



*Fiscal Year 2009 Statutory Review of  
Restrictions on Directly Contacting  
Taxpayers*

**March 24, 2009**

**Reference Number: 2009-30-054**

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

March 24, 2009

**MEMORANDUM FOR** COMMISSIONER, SMALL BUSINESS/SELF-EMPLOYED  
DIVISION

*Michael R. Phillips*

**FROM:**

Michael R. Phillips  
Deputy Inspector General for Audit

**SUBJECT:**

Final Audit Report – Fiscal Year 2009 Statutory Review of Restrictions  
on Directly Contacting Taxpayers (Audit # 200930018)

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 Sections 7521(b)(2) and (c). The Treasury Inspector General for Tax Administration is statutorily required to conduct this audit.

*Impact on the Taxpayer*

The Omnibus Taxpayer Bill of Rights<sup>1</sup> created a number of safeguards to protect taxpayers being interviewed by an IRS employee as part of an examination or investigation. IRS employees are required to stop an interview if the taxpayer requests to consult with a representative and may not bypass a representative without supervisory approval. Between October 2007 and September 2008, six complaint/investigation cases closed by the Treasury Inspector General for Tax Administration Office of Investigations found that IRS employees improperly bypassed taxpayer representatives and were either counseled or reprimanded for their actions.

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<sup>1</sup> 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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### Synopsis

Ultimately, the IRS relies on its employees to ensure that the direct contact provisions of Internal Revenue Code Sections 7521(b)(2) and (c) are followed. These provisions specifically require IRS employees 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 investigation.

To assist employees in meeting these responsibilities and address the requirements of the law, the Internal Revenue Manual<sup>2</sup> provides IRS employees with directions and explanations of the statutory and administrative procedures to follow in their day-to-day contacts with taxpayers and their representatives. The IRS has also revised various publications to better inform taxpayers of their rights, including some revisions that are related to the direct contact provisions of the Internal Revenue Code.

The six substantiated complaint/investigation cases closed during Fiscal Year 2008 are very small compared to the millions of taxpayer contacts IRS examiners and collectors make each year. However, neither we nor the IRS can provide assurances that there were not other potential direct contact violations. As we previously reported,<sup>3</sup> IRS management information systems do not separately record or monitor cases that involve direct contact issues, and there is no legal requirement to do so. Given the small number of complaints received in this area over the years, establishing such a system may entail costs that would outweigh potential benefits. However, the IRS could take better advantage of group manager review processes to ensure that Examination function employees are properly following the direct contact provisions.

Currently, there is no requirement in the Internal Revenue Manual that specifically requires Examination function group managers to address direct contact issues during reviews even though such reviews are a key control component that ensures procedures are followed and work is meeting acceptable standards. Having such a requirement is consistent with the Government Accountability Office *Standards for Internal Control in the Federal Government*,<sup>4</sup> which requires that control activities help ensure that management directions to mitigate risks are followed. The requirement would also be consistent with Internal Revenue Manual guidance for Collection function group manager reviews. Most importantly, perhaps, the documentation from the reviews could provide needed support to provide greater assurances that Examination

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<sup>2</sup> A manual containing the IRS' internal guidelines.

<sup>3</sup> *Fiscal Year 2008 Statutory Review of Restrictions on Directly Contacting Taxpayers* (Reference Number 2008-40-090, dated March 27, 2008).

<sup>4</sup> GAO/AIMD-00-21.3.1, dated November 1999.



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function employees are following the direct contact provisions in their day-to-day contact with taxpayers and their representatives.

### *Recommendation*

We recommended that the Commissioner, Small Business/Self-Employed Division, update the Internal Revenue Manual to include specific guidance for Examination function group managers to ensure that requirements mandated by Internal Revenue Code Sections 7521(b)(2) and (c) are understood and followed by their employees.

### *Response*

IRS management agreed with our recommendation and will update Internal Revenue Manual Section 1.4.40 to include specific guidance for Examination function group managers to ensure that the requirements of Internal Revenue Code Sections 7521(b)(2) and (c) are understood and followed. 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 recommendation. Please contact me at (202) 622-6510 if you have questions or Margaret E. Begg, Assistant Inspector General for Audit (Compliance and Enforcement Operations), at (202) 622-8510.



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*Abbreviations*

I.R.C.	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
RRA 98	Restructuring and Reform Act of 1998



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### *Background*

The Omnibus Taxpayer Bill of Rights<sup>1</sup> created a number of safeguards to protect taxpayers being interviewed by Internal Revenue Service (IRS) employees as part of an examination or investigation. Specifically, IRS employees are required by the direct contact provisions of Internal Revenue Code (I.R.C.) Sections (§§) 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 investigation.

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),<sup>2</sup> which required the IRS to revise *Your Rights as a Taxpayer* (Publication 1) to inform taxpayers of their rights to 1) be represented at interviews and 2) suspend an interview pursuant to I.R.C. § 7521(b)(2). In addition, Congress added I.R.C. § 7803(d)(1)(A)(ii) to the RRA 98, which requires the Treasury Inspector General for Tax Administration to annually evaluate the IRS' compliance with the direct contact provisions. *Senate Committee on Finance Report 105-174* (dated April 22, 1998), related to the RRA 98 § 3502 provision, 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 Treasury Inspector General for Tax Administration is required to annually evaluate the IRS' compliance with the direct contact provisions of I.R.C. §§ 7521(b)(2) and (c).***

This review was performed at the IRS National Headquarters in the offices of the Commissioner and the National Taxpayer Advocate in Washington, D.C., and in the Small Business/Self-Employed Division Headquarters in New Carrollton, Maryland, during the period October 2008 through January 2009. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained

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<sup>1</sup> 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.).

<sup>2</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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provides a reasonable basis for our findings and conclusions based on our audit objective. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.





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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. The 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 further enhanced the procedures and guidelines related to the direct contact issues.

In response to prior Treasury Inspector General for Tax Administration reports, the IRS updated the procedures and guidelines for directly contacting taxpayers and their representatives in its Internal Revenue Manual (IRM).<sup>3</sup> The IRM provides IRS employees with directions and explanations of the statutory and administrative procedures to follow in their day-to-day contacts with taxpayers and their representatives.

#### ***The Internal Revenue Service Has Informed Taxpayers of Their Rights Through Various Publications***

The IRS uses *Your Rights as a Taxpayer* (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 before scheduled interviews 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 to be represented at interviews with the IRS and to suspend an interview pursuant to I.R.C. § 7521(b)(2). Specifically, Publication 1 was revised to include the following statement of taxpayer rights:

*You may either represent yourself or, with proper written authorization, have someone else represent you in your place. Your representative must be a person allowed to practice before the IRS, such as an attorney, certified public accountant, or enrolled agent. If you are in an interview and ask to consult such a person, then we must stop and reschedule the interview in most cases.*

The IRS has also included information on these rights in other publications, such as:

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<sup>3</sup> A manual containing the IRS' internal guidelines.



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- *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).

In addition, the IRS uses *Practice Before the IRS and Power of Attorney* (Publication 947) to inform taxpayers of their representatives' responsibilities and to notify taxpayers that the IRS has the authority to bypass representatives that are uncooperative. Specifically, Publication 947 states "After a valid power of attorney is filed, the IRS will recognize your representative. However, if it appears the representative is responsible for unreasonably delaying or hindering the prompt disposition of an IRS matter by failing to furnish, after repeated requests, nonprivileged information, the IRS can contact you directly."

As a result, taxpayers may be better informed of their rights to representation during interviews with the IRS through the expanded information avenues made available to them.

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

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 because the IRS could not readily identify cases in which taxpayers requested to consult with a representative or in which IRS employees improperly bypassed a taxpayer's representative. This is the eleventh year in which we have reported our inability to give an opinion on the IRS' compliance with the I.R.C. §§ 7521(b)(2) and (c).

One way to identify possible violations of these taxpayer rights is to determine whether taxpayers complained that an IRS employee intentionally denied them their right to representation or bypassed their representative without proper approval. The Taxpayer Advocate Management Information System<sup>4</sup> and the IRS Commissioner's Information Tracking System<sup>5</sup> do not track these types of complaints. However, taxpayer complaints that allege IRS employees bypassed their representatives and contacted them directly are tracked on the Performance and Results Information System<sup>6</sup> by the Treasury Inspector General for Tax Administration Office of

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<sup>4</sup> The Taxpayer Advocate Management Information System is an electronic database and case inventory control system used by Taxpayer Advocate Service function employees.

<sup>5</sup> The Information Tracking System is a system used by the IRS to control and track information and correspondence.

<sup>6</sup> The Performance and Results Information System is a management information system that provides the Treasury Inspector General for Tax Administration with the ability to manage complaints received and investigations initiated.



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Investigations. The Office of Investigations closed nine direct contact complaint/investigation cases between October 2007 and September 2008. In six substantiated complaints, five revenue officers and one revenue agent improperly bypassed taxpayer representatives and were either counseled or reprimanded for their actions.

Ultimately, the IRS relies on its employees to ensure that the direct contact provisions of I.R.C. §§ 7521(b)(2) and (c) are followed. Although the IRS does not systemically monitor its employees' compliance, we believe the procedures and guidelines it has established for its employees and the revisions it has made to the publications given to taxpayers adequately address the requirements of the law.

In Fiscal Years 2001 and 2002, the Small Business/Self-Employed Division issued temporary guidance to its compliance managers, directing them to “take whatever steps are necessary (including discussion in group meetings, case reviews, workload reviews, on-the-job visits, and taxpayer/POA [Power of Attorney] inquiries) to ensure these requirements [the requirements mandated by I.R.C. §§ 7521(b)(2) and (c)] are understood and followed by employees.” A variation of this guidance was eventually put into the Collection Group Manager, Territory Manager, and Area Director Operational Aid found in the IRM.<sup>7</sup>

While the IRS has assigned group managers responsibility for monitoring employee compliance with the direct contact provisions, the IRM only provides guidance for Collection function group managers. Currently, there is no requirement in the IRM that specifically requires Examination function group managers to address direct contact issues during reviews even though such reviews are a key control component that ensures procedures are followed and work is meeting acceptable standards. Having such a requirement is consistent with the Government Accountability Office *Standards for Internal Control in the Federal Government*,<sup>8</sup> which requires that control activities help ensure that management directions to mitigate risks are followed. Moreover, the documentation from the reviews could provide needed support for providing greater assurances that Examination function employees are following the direct contact provisions in their day-to-day contact with taxpayers and their representatives.

The six substantiated complaint/investigation cases closed during Fiscal Year 2008 are very small compared to the millions of taxpayer contacts IRS examiners and collectors make each year. However, neither we nor the IRS can provide assurances that there were not other potential direct contact violations. As we previously reported,<sup>9</sup> IRS management information systems do not separately record or monitor cases that involve direct contact issues, and there is no legal requirement to do so. Given the small number of complaints received in this area over the years, establishing such a system may entail costs that would outweigh potential benefits. However,

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<sup>7</sup> IRM Section 1.4.50.5.13.

<sup>8</sup> GAO/AIMD-00-21.3.1, dated November 1999.

<sup>9</sup> *Fiscal Year 2008 Statutory Review of Restrictions on Directly Contacting Taxpayers* (Reference Number 2008-40-090, dated March 27, 2008).



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the IRS could take better advantage of group manager review processes to ensure that Examination function employees are properly following the direct contact provisions.

We believe that by improving Examination function group manager guidance in the IRM, the IRS would have additional assurance that employees are being informed of their responsibilities under the direct contact provisions and may help Examination function group managers prevent uninformed employees from violating taxpayer rights.

### ***Recommendation***

***Recommendation 1:*** The Commissioner, Small Business/Self-Employed Division, should update the IRM to include specific guidance that Examination function group managers take whatever steps are necessary (including discussion in group meetings, case reviews, workload reviews, on-the-job visits, and taxpayer/Power of Attorney inquiries) to ensure the requirements mandated by I.R.C. §§ 7521(b)(2) and (c) are understood and followed by their employees.

***Management's Response:*** IRS management agreed with our recommendation and will update IRM Section 1.4.40 to include specific guidance for Examination function group managers to ensure that the requirements of I.R.C. §§ 7521(b)(2) and (c) are understood and followed.



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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). To accomplish this objective, we:

- I. Obtained confirmation from the Small Business/Self-Employed Division 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 Treasury Inspector General for Tax Administration personnel responsible for the Taxpayer Advocate Management Information System,<sup>1</sup> the Information Tracking System,<sup>2</sup> and the Performance and Results Information System<sup>3</sup> to determine whether there is a system to track taxpayer complaints relating to violations of the direct contact provisions of the law.
  - A. Identified nine direct contact complaint/investigation cases on the Performance and Results Information System closed by the Treasury Inspector General for Tax Administration Office of Investigations during the period October 14, 2007, through September 15, 2008.
  - B. Obtained and reviewed the closed Office of Investigations case files to determine their validity and what actions were taken by the IRS as a result of the complaints/investigations.
- III. 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 Treasury Inspector General for Tax Administration audit reports for the statutory direct contact reviews and summarized the audit results, recommendations, and corrective actions taken by the IRS.

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

<sup>2</sup> The Information Tracking System is a system used by the IRS to control and track information and correspondence.

<sup>3</sup> The Performance and Results Information System is a management information system that provides the Treasury Inspector General for Tax Administration with the ability to manage complaints received and investigations initiated.



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- B. Reviewed historic and current IRM<sup>4</sup> sections to identify any updates made in response to I.R.C. §§ 7521(b)(2) and (c).
- C. Reviewed IRS.gov (the public IRS Internet site) and related IRS publications to identify how the IRS informs taxpayers of its prohibition against directly contacting taxpayers in certain situations.

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<sup>4</sup> A manual containing the IRS' internal guidelines.



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**Appendix II**

*Major Contributors to This Report*

Margaret E. Begg, Assistant Inspector General for Audit (Compliance and Enforcement  
Operations)  
Frank Dunleavy, Director  
Bryce Kisler, Audit Manager  
Sharon Summers, Lead Auditor  
Erlinda Foye, 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  
Deputy Commissioner, Small Business/Self-Employed Division SE:S  
Director, Collection, Small Business/Self-Employed Division SE:S:C  
Director, Communications, Liaison, and Disclosure, Small Business/Self-Employed Division  
SE:S:CLD  
Director, Examination, Small Business/Self-Employed Division SE:S:E  
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: Commissioner, Small Business/Self-Employed Division SE:S





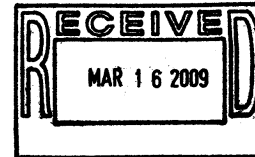
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**Appendix IV**

*Management's Response to the Draft Report*



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



March 16, 2009

MEMORANDUM FOR MICHAEL R. PHILLIPS  
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Christopher Wagner *Chris R. Wagner*  
Commissioner, Small Business/Self-Employed Division

SUBJECT: Draft Audit Report – Fiscal Year 2009 Statutory Review of  
Restrictions on Directly Contacting Taxpayers  
(Audit # 200930018)

Thank you for the opportunity to review the draft report titled "Fiscal Year 2009 Statutory Review of Restrictions on Directly Contacting Taxpayers." We agree with your recommendation to update the Internal Revenue Manual (IRM) to include specific guidance for our Examination group managers on this topic.

We appreciate your acknowledgement that the six substantiated complaint/investigation cases closed during Fiscal Year 2008 are very small in number when compared to the millions of taxpayer contacts IRS examiners and collectors make each year.

The IRM contains our internal procedures and guidelines for IRS employees. It presently includes directions and explanations of the statutory requirements and administrative procedures regarding contacts with taxpayers and their representatives. The inclusion of additional guidance in our Examination group manager's IRM section will help to further ensure that the requirements are understood and followed.

Attached is a detailed response outlining our corrective action. If you have questions, please call me at (202) 622-0600 or Alain Dubois, Director, Examination Policy, Small Business/Self Employed Division, at (202) 283-2513.

Attachment



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**Attachment**

**RECOMMENDATION 1:**

The Commissioner, Small Business/Self-Employed Division, should update the Internal Revenue Manual to include specific guidance for Examination function group managers to ensure that requirements mandated by Internal Revenue Code Sections 7521(b)(2) and (c) are understood and followed by their employees.

**CORRECTIVE ACTION:**

We agree with the recommendation and will update IRM 1.4.40, Resource Guide for Managers - SB/SE Compliance Field Examination Group Manager, to include specific guidance for Examination group managers to ensure that the requirements of Internal Revenue Code sections 7521(b)(2) and (c) are understood and followed.

**IMPLEMENTATION DATE:**

June 15, 2010

**RESPONSIBLE OFFICIAL:**

Director, Examination Policy (SB/SE Division)

**CORRECTIVE ACTION(S) MONITORING PLAN:**

The Director, Examination Policy will monitor the status and advise the Director, Examination of any delays in implementing.