



*Collection Employees Adhered to
Fair Tax Collection Practices
During Fiscal Year 2010*

April 25, 2011

Reference Number 2011-10-045

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

Phone Number | 202-622-6500

Email Address | TIGTACommunications@tigta.treas.gov

Web Site | <http://www.tigta.gov>



HIGHLIGHTS

COLLECTION EMPLOYEES ADHERED TO FAIR TAX COLLECTION PRACTICES DURING FISCAL YEAR 2010

Highlights

Final Report issued on April 25, 2011

Highlights of Reference Number: 2011-10-045 to the Internal Revenue Service Chief Counsel and the Internal Revenue Service Human Capital Officer.

IMPACT ON TAXPAYERS

The abuse or harassment of taxpayers by Internal Revenue Service (IRS) employees while attempting to collect taxes reflects poorly on the IRS and can have a negative impact on voluntary compliance. It can also result in civil damages against the Federal Government when Fair Tax Collection Practices (FTCP) are violated. During Fiscal Year 2010, there were no cases involving FTCP violations for which an employee received administrative disciplinary action, and there were no taxpayers who received civil damages for an FTCP violation. As such, taxpayers have reasonable assurance that communications with the IRS in connection with the collection of unpaid taxes generally did not violate the FTCP statute.

WHY TIGTA DID THE AUDIT

Section 1102(d)(1)(G) of the IRS Restructuring and Reform Act of 1998 requires TIGTA to include in one of its Semiannual Reports to Congress information regarding administrative or civil actions related to FTCP violations listed in 26 U.S.C. Section 6304. The overall objective of this review was to obtain information on IRS administrative or civil actions resulting from FTCP violations by IRS employees.

WHAT TIGTA FOUND

No FTCP violations were identified for cases on the IRS Human Capital Officer Workforce Relations' Automated Labor and Employee Relations Tracking System (ALERTS) that were closed in Fiscal Year 2010. In addition, no cases were identified that were miscoded as FTCP violations and should not have been or

that should have been coded as violations but were not. While no FTCP violations were identified, 114 cases were opened and subsequently removed from the ALERTS and were not available for our review. IRS management did not always maintain documentation to substantiate removal of these cases. As a result, TIGTA could not verify that these cases were not FTCP violations. IRS management indicated that they had previously identified the lack of documentation to be an issue and had plans to implement a system-generated audit log for the ALERTS by approximately June 2011.

In addition, there were no civil actions resulting in monetary settlements paid to taxpayers because of an FTCP violation.

WHAT TIGTA RECOMMENDED

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



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

April 25, 2011

MEMORANDUM FOR CHIEF COUNSEL
INTERNAL REVENUE SERVICE HUMAN CAPITAL OFFICER

Michael R. Phillips

FROM: Michael R. Phillips
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Collection Employees Adhered to Fair Tax
Collection Practices During Fiscal Year 2010 (Audit # 201110013)

This report presents the results of our review of Fair Tax Collection Practices¹ (FTCP) violations during Fiscal Year 2010. The overall objective of this review was to obtain information on Internal Revenue Service (IRS) administrative or civil actions resulting from violations of FTCP for cases opened after July 22, 1998, and closed during Fiscal Year 2010. Section 1102(d)(1)(G) of the IRS Restructuring and Reform Act of 1998² requires the Treasury Inspector General for Tax Administration to include in one of its Semiannual Reports to Congress information regarding administrative or civil actions related to FTCP violations. This audit is included in our Fiscal Year 2011 Annual Audit Plan and addresses the major management challenge of Taxpayer Protection and Rights.

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

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

¹ 26 U.S.C. Section 6304 (2007).

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



*Collection Employees Adhered to Fair Tax
Collection Practices During Fiscal Year 2010*

Table of Contents

BackgroundPage 1

Results of ReviewPage 3

 No Fair Tax Collection Practices Violations or Miscoded Cases
 Were Identified; However, Some Records Could Not Be ReviewedPage 3

 No Fair Tax Collection Practices Violations Resulted in
 Civil Damages (Monetary Awards) to TaxpayersPage 4

Appendices

 Appendix I – Detailed Objective, Scope, and MethodologyPage 5

 Appendix II – Major Contributors to This ReportPage 7

 Appendix III – Report Distribution ListPage 8

 Appendix IV – Fair Tax Collection Practices ProvisionsPage 9

 Appendix V – Fair Tax Collection Practices Violation Issue CodesPage 10



*Collection Employees Adhered to Fair Tax
Collection Practices During Fiscal Year 2010*

Abbreviations

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



*Collection Employees Adhered to Fair Tax
Collection Practices During Fiscal Year 2010*

Background

The Fair Debt Collection Practices Act¹ includes provisions that restrict various collection abuses and harassment in the private sector. However, prior to the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998,² restrictions such as these did not apply to the Federal Government. Congress believes that it is appropriate to require the IRS to comply with certain portions of the Fair Debt Collection Practices Act and to be at least as considerate to taxpayers as private creditors are required to be with their customers. Therefore, with the passage of the IRS Restructuring and Reform Act of 1998, the IRS is required to follow provisions, known as Fair Tax Collection Practices (FTCP), that are similar to those in the Fair Debt Collection Practices Act.³

IRS employees who violate the FTCP are subject to disciplinary actions. Violations of the FTCP and related disciplinary actions are tracked on the IRS Human Capital Officer Workforce Relations' Automated Labor and Employee Relations Tracking System (ALERTS). In addition, if any of the FTCP provisions are violated, the taxpayer can file a claim against the Federal Government under 26 U.S.C. § 7433, Civil Damages for Certain Unauthorized Collection Actions. Taxpayers may file an administrative claim for damages with the applicable IRS executive for the location in which the taxpayer resides or file for civil damages in Federal district court. Taxpayer civil actions are tracked on the Office of Chief Counsel's Counsel Automated System Environment.

***IRS employees who violate Fair
Tax Collection Practices are
subject to disciplinary actions.***

The IRS Restructuring and Reform Act of 1998 § 1102(d)(1)(G)⁴ requires the Treasury Inspector General for Tax Administration to include in one of its Semiannual Reports to Congress information regarding administrative or civil actions related to FTCP violations listed in 26 U.S.C. § 6304.⁵ This report must provide a summary of such actions and include any judgments or awards granted. The Treasury Inspector General for Tax Administration is required to report as violations the actions taken by IRS employees who were involved in a collection activity and who received a disciplinary action that is considered an administrative action.⁶ Information from this report will be used to meet the requirements of the IRS Restructuring and Reform Act of 1998 § 1102(d)(1)(G).

¹ 15 U.S.C. Sections (§§) 1601 note, 1692-1692o (2006).

² 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.).

³ See Appendix IV for a detailed description of FTCP provisions.

⁴ Pub. L. No. 105-206, 112 Stat 702-703.

⁵ 26 U.S.C. § 6304 (2007).

⁶ The law does not provide a definition of "administrative action;" however, for this review, we used the IRS's definition, which is action that ranges from a letter of admonishment to removal.



*Collection Employees Adhered to Fair Tax
Collection Practices During Fiscal Year 2010*

This review was performed at the IRS National Headquarters offices of the Chief Counsel and the IRS Human Capital Officer in Washington, D.C., during the period January through February 2011. 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.



*Collection Employees Adhered to Fair Tax
Collection Practices During Fiscal Year 2010*

Results of Review

No Fair Tax Collection Practices Violations or Miscoded Cases Were Identified; However, Some Records Could Not Be Reviewed

No FTCP violations were identified for cases closed in Fiscal Year 2010 on the ALERTS.⁷ As such, taxpayers have reasonable assurance that communications with the IRS in connection with the collection of unpaid taxes generally did not violate the FTCP statute.

In addition, the IRS has substantially reduced the number of cases miscoded on the ALERTS. In previous reports, a significant number of cases were miscoded. For example, in Calendar Year 2007, 13 cases were miscoded because: 1) the employee was not in a collection-related job series, 2) the case did not involve a taxpayer or taxpayer representative, or 3) the case should have been coded as an FTCP violation but instead had been coded as “Fighting” or

“Unprofessional Conduct.” During this review, we did not identify any cases that were miscoded as

FTCP violations but should not have been. To determine whether any cases were miscoded and should

have been coded as FTCP violations, we reviewed all

35 cases on the ALERTS involving a taxpayer or taxpayer representative and an employee in a collection-related job series coded as “other case” categories involving employee misconduct allegations, including those coded as either “Unprofessional Conduct” or “Not Otherwise Coded.” No cases were identified that should have been coded as FTCP violations.

The IRS did not document any FTCP violations in Fiscal Year 2010, and we did not identify any cases that should have been documented as a violation.

Although no FTCP violations were identified in the ALERTS data we reviewed, we determined that 114 out of 20,060 cases opened in Fiscal Year 2010 were subsequently removed from the ALERTS and were not available for our review. As a result, we could not verify that these cases were not FTCP violations. IRS management stated the reasons for removal of the cases included download errors from a system that feeds into the ALERTS and data entry errors. We selected a judgmental sample for review and found that documentation was not maintained supporting the removal of 4 (27 percent) of 15 cases from the sample. Inventory control on the ALERTS is important to prevent the unsubstantiated removal of employee cases, including FTCP violations that may warrant IRS management administrative actions. IRS management indicated that they had previously identified the lack of documentation to be an issue and had plans to implement a

⁷ We could not validate that the cases identified on the ALERTS constitute all FTCP violations, or determine if any potential violations were reported to the IRS’s Workforce Relations office but not recorded on the ALERTS.



*Collection Employees Adhered to Fair Tax
Collection Practices During Fiscal Year 2010*

system-generated audit log for the ALERTS by approximately June 2011. The audit log will provide a record of the date of removal, the employee initiating the removal, and the reason for removal for all cases removed from the ALERTS. Because the IRS already had plans to address this control weakness, we are not making any recommendations at this time; however, we will review this corrective action in our next audit of FTCP violations.

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

Internal Revenue Code § 7433⁸ provides that a taxpayer may bring a civil action for damages against the Federal Government if an officer or employee of the IRS recklessly, intentionally, or negligently disregards any provision of the Internal Revenue Code or related regulation in connection with the collection of Federal tax. There were no cases closed on the Counsel Automated System Environment during Fiscal Year 2010 for which the IRS paid civil damages to taxpayers resulting from FTCP violations.

⁸ 26 U.S.C. § 7433.



*Collection Employees Adhered to Fair Tax
Collection Practices During Fiscal Year 2010*

Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this audit was to obtain information on any IRS administrative or civil actions resulting from violations of FTCP for cases opened after July 22, 1998, and closed during Fiscal Year 2010. To accomplish this objective, we:

- I. Obtained all available ALERTS data and performed the following tests to validate the accuracy and completeness of the data.
 - A. Performed checks of the data to determine whether information in various data fields was reasonable. For example, we determined if date fields contained dates, if any blank fields were explainable, and if there were unexplained gaps in the sequential order¹ of case numbers, etc. We selected a judgmental sample² of 15 out of 114 cases that had been subsequently removed from the ALERTS and were not available for our review, and requested documentation supporting the removal. We determined a sample size of 15 cases was appropriate to identify an inventory control weakness.
 - B. Reviewed ALERTS data to verify that cases identified as miscoded in the Treasury Inspector General for Tax Administration Fiscal Year 2008–2010 FTCP audits³ were corrected as recommended.
 - C. Performed a query of the ALERTS data to identify cases opened after July 22, 1998, with an issue code of 141 to 147⁴ and closed during the period January 1 through September 30, 2009, and confirmed that the resulting number of violations matched the number provided by the IRS during the prior year audit.
- II. Identified the number of FTCP violations resulting in administrative actions for any cases opened after July 22, 1998, and closed during Fiscal Year 2010.
 - A. Performed a query of the ALERTS data to identify cases coded as FTCP violations that were opened after July 22, 1998, and closed during Fiscal Year 2010, and

¹ Only Fiscal Year 2010 ALERTS data were reviewed to determine if there were unexplained gaps in the sequential order of case numbers.

² We used judgmental sampling to select cases because we did not plan to project the results.

³ *Collection Employees Adhered to Fair Tax Collection Practices From January 2009 Through September 2009* (Reference Number 2010-10-037, dated March 17, 2010); *Collection Employees Adhered to Fair Tax Collection Practices in Calendar Year 2008* (Reference Number 2009-10-101, dated July 23, 2009); and *Five Fair Tax Collection Practices Violations Resulted in Administrative Actions in Calendar Year 2007* (Reference Number 2008-10-162, dated September 5, 2008).

⁴ See Appendix V for a description of Fair Tax Collection Practices violation issue codes.



*Collection Employees Adhered to Fair Tax
Collection Practices During Fiscal Year 2010*

- determined whether any cases involving FTCP violations resulted in administrative actions.
- B. Performed a query of the ALERTS for cases opened after July 22, 1998, and closed during Fiscal Year 2010 and analyzed the results to determine whether any cases were miscoded and should have been coded as FTCP violations.
 - C. Verified query results in II.A and II.B by confirming the number of violations with IRS personnel responsible for the ALERTS.
- III. Identified the number of FTCP violations resulting in IRS civil actions (judgments or awards granted) by obtaining a computer extract from the Chief Counsel's Counsel Automated System Environment database of Subcategory 6304 (established to track FTCP violations) cases opened after July 22, 1998, and closed during Fiscal Year 2010. Due to time constraints, we did not conduct validation tests of this system. The Fiscal Year 2010 data were consistent with those of past years, and there is low risk that cases were misclassified because qualified attorneys were deciding whether each case met the legal definition of an FTCP violation. For these reasons, we considered the data's reliability as undetermined but suitable for use in this report.

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 internal controls related to the reliability of information were relevant to our audit objective. We performed procedures to validate the ALERTS data and discussed inventory control weaknesses with management. We evaluated these controls by reviewing cases and determining whether they were correctly coded.



*Collection Employees Adhered to Fair Tax
Collection Practices During Fiscal Year 2010*

Appendix II

Major Contributors to This Report

Nancy A. Nakamura, Assistant Inspector General for Audit (Management Services and Exempt Organizations)
Troy D. Paterson, Director
Gerald T. Hawkins, Audit Manager
Melinda H. Dowdy, Lead Auditor
Donald J. Martineau, Auditor



*Collection Employees Adhered to Fair Tax
Collection Practices During Fiscal Year 2010*

Appendix III

Report Distribution List

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



*Collection Employees Adhered to Fair Tax
Collection Practices During Fiscal Year 2010*

Appendix IV

Fair Tax Collection Practices Provisions

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

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

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

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

¹ Pub. L. No. 105-206, 112 Stat. 768-769.

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



*Collection Employees Adhered to Fair Tax
Collection Practices During Fiscal Year 2010*

Appendix V

Fair Tax Collection Practices Violation Issue Codes

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

Source: IRS ALERTS User Guide (October 2009).