



*Fiscal Year 2019 Statutory  
Review of Restrictions on  
Directly Contacting Taxpayers*

**September 17, 2019**

**Reference Number: 2019-30-076**

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.

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## HIGHLIGHTS

### FISCAL YEAR 2019 STATUTORY REVIEW OF RESTRICTIONS ON DIRECTLY CONTACTING TAXPAYERS

## Highlights

**Final Report issued on  
September 17, 2019**

Highlights of Reference Number: 2019-30-076  
to the Commissioner of Internal Revenue.

### IMPACT ON TAXPAYERS

The direct contact provisions of Internal Revenue Code (I.R.C.) Section (§) 7521 generally require IRS personnel to stop a taxpayer interview whenever a taxpayer requests consultation with a representative and prohibits IRS personnel from bypassing a qualified representative without supervisory approval if the representative unreasonably delays the completion of an examination, collection, or investigation. The fair tax collection practices of I.R.C. § 6304(a)(2) prohibit IRS personnel from communicating with a taxpayer if it is known that the taxpayer has an authorized representative.

### WHY TIGTA DID THE AUDIT

This audit was initiated because TIGTA is required to annually report on the IRS's compliance with the direct contact provisions of the I.R.C. For this year's review, TIGTA analyzed the extent to which case advocates in the Taxpayer Advocate Service (TAS) and examiners in the Tax Exempt and Government Entities (TE/GE) Division complied with the direct contact provisions and fair tax collection practices of the I.R.C. during interactions with taxpayers or their representatives.

### WHAT TIGTA FOUND

The IRS has a number of policies and procedures to help ensure that taxpayers are afforded the right to designate an authorized representative to act on their behalf in a variety of tax matters. In addition, the IRS has a process to handle the review and disposition of taxpayer allegations of direct contact violations.

TIGTA selected statistically valid samples of case histories to review in TAS and the TE/GE Division, respectively, and identified six instances out of 118 cases reviewed in TAS and five instances out of 96 cases reviewed in the TE/GE Division in which their respective employees potentially violated taxpayer rights per I.R.C. § 7521(c) and bypassed authorized representatives, without obtaining appropriate authorization.

TIGTA also identified 36 of 118 TAS cases in which Taxpayer Bill of Rights and 11 of 96 TE/GE Division cases in which Publication 1, *Your Rights as a Taxpayer*, were not provided to taxpayers to ensure that taxpayers are both aware of and comprehend their rights as codified under I.R.C. § 7803(a)(3).

In addition, TAS and TE/GE Division employee training materials and procedures provided little to no guidance on their responsibilities with respect to the direct contact provisions of I.R.C. §§ 7521(b)(2) and (c) to suspend an interview when the taxpayer wishes to seek representation and the fair tax collection practices of I.R.C. § 6304(a)(2).

### WHAT TIGTA RECOMMENDED

TIGTA recommended that the National Taxpayer Advocate and the Commissioner, TE/GE Division, ensure that group managers appropriately discuss the cases identified with the respective employees; develop new methods and/or adhere to established procedures to document power of attorney verification and taxpayer rights; and update respective Internal Revenue Manuals and training materials to clarify guidance regarding taxpayer rights.

The IRS agreed with all of our recommendations. TAS and the TE/GE Division agreed to meet with their respective employees to discuss the cases TIGTA identified and plan to update their respective guidance in an effort to better protect taxpayers' right to representation.



TREASURY INSPECTOR GENERAL  
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

September 17, 2019

**MEMORANDUM FOR COMMISSIONER OF INTERNAL REVENUE**

**FROM:** Michael E. McKenney  
Deputy Inspector General for Audit

**SUBJECT:** Final Audit Report – Fiscal Year 2019 Statutory Review of Restrictions  
on Directly Contacting Taxpayers (Audit # 201930015)

This report presents the results of our review to determine whether the Internal Revenue Service (IRS) complied with legal guidelines addressing the direct contact of taxpayers and their representatives set forth in Internal Revenue Code (I.R.C.) Sections (§§) 7521(b)(2) and (c) and where applicable, the fair tax collection practices set forth in I.R.C. § 6304(a)(2). The Treasury Inspector General for Tax Administration is annually required to evaluate the IRS's compliance with the direct contact provisions.<sup>1</sup> This audit is included in our Fiscal Year 2019 Annual Audit Plan and addresses the major management challenge of Protecting Taxpayer Rights.

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

Copies of this report are also being sent to the IRS managers affected by the report recommendations. 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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<sup>1</sup> I.R.C. § 7803(d)(1)(A)(ii).



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*Abbreviations*

FY	Fiscal Year
I.R.C.	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
POA	Power of Attorney
QRIS	Question Resolution Information System
RCCMS	Reporting Compliance Case Management System
TAMIS	Taxpayer Advocate Management Information System
TAS	Taxpayer Advocate Service
TE/GE	Tax Exempt and Government Entities
TIGTA	Treasury Inspector General for Tax Administration



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### *Background*

Taxpayers have a right to representation in matters before the Internal Revenue Service (IRS).<sup>1</sup> Internal Revenue Code (I.R.C.) Sections (§§) 7521(b)(2) and (c) provide taxpayers the right to representation during interviews.<sup>2</sup> The Treasury Inspector General for Tax Administration (TIGTA) is required to annually assess whether the IRS is protecting taxpayers' rights to representation under I.R.C. § 7521.<sup>3</sup> I.R.C. § 6304(a) also protects taxpayers' rights to representation by prohibiting contact of a taxpayer if it knows the taxpayer is represented.<sup>4</sup>

The effort to determine whether the IRS is complying with I.R.C. §§ 7521(b)(2) and (c) (hereafter referred to as the direct contact provisions) and other provisions of the law protecting the right to representation is complicated by the fact that the IRS cannot proactively identify IRS employee violations of this law. TIGTA Office of Investigations receives complaints and initiates investigations based on those complaints. The Office of Investigations tracks those complaints and investigations using its Criminal Results Management System.

During Fiscal Year (FY) 2018, the Office of Investigations received 12 new complaints alleging that IRS employees: bypassed taxpayer representatives and contacted taxpayers directly, and/or potentially violated the fair tax collection practices. The Office of Investigations evaluates all complaints and makes a determination as to whether it will initiate an investigation into the matter or take other appropriate action. In FY 2018, three new investigations were initiated based on these 12 complaints. Additionally, the Office of Investigations closed six investigations during the fiscal year (some of which may have been opened in prior years), and three of these complaints were still pending and being referred to the IRS for further actions/responses.

To designate power of attorney (POA) authority to a representative, a taxpayer files Form 2848, *Power of Attorney and Declaration of Representative*, with the IRS. Once received and

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<sup>1</sup> I.R.C. §§ 7803(b)(3)(I), 7521(b)(2), and 6304(a)(2). See Appendix VI for a glossary of terms.

<sup>2</sup> I.R.C. § 7521(b)(2) provides: *If the taxpayer clearly states to an officer or employee of the Internal Revenue Service at any time during any interview (other than an interview initiated by an administrative summons issued under subchapter A of chapter 78) that the taxpayer wishes to consult with an attorney, certified public accountant, enrolled agent, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service, such officer or employee shall suspend such interview regardless of whether the taxpayer may have answered one or more questions.*

<sup>3</sup> I.R.C. § 7803(d)(1)(A)(ii).

<sup>4</sup> I.R.C. § 6304(a)(2) provides: *If the Secretary knows the taxpayer is represented by any person authorized to practice before the Internal Revenue Service with respect to such unpaid tax and has knowledge of, or can readily ascertain, such person's name and address, unless such person fails to respond within a reasonable period of time to a communication from the Secretary or unless such person consents to direct communication with the taxpayer.*



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validated, the IRS records the representative's authorization in its Centralized Authorization File, a computerized system of records that houses authorization information from both the POAs and tax information authorizations. This file is linked to other IRS applications and is used by many IRS functions to determine when a taxpayer is working with an authorized representative.

Identifying the authorized representative during audit or collection activities is critical for IRS personnel because I.R.C. § 6103 prohibits disclosure of tax return information to third parties unless the taxpayer has authorized the IRS to make the disclosure. In addition, the direct contact provisions of I.R.C. § 7521 enacted on November 10, 1988, as part of the Omnibus Taxpayer Bill of Rights created a number of safeguards to protect the rights of taxpayers interviewed by IRS employees as part of a tax examination or collection action.<sup>5</sup> Specifically, IRS employees are required to:

- Stop the interview (unless initiated by an administrative summons) whenever a taxpayer requests to consult with a representative, *i.e.*, any person, such as an accountant or attorney, who is permitted to represent taxpayers before the IRS.
- Obtain their immediate supervisor's approval to contact the taxpayer instead of the representative if the representative unreasonably delays the completion of an examination, collection, or investigation.

The Senate Committee on Finance conducted numerous hearings in Calendar Years 1997 and 1998 addressing the rights of taxpayers. Several witnesses provided statements regarding abuses of taxpayer rights by IRS employees, including incidents in which employees failed to observe the taxpayers' right to representation. Shortly after these hearings, the IRS Restructuring and Reform Act of 1998 was enacted into law, which directed the IRS to revise Publication 1, *Your Rights as a Taxpayer*, to better inform taxpayers of these rights.<sup>6</sup> In addition, this Act added I.R.C. § 7803(d)(1)(A)(ii), which requires TIGTA to annually evaluate the IRS's compliance with the direct contact provisions. TIGTA has previously performed 20 annual reviews to meet this requirement. Appendix IV lists the five most recent audit reports related to this statutory review.

This review was performed with information obtained from the offices of the National Taxpayer Advocate; the Commissioner, Tax Exempt and Government Entities (TE/GE) Division; in Washington, D.C., and various Taxpayer Advocate Service (TAS) and TE/GE Division field personnel, during the period November 2018 through June 2019. 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

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

<sup>6</sup> Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.). Also, see Appendix V for Publication 1.





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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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*Results of Review*

***The Internal Revenue Service Has a Process to Handle the Review  
and Disposition of Taxpayer Allegations of Direct Contact Violations***

IRS management cannot track situations in which a taxpayer is denied the right to appropriate representation unless the taxpayer or his or her representative files a complaint with the IRS, TIGTA, TAS, or his or her congressional Representative or Senator. The IRS has not put a system in place to systemically track violations of the direct contact provisions and does not plan to implement a system. However, the IRS has a process to ensure that reported allegations of direct contact violations are reviewed to determine if there was any employee misconduct.

The IRS Employee Conduct and Compliance office receives, processes, and tracks all complaint referrals, *e.g.*, allegations not investigated by TIGTA, as well as reports of investigation that TIGTA forwards to the IRS. According to the IRS, the Employee Conduct and Compliance office is responsible for ensuring that IRS management addresses the complaint referrals to determine their proper disposition. It also tracks the disposition of TIGTA complaint referrals. These complaint referrals are assigned, tracked, and recorded on the Employee Issues Branch E-trak database.

During our review, we requested a report of FY 2018 complaint referrals that the Employee Conduct and Compliance office maintained on the E-trak database. We reviewed these cases and determined that the Employee Conduct and Compliance Office closed three cases in which there were allegations of possible direct contact violations. We reviewed the details of the closed cases, and we agree with the final disposition and disciplinary actions taken on each case.

For those complaint referrals in which there is action taken by IRS management, the dispositions of the complaint referrals (including any disciplinary actions for substantiated allegations) are entered into the Automated Labor and Employee Relations Tracking System to ensure the maintenance of historic records of employee misconduct. The use of this system also helps ensure consistency in recording employee misconduct and disciplinary actions, *e.g.*, admonishment letters, employee suspensions, and employee removals.

***The Internal Revenue Service Needs to Take Action to Ensure That  
Taxpayers Rights to Representation Are Protected***

Congress mandates that TIGTA report annually regarding IRS compliance with the direct contact provisions. Reviewing the existing controls is required to ensure that the risk of violating taxpayer rights is mitigated. TAS and TE/GE Division employees record actions and decisions taken on cases within the Taxpayer Advocate Management Information System (TAMIS) and



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the Reporting Compliance Case Management System (RCCMS), respectively.<sup>7</sup> To determine how well TAS employees (case advocates) and TE/GE Division employees (examiners) are complying with the direct contact provisions and fair tax collection practices of the I.R.C., we:

- Obtained a download of 201,432 unique cases from the TAMIS closed between October 1, 2017, and September 30, 2018, that involved interactions with a taxpayer and/or the taxpayer's representative(s). We selected a statistically valid stratified sample of 118 cases from a population of 201,432 unique cases closed by case advocates during FY 2018.<sup>8</sup>
- Obtained a download of 26,523 unique cases from the RCCMS closed between October 1, 2017, and September 30, 2018, that involved interactions with a taxpayer and/or the taxpayer's representative(s). We selected a statistically valid sample of 96 TE/GE Division cases from a population of 26,523 unique cases closed by examiners during FY 2018.<sup>9</sup>

We reviewed the case history narratives from the TAMIS and the RCCMS, respectively, for these sampled cases and determined that case advocates and examiners working these cases generally adhered to procedures that help ensure compliance with the direct contact provisions of I.R.C. § 7521(b)(2) and fair tax collection practices of I.R.C. § 6304(a)(2). However, in our review of both TAS and TE/GE Division sampled cases, we found instances of potential violations with bypass procedures of I.R.C. § 7521(c) discussed later in this report.

I.R.C. § 7521(b)(2) provides taxpayers the right to representation during interviews and requires IRS employees to stop an interview whenever a taxpayer requests to consult with a representative. While I.R.C. § 7521(c) requires IRS employees to obtain their immediate supervisor's approval to contact the taxpayer instead of the representative if the representative unreasonably delays the completion of an examination, collection, or investigation. In collection matters and in circumstances in which the taxpayer has obtained authorized representation, I.R.C. § 6304(a)(2) affords the taxpayer protection against harassment and abuse by the IRS by prohibiting the IRS from contacting the taxpayer directly unless by court order or consent by the authorized representative to direct communication with the taxpayer.

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<sup>7</sup> TE/GE Division employees also use the Tax Exempt Determination System, the Employee Plans and Exempt Organization Determination System, and the Employee Plans Compliance Resolution System to record actions and decisions on determination and voluntary compliance cases. These systems were excluded from this year's review.

<sup>8</sup> Our sampling plan was based on a 95 percent confidence interval, a  $\pm 5$  percent precision, and a 5 percent expected error rate in the without POA group and a 35 percent error rate in the with POA group.

<sup>9</sup> For the TE/GE Division, our sampling plan was based on a 95 percent confidence interval, a  $\pm 5$  percent precision, and a 5 percent expected error rate.



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**TAS can take additional steps to ensure that case advocates are protecting taxpayers' right to representation**

In our review of the case history narratives from the TAMIS, we did not find any evidence in six of the 118 case files reviewed that case advocates secured managerial approval to bypass an authorized representative and deal with the taxpayer directly, nor provide any notification to the POA on file of such a bypass. Specifically, for the six cases, case advocates improperly contacted the taxpayers directly when there was a valid POA on file or a Form 2848 was sent directly to TAS. We found that case advocates attempted to contact the taxpayers directly by telephone instead of contacting the authorized representative as listed in the TAMIS or in the Integrated Data Retrieval System. Based on case reviews, there was no evidence indicating the POA was delaying the process or that the case advocate obtained the respective manager's approval to contact the taxpayer and bypass the POA on file. Additionally, TAS Quality Review Program management identified similar findings in their FY 2018 report, in which they reported 49 instances out of 930 reviews in which the authorized POA was not contacted.

**Management Action:** On January 9, 2017, TAS issued Question Resolution Information System (QRIS) 10795, *Communicating with the Taxpayer When Form 2848 is on File with the IRS*, to clarify employees' responsibilities pertaining to representation and authorization, and requested managers to review QRIS responses during a group meeting to remind employees of their responsibilities when taxpayers have a POA.<sup>10</sup>

When we discussed the six cases with TAS management, they only agreed that the case advocates did not properly document their discussions with taxpayers regarding the POA on file, as directed in their Internal Revenue Manual (IRM).<sup>11</sup> They disagreed with the potential violations on the basis that this IRM allows case advocates to make the initial contact with the taxpayer to ask whether the POA will be involved in the resolution of the case or if the taxpayer intends to revoke the POA's authorization, and then document this discussion in the TAMIS. The same IRM instructs case advocates, during this contact, to inform the taxpayer of the requirement to contact the POA unless the taxpayer revokes or the POA withdraws the authorization.

However, this position directly circumvents the requirement for managerial authorization which per I.R.C. § 7521(c) requires IRS employees to obtain their immediate supervisor's approval to contact the taxpayer instead of the representative if the representative unreasonably delays the completion of an examination, collection, or investigation. When TAS employees do not follow appropriate bypass procedures, TAS not only violates taxpayers' rights to receive appropriate and effective representation, but they may also negatively affect the outcome of these cases in which taxpayers may not otherwise make an informed decision. The IRM is the primary source

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<sup>10</sup> The QRIS is for all case advocates with a question pertaining to casework that requires additional explanation. The responses in this library provide clarity but do not supersede IRM guidance.

<sup>11</sup> IRM 13.1.18.3(8) (May 5, 2016).



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of the IRS's "instructions to staff" that relates to the administration and operation of tax administration. The IRM ensures that employees have the approved policy and guidance that they need to carry out their responsibilities to administer tax laws or other agency obligations. IRM content must be accurate and reliable to ensure consistent administration of the tax laws. Through the IRM, the IRS fulfills certain legal obligations.

### **The TE/GE Division can take additional steps to ensure that examiners are protecting taxpayers' right to representation**

In our review of the case activity records from the RCCMS and/or physical case files, we found five instances out of 96 case files in which examiners potentially violated taxpayers' right to representation per I.R.C. § 7521(c) and bypassed authorized representatives, without obtaining appropriate authorization. Specifically, for the five cases, examiners directly contacted taxpayers when there was a valid POA on file either in the RCCMS or in the Integrated Data Retrieval System, or a Form 2848 was sent directly to the TE/GE Division. For each of these cases, there was no evidence indicating the POA was delaying the process or that the examiner contacted the manager for approval to contact the taxpayer as required under the bypass provisions of I.R.C. § 7521(c). Further, there was also no indication of TE/GE Division manager acknowledgement authorizing the bypass of authorized representatives during the case closure process.

The TE/GE Division's IRM does include some POA bypass procedures by business units. For example:

- Examiners in the Employee Plans business unit are instructed to consult their group manager before making a referral as they must perform POA bypass procedures. Their IRM provides detailed instructions for the examiner to follow if the representative impedes or delays an examination.<sup>12</sup>
- Examiners in the Exempt Organizations business unit are instructed to consult with their group manager, if after the POA fails twice to provide the requested documents, before making a referral to perform POA bypass procedures.<sup>13</sup>

When we discussed the five cases with TE/GE Division management, they agreed in general that in all five cases, the taxpayers were contacted directly when the taxpayer had representation. The IRM ensures that employees have the approved policy and guidance that they need to carry out their responsibilities in administering tax laws, including bypass provisions of I.R.C. § 7521(c). When TE/GE Division employees do not follow their IRM or management does not take action on quality review results, taxpayer rights could potentially be violated.

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<sup>12</sup> IRM 4.71.1.9.1.1 (May 12, 2017).

<sup>13</sup> IRM 4.75.11.19 (Jan. 18, 2017).



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**TE/GE Division examiners documentation of Publication 1 rights needs improvement**

The TE/GE Division IRM specifically requires its examiners to provide taxpayers a copy of Publication 1 prior to a scheduled interview and to mention Publication 1 again during the initial contact interviews with the taxpayer or their representative.<sup>14</sup> We reviewed the sampled TE/GE Division cases to determine whether these actions were documented in case files. We found instances in which the examiners did not consistently follow IRM guidelines. We determined that:

- In 11 (11.5 percent) of 96 cases reviewed, examiners did not provide taxpayers Publication 1 prior to their scheduled interview nor discuss Publication 1 during initial contact interviews.

When we discussed the 11 cases with TE/GE Division management, they agreed in general that the examiners did not provide taxpayers with Publication 1 during the initial contact interviews or prior to the scheduled interview with the taxpayer. A review of the Tax Exempt Quality Measurement System staff for Exempt Organizations and Employee Plans business units showed similar findings in which they identified the following in their FY 2018 report:

- For the Exempt Organizations business unit, 56 (14.7 percent) of 380 reviews found that taxpayer or representative rights were not always observed and protected.
- For the Employee Plans business unit, 170 (55.6 percent) of 306 reviews found that taxpayer or representative rights were not always observed and protected.

We did not find management actions taken on the quality review findings. The IRS uses Publication 1 as the main document to inform taxpayers of their rights and to explain the audit, collection, appeals, and refund processes. Publication 1 also includes a contact number for TIGTA, for which suspected violations of the direct contact provisions and other potential misconduct or abuse by IRS personnel can be reported. Furthermore, the Taxpayer Bill of Rights as published in Publication 1 is also codified under I.R.C. § 7803(a)(3). Taxpayers would be better informed of their rights during interviews if examiners are mindful in safeguarding those rights afforded to taxpayers.

**TAS case advocates should consistently document taxpayer rights and taxpayers understanding of those rights**

The TAS IRM does not require its case advocates to provide the Taxpayer Bill of Rights as published in Publication 1 prior to a scheduled interview nor to mention Publication 1 during any contact with the taxpayer or their representative.<sup>15</sup> We reviewed the case history narratives for

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<sup>14</sup> IRM 4.71.1.7 (6) (May 12, 2017); IRM 4.71.1.12(8) (May 12, 2017); IRM 4.75.11.3(4) (Jan. 18, 2017); IRM 4.75.10.8(3) (Aug. 3, 2017); IRM 4.86.5.15.3(1) (Sep. 15, 2015). See Appendix V for Publication 1.

<sup>15</sup> IRM Part 13 Taxpayer Advocate Service. See Appendix V for Publication 1.





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the sampled TAS cases and found instances in which case advocates did not provide taxpayers their Taxpayer Bill of Rights as outlined in Publication 1.<sup>16</sup> We determined that:

- In 36 (30.5 percent) of 118 TAS cases reviewed, case advocates did not document in their case history narratives that the Taxpayer Bill of Rights were provided to taxpayers.
  - 22 of the 36 cases met TAS criteria for economic burden. Economic burden cases involve a financial difficulty to the taxpayer.<sup>17</sup>
  - 14 of the 36 cases met TAS criteria for systemic burden. Systemic burden cases are those cases in which an IRS process, system, or procedure has failed to operate as intended resulting in the IRS's failure to respond to or resolve the taxpayer's issue.<sup>18</sup>

When we discussed the 36 cases with TAS management, they disagreed that TAS should provide Publication 1 or discuss taxpayer rights at the point of initial contact of the case advocate's case work. TAS's position is that its primary responsibility is to advocate for the taxpayer, not to spend the time to explain taxpayer rights at every initial taxpayer contact. TAS will provide any relevant information when warranted, including any potential consequences or adverse action that non-action by the taxpayer would cause. However, TAS management stated that it does agree that the case advocates could better document their actions to provide or discuss Publication 1 or the Taxpayer Bill of Rights during case processing. TIGTA believes that taxpayers should be informed of their rights and most importantly understand them and any potential consequence. TAS should not wait until the end to make a decision based on the outcome of a case to decide to inform a taxpayer.

TIGTA found that TAS does not have established guidelines in place to communicate with taxpayers and ensure their understanding of their taxpayer rights as published in Publication 1 and as codified under I.R.C. § 7803(a)(3), which also covers the direct contact provision rights as outlined under I.R.C. §§ 7521(b)(2) and (c) and the fair tax collection practices of I.R.C. § 6304(a)(2). Furthermore, TAS management confirmed that case advocates are not required to provide Publication 1 and that there is no existing guidance in place to require Publication 1 as an enclosure in its letters. In its advance notice related to the IRM, TAS's position is reinforced stating, "*Since the IRS includes Publication 1 with the first Master File (MF), Delinquent Return (Del Ret) or Non Master File (NMF) notice, the taxpayer has received*

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<sup>16</sup> We also considered instances in which Publication 5170, *Taxpayer Bill of Rights (Brochure)*, was provided to taxpayers, similar to Publication 1.

<sup>17</sup> IRM 13.1.7.2(2) (Feb. 5, 2016). The taxpayer is experiencing economic harm or is about to suffer economic harm, is facing an immediate threat of adverse action, will incur significant costs if relief is not granted, or will suffer irreparable injury or long-term adverse impact if relief is not granted.

<sup>18</sup> IRM 13.1.7.2.2 (Feb. 5, 2016). The taxpayer has experienced a delay of more than 30 days to resolve a tax account problem; has not received a response or resolution to the problem or inquiry by the date promised; or a system or procedure has failed to operate as intended, or failed to resolve the taxpayer's problem or dispute with the IRS.



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notification, in most cases.”<sup>19</sup> In our TAS case reviews, we found that some case advocates documented that they provided Publication 1 to taxpayers. As previously stated, the IRS uses Publication 1 as the main document to inform taxpayers of their rights and to explain the audit, collection, appeals, and refund processes. In addition, Publication 1 includes a contact number for TIGTA, in which suspected violations of the direct contact provisions and other potential misconduct or abuse by IRS personnel can be reported.

TIGTA disagrees with TAS’s position and believes that TAS should ensure that taxpayers thoroughly comprehend their rights and potential consequences specific to their case. In doing so, taxpayers would be better informed of their rights, including the right to quality service from TAS. Informing and ensuring that taxpayers comprehend their rights will not only ensure compliance by TAS employees with the direct contact provisions, but also support taxpayers in making an informed decision pertaining to their individual circumstance and avoid the potential perception of TAS inadvertently violating taxpayers’ rights.

### ***Recommendations***

**Recommendation 1:** The National Taxpayer Advocate and the Commissioner, TE/GE Division, should ensure that their respective group managers appropriately discuss the cases TIGTA identified with the respective employees.

**Management’s Response:** IRS management agreed with this recommendation. TAS and the TE/GE Division will ensure that their respective group managers meet with their respective employees to discuss the cases TIGTA identified in an effort to better protect taxpayers’ right to representation.

**Recommendation 2:** The Commissioner, TE/GE Division, should reemphasize the importance of its examiners following established guidelines and procedures on taxpayer representation rights, including enclosure of Publication 1 in correspondence and discussing rights during the initial taxpayer interview process.

**Management’s Response:** IRS management agreed with this recommendation. The TE/GE Division will highlight and reemphasize established guidelines and procedures on taxpayer representation rights, including enclosure of Publication 1 in correspondence and discussing rights during the initial taxpayer interview process.

**Recommendation 3:** The National Taxpayer Advocate should develop procedures for case advocates so that they consistently document how taxpayer rights should be discussed, whether via related publications such as Publication 1 or through other means, and to confirm a taxpayer’s understanding of their rights.

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<sup>19</sup> IRM 13.1.2.4.1 (Mar. 16, 2012).





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**Management's Response:** IRS management agreed with this recommendation. TAS will develop guidance to clarify the procedures case advocates should follow when making initial and subsequent contact with a taxpayer.

**The Taxpayer Advocate Service and Tax Exempt and Government Entities Division Training Materials and Internal Revenue Manual Lack Adequate Direct Contact Provision Guidance**

Our review of TAS and TE/GE Division training materials found limited training and/or inconsistencies in how materials address the direct contact provisions of I.R.C. §§ 7521(b)(2) and (c) and the fair tax collection practices of I.R.C. § 6304(a)(2).

Control activities are the actions management establishes through policies and procedures to achieve objectives and respond to risks in the internal control system, which includes the entity's information system. Management of human capital is one control activity identified in the Government Accountability Office *Standards for Internal Control in the Federal Government*.<sup>20</sup> Effective management of an entity's workforce, its human capital, is essential to achieving results and an important part of internal control. Only when the right personnel for the job are on board and are provided the right training, tools, structure, incentives, and responsibilities is operational success possible. Management continually assesses the knowledge, skills, and ability needs of the entity so that the entity is able to obtain a workforce that has the required knowledge, skills, and abilities to achieve organizational goals. Training is aimed at developing and retaining employee knowledge, skills, and abilities to meet changing organizational needs.

Taxpayers depend on IRS employees to protect their rights and enact the laws, as written in the I.R.C. IRS employees require continuing education in order to fulfill their duties and gain the knowledge to complete their work in a manner which protects the taxpayer's rights. If employees do not receive adequate training on the direct contact provisions and fair tax collection practices, they may not retain an understanding of all the requirements pertaining to the law, which could threaten taxpayer rights.

**TAS training materials do not provide case advocates adequate training on direct contact provisions**

Our review of TAS training materials identified limited training opportunities available to TAS employees related to the direct contact provisions. The training materials were limited to new hires with no new updates for existing employees. Additionally, the training materials provided to TAS employees were aimed at recognizing whether other IRS business operating divisions protected taxpayer rights, including but not limited to Publication 1, POA consultation and representation, as well as bypass of the authorized representatives. TAS training modules did not

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<sup>20</sup> Government Accountability Office, GAO-14-704G, *Standards for Internal Control* pp. 44 and 46 (September 2014).



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provide TAS employees guidance to suspend an interview when the taxpayer wishes to seek representation. During our interview sessions with TAS employees, when asked if they had any suggestions for improving the direct contact guidance, some stated that they would like to receive annual refresher course training and IRM guidance specifically related to the direct contact provisions.<sup>21</sup>

Based on our review of IRM Part 13, *Taxpayer Advocate Service*, TAS does not have written guidance for case advocates and limited guidance for managers on their responsibilities regarding suspension of an interview when the taxpayer wishes to seek representation, as well as on bypass procedures when an authorized representative is responsible for unreasonable delay or hindrance of a taxpayer's examination or investigation. In response to a prior TIGTA audit, TAS recently published a new IRM on Taxpayer Advocate Case Procedures.<sup>22</sup> While the IRM addresses taxpayer bypass procedures under I.R.C. § 7521(c), TAS IRMs reviewed do not address a taxpayer's right to request representation nor do they address the fair tax collection practices under I.R.C. § 6304(a)(2) that require the IRS to contact an authorized representative directly, for which the taxpayer has made that election, related to collection matters. Further, TAS has not issued any new updates related to the Interim Guidance Memo or developed any additional training modules to address various scenarios related to authorized representatives legislation as covered under I.R.C. §§ 7521(b)(2) and (c) and I.R.C. § 6304(a)(2).

**TE/GE Division training materials do not provide examiners adequate training on direct contact provisions**

Our review found that TE/GE Division training materials lacked consistency across TE/GE Division business units. We reviewed available training materials for the following TE/GE Division business units: Exempt Organizations; Tax Exempt Bonds; and Federal, State and Local Governments. Current TE/GE Division training materials do not uniformly address I.R.C. §§ 7521(b)(2) and (c). For example, training materials for the Exempt Organizations business unit Examination function provide guidance on I.R.C. §§ 7521(b)(2) and (c), and training materials for the Federal, State and Local Governments business unit only provide guidance on I.R.C. § 7521(b)(2). In addition, the TE/GE Division did not provide any training material for the Employee Plans business unit or the Indian Tribal Governments office. TE/GE Division management is unaware of any training materials pertaining specifically to the direct contact provisions, including Saba or Enterprise Learning Management System courses. Nor did we observe any references to, or guidance for, the fair tax collection practices under I.R.C. § 6304(a)(2) in the current training materials provided by the TE/GE Division. During

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<sup>21</sup> We selected a judgmental sample of 20 TAS employees to interview from the current list of TAS employees to determine their knowledge of the direct contact provisions of I.R.C. §§ 7521(b)(2) and (c) and the fair tax collection practices set forth in I.R.C. § 6304(a)(2). A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.

<sup>22</sup> TIGTA, Ref. No. 2014-10-033, *The Taxpayer Advocate Service Can Improve the Processing of Systemic Burden Cases* (June 2014). IRM 13.1.23 (June 26, 2019).



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our interview sessions with TE/GE Division employees, when asked if they had any suggestions for improving the direct contact guidance, some stated that they would like to receive annual refresher course training and IRM guidance specifically related to the direct contact provisions.<sup>23</sup>

In our review of TE/GE Division IRM provisions, we found that, in general, management provides guidance which addresses and reminds employees of taxpayer rights pertaining to the direct contact provisions of I.R.C. §§ 7521(b)(2) and (c). However, we did not identify IRM guidance to Indian Tribal Governments office examination employees addressing the direct contact provisions of I.R.C. §§ 7521(b)(2) and (c).<sup>24</sup> TE/GE Division management could ensure that taxpayer rights are protected by providing consistent IRM guidance regarding I.R.C. §§ 7521(b)(2) and (c) to all employees. Also, the TE/GE Division does not have any specific guidance on the direct contact provisions for front-line managers.

Until TAS and TE/GE Division management provide consistent and uniform training regarding taxpayer rights under the direct contact provisions of I.R.C. §§ 7521(b)(2) and (c) and the fair tax collection practices under I.R.C. § 6304(a)(2), IRS managers and employees could potentially violate taxpayer rights.<sup>25</sup>

### ***Recommendations***

**Recommendation 4:** The National Taxpayer Advocate should update TAS's guidance to employees that clarifies the applicability of I.R.C. §§ 7521(b)(2) and (c) and I.R.C. § 6304(a)(2), and develop training materials, specific to their casework, to emphasize the importance of protecting taxpayers' right to representation, and designate to whom group managers should report cases with potential violations.

**Management's Response:** IRS management agreed with this recommendation. TAS will update case advocate guidance to clarify the applicability of I.R.C. §§ 7521(b)(2) and (c) and I.R.C. § 6304(a)(2) so that such guidance emphasizes the importance of protecting taxpayers' right to representation and designates to whom group managers should report cases with potential violations.

**Recommendation 5:** The Commissioner, TE/GE Division, should update guidance to employees that clarifies the applicability of I.R.C. §§ 7521(b)(2) and (c) and develop training

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<sup>23</sup> We selected a judgmental sample of 20 TE/GE Division employees to interview from the current list of TE/GE Division employees to determine their knowledge of the direct contact provisions of I.R.C. §§ 7521(b)(2) and (c) and the fair tax collection practices set forth in I.R.C. § 6304(a)(2). A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.

<sup>24</sup> While Indian Tribal Government office issued IRM 4.86.5.11.1 (Mar. 28, 2019) with instructions on the bypass provisions of I.R.C. § 7521(c), TIGTA's review found that it does not provide guidance on I.R.C. § 7521(b)(2), which provide taxpayers the right to representation during interviews. Additionally, the IRM was published after the scope of our FY 2018 review.

<sup>25</sup> According to TE/GE Division executives, its examiners do not perform collection actions and therefore I.R.C. § 6304(a)(2) does not apply.



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materials, specific to their casework, to emphasize the importance of protecting taxpayers' right to representation, and designate to whom group managers should report cases with potential violations.

**Management's Response:** IRS management agreed with this recommendation. The TE/GE Division will update guidance that clarifies the applicability of I.R.C. §§ 7521(b)(2) and (c) and develop training materials specific to TE/GE Division casework. Such guidance shall emphasize the importance of protecting taxpayers' right to representation and designate to whom group managers should report cases with potential violations.



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## **Appendix I**

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

The overall objective of this review was to determine whether TAS and the TE/GE Division complied with legal guidelines addressing the direct contact of taxpayers and their representatives set forth in I.R.C. §§ 7521(b)(2) and (c) and where applicable, the fair tax collection practices set forth in I.R.C. § 6304(a)(2).<sup>1</sup> To accomplish this objective, we:

- I. Determined the procedures and controls the IRS uses to ensure that employees are following the direct contact provisions and fair tax collection practices.
  - A. Contacted IRS officials in TAS and the TE/GE Division to determine if a system has been developed or is planned to identify those cases in which taxpayers have requested consultation with a representative or in which an IRS employee bypassed a representative and directly contacted the taxpayer.
  - B. Conducted searches on the IRS intranet and contacted IRS officials to identify any guidance provided to employees to help them meet the direct contact provisions and the fair tax collection practices and to group managers to help them provide oversight of their employees' compliance with the direct contact provisions set forth in I.R.C. §§ 7521(b)(2) and (c), and the fair tax collection practices set forth in I.R.C. § 6304(a)(2).
  - C. Reviewed the IRS's IRMs and contacted IRS officials to identify how the IRS informs taxpayers of the IRS's prohibition on directly contacting taxpayers when a representative has been requested.
  - D. Reviewed prior TIGTA and Joint Audit Management Enterprise System reports for FYs 2014 through 2018 direct contact reviews to identify any prior recommendations and the IRS's Planned Corrective Actions.
  - E. Evaluated available TAS and TE/GE Division business results reports for FYs 2017 and 2018, including Business Performance Reviews, Tax Exempt Quality Measurement System, and Quality Review Database annual report, ad-hoc reports, *etc.* to determine whether the reports addressed the direct contact provisions of the I.R.C. and the extent to which they consider taxpayer rights.
    1. Reviewed the quality review process using the results of the Tax Exempt Quality Measurement System and Quality Review Database reports and conducted telephone interviews with the quality review staff who conducts TE/GE Division and TAS closed case reviews to determine the quality review process and to gain an

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<sup>1</sup> See Appendix VI for a glossary of terms.



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- understanding of the causes and errors related specifically to the direct contact provisions.
- II. Determined how well the IRS is ensuring that taxpayer rights, under the direct contact provisions and fair tax collection practices of the I.R.C., are protected during TAS case reviews and TE/GE Division examinations by doing the following:
- A. Selected a judgmental sample of 20 TAS and 20 TE/GE Division employees to interview based from current list of employees.<sup>2</sup>
  - B. Conducted telephone interviews with the employees identified in Step II.A. to determine their knowledge of the direct contact provisions of I.R.C. §§ 7521(b)(2) and (c) and the fair tax collection practices set forth in I.R.C. § 6304(a)(2).
  - C. Reviewed TAS and TE/GE Division closed cases using the TAMIS and the RCCMS, respectively, for history action that included interactions with a taxpayer and/or the respective taxpayer's representatives between October 1, 2017, and September 30, 2018, to determine whether TAS and TE/GE Division employees were complying with the direct contact provisions and the fair tax collection practices of the I.R.C. For the TE/GE Division, we looked at the case chronology (Form 5464, *Case Chronology Record*, and Form 9984, *Examining Officer's Activity Record*) and other contemporaneous TE/GE Division documentation.
    - 1. Obtained a statistical data extract download of the total number of closed cases for FY 2018 from the TE/GE Division's RCCMS of all closed cases worked by the TE/GE Division Examination function closed between October 1, 2017, and September 30, 2018, resulting in a download of 26,523 unique cases. For TAS, we obtained a download of 201,432 unique cases from the TAMIS.
    - 2. Through analysis of TAMIS and RCCMS data files, worked with TIGTA's contracted statistician to develop a sampling plan to select a stratified valid random sample of closed cases from the total population of closed cases based on a 95 percent confidence level, a 5 percent anticipated error rate, and a  $\pm 5$  percent precision for the TE/GE Division, and for TAS, our sampling plan was based on a 95 percent confidence level, a 35 percent anticipated error rate, and a  $\pm 5$  percent precision in the with POA group and a 5 percent error rate in the without POA group. We doubled the number of cases selected to ensure that we have additional cases available if we determined a need to expand the sample size.
      - a. For TAS, stratified the population by two strata. The first subpopulation contained 30,145 taxpayer cases with an indicator reflecting they had a valid POA on file, and the second subpopulation contained 171,287 taxpayer cases with an indicator reflecting no POA on file. With assistance from TIGTA's statistician,

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<sup>2</sup> A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.





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we selected a stratified statistical sample size of 18 cases from the subpopulation with a valid POA on file and 100 cases from the subpopulation with no POA on file for review.

- b. For the TE/GE Division, identified the total population size of closing record count of 28,203. We then removed the following records in the “TIN\_validity\_description” field from our count to arrive at 26,684 filtered records count:
  - 2 invalid Taxpayer Identification Numbers.
  - 4 Taxpayer Identification Numbers with 999999999.
  - 7 Taxpayer Identification Numbers with 000000000.
  - 82 blank Taxpayer Identification Numbers.
  - 1,424 surveyed disposal codes containing 907, 910, and 913.

We then analyzed the data using a combination of TIN, TXPD, and Activity\_ID to determine the population size of 26,523 unique cases. With assistance from TIGTA’s statistician, we selected a stratified statistical sample size of 96 cases for review.

3. Used the SAS Enterprise Guide or Excel to select a sample of closed cases from TAS and the TE/GE Division, respectively, from the populations identified in Step II.C.2.
4. Reviewed the sampled case file case history narratives pulled in Step II.C.3. to determine whether TAS and TE/GE Division employees were complying with the direct contact provisions of I.R.C. §§ 7521(b)(2) and (c) and the fair tax collection practices set forth in I.R.C. § 6304(a)(2).
  - a. Ordered the respective physical case files from TAS and the TE/GE Division for those cases in which the history narratives contained language that appeared to violate the direct contact provisions or fair tax collection practices set forth in the I.R.C.
  - b. Reviewed the case activity records to determine whether the taxpayers were notified of their rights to representation by Publication 1, *Your Rights as a Taxpayer*, or other means.
- D. Quantified the case review results and potential outcomes, discussed the findings with TAS and TE/GE Division management, and obtained their feedback on potential violations identified through our case reviews.
- E. Contacted TAS officials to identify any taxpayer complaints resulting from potential IRS employee direct contact violations and determined whether changes have been made or



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are planned to be made to the TAMIS to start tracking taxpayer complaints related to potential IRS employee direct contact violations.

III. Contacted officials in the IRS Employee Conduct and Compliance Office to identify any taxpayer complaints resulting from potential IRS employee direct contact violations.

1. Obtained and reviewed any direct contact complaints recorded on the E-trak system during FY 2018, and identified and documented the resolution or current status of the complaints and the number of taxpayers involved.

IV. Reviewed the direct contact complaints and investigations closed by TIGTA's Office of Investigations in FY 2018 and tracked on the Criminal Results Management System.

V. Reviewed TAS and TE/GE Division training materials and conducted interviews with TAS and TE/GE Division employees and managers to determine whether TAS and the TE/GE Division provided training/learning opportunities that adequately address the direct contact provisions of I.R.C. §§ 7521(b)(2) and (c) and the fair tax collection practices of I.R.C. § 6304(a)(2), and whether TAS and TE/GE Division employees have a general understanding of these requirements.

**Data validation methodology**

We assessed the reliability of TAMIS and RCCMS case history files by: 1) performing electronic testing of required data elements, 2) reviewing existing information about the data and the system that produced them, and 3) comparing data elements from a judgmental sample of 15 sampled taxpayer accounts against data in the physical case files to ensure the accuracy of the data from the TAMIS and the RCCMS. 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 related to responding to taxpayer and taxpayer representative allegations of IRS employee violations of the direct contact provisions of I.R.C. §§ 7521(b)(2) and (c) and the fair tax collection practices of I.R.C. § 6304(a)(2). We evaluated these controls by contacting management, reviewing IRM guidance provided to managers and employees, interviewing employees and group managers, reviewing closed complaints and investigations from TIGTA's Criminal Results Management System, identifying closed cases tracked on the IRS's E-trak database, and reviewing case history narratives associated with the selected taxpayers.





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**Appendix II**

*Major Contributors to This Report*

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David Hartman, Senior Auditor



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**Appendix III**

*Report Distribution List*

Deputy Commissioner for Services and Enforcement  
National Taxpayer Advocate  
Commissioner, Tax Exempt and Government Entities Division  
Deputy Commissioner, Tax Exempt and Government Entities Division  
Deputy Human Capital Officer  
Deputy National Taxpayer Advocate  
Director, Advocacy Efforts  
Director, Advocacy, Implementation, and Evaluation  
Director, Employee Plans, Tax Exempt and Government Entities Division  
Director, Exempt Organizations, Tax Exempt and Government Entities Division  
Director, Government Entities/Shared Services, Tax Exempt and Government Entities Division  
Director, Indian Tribal Governments/Tax Exempt Bonds, Tax Exempt and Government Entities  
Division  
Director, Enterprise Audit Management



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**Appendix IV**

*Previous Audit Reports Related to  
This Statutory Review<sup>1</sup>*

TIGTA, Ref. No. 2018-30-070, *Fiscal Year 2018 Statutory Review of Restrictions on Directly Contacting Taxpayers* (Sept. 2018).

TIGTA, Ref. No. 2017-30-076, *Fiscal Year 2017 Statutory Review of Restrictions on Directly Contacting Taxpayers* (Sept. 2017).

TIGTA, Ref. No. 2016-30-067, *Fiscal Year 2016 Statutory Review of Restrictions on Directly Contacting Taxpayers* (Aug. 2016).

TIGTA, Ref. No. 2015-30-061, *Fiscal Year 2015 Statutory Review of Restrictions on Directly Contacting Taxpayers* (July 2015).

TIGTA, Ref. No. 2014-30-079, *Fiscal Year 2014 Statutory Review of Restrictions on Directly Contacting Taxpayers* (Sept. 2014).

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<sup>1</sup> This list provides the five most recent of the 20 previous reports issued by TIGTA.



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### Appendix V

### Publication 1, Your Rights as a Taxpayer



# Your Rights as a Taxpayer

Publication 1

This publication explains your rights as a taxpayer and the processes for examination, appeal, collection, and refunds. Also available in Spanish.

## The Taxpayer Bill of Rights

- 1. The Right to Be Informed**

Taxpayers have the right to know what they need to do to comply with the tax laws. They are entitled to clear explanations of the laws and IRS procedures in all tax forms, instructions, publications, notices, and correspondence. They have the right to be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.
- 2. The Right to Quality Service**

Taxpayers have the right to receive prompt, courteous, and professional assistance in their dealings with the IRS, to be spoken to in a way they can easily understand, to receive clear and easily understandable communications from the IRS, and to speak to a supervisor about inadequate service.
- 3. The Right to Pay No More than the Correct Amount of Tax**

Taxpayers have the right to pay only the amount of tax legally due, including interest and penalties, and to have the IRS apply all tax payments properly.
- 4. The Right to Challenge the IRS's Position and Be Heard**

Taxpayers have the right to raise objections and provide additional documentation in response to formal IRS actions or proposed actions, to expect that the IRS will consider their timely objections and documentation promptly and fairly, and to receive a response if the IRS does not agree with their position.
- 5. The Right to Appeal an IRS Decision in an Independent Forum**

Taxpayers are entitled to a fair and impartial administrative appeal of most IRS decisions, including many penalties, and have the right to receive a written response regarding the Office of Appeals' decision. Taxpayers generally have the right to take their cases to court.
- 6. The Right to Finality**

Taxpayers have the right to know the maximum amount of time they have to challenge the IRS's position as well as the maximum amount of time the IRS has to audit a particular tax year or collect a tax debt. Taxpayers have the right to know when the IRS has finished an audit.
- 7. The Right to Privacy**

Taxpayers have the right to expect that any IRS inquiry, examination, or enforcement action will comply with the law and be no more intrusive than necessary, and will respect all due process rights, including search and seizure protections, and will provide, where applicable, a collection due process hearing.
- 8. The Right to Confidentiality**

Taxpayers have the right to expect that any information they provide to the IRS will not be disclosed unless authorized by the taxpayer or by law. Taxpayers have the right to expect appropriate action will be taken against employees, return preparers, and others who wrongfully use or disclose taxpayer return information.
- 9. The Right to Retain Representation**

Taxpayers have the right to retain an authorized representative of their choice to represent them in their dealings with the IRS. Taxpayers have the right to seek assistance from a Low Income Taxpayer Clinic if they cannot afford representation.
- 10. The Right to a Fair and Just Tax System**

Taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. Taxpayers have the right to receive assistance from the Taxpayer Advocate Service if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels.

**The IRS Mission** | Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.



## Fiscal Year 2019 Statutory Review of Restrictions on Directly Contacting Taxpayers

### Examinations, Appeals, Collections, and Refunds

#### Examinations (Audits)

We accept most taxpayers' returns as filed. If we inquire about your return or select it for examination, it does not suggest that you are dishonest. The inquiry or examination may or may not result in more tax. We may close your case without change; or, you may receive a refund.

The process of selecting a return for examination usually begins in one of two ways. First, we use computer programs to identify returns that may have incorrect amounts. These programs may be based on information returns, such as Forms 1099 and W-2, on studies of past examinations, or on certain issues identified by compliance projects. Second, we use information from outside sources that indicates that a return may have incorrect amounts. These sources may include newspapers, public records, and individuals. If we determine that the information is accurate and reliable, we may use it to select a return for examination.

Publication 556, Examination of Returns, Appeal Rights, and Claims for Refund, explains the rules and procedures that we follow in examinations. The following sections give an overview of how we conduct examinations.

#### By Mail

We handle many examinations and inquiries by mail. We will send you a letter with either a request for more information or a reason why we believe a change to your return may be needed. You can respond by mail or you can request a personal interview with an examiner. If you mail us the requested information or provide an explanation, we may or may not agree with you, and we will explain the reasons for any changes. Please do not hesitate to write to us about anything you do not understand.

#### By Interview

If we notify you that we will conduct your examination through a personal interview, or you request such an interview, you have the right to ask that the examination take place at a reasonable time and place that is convenient for both you and the IRS. If our examiner proposes any changes to your return, he or she will explain the reasons for the changes. If you do not agree with these changes, you can meet with the examiner's supervisor.

#### Repeat Examinations

If we examined your return for the same items in either of the 2 previous years and proposed no change to your tax liability, please contact us as soon as possible so we can see if we should discontinue the examination.

#### Appeals

If you do not agree with the examiner's proposed changes, you can appeal them to

the Appeals Office of the IRS. Most differences can be settled without expensive and time-consuming court trials. Your appeal rights are explained in detail in both Publication 5, Your Appeal Rights and How To Prepare a Protest If You Don't Agree, and Publication 556, Examination of Returns, Appeal Rights, and Claims for Refund.

If you do not wish to use the Appeals Office or disagree with its findings, you may be able to take your case to the U.S. Tax Court, U.S. Court of Federal Claims, or the U.S. District Court where you live. If you take your case to court, the IRS will have the burden of proving certain facts if you kept adequate records to show your tax liability, cooperated with the IRS, and meet certain other conditions. If the court agrees with you on most issues in your case and finds that our position was largely unjustified, you may be able to recover some of your administrative and litigation costs. You will not be eligible to recover these costs unless you tried to resolve your case administratively, including going through the appeals system, and you gave us the information necessary to resolve the case.

#### Collections

Publication 594, The IRS Collection Process, explains your rights and responsibilities regarding payment of federal taxes. It describes:

- What to do when you owe taxes. It describes what to do if you get a tax bill and what to do if you think your bill is wrong. It also covers making installment payments, delaying collection action, and submitting an offer in compromise.
- IRS collection actions. It covers liens, releasing a lien, levies, releasing a levy, seizures and sales, and release of property.
- IRS certification to the State Department of a seriously delinquent tax debt, which will generally result in denial of a passport application and may lead to revocation of a passport.

Your collection appeal rights are explained in detail in Publication 1660, Collection Appeal Rights.

#### Innocent Spouse Relief

Generally, both you and your spouse are each responsible for paying the full amount of tax, interest, and penalties due on your joint return. However, if you qualify for innocent spouse relief, you may be relieved of part or all of the joint liability. To request relief, you must file Form 8857, Request for Innocent Spouse Relief. For more information on innocent spouse relief, see Publication 971, Innocent Spouse Relief, and Form 8857.

#### Potential Third Party Contacts

Generally, the IRS will deal directly with you or your duly authorized representative.

However, we sometimes talk with other persons if we need information that you have been unable to provide, or to verify information we have received. If we do contact other persons, such as a neighbor, bank, employer, or employees, we will generally need to tell them limited information, such as your name. The law prohibits us from disclosing any more information than is necessary to obtain or verify the information we are seeking. Our need to contact other persons may continue as long as there is activity in your case. If we do contact other persons, you have a right to request a list of those contacted. Your request can be made by telephone, in writing, or during a personal interview.

#### Refunds

You may file a claim for refund if you think you paid too much tax. You must generally file the claim within 3 years from the date you filed your original return or 2 years from the date you paid the tax, whichever is later. The law generally provides for interest on your refund if it is not paid within 45 days of the date you filed your return or claim for refund. Publication 556, Examination of Returns, Appeal Rights, and Claims for Refund, has more information on refunds.

If you were due a refund but you did not file a return, you generally must file your return within 3 years from the date the return was due (including extensions) to get that refund.

#### Taxpayer Advocate Service

TAS is an *independent* organization within the IRS that can help protect your taxpayer rights. We can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for our assistance, which is always free, we will do everything possible to help you. Visit [www.taxpayeradvocate.irs.gov](http://www.taxpayeradvocate.irs.gov) or call 1-877-777-4778.

#### Tax Information

The IRS provides the following sources for forms, publications, and additional information.

- **Tax Questions:** 1-800-829-1040 (1-800-829-4059 for TTY/TDD)
- **Forms and Publications:** 1-800-829-3676 (1-800-829-4059 for TTY/TDD)
- **Internet:** [www.irs.gov](http://www.irs.gov)
- **Small Business Ombudsman:** A small business entity can participate in the regulatory process and comment on enforcement actions of the IRS by calling 1-888-REG-FAIR.
- **Treasury Inspector General for Tax Administration:** You can confidentially report misconduct, waste, fraud, or abuse by an IRS employee by calling 1-800-366-4484 (1-800-877-8339 for TTY/TDD). You can remain anonymous.



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**Appendix VI**

*Glossary of Terms*

<b>Term</b>	<b>Definition</b>
<b>Automated Labor and Employee Relations Tracking System</b>	An application used to track labor/employee relations case data. It was developed to ensure consistency in tracking labor and employee relations disciplinary actions.
<b>Business Operating Division</b>	Term commonly used to refer to the Wage and Investment, Small Business/Self-Employed, Large Business and International, and TE/GE Divisions in the IRS Services and Enforcement organization.
<b>Calendar Year</b>	The 12-consecutive-month period ending on December 31.
<b>Case Advocate</b>	TAS employees who help taxpayers resolve problems, work with the IRS to correct systemic and procedural problems, and develop legislative proposals to reduce taxpayer burden.
<b>Criminal Results Management System</b>	A management information system that provides TIGTA's Office of Investigations the ability to manage and account for complaints received, including congressional inquiries, investigations initiated, and leads developed from Local Investigative Initiates and National Investigative Initiates.
<b>E-trak</b>	A web interface that easily allows business requirements to be translated into systemic configuration for case management and case tracking covering multiple IRS business functions.
<b>Enterprise Learning Management System</b>	An IRS learning management system, which is the system of record for all IRS training. It is used for the administration, documentation, tracking, and reporting of training, as well as the delivery of online training.
<b>Exempt Organizations Business Unit</b>	The Exempt Organizations business unit administers tax law governing charities, private foundations, and other entities exempt from Federal income tax.





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<b>Term</b>	<b>Definition</b>
<b>Federal, State, and Local Governments Business Unit</b>	The Federal, State, and Local Governments business unit facilitates cooperation through partnerships with Federal, State, and local government agencies for the purpose of meeting their Federal tax responsibilities, with a focus on customer service and fairness to all.
<b>Fiscal Year</b>	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.
<b>Indian Tribal Governments Office</b>	The Indian Tribal Governments office provides its customers top quality service by helping them understand and comply with applicable tax laws. The Indian Tribal Governments office addresses issues and provides guidance regarding issues such as tribal governments as employers; distributions to tribal members; and the establishment of governmental programs, trusts, and businesses.
<b>Integrated Data Retrieval System</b>	IRS computer system capable of retrieving or updating stored information. It works in conjunction with a taxpayer’s account records.
<b>Internal Revenue Code</b>	The Federal tax law, enacted by Congress in Title 26 of the United States Code. It is organized by topics such as income, estate and gift, employment, and miscellaneous excise taxes.
<b>Internal Revenue Manual</b>	The official source of IRS policies, procedures, and guidelines.
<b>National Taxpayer Advocate</b>	An independent voice inside the IRS that reports directly to the IRS Commissioner and serves as the advocate for taxpayers within the IRS and before Congress. The National Taxpayer Advocate leads the TAS organization, a nationwide organization of case advocates who help taxpayers resolve problems, work with the IRS to correct systemic and procedural problems, and develop legislative proposals to reduce taxpayer burden.
<b>Power of Attorney</b>	A POA is a taxpayer’s written authorization for a designated individual or individuals to perform certain specified acts on the taxpayer’s behalf.



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<b>Term</b>	<b>Definition</b>
<b>Question Resolution Information System</b>	The QRIS is a SharePoint Library that allows TAS employees with a question pertaining to casework in which existing guidance requires clarification to submit questions online to Technical Analysis and Guidance.
<b>Reporting Compliance Case Management System</b>	An application to support data analytics, querying, and report generating needs of business users for the TE/GE Division.
<b>Saba</b>	An Internet browser-based application that allows individuals in different locations to attend live events from their work locations. These virtual events include training classes, conferences, and meetings.
<b>Tax Exempt Bonds Business Unit</b>	The Tax Exempt Bonds business unit is focused on 1) participants in the municipal finance industry, 2) municipal finance community members understanding their tax responsibilities and helping them through a tailored education program focused on bond industry segments, 3) noncompliance trends to design proactive education and outreach products, and 4) compliance programs offering voluntary resolution of violations of the bond tax rules.
<b>Tax Exempt/Government Entities Division</b>	IRS operating division that ensures that pension plans, exempt organizations, and government entities comply with the tax laws.
<b>Taxpayer Advocate Management Information System</b>	A computerized inventory control and report system developed for the TAS caseworker to produce inventory and other management information system reports to support management.
<b>Taxpayer Advocate Service</b>	An independent organization within the IRS that works to protect taxpayers' rights by ensuring that all taxpayers are treated fairly and that they know and understand their rights.
<b>Treasury Inspector General for Tax Administration's Office of Investigations</b>	The Office of Investigations' overall mission is to help protect the ability of the IRS to collect revenue for the Federal Government. It conducts investigations and proactive investigative initiatives to ensure the integrity of IRS employees, contractors, and other tax professionals; ensure IRS employee and infrastructure security; and protect the IRS against external attempts to corrupt tax administration.





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**Appendix VII**

*Management's Response to the Draft Report*



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224

August 30, 2019

MEMORANDUM FOR MICHAEL E. McKENNEY  
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Bridget T. Roberts *Bridget Roberts*  
Acting National Taxpayer Advocate

Sunita B. Lough *Sunita Lough*  
Commissioner, Tax Exempt and Government Entities

SUBJECT: Draft Audit Report – Fiscal Year 2019 Statutory Review  
of Restrictions on Directly Contacting Taxpayers  
(Audit # 201930015)

Thank you for the opportunity to review the above subject draft audit report. We appreciate your recognition that Taxpayer Advocate Service (TAS) case advocates and Tax Exempt and Government Entities (TE/GE) examiners working cases “generally adhered to procedures that help ensure compliance with the direct contact provisions of IRC §7521(b)(2) and fair tax collection practices of IRC §6304(a)(2).” The managers and employees of the Internal Revenue Service (IRS) take seriously the legal guidelines addressing the direct contact of taxpayers and their representatives.

You identified five recommendations for the National Taxpayer Advocate and the Commissioner, TE/GE to strengthen compliance with the legal guidelines, and we agree with the five recommendations. 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 Bridget T. Roberts, Acting National Taxpayer Advocate at (202) 317-6100 or Sunita B. Lough, Commissioner, TE/GE at (202) 317-8400.

Attachment



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Attachment

**RECOMMENDATION 1:** The National Taxpayer Advocate and the Commissioner, TE/GE Division, should ensure that their respective group managers appropriately discuss the cases TIGTA identified with the respective employees.

**CORRECTIVE ACTION:**

TAS will ensure that group managers meet with case advocates to discuss the cases TIGTA identified, in an effort to better protect taxpayers' right to representation.

**IMPLEMENTATION DATE:**

December 15, 2019

**RESPONSIBLE OFFICIAL:**

TAS Executive Director, Case Advocacy

**CORRECTIVE ACTION:**

TE/GE will ensure that group managers meet with employees to discuss the cases TIGTA identified, in an effort to better protect taxpayers' right to representation.

**IMPLEMENTATION DATE:**

December 15, 2019

**RESPONSIBLE OFFICIALS:**

Director, Employee Plans and Director, Exempt Organizations, TE/GE

**CORRECTIVE ACTION MONITORING PLAN:**

IRS will monitor this corrective action as part of our internal management control system.

**RECOMMENDATION 2:** The Commissioner, TE/GE Division, should reemphasize the importance of its examiners following established guidelines and procedures on taxpayer representation rights, including enclosure of Publication 1 in correspondence and discussing rights during the initial taxpayer interview process.

**CORRECTIVE ACTION:**

TE/GE will highlight and reemphasize established guidelines and procedures on taxpayer representation rights, including enclosure of Publication 1 in correspondence and discussing rights during the initial taxpayer interview process.



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**IMPLEMENTATION DATE:**

October 15, 2020

**RESPONSIBLE OFFICIAL(S):**

Director, Employee Plans and Director, Exempt Organizations, TE/GE

**CORRECTIVE ACTION MONITORING PLAN:**

IRS will monitor this corrective action as part of our internal management control system.

**RECOMMENDATION 3:** The National Taxpayer Advocate should develop procedures for case advocates so that they consistently document how taxpayer rights should be discussed, whether via related publications such as Publication 1 or through other means, and to confirm a taxpayer's understanding of their rights.

**CORRECTIVE ACTION:**

TAS will develop guidance that will clarify the procedures case advocates should follow when making initial and subsequent contact with taxpayer.

**IMPLEMENTATION DATE:**

October 15, 2020

**RESPONSIBLE OFFICIAL(S):**

TAS Executive Director, Case Advocacy

**CORRECTIVE ACTION MONITORING PLAN:**

IRS will monitor this corrective action as part of our internal management control system.

**RECOMMENDATION 4:** The National Taxpayer Advocate should update TAS's guidance to employees that clarifies the applicability of I.R.C. §§ 7521(b)(2) and (c) and I.R.C. § 6304(a)(2), and develops training materials, specific to their casework, to emphasize the importance of protecting taxpayers' right to representation, and designate to whom group managers should report cases with potential violations.

**CORRECTIVE ACTION:**

TAS will update guidance that will clarify the applicability of IRC §§ 7521(b)(2) and (c) and IRS § 6304(a)(2) to case advocates. Such guidance shall emphasize



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the importance of protecting taxpayers' right to representation, and designate to whom group managers should report cases with potential violations.

**IMPLEMENTATION DATE:**

October 15, 2020

**RESPONSIBLE OFFICIAL(S):**

TAS Executive Director, Case Advocacy

**CORRECTIVE ACTION MONITORING PLAN:**

IRS will monitor this corrective action as part of our internal management control system.

**RECOMMENDATION 5:** The Commissioner, TE/GE Division, should update guidance to employees that clarifies the applicability of I.R.C. §§ 7521(b)(2) and (c) and develop training materials, specific to their casework, to emphasize the importance of protecting taxpayers' right to representation, and designate to whom group managers should report cases with potential violations.

**CORRECTIVE ACTION:**

TE/GE will update guidance that clarifies the applicability of I.R.C. §§ 7521(b)(2) and (c) and develop training materials, specific to TE/GE casework. Such guidance shall emphasize the importance of protecting taxpayers' right to representation, and designate to whom group managers should report cases with potential violations.

**IMPLEMENTATION DATE:**

October 15, 2020

**RESPONSIBLE OFFICIAL(S):**

Director, Employee Plans and Director, Exempt Organizations, TE/GE

**CORRECTIVE ACTION MONITORING PLAN:**

IRS will monitor this corrective action as part of our internal management control system.