TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION

Potential Fair Tax Collection Practices Violations Were Inaccurately Coded

July 3, 2013

Reference Number: 2013-10-074

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

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POTENTIAL FAIR TAX COLLECTION PRACTICES VIOLATIONS WERE INACCURATELY CODED

Highlights

Final Report issued on July 3, 2013

Highlights of Reference Number: 2013-10-074 to the Internal Revenue Service Chief Counsel and Internal Revenue Service Human Capital Officer.

IMPACT ON TAXPAYERS

TIGTA is required to report information to Congress regarding administrative or civil actions related to Fair Tax Collection Practices (FTCP) violations reported by the IRS. ***1** ********************1****************************** ********************1*********************************** ********************1***************************. In addition, the IRS system used to track employee actions that could result in administrative action was incorrectly coding potential FTCP violations as other types of violations. It is important that taxpayers receive fair and balanced treatment from IRS employees when attempting to collect taxes.

WHY TIGTA DID THE AUDIT

Our overall objective was to obtain information on any reported IRS administrative or civil actions resulting from FTCP violations (Internal Revenue Code Section 6304) for cases opened after July 22, 1998, and closed during Fiscal Year 2012. This information will be used to comply with the IRS Restructuring and Reform Act of 1998 requirement that TIGTA include in one of its Semiannual Reports to Congress information regarding administrative or civil actions related to FTCP violations.

WHAT TIGTA FOUND

Although the IRS did not close any cases it classified as FTCP violations in Fiscal Year 2012, TIGTA determined that 13 cases closed during Fiscal Year 2012 that were coded as "unprofessional conduct" cases should have been coded and worked as potential FTCP violations. Specifically, TIGTA identified: ****************************1************************. ****************************1************************** ****************************1************************** ****************************1************************** ****************************1************************** ****************************1************************** ****************************1************************** ****************1*************** In addition, TIGTA identified eight open cases (as of September 30, 2012). ***********1************ ***************************1*************************** ****************************1************************** **************1*******************

This occurred because the IRS's system for tracking employee investigations incorrectly coded cases received electronically from TIGTA's Office of Investigations as unprofessional conduct cases instead of potential FTCP cases.

In addition, there were no civil actions resulting in monetary awards for damages to taxpayers because of an FTCP violation.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the IRS Human Capital Officer correct the miscoded cases as well as system issues that were causing potential FTCP cases to be miscoded. The IRS completed corrective actions during TIGTA's review.

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

July 3, 2013

MEMORANDUM FOR CHIEF COUNSEL
INTERNAL REVENUE SERVICE HUMAN CAPITAL OFFICER

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

SUBJECT: Final Audit Report – Potential Fair Tax Collection Practices Violations Were Inaccurately Coded (Audit # 201310018)

This report presents the results of our review to obtain information on any reported Internal Revenue Service (IRS) administrative or civil actions resulting from Fair Tax Collection Practices (FTCP)[1] violations for cases opened after July 22, 1998, and closed during Fiscal Year 2012. 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[2] Section 1102(d)(1)(G)[3] requirement that the Treasury Inspector General for Tax Administration include this information in one of its Semiannual Reports to Congress. This audit was conducted as part of our Fiscal Year 2013 Annual Audit Plan and addresses the major management challenge of Taxpayer Protection and Rights.

We made one recommendation during the audit, and the IRS immediately implemented corrective actions. Key IRS management officials reviewed the report prior to issuance and agreed with the facts and conclusions presented but did not provide a formal response.

Copies of this report are also being sent to the IRS managers affected by the report recommendations. 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] 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.).
[3] Pub. L. No. 105-206, 112 Stat 702-703.

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Abbreviations

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

Background

As originally enacted, the Fair Debt Collection Practices Act[1] 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.

Internal Revenue Service employees are required to follow Fair Tax Collection Practices, 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 administrative action. The law does not provide a definition of administrative action; however, for this review, we used the IRS's definition, which

[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 V 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 at the offices of the IRS Human Capital Officer and the Chief Counsel in the IRS National Headquarters in Washington, D.C., during the period November 2012 through April 2013. 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.

[6] Admonishment is 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

System Issues Led to Inaccurate Coding of Fair Tax Collection Practices Violations

In Fiscal Year 2012, the IRS did not close any cases it classified as FTCP violations. However, we determined that 13 closed cases that were coded as "unprofessional conduct" on the ALERTS should have been coded and worked as potential FTCP violations. Specifically, we identified:

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- *********************************1************************************ *********************************1************************************ *********************************1************************************ *********************************1************************************ *********************************1************************************ *************1********************.[7]

In addition, we identified eight open cases (as of September 30, 2012) that should also have been classified as FTCP violations but were not.

The IRS controls allegations of FTCP violations on the ALERTS by assigning an issue code reflecting the relevant FTCP violation.[8] These cases are created on the ALERTS by IRS employees or electronically transferred to the ALERTS from TIGTA's Performance and Results Information System (PARIS) after an investigation of an IRS employee is completed by TIGTA's Office of Investigations.[9] Cases that are electronically transferred from the PARIS are assigned issue codes in the ALERTS automatically based upon the violation code present in TIGTA's system. For example, PARIS violation code 745-3466 (Use of Obscene or Profane Language to Abuse) should be assigned issue code 145 (Use of Obscene/Profane Language to Abuse) in the ALERTS.

However, we determined that the mapping definitions used by the ALERTS to translate PARIS violation codes to ALERTS issue codes were not correct. FTCP violations electronically

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[7] **1*** ******************1********************.

[8] See Appendix VI for a detailed description of FTCP violations issue codes.

[9] The TIGTA Office of Investigations is responsible for conducting investigations of alleged misconduct by IRS employees.

transferred from TIGTA to the IRS were mapped to the ALERTS issue code 058 (Unprofessional Conduct) instead of the correct FTCP issue code.

We recommended that the IRS Human Capital Office take action to correct the miscoded cases on the ALERTS. Figure 1 shows that IRS personnel from the Workforce Relations Branch took action to correct the 21 miscoded cases we identified as well as ***************1********* **********1****************.[10] In addition, IRS personnel revised the definitions used in the ALERTS to assign FTCP issue codes when cases are electronically transferred from TIGTA.

Figure 1: Number of Miscoded FTCP Cases Corrected by the IRS

****1***	Miscoded Fiscal Year 2012 Closed Cases Miscoded Fiscal Year 2012 Open Cases Miscoded Fiscal Year 2013 Open Cases (as of April 10, 2013)

Source: TIGTA analysis of ALERTS and PARIS case records for Fiscal Years 2012 and 2013.

It is important that the data in the ALERTS are accurate so that IRS management can detect any problems or trends that may exist, properly address them, and 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.

No Fair Tax Collection Practices Violations Resulted in Civil Damages (Monetary Awards) 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, intentionally, or negligently disregards any provision of the Internal Revenue Code or related regulation in connection with the collection of any unpaid Federal tax. There were no cases closed on the Counsel Automated System Environment database during Fiscal Year 2012 for which the IRS paid civil damages to taxpayers resulting from FTCP violations.

[10] See Appendix IV.
[11] 26 U.S.C. § 7433.

Appendix I

Detailed Objective, Scope, and Methodology

Our overall objective was to obtain information on any reported IRS administrative or civil actions resulting from FTCP violations (Internal Revenue Code Section 6304) for cases opened after July 22, 1998, and closed during Fiscal Year 2012. This audit did not address potential violations not reported to the IRS or TIGTA. To accomplish this objective, we:

I. Analyzed ALERTS data and performed tests to determine if the data appear reasonable.

   A. Performed checks of the data to determine whether field information was reasonable. For example, we determined if date fields contained dates, any blank fields were explainable, and fields contained only applicable data required for that field.

   B. Performed a query to determine whether there were unexplained gaps in the sequential order[1] of case numbers and whether documentation exists to substantiate the removal of employee cases.

   C. Obtained information from the IRS on any steps taken to provide reasonable assurance that all potential FTCP violations reported to the IRS are contained on the ALERTS.

II. Identified the number of reported FTCP violations resulting in administrative actions for cases opened after July 22, 1998, correctly coded as FTCP violations or incorrectly coded as other types of allegations, and closed during Fiscal Year 2012.

   A. Performed a query of the ALERTS data to identify cases opened after July 22, 1998, and closed during Fiscal Year 2012 that were coded as FTCP violations and determined whether any cases involving FTCP violations resulted in administrative actions. We verified query results by confirming the number of violations with IRS personnel responsible for the ALERTS.

   B. Performed a query of the ALERTS for any cases opened after July 22, 1998, and closed during Fiscal Year 2012 for specific issue codes where the affected party was a taxpayer/taxpayer representative and the case involved an employee performing specific collection-related activities. We analyzed the results to determine whether any cases were miscoded and should have been coded as an FTCP violation.

[1] We reviewed only Fiscal Year 2012 ALERTS data to determine if there were unexplained gaps in the sequential order of case numbers.

C. Identified any cases coded as potential FTCP violations on the PARIS and determined if those cases were coded correctly on the ALERTS.

III. Identified the number of FTCP violations resulting in IRS civil actions (judgments or awards granted) by obtaining 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 Fiscal Year 2012. Due to time constraints, we did not conduct validation tests of this system. The Fiscal Year 2012 data were consistent with those of past years, and there is low risk that cases were misclassified because qualified attorneys were deciding whether 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.

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, comparing PARIS cases with FTCP-related violation codes to the issue codes assigned for cases received in the ALERTS, and reviewing database controls used to capture information on 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
Thomas F. Seidell, Audit Manager
Evan A. Close, Lead Auditor
Yolanda D. Brown, Auditor

Appendix III

Report Distribution List

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National Taxpayer Advocate TA
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Director, Office of Program Evaluation and Risk Analysis RAS:O
Office of Internal Control OS:CF:CPIC:IC
Audit Liaisons:
  Chief Counsel CC
  IRS Human Capital Officer OS:HC

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; **1** ALERTS records (see page 3).

Methodology Used to Measure the Reported Benefit:

We reviewed closed Fiscal Year 2012 investigations from the PARIS that were classified as FTCP violations. Records for 13 cases were electronically transferred to the ALERTS but were classified on the ALERTS as unprofessional conduct and not as an FTCP violation issue. In addition, TIGTA identified eight open cases (as of September 30, 2012) ******1****** **********************************1*** **************1***************.

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[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 VI

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 at a 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 the taxpayer's 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 (April 2011).