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United States Senate

CHARLES E. GRASSLEY

WASHINGTON, DC 20510-1501
June 21, 2012

REPLY TO:

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- ☐ 131 WEST 3RD STREET
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- ☐ 307 FEDERAL BUILDING
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The Honorable Timothy F. Geithner
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

The Honorable Douglas L. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue NW
Washington, DC 20224

Dear Secretary Geithner and Commissioner Shulman:

Thank you for the response to my April 30, 2012 letter and for making Deputy Commissioner Steven Miller and Acting Assistant Secretary Emil McMahon available to meet with my staff. The actions in response to my letter and that meeting are encouraging but I continue to have questions and concerns.

A major concern is that I would not have received the information I requested if I had not requested Dr. Mark Mazur's assistance in securing the information during his confirmation hearing. During your own confirmation hearings, you had agreed to respond to my requests completely and in a timely manner. So, the effort required to secure responses from you is disheartening.

I appreciate the June 15, 2012, response, which I understand reflects the commitments Deputy Commissioner Miller made to my staff in their May 31, 2012, meeting, including releasing a new field directive and shaking loose the annual whistleblower report. However, some questions remain unanswered and the response, along with the most recent whistleblower report and Deputy Commissioner Miller's June 20, 2012, Field Directive, raise further questions. As a result, I would appreciate responses to the following.

The list of education and outreach activities regarding the whistleblower program is detailed. Yet, it does not seem to reflect the commitments made in November 22, 2011, Internal Revenue Service response. It appears that most communication efforts took place soon after the Whistleblower Office was launched and communication efforts do not seem to have increased between November, 2011, and June, 2012. In addition, there do not appear to be any communications from Commissioner Shulman's office or from Senior Executives in general..

- 1) Please provide information on if and when the Commissioner or other Senior Executives have conveyed the importance of the whistleblower program
- 2) Is information about the program included in periodic training for all employees, including Senior Executives?

RANKING MEMBER,
JUDICIARY

Committee Assignments:

AGRICULTURE
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FINANCE

Co-CHAIRMAN,
INTERNATIONAL NARCOTICS
CONTROL CAUCUS

I am very disappointed with the infrequent meetings of the Executive Board and that the board has implemented yet another level of review by delegating work to an Operations Committee. It is even more disappointing that in fourteen meetings of either the Executive Board or the Operations Committee over three years, award cases were presented only three times.

- 3) Please provide the number of cases presented to the Board in the course of those three meetings.
- 4) It does not appear that the draft Internal Revenue Manual revisions released on June 7, 2012, reference the Operations Committee. What exactly is the role of the Operations Committee and the Executive Board with respect to reviewing award recommendations? Is the Committee now required to review all award cases before presentation to the Board? If yes, please explain why.
- 5) Did the Operations Committee meet on June 19, 2012, as indicated in your response and how many award cases were presented? If the Committee did not meet, please explain why.
- 6) If the Committee did meet, when will the Executive Board meet to discuss the Committee's work, specifically the number of award cases?
- 7) Deputy Commissioner Miller's June 20, 2012, directive does not provide timelines for actions by the Operations Committee or the Executive Board. Please explain.

The update of the Government Accountability Office's (GAO) work also delivers bad news. The increase in the numbers of cases in "Whistleblower Office Award Evaluation" and Whistleblower Office Form 11369 Review" is very troubling. It is not clear if the cases in these categories have remained in the same status from when the GAO completed its analysis over a year ago.

- 8) Please provide information on the amount of time cases have been in this status.
- 9) As requested in my April 30, 2012, please provide the amount of time it takes the Whistleblower Office to calculate and recommend an award.

The number of "Awards Paid in Full" is also shockingly low. A news outlet recently quoted Deputy Commissioner Miller as stating that the IRS expected to pay out another three to five awards this year. As I have stated repeatedly, this snail's pace is disheartening and discouraging to whistleblowers and threatens to undermine the program. I am concerned that the drop in whistleblower claim filings, as reported in Table 1 of the Annual Whistleblower Report, is a result of this foot-dragging.

- 10) Please explain how this estimate was derived.
- 11) Please indicate how many award recommendations are awaiting action by the Operations Committee and/or the Executive Board.

I also continue to have concerns about the lack of priority for issuing regulations. Commissioner Shulman indicates in his latest response that regulations will be issued "later this year". This is not sufficient. I understand that Treasury, not the Internal Revenue Service (IRS), is responsible for issuing these regulations so I would appreciate a response to the following from Secretary Geithner.

- 12) Please indicate whether each of the topics listed in Commissioner Shulman's June 15, 2012, response will be addressed in separate regulations or in one combined package.
- 13) Please provide a detailed status report on the regulations to be issued, including whether the regulations have been written or are being reviewed.
- 14) Please provide a specific timeline for issuance, including deadlines for Treasury Office of Tax Policy, Chief Counsel, and IRS.
- 15) As requested in my April 30, 2012, letter, please provide a list of meetings or consultations Treasury and IRS officials have conducted with the Department of Justice and the Securities and Exchange Commission to ensure that Treasury efforts are not duplicative or conflicting with established precedents, such as for the definition of planners and initiators.
- 16) Please provide copies of all research and analysis supporting the IRS's position, as reported in the Annual Whistleblower Report, that Title 31 penalties are not eligible for awards under the whistleblower program.

Finally, the Annual Whistleblower Report was provided to Congress on June 15 – that is eight and a half months after the end of the fiscal year. With the end of this fiscal year quickly approaching, I repeat the request I made in my September 13, 2011, letter that the Annual Report be provided no later than November 30.

As the full Senate may consider the nominations of two Treasury Assistant Secretaries as early as next week, I would appreciate receiving your responses by June 26, 2012. If you have any questions, please do not hesitate to contact me or my staff.

Sincerely,



Charles E. Grassley
United States Senator

cc: The Honorable J. Russell George
The Honorable Gene L. Dodaro