Review of Fair Tax Collection Practices Violations During Fiscal Year 2013

May 27, 2014

Reference Number: 2014-10-036

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REVIEW OF FAIR TAX COLLECTION PRACTICES VIOLATIONS DURING FISCAL YEAR 2013

Highlights

Final Report issued on May 27, 2014

Highlights of Reference Number: 2014-10-036 to the Internal Revenue Service Chief Counsel and Internal Revenue Service Human Capital Officer.

IMPACT ON TAXPAYERS

The abuse or harassment of taxpayers by IRS employees while attempting to collect taxes reflects poorly on the IRS and can have a negative impact on voluntary compliance. It is important that taxpayers receive fair and balanced treatment from IRS employees when attempting to collect taxes.

WHY TIGTA DID THE AUDIT

The overall objective of this review was to obtain information on any reported IRS administrative or civil actions resulting from violations of Fair Tax Collection Practices (FTCP) (Internal Revenue Code Section 6304) for cases opened after July 22, 1998, and closed during Fiscal Year 2013. This information will be used to comply with the IRS Restructuring and Reform Act of 1998 requirements that TIGTA include in one of its Semiannual Reports to Congress information regarding administrative or civil actions related to FTCP violations.

WHAT TIGTA FOUND

Two FTCP violations were identified for cases on the IRS Human Capital Officer Workforce Relations' Automated Labor and Employee Relations Tracking System that were closed in Fiscal Year 2013. Both employees were revenue officers performing collection work, and each case involved the revenue officers contacting taxpayers directly, instead of contacting the taxpayer's power of attorney, as required. The IRS took administrative action of at least admonishment against both employees.

In addition, no cases were identified that were miscoded as FTCP violations, or that should have been coded as potential FTCP violations but were not. Also, there were no civil actions resulting in monetary awards for damages to taxpayers because of an FTCP violation.

WHAT TIGTA RECOMMENDED

TIGTA made no recommendations in this report. However, key IRS management officials reviewed the report prior to issuance and agreed with the facts and conclusions presented.

TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

May 27, 2014

MEMORANDUM FOR CHIEF COUNSEL
INTERNAL REVENUE SERVICE HUMAN CAPITAL OFFICER

FROM: Michael E. McKenney
Acting Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Review of Fair Tax Collection Practices Violations During Fiscal Year 2013 (Audit # 201410006)

This report presents the results of our review to obtain information on any reported Internal Revenue Service (IRS) administrative or civil actions resulting from violations of Fair Tax Collection Practices (FTCP)[1] for cases opened after July 22, 1998, and closed during Fiscal Year[2] 2013. Information found in this report regarding administrative or civil actions related to FTCP violations will be used to comply with the IRS Restructuring and Reform Act of 1998[3] Section 1102(d)(1)(G)[4] requirement that the Treasury Inspector General for Tax Administration include this information in one of its Semiannual Reports to Congress. This audit is included in the Treasury Inspector General for Tax Administration's Fiscal Year 2014 Annual Audit Plan and addresses the major management challenge of Taxpayer Protection and Rights.

We made no recommendations in this report. However, key IRS management officials reviewed the report prior to issuance and agreed with the facts and conclusions presented.

Copies of this report are also being sent to the IRS managers affected by the report results. If you have any questions, please contact me or Gregory D. Kutz, Assistant Inspector General for Audit (Management Services and Exempt Organizations).

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[1] 26 U.S.C. § 6304 (2012).
[2] Any yearly accounting period, regardless of its relationship to a calendar year. The Federal Government's fiscal year begins on October 1 and ends on September 30.
[3] Pub. L. No. 105-206, 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., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).
[4] Pub. L. No. 105-206, 112 Stat 702-703.

Table of Contents

Abbreviations

ALERTS	Automated Labor and Employee Relations Tracking System
FTCP	Fair Tax Collection Practices
IRS	Internal Revenue Service
TIGTA	Treasury Inspector General for Tax Administration

Background

Internal Revenue Service employees are required to follow Fair Tax Collection Practices, similar to those in the Fair Debt Collection Practices Act.

The Fair Debt Collection Practices Act,[1] as originally enacted, included provisions that prohibit various collection abuses and harassment in the private sector. However, the restrictions did not apply to the Federal Government until passage of the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998.[2] Congress believed that it was appropriate to require the IRS to comply with certain portions of the Fair Debt Collection Practices Act and be at least as considerate to taxpayers as private creditors are required to be with their customers. The IRS Restructuring and Reform Act of 1998 Section (§) 3466 requires the IRS to follow provisions, known as Fair Tax Collection Practices (FTCP),[3] similar to those in the Fair Debt Collection Practices Act.

IRS employees who violate any FTCP provision are subject to disciplinary actions. Violations and related disciplinary actions are tracked on the IRS Human Capital Officer's Automated Labor and Employee Relations Tracking System (ALERTS). In addition, the Federal Government may be subject to claims for damages under 26 U.S.C. § 7433, Civil Damages for Certain Unauthorized Collection Actions, if the FTCP violations are substantiated. Taxpayer civil actions are tracked on the Office of Chief Counsel's Counsel Automated System Environment.

The IRS Restructuring and Reform Act of 1998 § 1102(d)(1)(G)[4] requires the Treasury Inspector General for Tax Administration (TIGTA) to include in one of its Semiannual Reports to Congress information regarding administrative or civil actions related to FTCP violations listed in 26 U.S.C. § 6304.[5] The Semiannual Report must provide a summary of such actions and include any judgments or awards granted to taxpayers. TIGTA is required to report as violations the actions taken by IRS employees who were involved in a collection activity and who received a disciplinary action that is considered an administration action. The law does not provide a definition of administrative action; however, for this review, we used the IRS's definition, which

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[1] 15 U.S.C. §§ 1601 note, 1692-1692o (2006).
[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] See Appendix IV for a detailed description of FTCP provisions.
[4] Pub. L. No. 105-206, 112 Stat. 702-703.
[5] 26 U.S.C. § 6304 (2012).

is action that ranges from a letter of admonishment[6] to removal. Information from this report will be used to meet the requirements of the IRS Restructuring and Reform Act of 1998 § 1102 (d)(1)(G).

This review was performed with information obtained from the offices of the IRS Human Capital Officer and Chief Counsel in the IRS National Headquarters in Washington, D.C., during the period November 2013 through April 2014. 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. This audit did not address potential violations not reported to the IRS or TIGTA, or documented on the ALERTS. 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.

[6] A disciplinary action that involves the manager holding a discussion with the employee to advise the employee that he or she has engaged in misconduct and that the misconduct should not be repeated. The manager confirms the discussion with a written summary in a letter.

Results of Review

Administrative Actions Were Taken to Address Fair Tax Collection Practices Violations

The IRS closed two cases on the ALERTS during the period October 1, 2012, through September 30, 2013,[7] that involved FTCP violations resulting in administrative actions.[8] Both employees were revenue officers performing collection work, and each case involved the revenue officers contacting taxpayers directly, instead of contacting the taxpayer's power of attorney, as required.

We determined that the IRS took the following administrative actions against the two employees because of substantiated violations of the FTCP.

- One employee received oral counseling and a letter of admonishment.
- One employee received oral counseling, a letter of admonishment, and additional alternative disciplinary action greater than admonishment.

To determine if cases were coded correctly on the ALERTS, we reviewed other related categories of cases involving employee misconduct allegations and determined that none should have been coded as FTCP violations. In Fiscal Year[9] 2012, we reported that cases were incorrectly miscoded when transferred from TIGTA's Performance and Results Information System to the IRS's ALERTS.[10] This year, we did not identify any cases that were miscoded when transferred from the Performance and Results Information System to the ALERTS.

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

Internal Revenue Code § 7433[11] 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,

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[7] This includes cases opened after July 22, 1998, and closed during the period October 1, 2012, through September 30, 2013.
[8] Ten cases were initially coded as FTCP complaints on the ALERTS, but eight cases were not substantiated.
[9] Any yearly accounting period, regardless of its relationship to a calendar year. The Federal Government's fiscal year begins on October 1 and ends on September 30.
[10] TIGTA, Ref. No. 2013-10-074, *Potential Fair Tax Collection Practices Violations Were Inaccurately Coded* (July 2013).
[11] 26 U.S.C. § 7433.

or by reason of negligence, disregards any provision of the Internal Revenue Code, or related regulation, in connection with the collection of Federal tax. According to the Office of Chief Counsel, there were no cases closed on the Counsel Automated System Environment in Fiscal Year 2013 for which the IRS paid damages to taxpayers resulting from a civil action filed due to an FTCP violation.

Appendix I

Detailed Objective, Scope, and Methodology

Our overall objective was to obtain information on any reported IRS administrative or civil actions resulting from violations of the FTCP (Internal Revenue Code Section 6304) for cases opened after July 22, 1998, and closed during Fiscal Year[1] 2013. This audit did not address potential violations not reported to the IRS or TIGTA, or documented on the ALERTS. To accomplish this objective, we:

I. Identified the number of reported FTCP violations resulting in administrative actions for cases opened after July 22, 1998, and closed during Fiscal Year 2013.

   A. Obtained data for all cases posting to the ALERTS during Fiscal Year 2013 and performed tests to determine whether the data were reasonable. For example, tests determined date fields contained dates, blank fields were explainable, fields contained only applicable data required for that field, and that gaps in the sequential order of case numbers were explainable. The data were determined to be reliable for our purposes.

   B. Performed a query of the ALERTS for specific issue codes to identify cases that were opened after July 22, 1998, and closed during Fiscal Year 2013 where the affected party was a taxpayer/taxpayer representative, that involved employees performing specific collection-related activities, and that were coded as FTCP violations.

   C. Performed a query of the ALERTS for specific issue codes to identify cases that were opened after July 22, 1998, and closed during Fiscal Year 2013 where the affected party was a taxpayer/taxpayer representative, that involved employees performing specific collection-related activities, and that were potentially miscoded and should have been coded as an FTCP violation.

   D. Identified any cases coded as potential FTCP violations on the Performance and Results Information System and determined if those cases were coded correctly on the ALERTS.

II. Identified the number of FTCP violations resulting in IRS civil actions (judgments or awards granted) by requesting a computer extract from the Office of Chief Counsel's Counsel Automated System Environment database of any Subcategory 6304 (established to track FTCP violations) cases opened after July 22, 1998, and closed during

[1] Any yearly accounting period, regardless of its relationship to a calendar year. The Federal Government's fiscal year begins on October 1 and ends on September 30.

Fiscal Year 2013. We did not conduct validation tests of this system. The Fiscal Year 2013 data results were consistent with that of the past 14 years that this audit has been completed. Because the IRS's Office of Chief Counsel reported that there were no FTCP violations resulting in IRS civil actions (judgments or awards granted), there was no data to validate. TIGTA believes there is low risk that cases were misclassified because qualified attorneys were deciding whether each case met the legal definition of an FTCP violation.

Internal controls methodology

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined the following internal controls were relevant to our audit objective: the guidance used to code and work potential FTCP violation cases, FTCP provisions used to identify potential violations, and the ALERTS audit control log to substantiate the removal of cases from the database. We evaluated these controls by interviewing management, performing queries of ALERTS data, and comparing Performance and Results Information System cases with FTCP-related violation codes to the issue codes assigned for cases received in the ALERTS.

Appendix II

Major Contributors to This Report

Gregory D. Kutz, Assistant Inspector General for Audit (Management Services and Exempt Organizations)
Troy D. Paterson, Director
Gerald T. Hawkins, Audit Manager
Yolanda D. Brown, Lead Auditor
John W. Baxter, Senior Auditor

Appendix III

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Appendix IV

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[1] requires the IRS to comply with certain provisions of the Fair Debt Collection Practices Act.[2] 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.

[1] Pub. L. No. 105-206, 112 Stat. 768-769.
[2] 15 U.S.C. §§ 1601 note, 1692-1692p (2006).

Appendix V

Fair Tax Collection Practices Violation Issue Codes

Issue Code	Description
141	CONTACT TAXPAYER UNUSUAL TIME/PLACE – 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	CONTACT TAXPAYER WITHOUT REPRESENTATIVE – 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	USE/THREAT OF PHYSICAL HARM – 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 (May 2013).