

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



Criminal Restitution Assessment Procedures Need Improvement

June 7, 2021

Report Number: 2021-30-033

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.

Why TIGTA Did This Audit

The Firearms Excise Tax Improvement Act of 2010 authorized the IRS to assess criminal restitution ordered after August 16, 2010, so that the IRS could collect the amount as if it were a tax. Prior to this change in the law, the IRS accepted payments of restitution but could not assess the amount of restitution ordered or use its administrative collection tools to collect the restitution. Only the Department of Justice could collect the amount of restitution. This audit was initiated to determine if defendants convicted of tax-related crimes are held responsible for the payments of the associated taxes.

Impact on Taxpayers

The ultimate goal of every criminal prosecution is not merely to obtain a conviction but also to obtain a sentence sufficient to discourage similar criminal violations by other taxpayers. It is important that the IRS have effective procedures to ensure that the defendants are held responsible for their crimes and the maximum amount of criminal restitution is collected.

What TIGTA Found

During Fiscal Years 2016 through 2020, defendants were ordered to pay over \$2.7 billion in criminal restitution to the IRS but paid only \$844 million, or 31 percent during that same period. TIGTA found that in cases for which the IRS had the authority to assess the restitution ordered, a higher percentage of restitution was paid.

Improvements can be made to ensure that the restitution ordered is properly assessed. IRS Criminal Investigation (CI) did not always send closing documents to the Small Business/Self-Employed Division for the assessment of restitution, and the Division incorrectly assessed interest and penalties on some restitution-based assessments.

TIGTA also found that a lack of resources within CI and the Small Business/Self-Employed Division contributed to the IRS not being able to adequately monitor defendants' compliance with the conditions of probation or supervised release. TIGTA found that internal controls could be improved to prevent the IRS from issuing erroneous refunds for restitution payments. Lastly, TIGTA identified numerous errors in the CI Management Information System related to defendants who were sentenced for tax-related crimes and ordered to pay restitution.

What TIGTA Recommended

TIGTA recommended that the IRS: 1) develop procedures to ensure that CI timely sends restitution closing investigative documents to the Technical Services Unit; 2) review existing controls to ensure that restitution assessments are made in a timely manner; 3) establish monitoring procedures to provide reasonable assurance that all interest and penalties incorrectly assessed are removed; and 4) ensure that review of CI Management Information System information related to restitution and the monitoring of probation and supervised release are included in existing quality reviews mechanisms.

IRS management agreed with all four recommendations and has already implemented corrective actions to ensure that CI timely sends closing investigative documents to the SB/SE Division Technical Services Unit for restitution assessment, and that CI Management Information System information related to restitution and the monitoring of probation and supervised release is accurate.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

U.S. DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

June 7, 2021

MEMORANDUM FOR: COMMISSIONER OF INTERNAL REVENUE

A handwritten signature in blue ink that reads "Michael E. McKenney".

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Criminal Restitution Assessment Procedures Need Improvement (Audit # 202030026)

This report presents the results of our review to determine if defendants convicted of tax-related crimes are held responsible for the payments of the taxes associated with the offenses they committed. This review is part of our Fiscal Year 2021 Annual Audit Plan and addresses the major management and performance challenges of *Improving Tax Reporting and Payment Compliance* and *Reducing Fraudulent Claims and Improper Payments*.

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

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Background

Internal Revenue Service (IRS) Criminal Investigation (CI) enforces the criminal provisions of the Internal Revenue Code (I.R.C.) and related financial crimes to promote compliance with tax laws and confidence in the U.S. tax administration system.¹ CI pursues criminal sanctions when taxpayers (hereafter called defendants) refuse to comply or attempt to evade their tax obligations.² The ultimate goal of every criminal prosecution is not merely to obtain a conviction but also to obtain a sentence sufficient to discourage similar criminal violations by other taxpayers.

When a defendant pleads guilty or is found guilty of a tax-related crime, the terms of sentence can include various combinations of imprisonment, supervised release, probation, special tax-related provisions, and monetary penalties such as fines and restitution.³ As part of a sentence in a criminal case, a court may order a defendant to pay restitution to compensate the victim for losses suffered as a result of a crime. The IRS seeks restitution because it establishes some monetary obligation for the defendant at the time of sentencing in order to redress the loss inflicted (unpaid taxes in the case of the IRS). Although an order of restitution is not a determination of tax liability, it represents the defendant's legal obligation to pay a specified amount to the IRS and can act as a deterrent effect on future criminal violations of the I.R.C.

For Title 26 tax offenses, when a defendant pleads guilty and agrees to pay restitution as part of the plea, the court may order restitution as a component of the sentence.⁴ However, the court may order restitution for Title 26 offenses solely as a condition of probation or supervised release, regardless of whether the defendant agreed to the restitution in the plea agreement.⁵ When this happens, the restitution ordered is only collectible during the period of probation or supervised release. For Title 18 tax offenses, courts must order restitution as a component of the sentence.⁶

The Firearms Excise Tax Improvement Act of 2010 amended I.R.C. Section (§) 6201 and authorizes the IRS to assess criminal restitution ordered after August 16, 2010, as if it were a civil tax.⁷ Before the Firearms Excise Tax Improvement Act, the IRS lacked the legal authority to assess the amount of restitution ordered. Instead, the IRS could only make an assessment of the defendant's tax liability on the appropriate module after completing an examination of the defendant's relevant tax period. The IRS would then credit any restitution payments against that tax liability.

The Firearms Excise Tax Improvement Act allows the IRS to assess criminal restitution in certain cases as if it were a civil tax.

¹ See Appendix V for a glossary of terms.

² For the purposes of this report, the term "defendant" includes both individuals and tax return preparers who pleaded guilty to or were convicted of a tax-related crime.

³ For instance, the defendant can agree to cooperate with the IRS in filing accurate tax returns.

⁴ Under 18 U.S.C. § 3663(a)(3), restitution may be ordered as an independent part of the sentence if the defendant agrees to pay restitution in a plea agreement.

⁵ Under 18 U.S.C. §§ 3563(b), 3583(d), restitution may be ordered as a condition of probation or supervised release.

⁶ 18 U.S.C. § 3663A. This includes restitution ordered pursuant to a plea agreement of a Title 18 tax offense.

⁷ Pub. L. No. 111-237 (2009–2010). Specifically, Section 3 – *Assessment of Certain Criminal Restitution*.

As a result of the Act, the IRS can assess the amount of restitution ordered by the court and collect it as if it were a tax.⁸

The amount of restitution ordered payable to the IRS offers two different methods of collection, but the IRS cannot collect the amount twice.

- The first method is the “restitution judgment,” which the U.S. Department of Justice (DOJ) Financial Litigation Unit (FLU) is responsible for collecting. According to DOJ procedures, the FLU will pursue various means to collect restitution, as the judgment and its resources permit, on behalf of identified victims for a period of 20 years from the filing date of the judgment or until the death of the defendant.⁹
- The second method is the “restitution-based assessment” (RBA), which the IRS will assess and collect in the same manner as if it was a tax.¹⁰ The IRS has a 10-year period to collect the assessed tax unless the courts ordered the restitution only as a condition of probation or supervised release.¹¹

The Firearms Excise Tax Improvement Act does not allow the IRS to assess restitution in every instance. The IRS can only legally assess the restitution if the criminal offense is for tax purposes (*e.g.*, Title 26 cases stemming from an underreporting of income, an inflated credit or expense, or an alleged overpayment of tax that results in a false refund). In these instances, the restitution may be assessed as if it were a tax.¹² When the IRS cannot assess the restitution, it does not have the authority, under Title 18 or Title 26, to administratively collect on a restitution order because it is not a tax.¹³

Each year, defendants convicted of tax and tax-related crimes are subject to conditional terms of probation relating to the settlement of their civil tax liabilities, such as the filing of tax returns, payment of tax liabilities, and payment of restitution. Figure 1 shows that, from Fiscal Year (FY) 2016 to FY 2020, U.S. District Courts ordered defendants to pay over \$2.7 billion in restitution to the IRS.

⁸ Because restitution debts stem from the same underlying tax liability, the full amount can be collected only once. Therefore, any payments that wholly or in part satisfy the restitution-based assessment (RBA) must also be applied against the underlying tax liability for the same type of tax and tax periods (duplicate civil and/or co-defendant assessments), provided that the RBA relates to that underlying tax liability. Internal Revenue Manual (IRM) 25.26.1.2 (March 24, 2014).

⁹ The U.S. Attorney’s Office, Northern District of Georgia, *Understanding Restitution* (www.justice.gov/usao-ndga).

¹⁰ IRM 25.26.1.2 (March 24, 2014).

¹¹ Restitution ordered solely as a condition of probation or supervised release is collectible only during the period of probation or supervision. It is not collectible either before or after the term of probation or supervised release. *United States v. Westbrook*, 858 F. 3d 317, 328 (5th Cir. 2017).

¹² IRS, Chief Counsel Notice 2011-018, *The Assessment and Collection of Restitution* (August 26, 2011) (See response to Question No. 2).

¹³ In these instances, the DOJ FLU is responsible for collecting the restitution.

Figure 1: Restitution Ordered During FYs 2016–2020 (in millions)



Source: *Criminal Investigation*.

It is important that the IRS collect the restitution amounts assessed so that defendants are held financially responsible for their crimes. Several IRS functions are involved in the assessment and collection of restitution and the monitoring of compliance with the conditions of probation or supervised release. For instance, the Small Business/Self-Employed (SB/SE) Division's Examination Technical Services Unit has exclusive responsibility for completing assessment on criminal restitution cases for which I.R.C. § 6201(a)(4), *Assessment Authority*, is applicable.¹⁴ Appendix III of this report provides a summary of the IRS function and other agency responsibilities.

The Treasury Inspector General for Tax Administration (TIGTA) previously conducted an audit on the monitoring of probation and processing of restitution payments just prior to the law change and reported that the IRS did not have effective internal controls to ensure that defendants convicted of tax-related crimes comply with conditions of probation and restitution. Specifically:

- The IRS's inability to properly account for restitution payments resulted in the issuance of erroneous refunds totaling approximately [REDACTED] and 16 taxpayers involved in a refund scheme.
- The IRS's systems for monitoring defendants' compliance with the conditions of probation and restitution were neither effective nor reliable. Analysis of data used to monitor defendants identified inaccurate tax account data totaling approximately \$330,000 for 25 defendants.

TIGTA made several recommendations to the Chief, CI, to address internal control weaknesses regarding accurate accounting for restitution payments, including preventing the issuance of erroneous refunds.¹⁵

¹⁴ The SB/SE Division has designated a Technical Services Unit (located in Los Angeles, California) to make all of the criminal restitution assessments.

¹⁵ TIGTA, Report No. 2012-30-012, *Procedures Are Needed to Improve the Accounting and Monitoring of Restitution Payments to Prevent Erroneous Refunds* (Jan. 2012).

Results of Review

Criminal Restitution Was More Likely to Be Paid When the IRS Assessed the Restitution Ordered

Among the reasons for the Firearms Excise Tax Improvement Act was that the assessment of criminal restitution would allow the IRS to use existing enforcement techniques to collect restitution.¹⁶ The law change allows the IRS to assess the amount of restitution ordered by the courts and use its administrative collection tools, including the filing of Notices of Federal Tax Lien and levying assets. Prior to the Act, the IRS accepted payments of restitution but lacked the legal authority to assess the amount of restitution ordered. The IRS could use the examination process to determine the defendant’s tax liability for the same period to which the restitution related, which could be years after sentencing or when a defendant agreed to the liability.¹⁷

From FYs 2016 to 2020, the courts ordered defendants to pay over \$2.7 billion in criminal restitution to the IRS. During that same period, a total of \$844 million in restitution was paid to the IRS, only 31 percent of the amount ordered. Figure 2 lists the amounts of restitution ordered and paid from FYs 2016 to 2020.

Figure 2: Amount of Restitution Ordered and Paid (FYs 2016–2020)

| Fiscal Years | Restitution Ordered | Restitution Paid ¹⁸ | % of Restitution Paid |
|--------------|------------------------|--------------------------------|-----------------------|
| 2016 | \$603,400,000 | \$322,903,345 | 54% |
| 2017 | \$808,400,000 | \$98,561,949 | 12% |
| 2018 | \$444,800,000 | \$149,900,661 | 34% |
| 2019 | \$536,800,000 | \$121,591,601 | 23% |
| 2020 | \$328,800,000 | \$151,436,043 | 46% |
| Total | \$2,722,200,000 | \$844,393,598 | 31% |

Source: Information Provided by CI and the SB/SE Division.

The low percentage of restitution paid to the IRS in recent years may not be indicative of the effectiveness of the law change providing for the assessment of restitution. As we previously described, the IRS only has the authority to assess the restitution ordered by the courts if the criminal offense was for a tax-related crime. Since the law change in Calendar Year (CY) 2010, CI

¹⁶ *Restitution in Criminal Tax Cases – A Report and Recommendations Prepared by an IRS-Department of Justice Working Group* (April 1, 2004).

¹⁷ For instance, the defendant could have consented to the tax liability using Form 870, *Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment*.

¹⁸ The amount of restitution paid may not necessarily correspond with the restitution ordered during a given fiscal year because restitution paid during one year could relate to a restitution ordered from another year. Defendants are supposed to send restitution payments to the DOJ, which then forwards them to the Wage and Investment Division Accounting Operations Unit in Kansas City, Missouri. However, there is always the possibility that a defendant may have sent a restitution payment directly to the IRS and that such a payment may not have been recognized as a restitution payment. The SB/SE Division believes that would be very rare.

devoted significant resources investigating cases for which the IRS did not have the authority to assess any restitution ordered. For instance, the IRS was unable to assess any restitution ordered if defendants were sentenced for crimes involving identity theft because the restitution is attributable to fictitious tax returns.¹⁹ During FYs 2013 through 2017, CI initiated over 4,000 investigations involving identity theft.²⁰

During this audit, we analyzed a sample of cases for which the courts ordered the payment of restitution in recent years and found that generally a larger percentage of restitution was paid when the IRS had the authority to assess the restitution ordered. Specifically, we selected a judgmental sample of 110 criminal investigations for which courts ordered the payment of over \$300 million in restitution during FYs 2016 through 2019 to determine the amount of restitution paid.²¹ We selected these from a population 3,479 investigations for which defendants were ordered to pay nearly \$2.7 billion in restitution to the IRS.²² Figure 3 provides a breakdown of the restitution paid when the IRS is able to assess the restitution as opposed to instances when it is not.

¹⁹ CI defines these types of investigations as “Stolen Identity Refund Fraud.” According to the IRS Office of Chief Counsel, it could not identify an instance in which the IRS could assess restitution ordered in an identity theft case as the real taxpayer is not involved and is not liable for any losses to the Government.

²⁰ TIGTA, Report No. 2019-30-047, *Criminal Investigation Should Increase Its Role in Enforcement Efforts Against Identity Theft* (Aug. 2019). We reported that the number of identity theft investigations initiated was declining. From FY 2013 to FY 2017, the number of identity theft investigations declined from 1,492 to 374. However, the number of identity theft investigations resulting in sentences increased from 223 in FY 2012 to 550 in FY 2017.

²¹ From our analysis of Criminal Investigation Management Information System (CIMIS) data, we judgmentally selected the investigations if the Conditional Probation Expiration Date ended before October 1, 2019, and had a significant amount of restitution ordered. We also selected cases for which the restitution ordered included a Report of Foreign Bank and Financial Accounts (FBAR) penalty. We included Stolen Identity Refund Fraud investigations in our sample. A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.

²² The amount of restitution ordered differs slightly from the amount of restitution ordered in Figures 1 and 2. This could have occurred when CI recorded the same restitution amount in CIMIS multiple times when there was more than one defendant involved in the same crime. The amount of restitution ordered related to the population of 3,479 investigations was based on the amount recorded in CIMIS and not based on the review of court documents.

Figure 3: Analysis of Restitution Paid From Sample Cases

| Restitution Assessment Category | Sample Cases | Restitution Ordered | Restitution Paid | % of Restitution Paid |
|--|------------------|---------------------|----------------------------|-----------------------|
| Assessable | 68 ²³ | \$76,584,581 | \$36,532,384 ²⁴ | 48% |
| SIRF - Non-Assessable | 28 | \$152,603,734 | \$2,112,534 | 1% |
| Other Non-Assessable | 5 | \$36,851,281 | \$8,639 | Less than 1% |
| Closing Documents Not Sent ²⁵ | 6 | \$35,118,653 | N/A | N/A |
| Restitution Paid at Sentencing ²⁶ | █ | \$1,806,202 | \$1,806,202 | 100% |
| FBAR Penalties ²⁷ | █ | \$1,894,344 | █ | █ |
| Other ²⁸ | █ | N/A | █ | █ |

Source: TIGTA analysis of the Criminal Investigation Management Information System (CIMIS), Master File information from TIGTA's Data Center Warehouse (DCW), and payment information from the Wage and Investment (W&I) Division Accounting Operations. SIRF = Stolen Identity Refund Fraud. FBAR = Report of Foreign Bank and Financial Accounts.

In 68 of the 110 cases for which the IRS assessed the restitution, nearly 48 percent of the total restitution ordered was paid. Conversely, defendants paid a much lower percentage when the IRS did not have the authority to assess the restitution.²⁹ For example, in 28 of the 110 cases that had restitution related to SIRF cases, there was a much smaller percentage (less than 2 percent) paid. There were SIRF investigations in our sample with a significant amount of restitution ordered but with little restitution paid. For example, █

█ In cases for which the IRS may not assess the restitution, such as those involving SIRF, the restitution is still paid to the IRS, but the IRS does not have the authority, under Title 18 or Title 26, to collect on the restitution ordered. When the IRS cannot assess the restitution, the DOJ FLU is solely responsible for collecting the restitution ordered. These are

²³ █

²⁴ Includes the amounts paid on the restitution, refund offsets, and credits associated with payments on related accounts. For instance, if the defendant made payments on a related civil tax assessment, the IRS would also credit these payments to the restitution account because the amount owed can be collected only once.

²⁵ According to the SB/SE and W&I Divisions, it did not receive the closing documents needed to track the restitution payments in these six cases. Therefore, we could not determine the amount of restitution paid by the defendants.

²⁶ █ The IRS did not assess the restitution in these cases. See the next section of this report starting on page 8 for a further description of this issue.

²⁷ According to the IRS, FBAR penalties are not assessable as restitution because they are a nontax debt. SB/SE Division Specialty Examination is responsible for separately assessing the FBAR penalties, which are tracked on a database separate from the IRS Master File. The Bureau of the Fiscal Service (a bureau of the Department of the Treasury) is responsible for their collection. █ courts ordered the defendants to pay FBAR penalties.

²⁸ █

²⁹ The W&I Division Submission Processing Accounting Operations tracks and accounts for restitution paid in cases for which the IRS cannot make an assessment. These responsibilities are further described in Appendix III.

units located within each of the 94 U.S. Attorney's Offices (USAO). The restitution collected by the DOJ is then paid to the IRS.

During this audit, we did not evaluate the efforts by the DOJ FLUs to collect the criminal restitution owed the IRS. However, in previous years, the U.S. Government Accountability Office (GAO) has conducted several audits on the collection of restitution by the DOJ FLU.³⁰

In its most recent report on the collection of Federal restitution, issued in February 2018, the GAO found that the USAOs collected \$2.95 billion in restitution debt in FYs 2014 through 2016.³¹ However, at the end of FY 2016, \$110 billion in previously ordered restitution was outstanding, with 91 percent (\$100 billion) classified as uncollectible due to the defendants' inability to pay. The GAO reported that the DOJ has made improving debt collection, including restitution, a major management initiative in its FYs 2014 through 2018 Strategic Plan.

Most of the unpaid assessed restitution was determined to be currently not collectible

The SB/SE Division Collection function is responsible for collecting the amount of assessed Federal tax liabilities due from taxpayers. The mission of the Collection function is to collect delinquent taxes and secure delinquent tax returns through the fair and equitable application of the tax laws, including the use of enforcement tools when appropriate, and to educate taxpayers to facilitate future compliance. This is generally achieved through processes and programs that include the collection notice stream, the systemic processes and work of employees within the Campus Collection function (including the Automated Collection System), and the work of revenue officers within the Field Collection function.

The IRS has the ability to use its administrative collection tools to collect the RBAs. Making the RBA allows the IRS to collect the restitution as if it was a tax. That means that collection actions allowed under the I.R.C. may be used to collect the RBA. This includes taking enforcement actions such as levies, Notice of Federal Tax Lien filings, or seizures of property. Cases with RBAs will generally be worked in the same manner as other balance due cases.³² However, according to SB/SE Division Collection personnel, if a revenue officer determines that the defendant can make payments toward the RBA liability that exceed the payment schedule established by the courts, the revenue officer may not obtain an installment agreement unless it will fully pay the RBA within the Collection Statute Expiration Date.³³

We evaluated the collection actions taken on 50 of the 68 cases for which the IRS assessed the restitution and a liability remained (a total of more than \$40 million).³⁴ Our review found evidence that, in most cases, the IRS filed Notices of Federal Tax Lien, took levy actions, and

³⁰ GAO, GAO-01-664, *Criminal Debt: Oversight and Actions Needed to Address Deficiencies in Collection Processes* (July 2001); GAO, GAO-05-80, *Criminal Debt: Court-Ordered Restitution Amounts Far Exceed Likely Collections for the Crime Victims in Selected Financial Fraud Cases* (Jan. 2005); and GAO, GAO-18-115, *Federal Criminal Restitution: Factors to Consider for a Potential Expansion of Federal Courts' Authority to Order Restitution* (Oct. 2017).

³¹ GAO, GAO-18-203, *Federal Criminal Restitution: Most Debt Is Outstanding and Oversight of Collections Could Be Improved* (Feb. 2018).

³² IRM 5.1.5.18 (Nov. 4, 2019).

³³ The IRS will notify the DOJ FLU that the defendant can increase their established payment plan with the courts.

³⁴ We did not evaluate the actions taken in 18 cases for which the IRS assessed the restitution and was fully paid by the defendant. In our analysis, we compared the amounts collected with the restitution ordered and did not consider interest and penalties that the IRS assessed in addition to the restitution ordered.

assigned cases to the Collection Field function. However, most of the restitution due was determined to be currently not collectible. Specifically, we found that:

- In 43 of the 50 cases, the IRS filed Notices of Federal Tax Lien. [REDACTED] the seven remaining cases for which Notices of Federal Tax Lien were not filed, [REDACTED] [REDACTED] In the other five instances, we did not find evidence that the IRS filed a Notice of Federal Tax Lien.
- In 38 of the 50 cases, we found evidence the IRS had taken steps to levy the defendant's property. In three of the remaining 12 cases, there were other non-Federal victims awarded restitution. By law, all other (non-Federal) victims must receive full restitution before the Federal Government receives restitution.
- In 33 cases, restitution of more than \$21.7 million (54 percent) was determined to be currently not collectible. In 27 of the 33 cases, the IRS determined that the collection of the liability would create a hardship. The remaining \$18.2 million is in the collection stream or in bankruptcy status.

According to SB/SE Division Collection function personnel, limited resources have affected their ability to take necessary collection actions on RBAs. We recently reported that the number of revenue officers has declined from 2,809 in FY 2014 to 2,168 in FY 2018 (23 percent).³⁵ RBAs are assigned to Civil Enforcement Advice and Support Operations and it is required to issue "Other Investigations" to the Collection field to request investigations on probation and restitution cases when it becomes aware that an RBA was made.³⁶ Collection function personnel added there are areas of the country that do not have revenue officers available to conduct Other Investigations. Subsequently, the Other Investigations are closed without any collection action taken by the IRS. RBA accounts are initially graded as higher-grade cases, and most Collection Field function managers will only assign the Other Investigations to a higher-grade revenue officer.³⁷

Steps Need to Be Taken to Ensure That Restitution Is More Timely Assessed

The CY 2010 law change required the IRS to develop policies and procedures for the assessment and collection of the restitution ordered by the courts. This included creating procedures for the assessment of restitution, the processing of the restitution payments, and the linking of RBA accounts to civil tax accounts so restitution payments can also be credited to the underlying tax liability.³⁸ The IRS developed new Internal Revenue Manual (IRM) sections specifically related to the assessment of restitution and updated existing ones related to the processing of restitution

³⁵ TIGTA, Report No. 2019-30-063, *Trends in Compliance Activities Through Fiscal Year 2018* (Sept. 2019).

³⁶ Other Investigations are issued to the Collection Field function to request investigations on probation and restitution cases when it becomes aware that an RBA was made. According to the SB/SE Division, the Other Investigation may be closed once the RBA has been accelerated and assigned to a revenue officer.

³⁷ Field Collection managers may change the grade level if the case meets certain qualifying factors in accordance with the Resource Guide for Managers, IRM 1.4.50.10.1 (August 21, 2018).

³⁸ When restitution debts stem from the same underlying tax liability, the full amount can only be collected once. Therefore, any payments that wholly or in part satisfy the RBA must also be applied against the underlying tax liability for the same type of tax and tax periods, provided that the RBA relates to that underlying tax liability, IRM 5.1.5.19.2(1) (October 6, 2017).

payments and collection of restitution.³⁹ The three primary IRS divisions involved in the process created guidance and provided training to their employees as follows:

- CI developed procedures for the closing of the investigation and monitoring the conditions of probation or supervised release, including procedures for completing the forms needed for the assessment of restitution. It also developed specific procedures for the closing of SIRF investigations. It has provided training to the special agents and Conditions of Probation/Supervision (COP) coordinators on the law change, investigative closing procedures, the completion of forms sent to the civil functions, and recent court decisions relating to the assessment of restitution.
- The SB/SE Division issued memorandums containing interim guidance relating to the assessment and collection of restitution that it eventually incorporated into the IRM. It also developed desk procedures specifically for the assessment of restitution and provided training to the Technical Services staff on the assessment of restitution, including procedures for linking to related accounts and the impact of recent court decisions.
- The W&I Division provided training for the processing of restitution payments.

However, our audit did identify areas in which the IRS can take steps to improve the procedures relating to the assessment of restitution.

CI did not always send the closing package to the SB/SE Division

According to the IRM, CI is required to close its case and notify the civil functions of the amount of restitution ordered no later than 30 calendar days after final adjudication by a court.⁴⁰ CI notifies the applicable functions within the SB/SE and W&I Divisions of the amount of restitution ordered by completing Form 13308, *Criminal Investigation Closing Report*, and Form 14104, *Notification of Court Ordered Criminal Restitution Payable to the IRS*, (hereafter we will refer to these as "closing documents") and attaching the Judgment and Commitment Order (J&C).⁴¹ The closing documents sent to the civil functions can also include the plea agreement, indictment, and Special Agent Report.

We conducted testing to determine if the IRS properly assessed restitution when the courts sentenced and ordered 3,435 defendants to pay just over \$2.5 billion in restitution to the IRS for tax-related crimes during FYs 2016 through 2019.⁴² Our analysis of CIMIS revealed that 418 of the 3,435 cases for which a total of \$244 million in restitution was ordered were SIRF cases with

³⁹ The new IRM sections include IRM 4.8.6, *Technical Services, Criminal Restitution and Restitution-Based Assessments* (August 5, 2015); IRM 25.26.1, *Restitution, Criminal Restitution and Restitution-Based Assessments* (March 24, 2014); and IRM 5.19.23, *Liability Collection, Restitution-Based Assessments Processing* (June 6, 2014). The dates cited indicate when the IRS initially transmitted the IRM sections. The IRS has subsequently revised IRM 4.8.6 and IRM 5.19.23.

⁴⁰ The defendant has 14 calendar days in which to file an appeal after the sentencing hearing. CI will not send the closing documents to the civil functions until the sentence is fully adjudicated by the courts.

⁴¹ IRM 25.26.1.3.1 (March 24, 2014).

⁴² We identified this information from CIMIS. This differs from the 3,479 investigations noted in the first section of the report because we used only those investigations with a Taxpayer Identification Number. This allowed us to match the information to Master File data obtained from TIGTA's DCW.

no IRS conditions of probation or supervised release.⁴³ The restitution ordered in these types of cases was not assessable. We compared the remaining 3,017 cases, for which restitution of nearly \$2.3 billion was ordered, to Master File data obtained from the DCW. Our testing determined that the IRS made restitution assessments in 1,958 cases where defendants were ordered to pay nearly \$1.3 billion in restitution. This left 1,059 cases for which the defendants were ordered to pay nearly \$1 billion in restitution that was not assessed. Figure 4 presents the results of this testing to determine if restitution was assessed.

Figure 4: Analysis to Determine If the IRS Assessed Restitution

| Restitution Assessment Category | Number of Defendants | Total Restitution Ordered |
|---------------------------------|----------------------|---------------------------|
| Restitution Assessed | 1,958 | \$1,295,060,577 |
| SIRF | 418 | \$244,134,937 |
| Not Assessed | 1,059 | \$979,749,303 |
| Total | 3,435 | \$2,518,944,817 |

Source: Analysis of CIMIS and Individual Master File data.

We selected a statistical sample of 140 of the 1,059 unassessed restitution cases and reviewed the associated Form 14104 to determine if CI indicated that the restitution was assessable.⁴⁴ Our analysis identified 33 cases for which CI determined that restitution of more than \$21.6 million was assessable. For the other 107 cases, among the more prevalent reasons the IRS did not assess the restitution was that CI determined that the restitution was not assessable (94 cases) or the case was currently under appeal (seven cases).⁴⁵ We provided information for 33 cases to the SB/SE Division, and it responded that:

- In 19 cases, the restitution of just over \$9 million was not assessed because the Technical Services Unit indicated that it did not receive the closing documents from CI. In 12 instances, CI acknowledged that the closing documents were never sent or were not sent timely. In seven instances, CI asserted that the documents were sent. The Technical Services Unit had to request the pertinent information from CI.
- In seven cases, restitution assessments of more than \$10.2 million were delayed because of COVID-19. The Technical Services Unit eventually assessed the restitution in all seven cases by December 2020.

⁴³ We were able to identify these because CI issued closing guidelines to field offices for SIRF investigations (*SIRF Restitution Guidelines for CIMIS*). This allowed us to identify SIRF investigations with no IRS conditions of probation or supervised release.

⁴⁴ We used a stratified statistical sampling technique for this testing. We dividend the population into two strata: Stratum 1 of 374 cases with restitution ordered of \$295,138,281 were sentenced for a Title 26 violation. Stratum 2 of 685 cases with restitution owed of \$684,611,022 were not sentenced for a Title 26 violation. We expected that Stratum 1 would have a higher error rate. We used a 90 percent confidence level, a ±5 percent precision, and a 50 percent expected error rate for Stratum 1 and 10 percent expected error rate for Stratum 2.

⁴⁵ In the other six cases, we determined that the IRS either properly assessed the restitution or the restitution was not assessable until the defendant’s release from prison and during the period of probation or supervision. Restitution ordered solely as a condition of probation or supervised release is collectible only during the period of probation or supervision. It is not collectible either before or after the term of probation or supervised release. *United States v. Westbrook*, 858 F. 3d 317, 328 (5th Cir. 2017).

- In seven cases, restitution of almost \$2.4 million was not assessable. This included ██████████ for which the restitution was ordered solely as a condition of supervised release or probation. In these instances, the Technical Services Unit indicated that it would assess the restitution when the defendant is released from prison.

When we projected the results to the population, we estimate that restitution of \$69 million was not assessed in 144 cases because CI did not send the closing documents or the documents could not be located.⁴⁶ When forecast over five years, we estimate that a total of \$345 million in restitution was not assessed in 720 cases.⁴⁷

CI needs to develop procedures to ensure that closing documents are sent to the Technical Services Unit. Without the closing documents, the SB/SE Division cannot make the restitution assessment and the W&I Division would not be able to apply any restitution payments it receives to the defendant's restitution account. This could also delay any collection actions by the SB/SE Division on the restitution owed to the IRS.

Restitution assessments were not made timely

CI is required to forward the closing packages to the civil functions within 30 calendar days of final adjudication by a court. According to the IRM, once the Technical Services Unit receives the closing documents from CI, it can take as long as 75 calendar days for it to assess the restitution.⁴⁸ This includes 10 calendar days to review the closing documents provided by CI, 30 for the establishment of the RBA account on the Master File, and 35 days for the restitution assessment to post to the RBA account. If the package sent by CI is incomplete or inaccurate, it could add an additional 59 days to the process.

Our review of the processing of the 68 sample cases for which the IRS assessed the restitution found that the IRS did not always make restitution assessments in a timely manner.⁴⁹ Our analysis found that it took the IRS an average of 255 calendar days to assess the restitution once the court filed the J&C. This occurred partly because it took CI at least 57 calendar days to prepare the closing documents (only 28 of the 68 were transmitted within the 30 days).⁵⁰

Once CI prepared the closing documents, it took the Technical Services Unit an average of 198 calendar days to assess the restitution. Technical Services Unit personnel told us they face barriers in their efforts to timely assess restitution, including receiving incomplete or late packages from CI and the process of posting the actual assessments, which must pass through other Campus functions to be established. They indicated that they established a process to track restitution assessments to evaluate timeliness, but they agreed with the need to conduct

⁴⁶ We are 90 percent confident that the total number of cases for which CI did not forward the documents was between 99 and 190 and the amount of restitution not assessed was between \$31,922,171 and \$158,572,286.

⁴⁷ See Appendix II. The five-year forecast is based on multiplying the base year by five and assumes, among other considerations, that economic conditions and tax laws do not change.

⁴⁸ IRM Exhibit 4.8.6-1 (August 5, 2015).

⁴⁹ For this analysis, we reviewed the CIMIS data and court documents on the Public Access to Court Electronic Records to identify cases for which the defendant filed an appeal of the court's decision. We made the appropriate changes to our determinations.

⁵⁰ Our analysis was based on the date the special agent in charge signed either the Form 13308 or Form 14104. We could not determine when CI actually transmitted the documents to the SB/SE Division or when they were received. This represents the earliest date CI could have transmitted the documents to the SB/SE Division.

periodic reviews. Figure 5 contains a breakdown of the number of days it took to assess the restitution.

Figure 5: Analysis of Days to Assess Restitution for the 68 Sample Cases

| Restitution Assessment Category | Expected Days to Complete ⁵¹ | Average Days to Complete |
|---|---|--------------------------|
| From the Date of Final Adjudication by a Court Until the Date CI Forwarded the Closing Package to the Technical Services Unit | 30 | 57 |
| From the Date CI Forwarded the Closing Package Until the Date the Technical Services Unit Assessed Restitution | 75 | 198 |
| Total Days From the Date the Court Filed the J&C Until the Date the Technical Services Unit Assessed Restitution | 105 | 255 |

Source: TIGTA Review of CI closing documents, U.S. District Court documents, and the Date of Assessment on the Master File.

The IRS needs to take steps to ensure that restitution assessments are made in a timely manner. Specifically, CI should develop procedures to timely send closing documents to the Technical Services Unit. The timely assessment of restitution can allow the SB/SE Division Collection function to initiate collection actions sooner and allows the W&I Division to apply any restitution payments received directly to the defendant’s assessed restitution. As our analysis has shown, defendants pay a higher percentage of restitution when the IRS assesses the restitution.

Recommendation 1: The Chief, CI, should develop procedures to ensure that CI is timely sending closing documents to the Technical Services Unit. This includes receiving acknowledgement from the SB/SE Division that the documents were received.

Management’s Response: The IRS agreed with this recommendation. CI has procedures in place to ensure that CI is timely sending closing documents to the Technical Services Unit to include receiving acknowledgement from the SB/SE Division that the documents were received. In the first quarter of FY 2021, CI, in coordination with the SB/SE Division, implemented a quarterly reconciliation process. The reconciliation process allows CI to identify cases that need to be sent to the SB/SE Division. The reconciliation process also identifies closing packages that are potentially over-aged and require resolution. As indicated on the Form 13308, the field office COP or criminal restitution coordinator receives acknowledgement from the Technical Services Unit or Field and Collection Advisory when closing packages are received.

Recommendation 2: The Commissioner, SB/SE Division, should review the existing process controls to ensure that restitution assessments are made in a timely manner. This review could be conducted when completing periodic reviews of the restitution program and addressing any barriers to the timely assessment of restitution.

Management’s Response: The IRS agreed with this recommendation and will conduct a program review to evaluate its work processes.

⁵¹ Based on the criteria developed by the IRS.

Interest and Penalties Were Sometimes Erroneously Assessed

In response to the Firearms Excise Tax Improvement Act, the IRS Office of Chief Counsel issued a memorandum providing for the accrual of interest on RBAs made under Title 26.⁵² Accordingly, the IRS assessed interest on unpaid RBAs.

However, in October 2017, the U.S. Tax Court held, in *Klein v. Commissioner*, that the IRS may not assess and collect interest and penalties on restitution ordered for a criminal conviction for failure to pay tax.⁵³ The Tax Court concluded that, if the Government wanted to assess interest and penalties, it was free to commence a civil examination. The Government did not appeal the decision. Subsequently, the IRS Office of Chief Counsel issued a notice instructing IRS personnel to abate the interest and penalties if contested by the defendant. The notice further stated that, "Chief Counsel Attorneys should review any case in which interest is included in a module containing an amount of restitution assessed under I.R.C. Section 6201(a)(4)(A) to determine whether the interest is improperly accruing on the amount of restitution assessed."⁵⁴ IRS Office of Chief Counsel attorneys explained to us that the IRS may only assess the amount of restitution ordered by the courts. The SB/SE Division makes the assessment based on the composition of the tax loss ordered as restitution.

The notice did not require SB/SE Division personnel to remove interest and penalties incorrectly assessed in response to the *Klein* decision.⁵⁵ It instructed them to remove the interest and penalties when challenged by the defendant, thereby placing the burden on the defendant to initiate the removal of any interest and penalties incorrectly assessed. SB/SE Division personnel told us that they have taken a more proactive approach and efforts to remove the incorrect interest and penalties on RBA accounts are currently in process. Specifically, the SB/SE Division established a cross-functional team in CY 2018 after the *Klein* decision to address the application of interest and penalties on the RBA accounts. SB/SE Division personnel told us that, as of December 2020, they have removed the Failure to Pay Penalties from the RBA accounts and are continuing to perform analysis to remove the assessed interest. However, their efforts have been temporarily delayed by COVID-19 work.

We analyzed Individual Master File information and determined the amount of interest and penalties incorrectly assessed to RBA accounts that were not removed as of March 2020. We analyzed CIMIS and Individual Master File data for 3,435 cases in which defendants were ordered to pay just over \$2.5 billion in restitution to the IRS for tax-related crimes during FYs 2016 through 2019. Our analysis identified 676 cases for which it appears that the IRS may have incorrectly assessed \$66.7 million in interest and penalties that have not been removed.⁵⁶

⁵² IRS, Office of Chief Counsel Notice CC-2011-018, *The Assessment and Collection of Criminal Restitution* (Aug. 26, 2011). See Question No. 12 on page 6.

⁵³ *Klein v. Commissioner*, 149 T.C. No. 15 (2017).

⁵⁴ IRS, Office of Chief Counsel Notice CC-2019-004, *Interest and Penalties on Restitution-Based Assessments* (June 27, 2019).

⁵⁵ The IRS Office of Chief Counsel explained that this notice was written in order for Chief Counsel attorneys to advise the IRS if they had a question in a particular case after the *Klein* decision.

⁵⁶ These could include instances where the IRS properly assessed interest and penalties to the account used for the RBA. This same account code is also used to identify assessments against an individual taxpayer on a joint module and is generated by certain triggering events including when an innocent spouse files a request for innocent spouse relief during an open examination of the joint civil tax account. In these instances, the interest and penalties cannot

This includes several instances in which defendants fully paid the restitution ordered but were assessed additional interest and penalties. In some cases, the defendants made additional payments that exceeded the restitution ordered. Our analysis found that only 31 of the 676 cases may have contained incorrectly assessed penalties, which lends support for the SB/SE Division's statements that it was taking steps to remove the interest and penalties from RBA accounts. It is important that the SB/SE Division continue its efforts to remove the interest and penalties that were incorrectly assessed to RBA accounts to ensure that the IRS is not overcompensated for the restitution owed.

Technical Services personnel explained to us that they have established a process to prevent the accrual and assessment of interest and penalties when they establish RBA accounts. We evaluated the effectiveness of these procedures by analyzing Individual Master File data for cases for which the Technical Services Unit assessed restitution for a judgmental sample of 19 cases in which defendants were sentenced during CY 2019.⁵⁷ Our analysis found that the new procedures were effective in preventing the accrual of interest and penalties on RBA accounts established after the *Klein* decision. For 16 defendants, the IRS took steps to prevent the accrual and assessment of interest and penalties, and for the remaining three defendants, the interest and penalties assessed were appropriate and did not exceed the amount of restitution ordered.

Recommendation 3: The Commissioner, SB/SE Division, should establish monitoring procedures to provide reasonable assurance that all interest and penalties incorrectly assessed to RBA accounts are removed.

Management's Response: The IRS agreed with this recommendation. The SB/SE Division had taken a proactive approach to abate interest and penalties asserted on RBA accounts before the decision of the United States Tax Court in *Klein v. Commissioner*, 149 T.C. No. 15 (2017). As the report notes, the IRS abated Failure to Pay Penalties from RBA accounts as of December 2020. Collection and the Office of Service-wide Interest will continue to develop and implement a systemic process to abate interest that was applied to RBA accounts prior to the *Klein* decision. Accounts that cannot be systemically corrected will be referred to the Examination function.

Limited Resources Have Diminished the Capacity to Monitor Compliance With the Conditions of Probation or Supervised Release

Public confidence in the tax system requires that the IRS exercise due diligence to ensure taxpayer compliance with any tax-related conditions of probation or supervised release imposed by the courts. To ensure that any noncompliance with IRS-related conditions of probation or supervised release is detected and appropriate parties are timely notified, coordination between the SB/SE Division, CI, and the Department of Justice is required.⁵⁸

be assessed to the civil tax account and must be assessed to the RBA account. The account is also used when a spouse files for bankruptcy and the non-bankrupt spouse has defaulted.

⁵⁷ We identified these 19 cases from the CIMIS data.

⁵⁸ IRM 5.1.5.14 (Nov. 4, 2019).

According to the IRS, the revocation of probation or supervised release can be a powerful tool in motivating a defendant to pay restitution. Because periods of probation or supervised release are often fairly short, difficulties may arise in timely seeking revocation based on the failure to make restitution payments. Thus, compliance should be closely monitored and noncompliance reported immediately upon discovery.⁵⁹

The courts may impose a variety of conditions of probation or supervised release. Some of the more common include paying restitution to the IRS, paying or making arrangements to pay past due taxes, filing past due and current tax returns, and cooperating with the IRS in a collection investigation or examination. The lack of cooperation with the IRS can include:

- Failing to file returns or filing frivolous returns.
- Failure to schedule or appear at scheduled appointments.
- Failing to provide complete records in a timely manner.
- Putting assets beyond the reach of the IRS.
- Any actions causing unwarranted delays in resolving tax compliance issues.

The SB/SE Division's Examination and Collection functions are responsible for monitoring defendants' compliance with the conditions of probation or supervised release. The SB/SE Division is required to provide a 180-day (calendar days) memorandum to notify CI that a defendant is not in compliance six months before the end of the probation or supervised release.⁶⁰ The IRM instructs the SB/SE Division not to wait until six months before the end of the probationary period to provide the 180-day memorandum but to provide it as soon as noncompliance is identified.

It is important for the SB/SE Division to timely notify CI of any noncompliance because it is the responsibility of the Special Agent in Charge to take whatever steps are necessary to initiate proper legal action in any instance in which a defendant failed to comply with the conditions of probation or supervised release. During the audit, we contacted three Special Agents in Charge and each indicated that, when notified of noncompliance, they would contact the USAO, and the USAO would ultimately decide whether the revocation of probation would be pursued. The courts then decide if probation or supervised release should be revoked.⁶¹

A total of 67 of the 110 sample cases we reviewed had IRS conditions of probation or supervised release that the IRS needed to monitor.⁶² We reviewed each of those cases to determine if the defendant was compliant with the terms of probation by focusing on the payment of restitution and whether CI communicated with the SB/SE Division, W&I Division, or a U.S. Probation Officer

⁵⁹ IRM 5.1.5.24 (Dec. 16, 2014).

⁶⁰ IRM 5.1.5.20.1 (October 6, 2017). This requirement was changed in October 2017 to limit the circumstances when the memorandum was required. Prior to that, the memorandum was required in all cases with IRS conditions of probation or supervised release.

⁶¹ IRM 9.5.11.8 (Nov. 1, 2011).

⁶² We did not include 30 cases that did not appear to have IRS conditions of probation or supervised release, and most of those were SIRF cases. We also did not include 13 cases for which the defendant was still on probation at the time of our review, CI did not send the closing documents to the civil function, or the defendant had died or was diagnosed with terminal cancer during the probationary period.

on the status of compliance with the conditions of probation or supervised release.⁶³ Our review found:

- 30 cases for which it appeared the defendant complied with the conditions of probation or supervised release, which included making restitution payments according to a court-approved payment plan. In those cases, the 180-day memorandum would not have been required.
- 20 cases for which it appeared that the defendant did not comply with the terms of probation. [REDACTED] did we find a 180-day memorandum prepared by the SB/SE Division. In five cases (including the case with the 180-day memorandum), there was evidence that CI communicated with the SB/SE Division on the probation status (such as restitution payment histories).⁶⁴
- 17 cases for which we could not make a definitive conclusion on the defendant's compliance with the conditions of probation or supervised release. This included cases for which the courts ordered the defendant to make periodic restitution payments based on a percentage of the defendant's gross income. [REDACTED] did we find that a 180-day memorandum was prepared.

Figure 6 summarizes the results of our analysis of compliance with the conditions of probation or supervised release:

Figure 6: Compliance With Conditions of Probation or Supervised Release

| TIGTA Conclusion on Compliance With Conditions of Probation or Supervised Release | Cases Reviewed | 180-Day Memorandum Prepared by SB/SE Division | Other Communication With IRS Civil Functions | Communication With U.S. Probation Officer |
|---|----------------|---|--|---|
| Complied With the Terms of Probation | 30 | [REDACTED] | 5 | [REDACTED] |
| Did Not Comply With the Terms of Probation | 20 | [REDACTED] | 5 | [REDACTED] |
| Could Not Make a Definitive Conclusion | 17 | [REDACTED] | [REDACTED] | [REDACTED] |

Source: TIGTA review of information provided by CI and Individual Master File data.

Because the 180-day memorandums are rarely prepared even when it appears a defendant is not in compliance, CI cannot assume a defendant is compliant when one is not prepared. According to SB/SE Division Collection function personnel, the 180-day memorandums were seldom prepared because they do not have the resources to timely monitor cases involving the payment of restitution and compliance with other conditions of probation or supervised release. SB/SE Division Collection personnel told us that a team of 10 employees within Collection's Civil Enforcement Advice and Support Operations is solely responsible for monitoring the conditions of probation or supervised release and payment of restitution. As of September 2020, the average caseload for each of the 10 employees was 650 cases, which created a backlog in their

⁶³ We requested from CI all 180-day memorandums prepared by the SB/SE Division, all communication with the SB/SE Division regarding compliance with the conditions of probation or supervised release, and communication with a U.S. Probation Officer regarding compliance.

⁶⁴ The W&I Division processes restitution payments, and it prepared the restitution payment histories.

ability to monitor the conditions of probation or supervised release.⁶⁵ SB/SE Division Collection function personnel indicated that their biggest delay was processing the 180-day memorandum in cases for which the taxpayer was not compliant with the terms of probation. CI indicated that limited resources have also affected its ability to monitor the conditions of probation or supervised release, primarily due to the increase of administrative tasks placed on personnel involved in the program, such as COP coordinators.

The inability to properly monitor the conditions of probation or supervised release could be a contributing factor for why U.S. courts rarely revoked the probation or supervised release for defendants sentenced for tax-related crimes. The courts revoked probation in only 12 of the over 9,000 CI criminal investigations for which a defendant was sentenced for tax-related crimes during FYs 2016 through 2019. Courts will generally not revoke probation unless the failure to comply was willful. Because this can be hard to prove, this remedy is not widely invoked. One Special Agent in Charge we contacted also indicated that the resources of the USAOs are also limited, and [REDACTED]

Because of the current resource issue, we are not making a formal recommendation. However, the IRS should be mindful of any alternatives to monitoring compliance with the conditions of probation or supervised release. For instance, one Special Agent in Charge we contacted during our audit indicated that, instead of CI making ad hoc requests to the W&I Division for restitution payment histories, a recurring automated report could be prepared periodically and distributed to the field offices allowing them to identify defendants that have not made restitution payments.

Internal Controls Related to the New Assessment Procedures Did Not Prevent the Issuance of Erroneous Refunds

Our review of a sample of RBA accounts that contained refunds determined that internal controls could be improved to prevent the IRS from issuing erroneous refunds in the accounting for restitution payments. During our previous audit, we concluded that the IRS did not have effective internal controls to prevent issuing erroneous refunds when it receives restitution payments and a tax assessment was not made to the defendant's tax account. We indicated that the law change to allow the IRS the ability to assess an ordered amount of restitution as if it was a tax would provide for the opportunity for a better accounting of restitution payments, but effective internal controls were still needed to prevent the issuance of erroneous refunds.⁶⁶

We reviewed Master File information and identified 204 refunds totaling more than \$1.7 million issued to defendants that the courts ordered to pay restitution during FYs 2016 through 2019.⁶⁷ We reviewed all 55 refunds that exceeded \$5,000 that the IRS issued to 31 defendants to determine if they were appropriate.⁶⁸ These funds totaled more than \$1.5 million. Most of the

⁶⁵ Specifically, 2,175 civil tax modules were being monitored by 10 employees for compliance with the terms of probation and eight advisors were also responsible for monitoring 4,900 restitution modules for payment of restitution. A module is part of a taxpayer's account that reflects tax data for one tax class and one tax period.

⁶⁶ TIGTA, Report No. 2012-30-012, *Procedures Are Needed to Improve the Accounting and Monitoring of Restitution Payments to Prevent Erroneous Refunds* (Jan. 2012).

⁶⁷ These refunds were issued both manually and systemically.

⁶⁸ For this testing, we reviewed Master File transactions and court documents and considered input from IRS personnel.

refunds we analyzed were correct, but we identified [REDACTED] that were erroneously issued back to defendants, indicating that internal controls could be improved. [REDACTED]

[REDACTED] According to the SB/SE Division, it cannot try to recapture these erroneous refunds because they exceed the Erroneous Refund Statute Expiration Date of two years.⁶⁹

There should not be refunds emanating from defendant restitution accounts because they are generally used by the IRS to assess restitution and process payments and related credits. However, the transfer of credits between a defendant's tax and restitution accounts can sometimes lead to credit balances on restitution accounts and the issuance of refunds. The *Standards for Internal Control in the Federal Government* requires that all transactions be authorized, clearly documented, and readily available for examination.⁷⁰ Control activities such as accurate and timely recording of transactions and events help ensure the completeness and accuracy of refunds.

SB/SE Division Collection function personnel indicated that the RBA program does have a process in place whereby each account showing a zero or credit balance is reviewed for accuracy. However, [REDACTED] were issued after this control was first developed in June 2014.⁷¹ The SB/SE Division needs to ensure that this control is working as intended and is preventing the issuance of erroneous refunds.

The Criminal Investigation Management Information System Contained Numerous Errors Related to Restitution and the Monitoring of Probation

During our review, we identified numerous errors in the CIMIS data relating to defendants who were sentenced for tax-related crimes and ordered to pay restitution. For the 110 sample cases, we compared the information in CIMIS to court documents, such as the J&C, and prison release information on the U.S. Bureau of Prisons website. A total of 91 (82.7 percent) of the 110 sample cases contained one or more errors in the following data fields.

- Conditional Expiration Probation Date – 32 (29 percent) with inaccurate dates. We believe this could have occurred because the field was not updated when the defendant was released from prison. This information is used to identify defendants with pending expiration of probation or supervised release. After the expiration of probation or supervised release, the courts cannot revoke or modify the terms of supervision.
- Conditional Probation Results – 56 cases (51 percent) for which the field office did not input the results. According to CI Field Office Procedures, this field should be completed once the probation or supervised release expires to indicate whether the terms of probation were met. This field is important because CI management can use the information to determine the number of defendants that had met the terms of probation.

⁶⁹ IRM 21.4.5.4.1 (October 1, 2006).

⁷⁰ GAO, GAO-14-7046, *Standards for Internal Control in the Federal Government* (Sept. 2014).

⁷¹ IRM 5.19.23.6 (June 6, 2014). The IRS has since revised that IRM section.

- Months to Serve or Months' Probation – 16 cases (14.6 percent) for which either the months to serve or months of probation was incorrect. It is important this information be accurately input and updated (if courts amend the J&C) because it can be used to help determine when the defendant's probation expires.
- Amount of Fines – 25 cases (22.7 percent) for which the amounts were incorrect. This occurred in most instances because the amount of assessment ordered by the courts was entered instead of the fine. According to CI Field Office Procedures, this field should contain fines only, not assessments.⁷²

In addition, as we indicated in a previous section of the report, we identified 19 instances in which the closing package was not sent to the Technical Services Unit so the restitution could be assessed. In 15 of the 19 instances, the CIMIS status field indicated that the field office had sent the closing package to the SB/SE Division.⁷³ This could lead CI personnel reviewing information on CIMIS to mistakenly believe that the closing package had already been sent to the civil functions for processing.

The *Standards for Internal Control in the Federal Government* requires that all transactions be authorized, clearly documented, and readily available for examination. Control activities, such as accurate and timely recording of transactions and events, help ensure the completeness and accuracy of all transactions. CI's special agents are responsible for entering the CIMIS information related to defendants sentenced for tax-related crimes and ordered to pay restitution. For instance, they are responsible for computing the Conditional Expiration Probation Date. The COP coordinators in each CI field office are responsible for reviewing the applicable information entered on CIMIS. During the audit, we contacted COP coordinators from three CI field offices. Each of the coordinators indicated that they compare the information entered on CIMIS to court documents.

In addition, CI indicated that it has several quality review mechanisms in place to ensure the accuracy of CIMIS information. This includes administrative officers within each field office conducting CIMIS accuracy reviews on 25 percent of open investigations every year. Supervisory special agents also review the accuracy of CIMIS data during their workload reviews with each special agent.⁷⁴ In addition, CI's Office of Review and Program Evaluation reviews the accuracy of CIMIS data during its evaluation of each field office.⁷⁵ CI also indicated that the Office of Financial Crimes recently developed a monthly process to ensure that criminal restitution and the conditional probation results are entered correctly in CIMIS.

However, these quality review measures did not ensure the accuracy of the CIMIS information related to restitution and the conditions of probation or supervised release. It is important that the information in CIMIS related to the monitoring of the conditions of probation or supervised release be accurately input and updated timely. An effective management information system is also necessary for measuring program results and making management decisions. Without

⁷² *Field Office Procedures – Investigation Closing and Conditions of Probation* (Nov. 21, 2016).

⁷³ Each of the 15 investigations contained the status in CIMIS, "Form 13308 CI Closing Report Forwarded to Small Business/Self-Employed Division." According to the CI Field Offices Procedures, if restitution is ordered, the field office is required to send the Form 14104 along with the Form 13308.

⁷⁴ According to CI, supervisory special agents conduct three workload reviews per year.

⁷⁵ According to CI, a Review and Program Evaluation of each field office is conducted once every two years. These evaluations assess field office operations and managerial effectiveness.

accurate information, CI personnel may be unable to take timely actions related to the defendants' probation, and CI management may be relying on incorrect data for making management decisions.

Recommendation 4: The Chief, CI, should ensure that reviews of CIMIS information related to restitution and the monitoring of the conditions of probation or supervised release are included in existing quality review mechanisms.

Management's Response: The IRS agreed with this recommendation. CI has several mechanisms in place to ensure that reviews of CIMIS information related to restitution and the monitoring of the conditions of probation or supervised release are included in existing quality reviews. Specifically, the CI Field Office administrative officers perform administrative reviews, which includes CIMIS accuracy reviews of each field office group. Supervisory special agents also perform CIMIS accuracy reviews at least once per year during workload reviews conducted with special agents. Additionally, CIMIS accuracy reviews are required for all cases at case closing. CI's Office of Review and Program Evaluation is ultimately responsible for ensuring that CI is compliant with established policies including CIMIS entries and the accuracy of those entries during field office reviews. CI Headquarters has also developed a monthly process that samples conditions of probation or supervised release and criminal restitution cases to ensure that conditions of probation or supervised release results are entered correctly and criminal restitution amounts are reported accurately.

Appendix I

Detailed Objective, Scope, and Methodology

Our overall objective was to determine if defendants convicted of tax-related crimes are held responsible for the payments of the taxes associated with the offenses they committed. To accomplish our objective, we:

- Determined if the IRS has established internal controls, procedures, and processes to effectively monitor and track compliance with conditions of probation or supervised release and restitution. We reviewed current IRMs, I.R.C. sections, and other guidance developed by the IRS. We interviewed SB/SE Division personnel responsible for assessing restitution and W&I Division personnel responsible for processing restitution payments. We also corresponded with CI management and other personnel from three field offices on the process for monitoring the conditions of probation or supervised release.
- Evaluated the effectiveness of the IRS's procedures for assessing criminal restitution that defendants were ordered to pay as part of their sentences for tax-related crimes. We determined if the IRS properly assessed restitution when the courts sentenced and ordered 3,435 defendants to pay just over \$2.5 billion in restitution to the IRS for tax-related crimes during FYs 2016 through 2019. From 1,059 cases for which we could not determine if the IRS assessed the restitution, we selected a statistical sample of 140 cases to conduct additional testing and determined if the IRS should have assessed the restitution.¹ We developed all sampling plans and projections with the assistance of the TIGTA's contracted statistician.
- Determined if defendants fully complied with the conditional terms of probation as part of their sentences and if the IRS took appropriate actions if they did not comply. From the CIMIS, we judgmentally selected a sample of 110 criminal investigations for which courts ordered the payment of over \$300 million in restitution to the IRS during FYs 2016 through 2019 from a population 3,479 investigations for which defendants were ordered to pay nearly \$2.7 billion in restitution to the IRS.² We analyzed information provided by CI field offices, court documents from the Public Access to Court Electronic Records, Master File data using both the Integrated Data Retrieval System and the TIGTA DCW, and the U.S. Bureau of Prisons website.
- Determined if interest and penalties were properly assessed. From the same judgmental sample of 110 cases previously noted, we analyzed Master File data using both the

¹ We used a stratified statistical sampling technique for this testing. We divided the population into two strata: Stratum 1 of 374 cases with restitution ordered of \$295,138,281 were sentenced for a Title 26 violation. Stratum 2 of 685 cases with restitution owed of \$684,611,022 were not sentenced for a Title 26 violation. We expected that Stratum 1 would have a higher error rate. We used a 90 percent confidence level, a ± 5 percent precision, and a 50 percent expected error rate for Stratum 1 and 10 percent expected error rate for Stratum 2.

² For our analysis of CIMIS, we judgmentally selected investigations if the Conditional Probation Expiration Date ended before October 1, 2019, and the defendant had a significant amount of restitution ordered. We also selected cases for which the restitution ordered included an FBAR penalty. We also included SIRF investigations in our sample. A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.

Integrated Data Retrieval System and the TIGTA DCW. For additional analysis, we identified 3,435 cases, from CIMIS data provided by CI, for which the defendant was sentenced during FYs 2016 through 2019, restitution was ordered, and a Taxpayer Identification Number was present. We matched this information to Master File data from TIGTA's DCW and conducted analysis to identify cases for which interest and penalties were assessed, including fraud penalties.

- Identified 204 refunds totaling \$1,741,662 from Master File information issued to defendants who the courts ordered to pay restitution during FYs 2016 through 2019. We reviewed all 55 refunds that exceeded \$5,000 issued to 31 defendants to determine if they were appropriate. These funds totaled \$1,553,324.

Performance of This Review

This review was performed with information obtained from CI, the SB/SE Division, and the W&I Division during the period of October 2019 through January 2021. We were limited during this audit to conducting conference calls and requesting information via electronic mail because the COVID-19 pandemic curtailed our plans to make visitations to audit sites. We believe we were still able to conduct 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 Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations); Christina Dreyer, Director; Timothy Greiner, Audit Manager; and Jeff K. Jones, Lead Auditor.

Validity and Reliability of Data From Computer-Based Systems

During this review, we relied on information obtained from CIMIS related to the restitution ordered and the monitoring of the conditions of probation or supervised release. As documented in the audit report, we identified numerous errors with the information obtained. For instance, during the audit, we determined that we could not rely on the accuracy of the Conditional Probation Expiration Date. However, we found that information such as the sentencing date and restitution amount were largely accurate. Therefore, for purposes of this audit, we relied on the CIMIS information we believed to be accurate. We also used Master File data obtained from the TIGTA DCW. We compared the amount of restitution assessed on the DCW to the amount of restitution assessed on the Integrated Data Retrieval System for 10 cases and determined that the information was sufficiently reliable for purposes of this audit.

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 related to the assessment of restitution, the processing of restitution payments, and the monitoring of the conditions of probation or supervised release. We evaluated these controls by interviewing and

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corresponding with key personnel and analyzing criminal investigation documents provided by CI, restitution payment information provided by the W&I Division, court documents obtained from the Public Access to Court Electronic Records, and Master File data.

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:

- Increased Revenue – Potential; more than \$68.9 million related to 144 cases in which CI did not forward the closing documents to the Technical Services Unit for restitution assessment. When forecast over five years, this is more than \$344.8 million for 720 cases (see Recommendation 1).¹

Methodology Used to Measure the Reported Benefit:

We conducted tests to determine if the IRS properly assessed restitution when the courts sentenced and ordered 3,435 defendants to pay just over \$2.5 billion in restitution to the IRS for tax-related crimes during FYs 2016 through 2019.² Our analysis of the CIMIS revealed that 418 of the 3,435 cases for which \$244 million in restitution was ordered were SIRF cases with no IRS conditions of probation or supervised release.³ The restitution ordered in these types of cases was not assessable. We compared the remaining 3,017 cases for which restitution of nearly \$2.3 billion was ordered to Master File data obtained from the DCW. Our testing determined that the IRS made restitution assessments in 1,958 cases in which defendants were ordered to pay nearly \$1.3 billion in restitution. This left 1,059 cases for which the defendants were ordered to pay nearly \$1 billion in restitution and for which the restitution was not assessed.

We selected a stratified statistical sample of 140 of 1,059 cases and reviewed the Form 14104 to determine if CI indicated that the restitution was assessable. We divided the population of 1,059 cases into two strata: Stratum 1 of 374 cases with restitution ordered of \$295,138,281 were sentenced for a Title 26 violation. Stratum 2 of 685 cases with restitution owed of \$684,611,022 were not sentenced for a Title 26 violation. We expected that Stratum 1 would have a higher error rate. We used a 90 percent confidence level, a ± 5 percent precision, and a 50 percent expected error rate for Stratum 1 and 10 percent expected error rate for Stratum 2. Figure 1 details the population and sample data for each stratum.

¹ The five-year forecast is based on multiplying the base year by five and assumes, among other considerations, that economic conditions and tax laws do not change.

² We identified this information from CIMIS. This differs from the 3,479 noted in the first section of the report starting on page 1 because we only used those defendants with a TIN. This allowed us to match the information to Master File data obtained from TIGTA's DCW.

³ We were able to identify these because CI issued closing guidelines to field offices for SIRF investigations (*SIRF Restitution Guidelines for CIMIS*). This allowed us to identify SIRF investigations with no IRS conditions of probation or supervised release.

Figure 1: Population and Sample Data for Cases (Restitution Was Not Assessed)

| Categories | Stratum 1 – Cases With Title 26 Violation | Stratum 2 – Cases Without Title 26 Violation | Total |
|------------------------------|---|--|---------------|
| Population Accounts | 374 | 685 | 1,059 |
| Population Percentage | 35.3% | 64.7% | 100% |
| Population Restitution Total | \$295,138,281 | \$684,611,022 | \$979,749,303 |
| Sample Cases | 49 | 91 | 140 |
| Sample Restitution Total | \$21,740,612 | \$111,201,454 | \$132,942,066 |

Source: Analysis of CIMIS and Individual Master File data.

We found that, in 19 cases, restitution of \$9,049,945 was not assessed because the Technical Services Unit indicated that it did not receive the closing documents from CI. In 12 instances, CI acknowledged that the closing documents were never sent or were not sent timely. In seven instances, CI asserted that the documents were sent. The SB/SE Division had to request the pertinent information from CI. For these 19 cases, TIGTA’s statistician calculated the error rate for each stratum by multiplying the stratum number of errors by the stratum sample cases. The computed error rates were 28.57 percent (14/49) for Stratum 1 and 5.5 percent (5/91) for Stratum 2. TIGTA’s statistician multiplied the error rates to the stratum population cases to determine the projected number of cases for which CI did not forward the closing documents to the SB/SE Division—a total of 107 cases (28.57 percent x 374) for Stratum 1 and 38 cases (5.5 percent x 685) for Stratum 2.

TIGTA’s statistician projected that CI did not forward the closing documents to the Technical Services Unit for restitution assessment for 144 cases (720 cases when forecast over the next five years).⁴ We are 90 percent confident that the total number of cases for which CI did not forward the documents was between 99 and 190. For the 19 cases, a total amount of \$9,050,945 in restitution was not assessed because CI did not forward the documents to the Technical Services Unit. TIGTA’s statistician projected this to the population, and we estimate that the SB/SE Division did not assess restitution of \$68,963,402 (\$344,817,010 forecast over the next five years) because CI did not forward the documentation. We are 90 percent confident that the amount of restitution not assessed is between \$31,922,171 and \$158,572,286.

Type and Value of Outcome Measure:

- Taxpayer Burden – Potential; more than \$66.6 million for 676 defendants for whom the IRS assessed interest and penalties in addition to the restitution ordered (see Recommendation 3).

⁴ The Stratum 1 projected number of cases was 106.85711 and the Stratum 2 projected number of cases was 37.637325. When added, the total number of projected cases is 144.49443. This would account for the difference from the totals in the prior sentence.

Methodology Used to Measure the Reported Benefit:

We identified 3,435 cases from CIMIS data provided by CI for which the defendant was sentenced during FYs 2016 through 2019 and ordered to pay restitution and for which a Taxpayer Identification Number was present. We matched this information to Master File data from TIGTA's DCW and conducted an analysis to identify cases for which interest and penalties was assessed.

Our analysis identified 676 cases for which it appears that the IRS assessed \$66,670,106 in interest and penalties in addition to the restitution ordered. This includes several instances in which defendants fully paid the restitution but were assessed interest and penalties and, in some cases, made additional payments for which they were not liable.

Appendix III

Summary of IRS Responsibilities for the Assessment and Collection of Restitution and the Monitoring of the Conditions of Probation or Supervised Release

Criminal Investigation

CI special agents should devote the same attention and energy to the sentencing process as to the investigation. The special agent should emphasize to the Assistant United States Attorney responsible for the prosecution, and to the U.S. Probation Officer who may be responsible for preparing a presentencing report, the importance that CI attaches to the sentence imposed and should point out the effect that the sentence may have on the IRS's compliance efforts among similarly situated individuals.¹ CI's responsibilities include:

- Contacting the U.S. Probation Officer in the presentencing and sentencing stages of the case when appropriate.
- Timely inputting and reversing Transaction Code 910 that establishes that the tax account has special conditions of probation or supervised release. CI will not release the Transaction Code 910 until the special conditions of probation or supervised release have been satisfied, the probationary period has expired, or the conditions are otherwise terminated by the court.
- Obtaining the J&C and plea agreement, if any, at the conclusion of every sentencing.
- Determining the applicability of I.R.C. § 6201(a)(4) on whether the restitution can be assessed.
- Notifying the IRS civil functions of the amount of restitution ordered by completing Form 13308 and Form 14104.
- Monitoring the defendant's incarceration status and making any necessary changes to the conditional probation expiration date in CIMIS.
- Reporting to the U.S. Probation Officer and the prosecutor the defendant's compliance or noncompliance with IRS-related conditions of probation or supervised release.
- Sharing joint responsibility with the SB/SE Division in ensuring compliance with court orders.

SB/SE Division Collection and Examination functions

Responsibilities of the Technical Services Unit include:

- Exclusive responsibility for completing assessment on criminal restitution cases for which I.R.C. § 6201(a)(4), *Assessment Authority*, is applicable.
- A centralized Technical Services group has been designated to make all of the criminal restitution assessments.

¹ IRM 9.6.2.5.1 (August 11, 2008).

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- Preparing and submitting Form 3177, *Notice of Action for Entry on Master File*, to Centralized Case Processing to establish restitution-based assessments on the Master File Tax Account Code 31 account.²
- Tracking and monitoring criminal restitution inventory by establishing Examination Returns Control System collateral records for all taxpayers against whom assessable restitution payable to the IRS has been ordered by the court.
- Notifying the W&I Division Submission Processing Accounting Operations of Master File Tax Account Code 31 accounts.
- Issuing the restitution-based assessment notice and demand.
- Forwarding the case file, where appropriate, for necessary civil actions.
- Reviewing the civil examination case file at the conclusion of the examination.

Specific responsibilities of the Field Examination, in coordination with Technical Services (Examination), include:

- Taking appropriate civil actions, including the recommendation not to take further civil action, to conduct a limited or in-depth civil examination, and/or prepare applicable audit reports as warranted based on the facts and circumstances of the case.
- Determining whether civil assessment of tax, interest, and/or penalties is appropriate after a defendant is convicted of a tax crime or related offense and making such assessments.
- Forwarding the completed examination case to Technical Services for mandatory review prior to closure.
- Reporting any noncompliance with conditions of probation or supervised release relating to assessments.
- Monitoring the defendant's conditional probation expiration date.
- Responding to CI regarding the taxpayer's level of compliance with the IRS conditions of probation or supervised release that are examination related.

Responsibilities of the advisory (Collection), in coordination with Field Collection, include:

- Following up with CI if the Transaction Code 914 is not reversed after receipt of Form 13308 or the Transaction Code 910 is not input on a case involving IRS conditions of probation or supervised release.
- Taking appropriate enforcement actions, including collecting the RBA and other civil assessments owed by the taxpayer.
- Maintaining case files and inventory for post-probation and non-probation restitution cases and providing guidance regarding collection of restitution-based assessments and restitution judgments.
- Monitoring the conditional probation expiration date.

² Master File Tax 31 is a Master File Account Code used to identify assessments against an individual taxpayer on a joint module and is generated by certain triggering events including restitution-based assessments.

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- Reporting any noncompliance with the conditions of probation or supervised release throughout the term of the probationary period.
- Preparing a 180-day memorandum reporting that the IRS-related conditions of probation or supervised release have not been met.

Accounting Operations (IRS)

The Accounting Operations is responsible for receiving all restitution payments from the Clerk of the Court or other sources, including directly from the defendant or other IRS functions. Payments are credited to the defendant's RBA account if the Technical Services Unit made the restitution assessment. The Accounting Operations is instructed to apply the payment(s) to the RBA account, with a freeze code, in cases for which the restitution assessment has yet to be made. Any payments that cannot be applied to an account or resolved are input to Treasury Account 6400. In the past, the IRS has received restitution payments from the Clerk of the Court with no identifying information. The Accounting Operations is required to periodically contact the Clerk of the Court to resolve these situations. If no assessment is made, the payment will remain in Treasury Account 6400. This W&I Division function is located at the Kansas City, Missouri, Campus.

Management's Response to the Draft Report



Criminal Investigation

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

May 10, 2021

MEMORANDUM FOR MICHAEL E. MCKENNEY
DEPUTY INSPECTOR GENERAL FOR AUDIT
TREASURY INSPECTOR GENERAL FOR TAX
ADMINISTRATION

FROM:

James C. Lee
Chief, Criminal Investigation

Handwritten signature of James C. Lee in cursive.

SUBJECT:

Draft Audit Report - Audit# 202030026, Criminal Restitution
Assessment Procedures Need Improvement

Thank you for the opportunity to review and comment on the TIGTA Draft Report #202030026 – “*Criminal Restitution Assessment Procedures Need Improvement*”, dated April 5th, 2021. The IRS takes seriously our responsibility to ensure that all policies related to our administration of criminal restitution assessment procedures demonstrate proper controls with only the highest levels of efficiency and security in mind. We are committed to adhering to all federal laws, regulations, and IRS policies, procedures and guidelines that are applicable to the management of our criminal restitution assessment procedures.

The IRS has numerous controls in place to ensure responsible management of our criminal restitution assessment procedures. We appreciate TIGTA's recommendations to improve controls and overall management.

Attached is our response to your recommendations. If you have any questions, please contact Guy Ficco, Executive Director of Operations, Policy & Support, at 202-317-3804.

Attachments: 1

Recommendation 1

The Chief, CI, should develop procedures to ensure that CI is timely sending closing documents to the Technical Services Unit. This includes receiving acknowledgement from the SB/SE Division that the documents were received.

CORRECTIVE ACTION

CI has procedures in place to ensure CI is timely sending closing documents to the Technical Services Unit to include receiving acknowledgement from the SB/SE Division that the documents were received.

In the first quarter of FY 2021, CI, in coordination with SB/SE, implemented a quarterly reconciliation process. The reconciliation process allows CI to identify cases that need to be sent to SB/SE. The reconciliation process also identifies closing packages that are potentially overaged and require resolution.

As indicated on the Form 13308, CI Closing Report, the field office Conditions of Probation (COP) or Criminal Restitution (CR) coordinator receives acknowledgement from Examination Tech Services or Field and Collection Advisory when closing packages are received.

IMPLEMENTATION DATE

Implemented

RESPONSIBLE OFFICIAL

CI Executive Director of Operations, Policy & Support

CORRECTIVE ACTION MONITORING PLAN

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

RECOMMENDATION 2

The Commissioner, SB/SE Division, should review the existing process controls to ensure that restitution assessments are made in a timely manner. This review could be conducted when completing periodic reviews of the restitution program and addressing any barriers to the timely assessment of restitution.

CORRECTIVE ACTION

We will conduct a program review to evaluate our work processes.

IMPLEMENTATION DATE

October 15, 2022

RESPONSIBLE OFFICIAL

Director, Examination Field and Campus Policy, Small Business/Self-Employed Division

CORRECTIVE ACTION MONITORING PLAN

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

RECOMMENDATION 3

The Commissioner, SB/SE Division, should establish monitoring procedures to provide reasonable assurance that all interest and penalties incorrectly assessed to RBA accounts are removed.

CORRECTIVE ACTION

SB/SE has taken a proactive approach to abate interest and penalties asserted on Restitution Based Assessments (RBA) accounts before the decision of the United States Tax Court in *Klein v. Commissioner*, 149 T.C. No. 15 (2017). As your report notes, the IRS has abated failure to pay penalties from RBA accounts as of December 2020. Collection and the Office of Service-wide Interest will continue to develop and implement a systemic process to abate interest that was applied to RBA accounts prior to Klein. Accounts that cannot be systemically corrected will be referred to Examination.

IMPLEMENTATION DATE

December 15, 2022

RESPONSIBLE OFFICIAL

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

CORRECTIVE ACTION MONITORING PLAN

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

RECOMMENDATION 4

The Chief, CI, should ensure that reviews of CIMIS information related to restitution and the monitoring of the conditions of probation or supervised release are included in existing quality review mechanisms.

CORRECTIVE ACTION

CI has several mechanisms in place to ensure that reviews of CIMIS information related to restitution and the monitoring of the conditions of probation or supervised release are included in existing quality reviews. Specifically, the field office CI Administrative Officers perform administrative reviews, which includes CIMIS Accuracy

reviews, of each field office group. Supervisory Special Agents also perform CIMIS Accuracy reviews at least once per year during workload reviews conducted with special agents. Additionally, CIMIS Accuracy reviews are required for all cases at case closing. CI's Office of Review and Program Evaluation is ultimately responsible for ensuring that CI is compliant with established policies including CIMIS entries and the accuracy of those entries during field office reviews.

CI HQ has also developed a monthly process that samples Conditions of Probation and Criminal Restitution (CR) cases closely to ensure COP results are entered correctly and CR amounts are reported accurately.

IMPLEMENTATION DATE

Implemented

RESPONSIBLE OFFICIAL

CI Executive Director of Operations, Policy & Support

CORRECTIVE ACTION MONITORING PLAN

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

Glossary of Terms

| Term | Definition |
|--|--|
| Accounting Operations | IRS function responsible for recording and monitoring restitution payments received from defendants. |
| Automated Collection System | A telephone contact system through which telephone assistors collect unpaid taxes and secure tax returns from delinquent taxpayers who have not complied with previous notices. |
| Campus | The data processing arm of the IRS. The campuses process paper and electronic submissions, correct errors, and forward data to the Computing Centers for analysis and posting to taxpayers accounts. |
| Collection Statute Expiration Date | Each tax assessment has a Collection Statute Expiration Date. I.R.C. § 6502 provides that the length of the period for collection after assessment of a tax liability is 10 calendar years. This date ends the Government's right to pursue collection of a liability. |
| Criminal Investigative Management Information System (CIMIS) | A database used by CI to track the status and progress of investigations and the time expended by special agents. |
| Currently Not Collectible | Tax accounts can be declared currently not collectible for numerous reasons, including bankruptcy, hardship, and inability to locate the taxpayer. |
| Data Center Warehouse | An online database maintained by TIGTA. The DCW pulls data from IRS system resources, such as IRS Collection files and IRS Examination files, for TIGTA access. |
| Defendant | In the context of this report, a defendant is defined to include both individual taxpayers who were convicted of a tax-related crime and tax return preparers who were convicted of a tax-related refund scheme. |
| Erroneous Refund | Incorrect refunds issued to taxpayers due to processing errors, misapplied payments, incorrect tax adjustments, taxpayers filing fraudulent tax returns, or using an incorrect Taxpayer Identification Number. |
| Fiscal Year | Any yearly accounting period, regardless of its relationship to a calendar year. The Federal Government's fiscal year begins on October 1 and ends on September 30. |
| Freeze Code | Alpha codes that identify specific conditions in the Master File that can be generated systemically during processing operations or input manually. |
| Integrated Data Retrieval System | IRS computer system capable of retrieving or updating stored information. It works in conjunction with a taxpayer's account records. |

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| Term | Definition |
|---|---|
| Internal Revenue Code | Federal tax law enacted by Congress in Title 26 of the United States Code (26 U.S.C.). It is the codified collection of U.S. laws on income, estate and gift, and employment and excise tax, plus administrative and procedural provisions. |
| Internal Revenue Manual | Contains the policies, procedures, instructions, guidelines, and delegations of authority that direct the operation for all divisions and functions of the IRS. Topics include tax administration, personnel and office management, and others. |
| Levy | A method used by the IRS to collect outstanding taxes from sources such as bank accounts and wages. |
| Lien | An encumbrance on property or rights to property as security for outstanding taxes. |
| 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. |
| Master File Tax Account Code | The two-digit number codes that identify the type of return filed by the taxpayer. |
| Plea Agreement | Agreements between defendants and prosecutors in which defendants agree to plead guilty to some or all of the charges against them in exchange for concessions from the prosecutors. |
| Probation | Sentencing option in the Federal courts. With probation, instead of sending an individual to prison, the court releases the person to the community and orders him or her to abide by certain conditions and complete a period of supervision monitored by a U.S. Probation Officer. |
| Probation Officer | Officers of the Probation Office of a court. Probation Officer duties include conducting presentence investigations, preparing presentence reports on defendants, and supervising released defendants. |
| Report of Foreign Bank and Financial Accounts | Filed by a U.S. person who has a financial interest in or a signature authority over foreign financial accounts when the aggregate value of the foreign financial accounts exceeds \$10,000 at any time during the calendar year. |
| Restitution | A legal remedy that can be ordered in a criminal court case. A restitution order requires the defendant to pay money to the victim(s) in order to compensate for the loss inflicted. It is generally imposed during sentencing as a condition of probation or supervised release in tax-related crimes. |
| Revenue Officer | Employees in the field who attempt to contact taxpayers and resolve collection matters that have not been resolved through notices sent by the IRS campuses or the Automated Collection System. |
| Sentence | The punishment ordered by a court for a defendant convicted of a crime. |
| Special Agent | A law enforcement employee who investigates potential criminal violations of the Internal Revenue laws and related financial crimes. |

Criminal Restitution Assessment Procedures Need Improvement

| Term | Definition |
|--------------------------------|---|
| Special Agent in Charge | A law enforcement employee responsible for directing, monitoring, and coordinating the criminal investigation activities within a field office's area of responsibility. |
| Special Tax-Related Provisions | Requirements included in criminal sentences, such as filing past due and current tax returns and paying or making arrangements to pay past due taxes. |
| Supervised Release | Term of supervision served after a person is released from prison. The court imposes supervised release during sentencing in addition to the sentence of imprisonment. Supervised release does not replace a portion of the sentence of imprisonment but is in addition to the time spent in prison. Probation officers supervise people on supervised release. |
| Supervisory Special Agent | A supervisory law enforcement employee who oversees the overall criminal investigation, including the undercover operation. |
| Tax Case | A criminal tax case involves tax offenses and tax-related offenses. A tax offense refers to criminal offenses under the I.R.C. Tax offenses include, but are not limited to, willful attempt to evade or defeat tax, willful failure to collect or pay over taxes, willful failure to file or failure to pay, and willfully making a false declaration under penalties of perjury or willfully assisting in the preparation of a false document. |
| Tax Gap | The estimated difference between the amount of tax that taxpayers should pay and the amount that is paid voluntarily and on time. |
| Tax-Related Crime | A tax-related crime may fall under either Title 18 or Title 31 of the United States Code when the offense is associated with a tax crime or the offense impedes the administration of the Internal Revenue laws. Examples of tax-related crimes include, but are not limited to, false statements on a tax return; presenting a false, fictitious, or fraudulent claim for a refund; conspiracy to defraud the IRS; and willful violations of reporting requirements. |
| Tax Year | A 12-month accounting period for keeping records on income and expenses used as the basis for calculating the annual taxes due. For most individual taxpayers, the tax year is synonymous with the calendar year. |
| Taxpayer Identification Number | A nine-digit number assigned to taxpayers for identification purposes. Depending upon the nature of the taxpayer, the Taxpayer Identification Number is an Employer Identification Number, a Social Security Number, or an Individual Taxpayer Identification Number. |

Criminal Restitution Assessment Procedures Need Improvement

| Term | Definition |
|------------------------|---|
| Title 18 | Title 18, United States Code, <i>Crimes and Criminal Procedure</i> . Various sections of Title 18 apply to violations that are within the jurisdiction of CI. Examples include § 286, <i>Conspiracy to Defraud the Government With Respect to Claims</i> ; § 287, <i>False, Fictitious, or Fraudulent Claims</i> ; § 371, <i>Conspiracy to Commit Offense or to Defraud United States</i> ; and §§ 1956 and 1957, <i>Laundering of Monetary Instruments and Engaging in Monetary Transactions in Property Derived From the Specified Unlawful Activity</i> . The most common section investigated under this statute is money laundering. |
| Title 26 | Title 26, United States Code, Internal Revenue Code. |
| United States Attorney | A lawyer appointed in each judicial district to prosecute and defend court cases for the Federal Government. The U.S. Attorney employs a staff of Assistant U.S. Attorneys who appear as the Federal Government's attorneys in individual court cases. |

Appendix VI

Abbreviations

| | |
|--------|--|
| CI | Criminal Investigation |
| CIMIS | Criminal Investigation Management Information System |
| COP | Conditions of Probation |
| CY | Calendar Year |
| DOJ | Department of Justice |
| DCW | Data Center Warehouse |
| FBAR | Report of Foreign Bank and Financial Accounts |
| FLU | Financial Litigation Unit |
| FY | Fiscal Year |
| GAO | Government Accountability Office |
| I.R.C. | Internal Revenue Code |
| IRM | Internal Revenue Manual |
| IRS | Internal Revenue Service |
| J&C | Judgment and Commitment Order |
| RBA | Restitution-Based Assessment |
| SB/SE | Small Business/Self-Employed |
| SIRF | Stolen Identity Refund Fraud |
| TIGTA | Treasury Inspector General for Tax Administration |
| USAO | U.S. Attorney's Office |
| W&I | Wage and Investment |



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