



*Fiscal Year 2009 Statutory Audit of
Compliance With Legal Guidelines
Prohibiting the Use of Illegal Tax Protester
and Similar Designations*

May 28, 2009

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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.

Redaction Legend:

1 = Tax Return/Return Information



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

May 28, 2009

MEMORANDUM FOR DEPUTY COMMISSIONER FOR SERVICES AND
ENFORCEMENT
DEPUTY COMMISSIONER FOR OPERATIONS SUPPORT

FROM: *Michael R. Phillips*
Michael R. Phillips
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Fiscal Year 2009 Statutory Audit of Compliance
With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and
Similar Designations (Audit # 200840036)

This report presents the results of our review to determine whether the Internal Revenue Service (IRS) complied with the IRS Restructuring and Reform Act of 1998 (RRA 98)¹ Section (§) 3707 and its own internal guidelines that prohibit IRS officers and employees from referring to taxpayers as Illegal Tax Protesters or any similar designations. The Treasury Inspector General for Tax Administration is required under Internal Revenue Code § 7803(d)(1)(A)(v) to annually evaluate the IRS' compliance with the provisions of RRA 98 § 3707.

Impact on the Taxpayer

Congress enacted RRA 98 § 3707 to prohibit the IRS from labeling taxpayers as Illegal Tax Protesters or any similar designations. Overall, the IRS has eliminated most uses of this and similar designations. However, in some instances, IRS employees did refer to taxpayers by these designations in case narratives, which could stigmatize taxpayers and cause employee bias in future contacts with these taxpayers.

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.).



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Synopsis

Prior to enactment of the RRA 98, taxpayers could be designated as Illegal Tax Protesters if their tax returns or correspondence contained specific indicators of noncompliance with the tax law, such as the use of arguments that had been repeatedly rejected by the courts. Once taxpayers' accounts were coded with Illegal Tax Protester indicators, certain tax enforcement actions were accelerated. The designation was also intended to alert employees to be cautious so they would not be drawn into confrontations with taxpayers. The RRA 98 prohibits the IRS from using Illegal Tax Protester or any similar designations.

The IRS has not reintroduced past Illegal Tax Protester codes on the Master File,² and formerly coded taxpayer accounts have not been assigned similar Master File designations. In addition, the Internal Revenue Manual³ and current publications do not have any Illegal Tax Protester references. However, there were some designations identified in the case narratives. In 324 instances out of approximately 65.3 million records and cases, IRS employees improperly referred to taxpayers as Illegal Tax Protesters or other similar designations.

In some instances, IRS employees referred to taxpayers as Illegal Tax Protesters or used similar designations in case narratives.

IRS management disagrees that employee use of Illegal Tax Protester or similar designations in a case narrative is a potential violation of the law. We continue to believe that the use of these designations in case narratives may stigmatize taxpayers and cause employee bias in future contacts with these taxpayers. Electronic case narratives are available to other IRS employees for future reference and may affect the opinions and actions of employees working the taxpayers' cases.

Notwithstanding their disagreement with our interpretation of the law, IRS management advised us they have taken a conservative approach by implementing a policy that prohibits employees from using Illegal Tax Protester or any similar designation. In August 2007, IRS management issued a memorandum to all employees reminding them of this policy. In Fiscal Year 2008, guidance in the form of Alerts and memorandums were issued to employees and portions of the Internal Revenue Manual were updated to reflect the prohibition on using Illegal Tax Protester or any similar designation. Through IRS management's continued efforts, the total number of improper designations by IRS employees has decreased.

² A database that stores various types of taxpayer account information. This database includes individual, business, and employee plans and exempt organizations data.

³ A manual containing the IRS' internal guidelines.



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Response

We made no recommendations in this report. In their response to a draft of this report, IRS management stated there are no indications that the use of Illegal Tax Protester or similar designation has affected the way in which the IRS deals with taxpayers who disapprove of the tax system. Because these taxpayers are treated in the same manner and given the same rights as any other taxpayer, the IRS does not believe that the rights of the taxpayers related to the 324 instances we identified were affected. Management's complete response to the draft report is included as Appendix V.

Office of Audit Comment

We continue to believe our outcome measure is valid because the use of Illegal Tax Protester or similar designations may stigmatize taxpayers and cause employee bias in future contacts with these taxpayers.

Copies of this report are also being sent to the IRS managers affected by the report. Please contact me at (202) 622-6510 if you have questions or Margaret E. Begg, Assistant Inspector General for Audit (Compliance and Enforcement Operations), at (202) 622-8510.



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Abbreviations

IRS

Internal Revenue Service

RRA 98

Restructuring and Reform Act of 1998



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Background

Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98)¹ Section (§) 3707 prohibits the IRS from using Illegal Tax Protester or any similar designations. In addition, the law requires the removal of all existing Illegal Tax Protester codes from the Master File² and instructs IRS employees to disregard any such designation not located on the Individual Master File.³

Prior to enactment of the RRA 98, the IRS used the Illegal Tax Protester Program to identify individuals and businesses that were using methods that were not legally valid to protest the tax laws. Employees identified taxpayers for referral to the Program when their tax returns or correspondence contained specific indicators of noncompliance with the tax law, such as the use of arguments that had been repeatedly rejected by the courts. There were tax protester coordinators who were responsible for determining whether a taxpayer should be included in the Illegal Tax Protester Program. If a taxpayer was classified as an Illegal Tax Protester, the taxpayer's record was coded as such on the Master File. Once a taxpayer's account was coded, certain tax enforcement actions were accelerated. The designation was also intended to alert employees to be cautious so they would not be drawn into confrontations with taxpayers.

Congress was concerned that some taxpayers were being permanently labeled and stigmatized by the Illegal Tax Protester designation. The concern was that this label could bias IRS employees and result in unfair treatment of the taxpayer.

Internal Revenue Code § 7803(d)(1)(A)(v) requires the Treasury Inspector General for Tax Administration to annually evaluate IRS compliance with the prohibition against using the Illegal Tax Protester or any similar designations. This is our eleventh review since Fiscal Year 1999. These reviews have identified areas for improvement to help the IRS comply with the Illegal Tax Protester designation prohibition.

The Treasury Inspector General for Tax Administration is required to annually evaluate IRS compliance with the prohibition against using Illegal Tax Protester or any similar designations.

This review was performed in the Criminal Investigation Division, the Office of the National Taxpayer Advocate, and the Office of Appeals in Washington, D.C.; the Small

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 A database that stores various types of taxpayer account information. This database includes individual, business, and employee plans and exempt organizations data.

³ A database that maintains transactions or records of individual tax accounts.



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Business/Self-Employed Division in New Carrollton, Maryland; and the Wage and Investment Division in Atlanta, Georgia, during the period July 2008 through February 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. However, due to concerns with providing us access to sensitive grand jury information, the IRS provided us with an extract of manually edited Criminal Investigation Division cases from the Criminal Investigation Management Information System. While our audit results seem reasonable based on prior experience with this database, we were not able to validate any of the information due to IRS editing of the data. We are required by generally accepted government auditing standards to disclose this limitation in the scope of our work. 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

Illegal Tax Protester Codes Were Not Used on the Master File

Prior to enactment of the RRA 98, the IRS used Illegal Tax Protester indicators on the Master File to accelerate collection activity for taxpayers who were delinquent in filing tax returns or paying their taxes. These indicators were also intended to alert employees that there might be problems encountered when dealing with nonfilers and delinquent taxpayers.

Congress was concerned about the use of the Illegal Tax Protester designation because:

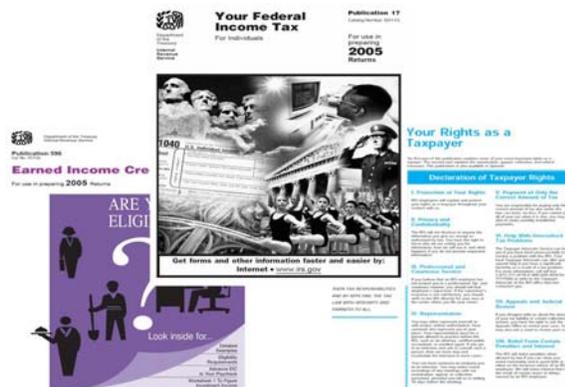
- Taxpayers were labeled as Illegal Tax Protesters without regard to their filing obligations or compliance.
- Illegal Tax Protester indicators were not always reversed when taxpayers became compliant with their tax obligations.

RRA 98 § 3707 required the IRS to remove the existing Illegal Tax Protester designations from taxpayers' accounts on the Master File beginning January 1, 1999.

In prior reviews, we reported the IRS had removed these designation codes from the Master File as required by the law. Based on our analysis of approximately 1.2 million taxpayer records that had been coded for accelerated collection activity, the IRS has not reintroduced Illegal Tax Protester codes on the Master File. The law also prohibits using any designation similar to Illegal Tax Protester. We matched approximately 57,000 taxpayer accounts formerly coded as Illegal Tax Protesters to the Master File and confirmed that the IRS had not input any other type of similar designation on these accounts.

Internal Revenue Service Publications Do Not Contain Illegal Tax Protester References

To help promote compliance with RRA 98 § 3707, IRS management issued directives for employees to update various publications to eliminate references to Illegal Tax Protester terminology and programs. Our reviews prior to Fiscal Year 2002 identified several publications that contained Illegal Tax Protester references. When notified of the





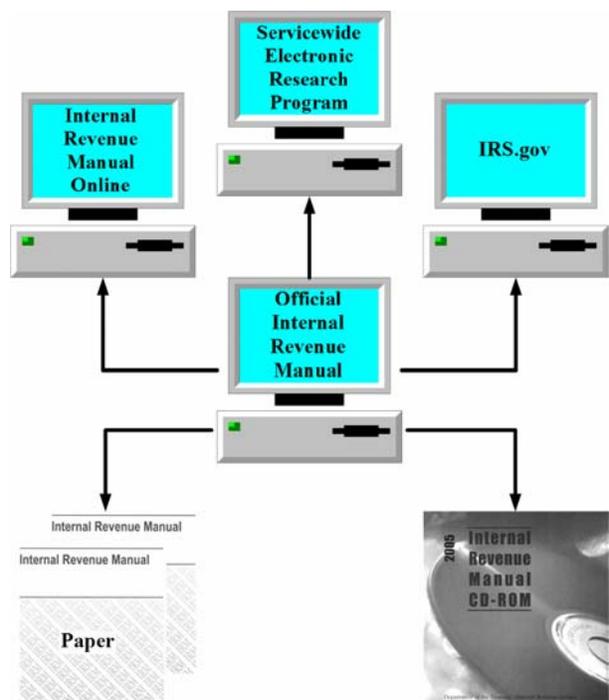
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problem, the IRS had either revised the publications or labeled them as being obsolete. Our review of available publications on the Servicewide Electronic Research Program,⁴ IRS public Internet web site (IRS.gov), Electronic Publishing web site, and 2008 Federal Tax Products DVD did not identify any current Illegal Tax Protester references. By eliminating these references from its forms, documents, letters, and training materials, the IRS avoids the implication that the use of this terminology is permissible.

Illegal Tax Protester References Have Been Removed From the Internal Revenue Manual

In 9 of our 10 prior reviews, we identified Illegal Tax Protester references in various formats of the Internal Revenue Manual.⁵ The Official Internal Revenue Manual is maintained on the Electronic Publishing web site. However, it is also found electronically on the Internal Revenue Manual online, the Servicewide Electronic Research Program, IRS.gov, and the Internal Revenue Manual CD-ROM, as well as in paper format. The graphic to the right shows the relationship between the Official Internal Revenue Manual and the various formats available to IRS employees.

During our Fiscal Year 2009 review, we again verified that no Illegal Tax Protester references existed in the Internal Revenue Manual. By removing all Illegal Tax Protester references from the Internal Revenue Manual, the IRS avoids any inappropriate implication to taxpayers for whom these designations are being used.



⁴ An electronic researching tool containing many former paper research applications (e.g., publications, the Internal Revenue Manual, the Probe and Response Guide).

⁵ A manual containing the IRS' internal guidelines.



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In Some Instances, Employees Used Illegal Tax Protester or Similar Designations in Case Narratives

We found that, out of approximately 65.3 million records and cases, there were 324 instances in which employees had labeled taxpayers as “Tax Protester,” “Illegal Tax Protester,” “Constitutionally Challenged,” or other similar designations in case narratives on the following computer systems during the period of October 2007 through September 2008.

- Appeals Centralized Database System:⁶ A review of approximately 2.6 million opened/closed Appeals function narrative comment records identified 48 cases in which 41 employees used Illegal Tax Protester or a similar designation when referring to specific taxpayers in the case narratives.
- Automated Collection System:⁷ A review of approximately 3 million open cases identified 3 cases in which 3 employees used Illegal Tax Protester or a similar designation when referring to specific taxpayers in the case narratives.
- Criminal Investigation Management Information System:⁸ A review of approximately 6,600 opened/closed cases identified 4 cases in which 4 employees used a similar designation when referring to specific taxpayers in the case narratives.
- Desktop Integration:⁹ A review of approximately 59 million records identified 94 cases in which 77 employees used Illegal Tax Protester or a similar designation when referring to specific taxpayers in the case narratives.
- Integrated Collection System:¹⁰ A review of approximately 519,000 open cases identified 168 cases in which 131 employees used Illegal Tax Protester or a similar designation when referring to specific taxpayers in the case narratives.
- Taxpayer Advocate Management Information System:¹¹ A review of approximately 68,000 open cases identified 3 cases in which 3 employees used Illegal Tax Protester or a similar designation when referring to specific taxpayers in the case narratives.

⁶ A computerized system used to track case receipts, record case time, document case actions, and monitor the progress of Appeals function workload.

⁷ A telephone contact system through which telephone assistants collect unpaid taxes and secure tax returns from delinquent taxpayers who have not complied with previous notices.

⁸ A computerized system used to track the status and progress of criminal investigations.

⁹ Provides employees access to multiple IRS systems through their computers and allows for inventory management, case delivery, history narratives, print-to-fax capabilities for sending information to taxpayers, and electronic referral generation. Desktop Integration was renamed Account Management Services in February 2009.

¹⁰ A system used by Collection function employees to report taxpayer case time and activity.

¹¹ An electronic database and inventory control system used by Taxpayer Advocate Service employees.



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- Taxpayer Information File:¹² A review of approximately 98,000 open records identified 4 cases in which 4 employees used Illegal Tax Protester or a similar designation when referring to specific taxpayers in the Activity Code field.

We believe these designations are prohibited by law. Figure 1 contains the number of Illegal Tax Protester or similar designations identified in IRS computer system case narratives during our Fiscal Years 2008 and 2009 reviews.

Figure 1: Illegal Tax Protester and Similar Designations in Case Narratives

Computer System	Fiscal Year 2008 Review			Fiscal Year 2009 Review		
	Employees Involved	Protester Designation Used	Similar Designation Used	Employees Involved	Protester Designation Used	Similar Designation Used
Appeals Centralized Database System	56	27	41	4	15	33
Automated Collection System	1			3	3	0
Criminal Investigation Management Information System	3	0	3	4	0	4
Desktop Integration	134	150	33	77	75	19
Integrated Collection System	147	70	97	131	49	119
Taxpayer Advocate Management Information System	7	4	3	3	0	3
Taxpayer Information File ¹³	N/A	N/A	N/A	4		

Source: Case narratives found on various IRS computer systems and the Treasury Inspector General for Tax Administration report entitled *Fiscal Year 2008 Statutory Audit of Compliance With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and Similar Designations* (Reference Number 2008-40-124, dated May 23, 2008). N/A = not applicable.

We also identified 90 case narratives in which employees made references about the taxpayers' actions (e.g., taxpayer sent letters containing "typical protester language," the taxpayer

¹² Provides tax account information for taxpayers selected for the Integrated Data Retrieval System (the IRS computer system capable of retrieving or updating stored information; it works in conjunction with a taxpayer's account records).

¹³ We did not analyze the Taxpayer Information File during our Fiscal Year 2008 review.



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responded with “protester jargon”). We agree with the IRS that merely making references to a taxpayer’s actions does not constitute a designation prohibited by statute. However, we are concerned these references could become, or be considered, permanent labels that could subsequently stigmatize taxpayers in future contacts with the IRS. We did not include any instances in which employees were only documenting statements made by a taxpayer and/or his or her representative because quoting a taxpayer’s self-designation as an Illegal Tax Protester is not prohibited by the law.

The statute states that officers and employees of the IRS shall not designate taxpayers as Illegal Tax Protesters or any similar designations. It further specifies that existing designations in the Master File must be removed and any other designations made before the effective date of the statute, such as those on paper records that have been archived, must be disregarded. *Senate Committee on Finance Report 105-174* (dated April 22, 1998), related to the RRA 98 § 3707 provision, stated the Committee was concerned that taxpayers might be stigmatized by a designation as an “Illegal Tax Protester.” Based upon the language of the statute and the Senate Committee Report, we believe IRS officers and employees should not label taxpayers as Illegal Tax Protesters or similar designations in any records, which include paper and electronic case files. Officers and employees should not designate taxpayers as such because a designation alone contains a negative connotation and appears to label the taxpayer.

IRS management disagrees that employee use of Illegal Tax Protester or similar designations in a case narrative is a potential violation of the law. We continue to believe that the use of these designations in case narratives may stigmatize taxpayers and cause employee bias in future contacts with these taxpayers. Electronic case narratives are available to other IRS employees for future reference and may affect the opinions and actions of employees working the taxpayers’ cases.

Even though IRS management continues to disagree with our interpretation of the law, they have taken a conservative approach by implementing a policy that prohibits employees from using Illegal Tax Protester or any similar designation. In August 2007, IRS management issued a memorandum to all employees reminding them of this policy. In Fiscal Year 2008, guidance in the form of Alerts and memorandums were issued to employees and portions of the Internal Revenue Manual were updated to reflect the prohibition on using Illegal Tax Protester or any similar designation. Through IRS management’s continued efforts, the total number of improper designations by IRS employees has decreased.



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Alternative Methods That Avoid the Need for Illegal Tax Protester Designations Have Been Established to Address Tax Compliance Issues

IRS tax compliance operations have not been significantly affected by the prohibition against using Illegal Tax Protester or similar designations because alternative programs exist to address issues previously handled by the Illegal Tax Protester Program. These include:

- The Frivolous Return Program that handles taxpayers who file tax returns based on some type of frivolous argument that justifies payment of little or no income tax. This includes filing a tax return claiming no income because paying taxes is voluntary or claiming to be a citizen of a State but not a citizen of the United States.
- The Nonfiler Program that handles taxpayers who fail to file their required tax returns.
- The Potentially Dangerous Taxpayer/Caution Upon Contact Program that handles taxpayers who have assaulted and/or threatened IRS employees.

Each of these programs is set up to address various issues IRS employees may encounter when dealing with taxpayers protesting the legality of paying their income taxes. Unlike the former Illegal Tax Protester Program, each program addresses a specific taxpayer behavior. In addition, taxpayers are not assigned to these individual programs on a permanent basis, as was the case in the Illegal Tax Protester Program.

None of our prior reviews have identified instances in which the Illegal Tax Protester indicator was needed on a taxpayer's account to either accelerate tax enforcement actions and/or alert IRS employees to be cautious when dealing with the taxpayer. As a result, we believe that prohibiting the use of the Illegal Tax Protester designation has had no negative impact on collection or examination activities.

Management's Response: We made no recommendations in this report. However, IRS management stated there are no indications that the use of Illegal Tax Protester or similar designation has affected the way in which the IRS deals with taxpayers who disapprove of the tax system. Because these taxpayers are treated in the same manner and given the same rights as any other taxpayer, the IRS does not concur with our outcome measure described in Appendix IV.

Office of Audit Comment: We continue to believe our outcome measure is valid because the use of Illegal Tax Protester or similar designations may stigmatize taxpayers and cause employee bias in future contacts with these taxpayers. Electronic case narratives are available to other IRS employees for future reference and may affect the opinions and actions of employees working the taxpayers' cases.



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Appendix I

Detailed Objective, Scope, and Methodology

The objective of this review was to determine whether the IRS complied with RRA 98¹ § 3707 and its own internal guidelines that prohibit IRS officers and employees from referring to taxpayers as Illegal Tax Protesters or any similar designations. The Treasury Inspector General for Tax Administration is required to annually evaluate compliance with the prohibition against using Illegal Tax Protester or any similar designations.² Unless otherwise noted, our limited tests of the reliability of data obtained from various IRS systems did not identify any errors. We tested the reliability of the data by scanning the data received for blank, incomplete, illogical, or improper data. In addition, we traced a judgmental sample for each data set to the source IRS files to ensure accuracy. We did not perform any testing of internal controls over the systems that were the sources of our data. To accomplish the objective, we:

- I. Determined if the Illegal Tax Protester coding on the Master File³ was removed by reviewing all tax accounts coded for accelerated collection activity as of September 2008 on the Business Master File⁴ and Individual Master File.⁵ We analyzed 1,217,048 Master File records that had been coded for accelerated collection activity.

We also matched our historic computer extract of approximately 57,000 taxpayers designated as Illegal Tax Protesters before the RRA 98 was enacted to our records that had been coded for accelerated collection activity to determine if any new common codes were being used to classify the taxpayers as Illegal Tax Protesters.

- II. Determined if the Internal Revenue Manual⁶ contained Illegal Tax Protester or any similar designations by performing key word searches of the IRS Electronic Publishing web site, the Internal Revenue Manual online, the Servicewide Electronic Research Program,⁷ IRS.gov, and the Internal Revenue Manual CD-ROM.

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 Internal Revenue Code § 7803(d)(1)(A)(v).

³ A database that stores various types of taxpayer account information. This database includes individual, business, and employee plans and exempt organizations data.

⁴ A database that consists of Federal tax-related transactions and accounts for businesses. These include employment taxes, income taxes on businesses, and excise taxes.

⁵ A database that maintains transactions or records of individual tax accounts.

⁶ A manual containing the IRS' internal guidelines.

⁷ An electronic researching tool containing many former paper research applications (e.g., publications, the Internal Revenue Manual, the Probe and Response Guide).



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- III. Determined if IRS publications contained Illegal Tax Protester or any similar designations by performing key word searches of the Servicewide Electronic Research Program, IRS.gov, and the IRS Electronic Publishing web site in August 2008, and the IRS 2008 Federal Tax Products DVD in February 2009.
- IV. Determined if employees were using Illegal Tax Protester or any similar designations within taxpayer case narratives on the Integrated Collection System⁸ by securing a copy of the database and analyzing 519,327 cases open as of September 2008 with history action dates between October 2007 and September 2008.
- V. Determined if employees were using Illegal Tax Protester or any similar designations within taxpayer case narratives on the Automated Collection System⁹ by securing a copy of the database¹⁰ and analyzing 2,981,246 cases open as of September 2008 with history action dates between October 2007 and September 2008.
- VI. Determined if employees were using Illegal Tax Protester or any similar designations within taxpayer case narratives on the Taxpayer Advocate Management Information System¹¹ by securing a copy of the database as of September 2008 and analyzing 67,593 open cases with activity between October 2007 and September 2008.
- VII. Determined if employees were using Illegal Tax Protester or any similar designations within the taxpayer case narratives on Desktop Integration¹² by securing a copy of the database as of September 2008 and analyzing 59,049,776 records with activity between October 2007 and September 2008.
- VIII. Determined if employees were using the Illegal Tax Protester or any similar designations within taxpayer case narratives on the Appeals Centralized Database System¹³ by securing a copy of the database as of September 2008 and analyzing 2,593,038 open/closed Appeals function narrative comment records with activity between October 2007 and September 2008.

⁸ A system used by Collection function employees to report taxpayer case time and activity.

⁹ A telephone contact system through which telephone assistors collect unpaid taxes and secure tax returns from delinquent taxpayers who have not complied with previous notices.

¹⁰ The Automated Collection System did not always contain employee identifying information from which we could determine the number of employees using Illegal Tax Protester or a similar designation. We assumed each comment was made by a different employee.

¹¹ An electronic database and inventory control system used by Taxpayer Advocate Service employees.

¹² Provides employees access to multiple IRS systems through their computers and allows for inventory management, case delivery, history narratives, print-to-fax capabilities for sending information to taxpayers, and electronic referral generation. Desktop Integration was renamed Account Management Services in February 2009.

¹³ A computerized system used to track case receipts, record case time, document case actions, and monitor the progress of Appeals function workload.



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- IX. Determined if employees were using Illegal Tax Protester or any similar designations within the taxpayer case narratives on the Criminal Investigation Management Information System¹⁴ by analyzing 6,641 Criminal Investigation Division cases opened and/or closed between October 2007 and September 2008.

Due to concerns with providing us access to sensitive grand jury information, the IRS provided us with an extract of manually edited Criminal Investigation Division cases from the Criminal Investigation Management Information System. While our audit results seem reasonable based on prior experience with this database, we were not able to validate any of the information due to IRS editing of the data. We are required by generally accepted government auditing standards to disclose this limitation in the scope of our work.

- X. Determined if the IRS is using any Frivolous Return Program¹⁵ codes as replacements for Illegal Tax Protester designations by reviewing guidance provided for the Frivolous Return Program and interviewing its Program Coordinator.
- XI. Determined if the IRS Nonfiler Program¹⁶ is in compliance with the provisions established by RRA 98 § 3707(b) by reviewing guidance provided for the Nonfiler Program and interviewing its Program Coordinator.
- XII. Determined if there is any relationship between Illegal Tax Protester designations and Potentially Dangerous Taxpayer/Caution Upon Contact indicator use on the Master File by reviewing guidance provided for the Potentially Dangerous Taxpayer/Caution Upon Contact Program¹⁷ and interviewing its Program Coordinator.
- XIII. Determined if employees were using Illegal Tax Protester or any similar designations within the Activity Code field on the Taxpayer Information File¹⁸ by securing a copy of the database and analyzing 97,692 open records with activity between October 2007 and September 2008.

¹⁴ A computerized system used to track the status and progress of criminal investigations.

¹⁵ The Frivolous Return Program handles taxpayers who file tax returns based on some type of frivolous argument that justifies payment of little or no income tax. This would include filing a tax return claiming no income because paying taxes is voluntary or claiming to be a citizen of a State but not a citizen of the United States.

¹⁶ The Nonfiler Program handles taxpayers who fail to file their required tax returns.

¹⁷ The Potentially Dangerous Taxpayer/Caution Upon Contact Program handles taxpayers who have assaulted and/or threatened IRS employees.

¹⁸ Provides tax account information for taxpayers selected for the Integrated Data Retrieval System (the IRS computer system capable of retrieving or updating stored information; it works in conjunction with a taxpayer's account records).



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Appendix II

Major Contributors to This Report

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Appendix III

Report Distribution List

Commissioner C
Office of the Commissioner – Attn: Chief of Staff C
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Commissioner, Wage and Investment Division SE:W
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Chief, Criminal Investigation SE:CI
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GAO/TIGTA Liaison, National Taxpayer Advocate TA
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Chief, GAO/TIGTA/Legislative Implementation Branch SE:S:CLD:PSP:GTL
Senior Operations Advisor, Wage and Investment Division SE:W:S



Fiscal Year 2009 Statutory Audit of Compliance With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and Similar Designations

Appendix IV

Outcome Measure

This appendix presents detailed information on the measurable impact that our recommended corrective action will have on tax administration. While no recommendations were made in this report, the Treasury Inspector General for Tax Administration has made prior recommendations that continue to provide benefits. This benefit will be incorporated into our Semiannual Report to Congress.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Actual; 321 taxpayers potentially affected¹ (see page 5).

Methodology Used to Measure the Reported Benefit:

We reviewed:

- From the Appeals Centralized Database System,² approximately 2.6 million open/closed Appeals function narrative comment records with history action dates between October 2007 and September 2008 and identified 48 taxpayer cases with narratives that contained Illegal Tax Protester or a similar designation.
- From the Automated Collection System,³ approximately 3 million open cases with history action dates between October 2007 and September 2008 and identified 3 taxpayer cases with narratives that contained Illegal Tax Protester or a similar designation.
- From the Criminal Investigation Management Information System,⁴ approximately 6,600 cases opened and/or closed between October 2007 and September 2008 and identified 4 taxpayer cases with narratives that contained a similar designation.

¹ We identified 324 instances in which employees had labeled taxpayers as an Illegal Tax Protester or a similar designation in a case narrative on an IRS computer system. Three of these taxpayers were labeled as an Illegal Tax Protester or similar designation in a case narrative on more than one IRS computer system.

² A computerized system used to track case receipts, record case time, document case actions, and monitor the progress of the Appeals function workload.

³ A telephone contact system through which telephone assistants collect unpaid taxes and secure tax returns from delinquent taxpayers who have not complied with previous notices.

⁴ A computerized system used to track the status and progress of criminal investigations.



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- From Desktop Integration,⁵ approximately 59 million records with history action dates between October 2007 and September 2008 and identified 94 taxpayer cases with narratives that contained Illegal Tax Protester or a similar designation.
- From the Integrated Collection System,⁶ approximately 519,000 open cases with history action dates between October 2007 and September 2008 and identified 168 taxpayer cases with narratives that contained Illegal Tax Protester or a similar designation.
- From the Taxpayer Advocate Management Information System,⁷ approximately 68,000 open cases with history action dates between October 2007 and September 2008 and identified 3 taxpayer cases with narratives that contained Illegal Tax Protester or a similar designation.
- From the Taxpayer Information File,⁸ approximately 98,000 open records with history action dates between October 2007 and September 2008 and identified 4 taxpayer records that contained Illegal Tax Protester or a similar designation in the Activity Code field.

⁵ Provides employees access to multiple IRS systems through their computers and allows for inventory management, case delivery, history narratives, print-to-fax capabilities for sending information to taxpayers, and electronic referral generation. Desktop Integration was renamed Account Management Services in February 2009.

⁶ A system used by Collection function employees to report taxpayer case time and activity.

⁷ An electronic database and inventory control system used by Taxpayer Advocate Service employees.

⁸ Provides tax account information for taxpayers selected for the Integrated Data Retrieval System (the IRS computer system capable of retrieving or updating stored information; it works in conjunction with a taxpayer's account records).



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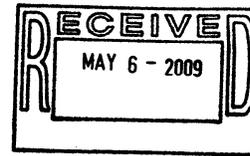
Appendix V

Management's Response to the Draft Report



COMMISSIONER
SMALL BUSINESS/SELF-EMPLOYED DIVISION

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



May 6, 2009

MEMORANDUM FOR MICHAEL R. PHILLIPS
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Christopher Wagner ^{Chris Wagner}
Commissioner, Small Business/Self-Employed Division

SUBJECT: Draft Audit Report - Fiscal Year 2009 Statutory Audit of
Compliance with Legal Guidelines Prohibiting the Use of
Illegal Tax Protester and Similar Designations
(Audit # 200840036)

I have reviewed your report and appreciate your acknowledgement of our ongoing efforts to comply with Section 3707 of the Internal Revenue Restructuring and Reform Act of 1998 (RRA '98). We have taken significant actions to comply with this section to ensure we protect the rights of all taxpayers, including those with constitutional or philosophical objections to our tax system. As noted in the report, we have removed Illegal Tax Protester codes and references from the Master File, current publications and the Internal Revenue Manual. Out of approximately 65.3 million records and cases, there were only 324 instances in which employees labeled taxpayers as Illegal Tax Protesters or other similar terms, and all of those were found within case narratives.

The IRS disagrees with your statement that an individual employee's use of the term Illegal Tax Protestor or another similar term within a case narrative is a violation of the law. However, the IRS takes a conservative approach on this issue and we continue to take actions to further minimize the number of instances these references occur. For example, a recent enhancement to our Integrated Collection System (ICS) Windows will preclude ICS users from saving history if they have used the term Illegal Tax Protestor or a similar term in their case histories. This systemic process will aid tremendously in reducing the usage of these terms.

While no recommendations were made in this report, we continue to discourage using such labels in our casework. Although the use of the label Illegal Tax Protestor or similar designations is contrary to our policy, there are no indications that these references have affected the way the IRS deals with taxpayers who disapprove of the tax system. Since these taxpayers are treated in the same manner and given the same rights as any other taxpayer, we cannot concur with your described benefits.

If you have any questions, please contact me at (202) 622-0600 or Laura Hostelley, Acting Director, Collection Policy at (202) 283-1555.