

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE INTERNAL REVENUE SERVICE
CRIMINAL INVESTIGATION DIVISION
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, Criminal Investigation Division (IRS-CID), and the Treasury Inspector General for Tax Administration, Office of Investigations (TIGTA-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, "CID" refers to special agents and other employees, as appropriate, of the IRS, Criminal Investigation Division. "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 CID has responsibility to investigate violations of the Internal Revenue Code's substantive criminal tax provisions, such as, § 7201 attempted evasion, § 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 against attempts to corrupt or threaten IRS employees. 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 Service 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). CID 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 statutes, certain tax preparer cases, etc. Cases involving allegations of substantive criminal tax violations by employees will be jointly investigated by OI and CID. Where information indicates the involvement of a CID employee in any such offense, the responsible OI special agent-in-charge (SAC) and the responsible CID Director, Field Operations (DFO), will ensure that the investigation is conducted by CID personnel from a field office other than the field office to which the subject CID employee is assigned.

The remainder of this section addresses responsibilities in particular situations.

A. Armed Escort Duties. CID has primary responsibility for providing armed escorts, as appropriate, for IRS personnel, informants and witnesses, and other eligible persons. OI has responsibility for providing armed escorts against subjects of open assault or threat investigations, or during IRS employee contacts with taxpayers who have been designated as Potentially Dangerous Taxpayers by the IRS.

B. Assaults and Threats. Assaults upon and threats to Service 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 in the course of CID armed escort assignments or during the execution of search or arrest warrants, CID may take appropriate enforcement action, such as placing the attacker under arrest. CID 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 determinations. OI will continue to assist CID 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 Service 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 Service 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 Service 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. CID 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 CID.

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

E. Bribery. OI will have investigative responsibility in cases involving allegations of bribery, including attempted bribery of IRS employees and cases where Service employees are suspected of soliciting or receiving bribes. Additionally, OI will have responsibility in cases where non-Service personnel are alleged to have solicited or received bribes while employed by the Service. In cases where such bribe offers occur in the course of searches or arrests executed by or at the behest of CID, CID 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 commission of an offense within the investigative jurisdiction of CID will be promptly provided by OI to CID for investigation.

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

CID and OI acknowledge that there will be joint interest and investigative responsibility in cases alleging access to or influence over Service personnel where there are also allegations of substantive tax, Bank Secrecy Act, and/or money laundering violations by non-Service personnel. CID and OI will coordinate investigative activities in these cases. Evidence of 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 Service personnel involvement, will fall within CID's area of responsibility. Such illegal return preparer activities often engender immediate harm to the tax system's financial integrity. Therefore, CID will be notified, in writing, whenever OI determines that a return preparer is potentially involved in illegal activities. Upon discovery, OI will telephonically notify CID, in addition to the written notification. Timeliness of notification is particularly important during the filing season. This notification will be made at 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 Service employees or other persons associated with tax administration are victimized by persons filing meritless liens or other documents designed to harass or intimidate Service 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 CID who will have responsibility to investigate such allegations and coordinate findings with OI. Tax violations will be processed through the CID 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 by Service personnel or other persons, in violation of I.R.C. § 7213, § 7213A or § 7216.

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

In cases where Service employees are allegedly committing substantive tax or 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 CID to obtain assistance in investigating the tax and financial aspects of any allegations. OI will request and CID 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 CID supervisory special agent. The CID 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 CID that is found to involve an IRS employee, CID will immediately notify OI of the allegations. A recording memorandum will be placed into the investigative file denoting the notification.

If, after initial review of an employee tax allegation, the CID special agent working with OI believes that no criminal violation has occurred, the special agent should consult with CID management for concurrence and advise OI accordingly. If OI concurs that no criminal violations have occurred, the CID 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 CID 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 CID conducts an investigation but does not believe there is reasonable probability of conviction. However, if tax charges are recommended by CID and agreed to by OI, the report will be submitted through normal CID channels to the appropriate OI SAC. The OI SAC will be responsible for forwarding the report to the CID SAC for referral.

If employee tax violations are alleged to have been committed by a CID employee, the information will be provided by the responsible OI SAC to the responsible CID DFO. The CID DFO will ensure that the assigned CID special agent is from a different field office than the one to which the subject CID 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 CID 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 a Service employee, the investigation of that subject shall fall within the purview of OI with a CID 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 CID 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

OI personnel will have the final authority to investigate and/or recommend prosecution to the CID SAC of IRS personnel tax violations. However, OI will rely heavily on CID's expertise to investigate the tax issues. Disagreements between CID and OI personnel regarding authority to investigate, the investigative process, and/or disposition of a particular case will initially be considered by the responsible CID supervisory special agent and the OI ASAC. 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 CID SAC in consultation with the CID ASAC and OI SAC.
2. To the CID DFO, for the appropriate area, and the OI Assistant Inspector General for Investigations (Field Operations).
3. To the Chief, CID, and the Deputy Inspector General for Investigations, OI.
4. If the matter is left unresolved, the matter will be referred to the Treasury Inspector General for Tax Administration, who will have final authority to resolve the matter.

Section IV. Amendment

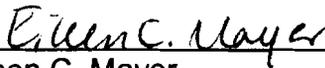
This MOU may be amended by deleting, modifying, or adding provisions, upon the written agreement of both parties.

Section V. Termination

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

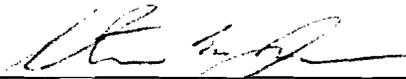
Section VI. Approval

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



Eileen C. Mayer
Chief, Criminal Investigation Division
Internal Revenue Service

12/02/08
Date



Steven M. Jones
Deputy Inspector General for Investigations
Treasury Inspector General for Tax Administration

11/19/2008
Date

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