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United States Senate

COMMITTEE ON THE JUDICIARY

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May 19, 2015

VIA ELECTRONIC TRANSMISSION

The Honorable John Koskinen
Commissioner of Internal Revenue
1111 Constitution Ave. NW
Washington, DC 20224

Dear Commissioner Koskinen:

Federal law requires the Internal Revenue Service (IRS) to terminate the employment of any IRS employee if there is a final determination that the employee committed certain acts of misconduct, including willful violations of tax law, unless such penalty is mitigated by the IRS Commissioner.¹

¹ SEC. 1203 TERMINATION OF EMPLOYMENT FOR MISCONDUCT.

(a) In General.--Subject to subsection (c), the Commissioner of Internal Revenue shall terminate the employment of any employee of the Internal Revenue Service if there is a final administrative or judicial determination that such employee committed any act or omission described under subsection (b) in the performance of the employee's official duties. Such termination shall be a removal for cause on charges of misconduct.

(b) Acts or Omissions.--The acts or omissions referred to under subsection (a) are...—

(8) willful failure to file any return of tax required under the Internal Revenue Code of 1986 on or before the date prescribed therefore (including any extensions), unless such failure is due to reasonable cause and not to willful neglect;

(9) willful understatement of Federal tax liability, unless such understatement is due to reasonable cause and not to willful neglect.

(c) Determination of Commissioner.--

(1) In general.--The Commissioner of Internal Revenue may take a personnel action other than termination for an act or omission under subsection (a).

(2) Discretion.--The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner of Internal Revenue and may not be delegated to any other officer. The Commissioner of Internal Revenue, in his sole discretion, may establish a procedure which will be used to determine whether an individual should be referred to the Commissioner of Internal Revenue for a determination by the Commissioner under paragraph (1).

(3) No appeal.--Any determination of the Commissioner of Internal Revenue under this subsection may not be appealed in any administrative or judicial proceeding.

A recent report by the Treasury Inspector General for Tax Administration (TIGTA) reviewed cases of willful violation of tax laws by IRS employees for a 10 year period (FY 2004-2013). The review found 1,580 IRS employees who willfully understated their Federal tax liability or willfully filed their tax return late.² Of these, 400, or roughly one quarter, were terminated. An additional 220 employees, or almost 14 percent, resigned or retired.

The remaining 960 employees (61 percent) found to have willfully violated tax law remained employed by the IRS, suffering only lesser penalties such as suspensions, reprimands or counseling. In fact, many of these employees would receive awards, promotions and pay increases often within one year of the closing of their willful tax noncompliance case.

The TIGTA report also found that disciplinary actions for employees found to have willfully violated tax law varied from case to case. It found further that significant and repeated noncompliance did not necessarily result in termination.

The sole recommendation TIGTA made in the report was for the IRS to document its analysis of evidence and basis for its decision on whether or not to mitigate penalties to something less than termination.

The principal reaction of the public has been astonishment that 61% of IRS employees found to have willfully violated tax law remain employed.³ This is not an unreasonable reaction.

IRS management responded to the TIGTA report by noting that IRS employees who willfully violated tax laws were to be terminated unless the Commissioner decided at his "sole discretion" to mitigate that penalty.⁴ IRS management also noted that the Commissioner's decision is not subject to appeal.⁵ These observations miss the point. Willful violation of tax law is a serious offense and the presumption is an employee guilty of the offense shall be terminated.

In 1998, Congress authorized various personnel flexibilities for the IRS in Public Law 105-206, the IRS Restructuring and Reform Act. These changes created a clear and direct path to termination for employees who commit ten specific offenses, two of which are the willful tax violations at issue here. The Commissioner's discretion to mitigate

² Treasury Inspector General for Tax Administration, Review of the Internal Revenue Service's Process to Address Violations of Tax Law by Its Own Employees, April 14, 2015, Reference Number: 2015-10-002

³ Forbes, May 7, 2015, 61% Of IRS Employees Caught Willfully Violating Tax Law Aren't Fired, May Get Promoted, Robert Wood

<http://www.forbes.com/sites/robertwood/2015/05/07/61-of-irs-employees-caught-willfully-violating-tax-law-arent-fired-may-get-promoted/>

⁴ Treasury Inspector General for Tax Administration, Review of the Internal Revenue Service's Process to Address Violations of Tax Law by Its Own Employees, April 14, 2015, Reference Number: 2015-10-002

⁵ Id.

the penalty of termination was intended to be a safety valve, not a tool to be used routinely to frustrate the intent of Congress. And, by making the Commissioner's decisions not subject to appeal, Congress simply removed those decisions from the judicial and administrative appeals that are available in other personnel actions. Congress has an inherent interest in how the laws it passes are carried out so that informed decisions can be made as to whether legislative changes are necessary. Therefore it is necessary for Congress to conduct oversight of the Commissioner's exercise of discretion.

To help better understand how this mitigation discretion is exercised, please answer the following questions:

1. Please list the factors or facts that tend to lead to the taking of a personnel action other than termination under section 1203 (a) for an employee found to have willfully understated a Federal tax liability or willful late filing of tax returns.
2. To what extent, if any, are past willful violations of tax law considered in the mitigation decision? If they are not considered, why not?
3. Please list the factors or facts that reinforce the presumption of termination under section 1203 (a) for an employee found to have willfully understated a Federal tax liability or to have willfully filed a late tax return.

Please provide your written response to these questions by June 12, 2015. Should you have any questions regarding these issues, please contact Paul Junge of Chairman Grassley's staff at (202) 224-0747.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary