

**There Were No Administrative or Civil Actions
With Respect to Violations of Fair Tax
Collection Practices in Calendar Year 2004**

March 2005

Reference Number: 2005-10-051

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

March 15, 2005

MEMORANDUM FOR DEPUTY COMMISSIONER FOR OPERATIONS SUPPORT

A handwritten signature in cursive script that reads "Pamela J. Gardiner".

FROM: Pamela J. Gardiner
Deputy Inspector General for Audit

SUBJECT: Final Audit Report - There Were No Administrative or Civil
Actions With Respect to Violations of Fair Tax Collection
Practices in Calendar Year 2004 (Audit # 200410040)

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 Practices¹ violations by IRS employees. Section (§) 1102 (d)(1)(G) of the IRS Restructuring and Reform Act of 1998² requires the Treasury Inspector General for Tax Administration to include in one of its semiannual reports to the Congress information regarding any administrative or civil actions related to the violations of the fair debt collection provisions of 26 U.S.C. § 6304.

In summary, our review of the 32 cases closed during the period January 1 through December 31, 2004, that were coded as potential Fair Debt Collection Practices Act³ violations did not identify any administrative or civil actions with respect to violations of Fair Tax Collection Practices. Further, there were no civil actions that resulted in the IRS paying monetary settlements to taxpayers because of a Fair Tax Collection Practices violation.

¹ 26 U.S.C. § 6304 (2004).

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

³ 15 U.S.C. §§ 1601 note, 1692-1692o (2000). The IRS has traditionally referred to the Fair Tax Collection Practices violations under 26 U.S.C. § 6304 as "Fair Debt Collection Practices Act" violations.

Management's Response: IRS management agreed with the findings in our draft audit report. Management's complete response to the draft report is included as Appendix V.

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 Daniel R. Devlin, Assistant Inspector General for Audit (Headquarters Operations and Exempt Organizations Programs), at (202) 622-8500.

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Background

Section (§) 1102 (d)(1)(G) of the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98)¹ 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 26 U.S.C. § 6304 violations as “Fair Debt Collection Practices Act” (FDCPA)³ violations. The TIGTA semiannual report must provide a summary of such actions and include any judgments or awards granted.

The law itself does not provide an explanation of what is meant by “administrative actions.” We used the IRS’ definition when determining the number of FDCPA violations to be reported under RRA 98 § 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 FDCPA provisions). As such, RRA 98 § 3466(a) required the IRS to follow Fair Tax Collection Practices in line with the FDCPA.

Taxpayer complaints about IRS employees’ conduct can be reported to several IRS functions for tracking on IRS management information systems. If a taxpayer files a civil action or if IRS management determines that the taxpayer’s rights related to Fair Tax Collection Practices were

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

- Office of Workforce Relations' Automated Labor and Employee Relations Tracking System (ALERTS), which generally tracks employee behavior that may warrant IRS management administrative actions.
- 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 began tracking FDCPA codes on the ALERTS in March 1999 and on the CASE in June 1999.

For the Calendar Year 2004 review, we analyzed closed cases from the ALERTS and the CASE to identify violations of Fair Tax Collection Practices. However, we could not ensure the cases recorded on the ALERTS and the CASE constitute all Fair Tax Collection Practices violations. Furthermore, the scope of our audit was not intended to determine the accuracy or consistency of disciplinary actions taken against employees for Fair Tax Collection Practices violations that were not reported to the Office of Workforce Relations.

This review was performed at the Chief Human Capital and Chief Counsel Offices in the IRS National Headquarters in Washington, D.C., during the period October through December 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.

There Were No Administrative Actions With Respect to Violations of Fair Tax Collection Practices

There were 32 cases coded as FDCPA complaints closed on the ALERTS during the period January 1 through December 31, 2004. However, only 18 of the cases were related to collection practices—the other cases were either miscoded (13 cases) or duplicate (1 case). None of the 18 cases involved administrative actions with respect to violations of Fair Tax Collection Practices. The disposition of the 18 cases included admonishment for failure to follow established guidelines, written counseling, retirement or other separation from the IRS, withdrawal of the allegation,

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clearance of any wrongdoing, and closure without further action.

Oral or written counseling is not considered an administrative action under the IRS' definition. Since the IRS does not routinely track all informal oral counseling or minor actions against its employees, it is not possible to determine how often, and for what reasons, informal oral counseling or other minor disciplinary actions occurred.

**There Were No Monetary
Settlements to Taxpayers With
Respect to Fair Tax Collection
Practices Civil Actions**

Section 7433 of the Internal Revenue Code (I.R.C.) 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 I.R.C., or related regulation, in connection with the collection of Federal tax.

There were no cases closed on the CASE for which the IRS paid damages to taxpayers resulting from a civil action filed due to a Fair Tax Collection Practices violation.

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Appendix I

Detailed Objective, Scope, and Methodology

The objective of this review was to obtain information on any Internal Revenue Service (IRS) administrative or civil actions resulting from Fair Tax Collection Practices¹ violations by IRS employees. Specifically, we:

- I. Determined the number of Fair Tax Collection Practices violations resulting in administrative actions.
 - A. Obtained a computer extract from the Automated Labor and Employee Relations Tracking System (ALERTS)² of the 32 cases that were opened after July 22, 1998, and closed during the period January 1 through December 31, 2004, as Fair Debt Collection Practices Act (FDCPA)³ violations.
 - B. Determined whether any of the FDCPA-coded cases resulted in administrative actions.
- II. Determined whether there were Fair Tax Collection Practices violations which resulted in civil actions (judgments and awards granted) by requesting 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, 2004. The Office of Chief Counsel identified no cases.

¹ 26 U.S.C. § 6304 (2004).

² The Office of Workforce Relations' 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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Appendix II

Major Contributors to This Report

Daniel R. Devlin, Assistant Inspector General for Audit (Headquarters Operations and Exempt Organizations Programs)

Michael E. McKenney, Director

Kevin P. Riley, Audit Manager

Charles O. Ekunwe, Lead Auditor

Frank I. Maletta, 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 Human Capital Officer OS:HC
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 the Internal Revenue Service (IRS) and private debt collectors follow similar rules, the 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 Practices³ procedures. 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.

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.
- 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.

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).

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Appendix V

Management's Response to the Draft Report



CHIEF
HUMAN CAPITAL OFFICER

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

RECEIVED
MAR 10 2005

MAR 7 2005

RESPONSE DATE TO TIGTA
March 11, 2005

MEMORANDUM FOR PAMELA J. GARDINER
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Beverly Ortega Babers *BOB*
Chief Human Capital Officer

SUBJECT: Draft Audit Report – There Were No Administrative or Civil
Actions With Respect to Violations of Fair Tax Collection
Practices in Calendar Year 2004 (Audit No.200410040)
ECMS # 0502-69XQB8BL

On March 1, 2005, we received a copy of the TIGTA subject draft report. There are no findings or actions in respect to violations of Fair Tax Collection practices in calendar year 2004, therefore we have no corrective actions to initiate. We have reviewed the draft report and consider it to be accurate and complete and are in agreement with its findings.

If you have any questions or need any further information, please contact Floy Rupp, HR Specialist, Workforce Relations, LR/ER Policy Office at (202) 522-3779.