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MEMORANDUM FOR STEVEN BURGESS
DIRECTOR, EXAMINATION
SMALL BUSINESS/SELF EMPLOYED SE:S:E

FROM: Neil B. Worden /s/ *Neil B. Worden*
Chief, Claims, Labor, and Personnel Law Branch
General Legal Services CC:GLS:CLP

SUBJECT: Sharing Outcome Neutral Production Statistics

This memorandum responds to your request for an opinion concerning the sharing of outcome neutral production statistics between areas, territories, and groups in the Examination Division. Specifically, the question asked was whether Section 1204; Regulation 801; or IRM 1.5 prohibit the Service from sharing outcome neutral production statistics, such as case closings, time per case, etc. between areas or territories or groups such that one area or territory or group is able to review the statistics from the other areas or territories or groups in their Division.

Neither Section 1204 nor Regulation 801 nor IRM 1.5 prohibits the sharing of outcome neutral production statistics between divisions or territories or groups. If the sharing of information, however, is done in such a fashion so as to impose or suggest a production quota or goal for the organization, and the organization consists of employees who are responsible for exercising judgment with respect to tax enforcement results, then that organization must also have goals for or be evaluated on customer satisfaction, employee satisfaction and quality. Additionally, care should be taken when sharing outcome neutral production statistics between groups to ensure that group managers do not use the information to impose or suggest production quotas or goals on their front-line bargaining unit employees who are responsible for exercising judgment with

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respect to tax enforcement results.

Discussion

Section 1204

Section 1204 prohibits the Service from using "records of tax enforcement results" to evaluate employees or to impose or suggest production quotas or goals. A "tax enforcement result" is defined as the "outcome produced by an Internal Revenue Service employee's exercise of judgment recommending or determining whether or how the Internal Revenue Service should pursue enforcement of the tax laws." 26 C.F.R. § 801.6(d). Tax enforcement results include such items as amount of money collected, number of liens filed, or number of levies served. Therefore, Section 1204 prohibits the Service from imposing or suggesting a goal for such matters as number of liens filed or amount of money to be collected.

On the other hand, outcome neutral quantity data that does not contain information regarding the tax enforcement result reached is not considered to be a tax enforcement result. 26 C.F.R. § 801.6(c); (d)(ii). Outcome neutral quantity data includes such matters as number of cases closed, work items completed, time per case, cycle time, etc. Consequently, Section 1204 does apply to such outcome neutral production data and, therefore, does not prohibit sharing outcome neutral quantity data between groups, territories or areas.

Regulation 801

In addition to reinforcing the proscriptions found in Section 1204 against using records of tax enforcement results, Regulation 801 also implemented a balanced measurement system for the Service and established three limitations on the use of outcome neutral quantity data. These limitations are as follows:

First, 26 C.F.R. § 801.2(b) provides that no outcome neutral quantity measure may be established for an organization with 1204 employees¹ unless that organization is also evaluated upon or has goals with respect to customer satisfaction measures, employee satisfaction measures, and quality measures.

Second, 26 C.F.R. § 801.3(a) provides that organizational measures, including business results², may not directly determine the evaluation of individual

¹ A "1204 employee" is an employee who is responsible for exercising judgment with respect to determining whether or how to pursue enforcement of the tax laws.

² In the balanced measurement system, "business results" are comprised of the

employees. Rather, employees are to be evaluated according to their critical elements and standards which will be designed to support the organizational measures.

Third, 26 C.F.R. § 801.3(e)(2) provides that quantity measures may not be used to evaluate the performance of or to impose or suggest production goals for any non-supervisory employee who is responsible for exercising judgment with respect to tax enforcement results.

The above-mentioned limitations are the only limitations within the regulation regarding the use of outcome neutral quantity measures. The only applicable limitations, then, against sharing the outcome neutral quantity data are that (1) the information not be shared in a fashion so as to impose or suggest production goals for 1204 bargaining unit employees;³ and (2) if the sharing of the quantity data is done in such a fashion so as to impose or suggest a production quota or goal for an organization, then that organization must also have goals with respect to or be evaluated on customer satisfaction, employee satisfaction, and quality measures.

IRM 1.5

Section 1.5.1.11.3 specifically provides that an organizational unit may share balanced measures and other non-ROTTER data with other units at the same level. According to the IRM, the Service has determined that "the results achieved in other organizational units may be useful diagnostic tools to managers in assessing the performance of their own organizational units," and that with the implementation of the balanced measurement system, there should not exist "the same competitive environment where some offices strived for the highest numeric results concerning production measures only." The IRM cautions, however, that the sharing of goals must be done in a way that "does not encourage the competitive environment that existed previously among some organizational units whose efforts were directed at achieving numeric targets without carefully considering the impact on all elements of the balanced measurement system." IRM 1.5.1.11.2 The IRM continues on to state that the performance of any one unit at any level of the organization should not be used as a standard by which the performance of any other unit would be evaluated due to differences that exist in the types of taxpayers served, employee skill

quality measures and quantity measures for the organization. 26 C.F.R. § 801.6(a).

³ Given that outcome neutral production goals may not be established for "1204" bargaining unit employees, care should be given if quantity measures are being shared between group managers. The risk is greatest at the group level that production goals will be impermissibly passed on "1204" to bargaining unit employees.

levels, specific tax issue being worked, and other factors. IRM 1.5.1.11.3(2).

Conclusion

Neither Section 1204, nor Regulation 801, nor IRM 1.5 prohibits the sharing of outcome neutral production statistics between divisions or territories or groups. If the sharing of information, however, is done in such a fashion as to impose or suggest a production quota or goal for the organization, then that organization should also have goals for or be evaluated on customer satisfaction, employee satisfaction and quality. Additionally, care should be taken when sharing outcome neutral production statistics between groups to ensure that group managers do not feel compelled or pressured into using the information to impose or suggest production quotas or goals on their front-line bargaining unit employees. It simply seems that the risk is the greatest at the group level that production goals will be impermissibly passed on to bargaining unit employees.

If you have any questions regarding this matter, please feel free to contact Julie Barry at 283-7912.