

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

Section I. Purpose

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

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

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 IRS CI 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 TIGTA has responsibility to protect the IRS against attempts to corrupt or threaten IRS employees. TIGTA 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 or 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 USC §§1956 and 1957 where the underlying conduct is specifically subject to investigation by TIGTA. Additionally, TIGTA has responsibility to investigate acts, such as filing harassing liens, 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). TIGTA also has responsibility to investigate acts which collectively constitute a broad-based, systematic attempt to corruptly interfere with or impede tax administration generally, as opposed to a substantive tax offense, punishable under IRC 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 statutes, certain tax preparer cases, etc. Cases involving allegations of substantive criminal tax violations by employees will be jointly investigated by TIGTA and IRS CI. Where information indicates the involvement of an IRS CI employee in any such offense, the responsible TIGTA Special Agent in Charge (SAC) and the responsible IRS CI Director, Field Operations (DFO) will ensure that the investigation is conducted by IRS CI personnel from a field office other than the field office to which the subject IRS CI employee is assigned.

The remainder of this section addresses responsibilities in particular situations.

A. Armed Escort Duties. IRS CI has primary responsibility for providing armed escorts as appropriate for Service personnel, informants, witnesses, and other eligible persons.

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 TIGTA. However, when the assault or threat occurs in the course of IRS CI armed escort assignments or during the execution of search or arrest warrants, IRS CI may take appropriate enforcement action, such as placing the attacker under arrest. CI will promptly notify TIGTA and provide documentation concerning the incident and action taken. TIGTA will determine what investigation by TIGTA is warranted and will initiate appropriate processing of Potentially Dangerous Taxpayer

determinations. TIGTA 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 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.

TIGTA has investigative responsibility for § 7212(a) corrupt interference allegations which involve broad-based, systematic 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 filing of harassing liens which 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. IRS CI has investigative responsibility for § 7212(a) corrupt interference allegations which involve substantive tax violations of non-employees or interference with other activities within the responsibility of IRS CI.

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 IRS CI. Assaults and threats in connection with such forcible rescues will be addressed, as described in section B above.

E. Bribery. TIGTA 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, TIGTA 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 IRS CI, IRS CI will take appropriate action and notify TIGTA 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 (refund schemes, etc.). Other investigations which 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 IRS CI will be promptly provided by TIGTA to IRS CI 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 TIGTA. If, in addition, there are any indications of substantive tax violations, such as, preparing or filing, or assisting in preparing or filing false documents, attempts to evade assessment or payment of tax, by an IRS employee, the investigation will be conducted jointly by TIGTA and IRS CI.

IRS CI and TIGTA 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. IRS CI and TIGTA 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 IRS CI's area of responsibility. Such illegal return preparer activities often engender immediate harm to the tax system's financial integrity. Therefore, IRS CI will be notified, in writing, whenever TIGTA determines that a return preparer is potentially involved in illegal activities. Upon discovery, TIGTA will telephonically notify IRS CI, in addition to the written notification. Timeliness of notification is particularly important during the filing season. This notification will be made no lower than the first line supervisory level.

G. Harassing Liens. Consistent with the discussion at section II, item C above, TIGTA 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. TIGTA will refer such violations to the DOJ, Tax Division as violations of IRC § 7212(a), in accordance with existing procedures. In such cases, if information is obtained suggesting substantive tax violations have also been committed, TIGTA will request assistance of IRS CI who will have responsibility to investigate such allegations and coordinate findings with TIGTA. Tax violations will be processed through the IRS CI Special Agent in Charge (SAC) for referral to DOJ, Tax Division.

H. Disclosure Violations. TIGTA 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 TIGTA. Although IRS CI 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 the TIGTA, as detailed in section III.

In cases where Service employees are allegedly committing substantive tax or financial offenses, e.g., 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"), TIGTA will contact IRS CI to obtain assistance in investigating the tax and financial aspects of any allegations. TIGTA will request and IRS CI will provide a Special Agent to assist in evaluating and, if appropriate, conducting the investigation for substantive tax or financial offenses. TIGTA's request for assistance in such investigations will normally be made by the TIGTA Assistant Special Agent in Charge (ASAC) to the IRS CI Supervisory Special Agent. The IRS 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 IRS CI which is found to involve an IRS employee, IRS CI will immediately notify TIGTA 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 IRS CI special agent working with TIGTA believes that no criminal violation has occurred, the special agent should consult with IRS CI management for concurrence and advise TIGTA accordingly. If TIGTA concurs that no criminal violations have occurred, the IRS CI special agent will share investigative findings with TIGTA and provide a report to TIGTA summarizing the tax issues and investigative activity to date. The IRS CI special agent will not include conclusions or recommendations in the report. If approved by TIGTA management, the report will become an attachment to the Report of Investigation (ROI). This same process will be followed if IRS CI conducts an investigation but does not believe there is a reasonable probability of conviction. However, if tax charges are recommended by IRS CI and agreed to by TIGTA, the report will be submitted through normal IRS CI channels to the appropriate TIGTA Special Agent in Charge (SAC). The TIGTA SAC will be responsible for forwarding the report to the IRS CI SAC for referral.

If employee tax violations are alleged to have been committed by an IRS CI employee, the information will be provided by the responsible TIGTA SAC to the

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

J. Impersonation of IRS Employee. TIGTA 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, e.g., under 31 U.S.C. § 333(d).

K. Coordination of Investigation and Referral. In cases in which either TIGTA or IRS CI becomes aware that they are investigating the same person, entity, or conduct as the other, they will confer and coordinate to assure 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 TIGTA with an IRS 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. TIGTA and CI agree to formulate procedures governing those circumstances when limited deviations from this MOU may be necessary to enable TIGTA to fulfill its oversight responsibilities.

Section III. Resolution of Disagreements

TIGTA personnel will have the final authority to investigate and/or recommend prosecution to the IRS CI SAC of IRS personnel for tax violations. However, TIGTA will rely heavily on IRS CI's expertise to investigate the tax issues. Disagreements between IRS CI and TIGTA personnel regarding authority to investigate, the investigative process, and/or disposition of a particular case will initially be considered by the responsible IRS CI Supervisory Special Agent and the TIGTA (ASAC). Matters unresolved at this level will be referred through each bureau's designated chain of authority, in the following sequence, until reaching a level at which agreement is reached.

1. To the IRS CI (SAC) in consultation with the IRS CI (ASAC) and TIGTA (SAC).
2. To the IRS CI DFO for the appropriate area, and the TIGTA Associate Inspector General for Investigations
3. To the IRS Chief, Criminal Investigation and the TIGTA Deputy Inspector General for Investigations.

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

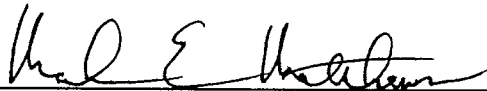
This MOU may be amended by deleting, modifying, or adding provisions, upon the written agreement of both parties.

Section V. Termination

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

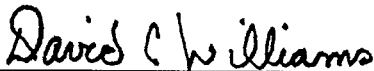
Section VI. Approval

This MOU becomes effective when signed by the Chief, Criminal Investigation and the Treasury Inspector General for Tax Administration.



Mark E. Matthews
Chief, Criminal Investigation

4 Aug 2000
Date



David C. Williams
Treasury Inspector General for Tax Administration

10 August 2000
Date

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