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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

VIA ELECTRONIC COMMUNICATION

The Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20224

May 2, 2019

Dear Commissioner Rettig:

On April 15, 2019, the Treasury Inspector General for Tax Administration (TIGTA) published a report assessing how the Internal Revenue Service (IRS) addresses tax noncompliance within its own workforce.¹ The report found the IRS was inconsistent in both determining willful noncompliance within its workforce and in adjudicating Section 1203 cases.²

Congress passed Section 1203 as part of the IRS Restructuring and Reform Act of 1998 (“RRA 98”).³ Section 1203 states that the IRS shall terminate the employment of any IRS employee if there is a final determination that the employee committed certain acts of misconduct or omissions, including willful violations of the tax laws.⁴ It further states that a determination to terminate an employee may be mitigated only at the discretion of the IRS Commissioner.⁵ However, the TIGTA report found that the IRS’ actions were inconsistent with what the law requires.⁶

First, the report states the IRS management’s determination regarding willfulness was not always supported by the facts and circumstances of the cases under review.⁷ To make a

¹ TIGTA, Report No. 2019-10-021, *Improvements Are Needed to Ensure That Employee Tax Compliance Cases Are Adjudicated Consistently* (April. 2019).

² *Id.*

³ Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 1203, 112 Stat. 685, 720-22 (1998).

⁴ *Id.*

⁵ *Id.*

⁶ See TIGTA, Report No. 2019-10-021, *Improvements Are Needed to Ensure That Employee Tax Compliance Cases Are Adjudicated Consistently* (Apr. 2019).

⁷ *Id.*

determination of willingness, it must be established that the employee knew, or should have known, of his or her obligation under the tax law and the employee knew he or she was violating that duty.⁸ Second, there are multiple groups responsible in identifying and resolving potential employee tax-noncompliance, including the Employee Tax Compliance Branch, Labor Relations, IRS Management, a Section 1203 Review Board, and the IRS Commissioner.⁹ TIGTA noted that labor relations specialists did not properly classify cases in the Automated Labor and Employee Relation Tracking System, estimating that 123 cases that were listed as closed in FY 2017 are potentially misclassified.¹⁰ Additionally, TIGTA found the IRS's adjudication of Section 1203 cases inconsistent.¹¹

TIGTA reviewed a sample of 50 cases from a total of 1,250 cases that the IRS closed in FY 2017, and found that in 21 cases, the IRS did not make a proper determination of willfulness as required by Section 1203.¹² Across all 1,250 cases, TIGTA estimates that the IRS did not make a proper determination of willingness in 530 cases.¹³ In seven of the 50 cases studied, the IRS did not include the required documentation to support a determination of willfulness, and TIGTA estimates that the IRS did not include this required information in a total of 177 cases.¹⁴ Additionally, TIGTA found that, of 22 potential Section 1203 tax-noncompliance cases studied, the facts did not support IRS' non-determination of willfulness in 13 of those cases. In ten of the 13 cases, the IRS employee had at least one prior case that contained a substantiated tax violation.¹⁵ So, not only did the IRS make unsubstantiated determinations on willful violations of the tax laws, but it did so with individuals who are repeat offenders.

Further, TIGTA found that 802 of the 1,250 cases involved employees with potential Section 1203 cases who held tax-enforcement positions within the IRS.¹⁶ Of those 802 cases, 66 appeared to involve willful violations of the tax laws, including one Criminal Investigator, one Revenue Officer, and four Internal Revenue Agents.¹⁷ These individuals are in positions of authority within the IRS that review, analyze, and investigate some of the most complex tax returns submitted to the IRS. Individuals with such authority should be subject to the same, if not higher, standards than the taxpayers whose returns they review and investigate.

If taxpayers lack faith in the IRS' ability to police its own workforce, they will lose faith in the IRS' ability to administer the tax code fairly for everyone else. The law is clear on this issue, yet the IRS continues to employ individuals who are in willful violation of the tax law and policy of the IRS. We must hold the IRS, and its employees, to the same standard to which we hold every other taxpayer in the United States.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

To better understand the IRS' internal enforcement mechanisms and policies regarding employee tax delinquency, please answer the following questions no later than May 31, 2019.

1. Were you aware that there were individuals in noncompliance with the tax laws within the IRS? If not, was the previous Commissioner aware?
2. Did you, or the previous IRS Commissioner, exercise discretion to disregard the Section 1203 requirement to dismiss employees who are not in compliance with the tax laws? If so, why?
3. What is the tax delinquency status of the Criminal Investigator, the Revenue Officer, and the four Internal Revenue Agents described as willful violators of the tax law?
4. TIGTA estimates that the IRS failed to properly determine willfulness in 530 cases. Has the IRS re-examined all of the 1,250 cases of noncompliance to make corrected determinations where necessary? If not, why?
5. What is prohibiting the IRS from adhering to the statutory requirement that requires the IRS to terminate the employment of any employees who are currently non-compliant with their taxes?
6. What actions have been taken to address those within the IRS who are noncompliant with their taxes?
7. TIGTA identified five cases in which labor-relations specialists did not agree with IRS management's willfulness determination. Why did these labor-relations specialists disagree with IRS management in these five cases? Please provide documentation on the decision making process from IRS management.
8. Has the IRS taken steps to address unsubstantiated non-determinations of willfulness in the 13 cases identified in this report? Are those employees still noncompliant with the tax laws? What is the status of those employees who are repeat offenders?
9. How has the IRS addressed the potential misclassifications within the Automated Labor and Employee Relations Tracking System?
10. Are the recommendations made by TIGTA sufficient to address these issues? If not, what else can the IRS do to better ensure that tax-noncompliance within the IRS does not occur?

I look forward to your responses to these questions. Pursuant to the Committee's authority under § 6103(f)(1) and (4) of the Internal Revenue Code, this is to designate the

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following individuals as agents to receive briefings and responses related to this letter: Quinton Brady. I also ask that you answer the questions on a question-by-question basis, indicating which questions you are answering. Thank you in advance for your assistance in this matter. Should you have questions, please contact Quinton Brady of my Committee staff at (202) 224-4515. Thank you for your attention to this important matter.

Sincerely,



Charles E. Grassley
Chairman

Senate Committee on Finance