



*Collection Employees Adhered to Fair
Tax Collection Practices in
Calendar Year 2008*

July 23, 2009

Reference Number: 2009-10-101

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.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

July 23, 2009

MEMORANDUM FOR CHIEF COUNSEL
IRS CHIEF HUMAN CAPITAL OFFICER

Michael R. Phillips

FROM: Michael R. Phillips
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Collection Employees Adhered to Fair Tax
Collection Practices in Calendar Year 2008 (Audit # 200910016)

This report presents the results of our review of Fair Tax Collection Practices (FTCP)¹ violations for Calendar Year 2008. The overall objective of this review was to obtain information on Internal Revenue Service (IRS) administrative or civil actions resulting from FTCP violations by IRS employees. Section 1102 (d)(1)(G) of the IRS Restructuring and Reform Act of 1998² requires the Treasury Inspector General for Tax Administration to include in one of its Semiannual Reports to Congress information regarding administrative or civil actions related to FTCP violations. This audit was conducted as part of the Treasury Inspector General for Tax Administration Office of Audit Fiscal Year 2009 Annual Audit Plan related to the major management challenge of Taxpayer Protection and Rights.

Impact on the Taxpayer

The abuse or harassment of taxpayers by IRS employees while attempting to collect taxes reflects poorly on the IRS and can have a negative impact on voluntary compliance and result in civil damages against the Government when FTCP are violated. For Calendar Year 2008, there were no cases involving FTCP violations for which an employee received administrative disciplinary action and there were no taxpayers who received civil damages for an FTCP violation. As a result, taxpayers have reasonable assurance that communications with the IRS in connection with the collection of unpaid taxes generally did not violate the FTCP statute.

¹ 26 U.S.C. Section 6304 (2007). See Appendix V for an explanation of FTCP provisions.

² Pub. L. No. 105-206, 112 Stat. 702-703.



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Synopsis

The FTCP provisions of Internal Revenue Code Section 6304 prohibit employees from using abusive or harassing behavior toward taxpayers when attempting to collect taxes. Employees who are found to have violated the FTCP statute could be subject to disciplinary action. In Calendar Year 2008, IRS employees in the collection-related jobs series committed only one potential violation of the FTCP statute. Initially, the IRS coded two cases as FTCP violations. In the first case, the action taken by management was considered a lesser action and did not qualify as an administrative action. The other case was improperly coded as an FTCP violation and should not have been because it did not involve an employee in a collection-related job series. During the audit, we recommended the miscoding in the second case be corrected and the IRS corrected the miscoding. In addition, there were no civil actions resulting in monetary awards being paid to taxpayers because of an FTCP violation.

It is important that FTCP violations information be accurate since it is needed by IRS management to detect any problems or trends that might exist and properly address them to minimize negative interactions between IRS employees and taxpayers. In our previous reports, we had noted the miscoding of a significant number of cases. For example, we determined that 13 cases were miscoded in Calendar Year 2007.³ As a result, we previously recommended that improvements be made to ensure that cases are coded correctly. To determine if the IRS had made improvements, we reviewed 498 cases in 6 “other case” categories to determine whether there were other instances of FTCP violations that were coded incorrectly. Our review determined that the IRS had improved its practices because no additional cases were identified that should have been coded as FTCP violations.

Recommendations

We made no recommendations in this report. However, key IRS management officials reviewed the report prior to issuance and agreed with the facts and conclusions presented.

Copies of this report are also being sent to the IRS managers affected by the report findings. Please contact me at (202) 622-6510 if you have questions or Nancy A. Nakamura, Assistant Inspector General for Audit (Management Services and Exempt Organizations), at (202) 622-8500.

³ *Five Fair Tax Collection Practices Violations Resulted in Administrative Actions in Calendar Year 2007* (Reference Number 2008-10-162, dated September 5, 2008).



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Abbreviations

ALERTS	Automated Labor and Employee Relations Tracking System
FTCP	Fair Tax Collection Practices
IRS	Internal Revenue Service



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Background

Section (§) 1102 (d)(1)(G) of the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998¹ requires that the Treasury Inspector General for Tax Administration include in one of its Semiannual Reports to Congress information regarding any administrative or civil actions related to violations of the Fair Tax Collection Practices (FTCP) listed in 26 U.S.C. § 6304.² The Treasury Inspector General for Tax Administration's Semiannual Report to Congress must provide a summary of such actions and include any judgments or awards granted.

The abuse or harassment of taxpayers by IRS employees while attempting to collect taxes reflects poorly on the IRS and can have a negative impact on voluntary compliance. As originally enacted, the Fair Debt Collection Practices Act³ included provisions that prohibit various collection abuses and harassment in the private sector. The restrictions do not apply to Federal Government practices. However, Congress believes that it is appropriate to require the IRS to comply with applicable portions of the Fair Debt Collection Practices Act and to be at least as considerate to taxpayers as private creditors are required to be with their customers. IRS Restructuring and Reform Act of 1998 § 3466⁴ requires that the IRS follow FTCP provisions⁵ that are similar to the Fair Debt Collection Practices Act provisions.

Taxpayer complaints regarding IRS employees' conduct can be reported to several IRS divisions⁶ for tracking. If a taxpayer files a civil action, or if IRS management determines that a taxpayer's rights related to the FTCP might have been violated, the complaint may be referred and tracked on one or both of the following IRS systems:

- The IRS Chief Human Capital Officer Workforce Relations Automated Labor and Employee Relations Tracking System (ALERTS) generally tracks employee behavior that might warrant IRS management administrative actions.
- The Office of Chief Counsel Counsel Automated System Environment is an inventory control system that tracks items such as taxpayer civil actions.

The IRS began tracking FTCP codes on the ALERTS in March 1999⁷ and on the Counsel Automated System Environment in June 1999. For this review, we analyzed closed cases for

¹ Pub. L. No. 105-206, 112 Stat 702-703.

² 26 U.S.C. § 6304 (2007).

³ 15 U.S.C. §§ 1601 note, 1692-1692p (2006).

⁴ Pub. L. No. 105-206, 112 Stat 768-769.

⁵ See Appendix V for a detailed description of FTCP provisions.

⁶ The IRS divisions are the Large and Mid-Size Business, Small Business/Self-Employed, Tax Exempt and Government Entities, and Wage and Investment Divisions.

⁷ See Appendix VI for a description of the ALERTS FTCP violation codes.



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Calendar Year 2008 from the ALERTS to identify violations of the FTCP. To be an FTCP violation that the Treasury Inspector General for Tax Administration is required to report, the action must have been taken by an IRS employee who was involved in a collection activity and who received a disciplinary action that is considered an administrative action. We determined that usually only those employees in the job series listed below will be engaged in collection-related activities:

- Tax Specialist – Job Series 0526.
- Tax Examiner – Job Series 0592.
- Contact Representative – Job Series 0962.
- Revenue Officer – Job Series 1169.

The law does not provide a definition of “administrative action.” We used the IRS’ definition of a disciplinary action when determining the number of violations to report under IRS Restructuring and Reform Act of 1998 § 1102 (d)(1)(G). As defined by the IRS, disciplinary actions range from a letter of admonishment through removal.

We could not ensure that the cases recorded on the ALERTS constitute all FTCP violations. The ALERTS tracks disciplinary actions taken against employees due to improper conduct. Lesser actions, such as oral or written counseling, are not considered to be disciplinary actions under the IRS’ definition. Because the IRS does not routinely track all informal oral counseling or minor actions against its employees, it is not possible for us to determine how often, or why, informal oral counseling or other minor disciplinary actions occurred. The scope of our audit was not intended to determine the accuracy or consistency of disciplinary actions taken against employees.

This review was performed at the offices of the IRS Chief Human Capital Officer and the Chief Counsel in the IRS National Headquarters in Washington, D.C., during the period February through May 2009. 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. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.



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Results of Review

No Fair Tax Collection Practices Violations Resulted in Administrative Actions to Employees

Our audit concluded that IRS employees received no administrative actions as a result of FTCP violations. As such, taxpayers have reasonable assurance that communications with the IRS in connection with the collection of unpaid taxes generally did not violate the FTCP statute. While two cases were initially coded as FTCP violation complaints and closed on the ALERTS from January 1 through December 31, 2008,⁸ we reviewed the cases and determined that only one potential FTCP violation had occurred. Upon reviewing the potential FTCP violation, we found that management disposed of this case with a lesser action that did not qualify as administrative action to the employee. The second case was miscoded on the ALERTS and was not an FTCP violation because it did not involve an employee in a collection-related jobs series. During the audit, we recommended that the miscoding be corrected and the Workforce Relations function staff corrected the miscoding by amending the second case to reflect the appropriate issue code instead of the FTCP violation issue code.⁹

No Fair Tax Collection Practices Violations Resulted in Civil Damages (Monetary Awards) to Taxpayers

Section 7433 of the Internal Revenue Code provides that a taxpayer may bring a civil action for damages against the Federal Government if an officer or employee of the IRS recklessly, intentionally, or by reason of negligence, disregards any provision of the Internal Revenue Code, or related regulation, in connection with the collection of Federal tax.

There were no cases closed on the Counsel Automated System Environment in Calendar Year 2008 for which the IRS paid civil damages to taxpayers resulting from an FTCP violation.

⁸ This included cases opened after July 22, 1998, and closed during the period January 1 through December 31, 2008.

⁹ See Appendix IV for additional details.



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The Internal Revenue Service Substantially Reduced the Number of Cases Miscoded on the Automated Labor and Employee Relations Tracking System

It is important that ALERTS data be accurate since they are needed by IRS management to detect any problems or trends that might exist and properly address them to minimize poor interactions between IRS employees and taxpayers. The ALERTS is also the data source for reports provided to a number of oversight offices and at times is the basis for information provided to Congress on legislation affecting the IRS.

In our previous reports, we had noted that a significant number of cases were miscoded on the ALERTS. For example, our review of records on the ALERTS for our last FTCP violations audit found 13 cases that were miscoded.¹⁰ As a result, we recommended that improvements be made to ensure that cases are coded correctly. In addressing our prior recommendation, IRS management agreed to initiate a quarterly review of the ALERTS to validate the use of FTCP violation issue codes as a temporary measure until programming could be completed on a hard-code validation¹¹ to the ALERTS.¹² According to Workforce Relations function staff, a manual validation review of the ALERTS was performed in December 2008. The hard-code validation of FTCP violation issue codes was implemented in January 2009.

There are two types of miscoding errors that we have noted in the past: 1) cases that were coded as FTCP violation cases, but should not have been coded as such; and 2) cases that were not coded as FTCP violation cases, but should have been coded as FTCP violation cases. As mentioned previously, we identified one case in our current audit that was incorrectly coded as an FTCP violation case. To determine if the IRS incorrectly used other codes that should have been identified as FTCP violation cases, we reviewed 498 cases on the ALERTS in 6 “other case” categories involving employee misconduct allegations, including those coded as either “Unprofessional Conduct” or “Not Otherwise Coded.” Our review did not identify any additional cases that should have been coded as an FTCP violation.

While we did identify one miscoded case, IRS actions have ensured that miscoding was kept to a minimum in Calendar Year 2008. In addition, the Workforce Relations function staff was confident that the new, hard-code validation would prevent the miscoded case we identified from being entered into the ALERTS in the future because the hard-code validation requires the issue code, affected party code, and job series code to meet FTCP violation criteria.

¹⁰ *Five Fair Tax Collection Practices Violations Resulted in Administrative Actions in Calendar Year 2007* (Reference Number 2008-10-162, dated September 5, 2008).

¹¹ An enhancement to an ALERTS software program that only allows FTCP violation issue codes for cases where the affected party was a taxpayer/taxpayer representative and where the case involved an employee performing specific collection-related activities.

¹² *Five Fair Tax Collection Practices Violations Resulted in Administrative Actions in Calendar Year 2006* (Reference Number 2007-10-188, dated September 21, 2007).



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Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this audit was to obtain information on IRS administrative or civil actions resulting from FTCP violations¹ by IRS employees. To accomplish the objective, we:

- I. Identified the number of FTCP violations resulting in administrative actions.
 - A. Obtained from the ALERTS² a computer extract of any cases opened after July 22, 1998,³ with an Issue Code of 141 to 147⁴ and closed during the period January 1 through December 31, 2008.
 - B. Determined whether any cases involving FTCP violations resulted in administrative actions.
 - C. Obtained from the ALERTS a computer extract of 1,151 cases opened after July 22, 1998, and closed during the period January 1 through December 31, 2008, with the following Issue Codes:
 - 013 (Position/Authority Misuse - limited to only those closed with a disposition code of 009 or higher).
 - 020 (Fighting, Assaults, and Threats - limited to only those closed with a disposition code of 009 or higher).
 - 058 (Unprofessional Conduct - limited to only those closed with a disposition code of 009 or higher).
 - 114 (Conviction Assault/Battery - all disposition codes).
 - 119 (Threat of Audit/Personal - all disposition codes).
 - 999 (Not Otherwise Coded - limited to only those closed with a disposition code of 008 or higher).

¹ 26 U.S.C. Section 6304 (2007). See Appendix V for an explanation of FTCP provisions.

² The Office of Workforce Relations ALERTS generally tracks employee behavior that might warrant IRS management disciplinary actions.

³ The Act requiring the Treasury Inspector General for Tax Administration to include in one of its Semiannual Reports to Congress information regarding administrative or civil actions related to FTCP violations became Public Law on July 22, 1998.

⁴ See Appendix VI for a description of these Codes.



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- D. Analyzed the ALERTS extract and determined whether any of the cases in these categories were miscoded and should have been coded as FTCP violations. We did not attempt to independently validate the accuracy of the ALERTS for this review. We limited our work to assessing the accuracy of the Issue Codes for those cases that met the criteria listed in Steps I.A through I.C.
- E. Assessed the use of quarterly reviews and hard-code validations⁵ of the ALERTS to correct any cases that were miscoded as FTCP violations when entered into the ALERTS. We obtained documentation of the hard-code validations and reviewed the ALERTS FTCP violation extracts for Calendar Years 2007 and 2008 to ensure cases identified with FTCP violation issue codes were all FTCP violations.
- II. Determined there were no FTCP violation cases (Subcategory 6304, established to track FTCP violations) resulting in IRS civil actions (judgments or awards granted) on the Office of Chief Counsel Counsel Automated System Environment⁶ database that had been opened after July 22, 1998, and closed during the period January 1 through December 31, 2008. Due to time constraints, we did not conduct validation tests of this System. The Calendar Year 2008 data were consistent with those of past years, and there is less risk that cases were misclassified because qualified attorneys were deciding if each case met the legal definition of an FTCP violation. For these reasons, we considered the reliability of the data undetermined but suitable for use in this report.

Internal Controls Methodology

Internal controls relate to management's plans, methods, and procedures used to meet its 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. While the scope of this audit was generally limited to providing information on FTCP violations documented within IRS systems, we also determined whether corrective action taken based on a prior recommendation was adequate to improve the coding of FTCP violation cases. For this part of our audit, we determined that internal controls related to reliability of information were relevant to our audit objective. We evaluated these controls by interviewing management, reviewing applicable system information, and assessing whether information on these systems was validated appropriately.

⁵ An enhancement to an ALERTS software program that only allows FTCP violation issue codes for cases where the affected party was a taxpayer/taxpayer representative and where the case involved an employee performing specific collection-related activities.

⁶ The Counsel Automated System Environment is an Office of Chief Counsel inventory control system that tracks items such as taxpayer civil actions.



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Appendix II

Major Contributors to This Report

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James V. Westcott, Audit Manager

Donald J. Martineau, Lead Auditor

Deadra M. English, Senior Auditor

Carol A. Rowland, Auditor



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Appendix III

Report Distribution List

Commissioner C
Office of the Commissioner – Attn: Chief of Staff C
Deputy Commissioner for Operations Support OS
Director, Workforce Relations, IRS Chief Human Capital Officer OS:HC:R
National Taxpayer Advocate TA
Director, Office of Legislative Affairs CL:LA
Director, Office of Program Evaluation and Risk Analysis RAS:O
Office of Internal Control OS:CFO:CPIC:IC
Audit Liaisons: Chief Counsel CC
IRS Chief Human Capital Officer OS:HCO



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Appendix IV

Outcome Measure

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

Type and Value of Outcome Measure:

- Reliability of Information – Actual; one ALERTS¹ record (see page 3).

Methodology Used to Measure the Reported Benefit:

We reviewed the two FTCP violation complaints closed on the ALERTS from January 1 through December 31, 2008, and determined that one of the cases was coded as an FTCP violation but should not have been because the case did not involve an employee in the collection-related jobs series.²

¹ The Office of Workforce Relations ALERTS generally tracks employee behavior that may warrant IRS management disciplinary actions.

² Tax Specialist – Job Series 0526; Tax Examiner – Job Series 0592; Contact Representative – Job Series 0962; Revenue Officer – Job Series 1169.



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Appendix V

Fair Tax Collection Practices Provisions

To ensure equitable treatment of debt collectors in the public and private sectors, the IRS Restructuring and Reform Act of 1998¹ requires the IRS to comply with certain provisions of the Fair Debt Collection Practices Act.² Specifically, the IRS may not communicate with taxpayers in connection with the collection of any unpaid tax:

- At unusual or inconvenient times.
- If the IRS knows that the taxpayer has obtained representation from a person authorized to practice before the IRS, and the IRS knows or can easily obtain the representative's name and address.
- At the taxpayer's place of employment, if the IRS knows or has reason to know that such communication is prohibited.

In addition, the IRS may not harass, oppress, or abuse any person in connection with any tax collection activity or engage in any activity that would naturally lead to harassment, oppression, or abuse. Such conduct specifically includes, but is not limited to:

- Use or threat of violence or harm.
- Use of obscene or profane language.
- Causing a telephone to ring continuously with harassing intent.
- Placement of telephone calls without meaningful disclosure of the caller's identity.

¹ Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 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.).

² 15 U.S.C. Sections 1601 note, 1692-1692p (2006).



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Appendix VI

Fair Tax Collection Practices Violation Issue Codes

Issue Code	Description
141	UNUSUAL CONTACT WITH TAXPAYER – Contacting a taxpayer before 8:00 a.m. or after 9:00 p.m., or at an unusual location or time, or location known or which should be known to be inconvenient to the taxpayer.
142	DIRECT CONTACT WITH TAXPAYER WITHOUT REPRESENTATIVE CONSENT – Contacting a taxpayer directly without the consent of the taxpayer’s Power of Attorney.
143	CONTACT AT TAXPAYER EMPLOYMENT WHEN PROHIBITED – Contacting a taxpayer at their place of employment when it is known or should be known that the taxpayer’s employer prohibits the taxpayer from receiving such communication.
144	USE/THREAT OF PHYSICAL HARM – Conduct which is intended to harass or abuse a taxpayer, or conduct which uses or threatens to use violence or harm.
145	USE OBSCENE/PROFANE LANGUAGE TO ABUSE – The use of obscene or profane language toward a taxpayer.
146	CONTINUOUS PHONE CALLS WITH INTENT TO HARASS – Causing a taxpayer’s telephone to ring continuously with harassing intent.
147	PHONE CALLS WITHOUT MAKING FULL IDENTIFICATION DISCLOSURE – Contacting a taxpayer by telephone without providing a meaningful disclosure of the IRS employee’s identity.

Source: IRS ALERTS User Manual (January 2008).