

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE INTERNAL REVENUE SERVICE
CRIMINAL INVESTIGATION
AND
THE TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION
OFFICE OF INVESTIGATIONS
REGARDING INVESTIGATIVE RESPONSIBILITY**

Section I. Purpose

This Memorandum of Understanding (MOU) constitutes an agreement between the Internal Revenue Service (IRS), Criminal Investigation (CI), and the Treasury Inspector General for Tax Administration (TIGTA), Office of Investigations (OI) to clarify the responsibility of the IRS and TIGTA to investigate conduct involving IRS employees, potential offenses under the Internal Revenue laws or related statutes, and the protection of IRS employees.

For purposes of definition, "CI" refers to special agents and other employees, as appropriate, of the IRS, Criminal Investigation. "OI" refers to special agents and other employees, as appropriate, of the TIGTA, Office of Investigations.

While this MOU's purpose is to delineate investigatory responsibility, the fact that a particular investigation and/or prosecution recommendation was accomplished contrary to the provisions of this MOU will not constitute a defense for any person.

Section II. Responsibilities

It is understood and agreed that CI has responsibility to investigate violations of the Internal Revenue Code's substantive criminal tax provisions, such as, § 7201 attempt to evade or defeat tax, § 7203 failure to file or pay, § 7206 subscription of false documents, § 7212(a) corrupt endeavors to obstruct or impede the administration of the Internal Revenue Code, with exceptions noted below, and § 7212(b) forcible rescue of seized property, the Bank Secrecy Act 31 U.S.C. § 5311 et seq., and the money laundering forfeiture and criminal provisions in 18 U.S.C. §§ 1956 and 1957.

Similarly, it is understood and agreed that OI has responsibility to protect the IRS from threats against, or assaults upon, its employees, facilities, and infrastructure; and attempts to corrupt, impede, or otherwise interfere with tax administration.

OI investigates conduct violations by IRS employees, and other allegations regarding their integrity, such as disclosure violations punishable under I.R.C. § 7213, unauthorized inspection of returns and return information punishable under I.R.C. § 7213A, unlawful acts punishable under I.R.C. § 7214, wrongful disclosure or use of

information by other persons made punishable under I.R.C. § 7216, unlawful influence over taxpayer audits and other investigations punishable under I.R.C. § 7217, and the money laundering provisions in 18 U.S.C. §§ 1956 and 1957 where the underlying conduct is specifically subject to investigation by OI.

Additionally, OI has responsibility to investigate acts such as filing harassing liens or other frivolous documents done to intimidate, influence, tamper with, or retaliate against, IRS employees and their families, and other related persons such as witnesses and informants, punishable under I.R.C. § 7212(a).

OI also has responsibility to investigate acts which collectively constitute a broad-based, systemic attempt to corruptly interfere with or impede tax administration generally, as opposed to a substantive tax offense, punishable under I.R.C. § 7212(a). CI has responsibility to investigate substantive tax offenses, including the filing of tax instruments intended to result in personal gain to the taxpayer.

During the course of investigating allegations within the investigative responsibility of one bureau, the investigation may disclose information indicating the commission of an offense within the investigative responsibility of the other bureau. Except as otherwise provided in this MOU, the relevant information will be promptly provided to the other bureau for investigation.

Some investigations by their nature involve allegations within the responsibility of both bureaus, including employee misconduct involving substantive tax violations, certain tax preparer cases, etc. Cases involving allegations of substantive criminal tax violations by IRS employees will be jointly investigated by OI and CI. Where information indicates the involvement of a CI employee in any such offense, the responsible OI Special Agent in Charge (SAC) and the responsible CI Director, Field Operations (DFO), will ensure that the investigation is conducted by CI personnel from a field office other than the field office to which the subject CI employee is assigned.

The remainder of this section addresses responsibilities in particular situations.

A. Armed Escort Duties. OI has sole responsibility for providing armed escorts to IRS personnel, IRS contractors, witnesses, and other eligible persons. CI will continue to provide protection for the Commissioner of the IRS. Unless specifically asked by OI to provide assistance, CI will no longer be responsible for providing armed escorts to IRS employees.

As OI has sole responsibility for providing armed escorts, IRS management may not request and/or seek assistance from CI if their request for an armed escort has been denied by OI. If CI does receive a request for an armed escort from IRS management, CI will forward this request and/or refer the IRS employee/management official to the nearest OI office.

B. Assaults and Threats. Assaults upon and threats to IRS employees or their families, as well as to informants and witnesses, done to intimidate, influence, tamper with or retaliate against such persons, in violation of 26 U.S.C. § 7212(a), are primarily the investigative responsibility of OI. However, when the assault or threat occurs during a CI enforcement operation (such as the execution of a search or arrest warrant), CI may take appropriate enforcement action such as placing the attacker under arrest. CI will promptly notify OI and provide documentation concerning the incident and action taken. OI will determine what investigation by OI is warranted and will initiate appropriate processing of Potentially Dangerous Taxpayer (PDT) determinations. OI will continue to assist CI in responding to employee safety concerns in emergency circumstances.

C. Corrupt Endeavors to Impede. Allegations of corrupt interference with tax administration involve the violation of the “omnibus clause” of 26 U.S.C. § 7212(a). Consistent with IRS and Department of Justice (DOJ) Tax Division policy, the “omnibus clause” of § 7212(a) is appropriate in cases involving efforts to secure an unlawful advantage or benefit for someone. Examples of such conduct include acts done to impede an audit, examination or investigation such as destruction of records or creation of false records, actions to harass or intimidate IRS employees or other relevant persons, and acts done with undercover agents that will not support conspiracy charges under 18 U.S.C. § 371.

OI has investigative responsibility for § 7212(a) corrupt interference allegations that involve broad-based, systemic attempts to corruptly interfere with or impede tax administration generally, or actions designed to harass IRS employees or interfere with activities or functions of IRS personnel such as the filing of harassing liens that are designed to intimidate, influence, tamper with or retaliate against IRS employees and their families, or other related persons such as witnesses and informants, including the filing of fictitious Forms 8300 on public officials not directly involved in tax administration.

CI has investigative responsibility for § 7212(a) corrupt interference allegations that involve substantive tax violations of non-employees or interference with other activities within the responsibility of CI.

D. Forcible Rescue. Forcible rescues of property from the IRS, in violation of 26 U.S.C. § 7212(b), will be the investigative responsibility of CI. Assaults and threats in connection with such forcible rescues will be addressed, as described in section B above.

E. Bribery. OI has investigative responsibility in cases involving allegations of bribery, or attempted bribery, of IRS employees and cases where IRS employees are suspected of soliciting or receiving bribes. Additionally, OI will have responsibility in cases where non-IRS personnel are alleged to have solicited or received bribes while employed by the IRS. In cases where such bribe offers occur in the course of searches or arrests

executed by or at the behest of CI, CI will take appropriate action and notify OI of the event as soon as possible.

Certain allegations of bribery (such as those involving return preparers) may be indicative of potential substantive tax violations (e.g., refund schemes). Other investigations that uncover evidence that bribes have been paid in the past could also be indicative of potential money laundering or Bank Secrecy Act violations. As with all investigations, evidence of the commission of an offense within the investigative jurisdiction of CI will promptly be referred to CI by OI for investigation.

F. Return Preparer Cases. Consistent with the principles set forth in the introductory paragraphs of section II, allegations of misconduct by IRS personnel will be investigated by OI. If, in addition to allegations of IRS employee misconduct, there are any indications of substantive tax violations by an IRS employee such as the preparing or filing of, or assisting in preparing or filing of false documents, attempts to evade assessment of tax, or attempts to evade payment of tax, the investigation will be conducted jointly by OI and CI.

CI and OI acknowledge that there will be joint interest and investigative responsibility in cases alleging access to or influence over IRS personnel where there are also allegations of substantive tax, Bank Secrecy Act, and/or money laundering violations by non-IRS personnel. CI and OI will coordinate investigative activities in these cases. Evidence of the commission of an offense within the investigative jurisdiction of the other bureau will be promptly provided to that bureau for investigation.

By the very nature of their profession, illegal tax activities involving return preparers where there is no substantive evidence of IRS personnel involvement will fall within CI's area of responsibility. Such illegal return preparer activities often engender immediate harm to the tax system's financial integrity therefore CI will be notified, in writing, whenever OI determines that a return preparer is potentially involved in illegal activities. Upon discovery of such illegal return preparer activities, OI will telephonically notify CI in addition to providing written notification. Timeliness of notification is particularly important during the filing season. This notification will be made at a level no lower than the first-line supervisory level.

G. Harassing Liens. Consistent with the discussion at section II, item C above, OI has primary responsibility in cases where IRS employees or other persons associated with tax administration are victimized by persons filing meritless liens or other documents designed to harass or intimidate IRS employees. OI will refer such violations to the DOJ Tax Division as violations of I.R.C. § 7212(a) in accordance with existing procedures. In such cases, if information is obtained suggesting substantive tax violations have also been committed, OI will request the assistance of CI who will have responsibility to investigate such allegations and coordinate findings with OI. Tax violations will be processed through the CI SAC for referral to DOJ Tax Division.

H. Disclosure Violations. OI will have investigative responsibility over allegations of disclosures of, or unauthorized inspection of, returns or return information, in violation of I.R.C. § 7213, § 7213A or § 7216, by IRS personnel or other persons.

I. Tax and Financial Crime-Related Employee Misconduct. Allegations of misconduct by IRS employees are the investigative responsibility of OI. Although CI has been delegated responsibility to investigate substantive tax offenses and related offenses, the overriding goal of the IRS to maintain the integrity of its workforce mandates that disputes involving joint investigations regarding IRS personnel ultimately be resolved by OI, as detailed in section III.

In cases where IRS employees are allegedly committing substantive tax or related financial offenses such as filing false returns or other documents, willfully failing to file returns or pay taxes, willfully attempting to evade assessment or payment of taxes, filing false claims for refunds, conspiring to defraud the United States or to commit an offense against the United States (“Klein conspiracy”), OI will contact CI to obtain assistance in investigating the tax and financial aspects of any allegations. OI will request and CI will provide a special agent to assist in evaluating and, if appropriate, conducting the investigation of substantive tax or financial offenses. OI’s request for assistance in such investigations will normally be made by the OI Assistant Special Agent in Charge (ASAC) to the CI Supervisory Special Agent (SSA). The CI special agent assigned will have responsibility to investigate such allegations pursuant to delegated responsibilities to investigate substantive tax offenses and related offenses.

In any tax or financial crime investigation independently initiated by CI that is found to involve an IRS employee, CI will immediately notify OI of the allegations, at the Special Agent in Charge level. A recording memorandum will be placed into the investigative file denoting the notification.

If, after initial review of an employee tax allegation, the CI special agent working with OI believes that no criminal violation has occurred, the special agent should consult with CI management for concurrence and advise OI accordingly. If OI concurs that no criminal violations have occurred, the CI special agent will share their investigative findings with OI and provide a report to OI summarizing the tax issues and investigative activity to date. The CI special agent will not include conclusions or recommendations in the report. If approved by OI management, the report will become an attachment to the Report of Investigation (ROI).

This same process will be followed if CI conducts an investigation but does not believe there is reasonable probability of conviction. However, if tax charges are recommended by CI and agreed to by OI, the report will be submitted through normal CI channels to the appropriate OI SAC. The OI SAC will be responsible for forwarding the report to the CI SAC for referral.

If employee tax violations are alleged to have been committed by a CI employee, the information will be provided by the responsible OI SAC to the responsible CI DFO. The

CI DFO will ensure that the assigned CI special agent is from a different field office than the one to which the subject CI employee is assigned.

J. Impersonation of IRS Employee. OI has investigative responsibility in all cases in which non-employees are impersonating or otherwise holding themselves out to be IRS employees or wrongly using IRS seals or other identifying marks, for example, under 31 U.S.C. § 333(d).

K. Coordination of Investigation and Referral. In cases in which either OI or CI becomes aware that they are investigating the same person, entity, or conduct as the other, they will confer and coordinate to ensure that the investigations do not conflict. In all such cases, if the tax investigation involves an IRS employee, the investigation of that subject shall fall within the purview of OI with a CI special agent assigned as previously defined.

To ensure consistency, both parties agree to adhere to DOJ Tax Division prosecution policies and review procedures and agree the underlying criminal conduct as well as the proposed charges govern when DOJ Tax Division review is mandatory.

L. TIGTA Oversight Responsibilities. OI and CI agree to formulate procedures governing those circumstances when limited deviations from this MOU may be necessary to enable OI to fulfill its oversight responsibilities.

Section III. Resolution of Disagreements

Disagreements between CI and OI personnel regarding either the responsibility to investigate, the investigative process, and/or the disposition of a particular investigation will initially be elevated and resolved by the responsible CI SSA and the OI ASAC, with concurrence from the respective SACs. Matters unresolved at this level will be referred through each bureau's designated chain of authority, in the following sequence, until an agreement is reached:

1. To the CI SAC in consultation with the CI ASAC and OI SAC.
2. To the CI DFO, for the appropriate area, and the OI Deputy Assistant Inspector General for Investigations (Field or Headquarters Operations, as appropriate).
3. To the CI Deputy Chief, and the OI Assistant Inspector General for Investigations (Field or Headquarters Operations, as appropriate).
4. To the CI Chief, and the Deputy Inspector General for Investigations, OI.
5. If the matter is left unresolved, the matter will be referred to the Inspector General for Tax Administration, who will have final authority to resolve the matter.

Section IV. Amendment

This MOU may be amended by deleting, modifying, or adding provisions, upon the written agreement of both parties.

Section V. Termination

This MOU may be terminated by either party upon 60 days written notice.

Section VI. Approval

This MOU becomes effective when signed by the Chief, CI, and the Deputy Inspector General for Investigations, OI.

Richard Weber

12/24/14

Date



Richard Weber
Chief, Criminal Investigation
Internal Revenue Service

Michael R. Phillips

09/29/15

Date

Michael R. Phillips
Acting Principal Deputy Inspector General
Treasury Inspector General for Tax Administration

cc: Treasury Inspector General for Tax Administration
Commissioner of Internal Revenue