

# CI Expecting More Fraud Referrals From IRS Operating Divisions

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By Wesley Elmore

The IRS Criminal Investigation division expects to receive more tax fraud referrals from the IRS operating divisions as the agency beefs up its internal fraud awareness campaign.

Don Fort, IRS Criminal Investigation division chief, said July 19 that only 7 percent of the cases that CI receives come from the IRS operating divisions, but he expects that to change now that the issue has gotten the attention of IRS Commissioner Charles Rettig.

As part of a fraud awareness campaign within the IRS, Rettig recently participated in a video production in which Fort talks about the importance of fraud referrals, Fort said at the University of San Diego School of Law and RJS Law Tax Controversy Institute in San Diego. That video is expected to be sent out to IRS employees for viewing, he said.

Fort stressed that the civil case referrals received from the IRS are among the best cases CI works. “The insight that the auditors and revenue officers have is something that we can’t see on the criminal side,” he said.

The bulk of the referrals that CI gets from the IRS come from the collections side of the Small Business/Self-Employed Division and are largely employment tax cases, Fort said. Other referrals come from the U.S. attorney’s office or other sources, such as CI’s own data analytics efforts, Fort noted.

## Case Selection

CI refers fewer than 900 cases to the Justice Department Tax Division for prosecution each year, Fort said. The division must select its cases carefully so that they have the deterrent effect needed to ensure voluntary compliance across the country, he said.

“We’ve got to be bringing every type of tax case in every judicial district to send a message out to those individuals in those judicial districts,” Fort said. “If we have parts of the country where we’re not recommending criminal tax cases, that’s a problem.”

CI’s [fiscal 2018 annual report](#) shows that investigations have been nearly halved over the previous five years. Fort attributed that in part to a steep decline in the number of agents at the division, and to the amount of time it takes to get a new agent properly trained.

A lack of support staff also has contributed to the drop in investigations, Fort said. “We’ve got whole groups of agents — 20, 30 agents — with no support staff,” he said. “Somebody’s got to

do the administrative work, and that further drags down the performance results.”

Moreover, the division’s workload in previous years was “bloated” by thousands of identity theft cases, Fort said. Those cases, which had been about 18 percent of the division’s work, now account for only about 6 percent, he said.

## Voluntary Disclosure Program

Fort noted that while the ongoing voluntary disclosure program is operated by the IRS Large Business and International Division, CI has access to everything a taxpayer submits to that program. In fact, CI is still developing leads based on the data provided under the previous iterations of the program that focused on offshore accounts, he said.

During the same session, Sandra R. Brown of Hochman Salkin Toscher Perez PC pointed out that taxpayers in the program are spared criminal prosecution only if they are pre-cleared to participate and then fully comply with IRS examiners once they’re cleared. Anyone who thinks they can come into the program, provide their information to the IRS, and then opt out if they don’t like the results has no guarantee of immunity to further prosecution, she emphasized.

“There is no absolute guarantee of immunity unless you get it from the DOJ,” said Brown, former acting U.S. attorney for the Central District of California and chief of its tax division before that.