



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

DEPUTY COMMISSIONER

July 1, 2011

The Honorable Dave Camp  
Chairman  
Committee on Ways and Means  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

I am responding to your letter of June 3, 2011, to Commissioner Shulman regarding the application of gift tax to contributions to section 501(c)(4) organizations. I assure you that the IRS's actions in this area were in no way influenced by political considerations. The IRS is apolitical and non-partisan. All decisions made and actions taken with respect to the matter were performed by career employees in the normal course of their duties. No one outside of the IRS provided input regarding the enforcement decisions on these cases.

The responses to your specific requests are below. Because of the limited number of cases that involve this issue, responses to some of your questions may disclose return information of specific taxpayers. Where applicable, these responses are included in our accompanying reply to your letter dated June 3, 2011, requesting information covered under section 6103 of the Internal Revenue Code. Unredacted case files and other related documentation previously have been provided to your staff.

**1. Names, titles, and divisions and/or offices of all individuals involved in or contributed to the decision to investigate whether taxpayer contributions to §501(c)(4) organizations should be subject to gift tax rules.**

The response to this question has been provided in our reply to your request for information covered under section 6103 related to particular gift tax audits.

**2. All IRS rulings and internal memoranda relating to the applicability of the gift tax to §501(c)(4) organizations.**

There have been no rulings on this issue since the issuance of Revenue Ruling 82-216. Information responsive to this request has been provided in our reply to your request for information covered under section 6103 related to particular gift tax audits. The IRS is in the process of performing an electronic search of files of the individuals involved in

this matter. As discussed with your staff, the results of that search will take some time to produce.

**3. Detailed explanation and relevant documents related to:**

**a. How are employees that work on estate and gift taxes organized within the Small Business/Self Employed Division (SB/SE)?**

The SB/SE management chain is as follows:

Commissioner and Deputy Commissioner of SB/SE  
Director, Specialty Tax  
Chief, Estate and Gift (E&G)  
Territory Managers, E&G  
Group Managers, E&G  
Estate Tax Attorneys (ETA) (i.e., the field examiners in E&G)

The Chief, E&G, also has line authority over an E&G Policy staff and a Planning and Special Programs (PSP) staff who provide technical and case assignment assistance for the field examiner staffs.

**b. Where are the employees that work on estate and gift tax issues physically located?**

See Enclosure A for the post-of-duty listing.

**c. How many employees in the IRS work on estate and gift tax issues? Provide an organizational chart identifying each employee in the structure.**

As of June 2011, there are 361 employees in the E&G program. See Enclosure B for the organizational chart.

**d. Does the E&G office prepare an annual work plan similar to the annual work plan released by the TE/GE Division? Provide a copy of the last five years' annual reports.**

The E&G program prepares an annual work plan based on return closures. The E&G program does not prepare a work plan similar to the annual work plan released by TE/GE discussing projects for the coming year.

Estate & Gift Tax Program					
Annual Work Plan					
Workstream	FY2007	FY2008	FY2009	FY2010	FY2011
Estate Under \$5M - FLP	396	375	263	124	78
Estate Under \$5M - Non FLP	2,401	1,640	1,503	1,850	1,811
Estate \$5M and Over - FLP	290	375	359	220	241
Estate \$5M and Over - Non FLP	1,355	1,370	1,464	1,825	1,831
Gift - FLP	568	450	301	464	464
Gift - Non FLP	1,020	1,032	789	1,140	1,705
Fiduciary	233	88	81	60	25
Total	6,263	5,331	4,760	5,683	6,155
Estate Under \$5M	2,797	2,016	1,766	1,974	1,889
Estate \$5M and Over	1,645	1,745	1,823	2,045	2,072
Estate Total	4,442	3,761	3,589	4,019	3,961
Gift Total	1,588	1,482	1,090	1,604	2,169

Family Limited Partnership (FLP)

**e. How many estate and gift tax audits were conducted in 2006, 2008, and 2010 related to gifts made to § 501(c)(4) organizations?**

The E&G information management systems do not classify gift tax returns by type of entity receiving the donation; however, employees in the E&G function, do not recall any other such audits other than the taxpayers currently being examined.

**f. How do employees that work on estate and gift tax issues within the SB/SE Division gain access to the Form 990s for § 501(c)(4) organizations?**

Estate and Gift tax examiners do not have direct access to Forms 990 through any internal system (an internal system exists to provide access to exempt organization returns upon request if necessitated by a business reason, but E&G employees have not requested access to that system). When EO Examination refers an organization for potential examination to any other part of the IRS, pertinent documents are sent; these referrals might include copies of Forms 990, depending on the issue involved. Note that Forms 990 are available on a variety of public websites, such as Guidestar, or Foundation Center. Forms 990 of 501(c)(4) organizations found on public websites do not include contributor lists.

**g. How did employees in the Exempt Organizations Division assist in the sharing of the Form 990 information with other IRS employees? Is this common practice? If so, how many examinations have originated from shared Form 990s to other IRS divisions?**

Information with respect to the specific E&G cases has been provided in our reply to your request for information covered under section 6103 related to particular gift tax audits.

More generally, Form 990 information can be included as support in referrals to other operating units. Whether to include such information is determined on a case-by-case basis depending on the relevant facts and circumstances. Some referrals provide enough information on the referred entity without the need for Form 990 information while others may require Form 990 information to support the referral. Sharing of Form 990 information does not occur in every referral, but it is not unusual to share information with other Business Operating Divisions when needed. (As noted above, the vast majority of information on Form 990 for section 501(c)(4) organizations is public, with the exception of the contributor lists.)

Sharing of information can occur in several ways. Referral to other units is triggered when EO personnel submit Form 5666 (TE/GE Referral Information Report) or other equivalent information report to EO Classification for processing. Form 5666 will include information supporting the submitted referral based on the Agent's examination or review findings that address issues outside the scope of Exempt Organizations. Submitted information may include data found on Form 990 along with data gathered during the examination and/or review process. EO Classification forwards referrals to other units based on the procedures specified in IRM 4.75.5.5 (13), which states that EO Classification will forward Forms 5666 (or equivalent information report) not involving exempt organizations, to Planning and Special Programs (PSP) for the territory servicing the principal place of business of the taxpayer, i.e., Small Business and Self Employed (SBSE), Wage and Investment (W&I), and Large Business & International (LB&I).

EO personnel also can refer taxpayers other than exempt organizations utilizing the online Specialist Referral System (SRS). SRS automates the request process for LB&I, SBSE, W&I, and TE/GE field specialists. SRS can be used to refer, or most often, to request the assistance of a specialist (e.g., an economist) for an ongoing examination. Agents can generate a request online that will automatically notify the appropriate Specialist Manager in the receiving business unit, as well as the referring agent's manager, of the request. Using the SRS, one can generate referrals for, or request assistance from, a Computer Audit Specialist, Economist, Employee Plans, Employment Tax, Engineering, Excise Tax, Exempt Organizations, Federal, State & Local Government, Financial Products, Indian Tribal Government, International, and Tax-Exempt Bonds.

SBSE's Estate and Gift (E&G) Tax unit has its own referral procedures for other operating units to follow. The procedures include contacting the E&G PSP Referral Coordinator and completing a referral form, which is then emailed or mailed to the E&G PSP Referral Coordinator.

In addition to the above case-specific referral process, EO Examination shares Form 990 information with a variety of IRS functions, depending on the circumstances. They include the following:

- SBSE's Lead Development Center – In accordance with a Memorandum of Understanding, there are routine exchanges of information regarding promoters and promotions.
- Service-wide Compliance Strategies Executive Steering Committee (SCS ESC) - The SCS ESC serves as the forum to develop a unified cross-divisional IRS approach to compliance strategies needing collaboration. The SCS ESC ensures thorough coordination of enforcement activities and resource issues for service-wide technical issues, emerging issues, operational procedures and promoters, investors, participants and taxpayers involved in abusive tax avoidance transactions.
- Fraud Working Group – SBSE is a member of TE/GE's Fraud Working Group and SBSE Fraud Technical Advisors work with TE/GE Fraud Coordinators and Fraud Specialist as warranted to assist with case development.
- High Income High Wealth – EO Examination participates on this SBSE team that was formed to develop strategies that address compliance issues in the high income/high wealth population.
- Office of Servicewide Penalties (SBSE) – EO Examination exchanges data with SBSE to determine if penalties are being applied consistently in appropriate factual circumstances and if additional emphasis is needed in particular areas.

The IRS does not track the number of examinations that have originated from sharing Forms 990s with other divisions.

**h. Provide the name(s) of the individual(s) who decided to treat contributions to a § 501(c)(4) organization as subject to the gift tax.**

The response to this question has been provided in our reply to your request for information covered under section 6103 related to particular gift tax audits.

**i. Criteria that are used to select taxpayers for gift tax examinations.**

A variety of criteria are used in selecting returns for examination. Returns are selected through the classification process or from a related open examination (e.g., the examination of an estate for which gift tax returns are required). Returns are sent to E&G classification from a number of origins. All filed returns that meet certain screening criteria are sent to classification. In addition, returns may be sent to classification as a result of an internal referral or from efforts to identify nonfilers. During classification, the classifiers look for potential issues. A return can be selected to correct an error on the face of the return. The issues may involve either legal or valuation issues. A legal issue is one that does not (or appears to not) satisfy the requirements of the Internal Revenue Code and/or Treasury Regulations or that is not consistent with relevant case law. This includes pursuing non-filed returns which are required to be filed. A valuation issue is one where the gifted asset either appears undervalued or an appraisal of the asset was not provided with the return as filed. Classifiers may also utilize a gift tax classification check sheet when there is a filed gift tax return.

**j. Provide all information that analyzed the legal or political consequences of auditing gift tax returns for contributions to § 501(c)(4) organizations.**

Information responsive to this request relating to specific examinations has been provided in our reply to your request for information covered under section 6103 related to particular gift tax audits. No analysis was performed on the political consequences.

The IRS is in the process of performing an electronic search of files of individuals involved in this matter. As discussed with your staff, the results of that search will take some time to produce.

**4. How are tax-exempt organizations generally selected for audit?**

There are two primary categories of audits (1) compliance projects and (2) casework, consisting of referrals, claims for refund, and general casework.

**Compliance Projects:** Compliance projects direct resources to areas of known or suspected noncompliance. Projects are distinguishable from general casework because they have a targeted purpose, and may involve more than one function or activity (e.g., examinations, compliance checks, educational outreach, etc.). The Strategic Planning Working Group (SPWG), which is made up of employees across functions within the Exempt Organizations (EO) division of the Tax-Exempt and Government Entities Division (TEGE), is responsible for designing the compliance projects that become part of the EO Workplan for each fiscal year. As part of the process, their activities include requesting and reviewing input from a variety of sources, analyzing monitoring reports, determining projects to be initiated or continued, and making recommendations to EO executives on proposed projects and on the scope and direction of the EO workplan.

The EO workplan is available publically and includes a discussion of current compliance projects.

Compliance projects also can include Issue Management Team (IMT) projects. An IMT is typically cross functional, integrated with other Business Operating Divisions (BODs), and includes IRS Chief Counsel personnel. Most IMTs are formed in response to the identification of an Abusive Tax Avoidance Transaction (ATAT). An IMT plays a key role in creating alternative resolution strategies, monitoring field participant/promoter inventories, and coordinating with campus activities.

**Casework:**

Referrals (IRM 4.75.5): Referrals (information items) can be either:

- External -- A document or other communication, including an electronic communication, received by EO Classification from a source outside the Internal Revenue Service, which alleges possible noncompliance with a tax

law on the part of an exempt organization, political organization, taxable entity, or individual; or

- Internal -- A document prepared by an Internal Revenue Service employee and forwarded to EO Classification, which identifies current or potential noncompliance discovered during either the processing of an assigned case, or at any other time in the performance of official duties.

Referrals may come from a variety of sources including:

- EO employees conducting examinations or processing determinations
- Other IRS functional areas
- The media
- Other federal agencies,<sup>1</sup> e.g., Department of Labor, Department of Housing and Urban Development, or Department of Justice
- State and local government agencies and officials
- Members of the exempt organization community
- The general public
- Members of Congress

Classification staff determine whether an information item has examination potential, no examination potential, should be considered in a future year, needs additional information to make a decision, or should be referred to an EO Referral Committee. Procedures exist to ensure that no single individual makes case selection determinations when sensitive issues are potentially involved. Certain allegations must be referred to an EO Referral Committee, made up of career managers. These include allegations: of political or lobbying activities; containing evidence or allegations of financial transactions with known or suspected terrorist connections; involving a church; involving high-impact or sensitive issues (e.g., the decision may result in media attention or the information was submitted by an elected official, other than Congress or Executive Branch); submitted by a Member of Congress (or Congressional staff); or involving other factors indicating that review by the EO Referral Committee would be desirable for reasons of fairness or integrity. In considering whether a referral has examination potential, the members of the EO Referral Committee determine whether the information item establishes a reasonable belief that further action by the Service is warranted.

Claims for Refund (IRM 4.75.4.7): Claims are received and processed by the Ogden Service Center (OSC). All claims that cannot be processed in the OSC are forwarded to EO Classification. A classifier determines whether the claim is clearly allowable or should be sent to a field group.

General Casework: General casework includes audits selected using established queries (for example, certain Form 990 line item responses or combination of responses).

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<sup>1</sup> IRC section 7217 prohibits influence over taxpayer audits and other investigations by certain executive branch officials.

**5. How many § 501(c)(4) audits are usually conducted every tax year? Provide a breakdown of the total number of § 501(c)(4) examinations conducted annually over the last five years and identify the tax issues involved.**

Below is a table showing the number of section 501(c)(4) organizations examined for the last five fiscal years, as recorded in EO Exam's Returns Inventory and Classification System. The numbers below are based on the fiscal year the exam was concluded. An organization may be included twice if separate examinations closed in separate fiscal years. For example, if an employment tax examination of an organization closed in 2010 after the 2008 closure of a Form 990 examination for that same organization, that would be considered two separate closures.

<b>Number of 501(c)(4) Cases (Organizations) Closed By Fiscal Year</b>					
<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>Total</b>
177	156	116	127	200	776

While there are limitations to the information that our coding system provides, we are in the process of determining the most common issue codes used.

**6. What percentage of gift and estate tax office examinations typically originate from an internal referral? Please describe IRS protocol for making internal referrals and how referrals are processed.**

No formal statistics are kept on the percentage of E&G examinations typically originating from internal referrals. The E&G formal referral procedures are relatively new; in August 2010, E&G formalized referral procedures for other organizations within the IRS to make referrals to it. Since the procedures were formalized, E&G has received 112 referrals (from all IRS organizations).

If an examiner from another function encounters a potential estate or gift tax issue during the course of an examination, the examiner is to contact the Estate & Gift Tax Program PSP Referral Coordinator to determine if a referral is warranted. If a referral is warranted, the examiner will complete the Estate & Gift Tax Program Referral Form and email the form and all relevant supporting information and documentation to the PSP Referral Coordinator.

When the PSP Referral Coordinator receives a referral, he reviews the referral form and supporting information and documentation and then determines if an examination is warranted. If an examination is warranted, the PSP Referral Coordinator contacts the appropriate Territory Manager, explains the facts of the case, and asks to which group the referral should be assigned. The PSP Referral Coordinator sends the referral information to a PSP Paralegal for case building (i.e., including relevant information in the case file) and to establish the case in our inventory management information

systems. Once the case is built and fully established, the PSP Paralegal mails the case to the assigned group and notifies the PSP Referral Coordinator that the case has been shipped to the group.

**7. Provide any correspondence and records shared with the Department of the Treasury regarding the application of gift tax to §501(c)(4) organizations. Detail all communications between the IRS and the Department of Treasury on this topic since 2004.**

The Department of Treasury had no input regarding the enforcement decisions made with respect to any gift tax examinations.

With respect to the broader request, the IRS is in the process of performing an electronic search of files of individuals involved in this matter. As discussed with your staff, the results of that search will take some time to produce.

My staff is available to meet with your staff to answer any questions or provide further information regarding your request. Should you have additional questions, please contact me, or have your staff contact Floyd Williams, Director, Office of Legislative Affairs, at (202) 622-3720.

Sincerely,

A handwritten signature in blue ink, appearing to read "S. T. Miller", is written over the typed name.

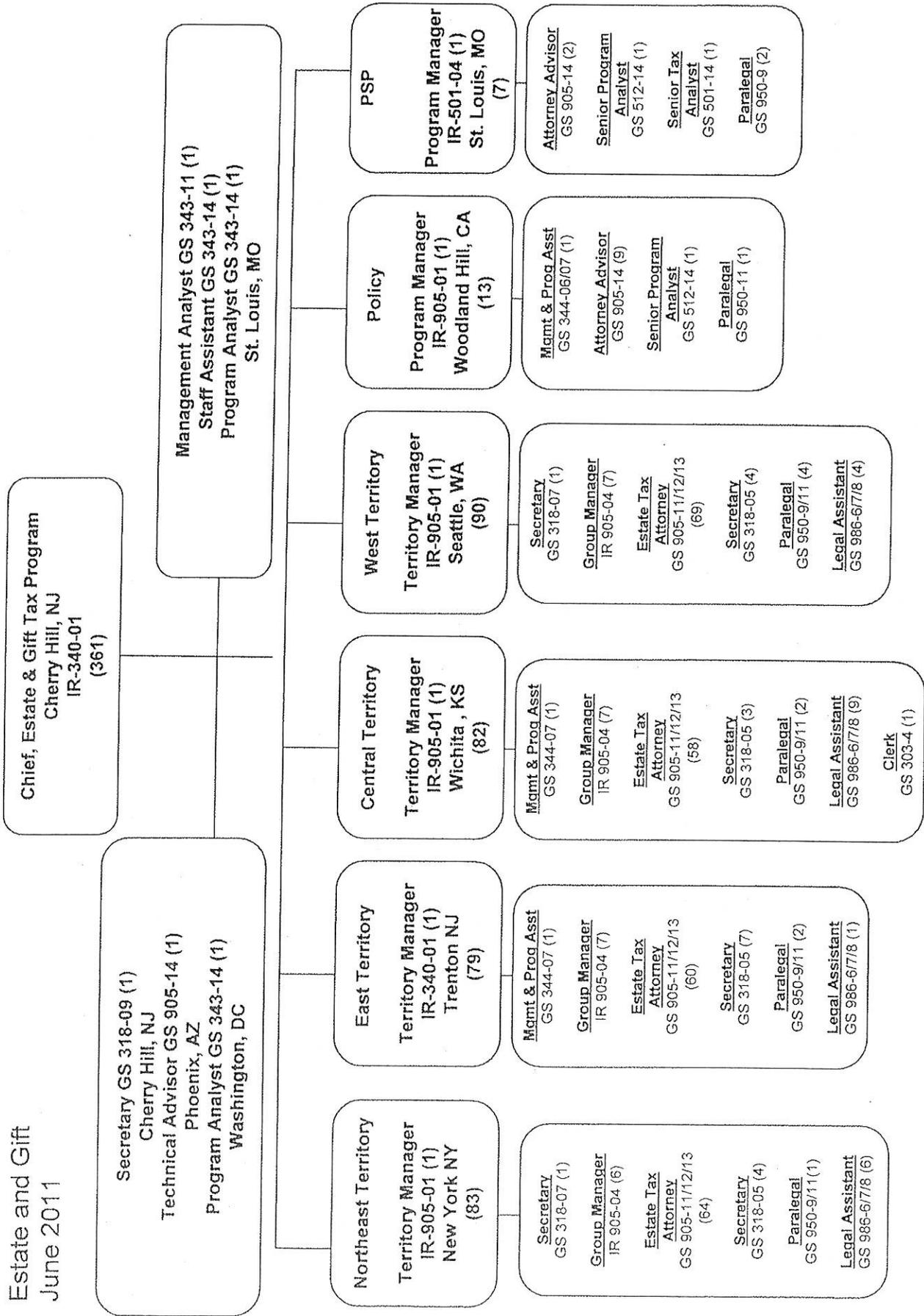
Steven T. Miller

Enclosures (2)

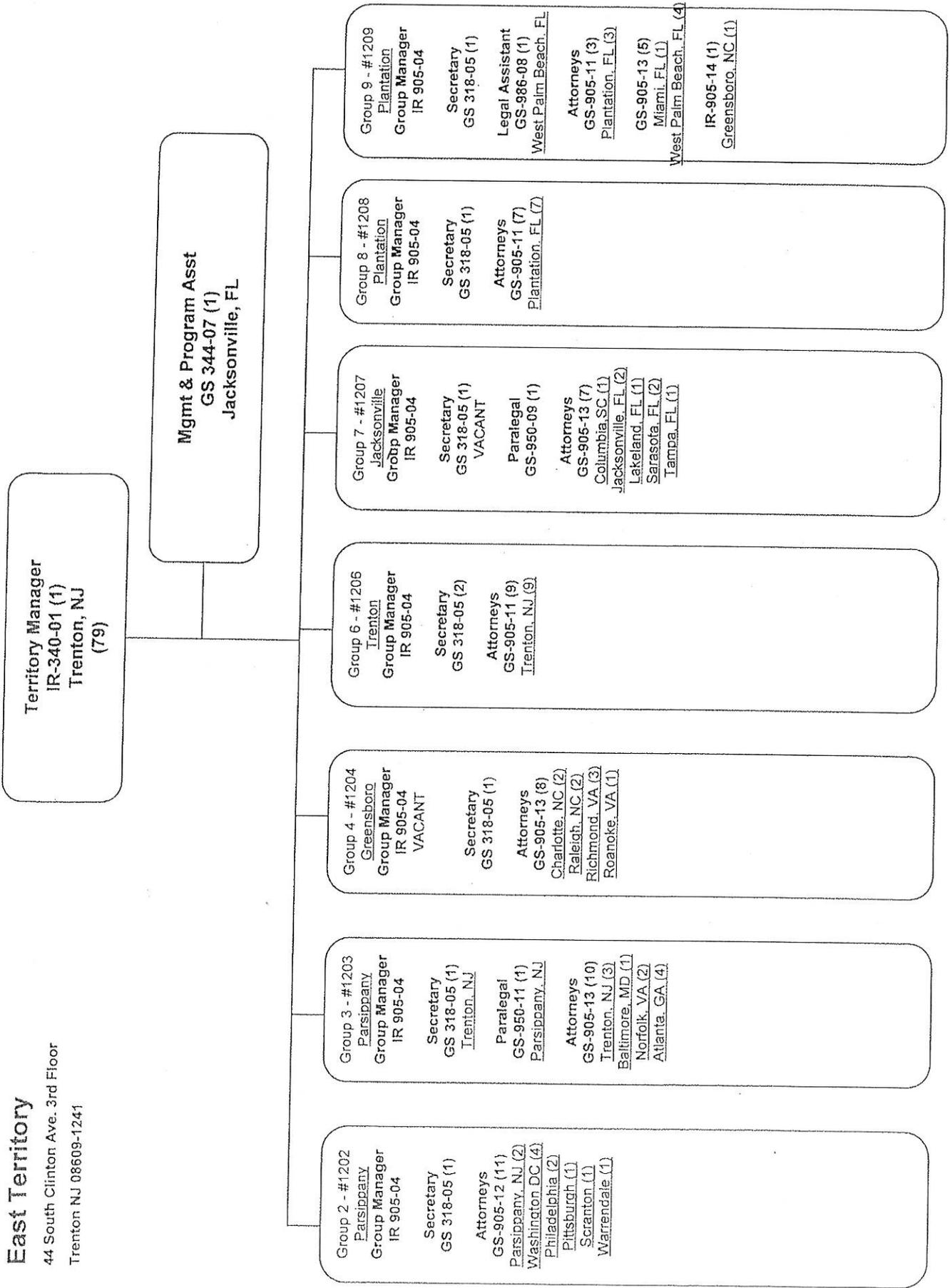
Estate & Gift Tax Program	
Post of Duty	Number of Employees
ALBANY, NY	3
ALBUQUERQUE, NM	1
ATLANTA, GA	4
AUSTIN, TX	4
BALTIMORE, MD	1
BELLEVUE, WA	1
BLOOMINGTON, MN	4
BOSTON, MA	18
BRIDGEPORT, CT	3
CAMARILLO, CA	1
CHARLOTTE, NC	2
CHERRY HILL, NJ	3
CHICAGO, IL	4
CINCINNATI, OH	8
COLUMBIA, SC	2
COLUMBUS, OH	2
CRANBERRY TOWNSHIP, PA	1
DENVER, CO	1
DES MOINES, IA	2
DETROIT, MI	3
FAIRFAX, VA	1
FAIRVIEW HEIGHTS, IL	1
FARMERS BRANCH, TX	2
FLORENCE, KY	2
FORT WORTH, TX	5
GARDEN CITY, NY	7
GLENDALE, CA	1
GREENSBORO, NC	4
HONOLULU, HI	2
HOUSTON, TX	2
INDEPENDENCE, OH	7
INDIANAPOLIS, IN	3
JACKSON, MS	3
JACKSONVILLE, FL	5
LAGUNA NIGUEL, CA	9
LAKELAND, FL	1
LAS VEGAS, NV	1
LITTLE ROCK, AR	1
LOS ANGELES, CA	8
LUBBOCK, TX	1
MANCHESTER, NH	1
METHUEN, MA	1
MIAMI, FL	1
MILWAUKEE, WI	10
MONTPELIER, VT	1
MUNCIE, IN	1
NASHVILLE, TN	3
NEW CARROLLTON, MD	1
NEW ORLEANS, LA	4

NEW WINDSOR, NY	1
NEW YORK, NY	42
NORFOLK, VA	2
OAKLAND, CA	20
OKLAHOMA CITY, OK	5
OMAHA, NE	5
OVERLAND PARK, KS	3
PARSIPPANY, NJ	6
PEORIA, IL	1
PHILADELPHIA, PA	5
PHOENIX, AZ	3
PITTSBURGH, PA	1
PLANTATION, FL	14
PORTLAND, OR	1
PORTSMOUTH, NH	2
RALEIGH, NC	2
RAPID CITY, SD	1
RICHMOND, VA	3
ROANOKE, VA	1
SACRAMENTO, CA	1
SALEM, OR	1
SALT LAKE CITY, UT	2
SAN ANTONIO, TX	1
SAN JOSE, CA	4
SANTA ANA, CA	3
SANTA MARIA, CA	1
SARASOTA, FL	2
SCRANTON, PA	1
SEATTLE, WA	7
SHREVEPORT, LA	1
SOUTHBORO, MA	1
SPOKANE, WA	1
SPRINGFIELD, IL	1
ST LOUIS, MO	4
ST PAUL, MN	2
TAMPA, FL	1
TOLEDO, OH	1
TOWN AND COUNTRY, MO	3
TRENTON, NJ	17
TULSA, OK	1
TYLER, TX	1
VAN NUYS, CA	11
WALNUT CREEK, CA	1
WASHINGTON, DC	5
WEST PALM BEACH, FL	5
WETHERSFIELD, CT	2
WICHITA, KS	4
WOODLAND HILLS, CA	1
Total	361

Estate and Gift  
June 2011



**East Territory**  
44 South Clinton Ave. 3rd Floor  
Trenton NJ 08609-1241



# West Territory

915 Second Avenue  
Seattle, WA 98174-1009

Territory Manager  
IR-905-01 (1)  
Seattle, WA  
(90)

Secretary  
GS 318-07 (1)  
Santa Ana, CA

Group 1 - #1501  
Ft. Worth  
Group Manager  
IR 905-04

Secretary  
GS 318-05 (1)  
VACANT

Legal Assistant  
GS 986-07 (1)  
Ft. Worth, TX (1)

Attorneys  
GS 905-13 (9)  
Ft. Worth, TX (3)  
Tyler, TX (1)  
Farmers Branch, TX (3)  
Lubbock, TX (1)  
Las Vegas, NV (1)

Group 2 - #1502  
Los Angeles  
Group Manager  
IR 905-04

Secretary  
GS 318-05 (1)  
Laguna Niguel, CA (1)

Legal Assistants  
GS 986-07 (1)  
VACANT

Attorneys  
GS 905-11 (8)  
Phoenix, AZ (1)  
Santa Ana, CA (2)  
Albuquerque, NM (1)  
Salt Lake City, UT (2)  
Camarillo, CA (1)  
Santa Maria, CA (1)

Group 3 - #1503  
Seattle  
Group Manager  
IR 905-04

Secretary  
GS 318-05(1)

Attorneys  
GS 905-11 (4)  
Seattle, WA (4)

GS 905-13 (6)  
Salem, OR (1)  
Portland, OR (1)  
Bellevue, WA (1)  
Honolulu, HI (2)  
Spokane, WA (1)

Group 4 - #1504  
Oakland  
Group Manager  
IR 905-04

Secretary  
GS 318-05 (1)  
VACANT

Paralegal  
GS 950-11 (1)

Attorneys  
GS 905-12 (2)  
Oakland, CA (2)

GS 905-13 (9)  
Oakland, CA (8)  
Walnut Creek, CA (1)

Group 5 - #1505  
Oakland  
Group Manager  
IR 905-04

Secretary  
GS 318-05 (1)  
VACANT

Legal Assistant  
GS 986-06 (1)

Attorneys  
GS 905 -11 (6)  
Oakland, CA (6)

GS 905 -13 (4)  
San Jose, CA (4)

Group 6 - #1506  
Houston  
Group Manager  
IR 905-04

Secretary  
GS 318-05 (1)

Legal Assistant  
GS 986-08 (1)  
Laguna Niguel, CA (1)

Paralegal  
GS 950-11 (3)  
Austin, TX (3)

Attorneys  
GS 905-11 (2)  
Laguna Niguel, CA (2)

GS 905 - 13 (7)  
San Antonio, TX (1)  
Austin, TX (1)  
Laguna Niguel, CA (5)

Group 7 - #1507  
Van Nuys  
Group Manager  
IR 905-04

Secretary  
GS 318-05 (1)

Legal Assistants  
GS 986-08 (1)  
Los Angeles, CA (1)

Attorneys  
GS 905-11 (3)  
Van Nuys, CA (3)

GS 905-13 (9)  
Los Angeles, CA (5)  
Van Nuys, CA (4)

# PSP

1222 Spruce Street  
St. Louis, MO 63103

PSP Program Manager  
St. Louis, MO  
IR 501-04 (1)  
(7)

Senior Program Analyst  
GS 512-14 (1)  
Cherry Hill, NJ (1)

Senior Tax Analyst  
GS 501-14 (1)  
St. Paul, MN (1)

Attorney Advisor  
GS 905-14 (2)  
Boston, MA (1)  
Fort Worth, TX (1)

Paralegal  
GS 950-9 (2)  
Covington, KY (2)