



*Fiscal Year 2006 Statutory Audit of  
Compliance With Legal Guidelines  
Restricting the Use of Records of Tax  
Enforcement Results*

**June 2006**

**Reference Number: 2006-40-095**

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.

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TREASURY INSPECTOR GENERAL  
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

June 6, 2006

**MEMORANDUM FOR DEPUTY COMMISSIONER FOR OPERATIONS SUPPORT**

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

**SUBJECT:** Final Audit Report – Fiscal Year 2006 Statutory Audit of Compliance  
With Legal Guidelines Restricting the Use of Records of Tax  
Enforcement Results (Audit # 200540038)

This report presents the results of our review to determine whether the Internal Revenue Service (IRS) complied with established procedures to implement the legal guidelines set forth in IRS Restructuring and Reform Act of 1998 (RRA 98) Section 1204.<sup>1</sup>

*Synopsis*

RRA 98 Section 1204(a) prohibits the IRS from using any record of tax enforcement results (ROTTER) to evaluate employees or to impose or suggest production quotas or goals. Section 1204(c) requires each appropriate supervisor to certify quarterly whether tax enforcement results were used in a prohibited manner. The Treasury Inspector General for Tax Administration is required under Internal Revenue Code Section 7803(d)(1) (2000) to annually evaluate the IRS' compliance with the provisions of RRA 98 Section 1204.

***First-line managers followed  
RRA 98 Section 1204  
provisions for evaluating  
employees.***

To evaluate compliance with RRA 98 Section 1204, we selected a random sample of 10 first-line managers and 4 employees for each of these managers in 5 metropolitan areas for a

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<sup>1</sup> Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).



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total of 50 managers and 200 employees.<sup>2</sup> We evaluated Fiscal Year 2005 performance evaluation documentation (including midyear and annual performance reviews, award documentation, and workload reviews) for each employee to determine whether ROTERs were used when evaluating the employees' performance.

The first-line managers we sampled complied with RRA 98 Section 1204. They did not use ROTERs or production quotas or goals when evaluating employees. They also appropriately certified that they had not used tax enforcement results in a prohibited manner. The first-line managers we sampled worked for the IRS Small Business/Self-Employed Division, the Wage and Investment Division, and the Chief, Appeals. Based on the results of our sample, we believe the IRS' efforts to ensure managers are not using ROTERs or production goals or quotas to evaluate employees are generally effective and are helping to protect the rights of taxpayers.

### Response

IRS management has reviewed the draft report and provided their concurrence with its contents via email. Since there were no recommendations requiring a formal response, the IRS agreed that the report will be issued with no formal written response.

Copies of this report are also being sent to the IRS managers affected by the report results. Please contact me at (202) 622-6510 if you have questions or Michael E. McKenney, Assistant Inspector General for Audit (Wage and Investment Income Programs), at (202) 622-5916.

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<sup>2</sup> These were employees in jobs for which RRA 98 Section 1204 would be applicable. We determined the number of first-line managers to sample in each business unit based on their proportional representation in the metropolitan area. A random sample was then taken of the first-line managers in each represented business unit.



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## *Background*

On July 22, 1998, the President signed the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98) into law.<sup>1</sup> RRA 98 Section 1204 restricts the use of enforcement statistics. Specifically, RRA 98 Section 1204(a) prohibits the IRS from using any record of tax enforcement results (ROTTER) to evaluate employees or to impose or suggest production quotas or goals.

The IRS defines ROTERs as data, statistics, compilations of information, or other numerical or quantitative recording of the tax enforcement results reached in one or more cases. A ROTER does not include evaluating an individual case to determine if an employee exercised appropriate judgment in pursuing enforcement of the tax laws. Examples of ROTERs include the amount of dollars collected or assessed, the number of fraud referrals, and the number of seizures conducted.

***RRA 98 Section 1204  
prohibits the IRS from using  
tax enforcement results or  
production goals or quotas  
to evaluate employees.***

RRA 98 Section 1204(c) requires each appropriate supervisor to perform a self-certification quarterly. In the self-certification, the appropriate supervisor attests to whether ROTERs or production quotas or goals were used in a prohibited manner. The IRS defines an appropriate supervisor as the highest ranking executive in a distinct organizational unit that supervises directly or indirectly one or more Section 1204 enforcement employees.<sup>2</sup> IRS procedures require that, beginning with first-line managers of Section 1204 employees, each level of management self-certify that they have not used ROTERs in a manner prohibited by RRA 98 Section 1204(a). The appropriate supervisor is then to prepare a consolidated office certification covering the entire organizational unit.

IRS business units and functions, including the Small Business/Self-Employed (SB/SE) Division, the Wage and Investment (W&I) Division, and the Office of the Chief, Appeals (Appeals function), are responsible for Section 1204 program implementation within their respective areas. Section 1204 Program Managers and Section 1204 Coordinators in each division and function are available to provide guidance to managers regarding Section 1204 issues, including the certification process.

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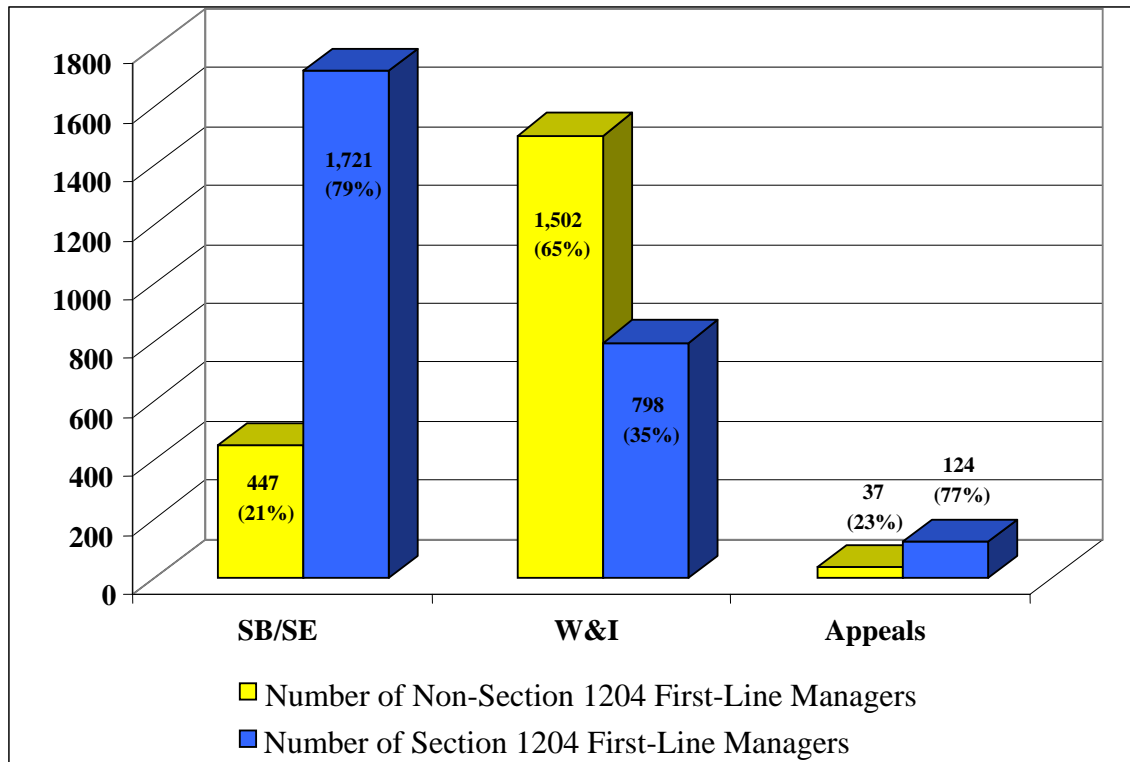
<sup>1</sup> Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

<sup>2</sup> An enforcement employee (Section 1204 employee) is an employee or any first-line manager of an employee who exercises judgment in recommending or determining whether or how the IRS should pursue enforcement of the tax laws or who provides direction/guidance for Section 1204 program activities.



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**Figure 1: Percentage of Section 1204 First-Line Managers  
October 1, 2005**



*Source: Analysis of IRS HR Connect<sup>3</sup> and Division Quarterly Listings of Section 1204 Managers, as of October 1, 2005.*

As shown in Figure 1, as of October 1, 2005, approximately 79 percent of the first-line managers in the SB/SE Division and 77 percent of the first-line managers in the Appeals function were designated as Section 1204 managers. The managers either supervised a Section 1204 employee or provided guidance or direction for Section 1204 activities. In contrast, only approximately 35 percent of the W&I Division first-line managers were designated as Section 1204 managers.

Internal Revenue Code Section 7803(d)(1) (2000) requires the Treasury Inspector General for Tax Administration to determine annually whether the IRS is in compliance with restrictions on the use of enforcement statistics under RRA 98 Section 1204. We have previously performed seven mandatory reviews of the IRS' use of enforcement statistics in employee evaluations. These reports are listed in Appendix IV.

<sup>3</sup> HR Connect is the Department of the Treasury's primary human resources system.



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This review was performed at the IRS National Headquarters in Washington, D.C., in the offices of the Chief Financial Officer, the SB/SE Division Headquarters, and the Appeals function and in the W&I Division Headquarters in Atlanta, Georgia, during the period September 2005 through April 2006. In addition, the review was performed at the IRS field offices of the SB/SE Division, the W&I Division, and the Appeals function in the Atlanta, Georgia; Austin, Texas; Denver, Colorado; Memphis, Tennessee; and Oakland, California, metropolitan areas. 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*

### ***First-Line Managers Complied With the Law Restricting the Use of Enforcement Statistics***

To evaluate the IRS' compliance with Section 1204(a), which prohibits the use of enforcement statistics to evaluate employee performance, we selected a random sample of 10 first-line managers and 4 employees for each of these managers in 5 metropolitan areas for a total of 50 managers and 200 employees.<sup>4</sup> The number of first-line managers selected from each business unit was based on the proportional representation of IRS business units in the metropolitan area. We evaluated Fiscal Year 2005 performance evaluation documentation (including midyear and annual performance reviews, award documentation, and workload reviews) for each employee to determine whether ROTERs were used when evaluating the employees' performance.

The 50 first-line managers in our sample followed the provisions of RRA 98 Section 1204(a) when evaluating employees. The managers we sampled worked in the SB/SE Division, the W&I Division, and the Appeals function. They had not used ROTERs or production quotas or goals when documenting the performance of the 200 Section 1204 employees we sampled.

Furthermore, to evaluate whether the managers had been provided proper guidance and understood the requirements of RRA 98 Section 1204, we interviewed 15 of the 50 managers selected for this review. These first-line managers stated that they understood what constituted ROTERs, production goals, and quotas when documenting their employees' performance. They also stated that they were reminded of their Section 1204(a) responsibilities during managers' meetings and training classes.

Based on the results of our sample, we believe the IRS' efforts to ensure managers are not using ROTERs or production goals or quotas to evaluate employees are generally effective and are helping to protect the rights of taxpayers.

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<sup>4</sup> These were employees in jobs for which RRA 98 Section 1204 would be applicable. We determined the number of first-line managers to sample in each business unit based on their proportional representation in the metropolitan area. A random sample was then taken of the first-line managers in each represented business unit.





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## **First-Line Managers Appropriately Completed Their Self-Certifications**

The first-line managers we sampled complied with the provisions of RRA 98 Section 1204(c) by completing the required self-certifications on the use of tax enforcement results. Each manager certified that ROTERs or production quotas or quotas were not used when evaluating employees.

**Figure 2: RRA 98 Section 1204 Manager's Quarterly Self-Certification**

<p><b>FY 200X RRA 98 Section 1204 Manager's Quarterly Self-Certification</b> <b>Part 1 – General Certification</b></p> <p><u>Quarter Ending:</u> MM-DD-YY</p> <p><u>Manager's Name/Title:</u></p> <p><u>Organization:</u></p> <p><b>Section A – Section 1204 (a) Record of Tax Enforcement Results (ROTER) Certification</b> (Check one of the boxes below to indicate your Section 1204 (a) certification status. The certification statement must be included.)</p> <p><input type="checkbox"/> No Section 1204 (a) ROTER violations were identified.</p> <p><input type="checkbox"/> Section 1204 (a) ROTER violations were identified as indicated in Part 2 (attached).</p>
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Source: *The Internal Revenue Manual.*

RRA 98 Section 1204(c) requires appropriate supervisors to certify quarterly in writing to the IRS Commissioner whether ROTERs and production quotas or goals were used in a prohibited manner. To do this, the IRS required managers who evaluated Section 1204 employees to certify in writing that they did not:

- Use ROTERs to evaluate employees or to impose or suggest production quotas or goals for employees in any performance evaluations, including appraisals, awards, or promotion justifications, written or reviewed by the manager.
- Verbally communicate to employees that ROTERs affected their evaluations.
- Verbally or in writing use ROTERs to impose or suggest production quotas or goals for employees or for work unit activities (e.g., through program guidance or business and program reviews).

Per the Internal Revenue Manual, the business units'/functions' Section 1204 Program Managers and their respective Section 1204 Coordinators should monitor the quarterly certification process throughout their organizations. The Program Managers' and Section 1204 Coordinators' duties included providing guidance to managers regarding Section 1204 issues.

Through the quarterly certification process, managers were reminded of their responsibilities under RRA 98 Section 1204 not to evaluate their employees on the basis of ROTERs or production quotas or goals. This helped to ensure managers were aware of the IRS' commitment to administer the tax laws fairly and to protect the rights of taxpayers.



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## **Appendix I**

### *Detailed Objective, Scope, and Methodology*

The overall objective of this review was to determine whether the Internal Revenue Service (IRS) complied with established procedures to implement the legal guidelines set forth in IRS Restructuring and Reform Act of 1998 (RRA 98) Section 1204.<sup>1</sup> To accomplish this objective, we:

- I. Determined whether a sample of the IRS first-line managers in the Small Business/Self-Employed (SB/SE) Division, the Wage and Investment (W&I) Division, and the Office of the Chief, Appeals (Appeals function) complied with the provisions of RRA 98 Section 1204(a) when evaluating their Section 1204 employees'<sup>2</sup> performance.
  - A. Identified Fiscal Year (FY) 2005 and ongoing procedures to ensure IRS compliance with the provisions of RRA 98 Section 1204(a) for first-line managers and their employees by interviewing IRS management and reviewing the Internal Revenue Manual, IRS memoranda, and the IRS Intranet web site. This included interviewing selected IRS business unit Section 1204 Program Managers and Coordinators to identify any additional written documentation and guidance that may have been used to direct the evaluation of Section 1204 managers and employees.
  - B. Identified SB/SE Division, W&I Division, and Appeals function locations in various cities and the surrounding metropolitan areas and the number of Section 1204 first-line managers and employees located at each area. We judgmentally selected five metropolitan areas for this year's audit – Atlanta, Georgia; Austin, Texas; Denver, Colorado; Memphis, Tennessee; and Oakland, California. We considered the enforcement employee population disbursement, geographic coverage, and prior audit coverage in selecting the five audit sites.
  - C. Selected a random sample of 10 first-line managers and 4 Section 1204 employees for each manager in each of the 5 metropolitan areas. We determined the number of first-line managers to sample in each business unit based on their proportional representation in the metropolitan area. A random sample was then taken of the first-line managers in each represented business unit. The number of first-line

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<sup>1</sup> Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

<sup>2</sup> An enforcement employee (Section 1204 employee) is an employee or any first-line manager of an employee who exercises judgment in recommending or determining whether or how the IRS should pursue enforcement of the tax laws or who provides direction/guidance for Section 1204 program activities.



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- managers selected from each business unit was based on the proportional representation of the business units in the metropolitan area. This provided a total of 50 managers and 200 employees for review.
- D. Obtained and reviewed FY 2005 performance evaluation documentation (including midyear and annual performance reviews, award documentation, and workload reviews) for each employee to determine whether the use of any record of tax enforcement results (ROTTER) or production goals or quotas was documented.
- II. Determined whether selected first-line managers complied with RRA 98 Section 1204(c) by certifying by letter whether ROTERs were used in a manner prohibited by RRA 98 Section 1204(a).
- A. Identified procedures used to ensure compliance with provisions of RRA 98 Section 1204(c) by interviewing IRS management and reviewing the Internal Revenue Manual, IRS memoranda, and the IRS Intranet web site. This included interviewing Section 1204 Program Managers and Coordinators to identify any additional written documentation and guidance that may have been used to direct the Section 1204 certification process.
- B. Obtained FY 2005 fourth quarter self-certifications for the selected first-line managers.
- C. Reviewed the self-certifications for compliance with IRS procedures and the identification of any use of ROTERs or production quotas or goals.
- D. At each site, interviewed 1 judgmentally selected first-line manager from each business unit (for a total of 15 managers). We considered the geographic disbursement and the manager's business unit when selecting the 15 managers. We determined whether:
1. The manager maintained a copy of his or her FY 2005 fourth quarter self-certification.
  2. Any additional written or verbal guidance was provided by business unit/function management on the prohibited use of enforcement statistics.
  3. The manager had any concerns about what constituted a ROTER or production goals or quotas.
  4. The manager had received formal training on Section 1204 restrictions and his or her responsibilities.
  5. The manager ever reported the use of ROTERs or the use of production goals or quotas and, if so, the circumstances surrounding their use.



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**Appendix II**

*Major Contributors to This Report*

Michael E. McKenney, Assistant Inspector General for Audit (Wage and Investment Income Programs)

Mary V. Baker, Director

James D. O'Hara, Audit Manager

William Simmons, Acting Audit Manager

Cindy J. Harris, Lead Auditor

Tanya L. Boone, Senior Auditor

Gwendolyn M. Green, Senior Auditor

Sharon Summers, Senior Auditor

James M. Traynor, Senior Auditor



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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  
Commissioner, Small Business/Self-Employed Division SE:S  
Commissioner, Wage and Investment Division SE:W  
Chief, Appeals AP  
Chief Financial Officer OS:CFO  
Director, Assistance and Review OS:CFO:AR  
Director, Communications, Liaison, and Disclosure, Small Business/Self-Employed Division  
SE:S:CLD  
Director, Strategy and Finance, Wage and Investment Division SE:W:S  
Chief, Performance Improvement, Wage and Investment Division SE:W:S:PI  
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 Management Controls OS:CFO:AR:M  
Audit Liaisons:  
    Chief, Appeals AP:TP:SS  
    Chief Financial Officer OS:CFO  
    Chief, GAO/TIGTA/Legislative Implementation Branch SE:S:CLD:PSP:GTL  
    Senior Operations Advisor, Wage and Investment Division SE:W:S



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## **Appendix IV**

### *Prior Audit Reports*

The Treasury Inspector General for Tax Administration has previously performed seven mandatory audits in this subject area. These audits were:

*Fiscal Year 2005 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (Reference Number 2005-40-157, dated September 2005).

*Fiscal Year 2004 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (Reference Number 2004-40-066, dated March 2004).

*Fiscal Year 2003 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (Reference Number 2003-40-090, dated March 2003).

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

*Compliance With the Internal Revenue Service Restructuring and Reform Act of 1998 Section 1204 Has Not Yet Been Achieved* (Reference Number 2001-10-178, dated September 2001).

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

*The Internal Revenue Service Should Continue Its Efforts to Achieve Full Compliance with Restrictions on the Use of Enforcement Statistics* (Reference Number 1999-10-073, dated September 1999).