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# **TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION**



## ***The Office of Chief Counsel Accurately Administered User Fees but Could Improve Its User Fee Refund Process***

January 12, 2017

Reference Number: 2017-10-012

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.

**Redaction Legend:**

2 = Risk Circumvention of Agency Regulation or Statute

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## HIGHLIGHTS

### THE OFFICE OF CHIEF COUNSEL ACCURATELY ADMINISTERED USER FEES BUT COULD IMPROVE ITS USER FEE REFUND PROCESS

## Highlights

**Final Report issued on  
January 12, 2017**

Highlights of Reference Number: 2017-10-012  
to the Internal Revenue Service Chief Counsel.

### IMPACT ON TAXPAYERS

Federal law and policy require agencies, including the IRS, to charge a user fee to recover the cost of providing certain services to the public that confer a special benefit to the recipient. The price of user fees for requests processed by the IRS Office of Chief Counsel ranges from \$150 to more than \$28,000, depending on the type of request. It is important to the taxpayer that fees for these requests are processed accurately and refunded when required.

### WHY TIGTA DID THE AUDIT

The overall objective of this review was to determine whether Chief Counsel accurately and efficiently administers user fees.

### WHAT TIGTA FOUND

Chief Counsel accurately administered fees for requests for rulings by assigning the correct user fee case type and assessing the appropriate fee—including reduced user fees when applicable. In Fiscal Year 2015, it accurately processed 3,530 user fee collections valued at more than \$20 million.

There are areas in which Chief Counsel could improve its process. Specifically, Chief Counsel took an average of five business days to deposit user fee receipts in Fiscal Year 2015, which exceeds the statutory requirement to deposit payments within three days. In order to comply with Federal requirements and have timely access to funds, Chief Counsel should deposit user fee payments within three days of receipt. Additionally, TIGTA identified differences

between information contained in paper case files and Chief Counsel electronic data.

Finally, although cases were initially processed accurately, Chief Counsel's process does not ensure that user fee refunds for overpayments or for payment on requests for which Chief Counsel declined to rule are processed for remittance back to taxpayers. Specifically, TIGTA found 24 user fee overpayments totaling almost \$58,000 that were not refunded in Fiscal Year 2015.

### WHAT TIGTA RECOMMENDED

TIGTA made four recommendations, including that Chief Counsel should make user fee deposits within three days of receipt, provide training to employees to ensure that proper dates are entered into its case management information system, implement policies to process refunds, and issue refunds to the 24 taxpayers that overpaid user fees in Fiscal Year 2015 without receiving a refund.

In its response, the IRS agreed with TIGTA's recommendations. The IRS plans to update its policies and provide additional training. The IRS also plans to implement new procedures to help ensure timely deposits, and it has already refunded the 24 taxpayers that TIGTA identified as overpaying user fees in FY 2015.



TREASURY INSPECTOR GENERAL  
FOR TAX ADMINISTRATION

**DEPARTMENT OF THE TREASURY**

**WASHINGTON, D.C. 20220**

January 12, 2017

**MEMORANDUM FOR CHIEF COUNSEL**

**FROM:**

Michael E. McKenney  
Deputy Inspector General for Audit

**SUBJECT:**

Final Audit Report – The Office of Chief Counsel Accurately  
Administered User Fees but Could Improve Its User Fee Refund  
Process (Audit # 201610006)

This report presents the result of our review to determine whether Chief Counsel accurately and efficiently administers user fees. This audit is included in our Fiscal Year 2017 Annual Audit Plan and addresses the major management challenge of Achieving Program Efficiencies and Cost Savings.

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

Copies of this report are also being sent to the Internal Revenue Service managers affected by the report recommendations. If you have any questions, please contact me or Gregory D. Kutz, Assistant Inspector General for Audit (Management Services and Exempt Organizations).



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***The Office of Chief Counsel Accurately Administered  
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***Abbreviations***

CASE-MIS	Counsel Automated Systems Environment – Management Information System
FY	Fiscal Year
IRB	Internal Revenue Bulletin
IRS	Internal Revenue Service
U.S.C.	United States Code



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## ***The Office of Chief Counsel Accurately Administered User Fees but Could Improve Its User Fee Refund Process***

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### **Background**

A user fee is a fee charged to users of goods and services provided by the Federal Government. Section (§) 7528 of the United States Code (U.S.C.)<sup>1</sup> directs the Secretary of the Treasury or his delegate to establish a program requiring the payment of user fees for requests to the Internal Revenue Service (IRS) for letter rulings, opinion letters, determination letters,<sup>2</sup> and similar services. Fees for these services, which are handled by the IRS Office of Chief Counsel, herein referred to as Chief Counsel, were first required by § 10511 of the Revenue Act of 1987.<sup>3</sup> The user fees charged under the program: (1) are to vary according to categories or subcategories established by the Secretary; (2) are to be determined after taking into account the average time, and difficulty, of complying with requests in each category and subcategory; and (3) are to be payable in advance.

Section 7528(b)(3) directs the Secretary to provide for exemptions and reduced fees under the program as the Secretary determines to be appropriate, but the average fee applicable to each category may not be less than the amount specified in § 7528. Furthermore, public law<sup>4</sup> authorizes the Secretary of the Treasury to establish new fees or raise existing fees for services provided by the IRS to increase receipts, where such fees are authorized by another law. The IRS may spend the new or increased fee receipts to supplement appropriations, provided the fee is based on the costs of specific services to persons paying the fee.

IRS Chief Counsel has been delegated authority by the Secretary of the Treasury to determine the price of Chief Counsel user fees. The methodology used by Chief Counsel to determine these fees includes the full cost method outlined in Office of Management and Budget Circular A-25<sup>5</sup> and reduced fees that represent an effort to increase the access of low-income taxpayers to Chief Counsel's rulings program. The full cost method includes all direct and indirect personnel costs for professional and administrative staff as well as overhead costs. These fees are reassessed every two years using the prior three years of data. Overall, Chief Counsel does not

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<sup>1</sup> 26 U.S.C. § 7528.

<sup>2</sup> A letter ruling is a written statement issued to a taxpayer that interprets and applies the tax laws or any nontax laws applicable to employee benefit plans to the taxpayer's specific set of facts. An opinion letter is a written statement issued by the IRS to a sponsor or mass submitter as to the acceptability of certain forms. A determination letter is a written statement issued to a taxpayer that applies the principles and precedents previously announced to a specific set of facts. It is issued only when a determination can be made based on clearly established rules in the statute, a tax treaty, or the regulations or based on a conclusion in a revenue ruling, opinion, or court decision published in the Internal Revenue Bulletin that specifically answers the questions presented.

<sup>3</sup> Pub. L. No. 102-203, 101 Stat. 1330-446 (1987).

<sup>4</sup> Pub. L. No. 103-329, 108 Stat. 2388 (1994).

<sup>5</sup> Office of Management and Budget, Circular No. A-25 Revised, *User Charges* (July 1993).



## ***The Office of Chief Counsel Accurately Administered User Fees but Could Improve Its User Fee Refund Process***

recuperate all costs associated with administering the rulings because of reduced user fees,<sup>6</sup> user fee exemptions,<sup>7</sup> cases for which Chief Counsel does not rule, and a steady increase in the hours that it takes to complete a ruling.

The rules for determining the correct fee to be paid by the taxpayer are in the revenue procedures concerning these submissions published in the first Internal Revenue Bulletin (IRB) of the year. For Fiscal year (FY)<sup>8</sup> 2015, the applicable IRB is IRB No. 2015-1.<sup>9</sup> IRB No. 2015-1 is the authoritative instrument of the IRS Commissioner for announcing official rulings and procedures of the IRS. It includes Appendix A, *Schedule of User Fees*, which contains a new schedule of increased user fees that were effective after February 1, 2015. The *Schedule of User Fees* provides a list of categories that the associate offices of Chief Counsel will rule on, such as change in accounting periods and methods, letter rulings, and closing agreements. The user fees vary for each of these categories and vary significantly if the taxpayer chooses to file for a reduced user fee. Figure 1 is an abbreviated version of the *Schedule of User Fees*, which breaks down the category type of user fees and the amount to be assessed.

***Figure 1: Summary of User Fees***

Category	User Fee for Requests Received Prior to 2/2/2015	User Fee for Requests Received After 2/1/2015
<b>Letter ruling or closing agreement:</b>		
a. Change in Accounting Period		
i. Change in accounting period using Form 1128	\$2,700	\$4,200
ii. Change in accounting period request made on Part II of Form 2553	\$2,700	\$4,200
iii. Letter ruling requests for extensions of time to file Form 1128	\$2,000	\$3,700
b. Change in Accounting Method		
i. Non-automatic Form 3115	\$7,000	\$8,600
ii. Letter ruling requests for extensions of time to file Form 3115	\$9,000	\$9,100

<sup>6</sup> Reduced user fees are for taxpayers below certain income thresholds.

<sup>7</sup> User fee requirements do not apply to departments, agencies, or instrumentalities of the United States if they certify that they are seeking a letter ruling or determination letter on behalf of a program or activity funded by Federal appropriations.

<sup>8</sup> 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.

<sup>9</sup> IRS, IRB No. 2015-1 (January 2, 2015).





***The Office of Chief Counsel Accurately Administered User Fees but Could Improve Its User Fee Refund Process***

Category	User Fee for Requests Received Prior to 2/2/2015	User Fee for Requests Received After 2/1/2015
<b>Letter ruling or closing agreement: (continued)</b>		
c. Other Requests		
i. Letter ruling requests for relief under § 301-9100-3	\$6,900	\$9,800
ii. All other letter ruling requests	\$19,000	\$28,300
d. Requests for closing agreements on a proposed transaction	\$18,000	\$28,300
<b>Reduced user fee for a letter ruling, method or period change, or closing agreement:</b>		
a. Request involves a tax issue from a person with gross income of less than \$250,000	\$2,000	\$2,200
b. Request involves a tax issue from a person with gross income of \$250,000 or more but less than \$1 million	\$5,000	\$6,500

Source: *IRB No. 2015-1, Appendix A. Form 1128, Application to Adopt, Change, or Retain a Tax Year. Form 2553, Election by a Small Business Corporation. Form 3115, Application for Change in Accounting Method.*

In FY 2015, Chief Counsel records indicate that it processed \$20,767,135 in user fees associated with 1,691 lead cases.<sup>10</sup> Figure 2 provides a breakdown of the FY 2015 user fee receipts.

***Figure 2: Summary of User Fee Receipts by User Fee Case Type***

User Fee Type	Number of Lead Cases	FY 2015 User Fee Receipts
Change in Accounting Method	707	\$ 5,346,010.00
Change in Accounting Period	56	\$ 183,700.00
Closing Agreement	14	\$ 344,700.00
Private Letter Ruling <sup>11</sup>	866	\$ 14,760,605.00
Unassigned <sup>12</sup>	48	\$ 132,120.00
<b>Grand Total</b>	<b>1,691</b>	<b>\$ 20,767,135.00</b>

Source: *Analysis of user fee receipts from a Counsel Automated Systems Environment – Management Information System (CASE-MIS) data extract.*

<sup>10</sup> The 1,691 lead cases encompass all primary case identifiers, including those that are associated with multifilers.

<sup>11</sup> A letter ruling, also referred to as a private letter ruling, is a written determination issued to a taxpayer by an Associate Chief Counsel Branch Office in response to the taxpayer's written inquiry, filed prior to the filing of returns or reports that are required by the tax laws, about its status for tax purposes or the tax effects of its acts or transactions. It interprets the tax laws and applies them to the taxpayer's specific set of facts. A letter ruling is issued when appropriate in the interest of sound tax administration.

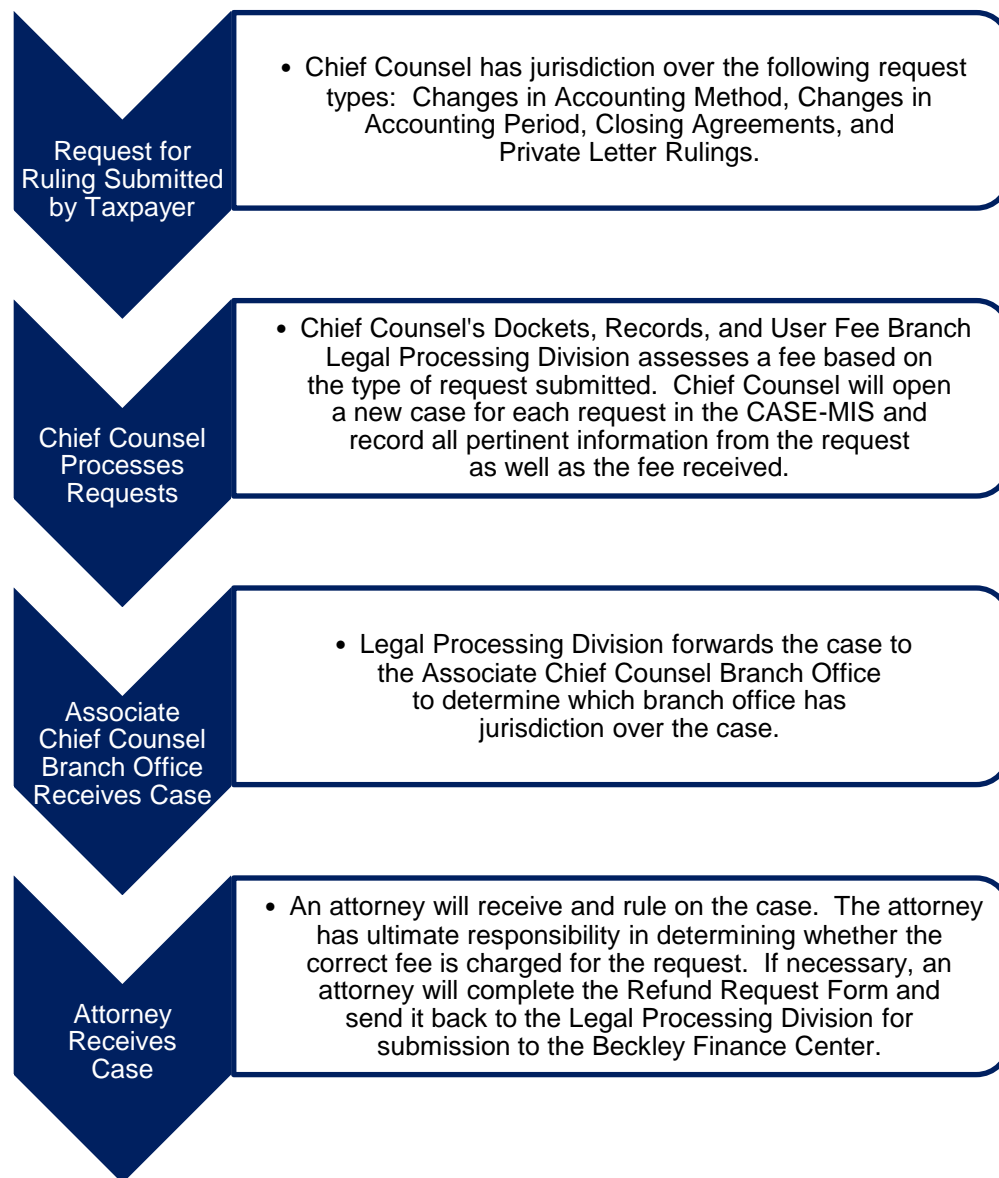
<sup>12</sup> These are instances in which a ruling request was never assigned a case type because the full user fee payment was not received and the request was therefore returned back to the taxpayer.



## ***The Office of Chief Counsel Accurately Administered User Fees but Could Improve Its User Fee Refund Process***

Figure 3 provides an overview of Chief Counsel's user fee administrative process.

***Figure 3: Chief Counsel User Fee Process***



*Source: Internal Revenue Manual 37,<sup>13</sup> Chief Counsel Directives Manual – Disclosure, and discussions with management.*

<sup>13</sup> The Internal Revenue Manual is the IRS's primary official source of instructions to staff relating to the administration and operations of the IRS. It contains the directions employees need to carry out their operational responsibilities.



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## ***The Office of Chief Counsel Accurately Administered User Fees but Could Improve Its User Fee Refund Process***

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In general, a user fee will not be refunded unless the IRS declines to rule on all issues for which a ruling is requested. IRB No. 2015-1 § 15.10 provides examples of situations in which a user fee will or will not be refunded.

### **Examples of situations in which a refund will not be issued are:**

- If a request for a letter ruling, determination letter, *etc.*, is withdrawn at any time subsequent to its receipt by the IRS.
- If a request is procedurally deficient, although accompanied by the proper fee, and is not timely perfected.
- If the request contains several issues, and the IRS rules on some, but not all, of the issues.

### **Examples of situations in which a refund will be issued are:**

- If a taxpayer requests and is granted relief under § 7805(b).
- If the letter ruling is not issued and taking into account all the facts and circumstances, including IRS resources devoted to the request.
- If a taxpayer requests a supplemental ruling to correct a mistake that the IRS agrees it made in the original ruling.

This review was performed with information obtained from the IRS Office of Chief Counsel located in Washington, D.C., during the period February through August 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.



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## ***The Office of Chief Counsel Accurately Administered User Fees but Could Improve Its User Fee Refund Process***

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### **Results of Review**

#### **The Office of Chief Counsel Accurately Administered User Fees**

##### **Fee amounts were accurately assessed**

The Legal Processing Division within the IRS Office of Chief Counsel accurately administered user fees for requests for rulings by assigning the correct user fee case type and assessing the appropriate fee—including reduced user fees where applicable. We reviewed all 3,530 user fee collections<sup>14</sup> associated with 1,691 lead cases processed by Chief Counsel in FY 2015 for proper adherence to the *Schedule of User Fees*. This schedule provides user fee rates to be assessed to the taxpayer for ruling requests received prior to February 2, 2015, and after February 1, 2015. We used this fee schedule to determine if the required fee listed in the FY 2015 user fee receipts CASE-MIS data extract aligns with the fees listed in the *Schedule of User Fees*. We determined, by comparing the user fee case type to the required fee amount, that Chief Counsel accurately assessed the user fee listed in the *Schedule of User Fees*.

We also found no errors in the assessment of the user fee, reduced fee, or user fee case type for a sample of 91 of 1,643 lead cases.<sup>15</sup> The sample represented \$1,095,600 in total collections and \$56,825 in refunds. For the sample of 91 cases, we confirmed that the user fees were properly assessed by (1) reviewing the request letter and date of request to ensure that it was assigned the correct user fee case type and (2) determining if the appropriate fee was assessed based on the *Schedule of User Fees*. The user fee was properly applied to each case based on the type of ruling request and user fee case type, including 12 cases for which the taxpayer requested a reduced user fee. A taxpayer seeking a reduction in user fees must provide certification to obtain the reduced user fee. The taxpayer must certify in the request that income is less than \$250,000 or is less than \$1 million and more than \$250,000 for the last full taxable year (12 months) ending before the date the request is filed. \*\*\*\*\*2\*\*\*\*\*. We determined that the 12 case files with approved reduced fees contained the reduced fee certification statement as required by Chief Counsel procedures.

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<sup>14</sup> One lead case can have multiple user fee collections.

<sup>15</sup> We excluded 48 cases from the total population of 1,691 lead cases because those cases had not been assigned a category. Reasons that cases had not been assigned a category included insufficient fee payment and the limited time between the case receipt by Chief Counsel and the date of our sample. Our random sample, selected from the remaining 1,643 lead cases, was stratified by user fee case type: 57 were private letter rulings; one was a closing agreement; 31 were changes in accounting method; and two were changes in account period. The sample size represents a 90 percent confidence level with a 5.5 percent precision rate and a 10 percent exception rate.



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## ***The Office of Chief Counsel Accurately Administered User Fees but Could Improve Its User Fee Refund Process***

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### **Deposits of some user fee payments were delayed**

The Legal Processing Division took an average of five business days<sup>16</sup> to deposit user fee receipts in FY 2015, which exceeds the statutory requirement to deposit payments within three days. Absent specific statutory authority, agencies must promptly deposit any funds received for Government use to the General Fund. Specifically, the U.S.C.<sup>17</sup> states that money shall be deposited no later than the third day after receipt of the money. We calculated the business days between the deposit date and the IRS received date<sup>18</sup> for the sample of 91 cases in order to determine if Chief Counsel met the three-day deposit requirement. We found that 36 of 91 cases did not meet the three-day requirement. When projected to the total population of 1,643 user fee cases, the sample results indicate that 669 cases (41 percent) may not meet the three-day requirement for depositing money received.<sup>19</sup>

The Legal Processing Division explained that deposits are not always timely made due to the user fee requests being concentrated around a few key time periods in the calendar year. It detailed that most user fee requests are sent to the IRS at the end of the calendar year, at the end of a taxpayer's fiscal year, or before the deadline for fee adjustments. According to the division, the heavy volumes received during those busy periods overwhelm the resources available. At the time of our review, there were three employees within the Legal Processing Division who process incoming user fee requests, establish the case in the CASE-MIS, and deposit the user fee receipts. Making timely deposits helps ensure that the taxpayer has sufficient funds available when the deposit is made and enables the Government to have prompt access to the funds received.

### **Date information recorded in the CASE-MIS was incorrect**

We found CASE-MIS data entry errors in 10 of 91 sampled cases, mostly pertaining to dates.<sup>20</sup> For example, we found instances in which the case receipt date recorded in the CASE-MIS was more than three days after the actual case receipt date shown in paper case files. These types of errors can result in the incorrect user fee being assessed for a case because case type user fee amounts are reassessed every two years. However, the 10 errors we identified did not result in

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<sup>16</sup> We calculated the deposit time frames in business days, which exclude weekends and Federal holidays.

<sup>17</sup> 31 U.S.C. § 3302.

<sup>18</sup> This is the earliest date stamped as received by the IRS and is recorded in the CASE-MIS by Chief Counsel.

<sup>19</sup> The point estimate projection is based on a two-sided 90 percent confidence interval, a  $\pm 8.27$  percent precision rate, and a 40.70 percent error rate. We are 90 percent confident that the point estimate is between 533 and 805 cases. See Appendix IV.

<sup>20</sup> Criteria reviewed included the user fee required amount, U.S. Postal Service date, user fee check amount, user fee deposit date, IRS received date, taxpayer/business entity and address, and user fee case type. We were able to complete the analysis of the seven data points for 82 of the 91 sample cases selected. The remaining nine sample case files were missing supporting documentation, which prohibited us from assessing the reliability of data points within the CASE-MIS. We were unable to verify the U.S. Postal Service date within the CASE-MIS because the files did not contain the appropriate envelopes or shipping labels to support the date listed in the CASE-MIS.



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## ***The Office of Chief Counsel Accurately Administered User Fees but Could Improve Its User Fee Refund Process***

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errors in the user fee assessments because they occurred during time frames when case fees did not change. When projected to the population of 1,643 user fee cases, the sample results indicate that approximately 226 cases (14 percent) could include data errors.<sup>21</sup> The errors were either an input or typographical error made during data entry into the CASE-MIS by Chief Counsel. Chief Counsel should work to minimize date errors because they can result in assessing an incorrect fee during the time when fees change.

### ***Recommendations***

Chief Counsel should:

**Recommendation 1:** Implement a policy requiring compliance with the U.S.C. rule that money shall be deposited no later than the third day after receipt.

**Management's Response:** The IRS agreed with this recommendation. Chief Counsel plans to update the Chief Counsel Directives Manual to reflect a policy that money shall be deposited no later than the third day after receipt. In addition, Chief Counsel plans to implement pay.gov<sup>22</sup> as the means for receiving user fee deposits, and it expects that using pay.gov will enable timely deposits.

**Recommendation 2:** Provide additional training to Chief Counsel employees to help assure that proper dates are entered into the CASE-MIS.

**Management's Response:** The IRS agreed with this recommendation. Chief Counsel plans to provide training to its user fee unit employees to help them identify and properly enter the correct dates into the CASE-MIS.

### **Chief Counsel's User Fee Refund Process Needs Improvement**

Chief Counsel's user fee refund process does not ensure that user fee refunds are processed for remittance back to taxpayers, including 25 user fee refunds totaling almost \$65,000 that Chief Counsel attorneys did not properly process in FY 2015. Chief Counsel does not have written policies or procedures addressing the roles and responsibilities for processing user fee refunds, and its practices are not consistently followed.

The IRS issued 359 user fee refunds totaling more than \$2.4 million in FY 2015 that correlated to cases opened in FYs 2009 through 2015. According to Chief Counsel, the attorney or reviewer within an Associate Chief Counsel Branch Office will complete a *User Fee Refund*

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<sup>21</sup> The point estimate projection is based on a two-sided 90 percent confidence interval, a  $\pm 6.56$  percent precision rate, and a 13.74 percent error rate. We are 90 percent confident that the point estimate is between 118 and 334 cases.

<sup>22</sup> Pay.gov is a website that facilitates secure electronic payments to Federal Government agencies. Many common forms of payment are accepted, including credit cards, debit cards, and direct debit.





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*Request* and obtain proper approvals before hand-delivering the approved hard copy form to the Legal Processing Division. The Legal Processing Division enters the information in the CASE-MIS, generates refund reports for review and approval, and submits the approved user fee refunds to the Beckley Finance Center for processing and issuance to the taxpayer. However, we found that this process did not take place in all cases for which the taxpayer was owed a refund.

We identified that, of 1,643 lead cases<sup>23</sup> processed by Chief Counsel in FY 2015, there were 24 lead cases for which the taxpayer paid more than the required fee for a ruling. We identified these cases by comparing the total amount that the taxpayer paid and the IRS deposited to the amount that the taxpayer was required to pay for each case. Instead of refunding an overpayment upon receipt, the Legal Processing Division alerts the Associate Chief Counsel Branch Office, at the time the case is referred, that a user fee refund will need to be processed at the time of case closure, and the Associate Chief Counsel Branch Offices have the responsibility for completing the *User Fee Refund Request* at the conclusion of a case. As of August 2016, 24 lead cases did not have user fee refunds that were owed to the taxpayers for overpaid fees processed for remittance to those taxpayers, and these cases have been closed on average for 271 days. These cases totaled \$57,925 owed to the taxpayers.

In addition to the cases above for which refunds were not issued on overpaid fees, we identified an unprocessed refund in our sample of 91 lead cases; in this case, the user fee should have been fully refunded to the taxpayer because Chief Counsel did not rule on the case. In some instances, in which Chief Counsel declines to rule on a case, the taxpayer is refunded the total amount of the fee received. However, for this case, the Chief Counsel Income Tax and Accounting Branch did not complete and submit the *User Fee Refund Request* to the Legal Processing Division for processing and submission to the Beckley Finance Center for remittance to the taxpayer. Prior to our review of the file, only the attorney would have been aware that the taxpayer was owed a refund. As a result, the taxpayer did not receive the \$7,000 user fee refund to which it was entitled.

We met with the attorneys of the Income Tax and Accounting Branch to discuss the unprocessed refund. They agreed that the user fee refund was overlooked and processed the refund for remittance to the taxpayer. Based on our case reviews, we have determined that there could be additional case files for which a refund has been unprocessed because the attorney has not forwarded it to the Legal Processing Division for processing. When projected to the population of 1,643 lead user fee cases, the sample results indicate that approximately 23 cases (1 percent) could include unprocessed refunds.<sup>24</sup>

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<sup>23</sup> We excluded 48 cases from the total population of 1,691 lead cases because those cases had not been assigned a category as of the date of our sample. Without a case type, we were unable to determine the required amount, and could therefore not assess whether an overpayment existed.

<sup>24</sup> The point estimate projection is based on a two-sided 90 percent confidence interval, a  $\pm 2.23$  percent precision rate, and a 1.39 percent error rate. We are 90 percent confident that the point estimate is between one and 59 cases.



## ***The Office of Chief Counsel Accurately Administered User Fees but Could Improve Its User Fee Refund Process***

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### ***Recommendations***

Chief Counsel should:

**Recommendation 3:** Develop and implement policies requiring that refunds are issued either at the time of overpayment or at the time of case closure.

**Management's Response:** The IRS agreed with this recommendation. Chief Counsel plans to solicit input from the affected offices and develop policies surrounding user fee refunds. These policies will clarify each office's responsibilities with respect to refund processes and will require that refunds are issued either at the time of overpayment or at the time of case closure. Chief Counsel plans to update the Chief Counsel Directives Manual to reflect these changes.

**Recommendation 4:** Issue refunds to the 24 taxpayers that overpaid user fees in FY 2015 without receiving a refund.

**Management's Response:** The IRS agreed with this recommendation and has issued refunds to the identified taxpayers that overpaid user fees in FY 2015.





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## ***The Office of Chief Counsel Accurately Administered User Fees but Could Improve Its User Fee Refund Process***

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### **Appendix I**

#### **Detailed Objective, Scope, and Methodology**

Our overall objective was to determine whether Chief Counsel accurately and efficiently administers user fees. To achieve our overall objective, we performed the following:

- I. Determined the controls in place for processing taxpayer requests for Chief Counsel rulings that require user fees.
  - A. Identified the appropriate Federal laws and regulations pertaining to Chief Counsel user fees.
  - B. Identified applicable IRS policies, Chief Counsel standard operating procedures, and desk guides used to administer Chief Counsel user fees.
  - C. Interviewed Chief Counsel personnel to understand the process of administering user fees, and Chief Counsel's response to taxpayer requests for rulings.
- II. Assessed the effectiveness of the administration of the Chief Counsel user fee program through a review of data on all Chief Counsel user fee cases.
  - A. Obtained an extract of CASE-MIS records of 1,691 lead cases with user fee receipts or refunds issued in FY 2015.<sup>1</sup> We validated the completeness of the data by determining that data records were present and that the fields in each record were populated appropriately. In addition, we validated the accuracy of CASE-MIS data by tracing data points (such as deposit dates, receipt dates, request dates, required amount, taxpayer information, check data, and case categories (*e.g.*, type)) to paper case files.
  - B. Determined whether fees assessed in FY 2015 matched the required fee for the case type, taking into account any exemptions, reduced user fees, or refunds as applicable.
  - C. Evaluated the timeliness of Chief Counsel's user fee case deposits and refunds.
    1. Determined whether Chief Counsel complied with its own policy regarding timely deposits of user fees based on the payment receipt date.
    2. Determined the number of business days until a refund was submitted to the Beckley Finance Center for processing and issuance to the taxpayer, when applicable.

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<sup>1</sup> 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.



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- D. Evaluated Chief Counsel's use of staff resources devoted to user fee cases.
1. Determined the reasonableness of user fee rates, including a comparison of the estimated cost of wages for the number of hours expended on a case.
  2. Evaluated the reasons some cases net \$0 in user fees.
  3. Estimated the cost to Chief Counsel for resources expended on net \$0 user fee cases.
- III. Starting with the extract of 1,691 lead cases with user fee receipts or refunds in FY 2015 obtained in Step II.A, we removed 48 cases that did not have a case type assigned, leaving 1,643 lead cases in our total population. Conducted a review of a random sample of 91 lead cases. The sample was stratified by the four types of cases that Chief Counsel processes: change in accounting method, change in accounting period, closing agreements, and private letter rulings.<sup>2</sup>
- A. For each selected case, we:
1. Validated the reliability of CASE-MIS data by tracing data points (such as deposit dates, receipt dates, request dates, required amount, taxpayer information, check data, and case categories (*e.g.*, type)) to paper case files.
  2. Determined whether the case was initially assigned the correct case type and submitted to the appropriate Associate Chief Counsel Branch Office for assignment to an attorney.
  3. Evaluated all reductions in fees as applicable.
    - a) Determined whether exemptions had the required certification.
    - b) Determined whether reduced user fees were assessed in compliance with the income requirements of IRB No. 2015-1, Appendix A, *Schedule of User Fees*.
    - c) Determined whether refunds were properly approved, submitted to the Beckley Finance Center, and refunded to the taxpayer according to the general guidelines of IRB No. 2015-1.
- B. Interviewed personnel responsible for the selected cases to determine if refunds were properly administered.

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<sup>2</sup> Our sample size was determined using a confidence level of 90 percent, an expected error rate of 10 percent, and a precision of  $\pm 5.5$  percent. A statistical sample was used in order to support a statistically valid projection to the population of total cases if exceptions were found during the review. A contract statistician assisted with developing the sampling plans and projections.



## ***The Office of Chief Counsel Accurately Administered User Fees but Could Improve Its User Fee Refund Process***

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### **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: Chief Counsel policies, procedures, and practices for administering user fees for requests for rulings. We evaluated these controls by interviewing management responsible for executing the program, reviewing applicable documentation, analyzing CASE-MIS data, and evaluating sampled ruling requests that required a user fee.



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**Appendix II**

**Major Contributors to This Report**

Gregory D. Kutz, Assistant Inspector General for Audit (Management Services and Exempt Organizations)

Jonathan T. Meyer, Director

Deanna G. Lee, Audit Manager

Antonina A. Hill, Senior Auditor

Gene A. Luevano, Senior Auditor

Zachary P. Orrico, Senior Auditor



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**Appendix III**

**Report Distribution List**

Commissioner  
Deputy Commissioner – Attn: Chief of Staff  
Deputy Commissioner for Services and Enforcement  
Director, Office of Audit Coordination



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***The Office of Chief Counsel Accurately Administered  
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## **Appendix IV**

### **Outcome Measures**

This appendix presents detailed information on the measurable impact that our recommended corrective actions will have on tax administration. These benefits will be incorporated into our Semiannual Report to Congress.

#### **Type and Value of Outcome Measure:**

- Reliability of Information – Potential; 226 hard copy case files do not match the CASE-MIS (see page 6).<sup>1</sup>

#### **Methodology Used to Measure the Reported Benefit:**

We reviewed 91 sample cases to determine the reliability of the CASE-MIS data by tracing seven data points to the original Chief Counsel case files. The seven data points included user fee required amount, U.S. Postal Service date, user fee check amount, user fee deposit date, IRS received date, taxpayer/business entity and address, and user fee case type. Based on our sample error rate of 13.74 percent and a confidence level of 90 percent, we estimate that 226 cases have inaccurate information in the CASE-MIS.

#### **Type and Value of Outcome Measure:**

- Taxpayer Rights and Entitlements – Actual; \$57,925 in user fee refunds owed to 24 taxpayers. Chief Counsel did not issue refunds on 24 user fee overpayments (see page 8).

#### **Methodology Used to Measure the Reported Benefit:**

We analyzed all user fee collections from 1,643 lead cases processed by Chief Counsel in FY 2015 and identified 24 cases for which the taxpayer paid more than the required fee for the request for ruling. We identified this by comparing the amount received to the amount required in the CASE-MIS.

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<sup>1</sup> The point estimate projection is based on a two-sided 90 percent confidence interval, a  $\pm 6.56$  percent precision rate, and a 13.74 percent error rate. We are 90 percent confident that the point estimate is between 118 and 334 cases.



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### **Type and Value of Outcome Measure:**

- Taxpayer Rights and Entitlements – Potential; 23 case files may have an unprocessed *User Fee Refund Request* (see page 8).<sup>2</sup>

### **Methodology Used to Measure the Reported Benefit:**

During our review of 91 sample cases, we identified one user fee case for which Chief Counsel did not rule on the case but did not issue the taxpayer a refund. The amount of the refund was \$7,000. Based on our sample error rate of 1.39 percent and a confidence level of 90 percent, we estimate the number of cases that have unprocessed *User Fee Refund Requests* to be 23 cases, with a range of one to 59 cases.

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<sup>2</sup> The point estimate projection is based on a two-sided 90 percent confidence interval, a  $\pm 2.23$  percent precision rate, and a 1.39 percent error rate. We are 90 percent confident that the point estimate is between one and 59 cases.



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**Appendix V**

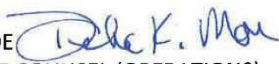
**Management's Response to the Draft Report**



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

DEC 12 2016

MEMORANDUM FOR      MICHAEL E. MCKENNEY  
                                 DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM:                    DEBRA K. MOE   
                                 DEPUTY CHIEF COUNSEL (OPERATIONS)

SUBJECT:                Draft Audit Report – The Office of Chief Counsel Accurately  
                                 Administered User Fees but Could Improve Its User Fee Refund  
                                 Process (Audit # 201610006)

Thank you for the opportunity to review and comment on the draft audit report. The User Fee program provides a valuable service for taxpayers seeking to comply with the internal revenue laws. It is an essential component of the Office of Chief Counsel's mission to serve America's taxpayers fairly and with integrity by providing correct and impartial interpretation of the internal revenue laws.

We appreciate the acknowledgement in your report that our user fee program assessed the appropriate fee and selected the correct case type for each of the 3,530 user fee collections received in FY 2015. We recognize the importance of timely depositing funds within three days after receipt, and to address this recommendation, we are implementing pay.gov as the preferred payment method for user fees. We expect that automation of the user fee deposit process will ensure timely deposit of these funds.

We are pleased to report that we have processed all the refunds owed to the taxpayers identified during your review as having overpaid user fees in FY 2015. We recognize that we can improve our refund process, and we have begun to develop and implement clearer policies in this area.

We agree with your remaining recommendations as well, and our detailed responses are attached. We also concur with the benefits described in Appendix IV of the report. If you have any questions, please contact me at (202) 317-3300, or members of your staff may contact Drita Tonuzi, Associate Chief Counsel, Procedure and Administration, at (202) 317-3400.

Attachment





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## ***The Office of Chief Counsel Accurately Administered User Fees but Could Improve Its User Fee Refund Process***

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Attachment

### **RECOMMENDATION 1:**

Implement a policy requiring compliance with the U.S.C. rule that money shall be deposited no later than the third day after receipt.

### **CORRECTIVE ACTION**

We agree with this recommendation. We will update the CCDM to reflect a policy that money shall be deposited no later than the third day after receipt. In addition, we are implementing pay.gov as the means for receiving user fee deposits. We expect that using pay.gov will enable us to make timely deposits.

### **IMPLEMENTATION DATE**

August 30, 2017

### **RESPONSIBLE OFFICIAL**

Associate Chief Counsel, Procedure & Administration

### **CORRECTIVE ACTION MONITORING PLAN**

We will monitor this corrective action as part of our internal management controls.

### **RECOMMENDATION 2**

Provide additional training to Chief Counsel employees to help assure that proper dates are entered into the CASE-MIS.

### **CORRECTIVE ACTION**

We agree with this recommendation. We will provide training to our user fee unit employees to help them identify and properly enter the correct dates into the CASE-MIS.

### **IMPLEMENTATION DATE**

August 30, 2017

### **RESPONSIBLE OFFICIAL**

Associate Chief Counsel, Procedure & Administration

### **CORRECTIVE ACTION MONITORING PLAN**

We will monitor this corrective action as part of our internal management controls.

### **RECOMMENDATION 3**

Develop and implement policies requiring that refunds are issued either at the time of overpayment or at the time of case closure.

### **CORRECTIVE ACTION**

We agree with this recommendation. We will solicit input from the affected offices and develop policies surrounding user fee refunds. These policies will clarify each office's responsibilities with respect to



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***The Office of Chief Counsel Accurately Administered  
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refund processes, and will require that refunds are issued either at the time of overpayment or at the time of case closure. We will update the CCDM to reflect these changes.

**IMPLEMENTATION DATE**

September 30, 2017

**RESPONSIBLE OFFICIAL**

Associate Chief Counsel, Procedure & Administration

**CORRECTIVE ACTION MONITORING PLAN**

We will monitor this corrective action as part of our internal management controls.

**RECOMMENDATION 4**

Issue refunds to the 25 taxpayers that overpaid user fees in FY 2015 without receiving a refund.

**CORRECTIVE ACTION**

We agree with this recommendation and have already issued refunds to the identified taxpayers that overpaid user fees in FY 2015.

**IMPLEMENTATION DATE**

October 18, 2016

**RESPONSIBLE OFFICIAL**

Associate Chief Counsel, Procedure & Administration

**CORRECTIVE ACTION MONITORING PLAN**

n/a