



*Fiscal Year 2006
Statutory Review of Restrictions
on Directly Contacting Taxpayers*

August 28, 2006

Reference Number: 2006-40-136

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



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

August 28, 2006

**MEMORANDUM FOR DEPUTY COMMISSIONER FOR SERVICES AND
ENFORCEMENT**

FROM: (for) Michael R. Phillips
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Fiscal Year 2006 Statutory Review of Restrictions
on Directly Contacting Taxpayers (Audit # 200640002)

This report presents the results of our review to determine whether the Internal Revenue Service (IRS) complied with legal guidelines addressing the direct contact of taxpayers and their representatives as set forth in Internal Revenue Code Section (I.R.C. §) 7521(b)(2) and (c) (2004). The Treasury Inspector General for Tax Administration was statutorily required to conduct this audit.

Synopsis

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

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

***Taxpayers are informed of
direct contact provisions
through IRS publications.***

The IRS Internal Revenue Manual provides employees guidance to help ensure compliance with the direct contact provisions. In addition, the IRS has informed taxpayers of these rights through various IRS publications.



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However, we could not determine whether the IRS complied with I.R.C. § 7521(b)(2) and (c) requirements when directly contacting taxpayers and their representatives. IRS management information systems do not separately record or monitor direct contact requirements, and Congress has not explicitly required the IRS to do so. Furthermore, we do not recommend the creation of a separate IRS system to track those cases involved with direct contact issues. Accordingly, we made no recommendations in this report.

Response

The IRS agreed with the information presented in this report. 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 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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Abbreviations

I.R.C. §	Internal Revenue Code Section
IRS	Internal Revenue Service
RRA 98	Internal Revenue Service Restructuring and Reform Act of 1998
TIGTA	Treasury Inspector General for Tax Administration
U.S.C.	United States Code



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Background

The Omnibus Taxpayer Bill of Rights¹ created a number of safeguards to protect taxpayers being interviewed by an Internal Revenue Service (IRS) employee as part of an examination or collection action. Specifically, IRS employees are required by the direct contact provisions of Internal Revenue Code Section (I.R.C. §) 7521(b)(2) and (c) (2004) to:

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

The provisions were added to the Omnibus Taxpayer Bill of Rights to protect the rights of taxpayers who are interviewed by an IRS employee as part of an examination or collection action. A taxpayer can file a civil suit against the IRS if an IRS employee intentionally disregards these provisions by denying a taxpayer the right to appropriate representation.

On July 22, 1998, the President signed into law the IRS Restructuring and Reform Act of 1998 (RRA 98),² which required the IRS to revise *Your Rights as a Taxpayer* (Publication 1) to inform taxpayers of their rights (1) to be represented at interviews and (2) to suspend an interview pursuant to I.R.C. § 7521(b)(2). In addition, Congress added I.R.C. § 7803(d)(1)(A)(ii) (2004) to the RRA 98, which requires the Treasury Inspector General for Tax Administration (TIGTA) to evaluate annually the IRS' compliance with the direct contact provisions. The Senate Committee report for this law stated that Congress believes taxpayers should be more fully informed of their rights to representation in dealing with the IRS and those rights should be respected.

The TIGTA is required to evaluate annually the IRS' compliance with the direct contact provisions of I.R.C. § 7521(b)(2) and (c).

This review was performed in the IRS Headquarters and in the National Taxpayer Advocate function in Washington, D.C.; the Small Business/Self-Employed Division Headquarters in New Carrollton, Maryland; and the Wage and Investment Division Headquarters in Atlanta, Georgia, during the period April through June 2006. 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.

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

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



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Results of Review

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

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

Enactment of the RRA 98 contributed to the further enhancement of the procedures and guidelines related to the direct contact issues. The TIGTA is required under the RRA 98 to assess annually the IRS' compliance with the direct contact provisions. In response to prior TIGTA reports, the IRS took several corrective actions to further improve the existing procedures and guidelines for directly contacting taxpayers and their representatives.

In our Fiscal Year 1999 report,³ we recommended the IRS (1) complete its efforts to develop national guidance to ensure consistent treatment of taxpayers and (2) develop a process to determine whether employees are complying with the direct contact provisions.

In response to our first recommendation, the IRS updated its Internal Revenue Manual in 1999 and 2000 to include:

- Procedures for handling situations when a representative is authorized to represent the taxpayer on only 1 tax year, but the examination or collection interview covers more than 1 year.
- Clarifying guidance to determine a reasonable time period for taxpayers to secure representation.
- Clarifying guidance to determine whether enforcement actions (such as seizure of property) should be considered an "interview" for the purpose of I.R.C. § 7521(b)(2) and (c).

In response to our second recommendation, the IRS assigned group managers responsibility for monitoring employees' compliance with the direct contact provisions. The group managers were

³ *The Internal Revenue Service Needs to Enhance Guidance on and Monitoring of Compliance with Procedures for Directly Contacting Taxpayers and Their Representatives* (Reference Number 1999-10-076, dated September 1999).



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required to address this issue during group meetings, case reviews, on-the-job visits, and taxpayer/representative inquiries to ensure employees fully comply with the law.

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

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

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

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

We could not determine whether IRS employees followed proper procedures to stop an interview if the taxpayer requested to consult with a representative. Neither the IRS nor we could readily identify cases in which the taxpayer requested a representative or the IRS contacted the taxpayer directly and bypassed the representative.

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

One way to identify possible violations of these taxpayer rights is to determine if taxpayers have complained that an IRS employee intentionally denied them their right to representation or bypassed a representative without proper approval. Taxpayer complaints that allege IRS employees bypassed their representatives and contacted them directly are tracked by the TIGTA Office of Investigations. The TIGTA Office of Investigations closed seven direct contact complaint and/or investigation cases between October 2004 and October 2005. In all seven



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cases, the facts of the cases indicated the IRS employees did not violate the direct contact provisions.

This is the eighth year in which we have reported our inability to give an opinion on the IRS' compliance with the I.R.C. restrictions on direct contact. Although Congress has not explicitly required IRS management information systems to separately record or monitor direct contact requirements, over the years the IRS has established and further enhanced the procedures and guidelines to adequately address the requirements of the law. We do not recommend the creation of a separate tracking system and are making no recommendations in this report.



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Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this review was to determine whether the IRS complied with legal guidelines addressing the direct contact of taxpayers and their representatives as set forth in I.R.C. § 7521(b)(2) and (c) (2004). To accomplish this objective, we:

- I. Obtained confirmation from the Small Business/Self-Employed and Wage and Investment Divisions that the IRS neither has, nor plans to implement, a system or process to identify or track cases in which taxpayers have requested to consult with a representative or in which an IRS employee bypassed a representative.
- II. Interviewed various IRS and TIGTA personnel responsible for the Taxpayer Advocate Management Information System,¹ the Information Tracking System,² and the Performance and Results Information System³ to determine if there is a system to track taxpayer complaints relating to violations of the direct contact provisions of the law.
 - A. Identified seven direct contact cases (three complaints and four complaints/investigations) closed by the TIGTA Office of Investigations during the period October 13, 2004, through October 19, 2005.
 - B. Obtained and reviewed the closed TIGTA Office of Investigations case files to determine their validity and what actions were taken by the IRS as a result of the complaints and investigations.
- III. Gathered historical information to determine the Congressional intent in passing I.R.C. § 7521(b)(2) and (c).
 - A. Researched the Congressional Committee reports to determine the Congressional intent of adding I.R.C. § 7521(b)(2) and (c) to the Omnibus Taxpayer Bill of Rights,⁴ thereby prohibiting the IRS from directly contacting taxpayers in certain situations.

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

² The Information Tracking System is an application used by the IRS to assign, control, and track information and correspondence. It replaced the Executive Control Management System.

³ The Performance and Results Information System is a management information system that provides the TIGTA with the ability to manage and account for the thousands of complaints received and investigations initiated annually.

⁴ Pub. L. No. 100-647, 102 Stat. 3730 (1988) (codified as amended in scattered sections of 5 U.S.C. and 26 U.S.C.).



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- B. Researched the Congressional Committee reports to determine the Congressional intent of adding I.R.C. § 7803(d)(1)(A)(ii) (2004) to the RRA 98,⁵ thereby requiring the TIGTA to assess annually the IRS' compliance with I.R.C. § 7521(b)(2) and (c).
- IV. Obtained information on the actions taken by the IRS in response to I.R.C. § 7521(b)(2) and (c) to determine the impact on IRS programs.
 - A. Reviewed all prior TIGTA audit reports for the Mandatory Direct Contact reviews and summarized the audit results, recommendations, and corrective actions taken by the IRS.
 - B. Reviewed historic Internal Revenue Manual sections to identify any updates made in response to I.R.C. § 7521(b)(2) and (c).
 - C. Reviewed IRWeb (the IRS Intranet) to identify the impact I.R.C. § 7521(b)(2) and (c) have had on any IRS programs.
 - D. Reviewed IRS.gov (the IRS Internet web site) and related IRS publications to identify how the IRS informs taxpayers of the IRS' prohibition on directly contacting taxpayers in certain situations.

⁵ 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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Appendix II

Major Contributors to This Report

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

Mary V. Baker, Director

Bryce Kisler, Audit Manager

Jean Kao, Lead Auditor

Gwendolyn Green, Senior Auditor



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Appendix III

Report Distribution List

Commissioner C
Office of the Commissioner – Attn: Chief of Staff C
Commissioner, Small Business/Self-Employed Division SE:S
Commissioner, Wage and Investment Division SE:W
National Taxpayer Advocate TA
Director, Collection, Small Business/Self-Employed Division SE:S:C
Director, Communications, Liaison, and Disclosure, Small Business/Self-Employed Division
SE:S:CLD
Director, Customer Assistance, Relationships, and Education, Wage and Investment Division
SE:W:CAR
Director, Examination, Small Business/Self-Employed Division SE:S:E
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 Internal Control OS:CFO:CPIC:IC
Audit Liaisons:
 Chief, Customer Liaison, Small Business/Self-Employed Division SE:S:COM
 Director, Communications and Liaison, National Taxpayer Advocate TA:CCL
 Senior Operations Advisor, Wage and Investment Division SE:W:S



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Appendix IV

Management's Response to the Draft Report



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

RECEIVED
AUG 22 2006

August 17, 2006

MEMORANDUM FOR DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Floyd L. Williams *fw*
Director of Legislative Affairs

SUBJECT: Draft Audit Report – Fiscal Year 2006 Statutory Review of
Restrictions on Directly Contacting Taxpayers
(Audit # 200640002)

I have reviewed your draft audit report concerning the annual review and certification of the Internal Revenue Service (IRS) compliance with legal guidelines dealing with directly contacting taxpayers and their representatives as set forth in Internal Revenue Code (Code) section 7521 (b)(2) and (c). We concur with your conclusion not to recommend that we create a separate system to track such compliance.

This provision continues to place a burden on both of our staffs to repeatedly address this issue. TIGTA has put forward and the IRS has supported proposals to repeal U.S.C. section 7803(d)(1)(A)(ii), requiring annual evaluation of IRS compliance with the direct contact provisions of Code section 7521 (b) and (c).

The U.S. Senate approved legislation to repeal this provision on May 19, 2004 as part of the Tax Administration Good Government Act, which was incorporated as an amendment to a previously passed House measure, H.R. 1528. The 108th Congress adjourned before the Senate and House could meet to reconcile their respective versions of H.R. 1528. During the 109th Congress, the repeal of this provision was included in the Senate Committee on Finance's Mark-Up of S. 1321 (Telephone Excise Tax Repeal Act of 2005) and S. 832 (Taxpayer Protection and Assistance Act of 2005). The IRS continues to support Treasury in urging Congress to approve legislation to eliminate this mandatory audit. Enactment of the repeal provision will alleviate the need for TIGTA to annually review and certify compliance with Code section 7521 (b) and (c).

We appreciate that you continue to support the elimination of this unnecessary required report. If you have any questions, please contact me at (202) 622-4725.