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Postal Service and General Government
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TAX ADMINISTRATION

IRS Can Strengthen Its Efforts to See That Taxpayers Are Treated Properly



General Government Division

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Chairman
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Ranking Minority Member
Subcommittee on Treasury, Postal
Service and General Government
Committee on Appropriations
House of Representatives

This report responds to the Subcommittee's request, made as part of the Appropriations Committee's report to accompany the 1992 Treasury Appropriation bill, that we determine whether the Internal Revenue Service (IRS) has adequate controls and other measures to prevent the abuse of taxpayers and, if warranted, that we recommend additional measures to reduce the potential for taxpayer abuse. The Subcommittee also asked if we believe that additional appropriations are needed to strengthen IRS' ability to prevent the mistreatment of taxpayers.

Background

IRS is responsible for administering our nation's voluntary tax system in a fair and efficient manner. To do so, IRS has a staff of about 115,000 employees who work at hundreds of locations in the United States and in several foreign countries. These employees (1) process over 200 million tax returns each year, (2) examine returns to determine whether additional taxes are owed, (3) collect delinquent taxes, and (4) investigate civil and criminal violations of the tax laws.

To aid in carrying out these responsibilities, Congress has provided IRS with a broad set of discretionary enforcement powers. These enforcement powers include (1) examining taxpayers' returns and assessing additional tax, interest, and penalties for underreported income or failure to file a return, (2) enforcing the collection of unpaid taxes by such actions as seizing taxpayers' property, and (3) conducting criminal investigations of taxpayers and recommending prosecution for violations of the tax laws. In fiscal year 1992, IRS examined over 1 million individual taxpayers' returns, took about 4.7 million enforced collection actions for delinquent taxes, and initiated over 6,000 criminal investigations. Each of these actions had the potential to create an adversarial relationship between the affected taxpayers and IRS staff.

In 1988, concerned about allegations of taxpayer abuse, Congress enacted the Taxpayer Bill of Rights, a law containing numerous provisions to strengthen and clarify taxpayers' rights in their dealings with IRS. In 1992, additional taxpayers' rights legislation, identified as "Taxpayer Bill of Rights 2," was passed by Congress as part of broader tax legislation but was not signed into law by the President. Very similar legislation, still identified as Taxpayer Bill of Rights 2, was introduced in the 103rd Congress as S. 542 and H.R. 22. In addition, some provisions of H.R. 22 were included in H.R. 3419, introduced in November 1993. As of September 1994, Congress had not passed these bills.

Research Approach

At the outset, we learned that IRS has a wide range of controls and procedures to govern its relationships with taxpayers. But IRS has neither a specific definition of nor management information on the nature and extent of taxpayer abuse. Thus, it was not possible to select a representative sample of IRS actions to determine if taxpayer abuse had occurred and, if so, to estimate how frequently or attempt to determine if there were patterns of abuse in the many IRS divisions and offices throughout the country.

Given the lack of an IRS definition of taxpayer abuse, we found it necessary to develop our own. On the basis of interviews with IRS officials and representatives of tax practitioners and taxpayer advocate organizations, we developed a definition of abuse that encompassed a broad range of situations potentially harmful to taxpayers. We attempted to define abuse from the taxpayer's point of view, not from IRS' viewpoint. Therefore, we defined it to include situations in which taxpayers were, or perceived they were, harmed when (1) an IRS employee violated a law, regulation, or IRS' Rules of Conduct;¹ (2) an IRS employee was unnecessarily aggressive in applying discretionary enforcement power; or (3) IRS' information systems broke down. By "harmed" we meant primarily financial harm. But, we also recognized and incorporated into our definition the fact that frustration and the resulting burden arising from lengthy delays in resolving problems, time spent in dealing with IRS, and fear of the IRS can be factors in taxpayers' situations that may contribute to their perception of abuse even though—from IRS' perspective—the taxpayer may not have been abused.

¹At the time we began our work, IRS' Rules of Conduct described the appropriate behavior for IRS employees to follow when carrying out IRS' mission. The Rules of Conduct covered such areas as conflicts of interest, relationships with taxpayers, and personal activities. In February 1993, the Office of Government Ethics' "Standards of Ethical Conduct for Employees of the Executive Branch" superseded IRS' and other agencies' Rules of Conduct.

Next, we identified the controls and related measures IRS uses to prevent instances that would meet our definition of taxpayer abuse and to respond to allegations of such instances occurring. We also researched various IRS data sources and focused on Problem Resolution Program files, congressional correspondence files, and internal audit and internal security reports and files to find possible examples of abuse that would fall within our definition. We judgmentally selected 26 such examples and used them to analyze the effectiveness of IRS' controls and processes to prevent such abuse. While we did not follow up on all 26 examples to determine whether taxpayers were actually harmed by IRS, we cited the circumstances of these examples in our discussions with IRS managers to learn the range of controls in place that should have prevented these circumstances from occurring. We selected these examples without regard to when the incidents occurred, resulting in examples spanning the period 1987 through 1993. However, we evaluated the controls that were in place during the period of our review, from April 1992 to January 1994.

To illustrate our approach, we found an example in which an IRS employee, after accepting a cash payment from a taxpayer, stole the cash payment and falsified the document used to credit the taxpayer's account. This led us to review the adequacy of IRS' controls over taxpayers' cash payments. Our review of the controls then led us to a conclusion that they could be strengthened and a recommendation about what should be done.

During our review, an allegation of potential taxpayer abuse received considerable media attention because it involved reports of possible improper contacts with IRS by staff of the White House and the Federal Bureau of Investigation (FBI). We included an analysis of both the allegation and the adequacy of IRS' controls to deal with such contacts in our report.

The details of our objectives, scope, and methodology are discussed in appendix I. Appendix II provides a detailed description of IRS' controls, processes, and oversight offices, as well as recent congressional and IRS initiatives that govern IRS' interaction with taxpayers. Appendix III provides a summary of the provisions in the 1988 Taxpayer Bill of Rights. Appendix IV is a summary of GAO products that cover issues related to those discussed in this report. The Acting Commissioner of Internal Revenue provided written comments on a draft of this report. Those comments are presented and evaluated on pages 21 to 26 and are reprinted in appendix V.

Results in Brief

Several initiatives have been undertaken in recent years to better protect taxpayers—particularly enactment of the Taxpayer Bill of Rights in 1988 and IRS’ continuing efforts to improve its operations and treat taxpayers as customers. And, IRS has a wide range of controls, processes, and oversight offices to govern the behavior of its employees in the millions of contacts they have with taxpayers each year. However, we were not able to reach a conclusion as to the overall adequacy of this “system” of controls in protecting taxpayers from abuse primarily because of IRS’ lack of a definition of abuse and related management information about its frequency and nature.

Despite the many controls intended to protect taxpayers, we found examples that fell within our definition of taxpayer abuse. Such instances show that IRS can take action to strengthen its procedures. The most fundamental action needed is for IRS to specifically define taxpayer abuse and develop management information about it. This would help ensure that future instances of abuse are identified and that steps are taken to minimize their frequency. It would also provide the information needed for IRS and Congress to better evaluate IRS’ performance in carrying out its responsibility for protecting taxpayers’ rights.

Additional steps are needed to strengthen specific IRS controls and procedures to reduce the potential for (1) unauthorized access to computerized tax information by IRS employees, (2) inappropriate selection of tax returns during information gathering projects, (3) embezzlement of taxpayers’ cash payments to IRS, (4) questionable application of trust fund recovery penalties² to company officials when taxes withheld from employees have not been paid, and (5) information-handling problems that contribute to taxpayer frustration and perception of abuse.

A provision included in the Taxpayer Bill of Rights 2 introduced in Congress in 1992 and again in 1993, if enacted, would aid in providing taxpayers with information needed to better deal with the trust fund recovery penalty. We believe that IRS can address the remaining issues administratively.

We concluded that the allegation of potential abuse that involved possible improper contacts with IRS by staff of the White House was unfounded. In this instance, we found no evidence that either the White House or the FBI

²When employers do not pay IRS the income and social security taxes (trust fund taxes) withheld from employees’ salaries, IRS may impose this penalty—which is actually the unpaid tax—against the person(s) responsible for making the payments.

had made improper contact with IRS or that IRS employees had violated a taxpayer's rights. In response to the allegation, the White House provided explicit guidance for staff regarding contacts with IRS. Similarly, we believe IRS should develop specific guidance for its employees for handling White House contacts.

We do not believe that Congress will need to provide additional appropriations to enable IRS to implement the actions we recommend, with one possible exception. Additional funding may be needed for IRS to deal with a variety of information-handling problems as part of its Tax Systems Modernization (TSM) program, a long-term effort to modernize its computer and telecommunication systems. We do not know how much funding may be needed because IRS has yet to specify its requirements or develop a cost/benefit analysis for them. We believe that the steps we are recommending to correct the remaining problems—while not cost free—will not require additional appropriations.

IRS' Controls and Initiatives to Protect Against Taxpayer Abuse

IRS has a wide range of controls, processes, and oversight offices designed to govern how its employees interact with taxpayers. Specifically, IRS has operational controls governing examination, collection, and criminal investigation activities to prevent taxpayer abuse. IRS also has a Problem Resolution Office to handle taxpayer complaints, if a taxpayer feels that these operational controls have broken down. In addition, IRS' Internal Security Division investigates taxpayer complaints involving potential criminal misconduct by IRS employees.

In recent years, legislation and IRS initiatives have aided taxpayers in dealing with IRS. In 1988, Congress passed the Taxpayer Bill of Rights (P.L. 100-647) containing numerous provisions that expanded taxpayer rights. IRS has begun quality management, ethics and integrity, and tax systems modernization initiatives, as well as a limited collection appeals project. And, a key element of IRS' current strategy is emphasis on treating taxpayers as "customers." All of these initiatives should help IRS to better serve taxpayers and to prevent their mistreatment.

IRS Can Strengthen Its Efforts to Prevent Taxpayer Abuse

Despite IRS' efforts to prevent violations of taxpayers' rights, we found various instances of what we consider to be taxpayer abuse by IRS. Some instances involved situations in which IRS employees violated either the law or IRS' Rules of Conduct and the taxpayer abuse may have been intentional. Other instances involved situations in which IRS employees

violated neither the law nor a regulation, but used discretionary enforcement power in a way that appeared to unnecessarily create a financial or other hardship for the taxpayers. Still others involved IRS computer system problems that engaged taxpayers in lengthy efforts to resolve their tax problems, leaving them with the perception that they were abused by IRS.

The following sections of this report discuss (1) the need for better information to aid in protecting taxpayers' rights and (2) the specific areas where we believe IRS' controls can be strengthened.

IRS Has Not Defined and Does Not Track Taxpayer Abuse

Although IRS collects data on taxpayer complaints, it has neither a definition of nor management information for tracking and measuring taxpayer abuse. As a result, IRS is unable to determine the nature and extent of abuse by its employees or systems, and whether existing controls need to be strengthened. A specific definition of taxpayer abuse is essential to provide a basis for collecting consistent information about it and to assist IRS staff in identifying abuse when it occurs and preventing its reoccurrence.

IRS has several management information systems that collect data on taxpayer complaints. Complaints handled by IRS' Problem Resolution Program or investigated by its Internal Security Division are entered into their respective management information systems. IRS' Labor Relations Division also has a management information system that includes the results of investigations of IRS employees and indicates any disciplinary actions taken against them, including those investigations that may have originated from taxpayer complaints.

Each of these management information systems uses codes to track and measure various issues considered important to the respective offices, but none of them has a specific code for taxpayer abuse. For example, the Labor Relations system tracks such issues as criminal misconduct and misuse of authority by IRS employees. In some instances these particular issues may involve taxpayer abuse, but in other instances they do not. We found similar situations with both the Problem Resolution Program and Internal Security management information systems. Without a definition of taxpayer abuse and specific codes related to that definition, these systems are not currently able to record incidents of abuse to track their nature and extent.

To better ensure that violations of taxpayers' rights are minimized, we believe that IRS should establish a service-wide definition of taxpayer abuse and then identify and gather management information to systematically track its nature and extent. Although this may require IRS to modify some of its existing data bases, we believe that this can be accomplished without requiring additional appropriations. IRS is currently involved in an effort to develop broad-based performance indicators to allow top IRS, Treasury, other administration officials, Congress, and the public to better assess its performance in key areas. Developing the information needed to assess performance in controlling taxpayer abuse would seem to fit well into that effort.

Taxpayer surveys IRS has conducted in recent years are another potential source of information about taxpayer abuse. As discussed in appendix II, these surveys have collected information from taxpayers about their views on how they were treated by IRS representatives. These surveys have not, however, included questions designed to identify possible abusive incidents for further analysis. Once IRS has defined and is systematically tracking abuse, these types of surveys could be used as another indicator of IRS' progress.

IRS Has Limited Ability to Detect and Prevent Unauthorized Access to Computerized Taxpayer Information

Public Law, Treasury Directives, and Internal Revenue Manual guidelines require that IRS protect the integrity, availability, and privacy of taxpayer information in its computer systems. Consequently, IRS employees are prohibited from obtaining access to taxpayer accounts without authorization. The Integrated Data Retrieval System (IDRS) is IRS' primary computer system for accessing and adjusting taxpayer accounts. Authorized IRS staff obtain access to taxpayer information through IDRS terminals located at the service centers and the regional and district offices. There are approximately 56,000 staff nationwide authorized to use IDRS. Eventually, IRS plans to replace IDRS as part of its TSM initiative. According to IRS, under the new system, users will be able to obtain more taxpayer information than they can through IDRS.

IRS has procedures and controls in place to aid in preventing and detecting unauthorized access and use of taxpayer information contained in IDRS. Specifically, each IDRS user is given a unique password that allows access to the system. Users are also assigned a profile of command codes—codes that, among other things, enable users to make changes in taxpayers' accounts—based on the user's job requirements. The profile limits the user to only those command codes needed to do his or her job effectively.

IDRS also provides a means to identify all employees who access taxpayer accounts, as IDRS records each employee access of taxpayer information in a daily audit trail. IRS can search these audit trails to investigate specific allegations of unauthorized access, as well as to look for patterns of use that could indicate unauthorized access. In addition, IDRS automatically generates security reports when employees access their own accounts, their spouses' accounts, or the accounts of other employees. Each IRS office has security personnel who are responsible for monitoring all IDRS activities, including monitoring security reports, adding and removing IDRS users, and assigning profiles for IDRS users.

We learned through discussions with IRS Internal Audit staff and a review of an October 1992 Internal Audit report³ that these controls and procedures provide IRS with limited capability to (1) prevent employees from unauthorized access to taxpayers' accounts and (2) detect an unauthorized access once it occurs. Even though IRS employees can access IDRS only with a password, once in the system, they cannot be prevented from accessing the account of any taxpayer living within their service center area. Furthermore, even though IDRS records every employee access of IDRS in its daily audit trail, these audit trails are so voluminous and detailed that they cannot be used efficiently to identify inappropriate access and misuse of IDRS information.

In addition to these weaknesses, the security reports monitored by security personnel are not adequate to help them identify potential browsing, disclosure, or other integrity problems. Finally, according to the Internal Audit report, ". . . the IDRS Security Handbook and related training materials do not provide proper guidance to security personnel on how to detect potential employee misuse of IDRS."

In one of our examples of alleged abuse, an IRS employee, after a personal dispute with a contractor, gained access to the contractor's account without authorization. The employee then allegedly used this information to threaten the contractor with enforcement action in an effort to favorably resolve the dispute. Because of the weaknesses in IDRS security as described above, the unauthorized access to the contractor's account described in this example would not automatically have been detected by security personnel. Rather, it was only because the taxpayer complained that IRS management was made aware of this specific instance of taxpayer abuse.

³Review of Controls Over IDRS Security (Internal Audit Reference Number 030103, Oct. 23, 1992).

IRS management is aware of its overall problems with IDRS security because of the Internal Audit report mentioned above. According to the report, 368 IRS employees in one region had used IDRS to gain access to nonwork-related taxpayer accounts, including those of friends, relatives, neighbors, and celebrities. In most instances, the access did not result in changes to taxpayer's accounts, but rather enabled the IRS employees to merely view the taxpayer's account information. Ultimately, information on 79 employees was referred to Internal Security for investigation of potential criminal violations. Internal Security determined that six employees prepared fraudulent returns for taxpayers and then monitored the accounts on IDRS. The actions of some of these employees are being reviewed by the appropriate U.S. Attorney for potential criminal prosecution.

On the basis of these findings, Internal Audit recommended that IRS management take actions to strengthen existing IDRS security controls. Internal Audit recommended seven steps to enhance security controls over IDRS, one of which was to ensure that the security system for TSM will have similar controls to those recommended for the current IDRS security system.

We also discussed these problems in a September 1993 report⁴ that recommended several actions IRS needs to take to strengthen its general controls over computerized information systems. We and IRS are continuing to study ways to solve these problems. IRS is currently working on a program to help detect unauthorized access to IDRS. Specifically, the goal is to implement standardized IDRS reviews periodically in each service center. To prevent unauthorized access to taxpayer accounts, IRS wants to limit some employees' access to only specified accounts authorized by a manager for official purposes. IRS has also indicated that it plans to build security controls to minimize unauthorized access of taxpayer information into the system that will eventually replace IDRS. Although IRS has yet to develop a cost/benefit analysis for these security controls, IRS officials said that the cost of these controls will be included in future requests for TSM appropriations.

⁴IRS Information Systems: Weaknesses Increase Risk of Fraud and Impair Reliability of Management Information (GAO/AIMD-93-34, Sept. 22, 1993).

Guidelines for Selecting Returns to Examine During IRS Information Gathering Projects Are Inadequate

When selecting taxpayers' returns for examination, IRS often uses computer-generated lists to identify returns with examination potential. However, because computer-aided selection techniques rely solely on information in filed returns, IRS collects information from outside sources to identify other areas of potential taxpayer noncompliance. Information Gathering Projects (IGP) are one technique that IRS uses to collect outside information and to identify returns with examination potential. In fiscal years 1990 and 1991, district office examinations of individual taxpayers resulting from IGPs were about 4.5 percent of the total of such examinations.

An IGP is a study or survey undertaken to identify noncompliance with the tax laws. It usually involves a limited number of taxpayers within such categories as an occupation, an industry, a geographic area, or a specific economic activity. IRS requires that an IGP be authorized by a district director or higher level management official for a specified length of time during which specific tax-related information is to be collected from third party sources.

Once authorized, IGPs normally include an information gathering phase and an examination phase. During the information gathering phase, a project team—revenue agents and a project coordinator—collect and analyze information on a particular group of taxpayers. On the basis of this analysis, the project team will identify tax returns that have potential for tax changes and therefore should be examined during the project. Examination staff then review the returns to identify those with the greatest potential for tax changes. The returns selected will then be sent to an examination group designated to conduct the examinations.

Although IRS procedures provide general guidelines for identifying, approving, initiating, and coordinating IGPs, the controls and procedures are not adequate to prevent examination staff from selectively targeting individual taxpayers for examination. For example, although IRS requires project coordinators to develop general work plans for each IGP, there is no requirement in IRS' procedures that specific criteria be established for selecting tax returns to be examined during the project. Furthermore, IRS' procedures do not require a separation of duties—a key examination control against potential abuse—between project staff responsible for identifying potential returns to be included in the project and staff responsible for selecting the tax returns to be examined.

As a result, an examination employee working on the project could be involved in (1) the project's information gathering phase, which results in the selection of a group of tax returns that have potential for tax changes and (2) selecting those returns from that group believed to have the greatest potential for tax changes, which will be examined. This makes it possible for such an employee to selectively target an individual taxpayer for examination during the project. In one of our examples, a revenue agent working on an IGP included the returns of two taxpayers for examination against whom the revenue agent had initiated legal action stemming from a personal business dispute.

IRS is currently implementing Compliance 2000, an initiative designed to increase taxpayer compliance by (1) identifying market segments believed to be in noncompliance, (2) determining the reasons for such noncompliance, and (3) improving taxpayer compliance using assistance and education methods before initiating more traditional enforcement methods. According to IRS officials, as IRS implements Compliance 2000, it will likely increase the use of special enforcement projects and, therefore, increase the number of returns selected for examination using locally-derived and possibly subjective criteria, such as those used during IGPS.

To help ensure that taxpayers are not improperly targeted for examination by IRS employees during IGPS, we believe that IRS should revise its guidelines to require that specific criteria be established for selecting taxpayers' returns to be examined during these projects. We also believe there should be a separation of duties between project staff who identify returns with potential for tax changes, and staff who select the returns to be examined. Since these are basically procedural changes, we do not believe that IRS would incur substantial costs in implementing them.

Cash Payments Made by Taxpayers Are Not Adequately Controlled

IRS officials told us that IRS prefers that taxpayers settle their tax bills with a check or money order. However, IRS is required by law to accept cash if a taxpayer insists on this method of payment.⁵ When a taxpayer pays with cash, an IRS collection employee is required to provide the taxpayer with a cash receipt—IRS Form 809. At the end of each day, collection support staff are to process the payments and reconcile all Form 809 receipts they receive with daily collection activity reports submitted to them by collection staff. In addition to the daily reconciliation, collection managers are to do an annual reconciliation of all Form 809 receipts issued to

⁵31 U.S.C. 5103.

collection staff to ensure that all receipts are accounted for. Any discrepancies noted during either the daily or annual reconciliations are to be discussed by the appropriate collection employee and his or her supervisor.

We found that IRS did not consistently mention its preference for tax payments by check or money order in its forms, notices, and publications. For example, IRS Publication 594 “Understanding the Collection Process” says that taxpayers must receive an IRS Form 809 receipt for cash payments to the IRS, but does not say that IRS prefers either a check or money order.

We also found that the controls to prevent IRS employees from embezzling taxpayers’ cash payments relied to a great extent on employee integrity and taxpayer complaints. Although Form 809 receipts provided to taxpayers are to be reconciled with daily collection reports, there are no management reviews of all Form 809 receipts other than the annual reconciliation. As a result, if a collection employee embezzled a taxpayer’s cash payment and the embezzlement was not detected through the daily reconciliation, IRS might not detect this until the next annual reconciliation. In the interim, IRS relies on taxpayer complaints to identify when employees embezzle taxpayers’ cash remittances.

In one of our examples, we found that a taxpayer complained to IRS that her bank account was levied after she fully paid her tax liability with cash. Internal Security investigated her complaint and determined that the IRS collection employee whom she paid had embezzled most of her cash payment by altering the amount on the cash receipt he submitted to the collection support staff. This employee also embezzled other taxpayers’ cash payments for which he had not submitted any cash receipts. Unfortunately for the taxpayer in this example, the situation was not detected until the taxpayer complained about the erroneous bank account levy made by IRS. Reconciling outstanding cash receipts more often may have detected this problem before the taxpayer was subjected to the additional IRS collection action.

To better protect against possible embezzlement of cash payments, we believe that IRS should reconcile all outstanding Form 809 cash receipts more often than once a year. We also believe that IRS should consistently stress in its forms, notices, and publications that taxpayers should use checks or money orders whenever possible, rather than cash to pay their tax bills. In our view, IRS could implement these changes at minimal cost,

as they are basically procedural changes and modifications to existing forms and publications.

Taxpayers Need More Information About the Trust Fund Recovery Penalty

When businesses fail to collect or pay withheld income, employment, or excise taxes, IRS may assess a trust fund recovery penalty against the responsible officers and employees. This penalty amounts to 100 percent of the unpaid taxes. IRS may also charge interest from the date the penalty was assessed. In determining who should be assessed the penalty, IRS is required to show that the employee being assessed was responsible for and willfully failed to collect or pay the taxes to IRS. Although IRS may assess the penalty against all responsible officers and employees, it is to collect only the amount of tax owed. That is, if taxes owed amount to \$100, IRS may hold various company officials responsible, but it is to collect no more than \$100 (plus interest) in total from these officials. We reported on IRS' process for collecting 100-percent penalties in August 1989.⁶

Relatively large trust fund recovery penalties have caused financial hardships for the individuals involved. Some individuals have complained that they were wrongfully assessed the penalty and then required by IRS to show why they were not liable for the penalty. In one of the cases we reviewed, a bookkeeper for a company that had declared bankruptcy was assessed penalties and interest on the business's unpaid taxes. After long and exhaustive proceedings, the state tax agency determined that the bookkeeper was not an operating officer and did not owe the state penalty. Nonetheless, IRS continued to pursue the bookkeeper for payment of the federal penalty. Six months later, with the help of his Congressman, the bookkeeper convinced IRS that he was not responsible for paying the trust fund taxes.

Some responsible employees may not be aware that they could be assessed the penalty if they fail to ensure that the taxes are paid to IRS. Moreover, under current law—Internal Revenue Code Section 6103—IRS is prohibited from disclosing to a responsible person the names of other responsible persons held liable for the penalty and the general nature of collection actions taken against them.

IRS has recognized weaknesses in its controls and procedures for identifying the responsible person for this type of penalty. As a result, IRS

⁶Tax Administration: IRS Can Improve the Process for Collecting 100-Percent Penalties (GAO/GGD-89-94, Aug. 21, 1989).

instituted policy changes aimed at ensuring that responsibility for paying the penalty remained with the responsible person. The revised policy requires IRS managers to ensure that their staffs conduct quality investigations to identify responsible persons and prove willful intent.

Taxpayer rights legislation introduced in Congress in 1992 and 1993 contained provisions that, if enacted, would assist individuals in getting information about the trust fund recovery penalty. The bills would require IRS to increase awareness of the penalty through special information packets and printed warnings on tax documents. The bills would also allow each individual assessed the penalty to find out from IRS the names of others against whom IRS had assessed the penalty. Also, the bills would allow these assessed individuals to find out the nature of any collection actions being taken against the other assessed individuals so that all involved parties would have complete information with which to deal with IRS and each other. We support the intent of this provision of the proposed legislation.

To help responsible officials and employees become more aware of their responsibilities to collect and forward trust fund taxes to IRS, we believe that IRS should provide better information about their responsibilities and the penalty for failure to meet these responsibilities by providing special information packets. IRS is already implementing changes to its trust fund recovery penalty assessment process, which will remedy some of these problems. As a result, we do not believe that IRS would incur significant costs to implement the additional changes.

Information System Problems Frustrate Taxpayers

We found examples of situations in which taxpayers repeatedly received tax deficiency notices and payment demands despite continual contacts with IRS over a period of months and even years in an attempt to resolve problems with their accounts. IRS' inability to correct the underlying problems in such situations resulted in taxpayers feeling frustrated. In these instances, although no IRS employee appeared to have intentionally abused them, the taxpayers' correspondence with IRS indicated they felt they were abused by the "tax system." In one instance, a taxpayer required intervention from her Senator to prevent IRS taking more than \$50,000 to pay for taxes on a sale of property that the taxpayer had not owned or sold. The problem arose because two taxpayers had the same social security number and the same name. Initially, IRS released the levy it had placed on the taxpayer's salary to allow her time to prove that she was not the seller of the property. Although the taxpayer tried to resolve the

problem by obtaining a letter from the Social Security Administration explaining the problem with the duplicate social security number and same name, IRS would not accept the letter as proof of who sold the property. The taxpayer's efforts to resolve the problem by working with the bank that had handled the property sale also failed. Finally, the taxpayer contacted her Senator and eventually was able to get the levy released.

In another instance, a taxpayer who promptly paid an additional tax assessment in early 1991 got help from his Senator to get IRS to acknowledge that he had paid his assessment in a timely manner. Soon after the taxpayer sent his payment to IRS, it sent the taxpayer a check in an amount very close to the amount he had originally sent IRS. Later, IRS wrote the taxpayer, asking payment for the original tax assessment and adding a penalty for late payment. Correspondence continued for months back and forth between the taxpayer and IRS. Finally, in early 1992, nearly a year after the taxpayer had made his payment, the matter was resolved with IRS noting that the problem occurred because the taxpayer's payment was posted to his account before the additional tax assessment had been recorded.

A more general type of problem affects divorced or separated spouses. Divorced or separated taxpayers who had previously filed joint returns may subsequently be assessed a tax deficiency. In these instances, IRS' procedure is to send notices of deficiency to the last known address of the spouse whose name and social security number appeared first on the joint return. Once enforcement action begins, the other spouse may be subjected to such actions as a levy on his or her salary without having been informed by IRS of the tax delinquency.

IRS' procedures require that duplicate notices of deficiency be sent by certified or registered mail to each spouse, if the spouses notify IRS that separate residences have been established. However, IRS' computer system is not capable of searching taxpayer files each time a notice of deficiency is issued for a joint return to determine whether spouses have subsequently filed separate returns with new addresses or otherwise provided separate addresses. IRS Problem Resolution Program officials in IRS' Southeast Region told us they frequently became involved in situations where a separated or divorced taxpayer, typically a woman, says that the first notice she received for a joint return deficiency was a notice of lien or levy on her property.

In a February 1992 congressional hearing on S. 2239, Taxpayer Bill of Rights 2, Treasury's Assistant Secretary for Tax Policy said that IRS would begin sending a notice of deficiency to both parties in such situations "... as soon as modernization of its computer system makes it feasible to do so." More recently, IRS Problem Resolution staff told us that IRS' TSM program will improve existing computer capabilities and make it possible for IRS to begin providing notices to both parties.

The three examples discussed above, and others we have reviewed, have the common thread of occurring and continuing primarily because of information handling problems. We believe that IRS' implementation of the various elements of TSM, together with IRS' emphasis on improving operations and providing better service to taxpayers, should go a long way toward eliminating these types of problems. With adequate controls to guard against misuse, TSM should make taxpayer information more accurate and more readily available to IRS employees and, consequently, should increase IRS' ability to help taxpayers resolve their problems. However, TSM is a massive, long-term effort, extending into the next century, so it may be some time before the technological capability to resolve these problems is in place.

Given that, we believe IRS needs to do as much as it can to identify possible interim solutions and to assure that TSM deals with these problems. First, IRS can systematically identify, inventory, and categorize the various kinds of information handling problems that lead to taxpayer frustration and perceptions of abuse. Analysis of these data in connection with IRS' operational improvement efforts may help identify some short term remedies. Second, IRS can use the data in its current operational improvement effort to define TSM business requirements to make sure that TSM has the capabilities needed to deal with these types of problems. We recently testified about the need for IRS to define its business requirements for TSM in detail.⁷ Carrying out these steps would require some analytical resources but, since the steps are consistent with TSM and operational improvement efforts already underway, we do not believe substantial incremental costs would be incurred.

⁷Tax Systems Modernization: Status of Planning and Technical Foundation (GAO/T-AIMD-GGD-94-104, Mar. 2, 1994)

Allegations of IRS Abuse and Improper White House and FBI Contacts Were Unfounded

IRS controls for dealing with third party contacts that provide information on possible tax violations call for the information to be referred to the appropriate IRS unit for evaluation as to what action, if any, to take. For example, if someone contacts IRS with information that a taxpayer has not reported a substantial amount of his or her income and suggests that an audit could be warranted, that information would be referred to the Examination Division in the IRS field office that has jurisdiction. Examination staff would then evaluate the information for credibility and specificity, including reviewing the taxpayer's return—assuming one was filed—to see if there were indications of underreporting as part of the decision on whether to examine the taxpayer's return. Since IRS' National Office is prohibited from initiating an examination, field office managers make final decisions in such cases.

IRS has specific procedures to handle requests from the White House for matters such as preparing tax check reports on prospective appointees, but there are no specific procedures to handle a White House contact offering information about potential tax violations. According to IRS officials, such information would be handled in the same manner as any other third party communication in that it would be evaluated for potential tax examination and/or criminal investigation purposes by Examination Division or Criminal Investigation Division staff.

In May 1993, the White House announced that seven employees of the White House Travel Office had been fired because of concerns about the office's management and financial integrity. (These and related issues are discussed in detail in our report entitled White House Travel Office Operations (GAO/GGD-94-132, May 2, 1994).⁸ Soon after, related allegations arose that the White House and/or the FBI made improper contacts with IRS, resulting in improper IRS contacts with a taxpayer.

These allegations have been reviewed by three organizations.

- A White House team, led by the former Chief of Staff to the President, reported that there was no evidence of White House contact with IRS in connection with the Travel Office issue.
- The IRS Inspection Service investigated the allegations involving IRS and concluded that no White House contact had been made with IRS concerning this matter and that IRS employees had carried out their duties properly. Although IRS released a heavily edited copy of its report, most of

⁸Public Law 103-50 required GAO to conduct a review of the actions taken with respect to the White House Travel Office.

the report cannot be made public because it contains tax return information protected from disclosure by section 6103 of the Internal Revenue Code and the taxpayer declined to grant a waiver from this provision of the law so IRS could comment publicly on this matter.

- At the request of a Member of Congress, the Office of Inspector General (OIG), Department of the Treasury, also investigated the allegations involving IRS.⁹ The OIG report was issued on March 31, 1994. The OIG, in its report, also concluded that the White House had not contacted IRS about the Travel Office matter and that it found no evidence of taxpayer abuse by IRS employees. Disclosure of tax return information in the OIG's report also was limited by section 6103.

We reviewed the three reports and supporting documentation and discussed their findings with representatives of the three organizations. We also interviewed key White House, IRS, and FBI personnel involved in the events leading up to the allegations of abuse by IRS. Finally, we interviewed representatives of the taxpayer involved.

On the basis of our review, we believe that (1) neither the White House nor the FBI made improper contact with IRS, (2) IRS employees carried out their duties properly and in accordance with IRS guidelines and procedures, and (3) abuse did not occur. Section 6103 provides us with access to tax return information to enable us to carry out our work, but it also limits the information we may disclose. Thus, we are not able to provide the details of our review in this report.

In July 1993, the White House Counsel issued guidance to White House staff on contacts with the FBI and the IRS, which supplemented guidelines issued earlier in the year. The July guidelines stated that "It is never appropriate for White House personnel to initiate an investigation or audit by directly contacting the Internal Revenue Service." The guidelines further provided that any information about possible violations of law or wrongful activities were to be communicated by White House staff to the Counsel to the President, who would decide whether the information should be provided to senior Justice or Treasury Department officials.

As noted above, IRS has specific procedures for handling White House contacts about tax checks for appointees and for other administrative matters, and general procedures for handling third-party contacts from

⁹Because the OIG investigation was being done at the same time as our review, and consistent with the cooperation expected between Inspectors General and GAO under the Inspector General Act of 1978, we established a cooperative working arrangement with the OIG staff that included sharing workpapers and related information.

any source offering information that may lead to examinations or investigations. IRS does not, however, have specific procedures to deal with a White House contact offering information about possible tax violations.

We emphasize that we found no evidence of taxpayer abuse in this situation. However, we believe IRS can expand its procedures by adding guidance to its employees on how to handle White House contacts other than those involving tax checks and routine administrative matters. Developing and issuing such guidance should not impose any significant incremental costs on IRS.

Conclusions

IRS has a wide range of controls, processes, and oversight offices designed to govern how its employees interact with taxpayers. While this “system” of controls has many elements designed to protect taxpayers from abuse, including IRS’ initiatives and numerous protections provided by law, it lacks the key element of timely and accurate information about when, where, how often, and under what circumstances taxpayer abuse occurs. This information would greatly enhance IRS’ ability to pull together its various efforts to deal with abuse into a more effective system for minimizing it. The information would also be valuable to Congress and taxpayers in general in assessing IRS’ progress in treating taxpayers as customers—an often cited IRS goal. Therefore, we believe IRS should define taxpayer abuse and develop the management information needed to identify its nature and extent.

In addition, we believe IRS can strengthen its controls in several specific areas and provide additional information to taxpayers that will increase their ability to protect their rights. Specifically, we believe IRS can (1) ensure that the information systems now being developed under its TSM initiative include the capability to minimize unauthorized access to taxpayer information, (2) clarify its guidelines for selecting tax returns during IGPS, (3) reconcile its cash receipts more often and encourage taxpayers to avoid using cash whenever possible in making payments to IRS, (4) provide individuals who may be subject to trust fund recovery penalties with more information about their responsibilities, (5) attempt to identify short-term remedies to minimize the problems caused taxpayers by IRS’ information handling weaknesses and ensure that the TSM program includes requirements designed to solve those problems as the new information systems are implemented over the next several years, and

(6) develop specific guidance for IRS employees on how they are to handle White House contacts.

Finally, we believe that legislation is needed to provide IRS with authority to disclose information to all responsible officers involved in IRS efforts to collect a trust fund recovery penalty. This authority was included in legislation titled Taxpayer Bill of Rights 2, (S. 542 and H.R. 22) introduced in the 103rd Congress.

We do not believe that Congress needs to provide additional appropriations to enable IRS to implement these recommendations, with one possible exception. Although additional funding may be needed so that IRS can deal with the information management problems discussed in this report as it proceeds with the TSM program, IRS does not know the amount of funds that will be needed because it has yet to decide on specific requirements and develop a cost/benefit analysis for these requirements. Any funding needed should be included in budget requests for IRS' TSM program. We believe that the steps we are recommending to correct the remaining problems will not require additional appropriations.

Recommendations to the Commissioner of Internal Revenue

To improve IRS' ability to manage its interactions with taxpayers, we recommend that the Commissioner of Internal Revenue establish a service-wide definition of taxpayer abuse or mistreatment and identify and gather the management information needed to systematically track its nature and extent.

To strengthen controls for preventing taxpayer abuse within certain areas of IRS operations, we recommend that the Commissioner of Internal Revenue

- ensure that TSM provides the capability to minimize unauthorized employee access to taxpayer information in the computer system that eventually replaces IDRS;
- revise the guidelines for IGPS to require that specific criteria be established for selecting taxpayers' returns to be examined during each project and to require that there is a separation of duties between staff who identify returns with potential for tax changes and staff who select the returns to be examined;
- reconcile all outstanding Form 809 cash receipts more often than once a year, and stress in forms, notices, and publications that taxpayers should

use checks or money orders whenever possible to pay their tax bills, rather than cash;

- better inform taxpayers about their responsibility and potential liability for the trust fund recovery penalty by providing taxpayers with special information packets;
- seek ways to alleviate taxpayers' frustration in the short-term by analyzing the most prevalent kinds of information-handling problems and ensuring that requirements now being developed for TSM information systems provide for long-term solutions to those problems; and
- provide specific guidance for IRS employees on how they should handle White House contacts other than those involving tax checks of potential appointees or routine administrative matters.

Recommendation to Congress

To better enable taxpayers and IRS to resolve trust fund liabilities, we recommend that Congress amend the Internal Revenue Code to allow IRS to provide information to all responsible officers regarding its efforts to collect the trust fund recovery penalty from other responsible officers.

Agency Comments and Our Evaluation

The Acting Commissioner of Internal Revenue commented on a draft of this report by letter dated August 26, 1994. (See app. V.) We also discussed the draft report several times with IRS officials. Our evaluation of IRS' written comments on our proposed recommendations in the draft report follows.

IRS disagreed with our recommendation that it establish a definition of taxpayer abuse and identify and gather the information needed to systematically track the nature and extent of such incidents. IRS said use of the term "taxpayer abuse" was misleading, inaccurate, and inflammatory; disagreed with parts of the definition of abuse used in our study; challenged the assumption that there was any need to collect additional information about abuse because its existing systems already identify and gather sufficient information to track and manage cases of improper treatment of taxpayers; suggested that our methodology was flawed because it did not show a statistically significant frequency of abuse; and asserted that the problem, to the extent it exists, was well under control. In summary, IRS said that the problem of taxpayer abuse, to the extent that it exists, is best defined, monitored, and corrected within the context of its definitions and current management information systems. Consequently, IRS planned no action on our recommendation.

IRS' disagreement with our definition of taxpayer abuse centered on two of the three components we used to define this issue in the absence of an IRS definition. While agreeing that taxpayers can be abused when IRS employees violate laws, regulations, or rules of conduct, IRS did not agree that harm resulting from employees aggressively applying discretionary enforcement power or information system breakdowns constituted taxpayer abuse.

We believe that it is commendable when IRS employees aggressively respond to taxpayers who do not comply with the tax laws, particularly if the noncompliance appears to be intentional. However, we noted instances when taxpayers who may not have complied because they did not understand the tax laws also received aggressive—perhaps overly aggressive—treatment by IRS employees. Throughout our study, it was our intent to focus on these latter instances. We have clarified our definition to explicitly specify unnecessarily aggressive application of discretionary enforcement power. We also noted instances when taxpayers were thoroughly frustrated due to the time and cost they had to expend in order to resolve misunderstandings resulting from IRS information handling problems. In both types of situations, we can understand why taxpayers would feel abused by IRS even though there was no violation of laws, regulations, or rules of conduct.

Another area in which we and IRS disagree is whether mistreatment of taxpayers, whatever its frequency and whether intentional or not, is an issue of sufficient significance to merit specific management attention based on systematic information gathering, reporting, and tracking over time. IRS clearly believes it is not unless it can be shown that the problem is statistically significant relative to the total number of IRS contacts with the public. IRS argues in its comments that (1) our study did not show that abuse, as we defined it, occurred with statistically verifiable frequency; and (2) other IRS information gathering activities give IRS management sufficient information to track these situations. In other words, IRS said that we have not shown that there is a significant problem, but if there is, IRS believes it has all the information needed to deal with it.

We believe the issue of taxpayer mistreatment deserves attention, not because we found it to occur frequently, but because we could not determine how frequently it occurs, and neither can IRS without modifying its existing management information systems. More fundamentally, we believe the issue inherently deserves attention. Congress has provided IRS with broad powers to carry out demanding and difficult responsibilities,

but Congress also continues to be concerned about protecting taxpayers from arbitrary or overzealous IRS employees and from administrative systems that sometimes go awry. It does not seem unreasonable to us that IRS should have information available about such incidents for its own use in working to strengthen preventative measures and to be able to report periodically on the issue.

It is true that our study does not present a statistical analysis of the incidence of abuse. That is the point. We say early in our report that IRS does not have the information readily available to estimate the frequency of such incidents. Our concern is not that we found a high—or low—frequency of abuse. Our concern is that the information needed to allow either us or IRS to determine the frequency of such incidents and to assess the effectiveness of IRS' controls to prevent such incidents over time is not presently available.

We agree, and our draft report recognized, that IRS has numerous information gathering efforts that collect a great deal of information related to the mistreatment of taxpayers. These include an attempt to measure taxpayer burden, defined as time, cost, and dissatisfaction, through such means as an annual report to the tax committees and periodic customer surveys. We do not agree, however, that these efforts and the management information derived from them, as presently structured, allow IRS to adequately measure and track incidents of taxpayer mistreatment.

IRS says, for example, that it has in place definitions and an information system to track and manage cases where IRS employees have violated a law, regulation, or the Office of Government Ethics' Standards of Ethical Conduct for Employees of the Executive Branch. This system contains information on all cases investigated by IRS' Internal Security Division, ranging from allegations of violating travel regulations to accepting bribes.

While we were able to select some cases out of the system that met our study definition of taxpayer abuse, we found it extremely time consuming and cumbersome because the system is structured to identify employee violations of policies and procedures, rather than to identify cases of abuse or taxpayer mistreatment from the taxpayer's perspective. In any event, IRS has no definition of taxpayer perception of mistreatment or abuse and the system has no code or category to identify such cases. As a result, although the cases that are entered in this system may involve

taxpayer mistreatment, at present no reporting or tracking of such cases can occur.

In summary, IRS believes it has adequate information to deal with what it believes are rare instances of taxpayer mistreatment. We do not agree that IRS has adequate information for the reasons noted above. We believe, however, that IRS could readily develop adequate information from its existing management information systems by developing a definition of “taxpayer mistreatment,” or such other term as IRS chooses, and modifying one or more of its present systems to identify incidents with the characteristics called for by the definition. Similarly, IRS could develop questions for use in its customer surveys to serve as indicators of the frequency of taxpayer mistreatment and progress in preventing it.

We believe IRS should reconsider its decision not to implement this recommendation.

IRS disagreed with a recommendation we made in a draft of this report that it revise its Rules of Conduct to deal with situations that can arise when IRS employees have dealings with taxpayers with whom the employees have recently completed an examination, investigation, or collection enforcement action. IRS said that it believed the Office of Government Ethics’ Standards of Ethical Conduct for Employees of the Executive Branch—which superseded IRS’ and other agencies’ Rules of Conduct—are sufficient to address the issues involved. On the basis of our discussions with IRS ethics officials and Office of Government Ethics officials, we agree and have dropped this recommendation and related material from our final report.

IRS’ comments on our other recommendations and our recommendation to Congress, along with our evaluation, are briefly summarized below.

- IRS agreed with our recommendation to provide the capability to minimize unauthorized employee access to taxpayer information in the new computer systems now being developed. IRS summarized several of the security and privacy capabilities these systems are to provide.
- In response to our recommendation to revise the guidelines for IGPS, IRS said it would issue a memorandum to the field updating a similar memorandum issued on September 21, 1989. IRS said the guidance would, among other things, address the need for (1) establishing criteria for selecting returns to be examined and (2) for separating duties of employees who identify returns to be included in the project from those

who select the specific returns to be examined. While this may serve to temporarily heighten field staff awareness of the importance of this issue, we believe that including such guidance in the Internal Revenue Manual would result in a more permanent emphasis on this issue in light of the potential for greater use of IGPs under Compliance 2000.

- IRS agreed with our recommendation to reconcile cash receipts more often than once a year and said it would consider doing random and unannounced reconciliations in addition to the annual reconciliations. We believe this is an excellent approach. IRS said that it supported the other part of this recommendation calling for it to emphasize in forms, notices, and publications that taxpayers should, whenever possible, pay their tax bills with checks or money orders instead of cash.
- In response to our recommendation that IRS better inform taxpayers about their responsibility and potential liability for trust fund recovery penalties, IRS said that it had already done a great deal in this area, including placing warnings on tax deposit coupons, on almost 30 forms, and in publications used by business taxpayers, and does not plan future changes in the coupons because it is moving away from the paper coupons and encouraging electronic payments. IRS did say it would consider using special information packets or taxpayer education materials for small businesses to alert taxpayers to this problem.
- In response to our recommendation that IRS seek ways to alleviate information-handling problems that frustrate taxpayers, IRS said it continually does this as it gathers data through Quality Review Programs. IRS said that as it moves into TSM's Document Processing System, the capture of images of returns and other tax documents will improve communications with taxpayers. IRS also said that the Taxpayer Ombudsman's Problem Resolution Program provides recommendations to the Tax Systems Modernization Program for ways to alleviate systemic problems that cause problems for taxpayers.
- IRS disagreed with our recommendation that it provide guidance for IRS employees on how they should handle White House contacts, other than those involving tax checks of potential appointees or routine administrative matters. IRS said that its current procedures regarding third-party contacts who provide information that could lead to an audit or investigation are adequate to cover any contacts from the White House. Those procedures essentially call for IRS field office personnel to evaluate the information provided and decide if an audit or investigation is warranted.

We continue to believe that IRS and taxpayers would be better served by specific, tailored guidance on this topic. Retaining only the current

procedures for all third-party contacts will allow IRS employees to (1) accept any information from any White House staffer suggesting that an IRS audit or investigation be done, whether or not the information was received through the senior level channels prescribed by the White House guidance to its employees and (2) allow that information to be evaluated and a decision made as to whether to conduct an audit or investigation by a relatively low-level IRS employee.

- IRS supported our recommendation to Congress calling for amending the Internal Revenue Code to allow IRS to inform all of the responsible officers in a business about IRS' efforts to collect a trust fund recovery penalty from other responsible officers.

As agreed with the Subcommittee, we will send copies of this report to other interested congressional committees, the Secretary of the Treasury, the Commissioner of Internal Revenue, and other interested parties. Copies will be made available to others upon request.

The major contributors to this report are listed in appendix VI. If you have any questions, please call me at (202) 512-5407.



Jennie S. Stathis
Director, Tax Policy and
Administration Issues

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Abbreviations

FBI	Federal Bureau of Investigation
DO	district office
IGP	Information Gathering Projects
IDRS	Integrated Data Retrieval System
IRS	Internal Revenue Service
OIG	Office of Inspector General
PRO	Problem Resolution Officer
SC	service center
TSM	Tax Systems Modernization

Objectives, Scope, and Methodology

The Subcommittee on Treasury, Postal Service and General Government, House Committee on Appropriations, asked us to determine if IRS has adequate controls and procedures to prevent IRS from abusing taxpayers' rights. To attempt this determination, we identified various examples of potential taxpayer abuse that were of concern to the public, Congress, and the media. From these examples, we developed a range of taxpayer abuse issues for which we examined IRS' procedures, guidelines, and management oversight to determine if these controls appeared adequate to protect taxpayers from abuse by IRS employees, procedures, or systems.

At the outset of our review, we found that IRS had no definition of taxpayer abuse. We discussed the topic of taxpayer abuse with managers of various IRS offices, including the Collection, Examination, and Criminal Investigation Divisions; the Inspection Service; and the Problem Resolution Office. Although some managers offered their opinions as to what situations might be considered "abusive," none was aware of any specific IRS definition of taxpayer abuse.

To get other perspectives on the issue, we contacted a number of groups representing both tax practitioners and taxpayers. These groups included the American Bar Association, the American Institute of Certified Public Accountants, the Tax Executive Institute, the Federation of Tax Administrators, and the National Coalition of IRS Whistleblowers. As was the case with IRS managers, the officials from these groups did not have a standard definition of taxpayer abuse. However, they raised a number of concerns, centering not only on what they believed to be specific instances of IRS employees' excessive use of discretionary enforcement power, but also on IRS' systemic problems, which they felt caused harm to taxpayers in general and which we believe could be perceived by taxpayers to be abusive.

To assist our data collection efforts regarding taxpayer abuse, we developed a working definition of abuse that encompassed a broad range of situations that were potentially harmful to taxpayers. We defined abuse from the taxpayers' viewpoint, rather than from IRS' viewpoint. We then listed various issues related to specific examples of potential abuse that we identified by reviewing recent congressional hearings and reports, newspaper and magazine articles, IRS Problem Resolution Office files, IRS district office and service center congressional correspondence files, and IRS Internal Audit and Internal Security files and reports.

Our working definition of taxpayer abuse had three parts that described general categories of potential taxpayer abuse on the part of IRS and its employees. The three categories, as well as related issues of taxpayer abuse, were as follows:

- An IRS employee is alleged to have violated a law, regulation, or the IRS rules of conduct, resulting in possible harm to a taxpayer; a related issue is the use of discretionary enforcement power for personal reasons.
- An IRS employee aggressively uses discretionary enforcement power in such a way that a taxpayer perceives that he or she is harmed, as does the media, Congress, or the general public; related issues include the use of enforcement power against certain persons who, although not directly responsible for a failure to pay a tax liability, may be technically liable for the tax, such as when an innocent spouse is assessed a joint tax liability or when a company employee is assessed a trust fund recovery penalty.
- An IRS computer system fails in such a way that a taxpayer perceives that he or she is abused, as does the media, Congress, or the general public; a related issue is the use of discretionary enforcement power against a taxpayer because the IRS has mistakenly assessed the taxpayer for a debt that the taxpayer does not owe.

Within IRS, in addition to the lack of a service-wide definition of taxpayer abuse, we also learned that IRS does not have specific management information to enable the Service to track and measure abuse. Rather, there are files maintained by various IRS offices that may contain taxpayer complaint information, such as congressional correspondence files maintained at the IRS National Office, district offices, and service centers, and Problem Resolution Office files maintained in IRS' district offices and service centers.

After discussions with IRS officials concerning data sources within the Service that we might use to find examples of potential taxpayer abuse, we decided to review three sources in particular: (1) Problem Resolution Office files maintained at each district office and service center, (2) congressional correspondence files maintained at the National Office and at each district office and service center, and (3) Internal Security investigative case files maintained at the National Office. We judgmentally selected and reviewed 421 fiscal year 1992 Problem Resolution Office files and 201 fiscal year 1992 congressional correspondence files from the field locations shown in table I.1.

Appendix I
Objectives, Scope, and Methodology

Table I.1: Summary of Problem Resolution Office and Congressional Correspondence Files Reviewed

District office/ service center	Files	
	Problem resolution office	Congressional
Albany DO	120	0
Atlanta DO	115	0
Atlanta SC	0	25
Manhattan DO	48	112
Brookhaven SC	138	64
Total	421	201

Legend

DO: District office.
 SC: Service center.

Source: GAO analysis of IRS files.

In addition, at the National Office we reviewed summaries of all 909 Internal Security investigations closed during fiscal year 1992.

From these three sources, we subjectively selected examples of taxpayer complaints that appeared to illustrate various issues within our definition of taxpayer abuse. Initially, we selected 139 examples that we believed indicated potential taxpayer abuse. From those, we further selected 24 that we used as a basis for evaluating IRS' specific procedures, guidelines, and management oversight to protect against taxpayer abuse. We did the same for two additional potential examples of taxpayer abuse, one we identified in an IRS Internal Audit report, and a second we included because of extensive media coverage and its sensitivity. Although we did not follow up on each individual example to determine whether these taxpayers were actually abused by IRS, we cited them in our discussions with IRS managers to learn about the range of controls in place to prevent this type of taxpayer abuse.

Further, our selection of these examples was intended for illustrative purposes only and did not indicate a frequency of occurrence. In our review, we made no attempt to statistically sample the files that we reviewed because they did not solely represent instances of potential taxpayer abuse. For example, we did not include taxpayer complaints concerning delays in receiving refund checks as an instance of taxpayer abuse. Therefore, we were unable to quantify the extent of potential taxpayer abuse by IRS employees. This was due to both the absence of

information on the total universe of situations that may have involved taxpayer abuse and the difficulty of finding specific data concerning instances that could conclusively be defined as taxpayer abuse.

As noted above, in our discussions with IRS managers, we used the examples we selected from IRS files to determine whether there were controls in place over IRS operations to prevent taxpayer abuse. Thus, we talked with officials knowledgeable about IRS operations, particularly those of the Collection, Examination, and Criminal Investigation Divisions, to determine the specific processes and procedures currently required in their respective enforcement efforts. In so doing, we attempted to get an understanding of the general controls applicable to these separate operations. The examples we selected, in some instances, enabled us to identify weaknesses in IRS' current controls and procedures.

In addition to discussions concerning specific issues and controls, we reviewed documentation related to IRS' efforts to improve its treatment of taxpayers since we testified on this issue in 1982. We looked at initiatives mandated by Congress, such as the 1988 Taxpayer Bill of Rights, as well as initiatives set forth by IRS in its strategic business plan, such as the Compliance 2000 initiative, in which IRS plans to work closely with taxpayers to aid them in complying with the tax laws.

We also reviewed a highly publicized allegation that a taxpayer was abused by IRS because of improper contacts from the White House and FBI. Due to the sensitivity of this allegation, we also looked into IRS' controls related to contacts by the White House and FBI and determined whether taxpayer abuse actually occurred in this instance. To do this, we discussed the issue of controls with IRS officials and reviewed the related Internal Revenue Manual procedures. We also reviewed a White House Chief of Staff Management Review, an IRS Inspection report and supporting documents, and a Treasury OIG report and supporting workpapers, concerning their respective investigations of the abuse allegations. Finally, we discussed the allegations with officials of the White House, FBI, IRS Inspection Service, Treasury OIG, and representatives of the taxpayer.

Because our review overlapped the OIG inquiry, both in terms of the time when the two reviews were being carried out and the issues they addressed, we established a joint working relationship, consistent with the cooperation expected between Inspectors General and GAO under the Inspector General Act of 1978. Through this relationship, we obtained access to the results of and workpapers supporting the OIG's work, and we

provided similar access to pertinent results and workpapers from our work. We relied heavily on OIG workpapers and interviews with OIG staff to corroborate information from IRS' Inspection Service's report concerning IRS employees' actions.

We did our work from April 1992 through January 1994 at IRS' National Office; the North Atlantic and Southeast Regions; the Albany, Atlanta, Brooklyn, and Manhattan Districts; and the Atlanta and Brookhaven Service Centers. We also met with White House and FBI officials and with representatives of a taxpayer involved in one of the examples we reviewed. We did our work in accordance with generally accepted government auditing standards. The Acting Commissioner of Internal Revenue provided written comments on a draft of this report, and those comments are reprinted in appendix V.

Summary of IRS Controls and Other Initiatives That Aid in Preventing Taxpayer Abuse

IRS has many operational controls in place to help govern its interactions with taxpayers that should aid in the prevention of taxpayer abuse. In recent years, IRS has also undertaken various initiatives to help improve how it deals with taxpayers. The key elements of IRS' approach for preventing taxpayer abuse, such as (1) operational controls governing the actions of IRS' enforcement functions, (2) processes for handling taxpayer complaints, and (3) offices for overseeing IRS' operations, as well as recent IRS and congressional initiatives to better ensure that taxpayers are treated fairly in their dealings with IRS, are summarized below.

IRS' Operational Controls Governing Examination, Collection, and Criminal Investigation Activities

IRS has a wide range of operational controls to govern its primary enforcement activities—examination, collection, and criminal investigation. Among these controls are some that IRS considers crucial in its overall efforts to safeguard taxpayers' rights and prevent abuse. For example, a key control over examination activities is a separation of duties between IRS staff who identify tax returns with potential for a tax change and staff who conduct the actual tax examination. A key control over collection activities is a series of tax delinquency notices warning of pending enforcement actions that IRS sends to taxpayers before it actually initiates such actions.¹ For criminal investigations, a key control is the required approval by a management official before IRS criminal investigators initiate such investigations.

Specific operational controls and procedures are required when a taxpayer's return is examined by IRS. Before an examination is done, IRS often has used a computer program to identify returns with potential for tax changes. Some of these computer-identified returns are to be automatically examined, such as those resulting in a refund of \$200,000 or more. Others, such as those identified by IRS' Discriminant Function formula, are to be screened by examination classifiers to further determine those with the greatest potential for tax changes. The returns selected through this screening process would be stored in inventory at the service center until requested by a district office examination manager, who would assign them to either a district office tax examiner or revenue agent to conduct the tax examination. Generally, noncomputer-identified returns, such as referrals from other IRS offices and state tax agencies, would also be (1) further screened by examination classifiers to identify those with the greatest potential for tax changes, (2) stored in inventory

¹We have recommended that IRS provide much faster notice to taxpayers by making early telephone contact. By resolving cases sooner, IRS may avoid some written notices that become progressively harsher in tone. See *Tax Administration: New Delinquent Tax Collection Methods for IRS* (GAO/GGD-93-67, May 11, 1993).

Appendix II
Summary of IRS Controls and Other
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until requested by district office examination managers, and (3) assigned to be examined by a district office tax examiner or revenue agent. However, we identified some flaws in the controls for IGPS—a particular type of examination activity involving returns not selected by computer. Controls over IGPS are discussed in our report on page 10.

When IRS notifies the taxpayer that his or her return will be examined, the taxpayer is to be provided with IRS Publication 1, “Your Rights as a Taxpayer,” describing the taxpayer’s rights related to the examination process. At the start of the examination, IRS examiners are to ask taxpayers if they received Publication 1. IRS Publication 1 informs taxpayers that they have the right to (1) representation, (2) record interviews with IRS personnel, (3) have their personal and financial information kept confidential, (4) receive an explanation of any changes to their taxes, and (5) appeal IRS’ findings through an IRS appeals office or through the court system. The appeals process provides an independent review of IRS examinations and protects against taxpayer abuse by helping to ensure that the taxpayer pays the correct tax.

Similar controls and procedures are to be followed when IRS seeks to collect unpaid taxes from taxpayers. For example, IRS is to send taxpayers a series of computer-generated notices before taking any collection enforcement action, thereby enabling taxpayers to voluntarily settle their tax liabilities. IRS also is to send Publication 594, “Understanding the Collection Process,” with its first and last payment delinquency notices. This publication explains taxpayers’ payment alternatives and rights during the collection process, as well as the sequence of enforcement actions that IRS may use if the taxpayers fail to comply.

When contacted by IRS collection staff, a taxpayer may seek an installment agreement or submit an offer-in-compromise² as alternatives to full payment on demand. If the taxpayer believes that paying the tax would create a hardship, he or she can file an Application for Taxpayer Assistance Order, whereby IRS may agree to allow the taxpayer to defer payment until the taxpayer’s finances improve. If the taxpayer disagrees with the results of IRS’ collection action, he or she may seek an informal administrative review with an IRS manager. Taxpayers who disagree with certain collection actions, such as the assessment of a trust fund recovery penalty, may also pursue a formal appeal through an IRS Regional Director of Appeals or the court system.

²Section 7122 of the Internal Revenue Code allows IRS to settle an unpaid tax delinquency for less than the full amount of the balance due when there is doubt as to the liability or to the collectibility of the balance due.

Various controls and procedures are also to be followed by the IRS when a taxpayer is the subject of an IRS criminal investigation. For example, the investigation is to be based on evidence of a possible criminal violation of the Internal Revenue law and it is to be approved by an IRS manager before it is started. At the first meeting between IRS agents and the taxpayer, IRS agents are required to explain the taxpayer's rights, including the right to representation. If the taxpayer requests representation, the IRS agents are to terminate the meeting. Once the investigation is completed, IRS is required to notify the taxpayer. If IRS plans to recommend prosecution, the taxpayer may seek a conference with an IRS manager to determine the basis for such a recommendation. Prosecution recommendations are to be reviewed and approved by both the IRS District Counsel and the local U.S. Attorney before a case against the taxpayer is presented to a grand jury.

IRS' Processes for Handling Taxpayers' Complaints and Overseeing IRS Operations

Taxpayers have several ways to obtain help if they believe they have been abused by IRS staff. Taxpayers may seek help from supervisors, Problem Resolution Officers (PRO), or the directors of IRS' local district offices and service centers. They may also complain directly to IRS' National Office. IRS Publication 1 contains information on filing complaints with supervisors, PROs, and local office directors. Serious complaints involving potential integrity issues are to be referred to IRS' Internal Security Division for investigation. Complaints of misconduct made against upper-level managers, senior executives, and IRS' Inspection Service staff are to be referred to the OIG in the Department of the Treasury.

Problem Resolution Program

IRS has a nationwide Problem Resolution Program, headed by the Taxpayer Ombudsman at the National Office and carried out by PROs in IRS' 63 district offices and 10 service centers. PROs can help taxpayers who have been unable to resolve their problems after repeated attempts with other IRS staff. For example, PROs can help taxpayers who believe (1) their tax accounts are incorrect, (2) a significant item was overlooked, or (3) their rights were violated. PROs can ensure that action is taken when taxpayers' rights were not protected, correct procedures were not followed, or incorrect decisions were made. PROs can also use authority provided by the Taxpayer Bill of Rights to order that an enforcement action be stopped or other action be taken when a taxpayer faces a significant hardship as a result of an IRS enforcement action. A significant hardship may occur when, as a result of the enforcement action, a taxpayer cannot maintain necessities such as food, clothing, shelter, transportation, or medical treatment.

Appendix II
Summary of IRS Controls and Other
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PROS do not resolve technical or legal questions. Such questions, as well as taxpayer complaints of harassment and discourteous treatment by IRS staff, are to be referred to IRS managers. PROS are to refer complaints involving potential employee integrity issues to Internal Security or, if a senior IRS official is involved, to the Treasury OIG.

Internal Security and
Internal Audit

IRS' Internal Security Division is required to investigate taxpayer complaints involving potential criminal misconduct, such as embezzlement by IRS staff and potential administrative misconduct, such as unauthorized access to a taxpayer's account. Internal Security is to report its investigative results to IRS management for its use in determining appropriate personnel action. In addition, Internal Security can refer criminal violations to the local U.S. Attorney for prosecution.

Internal Security is to refer other allegations of misconduct, such as discourteous treatment of taxpayers, to management officials. When handling these referrals and other less serious taxpayer complaints, supervisors are required to obtain a full explanation from both the taxpayer and employee before deciding how to resolve the problem. If they cannot determine how to resolve the problem, supervisors are to refer the unresolved complaints to the PRO.

Although IRS' Internal Audit Division usually neither receives nor investigates taxpayer complaints, in addition to performing its mission of reviewing IRS' operations, it can review the results of Internal Security investigations. Both types of reviews could identify potential internal control weaknesses, some of which may identify possible taxpayer abuse. When such weaknesses are identified, Internal Audit can recommend that IRS management strengthen the controls in question. Internal Audit findings are to be disseminated to IRS' district offices, so that similar potential control problems in other offices can be identified and acted upon. Thus, Internal Audit can serve as an important aid to management oversight.

Treasury Office of
Inspector General

The OIG in the Department of the Treasury is to play an oversight role in protecting taxpayers from abuse. Soon after the OIG was established by Congress, allegations of misconduct by IRS officials led the Commissioner of Internal Revenue to transfer staff and funds to the OIG for investigating allegations involving IRS officials above grade 14 of the General Schedule. The OIG also conducts reviews of IRS' Internal Security and Internal Audit

Divisions, and it has the authority to review any IRS activity the Inspector General believes warrants such attention.

Recent Legislation and IRS Initiatives That Have Aided Taxpayers in Their Dealings With IRS

In the 1980s, both new laws and new IRS initiatives improved taxpayers' ability to resolve problems with IRS. This has been particularly noticeable since 1988, when Congress passed the Taxpayer Bill of Rights. We believe this legislation, coupled with various IRS initiatives, such as those involving quality management, ethics and integrity, a collection appeals process, and modernizing its computer systems, has improved the potential for fair and reasonable treatment of taxpayers in their dealings with IRS. These efforts should also lessen the potential for taxpayer abuse by IRS employees.

1988 Taxpayer Bill of Rights Helped to Ensure Fair Treatment of Taxpayers

In 1988, Congress passed the Taxpayer Bill of Rights, which caused IRS to take steps to improve its interaction with taxpayers. The Act contained 21 provisions affecting a wide range of issues. For example, it clarified certain basic rights of taxpayers and required IRS to provide taxpayers with a statement of these rights. To fulfill this requirement, IRS developed Publication 1, "Your Rights as a Taxpayer," which is to be given to all taxpayers who are subject to examination and collection actions. Among other provisions, the act clarifies a taxpayer's right to representation in dealing with IRS and provides additional methods to resolve disputes over IRS' interpretation and administration of the tax laws.

A key provision of the act authorizes the Taxpayer Ombudsman or any designee of the Ombudsman—who reports only to the Commissioner of Internal Revenue—to issue Taxpayer Assistance Orders to rescind or change enforcement actions that caused or might cause a significant hardship for the taxpayer. Although few of these formal orders have been issued, the authority provided by the act and three key decisions IRS made to implement the act greatly strengthened the ability of the PROS to assist taxpayers. IRS decided to (1) expand the act's definition of "hardship" to include not only hardships caused by its administration of the tax laws, but all hardships that it could reasonably relieve; (2) provide assistance, when reasonable, to hardship applicants who did not meet IRS' hardship criteria, but who could be helped, either through the Problem Resolution Program or by another IRS unit; and (3) instruct its employees to initiate hardship applications on behalf of taxpayers when employees encountered situations that might warrant assistance.

We discussed IRS' implementation of this, and other provisions of the act in a 1991 report.³ Our report confirmed that IRS had assisted taxpayers who applied for hardship whether or not they met the hardship criteria. IRS statistics showed that over 32,000 taxpayers—about 70 percent of all applicants—had received assistance. (See appendix III for a detailed description of the provisions of the act.)

IRS' Quality Management Initiative Emphasizes Treating Taxpayers as Customers

In 1985, IRS established a Commissioner's Quality Council and began developing a service-wide quality improvement initiative designed to identify and satisfy customers' needs. Since that time, Internal Revenue Commissioners have defined IRS' objectives in terms of both increasing customer service and reducing taxpayer burden. As a result of the emphasis on meeting customers' needs, IRS developed customer service training that focuses on improving staff interaction with taxpayers in an effort to attain greater customer satisfaction and confidence.

In addition to customer service training, IRS has also recently conducted customer satisfaction surveys, including surveys of those taxpayers who had been subjected to IRS' examination and collection actions. Overall, these surveys have shown that there were more respondents who believed that IRS had treated them fairly than respondents who believed that IRS had treated them unfairly. For example, in one survey of taxpayers in general, 32 percent of the respondents gave IRS a high rating for fairly applying the tax laws and 17 percent gave IRS a low rating. In another survey of taxpayers who had been audited by IRS, 50 percent gave IRS a high rating for fair treatment and 16 percent gave IRS a low rating. In a survey of taxpayers who had been subjected to IRS collection action, 42 percent of those who responded gave IRS a high rating for fairness and 28 percent gave IRS a low rating.

As a continuation of its emphasis on treating taxpayers as customers, IRS has embarked on a service-wide initiative called Compliance 2000, in which IRS staff are to use assistance and education to aid taxpayers in complying with the tax laws. A goal of this initiative is to reduce the need for examination and collection actions against those taxpayers who would voluntarily comply with the tax laws if they fully understood how to do so, thus enabling IRS to concentrate its enforcement efforts against those who intentionally fail to comply with the tax laws. If this initiative has the intended effect, more taxpayers may avoid noncompliance with the tax

³Tax Administration: IRS' Implementation of the 1988 Taxpayer Bill of Rights (GAO/GGD-92-23, Dec. 10, 1991).

laws, thus reducing their interaction with IRS and the potential for taxpayer abuse.

IRS' Ethics and Integrity Initiative Has Increased Awareness Among IRS Staff of Ethical Issues

Congressional hearings in 1989 and 1990 questioned IRS' overall standards of ethics and integrity. To address these concerns, IRS began a long-term effort to enhance its ethics and integrity programs and to improve staff awareness of integrity issues throughout the Service. As part of this effort, IRS published an Ethics Plan that called for IRS to develop and deliver ethics training to all its employees. As of September 30, 1992, 14,000 IRS managers had completed an ethics training course developed for IRS by the Josephson Institute of Ethics. As of the end of Fiscal Year 1993, IRS had provided ethics training to the remainder of its employees.

In addition to developing an Ethics Plan, IRS responded to congressional concerns about whether it could adequately and independently investigate ethical misconduct on the part of its senior employees by permanently transferring 21 staff years and \$1.9 million to the OIG of the Department of the Treasury. The OIG planned to use these resources to oversee IRS' Office of Inspection, investigate allegations of misconduct by IRS senior employees, and conduct special reviews of IRS operations. Over time, IRS' emphasis on ethics and integrity should have a positive impact on how IRS employees conduct themselves when dealing with the public.

IRS Is Testing a Formal Appeals Process for Collection Decisions

When IRS collects unpaid taxes, it is to distinguish between those taxpayers who show a sincere effort to meet their tax obligations and those who do not. If full payment is not possible, IRS collection officials are required to consider each of the payment options available to taxpayers, and attempt to find the best way for them to voluntarily pay the taxes they owe. If a taxpayer does not make an attempt to pay a tax bill, IRS may take actions to enforce the notice and demand for payment, such as (1) file a notice of federal tax lien,⁴ (2) serve a notice of levy, and (3) seize and sell a taxpayer's property.

IRS collection officials can recommend enforcement actions on the basis of contact with the taxpayer and analysis of his or her income, expenses, and assets. They have discretionary power in carrying out these actions, and their decisions often result as much from their judgment as from the payment history of the taxpayer. In reaching their determinations,

⁴A lien represents the government's claim against and rights to taxpayers' property and may have an adverse effect on their credit rating.

collection staff are to consider such issues as whether (1) the taxpayer has a history of unreasonably delaying the collection process, (2) the taxpayer is a tax protestor, and (3) collection of the tax is threatened or in jeopardy.

If a taxpayer disagrees with a revenue officer's collection decision, he or she may raise the issue with the revenue officer's supervisor. Alternatively, the taxpayer may contact the Problem Resolution Office to complain about collection actions. Problem Resolution officials have the authority to overturn collection decisions when issues of hardship arise. Currently, there is no formal appeals procedure for taxpayers who disagree with IRS' collection actions, with the exception of cases involving the trust fund recovery penalty, rejected offers-in-compromise, and specified penalty issues.

One provision of the taxpayer rights legislation introduced in Congress in 1992 and again in 1993 called for a pilot program to study the merits of a formal appeal procedure for taxpayers who disagree with collection enforcement actions. IRS established such a pilot program in the Indianapolis District on March 30, 1992, later expanded it, and is currently evaluating its effectiveness. IRS is gathering data on how often taxpayers appealed IRS' collection actions, how often its decisions were upheld or reversed, the costs of such a program and its benefits to IRS and taxpayers, and the effects such a program would have on the number of IRS' collection actions. IRS recently expanded the program to other locations and plans to eventually determine the need for a formal collection appeals process.

Tax Systems
Modernization Should
Reduce Taxpayers' Burden

IRS is currently implementing TSM, which is a long-term strategy to modernize IRS' computer and telecommunications systems. While some phases of TSM are already underway, it is expected to be fully implemented early next century and should greatly enhance IRS' capability to serve taxpayers and reduce their burden when dealing with IRS.

TSM has already benefited some taxpayers. For example, one aspect of TSM—Electronic Filing—allows taxpayers to file their returns more quickly and accurately and also to receive their refunds more quickly. In the future, TSM is expected to eliminate mailing unnecessary computer generated correspondence to taxpayers who have already responded to prior notices. In addition, with proper controls, by making more information readily available to IRS staff, TSM should reduce the time it takes to answer taxpayers' questions and resolve taxpayers' problems,

Appendix II
Summary of IRS Controls and Other
Initiatives That Aid in Preventing Taxpayer
Abuse

both of which could be a source of frustration and may be perceived by some taxpayers to be a form of abuse.

Summary of Provisions in the 1988 Taxpayer Bill of Rights

Provision	Act Section ^a	Required implementation date
Disclosure of Taxpayers' Rights	6227	May 9, 1989
Requires Internal Revenue Service (IRS) to prepare a simple statement of taxpayer rights. Must be provided to all taxpayers contacted regarding the determination and collection of taxes.		
Procedures Involving Taxpayer Interviews	6228	Feb. 8, 1989
Defines taxpayer and IRS responsibilities regarding interviewing and audio recordings of in-person interviews.		
Taxpayers' Reliance on IRS Written Advice	6229	Jan. 1, 1989
Requires IRS to abate penalty or additional tax attributable to erroneous written advice of IRS if the advice was requested in writing, was relied upon by the taxpayer, and the taxpayer provided adequate information.		
Taxpayer Assistance Orders	6230	Jan. 1, 1989
Grants a Taxpayer Ombudsman authority to issue assistance orders when taxpayers suffer or are about to suffer significant hardship as a result of the manner in which Internal Revenue laws are administered.		
Basis for Evaluation of IRS Employees	6231	Jan. 1, 1989
Prohibits IRS from using records of tax enforcement results to evaluate employees or to impose production quotas.		
Procedures Relating to IRS Regulations	6232	Nov. 20, 1988
Requires that temporary regulations be issued as proposed regulations and expire within 3 years after they are issued. It also requires that regulations be submitted to the Small Business Administration for comment before promulgation.		
Content of Tax Due, Deficiency, and Other Notices	6233	Jan. 1, 1990
Requires that certain notices to taxpayers describe the basis for and identify the amounts of taxes due as well as interest and penalties.		
Installment Payment of Tax Liability	6234	Nov. 11, 1988
Provides statutory authority for installment agreements and specifies reasons to amend or revoke such agreements.		
Assistant Commissioner for Taxpayer Services	6235	May 9, 1989
Establishes an Assistant Commissioner for Taxpayer Services and requires a joint annual report with the Taxpayer Ombudsman to Congress on the quality of services provided.		
Levy and Distrain	6236	July 1, 1989
Revises the tax laws relating to notice of intent to levy, exemptions from levy, limitations on levy, release of levy, and the sale of seized property. Extends the period during which a levy may not be made following notice from 10 to 30 days. It also requires banks to hold levied funds 21 days before remitting them to IRS.		
Review of Jeopardy Levy and Assessment Procedures	6237	July 1, 1989
Grants concurrent jurisdiction to the Tax and U.S. District Courts to determine whether a jeopardy assessment was reasonable.		

(continued)

**Appendix III
Summary of Provisions in the 1988 Taxpayer
Bill of Rights**

Provision	Act Section^a	Required implementation date
Administrative Appeal of Liens	6238	July 12, 1989
Requires IRS to provide an administrative appeal procedure for liens. If the notice of lien was erroneous, a certificate of release must be issued.		
Awarding of Costs and Certain Fees in Administrative and Court Proceedings	6239	Nov. 11, 1988
Authorizes the recovery of costs incurred on or after the receipt of an appeals decision or the date of the statutory notice of deficiency, whichever is earlier.		
Civil Cause of Action for Damages Sustained Due to Failure to Release Lien	6240	Jan. 1, 1989
Allows taxpayer to sue in District Court for damages resulting when IRS fails to release a lien.		
Civil Cause of Action for Damage Due to Unauthorized IRS Action	6241	Nov. 11, 1988
Permits taxpayers to sue if IRS recklessly or intentionally violates the law.		
Assessable Penalty for Improper Disclosure or Use of Information by Preparers	6242	Jan. 1, 1989
Provides for a civil penalty of \$250 for each unauthorized disclosure or use of taxpayer information by preparers.		
Jurisdiction to Restrain Certain Premature Assessments	6243	Nov. 11, 1988
Grants the Tax Court concurrent jurisdiction to restrain assessments and collections for some cases pending before the court.		
Jurisdiction to Enforce Overpayment Determination	6244	Feb. 8, 1989
Grants the Tax Court jurisdiction to order the refund, with interest, of any overpayment if IRS fails to refund within 120 days an overpayment determined by the court.		
Jurisdiction to Review Sale of Seized Property	6245	Feb. 8, 1989
Grants the Tax Court jurisdiction during the pendency of proceedings before it is to review an IRS determination to sell seized property.		
Jurisdiction to Redetermine Interest on Deficiencies	6246	Nov. 11, 1988
Authorizes taxpayers to request the Tax Court to reopen proceedings to redetermine the interest charged by IRS on a deficiency.		
Jurisdiction to Modify Decisions in Estate Tax Cases	6247	Nov. 10, 1988
Gives the Tax Court authority to reopen an estate tax proceeding in order to modify decisions regarding deductions for interest.		

^aRefers to a section of the Technical and Miscellaneous Revenue Act of 1988, which contained the Omnibus Taxpayer Bill of Rights as Subtitle J (P.L. 100-647).

Summary of GAO Products That Cover Issues Related to Those Discussed in This Report

GAO has conducted several studies in the past that, while not designed to identify instances of taxpayer abuse, cover related issues, such as safeguarding taxpayers' rights and taxpayer information, IRS' collection methods, and employee integrity and ethics. Following are summaries of these studies.

Safeguarding Taxpayers' Rights

Tax Administration: IRS' Implementation of the Taxpayer Bill of Rights (GAO/T-GGD-92-09, Dec. 10, 1991).

Tax Administration: IRS' Implementation of the 1988 Taxpayer Bill of Rights (GAO/GGD-92-23, Dec. 10, 1991).

This testimony and report assessed IRS' implementation of seven key provisions of the 1988 Taxpayer Bill of Rights and stated that while IRS had successfully implemented them in general, there were areas in which IRS could more consistently treat taxpayers, such as notifying them when IRS cancels installment agreements.

IRS Policies and Procedures to Safeguard Taxpayer Rights and the Effects of Certain Provisions of the 1976 Tax Reform Act (Testimony - Apr. 26, 1982).

This testimony concluded that while there may have been instances in which IRS violated a taxpayer's rights, we found no evidence to indicate that such instances were widespread or systemic.

Safeguarding Taxpayer Information

IRS Information Systems: Weaknesses Increase Risk of Fraud and Impair Reliability of Management Information (GAO/AIMD-93-34, Sept. 22, 1993).

This report identified weaknesses in IRS' general controls over its computer systems which resulted in various problems, such as unauthorized access to taxpayers' account information by IRS employees.

Tax Systems Modernization: Concerns Over Security and Privacy Elements of the Systems Architecture (GAO/IMTEC-92-63, Sept. 21, 1992).

This report raised concerns about the need for IRS to clearly delineate responsibility for protecting the privacy of taxpayer information.

IRS Collection Methods

Tax Administration: New Delinquent Tax Collection Methods for IRS
(GAO/GGD-93-67, May 11, 1993).

This report highlighted improvements that IRS could make in its lengthy and rigid collection process for delinquent tax debts.

Tax Administration: IRS' Management of Seized Assets (GAO/T-GGD-92-65, Sept. 24, 1992).

This testimony stated that IRS has inadequate controls to protect taxpayer property it seizes and that IRS' practices for disposing of seized property do not always provide the best return for the taxpayer.

Tax Administration: Extent and Causes of Erroneous Levies (GAO/GGD-91-9, Dec. 21, 1990).

This report showed that IRS initiated over 16,000 erroneous levies against taxpayers in Fiscal Year 1986 and recommended that IRS institute a nationwide levy verification program to significantly reduce the number of erroneous levies.

Tax Administration: IRS Can Improve the Process for Collecting 100-Percent Penalties (GAO/GGD-89-94, Aug. 21, 1989).

This report analyzed IRS' process for collecting the 100-percent penalty and recommended several actions IRS should take to make the process more efficient and effective.

Employee Integrity and Ethics

Tax Administration: IRS Should Expand Financial Disclosure Requirements
(GAO/GGD-92-117, Aug. 17, 1992).

This report recommended that IRS could better detect and prevent employee conflicts of interest by expanding its financial disclosure requirements.

Tax Administration: IRS' Progress on Integrity and Ethics Issues
(GAO/T-GGD-92-62, July 22, 1992).

Internal Revenue Service: Status of IRS' Efforts to Deal With Integrity and Ethics Issues (GAO/GGD-92-16, Dec. 31, 1991).

Appendix IV
Summary of GAO Products That Cover
Issues Related to Those Discussed in This
Report

This testimony and report dealt with the progress IRS has made in addressing problems we had identified related to ethics and integrity issues and suggested that IRS make better use of its management information system to monitor disciplinary actions against its employees.

IRS' Efforts to Deal With Integrity and Ethics Issues (GAO/T-GGD-91-58, July 24, 1991).

Internal Revenue Service: Employee Views on Integrity and Willingness to Report Misconduct (GAO/GGD-91-112FS, July 24, 1991).

This testimony and fact sheet outlined IRS' efforts, in conjunction with the Treasury Inspector General, to deal with concerns about integrity and ethics at IRS.

IRS Data on Investigations of Alleged Employee Misconduct (GAO/T-GGD-89-38, July 27, 1989).

Tax Administration: IRS' Data on Its Investigations of Employee Misconduct (GAO/GGD-89-13, Nov. 18, 1988).

This testimony and report pointed out various weaknesses with IRS' Internal Security Management Information System related to the outcomes of employee misconduct investigations and also highlighted IRS' plans to develop a new and improved management information system.

Comments From the Internal Revenue Service



COMMISSIONER

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

August 26, 1994

Ms. Jennie S. Stathis
Director, Tax Policy and Administration Issues
General Government Division
U.S. General Accounting Office
Washington, DC 20548

Dear Ms. Stathis:

Thank you for the opportunity to review your recent draft report relating to the strengthening of controls to protect taxpayers. This report is the result of a 1992 request from Rep. James A. Traficant, Jr. (D-OH) to Edward R. Roybal, former Chairman of the Subcommittee on Treasury, Postal Service and General Government, Committee on Appropriations, House of Representatives.

See p. 21.

We appreciate your efforts to identify and define this area and to recommend possible ways in which the IRS can strengthen its controls and procedures. The IRS believes that improper treatment of taxpayers is an unacceptable result of any activity by an IRS employee and we pledge our fullest efforts to ensure that taxpayers are not disadvantaged by the actions of our employees. We agree with many of your conclusions and recommendations, and have comments on your recommendations in the order in which they appear in the report, as follows:

RECOMMENDATION #1:

To improve IRS' ability to manage its interactions with taxpayers, we recommend that the Commissioner of Internal Revenue establish a service-wide definition of taxpayer abuse and identify and gather the management information needed to systematically track the nature and extent of abuse.

See pp. 21-24.

COMMENT:

We believe that the use of the term "taxpayer abuse" is misleading, inaccurate and inflammatory.

Now on p. 2.

Of the three components of the term "taxpayer abuse" defined on page 4 of your report, we do agree with the first--situations in which taxpayers were, or perceived they were, harmed when an IRS employee violated a law, regulation or the Office of Government Ethics (OGE) Rules of Conduct. As I will describe later in the response to this recommendation, and as we believe you would agree, we already have in place systems to track and manage these cases. We believe these systems, viewed collectively, already identify and gather the kinds of management information needed to track these situations.

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Comments From the Internal Revenue
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However, we do not believe the other two components of your definition--that harm or a perception of harm on the part of a taxpayer when an IRS employee aggressively and properly applied discretionary authority (power) and IRS' information systems broke down--constitutes abuse. Arguably, IRS needs employees who can and will apply their legal discretionary authority when necessary to carry out tax system responsibilities. GAO is well aware that there are taxpayers who do not comply voluntarily and therefore need to be reminded of their tax responsibilities. No one is more frustrated when information systems break down than our employees. However, neither of these situations can reasonably be called "taxpayer abuse."

The report appears to assume that the labeling of a certain group of actions as "taxpayer abuse" is in itself sufficient reason to require the development of an institutional definition of the term and the gathering of management information to systematically track its nature and extent. We do not believe that the data contained in the report supports this assumption; nor do we believe that this would be a cost-effective use of resources in furthering the goals of fair and equitable tax administration.

The report states that the GAO "researched various IRS data sources and focused on Problem Resolution Program (PRP) files, Congressional correspondence files, and Internal Audit and Internal Security reports and files to find possible examples that would fall within our definition. We judgmentally selected 26 such examples and used them to analyze the effectiveness of IRS' controls and processes." It is significant to note that all of the 26 cases selected for study by the GAO were identified through the use of existing IRS databases, and were dealt with appropriately through the use of existing procedures and disciplinary mechanisms. We believe that the sampling techniques used in this report to determine "taxpayer abuse" do not demonstrate that this problem is statistically significant in relation to the millions of processing and personal contacts made with the public. The selection of 26 cases from a total of 1,531 Problem Resolution, Congressional correspondence, Internal Audit and Internal Security files spanning a period of five years is insufficient to document the existence of a significant group of incidents, meriting separate identification and management information categories.

We believe that this problem, to the extent it exists, is best defined, monitored and corrected within the context of our accepted definitions and management information categories. For example, a definition of "taxpayer burden" was adopted earlier this year by the IRS Executive Committee and supported by

See pp. 21-24.

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Treasury and the OMB. This definition had three components: time, cost and dissatisfaction. We suggest that the perception by a taxpayer that he or she has been harmed is a component of the larger issue of taxpayer dissatisfaction, and possibly also of time and cost, and therefore is better understood within this context.

The IRS has already in place a number of instruments to monitor, report and correct problems related to taxpayer burden. An annual report is required by section 6235(b) of the Technical and Miscellaneous Revenue Act of 1988. This report is sent to the tax committees jointly by the Assistant Commissioner (Taxpayer Services) and the Taxpayer Ombudsman, and in part describes those areas where IRS' services to taxpayers need improvement and what improvements, if any, are planned. The Taxpayer Ombudsman also has compiled, at the request of the Chairman of the Ways and Means Oversight Subcommittee, a list of the Ombudsman's recommended legislative and administrative changes. As part of this effort, the Ombudsman lists his estimate of the top twenty problems which taxpayers face in dealing with IRS.

As an integral part of the everyday work of problem solving, Problem Resolution Officers routinely capture data on the characteristics of each case. The goal of this data capture is to identify the root causes of taxpayer problems so that the underlying causes can be corrected, thus reducing taxpayer burden and improving customer satisfaction while allowing the Service to avoid repetitive processing. These measures should result in a reduction of taxpayer contacts with the IRS which might result in a taxpayer perceiving that he or she has been harmed.

With regard to those taxpayer contacts which may involve employee misconduct, we believe that the current definitions of IRS employee misconduct, based upon violations of the law or regulations and the OGE Rules of Conduct, are satisfactory methods of identifying and tracking the types of employee misconduct discussed in the report.

Finally, it is significant to note that since 1987 the IRS has had efforts underway to actively solicit customer input, to respond to customer suggestions and to improve customer satisfaction. These activities include the following:

--Mail and telephone surveys have been used to gather data about the quality of service provided. An "IRS Report Card," a restaurant-type survey instrument, has been used for several years to ask customers about the quality of service provided.

See pp. 21-24.

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--Customer Opinion Surveys were conducted in 1987 and 1990, and Customer Needs Focus Groups and a Customer Needs Survey were concluded in 1989 and 1990. These data collections focused on a variety of issues ranging from taxpayer perceptions on how forms and publications were made available to them, to what media should be used to advertise IRS services.

--In September, 1992, we issued "The IRS Plan for Improving Customer Satisfaction and Organizational Performance." This document serves as the cornerstone for incorporating customer input into decision-making processes.

--Focus groups with individuals and small business taxpayers have been conducted periodically since 1988. These groups have solicited taxpayer perceptions of the services and support they expect from the IRS. These groups have been used to explore taxpayer reaction to new methods of filing their tax returns via Telefile, and to solicit taxpayer input in the design of telephone systems using Voice Response Units (VRUs).

--A series of three Customer Satisfaction Surveys was conducted in 1992 and 1993 by a contractor to measure individuals' perceptions of how well IRS serves them. The 1993 study resulted in the identification of nine customer-identified issues of greatest concern to the taxpayer and recommended that strategies be developed to address them. These areas included "empathy/helpfulness" and "integrity/fairness." We plan to conduct these surveys annually to determine trends in attitudes and perceptions, and plan to expand this approach to small business taxpayers in 1994.

--We have developed customer service performance standards which exemplify what customers can expect when dealing with the agency. These standards are: timeliness of refunds; resolution of account-related problems; fair penalty administration; simpler forms and instructions; and convenient ways of filing returns.

While obviously some errors of fact or judgment will occur in a decentralized agency as large as the IRS, we feel that on balance our employees meet the high standards set for them. Any behavior or conduct which seems to fall short of these standards should be reported immediately by the taxpayer to the employee's supervisor or the IRS Regional Inspector. The actions we take in response to reported situations will help maintain the voluntary self-assessment tax system by reminding taxpayers that the system is administered in a fair, firm and respectful way.

See pp. 21-24.

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RECOMMENDATION #2

Ensure that TSM provides the capability to minimize unauthorized employee access to taxpayer information in the computer system that eventually replaces IDRS.

COMMENT:

We concur. We share the concern over unauthorized access to taxpayer information with the Integrated Data Retrieval System (IDRS). As we move to be more responsive to taxpayer needs by providing employees with quicker and expanded access to taxpayer information, we know it is essential that expanded security and safeguards be established throughout our Tax Systems Modernization efforts. TSM will significantly enhance our ability to prevent system abuses by better upfront security as well as provide for more rapid identification of employee misconduct. Some enhanced TSM systems will include:

- Near real time alarm systems which utilize advanced technologies, such as artificial intelligence software, to alert the system administrator of a potential security violation. The violation will be determined much more quickly than currently occurs. (Review of audit trail records now occurs after the violation is weeks or months old).
- A security profile that specifies the extent of access to taxpayer information for each user of IRS information systems. All other access to taxpayer data, for where there is no official need to know, will be prevented.
- New workload management techniques that will assign cases to employees based on their current skill levels and security authorizations. These techniques will only allow access to that employee's specific workload, therefore making browsing almost impossible.
- For taxpayers, IRS will begin using authentication and identification techniques such as personal identification numbers (PINs) to identify and ensure the authenticity of the taxpayers calling in on touch-tone phones when they request access to their account information.

Our Chief Information Officer has taken actions to ensure that security keeps pace with technological improvements. In the recently issued IRS Business Master Plan, a number of action items are referenced that deal with information security: providing security for IRS information and systems through

See p. 24.

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education and through administrative, procedural, physical, and technical controls; and certifying that data and systems are providing a sufficient level of confidentiality, integrity, and service.

RECOMMENDATION #3

Revise the guidelines for Information Gathering Projects to require that specific criteria be established for selecting taxpayer's returns to be examined during each project and to require that there is a separation of duties between staff who identify returns with potential for a tax change and staff who select the returns to be examined.

COMMENT:

Guidance contained in a memo issued to the field on September 21, 1989, called attention to the sensitive nature of Information Gathering Projects (IGPs) and the need to continually monitor them to guard against improprieties, and noted that the following safeguards are needed:

- o Requiring managers to provide appropriate emphasis and caution regarding conflict of interest provisions in the Rules of Conduct,
- o Pre-establishing specific criteria for including taxpayers in the project, requesting returns for further screening and selecting tax returns for examination (deviation from the criteria could be explained in writing).
- o Separating duties between employees having responsibility for identifying taxpayers to be included in the project and those with responsibility for actually selecting tax returns for examination.
- o Minimizing the opportunities for project coordinators to by-pass the screening and return selection processes to either include specific taxpayers in or exclude taxpayers from the project.
- o Providing appropriate management monitoring to assure compliance with safeguards.

We plan to issue an updated memorandum to the field on Information Gathering Projects which will once again cover these issues.

See pp. 24-25.

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Comments From the Internal Revenue
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Ms. Jennie S. Stathis

RECOMMENDATION #4

Revise the Rules of Conduct to require that IRS employees report to their supervisors any planned dealings with taxpayers with whom they have recently completed an examination, investigation or collection enforcement action.

COMMENT:

We do not agree with this recommendation. The Office of Government Ethics (OGE), in 1992, issued the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR sec. 2635. These are intended to be a uniform set of standards of conduct for all executive branch employees. Agencies may issue their own rules or standards of conduct only in areas not covered by the Government-wide standards, although they may issue supplemental regulations, with OGE's approval. Since the Government-wide standards deal with conflicts of interest (Subpart D) and appearance problems (Impartiality in Performing Official Duties - Subpart E), we do not believe that the Service has the authority to issue the rule which is recommended. Even if the rule were considered strictly procedural, i.e., since it would require only reporting of planned transactions, we believe that it would not be acceptable because of the chilling effect that it would have on conduct that is permitted under the Government-wide standards. In addition, the OGE standards deal with related issues, including use of public office for private gain (secs. 2635.101(b)(7) and 2635.702) and use of nonpublic information (secs. 2635.101(b)(3) and 2635.703). Further, there are other provisions which regulate employee conduct with taxpayers, including 18 USC 201(b), which generally prohibits the receipt of anything of value in return for being influenced in the performance of any official act. We would also note that the standards generally prohibit an employee from accepting gifts from persons whose interests may be substantially affected by the employee, but specifically exclude from the definition of a gift, anything for which market value is paid by the employee.

In summary, we believe that existing ethics rules are sufficient to address the issues involved and, in fact, may preclude us from promulgating the recommended rule. Further, the recommendation would require a significant resource investment to adequately monitor and enforce. We believe that our employees recognize the ethical implications of dealing with taxpayers and, if they have questions, will address them to their supervisors, the IRS Office of Ethics and Business Conduct, or the Deputy Agency Ethics Official. IRS training programs regularly encourage employees at all levels to use any of these avenues whenever they are faced with questions of this type.

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RECOMMENDATION #5

Reconcile all outstanding Form 809 cash receipts more often than once a year, and stress in forms, notices, and publications that taxpayers should use checks or money orders whenever possible to pay their tax bills, rather than cash.

COMMENT:

We concur. We believe that the problem of embezzlement of cash payments by IRS employees is extremely negligible, and do not feel that additional regular and periodic reconciliations would be cost-effective. However, we would consider initiating a policy of conducting random and unannounced reconciliations, in addition to the annual reconciliations. This would have an added deterrent effect while avoiding the cost of required periodic reconciliations.

We support the recommendation to stress in the appropriate forms, notices, and publications that taxpayers should pay their tax bills with checks or money orders whenever possible, instead of using cash.

We believe that cash payments can be further reduced if legislation is approved to allow credit card payments and if electronic filing is increased.

RECOMMENDATION #6

Better inform taxpayers about their responsibility and potential liability for the trust fund recovery penalty by providing taxpayers special information packets and by printing warnings on tax deposit coupons.

COMMENT:

Over the past two years, we have added "warnings" regarding the trust fund recovery penalty to tax deposit coupons, as well as to nearly 30 other forms and publications commonly used by business taxpayers. We made these changes due to recommendations made by our 100-Percent Penalty Task Force and other initiatives. We do not plan any additional changes to the FTD coupon, in part because we are moving away from paper FTD coupons and encouraging electronic payments. Section 523 of the North American Free Trade Agreement enabled IRS to process FTD payments electronically. Currently, this process is in place at our Atlanta Service Center and is being extended nationwide. Our goal is to collect 97 percent of the FTD payments electronically.

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We will also consider the possible use of other communication vehicles, such as the referenced special information packet or taxpayer education materials for small businesses, to alert taxpayers to this problem.

RECOMMENDATION #7

Seek ways to alleviate taxpayer's frustration in the short-term by analyzing the most prevalent kinds of information-handling problems and ensuring that requirements now being developed for TSM information systems provide for long-term solutions to those problems.

COMMENT:

We do this as we continually gather data through our Quality Review Programs on where problems are occurring. We seek interim solutions whenever possible. As we move into TSM's Document Processing System, the capture of images of returns and other tax documents will significantly improve our communications with taxpayers.

We would also note that the Taxpayer Ombudsman's Problem Resolution Program (PRP) has furnished and will continue to furnish TSM with recommendations for ways to alleviate specific systemic problems that currently have an adverse impact on taxpayers. These issues are controlled on the Commissioner's Reporting System for Taxpayer Advocacy and are considered for incorporation into the Service's business vision and modernization designs.

RECOMMENDATION #8

Provide guidance for IRS employees on how they should handle White House contacts other than those involving tax checks of potential appointees or routine administrative matters.

COMMENT:

Our current procedures regarding third party contacts cover these situations adequately. Any information received would be evaluated according to our normal procedures for initiating an audit or investigation based upon a third-party contact.

RECOMMENDATION TO THE CONGRESS:

To better enable taxpayers and IRS to resolve trust fund liabilities, we recommend that Congress amend the Internal Revenue Code to allow IRS to provide information to all

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responsible officers regarding its efforts to collect the trust
fund recovery penalty from other responsible officers.

COMMENT:

We support this recommendation.

We hope that you find these comments helpful and look
forward to working with you to resolve any remaining differences
of opinion.

Sincerely,



Michael P. Dolan
Acting Commissioner

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