

Part III. Administrative, Procedural, and Miscellaneous

Termination of Employment for Misconduct

Notice 99-27

SECTION I. PURPOSE

Section 1203 of the Internal Revenue Service Restructuring and Reform Act of 1998 (the "RRA") provides generally that IRS employees must be terminated from Federal employment if they violate certain rules in connection with the performance of their official duties. The statute also allows the Commissioner to mitigate the sanction of termination. This Notice requests public comments on the proper interpretation of section 1203.

SECTION II. BACKGROUND

The basic rules governing disciplinary actions against federal civilian employees are set forth in Chapter 75 of Title 5 of the United States Code. In general, these rules permit discipline, up to and including termination of employment, to be imposed for such cause as will promote the efficiency of the federal service. Agencies generally have discretion as to whether to impose disciplinary action and as to the form and severity of the action to be imposed, based upon the facts and circumstances of the situation. Most agency decisions concerning the imposition of discipline are subject to review by parties outside the agency, *e.g.*, in arbitration or by an appeal to the Merit Systems Protection Board.

RRA section 1203 made significant changes in these general rules as applied to IRS employees. Specifically, section 1203 provides that an IRS employee must be terminated from employment if there is a final administrative or judicial determination that the employee violated any of the rules set forth in sections 1203(b)(1)-(10) in the performance of official duties. In addition, section 1203(c) of the statute provides that the Commissioner may decide to take a personnel action other than removal if certain mitigating factors are present; however, this decision may only be made by the Commissioner personally and is not subject to review in any administrative or judicial proceeding. The full text of section 1203 is attached at Appendix A.

SECTION III. INTERPRETATION OF SECTION 1203

The Internal Revenue Service requests comment with respect to the following matters under RRA section 1203:

A. Existing personnel law and procedures will be applied in interpreting section 1203, unless explicitly provided otherwise. For example, current procedural requirements of personnel law, including advance written notice, an opportunity for an oral and written

APPENDIX A

SEC. 1203. TERMINATION OF EMPLOYMENT FOR MISCONDUCT

(a) IN GENERAL.— Subject to subsection (c), the Commissioner of Internal Revenue shall terminate the employment of any employee of the Internal Revenue Service if there is a final administrative or judicial determination that such employee committed any act or omission described under subsection (b) in the performance of the employee's official duties. Such termination shall be a removal for cause on charges of misconduct.

(b) ACTS OR OMISSIONS.— The acts or omissions referred to under subsection (a) are—

(1) willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business assets;

(2) providing a false statement under oath with respect to a material matter involving a taxpayer or taxpayer's representative;

(3) with respect to a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service, the violation of—

(A) any right under the Constitution of the United States; or

(B) any civil right established under—

(i) title VI or VII of the Civil Rights Act of 1964;

(ii) title IX of the Education Amendments of 1972;

(iii) the Age Discrimination in Employment Act of 1967;

(iv) the Age Discrimination Act of 1975;

(v) section 501 or 504 of the Rehabilitation Act of 1973; or

(vi) title I of the Americans with Disabilities Act of 1990;

(4) falsifying or destroying documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or taxpayer representative;

(5) assault or battery on a taxpayer, taxpayer representative, or other

employee of the Internal Revenue Service, but only if there is a criminal conviction, or a final judgment by a court in a civil case, with respect to the assault or battery;

(6) violations of the Internal Revenue Code of 1986, Department of Treasury regulations, or policies of the Internal Revenue Service (including the Internal Revenue Manual) for the purpose of retaliating against, or harassing, a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service;

(7) willful misuse of the provisions of section 6103 of the Internal Revenue Code of 1986 for the purpose of concealing information from a congressional inquiry,

(8) willful failure to file any return of tax required under the Internal Revenue Code of 1986 on or before the date prescribed therefor (including any extensions), unless such failure is due to reasonable cause and not to willful neglect,

(9) willful understatement of Federal tax liability, unless such understatement is due to reasonable cause and not to willful neglect, and

(10) threatening to audit a taxpayer for the purpose of extracting personal gain or benefit.

(c) DETERMINATION OF COMMISSIONER.--

(1) IN GENERAL.-- The Commissioner of Internal Revenue may take a personnel action other than termination for an act or omission under subsection (a).

(2) DISCRETION.-- The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner of Internal Revenue and may not be delegated to any other officer. The Commissioner of Internal Revenue, in his sole discretion, may establish a procedure which will be used to determine whether an individual should be referred to the Commissioner of Internal Revenue for a determination by the Commissioner under paragraph (1).

(3) NO APPEAL.-- Any determination of the Commissioner of Internal Revenue under this subsection may not be appealed in any administrative or judicial proceeding.

(d) DEFINITION.-- For purposes of the provisions described in clauses (i), (ii), and (iv) of subsection (b)(3)(B), references to a program or activity receiving Federal financial assistance or an educational program or activity receiving Federal financial assistance shall include any program or activity conducted by the Internal Revenue Service for a taxpayer.