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## GENERAL MEMORANDUM 13-031

### Treasury Inspector General Questions Fraud Detection Efforts at Internal Revenue Service's Indian Tribal Governments Office

On January 28, 2013, the Treasury Inspector General for Tax Administration (TIGTA) released the following report: *Fraud and Abuse Are Addressed in the Indian Tribal Sector, but Performance Objectives and Measures Are Needed to Assess Program Effectiveness* (2013-10-018). While the report focuses on the need for quantifiable performance measures to better gauge the work of the Abuse Detection and Prevention Team (ADAPT) in the Indian Tribal Governments (ITG) Office, the data provided on the number of audits performed chronicles what had previously been only anecdotal: there has been a dramatic uptick in the number of audits of Indian Country but these audits have uncovered only minimal instances of fraud or abuse.

The ADAPT was established in FY 2004 after the release of the TIGTA's September 2003 report entitled *The Tax Exempt and Government Entities Division Should Pursue Additional Methods to Identify Potential Fraudulent Activities* (2003-10-217). The Tax Exempt and Government Entities Division (TE/GE) of the Internal Revenue Service (IRS) is composed of three functions: Employee Plans; Exempt Organizations; and Government Entities. The Government Entities function is then further subdivided into three offices: Federal, State, and Local Governments; Indian Tribal Governments; and Tax Exempt Bonds. The 2003 report was not specific to the ITG Office, rather, it was directed towards the entire TE/GE Division. In its 2003 report the TIGTA observed and recommended that:

"Overall, TE/GE Division management focuses their customer education and outreach efforts on voluntary compliance programs to increase upfront compliance and reduce the need for examinations. ... Providing outreach, education, and voluntary compliance agreements is appropriate for TE/GE Division customers who want to comply with their tax obligations. However, for those customers who willfully evade their obligations, a stronger approach should be taken. TE/GE Division management should work with the CI [Criminal Investigation] function to address willful noncompliance that could be considered criminal or fraudulent. ... the Commissioner, TE/GE Division, [should] formalize plans for providing fraud training and establish a process to identify the areas most vulnerable to potential criminal fraud, evaluate externally or internally identified allegations of fraud to determine the appropriate action to take, and coordinate the priority of issues with the CI function."

The TIGTA then detailed a number of areas considered to be potentially vulnerable to fraud and abuse within the three functions but never mentioned the ITG; rather the TIGTA noted that the ITG Office (in contrast with other TE/GE Offices) was *already* giving potential fraud allegations higher priority when determining which cases to send to the field. "Growth of fraud and abuse" was what supposedly justified the creation of ADAPT, yet neither in 2003 nor since has IRS demonstrated any evidence or basis for the alleged increasing fraud and abuse.

The TIGTA's 2013 report details that between FY 2008 and FY 2011, the ADAPT completed examinations of 95 Indian tribal entities and 203 tribal members connected to 68 of the 566 federally recognized tribes. Of these examinations, only eight cases were referred to the National Fraud Office and only four of the eight cases were then accepted by CI for further investigation. Of the remaining four, the National Fraud Office took no action in two of the cases, asserted a civil penalty in one case, and CI declined the other. While the IRS Restructuring and Reform Act of 1998 (PL 105-206) prohibits Records of Tax Enforcement Results (the number of cases closed, dollars assessed, etc.) from being used to set performance goals or evaluate examiners, the significant number of tribes investigated compared to the low percentage of cases accepted by CI for further investigation would appear to contradict the overarching premise that IRS needs to stem the growth of fraud and abuse in the tribal sector. The Indian Tribal Governments Office in their response to the 2013 report even goes so far as to state:

"Our experience, and the data we have seen, does not support any implication that fraudulent or abusive schemes are more prevalent in Indian Country than in other sectors of the population, or that tribes or their members are the major source of those schemes."

While the TIGTA recommends that, "the Director, ITG, develop specific performance objectives and measures in order to better assess ADAPT performance," a broader and more fundamental question regarding the allocation of IRS resources is raised by the TIGTA report. Indian Country appears to have been investigated at a much higher rate than the rest of the general population, yet these investigations have yielded few results. Audits come at a significant cost to tribes and taxpayers and in most instances appear to have been unwarranted.

Please let us know if we may provide additional information regarding the Treasury Inspector General for Tax Administration's 2003 and 2013 reports.

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