



*Fiscal Year 2017 Statutory Review of
Restrictions on Directly Contacting
Taxpayers*

September 12, 2017

Reference Number: 2017-30-076

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HIGHLIGHTS

FISCAL YEAR 2017 STATUTORY REVIEW OF RESTRICTIONS ON DIRECTLY CONTACTING TAXPAYERS

Highlights

**Final Report issued on
September 12, 2017**

Highlights of Reference Number: 2017-30-076 to the Internal Revenue Service Commissioner for the Small Business/Self-Employed Division.

IMPACT ON TAXPAYERS

The direct contact provisions of Internal Revenue Code (I.R.C.) Section (§) 7521 generally require IRS personnel to stop a taxpayer interview whenever a taxpayer requests consultation with a representative and prohibits IRS personnel from bypassing a qualified representative without supervisory approval if the representative unreasonably delays the completion of an examination, collection, or investigation. The fair tax collection practices of I.R.C. § 6304 (a)(2) prohibit IRS personnel from communicating with a taxpayer if it is known that the taxpayer has an authorized representative.

WHY TIGTA DID THE AUDIT

This audit was initiated because TIGTA is required to annually report on the IRS's compliance with the direct contact provisions of the I.R.C. Each year, TIGTA focuses on one IRS office or function that interacts with taxpayers and their representatives on a routine basis. For this year's review, TIGTA analyzed the extent to which revenue officers in the Small Business/Self-Employed Division's Field Collection function comply with the direct contact provisions and fair tax collection practices of the I.R.C. during interactions with taxpayers or their representatives.

WHAT TIGTA FOUND

The IRS has a number of policies and procedures in place to help ensure that taxpayers are afforded the right to designate an authorized representative to act on their behalf

in dealing with IRS personnel in a variety of tax matters. In addition, the IRS has a process to handle the review and disposition of taxpayer allegations of direct contact violations.

TIGTA selected a stratified statistically valid sample of case histories for 122 taxpayers from a filtered population of 9,748 taxpayers who had collection actions documented on the Integrated Collection System during Fiscal Year 2016. TIGTA reviewed the case history narratives for these sampled taxpayers and found a small number of instances in which revenue officers contacted taxpayers directly even though there was an authorized representative on file. These contacts may have violated I.R.C. § 6304, which could indicate that the rights granted under I.R.C. § 7521 were also not protected.

Additionally, TIGTA interviewed a judgmental sample of 53 revenue officers and 19 supervisory revenue officers to determine their knowledge and understanding of the direct contact provisions and fair tax collection practices. TIGTA determined that IRS employees could benefit from a better understanding of the direct contact provisions and fair tax collection practices set forth in the I.R.C., specifically as interpreted in the Internal Revenue Manual.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the IRS group managers report the potential I.R.C. § 6304 noncompliance identified in this report to the local Labor Relations Specialist. Additionally, TIGTA recommended that the IRS update Internal Revenue Manual procedures to be more specific to the laws and provide clarification on certain policies pertaining to a taxpayer's right to representation under the direct contact procedures.

In their response to the report, IRS officials agreed with both recommendations and plan to take corrective actions. Specifically, the IRS plans to report the potential I.R.C. § 6304 violations to the local Labor Relations Specialist and provide further guidance and clarification to all revenue officers on the specific policies pertaining to a taxpayer's right to representation under the direct contact procedures.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

September 12, 2017

MEMORANDUM FOR COMMISSIONER, SMALL BUSINESS/SELF-EMPLOYED DIVISION

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Fiscal Year 2017 Statutory Review of Restrictions
on Directly Contacting Taxpayers (Audit # 201730009)

This report presents the results of our review to determine whether the Internal Revenue Service (IRS) complied with legal guidelines addressing the direct contact of taxpayers and their representatives as set forth in Internal Revenue Code (I.R.C.) Sections (§) 7521(b)(2) and (c) and the fair tax collection practices set forth in I.R.C. § 6304 (a)(2). The Treasury Inspector General for Tax Administration is annually required to evaluate the IRS's compliance with the direct contact provisions.¹ This audit is included in our Fiscal Year 2017 Annual Audit Plan and addresses the major management challenge of Protecting Taxpayer Rights.

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

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 Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations).

¹ I.R.C. § 7803(d)(1)(A)(ii).



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Abbreviations

I.R.C.	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
SB/SE	Small Business/Self Employed
TIGTA	Treasury Inspector General for Tax Administration



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Background

The effort to determine whether the Internal Revenue Service (IRS) is complying with Internal Revenue Code (I.R.C.)¹ Sections (§) 7521(b)(2) and (c) (hereafter referred to as the direct contact provisions) is complicated by the fact that the IRS cannot proactively identify IRS employee violations of this law. The Treasury Inspector General for Tax Administration's (TIGTA) Office of Investigations receives and investigates taxpayer complaints that allege IRS employees bypassed taxpayer representatives and contacted taxpayers directly. These investigations are tracked by the Office of Investigations on the Performance and Results Information System. During Fiscal Year 2016, the Office of Investigations initiated seven new investigations on IRS employees who had direct contact complaints filed against them by taxpayers or their representatives.² Additionally, three investigations were closed during the fiscal year.

To designate power of attorney authority to a representative, a taxpayer files Form 2848, *Power of Attorney and Declaration of Representative*, with the IRS. Once received and validated, the IRS records the representative's authorization in its Centralized Authorization File. This file is linked to other IRS applications and is used by many organizations within the IRS to determine when a taxpayer they are working with has an authorized representative.

Identifying the authorized representative during audit or collection activities is critical for IRS personnel because I.R.C. § 6103 prohibits disclosure of tax return information to third parties unless the taxpayer has authorized the IRS to make the disclosure. In addition, the Omnibus Taxpayer Bill of Rights³ created a number of safeguards in the direct contact provisions of I.R.C. § 7521 to protect the rights of taxpayers interviewed by IRS employees as part of a tax examination or collection action. Specifically, IRS employees are required to:

- Stop the interview (unless required by court order) whenever a taxpayer requests to consult with a representative (*i.e.*, any person, such as an accountant or attorney, who is permitted to represent taxpayers before the IRS).
- Obtain their immediate supervisor's approval to contact the taxpayer instead of the representative if the representative unreasonably delays the completion of an examination, collection, or investigation.

The Senate Committee on Finance conducted numerous hearings in Calendar Years 1997 and 1998 addressing the rights of taxpayers. Several witnesses provided statements regarding abuses of taxpayer rights by IRS employees, including incidents in which employees failed to observe

¹ See Appendix V for a glossary of terms.

² We reviewed taxpayer complaints from the Performance and Results Information System since Fiscal Year 2012 and determined that there were no previous complaints filed on these seven IRS employees.

³ Pub. L. No. 100-647, 102 Stat. 3730 (1988) (codified as amended in scattered sections of 5 U.S.C. and 26 U.S.C.).



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the taxpayers' right to representation. Shortly after these hearings, Congress passed the IRS Restructuring and Reform Act of 1998,⁴ which directed the IRS to revise Publication 1, *Your Rights as a Taxpayer*, to better inform taxpayers of these rights. In addition, this Act added I.R.C. § 7803(d)(1)(A)(ii), which requires TIGTA to annually evaluate the IRS's compliance with the direct contact provisions. TIGTA has previously performed 18 annual reviews to meet this requirement. Appendix IV lists the five most recent audit reports related to this statutory review.

This review was performed with information obtained from the IRS Headquarters office of the Deputy Commissioner for Operations Support and Small Business/Self-Employed (SB/SE) Division Headquarters personnel, during the period October 2016 through June 2017. On-site reviews were also performed at the IRS SB/SE Division field offices in El Monte, Glendale, and Laguna Niguel, California; and in Dallas, Farmers Branch, and Fort Worth, Texas. 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.

⁴ Pub. L. No. 105-206, 112 Stat. 685.



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Results of Review

Internal Controls Have Helped Ensure Compliance With the Direct Contact Provisions of the Internal Revenue Code

The IRS expects and relies on its employees to properly consider and protect taxpayer rights when conducting audits and taking collection actions. The IRS's mission statement describes the IRS's role and the public's expectation about how IRS employees should carry out their duties. The IRS has implemented an array of policies, procedures, and guidelines to assist its employees in meeting these responsibilities.

The Internal Revenue Manual (IRM) and taxpayer publications are important control components

In addition to the agency-level mission statement, the IRS uses and periodically updates policy statements, the IRM, and numerous taxpayer publications. Both the IRM and taxpayer publications are available online and are designed to provide guidance to IRS personnel and taxpayers.

For example, IRM guidance pertaining to the SB/SE Division's Field Collection function asserts that taxpayers have the right to be represented during interactions with the IRS. Specifically, it states that if during any interview not required by a summons the taxpayer requests to consult with an authorized representative, the IRS employee will suspend the interview to permit such consultation. It directs the IRS employee to allow the taxpayer up to 10 business days to consult with authorized representation.⁵ The IRM also provides procedures to follow if it becomes necessary for a revenue officer to bypass a representative.⁶ In addition, during the initial contact, revenue officers are to determine whether the taxpayer received Publication 1 and answer any questions taxpayers may have concerning their rights.⁷

The IRS uses Publication 1 to inform taxpayers of their rights and to explain the audit, collection, appeals, and refund processes. Publication 1 also includes a contact number for TIGTA, where suspected violations of the direct contact provisions and other potential misconduct or abuse by IRS personnel can be reported. The IRS has also included information on these rights in other publications such as:

⁵ IRM 5.1.10.7.1 (Feb. 26, 2016).

⁶ IRM 5.1.23.5 (Oct. 30, 2012).

⁷ IRM 5.1.10.3.2 (Jan. 26, 2017).



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- Publication 17, *Your Federal Income Tax*.
- Publication 334, *Tax Guide for Small Business*.
- Publication 594, *The IRS Collection Process*.
- Publication 1660, *Collection Appeal Rights*.

In addition, the IRS uses Publication 947, *Practice Before the IRS and Power of Attorney*, to inform taxpayers of their representatives' responsibilities and to notify taxpayers that the IRS has the authority to bypass representatives who are uncooperative.

First-line managers are a key control at the operational level

At the operational level, first-line managers are a key internal control because they are responsible for ensuring that the personnel they supervise follow procedures and that their work meets acceptable standards. To ensure that procedures are followed and standards are met, the IRM requires managers to conduct reviews over the work of the personnel they supervise, both while it is in process and after it is completed. These control techniques help identify problems so prompt corrective actions can be taken.

In response to prior TIGTA reports, the IRS has addressed the respective recommendations and has taken a number of steps to emphasize the need for first-line managers to ensure that the personnel they supervise are adhering to the direct contact provisions. For example, in January 2013, the IRS updated the IRM to include specific directions on how to ensure compliance with the direct contact provisions for SB/SE Division managers in its Field Collection function; and for its Examination function employees, in February 2016, the IRS updated IRM sections to further clarify the procedures for allowing taxpayers adequate time to secure representation before taking any follow-up action to schedule an appointment.⁸

The Internal Revenue Service Has a Process to Handle the Review and Disposition of Taxpayer Allegations of Direct Contact Violations

IRS management cannot track situations in which a taxpayer is denied the right to appropriate representation unless the taxpayer or his or her representative files a complaint with the IRS, TIGTA, the Taxpayer Advocate Service, or their congressional Representative or Senator. The IRS's position has not changed from last year, and the IRS does not plan to implement a system to proactively identify or track when taxpayers have requested consultation with a representative or when an IRS employee bypassed a representative and directly contacted the taxpayer. However, the IRS has a process to ensure that reported allegations of direct contact violations are reviewed to determine if there was any employee misconduct.

⁸ IRM 1.4.50.3.2.1 (Jan. 25, 2013), IRM 4.10.2.9.1 (Feb. 11, 2016), and IRM 4.10.3.3.7.2 (Feb. 26, 2016).



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The IRS Employee Conduct and Compliance office receives, processes, and tracks all complaint referrals, *e.g.*, allegations not investigated by TIGTA, as well as reports of investigation that TIGTA forwards to the IRS. According to the IRS, the Employee Conduct and Compliance office is responsible for ensuring that IRS management addresses the complaint referrals to determine their proper disposition. It also tracks the disposition of TIGTA complaint referrals (including any subsequent disciplinary actions taken). These complaint referrals are assigned, tracked, and recorded on the Employee Issues Branch E-trak database.

During our review, we requested a report of Fiscal Year 2016 complaint referrals that the Employee Conduct and Compliance office maintained on the E-trak database. We received case documents for two closed cases in which there were allegations of possible contact with taxpayers without their representative's consent. We reviewed and concur with these cases and in both cases, either a Clearance letter or a Closed Without Action letter was issued to the employee.⁹

For those complaint referrals in which there is action taken by IRS management, the disposition of the complaint referrals (including any disciplinary actions for substantiated allegations) are entered into the Automated Labor and Employee Relations Tracking System to ensure the maintenance of historic records of employee misconduct. The use of this system also helps ensure consistency in recording employee misconduct and disciplinary actions, *e.g.*, admonishment letters, employee suspensions, and employee removals.

Field Collection Employees Are Generally Following Procedures Intended to Protect a Taxpayer's Right to Representation

In order to determine how well revenue officers are complying with the direct contact provisions of the I.R.C., we obtained a download of individual field collection Integrated Collection System records for cases with history action dates between October 1, 2015, and September 30, 2016. Overall, there were a total of 15,013,135 history narrative lines for 192,915 unique taxpayers. Using computer software, we systemically searched these records using certain key words which would indicate that a potential direct contact or fair tax collection violation took place. We further filtered these results by determining one or more of the words that came before or after the key words and eliminated the cases that did not contain language that could lead to potential violations of the direct contact provisions. Our search and filter found 14,945 unique history narrative lines for 9,748 unique taxpayers.

⁹ A Clearance letter is issued when there is no credible evidence to support an allegation or the evidence clearly established the employee's innocence. A Closed Without Action letter is issued when the evidence fails to clearly establish that wrongdoing occurred and further investigation could not resolve the issue.



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We selected a stratified statistically valid sample¹⁰ of 122 taxpayers from a population of 9,748 taxpayers who had collection actions documented in their case history narratives on the Integrated Collection System by Field Collection function employees (revenue officers) during Fiscal Year 2016. We reviewed the case history narratives for these sampled taxpayers and determined that the revenue officers working these cases followed the direct contact provisions of I.R.C. §§ 7521(b)(2) and (c). However, there were instances in which revenue officers may have violated the fair tax collection practices of I.R.C. § 6304(a)(2), which could indicate that the rights granted under I.R.C. §§ 7521(b)(2) and (c) were also not protected.

Both I.R.C. §§ 7521(b)(2) and (c) and I.R.C. § 6304(a)(2) address a taxpayer's right to representation. The provisions of I.R.C. §§ 7521(b)(2) and (c) apply in most interactions any IRS employee may have with a taxpayer when the taxpayer explicitly exercises his or her right to consult with an authorized representative during an interview. I.R.C. § 6304(a)(2) provides more stringent rules during an IRS collection action when the IRS employee knows that a taxpayer has an authorized representative. In these instances, IRS employees may not communicate with taxpayers, without taxpayer consent or a court order, when they know that the taxpayer has obtained an authorized representative to handle the collection matter. Specifically, I.R.C. § 6304(a)(2) states:

... without the prior consent of the taxpayer given directly to the [IRS employee] or the express permission of a court of competent jurisdiction, the [IRS employee] may not communicate with a taxpayer in connection with the collection of any unpaid tax if the [IRS employee] knows the taxpayer is represented by any person authorized to practice before the [IRS] with respect to such unpaid tax and has knowledge of, or can readily ascertain, such person's name and address, unless such person fails to respond within a reasonable period of time to a communication from the [IRS employee] or unless such person consents to direct communication with the taxpayer.

To address I.R.C. § 6304(a)(2) issues, field collection procedures prohibit revenue officers from bypassing a taxpayer's representative because they wish to interview the taxpayer. The IRM also advises staff to remain mindful that I.R.C. § 6304(a)(2) generally precludes the IRS from directly communicating with a represented taxpayer in connection with the collection of any unpaid taxes. However, the procedures provide the following three conditions which all must be met in order for a revenue officer to work directly with a represented taxpayer:

- 1) The taxpayer initiates the contact to resolve the issue on the account.
- 2) The taxpayer expresses a specific desire to resolve the issue without the

¹⁰ Our sampling plan was based on a 95 percent confidence interval, a ± 5 percent precision, and a 5 percent expected error rate.



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involvement of their representative after the IRS employee has advised the taxpayer of the current representation.

- 3) The taxpayer's desire to have the IRS work directly with the taxpayer instead of the representative is properly documented in the case file.¹¹

For the small number of cases in which we found that revenue officers may have violated provisions of I.R.C. § 6304(a)(2),¹² the case histories showed the existence of a power of attorney. This would mean that the revenue officers should have known that the taxpayers had authorized representatives. The revenue officers appeared to have ignored this fact and initiated contact directly with the taxpayers thus bypassing their representatives, which the respective group manager should have identified during their case review.

The IRM instructs group managers to report any potential employee violations of the Fair Tax Collection Practices to the local Labor Relations Specialist by the close of the next business day following notification of the alleged violation. If violations are confirmed, group managers are instructed to work with the Labor Relations Specialist to determine the next appropriate action.¹³

We provided the case history narratives and our observations to Field Collection function management, and they agreed that these could be potential violations of I.R.C. § 6304(a)(2). Field Collection management may want to ensure that all their employees remain mindful of I.R.C. § 6304(a)(2), as well as I.R.C. §§ 7521(b)(2) and (c) and follow established procedures. When IRS employees ensure that taxpayer rights are protected, the IRS's exposure to potentially harmful litigation is limited.

Recommendation

Recommendation 1: The Director, Field Collection, should ensure that the group managers appropriately report the cases TIGTA identified with potential I.R.C. § 6304(a)(2) violations to the local Labor Relations Specialist.

Management's Response: IRS management agreed with this recommendation. The Director, Field Collection, SB/SE Division, will report the cases we identified with potential I.R.C. § 6304(a)(2) violations to the local Labor Relations Specialist.

¹¹ IRM 5.1.23.5 (Oct. 30, 2012).

¹² Case history narratives for three cases contained language that suggested a possible violation of I.R.C. § 6304(a)(2).

¹³ IRM 1.4.50.3.2.3 (Sep. 12, 2014).



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**Managers and Employees Could Benefit From a Better Understanding
of the Direct Contact Provisions**

We obtained a list of 3,400 Field Collection employees as of September 30, 2016, and judgmentally selected six IRS offices within two geographic areas to conduct interviews.¹⁴ We interviewed a judgmental sample¹⁵ of 53 revenue officers and 19 supervisory revenue officers (hereafter referred to as group managers) to determine if they had a clear understanding of the direct contact provisions of I.R.C. §§ 7521(b)(2) and (c) and any knowledge of the fair tax collection practices of I.R.C. § 6304(a)(2). While many employees claimed to be familiar with the direct contact provisions and fair tax collection practices, we determined that:

- The majority of group managers (17 of 19) stated that they would expect revenue officers to suspend an interview when a taxpayer wishes to consult with an authorized representative.
- However, 28 (53 percent) revenue officers responded that they would continue the interview after the taxpayer asks to speak with their representative to get his or her opinion. Of the 28 revenue officers: 12 revenue officers said they would continue to collect as much information as the taxpayer is willing to give; three revenue officers said they would ask to get the representative on a conference call at that time; and 13 revenue officers said they would ask the taxpayer if he or she would like to continue the interview. The remaining 25 (47 percent) revenue officers said they would stop the interview immediately and allow time for the taxpayer to speak with his or her representative, as required by law. In response to this issue, IRS management believes that their revenue officers responded as such because we presented a taxpayer scenario that contained language different from the language included in I.R.C. § 7521(b)(2). Specifically, TIGTA presented revenue officers a taxpayer scenario in which the taxpayer stated to the IRS employee during the interview that the taxpayer wishes to “speak with their [authorized representative] to get their opinion” versus using the words “consult with” their authorized representative per the respective I.R.C. TIGTA disagrees with this position and urges the IRS not to deny a taxpayer his or her right to suspend an interview because the taxpayer did not use the exact terminology “consult with” in circumstances in which the taxpayer clearly wishes to seek his or her authorized representative’s counsel on the tax matter.
- The majority of revenue officers (49 [92 percent] of 53) could not provide an accurate situation (*i.e.*, interview initiated by a summons) in which they should not agree to

¹⁴ We selected IRS SB/SE Division field offices in El Monte, Glendale, and Laguna Niguel, California; and in Dallas, Farmers Branch, and Fort Worth, Texas. As of September 30, 2016, there were 173 employees from groups with three or more employees in the selected offices and 20 supervisory revenue officers from those groups.

¹⁵ A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.



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suspend an interview when a taxpayer wishes to stop the interview to consult with an authorized representative.

- Some revenue officers may not have a clear understanding or interpretation of the up to 10 business days limitation for allowing a taxpayer to consult with an authorized representative. Of the 53 revenue officers interviewed, 42 revenue officers responded with 10 or fewer business days or mentioned that it varies from case to case. However, the remaining revenue officers responded that they would allow more than 10 business days (eight revenue officers) or that they would not set a deadline (three revenue officers).
- One-half of the revenue officers (27) mentioned that when a taxpayer has an authorized representative on file that does not have power of attorney for all open tax periods, they would go to the taxpayer, to avoid disclosure issues with the power of attorney, to inform him or her of the missing tax periods and request an updated Form 2848. The other one-half of the revenue officers (26) said they would go to the power of attorney to inform him or her of the missing tax periods and request an updated Form 2848, but would not disclose any information on the missing tax periods. We noticed the split mostly between the two different areas where we conducted our interviews. In the area that mostly responded that they would go to the taxpayer, several revenue officers mentioned that they had received recent guidance to address only the missing tax periods with the taxpayer.

The law requires revenue officers to immediately suspend the interview at the point that the taxpayer requests to speak with an authorized representative (unless it was initiated by administrative summons). Specifically, I.R.C. § 7521(b)(2) states:

If the taxpayer clearly states to an [IRS employee] at any time during any interview (other than an interview initiated by an administrative summons issued under subchapter A of chapter 78) that the taxpayer wishes to consult with an attorney, certified public accountant, enrolled agent, enrolled actuary, or any other person permitted to represent the taxpayer before the [IRS], such [IRS employee] shall suspend such interview regardless of whether the taxpayer may have answered one or more questions.

The IRM presents the law and further instructs as:

Generally, if a taxpayer states during any interview that he or she wishes to consult with an authorized representative, the employee will suspend the interview to permit such consultation. **If** the interview is suspended, allow up to 10 business days for the consultation with an authorized representative. *The*



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*employee should inform the taxpayer of the consequences if the representative fails to contact the employee within 10 business days.*¹⁶

The use of the words *generally* and *if* in the IRM could allow more flexible interpretations of the law. The use of these words most likely are leading up to the exception of the aforementioned summons. Yet, awareness and protection of taxpayer rights is vitally important to the mission of the IRS. Revenue officers should be aware of the laws governing these rights and should be able to rely on the IRM and its presentation and interpretation of the laws.

As instructed in the IRM, revenue officers should allow *up to* 10 business days to consult with an authorized representative. IRS officials in the Field Collection function of the SB/SE Division informed us that they interpret the IRM to allow revenue officers to set a deadline of less than 10 business days if warranted by the facts and circumstances of the case. They also said that per the IRM, revenue officers have the discretion to extend established deadlines.¹⁷ Because the policy in the IRM allows for such interpretation, some taxpayers may not be allowed enough time to find, interview, and obtain competent and authorized representation.¹⁸

The IRM contains some guidance that instructs revenue officers to contact the taxpayer to secure an up-to-date form if all open tax periods are not reflected on Form 2848.¹⁹ Additional guidance instructs revenue officers to work with the taxpayer when the Form 2848 does not cover all tax periods in order to send the appropriate written communications to the power of attorney.²⁰ There is no policy or guidance that would prohibit a revenue officer from contacting the power of attorney, as long as they do not disclose any taxpayer information for the tax periods not covered by the power of attorney. IRS employees can face major consequences if they accidentally or purposefully violate disclosure laws when working with taxpayers and representatives. We believe that some revenue officers would run less risk if they were to handle missing tax periods with taxpayers, not the power of attorney. The chances of some revenue officers violating these laws is much greater if they continue contact with the power of attorney.

If revenue officers fail to protect taxpayer rights to representation during interviews or after taxpayers assign their respective authorized representative, it may negatively affect their interactions with taxpayers or representatives, including their ability to collect on unpaid taxes. During our interviews, we also asked the sampled revenue officers and group managers for suggestions on how to improve the overall understanding of the policies and procedures surrounding the direct contact provisions and fair tax collection practices. Some of the revenue officers and group managers expressed a desire for the IRM sections pertaining to the direct contact procedures and fair tax collection practices to be more streamlined and provide more

¹⁶ IRM 5.1.10.7.1 (Feb 26, 2016).

¹⁷ IRM 5.1.10.9(3) (Feb.26, 2016).

¹⁸ IRM 4.11.55.2.1.2 (Apr. 20, 2010), used by examination personnel in the SB/SE Division, instructs them to “allow the taxpayer a *minimum* of 10 business days to secure representation.”

¹⁹ IRM 5.1.10.7.2(3) (Jan. 26, 2017).

²⁰ IRM 5.1.23.3.2.3(7) (Oct. 30, 2014).



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guidance and examples in order to reduce the differences in interpretation. If the IRM is not explicit in its representation of the laws, some IRS employees may have a greater risk of violating the laws and taxpayer rights.

We believe that: (1) clearly defined guidance and policies within the IRM used by Field Collection function revenue officers could improve the consistency of processes and allow taxpayers the appropriate amount of time to secure representation, which would help protect taxpayer information from being accidentally disclosed and would protect revenue officers from the consequences of disclosure violations; (2) the laws pertaining to direct contact provisions and fair tax collection practices should be transferred to the IRM with minimal modifications; (3) some managers and employees would benefit greatly from further guidance and an increased knowledge of the direct contact procedures and fair tax collection practices. Continued emphasis would allow some revenue officers and group managers to be more knowledgeable on I.R.C. § 7521, as well as I.R.C. § 6304.

Recommendation

Recommendation 2: The Director, Collection, SB/SE Division, should update IRM procedures to: (1) ensure proper handling of situations in which a taxpayer clearly states that he or she wishes to consult with an authorized representative with emphasis that revenue officers should suspend an interview regardless of whether the taxpayer may have answered one or more questions; (2) provide clarification or interpretation on the up to 10 business days deadline policy for taxpayers to consult with representation; (3) provide clarification for situations in which a taxpayer's representative does not have power of attorney for all open tax periods and instruct the revenue officer on who to contact for an updated Form 2848; and (4) incorporate IRM revisions into all applicable technical communications for revenue officers.

Management's Response: IRS management agreed with this recommendation. The Director, Collection Policy, SB/SE Division, and the Director, Field Collection, SB/SE Division, will provide guidance to clarify: the requirement to suspend an interview when the taxpayer wishes to seek representation; the time frame to allow taxpayers to consult with a representative; and that the revenue officer should not contact the representative to seek an updated Form 2848 when all open periods are not reflected on the form. They will ensure that this information is communicated to all revenue officers.



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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 legal guidelines addressing the direct contact of taxpayers and their representatives set forth in I.R.C. § 7521(b)(2) and (c) and the fair tax collection practices set forth in I.R.C. § 6304 (a)(2). To accomplish this objective, we:

- I. Determined the procedures and controls the IRS uses to ensure that employees are following the direct contact provisions and fair tax collection practices.
 - A. Contacted IRS management personnel in the SB/SE Division to determine if an IRS system or process has been developed or is planned to identify those cases when taxpayers have requested consultation with a representative or when an IRS employee bypassed a representative and directly contacted the taxpayer.
 - B. Conducted searches on the IRS intranet and contacted IRS officials to identify guidance provided to employees to help them meet the direct contact provisions and fair tax collection practices and to group managers to help them provide oversight of their employees' compliance with the direct contact provisions and fair tax collection practices.
 - C. Reviewed IRS.gov and contacted IRS officials to identify how the IRS informs taxpayers of the IRS's prohibition on directly contacting taxpayers when a representative has been requested.
- II. Determined how well the IRS is ensuring that taxpayer rights, under the direct contact provisions and the fair tax collection practices of the I.R.C., are protected during field collection actions.
 - A. Reviewed the fair tax collection practices complaints and investigations closed by TIGTA's Office of Investigations in Fiscal Year 2016 and tracked on the Performance and Results Information System.
 - B. Contacted officials in the IRS Employee Conduct and Compliance office to identify any taxpayer complaints resulting from potential IRS employee fair tax collection practices violations and obtained and reviewed fair tax collection practices complaints recorded on the E-trak database during Fiscal Year 2016 to identify and document the resolution or current status of the complaints and the number of taxpayers involved.
 - C. Obtained a download of the IRS's Integrated Collection System individual field collection records for cases with history action dates between October 1, 2015, and September 30, 2016, from TIGTA's Data Center Warehouse. We electronically



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searched more than 15 million history narrative lines for 192,915 unique taxpayers using the following six groupings of key words, which could indicate that a potential direct contact or fair tax collection violation took place:

- Direct contact and directly contact.
 - Consult with.
 - Representation.
 - 7521; 5.1.10.7.1; stop interview; stopped interview; stop the interview; stopped the interview; suspend interview; suspended interview; suspend the interview; suspended the interview; discontinue interview; discontinued interview; discontinue the interview; discontinued the interview; end interview; ended interview; end the interview; ended the interview; cease interview; ceased interview; cease the interview; ceased the interview; stop contact; stopped contact; suspend contact; suspended contact; end contact; ended contact; discontinue contact; discontinued contact; stop TP; stopped TP; stop taxpayer; stopped taxpayer; suspend TP; suspended TP; suspend taxpayer; and suspended taxpayer.
 - 4016; 5.1.23.5; bypass; by-pass; by pass; not the POA; unreasonable delay; and hindrance of.
 - 6304; 5.1.10.6.1; and fair tax collection.
- D. Filtered the results of the key word search by determining one or more of the words that came before or after the key words and eliminated the cases that did not contain language that could lead to potential violations of the direct contact provisions or fair tax collection practices. In total, the filter returned 14,945 unique history narrative lines for 9,748 unique taxpayers.
- E. Reviewed the Fiscal Year 2016 case history narratives associated with a stratified random sample of 122 of the 9,748 taxpayers, identified in step II.D., to determine whether revenue officers were complying with the direct contact provisions and fair tax collection practices of the I.R.C. Our sampling plan was based on a 95 percent confidence interval, a ± 5 percent precision, and a 5 percent expected error rate.¹ We used a stratified random sample to ensure that cases from each of the six groupings of key words were selected and that each taxpayer with a key word in each of the six groupings had a statistically random chance of being selected.

¹ TIGTA's contracted statistician assisted with developing the sampling plan.



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- III. Determined if collection employees have a general understanding of the requirements, policies, and procedures of the direct contact provisions of I.R.C. §§ 7521(b)(2) and (c) and the fair tax collection practices of I.R.C. § 6304 (a)(2).
- A. Selected a judgmental sample of revenue officers and supervisory revenue officers to interview.²
1. Obtained a list of 3,400 Field Collection revenue officers and supervisory revenue officers as of September 30, 2016. We determined the distribution of the revenue officers to be judgmentally sampled to include revenue officers located in an IRS office with three or more revenue officers from at least two Field Collection groups and located in a geographical area with at least three IRS offices meeting the same criteria.
 2. Selected six offices in two geographical areas from the results of Step III.A.1. Judgmentally selected offices in El Monte, Glendale, and Laguna Niguel, California; and in Dallas, Farmers Branch, and Fort Worth, Texas. We used a judgmental sample to select locations based on human resources (*i.e.*, location of auditors and the number of available groups and employees), budget resources for travel, and time constraints.
 3. Identified the population of 173 potential revenue officers and 20 supervisory revenue officers located in the six offices selected in Step III.A.2.
 4. Selected a judgmental sample, from the population determined in Step III.A.3., of 57 revenue officers and 19 supervisory revenue officers from the groups within the six offices selected in Step III.A.2. We used a judgmental sample to select interviewees to ensure a diversity of employee experience levels based on the series and grade level.
- B. Interviewed 53 revenue officers³ and 19 supervisory revenue officers from the judgmental sample selected in step III.A.4. and presented scenarios and questions pertaining to the direct contact provisions and fair tax collection practices.

Data validation methodology

We assessed the reliability of the Integrated Collection System data by: (1) performing electronic testing of required data elements, (2) reviewing existing information about the data and the system that produced them, and comparing data elements from a judgmental sample of 15 of the 122 sampled taxpayers against data in the IRS's Integrated Data Retrieval System to ensure the accuracy of the data from the Integrated Collection System. We determined that the data were sufficiently reliable for purposes of this report.

² A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.

³ Some of the selected revenue officers were not available during the site visits.



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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 IRS's policies, procedures, and practices related to responding to taxpayer and taxpayer representative allegations of IRS employee violations of the direct contact provisions of I.R.C. §§ 7521(b)(2) and (c) and the fair tax collection practices of I.R.C. § 6304 (a)(2). We evaluated these controls by contacting management, reviewing IRM guidance provided to managers and employees, reviewing closed complaints and investigations from TIGTA's Performance and Results Information System, identifying closed cases tracked on the IRS's E-trak database, and reviewing case history narratives associated with the 122 sampled taxpayers.



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Appendix II

Major Contributors to This Report

Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement
Operations)

Christina M. Dreyer, Director

Javier Fernandez, Audit Manager

Kevin Nielsen, Senior Auditor



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Appendix III

Report Distribution List

Commissioner
Office of the Commissioner – Attn: Chief of Staff
Deputy Commissioner for Services and Enforcement
Director, Field Collection, Small Business/Self-Employed Division
Director, Office of Audit Coordination



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Appendix IV

*Recent Audit Reports Related to This
Statutory Review*

TIGTA, Ref. No. 2016-30-067, *Fiscal Year 2016 Statutory Review of Restrictions on Directly Contacting Taxpayers* (Aug. 2016).

TIGTA, Ref. No. 2015-30-061, *Fiscal Year 2015 Statutory Review of Restrictions on Directly Contacting Taxpayers* (July 2015).

TIGTA, Ref. No. 2014-30-079, *Fiscal Year 2014 Statutory Review of Restrictions on Directly Contacting Taxpayers* (Sept. 2014).

TIGTA, Ref. No. 2013-30-080, *Fiscal Year 2013 Statutory Review of Restrictions on Directly Contacting Taxpayers* (Aug. 2013).

TIGTA, Ref. No. 2012-30-089, *Fiscal Year 2012 Statutory Review of Restrictions on Directly Contacting Taxpayers* (Sept. 2012).

¹ This list provides the most recent five of the 18 previous reports issued by TIGTA.



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Appendix V

Glossary of Terms

Term	Definition
Automated Labor and Employee Relations Tracking System	An application used to track labor/employee relations case data. It was developed to ensure consistency in tracking labor and employee relations disciplinary actions.
Calendar Year	The 12-consecutive-month period ending on December 31.
Centralized Authorization File	A computerized system of records which houses authorization information from both powers of attorney and tax information authorizations. It contains several types of records, among them taxpayers, representatives, tax forms, tax periods, and authorizations.
E-trak	A web interface that easily allows business requirements to be translated into systemic configuration for case management and case tracking covering multiple IRS business functions.
Employee Conduct and Compliance Office	An office within the Workforce Relations Division of the IRS's Human Capital Office that provides a centralized structure and forum for addressing concerns about employee conduct. It ensures that all allegations are addressed appropriately, in a fair and consistent manner, and that corrective actions are taken when necessary. In doing so, it handles all TIGTA complaint referrals and reports of investigation, as well as congressional inquiries and IRS Commissioner correspondence involving employee issues and misconduct.
Field Collection	An IRS function within the SB/SE Division that helps taxpayers understand and comply with all applicable tax laws and applies the tax laws with integrity and fairness. It is also responsible for protecting the revenue and the interests of the Government through direct collection and enforcement activity with taxpayers or their representatives.
Fiscal Year	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.



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Term	Definition
Integrated Collection System	An IRS application that provides workload management, case assignment/tracking, inventory control, case analysis tools, and management information system capabilities to support collection fieldwork in the SB/SE Division.
Integrated Data Retrieval System	IRS computer system capable of retrieving or updating stored information. It works in conjunction with a taxpayer's account records.
Internal Revenue Code	The Federal tax law, enacted by Congress in Title 26 of the United States Code. It is organized by topics such as income, estate and gift, employment, and miscellaneous excise taxes.
Internal Revenue Manual	The official source of IRS policies, procedures, and guidelines.
Performance and Results Information System	A management information system that provides TIGTA with the ability to manage and account for complaints received and investigations initiated.
Revenue Officer	A Field Collection employee who is responsible for collecting delinquent taxes and securing overdue tax returns within the guidelines established by the I.R.C. and procedures outlined in the IRM. To fulfill these responsibilities, they conduct face-to-face interviews with taxpayers (and/or their representatives), inform taxpayers of their legal rights, obtain and analyze financial information to determine the taxpayer's ability to pay the taxes, and educate and promote voluntary compliance in accordance with the tax laws and regulations.
Tax Period	The period of time for which a tax return is filed. The IRS uses a six-digit code to indicate the end of the tax period for a given return. (The first four digits represent the year and the next two digits represent the month).
Taxpayer Advocate Service	An independent organization within the IRS that works to protect taxpayers' rights by ensuring that all taxpayers are treated fairly and that they know and understand their rights.
TIGTA's Data Center Warehouse	A collection of IRS databases containing various types of taxpayer account information that is maintained by TIGTA for the purpose of analyzing data for ongoing audits and investigations.



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Term	Definition
TIGTA's Office of Investigations	The overall mission is to help protect the ability of the IRS to collect revenue for the Federal Government. They conduct investigations and proactive investigative initiatives to ensure the integrity of IRS employees, contractors, and other tax professionals; ensure IRS employee and infrastructure security; and protect the IRS against external attempts to corrupt tax administration.



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Appendix VI

Management's Response to the Draft Report



COMMISSIONER
SMALL BUSINESS/SELF-EMPLOYED DIVISION

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

AUG 24 2017

MEMORANDUM FOR MICHAEL E. MCKENNEY
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Mary Beth Murphy 
Commissioner, Small Business/Self-Employed Division

SUBJECT: Draft Audit Report – Fiscal Year 2017 Statutory Review of
Restrictions on Directly Contacting Taxpayers (Audit #
201730009)

Thank you for the opportunity to review the subject draft report. We appreciate your recognition that the IRS's internal controls have helped ensure compliance with the direct contact provisions of the Code. We have implemented several policies, procedures and techniques to help ensure taxpayers are afforded the right to designate an authorized representative to act on their behalf on a variety of federal tax matters. And, in response to a recommendation from a 2012 TIGTA audit, we clarified the Internal Revenue Manual (IRM) instructing management to review for adherence to these procedures when conducting case reviews.

In this year's review, you found a few (3) instances in which revenue officers may have contacted taxpayers directly even though there was an authorized representative on file. We will refer those cases to our Labor Relations organization to determine whether disciplinary action is appropriate.

TIGTA also presented a sample of revenue officers and their supervisors with hypothetical situations to determine the employees' knowledge of the direct contact provisions and fair tax collection practices, and found that some employees could benefit from a better understanding of the provisions. While we believe that IRS employees generally understand when an interview must be suspended under the law, we will enhance our guidance about the requirement to suspend an interview when the taxpayer wishes to seek representation and will clarify the timeframe to be granted to allow taxpayers to consult with a representative.

Finally, although the IRM already states that employees should contact the taxpayer to seek an updated Form 2848, *Power of Attorney and Declaration of Representative*, when all open tax periods are not reflected on the form, we will clarify that they should not contact the representative for that purpose.



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We value your recommendations to help us improve our processes. We have worked and will continue to work to protect taxpayer rights. Attached is a detailed response outlining our corrective actions to address your recommendations.

If you have any questions, please contact me, or a member of your staff may contact Scott Prentky, Director Collection at (954) 991-4326.

Attachment



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Attachment

RECOMMENDATION 1:

The Director, Field Collection, should ensure that the group managers appropriately report the cases TIGTA identified with potential I.R.C § 6304(a)(2) violations to the local Labor Relations Specialist.

CORRECTIVE ACTION:

We will report the cases TIGTA identified during this audit with potential I.R.C § 6304(a)(2) violations to the local Labor Relations Specialist.

IMPLEMENTATION DATE:

October 15, 2017

RESPONSIBLE OFFICIAL:

Director, Field Collection, Small Business/Self-Employed Division

CORRECTIVE ACTION MONITORING PLAN:

IRS will monitor this corrective action as part of our internal management system of controls.

RECOMMENDATION 2:

The Director, Collection, SB/SE Division, should update IRM procedures to: (1) ensure proper handling of situations in which a taxpayer clearly states that he or she wishes to consult with an authorized representative with emphasis that revenue officers should suspend an interview regardless of whether the taxpayer may have answered one or more questions; (2) provide clarification or interpretation on the up to 10 business days deadline policy for taxpayers to consult with representation; (3) provide clarification for situations in which a taxpayer's representative does not have power of attorney for all open tax periods and instruct the revenue officer on who to contact for an updated Form 2848; and (4) incorporate IRM revisions into all applicable technical communications for revenue officers.

CORRECTIVE ACTION:

We will provide guidance to clarify the requirement to suspend an interview when the taxpayer wishes to seek representation, to clarify the timeframe to allow taxpayers to consult with a representative, and to clarify that the revenue officer should not contact the representative to seek an updated Form 2848 when all open periods are not reflected on the form (and we will provide the reason for this prohibition). We will ensure this information is communicated to all revenue officers.

IMPLEMENTATION DATE:

December 15, 2017



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RESPONSIBLE OFFICIALS:

Director, Collection Policy, Small Business/Self-Employed Division
Director, Field Collection, Small Business/Self-Employed Division

CORRECTIVE ACTION MONITORING PLAN:

IRS will monitor this corrective action as part of our internal management system of controls.