TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



Fiscal Year 2021 Statutory Audit of Compliance With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and Similar Designations

August 16, 2021

Report Number: 2021-30-048

Why TIGTA Did This Audit

This audit was initiated because Congress enacted the prohibition against the use of the term "Illegal Tax Protester" and similar designations due to a concern that some taxpayers were being permanently labeled as Illegal Tax Protesters even though they had subsequently become compliant with the tax laws. TIGTA is required to annually evaluate the IRS's compliance with the prohibition against using Illegal Tax Protester or similar designations.

The purpose of this audit was to determine whether the IRS complied with the IRS Restructuring and Reform Act of 1998 (RRA 98) § 3707 and its own internal guidelines that prohibit IRS officers and employees from referring to taxpayers as Illegal Tax Protesters or any similar designations.

Impact on Taxpayers

Congress enacted RRA 98 § 3707 to prohibit the IRS from labeling taxpayers as Illegal Tax Protesters or any similar designations. Using Illegal Tax Protester or other similar designations may stigmatize taxpayers and may cause employee bias in future contacts with these taxpayers.

What TIGTA Found

Prior to enactment of the RRA 98, the IRS used Illegal Tax Protester indicators on the Individual Master File to accelerate enforcement activity for taxpayers whose tax returns or correspondence contained specific indicators of noncompliance with the tax law, such as the use of arguments repeatedly rejected by the courts. Section 3707 of the RRA 98 required the IRS to remove the existing Illegal Tax Protester designations from taxpayers' accounts on the Individual Master File beginning January 1, 1999. TIGTA's review of taxpayer accounts on both the Individual and Business Master Files showed that the IRS did not reintroduce past Illegal Tax Protester codes or similar designations on taxpayer accounts during Fiscal Year 2020.

However, TIGTA's review of nearly 3 million records from cases closed during Fiscal Year 2020 in the Correspondence Examination Automation Support system identified 32 instances of the use of Illegal Tax Protester or similar designations on 14 taxpayers' accounts. Fourteen of these instances were potential violations of § 3707, and 18 instances were procedural violations.

TIGTA's review of more than 13.3 million records from cases with history entries during Fiscal Year 2020 in the Accounts Management System, Appeal Centralized Database System, and Automated Offer in Compromise system did not identify improper uses of Illegal Tax Protester or similar designations.

What TIGTA Recommended

TIGTA recommended that the Commissioner, Small Business/ Self-Employed Division, communicate to all employees reminding them to not designate taxpayers as "Illegal Tax Protestor, tax protester, or similar designations" and that the use of these designations in their interactions with taxpayers and their official duties is not helpful and may unnecessarily distract from effective tax administration.

The IRS agreed with TIGTA's recommendation and will send a message to all Small Business/Self-Employed Division employees reminding them that they should not be designating taxpayers as "Illegal Tax Protestor, tax protester, or similar designations" and that their use in interactions with taxpayers and their work processes are not helpful and can be an unnecessary distraction to effective tax administration.



U.S. DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

August 16, 2021

MEMORANDUM FOR: COMMISSIONER OF INTERNAL REVENUE

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FROM: Michael E. McKenney

Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Fiscal Year 2021 Statutory Audit of Compliance

With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and

Similar Designations (Audit # 202130005)

This report presents the results of our review to determine whether the Internal Revenue Service (IRS) complied with the IRS Restructuring and Reform Act of 1998 (RRA 98) § 3707 and internal IRS guidelines that prohibit IRS officers and employees from referring to taxpayers as Illegal Tax Protesters or any similar designations. The Treasury Inspector General for Tax Administration is required under Internal Revenue Code § 7803(d)(1)(A)(v) to annually evaluate the IRS's compliance with the provisions of RRA 98 § 3707. This audit is included in our Fiscal Year 2021 Annual Audit Plan and addresses the major management and performance challenge of *Protecting Taxpayer Rights*.

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

Copies of this report are also being sent to the IRS managers affected by the report recommendation. 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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Background

The Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98) § 3707 prohibits the IRS from using Illegal Tax Protester or any similar designations.¹

In addition, the law requires the removal of all existing Illegal Tax Protester codes from the Master File and instructs IRS employees to disregard any such designation located on databases other than the Individual Master File.²

TIGTA is required to annually evaluate the IRS's compliance with the prohibition against using Illegal Tax Protester or any similar designations.

Prior to enactment of the RRA 98, the IRS used the Illegal Tax Protester Program to identify individuals and businesses that were using methods that were not legally valid to protest the tax laws. IRS employees identified taxpayers for referral to the Program when their tax returns or correspondence contained specific indicators of noncompliance with the tax law, such as the use of arguments that had been repeatedly rejected by the courts. There were tax protester coordinators who were responsible for determining whether a taxpayer should be included in the Illegal Tax Protester Program. If a taxpayer was classified as an Illegal Tax Protester, the taxpayer's record was coded as such on the Individual Master File. Once a taxpayer's account was coded, certain tax enforcement actions were accelerated. The designation was also intended to alert employees to be cautious so they would not be drawn into confrontations with those taxpayers.

Congress was concerned that some taxpayers were being permanently labeled and stigmatized by the Illegal Tax Protester designation. The concern was that this label could bias IRS employees and result in unfair treatment of the taxpayer. Internal Revenue Code § 7803(d)(1)(A)(v) requires the Treasury Inspector General for Tax Administration (TIGTA) to annually evaluate the IRS's compliance with the prohibition against using the Illegal Tax Protester or any similar designations. This is our twenty-third review since Fiscal Year (FY) 1999. These reviews have identified areas for improvement to help the IRS comply with the Illegal Tax Protester designation prohibition.³

To conduct this audit, TIGTA reviews the Master File and related systems annually. Each year, TIGTA also selects other IRS systems for review on a rotating basis. This year, TIGTA focused on the Accounts Management Services (AMS) system, the Appeals Centralized Database System (ACDS), the Automated Offers in Compromise (AOIC), and the Correspondence Examination Automation Support (CEAS) system. IRS employees document notes as they are working taxpayer cases. We reviewed the case files stored within these systems to determine whether employees complied with RRA 98 § 3707.

¹ Pub. L. No. 105-206, 112 Stat. 685.

² See Appendix III for a glossary of terms.

³ See Appendix II for a list of the five prior reports.

Results of Review

Illegal Tax Protester Codes Were Not Used on the Master File

Prior to enactment of the RRA 98, the IRS used Illegal Tax Protester indicators on the Master File to accelerate enforcement activity for taxpayers whose tax returns or correspondence contained specific indicators of noncompliance with the tax law, such as the use of arguments repeatedly rejected by the courts. These indicators were also intended to alert employees to be cautious and that they might encounter problems when dealing with specific nonfilers and delinquent taxpayers. Congress was concerned about the use of the Illegal Tax Protester designation because:

- Taxpayers were labeled as Illegal Tax Protesters without regard to their filing obligations or compliance.
- Illegal Tax Protester indicators were not always reversed when taxpayers became compliant with their tax obligations.

Section 3707 of the RRA 98 required the IRS to remove the existing Illegal Tax Protester designations from taxpayers' accounts on the Master File beginning January 1, 1999.

In prior reviews, we reported that the IRS had removed these designation codes from the Master File as required by the law. Based on our analysis of nearly 1.3 million taxpayer Master File records coded for accelerated collection activity, the IRS has not reintroduced Illegal Tax Protester codes on the Master File.⁴ We also matched over 53,000 taxpayer accounts formerly coded as Illegal Tax Protesters to the Master File and confirmed that the IRS had not input any other type of similar designation on these accounts.

<u>Some Examination Employees Used Tax Protester or Similar Designations in</u> Some Case Files

Our review of IRS records included data from the CEAS system, which is used by the Field Examination and Correspondence Examination functions and has approximately 11,600 users.⁵ We also reviewed IRS records from the ACDS, AMS, and AOIC.

Overall, our review identified 32 instances, involving 14 taxpayers, of Illegal Tax Protester or similar designations in the CEAS system. We audited the CEAS system last year for this purpose and found improper uses of Illegal Tax Protester or similar designations.

Some improper designations were identified in the CEAS system

We analyzed all CEAS system records for examination cases closed during FY 2020 by searching for Illegal Tax Protester or similar designations in the case documentation. From the population of nearly 3 million records, we identified approximately 667 records with one or more potential

⁴ We reviewed 1,043,851 records on the Individual Master File and 205,729 records on the Business Master File.

⁵ There are 3,202 CEAS View Case Users that have "read only" access. Because CEAS is Report Generated System data, only approximately 8,400 Report Generated System users with CEAS access can change Report Generated System files.

improper terms. We reviewed the 667 records and found 32 instances of Illegal Tax Protester or similar designations used improperly on 14 taxpayers' accounts. Nearly half of these exceptions were potential violations of § 3707. Figure 1 shows how many of the 32 instances were potential statute violations and how many were procedural violations.

Figure 1: Results of CEAS Case Reviews

Type of Exception	Number of Instances	Number of Taxpayers	Reason
Violation of § 3707	14	4	Labeling Taxpayer
Procedural Violation	18	10	Description/Reference
Total	32	14	

Source: TIGTA analysis of CEAS cases closed during FY 2020.

Below are two examples of what we found in examination case documentation.



While the IRS agreed that, in 25 instances, Internal Revenue Manual (IRM) guidance was not followed, IRS management disagreed that the examiners used language in the case file that is

prohibited by statute.⁶ The language of § 3707 does not limit violations to Master File designations only. Moreover, the IRM guidance provides that all examiners should be aware to not refer to the taxpayer as an "illegal tax protester" (or any similar designation) anywhere in the case file.

The language of § 3707 does not limit violations to Master File designations only.

Section 3707 states that "officers and employees of

the Internal Revenue Service shall not designate taxpayers as Illegal Tax Protesters (or any similar designation)." It further specifies that existing designations in the Master File must be removed and any other designations made before the effective date of the statute, such as those on paper records that have been archived, must be disregarded. Section 3707 can reasonably be interpreted to preclude the IRS from designating or labeling an individual using the term "tax protester." Based upon the language of § 3707, this prohibition applies to designations or labels anywhere in the case file.

Senate Committee on Finance Report 105-174 (dated April 22, 1998), related to the RRA 98 § 3707 provision, stated the Committee was concerned that taxpayers might be stigmatized by a

⁶ IRM 4.10.1.2.2 (August 24, 2017).

designation as an "Illegal Tax Protester." IRS management stated that they continue to disagree with TIGTA's determination that including "tax protester" or a similar phrase in a case file constitutes an official "designation" that violates RRA 98 § 3707. However, the IRS agrees that employees should refrain from the use of such terms when referring to taxpayers. Based upon the language of § 3707 and the Senate Committee Report, TIGTA believes that IRS officers and employees should not label taxpayers as Illegal Tax Protesters or other similar designations in any records, which include paper and electronic records. Officers and employees should not designate taxpayers as such because a designation alone contains a negative connotation and may label or stigmatize the taxpayer. Electronic case narratives are available to other IRS employees for review and future reference and may affect the opinions and actions of employees working the taxpayers' cases.

The CEAS system was also reviewed during our FY 2020 audit in which we found 18 instances for 13 taxpayers, out of more than 800 records, in which employees improperly labeled taxpayers as an Illegal Tax Protester or other similar designation. As a result, we recommended that the IRS emphasize to all employees with access to the CEAS system the importance of compliance with RRA 98 § 3707 and reinforce that taxpayers are not to be referred to as Illegal Tax Protesters or any other similar designations. IRS management agreed with the recommendation and published an article in the Technical Digest emphasizing to their examiners the importance of not referring to any taxpayer as an Illegal Tax Protester or any other similar designation to maintain compliance with the RRA 98 and IRS procedures.⁷

No improper designations were identified in the AMS, ACDS, and AOIC

Our analysis of more than 13.3 million records from the AMS, ACDS, and AOIC with history or notes posted during FY 2020 identified no improper uses of Illegal Tax Protester or similar designations.

- The AMS system incorporates information from 22 different IRS functions and can be
 accessed by more than 33,000 users. We reviewed approximately 1.8 million AMS
 records with history action dates between October 2019 and September 2020 and did
 not identify any taxpayer cases with narratives that contained Illegal Tax Protester or a
 similar designation.
- The ACDS system can be accessed by approximately 2,008 users. We reviewed data from 462,480 open/closed Appeals function narrative comment records with history action dates between October 2019 and September 2020 and did not identify any taxpayer cases with narratives that contained Illegal Tax Protester or a similar designation.
- The AOIC system may be accessed by more than 1,824 users from six different functions.⁸ We reviewed approximately 12.9 million AOIC records with history action dates between October 2019 and September 2020 and did not identify any taxpayer cases with narratives that contained Illegal Tax Protester or a similar designation.

Overall, the number of employees we have identified as improperly labeling taxpayers within the AMS system declined. During our FY 2020 audit, we reviewed the AMS and found seven

⁷ IRM 4.10.1.2.2 (August 2017).

⁸ Of the 1,824 users who have AOIC access, 629 have "view" only access and cannot incorporate information to the AOIC system.

Fiscal Year 2021 Statutory Audit of Compliance With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and Similar Designations

instances in which five employees used Illegal Tax Protester or a similar designation when referring to specific taxpayers in the case narratives.

As prohibited by RRA 98 § 3707, IRS employees should not designate taxpayers as Illegal Tax Protesters or other similar designations in any records, which include paper and electronic records. It is important that IRS management personnel are aware of these prohibitions to ensure that inappropriate designations are not perpetuated and to decrease the chances that they may influence the objectivity of other employees.

<u>Recommendation 1</u>: The Commissioner, Small Business/Self-Employed Division, should communicate to all employees to remind them to not designate taxpayers as "Illegal Tax Protestor, tax protester, or similar designations" and that the use of these designations in their official duties or during their interactions with taxpayers is not helpful and may unnecessarily distract from effective tax administration.

Management's Response: The IRS agreed with the recommendation and will send a message to all Small Business/Self-Employed Division employees reminding them that they should not be designating taxpayers as "Illegal Tax Protestor, tax protester, or similar designations" and that their use in interactions with taxpayers and their work processes are not helpful and can be an unnecessary distraction to effective tax administration.

Appendix I

Detailed Objective, Scope, and Methodology

The overall objective was to determine whether the IRS complied with RRA 98 § 3707 and internal IRS guidelines that prohibit IRS officers and employees from referring to taxpayers as Illegal Tax Protesters or any similar designations. To accomplish our objective, we:

- Determined whether the IRS Master File is free of Illegal Tax Protester designations as required by the RRA 98 and did not contain new coding to refer to Illegal Tax Protester taxpayers. We analyzed the Individual Master File population of 1,043,851 records and the Business Master File population of 205,729 records that had been coded for accelerated collection activity during FY 2020.¹
 - We also matched our historic computer extract of approximately 53,000 taxpayers designated as Illegal Tax Protesters before the RRA 98 was enacted to the records that had been coded for accelerated collection activity to determine if any new common codes were being used to classify the taxpayers as Illegal Tax Protesters.
- Determined whether IRS employees were using Illegal Tax Protester or any similar designation or reference within the CEAS system tax return case history narratives and related examination case documents. We obtained and reviewed a population of nearly 3 million records with histories during FY 2020 and that had potential Illegal Tax Protester or similar designation character strings.
- Determined whether the IRS's AMS system was free of Illegal Tax Protester designations as required by the RRA 98 and did not contain new coding to refer to Illegal Tax Protester taxpayers. We obtained and reviewed a population of 29,659 records with histories during FY 2020 and that had potential Illegal Tax Protester or similar designation character strings.
- Determined if IRS employees are using Illegal Tax Protester or similar designations within the Remarks section of the AOIC system. We reviewed approximately 12.9 million AOIC records with history action dates between October 1, 2019, and September 30, 2020.
- Determined if employees were using the Illegal Tax Protester or any similar designations within taxpayer case narratives on the ACDS by securing a copy of the database and analyzing 462,480 records with history action dates between October 1, 2019, and September 30, 2020.

Performance of This Review

This review was performed with information obtained from electronic files accessed through the TIGTA network as well as the Small Business/Self-Employed Division located in New Carrollton, Maryland, the Wage and Investment Division located in Atlanta, Georgia, and the IRS Office of Appeals in Washington, D.C., during the period September 2020 through May 2021. We conducted this performance audit in accordance with generally accepted government auditing

¹ A Transaction Code 148 causes the accelerated issuance of a Taxpayer Delinquency Investigation or Taxpayer Delinquent Account.

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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.

Major contributors to the report were Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations); Christina Dreyer, Director; Timothy Greiner, Audit Manager; and Dmitri Medvedev, Lead Auditor.

Validity and Reliability of Data From Computer-Based Systems

We performed tests to assess the reliability of data from the Individual Master File, the Business Master File, the CEAS system, the AMS system, and the AOIC and ACDS systems. We evaluated the data by scanning the data received for blank, incomplete, illogical, or improper data. In addition, we compared the information in a judgmental sample of records from each of the Business Master File, Individual Master File, AMS, ACDS, AOIC and CEAS systems to IRS source data on the Integrated Data Retrieval System to ensure data accuracy. We determined that the data were sufficiently reliable for 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: controls that ensure the reliability of the data used for our analysis. During our review, we tested the validity of the data used for our analyses against selected IRS data, but we did not perform any specific testing of data input controls because systems are not in place to prevent employees from using these designations.

Appendix II

Recent Audit Reports Related to This Statutory Review

TIGTA, Report No. 2016-30-087, Fiscal Year 2016 Statutory Audit of Compliance With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and Similar Designations (Sept. 2016).

TIGTA, Report No. 2017-30-059, Fiscal Year 2017 Statutory Audit of Compliance With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and Similar Designations (Aug. 2017).

TIGTA, Report No. 2018-30-056, Fiscal Year 2018 Statutory Audit of Compliance With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and Similar Designations (Aug. 2018).

TIGTA, Report No. 2019-30-045, *Fiscal Year 2019 Statutory Audit of Compliance With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and Similar Designations* (July 2019).

TIGTA, Report No. 2020-30-057, Fiscal Year 2020 Statutory Audit of Compliance With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and Similar Designations (Sept. 2020).

Appendix III

Management's Response to the Draft Report



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

COMMISSIONER
SMALL BUSINESS/SELE-EMPLOYED DIVISION

July 30, 2021

MEMORANDUM FOR MICHAEL E. McKENNEY

DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Darren John Guillot Guillot Guillot Date: 2021.07.30 13:24:21-04/00'

Commissioner, Small Business/Self-Employed Collection

De Lon Harris Deha Harris

Digitally signed by Gearl D. Harris Date: 2021.07.30 09:52:19 -04'00'

Digitally signed by Darren J.

Commissioner, Small Business/Self-Employed Examination

SUBJECT: Draft Audit Report – Fiscal Year 2021 Statutory Audit of

Compliance With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and Similar Designations (Audit #202130005)

Thank you for the opportunity to review and comment on the subject draft audit report. We appreciate your acknowledgement that, in 1999, the IRS removed "Illegal Tax Protester" indicators from our Individual Master File and has not reintroduced this indicator, or any similar indicators, in the 23 years that you have conducted your annual review of our programs. We also are extremely proud of our employees who consistently avoid using such terms when interacting with taxpayers.

In FY 2021, TIGTA reviewed nearly 22 million IRS records in four IRS systems (the Accounts Management Services (AMS) system, the Appeals Centralized Database System (ACDS), the Automated Offers in Compromise (AOIC), and the Correspondence Examination Automation Support (CEAS) system) identifying 667 potential exceptions, of which you determined only 32 to be an improper use of the term, potentially affecting 14 taxpayers. While your report correctly notes our difference of opinion on whether the exceptions you identified are statutory violations, your findings nevertheless show that our employees did not use these terms in 99.9999% of the records you reviewed. Additionally, in the rare instances when one of these terms was

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used, you determined that its use was not improper over 95.4% of the time. This is an outstanding record of compliance by our employees.

We will continue to take reasonable actions to remind our employees not to use these terms in our work processes and our interactions with taxpayers. Our conversations with employees will reinforce that using these terms is unhelpful and can be an unnecessary distraction to effective tax administration. If you have any questions, please contact one of us, or Frederick W. Schindler, Director, Collection.

Attachment

Fiscal Year 2021 Statutory Audit of Compliance With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and Similar Designations

Attachment

RECOMMENDATION 1:

The Commissioner, Small Business/Self-Employed Division should communicate to all employees to remind them to not designate taxpayers as "Illegal Tax Protestor, tax protester, or similar designations" and that the use of these designations in their official duties or during their interactions with taxpayers is not helpful and may unnecessarily distract from effective tax administration.

CORRECTIVE ACTION:

We will send a message to all SB/SE employees reminding them that we should not be designating taxpayers as "Illegal Tax Protestor, tax protester, or similar designations" and that their use in interactions with taxpayers and our work processes are not helpful and can be an unnecessary distraction to effective tax administration.

IMPLEMENTATION DATE:

November 15, 2021

RESPONSIBLE OFFICIAL:

Director, Headquarters Collection, Small Business/Self-Employed Division

CORRECTIVE ACTION MONITORING PLAN:

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

Appendix IV

Glossary of Terms

Term	Definition
Accounts Management System	Provides employees access to multiple IRS systems through their computers and allows for inventory management, case delivery, history narratives, print-to-fax capabilities for sending information to taxpayers, and electronic referral generation.
Appeals Centralized Database System	The ACDS is used by Appeals Officers, Settlement Officers, managers, and technical analysts to track case receipts, record case time, document case actions, and monitor the progress of the Appeals workload.
Automated Offers in Compromise	The AOIC application tracks and controls offers in compromise. Area offices and campuses share a common database that contains relevant offer information. The application allows the user to process, view, and track the status of each offer. The AOIC also generates forms, letters, and managerial reports.
Fiscal Year	A 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.
Integrated Data Retrieval System	A computer system capable of retrieving or updating stored information; it works in conjunction with a taxpayer's account records.
Internal Revenue Code	The codified collection of U.S. laws on income, estate and gift, employment, and excise taxes plus administrative and procedural provisions.
Master File	The IRS database that stores various types of taxpayer account information. This database includes individual, business, and employee plans and exempt organizations data.

Appendix V

Abbreviations

ACDS	Appeals Centralized Database System
AMS	Accounts Management Services
AOIC	Automated Offer In Compromise
CEAS	Correspondence Examination Automation Support
FY	Fiscal Year
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
RRA 98	Restructuring and Reform Act of 1998
TIGTA	Treasury Inspector General for Tax Administration



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(800) 366-4484

By Web:

www.treasury.gov/tigta/

Or Write:

Treasury Inspector General for Tax Administration
P.O. Box 589
Ben Franklin Station
Washington, D.C. 20044-0589

Information you provide is confidential, and you may remain anonymous.