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CONSISTENCY OF DISCIPLINE: EMPLOYEES AND MANAGERS

The Internal Revenue Service is committed to fair and consistent application of disciplinary rules across all levels of the workforce and will continue to work toward ensuring against instances where managers seem to be held to a lesser standard. Favoritism toward managers is not acceptable.

Because the appropriateness of a penalty depends on the particular circumstances of each case, variations of penalties for similar offenses are inevitable.

That a supervisor occupies a position of significant trust and responsibility will often warrant a more severe penalty for a particular offense than might be appropriate for a subordinate employee. However, several, sometimes competing, factors must be weighed in determining the appropriate penalty; as a result, in some situations a supervisor might receive a seemingly less severe penalty.

The incidence of proportionately fewer misconduct cases involving higher graded employees, especially senior managers, as compared to lower graded employees, reflects the fact that employees with a tendency to engage in misconduct are less likely to be promoted to more senior positions.

In an effort to ensure that appropriate penalties are imposed in a fair, equitable and consistent manner, the IRS developed and published a Guide for Penalty Determinations in February 1994. The Guide sets out the *range* of penalties which may be appropriate to particular offenses. The recommended range is to be considered along with all other relevant factors, including a balancing of the "Douglas factors".

The "Douglas factors," which all agencies must consider when taking discipline, include: nature and seriousness of the offense, nature of the employee's position (supervisory, law enforcement, etc.), length of service, past performance and disciplinary record, consistency of the penalty with that levied against other employees for similar offenses, potential for rehabilitation, clarity with which the agency notified the employee of its expectations, and adequacy of alternative sanctions.

(more)

The IRS has emphasized in its guidance to managers that the position an employee occupies and the accountability associated with that position must be taken into account in determining the appropriate penalty, even if it results in a greater penalty than set forth in the Guide. (See IRM 0751.16)

In September 1997, the IRS evaluated three years of data to assess whether the Guide was having a positive impact on the consistency of penalty determinations. The data showed the following:

- Overall conformance with the Guide was very high -- 91% of the disciplinary actions were within the range recommended. This degree of conformance was consistent in offices nationwide.

- There is a slight decline in conformance as the grade level of the employee (both non-managerial and managerial) rises: 77-87% for grades 13-15; 88-91% for grades 8-12; and 92-93% for grades 2-7.

- This decline may not be inconsistent with the application of the Douglas factors. For example, a higher graded employee, whether a manager of non-manager, may have a past work record, including many years of quality service with no prior discipline, which may serve to mitigate against a more severe disciplinary action (although, as noted above, under some circumstances, length of service and nature of the position may argue for a more severe penalty).

The IRS is using the results of this study to assess whether modifications to the Guide are appropriate. In addition, a sample of cases which were not in conformance with the Guide is being reviewed to assess whether the disciplinary actions in those were appropriate in light of *all* the applicable factors. The continuing goal is to ensure that there is no real or implied double standard of discipline in the Internal Revenue Service; that any discipline applied is appropriate, fair and consistent.

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