



*Fiscal Year 2014 Statutory Audit of
Compliance With Legal Guidelines
Restricting the Use of Records of Tax
Enforcement Results*

September 19, 2014

Reference Number: 2014-30-055

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.



HIGHLIGHTS

FISCAL YEAR 2014 STATUTORY AUDIT OF COMPLIANCE WITH LEGAL GUIDELINES RESTRICTING THE USE OF RECORDS OF TAX ENFORCEMENT RESULTS

Highlights

**Final Report issued on
September 19, 2014**

Highlights of Reference Number: 2014-30-055
to the Internal Revenue Service Deputy
Commissioner for Operations Support.

IMPACT ON TAXPAYERS

The IRS Restructuring and Reform Act of 1998 (RRA 98) requires the IRS to ensure that managers do not evaluate enforcement employees using any record of tax enforcement results (ROTTER) or base employee successes on meeting ROTER goals or quotas. Use of ROTERs may create the misperception that safeguarding taxpayer rights is secondary to IRS enforcement results.

WHY TIGTA DID THE AUDIT

TIGTA is required under Internal Revenue Code Section 7803(d)(1)(2000) to annually evaluate whether the IRS complies with restrictions on the use of enforcement statistics to evaluate employees as set forth in RRA 98 Section 1204. Our review determined whether the IRS complied with:

- Section 1204(a), which prohibits the IRS from using any ROTER to evaluate employees or to impose or suggest production quotas or goals.
- Section 1204(b), which requires that employees be evaluated using the fair and equitable treatment of taxpayers as a performance standard.
- Section 1204(c), which requires each appropriate supervisor to self-certify quarterly whether ROTERs were used in a prohibitive manner.

WHAT TIGTA FOUND

There were some instances of noncompliance with RRA 98 Section 1204 requirements. TIGTA identified instances of noncompliance with each subsection of the law:

- Section 1204(a) – 13 potential violations.
- Section 1204(b) – 55 instances of documentation noncompliance.
- Section 1204(c) – three instances of noncompliance.

TIGTA also identified 11 IRS policy violations. In these 11 instances, managers did not reject employee self-assessments containing ROTER information.

In addition, TIGTA determined that changes to a human resources computer system resulted in 466 Section 1204 managers not being listed on the Fiscal Year 2013 Section 1204 Manager Listing, as well as eight employees missing the mandatory ROTER training in Fiscal Year 2013.

WHAT TIGTA RECOMMENDED

TIGTA made seven recommendations, including that Section 1204 noncompliance and IRS policy violations identified in this report be discussed with responsible managers and employees. TIGTA also recommended that IRS management disseminate guidance regarding Section 1204 compliance and that they continue to review human resources data to ensure the appropriate classification of Section 1204 managers and employees. The IRS agreed with all the recommendations and has taken or plans to take corrective actions.

However, the IRS did not agree with four of the 13 Section 1204(a) potential violations, as well as 11 of the 55 instances of Section 1204(b) documentation noncompliance.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

September 19, 2014

MEMORANDUM FOR DEPUTY COMMISSIONER FOR OPERATIONS SUPPORT

FROM:

Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT:

Final Audit Report – Fiscal Year 2014 Statutory Audit of Compliance
With Legal Guidelines Restricting the Use of Records of Tax
Enforcement Results (Audit # 201430005)

This report presents the results of our review to determine whether the Internal Revenue Service (IRS) complied with restrictions on the use of enforcement statistics to evaluate employees as set forth in IRS Restructuring and Reform Act of 1998 (RRA 98) Section (§) 1204.¹

The Treasury Inspector General for Tax Administration is required under Internal Revenue Code § 7803(d)(1)(2000) to annually evaluate the IRS's compliance with the provisions of RRA 98 § 1204. The RRA 98 requires the IRS to ensure that managers do not evaluate enforcement employees² using any record of tax enforcement results (ROTTER) or base employee successes on meeting goals or quotas for ROTERs. This review is included in our Fiscal Year 2014 Annual Audit Plan and addresses the major management challenge of Taxpayer Protection and Rights.

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 recommendations.

If you have any questions, please contact me or Bryce Kisler, Acting Assistant Inspector General for Audit (Compliance and Enforcement Operations).

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 An enforcement (Section 1204) employee is an employee or any manager of an employee who exercises judgment in recommending or determining whether or how the IRS should pursue enforcement of the tax laws or who provides direction/guidance for RRA 98 Section 1204 program activities.



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Abbreviations

IRS	Internal Revenue Service
ROTTER	Record of Tax Enforcement Results
RRA 98	Restructuring and Reform Act of 1998
TIGTA	Treasury Inspector General for Tax Administration



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Background

On July 22, 1998, the President signed the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98) into law.¹ RRA 98 Section (§) 1204 restricts the use of enforcement statistics. Specifically, RRA 98 § 1204(a) restricts the use of enforcement statistics and prohibits the IRS from using any record of tax enforcement results (ROTTER) to evaluate employees or to impose or suggest production quotas or goals.

The IRS defines ROTERs as data, statistics, compilations of information, or other numerical or quantitative recording of the tax enforcement results reached in one or more cases.

Examples of ROTERs include the amount of dollars collected or assessed, the number of fraud referrals made, and the number of seizures conducted. A ROTER does not include evaluating an individual case to determine if an employee exercised appropriate judgment in pursuing enforcement of the tax laws.

RRA 98 § 1204 prohibits the IRS from using ROTERs, production goals, or quotas to evaluate employees.

RRA 98 § 1204(b) requires employees to be evaluated using the fair and equitable treatment of taxpayers as a performance standard. The IRS refers to this standard as the retention standard. The retention standard requires employees to administer the tax laws fairly and equitably; protect all taxpayers' rights; and treat each taxpayer ethically with honesty, integrity, and respect. This provision of the law was enacted to provide assurance that employee performance is focused on providing quality service to taxpayers instead of achieving enforcement results.

RRA 98 § 1204(c) requires each appropriate supervisor to perform a quarterly self-certification. In the self-certification, the appropriate supervisor attests to whether ROTERs, production quotas, or goals were used in a prohibited manner. The IRS defines an appropriate supervisor as the highest ranking executive in a distinct organizational unit who supervises directly or indirectly one or more Section 1204 enforcement employees.² Current IRS procedures require each level of management, beginning with first-line managers of Section 1204 employees, to self-certify that they have not used ROTERs in a manner prohibited by RRA 98 § 1204(a). The appropriate supervisor then prepares a consolidated office certification covering the entire organizational unit.

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 An enforcement (Section 1204) employee is an employee or any first-line manager of an employee who exercises judgment in recommending or determining whether or how the IRS should pursue enforcement of the tax laws or who provides direction/guidance for Section 1204 program activities.

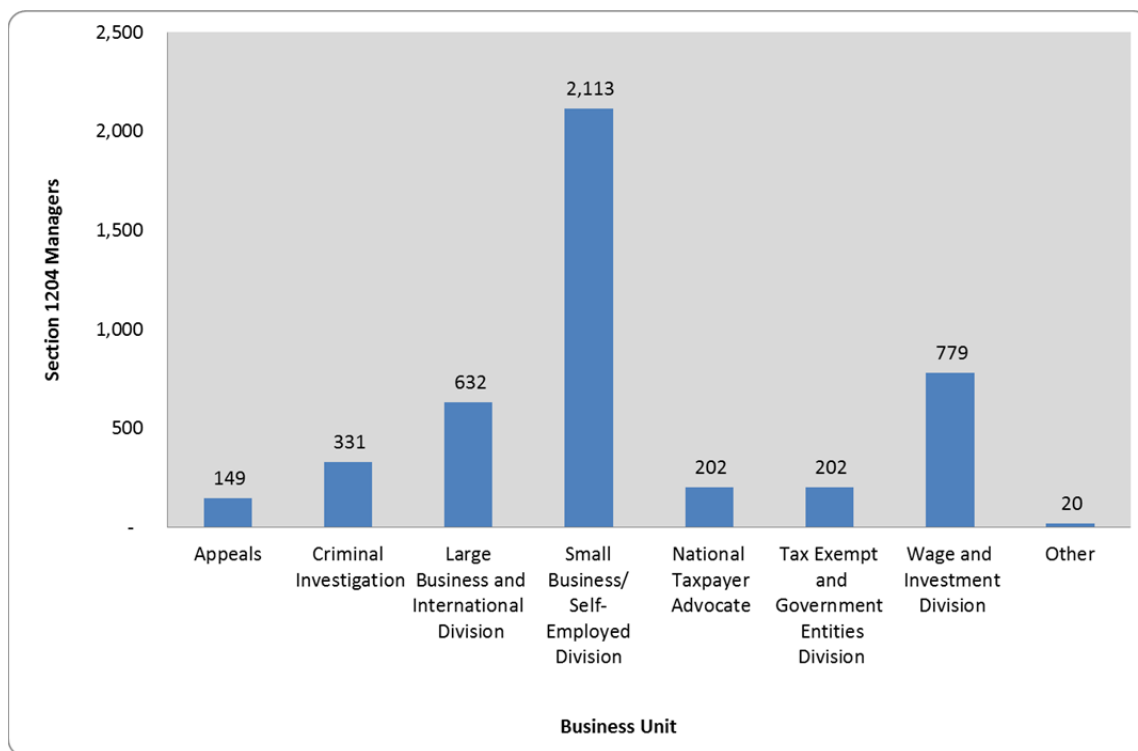


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IRS functional offices and operating divisions, including the Office of Appeals; Criminal Investigation; the Large Business and International Division; the Small Business/Self-Employed Division; the Office of the National Taxpayer Advocate; the Tax Exempt and Government Entities Division; and the Wage and Investment Division, are responsible for implementing the Section 1204 Program within their respective organization. Section 1204 Program Managers and Program Coordinators in each business organization are available to provide guidance to managers regarding Section 1204 issues, including the self-certification process.

As of September 30, 2013, there were 4,428 Section 1204 managers on the HR Connect³ Manager Listing provided by the IRS. Section 1204 managers have either supervised a Section 1204 employee or provided guidance or direction for Section 1204 activities. Figure 1 shows how Section 1204 managers are dispersed across the various business organizations within the IRS.

Figure 1: Number of Section 1204 Managers by Business Organization (as of September 30, 2013)



Source: Treasury Inspector General for Tax Administration (TIGTA) analysis of data from the IRS's HR Connect Section 1204 Manager Listing as of September 30, 2013.

³ HR Connect is a human resources system, owned and operated by the U.S. Department of the Treasury.



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Internal Revenue Code § 7803(d)(1)(2000) requires TIGTA to determine annually whether the IRS is in compliance with restrictions on the use of enforcement statistics under RRA 98 § 1204. TIGTA has previously performed 15 annual reviews to meet this requirement. Appendix IV lists the prior audit reports.

This review was performed with information obtained from the IRS Headquarters; the Office of the Chief Financial Officer; the Office of the Chief, Appeals; the Office of the Chief, Criminal Investigation; the Office of the National Taxpayer Advocate; the Large Business and International Division; and the Tax Exempt and Government Entities Division in Washington, D.C.; the Small Business/Self-Employed Division in New Carrollton, Maryland; and the Wage and Investment Division in Atlanta, Georgia, during the period November 2013 through May 2014. On-site reviews were also performed at the IRS field offices in Atlanta, Georgia (which included Chamblee, Georgia); Chicago, Illinois (which included Schiller Park, Illinois); St. Louis, Missouri (which included Town and Country, Missouri); Dallas, Texas (which included Fort Worth, Texas); and Richmond, Virginia.

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.



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Results of Review

There Were Some Instances of Noncompliance With Section 1204 of the Restructuring and Reform Act of 1998

The IRS is generally ensuring that its managers do not use ROTERs and/or production goals or quotas to evaluate employees. However, the IRS was not in full compliance with RRA 98 § 1204 during Fiscal Year 2013 and some IRS business units need to be more diligent. The following issues were identified:

- **Section 1204(a) – 13 potential violations** in which seven IRS managers used ROTERs to evaluate employees and/or suggest production quotas or goals.
- **Section 1204(b) – 55 instances of documentation noncompliance** in which 21 IRS managers did not maintain proper documentation that showed they evaluated their employees using the fair and equitable treatment of taxpayers as a performance standard.
- **Section 1204(c) – three instances of noncompliance** in which an IRS manager did not certify in writing to the IRS Commissioner or provide documentation whether ROTERs and/or production quotas or goals were used in a prohibited manner.

To evaluate the IRS's compliance with Section 1204 provisions, we selected a judgmental sample⁴ of 35 first-line managers and 105 employees at five sites. The sites selected had at least six business organizations with Section 1204 first-line managers. We selected seven managers along with three of the managers' employees at each site and reviewed their performance evaluation documentation. In addition, we reviewed performance documentation for five second-line managers, one from each site. As a result, 145 employees were selected to determine the IRS's compliance with RRA 98 § 1204 provisions.

The IRS was not in full compliance with the use of ROTER procedures

In Fiscal Year 2013, the IRS did not achieve full compliance with RRA 98 § 1204(a). We found 13 potential ROTER violations in employee or manager performance-related documents, operational reviews, or group meeting minutes obtained from Criminal Investigation, and the Small Business/Self-Employed and Tax Exempt and Government Entities Divisions. Specifically, the ROTERs were found in:

⁴ A judgmental sample is a nonstatistical sample, the results of which cannot be used to project to the population.



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- Six of 143 annual appraisals reviewed.⁵
- Three of 125 mid-year appraisals reviewed.⁶
- Two of 139 group meeting minutes reviewed.⁷
- Two of 21 operational reviews reviewed.⁸

To evaluate the IRS's compliance with RRA 98 § 1204(a), we reviewed Fiscal Year 2013 performance-related documents, including available mid-year and annual performance reviews, employee self-assessments, workload reviews, case reviews, and award documentation for the 145 employees and managers selected, as well as meeting minutes and operational reviews. We reviewed these documents to determine whether ROTERs were used when evaluating the employees' performance and/or to impose or suggest quotas or goals for such employees.

Based on the results of our review, IRS managers are, in most cases, not using ROTERs and/or production quotas or goals to evaluate employees. However, to ensure the fair and equitable treatment of taxpayers, some IRS business units need to be more diligent to ensure that ROTERs are not used to evaluate employees and/or suggest production quotas or goals. Use of ROTERs may create the misperception that safeguarding taxpayer rights is secondary to IRS enforcement results. After discussions with management from the three business units, they agreed to discuss the audit results with the managers and remind them of the guidelines.

In addition, we identified that 11 of the 53 self-assessments prepared by IRS employees⁹ from Criminal Investigation, the Small Business/Self-Employed and Tax Exempt and Government Entities Divisions, and the Office of the Taxpayer Advocate contained ROTERs. For seven ROTERs identified in the employees' self-assessments, their manager also used the ROTERs in the employees' annual appraisals.¹⁰

We did not consider the remaining four instances to be potential RRA 98 § 1204(a) violations because the ROTERs from the employees' self-assessments were not used in the employees' annual appraisals. However, according to the Internal Revenue Manual,¹¹ it is IRS policy that bargaining unit and non-bargaining unit employees should not use ROTERs in their self-assessments. If a self-assessment is submitted with a ROTER, it is incumbent upon the

⁵ For two of the 145 requested annual appraisals, two Forms 6850-BU, *Bargaining Unit Performance Appraisal and Recognition Election*, were not available for review.

⁶ For 20 of the 145 requested mid-year appraisals, the responsible managers did not conduct mid-year evaluations of these employees, which resulted in no mid-year appraisal for us to review.

⁷ Of the 35 first-line managers sampled, 11 managers did not provide any group meeting minutes. Of the 24 remaining managers, the number of group meeting minutes per manager varied from one to 37.

⁸ Of the 35 first-line managers sampled, 14 managers did not provide any documentation of an operational review.

⁹ For 92 of the 145 annual self-assessments requested, the employee or manager did not complete one.

¹⁰ The seven ROTERs identified in the employees' self-assessments and also used in the employees' annual appraisals were included as part of the 13 Section 1204(a) violations.

¹¹ Internal Revenue Manual 1.5.2.6.2(3) (May 10, 2012).



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manager to return it to the employee for removal of the ROTER.¹² In these four cases, the managers did not follow proper procedures by returning the self-assessments to the employees. As such, the employees may be unaware of the IRS's policy that prohibits the use of ROTERs.

Documentation that IRS managers are meeting the requirements of the retention standard needs improvement

To evaluate the IRS's compliance with RRA 98 § 1204(b), we requested the appropriate Fiscal Year 2013 retention standard documents applicable to the 145 selected employees/managers. The IRS did not achieve full compliance with the retention standard as related to RRA 98 § 1204(b) in Fiscal Year 2013 for the Office of Appeals; Criminal Investigation; the Large Business and International, Small Business/Self-Employed, Tax Exempt and Government Entities, and Wage and Investment Divisions; and the Office of the Taxpayer Advocate. Specifically, for the 105 employees we determined that:

- 24 Employee Personnel Files were missing the Form 6774, *Receipt of Critical Job Elements and Fair and Equitable Treatment of Taxpayers Retention Standard*.
- 11 Employee Personnel Files included the Form 6774; however, the form was signed at or after the end of the review period.
- Four Employee Personnel Files included the Form 6774. However, the acknowledgement (receipt of the Critical Job Elements, including the Fair and Equitable Treatment of Taxpayers Retention Standard) section within the form was not appropriately signed or dated by all parties.
- Three Employee Personnel Files included the Form 6850-BU; however, the Certification of Rating section was not appropriately signed and/or dated by all parties.
- Two Employee Personnel Files were missing the Form 6850-BU.

While for the 40 managers, we found that:

- Six managers' Employee Personnel Files included the Form 12450-A, *Manager Performance Agreement*, or the Form 12450-B, *Management Official Performance Agreement*; however, the final Summary Evaluation Rating was not appropriately signed and/or dated by all parties.
- Five managers' Employee Personnel Files included the Form 12450-A or the Form 12450-B; however, the acknowledgment (receipt of the Critical Job Elements, including the Fair and Equitable Treatment of Taxpayers Retention Standard) section within the form was not appropriately signed by all parties.

¹² Internal Revenue Manual 1.5.2.6.2(4) (May 10, 2012).



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RRA 98 § 1204(b) requires employees to be evaluated using the fair and equitable treatment of taxpayers as a performance standard. The standard applies to all executives, managers, and employees.

Compliance with RRA 98 § 1204(b) is twofold, the receipt and acknowledgment of the retention standard and the annual performance rating related to the retention standard. At the beginning of each performance period, managers must provide the appropriate receipt of the retention standard form to their employees.¹³ The manager must sign and date the appropriate form indicating the sharing of the retention standard with his or her employee and, in turn, the employee must acknowledge receipt of the retention standard by signing and dating the form. At the end of the performance period, the employee must be evaluated on the retention standard using the appropriate appraisal form.¹⁴ The Internal Revenue Manual¹⁵ states that RRA 98 § 1204(b) noncompliance occurs when:

- Documentation (either acknowledgment or rating) is not contained in the Employee Personnel File and/or does not exist for the fiscal year of audit.
- Documentation (either acknowledgment or rating) does not contain all signatures and dates (employee, manager, and next-level manager).
- The retention standard rating is unchecked in the annual performance document.

Further, the Internal Revenue Manual¹⁶ also states that both the receipt and acknowledgment of the retention standard and the performance ratings should be filed in the Employee Personnel File and retained for three years.

When we discussed the issues of RRA 98 § 1204(b) noncompliance with the IRS first-line managers, they noted that some employees were missing or late signing the Form 6774 because the manager had not completed, signed, and provided this form until the end of or after the review period. While timeliness is not specifically addressed in Section 1204(b), the language of the law implies that employees need to be informed or reminded of the retention standard prior to carrying out work on taxpayers' accounts to ensure the fair and equitable treatment of taxpayers.

Other instances of noncompliance were caused by the manager failing to properly complete the Form 6774, retain performance documentation, or improperly recertifying prior year performance appraisals. In addition, some annual performance evaluation forms lacked the required signature(s) or date(s) on the retained paper copies due to a glitch in the electronic

¹³ The appropriate documents for the receipt of the retention standard are Form 6774, Form 12450-A, Form 12450-B, Form 12450-D, *Management/Program Analyst Performance Agreement*, or Form TD F 35-07, *SES Performance Management System Executive Performance Agreement*.

¹⁴ The appropriate appraisal forms are Form 6850-BU, Form 6850-NBU, *Non-Bargaining Unit Performance Appraisal*, Form 12450-A, Form 12450-B, Form 12450-D, or Form TDF 35-07.

¹⁵ Internal Revenue Manual 1.5.3.6.4(1) (June 6, 2012).

¹⁶ Internal Revenue Manual 1.5.3.6(10) (June 6, 2012).



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approval system in HR Connect that resulted in electronic signatures not being transferred to the printed copies retained in the Employee Personnel Files. IRS management has stated that this glitch has since been resolved.

The IRS uses the discussion and acknowledgement of the retention standard and subsequent performance evaluations to ensure that all Section 1204 employees meet the provisions of the standard and provide fair and equitable treatment to taxpayers. If managers are not adequately documenting these discussions with their employees, it is difficult to determine whether employees were aware of and/or actually received information on the retention standard. If managers fail to properly share the retention standard information with their employees, it can affect their employees' interactions with taxpayers, as well as their understanding of the importance of safeguarding taxpayer rights.

First-line managers are completing their quarterly self-certifications

With the exception of three quarterly self-certifications from Criminal Investigation and the Tax Exempt and Government Entities Division, the IRS complied with RRA 98 § 1204(c). To evaluate the IRS's compliance with Section 1204(c), we requested Fiscal Year 2013 first and third quarter self-certifications for 35 first-line managers. RRA 98 § 1204(c) requires Section 1204 supervisors to quarterly certify in writing to the IRS Commissioner whether ROTERs and/or production quotas or goals were used in a prohibited manner. Therefore, managers who evaluate Section 1204 employees are required to certify each quarter in writing that they did not:

- Use ROTERs to evaluate employees and/or impose or suggest production quotas or goals for employees in any performance evaluations, including appraisals, awards, or promotion justifications, written or reviewed by the manager.
- Verbally communicate to employees that ROTERs affected their evaluations.
- Verbally or in writing use ROTERs to impose or suggest production quotas or goals for employees or for work unit activities (e.g., through program guidance or business and program reviews).

Per the Internal Revenue Manual,¹⁷ the business organization and function Section 1204 Program Managers and their respective Section 1204 Program Coordinators should monitor the quarterly self-certification process throughout their organizations/functions.

For the three quarterly self-certifications, we found two quarterly self-certifications were dated before the last day of the quarter and one was missing. For the two who signed early, one manager explained the document was misdated while the other manager explained that they signed the document early before going on leave for the remainder of the quarter. Regarding the missing self-certification, IRS management indicated that they could not locate the document

¹⁷ Internal Revenue Manual 1.5.3.7(10) (June 6, 2012).



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because the manager has retired. Per the Internal Revenue Manual,¹⁸ the self-certification must include the entire quarter, so it must not be signed and dated *before* the last day of the quarter. If the early signing of a self-certification is identified during a second-line manager's review, it should be returned to the manager for correction. The Internal Revenue Manual¹⁹ also states that managers must retain signed copies of completed self-certifications for audit and review purposes.

Through the quarterly self-certification process, managers are reminded of their responsibilities under RRA 98 § 1204 to not evaluate their employees on the basis of ROTERs and/or production quotas or goals. The quarterly self-certification process helps to ensure that managers are aware of the IRS's commitment to administer the tax laws fairly and to protect the rights of taxpayers.

Recommendations

Recommendation 1: The Chief, Criminal Investigation, and the Commissioners for the Small Business/Self-Employed and Tax Exempt and Government Entities Divisions should ensure that the potential RRA 98 § 1204(a) violations identified in this report are discussed with the responsible managers to ensure that managers understand the guidelines related to the use of ROTERs.

Management's Response: The IRS agreed with this recommendation, with the exception of four specific cases with which IRS Counsel disagreed. The Chief Financial Officer confirmed discussions were held with the responsible managers who had Section 1204(a) violations identified in this report, which also included reviewing the guidelines on the use of ROTERs with these managers.

Office of Audit Comment: We are concerned with the IRS's conclusions related to the four cases noted above. Two of the four cases contained references to increasing civil fraud referrals that could be construed as suggesting goals or quotas. These references also convey the impression that the employee is being evaluated on his/her ability to increase the number of those referrals. The remaining two cases contained references to the number of subpoenas. Subpoenas, like search warrants, are enforcement tools used to produce evidence. These are not pertinent to an employee's performance evaluation and in our opinion inappropriately suggest or give the perception of an enforcement production goal or quota.

Recommendation 2: The Chief, Criminal Investigation; the Commissioners for the Small Business/Self-Employed and Tax Exempt and Government Entities Divisions; and the National Taxpayer Advocate should ensure that noncompliance identified in this report relating to the prohibition on including ROTERs in employee self-assessments is discussed with the responsible

¹⁸ Internal Revenue Manual 1.5.3.7.7(1)c (June 6, 2012).

¹⁹ Internal Revenue Manual 1.5.3.7.7(2) (June 6, 2012).



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employees and their managers so that they understand the IRS's policy that bargaining unit and non-bargaining unit employees should not use ROTERs in their self-assessments.

Management's Response: The IRS agreed with this recommendation. The Chief Financial Officer confirmed that the Section 1204 instances of noncompliance, with the exception of the four specific cases in which IRS Counsel disagreed, were discussed with the responsible employees and managers. These discussions emphasized the IRS's policy that bargaining and non-bargaining employees should not use ROTERs in their self-assessments.

Office of Audit Comment: We are concerned about the four specific cases with which IRS Counsel disagreed. These four cases were also identified as ROTER violations. The employees' self-assessments were used by their managers in the employees' mid-year and annual appraisals, which resulted in potential Section 1204(a) violations. If these instances of potential Section 1204(a) violations are not discussed with the responsible employees and their managers, they could continue to occur.

Recommendation 3: The Chief, Appeals; the Chief, Criminal Investigation; the Commissioners for the Large Business and International, Small Business/Self-Employed, Tax Exempt and Government Entities, and Wage and Investment Divisions; and the National Taxpayer Advocate should ensure that the RRA 98 §§ 1204(b) and (c) noncompliance identified in this report are discussed with the responsible managers to ensure that they understand retention standard and quarterly self-certification requirements.

Management's Response: The IRS agreed with this recommendation. The Chief Financial Officer confirmed that the IRS policy on RRA 98 §§ 1204(b) and (c) noncompliance regarding the retention standard and quarterly self-certification requirements identified in this report were discussed with the responsible managers with the exception of the findings in the audit report related to the timeliness of sharing the retention standard.

Office of Audit Comment: IRS management disagreed with 11 instances of 1204(b) noncompliance identified in the report. In these instances, the performance standard was not shared at the beginning of the performance period as specified in Internal Revenue Manual 6.430. IRS management stated that timeliness of acknowledgment (sharing) and evaluation (rating) for the performance standard is not a Section 1204 requirement. As such, IRS management believes that the retention standard acknowledgments and evaluation documents signed 30 days after the end of the performance period should not count as Section 1204(b) instances of noncompliance for self-certification reporting.

RRA 98 § 1204 requires the IRS to use the fair and equitable treatment of taxpayers by employees as one of the standards for evaluating employee performance. Any Form 6774 signed at the end of or after the end of the review period was deemed an instance of Section 1204(b) noncompliance for the purposes of this audit. If employees



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are not informed of the fair and equitable treatment of taxpayers' performance requirement at the beginning of their performance appraisal period, we believe that it does not meet this requirement of the law.

Recommendation 4: The Deputy Commissioner for Operations Support should develop and issue guidance to all Section 1204 designated staff that retention standard and receipt of critical job element documentation must be completed at the beginning of each performance period and that all performance-related material be retained for three years.

Management's Response: The IRS agreed with this recommendation. The Chief Financial Officer is in the process of updating policy in Internal Revenue Manual 1.5.3, *Manager's Self-Certification and the Independent Review Process*, as well as updating the Mandatory Section 1204 training material, which will now be administered annually. The Internal Revenue Manual 1.5.3 update will include Internal Revenue Manual 6.430 guidance regarding retention standard receipt/acknowledgment, ratings, and National Treasury Employees Union Section 1204 related guidance to clarify that the retention standard and receipt of critical job element documentation should be completed at the beginning of each performance period and that all performance related materials be retained for three years.

HR Connect Limitations Caused Some Managers to Be Missing From the Section 1204 Manager Listing and Some Employees to Miss Mandatory Training

Beginning January 2013, all Section 1204 managers were required to use a new HR Connect indicator to designate their employees and themselves as Section 1204 employees. Managers were to validate the accuracy of this indicator at the end of each quarter. The HR Connect indicator was set up to:

- Manage the Section 1204 population more efficiently.
- Reduce managerial burden in the Section 1204 self-certification process.
- Improve the accuracy of reporting, which also helps support the annual TIGTA audit and independent reviews done by the Office of the Chief Financial Officer.

In addition, the IRS began using the HR Connect Section 1204 indicator to identify employees who were required to attend *The Mandatory Briefing for Section 1204 Employees and Managers* training. The Office of the Chief Financial Officer took a proactive approach in developing this mandatory Section 1204 training that is required to be taken every two years.

However, we determined that the conversion to an HR Connect indicator has impacted the accuracy of the Fiscal Year 2013 Section 1204 Manager Listing created by the Office of the Chief Financial Officer, as well as the assignment of the mandatory ROTERs training. Specifically, we determined that:



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- 466 Section 1204 managers were missing from the Fiscal Year 2013 Section 1204 Manager Listing.
- Eight of the 145 employees in our sample did not complete the Fiscal Year 2013 mandatory Section 1204 training within the fiscal year.

The Section 1204 Manager Listing did not capture all Section 1204 management personnel

The Section 1204 Manager Listing is used to identify managers who are required to comply with RRA 98 § 1204. However, we identified that several Section 1204 managers were missing from the Fiscal Year 2013 Section 1204 Manager Listing that was provided to us by the IRS. When we compared the Fiscal Year 2013 list to the Fiscal Year 2012 list obtained during last year's review, we initially found that 1,373 managers were missing. We then used the IRS's Discovery Directory²⁰ to determine the current employment status for each of the 1,373 managers and whether they may have been in a Section 1204 manager position during Fiscal Year 2013. While many of these managers were either no longer employed by the IRS or no longer supervised Section 1204 employees, we identified 466 Section 1204 managers who should have been on the Fiscal Year 2013 list but were not.

Management in the Office of the Chief Financial Officer informed us that there were formatting problems with the Fiscal Year 2013 Manager Listing since it was the first year of use. For example, the HR Connect Section 1204 indicator report provides all Section 1204 managers and employees for various organizations levels, by date range, contains over 40,000 employee records which requires significant and complex sorting. The Office of the Chief Financial Officer stated that they will analyze the sort functionality for the HR Connect Section 1204 indicator report so that they can provide a listing that accurately captures all Section 1204 managers in the future. The IRS's compliance with RRA 98 § 1204 is reliant on accurate identification of Section 1204 managers. In addition, accurate identification of Section 1204 managers is critical for the annual TIGTA audit, as well as the annual reviews conducted by the Office of the Chief Financial Officer. As a result, managers and/or employees in violation or noncompliant with RRA 98 § 1204 could potentially be overlooked.

Some employees did not complete the mandatory Section 1204 training

The new Section 1204 training became available to employees in the IRS's Enterprise Learning Management System²¹ on July 15, 2013. The IRS assigned the training to all IRS staff designated on HR Connect as Section 1204 employees. All Section 1204 personnel were to complete the training class by the end of Fiscal Year 2013.

²⁰ The Discovery Directory is a computer system available to IRS personnel that provides information on IRS employees including their name, job title, job location, and management level.

²¹ The Enterprise Learning Management System is an IRS automated training system. It allows the employee and manager to be directly engaged in planning, communicating, and coordinating training and development activities online.



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We reviewed training records for the 105 employees, 35 first-line managers, and five second-line managers selected in our sample to determine whether the new training was completed by the end of Fiscal Year 2013. We identified eight employees who had not completed the training by the end of Fiscal Year 2013.

Through discussions with IRS management, we determined that some employees and managers may have missed the training because some managers failed to designate themselves and/or their employees as Section 1204 staff within HR Connect. As a result, the mandatory Section 1204 training was not assigned to these employees' Enterprise Learning Management System learning plan. A lapse in training could have a potentially negative effect on taxpayer rights if IRS personnel lack a clear understanding of how they should and should not use enforcement statistics.

Recommendations

The Deputy Commissioner for Operations Support should:

Recommendation 5: Include a separate indicator on the HR Connect report to distinguish a Section 1204 manager from a Section 1204 employee.

Management's Response: The IRS agreed with this recommendation. In June 2014, the Chief Financial Officer downloaded the HR Connect report to verify for TIGTA that the appropriate columns, especially those indicating Section 1204 employees and managers, were available. The Chief Financial Officer will ensure that these indicators for Section 1204 managers and employees are provided for all future TIGTA audits to accurately differentiate the Section 1204 population.

Recommendation 6: Issue guidance for managers to review their employees' HR Connect profiles as part of their quarterly self-certification process to ensure that all Section 1204 employees are appropriately identified.

Management's Response: The IRS agreed with this recommendation. The Chief Financial Officer is updating Internal Revenue Manual 1.5.3, *Manager's Self-Certification and the Independent Review Process*, to instruct Section 1204 managers to review and update employees' HR Connect profiles as part of the quarterly certification process. Guidance is currently being provided to the Section 1204 program managers as part of the quarterly certification process until the Internal Revenue Manual updates are published.



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Managers and Employees Could Benefit From a Better Understanding of Record of Tax Enforcement Results Statistics

We interviewed a judgmental sample²² of 20 Section 1204 employees and 40 Section 1204 managers²³ to determine their understanding of what a ROTER is and whether employees understood the retention standard.²⁴ We found that the majority of employees understood the retention standard. However, we determined that:

- While all 40 managers claimed to have a clear understanding of ROTERS, 11 could not accurately provide an example of a ROTER statistic and six provided both accurate and inaccurate examples of ROTER statistics.
- While many employees claimed some degree of understanding of ROTERS, six could not accurately provide an example of a ROTER statistic, three provided both accurate and inaccurate examples of ROTER statistics, and two claimed no understanding of ROTER statistics.

The IRS handles so many production-related statistics that it is understandable that managers and employees could become confused about which statistics are considered acceptable and which are considered ROTERS. Both the Internal Revenue Manual and the biennial training briefing define and provide examples of the outcome-neutral nature of the acceptable quantity measures which include, but are not limited to, the number of cases started and closed, community outreach efforts completed, time applied per case, direct examination or investigation time, or indirect time. The training also aims to help managers understand how the statistics can be used appropriately to evaluate performance or establish performance goals and objectives, as well as describes the management self-certification process.

A clear understanding of ROTERS is critical for managers to ensure that they are not violating RRA 98 § 1204(a), are able to accurately document their own compliance through self-certification, and can assist their employees' understanding of the requirements of the law. While the Internal Revenue Manual and required training provide good examples of ROTERS, it appears that additional reminders on the definition and use of ROTERS would help managers fully evaluate their employees using acceptable quantity measures while also helping the IRS ensure that it is compliant with RRA 98 § 1204.

Recommendation

Recommendation 7: The Deputy Commissioner for Operations Support should require Section 1204 managers and employees to take the mandatory training annually, instead of biennially.

²² A judgmental sample is a nonstatistical sample, the results of which cannot be used to project to the population.

²³ The 40 managers consist of the 35 first-line and five second-line managers from our initial sample.

²⁴ We asked the retention standard question only to employees. We did not ask this question of the managers.



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Management's Response: The IRS agreed with this recommendation. The Chief Financial Officer will update the existing Section 1204 mandatory briefing and coordinate efforts to provide the training annually beginning in Fiscal Year 2015.



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Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this review was to determine whether the IRS complied with restrictions on the use of enforcement statistics to evaluate employees as set forth in RRA 98 § 1204.¹ To accomplish the objective, we:

- I. Determined whether the IRS complied with the provisions of RRA 98 §§ 1204(a) and (b) when evaluating Section 1204 employees' performance.
 - A. Selected a judgmental sample² of enforcement employees/managers for review.
 1. Judgmentally selected Atlanta, Georgia; Chamblee, Georgia; Chicago, Illinois; Schiller Park, Illinois; St. Louis, Missouri; Town and Country, Missouri; Dallas, Texas; Fort Worth, Texas; and Richmond, Virginia, as the audit sites and obtained a list of Section 1204 managers by operating division/function from the national Section 1204 Program Manager. We eliminated cities recently reviewed for ROTERs either by TIGTA or the IRS's internal review teams. Based on the above, we also took into consideration personnel and travel resources to select locations that provided an adequate mix of managers from all IRS business units/functions. We determined the distribution of the employees to be sampled in accordance with the sampling plan. The site visits were completed from December 2013 through February 2014.
 2. Identified the 4,428 population of potential first-line managers for each operating division/function by obtaining the Section 1204 Manager Listing and researching the Discovery Directory.
 3. Judgmentally selected 35 first-line managers from the population identified in Step I.A.2. If a selected manager was unavailable during the scheduled visit, a substitution was made. We judgmentally selected three employees from each manager to review their performance evaluation documents.
 - B. Obtained and reviewed the performance evaluation documents (*i.e.*, mid-year, annual performance reviews, award documents) for each selected employee and first-line manager. In addition, we reviewed self-assessments, case reviews, and workload reviews for the selected employees, as well as group meeting minutes and also operational reviews for the managers.

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 A judgmental sample is a nonstatistical sample, the results of which cannot be used to project to the population.



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1. Contacted the selected first-line managers to obtain performance evaluation documentation, case reviews, and workload reviews for the three employees assigned to them. When a selected manager was unavailable during the scheduled visit, we made a substitution or had the manager assign a designee to provide the requested files.
 2. Reviewed the employee performance evaluation documentation, case reviews, and workload reviews to determine whether ROTERs, production goals, or quotas were inappropriately used in the evaluation process and whether employees were evaluated appropriately on the fair and equitable treatment of taxpayers. We also verified whether the Form 6774, *Receipt of Critical Job Elements and Fair and Equitable Treatment of Taxpayers Retention Standard*, was signed and in the Employee Personnel File for the rating period under review.
- C. Interviewed the employee's manager and determined the potential cause when a potential exception case was identified.
- D. Requested and reviewed the training records for the 105 employees and 35 managers selected for review.
- E. Discussed the identified exceptions with the national Section 1204 Program Coordinator and the appropriate operating division/function program manager for agreement to the facts and to identify the causes for the potential violations.
- F. Selected a judgmental sample of five second-line managers from those who oversee the managers selected in our judgmental sample of 35 in Step I.A.3. We reviewed performance evaluation documentation (*i.e.*, mid-year, annual performance reviews, award documents) for the first-line managers under their control to identify any inappropriate use of ROTERs.
- G. Verified that Section 1204 Managers were correctly classified by matching the Fiscal Year 2013 Section 1204 Manager Listing to Fiscal Year 2012 Section 1204 Manager Listing obtained during our Fiscal Year 2012 review to identify any managerial changes between the two years. For any managers who were removed from the current list, we used the Discovery Directory to determine their current employment/management designation.
- II. Determined if the sampled first-line managers complied with RRA 98 § 1204(c) by certifying whether or not ROTERs were used in a manner prohibited by subsection (a).
- A. Obtained the Fiscal Year 2013 first and third quarter self-certification documents from the selected first-line managers at each audit site.
1. Reviewed the self-certification documents submitted by the first-line managers to establish whether they were completed timely and signed appropriately.



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2. Determined if any ROTERs and/or production goals and quotas were reported by the first-line managers on their self-certifications.
 - B. Contacted the second-line manager for any first-line manager certifications that could not be located.
 1. From the second-line manager, attempted to obtain evidence that the certification was filed (*i.e.*, copy of certification).
 2. If the first-line manager's certification could not be located, discussed the reason it could not be located with the first- and second-line manager.
 - C. Discussed any self-certification exception cases with the national Section 1204 Program Coordinator and the appropriate Section 1204 Program Manager (for each operating division/function), obtained agreement, and further explored the cause for the potential violation.
- III. Determined the effectiveness of the mandatory RRA 98 § 1204 training for managers and employees.
- A. Reviewed documentation and determined how and when the Section 1204 training was implemented.
 - B. Reviewed the content of the mandatory Section 1204 training.
 - C. Requested and reviewed documentation to ensure that the Section 1204 training was completed by all Section 1204 employees selected for review.
 - D. Interviewed a judgmental sample of 20 employees and 40 first- and second-line managers to determine whether they understood what ROTERs were, could provide an example of a ROTER, and whether the employees understood the retention standard.

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 that the following internal controls were relevant to our audit objective: the guidelines and rules related to using ROTERs in a way as to improperly influence the handling of taxpayer cases and retention standard guidance. We evaluated these controls and reviewed judgmental samples of performance appraisals and signed self-certifications to determine whether the IRS complied with restrictions on the use of enforcement statistics when evaluating its employees.



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Data validation methodology

We obtained the Fiscal Year 2013 Fourth Quarter HR Connect list of Section 1204 managers from the IRS's Office of the Chief Financial Officer. We used this list to develop our judgmental sampling plan. To determine the reliability of the data, we reviewed the data for duplicates and to identify any missing information. We compared the names on the current list to those on the Section 1204 Manager Listing obtained for last year's review. For the missing names, we compared the data to the Discovery Directory³ which contains information about managers, employees, and locations. We used this information to verify the accuracy of the data provided by the IRS by matching the information to the Fiscal Year 2012 Fourth Quarter list. As a result, we expanded the audit plan to test the list further. These tests determined that the data were sufficiently reliable and could be used to meet the objective of this audit.

³ The Discovery Directory is a computer system available to IRS personnel that provides information on IRS employees including their name, job title, job location, and management level.



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Appendix II

Major Contributors to This Report

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Bryce Kisler, Acting Assistant Inspector General for Audit (Compliance and Enforcement Operations)

Alan D. Lund, Acting Director

Christina M. Dreyer, Audit Manager

Shalin R. Basnayake, Lead Auditor

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Appendix III

Report Distribution List

Commissioner C
Office of the Commissioner – Attn: Chief of Staff C
Commissioner, Large Business and International Division SE:LB
Commissioner, Small Business/Self-Employed Division SE:S
Commissioner, Tax Exempt and Government Entities Division SE:T
Commissioner, Wage and Investment Division SE:W
Chief, Appeals AP
Chief, Criminal Investigation SE:CI
Chief Financial Officer OS:CFO
Director, Communications, Liaison, and Disclosure, Small Business/Self-Employed Division
SE:S:CSO
Director, Strategy and Finance, Wage and Investment Division SE:W:S
Chief Counsel CC
National Taxpayer Advocate TA
Director, Office of Legislative Affairs CL:LA
Director, Office of Program Evaluation and Risk Analysis RAS:O
Office of Internal Control OS:CFO:CPIC:IC
Audit Liaisons:
 Commissioner, Large Business and International Division SE:LB
 Commissioner, Small Business/Self-Employed Division SE:S
 Commissioner, Tax Exempt and Government Entities Division SE:T
 Commissioner, Wage and Investment Division SE:W
 Chief, Appeals AP
 National Taxpayer Advocate TA
 Chief, Criminal Investigation SE:CI
 Chief Financial Officer OS:CFO



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Appendix IV

Previous Audit Reports Related to This Statutory Review

TIGTA, Ref. No. 2013-30-073, *Fiscal Year 2013 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (Aug. 2013).

TIGTA, Ref. No. 2012-30-090, *Fiscal Year 2012 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (Aug. 2012).

TIGTA, Ref. No. 2011-30-069, *Fiscal Year 2011 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (Jul. 2011).

TIGTA, Ref. No. 2010-30-076, *Fiscal Year 2010 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (Jul. 2010).

TIGTA, Ref. No. 2009-30-091, *Fiscal Year 2009 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (Jun. 2009).

TIGTA, Ref. No. 2008-40-108, *Fiscal Year 2008 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (Apr. 2008).

TIGTA, Ref. No. 2007-40-055, *Fiscal Year 2007 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (Mar. 2007).

TIGTA, Ref. No. 2006-40-095, *Fiscal Year 2006 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (Jun. 2006).

TIGTA, Ref. No. 2005-40-157, *Fiscal Year 2005 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (Sept. 2005).

TIGTA, Ref. No. 2004-40-066, *Fiscal Year 2004 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (Mar. 2004).

TIGTA, Ref. No. 2003-40-090, *Fiscal Year 2003 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (Mar. 2003).

TIGTA, Ref. No. 2002-40-163, *Compliance With Regulations Restricting the Use of Records of Tax Enforcement Results Shows Improvement* (Sept. 2002).

TIGTA, Ref. No. 2001-10-178, *Compliance With the Internal Revenue Service Restructuring and Reform Act of 1998 Section 1204 Has Not Yet Been Achieved* (Sept. 2001).



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TIGTA, Ref. No. 2000-10-118, *Further Improvements Are Needed in Processes That Control and Report Misuse of Enforcement Statistics* (Sept. 2000).

TIGTA, Ref. No. 1999-10-073, *The Internal Revenue Service Should Continue Its Efforts to Achieve Full Compliance With Restrictions on the Use of Enforcement Statistics* (Sept. 1999).



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Appendix V

Management's Response to the Draft Report




CHIEF FINANCIAL OFFICER

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

August 29, 2014

MEMORANDUM FOR MICHAEL E. MCKENNEY
ACTING DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Robin L. Canady 
Chief Financial Officer

SUBJECT: Draft Audit Report – Fiscal Year 2014 Statutory Audit of
Compliance with Legal Guidelines Restricting the Use of Tax
Enforcement Results (Audit # 201430005)

We have reviewed the draft report entitled, “*Fiscal Year 2014 Statutory Audit of Compliance with Legal Guidelines Restricting the Use of Tax Enforcement Results*” (Audit # 201430005), and appreciate your acknowledgement that the IRS is generally ensuring that its managers do not use Records of Tax Enforcement Results (ROTERRs) and/or production goals or quotas to evaluate employees, which helps to protect the rights of taxpayers.

We agree with the report language and the audit findings have been discussed with the responsible managers and employees pertaining to the Section 1204 violations, instances of noncompliance, and Internal Revenue Manual (IRM) policy violations.

In general, we agree to the report recommendations with the following exceptions:

- Based on a review by our General Legal Services division, we do not agree with four of the identified Section 1204(a) violations cited in the audit report. Tax enforcement results (TERs), such as fraud referrals, can be referenced in a performance appraisal without violating section 1204(a). Statements in a performance appraisal can refer to the steps taken toward improving the relationship with other components of the organization in a coordinated effort to increase the number of fraud referrals. Similarly, the delivery of subpoenas is not a tax enforcement result, which is an outcome produced by an IRS employee's exercise of judgment in recommending or determining whether or how the IRS should pursue enforcement of the tax laws. Administrative acts included in an employee's self-assessment are not TERs and there is no basis to conclude that the statement references a ROTERR used in violation of section 1204(a).



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- Based on IRM policy guidance, we do not agree with 11 of the identified Section 1204(b) instances of non-compliance cited in the audit report. The requirement to share the performance plan at the beginning of the performance period is found in IRM 6.430, Performance Management. This policy is reinforced in guidance in Leaders' Alerts articles, training and job aids. According to IRM 1.5.3.7.6, timeliness of acknowledgement (sharing) and evaluation (rating) for the performance standard is not a Section 1204 requirement. This means that retention standard acknowledgement and evaluation documents signed 30 days after the beginning of the performance period and 30 days after the end of the performance period are not counted as Section 1204(b) instances of non-compliance for self-certification reporting.

Our completed and proposed corrective actions to the recommendations are discussed in the attachment.

If you have any questions, please contact John Pekarik, Associate CFO, Corporate Planning and Internal Control, at (202) 803-9151.

Attachment



Fiscal Year 2014 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results

Attachment

RECOMMENDATION 1

The Chief, Criminal Investigation, and the Commissioners for the Small Business/Self-Employed and Tax Exempt and Government Entities Divisions should ensure that the potential RRA 98 § 1204(a) violations identified in this report are discussed with the responsible managers to ensure that managers understand the guidelines related to the use of ROTERS.

CORRECTIVE ACTION

The IRS agrees with this recommendation, with the exception of four specific cases with which the IRS Counsel disagrees. The CFO confirmed discussions were held with the responsible managers of the named business units that had Section 1204(a) violations identified in this report, which also included review of guidelines on the use of ROTERS.

IMPLEMENTATION DATE

June 25, 2014 (Completed)

RESPONSIBLE OFFICIAL

Chief Financial Officer

CORRECTIVE ACTION MONITORING PLAN

N/A

RECOMMENDATION 2

The Chief, Criminal Investigation; the Commissioners for the Small Business/Self-Employed and Tax Exempt and Government Entities Divisions; and the National Taxpayer Advocate should ensure that noncompliance identified in this report relating to the prohibition on including ROTERS in employee self-assessments is discussed with the responsible employees and their managers so that they understand the IRS's policy that bargaining unit and non-bargaining unit employees should not use ROTERS in their self-assessments.

CORRECTIVE ACTION

The IRS agrees with this recommendation. The CFO confirmed with the named business units that the Section 1204 instances of non-compliance, with the exception of specific cases in which the IRS Counsel disagrees, were discussed with the responsible employees and managers regarding IRS's policy that bargaining unit and non-bargaining unit employees should not use ROTERS in their self-assessments.

IMPLEMENTATION DATE

June 26, 2014 (Completed)

RESPONSIBLE OFFICIAL

Chief Financial Officer



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CORRECTIVE ACTION MONITORING PLAN

N/A

RECOMMENDATION 3

The Chief, Appeals; the Chief, Criminal Investigation; the Commissioners for the Large Business and International, Small Business/Self-Employed, Tax Exempt and Government Entities, and Wage and Investment Divisions; and the National Taxpayer Advocate should ensure that the RRA 98 §1204(b) and (c) noncompliance identified in this report are discussed with the responsible managers to ensure that they understand retention standard and quarterly self-certification requirements.

CORRECTIVE ACTION

The IRS agrees with this recommendation. The CFO confirmed with the named business units that the IRS policy on 1204(b) and (c) noncompliance regarding the retention standard and quarterly self-certification requirements identified in this report were discussed with the responsible managers with the exception of findings in the audit report related to timeliness of the retention standard.

IMPLEMENTATION DATE

June 25, 2014 (Completed)

RESPONSIBLE OFFICIAL

Chief Financial Officer

CORRECTIVE ACTION MONITORING PLAN

N/A

RECOMMENDATION 4

The Deputy Commissioner for Operations Support should develop and issue guidance to all Section 1204 designated staff that retention standard and receipt of critical job element documentation must be completed at the beginning of each performance period and that all performance related material be retained for three years.

CORRECTIVE ACTION

The IRS agrees with this recommendation. IRM 1.5.3 currently states that quarterly certification documentation should be retained for three years. The requirement to share the performance plan at the beginning of the performance period is documented in IRM 6.430, Performance Management. For CJE employees, IRM 6.430.2.2.4.2 states that the supervisor must meet with the employee within 30 days of the beginning of the employee's appraisal period or when the employee is assigned to a new position that is expected to last at least 60 days or longer (e.g. temporary promotion, detail). This timeframe ensures that the employee has sufficient time to understand the supervisor's expectations for job performance and what performance is needed to achieve a specific rating. The CFO is in the process of updating policy in IRM 1.5.3, *Manager's Self-Certification and the Independent Review Process*, as well as updates to the Mandatory Section 1204 training material, which will now be administered annually. The IRM 1.5.3



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update will include IRM 6.430, *Performance Management*, guidance regarding retention standard receipt/acknowledgement, ratings, and National Treasury Employees Union (NTEU) Section 1204 related guidance to clarify that the retention standard and receipt of critical job element documentation should be completed at the beginning of each performance period and that all performance related materials be retained for three years.

IMPLEMENTATION DATE

December 31, 2014

RESPONSIBLE OFFICIAL

Chief Financial Officer

CORRECTIVE ACTION MONITORING PLAN

N/A

RECOMMENDATION 5

The Deputy Commissioner for Operations Support should include a separate indicator on the HR Connect report to distinguish a Section 1204 manager from a Section 1204 employee.

CORRECTIVE ACTION

The IRS agrees with this recommendation. In June 2014, the CFO downloaded the HR Connect report to verify for TIGTA that the appropriate columns, especially those indicating Section 1204 employees and managers, were available. The CFO will ensure these indicators for Section 1204 managers and employees are provided for all future TIGTA audits to accurately differentiate the Section 1204 population.

IMPLEMENTATION DATE

June 26, 2014 (Completed)

RESPONSIBLE OFFICIAL

Chief Financial Officer

CORRECTIVE ACTION MONITORING PLAN

N/A

RECOMMENDATION 6

The Deputy Commissioner for Operations Support should issue guidance for managers to review their employees' HR Connect profiles as part of their quarterly self-certification process to ensure that all Section 1204 employees are appropriately identified.

CORRECTIVE ACTION

The IRS agrees with this recommendation. The CFO is updating IRM 1.5.3, *Manager's Self-Certification and the Independent Review Process*, to instruct Section 1204 managers to review and update employees' HR Connect profiles as part of the



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Quarterly Certification process. Guidance is currently being provided to the Section 1204 program managers as part of the quarterly certification process until the IRM updates are published.

IMPLEMENTATION DATE

December 31, 2014

RESPONSIBLE OFFICIAL

Chief Financial Officer

CORRECTIVE ACTION MONITORING PLAN

In the Quarterly Certification Process instructions to Section 1204 Program Managers, the CFO currently requests that business unit Section 1204 managers review and update the employee's HR Connect profile. The CFO is updating IRM 1.5.3, *Manager's Self-Certification and the Independent Review Process*, to instruct Section 1204 managers to review and update employees' HR Connect profiles as part of the Quarterly Certification Process.

RECOMMENDATION 7

The Deputy Commissioner for Operations Support should require Section 1204 managers and employees to take the mandatory training annually, instead of biennially.

CORRECTIVE ACTION

The IRS agrees with this recommendation. The CFO will update the existing Section 1204 mandatory briefing and coordinate efforts to provide the training annually beginning in FY 2015.

IMPLEMENTATION DATE

September 30, 2015

RESPONSIBLE OFFICIAL

Chief Financial Officer

CORRECTIVE ACTION MONITORING PLAN

The CFO will update the existing Section 1204 mandatory briefing and complete actions to require Section 1204 annual training beginning in FY 2015. Training topics will include: IRMs 1.5.2 and 1.5.3 guidance, the guidelines related to the use of ROTERs, IRS's policy that bargaining unit and non-bargaining unit employees should not use ROTERs in their self-assessments, IRS policy on 1204(b) and (c) compliance, and IRS Performance Management guidelines to address additional TIGTA recommendations made in this report, as applicable.