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TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



*The Internal Revenue Service Has  
Implemented Some Screening Procedures,  
but Employees With Recent Tax and  
Conduct Issues Continue to Receive Awards*

**February 13, 2018**

**Reference Number: 2018-10-005**

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

**Redaction Legend:**

1 = Tax Return/Return Information  
3 = Personal Privacy Information

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## HIGHLIGHTS

### THE INTERNAL REVENUE SERVICE HAS IMPLEMENTED SOME SCREENING PROCEDURES, BUT EMPLOYEES WITH RECENT TAX AND CONDUCT ISSUES CONTINUE TO RECEIVE AWARDS

## Highlights

Final Report issued on  
February 13, 2018

Highlights of Reference Number: 2018-10-005 to the Internal Revenue Service Human Capital Officer.

### IMPACT ON TAXPAYERS

In Fiscal Year (FY) 2016 and the first quarter of FY 2017 (hereafter referred to as FY 2017), the IRS issued more than \$141 million in cash and time-off awards to its employees. These awards are designed to recognize and reward employees for their performance. Oversight of the awards program is important to ensure proper stewardship of Government funds and the integrity of the IRS.

### WHY TIGTA DID THE AUDIT

This audit is a follow-up review of the TIGTA report, *The Awards Program Complied With Federal Regulations, but Some Employees With Tax and Conduct Issues Received Awards*, dated March 21, 2014. The overall objectives of this audit were to determine whether employees received an award within 12 months of being disciplined for a conduct or Federal tax compliance issue and to evaluate whether employee conduct and Federal tax compliance was considered when issuing awards.

### WHAT TIGTA FOUND

In FY 2017, the IRS prevented 1,048 employees with conduct and tax issues from receiving awards. Increased screening procedures for awards resulted in the IRS denying almost 80 percent of awards to screened employees with identified conduct and tax issues such as willful tax violations, criminal misconduct, substance abuse, and unauthorized access to tax return information. The vast majority of IRS

employees receiving awards do not have conduct and tax issues.

However, the improved processes did not ensure that all employees with conduct and tax compliance issues were screened as required by Department of the Treasury policy and Federal law. Specifically, 26 employees with Section 1203(b) violations including willful tax noncompliance, whose employment was not terminated, received awards. In addition, TIGTA found that in FY 2016 and FY 2017, the IRS issued more than \$1.7 million in awards to 1,962 employees who had a disciplinary or adverse action during the 12 months prior to receiving their award. Some of these employees had serious misconduct such as unauthorized access to tax return information, substance abuse, and sexual misconduct.

In addition, TIGTA found that IRS screening processes do not look for or identify employees with tax compliance issues unless those issues have resulted in disciplinary action. Specifically, TIGTA identified a judgmental sample of employees in a noncompliant tax status at the time of award who were not included in the screening process because they were not disciplined. These employees had Federal tax liens or were in failure to pay status or currently not collectible status, which all indicate significant tax problems. Providing awards to employees with conduct issues, especially those who fail to pay Federal taxes, appears to conflict with the IRS's charge of ensuring the integrity of the system of tax administration.

### WHAT TIGTA RECOMMENDED

TIGTA recommended that the IRS Human Capital Officer expand misconduct screening to consider employees with any level of disciplinary action prior to issuing awards, examine the Federal tax compliance status of all employees before issuing awards, and comply with Treasury reporting requirements for awards.

In their response, IRS management agreed with all three recommendations, stating that it would expand its screening procedures to include employees with any level of discipline and Federal tax noncompliance prior to issuing awards and would comply with Treasury reporting requirements.



TREASURY INSPECTOR GENERAL  
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

February 13, 2018

**MEMORANDUM FOR INTERNAL REVENUE SERVICE HUMAN CAPITAL OFFICER**

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

**SUBJECT:** Final Audit Report – The Internal Revenue Service Has Implemented Some Screening Procedures, but Employees With Recent Tax and Conduct Issues Continue to Receive Awards  
(Audit # 201710013)

This report presents the result of our review on how the Internal Revenue Service ensures that employees with recent tax and conduct issues do not receive awards. The overall objectives of this review were to determine whether employees received an award within 12 months of being disciplined for a conduct or Federal tax compliance issue and to evaluate whether employee conduct and Federal tax compliance was considered when issuing awards. This audit is included in our Fiscal Year 2018 Annual Audit Plan and addresses the major management challenge of Achieving Program Efficiencies and Cost Savings.

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 Gregory D. Kutz, Assistant Inspector General for Audit (Management Services and Exempt Organizations).



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## *Abbreviations*

|        |  |
|--------|--|
| ALERTS | Automated Labor and Employee Relations Tracking System |
| FY     | Fiscal Year  |
| IRS    | Internal Revenue Service                               |
| TIGTA  | Treasury Inspector General for Tax Administration      |



*The Internal Revenue Service Has Implemented Some Screening Procedures, but Employees With Recent Tax and Conduct Issues Continue to Receive Awards*

*Background*

The Internal Revenue Service (IRS) has an awards<sup>1</sup> program in place to reward and retain competent and talented employees by appropriately recognizing their achievements and contributions to the IRS’s mission. The program promotes an organizational culture in which managers recognize and appreciate their employees’ contributions and achievements. For IRS employees, it is at the manager’s discretion for any award to be paid as cash only, time off only, or as a combination of cash and time off (with the exception of executives and political appointees, who are not eligible for time-off awards). In Fiscal Year (FY)<sup>2</sup> 2016, the IRS issued 67,471 awards totaling over \$78 million. In the first quarter of FY 2017 (hereafter referred to as FY 2017), the IRS issued 59,749 awards totaling over \$62 million. The majority of awards issued were performance awards and time-off awards for performance. Figure 1 provides a summary of the awards issued in FY 2016 and FY 2017.

**Figure 1: Summary of IRS Awards**

| Award Category              | FY 2016          |                     | First Quarter FY 2017 |                     |
|-----------------------------|------------------|---------------------|-----------------------|---------------------|
|                             | Number of Awards | Award Value         | Number of Awards      | Award Value         |
| Performance Awards          | 41,613           | \$48,601,477        | 39,443                | \$43,181,325        |
| Performance Time-Off Awards | 12,888           | \$9,798,794         | 13,604                | \$11,279,591        |
| Other Awards                | 12,970           | \$20,167,398        | 6,702                 | \$8,154,015         |
| <b>Totals</b>               | <b>67,471</b>    | <b>\$78,567,669</b> | <b>59,749</b>         | <b>\$62,614,931</b> |

Source: Consolidated awards data provided by the IRS Human Capital Office.

The IRS also has a structure of discipline in which all IRS employees are expected to comply with Government-wide standards of conduct as well as local office standards of conduct, work procedures, and office practices established to accomplish the work of the IRS. The IRS imposes varying degrees of disciplinary action on its employees who do not comply with its conduct standards. Disciplinary actions are measures taken by management that are intended to correct employee misconduct that adversely affects the efficiency of the IRS and to encourage employee compliance with the standards of conduct, policies, goals, work procedures, and office practices of the IRS. Disciplinary actions include admonishment, written reprimand, and

<sup>1</sup> For purposes of this report, “award” refers to the various types of recognition that IRS employees receive including one-time cash and time-off awards for performance and other awards such as performance-based increases, quality step increases, retention allowances, Presidential Rank awards, suggestion awards, bilingual awards, and special act awards.

<sup>2</sup> A fiscal year is 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.

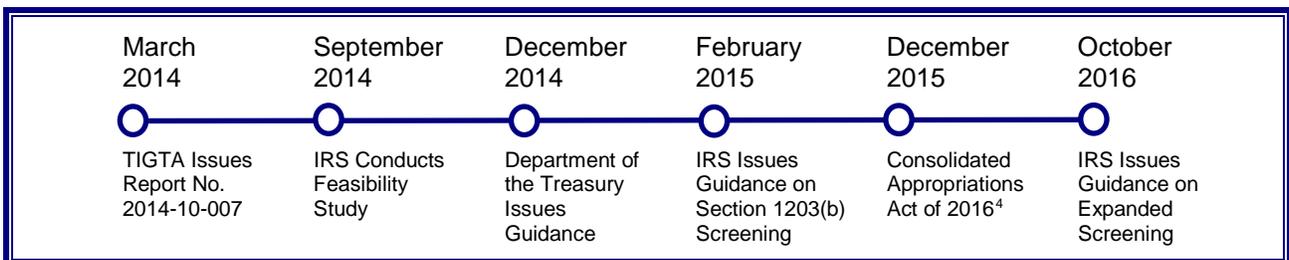


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suspension of 14 calendar days or less. Adverse actions include furlough of 30 calendar days or less, reduction in grade, reduction in pay, reduction in grade and pay, suspension of more than 14 calendar days, indefinite suspension, and removal.

A March 2014 Treasury Inspector General for Tax Administration (TIGTA) report<sup>3</sup> found that, with few exceptions, the IRS did not consider Federal tax compliance or other misconduct when issuing awards. Between October 1, 2010, and December 31, 2012, more than 2,800 IRS employees with recent substantiated conduct issues resulting in disciplinary action received approximately \$2.8 million in monetary awards and more than 27,000 hours in time-off awards. Among these, more than 1,100 IRS employees with substantiated Federal tax compliance problems received more than \$1 million in cash awards and more than 10,000 hours in time-off awards within a year of the IRS substantiating their tax compliance problem. In response to a recommendation from the report, the IRS Human Capital Officer completed a feasibility study in September 2014 and concluded that an agencywide policy limiting the issuance of certain types of awards was warranted for cases in which employees have engaged in serious misconduct. Figure 2 shows a timeline of events pertaining to awards policy beginning with the March 2014 report.

**Figure 2: Timeline of Events – IRS Awards Policy**



Source: TIGTA depiction of chronological publications relating to IRS award and misconduct screenings.

In December 2014, the Department of the Treasury implemented a policy<sup>5</sup> that requires management to consider all misconduct and discipline during the 12-month period or relevant performance year, as appropriate, prior to the effective date of the award when determining whether to grant an award (performance or otherwise). In addition, monetary recognition awarded to any employee involved in misconduct that warrants a suspension or higher penalty must be justified in writing and approved by the Commissioner or an official designated by the Commissioner and reported to the Department of the Treasury each December. Subsequently, in

<sup>3</sup> TIGTA, Ref. No. 2014-10-007, *The Awards Program Complied With Federal Regulations, but Some Employees With Tax and Conduct Issues Received Awards* (Mar. 2014).

<sup>4</sup> Pub. L. 114-113 (2015).

<sup>5</sup> The Department of the Treasury, Office of the Deputy Assistant Secretary for Human Resources and Chief Human Capital Officer, Transmittal Number TN-15-006, *Monetary Recognition and Employee Misconduct (Non-SES)* (Dec. 2014).



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February 2015, the IRS issued a memorandum of interim guidance<sup>6</sup> stating that an employee shall not be eligible for covered recognition if there has been a final agency decision in the prior fiscal year that a Section (§) 1203(b)<sup>7</sup> violation has occurred. Then the Consolidated Appropriations Act of 2016, passed on December 18, 2015, prohibited funds for IRS employee bonuses, awards, and hiring without considering the conduct and Federal tax compliance of such employees.<sup>8</sup> Finally, the IRS issued updated interim guidance in October 2016<sup>9</sup> detailing a new process to screen for misconduct prior to issuing monetary awards, high-level nonmonetary recognition, and other recognition actions.<sup>10</sup> In addition, the IRS established a review board to review cases with one-day suspension or higher and determine if the misconduct committed by those employees negatively affected the integrity of the IRS, which is internally defined:

*To serve the public interest, the Service and its employees must hold and maintain the confidence and esteem of the public we serve. Any conduct by an employee which does not conform to this principle, or to related statutes or regulations, and results in an action being taken against the employee will have a direct impact on the Integrity of the Service [IRS].*

The results of this follow-up review are based on information obtained from the IRS Human Capital offices located in Walnut Creek, California; Chicago, Illinois; and Andover, Massachusetts, during the period November 2016 through September 2017. 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Detailed information on our audit objectives, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

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<sup>6</sup> IRS Memorandum, HCO-06-1214, *Interim Guidance: Impact of Employee Misconduct on Awards, Bonuses, Performance-Based Pay Increases, and Quality Step Increases to be Paid in Fiscal Year (FY)2015* (February 4, 2015).

<sup>7</sup> Section 1203, *Termination of Employment for Misconduct*, of the IRS Restructuring and Reform Act of 1998 (Pub. L. No. 105-206, 112 Stat. 685) states that the IRS shall terminate the employment of any IRS employee if there is a final determination that the employee committed certain acts of misconduct, including willful violations of tax law. Section 1203 also states that this penalty may only be mitigated at the discretion of the IRS Commissioner, and his decision on mitigation may not be appealed. Section 1203(b) describes 10 specific acts or omissions for which IRS employees are required to be removed; two of the 10 acts apply to IRS employee tax compliance.

<sup>8</sup> The prohibition on the IRS expending funds without first considering employee tax compliance and misconduct was reiterated in the 2017 Consolidated Appropriations Act, Pub. L. No. 115-31 (2017).

<sup>9</sup> The IRS Human Capital Officer, *Interim Guidance on Misconduct Screening for Awards, Recognition and Other Actions (Non-SES)* (Oct. 2016).

<sup>10</sup> Other covered recognition actions include bonuses, incentive payments, and external awards.



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*Results of Review*

**Disciplinary Screening Processes Resulted in Some Employees With Conduct and Federal Tax Compliance Issues Being Denied Awards**

The IRS implemented a screening process that considers employee discipline prior to issuing awards. The misconduct screening was implemented in response to TIGTA's previous report recommendation which stated that the IRS Human Capital Officer should determine the feasibility of implementing a policy requiring management to consider conduct issues resulting in disciplinary actions, especially the nonpayment of taxes owed to the Federal Government, prior to awarding all types of performance and discretionary awards. The IRS agreed to the recommendation and conducted a feasibility study which concluded that an agencywide policy limiting the issuance of certain types of awards was warranted for cases in which the employees have engaged in serious misconduct; however, implementation of such policy would require collaboration across the IRS. The IRS determined that the way to implement a screening process more immediately was to concentrate on the most egregious conduct first by isolating § 1203(b) subsections 1 through 10 violations. Specifically, on February 4, 2015, the IRS implemented a policy stating that an employee is not eligible for recognition if there has been a final determination that a § 1203(b) violation has occurred in the past fiscal year. In FY 2016, the IRS screened and denied awards to 32 employees who had substantiated § 1203(b) violations. The screening applied to all bargaining unit and non-bargaining unit<sup>11</sup> IRS employees except executives and other high-level officials who are covered by separate misconduct procedures. Employees who were denied awards for substantiated § 1203(b) violations in FY 2016 either willfully understated their taxes or willfully failed to file their taxes.

For awards issued in FY 2017, the IRS expanded its screening process to consider 1,308 employees who had a disciplinary action of one-day suspension or higher in the prior performance year. The IRS stated that increased screening procedures were largely due to the passing of the Consolidated Appropriations Act of 2016. The new guidance was published on October 12, 2016, and subsequently, the IRS established a review board to review case information for award determination as it relates to the impact on the integrity of the IRS. The review board denied awards to 1,048 (80 percent) of the 1,308 employees considered.

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<sup>11</sup> An employee of the IRS is considered to be a member of a bargaining unit if his/her permanent position is represented by the exclusively recognized labor organization, the National Treasury Employees Union. Non-bargaining unit employees may be National Treasury Employees Union dues-paying members, but they have no statutory right to and are not entitled to National Treasury Employees Union representation in interviews.



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Employees who were disciplined at one-day suspension or higher and denied awards in FY 2017 had substantiated issues such as:

- Willful untimely return (§ 1203(b)(8)).
- Willful understated tax (§ 1203(b)(9)).
- Taxpayer contact without representative consent.
- Taxpayer abuse/harassment in a tax collection matter.
- Criminal misconduct.
- Failure to follow instructions/directives.
- Fighting, assault, or threats.
- Fraud or theft.
- Substance abuse.
- Unauthorized access to returns or return information.
- Unprofessional conduct.

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***Case Example – Taxpayer Abuse or Harassment***

*Three employees were denied awards in FY 2017 for substantiated conduct issues involving taxpayer abuse or harassment in a tax collection matter after receiving suspensions for their misconduct. Each employee received complaints of rude and unprofessional behavior toward taxpayers while on taxpayer calls.*

\*\*\*\*\*3\*\*\*\*\*  
\*\*\*\*\*3\*\*\*\*\*  
\*\*\*\*\*3\*\*\*\*\*  
\*\*\*\*\*3\*\*\*\*\*

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The Department of the Treasury requires that IRS management consider all misconduct<sup>12</sup> and discipline<sup>13</sup> during the 12-month period or relevant performance year, as appropriate, prior to the effective date of the award when determining whether to grant an award (performance or otherwise). In addition, the Consolidated Appropriations Acts of 2016 and 2017 prohibit the IRS from obligating or expending funds to make a payment to an employee under a bonus, award, or

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<sup>12</sup> The Department of the Treasury defines misconduct as any possible offense against the United States by an employee of the Treasury or any other individual working on behalf of the Treasury, including, but not limited to, bribery, fraud, perjury, conflict of interest, and misuse of funds, Government purchase or employee travel credit cards, equipment, or facilities. Serious misconduct as defined by Treasury policy states: “As a minimum, an employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct or other conduct prejudicial to the Government.”

<sup>13</sup> Treasury policy definition of discipline includes any one or a combination of the following actions: reprimand, suspension without pay, reduction in grade or pay, or removal.



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recognition program unless such program or process takes into account the conduct and Federal tax compliance of such employee. While the implemented screening procedures do not fully comply with the Department of the Treasury and Consolidated Appropriations Acts of 2016 and 2017 requirements by considering all misconduct and Federal tax compliance, the implemented screening procedures were a measurable improvement from the controls in place at the time of our prior report.

### ***Employees With Conduct and Federal Tax Compliance Issues Continued to Receive Awards***

Although the IRS has screening procedures in place to consider some employee conduct issues prior to award issuance, the screening does not capture all employee misconduct, discipline, and Federal tax noncompliance as required by Department of the Treasury policy and the Consolidated Appropriations Acts. While the majority of IRS employees receiving awards do not have conduct issues, we identified some with documented conduct and tax compliance issues who received awards. Specifically, we identified 26 employees with recent substantiated § 1203(b) violations, including willful tax noncompliance, who received awards in FY 2016 and FY 2017. We also found that, in FY 2016, the IRS issued more than \$1.1 million in awards and other recognition to 1,147 employees who were not screened per the IRS procedures that were in place at the time. Those employees had disciplinary or adverse actions ranging from admonishments to removal<sup>14</sup> within 12 months of the effective date of the award. In FY 2017, the IRS issued almost \$642,000 in awards to 815 employees who were not screened per IRS procedures and had received discipline ranging from admonishment to written reprimands for a tax or conduct matter within 12 months of the effective date of an award. Furthermore, the IRS did not screen employees with outstanding tax compliance issues that did not result in discipline prior to issuing awards. In addition to not reviewing all employees with conduct and tax compliance issues, we also found that the IRS Commissioner, or his designee, did not approve in writing and report to the Department of the Treasury as required awards provided to 357 employees in FY 2016 and 67 employees in FY 2017 who received suspensions of one day or more. Finally, we found that employees identified in a prior report as having conduct and tax compliance issues during the year prior to receiving awards received more than \$200,000 in awards during FY 2016 and FY 2017 after having another recent conduct or tax compliance issue.

### **Employees with § 1203(b) violations received awards**

The IRS's misconduct screening process did not capture all employees with substantiated § 1203(b) violations. Specifically, we identified 26 employees with substantiated § 1203(b) violations who received awards in FY 2016 and FY 2017. The IRS Restructuring and Reform Act of 1998 requires that employees with § 1203(b) violations are terminated from employment

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<sup>14</sup> We identified instances when an employee received an award after separating from the IRS.



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with the IRS unless mitigated by the Commissioner. However, these employees with § 1203(b) violations had their termination mitigated, received a lesser discipline, and received awards. Figure 3 illustrates the number of employees with § 1203(b) violations and those who were provided awards.

**Figure 3: Employees With § 1203(b) Violations in FY 2016 and FY 2017**

|              | Total Screened | Screened and Awarded | Not Screened and Awarded | Award Amount    |
|--------------|----------------|----------------------|--------------------------|-----------------|
| FY 2016      | 32             | 0                    | 10 <sup>15</sup>         | \$8,000         |
| FY 2017      | 87             | 16                   | *1*                      | \$14,000        |
| <b>Total</b> | <b>119</b>     | <b>16</b>            | <b>*1*</b>               | <b>\$22,000</b> |

Source: TIGTA analysis of IRS consideration data and award payouts rounded to the nearest thousand in FY 2016 and FY 2017.

In FY 2016, the IRS considered and denied awards to 32 employees with substantiated § 1203(b) violations; however, it issued almost \$8,000 in awards to 10 additional employees with substantiated § 1203(b) violations who were not considered as part of the IRS’s award screening process. In FY 2017, the IRS screened 87 employees but issued more than \$14,000 in awards to \*1\* employees with substantiated § 1203(b) violations. When determining the reasons as to why these employees received awards in FY 2016 and FY 2017, we identified the following causes:

- Award screening process weaknesses allowed employees with § 1203(b) violations to receive awards. The IRS’s screening process was designed to only deny awards to employees who had gone through the entire § 1203(b) review process. There are two steps in the § 1203(b) process. First, management makes a decision as to whether the employee had a willful violation. Second, a board of IRS executives and the IRS Commissioner decide whether employees found by management to have willful violations should be terminated or the penalty mitigated to a lesser discipline in order to retain the employee.<sup>16</sup> TIGTA found that 10 employees were given awards in FY 2017 when their § 1203(b) violation was determined willful by management but the final penalty decision had not been made by the IRS Commissioner. TIGTA also found that,

15 \*\*\*\*\*1\*\*\*\*\*  
 \*\*\*\*\*1\*\*\*\*\*  
 \*\*\*\*\*1\*\*\*\*\*

<sup>16</sup> To facilitate the mitigation decision-making process, the IRS Commissioner established the 1203 Review Board to identify § 1203 cases that may warrant mitigation. The 1203 Review Board examines all cases for which management determines there is a willful § 1203 violation. Cases that are recommended for mitigation go to the IRS Commissioner for a decision. Cases for which the 1203 Review Board does not recommend mitigation are returned to management to issue a decision to remove the employee. For further information, please see TIGTA, Ref. No. 2015-10-002, *Review of the Internal Revenue Service’s Process to Address Violations of Tax Law by Its Own Employees* (Apr. 2015).



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in some instances, employees were missed in the screening process and given awards because, even though the final penalty determination had been made by the IRS Commissioner, the Commissioner’s decision had not been recorded in the IRS system at the time of the screening. \*\*\*\*\*1\*\*\*\*\*

\*\*\*\*\*1\*\*\*\*\*. The Department of the Treasury policy specifies that, for cases in which an allegation of potentially serious misconduct is under investigation, bureaus may either deny an award or hold the award in abeyance pending the outcome of the investigation. TIGTA believes that employees found by management to have willful tax violations should not be provided awards regardless of whether the IRS Commissioner decides to terminate or retain the employee, and under no circumstances should employees with willful tax violations be provided awards after they leave the IRS.

- *Employees with consecutive year violations received awards.* It is the IRS’s practice to not deny an employee an award in consecutive years for the same violation, even in cases of serious misconduct that can take multiple years for a final agency decision on the disciplinary action. In FY 2016 and FY 2017, the IRS allowed 11 employees with § 1203(b) violations to receive awards because they had been denied an award in a previous consecutive year. Department of the Treasury policy specifies that IRS management shall consider any ongoing investigations, incidents of misconduct, or issuances of a decision to discipline within the applicable time period. The policy specifically notes that this action may result in postponement or denial of one or more awards in consecutive years, particularly in cases involving allegations of severe misconduct resulting in extensive investigations. Therefore, the IRS practice is contrary to the Department of the Treasury policy.

**Case Example – § 1203(b) Violation**

\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*  
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As a result of the ineffective processes used to identify employees with § 1203(b) violations and deny them awards, thousands of dollars were paid to employees with serious misconduct issues, including willful tax violations. Providing these awards to employees with conduct issues, especially those who fail to pay Federal taxes, appears to conflict with the IRS’s charge of ensuring the integrity of the system of tax administration. In addition, awards provided to these



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employees could be put to better use by providing additional opportunities for awards to employees who are compliant.

**Some employees with conduct issues were not screened prior to receiving awards**

Although IRS misconduct screening was expanded from employees with substantiated § 1203(b) violations in FY 2016 to employees with one-day suspensions or higher in FY 2017, other employees with conduct issues during those time periods were not screened and continued to receive awards. Specifically, in FY 2016, 1,147 employees with disciplines ranging from admonishment to removal were not screened per IRS procedures and received more than \$1.1 million in awards; in FY 2017, 815 employees with disciplines ranging from admonishment to written reprimand were not screened per IRS procedures and received almost \$642,000 in awards.

The Department of the Treasury requires that any misconduct be considered prior to approving awards. Furthermore, the Consolidated Appropriations Acts of 2016 and 2017 prohibit the IRS from obligating or expending funds to make a payment to an employee under a bonus, award, or recognition program unless such program or process takes into account the conduct and Federal tax compliance of such employee.

We judgmentally<sup>17</sup> selected seven employees who received an admonishment or reprimand for egregious misconduct within 12 months of receiving an award to illustrate why not screening these employees prior to giving them awards is problematic and contrary to the IRS's responsibility of ensuring the integrity of the tax system. The seven employees received \$5,429 in awards, and their misconduct was not considered by the IRS prior to award issuance. The employees received an admonishment or reprimand for substance abuse, unauthorized access to taxpayer information, and sexual misconduct.

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***Case Example – Unauthorized Access***

*Three employees who received \$2,501 in awards or other recognition in FY 2017 committed unauthorized access to their own or someone else's tax return information; each received reprimands. One employee accessed his or her own return information without authorization. One employee accessed a taxpayer's return information and orally supplied the information to a third-party taxpayer without authorization. The last employee accessed return information on behalf of another employee.*

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<sup>17</sup> A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.



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***Case Example – Substance Abuse***

*Two employees who received \$1,466 in awards or other recognition in FY 2017 committed a drug-related offense. Both employees were reprimanded for the possession of illegal drugs. One employee was found with marijuana at his or her desk. This employee admitted to purchasing marijuana from another employee and has had previous investigations by TIGTA for conduct matters. The other employee was found with marijuana in his or her vehicle on Government property after the employee was being investigated for the potential possession and transfer of a firearm on Federal property.*

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***Case Example – Sexual Misconduct***

*Two employees who received \$1,462 in awards or other recognition in FY 2017 committed sexual misconduct by making unwanted physical contact with another employee during work hours. One employee received a reprimand, and the other received an admonishment for misconduct.*

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These case examples illustrate why misconduct screening that does not include all categories of disciplinary actions places the IRS's integrity at risk when it spends appropriated funds on awarding employees who were disciplined for conduct or Federal tax compliance issues.

***The screening process was not designed to capture employees with outstanding Federal tax compliance issues that did not result in discipline***

We found that the IRS misconduct screening process did not consider employees who were not disciplined for their tax compliance issues in the prior performance year. The Consolidated Appropriations Acts of 2016 and 2017 prohibit the IRS from obligating or expending funds to make a payment to an employee under a bonus, award, or recognition program unless such program or process takes into account the conduct and Federal tax compliance of such employee. However, as part of our review, we identified employees who were in a noncompliant tax status of currently not collectible<sup>18</sup> or failure to pay or who had Federal tax liens at the time of their award issuance. These three tax compliance issues are just examples of the numerous ways a taxpayer can be in a noncompliant status. We judgmentally selected six employees who received almost \$7,000 in awards without the IRS reviewing their tax compliance status prior to award issuance. These employees were not disciplined in the prior performance year for their noncompliant tax status despite having almost \$65,600 in outstanding tax balances on their tax

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<sup>18</sup> Currently not collectible is a tax status in which the IRS agrees the taxpayer cannot satisfy his or her tax obligation. In these cases, the IRS normally ceases collection efforts.





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higher than the recommending official. The Department of the Treasury also requires that a report be provided by December 15 of each year detailing each form of monetary recognition granted at the suspension or higher level along with a copy of the disciplinary action, the justification for the award, the amount of the award or salary increase, and the name of the employee. Although for FY 2017 awards the IRS established a review board, the final approvals of the awards were not signed by the Commissioner, and the IRS did not provide documentation of delegation of the approval from the Commissioner to the review board. Finally, the IRS did not report in FY 2016 or FY 2017 awards made to employees with suspensions. Specifically, the IRS did not report to the Department of the Treasury, as required, the 357 employees in FY 2016 or the 67 in FY 2017 who received almost \$362,000 in awards and were disciplined at the suspension or higher level. We asked Department of the Treasury officials whether the IRS was exempt from the reporting requirements and were told by the officials that the IRS was not exempt from the directives in the Department of the Treasury policy.

**Employees identified in a prior TIGTA report had repeat offenses of conduct and Federal tax noncompliance and received awards**

We found that employees identified in TIGTA's previously discussed report continued to be disciplined for tax and conduct issues in FYs 2016 and 2017 and continued to receive awards, which further emphasizes the need for an effective screening process to prevent awards from being made to employees with repeated misconduct. Our prior report found that, with few exceptions, between October 1, 2010, and December 31, 2012, the IRS did not consider Federal tax compliance or other misconduct when issuing performance awards or most other types of awards. We found that 159 employees<sup>20</sup> identified in the prior TIGTA audit were also disciplined within 12 months of receiving an award in FYs 2016 and/or 2017. These 159 employees identified in the prior audit received more than \$239,000 in awards during the current review after receiving another disciplinary action during the 12 months prior to receiving their award. While there is not a specific requirement for the IRS to treat repeat offenders differently, issuing awards to employees who are repeatedly disciplined for conduct or Federal tax compliance issues appears to conflict with the IRS's charge of ensuring the integrity of the system of tax administration.

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<sup>20</sup> There are seven employees who overlap between FY 2016 and FY 2017, indicating that they received an award in both periods and were disciplined within 12 months of each award.



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## **Recommendations**

The Human Capital Officer should:

**Recommendation 1:** Expand misconduct screening to consider employees with any level of disciplinary action prior to issuing awards.

**Management's Response:** The Human Capital Officer agreed with the recommendation and stated that the IRS would assess the resource needs and timeline to integrate the screening of all disciplinary actions.

**Recommendation 2:** Examine the Federal tax compliance status of all employees before issuing awards.

**Management's Response:** The Human Capital Officer agreed with the recommendation and stated that the IRS would assess the resource needs and timeline to expand its tax compliance review process to prohibit the receipt of awards for employees with Federal tax noncompliance issues.

**Recommendation 3:** Implement the Department of the Treasury policies on awards for employees with conduct issues by:

- Issuing a report to the Deputy Secretary of Human Resources and Chief Human Capital by December 15 each year detailing each form of monetary recognition granted to an employee who engaged in misconduct that warranted a suspension or higher penalty along with a copy of the relevant disciplinary action (to include the proposal and final decision), the justification for the monetary recognition, the amount of the award, and the name of the employee.
- Having the IRS Commissioner, or an official designated by the Commissioner (who must be at least one level higher than the recommending official), approve any requests to grant monetary recognition to any employee involved in misconduct that warranted a suspension or higher penalty within the applicable time period.

**Management's Response:** The Human Capital Officer agreed with the recommendation. Specifically, the IRS agreed to issue a report to the Department of the Treasury each year, on December 15, detailing each form of monetary recognition paid out to employees who engaged in misconduct that warranted a suspension or higher penalty. The IRS stated that it had issued said report on December 15, 2017, for awards issued in FY 2017. In addition, the IRS stated that the Human Capital Officer would obtain the written delegation from the Commissioner required to approve monetary recognition to any employee involved in misconduct that warranted a suspension or higher penalty.



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## Appendix I

### *Detailed Objectives, Scope, and Methodology*

The overall objectives of this review were to determine whether employees received an award within 12 months of being disciplined for a conduct or Federal tax compliance issue and to evaluate whether employee conduct and Federal tax compliance was considered when issuing awards. To accomplish these objectives, we:

- I. Determined whether the IRS took into account the conduct and Federal tax compliance of employees prior to issuing employee awards.
  - A. Obtained a list of all awards paid to IRS employees in FY<sup>1</sup> 2016 through the first quarter of FY 2017.
  - B. Obtained an extract of the Automated Labor and Employee Relations Tracking System (ALERTS) database. We determined that the data were reliable for our purpose by validating a select number of fields within the overall data as well as tracing and verifying a random sample of 30 records to the live ALERTS database.
  - C. Evaluated the actions the IRS took to consider employee conduct and Federal tax compliance prior to issuing awards.
- II. Determined whether any employees received an award within 12 months of being disciplined for a conduct or Federal tax compliance issue.<sup>2</sup>
  - A. Matched the listing of IRS employees receiving an award to the ALERTS extract to identify any employees who were subject to disciplinary action for a conduct issue during the prior 12 months.
  - B. Matched the listing of IRS employees receiving an award to the ALERTS extract to identify any employees who were subject to disciplinary action for a Federal tax compliance issue during the prior 12 months.
  - C. Summarized the population of employees who received an award within 12 months of being subject to discipline by the type, frequency, and penalty for misconduct, and documented whether the employees have had conduct issues in prior fiscal years.

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<sup>1</sup> A fiscal year is 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.

<sup>2</sup> The law does not provide a definition of disciplinary action; however, for this review, we used the IRS's definition, which is action that ranges from a letter of admonishment to removal.



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D. Judgmentally<sup>3</sup> sampled seven cases involving employees who received an award within 12 months of being subject to disciplinary action of admonishment or reprimand for conduct or Federal tax compliance issues in order to illustrate examples of misconduct that the IRS misconduct screening does not consider prior to issuing awards. We also judgmentally selected six cases involving employees who were not disciplined and had Federal tax noncompliance in the form of outstanding tax liabilities due to failure to pay account statuses, liens on the taxpayer accounts, or accounts in currently not collectible status.

**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: public law;<sup>4</sup> Department of the Treasury directives; and IRS policies, procedures, and practices for administering the employee award program. We evaluated these controls by interviewing IRS personnel responsible for the awards program, reviewing applicable documentation, testing the effectiveness of the program, and analyzing selected employee awards.

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<sup>3</sup> A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.

<sup>4</sup> *Consolidated Appropriations Act of 2016*, Pub. L. 114-113 (2015).



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## **Appendix II**

### *Major Contributors to This Report*

Gregory D. Kutz, Assistant Inspector General for Audit (Management Services and Exempt Organizations)

Jonathan T. Meyer, Director

Deanna G. Lee, Audit Manager

Antonina A. Hill, Lead Auditor

Gene A. Luevano, Senior Auditor

Lara E. Phillippe, Senior Auditor



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## **Appendix III**

### *Report Distribution List*

Commissioner  
Office of the Commissioner – Attn: Chief of Staff  
Deputy IRS Human Capital Officer  
Director, Office of Audit Coordination



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## **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:**

- Inefficient Use of Resources – Potential; \$1,790,027 in awards to 1,962 employees with disciplinary or adverse actions during the 12 months prior to award issuance (see page 6).

#### **Methodology Used to Measure the Reported Benefit:**

We obtained data on awards paid out to IRS employees in FY<sup>1</sup> 2016 and the first quarter of FY 2017. We identified IRS employees who were disciplined with a disciplinary action or adverse action and issued an award during our period of review but were not included in the IRS's screening process. According to IRS data, in FY 2016, the IRS issued \$1,148,140 in awards to 1,147 employees who were not captured by the screening procedures. Those employees had disciplinary or adverse actions ranging from admonishments to removal within 12 months of the effective date of the award. In FY 2017, the IRS issued \$641,887 in awards to 815 employees who were not screened and had received discipline ranging from admonishment to written reprimands for a tax and/or conduct matter within 12 months of the effective date of an award.

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<sup>1</sup> A fiscal year is 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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**Appendix V**

*Management's Response to the Draft Report*



HUMAN CAPITAL OFFICE

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

February 7, 2018

MEMORANDUM FOR MICHAEL E. MCKENNEY  
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM:

Katherine M. Coffman *Katherine M. Coffman*  
IRS Human Capital Officer

SUBJECT:

Draft Audit Report – *The Internal Revenue Service Has Implemented Some Screening Procedures, but Employees with Recent Tax and Conduct Issues Continue to Receive Awards*, TIGTA #201710013

Thank you for the opportunity to review the draft report, *The Internal Revenue Service Has Implemented Some Screening Procedures, but Employees with Recent Tax and Conduct Issues Continue to Receive Awards*, TIGTA #201710013, dated November 8, 2017. The IRS takes conduct issues very seriously. The IRS conducts reviews and misconduct screenings for granting awards and high-level recognition. As a part of this, the IRS has increased its review of awards since 2014, and continues to make improvements.

The IRS will assess and ensure our program's compliance with the Department of the Treasury's (Treasury) *2014 Monetary Recognition and Employee Misconduct (Non-Senior Executive Service (SES)) Policy*. Our current policy requires awards to be withheld if an employee's misconduct is determined to "impact the integrity of the Service," and due to the importance of this issue, we have established a panel of Executives to ensure compliance with policy.

The IRS also reviews all misconduct through our disciplinary process, addressing each incident and applying the appropriate level of discipline. In addition to the IRS' non-SES awards misconduct program examined in TIGTA #201710013, we employ a *Misconduct Policy and Procedures for High Level Employees*, issued in March 2014, which links awards to conduct for high-level employees.

The Consolidated Appropriations Act (Pub. L. 114-113) (the "Act") requires that the IRS "take into account" the conduct and Federal tax compliance of employees and former employees in the awards and recognition process. We will expand our screening



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procedures to include employees with any level of discipline and Federal tax noncompliance issues prior to issuing awards.

Regarding TIGTA's Recommendation #1, we agree, and are taking actions to determine the resource needs and the timeline to integrate the screening of all disciplinary actions.

With respect to TIGTA's Recommendation #2, we agree, and we are taking actions to determine the resource needs and the timeline to expand our tax compliance review process to prohibit the receipt of awards for Federal tax noncompliance issues.

Additionally, in accordance with TIGTA's Recommendation #3, the IRS agrees to issue a report to Treasury by December 15 each year, detailing each form of monetary recognition paid out to employees who engaged in misconduct that warranted a suspension or higher penalty. In compliance with TIGTA's Recommendation, we issued the report to Treasury on December 15, 2017 for the awards issued in FY 2017.

The IRS understands the importance of withholding awards from employees whose conduct is deemed to impact the integrity of the Service, and/or who have a tax compliance issue, regardless of the level of discipline imposed.

Attached is a detailed response outlining the Corrective Actions that the IRS agrees to take to address TIGTA's recommendations to continue to improve our awards misconduct program. If you have any questions, please contact me at 202-317-4387, or a member of your staff may contact Debra Popoli, Director, Worklife Benefits & Performance, at 202-744-0387.

Attachment



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3

Attachment

**RECOMMENDATION 1:**

**Expand misconduct screening to consider employees with any level of disciplinary action prior to issuing awards.**

**CORRECTIVE ACTION(S):** The Human Capital Officer agrees and will assess the resource needs and the timeline to integrate the screening of all disciplinary actions.

**IMPLEMENTATION DATE:**

COMPLETED: \_\_\_\_\_ PROPOSED: January 15, 2019

**RESPONSIBLE OFFICIAL(S):** Director, Workforce Relations Division

**CORRECTIVE ACTION(S) MONITORING PLAN:**

We will enter accepted Corrective Actions into the Joint Audit Management Enterprise System (JAMES), monitor progress towards completion on a monthly basis, and upload supporting documentation into JAMES with Form 13872 *Planned Corrective Action (PCA) Status Update for TIGTA/GAO/MW/SD/TAS/REM*.

**RECOMMENDATION 2: Examine the Federal tax compliance status of all employees before issuing awards.**

**CORRECTIVE ACTION(S):** The Human Capital Officer agrees and will assess the resource needs and the timeline to expand its tax compliance review process to prohibit the receipt of awards for Federal tax noncompliance issues.

**IMPLEMENTATION DATE:**

COMPLETED: \_\_\_\_\_ PROPOSED: January 15, 2019

**RESPONSIBLE OFFICIAL(S):** Director, Workforce Relations Division

**CORRECTIVE ACTION(S) MONITORING PLAN:**

We will enter accepted Corrective Actions into the Joint Audit Management Enterprise System (JAMES), monitor progress towards completion on a monthly basis, and upload supporting documentation into JAMES with Form 13872 *Planned Corrective Action (PCA) Status Update for TIGTA/GAO/MW/SD/TAS/REM*.

**RECOMMENDATION 3: Implement the Department of the Treasury policies on awards for employees with conduct issues by:**

- Issuing a report to the Deputy Secretary of Human Resources and Chief Human Capital by December 15 each year detailing each form of monetary



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recognition granted to an employee who engaged in misconduct that warranted a suspension or higher penalty along with a copy of the relevant disciplinary action (to include the proposal and final decision), the justification for the monetary recognition, the amount of the and the name of the employee.

- Having the IRS Commissioner, or an official designated by the Commissioner (who must be at least one level higher than the recommending official), approve any requests to grant monetary recognition to any employee involved in misconduct that warranted a suspension or higher penalty within the applicable time period.

**CORRECTIVE ACTION(S):** The IRS Human Capital Officer agrees with Recommendation #3.

With respect to the second part of this Recommendation, the IRS Human Capital Officer agrees to obtain a written delegation from the IRS Commissioner to memorialize this delegation.

**IMPLEMENTATION DATE:**

COMPLETED: \_\_\_\_\_ PROPOSED: December 15, 2017, as to the Treasury Report; March 15, 2018, as to the written delegation authority.

**RESPONSIBLE OFFICIAL(S):** Director, Workforce Relations Division

**CORRECTIVE ACTION(S) MONITORING PLAN:**

We will enter accepted Corrective Actions into the Joint Audit Management Enterprise System (JAMES), monitor progress towards completion on a monthly basis, and upload supporting documentation into JAMES with Form 13872 *Planned Corrective Action (PCA) Status Update for TIGTA/GAO/MW/SD/TAS/REM*.