



*Five Fair Tax Collection Practices Violations  
Resulted in Administrative Actions in  
Calendar Year 2007*

**September 5, 2008**

**Reference Number: 2008-10-162**

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

3(d) = Identifying Information - Other Identifying Information of an Individual or Individuals



TREASURY INSPECTOR GENERAL  
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

September 5, 2008

**MEMORANDUM FOR CHIEF COUNSEL**  
**IRS HUMAN CAPITAL OFFICER**

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

**SUBJECT:** Final Audit Report – Five Fair Tax Collection Practices Violations  
Resulted in Administrative Actions in Calendar Year 2007  
(Audit # 200810004)

This report presents the results of our annual review of Internal Revenue Service (IRS) administrative or civil actions that result from Fair Tax Collection Practices<sup>1</sup> (FTCP) violations by IRS employees. Section 1102 (d)(1)(G) of the IRS Restructuring and Reform Act of 1998<sup>2</sup> requires the Treasury Inspector General for Tax Administration to include in one of its Semiannual Reports to Congress information regarding administrative or civil actions related to FTCP violations.

*Impact on the Taxpayer*

The abuse or harassment of taxpayers by the IRS employees while attempting to collect taxes reflects poorly on the IRS and can have a negative impact on voluntary compliance. We determined that for Calendar Year 2007, there were five cases involving FTCP violations for which the employee received administrative disciplinary action. In addition, the IRS' computer system contained a high percentage of cases that were miscoded as FTCP violations when they did not involve these types of violations. Inaccurate data on the number of FTCP violations can impede IRS management's efforts to detect and correct customer service problems that burden taxpayers.

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<sup>1</sup> 26 U.S.C. Section 6304 (2004).

<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.).



## ***Five Fair Tax Collection Practices Violations Resulted in Administrative Actions in Calendar Year 2007***

### **Synopsis**

The FTCP prohibit employees from using abusive or harassing behavior toward taxpayers when attempting to collect taxes. Employees who are found to have violated the FTCP could be subject to disciplinary action. In Calendar Year 2007, the IRS coded as FTCP violations [REDACTED] cases that were substantiated and resulted in an administrative action against the employee. In addition, we identified 11 cases that were coded as FTCP violations but should not have been because 1) the employee was not in a collection-related job series<sup>3</sup> or 2) the case did not involve a taxpayer or taxpayer representative.

Because of the high number of miscoded cases in previous years, we also reviewed all 157 cases in 6 other case categories to determine whether there were other cases that should have been coded as FTCP violations. We identified [REDACTED] additional cases that should have been coded as FTCP violations but instead had been coded as [REDACTED]. Combined with the previously mentioned [REDACTED] cases that were correctly coded, there were a total of [REDACTED] FTCP violations that resulted in an administrative action against the offending employees. The employees involved in these [REDACTED] cases received disciplinary actions including admonishment, suspension, probation/separation, and removal. Incorrect information on FTCP violations can impede management's efforts to identify and correct this type of behavior.

No civil actions resulted in the IRS paying monetary settlements to taxpayers because of an FTCP violation.

### **Recommendation**

We recommended that the IRS Human Capital Officer ensure that the issue codes on the 13 cases we identified as being miscoded are corrected (11 cases incorrectly coded as FTCP and the [REDACTED] cases coded as [REDACTED] cases that should have been coded as FTCP violations).

### **Response**

The IRS Human Capital Officer agreed to our outcome measure and recommendation and has already taken corrective action. The coding for the 13 cases has been corrected. Further, additional advice and guidance have been provided to the staff concerning the proper use of FTCP codes. Management's complete response to the draft report is included as Appendix VII.

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<sup>3</sup> Tax Specialist – Job Series 0526; Tax Examiner – Job Series 0592; Contact Representative – Job Series 0962; Revenue Officer – Job Series 1169.



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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 Nancy A. Nakamura, Assistant Inspector General for Audit (Headquarters Operations and Exempt Organizations Programs), at (202) 622-8500.



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*Abbreviations*

ALERTS	Automated Labor and Employee Relations Tracking System
FTCP	Fair Tax Collection Practices
IRS	Internal Revenue Service



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## *Background*

Section (§) 1102 (d)(1)(G) of the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998<sup>1</sup> requires that the Treasury Inspector General for Tax Administration include in one of its Semiannual Reports to Congress information regarding any administrative or civil actions related to violations of the Fair Tax Collection Practices (FTCP) listed in 26 U.S.C. § 6304.<sup>2</sup> The Treasury Inspector General for Tax Administration's Semiannual Report to Congress must provide a summary of such actions and include any judgments or awards granted.

As originally enacted, the Fair Debt Collection Practices Act<sup>3</sup> included provisions that prohibit various collection abuses and harassment in the private sector. The restrictions do not apply to Federal Government practices. However, Congress believes that it is appropriate to require the IRS to comply with applicable portions of the Fair Debt Collection Practices Act and to be at least as considerate to taxpayers as private creditors are required to be with their customers. IRS Restructuring and Reform Act of 1998 § 3466(a) requires that the IRS follow FTCP provisions that are similar to the Fair Debt Collection Practices Act provisions (see Appendix V for a detailed description of FTCP provisions).

Taxpayer complaints regarding IRS employees' conduct can be reported to several IRS divisions<sup>4</sup> for tracking. If a taxpayer files a civil action, or if IRS management determines that a taxpayer's rights related to the FTCP might have been violated, the complaint may be referred and tracked on one or both of the following IRS systems:

- IRS Human Capital Officer Workforce Relations' Automated Labor and Employee Relations Tracking System (ALERTS), which generally tracks employee behavior that might warrant IRS management administrative actions.
- Office of Chief Counsel's Counsel Automated System Environment, an inventory control system that tracks items such as taxpayer civil actions.

The IRS began tracking FTCP codes on the ALERTS in March 1999<sup>5</sup> and on the Counsel Automated System Environment in June 1999. For this review, we analyzed closed cases for Calendar Year 2007 from the ALERTS to identify violations of the FTCP. To be an FTCP violation that the Treasury Inspector General for Tax Administration is required to report, the

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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> 26 U.S.C. § 6304 (2004).

<sup>3</sup> 15 U.S.C. §§ 1601 note, 1692 (2000).

<sup>4</sup> The IRS divisions are the Large and Mid-Size Business, Small Business/Self-Employed, Tax Exempt and Government Entities, and Wage and Investment Divisions.

<sup>5</sup> See Appendix VI for a description of the ALERTS FTCP violation codes.



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action must have been taken by an IRS employee who was involved in a collection activity and who received a disciplinary action that is considered an administrative action. We determined that usually only those employees in the job series listed below will be engaged in collection-related activities:

- Tax Specialist – Job Series 0526.
- Tax Examiner – Job Series 0592.
- Contact Representative – Job Series 0962.
- Revenue Officer – Job Series 1169.

The law does not provide a definition of “administrative action.” We used the IRS’ definition of a disciplinary action when determining the number of violations to report under IRS Restructuring and Reform Act of 1998 § 1102 (d)(1)(G). As defined by the IRS, disciplinary actions range from a letter of admonishment to removal.

We could not ensure that the cases recorded on the ALERTS constitute all FTCP violations. The ALERTS tracks administrative actions taken against employees due to improper conduct. Lesser disciplinary actions, such as oral or written counseling, are not considered to be administrative actions under the IRS’ definition and are not tracked on the ALERTS. Because the IRS does not routinely track all informal oral counseling or minor actions against its employees, it is not possible for us to determine how often, or why, informal oral counseling or other minor disciplinary actions occurred. The scope of our audit was not intended to determine the accuracy or consistency of disciplinary actions taken against employees.

This review was performed at the IRS Human Capital and Chief Counsel Offices in the IRS National Headquarters in Washington, D.C., during the period March through May 2008. 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 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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**Five Fair Tax Collection Practices Violations Resulted in  
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**Results of Review**

**Fair Tax Collection Practices Violations Were Not Accurately  
Reported**

1,3(d) [redacted] cases closed on the ALERTS during the period January 1 through December 31, 2007,<sup>6</sup> involved FTCP violations that resulted in an administrative action. The employees involved in these [redacted] cases received disciplinary actions including admonishment, suspension, probation/separation, and removal. Specifically, we identified:

- 1,3(d)
- a. [redacted] cases that were correctly coded on the ALERTS as FTCP violations with an associated administrative action.
  - b. [redacted] cases that involved FTCP violations with an associated administrative action but were miscoded on the ALERTS as not involving FTCP violations.

A total of 35 cases were initially coded as FTCP complaints and closed on the ALERTS from January 1 through December 31, 2007.<sup>7</sup> We reviewed the cases and determined that [redacted] (as noted in "a." above) were correctly coded as FTCP violations with an associated administrative action. Of the [redacted] remaining cases, 4 involved FTCP violations, but the disciplinary actions did not meet the criteria to qualify as an administrative action; 17 contained unsubstantiated allegations; and 11 were miscoded and were not FTCP violations because they were not worked by employees in a collection-related job series or did not involve a taxpayer or taxpayer representative.

In addressing the miscoding of cases in our prior FTCP report,<sup>8</sup> IRS management agreed to initiate a quarterly review of the ALERTS database to validate the use of the FTCP issue codes as a temporary measure until programming could be completed on a hard-code validation to the ALERTS system. According to Workforce Relations function staff, the first validation review was conducted on December 28, 2007, and covered the 6-month period of July through December 2007. The quarterly review would not have identified 10 of the 11 miscoded cases because the cases were closed prior to July 2007.

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<sup>6</sup> This included cases opened after July 22, 1998, and closed during the period January 1 through December 31, 2007.

<sup>7</sup> This included cases opened after July 22, 1998, and closed during the period January 1 through December 31, 2007.

<sup>8</sup> *Five Fair Tax Collection Practices Violations Resulted in Administrative Actions in Calendar Year 2006* (Reference Number 2007-10-188, dated September 21, 2007).



## ***Five Fair Tax Collection Practices Violations Resulted in Administrative Actions in Calendar Year 2007***

Because of the high number of miscoded cases in previous years, we also reviewed all 157 cases on the ALERTS in 6 other case categories involving employee misconduct allegations, including those coded as either "Unprofessional Conduct" or "Not Otherwise Coded" to determine if any of the cases should have been coded as FTCP violations. We identified [REDACTED] additional cases (as noted in "b." above) with administrative actions that should have been coded as FTCP but were coded as [REDACTED]. In these cases, IRS employees used [REDACTED] while interacting with taxpayers on collection-related issues. These [REDACTED] cases were closed from May through October 2007. However, the quarterly review process would not have identified these miscoded cases because they were not originally coded as FTCP violations, and the review process validates only those cases coded with the FTCP issue codes.

All data in the ALERTS must be accurate so that IRS management can detect any problems or trends that might exist and properly address them to minimize poor interactions between IRS employees and taxpayers. Additionally, the ALERTS is the data source for reports provided to a number of oversight offices and at times is the basis for information provided to Congress on legislation affecting the IRS.

### ***Recommendation***

***Recommendation 1:*** The IRS Human Capital Officer should correct the issue codes on the 11 cases incorrectly coded as FTCP violations and the [REDACTED] that should have been coded as FTCP violations.

***Management's Response:*** The IRS Human Capital Officer agreed with the recommendation and took corrective action. The coding for the [REDACTED] cases has been corrected. Further, additional advice and guidance have been provided to the staff concerning the proper use of FTCP codes.

### ***No Fair Tax Collection Practices Civil Actions Resulted in Monetary Settlements to Taxpayers***

Section 7433 of the Internal Revenue Code provides that a taxpayer may bring a civil action for damages against the Federal Government if an officer or employee of the IRS recklessly or intentionally, or by reason of negligence, disregards any provision of the Internal Revenue Code, or related regulation, in connection with the collection of Federal tax.

There were no cases closed on the Counsel Automated System Environment in Calendar Year 2007 for which the IRS paid damages to taxpayers resulting from a civil action filed due to an FTCP violation.



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## **Appendix I**

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

The overall objective of this audit was to obtain information on IRS administrative or civil actions resulting from FTCP violations<sup>1</sup> by IRS employees. To accomplish the objective, we:

- I. Identified the number of FTCP violations resulting in administrative actions.
  - A. Obtained a computer extract from the ALERTS<sup>2</sup> of any cases opened after July 22, 1998, with an Issue Code of 141 to 147, and closed during the period January 1 through December 31, 2007. We analyzed the ALERTS extract and obtained additional case file information from the Labor Relations function, when needed, to determine the type of violation.
  - B. Determined if any cases involving FTCP violations resulted in administrative actions.
  - C. Obtained a computer extract from the ALERTS of any cases opened after July 22, 1998, and closed during the period January 1 through December 31, 2007, with the following Issue Codes:
    - 013 (Position/Authority Misuse - limited to only those closed with a disposition code of 009 or higher).
    - 020 (Fighting, Assaults, and Threats - limited to only those closed with a disposition code of 009 or higher).
    - 058 (Unprofessional Conduct - limited to only those closed with a disposition code of 009 or higher).
    - 114 (Conviction Assault/Battery - all disposition codes).
    - 119 (Threat of Audit/Personal - all disposition codes).
    - 999 (Not Otherwise Coded - limited to only those closed with a disposition code of 009 or higher).
  - D. Analyzed the ALERTS extract and determined if any of the cases in these categories were miscoded and should have been coded as FTCP violations. When needed, we obtained additional case file information from the Workforce Relations function to determine the reason for the miscoding and the final resolution of the case. We did not

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<sup>1</sup> 26 U.S.C. Section 6304 (2004). FTCP provisions are explained in Appendix V.

<sup>2</sup> The Office of Workforce Relations' ALERTS generally tracks employee behavior that might warrant IRS management administrative actions.



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attempt to independently validate the accuracy of the ALERTS database for this review. We limited our work to assessing the accuracy of the Issue Codes for those cases that met the criteria listed in Steps I.A through I.C.

- E. Determined if there were any FTCP violation cases (Subcategory 6304, established to track FTCP violations) resulting in IRS civil actions (judgments or awards granted) on the Office of Chief Counsel's Counsel Automated System Environment<sup>3</sup> database that had been opened after July 22, 1998, and closed during the period January 1 through December 31, 2007. We determined that no cases on the Counsel Automated System Environment database met these criteria. Due to time constraints, we did not conduct validation tests of this System. The Calendar Year 2007 data were consistent with those of past years, and there is less risk that cases were misclassified because qualified attorneys were deciding if each case met the legal definition of an FTCP violation. For these reasons, we considered the data's reliability as undetermined but suitable for use in this report.

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<sup>3</sup> The Counsel Automated System Environment is an Office of Chief Counsel inventory control system that tracks items such as taxpayer civil actions.



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**Appendix II**

*Major Contributors to This Report*

Nancy A. Nakamura, Assistant Inspector General for Audit (Headquarters Operations and Exempt Organizations Programs)  
Jeffrey M. Jones, Director  
Joseph F. Cooney, Audit Manager  
Robert Beel, Lead Auditor  
Janice A. Murphy, Senior Auditor  
Chinita M. Coates, Auditor



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**Appendix III**

*Report Distribution List*

Commissioner C  
Office of the Commissioner – Attn: Chief of Chief C  
Deputy Commissioner for Operations Support OS  
Director, Workforce Relations, IRS Human Capital Office OS:HC:R  
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 Counsel CC  
IRS Human Capital Officer OS:HCO



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**Appendix IV**

***Outcome Measure***

This appendix presents detailed information on the measurable impact that our recommended corrective action will have on tax administration. This benefit will be incorporated into our Semiannual Report to Congress.

**Type and Value of Outcome Measure:**

- Reliability of Information – Actual; 13 cases recorded on the ALERTS<sup>1</sup> (see page 3).

**Methodology Used to Measure the Reported Benefit:**

We reviewed the 35 FTCP complaints closed on the ALERTS from January 1 through December 31, 2007, and determined that:

- 10 cases were incorrectly coded as FTCP violations because the cases were not worked by employees in a collection jobs series.<sup>2</sup>
- [REDACTED] case was incorrectly coded as an FTCP violation because it did not involve a taxpayer or taxpayer representative.

We also reviewed 157 additional cases in 6 other case categories closed on the ALERTS during the period January 1 through December 31, 2007, involving employee misconduct allegations and determined that [REDACTED] cases should have been coded as FTCP violations but were incorrectly coded as [REDACTED]

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<sup>1</sup> The Office of Workforce Relations ALERTS generally tracks employee behavior that might warrant IRS management administrative actions.

<sup>2</sup> Tax Specialist – Job Series 0526; Tax Examiner – Job Series 0592; Contact Representative – Job Series 0962; Revenue Officer – Job Series 1169.



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**Appendix V**

*Fair Tax Collection Practices Provisions*

To ensure equitable treatment of debt collectors in the public and private sectors, the IRS Restructuring and Reform Act of 1998<sup>1</sup> requires the IRS to comply with certain provisions of the Fair Debt Collection Practices Act.<sup>2</sup> Specifically, the IRS may not communicate with taxpayers in connection with the collection of any unpaid tax:

- At unusual or inconvenient times.
- If the IRS knows that the taxpayer has obtained representation from a person authorized to practice before the IRS, and the IRS knows or can easily obtain the representative's name and address.
- At the taxpayer's place of employment, if the IRS knows or has reason to know that such communication is prohibited.

In addition, the IRS may not harass, oppress, or abuse any person in connection with any tax collection activity or engage in any activity that would naturally lead to harassment, oppression, or abuse. Such conduct specifically includes, but is not limited to:

- Use or threat of violence or harm.
- Use of obscene or profane language.
- Causing a telephone to ring continuously with harassing intent.
- Placement of telephone calls without meaningful disclosure of the caller's identity.

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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> 15 U.S.C. Sections 1601 note, 1692 (2000).





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**Appendix VI**

*Fair Tax Collection Violation Issue Codes*

Issue Code	Description
141	UNUSUAL CONTACT WITH TAXPAYER – Contacting a taxpayer before 8:00 a.m. or after 9:00 p.m., or at an unusual location or time, or location known or which should be known to be inconvenient to the taxpayer.
142	DIRECT CONTACT WITH TAXPAYER WITHOUT REPRESENTATIVE CONSENT – Contacting a taxpayer directly without the consent of the taxpayer’s Power of Attorney.
143	CONTACT AT TAXPAYER EMPLOYMENT WHEN PROHIBITED – Contacting a taxpayer at their place of employment when it is known or should be known that the taxpayer’s employer prohibits the taxpayer from receiving such communication.
144	HARASSMENT/ABUSE/THREAT OF ABUSE – Conduct which is intended to harass or abuse a taxpayer, or conduct which uses or threatens to use violence or harm.
145	USE OBSCENE/PROFANE LANGUAGE TO ABUSE – The use of obscene or profane language toward a taxpayer.
146	CONTINUOUS PHONE CALLS WITH INTENT TO HARASS – Causing a taxpayer’s telephone to ring continuously with harassing intent.
147	PHONE CALLS WITHOUT MAKING FULL IDENTIFICATION DISCLOSURE – Contacting a taxpayer by telephone without providing a meaningful disclosure of the IRS employee’s identity.

*Source: IRS ALERTS User Manual (April 2007).*



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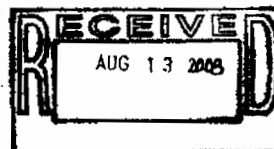
Appendix VII

**Management's Response to the Draft Report**



HUMAN CAPITAL OFFICE

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



August 11, 2008

MEMORANDUM FOR MICHAEL R. PHILLIPS  
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Robert Buggs   
IRS Human Capital Officer

SUBJECT: Draft Audit Report – Five Fair Tax Collection Practices  
Violations Resulted In Administrative Actions in Calendar Year  
2007 (Audit # 200810004)

I have received the subject draft audit report dated July 11, 2008, and appreciate having the opportunity to work with your auditors and to implement solutions to the issues identified in the audit report.

The Automated Labor and Employee Relations Tracking System (ALERTS) is a database affecting many stakeholders, including TIGTA. The accuracy of the data in ALERTS is important to its continued success as a reliable source of information for our various stakeholders. I acknowledge your findings and recommendations as they pertain to cases entered in ALERTS involving Fair Tax Collection Practices (FTCP) violations. ALERTS offers the use of seven "issue codes" that identify the various FTCP infractions set forth in 26 U.S.C. § 6304. As one of our stakeholders, TIGTA must report to Congress on cases the IRS has addressed which involved FTCP violations. The correct use of these issue codes will ensure accurate reports to Congress.

1 You identified  cases for Calendar Year 2007 that were FTCP infractions – some with the incorrect issue code, and a number of other cases coded with an FTCP issue code that were not really FTCP violations. I agree with the outcome measure as it is described in Appendix IV of your report. We have taken steps to implement your recommendations, and our response to those recommendations is attached.

If you have any questions, please call me at (202) 622-7676, or Barbara Pabotoy, Director, Workforce Relations Division, at (202) 622-6300.

Attachment



**Five Fair Tax Collection Practices Violations Resulted in  
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TIGTA Audit 200810004

Attachment

**RECOMMENDATION 1:** The IRS Human Capital Officer should correct the issue codes on the 11 cases incorrectly coded as FTCP violations and on the [REDACTED] cases coded as [REDACTED] cases that should have been coded as FTCP violations.

**CORRECTIVE ACTION:**

The issue codes on all of the identified cases have been corrected as of July 22, 2008. As it turns out, 7 of the 11 cases incorrectly coded as FTCP violations were contained within one operation. The chief of the office has been provided with additional advice and guidance concerning the proper use of the codes for dissemination with his staff. For the [REDACTED] cases coded as [REDACTED] the local chiefs have also been advised of the changes and reminded of the proper use of the FTCP codes.

**IMPLEMENTATION DATE**

Correct ALERTS issue codes: July 22, 2008 .

**RESPONSIBLE OFFICIAL**

Director, Workforce Relations Division