

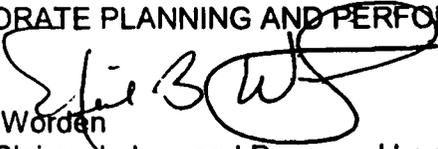


DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
OFFICE OF CHIEF COUNSEL
ASSOCIATE CHIEF COUNSEL GENERAL LEGAL SERVICES
950 L'ENFANT PLAZA, S.W., 2nd FLOOR
WASHINGTON, D.C. 20024-2123
Telephone: (202) 283-7900
Facsimile: (202) 283-7979

JUN 28 2007

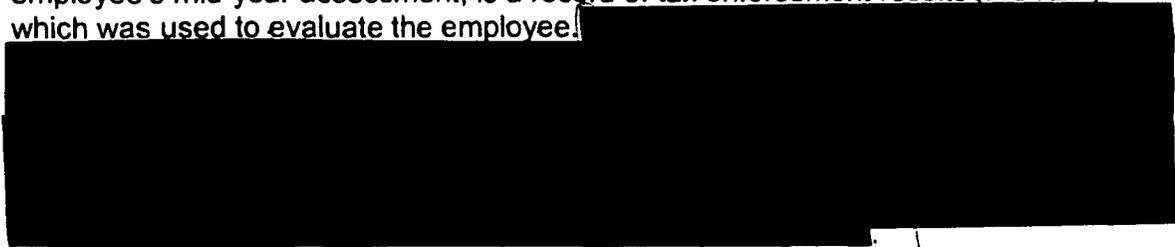
CC:GLS-128817-07
CLP:KKeller

MEMORANDUM FOR JIM IOCOZZIA
CORPORATE PLANNING AND PERFORMANCE
CFO

FROM: Neil B. Worden 
Chief, Claims, Labor, and Personnel Law Branch (GLS)

SUBJECT: FY 2006 – 1204 Independent Review Findings

This is in response to your request for our opinion as to whether a statement in an employee's 2006 mid-year self-assessment, which was repeated by her manager in the employee's mid-year assessment, is a record of tax enforcement results (ROTTER) which was used to evaluate the employee.



DP

As you have stated, IRM 1.5.2.7(1) defines a ROTER as a quantitative recordation of the tax enforcement results reached in one or more cases. The number of fraud referrals is given as an example of a ROTER. ROTERs do not include tax enforcement results of individual cases when used to determine whether an employee exercised appropriate judgment in pursuing enforcement of the tax laws based upon a review of the employee's work on that individual case. IRM 1.5.2.7(2).

In her self-assessment, the employee clearly did not include the statement regarding criminal fraud referrals to demonstrate that her team had exercised appropriate judgment in pursuing enforcement of the tax laws in a specific case. Rather, the statement shows that her team was successful in identifying one case for referral, and

having the referred case accepted by CID. While section 1204 does not prohibit an employee from discussing ROTERs in a self-assessment, IRS policy, as reflected in IRM 1.5.2.18(4), requires that the employee be directed to remove ROTERs from a self-assessment. The IRM section also directs managers not to use ROTERs in the employee's evaluation.

As we discussed, there is some question as to whether the employee's mid-year assessment is an "evaluation" within the scope of section 1204. According to IRM 1.5.2.14(6), an "employee evaluation" includes "any written document used to appraise or measure an employee's performance to provide" a "[r]equired or requested performance rating on Form 6850 or Form 12450 (annual, mid-year, ad hoc)." This language indicates that a mid-year evaluation subject to section 1204 may be conducted by a manager. IRM 1.5.2.14(7) states: "Other usual components of evaluations, such as individual case reviews, progress reviews, and workload reviews, are not included in this definition of employee evaluations." Mid-year assessments are not listed in this IRM provision as a component to be excluded from the definition of evaluation. One could conclude from the foregoing IRM language that a mid-year assessment is an evaluation, rather than a component of an evaluation. Apparently, this was the thinking of the 1204 review team when they identified the language in the manager's mid-year assessment as a ROTER violation.

However, the manager's mid-year assessment in this case did not include a performance rating. According to the IRM language, to be considered an evaluation subject to section 1204, a rating of the employee's performance must be provided in the appraisal document. Therefore, despite the suggestion in the IRM language that a mid-year assessment may be an evaluation for purposes of section 1204, the absence of a rating of the employee's performance leads us to conclude that in this case the ROTER was not used to evaluate the employee. Accordingly, there was no section 1204 violation.

DP

 If you have any questions regarding the above, please contact me at (202) 283-7900 or Karen Keller at (202) 283-7916.