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CRS Report for Congress

IRS Employees: Termination of Employment for Misconduct

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IRS Employees: Termination of Employment for Misconduct

Summary

Congress authorized various personnel flexibilities for the Internal Revenue Service (IRS) in Public Law 105-206, the IRS Restructuring and Reform Act, enacted on July 22, 1998. Section 1203 of the law included provisions relating to termination of IRS employees for misconduct. A final administrative or judicial determination that an employee willfully committed any of 10 acts or omissions stated in the law could result in termination. The IRS Commissioner has the sole discretion to take a personnel action other than termination for an act or omission. The termination provision was added to the Senate version of the IRS Restructuring and Reform Act during markup by the Senate Committee on Finance. Committee Chairman William Roth stated that the provision resulted, in part, from testimony presented at the committee's 1997 and 1998 oversight hearings. This point was reiterated by Senator Phil Gramm, who offered an amendment strengthening the provision, which was agreed to when the Senate considered the bill.

The IRS published procedures for handling Section 1203 allegations in a document entitled *RRA '98 Section 1203 Procedural Handbook*. Each IRS employee received a copy of the handbook and various other memorandums and documents on Section 1203. The agency is conducting ongoing training of its employees on the law's requirements. Both the Commissioner's Complaint Processing and Analysis Group and the Treasury Inspector General for Tax Administration (TIGTA) have published data on Section 1203 violations and disciplinary actions. The commissioner's semiannual report states that 28 employees were removed for Section 1203 violations during the period, January 1 through June 30, 2000. Of this total, 26 of the cases related to willful untimely tax returns; one involved a threat to audit for personal gain; and one involved destruction of documents to conceal a mistake. According to TIGTA, the largest number of Section 1203 allegations have related to violations of the Internal Revenue Manual or the Internal Revenue Code to retaliate or harass; civil rights, including Equal Employment Opportunity, violations; and willful destruction of documents and understatement of federal tax liability.

A General Accounting Office evaluation of five allegations made during the April 1998 Senate Committee on Finance hearings concluded that the IRS's information systems and documentation in the areas of employee discipline, retaliation against whistleblowers and taxpayers, and zeroing out of recommended taxes were inadequate, hindering "both congressional oversight and IRS management from addressing any problems in these areas." The National Treasury Employees Union, which represents IRS employees, would like to see the law modified (to allow discretion for mitigating circumstances) or repealed.

Federal employees can be removed from employment based on performance or adverse action under Chapters 43 and 75 of Title 5 of the United States Code. In addition to IRS employees, who can be removed for violating Section 1203, other employees can be removed under specific circumstances, including employees of the Defense Intelligence Agency and the Central Intelligence Agency (CIA).

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Introduction

Congress authorized various personnel flexibilities for the Internal Revenue Service (IRS) in Public Law 105-206, the IRS Restructuring and Reform Act, enacted on July 22, 1998. Section 1203 of the law included provisions relating to termination of IRS employees for misconduct. A final administrative or judicial determination that an employee willfully committed any of 10 acts or omissions stated in the law could result in termination. The IRS Commissioner has the sole discretion to take a personnel action other than termination for an act or omission. Testimony presented at the Senate Committee on Finance's 1997 and 1998 oversight hearings contributed to inclusion of Section 1203 in the law. During a May 3, 2000 joint review hearing conducted by the Senate Committees on Finance, Appropriations, and Governmental Affairs and the House Committees on Ways and Means, Appropriations, and Government Reform, several members told IRS Commissioner Charles Rossotti of their interest in the implementation of the restructuring and reform act, including Section 1203.

Senator Robert Kerrey, a co-chairman of the National Commission on Restructuring the IRS, expressed concern that Congress may have established a double standard by mandating that an IRS employee's tax delinquency could result in termination from employment. Two of the 10 acts or omissions in Section 1203 which may result in removal relate to tax compliance, but not all tax compliance cases are violations of the section. To be brought under Section 1203(b)(8) or (b)(9), as set out on page three below, a tax compliance case must meet the meaning of "willful"; the voluntary intentional violation of a known legal duty (timely filing of tax return or accurate reporting of tax obligation) for which there is no reasonable cause. Prior to the enactment of Section 1203, the IRS regarded the untimely payment of taxes as serious misconduct, depending on the amount and lateness of the tax due; a late tax return having a minimal balance due or a refund owed was not viewed as a serious offense. All Americans are subject to a fine, imprisonment, or both for failure to comply with the U.S. Tax Code.¹ Other federal employees are not subject to the possibility of removal from employment for substantiated allegations of untimely filing of or inaccurate tax returns.

The IRS has established procedures to implement Section 1203 and is conducting ongoing training of its employees about the requirements of the law. Employees have been removed for violating Section 1203. The commissioner's semiannual report on disciplinary actions states that 28 employees were removed for

¹ See 26 U.S.C. 7201-7203.

Section 1203 violations during the January 1 through June 30, 2000 period. Of this total, 26 of the cases related to willful untimely tax returns; one involved a threat to audit for personal gain; and one involved destruction of documents to conceal a mistake.

This report discusses Section 1203, including background and legislative history, General Accounting Office (GAO) evaluations, implementation, oversight, and data on violations covered by the section. Removal of federal employees from employment because of performance or adverse action under Chapters 43 and 75 of Title 5 of the United States Code and other federal employees subject to termination of employment for specific circumstances also are discussed.

Termination of Employment for Misconduct²

Subsection (a) of Section 1203 of Public Law 105-206 authorizes the IRS Commissioner to terminate any IRS employee if there is a final administrative or judicial determination that the employee committed any act or omission in performing his/her official duties. The termination shall be a removal for cause on charges of misconduct. The acts or omissions that would result in termination are stated in subsection (b) of Section 1203 and are the following:

- (1) willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business assets;³
- (2) providing a false statement under oath with respect to a material matter involving a taxpayer or taxpayer representative;⁴
- (3) with respect to a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service, the violation of—(A) any right under the Constitution of the United States; or (B) any civil right established under—(i) title VI or VII of the Civil Rights Act of 1964; (ii) title IX of the Education Amendments of 1972; (iii) the Age Discrimination in Employment Act of 1967; (iv) the Age Discrimination Act of 1975; (v) section 501 or 504 of the Rehabilitation Act of 1973; or (vi) title I of the Americans with Disabilities Act of 1990;⁵

² 112 Stat. 720-722, July 22, 1998, 26 U.S.C. 7804 note.

³ The word “willful” was added in the conference committee.

⁴ The words “or taxpayer representative” were added in the conference committee.

⁵ The wording is that provided by the conference committee. Under the Senate-passed bill, the provision read, “violation of the civil rights of a taxpayer or other employee of the IRS.” The IRS *RRA '98 Section 1203 Procedural Handbook* states the following on pp. 36-37: “Title VI of the Civil Rights Act of 1964 prohibits discrimination against individuals on the bases of race, color, or national origin, by programs receiving federal financial assistance. Title VII of the Civil Rights Act of 1964 prohibits discrimination against individuals in the workplace on the bases of race, color, religion, national origin, or sex. Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex for anyone in an education program or activity receiving federal financial assistance. This applies only to
(continued...)

- (4) falsifying or destroying documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or taxpayer representative;⁶
- (5) assault or battery on a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service, but only if there is a criminal conviction, or a final judgment by a court in a civil case, with respect to the assault or battery;⁷
- (6) violations of the Internal Revenue Code of 1986, Department of Treasury regulations, or policies of the Internal Revenue Service (including the Internal Revenue Manual) for the purpose of retaliating against, or harassing, a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service;⁸
- (7) willful misuse of the provisions of section 6103 of the Internal Revenue Code of 1986 for the purpose of concealing information from a congressional inquiry;
- (8) willful failure to file any return of tax required under the Internal Revenue Code of 1986 on or before the date prescribed therefor (including any extensions), unless such failure is due to reasonable cause and not to willful neglect;⁹
- (9) willful understatement of federal tax liability, unless such understatement is due to reasonable cause and not to willful neglect; and

⁵ (...continued)

vocational, professional and graduate higher education and public institutions of undergraduate higher education. Age Discrimination in Employment Act (ADEA) of 1967 prohibits discrimination in the workplace on the basis of age (over age 40). Age Discrimination Act of 1975 prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance. The Rehabilitation Act of 1973, as amended, prohibits discrimination in the federal workplace on the basis of a qualified employee's handicapping condition in hiring, promotion and other employment actions. It also requires affirmative action for the handicapped in federal employment. Americans with Disabilities Act (ADA) prohibits discrimination against qualified individuals on the basis of their mental or physical disability in all aspects of employment including job application procedures, hiring, advancement or discharge, employee compensation, job training as well as other terms, conditions and privileges of employment."

⁶ The wording is that provided by the conference committee. Under the Senate-passed bill, the provision read, "falsifying or destroying documents to conceal mistakes made by the employee with respect to a matter involving a taxpayer."

⁷ The wording is that provided by the conference committee. Under the Senate-passed bill, the provision read, "assault or battery on a taxpayer or other IRS employee."

⁸ The words "taxpayer representative" were added in the conference committee.

⁹ 26 U.S.C. 7202 provides that willful failure to pay tax, in addition to other penalties provided by law, is a felony punishable, upon conviction, by a fine up to \$10,000 or imprisonment for up to five years, or both, together with the costs of prosecution. 26 U.S.C. 7203 provides that willful failure to file a tax return, supply information, or pay tax, in addition to other penalties provided by law, is a misdemeanor punishable, upon conviction, by a fine up to \$25,000 or imprisonment for up to one year, or both, together with the costs of prosecution.

(10) threatening to audit a taxpayer for the purpose of extracting personal gain or benefit.

For purposes of Title VI or VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and the Age Discrimination Act of 1975, references to a program or activity receiving federal financial assistance or an education program or activity receiving federal financial assistance shall include any program or activity conducted by the Internal Revenue Service for a taxpayer.¹⁰

The acts or omissions stated in Section 1203 (b)(8) and (b)(9) relate to tax compliance.

The IRS Commissioner may take a personnel action other than termination for an act or omission. The exercise of this authority shall be at the sole discretion of the commissioner and may not be delegated to any other officer. The commissioner, in his sole discretion, may establish a procedure that will be used to determine whether an individual should be referred to him for a determination on a personnel action. Any determination of the commissioner may not be appealed in any administrative or judicial proceeding.

Background and Legislative History

A commission report and hearings in the House of Representatives and the Senate preceded the enactment of Public Law 105-206.

Report of the National Commission on Restructuring the Internal Revenue Service

Congress created the National Commission on Restructuring the Internal Revenue Service in November 1995, with the enactment of Public Law 104-52, to conduct a review, lasting no longer than 15 months, of the IRS with respect to, among other issues, “changing the culture of the IRS to make the organization more efficient, productive, and customer-oriented.”¹¹ The commission issued its report, entitled *A Vision for a New IRS*, in June 1997. Section 2 of the report addressed the agency’s workforce and culture and recommended that “Congress should enable the IRS to recruit and train a first class workforce that is able to work with taxpayers to solve problems.” The report did not include a provision on termination of employment for misconduct. It did, however, recommend a “centralize[d] cataloging and review of complaints and Board oversight.” According to the report:

The proposal would require the IRS to centralize the cataloging and review of taxpayer complaints of IRS misconduct on an individual employee basis. The proposal also would require the Commissioner and Taxpayer Advocate to establish guidelines for internal review and discipline of IRS employees, and the Board of

¹⁰ This provision was added by the conference committee.

¹¹ 109 Stat. 509, Nov. 19, 1995, 26 U.S.C. 7801 note.

Directors to ensure independent oversight of IRS internal review. This function would be similar to that performed by citizen's police boards that monitor internal police reviews. The proposal also would require the IRS to establish a toll-free number for taxpayers to register complaints, to be included in Publication 1.¹²

Hearings

The House Committee on Ways and Means, the Senate Committee on Finance, and the Senate Committee on Appropriations conducted oversight hearings on the IRS in 1997 and 1998. These hearings addressed a number of issues, including the findings and recommendations of the report of the commission, options for restructuring the IRS, tax rules for innocent spouses, and employee misconduct. Only testimony related to the latter issue is included in this report.

Senate Committee on Finance, September 23, 24, and 25, 1997. Current and former IRS employees told the committee of various practices they claimed were used by the IRS, including the following.

“Employees are given mandates by management to take positions known to be incorrect in order to obtain pre-ordained results.”¹³

“I know of seasoned tax collectors who were well aware of the law, take actions that were out of the realm of legal tax collection. In one instance, a Revenue Officer who made up a seizure document titled Nominee Levy on the spot prior to seizing assets from someone who was not the taxpayer, was soon after made a Group Manager.”¹⁴

“I know of numerous cases where the IRS has specifically exceeded its authority. In one of [the] most egregious examples, the IRS (Collections) predetermined that 637 taxpayers were liable for employment tax [they did not conduct legitimate investigations]; used extortion tactics to have taxpayers sign returns which the IRS prepared; did not use any IRC [Internal Revenue Code] sections which benefit the taxpayer; and disregarded established law, authorities and procedures; 630 of these taxpayers were also denied their ‘Due Process Rights’ [T]hat the IRS now has

¹² U.S. National Commission on Restructuring the Internal Revenue Service, *A Vision for a New IRS; Report of the National Commission on Restructuring the Internal Revenue Service* (Washington: June 1997), pp. 19, 50. Section 3701 of Public Law 105-206 provided that “In collecting data for the report required under section 1211 of the Taxpayer Bill of Rights 2 (Public Law 104-168), the Secretary of the Treasury or the Secretary’s delegate shall, not later than January 1, 2000, maintain records of taxpayer complaints of misconduct by Internal Revenue Service employees on an individual employee basis.” 112 Stat. 776, July 22, 1998, 26 U.S.C. 7804 note.

¹³ U.S. Congress, Senate Committee on Finance, *Practices and Procedures of the Internal Revenue Service*, hearings, 105th Cong., 1st sess., Sept. 23, 24, 25, 1997 (Washington: GPO, 1997), p. 310. Statement of Lawrence G. Lilly, who worked for IRS for 28 years, and whose last position was district counsel.

¹⁴ *Ibid.*, p. 314. Statement of David Patnoe, an enrolled agent, who earlier served for over 10 years as an IRS revenue officer.

the authority to assign additional income to a taxpayer at its discretion, without any basis in fact, is frightening and completely unacceptable.”¹⁵

“IRS tax collectors, Revenue Officers, but more importantly managers, are not properly trained in IRS policies and Internal Revenue Manual (IRM) procedures I have witnessed Collection Division Branch Chiefs, Assistant Division Chiefs, Division Chiefs, Problem Resolution (PRO) employees, and even an Assistant District Director, violate or ignore Internal Revenue Manual procedures and Treasury regulations simply because they wanted to punish a taxpayer.”¹⁶

“Proven violations of criminal misconduct against an employee have been ‘whitewashed’ by Internal Revenue Service managers and labor relations. Serious violations such as browsing, unauthorized access to taxpayer’s records, and unauthorized release of taxpayer’s information have received nothing more than counseling letters. These letters are then removed from the employee’s personnel file after one year. This kind of action does not serve as a deterrent for misconduct.”¹⁷

“I have personally witnessed in the IRS workplace ... tax data being accessed by IRS employees to check on prospective boyfriends; ex-husbands; ... on people with whom IRS employees were having some kind of personal disagreement; on locally prominent or newsworthy individuals, public figures—even team coaches; out of simple curiosity about a friend, a relative, or an employee’s neighbor; on individuals who are perceived as critical of the IRS, such as tax protesters Another incident involved ... a Fake Tax Lien ... filed by the IRS when there was no assessment and therefore no legitimate lien A case that is written off as uncollectible, a Form 53, is counted as a closed case just the same as if it were fully collected I have now seen months in which over 60% of case closures were ... closed as uncollectible.”¹⁸

“The area that causes me significant concern is the widely varied treatment that taxpayers can and do receive. The IRS’ approach toward a taxpayer can vary dramatically depending upon the IRS Group Manager whose group is assigned the case; depending on the employee working the case; and/or depending on the Collection Division policy in effect at the time the case is received Another concern I have is based on the fact that collection initiatives change regularly Recently a local Revenue Officer planned an elaborate sale to dispose of certain assets seized from a taxpayer Even though the Revenue Officer failed to achieve the minimum bid, as required by law, before selling the assets, he went ahead and sold the property at a significant loss to the taxpayer. Property which

¹⁵ Ibid., pp. 333-334. Statement of Bruce A. Strauss, an enrolled agent, retired from IRS after 31 years service, the last 18 of which were as division chief within the Collection Division.

¹⁶ Ibid., pp. 348-350. Statement of Witness No. 1, who for 25 years worked for the IRS Collection Division or represented taxpayers before the division.

¹⁷ Ibid., p. 351. Statement of Witness No. 2, a criminal investigator with the IRS Internal Security Division.

¹⁸ Ibid., pp. 352-353. Statement of Witness No. 3, a GS-12 IRS revenue officer with over 35 years’ service.

had a minimum bid of at least \$40,000 was sold for roughly \$7,000 ... [T]he Revenue Officer and his manager now face possible disciplinary actions.”¹⁹

“Many other issues have come to my attention ... that have created a threatening environment for myself and many other employees ... [M]anagers are targeted for termination on the basis of who their ‘friends’ are; statistics are manipulated to make it appear that our office is producing much higher statistics than what is factual; selected employees are encouraged to file EEO [Equal Employment Opportunity] complaints on the basis of trumped up charges with the promise that their claim will be settled so they can then be promoted—unfairly—without having to compete for the job against more qualified employees; Revenue Officers have been directed to release seized assets because management personally feels indebted to the taxpayer’s representative—a former IRS employee and a friend of management.”²⁰

“[I]t has been my observation and experience that taxpayers are treated as being ‘guilty until proven innocent.’ Based on my experience, this attitude coupled with an arrogant and indifferent manner in which citizens are sometimes treated, directly contributes to, and in some instances instigates many of the threats, assaults, resistance to and lack of cooperation experienced by IRS employees when dealing with the public.”²¹

Jennifer Long Testimony and Resulting Investigation. During the September 24, 1997 Senate Committee on Finance hearing, an IRS revenue agent, Jennifer Long, identified various practices used by IRS employees. Among these practices were the following, quoted from her testimony.

“[E]gregious tactics used by IRS Revenue Agents which are encouraged by members of the IRS management. These tactics—which appear nowhere in the IRS Manual—are used to extract unfairly assessed taxes from taxpayers, literally ruining families, lives, and businesses—all unnecessarily and sometimes illegally. As of late, we seem to be auditing only poor people Currently, in a typical case assigned for audit, there are no assets, no signs of wealth—no evidence that would support a suspicion of higher, unreported income.

“In other cases, IRS Management can determine that a particular taxpayer is simply someone ‘to get’ Management will go about fabricating evidence against that taxpayer to demonstrate that he, or she, owes more taxes than was originally claimed.

“In certain instances, the IRS management has even employed its authority to intimidate the actual taxpayers into fabricating evidence against its own IRS employees. In return for their compliance, the taxpayer may be offered a reduction in their taxes or a ‘no change case’. I also know that Management uses this same power to extort fabricated evidence from IRS employees against their own colleagues by offering cash awards, promotions, and lightened work loads as

¹⁹ Ibid., p. 354. Statement of Witness No. 4, who had more than 25 years’ IRS service, the majority as a revenue officer in the Collection Division.

²⁰ Ibid., p. 355. Statement of Witness No. 5, a long-term IRS revenue officer.

²¹ Ibid., p. 356. Statement of Witness No. 6, an IRS Inspection Division employee.

rewards for their compliance. The unfavorable information assembled by Management against its own employees is used against those whom the IRS has identified as someone who is unsupportive of its unwieldy methods of collection.

“[C]omplaints to the IRS Inspection Division about possible Management misconduct are routinely ignored, but often result in retaliation against the IRS employee reporting the problem. This is due to the fact that employees’ identities are disclosed when the Inspection Division reports the infraction to Management.

“I have actually witnessed IRS Management manipulate income tax return figures just to increase their office or division collection statistics.

“I know of certain IRS employees that have been instructed by IRS Management not to conduct audits of particular taxpayers who happen to be personal friends of someone in IRS Management.

“When a taxpayer comes to the IRS to negotiate a tax payment issue in good faith, they are subjected to provocative behavior on the part of the IRS in order to ‘set them off’ Based on this pretext, the IRS can then justify taking severe action contrary to the law in order to pursue the collection.”²²

At the Senate Committee on Finance’s April 28, 1998 hearing, the Deputy Assistant Inspector General for Investigation at the Department of the Treasury reported on his review of the allegations made by Jennifer Long. He stated that “The OIG [Office of Inspector General] limited the scope of its investigation to Long’s allegations as they pertain to the IRS Houston District.” His findings are presented below.

Long alleged that IRS managers harass and retaliate against IRS employees. Although the report does not substantiate her specific allegations of harassment, it cannot be concluded that IRS managers do not harass or retaliate against employees in the Houston District or in other Districts.

IRS management appears to treat managers differently than employees when it pertains to disciplinary action. OIG was advised that IRS managers are allowed to ‘voluntarily’ step down from their management position rather than being involuntarily removed. IRS management stated this is done to save money in case of a lawsuit. An Inspection manager also stated that IRS managers are punished less severely than IRS employees. This manager was of the opinion it is based on human nature since most managers, to have attained their position, have probably worked well over a long period of time with little or no prior disciplinary action.

Also, if an employee files a grievance, an EEO complaint, or a lawsuit against an IRS manager and the employee wins the settlement, usually no disciplinary action is taken against the manager for allegedly violating the rights of the employee. This process could allow managers the freedom to ‘harass’ an employee since no action is taken against them. This process could give employees the perception that they cannot take any action against a manager who harasses them or retaliates against them.

²² Ibid., pp. 311-312.

Employees may feel they are retaliated against by management for reporting complaints to Inspection. A supervisor, Internal Security, Houston, TX, said employees may feel they are routinely ignored after providing the information to Inspection, because the office does not notify the complainant of the action taken by Inspection.

Long alleged that Inspection advises IRS management of allegations provided to them, and who provided the information There appears to be confusion on the part of IRS Inspection managers and employees regarding the process of providing complainant's names to IRS management. Several of the Inspection employees interviewed said the complainant's names are provided to management, while others indicated the names are not provided to management.²³

Senate Committee on Finance, April 28, 29, 30, and May 1, 1998. These hearings took further testimony on IRS practices, including the following.

“[T]here is excessive use and misuse of intrusive and even oppressive investigative techniques within the Criminal Investigation Division The IRS does serious and needless damage to its image and relationship with the public—and government as a whole—when it lies to and deceives taxpayers in routine criminal tax investigations.”²⁴

“[I]t is also clear to me that harassment and overreaching by the Collection Division of the Internal Revenue Service is far from isolated and that, indeed, it could continue at the rate that I have seen over the years without institutional approval of these practices, whether that be an active approach or by passive approval For years a particular Collection Agent in Philadelphia lied to me repeatedly on a number of cases.”²⁵

“IRS abuse is not a series of isolated events. It is my experience that IRS culture increasingly permits, and even encourages, taxpayer abuse I know of one IRS employee whose in-service instructor asked of the class how the IRS enforces tax compliance. After a moment of silence in the classroom, he wrote the word fear in letters that reached from the top of the blackboard to the bottom, and then left the room.”²⁶

“I, as a tax lawyer, am concerned that it appears that the agency has in some instances directly targeted lawyers who represent taxpayer[s] in an effort to intimidate, harass, and I believe with the ultimate goal of making lawyers think

²³ U.S. Congress, Senate Committee on Finance, *IRS Oversight*, hearings, 105th Cong., 2nd sess., April 28, 29, 30 and May 1, 1998 (Washington: GPO, 1998), pp. 273-274.

²⁴ *Ibid.*, pp. 236-237. Statement of Robert Edwin Davis, an attorney for almost 40 years, greatest part of whose practice involves representing taxpayers before the IRS and the Department of Justice.

²⁵ *Ibid.*, pp. 239-240. Statement of J. Earl Epstein, an attorney practicing tax law for the last 35 years and representing taxpayers before the IRS.

²⁶ *Ibid.*, p. 56. Statement of Philip McNaughton, an attorney representing taxpayers before the IRS.

twice about zealously representing taxpayers I was soon subject not only to an audit, but to an intense criminal investigation as well.”²⁷

“[M]y partner and I became aware that we were being swindled by our bookkeeper. When we discovered substantial shortages in our accounts, we confronted her and she admitted to stealing from our business [S]he sought shelter with the IRS and told them a fantastic tale of money laundering, gun running, and drug dealing by my partner and I When the raid occurred at my home, the front door was torn from the hinges I returned to find my home in shambles We were never charged with any crimes. After scrutinizing our records for 4 months, the IRS returned most of them. A rental truck pulled up in front of my business 1 day and the items that were returned were basically dumped in a pile for us to sort through. I never received an apology.”²⁸

“[A]t the time of this raid the IRS had no complaints against me that I was aware of, or any complaints from any of the over 90,000 tax returns my office had prepared in the last 22 years [The IRS] tried to force some of my clients to wear hidden microphones into my tax office to record me, and when they refused, the special agent became angry and hinted ... that they too might experience some problems with the IRS. My employees were threatened with the loss of their jobs The IRS examined between 35,000 and 45,000 of my client tax returns for fraud, and failed [T]he Justice Department dropped two counts against me ... [A]ll of the other counts against me were dropped and the case was dismissed.”²⁹

“My family was investigated for more than 16 months. The Justice Department finally offered to drop the criminal investigation after I had spent millions of dollars in legal and accounting fees, roughly \$5.5 million, to prove that we had committed no crime.”³⁰

“IRS management has frequently promoted marginally qualified or possibly unqualified individuals, including a few blacks, to high-level positions as a reward for supporting racism, racist policies, and/or whatever management does Many blacks with substantial education and skills are hired into the IRS at the GS-5 and/or GS-7 levels and retire, in many instances, with only one promotion over a 20- to 40-year career.”³¹

“Throughout the Manhattan District, the technically weaker managers consistently ordered cases closed, no-change as they begin to age [I]t is standard practice to drop an issue that will delay the closing of the case. Large dollar amounts on major taxpayers are routinely zeroed out in this manner When people, such as these experts, commissioners, district directors, executives, and lawyers leave the service, they return as representatives of major taxpayers and ignore the ethical

²⁷ Ibid., p. 58. Statement of Ray Cody Mayo, Jr., an assistant district attorney, board certified in taxation, who also represents taxpayers before the IRS.

²⁸ Ibid., pp. 75-76. Statement of John Colaprete, a restaurant owner.

²⁹ Ibid., pp. 80-81. Statement of Richard Gardner, the owner of a tax service company.

³⁰ Ibid., pp. 82. Statement of W.A. Moncrief, Jr., the owner of an oil company.

³¹ Ibid., p. 106. Statement of Leroy W. Warren, a member of the NAACP National Board of Directors.

mandate of the service that former employees disqualify themselves for a 2-year period from representing any taxpayer whose cases were open and under their authority while they were employed by the service If an EEO complaint is brought either against an outspoken employee or by an outspoken employee, administration will get involved to the detriment of the outspoken employee. Strong efforts will be made by management to imply that the outspoken employee is the offending party.”³²

“I find it difficult if not impossible to understand how, on the one hand, the IRS will go after small taxpayers for arbitrary adjustments, while on the other hand, reduce by millions the amount of real taxes owed by extremely wealthy and powerful companies As a result of my objections to the resolution of the specific case I previously described, I became the focus of harassment by other agents ... [ranging from] comments on the quality of my work to comments on my Vietnamese heritage.”³³

“During my 7 years on the Commissioner’s staff, I witnessed a broad range of misconduct by high-level managers ... mistreatment of taxpayers, covering up serious revenue losses, sexual harassment, the creation of false records, improper use of enforcement statistics, covering up misconduct by executives and their high-level subordinates, and violations of prohibited civil service personnel practices In one case with which I am personally familiar, certain members of IRS management in a particular district actually forgave over \$30 million of a \$50 million tax liability for a large, influential business concern for no apparent reason In another matter, I reported that the district improperly closed 83,621 taxpayer cases ... without completing the process of collecting taxes owed on any of them.”³⁴

“At the sole discretion of individual managers, millions, even hundreds of millions of tax revenues owed to the U.S. Treasury by some of the largest taxpayers in the country are literally forgiven, zeroed out Since many of these former senior executives and managers have only recently separated from the service, many of their former colleagues and friends are still actively employed. As a result, I believe the newly-established tax advisor can take his or her client before the former colleague with the expectation of receiving decisions favoring their clients In one particular case, a \$10 million adjustment was never assessed against the taxpayer because the statute of limitations ran out while the case was languishing in the processing department.”³⁵

“What I had uncovered was an attempt to create an unfounded criminal investigation on two national political figures [a U.S. Congressman and a former

³² Ibid., pp. 132, 140, 143. Statement of Maureen O’Dwyer, a GS-13 international examiner, Manhattan District of the IRS.

³³ Ibid., p. 147. Statement of Minh Thi Johnson, a revenue agent with IRS’s Los Angeles District Office.

³⁴ Ibid., pp. 148-149. Statement of Michael Ayala, an IRS analyst with over 30 years’ service.

³⁵ Ibid., pp. 152-154. Statement of Ginger Mary Jarvis, an acting team coordinator, IRS Manhattan District Office, with 23 years of tax experience in the public and private sectors).

U.S. Senator] for no reason other than to redeem the agent's own career and ingratiate himself with his superiors. "³⁶

"I feared [an agent] because of his constant sexual harassment and certainly due to his position as a senior special agent I later learned that he had attempted to rape another female special agent [W]hen [Tommy Henderson] made my concerns relative to this renegade agent known to management, an investigation was instituted [T]he agent was not to be the target of this investigation, Tommy Henderson and I were As a result of having to clear myself, I obtained a criminal defense attorney When I attempted to leave [a meeting with the IRS] the group manager came after me and struck me in the stomach ... I was now branded a self-serving whistle blower by management and colleagues."³⁷

"In January 1993, I suddenly found myself ... caught up in a patronage scheme to protect one immoral female when she reported that her service weapon had been stolen. The truth was she had lost it, but preferred to accuse a co-worker, special agent Patricia Gernt who worked at a post of duty more than 120 miles away. Just days after the gun was reported missing, it was recovered under mysterious circumstances Patricia Gernt and I became the targets in the ensuing sham investigation It is the practice of the IRS Inspection Division to use Gestapo-type tactics to intimidate and harass the targets of their investigations. They coerce them into giving false evidence and then offer them immunity in exchange for it. These employees are forced to provide false evidence of criminal misconduct against innocent colleagues included on the IRS hit list."³⁸

"The whistleblowers are ostracized and [their] careers destroyed, and those senior officials who engaged in the misconduct which was reported and substantiated are not only protected from receiving any disciplinary actions, but are oftentimes rewarded during the same year the misconduct occurs I have suffered retaliation and continue to suffer retaliation as a result of my whistleblowing activities and participation in the OIG investigation [I]n most instances warranting disciplinary action, more effort went into how to clear the person rather than what needed to be done to ensure the misconduct did not recur. Exceptions were made and preferential treatment was granted. Excuses were readily accepted and misconduct was often reduced to being minor."³⁹

Senate Committee on Appropriations, April 14, 1998. This field hearing in Denver Colorado received testimony about such alleged IRS practices as:

³⁶ Ibid., p. 172. Statement of Tommy A. Henderson, a special agent, IRS Criminal Investigation Division, with over 25 years' service.

³⁷ Ibid., pp. 176-178. Statement of Patricia J. Gernt, a former special agent, IRS Criminal Investigation Division, Nashville District Office.

³⁸ Ibid., pp. 180-181. Statement of Barbara Latham, a former tax fraud investigative aide, IRS Criminal Investigation Division, Nashville District Office, with 17 years' IRS service.

³⁹ Ibid., pp. 19, 21. Statement of Yvonne D. DesJardins, chief of the Employee and Labor Relations Section, Personnel Branch, IRS, Washington, DC.

- seizing a home without granting the notice period required by law, committing perjury, and falsifying documents;⁴⁰
- belligerent treatment of a taxpayer and abuse of the burden-of-proof concept by an IRS revenue officer conducting an audit;⁴¹
- IRS disregard for the tax laws and the statute of limitations when the agency reversed its position on a write-off, conducted an audit, and began collection for back taxes;⁴²
- improper audit procedures used by the IRS which denied a taxpayer an amended return and access to court;⁴³
- mistreatment of African-American and Hispanic taxpayers; and harassment of taxpayer representatives (which in one representative's case reportedly involved such things as "evidence of illegal snooping, forgery, falsified and fabricated documents").⁴⁴

House of Representatives Passage

The Internal Revenue Service Restructuring and Reform Act, H.R. 2676, passed the House of Representatives, amended, by a 426-4 vote (Roll No. 577) on November 5, 1997.⁴⁵ Earlier, the bill, which had been introduced by Representative Bill Archer, Chairman of the Ways and Means Committee, on October 21, 1997, was reported from that committee on October 31, 1997 (H. Rept. 105-364, part I). It was discharged from the Government Reform and Oversight and Rules Committees on the same day. The House-passed bill did not include the provision on termination of employment for misconduct. The provision on cataloging complaints, recommended by the National Commission on Restructuring the IRS, was Section 372 of the bill. The committee report accompanying the bill stated the reasons for the provision:

The Committee believes that all allegations of misconduct by IRS employees must be carefully investigated. The Committee also believes that the annual report to Congress will help develop a public perception that the IRS takes such allegations of misconduct seriously. The Committee is concerned that, in the absence of records detailing taxpayer complaints of misconduct on an individual employee

⁴⁰ U.S. Congress, Senate Committee on Appropriations, *Internal Revenue Service's Methods*, special hearing, 105th Cong., 2nd sess., April 14, 1998 (Washington: GPO, 1998), pp. 12-13. Statement of Linda Sanders.

⁴¹ *Ibid.*, pp. 14-15. Statement of Dennis Marty.

⁴² *Ibid.*, p. 27. Statement of Dr. Alvin Stjernholm.

⁴³ *Ibid.*, p. 33. Statement of Robert Leshner.

⁴⁴ *Ibid.*, pp. 42-43. Statement of Doris Martinez, a former IRS revenue agent, now in private tax practice.

⁴⁵ *Congressional Record*, daily edition, vol. 143, Nov. 5, 1997, p. H10046.

basis, the IRS will not be able to adequately investigate such allegations or properly prepare the required report.⁴⁶

The committee report also stated that “individual records are not to be listed in the [annual] report,” but are to “be used in evaluating individual employees.” The provision was to be effective on the date of enactment.⁴⁷

Senate Passage

The Senate passed its version of H.R. 2676, amended, by a 97 to 0 vote (Vote No. 126) on May 7, 1998.⁴⁸ This action followed Finance Committee mark-up of the bill on March 31, 1998, during which Senator William Roth’s amendment in the nature of a substitute, as amended, was adopted, and reporting of the bill (S. Rept. 105-174), as amended, on April 22, 1998.

The provision on cataloging complaints was Section 3701 of the bill. The committee report accompanying the bill (S. Rept. 105-174) stated the same reasons and effective date for the provision as the House Committee on Ways and Means report.⁴⁹ The effective date of the provision was changed to January 1, 2000 in the conference agreement.⁵⁰

Section 1203, entitled “Termination of Employment for Misconduct,” was added to the bill during mark-up. The Committee on Finance report that accompanied the Senate’s version of the legislation explained this provision.

The bill provides non-delegable authority to the Commissioner to determine that mitigating factors exist, that, in the Commissioner’s sole discretion, mitigate against terminating the employee. The bill also provides that the Commissioner, in his sole discretion, may establish a procedure which will be used to determine whether an individual should be referred for such a determination by the Commissioner. The Treasury IG is required to track employee terminations and terminations that would have occurred had the Commissioner not determined that there were mitigation factors and include such information in the IG’s annual report.⁵¹

⁴⁶ U.S. Congress, House Committee on Ways and Means, *Internal Revenue Service Restructuring and Reform Act of 1997*, report to accompany H.R. 2676, 105th Cong., 1st sess., H. Rept. 105-364, part 1 (Washington: GPO, 1997), p. 77.

⁴⁷ *Ibid.*, p. 78.

⁴⁸ *Congressional Record*, daily edition, vol. 144, May 7, 1998, p. S4520.

⁴⁹ U.S. Congress, Senate Committee on Finance, *Internal Revenue Service Restructuring and Reform Act of 1998*, report to accompany H.R. 2676, 105th Cong., 2nd sess., S. Rept. 105-174 (Washington: GPO, 1998), pp. 99-100. (Hereafter referred to as *Senate Committee Report*.)

⁵⁰ U.S. Congress, Conference Committees, 1998, *Internal Revenue Service: Restructuring and Reform Act of 1998*, conference report to accompany H.R. 2676, H. Rept. 105-599, 105th Cong., 2nd sess. (Washington: GPO, 1998), pp. 303-304.

⁵¹ *Senate Committee Report*, pp. 38-39.

When Senate consideration of the committee amendment, in the nature of a substitute for H.R. 2676, began on May 4, 1998, Senator William Roth, Chairman of the Finance Committee, explained the need for the termination provision:

As we have seen—even this past week—the Finance Committee has disclosed egregious conduct by IRS employees. We have received thousands of letters relating the same. They have come from taxpayers and agency employees, alike. The stories we have heard are outrageous, as is the fact that many of those who perpetuate these abuses do so without consequence. This will not stand. Our bill requires the IRS to terminate an employee if it is proven that the employee failed to obtain required authorization to seize a taxpayer's property, committed perjury material to a taxpayer's matter or falsified or destroyed documents to conceal the employee's mistakes with respect to a taxpayer's case. This legislation allows terminations to take place if an IRS employee engages in abuses or egregious misconduct. Conditions for which an employee can be dismissed include, but are not limited to, assaulting or battering a taxpayer or other IRS employee, violating the civil rights of a taxpayer or other IRS employee, or breaking the law, regulations, or IRS policies for the purpose of retaliating or harassing a taxpayer or other IRS employee. Our legislation also allows an employee to be fired for willfully misusing section 6103 authority to conceal information from Congress. With this legislation, we show that we mean business. An environment that allows employees guilty of these kinds of behaviors to continue to work within the system is not acceptable to me, the Finance Committee, or to the American people. We have heard enough excuses. And Commissioner Rossotti agrees that enough is enough!⁵²

The acts or omissions numbered (8), (9), and (10) that would result in termination were contained in an amendment offered by Senator Phil Gramm which was agreed to by the Senate by voice vote on May 7, 1998. He stated why the amendment was offered:

Basically, we have in the bill a list of offenses for which an employee of the Internal Revenue Service may be terminated. In light of concerns that have arisen since we had the bill before the committee, I want to add two offenses to the list. One has to do with testimony we heard where members of the Internal Revenue Service were said to be threatening to audit people for personal gain. We heard an assertion that a police officer had stopped an IRS agent and was going to write him a ticket, and the IRS agent allegedly had told the officer that if he wrote the ticket, he was going to get audited. The second provision has to do with a knowing and willful failure of an IRS agent to file a tax return or pay taxes or declare income.⁵³

⁵² *Congressional Record*, daily edition, vol. 144, May 4, 1998, p. S4183. When the termination provision was amended during Senate consideration of the bill, Senator Roth stated that "this amendment addresses a serious problem that came out during the hearings held by the Finance Committee last week." *Congressional Record*, daily edition, vol. 144, May 7, 1998, p. S4486.

⁵³ *Congressional Record*, daily edition, vol. 144, May 7, 1998, p. S4486. Three acts or omissions were added by Senator Gramm's amendment. His statement explaining the amendment appears to group (8) and (9) when he speaks of the "second provision" in the
(continued...)

Senator Robert Kerrey, a co-chairman of the National Commission on Restructuring the IRS, in commenting on the amendment, said:

What the Senator from Texas has done is identified some additional things that ought to be on the list and once again has carefully drawn it—I believe the language is ... ‘Willful’ and ‘intentionally.’ This would not be a situation where an individual accidentally underpays taxes or misses a deadline or something like that. This is a much higher standard, a much more difficult standard. And I think it is a quite reasonable provision to add to the list of things that would force and require automatic termination. In general, this legislation is attempting to change the culture by saying here are some things that, if you do it, there are going to be severe penalties What we are trying to do is change the culture so that there is a new seriousness given to actions taken by the IRS. And all of us understand the penalty needs to be sufficient to meet the offense.⁵⁴

Enactment

The House agreed to the conference report accompanying H.R. 2676 by a 402-8 vote (Roll No. 273) on June 25, 1998, exactly one year after the National Commission on Restructuring the IRS issued its report to Congress. The Senate agreed to the conference report by a 96-2 vote (Roll No. 189) on July 9, 1998.⁵⁵ President William Clinton, when signing the bill on July 22, 1998, said it would help the IRS to build for the 21st Century. It became Public Law 105-206 on July 22, 1998 (112 Stat. 685).

General Accounting Office Evaluations

The General Accounting Office (GAO) conducted two evaluations on allegations of IRS employee misconduct. The findings of both reviews were published in May 1999. According to GAO, one of the reports is “fully restricted” because it contains taxpayer information.⁵⁶ The second report, for which the work was done between

⁵³ (...continued)
quotation.

⁵⁴ Ibid.

⁵⁵ *Congressional Record*, daily edition, vol. 144, June 25, 1998, p. H5368. *Congressional Record*, daily edition, vol. 144, July 9, 1998, p. S7723.

⁵⁶ U.S. General Accounting Office, *Tax Administration: Investigation of Allegations of Taxpayer Abuse and Employee Misconduct Raised at Senate Finance Committee’s IRS Oversight Hearings*, GAO report OSI-99-9R (Washington: May 24, 1999). GAO declined to provide a copy of the report to CRS, stating that the report was “fully restricted.” The *Washington Post* and *Government Executive* reported on an edited version of the report, which was released to *Tax Notes*. Both publications quoted the GAO finding that “Our investigation established that the allegations themselves had been based on an incomplete awareness of the total circumstances surrounding the matters.” The press secretary for the Senate Committee on Finance is quoted: “The GAO, while they cannot confirm what some of these witnesses said, they also cannot discredit what they have said.” See Albert B. Crenshaw and Stephen Barr, “GAO Report Exonerates IRS on ’98 Accusations,” *Washington* (continued...)

June 1998 and March 1999 (the IRS Restructuring and Reform Act was enacted in July 1998), examined five allegations made during the April 1998 Senate Committee on Finance hearings. The allegations and GAO's findings are as follows:

[Allegation] Senior IRS managers did not receive the same level of disciplinary action as line staff.

[Findings] Available data showed significant differences between Senior Executive Service (SES) and line staff disciplinary cases in terms of dispositions and processing times. For example, a much higher percentage of SES cases than of lower-level cases was cleared or closed without action, and SES cases tended to take longer to complete. Also, IRS found that actions taken against lower-level employees more closely conformed to its established table of penalties than actions taken against higher-graded employees. However, there was no basis for a more direct comparison of the discipline imposed on senior managers and lower-level employees because SES and line staff offenses, as well as their associated mitigating and aggravating factors, were different. Our ability to make other comparisons between SES and line staff disciplinary cases was hindered by the lack of detailed and accurate data in connection with IRS' disciplinary case database.

[Allegation] The Deputy Commissioner of Internal Revenue delayed action on substantiated cases of employee misconduct until senior managers were eligible to retire.

[Findings] [W]e focused on actual retirements and did not reach general conclusions about eligibility to retire. We found no cases in which an individual who was ineligible to retire when an allegation was filed, retired while the case was pending with the Deputy Commissioner. However, cases we studied in depth were pending for 2 months to 4 years at the Deputy Commissioner's level. In addition, we estimated, on the basis of a random sample of IRS SES disciplinary files, that SES cases averaged almost a year from the time executive support staff received them until case closure, compared to a goal of 90 days.

[Allegation] IRS retaliated against whistleblowers and against taxpayers and their representatives who were perceived to be noncooperative.

[Findings] We could not determine the extent of reprisal against whistleblowers because IRS did not track whistleblowing reprisal cases In fiscal years 1995 through 1997, OSC [Office of Special Counsel] received 63 IRS whistleblower reprisal matters and obtained action from IRS favorable to employees in 4 cases. In the same time period, MSPB [Merit Systems Protection Board] decided 45 initial appeals of whistleblowing reprisal allegations involving IRS, dismissing the majority of them but settling more than half of the remainder.

[Allegation] IRS employees zeroed out or reduced proposed tax assessments for reasons not related to the merits of the cases.

⁵⁶ (...continued)

Post, April 25, 2000, p. E1 and Katy Saldarini, "Report Finds No Evidence for Claim of IRS Misconduct," *Government Executive*, April 26, 2000. Available on the Internet at [<http://www.govexec.com>]. See also footnote 71.

[Findings] [W]e found no evidence to support the allegations in the eight specific cases referred to us by the IRS employees who testified at the hearings. On the other hand, IRS did not systematically collect data on how much additional taxes recommended by auditors were zeroed out or reduced by IRS employees without a basis in law or IRS procedure Although our results were not a measure of improper reductions in recommended taxes, we recently reported that the majority of additional taxes recommended during audits was not assessed.

[Allegation] IRS discriminated against employees in the evaluation process on the basis of race or national origin in its Midwest District Office, which is headquartered in Milwaukee, WI.

[Findings] IRS has acknowledged equal employment opportunity (EEO)-related problems, including problems in hiring and promotion, in its Midwest District Office and has begun addressing them.⁵⁷

GAO concluded that, "In general, IRS' lack of adequate information systems and documentation in the areas of employee discipline, retaliation against whistleblowers and taxpayers, and zeroing out of recommended taxes prevented us from doing a more comprehensive analysis of these issues [and] hinders both congressional oversight and IRS management from addressing any problems in these areas."⁵⁸

Implementation of Section 1203

The IRS has established procedures to implement Section 1203 and is conducting ongoing training of its employees as to the requirements of the law.

Procedures

IRS procedures for handling Section 1203 allegations are published in a document entitled *RRA '98 Section 1203 Procedural Handbook*. Each IRS employee has received a copy of the handbook. Generally, the process includes the following steps—

- Misconduct complaint is received.
- Inquiry and analysis is conducted by management (a member of the Senior Executive Service and above the Division Chief level) and/or the Treasury Inspector General for Tax Administration (TIGTA).

⁵⁷ U.S. General Accounting Office, *Tax Administration: Allegations of IRS Employee Misconduct*, GAO report GGD-99-82 (Washington: May 1999), pp. 1-3.

⁵⁸ *Ibid.*, p. 4.

- If the complaint does not appear to be a 1203 violation, the regular disciplinary process applies.⁵⁹ If the complaint appears to be a 1203 violation, the management official proposes removal.
- The employee responds to the proposal.
- The deciding official (a member of the Senior Executive Service and above the division chief level) evaluates the proposal and the employee's response.
- If the deciding official finds that the complaint is not a 1203 violation, the regular disciplinary process applies. If the deciding official finds that the complaint is a 1203 violation, he or she submits the case to the Review Board. The board has four members all of whom are members of the Senior Executive Service. The Deputy Commissioner of Internal Revenue chairs the board. Other members are the Assistant Deputy Commissioner, Operations; Chief, Equal Employment Opportunity and Diversity; and the Deputy Commissioner, Tax Exempt and Government Entities Division.
- If the review board finds that the complaint is not a 1203 violation, the regular disciplinary process applies. If the review board finds that the complaint is a 1203 violation, it either does or does not recommend mitigation of the penalty. Wanting to preserve discretionary authority, the IRS has not published guidelines on mitigation, but medical issues or financial hardship may enter into a decision on whether mitigation is recommended.
- If mitigation is recommended, the Commissioner of Internal Revenue reviews the recommendation. If the commissioner mitigates the penalty, other disciplinary action applies. This might include written counseling, admonishment, reprimand, or suspension. If the commissioner does not mitigate the penalty, the employee is terminated.
- If mitigation is not recommended by the review board, the case is not submitted to the commissioner and the employee is terminated.⁶⁰ According to the IRS, cases where mitigation is not recommended are not submitted to the commissioner for reasons of workload and

⁵⁹ The regular disciplinary process is codified at 5 U.S.C. Chapter 43 on unacceptable performance and 5 U.S.C. Chapter 75 on adverse actions.

⁶⁰ U.S. Dept. of the Treasury, Internal Revenue Service, *RRA '98 Section 1203 Procedural Handbook*, document 11043 (Washington: May 1999). U.S. Congress, Joint Committee on Taxation, *Joint Review of the Strategic Plans and Budget of the Internal Revenue Service, 2000*, hearing before the Senate Committees on Finance, Appropriations, and Governmental Affairs and the House Committees on Ways and Means, Appropriations, and Government Reform, 106th Cong., 2nd sess., May 3, 2000 (Washington: GPO, 2000), p. 122. (Hereafter cited as *Joint Review Hearing*.)

not wanting to place the commissioner in the role of the deciding official for all of the cases.

There are four specific procedures applying the overall process: one covering the acts or omissions in Section 1203 (b)(2), (4), (5), (7) and (10), one covering those in Section 1203 (b)(1), (3)(A), and (6); one covering the Section 1203 (b)(3)(B) act or omission; and one covering the Section 1203 (b)(8) and (9) acts or omissions. The text of each of the Section 1203(b) provisions and the meaning of “willful” and “intent” for each of them is stated in Appendix table 1. The specific procedures for handling Section 1203 allegations are described in appendix tables 2a through 2d.

Training

Each new IRS employee completes Form 5012, New Employee Tax Verification, on his or her first day of employment with the agency. The form verifies that new employees have filed and paid income tax for the three years prior to their employment.

All IRS employees received training, conducted in late 1998 and early 1999, on Section 1203. According to the IRS, “After feedback and numerous focus group interviews indicated that employees were still uncertain about their rights, responsibilities and risks under the law, and that the initial training had created unnecessary inflated fears, the training was revised and a new round of training was conducted in May 1999.”⁶¹ IRS managers and labor relations specialists also received training on their responsibilities. IRS senior executives and the Treasury Inspector General for Tax Administration discussed Section 1203 at a March 2000 conference of front line collection managers.

Each IRS employee received copies of various publications which explained the Section 1203 provisions. These included a September 1998 memorandum for all employees on the conduct provisions, a September 1998 employee guide on the conduct provisions (document 10848), an October 1998 participant guide to the training program, a February 1999 memorandum for all employees on tax compliance obligations, a March 1999 memorandum for all employees on Section 1203 training, a March 1999 publication (document 10997) on Section 1203 enclosed with paychecks, Section 1203 resource guide and procedural handbook in April and May 1999, a September 1999 memorandum for all employees on Section 1203 allegations and disciplinary actions, an April 2000 voice message on timely filing of federal tax returns, and an August 2000 pamphlet on Section 1203 tax compliance violations.⁶² The IRS Intranet has a page on Section 1203 which includes frequently asked questions and sample cases illustrating application of the tax compliance provisions. An IRS Labor and Employee Relations Resource Center is available to provide guidance and assistance to employees.

⁶¹ *Joint Review Hearing*, p. 102.

⁶² *Ibid.*, pp. 103-104.

The Treasury Inspector General for Tax Administration (TIGTA) reported to the IRS commissioner on an audit of IRS “processes and systems for identifying and reporting to [TIGTA] information on taxpayer complaints, allegations of employee misconduct, and terminations (including terminations mitigated by the Commissioner) under the IRS Restructuring and Reform Act” in September 1999. As part of the audit, TIGTA explained that:

To determine IRS employees’ perspectives on, and knowledge of, procedures for reporting taxpayer complaints and allegations of misconduct, we sent survey letters to a random sample of IRS employees. However, an insufficient number of responses were received to allow us to project these results over the entire population of IRS employees. Based upon the responses received, the survey results indicated that additional actions are needed to ensure that all IRS employees understand the IRS complaint processing procedures and are willing to report taxpayer complaints and allegations of employee misconduct. Of the 313 IRS employees responding to our survey, only 159 (51 percent) indicated that they understood how to report a taxpayer complaint or allegation of IRS employee misconduct.⁶³

After reviewing the survey results, TIGTA recommended that “the IRS identify and provide any additional training required on the complaint processing procedures” and “re-emphasize the employee’s responsibility for reporting taxpayer complaints and allegations of employee misconduct.” TIGTA also recommended that “the IRS periodically survey its employees to determine the effectiveness of the training, and employees’ willingness to report taxpayer complaints and allegations of employee misconduct.”⁶⁴ The IRS agreed with the TIGTA findings, and has continued to develop additional training. Currently, ongoing is training which presents “real world” examples of interactions between IRS employees and the general public and focuses on how best to resolve situations without confrontations.⁶⁵

Oversight of Implementation

House of Representatives and Senate oversight hearings, comments of a federal employees union, and an interview of the IRS Commissioner by a professional organization have focused on the implementation of Section 1203.

⁶³ U.S. Treasury Inspector General for Tax Administration, Memorandum for Commissioner Rossotti, *The Internal Revenue Service Can Further Improve Its Complaint Processing Procedures and Systems* (Washington: Sept. 1999), p. 10. Printed from the Internet at [<http://www.ustreas.gov/tigta/reports/199910070fr.html>], visited Sept. 6, 2000.

⁶⁴ *Ibid.*, p. 11.

⁶⁵ Meeting with staff of the IRS Commissioner’s Complaint Processing and Analysis Group, Sept. 13, 2000.

House Committee on Ways and Means and Senate Committee on Finance

The IRS Commissioner, Charles O. Rossotti, testifying before an April 14, 1999 Senate Committee on Finance hearing and a July 22, 1999 House Committee on Ways and Means Subcommittee on Oversight hearing, provided information on the implementation of Section 1203. He told the House subcommittee:

Another one of our critical training needs is Section 1203 ... for which all 100,000 IRS employees must be trained. The initial mandatory training that all employees received was certainly an important first step, but we found that it raised concerns among employees without answering their specific questions. In March, all employees received with their pay stub a special brochure on section 1203. It includes a plain language summary of all the provisions, how potential violations are reported, employee appeal rights and other important reminders. We are also encouraging our employees to take advantage of the IRS Labor and Employee Relations Resource Center that can help answer many of their Section 1203 questions. We will then build on this information with better training and guidance. In June, we began to provide employees with detailed instruction on the procedures to be used in handling Section 1203 cases. This instruction, including a training video, was based on a new Section 1203 Procedural Guide issued in May. It emphasizes good customer service and case management practices. Some IRS employees have been reluctant to pursue collection actions for fear they will be charged with a Section 1203 violation. However, this is only one factor that has reduced the number of collection actions....We are working very hard to re-enforce the message among all IRS employees that Section 1203 provisions are intended to address serious and willful incidents of misconduct. Simple mistakes in the course of doing your job in good faith are not Section 1203 violations.⁶⁶

At the Senate Committee on Finance's February 2, 2000 oversight hearing, the Treasury Inspector General for Tax Administration, David C. Williams, told the Members that "there has been much confusion and consternation surrounding Section 1203." According to him:

For several months, baseless rumors circulated throughout the IRS that thousands of Section 1203 investigations were being conducted. Many employees voiced concerns about this section of the Act and the investigation of allegations made under it IRS management is emphasizing to its employees that disciplinary action will not be imposed on those employees who make honest mistakes.⁶⁷

⁶⁶ U.S. Congress, House Committee on Ways and Means, Subcommittee on Oversight, *Hearing on the Implementation of the Internal Revenue Service Restructuring and Reform Act*, hearing, 106th Cong., 1st sess., July 22, 1999 (unpublished). Statement of Charles O. Rossotti, Commissioner, Internal Revenue Service.

⁶⁷ U.S. Congress, Senate Committee on Finance, *Hearing on the Status of Internal Revenue Service Reform*, hearing, 106th Cong., 2nd sess., Feb. 2, 2000 (unpublished). Testimony of David C. Williams, Treasury Inspector General for Tax Administration.

Joint Review

The Senate Committees on Finance, Appropriations, and Governmental Affairs and the House Committees on Ways and Means, Appropriations, and Government Reform conducted a joint review of the Internal Revenue Service on May 3, 2000.⁶⁸ Several members mentioned Section 1203 in their remarks during the hearing. Senator Byron Dorgan expressed concern “about the effect the Act has had on the morale of the agency, particularly Section 1203.” He stated that information that he received from an IRS employee “allud[ed] to the fact that since the enactment of section 1203 ... employees feel more concerned about losing their jobs and less concerned with being as thorough as they should be in their official duties for fear of having a complaint lodged against them.”⁶⁹ Senator Robert Kerrey asked the IRS Commissioner to provide him with an independent evaluation because:

I have heard a number of concerns that Congress, in trying to correct the problem with Treasury employees doing things that should obviously result in termination, we have made it difficult for you [the IRS Commissioner] to manage the agency and may have also, by the way, set a double standard in place, since one of the things was delinquent taxes could cause you to be terminated from employment. At least, there has been some published analyses that show there is more delinquency of paying taxes in Congress than there is in Treasury employees themselves.⁷⁰

Senator Charles Grassley, a co-chairman of the National Commission on Restructuring the IRS, commented on news reports of a GAO evaluation of the allegations raised during the Senate Committee on Finance hearings prior to the enactment of the restructuring act, remarking—

We have seen media headlines like the one in *The Washington Post* that said, “GAO Report Exonerates IRS on 1998 Accusations.” I am already hearing negative comments about the witnesses that had the courage to come forward and testify. The point is, the General Accounting Office absolutely did not exonerate anybody, if you read the report and actually looked into the matter itself. Unfortunately most reporters for the papers apparently have not actually looked into the cases. At most, the report says that the General Accounting Office was

⁶⁸ *Joint Review Hearing*.

⁶⁹ *Ibid.*, p. 89.

⁷⁰ *Ibid.*, p. 97. Table 6 in the appendix, below, shows, by department and agency, the number of federal employees with unpaid income taxes as of Oct. 1999. *The Washington Post* reported: “Those in the federal government, however, are far more dutiful about paying taxes than is the public at large. Nationally, 8.12 percent of taxpayers owed back taxes, according to the IRS, while 5.25 percent of all government workers and retirees were behind.” The newspaper also stated that “The IRS reported that 3.33 percent of its employees were behind on their taxes, including 1.87 percent who had not filed or paid.” Albert B. Crenshaw and Stephen Barr, “Tax Truants Found in Capitol,” *The Washington Post*, Mar. 30, 2000, p. A19.

not able to substantiate many of the allegations. That certainly does not mean that the allegations are not true, especially since there was not really an investigation.⁷¹

National Treasury Employees Union

The National Treasury Employees Union (NTEU), which represents IRS employees, stated emphatically that it “would never condone any of the offenses [listed in Section 1203]; they have always been outlawed, employees have always been subject to discipline and have in fact been fired.”⁷² However, the union views “the mandatory nature of the firing as having a chilling effect” which “leaves employees feeling exposed and vulnerable and having to live under a cloud for some 18 months of investigation.” The union is concerned about unfair treatment of IRS employees. A March 31, 2000 union press release stated that NTEU president Colleen Kelley had written to Senators William Roth and Daniel Patrick Moynihan that: “the mandatory termination provisions of RRA [Restructuring and Reform Act] are especially harsh when compared to the fact that no similar penalty of any kind applies to members of Congress or congressional staff ... who either do not file or pay their taxes on time It seems patently unfair to hold those who write the tax laws to a lesser standard than those who must enforce them.”⁷³ In April 10, 2000 testimony before a hearing of the House Subcommittee on Government Management, Information, and Technology, she reiterated the union’s views about a “double standard.”⁷⁴

NTEU also wants to ensure that quotas are not used to set the number of Section 1203 investigations to be conducted. In November 1999, the Treasury Inspector General for Tax Administration (TIGTA), David Williams, wrote an internal memorandum to TIGTA’s field offices suggesting 5,000 investigations of IRS misconduct allegations as a goal for the year 2000. The memorandum became public when it was obtained by the *New York Times*. A November 19, 1999 NTEU press release announced that Colleen Kelley had obtained “the commitment of the Treasury Department’s tax inspector general to avoid both the appearance and the reality of quotas in investigating allegations of misconduct against IRS employees.” According to her, “Mr. Williams is acutely aware of the damage that a perception of quotas can do throughout the IRS workplace ... and I welcome his stated commitment to work

⁷¹ Ibid., pp. 144, 191. See footnote 56.

⁷² Unless otherwise referenced, this section presents the views of NTEU as they were expressed to CRS during an Aug. 22, 2000 telephone conversation.

⁷³ “NTEU’s Kelley Says IRS Report on Congressional Tax Liability Shows Basic Unfairness to IRS Employees,” March 31, 2000. Printed from the Internet at [<http://www.nteu.org/pressindex>], visited Aug. 17, 2000.

⁷⁴ U.S. Congress, House Committee on Government Management, Subcommittee on Government Management, Information, and Technology, *Oversight of the Internal Revenue Service: The Commissioner Reports*, hearing, 106th Cong., 2nd sess., April 10, 2000 (unpublished). Statement of Colleen M. Kelley, National President, National Treasury Employees Union. (Hereafter referred to as *Kelley Testimony*.)

with NTEU to help monitor and keep open the lines of communication on the policies and procedures to be followed.”⁷⁵

Concerning whether rank and file employees are being treated the same as management for purposes of Section 1203, NTEU reported that it did not “currently have a breakdown of the grades of the employees charged with, or determined to have violated section 1203.” NTEU stated:

While implementation of section 1203 of IRS RRA may not be occurring in a purposefully discriminatory manner against rank and file employees as opposed to managers, NTEU believes that the impact of section 1203 falls disproportionately on rank and file workers. For example, the hundreds of frivolous harassment claims made against IRS employees under 1203(b)(6) most certainly are filed primarily against the frontline employees who have contact with taxpayers, not managers who review cases. In addition, if timely tax compliance by the general public is any guide, those at the lower ends of the income scale who find it most difficult to pay taxes when they are due are the most likely to file late. We believe that this trend would also be seen among IRS employees, with the impact being that more rank and file, lower paid employees would face termination for late filing under 1203(b)(8) than higher paid managers.⁷⁶

The Federal Manager Interview

A federal professional organization interviewed Commissioner Rossotti for an article in the Fall 1999 edition of its magazine entitled *The Federal Manager*. In response to a question on why the compliance [of citizens in paying income taxes] statistics have gone down, the commissioner stated: “Revenue and compliance are going up by leaps and bounds. What is going down is the number of enforcement actions.” He cited three reasons for this decline: fewer collectors and fewer auditors result in fewer cases; procedural requirements consume a significant number of resources in terms of personnel; and the confusion and uncertainty that accompany change. With regard to this last point, Mr. Rossotti said:

The initial training required [in Section 1203 of the 1998 IRS Restructuring and Reform Act] probably caused more concern than clarification. Now that we’ve gotten some additional training, people are starting to learn a little better. It’s extremely important for everyone to understand that 1203 is not aimed at people who are doing their jobs in good faith. 1203 is never going to affect people who do a reasonable job. It was specifically designed for very serious, willful, intentional cases of misconduct. There aren’t a lot of those The number of people that will actually be affected by this, I think, will be very minuscule. Nothing says that you’re not supposed to work with your employees to make sure that they take the right action I think it’s going to take some time for people to come to comfort with this. They’ll see this is not going to be used as a club to beat

⁷⁵ “NTEU President Kelley Wins Assurance from Treasury Tax IG That Investigation Policy Is Not a Form of Quota,” Nov. 19, 1999. Printed from the Internet at [<http://www.nteu.org/pressindex>], visited Aug. 16, 2000.

⁷⁶ Memorandum from Maureen Gilman, director of legislation, National Treasury Employees Union to CRS, Sept. 12, 2000. (Received via facsimile.)

up on people who are doing their job. But I don't think it's only the fear. I think it's the sheer confusion. This is all new. What are all these rights and how do we manage in this environment?⁷⁷

The commissioner, emphasizing that managers would be "essential" in turning around the IRS, stated the agency's need for "managers who are there on the front lines to be working with the employees and not let everybody go into a stall mode because they're so worried about what might happen with 1203, or what might happen with the reorganization."⁷⁸

Data on Violations⁷⁹

All Disciplinary Actions

The IRS is collecting data on disciplinary actions, including those related to violations of Section 1203, and sharing it with NTEU. In an August 23, 1999 press release, the IRS stated that the agency and NTEU had "agreed on procedures for the agency to give the union information about disciplinary actions imposed on employees." The Memorandum of Understanding provides that "the information will be in the form of charts listing employees by grade and position title, with measures taken to protect the identity of individual employees." The IRS will make the information public and available through its Web site as well. Commissioner Rossotti was quoted as stating his confidence that "those looking at this information will see that IRS managers administer disciplinary measures fairly and equitably, regardless of the position or grade of the employee." The information will be provided semi-annually and cover the first or last six months of the calendar year.⁸⁰ NTEU told CRS that the IRS is providing the data to the union.

The commissioner released his semiannual disciplinary actions report, covering the period January 1 through June 30, 2000, on September 13, 2000. It shows that 2,318 disciplinary actions were taken, 1,187 of which were for employee tax compliance reasons.⁸¹ Not all tax compliance cases are Section 1203 violations. To be brought under Section 1203(b)(8) or (b)(9), as set out on page three of this report, a tax compliance case must meet the meaning of "willful": the voluntary intentional violation of a known legal duty (timely filing of tax return or accurate reporting of tax

⁷⁷ "Remaking the IRS: What Role for Federal Managers?," *The Federal Manager*, Fall 1999, pp. 8-9. The interview was conducted by an IRS manager from the Manhattan, NY IRS district office who was also a member of the Federal Managers Association.

⁷⁸ *Ibid.*, p. 10.

⁷⁹ The data included in this report are the most current provided to CRS as of the cover date and will be updated as additional data are provided.

⁸⁰ U.S. Department of the Treasury, Internal Revenue Service, *IRS to Share Disciplinary Information with NTEU*, IR-1999-71, Aug. 23, 1999.

⁸¹ U.S. Department of the Treasury, Internal Revenue Service, *Commissioner's Semiannual Disciplinary Actions Report* (Washington: Sept. 2000). Provided to CRS during a Sept. 13, 2000 meeting. (Hereafter referred to as the *Commissioner's Semiannual Report*.)

obligation) for which there is no reasonable cause. Written counseling was the action taken most frequently for both all offenses and tax compliance. Ninety-one employees were suspended and 26 were removed for tax compliance reasons. (The 26 removals were Section 1203 violations.) Tables 3 and 4 in the appendix, below, show the number of disciplinary actions taken by type of discipline and by grade of the employees.

Section 1203 Violations

Both the Treasury Inspector General for Tax Administration (TIGTA) and the IRS Commissioner's Complaint Processing and Analysis Group compile data on allegations of Section 1203 violations received and investigated and on disciplinary actions taken for substantiated violations.

TIGTA Data. During the May 2000 joint review hearing, the Treasury Inspector General for Tax Administration, David C. Williams, told the Senate and House committees that since passage of the IRS Restructuring and Reform Act, TIGTA received 683 allegations, conducted 279 investigations, closed or referred 159 investigations to the IRS, and received notification from IRS that 17 employees had been removed or resigned and 10 employees received a lesser discipline as a result.⁸² TIGTA has just published its semiannual report covering the period April 1, 2000 to September 30, 2000, and those findings will be included in an update of this report. According to Mr. Williams:

The majority of Section 1203 allegations we received claimed that an IRS employee violated a provision of the Internal Revenue Manual or the Internal Revenue Code in order to retaliate or harass someone. The second largest type of allegation we received involved civil rights violations, including EEO violations. These are followed by allegations of willful destruction of documents and understatement of federal tax liability.⁸³

IRS Data. The commissioner's semiannual report states that 28 employees were removed for Section 1203 violations during the January 1 through June 30, 2000 period. Of this total, 26 of the cases related to willful untimely tax return (tax compliance), one involved a threat to audit for personal gain, and one involved destruction of documents to conceal a mistake.⁸⁴

During the period as well, there were 57 cases coded as willful untimely tax returns. Of this total, the 26 cases stated above resulted in removal, 10 cases resulted in a mitigated penalty less than removal, and 21 cases were resolved by other actions such as resignation or retirement.⁸⁵

⁸² *Joint Review Hearing*, p. 154.

⁸³ *Ibid.*

⁸⁴ *Commissioner's Semiannual Report*, p. 2.

⁸⁵ *Ibid.*

On June 7, 2000, the IRS Commissioner's Complaint Processing and Analysis Group provided information to Congress on the implementation of Section 1203, which included data on allegations received and investigated during the period July 1998 through May 2000. Appendix table 5, below, provides the data showing that during this time period 109 substantiated Section 1203 violations occurred. Of this total, 102 related to failure to timely file federal tax return, four related to threat to audit for personal gain, and two related to understatement of federal tax liability.⁸⁶

The transmittal also placed Section 1203 in context with previous practice:

The conduct addressed in Section 1203 has always been regarded as serious misconduct. What has changed is the penalty imposed for violations. Prior to the enactment of Section 1203, the general rules for imposing discipline required a deciding official to consider a wide range of factors in arriving at the appropriate penalty. These factors include the nature and seriousness of the offense, the employee's work record, the notoriety of the offense, and the impact of the offense on confidence in the employee's ability to perform his/her duties. When these factors were applied to specific cases, a range of penalties was imposed [ranged from written counseling to suspension] [T]here is one area where Section 1203 has changed the significance of an offense. Prior to section 1203, the IRS viewed untimely payment of Federal tax liability as a more serious offense than late submission of a return. Late payment of a balance due was regarded as serious misconduct, depending on the amount due and the degree to which the payment was overdue. A return filed late with a minimal balance due, or a refund return, was not treated as a serious offense. Section 1203 does not address late payment, but makes all willful late filing a removal offense.⁸⁷

Managers and Supervisors and Rank and File Employees. In response to a request from CRS for data on the grades of employees disciplined for Section 1203 violations, the Commissioner's Complaint Processing and Analysis Group provided the following information on *all disciplinary actions*: data on 85 disciplinary actions for managers and supervisors at GS-15 and above for the period January 1, 1996 through June 30, 1999⁸⁸ and data on disciplinary actions (covered 566 pages with seven to 13 cases per page) for rank and file employees at GS-15 and below for the years 1996 through 2000.⁸⁹

For the managers and supervisors, 30 cases were related to tax compliance during the period covered. None was specifically identified as a Section 1203 investigation.

⁸⁶ The group's report was published in the *Joint Review Hearing*, p. 109.

⁸⁷ *Ibid.*, p. 101.

⁸⁸ U.S. Internal Revenue Service, Summary of Disciplinary Actions, Jan. 11, 2000. Sent to CRS by facsimile Sept. 15, 2000. The IRS retained the merit pay designation 'GM' when that program sunset, hence the designation of some of the managers and supervisors as GM-15.

⁸⁹ Received by CRS, in-person, Oct. 18, 2000.

For the rank and file employees, the data for those 25 cases clearly identified as Section 1203 (all but five were Section 1203(b)(8) tax cases) showed:

- two WG-2 wage grade laborers were removed;
- three GS-3s (cash processing, mail and file, and miscellaneous clerk and assistant positions) were removed;
- two GS-4s (miscellaneous clerk and assistant and mail and file positions) were removed;
- five GS-5s (two tax examining, financial clerk and assistance, mail and file, and secretary positions) were removed; (the secretary had violated Section 1203(b)(10)); one GS-5 financial clerk and assistance received written counseling for attempting access of own social security number;
- four GS-6s (tax examining, secretary, and two accounting technician positions) were removed; (one of the accounting technicians had violated Section 1203(b)(3));
- two GS-7s (both tax examining positions) were removed and one GS-7 (tax examining) received a 60-day suspension (although removal had been recommended for threatening to audit a taxpayer);
- two GS-9s (internal revenue officer and contracting positions) were removed (the internal revenue officer had violated the Section 1203 provision on falsifying documents);
- two GS-12s (internal revenue officers) were removed;
- a GS-13 internal revenue agent was removed.

Other Federal Employees Subject to Termination of Employment

Federal employees can be removed from employment based on performance or adverse action under Title 5 of the United States Code. Chapter 43 of Title 5 covers removal based on performance. Generally, an employee can be removed for unacceptable performance: failure to meet established performance standards in one or more critical elements of his or her position. The employee is entitled to advance written notice of the proposed action, to be represented by an attorney or other individual, a reasonable time to answer orally and in writing, and a written decision. An appeal to the Merit Systems Protection Board is provided.⁹⁰ A member of the Senior Executive Service (SES) receiving an unsatisfactory rating may be removed from the SES. Any senior executive who receives two unsatisfactory ratings in any

⁹⁰ 5 U.S.C. 4301 and 5 U.S.C. 4303.

period of five consecutive years must be removed from the SES. Any senior executive who twice in any period of three consecutive years receives less than fully successful ratings also must be removed from the SES. Recommendations relating to the performance of senior executives are made by performance review boards.⁹¹

Chapter 75 of Title 5 covers removal based on adverse action. Generally, an employee can be removed for such cause as will promote the efficiency of the service. A member of the SES may be removed from the SES for misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function. Employees and senior executives are entitled to advance written notice of the proposed action, to be represented by an attorney or other individual, a reasonable time (not less than seven days) to answer orally and in writing, and a written decision. An agency may provide for a hearing. An appeal to the Merit Systems Protection Board is provided.⁹²

In addition to IRS employees, who can be removed for violating Section 1203 of the IRS Restructuring and Reform Act, other employees, including those discussed below, can be removed under specific circumstances.⁹³

Officer or Employee of the United States

Willful disclosure of any income tax return or return information by any officer or employee of the United States to any person, except as authorized by Title 26 of the United States Code, is a felony punishable, upon conviction, by a fine of up to \$5,000 or imprisonment for up to five years, or both, together with the costs of prosecution. In addition to any other punishment, the officer or employee is to be dismissed from office or discharged from employment upon conviction.⁹⁴

The head of an agency may remove an employee who has been suspended under 5 U.S.C. 7532(a) when, after such investigation and review as he considers necessary, he determines that removal is necessary or advisable in the interests of national security. The agency head's determination is final.⁹⁵ Removal does not affect the right of the individual to seek or accept employment in a federal government agency, other than the agency from which he or she was removed. The appointment of the individual may be made only after the agency head concerned has consulted with the Office of Personnel Management (OPM). On written request of the agency or the

⁹¹ 5 U.S.C. 4314.

⁹² 5 U.S.C. 7513 and 5 U.S.C. 7543.

⁹³ Some provisions of Title 18 of the U.S. Code render a person ineligible to hold government office. See 18 U.S.C. 201, relating to bribery of public officials and witnesses; 18 U.S.C. 2381, relating to treason; 18 U.S.C. 2383, relating to rebellion or insurrection; and 18 U.S.C. 2385, relating to advocating the overthrow of the government.

⁹⁴ 26 U.S.C. 7213.

⁹⁵ 5 U.S.C. 7532(b).

individual, OPM may determine whether the individual is eligible for employment in an agency other than the agency from which he or she was removed.⁹⁶

Executive Order 10450 issued on April 27, 1953, as amended, which prescribes security requirements for government employees, authorizes the termination of any officer or employee for reasons of national security. Section 6 of the order provides:

Should there develop at any stage of investigation information indicating that the employment of any officer or employees of the Government may not be clearly consistent with the interests of the national security, the head of the department or agency concerned or his representative shall immediately suspend the employment of the person involved if he deems such suspension necessary in the interests of the national security and, following such investigation and review as he deems necessary[,] the head of the department or agency concerned shall terminate the employment of such suspended officer in the interests of the national security, or employee whenever he shall determine such termination necessary or advisable in accordance with the said act of August 26, 1950.⁹⁷

An employee or individual who violates 5 U.S.C. 7323 or 5 U.S.C. 7324, related to prohibited political activity, shall be removed from his position, and funds appropriated for the position thereafter may not be used to pay the employee or individual. If the Merit Systems Protection Board finds by unanimous vote that the violation does not warrant removal, the board is to impose suspension without pay for not less than 30 days.⁹⁸

Revenue Officers or Agents

The following unlawful acts of revenue officers or agents shall result in dismissal from office or discharge from employment. Upon conviction of these offenses, any officer or employee of the United States shall be fined up to \$10,000 or imprisoned for up to five years, or both. The penalties apply to:

Any officer or employee of the United States acting in connection with any revenue law of the United States –

- (1) who is guilty of any extortion or willful oppression under color of law; or
- (2) who knowingly demands other or greater sums than are authorized by law, or receives any fee, compensation, or reward, except as by law prescribed, for the performance of any duty; or
- (3) who with intent to defeat the application of any provision of this title fails to perform any of the duties of his office or employment; or

⁹⁶ 5 U.S.C. 7312.

⁹⁷ 5 U.S.C. 7311 note.

⁹⁸ 5 U.S.C. 7326.

- (4) who conspires or colludes with any other person to defraud the United States;
or
- (5) who knowingly makes opportunity for any person to defraud the United States;
or
- (6) who does or omits to do any act with intent to enable any other person to defraud the United States; or
- (7) who makes or signs any fraudulent entry in any book, or makes or signs any fraudulent certificate, return, or statement; or
- (8) who, having knowledge or information of the violation of any revenue law by any person, or of fraud committed by any person against the United States under any revenue law, fails to report, in writing, such knowledge or information to the Secretary [of the Treasury]; or
- (9) who demands, or accepts, or attempts to collect, directly or indirectly as payment or gift, or otherwise, any sum of money or other thing of value for the compromise, adjustment, or settlement of any charge or complaint for any violation or alleged violation of law, except as expressly authorized by law so to do.⁹⁹

This provision at 26 U.S.C. 7214 appears to cover more employees than Section 1203 of the IRS Restructuring and Reform Act. Section 7214 applies to any officer or employee of the United States acting in connection with any revenue law of the United States; Section 1203 applies only to IRS employees. While both provisions contain mandatory language relating to dismissal from office or discharge from employment for violations of enumerated infractions, Section 7214 provides for not only administrative discipline, but also criminal penalties for such violations: upon conviction a fine of not more than \$10,000, or imprisonment of not more than 5 years, or both. Section 1203 has no criminal penalties. Moreover, while Section 1203 says that the commissioner “shall terminate the employment of any Internal Revenue Service employee if there is final administrative or judicial committed any act or omission” of infractions listed therein, it authorizes the commissioner to take a personnel action other than termination, i.e., reduced discipline, for such an act or omission. The scope of infractions warranting discipline appears broader under Section 1203 than under Section 7214. The infractions described in Section 7214 appear to be traditional criminal ones, such as extortion, demanding greater sums than authorized by law, and conspiring or colluding to defraud the United States. Those described in Section 1203 include such things as violating any right of a taxpayer, taxpayer representative, or another employee of the IRS under the Constitution of the United States, any civil right established under various civil rights acts, willful failure to file any return required by the IRS Code of 1986 on or before the due date, including any extension, and willful understatement of any tax liability.¹⁰⁰

⁹⁹ 26 U.S.C. 7214.

¹⁰⁰ Analysis provided by Thomas J. Nicola, legislative attorney, American Law Division, Congressional Research Service.

Defense Intelligence Employees

Employees in defense intelligence positions may be terminated by the Secretary of Defense if the secretary (1) considers that action to be in the interests of the United States; and (2) determines that the procedures prescribed in other provisions of law that authorize the termination of the employment of such employee cannot be invoked in a manner consistent with the national security. The secretary's decision is final and may not be appealed or reviewed outside the Department of Defense (DOD). The secretary's authority may be delegated only to the Deputy Secretary of Defense, the head of an intelligence component of DOD (with respect to employees of that component), or the secretary of a military department (with respect to employees of that department). An action to terminate an employee by any such official may be appealed to the Secretary of Defense. The secretary must promptly notify the congressional oversight committees of the termination. The termination of the employee does not affect his or her right to seek or accept employment with any other federal government department or agency if the employee is declared eligible for employment by the OPM Director.¹⁰¹

Central Intelligence Agency Employees

Central Intelligence Agency (CIA) employees may have their employment terminated by the CIA Director, at his or her discretion, whenever the director deems the termination necessary or advisable in the interests of the United States. The termination of the employee does not affect his or her right to seek or accept employment with any other federal government department or agency if the employee is declared eligible for employment by the OPM Director.¹⁰²

Law Enforcement Officers

Law enforcement officers convicted of felonies would be subject to mandatory removal under one version of the Treasury, Postal Service, and General Government Appropriations Bill, 2001.¹⁰³ The section would amend 5 U.S.C. Chapter 73 by adding a provision that a law enforcement officer who is convicted of a felony shall be removed from employment, without regard to 5 U.S.C. Chapter 75, on the last day of the first applicable pay period following the conviction date. The section would not prohibit removal from employment before a conviction date. 'Conviction date' means the date on which an agency has notice of the date on which a conviction of a felony is entered by a federal or state court, regardless of whether that conviction is appealed or is subject to appeal. "Law enforcement officer" has the meaning given that term under 5 U.S.C. 8331(20) or 8401(17). The provision was originally introduced on April 12, 2000 by Senator Charles Grassley as S. 2404.

¹⁰¹ 10 U.S.C. 1609.

¹⁰² 50 U.S.C. 403-4(g).

¹⁰³ H.R. 4516, vetoed Oct. 30, 2000. Section 1001 contains provisions of H.R. 4985. See Section 639 of H.R. 4985.

Conclusion

During the May 3, 2000 joint review hearing conducted by the Senate Committees on Finance, Appropriations, and Governmental Affairs and the House Committees on Ways and Means, Appropriations, and Government Reform, Senator Grassley associated himself with the remarks of Senator Kerrey (about a potential double standard in enforcing tax compliance) and stated: “we want to make sure that you report to us according to what Senator Kerrey asked you to do, and I may have some follow-up on that because I want to make sure that there is not an attempt out there to sabotage what we wanted to accomplish through our legislation and make it more egregious, purposely, for the purpose of doing that.”¹⁰⁴

The National Treasury Employees Union believes that Section 1203 should be modified or repealed. During the April 10, 2000 House Government Management Subcommittee hearing, president Colleen Kelley stated that “NTEU vigorously opposed Section 1203 and continues to believe that this section of the Restructuring Act should be repealed.” The union views the provision as creating anxiety among IRS employees and precluding “the trust necessary to continue to move toward a modernized IRS.”¹⁰⁵ A modification suggested by NTEU would allow discretion for mitigating circumstances (such as not applying the provision to employees who are late in filing their taxes but are owed a refund). Currently, the commissioner has sole discretion to mitigate a penalty. The union would favor granting IRS managers the opportunity to provide for a penalty other than firing.

As implementation of Section 1203 proceeds and as more data on violations of Section 1203 become available, amendments to the law may be considered.

¹⁰⁴ *Joint Review Hearing*, p. 144.

¹⁰⁵ *Kelley Testimony*.

Appendix

Table 1. Meaning of “Willful” and “Intent” Under Section 1203	
Section 1203 Provision	Intent Requirement
(b)(1) Willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer’s home, personal belongings, or business assets	Willful means actual knowledge or reckless disregard of the requirements to obtain signature approvals.
(b)(2) Providing a false statement under oath with respect to a material matter involving a taxpayer or taxpayer’s representative	Intent in this provision requires that the employee (1) knew the statement was incorrect or made recklessly without an honest belief in its truth, and (2) made it to mislead or deceive.
(b)(3)(A) With respect to a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service, the violation of—(A) any right under the Constitution of the United States;	Intent means that: (A) The employee’s conduct must violate clearly established constitutional rights, of which a reasonable person would be aware.
(b)(3)(B) With respect to a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service, the violation of—(B) any civil right established under—(i) title VI or VII of the Civil Rights Act of 1964; (ii) title IX of the Education Amendments of 1972; (iii) the Age Discrimination in Employment Act of 1967; (iv) the Age Discrimination Act of 1975; (v) section 501 or 504 of the Rehabilitation Act of 1973; or (vi) title I of the Americans With Disabilities Act of 1990.	(B) The employee’s conduct must be motivated by discrimination (i.e. treating employees, taxpayers, or taxpayer representatives differently on the basis of race, sex, color, religion, national origin, age, or disability as defined by the civil rights statutes).
(b)(4) Falsifying or destroying documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or taxpayer representative	Intent in this provision requires that the falsification or destruction of the document must have been done to conceal mistakes.
(b)(5) Assault or battery on a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service, but only if there is a criminal conviction, or a final judgment by a court in a civil case, with respect to the assault or battery	Intent means that the assault (imminent threat of a battery) (an unwanted touching) must have been done deliberately or purposefully.
(b)(6) Violations of the Internal Revenue Code of 1986, Department of Treasury regulations, or policies of the Internal Revenue Service (including the Internal Revenue Manual [IRM]) for the purpose of retaliating against, or harassing, a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service	Intent means that the violation of Code, regulations, or policies (including the IRM) must have been done for the purpose of retaliating against or harassing a taxpayer, taxpayer representative or other IRS employee.

Table 1. Meaning of “Willful” and “Intent” Under Section 1203	
(b)(7) Willful misuse of the provisions of section 6103 of the Internal Revenue Code of 1986 for the purpose of concealing information from a congressional inquiry	Willful in this provision means the actual knowledge of or reckless disregard of the statutory provisions for disclosing information in response to a congressional inquiry.
(b)(8) Willful failure to file any return of tax required under the Internal Revenue Code of 1986 on or before the date prescribed therefor (including any extensions), unless such failure is due to reasonable cause and not to willful neglect	Willful means the voluntary intentional violation of a known legal duty (timely filing of tax return), for which there is no reasonable cause.
(b)(9) Willful understatement of Federal tax liability, unless such understatement is due to reasonable cause and not to willful neglect	Willful means the voluntary intentional violation of a known legal duty (accurate reporting of tax obligation) for which there is no reasonable cause.
(b)(10) Threatening to audit a taxpayer for the purpose of extracting personal gain or benefit	Intent in this provision means that the threat to audit must have been made to extract personal gain or benefit.
Source. U.S. Dept. of the Treasury, Internal Revenue Service, <i>RRA '98 Section 1203 Procedural Handbook</i> , document 11043 (Washington: May 1999), pp. 4-5.	

Table 2a. Procedures for Handling Alleged Acts or Omissions Stated in Section 1203 (b)(2), (b)(4), (b)(5), (b)(7), and (b)(10)	
Act or Omission Alleged	Procedures
<p>Section 1203</p> <p>(b)(2) Providing a false statement under oath with respect to a material matter involving a taxpayer or taxpayer representative;</p> <p>(b)(4) Falsifying or destroying documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or taxpayer representative;</p> <p>(b)(5) Assault or battery on a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service, but only if there is a criminal conviction, or a final judgment by a court in a civil case, with respect to the assault or battery;</p> <p>(b)(7) Willful misuse of the provisions of section 6103 of the Internal Revenue Code of 1986 for the purpose of concealing information from a congressional inquiry;</p> <p>(b)(10) Threatening to audit a taxpayer for the purpose of extracting personal gain or benefit.</p>	<p><i>No 1203 Violation.</i></p> <p>Complaint is received. Case referred by phone to Treasury Inspector General for Tax Administration (TIGTA) for investigation. Management completes Allegation Referral Form 12217. TIGTA investigates. TIGTA report of investigation to head of office. Management assesses 1203 violation. No 1203 violation. Routine administrative processing. Case ends.</p> <hr/> <p><i>1203 Violation With Mitigation Recommended.</i></p> <p>Same steps as stated immediately above through "Management assesses 1203 violation." 1203 violation determined. Proposal letter issued to employee. Employee provides oral or written reply. Deciding official validates 1203 violation. Case sent to the review board. Mitigation recommended. Case referred to the commissioner. If the commissioner mitigates the penalty, a decision is issued and the action is effected. If the commissioner does not mitigate the penalty, a decision is issued and the employee is terminated.</p> <hr/> <p><i>1203 Violation With No Mitigation Recommended.</i></p> <p>Same steps as stated immediately above through "Case sent to the review board." Mitigation not recommended. Employee is terminated by the deciding official.</p>

Table 2b. Procedures for Handling Alleged Acts or Omissions Stated in Section 1203 (b)(1), (b)(3)(A), and (b)(6)	
Act or Omission Alleged	Procedures
<p>Section 1203</p> <p>(b)(1) Willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business assets;</p> <p>(b)(3)(A) With respect to a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service, the violation of—(A) any right under the Constitution of the United States;</p> <p>(b)(6) Violations of the Internal Revenue Code of 1986, Department of [the] Treasury regulations, or policies of the Internal Revenue Service (including the Internal Revenue Manual) for the purpose of retaliating against, or harassing, a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service.</p>	<p style="text-align: center;">Taxpayer Complaint</p> <p><i>Division level finds no 1203 Violation.</i></p> <p>Complaint is received. Management completes Allegation Form 12217. Management gathers information. Division level determines whether threshold criteria are met (for (b)(1), the threshold is whether required approval signatures were obtained). Threshold not met, no 1203 violation. Administrative action process, if applicable. Case ends.</p> <p><i>Management finds no 1203 Violation.</i></p> <p>Same steps as stated immediately above through "Division level determines whether threshold criteria are met." Potential 1203 violation. Case forwarded to Labor Relations (LR) Office for referral to TIGTA. TIGTA investigates. TIGTA report of investigation to head of office. Management determines 1203 violation. No 1203 violation. Initiate administrative action. Return Form 12217 to LR. Case Ends.</p> <p><i>Management finds 1203 Violation.</i></p> <p>Same steps as stated immediately above through "Management determines 1203 violation." 1203 violation. Proposal letter issued to employee. Employee provides oral or written reply. Deciding official validates 1203 violation. Case sent to the review board. If mitigation is not recommended, the employee is terminated by the deciding official. If mitigation is recommended, the case is referred to the commissioner. If the commissioner mitigates the penalty, a decision is issued and the action is effected. If the commissioner does not mitigate the penalty, a decision is issued and the employee is terminated.</p>

Table 2b. Procedures for Handling Alleged Acts or Omissions Stated in Section 1203 (b)(1), (b)(3)(A), and (b)(6)	
	<p style="text-align: center;">Internal Complaint</p> <p><i>No 1203 Violation.</i></p> <p>Complaint is received. Management completes Allegation Form 12217. Form 12217 forwarded to LR. LR referred to head of office. Head of office makes threshold determination. No 1203 violation. Initiate administrative action. Return Form 12217 to LR. Case ends.</p> <p><i>Management finds no 1203 Violation.</i></p> <p>Same steps as stated immediately above through "Head of office makes threshold determination." Potential 1203 violation. Refer to servicing LR office for forwarding to TIGTA. TIGTA investigates. TIGTA report of investigation to head of office. Management determines 1203 violation. No 1203 violation. Initiate administrative action. Return Form 12217 to LR. Case ends.</p> <p><i>Management finds 1203 Violation.</i></p> <p>Same steps as stated immediately above through "Management determines 1203 violation." 1203 violation. Proposal letter issued to employee. Employee provides oral or written reply. Deciding official validates 1203 violation. Case sent to the review board. If mitigation is not recommended, the employee is terminated by the deciding official. If mitigation is recommended, the case is referred to the commissioner. If the commissioner mitigates the penalty, a decision is issued and the action is effected. If the commissioner does not mitigate the penalty, a decision is issued and the employee is terminated.</p>

Table 2c. Procedures for Handling Alleged Acts or Omissions Stated in Section 1203(b)(3)(B)	
Act or Omission Alleged	Procedures
<p>Section 1203</p> <p>(b)(3)(B) With respect to a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service, the violation of--(B) any civil right established under--(i) title VI or VII of the Civil Rights Act of 1964; (ii) title IX of the Education Amendments of 1972; (iii) the Age Discrimination in Employment Act of 1967; (iv) the Age Discrimination Act of 1975; (v) section 501 or 504 of the Rehabilitation Act of 1973; or (vi) title I of the Americans With Disabilities Act of 1990.</p>	Taxpayer-Initiated Complaint
	<p>Case referred to TIGTA for investigation. TIGTA refers to head of office or LR for determination of 1203 violation and disposition.</p> <p>Determination of whether adverse action or administrative action apply.</p> <p>Either adverse action process or administrative action process followed.</p>
	Employee-Initiated Complaint
	<p>Employee elects either a negotiated process or an Equal Employment Opportunity (EEO) process. If the negotiated process is selected, the negotiated procedures apply. If the EEO process is selected, the EEO procedures apply.</p> <p><i>EEO Procedures or Negotiated Procedures - No Finding of Discrimination or No Settlement Agreement.</i></p> <p>EEO issues closed by withdrawal, lapses of action, or no finding of discrimination. Cases referred to head of office through LR. Case ends.</p>

Table 2c. Procedures for Handling Alleged Acts or Omissions Stated in Section 1203(b)(3)(B)

	<p><i>EEO Procedures or Negotiated Procedures - A Finding of Discrimination or Settlement Agreement.</i></p> <p>There are five kinds of referral to Discrimination Complaint Review Unit (DCRU) under a finding of discrimination or settlement agreement. (1) EEO issues raised in the negotiated grievance process are referred to DCRU by management; (2) Settlement agreements at the pre-complaint stage are referred to DCRU by the servicing EEO office; (3) Settlement agreements at the formal complaint stage are referred to DCRU by the regional complaints center; (4) Settlement agreements and findings of discrimination where the aggrieved elected for a non-hearing decision are referred to DCRU by the Office of Equal Opportunity Program (OEOP); (5) Settlement agreements and findings of discrimination at an administrative or judicial hearing are referred to DCRU by General Legal Services. All these referrals go to the National Director EEO Discrimination Complaint Review Unit. DCRU makes a preliminary determination of potential 1203 violation. If no potential 1203 violation, LR coordinates with head of office that will make the final decision.</p> <p>If a potential 1203 violation, the case is forwarded to TIGTA with a copy to LR. TIGTA conducts an investigation, focused on whether any IRS employee intentionally violated one of the listed laws. TIGTA report of investigation to head of office. Management determines potential 1203 violation.</p> <p><i>Management finds no 1203 Violation.</i></p> <p>No 1203 violation. Initiate administrative action. Return Form 12217 to LR. Case ends.</p>
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<p>Table 2c. Procedures for Handling Alleged Acts or Omissions Stated in Section 1203(b)(3)(B)</p>	
	<p><i>Management finds 1203 Violation.</i></p> <p>1203 violation. Proposal letter issued to employee. Employee provides oral or written reply. Deciding official validates 1203 violation. Case sent to the Review Board. If mitigation is not recommended, the employee is terminated by the deciding official. If mitigation is recommended, the case is referred to the commissioner. If the commissioner mitigates the penalty, a decision is issued and the action is effected. If the commissioner does not mitigate the penalty, a decision is issued and the employee is terminated.</p>

Table 2d. Procedures for Handling Alleged Acts or Omissions Stated in Section 1203 (b)(8) and (b)(9)	
Act or Omission Alleged	Procedures
<p>Section 1203</p> <p>(b)(8) Willful failure to file any return of tax required under the Internal Revenue Code of 1986 on or before the date prescribed therefor (including any extensions), unless such failure is due to reasonable cause and not to willful neglect;</p> <p>(b)(9) Willful understatement of Federal tax liability, unless such understatement is due to reasonable cause and not to willful neglect.</p>	<p><i>No 1203 Violation.</i></p> <p>Employee Tax Compliance (ETC) Branch contacts employee. Employee either provides information to ETC or fails to respond to ETC. If ETC cannot resolve the case based on the information provided by the employee, ETC refers case to LR for coordination with management. Management gathers facts. Management determines 1203 violation. No 1203 violation. Administrative action process. Case ends.</p>
	<p><i>1203 Violation With Mitigation Recommended.</i></p> <p>Same steps as stated immediately above through "Management determines 1203 violation." (If criminal implications, the case is referred to TIGTA for investigation.) 1203 violation. LR issues proposal letter to employee. Employee returns oral or written reply. Deciding official validates 1203 violation. Case sent to review board. Mitigation recommended. Case referred to the commissioner. If the commissioner mitigates the penalty, a decision is issued and the action is effected. If the commissioner does not mitigate the penalty, a decision is issued and the employee is terminated by the deciding official.</p>
	<p><i>1203 Violation With No Mitigation Recommended.</i></p> <p>Same steps as stated immediately above through "Case sent to the review board." Mitigation not recommended. Employee is terminated by the deciding official.</p>
<p>Table 2 Sources. U.S. Congress, Joint Committee on Taxation, <i>Joint Review of the Strategic Plans and Budget of the Internal Revenue Service, 2000</i>, hearing before the Senate Committees on Finance, Appropriations, and Governmental Affairs and the House Committees on Ways and Means, Appropriations, and Government Reform, 106th Cong., 2nd sess., May 3, 2000 (Washington: GPO, 2000), pp. 123-127. U.S. Dept. of the Treasury, Internal Revenue Service, <i>RRA '98 Section 1203 Procedural Handbook</i>, document 11043 (Washington: May 1999), pp. 14-21.</p>	

Table 3. All Disciplinary Actions, January 1 Through June 30, 2000		
Disciplinary Action	All Offenses	Employee Tax Compliance
Written Counseling	1,139	588
Admonishment	466	343
Reprimand	301	139
Suspension	257	91
Removal	155	26
Total	2,318	1,187

Source. U.S. Department of the Treasury, Internal Revenue Service, Commissioner's Semiannual Disciplinary Actions Report, Sept. 13, 2000. Not all tax compliance cases are Section 1203 violations. The 26 removals for tax compliance reasons were Section 1203 violations. Data provided to CRS during a meeting with staff of the IRS Commissioner's Complaint Processing and Analysis Group, Sept. 13, 2000.

Table 4. All Disciplinary Actions by Grade, January 1 Through June 30, 2000		
Grade	Number of Employees (As of Feb. 26, 2000)	Disciplinary Actions
GS-1	169	3
GS-2	1,023	11
GS-3	4,611	171
GS-4	7,515	363
GS-5	9,164	294
GS-6	6,873	209
GS-7	11,492	305
GS-8	8,387	223
GS-9	7,332	126
GS-10	840	21
GS-11	9,519	148
GS-12	11,865	159
GS-13	14,466	186
GS-14	5,606	51
GS-15	1,913	44
Executives	279	4
Total	101,054	2,318

Source. U.S. Department of the Treasury, Internal Revenue Service, Commissioner's Semiannual Disciplinary Actions Report, Sept. 13, 2000. The report does not provide data on the number of cases investigated nor on the nature of the misconduct by grade. Tax delinquency, absence and leave, underreported tax liability (but not in violation of section 1203), and indebtedness/excessive borrowing are the most frequent offenses which result in discipline. Not all tax compliance cases are section 1203 violations. Data provided to CRS during a meeting with staff of the IRS Commissioner's Complaint Processing and Analysis Group, Sept. 13, 2000.

Table 5. Section 1203 Allegations Received and Investigated, July 1998 to May 2000				
Type of Allegation	Received by TIGTA	Received by IRS	Investigations or Inquiries Completed by TIGTA or IRS	Substantiated Section 1203 Violations
(b)(1) seizure without approvals	14	8	7	0
(b)(2) false statement under oath	15	8	5	0
(b)(3) violation of Constitutional or civil rights	169	193	170	0
(b)(4) falsifying or destroying records	38	46	24	1
(b)(5) assault or battery	0	7	3	0
(b)(6) retaliate or harass	399	990	830	0
(b)(7) misuse of 5 U.S.C. 6103	0	3	3	0
(b)(8) untimely filing of federal tax return	5	443	256	102
(b)(9) understatement of federal tax liability	30	31	15	2
(b)(10) threat to audit for personal gain	13	52	36	4
Total	683	1781	1349	109
<p>Source. U.S. Congress, Joint Committee on Taxation, <i>Joint Review of the Strategic Plans and Budget of the Internal Revenue Service, 2000</i>, hearing before the Senate Committees on Finance, Appropriations, and Governmental Affairs and the House Committees on Ways and Means, Appropriations, and Government Reform, 106th Cong., 2nd sess., May 3, 2000 (Washington: GPO, 2000), p. 109. The numbers cannot be added across columns. Most of the allegations received by TIGTA are referred to the IRS for action either as a report of investigation or a referral for a management inquiry. The IRS has not yet submitted an update of this table to CRS.</p>				

Table 6. Federal Employees' Unpaid Income Taxes, October 1999				
Department	Number of Employees	Number of Taxpayers with a Balance Due or Nonfiler Accounts	Total Balance Owed (\$)	Number of Taxpayers with Installment Agreements
Legislative Branch				
U.S. Senate	6,304	476	2,400,910	162
U.S. House of Representatives	10,489	881	8,135,740	255
Executive Branch Executive Office of the President and Cabinet Agencies				
Executive Office of the President	1,632	107	652,210	36
Agriculture	108,929	4,231	17,365,688	1,604
Commerce	43,707	2,809	14,798,180	1,024
Defense	684,388	50,205	217,385,014	19,502
Education	4,915	466	3,432,267	188
Energy	15,859	715	3,508,952	276
Health and Human Services	60,420	3,920	20,704,809	1,558
Housing and Urban Development	10,252	878	6,094,640	358
Interior	72,830	3,290	15,162,903	1,237
Justice	124,910	4,944	16,876,311	2,345
Labor	15,908	1,226	10,125,845	544
State	17,128	1,074	3,474,781	254
Transportation	64,135	3,055	20,281,441	1,208
Treasury	144,482	5,491	19,110,684	2,408
Veterans Affairs	219,153	16,652	94,984,018	6,789
Executive Branch Independent Agencies				
African Development Foundation	24	5	13,430	3
Agency for International Development	2,427	214	824,072	38

Department	Number of Employees	Number of Taxpayers with a Balance Due or Nonfiler Accounts	Total Balance Owed (\$)	Number of Taxpayers with Installment Agreements
American Battle Monuments Commission	50	2	25,980	0
Appalachian Regional Commission	10	1	11,517	0
Board of Governors of the Federal Reserve System	1,688	138	1,180,095	50
Central Intelligence Agency	unknown	419	2,260,981	144
Commodity Futures Trading Commission	571	43	338,821	22
Consumer Product Safety Commission	483	35	114,868	15
Corporation for National and Community Service	596	62	308,628	25
Environmental Protection Agency	19,045	1,028	5,993,734	391
Equal Employment Opportunity Commission	2,944	251	1,035,141	104
Export Import Bank of the United States	407	37	183,719	19
Farm Credit Administration	296	17	115,838	8
Federal Bureau of Investigation	28,456	1,122	3,707,893	510
Federal Communications Commission	1,968	160	698,434	59
Federal Deposit Insurance Corporation	7,409	447	2,502,909	178
Federal Election Commission	343	37	224,992	14
Federal Emergency Management Agency	9,876	744	4,970,338	255
Federal Housing Finance Board	118	12	86,100	6

Department	Number of Employees	Number of Taxpayers with a Balance Due or Nonfiler Accounts	Total Balance Owed (\$)	Number of Taxpayers with Installment Agreements
Federal Labor Relations Authority	234	20	103,177	10
Federal Maritime Commission	136	11	43,116	6
Federal Mediation and Conciliation Service	287	18	48,195	10
Federal Trade Commission	974	64	426,121	21
General Services Administration	14,215	950	4,094,384	417
Government Printing Office	3,262	369	2,056,659	167
Inter-American Foundation	62	4	1,627	1
International Boundary and Water Commission	285	13	20,628	7
Merit Systems Protection Board	231	23	586,112	6
National Aeronautics and Space Administration	18,941	687	4,513,508	242
National Archives and Records Administration	2,612	166	684,454	76
National Credit Union Administration	976	22	122,955	7
National Endowment for the Arts	426	33	124,493	11
National Labor Relations Board	1,895	127	1,370,628	48
National Science Foundation	980	130	538,231	54
National Security Agency	unknown	715	2,556,082	229
National Transportation Safety Board	435	26	157,028	13
Occupational Safety and Health Review Commission	63	2	1,578	0

Table 6. Federal Employees' Unpaid Income Taxes, October 1999

Department	Number of Employees	Number of Taxpayers with a Balance Due or Nonfiler Accounts	Total Balance Owed (\$)	Number of Taxpayers with Installment Agreements
Office of Personnel Management	3,691	330	2,364,922	138
Panama Canal Commission	308	29	1,000,049	2
Peace Corps	829	63	293,672	14
Pension Benefit Guaranty Corporation	737	83	444,661	31
Railroad Retirement Board	1,252	81	515,780	35
Securities and Exchange Commission	2,858	197	1,460,245	79
Selective Service System	218	26	79,581	14
Small Business Administration	4,543	325	2,571,308	128
Smithsonian Institution	5,109	476	1,627,169	180
Social Security Administration	63,957	3,593	16,232,484	1,552
Tennessee Valley Authority	13,321	511	2,357,523	202
U.S. Commission on Civil Rights	81	8	20,143	5
U.S. Information Agency	3,889	315	1,913,566	96
U.S. International Trade Commission	402	26	278,889	6
U.S. Nuclear Regulatory Commission	2,925	131	581,115	49
U.S. Office of Government Ethics	80	2	514	1
U.S. Office of Special Counsel	88	7	31,942	5
U.S. Soldiers and Airmens Home	813	79	416,120	33
U.S. Tax Court	243	10	84,242	4

Table 6. Federal Employees' Unpaid Income Taxes, October 1999				
Department	Number of Employees	Number of Taxpayers with a Balance Due or Nonfiler Accounts	Total Balance Owed (\$)	Number of Taxpayers with Installment Agreements
Source. U.S. Dept. of the Treasury, Internal Revenue Service, FERDI Annual Match Oct. 1999 Combination Balance Due and Potential Nonfiler with Population and Installment Agreement Data. Sent to CRS by IRS Legislative Affairs Division by facsimile Sept. 7 and 12, 2000.				