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# United States Senate

CHARLES E. GRASSLEY

WASHINGTON, DC 20510-1501

September 26, 2013

REPLY TO:

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The Honorable John A. Koskinen  
Nominee, Commissioner of Internal Revenue  
Internal Revenue Service  
111 Constitution Avenue NW, Room 1519  
Washington, DC 20224

Dear Mr. Koskinen:

I congratulate you on your nomination as Commissioner of the Internal Revenue Service (IRS). I am writing to bring to your attention the need for greater focus by the IRS on legitimate enforcement and collection activities. There is much the IRS can do in this area by taking full advantage of two important initiatives that will help the IRS fulfill its mission – without the need for additional appropriations. These two initiatives are: the IRS' authority to use private debt collectors; and, the IRS whistleblower program – both programs that I have long championed.

On August 23, 2013, the Treasury Inspector General for Tax Administration (TIGTA) released a report that examined IRS' collection and enforcement activities. According to TIGTA, enforcement revenue has decreased for two straight years and is 13 percent less than the amount in Fiscal Year 2010.<sup>1</sup> There were mixed results in IRS Collection function, but Tax Delinquent Accounts continue to increase with the amount in the Queue growing by 46% over the past 5 years. Additionally, accounts receivable have increased by approximately \$100 billion in last ten years.

As TIGTA notes, the IRS has been faced with many challenges these past years due to the fiscal realities we currently face, as well as its role in implementing and enforcing the Affordable Care Act. The primary role of the IRS is to collect the revenue necessary to fund the government. While the IRS' role has been expanded over the years, and vastly so with the implementation of the Affordable Care Act, it is important the chief mission of the IRS is not degraded.

As is evident from recent news reports, whether it's over indulgent spending on conferences or paying out unnecessary bonuses, there are opportunities for the IRS to better use its resources. In the grand scheme of things the additional dollars saved by curtailing these excesses may not be enough to cover all the challenges on the IRS' plate. Yet, given the current fiscal imbalance, the answer cannot solely be ever larger appropriations from Congress. It is incumbent on the IRS to work smarter and utilize *all* the resources currently at its disposal.

<sup>1</sup> TIGTA, *Trends in Compliance Activities Through Fiscal Year 2012*, Ref. Num.: 2012-30-078, August 23, 2013

Over the past decade I have sought to provide the IRS with additional tools to track down tax cheats and collect funds through the enactment of the Private Debt Collection (PDC) program and the expansion of the IRS whistleblower program. Unfortunately, both programs have been fought every step of the way by some within Treasury and IRS who have an ideological disposition to oppose any program that seeks to utilize “private” or non-government resources to reduce the burden on the IRS.

As part of the 2004 American Jobs Creation Act, Congress added an arrow to IRS’ quiver with the authorization of the PDC Program. This program authorized the IRS to contract with private agencies to collect owed taxes that the IRS wasn’t collecting on its own. For two and a half years private agencies were contracted by the IRS to work cases the IRS wouldn’t work because they were deemed low yield. In this short time, this fledgling program collected nearly \$100 million in revenue that otherwise would have gone uncollected.<sup>2</sup> Additionally, IRS’ own information showed the private employees’ quality ratings were consistently higher than that of IRS employees. However, those with a vested interest in seeing the PDC program fail got their wish in March of 2009 when the IRS chose not to renew contracts with the private debt collecting agencies.

IRS’ decision was based on a study it claimed showed IRS employees could collect the tax debts cheaper and better than private employees. However, it is evident from a 2010 Government Accountability Office (GAO) study that IRS cooked the books to get the result it wanted. GAO found the IRS study contained numerous flaws and “was not a soundly designed cost-effectiveness comparison for supporting IRS’s decision.”<sup>3</sup> GAO made several suggestions on how to fix the study and any future studies. Yet, the IRS doggedly refused to reevaluate the PDC program in light of GAO’s findings.

The IRS decision was further undermined by a 2011 TIGTA report. TIGTA unequivocally found that it was “clear that the Federal Government benefited from PCAs working these...cases.”<sup>4</sup> Despite IRS’ assertion that its employees would work the cases and do so more effectively, TIGTA found that IRS worked only 47% of cases that were reassigned to the IRS in 2009 as a result of the cancellation of the PDC. TIGTA further estimated that as much as \$516 million could have been collected over the next five years if similar cases would have been assigned to the PDC collection program. This is consistent with Treasury Department’s own analysis from 2004 that estimated the program would collect approximately \$1.4 billion over ten years.

The PDC Program remains authorized and is a proven tool currently at this Administration’s disposal. The IRS has not shown that it has the resources or willingness to go after the “low priority” cases that are eligible to be assigned to PDCs. Thus, as TIGTA recommended in 2011,

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<sup>2</sup> TIGTA, *Collection Actions Were Not Always Pursued on Cases Returned From the Private Debt Collection Program*, Ref. Num.: 2011-30-114, September 27, 2011

<sup>3</sup> GAO, *Tax Debt Collection: IRS Could Improve Future Studies By Establishing Appropriate Guidance*, GAO-10-963, September 2010. (“We continue to believe that the study was not a soundly designed cost-effectiveness comparison for supporting IRS’s decision. Our report discusses our reasoning in detail, focusing on the study’s methodological errors, narrow scope, and lack of adherence to guidance for doing such studies.”)

<sup>4</sup> TIGTA 2011, *Supra*



“the IRS should consider reinstituting the PDC Program and funding all Program costs through Program collections.”<sup>5</sup>

I encourage you to show the leadership necessary to set aside narrow-minded ideology that grips some at Treasury and the IRS and put good tax administration first – and reinstate the PDC Program immediately. I ask that you familiarize yourself with the program, provide me your detailed views prior to your confirmation and commit to a decision on this matter within your first 60 days as Commissioner.

The expanded IRS Whistleblower program I authored in 2006 is an additional tool I fear the IRS is not using to its full capability. This program has the potential to be an excellent enforcement tool for tracking down high dollar tax fraud and evasion. Its potential has already been shown by the billions of dollars that have been brought in from illegal offshore accounts. The key for these billions is the work of whistleblowers coming forward and opening the curtain to secret bank accounts.

Yet, despite this success, many at the IRS, and especially Treasury and Chief Counsel have undermined the program and have discouraged whistleblowers from coming forward. Payouts under the program are few and far between and IRS agents refuse to fully utilize the whistleblower’s knowledge and expertise to identify and expose tax cheats. Moreover, whistleblowers who often are putting their whole career on the line frequently have to wait for years in the dark with no information as to whether or when the IRS will act on their claim. Finally, Treasury is proposing regulations that will further undercut the whistleblower program – with a shortsighted view that will save a penny today and lose the Treasury much more in the future due to discouraged whistleblowers’ not coming forward.

The statute gives the IRS Whistleblower Office clear authority to not only award whistleblowers, but to also enter into contracts with whistleblowers and their attorneys to assist the IRS in its work (while at the same time protecting taxpayer confidentiality).<sup>6</sup> The Department of Justice has found success to the tune of billions of dollars recovered under the False Claims Act (FCA), working with whistleblowers and their representatives. The IRS would find similar success working with whistleblowers and their attorneys – if it would only get out of its own way. Unfortunately, the IRS has taken this opportunity to partner with whistleblowers and buried it. It is my understanding that the IRS has delegated the authority to request whistleblower assistance solely to IRS field offices. To my knowledge, such contracting with whistleblowers has never happened because of the reality that the field has no understanding, guidance or support for such an undertaking. This is inexcusable. Whistleblowers and their representatives stand at the ready to assist the IRS, cutting down enormously the time and effort needed by the IRS to conduct an examination – and instead the naysayers at the IRS find ways to gum up the works. I ask for your commitment to affirm the IRS Whistleblower Office’s authority to contract with

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<sup>5</sup> *Id.* (“The Director, Collection, Small Business/Self-Employed Division, should ensure collection policy and procedures are reviewed for inventory assignment practices to determine if cases that otherwise would have been assigned to the PDC Program can be worked. *Alternatively, the IRS should consider reinstituting the PDC Program and funding all Program costs through Program collections.*” Emphasis added)

<sup>6</sup> Pub.L. 109-432, Div. A, Title IV, § 406(b)(1)(C), (“[The Whistleblower Office] in its sole discretion, may ask for additional assistance from such individual or any legal representative of such individual.”)

whistleblowers and their representatives and to provide clear direction that contracting is encouraged and should be a priority.

For the whistleblower program to reach its full potential, the IRS must reassure whistleblowers that they are valued and will be treated fairly. In December of 2012 the IRS issued proposed whistleblower regulations that continue to await finalization. I, as well as many in the whistleblower community, have expressed deep concerns that the regulations as proposed will hamstring the program by limiting whistleblower awards and discouraging knowledgeable insiders from coming forward. Treasury and IRS should work expeditiously to finalize the regulations taking into account all the comments and concerns they have received. The final regulations must assure whistleblowers that it's worth risking their career to come forward to expose those who are skirting our tax laws.

These regulations require your approval before they are made final. I ask that you review closely these proposed regulations, as well as all my correspondence with the Treasury and IRS on this matter overall as well as the regulations, and also the comments on the regulations by the leading whistleblower representatives. Additionally, please provide me your thoughts on the whistleblower program overall, the steps you intend to take to ensure its success is realized – particularly those steps you can take under your own authority such as improved communication with whistleblowers during the process -- and your views on the proposed regulations – especially on the issues of “related action,” “collected proceeds,” and “planned and initiated.”

The impact of the proposed regulations as they are written would be to greatly discourage whistleblowers and to give comfort to tax cheats. Time and time again the writers of the proposed regulation turn a blind eye to the plain meaning of the statute I wrote, the policy of the statute of rewarding whistleblowers, and the precedence of the False Claims Act.

Certain actions by the IRS have further fostered a level of distrust between whistleblowers and the IRS. One glaring example is the case of *Anonymous 1 and Anonymous 2 v. Commissioner*, in which the IRS whistleblower office denied a whistleblower's claim, yet another branch of the IRS opened its own investigation into the same company identified by the whistleblower.<sup>7</sup> This case resulted in the Tax Court Judge admonishing the IRS for misleading the court to believe the new investigation was independent and did not rely on information provided by the whistleblower. While this case may be an isolated incident, it gives pause to any whistleblower who may be debating whether it's worth coming forward.

In this light, I ask for you to review the work and role of the IRS Whistleblower Office. The office has excellent staff. However, the Whistleblower Office is small and needs you to support it in the battles at the IRS and Treasury. I suggest this is especially the case where I am hearing more and more of first-rate cases being submitted by whistleblowers – from whistleblowers who are knowledgeable and well-placed and often involving tens of millions if not hundreds of

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<sup>7</sup> *Anonymous 1 and Anonymous 2 v. Commissioner*, United States Tax Court, Docket No. 12471-11w (“Respondent's statement is misleading. The Court was aware that respondent opened a subsequent investigation, however, respondent assured the Court that the SB/SE investigation was independent and that the information petitioners provided in their original Forms 211 was not being used.”)



millions of tax dollars -- who are being ignored by IRS field offices as well as Large Business and International Division senior managers.

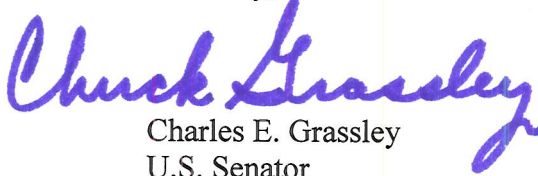
The IRS Whistleblower Office was given the statutory authority to investigate these good cases itself, or at a minimum to raise them to your attention and review. We cannot have good whistleblower cases go unworked because IRS field agents don't want to be bothered or because senior managers are resistant. And again, staffing is not an excuse when the IRS has the authority to work with the whistleblower and her representatives to assist. I ask for your commitment that you will put in place procedures that will allow the IRS whistleblower office to work cases itself and/or to have good cases that aren't being worked to be subject to review by the most senior management at the IRS. In addition, I ask for your commitment that the work of the IRS whistleblower office will be a priority in your time as Commissioner.

Lastly, let me note that there are a good number of IRS agents that do work well with whistleblowers – and the honest taxpayers have benefitted enormously from those efforts. I ask that the IRS look to recognize and reward those IRS agents and examiners who have had superior accomplishments thanks to working with whistleblowers. Changing the culture at the IRS as it relates to whistleblowers will do much to address the current problems I've cataloged.

The President has made it quite clear that he believes the federal government needs more revenue. But, before increasing taxes on the millions of law-abiding Americans who voluntarily comply with the tax law, Treasury and IRS should make every effort to collect the billions of dollars in taxes that currently go uncollected. The PDC program and the expanded whistleblower program are available tools that the IRS can better utilize to handle its enforcement and collection case load without requiring additional funding from Congress. If this Administration is serious about making individuals "pay their fair share," and closing the tax gap, it will heed my call to embrace both of these programs.

I look forward to your reply prior to your confirmation hearing.

Sincerely,

  
Charles E. Grassley  
U.S. Senator

cc: The Honorable Jacob Lew, Secretary of the Treasury

cc: The Honorable Danny Werfel, Acting IRS Commissioner