



*The Process Taxpayers Must Use to Report
Complaints Against Tax Return Preparers Is
Ineffective and Causes Unnecessary
Taxpayer Burden*

February 24, 2009

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This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

February 24, 2009

**MEMORANDUM FOR DEPUTY COMMISSIONER FOR SERVICES AND
ENFORCEMENT**

Michael R. Phillips

FROM:

Michael R. Phillips
Deputy Inspector General for Audit

SUBJECT:

Final Audit Report – The Process Taxpayers Must Use to Report
Complaints Against Tax Return Preparers Is Ineffective and Causes
Unnecessary Taxpayer Burden (Audit # 200840015)

This report presents the results of our review to determine whether the process for taxpayers to report complaints against tax return preparers to the Internal Revenue Service (IRS) is effective. This audit was part of our Fiscal Year 2008 Annual Audit Plan.

Impact on the Taxpayer

In Calendar Year 2007, the IRS processed approximately 83 million individual Federal income tax returns prepared by paid tax return preparers. With its current processes, the IRS cannot determine how many complaints against tax return preparers it receives, how many complaints are worked, and the total number of multiple complaints against a specific firm or preparer. Taxpayer complaints about tax return preparers can provide valuable information about understanding the root causes of taxpayer problems, identify areas of noncompliance, and help the IRS address core processes that need improvement.

Synopsis

Paid tax return preparers are a critical component and stakeholder in tax administration and represent an important intermediary between taxpayers and the IRS. The tax return preparer community provides a unique opportunity to affect taxpayer behavior and compliance with the tax laws. Taxpayers can file complaints against preparers by calling the IRS, visiting one of the IRS' 401 local offices, sending a letter or fax, or contacting the Treasury Inspector General for Tax Administration.



The Process Taxpayers Must Use to Report Complaints Against Tax Return Preparers Is Ineffective and Causes Unnecessary Taxpayer Burden

Guidelines provided to taxpayers and employees about filing a tax return preparer complaint are confusing and inconsistent. Taxpayers must first be able to determine whether the preparer is an unenrolled agent or a practitioner¹ and then determine if the complaint involves fraud and/or a violation of the tax code. Many taxpayers do not know their tax return preparer's designation to ensure that their complaints are sent to the correct IRS office and do not know what constitutes fraud or a violation of the tax code. Finally, the form used to submit complaints against unenrolled preparers is not designed to provide adequate information with which complaints can be worked.

We selected a judgmental sample of 50 complaints to determine the types of complaints submitted and whether sufficient details were present to allow the IRS to identify the tax return preparer and the issue and to determine its merits. Of the 50 complaints reviewed, 35 (70 percent) identified a preparer and provided allegations about a violation of tax law or a fraud issue. The other 15 (30 percent) complaints either did not provide enough information to identify the tax return preparer, did not contain information related to a tax return preparer, or involved allegations about tax avoidance schemes being used by individuals or investment companies.

The IRS' current process for handling taxpayer complaints against preparers does not identify potential problem preparers so that the IRS can determine the extent of noncompliance, if any, or how the noncompliance should be addressed. Complaints are generally not controlled and tracked. Therefore, neither the volume of complaints received from taxpayers and worked nor their resolutions are known. Moreover, complaints are reviewed multiple times and mailed to multiple offices before most are ultimately destroyed.

The current complaint process does not identify potential problem preparers so that the IRS can determine the extent of the problem, if any, or how the problem should be addressed.

Several offices, including the Criminal Investigation, Small Business/Self-Employed and Wage and Investment Divisions, the Office of Professional Responsibility, and the Treasury Inspector General for Tax Administration, are involved in the process of resolving taxpayer complaints. Complaints are not centrally recorded to identify duplicates, and many complaints are redirected to another function. Because of this, the IRS spends unnecessary time sorting and redirecting complaints. In addition, the IRS does not acknowledge all taxpayer complaints. An ineffective complaint system erodes public trust as taxpayers become frustrated with the IRS' apparent non-response.

¹ The IRS refers to tax return preparers who are attorneys, certified public accountants, and enrolled agents as practitioners. Enrolled agents are preparers who have passed an IRS examination or presented evidence of qualifying experience as a former IRS employee and have been issued an enrollment card.



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Recommendations

We recommended that the Deputy Commissioner for Services and Enforcement 1) clarify guidance to taxpayers on the public IRS web site (IRS.gov) regarding the preparer complaint process, and 2) develop a form, both web-based and paper, specifically for tax return preparer complaints that routes to the correct function based on type of tax return preparer and includes the items necessary for the IRS to appropriately evaluate the legitimacy of the complaint. Once a form is developed to ensure that sufficient information is captured about the complaint, a database(s) or tracking system should be developed to efficiently control the complaints.

Response

The Deputy Commissioner for Services and Enforcement agreed to update guidance on IRS.gov and create a cross-functional team to develop recommended action items to identify opportunities for improvement that may include changes to forms and creation of an automated tracking system. Management's complete response to the draft report is included as Appendix V.

Copies of this report are also being sent to the IRS managers affected by the report recommendations. Please contact me at (202) 622-6510 if you have questions or Michael E. McKenney, Assistant Inspector General for Audit (Returns Processing and Account Services), at (202) 622-5916.



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Abbreviations

IRS	Internal Revenue Service
TAC	Taxpayer Assistance Center



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Background

Paid tax return preparers are a critical component and stakeholder in tax administration and represent an important intermediary between taxpayers and the Internal Revenue Service (IRS). The tax return preparer community provides a unique opportunity to affect taxpayer behavior

Paid preparers can be self-employed or work for accounting firms, large tax preparation services, or law firms and include the following:

- Licensed professionals, such as attorneys and certified public accountants. These licensed professionals are regulated by the State licensing authority and the related associations such as the American Bar Association and the American Institute of Certified Public Accountants.
- Enrolled agents. These professionals pass an IRS examination or present evidence of qualifying experience as a former IRS employee and have been issued an enrollment card. Enrolled agents are the only taxpayer representatives who receive their right to practice from the Federal Government.
- Unenrolled or unlicensed preparers. These individuals range from those who might receive extensive training to those with little or no training. Currently, only three States, California, Maryland, and Oregon, have requirements for unenrolled paid preparers. In these States, unenrolled paid preparers must register with State agencies and meet continuing education requirements.

and compliance with the tax laws. In Calendar Year 2007, the IRS processed approximately 83 million individual Federal income tax returns prepared by paid tax return preparers.

Currently, there are no national standards that a tax return preparer is required to satisfy before selling tax preparation services to the public. Anyone—regardless of training, experience, skill, or knowledge—is allowed to prepare Federal income tax returns for others for a fee.

All paid tax return preparers are subject to Internal Revenue Code penalties—both civil and criminal. For example, civil penalties apply if paid tax return preparers do not sign the tax returns they prepare, do not provide the taxpayers with copies of the tax returns, or deliberately understate a taxpayer's tax liability. Criminal penalties apply when a paid tax return preparer willfully prepares or makes a false statement regarding a false or fraudulent tax return or knowingly provides fraudulent tax returns to the IRS.

However, application of other regulations depends on whether the tax return preparer is

an attorney, a certified public accountant, an enrolled agent (referred to by the IRS as a practitioner), or an unenrolled preparer. For example:



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- Attorneys, certified public accountants, enrolled agents, and enrolled actuaries are governed by the Internal Revenue Code, Treasury Department Circular 230,¹ and the individual States in which they practice. These authorities have established requirements, penalties, and disciplinary actions for noncompliance and/or issue licenses and require continuing education to maintain them.
- Unenrolled preparers are governed by the Internal Revenue Code. However, neither the Circular 230 nor individual State requirements, with the exception of the States of California, Maryland, and Oregon,² apply to them.

The IRS Office of Professional Responsibility regulates attorneys, certified public accountants, and enrolled agents who practice before the IRS. Practice is defined broadly in Treasury Department Circular 230 as comprehending all matters connected with a presentation to the IRS relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the IRS.

The IRS has additional regulations for any paid tax return preparers who are authorized to file tax returns electronically. Applicants to the Electronic Filing Program must pass certain IRS checks, including background and credit history checks. Participants are also monitored.

Taxpayers can file complaints against preparers using the following methods:

- Calling the IRS toll-free telephone number (1-800-829-1040). An assistor should advise the caller/taxpayer to complete an Information Referral (Form 3949 A) or to submit information via a letter and mail it to the IRS, Fresno, California, 93888. Form 3949 A can be obtained from the public IRS web site (IRS.gov) or can be mailed to the taxpayer.
- Calling the Tax Fraud Referral Line (1-800-829-0433). This is an automated line that provides instructions for filing a complaint.
- Visiting 1 of the IRS' 401 local walk-in offices called Taxpayer Assistance Centers (TAC).³ An assistor should provide the taxpayer with Form 3949 A and either take the completed Form from the taxpayer or advise him or her to mail it to Fresno, California.

¹ *Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, Enrolled Retirement Plan Agents, and Appraisers before the Internal Revenue Service* (Treasury Department Circular No. 230 (revised 4-2008)).

² California requires that paid preparers pass a 60-hour approved course and obtain a tax preparer bond to become registered. California also requires 20 hours of continuing education annually. Oregon requires that tax preparers be at least 18 years old, have a high school degree or equivalent, complete 80 hours of income tax law education, and pass a tax preparer examination. Oregon also requires 30 hours of continuing education annually. While Oregon requires enrolled agents to register, enrolled agents must meet far fewer registration requirements than unenrolled preparers. In May 2008, Maryland also enacted paid preparer legislation that will require tax preparers to pass an examination, pay a registration fee, and subsequently comply with continuing education requirements.

³ An IRS office with employees who answer questions, provide assistance, and resolve account-related issues for taxpayers face to face.



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- Sending a letter or fax directly to an IRS office.
- Accessing the public Treasury Inspector General for Tax Administration web site (TIGTA.gov) and completing an online form, emailing the complaint, or calling the toll-free Hotline (1-800-366-4484).

This review was performed in the Wage and Investment Division Accounts Management function in Fresno, California; the Office of Professional Responsibility in Washington, D.C.; the Small Business/Self-Employed Division Exam Planning and Delivery function in Austin, Texas; and the Gulf States Area Planning and Special Programs function in Austin and Houston, Texas, and Atlanta, Georgia, during the period May through October 2008. Discussions were also held with personnel in the Criminal Investigation Division and South Atlantic Area Planning and Special Programs function. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.



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Results of Review

Guidance Provided to Taxpayers to Report Complaints Against Tax Return Preparers Creates Taxpayer Burden

Tax preparer complaint reporting guidelines provided to taxpayers and employees are confusing and inconsistent. Taxpayers must first be able to determine whether the tax return preparer is an unenrolled agent or a practitioner and then determine if the complaint involves fraud and/or a violation of the tax code. Many taxpayers do not know their tax return preparer's designation, to ensure that their complaints are sent to the correct IRS office, and do not know what constitutes fraud or a violation of the tax code. Finally, the IRS Form used to submit complaints against unenrolled preparers is generic and does not instruct taxpayers to include adequate information with which complaints can be worked.

Guidelines for taxpayers to use to report complaints against tax return preparers are confusing and inconsistent

Taxpayers obtain information about filing a complaint from a variety of IRS sources:

1) IRS.gov; 2) the toll-free telephone service; and 3) the TACs. Only IRS.gov provides written instructions to taxpayers on how to file, what form to use, and where to submit a complaint.

1) If a taxpayer visits IRS.gov, he or she will not find a direct link on the main page to file a complaint. The taxpayer must search to obtain information on how to file a complaint. The taxpayer can click on "Contact IRS," then click on:⁴

How Do You Report Suspected Tax Fraud Activity?

If you have information about an individual or company you suspect is not complying with the tax law, report this activity.

At the top of the resulting webpage, the IRS advises the taxpayer to complete Form 3949 A or to draft a letter and mail either to the IRS Fresno office.

At the bottom of the webpage, the IRS explains that if the preparer is an attorney, certified public accountant, or an enrolled agent, the taxpayer should instead report the suspicious actions to the email address of the IRS Office of Professional Responsibility.

Alternatively, if a taxpayer searches on "taxpayer complaints" or "preparer complaints," one of the results includes **How to File a Complaint Against a Tax Professional**. Clicking on this link directs the taxpayer to a webpage that explains how to submit complaints against

⁴ See Appendix IV for a replica of the webpage, How Do You Report Suspected Tax Fraud Activity?



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attorneys, certified public accountants, enrolled agents, and enrolled actuaries. The webpage explains:

A complaint should be written in a letter format. The letter should include the tax practitioner's name, address, telephone number, designation (i.e., attorney, certified public accountant, enrolled agent, enrolled actuary, etc.), a detailed description of the allegations, and any documents that support those allegations. Please direct all questions and referrals to:

Internal Revenue Service
Office of Professional Responsibility
SE:OPR, Room 7238/IR
1111 Constitution Avenue NW
Washington, DC 20224

However, the definition of an enrolled agent is not provided. The taxpayer must complete a search for the term “enrolled agent” to understand how this might affect where to send a complaint. Once the taxpayer finds the definition of an enrolled agent, there is no database or list of enrolled agents on the webpage to let the taxpayer identify whether his or her tax return preparer is an enrolled agent.

- 2) If the taxpayer calls the IRS, a toll-free telephone service assistor should advise the taxpayer to mail a complaint via Form 3949 A or a letter to the IRS in Fresno, California. The assistor will not take the complaint information from the taxpayer but should offer to help the taxpayer obtain the Form by directing the taxpayer to IRS.gov or by having the Form mailed to the taxpayer.
- 3) If the taxpayer visits a TAC, an assistor should advise the taxpayer to correspond directly with the Office of Professional Responsibility and to refer to the written guidelines located on IRS.gov by searching the keyword “complaint” for complaints concerning practitioners (i.e., attorneys, certified public accountants, enrolled agents). A taxpayer with a complaint against an unenrolled agent is provided a copy of Form 3949 A. The assistor will not complete the Form for the taxpayer but will forward the completed Form to Fresno, California, if the taxpayer requests.

We placed 10 calls to the IRS main toll-free telephone number (1-800-829-1040). For:

- 6 (60 percent) calls, assistors attempted to determine the type of practitioner or if the complaint was related to fraud. In the other 4 calls, the assistors did not make this attempt which could later hinder the processing and evaluation of the complaints.
- 7 (70 percent) calls, assistors provided instructions on how to obtain Form 3949 A or what should be included if the caller opted to submit the complaint via letter. For the remaining 3 calls (30 percent), the assistors provided information related to sending a letter to the Office of Professional Responsibility: 2 provided an incorrect name, address, or fax number; 1 provided correct information.



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We visited five TACs to determine what assistance is given to a taxpayer with a complaint against a tax return preparer. Figure 1 presents the results of the TAC visits.

Figure 1: Results of Visits to TACs

Number of TACs	Information Provided by Assistor	Assistor Asked if Tax Return Preparer Was Enrolled
3	Form 3949 A	No
1	List of IRS telephone numbers	No
1	Address for the Director of Practice*	No

* = The Director of Practice was renamed the Office of Professional Responsibility in Fiscal Year 2003.

Source: Our analysis of visits to five TACs.

None of the five TAC assistors provided a complete response, and one of the assistors referred us to another function in the IRS. Because the assistors did not ask whether the preparers in question were enrolled and whether the complaints were related to fraud for 11 (73 percent) of our 15 in-person and telephone contacts, these potential complaints might have been misrouted to the incorrect office. This creates additional processing for the IRS and delays actions, if any, on the taxpayer complaints.

The IRS Form taxpayers use to submit complaints against tax return preparers is not designed to provide adequate information with which to process the complaints

The IRS states that Form 3949 A is used to report alleged violations of tax law by individuals and businesses to the IRS. However, it is a general information referral form used by multiple IRS functions and is very generic—the word “preparer” is not referenced anywhere on the Form.

Form 3949 A also does not provide sufficient room for the taxpayer to report the complaint because it includes only eight lines on which the taxpayer is to provide a description of an “alleged violation.” Users of the Form are instructed to attach another sheet, if needed.

Figure 2 presents an excerpt of the top of Form 3949 A.



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Figure 2: Excerpt of Form 3949 A

Form 3949 A (2-2007)	Department of the Treasury - Internal Revenue Service Information Referral <small>(See instructions on reverse)</small>	OMB # 1545-1960									
1. Taxpayer Name		2. Business Name									
a. Street Address		a. Street Address									
b. City/State/ZIP		b. City/State/ZIP									
c. Social Security Number (SSN)		c. Employer Identification Number									
d. Occupation		d. Principal Bus Activity									
e. Date of Birth											
3. Marital Status <input type="checkbox"/> Married <input type="checkbox"/> Single <input type="checkbox"/> Head of Household <input type="checkbox"/> Divorced <input type="checkbox"/> Separated		3a. Name of Spouse									
4. Alleged Violation of Income Tax Law (Check all that apply).											
<input type="checkbox"/> False Exemption <input type="checkbox"/> Unsubstantiated Income <input type="checkbox"/> Unreported Income <input type="checkbox"/> Failure to Withhold Tax <input type="checkbox"/> False Deductions <input type="checkbox"/> Kickback <input type="checkbox"/> Narcotics Income <input type="checkbox"/> Wagering/Gambling <input type="checkbox"/> Multiple Filing <input type="checkbox"/> False/Altered Documents <input type="checkbox"/> Public/Political Corruption <input type="checkbox"/> Earned Income Credit <input type="checkbox"/> Organized Crime <input type="checkbox"/> Failure to Pay Tax <input type="checkbox"/> Failure to File Return <input type="checkbox"/> Other (Describe below)											
5. Unreported Income and Tax Years (Fill in Tax Years and dollar amount(s), if known, e.g., TY2005 \$10,000)											
TY	\$	TY	\$	TY	\$	TY	\$	TY	\$	TY	\$

a. Comments (Briefly describe the facts of the alleged violation - Who/What/Where/When/How. Attach another sheet, if needed).

Source: IRS.gov.

In addition, the Form does not ask for specific information so that the IRS can adequately understand and/or consider the claim(s). We selected a judgmental sample of 50 complaints to determine the types of complaints submitted and whether sufficient details were present to allow the IRS to identify the tax return preparer and the issue and to determine its merits.

Of the 50 complaints reviewed, 35 (70 percent) identified a preparer and provided allegations about a violation of tax law or a fraud issue. The other 15 (30 percent) did not provide enough information with which to identify the tax return preparer, did not contain information related to a tax return preparer, or involved allegations about tax avoidance schemes being used by individuals or investment companies. Of the 35 complaints:

- 15 (30 percent) involved allegations of falsifying exemptions, credits, or deductions.
- 11 (22 percent) involved allegations of fraudulent activities or refund theft.
- 5 (10 percent) involved allegations of tax return preparers failing to file tax returns or to return records to the taxpayers.
- 2 (4 percent) involved allegations of tax return preparers representing taxpayers while disbarred or engaging in misconduct.
- 2 (4 percent) involved allegations of tax return preparers disclosing information to unauthorized individuals.



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Many of the complaints received could have been avoided if the IRS better educated taxpayers and clarified instructions

Many of the complaints reviewed did not meet any criteria under which the IRS could or would be able to take action(s). In addition, because of the lack of specificity on Form 3949 A, taxpayers are not providing the IRS with information from which it could take action. IRS employees who evaluate the Forms for leads confirmed that the complaints received often do not provide enough information to identify the tax return preparer or the issue. Therefore, the complaints evaluated are generally not considered valuable enough to pursue additional actions.

The Government Accountability Office *Standards for Internal Control in the Federal Government*⁵ requires that the agency assess the risks it faces from both external and internal sources. The agency must establish clear, consistent objectives and should consider all significant interactions between the entity and other parties to identify risks. Once risks have been identified, they should be analyzed for their possible effect.

Recommendation

Recommendation 1: The Deputy Commissioner for Services and Enforcement should clarify guidance on IRS.gov when the taxpayer searches for “preparer complaint” so that taxpayers can understand the differences in the types of tax return preparers, the jurisdiction the IRS has over enrolled and unenrolled tax return preparers, and to which function taxpayer complaints about tax return preparers should be sent and by what method.

Management’s Response: The Deputy Commissioner for Services and Enforcement concurs with the recommendation and will ensure that the guidance on IRS.gov is updated to assist taxpayers in understanding the process to file complaints against tax return preparers.

The Process Used to Control and Track Complaints Against Tax Return Preparers Is Not Efficient or Effective

The IRS’ current process for handling taxpayer complaints against preparers does not identify potential problem preparers so that the IRS can determine the extent of the problem, if any, or how the problem should be addressed. Complaints are generally not controlled and tracked. Therefore, neither the volume of complaints received from taxpayers and worked nor their resolutions are

Multiple offices handle taxpayer complaints against preparers, including:

- ***Criminal Investigation Division.***
- ***Small Business/Self-Employed Division.***
- ***Wage and Investment Division.***
- ***Office of Professional Responsibility.***
- ***Treasury Inspector General for Tax Administration.***

⁵ *Standards for Internal Control in the Federal Government* (GAO/AIMD-00-21.3.1, dated November 1999).



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known. Moreover, complaints are reviewed multiple times and mailed to multiple offices, before most are ultimately destroyed.

Several offices, including the Criminal Investigation, Small Business/Self-Employed and Wage and Investment Divisions, the Office of Professional Responsibility, and the Treasury Inspector General for Tax Administration, are involved in the process of resolving taxpayer complaints. Complaints are not centrally recorded to identify duplicates, and many complaints are redirected to another function. Because of this, the IRS spends unnecessary time sorting and redirecting complaints. In addition, the IRS does not acknowledge all taxpayer complaints. For an agency to run and control its operations, it must have relevant, reliable, and timely communications relating to internal as well as external events. Program managers need both operational and financial data to determine whether they are meeting their agencies' strategic and annual performance plans and meeting their goals of accountability for effective and efficient use of resources. An ineffective complaint system erodes public trust as taxpayers become frustrated with the IRS' apparent non-response.

Process for complaints against unenrolled preparers

Tax return preparer complaints are received in the Accounts Management function in Fresno, California. However, they are not worked or investigated from that office; the Accounts Management function is merely a conduit for the complaints. The Accounts Management function staff sort Forms 3949 A that refer to a tax return preparer and forward them to another IRS office. Accounts Management function staff do not determine whether the tax return preparer is enrolled (i.e., is a practitioner).

- All complaints are mailed to the Small Business/Self-Employed Division Examination and Return Selection function in Austin, Texas. An analyst in Austin, Texas, reviews the Forms 3949 A and forwards them to the Planning and Special Programs function.
 - Complaints about an attorney, a certified public accountant, or an enrolled preparer are not forwarded to the Office of Professional Responsibility.
- Once shipped to the Planning and Special Programs function, the complaints are forwarded to the Return Preparer Coordinators (16 in total) located in 1 of the 7 Area Offices⁶ throughout the IRS. The Return Preparer Coordinators review the Forms 3949 A to determine whether they meet the criteria for evaluation in the field (i.e., the preparer prepares a number of tax returns above a specific threshold, and there is evidence of a recurring theme that is harmful to taxpayers).

⁶ An Area Office is a geographic organizational level used by IRS business units and offices to help their specific types of taxpayers understand and comply with tax laws and issues.

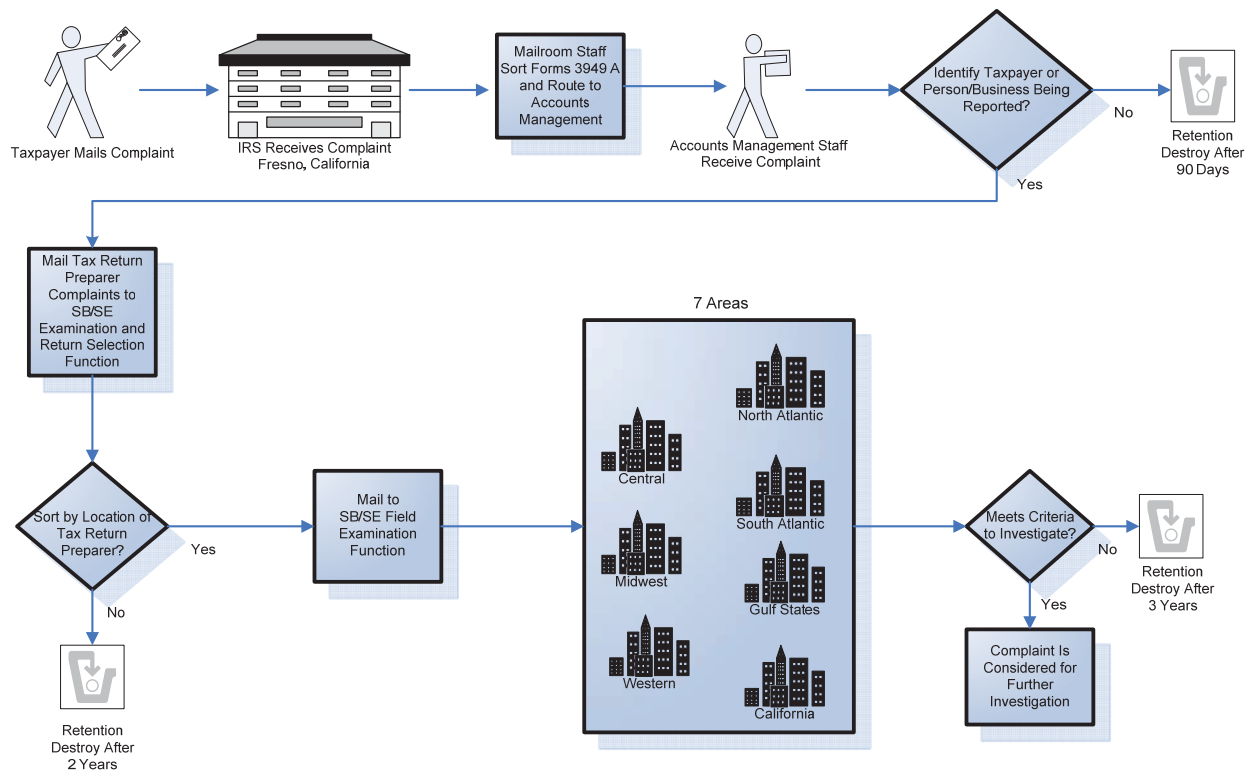


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- Incoming and outgoing inventory to these locations are not maintained except through use of the number of total documents received and forwarded on a Document Transmittal (Form 3210).

Figure 3 presents a flowchart of how Forms 3949 A are processed for tax return preparer complaints.

Figure 3: Form 3949 A Processing



Source: *Our analysis of Form 3949 A processing.* SB/SE = Small Business/Self-Employed Division.

Until January 2006, taxpayers could submit complaints against tax return preparers to the IRS over the telephone. An IRS assistor would question the caller to gather information about the complaint. The assistor would record the information on an internal form and submit it to the responsible function for the appropriate action. The Criminal Investigation Division did not generally view these complaints as valuable because they generated few investigative cases. In an effort to cut costs, the IRS discontinued the process for submitting complaints via the telephone in Fiscal Year 2006. The IRS reported \$3.5 million in cost savings with this change. This savings does not include cost projections for increased correspondence and for processing that correspondence. The IRS now accepts taxpayer complaints against tax return preparers through the mail and by fax.



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Return Preparer Coordinators advised us that Forms 3949 A typically do not provide enough information to enable them to further investigate the complaint by using resources in the field to conduct an audit of returns prepared by the tax return preparer. Our tests of 50 complaints confirmed that taxpayer complaints against preparers either did not always contain enough information to identify the preparer and alleged tax law violations or did not involve preparer issues. For example, the IRS does not have any authority over the return preparation activities of unpaid preparers such as relatives who incorrectly prepare tax returns or investment groups that advertise tax savings for real estate agents.

Because there is no single database of all taxpayer complaints, we could not determine how many complaints the IRS receives against unenrolled preparers or how many yield productive cases. Our tests also identified the following:

- The Accounts Management function does not log in complaints, cannot determine how many complaints the IRS receives, and does not track the complaints to determine their outcome or identify problem preparers. Only the volume of complaints being forwarded to other offices is documented on the Forms 3210.
- The Accounts Management function does not forward complaints about practitioners (i.e., attorneys, certified public accountants, and enrolled agents) to the Office of Professional Responsibility because research is not performed to identify preparer designation. It forwards all tax return preparer complaints to a Small Business/Self-Employed Division analyst in the Examination and Return Selection function.
- The Examination and Return Selection function does not forward complaints about practitioners to the Office of Professional Responsibility because research is not performed to identify preparer designation. However, this function does receive complaints against unenrolled preparers forwarded from the Office of Professional Responsibility.
- Complaints are sorted and filed at each function to which they are sent. However, most of the functions file the complaints by receipt date, so it is not possible for employees to retrieve specific complaints without significant effort. Filed complaints are then destroyed based on the amount of time elapsed from the receipt date. Handling complaints in this manner does not afford the IRS the opportunity to gauge the magnitude of tax return preparer issues because complaints are not analyzed and cannot be retrieved. In addition, shipping complaints to functions where they will ultimately be destroyed wastes IRS resources.
- Taxpayers are not sent acknowledgments that the IRS has received their complaints.



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However, from March 29 to August 9, 2008, the IRS expended 2.2 Full-Time Equivalents⁷ in the Accounts Management function alone, costing approximately \$66,250 in salary without overhead, to sort the complaints sent to an analyst for further sorting and forwarding. Moreover, the Accounts Management function has used overtime hours to sort the Forms 3949 A. Additional costs are incurred in the Examination function when the analyst sorts the complaints by preparer location and forwards them to the appropriate Area Office. Return Preparer Coordinators in the Area Offices receive the complaints and review them to determine whether they meet the Examination function criteria for application of resources.

Process for complaints against practitioners

Taxpayers may also submit complaints against preparers to the Office of Professional Responsibility. Current procedures require taxpayers to submit complaints against practitioners via a letter, which should include the following elements: tax practitioner's name, address, telephone number, and designation (attorney, certified public accountant, enrolled agent, enrolled actuary, etc.); a detailed description of the allegations; and any documents that support those allegations. These letters can be mailed, faxed, or emailed directly to the Office of Professional Responsibility. The Office of Professional Responsibility also receives complaints from taxpayers via Forms 3949 A.

Complaints received in the mail are entered into a database upon receipt, regardless of practitioner designation, and then evaluated for Circular 230 designation and Office of Professional Responsibility jurisdiction. Complaints submitted via email and fax are first evaluated for Circular 230 designation and jurisdiction. Emails and faxes subject to Office of Professional Responsibility jurisdiction are then entered into the database. The types of allegations that warrant entry to the database include, but are not limited to, the following:

- A practitioner who did not exercise due diligence in the preparation of, approving, and filing of tax returns, documents, affidavits, and other papers relating to IRS matters.
- A practitioner who unreasonably delayed the prompt disposition of any matter before the IRS.
- A practitioner who charged an unconscionable fee in connection with any matter before the IRS.
- A practitioner who did not, at the request of a client, promptly return any and all records of the client that are necessary for the client to comply with Federal tax obligations.

⁷ A measure of labor hours in which 1 Full-Time Equivalent is equal to 8 hours multiplied by the number of compensable days in a particular fiscal year. For Fiscal Year 2008, 1 Full-Time Equivalent was equal to 2,096 staff hours.

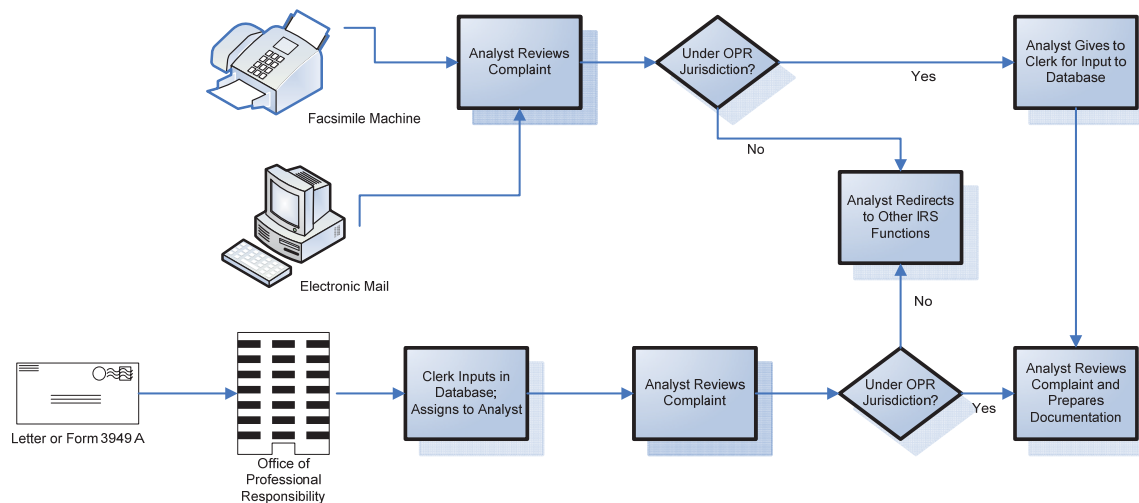


The Process Taxpayers Must Use to Report Complaints Against Tax Return Preparers Is Ineffective and Causes Unnecessary Taxpayer Burden

Office of Professional Responsibility employees indicated they believe that taxpayers are submitting complaints to both their office and the Accounts Management function. One complaint in our sample of 50 complaints was sent to both the Accounts Management function and the Office of Professional Responsibility. However, because there is no database of all complaints received by the Office of Professional Responsibility or the Accounts Management function, neither we nor the IRS can determine how many duplicate complaints are received. The Office of Professional Responsibility can determine whether it has received more than one complaint against a practitioner for only those complaints subject to Circular 230 designation and jurisdiction.

Figure 4 presents a flowchart of how the Office of Professional Responsibility processes the receipt of taxpayer complaints against practitioners.

Figure 4: Office of Professional Responsibility Processing of Taxpayer Complaints Against Preparers



Source: Our analysis of the processing of complaint receipts in the Office of Professional Responsibility. OPR = Office of Professional Responsibility.

If the tax return preparer is a practitioner and the issue is under the Office of Professional Responsibility's jurisdiction (i.e., subject to Circular 230), an acknowledgement is sent to the taxpayer that the complaint was received. Evidence is gathered to determine whether the complaint can be supported; actions taken by the Office of Professional Responsibility resulting from supported complaints range from reprimands to disbarments. Case files for completed cases are retained by the Office of Professional Responsibility for at least 7 years before they are sent to a Federal Records Center.⁸ Suspended and disbarred practitioners may continue to

⁸ The National Archives and Records Administration Federal Records Center system is a national network of 17 regional facilities that store and provide access to over 25 million cubic feet of records.



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prepare returns but may not represent taxpayers before the IRS. If a complaint is not under its jurisdiction, the Office of Professional Responsibility forwards it to another office within the IRS, such as the Criminal Investigation or Small Business/Self-Employed Divisions, or to the Treasury Inspector General for Tax Administration.

The Office of Professional Responsibility receives complaints from a variety of sources, both internal and external to the IRS. Discussions with Office of Professional Responsibility staff indicated that many of the complaints are warranted and result in productive cases. However, a review of the Office of Professional Responsibility's database of complaints showed that most complaints submitted from taxpayers do not result in actions being taken against practitioners. Of the 621 cases closed from January 1 to September 3, 2008, that were coded with taxpayer as the original source, 467 (75 percent) were closed because the Office of Professional Responsibility lacked jurisdiction, 111 (18 percent) were closed with no sanctions, 27 (4 percent) were opened in error, and 10 (2 percent) were closed with various other codes. Only 6 (1 percent) resulted in action being taken against the practitioner. Of the 467 cases closed because of a lack of jurisdiction, 457 were for unenrolled preparers, while 10 were closed because the complaint was against a practitioner but was an issue that was not covered under Circular 230. The large number of complaints about unenrolled preparers indicates complaints from taxpayers are being routed to the incorrect function within the IRS.

Overall, the IRS cannot determine how many complaints against tax return preparers (unenrolled and practitioners) it receives, how many are productive, and the total number of multiple complaints against a specific firm, practitioner, or preparer. Although the Office of Professional Responsibility controls and tracks complaints received by mail against practitioners or unenrolled tax return preparers not subject to Circular 230, it does not do so for all complaints received by fax or email. In addition, the Accounts Management and the Examination and Return Selection functions control and track complaints by volume rather than by practitioners or unenrolled tax return preparers.

Taxpayer complaints against tax return preparers can provide valuable information about recurring problems. They can provide valuable information to understanding the root causes of taxpayer problems and identify noncompliance, as well as help the IRS address core processes that need improvement. The IRS needs to ensure that it has sufficient data with which to identify potential problem preparers. Developing a form to capture all the information necessary to analyze the situation and determine the best course of action to take, if any, is essential. Once a form is developed, the IRS needs to create a means to capture, monitor, and track the complaints.

Recommendation

Recommendation 2: The Deputy Commissioner for Services and Enforcement should develop a form, both web-based and paper, specifically for tax return preparer complaints that routes to the correct function based on type of tax return preparer and includes the items



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necessary for the IRS to appropriately evaluate the complaint. Once a form is developed to ensure that sufficient information is captured about the complaint, a database(s) or tracking system should be developed to efficiently control the complaints.

Management's Response: The Director, Examination, Small Business/
Self-Employment Division, will ensure that the tax return preparer complaint process is reviewed by a cross-functional team to identify opportunities for improvement. The cross-functional team will develop recommended action items to modify the system to produce an appropriate level of efficiency, effectiveness, and accountability that may include changes to forms and creation of an automated tracking system.



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Appendix I

Detailed Objective, Scope, and Methodology

Our overall objective was to determine whether the process for taxpayers to report complaints against tax return preparers to the IRS is effective. To accomplish our objective, we:

- I. Determined whether the method taxpayers use to file complaints against tax return preparers with the IRS is effective and reduces taxpayer burden.
 - A. Determined whether guidance for taxpayers lodging a complaint and for IRS employees handling a complaint against a tax return preparer is clear.
 - B. Determined whether IRS employees provide consistent responses when guiding a taxpayer on reporting a complaint against a tax return preparer. We placed 10 calls to the IRS main toll-free telephone number (1-800-829-1040) between September 19 and September 23, 2008. We also visited five judgmentally selected TACs¹ in Atlanta, Georgia; Austin, Texas; Houston, Texas; San Diego, California; and Washington, D.C., between June 12 and September 4, 2008. To conserve audit resources, we selected TACs in cities where we were conducting other audit work.
 - C. Determined whether the decision to discontinue “live” services was effective.
- II. Determined whether the process the IRS uses to handle, track, and control complaints is effective in stopping problematic tax return preparers from preparing tax returns.
 - A. Determined responsibilities of staff in the Wage and Investment Division, Small Business/Self-Employed Division, Criminal Investigation Division, and Office of Professional Responsibility for processing complaints.
 - B. Determined procedures used to process complaints received, retained, forwarded, and destroyed and actions to be taken to document the volumes.
 - C. Determined procedures used to evaluate complaints to determine next action (retain, forward, destroy).
 - D. Determined whether a numbering or tracking system exists for each complaint received to identify duplicate and multiple complaints received for processing and historical data.
 - E. Determined whether the IRS provides an acknowledgement to taxpayers who submit complaints.

¹ An IRS office with employees who answer questions, provide assistance, and resolve account-related issues for taxpayers face to face.



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- F. Reviewed documentation maintained to determine the format of (Form or letter) and reasons for complaints. Because the IRS could not identify the total population of complaints, we could not select a statistical sample. We selected a judgmental sample of paper tax return preparer complaints currently in inventory in the following sites between August 18 and September 3, 2008 (total sample = 50 complaints):
1. Fresno, California – Wage and Investment Division; sample size = 16.
 2. Austin, Texas – Small Business/Self-Employed Division, Examination and Return Selection function; sample size = 16.
 3. Houston, Texas, and Atlanta, Georgia – Small Business/Self-Employed Division, Examination Gulf States Area Planning and Special Programs function/Return Preparer Program Coordinator; sample size = 7.
 4. Washington, D.C. – Office of Professional Responsibility; sample size = 11.
- G. Determined whether the IRS could identify the disposition of tax return preparer complaints received from January 1 through December 31, 2007. The IRS could not provide us information on complaints received during this time period. However, we obtained an extract of the database used by the Office of Professional Responsibility to track cases under its jurisdiction. The extract included information for cases closed between January 1 and September 3, 2008, that were based on taxpayer complaints. We did not assess the reliability of the extract because we were only determining whether the closed cases resulted in actions being taken against practitioners.



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Appendix II

Major Contributors to This Report

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Jerome Antoine, Auditor



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Appendix III

Report Distribution List

Commissioner C
Office of the Commissioner – Attn: Chief of Staff C
Assistant Deputy Commissioner for Services and Enforcement SE
Commissioner, Small Business/Self-Employed Division SE:S
Commissioner, Wage and Investment Division SE:W
Director, Office of Research, Analysis and Statistics RAS
Chief, Criminal Investigation Division SE:CI
Director, Office of Professional Responsibility SE:OPR
Director, Office of Program Evaluation and Risk Analysis RAS:O
Director, Communications and Liaison, Wage and Investment Division SE:W:C
Director, Communications, Liaison, and Disclosure, Small Business/Self-Employed Division
SE:S:CLD
Director, Customer Account Services, Wage and Investment Division SE:W:CAS
Director, Customer Assistance, Relationships, and Education, Wage and Investment Division
SE:W:CAR
Director, Examination, Small Business/Self-Employed Division SE:S:E
Director, Refund Crimes, Criminal Investigation Division SE:CI:RC
Director, Strategy and Finance, Wage and Investment Division SE:W:S
Chief, Performance Improvement, Wage and Investment Division SE:W:S:PI
Director, Accounts Management, Wage and Investment Division SE:W:CAS:AM
Director, Exam Planning and Delivery, Small Business/Self-Employed Division SE:S:E:EPD
Director, Exam Policy, Small Business/Self-Employed Division SE:S:E:EP
Director, Field Assistance, Wage and Investment Division SE:W:CAR:FA
Field Director, Accounts Management (Fresno), Wage and Investment Division
SE:W:CAS:AM:F
Chief Counsel CC
National Taxpayer Advocate TA
Director, Office of Legislative Affairs CL:LA
Office of Internal Control OS:CFO:CPIC:IC
Audit Liaisons:
 Deputy Commissioner for Services and Enforcement SE
 Commissioner, Small Business/Self-Employed Division SE:S
 Commissioner, Wage and Investment Division SE:W
 Chief, Criminal Investigation Division SE:CI
 Director, Office of Professional Responsibility SE:OPR
 Senior Operations Advisor, Wage and Investment Division SE:W:S



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Appendix IV

How Do You Report Suspected Tax Fraud Activity?

Internal Revenue Service
United States Department of the Treasury

Keyword/Search Terms **SEARCH**
[Advanced Search](#) [Search Tips](#)

INDIVIDUALS | **BUSINESSES** | **CHARITIES & NON-PROFITS** | **GOVERNMENT ENTITIES** | **TAX PROFESSIONALS** | **RETIREMENT PLANS COMMUNITY** | **TAX EXEMPT BOND COMMUNITY**

[Employees](#) | [Farmers](#) | [International Taxpayers](#) | [Military](#) | [Parents](#) | [Self-Employed](#) | [Seniors & Retirees](#) | [Students](#)

Individuals Topics

- [Abusive Tax Shelters](#)
- [Appeal a Tax Dispute](#)
- [Taxpayer Rights](#)
- [Tax Exempt Bond](#)
- [More Topics ...](#)

IRS Resources

- [Compliance & Enforcement](#)
- [Contact My Local Office](#)
- [e-file](#)
- [Forms and Publications](#)
- [Frequently Asked Questions](#)
- [News](#)
- [Taxpayer Advocacy](#)
- [Where To File](#)

How Do You Report Suspected Tax Fraud Activity?

If you suspect or know of an individual or company that is not complying with the tax laws, you may report this activity by completing [Form 3949-A](#). You may fill out Form 3949-A online, print it and mail it to:

Internal Revenue Service
Fresno, CA 93888

If you do not wish to use Form 3949-A, you may send a letter to the address above. Please include the following information, if available:

- Name and address of the person you are reporting
- The taxpayer identification number (social security number for an individual or employer identification number for a business)
- A brief description of the alleged violation, including how you became aware of or obtained the information
- The years involved
- The estimated dollar amount of any unreported income
- Your name, address and daytime telephone number

Although you are not required to identify yourself, it is helpful to do so. Your identity can be kept confidential.

Frequently Asked Questions - [1.13 IRS Procedures: Reporting Fraud](#)

How to Report Abusive Tax Promotions and/or Promoters:
Complete the [referral form](#) which documents the information necessary to report an abusive tax avoidance scheme. The form can be mailed or faxed to the IRS address and fax number on the form.

How to Report Abusive CPAs, Attorneys or Enrolled Agents:
Report suspicious actions by tax professionals to the [email address](#) of the IRS Office of Professional Responsibility.

Source: IRS public Internet site, IRS.gov.



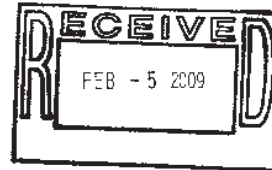
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Appendix V

Management's Response to the Draft Report



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224



February 5, 2009

MEMORANDUM FOR MICHAEL R. PHILLIPS
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Linda E. Stiff 
Deputy Commissioner Services and Enforcement

SUBJECT: Draft Audit Report – The Process Taxpayers Must Use to Report
Complaints Against Tax Return Preparers is Ineffective and
Causes Unnecessary Taxpayer Burden (Audit No. 200840015)

We have reviewed the draft report titled "The Process Taxpayers Must Use to Report Complaints Against Tax Return Preparers is Ineffective and Causes Unnecessary Taxpayer Burden".

We are committed to improving our overall program actions in regards to paid tax return preparers. We will expand our current efforts to include a cross-functional team assigned to review and revise our tax return preparer complaint process. This updated process will assist our efforts to reduce taxpayer burden and to enhance compliance by tax professionals and unenrolled return preparers.

Attached is a detailed response outlining our corrective actions. If you have questions, please call me at (202) 622-6860 or Monica Baker, Director, Examination at (202) 283-2659.

Attachment



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Attachment

RECOMMENDATION 1:

The Deputy Commissioner for Services and Enforcement should clarify guidance on IRS.gov when the taxpayer searches for "preparer complaint" so that taxpayers can understand the differences in the types of tax return preparers, the jurisdiction the IRS has over enrolled and unenrolled tax return preparers, and to which function taxpayer complaints about tax return preparers should be sent and by what method.

CORRECTIVE ACTIONS:

We concur with this recommendation. The Director, Examination SB/SE Division will ensure the guidance on IRS.gov is updated to assist taxpayers in understanding the process to file complaints against tax return preparers.

IMPLEMENTATION DATE:

June 15, 2009

RESPONSIBLE OFFICIAL:

Director, Examination Policy SB/SE Division

CORRECTIVE ACTION(S) MONITORING PLAN:

The Director, Examination Policy SB/SE will advise the Director, Examination SB/SE of any delays in implementing this corrective action.

RECOMMENDATION 2:

The Deputy Commissioner for Services and Enforcement should develop a form, both web-based and paper, specifically for tax return preparer complaints that routes to the correct function based on type of tax return preparer and includes the items necessary for the IRS to appropriately evaluate the complaint. Once a form is developed to ensure that sufficient information is captured about the complaint, a database(s) should be developed to efficiently control the complaints.

CORRECTIVE ACTION:

The Director, Examination SB/SE Division will ensure the tax return preparer complaint process is reviewed by a cross-functional team to identify opportunities for improvement. The cross-functional team will develop recommended action items to modify the system to produce an appropriate level of efficiency, effectiveness, and accountability that may include changes to forms and creation of an automated tracking system.

IMPLEMENTATION DATE:

By June 15, 2010, the cross-functional team will develop recommended action items.

RESPONSIBLE OFFICIAL(S):

Director, Examination Planning & Delivery SB/SE



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CORRECTIVE ACTION MONITORING PLAN:

The Director, Examination Planning and Delivery SB/SE will advise the Director, Examination SB/SE of any delays in implementation of this corrective action.