

**WRITTEN TESTIMONY OF
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BEFORE THE
HOUSE OVERSIGHT AND GOVERNMENT REFORM COMMITTEE
SUBCOMMITTEE ON ECONOMIC GROWTH, JOB CREATION AND
REGULATORY AFFAIRS
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Chairman Jordan, Ranking Member Cartwright and Members of the Subcommittee, thank you for the opportunity to appear before you today to give you an update on the work we have been doing to cooperate with the six investigations into the findings by the Treasury Inspector General for Tax Administration (TIGTA) regarding the improper criteria used in processing applications for tax-exempt status under section 501(c)(4) of the Internal Revenue Code.

Before beginning my testimony, I want to thank the Subcommittee for its willingness to work around my travel schedule, which caused me to be unable to testify in the same week as the Department of Justice (DOJ). In attempting to set the original hearing date, I had planned to focus my testimony on an overview of IRS interactions with DOJ, the ways in which our agencies cooperate to protect the integrity of our tax system, and our efforts to cooperate with DOJ's investigation into the situation involving the applications for 501(c)(4) status. I would like to begin my testimony today by providing that information to the Subcommittee.

In general terms, the IRS regularly and routinely interacts with the DOJ Tax Division in the investigation and prosecution of criminal and civil tax matters, and with the United States Attorneys' offices in other financial fraud, including money laundering and violations of the Bank Secrecy Act.

Let me begin by outlining for you the work of our Criminal Investigation (CI) division. CI investigates and detects tax and other financial fraud and, after developing cases, recommends these cases to DOJ's Tax Division for prosecution. These cases represent a variety of tax issues, including refund fraud, abusive tax shelters, return preparer fraud and international tax noncompliance. CI also works closely with DOJ's Criminal Division and the 93 U.S. Attorneys around the country on tax and non-tax cases.

Through these cooperative efforts, we have made significant progress in combatting tax-related crimes in recent years. Prosecutions recommended by CI increased to 4,364 in FY 2013 from 3,701 the previous year. This is the highest

level of prosecution recommendations in more than a decade. The conviction rate for cases tried in court that year reached 93.1 percent, also the highest in a decade.

In addition to cooperating on individual cases, CI coordinates with the DOJ Tax Division in defining goals and strategies with respect to criminal tax case selection criteria and other emerging issues. Such issues include offshore tax evasion and fraud involving identity theft. An excellent example involves the collaborative efforts that recently led to the issuance of a new directive to the field on identity theft, Tax Division Directive No. 144. This directive streamlined the process for U.S. Attorneys in moving ahead with grand jury investigations and criminal complaints in cases involving tax-related identity theft. This allows them to more quickly and easily address this crime in their jurisdictions, with the result being that more of these criminals are being brought to justice.

Routine interactions between the IRS and the Tax Division also involve the IRS Office of Chief Counsel, which reviews all criminal tax cases developed by CI before those cases are recommended to the Tax Division for prosecution.

The cooperative efforts by Chief Counsel extend to civil tax matters as well. The DOJ Tax Division represents the U.S. in most civil tax litigation in the federal and state courts (with the exception of the U.S. Tax Court, where Chief Counsel has jurisdiction). When the Tax Division litigates a civil matter, Chief Counsel attorneys are actively involved, collaborating with DOJ attorneys on the arguments and positions taken in pleadings, motions, briefs and other papers. Chief Counsel attorneys also refer cases to the Tax Division in various situations, such as when there is a need to seek injunctions against unscrupulous tax return preparers and abusive tax shelter promoters to prevent them from continuing to engage in those activities.

It is important to note that communications between the IRS and DOJ, both the Tax Division and other DOJ components, are governed by Internal Revenue Code Section 6103, which generally prohibits disclosure of returns and return information, although disclosure is allowed in certain situations. For example, under section 6103(h)(3)(A), the IRS may make disclosures to the Tax Division on its own motion where a tax case has been referred to DOJ, or where a taxpayer or third party initiates a suit against the United States that is a matter of tax administration. Under section 6103(h)(3)(B), the IRS may make disclosures to DOJ in matters involving tax administration in response to a request from the Attorney General, Deputy Attorney General, or an Assistant Attorney General. Generally, in non-tax matters, DOJ must obtain court approval to obtain a return or return information submitted by the taxpayer or his or her representative.

Let me highlight for you two specific areas where our collaborative efforts with the Tax Division and United States Attorneys' offices have recently led to important accomplishments in reducing tax noncompliance:

International compliance/offshore tax evasion. Working together, the IRS and DOJ have made critical progress in the international tax area. Recently, our work on offshore tax evasion has included the prosecution of several foreign banks for conspiracy to commit tax evasion resulting in restitution of \$808.4 million and forfeitures of \$51.8 million; indictments of almost two dozen foreign bank employees and investment advisors; and more than 100 indictments of U.S. citizens with hidden offshore accounts.

Additionally, in May of this year, the Swiss bank Credit Suisse AG pleaded guilty to charges involving its efforts to assist U.S. citizens in hiding assets in undisclosed Swiss accounts. As part of the agreement, Credit Suisse agreed to pay a total of \$2.6 billion to the U.S. The guilty plea is an important milestone in ongoing law enforcement efforts undertaken jointly by the IRS and DOJ to go after the use of offshore accounts to evade taxes.

I would note that the Credit Suisse case highlights the financial expertise of CI special agents, who are uniquely adept at unraveling complex financial transactions. The IRS was pleased to be able to provide prosecutors with CI's technical and investigative expertise in support of this action as well as other actions designed to increase our ability to enforce the tax code here and around the world.

Another recent example of our accomplishments in the international area involves a non-tax case. DOJ announced last month that BNP Paribas S.A. (BNPP), a global financial institution headquartered in Paris, agreed to plead guilty to criminal charges and pay penalties of almost \$9 billion in connection with its efforts to assist several foreign entities that were attempting to circumvent U.S. economic sanctions. BNPP processed billions of dollars of transactions through the U.S. financial system on behalf of Sudanese, Iranian, and Cuban entities subject to sanctions, in direct violation of U.S. laws. This plea agreement is the first of its kind, and came about as the result of ongoing coordinated efforts of several law enforcement agencies, including CI, which was the lead investigative agency.

Refund fraud involving identity theft. The investigative work done by CI and its collaboration with the DOJ Tax Division are major components of our efforts to combat tax-related identity theft. As with other types of tax fraud, CI investigates and detects identity theft-related refund fraud and recommends prosecution of these cases to the Tax Division.

These efforts recently have yielded significant progress against identity theft schemes. Along with more than 821 new investigations opened so far in Calendar Year 2014, there have been 731 recommendations for prosecution and 555 sentences so far this year, with an average time to be served of more than 43 months.

To highlight one example of our collaborative efforts in this area, in January 2013 CI, the Tax Division and local U.S. Attorneys together conducted a highly successful identity theft enforcement sweep. This nationwide effort against 389 identity theft suspects led to 734 enforcement actions, including 189 indictments, informations and complaints, and 109 arrests. Around the time of the sweep, IRS auditors and investigators made compliance visits to 197 money service businesses in a variety of locations across the country to help ensure that these businesses were not facilitating refund fraud and identity theft.

Let me turn now to the efforts we have made over the past year to cooperate with the investigation being conducted by DOJ, as well as five others, into the processing and review of applications for tax-exempt status as described in the May 2013 audit report by TIGTA.

We have cooperated with this investigation through the production of relevant documents and by making IRS employees available for interviews. I have no information regarding the status or the nature of the DOJ investigation, nor do I have a record of who among our employees has been interviewed by DOJ.

To put this in perspective, the DOJ investigation is one of six ongoing probes into the matter. Four others are being conducted by Congress and one is being done by TIGTA. The IRS has been making and continues to make every effort to be as transparent as possible and cooperate with all six investigations.

To date we have produced more than 960,000 pages of unredacted documents to the tax-writing committees (which have section 6103 authority) and more than 700,000 pages of redacted documents to the House Oversight and Government Reform Committee and the Senate Permanent Subcommittee on Investigations. I understand that the Oversight Committee's staff has interviewed more than 30 current and former IRS employees, who have given more than 60 interviews to congressional staff. It is important to note that in our efforts to cooperate, we have worked to accommodate the information needs of each of the six investigating entities

As we have reported previously, over the past year the IRS has devoted significant resources to complying with the requests for information from the six investigating entities – transmitting documents and facilitating interviews in an effort to provide complete facts about the determinations process for tax-exempt status under section 501(c)(4). More than 250 IRS employees have spent more than 125,000 hours working directly on complying with the investigations, at a cost of approximately \$10.75 million. In order to properly protect taxpayer information while efficiently processing voluminous materials for production, we had to add capacity to our information technology systems and, therefore, spent an additional \$6 million to \$8 million to optimize existing systems and ensure a stable infrastructure.

Before concluding my testimony, I also want to address an issue that arose recently in relation to a DOJ Public Integrity Section information request in 2010 regarding a separate matter involving 501(c)(4) organizations.

It is our understanding that in 2010, the DOJ Public Integrity Section contacted the IRS to discuss 501(c)(4) issues and was directed to Ms. Lerner. Thereafter, a meeting was scheduled and in conjunction with that meeting, the IRS agreed to provide publicly available information regarding existing 501(c)(4) organizations. In the fall of 2010, after the meeting, we understand that the IRS provided 21 disks of material to the FBI. The disks contained Forms 990, *Return of Organization Exempt from Income Tax*, that were filed by section 501(c)(4) organizations from January 1, 2007 through October 1, 2010.

The disks were provided by the unit that processes requests for the Form 990 information that is publicly available under section 6104 (which is an exception to the statutory confidentiality provisions of section 6103). This information is available to the public on various websites.

This 990 data, when it is released, can sometimes inadvertently include material that is nonpublic and should have been redacted or withheld. That was the case with 32 of the more than 12,000 Forms 990 stored on the 21 disks provided to the FBI in 2010. Although I cannot reveal the identities of the 32 affected organizations because that is confidential taxpayer information legally protected from disclosure under section 6103, these organizations represent a wide spectrum of groups, and the majority of them do not appear to have any connection to political activity.

On June 11, 2014, we provided the House Oversight and Government Reform Committee with an additional production of materials we identified as relating to DOJ's communications with us regarding the disks that we sent to DOJ in 2010. Several of these documents are from IRS employees' accounts beyond those of the 83 custodians involved in our productions relating to the processing and review of applications for tax-exempt status.

Chairman Jordan, Ranking Member Cartwright and members of the Subcommittee, thank you again for the opportunity to provide you with an overview of the ways the IRS interacts with DOJ in order to improve tax administration and serve the American taxpayer, and to update you on our continuing efforts to cooperate with the six ongoing investigations into the situation involving the applications for 501(c)(4) status. This concludes my statement, and I would be happy to take your questions.