Fiscal Year 2007 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results

March 20, 2007

Reference Number: 2007-40-055

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.

Phone Number | 202-927-7037
Email Address | Bonnie.Heald@tigta.treas.gov
Web Site | http://www.tigta.gov

TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

March 20, 2007

MEMORANDUM FOR DEPUTY COMMISSIONER FOR OPERATIONS SUPPORT

FROM: Michael R. Phillips
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Fiscal Year 2007 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results (Audit # 200740001)

This report presents the results of our review to determine whether the Internal Revenue Service (IRS) complied with established procedures to implement the legal guidelines set forth in the IRS Restructuring and Reform Act of 1998 (RRA 98) Section 1204.[1] The Treasury Inspector General for Tax Administration is required under Internal Revenue Code Section 7803(d)(1) (2000) to annually evaluate the IRS' compliance with the provisions of RRA 98 Section 1204.

Impact on the Taxpayer

The RRA 98 requires the IRS to ensure managers do not evaluate employees using any record of tax enforcement results (ROTER) or base employee successes on meeting arbitrary production goals and quotas. Based on the results of our sample, we believe the IRS' efforts to enforce the employee evaluation requirements under Section 1204 are generally effective and are helping to protect the rights of taxpayers.

Synopsis

RRA 98 Section 1204(a) prohibits the IRS from using any ROTERs to evaluate employees or to impose or suggest production quotas or goals. Section 1204 (b) requires employees to be evaluated using the fair and equitable treatment of taxpayers as a performance standard.

[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.).

Section 1204(c) requires each appropriate supervisor to certify quarterly whether tax enforcement results were used in a prohibited manner. To evaluate the IRS' compliance with RRA 98 Section 1204, we selected a judgmental sample of 5 first-line managers and 3 employees for each of these managers in 12 cities, for a total of 60 managers and 180 employees.[2] We evaluated Fiscal Year 2006 performance evaluation documentation (including midyear and annual performance reviews and award documentation) for each employee to determine whether ROTERs were used when evaluating the employees' performance.

First-line managers followed RRA 98 Section 1204 provisions for evaluating employees.

The first-line managers we sampled complied with RRA 98 Section 1204. They had not used ROTERs or production quotas or goals when evaluating employees, had considered the fair and equitable treatment of taxpayers as a performance requirement, and had appropriately certified that they had not used tax enforcement results in a prohibited manner. The first-line managers sampled worked for the Small Business/Self-Employed Division; the Wage and Investment Division; the Large and Mid-Size Business Division; the Tax Exempt and Government Entities Division; the Office of the Chief, Appeals; and the Office of the National Taxpayer Advocate. Based on the results of our review, the IRS' efforts to ensure managers are not using ROTERs or production goals or quotas to evaluate employees are generally effective.

Response

IRS management reviewed the draft report and provided their concurrence with its contents via email. Because there were no recommendations requiring a formal response, the IRS agreed that the report will be issued with no formal written response.

Please contact me at (202) 622-6510 if you have questions or Michael E. McKenney, Assistant Inspector General for Audit (Wage and Investment Income Programs), at (202) 622-5916.

[2] These were employees in jobs for which RRA 98 Section 1204 would be applicable.

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Abbreviations

IRS	Internal Revenue Service
LMSB	Large and Mid-Size Business
PARIS	Performance and Results Information System
ROTER	Record of Tax Enforcement Results
RRA 98	Restructuring and Reform Act of 1998
SB/SE	Small Business/Self-Employed
TE/GE	Tax Exempt and Government Entities
TIGTA	Treasury Inspector General for Tax Administration
W&I	Wage and Investment

Background

On July 22, 1998, the President signed the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98) into law.[1] RRA 98 Section 1204 restricts the use of enforcement statistics. Specifically, RRA 98 Section 1204(a) prohibits the IRS from using any record of tax enforcement results (ROTER) to evaluate employees or to impose or suggest production quotas or goals.

The IRS defines ROTERs as data, statistics, compilations of information, or other numerical or quantitative recording of the tax enforcement results reached in one or more cases. A ROTER does not include evaluating an individual case to determine if an employee exercised appropriate judgment in pursuing enforcement of the tax laws. Examples of ROTERs include the amount of dollars collected or assessed, the number of fraud referrals made, and the number of seizures conducted.

RRA 98 Section 1204 prohibits the IRS from using tax enforcement results or production goals or quotas to evaluate employees.

RRA 98 Section 1204 (b) requires employees to be evaluated using the fair and equitable treatment of taxpayers as a performance standard. This provision of the law was enacted to provide assurance that employee performance is focused on providing quality service to taxpayers instead of achieving enforcement results. The IRS requires employees to administer the tax laws fairly and equitably; protect all taxpayers' rights; and treat each taxpayer ethically with honesty, integrity, and respect.

RRA 98 Section 1204(c) requires each appropriate supervisor to perform a self-certification quarterly. In the self-certification, the appropriate supervisor attests to whether ROTERs or production quotas or goals were used in a prohibited manner. The IRS defines an appropriate supervisor as the highest ranking executive in a distinct organizational unit that supervises directly or indirectly one or more Section 1204 enforcement employees.[2] Beginning with first-line managers of Section 1204 employees, IRS procedures require each level of management to self-certify they have not used ROTERs in a manner prohibited by RRA 98 Section 1204(a). The appropriate supervisor is then to prepare a consolidated office certification covering the entire organizational unit.

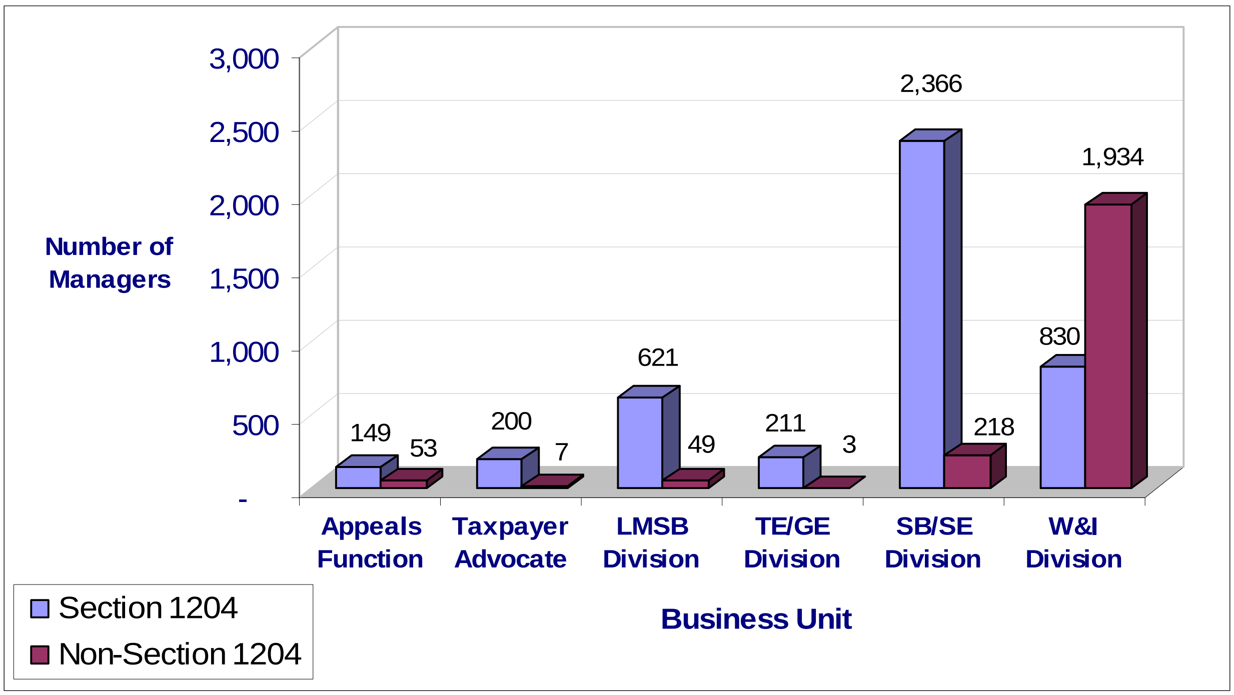
[1] Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

[2] An enforcement employee (Section 1204 employee) is an employee or any level manager of an employee who exercises judgment in recommending or determining whether or how the IRS should pursue enforcement of the tax laws or who provides direction/guidance for Section 1204 program activities.

The IRS business units and functions, including the Small Business/Self-Employed (SB/SE) Division; the Wage and Investment (W&I) Division; the Large and Mid-Size Business (LMSB) Division; the Tax Exempt and Government Entities (TE/GE) Division; the Office of the Chief, Appeals (Appeals function); and the Office of the National Taxpayer Advocate (Taxpayer Advocate office) are responsible for Section 1204 program implementation within their respective areas. Section 1204 Program Managers and Coordinators in each division and function are available to provide guidance to managers regarding Section 1204 issues, including the certification process.

Figure 1 depicts the ratio of Section 1204 and Non-Section 1204 managers in the subject business units as of October 31, 2006. The Section 1204 managers either supervised a Section 1204 employee or provided guidance or direction for Section 1204 activities.

Figure 1: Number of Section 1204 and Non-Section 1204 Managers by Business Unit (as of October 31, 2006)



Source: The Treasury Integrated Management Information System.

Internal Revenue Code Section 7803(d)(1) (2000) requires the Treasury Inspector General for Tax Administration (TIGTA) to determine annually whether the IRS is in compliance with restrictions on the use of enforcement statistics under RRA 98 Section 1204. We have previously performed eight annual reviews to do this. The audit reports are listed in Appendix IV.

This review was performed at the IRS National Headquarters in Washington, D.C., in the offices of the Chief Financial Officer and involved the SB/SE, LMSB, and TE/GE Divisions, the Appeals function, the Taxpayer Advocate office, and the W&I Division headquartered in Atlanta, Georgia, during the period August 2006 through February 2007. Onsite reviews were performed at the IRS field offices in St. Paul, Minnesota; Milwaukee, Wisconsin; Chicago, Illinois; Richmond, Virginia; Jacksonville, Florida; Houston, Texas; Dallas, Texas; Oklahoma City, Oklahoma; Nashville, Tennessee; Seattle, Washington; Portland, Oregon; and El Monte, California. The audit was conducted in accordance with *Government Auditing Standards*. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

Results of Review

First-Line Managers Complied With the Law Restricting the Use of Enforcement Statistics

To evaluate the IRS' compliance with Sections 1204(a) and 1204(b), which prohibit the use of enforcement statistics to evaluate employee performance and require that employees be evaluated on the fair and equitable treatment of taxpayers, we selected a judgmental sample of 5 first-line managers and 3 employees for each of these managers in 12 cities, for a total of 60 managers and 180 employees.[3] We evaluated Fiscal Year 2006 performance evaluation documentation (including midyear and annual performance reviews and award documentation) for each employee to determine whether ROTERs were used when evaluating the employees' performance.

The 60 first-line managers in our sample followed the provisions of RRA 98 Sections 1204(a) and 1204(b) when evaluating employees. The managers we sampled worked in the SB/SE Division, the W&I Division, the LMSB Division, the TE/GE Division, the Appeals function, and the Taxpayer Advocate office. They had not used ROTERs or production quotas or goals when documenting the performance of the 180 Section 1204 employees we sampled, and there was evidence that those employees had been evaluated on the fair and equitable treatment of taxpayers.

We also researched the TIGTA Performance and Results Information System (PARIS)[4] for any related Section 1204 complaints made during the period October 1, 2005, through August 31, 2006. There was only 1 potential Section 1204 complaint identified in the PARIS during the 11-month period.

The results of our review indicate the IRS' efforts to ensure managers are not using ROTERs or production goals or quotas to evaluate employees are generally effective and continue to protect the rights of taxpayers.

[3] See Appendix I for details.
[4] The PARIS provides the TIGTA with the managerial ability to account for and track all leads developed by the TIGTA, all complaints received from external sources, and all investigations initiated as a result of internal and external allegations.

First-Line Managers Appropriately Completed Their Self-Certifications

The first-line managers we sampled complied with the provisions of RRA 98 Section 1204(c) by completing the required self-certifications on the use of tax enforcement results for the second and fourth quarters of 2006. Each manager had certified that ROTERs or production goals or quotas were not used when evaluating employees. Figure 2 presents Part 1 of the RRA 98 Section 1204 Manager's Quarterly Self-Certification document.

Figure 2: RRA 98 Section 1204 Manager's Quarterly Self-Certification

FY 200X RRA 98 Section 1204 Manager's Quarterly Self-Certification
Part 1 – General Certification

Quarter Ending: MM-DD-YY

Manager's Name/Title:

Organization:

Section A – Section 1204 (a) Record of Tax Enforcement Results (ROTER) Certification
(Check one of the boxes below to indicate your Section 1204 (a) certification status. The certification statement must be included.)

☐ No Section 1204 (a) ROTER violations were identified.

☐ Section 1204 (a) ROTER violations were identified as indicated in Part 2 (attached).

Source: The Internal Revenue Manual.

RRA 98 Section 1204(c) requires appropriate supervisors to certify quarterly in writing to the IRS Commissioner whether ROTERs and production quotas or goals were used in a prohibited manner. To do this, the IRS requires managers who evaluated Section 1204 employees to certify in writing that they did not:

- Use ROTERs to evaluate employees or to impose or suggest production quotas or goals for employees in any performance evaluations, including appraisals, awards, or promotion justifications, written or reviewed by the manager.
- Verbally communicate to employees that ROTERs affected their evaluations.
- Verbally or in writing use ROTERs to impose or suggest production quotas or goals for employees or for work unit activities (e.g., through program guidance or business and program reviews).

The Internal Revenue Manual states the business organizations'/functions' Section 1204 Program Managers and their respective Coordinators should monitor the quarterly certification process throughout their organizations. The Section 1204 Program Managers' and Coordinators' duties include providing guidance to managers regarding Section 1204 issues.

Through the quarterly certification process, managers were reminded of their responsibilities under RRA 98 Section 1204 not to evaluate their employees on the basis of ROTERs or production quotas or goals. This helped to ensure managers were aware of the IRS' commitment to administer the tax laws fairly and to protect the rights of taxpayers.

Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this review was to determine whether the IRS complied with established procedures to implement the legal guidelines set forth in RRA 98 Section 1204.[1] To accomplish this objective, we:

I. Determined whether a sample of the first-line managers in the SB/SE Division, the W&I Division, the LMSB Division, the TE/GE Division, the Office of the Chief, Appeals (Appeals function), and the Office of the National Taxpayer Advocate (Taxpayer Advocate office) complied with the provisions of RRA 98 Sections 1204(a) and 1204(b) when evaluating the performance of their Section 1204 employees.[2]

   A. Identified SB/SE Division, W&I Division, LMSB Division, TE/GE Division, Appeals function, and Taxpayer Advocate office locations in various cities and the number of Section 1204 first-line managers located in each business organization by city. We judgmentally selected 12 cities for this year's audit: St. Paul, Minnesota; Milwaukee, Wisconsin; Chicago, Illinois; Richmond, Virginia; Jacksonville, Florida; Houston, Texas; Dallas, Texas; Oklahoma City, Oklahoma; Nashville, Tennessee; Seattle, Washington; Portland, Oregon; and El Monte, California. We considered the enforcement employee population disbursement, geographic coverage, and prior audit coverage when selecting the 12 audit sites.

   B. Upon arrival at each audit site, selected a judgmental sample of 5 first-line managers and 3 Section 1204 employees for each manager. We determined the number of first-line managers to sample based on their general representation in the 6 business units and their availability in the individual locations, for a total of 60 managers (20 SB/SE Division, 15 W&I Division, 10 LMSB Division, 5 TE/GE Division, 5 Appeals function, and 5 Taxpayer Advocate office managers). This provided a total of 60 managers and 180 employees for review.

   C. Obtained and reviewed Fiscal Year 2006 performance evaluation documentation (including midyear and annual performance reviews and award documentation) for each employee to determine whether the use of any ROTER or production goals or

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[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] An enforcement employee (Section 1204 employee) is an employee or any level manager of an employee who exercises judgment in recommending or determining whether or how the IRS should pursue enforcement of the tax laws or who provides direction/guidance for Section 1204 program activities.

quotas was documented and whether employees were evaluated appropriately on the fair and equitable treatment of taxpayers.

D. Reviewed the TIGTA PARIS[3] for complaints regarding the violation of Section 1204.

II. Determined whether selected first-line managers complied with RRA 98 Section 1204(c) by certifying by letter whether ROTERs were used in a manner prohibited by RRA 98 Section 1204(a).

A. Obtained Fiscal Year 2006 second and fourth quarter self-certifications for the selected first-line managers and reviewed the self-certifications for compliance with IRS procedures and the identification of any use of ROTERs or production quotas or goals.

[3] The PARIS is the TIGTA management information system that tracks all leads developed by the TIGTA, all complaints received from external sources, and all investigations initiated as a result of internal and external allegations.

Appendix II

Major Contributors to This Report

Michael E. McKenney, Assistant Inspector General for Audit (Wage and Investment Income Programs)
Mary V. Baker, Director
James D. O'Hara, Audit Manager
Gwendolyn M. Green, Lead Auditor
Sharon Summers, Senior Auditor
Andrea McDuffie, Auditor

Appendix III

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- Senior Operations Advisor, Wage and Investment Division SE:W:S

Appendix IV

Prior Audit Reports

The TIGTA has previously performed eight audits in this subject area. The audits were:

Fiscal Year 2006 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results (Reference Number 2006-40-095, dated June 2006).

Fiscal Year 2005 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results (Reference Number 2005-40-157, dated September 2005).

Fiscal Year 2004 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results (Reference Number 2004-40-066, dated March 2004).

Fiscal Year 2003 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results (Reference Number 2003-40-090, dated March 2003).

Compliance With Regulations Restricting the Use of Records of Tax Enforcement Results Shows Improvement (Reference Number 2002-40-163, dated September 2002).

Compliance With the Internal Revenue Service Restructuring and Reform Act of 1998 Section 1204 Has Not Yet Been Achieved (Reference Number 2001-10-178, dated September 2001).

Further Improvements Are Needed in Processes That Control and Report Misuse of Enforcement Statistics (Reference Number 2000-10-118, dated September 2000).

The Internal Revenue Service Should Continue Its Efforts to Achieve Full Compliance with Restrictions on the Use of Enforcement Statistics (Reference Number 1999-10-073, dated September 1999).