

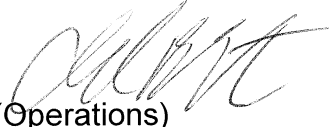


DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

DEPUTY CHIEF COUNSEL

AUG 16 2010

MEMORANDUM FOR CHIEF COUNSEL EXECUTIVES AND MANAGERS

FROM: Christopher B. Sterner   
Deputy Chief Counsel (Operations)

SUBJECT: Chief Counsel 2009 Report on Professionalism

I am transmitting the twelfth annual report on Professionalism for the Office of Chief Counsel. The Chief Counsel Directives Manual provides that the office will publish an annual report that will inform employees and the public about the office's actions regarding allegations and evidence of misconduct. This report has been designed to protect the privacy rights of employees. Please feel free to share the report with your subordinate managers and employees.

Attachment

## **OFFICE OF CHIEF COUNSEL 2009 REPORT ON PROFESSIONALISM**

The Office of Chief Counsel, Internal Revenue Service, prepares an annual Report on Professionalism to inform employees about the procedures followed and actions taken by the Office with respect to allegations of misconduct and unprofessional conduct. This twelfth annual report contains data regarding cases opened and closed for the period January 1, 2009 to December 31, 2009.

### **Background on the Office of Chief Counsel Professionalism Program**

The Office of Chief Counsel is committed to maintaining the highest standards of ethical and professional conduct. Through formal training sessions and in daily oversight and management activities, the Office seeks to ensure that all employees adhere to the letter and spirit of the Tax Court Rules of Practice and Procedure, the ABA Model Rules of Professional Conduct, the Office of Government Ethics Standards of Conduct, and the Treasury Department's Rules and Supplemental Standards of Conduct, and that the Office as a whole maintains the highest standards of professionalism, honesty, and fair play.

The Chief Counsel's Professionalism Program was established in August 1998. The Program is designed to ensure that the Office fully complies with Treasury directives, that all allegations of misconduct are promptly and thoroughly investigated, and that in all instances employees are treated in a fair and uniform manner. It established uniform procedures for handling allegations or evidence of misconduct or unprofessional behavior that does not need to be referred to the Office of Treasury Inspector General for Tax Administration (TIGTA).

Under the Professionalism Program procedures, all allegations or evidence of an employee's serious or significant failure to comply with the accepted standards of legal practice must be referred to the Deputy Chief Counsel (Operations). Matters that must be referred to the Deputy Chief Counsel (Operations) include non-frivolous allegations of professional misconduct; any ethical violation; failure to protect the statute of limitations; failure to coordinate a legal position with responsible offices; and repeated failures to meet pleading deadlines. The following conduct matters must be referred to TIGTA: all allegations or evidence concerning the possible existence of criminal or other misconduct constituting a violation of law, rules or regulations or mismanagement; gross waste of funds; abuse of authority; substantial and specific threats to public health and safety; and integrity issues (unless otherwise covered by established procedures such as the employee tax compliance, UNAX or EEO programs).

### **TIGTA Cases – Overview**

During 2009, the Office of Chief Counsel received 43 referrals from TIGTA alleging that Counsel employees committed misconduct or violated professional standards. Three of these referrals were previously transmitted to the Deputy Chief Counsel (Operations) by offices within the Counsel organization or other sources. All three matters were directly referred to TIGTA for investigation or other action. The remaining 40 referrals were forwarded to the Deputy Chief Counsel (Operations) by TIGTA, with a request that the

Deputy Chief Counsel (Operations) investigate the matter and report back to TIGTA upon final disposition.

Of the 43 TIGTA cases under active consideration in 2009, 40 were closed and 3 remain pending. The following chart sets forth the disposition of the 40 cases closed in 2009, compared with the cases closed in 2008.

|  | <b>Calendar Year<br/>2008</b> | <b>Calendar Year<br/>2009</b> |
|--|-------------------------------|-------------------------------|
| Cases Not Substantiated                    | 15                            | 11                            |
| Employee Separated Before Review Completed | 2 retired<br>5 resigned       | 0 retired<br>0 resigned       |
| Substantiated                              | 15                            | 28                            |
| Undetermined <sup>1</sup>                  | 1                             | 1                             |
| <b>TOTAL</b>                               | <b>38</b>                     | <b>40</b>                     |

The Office of Chief Counsel took disciplinary action in 7 of the substantiated cases and other appropriate personnel actions in the remaining 21 cases, which were of lesser offense such as loss of credentials. The disciplinary actions taken in 2009, compared to that taken in 2008 can be summarized as follows:

| <b>Disciplinary Action</b> | <b>Calendar Year<br/>2008</b> | <b>Calendar Year<br/>2009</b> |
|----------------------------|-------------------------------|-------------------------------|
| Counseling                 | Written: 2<br>Oral: 5         | Written: 3<br>Oral: 2         |
| Admonishment               | 0                             | 0                             |
| Reprimand                  | 4                             | 1                             |
| Suspension                 | 3                             | 1                             |
| Removal                    | 0                             | 0                             |
| Downgrade                  | 0                             | 0                             |
| <b>TOTAL</b>               | <b>14</b>                     | <b>7</b>                      |

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<sup>1</sup> Grievant was informed of rights to file a case in another administrative forum.

### **Additional Disciplinary Action**

In addition to the action taken in the 7 substantiated TIGTA cases noted above, Counsel imposed discipline in 23 other non-TIGTA cases. The table below reflects the actions taken.

| <b>Chief Counsel 2009 Disciplinary Actions Report</b> |                    |              |              |
|---|--------------------|--------------|--------------|
| <b>Actions Taken</b>                                  | <b>Tax Related</b> | <b>Other</b> | <b>Total</b> |
| Written Counseling                                    | 6                  | 3            | 9            |
| Admonishment  | 0                  | 3            | 3            |
| Reprimand   | 2                  | 6            | 8            |
| Suspension  | 0                  | 3            | 3            |
| Removal   | 0                  | 0            | 0            |
| <b>TOTAL</b>  | <b>8</b>           | <b>15</b>    | <b>23</b>    |

Of the 28 substantiated TIGTA cases and the 23 non-TIGTA cases relating to conduct or performance, disciplinary action was taken in 30 cases, or 59 percent. Seventeen of the substantiated TIGTA cases were for lesser offences such as misplaced credentials or building passes and no fault offences such as packages either destroyed or not received during shipping.

#### **Example cases (TIGTA):**

Reprimand -- An employee received a reprimand for losing a government laptop. The laptop was accidentally lost while the employee was traveling. The laptop had the appropriate security to safeguard the material on the laptop and the employee had not stored password information with the laptop that would compromise the security. Even though the laptop was lost by accident and the employee took responsible steps to recover it, the employee was still responsible for the loss of government equipment and was, therefore, reprimanded.

Suspension -- An employee received a 45-day suspension for UNAX-related misconduct. The employee had access to the IDRS system as a part of their official duties in the office. The employee misused the IDRS system for personal reasons by seeking address information about the ex-spouse of the employee's child. This constitutes serious UNAX misconduct because the IDRS system cannot be used for any personal reasons.

#### **Example cases (non-TIGTA):**

Counseling -- An employee received written counseling for failing to file a proper tax return. The employee had accidentally overlooked interest income from a particular account when filing the return. The oversight was discovered through an IRS Underreporter audit and the employee promptly paid the additional tax. Even though this was not intentional misconduct, the employee was counseled because of the failure to file a proper tax return (including all income).

Suspension/Admonishment -- for litigation related failures. Tax court ordered attorney to take various actions on a pending case by a set deadline. The attorney failed to do so and also did not provide an excuse to the Court for this failure. The Tax Court judge sanctioned the government and, after an investigation into the facts, the attorney was suspended for his failure to comply with the Tax Court's order. The manager of the attorney was also disciplined. Even though the attorney provided misleading information to the manager, the manager failed to exercise appropriate oversight and was therefore admonished.

**Conclusion**

The Office of Chief Counsel will continue its efforts to ensure that allegations and evidence of misconduct are promptly reported to the proper officials, that they are thoroughly investigated, and that these matters are handled in a fair and uniform manner.