



*Compliance With Statutory Provisions
Regarding the Use of Tax Information in
Nontax Criminal Investigations Cannot Be
Verified*

September 12, 2006

Reference Number: 2006-10-127

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

Redaction Legend:

1 = Tax Return/Return Information

8 = Information Reflecting the Bureau's Decision-Making Processes



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

September 12, 2006

MEMORANDUM FOR CHIEF, CRIMINAL INVESTIGATION

Michael R. Phillips

FROM: Michael R. Phillips
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Compliance With Statutory Provisions Regarding the Use of Tax Information in Nontax Criminal Investigations Cannot Be Verified (Audit # 200510031)

This report presents the results of our review of the use of tax information in nontax criminal investigations.¹ The overall objective of this review was to determine whether the Criminal Investigation (CI) function's accesses to tax return information were made properly, as authorized for tax administration purposes. This audit is a follow-on to a prior audit.² In that audit, the Internal Revenue Service (IRS) Office of Chief Counsel, Division Counsel/Associate Chief Counsel (Criminal Tax), had advised the CI function that information related to grand jury investigations could not be provided to us without potentially violating the secrecy provisions of the grand jury process. As a result, we deferred some of the audit tests to this audit and attempted to resolve the secrecy provision limitations by requesting access to nongrand jury supporting documents and soliciting assistance from the particular United States Attorney's Offices in charge of a sample of grand jury investigations. Despite indicating an initial willingness to assist with our audit, two of three United States Attorney's Offices determined that all information from our sample cases was grand jury in nature and thus could not be released to us for auditing purposes.

Impact on the Taxpayer

To promote the sound administration of the nation's tax laws, we conduct comprehensive and independent performance audits of IRS programs and operations. In this instance, grand jury

¹ See Appendix IV for a Glossary of Terms.

² *The Criminal Investigation Function Should Consider Changes to Its Custody of Original Tax Returns and Controls for Accessing Tax Information Electronically* (Reference Number 2006-10-028, dated January 2006).



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secrecy rules³ precluded our determining if taxpayer information used in nontax criminal investigations was in compliance with the Tax Code. However, we noted indications that procedures to deter noncompliance with Internal Revenue Code (I.R.C.) § 6103⁴ disclosure provisions could be improved.

Synopsis

This audit was conducted in accordance with *Government Auditing Standards*, except for the Field Work Standard for Performance Audits governing sufficient, competent, and relevant evidence.⁵ We did not have sufficient evidence to provide a reasonable basis for findings and conclusions about the CI function's access to tax information on nontax investigations; accordingly, we are issuing a disclaimer of opinion.

In addition to tax crimes, the CI function is involved in other areas of financial investigation that may or may not have an obvious relationship to tax administration, such as money laundering, securities fraud, narcotics, embezzlement, terrorism financing, and public corruption. When an investigation does not have a direct connection to a tax administration statute and the CI function has not designated the investigation as otherwise related to tax administration, CI function personnel do *not* have an inherent right to access or use tax information possessed by the IRS. Use of tax information in purely nontax investigations is allowed only pursuant to Federal Government disclosure provisions, which normally would involve obtaining a detailed court order from a district judge or magistrate allowing use of the information for nontax purposes.⁶

Due to the nature of nontax investigations, the vast majority are conducted jointly with at least one other Federal Government law enforcement agency and use the grand jury process to facilitate the investigations. Grand jury secrecy rules, in turn, generally create an environment that severely hinders our ability to audit the CI function's compliance with many tax provisions, including tax information disclosure provisions.

From our limited-scope review, we noted indications that procedures to deter noncompliance with I.R.C. § 6103 disclosure provisions could be improved. Three of the 10 investigations sampled from the field office that provided us with responsive documents were noncompliant with I.R.C. § 6103. Notwithstanding our disclaimer of opinion, we are providing the results of our limited review to CI function management for use in considering potential improvements to policies and procedures for compliance with disclosure provisions.

³ Federal Rules of Criminal Procedure, 18 United States Code Appendix Rule 6(e) (2005).

⁴ I.R.C. § 6103 (2004).

⁵ *Government Auditing Standards 2003 Revision* (GAO-03-673G, dated June 2003).

⁶ 26 United States Code § 6103(i) (2004).



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Response

We made no recommendations in this report. CI function management officials reviewed the discussion draft report and responded they are acutely aware of the seriousness of unauthorized disclosures of information protected by I.R.C. § 6103. The provisions of I.R.C. § 6103 are constantly reemphasized to all CI function employees and are an integral part of training programs and continuing professional education sessions. CI function management responded they believe the current statutory framework, case law, regulations, policy, and procedures provide adequate safeguards to protect taxpayers from unauthorized disclosures. However, because the prevention of unauthorized disclosures is a critical matter, the CI function will issue a guidance memorandum reemphasizing relevant policy and procedures regarding the disclosure of tax information and reminding employees of the ramifications of failing to adhere to them.

CI function management officials also provided written comments which we considered in revising the final report to make it more informative to the reader. Management's complete response to the discussion draft report is included as Appendix V.

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



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Abbreviations

CI	Criminal Investigation
CIMIS	Criminal Investigation Management Information System
FY	Fiscal Year
IDRS	Integrated Data Retrieval System
I.R.C.	Internal Revenue Code
IRS	Internal Revenue Service
TIGTA	Treasury Inspector General for Tax Administration
U.S.C.	United States Code



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Background

The Internal Revenue Service (IRS) Criminal Investigation (CI) function's responsibility to enforce criminal statutes regarding tax administration¹ is relatively evident because of the widely known role of the IRS as the nation's tax collection agency. The CI function has the authority to investigate criminal violations of the Tax Code, which specifically allows disclosure to and use of IRS tax information by CI function personnel for this purpose.² In addition to tax crimes, the CI function is involved in other areas of financial investigation that may or may not have an obvious relationship to tax administration. The CI function's long-time strategy asserts that tax and nontax areas are mutually supportive and encourages use of all statutes within the CI function's jurisdiction, the grand jury process, and all available enforcement techniques to combat tax evasion, money laundering, corporate fraud, terrorism financing, currency reporting violations, or other critical national law enforcement priorities.

When an investigation does not have a direct connection to a tax administration statute and the CI function has not designated the investigation as otherwise related to tax administration, CI function personnel do *not* have an inherent right to access or use tax information possessed by the IRS. Use of tax information in purely nontax investigations is allowed only pursuant to Federal Government disclosure provisions, which normally would involve obtaining a detailed court order from a district judge or magistrate allowing use of the tax information for nontax purposes.³ Civil and criminal sanctions may be imposed upon intentional violators, and civil damages are permitted against the Federal Government.⁴

The seemingly odd circumstance of an IRS agent being restricted from viewing tax information is illustrated by the following cautionary statements within CI function guidance documents in relation to pure nontax cases:

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¹ See Appendix IV for a Glossary of Terms.

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

³ 26 U.S.C. § 6103(i) (2004).

⁴ 26 U.S.C. §§ 7213, 7431 (2004).



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The situation that most frequently causes confusion to a special agent arises when the special agent is participating in a money laundering investigation or a multi-agency money laundering or other multi-agency Federal grand jury investigation and tax charges are not the main focus of the investigation.⁶

Nontax crimes within the CI function's jurisdiction involve money laundering, securities fraud, narcotics, embezzlement, terrorism financing, public corruption, and many others. Due to the nature of such nontax investigations, the vast majority are conducted jointly with at least one other Federal Government law enforcement agency and use the grand jury process to facilitate the investigations. Grand jury secrecy rules,⁷ in turn, generally create an environment that severely hinders our ability to audit the CI function's compliance with various laws, regulations, policies, and procedures, including tax information disclosure provisions.

This audit is a follow-on to a prior audit.⁸ In that audit, the IRS Office of Chief Counsel, Division Counsel/Associate Chief Counsel (Criminal Tax),⁹ had advised the CI function that information related to grand jury investigations could not be provided to us without potentially violating the secrecy provisions of the grand jury process. As a result, we deferred some of the audit tests to this audit and attempted to resolve the secrecy provision limitations by requesting access to nongrand jury supporting documents from CI function files and soliciting assistance from the particular United States Attorney's Offices in charge of a sample of grand jury investigations. All three Offices in our sample initially stated a willingness to assist us in an audit of this area. However, only one of the three United States Attorney's Offices allowed the CI function field office to provide responsive documents to us. The other two Offices determined that all information from our sample cases was grand jury in nature and thus could not be released due to grand jury secrecy provisions. This situation is discussed further in the first section of this audit report.

We conducted this audit during the period November 2005 through July 2006 and engaged CI function personnel at the National Headquarters in Washington, D.C., and the Boston, Massachusetts; Dallas, Texas; and Miami, Florida, field offices. We requested the assistance of three United States Attorney's Offices.

⁶ Internal Revenue Manual 9.3.1.4.3.1.1 (04-13-2005).

⁷ Federal Rules of Criminal Procedure, 18 U.S.C. Appendix Rule 6 (2005).

⁸ *The Criminal Investigation Function Should Consider Changes to Its Custody of Original Tax Returns and Controls for Accessing Tax Information Electronically* (Reference Number 2006-10-028, dated January 2006).

⁹ A function within the IRS Office of Chief Counsel responsible for providing legal guidance.



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This audit was conducted in accordance with *Government Auditing Standards*, except for the Field Work Standard for Performance Audits governing sufficient, competent, and relevant evidence.¹⁰ Because the United States Attorney's Office interpretation of the grand jury secrecy rule in two locations prohibited the CI function from providing any documents responsive to our objective, we did not have sufficient evidence to provide a reasonable basis for findings and conclusions about the CI function's access to tax information on nontax investigations; accordingly, we are issuing a disclaimer of opinion. Notwithstanding this disclaimer of opinion, we are providing the results of our limited-scope review to CI function management for use in considering potential improvements to policies and procedures for compliance with disclosure provisions.

Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

¹⁰ *Government Auditing Standards 2003 Revision* (GAO-03-673G, dated June 2003).



Results of Review

Secrecy Rules Preclude an Effective Oversight Review Because of the Prevalence of Grand Jury Cases

In the past several years, the Treasury Inspector General for Tax Administration (TIGTA) has sought clarification of what is covered by grand jury secrecy rules through the advice of the TIGTA Office of Chief Counsel, the IRS Office of Chief Counsel, and Offices of Counsel for the Department of the Treasury and Department of Justice. Rule 6(e) of the Federal Rules of Criminal Procedure states that persons shall not disclose matters occurring before the grand jury, except as otherwise provided for in the Rules. A knowing violation of Rule 6 may be punished as a contempt of court, with the court having the discretion to decide whether the matter should be treated criminally or civilly. Disclosures of grand jury information may also be prosecuted as criminal violations of Title 18 United States Code (U.S.C.) § 1503¹¹ (relating to impeding the administration of justice).

The TIGTA's contention is that, in each grand jury investigation, it is unlikely all information and documentation kept by the CI function is grand jury information. There is uncertainty in the law surrounding what constitutes grand jury information, and the issue is subject to much debate. While there is a lengthy history of legal analysis of Rule 6(e)'s secrecy mandate for "matters occurring before the grand jury," analysis provided to us indicated the United States Supreme Court has not specifically defined the profile for how that language should be interpreted. As a result, the Federal circuit courts were split in their relative approaches and the degree to which they are open to disclosures in the grand jury area.

A Department of Justice Manual includes the following description of what is covered by Rule 6(e), footnoted with several court case citations:¹²

Rule 6(e) does not cover all information developed during the course of a grand jury investigation, but only information that would reveal the strategy or direction of the investigation, the nature of the evidence produced before the grand jury, the views expressed by members of the grand jury, or anything else that actually occurred before the grand jury.

For purposes of our audit, we sought to obtain only nongrand jury information that would not reveal matters occurring before a grand jury. However, the following caveat, also in the above Manual, may have affected our evidence-gathering effort:

¹¹ 18 U.S.C. § 1503 (2005).

¹² United States Department of Justice, Criminal Division, *Federal Grand Jury Practice* (January 1993).



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The local rules in a particular jurisdiction may provide for additional secrecy. The local rules of one district court, for example, contain particularly strict secrecy requirements for subpoenaed documents. Consequently, the local rules regarding the disclosure of information concerning grand jury should be carefully reviewed before making any disclosures.

We could not determine if the CI function had complied with I.R.C. § 6103

Despite indicating an initial willingness to assist with our audit, two of three United States Attorney's Offices determined that all information from our sample cases was grand jury in nature and thus could not be released to us for auditing purposes. An interpretation applied in the two Judicial Districts was that Rule 6(e) prohibits the release of any and all material associated with the CI function's investigation from the point it became a grand jury case. A more open interpretation of Rule 6(e), which was applied in the third Judicial District, apparently considered the substance of the materials in determining what could be shared for auditing purposes without divulging any secret workings of the grand jury. For that sample, we received responsive evidence, which included redacted (blacked-out) portions on some documents where the material had been deemed appropriate to withhold.

The CI function's position, per the advice of the IRS Office of Chief Counsel, Division Counsel/Associate Chief Counsel (Criminal Tax), was that, when the classification of material as grand jury or nongrand jury is in question, the ultimate decision to release information falls within the purview of the attorney for the Federal Government (i.e., the United States Attorney's Office or other pertinent Department of Justice official) and the CI function could not provide us with information related to grand jury investigations without potentially violating the grand jury secrecy provisions. One Assistant United States Attorney suggested to CI function management that, as an alternative, a statement or an affidavit could be provided to us, affirming that the audit sample cases were reviewed by the IRS and asserting whether accesses to tax information were authorized. We declined this suggestion because it does not satisfy standards for auditors to independently evaluate audit evidence, particularly when considering our audit population represented instances in which we sought to verify whether tax information had been accessed improperly on nontax cases in potential violation of law.

As a result, our scope of review consisted of only 10 nontax investigations, as recorded in the CI Management Information System (CIMIS), for 1 CI function field office where access to tax information had occurred, as opposed to our planned scope of 30 sampled investigations from 3 dispersed field offices. These results, although valid for the individual cases reviewed, were not sufficient to support a sound basis for audit findings, conclusions, and recommendations. As mentioned earlier, a large part of an auditor's responsibility under the *Government Auditing Standards* is obtaining and evaluating evidence that ultimately supports his or her judgments and conclusions pertaining to the audit objective. The absence of sufficient evidence, in this instance due to the grand jury secrecy issue, results in a disclaimer from providing any assurances or recommendations.

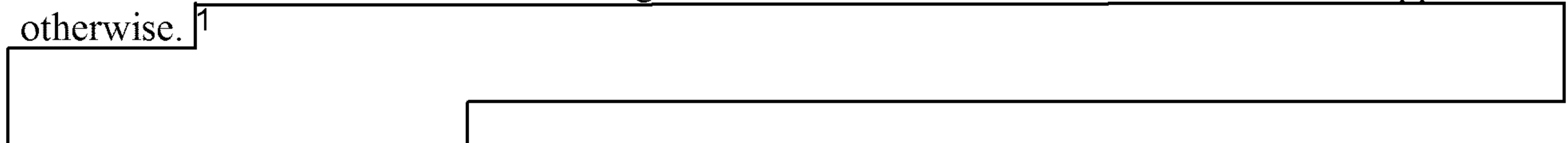


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As we stated in our prior audit report, we consider the disclosure of tax information on nontax-related cases to be an area in which even a few missteps could have significant repercussions for the IRS. We understand the purpose of Rule 6(e) and agree that secrecy for pertinent material is vital to the investigative function of the grand jury. Unfortunately, because of differing Federal Government circuit court rules regarding what information is covered by Rule 6(e), we are precluded from fulfilling our oversight role of providing an independent assessment of whether accesses to tax information were made properly, as authorized for tax administration purposes.

Management Should Consider Improving Procedures That Deter Noncompliance With Statutory Restrictions

From our limited-scope review, we discovered instances of noncompliance had occurred. As shown in Figure 1 that follows, 3 of 10 investigations sampled from the CI function field office that provided us with responsive case file documents were not in compliance with I.R.C. § 6103 disclosure provisions. When we considered the field office's explanations, the three investigations appear to involve inadvertent instances of noncompliance, possibly due to a lack of awareness by the CI function personnel. In 5 of 10 investigations, the cases were actually related to tax administration even though inaccurate entries in the CIMIS made them appear otherwise.¹





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Figure 1: Limited-Scope Sample Results

<u>Summary of 10 Cases</u>	<u>I.R.C. Compliant?</u>	<u>Number of Cases</u>	<u>CIMIS Coding Issues</u>
1			

Source: TIGTA analysis of case file documents and CIMIS data provided by the CI function.

Controlling electronic access to tax information is both challenging and critical

Because of the nature of the CI function’s role in tax administration, CI function personnel routinely access and use tax information during the course of their investigations. Because electronic access to tax information is such an integral part of the investigative process, yet has some inherent disclosure limitations, we believe it can be challenging for CI function management to balance employees’ ability to quickly, easily, and efficiently access information they are allowed to use with adequate control features to help ensure accesses are appropriate, approved, and supported, and any unauthorized accesses would be deterred or detected. Our analysis of CIMIS data identified 4,981 nontax investigations active during Fiscal Year (FY) 2004. By comparing subject identities to Integrated Data Retrieval System (IDRS) audit trail data, we determined that for 723 of 4,853 grand jury case taxpayers (15 percent) CI function personnel had accessed tax information. This was the audit population for our review.¹³

Although our observations from the single field office cannot be projected to this population of 723 cases, the results indicate a portion of the accesses may have actually been for tax-related investigations that incorrectly appeared as nontax cases due to CIMIS coding issues. On the

¹³ Many accesses by CI function employees relate to associates of a subject or to persons and entities somehow related to an investigation. Other accesses relate to the CI function’s evaluation of investigative leads or allegations prior to a case being initiated on the CIMIS. We limited the scope of our audit population to the persons who were subjects of investigations.



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other hand, neither we nor CI function managers can reliably ascertain solely from CIMIS data whether accesses to tax information on nontax cases were authorized, were inadvertent noncompliance, or were violations of law.

The IRS has an annual awareness program to increase employees' knowledge about their responsibilities regarding disclosure of taxpayer information. More specifically, CI function management officials advised us that disclosure provisions are constantly reemphasized to all CI function employees and are an integral part of training programs and continuing professional education sessions. We believe a vigilant deterrent effort is warranted because the risk of unauthorized access to confidential tax information is a problem across all IRS operating functions that will likely persist in spite of the serious consequences that violators face. Despite the IRS' continuous education efforts, the number of unauthorized access violations investigated by the TIGTA has remained relatively constant over the last 8 years. We do not intend to imply that this risk is indicative of actions by CI function personnel; however, TIGTA proactive reviews have identified IRS personnel across all functions who had inappropriately viewed confidential tax information for invalid reasons.¹⁴

In our prior report on controls over tax returns and return information, we concluded that supporting documentation to show the purposes of electronic accesses to tax information was not readily available or did not exist.¹⁵ We recommended the CI function improve the basic control procedures regarding IDRS access to tax information. CI function management took several actions in response to that recommendation. For example, CI function group supervisors were reminded of the usefulness and availability of IDRS Security Reports as a management oversight tool. We continue to encourage CI function management to conduct such oversight reviews and also to reconsider whether additional controls are necessary to effectively ensure accesses to tax information are authorized and appropriate. Additional actions may be necessary; a recent TIGTA report on the IDRS security system concluded that a majority of IRS managers were not reviewing IDRS Security Reports, resulting in little confidence that IRS managers are detecting potential unauthorized accesses of taxpayer information by employees.¹⁶ Also, IDRS Security Reports generally do not show individual accesses made to taxpayer accounts; thus, CI function managers would have to make further inquiries, based on Security Report information such as unusual command code activity, to determine if accesses to tax information were authorized. The issue of unauthorized access to tax information continues to generate interest. For example,

¹⁴ In addition to IRS monitoring of the IDRS, the TIGTA Office of Investigations Strategic Enforcement Division conducts comprehensive proactive reviews of IDRS audit trail information for employees of all IRS operating functions to identify unauthorized accesses of tax information of celebrities; political figures; and employees' neighbors, former spouses, and relatives.

¹⁵ *The Criminal Investigation Function Should Consider Changes to Its Custody of Original Tax Returns and Controls for Accessing Tax Information Electronically* (Reference Number 2006-10-028, dated January 2006).

¹⁶ *Increased Managerial Attention Is Needed to Ensure Taxpayer Accounts Are Monitored to Detect Unauthorized Employee Accesses* (Reference Number 2006-20-111, dated July 2006).



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upon the release of the TIGTA report on the IDRS security system, Congress expressed concerns regarding the possibility of unauthorized access to taxpayer information by IRS employees.

In another prior report, we recommended CI function management take necessary steps to ensure the accuracy of CIMIS data, which are used to facilitate program oversight and resource decisions.¹⁷ Since issuance of that report, the CI function has developed a new iteration of the CIMIS with upgrades to address identified problems, including prior audit recommendations, and has strengthened operating system controls. In this instance, we again suggest CI function management continue to ensure the CIMIS can accurately differentiate between tax-related and nontax investigations to facilitate CI function group supervisors' monitoring of the IDRS.

¹⁷ *The Criminal Investigation Function Has Made Progress in Investigating Criminal Tax Cases; However, Challenges Remain* (Reference Number 2005-10-054, dated March 2005).



Appendix I

Detailed Objective, Scope, and Methodology

The objective of this review was to determine whether the CI function's accesses to tax return information were made properly, as authorized for tax administration purposes. To accomplish this objective, we planned to evaluate IDRS inputs made by CI function personnel to cases controlled as nontax investigations on the CIMIS.¹

During FY 2004, CI function personnel accessed tax information associated with over 1.3 million taxpayers, inputting over 17 million IDRS command codes. In terms of case inventory, our analysis of the CIMIS identified 4,981 subject investigations (full-scale criminal investigations to prove or disprove an allegation against an individual or entity) that:

- Were in open investigation status at some point during FY 2004 or for which the subsequent legal process had not yet been completed during FY 2004.
- Did not have a direct connection to a tax-related violation.
- Had not been designated as otherwise related to tax administration.

We identified the nontax nature of each case based on the statutory violations entered into the CIMIS at the time of the case allegation and, if applicable, the prosecution recommendation. Of these nontax cases, 97 percent (4,853) were coded as grand jury cases. A comparison of CIMIS data to the FY 2004 IDRS audit trail identified 723 of the 4,853 grand jury case taxpayers (15 percent) were accessed by CI function personnel. We selected our samples from this population of 723 taxpayers.²

As discussed in the first section of the audit report, limitations to the scope of our review meant we could not conduct the audit in accordance with the *Government Auditing Standard* regarding Field Work Standards for Performance Audits.³ Because the interpretation of the grand jury secrecy rule by the United States Attorney's Offices in two locations prohibited the CI function from providing any documents responsive to our objective, we did not have sufficient evidence to provide a reasonable basis for findings and conclusions. The impact of being unable to meet the Field Work Standard is a disclaimer from providing any assurances or recommendations.

¹ See Appendix IV for a Glossary of Terms.

² Many accesses by CI function employees relate to associates of a subject or to persons and entities somehow related to an investigation. Other accesses relate to the CI function's evaluation of investigative leads or allegations prior to a case being initiated on the CIMIS. We limited the scope of our audit population to the persons who were subjects of investigations.

³ *Government Auditing Standards 2003 Revision* (GAO-03-673G, dated June 2003).



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Our methodology included the following steps. Specifically, we:

- I. Requested the assistance of selected United States Attorney's Offices in approving the release from grand jury cases of CI function documents responsive to our audit test.
 - A. Selected the three United States Attorney's Offices based on the highest volumes of cases per judicial district from the 723 investigation case population, while avoiding the repetitive selection of CI function field offices considering recent audit participation. The locations selected were three of the six top judicial districts by volume of cases and were geographically dispersed.
 - B. Asked the United States Attorney's Offices via letter to review responsive documents identified by the CI function, determine whether the documents were grand jury material, and identify any grand jury material for the CI function.
- II. Reviewed a judgmental sample of nontax investigations, as recorded in the CIMIS, that had audit trail history for the subject taxpayer.
 - A. Through assessment of the electronic data sources used in this audit, concluded the data were of undetermined reliability. However, answering the audit's objective would not be feasible if the data were not used, and it was our opinion that using the data would not weaken the analysis or lead to an incorrect or unintentional message.
 1. The CIMIS had a reputation of being partially incomplete or incorrect. An IRS attempt in 2003 to determine the validity of the CIMIS using a statistically valid sample indicated that one of the data fields we would use to determine our audit scope received one of the lowest accuracy ratings in the review. In addition, another data field used to determine our scope had no valid entry for 14 percent of the pertinent records, although it was supposed to be a mandatory entry field. In addition, we had observed other CIMIS accuracy problems over the course of previous audits.⁴
 2. The IDRS audit trail also had a reputation of being partially incomplete or incorrect. Audit trail data are obtained daily from the IRS mainframe computer. Other than record count matches, validity checks are limited because each record contains a 41-character variable field that contains different contents based on the IDRS command code input. The audit trail is organized by using logical rules to select which digits within the variable field identify the tax account accessed, but this method is not foolproof. In addition, during our preceding audit, for one command code we identified a pattern in which the audit trail did not always

⁴ Since our FY 2004 snapshot of CIMIS data, the CI function has developed a new iteration of the CIMIS with upgrades to address identified problems, including prior audit recommendations, and has strengthened operating system controls.



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include specific information to identify what taxpayer account was accessed. This issue illustrates that the audit trail data are not complete.

3. Additional steps to determine data reliability prior to testing were not feasible. For samples selected, the electronic data would ultimately be validated on a case-by-case basis as we reviewed source documents and obtained comments from CI function management.
 - B. Designed judgmental samples to select 10 cases from each applicable CI function field office to discover an adverse condition if any existed. Statistically valid random sampling techniques were not used because we did not plan to project our results to the audit population and a statistically valid sample size would have required the review of a significantly larger number of grand jury-related cases.
 - C. Analyzed CIMIS and IDRS data for members of the audit population.
- III. Requested responsive documents from three CI function field offices to determine whether IDRS access to tax information satisfied disclosure provisions.
 - A. Forwarded our audit samples to the three respective CI function field offices and asked that they coordinate with the United States Attorney's Offices. Samples of 10 cases were forwarded to 2 field offices, and a sample of 8 cases was forwarded to 1 field office.
 - B. Reviewed the supporting documentation and explanations from one CI function field office regarding the tax information accesses.
- IV. Requested the assistance of the TIGTA Office of Chief Counsel in reviewing instances of potential noncompliance with statutory disclosure provisions.



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Appendix II

Major Contributors to This Report

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Appendix III

Report Distribution List

Commissioner C
Office of the Commissioner – Attn: Chief of Staff C
Deputy Commissioner for Services and Enforcement SE
Director, Operations Policy and Support, Criminal Investigation SE:CI:OPS
Director, Strategy, Criminal Investigation SE:CI:S
Chief Counsel CC
National Taxpayer Advocate TA
Director, Office of Legislative Affairs CL:LA
Director, Office of Program Evaluation and Risk Analysis RAS:O
Office of Internal Control OS:CFO:CPIC:IC
Audit Liaison: Director, Planning and Strategy, Criminal Investigation SE:CI:S:PS



Appendix IV

Glossary of Terms

Criminal Investigation Management Information System (CIMIS)	The CIMIS is a database that tracks the status and progress of criminal investigations and the time expended by special agents. Capabilities include direct data entry from the field, real-time query, and report features. It is used as a management tool that provides the basis for decisions of both local and national scope.
Integrated Data Retrieval System (IDRS)	The IDRS enables IRS employees to have instantaneous visual access to certain taxpayer accounts. The IDRS is a large-scale computer system designed to maintain national database files with access capability from remote locations. The System employs storage devices and visual display terminals located in field offices to provide a two-way rapid communications pipeline between the field and the database files, presenting a ready source of current information on taxpayers. The IDRS maintains an automatic electronic chronological record of system activities (i.e., an audit trail) to permit reconstruction, review, and examination of IDRS command codes used.
Nontax Investigation/Case	A nontax investigation is the contrast to a tax investigation. The CI function has investigative authority regarding many statutes but defines tax cases as only those investigations relating to violations of any statute within U.S.C. Title 26 (I.R.C.) or Title 26 related false claims and conspiracy statutes at 18 U.S.C. §§ 286, 287, or 371 (2005). 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.”
Tax Administration	26 U.S.C. § 6103(b)(4) (2004), as paraphrased, defines tax administration as the administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws or related statutes and tax conventions to which the United States is a party and enforcement under such laws, statutes, or conventions.



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Tax Code

U.S.C. Title 26 is entitled *Internal Revenue Code* and is commonly referred to as the Tax Code.

Tax Information

For purposes of this report, we use the term “tax information” in lieu of the following definitions paraphrased for return and return information from 26 U.S.C. §§ 6103(b)(1) and (2) (2004). A return is any tax return or information return, schedules, and attachments, including any amendment or supplement, that is required or permitted to be filed and is filed by a taxpayer with the Secretary of the Treasury. The definition of return information is broad and primarily relates to information other than a taxpayer’s return itself that the IRS has obtained from any source or developed through any means that relates to a potential liability under the Tax Code. It includes information extracted from a return (e.g., the names of dependents, locations of business interests, and bank accounts).



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Appendix V

Management's Response to the Discussion Draft Report




Criminal Investigation

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

SEP 1 - 2006

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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 Discussion Draft Audit Report— Compliance with Statutory Provisions Regarding the Use of Tax Information in Non-tax Criminal Investigations Cannot be Verified (Audit #200510031)

Thank you for providing Criminal Investigation (CI) the opportunity to comment on the draft of the Treasury Inspector General for Tax Administration Report (TIGTA) report entitled "Compliance with Statutory Provisions Regarding the Use of Tax Information in Non-Tax Criminal Investigations Cannot be Verified." Criminal Investigation is acutely aware of the seriousness of unauthorized disclosures of information protected by Internal Revenue Code (IRC) Section 6103. Further, CI strives to adhere to specific policies and procedures to ensure return information is only disclosed under appropriate circumstances in non-tax investigations. The procedures are set forth in the Internal Revenue Manual and in guidance memorandums. The provisions of IRC Section 6103 are constantly re-emphasized to all CI employees and are an integral part of our training programs and continuing professional education sessions. Headquarters also provides periodic guidance to the field.

Due to the complexities of IRC Section 6103, CI employees are encouraged to utilize the staff of the Government Liaison and Disclosure Office. At the headquarters level, CI also has a highly experienced disclosure analyst, Barbara Ferris, who is well versed in CI operations and possesses a thorough understanding of our unique disclosure requirements.

Consistent with its "core" tax enforcement mission, CI prefers every investigation have a substantial tax nexus. As a practical matter, this is not always possible, particularly when CI participates in multi-agency task forces organized to address specific national law enforcement priorities. Currently, CI is involved in task forces organized to combat crimes such as terrorism, health care fraud, identity theft, corporate fraud, financial institution fraud, and narcotics trafficking. In these settings, the most common methods of accessing return information are via a related statute determination, an ex parte court



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order, a tax grand jury authorization, or by a formal request from the appropriate federal law enforcement agency head. The inherent complexity of the disclosure provisions of the IRC can only be highlighted in this response.

The procedures for related statute determinations are set out in IRM 9.3.1.4.3.1.1.2. The Special Agent in Charge of a respective field office makes this determination based on the particulars of the case. Due to the common characteristics of money laundering and tax evasion, this related statute threshold is generally met. This determination must be in writing and is commonly referred to as the "related statute call." Tax returns and return information cannot be accessed for the purpose of evaluating information to determine if a related statute determination can be made. Once the related statute determination is made, all information collected by the IRS from that point forward is deemed to be return information and the disclosure rules of IRC Section 6103 apply.

Internal Revenue Code Section 6103(i)(2) allows for the disclosure of certain return information to other federal agencies for use in non-tax criminal investigations. Any request for information under this section must be in writing from the head of the requesting agency and forwarded to the appropriate disclosure office for processing.

There are also special IRC Section 6103 disclosure provisions for certain information relating to terrorist activities. These provisions have been renewed by Congress twice and are currently scheduled to expire on December 31, 2006.

Internal Revenue Code Section 6103(h)(3) outlines procedures for either the Department of Justice (DOJ) or IRS to secure tax information to use before grand juries investigating tax matters. Federal grand juries may also investigate other crimes and have other federal law enforcement agencies participating. The grand jury secrecy provisions are part of the Federal Rules of Criminal Procedure, which were approved by the Supreme Court and adopted into law by Congress. There is also a significant body of case law regarding the use of grand jury information. In several landmark cases, the Supreme Court narrowed the Government's ability to disclose grand jury information for matters not pertaining to a criminal investigation, including tax assessments and civil forfeitures. Consequently, information from the grand jury cannot typically be utilized for tax administration unless it becomes public in a court proceeding.

Non-tax grand juries can obtain tax return information under the ex parte procedures of IRC 6103(i)(1). This information cannot be used for tax administration. Consequently, an IRS special agent or Assistant United States Attorney would have to request a tax grand jury authorization before pursuing tax charges.

Criminal Investigation believes the current statutory framework, case law, regulations, policy, and procedures provide adequate safeguards to protect taxpayers from unauthorized disclosures. However, because the prevention of unauthorized disclosures is a critical matter, CI will issue a guidance memorandum re-emphasizing relevant policy and procedures regarding the disclosure of tax return information and reminding all employees of the ramifications of failing to adhere to them.



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This report has been reviewed for potential disclosures of tax return information.
Criminal Investigation found no potential disclosures of 6103 material.

If you have any questions concerning this response, please call me at 703-208-4922, or a member of your staff may contact Andrea D. Whelan, Acting Director, Planning and Strategy section, at (240) 286-1293.