RECOVERY ACT

Control Weaknesses Over Amended Returns Allowed Some Inappropriate Claims for the First-Time Homebuyer Credit to Be Allowed

June 24, 2011

Reference Number: 2011-41-057

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
2(f) = Risk Circumvention of Agency Regulation or Statute

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HIGHLIGHTS

CONTROL WEAKNESSES OVER AMENDED RETURNS ALLOWED SOME INAPPROPRIATE CLAIMS FOR THE FIRST-TIME HOMEBUYER CREDIT TO BE ALLOWED

Highlights

Final Report issued on June 24, 2011

Highlights of Reference Number: 2011-41-057 to the Internal Revenue Service Commissioner for the Wage and Investment Division.

IMPACT ON TAXPAYERS

Homebuyers who purchased a home in 2008, 2009, or 2010 may be able to take advantage of the First-Time Homebuyer Credit (Homebuyer Credit). The Homebuyer Credit may be an interest-free loan or a fully refundable Credit depending on when the taxpayer purchased his or her home. Questionable Homebuyer Credits totaling millions of dollars in refunds as well as additional interest amounts were issued on amended claims.

WHY TIGTA DID THE AUDIT

The Homebuyer Credit as expressed in the Housing and Economic Recovery Act of 2008 has been revised and extended by three subsequent bills. Taxpayers may be confused regarding which version of the Homebuyer Credit they qualify for and specifics on how to claim the Credit. Also, unscrupulous individuals may make fraudulent claims for the refundable Homebuyer Credit.

The President of the United States has called on Federal agencies to ensure that recovery funds are used for authorized purposes and that every step is taken to prevent fraud, waste, error, and abuse. The Internal Revenue Service (IRS) faces significant challenges to ensure that recovery funds it administers are used for authorized purposes. This report contains the results of our audit to determine whether the IRS has controls in place to ensure that Homebuyer Credits claimed on *Amended U.S. Individual Income Tax Returns* (Forms 1040X) are appropriately processed.

WHAT TIGTA FOUND

The IRS has taken a number of positive steps to process Homebuyer Credits claimed on amended returns. Primary among these was development of criteria to identify amended returns with questionable claims before they are processed. However, additional issues need to be addressed for claims of the Homebuyer Credit on amended returns.

Taxpayers inappropriately changed their home acquisition date to avoid repayment of their Homebuyer Credits. Some taxpayers received multiple refunds of the Homebuyer Credit. Many questionable claims for the Homebuyer Credit were not appropriately sent to the IRS's Examination function for scrutiny.

TIGTA also found that the IRS paid an estimated $37 million in interest on claims for the time period prior to actual home purchase dates. It is unclear whether Congress intended for this interest to be paid. Finally, some claims for the Homebuyer Credit were significantly delayed.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the IRS ensure that taxpayers changing the year of purchase or receiving more Homebuyer Credit than they are entitled to are identified and invalid claims are recovered through examinations. The IRS should also ensure that employees are provided proper training and perform quality reviews of Homebuyer Credit claims. The IRS should identify interest-related issues on any future legislation and work with the Department of the Treasury's Office of Tax Policy to request clarification from Congress if warranted. Further, the IRS should ensure that timeliness standards are adhered to when cases are referred to the Examination function.

IRS management agreed with our recommendations and has initiated appropriate corrective actions.

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

June 24, 2011

MEMORANDUM FOR COMMISSIONER, WAGE AND INVESTMENT DIVISION

FROM: Michael R. Phillips
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Control Weaknesses Over Amended Returns Allowed Some Inappropriate Claims for the First-Time Homebuyer Credit to Be Allowed (Audit # 201040140)

This report presents the results of our review to determine whether the Internal Revenue Service (IRS) had controls in place to ensure that First-Time Homebuyer Credits claimed on *Amended U.S. Individual Income Tax Returns* (Forms 1040X) were appropriately processed. This audit is included in our Fiscal Year 2011 Annual Audit Plan and addresses the major management challenges of Implementing Health Care and Other Tax Law Changes and Erroneous and Improper Payments and Credits. It presents selected information related to the IRS implementation of Section 1006 of the American Recovery and Reinvestment Act of 2009 (Recovery Act).[1]

The Recovery Act provides separate funding to the Treasury Inspector General for Tax Administration through September 30, 2013, to be used in oversight activities of IRS programs. This audit was conducted using Recovery Act funds.

Management's complete response to the draft report is included in Appendix V.

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 Michael E. McKenney, Assistant Inspector General for Audit (Returns Processing and Account Services), at (202) 622-5916.

[1] Pub. L. No. 111-5, 123 Stat. 115 (2009).

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Abbreviations

HERA	Housing and Economic Recovery Act of 2008
IRS	Internal Revenue Service
TIGTA	Treasury Inspector General for Tax Administration
WHBAA	Worker, Homeownership, and Business Assistance Act of 2009

Background

The First-Time Homebuyer Credit (Homebuyer Credit) is a refundable tax credit available to taxpayers who purchase a principal residence. In order to qualify, taxpayers cannot have owned a principle residence at any time during the 3 years prior to the date they purchased their new home. The Housing and Economic Recovery Act of 2008 (HERA)[1] allowed qualifying taxpayers who purchased a principal residence after April 8, 2008, and before July 1, 2009, to claim a credit equal to 10 percent of the purchase price of the home, limited to $7,500. The Homebuyer Credit, as expressed in this Act, served as an interest-free loan to be paid back over a 15-year period beginning 2 years after the Credit was claimed and phased out for taxpayers with adjusted gross income of more than $75,000 ($150,000 for joint returns).

Section 1006 of the American Recovery and Reinvestment Act of 2009 (Recovery Act)[2] revised and extended the Homebuyer Credit to include purchases made on or after January 1, 2009, and before December 1, 2009; increased the maximum Credit to $8,000; and eliminated the repayment requirements as long as the taxpayer retains the residence for 36 months.

The Worker, Homeownership, and Business Assistance Act of 2009 (WHBAA),[3] signed into law on November 6, 2009, extended and expanded the Homebuyer Credit allowed by the previous Acts. Under the WHBAA, an eligible taxpayer must buy, or enter into a binding contract to buy, a principal residence on or before April 30, 2010, and close on the home by June 30, 2010. The law maintained that the taxpayer would not be required to repay the Homebuyer Credit and kept the maximum amount at $8,000. The law increased the Homebuyer Credit phase-out to adjusted gross income of more than $125,000 ($225,000 for joint returns), established documentation requirements for claiming the Credit, and gave the Internal Revenue Service (IRS) the authority to deny taxpayer claims that are inconsistent with the eligibility for the Credit. Legislation enacted in July 2010 extended the closing deadline from June 30 to September 30, 2010, for eligible homebuyers.[4]

Congress estimated that $13.6 billion would be paid to taxpayers for the Homebuyer Credit in the HERA. The Joint Committee on Taxation estimated that approximately $4.3 billion more would be paid to first-time homebuyers in Fiscal Years 2009 and 2010 as a result of the Recovery Act and an additional $9.96 billion as a result of the WHBAA.

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[1] Pub. L. No. 110-289, 122 Stat. 2654 (2008).
[2] Pub. L. No. 111-5, 123 Stat. 115 (2009).
[3] Pub. L. No. 111-92, 123 Stat 2984 (2009).
[4] Homebuyer Assistance Act of 2010, Pub. L. No. 111-198, 124 Stat. 1356.

The President of the United States has stated that every taxpayer dollar spent on the economic recovery must be subject to unprecedented levels of transparency and accountability. The President has called on Federal agencies to ensure that recovery funds are used for authorized purposes and every step is taken to prevent instances of fraud, waste, error, and abuse. However, with the various changes in the law, taxpayers may be confused regarding which version of the Homebuyer Credit they qualify for, when to file, what tax year to file for, and what forms and documentation to provide to claim the Credit. In addition, without proper controls, unscrupulous individuals could make fraudulent claims for the refundable Homebuyer Credit.

Taxpayers have several filing options to claim the Homebuyer Credit, one of which is filing an amended tax return. This report contains the results of our audit to determine whether the IRS had controls in place to ensure that Homebuyer Credits claimed on *Amended U.S. Individual Income Tax Returns* (Forms 1040X) were appropriately processed. The IRS reported that as of January 29, 2011, it had processed more than 1.4 million amended claims for Homebuyer Credits totaling more than $10 billion.

This review was performed onsite at the IRS Ogden, Utah, Campus[5] during the period February 2010 through March 2011. It included a review of amended individual income tax returns filed nationwide. 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 objectives. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

[5] The data processing arm of the IRS. The campuses process paper and electronic submissions, correct errors, and forward data to the Computing Centers for analysis and posting to taxpayer accounts.

Results of Review

The Internal Revenue Service Implemented Several Key Controls for Processing Amended Homebuyer Credit Claims

The Homebuyer Credit was enacted, revised, and extended in four different legislative acts. Each act created, added, and modified rules to qualify for and claim the Homebuyer Credit. The IRS faced difficult and significant challenges to administer the Homebuyer Credit and ensure that recovery funds were used for authorized purposes.

The IRS took the following steps to facilitate the accurate processing of Homebuyer Credits filed on amended returns:

- Increased staffing resources to handle the significant number of Homebuyer Credit claims expected to be filed on amended returns.
- Organized staffing resources to address a significant number of telephone and correspondence inquiries expected for the Homebuyer Credit.
- Developed and updated employee instructions for processing Homebuyer Credit claims on amended returns.
- Implemented controls to process Homebuyer Credit claims on amended returns that would identify if the Credit was to be paid back.
- Updated forms and instructions necessary for taxpayers to claim the Homebuyer Credit, including the development of First-Time Homebuyer Credit and Repayment of the Credit (Form 5405).

Early in 2009, the Treasury Inspector General for Tax Administration (TIGTA) identified thousands of taxpayers with indications of prior home ownership claiming the Homebuyer Credit on their original tax returns, and recognized that this same condition would likely occur as taxpayers claimed Homebuyer Credits using amended returns. In April 2009, we recommended that the IRS implement controls to ensure that taxpayers claiming Homebuyer Credits on amended tax returns had not owned a principal residence within the prior 3 years.

The IRS agreed with our recommendation and stated that it was already in the process of developing criteria to identify amended returns with questionable claims for the Homebuyer Credit for review by the Examination function. The IRS requested and was provided specific cases and details of our criteria for identifying questionable claims for the Credit. The IRS's criteria were incorporated into the Internal Revenue Manual in June 2009.

Along with the criteria in the Internal Revenue Manual, the IRS developed an enhancement to its automated tool used to process amended tax returns (xClaim). The tool was enhanced to automate research of IRS records for indications of prior home ownership over the past 3 years and other predetermined criteria that, if present, make the claim questionable. The IRS reported that the research results will be forwarded to the Campus Examination function along with the amended tax return, using the Correspondence Imaging System. In the interim, the Examination Classification function reviewed all Homebuyer Credit claims referred to them by the Submission Processing function for indications of prior home ownership.

This report discusses several issues for Homebuyer Credit claims made on amended returns that the IRS had not addressed.

Some Taxpayers Changed Their Home Acquisition Dates to Inappropriately Take Advantage of New Tax Law Changes

We identified a number of amended claims for Homebuyer Credits where the reported purchase dates of the homes were changed from what was reported on the original tax returns. The IRS implemented controls to enter specific codes when adjusting a taxpayer account claiming a Homebuyer Credit on an amended return that would identify the reported year of purchase.

We identified 1,225 cases with the following characteristics:

- The taxpayer filed a claim for the Homebuyer Credit on an original Tax Year[6] 2008 U.S. Individual Income Tax Return (Form 1040) using a Calendar Year 2008 purchase date as entered from Form 5405.
- The IRS subsequently processed an amended return for the taxpayer claiming a change to the original Homebuyer Credit with an identifier now indicating a Calendar Year 2009 or 2010 purchase year.

As mentioned earlier, the Homebuyer Credit enacted under the HERA served as an interest-free loan to be paid back over a 15-year period. Subsequent legislation modified the Homebuyer Credit and eliminated the repayment requirement for purchases made after December 31, 2008, as long as the taxpayer retains the residence for 36 months. Changing the year of purchase clearly benefitted taxpayers as they would now not be liable for the repayment of the total amounts received for the Homebuyer Credits.

[6] For most individual taxpayers, a tax year is synonymous with a calendar year. For the purposes of this report, we use tax year when referring to the filing of a tax return and calendar year when referring to home purchase dates.

We reviewed a judgmental sample of 43 of the 1,225 amended claims for the Homebuyer Credit and identified the following:

- 22 claims (51 percent) appeared to be legitimate changes of purchase years based on information we researched and obtained from third-party sources. However, only four of these taxpayers provided documentation with their amended return to support their amended date of purchase. The taxpayers generally stated the reason for filing the amended claim was that they originally reported or used the wrong purchase date on Form 5405 or originally listed the date of their construction loan and not the closed or occupied date. All of these taxpayers filed for and received original Homebuyer Credits using apparently incorrect purchase dates.

- 15 claims (35 percent) appeared to be invalid changes of purchase years based on information we researched and obtained from third-party sources. None of these taxpayers provided documentation with their amended return to support their amended date of purchase. The taxpayers generally stated the reason for filing the amended claim was to claim the Tax Year 2009 Homebuyer Credit and that they had originally claimed the wrong credit, or they provided no explanation at all.

  Our research identified that 10 of the taxpayers appeared to purchase a home in Calendar Year 2008. All of these taxpayers inappropriately changed the year of purchase so that they would not be subject to the repayment provisions applicable to Calendar Year 2008 purchases. According to the third-party records included in our research, the other **1** taxpayers did not have qualifying home purchases under either the HERA or the Recovery Act. Four of the taxpayers had no record of owning or purchasing a home and **************************1*************************.

- 6 claims (14 percent) were incorrectly processed by IRS employees. All six of these claims were amended by the taxpayers just to increase the amounts of their Homebuyer Credits. The taxpayers did not change their purchase dates from the dates originally reported, but IRS employees mistakenly changed the codes on the taxpayers' accounts to indicate a Calendar Year 2009 or 2010 purchase year rather than the correct Calendar Year 2008 purchase. Therefore, these taxpayers' accounts now incorrectly indicate that the taxpayers are not liable to repay their Homebuyer Credits. The IRS also incorrectly allowed an additional amount of Homebuyer Credit on four of these returns.

We identified an additional 607 cases with the following characteristics:

- The taxpayer's Homebuyer Credit was originally claimed on an amended return reporting a home purchased in Calendar Year 2008.

- A subsequent amended Homebuyer Credit claim was processed with an identifier indicating a Calendar Year 2009 or 2010 home purchase.

We reviewed a judgmental sample of 45 of these amended claims for the Homebuyer Credit and found:

- 36 claims (80 percent) for which the year of purchase from the taxpayer's first amended return was recorded inaccurately by the IRS. These taxpayers filed amended returns to increase the amounts of their Homebuyer Credits, and only when the amended return was processed was the year of purchase corrected.
    - 18 of the original amended returns were processed before the IRS's computers were programmed to recognize any purchase year other than Calendar Year 2008. (The IRS also incorrectly allowed four of these taxpayers the Homebuyer Credit when they indicated the purchase of the home would take place in the future).
    - 18 of the original amended returns were processed incorrectly by IRS employees. The employees entered identifiers indicating a Calendar Year 2008 purchase year when the taxpayer had actually indicated a Calendar Year 2009 or 2010 purchase year. *****************************1***********************************
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- 9 claims (20 percent) for which the taxpayer amended the year of purchase. The taxpayers generally stated that the reason for filing the amended claim was that they were claiming the Calendar Year 2009 Homebuyer Credit, originally reported the wrong date, or originally listed the date of their construction loan and not the closed or occupied date. **1*****************************
*********1**********************. We found from research of third-party information that six taxpayers appeared to purchase a home in Calendar Year 2009. We could not obtain information for the remaining three claims.

Prior to enactment of the WHBAA, taxpayers were required to submit only Form 5405 with their return to claim the Homebuyer Credit. Form 5405 included a specific line to list the date the home was acquired. Effective for homes purchased after November 6, 2009, the WHBAA requires taxpayers to submit valid documentation to support the Homebuyer Credit claim. Along with Form 5405, taxpayers must attach a copy of the settlement statement showing certain information about the home purchased, including the date of purchase. Without proper documentation attached to the amended return listing the purchase date of the home, IRS employees had to rely on information provided by and attested to by the taxpayer.

We notified the IRS that some taxpayers were changing the year of purchase when filing an amended return for the Homebuyer Credit and there appeared to be no control to address these cases. As of March 29, 2010, the IRS issued additional instructions to its employees for processing amended tax returns to potentially identify claims filed for the Homebuyer Credit where the year of purchase was changed. In addition, it developed enhancements to the xClaim tool to address these amended returns. The IRS also indicated that subsequent to our review, it referred 166 of these cases to its Examination function for further scrutiny.

The Homebuyer Credits on all of the 1,225 and 607 taxpayer accounts have now been coded as exempt from repayment. In our samples, 27 percent of these accounts (24 of 88) were coded in error. The combined amounts of the Credits on the original and subsequent amended returns totaled $14.1 million. Our samples in this audit test were not statistically valid and cannot be projected to the population overall with any statistical reliability. However, if the results of our samples are representative of the rest of the population, $3.8 million in Credits will have been recharacterized from interest-free loans to a nonrepayable refundable credit for these taxpayers in error.

Recommendation

Recommendation 1: The Director, Reporting Compliance, Wage and Investment Division, should identify those amended claims that changed the purchase year of the home and initiate post-refund examinations to ensure refunds for the invalid claims are recovered or the Homebuyer Credit is correctly classified. The TIGTA has provided the IRS with details on the cases previously described.

> ***Management's Response:*** IRS management agreed with this recommendation. An established method is in place to verify the actual purchase date of a home using third-party records. Claims for the Homebuyer Credit with purchase date inconsistencies will be considered for the post-refund examination pool.

Some Taxpayers Received Multiple Homebuyer Credits That Exceeded the Amounts Allowed by Law

A number of taxpayers received Homebuyer Credits in more than 1 tax year. We identified 70 taxpayers who received a Homebuyer Credit for both Tax Years 2008 and 2009. Of the 70 taxpayers, we found:

- 10 taxpayers (14 percent) received Homebuyer Credits as claimed on their original Tax Year 2008 return, then claimed second Homebuyer Credits on amended tax returns, which were processed and allowed by the IRS. The Homebuyer Credits totaled more than the $8,000 maximum allowed by law for 7 of the 10 taxpayers and less than the $8,000 maximum for the other 3 taxpayers. However, the 3 taxpayers did not appear to be entitled to the additional amount of Homebuyer Credit. All but **1**of the 10 taxpayers received all refund amounts with no subsequent IRS scrutiny. ***1****** *******************************1*************************.[7]

- **1** taxpayers (31 percent) filed amended returns claiming the same Homebuyer Credit for both Tax Years 2008 and 2009. The Credits were processed by the IRS for both years. The Homebuyer Credits totaled more than the $8,000 maximum allowed by law for all of these **1** taxpayers.

  Of the **1** duplicate claims processed in error:

  - ********************1************************************.
  - 12 taxpayers returned the refund checks or paid back the duplicate Credit.
  - 5 taxpayers' Credits were reversed, creating a balance due on the taxpayers' accounts.
  - The remaining 4 taxpayers received all refund amounts with no subsequent IRS actions.[8]

- 16 taxpayers (23 percent) filed only 1 amended return but IRS employees mistakenly applied the same Homebuyer Credit to 2 tax years.

  - 9 of these taxpayers returned one refund check or paid the refund amount back to the IRS.
  - 3 taxpayers' Credits were reversed, creating a balance due on the taxpayers' accounts.
  - The remaining 4 taxpayers received all refund amounts with no subsequent IRS actions.

Because source documents were not available, we could not determine the reason the remaining **1** cases received Homebuyer Credits in 2 consecutive years. We made multiple attempts to obtain these source documents.

IRS employees did not perform adequate research when processing these amended claims for the Homebuyer Credit, or simply processed the claims incorrectly. As a result, these taxpayers, and possibly more, received erroneous refunds.

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[7] Subsequent to our review, the IRS reversed the Credits on five of these accounts, creating a balance due on the taxpayers' accounts.
[8] Subsequent to our review, the IRS reversed all four of these Credits, creating a balance due on the taxpayers' accounts.

Recommendation

Recommendation 2: The Director, Reporting Compliance, Wage and Investment Division, should identify those taxpayers who received multiple Homebuyer Credits and initiate post-refund examinations to ensure the refunds are valid and any questionable refunds are recovered. The TIGTA has provided the IRS with details on the cases previously described.

> ***Management's Response:*** IRS management agreed and has taken significant steps to strengthen controls and reduce risks of duplicate/erroneous refunds. The IRS has implemented an unpostable check and filters to screen original and amended returns for pre-refund examinations to prevent duplicate/erroneous Homebuyer Credit refunds. Of the 73[9] taxpayers the TIGTA identified as receiving duplicate credit for both Tax Years 2008 and 2009, 59 were adjusted/reversed, ********1*********************, and the remaining 12 were referred to the Examination function for appropriate action.

Not All Questionable Amended Claims Were Sent to the Examination Function for Scrutiny

For qualifying homes purchased in Calendar Year 2008, the Homebuyer Credit could be claimed on an original filed Tax Year 2008 individual income tax return or by amending a Tax Year 2008 return using Form 1040X. For qualifying homes purchased in Calendar Years 2009 or 2010, the Homebuyer Credit could be claimed on an original filed Tax Year 2008,[10] 2009, or 2010 return, or taxpayers could elect to amend their prior year tax return using Form 1040X. Amending the prior year tax return allows taxpayers to claim the Homebuyer Credit for a home purchased in Calendar Year 2009 or 2010 without waiting to claim it on their Tax Year 2009 or 2010 return.

The IRS developed specific criteria to identify questionable claims for Homebuyer Credits on amended returns and implemented controls to apply these criteria during processing of the amended returns. The IRS reported that the controls were implemented on June 10, 2009. The controls were designed, in part, to identify taxpayers who had indications of home ownership within the last 3 years and route these returns to the Examination function for further scrutiny.

We found that the IRS's criteria to identify cases for Examination scrutiny overlooked certain cases. The Recovery Act increased the maximum Credit provided in the HERA from $7,500 to $8,000 and eliminated the requirement to repay the Credit. Some taxpayers who originally claimed the $7,500 repayable credit amended their returns to claim the additional $500, which also changed their Credit from repayable to nonrepayable. Many of these taxpayers amended the purchase dates of their homes, which was discussed earlier in this report. ****2(f)****

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[9] Preliminary data provided to the IRS contained **1**cases. During in-depth review of the data, TIGTA eliminated **1** cases and, therefore, referred to only **1** cases in our report.
[10] Homes purchased in Calendar Year 2009 before the Tax Year 2008 return was filed could be treated as purchased in Calendar Year 2008 and claimed on an original Tax Year 2008 return.

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*************************2(f)*******************. We brought this oversight to the IRS's attention, and they took immediate corrective action to address the issue.

To determine whether all questionable claims on amended returns meeting the IRS's criteria were identified and reviewed, we selected a statistically valid sample of 379 Forms 1040X (206 processed before the IRS's criteria were implemented, and 173 processed after the criteria were implemented).

Of the 206 amended returns processed prior to the implementation of the criteria, we found that none of the 64 cases that would have met Examination criteria, based on prior home ownership, had been examined. The average claim totaled $7,225. Based on our sample, we estimate that an additional 4,385 amended claims received by the IRS prior to the implementation of the criteria had indications of prior home ownership but were never examined. To address our issue, the IRS informed us that it screened the claims made on amended returns prior to implementation of the criteria and referred 7,911 cases to the Examination function for its consideration. The Examination function agreed to include 2,872 returns in its post-refund examinations. As of December 31, 2010, the IRS had conducted examinations on 904 taxpayers where the Homebuyer Credit was not allowed as claimed. The amount of Homebuyer Credits claimed on these amended returns for these 904 taxpayers totaled $6,408,930. Based on the IRS's examination results for amended Homebuyer Credit returns, we estimate the IRS can recover an additional $2,837,534 in erroneous claims from 406 examinations where a final determination was not made as of December 31, 2010.

Of the 173 amended returns processed after the implementation of the criteria, we found 50 with indications of prior home ownership within the last 3 years (which should have met the criteria for further scrutiny). However, 25 (50 percent) of these 50 were not identified as questionable and/or not referred to the Examination function. The average claim for the Homebuyer Credit on these 25 returns was $7,126. Based on our sample, we estimate that a total of 1,713 amended returns processed between June 10, 2009, and October 31, 2009, met examination criteria but were not appropriately referred to the Examination function for review.

The IRS believed the returns that were processed incorrectly in our sample were simply the result of the learning curve associated with a new process. We performed follow-up tests to determine whether this issue had improved as employees became more familiar with the process. We selected an additional statistically valid sample of 346 Forms 1040X processed after implementation of the criteria and processed after our original sample of 1040Xs. Although the IRS employees' identification of returns meeting examination criteria had improved, we still found errors. Of the 346 amended returns, 175 had indications of prior home ownership within the last 3 years (which should have met the criteria for further scrutiny). We found that 10 (6 percent) of these 175 were not identified as questionable and/or were not referred to the Examination function. Although the IRS believed there would be a learning curve associated with the processing of these claims, it did not develop a quality review process specific to Homebuyer Credits. Without proper controls to ensure questionable claims are scrutinized, erroneous Credits will continue to be issued.

Recommendation

Recommendation 3: The Director, Submission Processing, Wage and Investment Division, should ensure that employees are provided proper training for screening claims made on all amended returns, particularly those involving new tax laws. Also, increased quality reviews of the amended claims involving new processes should be performed to determine if employees understand the new processes.

> ***Management's Response:*** IRS management stated that they are already taking steps to ensure that employees are properly trained and that new processes are followed. For Tax Year 2010, training resources allocated to newly hired employees increased from 2 to 5 weeks. Refresher training for permanent and returning employees was increased from 1 to 2 weeks. Training is also conducted throughout the year, whenever changes to procedures are issued, and includes procedures for screening claims.

Considerable Interest Amounts Were Paid on Amended Claims

The Recovery Act and the WHBAA allow taxpayers to treat homes they purchased in Calendar Year 2009 or 2010 as if they were purchased in the prior year (for purposes of claiming Homebuyer Credits) to allow for immediate use of the refunds associated with the Credits. Taxpayers electing to accelerate the Homebuyer Credits could amend their Tax Year 2008 returns to claim the Credits for purchases made in Calendar Year 2009 or amend their Tax Year 2009 returns for Calendar Year 2010 purchases if the Credits were not claimed on original Tax Year 2009 returns. Neither law specifically addressed how interest on these amended claims should be administered.

The Internal Revenue Code provides that interest shall be allowed and paid upon any overpayment in respect of any internal revenue tax. The IRS determined that interest on overpayments is mandatory unless specifically prohibited by law. Because no authority other than the general interest rules as provided in the Internal Revenue Code was found, the IRS determined taxpayers filing an amended claim for the Homebuyer Credit were entitled to interest as provided for by law. When paying interest on an overpayment, any credit available for refund is considered to originate as of the due date of the return for the tax year, generally April 15. Interest is allowed on any overpayment from the later of the credit received (originated) date or the return received date.

A taxpayer that timely filed his or her Tax Year 2008 return (on or before April 15, 2009) and purchased a home in September 2009 can amend their Tax Year 2008 return and will be paid interest on the amount of the Homebuyer Credit beginning April 15, 2009. Because the IRS considers April 15 as the date the Homebuyer Credit originated, they would pay interest beginning 5 months before the actual purchase date or liability to the taxpayer even occurred.

We determined that the IRS paid more than $76 million in interest on adjustments made for more than 580,000 amended claims related to the Homebuyer Credit through April 22, 2010. The interest paid was in addition to the amounts claimed for the actual Homebuyer Credit.

We reviewed statistically valid samples of 486 amended returns claiming the Homebuyer Credit processed through April 22, 2010. We determined the IRS paid an additional $22,332 in interest to taxpayers in our samples for the time period before the actual purchase date or true liability to the taxpayer occurred.

It was clear that Congress' intent in allowing taxpayers to amend their prior years' returns to immediately claim Homebuyer Credits was to get the credit amounts to the taxpayers as soon as possible. However, the law was silent regarding the payment of interest on these claims. We agree with the IRS's interpretation that interest on overpayments is mandatory unless specifically prohibited in the law. However, payment of interest on a liability before it occurred seems counterintuitive. Therefore, we believe the IRS should have sought clarification from Congress with respect to its intent to pay interest on these claims.

Based on our samples, we estimate that on amended returns processed through April 22, 2010, approximately $37 million in interest was paid on Homebuyer Credits before taxpayers had even purchased their homes.

Recommendation

Recommendation 4: If future legislation allows taxpayers to amend prior year returns to take advantage of a tax provision effective for the current year and does not address the payment of interest, the Commissioner, Wage and Investment Division, should work with the Department of the Treasury's Office of Tax Policy to seek clarification in the law to allow for administration of the provision in a manner that would avoid paying unnecessary interest.

> ***Management's Response:*** IRS management agreed with this recommendation. If legislative history is unclear as to when Congress intends overpayment to exist for purposes of allowing interest on amended returns claiming a benefit, the IRS will consult with the Department of the Treasury's Office of Tax Policy as to whether it should pursue a legislative clarification regarding the applicability of interest.

Some Delays Occurred in Processing Claims on Amended Returns

We analyzed Homebuyer Credit claims made on amended returns for indications of significant processing delays. If amended returns are not processed within 45 days, interest must be paid to the taxpayer on the amount of the claim until processing is completed on the return. If the return does not contain complete information necessary to process the claim, the time necessary to correspond and receive this information from the taxpayer is not included in the 45 days.

We reviewed a statistically valid sample[11] of 102 amended claims for the Homebuyer Credit to determine if the claims were processed timely. For purposes of this test, we considered 45 days to be timely and more than 75 days to be significantly delayed.

Of the 102 returns, we determined that 44 (43 percent) were processed timely. Those processed timely had an average processing time of 39 days. We found 19 (19 percent) with significant processing delays. However, seven of these cases were delayed primarily because the IRS had to correspond with the taxpayers for missing information. The remaining 12 cases were delayed in IRS functions, and 10 of these 12 cases were delayed, at least in part, because the Examination function waited for Examination employees to make a determination to audit the claims or accept the claims as filed and return them to the Accounts Management function for processing.

We found that 9 of the **1** cases were not audited and were referred back for processing. ***1*********************************
**************1***********************.[12] Overall, these **1**cases remained in the Examination function an average of 81 days before a determination was made to audit or not audit the Homebuyer Credit claims. One-half of these cases remained in Examination for more than 90 days.

The Examination function's procedures call for cases referred from the Accounts Management function to be selected for audit or returned to the Accounts Management function within 14 days. Untimely processing of cases results in unnecessary interest payments and increased burden on taxpayers whose refunds are delayed.

Recommendation

Recommendation 5: The Commissioner, Wage and Investment Division, should ensure that timeliness standards are adhered to for the screening and classification of cases referred to the Examination function from the Accounts Management function.

> **Management's Response:** IRS management agreed with the recommendation and has guidelines in place in its Examination function for cases referred from the Accounts Management function. They will continue to ensure procedures are followed and will take appropriate action when the workload impacts their ability to adhere to the guidelines.

[11] This sample was valid for all amended returns processed between November 2009 and April 2010.
[12] **************1*************************.

Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this review was to determine whether the IRS had controls in place to ensure that Homebuyer Credits claimed on *Amended U.S. Individual Income Tax Returns* (Forms 1040X) were appropriately processed. To accomplish our objective, we:

I. Identified and evaluated processing procedures and controls for amended returns within the IRS return processing functions and determined whether those procedures and controls would identify, correct, or refer questionable claims for the Homebuyer Credit to the Examination function.

   A. Reviewed documented IRS procedures within the Submission Processing and Accounts Management functions developed to identify and process claims for the Homebuyer Credit on amended returns as well as identify and stop erroneous or questionable claims.

   B. Determined the specific program and filters that the IRS used to identify case work (including referral to the Examination function) for questionable claims for the Homebuyer Credit filed on amended returns.

   C. Discussed with IRS personnel the controls, programs, and procedures in place to identify and prevent questionable claims for the Homebuyer Credit on amended returns. We determined the criteria used for either working the amended claims or referring the work to the Examination function.

   D. Determined whether there were any quality control reviews performed for identifying, working, or referring questionable claims for the Homebuyer Credit on amended returns, and assessed whether those reviews were adequate.

   E. Determined the documentation required for taxpayers to support their claims for the Homebuyer Credit.

II. Identified and evaluated the Examination function procedures and controls to ensure inappropriate claims for the Homebuyer Credit on amended returns are examined and corrected.

   A. Reviewed documented procedures and controls designed to identify and work erroneous claims for the Homebuyer Credit on amended returns.

   B. Determined whether adequate information is provided by the taxpayer and/or by other IRS functions making amended Homebuyer Credit claim referrals to allow

Examination function personnel to determine sufficient and appropriate resolution of the amended claims.

C. Determined whether there were any quality control reviews performed for identifying, working, or resolving questionable claims for the Homebuyer Credit on amended returns, and assessed whether those reviews were adequate.

III. Identified taxpayers filing amended returns claiming the Homebuyer Credit, and evaluated whether controls identified, stopped, and corrected erroneous claims.

A. Worked with TIGTA Information Services programmers to develop a computer program to identify taxpayers claiming the Homebuyer Credit on their Tax Year 2008 return and on amended returns filed for their Tax Year 2008, 2009, or 2010 return. The records were obtained from the IRS Master File.[1] We validated the data received by comparing 30 records to IRS Master File data.

B. Worked with TIGTA Information Services programmers to develop a computer program to match taxpayers filing an amended return identified in Step III.A. with data from returns on the Individual Return Transaction File[2] indicating prior home ownership. We validated the data received by comparing 30 records to IRS Master File data. From a population of 25,970 claims, we selected and reviewed a statistically valid sample[3] of 379 claims for indications that the return was identified for meeting examination criteria and was forwarded to the Examination function for further scrutiny. From a subsequent population of 3,395 claims, we selected and reviewed a statistically valid sample[4] of 346 claims for indications that the return was identified for meeting examination criteria and was forwarded to the Examination function for further scrutiny.

C. We used data from the files received from TIGTA Information Services employees to identify 1,225 taxpayers who claimed the Homebuyer Credit indicating a Calendar Year 2008 purchase on their original Tax Year 2008 return filed electronically and who then filed an amended return claiming the Homebuyer Credit indicating a

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[1] The IRS database that stores various types of taxpayer account information. This database included individual, business, and employee plans and exempt organizations data.
[2] The IRS computer file containing individual tax return data.
[3] The statistical sample size was selected by using a 95 percent confidence level, a ±5 percent precision, and a 50 percent expected error rate.
[4] The IRS believed the returns that were processed incorrectly in our original sample were simply the result of the learning curve associated with a new process. We performed follow-up tests to determine whether this issue had improved as employees became more familiar with the process. The statistical sample size was selected by using a 95 percent confidence level, a ±5 percent precision, and a 50 percent expected error rate.

Calendar Year 2009 or 2010 purchase. We selected and reviewed a judgmental sample[5] of 43 of these claims to determine why the year of purchase was changed.

D. We used data from the files received from TIGTA Information Services employees to identify 607 taxpayers who claimed the Homebuyer Credit on an amended return indicating a Calendar Year 2008 purchase with a subsequent amended return claiming the Homebuyer Credit indicating a Calendar Year 2009 or 2010 purchase. We selected and reviewed a judgmental sample[6] of 45 of these claims to determine why the year of purchase was changed.

E. Conducted research through third-party sources to verify if the Homebuyer Credits identified may have been legitimately claimed by the taxpayers.

IV. Identified and evaluated IRS controls over interest paid to taxpayers who claim the Homebuyer Credit on amended returns.

A. Researched the Internal Revenue Code, applicable laws, and IRS procedures related to paying interest on amended returns with Homebuyer Credit claims.

B. Worked with TIGTA Information Services programmers to develop a computer program to identify taxpayers claiming the Homebuyer Credit on amended returns and related interest and refund transactions. We validated the data received by comparing 30 records to IRS Master File data.

C. Selected and reviewed a statistically valid sample[7] of 384 of the population of 409,386 amended claims processed through October 31, 2009, to determine the amount of interest paid, how long it took the IRS to process the return, whether there were indications of significant processing delays, and whether the claims were questionable.

D. Selected and reviewed an additional statistically valid sample[8] of 102 of an additional population of 329,982 amended claims processed from November 1, 2009, through April 22, 2010, to determine the amount of interest paid, how long it took the IRS to process the return, whether there were indications of significant processing delays, and whether the claims were questionable.

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[5] We used a judgmental sample because we did not intend to project the results of this sample to the entire population.
[6] We used a judgmental sample because we did not intend to project the results of this sample to the entire population.
[7] The statistical sample size was selected by using a 95 percent confidence level, a ±5 percent precision, and a 50 percent expected error rate.
[8] The statistical sample size was selected by using a 95 percent confidence level, a ±10 percent precision, and a 50 percent expected error rate.

E. Determined from our samples whether the amount of interest paid was congruent with the law and in a manner that was fair and equitable to taxpayers.

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: the IRS's policies, procedures, and practices related to the processing of amended returns and the identification of erroneous claims for the Homebuyer Credit filed on amended returns.

Appendix II

Major Contributors to This Report

Michael E. McKenney, Assistant Inspector General for Audit (Returns Processing and Account Services)
Kyle R. Andersen, Director
Larry Madsen, Audit Manager
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Appendix III

Report Distribution List

Commissioner C
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Deputy Commissioner for Services and Enforcement SE
Deputy Commissioner, Wage and Investment Division SE:W
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Director, Accounts Management, Wage and Investment Division SE:W:CAS:AM
Director, Submission Processing, Wage and Investment Division SE:W:CAS:SP
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Director, Office of Program Evaluation and Risk Analysis RAS:O
Office of Internal Control OS:CFO:CPIC:IC
Audit Liaison: Chief, Program Evaluation and Improvement, Wage and Investment Division SE:W:S:PRA:PEI

Appendix IV

Outcome Measures

This appendix presents detailed information on the measurable impact that our recommended corrective actions will have on tax administration. These benefits will be incorporated into our Semiannual Report to Congress.

Type and Value of Outcome Measure:

- Funds Put to Better Use – Actual; $6,408,930 of amended First-Time Homebuyer Credits claimed by 904 taxpayers was disallowed in post-refund examinations (see page 9).

Methodology Used to Measure the Reported Benefit:

The IRS developed specific criteria to identify questionable claims for Homebuyer Credits on amended returns and implemented controls to apply these criteria during processing of the amended returns. The controls were designed, in part, to identify taxpayers who had indications of home ownership within the last 3 years and route these returns to the Examination function for further scrutiny. Our audit tests identified amended returns that were processed prior to the implementation of the criteria, but were not appropriately referred to the Examination function for review.

To address our issue, the IRS screened claims made on amended returns prior to implementation of its criteria and agreed to include 2,872 returns in its post-refund examinations. As of December 31, 2010, the IRS had conducted examinations on 904 taxpayers and disallowed the Homebuyer Credit. The amount of Homebuyer Credits claimed on the amended returns for these 904 taxpayers totaled $6,408,930.

Type and Value of Outcome Measure:

- Funds Put to Better Use – Potential; $2,837,534 of erroneous refunds to 406 taxpayers claiming amended First-Time Homebuyer Credits (see page 9).

Methodology Used to Measure the Reported Benefit:

The IRS developed specific criteria to identify questionable claims for Homebuyer Credits on amended returns and implemented controls to apply these criteria during processing of the amended returns. The controls were designed, in part, to identify taxpayers who had indications of home ownership within the last 3 years and route these returns to the Examination function for further scrutiny. Our audit tests identified amended returns that were processed prior to the implementation of the criteria but were not appropriately referred to the Examination function for review.

To address our issue, the IRS screened claims made on amended returns prior to implementation of its criteria and agreed to include 2,872 returns in its post-refund examinations. As of December 31, 2010, the IRS had open examinations on 842 of these taxpayers without a final determination being made.

We determined the average amount of Homebuyer Credit claimed on the amended returns for these 842 taxpayers was $6,989. The IRS's examinations of amended returns have resulted in 48.21 percent of Homebuyer Credit claims being disallowed through December 31, 2010. Using these examination results, multiplying 0.4821 by the 842 taxpayers with open examinations, we estimate the IRS will disallow the Homebuyer Credit on an additional 406 returns. By multiplying the 406 returns with disallowed claims by the $6,989 average claim, we estimate the IRS can recover $2,837,534 in erroneous claims from these examinations.

Appendix V

Management's Response to the Draft Report

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
ATLANTA, GA 30308

COMMISSIONER
WAGE AND INVESTMENT DIVISION

RECEIVED
JUN - 3 2011

June 3, 2011

MEMORANDUM FOR MICHAEL R. PHILLIPS
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Richard Byrd, Jr.
Commissioner, Wage and Investment Division

SUBJECT: Draft Audit Report – Control Weaknesses Over Amended Returns Allowed Some Inappropriate Claims for the First-Time Homebuyer Credit to Be Allowed (Audit # 201040140)

We have reviewed the subject draft report which is part of the Treasury Inspector General for Tax Administration's (TIGTA) on-going independent review of the IRS administration of the First-Time Homebuyer Credit (FTHBC). We appreciate your recognition of the positive steps we have taken to facilitate the accurate processing of the FTHBC claimed on amended returns. This legislation, which allows taxpayers to claim the FTHBC on their prior year amended returns, emphasized the intent of Congress to quickly deliver the benefits of the legislation. The IRS takes the administration of tax credits very seriously and recognized the need to deliver these benefits timely, while ensuring that appropriate and prudent controls and filters were in place to minimize errors and fraud.

The American Recovery and Reinvestment Act of 2009 was enacted during the 2009 Filing Season. After enactment, IRS had to implement a procedure to process original returns claiming the FTHBC claims from 2009 purchasers, as well as those claiming the credit on amended Tax Year 2008 returns. The IRS faced significant challenges with amended FTHBC returns, as well as with original returns claiming the credit. We immediately took action to ensure the controls, developed and implemented for original FTHBC return processing, were mirrored in the processing of the amended returns. We have also updated this mirrored amended return processing approach for subsequent legislation. As noted in your report, we increased our staffing resources, and developed and provided instructions and training necessary for our employees to process FTHBC amended returns.

2

Through the end of March 2011, the IRS processed over 4 million FTHBC claims and provided over $28 billion dollars to homebuyers. We also closed almost 450,000 examinations, protecting over $1.4 billion in revenue, including examinations of over 225,000 amended returns where over $820 million was protected.

With reference to the measurable benefits on tax administration included in the Appendix IV of your report, we agree with TIGTA's estimates.

Attached are our responses to your specific recommendations. If you have any questions, please contact me, or a member of your staff may contact Robin L. Canady, Director, Strategy and Finance, at (404) 338-8801.

Attachment

Attachment

RECOMMENDATION 1:
The Director, Reporting Compliance, Wage and Investment Division, should identify the amended claims that changed the purchase year of the home and initiate post-refund examinations to ensure refunds for the invalid claims are recovered or the Homebuyer Credit is correctly classified. The TIGTA has provided the IRS with details on the cases described above.

CORRECTIVE ACTION:
We agree with this recommendation. The IRS has an established method in place, using third-party public property records, to verify the actual purchase date of a home for individuals for claimed the First Time Homebuyer Credit (FTHBC). Claims with purchase date inconsistencies will be considered for the post refund examination pool.

Implementation Date:
April 15, 2012

Responsible Official:
Director, Reporting Compliance, Wage and Investment Division
Director, Earned Income Tax Credit, Wage and Investment Division

Corrective Action Monitoring Plan
The IRS will monitor this corrective action as part of our internal management control system.

RECOMMENDATION 2:
The Director, Reporting Compliance, Wage and Investment Division, should identify those taxpayers that received multiple Homebuyer Credits and initiate post-refund examinations to ensure the refunds are valid and any questionable refunds are recovered. The TIGTA has provided the IRS with details on the cases described above.

CORRECTIVE ACTION:
We agree with this recommendation. The IRS has taken significant steps to strengthen controls and reduce risks of duplicate/erroneous refunds. We have implemented an unpostable check and filters to screen original and amended returns for pre-refund examinations to prevent duplicate/erroneous FTHBC refunds. Of the 73 taxpayers the Treasury Inspector General for Tax Administration identified as receiving a duplicate credit for both the 2008 and 2009 Tax Years, 59 were adjusted/reversed, and ***1*****. The 12 remaining cases have been referred to the Examination Function for appropriate action by the implementation date indicated below.

Implementation Date:
October 15, 2011

RESPONSIBLE OFFICIAL
Director, Reporting Compliance, Wage and Investment Division

CORRECTIVE ACTION MONITORING PLAN
The IRS will monitor this corrective action as part of our internal management control system.

RECOMMENDATION 3: The Director, Submission Processing, Wage and Investment Division, should ensure that employees are provided proper training for screening claims made on all amended returns, particularly those involving new tax laws. Also, increased quality reviews of the amended claims involving new processes should be performed to determine if employees understand the new processes.

CORRECTIVE ACTION
The IRS is already taking steps to ensure that employees are properly trained and that new processes are followed. For Tax Year 2010, training resources allocated to newly hired employees increased from two to five weeks. We also increased refresher training, for permanent and return to duty employees, from one to two weeks. Training is also conducted throughout the year, whenever changes to procedures, are issued. This on-going training includes procedures for screening claims. Based on the sample contained in the draft audit report (page 10), after implementation of our increased training for employees, there was a 44 percent increase in correct processing of Forms 1040X, *Amended U.S. Individual Income Tax Returns*, claiming the FTHBC.

Our own, statistically valid, internal quality review shows that for Fiscal Year 2010, the processing accuracy of Form 1040X in the Submission Processing Function was 90.2 percent. The current quality review process, combined with required managerial review, ensures quality return processing, and identifies trends and/or issues that require additional training. When a problem is identified by quality and/or managerial review, additional training is provided.

IMPLEMENTATION DATE
Implemented and ongoing

RESPONSIBLE OFFICIAL
N/A

CORRECTIVE ACTION MONITORING PLAN
N/A

RECOMMENDATION 4: If future legislation allows taxpayers to amend prior year returns to take advantage of a tax provision effective for the current year and does not address the payment of interest, the Commissioner, Wage and Investment Division, should work with the Department of the Treasury's Office of Tax Policy to seek clarification in the law to allow for administration of the provision in a manner that would avoid paying unnecessary interest.

CORRECTIVE ACTION
We agree with this recommendation. If the legislative history is unclear as to when Congress intended the overpayment to exist for purposes of allowing interest on the amended returns claiming the benefit, we will consult with the Department of the Treasury's Office of Tax Policy as to whether we should pursue a legislative clarification regarding the applicability of interest.

IMPLEMENTATION DATE
Implemented and ongoing.

RESPONSIBLE OFFICIAL
Commissioner, Wage and Investment Division

CORRECTIVE ACTION MONITORING PLAN
The IRS will monitor this corrective action as part of our internal management control system.

RECOMMENDATION 5: The Commissioner, Wage and Investment Division, should ensure that timeliness standards are adhered to for the screening and classification of cases referred to the Examination function from Accounts Management.

CORRECTIVE ACTION
We agree with this recommendation. The Examination Function has guidelines in place in Internal Revenue Manual 4.19.16.1.2, Liability Determination - Claims, for cases referred from the Accounts Management function. We will continue to ensure our procedures are followed and will take appropriate action when our workload impacts our ability to adhere to the guidelines.

IMPLEMENTATION DATE
Implemented and ongoing

RESPONSIBLE OFFICIAL
Director, Reporting Compliance, Wage and Investment Division

CORRECTIVE ACTION MONITORING PLAN
The IRS will monitor this corrective action as part of our internal management control system.