



*Fiscal Year 2010 Statutory Audit of
Compliance With Legal Guidelines
Restricting the Use of Records of
Tax Enforcement Results*

July 23, 2010

Reference Number: 2010-30-076

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:

3(d) - Other



HIGHLIGHTS

FISCAL YEAR 2010 STATUTORY AUDIT OF COMPLIANCE WITH LEGAL GUIDELINES RESTRICTING THE USE OF RECORDS OF TAX ENFORCEMENT RESULTS

Highlights

Final Report issued on July 23, 2010

Highlights of Reference Number: 2010-30-076 to the Internal Revenue Service Deputy Commissioner for Operations Support.

IMPACT ON TAXPAYERS

The Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98) requires the IRS to ensure that managers do not evaluate enforcement employees using any record of tax enforcement results (ROTTER) or base employee successes on meeting production goals and quotas. Based on the results of our sample, TIGTA believes the IRS' efforts to enforce the employee evaluation requirements under Section 1204 are generally effective and are helping to protect the rights of taxpayers.

WHY TIGTA DID THE AUDIT

TIGTA is required under Internal Revenue Code Section 7803(d)(1)(2000) to annually evaluate whether the IRS is in compliance with restrictions on the use of enforcement statistics under RRA 98 Section 1204. Our review determined whether the IRS was compliant with:

- Section 1204(a), which prohibits the IRS from using any ROTTER to evaluate employees or to impose or suggest production quotas or goals.
- Section 1204(b), which requires that employees be evaluated using the fair and equitable treatment of taxpayers as a performance standard.
- Section 1204(c), which requires each appropriate supervisor to self-certify quarterly whether ROTTERs were used in a prohibited manner.

WHAT TIGTA FOUND

The IRS did not achieve full compliance with Section 1204(a) requirements. TIGTA identified violations of RRA 98 Section 1204(a) in 3 of the 1,074 employee or manager performance evaluation documents reviewed. Our review found documentation that managers included ROTTERs in three employees' performance evaluation documents.

Also, the IRS did achieve full compliance with Section 1204(b) and (c) requirements. The IRS evaluated all employees on the fair and equitable treatment of taxpayers and prepared quarterly self-certifications showing that ROTTERs were not used to evaluate employees.

In a judgmental sample of 31 employees, 7 (23 percent) did not understand the term "retention standard" and 11 (35 percent) were not sure they had received training on the retention standard.

WHAT TIGTA RECOMMENDED

TIGTA recommended the IRS ensure that:

- Section 1204 violations are reviewed with managers and that they are provided training related to the use of ROTTERs.
- All managers are aware of guidelines when reviewing employee self-assessments.
- A mandatory annual training is instituted to ensure that employees understand the retention standard.

IRS officials agreed with one of three recommendations. For the two disagreed recommendations, IRS officials provided corrective actions that appeared to address TIGTA's concerns; however, the actions were not clear or were incomplete. In one of the two disagreed recommendations, subsequent discussions identified new planned guidelines concerning self assessments; however, IRS officials were unable to provide the guidelines for review because they had not been finalized. In the remaining disagreed recommendation, the IRS clarified its actions and provided a planned completion date of December 31, 2010.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

July 23, 2010

MEMORANDUM FOR DEPUTY COMMISSIONER FOR OPERATIONS SUPPORT

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

SUBJECT: Final Audit Report – Fiscal Year 2010 Statutory Audit of Compliance
With Legal Guidelines Restricting the Use of Records of Tax
Enforcement Results (Audit # 201030006)

This report presents the results of our review to determine whether the Internal Revenue Service (IRS) complied with restrictions on the use of enforcement statistics to evaluate employees as set forth in the IRS Restructuring and Reform Act of 1998 (RRA 98) Section 1204.¹ The Treasury Inspector General for Tax Administration is required under Internal Revenue Code Section 7803(d)(1)(2000) to annually evaluate the IRS' compliance with the provisions of RRA 98 Section 1204. The RRA 98 requires the IRS to ensure that managers do not evaluate enforcement employees² using any record of tax enforcement results or base employee successes on meeting production goals and quotas.

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

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.

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

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



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Abbreviations

FY	Fiscal Year
IRS	Internal Revenue Service
ROTER	Record of Tax Enforcement Results
RRA 98	Restructuring and Reform Act of 1998
TIGTA	Treasury Inspector General for Tax Administration



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Background

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

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

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

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

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

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

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



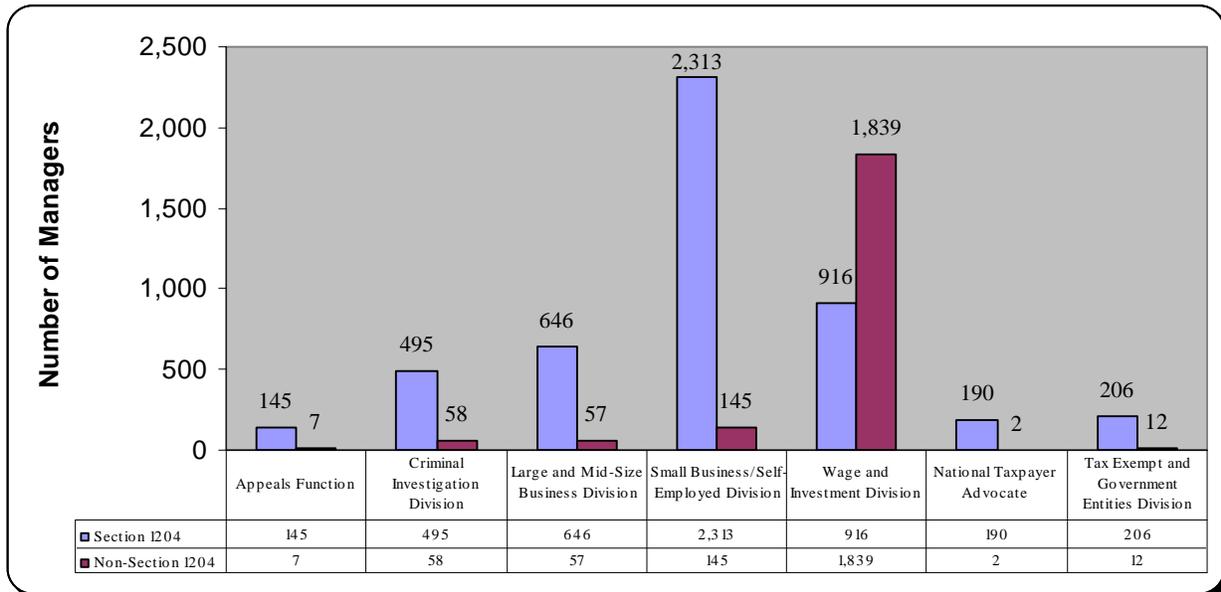
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prohibited by RRA 98 Section 1204(a). The appropriate supervisor then prepares a consolidated office certification covering the entire organizational unit.

The IRS functional offices and divisions, including the Office of the Chief, Appeals; the Office of the Chief, Criminal Investigation Division; the Large and Mid-Size Business Division; the Small Business/Self-Employed Division; the Office of the National Taxpayer Advocate; the Tax Exempt and Government Entities Division; and the Wage and Investment Division, are responsible for Section 1204 program implementation within their respective areas. Section 1204 Program Managers and Coordinators in each business organization are available to provide guidance to managers regarding Section 1204 issues, including the certification process.

Figure 1 depicts the ratio of Section 1204 and Non-Section 1204 managers in the subject business organizations as of September 30, 2009. The Section 1204 managers either supervised a Section 1204 employee or provided guidance or direction for Section 1204 activities.

Figure 1: Number of Section 1204 and Non-Section 1204 Managers by Business Organization (as of September 30, 2009)



Source: IRS National Section 1204 Program Manager.

Internal Revenue Code Section 7803(d)(1)(2000) requires the Treasury Inspector General for Tax Administration (TIGTA) to determine annually whether the IRS is in compliance with restrictions on the use of enforcement statistics under RRA 98 Section 1204. We have previously performed 11 annual reviews to meet this requirement. Appendix IV lists the prior audit reports.



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This review was performed at the IRS National Headquarters in Washington, D.C., in the Office of the Chief Financial Officer; the Office of the Chief, Appeals; the Office of the Chief, Criminal Investigation Division; the Office of the National Taxpayer Advocate; the Large and Mid-Size Business Division; the Small Business/Self-Employed Division; the Tax Exempt and Government Entities Division; and the Wage and Investment Division during the period October 2009 through March 2010. Onsite reviews were performed at the IRS field offices in Oakland and San Francisco, California; Hartford and New Haven, Connecticut; Jacksonville, Florida; Atlanta, Georgia; Chicago and Downers Grove, Illinois; and Dallas and Farmers Branch, Texas. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Detailed information on our audit objective, scope and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.



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Results of Review

First-Line and Second-Line Managers Appropriately Completed Their Quarterly Self-Certifications

All 79³ first-line and second-line managers we sampled were in compliance with the provisions of RRA 98 Section 1204(c) and completed the required self-certifications on the use of tax enforcement results for the second and fourth quarters of Fiscal Year (FY) 2009. Each manager certified that ROTERs or production goals or quotas were not used when evaluating employees. Appendix V reflects the Manager's Quarterly Self-Certification – No Violations (Form 1204-M) that managers use to self-certify that there are no violations of RRA 98 Section 1204(a) and (b).

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

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

Per the Internal Revenue Manual, the business organization and function Section 1204 Program Managers and their respective Section 1204 Coordinators should monitor the quarterly certification process and provide guidance to managers regarding Section 1204 issues throughout their organizations/functions. Through the quarterly certification process, managers are reminded of their responsibilities under RRA 98 Section 1204 not to evaluate their employees on the basis of ROTERs or production quotas or goals. The quarterly certification process helps to ensure that managers are aware of the IRS' commitment to administer the tax laws fairly and to protect the rights of taxpayers.

³ Our original sample consisted of 80 managers. However, one manager listed was not responsible for any Section 1204 employees and was removed from our sample.



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The Internal Revenue Service Is Not in Full Compliance With the Use of Records of Tax Enforcement Results Procedures

In FY 2009, the IRS did not achieve full compliance with RRA 98 Section 1204(a) due to violations in 3 of 1,074 employee or manager performance-related documents reviewed. The ROTERs were found in one annual and two mid-year appraisals of employees in the **3(d)**. We discussed the violations with the manager who was not aware that he or she had included ROTERs in the performance evaluation documents. The manager provided reasons for using statistics in the performance evaluations and stated Section 1204 internal guidelines were used when writing the evaluations. However, the additional information provided did not eliminate the violation.

To evaluate the IRS' compliance with Sections 1204(a) and 1204(b), we selected a judgmental sample of 69 first-line managers and 207 employees in 10 sites.⁴ The sites selected had at least four⁵ business organizations with Section 1204 first-line managers. We selected seven managers and three of the manager's employees at each site and reviewed their performance evaluation documents. We also reviewed performance documents for 10 second-line managers. We evaluated 1,074 FY 2009 performance-related documents, including mid-year and annual performance reviews, employee self-assessments, workload reviews, and award documentation for 286 employees, to determine whether ROTERs were used when evaluating the employees' performance.

***TIGTA auditors reviewed
1,074 performance-related
documents for 286 IRS
employees.***

During our review of the **3(d)**, we identified a self-assessment that contained ROTER information that was attached to a Recommendation for Performance Award. We discussed this issue with a Program Manager from the **3(d)** and learned that employees are encouraged but not required to submit a self-assessment. We did not consider this a violation because the ROTER information was not included in the narrative for the performance award. However, the manager did not follow proper procedures which require employees to submit a revised self-assessment when ROTERs are identified. In addition, employees should be counseled to ensure they understand the proper use of statistics within the IRS. We were advised by the **3(d)** that the procedures for self-assessments are currently being revised because many employees fail to submit a revised self-assessment when ROTERs are identified.

⁴ See Appendix I for details of the IRS offices and cities selected for review. We originally sampled 70 first-line managers; however, 1 manager was removed from our sample because he or she did not have responsibility for enforcement employees. As a result, three employees were also eliminated from our sample.

⁵ In the Dallas, Farmers Branch, and Jacksonville locations, we contacted first-line managers in only three business organizations.



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Based on the results of our review, the IRS' efforts to ensure that managers are not using ROTERs or production goals or quotas to evaluate employees are effective and are helping to protect the rights of taxpayers. The IRS continues to use its managerial self-certification process to identify and report ROTER violations.

Some employees did not understand the retention standard terminology or receive training

We interviewed a judgmental sample of 31 Section 1204 employees to determine if they received training and understood the terminology "retention standard." Seven (23 percent) did not understand the term and 11 (35 percent) were not sure if they had received training related to this topic. The first-line managers we sampled documented that they had evaluated employees on the retention standard. According to RRA 98 Section 1204(b), IRS employees are to be evaluated on the retention standard. The standard applies to all executives, managers, and other employees.

On June 16, 1999, the IRS established a retention standard method to ensure that employee performance is focused on providing quality service to taxpayers instead of on achieving enforcement results. For all 286 employees sampled, Block 9 of the Bargaining Unit Performance Appraisal and Recognition Election (Form 6850-BU) or the Non-Bargaining Unit Performance Appraisal (Form 6850-NBU) was checked, indicating that the employees were evaluated on this standard. Figure 2 presents a Form 6850-BU pertaining to the retention standard.



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Figure 2: Forms 6850 Retention Standard Rating

Bargaining Unit Performance Appraisal and Recognition Request			
<small>(Review instructions before completing this form)</small>			
1. Name of employee (Last, first, middle initial)		2. Last 4 digits of SSN	
4. Office symbols/Organization		5. Pay plan, series and grade	
6. Position title		7. Period covered From: _____ To: _____	
9. Fair and Equitable Treatment of Taxpayers Retention Standard Rating <input type="checkbox"/> Not Applicable <input type="checkbox"/> Met <input type="checkbox"/> Not Met		3. Reason for Appraisal <input type="checkbox"/> Annual Rating <input type="checkbox"/> Merit Promotion Appraisal <input type="checkbox"/> Other <input type="checkbox"/> Departure Appraisal Reason for other: _____ 8. Mandatory progress review was conducted on: _____	
10. Critical Job Elements (CJEs)		11. Performance Aspects	
I. Employee Satisfaction – Employee Contribution		12. Performance Aspects Rating	
II. Customer Satisfaction – Knowledge		13. CJE Ratings	
III. Customer Satisfaction – Application			
IV. Business Results – Quality			
V. Business Results – Efficiency			
14. Overall rating <input type="checkbox"/> Outstanding <input type="checkbox"/> Exceeds Fully Successful <input type="checkbox"/> Fully Successful <input type="checkbox"/> Minimally Successful <input type="checkbox"/> Unacceptable <input type="checkbox"/> Not Ratable Reason for not ratable: _____		15. Average CJE Score	
A. Certification of Rating - By signing below, each Rater and Reviewer certifies that records of tax enforcement results (ROTERR) were not used to prepare this appraisal.			
16a. Rater name/title/signature/date			
16b. Reviewing Official name/title/signature/date			
16c. Employee signature/date (Signature only indicates copy has been received, not agreement)			
17a. Revalidation of Rating of Record (Period covered)		17b. Mandatory progress review conducted on	
17c. Rater name/title/signature/date		17d. Reviewing Official name/title/signature/date	
17e. Employee signature/date (Signature only indicates copy has been received, not agreement)		17f. Employee signature/date (Signature only indicates copy has been received, not agreement)	
18a. Revalidation of Rating of Record (Period covered)		18b. Mandatory progress review conducted on	
18c. Rater name/title/signature/date		18d. Reviewing Official name/title/signature/date	
18e. Employee signature/date (Signature only indicates copy has been received, not agreement)		18f. Employee signature/date (Signature only indicates copy has been received, not agreement)	
Form 6850-BU (Rev. 12-2009) Cat. No. 35509M publish.no.irs.gov Department of Treasury - Internal Revenue Service			

Block 9 is where managers should indicate that employees were evaluated on the retention standard in compliance with RRA 98 Section 1204(b).

Source: Form 6850-BU.

It is important that the IRS ensure employees understand the retention standard because it can directly affect interactions with taxpayers and the employee’s ability to safeguard taxpayer rights. We reported⁶ this issue during a prior TIGTA review and the IRS agreed to take corrective actions. In December 2008, the IRS made changes to the Form 6850 and the

⁶ Fiscal Year 2008 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results (Reference Number 2008-40-108, dated April 17, 2008).



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instructions. Based on our results, this effort has not been sufficient to educate employees and indicates the IRS continues to not meet full compliance with Section 1204 procedures.

Recommendations

Recommendation 1: The Commissioner, Large and Mid-Size Business Division, should ensure that Section 1204 violations are reviewed with managers and that managers are provided training to ensure they understand guidelines related to the use of ROTERs.

Management's Response: IRS management agreed with this recommendation. On June 9, 2010, the Large and Mid-Size Business Division issued a guidance memorandum. Supplemental guidance will be provided to all Large and Mid-Size Business Division managers at the all managers meeting scheduled for September 2010.

Recommendation 2: The Chief, Criminal Investigation Division, should ensure that all Criminal Investigation Division managers follow the specific guidelines concerning employee self-assessments.

Management's Response: IRS management disagreed with the recommendation. Management responded that annually, the Criminal Investigation Division conducts Section 1204 training using material that includes findings and violations from TIGTA's audits. In addition, the Criminal Investigation Division is updating its training to include resolution of self-assessment ROTERs.

Office of Audit Comment: Although IRS management disagreed with the recommendation, they plan to take corrective actions that include using findings and violations identified by TIGTA in their annual training. We believe these actions will assist the IRS' efforts to achieve its goal of full compliance with Section 1204 guidelines. However, it is unclear whether the IRS' efforts to update its training will ensure ROTERs are not included in self assessments. We contacted the IRS for clarity concerning the updated training and were advised that new guidelines are planned but they were unable to provide the new guidelines for our review.

Recommendation 3: The Deputy Commissioner for Operations Support should strengthen the IRS' efforts to achieve full compliance with RRA 98 Section 1204 procedures by instituting mandatory annual training to ensure that each tax enforcement employee understands the retention standard and its impact on the fair and equitable treatment of taxpayers.

Management's Response: IRS management disagreed with the recommendation. Management responded that all new Section 1204 managers and employees are required to take Section 1204 training upon arrival. The Chief Financial Officer plans to update IRS guidelines to include applicable documentation for retention standards. In addition, management plans to make a retention standard briefing available on the Chief Financial Officer's web site and update Service-wide training.



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Office of Audit Comment: Although IRS management disagreed with the recommendation, they plan to take corrective actions to address TIGTA's concern that employees do not understand or acknowledge that they have received training on the retention standard. However, their corrective actions are not sufficient because they do not include an implementation date, a responsible official, or a process to monitor adherence to these guidelines. We discussed our concerns about the missing information with the IRS and they agreed to designate a responsible official and implement the planned corrective actions by December 31, 2010.



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Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this review was to determine whether the IRS complied with restrictions on the use of enforcement statistics to evaluate employees as set forth in RRA 98 Section 1204.¹ To accomplish this objective, we:

- I. Selected from a population of 4,886 first-line and second-line managers a judgmental sample of 79 managers to determine whether they complied with the provisions of RRA 98 Sections 1204(a) and 1204(b) when evaluating their Section 1204 employees'² performance.
 - A. Identified the Office of the Chief Financial Officer; the Office of the Chief, Appeals; the Office of the Chief, Criminal Investigation Division; the Office of the National Taxpayer Advocate; the Large and Mid-Size Business Division; the Small Business/Self-Employed Division; the Tax Exempt and Government Entities Division; and the Wage and Investment Division office locations in various cities and the number of Section 1204 first-line managers located in each business organization.

We judgmentally selected 10 cities for this year's audit: Oakland and San Francisco, California; Hartford and New Haven, Connecticut; Jacksonville, Florida; Atlanta, Georgia; Chicago and Downers Grove, Illinois; and Dallas and Farmers Branch, Texas. We used FY 2009 data to select the audit sites for the sample. The audit sites were judgmentally selected based on the number of Section 1204 first-line managers located at a site and the business organizations represented, prior audit coverage in FYs 2004 through 2009,³ geographical location of potential cities for travel considerations, and sites where the IRS internal review team identified problems.

- B. Selected a judgmental sample of seven first-line managers per city and three Section 1204 employees for each manager in our sample. We selected managers and employees from sites that had at least four⁴ business organizations with Section 1204

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

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

³ Reviewed locations visited during prior audits to ensure locations selected were not duplicated.

⁴ In the Dallas, Farmers Branch, and Jacksonville locations, we contacted first-line managers in only three business organizations.



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- first-line managers that had not been reviewed recently by TIGTA or IRS independent reviews. This provided a total of 69 managers and 207⁵ employees for review. We obtained the FY 2009 performance evaluation documents prepared by the manager (including mid-year, annual performance reviews, award documents, and workload reviews) to determine whether ROTERs or production goals or quotas were inappropriately used in the evaluation process and whether employees were evaluated appropriately on the fair and equitable treatment of taxpayers.
- C. For any potential exception cases identified, interviewed the employees' managers to determine the potential cause.
 - D. Reviewed training records for the employees/managers selected for review that had ROTERs in their evaluations or self-assessments to determine whether mandatory yearly training was attended.
 - E. Obtained TIGTA Counsel's opinion on four cases (three violations of Section 1204(a) and one CID self-assessment) identified and referred as having potential legal violations of RRA 98 Section 1204.
 - F. Discussed exception cases identified with the National Section 1204 Program Manager and the appropriate business organization coordinator for agreement and explored the potential root cause for the violations.
 - G. Interviewed a judgmental sample of 31 Section 1204 employees concerning the use of ROTERs and their understanding of the retention standard. We selected three to four employees for each of the 10 sites visited. The overall population could not be determined because the sample was selected based on the employees in the office the day of our visits. New employees were interviewed to obtain their feedback on whether perceptions about the use of or emphasis on enforcement statistics or ROTERs have changed.
 - H. We selected and reviewed a judgmental sample of 10 second-line managers' management performance evaluation documentation (i.e., mid-year, annual performance reviews, and award documents) for the inappropriate use of ROTERs. We focused on second-line managers whose performance documentation was located in the same cities as the first-line managers selected for review.

⁵ We sampled 70 front-line managers; however, 1 manager did not have responsibility for enforcement employees. Therefore, one manager and three employees were eliminated from our sample.



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- II. Determined whether the 79 selected first-line and second-line managers complied with RRA 98 Section 1204(c) by certifying by letter whether or not ROTERs were used in a manner prohibited by RRA 98 Section 1204(a).⁶
 - A. Obtained FY 2009 second and fourth quarter self-certifications for the selected first-line managers.
 - B. Reviewed the self-certifications for compliance with IRS procedures and the identification of any use of ROTERs or production quotas or goals.

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 the following internal controls were relevant to our audit objective: guidelines and rules related to using ROTERs in a way as to improperly influence the handling of taxpayer cases and employees understanding and adherence to the “retention standard.” We evaluated these controls by reviewing a judgmental sample of performance appraisals and signed self-certifications to determine if the IRS is complying with restrictions on the use of enforcement statistics when evaluating employees.

⁶ Our original sample consisted of 80 managers. However, one manager listed was not responsible for any Section 1204 employees and was removed from our sample.



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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
Commissioner, Large and Mid-Size Business Division SE:LM
Commissioner, Small Business/Self-Employed Division SE:S
Commissioner, Tax Exempt and Government Entities Division SE:T
Commissioner, Wage and Investment Division SE:W
Chief, Appeals AP
Chief, Criminal Investigation Division SE:CI
Chief Financial Officer OS:CFO
National Taxpayer Advocate TA
Director, Communications, Liaison, and Disclosure, Small Business/Self-Employed Division
SE:S:CLD
Director, Strategy and Finance, Wage and Investment Division SE:W:S
Chief, Performance Improvement, Wage and Investment Division SE:W:S:PI
Chief Counsel CC
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Director, Office of Program Evaluation and Risk Analysis RAS:O
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 Commissioner, Wage and Investment Division SE:W
 Chief, Appeals AP:TP:SS
 Chief, Criminal Investigation Division SE:CI
 Chief Financial Officer OS:CFO
 National Taxpayer Advocate TA



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Appendix IV

Prior Audit Reports

The TIGTA has previously performed 11 audits in this subject area. The audit reports were:

Fiscal Year 2009 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results (Reference Number 2009-30-091, dated June 30, 2009).

Fiscal Year 2008 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results (Reference Number 2008-40-108, dated April 17, 2008).

Fiscal Year 2007 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results (Reference Number 2007-40-055, dated March 20, 2007).

Fiscal Year 2006 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results (Reference Number 2006-40-095, dated June 6, 2006).

Fiscal Year 2005 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results (Reference Number 2005-40-157, dated September 21, 2005).

Fiscal Year 2004 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results (Reference Number 2004-40-066, dated March 19, 2004).

Fiscal Year 2003 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results (Reference Number 2003-40-090, dated March 27, 2003).

Compliance With Regulations Restricting the Use of Records of Tax Enforcement Results Shows Improvement (Reference Number 2002-40-163, dated September 11, 2002).

Compliance With the Internal Revenue Service Restructuring and Reform Act of 1998 Section 1204 Has Not Yet Been Achieved (Reference Number 2001-10-178, dated September 27, 2001).

Further Improvements Are Needed in Processes That Control and Report Misuse of Enforcement Statistics (Reference Number 2000-10-118, dated September 18, 2000).



*Fiscal Year 2010 Statutory Audit of Compliance
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The Internal Revenue Service Should Continue Its Efforts to Achieve Full Compliance with Restrictions on the Use of Enforcement Statistics (Reference Number 1999-10-073, dated September 29, 1999).



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Appendix V

*Manager's Quarterly Self-Certification –
No Violations (Form 1204-M)*

Manager's Quarterly Self-Certification – No Violations	
RRA 98 Section 1204	
Name of Manager	Title
Organization	Quarter ending (select correct quarter from drop down)
<input type="checkbox"/> I certify to the best of my knowledge that during this quarter I was in compliance with the IRS Restructuring and Reform Act of 1998 (RRA 98) Section 1204(a) and 1204(b).	
Certification Process	
<p>The quarterly certification process is a formal process required by statute to ensure managerial accountability and compliance with Section 1204. The process specifically addresses the following:</p> <ul style="list-style-type: none"> • Section 1204(a) in General -The IRS shall not use records of tax enforcement results (1) to evaluate employees; or (2) to impose or suggest production quotas or goals with respect to such employees. • Section 1204(b) (Retention Standard) Taxpayer Service - The IRS shall use fair and equitable treatment of taxpayers by employees as one of the standards for evaluating employee performance. <p>To comply with Section 1204(a), I have not:</p> <ul style="list-style-type: none"> • Used records of tax enforcement results (ROTERTs) in any written performance evaluations prepared or reviewed, including appraisals, awards, or promotion justifications • Used records of tax enforcement results (ROTERTs) to impose or suggest production quotas or goals with respect to field activities (e.g. through program guidance or business and program reviews) • Communicated to employees, verbally or in writing, that records of tax enforcement results affected their evaluations, or were used to set individual/group production goals or quotas <p>To comply with Section 1204(b), all employees in my organization have:</p> <ul style="list-style-type: none"> • Signed for receipt of the Retention Standard annually • Been evaluated on the Retention Standard annually <p>I have provided a copy of this self-certification to my next level manager and retained a file copy to be available for audit or review.</p>	
Manager's signature	Date signed
Next-level Manager's signature (Section 1204 Appropriate Managers do not need to forward for next level signatures)	Date signed

Source: Internal forms on the IRS web site.



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Appendix VI

Management's Response to the Draft Report



CHIEF FINANCIAL OFFICER

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

June 22, 2010

RECEIVED
JUN 24 2010

BY: *DAZ*

MEMORANDUM FOR MICHAEL R. PHILLIPS
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: *Alison L. Doone*
Alison L. Doone
Chief Financial Officer

SUBJECT: Draft Audit Report – Fiscal Year 2010 Statutory Audit of
Compliance with Legal Guidelines Restricting the Use of
Records of Tax Enforcement Results (Audit #201030006)

We are pleased with your acknowledgement that IRS efforts have been effective in ensuring that managers are not using ROTERS or production goals or quotas to evaluate employees and are helping to protect the rights of taxpayers.

With regard to the recommendations, we agree with the first recommendation and disagree with the remaining two recommendations. The attached plan describes the corrective actions necessary to implement the first recommendation.

To address the remaining recommendations, training guidance updates have already been identified and are in the process of being made. CFO is reviewing and expanding the existing IRS wide training for the retention standard for bargaining and non-bargaining unit employees. The CFO website is also being updated to include an explanation of the retention standard and its impact on the fair and equitable treatment of taxpayers.

If you have any questions, please contact Peter Rose, Acting Associate CFO for Corporate Planning and Internal Control, at (202) 622-4508.

Attachment



*Fiscal Year 2010 Statutory Audit of Compliance
With Legal Guidelines Restricting the Use of
Records of Tax Enforcement Results*

Attachment

RECOMMENDATION 1:

The Commissioner, Large and Mid-Size Business Division (LMSB), should ensure that Section 1204 violations are reviewed with managers and that managers are provided training to ensure they understand guidelines related to the use of ROTERs.

CORRECTIVE ACTION:

The IRS agrees with the recommendation. LMSB will issue a guidance memorandum to 1) remind LMSB managers of Section 1204 and Regulation 801 prohibiting the use of ROTERs to evaluate and to impose or suggest production goals or quotas, and 2) ensure managers violating Section 1204 are made aware of the violations and provided Section 1204 and Regulation 801 training. Supplemental Section 1204 and Regulation 801 guidance will be provided to all LMSB managers at the next LMSB all managers meeting.

IMPLEMENTATION DATE:

The guidance memo was issued June 9, 2010, and this action is closed. The supplemental Section 1204 and Regulation 801 guidance will be provided to all LMSB managers at the all managers meeting scheduled for September 2010.

RESPONSIBLE OFFICIAL:

Director, Planning, Quality, Analysis, and Support (LMSB Division)

CORRECTIVE ACTION(S) MONITORING PLAN: N/A

RECOMMENDATION 2:

The Chief, Criminal Investigation Division (CI), should ensure that all Criminal Investigation Division managers follow the specific guidelines concerning employee self-assessments.

CORRECTIVE ACTION:

The IRS disagrees with the recommendation. On an annual basis, the CI division conducts Section 1204 training using material that is updated to include findings or violations identified through both the annual TIGTA audit and the CFO independent review. This year, CI is updating the training to include the appropriate resolution of self-assessment ROTERs.



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2

Attachment

IMPLEMENTATION DATE: N/A

RESPONSIBLE OFFICIAL: N/A

CORRECTIVE ACTION MONITORING PLAN: N/A

RECOMMENDATION 3:

The Deputy Commissioner for Operations Support should strengthen the IRS' efforts to achieve full compliance with RRA 98 Section 1204 procedures by instituting mandatory annual training to ensure that each tax enforcement employee understands the retention standard and its impact on the fair and equitable treatment of taxpayers.

CORRECTIVE ACTION:

The IRS disagrees with the recommendation. All new Section 1204 managers and employees are required to take Section 1204 training upon arrival in their new positions. In addition, mandatory Section 1204 training occurs every three years for all Section 1204 managers and employees. The CFO is also updating IRM 1.5.3, *Managing Statistics in a Balanced Measurement System, RRA Section 1204 Certification and Independent Review Process* to include examples of behavior that meet the standard, circumstances that may result in a determination that employee performance does not meet the standard and the potential impact of not meeting the standard. Applicable documentation for the retention standard will also be included. Additionally, a retention standard briefing presentation will be made available on the CFO website and updates to Section 1204 service-wide training and the Section 1204 At-A-Glance Guide for the retention standard are planned.

IMPLEMENTATION DATE: N/A

RESPONSIBLE OFFICIAL: N/A

CORRECTIVE ACTION MONITORING PLAN: N/A