

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

N o t i c e

+ ,
N(30)000-356
• -

November 7, 2000

Tracking Damages Litigation
Subject: and Maintaining Outcome Data Cancellation Date: Upon Incorporation into the CCDM

Purpose

This provides guidance to Chief Counsel personnel about tracking damages litigation involving the Government or Government employees and reporting results. The Department of Justice is primarily responsible for litigation of these types of cases, and Counsel attorneys generally support the litigation with litigation reports or defense letters, analysis and assistance. The procedures in this Notice require Counsel personnel to monitor the cases, obtain information about outcomes from the Department of Justice, and take steps to ensure that results are entered into Counsel information systems.

Definition and Scope

(1) For purposes of this section the term "damages litigation" includes all suits for money damages against the United States, federal agencies, or federal employees. It does not include cases in the United States Tax Court or tax refund suits. A list of examples of "damages litigation" follows; however, this list should not be considered exhaustive:

- a) unauthorized disclosure suits filed under I.R.C. 7431;
- b) suits for damages for failure to release a lien under I.R.C. 7432;
- c) suits for damages for certain unauthorized collection actions under I.R.C. 7433;
- d) cases filed against IRS or Counsel employees on the basis of *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971);
- e) suits for damages filed under the Privacy Act of 1974, 5 U.S.C. 552a;

Filing Instructions: Binder Part (30) Master Sets: NO X RO
NO: Circulate Distribute X to: All Personnel X Attorneys In:
RO: Circulate Distribute X to: All Personnel X Attorneys In:
Other FOIA Reading Room
Electronic Filename: Damage.pdf Original signed copy in: CC:F&M:PM

- f) suits filed under the Federal Tort Claims Act, 28 U.S.C. 2671-2680, if they allege damages based on actions of an IRS or Counsel employee; and
- g) other kinds of suits for damages naming IRS or Counsel employees (including former employees) as defendants, if the plaintiff or petitioner is not an IRS or Counsel employee.

(2) If a damages claim is based on multiple legal theories and more than one Counsel function is assigned to work on the case as a result, the attorney with primary responsibility for the damages litigation case must ensure coordination with the other Counsel offices, as appropriate, and place in the primary case file a statement of which Counsel attorney will provide outcome notification to management, according to paragraph (2)(a), below, under "Outcomes of Damages Litigation Cases."

Pending Damages Litigation Cases

(1) When a damages litigation case is opened in CASE-MIS, the dollar amount of damages claimed should be entered in the appropriate Counsel database.

(2) The Counsel attorney with primary responsibility for the damages litigation case must obtain a status report from the Department of Justice attorney assigned to the case a minimum of once every three months, until the case is withdrawn, dismissed, settled or decided. A note of the information obtained with each status report should be made in the case file.

Outcomes of Damages Litigation Cases

(1) When a damages litigation case is settled or a final decision is rendered, the Counsel attorney with primary responsibility for the case must

- a) obtain a copy of the decision, order and/or settlement document;
- b) obtain documentation of the exact dollar amount awarded or agreed to, if damages are to be paid by the Government or a Government employee; and
- c) take steps to ensure that relevant outcome data, including win/loss information and, in the event of a damages award, the total dollar amount awarded, are entered into Counsel databases (CASE-MIS); if fields for entry of the dollar amounts are not yet available in CASE-MIS, the data must be kept in the case file and input into CASE-MIS as soon as the fields are available.

(2) The responsible Area Counsel, Assistant Chief Counsel or Associate Chief Counsel must ensure that the following steps are taken with regard to giving notice to affected IRS or Counsel offices:

- a) notify appropriate IRS functional management of the outcome, whether the government wins or settles on a favorable basis, or whether the result is a loss or settlement adverse to the government's position;
- b) include in the notice a statement of the dollar amount of damages awarded or agreed to, when the result is a loss or settlement adverse to the government's position;
- c) advise appropriate IRS management of the Treasury Department standards governing referral to TIGTA (see Treasury Order 115-01, copy attached);
- d) provide a recommendation as to whether, if the case has not previously been referred to TIGTA, a referral is appropriate in light of the outcome of the case; and
- e) if a Chief Counsel employee has been named as a defendant in the case, prepare notification to the Deputy Chief Counsel (Operations) of the background and outcome of the damages litigation.

 /s/
DEBORAH A. BUTLER
Associate Chief Counsel
(Procedure and Administration)

 /s/
MARK S. KAIZEN
Associate Chief Counsel
(General Legal Services)

Attachment

BY ORDER OF THE SECRETARY OF THE TREASURY

TREASURY ORDER 115-01

Date: January 14, 1999

Sunset Review: January 14, 2004

SUBJECT: Office of the Treasury Inspector General for Tax Administration

By virtue of the authority vested in the Secretary of the Treasury by 31 U.S.C.§321(b), 5 U.S.C.§301 and §302; and the authority contained in the Inspector General Act of 1978, 5 U.S.C. App. 3 (the I.G. Act), and the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, it is hereby ordered as follows.

1. OFFICE OF THE TREASURY INSPECTOR FOR TAX ADMINISTRATION.

a. There is within the Department of the Treasury an Office of the Treasury Inspector General for Tax Administration (OTIGTA). The OTIGTA shall be headed by an Inspector General who is appointed by the President and who shall report to and be under the general supervision of the Secretary of the Treasury and the Deputy Secretary.

b. The Treasury Inspector General for Tax Administration (TIGTA) shall exercise all duties and responsibilities of an Inspector General with respect to the Department and the Secretary on all matters relating to the Internal Revenue Service (IRS). The TIGTA shall have sole authority under the I.G. Act to conduct an audit or investigation of the IRS Oversight Board, and the Office of Chief Counsel of the IRS (Office of Chief Counsel). (Hereafter the IRS Oversight Board and the Office of Chief Counsel are referred to as the "Related Entities".) All the powers and responsibilities of the IRS Office of Chief Inspector, except for the conducting of background checks and the providing of physical security, are transferred to the TIGTA.

c. The OTIGTA shall be placed organizationally within the Departmental Offices but shall be independent of the Departmental Offices and all other offices and bureaus within the Department.

d. It shall be the duty and responsibility of the TIGTA to:

(1) provide policy direction for, and conduct, supervise, and coordinate audits and investigations relating to the programs and operations of the IRS and Related Entities;

(2) review existing and proposed legislation and regulations relating to the programs and operations of the IRS and Related Entities, and make recommendations in the semiannual reports required by §5(a) of the I.G. Act concerning the impact of such legislation and regulations on the economy and efficiency in the administration of programs and operations administered or financed by the IRS and Related Entities or the prevention and detection of fraud and abuse in such programs and operations;

(3) recommend policies for, and conduct, supervise, or coordinate other activities carried out or financed by the IRS and Related Entities for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, their programs and operations;

(4) recommend policies for, and conduct, supervise, or coordinate relationships between the IRS and Related Entities and other Federal agencies, State and local governmental agencies, and non-governmental entities with respect to all matters relating to the promotion of economy and efficiency in administration of, or the prevention and detection of fraud and abuse in, the programs and operations administered or financed by the IRS and Related Entities; or the identification and prosecution of participants in such fraud or abuse;

(5) recommend actions to resolve fraud and other serious problems, abuses and deficiencies in the programs and operations of the IRS and Related Entities; and inform the Secretary and the Congress, fully and currently, of these problems and the progress made resolving these problems; and,

(6) protect the IRS and Related Entities against external attempts to corrupt or threaten their employees except that the TIGTA shall not, with respect to employees of the IRS and Related Entities, conduct background checks or provide physical security.

e. The duties and responsibilities described in paragraph 1.d. shall not be construed to impair or reduce the responsibilities of program managers in the IRS and Related Entities to ensure that programs are administered in an economic and efficient manner and that such programs are protected against waste, fraud and abuse. Similarly, paragraph 1.d. shall not be construed to prevent program managers in the IRS and Related Entities from coordinating with other agencies in fulfilling the managers' responsibilities for proper administration of programs.

f. An audit or investigation conducted by the TIGTA shall not affect the final decision of the Secretary or his delegate under 26 U.S.C. §6406.

g. The TIGTA shall not assume responsibility for any program operating responsibility of the IRS or Related Entities.

2. AUDIT AND INVESTIGATIVE MATTERS.

a. In executing the functions of an Inspector General, the TIGTA is authorized to:

(1) access return and return information, as defined in 26 U.S.C. §6103(b), only in accordance with the provisions of 26 U.S.C. §6103 and the I.G. Act;

(2) access all facilities of the IRS and Related Entities, including computer facilities and computer rooms, electronic data bases and files, electronic and paper records, reports and documents, and other material available to the IRS and Related Entities which relate to their programs and operations; and, when access is necessary to execute a function of the TIGTA pertaining to a matter within the jurisdiction of the TIGTA, all similar facilities throughout the Department.

- (3) make such investigations and reports relating to the administration of the programs and operations of the IRS and Related Entities as are, in the judgment of the TIGTA, necessary or desirable;
- (4) request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by the I.G. Act from any Federal, State, or local government agency or unit thereof;
- (5) require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of functions assigned by the I.G. Act, which subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate U.S. district court: provided, that procedures other than subpoenas shall be used by the TIGTA to obtain documents and information from Federal agencies;
- (6) administer to or take from any person an oath, affirmation, or affidavit whenever necessary for the performance of TIGTA functions, which oath, affirmation, or affidavit when administered or taken by or before a OTIGTA employee designated by the TIGTA shall have the same force and effect as if administered or taken by or before an officer having a seal;
- (7) enforce criminal provisions of the internal revenue laws, other criminal provisions of law relating to internal revenue for the enforcement of which the Secretary is responsible, or any other law for which the Secretary has delegated investigative authority to the IRS pursuant to section 8D(k)(1)(A) of the I.G. Act. The TIGTA and the Commissioner of the IRS (Commissioner) will establish policies and procedures to ensure that the TIGTA's and the Commissioner's responsibilities to investigate alleged offenses under the internal revenue laws and related statutes are delineated clearly;
- (8) carry firearms, and perform the following functions set out in 26 U.S.C. §7608(b)(2):
 - (a) execute and serve search warrants and arrest warrants, and serve subpoenas and summonses issued under the authority of the United States;
 - (b) make arrests without warrant for any offense against the United States relating to the internal revenue laws committed in the OTIGTA employee's presence, or for any felony cognizable under such laws if there are reasonable grounds to believe that the person to be arrested has committed or is committing any such felony; and,
 - (c) make seizures of property subject to forfeiture under the internal revenue laws;
- (9) report any reasonable grounds believed to be a violation of Federal criminal law to the Attorney General of the United States in accordance with sections 4(d) and 8D(k)(2) of the I.G. Act, subject to 26 U.S.C. §6103;
- (10) investigate violations of 31 U.S.C. §333 involving the misuse of the name or symbol of the IRS; the title of any IRS employee; the name or symbol of the Department of the Treasury in connection with internal revenue laws; or the title of any Treasury employee in connection with the activities of the IRS and Related Entities;

(11) make determinations and issue orders, pursuant to 18 U.S.C. §6001-§6005, with the approval of the Attorney General, to compel the testimony under a grant of immunity of any individual who has been or may be called to testify or provide information at any proceeding before the IRS which such individual refuses to give or provide on the basis of the individual's privilege against self-incrimination; and,

(12) use the investigative, seizure and forfeiture authority under the Money Laundering and Control Act of 1986, 18 U.S.C. §1956-§1957, where the underlying conduct is subject to investigation under the I.G. Act.

b. The TIGTA shall provide or arrange for audit services for contracts awarded by the IRS and Related Entities.

c. The TIGTA shall receive, investigate and prepare final investigative reports for the Secretary or his designate on matters referred to the Department by the Office of Special Counsel regarding allegations of prohibited personnel practices related to personnel of the IRS and Related Entities.

3. OTHER MATTERS.

a. The TIGTA is authorized to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the OTIGTA subject to the provisions of Title 5, U.S.C., governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

b. The TIGTA may exercise any and all administrative functions attendant upon this personnel authority except those authorities and functions assigned by law to the Secretary which may not be delegated.

c. The TIGTA is authorized to exercise all authorities granted to an "appointing authority" pursuant to Title 5, U.S.C. as those authorities pertain to SES members or positions which are or would be within the OTIGTA. With regard to authorities accorded by law to the Department or the Secretary that pertain to SES members or positions, the TIGTA shall be under the general supervision of the Secretary and the Deputy Secretary and no other Departmental official.

d. The TIGTA is authorized to obtain services as authorized by 5 U.S.C. §3109 at daily rates not to exceed the highest rate prescribed in the General Schedule by 5 U.S.C. §5332.

e. Each fiscal year, the TIGTA shall submit to the Secretary a request for a separate appropriation account as contemplated by 31 U.S.C. §1105(a)(25). The staffing and funding level transmitted to Office of Management and Budget for the TIGTA shall be subject to final determination by the Secretary or the Deputy Secretary.

f. To the extent and in such amounts as may be provided in advance by appropriations Acts, the TIGTA may enter into contracts and other arrangements for audits, studies, analyses, and other services, and make such payments as may be necessary to carry out the TIGTA's mission.

g. The TIGTA shall take all appropriate actions in response to a recommendation by the Office of Special Counsel with respect to TIGTA employees.

h. The TIGTA shall issue final decisions on administrative appeals under 5 U.S.C. §552 and §552a with respect to records that are within the custody of the OTIGTA.

i. The Secretary shall provide the TIGTA with adequate and appropriate office space at the Departmental Offices, IRS headquarters and IRS field office locations, together with such equipment, office supplies, communications facilities and services necessary for the effective operation of such offices, and will ensure necessary maintenance services for such offices, equipment, and facilities.

j. Pursuant to section 8D(b)(3) of the I.G. Act, the Inspector General of the Department of the Treasury and the TIGTA, within six months of the appointment of the TIGTA, shall develop procedures to:

(1) determine how audits and investigations are allocated in cases of overlapping jurisdiction; and

(2) provide for coordination, cooperation and efficiency in the conduct of such audits and investigations.

4. TIGTA REPORTING REQUIREMENTS.

a. Pursuant to §5(a) of the I.G. Act, the TIGTA shall, no later than April 30 and October 31 of each year, prepare semiannual reports for the Secretary to transmit to Congress.

(1) Such reports shall summarize the activities of the OTIGTA during the immediately preceding six-month periods ending March 31 and September 30.

(2) In addition to including the information described in §5(a) of the I.G. Act, the semiannual reports shall contain information to fulfill the additional reporting requirements contained in 26 U.S.C. §7803(d).

b. In the event that the TIGTA becomes aware of a particularly serious or flagrant problem, abuse or deficiency relating to the administration of programs and operations of the IRS or Related Entities, the TIGTA, pursuant to §5(d) of the I.G. Act, shall report immediately to the Secretary or the Deputy Secretary.

(1) Such report shall be transmitted to the appropriate committees or subcommittees of Congress, the Commissioner, and the IRS Oversight Board (Board) within seven calendar days, together with a report from the Secretary containing any comments the Secretary deems appropriate.

(2) The required report may be transmitted at a time determined appropriate by the Secretary if the problem, abuse, or deficiency relates to the performance of a law enforcement function under §8D(k)(1)(A) of the I.G. Act, and other sensitive information as described in §8D(a)(1)(A) through (F) of the I.G. Act.

c. In addition to these reporting requirements, the TIGTA, pursuant to §8D(l)(2) of the I.G. Act, shall:

(1) timely submit to the Commissioner and the Board any final report of audit conducted by the TIGTA; and,

(2) periodically submit to the Commissioner and the Board a list of investigations for which a final report has been completed, and shall provide, upon request, a copy of any such report to the Commissioner or the Board.

d. Pursuant to 26 U.S.C. §6103(h)(5)(B), if the TIGTA or the Commissioner prepares any report or other matter for the Board in order to assist the Board in carrying out its duties, and the TIGTA or the Commissioner determines it is necessary to include any return or return information in such report or other matter to enable the Board to carry such duties, such return or return information (other than information regarding taxpayer identity) may be disclosed to members, employees, or detailees of the Board solely for the purpose of carrying out the Board's official duties.

e. Pursuant to Executive Order No. 12863, September 13, 1993, and No. 12333, December 4, 1981, the TIGTA, together with the General Counsel, to the extent permitted by law, shall report to the President's Intelligence Oversight Board concerning intelligence activities of the IRS and Related Entities where there is reason to believe the activities may be unlawful or contrary to Executive Order or Presidential Directive.

5. RESPONSIBILITIES OF DEPARTMENT OF TREASURY PERSONNEL.

a. All employees of the Department of the Treasury, including IRS and Office of Chief Counsel personnel, and members and staff of the Board, shall promptly and directly report to the OTIGTA, on matters under TIGTA authority:

(1) complaints or information concerning the possible existence of any activity related to the IRS or Related Entities that constitutes a violation of law, including bribery overtures, or any other corrupt or threatening action to the extent it is within the TIGTA's jurisdiction;

(2) complaints or information related to programs and operations of IRS or Related Entities concerning mismanagement; gross waste of funds; abuse of authority or violation of a taxpayer's rights; violations of regulations, including ethics regulations; or a substantial and specific danger to the public health and safety;

(3) any unauthorized request from, or unauthorized disclosure of return or return information to, Board members, employees or detailees, which is prohibited by 26 U.S.C. §6103(h)(5)(A);

(4) any unlawful request by the President, Vice President, employees of the executive offices of either the President or Vice President, or any individual (except the Attorney General) serving in a position specified in 5 U.S.C. §5312 (generally Cabinet level positions), that any IRS employee conduct or terminate an audit or other investigation of any particular taxpayer with respect to the tax liability of such taxpayer, which is prohibited by 26 U.S.C. §7217; and,

(5) any matters that raise questions of propriety or legality under Executive Orders 12863 and 12333 regarding the conduct of United States intelligence activities with respect to IRS and Related Entities programs and operations.

b. Any employee of the Department of the Treasury, who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employee as a reprisal for making a complaint or disclosing information to the TIGTA, unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

c. No employee of the Department of the Treasury shall prevent or prohibit the TIGTA from initiating, carrying out, or completing any audit or investigation of a matter within the jurisdiction of the TIGTA, or from issuing any subpoena during the course of any such audit or investigation.

d. In carrying out their official duties, OTIGTA personnel shall have the full cooperation of employees of the Department of the Treasury and shall have full and prompt access to facilities, property, electronic or paper records, documents, correspondence, data, and computer systems, as such access is defined in paragraph 2.a.(2) of this Order.

e. Employees of the Department of the Treasury shall maintain in confidence all communications with OTIGTA employees when requested to do so, unless required or permitted by law to disclose, and shall not discuss any pending OTIGTA investigation with the subject(s) of the investigation or the subject's representatives unless required or permitted by law.

6. RESPONSIBILITIES OF OTIGTA PERSONNEL.

a. Whenever information or assistance requested under paragraphs 2.a.(1), 2.a.(2) or 2.a.(4) of this Treasury Order is, in the judgment of the TIGTA, unreasonably refused or not provided, the TIGTA shall report the circumstances to the Secretary or Deputy Secretary without delay.

b. Employees of the OTIGTA shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee without the consent of the employee, unless the TIGTA determines such disclosure is unavoidable during the course of an investigation.

c. Employees of the OTIGTA shall safeguard information in accordance with 26 U.S. C. §6103(p)(4) and other applicable laws.

7. CONFORMING AMENDMENTS.

a. Any authority or responsibility currently delegated to the Inspector General of the Department of the Treasury in Treasury Order 101-19, dated October 24, 1994; Treasury Order 101-21, dated July 7, 1997; Treasury Order 102-13, dated January 19, 1993; Treasury Order 102-19, dated March 19, 1998; Treasury Order 105-13, dated February 19, 1997; Treasury Order 107-05, dated March 2, 1995; and Treasury Order 150-29, dated November 23, 1982, is also delegated to the TIGTA until the listed Treasury Order is canceled or a successor Treasury Order is issued.

b. The TIGTA is designated a "Head of Bureau" and is authorized, with respect to the operations of the TIGTA, to exercise the functions delegated from the Secretary to the "Head of Bureau" in Treasury Order 101-06, dated July 7, 1980; Treasury Order 101-12, dated December 19, 1955; and Treasury Order 101-14, dated October 24, 1960, until the listed Treasury Order is canceled or a successor Treasury Order is issued.

c. The TIGTA may issue additional directives, delegations or regulations regarding the operations of the OTIGTA as the TIGTA deems appropriate.

8. SUNSET REVIEW. This Order shall be reviewed five years from the date of issuance unless superseded or canceled prior to that date.

Robert E. Rubin

Secretary of the Treasury