

## LR #10 IRS CORRESPONDENCE: Codify § 3705(a)(1) of RRA 98, Define “Manually Generated,” and Require Contact Information on Certain Notices in All Cases

### PROBLEM

Concerned about taxpayer access to employees both knowledgeable about and accountable for actions taken on their cases, Congress required the IRS in the IRS Restructuring and Reform Act of 1998 (RRA 98) to include employee contact information on “manually generated correspondence.”<sup>1</sup> The IRS has failed to meaningfully implement the requirements of § 3705(a)(1) of RRA 98. Congress did not define the term “manually generated;” instead, the IRS created its own definition in the Internal Revenue Manual (IRM).<sup>2</sup> However, the IRS does not follow its own manual and fails to include appropriate employee contact information on most computer-generated notices,<sup>3</sup> even when a particular employee has worked on the case<sup>4</sup> or exercised judgment and made a decision.<sup>5</sup> Consequently, IRS correspondence procedures fail to address Congress’s concerns<sup>6</sup> about the inability of taxpayers to contact an IRS employee who is knowledgeable about, and accountable for, their case.<sup>7</sup>

In its recent adoption of the Taxpayer Bill of Rights, the IRS affirmed its commitment to many of the principles underlying the implementation of RRA 98, including rights impacted by § 3705(a)(1)—*the right to quality service, the right to be informed, and the right to a fair and just tax system.*<sup>8</sup> By not providing appropriate contact information to taxpayers who receive important IRS notices—including those that impact taxpayers’ legal rights—the IRS erodes the meaning and value of these fundamental taxpayer rights.

- 1 Pub. L. No. 105-206, § 3705(a)(1), 112 Stat. 685, 777 (1998). For a full discussion of the National Taxpayer Advocate’s concerns regarding contact information on audit notices, see Most Serious Problem: *Audit Notices: The IRS’s Failure to Include Employee Contact Information on Audit Notices Impedes Case Resolution and Erodes Employee Accountability*, *supra*.
- 2 The IRM defines manually generated correspondence as “correspondence issued as a result of an IRS employee exercising his/her judgment in working/resolving a specific taxpayer case or correspondence, or where the employee (Tax Examiner, Revenue Agent, Revenue Officer, etc.) is asking the taxpayer to provide additional case-related information.” IRM 21.3.3.4.16.1(2), *Preparation of Outgoing Correspondence* (Oct. 25, 2007).
- 3 The IRS’s definition of manually generated correspondence is broad and includes “CORRESPONDEX letters, local letters, quick notes, and some computer generated letters.” IRM 21.3.3.4.16.1(3), *Preparation of Outgoing Correspondence* (Oct. 25, 2007).
- 4 IRM 21.3.3.4.16.1(2), *Preparation of Outgoing Correspondence* (Oct. 25, 2007).
- 5 See IRM 4.19.10.1.6(6), *Correspondence Examination Letters* (Jan. 1, 2013). Sixty-nine letters are listed which will only contain generic contact information when issued on campus exam inventory.
- 6 See, e.g., 144 CONG. REC. S7717-04 (1998) (statement of Sen. Domenici), and *Practices and Procedures of the Internal Revenue Service: Hearings Before the S. Comm. on Finance*, 105th Cong. 105-190 (1997) at 97, 213-14; *Practices and Procedures of the Internal Revenue Service: Hearings Before the S. Comm. on Finance*, 105th Cong. 105-190 (1997) (questions of Chairman Roth) at 214.
- 7 For a complete discussion of the National Taxpayer Advocate’s concerns regarding the failure of the IRS to include contact information on audit notices, see Most Serious Problem: *Audit Notices: The IRS’s Failure to Include Employee Contact Information on Audit Notices Impedes Case Resolution and Erodes Employee Accountability*, *supra*.
- 8 The IRS adopted the Taxpayer Bill of Rights on June 10, 2014. See IRS, *Taxpayer Bill of Rights*, available at <http://www.irs.gov/Taxpayer-Bill-of-Rights>. See also Publication 1, *Your Rights as a Taxpayer* (2014).

## EXAMPLE

A taxpayer who has three children has moved twice during the tax year. When she files her return, the taxpayer claims all her children for the purposes of the Earned Income Tax Credit (EITC). Shortly after filing her return, she receives a CP 75 – *Exam Initial Contact Letter – EIC – Refund Frozen*, which says the IRS needs more information about her children and has frozen her EITC pending the results of the audit. It provides a form listing potential documentation the taxpayer can submit to substantiate her claim,<sup>9</sup> but does not include the contact information for a specific employee.<sup>10</sup>

The taxpayer reviews the list of acceptable documentation and sends what she thinks will show that the children lived with her and she provided more than half the cost of maintaining a household for the children since she claimed head of household status,<sup>11</sup> including school records and a current lease. However, the lease does not list her children and the school records only show partial-year attendance for one child who was not old enough to attend school in the previous school district, but was old enough in the new district.

The taxpayer then receives a Letter 105C, *Claim Disallowance*, indicating the IRS will not allow the EITC for her third child because the records submitted are not sufficient. Even though an employee had to review the documentation the taxpayer provided and input specifics about that documentation into the 105C, the letter does not list specific contact information for that employee nor does it explain why the documentation was insufficient. As a result, the taxpayer cannot reach the employee who made the decision to ask for an explanation.<sup>12</sup>

In an attempt to resolve the issue, the taxpayer calls the general operating division toll-free number listed on the 105C. The taxpayer must take time off work to make this call. After she waits on the phone for 22 minutes, she reaches an IRS employee, who indicates that he does not see any notation of what was insufficient about the records and that the taxpayer should file an appeal. The taxpayer calls the IRS again, trying to reach someone who can tell her what documentation would prove her claim, and waits another 34 minutes on the phone, only to be disconnected. The taxpayer is frustrated because she cannot afford to take more time off to make phone calls and just wants to resolve the issue, but cannot speak to the employee who made the decision on her case. She decides not to file an appeal because she is afraid she will lose her job if she takes off more time, and does not receive the EITC even though she would have been eligible had she been able to provide appropriate documentation.

## RECOMMENDATION

To provide taxpayers with access to IRS employees knowledgeable about and accountable for their cases, the National Taxpayer Advocate recommends that Congress:

- Codify RRA 98 § 3705(a)(1).
- Define the term “manually generated correspondence” as correspondence issued as a result of an IRS employee exercising his or her judgment in working or resolving a specific taxpayer case or correspondence, or where the employee is asking the taxpayer to provide additional case-related information.

9 IRS, CP 75 - *Exam Initial Contact Letter – EIC – Refund Frozen* (Feb. 2012).

10 IRM 4.19.10.1.6(6), *Correspondence Examination Letters* (Jan. 1, 2013).

11 See IRC §§ 32(c)(3) and 152(c) (definitions of qualifying child).

12 For a complete discussion of the National Taxpayer Advocate’s concerns regarding explanations in refund disallowance notices, see Most Serious Problem: *NOTICES: Refund Disallowance Notices Do Not Provide Adequate Explanations*, *supra*.

- Require the IRS to provide the name, telephone number, and unique identification number of an IRS manager on notices with legal impact, such as those that start the running of a statute of limitations or trigger appeal rights (such as the Statutory Notice of Deficiency), where such notices have been automatically generated without employee review.

## PRESENT LAW

Section 3705(a)(1) of RRA 98 provides “The Secretary of the Treasury or the Secretary’s delegate shall provide that—any manually generated correspondence received by a taxpayer from the Internal Revenue Service shall include in a prominent manner the name, telephone number, and unique identifying number of an Internal Revenue Service employee the taxpayer may contact with respect to the correspondence.”<sup>13</sup>

## REASONS FOR CHANGE

The Joint Committee on Taxation reported the reason for the inclusion of § 3705(a)(1) in RRA 98 was so taxpayers could receive prompt answers to questions about their tax liabilities, as many expressed frustration at not knowing which employee to contact.<sup>14</sup> The IRS defines the phrase “manually generated correspondence” in the Internal Revenue Manual (IRM) as “correspondence issued as a result of an IRS employee exercising his/her judgment in working/resolving a specific taxpayer case or correspondence, or where the employee (Tax Examiner, Revenue Agent, Revenue Officer, *etc.*) is asking the taxpayer to provide additional case-related information.”<sup>15</sup>

Although the IRS defines “manually generated” in the IRM in a manner in which it would seem taxpayers would receive such contact information, in practice, taxpayers do not receive this information on most notices, even where an employee had reviewed and made determinations on the outcome of the case. IRS practices also do not address congressional concerns about IRS employee accountability.<sup>16</sup>

TAS reviewed and analyzed a sample of 100 Letters 105C, *Claim Disallowance*.<sup>17</sup> None contained contact information for a specific employee; instead, each was “signed” by a high-level manager or program director and listed only an operating division toll-free number.<sup>18</sup> While many of these letters resulted from a mismatch between information provided by the taxpayer and information the IRS had in its systems and were issued without an employee ever looking at the case, five of the letters contained non-standardized paragraphs with information specific to the taxpayer’s situation that had to have been crafted manually by an employee.<sup>19</sup> The IRM seems to require that these notices, where an employee has worked a case and made case specific decisions, thus “exercising judgment” on the case, contain employee contact information. However, our sample suggests this information is not included despite the IRM requirement.<sup>20</sup>

13 Pub. L. No. 105-206, § 3705(a)(1), 112 Stat. 685, 777 (1998).

14 J. Comm. on Tax’n, *General Explanation of Tax Legislation Enacted in 1998*, 128 (Nov. 24, 1998).

15 IRM 21.3.3.4.16.1(2), *Preparation of Outgoing Correspondence* (Oct. 25, 2007).

16 See, e.g., *Practices and Procedures of the Internal Revenue Service: Hearings Before the S. Comm. on Finance*, 105th Cong. 105-190 (1997) (questions of Chairman Roth) at 214.

17 Sample on file with TAS Attorney Advisor Group.

18 *Id.*

19 *Id.*

20 IRM 21.3.3.4.16.1(3), *Preparation of Outgoing Correspondence* (Oct. 25, 2007).

Even where a taxpayer has corresponded with the IRS regarding his or her correspondence exam, IRS procedures provide that in most cases, the case can be returned for automatic processing after the correspondence has been reviewed.<sup>21</sup> The Automated Correspondence Examination (ACE) program exists solely to conduct examinations with little or no human involvement.<sup>22</sup> The result of a taxpayer continuing to receive automated correspondence with no specific employee contact information even after corresponding with the IRS fails to address Congress's concerns about access to knowledgeable and accountable employees. Where a taxpayer's audit is conducted solely through ACE, taxpayers will receive no notice with any appropriate contact information, up to and including the Statutory Notice of Deficiency (SNOD), after which the taxpayer has limited time to address the issue directly with the IRS or petition the United States Tax Court, which results in an increase in taxpayer burden.<sup>23</sup>

In the discussions leading up to the enactment of RRA 98, several Senators indicated concerns about taxpayer access to the IRS and, in particular, accountability for employees who made decisions on cases.<sup>24</sup> Despite these concerns, the IRS implementation of § 3705(a)(1) fails to provide taxpayers greater access to employees both knowledgeable about and accountable for actions taken on cases.

While it may be unnecessary or impractical to include contact information for a specific employee on all notices, particularly before a case is assigned, failing to do so after a taxpayer has communicated with the IRS may violate the law and contradict the IRS's own Internal Revenue Manual. The codification of RRA 98 § 3705 with a specific definition of manually generated notices and specific requirements about when the contact information must be included will ensure the IRS's accountability and provide real meaning to the taxpayer *rights to quality service, to be informed, and to a fair and just tax system.*

## EXPLANATION OF RECOMMENDATION

Left to define “manually generated” on its own, the IRS does not report either seeking an official Chief Counsel opinion on the meaning of the term nor performing a comprehensive, principled review of notices to determine which should include contact information to address Congress' concerns about employee access and accountability.<sup>25</sup> While its own IRM may suggest that notices resulting from an employee working on a case would include specific employee contact information, many of these notices do not, as the IRS does not follow its IRM.<sup>26</sup>

The National Taxpayer Advocate and other stakeholders have continued to raise concerns regarding the lack of access to knowledgeable and accountable employees despite Congress's enactment of RRA 98,

21 IRM 4.19.20.1(1), *Automated Correspondence Examination Overview (ACE)* (May 21, 2013). (“Using the ACE, Correspondence Examination can process specified cases with minimal to no tax examiner involvement until a taxpayer reply is received. Because the ACE system will automatically process the case through creation, statutory notice and closing, tax examiner involvement is eliminated entirely on no-reply cases. Once a taxpayer reply has been considered, the case can be reintroduced into ACE for automated Aging and Closing in most instances.”)

22 IRM 4.19.20.1, *Automated Correspondence Examination Overview (ACE)* (May 21, 2013).

23 See, e.g., Letter 531, *General Statutory Notice of Deficiency*. For a discussion of the National Taxpayer Advocate's concerns about SNOD compliance with RRA 98, see Most Serious Problem: *STATUTORY NOTICES OF DEFICIENCY: Statutory Notices of Deficiency Do Not Include Local Taxpayer Advocate Office Contact Information on the Face of the Notice*, *supra*.

24 See, e.g., 144 CONG. REC. S7717-04 (1998) (statement of Sen. Domenici), and *Practices and Procedures of the Internal Revenue Service: Hearings Before the S. Comm. on Finance*, 105th Cong. 105-190 (1997) at 97, 213-14; *Practices and Procedures of the Internal Revenue Service: Hearings Before the S. Comm. on Finance*, 105th Cong. 105-190 (1997) (questions of Chairman Roth) at 214.

25 IRS, Office of Legislative Affairs, *Enacted Law Report for the Restructuring and Reform Act of 1998* (May 28, 2014). The record of IRS actions taken to implement RRA 98 shows no comprehensive review of notices or Counsel opinion sought regarding § 3705(a)(1).

26 IRM 21.3.3.4.16.1, *Preparation of Outgoing Correspondence* (Oct. 25, 2007).

suggesting that meaningful change did not result from the IRS's implementation of §3705(a)(1).<sup>27</sup> Congress should address this failure by codifying RRA 98 §3705(a)(1) and adopting the IRM's definition of "manually generated correspondence" as that issued as a result of an IRS employee exercising his or her judgment in working or resolving a specific taxpayer case or correspondence, or where the employee is asking the taxpayer to provide additional case-related information. Congress should also require the IRS to provide specific manager contact information in automatically generated notices where the legal rights of taxpayers are impacted, such as the Statutory Notice of Deficiency.<sup>28</sup>

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27 See, e.g., National Taxpayer Advocate, *Are IRS Correspondence Audits Really Less Burdensome for Taxpayers?*, available at <http://www.taxpayeradvocate.irs.gov/Blog/are-irs-correspondence-audits-really-less-burdensome-for-taxpayers> (last visited Nov. 26, 2014), National Taxpayer Advocate 2011 Annual Report to Congress Vol. 2 63-90 (Research Study: *An Analysis of the IRS Examination Strategy: Suggestions to Maximize Compliance, Improve Credibility, and Respect Taxpayer Rights*), *IRS Oversight Board Public Forum: Panel 1: How Can Correspondence Audits Be More Effective for the IRS and Less Burdensome for Taxpayers?* (Feb. 28, 2012).

28 A taxpayer has only 90 days from the date on the Statutory Notice of Deficiency (150 days if the Statutory Notice of Deficiency is mailed to the taxpayer outside the United States) to file a petition with the U.S. Tax Court. Because a taxpayer has a limited amount of time to file a petition, if the taxpayer has questions about the Statutory Notice of Deficiency, contact information for a manager would be helpful.