

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



Existing Controls Did Not Prevent Unauthorized Disclosures and Case Documentation Issues in Appeals Trust Fund Recovery Penalty Cases

August 12, 2020

Reference Number: 2020-10-042

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Redaction Legend:

1 = Tax Return/Return Information

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HIGHLIGHTS: Existing Controls Did Not Prevent Unauthorized Disclosures and Case Documentation Issues in Appeals Trust Fund Recovery Penalty Cases



Final Audit Report issued on August 12, 2020
Reference Number 2020-10-042

Why TIGTA Did This Audit

This audit was initiated to determine whether Independent Office of Appeals (Appeals) Trust Fund Recovery Penalty (TFRP) cases were processed according to IRS criteria and whether Appeals decisions on cases were adequately documented.

Impact on Taxpayers

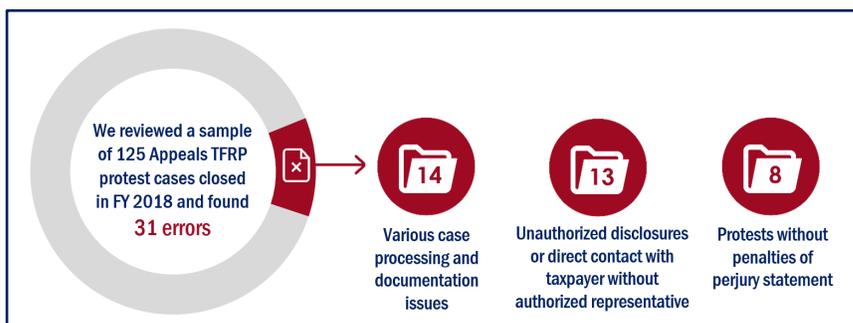
The IRS may assess a TFRP against an individual, *e.g.*, an officer or shareholder, when a corporation fails to pay withheld income and employment taxes. If a taxpayer disagrees with the proposed or assessed TFRP, he or she may file a protest that is referred to Appeals.

Appeals is an independent function within the IRS whose mission is to resolve disputes on a fair and impartial basis without litigation. Appeals has the authority to make the final determination on whether a taxpayer is liable (or partially liable) for a TFRP. In Fiscal Year (FY) 2018, Appeals closed 1,511 protested TFRP cases. It is important that Appeals personnel apply a consistent methodology when deciding whether to sustain TFRPs to promote fair and impartial resolutions to taxpayers.

What TIGTA Found

Appeals generally complied with IRS criteria when processing TFRP protests in FY 2018. However, Appeals personnel did not follow IRS criteria for 31 of 125 FY 2018 TFRP protests TIGTA sampled.

Specifically, TIGTA identified cases in which Appeals contacted a representative that did not have the authority to act on behalf of the taxpayer or in which Appeals inappropriately contacted a taxpayer instead of his or her Power of Attorney. In addition, Appeals worked protests that were not signed under penalties of perjury as required. TIGTA also observed other case processing and documentation issues. For example, some cases did not contain the necessary information to support the final decisions made by Appeals. Further, once TFRP cases were closed, the data were not always accurately recorded in the Appeals Centralized Database System.



Note: Four cases had errors in multiple categories.

What TIGTA Recommended

TIGTA made five recommendations to the Chief, Independent Office of Appeals, to improve the processing of Appeals TFRP cases. Our recommendations include that Appeals report potential unauthorized disclosures of tax return information, document Power of Attorney information in case files, and reemphasize guidance (including the need to input accurate information on the Appeals Centralized Database System).

IRS management agreed with all 15 recommendations and plans to take appropriate corrective actions.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

U.S. DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

August 12, 2020

MEMORANDUM FOR: COMMISSIONER OF INTERNAL REVENUE

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Existing Controls Did Not Prevent Unauthorized Disclosures and Case Documentation Issues in Appeals Trust Fund Recovery Penalty Cases (Audit # 201910018)

This report presents the results of our review of whether Independent Office of Appeals (Appeals) Trust Fund Recovery Penalty cases were processed according to Internal Revenue Service criteria and whether Appeals decisions on cases were adequately documented. This review is part of our Fiscal Year 2020 Annual Audit Plan and addresses the major management and performance challenge of *Supporting an Enhanced Taxpayer Experience*.

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

Copies of this report are also being sent to the Internal Revenue Service managers affected by the report recommendations. If you have any questions, please contact me or Heather M. Hill, Assistant Inspector General for Audit (Management Services and Exempt Organizations).



Existing Controls Did Not Prevent Unauthorized Disclosures and Case Documentation Issues in Appeals Trust Fund Recovery Penalty Cases

Table of Contents

Background	Page 1
Results of Review	Page 4
<u>Appeals Personnel Disclosed Taxpayer Information to Unauthorized Individuals and Met With Taxpayers Without Authorized Representatives Present</u>	Page 5
<u>Recommendations 1 and 2:</u>	Page 6
<u>Appeals Worked Trust Fund Recovery Penalty Protests That Were Not Signed Under Penalties of Perjury As Required</u>	Page 7
<u>Recommendation 3:</u>	Page 7
<u>Appeals Trust Fund Recovery Penalty Case Files Had Various Case Documentation or Processing Errors</u>	Page 7
<u>Recommendation 4:</u>	Page 10
<u>Trust Fund Recovery Penalty Case Data Are Not Always Recorded Accurately on the Appeals Centralized Database System</u>	Page 11
<u>Recommendation 5:</u>	Page 11
Appendices	
<u>Appendix I – Detailed Objective, Scope, and Methodology</u>	Page 12
<u>Appendix II – Outcome Measures</u>	Page 14
<u>Appendix III – Example of Hazards of Litigation Analysis *****1*****</u>	Page 15
<u>Appendix IV – Management’s Response to the Draft Report</u>	Page 16
<u>Appendix V – Abbreviations</u>	Page.20

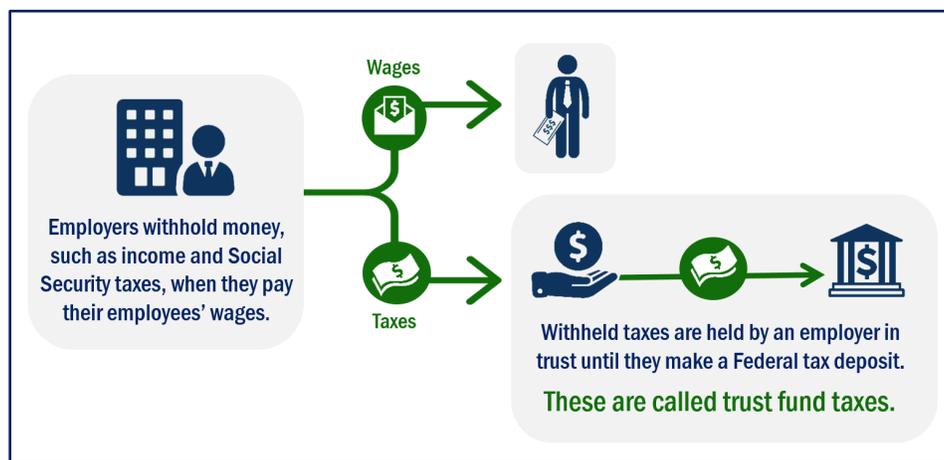


Existing Controls Did Not Prevent Unauthorized Disclosures and Case Documentation Issues in Appeals Trust Fund Recovery Penalty Cases

Background

Employers are required to promptly pay withheld income and employment taxes, including Social Security taxes, railroad retirement taxes, or collected excise taxes. These taxes are called trust fund taxes because employers hold the employee's money in trust until the employer makes a Federal tax deposit in that amount. In order to encourage prompt payment, Congress passed a law that provides for the Trust Fund Recovery Penalty (TFRP). The Internal Revenue Service (IRS) may impose a TFRP against any responsible person required to collect, account for, and pay taxes held in trust by a corporation who willfully fails to perform any of these activities.¹

Figure 1: Overview of Trust Fund Taxes



Source: Internal Revenue Code (I.R.C.) Section (§) 3402(a), I.R.C. § 3101(a), and I.R.C. § 7501(a).

The TFRP is important because it allows the Government to reach parties otherwise shielded from tax liability, *e.g.*, officers; shareholders; employees of a corporation, partnership, or limited liability corporation. It is not necessary for the IRS to assess the TFRP against parties already fully liable for the tax in question, for example, an owner of a sole proprietorship.

Persons who are liable for a TFRP must be "responsible" and "willful." Many factors have been developed to determine whether someone is deemed "responsible" under I.R.C. § 6672, including whether the person:

- Made financial decisions regarding the company.
- Signed company checks.
- Controlled disbursement of payroll.
- Prepared payroll tax returns/made tax deposits.
- Was active in the management of the day-to-day affairs of the company.
- Made decisions regarding which debts were paid first.

¹ Willfulness in the context of the TFRP is defined as intentional, deliberate, voluntary, and knowing, as distinguished from accidental.



Existing Controls Did Not Prevent Unauthorized Disclosures and Case Documentation Issues in Appeals Trust Fund Recovery Penalty Cases

- Was an officer or member of the Board of Directors.
- Owned a share of the company.
- Controlled voting stock.
- Had the ability to hire and fire employees.

“Willfulness” is also a key statutory requirement in determining whether a person is liable for a TFRP. For willfulness to exist, the Government generally must demonstrate that the responsible person was aware, or should have been aware, of the outstanding taxes and either intentionally disregarded the law or was plainly indifferent to its requirements (no evil intent or bad motive is required). For example, if a business uses trust funds to pay other creditors when it fails to pay the employment taxes, it is an indication of willfulness. Under I.R.C. § 6672, willfulness has been defined as a “voluntary, intentional, and conscious decision” to pay other creditors rather than remit the trust fund taxes to the Government. Courts have held that a reckless disregard of the duty to collect and pay employment taxes satisfies the willfulness standard.

According to I.R.C. § 6672, the TFRP is equal to the total amount of tax evaded, not collected, or not accounted for and paid over. I.R.C. § 6672 applies to the employee’s portion of employment tax, namely, the withheld income tax and the employee’s portion of Federal Insurance Contributions Act tax. It does not apply to the employer’s portion of Social Security and Medicare taxes. The TFRP also applies to collected excise taxes.

The Collection Field function has the sole responsibility for recommending that a TFRP be assessed against a taxpayer.² In addition, before the IRS can assess the TFRP, the revenue officer must mail or hand deliver a Letter 1153, *Proposed Trust Fund Recovery Penalty Notification* (hereafter referred to as proposed TFRP notification letter). If the taxpayer disagrees with the proposed TFRP, he or she may file a protest.

Challenging the TFRP Preassessment

The Independent Office of Appeals (hereafter referred to as Appeals) is the only IRS function that may make the final determination on whether the taxpayer is liable (or partially liable) for the TFRP. Appeals is an independent function within the IRS whose mission is to settle tax disputes on a fair and impartial basis without litigation.

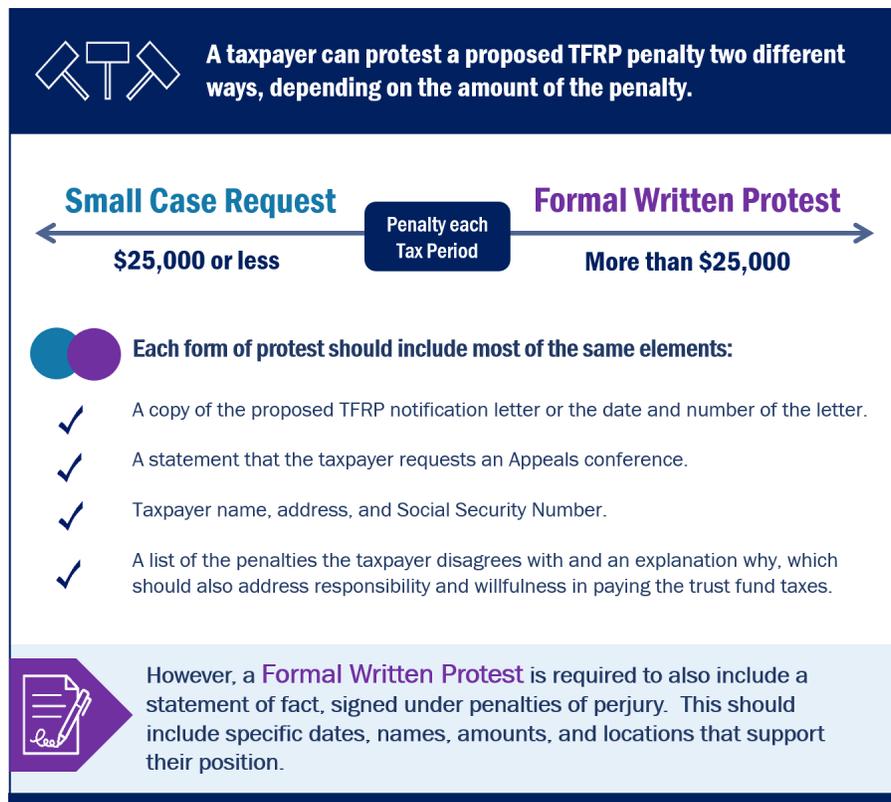
Taxpayers wishing to protest a proposed TFRP must send a written protest to the attention of the contact person at the top of the proposed TFRP notification letter within 60 days (75 days if the letter is addressed to a taxpayer outside the United States), which is then referred to Appeals. As shown in Figure 2, the amount of proposed penalty that the taxpayer wishes to protest determines how he or she should protest the proposed TFRP.

² The Collection Field function in the Area Offices consists of revenue officers who handle personal contacts with taxpayers to collect delinquent accounts or secure unfiled returns. An Area Office is a geographic organizational level used by IRS business units and offices to help their specific types of taxpayers understand and comply with tax laws and issues.



Existing Controls Did Not Prevent Unauthorized Disclosures and Case Documentation Issues in Appeals Trust Fund Recovery Penalty Cases

Figure 2: Ways Taxpayers Can Protest a Proposed TFRP



Source: Letter 1153 (Rev. Sept. 2018).

The Taxpayer Bill of Rights 2³ requires the IRS to send a proposed TFRP notification letter that gives the taxpayer 60 days to file a protest. Assessment of the TFRP is delayed during this 60-day period and, if the taxpayer files a protest, until a final determination is made plus an additional 30 days to assess the TFRP, if applicable. To ensure that the statute⁴ is protected in these cases, Appeals will maintain control of the case until it makes a final determination.

Appeals processing of TFRP cases

Appeals categorizes TFRP cases involving settlements with the taxpayer into the following three types:

- Factual settlements – Factual settlements are based on analysis of the facts of the case.
- Allocations settlements – Appeals may settle a TFRP case by allocating the TFRP among the responsible taxpayers.
- Hazards settlements – A litigating hazard is a substantial uncertainty about the outcome of a case should the taxpayer petition the court.

³ Pub. L. No. 104-168, 110 Stat. 1452 (1996) (codified as amended in scattered sections of 26 U.S.C.).

⁴ The assessment statute is the date established by law by which the IRS must assess any tax due for a given tax period.



Existing Controls Did Not Prevent Unauthorized Disclosures and Case Documentation Issues in Appeals Trust Fund Recovery Penalty Cases

TFRP claims cases

If Appeals sustains or partially sustains the TFRP, the IRS will send a balance due notice to the taxpayer.⁵ If the taxpayer still disagrees with the TFRP, he or she may file a claim with a payment, and if the claim is denied, he or she may file suit in the U.S. Court of Federal Claims or the U.S. District Court.⁶

A claim is either a request for abatement of assessed tax or a request for refund of a tax paid or of a credit not previously reported or allowed. If the Collection function denies the claim, the taxpayer may have the option of going to Appeals. However, if the taxpayer files a claim on a TFRP that Appeals previously sustained, the Collection function cannot reverse Appeals' determination. If Appeals determines the taxpayer's issue on the claim is different or new, Appeals should close the claim as a premature referral for Collection Advisory to work.⁷ If Collection function personnel partially or fully deny the claim, they will issue a Claim Disallowance Letter which informs the taxpayer that he or she has 30 days to request a reconsideration by Appeals and two years to request consideration by a court.

There are two types of claims a taxpayer may file: a formal or an informal claim. For a formal claim, the taxpayer must pay the proper portion of tax and, within two years, submit a separate Form 843, *Claim for Refund and Request for Abatement*, for each tax period in question to retain the option of filing suit in court.⁸ Appeals also receives informal claims for reconsideration. Appeals represents the final administrative determination on these claims, and the taxpayer cannot petition the court if he or she disagrees with Appeals' decision.

Results of Review

It is important that Appeals personnel apply a consistent methodology when deciding whether to sustain TFRPs to promote fair and impartial resolutions to taxpayers. Appeals generally complied with IRS criteria when processing TFRP protests in Fiscal Year (FY) 2018.⁹ However, Appeals personnel did not follow IRS criteria for 31 of 125 FY 2018 TFRP protests in our sample.¹⁰ Specifically, we identified cases in which Appeals contacted a representative that did not have the authority to act on behalf of the taxpayer or in which Appeals inappropriately contacted a taxpayer instead of his or her Power of Attorney (POA). In addition, Appeals worked protests that were not signed under penalties of perjury as required. We also observed other case processing and documentation issues. For example, some cases did not contain necessary information to support the final decisions made by Appeals. Further, once TFRP cases were

⁵ When Appeals sustains or partially sustains a proposed TFRP, the taxpayer will be assessed the full or a partial amount proposed by Collection function personnel.

⁶ Taxpayers may pay the tax for one employee for each period of liability that they want to contest and file a claim for a refund of the amounts they paid using Form 843, *Claim for Refund and Request for Abatement*.

⁷ Collection Advisory is part of the Civil Enforcement Advice and Support Operations office. Collection Advisory gives technical guidance to revenue officers and other Collection function personnel about liens, levies, litigation, and more. It reviews proposed suits, seizures, summons enforcement, special condition Notices of Federal Tax Lien, and other technical items for the Collection function.

⁸ I.R.C. § 6511(a). Tax period means, with respect to any tax, the period for which the tax is reported as provided under the I.R.C. or other applicable tax law.

⁹ 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.

¹⁰ See Appendix I for details on our sampling methodology. Four of the 31 cases had more than one error.



Existing Controls Did Not Prevent Unauthorized Disclosures and Case Documentation Issues in Appeals Trust Fund Recovery Penalty Cases

closed, the data were not always accurately recorded in the system used to track appeals case receipts and actions.

Generally, these errors occurred due to the lack of emphasis on existing criteria, which resulted in unauthorized disclosure of taxpayer information, potential violation of taxpayer rights, taxpayers provided appeals to which they were not entitled, and the lack of adequate documentation to support case dispositions.

Appeals Personnel Disclosed Taxpayer Information to Unauthorized Individuals and Met With Taxpayers Without Authorized Representatives Present

Based on our review of a statistically valid sample of 125 of the 1,511 TFRP protest cases closed by Appeals in FY 2018, we determined that 13 (10.4 percent) involved either an unauthorized disclosure or a direct contact with a taxpayer who had a valid POA. Appeals personnel agreed with 12 of the 13 exceptions.¹¹

Appeals personnel made unauthorized disclosures

We identified *1* cases from our statistical sample of 125 TFRP protest cases for which Appeals personnel made unauthorized disclosures to individuals who did not have the authority to act on behalf of the taxpayer. Based on our sample results, we estimate that **1** taxpayers had their information disclosed to unauthorized individuals in FY 2018.¹² IRS personnel are required to ensure that taxpayer return information is not disclosed to unauthorized individuals, which can result in a violation of taxpayer privacy.¹³ Documentation of a valid POA would include a Form 2848, *Power of Attorney and Declaration of Representative*, or a previous Form 2848 filed with the IRS and maintained on the Integrated Data Retrieval System (IDRS).¹⁴

These unauthorized disclosures occurred for various reasons but were generally due to Appeals personnel not ensuring that the Form 2848 or the POA information on the IDRS was for the correct taxpayer and covered all tax periods or due to the lack of emphasis on adhering to existing criteria. Although a valid POA is required before Appeals contacts a third party on a taxpayer's behalf, some of the Appeals or associated TFRP compliance case files did not contain a copy of the Form 2848.

For the *1* cases, Appeals personnel did not follow existing guidance to ensure that the POA covered all tax periods and was for the correct Taxpayer Identification Number¹⁵ or the case file did not contain documentation of a valid POA. For example, *****1*****
*****1*****

¹¹ The disagreed exception is described later in this section of the report.

¹² Our sample was selected using a 90 percent confidence interval, 20 percent error rate, and ±6 percent precision factor. When projecting the results of our statistical sample, we are 90 percent confident that the actual total amount is between *****1*****. See Appendix II.

¹³ I.R.C. § 6103.

¹⁴ IRS computer system capable of retrieving or updating stored information. It works in conjunction with a taxpayer's account records.

¹⁵ A nine-digit number assigned to taxpayers for identification purposes. Depending upon the nature of the taxpayer, the Taxpayer Identification Number is either an Employer Identification Number, a Social Security Number, or an Individual Taxpayer Identification Number.



Existing Controls Did Not Prevent Unauthorized Disclosures and Case Documentation Issues in Appeals Trust Fund Recovery Penalty Cases

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 *****1*****. Therefore, we continue to believe *****1***** unauthorized disclosure.

Appeals personnel directly contacted taxpayers with valid POAs

Our sample review identified *****1***** in which Appeals contacted a taxpayer directly rather than the valid POA, which can result in a violation of taxpayer rights. The fair tax collection practices of I.R.C. § 6304(a)(2) prohibits IRS personnel from communicating with a taxpayer if it is known that the taxpayer has an authorized representative.

*****1*****
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 *****1*****
 *****1*****

This happened because Appeals management has not always believed that Appeals was subject to I.R.C. § 6304(a)(2) because Appeals’ interactions with taxpayers are not in connection with the collection of an unpaid tax. However, in September 2019, Appeals revised its Internal Revenue Manual (IRM), adding the I.R.C. § 6304(a)(2) requirement based on a recommendation in a Treasury Inspector General for Tax Administration (TIGTA) audit report.¹⁶ The cases we identified happened before the IRM was updated. Therefore, we will not be making a recommendation regarding direct taxpayer contacts without a valid POA present.

The Chief, Independent Office of Appeals, should:

Recommendation 1: Report the potential unauthorized disclosures of tax return information, as appropriate, to the Office of Privacy, Governmental Liaison, and Disclosure Incident Management Office and require that Appeals management review the 13 exception cases with the Appeals personnel who worked them.

Management’s Response: The IRS agreed with this recommendation. The IRS will report the potential unauthorized disclosures of tax return information to the Office of Privacy, Governmental Liaison, and Disclosure Incident Management Office and require that Appeals management review the 13 exception cases with the Appeals personnel who worked them.

Recommendation 2: Reemphasize that documentation of a valid POA, including all protested tax periods, be maintained in the Appeals case file.

Management’s Response: The IRS agreed with this recommendation. The IRS will reemphasize that documentation of a valid POA be maintained in the Appeals case file.

¹⁶ TIGTA, Ref. No. 2018-30-070, *Fiscal Year 2018 Statutory Review of Restrictions on Directly Contacting Taxpayers* (Sept. 2018).



Existing Controls Did Not Prevent Unauthorized Disclosures and Case Documentation Issues in Appeals Trust Fund Recovery Penalty Cases

Appeals Worked Trust Fund Recovery Penalty Protests That Were Not Signed Under Penalties of Perjury As Required

We determined that Appeals processed eight (15.7 percent) of 51 TFRP formal written protest cases in our sample without obtaining an appropriate signature under penalties of perjury by the taxpayer or a valid POA.¹⁷ In these cases, Appeals did not attempt to obtain authorized signatures under penalties of perjury (known as perfecting the protest) and worked protests as if they were not defective. Based on our sample results, we estimate that 97 TFRP protest cases closed in FY 2018 were not signed under penalties of perjury as required.¹⁸



We estimate that 97 TFRP protest cases closed in FY 2018 were not signed under penalties of perjury as required.

The IRM requires that a written protest must be signed under penalties of perjury by the taxpayer or a valid POA.¹⁹ Statements obtained under penalties of perjury are sworn to be true by the signer, and the signer is guilty of the crime of perjury if the statements are shown to be materially false. If a written protest is not signed under penalties of perjury, it should be considered defective, and Appeals is required to contact the taxpayer or POA to perfect the written protest by either having the taxpayer sign under penalties of perjury or securing a valid Form 2848 for the POA. If the taxpayer or representative fails to take these actions within 30 days of the request, Appeals should consider the protest withdrawn and close the case.²⁰ These errors occurred due to the lack of emphasis on existing criteria that require Appeals personnel to perfect written protests not signed under penalties of perjury. As a result, taxpayers were provided with appeals to which they were not entitled.

Recommendation 3: The Chief, Independent Office of Appeals, should reemphasize to Appeals personnel the IRM requirements to attempt to perfect written protests that are defective, specifically when they are not appropriately signed under penalties of perjury.

Management's Response: The IRS agreed with this recommendation. The IRS will reemphasize the IRM requirements to attempt to perfect written protests that are defective.

Appeals Trust Fund Recovery Penalty Case Files Had Various Case Documentation or Processing Errors

Our review determined that 14 (11.2 percent) of the sampled 125 Appeals TFRP protest cases closed in FY 2018 had various documentation or processing errors. Appeals agreed with 11 of the 14 exceptions.²¹ Based on our sample results, we estimate that 169 TFRP protest cases

¹⁷ The remaining 74 of 125 sampled cases did not require a signature under penalties of perjury.

¹⁸ Our sample was selected using a 90 percent confidence interval, 20 percent error rate, and ± 6 percent precision factor. When projecting the results of our statistical sample, we are 90 percent confident that the actual total amount is between 51 and 166.

¹⁹ IRM 8.25.2.3.3.2.2(1).

²⁰ IRM 8.25.2.3.3.7 and 8.25.2.3.4(7).

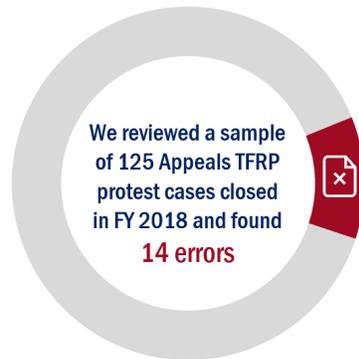
²¹ Appeals disagreed with three exceptions involving hazards of litigation, which are discussed later in this section of the report.



Existing Controls Did Not Prevent Unauthorized Disclosures and Case Documentation Issues in Appeals Trust Fund Recovery Penalty Cases

closed in FY 2018 had case documentation or processing errors.²² Figure 3 summarizes the 14 cases.

Figure 3: Appeals Case File Documentation or Processing Errors



Source: TIGTA review of a statistical sample of Appeals TFRP cases closed in FY 2018. Form 5402 is the Appeals Transmittal and Case Memo.

Case file documentation did not always support case determinations

Appeals personnel are required to prepare an Appeals Case Memorandum to adequately explain and support the basis for case disposition, *i.e.*, sustention or concession of compliance's position.²³ We determined that, for *1* of the 125 TFRP protest case files reviewed, the Appeals Case Memorandum did not support Appeals' case determination. These *1* cases included those for which Appeals personnel did not clearly identify the hazards of litigation or otherwise adequately document their case determination.

Hazards of Litigation support

In **1** cases, Appeals partially conceded the TFRP amounts based on hazards of litigation; however, the case files did not clearly identify the hazards or explain the decision to concede a certain percentage of the TFRP.²⁴ The Appeals IRM establishes that the Appeals Case Memorandum should discuss the various factors that were considered in arriving at the settlement, and the reader should understand why the settlement is appropriate. Further, if an issue was resolved based on hazards of litigation, the Appeals Case Memorandum should explain the steps taken in the evaluation process as follows:

- a. Summarize the hazards identified in the discussion and analysis.
- b. Weigh their strengths and weaknesses.
- c. Determine the relative strengths of opposing positions.
- d. Convert the evaluation to a percentage or numerical determination.²⁵

²² Our sample was selected using a 90 percent confidence interval, 20 percent error rate, and ± 6 percent precision factor. When projecting the results of our statistical sample, we are 90 percent confident that the actual total amount is between 107 and 252.

²³ IRM 8.6.2.2(2) and IRM 8.6.2.2(4)a.

²⁴ A litigating hazard is a substantial uncertainty about the outcome of a case should the taxpayer petition the court.

²⁵ IRM 8.6.2.6.4.2(1).



Existing Controls Did Not Prevent Unauthorized Disclosures and Case Documentation Issues in Appeals Trust Fund Recovery Penalty Cases

*****1*****
*****1*****

ATMs did not always sign and date Form 5402

We identified ****1**** in which the ATMs did not sign and date the Form 5402 as required by the IRM.²⁹ This is important because the Taxpayer Bill of Rights 2 suspends the assessment statute expiration date for a proposed TFRP to 30 days after the ATM signs and dates the Form 5402.³⁰ Specifically, if the original assessment statute expiration date had expired during the protest, the IRS would still have 30 days from the date the ATM signed the Form 5402 to assess the TFRP. In addition, the ATM signature and date on the Form 5402 would also indicate that the case was reviewed and case actions were acceptable, thereby documenting management oversight.

These errors indicate a lack of emphasis on existing criteria; however, the missing signatures and dates did not affect the assessments being made on these ****1****. While assessments were not jeopardized in these cases, not having a signature and date could put the Government at risk on Taxpayer Bill of Rights 2 protested TFRP cases in the future.

Some TFRP assessments were incorrect

While a majority of the TFRP determinations made by Appeals were accurately assessed, *****1***** were incorrect. *****1*****
*****1*****
*****1*****
*****1*****
*****1*****
*****1****. According to the Government Accountability Office's *Standards for Internal Control in the Federal Government*, control activities include verifications and accurate and timely recording of transactions and events. Accurately assessing TFRP determinations is important to prevent taxpayers from paying more or less than what is owed.

Recommendation 4: The Chief, Independent Office of Appeals, should reemphasize the IRM requirements to (a) clearly document case determinations in the Appeals Case Memorandum and (b) ensure that the ATM signs and dates the Forms 5402 to document management oversight and provide for the calculation of the assessment statute expiration date for Taxpayer Bill of Rights 2 cases.

Management's Response: The IRS agreed with this recommendation. The IRS will reemphasize the IRM requirements to (a) clearly document case determinations in the Appeals Case Memorandum and (b) ensure that the ATM signs and dates the Forms 5402.

²⁹ IRM 8.20.7.2(15) and 8.25.2.9(2).

³⁰ The ATM signature and date on Form 866, *Agreement as to Final Determination of Tax Liability*, or Form 906, *Closing Agreement On Final Determination Covering Specific Matters*, would also suffice.



Existing Controls Did Not Prevent Unauthorized Disclosures and Case Documentation Issues in Appeals Trust Fund Recovery Penalty Cases

Trust Fund Recovery Penalty Case Data Are Not Always Recorded Accurately on the Appeals Centralized Database System

The Appeals Centralized Database System (ACDS) is used by Appeals to track case receipts, record case time, document case actions, and monitor the progress of the Appeals workload. However, we determined that the ACDS contained incorrect information for 29 (23.2 percent) of the 125 TFRP protest cases in our sample. Specifically, we identified errors in the fields that captured TFRP dollar amounts for ***1*** and identified *****1***** misclassified **1** ****1****. When projected to the population of 1,511 closed TFRP protest cases in FY 2018, we estimate that the ACDS may contain unreliable or inaccurate data for 351 taxpayers.³¹ The errors we identified were due to inaccurate data entry. The information recorded by Appeals should be verified as accurate in accordance with *Standards for Internal Control in the Federal Government*.

These errors may be occurring because the ACDS has numerous manual-entry fields that are used for various purposes. As such, Appeals officials informed us that they are considering eliminating fields from the ACDS, including the Total Proposed Deficiency and Total Revised Deficiency fields.³² However, we believe that capturing accurate TFRP dollar amounts in the ACDS is necessary to allow Appeals management to better understand their overall TFRP inventory. When the dollar fields are inaccurate, Appeals management cannot calculate the total TFRP proposals or assessments or the dollars sustained, partially sustained, or conceded for TFRP protest cases once Appeals makes a final case determination. This information could prove useful for future initiatives. Specifically, Appeals' Future Vision includes "Caseload Analytics" and "Issue-Based Feedback."³³ These dollar fields would be essential to provide data to allow management to identify trends and to provide information on how the program is functioning and where improvements may be needed.

In addition, we determined that **1** of the 125 sampled cases *1* misclassified *****1***** in the ACDS database. *****1*****
*****1*****
*****1*****.

Recommendation 5: The Chief, Independent Office of Appeals, should reemphasize the importance of inputting accurate case dollar information in the ACDS.

Management's Response: The IRS agreed with this recommendation. The IRS will reemphasize the importance of inputting accurate case dollar information in the ACDS.

³¹ Our sample was selected using a 90 percent confidence interval, 20 percent error rate, and ±6 percent precision factor. When projecting the results of our statistical sample, we are 90 percent confident that the actual total amount is between 263 and 452. See Appendix II.

³² The Total Proposed Deficiency field contains the sum total of the proposed deficiency being protested by the taxpayer and the Total Revised Deficiency field provides a sum total of the revised deficiency determined by Appeals.

³³ Caseload Analytics is defined as "analytics that describe the outcomes and trends of cases." Issue-Based Feedback is defined as "consistent feedback loops between Appeals and Compliance that communicate emerging issues and results."



Existing Controls Did Not Prevent Unauthorized Disclosures and Case Documentation Issues in Appeals Trust Fund Recovery Penalty Cases

Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this review was to determine whether Independent Office of Appeals TFRP cases were processed according to IRS criteria and whether Appeals decisions on cases were adequately documented. To accomplish our objective, we:

- Identified and reviewed guidance available to Appeals employees regarding the processing of TFRP cases.
- Identified a population of 1,511 protested TFRP cases closed in FY 2018.
- Randomly selected a statistical sample of 125 of the 1,511 protested TFRP cases closed in FY 2018. We used the following criteria: a 90 percent confidence level, a ± 6 percent precision rate, and a 20 percent expected error rate. The contracted statistician assisted with developing sampling plans and projections.
- Reviewed the cases in our sample and determined if:
 - Appeals personnel contacted the taxpayer's POA, if applicable.
 - The taxpayer's written protests were signed under penalties of perjury.
 - The ATM signed and dated Form 5402 or a closing agreement.
 - Appeals personnel clearly documented their final decision.
 - The taxpayer's accounts on the IDRS accurately reflected the Appeals decision.
 - The data fields on the ACDS matched the information contained in the case files.
- Discussed potential exceptions with Appeals personnel.

Performance of This Review

This review was performed with information obtained from the Independent Office of Appeals' Collection Appeals located in Washington, D.C.; Grand Rapids, Michigan; Holtsville, New York; and Cleveland, Ohio, during the period July 2019 through March 2020. 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.

Major contributors to the report were Heather M. Hill, Assistant Inspector General for Audit (Management Services and Exempt Organizations); Troy D. Paterson, Director; Janice M. Pryor, Audit Manager; Melinda H. Dowdy, Audit Manager; Joseph P. Smith, Lead Auditor; Zachary P. Orrico, Senior Auditor; and Yasmin B. Ryan, Senior Auditor.

Validity and Reliability of Data From Computer-Based Systems

We queried the ACDS to secure the 1,511 protested TFRP cases closed in FY 2018 and validated the reliability of the data by comparing field descriptions to source data to ensure that the data



Existing Controls Did Not Prevent Unauthorized Disclosures and Case Documentation Issues in Appeals Trust Fund Recovery Penalty Cases

matched, reviewing the appropriateness of data within fields, and comparing population totals to information obtained from Appeals management. We determined the data to be sufficiently reliable for the purposes of this report.

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: Appeals and IRS policies, procedures, and practices for processing TFRP cases. We evaluated these controls by reviewing a statistical sample of 125 protested TFRP cases closed in FY 2018 and interviewing Appeals personnel.



Appendix II

Outcome Measures

This appendix presents detailed information on the measurable impact that our recommended corrective actions will have on tax administration. These benefits will be incorporated into our Semiannual Report to Congress.

Type and Value of Outcome Measure:

- Taxpayer Privacy and Security – Potential; **1** taxpayers whose information was disclosed to an unauthorized individual (see Recommendations 1 and 2).

Methodology Used to Measure the Reported Benefit:

We randomly selected a statistical sample of 125 cases from the population of 1,511 protested TFRP cases closed in FY 2018. For *****1***** of the 125 sampled FY 2018 closed protested TFRP cases reviewed, Appeals personnel made unauthorized disclosures. We estimate that Appeals personnel potentially made unauthorized disclosures for *1* TFRP taxpayer cases in FY 2018 (1,511 cases X **1** percent error rate).¹

Type and Value of Outcome Measure:

- Reliability of Information – Potential; 351 taxpayers whose cases contain unreliable data on the ACDS (see Recommendation 5).

Methodology Used to Measure the Reported Benefit:

We randomly selected a statistical sample of 125 cases from the population of 1,511 protested TFRP cases closed in FY 2018. For 29 (23.2 percent) of the 125 sampled FY 2018 closed protested TFRP cases reviewed, the case file information was not accurately recorded on the ACDS. We estimate that the ACDS contains 351 TFRP taxpayer cases closed in FY 2018 that are potentially inaccurate (1,511 cases x 23.2 percent error rate).²

¹ Our sample was selected using a 90 percent confidence interval, a 20 percent error rate, and a ±6 percent precision factor. When projecting the results of our statistical sample, we are 90 percent confident that the actual total amount is between *****1*****

² Our sample was selected using a 90 percent confidence interval, a 20 percent error rate, and a ±6 percent precision factor. When projecting the results of our statistical sample, we are 90 percent confident that the actual total amount is between 263 and 452.



Existing Controls Did Not Prevent Unauthorized Disclosures and Case Documentation Issues in Appeals Trust Fund Recovery Penalty Cases

Appendix III

Example of Hazards of Litigation Analysis *****1*****

*****1*****
*****1*****
*****1*****
*****1*****



Existing Controls Did Not Prevent Unauthorized Disclosures and Case Documentation Issues in Appeals Trust Fund Recovery Penalty Cases

Appendix IV

Management's Response to the Draft Report



APPEALS

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

Date: July 27, 2020

MEMORANDUM FOR MICHAEL E. MCKENNEY
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Andrew J. Keyso Andrew J. Keyso Jr. Digitally signed by Andrew J. Keyso Jr.
Keyso ID:
Date: 2020.07.27 13:58:02 -0400
Chief, IRS Independent Office of Appeals

SUBJECT: Draft Report – Existing Controls Did Not Prevent Unauthorized Disclosures and Case Documentation Issues in Appeals Trust Fund Recovery Penalty Cases (Audit #201910018)

Thank you for the opportunity to review and comment on the draft report of the Appeals Trust Fund Recovery Penalty program audit. We agree with your recommendations. Please see our attached response.

If you have any questions, please have a member of your staff contact Steven M. Martin, Director, Case and Operations Support at (202) 317-6991.

Attachment



Existing Controls Did Not Prevent Unauthorized Disclosures and Case Documentation Issues in Appeals Trust Fund Recovery Penalty Cases

Attachment

Recommendation 1:

The Chief, Independent Office of Appeals, report the potential unauthorized disclosures of tax return information, as appropriate, to the Office of Privacy, Governmental Liaison and Disclosure Incident Management Office and require that Appeals management review the 13 exception cases with the Appeals personnel who worked them.

Proposed Corrective Action:

The Independent Office of Appeals agrees with this recommendation. We will report the potential unauthorized disclosures of tax return information, as appropriate, to the Office of Privacy, Governmental Liaison and Disclosure Incident Management Office and require that Appeals management review the 13 exception cases with the Appeals personnel who worked them.

Implementation Date: December 15, 2020

Responsible Official: Director, Collection Appeals

Recommendation 2:

The Chief, Independent Office of Appeals, should reemphasize that documentation of a valid POA, including all protested tax periods, be maintained in the Appeals case file.

Proposed Corrective Action:

The Independent Office of Appeals agrees with this recommendation. We will reemphasize that documentation of a valid POA, including all protested tax periods, be maintained in the Appeals case file.

Implementation Date: March 15, 2021

Responsible Official: Director, Independent Office of Appeals Case and Operations Support

Recommendation 3:

The Chief, Independent Office of Appeals, should reemphasize to Appeals personnel the IRM requirements to attempt to perfect written protests that are defective, specifically when they are not appropriately signed under penalties of perjury.

Proposed Corrective Action:



Existing Controls Did Not Prevent Unauthorized Disclosures and Case Documentation Issues in Appeals Trust Fund Recovery Penalty Cases

The Independent Office of Appeals agrees with this recommendation. We will reemphasize to Appeals personnel the IRM requirements to attempt to perfect written protests that are defective, specifically when they are not appropriately signed under penalties of perjury.

Implementation Date: March 15, 2021

Responsible Official: Director, Independent Office of Appeals Case and Operations Support

Recommendation 4:

The Chief, Independent Office of Appeals, should reemphasize the IRM requirements to (a) clearly document case determinations in the Appeals Case Memorandum and (b) ensure that the ATM signs and dates the Forms 5402 to document management oversight and provide for the calculation of the assessment statute expiration date for Taxpayer Bill of Rights 2 cases.

Proposed Corrective Action:

The Independent Office of Appeals agrees with this recommendation. We will reemphasize the IRM requirements to (a) clearly document case determinations in the Appeals Case Memorandum and (b) ensure that the ATM signs and dates the Forms 5402 to document management oversight and provide for the calculation of the assessment statute expiration date for Taxpayer Bill of Rights 2 cases.

Implementation Date: March 15, 2021

Responsible Official: Director, Independent Office of Appeals Case and Operations Support

Recommendation 5:

The Chief, Independent Office of Appeals, should reemphasize the importance of inputting accurate case dollar information in the ACDS.

Proposed Corrective Action:

The Independent Office of Appeals agrees with this recommendation. We will reemphasize the importance of inputting accurate case dollar information in the ACDS.

Implementation Date: March 15, 2021

Responsible Official: Director, Independent Office of Appeals Case and Operations Support

Outcome Measure 1:



Existing Controls Did Not Prevent Unauthorized Disclosures and Case Documentation Issues in Appeals Trust Fund Recovery Penalty Cases

Taxpayer Privacy and Security – Potential; **1** taxpayers whose information was disclosed to an unauthorized individual (see Recommendations 1 and 2).

Response:

We agree with this outcome measure.

Outcome Measure 2:

Taxpayer Reliability of Information – Potential; 351 taxpayers whose cases contain unreliable data on the ACDS (see Recommendation 5).

Response:

We agree with this outcome measure.



Existing Controls Did Not Prevent Unauthorized Disclosures and Case Documentation Issues in Appeals Trust Fund Recovery Penalty Cases

Appendix V

Abbreviations

ACDS	Appeals Centralized Database System
ATM	Appeals Team Manager
FY	Fiscal Year
IDRS	Integrated Data Retrieval System
I.R.C.	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
POA	Power of Attorney
TFRP	Trust Fund Recovery Penalty
TIGTA	Treasury Inspector General for Tax Administration