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Tax Regs in Plain English

# IRS Restructuring and Reform Act of 1998

## 1105 - Prohibition on Executive Branch Influence over Taxpayer Audits & Other Investigations

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### Section 1105

**A. Provision(s) covered:** Section 1105 (Prohibition on Executive Branch Influence over Taxpayer Audits and Other Investigations) [added IRC § 7217]

**B. Background:** New IRC § 7217 makes it a crime for certain Executive Branch officers and employees to request (directly or indirectly) any Service employee to conduct or terminate a tax audit or other investigation of any particular taxpayer, subject to three exceptions discussed below. The officers and employees prohibited from making such requests are:

The President

The Vice President

Any employee of the executive office of the President or Vice President

The Secretary of State

The Secretary of the Treasury

The Secretary of Defense

The Secretary of the Interior

The Secretary of Agriculture

The Secretary of Commerce

The Secretary of Labor

The Secretary of Health and Human Services  
The Secretary of Housing and Urban Development  
The Secretary of Transportation  
The United States Trade Representative  
The Secretary of Energy  
The Secretary of Education  
The Secretary of Veterans Affairs  
The Director of the Office of Management and Budget  
The Director of National Drug Control Policy  
The Commissioner of Social Security  
The Social Security Administration

Employees who receive requests (whether directly or indirectly) to conduct or terminate a tax audit or other investigation of any particular taxpayer from these Executive Branch officials or employees must report receipt of the request to the new Treasury Inspector General for Tax Administration. Section 7217 makes it a crime for Service employees to fail to report prohibited requests as of the date of enactment. The failure of an employee to report prohibited requests is punishable by a fine of up to \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

These prohibitions are intended to eliminate taxpayers' perceptions that high-level Executive Branch influence over taxpayer audits and collection activity can occur with impunity. Section 7217 expressly excludes certain high-level contacts from the prohibition. In this regard, there are three types of written requests that can be made by the Executive Branch officials and employees listed above to agency employees that are specifically not prohibited under the terms of IRC § 7217 and do not trigger the requirement for an employee to report to the Treasury Inspector General for Tax Administration.

First, the prohibition does not apply to a written request made to one of the Executive Branch officials and employees listed above by or on behalf of a taxpayer that is then forwarded by that official or employee to the IRS. This is intended to cover two types of situations. The first situation is where a taxpayer (or a taxpayer's representative) writes to one of the Executive Branch officials and employees seeking assistance in resolving a difficulty with the IRS. It permits the Executive Branch official or employee who receives such a request to forward it to the IRS for resolution without violating the general prohibition. The second situation intended to be covered is an audit or investigation by the IRS of a Presidential nominee. Under present law (IRC § 6103(c)), nominees for Presidentially appointed positions consent to disclosure of their tax returns and return information so that background checks may be conducted. Sometimes an audit or other investigation is initiated as part of that background check.

The second type of written request not prohibited by IRC § 7217 is a written request for disclosure of returns or return information under IRC § 6103 if the request is made in accordance with the requirements of section 6103.

The third type of written request not prohibited by IRC § 7217 are requests made by the

Secretary of the Treasury as a consequence of the implementation of a change in tax policy.

**C. Change(s):** Creation of IRC § 7217.

**D. Impact:** Section 7217 makes it a crime for Service employees to fail to report prohibited requests as of the date of enactment.

### **E. Necessary Actions**

1. **Actions/Procedures:** Employees who receive requests (whether directly or indirectly) to conduct or terminate a tax audit or other investigation of any particular taxpayer from any Executive Branch official or employee identified in B. above must, within two days of receiving the request, make and transmit a written report to the new Treasury Inspector General for Tax Administration. Until such time as an Office of Treasury Inspector General for Tax Administration is established (expected to be within 180 days of enactment), written reports should be made to the Treasury Inspector General for Tax Administration in care of the Office of the Chief Inspector. The report must include as much of the following information as is known by you:

Your name, title, office, address, and telephone number;

The name, title, or office of the Executive Branch officials or employees making the request;

A description of exactly what was requested;

The manner in which the request was made (i.e., whether the request was in person, by telephone, by mail, by telex or telegram, by facsimile, or by any mode of telecommunication) The date and time the request was made and where it was made;

The identity of each person having knowledge or witnessing the request; and

To the extent the request was made in presence of someone in addition to yourself and involved discussions, the substance of what was said by each person who participated in any discussion in which the request was made.

You must also forward a copy of any document(s) that records, summarizes, or confirms the request or any discussion(s) related to the request.

2. **Things we CAN do:** Employee reports required under new IRC § 7217 may be made orally in the first instance, but must also be confirmed in writing within two days of receipt. See E.1. above.
3. **Things we CAN'T do:** Delaying the report described above. Advising the person that has made or is making the request of the fact that a report has been made or will be made. See E.1. above.

**F. Other Special Comments:** The reporting procedures described above in E.1. are temporary. Formal interim reporting procedures may be prescribed by the agency in consultation with appropriate offices. Final reporting procedures will likely be prescribed by the Office of the Treasury Inspector General for Tax Administration, once it is constituted.

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