
TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



***Criminal Investigation Division Resources
Devoted to Supporting Recommended
Prosecutions Can Be Enhanced With a
Stronger Strategic Focus***

March 25, 2010

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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

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TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

March 25, 2010

MEMORANDUM FOR CHIEF, CRIMINAL INVESTIGATION

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

SUBJECT: Final Audit Report – Criminal Investigation Division Resources
Devoted to Supporting Recommended Prosecutions Can Be Enhanced
With a Stronger Strategic Focus (Audit # 200810008)

This report presents the results of our review to evaluate the growth in the Criminal Investigation (CI) Division's prosecution referral pipeline inventory¹ and identify any potential actions that could be taken to reduce the resources devoted to this area. This audit originated from CI Division suggestions that we evaluate the steady increase in prosecution pipeline inventory over a period of years. As a result, this audit was included in our Fiscal Years 2008 and 2009 Annual Audit Plans and addresses the major management challenge of Tax Compliance Initiatives.

Impact on the Taxpayer

The current Administration and Congress have recently begun to focus on reducing tax evasion as a way to reduce the tax gap and help ease the current strain on Federal budgets, potentially resulting in increased demand for CI Division resources. The CI Division needs stronger oversight and coordination, both locally and nationally, to effectively manage the prosecution pipeline process, help its management to make sound decisions, and identify opportunities to reduce the resources devoted to cases in prosecution pipeline inventory. The successful prosecution of a criminal tax violation deters other taxpayers who might otherwise decide to not comply with the tax law and promotes confidence in the United States' tax administration system among taxpayers who do comply.

¹ See Appendix VII for a glossary of terms.



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Synopsis

The United States Attorneys' Offices rely on CI Division special agents to remain involved with their cases even after referral for prosecution. The number of cases in the prosecution pipeline increased quickly beginning in Fiscal Year 2003. This increase occurred because of increases in the number of cases referred for prosecution, as well as declines in the number of referrals closed with convictions. The CI Division was accustomed to having its open case inventory exceed its prosecution pipeline case inventory, but the difference between the number of open cases and the number of prosecution pipeline cases steadily diminished. These trends continued and, for the first time in at least 8 years, prosecution pipeline cases exceeded the number of open cases and prosecution pipeline cases accounted for 23.2 percent of all investigative time expended by special agents for Fiscal Year 2008. The CI Division believed the prosecution pipeline's increase began when the Department of Justice shifted its operational priorities to focus on national security issues (e.g., immigration and terrorism). In addition, the Department of Justice experienced attorney staffing shortages nationwide. These factors limited the priority of Internal Revenue Service (IRS) prosecutions and contributed to a lower number of prosecution pipeline case closures. During the quarterly Business Performance Review process, the CI Division began reporting to the IRS Commissioner's office that it expected performance measures to begin trending flat or cycling downward due to the need for its agents to spend time managing the prosecution pipeline inventory.

Because an increase in the percentage of investigative time spent on cases in prosecution pipeline status reduces the CI Division's ability to initiate new cases or complete ongoing cases, we believe the CI Division should expand the monitoring of prosecution pipeline issues to identify opportunities for improvement on both a local and national basis. The CI Division has only a limited overall strategy to materially reduce and manage the prosecution pipeline inventory.

While the steady increases in the volume of prosecution pipeline cases and percentage of investigative time expended on prosecution pipeline cases are indicators to be used in identifying concerns or trends, these measures alone do not provide CI Division executives sufficient information for making sound management decisions. The CI Division's management information system does not capture the nature of investigative time expended on cases in prosecution pipeline status. In addition, accumulating cases in prosecution pipeline inventory does not necessarily mean resources are being affected on a continuing basis.

Recommendations

The Chief, CI Division, should 1) create a structured oversight and coordination system to monitor and more effectively manage the prosecution pipeline process, 2) create an ad hoc strategic team to develop innovative policies and procedures to ensure tax cases receive appropriate attention and resolution by the Department of Justice, 3) develop additional



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techniques that refine the prosecution pipeline volume and investigative time performance measures and expand the information available for management purposes, and 4) ensure that necessary information is added to the quarterly Business Performance Reviews to provide the IRS Commissioner a clear depiction of the investigative resources devoted to prosecution pipeline inventory activities.

Response

IRS management agreed with two recommendations, providing an alternate corrective action on one, and disagreed with the other two recommendations. The CI Division realizes it needs to ensure management is providing the necessary oversight and direction to effectively manage the pipeline inventory. Effective management and oversight is a priority for all of the CI Division's investigative processes and programs, but administering the pipeline inventory is unique in that many external factors control the progression of an investigation through the adjudication process.

The CI Division agreed with the finding relating to Recommendation 1, but will implement a corrective action different from the recommendation to address the concerns we raise in the report, and agreed with Recommendation 2. The CI Division will create a strategic team to examine how a more structured approach to the oversight process can be implemented that will support a consistent pipeline methodology within all CI Division management levels. The strategic team will identify best practices implemented by field offices for the development of innovative policies and procedures, as well as evaluate circumstances where delays in prosecution cause the pipeline inventory to become unmanageable.

The CI Division does not agree with Recommendations 3 and 4 because modifying the CI Management Information System (CIMIS) to differentiate between time expended on management tasks and time expended on investigative actions would be cost prohibitive and would not impact the prosecution pipeline process. The CI Division explained that all investigative activity should at a minimum indirectly impact the progression of an investigation and would have to be timely completed regardless of how time is allocated. In addition, the CI Division will continue to rely on observations and comments provided by the Deputy Commissioner for Services and Enforcement to supplement pipeline inventory information contained in the Business Performance Review. CI Division management (and the Commissioner's Office) is aware that seeing a case through prosecution requires significant steps beyond making a prosecution recommendation. Extensive pipeline analyses and Business Performance Review talking points are provided to the Chief, Criminal Investigation, Deputy Chief, and Directors, as needed, for reference/discussion in delivering the Business Performance Reviews to the Deputy Commissioner for Services and Enforcement. Management's complete response to the draft report is included as Appendix VIII.



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Office of Audit Comment

We believe the CI Division's alternate action of examining, rather than specifically agreeing to create, a more structured oversight and coordination system will address the concerns we raise in the report related to Recommendation 1. An evaluation of various options is inherently a prerequisite to creating any structured system.

The CI Division's disagreement with Recommendation 3 is focused too narrowly on whether it is feasible to modify the CIMIS to differentiate between the nature of activities for expended time. We concede the CI Division's conclusion that attempting to separately account for the nature of special agents' time would not be effective. Our recommendation did not specify such a CIMIS modification. Rather, our recommendation was to develop additional data analysis and summary reporting techniques, which can be based on the CIMIS data that are already available. We reported examples that we believe show how the pipeline investigative time percentage measurement is nearly meaningless because of the variety of activities that get attributed to pipeline status. Any assumptions about the nature of the investigative time that makes up the prosecution pipeline percentage of total investigative time would inherently be misleading without determining underlying characteristics. For that reason, we continue to believe that the existing performance measures alone do not provide CI Division executives sufficient information for making sound business decisions.

Regarding the CI Division's disagreement with Recommendation 4, we understand that CI Division management and the Commissioner's Office are aware of the degree to which special agents continue to assist Federal prosecutors beyond making a prosecution recommendation. However, as explained in the report and in our comment regarding management's response to Recommendation 3, we believe escalating volumes and percentages in the prosecution pipeline performance measures do not clearly depict to what extent the CI Division's ability to balance its investigative workload is hindered by the requirements of successful adjudication of a case. Considering that a variety of investigative activities are applicable to prosecution pipeline status cases, resource use attributed to the pipeline cannot safely be assumed to be for the relatively advanced stages of administering the pipeline inventory or preparing the Government's case for indictment or trial. We believe the CI Division's manner of reporting their concerns about the demand for resources required to manage pipeline inventory could imply that pipeline inventory investigative time primarily relates to the advanced stages of prosecution. We do not believe that to be an accurate depiction. As reported, while the Business Performance Reviews are not publicly disseminated, it is possible that the statistics and statements could be conveyed to outside stakeholders.

Copies of this report are also being sent to the IRS managers affected by the report recommendations. 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

AUSA	Assistant United States Attorney
CI	Criminal Investigation
CIMIS	Criminal Investigation Management Information System
DOJ	Department of Justice
FY	Fiscal Year
IRS	Internal Revenue Service
USAO	United States Attorneys' Office



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Background

The Internal Revenue Service (IRS) Criminal Investigation (CI) Division investigates potential criminal violations of the Internal Revenue Code and related financial crimes (e.g., money laundering, corporate fraud, and terrorism financing) to promote compliance with the tax law and confidence in the United States' tax administration system. When the CI Division concludes that a criminal violation has occurred, a prosecution recommendation report is prepared. The report logically presents the evidence to support a recommendation for criminal prosecution and is referred to the Department of Justice (DOJ) for action. Law enforcement organizations, such as the CI Division, do not have the authority to charge people with crimes, negotiate plea agreements, or place individuals on trial. Federal indictments¹ and prosecutions are conducted by the DOJ, normally by attorneys of the various United States Attorneys' Offices (USAO) across the country. Where a case is initially sent depends on whether the alleged criminal violations are for tax statutes or the alleged violations are for nontax statutes. Appendix IV illustrates the flow of IRS referrals to the DOJ Tax Division or USAOs.

To help prepare the Federal Government's basis for indictment and possible trial, CI Division special agents remain involved with the referred cases. The USAOs rely on special agents to collect additional information, interview witnesses and prepare them to testify, prepare exhibits for trial, and assist in court procedures as legal actions progress. Tax evasion cases can involve complexities which require special agents to provide expert assistance throughout the legal process. After referral, the CI Division categorizes cases as being within its prosecution pipeline inventory until the DOJ prosecution efforts are completed. For example, charges are dropped, pleas are negotiated, or the court arrives at a conviction, acquittal, or dismissal.

However, the prosecution pipeline phase is the stage in a criminal prosecution when the CI Division no longer has control over making decisions on case progress. Once cases are referred, DOJ attorneys decide the prosecution strategy, evaluate the legal circumstances, and present the time periods for action. The DOJ's prosecutorial emphasis focuses on significant national issues and, therefore, there is limited availability of Assistant United States Attorneys (AUSA) to focus on cases where all alleged criminal violations relate to tax statutes only. In complex situations, it is not unusual for cases to be in the prosecution pipeline for multiple years and incur hundreds of hours of investigative time on the violations prosecuted. Therefore, a high value for investigative time or elapsed days in the prosecution pipeline does not mean that a prosecution recommendation had been conducted inefficiently.

While the IRS and USAOs benefit from a close working relationship to help fight financial crime, the CI Division became concerned that its overall workload would be affected by the

¹ See Appendix VII for a glossary of terms.

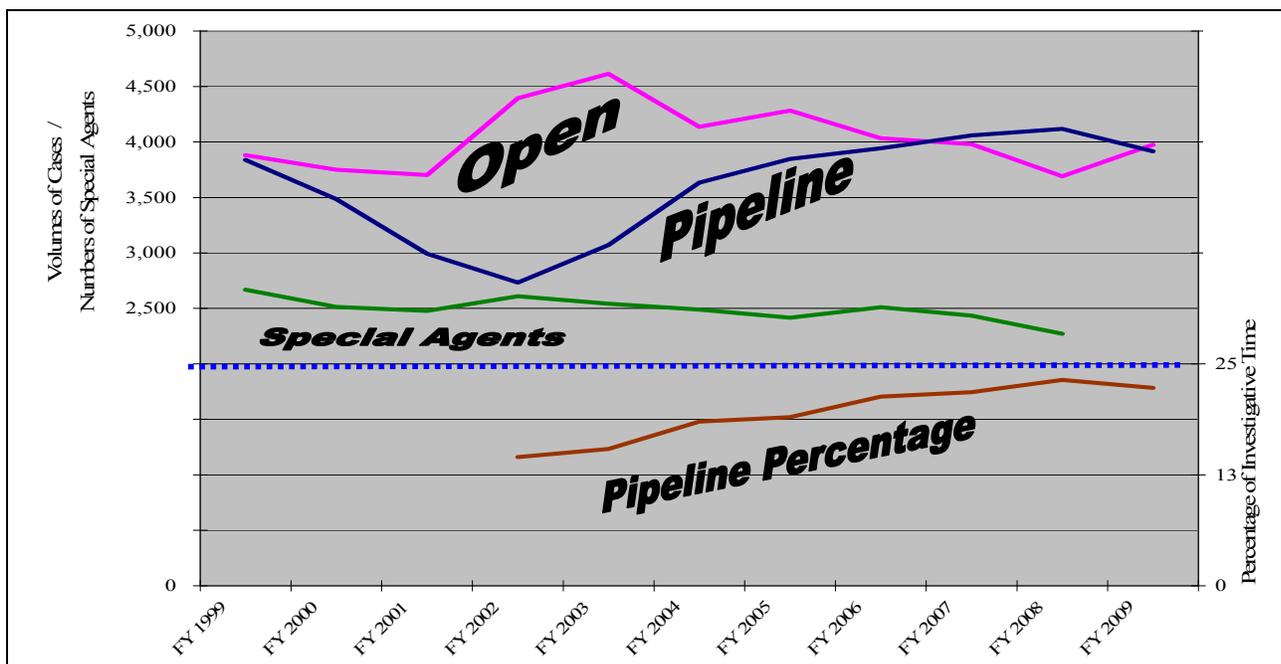


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steady growth from 2,733 prosecution pipeline cases at the end of Fiscal Year (FY) 2002 to more than 4,000 cases during FY 2007. The CI Division declared that the expected volumes of new and completed cases for FY 2008 and forward may not materialize because of the high volume of cases in the prosecution pipeline that required special agents' time.

For the past several years, the CI Division was accustomed to having its open case inventory exceed its prosecution pipeline case inventory. As shown in Figure 1, the number of cases in the prosecution pipeline increased quickly beginning in FY 2003. This increase occurred because FYs 2002 and 2003 had declines in the number of cases closed with convictions, and FYs 2003 and 2004 had increases each year in the number of cases referred for prosecution (see Appendix V). In FY 2004, the CI Division experienced a sharp decline in the number of open cases. As a result, the difference between the number of open cases and the number of prosecution pipeline cases steadily diminished. These trends continued and, for the first time in at least 8 years, prosecution pipeline cases exceeded the number of open cases. Appendix VI shows that the 4,152 cases in prosecution pipeline status as of July 31, 2008, were nearly equally divided between tax or nontax, and indicted or not indicted. It also presents additional information about the number of days elapsed and amounts of investigative time charged since the IRS made the referrals. After peaking in FY 2008, the prosecution pipeline cases decreased by about 5 percent during the first half of FY 2009 to 3,906 cases and remained near that level at the end of FY 2009 at 3,915 cases.

Figure 1: Case Volumes, Percentage of Investigative Time Spent on Prosecution Pipeline Cases, and Number of Field Office Special Agents



Source: The CI Division's Business Performance Reviews and its analysis of staffing information.



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The CI Division believed the prosecution pipeline's increase began when the DOJ shifted its operational priorities to focus on national security issues (e.g., immigration and terrorism). This shift in focus potentially caused DOJ attorneys to spend more case time on these significant cases. In addition, the DOJ experienced attorney staffing shortages nationwide. For example, an estimate reflected that at one point during FY 2006, there were 765 AUSA vacancies which were approximately 13.5 percent of authorized positions. As a result, some CI Division field offices reported these factors limited the priority of IRS prosecutions and contributed to a lower number of prosecution pipeline case closures.

As the prosecution pipeline volume increased, so did the percentage of investigative time expended by the special agents. In FY 2008, special agents spent 23.2 percent of their investigative time on prosecution pipeline cases, leaving 76.8 percent of investigative time available for initiating new cases or working ongoing cases. In contrast, special agents spent 14.5 percent of their investigative time on prosecution pipeline cases in FY 2002, leaving 85.5 percent of investigative time available for other cases. CI Division management acknowledged that a certain amount of investigative time is always necessary to manage the prosecution pipeline inventory and essential for successful prosecutions. However, prosecution pipeline investigative time was defined by the fact that the case had been referred to the DOJ. There was no separation between time spent on maintenance tasks such as keeping information current, monitoring the continued viability of the recommended charges, or otherwise sustaining the cases while they waited for DOJ resources, as contrasted with time spent by special agents on continued original investigative steps contributing to the prosecution effort.

During the FY 2008 quarterly Business Performance Review process, the CI Division began reporting to the IRS Commissioner's office that, "decreased agent staffing, increased complexity of our investigations, and the demand for resources required to manage the pipeline inventory has and will continue to have a negative impact on our current investigative activity." CI Division management cautioned that performance measures (such as initiations, completions, prosecution recommendations, and convictions) might begin trending flat or cycling downward due to the need for their agents to spend time managing the prosecution pipeline inventory. Throughout these reviews, the CI Division reported that, "materially reducing the pipeline inventory remains an issue of paramount importance."

This audit was performed during the period August 2008 through April 2009 by contacting CI Division personnel at the IRS National Headquarters in Washington, D.C., and the field offices in Chicago, Illinois; New York, New York; and Charlotte, North Carolina. We also contacted USAO officials of the Northern District of Illinois (Chicago, Illinois); the Southern District of New York (Manhattan, New York); the Eastern District of New York (Brooklyn, New York); and the Eastern District of North Carolina (Raleigh, North Carolina). 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 and appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. Nearly 80 percent of this audit's scope population



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included grand jury cases. Because of grand jury secrecy rules, the CI Division cannot provide us with specific documentation or information relating to these cases. Given this grand jury scope limitation, we designed our audit steps to not rely on a review of grand jury investigation information. 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

Stronger Oversight and Coordination Is Needed to Effectively Manage the Prosecution Pipeline Process

While the CI Division recognizes the steady growth of the prosecution pipeline inventory as an issue of high importance, it has only a limited overall strategy to materially reduce and manage the inventory. The CI Division's concern is that increases in the percentage of investigative time spent on cases in prosecution pipeline status reduce its ability to initiate new cases or complete ongoing cases, thereby making it difficult to balance its investigative workload. However, if the CI Division expects to materially reduce the affect of the prosecution pipeline on its current investigative workload, significant issues must be actively considered on a strategic level. The *Standards for Internal Control in the Federal Government*² addresses management's need to comprehensively identify risks and consider all significant interactions at both the entity-wide and activity levels. Risks should be analyzed for their possible effect and decisions made on what actions should be taken.

Only a limited overall strategy exists to materially reduce the prosecution pipeline inventory

In its first quarterly FY 2009 Business Performance Review report, the CI Division indicated it had "placed greater emphasis on the material reduction of the pipeline inventory, which remains an issue of paramount importance." However, the only formal emphasis described by CI Division's management was the addition of a generally worded performance commitment for FY 2009 in the field office managers' expectations to emphasize material prosecution pipeline reductions. During our interviews, field office managers indicated that CI Division Headquarters management did not communicate or specify techniques or practices on how to meet the commitment. As a result, each office's management cadre is left to determine what is applicable to their particular locations. In the final quarterly FY 2009 Business Performance Review report, the CI Division summarized that prosecution pipeline inventory was reduced by recommending dismissal of investigations no longer considered viable for prosecution. At the end of FY 2009, there were 203 fewer pipeline cases than at the beginning of the fiscal year, and there had been 115 more case dismissals as compared to the prior year.

While creating a performance commitment and dismissing cases that are no longer viable for prosecution are ways to reduce the prosecution pipeline inventory, the CI Division did not have an overall, coordinated strategy. Even though field office management has responsibility for

² GAO/AIMD-00-21.3.1, dated November 1999.



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determining appropriate local action, successful techniques to reduce the prosecution pipeline inventory should be developed and communicated throughout the CI Division. While local knowledge is indispensable, the identification and use of best practices to reduce the prosecution pipeline inventory will provide opportunities to assist field office management in achieving desired expectations.

We did not identify any other overall strategies that the CI Division had implemented even though both the IRS and DOJ personnel we consulted described long-standing challenges that exist in the working relationship between the two organizations. Some of the most influential challenges are that the IRS' tax priorities do not align directly with the usual DOJ priorities and the significant nontax demands upon finite USAO resources. For example, we determined during our interviews there was a common belief that, at times, there was "limited enthusiasm" for traditional criminal tax cases among some AUSAs as they prioritized their caseloads. We were advised that some AUSAs may not have high interest in tax cases due to various reasons, including their preference for drug, currency, or money laundering cases from the IRS, their inexperience with the inherent intricacy of tax litigation cases, or their perception of the general deterrent potential of a tax crime prosecution. Some USAOs regulate the volume of IRS referrals in these tax cases by raising the suggested dollar threshold for taking prosecution action in a particular judicial district. Another scenario presented was that, at times, an AUSA's first choice was to delay the basic tax cases (i.e., return preparer and refund fraud) if enough time remained on the statutory limitations period for an indictment. These situations appear to be more likely to occur in large metropolitan locations where there might be more overall crime to address and more law enforcement agencies competing for a USAO's attention.

A coordinated system is not in place to manage the prosecution pipeline inventory

During our interviews with CI Division field office managers, as well as USAO officials, we determined there was a common belief that the efficiency of moving cases through the prosecution pipeline phase was mostly influenced by the individual relationships established between the local CI Division management and USAO personnel. The CI Division field office managers arrange meetings with the USAOs within the judicial districts of their field offices to, among other things, discuss the IRS' investigative priorities. However, the frequency of these contacts on an annual basis is limited. At the Headquarters level, there were regular meetings as part of a DOJ/IRS Strategic Planning Commission, though we were advised these meetings did not focus on prosecution pipeline processing issues. To facilitate the processing of prosecution recommendations, more extensive communication was to occur on a case-by-case basis between the AUSAs, special agents, and supervisory agents. Whenever necessary, significant problems in maintaining progress on a case could be elevated within the CI Division management chain for resolution with the corresponding USAO management level. This effort is clearly an appropriate and necessary practice. However, it may not always occur timely. Our review of documentation for a judgmental sample of 38 nongrand jury tax cases identified significant



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delays and gaps in communication of 6 months to 16 months between the agents and the assigned AUSAs in 13 (34 percent) of the 38 cases.

For FYs 2008 and 2009, the CI Division Headquarters relied on their field office managers to engage more with their USAO counterparts as a strategic effort to reduce prosecution pipeline inventory. The CI Division Headquarters assessment of that effort was that “some are better than others” at cultivating effective relationships. The managers we interviewed generally described that they recognize the importance of establishing an effective rapport and they make a concerted effort to enhance healthy working relationships with their USAO counterparts. Occasional comments in our interviews indicated that some personnel believed there were instances where relationships had a detrimental effect on moving cases through the prosecution pipeline phase. Another factor some personnel believed might be creating a detrimental effect on effective relationships is the frequency of management rotations at CI Division field offices, thus hindering a relationship building effort at those levels.

We support the CI Division’s emphasis that all levels, from case agents up through field office executive managers, must continuously communicate with their USAO counterparts. However, we believe the CI Division should expand the monitoring of prosecution pipeline inventory issues to identify opportunities for improvement on both a local and national basis. The CI Division routinely uses coordinators to serve as subject matter experts and facilitate investigative processes. A similar concept could be introduced for managing prosecution pipeline inventory issues. For example, at the national level, a coordinator could assist with developing guidelines for timely followup with the AUSAs or triggers for management involvement. A local level coordinator could then monitor compliance with established followup guidelines.



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Figure 2: Potential Roles for Coordinators

National Level Activities	Local Level Activities	Example of Activities
Develop a strategy	Apply the strategy	Current Headquarters level liaison could be expanded to pursue DOJ buy-in to IRS action items designed for mutual benefit.
Monitor and coordinate activities	Serve as a subject matter expert on local USAO matters	Awareness of which USAOs support certain techniques, such as whether bundling of refund fraud charges for media attention during the filing season could identify areas for improvement.
Compile nationwide data and statistics	Compile local data and statistics	Useful data could help manage the program and clarify prosecution pipeline measures. For example, an analysis of the ways that a 5 percent reduction in prosecution pipeline inventory was achieved in the first half of FY 2009.
Enhance working relationships with DOJ Headquarters	Enhance working relationships with local USAOs	In addition to being an advocate for the progression of criminal cases, be an accessible liaison for USAO inquiries on the potential tax code implications of ongoing, non-IRS cases.
Brief and advise the Chief, CI Division	Brief and advise CI Division field office managers	Regular assessments of the ongoing nature of IRS criminal prosecution recommendations are necessary to allow sound decisions.
Evaluate unresolved issues having a nationwide impact	Assist in resolving conflicts between agents and attorneys	Should not remove the special agent and supervisory agent from case management responsibilities, but can assess the situation for consistent treatment, acceptable resolutions, or the need to elevate to a higher level.
Evaluate and share best practices	Suggest best practices for evaluation	For example, one field office had developed a periodic “top-10” list of priority prosecution pipeline cases from the IRS perspective that executive management discussed with the USAO. One field office had an agent as a liaison present at local USAOs on a rotating basis.

Source: Our knowledge of the CI Division’s various coordinator positions and interviews with CI Division management.

We recognize that sometimes tax cases may not warrant high-priority treatment within a USAO’s workload. In April 2007, the then IRS Commissioner acknowledged that the USAOs have to run a balanced program and, obviously, there are higher priorities than tax prosecutions. However, we believe the CI Division should manage its prosecution pipeline processing activities on a more strategic level. This additional emphasis is important because the Administration and Congress have recently begun to focus on reducing tax evasion as a way to reduce the tax gap and help ease the current strain on Federal budgets caused by the economy, potentially resulting in increased demand for CI Division resources.



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Recommendations

The Chief, CI Division, should:

Recommendation 1: Create a structured oversight and coordination system at National Headquarters, at each geographic area Field Operations Office, and at select field office locations that handle the most complex judicial workloads, to monitor and more effectively manage the prosecution pipeline process.

Management's Response: IRS management agreed with this finding but will implement a corrective action different from the recommendation. The CI Division recognizes that management and oversight of investigations in the pipeline status is imperative to ensure the appropriate investigative decisions are being made in a manner that is commensurate with the timely and successful prosecution of the investigation. The CI Division will examine the creation of a structured oversight and coordination system to monitor and more effectively manage the prosecution pipeline process.

Office of Audit Comment: We believe the CI Division's alternate action of examining, rather than specifically agreeing to create, a more structured oversight and coordination system will address the concerns we raise in the report. An evaluation of various options is inherently a prerequisite to creating any structured system. Therefore, a thoughtful examination of this issue by the CI Division should result in determining what specific actions are warranted.

Recommendation 2: Create an ad hoc strategic team to develop innovative policies and procedures to ensure tax cases receive appropriate attention and resolution by the DOJ.

Management's Response: IRS management agreed with this recommendation. The CI Division will create a strategic team to examine how a more structured approach to the oversight process can be implemented as referred to in Recommendation 1 that will support a consistent pipeline methodology within all CI Division management levels. The methodology will define the pertinent progression of management involvement to ensure tax cases receive the appropriate attention and resolution by the DOJ. The strategic team will also identify best practices implemented by field offices for the development of innovative policies and procedures, as well as evaluate circumstances where delays in prosecution cause the pipeline inventory to become unmanageable.

More Relevant Performance Measures Are Needed to Make Management Decisions and Provide a Clear Message to Stakeholders

The CI Division uses two measures to assess the performance of the prosecution pipeline process: the volume of prosecution pipeline cases, and the direct investigative time expended on prosecution pipeline cases. While these measures are indicators to be used in identifying



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concerns or trends, they alone do not provide CI Division executives sufficient information for making sound management decisions. Although the CI Division portrayed the steady increases in these two measures as having reached critical levels that directly affect its ability to initiate new investigations or complete ongoing ones, the relevance of those measures is diminished by a closer analysis of the data. The *Standards for Internal Control in the Federal Government* dictate that activities need to be established to monitor performance measures and indicators. These controls could call for comparisons and assessments relating different sets of data to one another so that analyses of the relationships can be made and appropriate actions taken. Controls should also be aimed at validating the propriety and integrity of organizational performance measures and indicators.

The CI Division's management information system does not capture the nature of the investigative time expended on cases in the prosecution pipeline phase

In FY 2008, the CI Division reported that 23.2 percent of all investigative time was applied to prosecution pipeline cases, indicating this percentage was too significant a portion of the total investigative time available. At the end of FY 2009, the CI Division reported that increased resources had been devoted to the prosecution of investigations in prosecution pipeline inventory during FYs 2008 and 2009, but the annual measurement of prosecution pipeline time for FY 2009 went down only slightly to 22.3 percent of all investigative time. General assessments based on this measurement of investigative time are nearly meaningless because pipeline status is defined simply by the fact that the case had been referred to the DOJ and thus the measure includes time spent by special agents on cases under a variety of circumstances.

For example, prosecution pipeline time includes tasks necessary to manage cases as they await legal action, such as contacting the AUSAs to determine the case status, ensuring the continued availability of witnesses during periods when attorneys are not actively working the case, and documenting case activity as required for periodic supervisory workload reviews. At the same time, prosecution pipeline time includes activities that are original investigative steps, such as assisting an AUSA by completing a request for additional information, attending court hearings, and preparing for trial. The CI Division cannot rely on this measure to focus on improving the efficiency of the time charged by special agents regarding the relatively basic tasks necessary to monitor and manage their prosecution pipeline cases because there currently is no way to separate the nature of hours applied to a prosecution pipeline case. Likewise, the CI Division cannot rely on this measure to disclose the actual portion of investigative time spent on cases that are developed into prosecution referrals to assist USAO prosecutors achieve a successful prosecution. Of the 4,152 cases in the prosecution pipeline as of July 31, 2008, there were 2,043 (49 percent) cases that had reached indictment status. Our analysis showed that 21.5 percent of the total investigative time on the 2,043 cases was applied during prosecution pipeline status just to obtain the indictment. Taking into consideration the additional investigative time that was applied after the indictments, the percentage increased (to 36.6 percent) and will ultimately be higher by the time these cases are fully decided in court.



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In fact, very large amounts of investigative time can occur during prosecution pipeline status in complex and high-profile cases. Figure 3 reflects how these types of cases can inflate the annual prosecution pipeline investigative time measure. Each example case was a high profile and widely reported Federal investigation with the vast majority of the investigative time occurring in the prosecution pipeline.

Figure 3: Examples of Large Scale Cases in Prosecution Pipeline Status

Case Number	Program Area	Hours Before IRS Referral to the DOJ	Hours From IRS Referral to Indictment	Hours After Indictment to July 31, 2008	Total Hours	Percentage of Total Hours in Prosecution Pipeline ³
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Source: Our analysis of the CI Management Information System (CIMIS).

In addition, in certain situations, the CI Division updates new cases almost immediately to prosecution pipeline status. For example, this scenario occurs when a USAO asks for the CI Division's assistance in joining another Federal agency's ongoing grand jury investigation. Another situation is when additional culpable persons are identified and added as related cases to a CI Division case that has already been referred. As a result, these types of cases had nearly all their investigative time recorded as occurring in the prosecution pipeline phase, distorting the measurements of prosecution pipeline activities in the sense that normally the CI Division initially conducts an investigation, next develops a prosecution recommendation, and then incurs prosecution pipeline status investigative time.

Figure 4 shows that 546 (13.2 percent) of the 4,152 cases went into prosecution pipeline status within only 10 calendar days or less from the date the case was initiated. In addition, there were 971 (23.4 percent) cases⁴ that went into prosecution pipeline status within 50 calendar days or less from the date the case was initiated. Figure 4 also shows the majority of these cases had zero hours charged prior to prosecution pipeline status and were narcotics and money laundering cases. This situation is likely because the narcotics and money laundering programs are usually

³ Percentage derived by adding hours before and after indictment and dividing by the total hours.

⁴ This number includes the 546 cases that went into a pipeline status within only 10 calendar days or less from the date the case was initiated.



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of high interest to the USAOs and are prone to the identification of additional culpable persons during the course of an investigation.

Figure 4: Cases That Quickly Went Into Prosecution Pipeline Status

	Prosecution Pipeline Inventory on July 31, 2008	Cases to the USAO in 50 Calendar Days or Less	Cases to the USAO in 10 Calendar Days or Less
Number of Cases	4,152	971	546
Percentage of the Prosecution Pipeline Inventory	100 percent	23.4 percent	13.2 percent
Number With Zero Hours Prior to Prosecution Pipeline Status	747	648	512
Percentage With Zero Hours Prior to Prosecution Pipeline Status	18 percent	66.7 percent	93.8 percent
Percentage of Investigative Time in Prosecution Pipeline Status	24 percent	90.6 percent	98.6 percent
Portions That Are Money Laundering	45.1 percent	72.1 percent	76.2 percent
Portions That Are Narcotics Related	21.7 percent	48.7 percent	57 percent

Source: Our analysis of the CIMIS.

In contrast, the data for the other 3,181 cases in the prosecution pipeline (4,152 less 971) reflect a more usual pattern where the CI Division first expends time to conduct the investigation and then subsequently develops a prosecution recommendation. These 3,181 cases were normally investigated by the CI Division for more than 15 months and had more than 580 hours of investigative time incurred before referral to the DOJ.

Accumulating cases in prosecution pipeline inventory does not necessarily mean the CI Division's resources are being affected on a continuing basis

In some instances, prosecution pipeline cases reach a point where there is no expectation that imminent actions will complete the legal process, so the CI Division can only remain ready to assist the prosecuting attorneys if circumstances or the attorney's strategy changes and the cases become ready to proceed toward completion. For example, the subject of an investigation may be a fugitive or a cooperating witness in another case. Another situation is when several cases are related, it might be that none of the individual cases are finalized until all the cases can be finalized. In addition, a prosecutor's strategy might be to keep the case open and continue to negotiate for the subject's cooperation or change in plea. The CI Division has always omitted cases involving fugitives from the reported prosecution pipeline inventory counts. Leaving inactive cases in the prosecution pipeline inventory count exaggerates the number of active cases that the CI Division might be addressing.



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As shown in Figure 5, the investigative time in prosecution pipeline status for cases at the USAOs was normally 1 year. However, almost 11 percent of the inventory remained unfinished in the prosecution pipeline 3 years or longer from the referral date, many of which had reached indictment. Of those 448 cases, 82.6 percent did not have any change in status within the previous year, and many had little additional investigative time applied to them during the previous 28 months (29.5 percent with 10 hours or less total and 50.4 percent with an average of 3 hours or less per month during that time). As part of the CI Division's efforts to reduce the prosecution pipeline inventory volume in FY 2009, it recommended dismissal of money laundering investigations and investigations where more than 3 years had passed since the indictment. The CI Division cited subject or witness issues as reasons for the dismissals.

Figure 5: Cases in the Prosecution Pipeline for Multiple Years

	Prosecution Pipeline Inventory on July 31, 2008	Cases in Prosecution Pipeline 2 Years or Longer	Cases in Prosecution Pipeline 3 Years or Longer
Number of Cases	4,152	908	448
Percentage of Prosecution Pipeline Inventory	100 percent	21.9 percent	10.8 percent
Median Years in Prosecution Pipeline Status	1 year	3 years	3.9 years
Percentage With No Status Change Within the Previous 1 Year	32.3 percent	77.2 percent	82.6 percent
Percentage With Investigative Time Applied During the Previous 28-Month Period of:			
10 Hours or Less Total	4.5 percent	19.9 percent	29.5 percent
3 Hours or Less Per Month on Average (84 Total)	9.7 percent	39 percent	50.4 percent

Source: Our analysis of the CIMIS.

Our analyses determined the prosecution pipeline process included a variety of circumstances that diminishes the relevance of the performance indicators currently used by the CI Division and communicated to the IRS Commissioner. While the CI Division's program reports in the Business Performance Reviews are not publicly disseminated, it is possible that these statistics and statements could be conveyed to outside stakeholders. For example, in February 2007, the United States Senate Committee on Finance asked the IRS for information about the perception that the DOJ might have been prosecuting an insufficient number of IRS criminal referrals. The Committee was concerned that such circumstances could potentially lead to increased criminal behavior because taxpayers think the chances of being criminally sanctioned are low. More recently, in October 2009, within the context of the high degree of interest in tax law enforcement on international tax havens, Congress considered a legislative amendment to specify that the DOJ should direct enough money to the Tax Division to ensure a backlog of inactive cases does not develop due to a lack of resources. For these reasons, we believe the CI Division needs to communicate a clear message about its prosecution pipeline role and situation, making



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internal and external stakeholders aware of the degree that special agents continue to assist Federal prosecutors. In addition, it is important that the CI Division develop ways to refine its measuring and reporting of the potential affects of the extent that investigative time is spent monitoring or managing a prosecution pipeline case versus actively working on a case to assist the DOJ attorneys to a successful prosecution.

Recommendations

The Chief, CI Division, should:

Recommendation 3: Develop additional data analysis and summary reporting techniques that refine the prosecution pipeline volume and investigative time performance measures, and expand the information available for management purposes.

Management's Response: IRS management disagreed with this recommendation because modifying the CIMIS to differentiate between time expended on management tasks and time expended on investigative actions would be cost prohibitive and would not impact the prosecution pipeline process. The CI Division explained that all investigative activity should at a minimum indirectly impact the progression of an investigation and would have to be timely completed regardless of how time is allocated. Pipeline direct investigative time measures the amount of actual time utilized on cases that are in pipeline status. Regardless of whether it is full-blown activity or simple management activity, the time for the specific activity required, whatever that may be, would be reported as pipeline direct investigative time.

Office of Audit Comment: The CI Division's disagreement with our recommendation is focused too narrowly on whether it is feasible to modify the CIMIS to differentiate between the nature of activities for expended time. We concede the CI Division's conclusion that attempting to separately account for the nature of special agents' time would not be effective. Our recommendation did not specify such a CIMIS modification. Rather, our recommendation was to develop additional data analysis and summary reporting techniques, which can be based on the CIMIS data that are already available.

As we reported, we believe the relevance of the existing prosecution pipeline performance measures is diminished by a closer analysis of the data. For example, comparing the type of investigation with how quickly it was placed into prosecution pipeline status reveals that many money laundering and narcotics related cases had all or nearly all of the case investigative time charged to pipeline status. The frequency of this scenario would drive upward the percentage of investigative time applied on prosecution pipeline cases even though it was the CI Division's initial work on the cases. A contrasting scenario would be when the CI Division conducts an investigation, develops a prosecution recommendation, and then subsequently devotes time in prosecution pipeline status to perfect the case for prosecution. We reported additional examples that we



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believe show how the pipeline investigative time percentage measurement is nearly meaningless because of the variety of activities that get attributed to pipeline status. Any assumptions about the nature of the investigative time that makes up the prosecution pipeline percentage of total investigative time would inherently be misleading without determining underlying characteristics. For that reason, we continue to believe that the existing performance measures alone do not provide CI Division executives sufficient information for making sound business decisions.

Recommendation 4: Ensure that necessary information is added to the quarterly Business Performance Reviews to provide the IRS Commissioner a clear depiction of investigative resources devoted to prosecution pipeline inventory activities.

Management's Response: IRS management disagreed with this recommendation and will continue to rely on observations and comments provided by the Deputy Commissioner for Services and Enforcement to supplement pipeline inventory information contained in the Business Performance Review. CI Division management (and the Commissioner's Office) is aware that seeing a case through prosecution requires significant steps beyond making a prosecution recommendation. Extensive pipeline analyses and Business Performance Review talking points are provided to the Chief, Criminal Investigation, Deputy Chief, and Directors, as needed, for reference/discussion in delivering the Business Performance Reviews to the Deputy Commissioner for Services and Enforcement.

Office of Audit Comment: We understand that CI Division management and the Commissioner's Office are aware of the degree to which special agents continue to assist Federal prosecutors beyond making a prosecution recommendation. However, as explained in the report and in our comment regarding management's response to Recommendation 3, we believe escalating volumes and percentages in the prosecution pipeline performance measures do not clearly depict to what extent the CI Division's ability to balance its investigative workload is hindered by the requirements of successful adjudication of a case. Considering that a variety of investigative activities are applicable to prosecution pipeline status cases, resource use attributed to the pipeline cannot safely be assumed to be for the relatively advanced stages of administering the pipeline inventory or preparing the Government's case for indictment or trial. We believe the CI Division's manner of reporting their concerns about the demand for resources required to manage pipeline inventory could imply that pipeline inventory investigative time primarily relates to the advanced stages of prosecution. We do not believe that to be an accurate depiction. As reported, while the Business Performance Reviews are not publicly disseminated, it is possible that the statistics and statements could be conveyed to outside stakeholders.



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Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this review was to evaluate the growth in the CI Division's prosecution pipeline inventory¹ and identify any potential actions that could be taken to reduce the resources devoted to this area. To accomplish our objective, we:

- I. Determined the ways in which prosecution pipeline inventory issues could diminish the CI Division's ability to initiate new cases, complete ongoing cases, or otherwise sustain positive productivity levels in the future.
 - A. Interviewed CI Division National Headquarters personnel and obtained their perspective regarding current conditions, circumstances, and influences and how the growth in prosecution pipeline inventory has affected the Division's ability to meet program goals.
 - B. Interviewed three assigned Special Agents in Charge and seven assigned Assistant Special Agents in Charge in the field offices judgmentally selected in Step III.A. and obtained their perspectives about the context and the hindering influence of prosecution pipeline inventory issues relative to other factors also detrimental to their performance.
 - C. Interviewed 10 Supervisory Special Agents in the judgmentally selected field offices focusing on the general impact on the local program.
 - D. Interviewed representatives from the DOJ, Tax Division and from the Executive Office of the USAO in Washington, D.C., and determined if the CI Division's efforts to coordinate with their office facilitates a high degree of acceptance of criminal tax referrals for prosecution.
 - E. Interviewed six representatives from Judicial Districts that correspond with the judgmentally selected field offices in the USAOs from the Northern District of Illinois (Chicago, Illinois); the Southern District of New York (Manhattan, New York); the Eastern District of New York (Brooklyn, New York); and the Eastern District of North Carolina (Raleigh, North Carolina) and determined if the CI Division's efforts to coordinate with these offices facilitates a high degree of acceptance of criminal referrals for prosecution and subsequent timely case resolution.

¹ See Appendix VII for a glossary of terms.



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- F. Evaluated the CI Division's prior and current efforts to resolve the prosecution pipeline growth by reviewing the 10 most recently conducted field office Review and Performance Evaluations and the quarterly Business Performance Reviews for FYs 2006 through 2009.
- II. Determined statistical trends and the correlation between prosecution pipeline issues and program performance measurements.
 - A. Obtained an extract of the CIMIS as of July 31, 2008, and determined if the CIMIS tracks sufficient data to enable management to manage and monitor the resources expended on managing the prosecution pipeline inventory.
 - B. Requested and received illustrations using current CIMIS data that showed case initiations, completions, cycle time, and other relevant productivity measures.
- III. Determined the nature of investigative time and other resources that are required to manage the prosecution pipeline inventory to evaluate if they are used efficiently.
 - A. Using the CIMIS data, we determined that the population of cases in the prosecution pipeline was 4,152 as of July 31, 2008. We judgmentally selected three CI Division field offices for site visitations. These locations included Chicago, Illinois; New York, New York; and Charlotte, North Carolina. The principle factors used for selecting the field offices were prosecution pipeline inventory levels of cases and investigative time invested on cases.
 - B. Reviewed detailed CIMIS data to identify the attributes of the local prosecution pipeline inventory in the three audit sites to the case-by-case level.
 - 1. Using these data for the 3 selected sites, we judgmentally selected a sample of 53 nongrand jury cases from 137 cases in inventory as of July 31, 2008. After discussion with CI Division management, we determined nine cases were since classified as grand jury. In addition, we excluded five cases because they were related to another in the sample and one case because we did not receive the documentation timely. Our case review consisted of 38 cases. We used a judgmental sample in this Step and in Step III.A. because we did not plan to project our results.
 - a. Obtained and reviewed the case file source documents and reconciled investigative time charges to case agent history notes and workload.
 - b. Interviewed 10 Supervisory Special Agents from the 3 audit sites to determine:
 - i. The type of actions taken by the special agents on the 38 cases while in prosecution pipeline status.
 - ii. If the actions taken are at the direction of USAO personnel.



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- iii. Why would some cases (grand jury or nongrand jury) have the majority of their investigative time charged while in the prosecution pipeline?
- IV. Did not conduct audit tests to determine the accuracy and reliability of the CIMIS data we received from the CI Division. In prior audits, our overall assessment has been that CIMIS data are of undetermined reliability. However, in our opinion, using the data did not weaken our analysis. During case reviews, we scanned some of the data and are satisfied that the data we used during this review provide a reasonable basis for our findings and conclusions.

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 CI Division's policies, procedures, and practices for managing the prosecution pipeline inventory, including its automated management information system and established periodic performance review techniques. We evaluated these controls by interviewing CI Division and DOJ personnel, reviewing the CI Division's self assessments contained in its performance reports, and reviewing selected source documents for a judgmental sample of nongrand jury cases.



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Appendix II

Major Contributors to This Report

Margaret E. Begg, Assistant Inspector General for Audit (Compliance and Enforcement Operations)
Nancy A. Nakamura, Assistant Inspector General for Audit (Management Services and Exempt Organizations)
Jeffrey M. Jones, Director
Marybeth H. Schumann, Director
Michael J. Hillenbrand, Acting Audit Manager
Diana M. Tengesdal, Audit Manager
Timothy A. Chriest, Lead Auditor
Janice A. Murphy, Senior Auditor
Ahmed M. Tobaa, Senior Auditor
Andrea R. McDuffie, Auditor
LaToya R. Penn, Auditor



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Appendix III

Report Distribution List

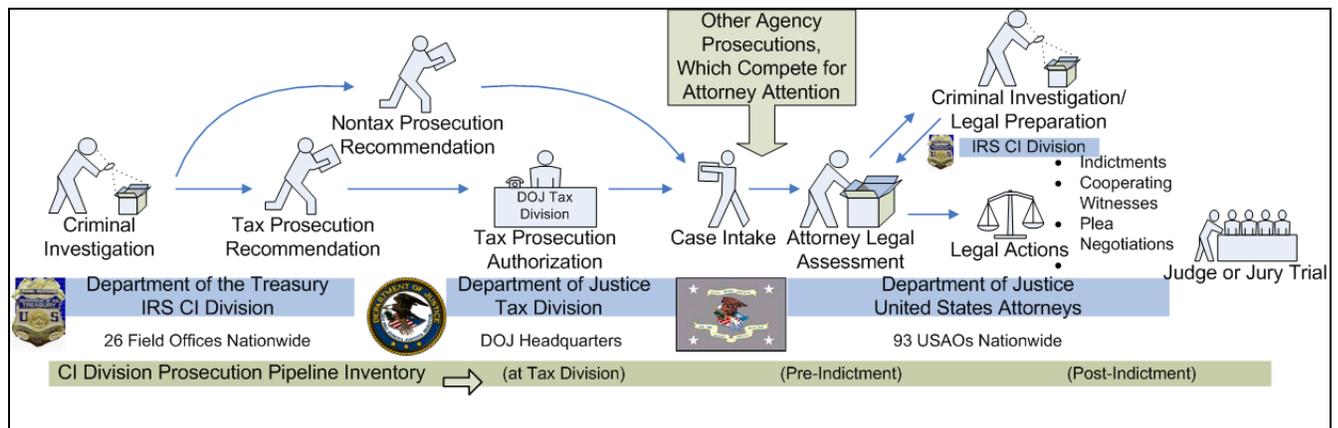
Commissioner C
Office of the Commissioner – Attn: Chief of Staff C
Deputy Commissioner for Services and Enforcement SE
Deputy Chief, Criminal Investigation SE:CI
Director, Operations Policy and Support, Criminal Investigation SE:CI:OPS
Director, Strategy, Criminal Investigation SE:CI:S
Chief Counsel CC
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 Liaison: Director, Planning and Strategy, Criminal Investigation SE:CI:S:PS



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Appendix IV

The Flow of Cases in the Prosecution Pipeline



Source: *Internal Revenue Manual and United States Attorney Manual.*

CI Division Responsibilities

In a tax case, the CI Division typically makes the initial selection, gathers and evaluates the evidence to determine that a tax crime is present, assembles a prosecution recommendation that is subject to internal reviews, and ultimately refers the report and associated materials to the DOJ Tax Division. In contrast, the IRS refers directly to a USAO those financial cases involving only nontax violations within the CI Division’s jurisdiction.

Tax Division Responsibilities

The DOJ Tax Division is a national level centralized control over the flow of tax cases to provide uniformity in the enforcement of tax laws. The Tax Division reviews and evaluates tax prosecution recommendations, authorizes prosecution, and normally refers the case to a USAO to be prosecuted. Small portions of the authorized cases are kept for preparation and trial by attorneys within the Tax Division or the two DOJ components may handle a prosecution jointly.

USAO Responsibilities

The USAOs evaluate the strength of the Government’s legal case and as appropriate determine the need for supplemental investigative actions, negotiate pleas, prepare the cases for trial, and try the cases in court. Nontax cases are usually investigated using a grand jury. This means an AUSA directs the scope and oversees the progress of the case. The USAOs have broad discretion in managing their casework and generally can decide to prosecute or not to prosecute in nontax cases. However, authorized tax prosecutions cannot be declined without Tax Division approval.

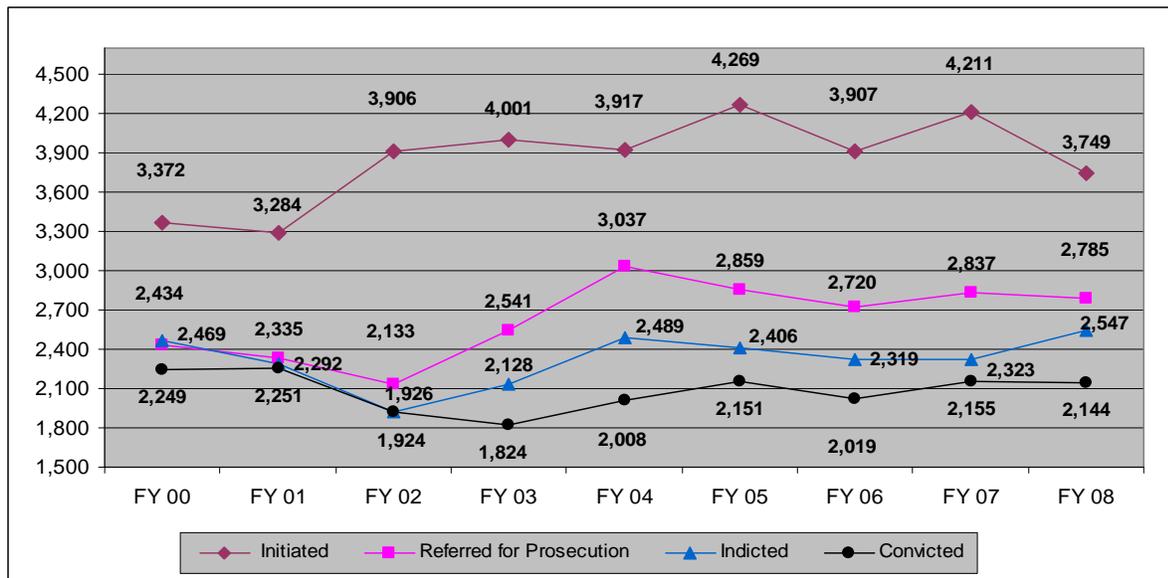


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Appendix V

*Criminal Investigation Division
Performance Statistics¹*

Number of Subject Investigations Initiated, Referred for Prosecution, Indicted, and Convicted Each Fiscal Year. Because actions on a specific investigation may cross fiscal years, the data shown in investigations initiated may not always represent the same universe of investigations shown in other actions within the same fiscal year.



Source: IRS Data Books (Publication 55B) for FYs 2000 through 2005 and the CIMIS Report INV001 (Criminal Investigation Summary Statistics) for FYs 2006 through 2008.

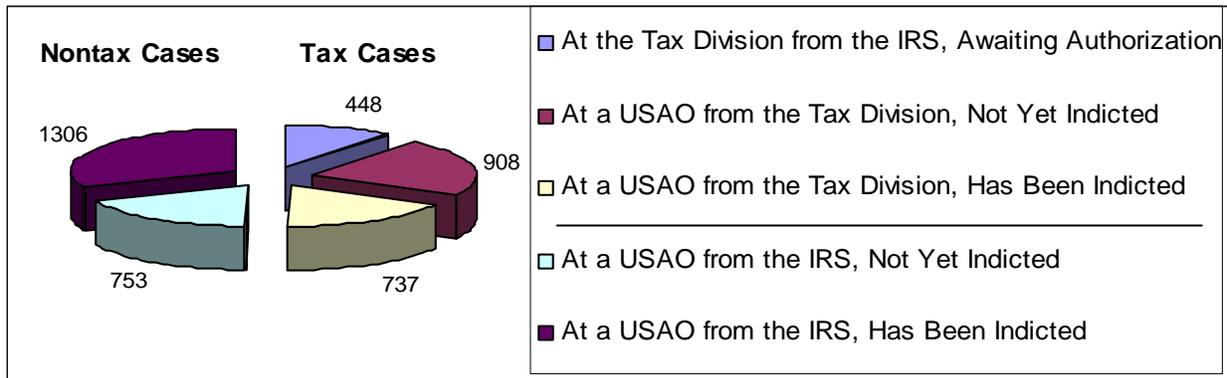
¹ Statistical Portrayal of the Criminal Investigation Division's Enforcement Activities for Fiscal Years 2000 Through 2008, page 31 (Reference Number 2009-30-053, dated March 26, 2009).



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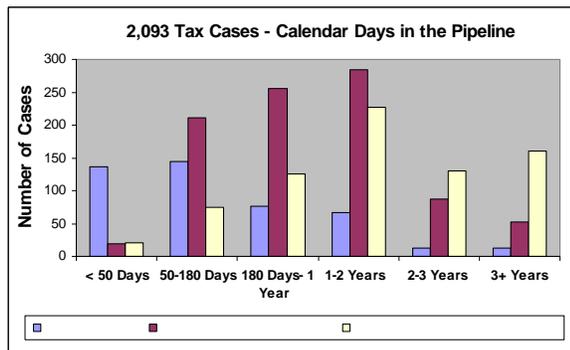
Appendix VI

*Status of 4,152 Prosecution Pipeline
Cases As of July 31, 2008*

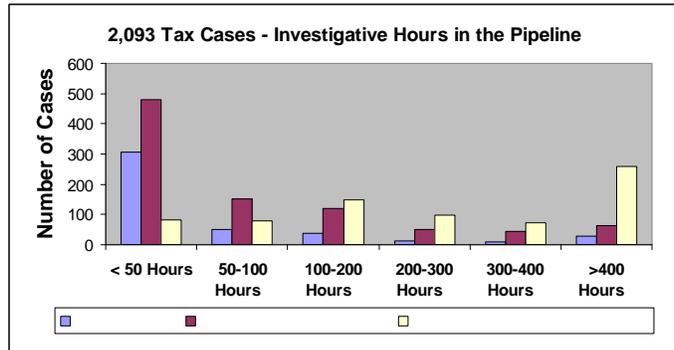


Source: Our analysis of the CIMIS.

Calendar Days



Investigative Hours

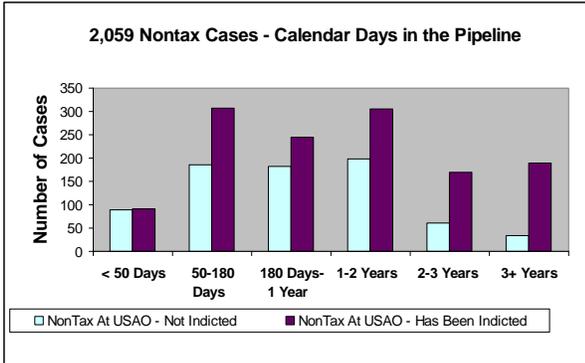


- Tax Cases – 63 percent of those at the Tax Division had been referred for 180 calendar days or less, 47 percent of those at a USAO but not yet indicted had been referred more than 1 year ago, and 39 percent of those at a USAO and indicted had been referred more than 2 years ago.
- Tax Cases – 69 percent of those at the Tax Division and 53 percent of those at a USAO but not yet indicted had 50 investigative hours or less accrued after being referred, and 58 percent of those at a USAO and indicted had more than 200 investigative hours accrued after being referred.

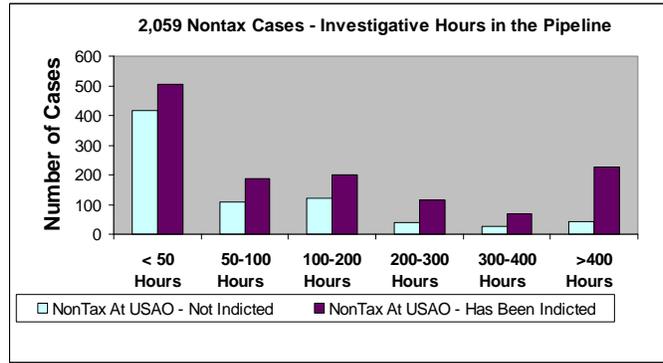


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Calendar Days



Investigative Hours



- Nontax Cases – 39 percent of those at a USAO but not yet indicted and 51 percent of those at a USAO and indicted had been referred more than 1 year ago.
- Nontax Cases – 56 percent of those at a USAO but not yet indicted had 50 investigative hours or less accrued after being referred and 47 percent of those at a USAO and indicted had more than 100 investigative hours accrued after being referred.



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Appendix VII

Glossary of Terms

Business Performance Review – The process establishes a framework for measuring, reporting, and reviewing a business unit’s performance against plans established within the Strategic Planning and Budget process. Reported quarterly to the IRS Commissioner’s Office, the Business Performance Review is one of several communication vehicles which provide insight into the “big picture,” as well as previews of potential future workloads.

Field Office – Offices within the four CI Division geographical areas throughout the country with boundaries that range from a portion of a single State to inter-State areas. There were 26 CI Division field offices at the time of our audit. Each field office has a special agent in charge to direct, monitor, and coordinate the criminal investigation activities within that office’s area of responsibility. Several post-of-duty cities are located within each field office.

Indict/Indictment – The official written accusation on behalf of the government outlining charges against a person accused of a criminal offense.

Grand Jury Investigative Process – When attorneys of the USAOs direct the course of an investigation and present evidence to a body of citizens (the jurors of a grand jury) who then determine whether there is probable cause to believe a crime was committed. The courts over the years have established special investigative powers that can make using a Federal grand jury more efficient than not having a prosecutor involved during the investigation. The grand jury process has a secrecy rule under the Federal Rules of Criminal Procedure, 18 U.S.C. Rule 6. Special agents working under the direction and authority of a prosecutor cannot disclose matters occurring before the grand jury. Due to the nature of nontax crimes within the CI Division’s jurisdiction, most cases are conducted jointly with at least one other Federal Government law enforcement agency and use the grand jury process to facilitate the cases.

Open Case Inventory – An investigation of an individual or entity alleged to be in noncompliance with the laws enforced by the IRS where a determination has not yet been made whether a crime was committed or the case warrants a recommendation for prosecution.

Prosecution Pipeline Inventory – Cases where the IRS CI Division has made criminal prosecution recommendations and the DOJ has either 1) not declined the case for prosecution or 2) not yet completed the legal process to arrive at a conviction, acquittal, or dismissal in court. In other words, the CI Division’s prosecution pipeline inventory is part of the “open inventory” at the DOJ (Tax Division) or at a USAO. The CI Division’s role in prosecution pipeline status cases is to assist DOJ attorneys to prepare the Federal Government’s case for indictment and possible trial. The calculation of prosecution pipeline statistics does not include fugitives, cases awaiting sentencing, or cases under appeal.



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Special Agent – A duly sworn CI Division Federal Government law enforcement officer trained as a financial investigator.

Tax Gap - The difference between the annual Federal tax obligation and the amount of tax the taxpayer pays voluntarily and timely.



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Appendix VIII

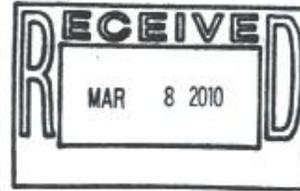
Management's Response to the Draft Report



Criminal Investigation

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

March 8, 2010



MEMORANDUM FOR MICHAEL R. PHILLIPS
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM:

Victor S.O. Song  
Chief, Criminal Investigation (SE:CI)

SUBJECT:

Criminal Investigation Resources Devoted to Supporting
Recommended Prosecutions Can Be Enhanced With a Stronger
Strategic Focus
(Audit # 200810008)

The following is Criminal Investigation's (CI) response to the above named report. Please incorporate this memorandum into your response to the Treasury Inspector General for Tax Administration (TIGTA).

Criminal Investigation realizes the impact an escalating prosecution pipeline inventory has on its investigative resources, as well as the need to ensure management is providing the necessary oversight and direction to effectively manage the pipeline inventory. Effective management and oversight is a priority for all CI's investigative processes and programs, but administering the pipeline inventory is unique in that as reflected in the report, once referred for prosecution many external factors control the progression of an investigation through the adjudication process. Nevertheless, CI management has initiated efforts to more effectively address the pipeline concerns with the Department of Justice (DOJ) and United States Attorney Offices (USAO).

Management requests that field offices review their pending prosecution pipeline to assess the prosecution potential of the many investigations where activity has been dormant. As a result, there is a mutual understanding with the DOJ and the USAO that CI may purge from its pipeline inventory investigations where the prosecution potential has diminished.

Because the successful prosecution of tax evaders is the indispensable element of fostering deterrence and enhancing voluntary compliance, the expenditure of investigative resources on the pipeline inventory is essential for successful adjudication of CI criminal cases. Preparing the government's case for indictment and trial, while providing the taxpayer with due process of law, is both time consuming and resource intensive. As the special agent workforce continues to decline, the percentage of direct



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investigative time expended on the pipeline will continue to increase. As more time and investigative resources are expended on the pipeline inventory, fewer resources are available to initiate and complete investigations. Criminal Investigation will continue to aggressively monitor the progress of investigations through the pipeline prosecution process, and its impact on special agents' ability to effectively initiate and conduct new and existing investigations.

Listed below are comments relating to the specific recommendations contained in your report.

Recommendation 1:

Create a structured oversight and coordination system at National Headquarters, at each geographic area Field Operations Office, and at select field office locations that handle the most complex judicial workloads, to monitor and more effectively manage the prosecution pipeline process.

Corrective Action(s)

Criminal Investigation recognizes that management and oversight of investigations in the pipeline status is imperative to ensure the appropriate investigative decisions are being made in a manner that is commensurate with the timely and successful prosecution of the investigation. Criminal Investigation will examine the creation of a structured oversight and coordination system to monitor and more effectively manage the prosecution pipeline process.

Implementation Date:

Completed: _____ Proposed: 08/15/2010

Responsible Official: Director, Operations, Policy and Support

Corrective Actions Monitoring Plan: N/A

Recommendation 2:

Create an ad hoc strategic team to develop innovative policies and procedures to ensure tax cases receive appropriate attention and resolution by the DOJ.

Corrective Action(s)

Criminal Investigation will create a strategic team to examine how a more structured approach to the oversight process can be implemented as referred to in Recommendation 1 that will support a consistent pipeline methodology within all Criminal Investigation management levels. The methodology will define the pertinent progression of management involvement to ensure tax cases receive the appropriate attention and resolution by the DOJ. The strategic team will also identify best practices implemented by field offices for the development of innovative policies and procedures, as well as evaluate circumstances where delays in prosecution cause the pipeline inventory to become unmanageable.



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Implementation Date:

Completed: _____ Proposed: 08/15/2010

Responsible Official: Director, Operation Policy and Support

Corrective Actions Monitoring Plan: N/A

Recommendation 3:

Develop additional data analysis and summary reporting techniques that refine the prosecution pipeline volume and investigative time performance measures, and expand the information available for management purposes.

Corrective Action(s)

Criminal Investigation does not agree with the recommendation to modify CIMIS to separately account for time expended in managing the investigation through the various legal processes. The report differentiates the application of time in an "inactive mode" or the general management of the case through the prosecution cycle versus time expended towards the more "positive attributes" of the investigation. Examples of basic management tasks reflected on page 10, par. 1 may appear to be diminutive, but failure to complete these tasks might result in negative consequences when it is time to indict and vital witnesses cannot be located. Even time expended during supervisory workload reviews should be considered investigative as guidance and direction provided by the supervisor is instrumental in the completion of pipeline activities. It is agreed there are ancillary tasks that must be performed during the period an investigation is in the pipeline status, but many of the same ancillary tasks performed during the investigation before being referred are recorded in CIMIS as direct investigative time. There is not any separation of time expended for management or investigative activities in the pre-referral process, nor should be for activities occurring during the post referral process because all actions are considered integral to the successful prosecution of the investigation.

As all investigative activity should at a minimum indirectly impact the progression of an investigation, it would be difficult to distinguish or define additional measures within the CIMIS reporting process or create an application that would account for case management versus investigative time. It would also put the special agent in a compromising position to properly account for time expended on a pipeline action where subjectively time expended might be viewed as investigative, but actually should be categorized as management time. Page 12 of TIGTA's report states, "Accumulating cases in pipeline inventory does not necessarily mean the CI Division's resources are being impacted on a continuing basis". While that may be true, Pipeline DIT does measure the amount of actual time utilized on cases that are in pipeline status. Regardless of whether it is full-blown activity or simple management activity, the time for the specific activity required, whatever that may be, would be reported as Pipeline DIT.



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The preparation of Ad Hoc reports for management that can delineate time expended for each stage in the prosecution process from the referral of the investigation until the final adjudication process can be provided by CI's Research section. However, to differentiate "management" tasks and investigative actions would be cost prohibitive and would not impact the prosecution pipeline process as both are part of the investigation process performed to sustain a successful indictment and prosecution, and would have to be timely completed regardless of how time is allocated.

Implementation Date

Completed: N/A Proposed: N/A

Responsible Official: Director, Strategy

Corrective Actions Monitoring Plan: N/A

Recommendation 4:

Ensure that necessary information is added to the quarterly Business Performance Reviews to provide the IRS Commissioner a clear depiction of investigative resources devoted to prosecution pipeline inventory activities.

Corrective Action(s)

Criminal Investigation will continue to rely on observations and comments provided by the Deputy Commissioner to supplement pipeline inventory information contained in the BPR. Criminal Investigation management (and the Commissioner's Office) is aware that seeing a case through prosecution requires significant steps beyond making a prosecution recommendation (i.e. assisting in the interview of and/or preparation of witnesses for grand jury testimony; assisting in responses to motions and preparation of plea agreements; trial preparation and assistance; etc...). In past Quarterly Business Performance Review reports (BPR), CI has completed extensive pipeline analyses and provided BPR talking points to the Chief, Deputy Chief, and Directors, as needed, for reference/discussion in delivering the BPRs to the Deputy Commissioner.

Implementation Date

Completed: N/A Proposed: N/A

Responsible Official: Director, Strategy

Corrective Actions Monitoring Plan: N/A

If you have any questions, please contact Kay Jernigan, Acting Director of Planning and Strategy (SE:CI:S:PS), at (202) 927-0120, or John Cooney, Acting Assistant Director, Planning and Strategy (SE:CI:S:PS) at (202) 622-3263.