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TAX ADMINISTRATION

IRS's Innocent Spouse Program Performance Improved; Balanced Performance Measures Needed

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Abbreviations

FTE	full-time equivalent
ICP	integrated case processing
IRS	Internal Revenue Service
ISTS	Innocent Spouse Tracking System
SB/SE	Small Business/Self-Employed
TIGTA	Treasury Inspector General for Tax Administration
TRR	taxpayer resolution representative
W&I	Wage and Investment

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United States General Accounting Office
Washington, DC 20548

April 24, 2002

The Honorable Max Baucus
Chairman
The Honorable Charles E. Grassley
Ranking Minority Member
Committee on Finance
United States Senate

By law, married persons who file joint tax returns are each fully responsible for the accuracy of the tax return and for the full tax liability. This is true even though only one taxpayer may have earned the wages or income shown on the tax return. Under the Internal Revenue Service's (IRS) Innocent Spouse Program, IRS can relieve taxpayers of tax debts on the basis of equity considerations, such as not knowing that their spouse failed to pay taxes due.

Since passage of the IRS Restructuring and Reform Act (Restructuring Act) of 1998, IRS has received thousands of requests from taxpayers for innocent spouse relief. IRS's inability to provide timely responses to such requests has generated concerns among taxpayers, Congress, and other stakeholders. It took IRS about a year, on average, to completely process an innocent spouse case in fiscal year 2001.

Because of your concerns about IRS's growing inventory of unresolved innocent spouse cases and the timeliness of IRS's case processing, you asked us to review IRS's administration of the program. Specifically, this report assesses (1) IRS's overall approach to ensure that innocent spouse cases were being processed in a timely, accurate, and consistent manner; (2) the adequacy of IRS's procedures to transfer tax liabilities between taxpayers when relief was granted to one of the taxpayers; and (3) IRS's efforts to evaluate the usefulness of its Innocent Spouse Program Web site to taxpayers.

To address these objectives, we reviewed and analyzed Innocent Spouse Program data from IRS's Innocent Spouse Tracking System (ISTS) and management reports, and we reviewed related policies, procedures, and guidance. We interviewed IRS officials responsible for managing the Innocent Spouse Program as well as officials in IRS's National Taxpayer Advocate Service Office and Electronic Tax Administration Office and in the U.S. Department of the Treasury's (Treasury) Office of Chief Counsel. We reviewed reports by the Treasury Inspector General for Tax

Administration (TIGTA) and the taxpayer advocate that addressed innocent spouse issues. We focused on program operations that cover the period March 1999 through December 2001, because this period best reflected the program's results after the Restructuring Act's changes and because it covers the period for which performance data were most recently available. Our scope and methodology are discussed in more detail in a separate section of this report.

You also asked us to provide information on the number and disposition of innocent spouse cases that federal courts recently litigated; appendix I provides this information. Appendix II provides similar information on cases that were scheduled to be tried in the federal courts but were settled by Treasury's Office of Chief Counsel and IRS's Office of Appeals. The data were the most currently available when we performed our review.

Results in Brief

IRS's efforts to process innocent spouse cases timely, accurately, and consistently have helped it to begin gaining control of the program and reducing its inventory of cases while maintaining or improving the quality of its decisions as measured by its quality review system. IRS reached decisions on about 21 percent more cases than it received in fiscal year 2001, reducing some of the backlog from previous years. The agency accomplished this through a variety of initiatives, including a substantial staffing commitment, centralization and specialization, automated tools, and routine estimating of future workload and staffing needs; it was also helped by a recent decline in the influx of new cases. Although these improvements did not reverse a trend of several years toward longer case-processing times, IRS appears poised to improve case timeliness as it shifts virtually all innocent spouse cases to its central processing site, which has the fastest case-processing times. In part through specialization and in part through development of an automated case-processing system, IRS has begun to improve the accuracy of its decisions to grant full, partial, or no relief in response to requests for innocent spouse relief. Data from IRS's quality review system indicate that the accuracy of examiners' decisions has increased as IRS's initiatives have been implemented. Although program improvements are apparent, IRS lacks a balanced set of measures for the Innocent Spouse Program to help ensure that future performance does not inappropriately concentrate on one aspect of performance at the expense of others.

IRS's procedures conform to applicable guidance for transferring tax liabilities from joint tax accounts to individual tax accounts when innocent spouse relief has been granted. The procedures follow federal internal control guidelines by requiring a mix of checks, verifications,

reconciliations, and documentation to support steps throughout the process. If IRS employees perform the required tasks, the tax liabilities should be accurately transferred from taxpayers' joint tax accounts to their individual tax accounts. The taxpayer advocate's staff said that IRS's procedures appeared adequate and should resolve the past problems of monitoring taxpayers' accounts after the liabilities were transferred.

The Web site for IRS's Innocent Spouse Program—part of IRS's agencywide Web site—went on-line in December 1999 to help taxpayers determine their eligibility for innocent spouse relief. Because IRS has not evaluated the Web site, the agency does not know how useful the Web site has been to taxpayers in determining their eligibility for innocent spouse relief. In January 2002, IRS started upgrading its overall agency Web site, and program officials stated that the enhancements would allow it to collect data on use of the Web site and gather comments from taxpayers.

We are recommending that the commissioner of internal revenue (1) establish balanced performance measures and targets for the Innocent Spouse Program and (2) evaluate the Innocent Spouse Program Web site's usefulness to taxpayers. In commenting on a draft of our report, the commissioner agreed with our recommendations.

Background

Under tax law, married couples who file joint tax returns are treated as a single unit, which means that each spouse becomes individually responsible for paying the entire amount of the tax associated with his or her joint return. Accordingly, an "innocent spouse" can be held liable for tax deficiencies assessed after a joint return was filed, even if those liabilities were solely attributable to the actions of the other spouse. However, if certain conditions are met, the innocent spouse may be able to obtain relief from the tax liability. Prior to the Restructuring Act, relief was available to taxpayers but under rather restrictive conditions, such as that certain dollar thresholds for tax underpayments first be met. The Restructuring Act revised the conditions for obtaining innocent spouse relief to make it easier for taxpayers to qualify. The act liberalized the former conditions and added new conditions. Simply stated, the three basic provisions related to innocent spouse relief are as follows:

- When the innocent spouse had no knowledge that there was an understatement of tax attributable to erroneous items of the other individual filing the joint return, and considering all facts and circumstances, it would be unfair for IRS to hold the innocent spouse liable for the tax.

- When the innocent spouse otherwise qualifies, he or she may request that the tax deficiency from a jointly filed return be recalculated to include only items allocable to him- or herself.
- When the tax shown on a joint return was not paid with the return, the innocent spouse may obtain "equitable relief" if he or she did not know that the funds intended to pay the tax were not used for that purpose. Equitable relief is also available for understatements of tax for which relief under the above two conditions was not available.

Each of these three conditions has different eligibility requirements and different types of relief. Appendix III describes in more detail the eligibility requirements for each condition and the factors that IRS is to weigh in deciding whether to grant or deny relief. Relief is generally available to taxpayers for liabilities arising after July 22, 1998, the date that the law was enacted, and for liabilities that arose before that date but remained unpaid as of that date.

Limited data exist to determine the trend in innocent spouse workload immediately following passage of the Restructuring Act. IRS did not systematically track innocent spouse cases until March 1999, about 8 months after the act was passed.[1] Prior to the Restructuring Act, IRS administered innocent spouse relief as part of its process for examining tax returns and did not keep statistics on the number of cases in which innocent spouse relief was requested or on the disposition of those requests. Nevertheless, according to IRS, because taxpayers were anticipating passage of the Restructuring Act, innocent spouse requests increased from a few cases to about 750 cases in each of the 4 months leading up to the act. During fiscal year 2000, it received, on average, 4,800 cases per month.

IRS processes innocent spouse cases on the basis of proposed regulations issued in January 2001, which set forth the basic guidelines that its examiners are to use in evaluating taxpayers' cases to determine whether to grant or deny relief. IRS's Wage and Investment (W&I) Division is responsible for managing this program. Under procedures adopted in fiscal year 2001, virtually all innocent spouse cases are to be processed by correspondence at IRS's Centralized Innocent Spouse Operation (Cincinnati processing site) in Covington, Kentucky. Generally, only those

[1]On March 6, 1999, IRS implemented its Innocent Spouse Tracking System (ISTS) to develop statistics on program workload and case dispositions.

cases needing face-to-face contact or that arise in the field are to be handled by field staff, generally tax compliance officers and revenue agents in IRS's Small Business/Self-Employed (SB/SE) Division. As discussed later in this report, IRS is phasing in new W&I field staff to work cases needing face-to-face contact with taxpayers.

Staff at the Cincinnati processing site screen the incoming cases to determine whether they meet the basic eligibility requirements for further processing. These requirements include, among other things, verifying that a joint tax return was filed, that an outstanding tax liability exists, and that the request is for the appropriate tax year. Any request that does not meet the basic requirements is to be judged ineligible for further review and closed through written notification to the taxpayer of the reasons for IRS's decision. Any case that meets the basic eligibility requirements is to be assigned to an examiner to further review the merits of the taxpayer's request for relief. IRS is required by law to attempt to contact the other taxpayer who signed the joint tax return, to give him or her an opportunity to participate in the case. IRS generally allows 30 days for the nonrequesting spouse to respond. If a taxpayer files a claim for innocent spouse relief covering more than one tax period or year, IRS evaluates the merits of the claim for each tax year individually to determine whether relief should be granted. Therefore, the claim for each tax year is counted as a separate case. Based on the merits of an individual claim, IRS grants a taxpayer full relief, partial relief, or no relief.

The examiners evaluate the facts and circumstances of each case and ultimately decide whether full, partial, or no relief should be granted. IRS is required by the Restructuring Act to notify the requesting spouse of its decision on each case and to inform him or her of the right to file an appeal with IRS's Office of Appeals within 30 days.[2] If the taxpayer does not file an appeal with IRS, or after the appeal is settled, IRS is to send a final determination letter to the requesting spouse and, as required by law, advise the individual of his or her right to appeal IRS's decision to a federal court within 90 days.[3] IRS's decision on a case becomes final after the taxpayer exhausts all rights to an IRS appeal or a court review or

[2]Generally, the appeal procedures would not apply when IRS fully approves the taxpayer's request for relief from the tax liability.

[3]The requesting spouse may file a petition with the U.S. Tax Court for a review of the case or may pay the tax deficiency and file a claim for refund in the U.S. Court of Federal Claims or U.S. District Court.

waives these rights and accepts IRS's decision. At that time, IRS is required to notify the nonrequesting spouse of the final result.

To close a case after relief is finally approved, IRS must separate and transfer taxes from the taxpayers' joint tax account in the amount of the approved relief. IRS procedures require that its staff establish a separate, individual tax account for the taxpayer who was judged responsible for the tax liability and transfer the tax liability to that account. Any joint tax liability that is not part of the relief granted remains a liability of both taxpayers that IRS may collect from either.

Objectives, Scope, and Methodology

To assess IRS's efforts to ensure that innocent spouse cases were being processed in a timely, accurate, and consistent manner, we reviewed W&I and SB/SE planning documents, ISTS data on the program's performance, and data from the innocent spouse quality review program, which analyzes samples of closed cases for adherence to procedures and accuracy of decisions. We interviewed IRS's innocent spouse project manager and staff to obtain information on how the program was managed, and we obtained relevant documentation on the program, including its procedures, policies, and guidance. To further assess the management of the program, we relied on our past reports on managing organizational performance, IRS's guidance regarding performance management, and other management literature, including the Government Performance and Results Act.[4] We reviewed reports by TIGTA and IRS's taxpayer advocate that addressed innocent spouse management issues. We also analyzed the assumptions that IRS used in projecting inventory and staffing levels.

To determine whether IRS's efforts to process cases timely, accurately, and consistently were resulting in changes in program performance, we also obtained and analyzed ISTS data from March 1999 to December 2001 regarding the number of innocent spouse cases that IRS received and resolved and their average case-processing times. We performed limited accuracy checks on the ISTS database. In September 2001, TIGTA recommended that IRS strengthen its controls over data in the ISTS. IRS subsequently implemented corrective actions to help ensure the accuracy and validity of the ISTS data, including correcting data from prior years. The database that we used reflected these corrections. We did not test the reliability of the other IRS databases used in our analysis—the Examination Case Reporting System and the Work Planning and Control

[4]Government Performance and Results Act of 1993 (P.L. 103-62).

System—that maintain data on staff hours applied to examination programs, including innocent spouse case processing. We analyzed the direct staff hours[5] that IRS staff charged to conduct case evaluations for fiscal years 2000 and 2001. IRS did not have complete information for earlier periods.

To assess the adequacy of IRS's procedures to transfer liabilities between taxpayers when relief was granted, we reviewed the procedures and related guidance such as training materials and policy memoranda. We discussed the procedures and related guidance with the innocent spouse project manager, managers at the Cincinnati processing site, and Customer Account Services staff who are responsible for overseeing the process of transferring tax liabilities between tax accounts. We also compared our published guidance on internal control management for federal agencies with IRS's procedures.[6] We observed the process that IRS had in place at the Cincinnati processing site for transferring tax liabilities from taxpayers' joint accounts to their individual accounts. We discussed IRS's procedures with taxpayer advocate service staff to determine whether they received any complaints from taxpayers that IRS had incorrectly transferred liabilities in their innocent spouse cases.

To assess IRS's efforts to evaluate the usefulness of its Innocent Spouse Program Web site to taxpayers, we reviewed guidance from selected academic and industry experts on assessing Web sites and we interviewed IRS's Electronic Tax Administration and Innocent Spouse Program officials. We also examined IRS's Innocent Spouse Web site to determine the type and content of information available to the taxpayers.

To determine the number and disposition of innocent spouse cases filed in U.S. federal courts, we obtained information from staff at Treasury's Office of Chief Counsel that identified court decisions on innocent spouse cases compiled from the LexisNexis database[7] for the period June 1996 to June 2001. The compilation excluded those cases that addressed only

[5]Direct staff time does not include all time related to the Innocent Spouse Program. For example, it does not include time required for management, quality review staff, overhead, and training.

[6]U.S. General Accounting Office, *Internal Control Management and Evaluation Tool*, GAO-01-1008G (Washington, D.C.: Aug. 1, 2001).

[7]The LexisNexis group of databases provides various types of information, including legal, tax, and regulatory information, to legal, corporate, government, and academic markets.

procedural issues such as whether a court had jurisdiction to hear the case. We also obtained information that was complied from IRS's Office of Appeals database on innocent spouse cases scheduled for trial that were settled by the Office of Appeals or Treasury's Office of Chief Counsel from fiscal year 1999, when IRS began tracking these data, through May 2001.

We performed our work with IRS's W&I Division staff and the National Taxpayer Advocate Service's office at IRS's national headquarters in Washington, D.C. We also met with W&I Division staff at the innocent spouse Cincinnati processing site in Covington, Kentucky; IRS's SB/SE Division office in Atlanta, Georgia; and Treasury's Office of Chief Counsel in Washington, D.C. We did our work between May 2001 and February 2002 in accordance with generally accepted government auditing standards.

We requested comments on a draft of this report from the commissioner of internal revenue. We received written comments from the commissioner in a letter dated April 18, 2002. The comments are reprinted in appendix VII and are discussed at the end of this letter.

IRS Is Gaining Control over Its Innocent Spouse Workload but Has Not Developed Balanced Measures

To better ensure timely, accurate, and consistent processing of innocent spouse cases, IRS officials developed and implemented several initiatives. Although the specific contribution of each initiative to improved results is not clear, IRS's initiatives, in total, have increased its ability to handle innocent spouse cases more quickly and at lower cost while maintaining or improving the accuracy of relief decisions as measured by IRS's quality review program. The initiatives contributed, along with a decrease in cases received, to IRS's reaching decisions on more cases than it received in fiscal year 2001. The average times to reach decisions and close cases continued to increase in fiscal year 2001 but should stabilize and then decline in future years.

The principal initiatives that IRS undertook to improve its management of the innocent spouse case workload included

- centralizing case processing within one W&I location—its Cincinnati site in Covington, Kentucky—and bringing more of the program staff under the project manager's direction;
- developing an automated decision-making and case-building tool;
- developing a model to estimate future workload and staffing needs and monitor program performance; and
- measuring the quality of case decision making, including adherence to procedures and the accuracy of decisions.

Although these initiatives, taken as a group, have improved IRS's ability to process cases and promote quality decision making, IRS has not established a set of balanced performance measures and performance targets for the program. Without such measures, IRS cannot be sure that these changes are having the desired results and are not creating unintended consequences. Balanced measures and performance targets are integral parts of IRS's performance management system that are intended, in part, to better ensure that program performance does not overly focus on one area of program performance to the detriment of others.

Centralized and Specialized Staffing

In anticipation of the Restructuring Act's passage, IRS decided in April 1998 that innocent spouse cases should be handled in a central processing site. IRS officials believed that centralization would facilitate more rapid and consistent processing of cases because staff in the centralized processing site would specialize in innocent spouse cases and follow consistent procedures and processes in resolving them. Although IRS was unable to fully implement the decision to centralize processing in the years immediately following the act's passage, over time IRS made considerable progress in doing so.

IRS does not have good data on staff usage before fiscal year 2000, but in fiscal year 2000, staffing totaled 887 full-time equivalents (FTE)[8] with 768 FTEs (about 86 percent) coming from SB/SE field staff and 119 FTEs coming from W&I staff in the centralized processing site. As table 1 shows, however, in fiscal year 2001, IRS increased the FTEs for W&I's centralized processing and decreased the field staffing. IRS projects that by fiscal year 2003, about 70 percent of the FTEs used in processing innocent spouse cases will be in W&I's centralized processing site.

[8]FTE means full time equivalent. An FTE generally consists of one or more employed individuals who collectively complete 2,080 work hours in a given year. Therefore, either one full-time employee or two half-time employees equal one FTE.

Table 1: Innocent Spouse Program FTE Staffing, Fiscal Years 2000–2003

	2000		2001		2002		2003	
	FTE	Percentage	FTE	Percentage	FTE	Percentage	FTE	Percentage
SB/SE	768	87	593	80	258	58	72	30
W&I	119	13	152	20	184	42	165	70
Total	**887**	**100**	**745**	**100**	**442**	**100**	**237**	**100**

Note: IRS did not collect data on FTEs for the Innocent Spouse Program in fiscal year 1999. Data for fiscal years 2002 and 2003 are for planned staffing levels.

Legend: FTE = full-time equivalent; SB/SE = Small Business/Self-Employed Division; W&I = Wage and Investment Division.

Source: IRS.

In addition to increasing its centralized staffing levels, IRS has improved the capability of the staff. IRS upgraded some examiner positions from grade level[9] GS-7 to GS-8, owing to concerns about attrition, and trained some examiners to specialize in working complex cases that would previously have been sent to field offices. For instance, some of the Cincinnati examiners have been trained to handle cases involving bankruptcies. By the end of fiscal year 2001, IRS had 157 employees at the Cincinnati processing site, with 56 employees examining cases and 30 employees screening cases to determine whether they met the basic eligibility requirements for relief. The remaining employees were supervisors, case quality reviewers, and clerical staff.

In general, the staff assigned to process cases in the centralized processing site are at lower grades—predominantly GS-8—than are the SB/SE staff processing innocent spouse cases in the field. SB/SE staff have generally been graded as GS-9 through GS-13, with most field staff tending to be graded as GS-12. Thus, as IRS has shifted processing more cases in Cincinnati, it has also lowered the salary structure of the staff processing the cases.

Beginning in fiscal year 2002, IRS is using W&I Division taxpayer resolution representatives (TRRs) to process field cases requiring face-to-face contact with the taxpayers. TRRs are to perform a variety of services at IRS field locations throughout the country. By using the W&I Division's TRRs, the innocent spouse project manager hopes to further reduce

[9]"Grade level" means the employee's classification under a position classification system (i.e., referring to the duties, tasks, and functions he or she performs).

reliance on the SB/SE Division's field staff. Program officials said that their lack of control over SB/SE field staff was one reason why field cases take longer to resolve than cases processed centrally. IRS expects that TRR involvement in the program will be minimal, as the agency expects to process 95 percent of the cases centrally during fiscal year 2003. As of February 2002, IRS projected that 11 TRR FTEs will be used in the Innocent Spouse Program in fiscal year 2002 and only 3 FTEs in fiscal year 2003.

Automated Decision-Making and Case-Building Tool

To increase the accuracy and consistency of examiners' decisions about granting relief to innocent spouses, to better ensure that an adequate case file supports each decision, and to speed case processing, IRS developed an "integrated case processing" system (ICP) for innocent spouse cases. The ICP, which was implemented in January 2001 at the Cincinnati processing site, uses a computer program to direct examiners through a series of questions leading to a decision about what, if any, relief is due to the taxpayer. The algorithm was designed to capture all of the factors that must be considered in making these determinations. The ICP also automatically prompts the examiner to create a documented case file so that IRS can be better assured that examiners' decisions are properly supported. The ICP is intended to increase the accuracy and consistency of determinations, since it is designed to help ensure that examiners consider all pertinent aspects of a taxpayer's case in accordance with the law. The ICP was expected to increase the speed of case processing, because, among other reasons, examiners would have all of the criteria for decision making available on-line and the structured process for guiding decisions should result in fewer examiner errors.

IRS is planning future enhancements to the ICP that would make it easier for examiners to access and update taxpayer data. IRS plans to make the ICP available to the field office TRRs to better ensure the accuracy and consistency of their determinations.

Model for Estimating Future Workloads and Staffing Needs

IRS developed an inventory model in April 2000 to enhance its ability to manage staff resources and the inventory of innocent spouse cases. IRS uses the model to estimate the numbers of staff that it will need in the field and at the Cincinnati processing site to process enough cases to result in a targeted level of cases at the end of the fiscal year. The model helped IRS to gauge the amount of progress that it could make in reducing its inventory of cases, assuming differing mixes in the numbers of staff available in Cincinnati and the field.

According to the innocent spouse project manager, the model provides a reasonable basis for planning and leads to improved staff allocations, but it is not expected to be precise. The project manager said that the projected case closures that are derived from the model estimates become part of the W&I Division's business and operating plans for the given fiscal year.

The model begins with the existing inventory, adds projections of new cases expected to be received during the period in question, and estimates the number of cases that will be in inventory at the end of the period, given assumptions about the number of staff who will be available and their productivity in handling cases. IRS's estimates of new cases likely to be received are based largely on prior experience and professional judgment. Staff requirements are projected on the basis of the percentage of cases that IRS estimates will be processed centrally versus in the field and on the types, numbers, and productivity of staff at these locations. For example, in fiscal year 2001, IRS estimated that the examiners at the centralized site could process about 14 cases per week, spending about 2.9 hours per case; this estimation was based in part on data from IRS's Work Planning and Control System and assumed productivity increases. For cases processed in the field, IRS used actual time from IRS's Examination Case Reporting System that showed that tax compliance officers were processing a case in about 5.6 hours and revenue agents were processing a case in about 13 hours. IRS estimated that the new TRRs would require about the same amount of time to process a case as do tax compliance officers.

To test the functioning of the model, we analyzed the assumptions in IRS's model as of November 2001 against recent performance data to confirm whether IRS would be likely to reduce its inventory of cases and reach the inventory level that it had projected for the end of fiscal year 2003. Our analysis showed that examiners at the centralized site had not been as productive as IRS believed. We determined that IRS would have to add the equivalent of 16 FTEs or become about 17 percent more efficient to achieve its projected ending inventory level for fiscal year 2003. Our analysis did not consider the productivity levels of field staff who are projected to close about 5 percent of cases. We recognize that other factors may also affect IRS's ability to meet its targeted inventory levels, such as unexpected changes in the volume of new cases, the proportion of cases processed centrally versus in the field, and the productivity of field staff.

IRS revises the projections from its model routinely as new data show changes in the volume of cases being received and in the productivity of staff. Subsequent to our test of the model, IRS revised its inventory projection using lower assumptions about examiners' productivity. Table 2 shows IRS's inventory projections for fiscal years 2002 and 2003 as of February 2002. As shown in the table, the inventory is expected to drop 43 percent during fiscal year 2002—from 52,093 cases to 29,810 cases.

Table 2: IRS Inventory Model Projections for Fiscal Years 2002 and 2003

IRS Projection	Fiscal Year 2002	Fiscal Year 2003
Beginning inventory	52,093	29,810
Plus receipts		
Cincinnati processing site	50,141	50,141
Field offices	1,968	1,968
Cases to be worked	104,202	81,919
Less dispositions		
Cincinnati processing site		
Ineligible cases	23,244	23,244
Net Dispositions	34,061	27,570
Field		
Net dispositions	17,087	1,974
Ending inventory	29,810	29,131

Notes: Net dispositions include cases such as those in the statutory 30- and 90-day periods and in local review. IRS's beginning inventory includes some cases that have been decided by IRS that have not yet completed the closing stage.

IRS opens a case for each tax period for which relief is sought. IRS estimates that, on average, each taxpayer files 1.9 cases. Thus, the number of taxpayers involved is slightly less than half the number of cases shown in this table.

Source: IRS's Innocent Spouse Inventory Projections, FY 2002 and 2003, revised February 14, 2002.

Quality Review Process

In June 1999, IRS established a process for reviewing closed innocent spouse cases from all locations to help ensure that high-quality case decisions were being made. Beginning in July 2000, IRS's research staff developed statistically valid sampling plans for each location on the basis of projected annual case receipts. Staff assigned to the quality review function assess the sampled cases using quality standards developed especially for the review. The standards are structured to evaluate whether examiners have followed all of the required processes for an innocent spouse case as well as whether the decision made by the examiner was correct. Adherence to process requirements is reviewed both to ensure compliance with legally required procedures, such as notifying the nonrequesting spouse and giving the individual an opportunity to participate in the case, and because the adherence to

required process steps is expected to lead to better IRS decisions about the requested relief. The accuracy of decisions is reviewed to provide IRS data on the accuracy and consistency of decisions made in the diverse offices handling innocent spouse cases.

Originally, the quality review staff included SB/SE Division revenue agents at grade levels GS-11 through GS-13. Starting in fiscal year 2002, IRS relieved SB/SE of the quality review function and now staffs the review with experienced W&I Division grade-level GS-9 examiners, who are to periodically rotate to the quality review function from the Cincinnati Innocent Spouse Program staff.

Overall, IRS's innocent spouse case quality was maintained between fiscal years 2000 and 2001, as shown in table 3. In the first quarter of fiscal year 2002, however, the quality review results reflected better performance. During that quarter, the quality review staff agreed with 100 percent of the decisions to grant and deny relief made for the sample of cases from the centralized processing site. For all field locations combined, the reviewers agreed with 93 percent of the decisions made. However, owing to the small sample size, the quarterly results may not be indicative of results over a longer period. The results from the first quarter of fiscal year 2002 are the first quality review data that accounted for IRS's use of automation in case processing and for the staffing enhancements at the centralized processing site.

Table 3: IRS's Quality Review Results, Fiscal Years 2000–2001

Fiscal year	Concurrence rate with granted cases, %	Concurrence rate with denied cases, %	Combined results, %
2000	75.6	88.3	82.3
2001	75.8	92.4	82.5

Source: IRS's Quality Review Results.

Effect of IRS's Initiatives on Timeliness, Accuracy, and Consistency

The effect of each of the individual IRS initiatives to process innocent spouse cases more timely, accurately, and consistently is difficult to separate and quantify. However, taken as a whole, these initiatives have enabled IRS to reduce its inventory of undecided innocent spouse cases while maintaining or improving the quality of its decisions as measured by the quality review program. The decline in cases received during fiscal year 2001 also contributed to IRS's ability to reduce its inventory of cases.

Table 4 shows that for the first year since the Restructuring Act was passed, IRS reached a decision on more cases than it received. IRS

decided 61,423 cases in fiscal year 2001, or about 21 percent more than the 50,840 cases it received, reducing some of the backlog from previous years. IRS received about 12 percent fewer cases in fiscal year 2001 than in fiscal year 2000, which contributed to its ability to reach decisions on more cases than it received. Appendix VI shows the disposition of resolved cases for fiscal years 1999 through 2001.

Table 4: Innocent Spouse Cases Received and Decided, Fiscal Years 1999–2001

Fiscal year	Cases received	Cases decided[a]	Cases not decided
1999	44,469	8,899	35,570
2000	57,633	53,431	39,772
2001	50,840	61,423	29,189
Total	**152,942**	**123,753**	

Notes: Fiscal year 1999 data includes March 1999, when IRS implemented the Innocent Spouse Tracking System, through September 30, 1999.

The table does not include approximately 7,000 cases that IRS had received before implementing the tracking system.

IRS opens a case for each tax period for which relief is sought. IRS estimates that, on average, each taxpayer files 1.9 cases. Thus, the number of taxpayers involved is slightly less than half the number of cases shown in this table.

[a]"Cases decided" includes IRS's determinations of ineligibility and determinations to grant full, partial, or no relief. Cases decided include cases received in any year.

Source: IRS's Innocent Spouse Tracking System database as of December 31, 2001.

However, the decline in cases received does not fully account for IRS's progress in reducing its inventory of undecided cases. The resulting increase in productivity appears to be largely attributable to IRS's strategy of centralizing case processing in Cincinnati, but it may be partly due to the use of the ICP and to general improvements in how IRS handles innocent spouse cases.

As table 5 shows, IRS has shifted an increasing portion of cases to the Cincinnati processing site. Because Cincinnati staff reach decisions on cases about four times faster than field office staff, IRS has realized an overall gain in productivity, which rose, on average, from 60 cases per FTE to 82 cases per FTE, or by 37 percent, between fiscal years 2000 and 2001. In fiscal year 2000, field office examiners took, on average, about 11.7 hours to make a determination on a case, compared with about 3.1 hours per case for examiners at the Cincinnati processing site. Similarly, in fiscal year 2001, field office examiners took, on average, about 10.5 hours per case, compared with 2.5 hours per case at the Cincinnati processing site.

Table 5: Cases Decided by Location and FTEs Applied, Fiscal Years 1999–2001

Fiscal year	Location	Cases decided	Percentage of cases decided	Cases decided per FTE	Average cases decided per FTE
1999	Cincinnati processing site	5,477	62	NA	
	Field offices	3,422	38	NA	
2000	Cincinnati processing site	27,783	52	233	60
	Field offices	25,648	48	33	
2001	Cincinnati processing site	40,516	66	267	82
	Field offices	20,907	34	35	

Notes: NA means that data were not available.

IRS opens a case for each tax period for which relief is sought. IRS estimates that, on average, each taxpayer files 1.9 cases. Thus, the number of taxpayers involved is slightly less than half the number of cases shown in this table.

Source: GAO analysis of unpublished IRS data from IRS's Innocent Spouse Tracking System.

Because IRS expects to shift 95 percent of innocent spouse cases to the Cincinnati processing site, where cases are processed faster, by the end of fiscal year 2003, additional gains in overall productivity are expected. These projected productivity gains, coupled with IRS's expectation that new case receipts will remain fairly close to the volume received in 2001, result in the significant estimated reduction in total staffing for the Innocent Spouse Program shown in table 1. If this reduction is achieved, IRS will have reduced overall staffing for the Innocent Spouse Program by 75 percent between fiscal year 2000 and fiscal year 2003 and will have redirected hundreds of tax compliance officers and revenue agents to their traditional duties.

To some extent, IRS also was able to reach decisions on more innocent spouse cases than it received in fiscal year 2001 because the portion of innocent spouse cases it receives that are not eligible for relief has been increasing. As a percentage of cases received, those determined to be ineligible rose from about 13 percent in fiscal year 1999 to 45 percent in fiscal year 2000 and to 56.5 percent in fiscal year 2001. Most requests for innocent spouse relief that are not eligible—for instance, because the taxpayers did not file a joint return in the year for which relief is requested—are identified during screenings at the Cincinnati processing

site. Officials estimated that, on average, staff who screen cases at the Cincinnati site need about 30 minutes per case to determine whether a taxpayer's request meets the basic eligibility requirements. In general, 80 percent or more of the cases found to be ineligible for relief are identified during case screening; the remainder are found to be ineligible during case processing either at the Cincinnati site or by field staff.

Although, in general, determining whether a case is ineligible does not require a significant amount of IRS time, agency officials are concerned about the portion of cases received that do not meet basic eligibility requirements. As a result, they have made revisions to forms and attempted to better inform tax practitioners of the innocent spouse eligibility requirements. In addition, IRS's Web site, which is discussed later in this report, includes information on the Innocent Spouse Program that is intended to help taxpayers determine their eligibility. Appendix IV provides more information on ineligible cases.

The improvements that IRS has realized in handling innocent spouse cases and in reducing its inventory of undecided cases have occurred while the agency has maintained or increased the accuracy of relief decisions. As the data in table 3 illustrate, IRS's reviewers have concurred with the case decision in a growing proportion of cases over time. Moreover, although this example reflects only the results during the first quarter of fiscal year 2002, the quality review staff agreed 100 percent of the time with the sample of case decisions pulled from the centralized processing site. This was the first quality measurement that reflected use of the ICP system and staffing enhancements at the centralized site.

IRS was not successful through fiscal year 2001 in reducing the average time to reach a decision on whether relief would be granted or to reach closure on cases, including all required notices, appeals, and transfers of taxpayers' liabilities when full or partial relief was granted. Table 6 shows that average times to decide and close cases continued to increase in the field offices and at the Cincinnati processing site through fiscal year 2001.

Table 6: Average Days for IRS to Decide and Close an Innocent Spouse Case, Fiscal Years 1999–2001

Fiscal year	Location	Cases decided	Average days from case receipt to decision	Average days from case receipt to closure
1999	Cincinnati processing site	5,477	88	91
	Field offices	3,422	187	183
	Locations combined	8,899	126	107
2000	Cincinnati processing site	27,783	110	129
	Field offices	25,648	339	409
	Locations combined	53,431	220	242
2001	Cincinnati processing site	40,516	176	189
	Field offices	20,907	442	604
	Locations combined	61,423	266	363

Notes: The average number of days to closure in fiscal year 1999 is less than the average number of days to decision because a greater proportion of the decided cases were ineligible cases, compared with cases that were fully evaluated for relief.

IRS opens a case for each tax period for which relief is sought. IRS estimates that, on average, each taxpayer files 1.9 cases. Thus, the number of taxpayers involved is slightly less than half the number of cases shown in this table.

Source: IRS's Innocent Spouse Tracking System database as of September 30, 2001.

If IRS is successful in reducing the inventory of cases by 43 percent during fiscal year 2002 as shown in table 2, the average case-processing time likely will stabilize or begin to decline. As a general rule, IRS processes the older cases in its inventory before it processes the newer cases. Thus, a significant reduction in inventory would disproportionately draw from the oldest cases. As these older cases are cleared out, and if IRS succeeds in processing as many cases as it receives in a year—that is, the maintenance level of inventory that the project manager would like to achieve—the average time for each case processed should decline. Further, because IRS estimates that 95 percent of the cases received will be processed at the Cincinnati processing site by the end of fiscal year 2003, and because Cincinnati's times for deciding cases are less than half the times for cases decided in the field, as shown in table 6, case-processing times should begin to fall toward the shorter times that are used at the centralized site. Appendix V provides information on the average number of days for IRS to come to a decision on a case.

Innocent Spouse Program Management Could Be Enhanced with More Balanced Performance Measures and Targets

As part of its strategic planning process, IRS has instructed divisions, operating units, and lower levels of the organization to implement management practices that will help IRS support its strategic goals of top-quality service to each taxpayer in every interaction, top-quality service to all taxpayers through fairness, and productivity through a quality work environment. IRS views balanced measures as its primary means for assessing organizational performance. The three balanced measures—customer service, employee satisfaction, and business results—are to be considered when setting objectives, establishing goals, assessing progress and results, and evaluating performance. Business results measures are to reflect both quantity and quality.

W&I stated in its October 2001 business performance review guidance that one of the keys to meeting future division objectives is the use of balanced measures to achieve target levels of performance at lower levels within the division. The performance measures are to be aligned with the strategic goals that the programs support. Other IRS management guidance such as IRS's *Strategic Planning, Budgeting, and Performance Management Process Manager's Guide*[10] instructs programs that report to operating units, such as divisions, to develop measures, with designated performance targets, for use in evaluating progress toward achieving IRS's mission and long-term goals. Performance measures and associated target performance levels that are explicitly stated and that conform to IRS's goals form the basis for communicating desired outcomes to program staff. Further, such measures and targets form the basis for assessing progress, identifying and addressing performance shortfalls, and holding managers and staff accountable for achieving results.

The W&I strategic plan has only one explicit performance measure for the Innocent Spouse Program, the number of cases closed in a fiscal year, which reflects only the business results quantity component of IRS's balanced approach to measuring performance. Data for the number of cases closed provides some useful information on the performance of the program. However, this one measure fails to address other dimensions of performance. For example, it does not address timeliness and quality, which relate both to business results and to the customer satisfaction component of IRS's balanced approach. Striving to achieve a specific number of case closings in a year could come at the expense of higher-quality decisions, which is why IRS's performance management system

[10]Internal Revenue Service (Washington, D.C: September 2000).

stresses the need for balanced performance measures. Although timeliness and quality measures and targets have not been adopted for the Innocent Spouse Program, the W&I strategic plan for fiscal years 2001 to 2003 recognizes that a measure of timeliness is needed and states that IRS is to establish such a measure.

Although IRS does not have performance measures or targets for timeliness and quality in the Innocent Spouse Program, the agency is gathering data that can be used in developing such measures and targets. Within its ISTS, IRS already flags innocent spouse cases that have remained unusually long in any processing stage. Beginning in fiscal year 2002, for all cases that are processed centrally, IRS will begin recording in ISTS the actual staff time used to close each case. In addition, IRS has developed estimates of the time to process a case under optimal circumstances. Program officials told us that the estimated times are used for benchmarking actual processing times but are not goals. The records of staff time to close each case and initial efforts to define benchmarks for case timeliness should therefore provide data that IRS can analyze in developing an appropriate performance measure, as well as a desired target level, for case-processing timeliness.

IRS had a performance measure for case quality as well as target levels of acceptable quality, but the agency recently dropped its performance target. IRS collects information on the quality of innocent spouse case determinations that derives from its quality review process, which samples closed cases. In fiscal years 2000 and 2001, IRS's quality goals for the Innocent Spouse Program were that the reviewers would concur with the examiners' decisions in 85 and 90 percent, respectively, of the sampled cases. In January 2002, the project manager told us that their goal should be the attainment of each quality standard for all cases and that they would no longer specify a quality goal as a percentage of cases meeting the quality standards. Accordingly, although IRS will continue to measure case quality, it no longer plans to include a specific performance measure and performance target for the quality of innocent spouse cases in its strategic or operating plans.

In discussing the program's performance measures and targets, the project manager said that the Innocent Spouse Program is small in comparison with other IRS programs and that consideration needs to be given to how much effort should be expended in developing performance measures and targets. Because data are being collected that could be used in developing timeliness and case quality performance measures and targets, the required effort should not be too great.

In March 2002, program officials told us that by the end of fiscal year 2003, IRS plans to have collected survey data relating to innocent spouse customer satisfaction that will enable it to develop related performance measures and targets. The officials said that these data on customer satisfaction, along with existing data on business results—including case quality measures—and employee satisfaction, would position IRS to develop a set of balanced performance measures and targets for the Innocent Spouse Program.

IRS's Procedures for Transferring Tax Liabilities Conform to Applicable Guidance

IRS procedures for transferring tax liabilities in innocent spouse cases conform to federal guidance for ensuring accurate and complete information processing. The procedures, if adhered to, should preclude erroneous transfers of liabilities between spouses as well as the sending of collection notices to the innocent spouse for liabilities that have been transferred to the other spouse.

To ensure accurate and complete processing, federal guidance on internal controls for managing information processing advises agencies to include in their procedures a variety of controls tailored to their systems. The guidance advises agencies to employ a combination of actions such as edit checks for controlling data entry and reconciliation of account totals. For authorization control, the guidance advises agencies to use key source documents with authorizing signatures, batch control sheets, and independent reviews of data before the data are entered into the system. The guidance instructs agencies to design their data entry processes to provide for editing and validating data and for output reports.[11]

IRS's procedures for transferring tax liabilities in innocent spouse cases employ a variety of processes to control for accuracy and completeness. For example, IRS requires that the document with the final authorizing signature approving the taxpayer's request for relief be the key document used to start the transfer process. The procedures require that an employee who was not involved in deciding the case perform edit checks and verify the information on the approval document by comparing it with the taxpayer's account information. Further, IRS procedures require that a worksheet be prepared to document, verify, review, and reconcile the accuracy of account adjustments before any changes are made to the tax accounts. The worksheet is required to include specific instructions for

[11]U.S. General Accounting Office, *Internal Control Management and Evaluation Tool*, GAO-01-1008G (Washington, D.C.: Aug. 1, 2001).

the data entry personnel to use when making the tax account adjustments, such as the exact dollar amount of tax liability to be transferred from the joint account to a separate, individual account and the specific transaction codes required by IRS's information systems to enter the changes. Staff are required to include documentation in the case files as evidence that the required tasks were completed. The procedures require that Accounting staff from a separate unit verify, reconcile, and record tax account adjustments in a journal before they are made. After the adjustments are made, Customer Account Service staff are to certify that the adjustments were made in accordance with IRS's guidelines.

On the basis of our review of IRS's procedures and our inspection of the process used at the Cincinnati processing site for transferring tax liabilities when innocent spouse relief was approved, we concluded that the procedures conform with the federal guidance for managing information processing. If IRS staff reconcile, edit, and verify the account information as they are required to do, the adjustments to transfer the tax liabilities should be made correctly. However, we did not independently test a sample of closed cases, and therefore we cannot determine the extent to which IRS staff actually performed the required control activities. The taxpayer advocate concurs that IRS's procedures to transfer tax liabilities in innocent spouse cases appear to be adequate and should resolve the past problems of monitoring taxpayers' accounts after the liabilities were transferred.

IRS Established an Innocent Spouse Web Site to Educate Taxpayers but Has Not Assessed Its Usefulness

IRS has established a Web site for its Innocent Spouse Program but has not evaluated the site. As a result, IRS does not know how useful the site is to taxpayers or what effect, if any, it has had on lessening taxpayer confusion about innocent spouse eligibility. Program officials said that recent enhancements to the Web site would enable them to collect data that could help them assess whether the site is useful to taxpayers.

In Developing Its Innocent Spouse Web Site, IRS Did Not Consider Assessing the Site's Usefulness to Taxpayers

IRS officials in the Electronic Tax Administration and Innocent Spouse Program offices told us that in developing the Web site, they did not give any consideration to the benefits that taxpayers' evaluations of the site might offer. Their immediate goal in developing the Web site was to give taxpayers an easy tool to help them determine their eligibility for the program.

The Innocent Spouse Program Web site, which went on-line in December 1999, was developed to help taxpayers determine their eligibility for innocent spouse relief. It is one of IRS's initiatives to better educate taxpayers and tax practitioners about the Innocent Spouse Program's eligibility requirements. By answering a series of yes-or-no questions, a taxpayer can generally determine whether he or she is eligible for innocent spouse relief. Called the Innocent Spouse Tax Relief Eligibility Explorer, the Web site takes the user through each of the innocent spouse eligibility factors via a series of questions. The Web site also allows the user to download the form used to apply to IRS for relief.

IRS has taken steps to increase awareness of the Web site among members of the public and within the tax professional community. IRS officials say that they have advertised the Web site in several ways, such as by including the Web site's address in IRS publications regarding the Innocent Spouse Program and linking the Web site to the Tax Professionals Web site within IRS's agencywide Web site.

Since officials had not considered evaluating the Innocent Spouse Program Web site when it was first created, they did not include features that would allow the collection of data for a meaningful evaluation. For example, IRS officials did not develop a capability for collecting information through Web-site-based customer surveys or customer feedback links.

IRS's Upgraded Innocent Spouse Web Site Will Provide Some, But Not Sufficient, Information

As part of the upgrading of its agencywide Web site, IRS is enhancing the data collection capabilities of the Innocent Spouse Program Web site. According to an official in IRS's Electronic Administration Office, the upgrading is being done in phases and the implementation of the initial phase began in January 2002. With more powerful software applications and tools, IRS will have the capability to collect data on use of the Web site and gather comments from taxpayers. For example, IRS will be able to collect data on the number of times the Innocent Spouse Web site was accessed, the number of times users accessed the Web site's eligibility questionnaire, and the number of times users completed the questionnaire and were found eligible or ineligible for consideration. As the new Innocent Spouse Web site evolves, IRS expects to develop standard performance reports and refine data collection by involving the stakeholders responsible for the contents of the various links on the agencywide Web site. IRS anticipates that project managers will have the opportunity to add additional customized enhancements and applications later.

Although the Web site's enhancements may provide IRS with more useful information than it currently has, the agency's plans did not call for obtaining directly from taxpayers any information on the Web site's usefulness. However, when we discussed the lack of such plans with Innocent Spouse Program officials in March 2002, they said that they would ask IRS's Electronic Tax Administration officials to include a survey of taxpayers. They said that they would gather information on the usefulness of the Web site that then could be used in determining how to reduce the number of ineligible cases. They said that they would do this for six months and then evaluate the costs and benefits. According to some information management experts, customer comments, surveys, and focus groups can provide valuable information for managers to assess the usefulness of a Web site.[12]

Conclusions

Over the past three years, IRS designed and implemented a number of initiatives to improve its ability to process innocent spouse cases timely, accurately, and consistently. In fiscal year 2001, these initiatives and the reduction of new cases collectively contributed to IRS's progress, for the first time since passage of the Restructuring Act, in reducing its inventory of innocent spouse cases while maintaining or increasing the quality of its case decisions. Absent unforeseen significant increases in the innocent spouse caseload, IRS appears to be positioned to make material additional improvements in reducing the inventory of cases at the same time that it redirects hundreds of employees to perform other work. To date, these improvements have not resulted in reduced average times for making case decisions and completing cases. However, improvement in the timeliness of case processing should be realized as inventory levels decrease and work is shifted to IRS's centralized processing center.

Although program improvements have been, and should continue to be, realized, IRS lacks a balanced set of measures for the Innocent Spouse Program that would help ensure that future performance does not inappropriately concentrate on one aspect of performance at the expense of others. IRS's only performance measure for the Innocent Spouse Program focuses on business results—that is, the number of cases closed. Because IRS is collecting information relevant to other dimensions of its performance, such as timeliness and case quality, developing performance

[12]Charles R. McClure, J. Timothy Sprehe, Sprehe, and Kristen Eschenfelder, *Performance Measures for Federal Agency Web Sites: Final Report to Sponsoring Agencies* (Washington, D.C: Defense Technical Information Center, Energy Information Administration, 2000).

measures and target levels for performance should not be burdensome for this relatively small IRS program.

IRS established its Innocent Spouse Program Web site to help educate taxpayers about eligibility requirements for the program. However, more than half of taxpayers' requests for innocent spouse relief are judged to be ineligible by IRS. Although IRS officials are beginning to formulate plans to evaluate the Web site, unless and until those plans are implemented, the agency would continue to lack a basis for determining whether the Web site could be improved to lessen taxpayers' confusion about eligibility requirements. If IRS had information on taxpayers' opinions about its Web site, it would be in a better position to adopt cost-effective strategies for further educating taxpayers and tax practitioners about the program. Better informed taxpayers will likely mean fewer ineligible cases and even further performance enhancements.

Recommendations for Executive Action

We recommend that the commissioner of internal revenue

- establish balanced performance measures and targets for the Innocent Spouse Program and
- evaluate the Innocent Spouse Program Web site's usefulness to taxpayers.

Agency Comments and Our Evaluation.

On April 18, 2002, we received written comments on a draft of this report from the commissioner of internal revenue (see app. VII). The commissioner concurred with our recommendations and stated that our report acknowledges the significant efforts taken by IRS to control the Innocent Spouse Program's workload.

The commissioner also said that our methodology for determining the average time from receipt of a case to a notification decision on cases closed over a yearlong period is disproportionately drawn from older cases in IRS's inventory. He enclosed a table showing, alternatively, the average time that cases received in a fiscal year have taken IRS to process. Although the commissioner's alternative calculation provides a useful perspective, we chose to reflect the average time that the taxpayers whom IRS notified of a decision during a fiscal year had to wait for that decision. Our methodology accurately reflects that average wait time.

As we agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution of it until 30 days from its issue date. We will then send copies of the report to the

commissioner of internal revenue and other interested parties. We will make copies available to others who request them.

If you have any questions or would like additional information, please call me or Charlie Daniel at (202) 512-9110. Key contributors to this report are Michael S. Arbogast, Helen Branch, and John Gates.

Michael Brostek
Director, Tax Issues

Appendix I: Few Innocent Spouse Cases Litigated in Federal Courts

Data obtained from IRS show that 73 innocent spouse cases were litigated in court from June 1996 through June 2001. These tried cases were from a large universe of innocent spouse cases; more than 130,000 cases were decided between July 1998 and September 2001. Most cases were tried in the U.S. Tax Court, and federal courts generally upheld IRS's determinations.

According to officials at the U.S. Department of the Treasury's (Treasury) Office of Chief Counsel, cases are sent to the courts for three primary reasons—disagreements between the parties over the actual facts of the case, over the interpretation of the law, and over the application of the law to the facts of the case—or some combination of these reasons. The officials also stated that courts weigh their decisions about cases by considering these reasons and other factors. Given this fact and the small number of innocent spouse cases that are tried, the officials do not regard the outcome of tried cases as a reliable measure of the quality of IRS's innocent spouse decisions.

Courts Generally Upheld All or Part of IRS's Determinations

According to IRS data, from June 1996 through June 2001, 73 innocent spouse cases pertaining to issues of relief were litigated in federal courts. Of these, 54, or about 75 percent, were litigated in the U. S. Tax Court, which has primary jurisdiction to review IRS tax cases. In 63 percent of the cases litigated in the Tax Court, the court concurred with IRS's decision to deny taxpayers relief; in 24 percent of the cases, the court disagreed with IRS's decision to deny relief. In the remaining 13 percent of the cases, the court granted taxpayers partial relief. The table below shows the number and disposition of cases litigated in the Tax Court from June 1996 through June 2001.

Table 7: Number and Disposition of Innocent Spouse Cases Litigated in U.S. Tax Court, June 1996–June 2001

		Disposition		
Calendar year	Number of cases	Upheld denial of relief	Overturned denial of relief	Partial decisions[a]
1996	12	7	2	3
1997	21	16	4	1
1998	6	3	1	2
1999	2	2	0	0
2000	6	3	2	1
2001	7	3	4	0
Total	**54**	**34**	**13**	**7**
Percentage of total		**63**	**24**	**13**

Note: Table excludes eleven cases that dealt only with innocent spouse procedural issues and not the merits of innocent spouse relief.

[a]Partial decisions denote cases in which the U.S. Tax Court agreed with a portion of IRS's preliminary determination of relief.

Source: LexisNexis research results from Treasury's Office of Chief Counsel.

Although the U.S. Tax Court has primary jurisdiction over innocent spouse cases, in some instances an innocent spouse case may be litigated in another federal court. Innocent spouse cases can be contested in federal district courts and the U.S. Court of Federal Claims if the taxpayer has already paid the tax liability and seeks a refund. Innocent spouse issues may also become part of any U.S. bankruptcy proceedings that the taxpayer initiates. In addition, all innocent spouse cases can be appealed to the U.S. Court of Appeals. According to IRS data, no cases were tried in either the U.S. District Courts or the Court of Federal Claims pertaining to issues of innocent spouse relief. However, 8 cases were decided in U.S. Bankruptcy Courts and 11 cases were decided in the U.S. Court of Appeals.

As with cases tried in the Tax Court, for the 19 cases concluded in the other courts between July 1996 and June 2001, the courts usually sustained IRS's determinations. IRS data show that the courts agreed with IRS's decision to deny taxpayers' relief in 11 cases and disagreed with IRS's denial of relief in 6 cases. In 2 cases, the courts granted the taxpayers partial relief. The following table shows the number and disposition of cases litigated in the federal courts other than Tax Court.

Table 8: Number and Disposition of Innocent Spouse Cases Litigated in the Federal Circuit Courts, June 1996–June 2001

	Disposition		
Calendar year/court	Upheld denied relief	Overturned denied relief	Partial decision
1996			
U.S. Bankruptcy Court, Northern District of Ohio	1	1	
U.S. Bankruptcy Court, Eastern District of Tennessee		1	
U.S. Court of Appeals for the Ninth Circuit	1		1
1997			
U.S. Bankruptcy Court, New Hampshire District		1	
U.S. Court of Appeals for the Second District	1		
U.S. Court of Appeals for the Fifth District		1	
U.S. Court of Appeals for the Sixth District		1	
U.S. Court of Appeals for the Ninth Circuit	1		
U.S. Court of Appeals for the Tenth Circuit	1		
1998			
U.S. Bankruptcy Court, Southern District of New York	1		
1999			
U.S. Court of Appeals for the Fourth Circuit	1		
U.S. Court of Appeals for the Sixth Circuit	1		
U.S. Bankruptcy Court, Northern District of Ohio	1		
U.S. Court of Appeals for the Tenth Circuit	1		
2000			
U.S. Court of Appeals for the Ninth Circuit			1
U.S. Bankruptcy Court, Eastern District of Oklahoma	1		
U.S. Bankruptcy Court, Middle District of Florida		1	
Total cases	**11**	**6**	**2**

Notes: Table excludes eight cases that dealt with innocent spouse procedural issues and not with merits of innocent spouse relief.

No innocent spouse cases were litigated in federal courts in 2001.

[a]Partial decisions denote cases in which the court agreed with a portion of IRS's position on the issue of innocent spouse relief.

Source: LexisNexis research results from Treasury's Office of Chief Counsel.

Appendix II: Innocent Spouse Cases Scheduled for Court That Were Settled by IRS's Appeals Office and Treasury's Counsel

According to IRS, most docketed[1] innocent spouse cases are settled before going to trial. IRS's Office of Appeals (Appeals) and Treasury's Office of Chief Counsel (Counsel) work with taxpayers to resolve the cases out of court. IRS officials stated that the primary mission of Appeals is to resolve tax controversies, without litigation, on a basis that is fair and impartial to both the government and the taxpayer and in a manner that will enhance voluntary compliance and public confidence.

When Appeals or Counsel settles a case, the outcome may reduce the amount of the taxpayer's liability, absolve the taxpayer of any liability, or leave unchanged the liability as originally determined by IRS. Of the docketed cases that were settled by Appeals or Counsel, 55 percent resulted in Appeals' absolving the taxpayer of the liability, and 33 percent resulted in Appeals' reducing the taxpayer's liability; in 12 percent of the cases, the liability remained unchanged. However, when the liability is reduced or absolved on behalf of the requesting spouse, the spouse not requesting relief would still be liable for the tax liability related to the jointly filed tax return.

The fact that Appeals or Counsel staff changed an examiner's determination does not necessarily mean that the examiner was incorrect in the application of law or the analysis of the facts in the case. An Appeals officer has the authority to settle a case on the basis of the hazards of litigation. Revenue agents and tax examiners do not have this authority. Even though an examiner may be correct in the application of law and interpretation of the facts, Appeals officers may settle the case because of a concern that IRS might not prevail in court owing to the relative weaknesses and strengths of IRS's case and the taxpayer's positions. The table below shows the number and disposition of docketed innocent spouse cases from fiscal year 1999 through May 2001 that were settled before going to trial.

[1]A petition filed with the court and accepted by the court for review becomes a docketed case.

Table 9: Number and Disposition of Docketed Innocent Spouse Cases Settled by IRS's Office of Appeals and Treasury's Office of Chief Counsel, Fiscal Years 1999–May 2001

	Settlement disposition			
Office/fiscal year	All settlements	Liability reduced to zero	Liability reduced	Liability not changed
IRS Office of Appeals				
FY 1999	27	14	10	3
FY 2000	90	49	31	10
FY 2001	62	37	18	7
Total	**179**	**100**	**59**	**20**
Treasury, Office of Chief Counsel				
FY 1999	5	3	1	1
FY 2000	17	6	7	4
FY 2001	15	11	4	0
Total	**37**	**20**	**12**	**5**
Combined total	**216**	**120**	**71**	**25**
Percentage of combined total		**55%**	**33%**	**12%**

Note: The settlements in the table were from a large universe of innocent spouse cases; more than 130,000 cases were decided between July 1998 and September 2001.

Legend: FY = fiscal year.

Source: IRS Office of Appeals innocent spouse data that IRS began collecting in FY 1999.

Appendix III: IRS's Innocent Spouse Eligibility Requirements

Table 10: IRS's Innocent Spouse Eligibility Requirements

Factors	Innocent spouse relief (Section 6015(b)[a])	Allocation of liability (Section 6015(c)[a])	Equitable relief (Section 6015(f)[a])	Equitable relief in community property states[b](Section 66(c)[a])
Type of return	Joint	Joint	Joint[c]	Married filing separately
Type of liability	Deficiency	Deficiency	Deficiency or underpayment	Deficiency or underpayment
Special requirements			Relief under section 6015(b) and section 6015(c) not available[c]	
			Liability remains unpaid except for amounts meeting requirements for refunds listed here[c]	
Refunds (Normal refund statute (RSED) controls)	Refunds available	No refunds	Refunds available for amounts paid between July 22, 1998, and April 15, 1999, and for amounts paid under an installment agreement (if not defaulted) after July 22, 1998, or date that Form 8857 was filed, whichever is later	
Marital status	Marital status considered as an equitable factor	Must be divorced or widowed, legally separated, OR not living together for at least 12 months prior to the election	Marital status considered as an equitable factor	
Knowledge	Taxpayer must establish that he or she had no knowledge OR reason to know	IRS must establish that taxpayer had *actual* knowledge of deficiency items	Knowledge considered as an equitable factor	
Equity	Inequitable to hold taxpayer liable: consider all facts and circumstances		Inequitable to hold taxpayer liable: consider all facts and circumstances	
Required factors—Tier I			Tier I cases Relief ordinarily granted if all 4 factors met: 1. Underpayment 2. Taxpayer is no longer married, is legally separated, OR has not lived with spouse for 12 months prior to request 3. Taxpayer had no knowledge of, or reason to know, when return was signed 4. Taxpayer will suffer economic hardship if relief not granted	
List of partial factors—Tier II			Tier II cases—underpayment and deficiency Factors weighing in favor of relief: 1. Marital status (same as 6015(c)) 2. Economic hardship (defined in Regs. § 301.6343-1(b)(4)) 3. Abuse (but not duress) 4. No knowledge or reason to know that liability would not be paid (for underpayment) or of item (for deficiency) 5. Nonrequesting spouse's legal obligation (not positive factor if knowledge nonrequesting spouse would not pay when decree or agreement was signed) 6. Liability solely attributable to nonrequesting spouse	

Factors	Innocent spouse relief (Section 6015(b)[a])	Allocation of liability (Section 6015(c)[a])	Equitable relief (Section 6015(f)[a])	Equitable relief in community property states[b](Section 66(c)[a])
			Factors weighing against relief: 1. Liability attributable to requesting spouse 2. Knowledge or reason to know (extremely strong factor) 3. Significant benefit 4. Lack of economic hardship 5. Noncompliance with federal income tax laws 6. Requesting spouse's legal obligation	
Fraud	Fraud is a consideration in equity determination	Election invalid if IRS shows taxpayer transferred assets as part of a fraudulent scheme	Relief not available if 1. return was fraudulent [c] 2. assets were transferred as part of fraudulent scheme[c]	
Disqualified assets transferred for avoidance of tax or payment of tax	Transfer of disqualified assets is a consideration in equity determination	Amount of allocation is increased by value of disqualified assets	Relief not available to extent of value of any disqualified assets[c]	
Time for filing	Two years from first collection activity after July 22, 1998[d]	2 years from 1st collection activity after July 22, 1998[d]	Two years from first collection activity after July 22, 1998[c,d]	
Consideration in courts	Tax Court; if liability fully paid, District Court or Court of Federal Claims	Tax Court	Tax Court review under IRS's "abuse of discretion" standard (Note: Section 66(c) cases may go to Tax Court only through deficiency proceedings)	

[a]Relief is available only for amounts unpaid as of July 22, 1998, and amounts arising after July 22, 1998. Section 6013(e) criteria that are similar but more restrictive than section 6015(b) criteria apply for amounts paid prior to July 22, 1998.

[b]There are nine community property states—Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin.

[c]This criterion is part of seven threshold conditions for section 6015(f) relief and part of 5 threshold conditions for section 66(c) relief.

[d]Collection activities that put the taxpayer on notice that IRS intends to collect the tax from the taxpayer (e.g., levy, seizure, refund offset, judicial suit, claim).

Source: IRS.

Appendix IV: Number and Types of Innocent Spouse Cases Not Meeting Eligibility Requirements, March 1999–September 2001

Table 11: Number and Types of Innocent Spouse Cases Not Meeting Eligibility Requirements, March 1999–September 2001

Reason for not meeting eligibility requirements	Number	Percentage
Incorrect filing status—no joint return	18,456	30.6
Collection statute expired	8,004	13.3
Tax paid in full—no refund requested at filing	6,882	11.4
Tax paid in full—no refund requested while claim pending	4,839	8.0
No return filed	4,808	8.0
Unable to process	4,716	7.8
Claim withdrawn	4,074	6.7
Injured spouse	3,971	6.6
Subtotal	**55,750**	**92.5**
All other reasons	4,522	7.5
Total	**60,272**	**100.0**

Note: IRS opens a case for each tax period for which relief is sought. IRS estimates that, on average, each taxpayer files 1.9 cases. Thus, the number of taxpayers involved is slightly less than half the number of cases shown in this table.

Source: IRS's Innocent Spouse Tracking System.

Appendix V: Average Days for Innocent Spouse Determinations, Fiscal Years 1999–2001

Table 12: Average Days For Determinations Made in Fiscal Years 1999–2001 (regardless of year that case was received)

	FY 1999[a]	FY 2000	FY 2001
All determinations			
Number of cases	8,899	53,431	61,423
Average days	126	220	266
Cases not meeting eligibility requirements			
Number of cases	5,552	25,987	28,733
Average days	86	125	157
Cases meeting eligibility requirements			
Full relief granted			
Number of cases	1,466	11,739	9,742
Average days[b]	193	318	382
Partial relief granted			
Number of cases	201	2,282	3,058
Average days[b]	222	324	375
Denied relief			
Number of cases	1,680	13,423	19,890
Average days[b]	188	300	350

Note: IRS opens a case for each tax period for which relief is sought. IRS estimates that, on average, each taxpayer files 1.9 cases. Thus, the number of taxpayers involved is slightly less than half the number of cases shown in this table.

[a]Fiscal year 1999 includes March 1999 through September 1999.

[b]Average days represent the time that IRS takes to make a decision on a case and do not include all case closure times.

Legend: FY = fiscal year.

Source: IRS's Innocent Spouse Tracking System database as of September 30, 2001.

As shown in the table, the average days for IRS to reach a decision on a case differed based on the outcome of the case—ineligible, full relief, partial relief, and denied relief—but regardless of the outcome, the average days have increased yearly from fiscal year 1999 through fiscal year 2001.

Appendix VI: Summary of Decided Innocent Spouse Cases, Fiscal Years 1999–2001

Table 13: Summary of Decided Innocent Spouse Cases, Fiscal Years 1999 2001

	Cincinnati		IRS field offices		Total	
	Cases	**Percentage**	**Cases**	**Percentage**	**Cases**	**Percentage**
Decision by IRS						
Ineligible	48,324	66	11,948	24	60,272	49
Eligible	25,452	34	38,029	76	63,481	51
Total decisions	73,776	100	49,977	100	123,753	100
Disposition of eligible cases						
Full relief	5,639	22	17,308	46	22,947	36
Partial relief	2,365	9	3,176	8	5,541	9
Denied relief	17,448	69	17,545	46	34,993	55
Total	**25,452**	**100**	**38,029**	**100**	**60,272**	**100**

Note: IRS opens a case for each tax period for which relief is sought. IRS estimates that, on average, each taxpayer files 1.9 cases. Thus, the number of taxpayers involved is slightly less than half the number of cases shown in this table.

Source: IRS Innocent Spouse Tracking System.

Appendix VII: Comments from the Internal Revenue Service

COMMISSIONER

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

April 18, 2002

Mr. Michael Brostek
Director, Tax Issues
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Brostek:

I reviewed your draft report titled "Tax Administration: IRS's Innocent Spouse Program Performance Improved; Balanced Performance Measures Needed."

Your report acknowledges our significant efforts to control our workload by implementing the following principal initiatives:

- Centralized the Innocent Spouse case processing at the Cincinnati Submission Processing Center
- Increased and specialized employee skills and assignments in working Innocent Spouse taxpayer claims
- Implemented an automated decision-making tool to assist examiners in making timely and accurate decisions
- Created a planning model to estimate and monitor workload and staffing patterns
- Enhanced our management information systems to provide process flowcharts
- Established a quality review process that enables us to monitor our workload for accuracy and make timely quality improvements

As a result of these activities, over the past year and a half, the number of taxpayers waiting for decisions on their Innocent Spouse claims has decreased 47 percent, from 21,136 as of September 30, 2000, to 11,295 as of March 31, 2002.

Our processing time shows continuous improvement. As your report points out, we generally work our cases on a first-in, first-out basis. We have been working to reduce a backlog. Your methodology for determining average time from receipt of a case to notification of a decision on cases over a year-long period is disproportionately drawn from older cases in our inventory. In order to identify improvements in processing, we draw from a more balanced workload to determine the time it takes to process claims received in each fiscal year (FY). The enclosed table shows the reduction in our inventory and the reduction of lapsed time to notify a taxpayer of the decision regarding their claim. For example, in FY 2001 our centralized processing site processed non-qualifying claims 37 percent faster than in FY 1999. They processed

2

qualifying claims 16 percent faster. We believe our improvement in service to taxpayers will continue.

Our comments on both of your recommendations are as follows:

RECOMMENDATION:
Establish balanced performance measures and targets for the Innocent Spouse Program.

COMMENT
We will use the information already available to establish additional performance measures and targets for timeliness and quality as part of the business results balanced measures in FY 2003. We are working with a vendor to develop a customer satisfaction survey from which we will determine baseline information. From this we will develop customer service measures and targets. We expect to complete the survey by the end of FY 2003 and develop new measures in the first quarter of FY 2004. In the meantime, we will continue to monitor lapsed time and seek opportunities for improved customer service.

RECOMMENDATION:
Evaluate the Innocent Spouse Web Site's usefulness to taxpayers.

COMMENT
The Innocent Spouse Web Site includes links to the interactive Eligibility Explorer that enables the taxpayer to do a preliminary self-determination on eligibility, order forms, and obtain other reference information. The Project Office will soon work with the new vendor for web site development to enhance both the contents of the site and our ability to capture data on its use and customer feedback. Once the data is available, we will evaluate the web site and make improvements as warranted.

We will work with the vendor during the remainder of FY 2002, and expect enhancements in the third quarter of FY 2003.

If you have any questions, please contact me or Jack G. Holstein, Innocent Spouse Project Manager, at (202) 622-6966.

Sincerely,

Charles O. Rossotti

Enclosure

Attachment

COMPARISON AVERAGE LAPSE TIME BETWEEN RECEIPT OF CLAIM AND NOTIFICATION LETTER BY DETERMINATION TYPE FULL HISTORY OF RECEIPTS, FY 1999, 2000 2001 RECEIPTS

AVERAGE LAPSE TIME

	Full History Days *			FY 1999 Receipts Days			FY 2000 Receipts Days			FY 2001 Receipts Days		
Type of Determination	Cincinnati Processing Site	Field Offices	Locations Combined	Cincinnati Processing Site	SBSE	Locations Combined	Cincinnati Processing Site	Field Offices	Locations Combined	Cincinnati Processing Site	Field Offices	Locations Combined
Non Qualifying Claims	81	400	145	114	456	277	96	350	142	72	217	82
Merit Claims	258	383	331	269	408	388	248	352	306	226	258	233

MODULES

	Full History Modules *			FY 1999 Receipts Modules			FY 2000 Receipts Modules			FY 2001 Receipts Modules		
Type of Determination	Cincinnati Processing Site	Field Offices	Locations Combined	Cincinnati Processing Site	Field Offices	Locations Combined	Cincinnati Processing Site	Field Offices	Locations Combined	Cincinnati Processing Site	Field Offices	Locations Combined
Non Qualifying Claims	57,660	14,305	71,965	8,021	7,521	15,542	21,081	4,712	25,793	20,970	1,421	22,391
Merit Claims	34,759	43,428	78,187	3,812	23,158	26,970	14,082	13,997	28,079	15,695	4,069	19,764

* Full History includes FY 2002 receipts and small number of pre-FY 99 receipts

7 day lapse time for mailing of computer-generated letters at Cincinnati Processing Site included above

An insufficient number of modules have reached a determination stage for FY 2002 to reflect valid information

Source: Innocent Spouse Tracking System 04/07/02

(440058)

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