

**Fiscal Year 2005
Statutory Review of Restrictions on
Directly Contacting Taxpayers**

February 2005

Reference Number: 2005-40-040

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.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

INSPECTOR GENERAL
for TAX
ADMINISTRATION

February 22, 2005

MEMORANDUM FOR DEPUTY COMMISSIONER FOR SERVICES AND
ENFORCEMENT

Pamela J. Gardiner

FROM: Pamela J. Gardiner
Deputy Inspector General for Audit

SUBJECT: Final Audit Report - Fiscal Year 2005 Statutory Review of
Restrictions on Directly Contacting Taxpayers
(Audit # 200540027)

This report presents the results of our review of the Internal Revenue Service's (IRS) compliance with restrictions on direct contact with taxpayers. The overall objective of this review was to determine whether the IRS complied with legal guidelines dealing with directly contacting taxpayers and their representatives as set forth in Internal Revenue Code Sections (I.R.C. §§) 7521(b)(2) and (c) (2000).

In summary, we could not determine whether the IRS fully complied with I.R.C. §§ 7521(b)(2) and (c) requirements when directly contacting taxpayers and their representatives. This is the seventh year in which we have reported our inability to give an opinion on the IRS' compliance with the restrictions of I.R.C. §§ 7521(b)(2) and (c).

The Treasury Inspector General for Tax Administration is required under I.R.C. § 7803(d)(1)(A)(ii) (2000) to annually evaluate the IRS' compliance with the direct contact provisions of the law. IRS management information systems do not separately record or monitor direct contact requirements, and the Congress has not explicitly required the IRS to do so. Furthermore, we do not recommend the creation of a separate tracking system. Accordingly, we made no recommendations in this report.

Management's Response: The IRS concurred with our decision to not recommend the creation of a separate tracking system and indicated its appreciation of our support of legislation that would alleviate the requirement to perform this review. Management's complete response to the draft report is included as Appendix IV.

Copies of this report are also being sent to the IRS managers affected by the report results. Please contact me at (202) 622-6510 if you have questions or Michael R. Phillips, Assistant Inspector General for Audit (Wage and Investment Income Programs), at (202) 927-0597.

**Fiscal Year 2005 Statutory Review of
Restrictions on Directly Contacting Taxpayers**

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Fiscal Year 2005 Statutory Review of Restrictions on Directly Contacting Taxpayers

Background

The Omnibus Taxpayer Bill of Rights¹ created a number of safeguards to protect taxpayers being interviewed by an Internal Revenue Service (IRS) employee as part of an examination or collection action. Specifically, IRS employees are required to:

- Stop a taxpayer interview (unless the interview is required by court order) whenever a taxpayer requests to consult with a representative (someone who is permitted to represent taxpayers before the IRS).
- Obtain their immediate supervisor's approval to contact the taxpayer instead of the representative if the representative is responsible for unreasonably delaying the completion of an examination or collection action.

The provisions were created to protect the rights of taxpayers who are interviewed by an IRS employee as part of an examination or collection action. A taxpayer can file a civil suit against the IRS if an IRS employee intentionally disregards these provisions by denying a taxpayer the right to appropriate representation.

The Treasury Inspector General for Tax Administration (TIGTA) is required under Internal Revenue Code Section (I.R.C. §) 7803(d)(1)(A)(ii) (2000) to annually evaluate the IRS' compliance with the direct contact provisions of I.R.C. §§ 7521(b)(2) and (c) (2000).

This review was performed at the IRS National Headquarters in Washington, D.C., in the Small Business/Self-Employed Division, Wage and Investment Division, and Office of the National Taxpayer Advocate during the period October 2004 through January 2005. The audit was conducted in accordance with *Government Auditing Standards*. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

¹ Pub. L. No. 100-647, 102 Stat. 3730 (1988) (codified as amended in scattered sections of 5 U.S.C. and 26 U.S.C.).

**Fiscal Year 2005 Statutory Review of
Restrictions on Directly Contacting Taxpayers**

**Compliance With Statutory
Requirements for Restrictions
on Directly Contacting
Taxpayers Cannot Be
Determined**

We could not determine whether IRS employees followed proper procedures to stop an interview if the taxpayer requested to consult with a representative. Neither the IRS nor we could readily identify cases in which the taxpayer requested a representative or the IRS contacted the taxpayer directly and bypassed the representative.

Current IRS management information systems do not separately record or monitor cases in which taxpayers had requested to consult with a representative or in which IRS employees bypassed taxpayer representatives and contacted the taxpayers directly. In addition, there is no legal requirement for the IRS to develop a separate system that records or monitors cases involving these two procedures.

Taxpayer complaints that allege IRS employees bypassed their representatives and contacted them directly are tracked by the TIGTA Office of Investigations (OI). The TIGTA OI closed six direct contact complaint and investigation cases between November 2003 and October 2004. Our review of these cases showed that, in all six cases, the IRS employees did not violate the direct contact provisions of the I.R.C.

As a result, we do not recommend the creation of a separate tracking system and are making no recommendations in this report. This is the seventh year in which we have reported our inability to give an opinion on the IRS' compliance with the I.R.C. restrictions on direct contact.

Management's Response: The IRS concurred with our decision to not recommend the creation of a separate tracking system and indicated its appreciation of our support of legislation that would alleviate the requirement to perform this review.

Detailed Objective, Scope, and Methodology

The overall objective of this review was to determine whether the Internal Revenue Service (IRS) complied with legal guidelines dealing with directly contacting taxpayers and their representatives as set forth in Internal Revenue Code Sections 7521(b)(2) and (c) (2000). To accomplish this objective, we:

- I. Obtained confirmation from the Small Business/Self-Employed and Wage and Investment Divisions that the IRS neither has, nor plans to implement, a system or process to identify or track cases in which taxpayers have requested to consult with a representative or in which an IRS employee bypassed a representative.

- II. Interviewed various IRS and Treasury Inspector General for Tax Administration (TIGTA) personnel responsible for the Taxpayer Advocate Management Information System (TAMIS),¹ the Executive Control Management System (ECMS),² and the Performance and Results Information System (PARIS)³ to determine if there is a system or a plan for a system to track taxpayer complaints relating to violations of the direct contact provisions of the law.
 - A. Identified six direct contact cases (four complaints and two investigations) closed by the TIGTA Office of Investigations (OI) during the period November 25, 2003, through October 13, 2004.
 - B. Obtained and reviewed the closed TIGTA OI complaint and investigation files to determine their validity and what actions were taken by the IRS as a result of the complaints and investigations.

¹ The TAMIS is an electronic database and case inventory control system used by Taxpayer Advocate Service employees.

² The ECMS is an application used by the IRS to assign, control, and track information and correspondence.

³ The PARIS is a management information system that provides the TIGTA with the ability to manage and account for the thousands of complaints received and investigations initiated annually.

Major Contributors to This Report

Michael R. Phillips, Assistant Inspector General for Audit (Wage and Investment Income Programs)

Mary V. Baker, Director

Bryce Kisler, Audit Manager

Sharon Summers, Lead Auditor

Cindy Harris, Auditor

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Appendix III

Report Distribution List

Commissioner C
Office of the Commissioner – Attn: Chief of Staff C
Commissioner, Small Business/Self-Employed Division SE:S
Commissioner, Wage and Investment Division SE:W
National Taxpayer Advocate TA
Director, Collection, Small Business/Self-Employed Division SE:S:C
Director, Communications, Government Liaison, and Disclosure Small Business/Self-Employed Division SE:S:CGL&D
Director, Customer Assistance, Relationships, and Education, Wage and Investment Division SE:W:CAR
Director, Examination, Small Business/Self-Employed Division SE:S:E
Director, Strategy and Finance, Wage and Investment Division SE:W:S
Chief, Performance Improvement, Wage and Investment Division SE:W:S:PI
Chief Counsel CC
National Taxpayer Advocate TA
Director, Office of Legislative Affairs CL:LA
Director, Office of Program Evaluation and Risk Analysis RAS:O
Office of Management Controls OS:CFO:AR:M
Audit Liaisons:
 Chief, Customer Liaison, Small Business/Self-Employed Division SE:S:COM
 Director, Communications and Liaison, National Taxpayer Advocate TA:CCL
 Senior Operations Advisor, Wage and Investment Division SE:W:S

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Appendix IV

Management's Response to the Draft Report



NATIONAL DIRECTOR
FOR LEGISLATIVE
AFFAIRS

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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MEMORANDUM FOR GORDON C. MILBOURN III
ASSISTANT INSPECTOR GENERAL FOR AUDIT
(SMALL BUSINESS AND CORPORATE PROGRAMS)

From: Floyd Williams 
Director, Office of Legislative Affairs

Subject: Draft Audit Report: Fiscal Year 2005 Statutory Review of
Restrictions on Directly Contacting Taxpayers
(Audit No. 200540027)

I have reviewed your Draft Audit Report concerning the annual review and certification of Internal Revenue Service (IRS) compliance with legal guidelines dealing with directly contacting taxpayers and their representatives as set forth in Internal Revenue Code ("Code") section 7521(b)(2) and (c). As you noted in your report, you do not recommend that we create a separate system to track such compliance. We concur with that conclusion.

This provision continues to place a burden on both of our staffs to repeatedly address the issue. TIGTA has put forward and the IRS has supported proposals to repeal 26 U.S.C. section 7803(d)(1)(A)(ii), requiring annual evaluation of IRS compliance with the direct contact provisions of Code section 7521(b) and (c).

The US Senate approved legislation to repeal this provision on May 19, 2004 as part of the Tax Administration Good Government Act which was incorporated as an amendment to a previously passed House measure, H.R. 1528. The 108th Congress adjourned before the Senate and House could meet to reconcile their respective versions of H.R. 1528. The IRS continues to support Treasury in urging Congress to approve legislation to eliminate this mandatory audit. Senate staff has confirmed the tax writing committees' intent to again incorporate this repeal provision in legislation in the 109th Congress. Enactment of this provision will alleviate the need for TIGTA to annually review and certify compliance with Code section 7521(b) and (c).

We appreciate your support for the elimination of this unnecessary required report. If you have any questions, or would like to discuss this response in greater detail, please contact me at (202) 622-4725.