

National Taxpayer Advocate

# **ANNUAL REPORT TO CONGRESS**



2020

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**NATIONAL TAXPAYER ADVOCATE 2021 PURPLE BOOK: Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration** (published as separate volume)

## Introductory Remarks by the National Taxpayer Advocate

### HONORABLE MEMBERS OF CONGRESS:

I respectfully submit for your consideration the National Taxpayer Advocate's 2020 Annual Report to Congress. Section 7803(c)(2)(B)(ii) of the Internal Revenue Code (IRC) requires the National Taxpayer Advocate to submit this report each year and in it, among other things, to identify the ten most serious problems encountered by taxpayers and make administrative and legislative recommendations to mitigate those problems. In each of the ten Most Serious Problem discussions in this report, we are including an IRS narrative response. Our intent is to help readers see both TAS's perspective and the IRS's perspective on the source and nature of key challenges and potential solutions.

### 2020 Filing Season and Economic Impact Payments: The Good News

To say the least, 2020 was an extraordinarily challenging year for tax administration. I was sworn in as the National Taxpayer Advocate in late March — just as the COVID-19 pandemic was erupting and the IRS was closing facilities around the country to comply with local stay-at-home orders and social distancing guidelines. As we detail in the Filing Season Review section of this report, the IRS had to temporarily shut down its mail facilities, call centers, and Taxpayer Assistance Centers (TACs). As a result, paper tax returns and correspondence from taxpayers sat unopened in trailers for months, many taxpayers did not receive timely refunds, taxpayers could not get through to the IRS by phone (for context, the IRS received more than 100 million telephone calls during fiscal year (FY) 2020), and taxpayers could not obtain in-person assistance at TACs.

Adding to the IRS's challenges, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law on March 27, giving the IRS the responsibility to deliver more than 160 million stimulus payments, which the Treasury Department dubbed "economic impact payments" (EIPs). This was no easy task. Eligibility was subject to an income phaseout based on filed tax returns, yet millions of individuals who did not file tax returns were also eligible to receive EIPs. The IRS worked with the Social Security Administration and the Department of Veterans Affairs to obtain lists of beneficiaries and then integrated those lists into its own systems to pay benefits to individuals who did not have a filing obligation.

Despite these unprecedented challenges, the IRS generally performed well. In most cases, the IRS can effectively handle whatever it can automate, and this year was no exception. As of November 20, 2020, the IRS had received about 169 million individual income tax returns, and of those, about 153 million (91 percent) had been e-filed.<sup>1</sup> For taxpayers who e-filed, the IRS processed the overwhelming majority of returns timely and issued the resulting refunds timely. The same was generally true of EIPs — most eligible individuals received their stimulus payments timely and in the correct amounts. The IRS deserves much credit for its overall performance in 2020.

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<sup>1</sup> IRS, 2020 Filing Season Statistics for Week Ending Nov. 20, 2020, <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-november-20-2020>. This total includes about 8.4 million returns submitted through the Non-Filer tool created by the IRS solely to enable eligible individuals who did not have a filing obligation to register online for an EIP.



## COVID-19 Challenges: The Bad News

Despite the IRS's overall success in managing the filing season and accurately paying the significant majority of EIPs, some taxpayers experienced major problems, and the agency was not always fully transparent about its struggles. Four areas stand out:

- **Millions of taxpayers experienced lengthy delays in receiving their tax refunds.** The significant majority of taxpayers who file tax returns receive refunds, and the average refund in recent years has exceeded \$2,500.<sup>2</sup> Particularly for low-income taxpayers, timely receipt of refunds can be critical. In 2020, there were two significant sources of refund delays. The first was the IRS's inability to timely open and process the roughly 16 million paper tax returns it received.<sup>3</sup> The majority of these taxpayers likely were entitled to refunds, yet they had to wait many months longer than usual to receive them.<sup>4</sup> According to an update posted on the IRS website, there were still 7.1 million unprocessed individual returns and 2.3 million unprocessed business returns as of November 24, with some dated as early as April 15 — more than seven months earlier.<sup>5</sup>

A second source of refund delays resulted from the IRS's fraud detection filters. Each year, all returns claiming refunds are passed through filters designed to detect fraudulent wage or identity theft-based claims. For many years, the filters have generated high false positive rates, leading to refund delays for those returns flagged.<sup>6</sup> The problem was compounded in 2020 because the IRS notifies taxpayers of refund holds by written correspondence, and the IRS was delayed both in sending notices and in processing taxpayer responses. Overall, the IRS's fraud filters flagged 5.2 million returns claiming refunds.<sup>7</sup> For about 25 percent of the returns flagged for income verification, refunds took longer than 56 days. For about 18 percent of the returns flagged for identity verification, refunds took longer than 120 days.<sup>8</sup> While we support the IRS's goal of identifying and preventing fraudulent refund claims, we encourage the IRS to continue to refine its filters to detect fraudulent claims with greater precision.

- **Millions of eligible individuals did not receive some or all of the EIPs for which they were eligible.** Last spring, the IRS took the position that it generally would not correct EIP mistakes in 2020. We pointed out that the CARES Act directed the IRS to pay EIPs “as rapidly as possible,” and we urged the IRS — both internally and externally through our mid-year report and in blogs — to correct EIP underpayments in 2020. As 2020 progressed, the IRS agreed to fix some categories of EIP problems, focusing on problems that could be corrected through automation. The IRS did not create programming to allow manual adjustments of individual accounts until September, and even then, only a limited number of issues could be manually corrected. While the IRS's inclination to use automation wherever possible is understandable in light of its human resource constraints, its approach left taxpayers frustrated and without the funds some of them desperately needed.

2 IRS, 2020 Filing Season Statistics for Week Ending Nov. 20, 2020, <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-november-20-2020>.

3 *Id.*

4 About 77 percent of all returns processed to date have resulted in refunds. IRS, Compliance Data Warehouse, Individual Returns Transaction File (covering returns processed through November 19, 2020).

5 See IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue, <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue> (last visited Dec. 31, 2020).

6 See, e.g., National Taxpayer Advocate 2019 Annual Report to Congress 34-44 (Most Serious Problem: *Processing Delays: Refund Fraud Filters Continue to Delay Taxpayer Refunds for Legitimately Filed Returns, Potentially Causing Financial Hardship*).

7 IRS, Identity Theft (IDT) and Integrity Verification Operations (IVO) Modeling Analysis Performance Report (Oct. 7, 2020) (data as of September 30, 2020).

8 IRS, RRP Non-IDT Performance Report 3 (Oct. 7, 2020); IDT and IVO Performance Report 6 (Oct. 7, 2020).

The IRS is quickly issuing the second round of stimulus payments authorized by the COVID-19 relief provisions included in the Consolidated Appropriations Act, 2021, signed into law on December 27, 2020.<sup>9</sup> I am optimistic the lessons learned from the first round will make the process go more smoothly in 2021, and to the extent there are any inconsistencies or errors, taxpayers will be able to address them with the filing of their 2020 income tax returns rather than waiting for the IRS to correct erroneous payment amounts.

- **Millions of taxpayers received late notices bearing dates that had passed and, in many cases, response deadlines that also had passed.** During the time crucial IRS functions were shut down last spring, the IRS automatically generated more than 31.2 million notices. By the time the IRS was ready to mail them, the dates on the notices had passed, some by several months, and some notices included response deadlines that also had passed. Nevertheless, the IRS mailed 18.9 million of these notices (after purging the balance). The IRS included an “insert” with about 1.8 million notices because it needed to give taxpayers an extension of time to act. However, the IRS failed to include these inserts with other notices that should have contained them and had to issue supplemental letters informing affected taxpayers of additional extensions.

Late notices caused considerable confusion and anxiety for taxpayers who feared they had missed critical response or payment deadlines. At the time I first blogged about this situation in June, we believed it was a one-time occurrence.<sup>10</sup> We were wrong. During November 2020, the IRS was unable to timely mail out over 11 million additional notices after they were automatically generated. Like the first time, the IRS purged millions of notices that could not be mailed timely. The nearly five million remaining time-sensitive notices are being mailed in December and January. This time, the IRS is including yet another insert extending the response time. The IRS must take steps to ensure this does not happen a third time.

- **Public information about the status of IRS operations and processing backlogs was insufficient.** While the IRS took some steps to keep the public informed about COVID-19-related delays, particularly later in the year, taxpayers often did not understand what was happening with their tax returns, refunds, balances, or EIPs. Many taxpayers called the IRS or TAS simply to get information because they did not have access to the IRS website, did not know how frequently the IRS updated its website information, or did not know where to turn to obtain information. The IRS could have placed a “COVID-19 Dashboard” on its website and updated its estimate of the number of returns it was processing weekly and the anticipated time for payment of refunds.<sup>11</sup> It could have issued weekly news releases to publicize this information. Similarly, the IRS could have posted a chart listing the major sources of EIP problems and indicating which ones it would address and when. It also could have provided more detailed information about the status of its operations.

For much of the year, relatively limited information was released, and comments made by IRS officials often were incomplete or misleading. For example, IRS officials stated the agency would reopen facilities

<sup>9</sup> Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, § 272, Div. N (2020).

<sup>10</sup> Erin M. Collins, Keep an Eye on Your Mailbox: Millions of Backlogged Notices Are Being Mailed Over the Next Few Months, Some Reflect Expired Action Dates. But Don't Panic, See Inserts Providing Extended Due Dates, NATIONAL TAXPAYER ADVOCATE BLOG, <https://www.taxpayeradvocate.irs.gov/news/ntablog-keep-an-eye-on-your-mailbox-millions-of-backlogged-notices-are-being-mailed-over-the-next-few-months-some-reflect-expired-action-dates-but-dont-panic-see-inserts-providing-extended> (June 22, 2020).

<sup>11</sup> The IRS did post some information about backlogs on its website. See IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue, <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue> (last visited Dec. 31, 2020). However, this webpage was not well-publicized, and the data was not updated weekly. On December 31, for example, the website stated that “as of November 24, 2020, we had 7.1 million unprocessed individual tax returns and 2.3 million unprocessed business returns.” Data that is five weeks old and buried within IRS.gov is not sufficiently informative for taxpayers.

in all states by mid-July.<sup>12</sup> Many observers reasonably interpreted those statements as indicating the IRS would be fully operational. In fact, some operations continued at limited capacity, bringing only a small percentage of employees into offices at a time to allow for adequate social distancing. As we enter the 2021 filing season, I strongly urge the agency to widely disseminate weekly updates on any processing delays and on the status of agency operations both on its website and through weekly news releases.

The challenges created by the COVID-19 pandemic will continue through the 2021 filing season and possibly for months longer, affecting both the IRS and taxpayers. I expect the IRS has learned from the 2020 experience and will improve on its performance in the coming months. The IRS is already heading in that direction in some areas, such as its acceptance of digital signatures on documents, its willingness to communicate externally by email, and its flexibility with collection matters. Indeed, these are successful practices the IRS should refine and continue even after the COVID-19 pandemic ends.

### **The Most Serious Problems Encountered by Taxpayers Result Primarily From Inadequate Funding, Which Has Led to a Staffing Shortage and an Inability to Modernize the IRS's Antiquated Technology Infrastructure**

As required by statute, I identify and discuss in this report what we in TAS believe to be the ten most serious problems encountered by taxpayers. If this year's Most Serious Problems are read in combination, one overriding theme emerges: *To improve taxpayer service, the IRS needs more resources to hire employees and more resources to modernize its information technology (IT) systems.*

Since FY 2010, Congress has reduced the IRS's budget by about 20 percent after adjusting for inflation.<sup>13</sup> The number of IRS employees has decreased by about the same percentage. When funds are tight, organizations need to get creative and find ways to do with less. But there are limits to what can be done with less — particularly with 20 percent less. In FY 2020, the IRS received 100.5 million telephone calls. Employees answered only 24 percent of those calls, with hold times averaging 18 minutes. Put differently, IRS employees did *not* answer more than 75 million telephone calls from taxpayers seeking help in complying with their tax obligations. (The IRS “answered” 23 million calls by routing them for automated responses, while 39 million taxpayers simply hung up.)<sup>14</sup>

The IRS has also reduced other means for taxpayer interaction. Over the past decade, it has curtailed in-person assistance at TACs and eliminated tax return preparation assistance. In addition, it often does not timely process correspondence, a source of considerable frustration that drives taxpayers to seek assistance through the toll-free phone lines or in the TACs, thus fueling spiraling taxpayer discontent.<sup>15</sup>

As we have noted before, the President's Management Agenda emphasizes the importance of high-quality customer service as measured by the American Customer Satisfaction Index (ACSI) and the Forrester U.S. Federal

12 See Michael Cohn, *IRS Employees Are Returning to Offices Amid Coronavirus*, ACCOUNTING TODAY (June 19, 2020), <https://www.accountingtoday.com/news/irs-employees-are-returning-to-offices-amid-coronavirus>.

13 IRS response to TAS information request (Sept. 30, 2020).

14 IRS, Joint Operations Center, Snapshot Reports: Enterprise Snapshot (week ending Sept. 30, 2020).

15 Similar weaknesses exist on the compliance side. IRS audits and collection actions have declined sharply in recent years. Most notably, the individual audit rate dropped from 1.11 percent in FY 2010 to 0.45 percent in FY 2019. See IRS, FY 2010 Enforcement and Service Results 2, [https://www.irs.gov/pub/irs-utl/2010\\_enforcement\\_results.pdf](https://www.irs.gov/pub/irs-utl/2010_enforcement_results.pdf); IRS Pub. 5382, Internal Revenue Service Progress Update Fiscal Year 2019, at 25 (Dec. 2019), <https://www.irs.gov/pub/irs-pdf/p5382.pdf>.

Customer Experience Index™.<sup>16</sup> By these measures, the IRS performs poorly relative to other federal agencies. The ACSI report for 2019 ranked the Treasury Department 11th out of 12 federal departments and says that “[m]ost IRS programs score ... in line with the overall rating for the Treasury Department.”<sup>17</sup> The 2019 Forrester report ranked the IRS 13th out of 15 federal agencies and characterized the IRS’s score as “very poor.”<sup>18</sup>

To underscore its concerns about taxpayer service, Congress enacted the Taxpayer First Act (TFA) in 2019. Among other things, the TFA directed the IRS to develop comprehensive multiyear plans to improve taxpayer services and modernize its IT systems.<sup>19</sup> These plans will require significant additional funding and staffing redirection to implement. The plan described in the TFA report includes a number of initiatives TAS has proposed for years, including customer callback, robust online accounts, a focus on resolving taxpayer issues at the earliest possible time, and the use of digital tools to improve service. If fully funded and implemented, the plan will be a game-changer for taxpayers and will transform the way the IRS currently operates.

The IRS’s IT challenges require immediate and sustained attention as well. The two IRS systems containing the official records of individual and business taxpayer accounts are the oldest major IT systems in the federal government.<sup>20</sup> The IRS also has about 60 case management systems that generally are not interconnected. Obsolete IT systems limit the potential functionality of online taxpayer accounts, prevent taxpayers from obtaining full details about the status of their cases, and impede the IRS’s ability to select the best cases for compliance actions.

The IRS has developed a roadmap known as the “Integrated Modernization Business Plan” that would replace legacy systems with modern technology systems and thereby enable the agency to provide improved service to taxpayers and deliver long-term budget efficiencies.<sup>21</sup> The IRS has estimated it will require between \$2.3 billion and \$2.7 billion in additional funding over the next six years to implement this plan.<sup>22</sup> Yet in FY 2020, the Business Systems Modernization (BSM) account was funded at only \$180 million. In July 2020, the Chairman of the Senate Appropriations Committee introduced legislation that would have provided \$2 billion to fund IT technology upgrades over the next six years, but the legislation did not advance.<sup>23</sup> Instead, the BSM account was ultimately funded at about \$223 million in FY 2021 — an increase of nearly \$43 million compared with FY 2020, but still a drop in the bucket compared to the IRS’s IT funding needs.<sup>24</sup>

Let’s be clear: The IRS is the accounts receivable department of the federal government. In FY 2020, it collected about \$3.5 trillion on a budget of about \$11.51 billion, producing a remarkable return on investment (ROI) of more than 300:1.<sup>25</sup> For this reason, it is economically irrational to underfund the IRS. If a company’s accounts receivable department could generate an ROI of 300:1 and the chief executive officer

16 Office of Management and Budget, *President’s Management Agenda* 7, 28 (2018), [https://www.performance.gov/PMA/Presidents\\_Management\\_Agenda.pdf](https://www.performance.gov/PMA/Presidents_Management_Agenda.pdf).

17 ACSI, *ACSI Federal Government Report 2019*, at 4 (2020).

18 Forrester Research, Inc., *The US Federal Customer Experience Index, 2019*, at 15-16 (June 11, 2019).

19 Taxpayer First Act, Pub. L. No. 116-25, §§ 1101 & 2101(a), 133 Stat. 981, 985 & 1008 (2019).

20 Government Accountability Office (GAO), GAO-16-468, *Information Technology: Federal Agencies Need to Address Aging Legacy Systems* 28-30 (May 2016), <https://www.gao.gov/assets/680/677436.pdf>.

21 IRS, Pub. 5336, *IRS Integrated Modernization Business Plan* (Apr. 2019), <https://www.irs.gov/pub/irs-pdf/p5336.pdf>.

22 IRS response to TAS information request (Sept. 30, 2020).

23 Coronavirus Response Additional Supplemental Appropriations Act, 2020, S. 4320, Title V, 116th Cong. (2020), <https://www.congress.gov/116/bills/s4320/BILLS-116s4320is.pdf>.

24 Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Div. E, Title I (2020).

25 GAO, GAO-21-162, *Financial Audit: IRS’s FY 2020 and FY 2019 Financial Statements* 78 (Nov. 2020), <https://www.gao.gov/assets/720/710591.pdf>; Department of the Treasury, *FY 2021 Budget-in-Brief* 83 (2020), <https://home.treasury.gov/system/files/266/FY-2021-BIB.pdf>.

(CEO) failed to provide enough funding for it to do so, the CEO would be looking for a new job. Whether Congress provides additional funding for the IRS in supplemental appropriations legislation as Chairman Shelby has proposed, increases the Section 302(b) allocation to the Appropriations' Financial Services and General Government subcommittees to allow greater IRS funding,<sup>26</sup> or finds another mechanism, it is critical for taxpayers that the agency that collects taxes be sufficiently funded to serve them well. Americans deserve a quality tax administration they can trust and have confidence in, which is imperative for a functioning voluntary tax system.

## Legislative Recommendations

The National Taxpayer Advocate Purple Book this year makes 66 recommendations to strengthen taxpayer rights and improve tax administration. While our recommendations cover a wide variety of subjects and are all worth consideration, I want to highlight ten for particular attention.

- **Provide the IRS with sufficient funding to meet taxpayer needs and improve tax compliance.** This is my top recommendation, as I discussed above.
- **Authorize the IRS to establish minimum competency standards for federal tax return preparers.** Most taxpayers rely on paid preparers to prepare their returns, yet the Government Accountability Office, the Treasury Inspector General for Tax Administration, and other entities have found that preparers make significant errors that can harm both taxpayers and the public fisc. The IRS sought to implement minimum standards for tax return preparers beginning in 2011, including requiring non-credentialed preparers to pass a basic competency test. However, a federal court held the IRS could not implement key components of its plan without statutory authorization.<sup>27</sup> The IRS's plan was well-thought-out, having been developed after extensive consultation with stakeholders.<sup>28</sup> Minimum preparer standards are still needed to protect taxpayers and improve tax compliance. Statutory authorization would allow the IRS to implement them.
- **Expand the U.S. Tax Court's jurisdiction to hear refund cases.** Under current law, taxpayers who owe tax and wish to litigate a dispute with the IRS must go to the U.S. Tax Court, while taxpayers who have paid their tax and are seeking a refund must file suit in a U.S. district court or the U.S. Court of Federal Claims. All taxpayers should have the option to litigate their tax disputes in the U.S. Tax Court. Tax Court judges are specialists, so they understand the nuances of complex tax issues more clearly, and they are well-accustomed to working with unrepresented taxpayers.
- **Restructure the Earned Income Tax Credit (EITC) to make it simpler for taxpayers and reduce improper payments.** TAS has long advocated for dividing the EITC into two separate credits: (i) a refundable worker credit based on each individual worker's earned income, irrespective of the presence of a qualifying child, and (ii) a refundable child credit that would reflect the costs of caring for one or

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26 Under Section 302(b) of the Congressional Budget and Impoundment Control Act of 1974, the House Appropriations Committee and the Senate Appropriations Committee each allocates the new budget authority and total outlays established in the budget resolution among its subcommittees. In FY 2020, the Financial Services and General Government appropriation came to less than \$23.8 billion, which includes funding for all agencies under the subcommittee's jurisdiction. See Congressional Budget Office Estimate for House Rules Committee Print 116-43, Consolidated Appropriations Act, 2020, H.R. 1158, 116th Cong. (2019) (enacted as Pub. L. No. 116-93), <https://www.cbo.gov/system/files/2019-12/hr1158.pdf>. If the \$23.8 billion cap is not significantly raised, increasing the IRS's budget by \$2 billion would require significant cuts to other agency budgets that cannot reasonably be made. Therefore, if Congress decides to allocate significantly more funding to the IRS through the regular appropriations process, it likely will need to do so by increasing the Financial Services and General Government subcommittees' Section 302(b) allocation by the desired amount.

27 *Loving v. IRS*, 917 F. Supp. 2d 67 (D.D.C. 2013), *aff'd*, 742 F.3d 1013 (D.C. Cir. 2014).

28 See IRS, Pub. 4832, Return Preparer Review (Dec. 2009), <https://www.irs.gov/pub/irs-pdf/p4832.pdf>.



more children. For wage earners, claims for the worker credit could be verified with nearly 100 percent accuracy by matching income information on tax returns against Forms W-2, thereby reducing the improper payments rate on those claims to nearly zero. The portion of the EITC that varies based on family size would be combined with the child tax credit into a single family credit.<sup>29</sup>

- **Increase the annual award cap for Low Income Taxpayer Clinics.** When the Low Income Taxpayer Clinic (LITC) matching grant program was established as part of the IRS Restructuring and Reform Act of 1998 (RRA 98), IRC § 7526 limited annual grants to no more than \$100,000 per clinic. The cap was not indexed for inflation, and as a result, the per-clinic grant maximum is now much lower in real-dollar terms. In light of the significant value LITCs provide, we are recommending that Congress increase the per-clinic cap to at least \$150,000 and then index it to rise with inflation.<sup>30</sup>
- **Clarify that supervisory approval is required before the IRS imposes certain penalties.** IRC § 6751(b)(1) states: “No penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination...” While it may appear requiring that an “initial determination” be approved by a supervisor would mean the approval must occur before the penalty is proposed, the timing of this requirement has been the subject of considerable litigation. Therefore, to effectuate Congress’s intent that the IRS not penalize taxpayers in certain circumstances without supervisory approval, the approval should be required earlier in the process. We recommend that Congress amend IRC § 6751(b)(1) to require that written supervisory approval be provided *before* the IRS sends a written communication to a taxpayer proposing a penalty.
- **Require taxpayer consent before allowing IRS Counsel or Compliance personnel to participate in an Independent Office of Appeals conference.** Historically, the IRS’s Counsel and Compliance functions provided input into Appeals conferences via the taxpayer case file and, if the case was particularly large or complex, at a pre-conference. However, Counsel and Compliance generally did not attend Appeals conferences with taxpayers, leaving taxpayers and Appeals Officers free to develop rapport, seek common ground, and pursue case resolution.<sup>31</sup> In October 2016, Appeals revised provisions of the Internal Revenue Manual (IRM) to allow Appeals Officers to include personnel from Counsel and Compliance in taxpayer conferences as a matter of routine. In our view, this has compromised the value of the Independent Office of Appeals and is inconsistent with Congress’s intent to “reassure taxpayers of the independence” of Appeals.<sup>32</sup> We recommend that Congress require explicit taxpayer consent regarding the inclusion of Counsel or Compliance personnel in advance of any conference between Appeals and a taxpayer.
- **Clarify that taxpayers may raise innocent spouse relief as a defense in collection proceedings and bankruptcy cases.** Congress has enacted rules to relieve “innocent spouses” from joint and several

29 In 2019, TAS published a comprehensive report recommending steps to restructure and improve the administration of the EITC, with the twin goals of improving the participation rate among eligible individuals and reducing improper payments. See National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress vol. 3 (*Earned Income Tax Credit: Making the EITC Work for Taxpayers and the Government*), [www.taxpayeradvocate.irs.gov/reports/2020-objectives-report-to-congress/volume-iii/](http://www.taxpayeradvocate.irs.gov/reports/2020-objectives-report-to-congress/volume-iii/).

30 For more information regarding the services LITCs provide, see IRS Pub. 5066, Low Income Taxpayer Clinics 2020 Program Report (Nov. 2020).

31 For a more detailed discussion of this topic, see National Taxpayer Advocate 2019 Annual Report to Congress 62-68 (Most Serious Problem: *Appeals: The Inclusion of Chief Counsel and Compliance Personnel in Taxpayer Conferences Undermines the Independence of the Office of Appeals*).

32 H.R. REP. NO. 116-39, pt. 1, at 29 (2019) (accompanying H.R. 1957, which was enacted into law without change to this provision as H.R. 3151).

liability in certain circumstances.<sup>33</sup> If the IRS denies a taxpayer's request for innocent spouse relief, the taxpayer generally may seek review of the adverse determination in the Tax Court. However, the Tax Court does not have jurisdiction over collection suits arising under IRC §§ 7402 or 7403, or over bankruptcy proceedings arising under Title 11 of the U.S. Code. Courts have reached inconsistent decisions about whether taxpayers may raise innocent spouse relief as a defense in those categories of cases, undermining the innocent spouse protections and potentially resulting in differing treatment of similarly situated taxpayers. We recommend Congress clarify that taxpayers may raise innocent spouse claims in all such proceedings.

- **Amend the Combat-Injured Veterans Tax Fairness Act of 2016 to allow veterans of the Coast Guard to file claims for credit or refund of taxes improperly withheld from disability severance pay (DSP).** The 2016 Act created an exception from the statute of limitations to allow otherwise time-barred refunds in cases where the Secretary of Defense wrongfully withheld tax from severance payments to wounded veterans. Although the tax code's definition of "military or naval forces of the United States" includes the Coast Guard, the Act as drafted excluded veterans of the Coast Guard from its scope. It appears that omitting the Coast Guard from the DSP tax relief provision may have resulted from a drafting error. Like members of the services within the Department of Defense, members of the Coast Guard often face perilous circumstances and potential injuries as they perform their mandated duties. While the number of veterans affected by this issue is relatively small, fairness and parity in treatment among the armed forces of the United States require that this apparent drafting error be corrected and that a claims period be opened for this group of taxpayers.
- **Clarify that the National Taxpayer Advocate may hire independent legal counsel.** IRC § 7803(c) requires the National Taxpayer Advocate to operate independently of the IRS in key respects. To help ensure this independence, the conference committee report accompanying RRA 98 stated: "The conferees intend that the National Taxpayer Advocate be able to hire and consult counsel as appropriate." This is similar to the authority Congress has granted inspectors general to ensure their independence. Until 2015, the National Taxpayer Advocate was able to hire attorneys to advise her, advocate for taxpayers, and write key sections of her two statutorily mandated reports to Congress. But the Treasury Department at that time began to enforce a Departmentwide policy that requires all attorney-advisors in the Department to report to the General Counsel absent a statutory exception. To continue to advocate for taxpayers effectively and independently, the National Taxpayer Advocate requires statutory authorization to hire attorney-advisors that do not report to other agency officials.

## TAS Accomplishments During Fiscal Year 2020

One nice feature of the position of National Taxpayer Advocate is that I have "two bites at the apple" in advocating for systemic change. Because I report directly to the Commissioner, I can advocate for change within the IRS. At the same time, I have the honor of submitting reports directly to Congress, where I can highlight areas of concern and recommend changes. As a general matter, my preferred approach is to resolve as many issues as I can within the IRS as quickly as possible.

TAS advocates at many levels within the IRS. One key area is in IRM guidance, which provides instructions to employees in the various IRS functions. TAS has been working to incorporate provisions of the Taxpayer Bill of Rights into the IRM, particularly IRM provisions that govern examination and collection activities.

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<sup>33</sup> See IRC § 6015.

During FY 2020, TAS made 782 recommendations to modify draft IRM provisions, and the IRS accepted 473 (60 percent) of our recommended changes.

TAS staff also meet regularly with the IRS operating divisions that interact with taxpayers, most notably the Wage and Investment and the Small Business/Self-Employed Divisions. Although often fruitful, some discussions may result in a stalemate. Where appropriate, I may issue a proposed Taxpayer Advocate Directive (TAD). If the issue remains unresolved, I may issue a final TAD that directs the IRS to make specified administrative or procedural changes. In FY 2020, I issued three proposed TADs. The IRS quickly addressed the issues raised in the proposed TADs, so final TADs were not required. Similarly, Local Taxpayer Advocates who work directly with taxpayers may issue Taxpayer Assistance Orders (TAOs) to advocate forcefully in individual cases. During FY 2020, TAS issued 96 TAOs.<sup>34</sup>

I look forward to continuing open and frank discussions within the IRS and to maintaining multiple advocacy channels on behalf of taxpayers. To improve transparency regarding our advocacy activities, we are including a new section entitled “Highlights of TAS Successes on Our Journey of Taxpayer Advocacy Throughout the Past Year” in this report to highlight some of TAS’s accomplishments.

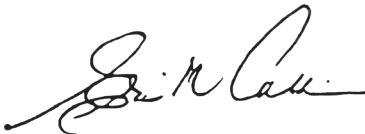
## Conclusion

The COVID-19 pandemic has presented frustrations and challenges. It also has pulled back the curtain on the significant limitations the IRS faces with technology and with its workforce. Congress’s passage of the TFA demonstrates its recognition that taxpayer service and modernized IT are critical for effective tax administration. But this recognition, by itself, does not solve problems. Continued leadership at the IRS and more funding from Congress are the keys to improving tax administration, which includes both the taxpayer experience and tax compliance.

I want to acknowledge and thank the hardworking members of my TAS team and the IRS employees who have risen to this year’s challenges to keep the tax system functioning.

I look forward to working with Congress and the IRS as we begin to face the challenges 2021 will bring. Together with my TAS team, I stand ready to work with you to improve the tax system for the benefit of taxpayers in any way we can.

Respectfully submitted,



Erin M. Collins  
National Taxpayer Advocate  
December 31, 2020

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<sup>34</sup> For additional information regarding TAOs issued in FY 2020, see the TAS Case Advocacy section of this report.



## Taxpayer Rights and Service Assessment: IRS Performance Measures and Data Relating to Taxpayer Rights and Service

The Taxpayer Rights and Service Assessment has provided the IRS, Congress, and other stakeholders with a “report card” to measure how the agency is doing in protecting and furthering taxpayer rights and service while driving voluntary compliance. This report card can become an integral part of the IRS’s ongoing implementation of the Taxpayer Bill of Rights (TBOR), which organizes the multitude of taxpayer rights provided by the IRC into a list of ten fundamental rights. This report card may also be used to indicate areas where decreasing resources might impact the IRS’s ability to maintain a robust adherence to the TBOR in practice or provide the appropriate level of service. Following the IRS’s adoption of the TBOR, Congress added it to the IRC and created a commitment for the Commissioner of the IRS to “ensure that employees of the Internal Revenue Service are familiar with and act in accord with taxpayer rights as afforded by other provisions of this title, including — [the ten taxpayer rights comprising the TBOR].”<sup>1</sup> This statutory language shows Congress’s intent not just to articulate the fundamental taxpayer rights, but also to hold the IRS accountable for putting them into practice. Without measures, the IRS and Congress face difficulty in determining whether the IRS is meeting its obligation.

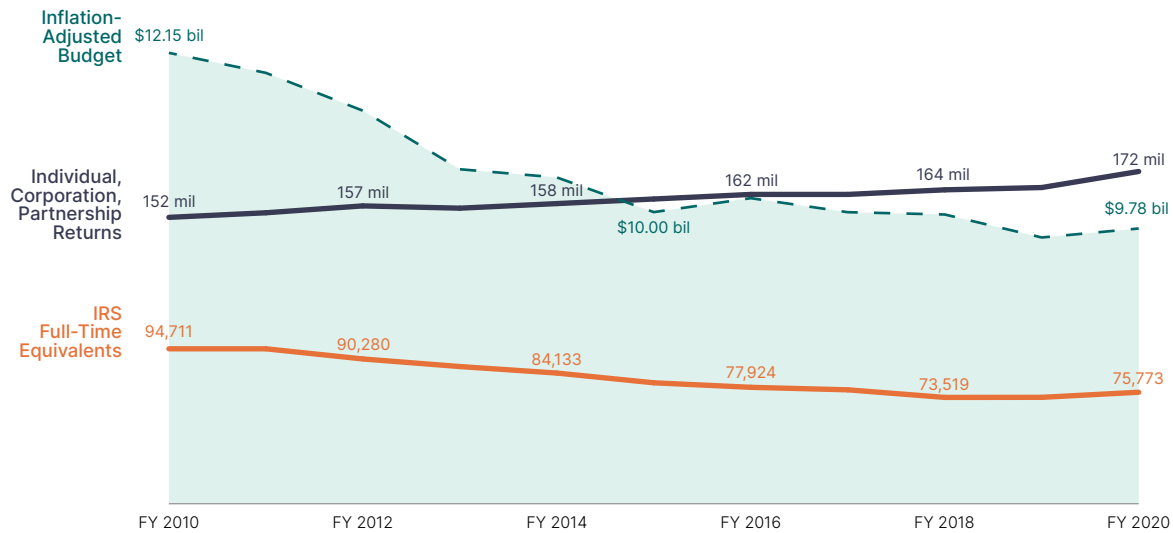
The Taxpayer First Act (TFA), passed in 2019, requires the IRS to include in its written comprehensive customer service strategy “identified metrics and benchmarks for quantitatively measuring the progress of the Internal Revenue Service in implementing such strategy.”<sup>2</sup> Taxpayer customer service and taxpayer rights are inextricably linked, as evidenced by the *right to quality service*. The Taxpayer Rights Assessment will allow the IRS to identify areas where it must improve and measure the success of specific changes by comparing data before and after implementing the new customer service strategy. TAS looks forward to working with the IRS on the TFA implementation and future measures.

The Office of the Taxpayer Advocate published the Taxpayer Rights Assessment in 2014, following the IRS’s adoption of the TBOR. While the assessment has grown in terms of data captured, it is still a work in progress. This year, we are restructuring and refining the presentation of measures to reflect Congress’s interest in IRS customer service while noting that reductions in budget and staffing may present difficulties to the IRS’s expansion of taxpayer-centric service delivery.<sup>3</sup> Traditionally, IRS metrics have focused on “efficiency” — no change rates, cycle time, etc. If the IRS is to evolve in the customer experience arena, it will require new metrics, and we look forward to working with the IRS on its TFA customer service strategy and metrics.

In this report, we highlight IRS challenges as its inflation-adjusted budget appropriation has declined by about 20 percent since fiscal year (FY) 2010,<sup>4</sup> even as its workload has increased. Analogously, IRS staffing levels have fallen by nearly 20 percent over the same period as shown in Figure 0.2.1 while the number of tax returns has increased by 13 percent.<sup>5</sup> It’s worth noting the IRS also experienced a 2011-2018 hiring freeze,<sup>6</sup> and continues to fight an uphill battle to improve the quality of its taxpayer customer service when the number of employees available to assist taxpayers has fallen so dramatically while tax filings increase. Taxpayers cannot receive the quality of service all Americans are entitled to when the IRS continues to face tough choices allocating reduced staffing and resources among the tax administrative requirements in the face of rising workloads.

**FIGURE 0.2.17**

**Comparison of IRS Full-Time Equivalents; Individual, Corporation, and Partnership Returns; and Inflation-Adjusted Budget, FYs 2010-2020**



**TAXPAYER SERVICE: Tax Return Processing<sup>8</sup>**

Tax return processing is a primary IRS function, and return filing metrics speak as a fundamental measure of IRS workload. Rising return inventories coupled with diminishing resources influence the quality of customer service taxpayers receive, and disruptions to this essential function negatively impact taxpayer rights.<sup>9</sup> The number of returns filed each year is on the rise,<sup>10</sup> and while a majority of taxpayers opt to file electronically either by choice or necessity, millions of tax returns are still filed on paper. The IRS must devote staffing and resources to process these paper submissions, while investing in the maintenance and upgrade of its systems to successfully manage a high volume of electronically-filed returns.

Measure/Indicator	FY 2018	FY 2019	FY 2020
Number of Returns Filed (Projected, All Types) <sup>11</sup>	254,001,709	255,249,983	259,995,800
Total Individual Income Tax Returns <sup>12</sup>	152,937,949	154,094,555	160,423,600
Total Individual Income Tax Returns Filed on Paper <sup>13</sup>	17,673,132	15,927,227	15,029,800
Total Individual Income Tax Returns Filed Electronically <sup>14</sup>	134,261,551	137,203,455	144,413,200
Free File Consortium (Tax Year) <sup>15</sup>	2,361,591	2,528,639	4,018,163
Fillable Forms (Tax Year) <sup>16</sup>	294,723	283,244	519,133
Total Corporation Income Tax Returns <sup>17</sup>	7,209,185	7,288,019	7,119,800
Total Corporation Income Tax Returns Filed on Paper <sup>18</sup>	1,430,754	1,325,429	1,155,900
Total Corporation Income Tax Returns Filed Electronically <sup>19</sup>	5,778,431	5,962,590	5,963,900

## TAXPAYER SERVICE: Examination and Collection<sup>20</sup>

Examination and collection action can raise taxpayer anxieties, which may be exacerbated if the process is perceived as unnecessarily prolonged or inequitable. Declining IRS staffing levels and high case inventory volumes pose challenges to maintaining acceptable levels of taxpayer customer service. In particular, the strategic allocation of limited workforce resources is challenging yet vital to ensuring equitable treatment across all taxpayer populations, while attention to closed case resolutions can indicate whether resources are being applied appropriately and promote a sense of parity. A higher rate of no-response audit<sup>21</sup> closures in the lower income taxpayer category, for example, may warrant consideration for adjustment in approach. Rising no change audit<sup>22</sup> closures might suggest resources may be better targeted toward areas of greater non-compliance. The quality of customer service provided must always respect the taxpayer's *rights to be informed, to quality service, to pay no more than the correct amount of tax, and to a fair and just tax system.*

Measure/Indicator	FY 2018	FY 2019	FY 2020
<b>Examination</b>			
Total Number of Closed Examinations – <b>Individual Tax Returns</b> <sup>23</sup>	892,065	680,463	452,510
Total Positive Income (under \$50,000)			
No Change Rate	8.3%	10.1%	11.4%
Agreed Rate <sup>24</sup>	21.6%	23.3%	20.6%
Taxpayer Failed to Respond Rate <sup>25</sup>	43.2%	39.8%	44.7%
Avg. Days to Audit Completion	253.7	278.7	263.2
Total Exam Time (hours) Correspondence Audits	1.3	1.4	1.4
Total Exam Time (hours) Field Exams	20.0	20.4	25.1
% of Correspondence Audit <sup>26</sup>	88.1%	88.1%	90.0%
Total Positive Income (at least \$50,000 and under \$10,000,000)			
No Change Rate	11.6%	12.4%	16.0%
Agreed Rate	44.8%	42.8%	44.6%
Taxpayer Failed to Respond Rate	21.0%	20.0%	17.5%
Avg. Days to Audit Completion	263.7	288.2	301.2
Total Exam Time (hours) Correspondence Audits	1.9	2.1	2.2
Total Exam Time (hours) Field Exams	26.6	28.7	28.5
% of Correspondence Audit <sup>27</sup>	68.9%	67.7%	62.0%
Total Positive Income (\$10,000,000 and over)			
No Change Rate	24.6%	21.3%	19.7%
Agreed Rate	50.2%	50.5%	52.2%
Taxpayer Failed to Respond Rate	0.4%	1.8%	0.8%
Avg. Days to Audit Completion	669.4	703.8	994.7
Total Exam Time (hours) Correspondence Audits	7.4	11.2	9.1
Total Exam Time (hours) Field Exams	92.9	117.1	94.3
% of Correspondence Audit <sup>28</sup>	46.1%	37.0%	43.3%

Measure/Indicator	FY 2018	FY 2019	FY 2020
<b>Collection</b>			
Offer in Compromise: Number of Offers Submitted <sup>29</sup>	59,127	54,225	44,809
Offer in Compromise: Percentage of Offers Accepted <sup>30</sup>	39.0%	36.6%	35.4%
Installment Agreements (IAs): Number of Individual & Business IAs <sup>31</sup>	2,883,035	2,821,134	1,825,378
Percentage of Cases Pending Assignment (in the Queue)(Taxpayers) <sup>32</sup>	16.6%	24.1%	28.1%
Percentage of Cases Pending Assignment (in the Queue)(Modules) <sup>33</sup>	24.6%	33.6%	39.3%
Age of Delinquencies Pending Assignment (in the Queue) <sup>34</sup>	4.8 years	4.8 years	4.6 years

## TAXPAYER SERVICE: Taxpayer-Facing Communication Channels<sup>35</sup>

Taxpayers are increasingly reaching out to the IRS through a variety of communication channels, but the IRS is challenged to efficiently and timely address taxpayer contacts when budget and workforce resources are down. Correspondence processing cycle times are up. Overage correspondence percentages are also rising while telephone Level of Service<sup>36</sup> measurements are falling. Rises in virtual service contacts are important to note,<sup>37</sup> but taxpayers' continued preference and need for face-to-face assistance must always be considered and supported. Taxpayers have the *rights to quality service, to be informed, to pay no more than the correct amount of tax, and to a fair and just tax system*. These rights must come to bear in the standard of service a taxpayer receives when working with the IRS no matter the communication channel.

Measure/Indicator	FY 2018	FY 2019	FY 2020
<b>In-Person Service</b>			
Number of Taxpayer Assistance ("Walk-In") Centers (TACs) <sup>38</sup>	359	358	358
Number of Face-to-Face TAC Contacts <sup>39</sup>	2.9 million	2.3 million	1.0 million
<b>Correspondence<sup>40</sup></b>			
Individual Correspondence Volume (Adjustments) <sup>41</sup>	4,485,906	4,134,753	2,765,003
Average Cycle Time to Work Individual Correspondence <sup>42</sup> (Master File (IMF))	66 days	74 days	96 days
Inventory Overage <sup>43</sup>	37.9%	41.8%	41.6%
Business Correspondence Volume (Adjustments) <sup>44</sup>	2,595,131	2,717,819	2,038,291
Average Cycle Time to Work Business Correspondence <sup>45</sup> (Master File (BMF))	51 days	101 days	149 days
Inventory Overage <sup>46</sup>	23.5%	57.8%	71.9%
<b>Telephone Service</b>			
Total Calls to IRS <sup>47</sup>	98,532,231	99,373,456	100,514,299
Number of Calls Answered by IRS Employees <sup>48</sup>	34,703,578	28,558,862	24,192,386
Percentage of Calls Answered by IRS Employees <sup>49</sup>	35.2%	28.7%	24.1%
IRS Level of Service (LOS) <sup>50</sup>	69.0%	56.2%	51.2%
IRS Average Speed of Answer <sup>51</sup>	11.3 minutes	16.2 minutes	18.3 minutes
Practitioner Priority: Percentage of Calls Answered (LOS) <sup>52</sup>	84.9%	78.3%	56.3%
Practitioner Priority: Average Speed of Answer <sup>53</sup>	7.5 minutes	8.8 minutes	12.7 minutes

Measure/Indicator	FY 2018	FY 2019	FY 2020
<b>Virtual Service</b>			
Number of Visits to IRS.gov <sup>54</sup>	608,776,283	650,989,560	1,603,938,876
Number of Page Views <sup>55</sup>	3,219,660,310	3,350,072,964	9,225,312,072
Online Installment Agreements <sup>56</sup>	714,901	786,505	719,752
Where's My Refund? Inquiries <sup>57</sup>	309,174,164	368,841,040	505,611,474

## TAXPAYER SERVICE: Information Technology

Taxpayers will experience increased frustration and difficulty resolving their IRS issues. Congress must provide an increased funding effort to upgrade the IRS's severely outdated information technology (IT) systems.<sup>58</sup> Modernization efforts are challenged when a large portion of available funding is required to maintain current operations and legacy systems. The modernization of aging IRS information systems and the requisite application of staffing to maintain that effort is integral to improving IRS customer service and respecting a taxpayer's *right to quality service*.

Measure/Indicator	FY 2018	FY 2019	FY 2020
Percentage of IT Funding Available for Operations and Maintenance <sup>59</sup>	87.2%	87.5%	89.3%
Percentage of IT Funding Available for Business Systems Modernization <sup>60</sup>	12.8%	12.5%	10.7%

1 IRC § 7803(a)(3).

2 Taxpayer First Act, Pub. L. No. 116-25, § 1101(a)(5), 133 Stat. 981 (2019).

3 We have omitted metrics with less direct emphasis on customer service and added others for context or greater customer service relevance. We submit the measures here as a sample of indicators and do not intend for them to be read as a comprehensive listing of performance benchmarks.

4 IRS response to TAS fact check (Dec. 14, 2020).

5 IRS response to TAS fact check (Oct. 2, 2019; Nov. 15, 2019). Staffing comparison was prepared on a Full-time Equivalent (FTE) basis. IRS, Pub. 6292, Table 1, Fiscal Year Return Projections for the United States: 2011-2018, Fall 2011 Update, at 6 (showing that taxpayers filed 151.5 million individual, corporation, and partnership returns in FY 2010) (Rev. 8-2011); IRS, Pub. 6292, Table 1, Fiscal Year Return Projections for the United States: 2020-2027, Fall 2020, at 4 (projecting that taxpayers will file 171.8 million individual, corporation, and partnership returns in FY 2020) (Rev. 9-2020), <https://www.irs.gov/pub/irs-pdf/p6292.pdf>.

6 *Hearing Before the H. Subcomm. on Oversight of the H. Comm on Ways and Means*, 116th Cong. (Nov. 20, 2020) (statement of Chuck Rettig, IRS Commissioner).

7 IRS response to TAS fact check (Dec. 14, 2020; Dec. 23, 2020). This figure represents the average number of FTE positions actually used to conduct IRS operations, which excludes FTEs attributable to overtime, terminal leave, and those funded by reimbursable agreements from other federal agencies and private companies for services performed for these external parties. It also excludes positions funded by private debt collection funds. IRS, Pub. 6292, Table 1, Fiscal Year Return Projections for the United States: 2011-2018, Fall 2011 Update, at 6 (Rev. 8-2011), and subsequent annual Fall Pub. 6292 updates through IRS, Pub. 6292, Table 1, Fiscal Year Return Projections for the United States: 2020-2027, Fall 2020, at 4 (Rev. 9-2020). The return volume reported for FY 2020 is a projected number. The budget figures include rescissions and funds provided in the administrative provisions of appropriations bills, but exclude supplemental funds passed outside of the normal appropriations bills. The inflation adjustment is computed using the GDP Index from the President's Budget FY 2021, Historical Tables, Table 10.1.

8 When considering FY 2020 data, it should be noted that core IRS services were suspended or reduced for a portion of FY 2020 due to COVID-19.

9 The IRS encountered a system outage on April 17, 2018 (the 2017 tax return filing deadline), and had to provide taxpayers an additional day to file and pay their taxes. See IRS, IRS Provides Additional Day to File and Pay for Taxpayers Through Wednesday, April 18; IRS Processing Systems Back Online, IR-2018-100 (Apr. 17, 2018); Jeff Stein, Damian Paletta & Mike DeBonis, *IRS to Delay Tax Deadline By One Day After Technology Collapse*, WASH. POST, Apr. 17, 2018, [https://www.washingtonpost.com/business/economy/irs-electronic-filing-system-breaks-down-hours-before-tax-deadline/2018/04/17/4c05ecae-4255-11e8-ad8f-27a8c409298b\\_story.html](https://www.washingtonpost.com/business/economy/irs-electronic-filing-system-breaks-down-hours-before-tax-deadline/2018/04/17/4c05ecae-4255-11e8-ad8f-27a8c409298b_story.html).

10 The rise in FY 2020 filed returns can in part be attributed to returns filed by taxpayers who traditionally are not required to file a return, but who will file solely to receive the Recovery Rebate Credit in advance. IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2020-2027, at 1 (Sept. 2020).

- 11 IRS Pub. 6292, Fiscal Year Return Projections for the United States: 2019-2026, at 3 (Sept. 2019); IRS Pub. 6292, Fiscal Year Return Projections for the United States: 2020-2027, at 4 (Sept. 2020). The FY 2019 figure has been updated from what we reported in the 2019 Annual Report to Congress to report actual return counts. The FY 2020 figures are projected numbers. The number of returns and related metrics are proxies for IRS workload and provide context for the environment in which taxpayers seek quality service and other rights from the Taxpayer Bill of Rights.
- 12 *Id.* The FY 2019 figure has been updated from what we reported in the 2019 Annual Report to Congress to report actual return counts. The FY 2020 figures are projected numbers.
- 13 *Id.* The FY 2018 figure is a tally of Forms 1040, 1040-A, and 1040-EZ. Beginning in January 2019, a new, streamlined Form 1040 replaced Forms 1040, 1040-A, and 1040-EZ. The FY 2020 figure is a projected number.
- 14 *Id.*
- 15 IRS Compliance Data Warehouse (CDW), Electronic Tax Administration Research and Analysis System Modernized e-File for Individuals for FY 2020 (Nov. 2020). The FY 2018 figures represent tax year (TY) 2017 tax returns. The FY 2019 figures represent TY 2018 tax returns. The FYs 2017 and 2018 numbers have been updated from what we reported in the 2018 Annual Report to Congress. The FY 2020 figures represent TY 2019 tax returns.
- 16 *Id.* The FY 2018 figures represent TY 2017 tax returns. The FY 2019 figures represent TY 2018 tax returns. The FY 2020 figures represent TY 2019 tax returns. The FY 2018 number has been updated from what we reported in the 2018 Annual Report to Congress.
- 17 IRS Pub. 6292, Fiscal Year Return Projections for the United States: 2019-2026 3 (Sept. 2019); IRS Pub. 6292, Fiscal Year Return Projections for the United States: 2020-2027, at 4 (Sept. 2020). The FY 2020 figures are projected numbers.
- 18 *Id.* The FY 2020 figures are projected numbers.
- 19 *Id.*
- 20 When considering FY 2020 data, it should be noted that core IRS services were suspended or reduced for a portion of FY 2020 due to COVID-19.
- 21 A no response audit includes taxpayers with undelivered IRS audit notices or statutory notice of deficiencies; and taxpayers who did not respond to IRS audit notices.
- 22 A no change audit occurs when a taxpayer substantiates all items being reviewed by the audit, resulting in no change to the reported tax.
- 23 IRS, CDW Audit Information Management System (AIMS) Closed Case Database for FYs 2018 to 2019 (Nov. 2020); IRS response to fact check (Dec. 14, 2020). These numbers reflect examination cases closed by the IRS, and do not account for subsequent appeal or litigation.
- 24 An audit is closed as agreed when the IRS proposes changes and the taxpayer understands and agrees with the changes.
- 25 The non-response rate includes taxpayers with undelivered IRS audit notices or statutory notice of deficiencies and taxpayers who did not respond to the IRS audit notices.
- 26 Represents percentage of correspondence audits for taxpayers with total positive income under \$50,000.
- 27 Represents percentage of correspondence audits for taxpayers with total positive income at least \$50,000 and under \$10,000,000.
- 28 Represents percentage of correspondence audits for taxpayers with total positive income \$10,000,000 and over.
- 29 IRS, Small Business/Self-Employed (SB/SE), Collection Activity Report (CAR) No. 5000-108, Monthly Report of Offer in Compromise Activity, cumulative through September, FY 2018 (Oct. 1, 2018), FY 2019 (Sept. 30, 2019), and FY 2020 (Sept. 28, 2020).
- 30 IRS, OIC Executive Summary Reports, FY 2017, 2018, and 2019. These percentages vary slightly from those reported in prior years as the IRS does not include doubt as to liability offers or offers accepted as a result of a Collection Due Process hearing.
- 31 IRS, SB/SE, CAR No. 5000-6, Installment Agreement Cumulative Report, FY 2018 (Sept. 30, 2018), FY 2019 (Sept. 29, 2019), and FY 2020 (Sept. 27, 2020).
- 32 IRS, SB/SE, CAR No. 5000-2, Taxpayer Delinquent Account Cumulative Report, FY 2018 (Sept. 30, 2018), FY 2019 (Sept. 29, 2019), and FY 2020 (Sept. 27, 2020). When taxpayers incur delinquent tax liabilities, the IRS sends them a series of notices during a six-month period during which the taxpayers are in “notice status.” If the taxpayer does not resolve his or her liability during the notice status, the account enters into taxpayer delinquent account status. The IRS then determines whether the case will be referred to the Automated Collection System (ACS), assigned directly for in-person contact by a revenue officer, assigned to the collection queue to await assignment to a revenue officer, or shelved. ACS may also assign cases to the collection queue. The IRS shelves cases prior to assigning the case to a private collection agency.
- 33 *Id.*
- 34 Query by TAS Research of tax delinquent accounts with queue status in IRS CDW, Accounts Receivable Dollar Inventory, Individual Master File, Modules. Age of balance due cases in the collection queue as of cycle 37 of FY 2018 and FY 2019, and cycle 38 of FY 2020. The age of Taxpayer Delinquency Investigations is not considered.
- 35 When considering FY 2020 data, it should be noted that core IRS services were suspended or reduced for a portion of FY 2020 due to COVID-19.
- 36 For a discussion of how the IRS calculates telephone LOS, see Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Difficulty Reaching IRS Representatives Due to Outdated Information Technology and Insufficient Staffing*, *infra*.
- 37 The IRS shutdown due to COVID-19 and its subsequent directing of taxpayers to IRS.gov should be considered when noting the dramatically elevated rise in FY 2020 virtual visits.
- 38 FY 2018 figure from IRS response to TAS information request (Oct. 24, 2018). The FY 2018 figure was calculated as of Aug. 2018, and does not include 38 face-to-face Virtual Service Delivery sites located at community partner facilities. FY 2019 figure from IRS response to TAS fact check (Nov. 15, 2019). FY 2020 figure from IRS response to TAS information request (Sept. 30, 2020).
- 39 Wage and Investment Division, Business Performance Review, 4th Quarter, FY 2019 2 (Nov. 7, 2019). IRS response to TAS information request (Sept. 30, 2020). The FY 2020 number is calculated through Sept. 12, 2020.
- 40 Correspondence represents Accounts Management inquiries and responses received from taxpayers that do not belong specifically to another area.
- 41 IRS, Joint Operations Center (JOC), Adjustments Inventory Reports: July-September FY Comparison (FY 2019 and FY 2020).
- 42 IRS, Research Analysis and Data (RAD), Accounts Management Reports: Collection Information System (CIS) Closed Case Cycle Time (FY 2019 and FY 2020).

- 43 IRS, Weekly Enterprise Adjustments Inventory Report, FY 2019 and FY 2020 (weeks ending Sept. 28, 2019, and Sept. 26, 2020). Certain IRS inventories must be worked within a specific timeframe to be considered timely. If not closed in that timeframe, the inventory item will be classified as “overaged.”
- 44 IRS, JOC, Adjustments Inventory Reports: July-September Fiscal Year Comparison (FY 2019 and FY 2020).
- 45 IRS, RAD, Accounts Management Reports: CIS Closed Case Cycle Time (FY 2018 and FY 2019).
- 46 IRS, Weekly Enterprise Adjustments Inventory Report, FY 2019 and FY 2020 (weeks ending Sept. 28, 2019, and Sept. 26, 2020).
- 47 IRS, JOC, Snapshot Reports: Enterprise Snapshot (weeks ending Sept. 30, 2019, and Sept. 30, 2020).
- 48 *Id.*
- 49 *Id.*
- 50 *Id.*
- 51 IRS, JOC, Snapshot Reports: Enterprise Snapshot (weeks ending Sept. 30, 2019, and Sept. 30, 2020).
- 52 IRS, JOC, Snapshot Reports: Product Line Detail (weeks ending Sept. 30, 2019, and Sept. 30, 2020).
- 53 *Id.*
- 54 IRS.gov Site Traffic Calculator (FY 2018, FY 2019, and FY 2020).
- 55 *Id.*
- 56 IRS, SB/SE, CAR No. 5000-6, Installment Agreement Cumulative Report, FY 2018 (Sept. 30, 2018), FY 2019 (Sept. 29, 2019), and FY 2020 (Sept. 27, 2020).
- 57 IRS Databook (FY 2018 and FY 2019); IRS response to TAS fact check for FY 2020 (Dec. 14, 2020).
- 58 For a discussion of IRS IT modernization, see Most Serious Problem: *Information Technology Modernization: Antiquated Technology Jeopardizes Current and Future Tax Administration, Impairing Both Taxpayer Service and Enforcement Efforts*, *infra*.
- 59 Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2018-20-083, *Annual Assessment of the Internal Revenue Service's Information Technology Program for Fiscal Year 2018*, at 2 (Sept. 26, 2018); TIGTA, Ref. No. 2019-20-083, *Annual Assessment of the Internal Revenue Service's Information Technology Program for Fiscal Year 2019*, at 1-2 (Sept. 27, 2019); TIGTA, Ref. No. 2021-20-001, *Annual Assessment of the Internal Revenue Service's Information Technology Program for Fiscal Year 2020*, at 1-2 (Oct. 30, 2020). The Operations and Maintenance percentage represents the sum of funding designated as: Applications Development, Cybersecurity, Sustaining Infrastructure/Infrastructure Currency, Other Funds, Enterprise Operations, Enterprise-Program Management Office, Enterprise Services, Office of the Chief Information Officer, Strategy and Planning, and User and Network Services. The FY 2020 percentage additionally includes Operations Support COVID-19 and Taxpayer First Act (User Fees) funding.
- 60 *Id.*



TAXPAYER ADVOCATE SERVICE

# JOURNEY OF ADVOCACY

Highlights of TAS Successes on Our  
Journey of Taxpayer Advocacy  
Throughout the Past Year



TAS Protects  
Taxpayer Rights



TAS Advocates  
for Change



TAS Reduces  
Taxpayer Burden



TAS Improves  
Access to Resources



## To Strengthen Taxpayer Rights, TAS Recommends the IRS Change How It Works

TAS ensures that IRS employee guidance and instructions contain the key elements necessary to protect taxpayers' rights. Each year, TAS reviews and recommends changes to Internal Revenue Manual (IRM) guidance to reflect how employees should engage with taxpayers while protecting their taxpayer rights; submits corrections to IRS notices, forms, and publications; and provides information on TAS assistance and access to Low Income Taxpayer Clinics.

**In 2020, TAS updated 133 IRMs, incorporated the Taxpayer Bill of Rights into 44 IRMs, and helped revise 23 taxpayer notices, 11 tax forms, and five publications, all strengthening the taxpayer's right to a fair and equitable tax system.**

## TAS Advocates for Outreach to Taxpayers to Ensure They Have Correct Tax Guidance

When the IRS published Publication 54, Tax Guidance for U.S. Citizens and Resident Aliens Abroad, it contained incorrect filing thresholds. TAS advocated for and collaborated with the IRS to correct and publicize inaccuracies in Publication 54, preventing a potentially significant negative impact on the related taxpayer population. These efforts mitigated the burden of the impacted taxpayers, protecting their *right to be informed*.

## TAS Advocates for Relief for Additional Taxpayers Whose Student Loan Debts Were Forgiven

TAS has long advocated for taxpayers whose student loans are canceled when the educational institution they attended closes or because of a legal settlement. In 2015, 2017, and 2018, with active involvement by TAS, the IRS issued guidance providing that some taxpayers are not required to include the discharged debt in income, and the lenders are not required to issue Forms 1099-C to report the canceled debt. TAS continued to advocate for taxpayers not covered by this *ad hoc* guidance, and in January 2020, the IRS extended the same relief to additional taxpayers whose student loan debts were forgiven.

## TAS Advocates for IRS to Provide a Web-Based EITC Tool in Spanish

In March 2019, the IRS released an interactive web-based tool to assist taxpayers with Form 886-H, Documents You Need to Send to Claim the Earned Income Credit on the Basis of a Qualifying Child or Children. TAS advocated for the translation of this toolkit to Spanish to help taxpayers understand the documents required to substantiate claims for the EITC. Because of TAS involvement, Spanish speaking taxpayers can now use the web-based tool for additional assistance during an examination where EITC is an issue, thus ensuring their *right to be informed*.



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## TAS's Collaboration Preserves Taxpayers' *Right to Appeal* During COVID-19 Closures

TAS identified nearly 75,000 taxpayers who would receive collection due process (CDP) notices with outdated deadlines who would lose their right to request a CDP hearing. TAS collaborated with the IRS to create Notice 1052-C, Important! You Have Additional Time to Appeal, specifically providing an extended deadline for these taxpayers to respond. These changes allow taxpayers more time to reply and ensure protection of their *right to appeal*.

## TAS Successfully Advocates for IRS to Place Its Phone Number More Prominently on Notice CP 14

The IRS sends Notice CP 14, Balance Due, No Math Error, as a first notice to inform a taxpayer of a balance due. Many taxpayers who receive a CP 14 notice want to speak with an IRS employee to get answers. The IRS proposed moving the phone number on the notice from the first page to the second page. The acting National Taxpayer Advocate issued a proposed Taxpayer Advocate Directive (TAD) requesting the IRS move the phone number back to the first page. The IRS agreed to TAS's recommendation, and the revised Notice CP 14 will show the IRS phone number on the first page in its own block of text and in the new *Where to Call* section on page 2 under the IRS Help section.

## TAS Helps Military Taxpayers Receive Their Refunds and Economic Impact Payments on Time

Military taxpayers requested TAS assistance because the IRS did not have their Form W-2 data. TAS researched current and prior year Form W-2 receipts for the military divisions and found that the military payor had submitted only half the number of W-2s in 2020 as it typically did in other years. TAS and the IRS worked with the Social Security Administration to obtain the missing Forms W-2 from the Defense Finance Accounting Service. TAS's efforts resulted in the impacted military personnel receiving their current year refunds as well as timely Economic Impact Payments.

## TAS Advocates to Improve Tools to More Quickly Validate Taxpayers Under Audit for Refundable Credits

TAS and IRS collaborated to develop tools and templates to improve the audit process for refundable credits, such as the Earned Income Tax Credit (EITC). During an EITC audit, an examiner may need to request additional information regarding the qualifying children on the return. TAS and IRS developed templates to ensure third parties, such as doctors' office or schools, provide the proper information so that the IRS is able to validate the information more quickly during an audit. This improvement benefits the taxpayer's *rights to quality service* and *to pay no more than the correct amount of tax*.



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## **TAS Advocates for a Process to Return Economic Impact Payments Based on Conscientious or Religious Objection**

TAS advocated for a process to allow members of religious communities who have objections to receiving refundable credit-related refunds to return their Economic Impact Payment with an explanatory letter and have their account noted accordingly. TAS's advocacy underscores the importance of a fair and just tax system that observes a taxpayer's constitutional right to freely exercise his or her religious beliefs.



## **TAS Advocates for IRS to Issue Determination Letters to Taxpayers Requesting Clarification on Their Worker Classification**

TAS learned that the IRS was improperly refusing to issue determination letters to taxpayers requesting clarification on their worker classification. Even when the litigation had already been resolved and was no longer pending, the IRS had notified the applicant it was unable to issue a determination letter due to the past litigation. TAS advocated for the IRS to process these worker status determinations if the litigation has been settled or otherwise resolved. Because of TAS involvement, internal guidance was updated, and the Form SS-8 instructions are more clear on when the IRS can issue determination letters.



## **TAS Identifies Penalty Assessment Problem Causing Practitioners Undue Burden on Form 7004**

Practitioners timely filed Forms 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns, but the IRS erroneously disallowed their requests. As a result, their accounts were incorrectly assessed failure to file and failure to pay penalties. TAS elevated over 200 cases to the IRS with the proof of timely-filed Forms 7004. The IRS determined the extensions were stamped with an incorrect postmark date, causing the extensions to be disallowed in error. Due to TAS raising this issue, Forms 7004 were processed correctly, and the erroneous penalty assessments were abated on affected taxpayer accounts.



## **TAS Recommends Internal Revenue Manual Updates to Reduce Tax Practitioner Burden**

Tax practitioners calling the Practitioner Priority Service phone line were having trouble obtaining unmasked transcripts, which show a taxpayer's Social Security number and other information. TAS recommended revising the Internal Revenue Manual (IRM) to explain how to request an "unmasked" transcript for delivery to the secured object repository or portal for tax practitioners. The IRS agreed and published updated IRM guidance in March 2020. These changes reduced tax practitioners' burden when requesting unmasked transcripts.



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## TAS Works to Keep Taxpayers Informed of Deadlines to Protect Their Rights

Taxpayers who make certain mistakes on their return (known as math errors) are notified by the IRS of the error and have 60 days based on the date on the notice to contest the change to their return before the IRS makes the change permanent. Because of the COVID-19 pandemic, the IRS was unable to timely print and mail many notices and letters, including math error notices. Taxpayers who received math error notices with outdated deadlines could possibly lose their right request a change to their return, and as a result, lose the ability to challenge the liability in court prior to having to pay it. TAS and the IRS worked to expedite the issuance of math error notices with inserts providing revised dates so that taxpayers were informed of the extended deadline and did not accrue penalties and interest prior to the time allowed to pay the tax. This ensures protection of the taxpayer's *right to pay no more than the correct amount of tax*.



## TAS Advocates for Better Information for Taxpayers Under Wage Verification Review Process

TAS advocated for new IRS procedures explaining to taxpayers that they should compare their return information against every income statement, and if they don't match, they should file an amended return. This procedural change helped clarify next steps and ensures the taxpayer's *right to be informed*.



## TAS Secures Additional Resolution Authorities to Address Aged Cases

Because of staffing and resource challenges imposed by COVID-19, the IRS temporarily closed many IRS campuses that process taxpayer mail and correspondence, which led to a backlog of work. This backlog included over 6,000 unresolved TAS Operations Assistance Requests (OARs), which TAS uses to secure relief for taxpayers experiencing financial and economic harm, related to campus work or submission processing. The National Taxpayer Advocate issued a proposed Taxpayer Assistance Directive ordering the IRS Submission Processing area to immediately address the backlog of OARs and provide a plan for quick resolution of the TAS cases. The IRS took several steps to address the backlog, including prioritizing the TAS OARs, temporarily allowing TAS the authority to work the issues, and working collaboratively with TAS to resolve the aged taxpayer issues.



## TAS Resolves Centralized Offer in Compromise Phone Line Issues

Practitioners submitted issues to TAS's Systemic Advocacy Management System regarding long hold times and unresponsiveness on the IRS's Centralized Offer in Compromise (COIC) phone lines. TAS reviewed calls and discovered that while hold times were not extreme, voice messages left on the lines were never returned. TAS worked with the IRS to correct technical issues that had distorted or prematurely ended some taxpayer voice messages. Because of TAS involvement, taxpayers with pending offers (more than 50,000 each year) can now successfully interact with COIC.



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## **TAS Advocates for Taxpayers to Know Exact Due Date on Collection Due Process Hearing Notices in COVID-19-Related Backlog**

For pandemic-related backlog notices providing Collection Due Process (CDP) hearing rights, the IRS initially proposed providing taxpayers with a response date based on the postmark of the envelope. TAS identified and raised concerns about taxpayers discarding the envelope and not knowing how long they had to request a CDP hearing. The IRS agreed to provide an exact due date in the notice for taxpayers to request the CDP hearing. This change ensures the taxpayer's *right to request an appeal in an independent forum* is not compromised during the COVID-19 pandemic emergency.



## **TAS Secures Emergency Financial Relief for Thousands Missed During Initial Economic Impact Payment Distribution**

The Coronavirus Aid, Relief, and Economic Security (CARES) Act authorized Economic Impact Payments (EIPs) for all individuals who fall under a specified income threshold to provide immediate economic assistance during the COVID-19 pandemic. Tens of thousands of individuals contacted TAS because they needed help getting their payment or they did not receive the correct amount. TAS was unable to assist these taxpayers because the IRS lacked a process to correct inaccurate EIP amounts. The National Taxpayer Advocate issued a proposed Taxpayer Advocate Directive (TAD) ordering the IRS to develop a process to correct EIP errors and issue revised EIPs where appropriate. To expedite the payments, TAS developed a matrix outlining the impacted groups of taxpayers that needed corrections. As a result of the proposed TAD, the IRS developed a series of planned systemic fixes and manual adjustments that provided taxpayers with corrected EIP amounts.



## **TAS Intervenes for Taxpayers Not Receiving Correspondence on Returns Suspended in the Automated Questionable Credit Process**

TAS learned that taxpayers were not receiving the required Letter 4800C, Questionable Credit 30-Day Contact Letter, or other return status correspondence while the IRS tested an automated tool to calculate and complete partial return adjustments. The testing of the new tool suspended these taxpayers' refunds from timely-filed 2018 returns, potentially causing hardship. Thanks to TAS's intervention, the IRS's Return Integrity Verification Office sent Letter 2644C, Second Interim Response, to about 9,000 taxpayers still waiting for account resolution while it manually worked individual taxpayer accounts until implementation of the automated tool.



## **TAS Advocates for More Guidance for Taxpayers Receiving Paycheck Protection Program Loans**

Section 1106 of the CARES Act provides loan forgiveness for certain loans made through the Paycheck Protection Program (PPP) by the Small Business Association. TAS reviewed an early version of Notice 2020-32, which provides guidance on the deductibility of expenses when a business receives a PPP loan. TAS recognized taxpayers needed further clarification on the tax ramifications if the PPP loan was not forgiven and provided such comments to Counsel and Treasury.



**TAS Advocacy  
Continues in 2021**



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## Introduction: The Most Serious Problems Encountered by Taxpayers

IRC § 7803(c)(2)(B)(ii)(III) requires the National Taxpayer Advocate to submit an annual report to Congress that contains a summary of ten “Most Serious Problems” encountered by taxpayers.<sup>1</sup> While we use the methodology described below to identify the Most Serious Problems, the list remains inherently subjective in many respects.

### A. METHODOLOGY OF IDENTIFYING THE MOST SERIOUS PROBLEMS

The National Taxpayer Advocate is in a unique position to identify the most pressing problems that the IRS faces and negatively impacts taxpayers’ service and their rights. Because TAS is an independent part of the IRS, it can serve as the advocate for the taxpayer and use the experience of its staff to identify taxpayer problems to make recommendations to improve the IRS from within the organization. TAS also works with hundreds of thousands of taxpayers and practitioners every year through its casework and outreach events, so it sees problems from an external perspective. TAS employees interact regularly with taxpayers and IRS employees to resolve taxpayers’ individual problems and make systemic fixes to widespread problems.

The National Taxpayer Advocate becomes aware of potential Most Serious Problems through multiple channels. Trends in TAS’s casework, referrals from congressional offices, research studies completed by TAS and outside groups, advocacy projects worked by the TAS’s Office of Systemic Advocacy, and findings from IRS taskforces and teams on which TAS participates often reveal issues. Additionally, the National Taxpayer Advocate hears directly from individuals, including IRS employees, taxpayers, tax practitioners, other external stakeholders, and through TAS’s Systemic Advocacy Management System and other channels.<sup>2</sup>

The National Taxpayer Advocate considers several factors in identifying, evaluating, and selecting the Most Serious Problems encountered by taxpayers. The ten issues in this year’s report are selected largely according to the following criteria:

- Impact on taxpayer rights;
- Number of taxpayers impacted;
- Financial impact on taxpayers;
- Visibility, sensitivity, and interest to stakeholders, Congress, and external indicators (*e.g.*, media, etc.);
- Barriers to tax law compliance, including cost, time, and burden;
- Taxpayer Advocate Management Information System (TAMIS) inventory data; and
- Emerging issues.

<sup>1</sup> In previous years, Congress tasked the National Taxpayer Advocate with identifying at least the 20 most serious problems impacting taxpayers. This change was the result of the recent passage of the Taxpayer First Act, Pub. L. No. 116-25, 133 Stat. 981 (2019).

<sup>2</sup> The Systemic Advocacy Management System is a database of systemic issues and information reported online to TAS by IRS employees and members of the public, <https://www.irs.gov/advocate/systemic-advocacy-management-system-sams>. TAS reviews and analyzes the submissions and determines a course of action, which can include information-gathering projects, immediate interventions, and advocacy projects. Internal Revenue Manual (IRM) 1.4.13.4.9.2, Systemic Advocacy Management System (SAMS) (Sept. 17, 2019).

## B. TAXPAYER ADVOCATE MANAGEMENT INFORMATION SYSTEM LIST

The identification of the Most Serious Problems reflects not only the mandates of Congress and the IRC, but also TAS's integrated approach to advocacy — using individual cases to detect trends and identifying systemic problems in IRS policy and procedures or the IRC. TAS tracks individual taxpayer cases on its internal system, TAMIS. The top 25 case issues, listed in Appendix 1, reflect TAMIS receipts based on taxpayer contacts in fiscal year (FY) 2020, a period spanning October 1, 2019, through September 30, 2020.

## C. DATA COMPILATION AND VALIDATION

The data cited in the National Taxpayer Advocate's annual reports generally come from one of three sources: (i) publicly available data such as the IRS Data Book, Government Accountability Office reports, and Treasury Inspector General for Tax Administration reports; (ii) IRS databases to which TAS has access; and (iii) IRS data that IRS operating divisions provide pursuant to TAS information requests. After TAS compiles data, TAS's Office of Research and Analysis confirms it. In accordance with IRC § 7803(c)(2)(B)(ii)(XII), TAS then sends all data in the Most Serious Problem section of the report to the IRS for final verification prior to publication.

On the rare occasion where TAS and the IRS have a disagreement about data or the presentation of the data, we generally discuss it, and if a disagreement persists, we note it in the report. This process ensures data integrity and full transparency regarding data sources and reliability.

## D. THE IMPACT OF COVID-19

In the middle of the 2020 tax filing season, COVID-19 presented the IRS with an extraordinary challenge: to safeguard the health and safety of taxpayers and employees while administering the longest filing season ever. Before we introduce the Most Serious Problems, we want to highlight some challenges the IRS faced and continues to face in light of the COVID-19 pandemic.

### **The IRS's Social Distancing in Response to Presidential Declaration of a National Emergency Negatively Impacted Taxpayer Service and Tax Administration**

After the President declared a national emergency due to the COVID-19 pandemic, the IRS took steps to maximize social distancing to protect the personal health and safety of taxpayers, employees, contractors, stakeholders, and local communities.<sup>3</sup> These precautions resulted in the partial or complete cessation of core IRS functions nationwide. The IRS's main challenge was that many core operations (*e.g.*, answering phones, opening and processing taxpayer correspondence and paper-filed returns, and issuing notices) were not portable. To further complicate matters, the IRS was tasked with administering the relief provisions in Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), including distribution of economic impact payments (EIPs) "as rapidly as possible" early in the pandemic.<sup>4</sup>

<sup>3</sup> Proclamation No. 9994, 85 Fed. Reg. 15, 337 (Mar. 13, 2020).

<sup>4</sup> The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), Pub. L. No. 116-136, § 2201, 134 Stat. 281 (2020).



As the pandemic increased in severity and spread across the nation, the IRS significantly modified operations through the following actions:

- Closed Taxpayer Assistance Centers (TACs) by ending walk-in and in-person appointments;<sup>5</sup>
- Ceased walk-in services at local TAS offices;<sup>6</sup>
- For mission-critical operations that required employees to work in a campus or IRS office setting, the IRS modified staffing to enhance social distancing;<sup>7</sup> and
- Directed all employees to telework if their work duties are portable or could be adapted to work offsite, even if such employees were not telework-eligible.<sup>8</sup>

Understandably, as a result of these actions, the operations of many IRS functions temporarily ceased. Although the IRS obtained laptops and needed software to give employees the ability to work remotely (having issued more than 15,000 laptops to customer service representatives and thousands more to non-customer-facing employees),<sup>9</sup> telework was not an option for some employees. Many employees had to adapt their work duties or were unable to work altogether, as some assignments were impossible to perform at home (*e.g.*, receiving or sending taxpayer correspondence by mail, accessing computer systems, and answering toll-free phone lines). In some instances, these operational adaptations resulted in the partial or complete cessation of core IRS functions throughout the entire country.

<sup>5</sup> IRS Commissioner, Protecting You; Protecting the Nation: New Steps to Safeguard Employees (Mar. 19, 2020).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> IRS, New Work at Home Directive Begins March 30 (Only Employees Directed by Their Supervisor to Perform Mission Essential Work May Work From an IRS POD) (Mar. 27, 2020), <https://www.irs.gov/newsroom/new-work-at-home-directive-begins-march-30-only-employees-directed-by-their-supervisor-to-perform-mission-essential-work-may-work-from-an-irs-pod>.

<sup>9</sup> IRS response to fact check request (Nov. 19, 2020).



**FIGURE 1.0.1, COVID-19 Timeline<sup>10</sup>**

March 13, 2020	President declares the COVID-19 outbreak in the United States a national emergency.
March 16, 2020	TAS instructs telework-eligible employees to begin teleworking full-time and announces changes to allow for telework-ineligible employees to begin teleworking.
March 20, 2020	In response to the national emergency, the IRS temporarily closes all Taxpayer Assistance Centers and discontinues face-to-face service.
March 21, 2020	The Treasury Department and the IRS announce federal tax filing due date is postponed to July 15, 2020.
March 25, 2020	The IRS announces the People First Initiative, providing compliance relief to taxpayers experiencing uncertainty and hardship from COVID-19. This includes postponing collections and limiting enforcement procedures.
March 27, 2020	The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") is enacted. The act provides \$2.2 trillion in economic relief to healthcare, businesses, and individuals, including economic impact payments.
March 30, 2020	The IRS evacuation order becomes effective. All employees, whose work is portable or can be adapted to work offsite, are instructed to evacuate and work from home.
April 24, 2020	The Paycheck Protection Program and Health Care Enhancement Act is enacted. This law provides \$484 billion in additional funding to programs under the CARES Act.
May 22, 2020	The IRS announces a June 1 reopening plan for "mission-critical" employees; TAS telework plan remains in place.
June 1, 2020	The IRS began to reopen by recalling certain employees back to their respective offices.
June 5, 2020	Congress enacted the Paycheck Protection Program Flexibility Act of 2020.
Aug. 28, 2020	The Treasury Department and the IRS issued guidance for employers to defer withholding and payment of the employee's portion of Social Security tax if wages are below a certain amount.
Nov. 2, 2020	The IRS announced the Taxpayer Relief Initiative, providing temporary revised collection procedures to assist taxpayers in settling their tax debts.
Nov. 21, 2020	Deadline for taxpayers to register for Economic Impact Payments and to claim the supplemental \$500 payments for qualifying children.

<sup>10</sup> Proclamation No. 9994, 85 Fed. Reg. 15,337 (Mar. 13, 2020); TAS, TAS Takes Measures to Protect Employees and Taxpayers (Mar. 16, 2020); IRS, Taxpayer Assistance Center Statement (Mar. 20, 2020), <https://www.irs.gov/newsroom/taxpayer-assistance-center-statement>; IRS, Tax Day Now July 15: Treasury, IRS Extend Filing Deadline and Federal Tax Payments Regardless of Amount Owed (Mar. 21, 2020), <https://www.irs.gov/newsroom/tax-day-now-july-15-treasury-irs-extend-filing-deadline-and-federal-tax-payments-regardless-of-amount-owed>; IRS, IR-2020-59, IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>; CARES Act, Pub. L. No. 116-136, 134 Stat. 281; IRS, Human Capital Office, New Work at Home Directive Begins March 30 (Mar. 30, 2020); Paycheck Protection Program and Health Care Enhancement Act, Pub. L. No. 116-139 134 Stat. 620; TAS, TAS Telework Flexibilities Remain in Place as IRS Offices Begin to Reopen (May 22, 2020); IRS, IR-2020-195, Guidance Issued to Implement Presidential Memorandum Deferring Certain Employee Social Security Tax Withholding (Aug. 28, 2020); IRS, IR-2020-248, IRS Makes It Easier to Set Up Payment Agreements; Offers Other Relief to Taxpayers Struggling With Tax Debts (Nov. 2, 2020); IRS, IR-2020-260, Register by Nov. 21 to Get an Economic Impact Payment; Same Deadline for Federal Beneficiaries to Get Missed \$500 Per Child Payments (Nov. 19, 2020). While the IRS officially started recalling some employees on June 1, 2020, some IRS employees returned to their offices before that date.

## The IRS Struggled to Maintain Adequate Telephone Service or Provide Taxpayers With Face-to-Face Service at Taxpayer Assistance Centers for Months

As the pandemic unfolded, IRS executives, like those in many agencies, weighed the health and safety of taxpayers and its employees as the highest priority in making business and operational decisions. The IRS's main obstacles stemmed from its inability to staff core IRS functions due to the lack of portability of duties, such as answering phones, issuing notices, and opening and processing taxpayer correspondence and paper-filed returns.

The IRS's decision to shut down core operations significantly reduced the services it provided to taxpayers and practitioners. Beginning in March 2020, taxpayers and practitioners had difficulty contacting the IRS in person and on the phone, and their mailed correspondence and paper-filed returns sat unopened and unprocessed for months. As an alternative, the IRS steered taxpayers to use self-help online tools, which were not necessarily accessible or preferred by some taxpayers.<sup>11</sup>

In early June, the IRS slowly recalled limited staff, but efforts to maximize social distancing remain in place today and many employees are still teleworking.<sup>12</sup> By October, the IRS's internal networks supported approximately 57,000 employees online concurrently.<sup>13</sup> However, the impact of COVID-19 could have significant downstream consequences for taxpayers for months to come. Due to the continuing spread of the virus, office shutdowns might be required again during the 2021 filing season. If that happens, some of these problems are likely to recur.

## While the IRS's "People First Initiative" Provided Temporary Relief From Enforcement Actions, Some Taxpayers Still Faced Compliance Challenges

In the early weeks of the pandemic, the IRS announced the "People First Initiative," which suspended many enforcement actions and provided taxpayers with much-needed filing and payment deadline postponements until July 15, 2020, among other relief.<sup>14</sup> The IRS temporarily stopped opening most new examinations and suspended most collection actions between April 1 and July 15 as part of the initiative (with the notable exception of compliance actions required to prevent the expiration of limitation periods for assessment or collection).<sup>15</sup> However, taxpayers undergoing existing examinations and collection actions still faced challenges. The IRS's operational adaptations placed taxpayers undergoing enforcement actions in a difficult position due to mail stoppage, suspension of notices, and inability to interact with the IRS in person, by phone, and through the mail. Meanwhile, even while enforcement actions were suspended, interest and penalties continued to accrue on tax liabilities. Those taxpayers undergoing examinations and collection actions that commenced before the national emergency still needed to interact with the IRS.

11 IRS, IR-2020-99, IRS.gov Helps Taxpayers Get Tax Information They Need; Find Tools for Filing, Paying, Checking Accounts and Answering Questions (May 21, 2020), <https://www.irs.gov/newsroom/irs-gov-helps-taxpayers-get-tax-information-they-need-find-tools-for-filing-paying-checking-accounts-and-answering-questions>.

12 Wage and Investment Division (W&I), Business Performance Review Quarter 3 FY 2020 3 (Aug. 7, 2020).

13 *IRS in the Pandemic, Hearing Before the H. Comm. on Oversight and Reform, Subcomm. on Government Operations*, 116th Cong., at 5 (Oct. 7, 2020) (statement of Charles P. Rettig, IRS Commissioner), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Rettig%20Testimony.pdf>.

14 IRS, Filing and Payment Deadline Extended to July 15, 2020 - Updated Statement (Mar. 21, 2020), <https://www.irs.gov/newsroom/payment-deadline-extended-to-july-15-2020>; IRS, IR-2020-59, IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>.

15 IRS, IR-2020-59, IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>.

The IRS developed temporary workaround procedures to enable taxpayers and representatives to digitally communicate with the IRS, but these procedures are set to expire at the end of 2020.<sup>16</sup> In addition, in early November, the IRS announced the IRS Taxpayer Relief Initiative to provide relief to taxpayers struggling to settle their tax debts due to COVID-19 by making it easier to enter into installment agreements and by providing additional relief.<sup>17</sup>

### **The IRS Temporarily Halted Opening and Processing Mail, Resulting in a Backlog of Unprocessed Tax Returns and Taxpayer Correspondence**

Beginning in March 2020, the IRS stopped opening and processing mail. IRS campuses fully resumed mailroom operations by June 3, 2020, but still have not worked through the entire backlog.<sup>18</sup> The mail backlog included paper-filed returns (original and amended), paper checks, and taxpayer correspondence, meaning that millions of taxpayers waited extended periods for the IRS to process their returns or review submitted documents. As of the Commissioner's testimony on November 20, 2020, the IRS still had a significant backlog of correspondence, including approximately three million pieces of unopened mail and 6.8 million returns in process.<sup>19</sup>

For taxpayers expecting refunds, the long delays were frustrating, and this frustration was compounded for those who experienced a sudden financial hardship and desperately need their tax refunds. In addition to burdening taxpayers, processing delays resulted in overpayment interest costs and rework for the IRS.<sup>20</sup>

### **After Closing for Weeks, the IRS Notice Production Centers Mailed Backlogged Notices That Were Confusing and Outdated**

The IRS fully closed its notice production centers by April 8 with partial reopening by June 15. The IRS was able to program some systems to stop or postpone system generation of some, but not all, correspondence, which resulted in a backlog of work once Correspondence Production Services reopened.<sup>21</sup> After reopening the centers in early June, due to programming limitations and the extensive manual time requirements to correct the notices, the IRS determined that it could not reasonably have the backlogged notices reflect updated response dates promptly. The IRS mailed notices as originally generated, and millions of taxpayers received notices bearing dates that were weeks or even months old, many with response dates that had passed. The IRS included an informational insert in over 1.8 million notices for the purpose of informing taxpayers

16 See, e.g., Memorandum From Sunita B. Lough, Deputy Commissioner, Services and Enforcement Employees for All Services and Enforcement Employees, Control Number: NHQ-01-0620-0002, (1) Approval to Accept Images of Signatures and Digital Signatures [and] (2) Approval to Receive Documents and Transmit Encrypted Documents by Email (June 12, 2020), <https://www.irs.gov/pub/foia/ig/spder/nhq-01-0620-0002.pdf>; IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue (Oct. 23, 2020), <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue>.

17 IRS, IR-2020-248, IRS Makes It Easier to Set Up Payment Agreements; Offers Other Relief to Taxpayers Struggling With Tax Debts (Nov. 2, 2020).

18 Email from Charles Rettig, IRS Commissioner, to all IRS employees (June 3, 2020).

19 *IRS Operations and COVID-19 Recovery, Hearing Before the H. Comm. on Ways and Means, Subcomm. on Oversight*, 116th Cong. (Nov. 20, 2020) (statement of Charles P. Rettig, IRS Commissioner), <https://www.c-span.org/video/?478161-1/irs-oversight-hearing>.

20 The IRS generally provided penalty relief by abating failure to file, failure to pay, and bad or dishonored check penalties once they processed the returns and checks as received on the "IRS received date" rather than on the date the IRS actually processed it. IRC §§ 6651(a), 6657; TAS, Case Guidance: IRS Continues to Process Mail Backlog (Aug. 24, 2020); SERP Alert 20A0339, Paper Check Processing Delays (Aug. 13, 2020); IRS SERP Alert 20A0321, Bad Check Penalty Relief Due to Remittance Processing Delays (Aug. 3, 2020). In addition, the IRS paid interest to individual taxpayers who filed their tax year (TY) 2019 returns on or before July 15, 2020. The overpayment interest accrued from the original April 15 due date, rather than from the postponed due date of July 15. IRC §§ 6611; 7508(c); IRS, Millions of Taxpayers Receive a Tax Refund Interest Payment, <https://www.irs.gov/newsroom/millions-of-taxpayers-receive-a-tax-refund-interest-payment> (last visited Oct. 20, 2020).

21 See IRS, SERP Alert 20A0211, Postponement of Account Settlement of Balance Due Tax Returns (May 20, 2020) (Rev. July 2, 2020).

that tax had been assessed against them and demanding that they pay a balance due (“notice and demand”), math error notices, or Collection Due Process.<sup>22</sup> The inserts informed taxpayers of the new, updated pay-or-respond deadlines, but some taxpayers inevitably were confused and did not know whether or how to respond.<sup>23</sup> Because telephone service was limited, many taxpayers did not know where to turn.<sup>24</sup>

### **Some Taxpayers Did Not Receive Their Full EIPs Due to IRS Programming Errors or Factual Issues and the IRS Decided It Did Not Have the Resources to Resolve This Year**

On March 27, 2020, the CARES Act was signed into law. It directed the IRS to make EIPs of \$1,200 to each “eligible individual” and an additional \$500 for each qualifying child “as rapidly as possible.”<sup>25</sup> The IRS took immediate steps and made significant efforts to expedite programming its systems; coordinate with the Social Security Administration, the Department of Veterans Affairs, and the Bureau of the Fiscal Service; issue guidance to the public; create a dedicated Coronavirus webpage; and develop two online tools (“Get My Payment” and “Non-Filers Enter Payment Info Here”) to provide eligible individuals with the ability to track their EIPs or file a short return listing their qualified children to receive an additional child payment. The IRS began issuing these payments around April 10, 2020. As of October 7, 2020, the IRS delivered more than 160 million payments, totaling more than \$270 billion, most by direct deposit and some by paper check or prepaid debit card.<sup>26</sup>

The IRS reached out to potentially eligible individuals who typically do not file federal income tax returns and had not yet registered to claim EIPs.<sup>27</sup> Because the EIP is an advance of a credit for an individual’s 2020 tax return, the IRS must issue the payment by the end of 2020. The IRS encouraged individuals to register for the EIP through an online “Non-Filers” tool created for taxpayers without a return filing obligation by November 21, 2020, to allow the IRS time to process and pay the EIP this calendar year.<sup>28</sup>

22 See Erin M. Collins, Keep an Eye on Your Mailbox: Millions of Backlogged Notices Are Being Mailed Over the Next Few Months, Some Reflect Expired Action Dates. But Don’t Panic, See Inserts Providing Extended Due Dates, NATIONAL TAXPAYER ADVOCATE BLOG (June 22, 2020), <https://www.taxpayeradvocate.irs.gov/news/ntablog-a-digital-mailbox-rule-is-required-as-the-irs-steers-taxpayers-toward-self-help-digital-tools/>; IRS, IRS Statement on Balance Due Notices (June 12, 2020), <https://www.irs.gov/newsroom/irs-statement-on-balance-due-notice>.

23 Notice 1052-A, Important! You Have More Time to Make Your Payment; Notice 1052-B, Important! You Have More Time to Make Your Payment; Notice 1052-C, Important! You Have More Time to Appeal; *Id.* A supplemental Letter 544-C was mailed on August 7, 2020, advising taxpayers that they had until September 8, 2020, to request a CDP hearing. SERP Alert 20A0333, Federal Payment Levy Program (FPLP) and State Income Tax Levy Program (SITLP) Collection Due Process (CDP) Notices (Aug. 12, 2020); IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue (Oct. 23, 2020), <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue>.

24 In October 2020, the IRS also issued supplemental 3064C letters notifying taxpayers who received 105-C, Claim Disallowed and 106-C, Claim Partially Disallowed, letters of the incorrect dates included in the letters and providing correct dates. IRS SERP Alert 20A0440, 105C/106C Incorrect Dates and Supplemental Correspondence (Oct. 21, 2020).

25 CARES Act, Pub. L. No. 116-136, § 2201, 134 Stat. 281, 335 (2020) (codified at IRC § 6428).

26 See *IRS in the Pandemic: Hearing Before the Subcomm. on Government Operations of the H. Comm. on Oversight and Reform*, 116th Cong. (Oct. 7, 2020) (written statement of Charles P. Rettig, IRS Commissioner).

27 IRS, IR-2020-242, To Help Non-Filers, IRS Sets Nov. 10 as ‘National EIP Registration Day,’ Register at IRS.gov for Economic Impact Payment (Oct. 23, 2020), <https://www.irs.gov/newsroom/to-help-non-filers-irs-sets-nov-10-as-national-eip-registration-day-register-at-irsgov-for-economic-impact-payment>.

28 *Id.*

The significant majority of eligible individuals receive their EIPs promptly and without incident.<sup>29</sup> However, some eligible individuals did not receive their EIPs, and other individuals did not receive the full amounts.<sup>30</sup> The IRS initially took the position that many of these individuals would have to wait until they filed their 2020 tax returns (in 2021) to claim recovery rebate credits against their 2020 tax liabilities.<sup>31</sup> However, it subsequently agreed to correct its programming errors and pay additional amounts in 2020 in certain circumstances, primarily to individuals with issues that could be identified and resolved via automation.<sup>32</sup>

Other EIP administration issues resulted from IRS system limitations that require the agency to rely on manual processes. Where the EIP had been disbursed based on information in the IRS's system, the IRS initially said the individual had to wait until filing a 2020 return next year to claim a 2020 recovery rebate credit. Some individuals, after receiving their EIPs, filed 2019 returns that should have resulted in increased EIP amounts.<sup>33</sup> The challenge the IRS faced was determining how to identify which individuals filed subsequent returns permitting increased EIP amounts, then manually adjusting their account information, and manually issuing second payments — a time-consuming task. This is yet another example of how aged IRS systems that rely too heavily on manual processes can burden taxpayers, requiring eligible individuals to wait nearly an entire year to receive payments Congress directed the IRS to disburse to them “as rapidly as possible.” By year-end, many individuals still had not received the full amount of EIP for which they are eligible and will need to claim a recovery rebate credit on their 2020 income tax return.

## E. THE MOST SERIOUS PROBLEMS ENCOUNTERED BY TAXPAYERS IN 2020

In the Most Serious Problems we included in this year's annual report, we tried to be cognizant of the impact of COVID-19. The challenges faced by taxpayers, representatives, and the IRS during the COVID-19 crisis were heightened by the IRS's reliance on outdated technology and a decade of budget cuts. To improve taxpayer service and to enable the IRS to do a better job of collecting taxes that are due under the law, the IRS requires significant additional resources.

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- 29 IRS, IR-2020-180, IRS Takes New Steps to Ensure People With Children Receive \$500 Economic Impact Payments (Aug. 14, 2020), <https://www.irs.gov/newsroom/irs-takes-new-steps-to-ensure-people-with-children-receive-500-economic-impact-payments>. See also Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2020-46-041, *Interim Results of the 2020 Filing Season: Effect of COVID-19 Shutdown on Tax Processing and Customer Service Operations and Assessment of Efforts to Implement Legislative Provisions* (June 2020), <https://www.treasury.gov/tigta/auditreports/2020reports/202046041fr.pdf>. TIGTA generally gave the IRS high marks for its efforts. Payments started going out on April 10, just two weeks after the passage of the CARES Act, and by TIGTA's reckoning, about 98 percent of the payment amounts were correctly computed.
  - 30 Government Accountability Office, GAO-20-701, *COVID-19: Federal Efforts Could Be Strengthened by Timely and Concerted Actions* (Sept. 21, 2020), <https://www.gao.gov/reports/GAO-20-701/>.
  - 31 National Taxpayer Advocate Fiscal Year 2021 Objectives Report to Congress 46-68 (Systemic Advocacy Objective: *Reducing Burden Resulting From the Implementation of the Coronavirus Aid, Relief, and Economic Security (CARES) Act*).
  - 32 For example, some of the programming errors related to qualifying children claimed on the non-filer tool, injured spouses who had their portion of the EIP erroneously offset against their spouses' past due child support, and taxpayers who filed a joint return with an incarcerated spouse had their portion of the EIP erroneously stopped. See *IRS in the Pandemic: Hearing Before the Subcomm. on Government Operations of the H. Comm. on Oversight and Reform*, 116th Cong. (Oct. 7, 2020) (written statement of Erin M. Collins, National Taxpayer Advocate). In addition, the U.S. District Court for the Northern District of California entered a permanent injunction in *Scholl v. Mnuchin*, No. 20-cv-05309 (N.D. Cal. Oct. 14, 2020), prohibiting the IRS from denying an EIP to someone who is incarcerated if they meet the criteria.
  - 33 For example, when the IRS issued the EIP to an eligible individual, it correctly applied the CARES Act and relied on the individual's 2018 return information in determining the amount of the EIP. After the issuance of the EIP, the individual filed a 2019 return reflecting a qualifying child who was not included on the 2018 return. Although the individual may be entitled to an additional \$500 payment, the IRS's system was not programmed to identify which EIP recipients filed subsequent returns and whether it needed to recalculate if any additional payments should be made. The CARES Act instructed the IRS to use the information in its system, either 2018 return information or 2019 return information, in calculating the advance credit for 2020. The CARES Act provided a true-up provision for additional payments with the filing of the individual's 2020 income tax return. TAS encouraged the IRS to find workarounds to make additional payments, but considering the IRS's current IT capabilities, the task was significant.



For the 2020 annual report, the ten Most Serious Problems are as follows:

**1. IRS RECRUITMENT, HIRING, AND EMPLOYEE RETENTION: Quality Taxpayer Service and Protection of Taxpayer Rights Are Directly Linked to the IRS's Need to Improve Its Recruitment, Hiring, and Retention Strategies**

The IRS's success as an agency depends almost entirely on its workforce. Even with outdated technology and a shrinking budget, the IRS has continued to serve as the accounts receivable department for the U.S. government while also administering social programs and implementing congressional mandates. Because the agency's success relies so heavily upon its workforce and their skillsets, it is imperative that the IRS not only receive the funding necessary to support programs but also be able to attract, hire, and retain the right talent at the right time to deliver these programs. While technology has helped somewhat in mitigating workforce losses, the IRS faces an inability to simultaneously hire and maintain full-time equivalent employees while also trying to catch up and replenish the losses incurred over the past decade. As the IRS faces the realities that come with an aging workforce, its inability to attract, hire, and retain younger generations of workers threatens its ability to fairly and efficiently administer the tax laws while providing the best customer service to our nation's taxpayers.

**2. TELEPHONE AND IN-PERSON SERVICE: Taxpayers Face Significant Difficulty Reaching IRS Representatives Due to Outdated Information Technology and Insufficient Staffing**

The IRS typically receives about 100 million telephone calls per year.<sup>34</sup> The Accounts Management (AM) phone lines have the highest call volumes and are used for account inquiries and tax law questions. The IRS closed all AM phone lines supported by Customer Service Representatives (CSRs) for both taxpayers and tax professionals beginning on March 30, 2020, and began slowly resuming phone service on April 27, 2020. Automated phone lines remained operational throughout the pandemic. A main reason the IRS initially struggled to provide service on the assistor-supported lines was the inability of CSRs to perform their duties while teleworking. The IRS addressed this issue by shipping thousands of laptops to CSRs at their telework locations. All major phone lines reopened by June 26, 2020, but callers continue to experience long waits.

**3. ONLINE RECORDS ACCESS: Limited Electronic Access to Taxpayer Records Through an Online Account Makes Problem Resolution Difficult for Taxpayers and Results in Inefficient Tax Administration**

Due to limited technology systems, the IRS operates under a largely paper-based system, requiring taxpayers to keep copies of paper correspondence or call the IRS for assistance. This system leads to inefficiencies because taxpayers lack the ability to access necessary filing information, resulting in taxpayer delays and dissatisfaction with tax administration. Taxpayers should be provided a simple way to access their IRS tax records and account information. The National Taxpayer Advocate recognizes the IRS is aware of these customer expectations and is progressing toward providing similar services. However, due to years of limited funds, the IRS has only been able to add some online services in a piecemeal fashion. The COVID-19 pandemic highlighted the necessity for robust online services to taxpayers and their representatives.

<sup>34</sup> IRS, Joint Operations Center Snapshot Reports, Enterprise Total (week ending Sept. 30, 2020).

#### 4. DIGITAL COMMUNICATIONS: Limited Digital Communications With the IRS Make Problem Resolution Unnecessarily Difficult for Taxpayers

To protect the health and safety of taxpayers and employees, the IRS shut down all Taxpayer Assistance Centers (TACs) on March 19. Although the IRS has some videoconferencing capability, the TACs could not continue to provide service while employees teleworked. The IRS lacks the server capacity to virtually connect employees working remotely with taxpayers seeking TAC appointments. The IRS began to gradually reopen TACs in phases starting on June 29, but taxpayers must make appointments and limited services are available. The COVID-19 related closures and resulting challenges exposed critical shortcomings in IRS service and communication channels.

#### 5. E-FILING AND DIGITALIZATION TECHNOLOGY: Failure to Expand Digitalization Technology Leaves Millions of Taxpayers Without Access to Electronic Filing and Wastes IRS Resources

For those taxpayers with the capability, electronic filing (e-filing) has many benefits for taxpayers and IRS. The transmission of data is quick, more accurate, and less costly. Digitalizing data also gives the IRS more flexibility to allow employees to work remotely. The IRS's antiquated IT systems and infrastructure present significant obstacles to expanding e-filing and digitizing paper returns. For example, although taxpayers can e-file returns and forms, more than 40 active forms still require paper filing. The IRS should expand its electronic filing capabilities to allow all taxpayers an e-filing option, regardless of the return or any associated schedules, documents, and attachments. And for those taxpayers that choose or do not have the ability to electronically file it must also improve the processing of paper returns by expanding existing technology and implementing new technology. These actions will reduce burden to both taxpayers and the IRS, as well as produce long-term cost savings.

#### 6. INFORMATION TECHNOLOGY MODERNIZATION: Antiquated Technology Jeopardizes Current and Future Tax Administration, Impairing Both Taxpayer Service and Enforcement Efforts

Despite its responsibility for collecting the most tax revenue in the world and its vital role in social benefits administration, the IRS operates with severely outdated information technology (IT) systems and infrastructure. Without a substantial overhaul of its IT systems, the IRS cannot provide first-rate taxpayer service or efficiently carry out its voluntary compliance, enforcement and collection efforts. The consequence of not fully modernizing IT systems can range from minor inconvenience (*e.g.*, requiring taxpayers who choose to e-file their tax returns to still submit some paper forms) to major catastrophe (*e.g.*, taxpayers being unable to e-file or make payments, and the IRS being unable to process tax returns and disburse refunds). As the nation's tax collector, the IRS can ill afford to have system outages.

#### 7. CORRESPONDENCE EXAMS: Taxpayers Encounter Unnecessary Delays and Difficulties Reaching an Accountable and Knowledgeable Contact for Correspondence Audits

The Restructuring and Reform Act of 1998 required that IRS correspondence "include in a prominent manner the name, telephone number, and unique identifying number of an Internal Revenue Service employee." However, more than 20 years later, the IRS still has not meaningfully implemented this provision regarding its correspondence audit programs, which is the largest percentage of all examinations. This makes it difficult and frustrating for taxpayers or their representatives to reach a single point of contact at the IRS who is accountable and knowledgeable about their audit. The

IRS correspondence audit program, as designed, leaves taxpayers without the ability to reach a single point of contact — which diminishes the customer experience, creates IRS inefficiency, and hinders opportunities to engage and educate our nation's taxpayers.

**8. INTERNATIONAL: The IRS's Assessment of International Penalties Under IRC §§ 6038 and 6038A Is Not Supported by Statute, and Systemic Assessments Burden Both Taxpayers and the IRS**

The National Taxpayer Advocate applauds Congress and the IRS for their enforcement efforts to curtail international tax abuses. However, the IRS's treatment of IRC §§ 6038 and 6038A foreign information reporting penalties as systemically assessable is legally unsupportable, administratively problematic, and imposes costs, delays, and stress for taxpayers. Bifurcating income tax and international information penalties has created inefficient, expensive, and unnecessary procedures for taxpayers with offshore income and assets. This approach is unsuited to these penalties, as demonstrated by high abatement rates.

**9. AMENDED RETURNS: The IRS Processes Most Amended Returns Timely But Some Linger for Months, Generating Over a Million Calls That the IRS Cannot Answer and Thousands of TAS Cases Each Year**

The IRS typically processes amended tax returns within 16 weeks. Although true for most amended returns, a subset takes longer to process. For example, if the amended return is selected for audit, processing will likely take several more months and sometimes the IRS will simply stop processing them. In these situations, the "Where's My Amended Return?" tool is of little help because it does not explain where an amended return is in the processing pipeline or estimate when processing will be complete. When taxpayers request an abatement of tax on an amended return, the IRS sometimes refuses to consider the claim and issues a denial form letter without an adequate explanation to the taxpayer. In FY 2019, the IRS's failure to keep taxpayers informed of the status of their amended returns generated over 2.2 million calls, 1.4 million of which it was able to answer, and resulted in over 9,400 TAS cases.

**10. REFUND DELAYS: Taxpayers Whose Legitimate Refunds Are Flagged by IRS Fraud Filters Experience Excessive Delays and Frustration in Receiving Their Refunds**

Taxpayers expect to receive their refunds quickly, and the IRS says it issues most within "21 calendar days" of e-filing (or within six weeks of mailing). But for about 25 percent of the returns flagged for income verification, refunds took longer than 56 days in 2020, and for about 18 percent of those flagged for identity verification, refunds took longer than 120 days. When taxpayers call the IRS about their refunds or use the "Where's My Refund?" tool on the IRS website or the IRS2go app, often they cannot get specific information about the cause of the delay, what the IRS needs, and when they can expect the refund. The IRS needs technology upgrades and procedural improvements to provide more prompt service, to provide transparency, and information to better manage taxpayer expectations.



## Quality Taxpayer Service and Protection of Taxpayer Rights Are Directly Linked to the IRS's Need to Improve Its Recruitment, Hiring, and Retention Strategies

### RESPONSIBLE OFFICIAL

Robin Bailey Jr., Human Capital Officer

### TAXPAYER RIGHTS IMPACTED<sup>1</sup>

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to Appeal an IRS Decision in an Independent Forum*
- *The Right to Finality*
- *The Right to Privacy*
- *The Right to Confidentiality*
- *The Right to Retain Representation*
- *The Right to a Fair and Just Tax System*

### EXPLANATION OF THE PROBLEM

The IRS's success as an agency depends almost entirely on its workforce. Even with outdated technology and a shrinking budget, the IRS has continued to serve, relatively successfully, as the accounts receivable department for the U.S. government<sup>2</sup> while also administering social programs and implementing congressional mandates.<sup>3</sup> Because the agency's success relies so heavily upon its workforce and their skillsets to accomplish their mission and provide quality taxpayer service, it is imperative that the IRS not only receive the funding necessary to support programs but also be able to attract, hire, and retain the right talent at the right time to deliver these programs. Between fiscal years (FYs) 2010 and 2019, the IRS budget was cut by 20.4 percent after adjusting for inflation.<sup>4</sup> Since FY 2010, the decrease in overall IRS staffing has been

1 See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the IRC. See IRC § 7803(a)(3).

2 "Last year we collected \$3.5 trillion — 95 percent of the gross revenue of the U.S. government ... [w]e cannot have a functioning government without a functioning IRS." *The 2019 Tax Filing Season and the 21st Century IRS, Hearing Before the S. Finance Comm.*, 116th Cong. (Apr. 10, 2019) (statement of IRS Commissioner Charles P. Rettig). See also THE ONLINE TAX GUY, *IRS Commissioner: You're Going to Be Seeing a Lot of Me* (June 11, 2019), <https://theonlinetaxguy.com/2019/06/11/irs-commissioner-youre-going-to-be-seeing-a-lot-of-me/> (citing to statement of IRS Commissioner Charles P. Rettig at the AICPA Engage 2019 conference).

3 The IRS has been tasked with several additional duties including implementing a variety of congressional mandates, issuing Economic Impact Payments, assisting with implementation of Affordable Care Act provisions, etc. See, e.g., the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), Pub. L. No. 116-136, 134 Stat. 281 (2020); the Patient Protection and Affordable Care Act ("ACA"), Pub. L. No. 111-148, 124 Stat. 119 (2010).

4 IRS response to TAS information request (Oct. 2, 2019). Data is rebased to FY 2010 using the Gross Domestic Product Chained Price Index (GDP Index). See Office of Management and Budget, *Fiscal Year 2020 Budget of the U.S. Government, Historical Tables*, Table 10.1 (showing year-to-year increases in the GDP index), <https://www.whitehouse.gov/omb/historical-tables/> (last visited Dec. 15, 2019).

staggering. In FY 2019, the IRS had 73,554 full-time equivalent (FTE) positions, a decrease of 22 percent from 94,711 FTE positions in FY 2010.<sup>5</sup> While technology has helped somewhat in mitigating workforce losses, the IRS is faced with an inability to simultaneously fill and maintain FTEs while also trying to catchup and replenish the losses incurred over the past decade. As we have seen, the IRS has been unable to meet its projected hiring each year. Between FYs 2017 and 2019, the IRS failed to hire over 5,000 FTEs for which it had allocated funding.<sup>6</sup> This is 5,000 FTEs who were not available to carry out critical IRS work; an inability to fill and maintain FTEs will make it impossible for the IRS to improve taxpayer service.<sup>7</sup> Further, as the IRS faces the realities that come with an aging workforce, its inability to attract, hire, and retain younger generations of workers threatens its ability to fairly and efficiently administer the tax laws while providing the best customer service to our nation's taxpayers.

## ANALYSIS

The issues with an aging workforce and the difficulties in attracting younger workers are not new or unique to the IRS.<sup>8</sup> Many federal agencies have faced similar ongoing problems for years. As of September 2019, approximately 44 percent of all federal employees were over the age of 50, while only eight percent were under the age of 30.<sup>9</sup> This places the federal government in a difficult situation. To compound the situation, the IRS has faced additional challenges as agency resources have been reduced over the past decade due to budget cuts and sequestration, limiting its ability to engage in the level of hiring necessary to ensure the agency has qualified employees ready to step in as experienced employees retire.

With the start of each new Congress, the Government Accountability Office (GAO) updates its list of federal programs and operations that are high-risk.<sup>10</sup> In its 2019 “High-Risk Series” report, GAO addressed the issues surrounding “Human Capital Management,” which it has listed as high-risk in every report since 2001. In its most recent report, GAO stated, in part:

Mission-critical skills gaps both within federal agencies and across the federal workforce pose a high risk to the nation because they impede the government from cost-effectively serving the public and achieving results.... Additionally, the changing nature of federal work and the high percentage of employees eligible for retirement could produce gaps in leadership and institutional knowledge and

5 These figures exclude seasonal and part-time employees. FTE is defined by the IRS as the total number of regular straight-time hours worked (*i.e.*, not including overtime or holiday hours) by employees divided by the number of compensable hours applicable to each fiscal year. This excludes positions funded by reimbursements from other federal agencies and private entities for services performed for these external parties. IRS, 2019 Data Book, Table 31: Collections, Costs, Personnel, and U.S. Population, Fiscal Years 1990-2019 (2020).

6 Chief Financial Office (CFO) FY 2017-2020 Operational Plan vs. Actual Full-Time Equivalent (FTE); IRS response to TAS information request (Sept. 16, 2020) (source: Integrated Financial System).

7 See Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Difficulty Reaching IRS Representatives Due to Outdated Information Technology and Insufficient Staffing*, *infra*. See also National Taxpayer Advocate 2019 Annual Report to Congress 3-13 (Most Serious Problem: *Customer Service Strategy: The IRS Needs to Develop a Comprehensive Customer Service Strategy That Puts Taxpayers First, Incorporates Research on Customer Needs and Preferences, and Focuses on Measurable Results*).

8 According to the Office of Personnel Management (OPM) in 2018, about 83 percent of federal agencies struggled with staffing shortages and 63 percent reported gaps in the knowledge and skills of their employees. OPM, *2018 Federal Workforce Priorities Report* 18 (Feb. 2018), <https://www.opm.gov/policy-data-oversight/human-capital-management/federal-workforce-priorities-report/2018-federal-workforce-priorities-report.pdf>.

9 OPM, *FedScope Sept. 2019 Employment Data*, <https://www.fedscope.opm.gov> (last visited Oct. 21, 2020).

10 They are considered high-risk due to their vulnerabilities to fraud, waste, abuse, and mismanagement. GAO, GAO-19-157SP, *High-Risk Series: Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas* (Mar. 6, 2019), <https://www.gao.gov/products/GAO-19-157sp>.

could threaten to aggravate the problems created from existing skills gaps.... Mission-critical skills gaps are a contributing factor in making other areas across the government high risk.<sup>11</sup>

## The IRS Faces Various Hurdles in Its Efforts to Keep Pace With Attrition and an Increasing Workload

The IRS has been facing human capital management issues for over a decade. According to IRS data, at the end of FY 2020, of the 81,115 employees on payroll, 17,406 (approximately 21 percent of the IRS workforce) were eligible to retire, and that number rises to 20,767 (approximately 26 percent of the IRS workforce) who would be eligible to retire within the next year.<sup>12</sup> Adding the average number of employees who leave the IRS each year for the private sector or another job (on average 5,576 employees),<sup>13</sup> approximately 32 percent of IRS employees could leave over the next year. If the IRS does not make significant changes, these staffing shortages will compound and pose significant threats to the U.S. Treasury and harm taxpayer services and taxpayer rights.

**If the IRS does not make significant changes, these staffing shortages will compound and pose significant threats to the U.S. Treasury and harm taxpayer services and taxpayer rights.**

The National Taxpayer Advocate is concerned that the IRS's Human Capital Office (HCO) is not equipped to handle the influx of hiring the IRS needs. In its FY 2021 annual budget, the IRS requested additional funding in support of the Taxpayer First Act, its Integrated Modernization Business Plan, and the Program Integrity Cap. These investments total over 3,200 FTEs.<sup>14</sup> Both the IRS Commissioner and the National Taxpayer Advocate have testified before Congress in support of additional funding for the IRS. If HCO doesn't address the challenges detailed below, the additional hiring needs and backfilling of normal attrition will continue to challenge the IRS.

The IRS does face certain challenges in this arena that are not fully within its control. For example: 1) the General Schedule (GS) pay system makes it difficult for the IRS to compete with benefits and salaries in the private sector, particularly with lower level positions;<sup>15</sup> 2) the IRS's contract with the National Treasury

11 GAO, GAO-19-157SP, *High-Risk Series: Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas* (Mar. 6, 2019), <https://www.gao.gov/products/GAO-19-157sp>.

12 IRS HCO, Human Capital Analytics and Technology, IRS Workforce Retirement Insight (last visited Oct. 21, 2020).

13 IRS HCO, IRS Gains and Losses Report by BOD FY 2017 – FY 2020 PP17; IRS response to TAS information request (Oct. 2, 2020). This data was derived from IRS National Finance Center transactions from Oct. 2, 2016, to Aug. 29, 2020.

14 IRS, Pub. 4550, Congressional Budget Justification & Annual Performance Plan 131 (Feb. 2020), [https://irssource.web.irs.gov/CFO/Documents/CB\\_PGS\\_BF\\_F\\_CJ\\_FY2021.pdf](https://irssource.web.irs.gov/CFO/Documents/CB_PGS_BF_F_CJ_FY2021.pdf).

15 The Partnership for Public Service, *A Time for Talent: Improving Federal Recruiting and Hiring* 1 (Aug. 2020), [https://ourpublicservice.org/wp-content/uploads/2020/08/A-Time-for-Talent.pdf#:~:text=A%20TIME%20FOR%20TALENT%20a%20AUGUST%202020%20A,serve%20and%20by%20transforming%20the%20way%20government%20works;Federal%20Salary%20Council,Report%20of%20the%20Federal%20Salary%20Council%20Working%20Group%205%20\(Oct.%2021,%202020\),https://cdn.govexec.com/media/gbc/docs/pdfs\\_edit/102120ew1.pdf](https://ourpublicservice.org/wp-content/uploads/2020/08/A-Time-for-Talent.pdf#:~:text=A%20TIME%20FOR%20TALENT%20a%20AUGUST%202020%20A,serve%20and%20by%20transforming%20the%20way%20government%20works;Federal%20Salary%20Council,Report%20of%20the%20Federal%20Salary%20Council%20Working%20Group%205%20(Oct.%2021,%202020),https://cdn.govexec.com/media/gbc/docs/pdfs_edit/102120ew1.pdf).

Employees Union (NTEU) limits the agency's ability to recruit employees from outside of the IRS;<sup>16</sup> and 3) the Office of Personnel Management (OPM) administrative rules prevent or make "direct-hire" authority very difficult to obtain for most positions in the IRS.<sup>17</sup> There are, however, changes the IRS can make to help alleviate some of these problems, including focusing strongly on recruitment, streamlining its hiring processes, collaborating more closely with the individual IRS Business Operating Divisions (divisions), and giving the divisions more meaningful roles and control over their own hiring.

### **The IRS's Human Capital Office Should Collaborate More Closely With Business Operating Divisions to Improve Its New HCO 2022 Initiative**

IRS HCO has known about these human capital challenges for some time, but the IRS had not taken an in-depth look at an IRS-wide strategic human capital plan or workforce plan since 2005-2006.<sup>18</sup> Staff reductions and budget cuts have reduced the ability of HCO's Employment Office and the divisions to accomplish necessary hiring. Because of the significant number of IRS employees who will be eligible to retire soon, HCO acknowledged that both hiring and developing new employees are now critical needs for the IRS.<sup>19</sup> Recognizing these challenges, HCO launched its "HCO 2022" initiative in May 2019.<sup>20</sup>

HCO 2022 is the IRS's attempt to overhaul its Human Capital Office to better meet the needs of its customers. HCO established the HCO 2022 project with a vision of working with individual IRS divisions to collaboratively build an "HR [Human Resources] Service Delivery Model" to meet the IRS's talent management needs. While the IRS's HCO 2022 project addresses some of the human capital issues the IRS is facing, we are concerned the initiatives will not solve the issues, thus requiring additional improvements.

### **The IRS Is Not Meeting the Goals Set Forth in the Office of Personnel Management's End to End Hiring Initiative or Its Pledge to Applicants**

Understanding that the federal government would be soon facing a significant loss of employees primarily due to retirement, in March 2017, OPM set forth its "End to End Hiring Initiative."<sup>21</sup> At the outset of the document, OPM sets forth its "Pledge to Applicants," which is also on the first page of the "Delegated Examining Operations Handbook," the primary guide for HR specialists.<sup>22</sup> That pledge states:

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- 16 Article 13, § 1.B of the 2019 National Agreement between the IRS and NTEU requires the IRS to provide first consideration to IRS employees for all bargaining unit vacancies, requiring hiring managers to review and consider all IRS applicants listed on the certificate prior to being permitted to review and/or consider any external candidates. The hiring managers also must make a determination to select or not select IRS applicants before any external candidates can be referred for consideration. 2019 IRS National Agreement, [https://www.treasury.gov/tigta/foia/efoia-imds/chapter400-inv/400-exhibits/NTEU\\_IRS\\_Contract.pdf](https://www.treasury.gov/tigta/foia/efoia-imds/chapter400-inv/400-exhibits/NTEU_IRS_Contract.pdf).
  - 17 Direct-hire authority allows agencies with delegated authority to hire individuals without regard to §§ 3309-3318 of title 5, United States Code, to positions for which: 1) Public notice has been given; and 2) OPM determines there is a severe shortage of candidates or a critical hiring need. 5 U.S.C. §§ 3309-3318. OPM may issue direct-hire authority for one or more of the following: occupational series, grades (or equivalent), and geographical location. Requests for direct-hire authority must be submitted by the agency's Chief Human Capital Officer (or equivalent) at the agency's headquarters level. 5 C.F.R. § 337.201.
  - 18 See IRS Human Capital Strategic Plan: 2005-2009 (2005), <http://hco.web.irs.gov/pdf/irshcstratplan.pdf>. See also IRS Human Capital Office, Workforce Plan (Mar. 2006), <http://hco.web.irs.gov/pdf/wkfrplan2006.pdf>.
  - 19 IRS HCO, HCO 2022 (Phase 1) Project Charter (Draft Version 5) (May 24, 2019); IRS response to TAS information request (Oct. 2, 2020).
  - 20 The purpose of HCO 2022, which was established in phases, is to create a "Human Capital Delivery Model that is competent, agile and customer centric" and that "will optimize and enhance" the current hiring processes. IRS HCO, HCO 2022 (Phase 1) Project Charter (Draft Version 5) (May 24, 2019); IRS response to TAS information request (Oct. 2, 2020).
  - 21 OPM, *End to End Hiring Initiative* (Mar. 2017), <https://www.opm.gov/policy-data-oversight/human-capital-management/hiring-reform/reference/end-to-end-hiring-initiative.pdf>.
  - 22 OPM, *Delegated Examining Operations Handbook*, [https://www.opm.gov/policy-data-oversight/hiring-information/competitive-hiring/deo\\_handbook.pdf](https://www.opm.gov/policy-data-oversight/hiring-information/competitive-hiring/deo_handbook.pdf).

We recognize that a Government's most important asset is its people. To attract talented people to the service of the Nation, we believe the application process should enable rather than deter job seekers. To that end, we will work to ensure a process that reflects these principles:

1. A user-friendly application process that is not unduly burdensome or time consuming;
2. Clear, understandable job announcements and instructions for applying;
3. Timely and informed responses to questions about the requirements and the process;
4. Prompt acknowledgment that their application has been received;
5. Regular updates on the status of their applications as significant decisions are reached; and
6. A timely decision-making process.<sup>23</sup>

The "Pledge to Applicants" has been around for almost 20 years.<sup>24</sup> Based on our discussions with IRS hiring managers, it appears the IRS is currently failing in most of these pledges.<sup>25</sup> As a professional organization, potential candidates for IRS vacancies demand, and should be able to expect, a professional, efficient hiring process. When the IRS cannot offer that, its reputation is tarnished, further hindering its ability to attract quality candidates to fill vacant positions.

Regarding an efficient hiring process, OPM's End to End Hiring initiative set a goal of 80 days from the time the IRS division validates the need to fill a position to the day the selected candidate starts his or her first day on the job.<sup>26</sup> IRS's HCO has also adopted this goal of an 80-day hiring cycle time as one of its "Key Performance Measures" for FY 2020.<sup>27</sup> This is a reasonable goal, but the IRS continues to fall short. According to information set forth in HCO's FY 2020 Business Performance Review, its actual hiring cycle time for FY 2020 was approximately 120 days, nearly 50 percent longer than its target goal for the year.<sup>28</sup> This four-month lag between the time the IRS identifies a need to fill a position to when the new employee starts can result in delays in IRS operations because a job is going unfilled, or it can cause the IRS to lose potential external candidates who are not willing to wait that long to start a new job. This is one area where the IRS needs to improve to ensure the agency has the employees it needs to carry out its mission.

### Lack of Trained Human Capital Office Staff Compounds Existing IRS Hiring Problems

In its End to End Hiring Initiative, OPM also recognized and acknowledged several challenges federal hiring agencies are experiencing that may hinder their ability to meet these goals. Some of those challenges included:

- "Availability of trained human resources staff conducting various steps of the hiring process; and
- Availability of managers dedicated to engage in the hiring process, beginning with reviewing workforce requirements, staffing and recruiting plans in order to select individuals best suited for the position."<sup>29</sup>

23 OPM, *End to End Hiring Initiative* 3 (Mar. 2017), <https://www.opm.gov/policy-data-oversight/human-capital-management/hiring-reform/reference/end-to-end-hiring-initiative.pdf>.

24 See OPM, *Memorandum for Human Resources Directors* (MSG-087a) (Dec. 13, 2002), <https://www.chcoc.gov/content/pledge-applicants>.

25 TAS interviews of IRS subject matter experts from the Wage and Investment, Tax Exempt and Government Entities, Small Business/Self-Employed, Large Business and International, and Chief Financial Officer divisions (Oct. 2020).

26 OPM, *End to End Hiring Initiative* 27 (Mar. 2017), <https://www.opm.gov/policy-data-oversight/human-capital-management/hiring-reform/reference/end-to-end-hiring-initiative.pdf>.

27 IRS response to TAS information request (Nov. 2, 2020).

28 IRS response to TAS information request (Oct. 28, 2020).

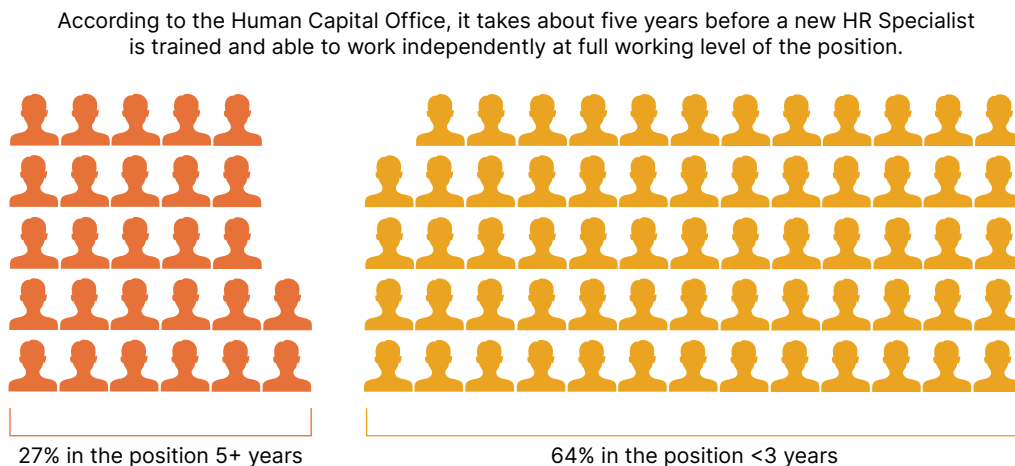
29 OPM, *End to End Hiring Initiative* 29 (Mar. 2017), <https://www.opm.gov/policy-data-oversight/human-capital-management/hiring-reform/reference/end-to-end-hiring-initiative.pdf>.

For the IRS, the lack of trained human resources staff is an issue that HCO is facing today, resulting in some of the delays in its hiring processes. Like many IRS divisions, HCO has its own recruitment, hiring, and retention challenges. HCO recently acknowledged that between its diminishing budget and increased employee attrition over the last eight to ten years, it has lost critical skillsets that have reduced its ability to effectively meet its customers' needs and as a result, customer dissatisfaction with its services has increased.<sup>30</sup>

At the end of FY 2020, there were approximately 293 GS-201 Series Human Resource Specialists employed by HCO.<sup>31</sup> Of those 293 employees, 188 (64 percent) have been in the position less than three years. On the other end, 81 of the 293 employees (27 percent) have been in the position five years or more.<sup>32</sup>

**FIGURE 1.1.1**

**GS-201 Human Resources Specialists Employed by the Human Capital Office, End of FY 2020**



While it is good to have a number of new employees in these positions, it is concerning that nearly two-thirds of the employees in these positions have less than three years of experience. According to HCO, it takes approximately five years before a new HR Specialist is trained and able to work independently at the full working level of the position,<sup>33</sup> which equates to just 27 percent of its current HR Specialists.<sup>34</sup> The lack of trained HR Specialists and the lack of experience has hampered HCO's timeliness goals and has contributed to the IRS failing to hire over 5,000 employees between FYs 2017-2019, as discussed above.<sup>35</sup>

30 IRS, HCO 2022 – Executive Champion Townhall – June/July 2020, slide 2 (July 7, 2020); IRS response to TAS information request (Oct. 2, 2020).

31 Length of Service of GS-201s (HR Specialists) (Sept. 30, 2020) (derived from National Finance Center Payroll via Treasury Enterprise Data Management (EDM) Data Warehouse Tabular Model); IRS response to TAS information request (Oct. 2, 2020).

32 *Id.*

33 IRS response to TAS information request (Oct. 28, 2020) (Internal Revenue Service Standard Position Description #98758).

34 Length of Service of GS-201s (HR Specialists) (Sept. 30, 2020) (derived from National Finance Center Payroll via Treasury EDM Data Warehouse Tabular Model); IRS response to TAS information request (Oct. 2, 2020).

35 CFO FY2017-2020 Operational Plan vs Actual FTE; IRS response to TAS information request (Sept. 16, 2020).



According to HCO's new plan, HCO will do all of the operational HR work, and individual IRS divisions will not be allowed to substantially participate in the hiring process.<sup>36</sup> Previously, several IRS divisions had their own HR staff members conduct the hiring work for their own division, but in FY 2020, HCO removed that authority from the individual divisions and took all that work back. This centralization of all hiring in HCO has the potential to further delay an already broken hiring process. Now, if a division has an issue with one of its announcements or packages, it has no control over the employee working the announcement or package. The centralized HCO hiring process does not allow for direct communications between the IRS functions and the HCO individuals working the hiring announcements. This causes further delays and creates more frustration when functions are trying to ensure their jobs are announced accurately and worked quickly so that they can fill these critical vacancies.

To gain further insight on these human capital issues from the customer perspective, TAS interviewed subject matter experts from all four of the primary IRS divisions and one of the principal offices in October 2020.<sup>37</sup> This qualitative study gathered information on their experiences with IRS hiring, including barriers encountered and recommendations to strengthen the process for the future. In our discussions with the respondents, the consensus was a general dissatisfaction with HCO's level of service to the agency. Many of the respondents that we interviewed felt that HCO's new hiring process – built around an assembly-line concept where different people work the same hiring package depending on what stage it is at, is not as efficient as the previous end-to-end processing. The respondents feel that the assembly-line concept is less effective because there is no accountability or personal ownership for a hiring package from beginning to end. If there is a question or issue with a hiring package, respondents indicated that they often do not know whom to contact because there is no longer a single point of contact in the HCO Employment Office for a hiring package. Given the barriers already inherent in hiring into government jobs, the IRS should not have to struggle internally with those tasked with hiring.

In our discussions with the subject matter experts from different divisions, there were several issues noted with HCO's new hiring processes. For example:

*Time:*

- Several respondents indicated that the processes to hire and bring on new employees simply takes too long.

*Communication:*

- Several respondents voiced concerns over a general lack of communication with HCO in the new hiring processes;
- Communication was not only noted as an issue with the IRS divisions but with the actual applicants. Respondents provided examples where applicants reached out personally to the hiring manager because of the length of time that had passed since the applicant heard anything about the vacancy for which he or she applied;
- Because the hiring packages are not worked by the same HCO employee from beginning to end, several respondents indicated they have a hard time determining who they need to talk to when a question arises, as the HR Specialists only know their piece of the process; and

36 IRS, HCO 2022 – Executive Champion Townhall – June/July 2020, slide 4 (July 7, 2020); IRS response to TAS information request (Oct. 2, 2020).

37 IRS, At-a-Glance: IRS Divisions and Principal Offices, <https://www.irs.gov/about-irs/at-a-glance-irs-divisions-and-principal-offices> (last visited Dec. 15, 2020).



- Possibly the most alarming, respondents indicated that there was a period of time in FY 2020 when HCO HR Specialists were told to disregard emails, phone calls, and other communications from their customers so that they could focus on learning the new processes.

*Qualification Issues:*

- Several respondents noted multiple experiences where an employee was fully onboarded, only to have HCO later come back and say that the individual does not qualify for the position. This requires the division to remove the employee from the position and work through related grievances.

*General Errors:*

- The respondents also provided several examples of HCO staff making general errors during the hiring process, which ultimately cause further delays before the IRS can fill positions. Respondents believed that this is primarily due to the turnover and lack of experience with HCO's HR Specialists who are working the hiring packages.

Another significant issue raised in these discussions was the additional delays to the process due to personnel security, including fingerprinting and background checks. Respondents raised concerns that this particular issue will balloon and become even more problematic when the IRS has additional hiring surges in the near future, which will further hamper its ability to fill vacant positions.

This feedback, while anecdotal, indicates that there is much the IRS can do internally to improve how it handles the hiring process. While respondents were generally appreciative of the hard work of the HCO staff and their willingness to help overall, customers believe that the new HCO processes are more time-consuming, take more division resources, are prone to errors on the HCO side, and generally lack communication and transparency from HCO through the process. From a customer service perspective, the new processes are currently failing. It is crucial that the IRS take steps to immediately address these concerns and design a hiring process that best meets the needs of the entire agency. The IRS should not be in a position where it is spending more time fighting to fill a position than it is focusing on its core mission.

## **The IRS Should Expand Current Recruitment Strategies and Increase Investment and Efforts Spent on Employee Recruitment to Target New Talent**

While there is much work for the IRS to do in how it implements hiring, there is also much it needs to do with regards to whom it hires. At its core, the IRS needs to rethink its approach to attracting new talent. Instead of posting a job online and waiting for candidates to apply, the agency should increase investment and efforts spent on finding and attracting new talent. It should improve methods to proactively seek out and attract the right talent rather than waiting for talent to find the IRS. For example, the IRS could consider a strengthened on-campus and virtual university presence to attract high-caliber students early for summer internships, in hopes of attracting them for future positions. The IRS should consider the use of external recruiters, referrals, and search firms to expand the search network for certain mission-critical positions. It should participate more in non-university career fairs, career open houses, and networking with professional associations, trade groups, and civics associations to create networking circles and affinity groups to help identify or recommend candidates. It should consider the use of diversity and skill-focused ad campaigns. Finally, the IRS should incentivize recruitment by providing bonuses paid to employees for successful referrals that result in the hiring of a new employee to the IRS.

Even though the IRS has its own corporate recruitment function within HCO, which can be beneficial in managing and coordinating agency recruitment efforts, we believe the bulk of IRS recruitment should follow a hybrid approach where individual IRS divisions lead their recruitment efforts instead of the efforts occurring centrally at the corporate level. The divisions leading the efforts would then coordinate with and receive support from HCO. This hybrid approach would ensure agency-wide coordination while allowing for more proactive, targeted recruitment. However, because most of the divisions do not have the funds to support their own recruitment staff, they must rely on HCO recruitment efforts.

**At its core, the IRS needs to rethink its approach to attracting new talent... It should improve methods to proactively seek out and attract the right talent rather than waiting for the talent to find the IRS.**

Under a hybrid approach, IRS staff and senior leaders from each of the divisions would lead in building and maintaining relationships with colleges and universities across the country, including conducting regular on-campus information sessions with students and serving as guest lecturers. Divisions would not see results immediately, as this requires long-term investment, but the IRS needs to spend more time, money, and effort in these areas to build its brand and convince potential candidates that the IRS is a great place to start and build their career. A decentralized hybrid approach to recruitment allows for a more personal connection with candidates and their potential future colleagues and would help candidates better understand the job for which they are applying.

### **The IRS Should Study and Learn From Recruitment Strategies Used by Other Federal Agencies and the Private Sector**

The IRS should consider the successes and best practices of other federal agencies and the private sector with recruitment efforts. For example, the Federal Deposit Insurance Corporation (FDIC) invests heavily in building long-term relationships with over 600 universities and colleges through its “Corporate Recruitment” program that enlists more than 300 employees to participate in outreach and talent attraction efforts.<sup>38</sup>

The recruitment model that the National Aeronautics and Space Administration (NASA) follows takes a long-term approach in developing future talent for future workforce needs.<sup>39</sup> NASA invests in long-term partnerships with academia, and its outreach plans focus on finding candidates with the knowledge and capabilities required to perform essential work. It relies heavily on fellowship and internship programs and

38 The Partnership for Public Service, *A Time for Talent: Improving Federal Recruiting and Hiring* 9 (Aug. 2020), <https://ourpublicservice.org/wp-content/uploads/2020/08/A-Time-for-Talent.pdf#:~:text=A%20TIME%20FOR%20TALENT%20a%20AUGUST%202020%20A,serve%20and%20by%20transforming%20the%20way%20government%20works> (highlighting the success of FDIC’s program and its use of scannable QR codes on agency business cards).

39 FEDWEEK, *MSPB Holds Up NASA Hiring Strategy as Model to Follow* (May 27, 2020), <https://www.fedweek.com/federal-managers-daily-report/mspb-cites-nasas-hiring-strategies-as-model-for-other-agencies/>.

expands its recruitment outreach to potential candidates via social media.<sup>40</sup> Another successful aspect of NASA's model is that it is continuously changing and adapting. After conducting a recruitment event or a new approach, NASA analyzes its strategy afterward to ensure it has met its goals, and if not, it changes its approaches or tries something different.<sup>41</sup>

The National Institutes of Health (NIH) utilizes robust search committees to attract talent. These committees, consisting of internal and external experts, identify and reach out personally to recruit potential employees, highlighting the effectiveness of personal outreach.<sup>42</sup> In the private sector, for example, Amazon Web Services proactively keeps networking channels and events with former employees and others with affinity with the company, and it uses this network to ask for recommendations for qualified candidates when it has vacancies to fill.<sup>43</sup> The IRS should take note and learn from these other agencies, as its recruitment strategies and efforts need to be more robust to attract its future workforce.

### **As Needed Skills Change, the IRS Must Adapt Its Recruitment Efforts**

The IRS must also consider what its future work looks like and be agile enough to adjust its recruitment efforts as the future of IRS work changes. As the IRS looks to make improvements in how it serves taxpayers, it should also look at whether hiring employees with unique skillsets will further that effort. If there is a drive to make more information and services available electronically, the IRS needs to consider the skillsets it will need to make this vision a reality, which will likely involve more emphasis on the information technology-related fields.

In this year's Most Serious Problem on information technology (IT) modernization,<sup>44</sup> TAS received several recommendations from IRS IT that are relevant for this discussion. For example:

- The IRS needs a workforce equipped with next-generation skills in advanced analytics and artificial intelligence;
- Current federal standards for job classification are inadequate to meet the increasing demand for deep talent in analytics and artificial intelligence. The IRS needs to make efforts to determine core educational requirements of a next-generation workforce prepared to deal with new challenges that originate from multiple interdisciplinary domains involving statistics, applied mathematics, computer science, engineering, economics, physics, and social sciences;
- While the IRS has made progress in recent years to deepen and expand collaborative research with industry and academia, catalyzing the application of novel and non-traditional approaches to tax administration and bringing needed enthusiasm, the amount of funding on such partnerships is a tiny fraction of what the IRS requires to create breakthrough research capabilities. While many analytical problems are both exciting and rewarding, it is unlikely that the IRS could attract top talent from universities without a major increase in funding; and
- To attract critically needed talent in advanced analytics and artificial intelligence, the IRS should consider a two-year fellowship program, sponsored by the IRS Commissioner, with a salary

40 FEDWEEK, *MSPB Holds Up NASA Hiring Strategy as Model to Follow* (May 27, 2020), <https://www.fedweek.com/federal-managers-daily-report/mspb-cites-nasas-hiring-strategies-as-model-for-other-agencies/>.

41 *Id.*

42 The Partnership for Public Service, *A Time for Talent: Improving Federal Recruiting and Hiring* 7 (Aug. 2020), <https://ourpublicservice.org/publications/a-time-for-talent/> (highlighting the success of NIH's search committees).

43 *Id.* at 9.

44 See Most Serious Problem: *Information Technology Modernization: Antiquated Technology Jeopardizes Current and Future Tax Administration, Impairing Both Taxpayer Service and Enforcement Efforts*, *infra*.

commensurate with skills and experience. Candidates would need to hold a graduate degree in a suitable field to qualify. The Food and Drug Administration has a good example of what such a program could look like.

The number of businesses and agencies competing for good IT talent today is huge. If the IRS wants to be competitive in recruiting this type of top-notch talent, it will need to make significant changes.

### **The IRS Needs to Expand Its Ability to Hire External Candidates**

In addition to focusing on recruitment efforts, the IRS needs to expand its ability to hire externally. Under the current union contract, the IRS is required to consider internal applicants first for any bargaining unit position vacancy announcement. The result is that the IRS often finds itself simply shuffling existing employees around between positions rather than bringing in new employees. The time spent announcing a position internally first and then having to go through the external process is significant and can be a waste of time and resources. While we recognize that giving existing IRS employees the first opportunity to compete for a position is important, the agency's need to hire new employees is as well. The IRS should work with NTEU to negotiate procedures that allow the agency to announce a certain percentage of positions externally without going through an internal announcement first. The goal would be to increase the overall IRS workforce while also preserving the advantage for existing IRS employees.

### **The Human Capital Office and IRS Divisions Should Work Together to Reevaluate and Improve Strategies Aimed at Retaining Skilled Employees**

Once the IRS finds the right talent, it must work at retaining that talent. The key to building and sustaining a vibrant workforce lies in investing in and cultivating talent in the workforce and creating incentives for employees to stay. Employee retention and employee advancement go hand-in-hand, as employees unsatisfied with their job or unable to see opportunities for advancement often leave for other jobs. IRS workflows require specialized, well-trained personnel to audit a taxpayer, collect tax debt, process correspondence, or answer tax law questions, and those specialized employees have been retiring or otherwise leaving for other agencies or the private sector during the past decade and taking their expertise and institutional knowledge with them. The IRS needs to be able to maintain the right mix of veteran employees and new employees so that there is enough time for the necessary knowledge transfer to take place and help ensure business continuity. If the knowledge transfer does not happen, the loss of talent is even more noticeable as it takes significant time and resources to attract, hire, and train replacements for those employees. When the IRS finds those replacements, it needs to do a better job of helping them see the opportunities for advancement within the agency.

In March 2017, HCO published its employee "Retention Strategy."<sup>45</sup> A few months before the publication of its "Retention Strategy," HCO merged "IRS Servicewide Retention" efforts and "IRS Engagement" efforts to create the "Engagement & Retention" office.<sup>46</sup> Employee retention is probably the most challenging of the three issues (recruitment, hiring, and retention), especially when the bulk of IRS attrition is due to retirements. Ultimately, employers can only do so much to retain employees looking forward to retirement. As HCO acknowledges in the 2017 Retention Strategy, "as staffing decreases, the remaining staff has to do

<sup>45</sup> See IRS HCO, Retention Strategy (Mar. 2017), [https://irssource.web.irs.gov/Linked%20Documents%20Library/HCO-Engagement\\_2017\\_Retention\\_Strategy.pdf](https://irssource.web.irs.gov/Linked%20Documents%20Library/HCO-Engagement_2017_Retention_Strategy.pdf).

<sup>46</sup> *Id.*

more with less while still meeting legislative mandates and levels of service” feeding into “a cycle of decreasing morale and more attrition.”<sup>47</sup> Similar to a centralized recruitment model, having employee retention work focused at the corporate level does not seem to work. Like recruitment efforts, employee retention should be more decentralized and have a larger focus for the individual IRS divisions to take the lead with support provided by HCO.

**The IRS needs to be able to maintain the right mix of veteran employees and new employees so that there is enough time for the necessary knowledge transfer to take place and help ensure business continuity. If the knowledge transfer does not happen, the loss of talent is even more noticeable as it takes significant time and resources to attract, hire, and train replacements for those employees.**

Additionally, the IRS needs to think creatively about different ways that it can retain employees. One way to help retain employees is by providing career path options so that they want to stay long-term. For example, the IRS could consider implementing a rotational program where IRS employees work on rotating six-month assignments in different parts of the IRS. This type of program would benefit both employees and the IRS as it would allow employees to see firsthand what different parts of the IRS have to offer for different job opportunities, and it would help place employees where their interests and skillsets fit best. HCO could also explore the possibility of partnering with the private sector to further develop IRS employees. Both the IRS and private sector companies compete for similar candidates, and both the IRS and those private sector companies could benefit from a partnership where employees participate in a fellowship program and are allowed to work in either the IRS or a partner private sector company for a period of time. Like the internal rotational program discussed above, this would help candidates see firsthand what the IRS and the partner private sector companies have to offer and would help place employees in positions where they are more likely to be happy and stay long-term. Finally, the IRS could do a better job of identifying emerging leaders early on in their careers, developing their skills, and putting them on a leadership fast-track so that we do not lose these individuals to the private sector or other government agencies. Many IRS divisions would be happy to partner with HCO and other IRS divisions to help set up these types of employee retention programs, as they would benefit all of the IRS.

47 See IRS HCO, Retention Strategy (Mar. 2017), [https://irssource.web.irs.gov/Linked%20Documents%20Library/HCO-Engagement\\_2017\\_Retention\\_Strategy.pdf](https://irssource.web.irs.gov/Linked%20Documents%20Library/HCO-Engagement_2017_Retention_Strategy.pdf).

## CONCLUSION AND RECOMMENDATIONS

The IRS has known about employee recruitment, hiring, and retention issues for years, and it has not made any meaningful strides toward improvement. This should be a serious concern and top priority for Congress, OPM, and the IRS as it is threatening the IRS's ability to fulfill its mission and ultimately harming taxpayer services and impairing voluntary compliance. While we recognize that HCO has a difficult job to support an agency the size of the IRS, if the IRS cannot fulfill its mission, the downstream effects will be felt across the federal government and the country. The IRS's inability to attract, hire, and retain younger generations of workers has been going on for too long, and the IRS needs to make significant changes.

### Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate preliminarily recommends that the IRS:

1. Hire additional HR Specialists to meet hiring demand.
2. Restructure internal hiring processes to improve cycle times.
3. Renegotiate the hiring process with the NTEU to allow for up to 50 percent of all hiring announcements to be filled externally.
4. Provide the IRS divisions with a single point of contact in the assigned HCO Employment Office for each of their hiring packages.
5. Allow the divisions to work their own announcements and hiring packages, when requested, while providing oversight, quality review, and technical support to ensure they follow the proper processes.
6. Conduct a research study to learn from successful recruitment strategies used by other federal agencies and the private sector.
7. Invest more time, effort, and money and be more proactive in its recruitment efforts.
8. Rather than hiring out to contractors, bring background check staff back to the IRS as full-time employees.
9. Dedicate more funding for recruitment efforts.
10. Work with the Department of Treasury to seek approval for additional direct-hire authority for critical IRS positions beyond IRS IT, and consider seeking legislative changes to expand critical pay authority for IRS positions beyond IRS IT.

### IRS COMMENTS

We appreciate the importance of an engaged workforce to our success in fairly and efficiently administering the tax laws and service our nation's taxpayers. As the Advocate notes, recruiting and retention efforts can face significant hurdles. Despite these challenges, we have made major strides over the past two years to streamline hiring activities, enhance the collaboration between the Human Capital Office (HCO) and the IRS business operating divisions, strengthen external partnerships, and increase transparency in the hiring process.

Here are some of the ways we are streamlining hiring and improving recruitment and retention, which address many of the Advocate's concerns:



- In April 2019, the IRS HCO restructured the hiring process, more than doubling hiring production and eliminating the hiring request backlog. A key aspect of this success was the adoption of a hiring “workstation” concept, a best practice at other federal agencies, which aligns hiring activities across the three major phases of the hiring process. This model improves transparency, accountability, and efficiency while providing a solid foundation for career development and training of human resources (HR) professionals.
- A career development program (Career+) was implemented to assess the proficiency levels of the HR staff and support the development of training plans. This effort resulted in the implementation of an 8-week comprehensive training course for the HCO hiring staff.
- We assigned Business Account Managers (BAMs) to each business unit to serve as a single point of contact to provide personalized, dedicated, and comprehensive service throughout the hiring process.
- The IRS is implementing a new Servicewide Knowledge Management initiative, which will greatly improve the transfer of knowledge from seasoned employees to our newer hires.
- We are exploring ways to make the hiring process more agile through negotiations with NTEU on our National Agreement.
- In 2019, we engaged the Schatz Strategy Group to assess and analyze the IRS recruitment strategy compared to other federal agencies and the private sector.
- Regarding recruitment, we recently reestablished our Recruitment Office, held enterprise-wide forums to share best practices, and increased our presence on social media and virtual platforms. Results of these efforts were shown in over 26,500 applicants and 700 recent graduate hires in the past seven months.

We recognize that we still have more work to do in the areas of recruitment, hiring, and retention; to that end, we appreciate the Advocate’s recommendations to increase funding and expand flexibilities for these activities. We will continue to refine and improve our strategies in these areas and are committed to attracting and retaining the best and the brightest talent available.

## TAXPAYER ADVOCATE SERVICE COMMENTS

TAS acknowledges the efforts made by the IRS in some areas of hiring and recruitment. However, there is still room for improvement in supporting the IRS’s hiring and recruitment needs now and into the future. The IRS’s greatest resource is its employees, and it should do more to ensure the Service is adequately staffed. As the organization charged with carrying out hiring and recruitment, HCO is a service organization whose role is to meet the needs of the various business units and functions within the IRS. As such, HCO needs to ensure that it understands these needs and develops policies in line with them.



The IRS states it has streamlined hiring activities, enhanced collaboration between HCO and the IRS divisions, and increased transparency in the hiring process. However, when we spoke with HCO customers from across the IRS, their feedback indicated otherwise. Some of the main concerns raised involved time (to bring candidates onboard), and communication (or lack thereof) from HCO. While HCO has assigned Business Account Managers to each business unit to serve as a single point of contact, those outside of HCO have indicated that they often did not know whom to reach out to when they had a question or an issue with a hiring package. According to their customers, HCO has not done enough to streamline hiring activities, enhance collaboration with the divisions, and increase transparency in the hiring process – issues that are critical to address if the IRS is to make meaningful progress in recruiting and timely hiring qualified employees.

Regarding recruitment, the IRS states it has “engaged the Schatz Strategy Group to assess and analyze the IRS recruitment strategy compared to other federal agencies and the private sector...” However, we do not yet know the results of that assessment and how the IRS will use that assessment to improve recruitment efforts. While we are happy to see the IRS’s success with 26,500 applicants and 700 recent graduate hires in the past seven months, without further context, we do not know what these numbers show. How many applicants do we normally have in a similar seven-month period? How many of those applicants were already IRS employees? How many of those applicants were under the age of 30? How many of those recent graduates were already IRS employees?

We appreciate the IRS’s acknowledgement that it still has work to do in the areas of recruitment, hiring, and retention. TAS will continue to advocate for the IRS’s hiring and recruitment needs and push HCO to ensure it is meeting the needs of the entire IRS to better position the IRS to provide quality service and protect taxpayer rights.

## RECOMMENDATIONS

### Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Hire additional HR Specialists to meet hiring demand.
2. Restructure internal hiring processes to improve cycle times.
3. Renegotiate the hiring process with the NTEU to allow for up to 50 percent of all hiring announcements to be filled externally.
4. Provide the IRS divisions with a single point of contact in the assigned HCO Employment Office for each of their hiring packages.
5. Allow the divisions to work their own announcements and hiring packages, when requested, while providing oversight, quality review, and technical support to ensure they follow the proper processes.
6. Conduct a research study to learn from successful recruitment strategies used by other federal agencies and the private sector.
7. Invest more time, effort, and money and be more proactive in its recruitment efforts.

8. Rather than hiring out to contractors, bring background check staff back to the IRS as full-time employees.
9. Work with the Department of Treasury to seek approval for additional direct-hire authority for critical IRS positions beyond IRS IT, and consider seeking legislative changes to expand critical pay authority for IRS positions beyond IRS IT.

## Taxpayers Face Significant Difficulty Reaching IRS Representatives Due to Outdated Information Technology and Insufficient Staffing

### RESPONSIBLE OFFICIALS

Charles Rettig, Commissioner, Internal Revenue

Sunita Lough, Deputy Commissioner for Services and Enforcement

Jeffrey Tribiano, Deputy Commissioner for Operations Support

Nancy Sieger, Acting Chief Information Officer

James Clifford, Project Director, Taxpayer First Act Office – Customer Service Strategy

Robert Ragano, Project Director, Taxpayer First Act Office – Information Technology

### TAXPAYER RIGHTS IMPACTED<sup>1</sup>

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Privacy*
- *The Right to a Fair and Just Tax System*

### EXPLANATION OF THE PROBLEM

The ability to speak to an IRS employee and receive quality service, whether over the phone or in person, is critical to meeting taxpayer needs as part of the IRS's mission to provide "top quality service."<sup>2</sup> However, the IRS's level of service (LOS) on IRS phone lines remains low,<sup>3</sup> and more Taxpayer Assistance Center (TAC) offices have closed in the last two years.<sup>4</sup> The pandemic only exacerbated this problem. To improve customer service, the IRS must update its technology to support innovative tools for assisting and communicating with taxpayers and increase its levels of staffing and future workforce hiring to support taxpayers. Although this

1 See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the IRC. See IRC § 7803(a)(3).

2 IRS, The IRS Mission, <https://www.irs.gov/about-irs/the-agency-its-mission-and-statutory-authority> (last visited July 31, 2020).

3 IRS's Fiscal Year (FY) 2020 budget for Taxpayer Services supported an LOS of 60 percent. IRS, Pub. 4450, Congressional Budget Justification & Annual Performance Report and Plan Fiscal Year 2021, at 12 (Feb. 2020).

4 Between 2011 and 2014, the number of TACs declined from 401 to 382, and the number of TACs with zero or one full-time employee increased from 37 to 80. IRS Wage and Investment Division (W&I) response to TAS information request (Dec. 23, 2014). As of the end of calendar year (CY) 2017, the IRS operated 371 TACs in 50 states, the District of Columbia, and Puerto Rico. Nina E. Olson, Overall the Filing Season at Taxpayer Assistance Centers Ran Smoothly, But Room for Improvement Remains, NATIONAL TAXPAYER ADVOCATE BLOG, [www.taxpayeradvocate.irs.gov/news/ntablog-overall-the-filing-season-at-taxpayer-assistance-centers-ran-smoothly-but-room-for-improvement-remains/](http://www.taxpayeradvocate.irs.gov/news/ntablog-overall-the-filing-season-at-taxpayer-assistance-centers-ran-smoothly-but-room-for-improvement-remains/) (July 11, 2018). There are currently 358 TACs. IRS response to TAS information request (Sept. 30, 2020).

Most Serious Problem focuses on telephone and in-person service, other Most Serious Problems in this report will discuss additional aspects of the omnichannel approach to customer service.<sup>5</sup>

## ANALYSIS

### The Taxpayer First Act Provides a Great Opportunity to Reimagine Customer Service

Congress is aware of low levels of IRS customer service and has annually approved budgets with projected low telephone LOS. However, in July 2019, it passed the Taxpayer First Act (TFA),<sup>6</sup> requiring the IRS to create and submit a comprehensive customer service strategy to Congress, which the IRS plans to deliver in December 2020.<sup>7</sup> This is the perfect time for the IRS to rethink and implement its new approach to customer service. In the private sector, companies take bold and innovative approaches to reach customers, and the IRS can be creative, too.<sup>8</sup>

One TFA strategy proposal is its plan to create a “concierge,” or seamless, service for taxpayers, which the National Taxpayer Advocate wholeheartedly endorses. Once implemented, this system would greatly improve taxpayers’ experience by allowing them to efficiently get their problem solved using their preferred method of communication to work with the IRS. The IRS strategy provides:

[A] taxpayer could begin their journey on IRS.gov, then could shift to ‘click-to-call’ or chat options to engage an assistor without leaving the channel they initially entered. With the introduction of Artificial Intelligence (AI) and robotics, the IRS would assist in diagnosing issues not resolved on the web and shepherd the taxpayer to a “concierge” type assistor, proactively. If the account issue is complex in nature, the concierge would escalate the issue to a subject matter expert (SME). If a SME is not readily available, the concierge would use an appointment process or callback technology to facilitate the transition between interactions and make the process seamless for the taxpayer.<sup>9</sup>

A concierge system will considerably improve customer service, but the IRS faces several challenges to make it work. First, the IRS is working to develop its Enterprise Case Management (ECM) system, which will consolidate various information and case management systems across the IRS and replace them with a cloud-based case management system.<sup>10</sup> But due to the lack of a dedicated multiyear funding commitment, the process will be slow to final completion based upon the number of existing standalone systems that the IRS must replace. Without such a system, a customer service representative (CSR) lacks the taxpayer’s complete

5 See Most Serious Problem: *Information Technology Modernization: Antiquated Technology Jeopardizes Current and Future Tax Administration, Impairing Both Taxpayer Service and Enforcement Efforts*; Most Serious Problem: *Digital Communications: Limited Digital Communications With the IRS Make Problem Resolution Unnecessarily Difficult for Taxpayers*; Most Serious Problem: *E-Filing and Digitalization Technology: Failure to Expand Digitalization Technology Leaves Millions of Taxpayers Without Access to Electronic Filing and Wastes IRS Resources*; Most Serious Problem: *Online Records Access: Limited Electronic Access to Taxpayer Records Through an Online Account Makes Problem Resolution Difficult for Taxpayers and Results in Inefficient Tax Administration, infra.*

6 TFA, Pub. L. No. 116-25, 133 Stat. 981 (2019).

7 See TFA, Pub. L. No. 116-25, § 1101, 133 Stat. 981 (2019).

8 For instance, Capital One has begun creating a presence in communities by building cafes that offer traditional banking services as well as financial coaching classes and workshops. However, the cafes also provide space for community events, all within a coffee shop environment. Capital One, *Nine Things You Can Do at a Capital One® Café* (Oct. 24, 2020), <https://www.capitalone.com/learn-grow/money-management/explore-capital-one-cafes/>.

9 IRS, FY 2022 Treasury Departmental Budget Submission 13 (June 5, 2020).

10 See also Most Serious Problem: *Information Technology Modernization: Antiquated Technology Jeopardizes Current and Future Tax Administration, Impairing Both Taxpayer Service and Enforcement Efforts, infra*; IRS, *IRS Creates New Enterprise Digitalization and Case Management Office*; Smith, Abold-LaBrecche to Serve as Co-directors (July 21, 2020), <https://www.irs.gov/newsroom/irs-creates-new-enterprise-digitalization-and-case-management-office-smith-abold-labrecche-to-serve-as-co-directors>.

taxpayer history. In fact, with the implementation of a robust ECM that is widely available online, taxpayers could efficiently answer their own questions in some instances.<sup>11</sup>

Second, to be effective, the concierge system will require higher-grade employees who are well-trained on technical issues and possess a strong working knowledge of IRS systems and routes of possible resolution for a wide variety of procedural and technical issues. It will need to ensure CSRs are trained to effectively communicate with taxpayers so that the nature of the taxpayer's problem is quickly identified and fully understood. Employees will need training on the various areas of the IRS so that they have competency to quickly route the taxpayer to the correct subject matter expert or proper function within the IRS.

## The IRS Faces Challenges Before It Can Make Improvements

### Level of Service Measurements Do Not Accurately Portray a Taxpayer's Experience With the IRS

The IRS received about 100.5 million telephone calls in FY 2020.<sup>12</sup> Calls to the Accounts Management (AM) telephone lines account for over 82 percent of all "Enterprise Total" calls in FY 2020, as these lines are where taxpayers go for answers to tax law questions, account inquiries, adjustments to accounts, and resolution of the "majority of issues and questions" to settle accounts.<sup>13</sup>

The IRS uses the CSR LOS as the rate of success a taxpayer has in reaching a CSR. However, this measure does not account for the total number of taxpayer calls the IRS receives or the time it took the average taxpayer to reach a CSR.<sup>14</sup> The current budget requested by the IRS and approved by Congress targets LOS measurements for FY 2021 at 60 percent, which is an acknowledgement that the IRS and Congress expect that four out of every ten taxpayers calling the IRS cannot get through to a CSR due to staffing issues.<sup>15</sup> This projection for FYs 2020 and 2021, which will likely be lower for FY 2020 due to the COVID-19 pandemic, is a decrease from previous years.<sup>16</sup> Figure 1.2.1 shows a breakdown of the LOS on some of the main telephone lines.

11 See Most Serious Problem: *Information Technology Modernization: Antiquated Technology Jeopardizes Current and Future Tax Administration, Impairing Both Taxpayer Service and Enforcement Efforts*, *infra*.

12 IRS, Joint Operations Center (JOC) Snapshot Reports, Enterprise Total (week ending Sept. 30, 2020).

13 IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending Sept. 30, 2020), Internal Revenue Manual (IRM) 21.1.1.1.3, Responsibilities - Accounts Management, Compliance Services and Field Assistance (Oct. 1, 2020). Enterprise total refers to the total number of calls the IRS receives on its toll-free assistance lines. National Taxpayer Advocate 2017 Annual Report to Congress 22, 24 (Most Serious Problem: *Telephones: The IRS Needs to Modernize the Way It Serves Taxpayers Over the Telephone, Which Should Become an Essential Part of an Omnichannel Customer Service Environment*).

14 The IRS's formula for determining LOS is more complex than just number of calls received divided by number of calls answered. The CSR LOS formula is: (Assistor Calls Answered + Automated Calls Answered (Info Messages)) divided by (Assistor Calls Answered + Automated Calls Answered (Info Messages) + Emergency Closed + Secondary Abandons + (Add either Calculated Busy Signal OR Network Incompletes) + (Add either Calculated Network Disconnects OR Total Disconnects)). IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending Sept. 30, 2020). In contrast to the LOS measure, the Treasury Inspector General for Tax Administration (TIGTA) has noted that other agencies with similar telephone lines look at the "Level of Access," an indicator that reflects the total of all callers seeking assistance that ultimately receives the assistance from IRS. See TIGTA, Ref. No. 2019-40-041, *Telephone Performance Measures Do Not Provide an Accurate Assessment of Service to Taxpayers* (June 2019).

15 IRS, Pub. 4450, Congressional Budget Justification & Annual Performance Report and Plan Fiscal Year 53 (Feb. 2020). W&I plans to deliver a FY 2021 CSR LOS of 50 percent and a Filing Season CSR LOS of 55 percent. This will result in essentially five out of every ten taxpayers calling the IRS to not be able to get through to a CSR. IRS response to TAS fact check (Nov. 16, 2020).

16 The LOS had a low of 38.1 percent in FY 2015 but had risen to 75.9 percent in FY 2018. IRS, Pub. 4450, Congressional Budget Justification & Annual Performance Report and Plan Fiscal Year 114 (Feb. 2020).

**FIGURE 1.2.1, Call Attempts, Calls Answered, and LOS for IRS Phones, FYs 2018-2020<sup>17</sup>**

Line and Measure	FY 2018	FY 2019	FY 2020	Percent Change From FY 2019 to FY 2020
Enterprisewide Call Attempts	98,532,231	99,373,456	100,514,299	1.1%
Enterprisewide Assistor Calls Answered	34,703,578	28,558,862	24,192,386	-15.3%
Enterprisewide LOS	68.96%	56.23%	51.17%	-9.0%
AM Call Attempts	77,715,282	76,814,886	82,578,446	7.5%
AM Assistor Calls Answered	25,295,849	21,257,015	17,852,748	-16.0%
AM LOS	75.92%	65.42%	53.15%	-18.8%
Consolidated ACS Call Attempts	12,073,311	15,033,568	11,995,745	-20.2%
Consolidated ACS Assistor Calls Answered	5,924,227	4,663,706	4,206,875	-9.8%
Consolidated ACS LOS	52.71%	34.27%	39.83%	16.2%
PPS (Practitioner Priority Service) Call Attempts	3,099,832	3,484,100	4,775,636	37.1%
PPS Assistor Calls Answered	2,233,960	2,139,275	1,875,399	-12.3%
PPS LOS	84.88%	78.29%	56.28%	-28.1%

The IRS's use of the LOS measure to gauge the customer experience is misplaced. The Treasury Inspector General for Tax Administration (TIGTA) noted that, "[t]he LOS only measures the success rate of access to the telephone system using the number of calls answered by CSRs."<sup>18</sup> The COVID-19 pandemic demonstrated one deficiency with the IRS's LOS measurement when the IRS reported 100 percent LOS on closed AM phone lines because all callers received a recorded message.<sup>19</sup> This shows that the IRS must change its measurement for LOS before it can identify where to focus its improvements. However, the IRS does not intend to change how the LOS is measured and instead is working to improve the LOS numbers.<sup>20</sup>

### First Contact Resolution as a Customer Satisfaction Measurement

There are additional ways to measure taxpayers' experience when contacting the IRS. According to TAS research, the primary drivers for telephone satisfaction were the time it took to get through on the phone and

17 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Executive Level Summary (week ending Sept. 30, 2019); IRS, JOC, Snapshot Reports: Enterprise Snapshot, Executive Level Summary (week ending Sept. 30, 2020).

18 TIGTA, Ref. No. 2019-40-041, *Telephone Performance Measures Do Not Provide an Accurate Assessment of Service to Taxpayers* 7 (June 12, 2019).

19 National Taxpayer Advocate Fiscal Year 2021 Objectives Report to Congress 18 (Systemic Advocacy Objective: *Protecting the Rights of Taxpayers Impacted by the COVID-19 National Emergency and Restoring Much-Needed Taxpayer Services*). The phone lines were shut down during the pandemic, but since all taxpayers got through and received an automated message, the LOS measured at 100 percent.

20 IRS response to TAS information request (Sept. 30, 2020). The IRS reports that changes to improve the LOS measurement include such things as hiring staff, opening a new call site, redesigning notices, text chatting, utilizing callback technology, upgrading functionality for Online Payment Agreement and Online Account applications, and processing IRM changes.

the number of steps required to get to someone who could help.<sup>21</sup> Likewise, “first contact resolution” (or FCR) is a metric strongly tied to high customer satisfaction.<sup>22</sup> It measures “the percentage of all calls that are resolved on the first attempt, without the agent needing to refer the customer to a colleague, their manager or calling the customer back.”<sup>23</sup> A majority (77 percent) of respondents to the FY 2020 survey of customer satisfaction on the AM line reported that their call eliminated the need for future calls; that group reported an overall satisfaction of 90 percent.<sup>24</sup> However, respondents who reported needing to make additional calls only reported a general satisfaction rate of 70 percent.<sup>25</sup> The most suggested improvement on that survey after “other” was if the IRS could resolve the taxpayer’s issue.<sup>26</sup> Using FCR in the IRS customer service plan will more accurately gauge the taxpayer’s experience when calling the IRS and could lead to more fine-tuned improvements.

### The IRS Should Expand Callback Technology to All Phone Lines

The IRS has identified many of the technological updates needed to create a concierge system. For instance, customer callback technology (“callback”) is “an automated service that lets taxpayers choose between waiting on the line or receiving a call back when an assistor is available.”<sup>27</sup> It allows the taxpayer the flexibility of receiving a call back from the IRS instead of waiting on hold for the next representative.

The IRS concluded the first phase of Customer Callback technology testing on August 30, 2019.<sup>28</sup> In FY 2019, IRS customer callback saved taxpayers contacting certain IRS telephone lines regarding their balance due an estimated 111,000 hours of “hold” time.<sup>29</sup> In January 2020, the IRS offered callbacks to 31.5 percent of its queued calls, and 68.4 of those taxpayers used the feature.<sup>30</sup> In June 2020, the IRS offered the callback feature to 28.5 percent of the queued calls, and 67.8 percent of those taxpayers used the feature.<sup>31</sup> The IRS estimates that using the callback feature saved 50,973 hours on hold in January 2020 and 35,638 hours in

21 National Taxpayer Advocate 2017 Annual Report to Congress vol. 2, at 64 (*A Further Exploration of Taxpayers’ Varying Abilities and Attitudes Toward IRS Options for Fulfilling Common Taxpayer Service Needs*).

22 Jeff Rumburg & Eric Zbikowski, *The Seven Most Important Performance Indicators for the Service Desk*, METRICNET, [https://www.thinkhdi.com/~media/HDICorp/Files/Library-Archive/Rumburg\\_SevenKPIs.pdf](https://www.thinkhdi.com/~media/HDICorp/Files/Library-Archive/Rumburg_SevenKPIs.pdf) (last visited Oct. 6, 2020).

23 International Finance Corp., *Measuring Call Center Performance: Global Best Practices*, <https://www.ifc.org/wps/wcm/connect/3a656e01-ad18-459a-b1ed-87784c1f1616/Tool+9.4.+Measuring+Call+Center+Performance.pdf?MOD=AJPERES&CVID=jENLHxM> (last visited Oct. 6, 2020).

24 IRS, W&I, Accounts Management Toll-Free Customer Satisfaction Survey FY 2020 Semiannual Report 6 (July 30, 2020).

25 *Id.*

26 IRS, W&I, Accounts Management Toll-Free Customer Satisfaction Survey FY 2020 Semiannual Report 8-9 (July 30, 2020). Thirty-seven percent of respondents reported “other” to improve their experience and 35 percent said that resolving their issue would improve their experience.

27 IRS SERP Alert 20A0272, Customer Callback FAQs (June 25, 2020). Callback saves the caller’s place in the queue and when an assistor becomes available, the Callback system automatically calls him or her back. No assistor training is required. To an assistor, it looks just like any other inbound call. Callbacks are offered to randomly selected taxpayers when estimated wait times are greater than 15 minutes. Callback is currently offered on these applications: AM: App 25 – BMF Accounts; App 42 – EIN, SB/SE: App 10 – Bal Due; App 12 – Bal Due Agreed; App 841 – AUR. Based upon the taxpayer’s estimated wait time, the callback system will “assign” the taxpayer to one of five predetermined callback buckets (20, 29, 38, 47, or 56 minutes). IRS response to TAS fact check (Nov. 16, 2020).

28 W&I, FY 2019 Q4 Business Performance Review (BPR) 11 (Nov. 2019).

29 W&I, FY 2020 Q1 BPR 10-11 (Feb. 2020).

30 IRS, W&I, Customer Account Services, JOC, Program Management Office, Customer Callback (CCB) FY 20 Quarterly Status Update 04/01/20-06/30/20, at 4 (July 7, 2020). In January 2020, the IRS had 704,000 calls in its queue and offered 204,000 callbacks to taxpayers (31.5 percent of the queued calls) and 137,000 taxpayers used the callback feature, an acceptance rate of 68.4 percent.

31 IRS, W&I, Customer Account Services, JOC, Program Management Office, Customer Callback (CCB) FY 20 Quarterly Status Update 04/01/20-06/30/20, at 4 (July 7, 2020). In June 2020, the IRS had 407,000 calls in its queue, and it offered 107,000 taxpayers the callback feature (28.5 percent of the queued calls) and 74,000 taxpayers accepted the service, an acceptance rate of 67.8 percent.



June 2020.<sup>32</sup> These measures show a meaningful improvement for taxpayers, and the IRS should extend the callback feature to all major phone lines.

The TFA mandates the IRS include callback services as part of its customer service strategy.<sup>33</sup> Among respondents to an IRS study, 74 percent of taxpayers who did not recall being offered the callback option were “very interested” or “somewhat interested” in the option.<sup>34</sup> The IRS uses the callback feature with five telephone lines but plans to expand it to 11 more lines, for a total of 16.<sup>35</sup> If the IRS received sufficient dedicated multiyear funding, it could upgrade its phone system to allow for a full roll-out of callback technology on all lines instead of expanding it in a piecemeal fashion.

### The IRS Can Address Long Wait Times With Estimated Times and Text Chats

Customer satisfaction survey results from the Small Business/Self-Employed (SB/SE) Automated Collection System (ACS) Interactive Voice Recognition (IVR) line show that the largest number of taxpayer comments for improvement related to improving wait time.<sup>36</sup> And of the respondents to the AM toll-free FY 2020 customer satisfaction survey who reported that the call length was unreasonable, 77 percent also said it was because of the wait time.<sup>37</sup> TAS research demonstrates that among the taxpayers who used the telephone but were unable to resolve their problem, about 41 percent reported that their problem was unresolved because the hold time to talk to a CSR was too long.<sup>38</sup> The IRS should research why taxpayers hang up either before or after they are placed in a queue.<sup>39</sup> For FY 2020, the wait time on the AM phone line was 16.8 minutes compared to 8.3 minutes on the National Taxpayer Advocate toll-free line.<sup>40</sup> To assist taxpayers, the IRS could update its technology to create an online “contact dashboard” like the California Franchise Tax Board uses<sup>41</sup> that would allow a user to find the hours of operation along with estimated wait times for various contact methods.<sup>42</sup> A taxpayer calling the IRS could save time by using this tool to determine the best time to call. The IRS shares an estimated wait time on major phone lines once the taxpayer calls, but it is difficult for the IRS to predict time on the smaller lines. None of this information is available to taxpayers online.

In 2017, the IRS started a text chat pilot within its ACS program.<sup>43</sup> Text chat generally assists taxpayers who receive certain ACS letters, visit certain IRS.gov web pages, or are routed out of the Online Payment Agreement application when attempting to establish an installment agreement. Using text chat has shown

32 IRS, W&I, Customer Account Services, JOC, Program Management Office, Customer Callback (CCB) FY 20 Quarterly Status Update 04/01/20–06/30/20, at 6 (July 7, 2020).

33 TFA, Pub. L. No. 116-25, § 1101(a)(1), 133 Stat. 981, 986 (2019).

34 IRS, W&I Strategies and Solutions Research Group 1, Highlights from the 2019 Taxpayer Experience Survey (TES) 13 (Feb. 2020).

35 IRS response to TAS information request (Sept. 30, 2020); IRS, SERP Alert 20A0459, Planned Customer Callback Temporary Outage (Nov. 6, 2020).

36 IRS, SB/SE Research, SBSE ACS IVR Customer Satisfaction Report Survey Year 2019 (April 2019 through March 2020) 9 (Sept. 2020). On the survey, the taxpayer is asked to report the number of minutes to resolve his or her issue, including wait time. However, the taxpayer is only asked to report satisfaction with the call once he or she reached a representative.

37 IRS, W&I, Accounts Management Toll-Free Customer Satisfaction Survey FY 2020 Semiannual Report 31 (July 30, 2020).

38 National Taxpayer Advocate 2017 Annual Report to Congress vol. 2, at 85 (*A Further Exploration of Taxpayers’ Varying Abilities and Attitudes Toward IRS Options for Fulfilling Common Taxpayer Service Needs*).

39 See National Taxpayer Advocate 2019 Annual Report to Congress 10 (*Most Serious Problem: Customer Service Strategy: The IRS Needs to Develop a Comprehensive Customer Service Strategy That Puts Taxpayers First, Incorporates Research on Customer Needs and Preferences, and Focuses on Measurable Results*). IRS response to TAS information request (July 2, 2019). National Taxpayer Advocate Fiscal Year 2021 Objectives Report to Congress 127 (*IRS Responses to Administrative Recommendations Proposed in the National Taxpayer Advocate’s 2019 Annual Report to Congress*).

40 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Executive Level Summary (week ending Sept. 30, 2020).

41 See California Franchise Tax Board, *myFTB Features* (July 8, 2020), <https://www.ftb.ca.gov/myftb/features.html>.

42 California Franchise Tax Board, *Wait Times*, <https://www.ftb.ca.gov/help/time-frames/#contact> (last visited Sept. 30, 2020).

43 Director, Collection Inventory Delivery and Selection, Interim Guidance on ACS Text Chat Pilot (May 22, 2019).

positive results with an average wait time of 91 seconds in FY 2019 and 35 seconds in FY 2020.<sup>44</sup> The IRS should expand the use of text chat as a way for taxpayers to get the personal service they need efficiently. Such an application would also support the concierge system.

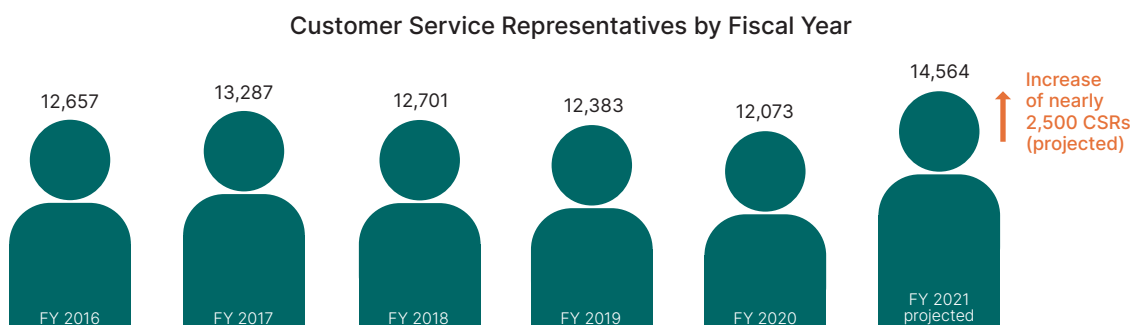
### The Natural Language Pilot Saves Taxpayer Time

The IRS is piloting an application called “Natural Language,” which allows interaction with the taxpayer by having the phone system ask an open-ended question and wait for a response. Based on the taxpayer’s response, the taxpayer can receive self-service through automation, or the system routes the taxpayer to an assistor.<sup>45</sup> A soft launch of this pilot is tentatively planned for January 19, 2021, through February 4, 2021.<sup>46</sup> This tool can help taxpayers navigate the phone system and speak with an employee trained in a specific area quickly.

### The IRS Needs to Increase the Customer Service Representative Skillset and Staffing Levels to Improve Current Levels of Service

Sufficient staffing and an increased skillset are critical for offering personal service. Figure 1.2.2 shows the level of staffing for FYs 2016 through the end of September 2021 (projected).

**FIGURE 1.2.2**<sup>47</sup>



Additionally, the operating plan for FY 2019 included a taxpayer services budget of \$2.56 billion to allow for 28,531 full-time taxpayer service employees. However, the enacted budget for FY 2020 saw a decrease of funding to \$2.54 billion to provide for 26,760 taxpayer service employees (a decrease of 1,771 employees).<sup>48</sup> The enacted budget for taxpayer services in FY 2021 then increased to approximately \$2.56 billion but allowed for only 25,678 taxpayer service employees, a decrease of 2,853 full-time employees from FY 2019.<sup>49</sup> These levels of staffing and funding bring LOS measurements that do not meet the needs of taxpayers. To improve the LOS and implement the changes discussed above, the IRS not only requires more staff but also

<sup>44</sup> For a detailed discussion of this pilot and its results, see *Digital Communications: Limited Digital Communications With the IRS Make Problem Resolution Unnecessarily Difficult for Taxpayers*, *infra*.

<sup>45</sup> IRS, W&I, Customer Account Services, JOC, Program Management Office, Natural Language Pilot on Economic Impact Payment (EIP) Line 2 (Sept. 20, 2020).

<sup>46</sup> *Id.* at 7.

<sup>47</sup> IRS response to TAS information request (Sept. 30, 2020); IRS response to TAS fact check (Nov. 16, 2020).

<sup>48</sup> IRS, Pub. 4450, Congressional Budget Justification & Annual Performance Report and Plan Fiscal Year 2021, at 1 (Feb. 2020).

<sup>49</sup> *Id.*

the ability to hire the right skillsets for positions. It is a good step to increase CSRs in FY 2021, and we hope Congress will continue to fund the IRS to further prioritize this.

## Taxpayer Assistance Centers Provide a Unique Service Within the IRS

TACs are unique because they provide the IRS with a physical presence in local communities. TAC employees assist taxpayers “whose issues cannot be resolved through other convenient and efficient methods or who choose to obtain information and assistance in the TAC” and sometimes offer necessary face-to-face service for issues such as identity verification.<sup>50</sup> In FY 2020, through March 14, 2020, 943,448 taxpayers received face-to-face assistance at TACs.<sup>51</sup> From June 29 through September 12, 2020, TACs offered limited service by appointment,<sup>52</sup> with 78,695 taxpayers receiving face-to-face service after the stay-at-home order lifted for TAC employees.<sup>53</sup>

TACs provide a wide range of key services, such as account inquiries, account adjustments, refund inquiries, and tax law assistance.<sup>54</sup> To schedule an appointment for services, taxpayers must call a toll-free appointment line.<sup>55</sup> When a taxpayer calls the appointment line, the IRS employee must identify the taxpayer’s issue and provide any self-help options available on IRS.gov or resolve the issue if he or she is trained to do so.<sup>56</sup> If a taxpayer arrives at a TAC without an appointment, the TAC will provide a same-day appointment if one is available; if not, the TAC will direct the taxpayer to the toll-free line.<sup>57</sup> Facilitated Self Assistance (FSA) kiosks, discussed below, are also offered to taxpayers without an appointment who need a service they can complete on the IRS website.<sup>58</sup>

Five situations require the taxpayer to visit a TAC since the IRS cannot fix the problem on the TAC appointment line, including when a taxpayer requests an immediate levy release.<sup>59</sup> However, these taxpayers must still call the appointment line to schedule. To incorporate the spirit of concierge service under TFA, the IRS should allow taxpayers who must seek in-person TAC assistance to schedule their appointments online instead of having to call the toll-free line first.

50 IRM 21.3.4.1.1, Background (Oct. 1, 2020). See IRM 21.3.4.2 for a full list of services available at a TAC, which vary by location. IRM 21.3.4.2, Standard Services in a Taxpayer Assistance Center (Oct. 1, 2019).

51 IRS response to TAS information request (Sept. 30, 2020).

52 On March 20, 2020, TACs were closed due to the COVID-19 pandemic. IRS, Taxpayer Assistance Centers Statement (Mar. 20, 2020), <https://www.irs.gov/newsroom/taxpayer-assistance-center-statement>. TACs were opened on a limited basis on June 29, 2020. IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue, <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue> (rev. Aug. 3, 2020). IRS response to TAS fact check (Nov. 16, 2020).

53 IRS response to TAS information request (Sept. 30, 2020).

54 IRM 21.3.4.2, Standard Services in a Taxpayer Assistance Center (TAC) (Oct. 1, 2019).

55 IRM 21.3.4.2.4, Taxpayer Assistance Center (TAC) Appointment Service (Feb. 8, 2018). In many instances the taxpayer can receive assistance from the employee who takes his or her call on the appointment line. In FY 2020 (through March 2020), 75 percent of respondents to a customer satisfaction survey reported that the CSR taking their call for a TAC appointment offered to address their problem over the phone. IRS, Field Assistance Appointment Services Report FY 2020 Q2, at 2 (Apr. 2020).

56 IRM 21.3.4.2.4.5.1, Addressing, Targeting and Resolving Issues Without an Appointment (Oct. 9, 2019). Self-help tools can include the ability to get a transcript. IRS, Welcome to Get Transcript, <https://www.irs.gov/individuals/get-transcript> (last visited Oct. 22, 2020).

57 IRM 21.3.4.2.4.2, TAC Appointment Exception Procedures (Oct. 1, 2019). Managerial discretion does allow TAC employees to make an exception for special situations, including an elderly taxpayer, taxpayer with a disability, or a taxpayer who has traveled a long distance.

58 IRM 21.3.4.2.2, Facilitated Self Assistance (FSA) (Oct. 1, 2018).

59 IRM 21.3.4.2.4.5.5, Taxpayer Issues That Require a TAC Visit (Oct. 1, 2019). The five issues are alien clearance (sailing permits); Individual Taxpayer Identification Number; immediate levy or lien release; Letter 5747C – TAC authentication only and Letter 5071C/4883C only if failed telephone authentication; and Secure Access Authentication.

With its 358 TACs, the IRS does not plan to expand or close TAC offices in FY 2021 and has an “aggressive” hiring plan to staff previously unstaffed TAC offices.<sup>60</sup> In TAS’s 2017 survey, TACs and the IRS website received the highest customer satisfaction ratings;<sup>61</sup> therefore, expanding TAC services represents a good customer service investment.<sup>62</sup> Even though the IRS is not increasing the number of TAC offices, it can still expand in-person service to taxpayers. For instance, there are six TAC locations that have temporarily moved and are now co-located with a local Social Security Administration office.<sup>63</sup> Though services are limited and require appointments for this co-located option, they may ease a taxpayer’s travel burden in some instances.<sup>64</sup>

FSA kiosks with internet access to IRS.gov and SSA.gov are in TAC offices for taxpayer assistance. These kiosks are offered to taxpayers without an appointment when they have a service they can accomplish on the IRS website. Future expansion of kiosks could include “connection to a live assistor, in-person identity proofing for online accounts, printer capabilities for printing transcripts and notices, and credit card payments.”<sup>65</sup> In these situations, TAC employees would serve as facilitators rather than provide actual assistance.

### Virtual Service Delivery Is Technology Particularly Useful for Taxpayer Assistance Centers

Another taxpayer tool is Virtual Service Delivery (VSD), which uses “video conferencing technology to assist taxpayers at IRS partner sites to provide alternative service delivery channels.”<sup>66</sup> Thirty IRS partner sites offer VSD to support customer assistance.<sup>67</sup> In the first two quarters of FY 2019, 606 taxpayers used VSD services, and during the comparable period in FY 2020, only 143 taxpayers used VSD because service was abruptly ended as a result of the COVID-19 pandemic.<sup>68</sup> Despite the low numbers using VSD, taxpayers who use the tool report a high level of satisfaction. In the FY 2019 annual survey of Field Assistance services, VSD users reported the highest overall customer satisfaction (98 percent) compared to taxpayers who called the appointment line (90 percent) and taxpayers who used a kiosk (89 percent).<sup>69</sup> However, taxpayers rated VSD the lowest ratings for privacy of contact (79 percent) and easy-to-find office (59 percent).<sup>70</sup> These are areas of videoconferencing technology the IRS should improve. TIGTA reviewed the VSD program and found that low usage may be due to a lack of vision and meaningful performance measures, without which “it is not

60 IRS response to TAS information request (Sept. 30, 2020).

61 National Taxpayer Advocate 2017 Annual Report to Congress vol. 2, at 64 (*A Further Exploration of Taxpayers’ Varying Abilities and Attitudes Toward IRS Options for Fulfilling Common Taxpayer Service Needs*).

62 *Id.* at 85.

63 IRM 21.3.4.2.4.5.6.2, TACs Co-located in Social Security Administration (SSA) Offices (Oct. 1, 2020). The six locations are Presque Isle, ME; Norwich (New London), CT; Danville, VA; North Platte, NE; Mansfield, OH; and Mount Vernon, IL.

64 See IRM 21.3.4.2.4.5.6.2(2) for information on what services are not available at a co-located TAC office.

65 IRS response to TAS information request (Oct. 21, 2020).

66 IRM 21.3.4.2.3, Virtual Services Delivery (VSD) (Oct. 1, 2020). See also IRM 21.3.4.2.3 for a list of services available through VSD and those that are not available. For additional information on this topic, see Most Serious Problem: *Digital Communications: Limited Digital Communications With the IRS Make Problem Resolution Unnecessarily Difficult for Taxpayers*, *infra*. TAS has had three operational VSD locations (located in Kenai, AK; Tampa, FL; and Spokane, WA) to interact with taxpayers. However, TAS will be discontinuing the use of this technology and migrating to other interactive technologies including WebEx, Zoom, and secure email (discussed in detail later).

67 IRS response to TAS information request (Sept 30, 2020). IRS response to TAS fact check (Nov. 16, 2020).

68 IRS response to TAS information request (Sept 30, 2020). As of September 30, 2020, it was unclear when VSD services would resume.

69 IRS response to TAS information request (Sept. 30, 2020). In the first quarter of FY 2020, VSD users reported an overall satisfaction rate of 94 percent. In the third quarter of FY 2020, VSD users reported an overall satisfaction rate of 79 percent. IRS response to TAS information request (Sept. 30, 2020). The cause for this decline, perhaps due to COVID-19 complications, could be one area for the IRS to investigate.

70 IRS response to TAS information request (Sept. 30, 2020).

possible to objectively measure whether the program is operating effectively or efficiently.”<sup>71</sup> Nonetheless, TIGTA suggested that the IRS work to expand the services available through VSD, in particular the ability to verify identification to resolve an identity theft problem.<sup>72</sup> Unfortunately, four VSD sites were closed in FY 2020 based on decisions made by the partnering organizations, and the IRS does not have plans in FY 2021 to expand VSD services.<sup>73</sup> As of September 1, 2020, VSD services are still not operational at TACs or partner sites due to COVID-19; it is unknown when services will resume at partner sites.<sup>74</sup>

VSD is a tool to enhance existing face-to-face options, but the IRS should not expand it at the expense of in-person contact with the IRS. Videoconferencing technology could fill voids in TAC services or provide service in remote areas, especially during large-scale emergencies. The IRS is not allowing circuit-riding, which is when TAC employees travel between offices, during the COVID-19 pandemic, and the IRS could have used videoconferencing to fill this gap.<sup>75</sup> Going forward, videoconferencing could be expanded to post offices and other federal, state, or local government organizations that maintain service during emergencies.<sup>76</sup> As part of the TFA, the IRS reported in its Taxpayer Experience Strategy it planned to shift VSD to “Virtual Face-to-Face” (referred to as WebSD, discussed below), which would allow a scheduled video chat with an IRS employee, using computer, tablet, or mobile phone.<sup>77</sup>

### The IRS Has Adopted Pilots to Enhance Taxpayer Assistance Center Presence in Communities

The IRS had two pilots planned prior to the COVID-19 pandemic to test if providing temporary, or “pop up,” TAC services is possible. One pilot, “IRS Community Assistance Visits,” has not yet launched but will test providing limited face-to-face assistance offsite to taxpayers in remote areas during two-day visits.<sup>78</sup> The IRS also started a WebSD pilot, which “enables taxpayers to attend a virtual appointment from any remote location over the internet” staffed by a group of TAC assistants.<sup>79</sup> It is similar to VSD technology except taxpayers can have access from any computer, tablet, or mobile phone. The IRS planned for the pilot to start on February 1, 2020, and run for 120 days, but COVID-19 intervened.<sup>80</sup> The IRS resumed the pilot on October 30, 2020, but due to the pandemic limiting services, it is currently offering WebSD only for taxpayers who needed assistance related to Economic Impact Payments.<sup>81</sup> The IRS plans to continue a pilot of this program in FY 2021.<sup>82</sup> In 2018, TIGTA noted that a web-based pilot such as WebSD could prove easier

71 TIGTA, Ref. No. 2019-IE-R002, *Although Virtual Face-to-Face Service Shows Promise, Few Taxpayers Use It* 4 (Nov. 13, 2018). TIGTA also pointed out that many VSD partner sites are located near a TAC office and taxpayers prefer to use a TAC, and the IRS does not advertise the VSD program. *Id.* at 8-9.

72 TIGTA, Ref. No. 2019-IE-R002, *Although Virtual Face-to-Face Service Shows Promise, Few Taxpayers Use It* 10-12 (Nov. 13, 2018).

73 IRS response to TAS information request (Sept. 30, 2020). The decision to close a VSD site is made by the participating organization. The four sites were closed in Christian County Library, Hopkinsville, KY; Human Resources Development Commission (HRDC), La Vale (Cumberland), MD; Salvation Army Rockland County, Spring Valley, NY; and PACE Coalition, Elko, NV.

74 IRS response to TAS information request (Sept. 30, 2020).

75 *Id.*

76 Erin M. Collins, Lessons Learned From COVID-19: The Critical Need to Improve IRS Digital Services, NATIONAL TAXPAYER ADVOCATE BLOG (Sept. 1, 2020), <https://www.taxpayeradvocate.irs.gov/news/ntablog-lessons-learned-from-covid-19-the-critical-need-to-improve-irs-digital-services/>.

77 IRS response to TAS information request (Oct. 21, 2020).

78 IRS, W&I, BPR Q2 FY 2020, at 9 (May 7, 2020).

79 IRS, W&I, BPR Q1 FY 2020, at 10 (Jan. 31, 2020).

80 IRS, SERP Alert 20A0057, Web Service Delivery (WebSD) Virtual TAC (Jan. 31, 2020). Topics available to through WebSD include notices/math errors, refund inquiries, individual taxpayer tax law inquiries, prior year return, Automated Underreporter Program, and balance due inquiries. To join the pilot, the CSR scheduling the appointment would offer the option once he or she determined that a face-to-face appointment was necessary.

81 IRS, SERP Alert 20A0089, Web Service Delivery Virtual TAC (Oct. 27, 2020). EIP is an advance recovery rebate credit offered through the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) in the beginning of the COVID-19 pandemic. CARES Act, Pub. L. No. 116-136, § 6428, 134 Stat. 281 (2020).

82 IRS response to TAS information request (Oct. 21, 2020). IRS response to TAS fact check (Nov. 16, 2020).



for taxpayers to use than VSD; it also noted that success is contingent partly on the quality of the internet connectivity, and the pilot will need clear objectives and performance measures.<sup>83</sup> Congress should provide dedicated multiyear funding to ensure TAC virtual face-to-face capabilities such as WebSD are realized and then maintained.

## Problems Related to COVID-19 Highlight Where the IRS Can Improve Phone and Taxpayer Assistance Center Service

In response to the COVID-19 pandemic, the IRS closed all TAC offices and discontinued all face-to-face service on March 20, 2020, unexpectedly leaving many taxpayers without face-to-face assistance during filing season.<sup>84</sup> The phone lines were impacted on March 30 when the IRS instructed all employees with portable work to telework even if they were not currently eligible to telework. Only employees with mission-critical work they could not accomplish remotely could return to an IRS office.<sup>85</sup> While the phones were not in operation as a result of the COVID-19 pandemic, the IRS continued to receive 600,000 calls during the week ending April 18, 2020, that went unanswered.<sup>86</sup> This data shows there will always be a population of taxpayers who prefer or need to speak to someone to resolve their tax problem.

On March 14, 2020, just prior to the stay-at-home order taking effect, there were 3,595 CSRs with laptops, a prerequisite for telework.<sup>87</sup> By September 30, 2020, 14,502 CSRs had laptops and were teleworking.<sup>88</sup> Employees did not require other technical updates to be telework-ready. In FY 2021, all CSRs will be eligible to telework if they have access to high-speed internet and a private workspace.<sup>89</sup> This is great progress and beneficial for taxpayer service. A CSR working from home can largely perform the same tasks as if he or she is working from an IRS office.<sup>90</sup>

Even though all major phone lines reopened by June 26, callers continue to experience long waits.<sup>91</sup> For the week ending September 19, 2020, of the almost 1.7 million calls made to the AM phone lines, only about 22 percent (approximately 388,000 calls) were answered by a CSR, with an average wait time of about 22 minutes.<sup>92</sup> The IRS needs dedicated multiyear funding to provide for more CSR hiring to improve customer service, and it needs to maintain the current level of telework. The callback feature, which was unavailable

83 TIGTA, Ref. No. 2019-IE-R002, *Although Virtual Face-to-Face Service Shows Promise, Few Taxpayers Use It* 12-14 (Nov. 13, 2018).

84 IRS, Taxpayer Assistance Center Statement, <https://www.irs.gov/newsroom/taxpayer-assistance-center-statement> (Mar. 20, 2020); National Taxpayer Advocate Fiscal Year 2021 Objectives Report to Congress 18 (Systemic Advocacy Objective: *Protecting the Rights of Taxpayers Impacted by the COVID-19 National Emergency and Restoring Much-Needed Taxpayer Services*).

85 IRS, Human Capital Office (HCO), New Work at Home Directive Begins March 30 (Mar. 30, 2020).

86 National Taxpayer Advocate Fiscal Year 2021 Objectives Report to Congress 18 (Systemic Advocacy Objective: *Protecting the Rights of Taxpayers Impacted by the COVID-19 National Emergency and Restoring Much-Needed Taxpayer Services*).

87 IRS response to TAS information request (Sept. 30, 2020). A breakdown of employees with laptops is as follows: Accounts Management had 238; Collection ACS had 185; SB/SE ACS had 1,800; and Campus Exam had 1,372.

88 IRS response to TAS information request (Sept. 30, 2020). A breakdown of employees with laptops is as follows: Accounts Management had 9,824; SB/SE ACS had 2,900; and Campus Exam had 1,778. No information was provided for Collection ACS.

89 IRS response to TAS information request (Sept. 30, 2020). These two requirements are the major reason why some CSRs are not currently teleworking.

90 IRS response to TAS information request (Sept. 30, 2020). Campus Examination did report some problems related to paper-based inventory when employees and their managers were not allowed to enter IRS buildings. Some jobs like Campus Support operations must be done in an office. Specialized units such as the Centralized Authorization File Unit are not portable, but the IRS is working to make the work portable.

91 W&I, BPR Q3 FY 2020, at 3-4 (Aug. 7, 2020).

92 For comparison, during the same week in FY 2019, about 41 percent of the calls were answered by a CSR (304,869 out of 942,564), and the average speed of answer was almost 13 minutes. The IRS reports a LOS for the week ending Sept. 19, 2020, of 44 percent, but this number also includes calls answered by automation. IRS JOC Snapshot Reports: Enterprise Snapshot (week ending Sept. 19, 2020).

during the COVID-19 shutdown, resumed on June 25, 2020.<sup>93</sup> Going forward, this tool could alleviate staff shortages during a state of emergency; however, the IRS must prioritize the importance of the callback feature so it does not face additional disruptions.

To protect the health and safety of taxpayers and employees, the IRS shut down all TACs on March 20, 2020, as part of its stay-at-home order.<sup>94</sup> Although the IRS has some videoconferencing capability, TACs could not continue to provide service. The IRS lacks the hardware and server capacity to virtually connect employees working remotely with taxpayers seeking TAC appointments. The IRS reopened the TAC offices in phases and offered limited face-to-face service on June 29, 2020.<sup>95</sup> Since July 27, 2020, between 200 and 220 TAC offices have provided face-to-face services.<sup>96</sup> But the staffing problem is not resolved. As of September 22, 2020, 457 frontline TAC employees were not in the office because of the stay-at-home order.<sup>97</sup> The IRS is replacing TAC employees' desktops with laptops, with planned completion of the conversion by the end of the 2020 calendar year.<sup>98</sup> Although telework for TAC employees will allow for "assignment of portable account work" when the IRS must close offices, the IRS needs to study this avenue more closely.<sup>99</sup> These upgrades will be essential for dealing with future service disruptions and require dedicated multiyear funding.

### **Taxpayers Suffered Sudden Loss of Free Tax Preparation Services Due to the COVID-19 Shutdown**

Eligible low-income and elderly taxpayers can have their income tax returns prepared free at volunteer partner sites participating in the IRS's Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) programs.<sup>100</sup> In calendar year (CY) 2019, VITA and TCE in combination prepared approximately 3.6 million tax returns.<sup>101</sup> However, once the COVID-19 pandemic hit during the 2020 filing season, 10,792 of the 11,014 partner sites closed.<sup>102</sup> In CY 2020, VITA and TCE prepared 2.5 million tax returns, a decrease of nearly 30 percent from last year.<sup>103</sup>

The IRS Office of Stakeholder Partnerships, Education and Communication (SPEC), which oversees the VITA and TCE programs, is developing a strategy to meet the needs of taxpayers who rely on the services provided by VITA and TCE partners. It acknowledges that face-to-face assistance is a preferred way to provide tax preparation services, and it will be allowing grant recipients to use grant money to buy personal protective gear.<sup>104</sup> However, SPEC is also taking proactive measures to allow contactless tax preparation. It is guiding partners to allow a "completely contactless, virtual option, using security-compliant software for file-sharing, videoconferencing, and signing documents."<sup>105</sup> One existing program uses a type of facilitated

93 IRS, SERP Alert 20A0272, Customer Callback (June 25, 2020).

94 IRS, Taxpayer Assistance Centers Statement (Mar. 20, 2020), <https://www.irs.gov/newsroom/taxpayer-assistance-center-statement>.

95 IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue, <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue> (rev. Aug. 3, 2020).

96 IRS response to TAS information request (Sept. 30, 2020). The number fluctuates due to COVID-19.

97 *Id.*

98 *Id.*

99 *Id.*

100 IRS, Free Tax Return Preparation for Qualifying Taxpayers, <https://www.irs.gov/individuals/free-tax-return-preparation-for-you-by-volunteers> (last visited Oct. 13, 2020).

101 IRS, Filing Season Weekly Reports cumulative through Oct. 16, 2020 (Oct. 23, 2020).

102 IRS response to TAS information request (Sept. 30, 2020).

103 *Id.*

104 *Id.*

105 *Id.*



self-assistance technology already available in TAC offices. With this service, a VITA/TCE partner gets access to laptops and software to help multiple taxpayers at once while identifying taxpayers who need one-on-one assistance.<sup>106</sup> These improvements will likely reduce taxpayer burden during any future large-scale disruption of service.

## CONCLUSION AND RECOMMENDATIONS

Taxpayers trying to reach the IRS often face long wait times and may not reach a CSR. With the enactment of the TFA, the IRS has the opportunity to pursue novel approaches to improving its customer service via an omnichannel approach.<sup>107</sup> Many of these approaches have already proven to be a success, such as the callback feature. However, the IRS cannot implement all approaches because it does not have the staffing or IT resources. To embrace the concierge system of service envisioned by the TFA, the IRS must receive sufficient dedicated multiyear funding to improve outdated technology and increase staffing levels with the right skillset – the workforce of the future. The IRS must also understand the taxpayer experience through better measurements before it can determine where to appropriately focus its improvements. Improved customer service is not an option; it is a requirement. Americans deserve best in class service and top-quality tax administration.

### Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate preliminarily recommends that the IRS:

1. Prioritize expanding customer callback technology to relieve taxpayers of the frustration associated with long hold times and low levels of service.
2. Provide taxpayers with the option of receiving face-to-face service through videoconferencing technology. The IRS's use of this technology was restricted during the initial months of the pandemic due to limited bandwidth, which the IRS must address as it further incorporates this technology into its operations.
3. Continue to explore the feasibility of incorporating and providing incentives for partner sites to implement the use of videoconferencing software into the VITA and TCE programs.
4. Ensure meaningful performance measures for existing and/or newly emerging telephone, online, and in-person assistance methods to objectively measure customer service.

### Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Provide dedicated multiyear funding to increase the “Level of Service” on both the IRS's Accounts Management and Compliance telephone lines to 80 percent, with average hold times not to exceed five minutes.<sup>108</sup> The IRS needs congressional support to continue and maintain upgrades allowing the IRS to make new investments in staffing, training, and improved telecommunications technology.

<sup>106</sup> IRS, Pub. 5047, IRS Offers Facilitated Self Assistance (Nov. 2012).

<sup>107</sup> See National Taxpayer Advocate 2017 Annual Report to Congress 22-35 (Most Serious Problem: *Telephones: The IRS Needs to Modernize the Way It Serves Taxpayers Over the Telephone, Which Should Become an Essential Part of an Omnichannel Customer Service Environment*).

<sup>108</sup> National Taxpayer Advocate 2019 Purple Book, Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration 7-8 (*Provide the IRS With Sufficient Funding to Meet Taxpayer Needs and Improve Federal Tax Compliance*).

## IRS COMMENTS

The IRS is continually working to improve service delivery to taxpayers who have questions or need assistance. All face-to-face and toll-free customer service was suspended in late March 2020, in response to state and local shelter-in-place orders due to the COVID-19 pandemic. The IRS immediately began developing plans to safely return to business and re-establish in-person and telephone services including the rapid enabling of employees to telework.

The IRS began reopening toll-free telephone lines on April 13, 2020, with the major toll-free telephone lines open by June. For example, after reopening, the Automated Collection System (ACS) level of service (LOS) was 58.7%, with an average wait time of 15 minutes. By the end of September, nearly 11,000 telework and in-office Customer Service Representatives (CSR) were answering calls and/or working priority paper inventory. The IRS was able to deliver a fiscal year (FY) 2020 CSR LOS of 53.1% (53.5% for the extended filing season) and end the FY with a paper inventory of comparable to previous years, plus any correspondence mail yet to be opened. The CSR LOS is dependent on the level of funding available for staffing resources to address telephone demand for assistors. The IRS has a full suite of measures and metrics used to evaluate services available for taxpayers online, in-person, on the telephone, and related to paper processing.

The IRS quickly deployed a dedicated Economic Impact Payment (EIP) toll-free line, to provide informational recordings, on April 11, 2020. In mid-May, the IRS staffed the line with vendor-provided assistors to answer non-account EIP-related questions. The EIP line included Over-the-Phone Interpreter service to allow for assistance in multiple languages. Through the end of July, this line had handled over 1.9 million calls. The IRS also assisted with answering over 185,000 FEMA calls with a 99.6% LOS in the wake of several hurricanes that hit the country during 2020.

Taxpayer Assistance Centers (TAC) began a return to limited, appointment-only, service in late June. In FY 2020, we provided face-to-face assistance to more than a million taxpayers, including almost 80,000 taxpayers without appointments. We continue to resolve many potential visits through the TAC toll-free appointment service line. The IRS plans to relaunch a pilot in early FY 2021 of the Web Service Delivery to assess our capability to provide face-to-face service to taxpayers via a virtual connection.

The IRS continues to develop technology improvements. Text chat has expanded to 11 of the 19 ACS call sites (including bilingual sites), and now allows taxpayers to attach documents such as installment agreement forms and delinquent returns. The IRS plans to expand customer callback from five to 16 toll-free applications in FY 2021, with future expansions planned subject to available funding. The IRS is exploring natural language capabilities on the EIP line to allow callers to self-route to get help with queries.

To mitigate the pandemic impact, most training for customer service focused employees is being conducted virtually. The IRS developed a strategy for VITA/TCE partners to provide virtual

assistance where needed, increased hiring to reduce the number of unstaffed TACs to the lowest level since 2017, and is equipping more employees with new laptops for in-office and remote work.

## TAXPAYER ADVOCATE SERVICE COMMENTS

TAS acknowledges the efforts made by the IRS to restore taxpayer services after the state and local shelter-in-place orders across the country took effect. The IRS navigated a process of enabling employees to telework. The IRS also continued working on implementing new technology, such as the callback feature, which has proven to be a success for the IRS and taxpayers. It ensured training was available in the new virtual environment.

However, even before the pandemic, the IRS requested funding levels that only allow for a 60 percent LOS. This did not allow for top quality customer service. The pandemic only exacerbated existing problems. TAS identified weak spots brought on by the pandemic, such as an inability to obtain tax preparation services through VITA or TCE. To offer the best service possible to taxpayers and to fulfill the IRS's plan to create a concierge system for taxpayers, the IRS must receive dedicated multiyear funding. This funding should prioritize callback technology and videoconferencing technology, both services that benefit taxpayers. Last, the IRS must consider metrics such as first contact resolution when it makes its decisions for allocating resources for taxpayer service.

## RECOMMENDATIONS

### Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Prioritize expanding customer callback technology to relieve taxpayers of the frustration associated with long hold times and low levels of service.
2. Provide taxpayers with the option of receiving face-to-face service through videoconferencing technology. The IRS's use of this technology was restricted during the initial months of the pandemic due to limited bandwidth, which the IRS must address as it further incorporates this technology into its operations.
3. Continue to explore alternative telephonic support by developing an automated telephone tool designed to complete specific software-based tasks and/or voice chatbot. Either system could handle routine questions or tasks which would free up CSRs for those individuals who have more complex issues or have a need to speak with a human.
4. Continue to explore the feasibility of incorporating and providing incentives for partner sites to implement the use of videoconferencing software into the VITA and TCE programs.
5. Ensure meaningful performance measures for existing and/or newly emerging telephone, online, and in-person assistance methods to objectively measure customer service.

### Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Provide dedicated multiyear funding to increase the “Level of Service” on both the IRS’s Accounts Management and Compliance telephone lines to 80 percent, with average hold times not to exceed five minutes.<sup>109</sup> The IRS needs congressional support to continue and maintain upgrades allowing the IRS to make new investments in staffing, training, and improved telecommunications technology.

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<sup>109</sup> National Taxpayer Advocate 2019 Purple Book, Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration 7-8 (*Provide the IRS With Sufficient Funding to Meet Taxpayer Needs and Improve Federal Tax Compliance*).

### Limited Electronic Access to Taxpayer Records Through an Online Account Makes Problem Resolution Difficult for Taxpayers and Results in Inefficient Tax Administration

#### RESPONSIBLE OFFICIALS

Karen Howard, Director, Office of Online Services

Eric Hylton, Commissioner, Small Business/Self-Employed Division

Kenneth Corbin, Commissioner, Wage and Investment Division

#### TAXPAYER RIGHTS IMPACTED<sup>1</sup>

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to Retain Representation*
- *The Right to a Fair and Just Tax System*

#### EXPLANATION OF THE PROBLEM

As the IRS moves forward with putting taxpayers first in delivering its strategies, it must continually emphasize innovation and creativity to ensure success. To provide top quality service, as measured through the eyes of the taxpayers, the IRS needs to consistently leverage existing technology and identify emerging programs to pursue innovative solutions and improvements. One area for improvement is its online access to taxpayer records. Due to limited technology systems, the IRS operates under a largely paper-based system, requiring taxpayers to keep copies of paper correspondence, call the IRS for assistance, or use a patchwork of electronic applications to gather necessary information to meet their tax obligations. This system leads to inefficiencies because taxpayers lack the ability to access necessary filing information, resulting in taxpayer delays and dissatisfaction with tax administration. Taxpayers must have a simple way to access their IRS tax records and account information to meet their tax filing and payment obligations.

Despite the many benefits of digital communication and online accounts, it is critical the IRS maintain telephone and in-person service options. Millions of taxpayers still do not have access to broadband internet, while other taxpayers strongly prefer to interact with the IRS by telephone or in person for certain categories

<sup>1</sup> See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the IRC. See IRC § 7803(a)(3).

of transactions.<sup>2</sup> For these reasons, we believe it is essential that the IRS maintain a robust omnichannel service environment while it enhances its digital offerings.<sup>3</sup>

## ANALYSIS

### Robust Online Accounts Would Modernize Information Sharing Between the IRS and Taxpayers

Technology is reshaping how taxpayers and the IRS communicate with each other. The commercial growth of online services has heightened taxpayers' expectations for quality online services they can use to conduct tax communications and transactions. For years, the IRS has steered taxpayers toward digital self-help and has continuously expanded its offerings of digital service options. However, many of these offerings are standalone systems, they do not offer complete information, and they are not available to all taxpayers. As the IRS continues to resume its business operations that were partially or completely shut down at the inception of the COVID-19 pandemic, it should continue to evaluate what it needs to do to administer the tax laws and provide necessary taxpayer services, especially under similar conditions in the future.

Because financial institutions and other state tax agencies<sup>4</sup> provide access to key information online, customers have come to expect secure and convenient access to their personal information with features such as:

- View account balance and tax year or account period details;
- View estimated payments and credits before filing a return;
- View payment history;
- View a list and images of tax returns;
- View a list and images of notices and correspondence;
- View and update contact information;
- View proposed assessments;
- View a list of authorized representatives (tax professional or a tax professional with a power of attorney) and manage who can access their account;
- View a list of activities that occurred on their account, such as the last time the taxpayer or their authorized representative accessed the account;
- Calculate a balance due for a date in the future;
- File a power of attorney (POA);
- File a nonresident withholding waiver request;
- Protest a proposed assessment;
- Chat with a customer service representative about confidential matters;
- Send a secure message with attachments;
- Receive an email when a notice or correspondence is sent; and

2 National Taxpayer Advocate 2017 Annual Report to Congress 36 (Most Serious Problem: *Online Accounts: The IRS's Focus on Online Service Delivery Does Not Adequately Take Into Account the Widely Divergent Needs and Preferences of the U.S. Taxpayer Population*).

3 For more perspective on the importance of providing taxpayers with multiple channels to interact with the IRS, see National Taxpayer Advocate 2019 Annual Report to Congress 3-14 (Most Serious Problem: *Customer Service Strategy: The IRS Needs to Develop a Comprehensive Customer Service Strategy That Puts Taxpayers First, Incorporates Research on Customer Needs and Preferences, and Focuses on Measurable Results*).

4 The California Franchise Tax Board (CA FTB) provides a model for what can be achieved currently, including engaging in electronic chats about confidential matters in an easily accessible electronic portal, tool, or application. See CA FTB, My FTB, Features, <https://www.ftb.ca.gov/myftb/features.html> (last visited Dec. 16, 2020).



- Allow an authorized representative full or partial access to the taxpayer's Online Account records and information.

The National Taxpayer Advocate recognizes the IRS is aware of these customer expectations and is progressing toward providing similar services as soon as possible. However, due to years of limited funds, the IRS has only been able to add some online services in a piecemeal fashion. Taxpayers deserve better service from the IRS. The COVID-19 pandemic highlighted the necessity of robust online services for taxpayers and their representatives.

Since 2016, the IRS has offered taxpayers an Online Account application. Over time, the capabilities and popularity of the Online Account have increased. Taxpayers accessed the Online Account application over 23 million times in fiscal year (FY) 2020.<sup>5</sup> As shown in Figure 1.3.1, the IRS has provided several other online applications to assist taxpayers. Because the Online Account does not reflect all the information from these other applications, there is no consolidated place where taxpayers can view all their information.

**FIGURE 1.3.1, IRS Online Self-Assistance Applications<sup>6</sup>**

Application Name	Taxpayer Function	Information From Application Reflected in Online Account	Type of Taxpayer Account	Number of Transactions or Sessions, FY 2019	Number of Transactions or Sessions, FY 2020 (Through August 2020)
Online Account	View key information such as balance due and payment history, make a payment online, request a plan via Online Payment Agreement, or access tax records via Get Transcript	N/A	Individual	Number unavailable	23,000,000
Get Transcripts Online	Retrieve a variety of transcripts online to view, print, or download	Yes	Individual	20,861,000	46,064,000
Get Transcripts by Mail	Receive a return or account transcript through mail	Yes	Individual and Business	2,545,000	2,156,000
Where's My Refund	Learn status of refund	No	Individual	368,841,000	758,260,000
Where's My Amended Return	Verify receipt and processing status for amended return (Form 1040X)	No	Individual	5,340,000	4,743,000
Direct Pay	Pay directly from bank account	Yes	Individual	9,420,257	11,841,916

<sup>5</sup> IRS response to TAS fact check (Nov. 24, 2020).

<sup>6</sup> IRS response to TAS information request (Oct. 6, 2020; Oct. 9, 2020; Oct. 16, 2020; Oct. 20, 2020; and Nov. 3, 2020). The volume for Online Account transactions was corrected as a result of the IRS response to TAS fact check (Nov. 24, 2020). The measure of transactions or sessions records the number of times an application was successfully accessed, or for applications where taxpayers use an application to conduct a transaction (such as make a payment), the number represents successfully completed transactions. Some of the applications listed in Figure 1.3.1 can be accessed through the Online Account. These applications are noted in the third column of the figure.

### Most Serious Problem #3: Online Records Access

Application Name	Taxpayer Function	Information From Application Reflected in Online Account	Type of Taxpayer Account	Number of Transactions or Sessions, FY 2019	Number of Transactions or Sessions, FY 2020 (Through August 2020)
Online Payment Agreements	Request a payment agreement for certain taxpayers	Yes	Individual and Business	786,000	844,000
ID Verify	Verify identity so the IRS can process a federal income tax return filed with the taxpayer's name and taxpayer identification number	No	Individual	132,000	211,000
Get an Identity Protection Personal Identification Number (PIN)	Validate identity and retrieve an Identity Protection PIN online	No	Individual	Number unavailable	488,000
Modernized Internet Employer Identification Number	Apply for and receive an employer identification number (EIN) over the web	No	Individual and Business	4,990,000	6,914,000
Transcript Delivery Service – Reporting Agents	Retrieve a variety of account transcripts through mail, fax, or online	No	Individual and Business	237,000	374,000
Transcript Delivery Service – States	Retrieve a variety of account transcripts through mail, fax, or online	No	Individual and Business	534,000	604,000
Transcript Delivery Service – Third Parties	Retrieve a variety of account transcripts through mail, fax, or online	No	Individual and Business	104,127,000	108,119,000
Income Verification Express Service (IVES)	Retrieve transcripts from an online secure mailbox to verify income of a borrower	No	Individual and Business	14,027,000	16,696,000
Free Application for Federal Student Aid (FAFSA) on the Web	Access tax return information and transfer it directly to the FAFSA form	No	Individual	18,691,000	27,498,000
Tax Withholding Estimator	Perform a “paycheck checkup” and learn how to adjust current-year withholding to avoid tax underpayments	No	Individual	Number unavailable	8,193,000
Interactive Tax Assistant (ITA)	Receive answers to basic tax law questions	No	Individual and Business	1,198,000	3,236,000

Below we will discuss the challenges taxpayers are facing and why the IRS must upgrade its systems and provide a robust Online Account for all taxpayers and its employees to assist taxpayers with issues.

### **Taxpayers Struggle Navigating a Piecemeal System of Online Applications That Have Limited Capabilities and Incomplete Information**

As shown in Figure 1.3.1, taxpayers' usage of online applications demonstrates their desire to obtain their information electronically. However, the present system has many downfalls. The IRS has not fully integrated information and access between online applications and a taxpayer's Online Account. The information from the Where's My Refund tool is not available in a taxpayer's Online Account, and during 2020, the information from Get My Payment (Economic Impact Payment) tool was also not incorporated into the Online Account.<sup>7</sup> Taxpayers wanting to know the date the IRS received and processed their tax returns would not know which transcript to review, and even then, the transcript may be confusing to a taxpayer. For example, for taxpayers who filed their return before the due date, the transcript lists the tax return received date as the due date of the tax return with no explanation. The transcript may list a return posted date that is later than the date the IRS issued a refund, further confusing the taxpayer. The taxpayer may also have to wait months after filing a return to see the information in a transcript in the Online Account. Wage and Income transcripts are not available until mid-May of the processing year.<sup>8</sup> The IRS made some key updates in September 2020 so that the Online Account immediately shows electronic payments, which means taxpayers do not have to wait until the payments show up on a transcript to confirm them.

While taxpayers can access some applications through the Online Account, such as Get My Transcript and the Online Payment Agreement, others such as the Identity Protection PIN are only available outside the Online Account. Taxpayers using IRS online applications for the first time may face difficulty authenticating their identities.<sup>9</sup> Some applications have a common login and password; this can actually be a problem for taxpayers who may have accessed an application years ago and misplaced their login information or perhaps forgot that they had used another application.<sup>10</sup>

Another issue is that each application is limited in what taxpayers can accomplish. For instance, the Online Payment Agreement is limited to individual taxpayers whose tax debts are below \$50,000 (\$100,000 if requesting a full pay agreement)<sup>11</sup> and business taxpayers with a balance of \$25,000 or less.<sup>12</sup> Taxpayers seeking an installment agreement outside of the IRS's streamline criteria must mail or fax in their request forms rather than using an online application. Similarly, taxpayers seeking an offer in compromise can use the IRS's online Offer in Compromise Pre-Qualifier tool to learn if they qualify but then cannot submit the offer online; rather, they must mail or fax in the forms.<sup>13</sup>

7 In January 2021, the IRS plans to make the amount of Economic Impact Payment received by the taxpayer available in the Online Account. IRS response to TAS fact check (Nov. 24, 2020).

8 View Your Account Information, <https://www.irs.gov/payments/view-your-tax-account> (last visited Dec. 16, 2020).

9 In FY 2020, the collective authentication rate for the IRS online applications requiring the highest level of assurance authentication, such as the Online Account, was about 42 percent, meaning 58 percent of taxpayers could not use the applications. For a detailed discussion of authentication issues with IRS online applications, see Most Serious Problem: *Digital Communications: Limited Digital Communications With the IRS Make Problem Resolution Unnecessarily Difficult for Taxpayers*, *infra*.

10 Once a taxpayer has signed up for Get My Transcript, the Online Payment Agreement, or an Online Account, he or she must use the same login and password information for the Identity Protection PIN, even though this application is separate. IRS, Get an Identity Protection PIN, <https://www.irs.gov/identity-theft-fraud-scams/get-an-identity-protection-pin> (last visited Dec. 16, 2020). Taxpayers are able to use Forgot My Username and Forgot My Password functions. IRS response to TAS fact check (Nov. 24, 2020).

11 Internal Revenue Manual (IRM) 21.2.1.57, Online Payment Agreement (OPA) for IMF Debts (Oct. 1, 2020).

12 IRM 21.2.1.57.1, Online Payment Agreements for Certain BMF Debts (Oct. 1, 2020).

13 IRS, Offer in Compromise Pre-Qualifier, [https://irs.treasury.gov/oic\\_pre\\_qualifier/](https://irs.treasury.gov/oic_pre_qualifier/) (last visited Dec. 16, 2020).

Taxpayers cannot access all the information they need through an online application. For example, the transcripts available through the Get My Transcript application do not provide the taxpayer with the actual tax return information, which a taxpayer might need to verify which child he or she claimed as a dependent on a return. The only way for the taxpayer to view a copy of the actual return filed is to mail a request to the IRS, pay a \$43 fee, and wait up to 75 days.<sup>14</sup> Additionally, it can take up to five months after filing a tax return for the transcript viewable in the Online Account to reflect the return information.<sup>15</sup> Many of the IRS's electronic applications are not available to business taxpayers, including Where's My Refund, Get Transcript Online, and the Online Account.

Some of the online applications only provide information temporarily, lacking the capability for the taxpayer to view the information later. An example is the employer identification number (EIN) application, which allows taxpayers to apply for an EIN online and receive it immediately once approved. The IRS warns that once it provides the EIN confirmation notice, it can *never* regenerate the notice, even if the taxpayer needs a copy to show proof of the EIN, so taxpayers should save a copy.<sup>16</sup> Taxpayers who need to verify their information to file a return must call the IRS if they have lost a copy of the EIN notice.

**Security, uniformity, and ease of use are key to successful online applications, including a robust Online Account.**

The IRS created the online application, Where's My Refund, which provides basic information such as an acknowledgement that the IRS received the tax return. However, for some taxpayers, the application only supplies a reference code and an IRS phone number, requiring them to call to learn basic information such as if the IRS applied their refund to an outstanding balance due for another tax period.<sup>17</sup> When the IRS holds a taxpayer's refund and asks the taxpayer to verify identity, income, or withholding, the taxpayer must wait to receive a notice in the mail rather than having the ability to be notified or respond online. Once the taxpayer submits a response, he or she does not know if the IRS received the response or is processing the refund until he or she receives another paper notice or the refund itself. From January 1 through October 2, 2019, the IRS took more than four weeks to release taxpayer refunds it held for potential non-identity theft refund fraud.<sup>18</sup> With an integrated Online Account system, these taxpayers could access further information about the status of their refunds, submit inquiries about their account, or provide the required information. Security, uniformity, and ease of use are key to successful online applications, including a robust Online Account.

14 IRS Form 4506, Request for a Copy of Tax Return (Oct. 2020).

15 Information from paper returns with a balance due filed on or before the April 15 due date will post to the transcript in mid to late June. <https://www.irs.gov/individuals/transcript-availability> (last visited Dec. 18, 2020).

16 CP 575A, Employer Identification Number (EIN) Has Been Assigned to You.

17 IRM 21.4.1.6(3) states, "In some instances, the refund callback number will be provided, along with a unique reference number, for further assistance."

18 IRS, IDT and IVO Performance Report Appendix, Non-IDT Extended Refile Rate Calculation, Slide 3 (Oct. 9, 2019).

## Taxpayers Have an Urgent Need for Full Access to Their Information in the Online Account Now

Although the IRS is working on several initiatives related to the Online Account, taxpayers cannot afford to wait years for these changes. In FYs 2021-2022, the IRS plans the following actions:

- **Expanded Online Account:** Taxpayers will be able to make a payment, and certain taxpayers can create a short-term payment plan within their Online Account.
- **Tax Professional Account:** Tax professionals and taxpayers will be able to establish digital authorizations (Form 8821, Tax Information Authorization) and Power of Attorney (Form 2848, Power of Attorney and Declaration of Representative) with eSignature.
- **Secure Document Exchange:** More individuals and large and small businesses will have expanded access to secure messaging and file sharing.
- **Authentication:** Some digital self-service applications will have new, more secure ways to authenticate, meeting governmentwide digital identity guidelines.
- **Expand Digital Notifications:** Taxpayers will be able to view electronic (PDF) copies of additional notices not previously available in the Online Account and opt-out of paper delivery for some notices.
- **Digital Signatures:** Authenticated taxpayers and representatives will be able to electronically sign and submit certain forms and documents.<sup>19</sup>

In FYs 2023-2025, the IRS plans to further expand the Online Account by allowing taxpayers to update contact information and use secure two-way messaging.<sup>20</sup>

The IRS introduced new functionalities in its Online Account that allow taxpayers to view a few specific notices and navigate to a message center.<sup>21</sup> It also plans to implement a feature to alert taxpayers to new notices. These are positive steps, but they fall short of what taxpayers need right now. As of late 2020, only six notices are available in the Online Account, with another five planned for mid-2021.<sup>22</sup> Of the notices chosen, most are purely informational notices about adjustments or other past actions. The IRS should instead prioritize notices that provide statutory rights and deadlines to act, such as the statutory notice of deficiency, providing an opportunity to challenge the liability in U.S. Tax Court; the math error notice, providing the taxpayer 60 days to request an abatement; and the Collection Due Process (CDP) hearing notice, providing 30 days to request a CDP hearing.<sup>23</sup> During FYs 2017-2019, the IRS received an average of 6,745 delinquent CDP hearing requests each year.<sup>24</sup> Placing important notices with deadlines to exercise taxpayer rights in the Online Account could make it easier for taxpayers to keep track of the deadlines and

19 IRS, Taxpayer First Act: Improving the online experience through Expanded Digital Services (Oct. 14, 2020). IRS response to TAS fact check (Nov. 24, 2020).

20 *Id.*

21 IRS response to TAS information request (Oct. 6, 2020).

22 The six notices initially added to the Online Account and their past volumes for FY 2019 are: CP 21A - Data Processing Adjustment Notice, Balance Due of (444,787); CP 60 - We Removed a payment Erroneously Applied to Your Account - Balance Due (316,281); CP 141 - Return Filed - Initial Balance Due Notice - Individual Retirement Account File (IRAF) Taxes or Penalties Due (32,074); CP 521 - Monthly Installment Agreement (IA) Payment Reminder (volume unknown); CP 01A - We Assigned You an Identity Protection Personal Identification Number (IP PIN) (3,620,563); CP 62 - Notice of Credit Transfer - We Credited Your Account (51,492). The additional five planned notices are: CP 14 - Balance Due, No Math Error (9,145,871); CP 49 - Overpayment Adjustment - Refund Applied to Other Liabilities (8,763,313); CP 39 - Overpaid Taxes Applied to Your Balance Due from a Secondary Social Security Number (SSN) (447,103); CP 14H - Owed Minimum Essential Health Coverage Payment (Shared Responsibility Payment) (739,850); CP 721A - Data Processing Adjustment Notice, Balance Due (Spanish) - Cambios a su Planilla - Saldo Adeudado - (275). IRS response to TAS information request (Oct. 6, 2020).

23 See IRC §§ 6213(a), (b); 6320(a); 6330(a).

24 Individual Master File (transactions posted on or before cycle 202039). CDP hearing requests received after the 30-day deadline are referred to as Equivalency Hearing requests.

exercise their rights. Although the IRS has set a target for placing more notices in the Online Account during FY 2022, it does not have a definitive plan for how many notices it will be adding to the Online Account, when it will add them, and how they will be prioritized.<sup>25</sup>

The IRS has beneficial elements planned for the Online Account, including the ability to select language preference for future notices, change the taxpayer's address, and view alerts that new notices have been posted within the taxpayer's Online Account.<sup>26</sup> However, the IRS could do more to notify taxpayers about the status of their accounts. While the Online Account already includes certain notifications at the top, they are primarily broader public service style messages one might find on IRS.gov, such as the availability of disaster assistance or a reminder to file a return if the taxpayer has not done so.<sup>27</sup> There are only a few notifications specific to the taxpayer, such as if the taxpayer is in jeopardy of a lien or levy or if a short term payment plan is past due.<sup>28</sup> The IRS could be tailoring more notifications to specific taxpayer situations, such as if the taxpayer had a deadline to provide documentation in an examination case.

The IRS is also planning future capabilities for its online application related to POA authorizations, the Tax Professional Account. By the third quarter of FY 2022, the IRS plans to allow users to view and cancel pending requests, view and print confirmation of a submission, view and resubmit incomplete requests due to system error, and save data entries across sessions.<sup>29</sup> Further, the IRS plans to give taxpayers and tax professionals the ability to view and print authorizations by the third quarter of FY 2023. While positive, these developments are still years away. To support representatives and taxpayers, the IRS must prioritize an online application for representatives that allows them to view tax information for their clients for the years they hold an authorization. Without this access, representatives must rely on paper mail, or they may ask taxpayers to give them access to their personal Online Accounts, potentially jeopardizing the taxpayer's privacy and security. The IRS states it has no plans for the Tax Professional Account to include external notifications, which slows down the ability for representatives to help clients since clients may not know when a document needs a signature or when the IRS has processed an authorization.

Unfortunately, there are several Online Account features not planned, such as the ability for taxpayers to view images of their past tax returns and information returns filed by third parties; file documents and request actions (*e.g.*, request a CDP hearing, field assignment, or Appeals hearing); view IRS employee contact information for any open Examination, Collection, or Appeals action; and view the status of compliance interactions (*e.g.*, the IRS received documentation and the examiner is reviewing).

### Additional Complexities Due to COVID-19

The pandemic and resulting impact on taxpayers emphasized the urgent need for a robust Online Account. During the pandemic, the IRS took the unprecedented step to protect the health and safety of its employees, their families, taxpayers, and local communities by shutting down some of its operations for months, including notice printing sites. The IRS had already digitally created many notices and placed them in the printing queue. Months passed, and when the IRS printed and mailed the notices, they still reflected the

<sup>25</sup> IRS response to TAS information request (Oct. 6, 2020).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> IRS response to TAS fact check (Nov. 24, 2020).

<sup>29</sup> IRS response to TAS information request (Oct. 6, 2020).



original dates, including due dates. Taxpayers' accounts of record reflected the original date on the notices, not the later date when the notices were mailed.

The total backlog, meaning all notices that were created but were not able to be printed and sent out on the date appearing on the notice, was approximately 31.2 million notices.<sup>30</sup> However, when addressing this backlog, the IRS did not treat all notices similarly, leading to taxpayer confusion. We anticipate future challenges as taxpayers and the IRS work through the different notice scenarios:

- The IRS purged approximately 12.3 million notices and never sent them, but they may still appear on the taxpayer's account of record;<sup>31</sup>
- The IRS purged approximately 543,000 notices, regenerated them with new dates, and later sent them out;<sup>32</sup>
- The IRS sent approximately 1.8 million notices with original dates on the notice that were prior (sometimes by months) to when they were mailed, but included an insert explaining that the taxpayer had additional time to take an action;<sup>33</sup>
- The IRS sent approximately 38,000 notices with original dates on the notice prior to when they were mailed, and taxpayers received a subsequent notice explaining they had additional time to take an action, but the subsequent notice failed to include a copy of the original notice;<sup>34</sup> and
- The IRS sent approximately 18 million notices with original dates on the notice prior to when they were mailed but included no insert or subsequent notice providing an explanation.<sup>35</sup>

Despite the IRS's efforts to prioritize which backlogged notices it should mail first, which notices were statutorily required, and which notices had incorrect dates and required an explanation or new deadline, the lack of transparency and communication created a situation confusing for IRS employees, taxpayers, and representatives, impairing their ability to effectively comply and increasing levels of stress. For example, some taxpayers may have received no communication from the IRS for months during the COVID-19 emergency when they had a balance due with interest accruing. This was due to the IRS purging certain balance due notices and then not recreating and mailing them for approximately six months.<sup>36</sup> Conversely, for notices that were not purged but sent out as generated when the printing sites reopened, some taxpayers received demands for payment even when they had already made a payment.<sup>37</sup>

An Online Account would have allowed the IRS to electronically post the notices and create an alert informing taxpayers to help mitigate the confusion. Taxpayers who received a backdated CDP hearing notice may have been especially confused, as some received an insert with their notices providing one date to request

30 IRS response to TAS information request (Nov. 24, 2020).

31 *Id.*

32 *Id.*

33 *Id.* The IRS sent 1,764,952 notices with Notice 1052-A, Important! You Have More Time to Make Your Payment (May 2020), which provided revised deadlines for notice and demand correspondence. The IRS sent 28,074 notices with Notice 1052-B, Important! You Have More Time to Make Your Payment (June 2020), which provided revised deadlines for math error notices. The IRS sent 47,497 notices with Notice 1052-C, Important! You Have Additional Time to Appeal (July 2020), which provided revised deadlines for Collection Due Process hearing notices.

34 IRS response to TAS information request (Nov. 24, 2020); IRS email response to TAS (Dec. 1, 2020). The supplemental notices provided a revised deadline for requesting a CDP hearing or a revised deadline for a taxpayer to file suit in court to challenge a refund disallowance.

35 IRS response to TAS information request (Nov. 24, 2020); IRS email response to TAS (Dec. 1, 2020).

36 IRS, IRS to Restart Sending 500 Series Balance Due Notices, <https://www.irs.gov/newsroom/irs-to-restart-sending-500-series-balance-due-notices> (Oct. 23, 2020; rev. Nov. 16, 2020). Additionally, for notices that were not purged but sent out as generated when the printing sites reopened, some taxpayers received demands for payment even when they had already made a payment.

37 Alexis Gravely, *Neal Asks IRS to Halt Tax Bills Amid Mail Backlog*, TAX NOTES TODAY (Aug. 21, 2020).

a hearing,<sup>38</sup> while other taxpayers later received an additional notice providing a different date to request a hearing. Viewing copies of these notices online would help taxpayers confirm whether their notice provided the first revised deadline or the second. Although the situation is understandable, it is unacceptable for the IRS to issue almost 20 million notices that create confusion and uncertainty.<sup>39</sup>

Another area where a robust Online Account would have mitigated problems with the COVID-19 emergency is incoming mail from taxpayers. During June 2020, the IRS had a backlog of 12.3 million pieces of unopened mail,<sup>40</sup> with 5.3 million remaining in early October 2020.<sup>41</sup> Taxpayers' paper refund returns and identity theft documentation supporting the validity of the refunds sat unopened and unprocessed.

The IRS provided for "digital transmission" of Form 1139, Corporation Application for Tentative Refund, and 1045, Application for Tentative Refund, which allow taxpayers to claim quick refunds (tentative allowances) for prior year minimum tax liability and net operating loss deductions pursuant to the Coronavirus Aid, Relief, and Economic Security (CARES) legislation.<sup>42</sup> Still, the "digital transmission" did not mean taxpayers could submit forms online; rather, they were merely given the option to fax in their forms. Having a portion of the Online Account where taxpayers could file key forms or requests would have provided an additional resource for taxpayers to quickly receive their tax benefits provided in the pandemic relief legislation rather than deal with delays and uncertainty.

### Greater Taxpayer Access to Online Records Will Also Benefit the IRS and TAS

The IRS expects to save millions of dollars in postage and printing by placing taxpayer notices in Online Accounts.<sup>43</sup> Placing additional information about the status of taxpayers' accounts could reduce customer service representative time as fewer taxpayers would need to call in to learn about the status of their case in examination or collection, confirm whether the IRS received and processed a document, or discover which power of attorneys are on file for which tax years. Online Accounts could free up valuable customer service representatives for taxpayers who can only use the telephone or mail to contact the IRS. During FY 2019, the Wage and Investment exam line received over one million taxpayer calls.<sup>44</sup> A survey of taxpayers who underwent correspondence examinations revealed that over 40 percent called the correspondence toll-free line simply to check the status of their audit with the majority calling more than once.<sup>45</sup> Some taxpayers reported calling solely to inform the IRS they had sent the requested documentation.

If the IRS posted notices in the Online Account and provided a notification page where taxpayers could see what information the IRS is requesting and the related due dates, taxpayers may provide the information

38 IRS, Notice 1052-C, Important! You Have Additional Time to Appeal (July 2020), provides all taxpayers receiving this notice until August 13, 2020, to request a CDP hearing.

39 The IRS mailed a total of 19,810,542 notices with dates appearing on the notices that were prior to the dates they were mailed. IRS response to TAS information request (Nov. 24, 2020).

40 *2020 Filing Season and IRS COVID-19 Recovery: Hearing Before the S. Committee on Finance*, 116th Cong. (June 30, 2020) (oral testimony of Charles P. Rettig, Commissioner of Internal Revenue).

41 *IRS in the Pandemic: Hearing Before the H. Government Operations Subcommittee, Comm. on Oversight and Reform, Ways and Means Comm.*, 116th Cong. (Oct. 7, 2020) (oral testimony of Charles P. Rettig, Commissioner of Internal Revenue).

42 IRS, Temporary procedures to fax certain Forms 1139 and 1045 due to COVID-19, <https://www.irs.gov/newsroom/temporary-procedures-to-fax-certain-forms-1139-and-1045-due-to-covid-19> (Oct. 29, 2020). See CARES Act, Pub. L. No. 116-136, §§ 2303, 2305, 134 Stat. 281 (2020).

43 IRS response to TAS information request (Oct. 6, 2020).

44 IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending Sept. 30, 2020).

45 IRS Customer Satisfaction Survey, W&I Refundable Credits Examination Operations (RCEO) IVR FY 2019 (May 2020).

more quickly, potentially resulting in shorter cycle times for examinations and collection cases.<sup>46</sup> Finally, placing information online such as past tax returns, information returns filed by the third parties, and clear due dates for filing forms and making payments will likely result in fewer taxpayer errors and a greater number of taxpayers meeting their filing and payment obligations on time.<sup>47</sup> Because the U.S. tax system is built on voluntary compliance, the IRS benefits greatly from providing top quality service and increasing trust with tax administration, leading to more taxpayers meeting their tax obligations on their own and reducing the need for compliance actions. The IRS recognizes the need to expand secure digital options for taxpayers and professionals to interact efficiently with the IRS while maintaining and improving traditional service options but has lacked the IT funding to move forward with the speed and accuracy required by taxpayers.<sup>48</sup>

**Because the U.S. tax system is built on voluntary compliance, the IRS benefits greatly from providing top quality service and increasing trust with tax administration, leading to more taxpayers meeting their tax obligations on their own and reducing the need for compliance actions.**

TAS receives many cases each year related to IRS delays. During FYs 2018-2019, TAS received approximately a quarter of its cases under criteria five or six, meaning the taxpayer experienced a delay of more than 30 days after the IRS's promised deadline to resolve a tax account problem or had not received a response or resolution to the problem or inquiry by the date promised.<sup>49</sup> Viewing the status of a case in examination, appeals, collection, or another part of the IRS would keep taxpayers informed about where their case stood and may mitigate the need for a TAS case. TAS works with the IRS to provide taxpayers with copies of IRS notices. Placing all notices online would allow TAS to focus more on obtaining relief for the taxpayer without the added time and burden of establishing the paper trail between the taxpayer and the IRS.

## CONCLUSION AND RECOMMENDATIONS

Although the IRS has taken positive steps and plans to expand online applications to provide greater access to information, there still remains a large gap between the IRS's offerings and the robust online experience taxpayers need and a quality tax administration requires. The COVID-19 emergency highlighted the

46 "Every year IRS receives millions of pieces of correspondence from audited taxpayers that IRS staff manually process. As a result, weeks can pass before taxpayer documentation is reviewed and taxpayers may make repeated calls or be asked to resubmit the same documentation." See United States Government Accountability Office (GAO), Report to the Committee on Finance, U.S. Senate, *IRS Correspondence Audits: Better Management Could Improve Tax Compliance and Reduce Taxpayer Burden* 20 (June 2014).

47 IRS Research Directors Coordinating Council, Deloitte and ASR Analytics demonstrates that making it easier for taxpayers to pay what they owe via user-friendly, self-service platforms (in addition to traditional service channels) improves voluntary compliance and satisfaction with services. IRS, *Behavioral Insights Toolkit* (May 1, 2017).

48 GAO, GAO-20-656, *Taxpayer Service Measures* 10 (Sept. 24, 2020).

49 TAS, *Business Performance Review* (4th Quarter FY 2019; 4th Quarter FY 2018). See IRM 13.1.7.2.2, TAS Case Criteria 5-7, Systemic Burden (Feb. 4, 2015).

downfalls of relying on paper. Although the IRS has contemplated many improvements to the Online Account, the National Taxpayer Advocate recommends expediting the completion date of improvements such as integrating a case management system, providing business taxpayers with full access to the same information individual taxpayers have within the Online Account, and integrating secure messaging and document upload capabilities. Without additional funding, the IRS cannot timely expand its Online Account, which requires taxpayers to rely on the phone and mail for their tax records, resulting in taxpayer burden and harm.

### Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate preliminarily recommends that the IRS:

1. Provide business taxpayers access to Online Accounts.
2. Prioritize posting to the Online Account notices that provide the taxpayer with statutory or administrative rights, a deadline for action, or notice of a potential intrusive enforcement action, such as levy.
3. Develop a timeline for when all remaining notices used by the IRS, outside the 11 notices already scheduled, will be available to be viewed within taxpayers' Online Accounts.
4. Update the programming for the Online Account application so taxpayers can view available notices that were issued prior to when the taxpayer signed up for the Online Account.
5. Provide access to all self-assistance online applications through the Online Account.
6. Update and consolidate Online Account information to reflect information from all other IRS online applications.
7. Integrate secure messaging so that taxpayers can initiate and view messages and upload and download documents to and from the IRS within their Online Accounts.
8. Place taxpayer-specific alerts and notifications on the main dashboard of taxpayers' Online Accounts to notify them of the status of their cases and specific deadlines for action.
9. Allow taxpayers to add, change, or remove authorized representatives through the Online Account.
10. Allow taxpayers to give authorized representatives access to Online Account records for the authorized tax years.
11. Allow taxpayers to update their address and other contact information through the Online Account.
12. Allow taxpayers to make certain requests and file certain forms through the Online Account, such as a CDP request, a penalty abatement request, or a tentative carryback application for refund where e-file is not otherwise available.

### Legislative Recommendations to Congress

The National Taxpayer Advocate recommends that Congress:

1. Continue to fund the technological upgrades the IRS requires to provide an enhanced level of service that the country deserves to improve its overall operations.
2. Provide sufficient funding for the Business Systems Modernization account to enable the IRS to replace its 1960s technology systems, create an integrated case management system, and offer robust Online Accounts for taxpayers and practitioners.<sup>50</sup>

<sup>50</sup> National Taxpayer Advocate 2021 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (Provide the IRS With Sufficient Funding to Meet Taxpayer Needs and Improve Federal Tax Compliance)*.

## IRS COMMENTS

We agree with the National Taxpayer Advocate on the need for robust online services as one part of our omni-channel approach to customer service consisting of internet capabilities, correspondence, telephone, and face-to-face interactions. We have focused for several years now on prioritizing, building and delivering the services that are most needed, while also considering feasibility given significant resource and technology constraints. The IRS systematically reviews taxpayer and stakeholder feedback, market research, and strategic priorities to inform our product prioritization and development.

Since launching Online Account for individual taxpayers in 2016, the IRS has added many new features using an agile development process with releases approximately every nine weeks. The IRS has a long list of ideas and must continuously prioritize which features to work on with the available capacity, taking into consideration the taxpayer and business benefit and the level of effort. The team has prioritized features that don't otherwise exist online, or where there were opportunities for significant user experience improvements. Current features available to individual taxpayers via their Online Account include personalized messaging on the home page with reminders to file, lien or levy status, payment plan details and status, and any pending payments. Additionally, in November we added a Message Center where taxpayers can view and download digital copies of six high priority notices. These notices cover 23% of the notice volume sent by the IRS, totaling more than 26 million notices, and taxpayers can view through Online Account any of these notices issued since November 15, 2020. In January we plan to display a taxpayer's Economic Impact Payment amount in Online Account, providing a digital way to look this up when filing 2020 tax returns for taxpayers who have misplaced or have not received the related notices and need to claim additional amounts.

In accordance with the Taxpayer First Act (TFA), the IRS recently developed a 10-year strategy for improving the taxpayer experience. This strategy will help drive prioritization and decision making going forward. The TFA Taxpayer Experience Strategy includes plans to further expand on existing Online Account features and add new ones. However, any future expansion or acceleration would be dependent on receipt of funding.

In Fiscal Year (FY) 2021, the IRS plans to add additional notices, show the taxpayer's address on file, enable taxpayers to sign tax professional authorizations, and offer the option to create a short-term payment plan in Online Account. In partnership with the Bureau of the Fiscal Service, the IRS plans to enable taxpayers in FY 2022 to make payments through Online Account, allowing taxpayers to view their balance and pay it in a single session online without having to reenter information, better enabling voluntary compliance and improving the user experience. In FYs 2022-2024, the IRS plans to add the option to update contact information, allow opt-in and -out of paper notices, allow access to secure messaging in Online Account, and add additional features for tax professionals.

We appreciate the National Taxpayer Advocate's support for additional and consistent funding for digital modernization and the National Taxpayer Advocate's recognition of the positive steps the IRS has taken to expand online services for taxpayers. The IRS is committed to high-quality, seamless

experience — through expanded digital service options as well as through improved traditional channels — in order to help resolve diverse taxpayer needs and promote voluntary tax compliance.

## TAXPAYER ADVOCATE SERVICE COMMENTS

TAS appreciates that the IRS is forward-thinking in regard to providing taxpayers comprehensive access to their online records through the Online Account and other applications. As discussed in the Most Serious Problem and the IRS response, there are many future features the IRS is planning that will greatly benefit taxpayers. Providing business taxpayers with the same access to online records as individual taxpayers will be critical to ensuring all taxpayers can easily access the information they need to comply with their tax obligations.

Throughout the Most Serious Problem, we illustrate problems with relying on a piecemeal system of online applications, where taxpayers must use one application to find some information and then another application to find additional information or take an action. The IRS has made some progress in integrating applications. The IRS's future plans to allow taxpayers to view a balance and pay it in a single session will encourage taxpayer compliance and reduce taxpayer frustration. Another step forward is the plan to make information regarding Economic Impact Payments available in the Online Account starting in early 2021. However, the IRS has not committed to integrating all its taxpayer-facing online applications into the Online Account. This step is key to making access to online records simpler for taxpayers. Although the IRS states that it is prioritizing features that do not otherwise exist online, it should also make adjustments to existing features so they are easier to use and integrated in one place.

The Most Serious Problem discusses the downfalls of relying primarily on transcripts to inform taxpayers about their accounts. As explained, the transcript can be confusing to taxpayers, who cannot easily ascertain from the transcript when a return was filed or when a refund was issued. Additionally, the transcript lacks key information shown on a taxpayer's return, such as the dependents claimed for certain tax benefits. The IRS has not committed to posting actual copies of returns within the Online Account, and we hope this is something it will reconsider in the near future.

TAS is pleased to learn the IRS has already begun posting notices in the Online Account, starting with the six notices that were part of a November 2020 update. The IRS indicates that the notices chosen represent a significant portion of all notices the IRS sends. While it is positive that the IRS is focusing on posting high-volume taxpayer notices in the Online Account, TAS believes the IRS should not only consider volume but also the impact on taxpayer rights when it chooses which notices to include next. Many of the notices included or planned are primarily informational notices. Missing from the list of notices currently available or planned for FY 2021 are some key taxpayer



notices such as the statutory notice of deficiency, which provides a taxpayer's only opportunity to challenge a liability in court prior to paying it; the CDP notice, which offers the taxpayer a deadline to request a hearing before the IRS Independent Office of Appeals; and the refund disallowance notice, which sets a two-year deadline to challenge a refund disallowance. TAS encourages the IRS to develop a prioritization plan for posting notices that considers the impact on taxpayer rights as well as volume.

The IRS must accelerate its timeframe for posting additional notices in the Online Account. The 31.2 million notices created during mid-2020 that could not be mailed on time due to the COVID-19 pandemic demonstrate how it is crucial for taxpayers to have access to their notices online. As taxpayers are grappling to understand the impact of the late-mailed or purged notices and what it means for their account balances and due dates, the IRS can leverage the Online Account to provide information. For example, even if a taxpayer lost a copy of his or her refund disallowance notice, and this notice is not yet included in the Online Account, the IRS could use personalized messaging to provide an alert to the taxpayer regarding when his or her deadlines expire for administratively appealing the disallowance or challenging it in court. The Most Serious Problem gives examples of other personalized status updates.

Overall, the IRS has made great strides toward providing more taxpayer information online. TAS understands that funding will continue to dictate when and what improvements the IRS can make to online services. Notwithstanding this restriction, TAS believes the following recommendations will help the IRS prioritize changes that will make it simpler for taxpayers to access their tax information online and will promote taxpayer rights.

## RECOMMENDATIONS

### Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Provide business taxpayers access to an online account similar to the IRS's Online Account that is available to individual taxpayers.
2. Prioritize posting to the Online Account notices that provide the taxpayer with key statutory or administrative rights, a deadline for action, or notice of a potential intrusive enforcement action, such as levy.
3. Develop a timeline for when all remaining notices used by the IRS, outside the 11 notices already scheduled, will be available to be viewed within taxpayers' Online Accounts.
4. Provide access to all self-assistance online applications through the Online Account.
5. Update and consolidate Online Account information to reflect information from all other IRS online applications.
6. Integrate secure messaging so that taxpayers can initiate and view messages and upload and download documents to and from the IRS within their Online Accounts.
7. Place taxpayer-specific alert banners on the main dashboard of taxpayers' Online Accounts to provide information regarding their status of their cases and highlight important deadlines,

- such as the due date for providing documentation in an examination, the assignment of a balance due case to a Revenue Officer, or the deadline to request a CDP hearing.
8. Allow taxpayers to add, change, or remove authorized representatives through the Online Account.
  9. Allow taxpayers to give authorized representatives access to Online Account records for the authorized tax years.
  10. Allow taxpayers to update their address and other contact information through the Online Account.
  11. Allow taxpayers to make certain requests and file certain forms through the Online Account, such as a CDP request, a penalty abatement request, or a tentative carryback application for refund where e-file is not otherwise available.

### Legislative Recommendations to Congress

The National Taxpayer Advocate recommends that Congress:

1. Continue to fund the technological upgrades the IRS requires to provide an enhanced level of service that the country deserves to improve its overall operations.
2. Provide sufficient funding for the Business Systems Modernization account to enable the IRS to replace its 1960s technology systems, create an integrated case management system, and offer robust online accounts for taxpayers and practitioners.<sup>51</sup>

<sup>51</sup> National Taxpayer Advocate 2021 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (Provide the IRS With Sufficient Funding to Meet Taxpayer Needs and Improve Federal Tax Compliance)*.

## Limited Digital Communications With the IRS Make Problem Resolution Unnecessarily Difficult for Taxpayers

### RESPONSIBLE OFFICIALS

Robert Choi, Chief Privacy Officer, Privacy, Governmental Liaison and Disclosure  
 Amalia Colbert, Deputy Chief, Appeals and Project Director, Taxpayer First Act Office  
 Nancy Sieger, Acting Chief Information Officer  
 Karen Howard, Director, Office of Online Services  
 Eric Hylton, Commissioner, Small Business/Self-Employed Division  
 Kenneth Corbin, Commissioner, Wage and Investment Division

### TAXPAYER RIGHTS IMPACTED<sup>1</sup>

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Finality*
- *The Right to Confidentiality*
- *The Right to Retain Representation*
- *The Right to a Fair and Just Tax System*

### EXPLANATION OF THE PROBLEM

During the early months of the COVID-19 crisis, taxpayers experienced additional difficulties interacting with the IRS. Taxpayers could not receive assistance from IRS employees by telephone or in person because the IRS shut down telephone call centers and Taxpayer Assistance Centers (TACs) to protect the health and safety of taxpayers, IRS employees, contractors, stakeholders, and local communities.<sup>2</sup> IRS facilities that process paper also shut down, so the IRS could not open or process paper tax returns and other mailed correspondence.<sup>3</sup> In addition, revenue agents and revenue officers began working remotely, which intensified the need for alternative methods of communication, such as the use of email or electronic means to upload documentation.

The COVID-19 related closures and resulting challenges exposed critical shortcomings in IRS service and communication channels. Going forward, it is clear that the IRS must increase the availability and use of digital communications, including the electronic exchange of correspondence and documents in a secure

1 See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the IRC. See IRC § 7803(a)(3).  
 2 Wage and Investment (W&I), Business Performance Review Q3 Fiscal Year (FY) 2020 3-4 (Aug. 7, 2020); IRS SERP (Servicewide Electronic Research Program) Alert 20A0135, Product Line Closure (Rev. Apr. 1, 2020); IRS SERP Alert 20A0191, TPP Guidance During Continued COVID-19 Closures (Apr. 29, 2020) (TPP line opened on April 27, 2020); IRS SERP Alert 20A0207, Accounts Management to Open Some Phone Lines on Monday May 18, 2020 (May 19, 2020); IRS, Taxpayer Assistance Centers Statement (Mar. 20, 2020), <https://www.irs.gov/newsroom/taxpayer-assistance-center-statement>.  
 3 Email from Charles Rettig, IRS Commissioner, to all IRS employees (June 3, 2020).

environment for critical services. To improve taxpayer service and avoid widescale service shutdowns during a future national or local emergency, the IRS should address:<sup>4</sup>

- The crucial need to maintain an omnichannel service environment;
- Taxpayers' need for an expanded and permanent way to digitally transmit and sign documents;
- Authentication barriers for many digital applications;
- Taxpayers' difficulty signing up for Taxpayer Digital Communications Secure Messaging;
- Limited digital communication options for taxpayers (individuals and businesses);
- The need for all digital applications to be mobile-ready; and
- Limited virtual face-to-face service options.

At the drafting of this report, the IRS Taxpayer First Act Office (TFAO) was finalizing the statutorily required Taxpayer First Act Report to Congress.<sup>5</sup> The planned report includes a Taxpayer Experience Strategy with a section devoted to "Expanded Digital Services," which TAS highly endorses and recommends the IRS move forward with as soon as is practical.<sup>6</sup> Many of the strategy's proposals to expand digital services are referenced herein. However, it is crucial that the IRS receives sufficient funds to implement such proposals provided in the TFAO report.

**The COVID-19 related closures and resulting challenges exposed critical shortcomings in IRS service and communication channels. Going forward, it is clear that the IRS must increase the availability and use of digital communications, including the electronic exchange of correspondence and documents in a secure environment for critical services.**

This analysis does not include issues related to online account applications for individual taxpayers, tax professionals, or business taxpayers, which is discussed separately.<sup>7</sup> However, the expansion of digital services available to taxpayers through these online accounts is critical. For taxpayers who sign up for online accounts, such accounts could provide a single-entry point to receive the numerous digital services provided by the IRS.

4 IRS actions to address these items are consistent with the IRS Strategic Plan, which includes an objective to "[e]xpand secure digital options for taxpayers and professionals to interact efficiently with the IRS, while maintaining and improving traditional service options." IRS, IRS Strategic Plan FYs 2018 – 2022, <https://www.irs.gov/about-irs/irs-strategic-plan>. IRS actions to address these items are also consistent with the Taxpayer Experience Pillar of the IRS Integrated Modernization Business Plan. IRS, IRS Integrated Modernization Business Plan 17-20 (Apr. 2019), [https://www.irs.gov/pub/irs-utl/irs\\_2019\\_integrated\\_modernization\\_business\\_plan.pdf](https://www.irs.gov/pub/irs-utl/irs_2019_integrated_modernization_business_plan.pdf).

5 See Taxpayer First Act, Pub. L. No. 116-25, § 1101, 133 Stat. 981 (2019); TFAO response to TAS information request (Oct. 13, 2020).

6 TFAO response to TAS information request (Oct. 13, 2020).

7 See Most Serious Problem: *Online Records Access: Limited Electronic Access to Taxpayer Records Through an Online Account Makes Problem Resolution Difficult for Taxpayers and Results in Inefficient Tax Administration*, *supra*.

## It Is Crucial to Maintain an Omnichannel Service Environment

Before discussing the many benefits of digital communication, it is critical to note that the IRS must still maintain telephone, mail, and in-person service options. Millions of taxpayers (about 27 percent of U.S. adults) still do not have broadband internet at home.<sup>8</sup> In addition, many taxpayers lack sufficient computer skills to interact electronically or may strongly prefer to interact with the IRS by telephone, in-person, or in writing. For these reasons, it is essential that the IRS maintain a robust omnichannel service environment while enhancing its digital offerings.<sup>9</sup>

## ANALYSIS

During the COVID-19 crisis, with the temporary closure of TACs, assistor-supported telephone lines, and mail processing centers, the IRS encouraged taxpayers to use digital service options.<sup>10</sup> The pandemic exposed shortcomings in the IRS's portfolio of digital options, which the IRS addressed by developing temporary workaround procedures. The IRS must build upon these short-term initiatives and expand and make permanent improvements in its digital service offerings, as discussed below.

## Taxpayers Need an Expanded and Permanent Way to Digitally Transmit and Sign Documents<sup>11</sup>

Pre-pandemic, taxpayer and practitioners faced the day-to-day challenges resulting from the limited ability to digitally transmit and sign documents. The temporary closure of IRS offices and mail facilities made it impossible for IRS employees to receive paper documents from taxpayers and representatives. As a temporary workaround, the IRS issued guidance, effective through 2020, authorizing employees to accept and transmit documents related to the determination or collection of a tax liability by email. The guidance also permitted employees to accept images of signatures (scanned or photographed) and electronic signatures on documents related to the determination or collection of a tax liability.<sup>12</sup> TAS issued similar guidance regarding digital communications and transmission of documents for open TAS cases.<sup>13</sup>

The IRS put these temporary procedures in place to keep compliance work progressing toward resolution and accept "low risk" forms and requests in the easiest way possible for taxpayers during COVID-19 restrictions.<sup>14</sup> These temporary procedures have been positively received, and we recommend the IRS make these changes permanent.<sup>15</sup> The IRS has indicated that it will determine whether to extend the effective dates of the

8 Monica Anderson, Pew Research Center, *Mobile Technology and Home Broadband 2019*, at 3 (June 13, 2019).

9 For more details on taxpayer needs and preferences, see National Taxpayer Advocate 2019 Annual Report to Congress 6-7 (Most Serious Problem: *Customer Service Strategy: The IRS Needs to Develop a Comprehensive Customer Service Strategy That Puts Taxpayers First, Incorporates Research on Customer Needs and Preferences, and Focuses on Measurable Results*); Emily A. Vogels and Monica Anderson, Pew Research Center, *Americans and Digital Knowledge* (Oct. 9, 2019).

10 IRS, IR-2020-99, IRS.gov Helps Taxpayers Get Tax Information They Need; Find Tools for Filing, Paying, Checking Accounts and Answering Questions (May 21, 2020), <https://www.irs.gov/newsroom/irsgov-helps-taxpayers-get-tax-information-they-need-find-tools-for-filing-paying-checking-accounts-and-answering-questions>.

11 See Most Serious Problem: *Online Records Access: Limited Electronic Access to Taxpayer Records Through an Online Account Makes Problem Resolution Difficult for Taxpayers and Results in Inefficient Tax Administration*, *supra*, for a detailed discussion of the IRS's plans to securely exchange documents through the online account applications.

12 Memorandum for All Services and Enforcement Employees, (1) Approval to Accept Images of Signatures and Digital Signatures (2) Approval to Receive Documents and Transmit Encrypted Documents by Email, by IRS Deputy Commissioner, Services and Enforcement (June 12, 2020).

13 Deputy National Taxpayer Advocate, Interim Guidance, Digital Signatures and External Email Communications (July 8, 2020).

14 Privacy, Governmental Liaison and Disclosure (PGLD) response to TAS information request (Oct. 13, 2020).

15 See, e.g., James Creech, *The IRS Cracks Open the Door to Electronic Communications*, *PROCEDURALLY TAXING* (May 14, 2020), <https://procedurallytaxing.com/the-irs-cracks-open-the-door-to-electronic-communications>.

procedures and include additional types of documents based on the success of the temporary initiative.<sup>16</sup> The IRS Enterprise Digitalization and Case Management Office is evaluating how the IRS can best increase digital intake across the IRS.<sup>17</sup>

In addition, during 2020, the IRS expanded the list of forms on which it will temporarily accept electronic signatures. For example, on August 28, 2020, the IRS announced that it will accept electronic signatures on ten forms that cannot be electronically filed, and it subsequently added six more forms on September 10, 2020.<sup>18</sup> The IRS will accept electronic signatures on these forms if signed and postmarked by December 31, 2020.<sup>19</sup> It indicated that the reason for the temporary change in procedure is to reduce in-person contact and lessen the risk to taxpayers and tax professionals, allowing both groups to work remotely to timely file forms.<sup>20</sup> We continue to recommend the IRS make these procedures permanent.<sup>21</sup>

Section 2302 of the Taxpayer First Act (TFA) requires the IRS to publish guidance establishing uniform standards and procedures for the acceptance of taxpayers' electronic signatures for any request for disclosure of a taxpayer's return or return information (e.g., Form 2848, Power of Attorney and Declaration of Representative, and Form 8821, Tax Information Authorization).<sup>22</sup> To comply, the IRS has taken the following actions:

- The IRS has approved an interim process allowing for representatives to electronically submit Form 2848 by attaching a document to a secure messaging platform.<sup>23</sup>
- Beginning in January 2021, the IRS will offer taxpayers and representatives the option of using electronic signatures on third-party authorization forms and uploading the documents to a secure communication platform, Taxpayer Digital Communication, which will be accessible on IRS.gov. The new "Submit Forms 2848 and 8821 Online" page will provide a way to upload Forms 2848 and 8821 (signed by taxpayers and representatives either electronically or in ink). The uploaded documents will transmit to the Centralized Authorization File units for the standard review and processing.<sup>24</sup>
- The IRS has also accelerated plans to offer this capability on the upcoming tax professional online account application. The tax professional online account application will allow tax professionals to interface with their clients' taxpayer online accounts to enable the establishment and management of authorizations (Forms 2848 and 8821) completely online, utilizing electronic signatures.<sup>25</sup> The IRS plans to launch the tax professional online account application mid-2021 and add further capabilities in the future.<sup>26</sup>

16 PGLD response to TAS information request (Oct. 13, 2020).

17 *Id.*

18 IRS, IR-2020-206, *IRS Adds Six More Forms to List That Can Be Signed Digitally; 16 Now Available* (Sept. 10, 2020).

19 IRS SERP Alert 20A0383, *Use of E-Signatures on Certain Forms* (Sept. 10, 2020).

20 IRS, IR-2020-206, *IRS Adds Six More Forms to List That Can Be Signed Digitally; 16 Now Available* (Sept. 10, 2020).

21 See *IRS in the Pandemic: Hearing Before the Subcomm. on Government Operations of the H. Comm. on Oversight and Reform*, 116th Cong. (Oct. 7, 2020) (written statement of Erin M. Collins, National Taxpayer Advocate); National Taxpayer Advocate Fiscal Year 2021 Objectives Report to Congress 10-45 (Systemic Advocacy Objective: *Protecting the Rights of Taxpayers Impacted by the COVID-19 National Emergency and Restoring Much-Needed Taxpayer Services*).

22 TFA, Pub. L. No. 116-25, § 2302, 133 Stat. 1013 (2019) (mandating the IRS to publish guidance within six months of enactment establishing uniform standards and procedures for the acceptance of taxpayers' digital signatures for powers of attorneys and disclosure authorizations); IRC § 6061(b)(3).

23 W&I response to TAS information request (Oct. 6, 2020).

24 IRS Deputy Commissioner Services and Enforcement, *IRS to Offer Electronic Signature Solutions for Third-Party Authorization Forms* (Oct. 30, 2020).

25 W&I response to TAS information request (Oct. 6, 2020). For more information on the online account for tax professionals, see Most Serious Problem: *Online Records Access: Limited Electronic Access to Taxpayer Records Through an Online Account Makes Problem Resolution Difficult for Taxpayers and Results in Inefficient Tax Administration*, *supra*.

26 Office of Online Services (OLS), *Tax Pro Account Briefing 5* (Aug. 2020).



**The National Taxpayer Advocate urges the IRS to accept electronic signatures on all documents that require a signature and to continue to allow and expand its use of secure digital communications permanently.**

The IRS is also developing an e-Signature strategy. The IRS has indicated that it aims to develop a strategy that is customer-friendly, accessible to a broad customer base, compliant with federal mandates and requirements, and consistent with IRS policy.<sup>27</sup> The strategy will incorporate a robust e-authentication process to identity-proof and authenticate the signer. It will also establish a Servicewide approach to the strategic goals, objectives, and initiatives needed for electronic signature implementation.<sup>28</sup> Once the IRS assesses, identifies, and eliminates any data security vulnerabilities or file size limitation issues, if applicable, the National Taxpayer Advocate urges the IRS to accept electronic signatures on all documents that require a signature and to continue to allow and expand its use of secure digital communications permanently. We recommend the IRS continue soliciting practical suggestions and input from external stakeholders on how to best use electronic signatures.<sup>29</sup>

### **Authentication Remains a Barrier for Many Digital Applications**

For taxpayers to access many of the digital services provided by the IRS, they must first satisfy strict IRS e-authentication requirements. The IRS developed these strict authentication requirements to comply with guidelines issued by the National Institute of Standards and Technology (NIST)<sup>30</sup> and applies them to the Secure Access e-authentication platform for taxpayers to access most digital applications.<sup>31</sup> Effective authentication requirements are necessary to screen out often highly sophisticated hackers and other unauthorized persons. However, taxpayers also experience difficulties authenticating their identities to access digital applications.<sup>32</sup> For example, the collective authentication rate for IRS online applications requiring the highest level of assurance authentication, such as taxpayer online accounts and the Taxpayer Digital Communication Secure Messaging (TDC SM) program, was about 42 percent in fiscal year (FY) 2020.<sup>33</sup>

<sup>27</sup> Email from Director, Identity Assurance, PGLD, e-Signature Integrated Project Team Update (Oct. 7, 2020).

<sup>28</sup> PGLD response to TAS information request (Oct. 13, 2020).

<sup>29</sup> See, e.g., IRS Pub. 5316, Internal Revenue Service Advisory Council, Public Report 37-41 (Nov. 2019); IRS Pub. 3415, Electronic Tax Administration Advisory Committee Annual Report to Congress 42 (June 2020); Letter from Christopher W. Hesse, Chair, AICPA Tax Executive Committee, to Charles P. Rettig, Comm'r, IRS, *Temporary IRS Guidance for Electronic Signature Program* (Aug. 19, 2020); Letter from Tom Callahan, Chair, Section of Taxation, ABA, to Charles P. Rettig, Comm'r, IRS, COVID-19 Response (Apr. 3, 2020); Letter from Jerry Gaddis, President, National Association of Enrolled Agents to Charles P. Rettig, Comm'r, IRS, Uniform Standards for Electronic Signatures (Apr. 1, 2020).

<sup>30</sup> NIST *Special Publication 800-63-2, Electronic Authentication Guidelines* (Sept. 2013); Office of Management and Budget (OMB), M-19-17, *Enabling Mission Delivery Through Improved Identity, Credential, and Access Management (ICAM) Policy 2*, 7 (May 21, 2019).

<sup>31</sup> Not all TDC SM installations require authentication via Secure Access. For example, the Large Business and International Division manually authenticates users using WebEx. IRS response to TAS fact check (Nov. 20, 2020).

<sup>32</sup> For additional information about the information needed to pass Secure Access authentication, see IRS, *Secure Access: How to Register for Certain Online Self-Help Tools*, <https://www.irs.gov/individuals/secure-access-how-to-register-for-certain-online-self-help-tools> (last visited Oct. 16, 2020); National Taxpayer Advocate Fiscal Year 2020 Objectives Report 108 (Area of Focus: *Facilitate Digital Interaction Between the IRS and Taxpayers While Still Maintaining Strict Security of Taxpayer Information*).

<sup>33</sup> PGLD response to TAS information request (Oct. 13, 2020). Note that the option to receive an activation code by mail was not available for several months during the COVID-19 pandemic, and this impacted the verification rate.

This means about 58 percent of taxpayers who attempted to set up an account could not register for one because they could not satisfy the strict authentication requirements.

Since the IRS developed Secure Access, NIST has issued even more rigorous e-authentication guidelines for federal agencies.<sup>34</sup> To comply with these rigorous guidelines, the IRS is developing the next iteration of Secure Access, called the Secure Access Digital Identity (SADI) platform. SADI integrates one or more credential service providers (CSPs) to complete identity verification and issue credentials to access applications.<sup>35</sup> Using this approach will allow other federal agencies to accept credentials if they use the same CSP, reducing the burden on taxpayers interacting with several federal agencies. Under the SADI platform, the registration and login processes will change by requiring new information to establish the user's digital identity in the identity proofing process (*e.g.*, passport or driver's license).<sup>36</sup> As the IRS further develops the SADI platform, it plans to test it on diverse populations to understand its impact on different demographics.<sup>37</sup> The IRS is planning to test SADI on one online application in July 2021 (ID Verify) with plans to implement SADI on other digital applications by September 2024.<sup>38</sup> As it performs testing of the platform, we recommend that the IRS continue to assess how the new requirements will impact different demographics and determine the feasibility of potentially increasing accessibility while also maintaining compliance with NIST guidelines.

The Identity Assurance group in Privacy, Governmental Liaison and Disclosure (PGLD) and Identity and Access Management group in Information Technology have ongoing discussions with NIST regarding implementing SADI and leveraging CSPs to identity-proof and authenticate taxpayers and representatives. The IRS plans to share the results of the initial SADI pilot with NIST to better understand and solve challenges while balancing security and accessibility. The IRS has also provided comments on NIST guidelines under development, including a recommendation to reconsider the evidence requirements for the three identified Identity Assurance Levels (IALs) to allow agencies to accept risk to balance accessibility/pass rates and security.<sup>39</sup>

To raise the verification rates, PGLD's Identity Assurance is working with the IRS Office of Online Services to implement the Secure Access Virtual Assistant. When error messages occur during the authentication process, the Virtual Assistant provides guidance to help the user overcome the error. This tool is aimed at improving the user experience by providing self-guided help and information on the most common errors taxpayers encounter during the three main steps of the Secure Access identity proofing process.<sup>40</sup>

## Taxpayers Face Difficulty Signing Up for Taxpayer Digital Communications Secure Messaging

The TDC SM program, which currently utilizes the eGain Solve communication platform, provides taxpayers with an option to digitally communicate with IRS employees in a secure manner rather than through paper correspondence, fax, and telephone calls. Specifically, TDC SM enables taxpayers to digitally submit

34 NIST *Special Publication 800-63-3, Digital Identity Guidelines* (June 2017).

35 IRS PGLD, Identity and Access Management and Identity Assurance, Secure Access Digital Identity (SADI) & App Integration Overview 3 (Sept. 2020).

36 *Id.* at 4-5.

37 Meeting Between PGLD and TAS, Overview of SADI with TAS (Sept. 22, 2020); PGLD response to TAS information request (Oct. 13, 2020).

38 PGLD response to TAS information request (Oct. 13, 2020).

39 *Id.* For a detailed description of how IALs are determined, see National Institute of Standards and Technology, *Special Publication 800-63-3, Digital Identity Guidelines*, § 6.1 (June 2017).

40 *Id.*

documentation quickly and securely through their web browser at their own convenience, allowing quicker resolution of their compliance issues. Because it reduces or eliminates the need to call or mail correspondence to the IRS, the program was a much-needed communication channel during the COVID-19 crisis.<sup>41</sup>

The TDC SM program is only available to taxpayers invited by the IRS to participate. Taxpayers who participate in the program must consent to receive information via the TDC SM platform by agreeing to the Terms of Service presented on first use. Taxpayers receive an invitation by letter (Correspondence Exam) or in person (Field Exam) requesting them to log into their secure accounts.<sup>42</sup> Once the taxpayer passes the strict authentication requirements and registers, the program allows him or her to send messages and securely attach and submit digital documentation.<sup>43</sup>

TDC SM is also available to taxpayer's representatives.<sup>44</sup> Appropriate authorizations must be on file. Once the representative authenticates his or her identity (using the representative's own Social Security number), the representative is assigned a secure messaging mailbox to receive copies of communications between the IRS and the client.<sup>45</sup>

These IRS organizations are currently using or have used TDC SM:

- Taxpayer Advocate Service (TAS): Conducted a TDC SM pilot in 2017 and 2018 but discontinued after experiencing a low participation rate.<sup>46</sup>
- Small Business/Self-Employed Division (SB/SE): Began using TDC SM in FY 2017 with Schedule A Correspondence Exams but has since expanded to include most issues worked by the program. SB/SE now offers TDC SM in all five Correspondence Exam locations. In September 2020, it also expanded to one campus of automated underreporter (AUR) and plans to expand to additional campuses in 2021.<sup>47</sup> In addition, Field Exam initiated a test in 2018 and is planning a possible expansion nationwide.<sup>48</sup>
- Large Business and International Division (LB&I): The Affordable Care Act group began using TDC SM in 2017 to communicate with Branded Prescription Drug fee payers. Since May 2020, LB&I Advanced Pricing and Mutual Agreement uses it to communicate with representatives of taxpayers with international tax issues. LB&I Compliance began using TDC SM on May 15, 2020 and has steadily expanded the program to include more businesses and business users.<sup>49</sup>
- Independent Office of Appeals: Began using TDC SM in October 2020.<sup>50</sup>

41 Appeals Office Provides Guidance for Secure Messaging Pilot Program, *Tax Notes* (Oct. 2, 2020); Memorandum, Appeals Taxpayer Digital Communications Secure Messaging Pilot, by Director, Case and Operations Support, IRS Independent Office of Appeals, Deputy Commissioner, Services and Enforcement (Oct. 2, 2020).

42 Appeals Office Provides Guidance for Secure Messaging Pilot Program, *Tax Notes* (Oct. 2, 2020).

43 Nathan J. Richman, *IRS Secure Messaging Pilot Coming to More Campuses*, *Tax Notes* (Aug. 5, 2020).

44 SB/SE, LB&I, TE/GE, and the Independent Office of Appeals are currently conducting TDC pilots. Meeting between TAS and IRS Office of Online Services (Sept. 18, 2020). TAS conducted a TDC pilot in 2017 and to 2018. LB&I has actively used the TDC Secure File Sharing-Secure Messaging (SFS-SM) program since May 15, 2020 and is considering ways to expand such usage. LB&I response to TAS information request (Oct. 6, 2020).

45 Nathan J. Richman, *IRS Secure Messaging Pilot Coming to More Campuses*, *Tax Notes* (Aug. 5, 2020).

46 See National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress 108-112 (Area of Focus: *Facilitate Digital Interaction Between the IRS and Taxpayers While Still Maintaining Strict Security of Taxpayer Information*).

47 SB/SE response to TAS information request (Oct. 8, 2020); Meeting Minutes, Meeting Between TAS and SB/SE AUR on the topic of AUR TDC (Sept. 18, 2020).

48 SB/SE response to TAS information request (Oct. 8, 2020); Nathan J. Richman, *IRS Secure Messaging Pilot Coming to More Campuses*, *Tax Notes* (Aug. 5, 2020); IRS SERP Alert 20A0363, Expansion of TDC in SB/SE Correspondence Exam (Aug. 26, 2020).

49 LB&I response to TAS information request (Oct. 6, 2020); IRS response to TAS fact check (Nov. 20, 2020).

50 Memorandum, Appeals Taxpayer Digital Communications Secure Messaging Pilot, by Director, Case and Operations Support, IRS Independent Office of Appeals, Deputy Commissioner, Services and Enforcement (Oct. 2, 2020).

- Tax Exempt and Government Entities (TE/GE): TE/GE Tax Exempt Bonds uses the program to provide more streamlined communication with locality bond issuers, representatives, and conduit borrowers.<sup>51</sup>

The SB/SE use of TDC SM has had favorable results for those who sign up. In August 2020, SB/SE reported a satisfaction rate of over 80 percent in August 2020, and updates to the program have reduced audit time for both the IRS and taxpayers.<sup>52</sup> However, taxpayers have difficulty passing authentication requirements to register. Of the taxpayers who are invited to participate and attempt to create an account, the TDC SM authentication success rate is about 55 percent, meaning that about 45 percent of the taxpayers who attempt to participate cannot authenticate (or choose not to continue).<sup>53</sup> As stated in Figure 1.4.1, 12 percent or fewer of taxpayers invited to participate in SB/SE TDC SM actually sign up for an account during each phase of the program.<sup>54</sup>

**FIGURE 1.4.1, SB/SE TDC SM Rate of Sign Ups From FYs 2017-2020**

Implementation Phase (Periods Generally Ending in March)	Invitations Sent	Signups (Passing Secure Access Authentication)	Percentage of Invitations That Signed Up
Phase I: FY 17/18	9,150	1,071	12%
Phase II: FY 18/19	18,841	2,205	12%
Phase III: FY 19/20	50,527	5,657	11%
Feb. to Sept. 2020	24,000	2,335	10%

Until the IRS develops online accounts for individual taxpayers, tax professionals, and business taxpayers that provide a full service experience, including the TDC SM functionality to correspond with IRS employees and securely attach and submit documents, TDC SM is a useful standalone digital tool.<sup>55</sup> However, once the IRS incorporates TDC SM functionality into the online account applications for individuals, professionals, and business taxpayers, it may not need to maintain TDC SM separate and apart from the online account applications.

### Taxpayers Would Benefit From an Expansion of Taxpayer Digital Communications eGain Text Chat

The Automated Collection System (ACS) program in SB/SE implemented the ACS Text Chat pilot on the TDC platform in November 2017.<sup>56</sup> The text chat directs taxpayers to the appropriate online service options where possible to reduce the need to call the IRS. Text chat provides general assistance to taxpayers who receive certain ACS letters, visit certain IRS.gov web pages, or were routed out of the Online Payment

51 IRS response to TAS fact check (Nov. 20, 2020).

52 Nathan J. Richman, *IRS Secure Messaging Pilot Coming to More Campuses*, TAX NOTES (Aug. 5, 2020).

53 SB/SE response to TAS information request (Oct. 8, 2020); Meeting Minutes, Meeting Between TAS and SB/SE AUR on the topic of AUR TDC (Sept. 18, 2020).

54 SB/SE response to TAS information request (Oct. 8, 2020). For many of the invitations sent to taxpayers, there is no response at all, or the taxpayer sends a payment and have no need for secure messaging. IRS response to TAS fact check (Nov. 20, 2020).

55 See Most Serious Problem: *Online Records Access: Limited Electronic Access to Taxpayer Records Through an Online Account Makes Problem Resolution Difficult for Taxpayers and Results in Inefficient Tax Administration*, *supra*.

56 Director, Collection Inventory Delivery and Selection, Interim Guidance on ACS Text Chat Pilot (May 22, 2019).

Agreement application when attempting to establish an installment agreement. Initially, the pilot was implemented as unauthenticated text chat. With unauthenticated text chat, the IRS assistors do not have access to taxpayer information and cannot access the taxpayer's account. Taxpayers are also prevented from providing their Taxpayer Identification Number.

ACS launched authenticated text chat in June 2019. With authenticated text chat, the assistors can provide responses to specific questions based on the taxpayer's entry point after the taxpayer authenticates. Beginning in June 2020, taxpayers could also attach documents during an authenticated chat session.<sup>57</sup> To access authenticated text chat, the text chat assistor provides the taxpayer with a link to the e-authentication page. Once authenticated, taxpayers are routed back to the assistor on the TDC platform. If the taxpayer fails authentication, he or she can continue with unauthenticated text chat.<sup>58</sup> ACS has expanded the program to five additional IRS office locations since the beginning of the COVID-19 pandemic and now supports text chats in Spanish.<sup>59</sup> Figure 1.4.2 shows the statistics of unauthenticated and authenticated text chat.

**FIGURE 1.4.2, Performance Metrics for ACS Unauthenticated and Authenticated Text Chat<sup>60</sup>**

Performance Metrics	FY 2018	FY 2019	FY 2020
<b>Total Chats Connected</b>	<b>29,836</b>	<b>98,571</b>	<b>328,815</b>
<i>Unauthenticated Chat</i>	29,333	94,225	320,584
<i>Authenticated Chat (Added June 2019)</i>	N/A	4,346	8,231
<b>Average Wait Time</b>	<b>36s</b>	<b>1m, 31s</b>	<b>35s</b>
<b>Average Handle Time</b>	<b>7m, 42s</b>	<b>6m, 54s</b>	<b>6m, 48s</b>
<i>Unauthenticated Chat</i>	7m, 42s	6m, 48s	6m, 13s
<i>Authenticated Chat</i>	N/A	15m, 23s	21m, 50s
<b>Percent Abandoned</b>	<b>1.70%</b>	<b>2.40%</b>	<b>1.30%</b>
<b>Resolution Rate</b>	<b>71%</b>	<b>76%</b>	<b>75%</b>
<i>Unauthenticated Chat</i>	71%	76%	75%
<i>Authenticated Chat</i>	N/A	83%	75%
<b>Customer Satisfaction (Out of 5 Stars)</b>	<b>4</b>	<b>4</b>	<b>4.1</b>

ACS's implementation of text chat has had favorable results. Most notable are the low percentage of users who abandoned text chat, the high resolution rates, and high customer satisfaction rates for both types of text chats. Given these results, taxpayers would benefit from the availability of text chat beyond ACS, and we recommend the IRS increase use for taxpayers.

<sup>57</sup> SB/SE Business Performance Review FY 2020 Third Quarter 9 (Aug. 20, 2020).

<sup>58</sup> Director, Collection Inventory Delivery and Selection, Interim Guidance on ACS Text Chat Pilot (May 22, 2019).

<sup>59</sup> IRS response to TAS fact check (Nov. 20, 2020).

<sup>60</sup> OLS response to TAS information request (Oct. 13, 2020). Authenticated chats involve more individualized interactions and generally more complex, contributing to the longer handle times.

## Digital Communication Options Are Currently Limited for Business Taxpayers

Many of the existing or planned digital communication tools are aimed at assisting individual taxpayers and their representatives. The expansion of digital communication options to business taxpayers is constrained by the complexities involved in authenticating and authorizing business taxpayer representatives. The IRS relies on a resource-intensive manual consent process to identity-proof and authorize business taxpayer representatives. To authenticate a business taxpayer to use TDC SM in LB&I, this process involves several steps, including: (1) communicating with the primary business contact(s) to confirm willingness to participate in the program; (2) sending the consent form to the taxpayer, corporate officer, or authorized representative by mail, eFax, or email; (3) verifying the information included on the signed and dated consent form returned by mail, eFax, or email; (4) verifying the information included on the form; (5) in the case of a new audit, calling the taxpayer, corporate officer, or authorized representative to further authenticate through a series of questions about the tax return; and (6) sending the account username to the taxpayer, corporate officer, or authorized representative once authentication is complete.<sup>61</sup>

The Taxpayer Experience Strategy in the Taxpayer First Act Report to Congress identifies business online accounts as a priority. The planned online account for businesses will include secure document exchange capability. This initiative will start with identification of the best and most secure way to authenticate business entities. The strategy schedules business authentication work to begin in FY 2022 with developing the business online accounts projected to start by FY 2026.<sup>62</sup> We recommend the IRS consider moving up the start date to provide business online capabilities as soon as practicable.

## All Digital Applications Should Be Mobile-Ready

As the IRS releases digital service options, it must consider how taxpayers will access such services. In 2019, about 37 percent of U.S. adults mostly used a smartphone when accessing the internet. In addition, about 17 percent of U.S. adults are now “smartphone only” internet users (*i.e.*, they own a smartphone but do not subscribe to broadband internet service at home).<sup>63</sup> While not all IRS digital applications are either mobile-ready or mobile-optimized,<sup>64</sup> the IRS is making progress. Several digital applications are both mobile-ready and mobile-optimized.<sup>65</sup> Further transition of applications to mobile-ready or mobile-optimized status is anticipated as part of the IRS response the 21st Century Integrated Digital Experience Act, though none are scheduled. In addition, the Taxpayer Experience Strategy of the Taxpayer First Act Report to Congress aims to make all applications mobile-ready.<sup>66</sup>

Supplementing its effort to make services mobile-ready, the IRS is incorporating mobile technology into its notices. On October 9, 2020, the IRS announced that it added QR barcode technology to notices sent to

61 OLS response to TAS information request (Oct. 13, 2020). Authenticated chats involve more individualized interactions and generally more complex, contributing to the longer handle times. For example, LB&I is leveraging a consent process to invite business representatives to use secure messaging with the audit of LB&I taxpayers including corporations, subchapter S corporations, partnerships with assets greater than \$10 million.

62 Taxpayer First Act Office response to TAS information request (Oct. 13, 2020); OLS response to TAS information request (Oct. 13, 2020). Budget priorities and realities may influence the exact timing of the delivery of business online accounts.

63 Monica Anderson, Pew Research Center, *Mobile Technology and Home Broadband 2019*, at 2-4 (June 13, 2019).

64 “Mobile ready” is defined to mean that some layouts, content, and elements resize to mobile viewports and that the application is largely usable in those circumstances with only (relatively) minor inconveniences. “Mobile optimized,” would be mean all of the above would react for mobile viewports, and follow the standards included in the IRS Online Design Guide based upon the U.S. Web Design System. OLS response to TAS information request (Oct. 13, 2020).

65 Such applications include: Direct Pay, Online Account, Tax Exempt Organization Search, Where Is My Amended Return, and Free File Lookup Tool. OLS response to TAS information request (Oct. 13, 2020).

66 OLS response to TAS information request (Oct. 13, 2020).



millions of taxpayers. The CP14 and CP14 IA notices, the first legal notices informing taxpayers they owe a balance, are now equipped with QR bar codes so that taxpayers can use their smartphones to scan the code to go directly to IRS.gov and securely access the information they need to resolve their account balance online without the need to call or interact with the IRS directly. The IRS is assessing the possibility of adding QR codes to other balance due notices in the future.<sup>67</sup>

### Virtual Face-to-Face Service Options Are Currently Limited

Videoconference technology allows taxpayers and representatives to be seen, heard, and share documents with the IRS without being physically present.<sup>68</sup> The following IRS organizations have incorporated videoconferencing technology into their operations:

- Wage and Investment Division (W&I) Field Assistance: W&I Field Assistance offers Virtual Service Delivery (VSD) as a face-to-face service option at about 30 community partner locations such as nonprofit offices and state and local government buildings.<sup>69</sup> However, VSD generally relies on old technology that only enables two-way communications from dedicated sites.<sup>70</sup>
- The IRS Independent Office of Appeals: Appeals offers WebEx technology for virtual face-to-face conferences between taxpayers, representatives, and Appeals Officers.<sup>71</sup>
- SB/SE Field and Specialty Exam: SB/SE has issued guidance setting forth the guidelines for Field and Specialty Exam employees to use WebEx videoconferencing technology to interact with taxpayers.<sup>72</sup>
- IRS Office of Chief Counsel: The IRS Office of Chief Counsel and the U.S. Tax Court are conducting pre-trial conferences and trials using videoconferencing technology.<sup>73</sup>

The IRS has distributed the Zoom for Government (ZoomGov) videoconferencing software to employees' workstations throughout the agency for internal and external meetings.<sup>74</sup> TAS is also evaluating the feasibility of using ZoomGov videoconferencing technology for virtual face-to-face meetings between Case Advocates and taxpayers (or their representatives). Videoconferencing is not meant to replace in-person or telephone conference options; rather, it adds a digital option to communicate with taxpayers and their representatives.

The Taxpayer Experience Strategy in the Taxpayer First Act Report to Congress includes plans to expand virtual face-to-face capabilities throughout the agency. The plans would enable taxpayers to schedule a video chat with an IRS employee using a computer, tablet, or mobile phone. This technology is planned to begin in FY 2021 with incremental increases over the next three to five years. The report includes plans to expand the availability of digital kiosks in the next three to five years. Such planned kiosks will connect to a live assistor,

67 IRS, IR-2020-233, IRS Adds QR Technology to Key Balance Due Notices to Help Taxpayers (Oct. 9, 2020).

68 IRS, Appeals Virtual Conferences – Webex, <https://www.irs.gov/appeals/appeals-virtual-conferences-webex> (last visited Oct. 6, 2020).

69 TAS also has had three operational VSD locations (located in Kenai, AK; Tampa, FL, and Spokane, WA) to interact with taxpayers. TAS, *Contact Us*, <https://www.taxpayeradvocate.irs.gov/contact-us/> (last visited Nov. 11, 2020); Internal Revenue Manual (IRM) 13.1.16.8, Sources of TAS Cases and Initial Intake Actions (Aug. 14, 2020). TAS will be discontinuing the use of this technology, and migrating to other interactive technologies.

70 TFAO response to TAS information request (Oct. 13, 2020); OLS response to TAS information request (Oct. 13, 2020); W&I response to TAS information request (Oct. 27, 2020); Treasury Inspector General for Tax Administration, Ref. No. 2019-IE-R002, *Although Virtual Face-to-Face Service Shows Promise, Few Taxpayers Use It* (Nov. 13, 2018); IRM 4.21.3.4.2.3, Virtual Services Delivery (VSD) (Oct. 1, 2018).

71 IRS, Appeals Virtual Conferences – Webex, <https://www.irs.gov/appeals/appeals-virtual-conferences-webex> (last visited Oct. 11, 2020).

72 Director, Examination Field and Campus Policy, SB/SE, Interim Guidance on WebEx for Taxpayer-Facing Interactions (Sept. 2020).

73 United States Tax Court, Press Release (May 29, 2020).

74 Email from IT Information Services, Advisory – ZoomGov 5.1.3 Enterprise (Sept. 30, 2020).

facilitate in-person identity-proofing for online accounts, enable the printing of transcripts and notices, and permit credit card payments. Return on investment analysis, budget considerations, and dialogue with IRS partners will determine how much the agency expands kiosks.<sup>75</sup>

The planned expansion of virtual face-to-face service is promising. We recommend that the IRS evaluate the feasibility of expanding the use of virtual face-to-face technology to as many taxpayer-facing functions as possible. While existing bandwidth restrictions may impede the IRS from initially deploying widescale use of this technology — limited bandwidth prevented the IRS from using videoconferencing technology for internal purposes during the COVID-19 closures<sup>76</sup> — such expansion could help fill current or future voids in face-to-face service at TACs and in communication with revenue agents or revenue officers. In addition, taxpayers geographically remote from a TAC or TAS local office would find using videoconferencing technology more helpful and economical than traveling for an in-person conference. Even taxpayers who are geographically close may prefer the convenience of a virtual meeting.

## CONCLUSION AND RECOMMENDATIONS

The COVID-19 pandemic exposed critical shortcomings in IRS service and communication channels. In many cases, the IRS addressed such shortcomings by developing temporary workaround procedures. To provide excellent taxpayer service and plan for any future emergencies, the IRS must build upon such temporary initiatives and make permanent improvements in the IRS's digital service offerings. Taxpayers need the option to correspond with the IRS digitally, including attaching and transmitting documents in a secure manner. In addition, the success of the TDC text chat pilot illustrates the need to expand this program beyond ACS. Expanding the use of videoconferencing software to all taxpayer-facing functions would benefit taxpayers, especially those who live in remote geographic locations or simply prefer this means of communication. The IRS must increase accessibility to digital services by increasing the e-authentication verification rates while also maintaining compliance with NIST guidelines. Finally, the provision of high-quality digital services necessitates a shift in IRS culture, in which IRS employees embrace a completely new way of communicating with taxpayers.

### Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate preliminarily recommends that the IRS:

1. Maintain a robust omnichannel service environment at the same time that it enhances its digital offerings.
2. Accept electronic signatures on all documents that require a signature, once the IRS assesses, identifies, and eliminates any data security vulnerabilities, if applicable.
3. Make permanent the use of a secured messaging system with taxpayers and their representatives.
4. Make permanent and expand the list of documents the IRS will accept and transmit by email using an established secured messaging system, once the IRS assesses, identifies, and eliminates any data security vulnerabilities and file size limitation issues, if applicable.
5. Assess how the new SADI platform will impact different demographics and determine the feasibility of potentially increasing accessibility to digital applications as they are integrated with SADI, while also maintaining compliance with NIST guidelines.

<sup>75</sup> TFAO response to TAS information request (Oct. 13, 2020).

<sup>76</sup> IRS Leaders Alert, COVID-19 Daily Manager Update (Mar. 20, 2020).

6. Expand the availability of TDC eGain Text Chat beyond ACS.
7. Continue to develop digital service tools that are mobile-ready.
8. Expand the use of virtual face-to-face technology to taxpayer-facing functions as permitted, while ensuring proper authentication and authorization controls are in place.

### Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Provide sufficient funding for the IRS to quickly and safely expand digital services including those proposed by the Taxpayer Experience Strategy of the Taxpayer First Act Report to Congress.

### IRS COMMENTS

The IRS has aimed to increase digital communications and services over the past decade, but funding constraints and operational challenges impeded progress. The COVID-19 pandemic highlighted the critical need to expand digital options to not only promote efficiency but also preserve health and safety. Digital options for taxpayers, tax professionals, and IRS employees are fundamental to effective tax administration.

In response to COVID-19 concerns, the IRS took steps to protect employees, taxpayers, and their representatives by minimizing the need for in-person contact. Taxpayer representatives expressed concerns with securing handwritten signatures for forms required to be filed or maintained on paper. To alleviate these concerns and promote timely filing, the IRS implemented temporary deviations that allow taxpayers and representatives to electronically sign and submit specific forms. We are reassessing this policy to see how the temporary accommodations may be expanded and, in some cases, made permanent.

As detailed in the Taxpayer First Act, Taxpayer Experience Strategy, the IRS is committed to providing increased options for communicating digitally and an improved online experience for all taxpayers while expanding this service to tax professionals. Because digital services will not meet every need, the IRS must continue to provide taxpayers assistance through a variety of channels — including mail, web, telephone, and in person. We will integrate those channels with expanded digital options to seamlessly guide taxpayers to the resources that will best resolve their issue. As the report mentions, Taxpayer Digital Communications Secure Messaging provides taxpayers with an option to digitally communicate with IRS employees in a secure manner and submit electronic documentation quickly and securely at their own convenience. Text chat for taxpayers with collection questions has expanded to 11 of the 19 Automated Collection System call sites (including bilingual sites), and now allows taxpayers to attach documents such as installment agreement forms and delinquent returns.

Securing our systems and taxpayer data is a top priority for the IRS. In 2017, the National Institute of Standards and Technology (NIST) released Special Publication (SP) 800-63-3 that provided

updated digital identity guidelines and created a new framework for federal agencies to improve the security of their identity-proofing and authentication standards. The guidelines redefined how federal agencies implement digital identity services and included substantially more rigorous authentication requirements. By utilizing Credential Service Providers (CSPs) and conducting emerging technology Innovation Studies and usability surveys, the IRS is working to expand identity proofing and authentication options to meet taxpayers' digital service needs and mobile service expectations while adhering to NIST requirements.

Taxpayers deserve personalized digital services that meet their needs and expectations. The IRS is committed to meeting these expectations and creating a positive digital services experience that increases trust in government and promotes voluntary tax compliance.

## TAXPAYER ADVOCATE SERVICE COMMENTS

The IRS's commitment to increase digital communication options for taxpayers and representatives, as reflected in its Taxpayer Experience Strategy of the Taxpayer First Act Report to Congress, will ensure that taxpayers' right to quality service is realized to a greater extent. It is encouraging that the IRS plans to reassess, with a possibility of expanding or making permanent, temporary procedures permitting electronic signatures and digital submission of documents. These temporary procedures were implemented to accommodate taxpayers and representatives as they interacted with the IRS during service limitations associated with the COVID-19 pandemic, but these expanded options to digitally communicate with the IRS will also prove useful to both taxpayers and IRS employees under normal operating conditions.

While the IRS is making great strides to provide digital services to taxpayers and representatives, it also acknowledges the need to maintain an omnichannel approach to taxpayer service which is consistent with TAS's longstanding recommendations. Allowing taxpayers and representatives to choose the service channel that best suits their needs at any given point in their interactions with the agency is crucial to improve their experience. Pursuant to the Taxpayer Experience Strategy, the IRS not only plans to maintain the different service channels, but it also plans to integrate the various channels to seamlessly guide taxpayers to the resources that will best resolve their issue.

For those taxpayers and representatives who choose to use a digital service channel, they can only gain access to many of the digital applications if they pass the rigorous authentication requirements required by NIST. As the IRS complies with the more rigorous NIST requirements and utilizes CSPs to identity proof taxpayers and representatives, we reiterate the need to continually evaluate how such procedures impact accessibility of the suite of digital applications. Specifically, the IRS should monitor how such authentication requirements impact different demographics and determine the feasibility of potentially increasing accessibility while also strictly adhering to the NIST requirements.

## RECOMMENDATIONS

### Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Maintain a robust omnichannel service environment at the same time that it enhances its digital offerings.
2. Accept electronic signatures on all documents that require a signature, once the IRS assesses, identifies, and eliminates any data security vulnerabilities, if applicable.
3. Make permanent the use of a secured messaging system with taxpayers and their representatives.
4. Make permanent and expand the list of documents the IRS will accept and transmit by email using an established secured messaging system, once the IRS assesses, identifies, and eliminates any data security vulnerabilities and file size limitation issues, if applicable.
5. Assess how the new SADI platform will impact different demographics and determine the feasibility of potentially increasing accessibility to digital applications as they are integrated with SADI, while also maintaining compliance with NIST guidelines.
6. Expand the availability of TDC eGain Text Chat beyond ACS.
7. Continue to develop digital service tools that are mobile-ready.
8. Expand the use of virtual face-to-face technology to taxpayer-facing functions as permitted, while ensuring proper authentication and authorization controls are in place.

### Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Provide sufficient funding for the IRS to quickly and safely expand digital services including those proposed by the Taxpayer Experience Strategy of the Taxpayer First Act Report to Congress.

## Failure to Expand Digitalization Technology Leaves Millions of Taxpayers Without Access to Electronic Filing and Wastes IRS Resources

### RESPONSIBLE OFFICIALS

Kenneth Corbin, Commissioner, Wage and Investment Division  
Eric Hylton, Commissioner, Small Business/Self-Employed Division  
Jeff Tribiano, Deputy Commissioner for Operations Support  
Nancy Sieger, Acting Chief Information Officer

### TAXPAYER RIGHTS IMPACTED<sup>1</sup>

- *The Right to Quality Service*
- *The Right to a Fair and Just Tax System*

### EXPLANATION OF THE PROBLEM

Electronic filing (e-filing) has many benefits for taxpayers and the IRS. The transmission of data is quick and accurate, the automated processing of an e-filed form eliminates the need for the costly manual transcription of millions of lines of data, and the increased accuracy of the data imported reduces the need to resolve transcription errors. Digitalizing data also gives the IRS more flexibility to allow employees to work remotely.

While most taxpayers prefer e-filing when it is available, some prefer to file paper returns or must file on paper because they do not have access to a computer or broadband internet. Therefore, even as the IRS expands its e-filing options, it must maintain options that allow taxpayers to choose their preferred method of filing.

The IRS's antiquated information technology (IT) systems and infrastructure present significant obstacles to expanding e-filing and digitizing paper returns. Taxpayers can e-file some returns and forms; however, more than 40 active forms still require paper filing. Some taxpayers who e-file experience processing delays because the IRS cannot digitally accept certain documents attached to an e-filed return, requiring the taxpayer to file them separately on paper.<sup>2</sup>

The IRS should expand its electronic filing capabilities to allow all taxpayers an e-filing option, regardless of the return or any associated schedules, documents, and attachments. It must also improve the processing of paper returns by expanding existing technology and implementing new technology to reduce processing delays. These actions reduce burden to taxpayers and the IRS and produce long-term cost savings.

1 See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the IRC. See IRC § 7803(a)(3).

2 See Form 8453, U.S. Individual Income Tax Transmittal for an IRS e-file Return (2020).



## ANALYSIS

Taxpayers who e-file their returns gain the benefit of faster processing of their return, digital confirmation of filing and receipt, and the flexibility to file from anywhere if they can access the internet. Taxpayers who file by mail must rely on the IRS's ability to process mail efficiently, transcribe their return information accurately, and process payments and refunds promptly. The forced shutdown of the IRS's mail processing campuses during the 2020 filing season exposed the inflexibility of these interdependent manual processes. Between mid-March and June 1, the IRS could not process paper returns due to the COVID-19 shutdown, and as of November 20, 2020, it estimated there was a backlog of individual returns of one million unopened paper returns and 6.8 million returns it had not fully processed.<sup>3</sup> Whereas, the IRS continued processing e-filed returns during the shutdown.

**The pandemic reinforced the importance of the IRS embracing digitalization technology to allow taxpayers to transmit documents to the IRS electronically. It must develop a program to accept all forms through electronic means and capture and process the information submitted, either manually, electronically, or via a combination of the two.**

There are many reasons the IRS cannot electronically process forms, including complexity, inclusion of attachments, and the potential tax impact on related or joint filers; however, none are true barriers to expanding e-filing or digital imaging of paper returns. The operational challenges arising under the pandemic forced the IRS to reconsider its stance on electronic communication, such as accepting wet (*i.e.*, handwritten) signatures.<sup>4</sup> The IRS temporarily deviated from the wet signature requirement for more than a dozen forms in response to the pandemic and permitted the use of electronic signatures. This allowed taxpayers and their representatives to fulfill their filing responsibilities without being in the same physical location or relying on the mail to transfer documents and allowed the IRS to conduct its business untethered to a physical location.

The pandemic reinforced the importance of the IRS embracing digitalization technology to allow taxpayers to transmit documents to the IRS electronically. It must develop a program to accept all forms through electronic means and capture and process the information submitted, either manually, electronically, or via a combination of the two. Figure 1.5.1 provides a list of active forms that taxpayers cannot e-file and the number of each filed during 2019.<sup>5</sup>

3 *Hearing with IRS Commissioner Charles Rettig: Hearing Before the H. Ways and Means, Subcomm. on Oversight*, 116th Cong. (Nov. 20, 2020) (statement of Charles Rettig, IRS Commissioner).

4 *See, e.g.*, Form 2848, Power of Attorney and Declaration of Representative (Feb. 2020).

5 Some forms listed in this table are submitted multiple times for the same purpose before the IRS processes them properly. E-filing would cut down on repeated submissions and the overall volume of mail and follow-up calls.

**FIGURE 1.5.1, Processing Year (PY) 2019 Filings of Forms Ineligible for e-Filing<sup>6</sup>**

Forms	PY 2019 Filings
Form 2848, Power of Attorney and Declaration of Representative	2,318,162
Form W-7, Application for IRS Individual Taxpayer Identification Number	1,526,880
Form 8821, Tax Information Authorization	873,426
Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business (Currently e-filing is not available for Foreign-owned U.S. Disregarded Entities)	286,100
Form 941-X, Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund	219,745
Form 1065X, Amended Partnership Return	103,264
Form 8332, Release of Claim to Exemption for Child by Custodial Parent	96,311
Form 14039, Identity Theft Affidavit	59,250
Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons	55,891
Form 3520, Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts	55,235
Form SS-4, Application for Employer Identification Number (for foreign companies)	53,950
Form 1139, Corporation Application for Tentative Refund	39,191
Form 8833, Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)	38,206
Form 730, Monthly Tax Return for Wagers	23,889
Form 12153, Request for a Collection Due Process or Equivalent Hearing	23,278
Form 8038-G, Information Return for Tax-Exempt Governmental Bonds	22,000
Form 1120-RIC, U.S. Income Tax Return for Regulated Investment Companies	18,331
Form 1120-PC, U.S. Property and Casualty Insurance Company Income Tax Return	16,515
Form 4768, Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes	15,182
Form 8275, Disclosure Statement	8,383
Form 8703, Annual Certification of a Residential Rental Project	6,226
Form 843, Claim for Refund and Request for Abatement	5,486
Form 1120-REIT, U.S. Income Tax Return for Real Estate Investment Trusts	4,101
Form 3115, Application for Change in Accounting Method	3,267
Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues	2,695
Form 1120-L, U.S. Life Insurance Company Income Tax Return	513
Form 8854, Initial and Annual Expatriation Information Statement	312
Form 14039-B, Business Identity Theft Affidavit	232
Form 8328, Carryforward Election of Unused Private Activity Bond Volume Cap	225

6 Data compiled from the IRS Compliance Data Warehouse (CDW) Individual Returns Transaction File (IRTF), Business Returns Transaction File (BRTF), Individual Master File (IMF), Business Master File (BMF), Modernized Tax Return Data Base (MTRDB), Electronic Tax Administration Research and Analysis System (ETARAS), Entity Application Programs (EAP), and Centralized Authorization File (CAF) databases. There are other forms that must be filed on paper but which are not transcribed (or for which complete data is not readily available) including: Form 56, Notice Concerning Fiduciary Relationship; Form 211, Application for Award for Original Information; Form 1045, Application for Tentative Refund; Form 1310, Statement of Person Claiming Refund Due a Deceased Taxpayer (when Part 1 Boxes A and B are present); Form 4466, Corporation Application for Quick Refund of Overpayment of Estimated Tax; Form 4506, Request for Copy of Tax Return; Form 5074, Allocation of Individual Income Tax to Guam or the Commonwealth of the Northern Mariana Islands (CNMI); Form 8288-B, Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests; Form 8802, Application for United States Residency Certification; Form 8809-I, Application for Extension of Time to File FATCA Form 8966; Form 8822, Change of Address; Form 8898, Statement for Individuals Who Begin or End Bona Fide Residence in a U.S. Possession; and Form 8918, Material Advisor Disclosure Statement.

The IRS does not have a comprehensive plan showing when the remaining forms will be available for e-filing and when taxpayers can digitally submit non-form attachments. Quite simply, the IRS needs to make long-term investments in technology that would enable all taxpayers to e-file all forms and supporting documents.<sup>7</sup>

### Modernized e-File System

The IRS provides a detailed set of communication procedures, transmission formats, business rules, and validation procedures that dictate what information taxpayers can and cannot e-file through the Modernized e-File (MeF) System.<sup>8</sup> When determining the rules on e-filing, the IRS consults with the private industry to understand the latest digitalization strategies and solutions available in the marketplace, including costs and benefits.<sup>9</sup> Before the IRS can change the business rules for e-filing, it determines the impact to processing and balances the competing priorities of reducing taxpayer burden while minimizing administrative burdens and downstream risk beyond the IRS's ability to manage.

When a taxpayer submits an e-filed return, the IRS automatically matches information on the return against its own records to determine whether to accept or reject the return. This process shifts the burden to the taxpayer of identifying and correcting an error causing the return to reject.<sup>10</sup> If the taxpayer cannot correct the problem, he or she must file a paper return. While an automated process allows the IRS expeditious return processing and issuance of refunds, it means fewer taxpayers can e-file successfully.<sup>11</sup>

### Processing Costs

The cost of processing paper returns is enormous. The IRS spent more than \$77 million processing nearly 17 million<sup>12</sup> paper Forms 1040 in fiscal year (FY) 2019. It spends about \$4.78 to process a paper return compared to \$0.18 for an electronically filed return.<sup>13</sup> Each paper filing is labor-intensive, requiring more than a dozen manual touches to process.<sup>14</sup> The IRS must handle and store all that paper, spending \$37 million a year to manage, ship, process, transfer, and retrieve paper records.<sup>15</sup> E-filing alleviates many of these costs. Over 920,000 taxpayers used tax preparation software but were unsuccessful in e-filing their 2018 tax return before needing to mail a paper return to the IRS.<sup>16</sup> If those taxpayers had been able to electronically transmit their returns, the IRS could have realized significant cost savings and the taxpayers could have benefited by receiving expedited refund payments and improved data entry accuracy.

7 IRS response to TAS information request (Oct. 29, 2020).

8 See, e.g., IRS Pub. 4164, Modernized e-File (MeF) Guide for Software Developers and Transmitters (Dec. 2019).

9 IRS response to TAS information request (Oct. 29, 2020).

10 For example, an e-filed return would not be accepted for processing if the taxpayer's identity could not be confirmed. In that instance, a taxpayer would need to file a paper return.

11 Over 920,000 taxpayers used tax preparation software for their 2018 tax return and attempted to e-file the return but were unable to and had to mail a paper return to the IRS. IRS CDW, IRTF Entity table.

12 Approximately 16.8 million individual income tax returns were filed in FY 2019. IRS, FY 2019 Data Book Tables 3 and 4 (June 2020) (difference between total individual income tax returns and electronically filed individual income tax returns filed in FY 2019).

13 The total pipeline and non-pipeline cost per return is \$4.78. The processing cost for an electronically filed return is \$0.18. IRS, Document 6746, Cost Estimate Reference FY 2019 (June 2020).

14 IRS Services and Enforcement PMO (S&E PMO) Digitalization Overview (Oct. 2019).

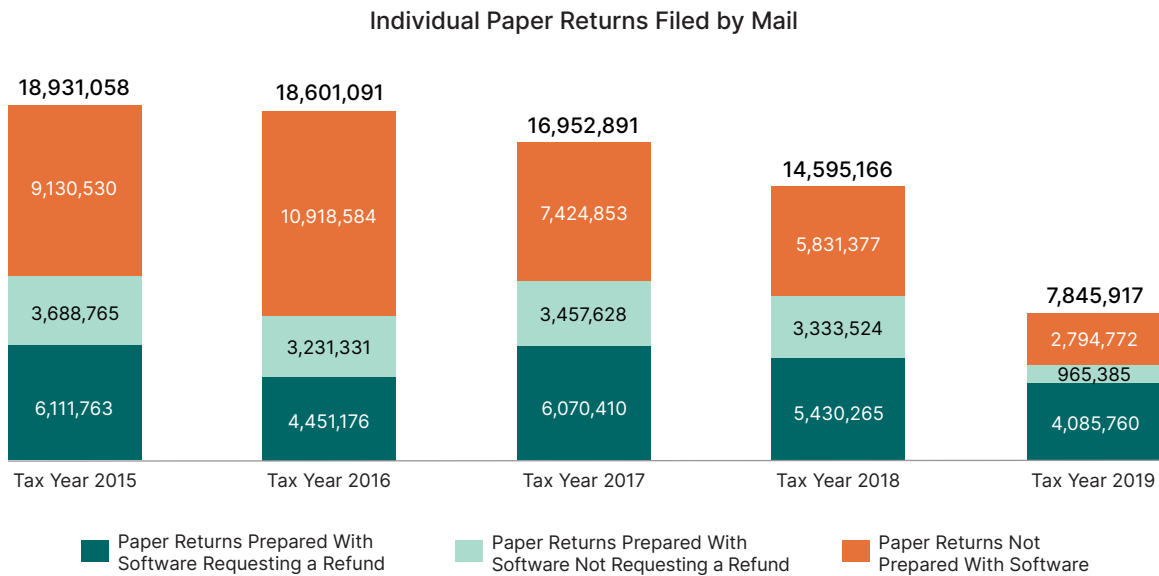
15 *Id.* A portion of this cost is attributable to the handling and storage of paper returns.

16 IRS CDW, IRTF Entity table.

## Refund Delays

Although the number of taxpayers filing paper returns is steadily declining, millions of taxpayers continue to file paper returns by mail, as shown in Figure 1.5.2. More than half of taxpayers who file by mail prepare the return using tax software.<sup>17</sup> Taxpayers filing by mail who were unable to e-file their return because of the IRS's technological shortcomings experienced longer wait times to receive their refund.<sup>18</sup> Taxpayers who e-filed their return claiming a refund generally received their refund via direct deposit within seven to 21 days or by paper check within 30 days.<sup>19</sup>

**FIGURE 1.5.2<sup>20</sup>**



## Transcription Errors

When processing paper returns, such as Form 1040, a submission processing employee manually enters the information from each line into IRS systems. Manual data entry inevitably leads to transcription errors, which then must be identified and corrected. For example, after the redesign of Form 1040 in 2018 to the “postcard” format,<sup>21</sup> the IRS manually processed some returns without capturing all the data.<sup>22</sup>

Since the IRS generally has no way of identifying transcription errors that are not systemic, taxpayers are in the difficult position of self-identifying any errors the IRS may make during the manual entry. It is not until

<sup>17</sup> IRS CDW, IRTF Entity table, IRTF F1040 table.

<sup>18</sup> Even with the excessive processing delays during the tax year 2019 filing season, 84 percent of taxpayers who prepared their return on software and filed by mail were seeking a refund.

<sup>19</sup> IRS, Where's My Refund?, <https://www.irs.gov/refunds> (last visited Dec. 21, 2020).

<sup>20</sup> IRS CDW, IRTF Entity table, IRTF F1040 table. The IRS continues to process 2019 returns. These numbers are as of November 17, 2020.

<sup>21</sup> U.S. Dept. of Treasury, Treasury, IRS Announce Development of Postcard-Size Form 1040 for 2019 (June 29, 2018), <https://home.treasury.gov/news/press-releases/sm421>.

<sup>22</sup> IRS response to TAS information request (Oct. 29, 2020).

the IRS sends a notification of additional tax due or other adjustment that the taxpayer learns of an issue. The taxpayer then has the daunting task of determining the cause of the error and correcting it.

The IRS reviews about two percent of manually transcribed returns to evaluate the accuracy of the processing.<sup>23</sup> However, that review is a measure of employee performance, not quality assurance. The average accuracy rate based on quality review held steady at about 80 percent during calendar year (CY) 2019 and the first nine months of CY 2020.<sup>24</sup> Any error rate related to manual transcription of paper returns is inherent to the transcription process — a process eliminated with electronic filing. Thus, more e-filed returns leads to fewer transcription errors.

## Paper Processing Options

There are four campus facilities that process paper submissions. The IRS shifted processing between those locations based on resources to overcome the backlog of mail submissions caused by the pandemic.<sup>25</sup> The IRS plans to eliminate submission processing at two of those locations by 2025. As the IRS streamlines submission processing, it should ensure its paper processing campuses have the appropriate tools and technology to handle all individual paper filers and retain the flexibility to handle disruptions caused by disasters and unforeseen events.

## Scanning Technology

The IRS engaged private industry and other government entities to explore the latest digitalization strategies and solutions<sup>26</sup> for processing forms that vary in type, length, and complexity. One such technology, Optical Character Recognition (OCR), incorporates a photoelectric machine that reads the information from a form and computer software that captures the data. OCR can be used on a digital file the taxpayer transmits or on a paper document the IRS scans into a digital format. The IRS should expand the use of OCR and similar technologies to automate processing and reduce the need for manual transcription, which would allow it to accept more forms and attachments electronically.

## 2-D Barcoding

Processing errors resulting from manual data transcription could be significantly reduced if the IRS worked with software providers to implement 2-D barcoding. 2-D barcoding adds a horizontal or vertical bar code containing the return information when printed. The IRS can record and capture the information reported on a return by scanning the barcode, eliminating the need for line-by-line data entry. The Government Accountability Office (GAO),<sup>27</sup> Treasury Inspector General for Tax Administration (TIGTA),<sup>28</sup> and the

23 IRS response to TAS information request (Oct. 29, 2020); IRS Submission Processing (SP) Filing Season Statistics Report, Report for Week Ending October 3, 2020.

24 IRS response to TAS information request (Oct. 29, 2020).

25 *Hearing with IRS Commissioner Charles Rettig: Hearing Before the H. Ways and Means, Subcomm. on Oversight*, 116th Cong. (Nov. 20, 2020) (statement of Charles Rettig, IRS Commissioner).

26 In July 2018, the Digitalization Working Group (DWG) issued a Request for Information (RFI), and shared information with both the Social Security Administration and U.S. Census Bureau to gain industry and peer insights on best practices for document imaging and digitalization technology and solutions.

27 GAO, GAO-18-544, *Tax Fraud and Compliance: IRS Could Further Leverage the Return Review Program to Strengthen Tax Enforcement* (July 2018).

28 TIGTA, Ref. No. 2007-40-105, *Additional Action Is Needed to Expand the Use and Improve the Administration of the Free File Program* (June 28, 2007).

National Taxpayer Advocate<sup>29</sup> have urged the IRS to explore this technology, which it already uses on IRS Form K-1.<sup>30</sup> However, the 2-D barcoding the IRS uses is limited to fewer than 100 characters and would need to be upgraded to scan forms with significantly more characters, such as the Form 1040-series. Expanding 2-D barcoding would require upfront investment into new machines capable of reading barcodes but would lead to faster, more accurate processing of paper returns, with downstream cost savings for each return that an IRS employee does not need to manually transcribe.

## CONCLUSION AND RECOMMENDATIONS

In the wake of the COVID-19 pandemic, the IRS has taken a fresh look at new — and not-so-new — technologies it has rejected in the past.<sup>31</sup> The IRS should provide a means for taxpayers to file any form electronically. It should use existing technology to digitize information to allow taxpayers to send forms and returns that the IRS does not currently permit taxpayers to e-file.

And for taxpayers who choose or are required to paper file their return, the IRS should incorporate technology to reduce processing transcription errors. These practices would produce long-term cost savings and significantly reduce burden on both taxpayers and the IRS.

### Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate preliminarily recommends that the IRS:

1. Make and publish an e-file plan for the forms that taxpayers cannot e-file.
2. Reevaluate the MeF System to allow for e-filing of all forms, schedules, and attachments.
3. Expand the use of optical character recognition and 2-D barcoding to improve processing of paper filings and reduce processing transcription errors.
4. Make permanent all temporary changes to electronic or digital signature requirements the IRS implemented in response to the COVID-19 pandemic.

29 See National Taxpayer Advocate 2021 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (Require the IRS to Work With Tax Software Companies to Incorporate Scanning Technology for Individual Income Tax Returns Prepared Electronically But Filed on Paper)*.

30 IRS, 2-D Bar Coding for Schedules K-1 is the Preferred Method, <https://www.irs.gov/e-file-providers/two-dimensional-bar-coding-for-schedules-k-1-is-the-preferred-method> (last visited Dec. 21, 2020).

31 See, e.g., IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue, <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue> (last visited Nov. 16, 2020).



## IRS COMMENTS

We continuously strive to improve how we process returns, whether filed electronically or on paper. Electronic return filing continues to trend upward, and overall through September 30, 2020, individual electronically filed returns were up 9.1% and electronically filed business returns were up 5.7% from last year. For FY 2020, the IRS processed over 150 million individual and almost 30.7 million business electronically filed returns.

Free File also continues to outpace last year. As of November 21, 2020, total returns filed through the Free File program are up over 300%, due in part to returns filed through the Non-Filer application or via the many partners that offered a streamlined entry for non-filers to claim their Economic Impact Payment (EIP). All of the IRS partners in the Free File Initiative (FFI) stepped up to provide a variety of Non-Filer utilities, including products in Spanish and an online Non-Filers tool to enable taxpayers to file for the EIP. As of November 21, 2020, over 8 million citizens received their EIP thanks to the FFI's efforts.

When removing EIP from consideration, Free File still marked a 50% increase this year as more than 4.2 million taxpayers used one of the free online partner products. To continue expanding the program, the IRS also introduced a host of new web changes for the Free File pages on IRS.gov. These changes, which were released in September, were based on the findings and recommendations from last summer's independent review of the program along with findings from focus group research conducted in December 2018. The IRS is currently assessing other recommendations from external stakeholders and oversight agencies, including the Treasury Inspector General for Tax Administration, National Taxpayer Advocate, Internal Revenue Service Advisory Council (IRSAC), and Government Accountability Office, among others, to inform future improvements.

The IRS has also expanded electronic filing options to include an electronic version of amended Form 1040 returns. The ability to electronically file the Form 1040X, Amended U.S. Individual Income Tax Return, has been an important goal of the IRS, the tax software, and tax professional industry for many years. It is also an ongoing recommendation from the IRSAC and the Electronic Tax Administration Advisory Committee. The availability of an electronically filed Form 1040X is a great success for IRS modernization efforts, given the numerous challenges to adding this form to the e-file family due to the details needed on the form. As of November 21, 2020, over 144,000 electronically filed amended returns have been accepted from 18 industry partners. Electronically filing Form 1040X provides taxpayers with a quicker, easier way to submit amended returns, streamlines work for the IRS and the entire tax community, and minimizes errors normally associated with manually completing the form.

Given the many benefits of e-filing, digitalization and technologies such as 2-D barcoding and Optical Character Recognition, the IRS continues to support their implementation. However, the speed with which we can execute these improvements is sometimes limited by available resources.

## TAXPAYER ADVOCATE SERVICE COMMENTS

As the IRS rightly points out, the number of taxpayers using electronic filing is growing. When the IRS offers new e-filing options, such as introducing the ability to electronically file Form 1040X, a large number of taxpayers are ready and waiting to use the new service. There is clearly a substantial demand for the service from taxpayers. The IRS also deserves praise for announcing the 2021 launch of online submission of Form 2848, Power of Attorney and Declaration of Representative, and Form 8821, Tax Information Authorization. Combined, the IRS received nearly 3.2 million of those two forms in 2019. Offering electronic filing of these forms provides better service to taxpayers and will reduce the IRS's paper processing workload.

The IRS cannot further expand e-filing options without the necessary resources from Congress, but nothing stands in the way of the IRS making an e-file plan for the forms that taxpayers cannot e-file and publishing it. Without a published schedule for upgrades, the IRS's plan for improving the e-file system seems to be "the squeaky wheel gets the grease," but that is not an effective long-term strategy. Instead of addressing forms one at a time, the IRS needs to establish a plan for all forms to be part of the MeF System and allow itself to be held accountable for meeting established goals.

The IRS supports more widespread implementation of e-filing, digitalization, and technologies such as 2-D barcoding and Optical Character Recognition, but points to lack of resources. Resource limitations are an ongoing issue for the IRS but should not stand in the way of having a plan ready for future upgrades as resources become available.

As the IRS extended the temporary deviation from the wet signature requirement on at least 20 forms<sup>32</sup> and allows electronic signatures for an additional six months, it should consider allowing electronic signatures on a permanent basis.

## RECOMMENDATIONS

### Administrative Recommendations to the IRS

1. Make and publish an e-file plan for the forms that taxpayers cannot e-file.
2. Reevaluate the MeF System to allow for e-filing of all forms, schedules, and attachments.
3. Expand the use of optical character recognition and 2-D barcoding to improve processing of paper filings and reduce processing transcription errors.
4. Make permanent all temporary changes to electronic or digital signature requirements the IRS implemented in response to the COVID-19 pandemic.

32 See IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue, <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue>.

## Antiquated Technology Jeopardizes Current and Future Tax Administration, Impairing Both Taxpayer Service and Enforcement Efforts

### RESPONSIBLE OFFICIALS

Jeff Tribiano, Deputy Commissioner for Operations Support  
Nancy Sieger, Acting Chief Information Officer

### TAXPAYER RIGHTS IMPACTED<sup>1</sup>

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to a Fair and Just Tax System*

### EXPLANATION OF THE PROBLEM

Despite its responsibility for collecting the most tax revenue in the world and its vital role in social benefits administration, the IRS operates with severely outdated information technology (IT) systems and infrastructure. Without a substantial overhaul of its IT systems, some of which were originally developed in the 1960s, and transformation of how the IRS interacts with taxpayers, the IRS cannot provide first-rate taxpayer service or efficiently carry out its enforcement and collection efforts. The IRS will require significant, sustained multiyear funding from Congress to modernize its IT systems.

The consequence of not fully modernizing IT systems can range from minor inconvenience (*e.g.*, requiring taxpayers who choose to e-file their tax returns to still submit some paper forms) to major catastrophe (*e.g.*, taxpayers being unable to e-file or make payments, and the IRS being unable to process tax returns and disburse refunds). As the nation's tax collector, the IRS can ill-afford to have its systems crash (even for a day, as occurred during the last day of the 2018 filing season). Significant disruptions in IRS operations can erode taxpayer confidence in the tax administration system and ultimately lead to reduced levels of tax compliance.

### ANALYSIS

#### Background

A Supreme Court Justice famously opined that “taxes are the lifeblood of government.”<sup>2</sup> Indeed, the IRS is responsible for collecting approximately \$3.6 trillion in taxes each year — roughly 96 percent of all federal

<sup>1</sup> See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the IRC. See IRC § 7803(a)(3).

<sup>2</sup> *Bull v. United States*, 295 U.S. 247, 259 (1935).

revenue.<sup>3</sup> In addition, the agency is tasked with administering recurring social benefits programs such as the Earned Income Tax Credit (EITC) and one-time financial relief programs such as the Economic Stimulus Payments in 2008 and Economic Impact Payments (EIPs) in 2020. Despite these enormous and critical responsibilities, the IRS is overwhelmingly reliant on “legacy” IT systems — which the IRS’s IT function has defined as systems that are at least 25 years old, use obsolete programming languages (e.g., Common Business-Oriented Language (COBOL)), or lack vendor support, training, or resources to maintain.<sup>4</sup>

In recent years, much has been written about the IRS’s antiquated IT systems.<sup>5</sup> The IRS can modernize some legacy systems, replace some with new technology, and retire or decommission others that no longer serve their intended purpose. The Treasury Inspector General for Tax Administration (TIGTA) issued a report in August 2020 that found the IRS had not developed a coordinated plan to address updating, replacing, or retiring its legacy systems.<sup>6</sup> Of the 231 legacy systems TIGTA identified, 45 were due for modernization, and 34 should have been retired.<sup>7</sup>

In a recent congressional hearing, the Government Accountability Office (GAO) noted that the IRS was still reliant on the Individual Master File (IMF), a system initially developed over 50 years ago, to update taxpayer account data, assess taxes, and generate refunds.<sup>8</sup> The IRS is continuing to develop the Customer Account Data Engine 2 (CADE 2) to replace core functions of the IMF. The GAO has identified CADE 2 — which uses modern computing language, is faster to process, and is more adaptable — as one of the federal government’s critical IT acquisitions.<sup>9</sup> Unfortunately, the IRS is not expected to complete the second phase of CADE 2 until 2024, partially because the project had been “rebaselined” seven times from 2016 to 2019 due to budget cuts, hiring freezes, and changes in scope.<sup>10</sup>

**Analogy:** An apt analogy is to think of the IRS’s IT systems as a 1960s-era car. The IMF is the engine, and while it has impressively served the needs of the IRS for over 50 years, with the IRS modifying it to coax a few more years out of it, it is time for an engine replacement. While it may be possible for aficionados of classic cars to integrate modern technology for safety (e.g., anti-lock brakes, airbags) or convenience (e.g., Bluetooth, GPS navigation), at some point it simply is no longer practical or cost-effective to transform a 1960s-era car to safely drive the

3 IRS, 2019 Data Book 1 (June 2020); *IRS in the Pandemic, Hearing Before the H. Comm. on Oversight and Reform, Subcomm. on Government Operations*, 116th Cong., at 1 (Oct. 7, 2020) (statement of Charles P. Rettig, IRS Commissioner), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Rettig%20Testimony.pdf>.

4 IRS response to TAS information request (Oct. 19, 2020). Current IRS criteria for legacy system includes (but is not limited to): aged software applications (25 years or older); obsolete programming languages (e.g., Assembler Language Code, COBOL, or Visual BASIC); outdated development methodology or lack of industry adoption; lack of vendor support; lack of resource and training; or outdated architecture adoption.

5 See, e.g., National Taxpayer Advocate 2019 Annual Report to Congress 15-22 (Most Serious Problem: *Information Technology Modernization: The IRS Modernization Plan’s Goal to Improve the Taxpayer Experience Is Commendable, But the IRS Needs Additional Multi-Year Funding to Bring It to Fruition*); National Taxpayer Advocate Fiscal Year 2019 Objectives Report to Congress 47-51 (Area of Focus: *The IRS’s Enterprise Case Management Project Shows Promise, But to Achieve 21st Century Tax Administration, the IRS Needs an Overarching Information Technology Strategy With Proper Multi-Year Funding*).

6 See TIGTA, Ref. No. 2020-20-044, *Legacy Systems Management Needs Improvement* 1 (Aug. 19, 2020).

7 *Id.*

8 GAO, GAO-21-178T, *Information Technology: IRS Needs to Address Operational Challenges and Opportunities to Improve Management* 4, 9 (Oct. 7, 2020) (statement of Vijay A. D’Souza, Director, Information Technology and Cybersecurity). See also IRS, Customer Account Data Engine (CADE) 2 Database Implementation (DI) – Privacy Impact Assessment (Oct. 4, 2010).

9 GAO, GAO-20-249SP, *Information Technology: Key Attributes of Essential Federal Mission-Critical Acquisitions* 41-42 (Sept. 2020). CADE 2 will benefit the IRS by “enabling increased agility in response to changing taxpayer priorities and legislation, reduced IT costs and complexity, reduced workforce risk, and reduced burden of manually intensive processes on IRS employees by enabling automated calculations.”

10 GAO, GAO-20-249SP, *Information Technology: Key Attributes of Essential Federal Mission-Critical Acquisitions* 41 (Sept. 2020).

roads in 2020. Similarly, the IRS cannot afford to continually retrofit safety (e.g., fraud detection filters) and convenience (e.g., e-filing, Direct Pay) features into an antiquated platform. The IRS, and taxpayers, would be much better served with a brand new electric vehicle, one capable of integrating new features seamlessly via software updates without needing to repeatedly take it off the road (or offline) for maintenance.

## Impact of COVID-19

With its antiquated IT systems holding it back, the IRS has had to deal with unprecedented challenges imposed by the COVID-19 pandemic for much of 2020. The disruption caused by the pandemic revealed the IRS's IT-related challenges for managing its workforce and serving taxpayers.

The IRS's primary workforce-related obstacle stemmed from its inability to continue core functions (such as answering phones, issuing notices, and opening and processing taxpayer correspondence, mailed payments, and paper-filed returns) during the height of the 2020 filing season with the majority of staff under an emergency evacuation order.<sup>11</sup> For example, the IRS was unable to quickly implement a programming fix to halt the creation of more than 20 million systemically-generated notices, which it could not mail to taxpayers due to shifting of staffing and resources.<sup>12</sup> When the IRS resumed its mailing operations, it mailed millions of notices bearing dates that had already passed, along with inserts containing updated due-date information. In June 2020, the National Taxpayer Advocate published a blog entry anticipating that this would result in confusion among taxpayers.<sup>13</sup>

The IRS workforce, like much of the rest of the country, had to overcome unforeseen obstacles as it dealt with COVID-19. To ensure its employees could continue to work during the pandemic, the IRS had to figure out ways to securely allow remote connectivity of employees to key IT systems. The IRS issued more than 15,000 laptops to customer service representatives and thousands more to non-customer-facing employees.<sup>14</sup> The IRS's internal networks support approximately 57,000 employees online concurrently, all in a secure environment.<sup>15</sup>

To provide relief for taxpayers impacted by the COVID-19 pandemic, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act in March 2020.<sup>16</sup> Most notably, the CARES Act authorized an advance recovery rebate credit (hereafter referred to as "economic impact payments" or EIP) for individuals, which Congress directed the IRS to distribute. Given the time-sensitive nature of the payments, the IRS had to pivot, in the middle of the filing season without full staffing, to develop processes and procedures and perform system changes that would allow for the quick release of the EIPs. Although there have been glitches, the National Taxpayer Advocate commends the IRS for timely delivering 165 million EIPs to taxpayers.<sup>17</sup>

11 See *Supplemental Review of the 2020 Filing Season*, *infra*; IRS response to TAS fact check (Nov. 19, 2020).

12 Erin Collins, Keep an Eye on Your Mailbox: Millions of Backlogged Notices Are Being Mailed Over the Next Few Months, Some Reflect Expired Action Dates. But Don't Panic, See Inserts Providing Extended Due Dates, NATIONAL TAXPAYER ADVOCATE BLOG, <https://www.taxpayeradvocate.irs.gov/news/ntablog-keep-an-eye-on-your-mailbox-millions-of-backlogged-notices-are-being-mailed-over-the-next-few-months-some-reflect-expired-action-dates-but-dont-panic-see-inserts-providing-extended/> (June 22, 2020).

13 *Id.*

14 IRS response to TAS information request 7 (Oct. 19, 2020); IRS response to TAS fact check (Nov. 19, 2020).

15 *IRS in the Pandemic*, *Hearing Before the H. Comm. on Oversight and Reform, Subcomm. on Government Operations*, 116th Cong., at 5 (Oct. 7, 2020) (statement of Charles P. Rettig, IRS Commissioner), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Rettig%20Testimony.pdf>.

16 The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020).

17 IRS response to TAS fact check (Nov. 19, 2020).

Despite the IRS's admirable performance handling the challenges of the pandemic, some taxpayers experienced unusual difficulties in their dealings with the IRS. While a portion of those difficulties is attributable to the impossibility of anticipating and planning for the impacts of a national shutdown, some difficulties would have been substantially lessened if the IRS had better technology and more staff to meet the needs of taxpayers. For an in-depth discussion of the IRS response to the COVID-19 pandemic and implementation of CARES Act provisions, refer to the National Taxpayer Advocate's Fiscal Year 2021 Objectives Report to Congress.<sup>18</sup>

## Modernization Plan

In April 2019, the IRS released a six-year Integrated Modernization Business Plan ("modernization plan") to improve IT infrastructure, make tax administration more efficient, and enable the IRS to provide better taxpayer service.<sup>19</sup> The modernization plan clarified that it involves "more than the replacement of aged infrastructure, software products, and outdated code... it will also address how IRS workforce processes and culture will evolve to sustain ongoing innovation and transformation."<sup>20</sup>

The modernization plan became even more important after the Taxpayer First Act (TFA) became law on July 1, 2019. The TFA established the position of the IRS Chief Information Officer (CIO) responsible for the "development, implementation, and maintenance of information technology," as well as the security and integration of technology into IRS systems. The CIO is also directed to develop and implement a multiyear strategic plan for the IRS's IT needs.<sup>21</sup> However, Congress did not provide additional funding to the IRS in the TFA, including funding for the modernization efforts.

The modernization plan contains four "pillars" critical to the agency's mission and future development.

1. **Taxpayer Experience.** Incorporate experiences from all parties across the federal tax ecosystem, including business taxpayers, taxpayer representatives, and tax return preparers (*e.g.*, web/mobile applications, taxpayer digital communications);
2. **Core Tax Services and Enforcement.** Overhaul core tax systems to provide quicker and easier tax filing services through data-driven decision-making, real-time tax processing, and core taxpayer administration integration (*e.g.*, CADE 2, Enterprise Case Management (ECM));
3. **Modernized IRS Operations.** Accelerate the adoption of emerging technologies to enhance taxpayer services (*e.g.*, artificial intelligence, data digitization, robotics process automation); and
4. **Cybersecurity and Data Protection.** New technologies must function as security stewards of sensitive taxpayer information (*e.g.*, identity and access management, vulnerability and threat management).

To advance in these areas, the IRS set forth two phases for delivering these capabilities — phase one was planned for fiscal years (FYs) 2019 to 2021, and the second phase to take place in FYs 2022 to 2024. The IRS described this modernization plan as a "six-year road map for achieving necessary modernization of IRS

18 See National Taxpayer Advocate Fiscal Year 2021 Objectives Report to Congress 10-45 (Systemic Advocacy Objective: *Protecting the Rights of Taxpayers Impacted by the COVID-19 National Emergency and Restoring Much-Needed Taxpayer Services*); National Taxpayer Advocate Fiscal Year 2021 Objectives Report to Congress 46-68 (Systemic Advocacy Objective: *Reducing Burden Resulting From the Implementation of the Coronavirus Aid, Relief, and Economic Security (CARES) Act*).

19 IRS Pub. 5336, IRS Integrated Modernization Business Plan (Apr. 2019).

20 *Id.* at 4.

21 TFA, Pub. L. No. 116-25, §§ 2101-2103, 133 Stat. 981 (2019).



systems and processes to improve taxpayer service”<sup>22</sup> — a perfect analogy to go with the IRS’s quest to replace its 1960s-era car with a sleek, modern electric vehicle capable of taking full advantage of the new road map.

### Pillar One: Taxpayer Experience

The goal of this modernization pillar is to have the IRS deliver a service experience comparable to private industry. The leading financial institutions in the world have invested heavily into ensuring their customers remain engaged, whether it be via online account access, live chat support, mobile phone apps, or a global network of ATMs that can handle transactions from customers. With smart investments and bold leadership, there is no reason the IRS cannot match the best financial institutions in private industry for customer service.

The IRS is exploring ways to expand its offering of online account tools for taxpayers.<sup>23</sup> Robust online accounts would be helpful to many taxpayers accustomed to viewing account information online from private sector financial institutions and even some government agencies. However, as a federal agency, the IRS faces certain challenges that do not apply to private companies. For example, the IRS is subject to oversight from multiple entities, including the IRS Oversight Board, the Secretary of Treasury, GAO, TIGTA, and various congressional committees<sup>24</sup> — each of which might have its own version of how the IRS should proceed. In addition, as a federal agency, the IRS must adhere to standards and protocols imposed by the Federal Information Security Modernization Act and by the National Institute of Standards and Technology.<sup>25</sup> Such limitations have hindered the IRS’s efforts to provide complete account information to taxpayers, necessitating more IRS employees to answer phone calls and respond to correspondence about matters that many taxpayers would handle quickly and efficiently online if the functionality were available.

Similarly, taxpayer representatives would benefit enormously from online account access. While a typical taxpayer can go many years without having to contact the IRS with account questions, some practitioners have to contact IRS personnel multiple times a day. Hold times on the Practitioner Priority Service telephone line can be long (average of 12.7 minutes in FY 2020), and hold times when practitioners must call the IRS’s compliance telephone lines can be even longer.<sup>26</sup> For inquiries such as balance inquiries, requests for transcripts, or obtaining copies of correspondence, telephone calls are not nearly as effective as a robust online account.<sup>27</sup>

The California Franchise Tax Board (FTB) has launched an online account service called “MyFTB” on its website. This online account tool provides real-time access to tax account information to individuals, business representatives, and tax professionals. Besides “view-only” account access, taxpayers (or their representatives)

22 IRS Pub. 5336, IRS Integrated Modernization Business Plan 4 (Apr. 2019).

23 See Most Serious Problem: *Online Records Access: Limited Electronic Access to Taxpayer Records Through an Online Account Makes Problem Resolution Difficult for Taxpayers and Results in Inefficient Tax Administration*, *supra*.

24 See IRS, IRS Oversight Organizations, <https://www.irs.gov/about-irs/irs-oversight-organizations> (last visited Nov. 5, 2020).

25 See Cybersecurity & Infrastructure Security Agency, Federal Information Security Modernization Act, <https://www.cisa.gov/federal-information-security-modernization-act> (last visited Nov. 2, 2020); National Institute of Standards and Technology, <https://www.nist.gov/> (last visited Nov. 2, 2020).

26 IRS, Joint Operations Center (JOC), Snapshot Reports: Enterprise Snapshot Product Line Detail 14 (week ending Sept. 30, 2020). The BMF Customer Response line had an average wait time of 35.3 minutes. IRS, JOC, Snapshot Reports: Enterprise Snapshot Product Line Detail 3 (week ending Sept. 30, 2020).

27 See Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Difficulty Reaching IRS Representatives Due to Outdated Information Technology and Insufficient Staffing*, *supra*.

can file a power of attorney, file certain forms, protest a proposed assessment, live chat with a customer service representative, or send a secure message (with attachments).<sup>28</sup>

When we spoke with the FTB in September 2020 regarding its technology strategy, a key lesson shared with us was that IRS divisions should partner more closely with IT staff to ensure alignment of goals throughout the project.<sup>29</sup> MyFTB did not happen overnight; it was the culmination of years of support from FTB leadership and sustained funding from California taxpayers.<sup>30</sup>

Clearly, there are multiple layers of challenges for the IRS to consider as it seeks to use technology to improve the taxpayer experience. California and other states<sup>31</sup> have shown that with a significant investment of time and resources, it is possible to overcome security and privacy obstacles to offer taxpayers a comparable online experience they are accustomed to receiving from private sector firms.

### Pillar Two: Core Taxpayer Service and Enforcement

The absence of modernized IT systems prevents the IRS from providing core taxpayer services and conducting its enforcement efforts as effectively as it could. For example, the IRS currently uses over 60 discrete case management systems it has developed over many years to support the individual needs of multiple business units.<sup>32</sup> Many of these systems are incapable of communicating with each other, resulting in redundancies, bottlenecks, and increased risk. The result is that taxpayers are harmed, practitioners' efforts are hindered, and the IRS is hampered in delivering on its mission to provide U.S. taxpayers top quality service and apply the tax law with integrity and fairness to all.

**The absence of modernized IT systems prevents the IRS from providing core taxpayer services and conducting its enforcement efforts as effectively as it could.**

Taxpayers will benefit if the IRS takes a taxpayer-centric approach to servicing their accounts. ECM is an example of a solution geared toward core taxpayer service. The IRS formally began the ECM initiative in January 2015 and has the daunting task of consolidating case management systems and information across the IRS and replacing them with a cloud-based case management system to improve taxpayer service.<sup>33</sup>

<sup>28</sup> See State of California FTB, *MyFTB*, <http://ftb.ca.gov/myftb/features.html> (last visited Oct. 23, 2020). For further discussion on MyFTB and IRS online account capabilities, see Most Serious Problem: *Online Records Access: Limited Electronic Access to Taxpayer Records Through an Online Account Makes Problem Resolution Difficult for Taxpayers and Results in Inefficient Tax Administration*, *supra*.

<sup>29</sup> State of California FTB response to TAS questions (Sept. 4, 2020).

<sup>30</sup> The State of California FTB reported that it took six years and two months to develop its online tools (including MyFTB) and spent nearly \$423 million on projects relating to the hardware and software to implement the systems behind its online tools. State of California FTB response to TAS questions (Sept. 4, 2020).

<sup>31</sup> See, e.g., New York Department of Taxation and Finance, <http://tax.ny.gov/online/learnmore.htm> (last visited Oct. 23, 2020).

<sup>32</sup> See TIGTA, Ref. No. 2020-20-061, *The Enterprise Case Management Solution Deployment Is Delayed, and Additional Actions Are Needed to Develop a Decommissioning Strategy* 1 (Sept. 21, 2020).

<sup>33</sup> *Id.*

The IRS awarded an ECM software contract with a value of more than \$45 million, with plans for deployment of Release 1.0 by the end of calendar year 2020.<sup>34</sup> The first phase of ECM was demonstrated in September 2020 to the Tax Exempt/Government Entities (TE/GE) division, with a full rollout expected in December 2020.<sup>35</sup> The IRS estimates it will require an additional \$255 million over the next four years to implement its ECM plan.<sup>36</sup> Implementation of the ECM plan should be a top priority, and Congress should provide the funding necessary for the IRS to complete the project.

The Return Review Program (RRP) is an example of a system that supports the core enforcement efforts of the IRS. RRP is a key system for detecting tax fraud and preventing the issuance of questionable refunds that uses predictive modeling techniques to identify subtle data patterns as it protects the integrity of the tax system.<sup>37</sup> The Electronic Fraud Detection System (EFDS) is the primary platform by which the IRS screens, verifies, and refers to a treatment process potentially fraudulent returns selected by RRP.<sup>38</sup> The IRS has plans to phase out EFDS (a system created in 1994) as part of the ECM plan.<sup>39</sup> The IRS's investment in fraud detection systems that would allow it to retire the antiquated EFDS platform should pay many dividends.

Another key element of the modernization plan is the transition to CADE 2 and the retirement of IMF. CADE 2 is expected to offer an integrated, near real-time environment to support the processing of individual tax returns, information returns, payments, and other transactions.<sup>40</sup> Curiously enough, the modernization plan does not include any mention of replacing the IRS's Business Master File (BMF), which contains records pertaining to business taxpayers and exempt organizations.<sup>41</sup>

### Pillar Three: Modernized IRS Operations

The goal of this modernization pillar is to enable the IRS to retire or decommission legacy systems in place of more sustainable infrastructure. One example of this is to move away from paper documents and toward full data digitization. If the IRS processes documents (both internal to the IRS and from taxpayers) electronically, it can capture the data in digital form — without the need to scan the document and/or manually transcribe the data.

Another tangible way the IRS can achieve modernized operations is to move to cloud-based data storage. Because the IRS handles so much sensitive taxpayer information, it has to be concerned about data security and has historically been reluctant to forgo the old-fashioned computer disk backup protocol for data storage. However, with increasing security features available for cloud-based data storage, it is just a matter of how soon the IRS will embrace cloud-based data storage. The IRS has started pursuing cloud-based solutions,

34 See TIGTA, Ref. No. 2020-20-061, *The Enterprise Case Management Solution Deployment Is Delayed, and Additional Actions Are Needed to Develop a Decommissioning Strategy* 4 (Sept. 21, 2020).

35 IRS Case Management Milestone: New Foundational and Business Capabilities Delivered in TE/GE FY 2020 Partial Release (Sept. 30, 2020).

36 IRS response to TAS information request (Oct. 1, 2020).

37 Individual returns are run throughout the RRP and scored to identify suspicious returns exceeding certain tolerances for false or inflated wages and/or withholding claimed on returns. Internal Revenue Manual (IRM) 25.25.11.1, Program Scope and Objectives (Mar. 24, 2020). See also IRM 25.25.2.2, Data Mining Screening (June 3, 2020).

38 IRM 25.25.2.22, Returns Not in EFDS (Feb. 26, 2020).

39 See TIGTA, Ref. No. 2015-20-093, *Review of the Electronic Fraud Detection System* 1 (Sept. 29, 2015); IRS, W&I response to TAS information request (Oct. 22, 2020); Most Serious Problem: *Refund Delays: Taxpayers Whose Legitimate Refunds Are Flagged by IRS Fraud Filters Experience Excessive Delays and Frustration in Receiving Their Refunds*, *infra*.

40 IRS Pub. 5336, IRS Integrated Modernization Business Plan 22 (Apr. 2019).

41 See IRM 25.71.2, Overview of Exempt Organizations Business Master File (Jan. 1, 2020). The BMF and the Exempt Organizations Master File were merged January 1, 1981, and the resulting file is referred to as the EO/BMF.

having added 26 systems, projects, and applications leveraging cloud infrastructure in FY 2020.<sup>42</sup> For example, the IRS utilizes leading commercial cloud providers to host and deliver secure, agile, and efficient cloud-based solutions.<sup>43</sup>

#### Pillar Four: Cybersecurity and Data Protection

The final modernization pillar relates to the protection of taxpayer data. As the guardian of valuable taxpayer data, the IRS will always be a target of hackers and identity thieves. The IRS estimates there are more than 2.5 million unauthorized access attempts per day, including denial-of-service attacks, unsuccessful intrusion attempts, probes or scans, and other unauthorized connectivity attempts.<sup>44</sup> As one of the nation's largest repositories of sensitive data, the IRS has strategically deployed enterprise safeguards to detect and prevent emerging cyber threats (*e.g.*, insider threats, social engineering, and unauthorized access to sensitive information).<sup>45</sup>

The IRS takes seriously its responsibility to develop and maintain an agencywide, proactive approach to security, which necessitates continued investment in cutting-edge technology to defend against expanding cyber threats. One of the most significant cybersecurity-related challenges that the IRS has articulated is the disadvantage in attracting specialized talent when competing with private sector, where its competitors can offer compensation packages commensurate with qualifications.<sup>46</sup>

#### Risk of Catastrophic Systems Failure

Because the IRS's core IT systems are among the oldest in the federal government,<sup>47</sup> its reliance on outdated and unsupported IT has been described as “a ticking time bomb.”<sup>48</sup> With the IRS collecting trillions of dollars (the IRS collected \$3.6 trillion in FY 2019),<sup>49</sup> a catastrophic disruption in government operations could occur if core IRS IT systems suffered a long-term failure. The IRS Commissioner reiterated the importance of protecting against catastrophic systems failure, pointing out that “we cannot have a functioning government without a functioning IRS.”<sup>50</sup>

Shortly before the 2018 filing season began, GAO had warned that “relying on these antiquated systems for our nation's primary source of revenue is highly risky, meaning the chance of having a failure during the filing season is continually increasing.”<sup>51</sup> IRS leadership had foreshadowed in an October 2017 congressional hearing that the antiquated IT infrastructure has increased “the potential for a catastrophic system failure.”<sup>52</sup>

42 IRS response to TAS information request (Oct. 19, 2020).

43 *Id.*

44 IRS response to TAS fact check (Nov. 19, 2020).

45 IRS response to TAS information request (Oct. 19, 2020).

46 *Id.*

47 GAO, GAO-16-468, *Information Technology: Federal Agencies Need to Address Aging Legacy Systems* 28-30 (May 2016).

48 *Federal Agencies' Reliance on Outdated and Unsupported Information Technology: A Ticking Time Bomb*, Hearing Before the House Comm. on Oversight and Government Reform, 114th Cong. 2d Sess. (May 25, 2016).

49 IRS, 2019 IRS Data Book 1 (June 2020).

50 *The 2019 Tax Filing Season and the 21st Century IRS*, Hearing Before the S. Finance Comm., 116th Cong., at 1 (Apr. 10, 2019) (statement of Charles P. Rettig, IRS Commissioner).

51 See Frank Konkeli, *The IRS System Processing Your Taxes Is Almost 60 Years Old*, NEXTGOV 2 (Mar. 19, 2018) (quoting David Powner, GAO's director of Information Technology Management Issues), <https://www.nextgov.com/it-modernization/2018/03/irs-system-processing-your-taxes-almost-60-years-old/146770/>.

52 *Internal Revenue Service's Information Technology Modernization Efforts*, Hearing Before the H. Ways and Means Comm. Subcomm. on Oversight, 115th Cong., at 1 (Oct. 4, 2017) (statement of Jeffrey J. Tribiano, IRS Deputy Commissioner for Operations Support, and Silvana Gina Garza, IRS Chief Information Officer), <https://gop-waysandmeans.house.gov/wp-content/uploads/2017/10/20171004OS-Testimony-Tribiano-Garza.pdf>.

The concerns were well-founded, and on April 17, 2018, an IRS systems outage prevented taxpayers from electronically submitting their tax returns and payments on the day of the filing deadline for submitting 2017 tax returns for individuals. The outage was attributed to a malfunction in hardware supporting the IMF — a legacy system that requires ongoing support every year.<sup>53</sup> The IRS gave taxpayers an extra day to file to mitigate the damage from the crash, but the systems failure created significant confusion and anxiety among taxpayers and preparers, serving as a wakeup call and a warning of future problems if the IRS cannot replace its legacy systems soon.

## Funding

The IRS cannot implement its modernization plan that includes ECM and online services until Congress provides adequate, predictable funding — which is outside of the IRS's control.<sup>54</sup> Not only must Congress provide the IRS with sufficient appropriations, but such funding must be consistent and reliable from year to year. In addition, the IRS must internally allocate enough of its budget to IT modernization in a manner that will not allow interruption of the modernization efforts.

There are at least two factors in play that make it challenging for IRS modernization projects to proceed as planned. First, there is a real risk that Congress cannot timely pass an appropriations bill. When that happens, the government operates on a “continuing resolution” — a stopgap funding measure that freezes the level of funding at prior year levels. This risk is not unique to the IRS or to IT, but it makes planning for modernization more difficult. Second, there is a risk that money and personnel budgeted for systems modernization get diverted to other IT projects. GAO noted in recent congressional testimony that the IRS has often had to shift its IT resources to implement tax law changes versus ongoing activities that it had planned to enhance its systems.<sup>55</sup> When there are competing priorities, it is tempting for the IRS to shift funds from one area to pay for another area that is seemingly more time-sensitive.

**Example:** Assume modernization Project X is estimated to cost \$90 million over three years. Congress funds the IRS budget request in year one, and the IRS allocates \$30 million of its budget to Project X. In year two, Congress does not pass an appropriations bill on time, and the IRS operates on a continuing resolution. By the time a full budget for year two is finalized by Congress, the period for requesting bids from contractors has expired, delaying Project X by three months. In year three, Congress approves IRS funding timely but not in the amount requested. In addition, Congress has directed the IRS to administer a one-time economic stimulus payment to over 150 million taxpayers, due within 90 days of the legislation's passage. To account for this budget shortfall, the Commissioner halts funding for Project X altogether in year three.

53 See Aaron Boyd & Frank Konkell, *IRS' 60-Year-Old IT System Failed on Tax Day Due to New Hardware*, NEXTGOV (Apr. 19, 2018) (citing an IRS official), <https://www.nextgov.com/it-modernization/2018/04/irs-60-year-old-it-system-failed-tax-day-due-new-hardware/147598/>.

54 The IRS is planning technological customer service focused features as part of the new comprehensive “customer service strategy” required by the TFA, which will be released in a forthcoming report. See TFA, Pub. L. No. 116-25, § 2302, 133 Stat. 1013 (2019). Each of these forthcoming new customer service features, such as concierge support to help shepherd taxpayers calling the IRS to the right people and a robust AI-powered employee assistant, will require dedicated multiyear funding and refinement of the budget requests to allow the IRS to invest in the technological infrastructure, such as additional server capacity, that will be a prerequisite for implementation. See IRS, FY 2022 Treasury Departmental Budget Submission 12-13 (June 5, 2020) (describing some of the new features including concierge support and use of artificial intelligence).

55 *IRS in the Pandemic*, Hearing Before the H. Comm. on Oversight and Reform, Subcomm. on Government Operations, 116th Cong. (Oct. 7, 2020) (statement of Vijay A. D'Souza, Director, Information Technology and Cybersecurity), <https://www.rev.com/blog/transcripts/house-oversight-hearing-on-irs-operations-transcript-october-7>.

The IRS had estimated that full implementation of its modernization plan over six years would cost \$2.3 to \$2.7 billion.<sup>56</sup> Congress appropriated \$150 million in FY 2019 and \$180 million in FY 2020 to the IRS for modernization efforts.<sup>57</sup> The President's budget for FY 2021 allocated \$300 million for IRS modernization,<sup>58</sup> while the appropriations bill by Congress for FY 2021 initially had \$250 million in appropriations for business systems modernization.<sup>59</sup> The full-year continuing resolution for FY 2021 caused the modernization funding to revert to the FY 2020 level of \$180 million.<sup>60</sup>

Even using the lower limit of the modernization plan cost (\$2.3 billion), the IRS would need sustained funding of nearly \$400 million a year over the six-year period ending in FY 2024. Figure 1.6.1 shows that the modernization plan is severely underfunded, even if Congress appropriates the full amount of the proposed FY 2021 budget.

**FIGURE 1.6.1, Estimated Modernization Funding Shortfall, FYs 2019-2024 (in Millions)<sup>61</sup>**

FY (Plan Year)	2019 1st Yr	2020 2nd Yr	2021 3rd Yr	2022 4th Yr	2023 5th Yr	2024 6th Yr
Upper Limit IT Modernization plan (Even Funding on \$2.7B)	\$450	\$450	\$450	\$450	\$450	\$450
Lower Limit IT Modernization plan (Even Funding on \$2.3B)	\$383	\$383	\$383	\$383	\$383	\$383
FY Appropriations Approved by Congress in Budget	\$150	\$180	\$250			
FY Appropriations Received by IRS	\$150	\$180	\$180			
Lower Limit Dollars Needed to Makeup Prior & Current Year Shortfall(s) [\$2.3B]	\$233	\$437	\$640			
Upper Limit Dollars Needed to Makeup Prior & Current Year Shortfall(s) [\$2.7B]	\$300	\$570	\$840			

56 IRS Fact Sheet, FS-2019-9, IRS Modernization Plan Provides Plan to Improve Services for Taxpayers, Tax Community (Apr. 2019), <https://www.irs.gov/newsroom/irs-modernization-plan-provides-plan-to-improve-services-for-taxpayers-tax-community>.

57 Consolidated Appropriations Act, 2020, Pub. L. No. 116-93, 133 Stat. 2441 (Dec. 20, 2019); Consolidated Appropriations Act, 2019, Pub. L. No. 116-6, 133 Stat. 145 (Feb. 15, 2019).

58 Office of Management and Budget, *Budget of the U.S. Government, Fiscal Year 2021*, at 86, [https://www.whitehouse.gov/wp-content/uploads/2020/02/budget\\_fy21.pdf](https://www.whitehouse.gov/wp-content/uploads/2020/02/budget_fy21.pdf).

59 See S. Comm. on Appropriations, Committee Print of FY 2021 Financial Services and General Government Funding Bill (Oct. 29, 2020), <https://www.appropriations.senate.gov/imo/media/doc/FSGGFY2021.pdf>.

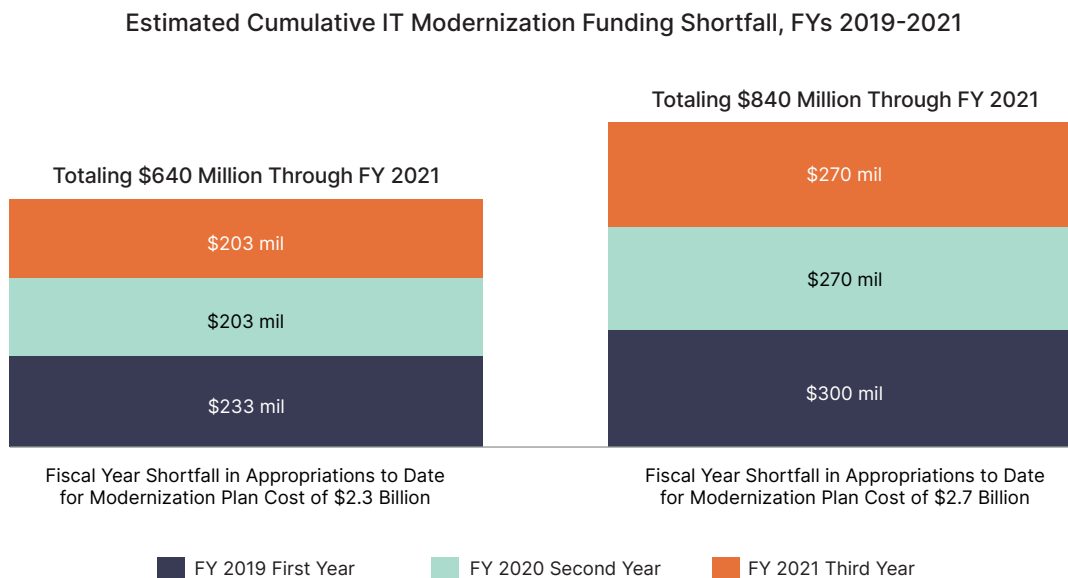
60 See H.R. 8337, Continuing Appropriations Act, 2021 and Other Extensions Act, Pub. L. No. 116-159 (2020). On December 27, 2020, the President signed H.R. 133, Consolidated Appropriations Act, 2021, 116th Cong. (2020), Div. E, appropriating \$223 million for IRS business systems modernization.

61 Upper limit and lower limit funding for IT modernization are from IRS Fact Sheet, FS-2019-9, divided by six for the years in the modernization plan. Congressional IRS appropriation amounts for 2019, \$150M; 2020, \$180M; and 2021, \$250M are respectively from Pub. L. No. 116-93, 133 Stat. 2441 (2019), Pub. L. No. 116-6, 133 Stat. 145 (2019), and H. Comm. on Appropriations, FY 2021 Financial Services and General Government Funding Bill (July 7, 2020). IRS appropriations or expected amounts for 2019, \$150M; 2020, \$180M; and 2021, \$180M are respectively from Pub. L. No. 116-93, 133 Stat. 2441 (2019), Pub. L. No. 116-6, 133 Stat. 145 (2019), and Pub. L. No. 116-159, § 101 (2020). Lower limit shortfall is derived by adding prior year shortfall dollars plus (lower limit dollars minus IRS appropriations or expected dollars) for each FY. Upper limit shortfall is derived by adding prior year shortfall dollars plus (upper limit dollars minus IRS appropriations or expected dollars) for each FY. Numbers for each year were rounded separately so the cumulative shortfall may exceed the total of the individual year shortfalls.



As Figure 1.6.1 shows, the IT modernization plan will require funding of between \$383 million and \$450 million per year, from the IRS's own estimates. Yet the amounts appropriated by Congress in the past three years fell substantially short of that amount, as depicted in Figure 1.6.2.

**FIGURE 1.6.2<sup>62</sup>**



Unless IT modernization funding is dramatically increased in the next three years, it is not feasible that the IRS will achieve its modernization plan goals by FY 2024. This is akin to receiving an estimate from an auto mechanic for \$5,000 to replace a transmission and getting authorization for a loan to finance the project, only to have the bank disburse only 40 percent of the funds to cover the cost of the repair. Congress needs to provide the IRS with full funding — provided to the IRS in a consistent and reliable manner — to implement its IT modernization plan.

The urgency of the IRS modernizing its IT systems is such that the House Majority Leader recently proposed a \$2 billion addition to the Technology Modernization Fund (TMF) — a revolving fund administered by the General Services Administration and the federal CIO — to fund the technology refresh.<sup>63</sup> For example, the Customs and Border Protection received a \$15 million loan from the TMF to upgrade its last remaining

62 Upper limit and lower limit funding for IT modernization are from IRS Fact Sheet, FS-2019-9, divided by six for the years in the modernization plan. Congressional IRS appropriation amounts for 2019, \$150M; 2020, \$180M; and 2021, \$250M are respectively from Pub. L. No. 116-93, 133 Stat. 2441 (2019), Pub. L. No. 116-6, 133 Stat. 145 (2019), and H. Comm. on Appropriations, FY 2021 Financial Services and General Government Funding Bill (July 7, 2020). IRS appropriations or expected amounts for 2019, \$150M; 2020, \$180M; and 2021, \$180M are respectively from Pub. L. No. 116-93, 133 Stat. 2441 (2019), Pub. L. No. 116-6, 133 Stat. 145 (2019), and Pub. L. No. 116-159, § 101 (2020). Lower limit shortfall is derived by adding prior year shortfall dollars plus (lower limit dollars minus IRS appropriations or expected dollars) for each FY. Upper limit shortfall is derived by adding prior year shortfall dollars plus (upper limit dollars minus IRS appropriations or expected dollars) for each FY. Numbers for each year were rounded separately so the cumulative shortfall may exceed the total of the individual year shortfalls.

63 Letter from House Majority Leader Steny Hoyer to Secretary of the Treasury Steven T. Mnuchin (July 31, 2020), <https://www.majorityleader.gov/sites/democraticwhip.house.gov/files/attachments/Hoyer%20Letter%20to%20Mnuchin%20on%20TMF.pdf>.

COBOL-coded mainframe application.<sup>64</sup> The IRS has never secured TMF funding, but it should continue to explore all options.

The IRS can also take cues from the private sector. In many for-profit enterprises, an investment in IT is a business decision substantiated by an expectation of a positive return on that investment. The IRS is different in that, as a governmental agency, it has a statutory obligation to conduct certain tasks, whether there is a return on that investment or not. But often, the IRS may be able to show IT modernization will have a net-positive effect. For example, perhaps the Exam function can show it could complete 40 percent more audits if it had the most up-to-date ECM software. Or the Collection function might estimate it could take in receipts 30 days faster if certain online payment tools were available to its taxpayers. If the IRS divisions requesting the programming change can articulate the expected return on investment of the requested IT modernization effort, it would help IT prioritize competing requests. Having a record of the anticipated return on investment for each project will help Congress keep the IRS accountable for how it spends its funds earmarked for IT modernization.

### Challenges With Maintaining Antiquated Information Technology Systems

IRS legacy systems are facing significant risks due to their reliance on outdated programming languages, antiquated hardware, and a shortage of human resources with critical skills.<sup>65</sup> For example, GAO noted that the IRS's reliance on primitive Assembler Language Code or obsolete COBOL, developed in the 1950s, exposes these legacy systems to rising operating costs and a decrease in staff available with the proper skillsets to maintain these systems.<sup>66</sup>

Because IRS legacy systems still require significant programming to prepare for each filing season and other purposes, the shrinking pool of qualified programmers poses a growing concern. There simply are few qualified IT personnel proficient in the antiquated COBOL programming language, so even expert computer programmers hired by the agency need extensive training before they can program some IRS systems.<sup>67</sup>

The older a system becomes, the more difficult it is to maintain. The sooner the IRS can replace its antiquated 1960s-era car, the less it must spend on maintaining the vehicle. In addition to improved taxpayer service, one benefit of IT modernization is that the IRS expects its legacy IT operations and maintenance (O&M) expenditures to fall as its IT systems become more modernized.

64 *Pandemic or Not, Federal Agencies Continued Efforts to Update Their Legacy Systems and Adopt Modern Ways of Buying, Developing and Implementing Technology*, NEXTGOV (Oct. 22, 2020), <https://www.nextgov.com/it-modernization/2020/10/whats-next-it-modernization/169428/>.

65 See GAO, GAO-18-298, *IRS Needs to Take Additional Actions to Address Significant Risks to Tax Processing* (June 2018). See also Most Serious Problem: *IRS Recruitment, Hiring, and Employee Retention: Quality Taxpayer Service and Protection of Taxpayer Rights Are Directly Linked to the IRS's Need to Improve Its Recruitment, Hiring, and Retention Strategies*, *supra*.

66 See GAO, GAO-18-298, *IRS Needs to Take Additional Actions to Address Significant Risks to Tax Processing* (June 2018).

67 See GAO, GAO-19-471, *Agencies Need to Develop Modernization Plans for Critical Legacy Systems* (June 2019).

### FIGURE 1.6.3, IRS Information Technology, Past and Future

IT procured 1960s-era tools and technologies that were state-of-the-art then but obsolete to serve taxpayers in modern era. Therefore, IT needs to modernize its arsenal to better serve taxpayers.

Dated IRS IT Tools and Services <sup>68</sup>	IRS 2020 to Future IT Tools and Services <sup>69</sup>
<b>Systems:</b> <ul style="list-style-type: none"> <li>• Accounts Management System</li> <li>• Individual Master File (IMF)/Business Master File (BMF)</li> <li>• Electronic Fraud Detection System (EFDS)</li> <li>• Integrated Data Retrieval System (IDRS)</li> </ul>	<b>Systems:</b> <ul style="list-style-type: none"> <li>• Enterprise Case Management</li> <li>• Customer Account Data Engine 2 (CADE 2)</li> <li>• Automated Fraud Detection Filters Using Machine Learning</li> <li>• Real Time Tax Processing</li> </ul>
<b>Taxpayer Correspondence Options:</b> <ul style="list-style-type: none"> <li>• Paper Filing</li> <li>• Wet Signature</li> </ul>	<b>Taxpayer Correspondence Options Expanded:</b> <ul style="list-style-type: none"> <li>• Paperless Filing for All Forms</li> <li>• Digital/Electronic Signature</li> </ul>
<b>Taxpayer Service Options:</b> <ul style="list-style-type: none"> <li>• Phone Based Customer Service</li> <li>• Mail Correspondence</li> <li>• Fax Service</li> <li>• Walk-in (in person)</li> </ul>	<b>Taxpayer Service Options Expanded:</b> <ul style="list-style-type: none"> <li>• Integrated Telephone Assistance (e.g., Customer Callback)</li> <li>• Online Services including Self Service Portal</li> <li>• Digital Communications (e.g., Web Chat, Secure Messaging)</li> <li>• Mobile-Ready Application</li> </ul>
<b>Information Technology Skills:</b> <ul style="list-style-type: none"> <li>• Basic Statistics and Mathematics</li> <li>• Computer Science</li> <li>• Business-Oriented Language (e.g., COBOL and Assembler Language Code (ALC))</li> </ul>	<b>Information Technology Skills:</b> <ul style="list-style-type: none"> <li>• Data Science</li> <li>• Artificial Intelligence Skills</li> <li>• Image Processing</li> <li>• Open Source Language (e.g., Java, Python)</li> <li>• Cloud Engineers</li> </ul>

However, the longer it takes the IRS to roll out new technology, the more it will spend on O&M. This becomes especially true when we account for the costs of operating dual systems during an extended transition phase. For example, the Taxpayer Advocate Service continues to spend resources maintaining the Taxpayer Advocate Management Information System (TAMIS) for its case management, while the IRS spends millions developing a usable ECM platform that can replace TAMIS. IRS IT should continue working with the IRS divisions to identify the priority ECM components to reduce overall O&M costs.

### Staffing Challenges

Along with funding issues, the IRS has several challenges for hiring the right staffing to oversee IT modernization. First is identifying the right subject matter experts. When dealing with legacy systems written in obsolete programming languages, there is a limited population of individuals with the appropriate technical competencies.

68 This is not an all-inclusive list of IRS IT tools that are obsolete. See TIGTA, Ref. No. 2020-20-044, *Legacy Systems Management Needs Improvement* (Aug. 19, 2020); IRS, FY 2022 Treasury Departmental Budget Submission (June 5, 2020). See also TIGTA, Ref. No. 2020-20-061, *The Enterprise Case Management Solution Deployment Is Delayed, and Additional Actions Are Needed to Develop a Decommissioning Strategy* 1 (Sept. 21, 2020).

69 This is not an all-inclusive list of IRS future IT tools. See IRS Pub. 5336, *IRS Integrated Modernization Business Plan* (Apr. 2019).

Second, even if the desired IT personnel are identified, how can the IRS attract and retain these employees, while largely constrained by the General Schedule pay system for federal employees? Although Congress recently reinstated the IRS's ability to offer critical pay (that is, compensation levels higher than typical government pay scale) to key IT employees, the IRS will still need to develop a robust recruiting strategy that proactively seeks IT expertise.<sup>70</sup> For example, the IRS may streamline its hiring processes and collaborate more closely with the IRS divisions by giving them more control over their own hiring.<sup>71</sup>

Third, the IRS should consider how it organizes itself internally. The IT professionals working under the CIO might be extremely well-versed in best practices, industry standards, and the latest technology offerings, but if the IRS divisions do not have counterparts who are trained and knowledgeable about both the business needs and the technical aspects, then there is a risk of a disconnect between what the IRS divisions need and what IT can deliver.

The ability to recruit, hire, and retain the next generation of employees will determine the IRS's ability to fulfill its IT mission, ultimately determining the IRS's effectiveness, while impacting taxpayer service and taxpayer rights and the ability to administer necessary social programs.

### Competing Priorities

Each filing season, the IRS must make numerous programming changes to various IT systems. Whenever there is new tax legislation, such as the CARES Act, the IRS is tasked with the responsibility to implement major changes, often in a short amount of time. To manage requests for IT products and services, the IRS has instituted a Unified Work Request (UWR) process. A UWR is a written agreement between IRS IT and IRS divisions that seek IT's assistance. The primary goal of the UWR process is to register the demand for IT products and services in a transparent manner before making data-driven decisions to approve or deny such requests from IRS divisions.<sup>72</sup>

Because of such competing priorities and a finite IT budget and resources, it is understandable how UWRs unrelated to filing season or new legislation can receive lower priority, which may cause delays as the IRS staff creates workarounds.

## CONCLUSION AND RECOMMENDATIONS

Because taxpayers deserve first-rate customer service, and because the fiscal health of the federal government depends on the IRS's collection capability, it is critical that the IRS modernize its IT systems and infrastructure. Apart from the risk of catastrophic collapse, the lack of modern IT systems harms taxpayers, inconveniences tax practitioners, and hinders the IRS from delivering its mission to provide taxpayers top quality service and to apply the tax law with integrity and fairness to all.

We are not advocating that Congress provide the IRS with a blank check, rather a more predictable flow of funds to implement IRS's modernization efforts. With additional funding and proper oversight, we are

<sup>70</sup> TFA, Pub. L. No. 116-25, § 2103, 133 Stat. 981 (2019).

<sup>71</sup> See Most Serious Problem: *IRS Recruitment, Hiring, and Employee Retention: Quality Taxpayer Service and Protection of Taxpayer Rights Are Directly Linked to the IRS's Need to Improve Its Recruitment, Hiring, and Retention Strategies*, *supra*.

<sup>72</sup> See IRM 2.22.1, Unified Work Request (UWR) Process (Jan. 27, 2020).

optimistic the IRS can modernize its IT systems, provide better taxpayer service, more efficiently collect tax revenue, and reduce its IT systems maintenance costs.

### Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate preliminarily recommends that the IRS:

1. Compile data on the operations and maintenance costs of all legacy systems to assist in prioritizing decommissioning decisions.
2. Prioritize the development of a Servicewide centralized system to store digital tax records to allow the IRS to go completely paperless.<sup>73</sup>
3. Create CIO liaisons for each IRS division knowledgeable about both the business needs and the technical aspects to bridge the disconnect between the needs of the IRS divisions and what IT can deliver.
4. Compile a list of IT lessons learned during COVID-19, documenting the problems taxpayers experienced due to IT-related challenges during the pandemic so it can be better prepared for the future.
5. Expand modernization efforts to include BMF to provide the same level of service to business taxpayers it will provide to individual taxpayers.
6. Ensure the amount requested for its IT budget is sufficient and sustainable to fund its multiyear modernization plan.
7. Consider seeking financial assistance from the Technology Modernization Fund.

### Legislative Recommendations to Congress

The National Taxpayer Advocate recommends that Congress:

1. Provide the IRS with sufficient, sustained funding to improve taxpayer service and modernize its IT systems over a predictable multiyear period, allowing the IRS to properly implement its modernization plan as a whole and not in pieces.<sup>74</sup>
2. Ensure that any increase in funding for enforcement (including program integrity cap adjustments) is coupled with a commensurate increase in funding for service and operations support so taxpayers seeking to respond to the IRS can do so easily. This way, the IRS need not prioritize IT over enforcement.<sup>75</sup>

<sup>73</sup> See Most Serious Problem: *E-Filing and Digitalization Technology: Failure to Expand Digitalization Technology Leaves Millions of Taxpayers Without Access to Electronic Filing and Wastes IRS Resources*, *supra*.

<sup>74</sup> For more detailed recommendations, see National Taxpayer Advocate 2020 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 6-8 (*Provide the IRS With Sufficient Funding to Meet Taxpayer Needs and Improve Federal Tax Compliance*).

<sup>75</sup> *Id.*

## IRS COMMENTS

The IRS appreciates the National Taxpayer Advocate's support for significant, sustained multi-year funding to modernize the IT systems that enable 21st century taxpayer service and fairness in our tax system. The IRS interacts with more Americans than any other public or private organization. As the National Taxpayer Advocate recognized, IT systems are critical to all aspects of tax administration, including collection of almost \$3.6 trillion in revenue each year (representing almost 96 percent of the gross revenue of the United States, each year), administering various subsidies such as the Earned Income Tax Credit, distributing hundreds of billions of dollars in tax refunds, delivering hundreds of billions of dollars in any potential future stimulus payments, providing customer service to tens of millions of taxpayers, and, as we saw in 2020, providing rapid financial relief to individuals and businesses when necessary.

The IRS also appreciates the National Taxpayer Advocate's recognition of the unprecedented challenges posed by the COVID-19 pandemic and the outstanding performance of our employees in delivering more than 160 million Economic Impact Payments totaling more than \$270 billion and implementing other CARES Act provisions, provisioning more than 15,000 IRS customer service representatives and other employees with laptops, and growing network capacity five-fold to support over 59,000 employees working remotely at one time – all during the middle of the longest filing season in history.

As the National Taxpayer Advocate noted, IRS is making considerable progress delivering upon the initiatives within the IRS Integrated Modernization Business Plan, despite appropriated funding at just over half the requested level. In the first two years of the plan, the IRS deployed secure online account features for individuals, the first iteration of a cloud-based case management system to improve taxpayer service, customer callback on several toll-free phone lines, and over 35 other capabilities to improve our technology infrastructure, systems, and cybersecurity defenses.

Although some of the IRS's core tax administration applications use aged programming languages, they operate on current, state-of-the-art hardware. In fact, at the end of FY 2020, the IRS's aged hardware percentage was 16 percent, below the industry standard of 20 to 25 percent. As the National Taxpayer Advocate describes, the primary risk in maintaining these systems is that there is a small and shrinking pool of engineers and developers who can make the changes required to prepare for each filing season and promptly respond to new legislation. We are mitigating these risks with robust training and a focus on transferring knowledge to our next generation of technical experts.

The IRS remains committed to transparent reporting on modernization progress, challenges, successes, costs, and risks to Congress and other stakeholders. We share the National Taxpayer Advocate's vision for improved taxpayer service, more effective revenue collection, and more efficient operations, in part through the modernization of the IRS's information technology.



## TAXPAYER ADVOCATE SERVICE COMMENTS

The National Taxpayer Advocate shares many of the sentiments expressed in the IRS response to this Most Serious Problem. Without question, the IRS is increasingly being asked to do more with less. The fallout of the COVID-19 pandemic exacerbated the challenges, but the IRS has performed admirably during this crisis to continue delivering quality service to taxpayers.

As the nation's primary revenue collector, the IRS is tasked with a role that is too important for Congress to short circuit its necessary investment in technology. It is vital that the IRS succeed in these efforts.

We are aligned with the IRS regarding the need for Congress to fully fund the IRS's efforts to modernize its systems. The IRS has devoted a substantial amount of thought and resources into developing its modernization plan; Congress should help, not hinder, the IRS's efforts to implement that plan.

## RECOMMENDATIONS

### Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Compile data on the operations and maintenance costs of all legacy systems to assist in prioritizing decommissioning decisions.
2. Expedite the development of a Servicewide centralized system to store digital tax records to allow the IRS to go completely paperless.<sup>76</sup>
3. Create CIO liaisons for each IRS division knowledgeable about both the business needs and the technical aspects to bridge the disconnect between the needs of the IRS divisions and what IT can deliver.
4. Compile a list of IT lessons learned during COVID-19, documenting the problems taxpayers experienced due to IT-related challenges during the pandemic so it can be better prepared for the future.
5. Expand modernization efforts to include BMF to provide a comparable level of service (e.g., online accounts, digital services, shorter processing cycles (CADE 2), etc.) to business taxpayers it will provide to individual taxpayers.
6. Ensure the amount requested for its IT budget is sufficient and sustainable to fully fund its multiyear modernization plan.
7. Consider seeking financial assistance from the Technology Modernization Fund.

<sup>76</sup> See Most Serious Problem: *E-Filing and Digitalization Technology: Failure to Expand Digitalization Technology Leaves Millions of Taxpayers Without Access to Electronic Filing and Wastes IRS Resources*, *supra*.

### Legislative Recommendations to Congress

The National Taxpayer Advocate recommends that Congress:

1. Provide the IRS with sufficient, sustained funding to improve taxpayer service and modernize its IT systems over a predictable multiyear period, allowing the IRS to properly implement its modernization plan as a whole and not in pieces.<sup>77</sup>
2. Ensure that any increase in funding for enforcement (including program integrity cap adjustments) is coupled with a commensurate increase in funding for service and operations support so taxpayers seeking to respond to the IRS can do so easily. This way, the IRS need not prioritize IT over enforcement.<sup>78</sup>

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<sup>77</sup> For more detailed recommendations, see National Taxpayer Advocate 2020 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 6-8 (*Provide the IRS With Sufficient Funding to Meet Taxpayer Needs and Improve Federal Tax Compliance*).

<sup>78</sup> *Id.*

## Taxpayers Encounter Unnecessary Delays and Difficulties Reaching an Accountable and Knowledgeable Contact for Correspondence Audits

### RESPONSIBLE OFFICIALS

Eric Hylton, Commissioner, Small Business/Self-Employed Division

Kenneth Corbin, Commissioner, Wage and Investment Division

### TAXPAYER RIGHTS IMPACTED<sup>1</sup>

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to a Fair and Just Tax System*

### EXPLANATION OF THE PROBLEM

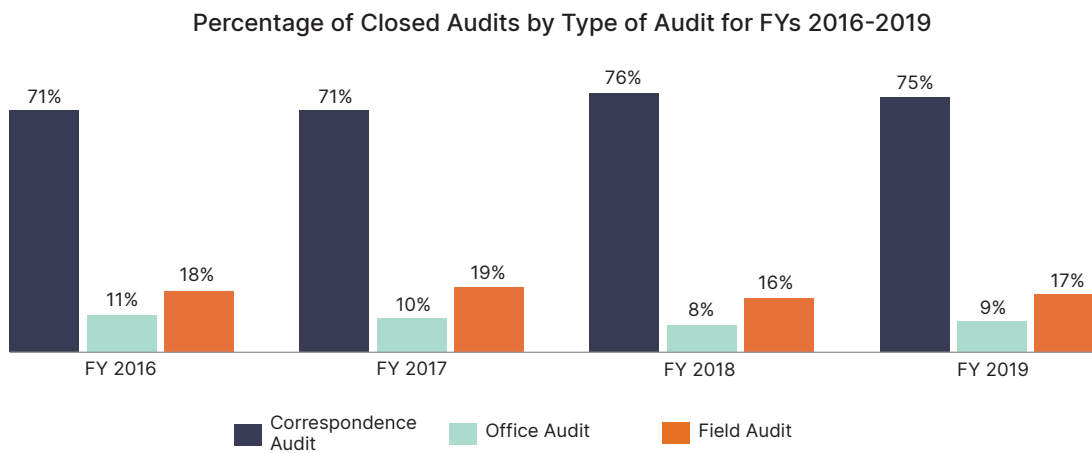
In response to taxpayer complaints about the inability to contact IRS staff directly, the IRS Restructuring and Reform Act of 1998 (RRA 98), section 3705(a) required that IRS correspondence “include in a prominent manner the name, telephone number, and unique identifying number of an Internal Revenue Service employee.” However, more than 20 years later, the IRS still has not meaningfully implemented this provision regarding its correspondence audit programs. This makes it difficult and frustrating for taxpayers or their representatives to reach a single point of contact at the IRS who is accountable and knowledgeable when they are seeking answers to questions about their audit or the information they submitted. The IRS correspondence audit program, as designed, leaves taxpayers solely dependent on toll-free phone services that operate with limited availability or the receipt of IRS notifications issued with uncertain timeframes. The inability to reach a single point of contact diminishes the customer experience, creates IRS inefficiency, hinders opportunities to engage and educate our nation’s taxpayers and decreases potential for developing and building trust with the IRS.

<sup>1</sup> See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the IRC. See IRC § 7803(a)(3).

## ANALYSIS

More than 70 percent of the audits conducted by the IRS are correspondence audits.<sup>2</sup> Although the number of taxpayers selected for IRS audit has declined in recent years,<sup>3</sup> the percentage of IRS audits conducted by correspondence has increased from fiscal years (FYs) 2016 to 2018 with a slight decrease in 2019, as shown in Figure 1.7.1. Because correspondence audits represent one of the most significant tools the IRS employs to achieve voluntary compliance, the taxpayer's ability to interact and communicate with the IRS is vitally important to the success of the correspondence audit process, the quality of service provided, and the fair and just treatment of taxpayers.

**FIGURE 1.7.1<sup>4</sup>**



### What Are Correspondence Audits?

Correspondence audits are examinations conducted by mail for a single tax year involving no more than a few issues that the IRS can resolve by reviewing simple documents.<sup>5</sup> Some of the highest volume issues addressed by correspondence audits during FY 2019 included the Earned Income Tax Credit (EITC); employee business expenses; nonfilers; items related to Schedule C, Profit or Loss From Business; and questionable refunds.<sup>6</sup> While these issues seem simple, many of these audit categories can encompass complicated rules, procedures, or factual situations that could give rise to taxpayer questions or the need for assistance.

2 IRS Compliance Data Warehouse (CDW), Audit Information Management System (AIMS) Closed Case Database FYs 2016 to 2019 (Oct. 2020). Correspondence audits include audits closed by campus tax examiners in the Wage and Investment (W&I) and Small Business/Self-Employed (SB/SE) Operating Divisions.

3 IRS CDW, AIMS Closed Case Database FYs 2016 to 2019 (Oct. 2020). Correspondence audits include audits closed by campus tax examiners in the W&I and SB/SE Operating Divisions. The IRS conducted a total of 1,111,323 income tax audits in FY 2016; 1,008,122 in FY 2017; 967,242 in FY 2018; and 752,306 in FY 2019.

4 IRS CDW, AIMS Closed Case Database FYs 2016 to 2019 (Oct. 2020); IRS response to TAS fact check (Nov. 24, 2020). For purposes of this figure, correspondence audits include audits closed by campus tax examiners in the W&I and SB/SE Operating Divisions. Office audits include audits closed by tax compliance offices in SB/SE. Field audits include audits closed by revenue agents in SB/SE and Large Business and International (LB&I) Operating Divisions. Due to rounding issues, the FY 2019 percentages exceed 100 percent.

5 See National Taxpayer Advocate 2018 Annual Report to Congress vol. 2, at 117 (*Introduction to the Exam Process: Promoting Voluntary Compliance and Minimizing Taxpayer Burden in the Selection and Conduct of Audits*).

6 IRS CDW, AIMS Closed Case Database FY 2019 (Oct. 2020).

Unlike other IRS audits, correspondence audits are not assigned to a single examiner who will work the case in its entirety and serve as the taxpayer's single point of contact for questions.<sup>7</sup> Taxpayers undergoing a correspondence audit are referred to a toll-free number where they may discuss their case with an IRS phone assistant who generally holds no responsibility for the actions or determinations made with their audit.<sup>8</sup> The high volume of correspondence audits combined with limited communication alternatives, insufficient levels of service, and the inability to contact a knowledgeable and accountable IRS employee often cause unnecessary taxpayer burden and hinder several taxpayer rights, including the *right to quality service*.<sup>9</sup>

### The Current Correspondence Audit Process

The IRS has stated that 95 percent of the Wage and Investment (W&I) and Small Business/Self-Employed (SB/SE) correspondence audit inventory is automated,<sup>10</sup> and that the correspondence audit program was specifically designed to be a mail-based workstream.<sup>11</sup> Although Internal Revenue Manual (IRM) 4.19.13.10.1, Taxpayer Responses - Prior to Status 24, requires a telephone contact when a taxpayer provides requested audit documentation the IRS determines to be insufficient, the IRS notes that correspondence audit programs do not have the resources to contact every taxpayer by telephone.<sup>12</sup> It also indicates that it processes non-response cases using the Automated Correspondence Examination system (ACE) and describes the ACE system as a system that will automatically process the case through creation, statutory notice, and closing process, requiring no tax examiner involvement when a taxpayer fails to reply to the correspondence.<sup>13</sup> Only when a correspondence audit receives a response from a taxpayer or representative is the correspondence assigned to one employee, who will generally field any subsequent case activities and responses from the taxpayer.<sup>14</sup> This practice provides the perfect opportunity for the IRS to give the taxpayer the name and direct phone number of the employee assigned when it receives the taxpayer's response. The IRS explains that given the design of the correspondence audit program, these employees do not have telephones capable of receiving direct external incoming calls.<sup>15</sup>

Taxpayers with questions at any point during the correspondence audit process are directed to the IRS's Correspondence Examination Toll-Free Lines, the numbers provided on the taxpayer's initial contact notice of audit.<sup>16</sup> By placing a toll-free number on correspondence audit notices, the IRS believes it has satisfied RRA 98, section 3705(a).<sup>17</sup> The IRS believes this is the most efficient method to address correspondence audit inquiries and notes these toll-free lines allow it to answer all correspondence examination telephone calls

7 National Taxpayer Advocate 2018 Annual Report to Congress vol. 2, at 119 (*Introduction to the Exam Process: Promoting Voluntary Compliance and Minimizing Taxpayer Burden in the Selection and Conduct of Audits*).

8 National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress vol. 2, at 51 (*IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in the 2018 Annual Report to Congress*).

9 See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the IRC. See IRC § 7803(a)(3).

10 National Taxpayer Advocate Fiscal Year 2016 Objectives Report to Congress vol. 2, at 53 (*IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in the 2014 Annual Report to Congress*).

11 National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress vol. 2, at 49 (*IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in the 2018 Annual Report to Congress*).

12 *Id.*

13 *Id.*

14 *Id.* at 51.

15 *Id.*

16 *Id.* at 52.

17 National Taxpayer Advocate Fiscal Year 2016 Objectives Report to Congress vol. 2, at 48 (*IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in the 2014 Annual Report to Congress*).

corporately for all campus operations, affording the taxpayer the ability to reach an experienced assistor at any campus for immediate assistance without waiting for a return call from an individually-assigned examiner.<sup>18</sup>

### Correspondence Audit Toll-Free Lines Do Not Provide Sufficient Levels of Service

While the IRS views this toll-free corporate approach as the most efficient alternative, toll-free lines often fail to provide an adequate level of customer service. In FY 2019, W&I worked about 570,000 correspondence audits, generating more than a million calls to its toll-free line. Only about 400,000 of these callers reached an examiner, resulting in a 40.7 percent level of service.<sup>19</sup> The average wait time to reach an assistor was 35 minutes, and over 600,000 taxpayers<sup>20</sup> disconnected their calls either before or after they entered the queue to reach the selected assistance.<sup>21</sup>

SB/SE toll-free results were somewhat better, reflecting that SB/SE worked nearly 500,000 correspondence audits in FY 2019, generating over 300,000 calls to its toll-free lines. Over 160,000 of these callers reached an examiner, resulting in a 59.9 percent level of service.<sup>22</sup> Taxpayers calling the SB/SE correspondence audit toll-free line experienced an average wait time of 28 minutes to reach an assistor, while almost 150,000 of these callers<sup>23</sup> disconnected their call either before or after they entered the queue to reach the assistance they selected.<sup>24</sup>

As shown in Figures 1.7.2 and 1.7.3, these FY 2019 levels of service are not unusual and represent the level of customer service taxpayers have customarily experienced when calling the IRS correspondence audit toll-free lines.<sup>25</sup> IRS correspondence audit toll-free lines are staffed insufficiently to adequately support the quantity of examinations conducted.

18 National Taxpayer Advocate Fiscal Year 2016 Objectives Report to Congress vol. 2, at 48-50 (*IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in the 2014 Annual Report to Congress*).

19 W&I opened nearly 320,000 correspondence audits in FY 2019 and continued to work about 250,000 correspondence audits carried over from prior FYs. IRS CDW, AIMS Closed Case Database for FY 2019 (Oct. 2020), IRS CDW, Individual Master File (IMF) Transaction History for correspondence audits opened in FY 2019 (Oct. 2020), and IRS, Joint Operations Center (JOC) Snapshot Reports: Product Line Detail, W&I Exam phone line (week ending Sept. 30, 2020).

20 IRS, JOC Snapshot Reports: Product Line Detail, W&I Exam phone line (week ending Sept. 30, 2020).

21 *Id.*

22 SB/SE opened about 289,000 correspondence audits in FY 2019 and continued to work about 203,000 correspondence audits carried over from prior FYs. IRS CDW, AIMS Closed Case Data FY 2019 (Oct. 2020), IRS CDW, IMF Transaction History for opened correspondence audits (Oct. 2020), and IRS, JOC Snapshot Reports: Product Line Detail, SB/SE Exam phone line (weeks ending Sept. 30, 2017; Sept. 30, 2018; Sept. 30, 2019; and Sept. 30, 2020).

23 IRS, JOC Snapshot Reports: Product Line Detail, SB/SE Exam phone line (week ending Sept. 30, 2020).

24 *Id.*

25 IRS CDW, IMF Transaction History for correspondence audits opened in FYs 2016-2019 (Oct. 2020) and IRS, JOC Snapshot Reports: Product Line Detail, SB/SE and W&I Exam phone line (week ending Sept. 30, 2020).



**FIGURE 1.7.2, W&I Correspondence Audits Opened Compared With Toll-Free Telephone Statistics for FYs 2016-2019<sup>26</sup>**

Fiscal Year	Audits Opened	Calls Received	Calls Answered	Level of Service
2016	462,654	1,351,822	489,295	40.2%
2017	481,664	1,484,849	541,043	40.2%
2018	447,566	1,440,366	517,395	40.2%
2019	319,558	1,098,142	392,227	40.7%

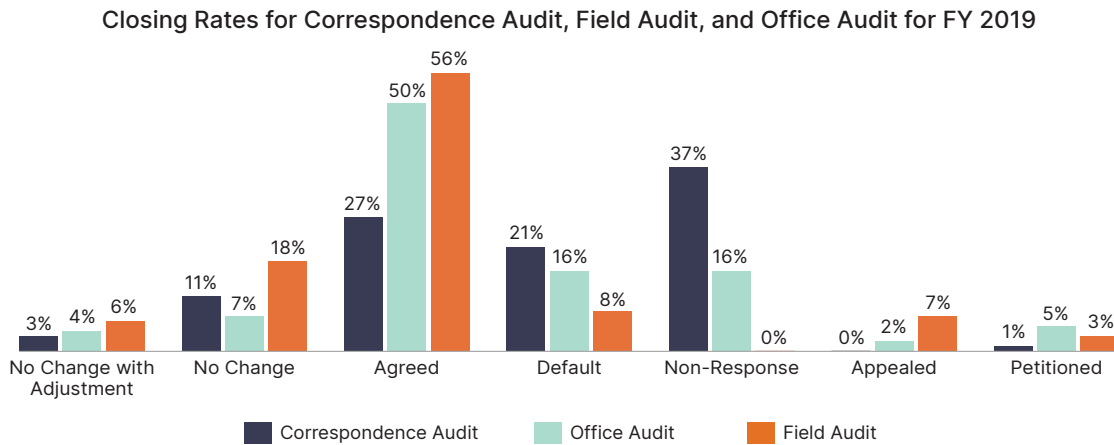
**FIGURE 1.7.3, SB/SE Correspondence Audits Opened Compared to Toll-Free Telephone Statistics for FYs 2016-2019<sup>27</sup>**

Fiscal Year	Audits Opened	Calls Received	Calls Answered	Level of Service
2016	301,567	412,853	241,225	65.8%
2017	348,985	435,512	236,213	60.8%
2018	298,466	468,569	245,140	60.8%
2019	289,334	317,737	162,730	59.9%

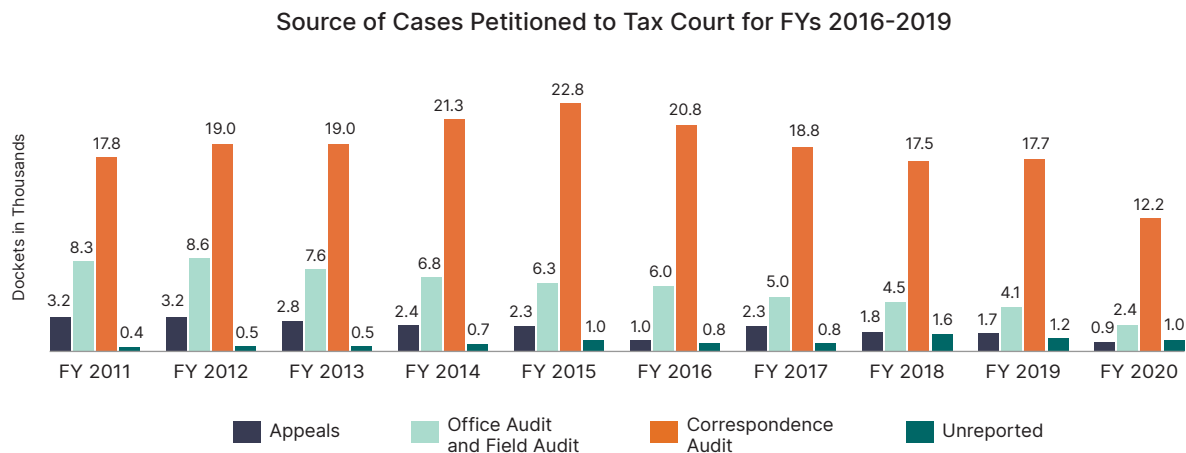
Despite the high call volumes discussed, audit results reflected that taxpayers subject to correspondence audit are less likely to participate in the audit process. As shown in Figure 1.7.4, correspondence audits resulted in the lowest agreement rate and the highest non-response rate of all other IRS audits. Cases closed “non-response” are cases where the taxpayers did not participate in the audit process because they did not respond to audit notifications or the postal service returned the audit notifications as “undeliverable.”

26 This figure compares audits opened in FYs 2016-2019 to toll-free telephone statistics since taxpayers are more likely to call the IRS at the beginning of an audit. IRS CDW, IMF Transaction History for correspondence audit opened in FYs 2016-2019 (Oct. 2020) and IRS, JOC Snapshot Reports: Product Line Detail, W&I Exam phone line (weeks ending Sept. 30, 2017; Sept. 30, 2018; Sept. 30, 2019; and Sept. 30, 2020).

27 This figure compares audits opened in FYs 2016-2019 to toll-free telephone statistics since taxpayers are more likely to call the IRS at the beginning of an audit. IRS response to TAS fact check (Nov. 24, 2020); IRS, JOC Snapshot Reports: Product Line Detail (week ending Sept. 30, 2019); IRS, JOC Snapshot Reports: Product Line Detail, SB/SE Exam phone line (weeks ending Sept. 30, 2017; Sept. 30, 2018; Sept. 30, 2019; and Sept. 30, 2020).

**FIGURE 1.7.4<sup>28</sup>**


Correspondence audits also resulted in the highest rate of audit deficiencies assessed by default<sup>29</sup> and produced the highest volume of petitions to the U.S. Tax Court as shown in Figure 1.7.5.

**FIGURE 1.7.5<sup>30</sup>**


28 IRS CDW, AIMS Closed Case Database FY 2019 (Oct. 2020). The No Change with Adjustment category applies to no changed examined returns if there is an adjustment to the tax base data such as income or deduction items but no change in the tax liability or refundable credits.

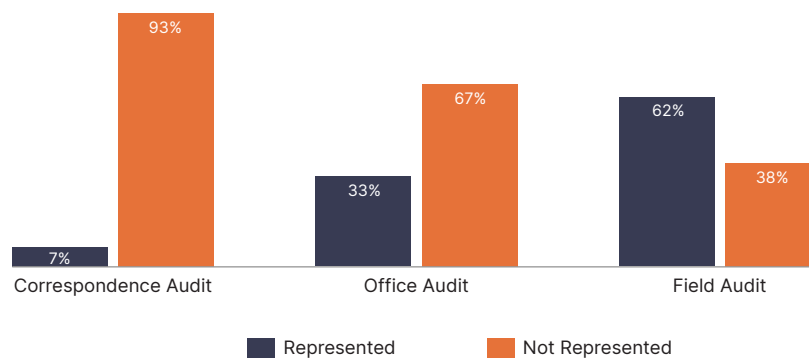
29 IRM 4.8.9.26, Defaulted Notices (July 9, 2013). The IRS may assess a proposed audit deficiency by default if the taxpayer does not petition the U.S. Tax Court within 105 days of the date a Statutory Notice is issued (165 days if the taxpayer resides outside of the U.S.). IRS CDW, AIMS Closed Case Database FY 2019 (Oct. 2020).

30 Counsel Automated Tracking System, TL-708B. The unreported category are petitioned cases not from Appeals, Office Audit, Field Audit, or Correspondence Audit.

The contrast between high call volume and low taxpayer response rate suggests that the level of service, or type of service provided on the correspondence audit toll-free lines, does not meet taxpayer needs. Further, the absence of personal interaction inherent to the correspondence audit process results in missed opportunities for the IRS to discuss the issues under audit and to educate taxpayers to improve future compliance. This is particularly impactful because so few of these taxpayers have representation and may be limited in their ability to secure assistance. As shown in Figure 1.7.6, only seven percent of the taxpayers undergoing correspondence audits in FY 2019 had representation, while 62 percent of the taxpayers undergoing field examinations were represented by tax professionals.<sup>31</sup>

**FIGURE 1.7.6<sup>32</sup>**

Individual Tax Return Closed Audits by Representation for  
Correspondence Audits, Office Audits, and Field Audits for FY 2019



### Correspondence Audit Response Time Can Be Lengthy

Because correspondence audit is a “mail-based workstream,” the taxpayer’s ability to effectively and timely communicate with the IRS by mail is also a critical component of the correspondence audit process. The IRS correspondence audit programs, however, cannot respond to correspondence promptly. In FY 2019, the IRS classified, on average, 67 percent<sup>33</sup> of the correspondence received in W&I correspondence audit and 54 percent<sup>34</sup> of the correspondence received in SB/SE correspondence audit as “overage,” meaning the IRS had not addressed within 30 days of the date received, requiring it to issue an interim letter.<sup>35</sup>

31 IRS, CDW AIMS Closed Case Database and IMF Transaction History for FY 2019 individual correspondence audits where a power of attorney was on file with the IRS during the audit. For purposes of this figure, correspondence audits include audits closed by campus tax examiners in W&I and SB/SE. Office audits include audits closed by tax compliance offices in SB/SE. Field audits include audits closed by revenue agents in SB/SE and LB&I. A power of attorney (POA) on file during the audit was used as a proxy to determine representation.

32 IRS, CDW AIMS Closed Case Database and IMF Transaction History for FY 2019 individual correspondence audits where a POA was on file with the IRS during the audit; IRS response to TAS fact check (Nov. 24, 2020). For purposes of this figure, correspondence audits include audits closed by campus tax examiners in W&I and SB/SE. Office audits include audits closed by tax compliance offices in SB/SE. Field audits include audits closed by revenue agents in SB/SE and LB&I. A POA on file during the audit was used as a proxy to determine representation.

33 W&I, Refundable Credits Examination Operations Weekly Mail Report for TAS, FY 2019 data.

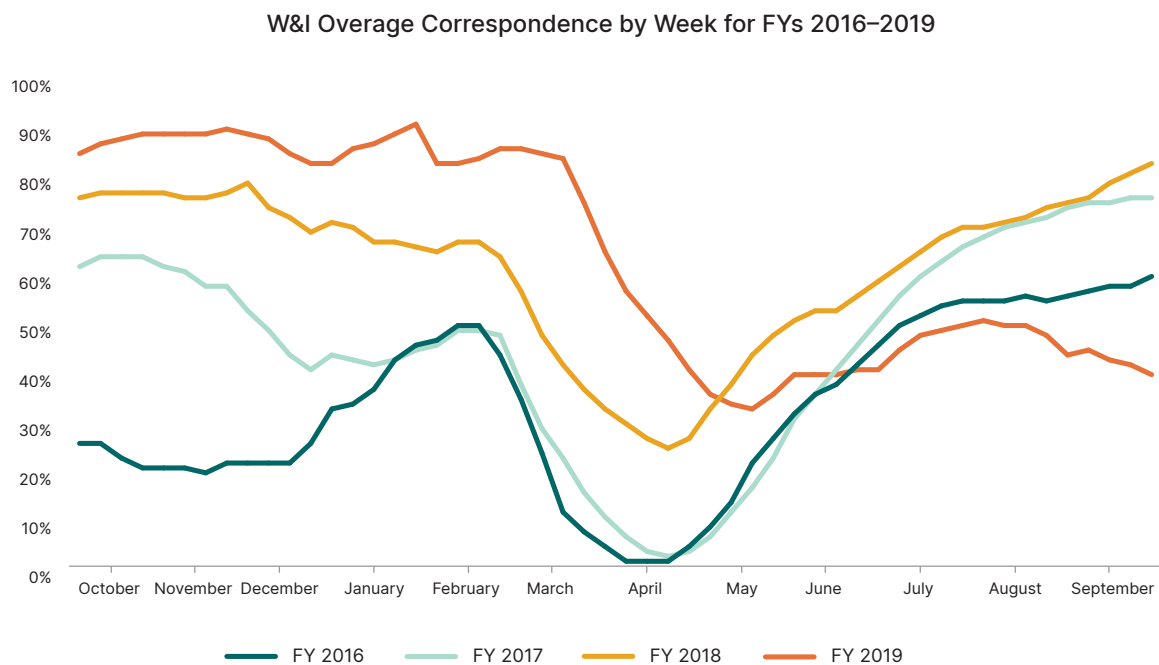
34 SB/SE Campus Operation Business Results (COBR) FY 2019, Corr Exam and Pass-Through Entities Reports FY 2019 year to date ending Sept. 30, 2019.

35 IRM 4.19.13.11, Monitoring Overage Replies (July 30, 2020).

The IRS sends interim letters to notify the taxpayer that the IRS will require additional time (generally 75 days) to provide a response. The IRS can extend this timeframe when the volume of overage correspondence renders the 75-day timeframe unachievable.<sup>36</sup> Taxpayers with questions about their audit or the documentation they have submitted cannot contact the examiner who will work their case. Although the assistants staffing the correspondence audit toll-free lines may view the documents the taxpayer has supplied, they generally cannot, with any certainty, provide a determination regarding the adequacy of the documents submitted or provide a timeframe in which the taxpayer might expect a reply. This inability to reach a knowledgeable, accountable IRS employee negatively affects customer satisfaction and often may lead taxpayers and their representatives to feel they have sent their correspondence into the proverbial “black hole.”

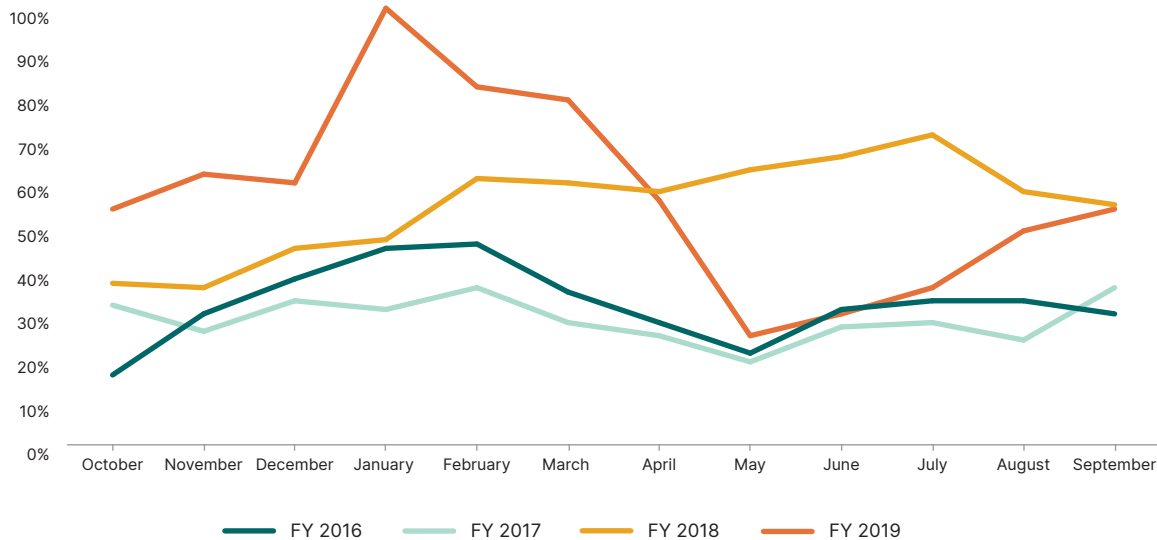
Much like the level of service on correspondence audit toll-free phone lines, the level of overage correspondence experienced in FY 2019 is not unusual and appears to trend in a pattern similar to that experienced in prior years, as shown in Figures 1.7.7 and 1.7.8.

**FIGURE 1.7.7<sup>37</sup>**



<sup>36</sup> IRM 4.19.13.11, Monitoring Overage Replies (July 30, 2020).

<sup>37</sup> W&I, RCEO Weekly Mail Report for TAS, FY 2016 through 2019 data. W&I provided weekly overage data. Figure 1.7.7 shows the weekly variation of the data even though the x-axis depicts months.

**FIGURE 1.7.8<sup>38</sup>****SB/SE Overage Correspondence by Month for FYs 2016-2019**

Results of the IRS's correspondence audit customer satisfaction surveys indicate how taxpayers view the overall correspondence audit process. Although the IRS's FY 2019 work product reviews indicate that both W&I and SB/SE have been highly successful in meeting the agency's standards, IRS customer satisfaction survey results indicate that correspondence audit programs are far less successful in meeting the standards of our nation's taxpayers.

As shown in Figure 1.7.9, IRS correspondence audit reviews reflected high marks in phone and case-related accuracy, professionalism, and timeliness. IRS customers, however, rated their overall satisfaction with the correspondence audit experience at 59 percent and 51 percent for SB/SE and W&I respectively, with the time taken to complete the audit identified among the taxpayers' chief concerns.<sup>39</sup> These results show that measures for select components of the correspondence audit process are not indicative of taxpayers' satisfaction with the overall correspondence audit experience.

<sup>38</sup> IRS response to TAS fact check (Nov. 24, 2020); SB/SE COBR, Corr Exam and Pass-Through Entities Reports for all months of FYs 2016 through 2019.

<sup>39</sup> IRS W&I response to TAS information request (Oct. 1, 2020) (from Internal Revenue Service Customer Satisfaction Survey, FY 2019, W&I RCEO Mail/Online Annual Report); IRS SB/SE response to TAS information request (Oct. 7, 2020) (from SB/SE Campus Exam Mail Customer Satisfaction Report, Survey Year 2018 (April 2018 through March 2019)).

**FIGURE 1.7.9, FY 2019 Correspondence Audit Quality and Customer Satisfaction<sup>40</sup>**

	SB/SE	W&I
<b>Phone Accuracy</b>	91.6%	87.9%
<b>Phone Professionalism</b>	99.4%	99.3%
<b>Phone Timeliness</b>	96.4%	95.0%
<b>Paper Accuracy</b>	98.7%	96.9%
<b>Paper Professionalism</b>	99.1%	98.6%
<b>Paper Timeliness</b>	99.4%	99.1%
<b>Customer Satisfaction</b>	59.0%	51.0%

### Impact of Insufficient Service and Communication Alternatives

Insufficient service and communication alternatives impact more than just customer satisfaction and can have consequences that result in reduced IRS efficiency. Taxpayers assessed tax deficiencies due to a lack of timely response or lack of understanding about the documentation required may need to request audit reconsideration of these unpaid deficiencies once the IRS assesses the tax. To do this, taxpayers must provide documentation that the IRS had not considered during the audit process.<sup>41</sup> The need to revisit completed audits results in duplicative IRS efforts and use of additional IRS resources.

In FY 2019, W&I completed 11,284 correspondence audit reconsiderations, and SB/SE completed audit reconsiderations totaling 6,081.<sup>42</sup> As shown in Figure 1.7.10, correspondence audits produce a significantly higher reconsideration rate than that experienced by IRS's field and office audit programs.

40 IRS SB/SE response to TAS information request (Oct. 7, 2020) (from FY 201909 COBR Workbooks, Corr Exam and Pass Through Entities, Exam Quality and Employee-Customer Satisfaction). IRS W&I response to TAS information request (Oct. 1, 2020) (from Internal Revenue Service Customer Satisfaction Survey, FY 2019, W&I RCEO Mail/Online Annual Report). IRS W&I response to TAS information request (Oct. 1, 2020) (from W&I Correspondence Exam Phones and Paper, Quality Measures, FY 2019). IRS SB/SE response to TAS information request (Oct. 7, 2020) (from SB/SE Campus Exam Mail Customer Satisfaction Report, Survey Year 2018 (April 2018 through March 2019)). Percentage reflects overall customer satisfaction rate for paper in the absence of an overall customer satisfaction rate.

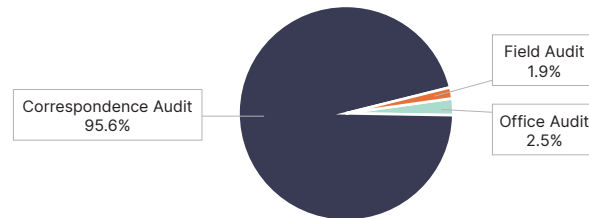
41 IRM 4.13.1.2(1), Definition of an Audit Reconsideration (Dec. 16, 2015).

42 IRS CDW AIMS Closed Case Database and Enforcement Revenue Information Management System FY 2019. For purposes of this figure, correspondence audits include audits closed by campus tax examiners in W&I and SB/SE. Office audits include audits closed by tax compliance offices in SB/SE. Field audits include audits closed by revenue agents in SB/SE and LB&I.



**FIGURE 1.7.10<sup>43</sup>**

Audit Reconsideration for Correspondence Audit, Office Audit, and Field Audit for FY 2019



Taxpayers unable to reach a knowledgeable and accountable point of contact frequently seek assistance requiring the utilization of resources by other areas within the IRS. In FY 2019, TAS provided service to almost 16,000 taxpayers seeking assistance during their EITC-related correspondence audits, rendering this among the highest volume of issues that brought taxpayers to TAS. TAS further assisted approximately 1,700 additional taxpayers seeking assistance for audit reconsideration of these EITC correspondence audit determinations and over 2,000 taxpayers seeking reconsideration of assessments made because of non-filer correspondence audits.<sup>44</sup> The volume of correspondence audit-related cases received in TAS<sup>45</sup> clearly demonstrates that taxpayers unable to obtain sufficient assistance by calling the correspondence audit toll-free lines find other avenues within IRS — such as TAS — to obtain the assistance they require.

### Correspondence Audit and COVID-19

The impact of COVID-19 further pronounced the shortcomings of the IRS's correspondence audit programs. As a part of its People First Initiative,<sup>46</sup> the IRS announced it would generally not start new audits during the period of April 1, 2020, through July 15, 2020. Existing technology and communication limitations, however, brought many of the IRS's correspondence audits already in progress to a standstill. Because of the COVID-19 shutdown, the IRS suspended correspondence audit toll-free phone assistance in March 2020 and did not resume it until September 28, 2020.<sup>47</sup> Because the IRS does not provide a single point of contact for taxpayers undergoing correspondence audits, these taxpayers, solely reliant on the IRS's correspondence audit toll-free lines for information, were left with no ability to call the IRS regarding correspondence audits in progress during the shutdown. The suspension of toll-free phone line services allowed employees to perform duties associated with the receipt and control of mail and with addressing overaged correspondence.<sup>48</sup> Correspondence backlogs experienced during this timeframe resulted in the IRS classifying over 90 percent of

<sup>43</sup> IRS CDW AIMS Closed Case Database and Enforcement Revenue Information Management System FY 2019. For purposes of this figure, correspondence audits include audits closed by campus tax examiners in W&I and SB/SE. Office audits include audits closed by tax compliance offices in SB/SE. Field audits include audits closed by revenue agents in SB/SE and LB&I.

<sup>44</sup> TAS provided service to 15,841 taxpayers seeking assistance during EITC-related correspondence audits, 1,684 taxpayers with audit reconsiderations and another 2,130 taxpayers seeking reconsideration of non-filer correspondence audits. Data obtained from Taxpayer Advocate Management Information System (TAMIS) (Oct. 1, 2019).

<sup>45</sup> TAS cases received in FY 2019 with a primary issue code of 610, 620, 630, or 639 compared to the examination started. Data obtained from TAMIS (Oct. 1, 2019) and IRS CDW, AIMS Closed Case Database (Oct. 2020).

<sup>46</sup> See IRS News Release IR-2020-59, IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Programs (Mar. 25, 2020).

<sup>47</sup> IRS W&I response to TAS information request (Oct. 1, 2020).

<sup>48</sup> *Id.*

the mail received in W&I and SB/SE campus operations as overage.<sup>49</sup> As a result of correspondence backlogs, taxpayers, in some instances, received interim letters requesting they allow up to an additional six months<sup>50</sup> to receive a reply, further showcasing the need for improved communication alternatives.<sup>51</sup>

### The Taxpayer First Act Calls for Improved IRS Efficiency and Effectiveness

The Taxpayer First Act (TFA)<sup>52</sup> signed into law on July 1, 2019, included several provisions designed to improve customer service and ensure that the IRS enforces tax laws in a fair and impartial manner. Among these provisions, TFA Section 1101 required the IRS to develop a thorough customer service strategy that would include private sector customer service best practices to meet reasonable customer expectations. Section 1302 called for redesigning the organization to minimize the duplication of services and to ensure that taxpayers easily receive needed assistance. Section 2101 further called for the development and implementation of a multiyear strategic plan for IRS information technology that aligns with the IRS's needs and strategic plan.<sup>53</sup> Although the IRS has taken steps to improve the correspondence audit process and the level of service, resulting customer satisfaction rates indicate it could do more to meet customer expectations.

**Although the IRS has taken steps to improve the correspondence audit process and the level of service, resulting customer satisfaction rates indicate it could do more to meet customer expectations.**

### Improvements to Toll-Free Phone Technology

In September 2020, the IRS provided correspondence audit examiners with all necessary equipment to answer the correspondence audit toll-free phone lines from alternate locations, preventing the suspension of correspondence audit toll-free operations if future emergency situations dictate the need for employees to work from remote locations.<sup>54</sup> Additional technology could also provide correspondence audit examiners the ability to receive direct external calls, removing phone system limitations that prevent these examiners from serving as a taxpayer's single point of contact during the correspondence audit process.<sup>55</sup>

49 RCEO Weekly Mail Report for TAS, 20200822, reflected overage mail at 92.61 percent and COBR FY20, 202008 Corr-Exam-PTE Report, reflected SB/SE overage mail at 97.2 percent as of 08/22/2020.

50 See National Taxpayer Advocate 2018 Annual Report to Congress 135 (Most Serious Problem: *Correspondence Examination: The IRS's Correspondence Examination Procedures Burden Taxpayers and Are Not Effective in Educating the Taxpayer and Promoting Future Voluntary Compliance*).

51 Taxpayers reported to TAS, Systemic Advocacy, the receipt of interim letters with six-month response timeframes. TAS is currently exploring this issue.

52 See TFA, Pub. L. No. 116-25.

53 National Taxpayer Advocate Fiscal Year 2021 Objectives Report to Congress 69-78 (Systemic Advocacy Objective: *Putting Taxpayers First, Improving Taxpayer Service, and Supporting the Development of a Comprehensive Customer Service Strategy and Related Plans to Implement the Taxpayer First Act*).

54 IRS W&I response to TAS information request (Oct. 1, 2020).

55 National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress vol. 2, at 51 (*IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in the 2018 Annual Report to Congress*).

Although not yet implemented, the IRS is also currently working to introduce telephone callback technology that would address insufficient levels of service on its correspondence audit and other toll-free phone lines.<sup>56</sup> This technology will enable callers to request a call back rather than waiting on hold to reach the next available assistor. Introducing callback technology will serve to reduce the lengthy hold times experienced by taxpayers and will reduce the need for taxpayers to make multiple calls to reach assistance. While this technology will improve the customer correspondence audit toll-free phone experience and reduce the volume of repeated unsuccessful attempts to these toll-free lines, it will not reduce the actual volume of callers requiring assistance. Based on the IRS's staffing model discussed below, introducing callback technology may require that the IRS further divert resources from completing correspondence audit activities to meet customer callback expectations.

### Increased Communication Alternatives

In August 2020, the SB/SE correspondence audit program expanded its communication alternatives through the Secure Messaging feature of its Taxpayer Digital Communications (TDC) program. This initiative, originally piloted in 2016, offers certain taxpayers the ability to communicate electronically with the IRS during their audit. TDC Secure Messaging enables taxpayers to receive messages from the IRS, respond to questions, and upload documents using the IRS's Secure Messaging Portal. Taxpayers invited to participate in this program must authenticate their identities via IRS Secure Access. They then receive a notification to their registered email address to log into the TDC Secure Messaging portal to view messages.

Using TDC Secure Messaging shows potential for improving the customer's correspondence audit experience and the correspondence audit process. TDC Secure Messaging offers a more expedient communication alternative to traditional mail. Further, TDC Secure Messaging enables taxpayers to access other IRS online services such as e-Services and Get Transcripts using the same account login name and password. The use of TDC Secure Messaging has been introduced in all five of SB/SE's correspondence audit campuses, with potential for successful expansion to other correspondence audit programs.<sup>57</sup> The IRS indicated that using TDC Secure Messaging has resulted in a reduction in the time needed for audit completion and a significant increase in customer satisfaction, reporting customer satisfaction rates consistently ranging near 83 percent with TDC Secure Messaging.<sup>58</sup> Further, the IRS indicates that the exam deployment of TDC Secure Messaging uses a feature of the software called "sticky agent," which automatically directs replies to the examiner assigned without clerical research or intervention.<sup>59</sup> This feature would complement the IRS's efforts to provide taxpayers with a single point of contact should the IRS do so.

By expanding the use of TDC Secure Messaging to a larger volume of taxpayers, calls to the correspondence audit toll-free phone lines will decline. W&I customer satisfaction surveys reflected that 41 percent of the taxpayers surveyed called the correspondence audit toll-free line to simply check the status of their case. Of these callers, 77 percent called more than once, and 39 percent called five or more times. Twelve percent of the callers surveyed indicated that they called merely to inform the IRS they had sent in the requested documentation. Of these callers, 61 percent called in more than once, with 31 percent indicating that

56 Most Serious Problem: *Telephone and In-person Service: Taxpayers Face Significant Difficulty Reaching IRS Representatives Due to Outdated Information Technology and Insufficient Staffing*, *supra*.

57 IRS response to fact check (Nov. 24, 2020).

58 IRS SB/SE response to TAS information request (Oct. 7, 2020).

59 *Id.*

they called five or more times to relay this information.<sup>60</sup> If TDC is widely used, the ability to submit documents and request status updates through TDC could positively impact call volumes experienced on the correspondence audit toll-free phones.

## CONCLUSION AND RECOMMENDATIONS

The IRS staffs W&I and SB/SE correspondence audit programs with a finite group of examiners who hold responsibility for both staffing the correspondence audit toll-free phone lines and auditing tax returns selected for correspondence audit.<sup>61</sup> The interdependence of the correspondence audit staffing structure clarifies that the current random shifting of resources from toll-free phones to audit activities will not increase the number of taxpayers serviced or improve the overall correspondence audit customer experience. Providing taxpayers who have responded to their correspondence audit notifications with the name and contact information for the examiner most knowledgeable and responsible for their case, however, will improve efficiency and the customer experience and is necessary for tax administration. Shifting these callers to an examiner who can serve as a single point of contact and act to progress their case will reduce the number of callers to the correspondence audit toll-free lines. This will enable callers recently receiving audit notifications who have not yet responded increased opportunity to reach assistance at this crucial point in the audit when general audit assistance is most appropriate.

The IRS indicates that the level of service provided on the correspondence audit toll-free phones and correspondence audit response timeframes are both factors under consideration when the IRS determines the number of correspondence audits it will conduct each year. The IRS indicates it uses historical data that incorporates these measures when determining the number of correspondence audits planned for completion.<sup>62</sup> The consistency displayed regarding the level of service provided by the correspondence audit toll-free phone lines and the trends identified regarding overage mail during the time period of FYs 2016 to 2019 suggest the IRS not only views these insufficient levels of customer service as acceptable, it builds them into the correspondence audit planning process.

Based on staffing levels, current staffing policies, and the number of audits conducted, the IRS's correspondence audit programs by design do not have the capacity to provide personal contact to every taxpayer subjected to a correspondence audit. However, the IRS should modify the correspondence audit planning process to appropriately ensure it can provide service to taxpayers responding to audit inquiries. Should technology alone fail to achieve sufficient improvements, the IRS must be willing to revisit the volume and timing of audits it introduces into its audit workstream. The volume of audits conducted should be commensurate with the IRS's ability to provide quality service that minimizes audit cycle time, provides for reasonable response timeframes, adequately services toll-free phone inquiries, and allows the IRS to provide taxpayers responding to their audit notifications the name and contact information to an IRS employee who can serve as the taxpayer's single point of contact throughout the correspondence audit process.

60 IRS W&I response to TAS information request (Oct. 1, 2020) (from Internal Revenue Service Customer Satisfaction Survey, W&I RCEO IVR FY 2019 Annual Report Issued May 2020).

61 IRS W&I response to TAS supplemental information request (Oct. 5, 2020); IRS SB/SE response to TAS supplemental information request (Oct. 6, 2020).

62 IRS W&I response to TAS information request (Oct. 1, 2020); IRS SB/SE response to TAS information request (Oct. 7, 2020).

As discussed, provisions of the TFA have mandated that the IRS develop customer service strategies, redesign the organization to promote efficiency, and introduce technology to include private sector customer service best practices. The IRS has taken steps to improve the correspondence audit process; however, with TFA mandates, it must revise its approach to the correspondence audit process in an effort to substantially improve the customer experience.

### Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate preliminarily recommends that the IRS:

1. Provide taxpayers responding to correspondence audit notices the name, telephone number, and unique identifying number of an IRS employee who can serve as their direct contact throughout the correspondence audit process, along with the employee's secure email address or the TDC Secure messaging access needed to send and receive documents and communicate electronically with the assigned examiner.
2. Ensure that the volume and timing of audits conducted are commensurate with the IRS's ability to provide correspondence audit toll-free phone services, timely correspondence responses, and timely audit completion.
3. Expand TDC Secure Messaging capabilities to all correspondence audit programs.

### IRS COMMENTS

Correspondence Exam is a critical part of the IRS's overall compliance approach to fair and balanced tax administration. The IRS designed Correspondence Exam to work single issue (non-complex) and single year cases that can easily be resolved via mail, allowing for broader geographic coverage. The program supports the IRS strategic goal to protect the integrity of the tax system by encouraging compliance through administering and enforcing the tax code.

As previously noted in the IRS responses to the 2014 and 2018 National Taxpayer Advocate Annual Report to Congress, it is not practical to assign one employee to handle all aspects of a taxpayer's correspondence examination from beginning to end. When we receive a written response from a taxpayer, it is assigned to one tax examiner to review,<sup>63</sup> and when the tax examiner sends a letter in response, the letter identifies the tax examiner by name and includes Exam's toll free telephone number since tax examiners do not have direct telephone lines. When taxpayers call the Correspondence Exam toll-free line, their call is routed to the next available assistor. Phone assistants are trained and experienced tax examiners, have access to the taxpayer's case history, and work with the taxpayer toward case resolution. However, if a taxpayer responds to an examination letter with correspondence and later calls the toll-free line and is not satisfied at the end of the call, they can request that the assigned tax examiner return their call.

<sup>63</sup> IRM 4.19.10.1.5.1(6), Correspondence Examination Letters (Dec. 8, 2017). Letters mailed on cases in the corporate inventory will include the appropriate Business Operating Division (BOD) corporate toll-free number, "Tax Examiner" as person to contact, and the site-specific identification number. If the letter sent is in reply to taxpayer correspondence, the letter, case history, and all letter attachments must identify the originating tax examiner to provide information for any subsequent contact, if needed.

Since 2017, Correspondence Exam has improved communications by digitizing a population of case files. Although transparent to taxpayers, some taxpayer correspondence is digitized and uploaded to the case file. Digitized cases improve customer service by increasing the visibility of case information. Telephone assistors can electronically view correspondence previously sent in by the taxpayer, regardless of which IRS site received the correspondence. This assists in resolving taxpayer inquiries more expeditiously.

We continued to improve communications with taxpayers with the expansion of secure messaging within Taxpayer Digital Communications (TDC) to all five SB/SE campuses. With TDC, taxpayers who sign up can submit documents online and easily ask questions. They do this without waiting in a queue, at their convenience, and on their own schedule. In general, like with paper correspondence, these messages are directed back to the examiner who last worked their case. The current customer satisfaction rating is 83.2 percent, and it is our expectation that as more taxpayers take advantage of this communication vehicle, we'll continue to see this high level of customer satisfaction.

Regarding the Earned Income Tax Credit (EITC), the IRS currently staffs a year-round toll-free telephone line in order to answer questions on EITC correspondence audits, many of which contain an audit issue for the Child Tax Credit/Additional Child Tax Credit. Our employees who answer these toll-free calls are trained and experienced, and best equipped to answer taxpayer telephone calls related to these potential audit issues. To enhance the taxpayer experience on the phone, a new Fast Track option will be implemented in 2021 for taxpayers inquiring about whether we received their documentation. This option will reroute incoming customer calls to an assistor to provide taxpayers with information on the receipt and status of their correspondence. We will continue to leverage available technology, as budget permits, to enhance taxpayers' experience when interacting with the IRS.

## TAXPAYER ADVOCATE SERVICE COMMENTS

While the IRS advises that it is not practical to assign one employee to handle all aspects of a taxpayer's correspondence examination, the described procedures suggest that correspondence audits are primarily assigned and worked by one employee. The simple lack of a direct telephone line, however, prevents the taxpayer from contacting the assigned employee directly, enabling the assigned examiner to serve as the taxpayer's single point of contact for assistance. Correspondence examiners hold responsibility for both staffing the correspondence audit toll-free phone lines and for auditing the tax returns selected for correspondence audit. It is unclear why these employees can audit returns and answer calls, yet it is impractical for correspondence examiners to answer calls from the taxpayers they are assigned to audit.



Recently implemented telephone and TDC technology, could serve to enhance the IRS's ability to provide taxpayers a single point of contact for correspondence audit assistance, and demonstrates that IRS has the capability to provide correspondence audit examiners with phone lines equipped to receive direct incoming calls. As stated, the inability to reach a single point of contact diminishes the customer experience, creates IRS inefficiency, and hinders opportunities to engage and educate our nation's taxpayers. Providing taxpayers who have responded to their correspondence audit notifications with the contact information of the assigned examiner will improve the customer experience, improve efficiency and is necessary for tax administration. Because correspondence exam is recognized as a critical part of the IRS's overall compliance approach to fair and balanced tax administration, the IRS must be willing to reconsider its current approach to the correspondence audit process — the process used to conduct the highest percentage of taxpayers audits throughout the IRS. In light of the fact that correspondence audits result in the highest rate of audit deficiencies assessed by default<sup>64</sup> and produced a high volume of petitions to the U.S. Tax Court, this is an area ripe for improvement.

## RECOMMENDATIONS

### Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Provide taxpayers responding to correspondence audit notices the name, telephone number, and unique identifying number of an IRS employee who can serve as their direct contact throughout the correspondence audit process, along with the employee's secure email address or the TDC Secure messaging access needed to send and receive documents and communicate electronically with the assigned examiner.
2. Ensure that the volume and timing of audits conducted are commensurate with the IRS's ability to provide correspondence audit toll-free phone services, timely correspondence responses, and timely audit completion.
3. Expand TDC Secure Messaging capabilities to all correspondence audit programs.

64 IRM 4.8.9.26, Defaulted Notices (July 9, 2013). The IRS may assess a proposed audit deficiency by default if the taxpayer does not petition the U.S. Tax Court within 105 days of the date a Statutory Notice is issued (165 days if the taxpayer resides outside of the U.S.). IRS CDW, AIMS Closed Case Database FY 2019 (Oct. 2020).

## The IRS's Assessment of International Penalties Under IRC §§ 6038 and 6038A Is Not Supported by Statute, and Systemic Assessments Burden Both Taxpayers and the IRS

### RESPONSIBLE OFFICIALS

Eric Hylton, Commissioner, Small Business/Self-Employed Division

Doug O'Donnell, Commissioner, Large Business and International Division

Kenneth Corbin, Commissioner, Wage and Investment Division

### TAXPAYER RIGHTS IMPACTED<sup>1</sup>

- *The Right to Quality Service*
- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to Finality*
- *The Right to a Fair and Just Tax System*

### EXPLANATION OF THE PROBLEM

The IRS's treatment of IRC §§ 6038 and 6038A foreign information reporting penalties<sup>2</sup> as systemically<sup>3</sup> assessable is legally unsupportable, administratively problematic, and imposes costs, delays, and stress for taxpayers.<sup>4</sup> Bifurcating income tax and international information penalties has created inefficient, expensive, and unnecessary procedures for taxpayers with offshore income and assets. The IRS assesses the IRC §§ 6038 and 6038A penalties either systemically at the time of a late-filed return or manually at the conclusion of an examination. In the former case, taxpayers are not contacted prior to assessment to determine whether a relevant defense, such as reasonable cause, would apply.<sup>5</sup> Instead, remedial steps and requests for relief become possible only after the penalties have been systemically assessed. This administrative approach is unsuited to

<sup>1</sup> See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the IRC. See IRC § 7803(a)(3).

<sup>2</sup> In this Most Serious Problem, we are focusing on IRC §§ 6038 and 6038A as the most direct means of analyzing problems common to most, if not all, of the other foreign information reporting penalties set forth in Chapter 61. Although we specifically examine the assessability of penalties under IRC §§ 6038 and 6038A, the same arguments are generally applicable to other provisions found in Chapter 61 of the code.

<sup>3</sup> Systemic penalties are those that are electronically asserted as an automatic matter whenever a late-filed corporate or partnership tax return includes an information return required by one of these code sections.

<sup>4</sup> Assessable penalties are generally defined as those due and payable upon notice and demand. Unlike penalties subject to deficiency procedures, assessable penalties carry no rights to a 30-day letter, agreement form, or notice requirements prior to assessment. Internal Revenue Manual (IRM) 20.1.9.1.1, Common Terms (Oct. 24, 2013). As discussed further below, the IRC §§ 6038 and 6038A penalties are sometimes assessed manually during an examination. Although still not ideal, this is somewhat less problematic as, in practice, taxpayers often are given the opportunity to furnish missing information and to avoid the penalty in the first instance or to have it simultaneously abated.

<sup>5</sup> See IRC §§ 6038(c)(4)(B) and 6038A(d)(3).

these penalties, as demonstrated by high abatement rates of 55 percent when measured by number of penalties and 71 percent when measured by dollar value.<sup>6</sup>

The National Taxpayer Advocate applauds Congress and the IRS for their enforcement efforts to curtail international tax abuses. However, the National Taxpayer Advocate's opinion is that the statutory framework provides authority for imposing the IRC §§ 6038 and 6038A penalties, not for summarily assessing those penalties.<sup>7</sup> As with the Report of Foreign Bank and Financial Accounts (FBAR) penalty, enforcement actions to collect these penalties should be brought by the Department of Justice.

## ANALYSIS

### Description of the IRC §§ 6038 and 6038A Penalty Regime

IRC § 6038 requires U.S. persons to furnish certain information regarding foreign business entities they control. This information is typically provided on Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations, which is attached to taxpayers' annual income tax returns.<sup>8</sup> Failure to timely provide this information results in a \$10,000 penalty, even if this information does not affect taxpayers' ultimate tax liabilities.<sup>9</sup> The IRS notifies taxpayers that the penalty has been assessed. If the taxpayer does not provide the required information within 90 days, the statute imposes an additional penalty (sometimes referred to as a "continuation penalty") for each 30-day period that the failure continues. This increase is capped at \$50,000.<sup>10</sup>

Similarly, IRC § 6038A requires 25 percent foreign-owned domestic corporations to report specified information as an attachment to the corporate income tax return. This information is generally reported on Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business.<sup>11</sup> The penalty under IRC § 6038A begins at \$25,000, and the continuation penalty, which commences 90 days after notification of assessment, is \$25,000 for each 30-day period, without an upper limit.<sup>12</sup>

Originally, these penalties were imposed manually on taxpayers whose missing filings were discovered during an audit. That manual process is still a part of current audit practice. However, beginning January 1, 2009, the IRS began systemic assessment of the monetary penalty under IRC § 6038(b)(1) regarding Forms 5471 attached to late-filed Forms 1120, U.S. Corporation Income Tax Return.<sup>13</sup> Beginning on January 1, 2014, the IRS expanded its systemic assessment of the monetary penalty under IRC § 6038(b)(1) to Form 5471

6 These numbers reflect data from calendar year (CY) 2018. Abatement rates generally increase as more time elapses from the assessment date. For example, the IRS has abated 64 percent of these penalties assessed in 2017 and 78 percent of the initial amount of the dollar assessments. IRS response to TAS information request (Oct. 8, 2020). These circumstances and a detailed analysis of the abatement rates from CYs 2014 to 2018 are discussed below.

7 The statutory authority for the government's collection of the unassessed IRC §§ 6038 and 6038A penalties is found at IRC § 7402(a) (jurisdiction to make and issue in civil actions such judgment and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws) and 28 U.S.C. § 1340 (general jurisdiction of the district courts of the United States in civil actions involving internal revenue). The statute does not provide the IRS with the ability to automatically assess and collect the penalties.

8 IRM 8.11.5.1, Introduction of International Penalties (Dec. 18, 2015). Partnerships are also subject to the IRC § 6038 filing requirement and must attach Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships, to their partnership tax return.

9 IRC § 6038(b)(1); Treas. Reg. § 1.6038-2(k)(4).

10 IRC § 6038(b)(2).

11 IRM 8.11.5.1, Introduction of International Penalties (Dec. 18, 2015).

12 IRC § 6038A(d)(1) and (2). See also Treas. Reg. 1.6038A-4 (d)(4).

13 IRM 21.8.2.20.2(1), Form 5471 Penalties Systemically Assessed from Late Filed Form 1120 Series or Form 1065 (Mar. 26, 2018).

attached to late-filed Form 1065, U.S. Return of Partnership Income.<sup>14</sup> Similarly, on January 1, 2013, the IRS began systemically assessing a monetary penalty under IRC § 6038A(d)(1) on Form 5472 attached to late-filed Form 1120 series returns.<sup>15</sup> Thus, the systemic penalty regime has expanded in the last decade to cover a much greater number of taxpayers.

As mentioned, the IRS treats these penalties as summarily assessable, as they are not subject to deficiency procedures, wherein taxpayers receive a notice of deficiency alerting them of the potential assessment and explaining taxpayers' options for contesting or complying with the penalty assessment.<sup>16</sup> The notice of deficiency also informs taxpayers of the last day to petition the Tax Court for pre-assessment and prepayment review.<sup>17</sup> Many penalties related to income tax filings are not summarily assessable (that is, they are generally subject to deficiency procedures). For example, deficiency procedures apply when the IRS determines that noncompliance resulted in an underpayment of tax. Common penalties associated with deficiency actions include IRC § 6662 accuracy-related penalties. This regime requires the IRS to determine a deficiency and allow the taxpayer to petition the Tax Court for a redetermination before making an assessment and initiating any collection action.

Summarily assessable penalties are primarily found in IRC §§ 6671 through 6720C. Chapter 68,<sup>18</sup> Subchapter B, titled "Assessable Penalties," allows the IRS to assess and collect penalties "in the same manner as taxes"<sup>19</sup> without first sending a notice of deficiency. Summary assessments are made without a deficiency determination and "shall be paid upon notice and demand... and collected in the same manner as taxes." Most of these "penalties" are included in Chapter 68 of the IRC. Chapter 68, Subchapter A, titled "Additions to the Tax and Additional Amounts," allows the IRS to impose penalties for failure to file or pay tax, understatements or underpayments of tax, and penalties for fraudulent behavior. However, Chapter 61 penalties, which include the IRC §§ 6038 and 6038A penalties, are not in Chapter 68, and, in the view of the National Taxpayer Advocate, among others, are therefore not assessable.<sup>20</sup>

### **The IRC §§ 6038 and 6038A Penalties Are Convoluting and Punitive in Their Operation**

To systemically impose a \$10,000 penalty per missing or incomplete Form 5471 (\$25,000 for Form 5472) when the taxpayer may be missing tens or even hundreds of such forms can cause a highly disproportionate penalty, particularly when failure to file may not affect the underlying tax liability. Further, these penalties can increase dramatically if the taxpayer becomes subject to the continuation penalty, which is manually assessed upon examination. This punitive approach runs counter to the guiding principles of IRS penalties. As cautioned in the IRS penalty handbook, "Penalties should... be objectively proportioned to the offense [and] be used as an opportunity to educate taxpayers and encourage their future compliance."<sup>21</sup>

14 IRM 21.8.2.20.2(2), Form 5471 Penalties Systemically Assessed from Late Filed Form 1120 Series or Form 1065 (Mar. 26, 2018).

15 IRM 21.8.2.21.2(1), Form 5472 – Information Return of a 25% Foreign Owned U.S. Corporation or a Foreign Corporation Engaged in a Trade or Business (Oct. 1, 2016).

16 IRM 4.8.9.8(1), Preparing Notices of Deficiency (July 9, 2013).

17 See IRM 4.8.9.10.2, Dating Notices (July 9, 2013); see paragraphs 1 and 3.

18 Chapter 68 is contained within Title 26, Subtitle F.

19 IRC § 6671(a).

20 There are, however, some "penalties" that are not found in Chapter 68, but these are authorized by a cross-reference to a code section within Chapter 68 or to another code section that authorizes the Secretary to summarily assess the penalty without first sending a notice of deficiency.

21 IRM 20.1.1.2.1, Encouraging Voluntary Compliance (Nov. 25, 2011).

The impact of the IRC §§ 6038 and 6038A penalties on taxpayers does not end with the initial penalty and potential continuation penalty. When these penalties are asserted, the IRS can propose a reduction of the foreign tax credit (FTC) on the underlying return. Ultimately, the initial penalty can reduce the FTC by ten percent of any FTC claimed or deemed paid to any foreign country, and the continuation penalty reduces the FTC by an additional five percent per 90-day period.<sup>22</sup> Failure to provide the information required by IRC §§ 6038 and 6038A can also result in an accuracy-related penalty. All these consequences can have a serious financial impact on a taxpayer, even though the information on the missing form itself may result in no change to the taxpayer's underlying liability, and therefore should be applied only when appropriate.

**As cautioned in the IRS penalty handbook, “Penalties should... be objectively proportioned to the offense [and] be used as an opportunity to educate taxpayers and encourage their future compliance.”**

IRC §§ 6038 and 6038A penalties are systemically assessed as an automatic matter when IRS systems detect late information returns.<sup>23</sup> As evidenced by high abatement rates (discussed below), much of this late filing is ultimately determined to result from benign circumstances, including ignorance of the filing requirements, unavailability of the requisite information, and IRS error.<sup>24</sup>

The inequities in the IRS's approach are exacerbated by treating these penalties as summarily assessable. Often, these penalties are due and owing even before taxpayers know of their existence.<sup>25</sup> The IRS does allow taxpayers to seek a post-assessment, pre-payment review in the IRS Independent Office of Appeals, which can include a reasonable cause defense.<sup>26</sup> Nevertheless, administrative relief depends on IRS discretion, which, in the case of these penalties, is generally only subject to judicial oversight if taxpayers can afford to first pay the penalty and then incur the cost of taking the case to federal court.<sup>27</sup> Further, some tax practitioners have reported accelerated collection activity, even while the penalties are still under review.<sup>28</sup>

22 IRC § 6038(c). The FTC reduction is not to exceed the greater of \$10,000 or the income of the foreign business entity for the tax period. The extent of the FTC reduction is offset by the monetary penalty.

23 See IRM 21.8.2.20.2, Form 5471 Penalties Systemically Assessed from Late-Filed Form 1120 Series or Form 1065 (Mar. 26, 2018); IRM 21.8.2.21.2, Form 5472 Penalties Systemically Assessed from Late-Filed Form 1120 Series (Oct. 1, 2019). IRS response to TAS information request (Oct. 1, 2020).

24 These examples are drawn from TAS's observations in this area. See also IRS response to TAS information request (Oct. 1, 2020).

25 IRM 20.1.9.3.2, Penalty Letters, Notice Letters, and Notices (Nov. 30, 2015). See also IRM 20.1.9.3.3.(2), Penalty Assertion (Mar. 21, 2013); IRM 21.8.1.26.1, Form 5471 Penalties (Oct. 1, 2019).

26 IRS response to TAS information request (Oct. 1, 2020); IRC §§ 6038(c)(4)(B) and 6038A(d)(3); IRM 8.11.5.1, Introduction of International Penalties (Dec. 18, 2015).

27 Chief Counsel Directives Manual 34.2.1.1, Suits for a Refund of Tax/Counterclaims (Aug. 11, 2004). For a legislative recommendation to address the issue of “pay to play” judicial review, see National Taxpayer Advocate 2018 Annual Report to Congress 364-386 (Legislative Recommendation: *Fix the Flora Rule: Give Taxpayers Who Cannot Pay the Same Access to Judicial Review as Those Who Can*). Taxpayers can seek review in the applicable federal district court or Court of Federal Claims.

28 Andrew Velarde, *Practitioners Fault Accelerated Assessable Penalty Collection*, TAX NOTES TODAY (Mar. 18, 2020); Megan Brackney, *Problems Facing Taxpayers with Foreign Information Return Penalties and Recommendations for Improving the System (Part 2)*, PROCEDURALLY TAXING (Jan. 7, 2020), <https://procedurallytaxing.com/the-irs-and-foreign-information-return-penalties-part-2/>.

## Several Commentators Have Questioned the IRS's Legal Authority to Treat These Penalties as Assessable

The IRS justifies the taxpayer-unfriendly regime surrounding the IRC §§ 6038 and 6038A penalties by explaining that it has little choice regarding the treatment of these penalties.<sup>29</sup> These penalties are neither imposed on tax deficiencies nor calculated referencing anything on the return itself. Further, they are not subject to deficiency procedures that would allow a pre-payment judicial review.<sup>30</sup> The IRS's position is that since deficiency procedures are unavailable, the penalties must be summarily assessable<sup>31</sup> even though they are not listed in Chapter 68, Subchapter B of the IRC, which is where assessable penalties are enumerated.<sup>32</sup>

The IRS finds a sweeping grant of authority to assess these penalties in IRC § 6201(a), which allows the IRS to assess “taxes (including interest, additional amounts, additions to the tax, and assessable penalties).”<sup>33</sup> In *NFIB v. Sebelius*,<sup>34</sup> the Supreme Court agreed that the plain language of IRC § 6201 places assessable penalties within the definition of a tax for purposes of granting the IRS the authority to assess those penalties.<sup>35</sup> To the IRS, this in turn gives it the ability to summarily assess penalties not subject to deficiency procedures, whether or not those penalties are listed in Chapter 68, Subchapter B.<sup>36</sup> In other words, even though the IRC fails to explicitly recognize these penalties as assessable, they must be treated as assessable because they are not subject to deficiency procedures. In the National Taxpayer Advocate's view, this is a circular argument without legal support.

Several commentators find the IRS's analysis to be overly broad and unpersuasive.<sup>37</sup> For example, Collins and Hahn point out that “a statute providing for a penalty and the IRS's authority to assess that penalty are two very distinct issues.”<sup>38</sup> In their view, although the IRC §§ 6038 and 6038A penalties are provided for in the IRC, the authority to assess those penalties is not. To collect these penalties, the Department of Justice must sue the taxpayer to collect any unpaid penalties. To these authors, the contention that IRC § 6201 allows the assessment of IRC §§ 6038 and 6038A penalties represents an overreach. As they see it, the authority granted by IRC § 6201(a) applies to the enumerated items, which, although extensive, do not include IRC §§ 6038 and 6038A penalties residing within Chapter 61. Thus, although IRC § 6201 contemplates the collection of assessable penalties enumerated in Chapter 68, Subchapter B, it does not provide authority, either directly or indirectly, for the assessment of IRC §§ 6038 and 6038A penalties. Collins and Hahn raise the possibility that the last ten years of assessments are legally dubious and therefore open to challenge.<sup>39</sup>

29 IRS response to TAS information request (Oct. 1, 2020).

30 IRM Exhibit 20.1.9-4, International Penalties Subject to or Not Subject to Deficiency Proceeding (July 8, 2015).

31 IRS response to TAS information request (Oct. 1, 2020); IRM 8.11.5.1, Introduction of International Penalties (Dec. 18, 2015).

32 Chapter 68, Subchapter B includes IRC §§ 6677 through 6725.

33 IRS response to TAS information request (Oct. 1, 2020).

34 *NFIB v. Sebelius*, 567 U.S. 519 (2012), 546. See also IRS response to TAS information request (Oct. 1, 2020).

35 In support of its position, the IRS also cites *Wheaton v. U.S.*, 888 F. Supp. 622, 626 (D.N.J. 1995) (acknowledging that penalties under IRC § 6038 are not subject to deficiency procedures). It also relies on *Heydemann v. United States*, 2008 WL 2502188 at \*2 (D. Md. April 23, 2008) (there is “no requirement that the initial assessment of § 6038 penalties requires prior notice”). While these decisions arguably support the proposition that deficiency procedures are inapplicable to IRC § 6038 penalties, they do not directly consider the legal questions of whether the IRS has statutory authority to assess these penalties.

36 IRS response to TAS information request (Oct. 1, 2020).

37 To date, courts have not directly ruled on this issue.

38 Erin Collins and Garrett Hahn, *Foreign Information Reporting Penalties: Assessable or Not?* TAX NOTES TODAY (July 9, 2018) 211-213. After publication of this article, Erin Collins was appointed IRS National Taxpayer Advocate.

39 *Id.*



Following a slightly different line of analysis, Horwitz concludes that the IRS has no direct means of assessing or otherwise collecting IRC §§ 6038 and 6038A penalties or any other penalties in Chapter 61.<sup>40</sup> He reasons that because these penalties are not a tax and are not assessed and collected in the same way as a tax, “(1) the IRS is not authorized to assess them; (2) the IRS cannot file tax liens or levy against assets to collect them; and (3) the collection due process provisions do not apply.”<sup>41</sup> Horwitz concurs with Collins and Hahn that the IRS’s only recourse is to ask the Department of Justice to sue the taxpayer seeking to collect any unpaid penalties.

Agostino and Colasanto summarize an emerging consensus among commentators: “Like Collins, Hahn, and Horwitz, we conclude that there is no authority in the code authorizing the summary assessment of these penalties.”<sup>42</sup> Further, Agostino and Colasanto suggest that these penalties should be adjudicated as part of the deficiency procedures.<sup>43</sup> They also contend that penalties made the subject of summary assessments should be abated by the IRS.<sup>44</sup>

Although these commentators follow slightly different analytical paths, they all arrive at the same conclusion. Each argues that the IRS lacks the legal ability to treat IRC §§ 6038 and 6038A as giving rise to assessable penalties. This is an area of controversy that could easily generate unwelcome litigation for the IRS, but more important, one that imposes unreasonable burdens on taxpayers and is inconsistent with the statutes.

### Systemic Assessment Is Resulting in the Reversal of Many Unnecessary Penalties

What makes this issue more than academic is that taxpayers are adversely impacted by the IRS’s treatment of these penalties as summarily assessable. Even if, as a legal matter, the IRS has the right to summarily assess these penalties on the late-filed return, this does not mean it should do so. The penalty regime, as applied by the IRS, is highly burdensome for taxpayers. The IRS should adopt a different path forward that will be more equitable for taxpayers and administratively more effective for all concerned.

An overhaul of the IRC §§ 6038 and 6038A penalty regime is long overdue. The need for this reinvention is evidenced by the prevailing abatement rates. Although abatements are always preferable to improperly assessed and collected penalties, high abatement rates indicate flawed policies. For the IRC §§ 6038 and 6038A penalties, these abatement rates, in the aggregate, are exorbitantly high. Such is the case where the penalties are systemically imposed as a preprogrammed, automatic matter. Penalties applied manually during examination are abated at a lower rate in comparison with those of the systemic penalties.

TAS analyzed abatement rates for the IRC §§ 6038 and 6038A penalties in terms of both numbers and dollars. Along the way, we paid particular attention to the abatement rates for systemic versus manual assessments, which are substantially disparate, as demonstrated in Figures 1.8.1-3.<sup>45</sup> When these penalties are applied systemically, the abatement percentage, measured by number of penalties, ranges from 55 to 72 percent, and by

40 Robert Horwitz, *Can the IRS Assess or Collect Foreign Information Reporting Penalties?* TAX NOTES TODAY (Jan. 31, 2019) 301-305.

41 *Id.* at 301.

42 Frank Agostino and Phillip Colasanto, *The IRS’s Illegal Assessment of International Penalties*, TAX NOTES TODAY (Apr. 8, 2019) 261-269.

43 *Id.*

44 *Id.*

45 IRS response to TAS information request (Oct. 8, 2020). Because the numbers for the manual versus systemic assessments under each Code section were in similar proportion, if not similar volumes, TAS has combined the data for these two penalties to present more simplified numbers. Abatement rates generally increase as more time elapses from the assessment date. Assessments and abatements of zero dollars are excluded from this analysis.

dollar value of penalties ranges from 71 to 88 percent.<sup>46</sup> Manual assessments are abated at rates ranging from 17 percent to about 39 percent by number, and from eight percent to about 66 percent by dollar.<sup>47</sup>

**FIGURE 1.8.1, Systemic Assessments of IRC §§ 6038 and 6038A Penalties<sup>48</sup>**

Calendar Year Penalty Assessed	Number of Penalties Assessed	Dollar Amount Assessed	Number of Abatements	Dollars Abated	Abatement Percentage by Number	Abatement Percentage by Dollar
2014	9,736	\$282,345,000	7,050	\$241,801,922	72%	86%
2015	9,316	\$236,038,000	6,632	\$194,566,666	71%	82%
2016	9,170	\$366,397,100	6,166	\$322,142,928	67%	88%
2017	8,892	\$220,715,000	5,653	\$172,101,999	64%	78%
2018	9,889	\$253,087,500	5,468	\$179,532,000	55%	71%

**FIGURE 1.8.2, Manual Assessments of IRC §§ 6038 and 6038A Penalties<sup>49</sup>**

Calendar Year Penalty Assessed	Number of Penalties Assessed	Dollar Amount Assessed	Number of Abatements	Dollars Abated	Abatement Percentage by Number	Abatement Percentage by Dollar
2014	389	\$33,268,121	150	\$21,875,043	39%	66%
2015	241	\$5,695,002	41	\$721,000	17%	13%
2016	610	\$45,148,635	180	\$4,571,000	30%	10%
2017	708	\$38,371,300	194	\$3,622,433	27%	9%
2018	1097	\$58,328,617	268	\$4,906,750	24%	8%

<sup>46</sup> IRS response to TAS information request (Oct. 8, 2020).

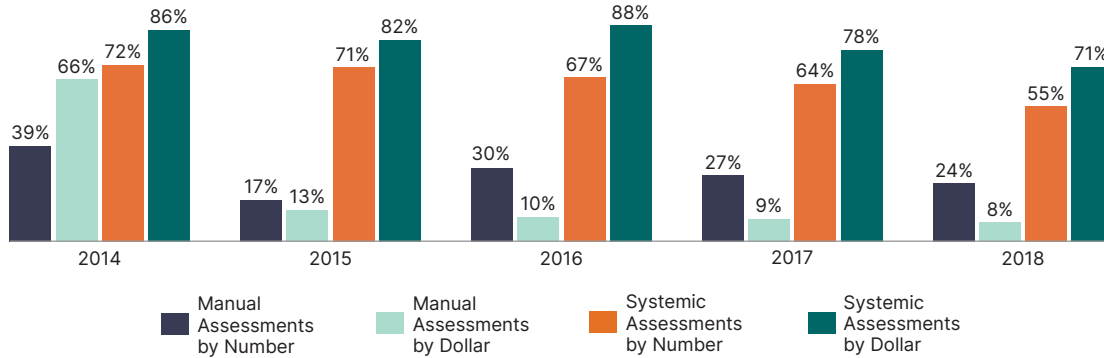
<sup>47</sup> Compliance Data Warehouse (CDW) Individual Master File (IMF) and Business Master File (BMF) data as of the end of fiscal year (FY) 2020.

<sup>48</sup> Figure 1.8.1 presents BMF data. Figure 1.8.2 presents a combination of data from BMF and IMF sources. IRS response to TAS information request (Oct. 8, 2020).

<sup>49</sup> IRS response to TAS information request (Oct. 8, 2020); CDW IMF and BMF data as of the end of FY 2020.

FIGURE 1.8.3<sup>50</sup>

## Abatement Rates: Manual Versus Systemic Assertions



As demonstrated in the above analysis, the abatement rates for penalties applied manually during exams are higher than they could be. However, the extent of systemically applied penalties that are later abated indicates a broken system. Taxpayers subject to the systemic penalty receive a letter in the mail informing them, generally for the first time, of a late return and that they must pay the assessed penalty.<sup>51</sup> The IRS then offers various avenues of administrative relief, including reasonable cause abatements.<sup>52</sup> When the IRS undertakes these reviews, it grants abatements at a startling rate, thus raising the inference that the reason for noncompliance was benign.

The IRS deserves credit for properly abating penalties that should not be enforced. It also has implemented some taxpayer-favorable measures, such as allowing an abatement of these penalties whenever a related IRC § 6651 penalty receives a first-time abatement.<sup>53</sup> However, the IRS is administering a systemic penalty regime that abates penalties at least 55 percent of the time and has a reversal rate of about 71 percent when measured in terms of dollars.<sup>54</sup> Notwithstanding the high number of eventual abatements, taxpayers can still experience a significantly adverse impact from the initial assessment. Taxpayers, many of whom are making good-faith efforts to comply with often-onerous U.S. information reporting regimes, are sometimes confronted with unexpected penalties that can be disproportionate and punitive. They can cause stress, create distractions, and cost legal fees to defend. Because these penalties are summarily assessed, taxpayers must depend on the IRS's benevolence and discretion as they seek administrative relief.<sup>55</sup> If either is in short supply,

50 IRS response to TAS information request (Oct. 8, 2020); CDW IMF and BMF data as of the end of FY 2020. Note, the percentages in this figure do not add up to 100 percent because each bar represents the individual abatement rate for a particular mode of assessment (manual or systemic) presented in terms of dollars abated and in terms of number of abatements.

51 IRM 20.1.9.3.2, Penalty Letters, Notice Letters, and Notices (Nov. 30, 2015).

52 IRS response to TAS information request (Oct. 1, 2020). For Form 5471, see IRM 20.1.9.3.5, Reasonable Cause (July 8, 2015), and Treas. Reg. 1.6038-2(k)(3); for Form 5472, see IRM 20.1.9.5.5, Reasonable Cause (July 8, 2015), and Reg. 1.6038A-4(b). See also IRM Exhibit 20.1.9-7, Sample CP 215 Notice (Nov. 30, 2015).

53 The IRS estimates that approximately 40 percent of the systemic abatements result from this circumstance, and another 25 percent of abatements are attributable to corrections from taxpayers or the IRS. IRS response to TAS information request (Oct. 1, 2020).

54 IRS response to TAS information request (Oct. 8, 2020). These numbers reflect data from CY 2018. Abatement rates generally increase as more time elapses from the assessment date.

55 Although the IRS points out that many of these penalties are abated in ways that often require little intervention from taxpayers, taxpayers find it far more desirable to avoid unnecessary penalties than to obtain relief later. IRS response to TAS information request (Oct. 1, 2020). For example, TAS knows from its own experience in advocating for taxpayers how difficult it can sometimes be to obtain a first-time abatement, even where such relief is governed by mechanical rules that should be easily applied.

taxpayers must pay the penalty to seek judicial review. Further, where the penalty amount is \$10,000, some taxpayers may reluctantly agree to the penalty rather than incur the accounting or legal fees to fight against it.

### **Systemic Application and Subsequent Abatement of the IRC §§ 6038 and 6038A Penalties Squanders IRS Resources and Risks Future Noncompliance by Taxpayers**

Although the burden of these assessments falls most heavily on taxpayers, it also negatively affects the IRS itself. Systemic application of the penalties is easy, but the subsequent reversals represent a drain on IRS resources. Any time a taxpayer contests the penalties, they must be reviewed by an examiner.<sup>56</sup> If the penalties cannot be resolved at that level, then taxpayers can seek an independent pre-payment appeal. All these proceedings require individual attention from IRS personnel.<sup>57</sup> Over time these demands not only squander scarce IRS funds, but also necessitate the dedication of significant personnel hours. These hours could be more productively allocated elsewhere if the IRS implemented a narrowly tailored penalty system that accurately detected bad actors.

Instead, the current approach does little more than irritate taxpayers and paint the IRS in a bad light. Some taxpayers and practitioners have realized that if they do not attach these forms to a late return, they can avoid systemic assessment of the penalties. Such an approach is antithetical to good tax administration. The IRS's accuracy rate regarding these penalties would be significantly improved if it simply relied on the flip of a coin or the spin of a roulette wheel. This reality cannot help but breed irritation against the IRS and disrespect for the reliability of its procedures. Almost inevitably, this will generate additional noncompliance not only in the international information reporting area, but in other aspects of taxpayers' interactions with the IRS.<sup>58</sup> As the Internal Revenue Manual itself recognizes, "A wrong [penalty] decision, even though eventually corrected, has a negative impact on voluntary compliance."<sup>59</sup> It is imperative that the IRS get this right, both to facilitate good tax administration and to protect taxpayer rights.

## **CONCLUSION AND RECOMMENDATIONS**

Beyond legal concerns, the current approach of systemically assessing the IRC §§ 6038 and 6038A penalties as summarily assessable harms taxpayers and is disadvantageous to the IRS.<sup>60</sup> The IRS should rethink this practice and provide a more effective system that is proportional and educational. Doing so would protect taxpayer rights, increase tax compliance, and preserve IRS resources. The IRS should discontinue its policy of treating the IRC §§ 6038 and 6038A penalties as assessable, as the IRC does not provide the authority for such actions.

The penalty regime could be improved in several ways, and TAS would partner with the IRS in exploring and formulating these best practices. The IRS could utilize systemically generated soft letters for late filed returns

<sup>56</sup> IRS response to TAS information request (Oct. 1, 2020).

<sup>57</sup> For example, according to the IRS, five to ten percent of abatements in this area are attributable to reasonable cause, which is an especially time-consuming way of providing relief. IRS response to TAS information request (Oct. 1, 2020).

<sup>58</sup> In a study of Schedule C filers, TAS found that when these taxpayers were subject to penalties that could reasonably be perceived as unfair — those assessed by default, abated, or appealed — they had lower levels of compliance in subsequent years. National Taxpayer Advocate 2013 Annual Report to Congress vol. 2, at 1-14 (*Do Accuracy-Related Penalties Improve Future Reporting Compliance by Schedule C Filers?*).

<sup>59</sup> IRM 20.1.1.3(4), Responsibilities (Nov. 21, 2017).

<sup>60</sup> These problems and many of the observations set forth below are equally applicable to other foreign information reporting penalties set forth in Chapter 61.

informing the taxpayer of the relevant penalty. These letters could educate taxpayers regarding applicable law, identify the missing or late information returns, and provide taxpayers an opportunity to comply with their filing requirements as a means of forestalling assertion of the penalty.<sup>61</sup> Similarly, the IRS could provide a first-time abatement for all Chapter 61 penalties, including the IRC §§ 6038 and 6038A penalties, to educate taxpayers and streamline tax administration.<sup>62</sup> These approaches would benefit all parties in that it would foster a better understanding of the law by taxpayers, facilitate information gathering, and substantially decrease the number of penalties asserted. Good faith taxpayers would have their rights protected, while the IRS would still receive the desired information. Likewise, both parties would be freed from the respective burdens generated by unnecessary penalties.

To protect taxpayer rights and reduce taxpayer burden, we strongly recommend that Congress amend the IRC to allow deficiency procedures for all Chapter 61 penalties, including the IRC §§ 6038 and 6038A penalties. As one possibility, these IRC sections could be amended to add a cross-reference directing that the penalties be asserted in the same way as other IRC sections subject to deficiency procedures. This approach would allow taxpayers to contest these penalties before Tax Court judges familiar with tax law in a pre-payment judicial forum.

### Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate preliminarily recommends that the IRS:

1. Stop erroneously assessing Chapter 61 penalties, including the IRC §§ 6038 and 6038A penalties, and refer assessment and collection efforts to the Department of Justice when appropriate.
2. Send soft notices to taxpayers upon discovery of late-filed international information returns as a means of enhancing compliance and minimizing the number of penalties being asserted.
3. Extend eligibility for the first-time abatement to all Chapter 61 penalties, including the IRC §§ 6038 and 6038A penalties, regardless of whether the underlying return was filed late.

### Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Expand deficiency procedures to cover Chapter 61, including the IRC §§ 6038 and 6038A penalties.<sup>63</sup>

61 The IRS uses such letters in the case of the continuation penalties discussed above. It also sends mailings that it refers to as “soft letters” in similar circumstances. See, e.g., Letter 6290 relating to failure to report foreign accounts on Form 8938, Statement of Specified Foreign Financial Assets, or failure to file Form 8938. This latter group of letters, however, does not provide previously noncompliant taxpayers with a mechanism for avoiding application of penalties in the first instance.

62 IRM 20.1.1.3.3.2.1, First Time Abate (FTA) (Nov. 21, 2017); IRM 20.1.9.3.5(3), Reasonable Cause (July 7, 2015); 20.1.9.5.5(3), Reasonable Cause (July 8, 2015). The first-time abatement is applied to the IRC §§ 6038 and 6038A penalties when it is applied to the underlying return, but it could also be applied more broadly without reference to the underlying return.

63 See Legislative Recommendation: *Repeal Flora and Expand the Tax Court’s Jurisdiction, Giving Taxpayers Who Cannot Pay The Same Access to Judicial Review as Those Who Can*, *infra*.

## IRS COMMENTS

While the U.S. income tax system is based on self-disclosure and self-assessment by taxpayers, there are inherent challenges with obtaining and verifying taxpayer information in the international context. Accordingly, Congress enacted statutory penalties in Internal Revenue Code (IRC) Chapter 61 for failure to timely file information returns relating to cross-border business activities. These information returns relate to both foreign taxpayers' activities and investments in the U.S. and U.S. taxpayers' activities and investments abroad. The IRS also utilizes the information in these annual returns to monitor and enforce tax compliance for other tax years and for other taxpayers (such as other shareholders or partners). The Treasury Inspector General for Tax Administration (TIGTA) recommended that the IRS consider systemic assessment of these penalties in 2006. After studying the issue further, the IRS began systemic assessment of some international information return penalties in 2009, and TIGTA evaluated IRS progress with implementing systemic assessment in 2013.

We disagree with the fundamental premise of the MSP that the IRS lacks legal authority to assess Chapter 61 penalties. The IRC provides two methods to assess penalties, either (1) pursuant to deficiency procedures or (2) as assessable penalties, that is, those penalties not subject to deficiency procedures. Penalties under Chapter 61, including IRC § 6038 and § 6038A, are meant to enforce reporting requirements and are not based on the tax shown on a return or the existence of a deficiency. As such, there is no legal basis for us to apply deficiency procedures to these penalties and the IRS has consistently treated Chapter 61 penalties as assessable.

IRC § 6201(a) provides the IRS authority to assess assessable penalties, that is, those penalties not subject to deficiency procedures. Neither that section nor the IRC in general limits assessable penalties to those described under IRC Subchapter 68B. To read the "Assessable Penalties" heading of that subchapter as the exclusive location of assessable penalties would be contrary to IRC § 7806, which expressly prohibits giving any legal effect to descriptive matter relating to the content of the IRC. Accordingly, there is authority to treat these penalties as immediately assessable, and the IRS is not required to first request that the Department of Justice file a suit to obtain a judgement for the penalties before collecting them.

The assessment of these penalties at filing, much like with other assessable penalties, provides the most equitable treatment of enforcement as it doesn't require the IRS to apply case selection criteria for examination. Meaning, all corporations and partnerships are held to the same standards of the law. The IRS recognizes the abatement rates for these systemically assessed penalties on corporations and partnerships are relatively high. We look forward to partnering with TAS to explore whether there are more efficient methods of administering these penalties while maintaining the equitable treatment afforded through systemic assessments.



## TAXPAYER ADVOCATE SERVICE COMMENTS

TAS agrees with the IRS regarding the importance of international information returns for tax administration and voluntary compliance. We understand that systemic assessment is sometimes the best and most equitable way to impose certain penalties for the IRS — but such is not always the case for taxpayers. When the majority of assessed penalties is ultimately abated, however, this indicates that other, more effective and efficient ways of seeking taxpayer compliance should be explored.

TAS looks forward to collaborating with the IRS to develop and implement programs and policies that drive compliance through communication and education. Such programs could include the issuance of soft letters prior to the assessment of penalties so that taxpayers have the opportunity to avoid penalties when they come into compliance. Also, if the IRS implemented a systemic first-time abatement for these penalties, this would represent a more streamlined and comprehensive version of what is already occurring as a practical matter for many systemically assessed IRC §§ 6038 and 6038A penalties. Both the soft letters and the systemic first-time abatement we recommend would present a means of generating compliance in a manner that preserves resources and reduces burdens for taxpayers and the IRS.

From a broader perspective, the National Taxpayer Advocate is unpersuaded by the IRS's legal argument that it has the right to assess these penalties. TAS concurs with the IRS that the IRC does not provide authority for the use of deficiency procedures with respect to Chapter 61 penalties. Nevertheless, the IRS has not provided any unambiguous statutory language or on-point judicial rulings based on which these penalties can be assessed.

IRC § 6201 simply states that assessable penalties can be assessed and the cases cited by the IRS only decide that penalties not subject to deficiency procedures do not require deficiency procedures.<sup>64</sup> These circumstances, either individually or in combination, cannot provide a basis for determining that Chapter 61 penalties are assessable in the first instance. The IRS primarily relies on the circular logic that just because the IRS cannot apply deficiency procedures, it therefore, by definition, must be able to resort to summary assessments. These are not either/or propositions, and the authority to assess is in no way conferred by the unavailability of deficiency procedures. Based on the National Taxpayer Advocate's reading of the law, and that of some commentators, the IRS simply has no ability to assess Chapter 61 penalties under the IRC as currently codified. This unfortunate and likely unintended situation is why assessment and collection of Chapter 61 penalties should be referred to the Department of Justice.

Although under current law, deficiency procedures do not apply to Chapter 61 penalties, we strongly recommend that Congress provide taxpayers with a statutory notice of deficiency giving them the opportunity to petition the U.S. Tax Court for reconsideration of the penalty. All taxpayers should have the chance to obtain judicial review of adverse IRS determinations. The IRS's position is that Chapter 61 penalties are assessable and not subject to judicial review unless a taxpayer is wealthy

64 See *Wheaton v. U.S.*, 888 F. Supp. 622, 626 (D.N.J. 1995); *Heydemann v. United States*, 2008 WL 2502188 (D. Md. Apr. 23, 2008).

enough to first fully pay the penalties assessed and proceed to U.S. District Court or the U.S. Court of Federal Claims.

Long-term reliance on the Department of Justice for such enforcement is not an efficient and taxpayer-favorable long-term outcome. TAS welcomes the prospect of working with the IRS and Congress to seek legislation making Chapter 61 penalties subject to deficiency procedures. In the meantime, we look forward to collaborating with the IRS in pursuing our administrative recommendations that would yield a fair and just tax system for both taxpayers and the IRS.

## RECOMMENDATIONS

### Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Stop erroneously assessing Chapter 61 penalties, including the IRC §§ 6038 and 6038A penalties, and refer assessment and collection efforts to the Department of Justice when appropriate.
2. Send soft notices to taxpayers upon discovery of late-filed international information returns as a means of enhancing compliance and minimizing the number of penalties being asserted.
3. Extend eligibility for the first-time abatement to all Chapter 61 penalties, including the IRC §§ 6038 and 6038A penalties, regardless of whether the underlying return was filed late.

### Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Expand deficiency procedures to cover Chapter 61, including the IRC §§ 6038 and 6038A penalties.<sup>65</sup>

65 See Legislative Recommendation: *Repeal Flora and Expand the Tax Court's Jurisdiction, Giving Taxpayers Who Cannot Pay The Same Access to Judicial Review as Those Who Can*, *infra*.

## The IRS Processes Most Amended Returns Timely But Some Linger for Months, Generating Over a Million Calls That the IRS Cannot Answer and Thousands of TAS Cases Each Year

### RESPONSIBLE OFFICIALS

Kenneth Corbin, Commissioner, Wage and Investment Division

Eric Hylton, Commissioner, Small Business/Self-Employed Division

### TAXPAYER RIGHTS IMPACTED<sup>1</sup>

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Finality*
- *The Right to a Fair and Just Tax System*

### EXPLANATION OF THE PROBLEM

The IRS leads taxpayers to expect that it will process their amended returns within 16 weeks. While this is true for most amended returns, a subset takes longer to process or hits snags that the IRS does not explain very well. The IRS does not disclose to taxpayers that if their amended returns are selected for audit, processing will likely take several more months and sometimes the IRS will simply stop processing them. In these situations, the Where's My Amended Return tool, which is not available to business taxpayers, is of little help because it has only three statuses (received, adjusted, or completed) and does not explain where an amended return is in the processing pipeline or estimate when processing will be complete.

In fiscal year (FY) 2019, the IRS's failure to set clear expectations and keep taxpayers informed of the status of their amended returns generated over 2.2 million calls, 1.4 million of which it was able to answer, and resulted in over 9,400 TAS cases.<sup>2</sup> Many taxpayers file an amended return to request a refund of a tax overpayment, but the IRS also has the statutory authority to consider a taxpayer's request to reduce an assessed tax that remains unpaid, *i.e.*, a request for abatement.<sup>3</sup> The IRS has exercised that authority and established procedures for processing amended returns requesting an abatement.<sup>4</sup> However, it sometimes refuses to consider the claim and issues a form letter without an adequate explanation to the taxpayer. The form letter

1 See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the IRC. See IRC § 7803(a)(3).

2 IRS, Joint Operations Center (JOC), Snapshot Reports: Enterprise Snapshot, FY 2019; Taxpayer Advocate Management Information System (TAMIS), case receipts with Primary Core Issue Code (PCIC) 330 (amended return processing), FY 2019.

3 IRC § 6404(a) authorizes the IRS, among other things, to abate the unpaid portion of the assessment of any tax which "is excessive in amount," meaning "in excess of the correct tax liability." Treas. Reg. § 301.6404-1(a).

4 Internal Revenue Manual (IRM) 25.6.1.10.1(2), (3), Requests for Abatement (Sept. 20, 2016). See also IRM 1.2.1.4.15, Policy Statement 3-15 (Formerly P-2-89), Reconsideration of an Unpaid Assessment (Sept. 20, 1999) (relating to requests for abatement in the context of audit reconsiderations).

simply states the law does not allow a claim to reduce tax owed and instructs the taxpayer to pay the tax followed by another amended return.

## ANALYSIS

An amended return is not defined in the IRC, and taxpayers are not required to file an amended return.<sup>5</sup> The Supreme Court has held an amended return is a creature of administrative origin and grace.<sup>6</sup> In practice, taxpayers regularly file amended returns to correct an error on a previously filed return, and the IRS has adopted specific procedures for handling amended returns.<sup>7</sup> Most individual taxpayers receive a refund after they file an amended return. The IRS's announced timeframe for processing individuals' amended returns is 16 weeks.<sup>8</sup> The IRS advises that it often takes three to four months to process corporations' amended returns.<sup>9</sup>

Taxpayers who file amended income tax returns include:

- Individuals filing Form 1040X, Amended U.S. Individual Income Tax Return;<sup>10</sup>
- Corporations filing Form 1120X, Amended U.S. Corporation Income Tax Return, or other Form 1120-series amended returns such as Form 1120-S, U.S. Income Tax Return for an S Corporation, and checking a box on the form to indicate that the return is an amended return;
- Partnerships filing Form 1065X, Amended Return or Administrative Adjustment Request (AAR), or Form 1065, U.S. Return of Partnership Income, and checking a box on the form to indicate that the return is an amended return; and
- Estates and trusts filing Form 1041, U.S. Income Tax Return for Estates and Trusts, and checking a box on the form to indicate that the return is an amended return.

In distinguishing between a request for abatement (*i.e.*, a request for a “decrease in the tax that was assessed”) and a request for refund (*i.e.*, “a request for the return of a paid assessment”), the IRS notes that “[a]lthough IRC Section 6404(b) provides that taxpayers have no right to file a claim for abatement of income, estate, or gift tax, the Service will consider a taxpayer’s request for an abatement of such taxes where the taxpayer files an amended return with the IRS that shows a decrease in the tax that was assessed.”<sup>11</sup>

Various codes on IRS computer systems show the receipt of an amended return and its movement through different IRS functions as it is processed.<sup>12</sup> The codes do not show the correction the taxpayer *sought* on the

5 There is no statutory provision that authorizes the filing of amended returns or requires the IRS to accept them, although the IRS has discretion to accept them. See *Hillsboro National Bank v. Comm’r*, 460 U.S. 370, 378, n. 10 (1983).

6 *Badaracco v. Comm’r*, 464 U.S. 386, 393 (1984) citing *Hillsboro National Bank v. Comm’r*, 460 U.S. 370 (1983).

7 The IRS’s procedures for accepting and processing amended returns are described in various places throughout the IRM. See, e.g., IRM 21.5.2, Account Resolution, Adjustments Guidelines (Oct. 1, 2020); IRM 21.6.7, Individual Tax Returns, Adjusting Individual Tax Accounts (Oct. 1, 2020); and IRM 3.11.217, Returns and Documents Analysis, Form 1120-S Corporation Income Tax Returns (Jan. 1, 2020).

8 See IRS, Form 1040X, Amended U.S. Individual Income Tax Return, Frequently Asked Questions, <https://www.irs.gov/filing/amended-return-frequently-asked-questions> (last visited Dec. 11, 2020) (noting that processing time is 16 weeks whether the amended return is filed electronically or not).

9 IRS Form 1120X, Amended U.S. Corporation Income Tax Return at 3 (Nov. 2016).

10 IRS Compliance Data Warehouse (CDW), Individual Master File (IMF) Transaction History File, Business Master File (BMF) Transaction History File (Oct. 1, 2020).

11 IRM 25.6.1.10.1(2), (3), Requests for Abatement (Sept. 20, 2016). Taxpayers may claim an abatement of tax other than income, estate, or gift tax by filing IRS Form 843, Claim For Refund and Request for Abatement. See Treas. Reg. § 301.6404-1(c).

12 A description of the methodology used to obtain counts and processing times is found in Appendix A, following this Most Serious Problem.

amended return, but they do show what adjustment *was made* to a taxpayer's account after an amended return was filed. The outcomes can be grouped into the following four categories:

- Category 1: The IRS agreed the taxpayer made an overpayment of tax and issued a refund to the taxpayer (or offset the overpayment to the taxpayer's tax liability for a different year);
- Category 2: The IRS abated some or all the tax, *i.e.*, the IRS adjusted its records to show the taxpayer owed less tax than the amount shown on the original return;
- Category 3: The IRS adjusted its records to show the taxpayer owed more tax than the amount shown on the original return; or
- Category 4: The IRS did not make any change to its records to reflect information shown on the amended return. This category includes cases in which the IRS rejected or declined to consider the change proposed on the amended return, and where the IRS disallowed refunds requested on an amended return.

Figure 1.9.1 shows an estimate of the number of amended returns the IRS processed in FYs 2017-2019 by the type of filer and the ensuing adjustment to the taxpayer's account, according to the categories described above.

**FIGURE 1.9.1, Estimated Number of Amended Returns Processed, FYs 2017-2019, by Type of Form and Category of Outcome<sup>13</sup>**

Fiscal Year	Form	Category 1 Refund	Category 2 Decrease in Tax	Category 3 Increase in Tax	Category 4 No Change	Total
FY 2017	Form 1040X	1,739,302	91,591	694,823	590,039	3,115,755
	Form 1120X	18,352	1,637	3,836	161,470	185,295
	Form 1065X	905	0	0	81,130	82,035
	Form 1041	12,016	1,091	4,869	26,230	44,206
FY 2018	Form 1040X	1,889,628	98,922	712,322	678,877	3,379,749
	Form 1120X	17,256	1,550	3,564	162,482	184,852
	Form 1065X	566	0	0	82,889	83,455
	Form 1041	11,281	1,056	4,368	28,210	44,915
FY 2019	Form 1040X	1,570,199	98,010	652,698	633,701	2,954,608
	Form 1120X	15,291	1,426	3,464	170,366	190,547
	Form 1065X	427	0	0	92,171	92,598
	Form 1041	10,887	1,028	4,297	42,119	58,331

<sup>13</sup> CDW IMF and BMF Transaction History Tables, cycle post 202039. To protect taxpayer confidentiality, the number of cases is shown as zero whenever the actual number of cases was less than ten.

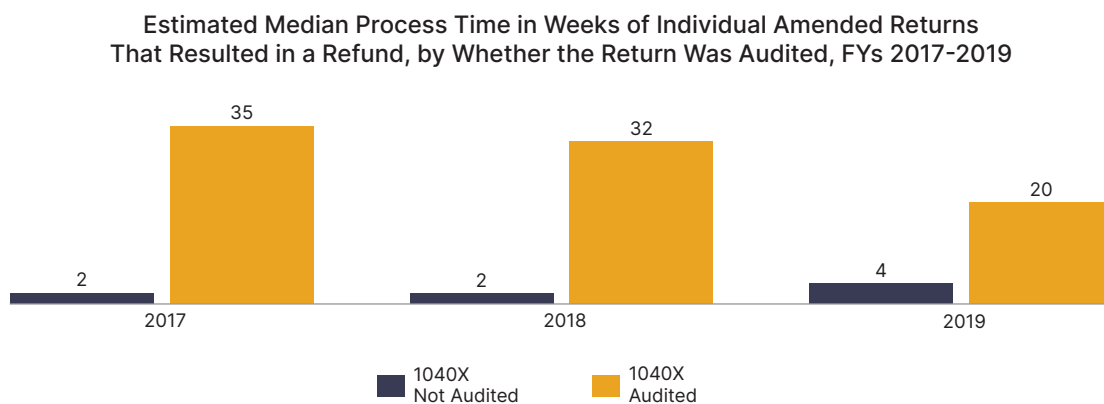
As the “Total” column in Figure 1.9.1 shows, individual taxpayers file the most amended returns; corporations file the next largest number of amended returns.<sup>14</sup> In terms of outcome, most individual taxpayers belong to Category 1 (*i.e.*, the taxpayer was issued a refund, or the overpayment was offset to a different year’s tax liability). Most business taxpayers belong to Category 4 (*i.e.*, no change). The Category 4 “no change” outcome is the second most likely outcome for individual taxpayers. Thus, this discussion focuses on the two largest groups of taxpayers — individuals and corporations — and Categories 1 and 4 outcomes.<sup>15</sup>

Estimated median processing time of amended returns varied depending on whether the IRS examined, or audited, the amended return, as discussed below.

### Examinations Add Months to Median Processing Time

As Figure 1.9.2 shows, the estimated overall median processing time for *individual* amended returns that resulted in a refund was never more than four weeks overall when the return was not audited. (Estimated median processing time for these amended returns doubled from two weeks to four weeks from FYs 2017-2019 but was well within the announced 16-week timeframe.) In FY 2017, estimated median processing time for these *audited* returns stretched up to 35 weeks; by FY 2019, it had decreased to 20 weeks, a significant improvement compared to FY 2017, but still 25 percent longer than taxpayers were told to expect.<sup>16</sup>

**FIGURE 1.9.2<sup>17</sup>**



14 Due to the COVID-19 pandemic, the IRS closed processing centers, imposed social distancing restrictions upon reopening, and prioritized the processing of current year (2019) returns; it therefore processed significantly fewer amended returns in FY 2020. For example, the IRS processed only 1,704,560 Forms 1040X and 120,573 Forms 1120X in FY 2020, a decline of 42 percent and 37 percent, respectively, compared to the 2,954,608 Forms 1040X and 190,547 Forms 1120X shown on Figure 1.9.1 as processed in FY 2019. CDW, IMF and BMF Transaction History Tables, cycle post 202039.

15 As Figure 1.9.1 shows, in FY 2019, the IRS processed 2,203,900 Forms 1040X that were in Category 1 or 4. In contrast, in FY 2020 the IRS processed only 1,424,249 of these amended returns, a decline of 35 percent. In FY 2019, the IRS processed 185,657 Forms 1120X that were in Category 1 or 4, compared to 117,296 in FY 2020, a decline of 27 percent.

16 The maximum processing time for one of these amended returns in FYs 2017-2019 was 97 weeks, *i.e.*, the taxpayer waited almost two years to receive the requested refund.

17 CDW, IMF and BMF Transaction History Tables, Individual Return Transaction File (IRTF) F1040, Business Return Transaction File (BRTF) F1120, Audit Information Management System (AIMS) Closed Case File, cycle post 202039.

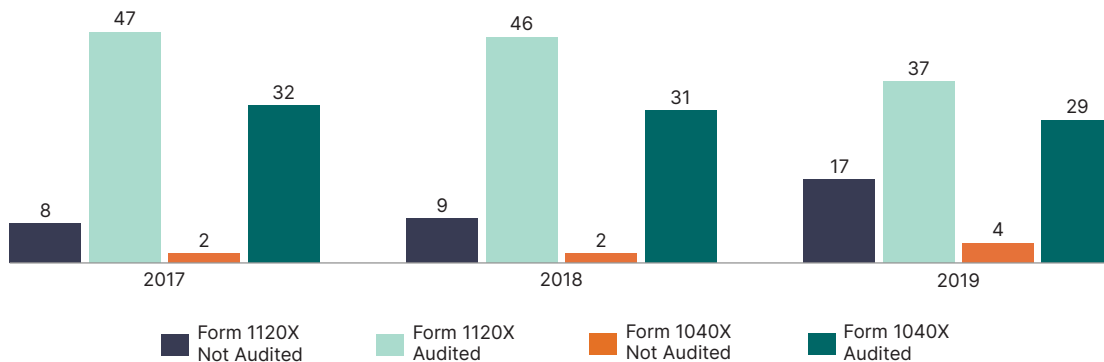


For many individual taxpayers and most business taxpayers, amended returns result in no change to their tax liability. Figure 1.9.3 shows the estimated median processing times for these amended returns filed by individuals *and* by corporations according to whether the return was audited. While individuals' *unaudited* returns in this category were processed in two to four weeks, estimated median processing time for corporations' *unaudited* amended returns increased from eight to 17 weeks in FYs 2017-2019.

For *audited* individual and corporate amended returns that resulted in no change, estimated median processing time in FY 2017 was 32 weeks for individuals and 47 weeks for corporations. By FY 2019, these estimated median processing times were 29 weeks for individuals and 37 weeks for corporations.<sup>18</sup>

**FIGURE 1.9.3<sup>19</sup>**

Estimated Median Processing Time in Weeks of Individual and Corporate Amended Returns That Resulted in No Change, by Whether the Return Was Audited, FYs 2017-2019



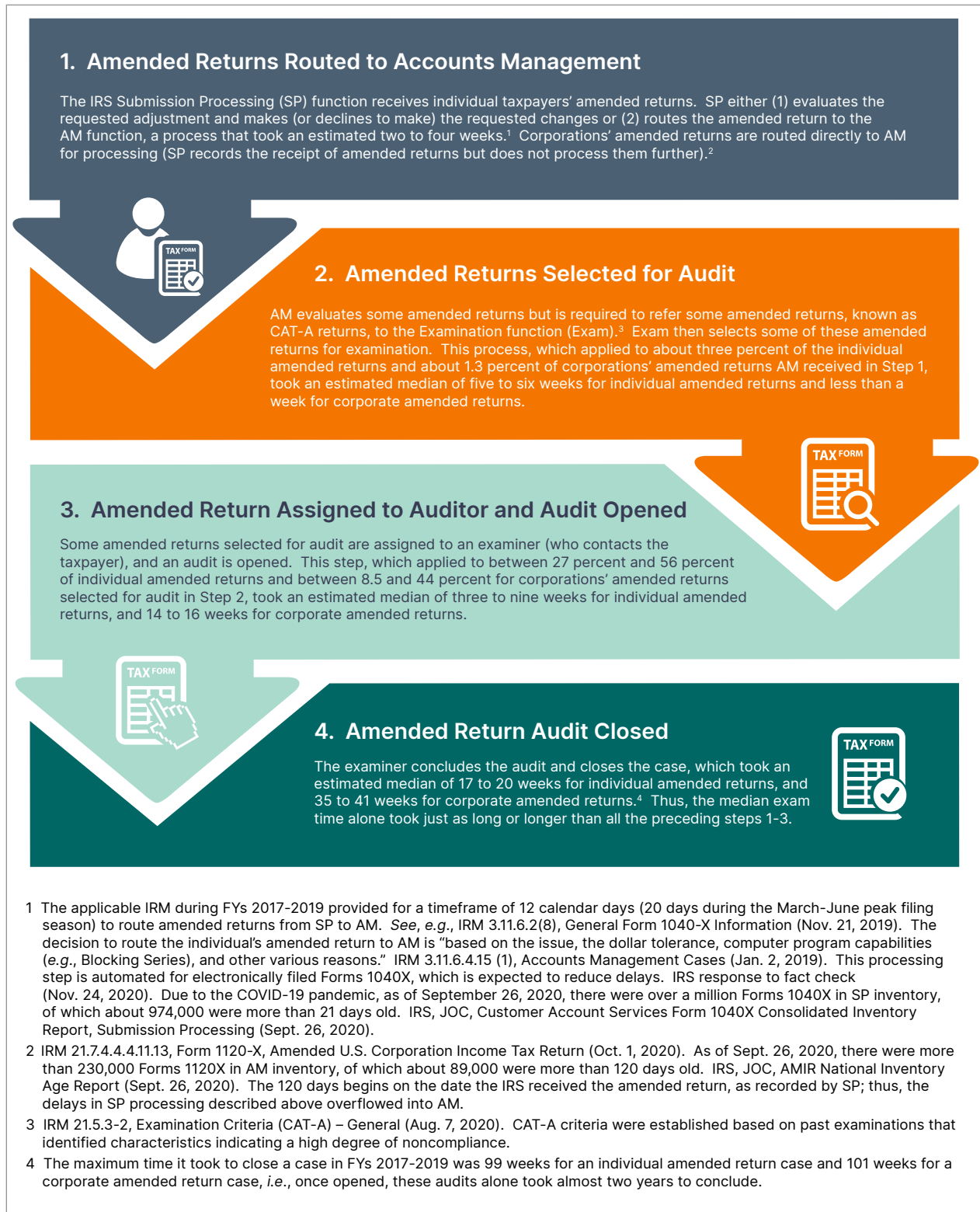
Whether a taxpayer files an amended return on paper or electronically, the IRS processes it manually.<sup>20</sup> In terms of outcomes, most taxpayers belong to Category 1 or Category 4 (*i.e.*, the taxpayer either received a refund or no change resulted from the amended return). The processing steps generally followed by *audited* amended returns filed by individuals and corporations with estimated processing timeframes for Category 1 and Category 4 cases in FYs 2017-2019 are summarized in Figure 1.9.4.<sup>21</sup>

18 The maximum processing time for these amended returns in FYs 2017-2019 was 100 weeks, occurring in four individual amended return cases and four corporate amended return cases, *i.e.*, these taxpayers waited almost two years for the IRS to take action such as rejecting or declining to consider the change proposed on the amended return or disallowing a refund requested on an amended return.

19 CDW, IMF and BMF Transaction History Tables, IRTF F1040, BRTF F1120, AIMS Closed Case File, cycle post 202039.

20 IRS response to TAS information request (Oct. 6, 2020). Most amended returns were filed on paper. Electronic filing became available to individuals in 2020, which allows automation of part of the process as described below. IRS, IR-2020-182, Now available: IRS Form 1040-X Electronic Filing; Major IRS Milestone Helps Taxpayers Correct Tax Returns With Fewer Errors, Speeds Processing (Aug. 17, 2020). Business taxpayers have long been able to file amended returns electronically (and some are *required* to file electronically, see, *e.g.*, IRC § 6511(e) and Treas. Reg. § 301.6011-5(a), (d)(4) & (f), effective for taxable years ending on or after Dec. 31, 2006, obliging corporations with assets of \$10 million or more that are required to file at least 250 returns each calendar year to file original and amended income tax returns electronically), but most Forms 1120X are not filed electronically. In FYs 2017, 2018, and 2019 respectively, 15,092, 15,552, and 16,707 Forms 1120X were filed electronically. IRS response to TAS information request (Oct. 6, 2020).

21 See Appendix A following this Most Serious Problem for additional data about processing times.

**FIGURE 1.9.4, Processing Steps for Audited Amended Returns, FYs 2017-2019<sup>22</sup>**

22 CDW, IMF and BMF Transaction History Tables, IRTF F1040, BRTF F1120, AIMS Closed Case File, cycle post 202039.

## DELAYED REFUNDS CAUSE THE GOVERNMENT TO INCUR INTEREST CHARGES

The government is required to pay interest on the overpayments taxpayers claim, and the interest generally begins to accrue 45 days after the taxpayer requests a refund from the IRS.<sup>23</sup> Thus, delays in processing amended returns on which taxpayers seek refunds contribute to overpayment interest.<sup>24</sup>

### Millions of Taxpayers Call the IRS Seeking Information About Their Amended Returns

Since 2013, the IRS has provided a “Where’s My Amended Return” tool.<sup>25</sup> The tool is accessible online at IRS.gov or by calling a toll-free number for an automated phone system, referred to as the amended return hotline. The tool allows taxpayers to ascertain whether the IRS received their amended return, whether the IRS made any adjustment to their accounts, and whether processing of the amended return is complete. However, beyond these three statuses (received, adjusted, or completed), the tool does not explain where an amended return is in the processing pipeline or estimate when processing will be complete.<sup>26</sup> Moreover, the application is not available for business taxpayers or for taxpayers who file an amended return with a foreign address, among others.<sup>27</sup> In FY 2019, taxpayers accessed the tool online through IRS.gov more than five million times and called the amended return hotline more than 2.2 million times; 1.4 million of these calls were answered.<sup>28</sup>

### Taxpayers Seek Assistance From TAS in Resolving Amended Return Issues

In each of FYs 2017-2019, the fourth most common reason taxpayers came to TAS was for assistance in resolving problems caused by amended return processing.<sup>29</sup> Past analysis of TAS cases with this issue showed that the underlying factor in these cases is that the processing period greatly exceeded the IRS’s announced

23 IRC § 6611(e)(1).

24 Taxpayers are required to make a claim of refund from the IRS before they bring a refund suit. IRC § 7422(a). If the IRS disallows the claim of refund, or if the claim goes unanswered for six months, the taxpayer may seek a tax refund by paying the tax and bringing suit in a U.S. district court or the U.S. Court of Federal Claims within two years from the disallowance. IRC § 6532(a); 28 U.S.C. § 1346(a)(1); *Flora v. United States*, 362 U.S. 145 (1960). If the IRS does not disallow the claim, the IRS’s position is that a taxpayer may file a refund suit any time after the initial six-month period provided in IRC § 6532(a). See IRS Chief Counsel Notice CC-2012-012, Period of Limitations for Refund Suits Absent Waiver or Issuance of a Notice of Claim Disallowance (June 1, 2012). See also IRM 34.5.2.2, Pre-Litigation Activity (Dec. 21, 2012), noting that “[i]f the taxpayer does not waive a notice of claim disallowance, and the Service has not issued such notice, then the taxpayer may file a refund suit at any time after six months from the filing of the administrative claim.” Thus, for example, a taxpayer whose timely administrative refund claim remains unaddressed for six months could bring a refund suit years later, and if successful would be entitled to interest on the overpayment for those intervening years.

25 IRM 21.2.1.59, Where’s My Amended Return (WMAR) (Mar. 30, 2016).

26 IRS, Form 1040X, Amended U.S. Individual Income Tax Return, Frequently Asked Questions, <https://www.irs.gov/filing/amended-return-frequently-asked-questions> (last visited Dec. 11, 2020).

27 IRM 21.2.1.59, Where’s My Amended Return (WMAR) (Mar. 30, 2016). The application is also not available with respect to claims for abatement filed on Form 843, Claim for Refund and Request for Abatement, applications and claims for carrybacks, Forms 1040 with “amended” or “correct” written or stamped on the return, or amended returns routed/received by specialized functions (e.g., Examination, Bankruptcy, Integrity Verification, etc.) outside processing operations.

28 IRS response to TAS information request (Most Serious Problem: *Online Records Access: Limited Electronic Access to Taxpayer Records Through an Online Account Makes Problem Resolution Difficult for Taxpayers and Results in Inefficient Tax Administration* (Oct. 2, 2020) (reporting that in FY 2019 there were 5.34 million sessions using the application); IRS, IRS.gov Usage Reports, Top Content Pages, for URL [www.irs.gov/filing/wheres-my-amended-return](http://www.irs.gov/filing/wheres-my-amended-return), Jan.-Dec. 2019; IRS, JOC, Snapshot Reports: Enterprise Snapshot (FY 2019), showing that 2,209,447 net attempts to call the amended return hotline (excluding callers who dialed this number, but should have dialed another number and including callers who dialed another number but should have dialed this number), of which 536,490 were automatically answered and 907,793 were answered by assistors. See Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Difficulty Reaching IRS Representatives Due to Outdated Information Technology and Insufficient Staffing*, *supra*, for the National Taxpayer Advocate’s recommendations for improving telephone service to taxpayers.

29 For FY 2019, there were 9,427 new TAS cases in which the PCIC was 330, IRS delays in processing amended returns. The PCIC defines the most significant policy, procedure, or issue within the IRS that generated the TAS case. IRM 13.1.16.18.1, Taxpayer Issue Code (Aug. 14, 2020). There were 7,713 such cases in FY 2017 and 8,767 such cases in FY 2018. TAMIS case receipts with PCIC 330 (amended return processing).

timeframe.<sup>30</sup> As discussed above, processing time is considerably lengthened when taxpayers' amended returns are audited. A review of TAS cases that were closed in FY 2019, discussed below, suggests that taxpayers encounter an additional difficulty: the IRS may refuse to consider their amended returns on which they request an abatement of tax.

## In Letter 916C, the IRS Declines to Consider Amended Returns Requesting Abatement of Tax

The IRS has the statutory authority to abate income taxes; it has exercised that authority and has adopted procedures for processing amended returns that request abatement.<sup>31</sup> As Figure 1.9.1 shows, the IRS abated taxes in about 100,000 cases each year in FYs 2017-2019 (Category 2 cases). Yet, in some situations the IRS refuses to consider these claims.

For some amended returns requesting an abatement of tax the IRS sends the taxpayer Letter 916C, Claim Incomplete for Processing; No Consideration.<sup>32</sup> Letter 916C is a blank template, with the IRS employee developing the content of the letter by selecting among pre-written paragraphs including Paragraph M.<sup>33</sup>

Paragraph M of Letter 916C says:

The law allows you to file a claim for a refund of taxes you have paid. However, the law doesn't allow you to file a claim to reduce the tax you owe. If you disagree with the amount of tax you owe, you can appeal our decision. To appeal our decision, you must:

- Pay the tax you owe.
- File an amended return with documentation that supports a reduction in the tax you owe.
- File your claim for refund within 3 years from the date you filed your return or 2 years from the date you paid your tax, whichever is later.<sup>34</sup>

The reference to the option to “appeal our decision” in paragraph M does not refer to the right to an administrative appeal, which is not available in tax abatement cases, but rather to the right to pay the assessed tax, request a refund from the IRS (which may include an administrative appeal), and if unsuccessful, bring a refund suit in a U.S. district court or the U.S. Court of Federal Claims.<sup>35</sup> While taxpayers are required to pay the assessed tax before they may bring a refund suit in federal court, there is no requirement that they pay an assessed tax before they seek abatement of some or all of the tax from the IRS.<sup>36</sup>

30 TAS Report: The PCIC 330 Amended Return Study (Sept. 25, 2007), on file with TAS.

31 IRC § 6404(a); IRM 25.6.1.10.1, Requests for Abatement (Sept. 20, 2016); IRM 25.6.1.10.1.1(3), Abatement Authority (Nov. 18, 2011). See also IRM 1.2.1.4.15, Policy Statement 3-15 (Formerly P-2-89), Reconsideration of an Unpaid Assessment (Sept. 20, 1999).

32 IRM 21.5.3.4.6.3, No Consideration Procedures (July 21, 2020), noting that **Letter must advise the taxpayer why the claim is not being considered.** (Emphasis in original.)

33 IRM 21.5.3.4.6 (2), No Consideration and Disallowance of Claims and Amended Returns (Oct. 1, 2020).

34 Letter 916C was revised in 2020 and the quoted text is now found in Paragraph N. IRM 21.5.3.4.6, No Consideration and Disallowance of Claims and Amended Returns (Oct. 1, 2020) has been updated to replace the reference to Paragraph M with a reference to Paragraph N. All the Letters 916C in the TAS cases that contained Paragraph M were issued when the content of Paragraph M was as quoted above.

35 If the amended return claimed a refund instead of an abatement of tax, and the IRS decides to disallow the claim, it issues Letter 105C, Claim Disallowed or Letter 106C, Claim Partially Disallowed. IRM 21.5.3.4.6 (2), No Consideration and Disallowance of Claims and Amended Returns (Oct. 1, 2020); IRM 21.5.3.4.6.1, Disallowance and Partial Disallowance Procedures (Oct. 1, 2020). A taxpayer may request an administrative appeal of the disallowance, and if unsuccessful may bring a refund suit in a U.S. district court or the U.S. Court of Federal Claims. The two-year period for bringing a refund suit under IRC § 6532(a) is not suspended while the taxpayer seeks administrative review of the disallowance. Treas. Reg. § 301.6532-1(d).

36 As noted above, taxpayers must generally pay the assessed tax before they may bring a refund suit. *Flora v. United States*, 362 U.S. 145 (1960).

The IRS justifies including Paragraph M in Letter 916C when requests for abatement do not contain adequate explanation or documentation by affirming that:

This procedure was established to provide a courtesy to the taxpayers, to allow AM CSR's [Customer Service Representatives] to consider a claim, even though the taxpayer may not have paid the tax they owe. Instead of outright denying the claim, AM CSR's will review the claim in full and determine if it is fully processable and contains all the necessary supporting documentation.<sup>37</sup>

The IRS also notes: "[t]hat is why in IRM 21.5.3.4.6(3), we advise our CSR's not to deny claims based solely on the nonpayment of tax, rather to consider the claims if they contain all of the necessary documentation."

It appears the IRS considers requests for tax abatement, but only if the request is submitted with adequate explanation and documentation. When the request is incomplete, rather than asking taxpayers to provide the missing information, taxpayers are told that "the law doesn't allow you to file a claim to reduce the tax you owe."<sup>38</sup> This practice is unacceptable. The IRS should contact the taxpayer and provide a reasonable period of time to submit documentation in support of the request for abatement.

### Each Year, TAS's Inventory Includes Abatement Requests the IRS Did Not Consider

In FY 2019, TAS closed 9,602 cases in which the primary issue was IRS delays in processing amended returns.<sup>39</sup> Of these, there were 240 "no consideration" cases in which the taxpayer, after filing an amended income tax return, was issued Letter 916C that was viewable on IRS databases.<sup>40</sup> Even though these cases comprise a small portion (three percent) of TAS cases involving delays in processing amended returns, they demonstrate inconsistencies in the IRS's treatment of amended returns.

Of the 240 cases, in 52 cases the taxpayer sought an abatement of tax rather than a refund. In 22 of these 52 cases (42 percent), Letter 916C informed the taxpayer that the law does not allow claims for abatements. Either Paragraph M was selected (18 cases) or a fill-in paragraph contained the same information (four cases).<sup>41</sup> In all 22 cases except one, this was the only reason given for not considering the claim (*i.e.*, in only one case was the taxpayer advised that the supporting information was not complete).

## CONCLUSION AND RECOMMENDATIONS

Most amended returns filed by individuals result in a refund, and the IRS usually processes these amended returns within its announced timeframe of 16 weeks, although auditing these returns increased processing time to a median of 20 weeks in FY 2019. Amended returns filed by individuals and corporations often do

<sup>37</sup> IRS response to TAS information request (Oct. 6, 2020).

<sup>38</sup> In contrast, when agents in the field audit an amended return, the examiner is instructed that if the taxpayer fails to appear for an interview or to provide substantiation, to provide the taxpayer with the following explanation: "We are disallowing your request for abatement in full because we did not receive a response to our request for supporting information." IRM 4.10.11.3.2(6), Requests for Abatement (Sept. 4, 2020).

<sup>39</sup> TAMIS closed cases with PCIC 330 (amended return processing) FY 2019.

<sup>40</sup> TAMIS cases closed in FY 2019 where a word search of the TAMIS history contained "916C" or "no consider" or "no-consider," excluding cases in which the taxpayer filed the amended return to resolve issues that IRS fraud filters identified when processing the original return (these amended returns were not filed to adjust a tax liability or claim a refund). The amended returns were filed by individual taxpayers in 189 cases and by an estate or trust in five cases.

<sup>41</sup> In eight of the 22 cases, Exam instructed AM to select Paragraph M or include this information in the fill-in paragraph.

not result in any change in liability. When they are not audited, these amended returns are usually processed timely (within a median time of four weeks for individuals and 17 weeks for corporations in FY 2019). When these amended returns are audited, processing times increase significantly, reaching an estimated median of 29 weeks for individuals and 37 weeks for corporations in FY 2019; these taxpayers wait seven or eight months to learn, *e.g.*, that their claimed refund or request for tax abatement was denied. The main driver of increased processing times for audited amended returns is the time it takes to conduct the audit.

The IRS has the authority to abate income taxes. It has exercised that authority and adopted procedures for considering requests for tax abatement submitted on an amended return. About 100,000 amended returns result in tax abatement each year. However, a review of TAS cases shows that when the IRS refuses to consider requests for tax abatement, it frequently cites as the reason for its refusal that the law doesn't allow taxpayers to file a claim to reduce the tax they owe. That response is misleading and undermines taxpayers' *rights to be informed and to pay no more than the correct amount of tax.*

### Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate preliminarily recommends that the IRS:

1. Change its procedures by:
  - a. Revising the IRM to provide that if a request for tax abatement is incomplete, the employee should solicit the necessary documentation from the taxpayer, and if the documentation is not forthcoming or is insufficient, the employee should deny the request, explain the reason for the denial, and explain the different procedures that apply to requests for tax abatement and requests for refund;
  - b. If the IRS determines the taxpayer is not entitled to an abatement, issuing a 30-day letter providing taxpayers the right to file a protest with the Independent Office of Appeals<sup>42</sup> for abatement of tax and updating and clarifying the IRM's No Immediate Tax Consequence provisions by referencing abatement cases;
  - c. Removing any selectable paragraph in Letter 916C that states the law does not allow taxpayers to file a claim to reduce the tax they owe or appears to advise taxpayers that they cannot seek an abatement of tax without first paying the amount of tax already assessed (Paragraph N in the current version of Letter 916C); and
  - d. Revising the IRM to instruct employees not to use a fill-in paragraph in Letter 916C to state the law does not allow taxpayers to file a claim to reduce the tax they owe or to inform taxpayers they cannot seek an abatement of tax without first paying the amount of tax already assessed.
2. Identify and address the cause of lengthy examination times for amended returns.
3. Identify and address the cause of the increase in processing time for corporations' unaudited amended returns.
4. Add additional status updates to the "Where's My Amended Return" tool to allow taxpayers to see when the IRS selects their amended return for audit, when it assigns the audit to an examiner, and what an estimated completed processing time is based on the return's current status.

42 See IRM 8.1.1.3.2, No Immediate Tax Consequence Cases (Oct. 1, 2016).



## IRS COMMENTS

The IRS is committed to processing amended returns accurately and efficiently. On August 17, 2020, the IRS began receiving electronic Forms 1040X, Amended U.S. Individual Income Tax Return, which has been an important goal for the IRS and our industry partners for many years. Electronically filing a Form 1040X will reduce errors and decrease processing time. As of November 21, 2020, over 144,000 electronically filed amended returns have been accepted from 18 industry partners. Future upgrades will allow taxpayers to file an electronic amended return for the current and two prior years. And, although the IRS has been converting more complex paper amended returns into electronic Correspondence Imaging System (CIS) cases for years, we initiated a pilot process in October 2020 to convert less complex paper amended returns to CIS cases. If the pilot is successful streamlining our ability to work and resolve these cases, we plan to implement the process Servicewide.

We are making progress in reducing the Business Masterfile (BMF) amended return inventory that has increased due to the lapse in appropriations in 2019 and office closures due to COVID-19 in 2020. As of November 2020, the current BMF inventory is about 670,000 cases, down 20 percent from a peak of 840,000 cases one year prior. We anticipate BMF amended return processing will increase once new employees are trained and are focused on this inventory.

Our efforts to ensure compliance with the tax laws extend to amended returns. Before determining whether to survey or examine an assigned claim for refund, examiners thoroughly review the return to identify large, unusual, or questionable items per IRM 4.10.2.3, In-Depth Pre-Contact Analysis, and evaluate the audit potential of the entire return, and possibly, for related returns for the same or other tax years. The examination is not limited to the issues raised in the claim for refund if there are other issues that warrant further consideration (IRM 4.10.11.2.4 and 4.10.11.3.3). Therefore, the effort and time required to examine an amended return can rise to the same level as in other examinations, although current data shows the cycle time for examinations on amended returns is lower than other examinations both in Field and Campus operations (269 days in fiscal year 2020 compared to 319 days for all examinations). The length of any audit is based on the unique facts and circumstances of each case, the timeliness of taxpayer responses to IRS letters, and may be affected by the need to balance competing priorities or extenuating circumstances such as disasters. To help expedite examinations, campuses began forwarding claims and assigning cases to the field electronically in July 2020.

We are always seeking to improve how we communicate with taxpayers and will consider how the “Where’s My Amended Return” tool could be improved in this regard, taking into account cost and competing IT priorities. We will also review and consider other recommendations provided by the National Taxpayer Advocate.

Some amended returns include requests for abatement of tax owed, before the tax is paid. Currently, we consider these requests where sufficient documentation is provided. We do so as a courtesy to taxpayers, to allow the Service to consider a claim even though the taxpayer has not paid the assessed

tax that is due. We are working with the IRS Office of Chief Counsel to determine how best to address the concerns raised by the Advocate with our procedures in addressing requests for abatement that are incomplete.

## TAXPAYER ADVOCATE SERVICE COMMENTS

TAS understands that there are good reasons why amended returns may take almost as much time to audit as other returns. TAS looks forward to the improved processing times expected to result from electronic filing, electronic assignment of some cases that are assigned for exam, and scanning some paper returns so they are accessible in the CIS database. In any event, taxpayers should be given more realistic estimates of what the expected processing time will be; the IRM should be adjusted if the current 16 week expected processing time is no longer accurate, and the Where's My Amended Return tool should be improved accordingly. The Form 1120X instructions should likewise be adjusted if the referenced processing time of three to four weeks is not accurate.

However, the IRS's explanation for lengthy processing times for amended returns filed by businesses is not supported by the data in this report, which is based on operations for FYs 2017-2019. There was indeed a government shutdown due to a lapse of appropriations in FY 2019, as the IRS notes, but amended return processing times improved in FY 2019 compared to FYs 2017 and 2018. The COVID-19 pandemic affected IRS operations, but not until FY 2020.

The National Taxpayer Advocate appreciates the IRS's willingness to work with the IRS Office of Chief Counsel to better address requests for abatement. As with any other taxpayer request, the IRS should advise taxpayers when they need to submit additional information in order for their request to be considered. The blanket statement currently in use (that the law doesn't allow taxpayers to file a claim to reduce the tax owed) without further explanation is not appropriate and often confusing for taxpayers. Providing the taxpayer an administrative review or initiating a specific request for documentation prior to rejection should be standard procedures. The IRS should also consider permitting these taxpayers to appeal their cases to the Independent Office of Appeals rather than having to pay the tax the taxpayer believes is not due, then file another claim of refund, or bring a refund suit in order for the IRS to review their documentation. Taxpayers have the *right to pay no more than the correct amount of tax*, and the IRS should assist them with that determination.

## RECOMMENDATIONS

### Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Revise the IRM to provide that if a request for tax abatement is incomplete, the employee should solicit the necessary documentation from the taxpayer, and if the documentation is not forthcoming or is insufficient, the employee should deny the request, explain the reason for the denial, and explain the different procedures that apply to requests for tax abatement and requests for refund.
2. If the IRS determines the taxpayer is not entitled to an abatement, issue a 30-day letter providing taxpayers the right to file a protest with the Independent Office of Appeals<sup>43</sup> for abatement of tax and updating and clarifying the IRM's No Immediate Tax Consequence provisions by referencing abatement cases.
3. Remove any selectable paragraph in Letter 916C that states the law does not allow taxpayers to file a claim to reduce the tax they owe or appears to advise taxpayers that they cannot seek an abatement of tax without first paying the amount of tax already assessed (Paragraph N in the current version of Letter 916C).
4. Revise the IRM to instruct employees not to use a fill-in paragraph in Letter 916C to state the law does not allow taxpayers to file a claim to reduce the tax they owe or to inform taxpayers they cannot seek an abatement of tax without first paying the amount of tax already assessed.
5. Identify and address the cause of lengthy examination times for amended returns.
6. Identify and address the cause of the increase in processing time for corporations' unaudited amended returns.
7. Add additional status updates to the "Where's My Amended Return" tool to allow taxpayers to see when the IRS selects their amended return for audit, when it assigns the audit to an examiner, and what an estimated completed processing time is based on the return's current status.
8. Revise the IRM and Form 1120X instructions to more accurately reflect the expected processing time for amended returns.

43 See IRM 8.1.1.3.2, No Immediate Tax Consequence Cases (Oct. 1, 2016).

## Appendix A

### METHODOLOGY

Traditional amended return data found on IRS databases includes items such as IRS received dates, transaction codes, action codes, and transaction dates. For example, we identified individual amended returns by searching taxpayer accounts for a transaction code of 971 and an action code of 120. The data in this report was gathered according to the following methodology:

1. Only one amended return per taxpayer per fiscal year was taken into account. If a taxpayer filed more than one amended return in the same fiscal year, whether or not it was with respect to the same tax year, only the earliest amended return was included, and processing times were computed with respect to that amended return. If a taxpayer filed more than one amended return with respect to the same tax year, the amended returns were all included in the analysis to the extent they were filed in different fiscal years.
2. Also not included in the analysis are individual amended returns that were filed after an audit was opened and amended returns that were filed with a function other than Submission Processing (*e.g.*, IRS Appeals, IRS Exam, Automated Underreporter Unit).
3. The analysis of individual amended returns is limited to individual amended returns filed on Form 1040X, although the IRS also processes as amended returns some filings taxpayers submit on another IRS form, such as Form 1040, U.S. Individual Income Tax Return, that indicate the filing is intended to be an amended return.
4. Other Business Master File returns not included in Figure 1.9.1 include, *e.g.*, employment tax, estate tax, gift tax, excise tax, and tax-exempt organization returns.

### Processing Times of Audited Amended Returns in Categories 1 or 4

**Step 1: SP routes amended returns to AM:** In FYs 2017-2019, SP received 2,152,508; 2,383,472; and 1,998,609 Category 1 and 4 Forms 1040X, respectively. SP routed 909,464 (42 percent); 929,902 (39 percent); and 791,716 (40 percent) of these returns to AM in FYs 2017-2019, respectively.<sup>44</sup> This step took an estimated median of two weeks, three weeks, and four weeks in FYs 2017-2019, respectively. In addition, SP routed 183,817; 184,605; and 194,508 Forms 1120X in Categories 1 and 4 to AM in FYs 2017-2019, respectively.

**Step 2: AM refers CAT-A returns to Exam, and Exam selects some of them for audit:** This process, which affected a small portion of amended returns, took an estimated median of five to six weeks for individual amended returns, and less than a week for corporate amended returns, as shown in Figure 1.9.A1.

<sup>44</sup> IRS CDW, IMF Transaction History File (Oct. 2, 2020). In contrast, in FY 2020, the *total* number of Forms 1040X that SP closed (*i.e.*, the number disposed of in SP or routed to another function) for all categories of outcomes was only 792,918. IRS, JOC, Customer Account Services Form 1040X Consolidated Inventory Report, Submission Processing (Sept. 26, 2020).

**FIGURE 1.9.A1, Estimated Number of Amended Returns in Categories 1 and 4 Referred From AM to Exam and Selected for Audit, and Processing Time<sup>45</sup>**

Fiscal Year	1040X Returns Referred to Exam by AM and Selected for Audit	1040X Returns Transferred From SP to AM That Were Referred to Exam and Selected for Audit	Median Number of Weeks	1120X Returns Referred to Exam by AM and Selected for Audit	1120X Returns Received by AM That Were Referred to Exam and Selected for Audit	Median Number of Weeks
FY 2017	30,405	3.3%	6	2,410	1.3%	0
FY 2018	26,571	2.9%	5	2,218	1.2%	0
FY 2019	24,007	3.0%	6	2,488	1.3%	0

**Step 3: Some amended returns that were selected for audit are assigned to an examiner, who contacts the taxpayer and opens an audit:** This process, which affected only a portion of the amended returns that were selected for audit, took an estimated three to eight weeks for individual amended returns and 14 to 16 weeks for corporate amended returns, as shown in Figure 1.9.A2.<sup>46</sup>

**FIGURE 1.9.A2, Estimated Number of Amended Returns in Categories 1 and 4 Selected for Audit That Were Assigned and an Audit Opened, and Processing Times<sup>47</sup>**

Fiscal Year	1040X Returns for Which an Audit Was Opened	1040X Returns Selected for Audit That Were Audited	Median Number of Weeks	1120X Returns for Which an Audit Was Opened	1120X Returns Selected for Audit That Were Audited	Median Number of Weeks
FY 2017	16,910	56%	4	1,059	44%	16
FY 2018	12,735	48%	9	583	26%	16
FY 2019	6,440	27%	3	211	8.5%	14

**Step 4: The examiner concludes the audit and closes the case:** This process took an estimated median of 16 to 21 weeks for individual amended returns, and 30 to 40 weeks for corporate amended returns, as shown in Figure 1.9.A3.

<sup>45</sup> CDW, IMF and BMF Transaction History Tables, IRTF F1040, BRTF F1120, AIMS Closed Case File, cycle post 202039.

<sup>46</sup> As Figure 1.9.A2 shows, a significant portion of amended returns selected for audit and assigned to an examiner are not actually audited. If the examiner concludes that an examination is not warranted, the examiner will “survey” the return instead. See IRM 4.10.2.5.1, Conditions Allowing Survey of Returns After Assignment (Sept. 9, 2019), providing that a “return will be surveyed after assignment if, after conducting the initial return screening, in-depth pre-contact analysis, and/or evaluating the audit potential the following conditions are met: a. The taxpayer (or representative) has not been contacted, b. Taxpayer records have not been inspected, and c. The examiner determined an examination will most likely not result in a material change in the taxpayer’s tax liability.”

<sup>47</sup> CDW, IMF and BMF Transaction History Tables, IRTF F1040, BRTF F1120, AIMS Closed Case File, cycle post 202039.

**FIGURE 1.9.A3, Estimated Number of Amended Returns in Categories 1 and 4 for Which an Open Audit Was Concluded, and Processing Times<sup>48</sup>**

Fiscal Year	1040X Returns for Which an Audit Was Begun and Completed	Median Number of Weeks	1120X Returns for Which an Audit Was Begun and Completed	Median Number of Weeks
FY 2017	16,760	21	973	41
FY 2018	12,606	18	541	39
FY 2019	6,328	16	200	35

48 CDW, IMF and BMF Transaction History Tables, IRTF F1040, BRTF F1120, AIMS Closed Case File, cycle post 202039.



## Taxpayers Whose Legitimate Returns Are Flagged by IRS Fraud Filters Experience Excessive Delays and Frustration in Receiving Their Refunds

### RESPONSIBLE OFFICIALS

Kenneth Corbin, Commissioner, Wage and Investment Division  
Nancy Sieger, Acting Chief Information Officer

### TAXPAYER RIGHTS IMPACTED<sup>1</sup>

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Privacy*
- *The Right to a Fair and Just Tax System*

### EXPLANATION OF THE PROBLEM

The IRS's fraud filters flagged 5.2 million refunds in 2020.<sup>2</sup> It released most after verifying the taxpayer's identity or income and withholding (*i.e.*, most were legitimate refund claims).<sup>3</sup> Taxpayers expect to receive their refunds quickly, and the IRS says it issues most within "21 calendar days" of e-filing (or within six weeks of mailing).<sup>4</sup> But for about 25 percent of the returns flagged for income verification, refunds took longer than 56 days in 2020, and for about 18 percent of those flagged for identity verification, refunds took longer than 120 days.<sup>5</sup>

When taxpayers call the IRS about their refunds or use the Where's My Refund (WMR) tool on the IRS website or the IRS2go app, they cannot get specific information about the cause of the delay, what the IRS needs, and when they can expect the refund. Even if they could, the refund might be stuck between functions.<sup>6</sup> This absence of specific information combined with the economic burden caused by delays drove over 65,000 taxpayers to seek TAS assistance with pre-refund identity or income verification in 2020. Income verification has been the number one reason for taxpayers to ask for TAS's help over the last three years.<sup>7</sup>

1 See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the IRC. See IRC § 7803(a)(3).

2 IRS, Identity Theft (IDT) and Integrity Verification Operation (IVO) Modeling Analysis Performance Report (Oct. 7, 2020) (data as of September 30, 2020).

3 IRS, IDT, and IVO Performance Report 3, 8-9 (Oct. 7, 2020).

4 IRS, Tax Season Refund Frequently Asked Questions, <https://www.irs.gov/refunds/tax-season-refund-frequently-asked-questions> (last visited Oct. 15, 2020). About 89.1 percent of individuals e-filed in fiscal year (FY) 2019. IRS 2018 Data Book (Sept. 30, 2019) (154,094,555 individuals filed, as shown in table 2, and 137,242,019 individuals e-filed, as shown in table 4).

5 IRS, RRP Non-IDT Performance Report 3 (Oct. 7, 2020); IDT, and IVO Performance Report 6 (Oct. 7, 2020). The IRS shutdown due to COVID-19 caused some of these delays. See *Supplemental Review of the 2020 Filing Season*, *infra*.

6 Internal Revenue Manual (IRM) 21.5.6.4.35.3.1, -R Freeze Phone Procedures for Accounts with Return Integrity Verification Operations (RIVO) Involvement (Oct. 1, 2020).

7 Taxpayer Advocate Management Information System (TAMIS) (Oct. 1, 2020; Oct. 1, 2019; Oct. 1, 2018).

Although the IRS has tried to expedite refunds, it needs technology upgrades and procedural improvements to do more. Upgrades would also improve communications with taxpayers, which would help the IRS provide better service and manage taxpayer expectations.

## ANALYSIS

### Background

#### Recent Legislation Gives the IRS Time to Verify Refunds Before Paying

Beginning in the 2017 filing season, the Protecting Americans From Tax Hikes (PATH) Act required employers and most other payers to submit third-party reporting information (*e.g.*, Form W-2, Wage and Tax Statement, and Form 1099-MISC, Miscellaneous Information) by January 31.<sup>8</sup> It also required the IRS to hold all refunds to taxpayers claiming the Earned Income Tax Credit (EITC) or the Additional Child Tax Credit until February 15.<sup>9</sup> By accelerating third-party information reporting and delaying refunds, Congress made it easier for the IRS to match returns to third-party information reporting documents before paying refunds.

Recent legislation also permits the IRS to require more employers to report income and withholding electronically. In 2020, employers filing fewer than 250 Forms W-2 were exempt from the electronic filing requirement, but the Taxpayer First Act (TFA) reduced this threshold to 100 in 2021 and to ten thereafter.<sup>10</sup> Once implemented, these changes should reduce the number of paper Forms W-2 that the Social Security Administration (SSA) must transcribe and accelerate the matching process.

Section 1206 of the TFA amended IRC § 7602(c) in 2019 to require the IRS to provide the taxpayer with notice that it intends to contact third parties at least 45 days prior to any contact. Thus, unless the IRS contacts the taxpayer to get authorization to make contact sooner (or another exception applies), a manual verification process that requires the IRS to contact a third party will take over 45 days.

#### The IRS's Return Integrity Verification Operation Aims to Prevent Fraud and Identity Theft

The IRS's Return Integrity Verification Operation (RIVO) prevents refund fraud by both taxpayers and third-party identity thieves.<sup>11</sup> When RIVO screens a return for potential identity theft (IDT), its Taxpayer Protection Program (TPP) asks the taxpayer to authenticate his or her identity either over the phone, online, by mail, or by visiting a Taxpayer Assistance Center (TAC).<sup>12</sup> If the taxpayer does not authenticate, the IRS does not process the return. If the taxpayer does not respond, the IRS eventually archives the return. If the taxpayer authenticates, RIVO's Pre-Refund Wage Verification Hold Program (PRWVH) screens it to determine if the income and withholding on the return match the IRS's Information Returns Master File (IRMF) data.<sup>13</sup>

<sup>8</sup> Section 201 of the PATH Act of 2015 amended IRC § 6071 to require that certain information returns be filed by January 31, generally the same date that employee and payee statements are due. See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 201 (2015).

<sup>9</sup> Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 201 (2015) (codified at IRC §§ 6071(c) and 6402(m)).

<sup>10</sup> See TFA, Pub. L. No. 116-25, § 2301, 133 Stat. 981 (2019) (codified at IRC §§ 6011(e) and 6724(c)). In the case of a partnership, the number will be 200 for calendar year (CY) 2018, 150 for CY 2019, 100 for CY 2020, and 50 for CY 2021. *Id.*

<sup>11</sup> IRM 25.25.6.1.7, Taxpayer Protection Program Overview (Apr. 28, 2020).

<sup>12</sup> *Id.*

<sup>13</sup> The IRMF maintains third-party payor data reported to the IRS.

When RIVO screens returns selected by non-IDT filters, it may contact employers or other third parties regarding income and withholding discrepancies, missing payor information, or questionable IRMF documents.<sup>14</sup> If not verified and released during this stage, the return may be forwarded to other treatment streams, such as examination.<sup>15</sup>

### The Return Integrity Verification Operation Has Been Working With TAS, But It Still Delays Many Legitimate Refunds

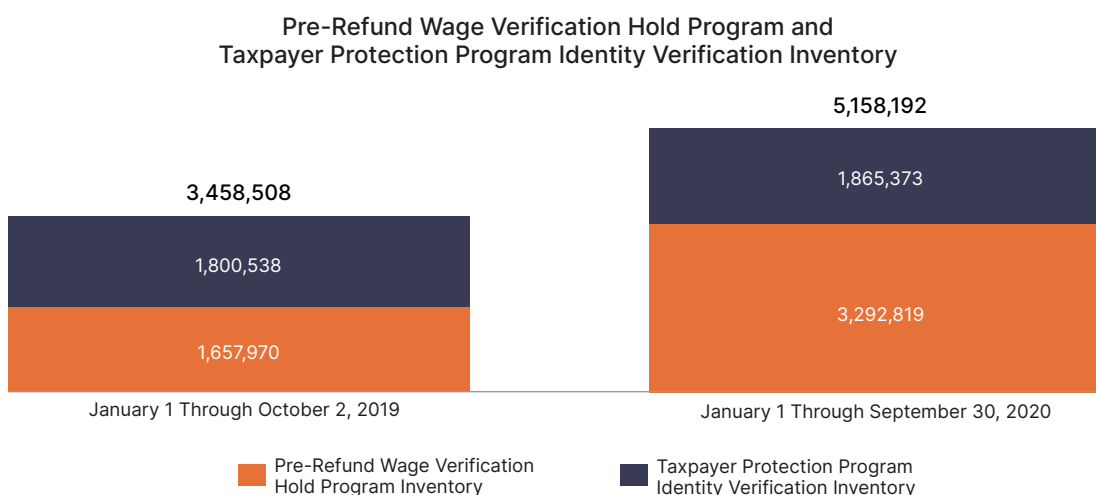
TAS recommended improvements to the RIVO program that are designed to keep taxpayers informed of the progress of their returns and refunds. The IRS agreed with many and has taken the following steps to improve the program in 2020:<sup>16</sup>

- The IRS and the SSA have been collaborating to reduce the processing time of paper Forms W-2;
- The IRS provides taxpayers whose refunds have been delayed by the PRWVH process with an interim letter every 60 days;
- The IRS issued a second TPP letter to those who do not authenticate their identity in response to the first letter;<sup>17</sup> and
- The IRS has updated its initial contact Letter 4464C, Questionable Refund Hold, to instruct taxpayers to review the income and withholding they reported and to file an amended return to correct any errors. This new language should help empower taxpayers to accelerate their refunds.

### The Return Integrity Verification Operation Screens Millions of Returns

The PRWVH and TPP programs review all returns claiming refunds and flag millions for additional screening each year, as shown in Figure 1.10.1.

**FIGURE 1.10.1<sup>18</sup>**



<sup>14</sup> IRM 25.25.3.2, Verification of Income (Oct. 1, 2020).

<sup>15</sup> IRM 25.25.13.3(3), Account Resolution Research (June 3, 2020).

<sup>16</sup> See National Taxpayer Advocate Fiscal Year 2021 Objectives Report to Congress 138-143 (Appendix 1: *IRS Responses to Administrative Recommendations Proposed in the National Taxpayer Advocate's 2019 Annual Report to Congress*).

<sup>17</sup> IRS response to TAS information request (Oct. 22, 2020) (item 23).

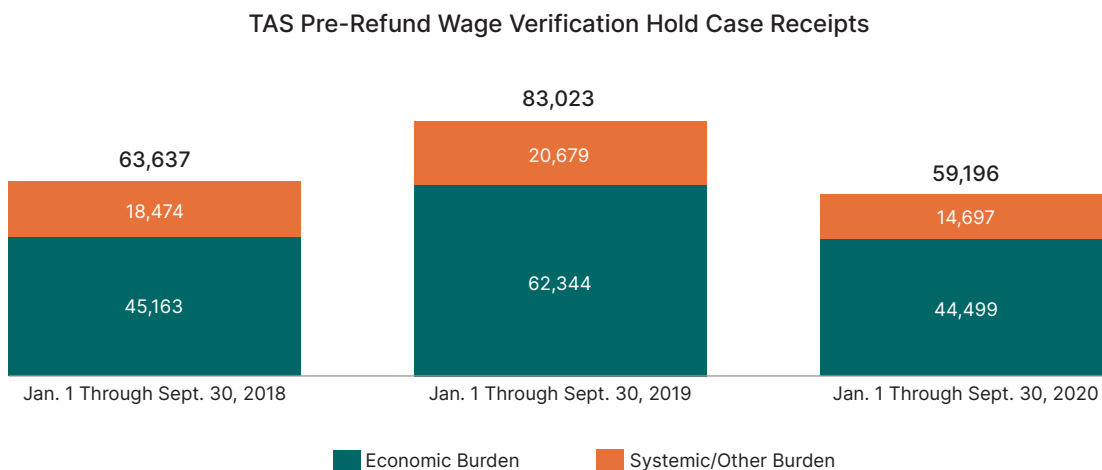
<sup>18</sup> IRS, IDT, and IVO Performance Report 3, 8-9 (Oct. 7, 2020); IRS, IDT, and IVO Performance Report 3, 8 (Oct. 9, 2019). The returns selected automatically each year by PRWVH have been increasing because the IRS has been automating some of its filters.

Most returns flagged for additional screening by RIVO are not fraudulent. It verified and released 72 percent of the refunds processed by the PRWVH program and 63 percent of those processed by TPP in calendar year (CY) 2019.<sup>19</sup>

### Tens of Thousands of Taxpayers Come to TAS for Assistance

When taxpayers need their refunds quickly to avoid an economic burden, or a systemic problem exists (e.g., the IRS has not responded within established timeframes), taxpayers may ask TAS for assistance.<sup>20</sup> In PRWVH cases, TAS checks to see if the taxpayer's third-party information reporting documents are on the system.<sup>21</sup> If they are and they match the return, TAS may ask RIVO to release the refund. If not, TAS may ask the taxpayer to provide a written statement from the employer (or payor) or to permit RIVO to contact the employer (or payor). TAS helps tens of thousands of taxpayers with these delays each year, as shown in Figures 1.10.2 and 1.10.3.

**FIGURE 1.10.2<sup>22</sup>**

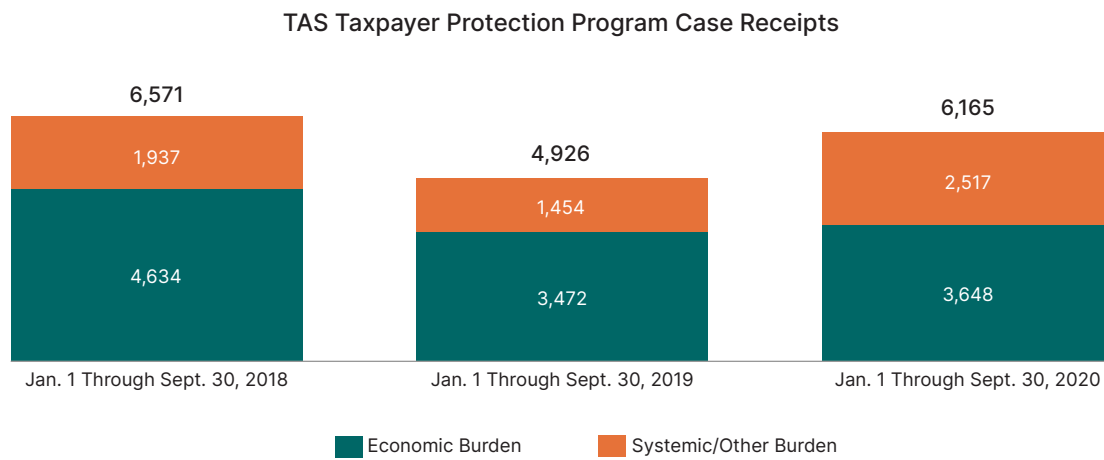


<sup>19</sup> IRS, RRP Non-IDT Performance Report 15 (Jan. 29, 2020); Wage and Investment (W&I), Business Performance Review Q4 FY 2020 (Nov. 5, 2020) (showing the IDT false detection rate for 2019). The non-IDT false detection rate was 66 percent in CY 2020 as of October 7. IRS, RRP Non-IDT Performance Report 2 (Oct. 7, 2020); Comparable figures are not available for IDT in 2020.

<sup>20</sup> IRM 13.1.7, Taxpayer Advocate Service (TAS) Case Criteria (Feb. 5, 2016).

<sup>21</sup> TAS, Case Assistance by Issue Code (CABIC), Issue Code 045, Initial Actions (July 2020).

<sup>22</sup> TAMIS (Oct. 1, 2020; Oct. 1, 2019; Oct. 1, 2018).

FIGURE 1.10.3<sup>23</sup>

In 2019, TAS accepted PRWVH cases that met its eligibility criteria any time after the IRS could issue refunds (*i.e.*, after February 15 for many returns), but TAS changed its criteria on February 14, 2020, to delay acceptance of PRWVH cases until four weeks after the filters stopped the refund.<sup>24</sup> As a result, TAS received fewer PRWVH cases in 2020 than in 2019. TAS determined that its involvement during the first four weeks added little to no value, and this additional time allowed the IRS to release more refunds on its own. Of the refunds it released, 63 percent were released within 28 days, thus supporting TAS's decision to alter its criteria.<sup>25</sup> Another factor that may have reduced TAS's PRWVH caseload was the IRS's inability to accept calls between March 21 and the end of April – calls that might otherwise have generated referrals from the IRS to TAS.<sup>26</sup> Notwithstanding these factors, the number one reason that taxpayers asked TAS for assistance during 2020 was for help with the PRWVH program, and this has been the number one reason for the last three years.<sup>27</sup>

## Manual Procedures and Referrals to Other Functions Delay Refunds

### Manual Reviews Delay Refunds

The IRS's systemic checks were quick in 2020 — two days on average for IDT cases after the taxpayer authenticated his or her identity and five days on average for automated PRWVH filter selections after the IRS received the third-party information reporting data.<sup>28</sup> The returns flagged by other (non-automated) filters were delayed longer — 39 days on average for certain manual filters used by PRWVH because they

<sup>23</sup> TAMIS (Oct. 1, 2020; Oct. 1, 2019; Oct. 1, 2018).

<sup>24</sup> TAS also accepted cases referred by Congress or if the taxpayer needed TAS's help to bypass a refund offset. TAS, TAS-13-0220-0002, Interim Guidance on Exclusion from TAS Case Acceptance Criteria Taxpayers Impacted by Pre-Refund Wage Verification Hold and Amended Returns (Feb. 14, 2020); SERP Alert 20A0037, TAS Referrals (Jan. 21, 2020).

<sup>25</sup> IRS, RRP Non-IDT Performance Report 3 (Oct. 7, 2020).

<sup>26</sup> See, e.g., IRS SERP Alert 20A0135, Product Line Closure (issued Mar. 24, 2020 and rescinded May 7, 2020); IRS SERP Alert 20A0191, TPP Guidance During Continued COVID-19 Closures (Apr. 29, 2020) (TPP line opened on April 27); IRS SERP Alert 20A0207, Accounts Management to Open Some Phone Lines on Monday May 18, 2020 (May 19, 2020); IRS, SERP Alert 20A0172, RIVO Compliance Treatment Inventories/Notice Changes Due to Ogden Site Centralized Printing Services Closures (issued Apr. 10, 2020 and rescinded Sept. 29, 2020: "RICS cannot issue letters/notices for any inventory type until further notice.").

<sup>27</sup> TAMIS (Oct. 23, 2020).

<sup>28</sup> IRS response to TAS information request (Oct. 22, 2020) (items 16 and 17).

require manual reviews — and some of these reviews take much longer because they require third-party contacts.<sup>29</sup> About a quarter of them took longer than 56 days.<sup>30</sup> Returns flagged and authenticated by TPP before PRWVH verified them were delayed by 67 days on average, and 18 percent were delayed over 120 days (though the IRS shutdown due to COVID-19 caused some of these delays).<sup>31</sup>

### Some Returns Get Stuck in Transit Between Functions

When RIVO transfers a return from the PRWVH program to another IRS function such as Examination, the IRS does not immediately assign an employee to work the case.<sup>32</sup> From the taxpayer's perspective, his or her refund seems to get stuck. RIVO does not currently track this period<sup>33</sup> but is in the preliminary stages of developing a methodology.<sup>34</sup> For tax year 2018 returns processed in 2019, PRWVH referred 149,405 returns to another compliance function.<sup>35</sup> These referrals sometimes delayed valid refund requests. The IRS issued full refunds on 17,736 (12 percent) after a median of 47 weeks (*i.e.*, 329 days), and as of September 24, 2020, 29,365 (20 percent) had still not reached the function — they were still sitting in transit between functions.<sup>36</sup>

The IRS should eliminate the time returns are in transit between functions by automatically assigning them in downstream functions and notifying the taxpayer. The IRS's Wage and Investment (W&I) Division should adopt as a measure the number of taxpayers who wait more than 60 days for their refunds. This measure would help the IRS focus on removing the roadblocks that some taxpayers face in getting their refunds.

### Technology Upgrades and Procedural Changes Could Improve Service

Taxpayers expect to receive their refunds shortly after they file their returns. Although the IRS website warns that refunds requested on returns with errors or affected by IDT or fraud could take longer, taxpayers submitting legitimate refund requests do not expect a delay. The IRS's website says “we issue most refunds in less than 21 calendar days” of e-filing (or within six weeks of mailing).<sup>37</sup> Both the PRWVH and TPP send letters that say the process can take longer — up to 60 days with PRWVH or up to nine weeks after a taxpayer verifies his or her identity with TPP.<sup>38</sup> But not all taxpayers receive, read, or understand the IRS's letters.<sup>39</sup>

29 IRS, RRP Non-IDT Performance Report 3 (Oct. 7, 2020).

30 *Id.*

31 IRS, IDT, and IVO Performance Report 6 (Oct. 7, 2020). The IRS is working with TAS to conduct a focus group to determine why taxpayers do not always verify their identity promptly; however, it was postponed due to COVID-19.

32 After TAS recommended RIVO send the taxpayer a letter to provide a contact in another function before closing a case as unverified, it responded: “...with our systemic Questionable Return Program (QRP) process, we are unable to provide specific contact information regarding the site/employee at this time...” National Taxpayer Advocate Fiscal Year 2019 Objectives Report to Congress 143 (Appendix 1: *IRS Responses to Administrative Recommendations Proposed in the National Taxpayer Advocate's 2019 Annual Report to Congress, IRS Response to Recommendation 4-7*).

33 IRS, W&I Comprehensive Data Dictionary Plus the Agency Priority Goal (Feb. 27, 2020).

34 W&I response to TAS information request (Oct. 23, 2020) (item 20) (“Cycle Time is currently not tracked, however, RIVPM is in the preliminary stages of establishing a methodology for tracking cycle time.”).

35 Compliance Data Warehouse (CDW) Individual Master File (IMF) Transaction History and IRTF F1040 Tables (Nov. 12, 2020).

36 *Id.* (all data is as of September 24, 2020).

37 IRS, Tax Season Refund Frequently Asked Questions, <https://www.irs.gov/refunds/tax-season-refund-frequently-asked-questions> (last visited Oct. 15, 2020).

38 IRM 25.25.6.2, Written Responses to Letter 4883C, Letter 5071C, Letter 5447C, Letter 5747C, Letter 6167C, or Letter 5216 (Oct. 1, 2020). Although one recent survey indicated that nearly eight in ten taxpayers are willing to wait up to at least 30 “additional” days for the IRS to verify their identity, it is unclear what they viewed as the baseline. W&I Strategies & Solutions, Highlights from the 2019 Taxpayer Experience Survey (TES) 4 (Feb. 2020). Moreover, most were not willing to wait an additional 60 days or more. *Id.*

39 For example, one TAS study found “almost 40 percent [of those receiving an Earned Income Tax Credit (EITC) audit notice]... did not understand what the IRS was questioning ... [and] only about half of the respondents felt that they knew what they needed to do in response to the audit letter.” See, e.g., National Taxpayer Advocate 2018 Annual Report to Congress vol. 2, at 100, 103-104 (Research Study: *What Influence Do IRS Audits Have on Taxpayer Attitudes and Perceptions? Evidence From a National Survey*).



Moreover, even these timeframes can be unrealistic.<sup>40</sup> If taxpayers try to determine the status of their refunds, they are likely to be frustrated for many reasons.

### Customer Service Representatives Do Not Provide Specific Information

When a taxpayer calls the toll-free line to ask about a refund, a customer service representative (CSR) may tell him or her to ensure his or her income, expenses, and credits are correct and to file an amended return if necessary.<sup>41</sup> Because CSRs are not required to compare return information to payor data,<sup>42</sup> they generally do not give taxpayers specific information about the cause of the delay or ways to expedite the refund.<sup>43</sup> CSRs often have to fill out a form and refer the issue to RIVO or send the taxpayer to TAS so that TAS can explain why the IRS is holding his or her refund.<sup>44</sup> Although some IDT victims who call about an open case can use a program-specific toll-free number and get a particular employee's contact information,<sup>45</sup> the IRS has no similar system or program-specific toll-free number for non-IDT cases.<sup>46</sup>

The IRS should change its procedures to require CSRs to (1) analyze the taxpayer's account so they can provide the same guidance as TAS,<sup>47</sup> and (2) have RIVO employees respond to taxpayer inquiries that the CSR cannot answer.<sup>48</sup> Once a RIVO employee responds to the taxpayer, he or she should serve as a single point of contact for the taxpayer's PRWVH follow-up questions, at least until the IRS issues the refund or opens a case in another function.<sup>49</sup>

### Online Tools Do Not Provide Specific Information Until Refunds Are Approved

IRS websites and letters raise the expectation that taxpayers can track refunds with precision on the WMR tool on IRS.gov or the IRS2Go app. But this tool and app have only three statuses (*i.e.*, return received, refund approved, or refund sent). They only provide a personalized estimate of when the taxpayer will receive

40 CSRs were recently advised to inform taxpayers calling about TPP verification: "advise the taxpayer it could take 16 weeks or longer to process their documentation, due to COVID delays." IRS, SERP Alert 20A0144, Treatment of TPP Taxpayers Sent to TAC during COVID-19 Shutdown (July 30, 2020).

41 IRM 21.5.6.4.35.3.1.2(2), -R Freeze Phone Procedures for Accounts with Return Integrity Verification Operations (RIVO) Involvement (Oct. 1, 2019).

42 IRM 1.1.13.4.2, Modernization Development and Delivery (MDD) (Dec. 21, 2018).

43 IRM 21.5.6.4.35.3.1, -R Freeze Phone Procedures for Accounts with Return Integrity Verification Operations (RIVO) Involvement (Oct. 1, 2020); *Continued Oversight Over the Internal Revenue Service: Joint Hearing Before the H. Subcomm. on Health Care, Benefits, and Administrative Rules and H. Subcomm. on Government Operations*, 115th Cong. (2018) (statement of Nina E. Olson, National Taxpayer Advocate).

44 See, e.g., IRM 21.5.6.4.35, -R Freeze (Oct. 1, 2020) (referral to TAS on Form 911); IRM 21.5.6.4.35.3, -R Freeze Overview for Accounts with Return Integrity Verification Operations (RIVO) Involvement (Jan. 13, 2020) (referral to RIVO on Form 4442).

45 IRM 25.23.12.5.1(7), Telephone Inquiries Regarding Identity Theft Victim Assistance (IDTVA) Tax-Related Cases (Oct. 1, 2020) ("If you are unable to assist the taxpayer by responding to their questions and concerns as it relates to the open IDTVA case, use the IDTVA tool to find the controlling IDTVA employee's contact information. Provide the taxpayer with the IDTVA toll-free number (855-343-0057), IDTVA's employee's name, six-digit extension and Tour of Duty (TOD), and availability based on the taxpayer's time").

46 For further discussion of this issue, see, e.g., National Taxpayer Advocate Fiscal Year 2019 Objectives Report to Congress 160-167 (Appendix 1: *IRS Responses to Administrative Recommendations Proposed in the National Taxpayer Advocate's 2019 Annual Report to Congress, IRS Response to Recommendation 19-2*).

47 The IRS provides specific information about the discrepancy by letter before contacting third parties. See IRM 25.25.3.9, Manual Verification Procedures (Oct. 1, 2020) (discussing Letter 6255C). In addition, the IRS plans to "provide taxpayers with visibility to third-party data before filing." See IRS Integrated Modernization Business Plan 24 (Apr. 2019), [https://www.irs.gov/pub/irs-utl/irs\\_2019\\_integrated\\_modernization\\_business\\_plan.pdf](https://www.irs.gov/pub/irs-utl/irs_2019_integrated_modernization_business_plan.pdf).

48 RIVO employees work cases referred to the Automated Questionable Credit or Wage/Withholding Only programs. IRM 25.25.11, Wage and Withholding Only (WOW) (Notice CP 05A) Procedures (Sept. 15, 2020); IRM 25.25.7, Automated Questionable Credit Program (Sept. 15, 2020). RICS is responsible for many of the resulting examinations. See IRM 4.19.20, Automated Correspondence Exam (ACE) Processing Overview (Dec. 16, 2019).

49 For a further discussion of this issue, see, e.g., National Taxpayer Advocate 2018 Annual Report to Congress 52-64 (Most Serious Problem: *Navigating the IRS: Taxpayers Have Difficulty Navigating the IRS, Reaching the Right Personnel to Resolve Their Tax Issues, and Holding IRS Employees Accountable*).



a refund after the IRS has approved it; an automated refund hotline provides the same information.<sup>50</sup> The IRS website says that “sometimes, when we are still reviewing your return... [the tool or app] will display instructions or an explanation of what we are doing.”<sup>51</sup> But the tool and app do not remind taxpayers that they will need to wait another eight to nine weeks for their refund after they authenticate their identity.<sup>52</sup> They also do not alert taxpayers that the IRS has not received or processed third-party information reporting documents or let them know if the IRS has referred their returns to another function (*e.g.*, Examination).

**The IRS should develop modern technology to ensure its fraud screens do not delay legitimate refunds while still blocking fraudulent claims.**

The IRS should improve service by updating the WMR tool, the IRS2Go app, and the automated refund hotline with more specific information about why refunds are delayed; what the IRS needs (*e.g.*, verification of taxpayers’ identity, income, or withholding, or permission to contact a third party); a convenient way to provide the information (*e.g.*, via upload, phone, fax, or in person); an updated estimate of when the IRS will issue the refund if the taxpayer responds to inquiries timely; and whom to contact for more information.

### Many Taxpayers Cannot Verify Their Identity Online

Even though some TPP letters offer taxpayers the option to verify their identities using the IRS’s ID Verify website, many cannot.<sup>53</sup> Before a taxpayer can use ID Verify, he or she must first get through “Secure Access” — the same authentication required for creating an online account. Less than half succeeded in 2020.<sup>54</sup> Although online security is important, unsuccessful attempts frustrate taxpayers. The IRS has tentative plans to allow taxpayers to reach ID Verify after authenticating through a new system called Secure

50 IRM 21.4.1.4, Refund Inquiry Response Procedures (Oct. 1, 2020). Despite being automated, this hotline received 22.9 million calls and only provided a 60 percent level of service in FY 2020. IRS, Joint Operations Center, Snapshot Report (Sept. 30, 2020).

51 IRS, Tax Season Refund Frequently Asked Questions, <https://www.irs.gov/refunds/tax-season-refund-frequently-asked-questions> (last visited Oct. 21, 2020). Although nine out of ten respondents to one recent survey used web-enabled cell phones, only about a third were willing to use the IRS2Go app to get information about their refunds. W&I Strategies & Solutions, Highlights from the 2019 Taxpayer Experience Survey (TES) 7 (Feb. 2020). The IRS says it has improved the messages for returns suspended in the TPP. IRS response to TAS information request (Oct. 22, 2020) (“At the beginning of the filing season, a change request was carried out to enhance messaging for Where’s My Refund for accounts in the Taxpayer Protection Program”).

52 IRM 21.4.1.6, Internet Refund Fact of Filing (IRFOF) (Oct. 1, 2018); IRM Exhibit 21.4.1-3, Internet Refund Fact of Filing Reference Numbers (June 22, 2018). The tool may display a code that a telephone assistor can explain if the taxpayer calls the IRS or finds meaning of the code in the IRM. Although two of the codes translate to “Refund delayed, pulled for review,” they do not appear to indicate that the refund has been delayed by TPP or PRWVH, explain what the IRS needs to process the refund, or give the taxpayer an updated estimate of when he or she can expect his or her refund. *Id.*

53 ID Verify is an IRS website that allows taxpayers to verify their identity using the IRS letter they received, the return referenced in the letter, a previous year return, and supporting documents filed with those returns. See, *e.g.*, IRS, Understanding Your 5071C Letter, <https://www.irs.gov/individuals/understanding-your-5071c-letter> (last visited Oct. 28, 2020).

54 The collective authentication rate for those IRS online applications requiring the highest level of assurance authentication (LOA3), such as online accounts and taxpayer digital communications, was about 42 percent in FY 2020. PGLD response to TAS information request (Oct. 13, 2020). For additional information about the information needed to pass Secure Access authentication, see IRS, Secure Access: How to Register for Certain Online Self-Help Tools, <https://www.irs.gov/individuals/secure-access-how-to-register-for-certain-online-self-help-tools> (last visited Oct. 16, 2020). Note that the option to receive an activation code by mail was not available for several months during the COVID-19 pandemic, and this impacted the verification rate.

Access Digital Identity beginning in July 2021, but it is not clear how much easier it will be for taxpayers to authenticate.<sup>55</sup>

### Taxpayers Are Only Temporarily Allowed to Verify Their Identity by Fax

During the COVID-19 shutdown, taxpayers could not verify their identity by phone or in person at a TAC because the IRS closed its call centers and TACs. The IRS began allowing taxpayers to submit verification documents by eFax (or mail) if they were unable to use other verification methods.<sup>56</sup> The IRS should continue to accept verification information by eFax, at least until it has an easier way to accept it electronically.

### Technology Upgrades Could Expedite Refunds and Save Resources

RIVO uses an obsolete case management and screening system called Return Review Program Legacy Component (RRPLC) (or Electronic Fraud Detection System), which the IRS has been planning to replace for more than a decade.<sup>57</sup> Just maintaining RRPLC has cost the IRS about \$26 million over the last two fiscal years,<sup>58</sup> but due to budget constraints, most other modernization backlog items planned for FY 2020 were put on hold.<sup>59</sup> Nonetheless, small fixes can have large payoffs.

Example: In January 2020, W&I reiterated its longstanding request for upgrades to RRPLC because the system lacked the ability to systemically update and verify certain withholding and income information.<sup>60</sup> Even if that information confirmed the taxpayer was due a refund, the system did not release the refund automatically.<sup>61</sup> W&I requested upgrades estimated to cost \$19,249.51 because manual procedures (*i.e.*, uploading information and releasing refunds), which can result in errors and delays, consumed about *100 full-time employees each year*.<sup>62</sup>

Other upgrades to various systems could help the IRS release refunds more quickly. Once the IRS determines that it should release a refund, its systems can take ten days to do so.<sup>63</sup> A more robust systemic process could release refunds more frequently (*e.g.*, every day). It might also save the IRS time and the cost of paying interest on delayed refunds. Similarly, many returns that PRWVH cannot verify are sent to other treatment

55 IRS, Secure Access Digital Identity (SADI) & App Integration Overview (Sept. 2020). For further discussion of the IRS's new authentication protocol, see Most Serious Problem: Digital Communications: Limited Digital Communications With the IRS Make Problem Resolution Unnecessarily Difficult for Taxpayers, *supra*.

56 IRS, SERP Alert 20A0144, Treatment of TPP Taxpayers Sent to TAC during COVID-19 Shutdown (rev. July 30, 2020).

57 See Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2017-20-080, *The Return Review Program Increases Fraud Detection; However, Full Retirement of the Electronic Fraud Detection System Will Be Delayed* 7 (Sept. 25, 2017). Although the IRS recently replaced one of RRPLC's screening components called Discoverer with a system called the Selections and Analytics Platform (or SNAP), other parts of the system are still obsolete.

58 W&I response to TAS information request (Oct. 23, 2020) (item 14).

59 *Id.* (item 13).

60 TAS discussed this problem in 2018. See National Taxpayer Advocate 2018 Annual Report to Congress 79, 88 (Most Serious Problem: False Positive Rates: The IRS's Fraud Detection Systems Are Marred by High False Positive Rates, Long Processing Times, and Unwieldy Processes Which Continue to Plague the IRS and Harm Legitimate Taxpayers) ("Because Electronic Fraud Detection System (EFDS) does not interact with the IRS system that maintains third-party income information, employees must enter the third-party information into EFDS one document at a time, and then manually release the refunds.").

61 IRS, Unified Work Request (UWR) #234153 (Jan. 31, 2020); W&I response to TAS information request (Oct. 23, 2020) (RPT Governance Board Minutes (Aug. 2020)).

62 IRS, UWR #234153 (Jan. 31, 2020); W&I response to TAS information request (Oct. 23, 2020) (RPT Governance Board Minutes (Aug. 2020)).

63 W&I response to TAS information request (Oct. 23, 2020) (item 5(d) discusses the manual release of TPP refunds); IRM 21.4.4.3(3)(a), Why Would a Manual Refund Be Needed? (Oct. 1, 2020) (indicating a manual refund may be necessary if a taxpayer needs it in less than ten days); IRM 25.6.1.9.12.2.1, Generalized Unpostable Framework (GUF) (May 15, 2017) (indicating items that do not "post" to the IRS's master file are sorted and addressed weekly).

streams manually.<sup>64</sup> A systemic referral process could expedite refunds. If the IRS scanned taxpayer and employer correspondence and stored it on RRPLC or an upgraded system, then various functions could avoid duplicate requests for information. However, these improvements are not a priority if they are viewed as maintenance of an obsolete legacy system.

The IRS has denied several of RIVO's requests.<sup>65</sup> The TFA, which became law on July 1, 2019,<sup>66</sup> requires the IRS Chief Information Officer to develop and implement a multiyear strategic information technology modernization plan.<sup>67</sup> Although the IRS has not released its plan as of this writing, it should give priority to the upgrades that would speed refunds to taxpayers and improve service as part of the IRS's overall business service modernization.

## CONCLUSION AND RECOMMENDATIONS

The IRS should develop modern technology to ensure its fraud screens do not delay legitimate refunds while still blocking fraudulent claims. The technology should also timely inform taxpayers about their refund delays; ways to expedite their refund (*e.g.*, by verifying their identities, ensuring the IRS has their information reporting documents, or responding to other IRS inquiries); contact information for relevant IRS employees; and an up-to-date estimate of when the IRS will pay the refund (if verified). CSRs, the refund hotline, the IRS's WMR tool, and IRS2Go app should all provide taxpayers with the same up-to-date information. If taxpayers call, CSRs should research and disclose the reason for the delay and what the taxpayer needs to do to expedite the case. The IRS should also permit CSRs to refer a taxpayer to a RIVO employee who should act as the taxpayer's single point of contact for followup questions. If the IRS fails to keep taxpayers informed, more taxpayers will be harmed, and they will continue to ask TAS for help.

The IRS should continue to allow taxpayers to provide documents needed to authenticate their identities by fax, email, or document upload. When merely receiving documents electronically, the IRS should not require significantly more authentication than when it receives a fax or letter from the taxpayer. Removing unnecessary barriers to electronic submissions would reduce taxpayer burden, especially for taxpayers with mobility or transportation challenges, and would free up TAC employees to assist taxpayers with problems requiring in-person presence. As discussed elsewhere in this report, a secure online account platform could allow those taxpayers to elect to receive letters, notices, and other updates on the status of their returns electronically without the need to mail correspondence.<sup>68</sup>

64 W&I response to TAS information request (Oct. 23, 2020) (item 8).

65 For a discussion of the IRS's challenges with IT modernization, see, *e.g.*, Most Serious Problem: *Information Technology Modernization: Antiquated Technology Jeopardizes Current and Future Tax Administration, Impairing Both Taxpayer Service and Enforcement Efforts*, *supra*.

66 TFA, Pub. L. No. 116-25, § 2101, 133 Stat. 981 (2019).

67 TFA, Pub. L. No. 116-25, §§ 2101-2103, 133 Stat. 981, 985-86 (2019).

68 See, *e.g.*, Most Serious Problem: *Digital Communications: Limited Digital Communications With the IRS Make Problem Resolution Unnecessarily Difficult for Taxpayers*, *supra*; Erin M. Collins, Lessons Learned From COVID-19: The Critical Need to Improve IRS Digital Services, NATIONAL TAXPAYER ADVOCATE BLOG (Sept. 1, 2020), <https://www.taxpayeradvocate.irs.gov/news/ntablog-lessons-learned-from-covid-19-the-critical-need-to-improve-irs-digital-services/>.

## Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate preliminarily recommends that the IRS:

1. Offer taxpayers with refunds flagged during the fraud screening processes an electronic option that provides them with:
  - a. More accurate estimates of when they can expect to receive a refund (*e.g.*, offer estimates before the refund is approved instead of just afterward);
  - b. What specific information the IRS needs to verify;
  - c. Whom the taxpayer can contact with questions; and
  - d. How to upload identity verification information (*e.g.*, by using a cell phone or camera) without first passing through Secure Access.
2. Make permanent the temporary procedures that allow taxpayers to submit identity verification documents by eFax, at least when other modes of communication are unavailable.
3. Upgrade IRS systems so the taxpayer is automatically informed of the status of his or her case when it moves to another treatment stream (*e.g.*, Examination) or when a case is automatically opened in those downstream functions, and so any authorized IRS employee can see the status of the case and related taxpayer correspondence.
4. Fund technology upgrades to expedite legitimate refund requests while continuing to modernize and replace obsolete IRS systems.
5. Update procedures so CSRs can provide specific information to taxpayers about how to expedite a refund (*i.e.*, identify a specific discrepancy) and ask that RIVO employees respond to the taxpayer's inquiry.
6. Measure and evaluate W&I's performance based on how many taxpayers with legitimate refunds its fraud filters flag and how many must wait more than 60 days to receive their refunds.

## Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Provide the IRS with predictable multiyear funding to expand digital services, expedite the release of legitimate refunds, and keep taxpayers informed about the status of their refunds, as part of its overall modernization plan.<sup>69</sup>

<sup>69</sup> For more detailed recommendations, see National Taxpayer Advocate 2020 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 6-8 (*Provide the IRS With Sufficient Funding to Meet Taxpayer Needs and Improve Federal Tax Compliance*). See also Most Serious Problem: *Digital Communications: Limited Digital Communications With the IRS Make Problem Resolution Unnecessarily Difficult for Taxpayers*, *supra*; Most Serious Problem: *Information Technology Modernization: Antiquated Technology Jeopardizes Current and Future Tax Administration, Impairing Both Taxpayer Service and Enforcement Efforts*, *supra*.

## IRS COMMENTS

We appreciate your support of the IRS goals of detecting and mitigating refund fraud while working to decrease burden on taxpayers who have filed legitimate returns. Roughly 98% of refund returns are not selected by fraud filters. The remaining 2% often have reported information that may not adhere to known patterns and may not have the information returns needed to validate reported amounts.

Without proper validation, the IRS risks issuing improper refunds. In 2019, the Taxpayer Protection Program (TPP) identity theft (IDT) filters protected \$2.5 billion in revenue and Return Review Program (RRP) Non-IDT filters protected \$1 billion in revenue.

We understand the concerns of how refund delays can impact taxpayers, and we continue to collaborate with internal and external partners, including the Taxpayer Advocate Service, to refine and automate refund fraud filters where appropriate. Each year, we consider several factors to make the most efficient selections and improve performance while continuing to achieve our high level of protection:

- **Measure and monitor:** The IRS added new metrics to reports of IDT and Non-IDT selections to track the resolution timeframe for false-positives to ensure no significant increase in process times.
- **Improve model selection through advanced analytics:** The IRS refreshes RRP models and filters for IDT and Non-IDT annually. The IRS reviews and updates dependent database filters annually to improve performance. We are also testing other selection approaches to determine effectiveness.
- **Improve case processes through automation:** The IRS conducted a significant overhaul of the RRP Non-IDT and systemic verification process to automate verification and processing of returns. Instead of scoring returns once at filing, the IRS is now re-scoring returns every time new third-party data is received and moving the case to the right process status instead of waiting for a manual verification. We are seeking updates to our technology and evaluating other ways to further improve these processes.
- **Improve taxpayer communications:** For 2020, all returns held in TPP for more than 90 days were scheduled for a second notice. Due to resources impacted by COVID-19, the secondary letter process was on hold until October 2020. Non-IDT selections were scheduled for interim notice every 60 days.
- **Leverage third-party data:** In 2018, the IRS began a pilot with the Bureau of the Fiscal Service (BFS) to determine if bank account information on a TPP return can be validated by BFS (a process also used for other agency payments). Based on the 2019 preliminary results, the IRS sent a secondary notice to taxpayers with matching accounts after 45 days of no response. During 2020, because of COVID-19, returns with matching bank information were immediately released from TPP.

Due to COVID-19, taxpayers experienced significant delays in the return process because of the closure of IRS sites and processes. The IRS worked to mitigate these delays by resolving as many cases

(including IDT inventory) as possible using available resources and data. As of November 2020, the IRS has not closed any cases due to no response from taxpayers, and will continue to extend the timeline to allow taxpayers to resolve their issues quickly once they are able to contact the IRS.

## TAXPAYER ADVOCATE SERVICE COMMENTS

We all agree that IDT and non-IDT screens help protect taxpayers and the government, and that most taxpayers receive their refunds without delay. But a substantial number of taxpayers whose legitimate refunds are delayed by the IRS's screening process do not know the reason for the delay. TAS appreciates RIVO's ongoing efforts to (1) track the resolution timeframe for false-positives, (2) improve return selection through advanced analytics, (3) rescore returns every time new third-party data is received, (4) send more regular notices to taxpayers whose refunds are delayed, and (5) leverage more third-party data, such as bank account information that can be validated by BFS. These activities should help reduce false positives, speed the release of legitimate refunds, and improve customer service. However, the IRS needs to take additional steps to fully address these problems and provide more transparency to taxpayers whose refunds are being held and a status update regarding the timing of the pending determination.

## RECOMMENDATIONS

### Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Offer taxpayers with refunds flagged during the fraud screening processes an electronic option that provides them with:
  - a. More accurate estimates of when they can expect to receive a refund (*e.g.*, offer estimates before the refund is approved instead of just afterward);
  - b. What specific information the IRS needs to verify;
  - c. Whom the taxpayer can contact with questions; and
  - d. How to upload identity verification information (*e.g.*, by using a cell phone or camera) without first passing through Secure Access.
2. Make permanent the temporary procedures that allow taxpayers to submit identity verification documents by eFax, at least when other modes of communication are unavailable.
3. Upgrade IRS systems so the taxpayer is automatically informed of the status of his or her case when it moves to another treatment stream (*e.g.*, Examination) or when a case is automatically opened in those downstream functions, and so any authorized IRS employee can see the status of the case and related taxpayer correspondence.
4. Fund technology upgrades to expedite legitimate refund requests while continuing to modernize and replace obsolete IRS systems.

5. Update procedures so CSRs can provide specific information to taxpayers about how to expedite a refund (*i.e.*, identify a specific discrepancy) and ask that RIVO employees respond to the taxpayer's inquiry.
6. Measure and evaluate W&I's performance based on how many taxpayers with legitimate refunds its fraud filters flag and how many must wait more than 60 days to receive their refunds.

### Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Provide the IRS with predictable multiyear funding to expand digital services, expedite the release of legitimate refunds, and keep taxpayers informed about the status of their refunds, as part of its overall modernization plan.<sup>70</sup>

<sup>70</sup> For more detailed recommendations, see National Taxpayer Advocate 2020 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 6-8 (*Provide the IRS With Sufficient Funding to Meet Taxpayer Needs and Improve Federal Tax Compliance*). See also Most Serious Problem: *Digital Communications: Limited Digital Communications With the IRS Make Problem Resolution Unnecessarily Difficult for Taxpayers*, *supra*; Most Serious Problem: *Information Technology Modernization: Antiquated Technology Jeopardizes Current and Future Tax Administration, Impairing Both Taxpayer Service and Enforcement Efforts*, *supra*.



## Introduction

### OVERVIEW

IRC § 7803(c)(2)(B)(ii)(XI) requires the National Taxpayer Advocate to identify in her Annual Report to Congress (ARC) the ten tax issues most litigated in federal courts (MLIs).<sup>1</sup>

TAS identified the MLIs from June 1, 2019, through May 31, 2020, using commercial legal research databases. This section of the Annual Report defines the term “litigated” as cases in which the court issued an opinion.<sup>2</sup> This year’s MLIs are, in order from most to least cases:

- Appeals From Collection Due Process Hearings (IRC §§ 6320 and 6330);
- Civil Actions to Enforce Federal Tax Liens or to Subject Property to Payment of Tax (IRC § 7403);
- Accuracy-Related Penalty (IRC §§ 6662(b)(1) and (2));<sup>3</sup>
- Trade or Business Expenses (IRC § 162(a) and related Code sections);
- Gross Income (IRC § 61 and related Code sections);
- Summons Enforcement (IRC §§ 7602(a), 7604(a), and 7609(a));
- Failure to File Penalty (IRC § 6651(a)(1)), Failure to Pay Penalty (IRC § 6651(a)(2)), and Failure to Pay Estimated Tax Penalty (IRC § 6654);
- Schedule A Deductions (IRC §§ 211-224);
- Charitable Contribution Deductions (IRC § 170); and
- Frivolous Issues Penalty (IRC § 6673 and related appellate-level sanctions).

Summons enforcement saw the greatest decrease since last year, dropping from 60 cases to 40 (a 33 percent decrease). Civil actions to enforce federal tax liens or to subject property to payment of tax was the only category that reflected an increase in the number of cases, from 52 cases to 71 (a nearly 37 percent increase). Overall, taxpayers prevailed in full or in part in 74 cases (about 16 percent), consistent with last year. Cases involving individual taxpayers outnumbered business taxpayers by a ratio of 3:2.<sup>4</sup>

We analyzed each issue in five sections: taxpayer rights impacted,<sup>5</sup> overview of findings, analysis of the litigated cases, conclusion, and recommendations to mitigate disputes. We have also included a “Significant Cases” section summarizing decisions that are not among the top ten issues but are relevant to tax administration. In this section, we generally used the same one-year period that we used in previous reports for the ten MLIs, ending on May 31, 2020.

1 Federal tax cases are tried in the United States Tax Court, United States District Courts, the United States Court of Federal Claims, United States Bankruptcy Courts, United States Courts of Appeals, and the United States Supreme Court.

2 Many cases are resolved before the court issues an opinion. Some taxpayers reach a settlement with the IRS before trial, while the courts dismiss other taxpayers’ cases for a variety of reasons, including lack of jurisdiction and lack of prosecution. Courts can issue less formal “bench opinions,” which are not published or precedential. This year, we did not include bench orders or summary judgments in this report.

3 IRC § 6662 also includes (b)(3), (b)(4), (5), (6), (7), and (8), but because those types of accuracy-related penalties were not heavily litigated, we have analyzed only subsections (b)(1), and (2).

4 Individuals filing Schedules C, E, or F are deemed business taxpayers for purposes of this discussion even if items reported on such schedules were not the subject of litigation.

5 See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the IRC. See IRC § 7803(a)(3).

This year the top ten MLIs included a total of 455 court opinions. That's the least number of cases we've identified since 2002.<sup>6</sup> Some of the 15 percent decrease in the total number of cases from last year can be attributed to court closures related to the COVID-19 pandemic;<sup>7</sup> however, this decrease follows a general decline in the number of litigated cases since the Great Recession. We recorded more than twice as many cases in 2007, 2008, and 2009 as we did this year. We may again see a surge in tax litigation in the wake of the pandemic's economic turmoil in years to come.

## TAX LITIGATION

A variety of courts share concurrent jurisdiction over federal tax litigation. They include Article I (*i.e.*, special courts created by Congress) and Article III (*i.e.*, constitutional courts). Litigation generally includes an automatic right of appeal to the United States Courts of Appeals,<sup>8</sup> although some taxpayers elect to give up their appeal rights and pursue binding but less formal proceedings, pursuant to court rules.<sup>9</sup> The taxpayer's choice of judicial forum depends on many factors, including whether the taxpayer is required to pre-pay the tax prior to litigation, the court's procedures, the burden of proof, and the controlling precedent. Tax litigation takes place in:

- The United States Tax Court;
- United States District Courts;
- United States Courts of Appeals;
- The United States Court of Federal Claims;
- United States Bankruptcy Courts; and
- The United States Supreme Court.

The United States district courts and the United States Court of Federal Claims have concurrent jurisdiction over tax matters in which (1) the tax has been assessed and paid in full<sup>10</sup> and (2) the taxpayer has filed an administrative claim for refund.<sup>11</sup> The United States district courts, along with the bankruptcy courts in very limited circumstances, provide the only fora in which a taxpayer can request a jury trial.<sup>12</sup> Bankruptcy courts can adjudicate tax matters not adjudicated prior to the initiation of a bankruptcy case.<sup>13</sup>

Congress created the Tax Court as a forum where taxpayers can bring suit to contest IRS proposed assessments and determinations without prepayment.<sup>14</sup> It has jurisdiction over a variety of issues, including deficiencies,

6 Our MLIs section in our first two reports (2000 and 2001 Annual Report to Congress) reviewed cases by sampling.

7 See, e.g., <https://www.ustaxcourt.gov/covid.html>.

8 See IRC § 7482, which provides that the United States Courts of Appeals (other than the United States Court of Appeals for the Federal Circuit) have jurisdiction to review the decisions of the Tax Court. There are exceptions to this general rule. See 28 U.S.C. § 1294 (appeals from a United States district court are to the appropriate United States Court of Appeals); 28 U.S.C. § 1295 (appeals from the United States Court of Federal Claims are heard in the United States Court of Appeals for the Federal Circuit); 28 U.S.C. § 1254 (appeals from the United States Courts of Appeals may be reviewed by the United States Supreme Court).

9 For example, IRC § 7463 provides special procedures for small Tax Court cases (where the amount of deficiency or claimed overpayment totals \$50,000 or less) for which appellate review is not available.

10 28 U.S.C. § 1346(a)(1). See *Flora v. United States*, 362 U.S. 145 (1960), *reh'g denied*, 362 U.S. 972 (1960). See National Taxpayer Advocate 2021 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (Repeal Flora and Expand the Tax Court's Jurisdiction: Give Taxpayers Who Cannot Pay the Same Access to Judicial Review as Those Who Can)*.

11 IRC § 7422(a).

12 The bankruptcy court may only conduct a jury trial if the right to a trial by jury applies, all parties expressly consent, and the district court specifically designates the bankruptcy judge to exercise such jurisdiction. 28 U.S.C. § 157(e).

13 See 11 U.S.C. §§ 505(a)(1) and (a)(2)(A).

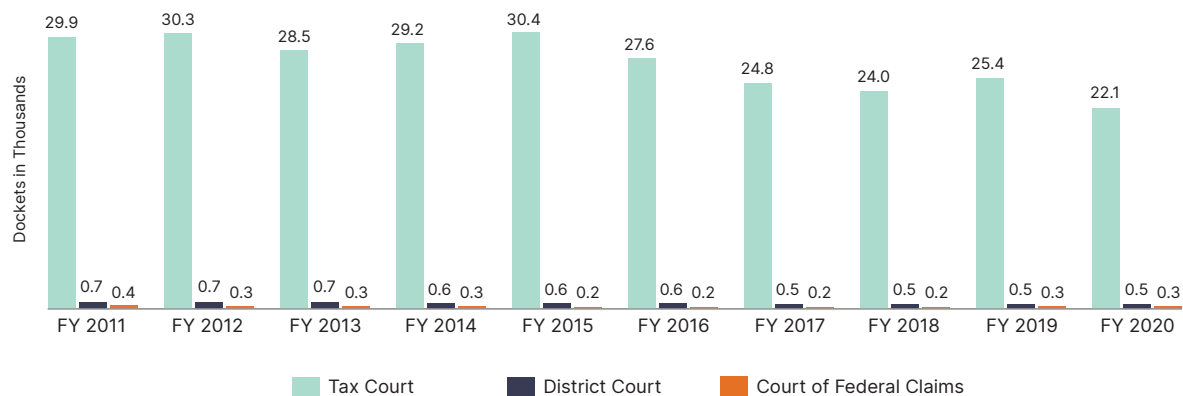
14 See IRC § 7441.

certain declaratory judgment actions, appeals from administrative hearings, relief from joint and several liability, and determination of employment status.<sup>15</sup> The Tax Court is the only “prepayment” forum which is one major advantage for taxpayers as they can adjudicate the merits of the issue without paying the disputed tax in advance. As a result, over 96 percent of all tax-related litigation is adjudicated in the Tax Court.

Comparing the number of dockets (*i.e.*, petitions filed with the court), the Tax Court receives at least 40 times as many cases as district courts, and 70 times as many cases as the Court of Federal Claims. Figure 2.0.1 compares the number of docketed cases in inventory in the Tax Court, the Court of Federal Claims, and the district courts at the end of the past ten fiscal years (FYs).<sup>16</sup>

**FIGURE 2.0.1<sup>17</sup>**

Docketed Inventory in Tax Court, District Court, and Court of Federal Claims, FYs 2011-2020

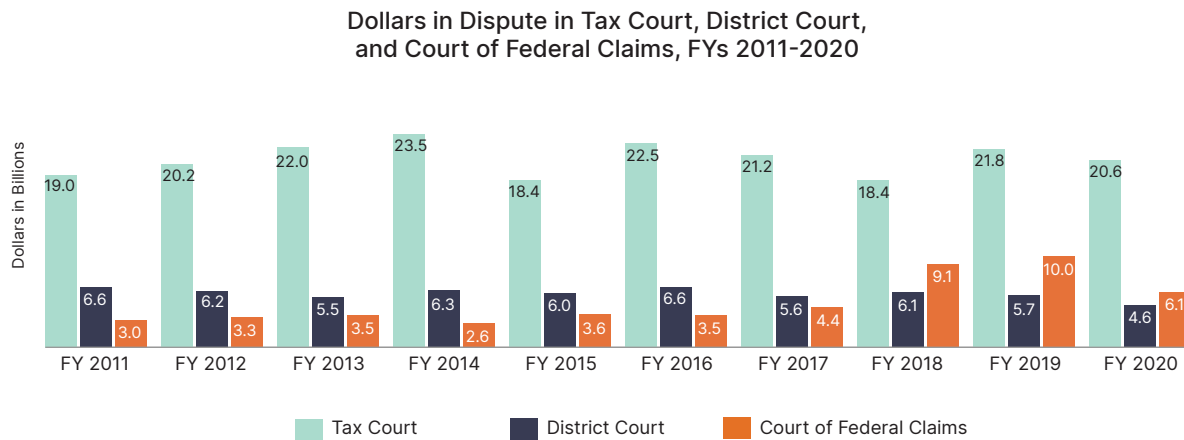


While the Tax Court docketed the lion’s share of cases, there tends to be more money at stake in tax litigation in the district courts and the Court of Federal Claims. Comparing the dollars in dispute, Tax Court cases compare about 4:1 to district courts, and about 3:1 to the Court of Federal Claims. Figure 2.0.2 shows the dollars in dispute for the docketed case inventory in these courts over the past ten fiscal years.

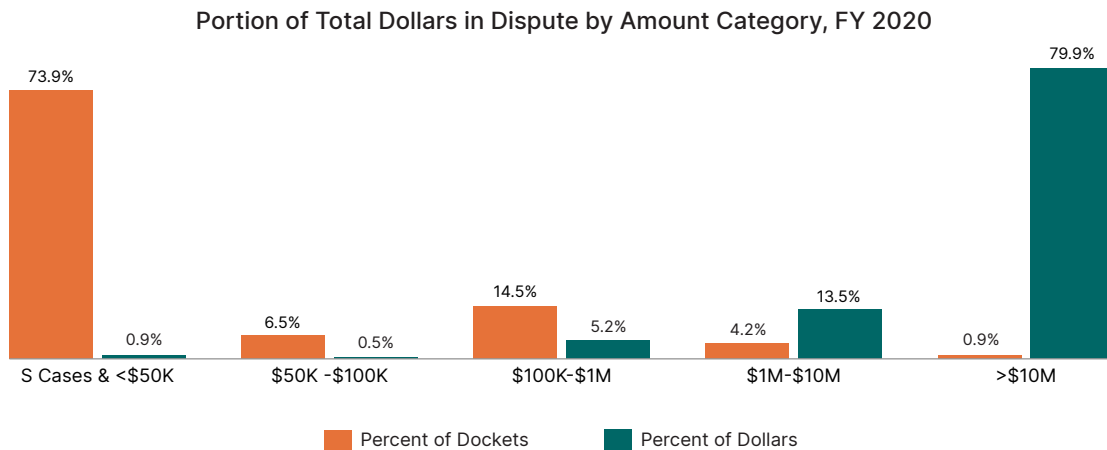
<sup>15</sup> IRC §§ 6214, 7476-7479, 6330(d), 6015(e), and 7436.

<sup>16</sup> A fiscal year runs from October 1 to September 30 of the following calendar year and is different than the reporting period used for the ten MLIs in this report - June 1, 2019, through May 31, 2020.

<sup>17</sup> IRS, Counsel Automated Tracking System, TL-711 and TL-712. Does not include cases on appeal and declaratory judgments. Note that this figure covers fiscal years (October 1 – September 30), while MLI review in this report covers the period June 1 – May 31.

**FIGURE 2.0.2<sup>18</sup>**

Looking more closely at the Tax Court cases during FY 2020, we see that in nearly 74 percent of the cases, there was less than \$50,000 at stake. Figure 2.0.3 shows the breakdown of FY 2020 Tax Court cases by dollars in dispute.

**FIGURE 2.0.3<sup>19</sup>**

<sup>18</sup> IRS, Counsel Automated Tracking System, TL-711 and TL-712. Does not include cases on appeal and declaratory judgments. Note that this figure covers fiscal years (October 1 – September 30), while MLI review in this report covers the period June 1 – May 31.

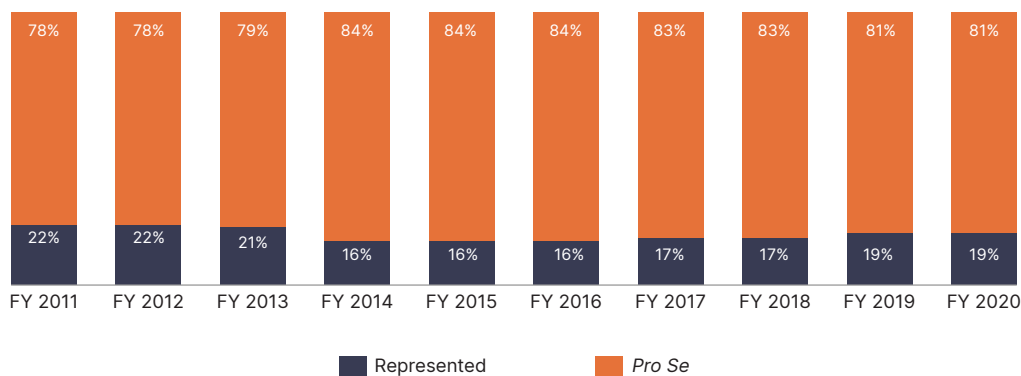
<sup>19</sup> IRS, Counsel Automated Tracking System, TL-711. Does not include cases on appeal and declaratory judgments.

## ANALYSIS OF *PRO SE* LITIGATION

Over the past ten years, an average of 82 percent of taxpayers appearing in Tax Court are not represented by counsel.<sup>20</sup> There is no doubt that self-represented taxpayers are disadvantaged in tax litigation as they are unfamiliar with the Court's Rules of Practice and Procedure, Rules of Evidence, and the nuances of negotiating with the IRS. The dollars at issue, along with the taxpayer's income level, are two key determinants of whether a taxpayer obtains representation to navigate the litigation process. Hiring a representative can be expensive. And even if a taxpayer has the means to do so, the amount at issue may not justify the cost. In an effort to ameliorate this difference, more than 25 years ago the Tax Court instituted Tax Clinics and Bar Sponsored Calendar Call programs which provide important advice and assistance to many low income, self-represented taxpayers.<sup>21</sup> The Calendar Call Program enables eligible taxpayers to seek legal advice and representation at a trial session. Low Income Taxpayer Clinics provide free or low-cost representation to qualifying taxpayers,<sup>22</sup> however only a fraction of eligible taxpayers avails themselves of those services. When a taxpayer appears before the court without a representative, it's called *pro se*.<sup>23</sup> Figure 2.0.4 compares the ratio of Tax Court cases where taxpayers proceeded *pro se* to the cases where taxpayers appeared with a representative over the past ten FYs.

**FIGURE 2.0.4<sup>24</sup>**

Proportion of Cases Petitioned to the Tax Court (Represented/*Pro Se*), FYs 2011-2020



We identify the top ten MLIs based on the number of opinions for each issue by using commercial legal research databases. This provides a high-level perspective on tax litigation, although it's important to note that the overwhelming majority of petitions filed in the Tax Court are resolved without the necessity of trial or issuance of an opinion. Figure 2.0.5 shows the number of Tax Court petitions over the past ten fiscal years, broken down by whether the taxpayers proceeded *pro se* or with a representative.

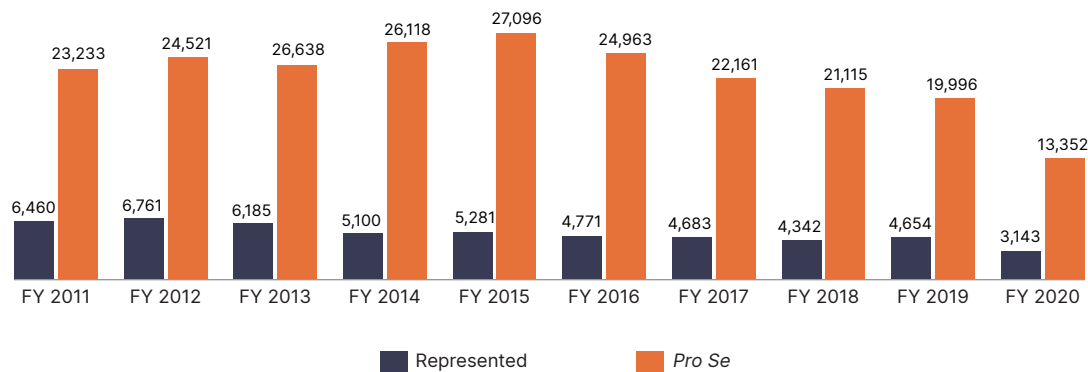
20 Counsel Automated Tracking System, TL-708A. Note that this figure covers fiscal years (October 1 – September 30), while MLI review in this report covers the period June 1 – May 31.

21 See <https://www.ustaxcourt.gov/clinics.html>. The Tax Court continues to invite academic and nonacademic tax clinics and bar-sponsored programs to consider participating and representing *pro se* taxpayers.

22 See IRC § 7526.

23 "*Pro se*" means "for oneself; on one's own behalf; without a lawyer." BLACK'S LAW DICTIONARY (11th ed. 2014).

24 IRS, Counsel Automated Tracking System, TL-708A. Does not include cases on appeal and declaratory judgments. Note that this figure covers fiscal years (October 1 – September 30), while MLI review in this report covers the period June 1 – May 31.

FIGURE 2.0.5<sup>25</sup>Number of Cases Petitioned to the Tax Court (Represented/*Pro Se*), FYs 2011-2020

Focusing our analysis on court opinions provides a real-time snapshot for determining any current trends and potential causes, and proposing solutions to mitigate future litigation. The opinions illustrate the IRS's successes in litigation and the parties' successes in settling a large percentage of issues thereby avoiding trial. The IRS settles about 80 percent of cases petitioned to Tax Court.<sup>26</sup> In litigation, the IRS consistently achieves the majority of favorable outcomes in the opinions across all issues, whether the taxpayer is represented or not. However, represented taxpayers will likely achieve a better outcome than *pro se* taxpayers.<sup>27</sup> Figure 2.0.6 affirms that taxpayers are more likely to prevail if they are represented. Also noteworthy is that there were 66 percent more opinions this year involving *pro se* taxpayers than represented taxpayers. Only 12 percent of *pro se* taxpayers prevailed in full or in part, compared to 23 percent of represented taxpayers in the cases we identified for this reporting period. In four of the ten categories, the only taxpayers that achieved a favorable outcome were represented. One explanation for this disparity could be that represented taxpayers may be more likely to resolve their dispute through an administrative remedy or by reaching a settlement with IRS Counsel prior to trial, obviating the need for a court opinion on the matter.

<sup>25</sup> IRS, Counsel Automated Tracking System, TL-708A. Does not include cases on appeal and declaratory judgments. Note that this figure covers fiscal years (October 1 – September 30), while MLI review in this report covers the period June 1 – May 31.

<sup>26</sup> IRS, Counsel Automated Tracking System, TL-711.

<sup>27</sup> For purposes of this analysis, we considered the court's decision with respect to the issue analyzed only. A "split" decision is defined as a partial allowance on the specific issue analyzed.

**FIGURE 2.0.6, Outcomes for *Pro Se* and Represented Taxpayers<sup>28</sup>**

Most Litigated Issue	<i>Pro Se</i> Taxpayers			Represented Taxpayers		
	Total Cases	Taxpayer Prevailed in Full or in Part	Percent of Wins	Total Cases	Taxpayer Prevailed in Full or in Part	Percent of Wins
Collection Due Process	45	4	9%	29	6	21%
Civil Actions to Enforce Federal Tax Liens or to Subject Property to Payment of Tax	44	4	9%	27	6	22%
Accuracy-Related Penalty	37	12	32%	27	7	26%
Trade or Business Expenses	41	11	27%	23	10	43%
Gross Income	46	4	9%	16	2	13%
Summons Enforcement	22	0	0%	18	1	6%
Failure to File, Failure to Pay, and Estimated Tax Penalties	20	0	0%	11	1	9%
Schedule A Deductions	12	0	0%	9	4	44%
Charitable Deductions	3	0	0%	11	2	18%
Frivolous Issues	14	0	0%	0	0	0%
<b>Total</b>	<b>284</b>	<b>35</b>	<b>12%</b>	<b>171</b>	<b>39</b>	<b>23%</b>

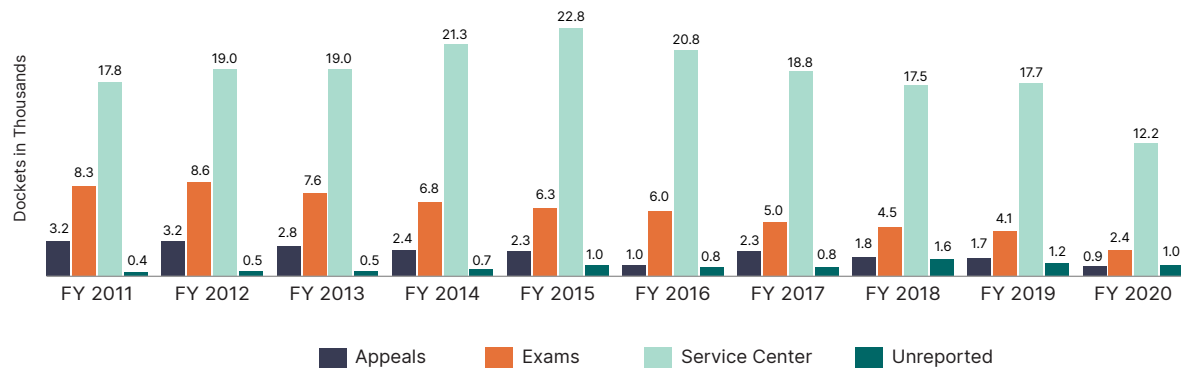
Where appropriate, each of the MLI sections that follow include recommendations to reduce the need for litigation. However, they all share one common element: litigation only occurs when there is a failure to reach a resolution at the administrative level. Figure 2.0.7 shows Tax Court petition filing over the last ten FYs based on the IRS function that issued the notice attached to each petition. The statutory notice of deficiency is the “ticket to Tax Court” and the document which starts the procedural clock for timely filing a petition.

28 This figure covers the period June 1, 2019 – May 31, 2020. Some of the 13 percent decrease in the total number of cases from the last reporting period can be attributed to court closures related to the COVID-19 pandemic. See, e.g., <https://www.ustaxcourt.gov/covid.html>.



**FIGURE 2.0.7<sup>29</sup>**

Source of Cases Petitioned to the Tax Court (Appeals/Exams/Service Center), FYs 2011-2020



A high percentage of petitions in the Tax Court result from a statutory notice of deficiency being issued from the IRS Service Centers (Campuses) bypassing Appeals, as shown in Figure 2.0.7. There are a variety of reasons that can trigger the issuance of the statutory notice of deficiency at the Campus: a taxpayer may not have understood the IRS correspondence or may not have provided timely or sufficient documentation; or the IRS needed to issue the statutory notice of deficiency to protect the period of limitations.

When the case originates at a Campus, a taxpayer may not have spoken with an IRS employee prior to filing a Tax Court petition.<sup>30</sup> Taxpayers may have had difficulty reaching an IRS employee that could assist in the process, or the IRS may not have been able to contact the taxpayer. Many of those taxpayers may miss an opportunity for achieving a resolution at the administrative level, prior to seeking Tax Court review. This is an area our office plans on reviewing this year.

29 IRS, Counsel Automated Tracking System, TL-708B. This includes declaratory judgments. The unreported category includes cases where no statutory notice was attached to the petition. Note that this figure covers fiscal years (October 1 – September 30), while MLI review in this report covers the period June 1 – May 31.

30 See Most Serious Problem: *Correspondence Exams: Taxpayers Encounter Unnecessary Delays and Difficulties Reaching an Accountable and Knowledgeable Contact for Correspondence Audits*, *supra*.

## Significant Cases

This section describes cases that do not involve the ten most litigated issues, but highlight important issues relevant to federal tax administration.<sup>1</sup> Cases relevant to the National Taxpayer Advocate's recommendations are summarized immediately below, and other significant cases of interest to a broad range of stakeholders are summarized further below.

**In *Myers v. Commissioner*, the U.S. Court of Appeals for the D.C. Circuit held that the deadline under IRC § 7623(b)(4) for filing a petition with the Tax Court for the review of a whistleblower award was subject to equitable tolling.**<sup>2</sup>

**Significance:** The dispute in *Myers* reminds us that the Tax Court does not always have jurisdiction to determine if equitable considerations (*e.g.*, the IRS's confusing communications) extended the filing deadline under the equitable tolling doctrine. Because low-income taxpayers often miss filing deadlines for reasons beyond their control, the National Taxpayer Advocate has recommended legislation that would allow courts to consider if equitable tolling would make their filings timely.<sup>3</sup> Such a change would further a taxpayer's rights *to appeal an IRS decision in an independent forum* and *to a fair and just tax system*.<sup>4</sup> This case highlights the need for legislation because, although it addresses the problem for whistleblowers, it does not solve the problem for taxpayers in other contexts.

### Summary

Mr. Myers filed Form 211, Application for Award of Original Information, with the IRS's Whistleblower Office (WBO). He sought a monetary award under IRC § 7623(b), alleging that his former employer intentionally misclassified him and other employees as independent contractors. In four letters written to Mr. Myers and sent by regular mail, the WBO declined to pay an award. The letters did not state they were determinations under the statute. Nor did they explain that to contest the determination, Mr. Myers needed to file a Tax Court petition within 30 days. Apparently confused about what to do next, he wrote to various government officials.

1 When identifying the ten most litigated issues, TAS analyzed federal decisions issued during the period beginning on June 1, 2019, and ending on May 31, 2020. For purposes of this section, we used the same period.

2 *Myers v. Comm'r*, 928 F.3d 1025 (D.C. Cir. 2019), *reh'g denied*, 2019 U.S. App. LEXIS 30046 (D.C. Cir. Oct. 4, 2019).

3 See National Taxpayer Advocate 2021 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 100-102 (*Provide That the Time Limits for Bringing Tax Litigation Are Subject to the Judicial Doctrines of Forfeiture, Waiver, Estoppel, and Equitable Tolling*). The low income taxpayer clinic at the Legal Services Center of Harvard Law School filed an *amicus* brief in this case on behalf of Mr. Myers. See Carlton Smith, *D.C. Circuit Denies DOJ En Banc Rehearing Petition in Myers Whistleblower Case*, PROCEDURALLY TAXING BLOG (Oct. 9, 2019), <https://procedurallytaxing.com/d-c-circuit-denies-doj-en-banc-rehearing-petition-in-myers-whistleblower-case/>; Carlton Smith, *D.C. Circuit Holds Tax Court Whistleblower Award Filing Deadline Not Jurisdictional and Subject to Equitable Tolling*, PROCEDURALLY TAXING BLOG (July 3, 2019), <https://procedurallytaxing.com/d-c-circuit-holds-tax-court-whistleblower-award-filing-deadline-not-jurisdictional-and-subject-to-equitable-tolling/>.

4 IRC § 7803(a)(3).

After receiving no satisfactory responses, Mr. Myers filed a petition *pro se* with the Tax Court. He filed after the 30-day deadline provided by IRC § 7623(b)(4). IRC § 7623(b)(4) says:

Any determination regarding an award ... may, within 30 days of such determination, be appealed to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter).

Based on this language, the Tax Court concluded that the deadline provided by IRC § 7623(b)(4) is “jurisdictional.” Thus, it had no jurisdiction to consider if the IRS’s confusing communications extended the deadline under the doctrine of equitable tolling. The Tax Court dismissed the case for lack of jurisdiction.<sup>5</sup> The U.S. Court of Appeals for the D.C. Circuit reversed and remanded so the Tax Court could consider if the doctrine would make the filing timely.

Without a “clear statement” indicating that a deadline is jurisdictional, it is merely a claim-processing rule, and is presumed to be subject to equitable tolling, according to the Supreme Court.<sup>6</sup> The IRS argued before the D.C. Circuit that the statutory grant of jurisdiction in IRC § 7623(b)(4) “with respect to such matter” limited jurisdiction to matters appealed “within 30 days.” Unconvinced, the court concluded that “such matter” could refer to determining the award under certain provisions (rather than on timing).<sup>7</sup> The court also observed the Supreme Court has not yet identified a single filing deadline that meets the “clear statement” test.<sup>8</sup>

Next, the court said there was no reason to believe Congress intended to exclude whistleblower claims from the equitable tolling doctrine. Two factors supported applying the doctrine: (1) the Tax Court is not an internal administrative body, and (2) Tax Court petitioners are typically *pro se* individuals who have never petitioned the Tax Court before. The only factor in the IRS’s favor was “[t]hat the whistleblower award statute is not unusually protective of claimants.”<sup>9</sup>

The Tax Court may now apply equitable tolling to review the appeal of whistleblower award determinations otherwise late. Because the D.C. Circuit is the sole appellate jurisdiction for whistleblower award appeals from the Tax Court, this is a nationwide victory for whistleblowers.

Perhaps even more important, the language of the whistleblower filing deadline (*i.e.*, IRC § 7623(b)(4)) mirrors the language of the collection due process filing deadline (*i.e.*, IRC § 6330(d)(1)), which the Ninth Circuit found was jurisdictional.<sup>10</sup> Thus, taxpayers outside the Ninth Circuit may now have an easier time arguing that the collection due process filing deadline is subject to equitable tolling. The ruling arguably creates a split with the Ninth Circuit, which could prompt the Supreme Court to review the issue.

<sup>5</sup> *Myers v. Comm’r*, 148 T.C. 438 (2017).

<sup>6</sup> See, e.g., *U.S. v. Kwai Fun Wong*, 575 U.S. 402 (2015) and the cases cited therein.

<sup>7</sup> *Myers*, 928 F.3d at 1035, n.†. The court distinguished this grant of jurisdiction in IRC § 7623(b)(4) from the one applicable to innocent spouse cases (in IRC § 6015(e)(1)(A)), which depends on the timing of the appeal (*i.e.*, limiting the Tax Court’s jurisdiction with respect to such matter “if such petition is filed — [during a certain time period]”).

<sup>8</sup> *Myers*, 928 F.3d at 1035.

<sup>9</sup> The D.C. Circuit also dismissed the government’s argument that the filing deadline for whistleblower awards in Tax Court is similar to an internal administrative filing deadline, which the Supreme Court said was not subject to equitable tolling in *Sebelius v. Auburn Reg’l Med. Ctr.*, 568 U.S. 145 (2013).

<sup>10</sup> *Duggan v. Comm’r*, 879 F.3d 1029, 1034 (9th Cir. 2018). Some have argued that the analysis in *Duggan* is incomplete. See, e.g., Bryan T. Camp, *New Thinking About Jurisdictional Time Periods in the Tax Code*, 73 THE TAX LAWYER 1–60 (Fall 2019).

## In *In re Shek*, the U.S. Court of Appeals for the Eleventh Circuit held that a tax debt assessed on a late-filed tax return was dischargeable in bankruptcy.<sup>11</sup>

**Significance:** *In re Shek* illustrates inconsistencies faced by taxpayers in different circuits regarding whether debts arising from late-filed returns are subject to discharge.<sup>12</sup> Previously, the National Taxpayer Advocate recommended legislation that would remove these inconsistencies by establishing a uniform rule.<sup>13</sup> Such legislation would further a taxpayer's rights *to be informed* and *to a fair and just tax system*.<sup>14</sup> It might also reduce the need for litigation about which tax debts are discharged in bankruptcy.

### Summary

Mr. Shek filed his 2008 state income tax return with the Massachusetts Department of Revenue (DOR) seven months late and did not pay the assessment. Six years later, he received a discharge in bankruptcy. After the DOR resumed collection activities, Mr. Shek moved to reopen his bankruptcy to determine if the discharge encompassed his state tax debt. The bankruptcy court held that his state tax liability had been discharged.<sup>15</sup> The district court affirmed,<sup>16</sup> and the U.S. Court of Appeals for the Eleventh Circuit also affirmed.

Under 11 U.S.C. § 523(a)(1)(B), there is an exception to discharge for tax liabilities (federal and state) with respect to which a return was (i) not filed or (ii) filed late and within two years before the bankruptcy. If something was filed, disputes center on whether the filing was a “return” under the discharge rules and when it was filed.

Whether a document is a “return” under the tax rules depends on whether it was an “honest and reasonable attempt” to satisfy the law, but does not depend on whether it was timely filed.<sup>17</sup> In 2005, Congress attempted to clarify the bankruptcy discharge rules by amending 11 U.S.C. § 523(a) to include a so-called “hanging paragraph.”<sup>18</sup> This paragraph defines a “return” under the discharge rules as a filing that:

satisfies the requirements of applicable nonbankruptcy law (including *applicable filing requirements*). Such term includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law.... (Emphasis added).

<sup>11</sup> *Mass. Dep't of Revenue v. Shek (In re Shek)*, 947 F.3d 770 (11th Cir. 2020).

<sup>12</sup> For helpful commentary, see, e.g., Keith Fogg, *Is the One Day Late Interpretation of Bankruptcy Code 523 Finally Headed to the Supreme Court?*, PROCEDURALLY TAXING BLOG (Jan. 28, 2020), <https://procedurallytaxing.com/is-the-one-day-late-interpretation-of-bankruptcy-code-523-finally-headed-to-the-supreme-court/#comments>.

<sup>13</sup> See National Taxpayer Advocate 2014 Annual Report to Congress 417-422 (Legislative Recommendation: *Late-Filed Returns: Clarify the Bankruptcy Law Relating to Obtaining a Discharge*). For prior coverage of litigation involving this issue, see, e.g., National Taxpayer Advocate 2017 Annual Report to Congress 351, 361-63 (*Significant Cases*).

<sup>14</sup> IRC § 7803(a)(3).

<sup>15</sup> *In re Shek*, 578 B.R. 918 (Bankr. M.D. Fla. 2017).

<sup>16</sup> *In re Shek*, 2018 WL 7140300 (M.D. Fla. Nov. 13, 2018).

<sup>17</sup> *Beard v. Comm'r*, 82 T.C. 766, 777 (1984), *aff'd per curiam*, 793 F.2d 139 (6th Cir. 1986) (applying a test set forth in *Zellerbach Paper Co. v. Helvering*, 293 U.S. 172 (1934)).

<sup>18</sup> Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, § 714, 119 Stat. 23, 128-29 (2005) (modifying 11 U.S.C. § 523(a)).

Focusing on the phrase “applicable filing requirements,” three circuit courts have held that liabilities regarding a late filing cannot be discharged because a late filing is not a “return” under the discharge rules.<sup>19</sup> Similarly, the DOR argued that Mr. Shek’s liability was not discharged because his filing was not timely, and therefore, was not treated as a “return” under the discharge rules.<sup>20</sup>

The U.S. Court of Appeals for the Eleventh Circuit disagreed with the DOR and the circuit court decisions in *McCoy*, *Mallo*, and *Fahey*. The Eleventh Circuit reasoned that interpreting “applicable filing requirements” to mean “all” filing requirements would render the word “applicable” superfluous. It said the “applicable” requirements include only those relevant to establishing that the substance of the filing is a return, rather than tangential considerations, such as whether it is timely filed. Next, the court said that if a late filed return could not be treated as a return, then the provision (11 U.S.C. § 523(a)(1)(B)(ii)) that excludes from discharge liabilities on late returns filed within two years of the bankruptcy, would be a “near nullity.” Under the DOR’s interpretation, the provision would only apply to the liabilities of the small subset of taxpayers who also filed those returns under IRC § 6020(a) (*i.e.*, jointly prepared by the IRS and the delinquent taxpayer) or a similar state or local provision. An interpretation that rendered the exclusion so insignificant would violate the surplusage canon of statutory construction.<sup>21</sup> Had Congress intended to modify the exclusion in such a drastic, convoluted, and confusing way, the court said it would likely have clearly indicated its intent.

**In *Norman v. United States*, the U.S. Court of Appeals for the Federal Circuit held regulations that capped the FBAR penalty were superseded by legislation enacted in 2004.<sup>22</sup>**

**Significance:** *Norman* illustrates that continuing controversy surrounds the application of the penalty for failure to file a Report of Foreign Bank and Financial Accounts (FBAR) and the conduct considered willful in this context. Previously, the National Taxpayer Advocate recommended legislation that would reduce the disproportionality of the FBAR penalty for willful violations and clarify the conduct considered willful.<sup>23</sup> Additional clarity in this area could reduce litigation and would further a taxpayer’s rights *to be informed*, *to finality*, and *to a fair and just tax system*.<sup>24</sup>

## Summary

Although Ms. Norman had owned a Swiss bank account since 1999, she did not indicate on her 2007 tax return she had a foreign bank account and did not file an FBAR for the year. The Bank Secrecy Act (BSA) provides:

19 See *In re McCoy*, 666 F.3d 924 (5th Cir. 2012); *In re Mallo*, 774 F.3d 1313 (10th Cir. 2014); *In re Fahey*, 779 F.3d 1 (1st Cir. 2015). Note that attorneys at the IRS do not share the same view as those three circuit courts. See Chief Counsel Notice CC-2010-016 (Sept. 2, 2010) (indicating that once the IRS has made an assessment pursuant to a substitute for return, a subsequently filed Form 1040 does not qualify as a return because the filing is not an “honest and reasonable attempt” to satisfy the law, as required under *Beard*).

20 *In re Shek*, 947 F.3d at 775.

21 This canon means that an interpretation should not be favored “when that interpretation would render a ‘clause, sentence, or word ... superfluous, void, or insignificant.’” *In re Shek*, 947 F.3d at 777 (quotations omitted).

22 *Norman v. United States*, 942 F.3d 1111 (Fed. Cir. 2019).

23 See National Taxpayer Advocate 2014 Annual Report to Congress 331-345 (*Foreign Account Reporting: Legislative Recommendations to Reduce the Burden of Filing a Report of Foreign Bank and Financial Accounts (FBAR) and Improve the Civil Penalty Structure*); National Taxpayer Advocate 2021 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 73-75 (*Modify the Standard of Proof for Willful FBAR Violations and Reduce the Maximum Penalty Amounts*).

24 IRC §§ 7803(a)(3)(A), (F).

[t]he Secretary of the Treasury *may* impose a civil money penalty on any person who violates [the FBAR rules, and] ... [I]n the case of any person willfully violating [the FBAR rules] ... the *maximum* penalty ... *shall* be increased to the greater of — (I) \$100,000, or (II) 50 percent of ... the balance in the account at the time of the violation. [Emphasis added.]<sup>25</sup>

The IRS determined that Ms. Norman willfully failed to report the account. It assessed a penalty of \$803,530, which was 50 percent of the account's balance. Ms. Norman paid the penalty and requested a refund, suing in the Court of Federal Claims. The court denied the request.<sup>26</sup> Finding no "clear error," the U.S. Court of Appeals for the Federal Circuit affirmed.

First, Ms. Norman argued before the Federal Circuit that her FBAR violation was not willful because she did not know of the FBAR filing requirement or the contents of her 2007 return. She argued willfulness requires actual knowledge of the obligation to file an FBAR, as explained in the Internal Revenue Manual (IRM). Otherwise, every failure to file an FBAR would be willful, and such an interpretation would render superfluous the penalties for non-willful violations.

The Federal Circuit disagreed, explaining that a violation would generally not be willful if a taxpayer had no reason to know about the account. Thus, its interpretation of willfulness would not make superfluous the penalty for non-willful violations.

The Federal Circuit explained that (1) courts are not bound by the IRM, (2) Ms. Norman could be charged with constructive knowledge of the contents of her return, (3) she had been reckless in failing to learn about the filing requirements, (4) other courts had held that recklessness was enough to trigger the willful penalty,<sup>27</sup> and (5) IRM 4.26.16.6.5.1(5) said "the failure to learn of the filing requirements coupled with other factors, such as efforts taken to conceal the existence of the accounts and the amounts involved, may lead to a conclusion" that the taxpayer acted willfully.

The court emphasized that Ms. Norman tried to conceal the account by: (1) opening a "numbered" account that did not list her name, (2) preventing the bank from investing in U.S. securities, (3) withdrawing a significant amount in cash, and (4) inconsistently stating her knowledge of, and the circumstances surrounding, the account. Thus, the violation was willful.

Next, Ms. Norman argued that the willful FBAR penalty was capped at \$100,000 by regulation.<sup>28</sup> From 1986 to 2004, the BSA only authorized FBAR penalties for willful violations and capped them at \$100,000. A regulation issued in 1987 reiterated that the maximum FBAR penalty was \$100,000.<sup>29</sup> In 2004, Congress increased the maximum FBAR penalty for willful violations (as quoted above) and added a \$10,000 penalty

<sup>25</sup> 31 U.S.C. § 5321(a)(5)(A)-(D).

<sup>26</sup> *Norman v. United States*, 138 Fed. Cl. 189 (Ct. Cl. 2018).

<sup>27</sup> See, e.g., *Bedrosian v. United States*, 912 F.3d 144, 152-53 (3d Cir. 2018); *United States v. Williams*, 489 F. App'x 655, 658-59 (4th Cir. 2012).

<sup>28</sup> At least one district court agreed with this argument. See *United States v. Colliot*, 2018-1 U.S.T.C. (CCH) ¶150,259 (W.D. Tex. 2018). The Federal Circuit did not discuss *Colliot*.

<sup>29</sup> *Amendments to Implementing Regulations Under the Bank Secrecy Act*, 52 Fed. Reg. 11436, 11445-46 (1987) (codified as 31 C.F.R. § 103.57(g)(2), and later re-codified as 31 C.F.R. § 1010.820(g)(2)) (authorizing FBAR penalties "not to exceed the greater of the amount (not to exceed \$100,000) equal to the balance in the account at the time of the violation, or \$25,000," an upper limit that reiterated what was then provided by 31 U.S.C. § 5321(a)(5)(C)).



for nonwillful violations.<sup>30</sup> However, the government did not amend the 1987 regulation, which still provides for a maximum penalty of \$100,000. But the court held the 2004 amendment rendered void the 1987 regulation because the law said the maximum penalty “shall” be increased.

This case clarifies that the 2004 legislation, which increased the “maximum” penalty the government “may” impose superseded regulations that provide for a lower penalty. Although the court was persuaded that Ms. Norman knew she had to report the account and intentionally violated the law, the alternative justifications for its holding may suggest that inadvertent FBAR violations could trigger the penalties supposedly reserved for “willful” violations, unless a taxpayer can show he or she did not know about the account.<sup>31</sup>

**In *Estate of Stauffer v. IRS*, the U.S. Court of Appeals for the First Circuit held that the limitations period for filing a refund claim was not tolled by the taxpayer’s financial disability because another person could file the returns and claim the refund(s).<sup>32</sup>**

**Significance:** *Estate of Stauffer* illustrates how the financial disability exception to the refund statute of limitations can fail to protect those with financial disabilities. The National Taxpayer Advocate has recommended broadening the circumstances in which a disability tolls the period to file a refund claim.<sup>33</sup> Such legislation would further a taxpayer’s rights *to appeal an IRS decision in an independent forum and to a fair and just tax system*.<sup>34</sup>

## Summary

Mr. Hoff Stauffer had a durable power of attorney (POA) to file returns and otherwise act on behalf of his elderly father, Mr. Carlton Stauffer, who was mentally ill. After a falling out, Hoff told Carlton and third parties he would no longer exercise his POA. Carlton failed to file multiple tax returns before he died in 2012.

As executor of Carlton’s estate, Hoff filed delinquent returns for tax years 2006 through 2012 in 2013. The 2006 return reflected an overpayment. The estate requested a portion of the overpayment be applied to the liability for 2007 and a refund of the remainder. The claim would have been late under IRC § 6511(a), unless the limitations period was extended by Carlton’s financial disability.<sup>35</sup> Although Carlton himself was financially disabled, IRC § 6511(h)(2)(B) provides that an individual is not treated as financially disabled during any period that another person is “authorized to act” on his or her behalf in financial matters. After determining that Hoff was “authorized to act” for Carlton, the IRS denied the claim, and Hoff filed a refund suit. The U.S. district court<sup>36</sup> dismissed the complaint, believing that the limitations period for filing a refund claim was not tolled while Hoff held a POA, and the U.S. Court of Appeals for the First Circuit agreed.

30 American Jobs Creation Act of 2004 (AJCA), Pub. L. No. 108–357, § 821, 118 Stat. 1418, 1586 (2004) (codified at 31 U.S.C. § 5321(a)(5)).

31 For a discussion of problems with this approach, see, e.g., National Taxpayer Advocate Fiscal Year 2017 Objectives Report to Congress 164–176 (Area of Focus 12: *The IRS’s Offshore Voluntary Disclosure (OVD)-Related Programs Have Improved, But Problems Remain*).

32 *Estate of Stauffer v. IRS*, 939 F.3d 1 (1st Cir. 2019).

33 See, e.g., National Taxpayer Advocate 2013 Annual Report to Congress 302–310 (*Legislative Recommendation: Broaden Relief From Timeframes for Filing a Claim for Refund for Taxpayers With Physical or Mental Impairments*).

34 IRC § 7803(a)(3).

35 Under IRC § 6511(a), taxpayers generally must file a refund claim within three years from the time the return was filed or two years from the time the tax was paid, whichever period expires later. IRC § 6511(h), however, provides an exception under which the general periods in IRC § 6511(a) are suspended if the individual is financially disabled. In a related case, the IRS lost the argument that a statement from Carlton’s psychologist could not be used to establish financial disability. See National Taxpayer Advocate 2018 Annual Report to Congress 432, 441 (*Significant Cases*) (discussing *Estate of Stauffer v. IRS*, 285 F. Supp. 3d 474 (D. Mass. 2017)).

36 *Estate of Stauffer v. IRS*, 2018 WL 5092885 (D. Mass. Sept. 29, 2018).



The estate argued that Hoff should not be treated as “authorized to act” on behalf of Carlton because he did not have both a duty to file Carlton’s tax returns, and actual or constructive knowledge that the tax returns had not been filed. The First Circuit rejected this argument because it found that Hoff was “authorized” to act on Carlton’s behalf, and the plain meaning of “authorized” does not permit it to superimpose a requirement for the person to also have a duty to do so or actual or constructive knowledge that the returns need to be filed.<sup>37</sup>

**In *CIC Services, LLC v. Commissioner*, the U.S. Court of Appeals for the Sixth Circuit denied a request to rehear a decision in which it held that the Anti-Injunction Act (AIA) barred it from enjoining enforcement of a reportable transaction notice allegedly promulgated in violation of the Administrative Procedure Act (APA).<sup>38</sup>**

**Significance:** *CIC* illustrates that the AIA can sometimes block judicial review of rules backed by tax penalties unless taxpayers first: violate them, wait for the IRS to assess the penalties, pay the penalties in full, and then sue for a refund. Low-income taxpayers are unlikely to have the time, resources, or appetite for this.<sup>39</sup> Therefore, the AIA could discourage them from claiming benefits to which they are entitled and from challenging rules that are invalid. This case highlights the continuing importance of the National Taxpayer Advocate’s legislative recommendation to allow judicial review of penalties without first requiring taxpayers to pay them in full.<sup>40</sup> Such legislation would further a taxpayer’s rights *to appeal an IRS decision in an independent forum and to a fair and just tax system*.<sup>41</sup>

## Summary

Taxpayers and their material advisors must maintain and submit records to the IRS pertaining to “reportable transactions,” or face severe penalties.<sup>42</sup> Reportable transactions include those that the IRS has identified as “transactions of interest.”<sup>43</sup> In November of 2016, the IRS issued Notice 2016-66, which designated certain “micro-captive” insurance transactions as “transactions of interest.”<sup>44</sup>

CIC Services (CIC), a captive insurance company, sued the IRS, seeking to enjoin the IRS from enforcing Notice 2016-66. CIC argued that Notice 2016-66 was invalid because it was a “legislative rule,” which had been promulgated without notice and comment (*i.e.*, a process in which the public is given an opportunity to comment on the proposed rule before it becomes effective, as discussed above). The IRS countered that the AIA barred CIC from suing “for the purpose of restraining the assessment or collection of any tax,” and that

37 *Estate of Stauffer*, 939 F.3d at 9.

38 *CIC Servs., LLC v. IRS*, 925 F.3d 247 (6th Cir. 2019), *reh’g denied*, 936 F.3d 501 (6th Cir. 2019), *petition for cert. filed* (Jan. 24, 2020) (No. 19-930).

39 The Center for Taxpayer Rights highlights concerns in an *Amicus* brief before the Supreme Court that the executive branch could impose onerous information reporting duties on low income taxpayers that the AIA would prevent them from challenging. See *CIC Servs., LLC v. IRS*, Brief of the Center for Taxpayer Rights as *Amicus Curiae* in Support of Petitioner (No. 19-930). *Amicus* briefs were filed by many other parties not listed here.

40 See, e.g., National Taxpayer Advocate 2017 Annual Report to Congress 343-386 (Legislative Recommendation: #3 Fix the Flora Rule: Give Taxpayers Who Cannot Pay the Same Access to Judicial Review as Those Who Can); National Taxpayer Advocate 2021 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 94-97 (Repeal Flora and Expand the Tax Court’s Jurisdiction: Give Taxpayers Who Cannot Pay the Same Access to Judicial Review as Those Who Can).

41 IRC § 7803(a)(3).

42 IRC §§ 6111, 6112, and 6707A.

43 See Treas. Reg. § 1.6011-4(b)(6).

44 Notice 2016-66, 2016-47 I.R.B. 745.

the penalties that could be imposed for failure to report micro-captive transactions were treated as taxes for this purpose.<sup>45</sup>

Both the district court and the Sixth Circuit agreed that the AIA prohibited the suit, finding that federal district courts lacked jurisdiction over suits seeking to enjoin the assessment or collection of taxes.<sup>46</sup> The Sixth Circuit explained that CIC could challenge Notice 2016-66 by paying the penalty and then filing a claim for refund.<sup>47</sup>

In August of 2019, the Sixth Circuit denied a petition for rehearing.<sup>48</sup> The Sixth Circuit acknowledged that the AIA was not meant to ban all prospective relief from IRS regulations, but also recognized the importance of the IRS revenue-collection process. In May of 2020, the Supreme Court granted *certiorari*.<sup>49</sup>

**In *Bullock v. IRS*, the U.S. District Court for the District of Montana held the IRS violated the APA when it waived the requirement for tax-exempt organizations to report their donors without following the notice and comment process.<sup>50</sup>**

**Significance:** *Bullock* illustrates that the IRS sometimes makes or changes rules without providing public notice of proposed changes, considering comments from stakeholders, and explaining the rationale for the rule, as required by the APA. The National Taxpayer Advocate is recommending legislation that would require the IRS to submit proposed or temporary regulations to the National Taxpayer Advocate for comment and to address any such comments in the preamble to the final rule.<sup>51</sup> The National Taxpayer Advocate is uniquely positioned to help the IRS consider the views of unrepresented stakeholders who might not otherwise offer comments. Such legislation would help ensure the IRS considers their perspectives. Incorporating their perspectives would further a taxpayer's *right to a fair and just tax system*.<sup>52</sup>

## Summary

Tax-exempt organizations are required by IRC § 6033(a)(1) to file a return that includes “other information... [that] the Secretary may by forms or regulations prescribe.” In 1970, after providing the public with notice and an opportunity to comment, the Secretary exercised this authority by issuing regulations that required exempt organizations to include the “names and addresses of all persons who contributed, bequeathed, or devised \$5,000 or more” in money or property on their returns.<sup>53</sup> That information was reported on Schedule B of Form 990, Return of Organization Exempt from Income Tax. In 2018, the IRS issued Rev. Proc. 2018-38, which said that tax-exempt organizations would “no longer be required to provide the names and addresses of contributors,”<sup>54</sup> and updated Schedule B of Form 990 and its instructions.

45 IRC § 7421(a).

46 *CIC Servs., LLC v. IRS*, 2017 WL 5015510 (E.D. Tenn. Nov. 2, 2017), *aff'd*, 925 F.3d at 247.

47 *CIC Servs., LLC*, 925 F.3d at 247.

48 *CIC Servs., LLC v. IRS*, 936 F.3d 501, 505 (6th Cir. 2019) (Sutton, J., concurring in denial of reh'g). The D.C. Circuit had similarly weighed in on the issue in 2015. See *Fla. Bankers Ass'n v. U.S. Dep't of the Treasury*, 799 F.3d 1065 (D.C. Cir. 2015).

49 *CIC Servs., LLC v. IRS*, 2020 WL 2105208 (May 4, 2020).

50 *Bullock v. IRS*, 401 F. Supp. 3d 1144 (D. Mont. 2019).

51 National Taxpayer Advocate 2021 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 89 (Require the IRS to Address the National Taxpayer Advocate's Comments in Final Rules).

52 IRC § 7803(a)(3).

53 Treas. Reg. § 1.6033-2(a)(2)(ii)(f).

54 Rev. Proc. 2018-38, 2018-31 I.R.B. 280.

Montana and New Jersey did not like Rev. Proc. 2018-38 because they were using the donor information that the IRS collected. They sued, alleging the IRS violated the APA by changing the reporting requirement without first providing public notice of the proposed change and an opportunity to comment. This notice and comment process is required when an agency issues or changes a “legislative rule.”<sup>55</sup> It is not required when an agency issues or makes changes to

interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice . . . or when the agency for good cause finds . . . that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.<sup>56</sup>

The IRS argued that Rev. Proc. 2018-38 was an interpretive rule because it interpreted and clarified the “other information” that IRC § 6033(a)(1) allows the IRS to require. However, the U.S. District Court for the District of Montana concluded that it was a legislative rule because it amended the previous legislative rule that required tax-exempt organizations to file substantial-contributor information annually. Thus, because Rev. Proc. 2018-38 changed a legislative rule without following the notice and comment process, the court set it aside.<sup>57</sup>

This case is significant because it suggests that when the IRS promulgates a legislative rule by publishing a form, it can change the form only after providing the public notice and an opportunity to comment, even if the change seems to reduce taxpayer burden.<sup>58</sup>

**In *Silver v. IRS*, the U.S. District Court for the District of Columbia held that a taxpayer had standing to challenge the IRS’s failure to carry out evaluations under the Regulatory Flexibility Act (RFA) and the Paperwork Reduction Act (PRA) when issuing regulations, and that the AIA did not bar the suit.<sup>59</sup>**

**Significance:** Like *Bullock* (discussed above), *Silver* illustrates that the IRS sometimes makes or changes rules without considering taxpayer burden, as required by the APA. This case is significant because it suggests that a broad range of tax regulations may be subject to challenge on the same bases (*i.e.*, a failure to conduct analysis under the RFA or PRA).<sup>60</sup> In 2016, the Government Accountability Office reported that only two of over 200 regulations issued by Treasury between 2013 and 2015 included an RFA analysis.<sup>61</sup>

<sup>55</sup> 5 U.S.C. §§ 553(b), (c).

<sup>56</sup> 5 U.S.C. § 553(b)(3)(A)-(B). Before 2011, the Supreme Court had suggested that regulations issued pursuant to a specific legislative grant of authority were “legislative” and entitled to greater deference than regulations issued pursuant to a general grant of authority (such as IRC § 7805(a)), which were called “interpretive.” See *Rowan Cos. v. United States*, 452 U.S. 247, 253 (1981). In 2011, however, the Supreme Court said the source of the authority for issuing a rule was not determinative. See *Mayo v. United States*, 562 U.S. 44 (2011). As the *Bullock* court noted, the effect of the rule (rather than the source of the authority for the rule) determines whether it is legislative or interpretive.

<sup>57</sup> The IRS subsequently updated the regulations using the notice and comment procedure. See *Guidance Under Section 6033 Regarding the Reporting Requirements of Exempt Organizations*, 84 Fed. Reg. 47,447 (Sept. 10, 2019) (codified at Treas. Reg. § 1.6033-2 with an optional effective date for returns filed after Sept. 6, 2019).

<sup>58</sup> This holding is generally consistent with a recently-issued policy statement, which says: “... if the intended interpretation or position would have the effect of modifying existing legislative rules or creating new legislative rules on matters not addressed in existing regulations, the interpretation or position will generally be issued through notice-and-comment rulemaking, absent exceptional circumstances.” Treasury Department, *Policy Statement on the Tax Regulatory Process* (Mar. 5, 2019). See also Chief Counsel Notice CC-2019-006 (Sept. 17, 2019).

<sup>59</sup> *Silver v. IRS*, 2019 U.S. Dist. LEXIS 220193 (D.D.C. Dec. 24, 2019).

<sup>60</sup> Stuart J. Bassin, *Rethinking Validity Challenges to Tax Regulations*, 166 TAX NOTES FEDERAL 573 (Jan. 27, 2020).

<sup>61</sup> Government Accountability Office (GAO), GAO-16-720, *Treasury and OMB Need to Reevaluate Long-standing Exemptions of Tax Regulations and Guidance* 22 (2016).

## Summary

As part of the Tax Cuts and Jobs Act (TCJA), Congress enacted certain “transition tax” provisions applicable to “controlled foreign corporations” owned by “United States persons.”<sup>62</sup> Mr. Monte Silver, an American citizen, and Monte Silver, Ltd., the controlled foreign corporation through which he practiced law in Israel (collectively, Mr. Silver), challenged the validity of regulations implementing the transition tax. Although Mr. Silver reported no transition tax liability, he alleged the IRS did not follow procedures mandated by the APA, the RFA, or the PRA — rules designed to protect small businesses from burdensome and costly regulations — when it issued the regulations.

The government moved to dismiss. It argued that Mr. Silver had no standing because he suffered no injury, and that any injury he sustained was due to the TCJA and not the regulations. It also argued that his suit was barred because invalidating the transition tax regulations would restrain “the assessment or collection of any tax,” in violation of the AIA.<sup>63</sup>

The court found that Mr. Silver had standing because he was injured by compliance costs (recordkeeping and collection of information) that were traceable to the government’s failure to follow procedural rules. Although the TCJA itself may have imposed the burden, a procedural violation that reasonably increased the risk of injury to Mr. Silver was enough to establish that the IRS’s violation (and not the statute) caused the injury for purposes of standing. Finally, the AIA was not applicable because Mr. Silver was merely asking the court to compel the agency to conduct RFA and PRA analyses. The court said it would not have to analyze whether a stay of enforcement of the regulations would violate the AIA unless Mr. Smith prevailed on the merits.

**In *Essner v. Commissioner*, the Tax Court held that IRC § 7605(b) does not bar the IRS from auditing a return while simultaneously using its automated document matching process (called Automated Underreporter or AUR) to address underreporting on the same return.**<sup>64</sup>

**Significance:** Although IRC § 7605(a) may create an expectation that the IRS will only review and adjust a taxpayer’s return once, *Essner* shows this expectation is wrong, and that the IRS’s communications about different reviews can be confusing. As automated error-correction procedures increasingly replace examinations, the National Taxpayer Advocate has suggested that the procedural protections available to taxpayers under examination (*e.g.*, the rights to avoid unnecessarily repetitive inquiries and to petition Appeals before issuance of a notice of deficiency) should be extended to those facing more automated procedures.<sup>65</sup> As this case shows, IRS procedures are inconsistent with a taxpayer’s rights *to be informed* and *to finality*.<sup>66</sup> Some have suggested that a legislative fix may be needed.<sup>67</sup>

62 See generally Pub. L. No. 115-97 § 14103(a), 131 Stat. 2054, 2195 (2017) (codified at IRC § 965).

63 IRC § 7421(a).

64 *Essner v. Comm’r*, T.C. Memo. 2020-23.

65 See, *e.g.*, National Taxpayer Advocate Fiscal Year 2019 Objectives Report to Congress vol. 2, at 38-43 (Most Serious Problem: Audit Rates: The IRS Is Conducting Significant Types and Amounts of Compliance Activities That It Does Not Deem to Be Traditional Audits, Thereby Underreporting the Extent of Its Compliance Activity and Return on Investment, and Circumventing Taxpayer Protections); Nina E. Olson, “Real” vs. “Unreal” Audits and Why This Distinction Matters, NATIONAL TAXPAYER ADVOCATE BLOG (July 6, 2018), <https://www.taxpayeradvocate.irs.gov/news/ntablog-real-vs-unreal-audits-and-why-this-distinction-matters/>.

66 IRC §§ 7803(a)(3)(A), (F).

67 See, *e.g.*, Leslie Book, *Unreal and Real Audits: Surgeon Finds No Relief From IRS’s “Byzantine” Exam Procedures*, PROCEDURALLY TAXING BLOG (Feb. 14, 2020), <https://procedurallytaxing.com/unreal-and-real-audits-surgeon-finds-no-relief-from-irss-byzantine-exam-procedures/>.

## Summary

Mr. Essner took distributions in 2014 and 2015 from an individual retirement account (IRA) he inherited. After reviewing material on the IRS website, he determined that the distributions were not taxable. He did not disclose them to his preparer, even though they were reported on Forms 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

In March of 2016, Mr. Essner received a letter from the IRS's AUR unit, proposing to increase his taxable income for 2014 by the IRA distribution.<sup>68</sup> In October 2016, Mr. Essner's 2014 return was also selected for examination. The examination addressed his expense deductions, but not his IRA distributions. During the examination, he received a notice of deficiency from the AUR unit increasing his income for 2014 by the IRA distribution.

Mr. Essner did not establish that any portion of the IRA distributions represented a non-taxable return of his late father's original investment. He argued, however, that the IRS was barred from assessing a deficiency because it had violated IRC § 7605(b), which prohibits the IRS from conducting (1) "unnecessary examination(s) or investigations," and (2) more than one "inspection of a taxpayer's books" unless "after investigation," the IRS notifies the taxpayer that an additional inspection is necessary.

The court explained that the AUR review process involved communication with the taxpayer and a comparison of third-party records with the taxpayer's return. These activities are not an examination or an inspection of the taxpayer's books and records.<sup>69</sup> In addition, because both the examination and AUR process resulted in adjustments, neither was an "unnecessary" investigation. Thus, while acknowledging that a "taxpayer ought not to have been subjected to such a byzantine examination," it held that the IRS did not violate IRC § 7605(b).<sup>70</sup>

**In *Rodriguez v. Federal Deposit Insurance Corp.*, the Supreme Court held that state law (and not federal common law) governs the ownership of a tax refund claimed on a consolidated return, potentially calling into question other federal common law doctrines and underscoring the importance of tax allocation agreements.<sup>71</sup>**

**Significance:** Following *Rodriguez v. Federal Deposit Insurance Corp.*, consolidated groups are more likely to find that the "wrong" member will unexpectedly own tax refunds under state law if the tax allocation agreement is unclear. Thus, it reminds consolidated groups to ensure their tax allocation agreements are clear.<sup>72</sup> This case is also significant because it may suggest that longstanding federal

<sup>68</sup> Mr. Essner's 2015 return would have been due in April 2016, after he received the letters. Perhaps this is why the IRS proposed and the court sustained an accuracy-related penalty under IRC § 6662 for that year.

<sup>69</sup> According to the IRS, an attempt to resolve a discrepancy between a taxpayer's return and third-party data does not constitute an examination, inspection, or reopening because the IRS merely is asking the taxpayer to explain the discrepancy. See Rev. Proc. 2005-32, § 4.03, 2005-1 C.B. 1206.

<sup>70</sup> *Essner*, 2020 WL 708950 at \*11. For further analysis, see, e.g., Bryan Camp, *Lesson From the Tax Court: IRS Automated Matching Program Not an 'Examination'*, TAX PROF BLOG (Feb. 17, 2020), [https://taxprof.typepad.com/taxprof\\_blog/2020/02/lesson-from-the-tax-court-irs-automated-matching-program-not-an-examination.html](https://taxprof.typepad.com/taxprof_blog/2020/02/lesson-from-the-tax-court-irs-automated-matching-program-not-an-examination.html).

<sup>71</sup> *Rodriguez v. Fed. Deposit Ins. Corp.*, 140 S. Ct. 713 (2020), *vacating and remanding* 914 F.3d 1262 (10th Cir. 2019).

<sup>72</sup> For further analysis, see, e.g., Anthony V. Sexton, *The Death of Bob Richards: Are There Broader Lessons?*, 166 TAX NOTES FEDERAL 2055 (Mar. 30, 2020).

common law doctrines, such as the substance-over-form doctrine, the sham transaction doctrine, and the step transaction doctrine are invalid because they are products of federal common law.<sup>73</sup>

## Summary

A bank holding company filed a consolidated federal income tax return to claim a refund on behalf of itself and its federally insured subsidiary, United Western Bank. By the time the IRS paid the refund, the Federal Deposit Insurance Corporation (FDIC) had taken control of the bank subsidiary, and the holding company had filed for bankruptcy. Both the trustee for the holding company (Simon Rodriguez) and the receiver for the bank (the FDIC) claimed the refund. The parties' tax allocation agreement did not unambiguously address who owned the refund, but one clause said any ambiguity would be resolved in favor of the bank. After the case was reviewed by a bankruptcy court<sup>74</sup> and a district court,<sup>75</sup> the United States Court of Appeals for the Tenth Circuit held the refund belonged to the FDIC as receiver for the bank.

The Tenth Circuit explained that “[f]ederal common law ... provides a framework for resolving this issue.”<sup>76</sup> Pursuant to a federal common law rule (called the *Bob Richards* rule), in the absence of an unambiguous tax allocation agreement to the contrary, a refund belongs to the consolidated group member responsible for the losses.<sup>77</sup> Thus, the Tenth Circuit said its holding was consistent with the *Bob Richards* rule.

On appeal to the Supreme Court, the FDIC declined to defend the *Bob Richards* rule, arguing instead that it was entitled to the refund under the tax allocation agreement. However, the Supreme Court said it “took this case to decide *Bob Richards*’s fate,”<sup>78</sup> and held that the rule was not a legitimate exercise of federal common lawmaking. It explained that in the absence of congressional authorization, federal common lawmaking must be “necessary to protect uniquely federal interests.”<sup>79</sup> Although this was a federal bankruptcy and a tax dispute, the Court observed that it was really about property rights, which are governed by state law.

**In *Texas v. United States*, the U.S. Court of Appeals for the Fifth Circuit held the “individual mandate” to buy insurance is unconstitutional because it is no longer backed by a tax penalty, and thus, cannot be an exercise of Congress’s power to tax.<sup>80</sup>**

**Significance:** Holding unconstitutional the “individual mandate” to purchase insurance is significant in its own right, but the *Texas* court’s analysis about why the mandate is unconstitutional is also significant. Under the court’s reasoning, regulatory mandates that would otherwise be unconstitutional are valid only if backed by a tax penalty of greater than \$0.

73 Although the Supreme Court’s opinion does not directly reference these doctrines, as one academic has observed, federal courts apply these doctrines in tax cases to disregard transactions that state law would honor. See Daniel Hemel, *Opinion Analysis: In Tax Refund Case, Justices Decide a Narrow Question But Leave Much Unresolved*, SCOTUSBLOG (Feb. 26, 2020), <https://www.scotusblog.com/2020/02/opinion-analysis-in-tax-refund-case-justices-decide-a-narrow-question-but-leave-much-unresolved/>.

74 *In re: United Western Bancorp v. Fed. Deposit Ins. Corp.*, 558 B.R. 409 (Bankr. D. Colo. 2016).

75 *United Western Bancorp*, 574 B.R. 876 (D. Colo. 2017).

76 *Rodriguez*, 914 F.3d at 1269.

77 See, e.g., *Barnes v. Harris*, 783 F.3d 1185, 1195 (10th Cir. 2015) (citing *In re Bob Richards Chrysler-Plymouth Corp.*, 473 F.2d 262, 265 (9th Cir. 1973)).

78 *Rodriguez*, 140 S. Ct. at 717.

79 *Id.*

80 *Texas v. United States*, 945 F.3d 355 (5th Cir. 2019).



## Summary

Enacted as part of the Patient Protection and Affordable Care Act (ACA),<sup>81</sup> IRC § 5000A(a) requires certain individuals to ensure that they and their dependents have minimum essential health insurance coverage or qualify for a coverage exemption (the “individual mandate”). IRC § 5000A(b) imposes a penalty called a “shared responsibility payment” on those who do not have coverage or qualify for an exemption.

In 2012, the Supreme Court held in *NFIB* that although Congress did not have the authority to require individuals to buy insurance under the Commerce Clause or the Necessary and Proper Clause of the U.S. Constitution, the individual mandate and shared responsibility payments were a constitutional exercise of its power to lay and collect taxes.<sup>82</sup> In December 2017, the TCJA reduced the “shared responsibility payment” to zero, effective January 1, 2019.<sup>83</sup>

A collection of state attorneys general and governors and two citizens filed a lawsuit challenging the continuing constitutionality of the ACA. The District Court for the Northern District of Texas held that setting the shared responsibility payment to zero rendered the individual mandate unconstitutional, and the unconstitutional provision could not be severed from any other part of the ACA.<sup>84</sup> The U.S. Court of Appeals for the Fifth Circuit affirmed that the individual mandate is no longer constitutional. Instead of deciding whether the rest of the ACA must be struck down, however, it remanded the case for additional analysis.<sup>85</sup>

<sup>81</sup> Pub. L. No. 111-148, 124 Stat. 119 (2010).

<sup>82</sup> *Nat'l Fed'n of Indep. Bus. v. Sebelius (NFIB)*, 567 U.S. 519 (2012).

<sup>83</sup> Pub. L. No. 115-97, § 11081, 131 Stat. 2054, 2092 (2017) (codified at IRC § 5000A(c)).

<sup>84</sup> *Texas v. United States*, 340 F. Supp. 3d 579 (N.D. Tex. 2018).

<sup>85</sup> In the meantime, another group of state attorneys general and governors, the state of California, and the U.S. House of Representatives petitioned the Supreme Court for review in support of the ACA. The Supreme Court granted certiorari. See *California v. Texas*, 140 S. Ct. 1262 (Mar. 2, 2020).



## Appeals From Collection Due Process Hearings Under IRC §§ 6320 and 6330

### TAXPAYER RIGHTS IMPACTED<sup>1</sup>

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to Appeal an IRS Decision in an Independent Forum*
- *The Right to a Fair and Just Tax System*

### OVERVIEW

Collection Due Process (CDP) is a procedural safeguard created by Congress as part of the IRS Restructuring and Reform Act of 1998 (RRA 98).<sup>2</sup> It requires the IRS to follow a set of procedures to ensure that taxpayers have due process protections when facing IRS levy and lien actions.<sup>3</sup> Prior to RRA 98, taxpayers with federal tax debts did not have many protections against the government's authority to collect for those tax debts. Congress mandated CDP rights to curb potential IRS abuses.<sup>4</sup> Treasury issued a robust set of regulations defining CDP procedures.<sup>5</sup>

A CDP hearing is an opportunity for a taxpayer to have an independent and meaningful review by the IRS Independent Office of Appeals (Appeals) prior to the IRS's first levy or immediately after its first Notice of Federal Tax Lien (NFTL) filing to enforce a tax liability. Under both lien and levy procedures, the taxpayer must return a signed and dated written request for a CDP hearing, including the reasons for requesting a hearing, within the applicable period.<sup>6</sup> At the hearing, the taxpayer has the right to raise any relevant issues related to the unpaid tax, the lien, or the proposed levy, including the appropriateness of the collection action, collection alternatives, spousal defenses, and, under certain circumstances, the underlying tax liability.<sup>7</sup> Some of the collection alternatives include installment agreements, requests for currently not collectible status, and

1 See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the IRC. See IRC § 7803(a)(3).

2 IRS Restructuring and Reform Act of 1998 (RRA 98), Pub. L. No. 105-206, § 3401, 112 Stat. 685, 746 (1998). Prior to RRA 98, the U.S. Supreme Court had held that a post-deprivation hearing satisfied due process concerns in the tax collection arena. See *United States v. Nat'l Bank of Commerce*, 472 U.S. 713, 726-31 (1985); *Phillips v. Comm'r*, 283 U.S. 589, 595-601 (1931).

3 IRC §§ 6320, 6330.

4 See S. REP. 105-174 (1998), at 67 *et seq.* (noting that "taxpayers are entitled to protections in dealing with the IRS that are similar to those they would have in dealing with any other creditor").

5 See Treas. Reg. §§ 301.6330-1 (pre-levy) and 301.6320-1 (post-filing Notice of Federal Tax Lien).

6 IRC §§ 6320(a)(3)(B) and 6330(a)(3)(B); Treas. Reg. §§ 301.6320-1(c)(2), Question and Answer (Q&A) (C1)(ii) and 301.6330-1(c)(2), Q&A (C1)(ii). The regulations require the IRS to provide the taxpayer an opportunity to "cure" any defect in a timely filed hearing request, including providing a reason for the hearing. Form 12153, Request for a Collection Due Process or Equivalent Hearing, includes space for the taxpayer to identify collection alternatives that he or she wants Appeals to consider, as well as examples of common reasons for requesting a hearing. See IRS, Form 12153, Request for Collection Due Process or Equivalent Hearing (Feb. 2020).

7 IRC §§ 6320(c) (lien) and 6330(c)(2) (levy). IRC § 6320(c) generally requires Appeals to follow the levy hearing procedures under IRC § 6330 for the conduct of the lien hearing, the review requirements, and the balancing test.

offers in compromise. CDP hearings also allow taxpayers to challenge the assessed liability if they received no prior opportunity to do so.<sup>8</sup>

Upon receiving the taxpayer's CDP hearing request, the IRS will assign the matter to a Settlement Officer (SO) within Appeals. If the taxpayer and the SO agree to a collection alternative, the parties will close the case and comply with the terms of the collection alternative. If the parties do not agree on a collection alternative, the SO will issue a Notice of Determination giving the taxpayer the right to a judicial review of that determination by the U.S. Tax Court. The taxpayer must file a petition in Tax Court within 30 days.<sup>9</sup> Taxpayers who fail to timely request a CDP hearing will be afforded an "equivalent hearing" that is similar to a CDP hearing, but there is no judicial review of an adverse determination.<sup>10</sup>

The standard of review the court applies depends on the nature of the issue it is reviewing. Where the validity of the underlying tax liability is properly at issue in the hearing, the court will review the amount of the tax liability on a *de novo*<sup>11</sup> basis, and the scope of its review extends to evidence introduced at the trial that was not a part of the administrative record.<sup>12</sup> Where the Tax Court is reviewing the appropriateness of the collection action or subsidiary factual and legal findings, the court will review these determinations under an abuse of discretion standard, a high standard which necessarily provides deference to an IRS Appeals determination unless it is "arbitrary, capricious, clearly unlawful, or without sound basis in fact or law."<sup>13</sup> When the review is for abuse of discretion, it is the position of the Tax Court that the scope of its review extends beyond the administrative record to include evidence adduced at trial, although in nonliability CDP cases appealable to the U.S. Courts of Appeals for the First, Eighth, and Ninth Circuits, the scope of review is limited to the administrative record.<sup>14</sup> However, in cases appealable to the other U.S. Courts of Appeals that have yet to address that precise issue in a precedential opinion, the court may consider new evidence not contained in the administrative record.<sup>15</sup> This means that taxpayers must be vigilant about developing their case fully at the administrative hearing, a requirement they may not be aware of based on the current CDP notices they receive from the IRS.

Appeals from CDP hearings have been one of the federal tax issues most frequently litigated in the federal courts since 2001. Our review of litigated issues for the period between June 1, 2019, and May 31, 2020, found 74 opinions on CDP cases. Each year, only a small fraction of taxpayers exercise their right to request an administrative hearing or petition for judicial review. Figure 2.1.1 depicts the filing trends for CDP cases.

<sup>8</sup> IRC § 6330(c).

<sup>9</sup> IRC § 6330(d) (setting forth the time requirements for obtaining judicial review of Appeals' determination); IRC §§ 6320(a)(3)(B) and 6330(a)(3)(B) (setting forth the time requirements for requesting a CDP hearing for lien and levy matters, respectively).

<sup>10</sup> Treas. Reg. §§ 301.6320-1(i)(2), Q&A (I6) and 301.6330-1(i)(2), Q&A (I6); *Business Integration Servs., Inc. v. Comm'r*, T.C. Memo. 2012-342 at 6-7; *Moorhouse v. Comm'r*, 116 T.C. 263 (2001). A taxpayer can request an equivalent hearing by checking a box on Form 12153, by making a written request, or by confirming that he or she wants the untimely CDP hearing request to be treated as an equivalent hearing when notified by Collection of an untimely CDP hearing request. Internal Revenue Manual (IRM) 5.19.8.4.3, Equivalent Hearing (EH) Requests and Timeliness of EH Requests (Nov. 1, 2007).

<sup>11</sup> Under a *de novo* standard of review, the Tax Court will consider all relevant evidence introduced at trial. *Jordan v. Comm'r*, 134 T.C. 1, 8 (2010).

<sup>12</sup> The legislative history of RRA 98 addresses the standard of review courts should apply in reviewing Appeals' CDP determinations. H.R. REP. NO. 105-599, at 266. See also IRS Chief Counsel Notice CC-2014-002, Proper Standard of Review for Collection Due Process Determinations (May 5, 2014).

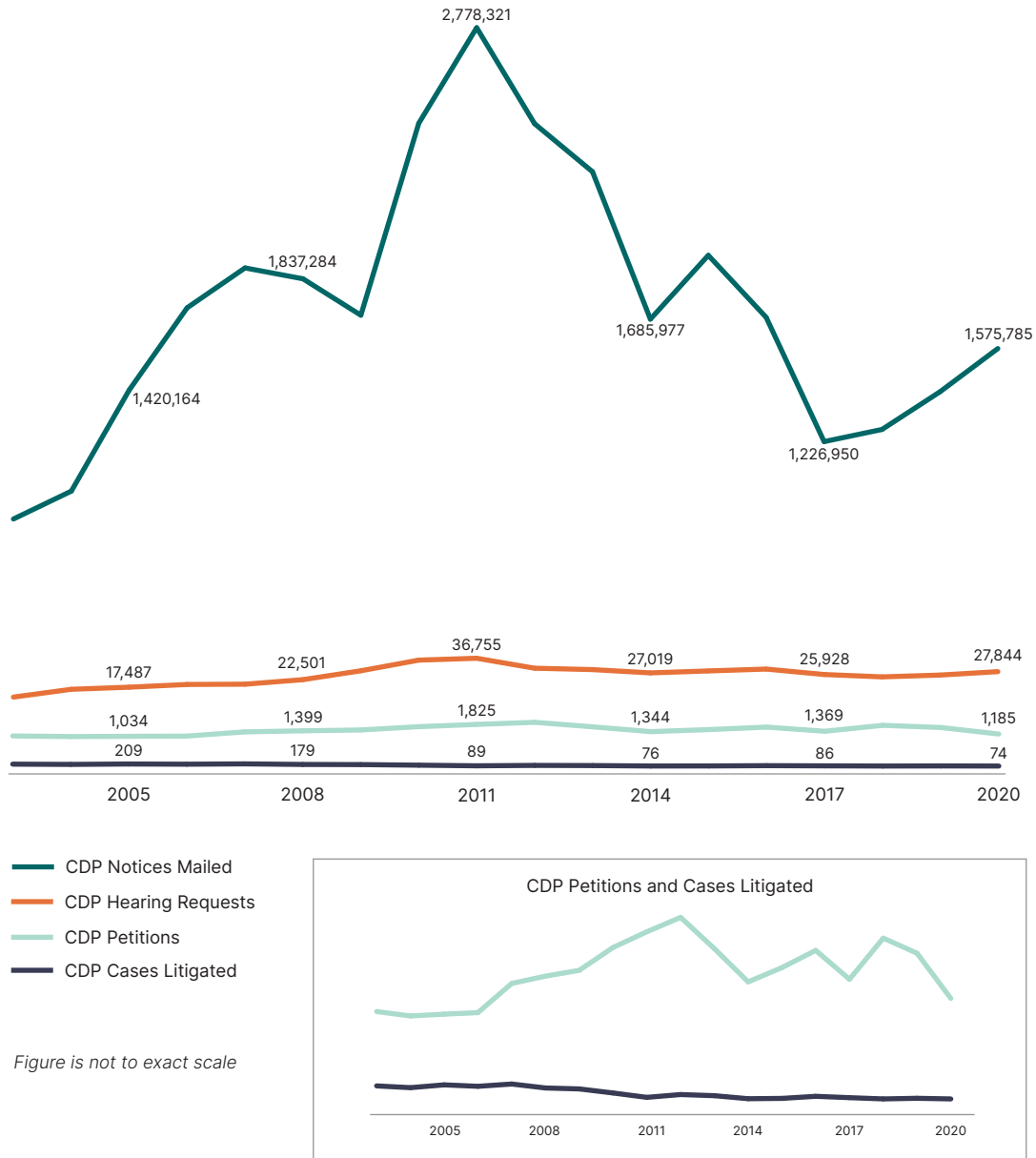
<sup>13</sup> See, e.g., *Murphy v. Comm'r*, 469 F.3d 27 (1st Cir. 2006); *Dalton v. Comm'r*, 682 F.3d 149 (1st Cir. 2012).

<sup>14</sup> See *Kasper v. Comm'r*, 150 T.C. 8 at 19 n.13 (2018); see also *Keller v. Comm'r*, 568 F.3d 710, 718 (9th Cir. 2009), *aff'd* in part as to this issue T.C. Memo. 2006-166; *Murphy v. Comm'r*, 469 F.3d 27; *Robinette v. Comm'r*, 439 F.3d 455 (8th Cir. 2006), *rev'd* 123 T.C. 85 (2004).

<sup>15</sup> See IRC § 7482(b)(1)(G)(i); *Rozday v. Comm'r*, 703 F. App'x 138, 139 (3d Cir. 2017); *Tuka v. Comm'r*, 324 F. App'x 193, 195 n.2 (3d Cir. 2009); *Emery Celli Cuti Brinckerhoff & Abady, P.C. v. Comm'r*, T.C. Memo. 2018-55; *Robinette v. Comm'r*, 123 T.C. 85 at 103.

FIGURE 2.1.1<sup>16</sup>

Collection Due Process Notices, Hearing Requests, Petitions, and Litigation



16 IRS, Counsel Automated Tracking System and IRS, Compliance Data Warehouse (CDW), Individual Master File (IMF) Transaction History table for the period June 1 to May 31 for 2010 to 2020.

One of the reasons for this may be that the CDP notice format is confusing for taxpayers. For instance, Letter 1058, Final Notice, Notice of Intent to Levy and Notice of Your Right to a Hearing, is framed as a billing notice from the IRS.<sup>17</sup> The notice begins by informing the taxpayer about the amount due and requests payment. It is not until halfway down the first page that the taxpayer is informed about CDP hearings. The notice consists of several pages, so the key CDP paragraph may get missed. In addition, where to send the form may also be confusing to taxpayers. The hearing request must be sent (or hand delivered if permitted) to the office and address as directed on the CDP notice.<sup>18</sup> However, many CDP notices, such as Letter 1058, provide different addresses for responding with payment or a CDP hearing request. This is one source of confusion for taxpayers and led to missed filing deadlines.<sup>19</sup> The IRS recently changed its policy and will now accept as timely any CDP request received at any address on the CDP notice as long as it is postmarked before the deadline.<sup>20</sup> Another criticism of the CDP notices is that they do not explain to a taxpayer why CDP rights are important. The notices do not explain what a CDP hearing is, why a taxpayer would want to request one, and does not adequately explain equivalent hearings.<sup>21</sup>

While the CDP provisions have been in place for over 20 years, a number of questions still remain regarding the Tax Court's authority and jurisdiction in CDP cases. For example, it is not clear whether IRS administrative and mailing processes provide adequate notice to identify when the 30-day period to petition the court following receipt of a Notice of Determination begins. The IRS Office of Chief Counsel Directives Manual (CCDM) provides guidance on the settlement of docketed CDP cases. It provides that settlements through acceptance of a collection alternative such as a new offer in compromise or installment agreement where there has been no abuse of discretion by Appeals may be appropriate when it is necessary for the fair treatment of a taxpayer or when a lack of settlement could result in unfavorable legal precedent. Otherwise, the determination should be defended and the taxpayer should be encouraged to submit a collection alternative after the litigation is concluded.<sup>22</sup> However, the CCDM goes on to say that Counsel does not have the authority to directly accept collection alternatives from taxpayers on behalf of the IRS. If Counsel seeks to settle a docketed CDP case through a collection alternative, Counsel must request the assistance of the IRS to evaluate and accept or reject the proposed collection alternative.<sup>23</sup>

17 IRS, Letter 1058, Final Notice, Notice of Intent to Levy and Notice of Your Right to a Hearing (Dec. 2019).

18 Treas. Reg. § 301.6320-1(c)(2), Q & A (6). See also IRM 5.1.9.3.2(8), Request for CDP Hearing Rights (Aug. 30, 2018).

19 Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2020-10-054, *Review of the Independent Office of Appeals Collection Due Process Program* 6 (Aug. 21, 2020).

20 Office of Chief Counsel, Treatment of Incorrectly-Addressed CDP Hearing Requests, POSTS-113081-18 (Dec. 12, 2019); SB/SE, Interim Guidance for Collection Due Process (CDP) Requests, SBSE-05-0720-0049 (July 6, 2020).

21 National Taxpayer Advocate 2018 Annual Report to Congress 212-222 (Most Serious Problem: *Collection Due Process Notices: Despite Recent Changes to Collection Due Process Notices, Taxpayers Are Still at Risk for Not Understanding Important Procedures and Deadlines, Thereby Missing Their Right to an Independent Hearing and Tax Court Review*).

22 CCDM § 35.5.2.19 (3) (Aug. 6, 2019).

23 *Id.*

The IRS could be more selective with which taxpayers receive a CDP notice. TAS previously suggested that the IRS should adopt an algorithm that would compare its internal data on a taxpayer (assets and income) to the taxpayer's Allowable Living Expenses in order to detect if a taxpayer is at risk for economic hardship or could qualify for a collection alternative.<sup>24</sup> This approach could be used prior to deciding if a taxpayer should receive a CDP notice.

The low response rate will likely be complicated further by events related to the COVID-19 pandemic. On March 25, 2020, the IRS announced the People First Initiative, which provided much-needed relief to taxpayers, particularly by postponing compliance actions, which included the issuance of liens and levies.<sup>25</sup> In particular, the IRS directed that if the taxpayer's due date for requesting a CDP hearing fell on or after April 1, 2020, and before July 15, 2020, that due date was postponed to July 15, 2020.<sup>26</sup> Following the shelter-in-place order due to the COVID-19 pandemic, the IRS generated almost 20 million notices (including 47,497 CDP notices providing hearing rights for automated levies that already occurred), which were not mailed on time.<sup>27</sup> As a result, the notices mailed bore dates that passed, and some of the notices required taxpayers to respond by deadlines that also had passed.

TAS recommended the IRS communicate a revised deadline to request a CDP hearing that was 30 days after the IRS mailed out its backlogged CDP notices and include an insert to that effect. The IRS agreed to include Notice 1052-C, Important: You Have Additional Time to Appeal, with the backlogged CDP notices. However, 28,125 CDP notices were inadvertently sent without the insert providing the extended date, and so the IRS issued a subsequent letter to these taxpayers, providing 30 days from when the subsequent letter was sent.<sup>28</sup> As a result, we anticipate confusion for taxpayers who wonder whether their deadline to request a CDP hearing was based on the original CDP notice date, the date provided on the Notice 1052-C, or the date provided to some taxpayers in the subsequent letter; or if the taxpayer even understands the significance of this moving target, leaving some with the impression of a wrong date and not filing a CDP hearing request.<sup>29</sup>

24 National Taxpayer Advocate 2018 Annual Report to Congress 228-239 (Most Serious Problem: *Economic Hardship: The IRS Does Not Proactively Use Internal Data to Identify Taxpayers at Risk of Economic Hardship Throughout the Collection Process*).

25 IRS, IR-2020-59, IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>).

26 See IRS Notice 2020-23, 2020-18 I.R.B. 742.

27 IRS response to TAS information request (Nov. 24, 2020).

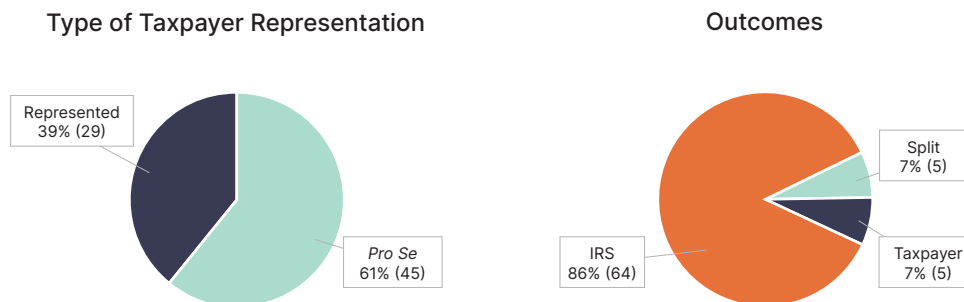
28 *Id.*

29 Some practitioners have already identified problems that could occur as a result of these backdated notices. For example, see Keith Fogg, *Sending Notices With Bad Dates*, PROCEDURALLY TAXING, <https://procedurallytaxing.com/sending-notices-with-bad-dates/> (June 30, 2020).

## ANALYSIS OF LITIGATED CASES

Taxpayers most often are not represented in CDP litigation, and in most cases the IRS prevails. During this reporting period there were seven cases brought by business taxpayers and 67 by individual taxpayers.

**FIGURE 2.1.2<sup>30</sup>**



We usually see a wide range of issues discussed in CDP hearings. This year's review is no different. For example, taxpayers used the CDP hearing process to contest penalties,<sup>31</sup> request collection alternatives,<sup>32</sup> and request interest abatement.<sup>33</sup>

## CONCLUSION

CDP hearings play an important role in overall tax administration by allowing taxpayers to contest a lien or levy before (or soon after) the IRS takes the action. Petitioning the Tax Court allows for judicial review of how the IRS and Appeals are applying the law and following procedures. Oftentimes, the taxpayer does not prevail in a CDP hearing. One reason for this is because many cases are reviewed under the abuse of discretion standard,<sup>34</sup> or taxpayers do not fully develop their cases.<sup>35</sup> However, the analysis that judicial review provides is an important protection for our tax system and ensuring taxpayer rights.

## Recommendations to Mitigate Disputes

The National Taxpayer Advocate recommends that:

1. The IRS should use its internal data pertaining to a taxpayer's income and assets compared to his or her Allowable Living Expenses to determine if a taxpayer is in economic hardship or qualifies for

<sup>30</sup> Twenty-nine taxpayers appeared with representation and 45 had no representation. Of the 74 opinions issued, the taxpayers prevailed in five, the IRS prevailed in 64, and there was a split opinion in five cases, two of which were remanded.

<sup>31</sup> *Kestin v. Comm'r*, 153 T.C. 14 (2019).

<sup>32</sup> See *Gilmore v. Comm'r*, T.C. Memo. 2019-97.

<sup>33</sup> See *Goldberg v. Comm'r*, T.C. Memo. 2020-38.

<sup>34</sup> See *Brown v. Comm'r*, T.C. Memo. 2019-121.

<sup>35</sup> See *Rockafellor v. Comm'r*, T.C. Memo. 2019-160.

- a collection alternative, such as an offer in compromise, prior to issuing an intent to levy notice or NFTL.<sup>36</sup> Working with taxpayers ahead of time could negate the need for further collection action.
2. Revise CDP notices so that the CDP hearing aspect is a separate notice from the collection portion of the notice. Provide the taxpayer an understanding of what a CDP hearing is and why a taxpayer would want to request a CDP hearing.

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36 See National Taxpayer Advocate 2018 Annual Report to Congress 228-239 (Most Serious Problem: *Economic Hardship: The IRS Does Not Proactively Use Internal Data to Identify Taxpayers at Risk of Economic Hardship Throughout the Collection Process*); National Taxpayer Advocate 2019 Annual Report to Congress 89-96 (Most Serious Problem: *Offer in Compromise: The IRS's Administration of the Offer in Compromise Program Falls Short of Congress's Expectations*).



## Civil Actions to Enforce Federal Tax Liens or to Subject Property to Payment of Tax Under IRC § 7403

### TAXPAYER RIGHTS IMPACTED<sup>1</sup>

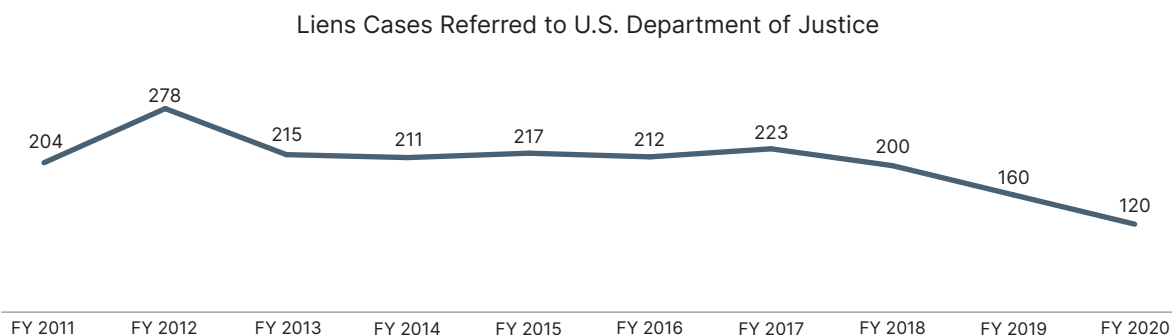
- *The Right to Appeal an IRS Decision in an Independent Forum*
- *The Right to Finality*
- *The Right to Privacy*
- *The Right to a Fair and Just Tax System*

### OVERVIEW

IRC § 7403 authorizes the Department of Justice (DOJ) to bring a civil action to enforce a federal tax lien and to foreclose on taxpayer property, including a personal residence, to satisfy an outstanding tax liability. If the United States proves the lien is valid, the court will typically issue an order of sale that (1) authorizes the United States to foreclose on the taxpayer's subject property and (2) describes how the proceeds of sale should be distributed. In *Rodgers*, the Supreme Court held that courts have essentially no discretion to refuse to authorize a sale simply to protect the interest of the delinquent taxpayer.<sup>2</sup>

In fiscal year (FY) 2020, 120 federal tax lien cases were referred to the DOJ, down 25 percent from FY 2019. This continues a downward trend in referrals to the DOJ over the past four years.

**FIGURE 2.2.1**



Oddly enough, the decreasing number of referrals to the DOJ have not correlated to the number of lien enforcement cases actually litigated in federal courts. During the reporting period from June 1, 2019, to May 31, 2020, we identified 71 opinions that involved civil actions to enforce liens under IRC § 7403. This represents a 37 percent increase from the 52 cases reported last year, and an 82 percent increase from the

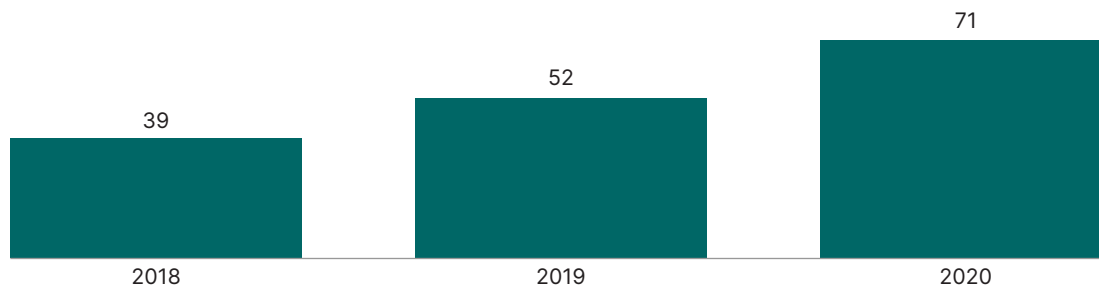
<sup>1</sup> See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the IRC. See IRC § 7803(a)(3).

<sup>2</sup> *United States v. Rodgers*, 461 U.S. 677 (1983).

39 cases reported in the period ending May 2018. Perhaps we will see a decline in litigated cases in upcoming years, as there may be a lag due to the time it takes the DOJ to develop its lien enforcement cases. The higher percentage of lien enforcement cases referred to the DOJ that are actually litigated could also be an indication that the IRS is being more selective about referring cases to the DOJ for prosecution.

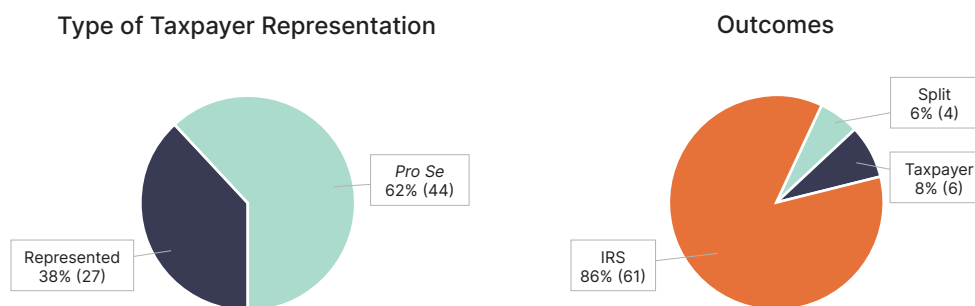
FIGURE 2.2.2

Lien Enforcement Cases Litigated, 2018-2020



## ANALYSIS OF LITIGATED CASES

Of the 71 lien enforcement cases adjudicated during the reporting period ending in May 2020, 44 (62 percent) taxpayers were unrepresented (*pro se*), while 27 (38 percent) were represented by counsel. Taxpayers prevailed in just six of the 71 lien enforcement cases. The IRS prevailed in 61 of these cases, with four cases resulting in split decisions where the IRS and taxpayers each prevailed in part.

FIGURE 2.2.3<sup>3</sup>

<sup>3</sup> TAS identified seven lien enforcement cases where the taxpayer was unresponsive and there was no attorney of record as of the date of the court's opinion. Therefore, we categorized these cases as *pro se*. See *United States v. Harding*, 125 A.F.T.R.2d 1265 (E.D. Cal. 2020); *United States v. Bonadio*, 125 A.F.T.R.2d 2142 (N.D.N.Y. 2020); *United States v. Patchell*, 125 A.F.T.R.2d 642 (E.D.N.Y. 2020); *United States v. Anderson*, 2019 U.S. Dist. LEXIS 186951 (W.D. Wis. Sept. 24, 2019); *United States v. Clark*, 2019 U.S. Dist. LEXIS 127841 (D.S.C. July 9, 2019); *United States v. John*, 2020 U.S. Dist. LEXIS 30373 (E.D.N.Y. Feb. 20, 2020); *United States v. John*, 2020 U.S. Dist. LEXIS 36708 (E.D.N.Y. Mar. 2, 2020).

Ordering the sale of a taxpayer's property is a powerful collection tool and greatly impacts all parties who have an interest in the property subject to the lien. This is particularly true when the lien involves a taxpayer's personal residence. Among the 71 litigated cases this year, 32 involved the enforcement of a lien against a taxpayer's personal residence.

Lien enforcement litigation typically focuses on applying well-settled legal principles. For example, it may involve the application of the *Rodgers*<sup>4</sup> factors to determine whether there should be a forced sale when the property involves a third party without a federal tax debt. While such analysis may be fact-intensive, very few lien enforcement cases break new ground or add to the legal landscape under IRC § 7403 — and such was the case this year.

## CONCLUSION

Lien enforcement cases are becoming an increasingly frequent source of litigation and often infringe on the rights of taxpayers and third parties. The National Taxpayer Advocate is concerned with the following aspects of the lien enforcement process:

First, seizure of a taxpayer's principal residence may have a devastating impact on the taxpayer and his or her family, especially if the taxpayer is at risk of economic hardship. Foreclosing on a home when a taxpayer is experiencing economic hardship runs contrary to a taxpayer's *right to a fair and just tax system*.<sup>5</sup> Congress intended that foreclosure of a principal residence should be the last resort.<sup>6</sup>

Second, Collection Due Process (CDP) notice and hearing procedures described in IRC §§ 6320 and 6330 are not extended to third parties who have an interest in property subject to an IRC § 7403 lien enforcement. This deprives these affected third parties of the *right to challenge the IRS's position and be heard* prior to a lien enforcement suit. Allowing affected third parties to raise defenses and propose collection alternatives in a CDP hearing could help reduce litigation by resolving these issues earlier.<sup>7</sup>

The National Taxpayer Advocate had included recommendations to address both of these concerns in her Purple Book.<sup>8</sup> At the recommendation of the Office of the Taxpayer Advocate, the IRS has written procedures into its Internal Revenue Manual (IRM) that provide substantial taxpayer protections before a case may be

4 *United States v. Rodgers*, 461 U.S. 677 (1983).

5 National Taxpayer Advocate 2020 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 46-47 (Provide Taxpayer Protections Before the IRS Recommends the Filing of a Lien Foreclosure Suit on a Principal Residence).

6 The Senate Finance Committee report stated that the seizure of the taxpayer's principal residence "should only be seized to satisfy a tax liability as a last resort." S. REP. NO. 105-174, at 86-87 (1998).

7 National Taxpayer Advocate 2021 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 47-48 (Provide Taxpayer Protections Before the IRS Recommends the Filing of a Lien Foreclosure Suit on a Principal Residence).

8 The National Taxpayer Advocate has submitted these recommendation in her 2020 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 46-47 (Provide Taxpayer Protections Before the IRS Recommends the Filing of a Lien Foreclosure Suit on a Principal Residence) and the 2021 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 47-48 (Provide Taxpayer Protections Before the IRS Recommends the Filing of a Lien Foreclosure Suit on a Principal Residence).

referred to the DOJ for the filing of a lien foreclosure suit.<sup>9</sup> However, the IRM is simply a set of instructions to IRS staff, without the force of law, and may be modified or rescinded by the IRS at any time.

### Recommendations to Mitigate Disputes

The National Taxpayer Advocate recommends that:

1. Congress amend IRC § 7403 to preclude IRS employees from requesting that the DOJ file a civil action in U.S. District Court seeking to enforce a tax lien and foreclose on a taxpayer's principal residence, unless the employee has determined that (1) the taxpayer's other property or rights to property, if sold, would be insufficient to pay the amount due, including the expenses of the proceedings, and (2) the foreclosure and sale of the residence would not create an economic hardship due to the financial condition of the taxpayer.
2. Congress amend IRC §§ 6320 and 6330 to extend CDP rights to "affected third parties" who hold legal title to property subject to IRS collection actions.

<sup>9</sup> See, e.g., IRM 5.17.4.8.2.5, Lien Foreclosure on a Principal Residence (May 23, 2019); IRM 5.17.12.20.2.2.4, Additional Items for Lien Foreclosure of Taxpayer's Principal Residence (May 24, 2019); IRM 25.3.2.4.5.2(3), Actions Involving the Principal Residence of the Taxpayer (May 29, 2019).

## Accuracy-Related Penalty Under IRC § 6662(b)(1) and (b)(2)

### TAXPAYER RIGHTS IMPACTED<sup>1</sup>

- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to Appeal an IRS Decision in an Independent Forum*
- *The Right to a Fair and Just Tax System*

### OVERVIEW

The accuracy-related penalty is frequently one of the most litigated tax issues. This penalty may be imposed if the taxpayer's negligence or disregard of rules or regulations causes an underpayment of tax required to be shown on the taxpayer's return,<sup>2</sup> or if an underpayment exceeds a computational threshold called a substantial understatement.<sup>3</sup> The accuracy-related penalty does not apply to any portion of an underpayment where the taxpayer acted with reasonable cause and in good faith.<sup>4</sup> Additionally, the supervisor of the employee making the penalty determination generally must provide written approval of the accuracy-related penalty before the "initial determination of such assessment."<sup>5</sup> There is an exception to the written supervisory approval requirement if the penalty was automatically calculated through electronic means.<sup>6</sup>

Much of the accuracy-related penalty litigation this year and in previous years has focused on either whether the taxpayer met the reasonable cause exception or whether the IRS failed to secure timely supervisory approval. Still, the overall number of accuracy-related penalty cases has been declining, as shown in Figure 2.3.1.<sup>7</sup> We identified only 64 opinions issued between June 1, 2019, and May 31, 2020, where taxpayers litigated the negligence or substantial understatement components of the accuracy-related penalty. During this same period, taxpayers petitioned Tax Court in 569 cases where the accuracy-related penalty for negligence or substantial understatement of tax was an issue during the examination.<sup>8</sup>

1 See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the IRC. See IRC § 7803(a)(3).

2 IRC § 6662(b)(1).

3 IRC § 6662(b)(2).

4 IRC § 6664(c)(1).

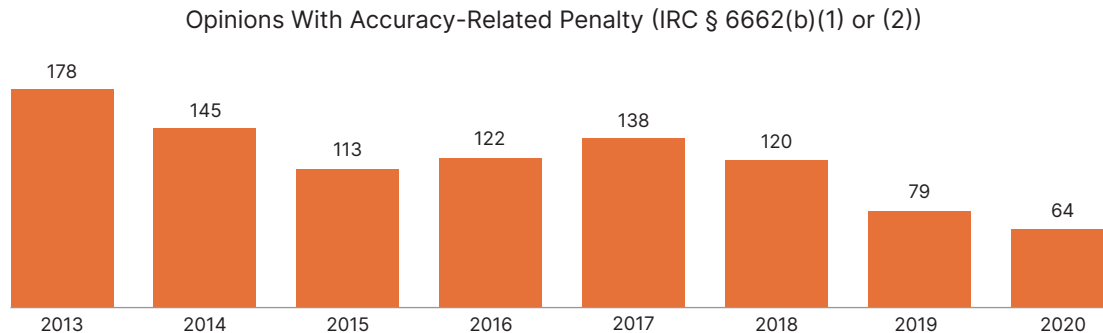
5 IRC § 6751(b)(1).

6 IRC § 6751(b)(2).

7 The periods in the figure refer to a one-year period ending on May 31 of each year.

8 IRS Appeals response to TAS information request (Dec. 3, 2020) showing cases petitioned to Tax Court between June 1, 2019 and May 31, 2020. TAS matched this data to the cases identified by examination where the accuracy penalty was recommended as recorded in the Examination Operational Automation Database on the IRS, Compliance Data Warehouse (Dec. 2020).

FIGURE 2.3.1



Taxpayers were more successful in challenging the accuracy-related penalty in smaller dollar cases. Where taxpayers prevailed in full or in part (30 percent of all cases), the average amount of the penalty in controversy was about \$61,000; whereas in cases where the IRS prevailed, the average amount was about \$317,000.<sup>9</sup> Almost two-thirds of the accuracy-related penalty cases involved business taxpayers, including 27 sole proprietorships, eight C corporations, six partnerships, and one S corporation. In 17 cases, the penalty was asserted based on negligence, in 23 cases it was asserted due to a substantial understatement, and in 15 cases on both grounds.<sup>10</sup>

## ANALYSIS OF LITIGATED CASES

In past reports, we have discussed the significant controversy over the IRS's compliance with the IRC § 6751(b) supervisory approval requirement.<sup>11</sup> Of the 19 opinions this year where taxpayers prevailed in full or in part, only five (26 percent) were due to the IRS's failure to obtain written supervisory approval as required. This is a significant decrease from last year, where 19 of the 27 opinions where taxpayers prevailed in full or in part (70 percent) were due to the IRS's failure to comply with the requirement. This decrease could be due to prior court opinions and the increased attention by the IRS to documenting supervisory approval prior to communicating the penalties to the taxpayer in writing,<sup>12</sup> or the IRS Office of Chief Counsel guidance advising its attorneys to concede cases where the IRS does not have sufficient evidence to show compliance with IRC § 6751(b).<sup>13</sup>

TAS recommended that the IRS and the Department of Treasury add a guidance project concerning the supervisory approval requirement in IRC § 6751(b) to the list of priority guidance for 2020-2021. Although guidance on IRC § 6751(b) was not included in the joint IRS and Department of Treasury Priority Guidance Plan for 2019-2020, the Office of Management and Budget (OMB) included in its unified agenda a proposal for guidance. OMB's proposal would require the supervisory approval to occur before the IRS sends a written

<sup>9</sup> The amounts in controversy ranged from \$618 to \$8,313,303. Of the 64 cases, only 50 of the cases stated the amount of the accuracy-related penalty that was in controversy and the averages in the text reflect only those 50 cases.

<sup>10</sup> In nine opinions, the basis for the accuracy-related penalty was not stated.

<sup>11</sup> See *Chai v. Comm'r*, 851 F.3d 190 (2d Cir. 2017); *Graev v. Comm'r*, 149 T.C. 485 (2017), *supplementing and overruling in part* 147 T.C. 460 (2016).

<sup>12</sup> See Internal Revenue Manual (IRM) 20.1.5.2.3.1, Documenting Supervisory Approval of Penalties (Apr. 22, 2019).

<sup>13</sup> See IRS Chief Counsel Notice, Section 6751(b) Compliance Issues for Penalties in Litigation, CC-2018-006 (June 6, 2018).

communication that includes the penalty and offers appeal rights.<sup>14</sup> In 2020, the IRS updated the Internal Revenue Manual (IRM) to instruct employees to obtain written supervisory approval before sending a written communication that offers the taxpayer an opportunity to sign an agreement or consent to an assessment of the penalty, or request a conference with the IRS Independent Office of Appeals.<sup>15</sup> The IRM specifies that prior to obtaining supervisory approval, employees can share written communications with the taxpayer reflecting proposed adjustments as long as they do not offer the opportunity to sign an agreement or consent, or request an Appeals conference.

This year, we noted only one case where the court found the IRS did not have to obtain supervisory approval because the penalty was automatically calculated through electronic means.<sup>16</sup> However, the concern remains that the IRS continues to use electronic means to calculate negligence for the accuracy-related penalty and assert it with no human review of the computer's negligence determination.<sup>17</sup>

## Key Decisions

The vast majority of the cases we reviewed this year mentioned the IRC § 6751(b) requirement, whether to document compliance, discuss whether the record should be reopened for the IRS to demonstrate compliance, or explain why the IRS did not have the burden to demonstrate such compliance. The key decisions we discuss below are all significant because they address novel issues related to IRC § 6751(b).

### *Belair Woods, LLC v. Commissioner*<sup>18</sup>

This case is significant because the court declined to require supervisory approval before the first time the IRS communicated the penalties to the taxpayer in writing. The case draws a new line between what is deemed a mere proposal and what is a final decision to assert the penalties.

The revenue agent sent the taxpayer a summary report of proposed adjustments along with Letter 1807, TEFRA Partnership Cover Letter for Summary Report, and invited the taxpayer to a closing conference to discuss the proposed adjustments, including accuracy-related penalties. After two conferences with no agreement, the revenue agent obtained supervisory approval of the penalties and issued a 60-day letter offering appeal rights. The court found the Letter 1807 and summary report with the tentative proposed adjustments did not trigger the supervisory approval requirement, but the subsequent 60-day letter did. The court reasoned that the 60-day letter was akin to a 30-day letter in *Clay v. Commissioner*<sup>19</sup> in that it formally communicated the IRS's definite decision to assert the penalties and gave appeal rights.<sup>20</sup> In rejecting the taxpayer's argument, the court noted: "The statute requires approval for the initial determination of a penalty assessment, not for a tentative proposal or hypothesis."<sup>21</sup>

<sup>14</sup> Office of Information and Regulatory Affairs, Office of Management and Budget, Rules for Supervisory Approval of Proposed Penalties, RIN 1545-BP63 (Spring 2020).

<sup>15</sup> Memorandum from Director, Examination Field and Campus Policy, to Area Directors, Field Examination, SBSE-04-0920-0054 (Sept. 24, 2020).

<sup>16</sup> *Purdie v. Comm'r*, T.C. Summ. Op. 2020-6.

<sup>17</sup> See IRM 4.19.3.22.1.4, Accuracy-Related Penalties (Sept. 21, 2020).

<sup>18</sup> 154 T.C. No. 1, 2020 WL 58313 (Jan. 6, 2020). Although we reviewed this case, it was not included in the count of 64 opinions we reported because it was not a final decision on the merits of the accuracy-related penalty. However, because of the significance of this summary judgment opinion on the IRC § 6751(b) issue, it warrants a discussion here.

<sup>19</sup> 152 T.C. 223 (2019).

<sup>20</sup> 154 T.C. No. 1, 2020 WL 58313, at \*5 (Jan. 6, 2020) (citing IRM 8.19.1.6.8.4(3) (Oct. 1, 2013)).

<sup>21</sup> 154 T.C. No. 1, 2020 WL 58313, at \*5 (Jan. 6, 2020).



***Frost v. Commissioner***<sup>22</sup>

In an issue of first impression, the Tax Court established that once the IRS proves supervisory approval before a formal written communication (here the notice of deficiency), the IRS has met its initial burden of production and does not need to show there were no prior formal communications about the penalty. This holding could create difficulty for taxpayers who have misplaced or did not retain all IRS written communications and cannot prove a prior communication.<sup>23</sup>

The IRS disallowed the taxpayer's business expense deductions and asserted the accuracy-related penalty during an examination. The IRS provided a Civil Penalty Approval Form, which was signed over a year before the IRS issued the notice of deficiency. The court found the IRS only had to show it had supervisory approval before issuing the notice of deficiency, and it would not require the IRS to prove a negative (*i.e.*, the absence of any prior formal communications). It noted that evidence of prior formal communication would be available to the taxpayer since the taxpayer would have received it.

***Wells Fargo & Company v. Commissioner***<sup>24</sup>

The Eighth Circuit's opinion included two significant holdings: (1) taxpayers must show actual reliance on a relevant authority to show reasonable basis, and (2) written supervisory approval is not required for penalties that merely reduce a taxpayer's refund. The first holding has broad implications for attorney-client privilege as attorneys could be forced to disclose opinions given to taxpayers to show the taxpayer knew about the relevant authority. The second holding exposes a loophole in the IRC § 6751(b) supervisory approval requirement because the IRS can assert penalties without supervisory approval as long as the penalties only reduce a refund and do not result in an assessment.

The taxpayer entered into a "structured trust advantaged repackaged securities" (STARS) transaction. After the IRS disallowed the foreign tax credits and interest deduction, the taxpayer paid the deficiency and filed a refund suit. The IRS first asserted the accuracy-related penalty in litigation. The United States Court of Appeals for the Eighth Circuit affirmed the lower court's ruling that a portion of the STARS transaction was a sham. The taxpayer argued that it should not be liable for an accuracy-related penalty because it had a reasonable basis for the transaction since its return position was objectionably reasonable under the relevant authorities. However, the Eighth Circuit held that it was not enough to show the return position was reasonable when considering the authorities. The taxpayer must provide evidence that it actually knew about the relevant authorities and relied on them. Because the taxpayer could not provide such evidence, it did not establish that it had a reasonable basis for its position.

Concerning the supervisory approval requirement, the Eighth Circuit concluded that the supervisory approval requirement in IRC § 6751(b) did not apply because approval is only required if the penalties are eventually assessed. In this case, the penalty was never assessed by a revenue agent during an exam or proposed by the IRS in a notice of deficiency but was first raised by the government in litigation as an offset defense to the taxpayer's

<sup>22</sup> 154 T.C. No. 2, 2020 WL 70716 (Jan. 7, 2020).

<sup>23</sup> The burden on taxpayers who have misplaced IRS communications would be alleviated if the IRS were to make all notices and correspondence accessible in taxpayers' online accounts. See Most Serious Problem: *Online Records Access: Limited Electronic Access to Taxpayer Records Through an Online Account Makes Problem Resolution Difficult for Taxpayers and Results in Inefficient Tax Administration*, *supra*.

<sup>24</sup> 957 F.3d 840 (8th Cir. 2020), *aff'g* 260 F.Supp.3d 1140 (D. Minn. 2017).

claim for refund. As a result, the penalty would never be assessed or collected by the IRS. The court noted that procedural requirements are generally relaxed when a penalty is asserted as a refund offset defense.

## CONCLUSION

This year, we saw a continued decrease in accuracy-related penalty cases. Although the requirement for written supervisory approval continues to be a hotly-contested issue, there was a noticeable drop in the percentage of taxpayers who prevailed. Nonetheless, legislative changes and regulatory guidance could mitigate future disputes by clarifying exactly when the supervisory approval is required. Additionally, legislation could protect taxpayers' rights by requiring supervisory approval not only in cases where a penalty is assessed, but also where it is included in a final judicial decision. Legislation could also ensure that where the IRS proposes the accuracy-related penalty for negligence based on a computer calculation, a supervisor has reviewed to ensure the penalty is appropriate. The IRS could also accomplish this last objective administratively by ending its practice of relying solely on a computer program to determine negligence.

## Recommendations to Mitigate Disputes

The National Taxpayer Advocate recommends that Congress:<sup>25</sup>

1. Amend IRC § 6751(b)(1) to clarify that no penalty under Title 26 shall be assessed or entered in a final judicial decision unless the penalty is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate *prior to the first time the IRS sends a written communication to the taxpayer proposing the penalty as an adjustment.*
2. Amend IRC § 6751(b)(2)(B) to clarify that the exception for "other penalties automatically calculated through electronic means" does not apply to the negligence penalty under IRC § 6662(b)(1).

The National Taxpayer Advocate recommends that the IRS:

1. Issue regulatory guidance to clarify that the supervisory approval under IRC § 6751(b) must occur prior to the first time the IRS sends a written communication to the taxpayer proposing the penalty as an adjustment.
2. Update its IRM to clarify that where the IRS uses a computer program to determine the accuracy-related penalty based on negligence, an IRS employee must first contact the taxpayer and review the facts and circumstances prior to determining the applicability of the negligence penalty and the IRS must obtain supervisory approval to ensure the penalty is appropriate prior to assertion of the penalty, consistent with the Memorandum from Director, Examination Field and Campus Policy, to Area Directors, Field Examination, SBSE-04-0920-0054 (Sept. 24, 2020).

25 The National Taxpayer Advocate has submitted these recommendations in her 2021 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 68-70 (*Clarify That Supervisory Approval Is Required Under IRC § 6751(b) Before Proposing Penalties*) and 71-72 (*Require an Employee to Determine Require an Employee to Determine and a Supervisor to Approve All Negligence Penalties Under IRC § 6662(b)(1)*).

## Trade or Business Expenses Under IRC § 162

### TAXPAYER RIGHTS IMPACTED<sup>1</sup>

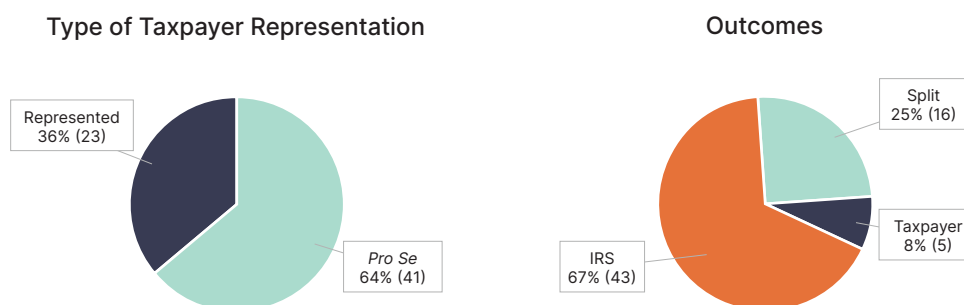
- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to Appeal an IRS Decision in an Independent Forum*
- *The Right to a Fair and Just Tax System*

### OVERVIEW

Trade or business deductions have been among the most litigated issues ever since TAS started tracking such activity. This litigation typically focuses on the application of well-settled legal principles and exhaustively articulated statutes and regulations to taxpayers' particular facts and circumstances. In most years, very few cases break new ground or add to the legal landscape regarding deductibility of trade or business expenses under IRC § 162. Such was the case again this year.<sup>2</sup>

By and large, the 64 opinions we reviewed involved unrepresented taxpayers (*pro se*) and the IRS prevailed in the overwhelming number of cases. During this same period, taxpayers petitioned Tax Court in 6,956 cases where trade or business expenses were an issue during the examination.<sup>3</sup>

FIGURE 2.4.1<sup>4</sup>



<sup>1</sup> See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the IRC. See IRC § 7803(a)(3).

<sup>2</sup> TAS analyzed cases decided during the period beginning on June 1, 2019, and ending on May 31, 2020.

<sup>3</sup> IRS Appeals response to TAS information request (Dec. 3, 2020) showing cases petitioned to Tax Court between June 1, 2019 and May 31, 2020. TAS matched this data to the cases identified by examination where an adjustment to trade or business expenses was recommended as recorded in the Examination Operational Automation Database on the IRS Compliance Data Warehouse (Dec. 2020).

<sup>4</sup> Of the cases analyzed by TAS, 41 involved unrepresented taxpayers, while 23 involved taxpayers with representation. The IRS fully prevailed in 43 cases, while taxpayers fully prevailed in five. The remaining 16 opinions were split between the two litigants based upon their specific facts.

## ANALYSIS OF LITIGATED CASES

IRC § 162 and related Code sections give rise to litigation in a variety of areas. This year, the cases present the following issues.

**FIGURE 2.4.2, Trade or Business Expense Issues<sup>5</sup>**

Issue	Type of Taxpayer	
	Individual	Business
Substantiation of Expenses Under IRC § 162, Including Application of the <i>Cohan</i> Rule	3	27
Deductibility of IRC § 162 Expenses	1	7
Substantiation of Expenses Under IRC § 274(d)	1	20
Schedule A Unreimbursed Employee Expenses Requiring Proof Employer Did Not Reimburse Taxpayer Under IRC § 162	4	6
Hobby Losses, Nondeductible Under Either IRC §§ 183 or 162	0	7
Home Office Under IRC § 280A	0	4
Net Operating Losses Under IRC § 172	1	5
Personal Expenditures Disallowed Under IRC § 262	0	4
Capitalization and Cost Recovery Under IRC §§ 263, 263A, 195, 179, and 167	2	8
Illegal Activities Under IRC §§ 280E, 162(c), 162(f), and 162(g)	0	1
Economic Substance Doctrine	0	2
Business Bad Debt Deduction Under IRC § 166	0	7
Not Engaged in a Trade or Business Under IRC § 162	0	4
Interest Deduction Under IRC § 163	0	0

Generally, the case law in this area is based upon the taxpayer's specific facts and supporting evidence. Although this is a well-settled area of the law, cases are litigated on a reoccurring basis and span many different fact patterns. Key opinions providing new insights or revised precedents rarely are handed down. This year is no exception. However, controversy and confusion continue to arise regarding the deductibility of expenses incurred by medical marijuana dispensaries. Such dispensaries are prohibited by federal law, but legal under the laws of many states. Moreover, IRC § 280E specifies that no trade or business deductions are allowed for any business engaged in trafficking in substances that are illegal under federal law.<sup>6</sup>

In *N. Cal. Small Bus. Assistants, Inc. v. Commissioner*,<sup>7</sup> the Taxpayer contended that, even if IRC § 280E bars IRC § 162 deductions, that prohibition does not extend to other deductions from related Code sections,

<sup>5</sup> Multiple issues may appear within one case; therefore, these figures exceed the total case count.

<sup>6</sup> IRC § 280E states: "No deduction or credit shall be allowed for any amount paid or incurred during the taxable year in carrying on any trade or business if such trade or business (or the activities which comprise such trade or business) consists of trafficking in controlled substances (within the meaning of schedule I and II of the Controlled Substances Act) which is prohibited by Federal law or the law of any State in which such trade or business is conducted."

<sup>7</sup> *N. Cal. Small Bus. Assistants, Inc. v. Comm'r*, 153 T.C. 65 (2019).

such as IRC § 167 depreciation.<sup>8</sup> The Tax Court, however, consistent with other recent opinions, held that the IRC § 280E language was extremely broad and operated to deny deductions attributable to all marijuana dispensary operations.<sup>9</sup>

## CONCLUSION

As witnessed by the IRS's success in litigating controversies regarding IRC § 162 trade or business deductions, most opinions in this area resulted either from taxpayer confusion regarding the applicable legal requirements or from taxpayers' occasional attempts to push the envelope. The case law, however, is well established and the statutory and regulatory guidance is exhaustive, if occasionally unduly complex.

As long as marijuana falls within schedules I or II of the Controlled Substances Act,<sup>10</sup> while being legal within many states, the deductibility of dispensary expenses will continue to generate controversy. Congress could consider minimizing future litigation by removing marijuana from schedule I so that businesses legally selling marijuana would not face the challenges and complexities that currently lead to most of the federal income tax litigation in this area.<sup>11</sup>

8 The taxpayer also raised constitutional and statutory arguments that the Tax Court found unpersuasive.

9 See, e.g., *Patients Mut. Assistance Collective Corp. v. Comm'r*, 151 T.C. 176 (2018).

10 See 21 U.S.C. Chapter 13. The schedules of controlled substances are located at 21 U.S.C. § 812(b).

11 Specifically, marijuana would need to be listed on neither schedule I nor schedule II for deductions in this area to be permissible.

## Gross Income Under IRC § 61

### TAXPAYER RIGHTS IMPACTED<sup>1</sup>

- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to Appeal an IRS Decision in an Independent Forum*
- *The Right to a Fair and Just Tax System*

### OVERVIEW

Section 61(a) of the IRC defines gross income as “all income from whatever source derived.” The income covered by IRC § 61 includes, but is not limited to, compensation for services, income from business activities, and income from dealings in property.

TAS has monitored the most litigated issues for the last 20 years, and controversies involving what constitutes gross income have always been at or near the top of this list.<sup>2</sup> Litigation is often attributable to disagreements regarding what constitutes accessions to wealth, taxable as income under IRC § 61. Likewise, controversies arise regarding the scope of specific statutory exclusions from gross income. In most years, very few cases break new ground or add to the legal landscape under IRC § 61. Such was the case again this year.<sup>3</sup>

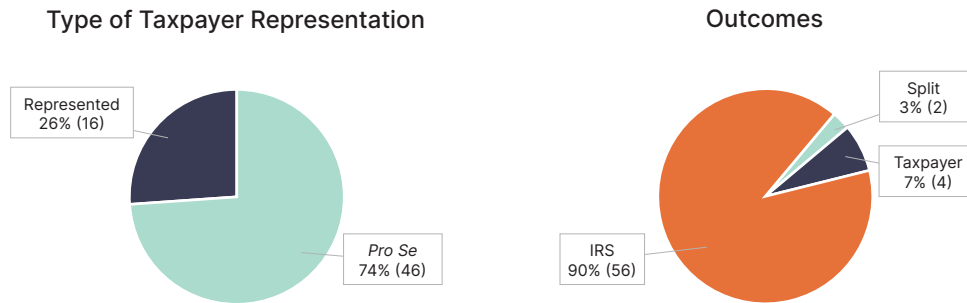
By and large, the 62 opinions we reviewed involved unrepresented taxpayers (*pro se*) and the IRS prevailed in an overwhelming majority of cases. During this same period, taxpayers petitioned Tax Court in 3,771 cases where gross income was an issue during the examination.<sup>4</sup>

<sup>1</sup> See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the IRC. See IRC § 7803(a)(3).

<sup>2</sup> National Taxpayer Advocate 2000 Annual Report to Congress 70.

<sup>3</sup> TAS analyzed cases handed down during the period beginning on June 1, 2019, and ending on May 31, 2020.

<sup>4</sup> IRS Appeals response to TAS information request (Dec. 3, 2020) showing cases petitioned to Tax Court between June 1, 2019, and May 31, 2020. TAS matched this data to the cases identified by examination where an adjustment to gross income was recommended as recorded in the Examination Operational Automation Database on the IRS Compliance Data Warehouse (CDW) (Dec. 2020). TAS also matched this data to the Individual Master File (IMF) transaction history table on CDW which showed an additional 4,350 taxpayers petitioned Tax Court as a result of changes recommended during the Automated Under Reporter process.

**FIGURE 2.5.1<sup>5</sup>**

## ANALYSIS OF LITIGATED CASES

IRC § 61 and related sections give rise to litigation in a variety of areas. Figure 2.5.2 shows the issues from this year's cases.

**FIGURE 2.5.2, Gross Income Issues<sup>6</sup>**

Issue	Type of Taxpayer	
	Individual	Business
Unreported income	10	20
Income includible/excludible	5	6
Income from retirement sources	9	0
Frivolous arguments outside of IRC § 6702	4	2
Foreign earned income exclusion under IRC § 911	4	0
Settlement proceeds/damages under IRC § 104(a)(2)	1	1
Parsonage exclusion under IRC § 107(2)	0	1
Tax benefit rule under IRC § 111	1	0
Cancellation of debt under IRC § 108	2	1
Cost of goods sold	0	2

<sup>5</sup> In this year's gross income cases identified by TAS, 46 involved unrepresented taxpayers, while 16 involved taxpayers with representation. The IRS fully prevailed in 56 cases, while taxpayers fully prevailed in four. The remaining two opinions resulted in split opinions. TAS has increased the percentage of cases where the taxpayer prevailed from 6.45 percent to seven percent for Figure 2.5.1 so that the pie chart shows 100 percent.

<sup>6</sup> Multiple issues may appear within one case; therefore, these figures exceed the total case count. For purposes of categorizing issues, we look to the specific contentions raised by taxpayers and analyzed by the courts. If, for example, a taxpayer's basis for exclusion is a particular code section, then we would reflect the issue accordingly. By contrast, if the discussion primarily involved conceptual or infrequently occurring legal arguments, these contentions would fall into the "income includible/excludible" category. Finally, if taxpayers failed to report gross income in the first instance and then did not articulate a legal position to support that failure, such cases would be grouped as "unreported income."



As shown in Figure 2.5.2, many issues arise on a reoccurring basis. The case law is sufficiently well-settled and spans so many different fact patterns, however, that key opinions providing new insights or revised precedents are rarely decided. Such was the case this year and, although a number of the opinions make for fascinating reading, we have not identified any that call for separate analysis here.

## CONCLUSION

As witnessed by the IRS's success, most opinions in this area resulted either from taxpayer confusion regarding the applicable legal requirements or from taxpayers' occasional attempts to push the envelope. As a result, the National Taxpayer Advocate has no specific recommendations in this area.

## Summons Enforcement Under IRC §§ 7602, 7604, and 7609

### TAXPAYER RIGHTS IMPACTED<sup>1</sup>

- *The Right to Appeal an IRS Decision in an Independent Forum*
- *The Right to Privacy*
- *The Right to a Fair and Just Tax System*

### OVERVIEW

Pursuant to IRC § 7602, the IRS may examine any books, records, or other data relevant to an investigation of a civil or criminal tax liability.<sup>2</sup> To obtain this information, the IRS may serve a summons directly on the subject of the investigation or any third party who may possess relevant information.<sup>3</sup> If a person summoned under IRC § 7602 neglects or refuses to obey the summons; to produce books, papers, records, or other data; or to give testimony as required by the summons, the IRS may seek enforcement of the summons in a U.S. district court.<sup>4</sup> A person who has a summons served upon him or her may contest the legality of the summons in a U.S. district court if the government petitions the court to enforce it.<sup>5</sup> Also, if the summons is served upon a third party, any person entitled to notice may petition to quash the summons in the appropriate district court, and may intervene in any proceeding regarding the enforceability of the summons.<sup>6</sup>

TAS used commercial legal research databases to identify 40 federal opinions issued between June 1, 2019, and May 31, 2020, involving IRS summons enforcement and related issues. For the purposes of this section of the National Taxpayer Advocate's Annual Report to Congress, the term "litigated" means cases in which the court issued an opinion.<sup>7</sup> The summons enforcement cases reviewed involved requesting taxpayer records directly from a taxpayer or a third party, such as a financial institution. Of these 40 opinions reviewed, seven cases applied the standards for summons enforcement set forth in *United States v. Powell*,<sup>8</sup> five cases involved the assertion of a privilege by the taxpayer, and two cases involved the issuance of a John Doe summons

<sup>1</sup> See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the IRC. See IRC § 7803(a)(3).

<sup>2</sup> IRC § 7602(a)(1); Treas. Reg. § 301.7602-1.

<sup>3</sup> IRC § 7602(a).

<sup>4</sup> IRC § 7604(b) (providing that if any taxpayer or third party is summoned to appear, testify or produce records, the United States District Court for the district in which the taxpayer resides or is found has jurisdiction to compel the taxpayer or third party to appear, testify or produce the records). Summons enforcement cases are different from many other cases described in other Most Litigated Issues because often the government, rather than the taxpayer, initiates the litigation. However, regardless of whether the taxpayer initiates the litigation via a motion to quash a summons that was served upon him or her or in response to the United States' petition to enforce a summons, the legal standard is the same. *Villarreal v. U.S.*, 111 A.F.T.R.2d (RIA) 778 (D. Nev. 2013), *aff'g* 110 A.F.T.R.2d (RIA) 6777 (D. Colo. 2012).

<sup>5</sup> IRC § 7604(b). See also *U.S. v. Powell*, 379 U.S. 48, 58 (1964).

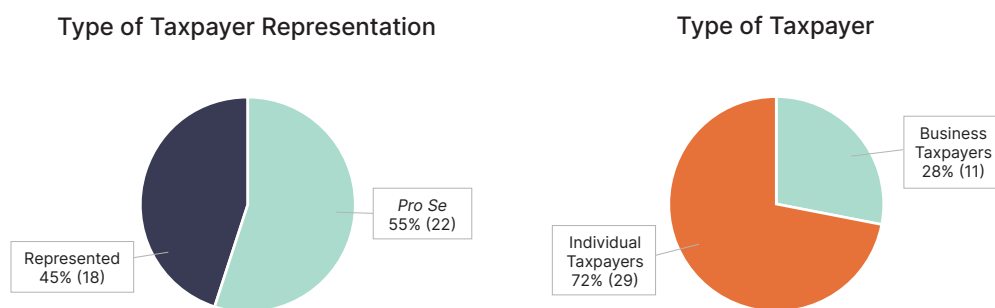
<sup>6</sup> IRC § 7609(b).

<sup>7</sup> We recognize that many cases are resolved before the court issues an opinion. Some taxpayers reach a settlement with the IRS before trial, while the courts dismiss other taxpayers' cases for a variety of reasons, including lack of jurisdiction and lack of prosecution. Additionally, courts can issue less formal "bench opinions," which are not published or precedential.

<sup>8</sup> *United States v. Powell*, 379 U.S. 48 (1964). To be enforceable, the IRS must show: 1) that the investigation was conducted pursuant to a legitimate purpose; 2) that the inquiry is relevant to the purpose; 3) that the information sought is not in possession of the IRS; 4) that all administrative steps required have been followed; and 5) that the summons was not issued for an improper purpose such as harassment, pressuring a taxpayer to settle a collateral dispute or other purpose adversely reflecting on good faith. *Id.* at 57-58.

under IRC § 7609(f) (where the taxpayer(s) under investigation is not specifically identified or is unknown).<sup>9</sup> Furthermore, six of the 40 cases were appeals decided by a United States Court of Appeals. Twenty-nine of the opinions involved individual taxpayers, while 11 involved business taxpayers as demonstrated in Figure 2.6.1. Furthermore, most taxpayers were not represented by counsel (*i.e.*, they were *pro se*), also shown in Figure 2.6.1. The government filed a petition to enforce the summons in 19 cases, while the taxpayer initiated by filing a petition to quash the summons in 21 cases. Overall, no taxpayers fully prevailed, but one case resulted in a partial taxpayer win with a split decision.<sup>10</sup>

**FIGURE 2.6.1<sup>11</sup>**



In fiscal year (FY) 2020, at least 433 summons cases were in the Office of Chief Counsel's inventory.<sup>12</sup> In general, the Department of Justice (DOJ) handles motions to quash summons (the U.S. is listed as a defendant), and the U.S. Attorneys' Offices handle suits to enforce the summons (the U.S. is listed as a plaintiff). A total of 34 cases were referred to DOJ in FY 2020.<sup>13</sup> Subtracting those 34 from the total inventory, that means 399 cases were handled by U.S. Attorneys' Offices. Many summons are complied with and do not require court enforcement (as demonstrated by the relatively small number of summons enforcement court cases TAS identified for the period June 1, 2019, through May 31, 2020).

9 Under IRC § 7609(f), as amended, the IRS may issue a John Doe summons if it can establish: 1) that the summons relates to the investigation of a particular person or ascertainable group or class of persons; 2) there is a reasonable basis for believing such person or group or class may fail or may have failed to comply with the internal revenue laws; and, 3) that the name(s) of the unidentified taxpayer(s) is not readily available from other sources. IRC § 7609(f). See also *United States v. Bisceglia*, 420 U.S. 141 (1975) (often referred to as the "case of the moldy money").

10 See *Williams Dev. & Constr., Inc. v. United States*, 124 A.F.T.R.2d (RIA) 6976 (D.S.D. 2019) (limiting the scope of one of the thirteen third-party summonses to certain limited documents while enforcing the rest of the summonses in full).

11 In the forty opinions analyzed by TAS, taxpayers were unrepresented in 22 of the cases. Due to rounding issues, the percentage of business taxpayers was rounded from 27.5 percent to 28 percent while the number of individual taxpayers was rounded from 72.5 percent to 72 percent.

12 Data compiled by the IRS Office of Chief Counsel (Dec. 2, 2020).

13 Data provided by DOJ to the IRS Office of Chief Counsel (Nov. 9, 2020).

## ANALYSIS OF LITIGATED CASES

In a summons enforcement action, the IRS bears the initial burden of establishing that the requirements for issuing a summons have been satisfied.<sup>14</sup> The IRS meets its burden by providing a sworn affidavit of the IRS agent who issued the summons.<sup>15</sup> The burden then shifts to the person contesting the summons to demonstrate that the IRS did not meet the requirements, or that enforcement of the summons would be an abuse of process.<sup>16</sup> This year's opinions simply applied the rules to new fact patterns.

The number of summons enforcement opinions have been declining as mirrored by the decrease in total IRS tax law enforcement and litigated cases.<sup>17</sup> Another contributing factor to this decline may be related to the gradual reduction in IRS examinations since 2010.<sup>18</sup> As noted above, TAS identified 40 opinions this year, down from 60 last year, and 85 the year before.<sup>19</sup> In addition, the additional taxpayer protections to the summons rules added by the Taxpayer First Act (TFA), coupled with the COVID-19 pandemic, may have had an impact on the decline of summons enforcement cases as well.<sup>20</sup> Under the TFA, the IRS must narrowly tailor the information sought in a John Doe summons, take additional steps before issuing a designated summons, and give taxpayers 45 days advance notice if it intends to contact third parties.<sup>21</sup>

## CONCLUSION

The IRS may issue a summons to obtain information needed to determine the correctness of a tax return, determine if a return should have been filed, determine a taxpayer's tax liability, or collect a liability.<sup>22</sup> Taxpayers and third parties continue to contest IRS summonses, but rarely succeed due to the broad statutory language in favor of the government,<sup>23</sup> the significant burden of proof for taxpayers, and the strict procedural requirements. Further, in the past, courts have generally justified broad readings of the summons enforcement statutes to ensure IRS investigatory powers are not unduly restricted.<sup>24</sup> As the IRS employs a more aggressive enforcement policy, it will continue to rely heavily on the summons enforcement tool. We expect the courts will continue to see these cases litigated.

<sup>14</sup> *Fortney v. U.S.*, 59 F.3d 117, 119-20 (9th Cir. 1995).

<sup>15</sup> *U.S. v. Dynavac, Inc.*, 6 F.3d 1407, 1414 (9th Cir. 1993) (citations omitted).

<sup>16</sup> *Id.*

<sup>17</sup> As reflected in the most recent IRS Databook, IRS tax law enforcement and litigation cases decreased in FY 2019 as compared to FY 2018. Compare IRS Pub. 55B, IRS Databook 2019, table 28 (June 2020) (showing 60,108 cases received and 58,307 cases closed by the IRS Office of Chief Counsel in FY 2019) and IRS Pub. 55B-2019, IRS Databook 2018, table 26 (May 2019) (showing 66,531 cases received and 66,886 cases closed by the IRS Office of Chief Counsel in FY 2018).

<sup>18</sup> See IRS Pub. 55B, IRS Databook 2019, Table 17b (June 2020) (showing a decline in the total number of tax returns examined, by examination type, in fiscal years 2010–2019).

<sup>19</sup> National Taxpayer Advocate 2019 Annual Report to Congress 168 (Most Litigated Issue: *Summons Enforcement Under IRC §§ 7602, 7604, and 7609*).

<sup>20</sup> *Id.*

<sup>21</sup> Taxpayer First Act (TFA), Pub. L. No. 116-25, §§ 1204, 1206, and 1207, 133 Stat. 981, 988, 990–91 (2019). Under the revisions added by the TFA, general third-party contact notices issued by the IRS are no longer acceptable. IRC § 7602(c) as amended also forbids the IRS from issuing a notice unless it intends at that time to make third-party contacts (*i.e.*, thereby creating a present-intent requirement).

<sup>22</sup> IRC § 7602(a).

<sup>23</sup> See IRC § 7602(b). The government may examine, summon, and take testimony for the purpose of *inquiring into any offense* connected with the administration or enforcement of the internal revenue laws of the United States (emphasis added). Whatever may shine a light on the accuracy of a tax return can be summoned. Within this broad boundary, very few things would be considered an “unreasonable search.”

<sup>24</sup> *Flight Vehicles Consulting, Inc. v. U.S.*, 110 A.F.T.R.2d (RIA) 5487 (N.D. Cal. 2012), *adopting* 110 A.F.T.R.2d (RIA) 5484 (N.D. Cal. 2012).

## Recommendations to Mitigate Disputes

To reduce summons enforcement challenges, it could be helpful for the government to do more to avoid the need for third-party summonses. Allowing taxpayers with an opportunity, where appropriate, to provide the information the IRS needs before contacting third parties protects taxpayer rights.<sup>25</sup> Under the *right to privacy*, taxpayers have the right to expect that any IRS inquiry, examination, or enforcement action will be no more intrusive than necessary.

The National Taxpayer Advocate recommends that Congress:

1. Amend IRC § 7602(c)(1) to require the IRS to tell the taxpayer in third-party contact notices what information it needs (if any) and give the taxpayer a reasonable opportunity to provide the information before contacting a third-party, unless an exception applies.<sup>26</sup>

The National Taxpayer Advocate recommends that the IRS:

1. Revise its third-party contact letters and internal guidance, including updated Letter 3164-A,<sup>27</sup> to inform the taxpayer of what the IRS needs and to give the taxpayer a reasonable opportunity to provide the information before contacting third parties.

<sup>25</sup> There are, however, certain categories of IRS summonses which do not require the IRS to give notice to a taxpayer, as detailed in IRC § 7609(c)(2).

<sup>26</sup> National Taxpayer Advocate 2021 Purple Book, Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration 137-138 (*Require the IRS to Specify the Information Needed in Third-Party Contact Notices*).

<sup>27</sup> The IRS will send IRS Letter 3164-A, Third Party Contact (Jan. 1999), to notify taxpayers that the IRS may contact third parties to obtain information during the audit process. An IRS employee who issues Letter 3164 must wait ten days before contacting a third party under the Internal Revenue Manual 25.27.1.3.1.7, TPC Notification Procedures (Oct. 19, 2017).

## Failure to File Penalty Under IRC § 6651(a)(1), Failure to Pay an Amount Shown as Tax on Return Under IRC § 6651(a)(2), and Failure to Pay Estimated Tax Penalty Under IRC § 6654

### TAXPAYER RIGHTS IMPACTED<sup>1</sup>

- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Appeal an IRS Decision in an Independent Forum*
- *The Right to a Fair and Just Tax System*

### OVERVIEW

Under IRC §§ 6651(a)(1), (a)(2), and 6654, the IRS may impose penalties on taxpayers when they fail to timely file a tax return, fail to pay an amount shown as tax on a return, or underpay installments of estimated taxes, respectively.<sup>2</sup> When these penalties should be imposed and how they are calculated is relatively straightforward. Historically, in the majority of litigated cases that we have reviewed, taxpayers were unrepresented (*pro se*) and the IRS has prevailed in most of them. This trend continued once again in our review of litigated cases where a written opinion was issued between June 1, 2019, and May 31, 2020.

Of the 31 cases we reviewed, taxpayers appeared *pro se* in 20, and in these cases, the outcomes almost always favored the IRS. Taxpayers were represented in the only case in which the court ruled in their favor.

During our reporting period, between June 1, 2019, and May 31, 2020, there were a total of 24,064,628 taxpayers who had penalties imposed due to the failure to timely file a tax return, failure to pay an amount shown as tax on a return, or underpayment of installments of estimated taxes.<sup>3</sup> Figure 2.7.1 breaks down the total for individual and business taxpayers and also shows the number of reasonable cause assistant abatements for the relevant penalties. The largest total category of abatements was for individual taxpayers with 176,308 abatements for taxpayers who had failed to pay an amount on a tax return due to a reasonable cause.<sup>4</sup> During this same period, taxpayers petitioned Tax Court in 127 cases where the failure to timely file a tax return penalty (delinquency penalty) and/or the estimated tax penalty was an issue during the examination.<sup>5</sup>

<sup>1</sup> See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the IRC. See IRC § 7803(a)(3).

<sup>2</sup> The failure to file (referred to as “FTF”) penalty, failure to pay (referred to as “FTP”) penalty, and the failure to pay estimated taxes (referred to as “FTE”) penalties have appeared on our top ten Most Litigated Issues list since 2003.

<sup>3</sup> Obtained from the FTF, FTP, and FTE Assessment and Reasonable Cause Assistant Abatement Transactions dated files between June 1, 2019, and May 31, 2020, posted as of cycle 202019 on Individual Master File (IMF) and Business Master File (BMF).

<sup>4</sup> *Id.*

<sup>5</sup> IRS Appeals response to TAS information request (Dec. 3, 2020) showing cases petitioned to Tax Court between June 1, 2019, and May 31, 2020. TAS matched this data to the cases identified by examination where the failure to timely file a tax return penalty (delinquency penalty) and/or the estimated tax penalty was recommended as recorded in the Examination Operational Automation Database on the IRS Compliance Data Warehouse (CDW) (Dec. 2020).

**FIGURE 2.7.1, Total Number of FTF, FTP, and FTE Penalties Imposed and Total Abatements Between June 1, 2019, and May 31, 2020<sup>6</sup>**

Penalty Type	Distinct Number of Taxpayers	Reasonable Cause Assistant Abatements <sup>7</sup>
<b>Individual Master File</b>		
FTF	2,272,265	63,994
FTP	12,253,704	176,308
FTE	6,352,322	N/A
<b>Business Master File</b>		
FTF	1,161,542	1,568
FTP	1,715,744	4,819
FTE	309,051	N/A

## ANALYSIS OF LITIGATED CASES

In all but two of the 31 cases reviewed, taxpayers raised reasonable cause as their reason for failing to file a tax return by the due date or failing to timely pay an amount shown or required to be shown as tax on a return.<sup>8</sup> In only one of the 29 cases where reasonable cause was raised did the taxpayer prevail.<sup>9</sup> In regard to the six cases where penalties were imposed for underpayment of an estimated tax under IRC § 6654, the IRS was able to show in five of those cases that the taxpayer had a required annual payment,<sup>10</sup> and no evidence was presented to show that the taxpayers qualified for any of the statutory exceptions to the penalty.<sup>11</sup> Thus, the penalty was imposed in all five of these cases. In the sixth case, the taxpayer prevailed because the IRS

<sup>6</sup> Obtained from the FTF, FTP, and FTE Assessment and Reasonable Cause Assistant Abatement and Abatement Transactions dated files between June 1, 2019, and May 31, 2020, posted as of cycle 202019 on the IRS, CDW Individual Master File and Business Master File database tables.

<sup>7</sup> The penalty may be abated in certain circumstances where the taxpayer can show that one of several exceptions set out in IRC § 6654(e)(1), (2) or (3) apply. Internal Revenue Manual 20.1.3.2.7.1, Estimated Tax Penalty and Reasonable Cause (Dec. 10, 2013), provides guidance as to when the penalty under IRC § 6654 can be abated, noting that underpayment of estimated tax cannot be removed or waived for reasonable cause alone. The penalty for underpayment of estimated tax generally is not waived as a result of disaster. However, in the case of a federally declared disaster area, "the Secretary may specify a period of up to one year that may be disregarded" in determining whether estimated tax payments were paid on time.

<sup>8</sup> Treas. Reg. § 301.6651-1(c)(1). If the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, then the delay is due to reasonable cause. *Id.* A failure to pay penalty will be abated due to reasonable cause to the extent that the taxpayer has made a satisfactory showing that he or she exercised ordinary business care and prudence in providing for payment of the tax liability and was nevertheless either unable to pay the tax or would suffer an undue hardship if he or she paid on the due date. *Id.*

<sup>9</sup> *Estate of Skeba v. U.S.*, 432 F.Supp.3d 461 (D.N.J. 2000).

<sup>10</sup> See *Collins v. Comm'r*, T.C. Memo. 2020-50; *Hayes v. Commissioner*, T.C. Memo. 2019-147, *appeal docketed* (9th Cir. Apr. 15, 2020); *U.S. v. Beckwith*, 124 A.F.T.R.2d (RIA) 6896 (D. Maine 2019); *Williams v. Comm'r*, 795 F. App'x 920 (5th Cir. 2019).

<sup>11</sup> To avoid an IRC § 6654 penalty, the taxpayer has the burden of proving that one of the following exceptions applies: The tax due (after taking into account any federal income tax withheld) is less than \$1,000; the preceding tax year was a full 12 months, the taxpayer had no liability for the preceding tax year, and the taxpayer was a U.S. citizen or resident throughout the preceding tax year; it is determined that because of casualty, disaster, or other unusual circumstances, the imposition of the penalty would be against equity and good conscience; or taxpayer retired after reaching age 62, or became disabled in the tax year for which estimated payments were required, or in the tax year preceding that year, and the underpayment was due to reasonable cause and not willful neglect. IRC § 6654(e)(1), (2), (3).



failed to meet its burden of production to show the taxpayer had a required annual payment payable in installments.<sup>12</sup>

*Benton v. Commissioner* illustrates the types of reasonable cause arguments that are most commonly raised by taxpayers. Taxpayers argued they had reasonable cause for failing to timely file their tax return due to a confluence of personal and financial difficulties, including a family member's serious illness and the loss of Mrs. Benton's job. However, the court held that the taxpayers did not act with ordinary business care and prudence, because despite these personal challenges, the taxpayers were able to continue operation of a family picture framing business, and the taxpayer's wife held down a temporary job.<sup>13</sup> *Willett v. U.S.* provides another example of a typical reasonable cause defense.<sup>14</sup> Here, taxpayers argued they had reasonable cause for failing to file and failing to pay because their certified public accountant (CPA), who possessed the original copies of their tax documents, became seriously ill and was unable to complete their 2014 tax return on time. However, the court determined that reliance on a CPA was not "reasonable cause" under *Boyle*.<sup>15</sup> These court opinions show what facts and circumstances typically establish reasonable cause.

A less conventional argument was raised in *Estate of Skeba v. U.S.* where the taxpayer was assessed a penalty in the amount of \$450,959.50 for failing to timely file the estate's tax return, despite timely paying the taxes due.<sup>16</sup> The taxpayer's primary argument in this case was that the failure to file penalty could not be calculated when reading IRC § 6651(a)(1) together with IRC § 6651(b)(1). In other words, the late filing penalty calculated by using the formula in subsection (a)(1) should be based on the net amount due on the date prescribed for payment as set forth in subsection (b)(1).<sup>17</sup> Because the taxpayer had already paid the taxes due prior to filing the estate tax return, the return showed no amount due for which the failure to file penalty could be based.<sup>18</sup> The court agreed with the taxpayer, and held that no failure to file penalty could be calculated because there was no tax due.

## CONCLUSION

The nearly unanimous rulings in favor of the IRS illustrate the case law is well established, and the statutory and regulatory guidance is exhaustive. Despite this clarity in the law, year after year, several taxpayers continue to challenge the imposition of these penalties, and most of them are unsuccessful. To ensure taxpayers are fully aware of the types of situations rise to the level of reasonable cause, the IRS should consider better communicating with taxpayers as to what constitutes "reasonable cause." For example, IRS Notice 746, Information About Your Notice, Penalty and Interest, merely informs taxpayers to submit a written statement as to why the penalty should be removed, and the IRS will consider if it is an "acceptable reason."<sup>19</sup> The IRS could improve this notice by providing taxpayers with a more in-depth description of what is "reasonable

<sup>12</sup> *Frost v. Comm'r*, 2020 WL 70716 (T.C. Jan. 7, 2020).

<sup>13</sup> *Benton v. Comm'r*, T.C. Summ. Op. 2020-12.

<sup>14</sup> *Willett v. U.S.*, 2020 U.S. Dist. LEXIS 32126 (N.D. Cal. Feb. 25, 2020).

<sup>15</sup> *U.S. v. Boyle*, 469 U.S. 241, 245 (1985). The Supreme Court held in *Boyle* that a taxpayer's reliance on an agent to file a return did not constitute reasonable cause for late filing, but reasonable cause may exist when a taxpayer relies on the erroneous advice of counsel concerning a question of law. 469 U.S. 241, 245, 250 (1985).

<sup>16</sup> *Estate of Skeba v. U.S.*, 432 F. Supp. 3d 461 (D.N.J. 2020).

<sup>17</sup> *Id.* The taxpayer also raised a reasonable cause argument in this case for failing to timely file its estate tax return. The taxpayer prevailed in this argument as well.

<sup>18</sup> The failure to file penalty would be based on the net amount due shown on the return minus any credits and any amount paid on or before the date prescribed for payment.

<sup>19</sup> IRS Notice 746, Information About Your Notice, Penalty and Interest (June 2020).

cause,” along with several examples that illustrate what types of situations do and do not rise to the level of reasonable cause.

### **Recommendation to Mitigate Disputes**

The National Taxpayer Advocate recommends that the IRS:

1. Review and revise notices and publications where appropriate to provide more examples of circumstances that constitute reasonable cause to better educate taxpayers.

## Itemized Deductions Reported on Schedule A (Form 1040)

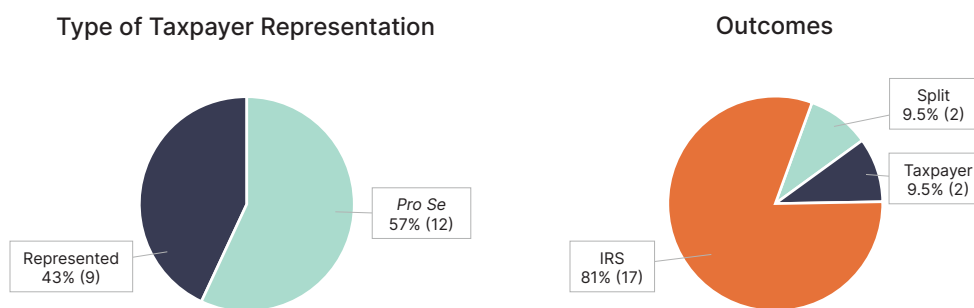
### TAXPAYER RIGHTS IMPACTED<sup>1</sup>

- *The Right to Be Informed*
- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to Appeal an IRS Decision in an Independent Forum*
- *The Right to a Fair and Just Tax System*

### OVERVIEW

Itemized deductions reported on Schedule A, Itemized Deductions, of IRS Form 1040, U.S. Individual Income Tax Return, were among the ten Most Litigated Issues for the fourth time since the National Taxpayer Advocate's 2000 Annual Report to Congress.<sup>2</sup> During this reporting period between June 1, 2019, and May 31, 2020, we identified 21 decisions, in which itemized deductions were litigated in federal courts.<sup>3</sup> All but four of these cases were litigated in the U.S. Tax Court. Figure 2.8.1 illustrates the outcome of the litigation by type of taxpayer representation. As shown, the courts affirmed the IRS position in 17 of these cases, or about 81 percent, while taxpayers fully prevailed in two cases, or about ten percent of the cases. The remaining two cases, or about ten percent, resulted in split decisions. Taxpayers were represented in 9 of the 21 (or 43%) while 12 of 21 cases (or 57%) had *pro se* (without counsel) taxpayers. During this same period, taxpayers petitioned Tax Court in 1,120 cases where itemized deductions were an issue during the examination.<sup>4</sup>

**FIGURE 2.8.1**



1 See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the IRC. See IRC § 7803(a)(3).

2 This year and in previous years, charitable contribution deductions have been considered separately as a Most Litigated Issue.

3 We excluded cases involving unreimbursed employee expenses and charitable deductions as they are discussed elsewhere in the National Taxpayer Advocate's Annual Report to Congress. Unreimbursed employee expenses are discussed in detail in the Most Litigated Issue: *Trade or Business Expenses Under IRC § 162*, *supra*. Cases involving charitable deductions are discussed in the Most Litigated Issue: *Charitable Contribution Deductions Under IRC § 170*, *infra*.

4 IRS Appeals response to TAS information request (Dec. 3, 2020) showing cases petitioned to Tax Court between June 1, 2019, and May 31, 2020. TAS matched this data to the cases identified by examination where an adjustment to itemized deductions was recommended as recorded in the Examination Operational Automation Database on the IRS Compliance Data Warehouse (CDW) (Dec. 2020).

## ANALYSIS OF LITIGATED CASES

With the exception of *New York v. Mnuchin*, detailed below,<sup>5</sup> the litigation on itemized deductions focused on the application of well-settled legal principles and applied the relevant statutes, regulations, and case law to the taxpayers' particular facts and circumstances. The largest portion of this year's 21 cases involved taxpayers claiming deductions for casualty and theft losses,<sup>6</sup> mortgage and investment interest expenses,<sup>7</sup> and gambling losses.<sup>8</sup> Figure 2.8.2 categorizes the main issues raised by taxpayers in the 21 cases we identified. As the figure demonstrates, the largest category of deductions was casualty and theft loss deductions.

**FIGURE 2.8.2, Itemized Deduction Issues<sup>9</sup>**

Itemized Deduction	Number of Cases	Percentage of Cases
Casualty/Theft Loss	7	33%
Mortgage Interest and Investment Interest	6	29%
Gambling	3	14%
State and Local Taxes	2	10%
Medical and Dental Expenses	2	10%
Tax Preparation Fees	1	5%
Other	3	14%

One hurdle faced by taxpayers across the various itemized deduction categories is substantiation. The Code requires taxpayers to substantiate expenses underlying each claimed deduction by maintaining records sufficient to establish the amount of the deduction to enable the Commissioner to determine the correct tax liability.<sup>10</sup> In these cases, taxpayers were unable to or had difficulty substantiating their itemized deduction claims in nine of the 21 cases we identified, or nearly 43 percent of the cases.

The most notable case litigated on the topic of itemized deductions involved the deduction for state and local taxes paid. Specifically, in *New York v. Mnuchin*, the states of New York, Connecticut, Maryland, and New Jersey filed an action against the United States, the IRS, the Acting Commissioner of the Internal Revenue, the United States Department of the Treasury, and the Secretary of the Treasury.<sup>11</sup> The states alleged that the new Tax Cuts and Jobs Act (TCJA) limit on the amount of state and local taxes paid that taxpayers can claim on Schedule A (the "SALT cap") violated constitutional guarantees of federalism and exceeded

5 *New York v. Mnuchin*, 408 F. Supp. 3d 399 (S.D.N.Y. 2019), *appeal docketed*, No. 19-3962 (2d Cir. Nov. 26, 2019).

6 IRC § 165.

7 IRC § 163.

8 IRC § 165(d).

9 Several cases we identified had more than one of the issues listed in Figure 2.8.2. In addition to the top three deductions listed above, IRC § 164(b)(6) provides the deduction for state and local taxes paid; IRC § 213(a) provides the deduction for medical and dental expenses; and IRC § 67 provides the miscellaneous itemized deductions, including tax preparation fees and other professional fees.

10 IRC § 6001; *Welch v. Helvering*, 290 U.S. 111, 115 (1933); *Cohan v. Comm'r*, 39 F.2d 540, 543-44 (2d Cir. 1930) (providing an exception to strict substantiation and allowing the taxpayer to estimate expenses under certain circumstances); Temp. Treas. Reg. § 1.274-5T(b). For detailed recordkeeping guidance for taxpayers, see also IRS, Publication 17, Your Federal Income Tax for Individuals: Tax Guide 2019 for Individuals (July 2020).

11 *New York v. Mnuchin*, 408 F. Supp. 3d 399 (S.D.N.Y. 2019), *appeal docketed*, No. 19-3962 (2d Cir. Nov. 26, 2019).

Congress's taxation powers.<sup>12</sup> The U.S. District Court for the Southern District of New York granted the defendants' motion to dismiss for failure to state a valid legal claim. It concluded that the states failed to cite a constitutional principle that would bar Congress from exercising its otherwise plenary power to impose an income tax with a limited SALT deduction. The court held that there is no basis to conclude that the SALT cap is unconstitutionally coercive. The SALT cap, like any federal tax provision, will affect some states more than others. However, the states still have the ability to make their decisions as to how they will exercise their own sovereign tax powers. Thus, the states failed to plausibly allege that the SALT cap meaningfully constrained their decision-making process.

## CONCLUSION

The number of itemizers significantly decreased, by about 66 percent from tax year (TY) 2017 to TY 2019, likely due to the tax changes brought about by the TCJA.<sup>13</sup> A reduction in the number of itemizers may eventually lead to a decrease in litigation in the coming years. In addition, a further decrease in litigation over the issue could occur through increased taxpayer awareness of substantiation requirements. If taxpayers carefully maintain detailed records related to any itemized deductions they claim, they will be in a better position to verify such deductions with the IRS before disputes result in litigation. Accordingly, the IRS must continue to increase awareness of taxpayer recordkeeping requirements, which will protect taxpayers' *rights to be informed* and *to pay no more than the correct amount of tax*. By doing so, the IRS will encourage taxpayers to comply with their tax obligations and minimize the risk of litigation.

## Recommendation to Mitigate Disputes

The National Taxpayer Advocate recommends that the IRS:

1. Evaluate the IRS's existing communication strategy, including the IRS website, guidance, and publications, to taxpayers, preparers, and practitioners to determine how to increase awareness about itemized deductions, including recordkeeping requirements. Then based on the findings, conduct outreach within the next two fiscal years to better educate taxpayers.

<sup>12</sup> Section 11042 of the TCJA, Pub. L. No. 115-97, 131 Stat. 2054, 2085 (2017), amended IRC § 164(b)(6) to limit the aggregate amount of the itemized deduction taxpayers can claim for state and local income, general sales, real property, or personal property taxes up to \$10,000 per year (\$5,000 in the case of a married individual filing a separate return) for Tax Years (TYs) 2018 to 2025.

<sup>13</sup> In TY 2017, about 43.4 million taxpayers claimed itemized deductions (30.3 percent). In TY 2019, about 14.6 million taxpayers claimed itemized deductions (9.9 percent). Individual Returns Transaction File on the IRS CDW (comparing tax returns filed between January 1 and October 1 in both TYs 2017 and 2019). The Joint Committee on Taxation staff estimated the number of taxpayers who itemize would decrease as a result of TCJA. JOINT COMM. ON TAXATION, *Tables Related to the Federal Tax System as in Effect 2017 Through 2026* (JCX-32-18), Table 5 (Apr. 23, 2018). TAS has a website, available in both English and Spanish, to educate individual taxpayers about items that were changed and not changed as a result of TCJA. For a detailed list of these changes, see TAS, Tax Changes by Topic, <https://www.taxchanges.us/> (last visited Aug. 9, 2020).

## Charitable Contribution Deductions Under IRC § 170

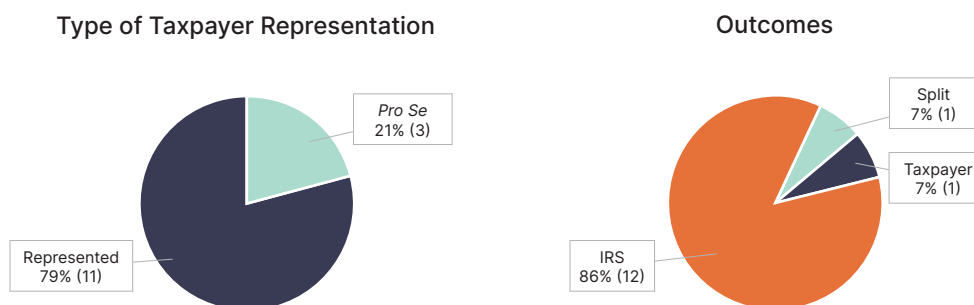
### TAXPAYER RIGHTS IMPACTED<sup>1</sup>

- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Appeal an IRS Decision in an Independent Forum*
- *The Right to a Fair and Just Tax System*

### OVERVIEW

We identified 14 opinions issued between June 1, 2019, and May 31, 2020, on the issue of the deductibility of charitable contributions under IRC § 170, which is three fewer cases than in last year's report. Of the 14 cases, the most common issues were whether a donation constituted a qualified conservation easement (eight cases) and whether a claimed deduction was adequately substantiated (six cases). An additional case involved both issues. Taxpayers were usually represented, and the IRS usually prevailed. During this same period, taxpayers petitioned the Tax Court in 401 cases where charitable contributions were an issue during the examination.<sup>2</sup>

FIGURE 2.9.1<sup>3</sup>



1 See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the IRC. See IRC § 7803(a)(3).

2 IRS Appeals response to TAS information request (Dec. 3, 2020) showing cases petitioned to Tax Court between June 1, 2019, and May 31, 2020. TAS matched this data to the cases identified by examination where an adjustment to charitable contributions was recommended as recorded in the Examination Operational Automation Database on the IRS, Compliance Data Warehouse (Dec. 2020).

3 Of the 14 cases, three taxpayers appeared without representation and 11 had representation. Of the 14 cases, the taxpayer prevailed in one case, the IRS prevailed in 12 cases, and there was a split opinion in one case.

## ANALYSIS OF LITIGATED CASES

The most significant cases centered on syndicated conservation easements, an arrangement in which an investor purchases an interest in a pass-through entity that holds real property. The pass-through entity contributes a conservation easement encumbering the property to a tax-exempt entity and allocates a charitable contribution deduction to the investor.<sup>4</sup> Promotional materials for these transactions offer prospective investors the possibility of a charitable contribution deduction of more than two and a half times the amount of the investor's investment.<sup>5</sup> The IRS contends that promoters obtain an appraisal that greatly inflates the value of the conservation easement by using the highest and best use of the property before it was encumbered with the easement to create a fictional and unrealistic valuation of the property. The IRS also contends that investors in the pass-through entity typically claim charitable contribution deductions that grossly multiply their actual investment in the transaction and defy common sense.

Although the IRS recognizes the important role of conservation easement deductions in incentivizing land preservation for future generations, abusive syndicated conservation easement transactions have been of concern to the IRS for several years. For several years, the IRS has focused on curtailing abuse in this area by designating syndicated conservation easements as a listed transaction and aggressively auditing taxpayers who participate in these transactions.<sup>6</sup>

Nevertheless, between 2017 and 2018, the number of individual participants in these transactions increased from 14,000 to 16,900, with many participating in multiple deals; the total amount of deductions claimed through these tax shelters increased from \$6.8 billion in 2017 to \$9.2 billion in 2018.<sup>7</sup> In June 2020, the IRS offered to settle docketed Tax Court cases with this issue.<sup>8</sup> It does not appear that many taxpayers have accepted the offer to date.<sup>9</sup>

4 Although taxpayers generally are not permitted to deduct gifts of property consisting of less than the taxpayer's entire interest in that property, they may deduct the value of a contribution of a partial interest in property that constitutes a "qualified conservation contribution." IRC § 170(f)(3)(B)(iii), (h).

5 IRS Notice 2017-10, 2017-4 I.R.B. 544 at 3, Syndicated Conservation Easement Transactions. See also S. Comm. on Finance, S. PR. 116-44 at 11, 116th Cong., 2d Sess., *Committee Print on Syndicated Conservation-Easement Transactions* (Aug. 2020), describing transactions in which the real property held by the pass-through entity was sold in an arm's length transaction, followed shortly thereafter by an appraisal asserting a value multiple times higher than the value established in that prior arm's length transaction, which calls into question the accuracy of the appraisal.

6 See IRS Notice 2017-10, 2017-4 I.R.B. 544, Syndicated Conservation Easement Transactions. Promoters and participants in these transactions must disclose them to the IRS pursuant to IRC §§ 6011, 6111, 6112, and the regulations thereunder. See also S. Comm. on Finance, S. PR. 116-44 at 3, 116th Cong., 2d Sess., *Committee Print on Syndicated Conservation-Easement Transactions* (Aug. 2020), noting that as of Feb. 2020 the IRS is auditing or plans to audit 84 percent of the partnerships that participated in syndicated conservation easements from 2015-2017.

7 Letter from Charles P. Rettig, Commissioner, IRS, to Sen. Charles Grassley, Chairman, Committee on Finance (Sept. 17, 2020). See also, e.g., Kristen A. Parillo, *Deluge of Tax Court Easement Petitions Continues*, 2020 TNTF 205-9 (Oct. 23, 2020), noting that "In the last few weeks, 27 easement-related petitions were filed, with \$481,505,985 in claimed deductions on the line."

8 IRS, IR-2020-130, IRS Offers Settlement for Syndicated Conservation Easements; Letters Being Mailed to Certain Taxpayers With Pending Litigation; IRS, IR-2020-152, IRS Urges Taxpayers to Accept Easement Settlement Offers. Among other things, the settlement requires a concession of the tax benefits claimed by the taxpayers and imposes penalties: all partners in an electing partnership must agree to settle to receive these terms, and the partnership must make a lump-sum payment representing the aggregate tax, penalties and interest for all of the partners before settlement is accepted by the IRS; the IRS Office of Chief Counsel will allow investors to deduct the cost of acquiring their partnership interests, but it will require a penalty of at least ten percent; partners who are promoters of conservation easement schemes are not allowed any deductions and must pay the maximum penalty asserted by IRS (typically 40 percent); if less than all the partners agree to settle, the IRS may settle with those partners but will normally impose less favorable terms on the settling partners. As of Nov. 2019, there were 80 such docketed Tax Court cases. See IRS, IR-2019-192, IRS Increases Enforcement Action on Syndicated Conservation Easements (Nov. 12, 2019).

9 See, however, IR-2020-196, Settlements Begin in Syndicated Conservation Easement Transaction Initiative (Aug. 31, 2020), announcing the completion of the first settlement under the initiative.



In this year's reporting cycle, the IRS prevailed in seven of the eight cases in which the deductibility of a donation of a conservation easement was at issue (including the case in which adequate substantiation was also at issue).<sup>10</sup> As the Tax Court noted in one of this year's opinions:

[i]n recent years the Commissioner has attacked a popular form of charitable contribution — the donation of conservation easements. Many of these attacks are surgical strikes on what he believes are gross exaggerations of the value of particular easements. But he has also launched three sorties — all predicated on the requirement that such easements be “perpetual” — that he hopes will cause more widespread casualties.<sup>11</sup>

The perpetuity requirement of IRC § 170(h)(5)(A) was primarily at issue in the conservation easement cases included in this year's analysis, rather than the value of the easement.<sup>12</sup> For example, in three Tax Court cases, the taxpayers lost because the deeds they used to convey the easements provided that in the event of a sale of the property following judicial extinguishment of the easement, the donee would receive a fixed amount, rather than a proportion, of the sale proceeds.<sup>13</sup> This provision did not satisfy the requirement that the conservation purpose of the easement must be protected in perpetuity.<sup>14</sup> The court in one of the cases acknowledged that many other conservation easement deeds contain the same inadequate language.<sup>15</sup>

The IRS could help avoid litigation by providing model language taxpayers could use in deeds conveying conservation easements, and the National Taxpayer Advocate has recommended that the IRS provide such guidance.<sup>16</sup> As the IRS explained in response to that recommendation, it has provided sample language for a “constructive denial clause” in conservation easement deeds that is consistent with the perpetuity requirements of IRC § 170(h).<sup>17</sup> This is an encouraging development that may avert unnecessary litigation. Additional guidance and sample language, particularly with respect to other aspects of the perpetuity requirements, may also help taxpayers navigate these complex issues and help prevent unnecessary litigation.

<sup>10</sup> In addition, the IRS prevailed in at least seven conservation easement cases that were decided outside of this year's reporting period. The opinions in three such cases were published on June 23, 2020: *Plateau Holdings, LLC v. Comm'r*, T.C. Memo. 2020-93; *Lumpkin One Five Six LLC v. Comm'r*, T.C. Memo. 2020-94; and *Lumpkin HC v. Comm'r*, T.C. Memo. 2020-95. The opinions in four such cases were published on July 9, 2020: *Effingham, LLC v. Comm'r*, T.C. Memo. 2020-102; *Englewood Place LLC v. Comm'r*, T.C. Memo. 2020-105; *Riverside Place LLC v. Comm'r*, T.C. Memo. 2020-103; and *Maple Landing, LLC v. Comm'r*, T.C. Memo. 2020-104.

<sup>11</sup> *Oakbrook Land Holdings, LLC v. Comm'r*, T.C. Memo. 2020-54 at \*1 (fn. refs. omitted).

<sup>12</sup> In contrast, last year's report included a discussion of several cases in which the value of the easement was at issue. See, e.g., *Pine Mountain Preserve LLLP v. Comm'r*, 51 T.C. 247 (2018), *aff'd in part, rev'd in part, vacated in part and remanded*, No. 19-11795, 2020 WL 6193897 (11th Cir. Oct. 22, 2020). The Tax Court determined the value of the conservation easement in a concurrently filed separate opinion, T.C. Memo. 2018-214.

<sup>13</sup> *R.R. Holdings, LLC v. Comm'r*, T.C. Memo. 2020-22; *Oakbrook Land Holdings, LLC v. Comm'r*, T.C. Memo. 2020-54; and *Woodland Properties Holdings, LLC v. Comm'r*, T.C. Memo. 2020-55.

<sup>14</sup> IRC § 170(h)(5)(A); Treas. Reg. § 1.170A-14(g)(6).

<sup>15</sup> *Oakbrook Land Holdings, LLC v. Comm'r*, T.C. Memo. 2020-54.

<sup>16</sup> National Taxpayer Advocate 2019 Annual Report to Congress 203 (Most Litigated Issue: *Charitable Contribution Deductions Under IRC § 170*).

<sup>17</sup> National Taxpayer Advocate Fiscal Year 2021 Objectives Report to Congress vol. 2, at 194, Counsel Narrative Response, citing IRS Chief Counsel Advice 2020-02011 (Jan. 10, 2020). A constructive denial clause provides that if an easement holder does not respond within a specified period to a request by the property owner regarding a proposed use, then the request is considered denied. See also IRS Chief Counsel Generic Legal Advice 2020-001 (Mar. 27, 2020) (providing language to amend a conservation easement that complies with the perpetuity requirements of § 170(h)).

## CONCLUSION

For several years, the IRS has focused on curtailing abuse in the area of syndicated conservation easements. However, designating these transactions as potentially abusive tax shelters does not appear to have deterred taxpayers from participating in them, and IRS court victories in this area do not appear to have deterred taxpayers from litigating their cases. Some taxpayers may accept the IRS's offer to settle their cases with this issue, but litigation in this area may very well continue for years.

## Recommendation to Mitigate Disputes

The National Taxpayer Advocate recommends that the IRS:

1. Develop and publish additional guidance that contains sample easement provisions to assist taxpayers in drafting deeds that satisfy the statutory requirements for qualified conservation contributions, particularly the perpetuity requirement for those conservation easements that incentivize land preservation for future generations.

## Frivolous Issues Penalty Under IRC § 6673 and Related Appellate-Level Sanctions

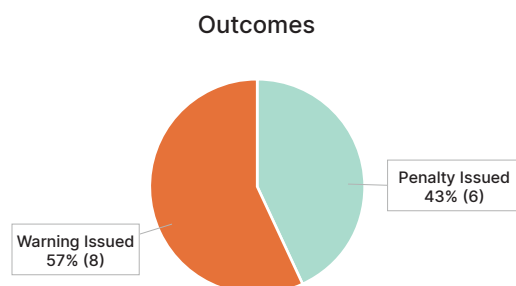
### TAXPAYER RIGHT IMPACTED<sup>1</sup>

- *The Right to Appeal an IRS Decision in an Independent Forum*

### OVERVIEW

From June 1, 2019, through May 31, 2020, the federal courts issued decisions in at least 14 cases involving the IRC § 6673 “frivolous issues” penalty, with two cases involving an analogous penalty at the appellate level. This litigation focuses on penalties for maintaining a case primarily for delay, raising arguments deemed frivolous by the courts, unreasonably failing to pursue administrative remedies, or filing a frivolous appeal.<sup>2</sup> In all 14 of the cases analyzed by TAS, taxpayers were unrepresented. Although none of them prevailed, in most (57 percent) of the decisions we analyzed, taxpayers escaped liability for the penalty with only a warning they could face sanctions for similar conduct in the future.<sup>3</sup> This year, no cases presented novel legal questions under IRC § 6673 and related appellate-level sanctions.

**FIGURE 2.10.1<sup>4</sup>**



- 1 See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the IRC. See IRC § 7803(a)(3).
- 2 The Tax Court generally imposes the penalty under IRC § 6673(a)(1). Other courts may impose the penalty under IRC § 6673(b)(1). U.S. Courts of Appeals are authorized to impose sanctions under IRC § 7482(c)(4), or Rule 38 of the Federal Rules of Appellate Procedure, although some appellate-level penalties may be imposed under other authorities.
- 3 See, e.g., *Tartt v. Comm’r*, T.C. Memo. 2019-112 (concluding that the taxpayer’s positions were “frivolous” but recognizing it was his first appearance before the court and therefore letting him off with just a warning).
- 4 The IRS fully prevailed in all 14 cases. In six cases, a penalty was issued. In eight cases, taxpayers were warned.

## ANALYSIS OF LITIGATED CASES

Case law in this area is considered well-settled, and the numerous arguments presented by taxpayers have been universally deemed frivolous and rejected by the courts. Taxpayers challenge the legality of tax laws, claim exemption from tax liabilities, and argue creative variations on these themes.<sup>5</sup> Upon encountering these arguments, the courts almost invariably cite the language set forth in *Crain v. Commissioner*:

We perceive no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit. The constitutionality of our income tax system — including the role played within that system by the Internal Revenue Service and the Tax Court — has long been established.<sup>6</sup>

Upon deciding to issue a penalty, the amount varied, regardless of the type of frivolous argument being raised.<sup>7</sup> The Tax Court has indicated, however, that it can be lenient when it is the taxpayer's first court appearance.<sup>8</sup> Instead, taxpayers were warned in these cases not to bring similar arguments in the future, demonstrating the willingness of the courts to penalize taxpayers if taxpayers persisted in raising frivolous arguments. Taxpayers were always warned in previous proceedings before a penalty was issued. Where the IRS has not requested the penalty, and the facts are appropriate, the court has nonetheless raised the issue *sua sponte*.<sup>9</sup>

## CONCLUSION

Taxpayers in the cases analyzed this year presented the same arguments raised and repeated year after year, which the courts routinely and universally reject.<sup>10</sup> Considering that all taxpayers in the examined cases were unrepresented, Congress and the IRS may consider increasing the visibility and availability of Low Income Taxpayer Clinics to provide assistance to eligible taxpayers who may otherwise make frivolous arguments. Congress may consider increasing funding for publicity and require the IRS to increase publicity efforts.

5 See, e.g., *Staples v. Comm'r*, T.C. Memo. 2019-75 (rejecting the taxpayer's argument that the law did not require him to file a federal income tax return or pay federal income tax).

6 *Crain v. Comm'r*, 737 F.2d 1417-18 (5th Cir. 1984). See, e.g., *Wells v. Comm'r*, T.C. Memo. 2019-134.

7 Penalties assessed during this review period ranged from \$1,000 to \$10,000.

8 See, e.g., *Hayes v. Comm'r*, T.C. Memo. 2019-147. Taxpayers avoided the IRC § 6673 penalty in six cases where the IRS requested it.

9 "Sua sponte" means without prompting or suggestion; on its own motion. BLACK'S LAW DICTIONARY (10th ed. 2014). For conduct that it finds particularly offensive, the Tax Court can choose to impose a penalty under IRC § 6673 even if the IRS has not requested the penalty. See, e.g., *Wells v. Comm'r*, T.C. Memo. 2019-134.

10 See, e.g., National Taxpayer Advocate 2019 Annual Report to Congress 204-207 (Most Litigated Issue: *Frivolous Issues Penalty Under § 6673 and Related Appellate-Level Sanctions*).

## Update of the Review Published in the Fiscal Year 2021 Objectives Report to Congress

The COVID-19 pandemic severely impacted the 2020 filing season.<sup>1</sup> On or about March 20, the IRS ceased operations in several key customer service channels and extended the due date for filing individual income tax returns and making income tax payments by three months to July 15, 2020.<sup>2</sup> The extended time applied to all Americans, including those who live and work abroad.<sup>3</sup>

In the National Taxpayer Advocate's Fiscal Year 2021 Objectives Report to Congress, we included a partial review of the 2020 filing season.<sup>4</sup> Because the filing season was extended by three months due to the disruption caused by COVID-19, we could not capture full filing season data prior to publication of the June Objectives Report. We provide a supplemental analysis of the IRS's filing season performance here, with data updated through the end of the extended 2020 filing season.

### Impact of COVID-19 on IRS Operations

The 2020 filing season operations were disrupted due to the impact of COVID-19. The IRS offered taxpayers limited means to obtain customer service assistance.

- Due to campus and office closures, the IRS did not staff phone lines to assist callers beginning March 31, 2020.<sup>5</sup>
- After March 20, 2020, taxpayers no longer had access to face-to-face customer service.<sup>6</sup>
- There was a large backlog of incoming mail, hindering the ability of the IRS to process paper-filed returns or respond to correspondence from taxpayers.
- There was a substantial reduction in Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) services.<sup>7</sup>
- The National Distribution Center (NDC) was also shut down, depriving taxpayers of a means to acquire pre-printed forms.
- Predictably, web traffic to IRS.gov more than tripled, from 422 million visits in the 2019 filing season to 1.38 billion visits in the extended 2020 filing season.<sup>8</sup>

In response to the impact of the COVID-19 pandemic on U.S. citizens, Congress enacted and assigned to the Secretary of Treasury the administration of the Economic Impact Payments (EIPs) in the height of the 2020

1 For an in-depth discussion of the impact of the COVID-19 pandemic, see the National Taxpayer Advocate's Fiscal Year 2021 Objectives Report to Congress 10-45 (*Protecting the Rights of Taxpayers Impacted by the COVID-19 National Emergency and Restoring Much-Needed Taxpayer Services*). Because the filing season was extended to July 15 for the 2020 filing season, comparison to prior filing seasons that ended in mid-April will not be an apples-to-apples comparison.

2 IRS, Notice 2020-18, 2020-15 I.R.B. 590, Relief for Taxpayers Affected by Ongoing Coronavirus Disease 2019 Pandemic (Apr. 6, 2020), <https://www.irs.gov/pub/irs-drop/n-20-18.pdf>.

3 IRS, Notice 2020-23, 2020-18 I.R.B. 742, Update to Notice 2020-18, Additional Relief for Taxpayers Affected by Ongoing Coronavirus Disease 2019 Pandemic (Apr. 27, 2020), <https://www.irs.gov/pub/irs-drop/n-20-23.pdf>.

4 See National Taxpayer Advocate's Fiscal Year 2021 Objectives Report to Congress 94-107 (*Review of the 2020 Filing Season*).

5 Accounts Management (AM) phone lines began reopening on April 27, 2020, with all major applications opened by June 26, 2020. IRS, Wage and Investment (W&I) Business Performance Review (BPR), 3rd Quarter FY 2020, at 3 (Aug. 2020).

6 Taxpayer Assistance Centers (TACs), closed since late March (including virtual service delivery), began reopening on June 29 in seven states. IRS, W&I BPR, 3rd Quarter FY 2020, at 3 (Aug. 2020).

7 Approximately 10,500 of the more than 11,000 VITA/TCE sites remain closed. IRS, W&I BPR, 3rd Quarter FY 2020, at 3 (Aug. 2020).

8 IRS, Filing Season Statistics for Week Ending July 17, 2020, <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-july-17-2020>.

filing season, while its workforce was working remotely.<sup>9</sup> Taxpayers with adjusted gross incomes below \$99,000 (\$198,000 for joint filers) were eligible for EIPs of up to \$1,200 per adult and \$500 per qualifying child.<sup>10</sup>

Given the time-sensitive nature of the payments, the IRS had to pivot, in the middle of the filing season and without full staffing, to develop processes and procedures that would allow for the quick release of the EIPs. Although there have been glitches — including some confusion about whether deceased individuals and prisoners are entitled to the EIP<sup>11</sup> — the IRS should be commended for timely delivering over 160 million EIPs.<sup>12</sup> As of the writing of this report, millions of taxpayers are still waiting for their EIP or are requesting an increase of the amount received.<sup>13</sup> These Americans will have to wait until the filing of their 2020 tax return before receiving the much-needed funds.

### Hiring of W&I Employees During the 2020 Filing Season

The Wage & Investment (W&I) Division is responsible for processing all returns and sorting all mail received by the IRS Campuses. Its Customer Account Services (CAS) and Customer Assistance, Relationships and Education (CARE) departments spearhead the IRS efforts in ensuring a successful filing season.<sup>14</sup> Despite its best pre-planning efforts, W&I experienced challenges meeting its fiscal year (FY) 2020 hiring goals due in part to low applicant pools and COVID-19-related disruptions, and encountered problems with onboarding new hires.<sup>15</sup> As of July 31, 2020, W&I hired 7,067 new employees, which was just 57 percent of its FY 2020 hiring goals.<sup>16</sup>

<sup>9</sup> The Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), Pub. L. No. 116-136 § 2201, 134 Stat. 335 (2020).

<sup>10</sup> The EIP is limited to children who have not attained age 17. For more information about the IRS’s administration of the EIP, see The CARES Act Provides Assistance to Workers and their Families, <https://home.treasury.gov/policy-issues/cares/assistance-for-american-workers-and-families> (last visited June 3, 2020).

<sup>11</sup> See Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2020-46-041, *Interim Results of the 2020 Filing Season: Effect of COVID-19 Shutdown on Tax Processing and Customer Service Operations and Assessment of Efforts to Implement Legislative Provisions 4-6* (June 30, 2020); IRS, SERP Alert 20A0446, EIP and Incarcerated Taxpayers (Oct. 29, 2020).

<sup>12</sup> See *IRS in the Pandemic: Hearing Before the Subcomm. on Government Operations of the H. Comm. on Oversight and Reform*, 116th Cong. (Oct. 7, 2020) (written statement of Charles P. Rettig, IRS Commissioner).

<sup>13</sup> Government Accountability Office (GAO), GAO-20-701, COVID-19: *Federal Efforts Could Be Strengthened by Timely and Concerted Actions* (Sept. 21, 2020), <https://www.gao.gov/reports/GAO-20-701/>.

<sup>14</sup> The 2020 filing season was interrupted by the COVID-19 pandemic. As a result, some of the data we analyzed is for the partial filing season, as the IRS suspended operations of some programs in mid- to late-March 2020.

<sup>15</sup> IRS, W&I BPR, 2nd Quarter FY 2020, at 6 (May 2020).

<sup>16</sup> *Id.*

**FIGURE 3.1, W&I FY 2020 Hiring as of July 31, 2020<sup>17</sup>**

W&I Function	2020 Vacancy Goals	2020 Actual Hires 7/31/2020	Percent
Customer Account Services (CAS)			
Accounts Management	3,300	2,740	83%
Submission Processing (SP)	8,841	4,074	46%
EPSS (Technical)	185	104	56%
<b>CAS Total</b>	<b>12,326</b>	<b>6,918</b>	<b>56%</b>
Customer Assistance, Relationship and Education (CARE)			
Media and Publications (M&P)-Correspondence Production Services	17	16	94%
M&P-Nat'l Distribution Center	12	12	100%
Field Assistance (Taxpayer Assistance Center)	123	106	86%
Stakeholder, Partnerships, Education & Communication	17	17	100%
<b>CARE Total</b>	<b>169</b>	<b>151</b>	<b>89%</b>
<b>TOTAL</b>	<b>12,495</b>	<b>7,069</b>	<b>57%</b>

<sup>17</sup> IRS, W&I BPR, 3rd Quarter FY 2020, at 9 (Aug. 2020).



## 2020 FILING SEASON PERFORMANCE

The IRS's 2020 filing season statistics indicate that of approximately 152 million individual returns filed, 143 million were filed electronically and over 100 million were requests for refunds.<sup>18</sup> Figure 3.2 presents an overview of returns processing and refunds during filing seasons 2018, 2019, and 2020.

**FIGURE 3.2, Filing Season Statistics Comparing Weeks Ending April 20, 2018; April 19, 2019; July 17, 2020<sup>19</sup>**

		2018	2019	2020	% Change 2019-2020
Individual Income Tax Returns	Total Receipts	136,919,000	137,233,000	151,782,000	10.6%
	Total Processed	130,477,000	130,775,000	145,464,000	11.2%
Free File	Total Free File	2,538,000	2,681,000	10,516,000	292.2%
e-Filing Receipts	Total e-Filing	124,515,000	126,264,000	143,379,000	13.6%
	Tax Professionals	70,983,000	70,476,000	73,806,000	4.7%
	Self-Prepared	53,532,000	55,788,000	69,573,000	24.7%
Total Refunds	Number	95,434,000	95,737,000	100,483,000	5.0%
	Amount	\$265.3 bil	\$260.9 bil	\$276.1 bil	5.8%
	Average Refund	\$2,780	\$2,725	\$2,748	0.8%
Direct Deposit Refunds	Number	80,491,000	83,249,000	83,384,000	0.2%
	Amount	\$236.9 bil	\$238.4 bil	\$240.5 bil	0.9%
	Average Refund	\$2,943	\$2,863	\$2,884	0.7%
Web Usage	Visits to IRS.gov	386.9 mil	421.5 mil	1,380.7 mil	227.6%
	Where's My Refund?	264.1 mil	316.5 mil	468.4 mil	47.9%

**FIGURE 3.3, Business Tax e-Filed Returns Comparing Weeks Ending July 15, 2019, and July 13, 2020<sup>20</sup>**

		2019	2020	% Change 2019-2020
Corporate Tax Returns (1120)	Total Accepted	803,000	843,000	5.0%
S-Corp Tax Returns (1120S)	Total Accepted	3,199,000	3,362,000	5.1%
Partnership Tax Returns (1065)	Total Accepted	2,542,000	2,696,000	6.1%

<sup>18</sup> IRS, Filing Season Statistics for Week Ending July 17, 2020, <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-july-17-2020>.

<sup>19</sup> *Id.*; Filing Season Statistics for Week Ending April 19, 2019, <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-april-19-2019>; Filing Season Statistics for Week Ending April 20, 2018, <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-april-20-2018>. The Free File and Where's My Refund data was obtained from internal filing season reports. Note: The total receipts for 2020 includes returns filed solely to obtain EIPs by those who would not usually file income tax returns.

<sup>20</sup> IRS response to TAS fact check (Dec. 23, 2020).

## TAXPAYER INTERACTIONS WITH THE IRS

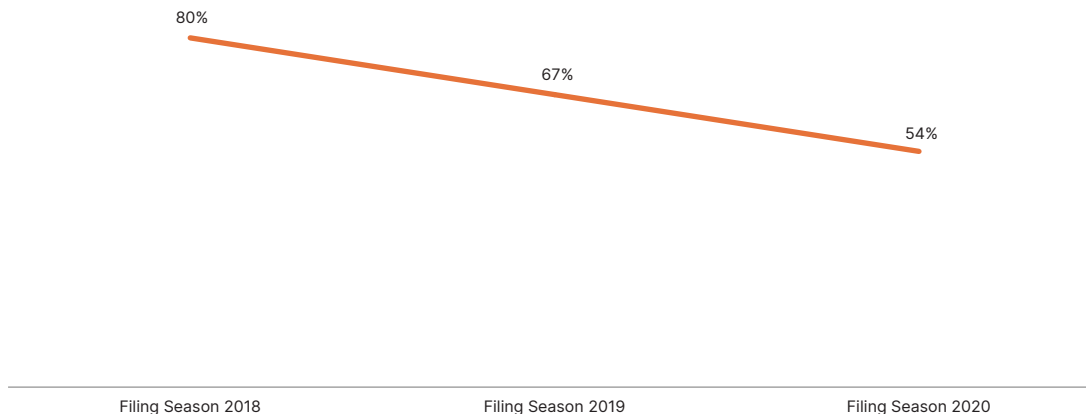
The IRS aids millions of taxpayers via its website (IRS.gov), telephone, and social media platforms, and face-to-face assistance at its TACs, VITA sites, and TCE sites.

### Telephones

From January 1 through June 30, 2020, the IRS received 55.3 million telephone calls during open hours,<sup>21</sup> of which 46.5 million were directed to its Accounts Management (AM) telephone lines.<sup>22</sup> The IRS achieved a 54 percent customer service representative (CSR) level of service (LOS)<sup>23</sup> for AM in the 2020 filing season, significantly lower than the 67 percent LOS attained in the 2019 filing season and the 80 percent LOS achieved during the 2018 filing season.<sup>24</sup> Among taxpayers who got through to AM telephone assistants this filing season through June 30, 2020, the average speed of answer was 15 minutes.<sup>25</sup>

**FIGURE 3.4**

Level of Service for Filing Seasons 2018-2020



21 IRS, Joint Operations Center (JOC), Snapshot Reports: Enterprise Snapshot, Enterprise Total (week ending June 30, 2020). The last day of the JOC planning period including the filing season is June 30, although in 2020, the filing season was extended to July 15.

22 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Accounts Management (AM) (week ending June 30, 2020).

23 The official IRS term is CSR LOS, but we will shorten it to LOS in our discussion here. The FY 2020 filing season was extended through July 15, 2020. IRS follow-up to TAS fact check response for LOS through week ending July 18, 2020 (Jan. 5, 2021).

24 IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending July 18, 2020); IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending Apr. 20, 2019); IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending Apr. 21, 2018). The phone service in filing season 2019 was impacted by the inability of the IRS to hire and train seasonal employees due to the 35-day government shutdown immediately prior to the opening of the filing season. We note that the IRS's FY 2020 budget projected a customer service representative LOS of 60 percent, so there should be no surprise at the LOS achieved this filing season. IRS, Pub. 4450, Congressional Budget Justification & Annual Performance Report and Plan Fiscal Year 2021, at 53 (Feb. 2020).

25 IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending June 30, 2020).

Level of service was considerably worse on some IRS telephone lines outside the AM category, particularly on the compliance lines, where fewer callers were assisted, with longer wait times. For example, the IRS had a LOS of 35 percent on its consolidated Automated Collection System telephone lines, and callers who managed to get through on those lines waited on hold for an average of almost 26 minutes.<sup>26</sup>

The LOS is the IRS benchmark measure in how it calculates and presents filing season data. It is complex and does not accurately reflect the overall experience of taxpayers seeking telephone assistance. It is also a very narrow one and may not accurately reflect the taxpayer experience in two respects. First, the benchmark measure reflects only calls directed to the IRS's AM telephone lines, which are primarily its taxpayer service lines and receives about 84 percent of its calls. Of those, 46.5 million of the 55.3 million total net attempts (84 percent) the IRS received came in on or were routed to AM.<sup>27</sup> The benchmark measure does not tell us anything about how the IRS handled the remaining almost nine million calls outside of AM (such as the Compliance phone lines).<sup>28</sup>

Second, the LOS is calculated using many components of call data. The denominator in the IRS's LOS computation is derived from calls from those seeking to speak to an assistor (those routed to telephone assistors or to automated services) rather than from *all* calls to that phone line. Callers to the AM lines are greeted by a phone tree, and based on their responses, they are directed either to an employee for live assistance or to an automated system — automation is not always a deliberate caller-selected option. Having said this, some callers are able to obtain the information they sought from the automation response lines even though they did not affirmatively opt in to these lines. Only 19 percent of the 46.5 million net attempts received by the AM lines (almost nine million calls) were answered by a representative, while the remaining taxpayer calls were routed to automation or reflected taxpayer hang ups.<sup>29</sup> Hang ups might be due to taxpayers' unwillingness to work through the phone tree or wait on hold. While the IRS is reporting a benchmark level of service of 56 percent, *IRS employees answered only 19 percent of the net attempted calls to the AM lines and 21 percent of the net attempted calls received on all lines.*<sup>30</sup>

## Telephone Service Observations

Favorable top-line numbers mask significant weaknesses in IRS telephone service. Consider the following:

- **Most taxpayers calling the IRS want to speak to an employee; however, 32 percent of the net attempts to reach AM were answered by automation and never connected to an employee.**<sup>31</sup> Callers generally have no choice regarding how and where their calls are routed; the IRS programs transfer the calls based on the caller's response to pre-recorded telephone prompt options. The IRS call tree does not

<sup>26</sup> IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending June 30, 2020).

<sup>27</sup> *Id.*

<sup>28</sup> The National Taxpayer Advocate raised these concerns in a March 2019 hearing. *The Tax Filing Season: Hearing Before the H. Subcomm. on Oversight of the H. Comm. on Ways and Means*, 116th Cong. 6-11 (Mar. 7, 2019) (statement of Nina E. Olson, National Taxpayer Advocate).

<sup>29</sup> IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending June 30, 2020). CSR LOS = Numerator divided by Denominator (see following). Numerator = Assistor Calls Answered + Info Messages. Denominator = Assistor Calls Answered + Info Messages + Emergency Closed + Secondary Abandons + (Add either Calculated Busy Signals OR Network Incompletes)\* + (Add either Calculated Network Disconnects OR Total Disconnects) \*Note: If the sum of VCR Answered + Informational Messages + ICCE-PHONES is greater than or equal to one, use Calculated Busy Signals and Calculated Network Disconnects to determine CSR LOS. Otherwise, use Total Busy Signals (Network Incompletes) and Total Disconnects.

<sup>30</sup> IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending June 30, 2020).

<sup>31</sup> *Id.*

present the taxpayer with a choice to speak to a live assistor. *Thus, the LOS data reflects where taxpayers have been directed by the IRS, not necessarily where and how taxpayers need or would like to be assisted.*

- **Despite a reported LOS of 56 percent, IRS telephone assistors answered only about 19 percent of the net attempted calls the IRS received on its AM lines.** While the IRS reported that its benchmark LOS was 56 percent, *telephone assistors answered only less than nine million calls out of 46.5 million net attempts to reach the AM lines, or 19 percent.* We are not suggesting that the IRS served less than 19 percent of callers; we recognize that some are adequately served through automation and some quickly hang up for personal reasons.

These results show taxpayers are not getting the full assistance they need over the phone, jeopardizing their *right to quality service* and *right to be informed*, while potentially undermining voluntary compliance.

## Correspondence

For FY 2018 and FY 2019, the IRS received an average of approximately seven million letters annually from taxpayers responding to proposed adjustments and other notices (*e.g.*, requesting penalty abatements, responding to math error notices, and making payment arrangements).<sup>32</sup> With the COVID-19 pandemic shutting down IRS offices during the midst of the 2020 filing season, the IRS has not been able to accurately track or respond to correspondence.

As of September 19, 2020, the IRS estimated there was a backlog of 5.8 million pieces of correspondence, including 2.8 million unopened returns.<sup>33</sup> Failing to timely process taxpayer responses to proposed increases in tax liability can have a significant impact on the taxpayer. For example, delays in processing of paper-filed returns (original or amended returns) would delay the release of a taxpayer's 2019 tax refund.

## Face-to-Face Service at Taxpayer Assistance Centers

The IRS Field Assistance function provides face-to-face assistance to taxpayers in the 50 states, the District of Columbia, and Puerto Rico at 358 TACs (down from 401 locations in 2011).<sup>34</sup> The number of taxpayers visiting a TAC declined from about 2.9 million in FY 2018 to 1.0 million in FY 2020.<sup>35</sup> In response to the COVID-19 crisis, TACs were temporarily closed on March 20 to ensure the safety and health of taxpayers and IRS employees.<sup>36</sup>

32 In FY 2019, the IRS received 6.9 million letters, down from 7.1 million letters in FY 2018. See IRS, JOC, Adjustments Inventory Reports: July-September Fiscal Year Comparison (FY 2018 through FY 2019).

33 *IRS in the Pandemic, Hearing Before the H. Comm. on Oversight and Reform, Subcomm. on Government Operations*, 116th Cong. (Oct. 7, 2020) (statement of Erin M. Collins, National Taxpayer Advocate).

34 Although the IRS reports having 358 TACs for the 2020 filing season, 40 of these were not open due to lack of staffing as of February 20, 2020. An additional seven TACs have no permanent technical staff assigned. However, the IRS is able to keep these locations open by providing a "circuit rider." A circuit rider is an employee who travels from one office to cover an unstaffed TAC. TIGTA, Ref. No. 2020-45-024, *Interim Results of the 2020 Filing Season* 15 (Apr. 7, 2020); GAO, GAO-12-176, *Processing Gains, but Taxpayer Assistance Could Be Enhanced by More Self-Service Tools* 18 (Dec. 2011).

35 IRS, W&I BPR, 4th Quarter FY 2020, at 22 (Nov. 5, 2020); IRS, Fiscal Year 2019 Data Book, Table 19, Selected Taxpayer Assistance and Education Programs, by Type of Assistance.

36 See IRS, Taxpayer Assistance Center (TAC) Locations Where In-Person Document Review Is Provided (Mar. 20, 2020), <https://www.irs.gov/help/tac-locations-where-in-person-document-verification-is-provided>.

The IRS continued its policy of encouraging taxpayers to schedule an appointment to receive assistance at any of its TACs.<sup>37</sup> This filing season through June 30, the number of assistor-answered calls to the TAC appointment line (670,486) was down 34 percent from filing season 2019 (1,019,131 assistor calls answered).<sup>38</sup> Field Assistance provided face-to-face assistance to nearly 537,000 taxpayers, a decrease of 33 percent compared to the prior filing season.<sup>39</sup> Nearly 37,000 taxpayers received assistance at TACs without an appointment because of openings in the day's calendar or the availability of staff, down 57 percent from the prior year.<sup>40</sup>

## SPECIAL TOPICS

### New Form 1040-SR

The IRS introduced a new Form 1040-SR, U.S. Tax Return for Seniors, during the 2020 filing season. This simplified form is intended for use by taxpayers aged 65 or older, many of whom may have previously used Form 1040EZ, Income Tax Return for Single and Joint Filers With No Dependents, which was eliminated after tax year 2018. Through July 17, 14.1 million Forms 1040-SR had been e-filed (12.9 million had been accepted).<sup>41</sup> With the shutdown of TCE and American Association of Retired Persons (AARP) Foundation Tax-Aide sites in mid-March due to COVID-19, this may have impacted the number of Form 1040-SR filings.<sup>42</sup>

### Refund Fraud

The IRS's efforts to detect and prevent refund fraud are managed by the Return Integrity Verification Operation (RIVO) of Wage and Investment (W&I). RIVO oversees both the identity theft (IDT) refund fraud program via the Taxpayer Protection Program (TPP) and non-IDT refund fraud via the Pre-Refund Wage Verification Hold Program (PRWVH).<sup>43</sup>

### Taxpayer Protection Program

When the TPP flags a tax return as potential IDT, it suspends the processing of the tax return and sends correspondence to the taxpayer to authenticate his or her identity either over the phone, online, or by visiting a TAC. During the 2020 filing season, the IRS selected over 1.5 million refund tax returns for TPP review as of July 15, 2020.<sup>44</sup> However, due to the pandemic-related closure of IRS notice production centers, the IRS suspended all printing of TPP correspondence to taxpayers on April 8, 2020, and resumed July 8, 2020.<sup>45</sup>

37 IRS, IR 2019-67, IRS.gov: Best Place to Get Last-Minute Tax Tips and Resources (Apr. 9, 2019), <https://www.irs.gov/newsroom/irsgov-best-place-to-get-last-minute-tax-tips-and-resources>. See also Internal Revenue Manual (IRM) 21.3.4.2.4.2, TAC Appointment Exception Procedures (Oct. 1, 2018).

38 IRS, JOC, Snapshot Reports: Product Line Detail Snapshot (week ending June 30, 2020); IRS, JOC, Snapshot Reports: Product Line Detail Snapshot (week ending Apr. 20, 2019).

39 IRS, 2019 Weekly Individual Filing Season Report Cumulative Statistics (July 17, 2020); IRS, 2018 Weekly Individual Filing Season Report Cumulative Statistics (Apr. 19, 2019).

40 *Id.*

41 IRS, SP, Program Management/Process Assurance Branch, Filing Season Statistics Report (week ending July 18, 2020).

42 IRS, W&I BPR, 2nd Quarter FY 2020, at 3 (May 2020); AARP Foundation, *Scheduling Notice: Due to Coronavirus Concerns, AARP Foundation Tax-Aide Suspends Service Until Further Notice* (Mar. 13, 2020), <https://press.aarp.org/2020-3-13-Scheduling-Notice-Due-to-Coronavirus-Concerns-AARP-Foundation-Tax-Aide-Suspends-Service-Until-Further-Notice>.

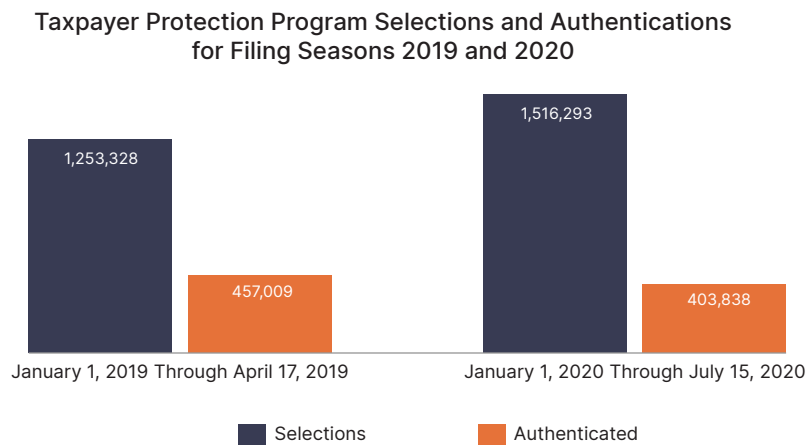
43 See IRM 25.25.6.1.7(1), Taxpayer Protection Program Overview (Apr. 28, 2020); IRM 25.25.3.1(1), Program Scope and Objectives (Aug. 30, 2019).

44 IDT and Integrity Verification Operation (IVO) Performance Report 2 (July 22, 2020).

45 TPP Combined Report 8 (July 20, 2020).

The IRS issued 964,319 letters on 64 percent of the selected returns by the July 15 due date.<sup>46</sup> Thus, only 403,838 taxpayers authenticated their identities by July 15, compared to 457,009 of the more than 1.2 million refund tax returns selected through April 17, 2019 during the 2019 filing season.<sup>47</sup>

**FIGURE 3.5**



### Pre-Refund Wage Verification Holds

When returns are selected as potential non-IDT refund fraud into the PRWVH process, the IRS freezes the claimed refund while they seek to verify information on the return, namely wages and withholding. This verification process is done by either confirming the information on the return by comparing it to Form W-2 data provided by the Social Security Administration, or by contacting the taxpayer's employer(s) to verify the wages.

For the 2020 filing season, the IRS continued to improve its non-IDT refund fraud program. These changes have resulted in two significant differences in the program, when compared to prior filing seasons:

1. The filters have been able to select many more returns for further analysis than they have in the past; and
2. Many more returns were identified for release earlier in the filing season.

During the 2020 filing season, the refund fraud filters selected over 3.2 million refund returns, a 107 percent increase over the 2019 filing season.<sup>48</sup> One possible explanation for this increase is the adoption of improved systemic verification and reprocessing features for the non-IDT refund fraud filters, a sign that the IRS is getting better at identifying questionable refund claims. This is a positive result — the IRS is identifying more fraud but also getting refunds out sooner than when it used a manual process.

Approximately 88 percent of over 3.2 million returns selected by the IRS non-IDT refund fraud filters have been released, as shown in Figure 3.6. Comparing these results with the same selections and release rates

<sup>46</sup> TPP Combined Report 8 (July 20, 2020).

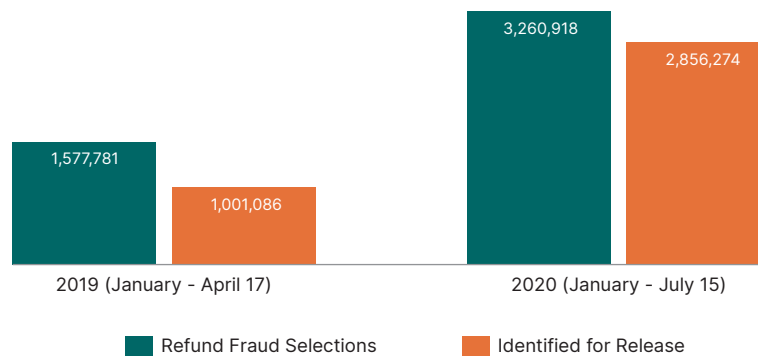
<sup>47</sup> IDT and IVO Performance Report 2 (Apr. 24, 2019). However, an additional 312,782 taxpayers authenticated after the filing season ended (July 15) through September 23, 2020.

<sup>48</sup> IDT and IVO Performance Report 4, 11-13 (July 22, 2020).

(63 percent) for the 2019 filing season indicates the IRS is more efficient at systemically identifying more returns for release earlier.<sup>49</sup>

**FIGURE 3.6**

**Comparison of Refund Fraud Selections and Returns Identified for Release During Filing Seasons 2019 and 2020**



Due to the suspension of notice production, taxpayers were unaware that the PRWVH was holding their refunds and that they may have needed to provide the IRS with documentation verifying information on the return (*e.g.*, wages and withholding) or submit an amended return to get their refunds released.<sup>50</sup> In many cases, taxpayers were unaware why their refund was held or what they could do to release it.

For FY 2020 through June, PRWVH case receipts remain the number one issue for taxpayers who come to TAS for assistance.<sup>51</sup> Of 58,276 TAS PRWVH cases closed through June 2020, 47,010 cases (81 percent) were closed with full or partial relief.<sup>52</sup> As of October 31, 2020, over 8,000 PRWVH cases remain open in TAS inventory.<sup>53</sup>

Despite the high number of returns identified for release, concerns remain. Systemic problems early in the filing season caused the misidentification of legitimate returns and created a backlog of returns, resulting in the need for manual workarounds and delaying refund issuance.<sup>54</sup> About 25 percent of the returns flagged for income verification took longer than 56 days for the IRS to release the refund this year, and about 18 percent of those flagged for identity verification took longer than 120 days for the IRS to release the refund.<sup>55</sup> Even a

49 IDT and IVO Performance Report 4, 9 (Apr. 24, 2019).

50 Letter 4464C, Questionable Refund Hold (Sept. 8, 2020). "You don't need to do anything at this time. However, we suggest you review your return and supporting documents for accuracy and ensure you're eligible to claim all reported income, withholding, and tax credits. If you find an error, you can file an amended return to correct it."

51 TAS BPR, 3rd Quarter FY 2020, at 23.

52 Data obtained from TAMIS (July 1, 2020).

53 Data obtained from TAMIS (Nov. 1, 2020).

54 Executive Director Systemic Advocacy and Return Integrity Compliance Service Meeting Minutes (Feb. 25, 2020) (on file with TAS).

55 IRS, RRP Non-IDT Performance Report 3 (Oct. 7, 2020); IDT, and IVO Performance Report 6 (Oct. 7, 2020).



short delay in receiving a refund can have significant impact for low-income taxpayers who may be relying on the refund to assist with day-to-day living expenses.<sup>56</sup>

## CONCLUSION

The IRS faced significant challenges in filing season 2020, including a severe disruption in work for much of the country due to COVID-19 and the need for the IRS to administer the delivery of EIPs to millions of Americans. Due to the disruptions by COVID-19-related closures in the midst of the filing season, the IRS served fewer taxpayers via telephone, correspondence, or in-person assistance than in prior years. The IRS reported a 54 percent LOS as its benchmark measure of telephone performance, down from a LOS of 67 percent in the 2019 filing season.

On a positive note, 152 million Americans filed their individual tax returns by the July 15 extended due date, up over ten percent from the 2019 filing season (which had the normal mid-April filing deadline), despite many taxpayers facing disruptions in their lives due to COVID-19. One possible explanation for the increased filings is that many taxpayers with no filing requirements in prior years filed in 2020 to ensure they received the EIP. Over 100 million of those returns were for refunds, up five percent from prior year filings.

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56 For a more in-depth discussion, see National Taxpayer Advocate's 2019 Annual Report to Congress 34-44 (Most Serious Problem: Processing Delays: Refund Fraud Filters Continue to Delay Taxpayer Refunds for Legitimately Filed Returns, Potentially Causing Financial Hardship).

## TAS Case Advocacy

Under IRC § 7803(c)(2)(A), the Office of the Taxpayer Advocate (the Taxpayer Advocate Service (TAS)) has four principal functions:

- Assist taxpayers in resolving problems with the IRS;
- Identify areas in which taxpayers are experiencing problems with the IRS;
- Propose changes in the administrative practices of the IRS to mitigate problems taxpayers are experiencing with the IRS; and
- Identify potential legislative changes that may be appropriate to mitigate such problems.

The first function described in the statute relates to TAS's case advocacy, which involves assisting taxpayers with their individual issues with the IRS. A fundamental part of helping taxpayers resolve their problems involves protecting taxpayer rights and reducing taxpayer burden.<sup>1</sup> The TAS Case Advocacy function is primarily responsible for direct contact with all types of taxpayers (including individuals, businesses, and tax exempt entities), their representatives, and congressional staff to resolve specific problems taxpayers are experiencing with the IRS. Information from these contacts and case results are vital to TAS's statutory mission to propose changes in the IRS's administrative practices to alleviate taxpayers' problems, and identify potential legislative changes to relieve such problems.<sup>2</sup> This section of the report discusses how TAS fulfills its mission to assist taxpayers with their specific issues and concerns involving IRS systems and procedures.<sup>3</sup>

### TAS CASE RECEIPT CRITERIA

Taxpayers typically seek TAS assistance with specific issues when:

- They experience a tax problem that causes financial difficulty;
- They are unable to resolve their issues directly with the IRS through normal channels; or
- An IRS action or inaction caused or will cause them to suffer a long-term adverse impact, including a violation of taxpayer rights.

TAS accepts cases in four categories: economic burden, systemic burden, best interest of the taxpayer, and public policy. See Figure 4.1.

1 See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the IRC. See IRC § 7803(a)(3).

2 TAS staff often use Case Advocacy's findings as the basis for many of the Most Serious Problems and Legislative Recommendations in the National Taxpayer Advocate's Annual Report to Congress.

3 TAS's other three functions involve identifying and proposing changes to systemic problems affecting taxpayers. TAS employees advocate systemically by identifying IRS procedures that adversely affect taxpayer rights or create taxpayer burden, and recommending solutions, either administrative or legislative, to improve tax administration. (Note: IRS employees, taxpayers, practitioners, and other external stakeholders can use the Systemic Advocacy Management System (SAMS) to submit systemic issues to TAS at <https://www.irs.gov/advocate/systemic-advocacy-management-system-sams>.)

FIGURE 4.1

## CASE ACCEPTANCE CRITERIA



As an independent organization within the IRS, the Taxpayer Advocate Service protects taxpayer rights under the Taxpayer Bill of Rights, helps taxpayers resolve problems with the IRS, and recommends changes to prevent future problems. TAS fulfills its statutory mission by working with taxpayers to resolve problems with the IRS.<sup>A</sup> TAS case acceptance criteria fall into four main categories.

### ECONOMIC BURDEN

Economic burden cases are those involving a financial difficulty to the taxpayer: an IRS action or inaction has caused or will cause negative financial consequences or have a long-term adverse impact on the taxpayer.

- CRITERIA 1** The taxpayer is experiencing economic harm or is about to suffer economic harm.
- CRITERIA 2** The taxpayer is facing an immediate threat of adverse action.
- CRITERIA 3** The taxpayer will incur significant costs if relief is not granted (including fees for professional representation).
- CRITERIA 4** The taxpayer will suffer irreparable injury or long-term adverse impact if relief is not granted.

### SYSTEMIC BURDEN

Systemic burden cases are those in which an IRS process, system, or procedure has failed to operate as intended, and as a result the IRS has failed to timely respond to or resolve a taxpayer issue.<sup>B</sup>

- CRITERIA 5** The taxpayer has experienced a delay of more than 30 days to resolve a tax account problem.
- CRITERIA 6** The taxpayer has not received a response or resolution to the problem or inquiry by the date promised.
- CRITERIA 7** A system or procedure has either failed to operate as intended, or failed to resolve the taxpayer's problem or dispute within the IRS.

### BEST INTEREST OF THE TAXPAYER

TAS acceptance of these cases will help ensure that taxpayers receive fair and equitable treatment and that their rights as taxpayers are protected.<sup>C</sup>

- CRITERIA 8** The manner in which the tax laws are being administered raises considerations of equity, or has impaired or will impair the taxpayer's rights.

### PUBLIC POLICY

Acceptance of cases into TAS under this category will be determined by the National Taxpayer Advocate and will generally be based on a unique set of circumstances warranting assistance to certain taxpayers.<sup>D</sup>

- CRITERIA 9** The National Taxpayer Advocate determines compelling public policy warrants assistance to an individual or group of taxpayers.

A IRC § 7803(c)(2)(A)(i).

B TAS changed its case acceptance criteria to generally stop accepting certain systemic burden issues. See Internal Revenue Manual (IRM) 13.1.7.3(d), Exceptions to Taxpayer Advocate Service Criteria (Feb. 4, 2015). This IRM is temporarily amended until December 31, 2020. TAS, Interim Guidance Memo (IGM) TAS-13-0220-002, Interim Guidance on Exclusion From TAS Case Acceptance Criteria Taxpayers Impacted by Pre-Refund Wage Verification Hold and Amended Returns (Feb. 14, 2020).

C See IRM 13.1.7.2.3, TAS Case Criteria 8, Best Interest of the Taxpayer (Feb. 4, 2015).

D See TAS, IGM TAS-13-1120-0019, Interim Guidance on Accepting Cases Under TAS Case Criteria 9, Public Policy (Nov. 20, 2020).

Economic burden (EB) cases often occur where an IRS action or inaction has caused or will cause negative financial consequences or have a long-term adverse impact on the taxpayer. In many of the economic burden cases, time is critical. If the IRS does not act quickly (*e.g.*, to remove a levy or release a lien), the taxpayer will experience additional economic harm.<sup>4</sup> Systemic burden cases include situations where an IRS process, system, or procedure has failed to resolve the taxpayer's issue.<sup>5</sup> Best interest of the taxpayer (Criteria 8) includes violations of the Taxpayer Bill of Rights.<sup>6</sup>

With respect to public policy cases (Criteria 9), the National Taxpayer Advocate has the sole authority to determine which issues are included in this criterion and will designate them by memorandum. The National Taxpayer Advocate issued an Interim Guidance Memorandum (IGM) on November 20, 2020 (effective until November 19, 2022), that designated Criteria 9 cases to include private debt collection; passport denial, revocation, or limitation; automatic exempt organization revocations due to failure to file an annual return or notice for three consecutive years; and congressional referred tax account-related inquiries (excluding stand-alone Economic Impact Payment (EIP) issues after November 23, 2020) that do not fit into any other category.<sup>7</sup>

## CASE RECEIPT TRENDS IN FISCAL YEAR 2020

In fiscal year (FY) 2020, TAS received 206,772 cases, 34,005 fewer cases than received in FY 2019, a decrease of 14 percent.<sup>8</sup> The most significant reason for this decrease in cases this fiscal year was the complete or partial shutdown of IRS core operations due to COVID-19, as discussed in detail later in this section. In addition to our case receipts, Intake Advocates also resolved another 29,117 taxpayer calls without the need to establish a TAS case.<sup>9</sup> Taxpayers who call the IRS National Taxpayer Advocate toll-free line, which is staffed by IRS employees, are transferred to the TAS Centralized Case Intake (TAS CCI) function if the IRS assistors are unable to assist the taxpayer and determine the taxpayer's issue meets TAS criteria.<sup>10</sup> Of the 55,760 taxpayer calls answered, TAS CCI assisted 52 percent of the taxpayers without creating a new case.<sup>11</sup> Providing taxpayers this assistance during the initial contact allows TAS to use its specialized skills and resources on more complex situations.

4 IRC § 7803(c)(2)(C)(ii); Internal Revenue Manual (IRM) 13.1.7.2.1, TAS Case Criteria 1-4, Economic Burden (Feb. 4, 2015).

5 IRC § 7803(c)(2)(C)(ii); IRM 13.1.7.2.2, TAS Case Criteria 5-7, Systemic Burden (Feb. 4, 2015).

6 IRC § 7803(c)(2)(C)(ii); IRM 13.1.7.2.3 (Feb. 4, 2015). See also TBOR, [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights); IRC § 7803(a)(3).

7 See IGM TAS-13-1120-0019, Interim Guidance on Accepting Cases Under TAS Case Criteria 9, Public Policy (Nov. 20, 2020).

8 Data obtained from Taxpayer Advocate Management Information System (TAMIS) (Oct. 1, 2019; Oct. 1, 2020).

9 The TAS CCI function serves as the first contact for most taxpayers coming to TAS for assistance. Intake Advocates are responsible for answering calls and conducting in-depth interviews with taxpayers to determine the correct disposition of their issue(s). Intake Advocates take actions where possible to resolve the issue upfront, create cases after validating the taxpayer meets TAS criteria, and offer taxpayers information and assistance with self-help options. See IRM 13.1.16.2, TAS Intake Strategy (Aug. 14, 2020).

10 TAS also has Intake Advocates in the CCI function.

11 Data obtained from TAMIS (Oct. 1, 2020); IRS, Joint Operations Center (JOC), Snapshot Report (Sept. 30, 2020).

**FIGURE 4.2, TAS Case and Intake Receipts and Relief Rates, FYs 2019-2020<sup>12</sup>**

Case Categories	Receipts FY 2019	Receipts FY 2020	Percent Change	Relief Rates FY 2019	Relief Rates FY 2020	Percent Change
Economic Burden	141,768	120,357	-15.1%	77.2%	79.2%	2.5%
Systemic Burden	98,207	85,462	-13.0%	78.5%	79.4%	1.2%
Best Interest of the Taxpayer	560	418	-25.4%	79.7%	76.7%	-3.8%
Public Policy	242	535	121.1%	80.0%	77.4%	-3.3%
Subtotal	240,777	206,772	-14.1%	77.8%	79.3%	1.9%
Calls Resolved with Alternative Assistance	26,209	29,117	11.1%			
Grand Total Receipts	266,986	235,889	-11.6%			

**Most Prevalent Issues in TAS Cases, With a Focus on Economic Burden Cases**

Figure 4.3 compares the top ten sources of TAS receipts by issue for FY 2019 to FY 2020.<sup>13</sup>

**FIGURE 4.3, Top Ten Issues for FY 2020 Cases Received in TAS Compared to Same Type of Issue in FY 2019<sup>14</sup>**

Rank	Issue Description	FY 2019	FY 2020	FY 2020 Percent of Total	Percent Change FY 2019 to FY 2020
1	Pre-Refund Wage Verification Hold	91,747	68,499	33.1%	-25.3%
2	Unpostables and Rejects	10,292	15,784	7.6%	53.4%
3	Earned Income Tax Credit (EITC)	18,691	12,176	5.9%	-34.9%
4	Processing Original Returns	5,150	8,509	4.1%	65.2%
5	Health Insurance Premium Tax Credit for Individuals	3,971	8,287	4.0%	108.7%
6	Other Refund Inquiries and Issues	9,425	8,187	4.0%	-13.1%
7	Processing Amended Returns	9,427	7,676	3.7%	-18.6%
8	Taxpayer Protection Program (TPP) Issues	6,037	7,098	3.4%	17.6%
9	Identity Theft	8,490	5,900	2.9%	-30.5%
10	Injured Spouse Claims	7,892	3,668	1.8%	-53.5%
Other TAS Receipts		69,655	60,988	29.5%	-12.4%
Total TAS Receipts		240,777	206,772	100%	-14.1%

<sup>12</sup> Data obtained from TAMIS (Oct. 1, 2019; Oct. 1, 2020).

<sup>13</sup> IRM 13.1.16.18.1.2, Primary Issue Code (Aug. 14, 2020) (stating the primary core issue code (PCIC) is a three-digit code that defines the most significant issue, policy, or process within the IRS that underlies the cause of the taxpayer's problem).

<sup>14</sup> Data obtained from TAMIS (Oct. 1, 2019; Oct. 1, 2020). The "Other TAS Receipts" category encompasses the remaining issues not in the top ten.

More than half of TAS's case receipts continue to involve taxpayers experiencing an economic burden.<sup>15</sup> Because these taxpayers face potential immediate adverse financial consequences, TAS requires employees to work these cases using accelerated timeframes.<sup>16</sup>

Figure 4.4 shows the top five issues driving economic burden receipts in FY 2020 compared to FY 2019. TAS dedicates significant resources to resolving the systemic causes of these issues, and, as discussed in the Most Serious Problems section of this and past reports, provides recommendations to the IRS to improve processes that cause taxpayers to experience economic or systemic burdens.

**FIGURE 4.4, Top Five Case Issues Causing Economic Burden Receipts in FY 2020 Compared to Same Type of Issue in FY 2019<sup>17</sup>**

Rank	Issue Description	FY 2019	EB Receipts as % Total EB Receipts FY 2019	FY 2020	EB Receipts as % Total EB Receipts FY 2020	EB Receipts Percent Change FY 2019 to FY 2020
1	Pre-Refund Wage Verification Hold	64,877	45.8%	48,051	39.9%	-25.9%
2	Unpostables and Rejects	6,610	4.7%	9,662	8.0%	46.2%
3	Earned Income Tax Credit (EITC)	13,190	9.3%	8,781	7.3%	-33.4%
4	Health Insurance Premium Tax Credit for Individuals	2,937	2.1%	6,293	5.2%	114.3%
5	Taxpayer Protection Program (TPP) Issues	3,974	2.8%	4,107	3.4%	3.3%

## IMPACT OF COVID-19

In the middle of the tax filing season, COVID-19 presented the IRS, including TAS, with an extraordinary challenge: to safeguard the health and safety of employees and taxpayers while administering the tax laws and assisting taxpayers with IRS issues. Adding additional challenges, the IRS was tasked with disbursing EIPs during the pandemic.<sup>18</sup>

<sup>15</sup> For the ninth consecutive fiscal year, more than half of TAS's case receipts involve taxpayer's experiencing EB. Data obtained from TAMIS (Oct. 1, 2012; Oct. 1, 2013; Oct. 1, 2014; Oct. 1, 2015; Oct. 1, 2016; Oct. 1, 2017; Oct. 1, 2018; Oct. 1, 2019; Oct. 1, 2020).

<sup>16</sup> IRM 13.1.18.3(1), Initial Contact (May 5, 2016). The TAS employee is required to contact the taxpayer or representative by telephone within three workdays of the taxpayer advocate received date (TARD) for criteria 1-4 cases and within five workdays of the TARD for criteria 5-9 cases to notify the taxpayer of TAS's involvement. Per IRM 13.1.18.1.1(1), Working TAS Cases (Feb. 1, 2011), TAS's policy is that cases involving EB will be worked sooner than other cases.

<sup>17</sup> Data obtained from TAMIS (Oct. 1, 2019; Oct. 1, 2020).

<sup>18</sup> See Most Serious Problem: *Digital Communications: Limited Digital Communications With the IRS Make Problem Resolution Unnecessarily Difficult for Taxpayers*, *supra.*; *IRS in the Pandemic*, Hearing Before the H. Subcomm. on Government Operations Committee on Oversight and Reform, 116th Cong. (Oct. 1, 2020) (statement of Erin M. Collins, National Taxpayer Advocate); Fiscal Year 2021 Objectives Report to Congress, *Systemic Advocacy Objective: Protecting the Rights of Taxpayers Impacted by the COVID-19 National Emergency and Restoring Much-Needed Taxpayer Services* 10-36.

## Economic Impact Payments and TAS

On March 27, 2020, the President signed into law the Coronavirus Aid, Relief, and Economic Security (CARES) Act.<sup>19</sup> The primary goal of this act was to provide fast and direct economic assistance for American workers, families, and small businesses, including getting cash into the hands of citizens as quickly as possible. As quickly as the IRS was able to issue EIPs to millions of taxpayers, problems with EIPs began to emerge. TAS became aware of these problems directly from taxpayers, tax professionals, and congressional offices.

TAS's strategy for addressing the concerns of taxpayers with EIP issues changed as the situation evolved. At first, TAS did not open a case when taxpayers were solely seeking EIP assistance. Until the IRS established manual processes for correcting EIP issues, TAS assistance could not expedite or initiate an EIP. As the IRS made programming changes and created manual processing guidance, TAS moved quickly to change our case acceptance criteria to assist those taxpayers where we could help with EIP processing.

In April 2020, TAS modified the Taxpayer Advocate Management Information System (TAMIS) functionality to enable tracking of EIP-related inquiries and respective contacts. This TAMIS modification captured EIP-related data in devising and negotiating our course of action to assist taxpayers with individual EIP issues and systemic deficiencies. Between April 1, 2020 and September 30, 2020, TAS employees recorded 10,456 contacts with taxpayers involving questions and issues relating to EIPs.<sup>20</sup> Additionally, TAS received 449 EIP and COVID-related submissions on its Systemic Advocacy Management System (SAMS) in FY 2020.<sup>21</sup>

With the initial shutdown of IRS toll-free operations, including TAS toll-free lines, taxpayers began calling TAS local offices. TAS local office staffing was insufficient to handle the influx of calls, thereby sending the calls to voicemail. Unfortunately, our voicemail system had limited capacity and the phone system was not configured to direct taxpayers to other resources. To remedy this, TAS upgraded its voicemail volume capability, assigned TAS CCI employees to respond to telephone inquiries, and offered overtime to employees assisting with telephone inquiry responses. Additionally, TAS instituted a call gating system on its phone lines with new voicemail messaging to direct taxpayers to the appropriate resource and to better serve taxpayers calling about their EIP. These changes allowed TAS to focus its limited resources on the taxpayers most in need of direct assistance. The gating system remains in place and has successfully helped TAS manage the level of phone assistance requests and staffing resources needed to answer the calls.

Although TAS was able to provide education and self-help options to many taxpayers via IRS resources available on the IRS website and elevate issues to IRS Business Operating Divisions (BODs) and functions, TAS's advocacy efforts were limited because the IRS had limited programming in place to address and correct several EIP issues impacting large segments of taxpayers. Furthermore, the IRS was firm in its stance that no manual corrections were permitted and advised TAS that programming was in development to address many systemic issues and provide for future manual corrections. Without IRS processes in place to resolve these issues TAS was unable to assist taxpayers with EIP-only cases. TAS issued Interim Guidance Memorandum (IGM) TAS-13-0520-0011, Interim Guidance - Economic Impact Payments and TAS Case Acceptance, to modify TAS case acceptance criteria to exclude cases involving EIP-only issues. TAS continued to accept cases

<sup>19</sup> The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), Pub. L. No. 116-136, 134 Stat. 281 (2020).

<sup>20</sup> Data obtained from TAMIS (Oct. 26, 2020).

<sup>21</sup> Data obtained from the Systemic Advocacy Management System (SAMS) (Oct. 1, 2020).



where we had a path forward to helping the taxpayer resolve an issue stemming from a filed 2019 return (or 2018 return if the 2019 return was not filed).

While TAS was initially unable to resolve individual EIP-related issues, TAS was at the forefront of advocacy through taxpayer education. TAS took action to provide information directly to taxpayers via telephone conversations, the TAS website, including the EIP Tool and Video, *How Do I Get An Economic Impact Payment?*, in addition to the National Taxpayer Advocate Blog, *During this National Emergency the IRS Is Called Upon to Issue Economic Impact Payments to All Eligible Americans: What Taxpayers Can Do to Speed Up Payment* (April 15, 2020).

In late July, the IRS announced systemic remedies for certain segments of taxpayers who did not receive the EIP for which they were eligible.<sup>22</sup> The IRS also defined limited circumstances where manual adjustments would be permitted and advised that programming was imminent. As a result of these commitments by the IRS, TAS modified its case acceptance criteria by issuing IGM TAS-13-0820-0016, *Interim Guidance – Economic Impact Payments and TAS Case Acceptance*, to accept those EIP-related issues where programming was in place to resolve the issue, or implementation of corrective programming was imminent.<sup>23</sup>

From April 1 to September 30, 2020, TAS accepted 2,077 cases with EIP-related issues, with 870 (42 percent) referred directly to TAS from congressional offices.<sup>24</sup> As the EIP is an advance payment of the Recovery Rebate Credit (RRC) authorized by the CARES Act, the IRS is statutorily prohibited from paying EIP after December 31, 2020. Instead, beginning January 1, 2021, taxpayers who did not receive an EIP or received less EIP than they were entitled to in calendar year 2020 can reconcile and claim the RRC on their 2020 income tax return.<sup>25</sup> TAS anticipates that taxpayers will continue to contact TAS to assist with RRC-related issues in the upcoming filing season.

## TAS Operations in the COVID-19 Environment

Early in the COVID-19 pandemic (March 2020), TAS employees transitioned to a telework environment.<sup>26</sup> However, the complete or partial shutdown of some core IRS operations negatively impacted the TAS organization and created barriers for taxpayers seeking assistance from TAS, whether in writing or via IRS toll-free hotlines. As shown in Figure 4.5, TAS case receipts through March were six percent higher in

22 See IRS, *IRS Takes New Steps to Ensure People With Children Receive \$500 Economic Impact Payments* (Aug. 14, 2020), <https://www.irs.gov/newsroom/irs-takes-new-steps-to-ensure-people-with-children-receive-500-economic-impact-payments>; See also IRS, *50,000 spouses to get catch-up Economic Impact Payments* (Aug. 25, 2020), <https://www.irs.gov/newsroom/irs-50000-spouses-to-get-catch-up-economic-impact-payments>.

23 See IGM TAS-13-0820-0016, *Interim Guidance – Economic Impact Payments and TAS Case Acceptance* (Aug. 7, 2020); Erin M. Collins, *Beginning August 10th, TAS Can Assist With Correcting EIP Amounts for Limited Groups of Taxpayers*, NATIONAL TAXPAYER ADVOCATE BLOG, <https://www.taxpayeradvocate.irs.gov/news/ntablog-beginning-august-10th-tas-can-assist-with-correcting-eip-amounts-for-limited-groups-of-taxpayers/> (Jul. 31, 2020); Erin M. Collins, *Need Help With Economic Impact Payment Issues? How TAS Can Assist Those That Qualify*, NATIONAL TAXPAYER ADVOCATE BLOG, <https://www.taxpayeradvocate.irs.gov/news/ntablog-need-help-with-economic-impact-payment-issues-how-tas-can-assist-those-that-qualify/> (Aug. 10, 2020).

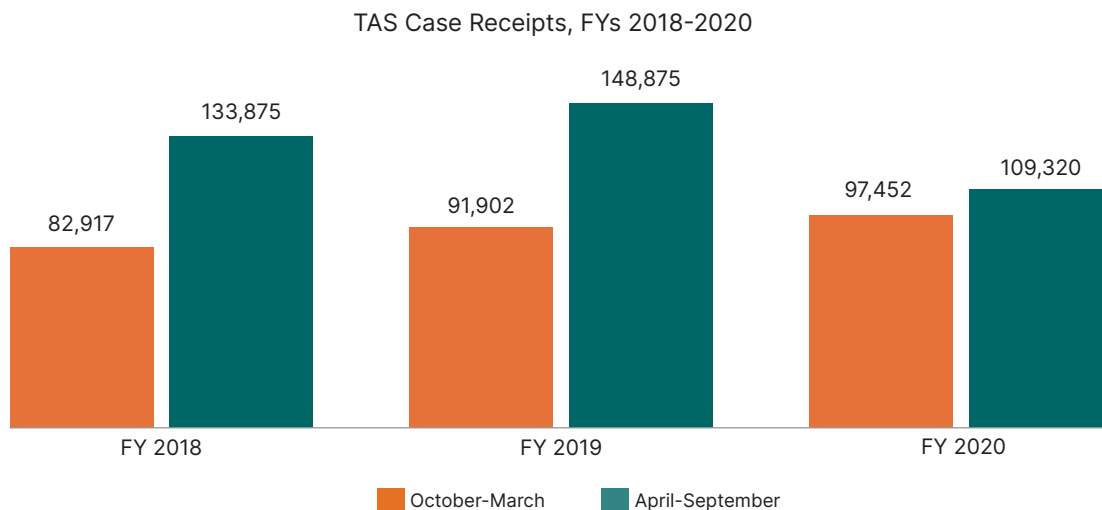
24 Data obtained from TAMIS (Oct. 26, 2020) for the period of April 1, 2020, through Sept. 30, 2020. When TAS identified an issue relating to EIP during the life of a case, TAS placed the code CARES on TAMIS. Some of these cases were received prior to FY 2020. TAS tracks EIP and other CARES issues with a National Office Use Field (“CARES”) on our TAMIS system. Our employees manually code the case as a CARES case, once they identify the CARES issue. We provided instruction and guidance on this process to our staff. We conducted a review to determine how accurate our TAMIS coding was for these cases. Our review found a significant percentage of cases with CARES issues, but without the CARES TAMIS coding. As a result, our reporting of CARES issues may be understated. In October 2020, we provided EIP training to our employees that included how to code CARES issues on TAMIS to improve the future accuracy of CARES-related data on TAMIS.

25 IRC § 6428.

26 See IGM TAS-13-0320-0006, *Interim Guidance – Advocating for taxpayers while preventing the spread of COVID-19* (Mar. 17, 2020).

FY 2020 than during the same period in FY 2019.<sup>27</sup> However, after core IRS operations were shut down or functioning in a limited capacity, TAS case receipts ended up dropping nearly 27 percent from April to September FY 2019 compared to the same time period in FY 2020.<sup>28</sup>

**FIGURE 4.5<sup>29</sup>**



The IRS's main obstacles stemmed from its limited telework readiness and its inability to staff core IRS functions because certain work, such as answering phones, issuing notices, and opening and processing taxpayer correspondence, including paper-filed returns, could not be done remotely. Although the IRS attempted to manage taxpayer expectations by issuing guidance throughout the pandemic, taxpayers were still confused and did not have sufficient status updates or information on the delays and backlogs in the campuses. The IRS launched the Coronavirus Tax Relief and Economic Impact Payments webpage, via IRS.gov, along with various other IRS publications and notices, yet taxpayers encountered significant challenges and IRS communications failed to provide details on the disruption the IRS experienced and continues to experience in processing paper returns and correspondence. To ensure the safety of employees, the IRS like many other operations that rely on an in-person workforce, continues to limit the number of on-site employees, which has a direct impact on taxpayer service.

Many taxpayers experienced an abrupt change in their financial status and either desperately needed their tax refund and EIP to pay for living expenses or found that they were unable to voluntarily comply and pay their tax liabilities. At the same time, taxpayers could not contact the IRS in person or by phone and their mailed correspondence, including paper-filed returns, remained unopened, unprocessed, and in some instances returned. For several months, the IRS did not have processes in place to facilitate the production and mailing

<sup>27</sup> Data obtained from TAMIS (Apr. 1, 2019; Apr. 1, 2020). TAS compared case receipt data from Oct. 1 through Mar. 31 for FYs 2019 and 2020.

<sup>28</sup> Data obtained from TAMIS (Oct. 1, 2019; Oct. 1, 2020). TAS compared case receipt data from Apr. 1 through Sep. 30 for FYs 2019 and 2020. With the declaration of a national emergency under the Stafford Act on March 13, 2020, the IRS and TAS immediately took steps to protect the personal health and safety of employees and taxpayers.

<sup>29</sup> Data obtained from TAMIS (Apr. 1, 2018; Oct. 1, 2018; Apr. 1, 2019; Oct. 1, 2019; Apr. 1, 2020; Oct. 1, 2020).

of taxpayer notices. Subsequently, resumption of notice production presented complications of its own, as some backlogged notices included outdated information, requiring the IRS to include stuffers to clarify certain dates and information.

Core IRS operational shutdowns and the limited functionality of those operations remaining open made it difficult for taxpayers to contact the IRS for assistance. Consequently, this drastically changed how TAS received cases. As shown in Figure 4.6, TAS case receipts originating from taxpayers contacting TAS CCI (TAS toll-free operations that were shut down along with IRS toll-free operations) decreased by nearly 32 percent and IRS referrals decreased by nearly 67 percent. Taxpayers unable to receive assistance via the IRS toll-free hotline and TAS CCI began calling TAS's local offices, resulting in an increase in call volume by nearly 152 percent.<sup>30</sup>

**FIGURE 4.6, Comparison of the Way in Which TAS Received Cases From April Through September in 2019 and 2020<sup>31</sup>**

How TAS Received the Case	2019 (Apr. 1 Through Sept. 30)	2020 (Apr. 1 Through Sept. 30)	Percentage Change (Apr. 1 Through Sept. 30 2019 to 2020)
Taxpayer Sent TAS Form 911 or Correspondence	17,367	6,680	-4.0%
Taxpayer Called NTA Toll-Free	4,549	4,981	9.5%
Congressional Referral to TAS	6,634	29,490	344.5%
IRS Referral to TAS (at Taxpayer Request or IRS Identified)	92,908	30,963	-66.7%
Taxpayer Called the Local TAS Office	5,378	13,540	151.8%
Taxpayer Visited the Local TAS Office	2,138	88	-95.9%
Taxpayer Called the TAS CCI Line	19,901	13,578	-31.8%
<b>Total Case Receipts</b>	<b>148,875</b>	<b>109,320</b>	<b>-26.6%</b>

Another area where TAS saw a significant change in how it received cases involved congressional offices. With much of the IRS shut down, many taxpayers contacted their congressional office seeking assistance with account issues and EIP questions. Congressional office staff turned to TAS for assistance. TAS cases received from congressional offices increased nearly 345 percent from FY 2019 to FY 2020, during the April 1 through September 30 timeframe, accounting for 27 percent of TAS receipts during this period.<sup>32</sup>

The reasons taxpayers sought TAS assistance changed during the pandemic. As shown in Figure 4.7, while Pre-Refund Wage Verification Hold (PRWVH) receipts continued to be the number one reason taxpayers sought TAS assistance, during the last half of FY 2020, PRWVH receipts decreased 44 percent compared to the same period in FY 2019. TAS saw a significant increase in receipts from IRS operations that rely on

<sup>30</sup> Data obtained from TAMIS (Oct. 1, 2019; Oct 1, 2020).

<sup>31</sup> *Id.*

<sup>32</sup> Data obtained from TAMIS (Apr. 1, 2019; Oct. 1, 2019; Apr. 1, 2020; Oct. 1, 2020). For additional discussion of TAS's congressional cases, see *Congressional Case Trends, infra*.

employees being physically present in the office to complete the work, such as Unpostables and Rejects, Health Insurance Premium Tax Credit for Individuals, and Processing Original Returns.

**FIGURE 4.7, Comparison of the Top Five Receipts From April Through September in 2020 to Same Type of Issue in 2019<sup>33</sup>**

Rank	Issue Description	2019 (Apr. 1 Through Sept. 30)	2020 (Apr. 1 Through Sept. 30)	Apr. 1 Through Sept. 30 2020 Percent of Total	Percent Change Apr. 1 Through Sept. 30 2019 to 2020
1	Pre-Refund Wage Verification Hold	59,158	33,111	30.3%	-44.0%
2	Unpostables and Rejects	7,964	13,202	12.1%	65.8%
3	Health Insurance Premium Tax Credit for Individuals	2,426	7,005	6.4%	188.7%
4	Processing Original Returns	3,015	6,562	6.0%	117.6%
5	Earned Income Tax Credit (EITC)	11,189	5,514	5.0%	-50.7%
Other TAS Receipts		65,123	43,926	40.2%	-32.5%
<b>Total TAS Receipts</b>		<b>148,875</b>	<b>109,320</b>	<b>100%</b>	<b>-26.6%</b>

Following the filing season, TAS will typically experience an increase in cases involving compliance issues related to examination and collection activities.

On March 25, 2020, the IRS released the *People First Initiative*, which provided relief for taxpayers on a variety of issues ranging from adjusting or postponing compliance actions, to adjusting or suspending key IRS compliance programs, to easing payment guidelines.<sup>34</sup> Since the IRS postponed these due dates and compliance activities, taxpayers who would normally seek TAS help during this timeframe did not need our assistance, and TAS experienced a corresponding decrease in case receipts with examination and collection compliance issues during the last half of FY 2020.<sup>35</sup> As the IRS resumes compliance activities, TAS anticipates taxpayers will again request TAS assistance with compliance issues.

For taxpayers accepted into TAS, TAS was limited in the advocacy and intervention it could timely provide. A large majority of cases remain unresolved pending resumption of normal IRS operations and implementation of IRS systems programming. While TAS was able to resolve some routine account issues, limited within the scope of statutory and delegated authority, often it took TAS longer to resolve the issues because of limited IRS staffing and others remain unresolved.<sup>36</sup>

<sup>33</sup> Data obtained from TAMIS (Oct. 1, 2019; Oct. 1, 2020).

<sup>34</sup> IRS, IR-2020-59, IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>.

<sup>35</sup> In FY 2020 (Apr. 1 through Sept. 30), TAS received 8,996 cases related to an examination issue (a decrease of 53.6 percent) and 4,914 cases related to a collections issue (a decrease of 44.0 percent) compared to 19,373 examination cases and 8,807 collection cases. Data obtained from TAMIS (Apr. 1, 2019; Oct. 1, 2019; Apr. 1, 2020; Oct. 1, 2020).

<sup>36</sup> IRM 1.2.2.12.2(1), Delegation Order 13-2 (Rev. 1), Authority of the National Taxpayer Advocate to Perform Certain Tax Administration Functions (Mar. 3, 2008).

As TAS lacks the statutory or delegated authority to resolve most taxpayer's problem, it coordinates with the responsible BODs/functions for resolution, a process necessary in 66 percent of TAS cases in FY 2019 and 61 percent in FY 2020.<sup>37</sup> TAS issues Operations Assistance Requests (OARs) supported by facts, research, and necessary documentation, to aid the BOD/function in understanding TAS's position and facilitate action.<sup>38</sup>

At the end of March 2020, IRS offices and processing centers were closed to mitigate the spread of COVID-19. During this time, TAS negotiated a process to have the IRS work our most critical cases that could not wait until the IRS resumed business. These closures created a backlog of paper-filed returns and other correspondence.<sup>39</sup> In May, the IRS started to resume business operations; however, the need for social distancing to protect employees necessitated a slow and cautious approach. This was especially difficult for those IRS operations whose work was not portable. Although TAS could have continued business as usual, sending an OAR to a non-operational BOD/function would be futile, exacerbate the backlog and waste resources. Instead, TAS collaborated with the BOD/functions and coordinated a process for the timed release of OARs to assist the BOD/functions with effectively managing OAR completion.

The process is multifaceted. TAS employees continue to case build and develop OARs. TAS forwards prepared OARs to designated Area Office analysts for tracking and to prioritize the OARs based on taxpayer hardship, balanced with the IRS's capability to enact resolution. The OARs that are not immediately issued to the BOD/functions are queued for scheduled release to the BOD/functions, at a rate and time in which the BOD/functions can meaningfully and impactfully resolve the issues. The objective was to wean the BOD/function off this process and ultimately resume the normal OAR process, which TAS has been able to do with some BOD/functions. However, the Wage and Investment (W&I) Submission Processing (SP) function in particular has not adequately resolved the volume of OARs it receives, despite accommodations TAS has extended, causing a backlog of OARs.<sup>40</sup> As shown in Figure 4.8, the average response times for OARs show significant increases from the second half of FY 2019 to 2020. For OARs to W&I, which constitutes the vast majority of TAS OARs, average response times more than doubled from 12 days to 30 and for the remaining OARs, mostly those to the Small Business/Self Employed (SB/SE) function, the average response times increased from 21 days to 35. In addition, the average age of those OARs that remain open is much higher than in the prior year because some IRS operations still have a backlog of work.<sup>41</sup>

37 Data obtained from TAMIS (Oct. 1, 2019; Oct. 1, 2020).

38 TAS closed 154,336 cases with OARs in FY 2019 and 124,985 in FY 2020. TAS can issue more than one OAR on a case. If the IRS already has an open control on an account, TAS must use the OAR process and request that the IRS function take the requested actions. Data obtained from TAMIS (Oct. 1, 2019; Oct. 1, 2020).

39 IRS, New Work at Home Directive Begins March 30 (Mar. 28, 2020), <https://www.irs.gov/newsroom/new-work-at-home-directive-begins-march-30-only-employees-directed-by-their-supervisor-to-perform-mission-essential-work-may-work-from-an-irs-pod>.

40 For OARs created from February 1 through October 16, 2020, the IRS had failed to address 2,543 OARs issued to W&I SP, and TAS had 3,667 unissued OARs that W&I refused to accept for a total backlog of 6,210 OARs. As of November 2, 2020, there were 222 OARs that W&I agreed to accept that TAS had not sent. Data obtained from TAMIS (Nov. 2, 2020).

41 Data obtained from TAMIS (Oct. 1, 2019, Oct. 1, 2020).

**FIGURE 4.8, Comparison of Closed OARs, Closed OAR Response Time, Open OARs, and Open OAR Age by IRS Division/Function, FYs 2019 and 2020<sup>42</sup>**

OAR BOD	Fiscal Year 2019				Fiscal Year 2020				As of Sept. 30, 2020	
	First Half of FY (Oct. 1 - Mar. 31)		Second Half of FY (Apr. 1 - Sept. 30)		First Half of FY (Oct. 1 - Mar. 31)		Second Half of FY (Apr. 1 - Sept. 30)		Open OARs	Open OAR Average Age (Days)
	OARs	Closed OAR Response Time from Creation (Days)	OARs	Closed OAR Response Time from Creation (Days)	OARs	Closed OAR Response Time from Creation (Days)	OARs	Closed OAR Response Time from Creation (Days)		
Appeals	242	54	311	54	296	41	179	57	72	116
CI	80	25	79	29	55	22	18	43	5	40
LB&I	384	54	318	55	357	50	192	63	98	103
SB/SE	13,269	25	15,394	21	15,648	22	10,313	35	2,549	82
TE/GE	268	28	225	21	264	26	135	28	22	73
W&I	66,617	16	125,545	12	69,400	15	67,575	30	13,220	50
All BODs	80,868	18	141,873	13	86,020	16	78,412	30	15,976	56

## TAS USES TAXPAYER ASSISTANCE ORDERS TO ADVOCATE EFFECTIVELY

While the COVID pandemic impacted much of TAS's work, we continued to use our available authorities to advocate for taxpayers. The Taxpayer Assistance Order (TAO) is a powerful statutory tool, delegated by the National Taxpayer Advocate to Local Taxpayer Advocates (LTAs) to resolve taxpayer cases.<sup>43</sup> LTAs issue TAOs to order the IRS to take certain actions, cease certain actions, or refrain from taking certain actions.<sup>44</sup> A TAO may also order the IRS to expedite consideration of a taxpayer's case, reconsider its determination in a case, or review the case at a higher level.<sup>45</sup> If a taxpayer faces significant hardship and the facts and law support relief, an LTA may issue a TAO if the IRS refuses or otherwise fails to take the action TAS requested to resolve the case.<sup>46</sup> Once TAS issues a TAO, the BOD must comply with the request or appeal the issue for resolution at higher management levels.<sup>47</sup> Only the National Taxpayer Advocate, the Commissioner or Deputy Commissioner of Internal Revenue may rescind a TAO issued by the National Taxpayer Advocate or designee, and unless that rescission occurs, the BOD must abide by the action(s) ordered in the TAO.<sup>48</sup>

In FY 2020, TAS issued 96 TAOs, the lowest number of TAOs issued in the past five years. With the complete or partial shutdown of IRS core operations, TAS recognized that in most instances, the IRS simply would not be able to comply with a TAO. Of the 96 TAOs issued, the IRS complied with 75 of them in

42 Data obtained from TAMIS (Oct. 1, 2019, Oct. 1, 2020). Nine OARs closed in FY 2019 and ten open OARs in FY 2020 had no BOD identified; these OARs are included in the All BODs total.

43 IRC § 7811(f) states that for purposes of this section, the term "National Taxpayer Advocate" includes any designee of the National Taxpayer Advocate. See IRM 1.2.2.12.1, Delegation Order 13-1 (Rev. 1), Authority to Issue, Modify or Rescind Taxpayer Assistance Orders (Mar. 17, 2009).

44 IRC § 7811(b)(2); Treas. Reg. § 301.7811-1(c)(2); IRM 13.1.20.3, Purpose of Taxpayer Assistance Orders (Dec. 15, 2007).

45 Treas. Reg. § 301.7811-1(c)(3); IRM 13.1.20.3, Purpose of Taxpayer Assistance Orders (Dec. 15, 2007).

46 IRC § 7811(a)(1)(A); Treas. Reg. § 301.7811-1(a)(1) and (c).

47 IRM 13.1.20.5(2), TAO Appeal Process (Dec. 9, 2015).

48 IRC § 7811(c)(1); Treas. Reg. § 301.7811-1(b).

an average of 23 days, meaning the IRS did not have a significant disagreement as to the resolution, and the taxpayers could have had relief sooner if the IRS had been more responsive to TAS.<sup>49</sup> Figure 4.9 reflects the results of all FY 2020 TAOs. Figure 4.10 shows the TAOs issued by fiscal year.

**FIGURE 4.9, Actions Taken on FY 2020 TAOs Issued<sup>50</sup>**

Action	Total
IRS complied with the TAO	75
IRS complied after the TAO was modified	2
TAS rescinded the TAO	12
TAO pending (in process)	7
<b>Total</b>	<b>96</b>

**FIGURE 4.10, TAOs Issued FYs 2015-2020<sup>51</sup>**

Fiscal Year	TAOs Issued
2015	236
2016	144
2017	166
2018	1,489
2019	617
2020	96

TAOs issued in FY 2020 resolved taxpayer issues and protected fundamental taxpayer rights. For example, TAS issued nine TAOs to assist taxpayers that had filed amended returns that were:

- Not processed timely by the IRS;
- Selected for examination but not timely assigned for resolution; or
- Processed, but account adjustments were not input correctly.

TAS issued 11 TAOs to advocate for taxpayers facing revocation, limitation, or denial of a passport under IRC § 7345.<sup>52</sup> In 2018, the IRS began implementing the legislatively directed program to certify taxpayers' seriously delinquent tax debts to the Department of State. The statute provides exceptions to passport certification for certain debts under specific circumstances.<sup>53</sup> The National Taxpayer Advocate accepts cases

49 Data obtained from TAMIS (Oct. 1, 2020).

50 *Id.*

51 Data obtained from TAMIS (Oct. 1, 2015; Oct. 1, 2016; Oct. 1, 2017; Oct. 1, 2018; Oct. 1, 2019; Oct. 1, 2020).

52 Pub. 1, No. 114-94, Div. C, Title XXXII, § 32101, 129 Stat. 1312, 1729-32 (2015) (codified at IRC § 7345) (hereinafter Fixing America's Surface Transportation (FAST) Act). Data obtained from TAMIS (Oct. 1, 2020).

53 IRM 5.19.1.5.19.4, Discretionary Certification Exclusions (Dec. 26, 2017); IRM 5.1.12.27.4, Discretionary Exclusions From Certification (Dec. 20, 2017).



from taxpayers facing passport issues as a matter of public policy.<sup>54</sup> These TAOs enabled taxpayers who otherwise would have been unable to travel internationally for work, medical treatment, or significant life events (marriages and funerals of immediate family). In four TAOs, taxpayers entered into installment agreements to resolve their past due tax debts, but because they had imminent travel plans, TAS used the TAO to expedite removal from passport certification/revocation.<sup>55</sup> In another four cases, the taxpayers took action to correct their balances due by filing correct returns, audit reconsiderations, or delinquent returns with refunds to reduce their liabilities, making them eligible for removal from passport certification/revocation.<sup>56</sup> Using TAOs in this way resulted in bringing these taxpayers with seriously delinquent tax debts back into communication with the IRS to address their balances due and compliance issues, resulting in long-term resolution for both the taxpayer and the IRS.

These TAO examples show how this tool can be used to protect fundamental taxpayer rights, such as:

- *The Right to Quality Service;*
- *The Right to Pay No More Than the Correct Amount of Tax;*
- *The Right to Challenge the IRS's Position and Be Heard;*
- *The Right to Appeal an IRS Decision in an Independent Forum;*
- *The Right to Finality; and*
- *The Right to a Fair and Just Tax System.*

## CONGRESSIONAL CASE TRENDS

TAS independently reviews all tax account inquiries it receives via members of Congress. In FY 2020, the TAS congressional receipts totaled 35,257 cases, a 232 percent increase from the previous fiscal year.<sup>57</sup> The shutdown of IRS operations due to COVID-19 caused this noticeable increase, as many taxpayers were unable to contact the IRS and sought assistance from their Congressional Representatives and Senators as a last resort. As discussed above, TAS was challenged with delays in resolving many taxpayer issues.<sup>58</sup> The National Taxpayer Advocate sent a letter to all congressional offices through the LTAs to address the impact of COVID-19 on TAS and the limitations to timely respond to inquiries and taxpayer's needs.<sup>59</sup> Figure 4.11 highlights the top ten issues in congressional cases for FY 2020. The PRWVH receipts increased by nearly 380 percent. Unpostables and rejects, processing original returns, and other refund inquiries or issues were the largest increases, yet TAS was unable to work these issues until the IRS resumed operations and worked through backlogs.

54 See TAS-13-1120-0019, Interim Guidance on Accepting Cases Under TAS Case Criteria 9, Public Policy (Nov. 20, 2020). See also National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress (Area of Focus: *TAS Will Continue to Assist Taxpayers in Exercising Their Administrative Rights While They Face Passport Consequences*).

55 Data obtained from TAMIS (Oct. 1, 2020).

56 *Id.*

57 From April through September, TAS cases received from congressional offices increased nearly 345 percent from FY 2019 to FY 2020. See *Impact of COVID-19*, *supra*. Data obtained from TAMIS (Apr. 1, 2019; Oct. 1, 2019; Apr. 1, 2020; Oct. 1, 2020).

58 See *Impact of COVID-19*, *supra*.

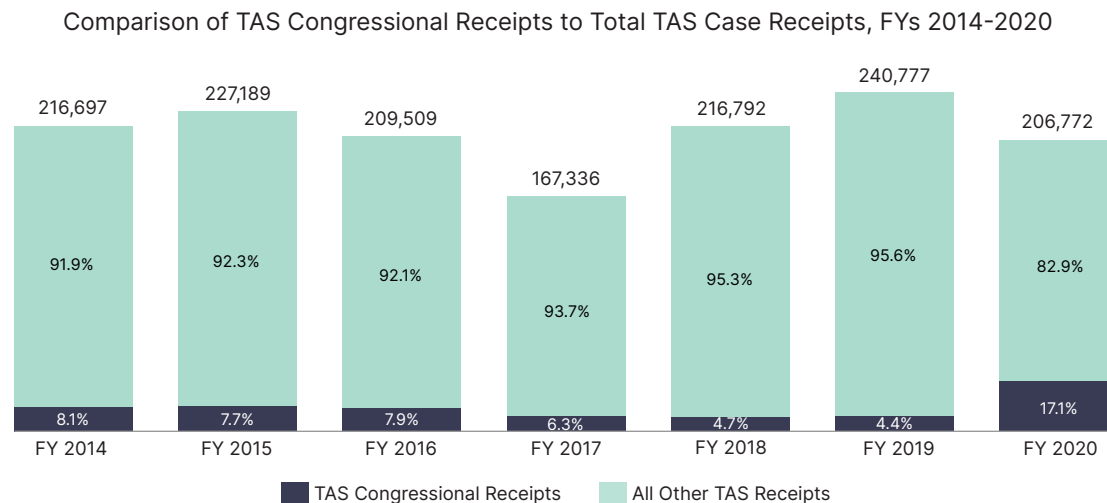
59 National Taxpayer Advocate letter to Congressional Representatives and Senators dated April 15, 2020.

**FIGURE 4.11, TAS Top Ten Congressional Receipts by Primary Core Issue Codes for FY 2020 Compared to Same Type of Issue in FY 2019<sup>60</sup>**

Rank	Issue Description	FY 2019	FY 2020	Percent Change
1	Pre-Refund Wage Verification Hold	1,597	7,659	379.6%
2	Unpostables and Rejects	322	3,252	909.9%
3	Processing Original Returns	408	3,196	683.3%
4	Other Refund Inquiries and Issues	577	1,113	92.9%
5	Taxpayer Protection Program Issues	189	1,154	510.6%
6	Affordable Care Act Health Insurance Premium Tax Credit for Individuals	203	1,117	450.2%
7	Identity Theft	242	710	193.4%
8	Processing Amended Returns	462	646	39.8%
9	Earned Income Tax Credit (EITC)	316	668	111.4%
10	Injured Spouse Claims	171	558	226.3%
Other Issues		6,133	15,184	147.6%
Total Congressional Receipts		10,620	35,257	232.0%

Figure 4.12 illustrates the TAS congressional receipts from FY 2014 to FY 2020.

**FIGURE 4.12, Comparison of TAS Congressional Receipts to Total TAS Case Receipts, FYs 2014-2020<sup>61</sup>**



<sup>60</sup> Data obtained from TAMIS (Oct. 1, 2019; Oct 1, 2020).

<sup>61</sup> Data obtained from TAMIS (Oct. 1, 2014; Oct. 1, 2015; Oct. 1, 2016; Oct. 1, 2017; Oct. 1, 2018; Oct. 1, 2019; Oct 1, 2020).

## TAS Uses Taxpayer Advocate Directives to Advocate for Change

IRS Delegation Order 13-3 authorizes the National Taxpayer Advocate to issue a Taxpayer Advocate Directive (TAD) “to mandate administrative or procedural changes to improve the operation of a functional process or to grant relief to groups of taxpayers (or all taxpayers) when implementation will protect the rights of taxpayers, prevent undue burden, ensure equitable treatment or provide an essential service to taxpayers.”<sup>1</sup> IRC § 7803(c)(2)(B)(ii)(VIII) requires the National Taxpayer Advocate to identify in her Annual Report to Congress any TAD “which was not honored by the Internal Revenue Service in a timely manner.”<sup>2</sup>

Under the Delegation Order, the authority to issue a TAD is provided solely to the National Taxpayer Advocate and may not be redelegated. Before the National Taxpayer Advocate may issue a TAD, the Internal Revenue Manual (IRM) generally requires that she issue a “proposed TAD” to apprise senior IRS leaders of her concerns and give them an opportunity to address them.<sup>3</sup>

### TAXPAYER ADVOCATE DIRECTIVES ISSUED IN FY 2020

The National Taxpayer Advocate did not issue any TADs in FY 2020. However, she did issue three proposed TADs. Working collaboratively, TAS and the IRS were able to resolve the National Taxpayer Advocate’s concerns before any formal TADs were issued.<sup>4</sup> The proposed TADs recommended the IRS take the following actions:

- Proposed Taxpayer Advocate Directive 2020-1 (*Whether the IRS’s Proposed Change to CP Notice 14 Harms Taxpayers and Is Inconsistent With the Requirements of the IRS Restructuring and Reform Act of 1998 (RRA 98) and the Taxpayer First Act (TFA)*)
- Proposed Taxpayer Advocate Directive 2020-2 (*Develop a Process to Immediately Correct Economic Impact Payment Amounts to Eligible Individuals*)
- Proposed Taxpayer Advocate Directive 2020-3 (*Develop a Process to Immediately Address the Backlog of TAS Operations Assistance Requests (OARs) Directed to W&I Submission Processing*)

1 IRM 1.2.2.12.3, Delegation Order 13-3 (formerly DO-250, Rev. 1), Authority to Issue Taxpayer Advocate Directives (Jan. 17, 2001).

2 Section 1301 of the Taxpayer First Act, Pub. L. No. 116-25, 133 Stat. 981 (2019), amended IRC § 7803(c) to codify the process for the IRS to respond to a TAD, how the National Taxpayer Advocate may appeal a modified or rescinded TAD, and a reporting requirement for any TAD not honored by the IRS.

3 See IRM 13.9.1.3(2), The TAD Process (Oct. 8, 2020).

4 Under IRM 13.9.1, Procedures for Taxpayer Advocate Directives (Oct. 8, 2020), a proposed TAD is a written communication from the National Taxpayer Advocate that recommends action (or forbearance of action) to address a systemic problem that affects multiple taxpayers that TAS has brought to the attention of the responsible head of office.

# The IRS Can Systemically Identify Taxpayers at Risk of Economic Hardship and Screen Them Before They Enter Into Installment Agreements They Cannot Afford<sup>1</sup>

## EXECUTIVE SUMMARY

The majority of IRS installment agreements (IAs) with individual taxpayers are streamlined agreements,<sup>2</sup> meaning that verification of a taxpayer's financial circumstances is not required when the liability does not exceed a certain amount and can be paid within a specified number of years. To reduce taxpayer burden and minimize IRS resources when agreeing to an IA, the IRS has eased the requirements for entering into a streamlined IA.<sup>3</sup> While streamlined IAs do not require the taxpayer to provide verification of his or her financial circumstances, unfortunately, these agreements place many taxpayers in a position where they cannot afford basic living expenses while meeting the payment required by the IA.

The IRS established allowable living expenses (ALEs) to ensure that the satisfaction of their unpaid tax liabilities does not interfere with the ability to pay for those expenses necessary for basic living.<sup>4</sup> ALEs include groceries and other incidentals such as apparel or cleaning supplies, housing and utilities, transportation, and out-of-pocket health care expenses.<sup>5</sup> However, with streamlined IAs, the IRS never compares the amount of these necessary expenses to the taxpayer's income. The result can be an IA that the taxpayer cannot afford while also meeting necessary living expenses.

TAS believes the IRS should establish an indicator, which shows whether a taxpayer is likely facing economic hardship. Specifically, TAS has developed an algorithm using the IRS ALEs to indicate when a taxpayer has income not in excess of their likely ALEs. In these situations, TAS believes the IRS should perform a basic financial analysis to ensure the taxpayer can afford the IA. Doing so could eliminate IRS rework when the taxpayer defaults an unaffordable IA, while also allowing the IRS to pursue other collection alternatives such as an offer in compromise or temporarily suspending collection action until the taxpayer's financial situation becomes more favorable.

This research study explores the effectiveness of an algorithm developed by TAS and based on systemically available information about the taxpayer's income and likely ALEs. The study examines non-streamlined

1 IRC § 7803(c)(2)(B)(ii)(XII) requires that the National Taxpayer Advocate, "with respect to any statistical information included in [this] report, include a statement of whether such statistical information was reviewed or provided by the Secretary under section 6108(d) and, if so, whether the Secretary determined such information to be statistically valid and based on sound statistical methodology." This report was submitted to IRS SB/SE Collection Inventory Delivery and Selection for review, and TAS added another table and related analysis as suggested.

2 IRS Collection Activity Reports (CAR) 5000-6 Fiscal Year (FY) 2017 (Oct. 11, 2017), FY 2018 (Oct. 1, 2018), FY 2019 (Sept. 30, 2019), and FY 2020 (Sept. 28, 2020).

3 Internal Revenue Manual (IRM) 5.19.1.6.4, Installment Agreements (IAs) (Nov. 30, 2020). Campus Collection Operations, Automated Collection System (ACS) and ACS Support employees are authorized to establish streamlined installment agreements over \$25,000 (for Individual Master File (IMF) and out of business (OOB) sole proprietors only) when the AAB (CC SUMRY) is between \$25,001 and \$50,000, and the assessed account balance will be paid within 72 months and prior to the expiration of the statute to collect the taxes.

4 ALEs, also known as Collection Financial Standards, provide for a taxpayer's and his or her family's, health and welfare and/or the production of income. These expenses establish the minimum amount on which a taxpayer needs to live. IRM 5.19.13.3.2.2, Allowable Living Expenses (June 6, 2019).

5 IRM 5.15.1.8, Allowable Expense Overview (July 24, 2019).

IAs for individuals initiated from fiscal year (FY) 2017 through most of FY 2020. While TAS's concern is with streamlined IAs, we tested the effectiveness of the algorithm with non-streamlined IAs. Since the IRS is required to conduct financial verification on non-streamlined IAs, the outcome of the algorithm is being compared to these IAs.<sup>6</sup>

The study shows that the algorithm agrees with the IRS determination 82 percent of the time and rises to 86 percent if no vehicle ownership expenses are allowed. The agreement rate increases to 95 percent when the taxpayer's systemically detected income exceeds \$50,000. Other conclusions from this study include:

- Agreement between an algorithm allowing taxpayers their likely ALEs and the IRS determination has increased slightly from FY 2017 to FY 2020;
- An algorithm comparing internal IRS income data to the minimum amount of ALEs provided to taxpayers has a 96 percent agreement rate with the IRS determination that the taxpayer could afford an IA; and
- An algorithm using internal IRS data to compare taxpayer's income to their likely ALEs are more likely to agree with the IRS determination when the taxpayers are elderly or when the taxpayers are married. However, the same algorithm is unlikely to agree with the IRS determination for taxpayers with systemically detected income of \$25,000 or less.

TAS believes the IRS should display an economic hardship indicator on taxpayer accounts when estimates of a taxpayer's ALEs and income indicate the taxpayer is not likely to afford a streamlined IA. If the indicator shows the likelihood of economic hardship, the IRS should perform a basic financial analysis before entering into the IA to make sure the taxpayer can afford the arrangement.

## INTRODUCTION

In her 2018 Annual Report to Congress, the National Taxpayer Advocate included a most serious problem (MSP) on the need for the IRS to proactively use its internal data to identify taxpayers at risk of economic hardship during the collection process.<sup>7</sup> Due to the impact of the pandemic, it is even more timely and important for the IRS to consider alternative means in working with financially distressed individuals and companies. Specifically, TAS has explored the efficacy of the IRS's use of internal income data with its ALE standards<sup>8</sup> to determine whether taxpayers can afford to pay their outstanding federal tax liability. The IRS maintains internal income data from both recent income tax returns filed by the taxpayer and from third-party documents reporting income received by taxpayers, such as wages or Social Security income. The IRS develops and publishes ALE standards based on where a taxpayer lives, the age of the taxpayer and the household size. Each item can be determined from the taxpayer's income tax return.<sup>9</sup>

The IRS has routinely maintained that the taxpayer's exact ALE cannot be determined because some ALE standards are maximum values as opposed to an amount guaranteed to the taxpayer for that expense.

6 The IRS does not generally conduct an analysis of a taxpayer's financial situation before agreeing to streamlined IAs. Accordingly, the accuracy of the TAS algorithm cannot be tested on streamlined IAs.

7 National Taxpayer Advocate 2018 Annual Report to Congress 228-239 (Most Serious Problem: *Economic Hardship: The IRS Does Not Proactively Use Internal Data to Identify Taxpayers at Risk of Economic Hardship Throughout the Collection Process*).

8 ALEs, also known as Collection Financial Standards, provide for a taxpayer's and his or her family's, health and welfare and/or the production of income. These expenses establish the minimum amount on which a taxpayer needs to live. IRM 5.19.13.3.2.2, Allowable Living Expenses (June 6, 2019).

9 *Id.*

National standards for food and other basic living necessities are solely determined by household size; however, for other expenses, such as housing or vehicle ownership expenses, the taxpayer is given their actual expense up to the amount allowed by the standard. For instance, if a taxpayer is allowed \$1,000 per month for housing and utilities based on the county of his or her residence location and family size, but the taxpayer only spends \$900 per month on housing and utilities, the taxpayer's allowable expense for housing and utilities is determined to be the lesser amount of \$900. Nevertheless, TAS is not advocating that taxpayers with incomes not in excess of their allowable expenses be immediately considered to be currently uncollectible. Rather, the IRS should be required to conduct a basic financial analysis to verify the taxpayer can actually afford payments toward the tax liability, while continuing to afford basic living expenses.

The 2018 MSP on economic hardship described TAS Research's analysis of a sample originally taken to determine how accurately the IRS followed its own ALE guidelines when performing the financial analysis required for non-streamlined<sup>10</sup> IAs. This sample of 2018 IAs showed that a comparison of the taxpayer's income to the taxpayer's likely allowable expenses agreed with the IRS determination that the taxpayer could afford to pay towards the liability in about 95 percent of the cases. TAS discussed these findings with the IRS Small Business/Self-Employed (SB/SE) operating division. SB/SE indicated a willingness to consider implementing an indicator of economic hardship when taxpayers were unlikely to currently pay towards their federal tax liability, but requested that TAS conduct its analysis on a larger group of non-streamlined IAs, as the previous sample reviewed by TAS only included about 300 IAs.

TAS Research developed a research plan to examine all non-streamlined IAs executed during FYs 2017, 2018, and 2019. We also included an analysis of non-streamlined IAs entered into during most of FY 2020.<sup>11</sup> Non-streamlined IAs are those agreed to by the IRS after completing the collection information statement (CIS), which captures the taxpayer's income and ALE. In non-streamlined IAs, the IRS should have conducted a financial analysis to determine the taxpayer's ability to pay.<sup>12</sup> Conversely, in streamlined IAs, instances in which the taxpayer owes under a certain amount, and the liability can be satisfied within the required number of years, the taxpayer may establish a monthly payment amount without the IRS completing a CIS or conducting a financial analysis to determine whether the taxpayer has an ability to pay.<sup>13</sup>

Implementing an economic hardship indicator would not affect non-streamlined IAs, since the IRS already reviews a taxpayer's financial circumstances, including any assets which could fund repayment of the tax liability, before agreeing to these IAs. However, the viability of an algorithm that uses internal IRS data can best be tested on non-streamlined IAs because the IRS should have conducted a financial analysis of the taxpayer's ability to pay before agreeing to the IA. The use of an economic hardship indicator would prevent taxpayers from entering into streamlined IAs which they could not afford. In recent years, the number of streamlined IAs has been decreasing, possibly because taxpayers rarely have the wherewithal to even consider an amount sufficient to full-pay the liability within the number of years required to meet streamlined criteria. However, streamlined IAs still accounted for over 55 percent of all IAs with the IRS in FY 2020, representing

10 Non-streamlined IAs require the IRS to complete a financial analysis before agreeing to the IA; therefore, this group of IAs is an excellent source to test if the use of internal IRS data could accurately indicate if taxpayers entering an IA were likely to experience economic hardship. An accurate algorithm using internal data to estimate a taxpayer's income and allowable expenses should indicate that the vast majority of taxpayers with non-streamlined IAs could afford an IA.

11 We also examined non-streamlined IAs that had posted to the IMF on the Compliance Data Warehouse (CDW) by cycle 202030.

12 IRM 5.19.1.6.4.1, Determining Appropriate IA (Mar. 11, 2020). Different IRS functions have different guidelines for when a collection information statement is required.

13 *Id.*



over a million taxpayers.<sup>14</sup> In FY 2019, a year not affected by COVID-19, over two out of every three IAs were streamlined, representing nearly two million taxpayers.

This study (report) compares how often the use of internal information to estimate both taxpayer income and allowable expenses agrees with the actual determination reached by the IRS. The report also compares the use of internal information based on various ALE assumptions, the function initiating the IA, and by other taxpayer demographics, including age and income. We reiterate that any proposed indicator of economic hardship would not require the IRS to immediately determine the tax liability as currently not collectible but would rather require the IRS to conduct a basic financial analysis to ensure the taxpayer can pay toward the liability without incurring economic hardship.

## BACKGROUND

In most years, the IRS enters into about three million IAs per year. Typically, over two-thirds of those agreements are streamlined agreements, meaning the IRS does not have to take any financial information from the taxpayer. This process reduces burden for most taxpayers and saves resources for the IRS — typically a win-win situation, except for those taxpayers that entered into a streamlined IA with the desire to pay but without the ability to pay on a regular or long-term basis without negatively impacting their ability to pay basic living expenses. The following figure shows the total IAs taken by the IRS and the number and percent of these agreements that were streamlined.

**FIGURE 5.1, IRS Installment Agreements During the Past Four Fiscal Years<sup>15</sup>**

Fiscal Year	Total Number of IAs	Number of Streamlined IAs	Percent Streamlined
2017	2,924,780	2,236,434	76%
2018	2,883,035	2,079,743	72%
2019	2,821,134	1,931,454	68%
2020	1,825,378	1,029,314	56%

As indicated by Figure 5.1, streamlined IAs accounted for only 56 percent of the total IAs agreed to by the IRS in FY 2020. However, the decrease in streamlined IAs likely results from the new IRS Taxpayer Relief Initiative designed to help taxpayers impacted by COVID-19 settle their IRS tax debts.<sup>16</sup> Although designed to reduce taxpayer burden, the Taxpayer Relief Initiative may actually cause taxpayers financial harm by assisting them with establishing IAs they cannot afford.

<sup>14</sup> IRS, CAR 5000-6 FY 2020 (Sept. 28, 2020).

<sup>15</sup> IRS, CARs 5000-6 FY 2017 (Oct. 11, 2017), FY 2018 (Oct. 1, 2018), FY 2019 (Sept. 30, 2019), and FY 2020 (Sept. 28, 2020).

<sup>16</sup> The IRS will automatically add certain new tax balances to existing IAs, for individual and out of business taxpayers. This taxpayer-friendly approach will occur instead of defaulting the agreement, which can complicate matters for those trying to pay their taxes. To reduce burden, certain qualified individual taxpayers who owe less than \$250,000 may set up IAs without providing a financial statement or substantiation if their monthly payment proposal is sufficient. Some individual taxpayers who only owe for the 2019 tax year and who owe less than \$250,000 may qualify to set up an IA without a notice of federal tax lien filed by the IRS. The expanded IA option also removes the requirement for financial statements and substantiation in more circumstances for balances owed up to \$250,000 if the monthly payment proposal is sufficient. Additionally, qualified taxpayers with existing Direct Debit IAs may now be able to use the Online Payment Agreement system to propose lower monthly payment amounts and change their payment due dates.



In FY 2019, the 12-month default rate for all IAs was nearly 15 percent. However, the Automated Collection System (ACS), which enters into the vast majority of streamlined IAs, has a default rate of nearly 20 percent.<sup>17</sup> The default rate for streamlined IAs has been only slightly higher than the default rate for all IAs. However, just because a taxpayer does not default on an IA does not mean it is not causing economic hardship for the taxpayer or their family. A 2016 TAS study found that less than a quarter of all streamlined IAs defaulted when the amount owed was less than \$10,000, however, the default rate rose to over 40 percent when the amount owed exceeded \$10,000.<sup>18</sup> Taxpayers likely forego needed expenditures to keep the IA. Moreover, taxpayers with incomes not in excess of their ALEs were ten percent more likely to have filing or payment noncompliance (or both) than taxpayers with incomes in excess of their ALEs.<sup>19</sup> Placing taxpayers in streamlined IAs they cannot afford exacerbates future noncompliance, causes additional taxpayer burdens and increases the IRS workload.

In our 2018 MSP on the need for the IRS to use internal data to create an economic hardship indicator on taxpayer accounts, TAS analyzed nearly 300 non-streamlined IAs entered into during FY 2018. TAS examined the income reported on the most recently filed tax return and income reported on information return documents by third-party payers and compared this amount to the taxpayer's ALEs. TAS Research also looked for assets that could be leveraged to pay the liability. Taxpayers with assets were considered able to afford an IA.<sup>20</sup> The sample results showed nearly 95 percent agreement between the IRS determination that the taxpayer could pay, and the determination made by either detecting an asset or showing that a taxpayer's income exceeded the likely ALEs. Of the remaining five percent of cases (14 cases) where the algorithm and the IRS reached a different conclusion, the IRS had placed a back-up currently not collectible determination on the account, if the taxpayer defaulted on the IA, suggesting that the IRS also questioned whether the taxpayer could afford to pay.

## OBJECTIVES

1. Determine if an algorithm using internal IRS data on taxpayers' income, basic demographics, likely allowable expenses, and assets can effectively determine if the taxpayer can afford an IA to satisfy outstanding tax liabilities;
2. Examine the algorithm's determination of ability to pay using different assumptions for estimating the ALEs; and
3. Explore the algorithm's effectiveness at different categories of age, income, and other demographics, such as the taxpayer's state of residence.

<sup>17</sup> IRS CAR, IA Default Report, FY2019.

<sup>18</sup> National Taxpayer Advocate 2016 Annual Report to Congress vol. 2, at 54-65 (Research Study: *The Importance of Financial Analysis in Installment Agreements (IAs) in Minimizing Defaults and Preventing Future Payment Noncompliance*).

<sup>19</sup> *Id.*

<sup>20</sup> Taxpayers reporting a deduction for home mortgage interest or property tax, or who received a third party document reporting mortgage interest paid, were deemed to have systemically detected assets. For a complete explanation of the methodology used on this sample, please see National Taxpayer Advocate 2018 Annual Report to Congress 228-239 (Most Serious Problem: *Economic Hardship: The IRS Does Not Proactively Use Internal Data to Identify Taxpayers at Risk of Economic Hardship Throughout the Collection Process*).

## METHODOLOGY

The algorithm for determining if taxpayers have the wherewithal to make payments toward their delinquent tax ability has three components:

1. A comparison of income to allowable expenses;
2. Detectable assets; and
3. Whether the taxpayer was claimed as a dependent by someone else.

To determine a taxpayer's income for comparison to IRS ALEs, TAS Research extracted taxpayers where the IRS entered into non-streamlined IAs during FY 2017, 2018, 2019 or 2020.<sup>21</sup> Non-streamlined IAs have an IA originator code of 10, 20, 30, 50, 58, 60, 70, 72, 75, or 80.<sup>22</sup> Information was extracted from the last federal income tax return for the tax year (TY) before the year the IA was initiated.<sup>23</sup> The income reported on the tax return was compared to common information documents, including wages, interest income, dividend income, stocks and bonds, retirement income, Social Security, and self-employment income reported on Form 1099 Miscellaneous.<sup>24</sup> In all instances, information from third-party income came from the TY immediately prior to the year of the installment agreement. If the taxpayer had not filed the most recently due tax return prior to entering their IA, we used the information on the return from the preceding TY. We determined the taxpayer's income to be the larger of the total positive income reported on the return or the total of the income amounts on the information return documents described. Other information from the taxpayer's income tax return was also used, including total positive income, total exemptions, elderly status, state, and ZIP Code.

The IRS publishes allowable expense standards each year for the following expense types:

- National standards;
- Housing and utilities;
- Vehicle ownership expenses;
- Vehicle operating expenses; and
- Out-of-pocket health care expenses.

National standards include expense amounts for food, personal care items, and other incidentals and are a guaranteed amount based on household size, regardless of income or other circumstances.<sup>25</sup> Housing and utilities are classified as local expenses.<sup>26</sup> These expenses are maximum allowances based on household size and the county where the taxpayer resides. In practice, the taxpayer is awarded the smaller published housing and utility standard for the county of residence or the amount actually being spent by the taxpayer.<sup>27</sup> We assign taxpayers to a county based on the ZIP Code of the taxpayer's address on the return filed in the TY prior to the initiation of the IA (or the prior year's tax return if the return for the TY immediately before the IA was not filed). We used the ZIP Code to county conversion data provided to the IRS by the United States Postal Service to determine the county where the taxpayer resides. The basic algorithm for likely ALEs allows

21 TAS extracted data from the IMF on IRS CDW as of cycle 202030 to determine which taxpayers entered into streamlined IAs during the study period.

22 IRM Exhibit 5.19.1-10, IA Originator Codes (Sept. 26, 2018).

23 A taxpayer's total positive income, filing status, age and other basic demographic information necessary for computing ALE were obtained from the Individual Returns Transaction File on the IRS CDW.

24 Third party payor information was extracted from the Information Returns Master File (IRMF) on the IRS CDW.

25 IRM 5.19.13.3.2.3, National Standards: Food, Clothing and Other Items (Apr. 3, 2020).

26 IRM 5.15.1.8, Allowable Expenses Overview (July 24, 2019).

27 *Id.*

one vehicle ownership expense, which is based on the state or metropolitan statistical area where the taxpayer resides. Married taxpayers filing a joint return are allowed two vehicle operating expenses, while all other taxpayers are allowed one vehicle operating expense. The out-of-pocket health care expenses are guaranteed to each member of the household and a higher amount is allowed if the taxpayer is aged 65 or over, under the ALE standards.<sup>28</sup> Taxpayers who had not filed either of the tax returns for the two TYs ending before the year in which the IA was initiated were awarded the lowest amounts for each of the ALE standards. The FY 2020 ALE standards appear at the end of this report, except that the housing and utility expenses are so voluminous that only an excerpt is provided.

The IRS publishes ALEs in March of each year. The appropriate ALE standards were selected by comparing the date when each year's ALE standards became effective to the IA. We then compared the taxpayer's income to an estimate of the taxpayer's ALEs.

In the Findings section of this report, we also compare the IRS determination that the taxpayer could afford an IA with different assumptions about the ALEs allowed. We examined the comparison of ALEs to income when not allowing a vehicle ownership expense and when only considering the guaranteed ALEs, which include the national standard, out-of-pocket health care allowance, and a minimum transportation allowance.<sup>29</sup>

The algorithm classifies taxpayers with income in excess of their ALEs as able to afford an IA. Additionally, the algorithm classifies taxpayers with systemically detected assets as being able to pay. Finally, taxpayers claimed as a dependent on another's tax return are also classified as able to pay, since another taxpayer is providing for more than half of their living expenses.

This report also examines whether the agreement rate of the algorithm using internal data to determine if a taxpayer can afford an IA differs by age, income category, or other demographic characteristics. This information may help to refine an algorithm using IRS internal data to determine the likelihood that the taxpayer can afford an IA. It should be noted that TAS is not proposing that IAs not be taken when there is an indication of economic hardship, but rather that the IRS perform a basic financial analysis to ensure the taxpayer can afford the IA.

Figure 5.2 describes the tax year of the return and the information return reporting documents, and the ALEs used to populate the algorithm, depending on the FY and the calendar year (CY) of the IA.

28 See IRS, Collection Financial Standards, <https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards> (last visited Oct. 29, 2020).

29 IRS, SERP Alert 20A0136, Allowable Living Expense Standards 2020 (Mar. 30, 2020).

**FIGURE 5.2, Internal Data Informing ALE Algorithm**

IA FY	IA CY	TY of Return Data	TY of IRMF Data	ALE Year*
2017	2016	Most recent of TY 2014 or TY 2015	2015	2016 or 2017
2017	2017	Most recent of TY 2015 or TY 2016	2016	
2018	2017	Most recent of TY 2015 or TY 2016	2016	2017 or 2018
2018	2018	Most recent of TY 2016 or TY 2017	2017	
2019	2018	Most recent of TY 2016 or TY 2017	2017	2018 or 2019
2019	2019	Most recent of TY 2017 or TY 2018	2018	
2020	2019	Most recent of TY 2017 or TY 2018	2018	2019 or 2020
2020	2020	Most recent of TY 2018 or TY 2019	2019	

\* Depends on if the IA data is before the IRS March release date of new ALE standard amounts.

## LIMITATIONS

If a taxpayer had two IAs in the same FY where the same ALE standards applied, the second IA in the same FY was removed from our analysis. Taxpayers with multiple IAs beginning in different FYs or with two IAs in the same FY, with different ALE standards because of the dates the IAs began were retained in the group of non-streamlined IAs analyzed.

This analysis uses tax return data prior to the date the IRS and the taxpayer initiated the IA, so the IRS could have access to the information indicating a high probability of economic hardship when the IA was initiated. However, because of computer processing times, the algorithm may need to use data available as of an earlier date (*e.g.*, for an IA initiated in March 2020, the tax return or information return reporting data might not be available until June 2020, meaning that the algorithm would need to look back to the TY 2018 return, instead of the 2019 return).

We compute the likely ALEs from the information on the tax return the taxpayer filed for no more than two TYs prior to the year in which the IA was initiated. However, the taxpayers may have moved, changed filing status, or experienced a change in the size of the household.

Non-streamlined IAs are determined by the IA originator code. However, a previous TAS study in 2018 found that many IAs coded as non-streamlined had no financial information in the case file, calling into question whether the IA was really non-streamlined. If the IAs are streamlined, then the IRS generally never examined the taxpayer's ability to afford the IA.

## FINDINGS

We deemed the IRS to have conducted a financial analysis determining the taxpayer could afford an IA for all 242,085 IAs analyzed, since these IAs were coded by the IRS as non-streamlined. To compute likely ALEs, we included:

- The national standard amount for the household size indicated on the return filed no more than two years before the year of the IA;
- The maximum housing and utility standard for the taxpayer's county of residence and household size for the address and household size indicated on the return filed no more than two years before the year of the IA;
- Vehicle ownership expense for one car;
- Vehicle operating expense amount(s) (one vehicle operating expense for all taxpayers, except for those married taxpayers filing jointly, who were allowed two vehicle operating expense amounts); and
- The amount for out-of-pocket health care, depending on taxpayer age.

When considering an algorithm for indicating likely economic hardship using internal IRS data with these ALE amounts, Figure 5.3 shows how often the algorithm agreed with the IRS determination.

**FIGURE 5.3, Algorithm Agreement With IRS Determination**

Agrees	Volume	Percent
No	44,707	18%
Yes	197,378	82%
<b>Total</b>	<b>242,085</b>	<b>100%</b>

As shown in Figure 5.3, when examining the IRS non-streamlined IAs from FY 2017 through the time data was extracted to conduct this analysis in 2020, the algorithm comparing taxpayer income and likely ALEs agreed with the IRS determination nearly 82 percent of the time. This is obviously a smaller agreement rate than the nearly 95 percent agreement rate found by TAS in its 2018 MSP about the IRS's failure to use internal data to establish when economic hardship likely exists. A significant reason for this difference is likely the fact that in its 2018 sample, TAS only used non-streamlined IAs where the case actually contained financial information. TAS omitted non-streamlined IAs where no financial information was found after reviewing the case file.

Nevertheless, the algorithm's agreement rate is still in excess of 80 percent, and TAS is not requesting the IRS forgo an IA when the economic hardship indicator suggests the taxpayer cannot afford it, but rather that the IRS should perform a basic financial analysis to ensure the taxpayer can afford the IA. Conducting this financial review is important for streamlined IAs where the IRS rarely performs any financial analysis. Although the economic hardship indicator shows that 18 percent of these IAs likely cause the taxpayer economic hardship, the purpose is to ensure the IRS performs a financial analysis when the algorithm indicates an inability to pay. Other factors may be causing the algorithm to incorrectly indicate the taxpayer is likely experiencing economic hardship and cannot afford the IA. For example, the taxpayer may have moved, and the algorithm is assigning ALEs too high or the taxpayer may have income from a cash-based business, not detectable from internal information reporting documents. The algorithm's indication of likely economic

hardship should only prompt the IRS to perform a financial analysis to ensure the IA would not cause economic hardship before entering into the agreement.

When examining the IAs by FY, we see the agreement rate with the IRS is consistent across the four FYs, but increases slightly as the FYs progress, as indicated by Figure 5.4.

**FIGURE 5.4, Algorithm Agreement Rate With IRS Determination by Fiscal Year**

Fiscal Year	Agreement	Count	Percent
2017	No	13,937	19.5%
	Yes	57,594	80.5%
	Total	71,531	100%
2018	No	12,611	18.8%
	Yes	54,616	81.2%
	Total	67,227	100%
2019	No	12,569	18.0%
	Yes	57,188	82.0%
	Total	69,757	100%
2020	No	5,590	16.7%
	Yes	27,980	83.3%
	Total	33,570	100%
Grand Total (All FYs)	No	44,707	18.5%
	Yes	197,378	81.5%
	Total	242,085	100%

We also explored the effect of a change in the algorithm's assumptions about the ALEs allowed. Specifically, for the IAs analyzed, Figure 5.5 depicts the agreement rate with the IRS determination if no vehicle ownership expenses are allowed.

**FIGURE 5.5, Algorithm Agreement With IRS Determination When ALEs Do Not Include Vehicle Ownership Expense**

Agreement	Count	Percent
No	35,023	14%
Yes	207,062	86%
<b>Total</b>	<b>242,085</b>	<b>100%</b>

As indicated, eliminating vehicle ownership expenses from the ALEs considered by the algorithm increases the agreement rate with the IRS determination to about 86 percent.

Finally, we examined the agreement rate with the IRS determination if the algorithm allowed the minimum amount of ALEs only. As described in the Methodology section, the amounts for the national standard, out-of-pocket health care expenses, and the minimum public transportation are always allowed in full.<sup>30</sup> Figure 5.6 shows the agreement rate with the IRS determination when the algorithm only allows the guaranteed amount of ALEs, excluding any ALE amounts not guaranteed to the taxpayer.

**FIGURE 5.6, Algorithm Agreement With IRS Determination When ALEs Only Includes Guaranteed Amounts of ALEs**

Agreement	Count	Percent
No	9,914	4%
Yes	232,171	96%
<b>Total</b>	<b>242,085</b>	<b>100%</b>

This prior figure shows that an algorithm allowing only the minimum ALEs given to all taxpayers based on age and household size would agree with the IRS determination 96 percent of the time, strongly suggesting that even an algorithm allowing only those ALE amounts could prevent thousands of taxpayers from entering into streamlined IAs they cannot afford. For the remaining analyses we will only show the agreement rate between the IRS determination and the algorithm based on the likely ALEs described initially, although it is interesting to note that a high level of agreement exists between the minimum ALE allowances and the IRS determination.

30 IRS, SERP Alert 20A0136, Allowable Living Expense Standards 2020 (Mar. 30, 2020).



We explored agreement with the IRS determination by several factors, including the function that initiated the IA, income categories, and whether the taxpayer was under age 65 or age 65 and over. First, we divided the IRS function initiating the IA into three categories: the ACS, the Collection Field function (CFF), and all other functions initiating IAs. Figure 5.7 shows that the algorithm is most likely to agree with the IRS determination in CFF cases and least likely to agree with the IRS determination in IAs originated in other functions besides ACS or CFF.

**FIGURE 5.7, Algorithm Agreement With IRS Determination by Function Originating IA**

			IA Function			Total
			ACS	CFf	Other	
Algorithm Agreement - Can Pay	No	Count	31,271	4,359	9,077	44,707
		% within IA function	20%	10%	22%	18%
	Yes	Count	125,879	39,352	32,147	197,378
		% within IA function	80%	90%	78%	82%
Total		Count	157,150	43,711	41,224	242,085
		% within IA function	100%	100%	100%	100%

The agreement rate between the algorithm and the IRS determination varies by the different functions originating the IA. The cause of this difference may be triggered by the different requirements of each IRS function in requiring financial data. Next, examining the non-streamlined IAs by whether the primary or secondary taxpayer is aged 65 or over for those taxpayers filing a recent<sup>31</sup> federal income tax return prior to the IA produces the data in Figure 5.8.

**FIGURE 5.8, Algorithm Agreement With IRS Determination by Whether the Taxpayer Is Aged 65 or Older**

			Under Age 65	Aged 65 and Over	Total
Algorithm Agreement - Can Pay	No	Count	34,441	4,152	38,593
		% in Age Category	18%	12%	17%
	Yes	Count	161,509	29,915	191,424
		% in Age Category	82%	88%	83%
Total		Count	195,950	34,067	230,017
		% in Age Category	100%	100%	100%

<sup>31</sup> This figure only includes the 230,017 taxpayers who filed a federal income tax return for one of the two tax years prior to the IA.

The figure shows that the algorithm agrees with the IRS determination 88 percent of the time when the taxpayers are aged 65 or over but only 82 percent of the time when the taxpayers are under age 65.

As expected, the algorithm's agreement with the IRS determination increases as income rises. When income reported on a taxpayer's return or on third-party payor documents does not exceed \$25,000, the algorithm only agrees with the IRS determination 14 percent of the time. However, when the taxpayer's income exceeds \$50,000, the algorithm agrees with the IRS over 95 percent of the time. This data is depicted in Figure 5.9.

**FIGURE 5.9, Algorithm Agreement With IRS Determination by Categories of Taxpayer Income**

			Income Category					Total
			Less Than or Equal to \$25,000	Greater Than \$25,000 and Less Than or Equal to \$50,000	Greater Than \$50,000 and Less Than or Equal to \$75,000	Greater Than \$75,000 and Less Than or Equal to \$100,000	Greater Than \$100,000	
Algorithm Agreement - Can Pay	No	Count	22,932	19,760	1,966	48	1	44,707
		% within income category	86%	43%	5%	0%	0%	18%
	Yes	Count	3,764	26,250	36,555	27,838	102,971	197,378
		% within income category	14%	57%	95%	100%	100%	82%
Total		Count	26,696	46,010	38,521	27,886	102,972	242,085
		% within income category	100%	100%	100%	100%	100%	100%

To further analyze the accuracy of the algorithm at different income categories, we stratified the prior figure by whether the taxpayer had filed the most recently due federal individual income tax return prior to the IA.<sup>32</sup> This data is depicted in Figure 5.10.

32 For example, for a 2019 IA, if the taxpayer timely filed his or her 2018 tax return, then the taxpayer filed the most recent Federal Individual Income return; however, if the 2018 tax return was not filed, the taxpayer had not filed the most recently due Federal Individual Income tax return due prior to the IA.

**FIGURE 5.10, Algorithm Agreement With IRS Determination by Categories of Taxpayer Income by Whether Taxpayer Filed Most Recently Due Income Tax Return Prior to IA**

				Income Category					Total
				Less Than or Equal to \$25,000	Greater Than \$25,000 and Less Than or Equal to \$50,000	Greater Than \$50,000 and Less Than or Equal to \$75,000	Greater Than \$75,000 and Less Than or Equal to \$100,000	Greater Than \$100,000	
Most Recently Due Individual Income Tax Return Before IA NOT FILED	Algorithm Agreement - Can Pay	No	Count	9,329	3,608	362	11	0	13,310
			% within income category	93%	35%	4%	0%	0%	24%
		Yes	Count	732	6,830	7,688	5,644	20,960	41,854
			% within income category	7%	65%	96%	100%	100%	76%
	Subtotal			10,061	10,438	8,050	5,655	20,960	55,164
Most Recently Due Individual Income Tax Return Before IA FILED	Algorithm Agreement - Can Pay	No	Count	13,603	16,152	1,604	37	1	31,397
			% within income category	82%	45%	5%	0%	0%	17%
		Yes	Count	3,032	19,420	28,867	22,194	82,011	155,524
			% within income category	18%	55%	95%	100%	100%	83%
	Subtotal			16,635	35,572	30,471	22,231	82,012	186,921
Grand Total			Count	26,696	46,010	38,521	27,886	102,972	242,085

When a taxpayer has income of \$25,000 or less and has filed the most recently due federal individual income tax return prior to the IA, the algorithm is somewhat more likely to agree with the IRS determination compared to taxpayers who have not filed the most recently due individual income tax return (18 percent versus seven percent). However for taxpayers earning over \$25,000, but not over \$50,000, the algorithm is less likely to agree with the IRS determination when the most recently due federal individual income tax return prior to the IA has been filed compared to taxpayers who have not filed the most recently due individual income tax return (55 percent versus 65 percent). Whether or not a taxpayer has filed the most recently due federal individual income tax return prior to the IA does not satisfactorily explain why the algorithm is so much less likely to agree with the IRS determination when the taxpayer earns \$50,000 or less.

Since the algorithm's agreement with the IRS determination that the taxpayer can afford an IA is so different for taxpayers earning \$50,000 or less, we produced Figure 5.11 showing the agreement rate when the algorithm provides the lowest possible amount of ALEs only.<sup>33</sup>

**FIGURE 5.11, Algorithm Agrees With IRS Determination When ALE Only Includes Guaranteed Amounts of ALE for Taxpayers With Incomes Not Exceeding \$50,000**

			Income Category		Total
			Less Than or Equal to \$25,000	Greater Than \$25,000 and Less Than or Equal to \$50,000	
Algorithm Agreement - Can Pay	No	Count	9,900	121	10,021
		% within income category	37%	0%	14%
	Yes	Count	16,796	45,889	62,685
		% within income category	63%	100%	86%
Total		Count	26,696	46,010	72,706
		% within income category	100%	100%	100%

While nearly all taxpayers earning between \$25,000 and \$50,000 have income in excess of their minimum ALEs (or a detectable asset), 37 percent of taxpayers with incomes \$25,000 or less earn less than their minimum ALEs. Reasons do exist why the ALEs could be lower, most notably because the taxpayer's household size decreased since the return used to inform the algorithm or because the taxpayer has income not easily detectable from systemic data. Nevertheless, the possibility also exists that either the IA was mistakenly coded as non-streamlined or the IRS did not allow the proper ALEs. Regardless, requiring the IRS to perform a basic financial analysis would protect taxpayers from entering into IAs they cannot afford and could reduce the IA default rate.

The agreement rate between the algorithm estimating taxpayer income and ALEs vary among the states. However, the agreement rates between the algorithm and the IRS determination for taxpayers in North Dakota, South Dakota, and Wisconsin are about ten percentage points higher than the agreement rates in the District of Columbia, Florida, or New York. The agreement rates in the United States' possessions and territories is generally low. This lower rate of agreement in the possessions and territories is to be expected, since the IRS does not publish a complete set of ALE standards for these areas and therefore the algorithm often only allows the taxpayer the lowest national ALE amount for that standard.

<sup>33</sup> Taxpayers are always entitled to the national standard for their household size, the full amount of the transportation standard for public transportation, and the allowance for out-of-pocket health care expenses.

We also explored the agreement rates by filing status for the approximately 230,000 taxpayers who had filed a federal income tax return in one of the two years prior to entering the IA. As Figure 5.12 indicates, the algorithm agrees with the IRS determination over 90 percent of the time for married taxpayers, but only about 75 percent of the time for taxpayers filing with the single or head-of-household filing statuses. These unmarried taxpayers have both mean and median incomes in excess of \$50,000 so the lower agreement rate between the ALE algorithm and the IRS determination is not likely related to the algorithm being less likely to determine that lower income taxpayers can afford an IA, which we discussed previously.

**FIGURE 5.12, Algorithm Agreement With IRS Determination by Filing Status**

Filing Status			Single	Married Filing Joint <sup>34</sup>	Married Filing Separate	Head of Household
Algorithm Agrees - Can Pay	No	Count	22,807	7,647	2,727	5,412
		% within filing status	26%	8%	15%	24%
	Yes	Count	64,500	94,184	15,365	17,375
		% within filing status	74%	92%	85%	76%
Total		Count	87,307	101,831	18,092	22,787
		% within filing status	100%	100%	100%	100%

## CONCLUSIONS

- An algorithm using internal IRS data to compare taxpayer's income to their likely ALEs<sup>35</sup> agrees with the IRS determination 82 percent of the time. The agreement rate rises to 86 percent if the taxpayer's ALE does not include any vehicle ownership expense.
- Agreement between an algorithm allowing taxpayers their likely ALE expenses and the IRS determination has increased slightly from FY 2017 to FY 2020.
- An algorithm comparing internal IRS income data to the minimum amount of ALEs provided to taxpayers has a 96 percent agreement rate with the IRS determination that the taxpayer could afford an IA.
- An algorithm using internal IRS data to compare taxpayers' incomes to their likely ALEs is more likely to agree with the IRS determination when the taxpayers are elderly, when the income exceeds \$50,000, or when the taxpayers are married. However, the same algorithm is unlikely to agree with the IRS determination for taxpayers with systemically detected income of \$25,000 or less.

<sup>34</sup> Includes a small number of taxpayers filing as qualifying widow(ers).

<sup>35</sup> Likely ALEs include the national standard for the taxpayer's household size, the maximum allowance for housing and utilities based on the taxpayer's county of residence, one vehicle ownership allowance and vehicle operating expense allowance(s) (the taxpayer would be given an allowance for operating two vehicles if the taxpayer files a joint return) based on the location of the taxpayer's residence, and an allowance for out-of-pocket health care expenses.

## RECOMMENDATION

The IRS should implement an economic hardship indicator on taxpayer accounts when estimates of a taxpayer's ALEs and income indicate the taxpayer is not likely to afford a streamlined IA. If the indicator shows the likelihood of economic hardship, procedures would direct the IRS to perform a basic financial analysis before entering into the IA to ensure the taxpayer can afford it without causing additional financial hardship and potentially triggering unnecessary defaults.

## ALLOWABLE LIVING EXPENSES

Allowable living expenses for 2020 (which went into effect on March 30, 2020) are shown in Figures 5.13 through 5.16.

**FIGURE 5.13, Allowable Living Expenses National Standards**

Expense	One Person	Two Persons	Three Persons	Four Persons
Food	\$385	\$715	\$779	\$947
Housekeeping supplies	\$45	\$67	\$73	\$71
Apparel & services	\$85	\$158	\$192	\$251
Personal care products & services	\$43	\$73	\$74	\$88
Miscellaneous	\$157	\$285	\$315	\$383
<b>Total</b>	<b>\$715</b>	<b>\$1,298</b>	<b>\$1,433</b>	<b>\$1,740</b>

More than four persons	Additional Persons Amount
For each additional person, add to four-person total allowance:	\$378

**FIGURE 5.14, Transportation Standards**

Public Transportation		
National	\$224	
Ownership Costs		
Region	One Car	Two Cars
National	\$521	\$1,042
Operating Costs		
Region	One Car	Two Cars
<b>Midwest Region</b>	\$188	\$376
Chicago	\$188	\$376
Cleveland	\$188	\$376
Detroit	\$314	\$628
Minneapolis-St. Paul	\$178	\$356
St. Louis	\$174	\$348
Region	One Car	Two Cars
<b>Northeast Region</b>	\$242	\$484
Boston	\$221	\$442
New York	\$319	\$638
Philadelphia	\$282	\$564
Region	One Car	Two Cars
<b>South Region</b>	\$193	\$386
Atlanta	\$231	\$462
Baltimore	\$233	\$466
Dallas-Ft. Worth	\$289	\$578
Houston	\$259	\$518
Miami	\$286	\$572
Tampa	\$213	\$426
Washington, DC	\$232	\$464
Region	One Car	Two Cars
<b>West Region</b>	\$209	\$418
Anchorage	\$162	\$324
Denver	\$217	\$434
Honolulu	\$178	\$356
Los Angeles	\$254	\$508
Phoenix	\$225	\$450
San Diego	\$230	\$460
San Francisco	\$231	\$462
Seattle	\$250	\$500



**FIGURE 5.15, Out-of-Pocket Health Care Standards**

Under 65	65 and Older
\$56	\$125

**FIGURE 5.16, Excerpt of Housing and Utilities Standards for Alabama**

County	Housing and Utilities for a Family of 1	Housing and Utilities for a Family of 2	Housing and Utilities for a Family of 3	Housing and Utilities for a Family of 4	Housing and Utilities for a Family of 5 or more
Autauga County	\$1,256	\$1,476	\$1,555	\$1,734	\$1,762
Baldwin County	\$1,410	\$1,656	\$1,745	\$1,946	\$1,977
Barbour County	\$1,067	\$1,253	\$1,320	\$1,472	\$1,496
Bibb County	\$1,187	\$1,394	\$1,469	\$1,638	\$1,664
Blount County	\$1,193	\$1,401	\$1,476	\$1,646	\$1,672
Bullock County	\$1,126	\$1,322	\$1,393	\$1,553	\$1,578
Butler County	\$1,056	\$1,240	\$1,307	\$1,457	\$1,481
Calhoun County	\$1,147	\$1,347	\$1,419	\$1,582	\$1,608
Chambers County	\$1,064	\$1,250	\$1,317	\$1,468	\$1,492
Cherokee County	\$1,206	\$1,416	\$1,492	\$1,664	\$1,690
Chilton County	\$1,130	\$1,327	\$1,398	\$1,559	\$1,584
Choctaw County	\$1,064	\$1,250	\$1,317	\$1,468	\$1,492
Clarke County	\$1,199	\$1,408	\$1,484	\$1,655	\$1,681
Clay County	\$1,097	\$1,289	\$1,358	\$1,514	\$1,539
Cleburne County	\$1,210	\$1,421	\$1,497	\$1,669	\$1,696
Coffee County	\$1,238	\$1,454	\$1,532	\$1,708	\$1,736
Colbert County	\$1,131	\$1,329	\$1,400	\$1,561	\$1,586
Conecuh County	\$977	\$1,147	\$1,209	\$1,348	\$1,370
Coosa County	\$1,021	\$1,199	\$1,263	\$1,408	\$1,431
Covington County	\$1,071	\$1,258	\$1,326	\$1,478	\$1,502
Crenshaw County	\$1,088	\$1,278	\$1,347	\$1,502	\$1,526
Cullman County	\$1,131	\$1,329	\$1,400	\$1,561	\$1,586
Dale County	\$1,110	\$1,304	\$1,374	\$1,532	\$1,557
Dallas County	\$1,077	\$1,265	\$1,333	\$1,486	\$1,510
DeKalb County	\$1,088	\$1,277	\$1,346	\$1,501	\$1,525
Elmore County	\$1,316	\$1,546	\$1,629	\$1,816	\$1,846
Escambia County	\$1,088	\$1,278	\$1,347	\$1,502	\$1,526
Etowah County	\$1,166	\$1,369	\$1,443	\$1,609	\$1,635

## Top 25 Case Advocacy Issues in Fiscal Year 2020 by Taxpayer Advocate Management Information System Receipts

Rank	Issue Code	Description	FY 2020 Case Receipts
1	045	Pre-Refund Wage Verification Hold	68,499
2	315	Unpostable and Reject	15,784
3	63x - 640	Earned Income Tax Credit (EITC)	12,176
4	310	Processing Original Return	8,509
5	920	Health Insurance Premium Tax Credit for Individuals Under IRC § 36B	8,287
6	090	Other Refund Inquiries and Issues	8,187
7	330	Processing Amended Return	7,676
8	318	Taxpayer Protection Program Unpostables	7,098
9	425	Identity Theft	5,900
10	340	Injured Spouse Claim	3,668
11	040	Returned and Stopped Refunds	3,450
12	610	Open Audit, Not EITC	3,450
13	71x	Levies	3,007
14	065	Refund Hold (Delinquent Return Refund Hold Program)	2,766
15	75x	Installment Agreements	2,618
16	060	IRS Offset	2,516
17	620	Reconsideration of Audits and Substitute for Return Under IRC § 6020(b)	2,381
18	670	Closed Automated Underreporter	2,306
19	010	Lost and Stolen Refunds	2,023
20	520	Failure to File (FTF) Penalty and Failure to Pay (FTP) Penalty	1,990
21	72x	Liens	1,954
22	790	Other Collection Issues	1,880
23	151	Transcript Requests	1,723
24	210	Missing and Incorrect Payments	1,720
25	390	Other Document Processing Issues	1,664
<b>Total Top 25 Receipts</b>			<b>181,232</b>
<b>Total TAS Receipts</b>			<b>206,772</b>

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## Glossary of Acronyms

ACRONYM	DEFINITION
<b>AAB</b>	Aggregate Assessed Balance
<b>AAR</b>	Administrative Adjustment Request
<b>AARP</b>	American Association of Retired Persons
<b>ABA</b>	American Bar Association
<b>AC</b>	Action Code
<b>ACA</b>	Affordable Care Act
<b>ACE</b>	Automated Correspondence Examination
<b>ACS</b>	Automated Collection System
<b>ACSI</b>	American Customer Satisfaction Index
<b>ACSS</b>	Automated Collection System Support
<b>ACTC</b>	Additional Child Tax Credit
<b>AFR</b>	Agency Financial Report
<b>AFSP</b>	Annual Filing Season Program
<b>AGI</b>	Adjusted Gross Income
<b>AI</b>	Artificial Intelligence
<b>AIA</b>	Anti-Injunction Act
<b>AICPA</b>	American Institute of CPAs
<b>AIMS</b>	Audit Information Management System
<b>AJCA</b>	American Jobs Creation Act
<b>ALC</b>	Assembler Language Code
<b>ALE</b>	Allowable Living Expenses
<b>AM</b>	Accounts Management
<b>AMS</b>	Accounts Management System
<b>AMT</b>	Alternative Minimum Tax
<b>AO</b>	Appeals Officer
<b>AOD</b>	Action on Decision
<b>AOTC</b>	American Opportunity Tax Credit
<b>APA</b>	Administrative Procedure Act
<b>APTC</b>	Advance Premium Tax Credit
<b>ARC</b>	Annual Report to Congress
<b>ASA</b>	Average Speed of Answer
<b>ASFR</b>	Automated Substitute for Return
<b>ATIN</b>	Adoption Taxpayer Identification Number
<b>ATM</b>	Automated Teller Machine
<b>AUR</b>	Automated Underreporter
<b>BAM</b>	Business Account Managers
<b>BFS</b>	Bureau of the Fiscal Service
<b>BLS</b>	Bureau of Labor Statistics

ACRONYM	DEFINITION
<b>BMF</b>	Business Master File
<b>BOD</b>	Business Operating Division
<b>BPR</b>	Business Performance Review
<b>BRTF</b>	Business Return Transaction File
<b>BSA</b>	Bank Secrecy Act
<b>BSM</b>	Business Systems Modernization
<b>CA</b>	Correspondence Audit
<b>CA FTB</b>	California Franchise Tax Board
<b>CADE</b>	Customer Account Data Engine
<b>CAF</b>	Centralized Authorization File
<b>CAP</b>	Collection Appeals Program
<b>CAR</b>	Collection Activity Report
<b>CARE</b>	Customer Assistance, Relationships and Education
<b>CARES</b>	Coronavirus Aid, Relief, and Economic Security Act
<b>CAS</b>	Customer Account Services
<b>CAT-A</b>	Category A
<b>CBO</b>	Congressional Budget Office
<b>CC</b>	Command Code
<b>CCB</b>	Customer Callback
<b>CCDM</b>	Chief Counsel Directives Manual
<b>CCE</b>	Compliance Center Exam
<b>CCH</b>	Commerce Clearing House
<b>CCI</b>	Centralized Case Intake
<b>C-CPI-U</b>	Chained Consumer Price Index for All Urban Consumers
<b>CDDb</b>	Custodial Detail Database
<b>CDP</b>	Collection Due Process
<b>CDW</b>	Compliance Data Warehouse
<b>CEAS</b>	Correspondence Examination Automated Support
<b>CEO</b>	Chief Executive Officer
<b>CET</b>	Correspondence Examination Technicians
<b>Cff</b>	Collection Field Function
<b>CFR</b>	Code of Federal Regulations
<b>CGET</b>	Correspondence Guidelines for Examination Technicians
<b>CHIP</b>	Children's Health Insurance Program
<b>CI</b>	Criminal Investigation (Division)

### Appendix 3: Glossary of Acronyms

ACRONYM	DEFINITION
<b>CIO</b>	Chief Information Officer
<b>CIP</b>	Compliance Initiative Projects
<b>CIS</b>	Collection Information Statement
<b>CNC</b>	Currently Not Collectible
<b>COBOL</b>	Common Business-Oriented Language
<b>COBR</b>	Campus Operation Business Results
<b>COD</b>	Cancellation of Debt
<b>COIC</b>	Centralized Offer in Compromise
<b>CONOPS</b>	Concept of Operations
<b>COVID-19</b>	Coronavirus Disease 2019
<b>CP</b>	Computer Paragraph
<b>CPA</b>	Certified Public Accountant
<b>CPE</b>	Continuing Professional Education
<b>CPI</b>	Consumer Price Index
<b>CSSED</b>	Collection Statute Expiration Date
<b>CSO</b>	Communications, Stakeholder Liaison & Online Services
<b>CSP</b>	Credential Service Provider
<b>CSR</b>	Customer Service Representative
<b>CTC</b>	Child Tax Credit
<b>CX</b>	Customer Experience
<b>CY</b>	Calendar Year
<b>DCI</b>	Data Collection Instrument
<b>DDb</b>	Dependent Database
<b>DDIA</b>	Direct Debit Installment Agreement
<b>DIF</b>	Discriminant Index Function
<b>DOD</b>	Department of Defense
<b>DOJ</b>	Department of Justice
<b>DOR</b>	Department of Revenue
<b>DSP</b>	Disability Severance Pay
<b>DWG</b>	Digitalization Working Group
<b>EA</b>	Enrolled Agent
<b>EAP</b>	Entity Application Programs
<b>EB</b>	Economic Burden
<b>ECM</b>	Enterprise Case Management
<b>EDCA</b>	Executive Director Case Advocacy
<b>EDP</b>	Economic Development Program
<b>EDM</b>	Enterprise Data Management
<b>EDSA</b>	Executive Director Systemic Advocacy
<b>EFDS</b>	Electronic Fraud Detection System
<b>EFT</b>	Electronic Funds Transfer
<b>EFTPS</b>	Electronic Federal Tax Payment System

ACRONYM	DEFINITION
<b>EGTRRA</b>	Economic Growth and Tax Relief Reconciliation Act of 2001
<b>EH</b>	Equivalent Hearing
<b>EIC</b>	Earned Income Credit
<b>EIN</b>	Employer Identification Number
<b>EIP</b>	Economic Impact Payment
<b>EITC</b>	Earned Income Tax Credit
<b>EO</b>	Exempt Organization
<b>EPSS</b>	Electronic Products and Services Support
<b>EQRS</b>	Embedded Quality Review System
<b>ERO</b>	Electronic Return Originator
<b>ESL</b>	English as a Second Language
<b>ETA</b>	Effective Tax Administration
<b>ETARAS</b>	Electronic Tax Administration Research and Analysis System
<b>ETLA</b>	Electronic Tax Law Assistance
<b>FA</b>	Field Audit
<b>FAFSA</b>	Free Application for Federal Student Aid
<b>FAST</b>	Fixing America's Surface Transportation Act
<b>FATCA</b>	Foreign Account Tax Compliance Act
<b>FBAR</b>	Report of Foreign Bank and Financial Accounts or Foreign Bank and Financial Account Report
<b>FCR</b>	First Contact Resolution or Federal Case Registry
<b>FDIC</b>	Federal Deposit Insurance Corporation
<b>FEMA</b>	Federal Emergency Management Agency
<b>FFI</b>	Free File, Inc. or Foreign Financial Institution
<b>FFRF</b>	Freedom from Religion Foundation
<b>FICA</b>	Federal Insurance Contributions Act
<b>FMIS</b>	Financial Management Information System
<b>FOIA</b>	Freedom of Information Act
<b>FPL</b>	Federal Poverty Level
<b>FPLP</b>	Federal Payment Levy Program
<b>FPR</b>	False Positive Rate
<b>FRCP</b>	Federal Rules of Civil Procedure
<b>FS</b>	Filing Season
<b>FSA</b>	Facilitated Self Assistance
<b>FTB</b>	Franchise Tax Board
<b>FTC</b>	Foreign Tax Credit or Federal Trade Commission
<b>FTD</b>	Federal Tax Deposit

### Appendix 3: Glossary of Acronyms

ACRONYM	DEFINITION
<b>FTE</b>	Full-Time Equivalent or Failure to Pay Estimated Tax
<b>FTF</b>	Failure To File
<b>FTL</b>	Federal Tax Lien
<b>FTP</b>	Failure To Pay
<b>FY</b>	Fiscal Year
<b>GAO</b>	Government Accountability Office
<b>GDP</b>	Gross Domestic Product
<b>GS</b>	General Schedule
<b>GSA</b>	General Services Administration
<b>GUF</b>	Generalized Unpostable Framework
<b>HCO</b>	Human Capital Office
<b>HHI</b>	Household Income
<b>HHS</b>	Health and Human Services
<b>HMRC</b>	Her Majesty's Revenue and Customs
<b>HR</b>	Human Resources
<b>HRDC</b>	Human Resources Development Commission
<b>HOH</b>	Head of Household
<b>HR</b>	Human Resources
<b>HUD</b>	Housing and Urban Development
<b>IA</b>	Installment Agreement
<b>IAL</b>	Identity Assurance Level
<b>IBTF</b>	In-Business Trust Fund
<b>IC</b>	Industry Cases
<b>ICAS</b>	Internet Customer Account Services
<b>IDES</b>	International Data Exchange System
<b>IDR</b>	Information Document Request
<b>IDRS</b>	Integrated Data Retrieval System
<b>IDS</b>	Inventory Delivery System
<b>IDT</b>	Identity Theft
<b>IDTVA</b>	Identity Theft Victim Assistance
<b>IGA</b>	Intergovernmental Agreements
<b>IGM</b>	Interim Guidance Memorandum
<b>IMD</b>	Internal Management Document
<b>IMF</b>	Individual Master File
<b>IOAA</b>	Independent Offices Appropriations Act
<b>IP PIN</b>	Identity Protection Personal Identification Number
<b>IPERA</b>	Improper Payments Elimination and Recovery Act
<b>IRA</b>	Individual Retirement Account
<b>IRAF</b>	Individual Retirement Account File

ACRONYM	DEFINITION
<b>IRB</b>	Internal Revenue Bulletin
<b>IRC</b>	Internal Revenue Code
<b>IRI</b>	Information Return Item
<b>IRM</b>	Internal Revenue Manual
<b>IRMF</b>	Information Returns Master File
<b>IRS</b>	Internal Revenue Service
<b>IRSAC</b>	Internal Revenue Service Advisory Council
<b>IRTF</b>	Individual Return Transaction File
<b>ISRP</b>	Individual Shared Responsibility Payment
<b>IT</b>	Information Technology
<b>ITA</b>	Interactive Tax Assistant
<b>ITIN</b>	Individual Taxpayer Identification Number
<b>IVES</b>	Income Verification Express Service
<b>IVO</b>	Integrity Verification Operation
<b>IVR</b>	Interactive Voice Recognition
<b>JCT</b>	Joint Committee on Taxation
<b>JOC</b>	Joint Operations Center
<b>LB&amp;I</b>	Large Business and International Operating Division
<b>LEP</b>	Limited English Proficiency
<b>LIF</b>	Low Income Filter
<b>LITC</b>	Low Income Taxpayer Clinic
<b>LLC</b>	Limited Liability Company
<b>LLP</b>	Limited Liability Partnership
<b>LM</b>	Legal Memorandum
<b>LOS</b>	Level of Service
<b>LR</b>	Legislative Recommendation
<b>LTA</b>	Local Taxpayer Advocate
<b>M&amp;P</b>	Media and Publications
<b>MEA</b>	Math Error Authority
<b>MEF</b>	Modernized e-File
<b>MFJ</b>	Married Filing Joint
<b>MFS</b>	Married Filing Separately
<b>MFT</b>	Master File Transcript
<b>MLI</b>	Most Litigated Issue
<b>MOU</b>	Memorandum of Understanding
<b>MSA</b>	Metropolitan Statistical Area
<b>MSP</b>	Most Serious Problem
<b>MSPB</b>	Merit Systems Protection Board
<b>NASA</b>	National Aeronautics and Space Administration
<b>NDC</b>	National Distribution Center

### Appendix 3: Glossary of Acronyms

ACRONYM	DEFINITION
<b>NDS</b>	Notice Delivery System
<b>NFIB</b>	National Federation of Independent Business
<b>NFTL</b>	Notice of Federal Tax Lien
<b>NIH</b>	National Institutes of Health
<b>NIST</b>	National Institute of Standards and Technology
<b>NOL</b>	Net Operating Loss
<b>NQRS</b>	National Quality Review System
<b>NRP</b>	National Research Program
<b>NSA</b>	National Society of Accountants
<b>NTA</b>	National Taxpayer Advocate
<b>NTEU</b>	National Treasury Employees Union
<b>O&amp;M</b>	Operations and Maintenance
<b>OA</b>	Office Audit
<b>OAR</b>	Operations Assistance Request
<b>OCC</b>	Office of Chief Counsel
<b>OCR</b>	Optical Character Recognition
<b>OD</b>	Operating Division
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>OIC</b>	Offer in Compromise
<b>OLC</b>	Office of Legal Counsel
<b>OLS</b>	Online Services
<b>OMB</b>	Office of Management and Budget
<b>OOB</b>	Out of Business
<b>OPA</b>	Online Payment Agreement
<b>OPI</b>	Over the Phone Interpreter
<b>OPM</b>	Office of Personnel Management
<b>OPR</b>	Office of Professional Responsibility or Operational Performance Rate
<b>OS</b>	Operations Support
<b>OTC</b>	Office of Taxpayer Correspondence
<b>OUO</b>	Official Use Only
<b>OVD</b>	Offshore Voluntary Disclosure
<b>PACER</b>	Public Access to Court Electronic Records
<b>PATH</b>	Protecting Americans from Tax Hikes Act of 2015
<b>PCA</b>	Private Collection Agency
<b>PCIC</b>	Primary Core Issue Code
<b>PDC</b>	Private Debt Collection
<b>PDF</b>	Portable Document Format

ACRONYM	DEFINITION
<b>PGLD</b>	Privacy, Governmental Liaison and Disclosure
<b>PIC</b>	Program Integrity Cap
<b>PII</b>	Personally Identifiable Information
<b>PIN</b>	Personal Identification Number
<b>PLR</b>	Private Letter Ruling
<b>PM</b>	Program Manager
<b>PMO</b>	Performance Management Office
<b>PMTA</b>	Program Manager Technical Advice
<b>POA</b>	Power of Attorney
<b>POD</b>	Post of Duty
<b>PPIA</b>	Partial Payment Installment Agreement
<b>PPP</b>	Paycheck Protection Program
<b>PPS</b>	Practitioner Priority Service
<b>PRA</b>	Paperwork Reduction Act
<b>PRWVH</b>	Pre-Refund Wage Verification Hold
<b>PSP</b>	Payroll Service Provider
<b>PTC</b>	Premium Tax Credit
<b>PTIN</b>	Preparer Tax Identification Number
<b>PY</b>	Processing Year
<b>Q&amp;A</b>	Question and Answer
<b>QBI</b>	Qualified Business Income
<b>QR</b>	Quick Response
<b>QRP</b>	Questionable Returns Program
<b>RA</b>	Revenue Agent
<b>RAAS</b>	Research, Analysis, and Statistics or Research, Applied Analytics, and Statistics
<b>RCA</b>	Reasonable Cause Assistant
<b>RCEO</b>	Refundable Credit Examination Operation
<b>RCP</b>	Reasonable Collection Potential
<b>RDC</b>	Research Development Center
<b>RFA</b>	Regulatory Flexibility Act
<b>RFI</b>	Request for Information
<b>RIA</b>	Research Institute of America
<b>RICS</b>	Return Integrity and Correspondence Services
<b>RIO</b>	Return Integrity Operations
<b>RIVO</b>	Return Integrity Verification Operations
<b>RO</b>	Revenue Officer
<b>ROI</b>	Return on Investment
<b>RPO</b>	Return Preparer Office
<b>RRA 98</b>	Internal Revenue Service Restructuring and Reform Act of 1998

### Appendix 3: Glossary of Acronyms

ACRONYM	DEFINITION
<b>RRP</b>	Return Review Program
<b>RRPLC</b>	Return Review Program Legacy Component
<b>SADI</b>	Secure Access Digital Identity
<b>SALT</b>	State and Local Taxes
<b>SAMS</b>	Systemic Advocacy Management System
<b>SB/SE</b>	Small Business/Self-Employed Operating Division
<b>SBA</b>	Small Business Administration
<b>SCA</b>	Service Center Advice
<b>SE</b>	Self-Employed
<b>SECA</b>	Self-Employment Contributions Act
<b>SERP</b>	Servicewide Electronic Research Program
<b>SIGTARP</b>	Special Inspector General for the Troubled Asset Relief Program
<b>SITLP</b>	State Income Tax Levy Program
<b>SL</b>	Stakeholder Liaison
<b>SLA</b>	Service Level Agreement
<b>SME</b>	Subject Matter Expert
<b>SNAP</b>	Selection and Analytics Platform
<b>SNIP</b>	Servicewide Notice Information Program
<b>SO</b>	Settlement Officer
<b>SP</b>	Submission Processing or Special Publication
<b>SPEC</b>	Stakeholder Partnerships, Education and Communication
<b>SPP</b>	Service Priorities Project
<b>SSA</b>	Social Security Administration
<b>SSI</b>	Supplemental Security Income
<b>SSN</b>	Social Security Number
<b>STARS</b>	Structured Trust Advantaged Repackaged Securities
<b>TA</b>	Taxpayer Advocate or Technical Assistance Memorandum
<b>TAC</b>	Taxpayer Assistance Center
<b>TAD</b>	Taxpayer Advocate Directive
<b>TAMIS</b>	Taxpayer Advocate Management Information System
<b>TAO</b>	Taxpayer Assistance Order
<b>TAP</b>	Taxpayer Advocacy Panel
<b>TARD</b>	Taxpayer Advocate Received Date
<b>TAS</b>	Taxpayer Advocate Service
<b>TASIS</b>	Taxpayer Advocate Service Integrated System
<b>TBOR</b>	Taxpayer Bill of Rights

ACRONYM	DEFINITION
<b>TC</b>	Transaction Code
<b>TCE</b>	Tax Counseling for the Elderly
<b>TCJA</b>	Tax Cuts and Jobs Act
<b>TCMP</b>	Tax Compliance Measurement Program
<b>TDC</b>	Taxpayer Digital Communication
<b>TDC SM</b>	Taxpayer Digital Communication Secure Messaging
<b>TE</b>	Tax Examiner
<b>TE/GE</b>	Tax Exempt and Government Entities Operating Division
<b>TEFRA</b>	Tax Equity and Fiscal Responsibility Act
<b>TES</b>	Taxpayer Experience Survey
<b>TFA</b>	Taxpayer First Act
<b>TFAO</b>	Taxpayer First Act Office
<b>TIGTA</b>	Treasury Inspector General for Tax Administration
<b>TIN</b>	Taxpayer Identification Number
<b>TIPRA</b>	Tax Increase Prevention and Reconciliation Act
<b>TMF</b>	Technology Modernization Fund
<b>TP</b>	Taxpayer
<b>TPC</b>	Third Party Contact
<b>TPI</b>	Total Positive Income
<b>TPNC</b>	Taxpayer Notice Code
<b>TPP</b>	Taxpayer Protection Program
<b>TY</b>	Tax Year
<b>UNAX</b>	Unauthorized Access of Taxpayer Account
<b>USC</b>	United States Code
<b>USPS</b>	United States Postal Service
<b>USVI</b>	United States Virgin Islands
<b>UWR</b>	Unified Work Request
<b>VITA</b>	Volunteer Income Tax Assistance
<b>VOIP</b>	Voice Over Internet Protocol
<b>VSD</b>	Virtual Service Delivery
<b>W&amp;I</b>	Wage and Investment Operating Division
<b>WBO</b>	Whistleblower Office
<b>WebSD</b>	Web Service Delivery
<b>WMAR</b>	Where's My Amended Return
<b>WMR</b>	Where's My Refund
<b>WOW</b>	Wage and Withholding Only
<b>WVP</b>	Wage Verification Program
<b>YTD</b>	Year to Date
<b>ZIP</b>	Zone Improvement Plan



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