

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



Fiscal Year 2023 Statutory Review of Restrictions on Directly Contacting Represented Taxpayers

August 16, 2023

Report Number: 2023-30-051

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.

HIGHLIGHTS: Fiscal Year 2023 Statutory Review of Restrictions on Directly Contacting Represented Taxpayers

Final Audit Report issued on August 16, 2023

Report Number 2023-30-051

Why TIGTA Did This Audit

This audit was initiated because TIGTA is required to annually report on the IRS's compliance with provisions of the law that restricts the IRS from directly contacting taxpayers who are represented. For this year's review, TIGTA analyzed the extent to which Small Business/Self-Employed Division Field Collection employees comply with the direct contact provisions of Internal Revenue Code (I.R.C.) § 7521 and Fair Tax Collection Practices of I.R.C. § 6304(a)(2) during interactions with taxpayers or their representatives. The Taxpayer Bill of Rights (I.R.C. § 7803(a)(3)(I)) also guarantees the right of representation for taxpayers before the IRS.

Impact on Tax Administration

If taxpayers' rights to representation are not adhered to by the IRS, they might not receive the benefits under the law and procedures to which they are entitled, and they may experience adverse outcomes.

What TIGTA Found

The IRS has policies and procedures to help ensure that taxpayers are afforded the right to designate an authorized representative to act on their behalf in a variety of tax matters. In addition, the IRS has a process to handle the review and disposition of taxpayer allegations of direct contact violations. However, the IRS has not developed a system to identify IRS employee violations of the direct contact provisions.

TIGTA found that revenue officers potentially violated taxpayers' rights concerning directly contacting taxpayers who are represented before the IRS. TIGTA reviewed a stratified statistically valid sample of 132 taxpayers from a population of 1,613 taxpayers who had collection actions documented in case history narratives by revenue officers between October 1, 2021, and June 30, 2022. TIGTA found eight taxpayers (12 instances) for whom revenue officers did not comply with the I.R.C. sections pertaining to direct contact provisions and the right to fair collection practices.

TIGTA also reviewed Fiscal Year 2022 Embedded Quality Review System (EQRS) data pertaining to Field Collection. There were 129 cases in which the quality element 'right to representation not observed,' was reported as a potential exception and the reviewer included a narrative explaining the specific nature of the violation. TIGTA found that for the 129 potential violations, there were 48 taxpayers for whom the IRS did not comply with the law regarding the right to representation. While IRS procedures require the reporting of potential Fair Tax Collection Practices violations to a Labor Relations Specialist for investigation, the 48 potential violations TIGTA identified were not reported. TIGTA concluded that the IRS has significant gaps in both its reporting of potential employee misconduct and in disciplining employees for potential taxpayer violations. TIGTA also determined that training for new revenue officers does not have case scenarios to show the variety of ways taxpayers may ask to consult with a representative.

What TIGTA Recommended

TIGTA recommended that the IRS: (1) ensure that group managers discuss the potential violations identified during the review of Integrated Collection System case narratives with responsible employees and report potential violations to Labor Relations; (2) report the potential Fair Tax Collection Practices violations identified in EQRS reviews to Labor Relations for investigation; (3) establish controls to ensure that all potential violations of Fair Tax Collection Practices identified in case reviews are reported for investigation; (4) establish procedures that require EQRS reviewers to include a narrative detailing a potential violation relating to the 'right to representation not observed' quality element; and (5) improve new revenue officer training by adding direct contact scenarios pertaining to taxpayers' statements concerning their right to representation. The IRS agreed with all five recommendations.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

U.S. DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20024

August 16, 2023

MEMORANDUM FOR: COMMISSIONER OF INTERNAL REVENUE

Heather Hill

FROM: Heather M. Hill
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Fiscal Year 2023 Statutory Review of Restrictions on Directly Contacting Represented Taxpayers (Audit # 202330008)

This report presents the results of our review to determine whether the Internal Revenue Service is in compliance with legal guidelines addressing the direct contact of taxpayers and their representatives as set forth in I.R.C. §§ 7521(b)(2) and (c) and the Fair Tax Collection Practices set forth in I.R.C. § 6304 (a)(2) and I.R.C. § 7803(a)(3)(I). This review is part of our Fiscal Year 2023 Annual Audit Plan and addresses the major management and performance challenge of *Improving Taxpayer Service*.

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

Taxpayers have a right to representation in matters before the Internal Revenue Service (IRS).¹ Internal Revenue Code (I.R.C.) §§ 7521(b)(2) and (c) provide taxpayers the right to representation during interviews.² I.R.C. § 6304(a)(2) also protects taxpayers' rights to representation by prohibiting IRS contact of a taxpayer if it knows the taxpayer is represented.³

The effort to determine whether the IRS is complying with I.R.C. §§ 7521(b)(2) and (c) (hereafter referred to as the direct contact provisions) and other provisions of the law protecting the right to representation is complicated by the fact that the IRS does not have a system to identify IRS employee violations of this law. The Treasury Inspector General for Tax Administration's (TIGTA) Office of Investigations receives complaints and initiates investigations based on the evaluation of those complaints. The Office of Investigations processes those complaints and investigations using its Criminal Results Management System. From October 1, 2021, to June 30, 2022, the Office of Investigations did not receive any specific complaints alleging that an IRS employee bypassed taxpayer representatives and contacted taxpayers directly.

To designate power of attorney (POA) authority to a representative, a taxpayer files Form 2848, *Power of Attorney and Declaration of Representative*, with the IRS. Once received and processed, the IRS records the representative's authorization in its Centralized Authorization File, a computerized system of records that houses authorization information from both the POAs and tax information authorizations. This file is linked to other IRS applications and is used by many IRS functions to determine when a taxpayer is working with an authorized representative.

Identifying the authorized representative during audit or collection activities is critical for IRS personnel because I.R.C. § 6103 prohibits disclosure of tax return information to third parties unless the taxpayer has authorized the IRS to make the disclosure. In addition, the direct contact provisions of I.R.C. § 7521 enacted on November 10, 1988, as part of the Omnibus Taxpayer Bill of Rights, created safeguards to protect the rights of taxpayers as part of a tax examination or collection action.⁴ Specifically, IRS employees are required to:

- Stop the interview (unless required by court order) whenever a taxpayer requests to consult with a representative, any person who is permitted to represent taxpayers before the IRS, such as a Certified Public Accountant (CPA) or attorney.

¹ I.R.C. §§ 7803(a)(3)(I), 7521 (b)(2), and 6304 (a)(2).

² See Appendix IV for a glossary of terms. I.R.C. § 7521(b)(2) provides: *If the taxpayer clearly states to an officer or employee of the Internal Revenue Service at any time during any interview (other than an interview initiated by an administrative summons issued under subchapter A of chapter 78) that the taxpayer wishes to consult with an attorney, certified public accountant, enrolled agent, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service, such officer or employee shall suspend such interview regardless of whether the taxpayer may have answered one or more questions.*

³ I.R.C. § 6304(a)(2) provides: *The Secretary may not communicate with a taxpayer in connection with the collection of any unpaid tax if the Secretary knows the taxpayer is represented by any person authorized to practice before the Internal Revenue Service with respect to such unpaid tax and has knowledge of, or can readily ascertain, such person's name and address, unless such person fails to respond within a reasonable period of time to a communication from the Secretary or unless such person consents to direct communication with the taxpayer.*

⁴ Pub. L. No. 100-647, 102 Stat. 3730 (1988) (codified as amended in scattered sections of 26 U.S.C.).

- Obtain their immediate supervisor's approval to contact the taxpayer instead of the representative if the representative unreasonably delays the completion of an examination, collection, or investigation.

The IRS Restructuring and Reform Act of 1998 directed the IRS to revise Publication 1, *Your Rights as a Taxpayer*, to better inform taxpayers of these rights.⁵ In addition, this Act added I.R.C. § 7803(d)(1)(A)(ii), which requires TIGTA to annually evaluate the IRS's compliance with the direct contact provisions. This is TIGTA's 25th annual review of the direct contact provisions.

Results of Review

The IRS Has a Process to Handle the Oversight and Disposition of Taxpayer Allegations of Direct Contact Violations

IRS management cannot systemically identify situations in which a taxpayer is denied the right to representation. However, the IRS documents situations in which a taxpayer is denied the right to representation if the taxpayer or representative files a complaint with the IRS, TIGTA, the Taxpayer Advocate Service, or a congressional Representative or Senator. The IRS has a process that reviews reported allegations of direct contact violations to determine if there was any employee misconduct. Potential violations can also be identified by IRS managers during case reviews and during the normal course of taxpayer examinations.

The IRS Labor and Employee Relations and Negotiations Division's Employee Issues Branch oversees all complaint referrals, including those allegations not investigated by TIGTA, and investigations that TIGTA forwards to the IRS.⁶ These complaint referrals are recorded on an e-Trak database.

For those complaint referrals for which action is taken by IRS management, the dispositions of the complaint referrals (including any disciplinary actions for substantiated allegations) are entered into the Automated Labor and Employee Relations Tracking System (ALERTS). The use of this system also helps ensure consistency in recording employee misconduct and disciplinary actions.

During our review, we requested a report of complaint referrals related to the direct contact provisions received between October 1, 2021, and June 30, 2022, by the Employee Conduct and Compliance Office maintained on the e-Trak database.⁷ According to the IRS, there were no referred cases of allegations of possible contact with taxpayers without their representative's consent for this time period.

⁵ Pub. L. No. 105-206, 112 Stat. 771.

⁶ Specifically, this is done by the Employee Conduct and Compliance Office.

⁷ The audit period was shortened to allow for all audits required by Internal Revenue Service Restructuring and Reform Act of 1998 to have an identical audit period. Going forward, the audit period will be July 1 to June 30 for the respective fiscal years.

Field Collection Employees Did Not Always Follow Procedures That Protect a Taxpayer's Right to Representation

This year's review focused on potential taxpayer rights and direct contact violations related to the Small Business/Self-Employed (SB/SE) Division's Field Collection employees. The Field Collection employees record actions and decisions taken on cases within the Integrated Collection System (ICS).⁸ These recorded actions and decisions are the historical narratives for cases in collection (hereafter referred to as case history narratives).

To assess compliance with the direct contact provisions of the law, we obtained individual Field Collection ICS case histories for all open and archived cases with actions recorded between October 1, 2021, and June 30, 2022. With the assistance of TIGTA's Applied Research and Technology Data Analytics team, we searched and filtered these records using keywords and phrases which may indicate that a potential direct contact or Fair Tax Collection Practices violation took place (see Figure 1 in Appendix I). We determined we had a population of nearly 2,100 unique history narrative lines for 1,613 taxpayers.

We selected a stratified statistically valid sample of 132 taxpayers from the population of 1,613 taxpayers who had collection actions documented in their ICS case history narratives by Field Collection employees (revenue officers).⁹ We also researched the ICS modules and determined that 85 of the 132 sampled taxpayers had a POA on at least one tax period as of January 17, 2023. We used this POA information to assist us in our analysis of the case history narratives reviewed. We reviewed the ICS case history narratives for these sampled taxpayers based on the following I.R.C. criteria.

Both I.R.C. §§ 7521(b)(2) and (c) (direct contact provisions) and 6304(a)(2) (right to fair collection practices), address a taxpayer's right to representation. The provisions of I.R.C. §§ 7521(b)(2) and (c) apply in most interactions an IRS employee may have with a taxpayer when the taxpayer explicitly exercises their right to consult with an authorized representative during an interview. The interview should be stopped to allow the taxpayer time to consult with a representative such as a POA, CPA, attorney, or any person who is permitted to represent the taxpayer before the IRS.

I.R.C. § 6304(a)(2) applies in IRS collection matters and provides that IRS employees may not communicate with taxpayers, without taxpayer consent or a court order, when they know that the taxpayer has obtained an authorized representative to handle the collection matter. The Internal Revenue Manual (IRM) advises staff to remain mindful that I.R.C. § 6304(a)(2) generally precludes the IRS from directly communicating with a represented taxpayer in connection with the collection of any unpaid taxes. However, the procedures provide the following three conditions, all of which must be met, for a revenue officer to directly contact a represented taxpayer:

1. The taxpayer initiates the contact to resolve the issue on the account.

⁸ Internal Revenue Manual 5.1.10.8(1) (Oct. 12, 2021).

⁹ Our sample size was determined by using a 95 percent confidence level, 5 percent error rate, and ±5 percent precision using six strata. See Appendix I for additional information regarding the sample selection.

2. The taxpayer expresses a specific desire to resolve the issue without the involvement of their representative after the IRS employee has advised the taxpayer of the current representation.
3. The taxpayer's desire to have the IRS work directly with the taxpayer instead of the representative is properly documented in the case file.¹⁰

In addition, an IRS employee may communicate with a represented taxpayer in connection with the collection of any unpaid tax if the taxpayer's authorized representative gives prior consent to the communication.¹¹ We reviewed 132 case narratives and identified eight case narratives with 12 potential violations of the direct contact provisions. Specifically,

- Five violations in which the revenue officer continued contact with a taxpayer after the taxpayer requested consultation with a POA.
- Four violations in which the revenue officer directly contacted a represented taxpayer.
- Three violations in which the revenue officer failed to follow appropriate bypass procedures after the POA delayed or hindered contact.

In addition, we asked Field Collection management to provide any documentation to support that the taxpayers pertaining to our exception cases were notified of the right to representation through Publication 1 or other means. The IRS noted that [REDACTED] of the case histories associated with identified exception cases show that taxpayers were notified of their right to representation, *e.g.*, Publication 1. In the three cases in which the POA was improperly bypassed, we determined that the respective group managers were not involved in the bypass decisions and that IRM procedures were not properly followed.

Further, the IRS agreed with seven of the 12 instances of direct contact violations in [REDACTED] case narratives. When asked about the increase in direct contact violations from prior years and plans to address the violations we identified, IRS Field Collection management said that the increase may be attributable to the influx of new revenue officers hired during Fiscal Years 2021 and 2022 (nearly 825 new revenue officers). They added that new revenue officers are in training for their first year and may not be proficient in applying direct contact provisions until they are fully trained. For example, in four of the seven cases the revenue officers were still within their initial training period.

If direct contact violations continue to increase by Field Collection personnel who inappropriately contact taxpayers to obtain information, there will also be an increase in violations of taxpayer rights. When IRS employees ensure that taxpayer rights are protected, overall tax administration is benefited.

Recommendation 1: The Director, Field Collection, SB/SE Division, should ensure that the respective group managers appropriately discuss the 12 potential violations TIGTA identified during the review of ICS case narratives with the responsible employees and report the potential I.R.C. § 6304(a)(2) violations to the local Labor Relations Specialist.

Management's Response: The IRS agreed with this recommendation and will coordinate with respective Field Collection area management for cases identified in our

¹⁰ IRM 5.1.23.6 (Dec. 26, 2019).

¹¹ IRM 5.1.23.6 (Dec. 26, 2019).

review to discuss potential Fair Tax Collection Practice Violations and report I.R.C. § 6304(a)(2) violations to Labor Relations.

Direct Contact Violations Identified in Quality Reviews Were Not Reported for Investigation

The Embedded Quality Review System (EQRS) is an online quality review database that is used by front line managers. This system is designed to assist managers in tracking employee performance, identifying training needs, and planning workload distribution. The EQRS database can generate an Organizational Cumulative Report for any organizational segment down to team level, depending on the user's permissions.¹² We obtained and reviewed the Fiscal Year 2022 EQRS Organization Cumulative Review Feedback Report for Field Collection. This report contained nearly 11,800 cases, and there were 138 cases in which the quality element 'right to representation not observed' was reported as a potential exception.¹³

We obtained and reviewed the supporting detail provided by the IRS for the 138 cases. We found that in nine of the 138 cases, the reviewer noted a 'right to representation not observed' violation but did not include a narrative explaining the specific nature of the violation. The EQRS procedures do not require reviewers to include a narrative on taxpayer rights violations. Because these nine violations did not contain a narrative, we could not determine the violation cause or evaluate the severity. We reviewed the remaining 129 potential violations and determined that 80 were not I.R.C. §§ 7521(b)(2) and (c) violations or I.R.C. § 6304 violations. For the remaining 49, we found:

- 48 potential I.R.C. § 6304 violations.

The IRM requires the reporting of potential I.R.C. § 6304 Fair Tax Collection Practices violations to a Labor Relations Specialist by the close of the next business day.¹⁴ This includes potential violations identified during a case review (like EQRS reviews). Labor Relations is to track these instances on ALERTS using specific issue codes to ensure that the collected data is complete and accurate.¹⁵ The 48 potential violations should have been reported on ALERTS using issue code 142/6304, *Contacting a taxpayer directly without the consent of the taxpayer's power of attorney*. TIGTA also annually completes an audit on potential Fair Tax Collection Practice violations not being properly reported.¹⁶ This audit's review of ALERTS included a search using issue code 142/6304 and determined that the 48 potential I.R.C. § 6304 violations we identified were not reported in ALERTS.

¹² IRM 21.10.1.7.12.1(5) (Oct. 1, 2022). The report displays information for the time frame selected as well as the percentage of times each attribute was met. There are several filters that can be selected to refine the report output to more specific information.

¹³ IRM 1.4.20.20.1.1 (2) (Jan. 2012). Managers select cases to review by either a random or judgmental sample.

¹⁴ IRM 1.4.50.3.2.3 (1), Resource Guide for Managers, Collection Group Manager, Territory Manager and Area Director Operational Aid (Sep. 12, 2014).

¹⁵ IRM 1.4.51.3.2.3 (2) Resource Guide for Managers, Collection Group Manager, Territory Manager and Area Director Operational Aid (Sep. 12, 2014).

¹⁶ TIGTA, Audit 202330005, *Fiscal Year 2023 Statutory Review of Potential Fair Tax Collection Practices Violations*.

In addition, Labor and Employee Relations and Negotiations Division's Employee Issues Branch management confirmed that potential violations of Fair Tax Collection Practices identified during EQRS reviews are not added to ALERTS for investigation and therefore it does not track them on ALERTS. Further, management in the SB/SE Division Field Collection would not confirm that I.R.C. § 6304 violations are being reported to Labor and Employee Relations and Negotiations Division's Employee Issues Branch though it is required by their IRM.

Management has taken action on this issue. In October 2022, the Director of Field Collection issued a memorandum to field collection managers on reporting potential Fair Tax Collection Practices violations. The purpose of the memorandum was to remind group managers of the procedures to follow in reporting potential violations of I.R.C. § 6304 when identified. This was issued as a corrective action in response to TIGTA's Fiscal Year 2022 audit on potential Fair Tax Collection Practice violations.¹⁷

The lack of reporting potential I.R.C. § 6304 violations in the ALERTS database demonstrates significant gaps in the reporting of potential employee misconduct and appropriate disciplinary actions regarding these potential violations.

The Director, Field Collection, SB/SE Division, should:

Recommendation 2: Report the potential I.R.C. § 6304 Fair Tax Collection Practices violations we identified in our EQRS reviews to a Labor Relations Specialist for investigation.

Management's Response: The IRS agreed with this recommendation and will coordinate with respective Field Collection area management for cases identified in our review and report potential violations of I.R.C. § 6304(a)(2) to Labor Relations as appropriate.

Recommendation 3: Establish controls to ensure that all potential violations of Fair Tax Collection Practices identified in case reviews, including EQRS reviews, are reported properly for evaluation or investigation, as appropriate.

Management's Response: The IRS agreed with this recommendation. It will remind Field Collection managers to review IRM 1.4.50 procedures for referring potential Fair Tax Collection Practice Violations to Labor Relations and to use the monthly report distributed by Labor Relations as a control to ensure that violations are addressed and resolved accordingly.

Recommendation 4: Establish procedures that require EQRS reviewers to include a narrative detailing the circumstances and cause of potential violations relating to the 'right to representation not observed' quality element.

Management's Response: The IRS agreed with this recommendation and will re-educate Field Collection managers on established EQRS review standards which require reviewers to input a narrative in all attributes resulting in a "NO" rating.

¹⁷ TIGTA, Report No 2022-30-056, *Fiscal Year 2022 Statutory Review of Potential Fair Tax Collection Practices Violations* (Sept. 2022).

Effective Training on Direct Contact Provisions Is Critical As the IRS Hires New Revenue Officers

We obtained an organizational chart containing the names of almost 2,700 Field Collection employees as of October 9, 2022. We interviewed a judgmental sample of four group managers and 16 revenue officers.¹⁸ We asked the group managers about the procedures followed to review tax cases for instances of direct contact violations and if there were any occurrences in their groups. For the revenue officer interviews, we developed scenarios involving communications between a collection employee and a taxpayer when the taxpayer asks to consult with a CPA.

When asked how revenue officers in their groups are monitored to determine that authorized representation is not bypassed, all four group managers stated they reviewed sampled case work of their employees for violations of directly contacting represented taxpayers.¹⁹ While these case reviews are not a proactive approach to stopping direct contact violations because any violation would have occurred prior to its discovery, it is the main tool used by group managers. When asked about the effectiveness of case reviews, one group manager stated that it is impossible for them to catch all instances of violations.

Two group managers made statements concerning new revenue officers and direct contact violations. One stated that they are much more concerned about the newer revenue officers committing a direct contact violation than more “seasoned” revenue officers. The other group manager recalled stopping an I.R.C. § 6304 violation from occurring while accompanying a newly hired revenue officer who was making field contacts

The IRS is expected to hire hundreds of new revenue officers in the coming years. The Inflation Reduction Act, signed into law on August 16, 2022, increases funding for IRS operations by nearly \$80 billion over 10 years to rebuild its workforce and modernize its information technology system.²⁰ This law provides the IRS with nearly \$46 billion for enforcement activities, which could be used for hiring more enforcement personnel which would include revenue officers. Due to the expected increase in new hire revenue officers, there will be an increased possibility of direct contact violations of represented taxpayers.

Training for new revenue officers still needs scenarios

When speaking with taxpayers, the same situation may have a different interpretation by different revenue officers. For example, we asked the 16 interviewed revenue officers the following about a hypothetical situation, “During an initial contact with a taxpayer, you are discussing the taxpayer’s account (returns). The taxpayer mentions that they would like to speak with their CPA to get their opinion. How would you respond to this request?”

¹⁸ Employees were selected judgmentally from the Central SB/SE Division Field Collection area. A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.

¹⁹ IRM 1.4.50.3.2.1 (Jan. 25, 2013) provides that case reviews can be conducted to ensure employee compliance with direct contact provisions.

²⁰ Public Law No.117-169, Section 10301, August 16, 2022. On June 3, 2023, H.R. 3746 (the “Fiscal Responsibility Act of 2023”) was signed into law, rescinding \$1.4 billion in Inflation Reduction Act funds. According to news reports, a separate agreement exists to take an additional \$20 billion from the IRS in Fiscal Years 2024 and 2025 to divert those funds to other nondefense programs.

Eight of those interviewed stated they would end the interview with the taxpayer. The other eight of the revenue officers did not state that they would suspend or reschedule the interview. Among those who would not end the interview:

- Two revenue officers would seek a call with the CPA.
- Two would ask to call the POA while in discussion with the taxpayer.
- One revenue officer would complete the conversation and inform the taxpayer that a Form 2848 is needed every time the taxpayer needs the CPA to speak on their behalf.
- One revenue officer said that they would obtain basic financial information.
- One revenue officer said they would ensure the CPA is an authorized representative before proceeding.
- One revenue officer would ask the taxpayer if they want to call the CPA before asking them to complete a Form 2848.

I.R.C. § 7521(b)(2) requires revenue officers to suspend the interview at the point that the taxpayer requests to speak with an authorized representative (unless it was initiated by administrative summons). Further, the IRM provides instruction on the law stating that, if a taxpayer states during any interview a desire to consult with an authorized representative, the employee will suspend the interview to permit such consultation.²¹

When discussing this issue with the IRS, we were advised that taxpayers would most likely say they “would like to seek representation” and that our scenario did not contain the terminology that revenue officers are accustomed to or would expect. However, revenue officers should not expect taxpayers to use exact IRM terminology. The IRS should incorporate scenario-based training to help ensure that employees understand the purpose and intent of the law.

During last year’s review we asked the same question (as previously stated) concerning a taxpayer asking to speak with a CPA to obtain an opinion during initial contact with a revenue officer. As with this year’s review, not all revenue officers said they would suspend the interview when the taxpayer asked to speak with a CPA. We asked the IRS why revenue officers would not have suspended or rescheduled the interview in our scenario and were told that our use of the word “opinion” might have been confusing to them because the IRM states “consult.” The revenue officer may have felt the intention in the scenario was something other than a consultation.

During our review of the ICS case histories, we noted that taxpayers asked to speak with their CPA, accountant, or POA in several different ways, which did not always follow the wording provided in the IRM. The following are a few examples we found in the ICS case histories:

- Like to discuss [REDACTED] with his CPA.
- Have to speak with [REDACTED] accountant to determine [REDACTED]
- Wanted to discuss the tax issues with [REDACTED] POA [REDACTED]

When being interviewed some revenue officers suggested that “more hands-on training” and “real world situations” be incorporated into the onboarding process to help with actual

²¹ IRM 5.1.10.7.1 (1) (Nov. 20, 2017).

interactions with taxpayers. The current training provided to new revenue officers includes only the following information on contacting represented taxpayers:

If there is a valid POA on file, you must contact the representative and not the taxpayer. I.R.C. § 6304 forbids the IRS from communicating with a represented taxpayer about the collection of any unpaid tax unless the taxpayer has given prior consent for that communication. In accordance with the purpose of I.R.C. § 6304, an IRS employee may not work directly with a represented taxpayer about an issue on the taxpayer's account unless:

- *The taxpayer initiates the contact to resolve the issue on the account;*
- *The taxpayer expresses a specific desire to resolve the issue without involving the power of attorney after the Service employee has advised the taxpayer of the current representation; and*
- *The taxpayer's decision to not use their representative for that tax period and work directly with the IRS to resolve the issue is properly documented on Account Management System for each tax period.²²*

There are currently no training scenarios to show new revenue officers the variety of ways a taxpayer may ask to consult with their POA, CPA, attorney, *etc.* There is no requirement that the revenue officer ask, "Do you want this person to be your representative on file with the IRS?" to reduce the risks of misunderstandings.

The IRS should enhance its training of revenue officers on taxpayers' right to representation to include real life experiences. Effective training is the only proactive action the IRS is currently able to take to help ensure the direct contact provisions are appropriately followed. When IRS employees ensure that taxpayer rights are protected, the IRS's exposure to potentially harmful litigation is limited.

Recommendation 5: The Director, Field Collection, SB/SE Division, should improve new revenue officer training by adding direct contact scenarios pertaining to taxpayers' statements concerning their right to representation.

Management's Response: The IRS agreed with this recommendation and will incorporate direct contact scenarios pertaining to taxpayers' statements concerning their right to representation into new hire training.

²² 2020 Balance Due Program, Recruit Phase I, Outcalls, POA Contact Requirement.

Appendix I

Detailed Objective, Scope, and Methodology

Our overall objective of this review was to determine whether the IRS is in compliance with legal guidelines addressing the direct contact of taxpayers and their representatives as set forth in I.R.C. §§ 7521(b)(2) and (c) and the Fair Tax Collection Practices set forth in I.R.C. § 6304 (a)(2) and I.R.C. § 7803(a)(3)(I). To accomplish our objective, we:

- Determined what procedures and controls the IRS uses to ensure that employees are following the direct contact provisions and Fair Tax Collection Practices.
- Determined how well the IRS is ensuring that taxpayer rights, under the direct contact provisions, Fair Tax Collection Practices, and taxpayer rights to representation, are protected by the SB/SE Division during Field Collection actions.

We obtained individual Field Collection ICS case history narratives data for all open and archived cases with actions recorded between October 1, 2021, and June 30, 2022. There were over 5.8 million history narratives for over 1 million unique taxpayers. Using statistical software, we searched and then filtered these records using keywords and phrases that may indicate a potential direct contact or Fair Tax Collection Practices violation took place (see Figure 1 in this appendix). We filtered these results to remove ICS case history narratives that would indicate when the IRS followed procedures and would not be subject to our review and removed them from our population. We determined we had a population of nearly 2,100 unique history narrative lines for 1,613 unique taxpayers.

We selected a stratified statistically valid sample of 132 taxpayers from the population of 1,613 taxpayers who had collection actions documented in their ICS case history narratives.¹ We stratified the case histories into six strata based on the keywords and phrases search. Our contract statistician confirmed a stratified random sample of 132 cases.²

We researched the ICS modules and determined that 85 of the 132 sampled taxpayers had a POA on at least one tax period as of January 17, 2023. We used this POA information to assist us in our analysis of the case history narratives reviewed.

- Reviewed the Fiscal Year 2022 EQRS Organization Cumulative Review Feedback Report for Field Collection narratives to determine the potential violations of a taxpayer's right to representation and directly contacting represented taxpayers.

The IRS agreed to review, at the most, 10 percent of our potential I.R.C. § 6304 violation cases. We randomly selected five of the 51 potential I.R.C. § 6304 violation cases and provided them to the IRS for review. The IRS confirmed that [REDACTED]

¹ Our sample size was determined by using a 95 percent confidence level, 5 percent error rate, and ± 5 percent precision using six strata.

² See Appendix I, Figure 1, for a summary of strata counts by keyword/phrase searched.

[REDACTED] We verified the subsequent information provided by the IRS and reduced the number of potential I.R.C. § 6304 violation cases to 48.

- Reviewed ALERTS narratives from October 2021 to June 2022 to determine if there were reported instances of taxpayer rights violations.
- Determined if the IRS provides training/learning opportunities that adequately address the direct contact provisions of I.R.C. §§ 7521(b)(2) and (c) and the Fair Tax Collection Practices of I.R.C. § 6304(a)(2) and whether collection employees have a general understanding of these requirements.
- Selected a judgmental sample of 16 revenue officers and four group managers from the 2,490 Field Collection employees as of October 9, 2022.³ We interviewed these employees and presented scenarios and questions pertaining to the direct contact provisions and Fair Tax Collection Practices.

Performance of This Review

This review was performed with information obtained from the SB/SE Division's Collection function during the period November 2022 through May 2023. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Major contributors to the report were Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations); Timothy Greiner, Director; Eugenia Smoak, Audit Manager; Shalin Basnayake, Lead Auditor; and Tishana Lawrence, Auditor.

Sampling Methodology

We used TIGTA's contracted statistician to select a statistically valid random sample of ICS case history narratives between October 1, 2021, and June 30, 2022, in which the actions recorded would possibly indicate violations of the direct contact provisions or Fair Tax Collection Practices. We conducted case reviews using a 95 percent confidence level, 5 percent error rate, and ± 5 percent precision and divided the cases into five strata. Based on discussions with our contracted statistician, we calculated that the stratified sample would be 132 cases, with six strata. Figure 1 shows the sample stratified by keyword/code.

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

Figure 1: Summary of Sample by Stratum

Stratum	Keyword/Phrase	Population of Taxpayers	Sampled Taxpayers
1	"Ignored"/"Overlooked"/"Missed" POA	13	5
2	"I.R.C. 6304" and "5.1.10.6.1"	31	5
3	"Directly contacted" and "Directly contact"	106	8
4	"I.R.C. 7521" and "Stop interview"	327	25
5	"BYPASS" AND "4016"	483	38
6	"Consult with representative" or "Requested representative"	653	51
	Totals	1,613	132

Source: TIGTA Applied Research and Technology Data Analytics Team analysis of ICS case history narratives from TIGTA's Data Center Warehouse.

Validity and Reliability of Data From Computer-Based Systems

We performed tests to assess the reliability of data from ICS case history narratives taken from TIGTA's Data Center Warehouse. We evaluated the data by 1) performing electronic testing of data elements and 2) reviewing existing information about the data and the system that produced them. We determined that the data were sufficiently reliable for purposes of this report.

Internal Controls Methodology

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our audit objective: the IRS's policies, procedures, and practices related to responding to taxpayer and taxpayer representative allegations of IRS employee violations of the direct contact provisions of I.R.C. §§ 7521(b)(2) and (c) and the Fair Tax Collection Practices of I.R.C. § 6304(a)(2). We evaluated these controls by contacting management, reviewing IRM guidance provided to managers and employees, identifying closed complaints and investigations from TIGTA's Criminal Results Management System, identifying closed cases tracked on the IRS's e-Trak database, reviewing ICS case history narratives associated with the selected cases, and interviewing revenue officers and group managers in SB/SE Division's Field Collection.

Appendix II

Outcome Measures

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

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; eight taxpayers for whom the IRS did not comply with the I.R.C. sections pertaining to direct contact provisions and the right to fair collection practices when working collection cases (see Recommendation 1).

Methodology Used to Measure the Reported Benefit:

We obtained individual Field Collection ICS case history narratives data for all open and archived cases with actions recorded between October 1, 2021, and June 30, 2022. With the assistance of our Applied Research and Technology Data Analytics team, we searched and filtered these records using keywords and phrases which may indicate that a potential direct contact or Fair Tax Collection Practices violation took place (see Figure 1 in Appendix I). We determined we had a population of nearly 2,100 unique history narrative lines for 1,613 taxpayers.

We selected a stratified statistically valid sample of 132 taxpayers from the population of 1,613 taxpayers who had collection actions documented in their ICS case history narratives by Field Collection employees (revenue officers).¹ Further, we also researched the ICS modules and determined that 85 of the 132 sampled taxpayers had a POA on at least one tax period as of January 17, 2023. We used this POA information to assist us in our analysis of the case history narratives reviewed. In our review of the case history narratives, we identified eight taxpayers with 12 potential violations with the direct contact provisions. Specifically,

- Five violations in which the revenue officer continued contact with five taxpayers after they requested consultation with a POA.
- Four violations in which the revenue officer directly contacted four represented taxpayers.
- Three violations in which the revenue officer failed to follow appropriate bypass procedures after the POA delayed or hindered contact (pertained to three taxpayers).

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 49 taxpayers for whom the IRS did not comply with the I.R.C. sections pertaining to the right to fair collection practices and direct contact provisions when working collection cases (see Recommendations 2 and 3).

¹ Our sample size was determined by using a 95 percent confidence level, 5 percent error rate, and ± 5 percent precision using six strata. See Appendix I for more information on the sample selection.

Methodology Used to Measure the Reported Benefit:

We obtained and reviewed the Fiscal Year 2022 EQRS Organization Cumulative Review Feedback Report for Field Collection. This report contained 138 cases in which the quality element 'right to representation not observed' was reported as a potential exception. We obtained and reviewed the supporting detail provided by the IRS for the 138 cases. We found that in nine of the 138 cases, the reviewer noted a 'right to representation not observed' violation but did not include a narrative explaining the specific nature of the violation. Because these nine violations did not contain a narrative, we could not determine the violation cause or evaluate the severity. The EQRS procedures do not require reviewers to include a narrative on taxpayer rights violations. For the remaining 129 potential violations, we found 48 potential fair collection practices violations and [REDACTED]

Appendix III

Management's Response to the Draft Report



COMMISSIONER
SMALL BUSINESS/Self-EMPLOYED DIVISION

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

August 3, 2023

MEMORANDUM FOR HEATHER M. HILL
DEPUTY INSPECTOR GENERAL FOR AUDIT
Amalia C. Colbert
FROM: Lia Colbert, Commissioner, Small Business/Self-Employed Division
SUBJECT: Draft Audit Report – Fiscal Year 2023 Statutory Review of Restrictions on Directly Contacting Represented Taxpayers (Audit # 202330008)

Thank you for the opportunity to review and comment on the subject draft audit report, which evaluates whether the IRS complied with the statutory requirements involving the direct contact provisions of Internal Revenue Code (I.R.C.) Section (§) 7521 and fair tax collection practices of I.R.C. § 6304(a)(2) during interactions with taxpayers or their representatives. The IRS is committed to helping taxpayers meet their tax responsibilities while ensuring that the rights of the taxpayer are respected and protected by the agency.

We are committed to protecting taxpayer rights and work hard to ensure our employees are aware of and protect those rights through guidance, training, and regular reviews of their work. Nonetheless, we agree that further steps can be taken to continue improvement of taxpayer rights.

As the IRS hires new employees, we will continue to focus on providing appropriate training to educate employees on protection of taxpayer's rights to representation. The findings in this audit reinforce the importance of such training.

To ensure that potential violations of taxpayer rights are appropriately addressed, the Director, Field Collection issued a memorandum in October of 2022 to field group managers reminding them of proper actions in reporting potential violations of IRC § 6304. Since this audit focused on cases with actions recorded between October 1, 2021, and June 30, 2022, the impact of the issued memo may not be reflected in this report. To further emphasize the importance of addressing potential violations, additional re-education and reminders will be issued to Field Collection managers as part of our planned corrective actions.

We appreciate TIGTA's review of our program and your insights and recommendations. The IRS is committed to protecting taxpayer rights and will continue to work to safeguard the integrity of the federal tax system.

Attached are our comments and proposed actions to your recommendations. If you have any questions, please contact me, or William H. Kea, Jr, Director, Field Collection, Small Business/Self-Employed Division.

Attachment

RECOMMENDATION 1:

The Director, Field Collection, SB/SE Division, should ensure that the respective group managers appropriately discuss the 12 potential violations TIGTA identified during the review of ICS case narratives with the responsible employees and report the potential I.R.C. § 6304(a)(2) violations to the local Labor Relations Specialist.

CORRECTIVE ACTION:

We will coordinate with respective Field Collection area management for cases identified in TIGTA's review to discuss potential Fair Tax Collection Practice Violations and report IRC § 6304(a)(2) violations to Labor Relations.

IMPLEMENTATION DATE:

February 15, 2024

RESPONSIBLE OFFICIAL:

Director, Field Collection, 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 2:

The Director, Field Collection SB/SE Division, should report the potential I.R.C. § 6304 Fair Tax Collection Practices violations we identified in our EQRS reviews to a Labor Relations Specialist for investigation.

CORRECTIVE ACTION:

We will coordinate with respective Field Collection area management for cases identified in TIGTA's review and report potential violations of IRC § 6304(a)(2) to Labor Relations as appropriate.

IMPLEMENTATION DATE:

February 15, 2024

RESPONSIBLE OFFICIAL:

Director, Field Collection, 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 Director, Field Collection, SB/SE Division should establish controls to ensure that all potential violations of Fair Tax Collection Practices identified in case reviews, including EQRS reviews, are reported properly for evaluation or investigation, as appropriate.

CORRECTIVE ACTION:

We will remind Field Collection managers to review IRM 1.4.50 procedures for referring potential Fair Tax Collection Practice Violations to Labor Relations and to use the monthly report distributed by Labor Relations as a control to ensure that violations are addressed and resolved accordingly.

IMPLEMENTATION DATE:

November 15, 2024

RESPONSIBLE OFFICIAL:

Director, Field Collection, 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 Director, Field Collection, SB/SE Division, should establish procedures that require EQRS reviewers to include a narrative detailing the circumstances and cause of potential violations relating to the 'right to representation not observed' quality element.

CORRECTIVE ACTION:

We will re-educate Field Collection managers on established EQRS review standards which require reviewers to input a narrative in all attributes resulting in a "NO" rating.

IMPLEMENTATION DATE:

March 15, 2024

RESPONSIBLE OFFICIAL:

Director, Field Collection, 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 5:

The Director, Field Collection, SB/SE Division, should improve new revenue officer training by adding direct contact scenarios pertaining to taxpayers' statements concerning their right to representation.

CORRECTIVE ACTION:

We will incorporate direct contact scenarios pertaining to taxpayers' statements concerning their right to representation into new hire training.

IMPLEMENTATION DATE:

January 15, 2026

RESPONSIBLE OFFICIAL:

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

CORRECTIVE ACTION MONITORING PLAN:

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

Appendix IV

Glossary of Terms

Term	Definition
Automated Labor and Employee Relations Tracking System	An application used to track labor/employee relations case data. It was developed to ensure consistency in tracking labor and employee relations disciplinary actions.
Centralized Authorization File	A computerized system of records which houses authorization information from both POAs and tax information authorizations.
Criminal Results Management System	TIGTA's Office of Investigations system that provides the ability to manage and account for all complaints received, investigations initiated, and leads developed from law enforcement initiatives.
Data Center Warehouse	A collection of IRS databases containing various types of taxpayer accounts and IRS and TIGTA employee information that is maintained by TIGTA for the purpose of analyzing data for ongoing audits.
e-Trak	A web interface that easily allows business requirements to be translated into systemic configuration for case management and case tracking covering multiple IRS business functions.
Field Collection	The unit in the Area Offices consisting of revenue officers who handle face-to-face contacts with taxpayers to collect delinquent accounts or secure unfiled returns.
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.
Integrated Collection System	An information management system designed to improve revenue collection by providing revenue officers with access to the most current taxpayer information.
Internal Revenue Code	The body of law that codifies all Federal tax laws, including income, estate, gift, excise, alcohol, tobacco, and employment taxes. These laws constitute Title 26 of the U.S. Code.
Internal Revenue Manual	The primary, official source of IRS instructions to staff related to the organization, administration, and operation of the IRS.
Power of Attorney	A taxpayer's written authorization for a designated individual or individuals to perform certain specified acts on the taxpayer's behalf.
Revenue Officer	Employees in the Field Collection function who attempt to contact taxpayers and resolve collection matters that have not been resolved through notices sent by the IRS campuses.

Appendix V

Abbreviations

ALERTS	Automated Labor and Employee Relations Tracking System
CPA	Certified Public Accountant
EQRS	Embedded Quality Review System
ICS	Integrated Collection System
I.R.C.	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
POA	Power of Attorney
SB/SE	Small Business/Self-Employed
TIGTA	Treasury Inspector General for Tax Administration



**To report fraud, waste, or abuse,
contact our hotline on the web at www.tigta.gov or via e-mail at
oi.govreports@tigta.treas.gov.**

**To make suggestions to improve IRS policies, processes, or systems
affecting taxpayers, contact us at www.tigta.gov/form/suggestions.**

Information you provide is confidential, and you may remain anonymous.