TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION

Revisions to Trust Fund Recovery Penalty Procedures Are Warranted

June 30, 2016

Reference Number: 2016-30-046

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REVISIONS TO TRUST FUND RECOVERY PENALTY PROCEDURES ARE WARRANTED

Highlights

Final Report issued on June 30, 2016

Highlights of Reference Number: 2016-30-046 to the Internal Revenue Service Commissioner for the Small Business/Self-Employed Division.

IMPACT ON TAXPAYERS

The Trust Fund Recovery Penalty (TFRP) is a penalty against any responsible person whose duty, status, and authority within a company or business requires them to collect, or to account for, and to pay over taxes held in trust for the benefit of the U.S. Government and who willfully fails to perform any of these activities. The IRS must prove that the responsible individual was aware of the outstanding taxes and either deliberately chose not to pay the taxes or recklessly disregarded an obvious risk that the taxes would not be paid. Because the TFRP can have significant economic consequences on those deemed responsible, it is essential that the IRS follow all required investigative and administrative procedures when making such determinations.

WHY TIGTA DID THE AUDIT

This audit was initiated based on concerns identified in a prior TIGTA review about the delay in assignment of TFRP cases. The overall objective of this review was to determine whether the Collection function is taking effective and timely actions to assess and collect the TFRP. This review focused on timeliness of assigning TFRP cases, Notice of Federal Tax Lien (NFTL) filings for TFRP cases, and control of TFRP cases that were appealed.

WHAT TIGTA FOUND

TIGTA reviewed two statistical samples of individuals with outstanding TFRP assessment liabilities (100 cases that were assigned and 100 cases that were unassigned). The IRS took an average of more than 15 months to assign cases to a revenue officer for collection action. Furthermore, only 20 (34 percent) of the 59 TFRP Field Collection cases were assigned to the same revenue officer who worked the business trust fund case. In addition, 72 (36 percent) of the 200 cases reviewed did not have NFTLs filed. TIGTA also reviewed a statistical sample of appealed TFRP assessments and found that they were not always timely sent to Appeals and that the inventory of cases sent to Appeals was not properly monitored.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the IRS: 1) require, when possible, the prompt assignment of the respective individual taxpayer account(s) to the same revenue officer working the business trust fund case; 2) clarify and emphasize the use of the NFTL in pyramiding trust fund cases; 3) require the revenue officer proposing the TFRP assessment to make a lien determination after the required notice period and update the Automated Trust Fund Recovery (ATFR) system to notify staff when an NFTL should be filed; 4) consider requiring revenue officers to complete a TFRP completeness checklist prior to sending cases to the Control Point Monitoring Advisory function to forward to Appeals; and 5) determine if it is feasible to systemically notify the Collection function when Appeals has made a determination.

In response to the report, IRS officials agreed with four of our five recommendations. IRS officials plan to: 1) emphasize prompt assignment of the individual taxpayer account to the same revenue officer when possible; 2) emphasize the use of the NFTL in pyramiding trust fund cases; 3) require group managers to ensure that a TFRP completeness checklist is used; and 4) determine if an interface between the Appeals Centralized Database System and the ATFR system is feasible.

The IRS also agreed to require the revenue officer proposing the TFRP assessment to make a lien determination; however, due to resource limitations, the IRS does not plan on updating the ATFR system to notify staff when an NFTL should be filed. TIGTA believes the IRS should identify an alternate method to ensure that NFTLs are filed timely.

TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

June 30, 2016

MEMORANDUM FOR COMMISSIONER, SMALL BUSINESS/SELF-EMPLOYED DIVISION

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Revisions to Trust Fund Recovery Penalty Procedures Are Warranted (Audit #201530011)

This report presents the results of our review to determine whether the Collection function is taking effective and timely actions to assess and collect the Trust Fund Recovery Penalty. This audit is included in our Fiscal Year 2016 Annual Audit Plan and addresses the major management challenge of Tax Compliance Initiatives.

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

If you have any questions, please contact me or Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations).

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Appendices

Abbreviations

ACS	Automated Collection System
ATFR	Automated Trust Fund Recovery
CPM	Control Point Monitoring
FY	Fiscal Year
GAO	Government Accountability Office
I.R.C.	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
NFTL	Notice of Federal Tax Lien
TFRP	Trust Fund Recovery Penalty

Background

The Internal Revenue Service (IRS) estimates that approximately $4 billion of payroll taxes go uncollected each year and comprise a portion of the Tax Gap.[1] When employers fail to remit collected payroll taxes, it may be difficult to successfully pursue collection against those businesses, particularly if the entities are no longer in business. However, the IRS can use certain collection tools to collect some or all of the payroll tax delinquencies, including the Trust Fund Recovery Penalty (TFRP).[2] The TFRP is a penalty against any responsible person whose duty, status, and authority within a company or business requires them to collect, or to account for, and to pay over taxes held in trust for the benefit of the U.S. Government and who willfully fails to perform any of these activities.[3] The TFRP is applicable to employees' income tax withheld; employees' portion of Federal Insurance Contributions Act (Social Security) or Railroad Retirement Tax withheld; and collected excise taxes. The penalty is equal to the total amount of trust fund tax not paid over to the Government.

The TFRP is a significant collection tool for the IRS in collecting delinquent payroll taxes as it allows the Government to reach responsible parties otherwise shielded from those tax liabilities including officers, shareholders, and employees of a corporation, partnership, or limited liability company. It is not necessary to assess the TFRP against parties that are already fully liable for the taxes such as a sole proprietorship, the general partner of a regular partnership, and a qualified intermediary.

The IRS must prove that the responsible individual was aware of the outstanding taxes and either deliberately chose not to pay the taxes or recklessly disregarded an obvious risk that the taxes would not be paid. The IRS must demonstrate that the responsible person had both knowledge of the tax delinquency and the authority to satisfy the delinquency at the same time as the liability is incurred. For example, it is possible for a person to not be liable in a quarter in which he or she had authority to address the liability but no knowledge of the delinquency. This same person can be found liable in another quarter if he or she had knowledge of the liability even if his or her authority has diminished.[4]

[1] See Appendix IV for a glossary of terms. The Tax Gap is the estimated difference between the amount of tax that taxpayers should pay and the amount that is paid voluntarily and on time. For Tax Year 2006, the IRS estimated that the total Tax Gap was $450 billion and the amount attributable to assessed but unpaid taxes was $46 billion. While excise taxes are trust fund taxes subject to the TFRP, they are only a small fraction of TFRP liabilities.
[2] Internal Revenue Code (I.R.C.) Section (§) 7202 also provides an important tool for the Government in that it criminalizes the willful failure to collect or pay over tax; however, due to various factors, this tool is seldom used.
[3] I.R.C. § 6672; Internal Revenue Manual 5.19.14.1.2 (Jan. 7, 2014).
[4] *Ferguson v. U.S.*, 343 F.Supp.2d 787 (S.D. Iowa 2004), while the controller's authority had been diminished in the quarter at issue, a reasonable inference remained that his authority was sufficient to compel payment of liabilities.

The deliberate intent or desire to defraud the Government is not necessary for the IRS to assess a TFRP. For example, an individual in a business who is responsible for collecting payroll taxes and decides to pay the monthly rent payment of the business instead of remitting employee withholdings to the Government can be found to be acting willfully and thus be assessed a TFRP. Typically, responsible individuals are owners or officers of a corporation, such as a president or treasurer.

The IRS's Collection function has sole responsibility for recommending an assertion of the TFRP; however, the Examination function may refer potential TFRP cases to the Collection function for investigation. Revenue officers are responsible for determining collection potential as well as investigating who they believe is responsible and willful for nonpayment. This is important because unlike other penalties, before assessing a TFRP, a revenue officer should establish that the responsible party has some ability to pay the penalty, currently or in the future. Even though the IRS may make assessments against more than one responsible person for a particular quarterly liability, it ultimately only collects the total amount once. The business or a responsible person may pay the entire amount, or everyone responsible may split payment of the amount.

The determination whether to pursue the TFRP is made no later than 120 calendar days after assignment by the revenue officer working the business collection case.[5] The revenue officer investigates all person(s) considered for assertion of the TFRP and documents the reasons for assertion or nonassertion for each person considered. A collectibility determination is completed for each potentially responsible person determined to be both responsible and willful. If the revenue officer determines that a TFRP assessment should be made, he or she submits the assessment recommendation to the group manager for approval no later than 120 calendar days from the date the determination was made.[6] Revenue officers use the Automated Trust Fund Recovery (ATFR) system to calculate the amount of the penalty to be proposed, document their investigation, and document the request for assertion of the penalty, which requires managerial approval. The group manager completes a thorough review of the TFRP recommendation to determine the adequacy of the recommendation prior to the revenue officer issuing the proposed assessment letter.

The revenue officer mails or hand delivers a proposed assessment letter with attachments (Form 2751, *Proposed Assessment of Trust Fund Recovery Penalty*; Publication 1, *The Taxpayer Bill of Rights*; and an envelope) to the taxpayer that advises the taxpayer of the proposed penalty and his or her legal rights. Taxpayers who agree with the proposed penalty sign and return Form 2751. The revenue officer then sends the case file to the Control Point Monitoring (CPM) Advisory function along with all required documentation. The CPM Advisory function staff is responsible for ensuring that TFRP case files are complete and accurate, the assessment statute

[5] Internal Revenue Manual 5.7.4.1.1(1) (Nov. 12, 2015).
[6] Internal Revenue Manual 5.7.4.1.1(8) (Nov. 12, 2015).

expiration dates are protected, and the final disposition of the case has been accurately recorded on the ATFR system.

The TFRP can have significant economic consequences on those deemed responsible. Therefore, it is essential that the IRS follow all required investigative and administrative procedures when making such determination, which includes promptly processing requests for hearings before the Office of Appeals (hereafter referred to as Appeals).[7] Taxpayers who disagree may submit a written appeal through their assigned revenue officer to appeal their case with Appeals. When a revenue officer receives an appeal request, he or she reviews it to determine if it is timely and complete. If the information that the taxpayer submits does not change the revenue officer's determination on the case, the revenue officer will secure managerial concurrence of the decision. After the group manager approves the request, the revenue officer sends the taxpayer a Letter 1154 (DO), *Notice of Protest of Trust Fund Recovery Penalty to be Forwarded to Appeals*, and then forwards the case file with the required documentation to the CPM Advisory function. Once the physical case file is received, CPM Advisory function staff conducts a technical review of the case file and, if it is complete and acceptable, forwards it to Appeals.

Figure 1 provides the number of TFRP assessment tax modules opened and closed, ending inventory, and the amount collected for Fiscal Years (FY) 2011 through 2015.

Figure 1: TFRP Assessments[8]

	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Tax Modules Assessed	302,450	349,637	281,289	281,415	271,860
Tax Modules Closed	256,182	290,456	328,046	275,763	267,022
Tax Modules Ending Inventory	383,339	443,248	404,990	410,270	415,506
Total Assessments Ending Inventory (in millions)	$5,233	$5,706	$5,499	$5,892	$6,082
Total Assessments Collected (in millions)	$96	$110	$116	$112	$114

Source: Collection Activity Reports, Report Symbol NO-5000-2.

[7] National Taxpayer Advocate, *2007 Annual Report to Congress – Volume One*.
[8] Collection Activity Report NO-5000-2 only includes the TFRP assessments that are in taxpayer delinquent account status in the Queue, Field Collection, Automated Collection System/Customer Service, and Compliance Services Collection Operations. The TFRP module values and ending inventory dollar amounts are inclusive of multiple assessments in which more than one responsible party is assessed a TFRP for the same business entity and therefore not all will be collectible.

We previously conducted a review on the investigation phase (prior to assessment) of the TFRP process.[9] During that review, we found untimely TFRP actions, expired assessment statutes, unsupported collectibility determinations, and incomplete TFRP investigations associated with installment agreement and currently not collectible cases. Additionally, the Government Accountability Office (GAO) previously reported that the IRS was not timely assessing the TFRP to individuals responsible for not remitting business payroll tax debts.[10] The GAO also reported that the IRS did not place as high a priority on collection efforts against the responsible owners or officers as it does the business, and it treats the TFRP as a separate collection effort unrelated to the business. This review focused on the timeliness of assigning TFRP cases, Notice of Federal Tax Lien (NFTL) filings for TFRP cases, and the control of TFRP cases that were appealed.

This review was performed at the IRS, Field Collection offices in Saint Paul, Minnesota, and New York, New York, and with information obtained from the Office of Appeals in Washington, D.C., and the Small Business/Self-Employed Division Headquarters in New Carrollton, Maryland, during the period May 2015 through March 2016. 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 objective. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

[9] Treasury Inspector General for Tax Administration, Ref. No. 2014-30-034, *Trust Fund Recovery Penalty Actions Were Not Always Timely or Adequate* (May 2014).
[10] GAO, GAO-08-617, *TAX COMPLIANCE: Businesses Owe Billions in Federal Payroll Taxes* (July 25, 2008).

Results of Review

We obtained two random samples of taxpayers assessed a TFRP during FY 2011 to determine whether effective and timely actions were taken to assess and collect the TFRP.[11] Our samples were selected based on taxpayers with unpaid TFRP assessments as of December 31, 2014.[12] The first random sample of 100 taxpayers was selected from taxpayers who were assigned to the Automated Collection System (ACS) or Field Collection.[13] The second random sample of 100 taxpayers was selected from taxpayers who were in the Collection Queue and available for assignment (but were unassigned).[14] Figure 2 breaks down the status for the assigned and unassigned TFRP cases in our samples as of the date of our case reviews.

Figure 2: Sample Case Status

Case Status	Number of Cases From Assigned Sample	Number of Cases From Unassigned Sample	Total Number of Cases
In Collection Queue Awaiting Assignment	**1**	**1**	33
Closed As Currently Not Collectible	**1**	**1**	96
Assigned to the ACS	**1**	**1**	32
Assigned to Field Collection	**1**	**1**	6
Full Paid	**1**	**1**	11
Offer in Compromise	**1**	**1**	8
Installment Agreement	**1**	**1**	5
Litigation (including Bankruptcy)	**1**	**1**	6
Notice Status	**1**	**1**	3
Total	100	100	200

Source: Treasury Inspector General for Tax Administration case review status from the IRS Integrated Data Retrieval System.

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[11] FY 2011 was selected because it allowed a review of collection activities for three or more years after the TFRP was assessed.
[12] Our samples included cases closed as currently not collectible as of December 31, 2014.
[13] As of December 31, 2014, 59 cases had previously been or were currently assigned to Field Collection and 47 cases were assigned to the ACS.
[14] Some cases that were unassigned when we selected our sample were assigned or closed by the time we started our case review; other cases that were assigned when we selected our sample were unassigned by the time we started our case review (such as cases that moved from the ACS to the Collection Queue).

Nearly half of the TFRP assessments we reviewed were closed as currently not collectible by revenue officers or systemically, and another 36 percent were still being worked or awaiting assignment.[15] This is similar to the GAO's finding that the IRS considered 52 percent of the payroll tax debt, which is directly related to the TFRP assessments, to be currently not collectible.[16]

We also reviewed a third random sample of 100 taxpayer-appealed TFRP cases that went through the appeals process during FY 2013 to determine the adequacy and timeliness of TFRP case actions taken for taxpayers appealing a proposed TFRP assessment.

Individual Taxpayer Cases Were Not Always Assigned Timely After the Trust Fund Recovery Penalty Assessment

The revenue officer assigned to the business case investigates potentially responsible individuals paying over the trust fund taxes and proposes the TFRP based on the investigation. The revenue officer who worked the business case and conducted the investigation of the individuals assessed the TFRP can request that the individual taxpayer's TFRP assessment case be assigned to them. This is not required and sometimes the individual taxpayer is not in the revenue officer's geographical area, so the case is assigned to a different group. Regardless, the group manager ultimately determines case assignments based on the priority of work in the Queue and available revenue officer resources.

When a TFRP is assessed against an individual, the taxpayer is sent a notice advising him or her of the assessment. The case may be sent to the ACS, the Collection Queue, or directly to Field Collection to be worked, depending on the established business rules to route cases. Cases that are unresolved by the ACS are placed in the Collection Queue to await assignment by the group manager to a revenue officer. Because the TFRP cases have already had a collectibility determination completed by the original revenue officer assigned the business case, cases with immediate collection potential should quickly be assigned to attempt to collect the assessment before the individual taxpayer's financial situation changes and the collection of the TFRP may no longer be possible.

As of December 31, 2014, 59 of 100 assigned TFRP cases had previously been or were currently assigned to Field Collection, and the remaining 41 cases were assigned to the ACS.[17] As of the date of our review, 20 (34 percent) of the 59 Field Collection cases were assigned to the same revenue officer who investigated the individuals for the penalty when working the business case. This is consistent with the GAO report, which also found that more than half of cases that were

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[15] The 96 cases transferred to currently not collectible status included 46 systemic transfers from the Queue (four from the assigned sample and 42 from the unassigned sample).
[16] GAO, GAO-08-617, *TAX COMPLIANCE: Businesses Owe Billions in Federal Payroll Taxes* (July 25, 2008).
[17] The cases assigned to the ACS or Field Collection may have been assigned one or more times to the ACS or Field Collection after the assessment date.

assigned in its sample were not assigned to the same revenue officer who worked the related business case.[18] For the remaining 39 of 59 Field Collection cases in our sample of assigned TFRP cases, we could not always determine why the original revenue officer was not assigned the individual case. In 20 cases, the revenue officers who worked the business cases were no longer revenue officers and/or the individual taxpayer was outside of the revenue officer's geographical area. It is unclear why the remaining 19 individual cases were not assigned to the same revenue officer who worked the business case.

Additionally, we determined that for our sample of 100 assigned TFRP cases, it took an average of more than 15 months to be assigned.[19] For 51 of the 59 Field Collection cases, the range was from *1* calendar days to more than *1* years to be assigned after the TFRP was assessed. The remaining eight Field Collection cases were assigned prior to the TFRP assessment, with assignments ranging from *1* calendar days to *1* months before the TFRP was assessed. For these eight cases, the reason most were assigned prior to assessment was that the revenue officer working the business case requested the individual case. This is a best practice that should be considered whenever possible because the revenue officer working the business case investigated the individual, is already familiar with the taxpayer, and can expedite the collection of the TFRPs to avoid the need for the cases to await assignment in the Collection Queue.

Delays in case assignment have a significant impact on the collectibility of a balance due account, and delays in TFRP assignments were raised as a concern by the GAO.[20] The GAO recommended that the IRS review current case prioritization and assignment practices to determine if businesses with egregious payroll tax debt and the responsible owners or officers with a TFRP assessment could be treated as a single unified and coordinated collection effort assigned to a single revenue officer. The IRS agreed to explore assigning a single revenue officer to work both liabilities as one and subsequently revised Internal Revenue Manual (IRM) guidance to include direction for group managers to assign TFRP cases to the revenue officer working the underlying assessment cases if feasible. However, we found that group managers do not always assign a single revenue officer to work both liabilities as one unified collection effort. Furthermore, based on the results of our sample TFRP cases showing that cases take an average of more than 15 months before being assigned, the IRS's implementation of the recommendation has not been effective. Some research has suggested that collectibility on all individual taxes owed to the IRS is diminished by as much as 50 percent when a case ages from the first year to the second year and another 30 percent when the case ages from the second year to the third year.[21]

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[18] GAO, GAO-08-617, *TAX COMPLIANCE: Businesses Owe Billions in Federal Payroll Taxes* (July 25, 2008).
[19] The GAO did not report on the time it took to assign the cases.
[20] GAO, GAO-08-617, *TAX COMPLIANCE: Businesses Owe Billions in Federal Payroll Taxes* (July 25, 2008).
[21] Testimony of Nina E. Olson, National Taxpayer Advocate, Committee on House Appropriations Subcommittee on Financial Services and General Government (February 25, 2015).

Recommendation

Recommendation 1: The Director, Collection, Small Business/Self-Employed Division, should require, when possible, the prompt assignment of the respective individual taxpayer account(s) to the same revenue officer working the business trust fund case.

> **Management's Response:** IRS management agreed with this recommendation. IRM 1.4.50, *Resource Guide for Managers, Collection Group Manager, Territory Manager, and Area Director Operational Aid*, will be revised to emphasize, when possible, the prompt assignment of the respective individual taxpayer account(s) to the same revenue officer working the business trust fund cases.

Notices of Federal Tax Lien Were Not Always Filed on Trust Fund Recovery Penalty Cases

A Federal tax lien is the Government's legal claim against property, including the current and future rights representing the tax or tax-related debt of an individual or business. The lien protects the Government's interest in all property and rights to property, whether real or personal. A Federal tax lien exists after:

- The IRS assesses the liability against the taxpayer.
- The IRS sends the taxpayer a notice and demand for payment.
- The taxpayer neglects or refuses to fully pay the debt in time.[22]

While the Government's lien arises after these steps by operation of law, this statutory lien is ineffective against certain third parties such as holders of a security interest, purchasers, and judgment creditors unless the IRS files an NFTL.[23] The NFTL is a public document filed with designated State and local jurisdictions to alert creditors that the Government has a legal interest in the taxpayer's property.

As the IRS procedures acknowledge, the large number of in-business taxpayers that pyramid (accumulate) unpaid trust fund tax liabilities is a significant compliance problem in that some individual taxpayers have multiple past TFRP assessments yet continue to move from one failed business to another, leaving additional unpaid TFRP assessments.[24] A pyramiding taxpayer is in-business, not current with Federal tax deposits, and has two or more trust fund modules assigned to Field Collection. A taxpayer who is pyramiding taxes is not demonstrating a good

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[22] I.R.C. § 6321.
[23] I.R.C. § 6323.
[24] IRM 5.7.8.1 (May 1, 2012) states, "The large number of in-business taxpayers who repeatedly accrue trust fund taxes is a major compliance problem. We need to properly identify these taxpayers and take appropriate action to bring them into compliance with their filing and paying requirements."

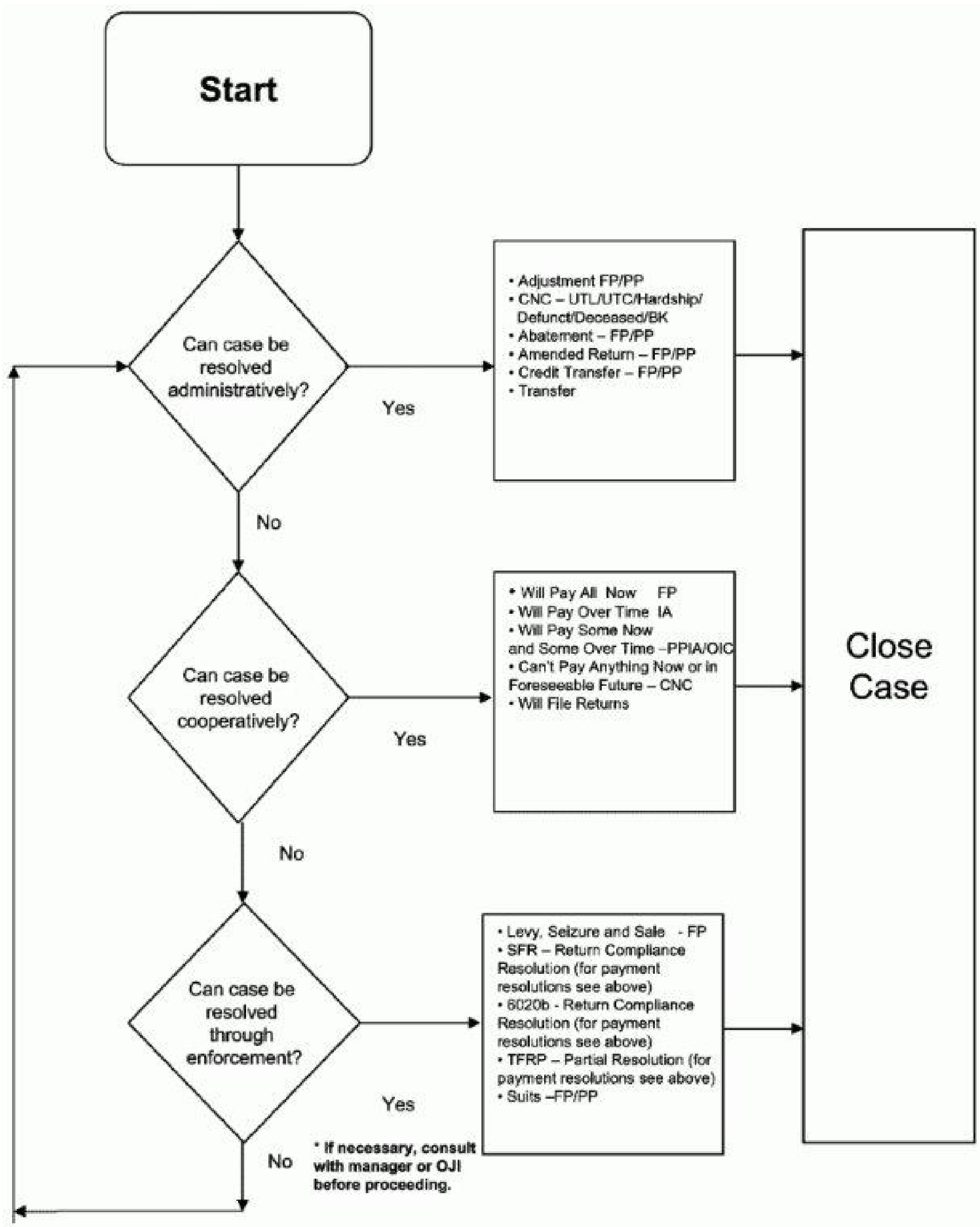
faith effort to comply with the tax laws and may be intentionally pyramiding tax obligations so as to avoid his or her tax obligations and obtain what is in essence a reduced cost of doing business at the expense of law-abiding taxpayers.[25]

Early intervention and continuous monitoring of Federal tax deposits can prevent in-business taxpayers from pyramiding.[26] Additionally, the NFTL is an important tool that places the public on notice, including secured lenders and purchasers for value, of the Government's interest in the taxpayer's property.[27] NFTLs can be effective in TFRP cases because they place persons on notice of the Government's interest who might otherwise be enabling the taxpayer to continue pyramiding tax liabilities, *e.g.*, creditors or purchasers for value. Revenue officers should make a timely decision about whether an NFTL should be filed (commonly referred to as a lien determination). In general, an NFTL should be filed when the total balance of all unpaid and assessed tax periods for the taxpayer is $10,000 or more.[28] Revenue officers also have discretion not to file an NFTL if it would hamper collection or if the circumstances of the case prohibit filing an NFTL.

While revenue officers are required to give special consideration to whether a taxpayer is pyramiding taxes before seizing property, no such special consideration is made before a lien is filed.[29] As the IRS's "Directed Approach to Casework" chart in Figure 3 indicates, the NFTL filing is not considered a part of the case resolution process.

[25] As the GAO concluded, unpaid payroll taxes result in the Government's General Fund subsidizing Social Security and Hospital Insurance Trust Funds. GAO, GAO-08-617, *TAX COMPLIANCE: Businesses Owe Billions in Federal Payroll Taxes* (July 25, 2008).
[26] IRM 5.7.8.3 (May 7, 2012).
[27] IRM 5.17.2.3.1 (Jan. 8, 2016).
[28] IRM 5.12.2.6 (Nov. 10, 2014).
[29] IRM 5.7.8.4.1(1) (May 7, 2012) provides that seizure should be made if the pyramiding taxpayer incurs another liability. While the NFTL filing is addressed in IRM 5.1.30.3 (Oct. 28, 2014) (*In Business Pyramiding Trust Fund Taxpayer*), it is listed only in the last section pertaining to "Revising Case Strategies" when the case strategy changes, and, even in that case, the language does not communicate the importance of an NFTL to assist in case resolution.

Figure 3: The IRS's "Directed Approach to Casework" Chart



Legend

***BK:** Bankruptcy*

***CNC:** Currently Not Collectible*

***FP:** Full Paid*

***IA:** Installment Agreement*

***OIC:** Offer in Compromise*

***OJI:** On-the-Job Instructor*

***PP:** Partial Payment*

***PPIA:** Partial Payment Installment Agreement*

***SFR:** Substitute for Return*

***UTC:** Unable to Contact*

***UTL:** Unable to Locate*

Source: IRM 5.1.30, Exhibit 5.1.30-1 (Feb. 18, 2011).

The timing of the NFTL filing is also important to its effectiveness in the collection process. In general, revenue officers are required to make the lien determination within 10 calendar days of contacting the individual taxpayer.[30] In addition, unlike levies, which give the taxpayers 30 calendar days to exercise their Collection Due Process rights before they are initiated, the IRS is not required to notify taxpayers about an NFTL until after it has been filed.[31] This helps to reduce the opportunity for taxpayers to dispose of their assets before the NFTL can be filed.[32]

TFRP cases can differ from other collection cases because the taxpayer often deals with two different revenue officers. The revenue officer who works the businesses' tax delinquency, *e.g.*, employment tax or excise tax, makes the decision about whether responsible individuals should be assessed the TFRP, and, if so, that revenue officer proposes the TFRP assessment on the responsible person(s). In order to make that decision, the revenue officer would normally have made contact with the potential responsible person. However, the revenue officer who worked the business case and proposed the TFRP is often not the same revenue officer who is later assigned to work the collection of the TFRP against the responsible person(s). There can be a significant delay (in our sample of cases, the average time frame exceeded 15 months) between the time the TFRP is assessed by the first revenue officer and the time it is later worked by the second revenue officer.

The IRM is silent about which revenue officers should conduct the lien determination and file the NFTL in TFRP cases that are not pre-assessed currently not collectible or pre-assessed installment agreements.[33] Group managers and revenue officers we interviewed were inconsistent on whether the revenue officer who works the business trust fund case should also file the NFTL on the individuals who are assessed the TFRP. Some revenue officers stated that they continue to monitor the associated individual taxpayer account(s) after closing the business case and submitting the individual case to the CPM Advisory function for processing. These revenue officers file an NFTL 10 calendar days after the TFRP assessment has posted and the initial notice and demand has been issued to the individual taxpayer(s). Because the case is not assigned to the revenue officer, he or she cannot submit the lien request using the Integrated Collection System, but rather completes Form 12636, *Request for Filing or Refiling Notice of Federal Tax Lien*, and forwards it to the lien unit to file the NFTL.

Other revenue officers stated that they do not file the NFTL, and some claimed they could not file an NFTL unless the individual case was assigned to their inventory and/or stated that sending the case file to the CPM Advisory function marked the end of their work related to the responsible person(s) assessed the TFRP. Collection Policy function officials advised us that the revenue officer could file the NFTL on the individual taxpayer after an initial notice and demand

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[30] IRM 5.12.2.3.2 (Nov. 10, 2014).
[31] I.R.C. § 6320.
[32] When a taxpayer disagrees with an NFTL filing, Collection function personnel are required to advise taxpayers of their right to appeal.
[33] IRM 5.12.1 (Oct. 14, 2013); IRM 5.12.2 (Nov. 10, 2014); and IRM 5.17.2 (Dec. 12, 2014).

was sent. However, because the IRM does not specifically address the NFTLs for TFRP cases, revenue officers who work the business case are not required to file the NFTL. As a result, most NFTLs are filed months after the assessment, when the individual TFRP case is assigned to a different revenue officer.

In our random samples of assigned and unassigned TFRP cases, we determined that 103 (52 percent) of the 200 individual taxpayers had multiple TFRP assessments. This is evidence that the business entity related to the TFRP assessments may be pyramiding trust fund liabilities.[34] Additionally, we determined that 181 (91 percent) of the 200 cases generally met the filing criteria for an NFTL. However, only seven of the 181 cases had liens filed before initial assignment.[35] Overall, from the 200 cases reviewed, we determined that 128 (64 percent) cases eventually had an NFTL filed and 72 (36 percent) cases did not have liens filed. The average time between the TFRP assessment and the NFTL filing for the 128 cases was approximately 15 months. These observations are consistent with the GAO's finding that the IRS's case assignment policy can delay the filing of liens for payroll tax cases.[36] If NFTLs were filed at the conclusion of the TFRP assessment process and the expiration of the taxpayers' pre-assessment appeal rights, the Government's interest and right of priority could have been established sooner for an estimated $11 million in TFRP assessments.

Revenue officers who work the business trust fund case rarely ensure that an NFTL is filed on the individual taxpayers for whom they have made TFRP assessments. Therefore, it can be several months or more after the TFRP is assessed before the individual taxpayer's case is assigned and the NFTL is finally filed to protect the Government's interest. The GAO recommended that the IRS develop and implement procedures to expeditiously file an NFTL against property as soon as possible after payroll tax debt is identified (including cases in the Queue awaiting assignment) and ensure that liens are filed on both businesses with unpaid payroll taxes and owners and/or officers assessed a TFRP.[37] The IRS agreed to evaluate existing practices and determine appropriate changes to its lien filing procedures to allow liens to be filed as soon as a payroll tax liability was identified. However, the IRS did not take effective corrective action to ensure that the NFTLs were filed timely. If the NFTL is not timely filed, individual taxpayer assets that were considered and available when the decision was made to assess the TFRP may no longer be available for the NFTL.

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[34] The additional TFRP assessments identified may or may not have been related to the same business entity as the one in our sample case review.
[35] Seven of the 181 cases that generally met NFTL filing criteria were not assigned to the ACS or Field Collection during the time of our review and remained in the Queue.
[36] GAO, GAO-08-617, *TAX COMPLIANCE: Businesses Owe Billions in Federal Payroll Taxes* (July 25, 2008).
[37] GAO, GAO-08-617, *TAX COMPLIANCE: Businesses Owe Billions in Federal Payroll Taxes* (July 25, 2008).

Recommendations

The Director, Collection, Small Business/Self-Employed Division, should:

Recommendation 2: Update the IRM to more clearly emphasize the use of the NFTL in appropriate circumstances in pyramiding trust fund cases.

> ***Management's Response:*** IRS management agreed with this recommendation. IRM 5.7.8, *In-Business Repeater or Pyramiding Taxpayers,* will be revised to more clearly emphasize the use of the NFTL in appropriate circumstances in pyramiding trust fund cases.

Recommendation 3: Update the IRM to require the revenue officer proposing the TFRP assessment to make a lien determination during the TFRP investigation. Management should also update the ATFR system to include an indicator that the revenue officer can use to notify appropriate staff that the TFRP has been assessed and that an NFTL should be filed based on the lien determination.

> ***Management's Response:*** IRS management partially agreed with this recommendation. Management will revise the IRM to require the revenue officer proposing the TFRP assessment to make a lien determination when submitting a TFRP for assessment.
>
> However, the implementation of the changes needed to update the ATFR system is subject to Information Technology budgetary constraints, limited resources, and competing priorities. In addition to programming resources, this change would require additional Collection resources and a change in TFRP case processing workflow after processing by the CPM Advisory function. Consequently, the IRS does not envision implementing these changes in the future.
>
> ***Office of Audit Comment:*** Since the IRS is unable to develop an indicator for the ATFR system, we believe it should identify an alternative method to ensure that NFTLs are filed when appropriate to protect the Government's interest. As included in the report, some revenue officers continue to monitor the associated individual taxpayer account(s) after closing the business case. These revenue officers file an NFTL after the TFRP assessment has posted and the initial notice and demand has been issued to the individual taxpayer(s). We believe the IRS should consider a similar process or identify another method to ensure that NFTLs are timely filed based on the lien determinations.

Trust Fund Recovery Penalty Cases Sent to Appeals Are Not Always Properly Controlled

During FY 2013, Appeals issued final determinations on 2,808 proposed TFRP assessments.[38] In our review of the 100 sampled Appeals cases, the majority of determinations resulted in TFRP assessment cases being sustained or partially sustained. Based on our review of the Appeals' case histories, the reasons for not sustaining the assessments generally referenced insufficient evidence to find the person responsible or willful. In our review of the sample cases, we found that the pre-assessment appealed cases were not always timely sent to Appeals and that the inventory of cases sent to Appeals was not properly monitored.

Pre-assessment appealed cases are not always timely sent to Appeals

Before a TFRP is assessed, taxpayers must be mailed or hand delivered a 60-day notice of the proposed assessment. This notice advises the taxpayer of the proposed penalty and of their appeal rights. Taxpayers who disagree may file a timely written appeal before the TFRP is assessed. The taxpayer has 60 calendar days in which to file a timely pre-assessment appeal (75 calendar days if the letter was addressed outside of the United States). In all cases, the revenue officer is required to complete TFRP processing and forward the case to the CPM Advisory function no later than 30 calendar days after the 60 calendar days allowed in the notice of the proposed assessment (a total of 90 or 105 calendar days). The CPM Advisory function will accept a case into its inventory if the physical case file is received within 20 business days of the revenue officer submission date. It must then process and send the case file to Appeals for review and determination within 10 business days of inventory acceptance.[39]

We determined that revenue officers and the CPM Advisory function staff did not always meet timeliness standards. In total, 37 of the 100 sampled appealed cases involved some degree of untimely action.[40]

- Revenue officers were not timely in 25 of 100 sampled cases (within the required 30 calendar days), ranging from *1* to *1* calendar days before submitting the appealed cases to the CPM Advisory function, with a median of 78 calendar days.
- The CPM Advisory function was not timely in seven of 100 sampled cases (within the required 20 business days to accept pending inventory), ranging from *1* to *1* business days before accepting the appealed cases into its inventory, with a median of 34 business days.

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[38] The IRS provided a download from the ATFR system representing the population of appealed TFRP cases for which Appeals made a determination during FY 2013.
[39] IRM 5.7.6.1(4) (Aug. 5, 2013) and IRM 5.7.10 (May 15, 2015).
[40] The number of cases noted in the bullets total more than the 37 untimely cases reported because some cases are represented in more than one category.

- The CPM Advisory function was not timely in 11 of 100 sampled cases (within the required 10 business days), ranging from *1* to *1* business days before sending the appealed cases to Appeals, with a median of 14 business days.

The CPM Advisory function staff advised us that TFRP case files received from revenue officers often do not include all of the required documentation. Therefore, the CPM Advisory function staff has to follow up with the revenue officer to obtain any missing information, which can delay the case being sent to Appeals. In our review of appealed sample cases, we determined that 11 of 100 case files were returned by the CPM Advisory function to the revenue officer because of missing documentation, which delayed the case being sent to Appeals.

The CPM Advisory function staff uses a checklist to review the TFRP case file for completeness. Revenue officers should follow the IRM guidance to ensure file completeness prior to submission, but they are not required to follow the checklist. For cases not sustained by Appeals, the delay affects the taxpayers because they have to wait additional time for resolution, which could affect their other financial decisions. For those TFRP assessments that Appeals sustains, the additional time delays the TFRP assessment and enforcement action, which can reduce the likelihood of collecting revenue.

Improvements could be made in monitoring cases sent to Appeals

When Appeals staff receives TFRP cases, information is input into the Appeals Centralized Database System, which is a computerized case control system used to track cases throughout the appeals process. After the Appeals staff makes a determination on the TFRP case, the staff faxes a copy of the determination letter to notify the originating CPM Advisory group of the outcome. Appeals staff then updates the Appeals Centralized Database System based on the appropriate closing instructions and returns the case file to the respective CPM Advisory group. If Appeals sustains the TFRP assessment, the CPM Advisory function staff processes the assessment against the taxpayer when the determination letter is received.

The CPM Advisory function staff advised us that Appeals sometimes faxes the determination letter or returns the case file documents to the wrong CPM Advisory group, which can delay the TFRP assessment because there is no interface between the ATFR system and the Appeals Centralized Database System.[41] Instead, the CPM Advisory group manager follows IRM guidance to manually reconcile the inventory of TFRP cases sent to Appeals every quarter. The group manager must follow up on any TFRP cases that are no longer in Appeals inventory for which the CPM Advisory group has not received a determination letter.

Significant time could elapse before the CPM Advisory function staff realizes that they did not receive a determination letter. In our sample cases, ***************1*****************
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[41] There are 27 CPM Advisory groups located across the country.

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******1******. These disruptions delay the assessment and enforcement of the TFRP, which can decrease the likelihood of collection and increase the risk that the TFRP may no longer be assessed due to a missed assessment statute expiration date.

Recommendations

The Director, Collection, Small Business/Self-Employed Division, should:

Recommendation 4: Consider requiring revenue officers to complete a TFRP completeness checklist that includes all items from the CPM Advisory checklist prior to sending cases to the CPM Advisory function to forward to Appeals to ensure that all required documentation is included.

> ***Management's Response:*** IRS management agreed with this recommendation. The IRS will require revenue officer group managers to ensure that a TFRP completeness checklist is completed that includes all items from the CPM Advisory checklist prior to sending cases to the CPM Advisory function to forward to Appeals so that all required documentation is included.

Recommendation 5: Determine if an interface between the Appeals Centralized Database System and the ATFR system is feasible to systemically notify the CPM Advisory function when Appeals has made a determination.

> ***Management's Response:*** IRS management agreed with this recommendation. The IRS will determine if an interface between the Appeals Centralized Database System and the ATFR system is feasible to systemically notify the CPM Advisory function when Appeals has made a determination. However, if the IRS determines an interface is feasible, any change would be dependent on budgetary constraints, limited resources, and competing priorities.

Appendix I

Detailed Objective, Scope, and Methodology

Our overall objective was to determine whether the Collection function is taking effective and timely actions to assess and collect the TFRP. To accomplish this objective, we:

I. Identified and reviewed current and proposed guidance over the administration of the Trust Fund Recovery Program.

II. Determined the efficiency and effectiveness of IRS systems and processes used to administer the Trust Fund Recovery Program.

   A. Interviewed Collection function management, group managers, revenue officers,[1] and the CPM Advisory function staff to determine the policies and processes in place over the administration of the Trust Fund Recovery Program.

   B. Compared TFRP guidance to actual processes based on the information gathered.

   C. Using the Treasury Inspector General for Tax Administration's Data Center Warehouse, identified a population of 130,799 unique individual taxpayers with unpaid TFRP assessments assigned to the ACS, Field Collection, or the Queue as of December 31, 2014. We stratified the population of taxpayer delinquent accounts related to TFRP assessments and determined that the largest number of cases were tax modules from FY 2011. The FY 2011 assessments included 7,722 unique taxpayers with 37,792 tax modules in the Collection Queue and 15,977 unique taxpayers with 78,494 tax modules assigned to the ACS or Field Collection.

   We obtained two separate statistically valid random samples of 100 taxpayers from the population of taxpayers in the Collection Queue and the population of taxpayers assigned to the ACS or Field Collection. We used random sampling to ensure that the samples were unbiased. We selected our samples using a 90 percent confidence level, a ± 6.5 percent precision, and a 10 percent estimated error rate. The Treasury Inspector General for Tax Administration's contracted statistician reviewed and assisted in developing the sampling plans.

      1. Reviewed case information from the Treasury Inspector General for Tax Administration's Data Center Warehouse, the Integrated Data Retrieval System, and relevant TFRP case documents for the two samples to identify potential program issues with the TFRP processes.

[1] See Appendix IV for a glossary of terms.

2. Reviewed ATFR system and/or Integrated Collection System histories to identify trends with cases returned by the CPM Advisory function to revenue officers before final acceptance into its inventory for processing.

3. Documented the timeliness and results of collection efforts including when and if the NFTLs had been issued to protect the Government's interest.

III. Determined the adequacy and timeliness of TFRP case actions taken by the IRS for taxpayers appealing a TFRP assessment.

A. Selected and reviewed a statistically valid random sample of 100 taxpayers from the population of 2,808 appealed proposed TFRP assessments from an ATFR system download provided by the IRS with final Appeal's determinations during FY 2013. We used random sampling to ensure that the sample was unbiased. We selected our sample using a 90 percent confidence level, a ± 6.5 percent precision, and a 10 percent estimated error rate. The Treasury Inspector General for Tax Administration's contracted statistician reviewed and assisted in developing the sampling plans.

B. Reviewed case information from the Treasury Inspector General for Tax Administration's Data Center Warehouse, the Integrated Data Retrieval System, and relevant TFRP case documents for the sample to assess the adequacy and timeliness of TFRP case actions taken for taxpayers appealing a TFRP assessment.

Data validation methodology

During this review, we evaluated the reasonableness of the FY 2011 TFRP population by comparing the Data Center Warehouse totals with the FY 2011 IRS Collection Activity Report, *Part 2 – Account Receivable Notices*, Report Symbol NO-5000-2/242, totals. The comparison supported that the data were sufficiently reliable and could be used to meet the objective of this audit. Additionally, we evaluated the reasonableness of sample cases selected by researching the IRS's Integrated Data Retrieval System for the accuracy of TFRP assessments for a nonrepresentative selection of 10 accounts for each sample. We also evaluated the reasonableness of the FY 2013 TFRP population of cases with final Appeals decisions by researching the IRS's Integrated Data Retrieval System for the accuracy of determinations for a nonrepresentative selection of 20 accounts. We determined that the data were sufficiently reliable for the purposes of this report.

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 that the following internal controls were relevant to our audit objective: the IRS's policies, procedures, and practices for processing the TFRPs. We evaluated these controls by interviewing management, group managers, and revenue officers; reviewing the TFRP program timeline; and analyzing data for individual taxpayers with unpaid TFRP assessments and individual taxpayers with final Appeals determinations on appealed proposed TFRP assessments.

Appendix II

Major Contributors to This Report

Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations)
Carl Aley, Director
Beverly Tamanaha, Audit Manager
Javier Fernandez, Lead Auditor
Janis Zuika, Senior Auditor
Jessica Aguilar, Auditor

Appendix III

Report Distribution List

Commissioner
Office of the Commissioner – Attn: Chief of Staff
Deputy Commissioner for Services and Enforcement
Deputy Commissioner, Small Business/Self-Employed Division
Director, Collection, Small Business/Self-Employed Division
Director, Campus Collection, Small Business/Self-Employed Division
Director, Field Collection, Small Business/Self-Employed Division
Director, Headquarters Collection, Small Business/Self-Employed Division
Director, Office of Audit Coordination

Appendix IV

Glossary of Terms

Term	Definition
Automated Collection System	A telephone contact system through which telephone assistors collect unpaid taxes and secure tax returns from delinquent taxpayers who have not complied with previous notices.
Bankruptcy	A legal proceeding administered by the U.S. Bankruptcy courts and governed by Title 11 of the United States Code (11 U.S.C.), commonly referred to as the Bankruptcy Code. The Bankruptcy Code establishes the law under which bankruptcy proceedings are commenced, administered, and closed.
Control Point Monitoring	A function within the Collection function Advisory unit that is responsible for ensuring that TFRP case files received from revenue officers are complete and accurate, the assessment statute expiration dates are protected, and the final disposition of the case has been accurately recorded.
Currently Not Collectible	Accounts can be declared currently not collectible for numerous reasons including: Bankruptcy, Defunct, Hardship, In-Business, Unable to Locate, Unable to Contact, Decedent, *etc*.
Field Collection	The unit in the Area Offices consisting of revenue officers who handle personal contacts with taxpayers to collect delinquent accounts or secure unfiled returns.
Fiscal Year	Any yearly accounting period, regardless of its relationship to a calendar year. The Federal Government's fiscal year begins on October 1 and ends on September 30.
Installment Agreement	An agreement by which the IRS allows taxpayers to pay the tax they owe in monthly installments instead of immediately paying the full amount.

Term	Definition
Integrated Collection System	An information management system designed to improve revenue collections by providing revenue officers access to the most current taxpayer information, while in the field, using laptop computers for quicker case resolution and improved customer service.
Integrated Data Retrieval System	The IRS computer system capable of retrieving or updating stored information. It works in conjunction with a taxpayer's account records.
Internal Revenue Manual	The primary, official source of instructions to staff related to the organization, administration, and operation of the IRS.
Offer in Compromise	An agreement between a taxpayer and the Government that settles a tax liability for payment of less than the full amount owed.
Partial Payment Installment Agreement	An installment agreement that the IRS can use when the taxpayer has some ability to pay, but the monthly payment amount will not fully pay the amount owed by the Collection Statute Expiration Date.
Queue	An automated holding file for unassigned inventory of delinquent cases for which employees in Field Collection are unable to be immediately assigned for contact due to limited resources.
Revenue Officer	Employees in the field who attempt to contact taxpayers and resolve collection matters that have not been resolved through notices sent by the IRS campuses or the ACS.
Substitute for Return	Tax returns prepared by the IRS, based on I.R.C. provisions, when the taxpayers appear to be liable for taxes but have not voluntarily filed the returns.
Tax Gap	The Tax Gap is the estimated difference between the amount of tax that taxpayers should pay and the amount that is paid voluntarily and on time.

Term	Definition
Tax Module	Refers to each tax return filed by the taxpayer for a specific period (year and quarter) during a calendar year for each type of tax.
Taxpayer Delinquent Account	A balance due account of a taxpayer. One account exists for all delinquent tax periods for a taxpayer.
Unable to Contact	When the taxpayer's ability to pay cannot be determined because he or she cannot be contacted and income and assets cannot be identified.
Unable to Locate	A classification used if neither the taxpayer nor assets can be located.

Appendix V

Management's Response to the Draft Report

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

COMMISSIONER
SMALL BUSINESS/SELF-EMPLOYED DIVISION

JUN 9 2016

MEMORANDUM FOR MICHAEL E. McKENNEY
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Karen Schiller
Commissioner, Small Business/Self-Employed Division

SUBJECT: Draft Audit Report – Revisions to Trust Fund Recovery Penalty Procedures Are Warranted (Audit #201530011)

Thank you for the opportunity to review the subject draft report. We agree with the premise in your report that early intervention and continuous monitoring of Federal tax deposits can prevent in-business taxpayers from pyramiding tax debt. This helps reduce the incidence of circumstances requiring assessment of the Trust Fund Recovery Penalty (TFRP).

Promoting payroll tax compliance is a top priority for the IRS as two-thirds of federal taxes are collected through the payroll tax system. Last year, we began an "Early Interaction Initiative" to more quickly identify employers who are falling behind on their payroll or employment taxes and to help them get caught up on their payment and reporting responsibilities. By identifying employers who appear to be falling behind on their tax payments, even before an employment tax return is filed, we can provide information and guidance through letters, automated phone messages and, in some instances, a visit from a revenue officer. This initiative provides the kind of real-time service taxpayers need and can help avoid interest and penalty charges. Identifying a tax problem early and fixing it quickly saves time, money and resources.

When payroll taxes are not collected from the employer, the TFRP is an important tool the IRS may use to collect unpaid payroll taxes from persons determined to be responsible for willful nonpayment of withheld taxes. One of your stated audit objectives was to determine if the IRS was taking effective and timely actions to assess and collect the TFRP. Following the referenced GAO audit, GAO-08-617, *TAX COMPLIANCE: Businesses Owe Billions in Federal Payroll Taxes* (July 25, 2008), the IRS made aggressive policy changes, such as the implementation of new deadlines for TFRP case actions, and developed targeted training to significantly improve our timeliness in investigating and asserting the penalty when appropriate. Since then, we have significantly improved overall average timeliness of TFRP case actions from 74% in FY 2010 to 92.9% in FY 2015.

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We agree that assigning the TFRP liability to the same revenue officer who worked the related business case can lead to better case outcomes. However, during this time the IRS experienced a 38.76% decrease in revenue officer staffing levels. These severely diminished revenue officer resources, competing priorities and geographic limitations can make assignment of a TFRP to the originating revenue officer challenging. It should also be noted that many TFRP assessments are successfully resolved through the notice process and other collection work streams such as the Automated Collection System. Those stages of collection afford the taxpayer additional opportunities to voluntarily resolve liabilities prior to collection enforcement actions.

We remain committed to continued improvement and recognize the opportunity to determine the feasibility of additional systemic enhancements that may increase our TFRP case processing efficiency. Despite considerably strained Information Technology programming resources, in 2015, we made programming changes to the Automated Trust Fund Recovery Penalty (ATFR) application used to process TFRP assessments to improve case quality. For example, the Integrated Collection System (ICS) has been programmed to systemically add subsequent modules to ATFR, the narrative used to support the TFRP recommendation in ATFR is now systemically copied to the ICS history, and ATFR now prevents transmission of untimely protest cases to Appeals. We are seeing positive results from these programming changes. In addition, the IRS' Enterprise Case Management Business Program Management Office is now actively assessing all IRS systems to reduce the number of duplicate computer applications related to case management, improve system quality, and facilitate effective and efficient tax administration.

Attached is a detailed response outlining our corrective actions to address your recommendations.

If you have any questions, please contact me, or a member of your staff may contact, Scott Prentky, Director Collection at (954) 423-7318.

Attachment

Attachment

RECOMMENDATION 1:
The Director, Collection, Small Business/Self-Employed Division, should require, when possible, the prompt assignment of the respective individual taxpayer account(s) to the same revenue officer working the business trust fund case.

CORRECTIVE ACTION:
We agree with this recommendation. Internal Revenue Manual (IRM) section 1.4.50, *Resource Guide for Managers, Collection Group Manager, Territory Manager and Area Director Operational Aid*, will be revised to emphasize, when possible, the prompt assignment of the respective individual taxpayer account(s) to the same revenue officer working the business trust fund cases.

IMPLEMENTATION DATE:
April 15, 2017

RESPONSIBLE OFFICIAL(S):
Director, Collection Policy, Small Business/Self-Employed Division (SB/SE)

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

RECOMMENDATION 2:
The Director, Collection, Small Business/Self-Employed Division, should update the IRM to more clearly emphasize the use of the NFTL in appropriate circumstances in pyramiding trust fund cases.

CORRECTIVE ACTION:
We agree with this recommendation. IRM section 5.7.8, *In-Business Repeater or Pyramiding Taxpayers*, will be revised to more clearly emphasize the use of the NFTL in appropriate circumstances in pyramiding trust fund cases.

IMPLEMENTATION DATE:
March 15, 2017

RESPONSIBLE OFFICIAL(S):
Director, Collection Policy, Small Business/Self-Employed Division (SB/SE)

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

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RECOMMENDATION 3:
The Director, Collection, Small Business/Self-Employed Division, should update the IRM to require the revenue officer proposing the TFRP assessment to make a lien determination during the TFRP investigation. Management should also update the ATFR system to include an indicator that the revenue officer can use to notify appropriate staff that the TFRP has been assessed and that an NFTL should be filed based on the lien determination.

CORRECTIVE ACTION:
We partially agree with this recommendation. IRM section 5.7.6, *Trust Fund Penalty Assessment Action*, will be revised to require the revenue officer proposing the TFRP assessment to make a lien determination when submitting a TFRP for assessment.

However, the implementation of requisite changes to update the ATFR system to include an indicator that the RO can use to notify appropriate staff that the TFRP has been assessed and an NFTL should be filed is subject to Information Technology budgetary constraints, limited resources, and competing priorities. In addition to programming resources, this change would require additional Collection resources outside the normal Collection work stream and a change in TFRP case processing workflow after processing by Control Point Monitoring. Consequently, the IRS does not envision implementing these changes in the future.

IMPLEMENTATION DATE:
March 15, 2017

RESPONSIBLE OFFICIAL(S):
Director, Collection Policy, Small Business/Self-Employed Division (SB/SE)

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

RECOMMENDATION 4:
The Director, Collection, Small Business/Self-Employed Division, should consider requiring revenue officers to complete a TFRP completeness checklist that includes all items from the CPM Advisory checklist prior to sending cases to the CPM Advisory function to forward to Appeals to ensure that all required documentation is included.

CORRECTIVE ACTION:
We agree to require revenue officer group managers to ensure a TFRP completeness checklist is completed that includes all items from the CPM Advisory checklist prior to sending cases to CPM Advisory to forward to Appeals so that all required documentation is included.

3

IMPLEMENTATION DATE:
May 15, 2017

RESPONSIBLE OFFICIAL(S):
Director, Collection Policy, Small Business/Self-Employed Division (SB/SE)

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

RECOMMENDATION 5:
The Director, Collection, Small Business/Self-Employed Division, should determine if an interface between the Appeals Centralized Database System and the ATFR system is feasible to systemically notify the CPM Advisory function when Appeals has made a determination.

CORRECTIVE ACTION:
We agree with this recommendation. The IRS will determine if an interface between the Appeals Centralized Database System and the ATFR system is feasible to systemically notify the CPM Advisory function when Appeals has made a determination. However, if we determine an interface is feasible, any change would be dependent on budgetary constraints, limited resources and competing priorities.

IMPLEMENTATION DATE:
March 15, 2017

RESPONSIBLE OFFICIAL(S):
Director, Collection Policy, Small Business/Self-Employed Division (SB/SE)

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