

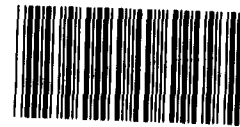
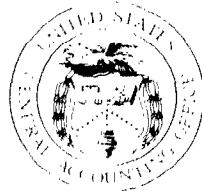
GAO

Report to the Chairman, Subcommittee  
on Private Retirement Plans and  
Oversight of the Internal Revenue  
Service, Committee on Finance, U.S.  
Senate

December 1991

TAX  
ADMINISTRATION

IRS' Implementation of  
the 1988 Taxpayer Bill  
of Rights



145649

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General Government Division

B-246746

December 10, 1991

The Honorable David Pryor  
Chairman, Subcommittee on Private  
Retirement Plans and Oversight  
of the Internal Revenue Service  
Committee on Finance  
United States Senate

Dear Mr. Chairman:

As you requested, we assessed the Internal Revenue Service's (IRS) implementation of the 1988 Taxpayer Bill of Rights.<sup>1</sup> As agreed, we focused on 7 of the act's 21 provisions. Our report addresses IRS' implementation of these seven provisions and discusses opportunities to further enhance IRS' administration of the act.

## Background

The 1988 Taxpayer Bill of Rights caused IRS to make positive changes in the way it relates to taxpayers. The act reaffirms that taxpayers are IRS' customers and establishes a set of rules and procedures to resolve problems that result from IRS' interpretation and administration of the tax laws. Additionally, the act restates fundamental principles that should underlie any tax system such as fairness, consistent application of the laws and regulations, and the right of taxpayers to receive clear explanations of their tax situation.

To implement the Taxpayer Bill of Rights, IRS prepared and followed a plan that addressed all the act's provisions. The plan laid out specific actions and milestones, identified those responsible for carrying out the actions, and included a program to monitor progress toward completing the actions.

We focused on seven provisions in the act that (1) give IRS' Taxpayer Ombudsman authority to issue Taxpayer Assistance Orders if a taxpayer is suffering or about to suffer a significant hardship because of IRS' administration of the tax laws, (2) require IRS to prepare a statement explaining taxpayer rights and IRS obligations, (3) set out rules for conducting taxpayer audit interviews, (4) authorize IRS to enter into installment payment agreements with taxpayers and set criteria for terminating an agreement, (5) prohibit the use of tax enforcement

<sup>1</sup>The Omnibus Taxpayer Bill of Rights was contained in Subtitle J of the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647).

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results to evaluate Collection employees or impose production quotas or goals, (6) require banks and financial institutions to hold accounts garnished by IRS for 21 days after receiving the notice of levy, and (7) allow taxpayers to recover costs and fees incurred in administrative and court proceedings.

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## Results in Brief

IRS has implemented all 21 provisions of the 1988 Taxpayer Bill of Rights, including the provisions on which we focused. We believe that IRS' implementation of the seven provisions has been generally successful. For example, IRS statistics show that it aided about 32,500 taxpayers in fiscal years 1990 and 1991 through the Taxpayer Assistance Order Program. IRS has also put procedures in place to inform taxpayers of their rights and guard against the use of enforcement results to evaluate employees or impose production quotas.

Despite IRS' general success, we believe there are some shortcomings in IRS' implementation of the Taxpayer Bill of Rights.

- Some taxpayers with hardships may be unaware that assistance is available under the Taxpayer Assistance Order Program, although IRS appears to be doing an effective job of helping taxpayers who do apply for assistance.
- IRS sends taxpayers copies of a taxpayer's rights guide known as Publication 1. However, IRS does not emphasize to taxpayers the importance of reading this publication when contacting them before conducting an audit interview.
- IRS reported in March 1991 that denials of taxpayer requests to pay taxes in installments may reduce tax collections. We also learned that IRS employs inconsistent methods of notifying taxpayers when it cancels installment agreements, depending on whether the agreements are monitored by one of IRS' 10 service centers or one of its 63 district offices.

Additionally, we believe the Internal Revenue Code may need to be clarified to facilitate IRS' implementation of the act.

- In October 1991, IRS changed its procedures to allow the withdrawal of tax lien notices that were not filed according to IRS guidelines or did not follow good business practices. While IRS stated that the change will benefit taxpayers, it also believed that clarifying legislation is needed to assure creditors that IRS' liens no longer have priority in financial dealings with taxpayers.

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- Section 6332(c) of the Code provides for a 21-day holding period on levied bank deposits so that taxpayers have time to resolve levy errors. IRS interprets the holding period as applying to the amount of time that banks hold levied funds. Therefore, it does not immediately notify taxpayers about a levy. As a result, taxpayers generally have about 14 days to resolve errors. Neither the legislative history nor the act specifically addresses the time to be allotted to taxpayers.

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## Objectives, Scope, and Methodology

As agreed with the Subcommittee, we focused on 7 of the Taxpayer Bill of Rights' 21 provisions. Our objectives in examining these provisions were to assess IRS' implementation of the seven provisions and to identify opportunities for improvement. Appendix I summarizes the act's 21 provisions.

We did our work at IRS' National Office in Washington, D.C., and the regional, district, and service center offices in Atlanta, Georgia, and Cincinnati, Ohio. We selected these sites to provide some perspective on IRS' implementation of the act at the field level. To obtain this perspective, we took several samples to pinpoint issues to discuss with IRS National Office managers. These samples are not projectable to IRS as a whole. Our methodology in reviewing the seven provisions is detailed in appendix II.

We did our work between July 1990 and September 1991 in accordance with generally accepted government auditing standards.

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## IRS Has Relieved Hardships Under the Taxpayer Assistance Order Program

One of the more important provisions of the Taxpayer Bill of Rights is the Taxpayer Assistance Order Program. The act authorizes an Ombudsman to issue Taxpayer Assistance Orders to rescind or change an IRS action if IRS' administration of the tax laws causes or is about to cause a significant hardship for a taxpayer. Taxpayers can apply directly to IRS for assistance orders, or IRS staff can apply on behalf of taxpayers. Acting on behalf of the Ombudsman, Problem Resolution Officers and their staffs in IRS district offices and service centers process the applications and work with other IRS functions to provide assistance. Examples of hardships include situations in which taxpayers need their refunds faster to avert an impending crisis or when the monthly payment on an installment agreement is too high for the taxpayer to afford food or medical care.

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In implementing the Taxpayer Assistance Order Program, IRS undertook three actions that were not specifically required by the Taxpayer Bill of Rights but that we believe were positive steps in keeping with the spirit of the act.

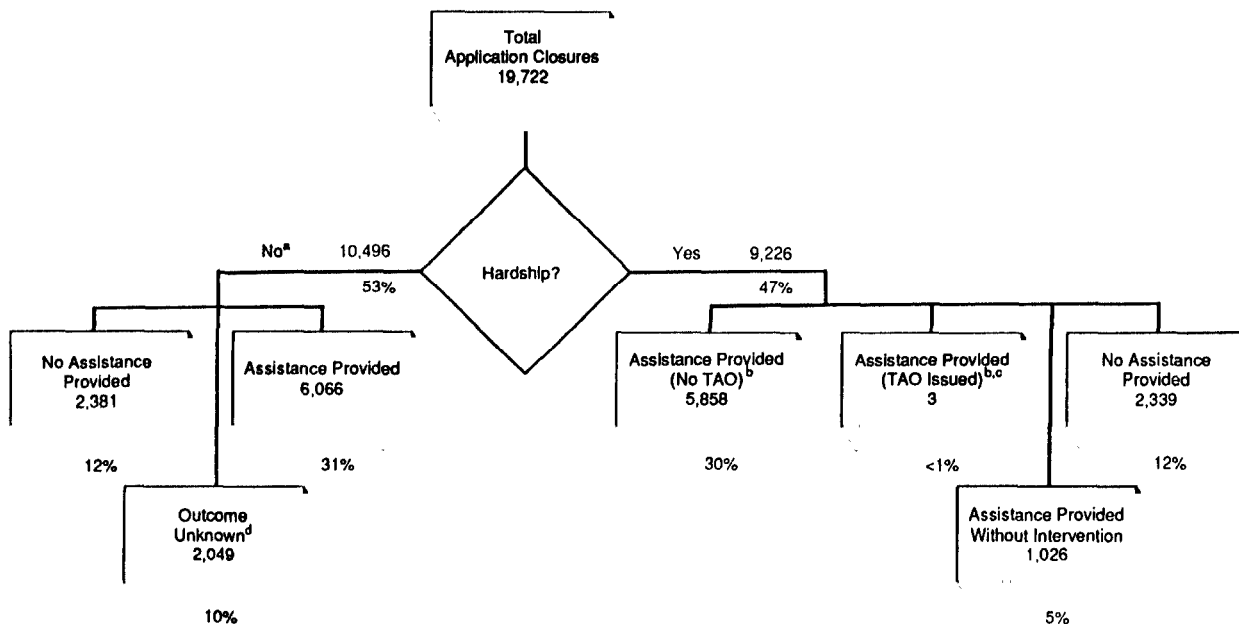
- IRS expanded the definition of “hardship” to relieve not only hardships caused by IRS’ administration of the tax laws but all hardships that could be reasonably mitigated by IRS. For example, under the expanded definition, IRS might expedite a tax refund to allow a taxpayer to meet an impending crisis, even though the refund would have otherwise been issued within IRS’ normal processing time.
- IRS decided to provide assistance, when reasonable, to hardship applicants who did not meet IRS’ hardship criteria but who could still be helped, either through IRS’ Problem Resolution Program or by another IRS function.
- IRS instructed its employees to initiate hardship applications on behalf of taxpayers when employees encountered situations that might warrant assistance.

During fiscal years 1990 and 1991, IRS statistics show that it closed 46,409 hardship applications from taxpayers, including those prepared by IRS employees on behalf of taxpayers, and provided some form of assistance to 32,476—or 70 percent—of the applicants. IRS determined that 9,809—or 21 percent— of the applicants either did not qualify for assistance or qualified for assistance but IRS was unable to provide assistance because of other reasons, such as legal constraints. The remaining 4,124 applications were those filed by IRS employees on behalf of taxpayers and determined to not be hardships. IRS’s procedure is to refer these applications for other assistance as it does taxpayer-initiated applications. However, IRS does not track the employee-initiated applications through final disposition and thus does not know whether these applications eventually qualified for assistance.

Figure 1 illustrates the two-step decisionmaking process IRS follows when it processes hardship applications. IRS first decides whether the taxpayer’s case meets the hardship criteria. During fiscal year 1990, IRS determined that 9,226, or 47 percent, of the 19,722 hardship applications met these criteria. Second, IRS decides whether it can provide some form of assistance, regardless of whether the taxpayer meets the hardship criteria. The sum of taxpayers with and without hardships to whom IRS provided assistance accounts for 12,953, or 66 percent, of the hardship applicants IRS assisted in fiscal year 1990. Figure 2 shows IRS’ disposition of hardship applications during fiscal year 1991.

Figure 1:

# GAO Disposition of Applications for Taxpayer Assistance Orders, FY '90



<sup>a</sup>These applications were reviewed to see whether other assistance could be provided.

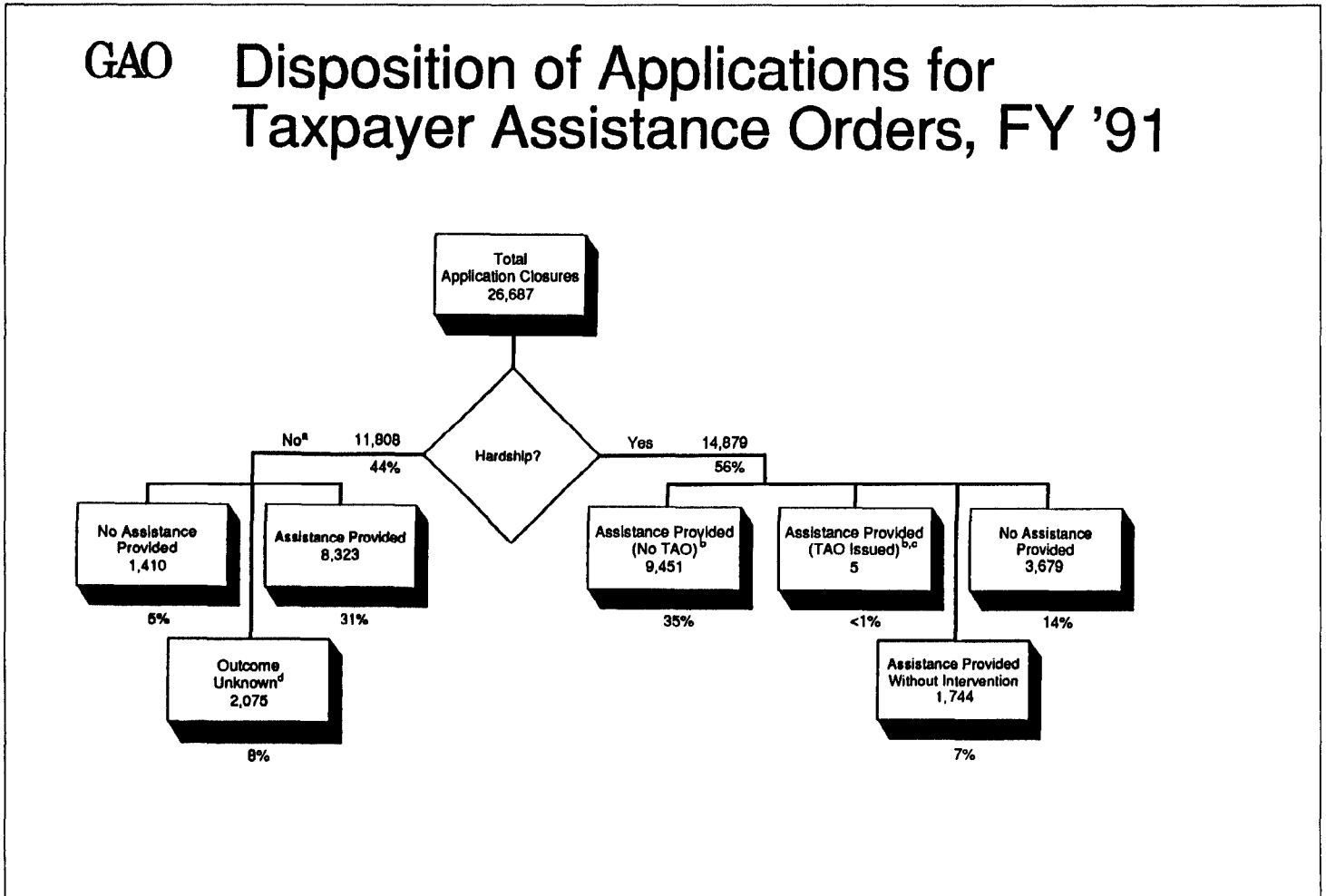
<sup>b</sup>TAO denotes Taxpayer Assistance Order.

<sup>c</sup>After review by IRS Directors, two Taxpayer Assistance Orders were rescinded with no assistance provided to the taxpayers.

<sup>d</sup>These applications were initiated by IRS employees on behalf of taxpayers and were determined to not meet IRS' hardship criteria. IRS referred these applications for further review and assistance but did not track or report their disposition.

Source: IRS Problem Resolution Office Management Information System (PROMIS) Report 7, fiscal year 1990.

Figure 2:



<sup>a</sup>These applications were reviewed to see whether other assistance could be provided.

<sup>b</sup>TAO denotes Taxpayer Assistance Order.

<sup>c</sup>After review by IRS Directors, three Taxpayer Assistance Orders were rescinded with no assistance provided to the taxpayers.

<sup>d</sup>These applications were initiated by IRS employees on behalf of taxpayers and were determined to not meet IRS' hardship criteria. IRS referred these applications for further review and assistance but did not track or report their disposition.

Source: IRS PROMIS Report 7, fiscal year 1991.

Figures 1 and 2 also show that IRS has provided virtually all of its assistance without the use of formal assistance orders. Out of 24,105 applications that met IRS' hardship criteria, the Ombudsman's representatives



issued 8 orders, 5 of which were rescinded by IRS Directors. The procedures IRS follows for resolving hardships require the Ombudsman's representative to request that officials in the appropriate function review the application and related case information, and reconsider IRS' course of action. According to the Ombudsman, the low number of assistance orders indicated that representatives were able to work out solutions with the functions before a stalemate occurred and an order needed to be issued.

To determine whether taxpayers in fact received assistance in the absence of a formal Taxpayer Assistance Order, we reviewed 146 randomly selected applications processed in fiscal year 1990 from 4 IRS offices in which IRS said it had provided some form of assistance. Included in the applications were 51 that IRS judged to be hardship situations and 95 that IRS judged were not hardships. We tracked IRS' processing of the applications through the taxpayers' accounts and determined that IRS assisted the taxpayers, as claimed, on all of the applications.

In analyzing our sample, we identified the type of assistance taxpayers sought and the amount of time IRS took to provide assistance. The five most frequently requested types of assistance were (1) expediting a refund or locating a lost refund (27 percent of the applications), (2) granting an installment agreement or delaying an installment agreement payment (14 percent), (3) releasing a levy (14 percent), (4) canceling a tax liability or abating a penalty or interest (12 percent), and (5) deferring a tax payment (9 percent). The average time IRS took to assist taxpayers was about 10 days, ranging from the same day of the request to 82 days.

Using IRS statistics, we also looked at whether IRS' seven regional offices were consistently administering the Taxpayer Assistance Order Program. We measured consistency by comparing among the regions (1) the percent of hardship applications in which IRS provided assistance and (2) the percent of hardship cases that were closed within 7 days of receipt—the latter being a measure that IRS monitors. We chose these measures because we reasoned that they would be primary taxpayer concerns.

On the basis of these two indicators, the regions were generally consistent. During fiscal year 1990, the percent of applications in which the regions provided assistance in hardship cases ranged from a high of 70 percent in IRS' Mid-Atlantic and Southeast Regions to a low of 58 percent

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in the Central Region. We believe the Central Region's results would have been higher if not for an initial misunderstanding of the reporting system.

The regions were also relatively consistent in the percent of hardship case applications they closed within 7 days. On the low end, the Southeast Region closed 57 percent of its applications within 7 days, while on the high end the Western Region closed 69 percent of its applications within 7 days.

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## IRS Needs to Ensure That Employees Are Able to Identify Hardship Cases

According to IRS procedures, its employees are responsible for recognizing hardship situations and helping taxpayers apply for Taxpayer Assistance Orders. During fiscal year 1990, IRS reported that its employees initiated 5,471, or 27 percent, of the total requests for hardship relief, while taxpayers or their representatives initiated the remaining 14,455, or 73 percent. During fiscal year 1991, IRS reported that its employees initiated 5,571, or 22 percent, of 25,374 requests.

The responsibility to help taxpayers identify hardships falls primarily on those IRS employees that deal directly with the public, such as the Taxpayer Services employees who handle account inquiries and answer taxpayer questions at 32 telephone call sites across the country. During fiscal year 1990, IRS answered 33.9 million taxpayer calls through this telephone program.

In a test conducted between August 7 and September 29, 1989, IRS' Internal Audit determined that telephone assistants failed to recognize about 79 percent of the test calls that met IRS' hardship criteria. In its May 1990 report, Internal Audit recommended that IRS expand its test call program to include procedures that isolate call site weaknesses and provide immediate feedback to correct problem areas. It also recommended that IRS consider establishing a similar test call program at its Automated Collection System sites, a system of 23 call sites that are responsible for contacting taxpayers about outstanding tax liabilities. IRS managers in the Taxpayer Services and Collection functions agreed with the Internal Audit recommendations.

However, as of September 1991, IRS had not yet implemented the Internal Audit recommendations. Taxpayer Services officials told us that they had revised training materials for employees at the 32 call sites but that subsequent attempts by the Taxpayer Ombudsman's office and several regional offices to test whether employee performance had

improved were inconclusive because of problems with the testing methodology. An official in the Ombudsman's office said that Collection officials also had not been able to successfully implement a testing program for the Automated Collection sites.

## IRS Is Requesting Legislative Authority to Release Notices of Liens

During the course of our work, IRS officials in the Taxpayer Ombudsman's office and the Central Region said that they are sometimes prevented from helping taxpayers with hardships even though such aid would be in the best interests of the government and the taxpayer. They referred specifically to instances in which the Internal Revenue Code prevents Collection and Problem Resolution Officers from withdrawing notice of a tax lien until the taxpayer's tax obligations have been satisfied. IRS officials said that this restriction prevents them from providing relief to taxpayers who might otherwise have qualified for hardship relief under the Taxpayer Assistance Order Program. The Commissioner of Internal Revenue requested authority to withdraw notices of tax liens in September 25, 1991, testimony before the House Subcommittee on Oversight of the Committee on Ways and Means.

A general tax lien arises when a tax assessment has been made and the taxpayer has been given notice and has failed to pay. A notice of tax lien provides public notice that a taxpayer owes the government money. Once a lien arises, however, it cannot be removed until a taxpayer's full debt is settled or the statute of limitations on collections has expired. Often, the public filing of a notice of tax lien adversely affects a taxpayer's ability to borrow funds or enter into other financial relationships with suppliers and other creditors, because credit bureaus routinely search lien records. As such, the notice of tax lien may impose an unintended and counterproductive hardship for the taxpayer and/or undermine the taxpayer's ability to pay taxes.

After reviewing actual cases, IRS' Collection and Problem Resolution functions suggested that it might be appropriate for IRS to withdraw a notice of lien in certain circumstances. For example, a notice of lien might have been recorded as a result of an administrative error during the processing of an installment agreement, although both IRS and the taxpayer had agreed that no notice would be filed. The potential creditors who check whether a tax lien is on file might not deal with the taxpayer if a notice of lien has been filed. Consequently, the taxpayer might be deprived of an opportunity to obtain funds to pay the tax. The withdrawal of the notice of lien would not affect the validity of a taxpayer's underlying tax liability.

In October 1991, IRS decided that current law permits notice withdrawals in certain instances—when lien notices were not filed according to IRS guidelines or did not follow good business practice. Newly issued procedures, IRS officials said, should help alleviate the problem discussed above, but they believe that clarifying legislation is still needed to assure creditors that IRS' liens no longer have priority in financial dealings with taxpayers.

## IRS Should Do More to Ensure That Taxpayers Read Publication 1

Section 6227 of the act requires IRS to provide any taxpayers it contacts about a collection or determination of tax liability with a clear statement of their rights. To provide a statement of rights, IRS sends taxpayers Publication 1, *Your Rights as a Taxpayer*. To schedule audit interviews, IRS examiners send taxpayers a notification letter with Publication 1 enclosed and, when necessary, confirm the interview arrangements by telephone. At the interview or before, IRS examiners are required to (1) confirm the taxpayer's receipt of Publication 1, (2) briefly explain the audit process and appeal rights, and (3) ask if the taxpayer has any questions.

We spoke with 25 revenue agents from 2 IRS regions to determine how they inform taxpayers of their rights and ensure that taxpayers are aware of these rights. All but one of the agents said they check to see whether taxpayers have received Publication 1. In addition, all but one of the agents told us they explain taxpayers' rights to them at the beginning of the audit interview. The one revenue agent who said she does not initiate this explanation told us she responds when taxpayers have questions about their rights. The fact that 24 of 25 agents were providing explanations of taxpayer rights at the beginning of audit interviews is a positive sign. However, IRS does not emphasize to taxpayers the importance of understanding their rights before the interview.

It is important that taxpayers understand the rights spelled out in Publication 1 before they attend the interview. For example, these rights offer taxpayers some flexibility in setting the time and place of the interview and in sending a representative to the interview instead of attending themselves. An opportunity to help taxpayers understand their rights before an interview occurs when IRS sends taxpayers a letter to arrange the interview and when agents telephone taxpayers to confirm the interview arrangement.

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Currently, the letter IRS mails to taxpayers lists Publication 1 as an enclosure but does not emphasize the importance of reading it. Moreover, the 25 agents we spoke with said that they did not explain taxpayers' rights during the initial phone contact unless taxpayers asked them questions. We believe the letters (and other IRS notices and correspondence that include the publication) and phone contacts provide IRS with an opportunity to enhance taxpayers' understanding of their rights by emphasizing the importance of reading Publication 1. IRS Examination officials said they could easily do so.

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## IRS Plans to Ensure That Notices Setting the Time and Place of Examination Comply With the Taxpayer Bill of Rights

The Taxpayer Bill of Rights permits any person authorized to represent taxpayers before IRS to represent a taxpayer in any collection or audit interview. Taxpayers need not accompany their representative unless IRS has issued a summons for their presence.

At one IRS district office we visited, however, we found four letters sent to arrange taxpayer interviews that advised taxpayers to attend the audit interviews. The district office looked into the matter and found that one revenue agent had used old computer software to generate the letters. The difficulty, an official explained, is that IRS issues an individual set of computer disks to each revenue agent, and the agents sometimes fail to replace the old disks with revised disks as required by changes occasioned by the 1988 Taxpayer Bill of Rights. After we brought this matter to his attention, the manager in the district office promptly directed the employees to stop using the old version of the letter.

We were not able to determine the extent to which outdated appointment letters are being used nationwide, although members of the American Institute of Certified Public Accountants told us that such use often occurs. Following an earlier occurrence in another district office, IRS' National Office sent a directive in November 1989 cautioning district offices about this problem. In light of the letters we found, the last of which was sent in March 1991, IRS said that it would reemphasize to field staff the importance of using the correct letters.

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## IRS Is Studying Ways to Increase Its Use of Installment Agreements

The Taxpayer Bill of Rights authorizes IRS to enter into an installment agreement with a taxpayer if it determines that the agreement will facilitate the collection of taxes. IRS' use of installment agreements has increased in recent years. IRS' inventory of installment agreements increased from 1.1 million agreements in fiscal year 1988 to 1.6 million agreements in fiscal year 1990, a 45-percent rise. Over the same period, the dollar amount of the agreements increased from \$1.9 billion to \$3.3 billion, a 74-percent rise.

It is difficult to determine the extent to which the Taxpayer Bill of Rights may have influenced these trends, because IRS' overall accounts receivable balance increased 28 percent (from \$75.5 billion to \$96.3 billion) over the same period. The figures seem to indicate, however, that IRS has not restricted its use of installment agreements as a collection tool. There are indications that IRS may be able to use these installment agreements to a greater extent than it does now.

In making a decision on whether to approve an agreement to pay taxes in installments, IRS generally analyzes a financial statement that the taxpayer prepares. This financial statement lists the taxpayer's assets and liabilities. When a taxpayer's liabilities are too great to permit payments, IRS often does not authorize an installment agreement even though the taxpayer has requested it. Instead, IRS classifies the account as not currently collectible.

A March 1991 IRS task group report indicated that granting a taxpayer's request for an installment agreement, even after IRS determines that a taxpayer does not have the ability to pay, might result in additional tax collections. The task force proposed that IRS should take the position that most taxpayers have an ability to pay a minimal amount, thereby recovering some of the taxes owed, rather than denying a taxpayer's request for an installment agreement on the basis of IRS' analysis of the taxpayer's financial condition and then classifying the account as not currently collectible. We are reviewing this proposal in more detail as part of our ongoing evaluation of IRS' accounts receivable balances.

## IRS Needs to Standardize Notification of Defaulted Installment Agreements

Included in the provision authorizing IRS to enter into installment agreements are criteria for when IRS may cancel, or default, an agreement. When IRS and taxpayers enter into an installment agreement, the taxpayers agree to certain conditions such as making timely payments, paying all future tax liabilities, and providing financial information when requested. When taxpayers fail to meet one of the preconditions, their agreements are subject to default. IRS is not required to notify taxpayers in advance when defaulting an agreement, except when an agreement is defaulted because of a change in the taxpayer's financial condition.

Installment agreements are monitored by IRS' 10 service centers and 63 district offices. IRS uses service center computers to monitor most agreements. However, IRS relies on district offices to monitor those agreements with a balance due greater than \$1 million or those that cannot be monitored by computer. The latter include, for example, agreements with irregular payment periods or amounts.

IRS procedures for notifying taxpayers about defaulted agreements differ depending on whether the agreement is monitored by a service center or a district office. For example, IRS notifies taxpayers by letter about 5 weeks before defaulting a service center-monitored agreement but does not use letters to notify taxpayers with district office-monitored agreements. District office Collection officials explained that IRS does not have formal procedures for notifying taxpayers with district office-monitored agreements and that their staffs individually monitor installment agreements. They normally notify taxpayers by phone if an agreement is in danger of default.

In our work at two district offices we did not find any situations in which taxpayers had complained about abrupt or unwarranted cancellations of agreements. However, the different procedures followed by service centers and district offices raises the issue of inconsistent treatment of taxpayers. District office officials acknowledged that for those agreements they monitor, some taxpayers might not be notified about a defaulted agreement and the amount of advance notice might vary for those who are notified.

## IRS Has Controls to Guard Against the Use of Collection Statistics to Evaluate Employees

The Taxpayer Bill of Rights prohibits the use of enforcement results to evaluate Collection employees or impose production quotas or goals. It also requires that IRS' 63 district directors certify quarterly to the IRS Commissioner that tax enforcement results are not being used for prohibited purposes.

We reviewed the quarterly certifications for calendar year 1990 and found that 10 of the 63 Directors had reported a total of 33 cases in which collection statistics had been misused or could have been perceived to be misused. These collection statistics could have been misused on performance evaluations of IRS revenue officers, of which IRS employed about 8,000 at the beginning of 1990. The 33 cases included incidents in which collection results were discussed in employee evaluations and incidents in which employee collection statistics were discussed in meetings or contained in employee files. To prevent further occurrences, IRS District Directors reported to the IRS Commissioner that managers involved in the 33 cases had been counseled about the proper uses of collection statistics.

Thirteen of the 33 cases came from one district office where IRS' Internal Audit found that employee files contained collection statistics. The District Director's certification letter stated that the data were in the files because of an incorrect interpretation of earlier guidance, which stated ". . .there will be instances when it will be beneficial or necessary to refer to an enforcement result regarding the case being reviewed." Although the guidance was later clarified, the collection statistics that pre-dated the clarification remained in the files. The Director explained that because the collection statistics had not been included in employee evaluations, he thought the district office had complied with policies prohibiting the use of collection data. The Director stated that the problem was corrected by purging employee files of collection data and reemphasizing the policies prohibiting the use of such data.

In an October 1987 letter to the Chairmen of the House Committee on Ways and Means and the Senate Committee on Finance, we commented on various proposals to prohibit the use of collection statistics in performance evaluations. Our position then and now is that collection statistics should not be the only indicator of performance but, along with other factors, could very well be a useful tool in evaluating employees. We pointed out that relying on a single factor can place more emphasis on that factor than on overall performance. We said that it is not totally inappropriate to generally consider the amount of revenues collected as



part of an employee's evaluation if that consideration is only one of several factors under review. We added that setting arbitrary quotas for amounts collected, property seized, or cases closed cannot be justified in evaluating performance, particularly because of the negative impact that trying to achieve those quotas can have on taxpayers.

Managers from IRS' National Office and the Central and Southeast Regions told us that the prohibition against the use of collection statistics does not constrain their efforts to evaluate their employees. In place of collection statistics, IRS uses seven elements to measure the performance of Collection employees. The elements measure whether information was secured and verified, delinquency causes were identified, workload was properly managed, communications were courteous, and other duties and assignments were effectively carried out.

In light of IRS' satisfaction with its evaluation procedures, the relatively low number of reported cases involving the use of collection statistics, and IRS' actions to counsel staff involved in those incidents, we believe IRS has established adequate controls to meet the requirements of the act.

## Congress May Wish to Clarify How Much Time Taxpayers Have to Correct Levy Errors

Section 6236 of the Taxpayer Bill of Rights requires banks and financial institutions to hold levied funds for 21 days before the funds are forwarded to IRS. Congress created the holding period to give taxpayers an opportunity to notify IRS of errors with respect to levied accounts. The provision was inserted following a number of publicized incidents in which banks improperly forwarded funds to IRS that belonged to children of the taxpayers who owed taxes—the so-called “kiddie levy.”

At that time, no statistics existed on how frequently IRS levied funds in error. We recently reported that IRS erroneously levied assets in 12,400, or 2.8 percent, of 448,200 levies it issued during fiscal year 1986. We recommended processing changes to reduce the error rate further.<sup>2</sup>

In May 1990, IRS' Internal Audit reported that many banks and financial institutions were not observing the 21-day holding period and were forwarding levied funds to IRS soon after receiving the notice of levy. Its review of 1,782 levies received at 3 IRS service centers in August and September 1989 showed that 350, or 20 percent, were remitted before

<sup>2</sup>Tax Administration: Extent and Causes of Erroneous Levies (GAO/GGD-91-9), Dec. 21, 1990.

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21 days. IRS and the banking community subsequently mounted a publicity campaign to alert financial institutions to the 21-day requirement.

Our sample of 224 levy cases at 2 service centers (one of which, Atlanta, was included in the Internal Audit sample) indicates that the publicity campaign helped. Of the 224 levy cases we reviewed, we identified only 5 instances, or 2 percent, in which banks had not held levied funds for 21 days. The predominant reason given by the banks for premature release of the levies was that bank personnel were not aware of the 21-day holding requirement.

We also determined that taxpayers did not have the full 21 days to correct an erroneous levy. This problem occurred because, under IRS processing procedures, IRS sends taxpayers a notice concerning a bank levy about a week after mailing the notice to the bank, leaving the taxpayer with about 14 days to correct errors. The purpose of this procedure is to reduce the possibility that taxpayers might withdraw funds before the bank has the opportunity to freeze the taxpayers' accounts, according to IRS officials. IRS officials said that the statutory requirement is only intended to ensure that banks hold funds for 21 days after they receive a levy notification and does not require IRS to allow 21 days for taxpayers to resolve any questions about the levy.

Congress' intent concerning the amount of time to be allotted to taxpayers for resolving levy questions is not explicitly stated in the act or the legislative history. We do not know if 14 days is enough time for taxpayers to correct any errors regarding their accounts, and we understand why IRS would want to send a levy notice to the bank before sending it to taxpayers. However, if Congress' intent was for taxpayers to have a full 21 days, the current provision does not clearly indicate that objective.

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## IRS Took Longer Than Expected to Begin Full Implementation of the Provision for Recovery of Administrative Costs

Section 6239 of the act states that a taxpayer may be awarded a settlement for reasonable administrative costs in connection with an administrative proceeding with IRS and for reasonable litigation costs in connection with a court proceeding involving the determination, collection, or refund of any tax, interest, or penalty.

Provisions for recovery of litigation costs have been in effect for several years; however, procedures needed to be developed to process claims for administrative costs. IRS began full implementation of the provision to award administrative costs in January 1991. Until that time taxpayers

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were encouraged to wait until regulations were published before submitting their claims for administrative costs. For those instances in which taxpayers refused to wait, claims were processed by IRS using proposed procedures. IRS completed the interim procedures and began using them to process all claims in January 1991, about 15 months later than IRS' initial September 1989 target for issuing the regulations. IRS expects to issue the final regulations in the near future.

IRS does not know either how many settlements were made or how many taxpayers would have filed claims to recover costs if regulations had been in place before March. An IRS official in the appeals function told us they had received inquiries regarding at least 10 potential claims.

IRS officials gave four reasons for missing the September 1989 target:

- IRS required more time than expected to resolve policy issues involving the definition of "recoverable costs."
- Three different project coordinators were responsible for developing the regulations.
- IRS did not have a statutory time limit to complete the regulations and gave higher priority to completing other regulations that affected a larger number of taxpayers.
- Coordination among the different IRS functions in charge of implementing the provision caused the latest delay.

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## Conclusions

IRS faces a continual challenge in implementing the Taxpayer Bill of Rights. We believe that most IRS employees work diligently to treat taxpayers fairly and equitably. However, in an organization of 120,000 employees at over 700 locations tasked with administering a complex set of tax laws, it is likely that some taxpayers will not be accorded the treatment to which they are entitled. For this reason, IRS needs to continually emphasize the act's requirements and measure performance in meeting its intent.

Generally, we believe IRS has made a reasonable effort to implement the Taxpayer Bill of Rights. For example, IRS has helped many people who applied for relief under the Taxpayer Assistance Order Program and has designed controls to guard against the use of collection statistics to evaluate employees. We also identified several areas that IRS is pursuing, namely (1) ensuring that tax examiners use current software when generating taxpayer letters, (2) examining the opportunity for more taxpayers to enter into installment agreements, and (3) issuing final

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regulations to allow taxpayers to recover costs in administrative proceedings.

At the same time, we believe that there are shortcomings in IRS' implementation of the Taxpayer Bill of Rights. First, IRS does not know whether its employees are identifying taxpayers who need relief under the Taxpayer Assistance Order Program. Second, it does not emphasize to taxpayers the importance of reading Publication 1 before they attend audit interviews and, as a result, may not be doing all it can to help taxpayers understand their rights. Finally, the lack of procedures for canceling district office-monitored installment agreements creates opportunities for inconsistent treatment of taxpayers.

We also identified two instances in which the Internal Revenue Code, or IRS' interpretation of the Code, may prevent full implementation of the Taxpayer Bill of Rights. First, IRS officials believe that they need clarifying legislation to assist them in withdrawing notice of a tax lien before a tax obligation has been satisfied. Second, our work showed that taxpayers do not have 21 days to correct errors on levies, because IRS interprets the 21-day holding period to apply to banks, not taxpayers. Neither the legislative history nor the act specifically addresses whether taxpayers should have 21 days to resolve levy errors.

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## Recommendations to the Commissioner of Internal Revenue

To improve implementation of the 1988 Taxpayer Bill of Rights, we recommend that the Commissioner of the Internal Revenue Service take the following actions:

- Develop testing procedures to determine whether IRS employees successfully recognize taxpayer hardship situations and, when hardships exist, initiate applications for assistance on the taxpayer's behalf. If the tests show that employees are having difficulty accomplishing this task, IRS should provide corrective training and/or additional aids. Finally, employee testing should be continuous in order to pinpoint future problem areas and to provide a baseline against which to measure progress.
- Emphasize the importance of reading Publication 1 when contacting taxpayers by telephone or through correspondence before taxpayers have an audit interview.
- Develop standard procedures for district offices to use when advising taxpayers that their installment agreements are subject to cancellation. This action should help resolve the problem of inconsistent treatment of

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taxpayers when their installment agreements are monitored by service centers or by district offices.

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## Matters for Congressional Consideration

Congress may wish to clarify the Internal Revenue Code to specifically provide IRS authority to withdraw a notice of a lien when it is in the best interests of the taxpayer and the government.

In addition, in light of the uncertainty over whether taxpayers should be given 21 days to correct an erroneous levy under section 6332(c) of the Internal Revenue Code, Congress may wish to clarify this issue.

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## Agency Comments

The IRS Commissioner provided written comments on a draft of this report. The Commissioner agreed with our recommendations to him and outlined steps that would be taken to implement them. (See appendix III.)

The Commissioner's response to our draft report provided updated information about IRS' authority to release notices of liens on taxpayers' property and on the current procedures for allowing taxpayers to recover administrative costs—information we incorporated into this final report.

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We are sending copies of this report to various congressional Committees, the Secretary of the Treasury, the Commissioner of IRS, the Director of the Office of Management and Budget, and other interested parties. We will also make copies available to others upon request.

Major contributors to this report are listed in appendix IV. Please contact me on (202) 275-6407 if your or your staff have any questions.

Sincerely yours,



Jennie S. Stathis  
Director, Tax Policy and  
Administration Issues

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## Abbreviations

IRS	Internal Revenue Service
PROMIS	Problem Resolution Office Management Information System
TAO	Taxpayer Assistance Order



# Summary of Provisions in the 1988 Taxpayer Bill of Rights

Provision	Act section <sup>a</sup>	Required implementation date
Disclosure of Taxpayers' Rights Requires Internal Revenue Service (IRS) to prepare a simple statement of taxpayer rights. Must be provided to all taxpayers contacted regarding the determination and collection of taxes.	6227	May 9, 1989
Procedures Involving Taxpayer Interviews Defines taxpayer and IRS responsibilities regarding interviewing and audio recordings of in-person interviews.	6228	Feb. 8, 1989
Taxpayers' Reliance on IRS Written Advice Requires IRS to abate penalty or additional tax attributable to erroneous written advice of IRS if the advice was requested in writing, was relied upon by the taxpayer, and the taxpayer provided adequate information.	6229	Jan. 1, 1989
Taxpayer Assistance Orders Grants a Taxpayer Ombudsman authority to issue assistance orders when taxpayers suffer or are about to suffer significant hardship as a result of the manner in which IRS laws are administered.	6230	Jan. 1, 1989
Basis for Evaluation of IRS Employees Prohibits IRS from using records of tax enforcement results to evaluate employees or to impose production quotas.	6231	Jan. 1, 1989
Procedures Relating to IRS Regulations Requires that temporary regulations be issued as proposed regulations and expire within 3 years after they are issued. It also requires that regulations be submitted to the Small Business Administration for comment before promulgation.	6232	Nov. 20, 1988
Content of Tax Due, Deficiency, and Other Notices Requires that certain notices to taxpayers describe the basis for and identify the amounts of taxes due as well as interest and penalties.	6233	Jan. 1, 1990
Installment Payment of Tax Liability Provides statutory authority for installment agreements and specifies reasons to amend or revoke such agreements.	6234	Nov. 10, 1988
Assistant Commissioner for Taxpayer Services Establishes an Assistant Commissioner for Taxpayer Services and requires a joint annual report with the Taxpayer Ombudsman to Congress on the quality of services provided.	6235	May 9, 1989
Levy and Distraint Revises the tax laws relating to notice of intent to levy, exemptions from levy, limitations on levy, release of levy, and the sale of seized property. Extends the period during which a levy may not be made following notice from 10 to 30 days. It also requires banks to hold levied funds 21 days before remitting them to IRS.	6236	July 1, 1989 (levies) Jan. 1, 1989 (sales)
Review of Jeopardy Levy and Assessment Procedures Grants concurrent jurisdiction to the Tax and U.S. District Courts to determine whether a jeopardy assessment was reasonable.	6237	July 1, 1989
Administrative Appeal of Liens Requires IRS to provide an administrative appeal procedure for liens. If the notice of lien was erroneous, a certificate of release must be issued.	6238	July 12, 1989
Awarding of Costs and Certain Fees in Administrative and Court Proceedings Authorizes the recovery of costs incurred on or after the receipt of an appeals decision or the date of the statutory notice of deficiency, whichever is earlier.	6239	Nov. 10, 1988

(continued)



**Appendix I  
Summary of Provisions in the 1988 Taxpayer  
Bill of Rights**

<b>Provision</b>	<b>Act section<sup>a</sup></b>	<b>Required implementation date</b>
Civil Cause of Action for Damages Sustained Due to Failure to Release Lien Allows taxpayers to sue in District Court for damages resulting when IRS fails to release a lien.	6240	Jan. 1, 1989
Civil Cause of Action for Damages Due to Unauthorized IRS Actions Permits taxpayers to sue if IRS recklessly or intentionally violates the law.	6241	Nov. 10, 1988
Assessable Penalty for Improper Disclosure or Use of Information by Preparers Provides for a civil penalty of \$250 for each unauthorized disclosure or use of taxpayer information by preparers.	6242	Dec. 31, 1988
Jurisdiction to Restrain Certain Premature Assessments Grants the Tax Court concurrent jurisdiction to restrain assessments and collections for some cases pending before the court.	6243	Nov. 10, 1988
Jurisdiction to Enforce Overpayment Determination Grants the Tax Court jurisdiction to order the refund, with interest, of any overpayment if IRS fails to refund within 120 days an overpayment determined by the court.	6244	Feb. 8, 1989
Jurisdiction to Review Sale of Seized Property Grants the Tax Court jurisdiction during the pendency of proceedings before it is to review an IRS determination to sell seized property.	6245	Feb. 8, 1989
Jurisdiction to Redetermine Interest on Deficiencies Authorizes taxpayers to request the Tax Court to reopen proceedings to redetermine the interest charged by IRS on a deficiency.	6246	Nov. 10, 1988
Jurisdiction to Modify Decisions in Estate Tax Cases Gives the Tax Court authority to reopen an estate tax proceeding in order to modify decisions regarding deductions for interest.	6247	Nov. 10, 1988

<sup>a</sup>Refers to sections of the Technical and Miscellaneous Revenue Act of 1988, which contained the Omnibus Taxpayer Bill of Rights as Subtitle J (P.L. 100-647).

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# Methodology Used in Reviewing IRS' Implementation of the Taxpayer Bill of Rights

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For this report, we examined Taxpayer Bill of Rights provisions involving (1) the Taxpayer Assistance Order Program, (2) disclosure of taxpayer rights, (3) procedures involving taxpayer interviews during audits, (4) installment payment of tax liabilities, (5) the basis for evaluating IRS Collection employees, (6) the 21-day holding period for levied funds, and (7) the recovery of costs and fees from administrative and court proceedings.

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## Taxpayer Assistance Orders

We randomly selected and reviewed a sample of 146 applications for Taxpayer Assistance Orders from 4 locations to determine whether IRS had provided taxpayers with hardship relief. The sample applications were drawn from 1,194 applications processed during fiscal year 1990 at the Cincinnati and Atlanta district offices and service centers. In reviewing our sample, we determined the reason for the application (expedited refund, release of levy or lien, etc.) and IRS' response to the application. We also obtained IRS statistics on closed application cases for fiscal years 1990 and 1991 to determine which IRS function resolved the cases, how long it took, and whether assistance rates varied by IRS region. Finally, we spoke with IRS managers in the Taxpayer Services and Ombudsman offices to determine the status of efforts to improve the rate of hardship identifications by IRS assistors at toll-free telephone call sites. We also followed up on a recommendation contained in an IRS Internal Audit report, Implementation of the Taxpayer Bill of Rights, dated May 1, 1990.

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## Disclosure of Taxpayer Rights

We discussed IRS' method of informing taxpayers of their rights with IRS National Office managers in the Taxpayer Services, Collection, and Examination functions. We also discussed this issue with members of the Association of Enrolled Agents and the American Institute of Certified Public Accountants.

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## Procedures Involving Taxpayer Interviews

We interviewed a judgmental sample of 25 revenue agents from IRS' Atlanta and Cincinnati district offices to determine if, when, and how they notify taxpayers of their rights during the audit process. We focused on IRS practices in allowing taxpayers to be represented at interviews instead of attending themselves. We also discussed this issue with the Association of Enrolled Agents and the American Institute of Certified Public Accountants.

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## **Installment Payment of Tax Liabilities**

We obtained IRS data on installment agreement inventories for fiscal years 1986 through 1990, examined IRS procedures for granting and terminating installment agreements, and discussed these procedures with IRS National Office, district office, and service center managers.

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## **Basis for Evaluating IRS Collection Employees**

We discussed with IRS National and district office managers the procedures for evaluating employees and preventing the use of prohibited data. We also reviewed the quarterly certifications for fiscal year 1990 to determine the type and volume of events reported as violations of the provision.

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## **Holding Period (21 Days) For Levied Funds**

We reviewed a sample of 224 levy cases from the Cincinnati and Atlanta service centers to determine the number of days that the banks held levied funds after receiving a levy notice from IRS. We also followed up on a recommendation contained in an IRS Internal Audit report, Implementation of the Taxpayer Bill of Rights, dated May 1, 1990. Our sample was judgmental and selected from 1 day's levy receipts processed at the Cincinnati service center in February 1991 and the Atlanta service center in March 1991. We also examined IRS' legal position concerning how much time the act intended to allow for a taxpayer to correct any errors.

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## **Recovery of Costs and Fees**

We discussed the development of procedures for recovering fees and costs with IRS National Office managers in the Appeals Office and the Office of the Chief Counsel. We also determined from IRS sources if any claims for fees and costs had been processed.

# Comments From the Internal Revenue Service



COMMISSIONER

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

Oct - 6 1991

Ms. Jennie S. Stathis  
Director  
Tax Policy and Administration Issues  
General Government Division  
United States General Accounting Office  
Washington, DC 20548

Dear Ms. Stathis:

We have reviewed your recent draft report entitled, "IRS' Implementation of the 1988 Taxpayer Bill of Rights".

Generally, we are pleased with the report's findings concerning our efforts to implement the Taxpayer Bill of Rights. We also agree with the report's recommendations to enhance our implementation of the Act by 1) determining the extent to which IRS employees are identifying taxpayers who need relief under the Application for Taxpayer Assistance Order Program, 2) further emphasizing to taxpayers the importance of reading Publication 1 before attending audit interviews, and 3) developing uniform procedures to advise taxpayers that their installment agreements are subject to cancellation.

Our detailed comments on the specific report recommendations are enclosed. These comments also include some general comments regarding the report text. If possible, we would encourage you to use the FY 91 statistical data on the Application for Taxpayer Assistance Order program which have been provided to your staff informally along with technical comments.

Best regards.

Sincerely,

Fred T. Goldberg, Jr.

Enclosure

IRS COMMENTS ON RECOMMENDATIONS  
CONTAINED IN GAO DRAFT REPORT ENTITLED  
"IRS' IMPLEMENTATION OF THE  
1988 TAXPAYER BILL OF RIGHTS"

Recommendation: Develop testing procedures to determine whether IRS employees successfully recognize taxpayer hardship situations and, when hardships exist, initiate applications for assistance on the taxpayer's behalf. If the tests show that employees are having difficulty accomplishing this task, corrective training and/or additional aids need to be provided to them. Finally, the testing should be continuous in order to pinpoint future problem areas and to provide a baseline against which to measure progress.

Comment:

We agree with the recommendation. Our Taxpayer Service Division and the Problem Resolution Program office have been working together to develop test questions for Taxpayer Assistance Orders (TAOs). This effort is in the planning stages and full implementation in Taxpayer Service is expected in 1992.

We should note, however, that major problems in testing procedural issues such as TAOs involve the validity of the test questions; the difficulty of testing issues requiring research of the taxpayer's account (e.g. for refund inquiries); and the sample size necessary for valid testing and evaluation. Taxpayer inquiries which might involve hardship issues are a relatively small segment of the procedural and technical areas which can be tested.

Since TAOs may also be submitted by IRS employees in other areas such as Collection, Examination and Returns Processing, coordination is necessary with all organizations where contacts with taxpayers may bring to light hardship situations. Monitoring and follow-up actions relating to TAOs should ensure consistent Servicewide treatment.

We would like to clarify the report discussion (page 13) regarding the Collection function implementation of a testing program for the Automated Collection Sites (ACS). Although Collection can implement a testing program, it will not use live taxpayer cases to monitor ATAO test calls because the Service employee receiving the test call will not know that the caller is not the actual taxpayer and could, as a result, take action on that account. The action could result in inappropriate enforcement, e.g., filing a lien, serving a levy, etc. Therefore, dummy data will be used for test call purposes. However, such a complex computerized program could not be obtained for at least two years, and would need to compete with other enhancement proposals for limited implementation resources.

Recommendation: Emphasize the importance of reading Publication 1 when contacting taxpayers by telephone or correspondence prior to an audit interview.

Comment:

We agree with the recommendation and, while we already include a copy of Publication 1 with each examination notice, will revise the audit notification letters to include (possibly in bold type): "Enclosed please find Publication 1, Your Rights as a Taxpayer. This publication advises you of your rights under the examination process. Please read this publication. Address any questions you may have to the examining officer at or before the audit interview."

Recommendation: Develop standard procedures for district offices to use when advising taxpayers that their installment agreements are subject to cancellation. This will address the opportunities for inconsistent treatment of taxpayers depending on whether they have installment agreements monitored by service centers or district offices.

Comment:

While each installment agreement form currently provides that the agreement may be cancelled for failure to comply with the terms of the agreement, we do not object to the recommendation to develop standard procedures for district offices to use when advising taxpayers that their installment agreements are being cancelled. Procedures for all district employees who monitor installment agreements will be written and incorporated into the Internal Revenue Manual (IRM). The implementation of these procedures will ensure consistent treatment of taxpayers regardless of whether installment agreements are monitored by our district offices or by our service centers.

GENERAL COMMENTS

-- In the report narrative regarding Section 6322, concerning when a lien arises, (page 5) GAO discusses our inability to withdraw a Notice of Federal Tax Lien. There have been some recent administrative changes that should be noted. We have worked closely with our Chief Counsel's office to determine whether this could be accomplished under current law. On October 22, 1991, we issued new procedures which now allow for withdrawing Notices of Federal Tax Liens in certain instances. However, we believe we still need clarifying legislation so that creditors will know that IRS' lien no longer has priority in any financial dealings with the taxpayer.

-- In issuing guidance we gave priority to regulations implementing sections of the Taxpayer Bill of Rights that would affect the largest number of taxpayers. Regarding the report's comments on the regulations under Section 7430, concerning the awarding of attorneys fees, we publicized, early on, administrative procedures that could be used in making claims under this section until formal guidance is published. Also, formal interim procedures in the form of amendments to the Internal Revenue Manual were made to give guidance to IRS employees handling these claims. While we had hoped to publish the section 7430 regulations earlier, we believe taxpayers did have helpful guidance on a timely basis.

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# Major Contributors to This Report

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