TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION

Review of Fair Tax Collection Practices Violations During Fiscal Year 2014

May 28, 2015

Reference Number: 2015-10-045

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.

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REVIEW OF FAIR TAX COLLECTION PRACTICES VIOLATIONS DURING FISCAL YEAR 2014

Highlights

Final Report issued on May 28, 2015

Highlights of Reference Number: 2015-10-045 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 2014. 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

Two FTCP violation cases were identified in IRS records that were closed in Fiscal Year 2014. Both employees were revenue officers performing collection work. One case involved harassment of a taxpayer and multiple instances of intimidation practices, which are strictly prohibited. The other case involved a revenue officer contacting the taxpayer directly, instead of contacting the taxpayer's power of attorney, as required. In both instances, the employees were disciplined for their actions consistent with IRS guidelines.

In addition, TIGTA identified one case that was miscoded and should have been evaluated as a potential FTCP violation but was not. This case involved a revenue officer performing collection work who denied a taxpayer the right to consult with his or her power of attorney. The employee was evaluated for unprofessional conduct and misuse of authority and was disciplined consistent with IRS guidelines.

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 case by appropriately coding it as an FTCP violation. The IRS completed the corrective action during TIGTA's review.

In their response, IRS officials stated they agreed with the facts in the report.

DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

May 28, 2015

MEMORANDUM FOR CHIEF COUNSEL
INTERNAL REVENUE SERVICE HUMAN CAPITAL OFFICER

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Review of Fair Tax Collection Practices Violations During Fiscal Year 2014 (Audit # 201510008)

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] 2014. 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 2015 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 this report prior to its issuance and agreed with the facts presented.

Management's complete response to the draft report is included as Appendix VII.

[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.

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

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

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.

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 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 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 with information obtained from the offices of the IRS Human Capital Officer and Chief Counsel in the IRS Headquarters in Washington, D.C., during the period October 2014 through March 2015. 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

Two FTCP violations were identified for cases on the IRS Human Capital Officer Workforce Relations' ALERTS that were closed in Fiscal Year 2014.[7] Both employees were revenue officers performing collection work. One instance involved the harassment of a taxpayer and multiple instances of intimidation practices, which are strictly prohibited. As punishment, the employee's employment with the IRS was terminated. The other case involved a revenue officer contacting a taxpayer directly, instead of contacting the taxpayer's power of attorney, as required. This employee received a letter of admonishment. Based on the *IRS Manager's Guide to Penalty Determinations*,[8] the employees were disciplined for their actions consistent with these guidelines.

In addition to the cases coded as FTCP violations, we identified one case that was miscoded and should have been evaluated as a potential FTCP violation.[9] This case involved a revenue officer performing collection work who denied a taxpayer the right to consult with his or her power of attorney. While the case was not coded as an FTCP violation, the employee received a 30-day suspension due to unprofessional conduct and misuse of authority, which is consistent with discipline that the employee would have received for an FTCP violation. During the audit, we recommended the IRS correct the miscoding, and IRS officials made the correction.

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

Internal Revenue Code § 7433[10] provides that a taxpayer may bring a civil action for damages against the Federal Government if an officer or employee of the IRS recklessly or intentionally, or by reason of negligence, disregards any provision of the Internal Revenue Code, or related

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[7] There were an additional 14 cases initially coded as FTCP complaints on the ALERTS, but 10 cases were not substantiated, two cases were not resolved because the employees separated from the IRS before the investigations were completed, one case was entered in error, and one case was substantiated and closed with a cautionary letter issued to the employee. A cautionary letter does not meet the IRS's definition of an administrative action.

[8] The range of penalties is to serve as a guide only, and not a rigid standard. Deviations from the guide are permissible and greater or lesser penalties than suggested may be imposed. IRS management determines the appropriate penalty for infractions as individual circumstances warrant, considering mitigating and aggravating factors, as well as agencywide penalties for comparable fact patterns.

[9] See Appendix IV.

[10] 26 U.S.C. § 7433.

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 2014 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] 2014. This audit did not address potential violations not reported to the IRS or TIGTA, or documented on the ALERTS. To accomplish the 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 2014.

   A. Obtained data for all cases posting to the ALERTS during Fiscal Year 2014 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 gaps in the sequential order of case numbers were explainable. The data were determined to be reliable for our purposes.

   B. Performed queries of the ALERTS for specific issue codes to identify cases that were opened after July 22, 1998, and closed during Fiscal Year 2014 in which the Treasury Integrated Management Information System[2] indicated the employee was performing specific collection-related activities and that were coded as FTCP violations.[3]

   C. Performed queries of the ALERTS to identify potentially miscoded FTCP violation cases that were opened after July 22, 1998, and closed during Fiscal Year 2014 in which the Treasury Integrated Management Information System indicated the employee was performing specific collection-related activities.

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 Fiscal Year 2014. We did not conduct validation tests of this system. The Fiscal Year 2014 data results were consistent with that of the past 15 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

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[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.
[2] The Treasury Integrated Management Information System contains payroll data for IRS employees per pay period, *e.g.*, post of duty, salary, grade, employee addresses.
[3] See Appendix VI for FTCP violation issue codes.

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 that 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, matching data to the Treasury Integrated Management Information System, 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
James V. Westcott, Audit Manager
Allison P. Sollisch, Lead Auditor
Peggy A. Anketell, Senior Auditor
Alberto Garza, Information Technology Specialist

Appendix III

Report Distribution List

Commissioner C
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Deputy Commissioner for Services and Enforcement SE
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Director, Office of Program Evaluation and Risk Analysis RAS:O
Office of Internal Control OS:CFO: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; one case (see page 3).

Methodology Used to Measure the Reported Benefit:

We identified one case that was miscoded and should have been evaluated as a potential FTCP violation, but was not. This case involved a revenue officer performing collection work who denied a taxpayer the right to consult with his or her power of attorney. While the case was not coded as an FTCP violation, the employee received a 30-day suspension due to unprofessional conduct and misuse of authority, which is consistent with discipline that the employee would have received for an FTCP violation. During the audit, we recommended the IRS correct the miscoding, and IRS officials made the correction.

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 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).

Appendix VII

Management's Response to the Draft Report

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

HUMAN CAPITAL OFFICE

May 13, 2015

MEMORANDUM FOR MICHAEL E. MCKENNEY
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Daniel T. Riordan Daniel T. Riordan
IRS Human Capital Officer

SUBJECT: Draft Audit Report - Review of Fair Tax Collection Practices Violations during fiscal year 2014 (Audit #2015-10008)

Thank you for the opportunity to respond to the Review of Fair Tax Collection Practices (FTCP) Violations during fiscal year 2014 draft audit report.

We agree with the facts in the draft report and acknowledge you did not offer any formal recommendations. Further, we appreciate the opportunity to review and respond to your findings and conclusions before you issue your final report.

If you have any questions, please contact me at (202) 317-7600, or a member of your staff may contact Lia Colbert, Director, Workforce Relations Division at (202) 317-4390.

Attachment