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United States Government Accountability Office
Washington, DC 20548

September 27, 2004

The Honorable Bill Thomas
Chairman, Committee on Ways and Means
House of Representatives

The Honorable Amo Houghton
Chairman, Subcommittee on Oversight
Committee on Ways and Means
House of Representatives

Subject: IRS' Efforts to Evaluate the Section 1203 Process for Employee Misconduct and Measure Its Impacts on Tax Administration

Congress has long stressed the importance of proper treatment of taxpayers by the Internal Revenue Service (IRS). This emphasis was a major impetus for the IRS Restructuring and Reform Act of 1998,¹ which included numerous additional protections for taxpayers. Among these was Section 1203, which defines 10 acts or omissions for which an IRS employee is to be fired.² Most, but not all, of the acts or omissions involve mistreatment of taxpayers, such as by falsifying information or by harassing them.³

At the same time, Congress has been concerned about IRS's ability to administer the tax laws, including whether the Section 1203 provisions could hamper IRS's enforcement efforts by having a "chilling effect" on IRS employees' willingness to take appropriate enforcement actions against noncompliant taxpayers. Related concerns are whether the IRS and the Treasury Inspector General for Tax Administration (TIGTA) process for reviewing allegations made against employees is too time consuming and inconsistent,⁴ and whether all the Section 1203 provisions should be retained. In February 2003, we recommended that IRS evaluate the effectiveness of changes it made to speed up and otherwise improve the review of Section 1203 allegations. Congress is now considering legislation that would amend

¹ P.L. 105-206, July 22, 1998.

² The IRS Commissioner has statutory discretion to mitigate the penalty by imposing some other disciplinary outcome other than firing the employee who committed a Section 1203 violation.

³ The 10 acts or omissions under Section 1203 can be broken into two types—eight relate to employee and taxpayer rights—such as the right not to be harassed or not to be discriminated against—and two relate to IRS employee noncompliance with tax laws—such as not filing a required tax return on time.

⁴ TIGTA's role in the process is to investigate most types of Section 1203 allegations, excluding allegations involving employees' tax noncompliance and discrimination.

Section 1203 by, for example, deleting the requirement that IRS employees be fired for failing to file a tax return on time when they are owed a refund.

This report responds to your request for information on IRS's Section 1203 process. Specifically, you asked for the (1) statistics on Section 1203 allegations and related actions taken; (2) status of any changes to the Section 1203 process and actions taken on our previous recommendation⁵ to evaluate the process; and (3) actions taken and data collected to measure the effects of Section 1203 on tax administration, particularly IRS's enforcement programs. We briefed your staff on our results on June 17, 2004, and July 27, 2004. As agreed with your staff at those briefings, we updated our briefing slides to include additional statistics on Section 1203 allegations and the most current information on the Section 1203 process. Our updated briefing slides are enclosed.

Results

The number of Section 1203 allegations concerning taxpayer and employee rights has declined since 2000, while the number concerning IRS employee tax compliance has varied. After investigation, few allegations have resulted in employee firings. While IRS and TIGTA took some actions to implement our 2003 recommendation on evaluating the Section 1203 process, neither agency had yet developed a balanced set of goals and measures as we recommended. Similarly, IRS took some actions toward measuring the effects of Section 1203 on tax administration through a survey of selected IRS employees, but IRS had not yet committed to regularly surveying its employees to measure these effects over time.

Statistics on Section 1203 Allegations, Investigations, and Outcomes

Since Section 1203 took effect in July 1998, the number of allegations filed annually peaked at about 1,700 in 2000, as shown in slide 12. However, the number of allegations regarding taxpayer and employee rights versus those regarding IRS employee compliance with federal tax filing and reporting laws differed over the years.

From 1998 to 2000, the number of Section 1203 allegations regarding taxpayer and employee rights increased, particularly from 1999 to 2000. Since 2000, most types of taxpayer and employee rights allegations have decreased each year. For example, Section 1203 allegations related to retaliation or harassment declined from 1,000 in 2000 to 143 in 2003. In contrast, Section 1203 allegations related to employee noncompliance with tax filing and reporting laws steadily increased almost each year since 1998. Partial year data for 2004 through April suggest that this trend might continue.

⁵ GAO, *Tax Administration: IRS and TIGTA Should Evaluate Their Processing of Employee Misconduct under Section 1203*, GAO-03-394 (Washington, D.C.: Feb. 14, 2003).

Although 88 percent of the allegations filed between July 1998 and April 2004 were completely investigated, 13 percent of these completed investigations substantiated the allegation made. However, differences exist by type of allegation in the number of completed investigations and substantiated allegations (see slide 16). Of 2,477 completed investigations of taxpayer and employee rights allegations, 36 (1.5 percent) were substantiated. More allegations regarding noncompliance with federal tax laws were substantiated; of 2,986 completed investigations, 667 (22.3 percent) were substantiated.

Of the 582 substantiated allegations where penalty decisions were complete,⁶ 126 (21.7 percent) resulted in employee firings. Another 149 (25.6 percent) resulted in employees resigning or retiring, and 257 (44.2 percent) resulted in penalty mitigation. Another 50 cases or 8.6 percent were closed because the employee separated for other reasons. The vast majority of the firings and other penalties were for noncompliance with federal tax laws, because such cases were the vast majority of substantiated allegations. Slide 17 has details.

Status and Evaluation of the Section 1203 Process

IRS and TIGTA managers stated that the basic Section 1203 process has not changed since 2002. However, IRS managers added that an IRS task force is studying the part of the process that deals with the Employee Tax Compliance (ETC) process and plans to recommend changes during November 2004. This task force is to identify ways to (1) more quickly process ETC issues including Section 1203 allegations and (2) more effectively educate employees about their responsibilities to comply with federal tax law.

IRS also is taking some actions to implement our previous recommendation on evaluating the Section 1203 process, but has not yet developed a full set of goals and measures for evaluating the process. We had recommended that IRS and TIGTA develop an approach for evaluating the Section 1203 process, using (1) results-oriented goals, (2) balanced performance measures to assess progress towards those goals, and (3) methods for collecting and analyzing data related to the goals and measures. IRS program managers stated that they are developing a data sharing system in conjunction with TIGTA that could be used to evaluate the entire Section 1203 process. Depending on the results of pilot testing during the fall of 2004, this system could be implemented as early as December 2004.

Although IRS and TIGTA have developed goals and measures on the timeliness of certain parts of the Section 1203 process, they have not developed other goals and measures, such as on the quality of the process or the satisfaction of those involved in the process. Without these other goals and measures, IRS does not have a balanced evaluation system. In other programs, IRS relies on a balanced set of goals and measures that address the results of the program (such as making quality decisions in a timely

⁶ Decisions for 121 of the 703 substantiated allegations were still being processed when we finished our analysis.

manner), and the satisfaction of customers and employees (such as their views on fairness and timeliness).

Having more than one goal and measure and then balancing those goals and measures is important to avoid adverse effects. For example, if improvements are made in the timeliness of the process but the quality of the decisions made during screening, investigating, and adjudicating is poor, or if those involved in the process view the process as unfair or incomplete, the net effect could be negative.

IRS managers explained that the Section 1203 process has been evolving since they implemented the changes during 2002. As a result, they said that they have not taken the time to focus on other potential goals and measures. Even so, they stated that they believe that the process is rigorous and subjects each allegation to multiple levels of review in an attempt to ensure quality in making sensitive decisions about employees' careers. They agreed, however, that other goals and measures would provide a more balanced evaluation system and that they will consider developing others.

Measuring the Effects of Section 1203 on Tax Administration

IRS has not yet measured the effects of Section 1203 on enforcement programs. In light of IRS officials stating that they still believe that Section 1203 can have a chilling effect on enforcement, measuring these effects is important. IRS plans to measure employees' willingness to take enforcement actions under Section 1203, using a revised version of the survey we used for our 2003 report to identify the extent of their willingness. According to an IRS official, IRS plans to administer the survey by the end of calendar year 2004. For now, the survey is to be administered to IRS enforcement employees who contact small business and self-employed taxpayers about their tax compliance.

IRS has not yet decided how regularly to administer the survey and for which types of employees. For example, IRS could also survey certain types of enforcement employees who interact with individual taxpayers who do not have business incomes and who have been subjected to Section 1203 allegations. The planned survey could be administered to more types of employees. Further, IRS could administer the survey regularly, such as annually or every 2 years. Having a regular measurement would give IRS some indication of whether its employees are more or less willing to perform their duties as assigned under the purview of Section 1203.

IRS officials said they are concerned about the time and effort of continually doing the survey, particularly when so few allegations in recent years have involved contacts with taxpayers. They also said that they are considering other means for getting input on the impacts of Section 1203 on enforcement, such as through focus groups. IRS officials said that after the survey is completed in 2004, they will decide whether and how often to administer the survey and whether other IRS employees should be included.

Concluding Observations

IRS and TIGTA have taken initial steps toward developing an approach for evaluating the entire Section 1203 process. However, IRS and TIGTA have not yet developed a balanced set of goals and measures, as recommended in our 2003 report. Given our previous recommendation and because of the ongoing development of the evaluation system for the Section 1203 process, we are not making a new recommendation. Rather, we will continue to track actions to meet our previous recommendation until we see the development of a balanced set of measures.

IRS has also taken initial steps to measure the effects of Section 1203 on tax administration by asking certain types of enforcement employees about their willingness to enforce the tax laws given Section 1203. This survey is important to IRS management to periodically get an indication of how Section 1203 affects IRS employees' willingness to enforce the tax laws, regardless of whether they have had a Section 1203 allegation. Any IRS employee who contacts taxpayers could be subjected to a Section 1203 allegation, which could affect their willingness to take enforcement actions. However, IRS has not yet committed to regularly surveying IRS employees, in part because of the time and effort of doing surveys. As stated previously, because IRS is considering such a commitment as it continues to develop the measurement system, we are not yet making a recommendation.

Scope and Methodology

To determine the number, type, and disposition of Section 1203 allegations, we analyzed data from IRS's Automated Labor and Employee Relations Tracking System (ALERTS) database as of April 30, 2004. The data included all Section 1203 cases that originated in IRS or TIGTA and were either investigated by TIGTA or referred to IRS for investigation or adjudication. On the basis of our review of IRS's documentation and interviews with IRS officials, we have determined how IRS ensures the accuracy and completeness of the ALERTS data entry and processing as well as maintenance of data integrity. In addition, our testing of the ALERTS database indicated that the data are sufficiently reliable for purposes of this report.

To describe the status of any changes to the Section 1203 process, our previous recommendation on evaluating the process, and actions taken and data collected to measure the effects of Section 1203 on IRS's enforcement programs, we interviewed IRS's Employee Conduct and Compliance Office staff. We also collected information from IRS offices responsible for handling allegations on employee tax compliance and discrimination, which used variations of the basic Section 1203 process. Although our previous recommendation covered all parts of the Section 1203 process, our briefing slides focused on the basic Section 1203 process that involved allegations on the treatment of taxpayers rather than on misconduct internal to IRS.

We supplemented this work with interviews of TIGTA and IRS's Office of Program Evaluation and Risk Analysis (OPERA) staff. We also reviewed various IRS documents on the timeliness of processing Section 1203 allegations. Finally, we obtained information from staff of IRS's Wage and Income Division as well as the Small Business/Self Employed Division on training provided to the employees of

these divisions about Section 1203. We conducted our work from April 2004 through July 2004 in accordance with generally accepted government auditing standards.

Agency Comments and Our Evaluation

We asked IRS and TIGTA to provide us comments on a draft of this report. The IRS Commissioner responded on September 15, 2004, saying that IRS is continuing to develop balanced goals and measures for evaluating the Section 1203 process (see app. D). He referred to timeliness goals and measures and to a 100 percent review of all Section 1203 cases as a measure of quality. He also referred to plans to revise our 2002 survey and administer it to selected IRS enforcement employees to measure, among other things, the extent to which they are willing to take specific enforcement actions given Section 1203 and the extent to which they think that a Section 1203 allegation will be handled timely and fairly as a measure of employee satisfaction.

We view these steps as progress. However, unless the 100-percent review for quality has a clear definition of quality as well as specific measures and goals to track quality—as we recommended in our 2003 report—the results will be difficult to interpret. Similarly, IRS has not made decisions on the specific goals and measures for the satisfaction of employees engaged in the Section 1203 process or affected by the process.

On September 13, 2004, the Acting Inspector General for TIGTA acknowledged our findings and decision to track progress in meeting our 2003 recommendation rather than make a new one (see app. II). She referred to the challenge in developing a coordinated evaluation system for the Section 1203 process because of TIGTA's independence in overseeing IRS. She said TIGTA has its own set of goals, measures, and performance data for evaluating TIGTA's processing of all complaints and investigations, including those involving Section 1203. She also pointed to workload indicators such as timeliness to ensure quality performance, and to meetings with IRS employees to solicit input on their satisfaction.

We acknowledged TIGTA's concern with independence in our 2003 report, discussing why coordination with IRS on how each agency will evaluate its part of the Section 1203 process need not jeopardize TIGTA's independence. Our issue now is whether each agency has produced a balanced evaluation system for its part of the process. While TIGTA has made progress, its goals and measures for employee satisfaction do not specifically tie to Section 1203 investigations, and it has no goals and measures for customer satisfaction with the Section 1203 process. As a result, determining whether employee or customer satisfaction with the process is increasing or decreasing is not possible.

We recognize that costs would be associated with producing goals and measures. However, the attention given the Section 1203 process by taxpayers, IRS employees, and the Congress shows the importance of having balanced goals and measures for reliable monitoring of how well the process works.

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We are sending copies of this report to the Commissioner of Internal Revenue and other interested parties. We will make copies available to others upon request. This report will also be available at no charge on GAO's Web site at <http://www.gao.gov>.

This report was prepared under the direction of Tom Short, Assistant Director. Other major contributors included Perry Datwyler, MacDonald Phillips, Jeff Schmerling, Brenda Rabinowitz, Evan Gilman, Shirley Jones, and Michael Rose. If you have any questions about this report, please contact me at whitej@gao.gov or Tom Short at shortt@gao.gov or either of us at (202) 512-9110.

A handwritten signature in black ink that reads "James R. White". The signature is written in a cursive style with a large initial "J" and "W".

James R. White
Director, Tax Issues

Enclosure



IRS' Efforts to Evaluate the Section 1203 Process for Employee Misconduct and Measure Its Impacts on Tax Administration

**U.S. House of Representatives
Committee on Ways and Means**

Background: Job Objectives

1. What are the statistics from 1998 on Section 1203 allegations and the related actions taken as a result of the substantiated allegations?
 2. What is the status of any changes to the Section 1203 process and of actions taken on GAO's previous recommendation on evaluating the process?
 3. What actions have been taken and data collected to measure the effects of Section 1203 on tax administration, particularly IRS's enforcement programs?
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Background: What is Section 1203?

- The 1998 Restructuring and Reform Act included Section 1203 to balance the Internal Revenue Service’s (IRS) responsibility to collect taxes with its responsibility to protect the rights of taxpayers and serve the public.
- Section 1203 outlined 10 “deadly sins”—actions or omissions that would require the firing of an IRS employee. Of the 10 sins, 2 relate to IRS employee tax compliance, and 8 relate to employee and taxpayer rights. The 10 deadly sins are as follows:

Background: 10 “Deadly Sins”

1. Willful failure to obtain the required approval signatures on documents authorizing a seizure of a taxpayer’s home, personal belongings, or business assets.
 2. Providing a false statement under oath with respect to a material matter involving a taxpayer or taxpayer representative.
 3. Violating the rights protected under the Constitution or the civil rights established under six specifically identified laws with respect to a taxpayer, taxpayer representative, or other employee of the IRS.
 4. Falsifying or destroying documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or taxpayer representative.
 5. Assault or battery of a taxpayer, taxpayer representative, or employee of the IRS but only if there is a criminal conviction, or a final judgment by a court in a civil case, with respect to the assault or battery.
-

Background: 10 “Deadly Sins” (Con’t)

6. Violating the Internal Revenue Code, Department of the Treasury regulations, or policies of the IRS (including the Internal Revenue Manual) for the purpose of retaliating against, or harassing a taxpayer, taxpayer representative, or other employee of the IRS.
 7. Willful misuse of the provisions of Section 6103 of the Internal Revenue Code for the purpose of concealing information from a congressional inquiry.
 8. Willful failure to file any return of tax required under the Internal Revenue Code on or before the date prescribed therefore (including any extensions), unless such failure is due to reasonable cause and not to willful neglect.
 9. Willful understatement of federal tax liability, unless such failure is due to reasonable cause and not to willful neglect.
 10. Threatening to audit a taxpayer for the purpose of extracting personal gain or benefit.
-

Background: Concerns about the Section 1203 Process

- IRS and TIGTA created a process to handle Section 1203 allegations.
 - A 2002 study by a private firm assessed the causes of lengthy processing times for Section 1203 allegations and identified other problems with the Section 1203 process.
 - In March 2002, IRS and TIGTA made changes to the 1203 process to address the problems identified by the private firm (see table 1).
-

Background: Table 1: 2002 Changes to the Section 1203 Process To Address Identified Problems

| Problem identified | Actions taken |
|---|--|
| Section 1203 cases changed hands frequently within IRS and TIGTA, which added to long case processing times. | IRS created a Board of Employee Professional Responsibility (BEPR) to screen the investigative merit of allegations it receives. |
| The Section 1203 process had multiple, inconsistent procedures. | IRS and TIGTA acted to streamline the process by clarifying TIGTA's responsibility for conducting most investigations and by eliminating some criteria on making various decisions (e.g., mitigation). |
| IRS and TIGTA lacked a centralized database for Section 1203 case data. | IRS and TIGTA were developing a system, rather than a centralized database, to share Section 1203 data. |
| IRS managers could investigate employees, but they were not trained to be investigators and doing so created conflicts of interest. | TIGTA was made responsible for conducting most investigations. |

Source: GAO.

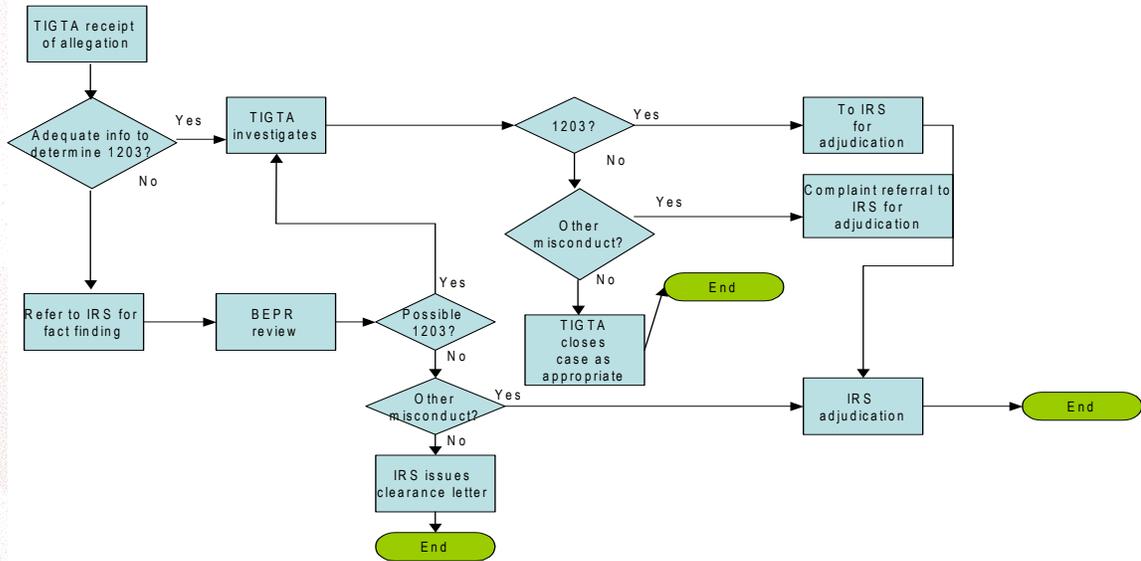
Background: What is the Revised Section 1203 Process?

- Currently, the Section 1203 process for an allegation filed against an IRS employee could involve various actions.
 - IRS and the Treasury Inspector General for Tax Administration (TIGTA) are to screen allegations to evaluate whether to undertake a full investigation.
 - TIGTA is to investigate allegations, except those involving employee tax compliance (ETC) and discrimination to be investigated by selected IRS offices.¹
 - IRS is to adjudicate (decide to fire or take other disciplinary action) allegations that are substantiated as violations.

(See simplified flowchart on next slide)

¹These offices follow similar processes, which existed prior to Section 1203, for investigating and adjudicating allegations involving ETC and discrimination issues.

Background: What is the Section 1203 Process?
Figure 1: Process for All Section 1203 Cases With the Exception of Employee Tax Compliance and Discrimination Cases



Source: IRS.

Background: Mitigation for Substantiated Section 1203 Allegations

- An IRS Section 1203 Review Board, which is composed of high-level IRS officials, decides whether mitigation is appropriate to consider.
 - If not appropriate, the employee is fired.
 - If appropriate, the case goes to the IRS Commissioner to consider mitigation.
- If the Commissioner mitigates the penalty, other disciplinary actions--such as counseling, admonishment, reprimand, or suspension--may be applied.

Background: GAO's Report and Recommendation on Evaluating the Section 1203 Process During 2003

- In 2003, we reported (GAO-03-394; February 14, 2003) that frontline enforcement staff said the time to do their jobs had increased and the likelihood of recommending certain enforcement actions had decreased under Section 1203.
- In this same report, we recommended that IRS and TIGTA develop an approach for evaluating the entire Section 1203 process, using
 - results-oriented goals.
 - balanced measures to assess progress towards the goals, and
 - methods for collecting and analyzing performance data related to the goals and measures.



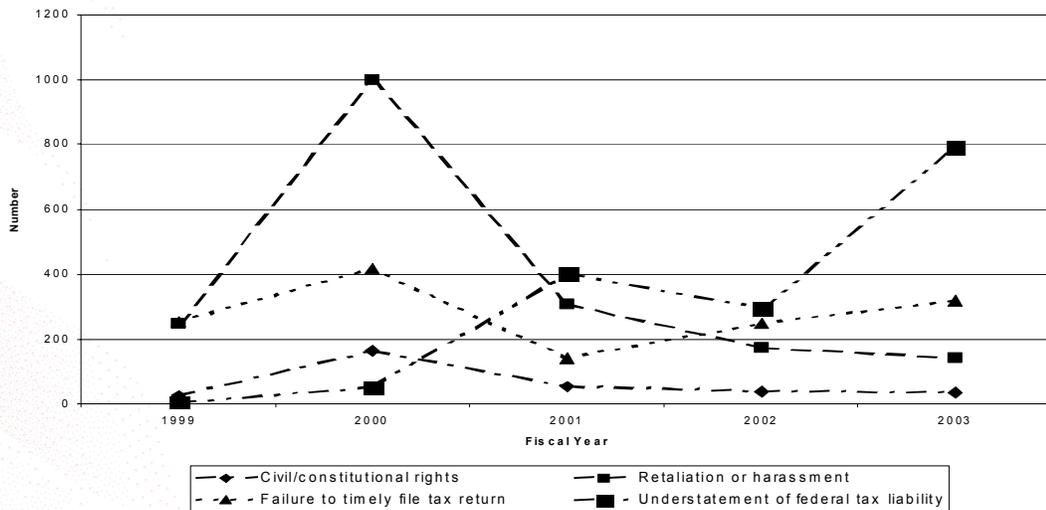
Objective 1: Statistics on Section 1203
Table 2: Number of Section 1203 Allegations Filed, July 1998 - April 2004

| Type of Section 1203 Allegation | Fiscal year | | | | | | | Total |
|---|----------------|------------|--------------|------------|------------|--------------|------------------|--------------|
| | 1998 from July | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 as of April | |
| Taxpayer and employee rights | | | | | | | | |
| Seizure without approval | 0 | 2 | 8 | 4 | 2 | 4 | 3 | 23 |
| False statement under oath | 0 | 4 | 10 | 6 | 2 | 2 | 2 | 26 |
| Civil rights/constitutional rights | 0 | 27 | 165 | 56 | 40 | 34 | 28 | 350 |
| Falsifying or destroying documents | 0 | 17 | 39 | 14 | 12 | 13 | 10 | 105 |
| Assault or battery | 0 | 5 | 3 | 2 | 0 | 3 | 1 | 14 |
| Retaliation or harassment | 0 | 247 | 1,000 | 310 | 173 | 143 | 76 | 1,949 |
| Misuse of Section 6103 to conceal information from Congress | 0 | 0 | 2 | 0 | 2 | 0 | 1 | 5 |
| Threat to audit for personal gain | 1 | 18 | 29 | 18 | 22 | 14 | 6 | 108 |
| Subtotal | 1 | 320 | 1,256 | 410 | 253 | 213 | 127 | 2,580 |
| Compliance with federal tax laws | | | | | | | | |
| Failure to timely file a federal return | 8 | 253 | 419 | 140 | 248 | 320 | 280 | 1,668 |
| Understatement of federal tax liability | 1 | 4 | 51 | 402 | 296 | 792 | 406 | 1,952 |
| Subtotal | 9 | 257 | 470 | 542 | 544 | 1,112 | 686 | 3,620 |
| Total | 10 | 577 | 1,726 | 952 | 797 | 1,325 | 813 | 6,200 |

Source: GAO analysis of IRS data.

Objective 1: Statistics on Section 1203

Figure 2: Number of Section 1203 Allegations for the Most Frequent Types and Overall, Fiscal Years 1999-2003



Source: GAO analysis of IRS data.

Note: Fiscal year 1998 and Fiscal year 2004 are partial year data and are not included in this figure.

**Objective 1: Statistics on Section 1203
Source of Section 1203 Allegations**

- IRS data on the number of Section 1203 violations alleged by taxpayers versus IRS employees were incomplete.
 - An IRS manager explained that IRS did not start tracking the source of allegations until July 12, 2001.
 - Analysis of the data on the source of allegations from July 12, 2001, through April 30, 2004, gives some indication of who is filing specific types of allegations (see table on next slide).
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Objective 1: Statistics on Section 1203
Table 3: Number of Section 1203 Allegations by Source of Complaint, July 12, 2001–April 30, 2004

| Source of complaint | Fiscal year | | | | |
|-------------------------|------------------|------------|--------------|--------------------|--------------|
| | 2001 (from July) | 2002 | 2003 | 2004 (as of April) | Total |
| Taxpayer | 41 | 115 | 115 | 56 | 327 |
| Employee | 40 | 149 | 112 | 79 | 380 |
| IRS System ^a | 70 | 494 | 1,053 | 642 | 2,259 |
| Other ^b | 20 | 39 | 45 | 33 | 137 |
| Missing | 0 | 0 | 0 | 3 | 3 |
| Total | 171 | 797 | 1,325 | 813 | 3,106 |

Source: GAO analysis of IRS data

^aAn IRS manager explained that these cases are identified by the ETC process or TIGTA investigations.

^bAn IRS manager explained that this category is a catch-all and includes appeals and taxpayer representative cases.



Objective 1: Statistics on Section 1203
Table 4: Number of Section 1203 Investigations Started and Completed, and Allegations Substantiated, July 1998—April 2004

| Type of Section 1203 allegation | Investigations started on the allegations | Investigations completed on the allegations | Allegations substantiated by completed investigations |
|---|---|---|---|
| Taxpayer and employee rights | | | |
| Seizure without approval | 23 | 23 | 1 |
| False statement under oath | 24 | 24 | 1 |
| Civil rights/constitutional rights | 336 | 327 | 1 |
| Falsifying or destroying documents | 98 | 87 | 12 |
| Assault or battery | 13 | 12 | 1 |
| Retaliation or harassment | 1,913 | 1,904 | 7 |
| Misuse of Section 6103 to conceal information from Congress | 3 | 3 | 0 |
| Threat to audit for personal gain | 101 | 97 | 13 |
| Subtotal | 2,511 | 2,477 | 36 |
| Compliance with federal tax laws | | | |
| Failure to timely file a federal return | 1,566 | 1,395 | 516 |
| Understatement of federal tax liability | 1,869 | 1,591 | 151 |
| Subtotal | 3,435 | 2,986 | 667 |
| Total | 5,946 | 5,463 | 703 |

Source: GAO analysis of IRS data.

Note: Of the 6,200 allegations, 254 were deemed not worth investigating and 483 were still being investigated.



Objective 1: Statistics on Section 1203
Table 5: Number of Substantiated Section 1203 Allegations By Types of Outcome, July 1998—April 2004

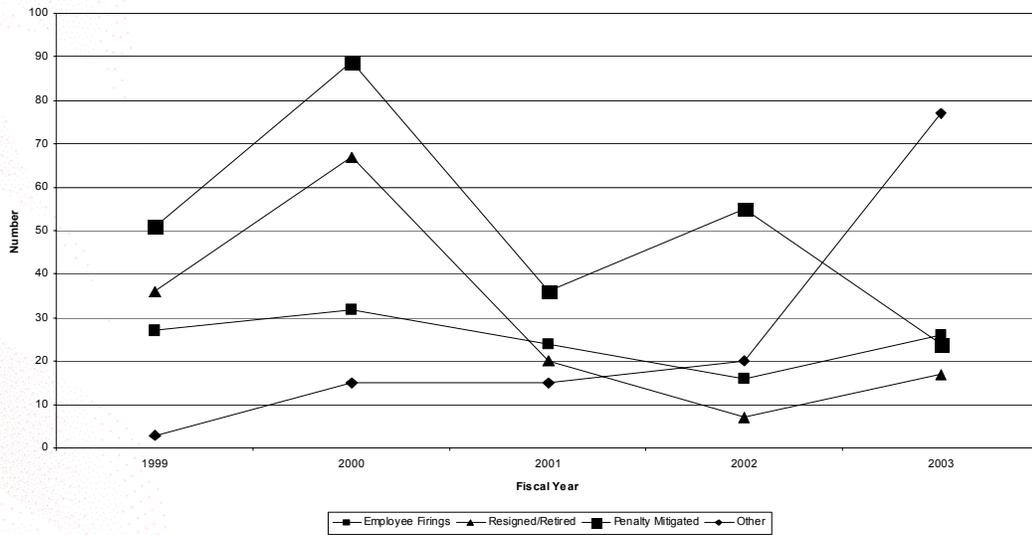
| Type of Section 1203 allegation | Employee Firings | Resigned/Retired | Penalty Mitigated | Other ^a | Total |
|---|------------------|------------------|-------------------|--------------------|-------|
| Taxpayer and employee rights | | | | | |
| Seizure without approval | 0 | 1 | 0 | 0 | 1 |
| False statement under oath | 0 | 1 | 0 | 0 | 1 |
| Civil rights/constitutional rights | 0 | 0 | 0 | 1 | 1 |
| Falsifying or destroying documents | 4 | 5 | 0 | 3 | 12 |
| Assault or battery | 1 | 0 | 0 | 0 | 1 |
| Retaliation or harassment | 1 | 4 | 0 | 2 | 7 |
| Misuse of Section 6103 to conceal information from Congress | 0 | 0 | 0 | 0 | 0 |
| Threat to audit for personal gain | 5 | 4 | 1 | 3 | 13 |
| Subtotal | 11 | 15 | 1 | 9 | 36 |
| Compliance with federal tax laws | | | | | |
| Failure to timely file a federal return | 84 | 107 | 221 | 104 | 516 |
| Understatement of federal tax liability | 31 | 27 | 35 | 58 | 151 |
| Subtotal | 115 | 134 | 256 | 162 | 667 |
| Total | 126 | 149 | 257 | 171 | 703 |

Source: GAO analysis of IRS data.

^a These included separation during probation period for reasons other than substantiated 1203 allegations—25 cases, removal for misconduct prior to completing adjudication of 1203 allegations—25 cases, and in personnel process—121 cases.

Objective 1: Statistics on Section 1203

Figure 3: Number of Substantiated Section 1203 Allegations by Types of Outcome, Fiscal Years 1999-2003



Source: GAO analysis of IRS data.

Note: Fiscal year 1998 and Fiscal year 2004 are partial year data and are not included in this figure.

Objective 1: Statistics on Section 1203

Declines in IRS Collection Enforcement Contacts and Employees

- IRS managers stated that they had not studied why the number of Section 1203 allegations declined in recent years, but they suggested that the recent decline in enforcement contacts and staff may be contributing factors. IRS data showed the following.
 - The number of certain audit and collection enforcement contacts with taxpayers, which can result in Section 1203 allegations, declined through fiscal year 2000 and increased to about three-quarters of its fiscal year 1998 level by fiscal year 2003 (see table 6).
 - The number of Revenue Agents (RA) and Revenue Officers (RO) making such audit and collection contacts, respectively, declined each fiscal year since fiscal year 1998 (see table 7).
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Objective 1: Statistics on Section 1203
Table 6: Number of Individual Audit and Collection Enforcement
Contacts, Fiscal Years 1998-2003 (Thousands)

| Type of enforcement contact | Fiscal year | | | | | |
|--|--------------|--------------|--------------|--------------|--------------|--------------|
| | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 |
| Audit contacts | | | | | | |
| Individual audits | 1,193 | 1,100 | 618 | 732 | 744 | 849 |
| Collection contacts | | | | | | |
| Notice of federal tax lien filed | 383 | 168 | 288 | 426 | 483 | 549 |
| Notice of levy served upon third parties | 2,503 | 504 | 220 | 674 | 1,284 | 1,681 |
| Seizures | 2 | 0.2 | 0.1 | 0.2 | 0.3 | 0.4 |
| Total | 4,081 | 1,772 | 1,126 | 1,832 | 2,511 | 3,079 |

Source: GAO analysis of IRS data.

Objective 1: Statistics on Section 1203
Table 7: Revenue Agents and Revenue Officers at Close of Fiscal Year, Fiscal Years 1998-2003

| Personnel type | Fiscal year | | | | | |
|------------------|---------------|---------------|---------------|---------------|---------------|---------------|
| | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 |
| Revenue agents | 13,491 | 13,022 | 12,828 | 12,371 | 11,816 | 11,513 |
| Revenue officers | 6,664 | 6,399 | 6,028 | 5,879 | 5,347 | 5,004 |
| Total | 20,155 | 19,421 | 18,856 | 18,250 | 17,163 | 16,517 |

Source: GAO analysis of IRS data.

Note: Revenue agents are IRS's highest graded auditors and revenue officers are involved with collection enforcement contacts.

Objective 2: Has IRS Changed or Evaluated the Section 1203 Process Since 2002?

- IRS and TIGTA managers stated that the basic Section 1203 process has not changed since 2002, but IRS officials explained the following.
 - They believe that changes made in 2002 corrected several problems including timeliness; multiple, inconsistent, procedures; and IRS managers investigating Section 1203 allegations, which created a potential conflict of interest.
 - They are also studying a segment of the Section 1203 process related to employee tax compliance (ETC) and plan to implement a system that could be used to evaluate the entire Section 1203 process (see next two slides for details about the study and the evaluation).
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Objective 2: Has IRS Changed or Evaluated the Section 1203 Process Since 2002?

- An IRS manager explained that an interdisciplinary task force is studying the ETC process under Section 1203 and plans to make recommendations in November 2004. This manager further explained that this study is intended to identify changes to
 - more quickly identify employee noncompliance.
 - more efficiently adjudicate instances of employee tax noncompliance.
 - more effectively communicate with employees about their responsibility to comply with tax laws.
-

Objective 2: Has IRS Changed or Evaluated the Section 1203 Process Since 2002?

- IRS has not evaluated the Section 1203 process, but IRS managers said that they are developing a data-sharing system in conjunction with TIGTA that could be used to evaluate the Section 1203 process.
 - An IRS manager stated that IRS plans to implement this system by December 2004 depending on the results of a pilot test program to be performed during the fall of 2004.
 - IRS and TIGTA managers stated that they developed various timeliness measures and goals to evaluate the Section 1203 process (see table 8).
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Objective 2: Has IRS Changed or Evaluated the Section 1203 Process Since 2002?

Table 8: Timeliness Measures and Goals in the Section 1203 Process

| Timeliness measure | Timeliness goal |
|--|---|
| IRS: Issue employee letter ^a | Within 90 days of receiving allegation |
| IRS: Overage case inventory | Close 80 percent of all cases within 120 days |
| Discrimination: Complete case analysis | Within 60 days of receiving complaint |
| Discrimination: Complete case fact finding | Within 180 days of initiating investigation |
| ETC: Complete case resolution | Within 180 days of entry into tracking system |
| TIGTA: Complete complaint evaluation | Within 30 days of receiving complaint |
| TIGTA: Respond to congressional inquiry | Within 15 days on receiving inquiry |
| TIGTA: Interview complainant | Within 15 days of receiving complaint |
| TIGTA: Referral to IRS | Within 30 days of receiving complaint |
| TIGTA: Followup on referral to IRS | 180 days after referral to IRS |
| TIGTA: Evaluate complaint from IRS | Within 5 days of receiving complaint |
| TIGTA: Complete case plan | Within 10 days of initiating investigation |
| TIGTA: Evaluate investigative potential | Within 90 days of initiating investigation |
| TIGTA: Review investigation case | Every 90 days from initiating investigation |
| TIGTA: Review for case extension | 120 days from initiating investigation |
| TIGTA: Investigation results to IRS | 45 days after last investigative lead |

Source: IRS and TIGTA officials.

^aEmployee letter discusses whether or not the evidence supports a Section 1203 violation.

Objective 2: Has IRS Changed or Evaluated the Section 1203 Process Since 2002?

- In our 2003 report, we recommended that IRS and TIGTA develop a results-oriented, balanced measures approach for evaluating the entire Section 1203 process. We also reported that a balanced measures approach can help in guiding and evaluating agency performance by ensuring that
 - one aspect of performance is not emphasized at the expense of others and
 - any changes to a program or process are having the desired results rather than unintended consequences.
 - Across IRS, a system of balanced measures is used to guide and evaluate organizational performance in three areas – business results, customer satisfaction, and employee satisfaction.
-

Objective 2: Has IRS Changed or Evaluated the Section 1203 Process Since 2002?

- IRS and TIGTA took some actions to implement our 2003 recommendation, but have not yet developed a balanced set of measures and goals for evaluating the entire Section 1203 process. For example, neither IRS nor TIGTA had measures or goals for
 - the results of the Section 1203 process, such as quality, beyond timelines and
 - customer and employee satisfaction with the timeliness, fairness, or other aspects of the process.
 - IRS and TIGTA managers provided explanations on measuring just timeliness and on not measuring quality or satisfaction.
-

Objective 2: Has IRS Changed or Evaluated the Section 1203 Process Since 2002?

- IRS managers explained that they believe quality is assured by a rigorous process involving multiple levels of review of all allegations to help make fair and consistent decisions on sensitive issues that affect employees. However, IRS did not have data on the amount of review time spent to assure quality in the Section 1203 process.
 - IRS managers also said that because the Section 1203 process is relatively new and being refined, they have not had time to develop other measures and goals. However,
 - they agreed that other goals and measures would provide a more balanced evaluation system and
 - they will consider what goals and measures beyond timeliness would be appropriate.
-

Objective 2: Has IRS Changed or Evaluated the Section 1203 Process Since 2002?

- In considering measures and goals, IRS officials explained that they are unsure about asking employees about their satisfaction with the Section 1203 process when employees
 - were alleged to have not complied with federal tax laws.
 - were cleared of the Section 1203 allegation without knowing that it had been filed (i.e., when IRS can quickly determine the allegation was not substantiated).
 - were likely to respond in anger because of the outcomes of the allegation being filed and investigations being done.
 - However, these measures and goals could focus on how the process worked specifically (i.e., timeliness, objectivity, fairness, consistency) rather than on overall satisfaction or outcomes.
-

Objective 2: Has IRS Changed or Evaluated the Section 1203 Process Since 2002?

- Despite concerns with asking employees about the Section 1203 process, an IRS representative stated that IRS plans to obtain the perceptions of selected employees on their satisfaction with the Section 1203 process as part of a survey on the impact of Section 1203 on tax administrations (see slide 35 for details on this survey). This representative explained that, in part, this survey will query selected IRS employees concerning their perceptions on
 - the fairness of IRS's process for Section 1203 allegations and
 - the timeliness of IRS's process for Section 1203 allegations.

Objective 2: Has IRS Changed or Evaluated the Section 1203 Process Since 2002?

- A TIGTA manager stated that TIGTA is developing another measure beyond timeliness for results. The manager explained that
 - TIGTA would establish a baseline for this measure in fiscal year 2004 and planned to develop a goal for this measure in fiscal year 2005 and
 - this measure and goal would address investigative quality in terms of the percentage increase in the number of investigative activities that generate results.
-

Objective 2: Has IRS Changed or Evaluated the Section 1203 Process Since 2002?

- As for customer satisfaction, a TIGTA manager stated that TIGTA currently has no measures and goals, and no plans to create them.
 - The manager explained that TIGTA discontinued customer satisfaction surveys in fiscal year 2001 because the survey process
 - was difficult to manage due to multiple types of customers (e.g., IRS, U.S. Attorney, Congress, Treasury) and
 - was not the most effective means for obtaining feedback.
 - Rather, the manager said that periodic meetings with customers provided more useful feedback to improve products and performance.
-

Objective 2: Has IRS Changed or Evaluated the Section 1203 Process Since 2002?

- As for employee satisfaction, a TIGTA manager stated that TIGTA has a measure and related goals of 70 percent satisfaction for fiscal year 2003 and 75 percent for fiscal year 2005. The manager explained that
 - TIGTA measures employee satisfaction every 2 years through a survey, which indicated 78 percent were satisfied in fiscal year 2003, and
 - TIGTA does not have employee satisfaction measures and goals for Section 1203 cases and TIGTA does not segregate survey data for those working Section 1203 cases.
-

Objective 3: Has IRS Measured the Effects of Section 1203 on Enforcement?

- In 2003, we reported that a majority of frontline enforcement employees had fears associated with Section 1203, such as being fired. Given these fears, over three-quarters of these employees said that the time needed to do their jobs had increased, and nearly two-thirds of those who collect tax debts said that the likelihood of recommending a seizure of a taxpayer's assets had decreased.
 - Although the number of taxpayer and employee rights allegations has declined, IRS officials stated that they still believe that Section 1203 can have a chilling effect on enforcement.
 - Even so, IRS has not yet measured the effects of Section 1203 on enforcement, which are difficult to isolate.
-

Objective 3: Has IRS Measured the Effects of Section 1203 on Enforcement?

- IRS representatives stated that they intend to measure the effects of Section 1203 on an ongoing basis. They plan to
 - measure employees' willingness to take enforcement actions under Section 1203, using a version of our 2002 survey, which is being revised.
 - survey certain types of enforcement employees who contact small business and self-employed taxpayers.
 - administer the survey by the end of calendar year 2004.
 - use the responses to the planned 2004 survey to assess the need for future surveys or focus groups.
-

Objective 3: Has IRS Measured the Effects of Section 1203 on Enforcement?

- IRS managers stated that training and other information on Section 1203 could help to minimize any chilling effects on enforcement programs. They added that IRS provides employees with information about Section 1203 through
 - 2 hours of orientation training provided to all newly hired employees and
 - the IRS intranet that includes information about Section 1203 and the Section 1203 process.
 - IRS managers said that IRS is starting to consider the need for mandatory annual training to remind all employees about the importance of Section 1203.
-

Concluding Observations

- While IRS and TIGTA have taken initial steps toward developing an approach for evaluating the entire Section 1203 process, they have yet to develop a balanced set of goals and measures, as recommended in our 2003 report.
 - Given our previous recommendation and because of the ongoing development of the evaluation system for the Section 1203 process, we are not making a new recommendation. Rather, we will continue to track actions to meet our previous recommendation until we see development of a balanced set of measures.
-

Concluding Observations

- IRS has taken initial steps towards measuring the effects of Section 1203 on tax administration by asking certain types of enforcement employees about their willingness to enforce tax laws given Section 1203.
 - However, IRS has not yet committed to regularly administering a survey of its employees beyond those who contact small business and self employed taxpayers about various aspects of their compliance with federal tax laws.
 - Because IRS is considering such a commitment and continues to develop a measurement system, we are not yet making a recommendation.
-

Appendix I: Comments from the Internal Revenue Service



COMMISSIONER

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

September 15, 2004

Mr. James R. White
Director, Tax Issues
United States Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. White:

Thank you for the opportunity to review the draft report, "Statistics on Section 1203, and IRS's Efforts to Evaluate the Section 1203 Process and Measure the Impacts," (GAO-04-1039R). We also appreciate the good working relationship we developed with your staff during this review, and the input they provided us on our plans to implement a follow-up survey to the survey GAO completed in 2002.

As discussed in the draft report, we are continuing to develop a balanced set of goals and measures for evaluating the Section 1203 process. As a result of our own internal work with contractors and your last review, we implemented procedural changes in processing Section 1203 cases that resulted in a 100% independent review of all allegations, which we consider to be a quality measure. We also set goals for timely processing of cases as identified in your report. Finally, as noted in the slides of your draft report, we are conducting a follow-up survey to your survey of Small Business/Self-Employed (SB/SE) employees. Our goal is to measure, among other things, whether there have been any changes in their perception of whether Section 1203 is impacting their willingness to take enforcement actions. We purposefully limited the survey to SB/SE employees so that we could compare the results with your initial survey. In this same survey, we also are getting a baseline measure of whether employees think a Section 1203 allegation against them will be handled in a timely and fair manner.

We will continue to look at ways to measure our current processing and to improve service to taxpayers and employees in implementing Section 1203. We anticipate being able to share the results of our survey of SB/SE frontline compliance staff with you sometime in the second quarter of 2005 and look forward to continuing to work with you on Section 1203 implementation. If you have any questions, please call Ronald Glaser, Director, Employee Conduct and Compliance Office, at (202) 622-4381.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark W. Everson".

Mark W. Everson

Appendix II: Comments from the Treasury Inspector General for Tax Administration



INSPECTOR GENERAL
for TAX
ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20005

September 13, 2004

Mr. James R. White
Director, Tax Issues
U.S. Government Accountability Office
441 G Street N.W.
Room 2440C
Washington, DC 20548

Dear Mr. White,

We have reviewed the draft report concerning the Internal Revenue Service (IRS) and the Treasury Inspector General for Tax Administration (TIGTA) processing of alleged Section 1203 violations and the implementation of "balanced" performance measures. The report is entitled *Statistics on Section 1203, and IRS's Efforts to Evaluate the Section 1203 Process and Measure the Impacts* (GAO-04-1039R). We appreciate the opportunity to comment on the report.

This draft report responds to a Congressional request for information on the IRS Section 1203 process. Specifically, the U.S. Government Accountability Office (GAO) was asked for (1) statistics on Section 1203 allegations and related actions taken; (2) status of any changes to the Section 1203 process and actions taken on GAO's previous recommendation to evaluate the process; and (3) actions taken and data collected to measure the effects of Section 1203 on tax administration, particularly IRS's enforcement programs.

Your draft report found that the number of Section 1203 allegations concerning taxpayer and employee rights has declined since 2000, while the number concerning IRS employee tax compliance have varied. In addition, while IRS and TIGTA took some actions to implement GAO's 2003 recommendation^[1], neither agency had yet developed a balanced set of goals and measures as GAO recommended.

This draft report did not make a new recommendation because IRS and TIGTA have yet to develop a balanced set of goals and measures, as GAO recommended in 2003. Instead, GAO intends to continue to track IRS and TIGTA actions to meet previous recommendations until GAO observes the development of a balanced set of measures.

^[1] GAO Report entitled *Tax Administration: IRS and TIGTA Should Evaluate Their Processing of Employee Misconduct under Section 1203*, (GAO-03-394).

As noted in our reply to GAO-03-394 dated February 6, 2003, TIGTA understands the desire to have a jointly established and implemented plan between IRS and TIGTA for a coordinated evaluation system for the Section 1203 process. However, there are significant challenges to meeting this objective. The Inspector General Act of 1978 (IG Act), as modified by the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98), created TIGTA to provide completely independent oversight of the IRS. As such, TIGTA has independently established goals, performance measures, and methods for analyzing performance data for TIGTA investigations, including Section 1203 allegations. The development of a joint, balanced set of goals by IRS and TIGTA, at least in appearance, would compromise our oversight independence, which was one of the principal congressional purposes for forming TIGTA. As also noted in our February 6, 2003 reply, TIGTA and the IRS worked together to create the IRS Board of Professional Responsibility (BEPR), a streamlined Section 1203 review and adjudication process.

TIGTA has established an effective policy for evaluating all complaints and investigations, to include Section 1203 issues. TIGTA also utilizes internal workload indicators (proper complaint triaging and timeliness) to assist managers in measuring and ensuring quality performance. TIGTA will continue to gauge customer satisfaction through periodic meetings with IRS managers and labor relations functions.

Thank you for the opportunity to review and comment on your draft report regarding the processing of Section 1203 allegations. If you need any further information, please contact Mr. Timothy Camus, Assistant Inspector General for Investigations, at (202) 927-7234.

Sincerely,



Pamela J. Gardiner
Acting Inspector General

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