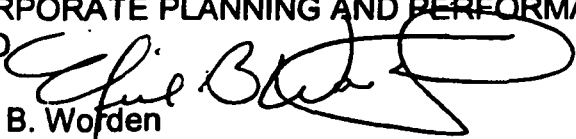


**DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
OFFICE OF CHIEF COUNSEL  
ASSOCIATE CHIEF COUNSEL GENERAL LEGAL SERVICES  
950 L'ENFANT PLAZA, S.W., 2<sup>ND</sup> FLOOR  
WASHINGTON, D.C. 20024-2123  
Telephone: (202) 283-7900  
Facsimile: (202) 283-7979**

JUL 13 2007

CC:GLS:130124-07  
CLP:KKeller

MEMORANDUM FOR JIM IOCOZZIA  
CORPORATE PLANNING AND PERFORMANCE  
CFO   
FROM: Neil B. Worden  
Chief, Claims, Labor, and Personnel Law Branch  
General Legal Services  
SUBJECT: Sharing ROTER and Quantity Measure Results at the  
Group Level

This is in response to your request for our opinion as to whether comparative statistics, specifically Territory and Area information, can be shared at the group level. For example, you have asked whether a group manager may see not only the case closure (outcome neutral) figures or amounts assessed (ROTERTs) for his group, but also the same information for his Territory and Area. You have cited language from the IRM and Part 801 to illustrate the apparent lack of a definitive position on the sharing of Area/Territory information with group managers.

Section 1204 does not address the dissemination of ROTER information within the Agency. As you know, section 1204 does prohibit the Agency from using ROTERTs to impose or suggest a production quota or goal. Therefore, sharing ROTER information at the group level, if done to impose or suggest a production quota or goal, is prohibited by 1204. Consequently, with respect to ROTER data, the business purpose for sharing the information is paramount. ROTERTs may be used only "for purposes such as forecasting, financial planning, resource management, and the formulation of case selection criteria." Given the narrow line between sharing ROTER data and using ROTERTs to suggest or impose production quotas or goals on employees any dissemination of Territory and Area ROTER data to the group level should be closely monitored.

PMTA : 00858

The dissemination of quantity measure results within the Agency is not addressed by Part 801. The regulation does impose legal restrictions on the use of quantity measures, e.g., prohibiting the evaluation of non-supervisory 1204 employees by performance measures based in whole or in part on quantity measures. However, as amended, Part 801 permits organizational units with 1204 employees to suggest or impose quotas or goals based on quantity measures results, so long as the other components of the balanced measures system are present at a higher level within the organization. Although Area or Territory quantity measure results may be shared at the group level, the Agency may determine that no business need is served by making the information available at that level, or that to make the information available would increase the possibility of noncompliance with the legal limitations governing the use of the information.

### Discussion

ROTER Data. Section 1204 precludes the use of ROTERS "to evaluate employees or to impose or suggest production quotas or goals with respect to such employees." ROTERS "may be used for purposes such as forecasting, financial planning, resource management, and the formulation of case selection criteria." 26 C.F.R. 801.6T(d)(2). Therefore, if Territory and Area Roter data is to be used by a group manager for the purpose of forecasting, financial planning, resource management, or the formulation of case selection criteria, there is no legal bar precluding the sharing of the information at the group level. The organization is in the best position to determine whether group managers would have a business need for the Roter data, i.e., whether their duties include "forecasting, financial planning, etc."

You have cited to IRM 1.5.2.17(3) which states: "The IRS has determined that Roter data may be made available as follows . . . Compilations of national statistics as to Roter information such as amount assessed, collected, etc, may be disclosed . . . on IRS web sites, may to disclosed to IRS executives, and may be disclosed selectively to IRS employees on a need to know basis." You have also included the example which follows the section:

The SB/SE Director, Collection, supervises eight area directors, who each have subordinate territory and group managers. A group manager may be provided with Roter data such as the amount collected by that group; the territory manager may be provided that information for each group in the territory; an area director may be provided that information for each group and territory in the area... .

The foregoing provision sets forth the Agency's policy determination regarding the permissible distribution or sharing of Roter data. The guidance and example clearly indicate that Territory and Area Roter data may not be shared with group managers except on a selective need to know basis. If the Agency

determines that group managers, as part of their duties, should have access to Territory and Area ROTER data to be used for purposes consistent with 26 C.F.R. § 801.6T(d)(2), the IRM should be revised accordingly. See, for example, the SB/SE Measures Matrix at IRM Exhibit 1.5.7-5. If Territory and Area ROTER data is disseminated at the group level, care must be taken to assure that it is not used to impose or suggest production quotas or goals on employees.

**Quantity Measure Results.** 26 C.F.R. Part 801 implemented the balanced measures performance system mandated by Section 1204 of RRA '98. Quantity measures, which are a component of business results measures, are used to measure organizational performance. Section 801.2T. Part 801 does not impose any legal limitations on the dissemination or sharing of quantity measure results. The regulation was amended to make it clear that organizational goals based on business results, which includes quantity measures, could be suggested or imposed on organizational components which contain 1204 employees. Part 801 provides that organizational measures will not directly determine the evaluation of individual employees. Section 801.3T(a). The Regulation further provides that quantity measures may not be used to evaluate the performance of non-supervisory 1204 employees. Section 801.3T(e)(3)

As discussed above regarding the use of ROTER data, while there are no legal restrictions on the dissemination of quantity measure results, the Agency can limit its availability to lower levels within the organization. The Agency may determine that certain organizational units, such as groups, have no business need for Area or Territory quantity measure results, or that release of the information may increase the possibility of violations of the legal limitations on the use of quantity measures. If Area and Territory quantity measure results are made available at the group level, care must be taken to assure that the information is not used to evaluate non-supervisory section 1204 employees.

You have cited the following example in IRM 1.5.2.19:

An area director may inform territory managers (or all subordinates, including bargaining unit employees), that for a certain type of examination, a goal is that the average time per described case will be 10 hours, and that a goal is that 90 percent of cases will be closed within six months. This use of a quantity measure does not violate Regulation 801 or any IRM provision. But the area director must make it clear that circumstances in a territory (or for a bargaining unit employee) may warrant a different closure rate.

In addition, you have cited Example 1 of Section 801.7T(a), which describes the sharing of quantity measure goals from the Area directors to the Territory managers to group managers, and finally to employees. Both examples illustrate that organizational goals based on quantity measure results may be shared down through levels of management. Amended Part 801 permits the suggestion or

imposition of production goals for employees, including section 1204 employees, based on organizational goals.

Conclusion

Section 1204 does not prohibit the sharing of ROTER data; however, the use of ROTER data is limited to forecasting, financial planning, resource management, and the formulation of case selection criteria. Whether managers at the group level would use high-level ROTER data for one of those purposes is a determination to be made by the Agency. [REDACTED]

AC  
DP

Likewise, Part 801 does not prohibit the sharing of quantity measure results among levels of the organization. Organizational units with section 1204 employees may suggest or impose quotas or goals based on quantity measure results, so long as the other components of the balanced measures system are present at a higher level within the organization. Section 1204 employees may not be evaluated by performance measures based on quantity measures. [REDACTED]

AC  
DP

If you have any questions regarding this matter, please contact Karen Keller at 283-7916.