

**Fair Tax Collection Practices Violations Did
Not Result in Administrative or Civil Action**

July 2004

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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

July 29, 2004

MEMORANDUM FOR DEPUTY COMMISSIONER FOR OPERATIONS SUPPORT

Gordon C. Milbourn III

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

SUBJECT: Final Audit Report - Fair Tax Collection Practices Violations Did Not Result in Administrative or Civil Action (Audit # 200440003)

This report presents the results of our review of violations of fair tax collection practices. The overall objective of this review was to obtain information on any Internal Revenue Service (IRS) administrative or civil actions resulting from fair tax collection practices violations by IRS employees.

Section (§) 1102(d)(1)(G) of the IRS Restructuring and Reform Act of 1998¹ requires the Treasury Inspector General for Tax Administration (TIGTA) to include, in one of its semiannual reports to the Congress, information regarding any administrative or civil actions related to violations of the fair debt collection provisions of 26 U.S.C. § 6304, Fair Tax Collection Practices.² The IRS has traditionally referred to the § 6304 violations as "Fair Debt Collection Practices Act³ (FDCPA)" violations. The TIGTA semiannual report must provide a summary of the resulting administrative or civil actions and include any judgments or awards granted.

None of the 55 cases coded as potential FDCPA violations and closed on the Automated Labor and Employee Relations Tracking System (ALERTS)⁴ during the period January 1 through December 31, 2003, resulted in a reportable administrative action against an IRS employee. In addition, there were no civil actions identified that resulted in the IRS paying monetary settlements to taxpayers because of an FDCPA violation.

¹ 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.).

² 26 U.S.C. § 6304 (2004).

³ 15 U.S.C. §§ 1601 note, 1692-1692o (2000).

⁴ The Workforce Relations Division's ALERTS generally tracks employee behavior that may warrant IRS management administrative actions.

IRS management has reviewed the draft report and provided their concurrence with its contents via email. Since no formal response was required, the IRS has agreed that the report will be issued without one.

Copies of this report are also being sent to the IRS managers affected by the report findings. 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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Fair Tax Collection Practices Violations Did Not Result in Administrative or Civil Action

Background

Section (§) 1102(d)(1)(G) of the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998¹ requires the Treasury Inspector General for Tax Administration (TIGTA) to include, in one of its semiannual reports to the Congress, information regarding any administrative or civil actions related to violations of the fair debt collection provisions of 26 U.S.C. § 6304, Fair Tax Collection Practices,² by IRS employees. The IRS has traditionally referred to the § 6304 violations as “Fair Debt Collection Practices Act³ (FDCPA)” violations. The TIGTA semiannual report must provide a summary of the resulting administrative or civil actions and include any judgments or awards granted.

Because the Congress did not provide an explanation of what was meant by “administrative actions,” we used the IRS’ definition when determining the number of fair tax collection practices violations to be reported under § 1102(d)(1)(G). The IRS’ definition of administrative actions includes disciplinary actions ranging from admonishment through removal. Lesser actions, such as oral or written counseling, are not considered administrative actions.

As originally enacted, the FDCPA included provisions that restricted various collection abuses and harassment in the private sector. These restrictions did not apply to Federal Government practices. However, the Congress believed it was appropriate to require the IRS to comply with applicable portions of the FDCPA and to be at least as considerate to taxpayers as private creditors are required to be with their customers (see Appendix IV for a detailed description of the fair tax collection practices provisions).

Taxpayer complaints about IRS employees’ conduct can be reported to several IRS functions for tracking on management information systems. If a taxpayer files a civil action or if IRS management determines that a taxpayer’s fair tax collection practices rights were potentially violated,

¹ 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.).

² 26 U.S.C. § 6304 (2004).

³ 15 U.S.C. §§ 1601 note, 1692-1692o (2000).

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the complaint could be referred and then tracked on one or both of the following IRS systems:

- The Workforce Relations Division's Automated Labor and Employee Relations Tracking System (ALERTS), which generally tracks employee behavior that may warrant IRS management administrative actions.
- The Office of Chief Counsel's Counsel Automated System Environment (CASE), which is an inventory control system that tracks items such as taxpayer civil actions or bankruptcies.

The IRS implemented codes to track fair tax collection practices violations on the ALERTS in March 1999 and on the CASE in June 1999.

For the Fiscal Year (FY) 2004 review, we analyzed closed cases from the ALERTS and the CASE to identify fair tax collection practices violations. However, we could not ensure the cases recorded on the ALERTS and the actions recorded on the CASE included all the fair tax collection practices violations. As previously stated in our FY 2000 report on the FDCPA,⁴ the data captured on the ALERTS related to potential FDCPA violations might not always be complete and accurate. In this audit, we did not attempt to determine the accuracy or consistency of disciplinary actions taken against employees for fair tax collection practices violations that were not reported to the Workforce Relations Division.

We conducted this audit in the Agency-Wide Shared Services, Chief Counsel, and Human Capital offices in the IRS National Headquarters in Washington, D.C., during the period March through June 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.

⁴ *The Identification and Reporting of Potential Fair Debt Collection Practices Act Violations Can Be Improved* (Reference Number 2000-10-109, dated August 2000).

**Fair Tax Collection Practices Violations Did Not
Result in Administrative or Civil Action**

**There Were No Fair Tax
Collection Practices Violations
Resulting in Administrative
Action**

None of the 55 cases coded as potential violations and closed on the ALERTS during the period January 1 through December 31, 2003, resulted in an administrative action against an IRS employee for violating fair tax collection practices.

While oral or written counseling is not an administrative action under the IRS definition, we did note from the ALERTS information that one employee received written counseling for a fair tax collection practices violation during our audit period. The counseling emphasized to the employee the importance of exercising professional conduct while conducting official business. Since the IRS does not routinely track all informal oral counseling or minor actions against its employees, it is impossible to determine how often and for what reasons informal, oral counseling or other minor disciplinary actions occurred. Nevertheless, such conduct as exhibited in this case can violate the rights of the taxpayer and impair the IRS' ability to meet its mission of providing top-quality customer service.

**There Were No Fair Tax
Collection Practices Civil
Actions Resulting in a Monetary
Settlement to a Taxpayer**

There were no cases closed on the CASE in which the IRS paid damages to taxpayers resulting from a civil action filed due to a fair tax collection practices violation. From January 1 through December 31, 2003, the CASE included only one closed civil action case coded as an FDCPA violation. Our review of the case documentation indicated the violation was improperly coded with the FDCPA subcategory code.

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Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this review was to obtain information on any Internal Revenue Service (IRS) administrative or civil actions resulting from fair tax collection practices violations¹ by IRS employees.

To accomplish our objective, we:

- I. Determined the number of fair tax collection practices violations resulting in administrative actions.
 - A. Obtained a computer extract from the Automated Labor Employee Relations Tracking System (ALERTS)² of all 55 cases that were opened after July 22, 1998, and closed during the period January 1 through December 31, 2003, as Fair Debt Collection Practices Act³ (FDCPA) violations. The computer extract contained 55 cases.
 - B. Determined whether any of the FDCPA-coded cases resulted in administrative action.
- II. Determined the number of fair tax collection practices violations resulting in civil actions (judgments and awards granted).
 - A. Obtained a computer extract from the Counsel Automated System Environment (CASE)⁴ of the Subcategory 6304 (established to track FDCPA violations) cases opened after July 22, 1998, and closed during the period January 1 through December 31, 2003. The Office of Chief Counsel identified one case.
 - B. Determined whether the FDCPA-coded case resulted in civil judgments or awards.

¹ 26 U.S.C. § 6304 (2004).

² The Workforce Relations Division's ALERTS generally tracks employee behavior that may warrant IRS management administrative actions.

³ 15 U.S.C. §§ 1601 note, 1692-1692o (2000).

⁴ The CASE is an Office of Chief Counsel inventory control system that tracks items such as taxpayer civil actions or bankruptcies.

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Note: We used ALERTS and CASE data provided by the IRS and did not determine whether the data provided were complete. Our validation consisted of reviewing case file documentation to ensure a potential fair tax collection practices violation existed and comparing the information in the case files to the data received. The IRS could not locate the case file documentation for one case. However, based on our review of the other 54 cases, we concluded that we could rely on the accuracy of the information recorded in the ALERTS. Based on that information, we concluded that this case was not a fair tax collection practices violation. For cases in which fair tax collection practices violations were in question, we consulted with the Treasury Inspector General for Tax Administration Office of Chief Counsel.

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Appendix II

Major Contributors to This Report

Michael R. Phillips, Assistant Inspector General for Audit (Wage and Investment Income Programs)

Mary V. Baker, Director

James D. O'Hara, Audit Manager

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Jean Kao, Auditor

Stephanie McFadden, Auditor

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Appendix III

Report Distribution List

Commissioner C
Office of the Commissioner – Attn: Chief of Staff C
Chief Counsel CC
Chief, Agency-Wide Shared Services OS:A
Chief Financial Officer OS:CFO
Chief Human Capital Officer OS:HC
Director, Personnel Field Services OS:HC:PS
Director, Workforce Relations 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 Management Controls OS:CFO:AR:M
Audit Liaisons:
 Chief Counsel CC
 Chief Human Capital Officer OS:HC

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Appendix IV

Fair Tax Collection Practices Provisions

To ensure equitable treatment among debt collectors in the public and private sectors, the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998¹ requires the IRS to comply with certain provisions of the Fair Debt Collection Practices Act.² These provisions are referred to as fair tax collection practices procedures.³ 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 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.

Further, 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:

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

¹ 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.).

² 15 U.S.C. §§ 1601 note, 1692-1692o (2000).

³ 26 U.S.C. § 6304 (2004).