



*Fiscal Year 2019 Statutory Audit of
Compliance With Legal Guidelines
Prohibiting the Use of Illegal Tax Protester
and Similar Designations*

July 25, 2019

Reference Number: 2019-30-045

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

Redaction Legend:

1 = Tax Return/Return Information

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HIGHLIGHTS

FISCAL YEAR 2019 STATUTORY AUDIT OF COMPLIANCE WITH LEGAL GUIDELINES PROHIBITING THE USE OF ILLEGAL TAX PROTESTER AND SIMILAR DESIGNATIONS

Highlights

Final Report issued on July 25, 2019

Highlights of Reference Number: 2019-30-045 to the Commissioner of Internal Revenue.

IMPACT ON TAXPAYERS

Congress enacted the IRS Restructuring and Reform Act of 1998 (RRA 98) Section 3707 to prohibit the IRS from labeling taxpayers as Illegal Tax Protesters or any similar designations. Using Illegal Tax Protester or other similar designations may stigmatize taxpayers and may cause employee bias in future contacts with these taxpayers.

WHY TIGTA DID THE AUDIT

Congress enacted the prohibition against Illegal Tax Protester designations due to a concern that some taxpayers were being permanently labeled as Illegal Tax Protesters, even though they had subsequently become compliant with the tax laws. TIGTA is required to annually evaluate IRS compliance with the prohibition against using Illegal Tax Protester or similar designations.

The purpose of this audit was to determine whether the IRS complied with RRA 98 Section 3707 and its own internal guidelines that prohibit IRS officers and employees from referring to taxpayers as Illegal Tax Protesters or any similar designations.

WHAT TIGTA FOUND

The IRS has not reintroduced past Illegal Tax Protester codes or similar designations on taxpayer accounts. However, in reviewing the narrative data entered for approximately 54.7 million records in the Account Management Services system, TIGTA found instances in which six employees referred to taxpayers as Illegal Tax Protester or similar designations.

TIGTA's review of the Criminal Investigation Management Information System also identified the use of Illegal Tax Protester in three instances.

WHAT TIGTA RECOMMENDED

Although TIGTA made no recommendations in this report, IRS officials were provided an opportunity to review the draft report and did not provide any comments.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

July 25, 2019

MEMORANDUM FOR COMMISSIONER OF INTERNAL REVENUE

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Fiscal Year 2019 Statutory Audit of Compliance With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and Similar Designations (Audit # 201930006)

This report presents the results of our review to determine whether the Internal Revenue Service (IRS) complied with the IRS Restructuring and Reform Act of 1998 (RRA 98) Section 3707 and internal IRS guidelines that prohibit IRS officers and employees from referring to taxpayers as “illegal tax protesters” (Illegal Tax Protesters) or any similar designations.¹ The Treasury Inspector General for Tax Administration is required under Internal Revenue Code Section 7803(d)(1)(A)(v) to annually evaluate the IRS’s compliance with the provisions of RRA 98 Section 3707. This audit is included in our Fiscal Year 2019 Annual Audit Plan and addresses the major management challenge of Protecting Taxpayer Rights.

Although we made no recommendations in this report, we provided IRS officials an opportunity to review the draft report. IRS management did not provide us with any report comments.

If you have any questions, please contact me or Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations).

¹ Pub. L. No. 105-206, 112 Stat. 685.



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Abbreviations

AMS	Accounts Management Services
CIMIS	Criminal Investigation Management Inventory System
IRS	Internal Revenue Service
RRA 98	Restructuring and Reform Act of 1998 Section
TIGTA	Treasury Inspector General for Tax Administration



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Background

The Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98) Section (§) 3707 prohibits the IRS from using Illegal Tax Protester or any similar designations.¹ In addition, the law requires the removal of all existing Illegal Tax Protester codes from the Master File and instructs IRS employees to disregard any such designation located on databases other than the Individual Master File.²

TIGTA is required to annually evaluate IRS compliance with the prohibition against using Illegal Tax Protester or any similar designations

Prior to enactment of the RRA 98, the IRS used the Illegal Tax Protester Program to identify individuals and businesses that were using methods that were not legally valid to protest the tax laws. IRS employees identified taxpayers for referral to the Program when their tax returns or correspondence contained specific indicators of noncompliance with the tax law, such as the use of arguments that had been repeatedly rejected by the courts. There were tax protester coordinators who were responsible for determining whether a taxpayer should be included in the Illegal Tax Protester Program. If a taxpayer was classified as an Illegal Tax Protester, the taxpayer's record was coded as such on the Master File. Once a taxpayer's account was coded, certain tax enforcement actions were accelerated. The designation was also intended to alert employees to be cautious so they would not be drawn into confrontations with taxpayers.

Congress was concerned that some taxpayers were being permanently labeled and stigmatized by the Illegal Tax Protester designation. The concern was that this label could bias IRS employees and result in unfair treatment of the taxpayer. Internal Revenue Code § 7803(d)(1)(A)(v) requires the Treasury Inspector General for Tax Administration (TIGTA) to annually evaluate IRS compliance with the prohibition against using the Illegal Tax Protester or any similar designations. This is our twenty-first review since Fiscal Year 1999. These reviews have identified areas for improvement to help the IRS comply with the Illegal Tax Protester designation prohibition.

To conduct this audit, TIGTA reviews the Individual Master File and related systems annually, as required by the RRA 98, and each year TIGTA additionally selects other IRS systems for review on a periodic basis. This year we focused on the Accounts Management Services (AMS) system and Criminal Investigation Management Inventory System (CIMIS).

This review was performed with information obtained from electronic files accessed through the TIGTA network as well as with information obtained from the Small Business/Self-Employed

¹ Pub. L. No. 105-206, 112 Stat. 685.

² See Appendix VI for a glossary of terms.



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Division in New Carrollton, Maryland; the Wage and Investment Division in Atlanta, Georgia; and the Criminal Investigation Division in Washington, D.C., during the period November 2018 through April 2019. This performance audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.



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Results of Review

Illegal Tax Protester Codes Were Not Used on the Master File

Prior to enactment of the RRA 98, the IRS used Illegal Tax Protester indicators on the Master File to accelerate enforcement activity for taxpayers whose tax returns or correspondence contained specific indicators of noncompliance with the tax law, such as the use of arguments repeatedly rejected by the courts. These indicators were also intended to alert employees to be cautious and that they might encounter problems when dealing with specific nonfilers and delinquent taxpayers.

Congress was concerned about the use of the Illegal Tax Protester designation because:

- Taxpayers were labeled as Illegal Tax Protesters without regard to their filing obligations or compliance.
- Illegal Tax Protester indicators were not always reversed when taxpayers became compliant with their tax obligations.

Section 3707 of the RRA 98 required the IRS to remove the existing Illegal Tax Protester designations from taxpayers' accounts on the Master File beginning January 1, 1999.

In prior reviews, TIGTA reported that the IRS had removed these designation codes from the Master File as required by the law. Based on our analysis of approximately 1.3 million taxpayer records that had been coded for accelerated collection activity, the IRS has not reintroduced Illegal Tax Protester codes on the Master File. The law also prohibits using any designation similar to Illegal Tax Protester.

In a Few Instances, Employees Used Illegal Tax Protester or Similar Designations in Case Narratives or Case Review Comments

Our review of IRS records included data from the AMS system, as it incorporates information from multiple IRS functions and may be accessed by more than 32,000 users from 21 different IRS functions. We also reviewed data from the CIMIS which has approximately 2,000 users.

Our review found six uses of Illegal Tax Protester or similar designations in the AMS system. We also identified three instances of the use of Illegal Tax Protester designations within the CIMIS that were entered by management personnel as part of their comments during three closed case reviews.

In Fiscal Year 2018, we reviewed the AMS system for nonfiler contacts because the Automated Collection System, which we normally reviewed for this purpose, uploaded case history and



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narrative to the AMS system.³ During that review, we also noted the significant amount of information being consolidated from multiple IRS systems into the AMS system. As a result, we expanded our AMS system review this year and did not limit it to nonfiler contacts. A list of functions that have access to the AMS system and the number of employees with access is provided in Appendix IV.

We analyzed AMS system records for use of Illegal Tax Protester and other similar designations in case narratives. We identified six specific instances, in which six separate employees improperly labeled taxpayers as an Illegal Tax Protester or other similar designation, as prohibited by law. Although the improper designations were identified as part of the AMS system, the narratives included references from employees in different functions. See Figure 1 for details on the functions with identified exceptions.

Figure 1: Source of Improper Designations in the AMS System

Computer System	Total Designations	Originating Function of Improper Designation	
		Accounts Management	Collection
AMS	6	*1*	*1*

Source: Case narratives found on the AMS system during this review.

The number of employees we have found improperly labeling taxpayers within the AMS system has declined since our Fiscal Year 2018 review when we identified nine employees improperly labeling taxpayers. We also identified nine employees during our Fiscal Year 2017 review.⁴ In Fiscal Year 2017, we recommended that the IRS should emphasize the importance of complying with RRA 98 § 3707 when using the AMS system. In response to this recommendation, IRS management stated that they had emphasized to all employees with access to the AMS system the importance of compliance with § 3707 and reinforced that taxpayers are not to be referred to as Illegal Tax Protesters or any other similar designations.

We also reviewed more than 47,000 records from the CIMIS that included documented remarks from the allegation and case review sections of the system. During our review, we found three references to Illegal Tax Protester. Although these are relatively few instances and these references were made as part of a closed case review, we are concerned that these labels would be used by management personnel. Criminal Investigation’s management personnel have

³ TIGTA, Ref. No. 2018-30-056, *Fiscal Year 2018 Statutory Audit of Compliance With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and Similar Designations* (Aug. 2018).

⁴ TIGTA, Ref. No. 2017-30-059, *Fiscal Year 2017 Statutory Audit of Compliance With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and Similar Designations* (Aug. 2017).



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influence that may extend beyond an electronic case file as they are responsible for overseeing multiple staff and may work directly with other law enforcement agencies.

TIGTA believes that IRS officers and employees should not label taxpayers as Illegal Tax Protesters or other similar designations in any records, which include paper and electronic case files. Officers and employees should not designate taxpayers as such because a designation alone contains a negative connotation and appears to label the taxpayer.

In response to prior report findings, IRS management continues to reinforce its policy by issuing alerts to employees and ensuring that Internal Revenue Manual updates retain reminders to employees regarding the prohibition on the use of Illegal Tax Protester or other similar designations when accessing taxpayer accounts.⁵ It is important that the IRS ensure that management personnel are aware of these prohibitions to ensure that inappropriate designations are not perpetuated and to decrease the chances that they may influence the objectivity of other employees.

Management actions

After we brought the above exceptions to Criminal Investigation's attention, management posted a notification on their intranet website reminding employees of the prohibition surrounding the use of the term Tax Protestor, as well as similar designations, within the CIMIS as well as in any document authored, or public statement made, by any Criminal Investigation employee.

Alternative Methods Are in Place to Address Tax Compliance Issues With Taxpayers Who Protest the Legality of Income Taxes

Some taxpayers engage in certain behaviors to delay or obstruct the tax administration process. The IRS must address these behaviors through enforcement actions. For example, some taxpayers submit frivolous tax returns or make other frivolous submissions as part of their attempt to avoid their tax obligations. Other taxpayers do not file tax returns as required, and some taxpayers make threats against IRS employees. The IRS has programs to identify and address these situations. These include:

- The Frivolous Return Program that handles taxpayers who file tax returns based on some type of frivolous argument that justifies payment of little or no income tax. This includes filing a tax return that claims no income using the rationale that paying taxes is voluntary or the taxpayer claims to be a citizen of a State but not a citizen of the United States.⁶
- The Nonfiler Program that handles taxpayers who fail to file their required tax returns.

⁵ TIGTA, Ref. No. 2017-30-059, *Fiscal Year 2017 Statutory Audit of Compliance With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and Similar Designations* (Aug. 2017).

⁶ I.R.C. § 6702.



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- The Potentially Dangerous Taxpayer/Caution Upon Contact Program that handles taxpayers who have assaulted or threatened IRS employees.

These programs address specific taxpayer behavior with appropriate enforcement actions, and the terminology associated with the taxpayer behavior is not assigned to the taxpayers on a permanent basis, as was the case with the use of the Illegal Tax Protester terminology.



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Appendix I

Detailed Objective, Scope, and Methodology

The objective of this review was to determine whether the IRS complied with RRA 98 § 3707 and internal IRS guidelines that prohibit IRS officers and employees from referring to taxpayers as Illegal Tax Protesters or any similar designations.¹ To accomplish the objective, we:

- I. Determined if the Illegal Tax Protester codes on the Master File were removed by reviewing all tax accounts coded for accelerated collection activity as of September 30, 2018, on the Business Master File and Individual Master File.² We analyzed 1,245,532 Master File records that had been coded for accelerated collection activity.³

We also matched our historic computer extract of approximately 55,000 taxpayers designated as Illegal Tax Protesters before the RRA 98 was enacted to the records that had been coded for accelerated collection activity to determine if any new common codes were being used to classify the taxpayers as Illegal Tax Protesters.

- II. Determined if employees were using Illegal Tax Protester or any similar designations within the Activity Code field on the Taxpayer Information File by securing a copy of the database and analyzed 55,785 open records with activity between October 1, 2017, and September 30, 2018.
- III. Determined if the IRS is using any Frivolous Return Program codes as replacements for Illegal Tax Protester designations by reviewing guidance provided for the Frivolous Return Program and interviewing its Program Coordinator.
- IV. Determined if there is any relationship between Illegal Tax Protester designations and the Potentially Dangerous Taxpayer/Caution Upon Contact indicator use on the Master File by reviewing guidance provided for the Potentially Dangerous Taxpayer/Caution Upon Contact Program and interviewing its Program Coordinator.
- V. Determined if the IRS Nonfiler Program complies with the provisions established by RRA 98 § 3707(b) by reviewing guidance provided for the Nonfiler Program and interviewing its program coordinators.

¹ Pub. L. No. 105-206, 112 Stat. 685.

² See Appendix VI for a glossary of terms.

³ A Transaction Code 148 causes the accelerated issuance of a Taxpayer Delinquency Investigation or Taxpayer Delinquent Account.



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- VI. Determined if IRS employees were using the Illegal Tax Protester or any similar designations within taxpayer case narratives on the AMS system by securing a copy of the database and analyzing 54,746,779 records as of September 30, 2018, with history action dates between October 1, 2017, and September 30, 2018.
- VII. Determined if IRS Criminal Investigation employees were using the Illegal Tax Protester or any similar designations within taxpayer case narratives on the CIMIS by securing a copy of the database and analyzing 47,980 records as of September 30, 2018, with history action dates between October 1, 2017, and September 30, 2018.

Validity and reliability of data from computer-based systems

Unless otherwise noted, our limited tests of the reliability of data obtained from various IRS systems did not identify any errors. We tested the reliability of the data by scanning the data received for blank, incomplete, illogical, or improper data. We compared the information in a judgmental sample of records for the Business Master File, Individual Master File, Taxpayer Information File, and AMS system to IRS source data on the Integrated Data Retrieval System to ensure data accuracy. In addition, we validated a judgmental sample of electronic data files from the CIMIS to the Integrated Data Retrieval System as well as to electronic case files to ensure data accuracy.

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: controls that ensure the reliability of the data used for our analysis. During our review, we tested the validity of the data used for our analyses against selected IRS data, but we did not perform any specific testing of data input controls. However, it should be noted that data from these same systems were used during prior audits of Illegal Tax Protester designations, and no significant data issues were identified.



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Appendix II

Major Contributors to This Report

Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations)
Glen J. Rhoades, Director
Curtis J. Kirschner, Audit Manager
Daniel E. O'Keefe, Lead Audit Evaluator



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Appendix III

Report Distribution List

Commissioner, Small Business/Self-Employed Division
Commissioner, Wage and Investment Division
Chief, Criminal Investigation Division
Chief Information Officer
Director, Accounts Management, Wage and Investment Division
Director, Office of Audit Coordination



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Appendix IV

*Breakdown of Accounts Management Services
System Users and Functions*

Business Operating Division/Function	User Count
Automated Collection System	2,959
Collection Appeals Program	510
Automated Trust Fund Recovery	3,413
Automated Under Reporter	1,078
Customer Assistance Relationships and Education	1,260
Customer Account Services	16,349
Chief Council	31
Criminal Investigation	2,113
Compliance Services Collection Operations	1,689
Accounts Management System	219
Examination	2,146
Field Examination	8
Large Business and International	88
Office of Professional Responsibility	4
Privacy Governmental Liaison and Disclosure	44
Return Integrity and Compliance Services	356
Return Preparer Office	4
Submission Processing	999
Taxpayer Advocate Service	1,127
Tax Exempt and Government Entities	32
Treasury Inspector General for Tax Administration	32
Total Users	32,562

Source: AMS system users by business operating division or function as provided by the IRS.



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Appendix V

*Recent Audit Reports Related to This
Statutory Review*

TIGTA, Ref. No. 2010-30-073, *Fiscal Year 2010 Statutory Audit of Compliance With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and Similar Designations* (July 2010).

TIGTA, Ref. No. 2011-30-040, *Fiscal Year 2011 Statutory Audit of Compliance With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and Similar Designations* (Apr. 2011).

TIGTA, Ref. No. 2012-30-066, *Fiscal Year 2012 Statutory Audit of Compliance With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and Similar Designations* (June 2012).

TIGTA, Ref. No. 2013-30-085, *Fiscal Year 2013 Statutory Audit of Compliance With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and Similar Designations* (Aug. 2013).

TIGTA, Ref. No. 2014-30-060, *Fiscal Year 2014 Statutory Audit of Compliance With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and Similar Designations* (Aug. 2014).

TIGTA, Ref. No. 2015-30-067, *Fiscal Year 2015 Statutory Audit of Compliance With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and Similar Designations* (Aug. 2015).

TIGTA, Ref. No. 2016-30-087, *Fiscal Year 2016 Statutory Audit of Compliance With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and Similar Designations* (Sept. 2016).

TIGTA, Ref. No. 2017-30-059, *Fiscal Year 2017 Statutory Audit of Compliance With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and Similar Designations* (Aug. 2017).

TIGTA, Ref. No. 2018-30-056, *Fiscal Year 2018 Statutory Audit of Compliance With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and Similar Designations* (Aug. 2018).



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Appendix VI

Glossary of Terms

Term	Definition
Accounts Management Services	A web-based system that provides a common user interface that allows users to update taxpayer accounts, view history and comments from other systems, and access a variety of case processing tools.
Accounts Management	Employees responsible for taxpayer relations by answering tax law/account inquiries, adjusting tax accounts, providing taxpayers with information on the status of their returns/refunds, and resolving the majority of issues and questions to settle their accounts.
Activity Code	A code that identifies the type and condition of returns selected for audit.
Business Master File	The IRS database that consists of Federal tax-related transactions and accounts for businesses. These include employment taxes, income taxes on businesses, and excise taxes.
Criminal Investigation (CI)	CI investigates potential criminal violations of the Internal Revenue Code and related financial crimes. CI plays an integral role in developing and implementing the IRS National Compliance Strategy and it interacts with the portion of the American public that willfully and intentionally violates their known legal duty of voluntarily filing income tax returns or paying their income tax due. This population segment includes individuals and businesses that attempt to evade taxes on earned income from legal sources as well as those individuals or businesses that launder funds obtained through illegal activities. Throughout the case development and prosecution phases, CI works closely with Chief Counsel. CI also collaborates with U.S. Attorneys, the Department of Justice Tax Division, and other law-enforcement agencies to develop and prosecute cases. CI has a senior management team consisting of the Chief, Deputy Chief Criminal Investigation, a Project Director, three Field Operations Directors, Directors of International Operations, Strategy, Operations Policy, and Support, Refund



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Term	Definition
	Crimes, Technology Operations and Investigative Services, and Communications and Education, as well as an Associate Director for Equity, Diversity and Inclusion.
Criminal Investigation Management Information System	Database that tracks the status and progress of criminal investigations and the time expended by special agents. It is also used as a management tool that provides the basis for decisions of both local and national scope.
Fiscal Year	A 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.
Individual Master File	The IRS database that maintains transactions or records of individual tax accounts.
Integrated Data Retrieval System	A computer system capable of retrieving or updating stored information; it works in conjunction with a taxpayer's account records.
Internal Revenue Code	Federal tax law enacted by Congress in Title 26 of the United States Code.
Master File	The IRS database that stores various types of taxpayer account information. This database includes individual, business, and employee plans and exempt organizations data.
Taxpayer Delinquency Investigation	An unfiled tax return for a taxpayer. One Taxpayer Delinquency Investigation exists for all unfiled tax periods for a specific taxpayer.
Taxpayer Delinquent Account	A balance due account of a taxpayer. A separate Taxpayer Delinquent Account exists for each balance due tax period.
Taxpayer Information File	A file containing entity and tax data processed at a given campus for all Taxpayer Identification Numbers.
Transaction Code	A three-digit code used to identify transactions being taken on a taxpayer's account.