

**Office of Chief Counsel
Internal Revenue Service
memorandum**

CC:SB:SAHaller
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to: Martin Malarkey, III, Chief, Fraud Policy & Operations

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(Small Business/Self-Employed)

subject: FTA's Role in Civil and Criminal Investigations

You have requested that our office provide you with a discussion of the Fraud Technical Reviewer's role in civil and criminal fraud investigations, desiring a focus on which legal standards revenue agents and revenue officers as well as their advisors must observe when developing potential fraud referrals. Since you expressed an interest in having case citations, we have placed the first citation of each case in bold for your convenience.

Background

Though the position of the fraud technical advisor ("FTA") is relatively new, the responsibilities have been assigned to at least two other similar coordinators in the past. Prior to the IRS's structural change implemented under RRA '98, the Service assigned the FTA's responsibilities to district fraud coordinators ("DFCs"). The DFCs served as "a cross functional resource person and liaison among compliance functions." See Internal Revenue Manual ("IRM") § 104.2.1.1 (6) (5/19/1999). Employees were to speak with their managers at their "earliest possible convenience" in order to obtain guidance on how to proceed. *Id.* The manual provisions contemplated the involvement of DFCs, and their review for concurrence was required. See IRM § 104.2.3.4 (7). The DFCs, however, did not have the ultimate approval authority, and functioned as a final set of eyes to ensure a quality referral before forwarding the case to CID. See IRM § 104.2.3.4 (8).

Upon reorganization of the Service into divisions, SB/SE created a new function, the National Fraud Program ("NFP"), in order to centralize and formalize fraud development and referrals. This function was part of SB/SE Compliance. Part of that systemization included the creation of a field component of fraud referral experts to aid revenue agents and revenue officers in the development of their fraud cases. Originally, the field function was divided into five groups, each with a manager who oversaw fraud referral specialists ("FRSs"), the renamed version of DFCs under the

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nationwide system. The procedures for conferring with DFCs and submitting referrals through DFCs to CID were essentially unchanged with the new system.

In 2003, the NFP instituted new changes to the referral program. The changes were designed to require the FRS's involvement in all potential criminal referrals as well as potential civil fraud penalty cases. See IRM § 25.1.1.1 (6) (1/1/2003).¹ Early involvement of the FRS was also emphasized in the new procedures. *Id.* Furthermore, the new procedures required not only the FRS's review of the case file and fraud referral, but it also required an affirmative approval by the FRS's group manager before the referral could be forwarded to CID. See IRM § 25.1.3.2 (7) & (8).

Additional changes were implemented to the program after the IRM procedures were last changed. Specifically, in 2004 the fraud program was removed from SB/SE Compliance and became part of a newly-created Fraud/BSA function, and the FRS position was redesignated as Fraud Technical Advisor (FTA). Additionally, with the success and expansion of the fraud program, two additional groups were added to the field component in 2006, increasing the number of FTA groups to seven.

Case Law on Improper Conduct of Agents in Case Development

I. Constitutional Standards

The IRS is charged with investigating and in the proper instances asserting civil fraud or, alternatively, referring for criminal prosecution cases that exhibit indicators of fraud. *Cf.* Internal Revenue Code ("IRC") § 6663 *and* § 7201 *et seq.* Criminal fraud cases may begin in a variety of ways: a fraud referral from the civil function, a tip from an outside source or informant, or a special agent's investigation of suspicious activity. See Michael I. Saltzman, IRS PRACTICE & PROCEDURE ¶ 12.03 (2007). Indicators of civil fraud often arise during the context of an otherwise routine civil examination, though cases brought to CID's attention first are sometimes referred to the civil division for further development when the case has insufficiently developed indicators of fraud. The dual investigative process and the inherent problem of dividing civil and criminal responsibilities within a single federal agency present delicate boundaries in permissible conduct between the two functions in developing fraud cases.

The seminal case delineating this dichotomy is ***United States v. Tweel*, 550 F.2d 297 (5th Cir. 1977)**. In *Tweel*, the defendant had been involved in a prior IRS audit, in which a special agent was also temporarily involved, though no criminal investigation or indictment resulted from that audit. *Id.* at 298. At the beginning of a new civil audit, the defendant's accountant inquired from the revenue agent whether a special agent was involved in the current case, and the agent replied that no special agent was involved. *Id.* In reality, the examination had been requested by the

¹ All subsequent IRM citations to the Fraud Manual are to the most recent version, which was last published on 1/1/2003, unless specifically noted.

Department of Justice's Organized Crime and Racketeering Section, a criminal investigation function. *Id.* Tweel challenged the admissibility of the evidence provided to the revenue agent as a violation of his Fourth Amendment rights against improper search and seizure. *Id.* Consent induced by "deceit, trickery or misrepresentation of [an] Internal Revenue agent" is unreasonable under the Fourth Amendment. *Id.* at 299. In analyzing the facts of *Tweel*, the court found that the revenue agent was merely acting as a civil front to a criminal investigation and did affirmatively deceive the defendant, and the court held that the evidence provided by the defendant to the civil revenue agent must be suppressed. *Id.* at 299-300.

Tweel represents the egregious case of the government sending its civil arm to conduct its criminal investigation, and obtaining information from the taxpayer through trickery and deceit. However, the civil and criminal dichotomy does not end where *Tweel* abuses stop. As stated earlier, the IRM requires employees to stop civil investigations upon discovering firm indicators of fraud. See IRM § 25.1.3.2 (1). Courts generally agree that the IRS's civil agents become an investigative arm of its criminal function when the agents continue to investigate a taxpayer after receiving evidence of firm indicators of fraud. See, e.g., *United States v. Grunewald*, 987 F.2d 531, 534 (8th Cir. 1993) ("[O]nce an IRS agent has developed "firm indications of fraud" in a civil investigation, the case must be turned over to the CID."); see also *United States v. Peters*, 153 F.3d 445, 452 (7th Cir. 1998), cert. denied, 525 U.S. 1070 (1999), 119 S.Ct. 801, 142 L.Ed.2d 663; *United States v. McKee* 192 F.3d 535, 542 (6th Cir. 1999). Generally, the determination of when there are firm indications of fraud, and thus when to stop an investigation and refer a case to CID, is a matter within the revenue agent's discretion, and courts recognize that a stringent termination standard would hinder audits without providing additional constitutional safeguards. See, e.g., *Peters*, 153 F.3d at 455-56 (citing to the IRM, distinguishing between first and firm indicators of fraud, and agreeing that agents must use discretion in suspending a civil investigation at the right moment); *Grunewald*, 987 F.2d at 534 ("If IRS agents, exercising sound discretion and good judgment, fear suppression of evidence where no intentional, prejudicial misrepresentation is afoot, civil audits will prematurely and unnecessarily be referred to CID.").

Courts have nevertheless expressed some concern about the self-interested nature of the discretionary decision to terminate an investigation. The court in *Peters* characterized the dilemma as follows:

[T]he "firm indications of fraud" standard is a difficult standard for federal courts to apply because it is inherently vague and depends, in large part, on the good faith and professional judgment of the revenue agents conducting the investigation at issue. When applying this standard, federal courts must navigate between two perils. On the one side, courts face the Scylla of judicial micromanagement of the inner workings of an administrative agency, a peril recognized by many of the courts that have addressed this issue. Yet, on the other side, courts face the Charybdis of

judicial abdication of their Article III duty to protect the constitutional rights of criminal defendants.

153 F.3d at 453. The Sixth Circuit has expressed similar reservations:

It is particularly troubling that almost all of the government's evidence against the McKees was practically handed to the CID on a silver platter as a result of the civil investigation We recognize that revenue agents are not charged with criminal law enforcement. Nevertheless, as this case exemplifies, the reality is that revenue agents sometimes perform the same functions of evidence gathering as their CID counterparts, and such evidence is often admissible at a criminal trial.

McKee, 192 F.3d at 544 (citations omitted). The court further stated that "we do encourage revenue agents to err on the side of protecting taxpayers' constitutional rights when they conduct their investigations." *Id.* Clearly, revenue agents and officers as well as the FTAs who advise them must walk a fine line between vigorous investigation and overzealous, and even unconstitutional, investigations.

Most recently, the role of an FTA was highlighted in an evidence suppression hearing. In *United States v. Rutherford*, 2007 WL 1703521 (E.D. Mich.), the FTA played a crucial role in a criminal fraud referral. After an article in the Detroit Free Press questioning donations from MES to political campaigns, the IRS initiated an investigation of a non-profit organization called Metro Emergency Services ("MES"). *Id.* at 1. A TE/GE revenue agent was initially assigned to perform the audit. *Id.* Because of the complexities involved in the case, an audit team was assembled, and the FTA took an early role as the coordinator of the various functions examining MES and the related parties. *Id.* at 2-3; *cf.* IRM 25.1.1.1 (6) ("The FRS (FTA) serves as a resource person and liaison to compliance employees in all the business organizations."). MES was controlled by Jon Rutherford, its president, and his wife Judith Bugaiski. *Id.* at 1. MES had been delinquent in employment tax returns and payments for many years, which along with excess compensation and questionable rental payments, would be the focus of the examination. *Id.* at 1-2.

During the examination, the FTA prepared a memorandum to the agents and revenue officer assigned to the case, detailing what steps must be taken to develop a quality referral. *Id.* at 3-4. Though the court placed some emphasis on the unique nature of the coordinated investigation, the court did not find that these activities were taken in bad faith nor that the conduct arose to misrepresentations to the defendants of the nature of the investigation. Instead, the court's attention was primarily focused on the defendants' ability to explain MES's unfiled employment tax returns as well as the unclear business transactions between MES, its landlord and Rutherford. Agent Carene, an SB/SE examiner assigned to the case, met with the defendants' representative on December 3, 2003. *Id.* at 5. The representative provided some requested documentation, but Carene asked to meet with the defendants to speak with

them about the discrepancies in person, telling them that it will help move the examination along. *Id.* On December 16, 2003, Carene met with the defendants' representative along with Rutherford and Bugaiski. *Id.* The defendants had brought some documents with them, and Carene questioned them about the documents and about the unfiled returns. *Id.* At some point during the interview, Rutherford slammed his fist on the table and asked to leave. *Id.* Carene attempted to reschedule a follow up interview in early 2004, but she was rebuffed in each attempt. *Id.* at 8. Finally, she issued summonses to Rutherford and Bugaiski, personally and as representatives of MES and the landlord partnership, to appear before her to present books and records and offer testimony. *Id.* The defendants complied with the summons and met with Carene and other agents on June 17, 2004 and several occasions afterwards. From these meetings, the IRS received substantial information from the defendants that led to the IRS's criminal fraud referral in July 2004. *Id.* at 9-10.

In analyzing the defendants' challenge to the IRS's use of evidence obtained from the summonses, the court focused on the purpose of the referral procedures. *Id.* at 13. The court noted that "when there are first indicators of fraud the taxpayer is given the opportunity to explain." *Id.* This opportunity is of particular importance since "an assessment of the taxpayer's intent is the most critical element in a revenue agent's determination of whether "firm indications of fraud" exist in any particular case." *Id.* (citations omitted). After recounting the most pertinent facts in the court's mind, it concluded that firm indicators of fraud had been developed *before* the IRS summons was issued, since the IRS had provided the taxpayer with an opportunity to explain the discrepancies, and when the taxpayer had failed to do so, the IRS agent should have referred the case to CID for further criminal development. *Id.* Thus, the court concluded that continuing the investigation by issuing summonses was a constitutional violation. *Id.* at 14.

Although a few summons cases are discussed below, the outcome in *Rutherford* appears to be unique. No other court has held that the IRS's exercise of summons authority to obtain answers to unanswered questions amounted to an abuse of the firm indications rule. However, we note that even when the IRS is found to have failed to refer a case even after firm indicators of fraud are established, a defendant must demonstrate that deceit, along with a threat or promise, coerced the defendant's participation in the continuing examination. As the Seventh Circuit has stated:

[T]he defendant must show "affirmative misrepresentations," "affirmative deceit," or "affirmative misleading", but it would be a mistake to infer that such a showing *without more* requires exclusion of incriminating statements. Proof of deceit must be linked up to the constitutional standard of threat or promise. Deceit by itself is neither, though it can be the basis of either

***United States v. Kontny*, 238 F.3d 815, 819 (7th Cir. 2001)**(emphasis in original). The court summarized this point, stating, "A failure to terminate a civil investigation when the

revenue agent has obtained firm indications of fraud does not without more establish the inadmissibility of evidence obtained by him in continuing to pursue the investigation." *Id.* at 820. Thus, even when the government is faced with an adverse factual determination with respect to when the IRS had firm indicators of fraud, such as in *Rutherford*, the government may still argue that it did not use deceit, nor did it threaten or promise so that suppression is not warranted.

II. Violations of the Internal Revenue Manual

In addition to the constitutional arguments summarized above, defendants have argued that a revenue agent's failure to follow the IRM's provisions constitutes a *per se* constitutional violation, or at least some order of violation below that, warranting a sanction or perhaps even suppression of the evidence. The seminal case on this point is *United States v. Caceres*, 440 U.S. 471 (1979), 99 S.Ct. 1465, 59 L.Ed.2d 733. In *Caceres*, the defendant challenged the use of incriminating recordings obtained from conversations between an IRS agent and the defendant. *Id.* at 743-44. The Court noted that the use of a recording device by IRS agents is not a violation of the Constitution or federal law. *Id.* at 744. According to an Attorney General Memorandum, the IRS's procedures required prior authorization before an agent could record a conversation with a taxpayer. *Id.* The agent failed to obtain the approval in sufficient time for some conversations with the defendant, while he obtained the approval for others. *Id.* at 746-49.

In reviewing the IRS Manual, the key question was whether compliance with the procedures is required under constitutional or federal law. *Id.* at 749. The court first held that an agency's violation of its own regulations, without more, is not a violation of a defendant's constitutional rights. *Id.* at 749-52 (contrasting the facts with those addressed in *Bridges v. Wixon*, 326 U.S. 135 (1945), 65 S.Ct. 1443, 89 L.Ed. 2103, and concluding that the violations of the agency's regulations did not raise constitutional questions.). In *Caceres* the defendant also argued that a rigid exclusionary rule should be applied to violations of agency regulations in order to protect individuals' privacy. *Id.* at 755. In rejecting this approach, the Supreme Court noted that a rigid exclusionary rule with respect to non-constitutional issues would discourage the executive branch from adopting protective rules, and the Court supported a more permissive role for federal agencies, even if some abuse of the intended purpose of the procedures and regulations might ensue. *Id.* at 755-56.

Although *Caceres* does stand for the principle that an agency's violations of its own regulations cannot be a *per se* violation of a defendant's rights, several circuits have addressed the issue of whether a violation of the Fraud Manual provisions, especially a failure to refer a case to CID immediately upon receiving evidence of firm indications of fraud, violates a defendant's rights. A few circuits have declined to extend constitutional protection to the Fraud Manual provisions. For instance, the Fourth Circuit, citing to *Caceres*, rejected a defendant's appeal for protection from perceived

abuses of the IRS Manual. ***Groder v. United States*, 816 F.2d 139, 142 (4th Cir. 1987)**. The court stated that:

[In *Caceres*], the [Supreme] Court distinguished internal rules of agency procedure from regulations promulgated pursuant to statutory directive for a taxpayer's benefit. Section 4565.21² is in the former category. *It confers no substantive rights or privileges upon taxpayers. See, e.g., United States v. Mapp*, 561 F.2d 685, 690 (7th Cir. 1977); *United States v. Lockyer*, 448 F.2d 417, 421 (10th Cir. 1971); *United States v. Kaatz*, 705 F.2d 1237, 1243 (10th Cir. 1983); *United States v. Arthur Andersen & Co.*, 43 A.F.T.R.2d 79-1161, 79-1162 (2d Cir. 1979).

***Groder*, 816 F.2d at 142 (emphasis added)**. A defendant raised a similar argument to the Fifth Circuit, but the panel declined to address the constitutional question presented, concluding that the IRS did not violate its manual provisions but noting the jurisdictions that had rejected the defendant's constitutional arguments. ***See United States v. Powell*, 835 F.2d 1095, 1100-01 (5th Cir. 1988)**.

On the other hand, at least one circuit has concluded that the Fraud Manual's referral criteria are specifically designed to protect taxpayers' constitutional rights. In *McKee*, the Sixth Circuit analyzed not only the Supreme Court's prior decisions but also its own and concluded that a conviction may be overturned where a defendant proves that the IRS violated a Manual provision "designed to protect the constitutional rights of taxpayers." ***McKee*, 192 F.3d at 541 (citing *United States v. Horne*, 714 F.2d 206, 207 (1st Cir. 1983) (per curiam) and *United States v. Leahey*, 434 F.2d 7, 10-11 (1st Cir. 1970))**.

The Sixth Circuit's conclusion on this issue requires clarification and qualification. First, in *Leahey* the First Circuit addressed a failure by IRS special agents to notify a defendant that she was the target of a potential criminal investigation and to inform her of her *Miranda* rights. 434 F.2d at 8. The IRS had recently implemented procedures requiring exactly the kinds of notice that the defendant complained were not provided. *Id.* at 8-9. In analyzing whether the IRS's violation of its procedures could be a basis for a suppression motion, the panel noted that the IRS had publicly determined that *Miranda* warnings should be provided to criminal targets by agents. *Id.* at 10-11. In contrast to *Leahey*, *McKee* involved the pre-criminal stage of a fraud investigation; thus, the reliance on *Leahey* has limited value. We also note that *Leahey* and *Horne* (a civil case) were decided prior to ***Beckwith v. United States*, 425 U.S. 341 (1976)**, in which the Supreme Court distinguished ***Miranda v. Arizona*, 384 U.S. 436 (1966)** and ***Mathis v. United States*, 391 U.S. 1 (1968)** (holding that the *Miranda* warnings must be provided by an IRS revenue agent for a custodial interrogation while the defendant was incarcerated in a state jail). In ***Beckwith***, the Supreme Court expressly refused to

² Section 4565.21 is the precursor to IRM section 25.1.3.2 (1) and required the suspension of any civil investigation in which firm indicators of fraud were present.

extend its holdings in *Miranda* and *Mathis* to a non-custodial interview by IRS special agents in the defendant's home, which interview was characterized by the district court as "entire[ly] . . . free of coercion." 425 U.S. at 344 n.4, 345-47. Since *Leahey* involved a similar, non-custodial interview in the defendant's home, albeit without the warnings given in *Beckwith*, the legal weight of *Leahey* is suspect, since the Court in *Beckwith* held that those warnings were constitutionally unnecessary.

Second, the Sixth Circuit panel relied upon the decisions in *Peters* and *Grunewald* for its decision that a violation of a Manual provision can provide a basis for a challenge to a conviction. In *Peters*, the Seventh Circuit only stated that:

[O]ther courts that have addressed the issue have relied on the "firm indications of fraud" rule as a good benchmark for determining whether the IRS has attempted to conduct a criminal investigation under the guise of a civil audit Indeed, when examining whether a revenue agent has misrepresented the true nature of her investigation, it is appropriate to consider the procedures and regulations under which she functions, including the "firm indications of fraud" rule

153 F.3d at 451-52 (citations omitted). Later 7th Circuit panels to address this issue have not found a constitutional protection in the IRS Fraud Manual procedures when reviewing the *Peters* decision. See, e.g., *Kontny*, 238 F.3d at 819 (citing to *Peters* and declining to follow *McKee*); see also *United States v. Greve*, 2007 WL 1583991 (7th Cir. 2007). In fact, the panel relied upon *Groder*, *inter alia*, for its conclusion that the "firm indications of fraud rule" is a "good benchmark". *Id.* at 452. In *Grunewald*, the Eighth Circuit concluded without discussion that "once an IRS agent has developed 'firm indications of fraud' in a civil investigation, the case must be turned over to CID." 987 F.2d at 534 (citing to the IRS's Manual provisions on fraud development and referral).

On the other hand, in support of the Sixth Circuit's approach, even the Supreme Court limited the scope of its decision in *Caceres*, stating that "[i]n this case, however, unlike *Bridges v. Wixon*, the agency was not required by the Constitution or by statute to adopt any particular procedures or rules before engaging in consensual monitoring and recording." *Caceres*, 440 U.S. at 749-50. In fact, in *Bridges* the Court emphasized that the Attorney General's procedures for deportation hearings were "designed to protect the interests of the alien and to afford him due process of law." 326 U.S. at 152. Thus, if the government's procedures are designed to protect constitutional rights, the government risks the reversal of a conviction or suppression of evidence whenever it fails to adhere to the procedures protecting the individual's interests.

In synthesizing the approaches taken by the various circuits on this question, FTAs should keep in mind the primary purpose of the inquiry: whether a taxpayer's Fourth or Fifth Amendment rights will be violated by continuing a civil investigation. What can be gleaned from the Supreme Court's decisions in *Bridges* and *Caceres* as well as the various circuit opinions is that the IRS cannot rely upon compliance with its

Manual if in fact an IRS agent has deceitfully misled a taxpayer into continued cooperation in a civil investigation that has progressed beyond the civil realm. The importance of the Manual in that process is best characterized by the Sixth Circuit, when it stated, "we believe that the Manual's provisions are, at the very least, relevant in determining whether a taxpayer's constitutional rights have been offended." *McKee*, 192 F.3d at 540-41. Whether the Manual provides substantive rights to challenge an appeal or merely general guideposts for civil agents aimed at preventing violation of constitutional rights, agents who do not follow the Manual provisions do so at the peril of the criminal investigation and conviction.

III. Effect of Case Law on IRS's Summons Power in Fraud Investigations

A few cases have identified a sensitive area with fraud investigations: the IRS's summons power. Courts hesitate to interfere with the IRS's authority to summons taxpayers and third parties to present records and offer testimony in the aid of determining a tax liability or administering the internal revenue laws. In the context of criminal fraud referrals, some taxpayers have asserted that the IRS civil side may not exercise its summons powers if the Service has substantial indicators of fraud.

In *Csotty v. United States*, 2007 WL 627872 (E.D. Mich.), the IRS issued civil summonses to the taxpayer, as an agent and officer of controlled entities. *Id.* at 1. After a hearing a district judge ordered the defendant to comply with the summonses. *Id.* Defendant appealed, arguing that the IRS already had established firm indicators of fraud and thus was operating a covert criminal investigation under a civil guise. *Id.* In addressing the defendant's arguments, the court reminded the defendant that "[t]he IRS may use the summons process to investigate possible civil and criminal conduct so long as the IRS issues [a] summons before it recommends criminal prosecution to the Justice Department and acts in a good faith pursuit of civil tax liability." *Id.* at 2. Although the IRS acts in bad faith if its civil summons is issued "to obtain evidence solely for the use in a criminal investigation," the court noted that a dual purpose is permissible. *Id.* Furthermore, the court rejected the defendant's argument that if the IRS was violating its Fraud referral criteria by delaying a criminal referral, that delay was evidence of bad faith. *Id.* at 3. In analyzing *McKee*, the controlling law in the case, the court noted that the IRS's Manual provisions provided the defendant with constitutional protections, not protection against the IRS's summons authority. *Id.* Of particular note, the court stated that "[t]he fact that the IRS has not made a criminal referral is not *prima facie* evidence of "bad faith". *Id.* at 4. In conclusion, the court explained that "[d]espite defendant's contentions, the IRS is entitled to the opportunity to develop its case in sufficient detail so that it can determine whether a criminal investigation is warranted." *Id.* at 5.

In *Groder v. United States*, the Fourth Circuit faced an appeal to quash an IRS summons, in which the defendant argued that the IRS was violating its Manual provisions and that it was acting in bad faith. 816 F.2d at 140. The court rejected the first argument, stating that "[i]n order to prevail, a taxpayer must show more than a mere

violation of the Internal Revenue Manual. He must show that the government proceeded in bad faith A Manual violation may be relevant to this showing, but it is not conclusive." *Id.* at 142 (citations omitted). In analyzing the conduct of the diligent but inexperienced revenue agent, the court noted that agents should have latitude in developing their cases. *Id.* at 144. Moreover, in affirming the district court's order enforcing the summonses, the court noted that the defendant could not demonstrate bad faith, pointing out that the revenue agent's inexperience did not amount to bad faith. *Id.* at 144-45.

Although the case law demonstrates that a defendant has a high burden to meet to prevent the enforcement of an IRS summons based on the argument that the Fraud Manual's referral criteria are not being followed, the *Rutherford* decision, discussed above, provides ample caution to the IRS to ensure that its agents are not abusing the Manual provisions. The judge in *Rutherford* emphasized in her decision that the IRS had provided the defendants with an opportunity to answer questions, and when they had failed to do so and had expressed opposition to further meetings, the agent should have terminated further investigations. 2007 WL 1703521 at 14.

Conclusion

The IRS's Fraud Manual along with case law provides agents and their fraud technical advisors meaningful discretion in developing cases and determining when there are firm indications of fraud. This discretion, however, is not boundless, and courts will rein in the IRS's conduct if it appears that the IRS has misrepresented, tricked or deceived defendants by threat or promise during an investigation under the guise of a civil audit. In advising the field compliance functions, FTAs should consider the legal points discussed above to prevent unreasonable or unwarranted delay in referring cases that contain firm indicators of fraud.

If you have any questions with the above advice, please feel free to contact Stephen Haller.



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