

# TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



## **Fiscal Year 2022 Statutory Review of Compliance With Notifying Taxpayers of Their Rights When Requested to Extend the Assessment Statute**

September 6, 2022

Report Number: 2022-IE-R005

# HIGHLIGHTS: Fiscal Year 2022 Statutory Review of Compliance With Notifying Taxpayers of Their Rights When Requested to Extend the Assessment Statute

Final Report issued on September 6, 2022

Report Number 2022-IE-R005

## Why TIGTA Did This Study

TIGTA is required by law to annually report information regarding extensions under Internal Revenue Code § 6501(c)(4)(B). This requires that the IRS provide notice to taxpayers of their rights to decline requests to extend the assessment statute of limitations or to request that any extension be limited to a specific period of time or specific issues on each occasion when the taxpayer is requested to provide such consent.

## Impact on Tax Administration

The IRS is required by law to notify taxpayers of their rights when requesting an extension of the statute of limitations for assessing additional taxes and penalties. Taxpayers may be adversely affected if the IRS does not follow the requirements to notify the taxpayers of the taxpayers' rights related to assessment statute extensions.

## What TIGTA Found

The IRS was compliant with legal requirements related to requests to extend the assessment statute. Specifically, the IRS complied with the legal requirement to notify taxpayers of their rights when requesting an extension of the assessment statute of limitations.

Our review of a statistically valid sample of 39 taxpayer audit files closed between October 1, 2020, and September 30, 2021, in which the taxpayers agreed to extend the statute expiration date found that the IRS complied with legal requirements. TIGTA did not identify any instances in which the IRS failed to provide notice to the taxpayers of their rights to decline to extend the assessment statute of limitations or to request that any extension be limited to a specific period of time or specific issues.

However, the IRS continues to be unable to locate the majority of paper documents requested. Specifically, the IRS was unable to provide the majority of taxpayer audit files requested during our review. The IRS reported that it is still recovering from the effects of the Coronavirus Disease 2019 shutdowns and there was a backlog in processing requests in the Kansas City Submission Processing Campus's Files Function, which contributed to the delays in receiving documents. According to the IRS, there are multiple efforts throughout the IRS aimed at modernization and digitization. The IRS believes that these efforts, which are long-term and Service-wide, will improve the IRS's document systems and tracking capabilities.

## What TIGTA Recommended

TIGTA made no recommendations in this report.



TREASURY INSPECTOR GENERAL  
FOR TAX ADMINISTRATION

## U.S. DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20024

September 6, 2022

### MEMORANDUM FOR: COMMISSIONER OF INTERNAL REVENUE

**FROM:** Russell P. Martin   
Deputy Inspector General for Inspections and Evaluations

**SUBJECT:** Final Report – Fiscal Year 2022 Statutory Review of Compliance With Notifying Taxpayers of Their Rights When Requested to Extend the Assessment Statute (Evaluation IE-22-001)

This report presents the results of our review to determine whether the Internal Revenue Service (IRS) is properly notifying taxpayers and their designated representatives of the right to refuse to extend the assessment statute of limitations or to limit such extensions to particular issues or a particular period of time in accordance with Internal Revenue Code § 6501(c)(4)(B). This notification is required on each occasion when IRS requests that the taxpayer provide such consent. The Treasury Inspector General for Tax Administration is statutorily required to provide information annually regarding extensions under this provision. This review is part of our Fiscal Year 2022 Annual Program Plan and addresses the major management and performance challenge of *Protecting Taxpayer Rights*.

Although we made no recommendations in this report, we provided IRS management officials with an advance copy of this report for review and comment prior to issuance.

Copies of this report are also being sent to the IRS managers affected by the report information. If you have any questions about this report, you may contact me or James A. Douglas, Director, Office of Inspections and Evaluations.

# Table of Contents

<a href="#"><u>Background</u></a> .....	Page 1
<a href="#"><u>Results of Review</u></a> .....	Page 3
<a href="#"><u>The IRS Was Compliant With Legal Requirements Related to Requests to Extend the Assessment Statute</u></a> .....	Page 3
 <b>Appendices</b>	
<a href="#"><u>Appendix I – Detailed Objective, Scope, and Methodology</u></a> .....	Page 5
<a href="#"><u>Appendix II – Sampling Methodology</u></a> .....	Page 6
<a href="#"><u>Appendix III – Recent Reports Related to This Statutory Review</u></a> .....	Page 7
<a href="#"><u>Appendix IV – Abbreviations</u></a> .....	Page 8

## **Background**

When the Internal Revenue Service (IRS) audits a tax return and determines that there is an additional tax liability, the additional tax assessment must generally be processed within three years from the date the return was due or from the date on which the return was actually filed, whichever is later. This three-year assessment period normally cannot be extended without the taxpayer's written consent. To extend the assessment statute, the IRS generally requests that the taxpayer provide a signed consent form, such as Form 872, *Consent to Extend the Time to Assess Tax*, or Form SS-10, *Consent to Extend the Time to Assess Employment Taxes*.

IRS employees who request these assessment statute extensions include examiners in the various IRS Examination functions as well as appeals officers in the Independent Office of Appeals. These consents extend the assessment statute of limitations to either a specific date or to a date which ends after the occurrence of certain events plus 90 days. The statute can be extended for a period that both the IRS and the taxpayer agree is reasonable to complete an ongoing examination. Both parties can also negotiate that the consent apply only to certain audit issues.

A taxpayer might agree to extend the assessment statute of limitations for the following reasons:

- The taxpayer might want to provide documentation to support additional audit issues that are in the taxpayer's favor in offsetting a proposed tax assessment or that might allow for a tax refund.
- If the remaining time before the statute expires is too short, the taxpayer will not be eligible to request a conference with the Independent Office of Appeals. If the taxpayer does not agree to an extension and the IRS issues a notice of deficiency, the taxpayer can either agree to the deficiency or take their case to the U.S. Tax Court.

A taxpayer might decide to limit or refuse to extend the assessment statute of limitations because the taxpayer might not want to:

- Provide the IRS more time to consider additional audit issues.
- Allow the IRS the opportunity to further develop audit issues already under consideration after the normal statute period has expired.

The IRS is required by the IRS Restructuring and Reform Act of 1998 (RRA 98) and the Internal Revenue Code (I.R.C.) to notify taxpayers of their rights when requesting an extension on the statute of limitations for the assessment of additional taxes and penalties.<sup>1</sup> Specifically, RRA 98 § 3461(b)(2)(B) requires the IRS to "...notify the taxpayer of the taxpayer's right to refuse to extend the period of limitations, or to limit such extension to particular issues or to a particular period of time, on each occasion when the taxpayer is requested to provide such consent." In passing this provision, Congress wanted to ensure that taxpayers are fully aware of their rights to refuse or limit the statute extension. Otherwise, taxpayers may be adversely

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<sup>1</sup> RRA 98 § 3461(b)(2)(B), Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 United States Code (U.S.C.), 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.). I.R.C. § 6501(c)(4)(B).

**Fiscal Year 2022 Statutory Review of Compliance With Notifying Taxpayers  
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affected if the IRS does not follow the requirements to notify the taxpayers of the taxpayers' rights related to assessment statute extensions. To implement this statutory requirement, the IRS revised its procedures to direct IRS employees to provide the taxpayer with Letter 907, *Request to Extend Assessment Statute*, or Letter 967, *Consent Extending Period of Limitation Transmittal*. Included with these letters should be the actual consent forms to be signed as well as Publication 1035, *Extending the Tax Assessment Period*, which includes a more detailed explanation of the taxpayer's rights and consequences of the taxpayer's choices.

In addition, since December 2004, the consent forms include a prominent statement informing taxpayers of their rights regarding extensions and provide information about Publication 1035. Figure 1 shows that the consent forms also include a statement for the taxpayer's representative to sign, confirming that they were notified of their rights regarding extensions and that the taxpayers were made aware of the same rights.

**Figure 1: Excerpt of Form 872 – Taxpayer Rights**

**Your Rights as a Taxpayer**

You have the right to refuse to extend the period of limitations or limit this extension to a mutually agreed-upon issue(s) or mutually agreed-upon period of time. *Publication 1035, Extending the Tax Assessment Period*, provides a more detailed explanation of your rights and the consequences of the choices you may make. If you have not already received a Publication 1035, the publication can be obtained, free of charge, from the IRS official who requested that you sign this consent or from the IRS' web site at [www.irs.gov](http://www.irs.gov) or by calling toll free at 1-800-TAX-FORM (1-800-829-3676). Signing this consent will not deprive you of any appeal rights to which you would otherwise be entitled.

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**YOUR SIGNATURE HERE** → \_\_\_\_\_ (Date signed)  
(Type or Print Name)

I am aware that I have the right to refuse to sign this consent or to limit the extension to mutually agreed-upon issues and/or period of time as set forth in I.R.C. § 6501(c)(4)(B).

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**TAXPAYER'S REPRESENTATIVE SIGN HERE** → \_\_\_\_\_ (Date signed)  
(Only needed if signing on behalf of the taxpayer.)  
(Type or Print Name)

I am aware that I have the right to refuse to sign this consent or to limit the extension to mutually agreed-upon issues and/or period of time as set forth in I.R.C. § 6501(c)(4)(B). In addition, the taxpayer(s) has been made aware of these rights.

If this document is signed by a taxpayer's representative, the Form 2848, Power of Attorney and Declaration of Representative, or other power of attorney document must state that the acts authorized by the power of attorney include representation for the purposes of Subchapter C of Chapter 63 of the Internal Revenue Code in order to cover items in paragraph (4).

Source: IRS Form 872. Note: The wording on Form SS-10 is consistent with that shown on Form 872.

IRS procedures require that any notice or other written communication required to be given to a taxpayer also be given to the taxpayer's properly authorized representative (unless restricted by the taxpayer) along with a cover letter, Letter 937, *Transmittal for Power of Attorney*.<sup>2</sup> IRS employees are instructed to document in their audit file activity record whether the taxpayer was notified of their rights each time the IRS requested an assessment statute extension. In addition, IRS internal procedures require employees to provide copies of any correspondence with a taxpayer's representative to the taxpayer.

The Treasury Inspector General for Tax Administration (TIGTA) previously reported that, beginning in March 2020, the IRS implemented a series of temporary measures, such as halting the mailing of physical audit files, to protect employees and taxpayers, facilitate IRS operations,

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<sup>2</sup> Conference and Practice Requirements, Statement of Procedural Rules, Treas. Reg. § 601.506 (2002).

and provide taxpayer relief during Coronavirus Disease 2019 shutdowns.<sup>3</sup> Although the majority of these temporary measures expired by the beginning of Fiscal Year 2021, the IRS continued to extend temporary measures to accept digital signatures and documents electronically throughout Fiscal Year 2021. TIGTA is required by RRA 98 to provide information annually regarding extensions under I.R.C. § 6501(c)(4)(B). This report presents the results of our twenty-third annual review of the IRS's compliance with the assessment statute extension provisions of the law.

## **Results of Review**

### **The IRS Was Compliant With Legal Requirements Related to Requests to Extend the Assessment Statute**

The IRS complied with the legal requirement to notify taxpayers of their rights when requesting an extension of the assessment statute of limitations. Specifically, our review of a statistically valid sample of 39 taxpayer audit files closed between October 1, 2020, and September 30, 2021, in which the taxpayers agreed to extend the statute expiration date found that the IRS complied with legal requirements.<sup>4</sup> We did not identify any instances in which the IRS failed to provide notice to the taxpayers of their rights to decline to extend the assessment statute of limitations or to request that any extension be limited to a specific period of time or specific issues. In all 39 taxpayer audit files, the legal requirements were satisfied when the taxpayer(s) or their representatives signed Form 872.

### **The IRS continues to be unable to locate the majority of paper documents requested**

The IRS was unable to provide the majority of taxpayer audit files requested during our review. In November 2021, we ordered 106 audit files to obtain our designated sample. In total, we requested 160 paper documents for the 106 audit files. As of April 30, 2022, we only received 19 (12 percent) of the 160 paper documents. The IRS reported that it is still recovering from the effects of the Coronavirus Disease 2019 shutdowns and there was a backlog in processing requests in the Kansas City Submission Processing Campus's Files Function, which contributed to the delays in receiving documents. In addition, the IRS reported that the reduction of service by the Federal Records Centers, which restored full staffing on March 28, 2022, may also have contributed to the delay in providing the paper documents. Although we did not receive all requested paper documents, the paper and electronic documentation that we received to review 39 audit files still represent a statistically valid sample.<sup>5</sup> Prior reviews identified similar issues with the IRS's ability to provide requested paper documents.

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<sup>3</sup> TIGTA, Report No. 2021-30-062, *Fiscal Year 2021 Statutory Audit of Compliance With Notifying Taxpayers of Their Rights When Requested to Extend the Assessment Statute* (Aug. 2021).

<sup>4</sup> Our stratified sample was selected using a 90 percent confidence level, a 5.63 percent expected error rate, and a  $\pm 6$  percent precision. I.R.C. § 6501(c)(4)(B). See Appendix II for more information pertaining to our sampling methodology.

<sup>5</sup> The 39 audit files represent a statistically valid stratified sample since they were randomly selected.

**Fiscal Year 2022 Statutory Review of Compliance With Notifying Taxpayers  
of Their Rights When Requested to Extend the Assessment Statute**

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For example, TIGTA reported previously that the IRS had difficulty locating and timely retrieving some audit files.<sup>6</sup> The IRS agreed with TIGTA's recommended corrective actions, such as creating a centralized system to track records. According to the IRS, there are multiple efforts throughout the IRS aimed at modernization and digitization, such as the Office of Management and Budget's mandate to the National Archives and Records Administration to create only electronic records effective after December 31, 2022, and the creation of the Enterprise Digitalization and Case Management Office to address the IRS's long-standing need to modernize and consolidate many aging legacy systems. The IRS believes that these efforts, which are long-term and Service-wide, will improve the IRS's document systems and tracking capabilities.

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<sup>6</sup> TIGTA, Report No. 2020-10-050, *Sensitive Tax Records Could Not Always Be Located or Timely Provided* (Aug. 2020).

## **Detailed Objective, Scope, and Methodology**

The overall objective of our review was to determine whether the IRS is properly notifying taxpayers and their designated representatives of the right to refuse to extend the assessment statute of limitations or to limit such extensions to particular issues or a particular period of time in accordance with I.R.C. § 6501(c)(4)(B). This notification is required on each occasion when IRS requests that the taxpayer provide such consent. To accomplish our objective, we:

- Determined whether taxpayers and their designated representatives were advised of their rights when the IRS requests an extension of the assessment statute.
- Reviewed the Internal Revenue Manual, and other guidelines as applicable, to determine if there were any changes since our last review to procedures for notifying taxpayers and their representatives when requesting to extend the assessment statute of limitations.
- Selected a stratified sample from our universe of combined Business Master File and Individual Master File audit files for which the IRS's records indicate an assessment statute was extended.<sup>1</sup> Our stratified sample was selected using a normal approximation distribution with a 90 percent confidence level, a 5.63 percent expected error rate, and a  $\pm 6$  percent precision factor. We used a statistical sample because we planned to project to the population. The contracted statistician assisted with developing the stratified sampling plan.

### **Performance of This Review**

This review was performed with information obtained from the Independent Office of Appeals, the Large Business and International Division, and the Tax Exempt and Government Entities Division Headquarters in Washington, D.C.; the Small Business/Self-Employed Division Headquarters in Lanham, Maryland; and the Wage and Investment Division Headquarters in Atlanta, Georgia, during the period November 2021 through August 2022. We conducted this evaluation in accordance with the Council of the Inspectors General for Integrity and Efficiency Quality Standards for Inspection and Evaluation.

Major contributors to the report were James Douglas, Director; Frank O'Connor, Supervisory Evaluator; Malissa Livingston, Lead Evaluator; and Matthew Pham, Evaluator.

### **Validity and Reliability of Data From Computer-Based Systems**

We evaluated the data by performing tests to assess the reliability of data obtained from the IRS's Individual Master File and Business Master File systems. We evaluated the data by running queries on the population to ensure that the data met our criteria and no information was missing or incomplete. We determined that the data were sufficiently reliable for purposes of this report.

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<sup>1</sup> The Individual Master File is the IRS database that maintains transactions or records of individual tax accounts. The Business Master File is the IRS database that consists of Federal tax-related transactions and accounts for businesses. These include employment taxes, income taxes on business, and excise taxes.

## **Sampling Methodology**

### **Methodology used to identify the universe of audit files and the sample size**

To determine the number of audit files for which the IRS sent a request to extend the assessment statute of limitations, we performed an analysis of individual and business tax return audit files for which there was an indicator that the assessment statute was extended and the audit was subsequently closed between October 1, 2020, and September 30, 2021. We identified 5,957 potential audit files consisting of two strata: individual (3,870) and business (2,087) tax return closed audit files. We used a 90 percent confidence level, a 5.63 percent expected error rate, and a  $\pm 6$  percent precision to determine our stratified sample sizes of 27 Individual Master File and 15 Business Master File taxpayer audit files for a combined total of 42 taxpayer audit files. We over-sampled and requested 106 taxpayer audit files but received only 39 files consisting of 27 individual and 12 business taxpayer audit files.

## Appendix III

### **Recent Reports Related to This Statutory Review**

1. TIGTA, Report No. 2021-30-062, *Fiscal Year 2021 Statutory Audit of Compliance With Notifying Taxpayers of Their Rights When Requested to Extend the Assessment Statute* (Aug. 2021).
2. TIGTA, Report No. 2020-30-047, *Fiscal Year 2020 Statutory Audit of Compliance With Notifying Taxpayers of Their Rights When Requested to Extend the Assessment Statute* (Aug. 2020).
3. TIGTA, Report No. 2019-30-054, *Fiscal Year 2019 Statutory Audit of Compliance With Notifying Taxpayers of Their Rights When Requested to Extend the Assessment Statute* (Aug. 2019).
4. TIGTA, Report No. 2018-30-059, *Fiscal Year 2018 Statutory Audit of Compliance With Notifying Taxpayers of Their Rights When Requested to Extend the Assessment Statute* (Aug. 2018).
5. TIGTA, Report No. 2017-30-047, *Fiscal Year 2017 Statutory Audit of Compliance With Notifying Taxpayers of Their Rights When Requested to Extend the Assessment Statute* (July 2017).

## **Abbreviations**

I.R.C.	Internal Revenue Code
IRS	Internal Revenue Service
RRA 98	Restructuring and Reform Act of 1998
TIGTA	Treasury Inspector General for Tax Administration
U.S.C.	United States Code



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