TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION

Ninety-Five Percent of IRS and Contractor Employees Were Tax Compliant; However, There Were Some Tax Delinquencies or Prior Conduct/Performance Issues

July 24, 2024

Report Number: 2024-100-033

TIGTACommunications@tigta.treas.gov | www.tigta.gov

HIGHLIGHTS: Ninety-Five Percent of IRS and Contractor Employees Were Tax Compliant; However, There Were Some Tax Delinquencies or Prior Conduct/Performance Issues

Final Audit Report issued on July 24, 2024 **Report Number 2024-100-033**

Why TIGTA Did This Audit

This review was initiated based on a congressional request asking TIGTA to conduct an updated review of the IRS's employment practices. This included determining how many agency employees are not currently fully compliant on their tax debts and how many rehires on the IRS payroll were previously separated for performance issues, including failure to fully pay their taxes, and what actions the agency is taking, if any, to remedy these compliance issues.

The overall objectives of this audit were to evaluate the process for identifying and remediating willful IRS and contractor employee tax noncompliance, and the steps taken to mitigate the risks of rehiring former employees with past conduct or performance issues.

Impact on Tax Administration

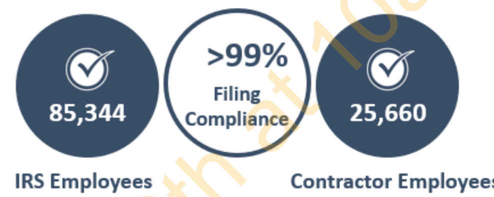
In Section (§) 1203(b) of the IRS Restructuring and Reform Act of 1998, Congress made mandatory the removal of any IRS employees who were found to have willfully committed certain acts of misconduct, including tax noncompliance, subject only to the IRS Commissioner's discretion.

Hiring employees of high integrity is essential to safeguarding taxpayer information. IRS and contractor employees who are not tax compliant could negatively affect public trust in tax administration and the perception that the IRS is being honest in its dealings with taxpayers.

What TIGTA Found

The IRS has policies and procedures in place to detect and remedy IRS and contractor employee willful and non-willful tax noncompliance as well as conduct/performance issues. However, some current IRS and contractor employees have previous tax noncompliance or prior conduct/performance issues.

Overall, IRS and contractor employees were 95 percent tax complaint, consisting of filing and payment tax compliance. Of the 85,359 IRS employees on the rolls as of May 6, 2023, 85,344 (more than 99 percent) were compliant with their tax filing obligations and 82,036 (96 percent) were compliant with their tax payment obligations. In addition, of the 25,732 contractor employees on board as of March 13, 2023, 25,660 (more than 99 percent) were compliant with their tax filing obligations and 23,248 (90 percent) were compliant with their tax payment obligations.



Between October 1, 2021, and April 1, 2023, the IRS closed 1,175 cases with disciplinary actions, for 1,068 current employees, with confirmed tax noncompliance issues. During that same time period, 70 employees were identified with substantiated willful § 1203(b)(8) or (b)(9) violations and 20 were removed as a result. Although the law requires an employee who has either willfully not filed or willfully understated their taxes due to be removed, subject only to the IRS Commissioner's mitigation, this disciplinary action is not always enforced. The Internal Revenue Manual does not describe the facts and circumstances considered by the § 1203 Review Board when making recommendations to the IRS Commissioner for mitigation or termination of IRS employees.

Further, there were an additional 397 rehired IRS employees, and 115 former IRS employees who are current contractor employees, with previously substantiated conduct/performance or tax noncompliance issues during Calendar Years 2005 to 2022.

What TIGTA Recommended

TIGTA recommended that the IRS ensure that any unfiled tax returns have been secured or the instances of unpaid balances due for IRS and contractor employees identified in this report have been resolved and include in the Internal Revenue Manual the policies, procedures, and standards for the § 1203 Review Board.

Although the IRS disagreed with the first recommendation, it verified that the identified instances of tax noncompliance were being addressed according to IRS policies and procedures. To support consistency in the § 1203 Review Board review process, the IRS agreed to consolidate documentation of the § 1203 Review Board policies and procedures.

U.S. DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20024

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION

July 24, 2024

MEMORANDUM FOR: COMMISSIONER OF INTERNAL REVENUE

FROM: Danny R. Verneuille
Acting Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Ninety-Five Percent of IRS and Contractor Employees Were Tax Compliant; However, There Were Some Tax Delinquencies or Prior Conduct/Performance Issues (Audit No.: 202310025)

This report presents the results of our review to evaluate the process for identifying and remediating willful Internal Revenue Service (IRS) and contractor employee tax noncompliance, and the steps taken to mitigate the risks of rehiring former employees with past conduct or performance issues. This review was initiated based on a congressional request asking that we conduct an updated review of the IRS's employment practices and specifically determine:

- The number of IRS employees who were not currently fully compliant on their tax debts.
- The number of rehires on the IRS payroll who were previously separated for performance issues, including failure to fully pay their taxes.
- The actions the IRS took, if any, to remedy these compliance issues.

This review is included in our Fiscal Year 2024 Audit Plan and addresses the major management and performance challenge of *Human Capital*.

Management's complete response to the draft report is included as Appendix II. If you have any questions, please contact me or Bryce Kisler, Assistant Inspector General for Audit (Management Services and Exempt Organizations).

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Appendices

Background

The Internal Revenue Code (I.R.C.) requires taxpayers who have received more than a statutorily determined amount of gross income during a tax year to file a tax return and pay the related tax on the income. These requirements are explicitly stated in I.R.C. §§ 6011(a), 6012(a), and 6072(a).

In § 1203(b) of the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98), Congress made mandatory the removal of any IRS employees who were found to have willfully committed certain acts of misconduct, including these two sections for employee tax noncompliance.[1]

- RRA 98 § 1203(b)(8) requires the removal of IRS employees who willfully fail to timely file a Federal tax return.
- RRA 98 § 1203(b)(9) requires the removal of IRS employees who willfully understate their Federal tax liability.[2]

The intent was to hold willfully tax noncompliant IRS employees accountable, thereby protecting the integrity of the tax administration system. The intentional failure to file a Federal tax return is a misdemeanor,[3] and making fraudulent or false statements on a tax return is a felony.[4] However, a determination by IRS management that the employee's tax noncompliance was intentional does not necessarily mean that the conduct warrants a referral for purposes of a criminal investigation.

Congress also granted the IRS Commissioner sole discretion under RRA 98 § 1203(c)(2) to mitigate the mandatory removal of employees to a lesser penalty. While this mitigation authority cannot be delegated, preliminary screening and penalty recommendations for RRA 98 § 1203 cases are done by a § 1203 Review Board.[5] In addition, as part of the Taxpayer First Act, Congress prohibited the IRS from rehiring employees who were terminated for RRA 98 § 1203 reasons.[6]

The Human Capital Office (HCO) provided guidance in the Internal Revenue Manual (IRM) titled, *IRS Guide to Penalty Determinations,* to assist management in determining which penalties may

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[1] Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2, 5, 16, 19, 22, 23, 26, 31, 38, and 49 U.S.C.).

[2] According to the IRS, "willful" means the voluntary intentional violation of a known legal duty for which there is no reasonable cause. Whether reasonable cause exists for an intentional failure to timely file or to accurately report tax liabilities will depend on the specific facts and circumstances that resulted in the tax violation and will be determined on a case-by-case basis.

[3] I.R.C. § 7203 states that the willful nonfiling of a Federal tax return is a misdemeanor, punishable by up to a year in jail and a fine of not more than $25,000.

[4] I.R.C. § 7206 states that making false statements on a Federal tax return is a felony, punishable by up to three years in jail and a fine of not more than $100,000.

[5] As of March 18, 2024, the voting members of the § 1203 Review Board included the Deputy Commissioner for Services and Enforcement; the Deputy Commissioner, Small Business/Self-Employed Division; the Deputy Commissioner, Wage and Investment Division; the Chief, IRS Independent Office of Appeals; and the Chief Diversity Officer.

[6] Pub. L. No. 116-25, § 3001, 133 Stat. 988 (2019) (codified in scattered sections of 26 U.S.C.).

be used.[7] Although the guidance recommends removal for all substantiated willful RRA 98 § 1203 cases, the penalties in the Guide are not mandatory.[8] When contemplating a disciplinary action, IRS guidance instructs managers to consider the *Douglas Factors,* which require that before deciding on an administrative action, management must consider aggravating or mitigating circumstances or other factors that may have some bearing on the issue.[9]

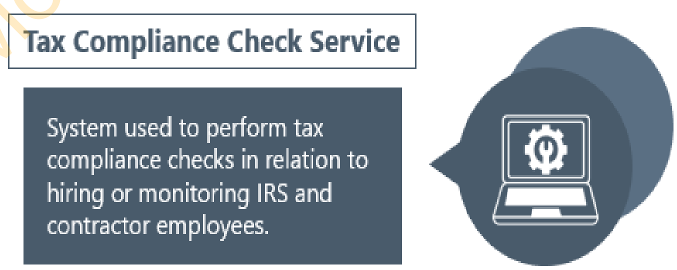
Further, IRS guidance states that to be fully compliant with Federal tax filing and payment requirements, an IRS employee must accurately and timely file their tax return, pay on time, and not have an outstanding tax liability.[10] Failure to timely pay is not a potential RRA 98 § 1203 violation; however, it is still considered misconduct and may result in disciplinary action(s) up to and including removal.[11]

IRS actions to remedy tax noncompliance

To help IRS employees comply with their Federal tax obligations, the HCO provided the following employee tax compliance reminder information on the IRS's intranet site in Fiscal Year 2023.

- **Filing Compliance:** "As a reminder, this year you must file and pay your taxes by April 18, 2023. However, an extension of time to file and pay your taxes could result in ineligibility to receive an award and disciplinary actions up to, and including, removal from the IRS. We encourage you to prepare and file you taxes early."
- **Reporting Compliance:** "Report all your income and take only those deductions, exemptions, and credits you qualify for."
- **Payment Compliance:** "Payment deadline is April 18."

HCO management stated that all employees are required to complete annual employee tax compliance and ethics briefings. Further, employees are also reminded of the Office of Government Ethics regulation, which states that Federal employees must "satisfy in good faith their obligations as citizens, including all just financial obligations, especially those such as Federal, State or local taxes that are imposed by law."[12]



The HCO uses the Tax Compliance Check Service (TCCS) to perform tax compliance checks for individuals when making suitability determinations for IRS hiring and to monitor the tax

[7] IRM Exhibit 6.751.1-1, *IRS Guide to Penalty Determinations* (Nov. 4, 2008).

[8] The *IRS Guide to Penalty Determinations* also provides recommended consequences for nonwillful tax noncompliance from admonishment to a 5-day suspension for the first offense up to a 15-day suspension to removal for a third offense.

[9] IRM 6.752.2.10 (2), *Determining Appropriate Action* (Oct. 15, 2010).

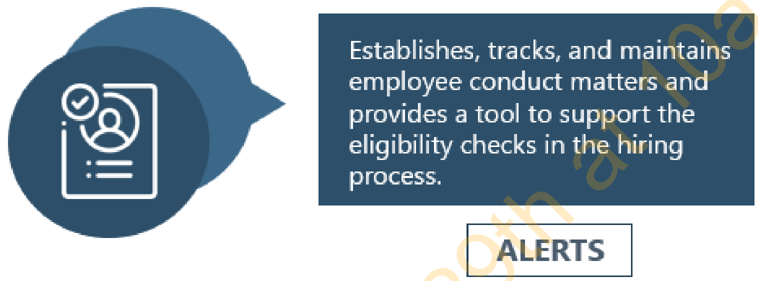
[10] IRM 25.29.1.2, *Standard Tax Compliance Checks Overview* (Aug. 18, 2021).

[11] The legal requirements to be fully compliant with Federal tax laws apply to all taxpayers (including all IRS and IRS contractor employees).

[12] 5 C.F.R § 2635.101, *Standards of Conduct for Employees of the Executive Branch* (2023).

compliance of current IRS employees. The TCCS uses automated business rules to review IRS employee accounts to identify their tax compliance status. The TCCS will review four years of tax records or up to five years if a Fraudulent Failure to File or Civil Tax Fraud penalty was assessed on the account.[13]

The TCCS extracts data from the Individual Master File (IMF) of potential tax noncompliant IRS employees and uploads the information into the Automated Labor and Employee Relations Tracking System (ALERTS).[14] Employee Tax Compliance (ETC) Branch personnel within the HCO review the data in ALERTS and research the Integrated Data Retrieval System to determine the validity of the potential employee tax noncompliance.[15]



In some cases, ETC Branch personnel may determine that there is not a compliance issue and will close the matter without any contact with the employee. However, when the research is unable to determine whether there has been employee tax noncompliance, the ETC Branch will contact the employee by letter to inquire about the potential tax issue and gather additional information, then take one of the following actions:

- If they determine that there is no tax compliance issue, they will close the inquiry with a clearance or advisory letter.
- If the employee does not reply to the ETC Branch letter, they will refer the issue to the employee's local management.
- If the issue cannot be resolved with the employee's response, they will refer the issue to the employee's local management.

Similar to the requirement for IRS employees, contractor employees must have filed all their required tax returns and paid all taxes due or be current on a payment plan for any taxes due to begin working on a contract with the IRS. They must also remain tax compliant while actively working on an IRS contract. According to the IRS, periodic tax checks are conducted by Personnel Security on all IRS contractors who have been granted staff-like access for them to remain active on an IRS contract.

[13] Willful failure to file a tax return is a misdemeanor, in cases where an overt act of evasion occurred, willful failure to file may be elevated to a felony. If failure to file a tax return is fraudulent (involving deception by misrepresentation of material facts), a civil penalty known as the "Fraudulent Failure to File penalty" may apply.

[14] The IMF is the IRS database that maintains transactions or records of individual tax accounts. ALERTS is an application used to track labor/employee relations case data. It was developed to ensure consistency in tracking labor and employee relations disciplinary actions.

[15] The Integrated Data Retrieval System is the IRS computer system capable of retrieving or updating stored information. It works in conjunction with a taxpayer's account records.

Results of Review

Ninety-Five Percent of IRS and Contractor Employees Were Tax Compliant

The Treasury Inspector General for Tax Administration (TIGTA) found that 95 percent of IRS and contractor employees were tax complaint during our review period. Figure 1 shows the overall tax compliance rates for both employee groups.[16]

Figure 1: Count and Percentage of IRS and Contractor Employee Tax Compliance

	Number of Employees	Filing and Payment Tax Compliant	Percentage Tax Compliant
IRS Employees	**85,359**	**82,023**	**96%**
Contractor Employees	**25,732**	**23,206**	**90%**
TOTALS	**111,091**	**105,229**	**95%**

Source: TIGTA analysis of the Treasury Integrated Management Information System (TIMIS), an IRS-provided contractor employees list, and the IMF.[17]

IRS employee filing compliance

As of May 6, 2023, the IRS had 85,359 employees on its rolls. Of those employees, we determined that 85,344 (more than 99 percent) were filing compliant, while the remaining 15 employees had not filed one or more of their Form(s) 1040, *U.S. Individual Income Tax Return*. For seven of the 15 IRS employees with unfiled tax returns, the IRS does not have third-party payor documentation available to determine if a tax return is required to be filed. The remaining eight employee accounts show that third-party payor information is available, and the employees would potentially have a balance due if the IRS prepared a Substitute for Return (SFR) based upon the third-party information.[18] The 15 employees have 16 unfiled tax returns.[19]

When the IRS has determined that a taxpayer is liable for filing a tax return, and fails to do so, the IRS will prepare an SFR. Any SFR prepared by the IRS will be based on third-party information reported on Forms W-2, *Wage and Tax Statement*, and Forms 1099-MISC, *Miscellaneous Information*, *etc*. The SFR process is the same for all taxpayers. Figure 2

[16] This is a count by employee or contractor employee; therefore, the employees or contractor employees may have both filing and payment compliance issues but are only counted once.

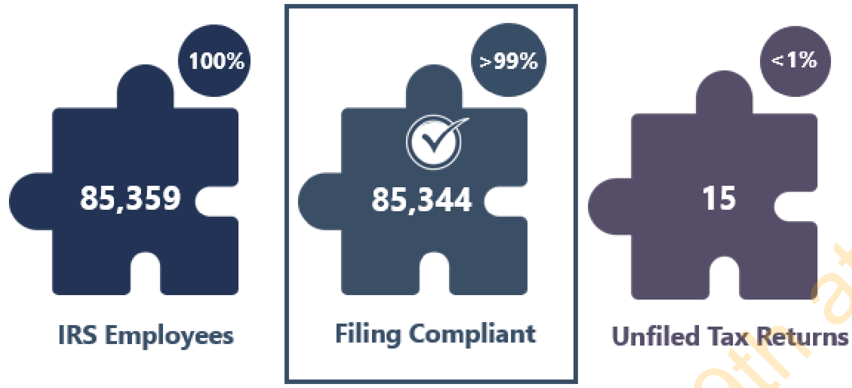
[17] The TIMIS is an official automated personnel and payroll system for storing and tracking all employee personnel and payroll data. It is outsourced to the Department of Agriculture's National Finance Center and managed by the Department of the Treasury.

[18] I.R.C. § 6020(b) authorizes the IRS to file returns on behalf of taxpayers based on information in the IRS's possession.

[19] TIGTA did not review the cases for these 15 employees; however, they may not have been sent through the SFR process yet because the IRS has sent them notices requesting them to voluntarily file. In addition, the IRS will generally not send a taxpayer through the SFR process when they also have another tax period with a balance due.

compares the number of filing compliant IRS employees against the number of nonfiling IRS employees.

Figure 2: IRS Employees With Filed or Unfiled Tax Returns



Source: TIGTA analysis of the TIMIS and the IMF.

Figure 3 compares the number of IRS employees with the number of tax periods with unfiled tax returns.

Figure 3: Count of IRS Employees and the Number of Tax Periods With Unfiled Tax Returns

Number of Delinquent Tax Returns	Count of IRS Employees	Total Number of Tax Periods With Unfiled Tax Returns
1	[redacted]	[redacted]
2	[redacted]	[redacted]
TOTALS	**15**	**16**

Source: TIGTA analysis of the TIMIS and the IMF.

Contractor employee filing compliance

The IRS workforce consists of not only paid employees, but also contractors. As of March 13, 2023, the IRS employed 25,732 contractor employees. Of these contractor employees, we determined that 25,660 (more than 99 percent) were filing compliant while the remaining 72 had not filed one or more of their Form(s) 1040. [redacted] of which eight tax returns if filed would result in refunds, while the other 62 would have a balance due if the IRS prepared their tax returns through the SFR process.[20]

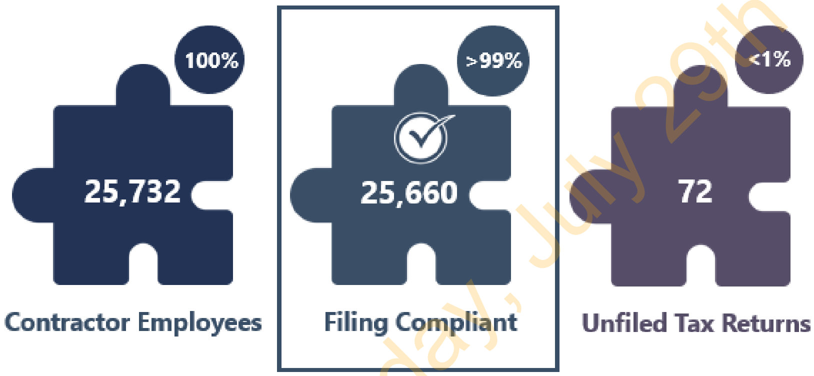
Because these contractor employees are employed by an outside vendor, the IRS does not track tax noncompliance cases for these individuals in ALERTS. Although TIGTA did not review how

[20] TIGTA did not review the cases for these 72 contractor employees; however, they may not have been sent through the SFR process yet because the IRS has sent them notices requesting that they voluntarily file. In addition, the IRS will generally not send a taxpayer through the SFR process when they also have another tax period with a balance due.

the IRS tracks these cases in this audit, IRS procedures require the removal of staff-like access for contractor employees upon identification of tax noncompliance, such as revoking security access to IRS facilities and information systems.[21]

HCO management stated that 59 of the 72 IRS contractors were subsequently denied access to IRS facilities and six others were contracted through other Governmental agencies, *e.g.*, security guards, and for whom the IRS may not impose compliance requirements on these individuals.[22] The remaining seven contractors were tax compliant as of their Calendar Year 2023 tax check. Figure 4 compares the number of filing compliant contractor employees against the number of nonfiling contractor employees.

Figure 4: Contractor Employees With Filed or Unfiled Tax Returns



Source: TIGTA analysis of an IRS-provided contractor employees list and the IMF.

Figure 5 compares the number of contractor employees with the number of tax periods with unfiled tax returns.

Figure 5: Count of Contractor Employees and the Number of Tax Periods With Unfiled Tax Returns

Number of Delinquent Tax Returns	Count of Contractor Employees	Total Number of Tax Periods With Unfiled Tax Returns
1	[redacted]	55
2	[redacted]	26
3	[redacted]	9
4	[redacted]	4
TOTALS	72	94

Source: TIGTA analysis of an IRS-provided contractor employees list and the IMF.

Given the ever-increasing threat of identity theft and the substantial amount of sensitive information that the IRS holds, hiring employees of high integrity is essential to safeguarding

[21] IRM 10.23.2.11.3, *Revocation of Final Staff-like Access* (Apr. 22, 2022).

[22] TIGTA did not review case files, or policies and procedures, to confirm the disposition of these 59 cases.

taxpayer information. We believe that IRS and contractor employees who are not tax compliant could negatively affect public trust in tax administration and the perception that the IRS is being honest in its dealings with all taxpayers. The 72 contractor employees have 94 unfiled tax returns.

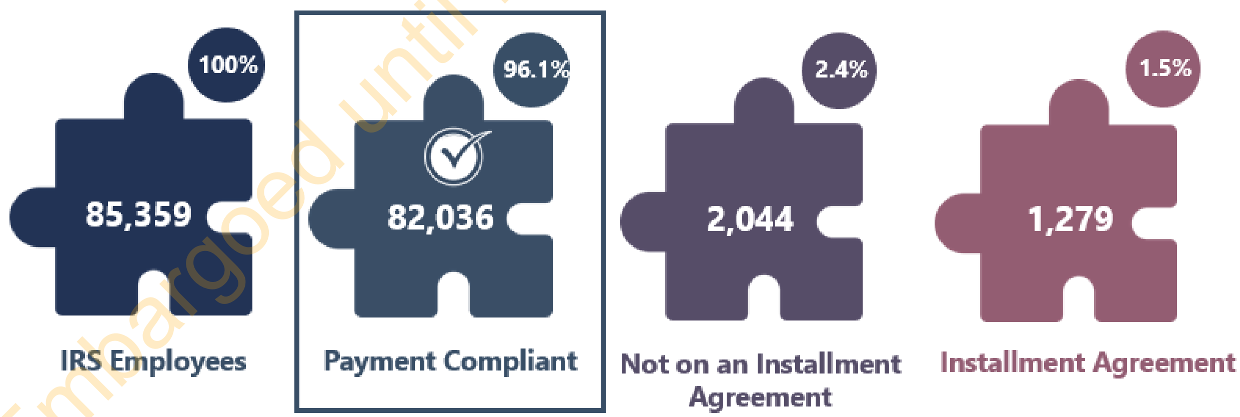
IRS employee payment compliance

Of the 85,359 IRS employees, we determined that 82,036 (96 percent) were payment compliant while the remaining 3,323 (4 percent) had not fully paid the balances due on their Form(s) 1040. Specifically, 2,044 IRS employees have balances due totaling more than $12 million on one or more tax periods that were not on any installment agreement.

The remaining 1,279 IRS employees were on installment agreements to pay their balances due totaling approximately $9 million. According to the IRM, when taxpayers are unable to fully pay a liability, an installment agreement will be considered.[23] All taxpayers are entitled to this option whether an IRS employee or not. Installment agreements are arrangements that allow taxpayers to pay liabilities over time. During the installment agreement payment period, penalties and interest continue to accrue; however, levies may generally not be served.[24]

The establishment of an installment agreement provides the IRS with the opportunity to educate the taxpayer on ways to avoid future tax delinquencies while paying off their balances due and ensuring that they fulfill their tax compliance responsibilities. We did not consider employees in installment agreements as noncompliant. However, the *IRS Employee Tax Responsibility Guide* states that failing to timely pay your taxes is a conduct issue and can result in discipline. Figure 6 compares the number of payment compliant IRS employees against the number of IRS employees with balances due.

Figure 6: IRS Employees With Balances Due



Source: TIGTA analysis of the TIMIS and the IMF.

Figure 7 shows the delinquent tax period account statuses of the 2,044 IRS employees not on an installment agreement as of May 25, 2023.

[23] IRM 5.4.11.2.1(1), *Types of Installment Agreements* (Oct. 6, 2016).

[24] IRM 5.4.11.2(1), *Overview* (May 24, 2021).

Figure 7: Master File Status of IRS Employee Tax Periods With Balances Due Not on an Installment Agreement

Master File Status Code	Status Code Definition	Count of Delinquent IRS Employees	Total Balance Due	Average Balance Due[25]
21, 56, and 58	Tax Return Filed and Assessed – Notice Issued	1,706	$8,192,700	$4,802
22	Balance Due – Assigned to the Automated Collection System	35	$888,724	$25,392
23	Balance Due – Below Tolerance Level	127	$25,780	$203
24	Balance Due – Awaiting Assignment to a Revenue Officer	6	$49,510	$8,252
26	Balance Due – Assigned to a Revenue Officer	310	$3,012,660	$9,718
TOTALS		2,044[26]	$12,169,374	$5,954

Source: TIGTA analysis of the TIMIS and the IMF.

Figure 8 shows that of the 2,044 IRS employees with a balance due and not on an installment agreement, 1,453 (71 percent) are delinquent on only one tax period.

Figure 8: Average Balance Due of IRS Employees by the Number of Tax Periods Not on an Installment Agreement

Number of Balance Due Tax Periods	Count of IRS Employees	Total Balance Due	Average Balance Due[27]
1	1,453	$4,324,457	$2,976
2	361	$3,233,055	$8,956
3	112	$1,609,361	$14,369
4	65	$1,172,249	$18,035
5 or more	53	$1,830,252	$34,533
TOTALS	2,044	$12,169,374	$5,954

Source: TIGTA analysis of the TIMIS and the IMF.

[25] Amounts in this column are generally not exact due to rounding.

[26] This total is for the total number of tax periods with a balance due because an individual can have more than one tax module or tax period in more than one status.

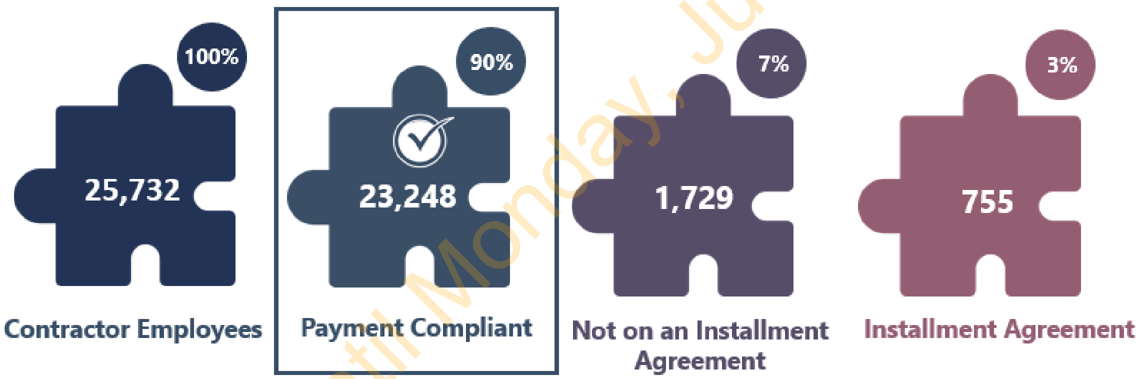
[27] Amounts in this column are generally not exact due to rounding.

Further, the IRS uses ALERTS to track the processing of employee relations cases, including tax noncompliance. We identified 2,180 of the 3,323 IRS employees who have payment noncompliance related cases in ALERTS.[28] We analyzed the remaining 1,143 employees without a case in ALERTS and found that 892 have a balance due only on Tax Year 2022. Because Tax Year 2022 tax returns are filed in Calendar Year 2023 and our data were pulled as of May 25, 2023, it is likely that these cases had not yet been established in ALERTS.

Contractor employee payment compliance

Of the 25,732 contractor employees, we determined that 23,248 (90 percent) were payment complaint, while the remaining 2,484 (10 percent) have not full paid the balances due on their Forms 1040. Specifically, 1,729 contractor employees have balances due totaling more than $17 million on one or more tax periods that were not on any installment agreement. The remaining 755 contractor employees were on installment agreements to pay their balances due totaling approximately $8 million. Figure 9 compares the number of payment compliant contractor employees against the number of contractor employees with balances due.

Figure 9: Contractor Employees With Balances Due



Source: TIGTA analysis of an IRS-provided contractor employees list and the IMF.

Contractor employees must be Federal tax compliant by filing and paying all taxes when due.[29] Periodic tax checks are conducted by Personnel Security within the HCO on contractor employees who have been granted staff-like access to remain active on an IRS contract. This is in addition to the tax checks conducted at the initial onboarding of contractor employees by Personnel Security. Contractor employees, just like any other taxpayers who are unable to pay what they owe, may enter into an installment agreement. Figure 10 shows the delinquent account statuses of the 1,729 contractor employees not on an installment agreement as of May 25, 2023.

[28] We did not review the tax noncompliance cases to determine whether the cases in ALERTS are specifically for the tax noncompliance identified by TIGTA.
[29] IRM 10.23.2.2.2(2)a, *Eligibility Criteria* (Apr. 22, 2022).

Figure 10: Master File Status of Contractor Employee Tax Periods With Balances Due Not on an Installment Agreement

Master File Status Code	Status Code Definition	Count of Delinquent Contractor Employees	Total Balance Due	Average Balance Due[30]
20, 21, 56, and 58	Tax Return Filed and Assessed – Notice Issued	1,317	$10,371,810	$7,875
22	Balance Due – Assigned to the Automated Collection System	402	$4,648,803	$11,564
23	Balance Due – Below Tolerance Level	85	$30,572	$360
24	Balance Due – Awaiting Assignment to a Revenue Officer	84	$1,673,494	$19,923
26	Balance Due – Assigned to a Revenue Officer	6	$627,362	$104,560
TOTALS		1,729[31]	$17,352,041	$10,036

Source: TIGTA analysis of an IRS-provided contractor employees list and the IMF.

Figure 11 shows that of the 1,729 contractor employees with a balance due and not on an installment agreement, 1,161 (67 percent) are delinquent on only one tax period.

Figure 11: Average Balance Due of Contractor Employees by the Number of Tax Periods Not on an Installment Agreement

Number of Balance Due Tax Periods	Count of Contractor Employees	Total Balance Due	Average Balance Due[32]
1	1,161	$6,084,275	$5,241
2	305	$3,592,164	$11,778
3	102	$1,691,373	$16,582
4	61	$1,553,358	$25,465
5 or more	100	$4,430,871	$44,309
TOTALS	1,729	$17,352,041	$10,036

Source: TIGTA analysis of an IRS-provided contractor employees list and the IMF.

[30] Amounts in this column are generally not exact due to rounding.

[31] The total here is for the total number of tax periods with a balance due because an individual can have more than one tax module or tax period in more than one status.

[32] Amounts in this column are generally not exact due to rounding.

Recommendation 1: The Chief Human Capital Officer should ensure that any unfiled tax returns have been secured or the instances of unpaid balances due for IRS and contractor employees identified in this report have been resolved.

Management's Response: The IRS disagreed with this recommendation stating the Chief Human Capital Officer does not have tax collection or enforcement authority; that authority resides with the IRS business operating divisions for all taxpayers, including IRS employees and contractors. However, the HCO reviewed the individuals identified by TIGTA in this draft report and validated that all tax noncompliance issues are being addressed consistently with IRS's policies and procedures.

Office of Audit Comment: Although the IRS disagreed with this recommendation, the HCO confirmed in its response that the tax noncompliance identified during this review are being addressed according to IRS policies and procedures. Therefore, it appears that the HCO has addressed TIGTA's concern.

The IRS Generally Addressed Willful Employee Tax Noncompliance

We found that 2,090 (2 percent) of the 85,359 current IRS employees (on board as of May 2023) had cases with tax noncompliance issues that were either closed or transferred to Labor Relations (LR) in ALERTS between October 1, 2021, and April 1, 2023. These 2,090 IRS employee cases were substantiated, indicating that they had been researched and validated by the ETC Branch. LR procedures require that once management determines whether the noncompliance was intentional (willful) or not, they will close the case with a letter from the deciding official with the proposed disciplinary actions, up to and including removal.[33]

The 2,090 IRS employees had a total of 3,030 tax noncompliance cases in ALERTS. Of the 3,030 tax noncompliance issues, 1,855 were referred to the LR for management adjudication or the employee appealed the disciplinary action to the Merit Systems Protection Board.[34] These 1,855 cases were in-process during our review period. Therefore, either the LR had not completed adjudicating these cases and no disciplinary action had been assigned in ALERTS, or the appeal process to the Merit Systems Protection Board was not yet complete. HCO management stated that once those cases are adjudicated by the LR, they will be closed in ALERTS with a disposition reflecting their disciplinary action and case type. As a result, during our review period, only 1,175 cases, for 1,068 employees, had been closed either by the ETC Branch or the LR and assigned a disciplinary action.

An employee can have more than one tax noncompliance issue. For example, an employee could have an issue for a late filed tax return and another for an unpaid balance due. Figure 12 provides a breakdown of the 1,175 closed cases in ALERTS involving tax noncompliance issues for the 1,068 IRS employees.

[33] *§ 1203(b)(8) and (b)(9) Manager's Guidelines.*

[34] According to the Office of Personnel Management, a common conception of the Federal Government's merit system principles is that they are designed to ensure fair and open recruitment, competition, and employment practices free of political influence or other nonmerit factors.

Figure 12: IRS Employee Tax Noncompliance Issues Closed With Disciplinary Actions in ALERTS

Issue Code Description	Count of Issue Codes
Late Paid	397
Late Filed	5
Nonfiler/Late Filer – Not RRA 98 § 1203	398
Unpaid	42
Underreporter – Not RRA 98 § 1203	254
RRA 98 § 1203(b)(8): Willful Untimely Return	44
RRA 98 § 1203(b)(9): Willful Understated Tax	28
Other – Not RRA 98 § 1203[35]	7
TOTAL	1,175

Source: TIGTA analysis of ALERTS issues closed with disciplinary actions between October 1, 2021, and April 1, 2023.

The following disciplinary actions were recorded in ALERTS for these 1,068 tax noncompliant IRS employees:

- 439 employees received an advisory letter. If the case only has a minor tax issue that does not rise to the level of a referral to the LR, the ETC Branch will issue an advisory letter to the employee.
- 229 employees received written counseling. Most of the non-RRA 98 § 1203 cases were closed with written counseling.
- 194 employees received an admonishment, reprimand, or some type of oral counseling.
    - 142 admonishments.
    - 37 reprimands.
    - 8 oral counsels.
    - 4 admonishments in lieu of a suspension.
    - 3 admonishments in lieu of a reprimand.
- 76 employees were suspended. Most of these cases involved willful RRA 98 § 1203(b)(8) or (b)(9) cases resulting in the employee being suspended for less than 14 days.[36]
- 130 employee cases were closed with:
    - 98 being issued a cautionary letter.

[35] Employee has been identified as being noncompliant with State or local tax laws concerning their own personal income taxes.

[36] Individuals could be removed, subsequently appeal the decision, and ultimately be suspended instead of removal.

- 9 being merged with another case.
- 8 having data entry errors (the cases were cancelled).
- 15 being issued a closed without action letter.

Subsequently, the HCO provided TIGTA a list of 70 employees with substantiated willful RRA 98 § 1203(b)(8) or (b)(9) violations between October 1, 2021, and April 1, 2023.[37] This list included all employees, current and removed, during that period. As a result, the IRS:

- Removed 20 employees.
- Suspended 47 employees.
- [redacted]
- [redacted]

Of these 70 employees, six employees exercised their appeal rights before the Merit Systems Protection Board. Four of the six appeals are still pending. Although the law requires an employee who has either willfully not filed or willfully understated their taxes due to be removed, subject only to the IRS Commissioner's mitigation, this disciplinary action is not always enforced.[38]

Further, the HCO provided an additional list of 69 substantiated willful RRA 98 § 1203(b)(8) and (b)(9) cases that were referred to the § 1203 Review Board for consideration of mitigation and assignment of disciplinary actions in Calendar Year 2022. The § 1203 Review Board recommended to the IRS Commissioner that most of the 69 cases be mitigated due to consideration of a variety of factors including:

- Years of service.
- Employee performance ratings.
- Current and past tax compliance.
- Cooperation during the investigation.

In deciding what disciplinary actions to recommend, the § 1203 Review Board considers the specific facts and circumstances of the issue and the employee, in conjunction with progressive discipline.[39] However, HCO management stated that there are no specific written descriptions of mitigation considerations, or policies and procedures, used by the § 1203 Review Board. The IRM does not describe the facts and circumstances considered by the § 1203 Review Board when making recommendations for mitigation or termination of IRS employees. Establishment of a formal IRM would offer transparency and specific guidelines for how the Board evaluates employees with these serious violations of the law.

[37] The 70 employees provided by the HCO are the same employees responsible for the willful RRA 98 § 1203(b)(8) or (b)(9) issues identified in Figure 12. Some of these employees had multiple noncompliance issues. The HCO data provided a final disposition for the 70 employees that was not available in ALERTS.

[38] TIGTA did not perform case reviews to determine whether the IRS files sufficiently documented the decision to retain these employees.

[39] According to IRM 6.752.1.2(15), *Definitions* (Nov. 28, 2008), progressive discipline is the imposition of the least serious disciplinary or adverse action applicable to correct the issue or misconduct with penalties imposed at an escalating level for subsequent offenses.

Recommendation 2: The Chief Human Capital Officer should include in the IRM the policies, procedures, and standards that the § 1203 Review Board uses when evaluating whether to recommend penalty mitigation or termination of an employee.

Management's Response: The IRS agreed that consolidated documentation may support consistency in the § 1203 Review Board review process. Accordingly, the Chief Human Capital Officer will consolidate existing § 1203 Review Board policy and procedures into a standard operating procedure document.

Some Rehired IRS and Contractor Employees Were Previously Tax Noncompliant or Had Prior Conduct/Performance Issues

We identified 397 current rehired IRS employees who had closed cases in ALERTS during Calendar Years 2005 to 2022 for one or more previously substantiated conduct/performance issues.[40] These 397 employees had 911 records in ALERTS. Of these 397 employees, 212 had more than one conduct/performance issue. Figure 13 provides the ALERTS issue description and a count of the rehired IRS employees by issue.

[40] TIGTA did not review the case files for the 397 rehired IRS employees to determine if the reasons for rehiring these individuals were supported.

Figure 13: Rehired IRS Employees With Prior Issues in ALERTS

Issue Description	Count of Issue Codes
Unacceptable Performance	306
Absence and Leave	183
Tax Related[41]	85
RRA § 1203(b)(8) or (b)(9)	24
Failure to Follow Instructions/Directives	54
Falsification: Various[42]	48
Unauthorized Access/Tax Return or Return Information	34
Unprofessional Conduct	24
Off Duty Misconduct	19
Unavailability/Extended Absence	17
Fraud/Theft: Other[43]	15
Workplace Disruption	12
Suitability	11
Fighting, Assault, Threat-Not RRA 98 § 1203	10
Criminal Misconduct	9
Disclosure/Security	7
Other Issues[44]	53
TOTAL	**911**

Source: TIGTA analysis of ALERTS issues closed with disciplinary actions for rehired IRS employees.

[41] Includes tax-related issue descriptions: Not Paid/Late Pay; Underreporter-Not RRA 98 § 1203; Nonfiler/Late Filer-Not RRA 98 § 1203.

[42] Includes Falsification: Other Than Official Documents; Falsification: Employee/Investment Forms; and Falsification: Official Documents-Not RRA 98 § 1203.

[43] Covers situations in which the fraud/theft did not involve Government property. Could also be used to identify situations in which an employee fraudulently obtained some form of benefit, such as unemployment or welfare, while being employed with the IRS.

[44] Other issues include: Collection of Administrative Debt; Travel Card Misuse; Substance Abuse; Garnishment; Property/Equipment Misuse; Workplace Disruption; Criminal Misconduct; Indebtedness/Excessive Borrowing; Outside Employment/Activity; Attempted Unauthorized Access; Safety and Physical Security Matter; Position/Authority Misuse-Not RRA 98 § 1203; Inability to Perform Duties; Travel Card Delinquency; Fitness Standards; Physical Fitness Program; Sexual Misconduct; Internet Misuse; Fraud/Theft: Government Funds/Property; Telework; Concealed Work Error-RRA 98 § 1203(b)(4); False Statement Under Oath-RRA 98 § 1203(b)(2); and Loss/Destruction of Documents-Not RRA 98 § 1203.

Similar to a prior TIGTA report, we identified individuals who were previously removed from the IRS or voluntarily separated while under investigation for substantiated conduct/performance issues.[45] This prior report recommended that selecting officials be given access to former employee conduct/performance issues and ensure that the basis for rehiring employees with prior employment issues be clearly documented. HCO management agreed to update its practices and policies for these requirements. Our review determined that the IRM was updated to include the TIGTA recommendations.

The HCO's Talent and Acquisition Office is responsible for recruitment and hiring. It partners with IRS business units to screen external applicants prior to their hiring, ensuring that the applicants have favorable Federal tax compliance and ALERTS checks.[46] ALERTS data provide the business units with the last nature of action (rehire dates), and any conduct/performance or tax noncompliance issues for former IRS employees. In addition, the HCO's Talent and Acquisition Office will ensure that the Personnel Security-adjudicated applicant was suitable for employment.

The Consolidated Appropriations Act, 2020 specifically directs the IRS to conduct Federal tax compliance checks prior to rehiring former employees.[47] As such, selecting officials must verify Federal tax compliance as well as conduct an ALERTS check. In addition, the Taxpayer First Act prohibits the IRS from rehiring former IRS employees who were involuntarily separated under any of the following provisions.

- Performance Management, 5 U.S.C. Ch. 43 provides for the establishment of agency performance appraisal systems and requires the Office of Personnel Management to prescribe regulations governing such systems.
- Adverse Actions, 5 U.S.C. Ch. 75 specifies the formal legal process that most agencies must follow when taking adverse actions, *i.e.*, suspensions, demotions, reductions in pay or grade, and removals, for acts of employee misconduct.
- RRA 98 § 1203.

We identified 13 former IRS employees, with 24 issues related to substantiated willful RRA § 1203 tax noncompliance. According to ALERTS, these employees were removed during April 2007 to August 2022, but subsequently reinstated. Employees have the option to appeal disciplinary actions through the Merit Systems Protection Board. Consequently, 10 of the 13 former employees appealed their removal, resulting in either a suspension due to mitigation or a settlement. Our research found that the HCO had not updated the status of the disciplinary actions in ALERTS. The remaining three had been removed and rehired before enactment of the Taxpayer First Act. HCO management advised us that the IRS also does not track the number of former employees who were not rehired because of a prior tax/conduct/performance issue with any degree of accuracy.

Selecting officials use a decision matrix when determining if they should extend a job offer. The matrix is provided by the assigned Employment Office to all selecting officials upon tentative

[45] TIGTA, Report No. 2017-10-035, *The Internal Revenue Service Continues to Rehire Former Employees With Conduct and Performance Issues* (July 2017).

[46] A business unit is the generic title for IRS offices and organizations such as the IRS Independent Office of Appeals, the Office of Professional Responsibility, and the Information Technology organization.

[47] Pub. L. No. 116-93.

selection of an applicant who has an ALERTS issue. The matrix takes into consideration factors such as the seriousness of the offense, length of time elapsed since the offense occurred, and evidence of employee rehabilitation.

The decision matrix allows for an applicant to be considered for rehire after the selecting official's review of the ALERTS case and depending on the time elapsed and the position to be filled. The matrix also considers other factors, such as work history and education, when determining if a former employee will be rehired. For example, the selecting official can continue a selection even if there was an unauthorized disclosure violation if it resulted in an admonishment, written counseling, or reprimand such as in the case of an attempted access of an employee's own Social Security Number.

Internal guidance also requires that all prior performance and misconduct issues be sent to the selecting official for consideration prior to a firm offer being issued.[48] If the former employee had a conduct/performance issue resulting in a suspension or higher penalty (but less than a removal), approval by the business unit Commissioner/Designee and the HCO/Designee is required.[49]

Some former IRS employees, currently working as contractor employees, had prior tax noncompliance or conduct/performance issues

We identified 115 of the 25,732 contractor employees (on board as of March 2023) were prior IRS employees who were removed from the IRS or voluntarily separated while under investigation and had one or more previously substantiated conduct/performance or tax noncompliance issues (researched and confirmed by the ETC Branch) closed in ALERTS during Calendar Years 2005 to 2022. These 115 contractor employees had a total of 246 substantiated tax noncompliance or conduct/performance issues. Of these contractor employees, 70 had more than one tax noncompliance or conduct/performance issue. Figure 14 provides the prior ALERTS issue description and count of the former IRS employees/current contractor employees by issue.

[48] IRM 6.332.2.4(1) and (2), *Prior Performance and Misconduct Check/Screening* (Apr. 6, 2021) and IRM 6.332.2.2, *Eligibility Requirements* (Apr. 06, 2021).

[49] IRM 6.332.2.4(4), *Prior Performance and Misconduct Check/Screening* (Apr. 6, 2021).

Figure 14: Former IRS Employees/Current Contractor Employees Prior Issues in ALERTS

Issue Description	Count of Issue Codes
Absence and Leave	108
Unacceptable Performance	41
Unavailability/Extended Absence	19
Failure to Follow Instructions/Directives	18
Falsification: Various[50]	12
Tax Issues[51]	8
RRA § 1203(b)(8) or (b)(9)	5
Suitability	7
Fraud/Theft: Other	4
Unauthorized/Attempted Unauthorized Access	6
Other Issues[52]	18
TOTAL	**246**

Source: TIGTA analysis of ALERTS issues closed with disciplinary actions for former IRS employees/current contractor employees.

IRS policy requires each contractor employee assigned to work under an IRS contract shall undergo investigative processing commensurate with the position risk level designation associated with the work to be performed, and comparable to that required for Federal employees who occupy the same positions and who have the same position risk designation.[53] For staff-like access, the individual must be Federal tax compliant and must have filed all required tax returns and paid all taxes due or be current on a payment plan, such as an installment agreement.

HCO management stated that Personnel Security conducts suitability prescreening of potential contractor employees as described in its policies and procedures. Prescreening investigative steps include Federal Bureau of Investigation fingerprint checks, credit checks, ALERTS checks, and Federal tax compliance checks.[54] In addition, contractor employees must remain tax compliant while actively working on IRS contracts. Periodic tax checks are to be conducted by

[50] Includes Falsification: Other Than Official Documents and Falsification: Employee/Investment Forms.

[51] Includes Taxes: Underreporter-Not RRA 98 § 1203; Taxes: Nonfiler/Late Filer-Not RRA 98 § 1203; and Taxes: Not Paid/Late Paid.

[52] The other issues include Unprofessional Conduct; Self-Reported Medical Issue; Fighting; Hearing issue discovered through annual audiogram; Management-Identified Medical Issue; Collection of Administrative Debt; Criminal Misconduct; Workplace Disruption; and Medical issue raised through the Physical Fitness Program.

[53] IRM 10.23.2.2(1), *General Investigative Requirements* (Apr. 27, 2016).

[54] IRM 10.23.3.2, *Applicant Suitability Prescreening and Fingerprint Check* (May 9, 2019).

Personnel Security on all contractor employees who have been granted staff-like access and remain active on an IRS contract.[55]

[55] IRM 10.23.2.2.2, *Eligibility Criteria* (Apr. 22, 2022).

Appendix I

Detailed Objectives, Scope, and Methodology

The overall objectives of this audit were to evaluate the process for identifying and remediating willful IRS and contractor employee tax noncompliance, and the steps taken to mitigate the risks of rehiring former employees with past conduct or performance issues. To accomplish our objectives, we:

- Interviewed HCO management and reviewed internal guidance to evaluate the process for identifying and addressing IRS and contractor employee tax noncompliance and prior conduct/performance issues.
- Identified current IRS and contractor employees who were not fully compliant, *e.g.*, filing and paying, on their Federal tax debts.
- Identified IRS employees with substantiated tax issues by querying ALERTS for IRS employees with the following issue codes for cases closed in Fiscal Year 2022:
  - 015 – Taxes: Underreporter.
  - 016 – Taxes: Nonfiler/Late Filer.
  - 017 – Taxes: Other – Not RRA 98 § 1203.
  - 117 – Willful Untimely Tax Return – RRA 98 § 1203(b)(8).
  - 118 – Willful Understated Tax – RRA 98 § 1203(b)(9).
  - 421 – Nonfiled.
  - 422 – Late Filed.
  - 423 – Unpaid.
  - 424 – Late Paid.
- Identified current IRS employees who were rehired that previously separated due to substantiated conduct/performance issues.
- Identified current contractor employees who were former IRS employees that previously separated due to substantiated conduct/performance issues.

Performance of This Review

This review was performed with information obtained from the HCO located in Washington, D.C., during the period of January 2023 through January 2024. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Major contributors to the report were Bryce Kisler, Assistant Inspector General for Audit (Management Services and Exempt Organizations); Glen J. Rhoades, Director; Melinda H. Dowdy, Audit Manager; Meaghan S. Tocco, Audit Manager; Yasmin B. Ryan, Lead Auditor; Joseph P. Smith, Senior Auditor; Euneke L. Coates, Auditor; and Lance J. Welling, Applied Research and Technology Data Analyst.

Data Validation Methodology

We evaluated the data extracts by performing tests to assess the reliability of the data obtained from the TIMIS and the IMF. We evaluated the data by running queries on the population to ensure that the data met our criteria, all fields were received, record counts were as expected, and there were no erroneous duplicates. We also evaluated ALERTS data to ensure that there were no duplicates, that the records matched the criteria requested, and that date parameters met our criteria. We determined that the data were sufficiently reliable for the purposes of this report.

Internal Controls Methodology

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our audit objectives: the policies, procedures, and practices used by the HCO. We evaluated these controls by interviewing HCO management; reviewing the IRM, the I.R.C., and data from ALERTS, the TIMIS, and the IMF to identify IRS and contractor employees with tax noncompliance or prior conduct/performance issues.

Appendix II

Management's Response to the Draft Report

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

HUMAN CAPITAL OFFICE

June 18, 2024

MEMORANDUM FOR MATTHEW A. WEIR
ACTING DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Traci M. DiMartini
IRS Human Capital Officer

Traci M. DiMartini
Digitally signed by Traci M. DiMartini
Date: 2024.06.18 11:42:47 -04'00'

SUBJECT: Draft Audit Report – Ninety-Five Percent of IRS and Contractor Employees Were Tax Compliant; However, There Were Some Prior Tax Noncompliance, Conduct and Performance Issues (Audit #202310025)

Thank you for the opportunity to review the draft report, *Ninety-Five Percent of IRS and Contractor Employees Were Tax Compliant; However, There Were Some Prior Tax Noncompliance, Conduct and Performance Issues* (Audit #202310025), dated May 3, 2024. Employee tax compliance is a key foundation to the public's trust in the IRS, and we are committed to maintaining effective processes to address IRS employees and contractors who fail to meet their tax compliance responsibilities. The IRS ranks at the top of all federal agencies for tax compliance, as reported by the Federal Employee/Retiree Delinquency Initiative in March 2022.

As the Treasury Inspector General for Tax Administration (TIGTA) acknowledges in this draft report, more than 99% of IRS employees and contractors were compliant with their tax filing obligations. Furthermore, 96% of IRS employees and 90% of contractors were payment compliant at the time that TIGTA pulled its data for this audit.

The Human Capital Office (HCO) uses the Tax Compliance Check Service (TCCS) to perform tax compliance checks for individuals when making suitability determinations for IRS hiring and to monitor the tax compliance of IRS employees. TCCS extracts from the Individual Master File data showing potential tax noncompliance and uploads the data into the Automated Labor and Employee Relations Tracking System (ALERTS). This process ensures that any potential tax noncompliance by IRS employees is reviewed by the HCO Employee Tax Compliance (ETC) Branch. The ETC branch refers appropriate cases to management to work with HCO Labor Relations (LR) on developing, considering, and adjudicating these tax non-compliance cases. For IRS contractors, tax compliance is verified at the time of onboarding and through periodic annual tax checks. If contractors are not compliant at the time of their periodic tax check, the HCO revokes security access to IRS facilities and information systems.

During this audit, TIGTA provided HCO with a list of 2,059 IRS employees with tax noncompliance issues, either due to nonpayment of taxes (15 employees) or not filing tax returns (2,044 employees), as of May 6, 2023. The HCO ETC Branch reviewed the 15 IRS employees TIGTA reported as having unfiled tax returns as of May 6, 2023. Of the 15 IRS employees reviewed, 10 were not required to file because their incomes were under the income threshold filing requirements; [redacted] The HCO ETC Branch also reviewed the 2,044 IRS employees TIGTA reported as having balances due and not having installment agreements as of May 6, 2023. Of the 2,044 IRS employees reviewed, 1,184 now have zero balances or are due a refund. The remaining 860 have cases pending review by the ETC Branch or are in progress with LR for final adjudication by management.

The HCO Personnel Security Office (PSO) reviewed the 72 contractors TIGTA reported as having unfiled tax returns as of March 13, 2023. Of the 72 contractors reviewed, 59 had already been disapproved for staff-like access to IRS facilities and systems due to tax noncompliance; 6 are contracted through other governmental agencies, and the IRS does not have authority to conduct tax checks on these individuals; and the remaining 7 were tax compliant as of the 2023 annual tax check. The PSO also reviewed the 1,729 contractors TIGTA reported as having balances due and not having installment agreements as of March 13, 2023. Of the 1,729 contractors reviewed, 618 were compliant as of the last periodic tax check; 482 had already been disapproved for staff- like access to IRS facilities and systems; 608 were no longer contractors with the IRS; 3 are contracted through other governmental agencies and the IRS does not have authority to conduct tax checks on these individuals; and the remaining 18 are pending review in the Automated Background Investigation System, the system of record for contractor suitability.

TIGTA also identified 115 former IRS employees who were rehired as contractors. Former employees working for IRS contractors are not subject to the I.R.C. § 7804(d) rehire provisions, which prohibit the IRS from hiring former employees who were removed for misconduct or RRA 98 § 1203 violations. The IRS reviewed the ALERTS records of these former IRS employees returning as contractors and considered any information in accordance with Defense Counterintelligence and Security Agency suitability guidelines and found there was no prohibition with engaging any of these former employees as contractors.

The results of HCO's thorough review of the individuals identified by TIGTA in this draft report validates TIGTA's finding that the IRS has policies and procedures in place to detect and remedy employee and contractor tax non-compliance. Corrective actions for any unfiled returns and/or unpaid balances are addressed consistently with these policies and procedures. Moreover, the HCO role in employee and contractor tax compliance cases does not extend to collecting unpaid taxes or obtaining unfiled returns, though HCO certainly encourages payment and filing in appropriate cases. The IRS business operating divisions manage taxpayer delinquent filing and payment issues for all taxpayers, including IRS employees and contractors. HCO evaluates tax compliance in determining employee and contractor suitability, monitors tax compliance for ongoing contractor suitability (and revokes contractor access as needed), and monitors for employee non-compliance and works with management on developing those cases and on imposing discipline, up to removal, for appropriate employee tax non-compliance cases. Accordingly, the IRS does not agree with TIGTA's recommendation that the Chief, HCO secure unfiled returns and ensure unpaid balances are resolved.

During this audit, HCO provided TIGTA with a list of 70 substantiated willful RRA 98 §1203(b)(8) or (b)(9) cases between October 1, 2021, and April 1, 2023, that were referred to the §1203 Review Board for consideration of mitigation. Those 70 cases resulted in 20 removals, 47 suspensions, [redacted] In calendar year 2022, HCO identified 69 substantiated willful RRA 98 §1203(b)(8) and (b)(9) cases that were referred to the §1203 Review Board. Those 69 cases resulted in 25 removals, 43 suspensions, [redacted]. The Commissioner exercised his sole discretion to mitigate the mandatory penalty of removal, where appropriate.

As TIGTA points out in this draft report, §1203 of the IRS Restructuring and Reform Act of 1998 (RRA 98) states that, for certain offenses, including the willful failure to file a tax return and willful understatement of a Federal tax liability, IRS employees shall be terminated unless the IRS Commissioner decides to mitigate the penalty of termination. Congress granted the IRS Commissioner "sole discretion" under RRA 98 §1203(c)(2) to mitigate the mandatory removal of employees to a lesser penalty. The authority under §1203(c)(2) also grants the Commissioner sole discretion to establish the procedure to determine which cases would be referred to the Commissioner for a mitigation determination. The Commissioner exercised this authority when he established the §1203 Review Board.

According to the §1203 Review Board Charter, the §1203 Review Board evaluates each case to determine whether mitigation from the proposed removal is warranted, recommends mitigation when the §1203 Board determines removal is not warranted, and assures consistency across the Agency. The §1203 Board makes recommendations to the Commissioner. The §1203 Review Board also uses the §1203 Commissioner's Review Board New Member Briefing and the §1203 Review Board Case Cover Sheet, the latter of which documents factors considered when making recommendations for mitigation in the light of prior Board recommendation history.

Before recommending to the Commissioner whether mitigation is warranted, the §1203 Review Board evaluates aggravating and mitigating circumstances or other factors that bear on the disciplinary issue.

The IRS currently has specific written policies and procedures on how §1203(b) cases are handled. We will consolidate this guidance into a standard operating procedure (SOP) to further consistency in the §1203 Review Board process, while ensuring we do not interfere with the Commissioner's authority or compromise the integrity of the §1203 adjudication process. We agree in principle that documenting the processes in this SOP will further consistent §1203 Review Board recommendations, but we disagree with including this SOP in the Internal Revenue Manual.

Attached is a detailed response outlining the corrective action the HCO will initiate in response to your recommendations. If you have any questions, please contact me at traci.m.dimartini@irs.gov, or a member of your staff may contact Geralda Larkins, Director, Labor/Employee Relations and Negotiations, at geralda.larkins@irs.gov.

Attachment

Attachment

RECOMMENDATION 1:
The Chief Human Capital Officer should ensure that any unfiled tax returns have been secured or the instances of unpaid balances due for the IRS and contractor employees identified in this report have been resolved.

CORRECTIVE ACTION:

Disagree.

The Chief Human Capital Officer (CHCO) does not have tax collection or enforcement authority; that authority resides with the IRS business operating divisions for all taxpayers, including IRS employees and contractors. HCO reviewed the individuals identified by TIGTA in this draft report and validated that all tax noncompliance issues are being addressed consistently with IRS's policies and procedures.

IMPLEMENTATION DATE:

NA

RESPONSIBLE OFFICIAL(S):

NA

CORRECTIVE ACTION(S) MONITORING PLAN:

NA

RECOMMENDATION 2:
The Chief Human Capital Officer should include in the IRM the policies, procedures, and standards that the §1203 Review Board uses when evaluating whether to recommend penalty mitigation or termination of an employee.

CORRECTIVE ACTION:

Agree in principle.

We disagree that the policies, procedures, and standards for the §1203 Review Board need to be included in the Internal Revenue Manual because we have written guidance regarding the §1203 Review Board within the §1203 Review Board Charter, the §1203 Commissioner's Review Board New Member Briefing, and in LR's §1203 Review Board Case Transmittal Cover Sheet.

Attachment

However, we agree that consolidated documentation may support consistency in the §1203 Review Board review process. Accordingly, the Chief Human Capital Officer will consolidate existing §1203 Review Board policy and procedures into a standard operating procedure document.

IMPLEMENTATION DATE:

September 15, 2024

RESPONSIBLE OFFICIAL(S):

Director, Labor/Employee Relations and Negotiations Division

CORRECTIVE ACTION(S) MONITORING PLAN:

We will upload a §1203 Review Board SOP into the Joint Audit Management Enterprise System, along with Form 13872, Planned Corrective Action Status Update, by September 15, 2024.

Appendix III

Abbreviations

ALERTS	Automated Labor and Employee Relations Tracking System
ETC	Employee Tax Compliance
HCO	Human Capital Office
IMF	Individual Master File
I.R.C.	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
LR	Labor Relations
RRA 98	Internal Revenue Service Restructuring and Reform Act of 1998
SFR	Substitute for Return
TCCS	Tax Compliance Check Service
TIGTA	Treasury Inspector General for Tax Administration
TIMIS	Treasury Integrated Management Information System

To report fraud, waste, or abuse,
contact our hotline on the web at www.tigta.gov or via e-mail at oi.govreports@tigta.treas.gov.

To make suggestions to improve IRS policies, processes, or systems affecting taxpayers, contact us at www.tigta.gov/form/suggestions.

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