



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

MAY 15 2002

Ms. Patti Eanet  
National Negotiator  
National Treasury Employees Union  
901 E Street, N. W., Suite 600  
Washington, DC. 20004

Dear Ms. Eanet:

This letter will confirm discussions between you, Jeanne Morrison, and other members of my staff, concerning the re-opening of the 1995 Employee Tax Compliance (ETC) Letter of Understanding. This Letter of Understanding has been changed to reflect the new IRS organization, to delete provisions that addressed the start-up of the program and are no longer necessary, to provide a notice to employees regarding the ETC-disposition of their cases, to provide a procedure for employees who self-report federal income tax non-compliance, to incorporate the practice of subsequent-year research by the ETC Branch, and to include a section on those matters that are excluded from the ETC program.

### **1. Overview of the Program**

The goals of the Program are to provide consistency in the treatment of employee tax delinquency issues, to protect employee privacy by further restricting access to sensitive employee tax information, and to conserve resources by involving the minimum number of people needed to dispose of the concern.

The purpose of the Program is to identify employees who are non-compliant with the tax laws. Employees who fail to timely and accurately file tax returns and to pay taxes when due and without penalty are non-compliant. The Program will identify those employees who are non-compliant for the tax year under review, including employees who had other tax activity due to non-compliance in earlier and in subsequent years.

The Program does not change any laws or regulations with which employees must comply, nor does it change the provisions of the Guide for Penalty Determinations which governs the imposition of administrative sanctions. Rather, the Program fulfills the purpose and intent of the Office of Government Ethics (OGE) regulation, 5 C.F.R. §2635.809, concerning the responsibility to satisfy just financial obligations, especially tax obligations that are imposed by law, as described in the enclosed Tax Compliance Policy Interpretation signed by the Deputy Commissioner on January 6, 1995. Therefore, employment actions against employees shall be instituted only if the alleged non-compliance constitutes a violation of law and/or regulation. No employment actions for alleged non-compliance shall be taken against employees that are inconsistent with applicable law and/or regulation.

## **2. How the Program Works/Employee Right to Respond**

The Program will be managed from the Employee Tax Compliance Branch of Agency-Wide Shared Services (AWSS) in Cincinnati, Ohio. Once a year prior to April 15, the individual master file (IMF) is reviewed to identify changes to an employee's account that could indicate non-compliance for any tax year. Identified accounts are downloaded to a separate file which the ETC Branch employees review for potential non-compliance before a contact letter is mailed to affected employees. However, the Service presumes that the information in the IMF is correct and, in cases where potential non-compliance is indicated, the employees will be contacted. The IMF has no way of taking into account the employees' individual circumstances, which, as the contact letter states, may result in the case being closed without action. The Service will refrain from contacting individual employees unless there is sufficient reason to believe that a violation of an existing law or regulation has occurred.

Employees of the ETC Branch will be responsible for reviewing the tax records of other employees. Employees of the ETC Branch must request disqualification from cases in which the employee believes a conflict of interest exists. Office of Government Ethics regulations at 5 C.F.R. §§2635.401-404 and §§2635.501-503 explain how to request disqualification. Copies of these regulations will be made available to the employees of the ETC Branch for their ready reference. For the purposes of the Program, employees of the ETC Branch should not answer questions about, or otherwise be involved with tax records of employees they know because of the appearance of a conflict of interest. In such cases, ETC Branch employees will immediately notify their supervisor and the case will be reassigned.

Employees shall be provided a reasonable amount of official time to respond to contact letters alleging non-compliance and to prepare for meetings and events relating to the alleged non-compliance. In these instances, the employee may request Union assistance. Local Union officials shall be allowed to assist such employees, provided the employees and the local Union officials follow the procedures in Article 9, Sections 20, 2P, 2Q, and 2R, National Agreement, regarding requesting time.

Employees shall not be required to show their managers copies of any transmittals received by the employee relating to the alleged non-compliance in order to receive official time. Such time will be provided, upon request, with the only requirement being that employees must notify their managers of the need for official time in order to prepare a response to an official inquiry. No specific explanation or additional information will be necessary.

Union officials may use FTS lines to contact individuals at the ETC Branch with Program responsibilities and knowledge to address general program questions. Questions specific to a particular case of alleged non-compliance will be directed to the ETC Branch via telephone. However, no employee tax account data will be disclosed without first faxing to the ETC Branch a copy of a properly executed "Request by

Representative for Access to Tax Information, copy enclosed. Telephone numbers, fax numbers and names of persons to contact will be provided to NTEU under separate cover.

Employees shall be provided three weeks from the date of receipt of any transmittal from the ETC Branch relating to alleged non-compliance to respond to the transmittal. The date of receipt is presumed to be five (5) calendar days after date of the transmittal. If the mailing of the transmittal is delayed, the employee will be granted an extension to three full weeks, provided the employee submits copies of the postmarked envelope and the dated letter to establish the delayed mailing. In such cases, the receipt is presumed to be five (5) calendar days after the postmark. If an extension is not granted, the response will be deemed due at the ETC Branch no later than twenty-eight (28) days from the date of the letter.

In order to maintain their privacy, employees who have questions or wish to discuss their case with members of the ETC branch should call the number given in the letter sent to them from the ETC branch. The ETC branch will inquire if the call is long distance and will offer to immediately return the call so as to minimize the charges incurred by the employee.

In all cases, employees will be advised in writing whether the ETC branch has determined that: 1) the employee did comply with his/her tax obligations and the matter is considered closed; 2) the non-compliance constituted a minor or technical violation that is not likely to be repeated, and the matter is closed without referral to local management; or 3) the non-compliance could be considered more than a minor or technical violation and that it will be referred to the employee's local management through the servicing personnel office.

### **3. Training**

Employees conducting duties under the Program will be provided the necessary training, materials and program support in order to successfully perform their Program duties.

### **4. Referral of Cases for Possible Disciplinary/Adverse Action**

Some cases are referred from the ETC Branch to management for possible disciplinary or adverse action. All information forwarded from the ETC Branch will be protected with Document 6441, (most current revision), This Document Requires Protection.

Because of time lags inherent in posting of changes to the IMF, ETC case processing and final adjudication of cases referred to local management, it is possible that in some cases information indicating non-compliance in tax years subsequent to those referred by the ETC branch will be available that was not available at the time of the original ETC branch review. Therefore, local management may request the ETC branch to research subsequent years. Action on the pending potential non-compliance issue(s)

will be suspended pending the ETC branch research. The ETC branch will notify management whether their research reveals additional non-compliance issues. If additional non-compliance issues are identified, the ETC branch will forward appropriate account information related to the issues to management.

When cases have been referred, including any additional information resulting from subsequent year research, an appropriate management official shall meet with the employee in order to review the potential non-compliance issues. The Service will consider explanations provided by the employee prior to proposing disciplinary or adverse action.

Meetings in which employees are questioned regarding alleged violations resulting from review of records under the Program shall be considered investigatory meetings, and all relevant provisions of the appropriate collective bargaining agreement shall apply (e.g., provisions including, but not limited to, National Agreement, Article 5, Employee Rights, would be applicable). Managers who examine employees who are the subjects of investigations related to alleged non-compliance with law and/or regulations regarding tax obligations shall comply with Article 5, Section 4A2e, by providing such employees with a copy of IRS Form 8111, found at Exhibit 5-1, National Agreement. Employees will acknowledge receipt on the form and will be given a copy of the executed form for their records.

Pursuant to Article 38, Section 3, and Article 39, Section 5, National Agreement, employees who are the subjects of disciplinary or adverse actions may request the information the Service relied upon to bring the action. IRM 6.751.1.16 discusses how to request that information. In addition, proposal letters used for suspensions and removals specifically advise employees how to request that information. The information relied upon in these cases is "return and return information," the release of which is governed by 26 U.S.C. §6103. The Union may request the information pursuant to 26 U.S.C. §6103(l)(4)(a). Nothing in this paragraph waives the employees' or the union's right to request and/or obtain additional information under other authorities, such as the Privacy Act, the Freedom of Information Act, the Federal Service Labor-Management Relations Statute or National Agreement.

All disciplinary and adverse actions of bargaining unit employees resulting from alleged non-compliance shall be handled in accordance with the appropriate collective bargaining agreement. Employees who disagree with an agency determination of responsibility may grieve that determination through the negotiated grievance procedure.

## **5. EMPLOYEE SELF IDENTIFICATION OF FEDERAL TAX NON-COMPLIANCE**

### General

Employees may bring instances of their own federal tax non-compliance to the attention of management at any time or in conjunction with an open non-compliance issue before management for administrative investigation and adjudication.

In both situations described below, management will request the ETC branch to do additional research. However, requests for additional research on potential non-compliance issues involving proposed additional federal tax or penalty assessments due to adjustment, audit, underreporter or other similar activity will not be forwarded to the ETC branch until the IRS finalizes the assessment.

Upon receipt of account information from the ETC branch, an appropriate management official shall meet with the employee in order to review the potential non-compliance issue. The Service will consider explanations provided by the employee prior to proposing disciplinary or adverse action.

#### When there is no open non-compliance issue before management

If an employee brings an instance of federal tax non-compliance to management's attention when there is no open non-compliance issue before management, the manager will identify, through discussion and review of any documents provided by the employee, the nature and status of the potential non-compliance issue(s).

The manager will forward the potential non-compliance issue(s) to the ETC branch by memorandum and will provide a copy of the memorandum to the employee. Employees may submit a separate written statement they would like the ETC branch to consider in reviewing the matter. Employees should provide the ETC branch with copies of any documents including correspondence with the IRS or other third parties in their possession that would help clarify the matter or support their written statement. The information provided by employees may provide an explanation that could result in the ETC branch closing the case without further inquiry or action. All information employees wish to submit must be received by the ETC branch within 15 days of the date of the manager's memorandum.

Upon receipt of management's memorandum, the ETC branch will review the employee's account to insure that potential non-compliance issues are identified. If any potential non-compliance issues are identified in addition to those identified by the employee, the ETC branch will contact the employee in accordance with established ETC procedures and provide the employee with an opportunity to respond. The ETC branch will review any written statement and any supporting documentation submitted by the employee in accordance with established ETC branch procedures.

If the ETC branch determines at any time that a potential non-compliance issue exists that cannot be closed as a minor or technical violation not likely to be repeated, the matter will be referred to the employee's local management through the servicing personnel office for appropriate action.

#### When there is an open non-compliance issue before management

If an employee brings an instance of federal tax non-compliance to management's attention when there is an open federal tax non-compliance issue before management

for administrative investigation and adjudication, the issue may be added to the open investigation and addressed by local management at the same time. The ETC branch will research the employee's account to ensure that potential non-compliance issues are identified. Administrative action on the current open non-compliance issue will be suspended until the ETC branch completes their research. The ETC branch will notify local management whether any new issue(s) constitute a potential non-compliance issue and, if so, will forward appropriate account information related to the issue.

#### Effect on an IRS spouse

If the ETC branch discovers that a potential non-compliance issue brought to management's attention by an employee involves a jointly filed return with a spouse who is also an IRS employee and who did not bring the issue to his/her manager's attention, the ETC branch will add the issue for the spouse to the current ETC inventory and work the issue in accordance with established ETC procedures.

### **6. EXCEPTIONS TO ETC PROCESS**

Information obtained through background investigations of newly hired employees, either through form 5012, new employee tax verification, or through background investigations.

Those occasions where a report of investigation involving potential employee misconduct after entrance on duty contains information indicating non-compliance with tax obligations.

Those occasions where a GAO or Congressional inquiry require the IRS to investigate and respond.

Those instances where management has already taken an action involving a tax year and is simply following up to ensure that the employee is complying with any conditions related to that action.

### **7. Program Information for NTEU**

On a quarterly basis, and upon request, NTEU national office will be provided with statistical information regarding the operation of the Program.

On a quarterly basis, and upon request, local chapters will receive additional detailed statistical reports for employees represented by the chapter.

### **8. Additional National Bargaining Obligations**

The Service shall notify the Union and conclude negotiations over all legally negotiable matters prior to implementing any changes to the Program.

The National parties agree to have continued interaction to address concerns as they arise. Meetings will be held upon the request of either party or by mutual agreement. Management will provide National NTEU with written notification of the end of the yearly cycle. Within 30 days of that notification, either party may exercise its right to reopen negotiations. The provisions of this letter remain in effect for the duration of National Agreement, or until a successor Letter of Understanding is reached, whichever comes first.

A copy of this letter will be provided to all bargaining unit employees.

We believe the above fully addresses your concerns. If you have questions or need more information, please call Jeanne Morrison on 202-622-8774.

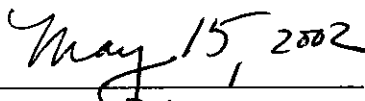
Sincerely,



Lucy G. Vargas  
Director, Workforce Relations Division

Enclosure

Concur:   
\_\_\_\_\_  
Patti Eanet

  
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Date