



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

OFFICE OF
CHIEF COUNSEL

JUL - 5 2000

CC: GLS: 1172-00
CASE NO. 111124-00
MGallagher

MEMORANDUM FOR CHRISTINA ROACH
APPEALS NATIONAL OFFICE PROGRAM ANALYST

FROM:

Dennis M. Ferrara
Deputy Associate Chief Counsel (GLS)

SUBJECT:

Review of Appeals Manual for Compliance with Section 1204
of RRA 98 and 26 C.F.R. 801

This memorandum responds to your May 31, 2000 request for our opinion on the following three issues: (1) whether a number of timeliness goals set forth in the Appeals Manual, Part VIII, Internal Revenue Manual ("IRM") violate Section 1204 of the IRS Restructuring and Reform Act of 1998 ("Section 1204") or the regulation entitled *Establishment of a Balanced Measurement System*, found at 26 C.F.R. §801 ("the Regulation"); (2) whether the Appeals mission statement violates either Section 1204 or the Regulation; and (3) whether such goals are "inappropriate"?

As explained more fully below, we conclude that, based upon the information you provided, none of the timeliness goals violates either Section 1204 or the Regulation. Regarding the second issue, we are unable to determine whether the Appeals mission statement violates Section 1204 or the Regulation as there is insufficient information to determine whether the mission statement suggests a production quota or goal. [REDACTED]

[REDACTED] Regarding the third issue, we are unable to determine whether the goals are "inappropriate" as that issue does not call for a legal conclusion. [REDACTED] DP

1. Whether the timeliness goals violate either Section 1204 or the Regulation?

Section 1204 prohibits the Internal Revenue Service from using "records of tax enforcement results" to evaluate employees or to impose or suggest production quotas or goals with respect to such employees. As explained more fully in Chapter 1 of IRM 105.4 *Managing Statistics in a Balanced Measurement System*

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(hereinafter referred to as "IRM 105.4"), the Congress did not define the term "records of tax enforcement results" (hereinafter referred to as "ROTERTs"). Accordingly, the Service reviewed past practices and other related efforts to determine what the term ROTER encompassed. A discussion of this effort is found in Exhibit 105.4.1-4 of IRM 105.4.

As a result of its internal review, the Service concluded that timeliness goals –including cycle time in particular– fell outside of the definition of ROTERTs. Thus, IRM 105.4 and its predecessors did not include cycle time and other timeliness measures as ROTERTs for purposes of complying with applicable statutes.

In reviewing the material you provided, we conclude that each of the standards is properly characterized as a "timeliness" goal and, thus falls outside of Section 1204. Accordingly, the Appeals Manual does not violate Section 1204 by including the cited timeliness goals.

Likewise, the timeliness goals fall outside of the definition of "quantity measures" as that term is defined under §801.6 (c) of the Regulation.¹ Although timeliness goals may be fairly characterized as quality measures,² their use is limited to measuring how well the organization has met its cycle time objectives. For example, the Appeals function has adopted "cycle time" as a quality measure meaning that it will evaluate how well the organization achieved the cycle time standard. To this end, we find that Appeals' proposed use of timeliness goals does not violate the Regulation.

Based upon the foregoing, we view that the timeliness measures set forth in the Appeals Manual violate neither Section 1204 nor the Regulation.

¹(c) *Quantity measures.* The quantity measures will consist of outcome-neutral production and resource data, such as the number of cases closed, work items completed, customer education, assistance and outreach efforts undertaken, hours expended and similar inventory, workload and staffing information, that does not contain information regarding the tax enforcement result reached in any case involving particular taxpayers.

²(b) *Quality measures.* The quality measure will be determined on the basis of a review by a specially dedicated staff within the Internal revenue Service of a statistically valid sample of work items handled by certain functions or organization.

2. Whether the Appeals Mission Statement Violates Section 1204 or the Regulation?

You set forth the following as an element of the Appeals Mission Statement and inquired whether it violates Section 1204 or the Regulation:

"...A satisfactory number of agreed settlements.—It is a fundamental purpose of the Appeals function to effect settlement of contested cases—on a basis fair to both the government and the taxpayer—to the end that the greatest possible number of nondocketed cases are closed in that status and the greatest possible number of docketed cases are closed without trial."

This passage of the Appeals Mission Statement addresses the concept of "agreed settlement rate" and we concur with your conclusion that this measurement is a ROTER. As expressed earlier in this memorandum, Section 1204 prohibits the IRS from using a ROTER to (1) evaluate employees; or (2) to impose or suggest production quotas or goals upon them.

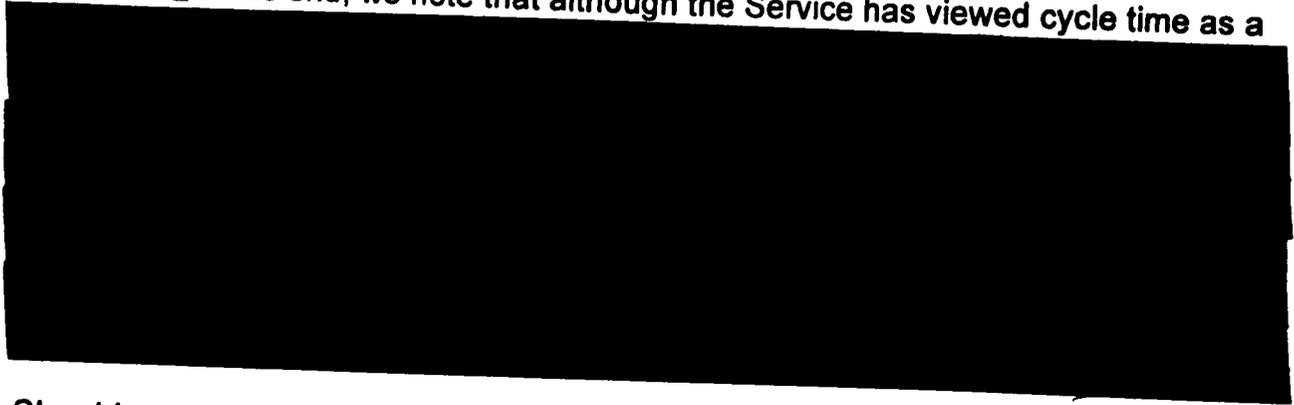
In our view, the cited passage from your Mission Statement does not use this ROTER to evaluate employees or to impose production quotas or goals upon them. However, we view this Mission Statement as setting forth a clear message that agreed settlements are encouraged and are a matter of importance. Accordingly, we have an initial concern that the Mission Statement might *suggest* a production quota or goal upon employees.

Unlike the use of ROTERs to evaluate employees or to impose production quotas or goals upon them, the concept of when the Service uses a ROTER to suggest a production quota or goal is not subject to easy analysis. Thus, the Service published at paragraph 1.9.2 of IRM 105.4 a list of various—but nonexclusive—criteria for your review in determining whether a particular use would suggest a production quota or goal. Accordingly, we suggest that you consider those factors in determining whether the use of the ROTER would suggest a production quota or goal.

Although you should consider all of these factors, we strongly suggest that you consider the organizational climate within Appeals as we have learned from Appeals representatives participating in the various efforts at revising IRM 105.4 that the collegial nature of the Appeals function creates an environment in which employees are less likely to infer production pressures from the dissemination of ROTERs. After you have considered these factors, we would be pleased to discuss them further with you.

3. Whether the Appeals Timeliness Measures are "Appropriate"?

The determination of whether the timeliness measures are appropriate (as opposed to permissible under law or regulation, a subject which we discussed above) is an operational question for which we lack the requisite business information to form an opinion. To this end, we note that although the Service has viewed cycle time as a



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Should you wish to discuss further, please contact Mike Gallagher at 202-283-7900.