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TAX ADMINISTRATION

Allegations of IRS Employee Misconduct

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The Honorable William V. Roth, Jr.
Chairman, Committee on Finance
United States Senate

Dear Mr. Chairman:

For years, the Congress has expressed concerns about the Internal Revenue Service's (IRS) management and treatment of taxpayers. We, and others, have chronicled IRS' struggle to modernize and have made scores of recommendations to improve IRS' operations and its service to taxpayers. Congressional concerns led to a June 1997 report[1] by the National Commission on Restructuring IRS and a series of hearings in 1997 and 1998 that focused on problems at IRS.

In April 1998, the Senate Committee on Finance held hearings on alleged misconduct by IRS employees in their treatment of other IRS employees and taxpayers. Witnesses testifying at the hearings alleged that (1) senior IRS managers did not receive the same level of disciplinary action as line staff; (2) the Deputy Commissioner of Internal Revenue delayed action on substantiated cases of employee misconduct until senior managers were eligible to retire; (3) IRS retaliated against whistleblowers and against taxpayers and their representatives who were perceived to be noncooperative; (4) IRS employees zeroed out or reduced proposed tax assessments for reasons not related to the merits of the cases; and (5) IRS discriminated against employees in the evaluation process on the basis of race or national origin in its Midwest District Office, which is headquartered in Milwaukee, WI.

You asked us to review these allegations and, in particular, to evaluate both the specific allegations made at the hearings and any underlying systemic or programmatic problems that needed to be resolved to protect the rights of taxpayers and IRS employees in these areas. This report provides information related to specific allegations regarding IRS senior managers and the Midwest District Office. It also brings together information bearing on the other allegations from our current and past work on systemic problems at IRS. Because some of the specific allegations involve taxpayer data that cannot be publicly disclosed, we are issuing to you at the same time as this report a separate, restricted letter

[1] A Vision for a New IRS, Report of the National Commission on Restructuring the Internal Revenue Service, June 25, 1997.

that discusses alleged improper zeroing out and retaliation against taxpayers.

We did our work in Washington, D.C., and Milwaukee between June 1998 and March 1999 in accordance with generally accepted government auditing standards. A complete description of the objectives, scope, and methodology for this report appears in appendix I. A summary of IRS' written comments on a draft of the report appears at the end of this letter.

Results in Brief

Available data showed significant differences between Senior Executive Service (SES) and line staff disciplinary cases in terms of dispositions and processing times. For example, a much higher percentage of SES cases than of lower-level cases was cleared or closed without action, and SES cases tended to take longer to complete. Also, IRS found that actions taken against lower-level employees more closely conformed to its established table of penalties than actions taken against higher-graded employees. However, there was no basis for a more direct comparison of the discipline imposed on senior managers and lower-level employees because SES and line staff offenses, as well as their associated mitigating and aggravating factors, were different. Our ability to make other comparisons between SES and line staff disciplinary cases was hindered by the lack of detailed and accurate data in connection with IRS' disciplinary case database.

Regarding the allegation that the Deputy Commissioner delayed action on senior manager misconduct cases until the managers were eligible to retire, we focused on actual retirements and did not reach general conclusions about eligibility to retire. We found no cases in which an individual who was ineligible to retire when an allegation was filed, retired while the case was pending with the Deputy Commissioner. However, cases we studied in depth were pending for 2 months to 4 years at the Deputy Commissioner's level. In addition, we estimated, on the basis of a random sample of IRS SES disciplinary files, that SES cases averaged almost a year from the time executive support staff received them until case closure, compared to a goal of 90 days. To address a variety of problems, including poor case-tracking procedures, inaccurate and incomplete records and files, and poor communication, IRS has started to revamp its entire disciplinary system.

We could not determine the extent of reprisal against whistleblowers because IRS did not track whistleblowing reprisal cases. The only systematic data available related to formal complaints filed with two independent review agencies—the U.S. Office of Special Counsel (OSC) and the U.S. Merit Systems Protection Board (MSPB). In fiscal years 1995

through 1997, OSC received 63 IRS whistleblower reprisal matters and obtained action from IRS favorable to employees in 4 cases. In the same time period, MSPB decided 45 initial appeals of whistleblowing reprisal allegations involving IRS, dismissing the majority of them but settling more than half of the remainder.

Regarding allegations of IRS retaliation against taxpayers, we previously reported that IRS information systems were not designed to identify, address, and prevent such taxpayer abuse.[2] In reviewing IRS databases for this report, we again found that IRS information systems provided limited and incomplete data on alleged revenue agent retaliation against taxpayers and their representatives.

With respect to allegations of improper zeroing out or reductions of recommended taxes by IRS managers, we found no evidence to support the allegations in the eight specific cases referred to us by the IRS employees who testified at the hearings. On the other hand, IRS did not systematically collect data on how much additional taxes recommended by auditors were zeroed out or reduced by IRS employees without a basis in law or IRS procedure. In particular, IRS had no data on supervisors' improperly limiting auditors' recommendations of additional tax before an audit was closed. Although our results were not a measure of improper reductions in recommended taxes, we recently reported that the majority of additional taxes recommended during audits was not assessed. We attributed this to many factors, including the complexity of the tax code and the overreliance on additional taxes recommended to measure audit results.

IRS has acknowledged equal employment opportunity (EEO)-related problems, including problems in hiring and promotion, in its Midwest District Office and has begun addressing them. After an Equal Employment Opportunity Commission administrative judge's finding that an IRS employee was a victim of discrimination, the district produced a climate assessment report. In addition, although a recent outside panel found no discriminatory hiring or promotion practices, its August 1998 report contained many recommendations related to several district problem areas, including the hiring and promotion processes. Since the report was

[2]Tax Administration: IRS Can Strengthen Its Efforts to See That Taxpayers Are Treated Properly (GAO/GGD-95-14, Oct. 26, 1994); Tax Administration: IRS Is Improving Its Controls for Ensuring That Taxpayers Are Treated Properly (GAO/GGD-96-176, Aug. 30, 1996); and Tax Administration: IRS Inspection Service and Taxpayer Advocate Roles for Ensuring That Taxpayers Are Treated Properly (GAO/T-GGD-98-63, Feb. 5, 1998).

issued, a new District Director was named who has stated her commitment to overcoming the district's contentious and long-standing EEO problems.

In general, IRS' lack of adequate information systems and documentation in the areas of employee discipline, retaliation against whistleblowers and taxpayers, and zeroing out of recommended taxes prevented us from doing a more comprehensive analysis of these issues. This lack of information hinders both congressional oversight and IRS management from addressing any problems in these areas. IRS has acknowledged the need for more complete and accurate program and management information on these issues.

The IRS Restructuring and Reform Act of 1998 included several provisions related to employee misconduct, abuse, and retaliation. As a consequence, IRS has taken steps intended to begin reform of its processes and data collection in the areas of employee discipline, retaliation, and the tax assessment process, among other things. We believe that it is important that IRS maintain adequate information systems and documentation so that employee and taxpayer complaints, including those related to retaliation, can be properly reviewed.

Disciplinary Actions for Senior Executive Service and Lower-Level Staff

Available data showed that case dispositions and processing times in disciplinary cases during the period of January 1, 1996, through June 30, 1998, differed for SES employees and lower-level, or general schedule (GS), staff. In addition, a 1997 IRS internal study found that actions taken against lower-level employees more closely conformed to the IRS table of penalties than actions taken against higher-graded employees.[3] However, because of dissimilarities in the types of offenses and incomplete case files, these data do not necessarily prove disparate treatment. Agencies must consider many factors, such as the nature and seriousness of the offense; the employee's job level and type of employment; whether the offense was intentional, technical, or inadvertent; the employee's past disciplinary record; and the notoriety of the offense or its impact upon the reputation of the agency, in deciding what penalty, if any, should be imposed in any given case. IRS recognized that problems have hindered the processing and resolution of employee misconduct cases and has begun revamping its disciplinary systems.

Background

For the period we studied, IRS tracked disciplinary cases for GS and SES employees in different systems. The Office of Labor Relations (OLR), which is the personnel office for non-SES staff, handled GS cases. It

[3] Guide for Penalty Determinations Report, IRS, Sept. 1997.

tracked these cases in the Automated Labor and Employee Relations Tracking System (ALERTS), although IRS officials told us that ALERTS data were often missing or incomplete. The Office of Executive Support (OES), which is the personnel office for IRS executives, handled SES cases. Although ALERTS was supposed to also track SES cases, OES tracked SES cases by using a log and monthly briefing reports. The monthly briefing reports were used to inform the Deputy Commissioner about the status of cases.

We selected the cases for our study of disciplinary actions for SES and lower-level staff as follows: For GS cases, we used ALERTS data for 22,025 cases received in, or closed by, OLR between January 1, 1996, and June 30, 1998. For SES cases, our information came from two sources: (1) a 70-case random sample of SES nontax misconduct case files that were active between January 1, 1996, and June 30, 1998;[4] and (2) for the same time period, 43 other SES nontax cases reported either in the logs or as "overaged"[5] SES cases in the monthly briefing reports. In total, we looked at 113 cases involving 83 SESers. Unless otherwise noted, all SES statistics presented in this section are based on the random sample. See appendix I for more information on how we selected the cases for our study.

We were unable to make many meaningful statistical comparisons between SES and GS employee misconduct cases for three reasons. First, we were able to collect more detailed data through our SES file review than from the ALERTS database used for GS cases. This was particularly true regarding dates on which important events occurred. As a result, we could not compare average processing time at each phase of the disciplinary process, although we were able to compare processing times from case receipt through case closure.

Second, the level of detail and accuracy of ALERTS data varied widely. Some IRS regions historically took ALERTS data entry more seriously than others did, according to an IRS memorandum, and cases contained varying levels of detail about case histories, issues, facts, and analyses. ALERTS had few built-in system controls to ensure data integrity. Instead, IRS relied on managers to ensure the accuracy of their subordinates' work.

Third, some data were missing for the majority of the cases tracked in ALERTS. For example, we could not analyze the frequency with which

[4]We excluded employee tax cases because they were inherently different from the cases and issues raised during the April 1998 Senate Finance Committee hearings.

[5]IRS defined overaged cases as those cases pending in OES for more than 90 days.

final dispositions were less severe than proposed dispositions because both pieces of information were available for only about 13 percent of the ALERTS cases. Because officials said that ALERTS was OLR's means of recording information on lower-level disciplinary cases, we used it to the extent that it had information comparable to what we collected on SES cases.

Comparisons Between SES and Lower-Level Misconduct Cases

Available data showed that processing time and frequency and type of case dispositions differed for SES and lower-level staff. On average, from OES' or OLR's receipt of a case until case closure, SES cases, on the basis of our 70-case random sample, lasted almost a year (352 days) and lower-level cases lasted less than 3 months (80 days).

We estimated that the largest difference between SES and GS case dispositions occurred in the closed without action (CWA) and clearance categories. As shown in table 1, the dispositions in 73 percent of SES cases were CWA or clearance, versus 26 percent for GS cases. CWA is to be used to close a case when the evidence neither proves nor disproves the allegation(s). A disposition of clearance is to be used when the evidence clearly establishes that the allegations are false. In practice, neither disposition results in a penalty. The actual breakdown between the two dispositions is as follows: for SES cases, 61 percent were CWA and 12 percent were clearance; for GS cases, 24 percent were CWA and 2 percent were clearance.

Table 1: Percentages of Closed SES and Lower-Level Misconduct Cases Receiving Various Dispositions

Disposition	Percentage of sampled SES cases	Confidence interval for SES cases[a]	Percentage of GS cases[b]
Clearance or closed without action	73	63.4 - 83.4	26
Caution letter	0	0 - 5	3
Oral or written counseling	9	4.5 - 17.0	13
Reprimand	2	0.4 - 7.9	9
Suspension	0	0 - 5	9
Removal	0	0 - 5	5
Retired/Resigned	9	4.5 - 17.0	11
Other[c]	7	3.2 -14.8	25

[a]The confidence level for these intervals was 95 percent.

[b]Does not add to 100 percent due to rounding.

[c]For GS cases, "other" includes admonishments, leave restriction, reassignment, alternative discipline, cases forwarded to Inspection, missing and miscoded cases, and other dispositions. For SES cases, "other" includes missing and miscoded cases.

Sources: GAO analysis based on sample of SES cases and information from IRS' ALERTS.

Table 1 outlines in order of severity the frequency with which available data indicate that various dispositions were imposed for SES and lower-

level staff. SES data are based on the 56 closed cases in our 70-case sample. GS data are based on 15,656 closed cases in ALERTS.[6] Ninety-five-percent confidence intervals for the SES data are presented to more accurately portray our findings. Using these confidence intervals, the rates of occurrence differed between SES and GS cases for dispositions of clearance and CWA, reprimand, suspension, and other. However, using 95-percent confidence intervals and eliminating the CWA or clearance category from the analysis, the rates of occurrence between SES and GS cases were similar for all dispositions, except oral or written counseling and retired/resigned. In any case, we will discuss later in this report that differences in dispositions of SES and GS cases do not necessarily mean that the dispositions were inappropriate or that disparate treatment occurred.

We also analyzed disciplinary actions for an additional 43 SES cases. Because these cases were not randomly selected, the results may not be representative. Of the 43 cases, we found 9 in the more serious categories—6 instances of counseling, 1 reprimand, 1 suspension, and 1 removal.

Factors Affecting Case-Processing Time and Dispositions

As further detailed in the upcoming section of this report on alleged case-processing delays by the Deputy Commissioner, SES cases took a long time to close for many reasons. These reasons included poor case-tracking procedures, inadequate file management, and poor communication among agency officials involved in the disciplinary process. We do not know to what extent, if any, these difficulties contributed to differences in processing times between SES and GS cases.

Many factors can affect the discipline imposed in a particular case. These factors include the nature and seriousness of the offense; the employee's job level and type of employment; whether the offense was intentional, technical, or inadvertent; the employee's past disciplinary record; and the notoriety of the offense or its impact upon the reputation of the agency. Collectively, these factors are components of what is known as the Douglas Factors, and they must be considered in determining the appropriate penalty in a case.[7] See appendix II for a listing of the Douglas Factors.

[6]Excludes duplicate cases and nondisciplinary dispositions.

[7]Douglas v. Veterans Administration, 5 M.S.P.R. 280 (1981).

Not all of the Douglas Factors will be pertinent in every case, and, while some factors will weigh in the employee's favor (mitigating factors), others may weigh against the employee (aggravating factors). IRS officials told us that lower-level actions tend to be more straightforward than SES actions, with fewer mitigating factors. Since mitigating factors tend to reduce the level of discipline imposed, this could partially explain why penalties might be imposed differently in lower-level cases than in SES cases.

We found that allegations against SES employees were usually reported to a hotline, the Department of the Treasury's Office of Inspector General (OIG), or the IRS Inspection Service. Because complaints against SES employees can be anonymous, this anonymity can affect IRS' ability to follow up on a complaint or investigate it thoroughly. In contrast, IRS officials told us that GS cases were generally filed by managers about their subordinates. In these cases, the complainant was known and generally provided concrete evidence to support the allegation.

Further, typical issues surrounding lower-level cases may be less complicated or easier to successfully investigate than those involving SES employees. Table 2 outlines in more detail the most common issues in SES and lower-level staff cases. SES data are based on our 70-case sample. GS data are based on 22,025 cases in ALERTS. We subjectively classified the issues in SES cases, and our classifications may not be precise. Overall, we found that the most common issue in SES cases was prohibited personnel practices,[8] while time and attendance was the most common issue in GS cases.

Table 2: Most Frequently Cited Issues in SES and GS Disciplinary Cases

Cases	Most common issue	Second most common issue	Third most common issue[a]
SES sample	Prohibited personnel practices	Misuse of funds/property; fraud, waste, and abuse	Procurement issues; lying/falsifying documents; abuse of position/authority; preferential treatment
GS	Time and attendance	Unauthorized access to taxpayer information	Unacceptable job performance

[a]There was a four-way tie among SES cases.

Sources: GAO analysis based on SES case file review and issue data from IRS' ALERTS.

[8]Defined as actions that, by law, may not be taken by any employee who can take, direct others to take, recommend, or approve any personnel actions. Examples include discrimination, coercion of political activity, and nepotism. 5 U.S.C. 2302(b).

IRS Study of Penalty Guide Effects

In 1994, in response to an internal IRS study reporting a perception that managers received preferential treatment in disciplinary matters, IRS created a table of penalties, the Guide for Penalty Determinations.[9] The purpose of the guide was to ensure that decisions on substantiated cases of misconduct were appropriate and consistent throughout IRS. In 1997 and 1998, IRS studied the effect of the guide on GS and SES employees and found that

- actions taken against lower-graded employees more closely conformed to the guide than those taken against higher-graded employees (see table 3);
- for GS employees overall, 91 percent of disciplinary actions conformed to the guide, versus 74 percent for SES employees;
- when disciplinary actions did not conform to the guide, the actions were below the guide's prescribed range 93 percent of the time for GS employees overall, versus 100 percent of the time for GS-13 through GS-15 and SES employees; and
- if admonishments were included as part of reprimands, conformance with the guide approached 100 percent for GS-13 through GS-15 employees.

Table 3: Degree With Which Disciplinary Action Conformed to Guide for Penalty Determinations, 1994-97

Employee level	Degree of conformance with the penalty guide
GS-2 through GS-7	92% - 93%
GS-8 through GS-12	88 - 91
GS-13 through GS-15	77 - 87
All SES[a]	74

Note: Nonconformance with the penalty guide does not necessarily mean that a particular penalty was inappropriate.

[a]IRS reviewed 164 executive cases. Of these, 43 cases had dispositions that were subject to the provisions of the guide.

Source: Report of the Employee Complaints Analysis Group, IRS, 1998.

The IRS study and IRS officials agreed that the guide had limitations and no longer met IRS needs. Specifically, the guide covered all employees but did not address statutory and regulatory limitations that restricted management's ability to impose disciplinary suspensions on SES employees. IRS officials said that governmentwide, there was no level of discipline available for SES employees that was more severe than a reprimand but less severe than a suspension of at least 15 days.[10] In contrast, GS employees could have received suspensions of 14 days or less. While the guide prescribed a penalty range of "reprimand to suspension," the only option for SES employees, because of the statutory

[9]Report of the Double Standard Study Group, IRS, May 1992.

[10]5 U.S.C. 7542 and 5 C.F.R. 752.601(b).

limitations against suspensions of less than 15 days, was a reprimand if management wished to impose a penalty, but not the harshest available penalty. IRS officials also told us that in certain cases, they might have imposed discipline in between a reprimand and a 15-day suspension had they had the option to do so. According to IRS officials, IRS' 1995 attempt to have the Office of Personnel Management deal with this issue was unsuccessful. Statutory and regulatory requirements could partially explain why reprimands might have been imposed when a harsher disciplinary action might have seemed more appropriate.

Applying to employees at different levels, the IRS penalty guide was constructed with very broad recommended discipline ranges to provide for management discretion. However, one IRS study pointed out that, in some instances, this rendered the guide useless (e.g., when the penalty range was "reprimand to removal").[11]

IRS Is Making Changes to Its Complaint System

IRS created a disciplinary review team in September 1998. Among other things, the team was to

- develop an action plan that addressed case handling, complaint systems, and employee awareness;
- review and revise IRS' Guide for Penalty Determinations; and
- develop a process to review and monitor complaints.

As of March 1999, the team was proposing a new integrated IRS complaint process. Its intent was to overcome problems with complaint processing systems' not (1) communicating or coordinating with each other, (2) capturing the universe of complaints, (3) specifically tracking or accurately measuring complaints, and (4) following up on complaints to ensure that appropriate corrective action had been taken. The team was proposing a 26-person Commissioner's Review Group to, among other things, manage and analyze complaints sent to the Commissioner of Internal Revenue, monitor other IRS complaint systems, and coordinate with the systems' representatives. The team was also redesigning the penalty guide.

[11]For the 51 offenses listed in the penalty guide, 15 offenses (or 29 percent) had a range of "reprimand to removal" or "admonishment to removal."

Alleged Delays by IRS Deputy Commissioner on Senior Executive Service Misconduct Cases

On the basis of our review of SES cases, we did not find a case in which an individual who was ineligible to retire at the time an allegation was filed, retired while the case was pending with the Deputy Commissioner. However, we found cases that spent up to 4 years at this stage in the disciplinary process and cases that stalled at various points throughout the process. Although OES' goal for closing an SES case was 90 days, on the basis of our random sample, cases averaged almost 1 year for OES to close. Further, IRS had poor case-tracking procedures, inadequate file management, missing and incomplete files, and poor communication among officials involved in the disciplinary process.

Background

Because IRS' 1990 and 1994 written SES case-handling procedures were out of date, IRS officials described the operable procedures to us.[12] During the period covered by our review, OES handled SES misconduct cases. Its goal for closing a case was 90 days from its receipt of a case. Once OES received a case, it was to enter it into ALERTS, although it did not always do this, and prepare a case analysis. The case analysis and supporting documents were then to be forwarded to the appropriate Regional Commissioner, Chief, or Executive Officer for Service Center Operations, who was to act as the "recommending official." Within 30 days, the recommending official was to review the case with the help of local labor relations experts, develop any additional facts deemed appropriate, and return a case report to OES, including a recommendation for disposition.

If OES disagreed with the report for any reason, it was to include a "statement of differences" in its case analysis. OES was to forward the field report and the OES analysis to the Deputy Commissioner's office for concurrence or disapproval. If the Deputy Commissioner concurred with the proposed disposition, the recommending official could take action. If the Deputy Commissioner did not approve, he could impose a lesser disposition or return the case to OES for further development.[13] IRS executive case-handling procedures did not define a time period within which the Deputy Commissioner was to act on case dispositions.

We collected information on SES cases from two sources: (1) the five specific cases mentioned during the April 1998 Senate Finance hearings, and (2) a 70-case random sample of the SES misconduct case files as previously described, plus 43 more cases from OES tracking logs and

[12]Offices and positions in existence when the procedures were written had changed or disappeared but were still official links in the processing chain.

[13]IRS officials told us that, procedurally, it would be difficult for the deciding official to impose a more severe penalty than what was proposed.

monthly briefing reports, for a total of 113 cases. These 113 cases involved 83 individuals. Again, see appendix I for more details on how we selected the cases to study.

No Cases Showing Retirement Linked to Deputy Commissioner Delays in Case Processing

Of the 113 SES cases we reviewed, we did not find a single instance in which an individual who was ineligible to retire at the time the allegation was filed, retired while the case was pending with the Deputy Commissioner. Overall, of the 83 individuals involved in the 113 cases, 25 people, or 30 percent, had retired from IRS by December 31, 1998.[14] Of these 25 people, 13 retired before their cases were closed or the cases were closed because the individuals retired. At the time of retirement, cases for 2 of the 13 people were pending in the Deputy Commissioner's office, but both of these individuals had been eligible to retire at the time the complaints against them were originally filed. Cases for the remaining 11 of the 13 people either were still being investigated or were pending in OES, that is, they had not yet reached the Deputy Commissioner's office. In doing our analyses, we focused on actual retirements and did not reach general conclusions about eligibility to retire.

As table 4 shows, of the five executive cases mentioned during the April 1998 hearings, two of the executives were already eligible to retire when the allegations against them were filed. We refer to the executives in the five cases as Executives A through E. One of the two eligible executives—Executive B—was still an IRS employee as of September 30, 1998. The other—Executive D—retired while, in OES' view, his case was pending in the Deputy Commissioner's office.[15] Of the three individuals who were not eligible to retire when the allegations against them were filed, one retired 16 months after his case was closed. The other two executives, one of whom was not found culpable, were still employed by IRS as of September 30, 1998.

[14]The 25 individuals do not include people for whom specific retirement dates were unavailable or individuals whose cases were received in OES after they had retired.

[15]Executive D was transferred about 7 months after the Inspection investigation was completed. The Deputy Commissioner considered the case closed with the individual's transfer, but OES was unaware of the Deputy Commissioner's view and did not formally close the case until 3 months after Executive D retired, or 35 months after the transfer.

Table 4: Information on the Five Misconduct Cases Cited at the April 1998 Senate Finance Committee Hearings

SESer	Employment status at our September 30, 1998, cutoff date	Retirement status at time of allegation	Case pending with Deputy Commissioner (months)	Case outcome
A	IRS employee	Not eligible to retire	[a]	Not found to be culpable for violation
B	IRS employee	Eligible to retire	2	Counseled, confirmed in writing
C	Retired	Not eligible to retire	18	Counseled
D	Retired	Eligible to retire	[a]	Transferred
E	IRS employee	Not eligible to retire	48	Counseled, confirmed in writing

[a]Disciplinary file did not document the duration of the Deputy Commissioner's review.

Sources: GAO analysis based on IRS misconduct case files and retirement eligibility information.

IRS records showed that the misconduct cases spent from 2 months to 4 years at the Deputy Commissioner level. See appendix III for more details about the five cases.

Case Processing Not Timely

As shown in table 5, on the basis of our random sample, the total processing time for SES misconduct cases averaged 471 days (almost 16 months) from the date the complaint was filed until the case was closed. Most of this time involved OES case analysis and referral to the recommending official for inquiry (214 days, or about 7 months) and investigation by the recommending official (124 days, or more than 4 months). These averages exceeded IRS' most recent, written case-processing time guidelines, which were 14 and 30 days, respectively. The average total time from OES' receipt of a case to the case's closure was 352 days, compared to a goal of 90 days. As previously mentioned, there was no targeted time frame for the Deputy Commissioner's review. However, on average, cases spent 42 days at this level.

Table 5: Processing Time at Selected Stages in the Disciplinary Process for SES Misconduct Cases

Stages of process	Percentage of sample cases with information[a]	Median number of days	Mean number of days	Required number of days	Range of days
Complaint filed to OIG/Inspection beginning investigation	21	41	60	10-15	0 - 280
Complaint filed to OIG/Inspection declining to investigate	66	40	57	10-15	0 - 306
OIG/Inspection starting investigation to referral to IRS	21	123	130	No standard	7 - 355
OES receipt to transmittal to recommending official (RO)	60	161	214	14	43 - 690
RO's receipt of case to RO's completion of inquiry	56	99	124	30	13 - 514
OES transmittal to deciding official (DO) to DO's decision	57	30	42	No standard	2 - 143
DO's decision to case closure	57	0	12	No standard	0 - 202
OES receipt to case closure	79	252	352	90	13 - 1,275
Overall time: complaint filed to case closure	**79**	**390**	**471**	**No standard**	**104 - 1,467**

Note: Ninety-five-percent confidence intervals surrounding the mean number of days for all processing stages were less than plus or minus 10 percent.

[a]Some percentages were relatively low because not all cases went through every phase, case files did not always include all dates, and open cases still had processing phases to go through.

Sources: GAO analysis based on IRS misconduct case data and executive case-handling procedures.

In addition, we found that some cases took a particularly long time to be resolved. For example, in our sample cases, from the date the complaint was filed to the date the case was closed, 8 cases took at least 2 years, an additional case took more than 3 years, and still another case took longer than 4 years.

In 1992, IRS acknowledged that the best way to prevent employees from retiring before their cases closed was to improve timeliness.[16] Although we found no cases in which individuals ineligible to retire when allegations

[16]IRS' Program to Combat Senior-Level Misconduct: Getting Stronger but Still a Long Way to Go, Forty-First Report by the Committee on Government Operations, Nov. 23, 1992.

were made retired with the case pending before the Deputy Commissioner, the longer it takes to close cases, the more likely that individuals would retire or resign while their cases were open.

Problems With the SES Misconduct Case-Handling Process

Our review and a recent IRS task force report identified numerous problems with the executive misconduct case-handling process.[17] These problems included inadequate staffing, poor communication, inaccurate and incomplete records and files, outdated procedures, conflicts over proposed case dispositions, and internal disagreement about case investigations. These problems contributed to the lengthy case-processing times in the available data and case files.

Lack of IRS Staff Resources

According to IRS officials, IRS' downsizing a few years ago significantly affected OES and field staff resources. From late 1996 through early 1998, OES devoted only one staff year to executive misconduct cases. The staff year was divided between the Director and one employee. In mid-1998, the Director moved to Labor Relations, and the employee retired, leaving OES with no resident expertise. Previously, four or five case experts handled executive cases. In total, according to an IRS official, the office was understaffed for about 18 months, which caused a case backlog. However, the new Chief of OES was able to bring the staffing level up to eight, including two individuals with employee relations backgrounds to act as team leaders. She also used detailees and a technical contractor to reduce the case backlog.

The understaffing issue also extended to the labor relations functions in the regions. These functions supplied the staff that recommending officials used to investigate misconduct cases. When the regional offices were consolidated several years ago, they lost their labor relations functions as well as a central repository for program administration and expertise.

IRS did not enter executive misconduct cases into ALERTS from late 1996 through early 1998. IRS officials told us they did not have enough labor relations experts to properly track cases on ALERTS because the system required significant detail about each case. Instead, it tracked these cases using logs and monthly briefing reports. OES also used the briefing reports to inform the Deputy Commissioner of case status. IRS officials acknowledged that these independent systems often disagreed with each other about the details and status of the cases.

[17] Task Force to Review Handling of Executive, Grade 15 and Inspector General Referrals and Investigations, IRS, July 28, 1998.

Poor Communication

Our review found that poor communication among IRS support staff, the Deputy Commissioner's office, IRS Inspection, and OIG contributed to case-processing delays. As previously mentioned, the Deputy Commissioner considered one case to be closed with the transfer of the individual, but OES was not told to formally close the case. In another instance, the Deputy Commissioner told us that he inadvertently allowed a case to be lost in the system. Case information in the ALERTS, OES, and IRS Inspection tracking systems was also found to be inconsistent and inaccurate in many instances. For example, according to IRS officials, cases recorded as "overaged" in the IRS Inspection system were recorded as "closed" by the field offices, leading to confusion among officials as to whether a case was open or closed and where a particular case was pending at a given time.

An internal IRS study found that many cases had timeliness problems, especially cases that had been referred to IRS from OIG. In certain instances, cases stayed at a particular phase in the process for months before an OES employee inquired about their status. In one instance, for nearly 2 years, OES did not follow up on the status of an OIG investigation. IRS officials told us that these problems occurred primarily because IRS had no contact person for OIG cases before early 1997, and because OES lacked staff resources to properly monitor cases.

Administrative Practices That Raised Concerns

Our review identified several concerns surrounding IRS' files, records, and miscellaneous procedures for executive misconduct cases. Examples included the following:

- Poor filing. Executive misconduct cases were to be filed alphabetically. Several times, we happened upon misfiled cases only because we went through all of the files to draw our sample. Also, in one instance, a closing letter addressed to the executive involved in a case was filed instead of being mailed to the individual. It took nearly 5 months for the error to be discovered and rectified.

- Missing files and records. We requested eight case files for our review that IRS could not provide, even after more than 4 months.

- Incomplete files. In some cases, the case files did not document important information, such as dates, transmittal memorandums, and final case dispositions. In one instance, the case file consisted of a single E-mail message. The case was serious enough to warrant suspending the individual.

- Noncompliance with procedures. In several instances, field staff imposed discipline before the Deputy Commissioner had concurred with the proposed action. Several files contained memorandums to the field staff, reminding them not to impose discipline or close a case until the Deputy Commissioner had indicated his approval. Further, as mentioned in appendix III, a premature disposition occurred in one of our case studies.

Outdated Procedures

According to two 1998 IRS internal studies, outdated procedures led to inefficient case handling and confusion as to who was responsible for what. Because of regional and district consolidations and a national office restructuring, the written, 1994 case-handling procedures no longer accurately depicted the proper flow of cases. Although procedures were informally adjusted and work kept moving, it was not efficient. As a result, ad hoc procedures were developed in each region, leading to communication problems between the regions and the national office. IRS recognized this problem in March 1998 and completed a draft of new case procedures in July 1998. During that time, the Internal Revenue Service Reform and Restructuring Act of 1998[18] established the Treasury Inspector General for Tax Administration (TIGTA), and procedures were again revised to accurately depict TIGTA's role. According to IRS officials, draft procedures were sent to IRS field offices for comment in mid-March 1999.

Internal Disagreements

Another factor contributing to case-processing delays was internal disagreement surrounding the proper level of discipline to impose in particular cases. In our case studies, we noted instances in which internal disputes significantly lengthened case-processing times.[19] OES officials told us that this situation occurred much more frequently in the past. However, over the past few years, IRS has made a concerted effort to resolve disputes below the Deputy Commissioner level.

As shown in table 6, in the cases involving Executives C and D, disagreements were serious. In fact, they warranted formal statements of differences. In each of these two cases, OES endorsed a stronger level of discipline than that suggested by the recommending official. In the case of

[18]P.L. 105-206.

[19]See appendix III for information on these disagreements.

Executive E, IRS officials disagreed among themselves over the facts of the case. Although an IRS Internal Security investigation confirmed the allegations, the Deputy Commissioner was not comfortable with the allegations' correctness. However, he eventually agreed that the allegations had some merit. The Deputy Commissioner issued a letter of counseling 5-½ years after the complaint was filed, which was more than 4 years after he received the case.

Table 6: Disputes Surrounding Case Dispositions in Three Executive Misconduct Cases

SESer	Recommending official's proposed disposition	OES' original proposed disposition	Final disposition
C	Close without action	Letter of reprimand [a]	Closed without action, but employee was counseled
D	Counseling	15-day suspension and consideration of transferring the employee	Transferred, according to Deputy Commissioner; according to OES, closed without action "administratively" due to retirement[b]
E	Letter of reprimand	Letter of reprimand[c]	Letter of counseling

[a]OES subsequently changed its position and recommended a disposition of "close without action."

[b]See footnote 15 of this report.

[c]The proposed disposition was later changed to "letter of reprimand or letter of counseling."

Source: GAO analysis based on IRS misconduct case files.

Recent IRS Actions

As of March 1999, an IRS disciplinary review team was proposing changes to overcome problems with complaints processing. One of the units of its proposed Commissioner's Review Group was to provide labor relations support for SES and other cases. This unit would have 11 employees. In addition, the Commissioner's Review Group would have a contractor available to supplement it and support field investigations when management believed help was needed. As previously mentioned, the group would also be responsible for overcoming communication and coordination problems among complaint-processing systems.

Number of Whistleblowing Reprisal Cases and Extent of Information on Alleged IRS Retaliation Against Taxpayers

IRS did not comprehensively collect and analyze information on reprisals against IRS employee whistleblowers or on IRS retaliation against taxpayers. Some information was available on the number of IRS-related whistleblowing reprisal cases resolved by the two agencies responsible for considering such cases. For example, one of the agencies, OSC, received 63 IRS whistleblower reprisal matters over the fiscal years 1995 through 1997 and obtained action from IRS favorable to employees in 4 cases. Concerning allegations of IRS retaliation against taxpayers, we reported in 1996 and 1998 that IRS did not systematically capture information needed to identify, address, and prevent such taxpayer abuse. During this review, we also found limited and incomplete IRS information of past revenue agent retaliation against taxpayers.

The IRS Restructuring and Reform Act of 1998 included several provisions related to abuse or retaliation against taxpayers, their representatives, or IRS employees. As of March 1999, the IRS disciplinary review team was proposing how data needed to fulfill the act's requirements would be assembled.

Reprisals Against Whistleblowers

It is against the law to take a personnel action as a reprisal against a whistleblower.[20] More specifically, an employee with personnel authority is not allowed to take, fail to take, or threaten a personnel action against an employee because the employee made a protected disclosure of information. Protected disclosures include disclosures that an employee reasonably believes show a violation of law, rule, or regulation; gross mismanagement; gross waste of funds; or an abuse of authority.

If federal employees believe they have been subject to reprisal, they may pursue their complaint through the agency where they work. Alternatively, they may direct their complaint to OSC or MSPB.

We could not determine the extent of reprisal against whistleblowers because IRS did not track information on whistleblower claims of reprisal. According to a knowledgeable IRS official, until recently, the ALERTS database did not have a code to capture information on retaliation associated with individuals, including reprisal against whistleblowers. However, OSC and MSPB provided the number of complaints filed with them.

Office of Special Counsel Cases

Under the Whistleblower Protection Act of 1989, OSC's main role is to protect federal employees, especially whistleblowers, from prohibited

[20] 5 U.S.C. 2302(b)(8).

personnel practices. In this role, OSC is to act in the interests of the employees by investigating their complaints of whistleblower reprisal and initiating appropriate actions. Whistleblowing employees may file a complaint with OSC for most personnel actions that are allegedly based on whistleblowing.

As shown in table 7, between fiscal years 1995 and 1997, OSC received 63 whistleblowing reprisal matters related to IRS, compared to 2,092 for the federal government as a whole. However, OSC concluded that a much smaller number of IRS and governmentwide reprisal matters involved potentially valid statutory claims and therefore warranted more extensive investigation. OSC closed cases without further action for many reasons, including lack of jurisdiction over an agency or employee, absence of an element needed to establish a violation, and insufficient evidence.

Table 7: OSC Whistleblower Reprisal Matters for Fiscal Years 1995-97

Category	IRS	Governmentwide
Matters received	63	2,092
Matters referred for field investigation	13	621
Actions favorable to employees	4	237

Source: OSC.

Since IRS had about 100,000 employees during this period, the ratio of matters received to the number of employees was less than a tenth of 1 percent. Similarly, although OSC received whistleblowing reprisal matters from throughout the federal government, the number of matters received was an extremely small percentage of the civilian employee federal workforce that numbered almost 2 million people.

As table 7 further shows, at times both IRS and the federal government took "favorable actions" as a result of OSC investigations. In general, favorable actions are those that may directly benefit the complaining employee, punish the supervisor involved, or systematically prevent future questionable personnel actions. Agencies take these actions after receiving a request from OSC or with knowledge of a pending OSC investigation. The four favorable actions taken by IRS between fiscal years 1995 and 1997 entailed removing disciplinary letters from a personnel file, correcting an employee's pay level, presenting a performance award, and promoting an employee retroactively and providing back pay.

Merit Systems Protection Board Cases

Employee complaints of whistleblowing reprisal may reach MSPB in two ways. First, if employees do not obtain relief through OSC, they may appeal to MSPB. Second, employees may appeal directly to MSPB without

first going through OSC. They may do this for actions including adverse actions, performance-based removals or reductions in grade, denials of within-grade salary increases, reduction-in-force actions, and denials of restoration or reemployment rights. MSPB categorizes both types of appeals as "initial appeals."

MSPB administrative judges throughout the country decide initial appeals. The judges either dismiss the cases or decide them on their merits. Common reasons for dismissing cases are that they do not raise appealable matters within MSPB's jurisdiction or that they are not filed within the required time limit. The parties to the dispute also may enter into a voluntary settlement, sometimes with assistance from the judge. Cases not dismissed or settled are adjudicated on their merits. Possible outcomes are that the agency action may be affirmed or reversed or the agency penalty may be mitigated or otherwise modified.

A party dissatisfied with a case decision may file a "petition for review" by MSPB's three-member board. The board may grant a petition if it determines that the initial decision was based on an erroneous interpretation of law or regulation or if new and material evidence became available. It may dismiss a petition that is untimely, withdrawn by the parties, or moot. Petitions may also be denied or settled.

As with OSC, the number of whistleblowing reprisal decisions issued by MSPB was very small compared to the size of the IRS and federal workforces. As shown in table 8, for fiscal years 1995 through 1997, MSPB decided 45 initial appeals of whistleblowing reprisal allegations involving IRS. Similar to MSPB's rulings involving the rest of the federal government, MSPB dismissed the majority of initial appeals involving IRS and denied the majority of petitions for review. However, settlements occurred in more than half of the initial appeals that were not dismissed, which could mean that employees were getting some relief. MSPB also occasionally remanded petitions for review, that is, sent them back for further consideration. MSPB ordered IRS corrective action (canceling an employee's removal and mandating back pay) in one initial appeal case when due process measures unrelated to reprisal were not followed. To our knowledge, except for this case, MSPB did not reverse any IRS actions regarding alleged whistleblower reprisal matters over the 3-year period. For government initial appeals as a whole, MSPB ordered agency

corrective action 11 times and otherwise reversed agency actions in 24 instances.[21]

Table 8: Number of MSPB Decisions Covering Whistleblower Disclosures for Fiscal Years 1995-97

Decision	IRS	Treasury	Governmentwide
Initial appeals			
Dismissed	27	63	882
Corrective action not ordered	1	6	70
Corrective action ordered	1	3	11
Settled	11	22	324
Affirmed	4	11	127
Reversed	0	0	24
Modified/Mitigated	1	4	21
Total	**45**	**109**	**1,459**
Petitions for review			
Dismissed	1	1	23
Settled	0	2	14
Denied	13	23	229
Denied then reopened	0	3	26
Granted - affirmed	0	2	10
Granted - reversed	0	0	7
Granted - remanded	3	5	32
Granted - mitigated	0	1	1
Granted - other	1	1	4
Other	0	0	3
Total	**18**	**38**	**349**

Sources: Information compiled by GAO from MSPB, IRS, and the Internet.

Extent of Information on IRS Retaliation Against Taxpayers

Before the IRS Reform and Restructuring Act of 1998, IRS did not systematically collect information on retaliation against taxpayers. As we have previously reported,[22] IRS information systems were designed for tracking disciplinary and investigative cases or correspondence and not for identifying, addressing, or preventing retaliation against taxpayers. The systems contained data elements that encompassed broad categories of employee misconduct, taxpayer problems, and legal action. Information in the systems related to allegations of taxpayer abuse was not easily distinguishable from information on allegations not involving taxpayers.

[21]Although we did not have any governmentwide statistics for 1998, we did have 1998 information for IRS. The only decisions in these cases that could have been construed to be favorable to the original complainants were 6 settlements out of the 25-case total.

[22]GAO/GGD-95-14, GAO/GGD-96-176, and GAO/T-GGD-98-63.

Consequently, we found limited information on potential taxpayer abuse in IRS information systems, as shown in table 9.[23]

Table 9: IRS Information on Retaliation Against Taxpayers

Database	Results of GAO queries
Internal Security Management Information System	IRS found information on two cases of confirmed retaliation in 4 years but said coding in database could not ensure comprehensiveness.
Automated Labor and Employee Relations Tracking System	Until recently, database did not include a code for retaliation for cases associated with individuals.
Problem Resolution Office Management Information System	Database did not include a code for retaliation.
Executive Control Management System	IRS case summaries described four cases as taxpayer retaliation during 1 year for this system, in existence since mid-1997. According to IRS, the system's coding was becoming more specific.

Source: GAO analysis of various IRS databases.

Restructuring Act Reporting Requirements

Recent changes in the law and IRS' progress on information systems are intended to improve IRS' ability to determine the extent to which its employees might have retaliated against taxpayers or employees for whistleblowing. Enacted in July 1998, the IRS Restructuring and Reform Act of 1998 included several provisions related to abuse or retaliation against taxpayers, their representatives, or IRS employees.

Section 1203 of the act provided for firing IRS employees who commit any 1 of 10 acts. For example, the act required the Commissioner of Internal Revenue to fire any IRS employee for

"violations of the Internal Revenue Code of 1986, Department of Treasury regulations, or policies of the Internal Revenue Service (including the Internal Revenue Manual) for the purpose of retaliating against, or harassing, a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service" …or … "threatening to audit a taxpayer for the purpose of extracting personal gain or benefit."

The act also required the Treasury Inspector General for Tax Administration to include in its annual report summary information about any termination under section 1203 or about any termination that would have occurred had the Commissioner not determined there were mitigating factors. In March 1999, the disciplinary review team previously described was proposing that the Commissioner's Review Group report these data to the Inspector General as well as broader data on the number of taxpayer complaints and the number of taxpayer abuse and employee

[23]For information on specific allegations of retaliation against taxpayers, see Tax Administration: Investigation of Allegations of Taxpayer Abuse and Employee Misconduct Raised at Senate Finance Committee's IRS Oversight Hearings (GAO/OSI-99-9R, May 24, 1999).

misconduct allegations. The group would collect, consolidate, and validate data from existing systems and obtain supplemental information to fill gaps. However, according to the team, the group would have to qualify the initial reports to the Inspector General, waiting for data reliability to be established.

Alleged Improper Zeroing Out or Reduction of Recommended Tax

With respect to allegations of improper zeroing out or reductions of recommended tax by IRS managers, we found no evidence to support the allegations in the eight specific cases referred to us by the IRS employees who testified at the hearings. On the other hand, IRS does not systematically collect data on the extent to which additional taxes recommended by IRS auditors are zeroed out or reduced without a basis in law or IRS procedure. While there are no data on improper reductions, there are data on IRS recommendations of additional tax that were not ultimately assessed. On the basis of such data, we recently reported that the majority of recommended additional taxes was not assessed. We attributed this result to a variety of factors, including the complexity of the tax code and the overreliance on taxes recommended as a measure of audit results.

Background

IRS' process for doing audits of taxpayers' returns and closing related disputes over additional recommended taxes has several steps. In an audit, an IRS auditor usually reviews the taxpayer's books and records to determine compliance with tax laws and identify whether the proper amount of tax has been reported. To close an audit, the auditor may recommend increasing, decreasing, or not changing the tax reported. If a taxpayer disagrees with the recommendation at the close of the examination, the taxpayer may request an immediate review by the auditor's supervisor.

If the taxpayer agrees with the recommended additional tax or does not respond to IRS' notices of examination results, IRS assesses the tax. With an assessment notice, IRS formally notifies the taxpayer that the specified amount of tax is owed and that interest and penalties may accrue if the tax is not paid by a certain date. The assessed amount, not the amount an auditor recommends at the end of the audit, establishes the taxpayer's liability.

If the taxpayer disagrees with an examination's recommendation, the recommendation may be protested to IRS' Office of Appeals or the dispute can be taken to court.[24] The Office of Appeals settles most of these

[24]Taxpayers may appeal to Tax Court without paying the tax or pay the tax and claim a refund in the U.S. Court of Federal Claims or a federal district court.

disputes, and the remainder are docketed for trial. Agreements made in settlements and court decisions determine the assessed part of the disputed tax.

The issue of reductions in recommended tax was raised in the Committee's hearing by IRS auditors who alleged that some supervisors "zeroed out" or reduced the results of audits—that is, the audits were closed with no or reduced recommended additional tax, without a basis in law or IRS procedure. The witnesses further alleged that the reasons for zeroing out included retaliating against auditors to diminish their chances for promotion, favoring former IRS employees in private practice, and exchanging zeroing out for bribes and gratuities from taxpayers.[25]

Data Collected by IRS

IRS has not systematically collected data on the extent to which additional taxes recommended by auditors have been zeroed out or reduced without a basis in law or IRS procedure. In particular, IRS had no data on supervisors' improperly limiting auditors' recommendations of additional tax before an audit was closed. However, IRS collects data on the amounts of recommended taxes that were not assessed and the number of examinations closed with no change in tax liability.

One of our recent reports illustrates the lack of data on the extent to which supervisors improperly limit auditors' recommendations of additional tax.[26] We found that an estimated 94 percent of IRS workpapers lacked documentation that the group manager reviewed either the support for adjustments or the report communicating the adjustments to the taxpayer. IRS managers acknowledged that because of competing priorities, they could not thoroughly review workpapers for all audits. IRS officials commented that supervisory reviews were usually completed through other processes, such as reviewing time spent on an audit, conducting on-the-job visits, and discussing cases with auditors. We recommended that the IRS Commissioner require all audit supervisors to document their review of all workpapers to help ensure the quality of all examinations.

In another recent report, we found that most additional taxes recommended by IRS auditors were not assessed. Table 10 shows taxes recommended by IRS auditors and the percentage of these amounts assessed for audits closed in fiscal years 1992 through 1997. During these

[25]Further information on these issues is in GAO/OSI-99-9R.

[26]IRS Audits: Workpapers Lack Documentation of Supervisory Review (GAO/GGD-98-98, Apr. 15, 1998).

years, at most, 41 percent of the additional taxes recommended during audits were assessed.

Table 10: Status of Additional Amounts Recommended for Individual, Corporate, and Other Audits Closed in Fiscal Years 1992-97, as of September 27, 1997

Dollars in billions

Fiscal year	Recommended amount	Percentage assessed
1992	$24.8	34
1993	22.0	40
1994	22.6	41
1995	27.2	40
1996	30.8	36
1997	31.7	38

Note: Dollars are in current dollars.

Source: Tax Administration: IRS Measures Could Provide a More Balanced Picture of Audit Results and Costs (GAO/GGD-98-128, June 23, 1998).

Other IRS data showed that many examinations were concluded with no recommended additional tax. For example, according to IRS' Fiscal Year 1997 Data Book, 24 percent of the corporate examinations completed during fiscal year 1997 were closed with no proposed tax change.

Reasons for Reducing Recommended Tax

Our previous work identified several factors that, in part, explained why recommended additional taxes were not assessed after audits were closed.[27] Factors like these could also explain some actions by supervisors to zero out or reduce recommended tax amounts prior to audits being closed. However, IRS does not collect data on the extent to which these factors, or others, contribute to supervisors' decisions prior to audits being closed.

We reported that the complexity and vagueness of the tax code was one explanation for recommended taxes not being assessed after a corporate audit was closed. Because of the complexity and vagueness of the tax code, IRS revenue agents had to spend many audit hours to find the necessary evidence to clearly support any additional recommended taxes. In addition, differing interpretations in applying the tax code to underlying transactions increased the likelihood of tax disputes. Because corporate representatives usually prevailed in Appeals or the courts, additional taxes recommended were often not actually assessed.

We also reported that aspects of the corporate audit process for large corporations also made it difficult for revenue agents to develop enough support to recommend tax changes that could survive a taxpayer appeal.

[27] Tax Administration: Factors Affecting Results From Audits of Large Corporations (GAO/GGD-97-62, Apr. 17, 1997).

For example, revenue agents worked alone on complex, large corporation audits with little direct assistance from district counsel or their group managers. In addition, when selecting returns for audit, the agents had little information on previously audited corporations or industry issues to serve as guideposts. Finally, the agents had difficulty obtaining relevant information from large corporations in a timely manner.

IRS Internal Audit[28] recently cited several factors that contributed to low productivity, as partially manifested by high no-change rates, in the Manhattan District Office. IRS acknowledged that in 1995, it took aggressive action to close old examinations. Also, audit group managers in Manhattan and two other districts did not have enough time to perform workload reviews to ensure quality examinations. Manhattan was below the IRS regional average in complying with IRS audit standards for such things as depth of examinations and workpaper support for conclusions.

We also reported that relying too heavily on additional taxes recommended as a measure of audit results might create undesirable incentives for auditors. We found that audits of large corporations raised concerns that relying on recommended taxes as a performance indicator might encourage auditors to recommend taxes that would be unlikely to withstand taxpayer challenges and thus not be assessed.[29] Supervisors on guard against this incentive, which might have also influenced them, might have been accused of improper zeroing out. In this connection, we recently reported that IRS examination and collection employees perceived that managers considered enforcement results when preparing annual performance evaluations.[30]

IRS is increasing its efforts to ensure that enforcement statistics are not used to evaluate its employees. In commenting on our report on enforcement statistics, the Commissioner stated that IRS was taking several actions to ensure that all employees comply with its policies on the proper use of enforcement statistics. These actions included redrafting applicable sections of the Internal Revenue Manual, establishing a panel responsible for answering all questions IRS received on enforcement statistics, and establishing an independent review panel to monitor compliance with restrictions on using enforcement statistics. In addition,

[28]Productivity of the General Examination Program in the Manhattan District, IRS Internal Audit Report, Reference No. 680904, Jan. 30, 1998.

[29]GAO/GGD-98-128.

[30]IRS Personnel Administration: Use of Enforcement Statistics in Employee Evaluations (GAO/GGD-99-11, Nov. 30, 1998).

in January 1999, IRS proposed establishing a balanced system of organizational measures focusing on quality and production measures, but not including tax enforcement results.

Witness Allegations of Improper Zeroing Out

Several of the individual allegations made by IRS employees that we reviewed involved the issue of improper zeroing out of additional taxes by IRS managers. The eight specific cases in question involved large organizations, and the issues generally related to complex financial transactions.

We found no evidence to support the allegations that IRS managers' decisions to zero out or reduce proposed additional taxes were improper. Instead, we found that the managers acted within their discretion and openly discussed relevant issues with involved IRS agents, technical advisors, and senior management. Ultimately, the decisions were approved by appropriate individuals and were documented in the files.

Several of the cases demonstrated some of the concerns and issues we have raised in our prior work concerning audits of large corporations. For example, the complexity and vagueness of the tax code create legitimate differences in interpretation and administering the tax system creates a tension in seeking a proper balance between the tax administrator's need for supporting documentation and the taxpayer's burden in providing such information.

Equal Employment Opportunity Issues in IRS' Midwest District Office

IRS has acknowledged problems related to the EEO climate in its Milwaukee, WI, area offices and over the last few years has moved to address them. After a finding of discrimination in 1995 in the case of one employee, a new district director initiated an internal review, and, afterwards, IRS appointed an outside review team to study the EEO situation. The internal study made 53 recommendations in broad categories related to creating a supportive work culture, understanding issues, preparing employees for promotion, and examining the promotion process. The outside study found no discriminatory hiring or promotion practices, but it did make recommendations related to hiring and promotions, among other things.

Background

Problems with the EEO climate in IRS' Midwest District Office, which is headquartered in Milwaukee, date back several years. In 1995, Treasury agreed with an Equal Employment Opportunity Commission administrative judge who found that a district employee was the victim of discrimination and retaliation. Also, Wisconsin congressional offices received EEO-related complaints from IRS employees, and internal and

external groups were critical of district EEO matters. According to the District Director who arrived in early 1996, the district was perceived to run on "good-old-boy" connections. Also, the district, which was created in 1996 through the merger of three smaller districts, was facing possible layoffs, further contributing to tense labor-management relations.

Two Studies of the EEO Climate Made Numerous Recommendations

To try to better identify some of the underlying causes of the problems in IRS Milwaukee area offices, the District Director commissioned an IRS team in April 1996 to assess the EEO climate and make recommendations for corrective action. As part of its review, the team distributed a survey to all Milwaukee area district employees to gather EEO-related perceptions.

On the basis of its review of the survey results and other data, in December 1997, the team reported that a lack of trust and goodwill pervaded the work environment. The survey revealed that people in all groups (e.g., males, females, nonminority whites, African Americans, and Hispanics) believed they were less likely than people in other groups to receive promotions, significant work assignments, training opportunities, and formal recognition or rewards. Specific problems cited in the report included little recent diversity training, a belief by certain minority employees that stereotypes negatively affected their treatment, difficulties in widely disseminating information, gaps in EEO communication, no formal mentoring program, and much dissatisfaction with how employees were selected for promotion.

On the basis of its findings, the assessment team made 53 recommendations in 4 categories. The categories covered creating a supportive culture, creating a greater understanding of issues, preparing employees for promotion, and examining ways that employees were selected for promotion. In a 5th category—examining the representation of minorities in the district—the team made 21 more recommendations that were expected to be suspended pending an IRS analysis of the ramifications of certain court cases.

The District Director who commissioned the climate assessment report praised it and the process that produced it. During his tenure, many actions were taken to address the district's EEO problems. For example, (1) policy statements were issued tolerating no discriminatory behavior, (2) minority representation in the Director's and EEO offices was increased, (3) the EEO office was given more privacy, (4) baselines were set to measure the impact of any improved hiring or promotion policies, (5) minorities were promoted to positions of authority, and (6) training was provided. Goals were also set to open communications with

employees, employee and community groups, and the media; treat individual performance cases fairly; and not debate emotionally charged personnel issues in the press.

In spite of the climate assessment team's efforts and the various changes made or planned, the district's EEO problems persisted. Consequently, IRS and certain members of the Wisconsin congressional delegation agreed that another team should independently review the situation.[31]

To try to preserve its independence, the team purposefully had no representation from IRS. Also for this reason, it solicited no IRS comments on its draft report.

The team interviewed more than 100 people and examined over 130 records and files, although it did not scientifically select interviewees or broadly survey all district employees. Team members told us they tried to ensure broad coverage by talking to many people and to all sides of general issues. Moreover, they relied on the climate assessment survey to summarize perceptions. They also, however, relied extensively on anecdotal information without determining its objectivity or accuracy.

In August 1998, the team reported, among other things, that (1) many employees had no confidence in the EEO process and feared retaliation if they filed complaints or participated in a way considered adversarial to management, (2) separating EEO functions into outreach and traditional EEO/counseling components was not working effectively, (3) the counseling program was in disarray, and (4) confusion existed over the role of Treasury's Regional Complaint Center in the formal EEO complaint process. Also, although anecdotes collected by the team did not support a sweeping indictment of Milwaukee IRS management practices, the report concluded that, intentionally or not, some practices perpetuated a work environment that was historically insensitive to the concerns of female and minority employees.

On the basis of its review, the team made recommendations in different areas. For instance, many recommendations dealt with the team's findings related to the district's EEO process for resolving issues in a precomplaint stage and its relationship to Treasury's formal complaint process. The team also made recommendations relating to hiring and promotions in spite of finding no discriminatory pattern or practice in promoting or

[31]Members of the congressional delegation were Senators Russell Feingold and Herb Kohl and Representatives Tom Barrett and Gerald Kleczka.

hiring minorities or women. The report noted that African Americans in IRS' Milwaukee and Waukesha, WI, offices appeared underrepresented when compared to the Milwaukee civilian labor force.[32]

Although district managers and representatives of employee groups disagreed with many of the issues and assertions in the report, there was general agreement with many of the recommendations. For instance, the head of the diversity office at the time of the study informed us that he agreed with the substance of, had actually taken action related to, or would favor forwarding to Treasury many of the report's recommendations.

After the report was released, IRS initiated several significant actions to address problems identified. Chief among these was appointing a new District Director who arrived in the district in mid-November 1998 with a stated commitment to overcome past problems. In that regard, she described to us her intent to open communication channels and deal with disrespect, nastiness, and mean-spiritedness at all levels. She emphasized her themes of communication, responsibility, and accountability and told us that on her second day in the district she discussed these themes at an off-site meeting with top managers and union, EEO, and diversity officials.

The new District Director also expressed to us her commitment to work with various interest groups. In addition, she combined the district's EEO and diversity functions, made EEO positions permanent as opposed to rotational, and invited a union representative to be present for interviews for a new EEO officer.

The new District Director stated that these actions were on the right track, but because of the long and contentious history of EEO problems in the district, improvements and success will take time. She also noted that better communication and cooperation among IRS and the various internal and external stakeholders will be extremely important in dealing with the district's long-standing problems.

Agency Comments

In commenting on a draft of this report, the Commissioner of Internal Revenue described IRS actions on the issues we noted. For instance, he shared our concern that IRS needed to improve how it managed executive misconduct cases. He noted that the recently created Commissioner's

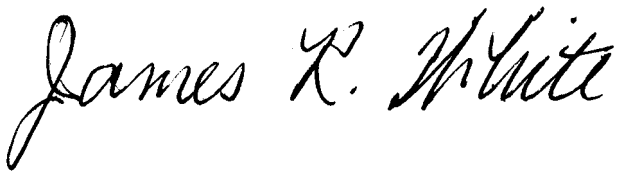
[32]The head of the study team acknowledged that the proper statistical comparison was with the local qualified labor force, not the civilian labor force. However, according to another study team member, the relevant qualified labor force statistics were not available.

Complaint Processing and Analysis Group, proposed as the Commissioner's Review Group, will coordinate IRS' efforts to improve complaint information, especially relating to alleged reprisal against whistleblowers, so that complaints will be promptly and fairly resolved. IRS will also share more information with employees and the public on responses to reprisals and other complaints to highlight a message that all employees will be held accountable for their actions. The full text of the Commissioner's comments is reprinted in appendix IV.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies to Senator Daniel Patrick Moynihan, the Ranking Minority Member of the Senate Committee on Finance; the Honorable Charles O. Rossotti, Commissioner of Internal Revenue; other interested congressional committees; and other interested parties.

This work was done under the direction of Joseph E. Jozefczyk, Assistant Director for Tax Policy and Administration Issues. Other major contributors are listed in appendix V. If you have questions, you may contact me on (202) 512-9110.

Sincerely yours,



James R. White
Director, Tax Policy
and Administration Issues

Contents

Abbreviations

ALERTS	Automated Labor and Employee Relations Tracking System
CWA	closed without action
DO	deciding official
EEO	equal employment opportunity
GS	general schedule
IRS	Internal Revenue Service
MSPB	Merit Systems Protection Board
OES	Office of Executive Support
OIG	Office of Inspector General
OLR	Office of Labor Relations
OSC	Office of Special Counsel
RO	recommending official
SES	Senior Executive Service
TIGTA	Treasury Inspector General for Tax Administration

Objectives, Scope, and Methodology

We organized our work to bring together information bearing on the five issues contained in your May 21, 1998, request letter. Accordingly, our objectives were to

(1) determine if senior Internal Revenue Service (IRS) managers received the same level of disciplinary action as line staff;

(2) determine to what extent, if any, the IRS Deputy Commissioner might have delayed action on substantiated cases of employee misconduct until senior managers were eligible to retire;

(3) ascertain the extent to which IRS employees might have retaliated against whistleblowers and against taxpayers or their representatives who were perceived as uncooperative;

(4) determine the extent to which IRS employees might have zeroed out or reduced the additional tax recommended from examinations for reasons not related to the merits of the examinations; and

(5) describe equal employment opportunity (EEO) issues in IRS offices in the Milwaukee metropolitan area.

Our scope and methodology related to each of these objectives follow.

Disciplinary Actions for Senior Executive Service and Lower-Level Staff

To compare disciplinary experiences of Senior Executive Service (SES) and lower-level employees, we matched data accumulated by sampling senior executives' misconduct cases against data for lower-level employees extracted from IRS' broader disciplinary database, the Automated Labor and Employee Relations Tracking System (ALERTS). We compiled general statistics on how long senior executive cases took by collecting information from every second nontax SES case file in IRS' Office of Executive Support (OES) that was active sometime between January 1, 1996, and June 30, 1998.[1] Our sample included 70 cases.

For each case in our sample, we extracted and recorded data from the relevant case file. These data included issues involved, processing dates, information on whether allegations were substantiated by investigators, disciplinary actions proposed and adopted, and information related to retirement.

[1]We excluded cases related to employees' tax compliance because they were different in nature from the cases raised at the April 1998 Senate Finance Committee hearings.

For lower-level employees, that is, general schedule (GS) employees, we obtained selected parts of the ALERTS database from IRS. We ran our statistical analyses on ALERTS cases that IRS' Office of Labor Relations received between January 1, 1996, and June 30, 1998, and on cases that were closed within that period. More specifically, we focused on administrative and IRS Inspection Service cases within ALERTS because they were the categories in which conduct matters were found. Although we did not audit ALERTS, IRS officials told us that this data system had over the years had flaws, but they also told us it was better than it used to be. Because ALERTS was the only source of information available on lower-level disciplinary actions, we used it to the extent that it had information comparable to what we collected on senior-level cases.

We also reviewed recent internal IRS and independent studies of IRS' disciplinary systems and interviewed IRS officials about their plans for revamping the systems. One IRS study we reviewed used the lower-level disciplinary database to assess the effect of IRS' using a guide to determine appropriate disciplinary action. We also became familiar with the Douglas Factors, shown in appendix II, governing disciplinary actions imposed and asked IRS officials about the differences, if any, they perceived between SES and lower-level cases.

Alleged Delays by IRS Deputy Commissioner on SES Misconduct Cases

We examined the question of alleged delays in dealing with cases of alleged misconduct by senior executives by taking several steps. First, we studied in depth the five specific cases mentioned in the April 1998 hearings. This involved examining investigative and personnel files as well as files maintained by OES. In addition, we interviewed various IRS officials, including the Deputy Commissioner, about these cases.

In addition, we used the 70-case sample of senior executive cases previously described to obtain more broad-based information about any possible delays. Although most of our analyses were based on this sample, to learn more about the cases that took the most time, we also examined every case file IRS could find that appeared on lists of cases awaiting action at OES for at least 90 days during the January 1, 1996, through June 30, 1998, period we were studying. We also examined cases that appeared on logs that IRS kept so we could better ensure we were not overlooking cases we did not otherwise encounter for the period. In all, we examined the 70 cases in our sample plus 43 more cases on lists and logs for a total of 113 cases. Because some individuals were involved in more than 1 case, the 113 cases we analyzed covered 83 senior executives. We extracted the same type of information from each of the case files that we extracted

from the sampled case files. Examining lists, logs, and files allowed us to see if recordkeeping practices might have contributed to any delays.

To examine the relationship between case-processing and retirement dates, we analyzed where in the case-processing sequence the retirement dates provided us by OES fell. In instances in which OES was also able to readily provide retirement eligibility dates, we considered them in examining processing timeliness as well.

Number of Whistleblowing Reprisal Cases and Extent of Information on IRS Retaliation Against Taxpayers

To tabulate the number of whistleblowing reprisal cases, we obtained information from the Office of Special Counsel (OSC) and the Merit Systems Protection Board (MSPB). We did this for the number of cases involving IRS employees, and for contextual purposes, for cases from throughout the federal government.

For governmentwide data, we used either information already published or data generated specifically for us. For IRS data, the agencies did special searches of their databases. We did not audit the OSC or MSPB data systems. Because in the MSPB data system not all IRS cases could be isolated, we examined actual case rulings that MSPB gathered for us or that we located on the Internet, looking for Department of the Treasury cases that were really IRS cases. For Treasury cases for which MSPB was not able to give us timely information and information was not on the Internet, we asked IRS to identify whether they involved IRS employees.

In looking for information on IRS employees who might have retaliated against taxpayers or their representatives who were perceived to be uncooperative, we studied our reports on taxpayer abuse. In addition, we interviewed IRS officials and investigated entries under specific codes in various databases to see if relevant issues appeared. Finally, we discussed with IRS officials changes to the information systems that might be coming in the future.

Alleged Improper Zeroing Out or Reduction of Recommended Tax

Concerning information on the improper zeroing out or reduction of additional tax recommended, we studied our and Inspection Service reports dealing with examination issues related to audit results. We specifically considered our and IRS information on the extent to which IRS audit recommendations were actually assessed and the factors that could explain the results.

EEO Issues in IRS' Midwest District Office

To describe EEO issues in the Milwaukee area, we examined the report of an outside team studying the program and the documents that the team accumulated in doing its work, including an IRS internal EEO climate

assessment study. We also interviewed key study participants and affected parties in Washington, D.C., and Milwaukee to better understand what the EEO climate in the area was, how the study report was done, and what had happened since the report was finished.

In addition to addressing the concerns of the Senate Committee on Finance, we planned our work to respond to a mandate in the Conference Report on the IRS Restructuring and Reform Act of 1998. The conferees intended for us to review the study team report.

We did our work in Washington, D.C., and Milwaukee between June 1998 and March 1999 in accordance with generally accepted government auditing standards.

The Douglas Factors

The Douglas Factors are as follows:[1]

- The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
- the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- the employee's past disciplinary record;
- the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;
- consistency of penalty with those imposed upon other employees for the same or similar offenses;
- consistency of the penalty with the applicable agency table of penalties;
- the notoriety of the offense or its impact on the reputation of the agency;
- the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
- potential for employee's rehabilitation;
- mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
- the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

[1]Douglas v. Veterans Administration, 5 M.S.P.R. 280 (1981).

Summaries of Alleged Senior-Level Misconduct Cases

This appendix summarizes information about the five senior-level misconduct allegations cited in the April 1998 Senate Finance Committee hearings. The summaries include information about when the executives were eligible to retire and about whether their eligibility dates might have related to how their cases were processed. We refer to the executives in these five cases as Executives A through E.

Executive A Allegations

An IRS employee filed a complaint that Executive A and two other IRS employees violated IRS ethics rules. The IRS employee also alleged that Executive A and the two other employees retaliated against her for reporting the ethics violations. The alleged violations included manipulating a rating system, giving an improper award, falsifying records, and not reporting time card fraud, although Executive A was only alleged to be involved in the last violation. Treasury's Office of Inspector General (OIG) did not find that Executive A was culpable for ethics violations but found that the other two employees were culpable. IRS attorneys reviewing the case concluded that the information in the OIG report did not demonstrate misconduct on Executive A's part.

Executive A was not eligible for retirement when the allegation was made or when the OIG investigation was closed.

Executive B Allegations

This case started when the OIG received an anonymous allegation that Executive B abused travel authority.[1] IRS officials reviewed the allegation and found that Executive B had authorized unjustified travel expenditures. Local management then counseled Executive B that all expenditures needed to be authorized according to IRS procedures. This counseling was confirmed in writing. However, contrary to IRS policy, the counseling took place before the Deputy Commissioner concurred with the proposed case resolution.

Executive B was already eligible for retirement at the time the allegation was made.

Executive C Allegations

The OIG received an anonymous complaint that Executive C was abusing official travel. The OIG report concluded that Executive C made personal use of some travel benefits earned on government travel.

The offices considering the case disagreed among themselves over the facts, the adequacy of the investigation, and the steps to be taken next. The

[1]The allegation included two other issues that were immediately closed because they had been previously reviewed.

Director of IRS' Human Resources Division, which was involved in executive misconduct cases earlier in the 1990s, advocated a reprimand, but the recommending official thought that significant circumstances mitigated any disciplinary action. OES prepared a statement of differences and recommended a reprimand.[2] A few months later, the recommending official, finding no abuse and unclear IRS guidance in the area, recommended closing the case without action but cautioning the executive. The next month, the OES official who previously recommended a reprimand sent the case to the Deputy Commissioner, this time agreeing with the recommending official's position. A few months after that, the OIG reminded the Deputy Commissioner of the previous year's report and requested appropriate action. Later, OIG officials told OES that they disagreed with OES' recommendation to close the case without action. Finally, OES wrote the Deputy Commissioner reaffirming the recommendation for closure without action but with cautioning.

The Deputy Commissioner counseled the executive 5-½ years after the case began and 18 months after receiving the case. When we asked the Deputy Commissioner why the final stage of case processing took so long, he had no explanation.

Executive C was not eligible for retirement at the time the allegation was made or at the time he was counseled.

Executive D Allegations

The IRS sexual harassment hotline received an anonymous allegation that Executive D might have harassed a staff member. During the Inspection Service investigation, Executive D refused to answer a question he believed was irrelevant. In its report, the Inspection Service summarized the facts of the investigation and did not conclude whether there was a violation of IRS ethical standards.

OES and the recommending official disagreed in their analyses of the report and their resulting recommendations. OES concluded that a 15-day suspension was warranted for the refusal to answer a question even though IRS counsel was not sure a violation really occurred. OES also raised the possibility of reassigning Executive D. The recommending official believed that, in this case, refusal to answer a question did not violate ethics rules, but that counseling was warranted.

[2]OES was previously known as the Office of Ethics and Business Conduct, but in this section only the designation OES will be used.

About 39 months after OES prepared a statement of differences, an Inspection Service case-tracking entry indicated that IRS management planned no action on the case. The next year, OES closed the case "administratively" due to the employee's retirement.

The Deputy Commissioner told us that, several years before its administrative close, the case was "de facto closed" with Executive D's transfer. He stated that the transfer was the appropriate disciplinary action because Executive D was too familiar with local employees.

OES did not close the case until the individual retired several years after the transfer. It did not realize that the Deputy Commissioner considered it closed earlier. Also, IRS officials we asked could not find the case file for at least a few months.

Executive D was eligible for retirement at the time the allegation was made.

Executive E Allegations

The Inspection Service began an investigation after an anonymous caller reported to Internal Security that Executive E abused her authority. More than a year later, the investigation confirmed the allegation, and the Director of the Human Resources Division recommended that a letter of reprimand be issued. More than 4 years after that, OES recommended sending a letter of reprimand or a letter confirming counseling. The Deputy Commissioner sent Executive E a letter of counseling 5-½ years after the original complaint and more than 4 years after receiving the case.

The Deputy Commissioner explained to us that he had not been comfortable with the allegations' correctness, but that he eventually agreed that the allegations had some merit. He added that the delay in closing the case occurred because he allowed the case to be lost in the system. He did not, he said, cover up for Executive E. Specifically, he stated that reduced OES staffing and a poor information system were contributing factors to the case being delayed without a disposition.

Executive E was not eligible for retirement at the time the allegation was made or at the time the counseling letter was sent.

Comments From the Internal Revenue Service

COMMISSIONER

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

May 13, 1999

Ms. Nancy Kingsbury
Acting Assistant Comptroller General,
General Government Division
U.S. General Accounting Office
441 G Street, NW
Washington, D.C. 20548

Dear Ms. Kingsbury:

Thank you for the opportunity to review and comment on your draft report titled Tax Administration: Allegations of Internal Revenue Service Employee Misconduct. The issues raised in the report are important to the credibility of the Internal Revenue Service (IRS) and the confidence of the public and our employees. We are committed to improving the IRS through our goals of service to each taxpayer, service to all taxpayers, and productivity through a quality work environment.

I share your concern that the IRS management of executive misconduct cases needs substantial improvement. I also appreciate your recognition of the steps we are taking to make these improvements. The recent creation of the Commissioner's Complaint Processing and Analysis Group represents a significant commitment of resources and attention to complaint intake, fact-finding, and adjudication of cases where allegations of misconduct are substantiated. This group will also coordinate our efforts to improve the quality of information on complaints, especially those involving allegations of reprisal against whistleblowers. This information will help us ensure prompt and fair resolution of complaints and use complaints as a source of strategic information to improve the integrity of Service operations.

Statistical reporting requirements included in the IRS Restructuring and Reform Act address the specific concern you raised about the lack of data on reprisal. We will share this and other information on actions taken in response to complaints with IRS employees and the public, including summaries of specific cases. This will reinforce the message that everyone, regardless of position, will be held accountable for their actions. I saw the benefits of this approach when we publicized the actions taken based on the work of the special panel of senior career civil servants from other federal agencies who reviewed the misuse of enforcement statistics at the national level. I am taking a similar approach in publicizing the actions we are taking to address the issue of misuse of statistics and improper seizures at regional and district offices. I have asked the National Director of the Commissioner's Complaint Processing and Analysis Group to develop a semiannual report that will continue this policy. As you know, I have taken

a strong stand on the issue of retaliation against IRS employees who come forward with information about wrongdoing. I have made it clear to all IRS employees through numerous memoranda, policy statements and all-employees messages that retaliation is intolerable, and that I will take decisive action in any case where retaliation is found to have occurred. In keeping with this commitment, our May 11, 1999, Mid-Year Business Meeting featured a presentation from the Office of Special Counsel to all of our executives on their obligations under the Whistleblower Protection Act.

Allegations of improper adjustments in tax assessments or of retaliation against taxpayers and their representatives who assert their rights are even more troublesome for the IRS, as they strike to the core of our responsibility to fairly administer the revenue laws. Thus, I was relieved that you found no evidence of improper adjustments to taxes and that managers acted properly in making adjustments to tax assessments. Similarly, your findings that there was no evidence of vendettas by criminal investigators against taxpayers, that decisions to initiate investigations were reasonably based on information available to IRS at the time, and that there was no evidence of impropriety in obtaining and executing search warrants, will be helpful as we move to implement the recommendations of Judge Webster's recent report for improving the Criminal Investigations Division.

In the important and difficult process of changing the IRS to deliver on our mission, it is essential to address carefully every serious allegation of wrongdoing to arrive at our best understanding of the facts and to act accordingly to improve for the future. I believe your report has aided in this endeavor.

If you have any further questions please call me at (202) 622-9511 or Stephen Whitlock, National Director of the Commissioner's Complaint Process and Analysis Group, at (202) 622-6383.

Sincerely,

Charles O. Rossotti

Charles O. Rossotti

Major Contributors to This Report

General Government Division, Washington, D.C.

Lawrence M. Korb, Evaluator-in-Charge, Tax Policy and Administration Issues
Leon H. Green, Senior Evaluator
Deborah A. Knorr, Senior Evaluator
Anthony P. Lofaro, Senior Evaluator
Jacqueline M. Nowicki, Evaluator
Patricia H. McGuire, Assistant Director
MacDonald R. Phillips, Senior Computer Specialist
James J. Ungvarsky, Senior Computer Specialist
Eric B. Hall, Computer Technician

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