



*The Criminal Investigation Function Should
Consider Changes to Its Custody of Original
Tax Returns and Controls for Accessing Tax
Information Electronically*

January 2006

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TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

January 4, 2006

MEMORANDUM FOR CHIEF, CRIMINAL INVESTIGATION

Michael R. Phillips

FROM: Michael R. Phillips
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – The Criminal Investigation Function Should Consider Changes to Its Custody of Original Tax Returns and Controls for Accessing Tax Information Electronically (Audit # 200410038)

This report presents the results of our review to determine whether the Criminal Investigation (CI) function adequately controls its custody of original tax returns¹ and use of tax return information.²

Synopsis

CI function personnel routinely access and use tax returns and tax information during the course of their investigations. Disclosure laws govern access to such information. The CI function obtains from Internal Revenue Service (IRS) storage facilities and the Federal Records Centers the original paper tax returns filed by the subjects of its tax investigations, the premise being the tax returns are an item of evidence. In addition to accessing tax returns, CI function personnel access IRS databases and view tax information on the Integrated Data Retrieval System (IDRS)³ during the course of an investigation or when evaluating potential cases. In instances where the investigation has no direct connection to a tax-related charge and the CI function has not designated that the investigation is otherwise related to tax administration, CI function personnel

¹ A return is any tax return or information return, schedules, and attachments, including any amendment or supplement, which is required or permitted to be filed and is filed by a taxpayer with the Secretary of the Treasury.

² The statutory definition of return information is very broad and primarily relates to information that did not come from the taxpayer. It includes information extracted from a return, e.g., the names of dependents, locations of business interests, and bank accounts.

³ The IDRS is a system which enables IRS employees in the campuses and the Area Offices to have instantaneous visual access to certain taxpayer accounts. Requests to have original documents charged out to an IRS employee or requests to have paper transcripts prepared are also input via the IDRS.



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do *not* have an inherent right to unilaterally access or use any tax returns or tax return information.⁴ Disclosure and use of specified tax information by the CI function in those instances is allowed only pursuant to disclosure provisions, such as those involving a court order or other agency request.

The CI function's Review and Program Evaluation reviews⁵ had identified control weaknesses in some field offices' custody of original tax returns. In response to the Treasury Inspector General for Tax Administration's request for suggestions for Fiscal Year (FY) 2004 audit coverage, the former Chief, CI, cited controls of tax returns as a management concern due to the anticipated lack of support staff in the field office locations caused by budgetary shortfalls. Our canvass of CI function field offices in January 2005 indicated there were about 216,000 original tax returns in the custody of 237 separate groups across 33 field offices.⁶ Our analysis of June 2005 IRS personnel data indicated 88 of the groups did not have a Compliance Support Assistant (CSA) on the group's roster.⁷ The CI function's FY 2005 new-hiring plans included the addition of 99 support staff, of which 42 would be CSAs, to address locations that had vacancies. We were advised by CI function Headquarters that 38 CSA positions were actually filled during FY 2005.

Our site visits to seven groups within three field offices verified that original tax returns were adequately safeguarded. We also identified that tax return inventory (TRI) database users were generally not fully using all the features of the system which can assist them as custodians, and some groups did things contrary to the most efficient use of the TRI database. Users generally did not use fields present in the TRI database to record when tax returns were temporarily charged out of their custody and when a tax return was initially requested from files for an investigation. System-generated reports for follow-up purposes would be available if those fields were used.

Securing the original tax returns needed as evidence has been problematic for the CI function. A task force found the CI function needs to educate its support staff personnel who request tax returns regarding items such as the proper document locator number to request and how to interpret the notations made on document requests that are returned unfilled. This would assist the staff in following up with other parties that have the document charged out or otherwise understanding if the document is available and/or what happened to it. We believe it may be

⁴ The CI function defines as tax-related those investigations relating to violations of any statute within United States Code (U.S.C.) Title 26 (Internal Revenue Code) or Title 26 related false claims and conspiracy statutes at 18 U.S.C. §§ 286, 287, or 371 (2004). The most prominent nontax-related statutes the CI function has jurisdiction for relate to money laundering statutes 18 U.S.C. §§ 1956 and 1957 (2004).

⁵ Review and Program Evaluation reviews assess local CI function operations and managerial effectiveness on a 3-year cycle to ensure a field office is in alignment with the CI Strategy and Internal Revenue Manual standards.

⁶ This figure does not include tax returns in the custody of other CI function programs such as Fraud Detection Centers and Lead Development Centers.

⁷ The CSA position normally would be assigned the tax return inventory duties. However, it is likely that there is some overlap of duties with other support staff positions, such as Tax Fraud Investigative Aides.



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more effective if a centralized group of support personnel, who could be more thoroughly trained, are responsible for resolving document retrieval issues. In addition, centralizing the tax return inventory might be a means to reduce the custodial workload at the field offices. Finally, the CI function's centralized document conversion center may be able to reasonably implement an electronic approach for case file copies of tax returns.

The CI function's involvement with electronic tax information is extensive. During FY 2004, CI function personnel accessed over 1.3 million unique taxpayers' tax information. This included about 407,000 requests for original paper filed tax returns, about 130,000 requests for printed images of electronically filed tax returns, and about 1.4 million requests for line item information transcribed from tax returns. The overarching issue in this area is the balancing of the CI function's freedom to quickly, easily, and efficiently access information it is allowed to use during the course of its investigations with the adequacy of control features to help ensure accesses are appropriate, approved, and supported, and any unauthorized accesses would be deterred or detected. Our site visits indicated that supporting documentation to show the connection of an access to a particular investigation generally was either not readily available or did not exist. Without such support, the CI function faces an increased risk that tax returns and return information are being accessed without proper authority to do so. We believe additional basic controls could accentuate the deterrence effect on users of tax information, in addition to improving the CI function's ability to retrieve useful information regarding the nature of an access in instances where that becomes necessary.

We were unable to complete, within our audit's time period, some audit steps designed to determine if CI function accesses to tax information were authorized for tax administration purposes. CI function National Headquarters officials informed us that their Criminal Tax Counsel had advised that certain information could not be provided to us without potentially violating the secrecy provisions of the grand jury process. The area of nontax-related cases rests squarely in the domain of grand jury investigations (i.e., 97 percent of the total nontax-related cases are grand jury). We consider the disclosure of tax information on nontax-related cases to be an area where even a few missteps could have significant repercussions for the IRS. We continue to work with CI function National Headquarters officials to develop a protocol that will allow us to access the data necessary to perform audit tests without compromising any grand jury process rules. The results of our analysis of tax information accesses on nontax-related cases will be reported in a subsequent audit report after an agreement on a protocol can be reached.

Recommendations

To assist the CI function in fulfilling the responsibilities associated with custody of original tax returns, we recommended the Chief, CI, develop and distribute an electronic online awareness program to provide sufficient information to group supervisors and support personnel that use the TRI database to ensure they know how to fully use the system's control features. We also



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believe the CI function should consider if its concerns regarding the ongoing custody of original tax returns at its field offices could be alleviated by centralizing custody at a single location. We recommended the Chief, CI, have the Tax Return Task Force study the pros and cons of centralizing custody of the tax return inventory. To help clarify how current case building trends relate to the custody issue, we also recommended the CI function gather data through the Review and Program Evaluation program regarding the extent that field office special agents actually rely on original tax returns (as opposed to copies of tax returns) during the interview and investigation process to achieve successful prosecution recommendations.

Given the sensitivity of taxpayer information, we believe it would be prudent for the CI function to improve the basic control procedures for accessing tax information electronically. We recommended the Chief, CI, develop a standard IDRS input request and supporting form that includes a space for a brief statement to explain the reason for the access, require the form be used, and require supervisory (or possibly an assisting designee) approval, either before or after input. In addition, we recommended that periodic IDRS activity reports be provided to the CI function's group supervisors so they can monitor the input history of personnel in their groups.

Response

The Chief, CI, agrees the CI function's current procedures provide sufficient safeguards for original tax returns, but also recognizes that improvements are always possible. The Chief, CI, agreed with two of the five recommendations and partially agreed with the others. For example, the Chief, CI, agreed to issue guidance highlighting the various TRI database features, and to remind Supervisory Special Agents of the usefulness and availability of IDRS security reports as a management oversight tool.

While agreeing to consider changes and take actions in response to other recommendations, the Chief, CI, did not immediately or fully adopt the remaining three recommendations. Instead, the CI function will take slightly different corrective actions or other intermediate steps to study the most substantial recommendations before considering them for potential future implementation in a modified fashion. Specifically, the CI function will consult with the Department of Justice Tax Division and Criminal Tax Counsel to determine the viability of using copies or images of tax returns in lieu of the originals during the investigative process. Once legal opinions are in hand, the CI function will study the matter further, if warranted. The Chief, CI, responded that because our recommendation to consider centralizing the tax return custody calls for the study of potential operating procedural changes beyond the scope and insight of their tax return task force as presently comprised, the CI function's senior staff will evaluate the recommendation further to determine whether a different task force should be convened at a later date. We accept these proposed alternative actions.

Regarding their controls for accessing tax information electronically, the Chief, CI, wishes to remain cautious in implementing the recommendation fully as it would add additional



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administrative burden on the field offices. After obtaining input from various levels in the organization, the CI function will determine the feasibility of implementing the full recommendation. While we do not disagree with the CI function's desire to study the issue, we continue to believe that a procedure to create adequate documentation to support the accesses made to tax information is a basic control procedure that would not be onerous and, that without such support, the risk of IDRS accesses without proper business purposes is increased.

Management's complete response to the draft report is included as Appendix IV.

Copies of this report are also being sent to the IRS managers affected by the report recommendations. Please contact me at (202) 622-6510 if you have any questions or Daniel R. Devlin, Assistant Inspector General for Audit (Headquarters Operations and Exempt Organizations Programs), at (202) 622-8500.



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Background

Among the most basic of a taxpayer's privacy rights is an expectation the Internal Revenue Service (IRS) will keep personal and financial information confidential. In general, the allowable ways in which the IRS can use tax returns¹ and tax information,² and, conversely, the required protections the IRS must apply to limit access to such information are guided by laws that are referred to, collectively, as disclosure laws. The most pertinent disclosure provisions regarding the IRS are contained in Internal Revenue Code (I.R.C. or Tax Code) Section (§) 6103, "Confidentiality and disclosure of returns and return information."³

Because the Criminal Investigation (CI) function's mission is to investigate potential criminal violations of the Tax Code and related financial crimes, CI function personnel routinely access and use tax returns and tax information during the course of their investigations. The disclosure of tax information to CI function personnel for this purpose is specifically allowed by I.R.C. § 6103 (h)(1)(2004), which makes tax information open to officers and employees of the Department of the Treasury without written request when official duties require such for tax administration purposes. Even when the matters being investigated are not specifically within the tax statutes of the I.R.C., the CI function has a procedure that allows managers to declare that an investigation is "related to tax administration." The CI function made such a related statute call in about 250 investigations during Fiscal Year (FY) 2004.

The CI function's access to tax returns and tax information is governed by disclosure laws.

Conversely, in instances where the CI function investigation has no direct connection to a tax-related charge and the CI function has not designated that the investigation is otherwise related to tax administration, CI function personnel do *not* have an inherent right to unilaterally access or use any tax returns or tax return information.⁴ In such situations when CI function personnel are enforcing laws not relating to tax administration, the disclosure and use of specified tax information is allowed only when the requirements of I.R.C. § 6103 (i)(2004) are

¹ A return is any tax return or information return, schedules, and attachments, including any amendment or supplement, which is required or permitted to be filed and is filed by a taxpayer with the Secretary of the Treasury.

² The statutory definition of return information is very broad and primarily relates to information that did not come from the taxpayer. It includes information extracted from a return, e.g., the names of dependents, locations of business interests, and bank accounts.

³ 26 United States Code (U.S.C.) § 6103 (2004).

⁴ The CI function defines as tax-related those investigations relating to violations of any statute within U.S.C. Title 26 (Internal Revenue Code) or Title 26 related false claims and conspiracy statutes at 18 U.S.C. §§ 286, 287, or 371 (2004). The most prominent nontax-related statutes the CI function has jurisdiction for relate to money laundering statutes 18 U.S.C. §§ 1956 and 1957 (2004).



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met, such as pursuant to and upon the granting of an order by a Federal district court judge or magistrate, or through the fulfillment of a request from another Federal agency or Department of Justice officials.

The CI function obtains from IRS storage facilities and the Federal Records Centers the original paper tax returns filed by the subjects of its tax investigations, the premise being the tax returns are an item of evidence. The CI function field offices that conduct investigations retain custody of original tax returns for the duration of an investigation because special agents may need the tax returns for “signature verification” by a taxpayer, for forensic analysis, or to present to a grand jury or at trial proceedings. The CI function’s guidelines for tax return inventory control require the field offices to maintain a separate record of all original tax returns in its custody, to provide appropriate security for original tax returns to prevent unauthorized disclosures, and to not retain original tax returns longer than necessary. Our canvass of CI function field offices in January 2005 indicated there were about 216,000 original tax returns in the custody of 237 separate groups across 33 field offices.⁵

However, when cases actually go to court, there is legal support for using authenticated copies of tax returns in the trial process. The process of authenticating a copy of a tax return involves the preparation of a certification statement by an officially designated custodian of the records. The CI function field offices forward the original tax returns to a Court Witness Coordinator located at a Fraud Detection Center to accomplish this. Department of Justice guidance states that arrangements should be made to provide substitute copies of tax returns to the Court, if possible; however, the original copies should always be available in the courtroom for use if the need arises.

The CI function’s Review and Program Evaluation reviews⁶ had identified control weaknesses in some field offices’ custody of original tax returns. In response to the Treasury Inspector General for Tax Administration’s request for suggestions for FY 2004 audit coverage, the former Chief, CI, cited controls of tax returns as a management concern due to the anticipated lack of support staff in the field office locations caused by budgetary shortfalls. Our analysis of June 2005 IRS personnel data indicated 88 of 237 CI function groups did not have a Compliance Support Assistant (CSA) on the group’s roster.⁷ The CI function’s FY 2005 new-hiring plans included the addition of 99 support staff, of

CI function management was concerned about a potential lack of support staff needed to control the custody of tax returns.

⁵ This figure does not include tax returns in the custody of other CI function programs such as Fraud Detection Centers and Lead Development Centers.

⁶ Review and Program Evaluation reviews assess local CI function operations and managerial effectiveness on a 3-year cycle to ensure a field office is in alignment with the CI Strategy and Internal Revenue Manual standards.

⁷ The CSA position normally would be assigned the tax return inventory duties. However, it is likely that there is some overlap of duties with other support staff positions, such as Tax Fraud Investigative Aides.



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which 42 would be CSAs, to address locations that had vacancies. We were advised by CI function Headquarters that only 38 CSA positions were actually filled during FY 2005.

When original tax returns are maintained in the custody of CI function groups, there are costs associated with providing space, storage cabinets, and personnel designated to perform the tasks of custodians. In an environment of tight budgets and staff vacancies, there is an inherent risk that affected field offices might experience substandard security in the area of controlling original tax returns if other investigative support tasks also needed from its available personnel are deemed to be a higher priority at the time.

In addition to accessing tax returns, CI function personnel access IRS databases and view tax information on the Integrated Data Retrieval System (IDRS)⁸ during the course of an investigation or when evaluating potential cases or identifying an individual or entity without initiating an investigation. In instances where tax returns were electronically filed, there is no traditional paper tax return to obtain as an item of evidence. There is, of course, still tax return information that is created by an electronically filed return. CI function personnel have the freedom to conduct tax account research without it being required to be associated with a formal case number. Normally, the responsibility for accessing the IDRS system to display tax information, generating transcripts of tax information, and requesting that tax returns be charged out to a group is centralized with group clerks and investigative aides. However, where field offices are affected by shortages in support staff personnel, special agents may have the ability to access IDRS directly to obtain the necessary tax information. Our review of IDRS audit trail data⁹ indicated that CI function personnel, including 137 special agents in 20 of the field offices, accessed tax information for over 1.3 million unique taxpayers during FY 2004.

This review was performed at seven CI function groups organizationally located within the Cleveland, Ohio; San Diego, California; and St. Louis, Missouri, field offices during the period January through August 2005. We also evaluated data representing all field offices nationwide as included in the CI function's Management Information System (CIMIS)¹⁰ and the IDRS audit trail file.

Field offices had custody of about 216,000 tax returns, and the CI function also had accessed tax information on over 1.3 million taxpayers during FY 2004.

⁸ The IDRS is a system which enables IRS employees in the campuses and the Area Offices to have instantaneous visual access to certain taxpayer accounts. Requests to have original documents charged out to an IRS employee or requests to have paper transcripts prepared are also input via the IDRS.

⁹ An audit trail in this context is an automatic electronic chronological record of system activities that is sufficient to permit reconstruction, review, and examination of a transaction.

¹⁰ The CIMIS is a database that tracks the status and progress of criminal investigations and the time expended by special agents. It is also used as a management tool that provides the basis for decisions of both local and national scope.



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We were unable to complete, within our audit's time period, some planned audit steps designed to determine if CI function accesses to tax information were authorized for tax administration purposes. The CI function's Criminal Tax Counsel advised that certain information could not be provided to us without potentially violating the secrecy provisions of the grand jury process. We continue to work with CI function National Headquarters officials to develop a protocol that will provide us with sufficient evidence for these tests. The results of our analysis of tax information accesses on nontax-related cases will be reported in a subsequent audit report after an agreement on a protocol can be reached.

With the exception of the scope limitation described above, the audit was conducted in accordance with *Government Auditing Standards*. 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

Effective Procedures Were in Place to Control Custody of Original Tax Returns, but Some Features of the Tax Return Inventory Database Were Not Being Used

The CI function has a tax return inventory (TRI) database system designed to control the request, receipt, inventory, and disposition of income tax returns processed in and through the CI function. This application is for use at the group level, typically with one support staff person in the group designated as the user. The various TRI systems across the country are not interconnected, but the same database is to be used consistently in all locations.

Our site visits to seven groups within three field offices verified that the designated TRI user in each group had exclusive control of the database and custody of all original tax returns in locked cabinets. Also according to procedure, group special agents worked from a copy of an original tax return supplied by the designee and did not

CI function field offices controlled and safeguarded the original tax returns.

normally retain the originals for extended periods. To ensure the effectiveness of their controls, the field offices annually performed as required a 100 percent physical verification of every original tax return in their custody, identified discrepancies, and took actions to correct them. In each group that we visited, we also tested a random sample of at least 50 tax return records in the TRI database to verify they were actually present in the group and a random sample of 50 tax returns present in the locked cabinets to verify they were actually recorded in the TRI database. In total, we compared 430 database records to tax returns in the cabinets and compared 350 tax returns from the cabinets to the database records. We identified only isolated discrepancies and concluded that on an internal control level, original tax returns were controlled and safeguarded. In one group, we identified issues in our sample verification that led us to expand our review and we identified significant accuracy problems with that group's TRI database.¹¹ We believe the group's next 100 percent physical verification would have likely identified these issues.

While original tax returns were adequately safeguarded, we also identified the TRI database users were generally not fully using all the features of the system which can assist them as

¹¹ The issues included a special agent transferring into the group with 44 original tax returns which did not get recorded in the group's TRI database, 3 tax returns were not recorded as being part of a large group of tax returns sent to the unit that generates certified copies for trial evidence, and several other isolated recordkeeping discrepancies.



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custodians, and some groups did things contrary to the most efficient use of the TRI database. We believe it was evident that the following issues occurred due to a lack of awareness by the users and group supervisors regarding the features of the TRI database and the proper use of it as an inventory control.

- Users generally did not use a field present in the TRI database to record when tax returns were temporarily charged out of their custody. If this feature was used, a list of all outstanding charge-outs could be immediately system generated for accountability purposes. Instead, paper charge-out sheets or logs were commonly used, but they tended to be scattered, inaccurate, and lacked detail.
- Users generally did not use a field present in the TRI database to record when a tax return was initially requested from files for an investigation. If this feature was used, a list of all unfilled requests could be immediately system generated for periodic follow-up. Instead, paper reminders were generally kept.
- Two groups (within two different field offices) had been controlling the printed images of electronically filed tax returns obtained by the group in its TRI databases when such was not necessary. While those images are tax return information, they do not represent actual original tax returns. Controlling those items in the TRI database could increase both the custodian's workload and the effort necessary to conduct the periodic 100 percent physical verifications.
- One group had replaced its TRI database records with a stand-in spreadsheet system to control its inventory of original tax returns on-hand because it felt its version of the TRI database had been corrupted. Thus, the group custodian did not have use of any of the TRI database record-keeping features for about 8 months while this situation remained unresolved until the time of our review.

Users were not always fully using the tax return database features.

Recommendation

Recommendation 1: The Chief, CI, should develop and distribute an electronic online awareness program to provide sufficient information to group supervisors and support personnel that use the TRI database to ensure they know how to fully use the system's control features, access TRI user guide materials, and achieve uniformity as to what documents are controlled.

Management's Response: The Chief, CI, agreed to issue guidance highlighting the various TRI database features available for use and remind the field on how to access the online handbook. There is a TRI database handbook already available online for all CI function personnel to reference. It identifies the features noted in the report and details



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their use. Additional information summarizing the TRI database features could benefit field office personnel, especially those who are unaware of the online handbook.

Centralizing the Tax Return Inventory Should Be Considered to Reduce the Custodial Workload at the Field Offices

The CI function's Internal Revenue Manual (IRM) procedures direct personnel to view tax information when evaluating potential cases and to obtain original tax returns before interviewing the subject of an investigation. The IRM specifies CI function special agents must have custody of the original tax returns involved as a prerequisite to independently interviewing a subject or that subject's representative. The IRM also states if the investigation deals with an alleged false or fraudulent tax return, the special agent shall obtain a statement under oath from the person who prepared the tax return (e.g., a tax professional paid by the subject to prepare the tax return). Ultimately, the original tax returns in a criminal tax case are items of evidence. The IRM specifies the special agent should secure documents in the custody and control of the IRS that will be used at trial, including all available original tax returns.

While we recognize the importance of and the necessity for the CI function to promptly secure possession of the original tax returns for the reasons described, we question whether the tax returns need to be maintained locally at each CI function group location. We believe the CI function should consider if its concerns regarding the

The custody of original tax returns could be centralized rather than maintained at each group location.

ongoing custody of tax returns at its numerous field offices could be alleviated by centralizing the storage of original tax returns for evidence custody purposes at a single location. In lieu of the original documents being in the groups, copies could be used during the investigative process unless original tax returns are necessary in the field on a case-by-case basis.

Special agents do not frequently handle the original tax returns

Even though the IRM language sounds like absolute requirements for having original tax returns in the hands of the special agents, we observed during our site visits that the original tax returns maintained by the field offices are not usually handled much by special agents during their investigations. In general, group support personnel make photocopies of all tax returns requested for investigative cases to provide the special agents with working copies for their case files, and the custodians retain exclusive custody of the originals in their locked cabinets. As mentioned previously in the background information, there were 237 separate groups that had custody responsibilities for original tax returns, with the average inventory per group about 900 tax returns.

In some instances, original tax returns are indeed handled by a special agent and may even be forensically analyzed when circumstances dictate (i.e., for fingerprints or handwriting analysis).



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When necessary, handling of original tax returns to evaluate their evidence value will need to continue. However, in many instances, based on our interviews of group personnel and our review of charge-out records, original tax returns received in the groups evidently are not often handled by the special agents. There are several reasons this may occur:

- The subject may not ever be interviewed by the special agent, depending on the case circumstances.
- The signature verification step may not be considered as being necessary, or the working copies may be considered to be just as effective as originals for a signature verification (unless the subject denies the signature as their own).
- Many of the original tax returns obtained by the group are not the returns of the subject of an investigation, but are the returns of a taxpayer that was associated with the subject and were obtained for informational purposes.

Charge-out records were kept by varying methods and in varying degrees of accuracy in the seven CI function field office groups where we did onsite visits. We observed that each group appeared to have had, at most, only several instances each out of the hundreds of taxpayers in their inventories during FY 2004 where special agents had charged out original tax returns for a period of time. Based on those records, and in conjunction with discussions we had with personnel in the groups, we do not believe the original tax returns are used as a matter of rule during the preliminary stages of an investigation (e.g., for a step such as signature verification with the subject) and may not be a necessity until the issue of generating authenticated copies is encountered for prosecution recommendations.

Group records did not show original tax returns being charged out very frequently by special agents.

Actually securing the tax returns needed as evidence has been problematic

An original tax return, when one exists, is in fact a piece of evidence. We acknowledge that the CI function's experiences indicate original tax returns must be secured from IRS files as soon as possible because the prospects of securing tax returns decrease over time as the tax returns flow through the IRS' records retention and disposition cycle and to the Federal Records Centers.

As mentioned in the background information, CI function special agents use the IDRS to submit an electronic request (group support personnel generally do the actual inputting) that is routed to the applicable IRS files unit or Federal Records Center to cause an original tax return to be charged out to their group. The charge-out request is input at a local IDRS terminal and the tax return is pulled from files and shipped to the specified group location where it is secured in the aforementioned manner. The CI function's experiences are that this process does not always result in its obtaining the requested tax returns on the initial attempt. The CI function had a Tax Return Task Force in place at the end of FY 2004, and the following was part of the task force's status as described in the CI function's Business Performance Review document at that time:



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Planning and Strategy designed a survey to determine whether, and to what extent, the field continues to experience delays in obtaining original tax returns. Although some respondents stated they had not experienced any perceptible delays, the majority of respondents are still frustrated with the length of time needed to obtain returns. Examples frequently cited include the need to reorder the same return multiple times and the difficulty in obtaining returns that had previously been charged-out. Criminal Investigation will also partner with Wage and Investment (W&I) Submissions Processing to identify the reasons behind the delays in obtaining returns and suggest possible solutions.

CI function management informed us that as the task force progressed, one of the findings was the CI function needs to educate its support staff personnel who request tax returns regarding items such as the proper document locator number to request and how to interpret the notations made on document requests that are returned unfilled. This would assist the staff in following up with other parties that have the document charged out or otherwise understanding if the document is available and/or what happened to it. As we alluded to earlier, since each group is involved with obtaining and securing its own tax returns, there is in essence somewhere around 237 separate individuals that at times must attempt to follow up on unfilled requests. Based on the historical perspective presented by the task force, in conjunction with discussions we had with personnel in the groups who also described problems relating to this task, we believe it may be more effective if a centralized group of support personnel, who could be more thoroughly trained, are responsible for resolving document retrieval issues.

Document retrieval issues might be more effectively resolved by a better trained and specialized support group.

The centralized document conversion center may be able to reasonably implement an electronic approach for case file copies of tax returns

One feature that a centralized approach would require would be an ability to subsequently provide copies of tax returns (in whole or in part) to the CI function field office locations that need to view return information for investigative purposes. In the past few years, the CI function has had a goal to support and advance the use of electronic case files in its investigative process. To encourage this, the CI function already has a specialized document conversion center that advertises a scanning capability of 100,000 pages per day. This unit translates paper evidence into electronic evidence, with a goal of allowing investigative teams and prosecutors to move files among themselves to share information and potentially presenting such evidence in courtrooms with those capabilities. The transfer of tax return images from the document conversion center to the end users would be in electronic format, such as by emails, compact

Electronic images of tax returns as evidence fit into the CI function's long term goals.



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disks, external drives, or other means based on the amount of data that needs to be moved. End users (such as special agents) could then print out the images if they desired.

Recommendations

Recommendation 2: The Chief, CI, should direct the CI function's Tax Return Task Force to study the pros and cons of centralizing the custody of the tax return inventory, including the aspects of resolving unfilled requests, providing electronic images of original documents, providing original documents when necessary, storing the inventory, and coordinating the preparation of authenticated copies for Court proceedings. If the Tax Return Task Force has finished its original assignment, the group should reconvene for this purpose.

Management's Response: The Chief, CI, agrees in concept with the recommendation but will not immediately adopt this recommendation. The CI function constantly strives to maximize the efficiency of its support staff. Centralization of the tax return inventory could result in increased productivity of field office support staff as the report suggests. However, it could also be problematic for a variety of reasons. All benefits and disadvantages would need to be thoroughly evaluated before such a centralized system could be instituted. Because this recommendation calls for the study of potential operating procedural changes beyond the scope and insight of the tax return task force as presently comprised, the CI function will not immediately adopt it. However, the CI function's senior staff will evaluate the recommendation further to determine whether a different task force should be convened at a later date.

Office of Audit Comment: We accept the alternative action proposed by management. The only factors in the response that deviate from the specific recommendation are who might conduct further study of the issues within the CI function and when that might occur. We will ask the Chief, CI, to supplement the response with a proposed implementation date for determining whether a task force will be convened.

Recommendation 3: The Chief, CI, should have the Director, Strategy, insert an objective into the Review and Program Evaluation plan to gather data regarding the extent that field office special agents actually rely on original tax returns (as opposed to copies of tax returns) during the interview and investigation process to achieve successful prosecution recommendations. Ultimately, the data gathered from various field offices should be considered to determine if the current IRM language emphasizing the use of original tax returns still reflects the CI function standard or if the IRM language warrants revision based on current case building trends.

Management's Response: The Chief, CI, is not adopting this specific recommendation. However, the CI function will consult with the Department of Justice Tax Division and Criminal Tax Counsel to determine the viability of using copies or images of tax returns in lieu of the originals during the investigative process. Once legal opinions are in hand, they will study this matter further, if warranted.



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Office of Audit Comment: We accept the alternative action proposed by the Chief, CI. The only factor in the response that deviates from the specific recommendation is that the CI function wants to determine the legal aspects relating to the issue as the initial step in a process that should ultimately end up in the CI function evaluating whether changes are warranted.

Supporting Documentation Was Not Readily Available to Show Electronic Accesses to Tax Return Information Were for Tax Administration Purposes

The CI function's involvement with tax information is extensive. During FY 2004, CI function personnel accessed tax information associated with over 1.3 million unique taxpayers. This included about 407,000 IDRS command code requests for original paper filed tax returns, about 130,000 command code requests for printed images of electronically filed tax returns, and about 1.4 million command code requests for line item information transcribed from tax returns. These command codes were part of a total of over 17 million command code inputs made by CI function personnel, the majority of which were requests for tax information.

As mentioned in the background information, the responsibility for accessing the IDRS to gather relevant tax information usually rests with group support personnel. However, we identified 137 field office special agents who accessed IDRS directly for a total of nearly 310,000 inputs. The overarching issue in the area of electronic access to tax information is the balancing of the CI function's freedom to quickly, easily, and efficiently access information it is allowed to use during the course of its investigations with the adequacy of control features to help ensure accesses are appropriate, approved, and supported, and any unauthorized accesses would be deterred or detected.

The overarching issue is the balance between easy access and adequate controls to help ensure appropriate access.

While it is reasonable to consider the existence of a tax investigation controlled within the CIMIS as basic support for accessing that subject's tax information, the majority of IDRS inputs by CI function personnel were not for information on numbered subjects. Many of the IDRS inputs relate to associates of a subject or to persons and entities somehow related to the investigation. Another portion of the IDRS inputs relate to the CI function's evaluation of investigative leads or allegations prior to a case being initiated on the CIMIS. If the information is not deemed to be worthy of investigation, there would be no record of that potential subject captured within the CIMIS that would support the IDRS accesses. The connection to an investigative step for many of the CI function's electronic accesses to tax information will inherently not be obvious. In addition, there is a disclosure limitation that when an investigation has no direct connection to a tax-related charge, CI function personnel do not have an inherent right to access tax return information.



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Our site visits to seven groups within three field offices indicated that supporting documentation to show the connection of an access to a particular investigation generally was either not readily available or did not exist. In each group we visited, we tested random samples of

Documentation to support access to tax information was not always available or did not exist.

20 inputs that accessed line item information transcribed from tax returns and 20 inputs from other command codes used.¹² All of the samples were derived from the IDRS audit trail record where the input Taxpayer Identification Number (TIN)¹³ did not match to a TIN within the population of subject TINs provided to us by the CI function. In total, we pursued supporting documentation within each group's centralized files that might show the reason for the access for 292 IDRS inputs. The primary source for determining the reason for a particular IDRS access was the retained copies of input request forms maintained by the group support staff that did the inputs. We limited our reviews to relatively small initial sample sizes because these input request forms were generally informally maintained and organized and in essence were not intended to be a researchable source of information. We were able to locate the input request forms in nearly 59 percent of our sampled inputs; however, these forms did not always contain case identifying information. In other instances, local CI function personnel located related email messages or case file notations to support the IDRS access or provided an explanation from personal knowledge.

Given the sensitivity of taxpayer information, we believe it would be prudent for the CI function to improve the basic control procedures regarding IDRS access to tax information in ways that will not create an unreasonable burden or act as a detriment to effective information analysis. The objective of our recommendations regarding this control environment is primarily to accentuate the deterrence effect on users of tax information, in addition to improving the CI function's ability to retrieve useful information regarding the nature of an access in instances where that becomes necessary.¹⁴

We believe the following conditions existed due to an emphasis by the CI function on achieving easy access to tax information, under an assumption that all accesses would be appropriate.

Improved basic control procedures would be prudent given the sensitivity of taxpayer information.

¹² We could not test a sample of inputs that requested printed images of electronically filed tax returns as the IDRS audit trail did not always include specific information to identify what taxpayer account was accessed for this command code. We referred this audit trail weakness to our Information Technology staff, who advised that certain identifying information is supposed to be present, and they referred this error to the IRS for correction. We tested inputs that requested original tax returns in a different manner, using the group TRI database.

¹³ A TIN is a nine-digit number assigned to taxpayers for identification purposes. Depending upon the nature of the taxpayer, the TIN is either an Employer Identification Number, a Social Security Number, or an Individual TIN.

¹⁴ In the three field offices we visited, group supervisors often commented that, in their opinion, the annual employee awareness briefing on the IRS' policy on willful, unauthorized access and inspection of taxpayer records (referred to as UNAX) was the primary deterrent against inappropriate accesses.



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- Various forms used by special agents to request that group support personnel input specified IDRS command codes to research tax information, obtain account transcripts, charge out tax returns, etc., did not have a conspicuous space for the requester to insert a brief statement explaining the reason for the access request. Statements were not required and were not normally present on the forms we reviewed.¹⁵ CIMIS case numbers would normally be present if the request related to an existing investigation.
- Only one of the three field offices required group supervisor approval of all IDRS actions input by the group support personnel. In the other two field offices, only the request forms requesting the original tax returns required a group supervisor's approval; other IDRS actions were input without supervisory review and approval.
- In two of the three field offices, 28 of the 108 special agents within those field offices had the ability to access IDRS themselves. The agents were not required to prepare IDRS input forms to get group supervisor approval or to reflect their direct accesses of IDRS. Thus, the centralized group files contained no documentation at all regarding those inputs.
- In the two field offices where special agents input IDRS commands, group supervisors were not precisely aware which special agents in their groups had IDRS capabilities and which did not. There were no periodic IDRS activity reports provided to the group supervisors to allow for monitoring inputs.¹⁶

Considering that special agents already must prepare a request form to communicate to support staff what inputs they want, we do not believe it would be onerous to add a brief supporting statement in most instances. Likewise, requiring forms from special agents that perform their own IDRS inputs simply puts them on par with what other agents have to do. If supervisors in one field office already approve all IDRS input request forms, it appears that is a reasonable task to implement consistently. Without such support, the CI function faces an increased risk that tax returns and return information are being accessed without proper authority to do so.

¹⁵ When this condition was discussed at one field office, the Special Agent in Charge stated the local request form would be modified to add a "Reason for" space and used by all groups.

¹⁶ In one group, a special agent had input over 20,000 research commands during FY 2004, purportedly relating to a General Investigation assignment that required extensive tax account research on many taxpayers. When made aware of this, the acting group supervisor at the time of our site visit stated that may not have been an efficient use of the special agent's time, as opposed to arranging for a support person to do that amount of research.



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Recommendations

Recommendation 4: The Chief, CI, should develop a standard IDRS input request and supporting form that includes a space for a brief statement to explain the reason for accessing tax information; require the form be used by special agents that perform their own IDRS accesses for support purposes; and require the form be subject to supervisory (or possibly an assisting designee) approval for all accesses, either before or after input.

Management's Response: The Chief, CI, wishes to remain cautious in implementing this recommendation fully to ensure all changes are necessary and, accordingly, plans to study the issue. The CI function will review the various IDRS request forms and file maintenance procedures currently in use by field offices. After receiving input from various levels in the organization, they will determine the feasibility and necessity of mandating a standardized request form with supervisory approval for all IDRS accesses. In the interim, a memorandum will be issued to the field requiring all IDRS access requests be documented with employee names, investigation numbers, and the business purpose for the request. This response is because the findings that resulted in this recommendation came from a very small sample of overall field office operations and the recommended changes would add additional administrative burden on the field.

Office of Audit Comment: While we do not disagree with the CI function's desire to study the issue, we continue to believe that a procedure to create adequate documentation to support the accesses made to tax information is a basic control procedure that would not be onerous and, that without such support, the risk of IDRS accesses without proper business purposes is increased.

Recommendation 5: The Chief, CI, should ensure that periodic IDRS activity reports are provided to the CI function's group supervisors so they can monitor the input history of personnel within their groups.

Management's Response: The Chief, CI, agreed to remind group supervisors of the usefulness and availability of IDRS security reports as a management oversight tool. Each field office already has a designated IDRS coordinator responsible for oversight of IDRS related security reports. Any identified discrepancies and questionable items should result in follow-up and discussion with CI function field office management. This process, as currently configured, adequately addresses the basic concern raised in this recommendation.



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Use of Tax Return Information in Nontax-Related Cases Could Not Be Evaluated Without Entering a Protracted Process to Get Data Related to Grand Jury Cases

For our use during this audit, the CI function provided us with a data extract from its CIMIS of 23,986 TINs for the subjects of and the related associate persons of its open investigations during the period of FY 2003 – FY 2004.

This was the basic way we could determine if IDRS audit trail accesses matched to persons that related to a CI function investigation. However, we were unable to complete some audit steps because the CI function did not provide us with specific data that would have correlated known IDRS inputs to specific grand jury investigation CIMIS case numbers. CI function National Headquarters officials informed us that their Criminal Tax Counsel had advised that the specific information could not be provided to us without potentially violating the secrecy provisions of the grand jury process.

Data regarding grand jury cases were not provided to the TIGTA to allow completion of some audit steps.

Tax information accesses in nontax-related investigations

Our analysis of the CIMIS database identified 4,981 subject investigations¹⁷ that were in open status or in the prosecution pipeline¹⁸ at some point during FY 2004 that had no direct connection to a tax-related charge. The nontax nature of the cases was based on the statutory violations the CI function entered into the CIMIS at the times of the case allegation and, if applicable, the prosecution recommendation. As mentioned in the background section, CI function personnel do not have an inherent right to unilaterally access or use any tax returns or tax return information in a nontax situation. We had designed audit steps to determine if there were any IDRS inputs made by CI function personnel on these nontax cases and, if so, verify whether they were appropriate. To identify that scope, we needed to correlate the TINs for the subjects and associates of the nontax-related case numbers in the CIMIS with the TINs from the audit trail record of the IDRS.

On Criminal Tax Counsel advice, CI function National Headquarters officials did not provide us with CIMIS case numbers that correlated to TINs in their data extract on grand jury cases. Having that data would have allowed us to determine if the 4,853 nontax cases that were grand jury (i.e., 97 percent of the total nontax cases) involved IDRS accesses to tax information.

¹⁷ A subject investigation is when an individual or entity is alleged to be in noncompliance with the laws enforced by the IRS and there is potential for criminal prosecution. A subject investigation is a full-scale criminal investigation to gather pertinent evidence to prove or disprove the existence of a violation.

¹⁸ Investigations where the CI function has made a prosecution recommendation, but where the subsequent legal process has not yet been completed, are considered to be pipeline cases. CI function personnel may still be active on pipeline cases in order to assist with trial preparation or to serve as witnesses.



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For the 128 nontax cases that were not grand jury, we determined the CI function did not access taxpayer information on 70 cases, and in an additional 37 cases, the CIMIS did not have a TIN entered for the subject of the investigation to compare to the IDRS audit trail records. In another five cases, the accesses were done by CI function personnel at a Fraud Detection Center as opposed to a field office; therefore, we did no further research since we limited the scope of our review to field office accesses.

We identified a court order in only 1 of the remaining 16 cases that likely allowed the IRS access to tax information. To resolve the other cases, we would have to review investigative case file documentation at the field offices to evaluate the appropriateness of the IDRS accesses to tax information, given the nontax nature of the subject investigation.¹⁹

We consider the disclosure of tax information on nontax-related cases to be an area where even a few missteps could have significant repercussions for the IRS. As our data analysis shows, the area of risk for the CI function in nontax-related cases rests squarely in the domain of grand jury investigations. Further, we have indicators from our limited work on nongrand jury cases that suggest additional reviews of case file documentation is needed to ensure that accesses to tax information were properly authorized. We will continue to work with CI function National Headquarters officials to develop a protocol that will allow us to access the data necessary to perform an audit test such as this without compromising any grand jury process rules. Since we anticipate the process of continuing an analysis in this area may be relatively time consuming, the results of our analysis of tax information accesses on nontax-related cases will be reported in a subsequent audit report after an agreement on a protocol can be reached.

¹⁹ In seven cases, a primary investigation was tax related, but the tax charges did not carry over to the subsequent subject investigation. A primary investigation can serve as a precursor to a subject investigation.



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Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this review was to determine whether the Criminal Investigation (CI) function adequately controls its custody of original tax returns¹ and use of tax return information.² To accomplish this objective, we:

- I. Determined if the CI function had effective procedures in place to control access to original tax returns and tax information and to deter and detect unauthorized accesses.
 - A. Evaluated Internal Revenue Manual and other procedural guidance relating to the CI function's obtaining and maintaining custody of original tax returns and accessing Internal Revenue Service (IRS) information on the Integrated Data Retrieval System (IDRS).³
 - B. Interviewed Supervisory Special Agents during seven group visits (see II.A) to evaluate the local control and security environment and asked for each Supervisory Special Agent's perspective on:
 1. What procedures are likely to deter CI function personnel from unauthorized tax information accesses considering the freedom to conduct IDRS research.
 2. How the budget and staffing environment regarding support personnel affects the group's ability to meet its tax return custody responsibilities.
 3. How printed images of electronically filed tax returns and printed transcripts of line item information transcribed from tax returns are treated for custody and control purposes.
 - C. Obtained IDRS audit trail data⁴ files containing over 17 million IDRS command code inputs by CI function personnel during Fiscal Year (FY) 2004.

¹ A return is any tax return or information return, schedules, and attachments, including any amendment or supplement, which is required or permitted to be filed and is filed by a taxpayer with the Secretary of the Treasury.

² The statutory definition of return information is very broad and primarily relates to information that did not come from the taxpayer. It includes information extracted from a return, e.g., the names of dependents, locations of business interests, and bank accounts.

³ The IDRS is a system which enables IRS employees in the campuses and the Area Offices to have instantaneous visual access to certain taxpayer accounts. Requests to have original documents charged out to an IRS employee or requests to have paper transcripts prepared are also input via the IDRS.

⁴ An audit trail in this context is an automatic electronic chronological record of system activities that is sufficient to permit reconstruction, review, and examination of a transaction.



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1. The data were extracted from the IDRS audit trail universe and transferred to a local network server by a Computer Specialist using the Treasury Inspector General for Tax Administration Data Center Warehouse files. Due to the large volume of data, it was necessary to move the data files in 16 individual segments.
 2. Analyzed and summarized CI function personnel's IDRS activity reflected by the audit trail to identify areas of interest and develop an awareness of the overall tax information access environment. For example, we analyzed the IDRS audit trail data to identify how prevalent it was that IDRS command codes were input by special agents and/or Supervisory Special Agents.
- II. Determined if original tax returns in the custody of the various CI function locations were adequately controlled and physically safeguarded.
- A. Selected seven CI function groups, organizationally located within the Cleveland, Ohio (two groups); San Diego, California (two groups); and St. Louis, Missouri (three groups), field offices for onsite review based on a judgmental ranking of pertinent factors.
 1. Analyzed 28 CI function Review and Program Evaluation reviews⁵ conducted during FY 2003 – FY 2005 to identify if significant weaknesses had been reported for any field offices in the area of tax return controls.
 2. Canvassed all field offices by email on January 10, 2005, to determine the volume of original tax returns on hand at each location and asked that any local issues be explained. Received responses from 237 field office groups across 33 field offices in existence at that time.
 3. Analyzed IDRS audit trail data to develop field office and group ratios, rates, and percentages to use as ranking factors. For example, we compared the volume of IDRS command code inputs to request original tax returns from IRS files to the volume of tax returns on hand to estimate a turnover rate for tax returns obtained.
 - B. For groups selected for onsite review, obtained a copy of the group's tax return inventory (TRI) database.⁶

⁵ Review and Program Evaluation reviews assess local CI function operations and managerial effectiveness on a 3-year cycle to ensure a field office is in alignment with the CI Strategy and Internal Revenue Manual standards.

⁶ The CI function has a TRI database system designed to control the request, receipt, inventory, and disposition of income tax returns processed in and through the CI function. This application is for use at the group level, typically with one support staff person in the group designated as the user.



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1. Selected a random sample of 50 records (plus alternate records) from each selected group TRI database and determined if the original tax returns were properly in custody and controlled. In total, we compared 430 database records to tax returns located in locked security cabinets. The total population in the 7 groups' TRI databases was 9,447 records.
 2. Selected a random sample of 50 original tax returns from each selected group's security cabinets and determined if they were properly controlled by the TRI database. In total, we compared 350 tax returns located in locked security cabinets to database records. The population of tax returns in the cabinets should be similar to the 9,447 records, but the exact population was not known with certainty due to the possibility that tax returns could have been present but not controlled on the TRI database.
 3. Statistically valid random sampling techniques were not used since we did not plan to project our reconciliation results to the tax return inventory universe.
- C. Determined the methods used by the selected groups to control the charging-out of original tax returns to the possession of special agents or other persons and compiled the frequency that tax returns were charged out during FY 2004.
- D. Reviewed the documentation retained by the selected groups regarding their latest periodic inventory validation to determine if the validation was done with due professional care, if there was a separation of duties in who conducted the reconciliations, and if identified database issues were resolved.
- III. Determined if CI function accesses to tax returns and tax information were conducted as authorized for tax administration purposes.
- A. Obtained a data extract from the CI function's Management Information System (CIMIS)⁷ that contained 23,986 Taxpayer Identification Numbers (TIN) for the subjects of and related associate persons of investigations open at some point during the period of FY 2003 – FY 2004.⁸
 - B. Compared the CIMIS data extract to the IDRS audit trail records (see I.C).
 1. Separated the IDRS audit trail records (i.e., known IDRS accesses by CI function personnel) into 11,364 unique TINs that matched to CIMIS subject or associate TINs and almost 1.3 million unique TINs that did not match.

⁷ The CIMIS is a database that tracks the status and progress of criminal investigations and the time expended by special agents. It is also used as a management tool that provides the basis for decisions of both local and national scope.

⁸ A TIN is a nine-digit number assigned to taxpayers for identification purposes. Depending upon the nature of the taxpayer, the TIN is either an Employer Identification Number, a Social Security Number, or an Individual TIN.



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2. Selected a random sample of 20 unique TINs that did not match to CIMIS for each selected group in the following types of IDRS command codes. In total, we pursued support documentation for 292 IDRS inputs.
 - a) Inputs that accessed line item information transcribed from tax returns, from a population of 1,261 unique TINs identified in the 7 groups.
 - b) Inputs from all other command codes used, from a population of 7,544 unique TINs identified in the 7 groups.
 3. Statistically valid random sampling techniques were not used since we did not plan to project our results to the IDRS accesses universe. In addition, we limited our reviews to these relatively small initial sample sizes because supporting documentation, as pursued in step 4 that follows, was generally only informally maintained and organized.
 4. Reviewed the IDRS input request forms maintained by each group Compliance Support Assistant to determine if such a form could be located that related to the specific sampled IDRS input and if information was present on the form to support the tax administration purpose for the access (i.e., case number relationships and/or explanatory statements.)
 5. Interviewed the Supervisory Special Agents to ask if supporting documentation could be retrieved for those instances where an IDRS input request form was not located or if further explanation was desired.
- C. Where possible, determined the type of violations being investigated for the 11,364 unique IDRS audit trail TINs that matched to CIMIS subject or associate TINs on the CIMIS data extract or determined the TINs that were associated with the 4,981 subject investigations⁹ that were in open status at some point during FY 2004 that were controlled as nontax-related¹⁰ cases.
1. Separated the IDRS audit trail records (i.e., known IDRS accesses by CI function personnel) into 7,846 that were for grand jury cases, and 3,518 that were for nongrand jury cases. Separated CIMIS nontax cases into 4,853 that were grand jury, and 128 that were nongrand jury.

⁹ A subject investigation is when an individual or entity is alleged to be in noncompliance with the laws enforced by the IRS and there is potential for criminal prosecution. A subject investigation is a full-scale criminal investigation to gather pertinent evidence to prove or disprove the existence of a violation.

¹⁰ The CI function defines as tax-related those investigations relating to violations of any statute within United States Code (U.S.C.) Title 26 (Internal Revenue Code) or Title 26 related false claims and conspiracy statutes at 18 U.S.C. §§ 286, 287, or 371 (2004). The most prominent nontax-related statutes the CI function has jurisdiction for relate to money laundering statutes 18 U.S.C. §§ 1956 and 1957 (2004).



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2. Analyzed the related CIMIS data for nongrand jury cases to determine that 21 subject investigations were controlled on CIMIS as nontax-related cases and had accesses to tax information via IDRS by CI function personnel.
3. The CI function had not provided the CIMIS case numbers corresponding to TINs associated with grand jury cases, so we could not analyze CIMIS data to determine if the CI function's investigation was controlled as a tax-related or nontax-related case. Criminal Tax Counsel advised the CI function National Headquarters that specific information could not be provided without potentially violating the secrecy provisions of the grand jury process.
4. Discussed protocol options with CI function National Headquarters officials that would allow us to access the necessary data to perform an audit test (as part of a subsequent audit) without compromising grand jury rules.



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Appendix II

Major Contributors to This Report

Daniel R. Devlin, Assistant Inspector General for Audit (Headquarters Operations and Exempt Organizations Programs)
John R. Wright, Director
Diana M. Tengesdal, Audit Manager
Timothy A. Chriest, Lead Auditor
James Mills, Senior Auditor
Ahmed M. Tobaa, Senior Auditor
John M. Caporale, Auditor
Blanche R. Lavender, Computer Specialist



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Appendix III

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Appendix IV

Management's Response to the Draft Report



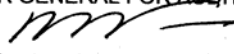
Criminal Investigation

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

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MEMORANDUM FOR MICHAEL R. PHILLIPS
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Nancy J. Jardini 
Chief, Criminal Investigation SE:CI

SUBJECT: Response To Draft Audit Report— The Criminal Investigation Function Should Consider Changes to Its Custody of Original Tax Returns and Controls for Accessing Tax Information Electronically (Audit # 200410038)
i-trak # 2006-06220

The Internal Revenue Service (IRS) Criminal Investigation (CI) function reviewed the Treasury Inspector General for Tax Administration (TIGTA) draft audit report concerning CI's access to, and custody and control of, original tax returns and return information. Criminal Investigation agrees its current procedures provide sufficient safeguards for original tax returns. As the draft report points out, CI identified potential weaknesses in its tax return inventory control procedures prior to Fiscal Year 2004. This realization resulted in positive steps to strengthen custody and verification procedures. Criminal Investigation has a system that tracks the custody of original tax returns at the field office level with a mandatory 100 percent annual physical verification of all original tax returns by independent CI field office personnel. Criminal Investigation's Review and Program Evaluation section supplements the process by completing additional sample verifications of field office tax return inventories during each field office review on a three year rotating cycle.

Although TIGTA concluded the current system provides adequate safeguards for original tax returns, CI recognizes that improvements are always possible. A detailed response to each individual TIGTA recommendation is discussed below.

Recommendation 1

"The Chief, CI, should develop and distribute an electronic online awareness program to provide sufficient information to group supervisors and support personnel that use the TRI database to ensure they know how to fully use the system's control features, access TRI user guide materials, and achieve uniformity as to what documents are controlled."



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2

The TRI database handbook is already available on-line for all CI personnel to reference. It identifies the features noted by TIGTA in the draft report and details their use. Additional information summarizing the TRI database features could benefit field personnel, especially those who are unaware of the on-line handbook. Therefore, CI will issue guidance highlighting the various TRI database features available for use and remind the field on how to access the on-line handbook.

Recommendation 2

“The Chief, CI, should direct the CI function’s Tax Return Task Force to study the pros and cons of centralizing the custody of the tax return inventory, including the aspects of resolving unfilled requests, providing electronic images of original documents, providing original documents when necessary, storing the inventory, and coordinating the preparation of authenticated copies for court proceedings. If the Tax Return Task Force has finished its original assignment, the group should reconvene for this purpose.”

As previously noted, CI constantly strives to maximize the efficiency of its support staff. Centralization of CI’s tax return inventory could result in increased productivity of field office support staff as the draft report suggests. However, it could also be problematic for a variety of reasons, such as resource location and potential increased delays due to the extra layer of processing involved. All benefits and disadvantages would need to be thoroughly evaluated before such a centralized system could be instituted. Because this recommendation calls for the study of potential operating procedural changes beyond the scope and insight of the tax return task force as presently comprised, CI will not immediately adopt it. However, CI’s senior staff will evaluate the recommendation further to determine whether a different task force should be convened at a later date.

Recommendation 3

“The Chief, CI, should have the Director, Strategy, insert an objective into the Review and Program Evaluation plan to gather data regarding the extent that field office special agents actually rely on original tax returns (as opposed to copies of tax returns) during the interview and investigation process to achieve successful prosecution recommendations. Ultimately, the data gathered from various field offices should be considered to determine if the current IRM language emphasizing the use of original tax returns still reflects the CI function standard or if the IRM language warrants revision based on current case building trends.”

Criminal Investigation is not adopting this specific recommendation. However, the Office of Operations Policy and Support will consult with the Department of Justice Tax Division (DOJ Tax) and Criminal Tax Counsel (CT Counsel) to determine the viability of using copies or images of tax returns in lieu of the originals during the investigative process. Once legal opinions are in hand, CI will study this matter further, if warranted.



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Recommendation 4

“The Chief, CI, should develop a standard IDRS input request and supporting form that includes a space for a brief statement to explain the reason for accessing tax information; require the form be used by special agents that perform their own IDRS accesses for support purposes; and require the form be subject to supervisory (or possibly an assisting designee) approval for all accesses, either before or after input.”

The IRM currently requires Supervisory Special Agent (SSA) approval to request tax returns, or other documents containing an IRS assigned Document Locator Number, but not for all Integrated Data Retrieval System (IDRS) accesses as recommended by the draft report.¹ Since the TIGTA findings that resulted in this recommendation came from a very small sample of overall field operations and the recommended changes would add additional administrative burden on the field, CI wishes to remain cautious in implementing this recommendation fully to ensure all changes are truly necessary.

Criminal Investigation will review the various IDRS request forms and file maintenance procedures currently in use by field offices. After receiving input from various levels in the organization, CI will determine the feasibility and necessity of mandating a standardized request form with SSA approval for all IDRS accesses.

In the interim, a memorandum will be issued to the field requiring all IDRS access requests be documented via one of the currently available forms that captures at minimum the requesting employee name, the processing employee name, the investigation number when applicable, and the business purpose for the request. The memorandum will also request that each field office review the suitability of direct IDRS access by special agents, in order to limit such access situations to the minimum necessary for continued effective operations.

Recommendation 5

“The Chief, CI, should ensure that periodic IDRS activity reports are provided to the CI function’s group supervisors so that they can monitor the input history of personnel within their groups.”

Each CI field office already has a designated IDRS coordinator responsible for oversight of IDRS related security reports. Each week the coordinator receives reports listing security violations, sensitive accesses, number of employees with IDRS access capabilities, and a master register report that specifically identifies all individuals with IDRS access within the field office.² On a monthly basis, the coordinator receives an IDRS security profile report that lists each individual with IDRS access, the IDRS command codes utilized by these individuals during the prior month, and the number of times each command code was utilized. The monthly reports are then consolidated into an additional quarterly report. Each coordinator is responsible for the review and certification of each of these reports. Any identified discrepancies and questionable

¹ IRM, Section 9.12.1.3.4

² The term “security violations” refers to issues such as sign-off delays, sign-off errors, and incorrect password use. The term “sensitive accesses” refers primarily to accesses of IRS employee and/or spouse IDRS accounts.



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items should result in follow-up and discussion with CI field office management. Additionally, the IRS Mission Assurance and Security Services function provides oversight to ensure CI coordinators are completing the required reviews and certifications. This process, as currently configured, adequately addresses the basic concern raised by this recommendation. However, SSAs will be reminded of the usefulness and availability of IDRS security reports as a management oversight tool.

Other Comments

Criminal Investigation agrees that the draft audit report, including CI's response, should be available to the public. The CI corrective action and monitoring plan for each of the recommendations contained in the draft report is described more completely below.

Recommendation 1

"The Chief, CI, should develop and distribute an electronic online awareness program to provide sufficient information to group supervisors and support personnel that use the TRI database to ensure they know how to fully use the system's control features, access TRI user guide materials, and achieve uniformity as to what documents are controlled."

Corrective Action(s)

Additional guidance will be provided to the field to ensure that necessary personnel are fully aware of the various TRI database features available for use and the location of the on-line handbook.

Implementation Date

Completed N/A Proposed 02/15/2006

Responsible Official(s)

Director, Financial Crimes

Corrective Action(s) Monitoring Plan

The Director, Operations Policy and Support will ensure this action is completed in a timely fashion.



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Recommendation 2

“The Chief, CI, should direct the CI function’s Tax Return Task Force to study the pros and cons of centralizing the custody of the tax return inventory, including the aspects of resolving unfilled requests, providing electronic images of original documents, providing original documents when necessary, storing the inventory, and coordinating the preparation of authenticated copies for Court proceedings. If the Tax Return Task Force has finished its original assignment, the group should reconvene for this purpose.”

Corrective Action(s)

As discussed in more detail above, this recommendation will not be adopted at this time, but will be considered for potential future implementation in a modified fashion.

Implementation Date

Completed N/A Proposed N/A

Responsible Official(s)

Not applicable

Corrective Action(s) Monitoring Plan

Not applicable

Recommendation 3

“The Chief, CI, should have the Director, Strategy, insert an objective into the Review and Program Evaluation plan to gather data regarding the extent that field office special agents actually rely on original tax returns (as opposed to copies of tax returns) during the interview and investigation process to achieve successful prosecution recommendations. Ultimately, the data gathered from various field offices should be considered to determine if the current IRM language emphasizing the use of original tax returns still reflects the CI function standard or if the IRM language warrants revision based on current case building trends.”

Corrective Action(s)

As discussed in more detail above, CI will consult with DOJ Tax and CT Counsel to determine the viability of using copies or images of tax returns in lieu of the originals. Additional study may take place later, depending on the legal guidance received.



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Implementation Date

Completed N/A Proposed 04/15/2006

Responsible Official(s)

Director, Financial Crimes

Corrective Action(s) Monitoring Plan

The Director, Operations Policy and Support will ensure the necessary action is completed in a timely fashion.

Recommendation 4

"The Chief, CI, should develop a standard IDRS input request and supporting form that includes a space for a brief statement to explain the reason for accessing tax information; require the form be used by special agents that perform their own IDRS accesses for support purposes; and require the form be subject to supervisory (or possibly an assisting designee) approval for all accesses, either before or after input."

Corrective Action(s)

Criminal Investigation will study the various IDRS access request forms and file maintenance procedures currently in use in its field offices. It will also seek senior staff and field management input regarding mandating standardized forms, file maintenance procedures, and SSA approval of each access to IDRS.

A memorandum will be issued requiring documentation of all IDRS access requests via a form that captures at minimum the requesting employee name, the processing employee name, the investigation number when applicable, and the business purpose for the request. The memorandum will also require each field office to review the number of special agents with direct IDRS access capability and the justification for each, with the goal of limiting such situations whenever feasible.

Implementation Date

Completed N/A Proposed 09/15/2006

Responsible Official(s)

Director, Financial Crimes

Corrective Action(s) Monitoring Plan

The Director, Operations Policy and Support will ensure these actions are completed in a timely fashion.



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Recommendation 5

"The Chief, CI, should ensure that periodic IDRS activity reports are provided to the CI function's group supervisors so that they can monitor the input history of personnel within their groups."

Corrective Action(s)

Headquarters CI will remind SSAs of the usefulness and availability of IDRS security reports as a management oversight tool.

Implementation Date

Completed N/A Proposed 02/15/2006

Responsible Official(s)

Director, Financial Crimes

Corrective Action(s) Monitoring Plan

The Director, Operations Policy and Support will ensure these actions are completed in a timely fashion.

If you have any questions, please call me at (202) 622-3200, or a member of your staff may contact Steven Pregozen, Director, Planning and Strategy section, SE:CI:S:PS, at (202) 622-3679.