

Office of Government Ethics

81 x 12 -- 03/19/81

Letter to an Employee dated March 19, 1981

By your letter of March 13, 1981, you raise the issue under 18 U.S.C. § 205 of whether an employee of the Internal Revenue Service (hereinafter "IRS") may represent another IRS employee during a tax audit.

Section 205 is fully consistent with the provisions of 5 U.S.C. Part 111(F), relating to labor-management and employee relations. In that part, provisions such as section 7114 (relating to representation rights and duties) deal with matters regarding agency personnel administration. Under section 205, there is a bar to an employee's participation as a representative in an agency matter except if it is a "disciplinary . . . or other personnel administration proceeding."

Under generally accepted principles of construction, convoluted interpretations of the provisions of section 205 may not be used to defeat the obvious purpose of this statute. Cf. *United States v. Louis Irons* No. 80-1478, slip op. (7th Cir. 1981). Section 205 broadly proscribes employee representation in matters affecting the Government. The exception noted in the preceding paragraph is in respect to the limited area of matters relating to personnel administration. A realistic and straightforward approach to the issues under section 205 with respect to a tax audit establishes that this type of proceeding with a taxpayer (who happens to be an employee) is distinct from a proceeding with an employee (who happens to be a taxpayer). This matter is not characterizable as a labor-management issue. Accordingly, the exception for personnel administration proceedings under section 205 does not apply to permit employee representation in connection with a tax audit.

Sincerely,

J. Jackson Walter
Director