

**Fiscal Year 2004 Statutory Audit of  
Compliance With Notifying Taxpayers of  
Their Rights When Requested to Extend the  
Assessment Statute**

**June 2004**

**Reference Number: 2004-40-108**

**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.**



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

INSPECTOR GENERAL  
for TAX  
ADMINISTRATION

June 9, 2004

MEMORANDUM FOR DEPUTY COMMISSIONER FOR SERVICES AND  
ENFORCEMENT

*Gordon C. Milbourn III*

FROM: Gordon C. Milbourn III  
Acting Deputy Inspector General for Audit

SUBJECT: Final Audit Report - Fiscal Year 2004 Statutory Audit of  
Compliance With Notifying Taxpayers of Their Rights When  
Requested to Extend the Assessment Statute  
(Audit # 200340052)

This report presents the results of our review to determine whether the Internal Revenue Service (IRS) was complying with Internal Revenue Code (I.R.C.) Section (§) 6501(c)(4)(B) (2000), which requires the IRS to provide notice to taxpayers of their rights to decline to extend the assessment statute of limitations or to request that any extension be limited to a specific period of time or to specific issues.

The Treasury Inspector General for Tax Administration (TIGTA) is required to provide information annually regarding the IRS' compliance with I.R.C. § 6501(c)(4)(B).<sup>1</sup> The IRS is required to advise taxpayers of their rights when requesting an extension of the statute of limitations on assessment of additional tax and penalties. In passing this law, the Congress expressed concern that taxpayers were not being adequately advised of their rights to refuse to extend the statute of limitations or to request that a statute extension be limited to a specific period of time or to specific issues.

In summary, there was not always documentation in the case files that taxpayers were advised of their rights regarding assessment statute extensions. Current consent forms<sup>2</sup> do not provide an explanation of the taxpayers' rights to limit or refuse to extend the

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<sup>1</sup> I.R.C. § 7803(d)(1)(C) (2000).

<sup>2</sup> The IRS uses several different types of consents, depending on the type of tax involved. For example, *Consent to Extend the Time to Assess Tax* (Form 872) is used for income taxes, and *Consent to Extend the Time to Assess Employment Taxes* (Form SS-10) is used for employment taxes.

assessment statute of limitations. In our sample, 21 percent of the case files reviewed<sup>3</sup> did not contain any documentation to support that taxpayers had been advised of their rights. In instances in which taxpayers filed a joint tax return, 47 percent of the case files did not contain any documentation that each taxpayer listed on the tax returns was separately informed of his or her rights (i.e., dual notification). In addition, when a taxpayer had made a declaration of representation, 40 percent of the case files did not contain any documentation that the IRS had provided both the taxpayers and their representatives with the advice of rights.

Although the IRS has revised its internal procedures over the last few years to help enhance controls, our reviews continue to identify instances in which there is no documentation that taxpayers were advised of their rights. Therefore, we recommended the Deputy Commissioner for Services and Enforcement revise the various consent forms to include a statement that the taxpayers have been informed of their rights regarding assessment statute extensions and have been provided a copy of *Extending the Tax Assessment Period* (Publication 1035).

Management's Response: IRS management agreed in part with our recommendation. Specifically, they agreed to revise the consent forms to include an additional statement indicating succinctly what rights taxpayers have when the IRS requests a consent to extend the assessment statute of limitations. However, IRS management did not agree to include wording in the consent forms that a copy of the Publication 1035 has been provided to or received by the taxpayer. While the IRS will continue to issue Publication 1035 when soliciting consent agreements, management believes it is not advisable to include this wording because the issuance of Publication 1035 goes considerably beyond the statutory requirement for notifying taxpayers of their rights. Management's complete response to the draft report is included as Appendix VI.

Office of Audit Comment: We agree that the IRS would be going beyond the statutory requirement by ensuring the taxpayers had been provided a copy of Publication 1035. However, the IRS designed Publication 1035 to notify taxpayers of their rights, and we believe that ensuring that taxpayers are provided a copy would be a benefit to taxpayers. While we still believe this portion of our recommendation is worthwhile, we do not intend to elevate our disagreement concerning this matter to the Department of the Treasury for resolution

Also, the IRS' response pointed out that in the Fiscal Year (FY) 2003 report, the TIGTA concluded that the IRS processes used to notify taxpayer representatives of their rights conformed with statutory requirements, while in the FY 2004 report, the TIGTA concluded that the same processes did not achieve conformance. However, this is not the case. Both reports state that the IRS had established guidelines to help ensure that taxpayers and their representatives were provided information on the taxpayers' rights, and that we found some employees were not following those guidelines. Our FY 2004

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<sup>3</sup> Some of the sampled tax returns and related case files met multiple criteria. All cases do not have the same requirements. For example, all cases have a documentation requirement; however, not all cases involve taxpayer representatives or taxpayers that file joint tax returns.

report goes beyond our FY 2003 report in making a recommendation to help further ensure taxpayers and their representatives would be notified of their rights.

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 Michael R. Phillips, Assistant Inspector General for Audit (Wage and Investment Income Programs), at (202) 927-0597.

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### **Background**

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The Internal Revenue Service (IRS) is required by Internal Revenue Code (I.R.C.) Section (§) 6501(c)(4)(B) (2000) to advise taxpayers of their rights when requesting an extension of the statute of limitations on assessment of additional tax and penalties. In passing this law, the Congress expressed concern that taxpayers were not being adequately advised of their rights to refuse to extend the statute of limitations or to request that a statute extension be limited to a specific period of time or to specific issues.

In addition, the IRS Restructuring and Reform Act of 1998 (RRA 98)<sup>1</sup> § 3201 requires the IRS to send any notice relating to a jointly filed return separately to each individual filing the joint return.

Federal regulations require that any notice or other written communication (or copy) required or permitted to be given to a taxpayer in any matter before the IRS must also be given to the taxpayer and to the taxpayer's representative.<sup>2</sup> However, the taxpayer can use the Power of Attorney and Declaration of Representative Form (Form 2848) to restrict the notices or information the representative is authorized to receive.

If the IRS examines a tax return and determines there is an additional tax liability, it generally must be assessed within 3 years from the date the return was due or from the date on which the return was actually filed, whichever is later. This 3-year assessment statute of limitations normally cannot be extended without the taxpayer's written agreement.<sup>3</sup>

To extend the assessment statute, the IRS asks the taxpayer to sign a statute extension agreement form (consent).<sup>4</sup> A consent extends the assessment statute of limitations to either a specific date or for an unlimited, indefinite period.

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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 Code of Federal Regulations § 601.506 (2003).

<sup>3</sup> There are some exceptions to the 3-year statute of limitations. For example, I.R.C. § 6501(c)(1) (2003) extends the assessment statute indefinitely when false or fraudulent tax returns are filed.

<sup>4</sup> IRS employees that most often request assessment statute extensions are examiners in the Examination function of the operating divisions and appeals officers in the Office of Appeals.

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The statute is usually extended for a period that both the IRS and the taxpayer agree is reasonable to complete the examination. The consent can also be negotiated to apply only to certain examination issues.

A taxpayer might agree to extend the assessment statute of limitations for the following reasons:

- The taxpayer may want to pursue additional examination issues that are in the taxpayer's favor in offsetting a proposed tax or that might allow for a tax refund.
- If the remaining time before the statute expires is too short, the IRS may have to prematurely stop the examination process and issue a notice of deficiency that limits the time for the normal appeals process before the taxpayer must file a petition to the United States Tax Court.

There are also certain circumstances in which a taxpayer may decide to limit or refuse to extend the assessment statute of limitations:

- The taxpayer may not want to provide the IRS more time to consider additional examination issues.
- The taxpayer may not want to allow the IRS the opportunity to further develop examination issues already under consideration after the normal statute period has expired.

The Treasury Inspector General for Tax Administration (TIGTA) is required to provide information annually regarding the IRS' compliance with I.R.C. § 6501(c)(4)(B).<sup>5</sup> This report presents the results of our fifth annual review of the IRS' compliance with the statute extension provisions of the law. In the prior reviews, we evaluated assessment statute extensions processed from January 1 to March 24, 2000; April 1 to September 30, 2000; October 1, 2000, to September 30, 2001; and September 30, 2001, to October 5, 2002, respectively.

We reported that, in the majority of the related case files reviewed, IRS employees advised taxpayers of their rights

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<sup>5</sup> I.R.C. § 7803(d)(1)(C) (2000).

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to refuse or restrict the scope of the statute extension. However, we also reported that improved documentation was needed to ensure taxpayers were informed of their rights. In response, the IRS agreed to update guidelines; revise *Extending the Tax Assessment Period* (Publication 1035), which is used to notify taxpayers of their rights; and inform employees of the changes.

For the current audit, we reviewed assessment statute extensions processed from October 6, 2002, to September 27, 2003. This review was performed at the Large and Mid-Size Business Division Headquarters, the Office of Appeals Headquarters, and the Tax Exempt and Government Entities Division Headquarters in Washington, D.C., and the Small Business/Self-Employed Division in New Carrollton, Maryland, during the period October 2003 through March 2004. 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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### There Was Not Always Documentation That Taxpayers Were Advised of Their Rights Regarding Assessment Statute Extensions

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Our review showed taxpayer rights were potentially affected in a total of 106<sup>6</sup> of 274 tax returns sampled. Current consent forms<sup>7</sup> do not provide an explanation of the taxpayers' rights to limit or refuse to extend the assessment statute of limitations. Therefore, we considered that IRS employees advised taxpayers of their rights if any of the following documentation was found in the related case files:

- A copy of Request to Extend Statute (Letter 907 (L-907)), Letter Transmitting Consent Extending Period of Limitation (Letter 967 (L-967)), or comparable cover

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<sup>6</sup> This number is a unique count of taxpayers that had exceptions under one or more of our three finding areas (i.e., taxpayer notification, dual notification, and representative notification). Even though each sampled tax return and related case file could have multiple findings for each criterion tested, for this number, each case with an exception was only counted once.

<sup>7</sup> The IRS uses several different types of consents, depending on the type of tax involved. For example, *Consent to Extend the Time to Assess Tax* (Form 872) is used for income taxes, and *Consent to Extend the Time to Assess Employment Taxes* (Form SS-10) is used for employment taxes.



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letter updated to include an explanation of taxpayer rights addressed to the taxpayer.

- A record that Publication 1035 was provided to the taxpayer, as documented in the examination activity record or as shown as an enclosure on a cover letter. This Publication provides a detailed explanation of taxpayer rights.
- A notation in the examination activity record indicating the taxpayer was given the required notification of rights.

For 58 (21 percent) of 274 tax returns sampled, the case files did not contain any documentation to support that taxpayers had been advised of their rights. As a result, we could not determine if the IRS protected the right of these taxpayers to be advised of their statute extension options. This occurred because employees were not following IRS internal guidelines. Internal procedures and the current Internal Revenue Manual (IRM) require IRS employees to provide the taxpayer with an L-907 or L-967, with Publication 1035 as an enclosure, and document on an activity record whether the taxpayer was notified of his or her rights.

In 111 of the 274 tax returns sampled, the IRS requested multiple extensions. Although the IRS advised taxpayers of their rights for extension requests at some time during the examinations, there was no record in 20 (18 percent) of the 111 related case files documenting that the taxpayers were notified of their rights for the last extensions requested.

I.R.C. § 6501(c)(4)(B)(2000) provides that the IRS must notify the taxpayer of his or her rights on each occasion when the taxpayer is requested to consent to an extension. It would be a potential violation of taxpayers' rights if the IRS did not notify taxpayers of their options when requesting assessment statute extensions. If taxpayers are not notified of their rights, they might not be aware that they have the rights to refuse to extend the period of limitations or to request that any extension be limited to specific issues or to a specific period of time.

Although the IRS has revised its internal procedures over the last few years to help enhance controls, our reviews

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### **There Was Not Always Documentation That Each Taxpayer Listed on a Jointly Filed Tax Return Was Advised of His or Her Rights Regarding Assessment Statute Extensions**

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continue to identify instances in which there is no documentation that the taxpayers were advised of their rights. To help ensure taxpayers are aware of their rights, we believe the IRS should use the various consent forms to confirm that taxpayers have been informed of their rights to limit or to refuse to extend the assessment statute of limitations. We believe the various consent forms should be revised to include a statement that the taxpayer has been informed of his or her rights regarding assessment statute extensions and has been provided a copy of Publication 1035. The specific rights would not need to be outlined on the consent forms.

For 52 (47 percent) of the 110 jointly filed tax returns sampled, there was no documentation in the related case files that each taxpayer listed on the tax returns was separately informed of his or her rights (i.e., dual notification).<sup>8</sup> This occurred because employees were not following IRS internal guidelines.

RRA 98 § 3201 requires the IRS to send any notice relating to a jointly filed tax return separately to each individual filing the joint tax return. The Congress intended that separate notices would increase the likelihood that separated or divorced spouses receive such notices, as well as increase the likelihood that the IRS will be made aware of address changes that apply to one, but not both, spouses. There could be a violation of taxpayer rights if both taxpayers are not notified of their rights to refuse to extend the period of limitations or to request that any extension be limited to specific issues or to a specific period of time.

The guidelines covering requests for taxpayers to extend the assessment statute require notices relating to joint tax returns be sent to each individual filing the joint tax return. Specifically, the IRM requires IRS employees to provide each individual filing a joint tax return with an L-907 or L-967.

Although the IRS has revised its internal procedures over the last few years to help enhance compliance with dual notification, our reviews continue to identify instances in

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<sup>8</sup> Some of the 274 sampled tax returns and related case files met multiple criteria.

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### **There Was Not Always Documentation That Both the Taxpayers and Their Representatives Were Advised of the Taxpayers' Rights Regarding Assessment Statute Extensions**

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which there was no documentation in the case files that each taxpayer listed on the tax returns was separately informed of his or her rights. We believe the IRS should revise the various consent forms to include a statement that the taxpayer has been informed of his or her rights regarding assessment statute extensions and has been provided a copy of Publication 1035.

For 66 (40 percent) of the 167 tax returns sampled in which taxpayers made a declaration of representation, there was no documentation in the case files that the IRS had provided both the taxpayers and their representatives with the advice of rights.<sup>9</sup> Again, this occurred because employees were not following IRS internal guidelines.

Internal IRS procedures and current Federal Government regulations require that any notice or other written communication (or copy) required or permitted to be given to a taxpayer in any matter before the IRS must also be given, unless restricted by the taxpayer, to the taxpayer's representative.

Taxpayer rights or taxpayer burden could be affected if the IRS does not follow the Federal Government regulations and notify both the taxpayer and the taxpayer's representative of the rights to refuse to extend the period of limitations or to request that any extension be limited to specific issues or to a specific period of time.

Although the IRS has revised its internal procedures over the last few years to help ensure both the taxpayers and their representatives were provided information on the taxpayers' rights, our reviews continue to identify instances in which there was no documentation in the case files that this had occurred. If the consent forms were revised, the taxpayers that signed the consent forms would be informed of their rights. In our sample of the individual tax returns, almost half the taxpayers had signed the consent form although they had made a declaration of representation. In the

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<sup>9</sup> Some of the 274 sampled tax returns and related case files met multiple criteria.

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remaining cases, the representative had signed the consent forms.<sup>10</sup>

### Recommendation

1. The Deputy Commissioner for Services and Enforcement should revise the various consent forms to include a statement that the taxpayer has been informed of his or her rights regarding assessment statute extensions and has been provided a copy of Publication 1035.

Management's Response: IRS management agreed in part with our recommendation. Specifically, they agreed to revise the consent forms to include an additional statement indicating succinctly what rights taxpayers have when the IRS requests a consent to extend the assessment statute of limitations. However, IRS management did not agree to include wording in the consent forms that a copy of the Publication 1035 has been provided to or received by the taxpayer. While the IRS will continue to issue Publication 1035 when soliciting consent agreements, management believes it is not advisable to include this wording because the issuance of Publication 1035 goes considerably beyond the statutory requirement for notifying taxpayers of their rights.

Office of Audit Comment: We agree that the IRS would be going beyond the statutory requirement by ensuring the taxpayers had been provided a copy of the Publication 1035. However, the IRS designed Publication 1035 to notify taxpayers of their rights, and we believe ensuring that taxpayers are provided a copy would be a benefit to taxpayers.

Also, the IRS' response pointed out that in the Fiscal Year (FY) 2003 report, the TIGTA had concluded that the IRS processes used to notify taxpayer representatives of their rights conformed with statutory requirements, while in the FY 2004 report, the TIGTA concluded that the processes did not achieve conformance. We believe that the FY 2003

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<sup>10</sup> In some instances, both the taxpayer and his or her representative signed the consent forms.

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and FY 2004 reports both state that the IRS had established guidelines to help ensure that both the taxpayers and their representatives were provided information on the taxpayers' rights, and we found employees were not following those guidelines. In our FY 2004 report, we have made a recommendation to help further ensure taxpayers and their representatives would be notified of their rights.

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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) was complying with Internal Revenue Code Section (§) 6501(c)(4)(B) (2000), which requires the IRS to provide notice to taxpayers of their rights to decline to extend the assessment statute of limitations or to request that any extension be limited to a specific period of time or to specific issues. To accomplish our objective, we:

- I. Determined whether taxpayers were being advised of their rights related to assessment statute extension requests.
  - A. Reviewed the Examination function Internal Revenue Manual (IRM), IRS memoranda and regulations, and the Office of Appeals (Appeals) IRM and other Appeals guidelines to determine the policies and procedures for processing requests to extend the assessment statute of limitations.
  - B. Reviewed a sample of Business Master File (BMF)<sup>1</sup> and Individual Master File (IMF)<sup>2</sup> tax returns with taxpayer consents to extend assessment statutes processed from October 6, 2002, to September 27, 2003.
    1. Obtained BMF and IMF extracts to identify a population of tax returns having extensions of the assessment statute of limitations. The identified tax return populations were 5,977 and 7,557, respectively. We selected those extensions processed during cycles 200241 through 200339, which included October 6, 2002, to September 27, 2003. The IRS processes data in 1-week cycles.
    2. Selected for review a statistical sample of 620 tax returns from the category of cases likely to have statute extensions by taxpayer consent from the Examination function and Appeals processes. We reviewed 620 tax returns and related case files, eliminating 346 tax returns that did not meet our criteria or because we did not receive all requested tax returns and related case files. Therefore, only 274 reviewed tax returns and related case files met the audit criteria. This was not sufficient for a statistical sample. Within this judgmental sample of 274 tax returns, there were 110 jointly filed tax returns and 167 tax returns for which the taxpayers had made a declaration of representation.<sup>3</sup>

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<sup>1</sup> The IRS database that consists of Federal tax-related transactions and business accounts. These include employment taxes, income taxes on businesses, and excise taxes.

<sup>2</sup> The IRS database that maintains transactions or records of individual tax accounts.

<sup>3</sup> Some of the 274 sampled tax returns and related case files met multiple criteria.

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3. Identified which business unit or function requested the extension and discussed any questionable extensions identified with IRS management for concurrence or an explanation of why the IRS believed proper procedures were followed.
  4. Validated the IMF and BMF data for 10 fields on a judgmental sample of 101 of the 13,534 records identified in step I.B.1. above to determine the reliability of the data.
- II. Reviewed the 274 selected tax returns and case files for documentation verifying that both taxpayers on jointly filed returns were separately advised of their rights related to statute extensions.
  - III. Reviewed the 274 selected tax returns and case files for documentation verifying that taxpayers' representatives were notified of the taxpayers' rights related to statute extensions, when appropriate.
  - IV. Determined the status of the IRS corrective actions proposed to address the recommendations presented in the prior Treasury Inspector General for Tax Administration audit reports.

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**Appendix II**

**Major Contributors to This Report**

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Mary V. Baker, Director

Bryce Kisler, Audit Manager

David Hartman, Senior Auditor

Kristi Larson, Senior Auditor

James Traynor, Senior Auditor

Jean Kao, Auditor

Sylvia Sloan-Copeland, Auditor

Arlene Feskanich, Information Technology Specialist

Judith Harrald, Information Technology Specialist



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**Appendix III**

**Report Distribution List**

Commissioner C  
Office of the Commissioner – Attn: Chief of Staff C  
Commissioner, Large and Mid-Size Business Division SE:LM  
Commissioner, Small Business/Self-Employed Division SE:S  
Commissioner, Tax Exempt and Government Entities Division SE:T  
Chief, Appeals AP  
Acting Deputy Commissioner, Small Business/Self-Employed Division SE:S  
Deputy Commissioner, Large and Mid-Size Business Division SE:LM  
Deputy Commissioner, Tax Exempt and Government Entities Division SE:T  
Acting Director, Compliance, Small Business/Self-Employed Division SE:S:C  
Director, Communications and Liaison, Small Business/Self-Employed Division SE:S:MS:CL  
Director, Exempt Organizations, Tax Exempt and Government Entities Division SE:T:EO  
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Chief Counsel CC  
National Taxpayer Advocate TA  
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Director, Office of Program Evaluation and Risk Analysis RAS:O  
Office of Management Controls OS:CFO:AR:M  
Audit Liaisons:  
    Commissioner, Large and Mid-Size Business Division SE:LM:CL  
    Commissioner, Tax Exempt and Government Entities Division SE:T:CL  
    Chief, Appeals AP:P:S  
    Chief, Customer Liaison, Small Business/Self-Employed Division SE:S:COM

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### Appendix IV

#### Outcome Measures

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

##### Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; Internal Revenue Code Section (§) 6501(c)(4)(B) (2000); 78<sup>1</sup> of 274 taxpayer accounts affected (see page 3).
- Taxpayer Rights and Entitlements – Potential; Internal Revenue Service (IRS) Restructuring and Reform Act of 1998<sup>2</sup> § 3201; 52 of 110 jointly filed accounts affected (see page 5).
- Taxpayer Rights and Entitlements – Potential; 26 Code of Federal Regulations (C.F.R.) § 601.506;<sup>3</sup> 66 of 167 tax accounts in which the taxpayers declared a representative (see page 6).

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

We reviewed a judgmental sample of 274 tax returns with consents to extend the assessment statute of limitations period. The returns were identified from the Fiscal Year 2003 Business Master File (BMF)<sup>4</sup> and Individual Master File (IMF)<sup>5</sup> databases. The review showed taxpayer rights were potentially affected in a total of 106<sup>6</sup> (39 percent) of 274 tax returns sampled. Each sampled tax return and related case file could have multiple findings for each criterion.

Related case files were not documented in 78 of the 274 taxpayer accounts to show the taxpayers were notified of their rights to refuse or to restrict the scope of the statute extensions. There was no documentation in the related case files that each taxpayer listed on the tax returns was separately informed of his or her rights in 52 of 110 jointly filed accounts. In addition, in 66 of 167 accounts in which taxpayers made declarations of representation, there was no

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<sup>1</sup> These 78 cases are comprised of 58 cases with no evidence that the taxpayers had been advised of their rights and 20 cases with evidence that the taxpayers had been advised of their rights at some time but not for the last extensions requested.

<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.).

<sup>3</sup> 26 C.F.R. § 601.506 (2003).

<sup>4</sup> The BMF is the IRS database that consists of Federal tax-related transactions and business accounts. These include employment taxes, income taxes on businesses, and excise taxes.

<sup>5</sup> The IMF is the IRS database that maintains transactions or records of individual tax accounts.

<sup>6</sup> This number is a unique count of taxpayers that had exceptions under one or more of our three finding areas (i.e., taxpayer notification, dual notification, and representative notification). Even though each sampled tax return and related case file could have multiple findings for each criterion tested, for this number, each case with an exception was only counted once.

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documentation in the related case files that the IRS had provided both the taxpayers and their representatives with the advice of rights.

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**Appendix V**

**Case Review Results by Division**

	Appeals	LMSB <sup>1</sup>	SB/SE <sup>2</sup>	TE/GE <sup>3</sup>	Totals <sup>4</sup>
<b>Compliance With Requirement to Notify Taxpayers of Their Rights</b>					
Number of Cases in Which There Was No Evidence the Taxpayer Was Advised of Rights	14	21	21	2	58
Number of Cases in Which the Taxpayer Was Previously Notified but Not Notified for the Extension in Our Sample	10	6	4	0	20
<b>Compliance With Internal Guidelines or Regulations</b>					
Number of Cases in Which There Was No Documentation That Separate Notices Were Sent to Both Joint Filers (Applicable Cases: 110) <sup>5</sup>	18	4	30	0	52
Number of Cases in Which There Was No Evidence That Notices Were Given to Both the Taxpayer and Representative (Applicable Cases: 167)	24	15	27	0	66

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<sup>1</sup> Large and Mid-Size Business Division.

<sup>2</sup> Small Business/Self-Employed Division.

<sup>3</sup> Tax Exempt and Government Entities Division.

<sup>4</sup> No cases from the Wage and Investment Division occurred in our sample.

<sup>5</sup> All cases do not have the same requirements. For example, all cases have a documentation requirement; however, not all cases involve taxpayer representatives or taxpayers that file joint tax returns.

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Appendix VI

Management's Response to the Draft Report



COMMISSIONER  
SMALL BUSINESS/SELF-EMPLOYED DIVISION

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

RECEIVED  
MAY 28 2004

MAY 28 2004

MEMORANDUM FOR ACTING DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Dale F. Hart *Dale Hart by MSA*  
Commissioner, Small Business/Self-Employed Division

SUBJECT: Draft Audit Report – Fiscal Year 2004 Statutory Audit of  
Compliance With Notifying Taxpayers of Their Rights  
Requested to Extend the Assessment Statute  
(Audit # 200340052)

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We have reviewed your report and are pleased that it indicates we continue to improve our conformance rate with the statutory notification requirements. We have worked diligently to address the notification requirements. We suggested to you that we revise the wording in our consent forms as a means of achieving a greater degree of conformance with the statutory requirements. While the basic premise of our suggestion is contained in your recommendation, we are not in agreement with including receipt of Publication 1035, Extending the Tax Assessment Period in our revised wording. As explained below, including the Publication 1035 reference in the language of the consent form will result in a mix of legal interpretation issues, inherent in consent agreements, with the procedural requirements that we have implemented to provide the maximum degree of taxpayer service.

Our current procedures are to issue the Publication 1035 and Letter 907, Request to Extend Statute, when we request a statute extension. We will continue to reinforce the existing guidelines for documenting case files including issuance of the Publication 1035 and Letter 907 to ensure all employees are following IRS internal guidelines. This will further ensure taxpayers are advised of their rights when a request is made to extend the statutory period for assessment.

As we previously discussed, your 2004 audit report data is not directly comparable to the 2003 audit report. In the 2003 audit report, you concluded that the processes we used to advise taxpayer representatives of the Internal Revenue Code Section 6501(c)(4)(B) rights and to sign the consent agreement on behalf of the taxpayer achieved conformance with the notification of rights statute. In the 2004 audit, you concluded that the same processes did not achieve conformance.

## Fiscal Year 2004 Statutory Audit of Compliance With Notifying Taxpayers of Their Rights When Requested to Extend the Assessment Statute

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Our comments to your recommendation follow:

### **Recommendation 1**

The Deputy Commissioner for Services and Enforcement should revise the various consent forms to include a statement that the taxpayer has been informed of his or her rights regarding assessment statute extensions and has been provided a copy of the Publication 1035.

### **Corrective Action**

We partially agree with your recommendation. We agree with revising the consent forms to include an additional statement indicating succinctly what rights taxpayers have when the IRS requests that taxpayers provide a consent to extend the assessment statute of limitations. We are working with the Office of Chief Counsel on the appropriate wording for the revised consent agreement forms.

We do not agree with the portion of your recommendation pertaining to the inclusion of wording in the consent forms that a copy of the Publication 1035 has been provided or received by the taxpayer. We believe it is not advisable to include this wording, as the issuance of the Publication 1035 goes considerably beyond the statutory requirement for notifying taxpayers of their rights. We will continue to procedurally require employees to issue Publication 1035 when soliciting consent agreements to provide the best possible taxpayer service. We believe, however, that it is inappropriate to mix the legal interpretation issues inherent in consent agreements with the procedural requirements that we have implemented to provide the maximum degree of taxpayer service.

### **Implementation Date**

April 15, 2005

### **Responsible Official**

Director, Reporting Compliance, Small Business/Self-Employed Division

### **Corrective Action Monitoring Plan**

The Program Manager, General Exam Processes, will advise the Director, Reporting Compliance, Small Business/Self-Employed Division of any delays.

If you have any questions or need additional information, please contact me or Robert L. Hunt, Acting Deputy Director, Compliance Policy, Small Business/Self-Employed Division, at (202) 283-2200.