



*Fiscal Year 2013
Statutory Review of Restrictions
on Directly Contacting Taxpayers*

August 30, 2013

Reference Number: 2013-30-080

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.



HIGHLIGHTS

FISCAL YEAR 2013 STATUTORY REVIEW OF RESTRICTIONS ON DIRECTLY CONTACTING TAXPAYERS

Highlights

Final Report issued on August 30, 2013

Highlights of Reference Number: 2013-30-080 to the Internal Revenue Service Chief, Appeals, and the Commissioner, Small Business/Self-Employed Division.

IMPACT ON TAXPAYERS

IRS personnel are required to stop an interview if the taxpayer requests to consult with a representative and may not bypass a representative without supervisory approval. Between October 2011 and September 2012, TIGTA's Office of Investigations closed 13 direct contact complaints involving IRS personnel, of which two employees were disciplined or counseled for their actions by IRS management officials.

WHY TIGTA DID THE AUDIT

This audit was initiated because TIGTA is required to annually report on the IRS's compliance with Internal Revenue Code Sections 7521(b)(2) and (c). The overall objective of this audit was to determine whether the IRS complied with the legal guidelines addressing the direct contact of taxpayers and their representatives.

WHAT TIGTA FOUND

The IRS has a number of policies and procedures in place to help ensure that taxpayers are afforded the right to designate a qualified representative to act on their behalf in dealing with IRS personnel in a variety of tax matters.

Each year, TIGTA focuses on an office or function of the IRS that interacts with taxpayers and their representatives on a routine basis. For this review, TIGTA analyzed how well the Office of Appeals (Appeals) has ensured that its personnel are appropriately including taxpayers' representatives in its activities. A statistical

sample of 96 of 72,239 cases closed by Appeals showed that Appeals personnel did not always involve representatives appropriately in some key actions.

In 11 of 96 sampled cases, Appeals personnel deviated from procedures by attempting to contact the taxpayer directly by telephone or not ensuring that copies of taxpayer correspondence were sent to the taxpayer's authorized representative. In addition, no documentation was found in managerial reviews indicating that checks were made to ensure that Appeals personnel were involving representatives in all case actions and providing representatives copies of all original correspondence sent to the taxpayers.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the Chief, Appeals, provide additional guidance to first-line managers and Appeals personnel that will reinforce the importance of ensuring that taxpayer representatives are involved in all case activities. This will help ensure that the procedures designed to afford taxpayers their right to appropriate and effective representation are followed and properly documented during the appeals process.

The IRS agreed with TIGTA's recommendation and plans to update the Internal Revenue Manual to clarify front-line managers' responsibilities for ensuring that procedures regarding the direct contact provisions of the Internal Revenue Code are followed and reinforce the importance of ensuring that representatives are involved in all case activities.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

August 30, 2013

MEMORANDUM FOR CHIEF, APPEALS
COMMISSIONER, SMALL BUSINESS/SELF-EMPLOYED
DIVISION

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

SUBJECT: Final Audit Report – Fiscal Year 2013 Statutory Review of Restrictions
on Directly Contacting Taxpayers (Audit # 201330008)

This report presents the results of our review to determine whether the Internal Revenue Service complied with legal guidelines addressing the direct contact of taxpayers and their representatives as set forth in Internal Revenue Code Sections 7521(b)(2) and (c). The Treasury Inspector General for Tax Administration is statutorily required to conduct this audit. This audit was conducted as part of our Fiscal Year 2013 Annual Audit Plan and addresses the major management challenge of Taxpayer Protection and Rights.

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

Copies of this report are also being sent to the Internal Revenue Service managers affected by the report recommendation. If you have any questions, please contact me or Nancy A. Nakamura, Acting Assistant Inspector General for Audit (Compliance and Enforcement Operations).



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Abbreviations

ACDS	Appeals Centralized Database System
I.R.C.	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
TIGTA	Treasury Inspector General for Tax Administration



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Background

Internal Revenue Service (IRS) records show that, in Fiscal Year 2012, approximately 2.2 million individual taxpayers exercised their right to grant power of attorney to an individual to act on their behalf in dealing with the IRS in a variety of tax matters. These tax matters include preparing and filing documents for the taxpayer, communicating and corresponding with the IRS for the taxpayer, and representing the taxpayer during an audit, collection, or appeal.

To designate power of attorney authority to a representative, a taxpayer files Form 2848, *Power of Attorney and Declaration of Representative*, with the IRS. Once received and validated, the IRS records the power of attorney in its Centralized

Taxpayers use Form 2848, Power of Attorney and Declaration of Representative, to designate qualified representatives to act on their behalf in dealing with the IRS in a variety of tax matters.

Authorization File¹ system, where it is linked to other automated information systems that are accessed and used by IRS personnel to identify authorized representatives. A taxpayer can file a civil suit seeking monetary damages against the IRS if an IRS employee intentionally disregards these provisions by denying the taxpayer the right to appropriate representation.

Identifying the authorized representative during a tax matter is critical for IRS personnel because the Internal Revenue Code (I.R.C.) 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. Section (§) 7521 enacted in 1988 as part of the Omnibus Taxpayer Bill of Rights² generally:

- Prohibit IRS personnel from bypassing a qualified representative once a taxpayer authorizes one to act on his or her behalf and informs the IRS of that authorization.
- Require IRS personnel to stop a taxpayer interview whenever a taxpayer requests to consult with a representative.
- Require IRS personnel to obtain their immediate supervisor's approval to contact the taxpayer instead of the representative if the representative is responsible for unreasonably delaying the completion of an audit or investigation.

¹ See Appendix VI for a glossary of terms.

² 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.).



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Congress, through the IRS Restructuring and Reform Act of 1998,³ directed the IRS to revise Publication 1, *Your Rights as a Taxpayer*, to better inform taxpayers of these rights. In addition, this act requires the Treasury Inspector General for Tax Administration (TIGTA) to annually evaluate the IRS's compliance with the direct contact provisions.

As reported in prior years,⁴ neither we nor the IRS know with any degree of precision how well the IRS is complying with direct contact provisions because its management information systems are not capable of readily identifying situations where a taxpayer is denied the right to appropriate representation. However, taxpayers' complaints that allege IRS personnel bypassed their representatives and contacted them directly are tracked by TIGTA's Office of Investigations on the Performance and Results Information System. During Fiscal Year 2012, the Office of Investigations closed 13 direct contact complaints involving IRS personnel, of which two employees were disciplined or counseled for their actions by IRS management.⁵

This is the fifteenth year we have conducted this review. Each year, we focus on an office or function of the IRS that interacts with taxpayers and their representatives on a routine basis. For this review, we analyzed how well the Office of Appeals (Appeals) has ensured that its personnel are appropriately including taxpayers' representatives in its activities. Many actions taken by the IRS can be appealed in addition to examination adjustments, such as penalties, interest, trust fund recovery penalties, offers in compromise, liens, and levies. The Appeals mission is to resolve tax controversies, without litigation, on a basis which is fair and impartial to both the Government and the taxpayer in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the Service. To accomplish this, Appeals personnel work with taxpayers and their representatives to resolve the tax disputes. Appeals personnel are responsible for following IRS policies and guidance pertaining to interactions with taxpayers, including ensuring that taxpayers are granted their right to representation.

This review was performed with information obtained from the offices of the Commissioner, Appeals, National Taxpayer Advocate, and Small Business/Self-Employed Division in Washington, D.C., during the period September 2012 through April 2013. 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.

³ 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.).

⁴ See Appendix V for a list of previous audit reports related to this review.

⁵ Appeals employees were not involved in any of the 13 complaints.



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Results of Review

An Array of Internal Controls Help Ensure Compliance With the Direct Contact Provisions of the Internal Revenue Code

Ultimately, the IRS relies on its personnel to properly consider and protect taxpayer rights when conducting audits, taking collection actions, and resolving tax disputes. To assist IRS and Appeals personnel in meeting these responsibilities, the IRS has an array of policies, procedures, and techniques (internal controls) that are in line with the Government Accountability Office's *Standards for Internal Control in the Federal Government*.⁶

The IRS's mission statement and supporting policy statements provide guidance nationwide to IRS personnel who have contact with taxpayers. Figure 1 provides an example of IRS Policy Statement 5-2, which contains the core principles that underscore the importance of protecting taxpayer rights as well as providing the public with quality, courteous, and effective assistance in collecting unpaid taxes.

⁶ Government Accountability Office (formerly known as the General Accounting Office), GAO/AIMD-00-21.3.1, *Standards for Internal Control in the Federal Government* (Nov. 1999).



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Figure 1: Core Principles for Collecting Unpaid Taxes

Excerpt From IRS Policy Statement 5-2	
Principles	Description
<p style="text-align: center;">OVERARCHING PRINCIPLES</p> <p style="text-align: center;">SERVICE AND ASSISTANCE</p> <p>All taxpayers are entitled to courteous, responsive, and effective service and assistance in all their dealings with the Service.</p> <p style="text-align: center;">TAXPAYER RIGHTS</p> <p>We will observe taxpayers' rights, including their rights to privacy and to fair and courteous treatment.</p> <p style="text-align: center;">COMPLIANCE</p> <p>The public trust requires us to ensure that all taxpayers promptly file their returns and pay the proper amount of tax, regardless of the amount owed.</p> <p style="text-align: center;">CASE RESOLUTION</p> <p>While we will actively assist taxpayers to comply, we will also take appropriate enforcement actions when warranted to resolve the delinquency. To resolve a case, good judgment is needed to make sound decisions on the appropriate action needed.</p>	<p>All our decisions about collecting must be guided by these principles. To the extent that they are, we will succeed in our mission.</p> <p>We will actively assist taxpayers who try to comply with the law and work to continually improve the quality of our systems and service to meet the needs of our customers. All taxpayers, whether delinquent or fully compliant, are entitled to prompt and professional service whenever they deal with Service personnel.</p> <p>This affirms our commitment to observe both the spirit as well as the letter of all legal requirements, including the Taxpayer Bill of Rights I and II and the IRS Restructuring and Reform Act of 1998. Taxpayers will be protected from unauthorized disclosure of information.</p> <p>The public as a whole is our customer, not just delinquent taxpayers. Our customers expect us to promote voluntary compliance by ensuring that all promptly pay their fair share.</p> <p>All taxpayers are required to pay by the due date of the return. From a broad range of collecting tools, personnel will select the one(s) most appropriate for each case. Case resolution, including actions such as lien, levy, seizure of assets, installment agreement, offer in compromise, substitute for return, summons, and I.R.C. 6020(b), are important elements of an effective compliance program. When it is appropriate to take such actions, it should be done promptly, yet judiciously, and based on the facts of each case.</p>

Source: Excerpt from IRS Policy Statement 5-2 – Collecting Principles.

These core principles are critical to setting the appropriate tone for agency activities and interactions with taxpayers and their representatives, especially because documentation of the interactions is controlled by IRS personnel. To supplement agency-level mission and policy statements, the IRS uses, and periodically updates, the Internal Revenue Manual (IRM) and



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numerous taxpayer publications. Both the IRM and taxpayer publications are available online and are designed to provide guidance nationwide to IRS personnel and taxpayers.

The IRM and taxpayer publications are important control components

From a control perspective, both the IRM and taxpayer publications are important because they provide detailed explanations and instructions of the statutory, business, and administrative procedures the IRS follows in administering the tax laws, including the direct contact provisions of I.R.C. §§ 7521(b)(2) and (c). For example, the IRS uses Publication 1 as the main document to keep taxpayers informed of their rights and to explain the audit, collection, appeals, and refund processes. Publication 1 also includes a contact number for TIGTA, where suspected violations of the direct contact provisions and other potential misconduct or abuse by IRS personnel can be reported. In addition, Publication 1 includes the following information concerning taxpayers' rights to be represented at interviews with the IRS and to suspend an interview pursuant to I.R.C. § 7521(b)(2).

You may either represent yourself or, with proper written authorization, have someone else represent you in your place. Your representative must be a person allowed to practice before the IRS, such as an attorney, certified public accountant, or enrolled agent. If you are in an interview and ask to consult such a person, then we must stop and reschedule the interview in most cases.

The IRS has also included information on these rights in other publications:

- Publication 17, *Your Federal Income Tax*.
- Publication 334, *Tax Guide for Small Business*.
- Publication 556, *Examination of Returns, Appeal Rights, and Claims for Refund*.
- Publication 3498, *The Examination Process*.

In addition, the IRS uses Publication 947, *Practice Before the IRS and Power of Attorney*, to inform taxpayers of their representatives' responsibilities and to notify taxpayers that the IRS has the authority to bypass representatives who are uncooperative. Specifically, Publication 947 states:

After a valid power of attorney is filed, the IRS will recognize your representative. However, if it appears the representative is responsible for unreasonably delaying or hindering the prompt disposition of an IRS matter by failing to furnish, after repeated requests, non-privileged information, the IRS can contact you directly.

A number of internal controls are also in place at the operational level

At the operational level, the first-line managers are a key control because they are responsible for ensuring that the personnel they supervise follow procedures and that their work meets



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acceptable standards. To assist managers in ensuring that procedures are followed and standards are met, the IRM requires managers to conduct reviews over the work of the personnel they supervise, both while it is in process and after it is completed. These control techniques, as we have previously reported, help identify problems so prompt corrective actions can be taken.

In response to prior TIGTA reports, the IRS has taken a number of steps to reinforce upon first-line managers the need to ensure that the personnel they supervise are adhering to the direct contact provisions. For example, the Small Business/Self-Employed Division issued a memorandum to its first-line managers in Fiscal Years 2001 and 2002 directing them to “take whatever steps are necessary (including discussion in group meetings, case reviews, workload reviews, on-the-job visits, and taxpayer/power of attorney inquiries) to ensure that these requirements [the requirements mandated by I.R.C. §§ 7521(b)(2) and (c)] are understood and followed by personnel.” In April 2010, May 2010, and January 2013, the IRS updated the IRM⁷ to include specific directions for Small Business/Self-Employed Division managers in its Collection and Examination functions on how to ensure compliance with the direct contact provisions of I.R.C. §§ 7521(b)(2) and (c). The guidance provided in April 2010 directed that initial contact for audits must be made with an authorized representative. Similarly, Appeals also provides guidance to its personnel on the requirements of I.R.C. §§ 7521(b)(2) and (c) in the IRM.⁸

Besides first-line management reviews, quality measurement staffs annually review hundreds of closed cases to measure and evaluate the quality of personnel actions, communicate areas of concern to upper management, identify potential training needs, and improve work processes. While these reviews do not specifically address adherence to the direct contact provisions, they do assess the degree to which personnel are complying with procedures for protecting taxpayer rights. For Fiscal Year 2012, the Appeals quality measurement staff reported that Appeals personnel complied with the procedures for protecting taxpayer rights in 87 percent of the cases reviewed.

In addition to reviews by first-line managers and the quality measurement staffs, mid-level managers may evaluate ongoing case work during their operational reviews. Operational reviews are generally required to be performed at least once a year to ensure that work is being done in conformance with procedures. These processes serve as a quality control by identifying managerial, technical, and procedural problems and providing a basis for corrective actions.

⁷ IRM 4.10.2.7.1 (Apr. 2, 2010), 1.4.40.3.8.2 (May 19, 2010), and 1.4.50.3.2.1 (Jan. 25, 2013).

⁸ IRM 8.6.1.2.3 (Nov. 6, 2007) and 8.6.1.3.3 (May 5, 2009).



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Actions Are Needed to Provide Greater Assurance That Taxpayer Representatives Are Included in Appeals Case Activities

A review of a statistical sample of 96 of 72,239 cases closed by Appeals between October 1, 2011, and September 30, 2012, showed that Appeals personnel are generally involving the power of attorneys in case activities. However, the documentation in case activity records in the ACDS (Appeals Centralized Database System) and in the physical case files that we were able to obtain⁹ did not always show that Appeals personnel adhered to procedures that help ensure compliance with the direct contact provisions of the I.R.C. and that taxpayers obtain appropriate and effective representation. Specifically, we identified the following conditions in 11 of the 96 cases reviewed.

- In two cases, Appeals personnel attempted to contact the taxpayer directly by telephone instead of contacting the representative designated on the power of attorney in the ACDS or Integrated Data Retrieval System. There was no evidence indicating the power of attorney was delaying the process or that Appeals personnel contacted their manager for approval to contact the taxpayer as required by direct contact provisions of the I.R.C.
- In nine cases, there was no evidence that copies of taxpayer correspondence were sent to the power of attorney identified on the ACDS or Integrated Data Retrieval System. For six of the nine cases, this occurred as part of the initial contact. IRS policy requires that all original correspondence be sent to the taxpayer and a copy sent to the taxpayer's authorized representative, unless the taxpayer has indicated otherwise on Form 2848.
 - In four of the nine cases, neither the documentation in the hard copy case files nor the case activity records in the ACDS showed that copies of the taxpayer correspondence were mailed to the power of attorneys.
 - In five cases, Appeals personnel did not document in the ACDS case history narratives whether copies of taxpayer correspondence were sent to the power of attorneys. Although we were unable to obtain the hard copy case files for these cases, Appeals guidelines require that all key actions be documented in the ACDS.

When the sample results are projected to the population, we estimate that the deviations may have negatively affected 8,277 taxpayers.¹⁰ Moreover, the deviations also leave the IRS vulnerable to a greater risk of taxpayers seeking to recover monetary damages from the IRS if they believe its personnel are intentionally disregarding the direct contact provisions of the I.R.C.

⁹ We were able to obtain physical case files for only 30 of the 96 sample cases.

¹⁰ We are 95 percent certain that the number of taxpayers in the population that may have been negatively affected is between 3,654 and 12,901.



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Managers could hold Appeals personnel more accountable for involving power of attorneys in all case activities

A review of feedback from the Appeals quality measurement staff showed that they too reported concerns with Appeals personnel not always providing copies of taxpayer correspondence to the power of attorneys. Narrative comments stating that copies of letters were not provided to the power of attorneys were made by quality reviewers in 42 of 1,646 reviews.

During this review, we evaluated Fiscal Year 2012 performance feedback provided by first-line managers to a judgmental sample¹¹ of seven Appeals personnel involved in our case reviews, along with seven operational reviews conducted by the mid-level managers over those Appeals groups. Results showed that general taxpayer rights were addressed in nearly all of the managerial reviews. However, none of the reviews conducted by first-line managers or the mid-level managers addressed the importance of adhering to the procedures governing the direct contact provisions of the I.R.C.

Performance feedback can be a very effective tool in helping personnel understand and meet their responsibilities. It also provides opportunities to give meaningful and constructive feedback on performance, pinpoint and address performance gaps, and hold personnel accountable for following management directives and delivering results. As the following excerpt from the United States Merit Systems Protection Board report to the President and Congress summarizes, continually monitoring and providing feedback to personnel is a critical component of performance management.

This component, more than any other, can give employees a sense of how they are doing and can motivate them to be as effective as possible. Ideally, through these ongoing interactions between employees and supervisors, employees learn how their work fits into the goals of the work unit and how it contributes to the larger mission of the agency.

Managerial reviews over Appeals personnel's adherence to IRS direct contact procedures, and documentation of such reviews, are important and need to be enhanced. They are the IRS's primary quality control mechanism and can provide greater assurances that taxpayers are being afforded their right to appropriate and effective representation.

Recommendation

Recommendation 1: The Chief, Appeals, should provide additional guidance to first-line managers and Appeals personnel that will reinforce the importance of ensuring that taxpayer representatives are involved in all case activities. This will help ensure that the procedures designed to afford taxpayers their right to appropriate and effective representation are followed and properly documented during the appeals process.

¹¹ A judgmental sample is a nonstatistical sample, the results of which cannot be used to project to the population.



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Management's Response: IRS management agreed with the recommendation. The IRS plans to update the IRM to clarify front-line managers' responsibilities to ensure that procedures regarding the direct contact provisions of the I.R.C. are followed and reinforce the importance of ensuring that representatives are involved in all case activities.



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Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this review was to determine whether the IRS complied with legal guidelines addressing the direct contact of taxpayers and their representatives as set forth in I.R.C. Sections (§§) 7521(b)(2) and (c). To accomplish this objective, we:

- I. Determined if an IRS system and/or process has been implemented since our last review to identify those cases where taxpayers have requested to consult with a representative or where IRS personnel bypassed a representative and directly contacted the taxpayer.
 - A. Interviewed IRS management personnel in the Small Business/Self-Employed Division to identify whether the IRS has implemented a system to identify those cases where taxpayers have requested to consult with a representative or where IRS personnel bypassed a representative and directly contacted the taxpayer.
 - B. Reviewed a random statistical sample of 96 of 72,239 Office of Appeals (Appeals) cases that were closed between October 1, 2011, and September 30, 2012, for taxpayers with a power of attorney identified on the ACDS to determine whether Appeals personnel were complying with the requirements of the I.R.C. Our sample size was based on a 95 percent confidence level, \pm 5 percent precision, and 5 percent expected error rate. Our contract statistician concurred with our sample size and projection of our results to the population.
 1. Obtained the Appeals data from the ACDS files maintained on TIGTA's Data Center Warehouse using the time period noted in Step I.B. and the representative ID field on the system.
 2. Validated the Appeals cases by sharing our data extract with the IRS and receiving its confirmation that we extracted the correct cases for the time period specified. We determined that the data were sufficiently reliable for purposes of this report.
 3. Evaluated the documentation recorded systemically and by Appeals personnel in the ACDS to make our judgments about each case. We also compared the power of attorney information in the ACDS to the power of attorney information the IRS maintains in each taxpayer account on the Integrated Data Retrieval System.¹

¹ See Appendix VI for a glossary of terms.



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- C. Evaluated 51 case and workload reviews and seven performance reviews the first-line managers conducted of a judgmental sample² of seven Appeals personnel associated with our 96 sample cases, along with seven operational reviews mid-level managers performed over the same Appeals groups to see the type of feedback provided to Appeals personnel concerning taxpayer rights and the direct contact provisions of I.R.C. §§ 7521(b)(2) and (c). A judgmental sample was used because we were trying to determine whether managers were addressing the direct contact provisions of the I.R.C. in their reviews and had not intended to project the results to the population.
- II. Determined if any systems or processes have been modified since our last review to track taxpayer complaints relating to IRS violations of I.R.C. §§ 7521(b)(2) and (c).
 - A. Interviewed IRS personnel responsible for the Taxpayer Advocate Management Information System and the e-trak System to determine if these two systems have been modified to track taxpayer complaints related to IRS violations of I.R.C. §§ 7521(b)(2) and (c).
 - B. Interviewed IRS management personnel in the Taxpayer Advocate Service to determine if the IRS plans to implement a system or process for tracking complaints arising from violations of I.R.C. §§ 7521(b)(2) and (c).
 - C. Reviewed the TIGTA Office of Investigation's complaint and investigation cases closed in Fiscal Year 2012 and tracked on the Performance and Results Information System to identify what actions the IRS had taken on subject personnel, as well as the number of taxpayers who may have had their rights and entitlements infringed upon.
- III. Obtained and reviewed information on the actions taken by the IRS in response to I.R.C. §§ 7521(b)(2) and (c) to determine the impact of this code section on IRS programs.
 - A. Reviewed the prior TIGTA reports³ to identify recommendations and the IRS's planned corrective action.
 - B. Conducted searches on the IRS intranet to identify guidance to IRS and Appeals personnel for meeting the direct contact provisions and determined the impact on IRS programs.
 - C. Researched IRS.gov to identify how the IRS informs taxpayers of the IRS's prohibition on directly contacting taxpayers and evaluated whether it provides adequate guidance for taxpayers and their representatives.

² A judgmental sample is a nonstatistical sample, the results of which cannot be used to project to the population.

³ See Appendix V for a list of previous audit reports related to this review.



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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 the following internal controls were relevant to our audit objective:

- Agency-level internal control activities:
 - a. The IRS's mission statement, the Appeals mission statement, and supporting policy statements along with the IRM guidelines provide guidance to IRS and Appeals personnel to ensure compliance with direct contact provisions.
 - b. Numerous publications that keep taxpayers informed of their rights.
- Operational-level internal control activities:
 - a. First-line managers are responsible for ensuring that the personnel they supervise follow procedures and that their work meets acceptable standards. They will need to review the work of the personnel they supervise, both while it is in process and after it is completed, which will help identify problems so prompt corrective actions, if needed, can be taken.

We evaluated these controls by reviewing the performance feedback first-line managers provided to a judgmental sample of seven Appeals personnel through case and workload reviews, and performance reviews concerning taxpayer rights and the direct contact provisions of I.R.C. §§ 7521(b)(2) and (c). In addition, we evaluated the feedback provided in seven operational reviews performed by mid-level managers over the same Appeals groups.



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Appendix II

Major Contributors to This Report

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Appendix III

Report Distribution List

Principal Deputy Commissioner
Office of the Commissioner – Attn: Chief of Staff C
Office of the Deputy Commissioner for Services and Enforcement SE
Deputy Commissioner, Small Business/Self-Employed Division SE:S
Director, Communications, Liaison, and Disclosure, Small Business/Self-Employed Division
SE:S:CSO
Director, Examination, Small Business/Self-Employed Division SE:S:E
Chief Counsel CC
National Taxpayer Advocate TA
Director, Office of Legislative Affairs CL:LA
Director, Office of Program Evaluation and Risk Analysis RAS:O
Office of Internal Control OS:CFO:CPIC:IC
Audit Liaisons:
 Chief, Appeals AP
 Commissioner, Small Business/Self-Employed Division SE:S
 National Taxpayer Advocate TA



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Appendix IV

Outcome Measure

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

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 8,277 taxpayers where Appeals personnel may not have appropriately involved the power of attorney during the Appeals process (see page 7).

Methodology Used to Measure the Reported Benefit:

We calculated our outcome for the Appeals exception cases using the following methodology:

- We reviewed a statistically valid sample of 96 of the 72,239 cases closed by Appeals between October 1, 2011, and September 30, 2012, in which the ACDS showed a power of attorney was involved.
- We reviewed a statistically valid sample of 96 of the 72,239 cases based on a 95 percent confidence level, ± 5 percent precision, and 5 percent expected error rate.
- We identified 11 cases where Appeals personnel did not follow the procedures that help ensure compliance with the direct contact provisions of the I.R.C.
- Based on our sample error rate (11/96), we calculated the number of taxpayers in the population that may have had their ability to obtain appropriate and effective representation negatively affected: $[72,239 \times (11/96) = 8,277]$. We are 95 percent confident that the number of taxpayers in the population that may have been negatively affected will be between 3,654 and 12,901.



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Appendix V

*Previous Audit Reports Related to This Statutory
Review*

TIGTA, Ref. No. 1999-10-076, *The Internal Revenue Service Needs to Enhance Guidance on and Monitoring of Compliance With Procedures for Directly Contacting Taxpayers and Their Representatives* (Sept. 1999).

TIGTA, Ref. No. 2000-10-132, *Letter Report: Improvements Have Been Implemented for Directly Contacting Taxpayers and Their Representatives* (Sept. 2000).

TIGTA, Ref. No. 2001-10-116, *Letter Report: The Internal Revenue Service Has Not Implemented a Process to Monitor Compliance With Direct Contact Provisions* (Jul. 2001).

TIGTA, Ref. No. 2002-40-177, *The Internal Revenue Service Cannot Monitor Its Compliance With the Direct Contact Provisions* (Sept. 2002).

TIGTA, Ref. No. 2003-40-131, *Fiscal Year 2003 Statutory Review of Restrictions on Directly Contacting Taxpayers* (Jun. 2003).

TIGTA, Ref. No. 2004-40-059, *Fiscal Year 2004 Statutory Review of Restrictions on Directly Contacting Taxpayers* (Feb. 2004).

TIGTA, Ref. No. 2005-40-040, *Fiscal Year 2005 Statutory Review of Restrictions on Directly Contacting Taxpayers* (Feb. 2005).

TIGTA, Ref. No. 2006-40-136, *Fiscal Year 2006 Statutory Review of Restrictions on Directly Contacting Taxpayers* (Aug. 2006).

TIGTA, Ref. No. 2007-40-118, *Fiscal Year 2007 Statutory Review of Restrictions on Directly Contacting Taxpayers* (Jul. 2007).

TIGTA, Ref. No. 2008-40-090, *Fiscal Year 2008 Statutory Review of Restrictions on Directly Contacting Taxpayers* (Mar. 2008).

TIGTA, Ref. No. 2009-30-054, *Fiscal Year 2009 Statutory Review of Restrictions on Directly Contacting Taxpayers* (Mar. 2009).

TIGTA, Ref. No. 2010-30-060, *Fiscal Year 2010 Statutory Review of Restrictions on Directly Contacting Taxpayers* (Jun. 2010).

TIGTA, Ref. No. 2011-30-090, *Fiscal Year 2011 Statutory Review of Restrictions on Directly Contacting Taxpayers* (Sept. 2011).



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TIGTA, Ref. No. 2012-30-089, *Fiscal Year 2012 Statutory Review of Restrictions on Directly Contacting Taxpayers* (Sept. 2012).



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Appendix VI

Glossary of Terms

Centralized Authorization File – Contains information about the type of authorizations taxpayers have given their representatives for their tax returns.

E-trak System – An IRS web-based data tracking application that enables meaningful data management, tracking, retrieval, and reporting.

Integrated Data Retrieval System – IRS computer system capable of retrieving or updating stored information. It works in conjunction with a taxpayer's account records.

Internal Revenue Manual – The single official source for IRS policies, directives, guidelines, procedures, and delegations of authority in the IRS.

Performance and Results Information System – A management information system that provides TIGTA with the ability to manage complaints received and investigations initiated.

Taxpayer Advocate Management Information System – A database of the Taxpayer Advocate Service that is exclusively dedicated to the recordation, control, and processing of Taxpayer Advocate Service taxpayer cases and to the capturing and analysis of core tax issues, laws, policies, and internal IRS functional processes that are the sources of significant taxpayer hardship and other critical problems.

United States Merit Systems Protection Board – An independent, quasi-judicial agency that oversees and adjudicates the application of merit system principles within the Executive Branch.



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Appendix VII

Management's Response to the Draft Report



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

MEMORANDUM FOR MICHAEL E. MCKENNEY
ACTING DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Kirsten B. Wielobob 
Deputy Chief, Appeals

SUBJECT: Draft Audit Report - Fiscal Year 2013 Statutory Review of
Restrictions on Directly Contacting Taxpayers (Audit #
201330008)

Thank you for the opportunity to review your draft report titled: "Fiscal Year 2013 Statutory Review of Restrictions on Directly Contacting Taxpayers." The IRS agrees with your findings and recommendation. We appreciate your acknowledgement that a review of your statistical sample of cases closed by Appeals between October 1, 2011, and September 30, 2012, showed that Appeals personnel are generally involving the designated representatives in case activities. We value your recommendation to help us improve our processes. We have worked and will continue to protect taxpayer rights and earn their confidence in our ability to resolve tax disputes fairly and without litigation.

We concur with the measurable benefit on tax administration described in your report. Attached is our corrective action in response to your recommendation.

If you have any questions, please contact me or a member of your staff may contact Susan L. Latham, Director, Appeals Policy Quality & Case Support, at (202) 435-5659.

Attachment



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Attachment

RECOMMENDATION 1:

The Chief, Appeals, should provide additional guidance to first-line managers and Appeals personnel that will reinforce the importance of ensuring taxpayer representatives are appropriately involved in all case activities. This will help ensure that the procedures designed to afford taxpayers their right to appropriate and effective representation are followed and properly documented during the appeals process.

PROPOSED CORRECTIVE ACTION:

Appeals will update Internal Revenue Manual (IRM) 1.4.28 to clarify that front-line managers' responsibilities for ensuring the current procedures regarding the direct taxpayer contact provisions of the Internal Revenue Code (I.R.C.) §§ 7521(b) (2) and (c) are followed. Appeals will also include additional guidance in IRM 8.6.1 to reinforce the importance of ensuring representatives are involved in all case activities.

IMPLEMENTATION DATE:

September 15, 2014

RESPONSIBLE OFFICIAL(S):

Director, Appeals Policy, Quality & Case Support (PQCS)

CORRECTIVE ACTION MONITORING PLAN:

The Directors, Tax Policy Procedure; Collection and Processing, and Exam will inform the Director Policy Quality & Case Support of any delays in implementing these actions.