

UNITED STATES SENATOR • IOWA  
**CHUCK GRASSLEY**  
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Grassley Seeks Answers on IRS' Use of Paid Leave

WASHINGTON – Sen. Chuck Grassley, ranking member of the Committee on Finance, today sought answers from the Internal Revenue Service about the agency's use of paid administrative leave for its employees. Grassley's letter to the agency follows.

April 4, 2002

The Honorable Charles O. Rossotti  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, Northwest  
Washington, DC 20224

Dear Commissioner Rossotti;

Last year, I wrote to you about an Internal Revenue Service (IRS) employee, Mr. Kenneth Dossey, who was indicted, convicted and sentenced for several felonies. During this entire time, Mr. Dossey remained on the federal payroll. It is my understanding that only after I wrote to you did IRS finally terminate him, after he spent some three years in paid administrative leave status.

In your response to my letter of November 27, 2001, raising concerns about Mr. Dossey as well as paid administrative leave in general, you agreed that “. . . better practices and standards that are consistently applied appear to be in order.” In addition, you stated you were directing a senior advisor to review and recommend policy changes. I appreciate your acknowledgment that controlling administrative leave is an important matter.

Administrative leave may in some instances make sense; however, we must recognize that in many cases it leads to significant waste of taxpayer money because it drains limited IRS resources. The amount of potential waste is highlighted in your November response, where you show that at that point scores of IRS employees either were on or had been on extended administrative leave – in some cases several months or a year. Thus, after reading your November comments about policy changes, I was troubled that the first news I heard on IRS administrative leave was in a Department of Justice (DoJ) press release dated March 27, 2002. The release

indicates that an IRS employee, Ms. Aucunette Cunningham, is on paid administrative leave after having been indicted for bribery and tax disclosure violations.

Ms. Cunningham allegedly provided tax return information in 1999 and 2000 in exchange for bribes. As taxpayers complete their duty to file their tax return information this April 15<sup>th</sup>, it is critical that they know their private information will remain just that – private. I imagine that most taxpayers writing their April 15<sup>th</sup> check will not be pleased to know that while Ms. Cunningham awaits trial for disclosing taxpayer information, she is at home on administrative leave, collecting a government paycheck.

In addition to the administrative leave issue, I am disturbed about the §6103 violation (i.e., unauthorized disclosure of tax information), particularly given my involvement in writing the Restructuring and Reform Act of 1998 and my belief that the privacy of personal tax information is essential to the integrity of our tax system.

In response to Ms. Cunningham’s indictment and your November 27, 2001, letter, I have several specific questions. Additionally, I have some general concerns about IRS’ use of extended administrative leave.

With respect to administrative leave in general, please answer the following questions:

- 1) You indicated in your November letter “better practices and standards that are consistently applied appear to be in order” with respect to IRS’ use of administrative leave. You asked Michael Shaheen, your senior counselor, to review the Dossey case and other cases in order to assess the need for a policy change. You stated that findings and recommendations were expected within a month. What did Mr. Shaheen conclude? What internal changes have been made regarding extended administrative leave?
- 2) Many agencies view indictment of an employee for a felony as a trigger point for considering whether administrative action (e.g., termination, suspension, demotion, etc.) should be taken. In some cases, such as an ongoing investigation, it may be imprudent to take administrative action. However, in many instances it seems that taking administrative action is justified given that the time period from indictment to verdict and subsequent sentencing can be measured in months if not years. Does IRS require an administrative review when an indictment is made of an employee? If so, please explain in detail the procedures and results of such review.
- 3) I understand that IRS started using a new time reporting system, Single Entry Time Reporting (SETR), at the beginning of Fiscal Year (FY) 2002. Its predecessor did not facilitate tracking administrative leave. Does SETR allow IRS to track administrative leave? If not, how do you plan to measure and manage administrative leave? If so, does the system distinguish between conduct-based administrative leave (e.g., pending disciplinary investigation or action) and other administrative leave (e.g., jury duty or leave bank usage)? In addition, if the new system allows IRS to track administrative leave, what guidance have you provided to first-line managers?
- 4) You provided an exhaustive list of IRS staff on more than 30 days of administrative leave since January 1, 1998. I am particularly interested in the following employees:
  - i. Employee 99-30, a GS-12, (reason: fighting/assault) for 146 days in Calendar Year (CY) 1998, 218 days in CY 1999, and 61 days in CY 2000.
  - ii. Employee 00-12, a GS-14 manager, (reason: unprofessional conduct) for the entire CY 2000 (240 days).
  - iii. Employee 00-26, a GS-5, (reason: disclosure/security) for 190 days in CY 2000 and

120 days in 2001

- iv. Employee 01-19, a GS-13 manager, (reason: fighting/assault) for 93 days in CY 2001.
- v. Employee 01-23, a GS-13, (reason: sexual harassment) for 120 days in CY 2001

The first three employees were on administrative leave for at least a full year; the last two for at least four calendar months (and quite possibly more, given that CY 2001 had yet to close when you forwarded the information). I cannot understand why these cases take so long to resolve and I do not understand why the American taxpayer has to foot the bill for this. Please explain to me what happened in these five cases. Additionally, please provide me with a list of employees who have been on administrative leave in FY 2002 for 30 or more days.

With respect to the Dossey matter, please answer the following questions:

- 1) This past November, you wrote that you would provide a separate answer to questions related to Mr. Dossey's federal tax payments. I have yet to receive the information or any other communication from you on this issue. Please include this information with your response to this letter.
- 2) I understand that all IRS full-time employees are required to request permission prior to taking concurrent part-time employment. Mr. Dossey evidently managed a convenience store while on administrative leave. Did he request permission for this? Did his manager grant it? If not, was he ever disciplined for this? If not, why not? Additionally, may IRS fire employees for failure to comply with this rule?
- 3) On August 2, 2000, Ms. Diane Camilleri, Chief of Staff for IRS Office of the Chief Information Officer, wrote Mr. Dossey proposing to suspend him without pay. Why was Mr. Dossey never suspended without pay? Which senior manager made the decision to keep Mr. Dossey in administrative leave status?

With respect to Ms. Cunningham, please answer the following questions:

- 1) What is her pay grade/step? How long has IRS been aware that she was under investigation? How many days has she been on administrative leave? How many more days do you expect she will be on administrative leave? What steps is IRS taking to minimize the number of days she will be on administrative leave?
- 2) In your November letter, you cite actions absent a criminal conviction that would justify IRS disciplinary action, including removal. These include three elements: whether the available information establishes misconduct; whether there is a nexus between the misconduct and the employment; and, if those two items have been satisfied, what management action is appropriate.

Your letter further states that in a case of adverse action the IRS must give the employee: 1) advance written notice of the charges and the proposed action; 2) the opportunity to respond in writing or in person or both; and 3) a written decision. In addition, while 30-day notice is usually required, that can be reduced to seven days if there is reason to believe the employee committed a crime punishable by imprisonment for more than one year. In this case, the Department of Justice release states that Ms. Cunningham's crime is punishable by up to five years in prison. While recognizing that there may be reasons for not taking administrative action (as I discussed earlier), what disciplinary action has the IRS proposed, if any, in regards to Ms. Cunningham? If no disciplinary actions have been proposed, why not?

- 3) Although IRS need not wait for a conviction to take disciplinary action, should Ms. Cunningham be convicted on any of the counts, what action will IRS take?

- 4) Is there any investigation under way to determine which employee actually accessed the taxpayer accounts in question? Please explain to the extent possible.

I am dedicated to ensuring that American taxpayer dollars are expended reasonably and responsibly. I trust your answers to the above questions will reassure me that IRS is committed to the same goals.

I look forward to your response by April 30, 2002.

Sincerely,

Charles Grassley  
Ranking Member

cc: Daniel Devlin, Assistant IG for Audit, TIGTA  
Tom McGivern, Legislative Affairs Counsel, Department of Treasury