

**Fiscal Year 2005
Statutory Review of Disclosure of Collection
Activity With Respect to Joint Returns**

February 2005

Reference Number: 2005-40-041

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.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

INSPECTOR GENERAL
for TAX
ADMINISTRATION

February 18, 2005

MEMORANDUM FOR DEPUTY COMMISSIONER FOR SERVICES AND
ENFORCEMENT

Pamela J. Gardiner

FROM: Pamela J. Gardiner
Deputy Inspector General for Audit

SUBJECT: Final Audit Report - Fiscal Year 2005 Statutory Review of
Disclosure of Collection Activity With Respect to Joint Returns
(Audit # 200540031)

This report presents the results of our review of the disclosure of collection activity with respect to joint returns. The overall objective of this review was to determine if the Internal Revenue Service (IRS) is in compliance with Internal Revenue Code Section (I.R.C. §) 6103(e)(8) (2000) related to the disclosure of collection activities to joint filers.

In summary, we could not determine if the IRS fully complied with I.R.C. § 6103(e)(8) requirements when responding to all written information requests from joint filers. This is the seventh year in which we have reported our inability to give an opinion on the IRS' compliance with the provisions of I.R.C. § 6103(e)(8).

The Treasury Inspector General for Tax Administration is required under I.R.C. § 7803(d)(1)(B) (2000) to annually evaluate the IRS' compliance with the joint filer request provisions of the law. IRS management information systems do not separately record or monitor joint filer requests, and the Congress has not explicitly required the IRS to do so. Furthermore, we do not recommend the creation of a separate tracking system. Accordingly, we are making no recommendations in this report.

Management's Response: The IRS concurs with our decision to not recommend the creation of a separate tracking system and indicated that they appreciate our support of legislation which would alleviate the requirement to perform this review. Management's complete response to the draft report is included as Appendix IV.

Copies of this report are also being sent to the IRS managers affected by the report results. Please contact me at (202) 622-6510 if you have questions or

Michael R. Phillips, Assistant Inspector General for Audit (Wage and Investment Income Programs), at (202) 927-0597.

**Fiscal Year 2005 Statutory Review of Disclosure
of Collection Activity With Respect to Joint Returns**

Table of Contents

Background	Page 1
Compliance With Statutory Requirements for the Disclosure of Collection Activity With Respect to Joint Returns Cannot Be Determined	Page 2
Appendix I – Detailed Objective, Scope, and Methodology	Page 4
Appendix II – Major Contributors to This Report	Page 5
Appendix III – Report Distribution List	Page 6
Appendix IV – Management’s Response to the Draft Report	Page 7

**Fiscal Year 2005 Statutory Review of Disclosure
of Collection Activity With Respect to Joint Returns**

Background

The Taxpayer Bill of Rights 2 (TBOR2)¹ added Internal Revenue Code Section (I.R.C. §) 6103(e)(8) (2000), which gives joint filer taxpayers who are no longer married or no longer reside in the same household the right to receive information regarding the Internal Revenue Service's (IRS) efforts to collect delinquent taxes on their joint return liabilities. The procedures in I.R.C. § 6103(e)(8) require that the IRS provide, in writing, collection activity information to joint filers if they send in a written request. After passage of the TBOR2, the IRS Disclosure Office issued procedures which stated if I.R.C. § 6103(e)(8) is not specifically cited in the request, the IRS can provide either an oral or written response, based upon I.R.C. § 6103(e)(7) (2000).

The IRS Restructuring and Reform Act of 1998 (RRA 98)² added I.R.C. § 7803(d)(1)(B) (2000), which requires the Treasury Inspector General for Tax Administration to review and certify annually whether the IRS is complying with the requirements of I.R.C. § 6103(e)(8).

The RRA 98 required both the Secretary of the Treasury and the Joint Committee on Taxation (JCT) to complete separate studies of the scope and use of provisions regarding taxpayer confidentiality. The JCT issued its study report in January 2000 and recommended I.R.C. § 6103(e)(8) be amended to allow for oral information requests in addition to written requests. The Department of the Treasury issued its study report in October 2000 with a recommendation to eliminate the requirement that joint filer information requests be in writing. The Department of the Treasury's report also suggested that our reporting requirement regarding joint filer requests be phased out.

¹ Pub. L. No. 104-168, 110 Stat. 1452 (1996) (codified as amended in scattered sections of 26 U.S.C.).

² Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

Fiscal Year 2005 Statutory Review of Disclosure of Collection Activity With Respect to Joint Returns

In response to a recommendation in our Fiscal Year 1999 audit report,³ the IRS agreed to perform separate analyses by January 2001 in the former National Headquarters Collection and Customer Service functions to determine the volume of written joint filer requests received. IRS management stated they would use the outcome of these analyses to determine if a centralized management control process to track joint filer requests was warranted.

Due to the low volume of requests identified during the Collection study, the former National Headquarters Customer Service function did not perform its analyses. In May 2001, management in the Small Business/Self-Employed (SB/SE) and Wage and Investment (W&I) Divisions⁴ decided not to develop a new management control process to track joint filer information requests.

This review was performed at the IRS National Headquarters in Washington, D.C., in the SB/SE and W&I Divisions, and the Office of the National Taxpayer Advocate during the period October 2004 through January 2005. This audit was performed in accordance with *Government Auditing Standards*. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

Compliance With Statutory Requirements for the Disclosure of Collection Activity With Respect to Joint Returns Cannot Be Determined

We could not determine if the IRS fully complied with I.R.C. § 6103(e)(8) requirements when responding to all written requests from joint filers because of our inability to identify joint filer requests received nationwide. This condition occurred because IRS management information systems do not separately record or monitor joint filer requests. During this review, management from the SB/SE and W&I Divisions commented that the IRS' position has not changed from last year, and the IRS does not plan to implement a system to identify or track joint filer requests

³ *The Internal Revenue Service's Procedures for Responding to Written Requests for Collection Activity From Joint Return Filers Vary From Statutory Requirements* (Reference Number 1999-10-077, dated September 1999).

⁴ The SB/SE and W&I Divisions were created by the reorganization of the IRS. Components of the former Collection and Customer Service Divisions were made part of these Divisions.

**Fiscal Year 2005 Statutory Review of Disclosure
of Collection Activity With Respect to Joint Returns**

for collection activity. In addition, there is no statutory or regulatory requirement for the IRS to develop a separate system that records or monitors these requests.

We do not recommend the creation of a separate tracking system and are making no recommendations in this report. This is the seventh year in which we have reported our inability to give an opinion on the IRS' compliance with the provisions of I.R.C. § 6103(e)(8).

Detailed Objective, Scope, and Methodology

The overall objective of this review was to determine if the Internal Revenue Service (IRS) is in compliance with Internal Revenue Code Section (I.R.C. §) 6103(e)(8) (2000) related to the disclosure of collection activities to joint filers. To accomplish our objective, we:

- I. Obtained confirmation from the Small Business/Self-Employed and Wage and Investment Divisions that the IRS neither has, nor plans to implement, a system or process to identify or track joint filer requests for collection information relating to the requirements of I.R.C. § 6103(e)(8).
- II. Interviewed personnel in the offices of the National Taxpayer Advocate, the IRS Commissioner's Executive Control Management System, and the Treasury Inspector General for Tax Administration to determine if there is a system or process that tracks taxpayer complaints relating to the requirements of I.R.C. § 6103(e)(8).

**Fiscal Year 2005 Statutory Review of Disclosure
of Collection Activity With Respect to Joint Returns**

Appendix II

Major Contributors to This Report

Michael R. Phillips, Assistant Inspector General for Audit (Wage and Investment Income Programs)

Mary V. Baker, Director

Bryce Kisler, Audit Manager

Sharon Summers, Lead Auditor

Cindy Harris, Auditor

**Fiscal Year 2005 Statutory Review of Disclosure
of Collection Activity With Respect to Joint Returns**

Appendix III

Report Distribution List

Commissioner C
Office of the Commissioner – Attn: Chief of Staff C
Commissioner, Small Business/Self-Employed Division SE:S
Commissioner, Wage and Investment Division SE:W
National Taxpayer Advocate TA
Director, Collection, Small Business/Self-Employed Division SE:S:C
Director, Communications & Liaison, Small Business/Self-Employed Division SE:S:C&L
Director, Compliance, Wage and Investment Division SE:W:CP
Director, Strategy and Finance, Wage and Investment Division SE:W:S
Chief, Performance Improvement, Wage and Investment Division SE:W:S:PI
Chief Counsel CC
National Taxpayer Advocate TA
Director, Office of Legislative Affairs CL:LA
Director, Office of Program Evaluation and Risk Analysis RAS:O
Office of Management Controls OS:CFO:AR:M
Audit Liaisons:
 Chief, Customer Liaison, Small Business/Self-Employed Division SE:S:COM
 Senior Operations Advisor, Wage and Investment Division SE:W:S
 Director, Communications and Liaison, National Taxpayer Advocate TA:CCL

Fiscal Year 2005 Statutory Review of Disclosure
of Collection Activity With Respect to Joint Returns

Appendix IV

Management's Response to the Draft Report



NATIONAL DIRECTOR
FOR LEGISLATIVE
AFFAIRS

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

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MEMORANDUM FOR GORDON C. MILBOURN III
ASSISTANT INSPECTOR GENERAL FOR AUDIT
(SMALL BUSINESS AND CORPORATE PROGRAMS)

From: Floyd Williams 
Director, Office of Legislative Affairs

Subject: Draft Audit Report: Fiscal Year 2005 Statutory Review of
Disclosure of Collection Activity with Respect to Joint
Returns (Audit #200540031)

I have reviewed your Draft Audit Report concerning the annual review and certification of Internal Revenue Service (IRS) compliance with the requirements of 26 U.S.C section 6103(e)(8). As you noted in your report, you do not recommend that we create a separate management system to track joint filer requests and we concur with that determination.

This provision continues to place a burden on both of our staffs to repeatedly address the issue. TIGTA has put forward and the IRS has supported proposals to repeal 26 U.S.C. section 7803(d)(1)(B). The US Senate approved legislation to repeal this provision on May 19, 2004 as part of the Tax Administration Good Government Act which was incorporated as an amendment to a previously passed House measure, H.R. 1528. The 108th Congress adjourned before the Senate and House could meet to reconcile their respective versions of H.R. 1528. The IRS continues to support Treasury in urging Congress to approve legislation to eliminate this mandatory audit. Senate staff has confirmed the tax writing committees' intent to again incorporate this repeal provision in legislation in the 109th Congress. Enactment of this provision will alleviate the need for TIGTA to annually review and certify compliance with joint filer information requests.

We appreciate your support for the elimination of this unnecessary required report. If you have any questions, or would like to discuss this response in greater detail, please contact me at (202) 622-4725.