

National Taxpayer Advocate

ANNUAL REPORT TO CONGRESS

Executive Summary – Preface & Highlights

2020

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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.¹ 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.

¹ 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 \$2,500.² 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.³ The majority of these taxpayers likely were entitled to refunds, yet they had to wait many months longer than usual to receive them.⁴ 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.⁵

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.⁶ 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.⁷ 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.⁸ 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, 2020.⁹ 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.¹⁰ 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.¹¹ 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

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

¹⁰ 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).

¹¹ 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.¹² 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.¹³ 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.)¹⁴

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.¹⁵

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-uti/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™.¹⁶ 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.”¹⁷ The 2019 Forrester report ranked the IRS 13th out of 15 federal agencies and characterized the IRS’s score as “very poor.”¹⁸

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.¹⁹ 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.²⁰ 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.²¹ 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.²² 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.²³ 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.²⁴

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 300:1.²⁵ 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.

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,²⁶ 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.²⁷ The IRS's plan was well-thought-out, having been developed after extensive consultation with stakeholders.²⁸ 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

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.²⁹

- **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.³⁰
- **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.³¹ 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.³² 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/.

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.³³ 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.

³³ 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.³⁴

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.

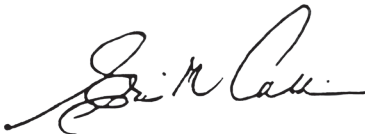
Conclusion

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

³⁴ 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].”¹ 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.

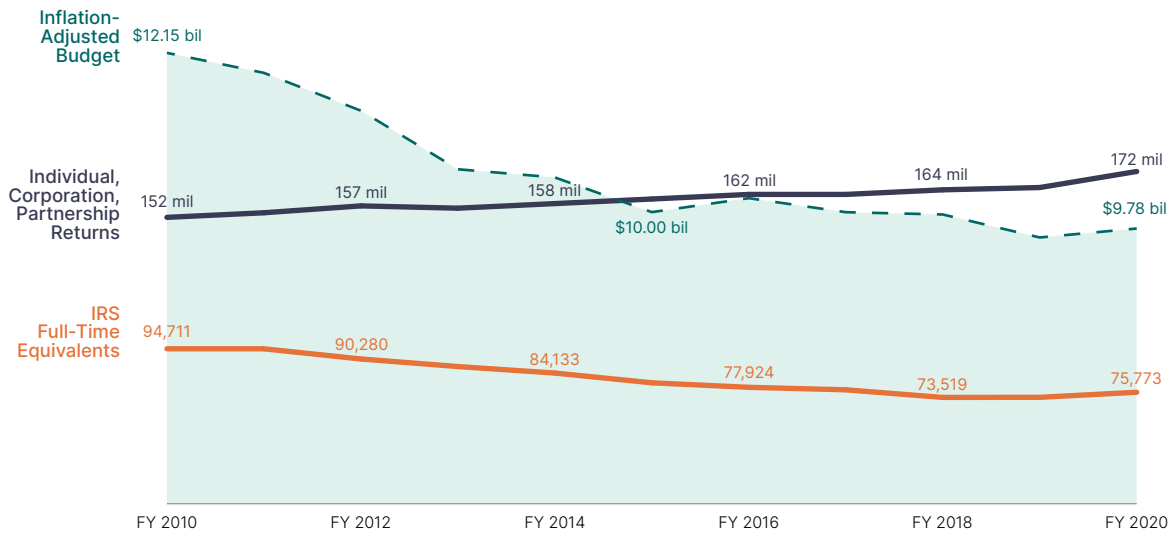
The Taxpayer First Act (TFA), passed in 2019, requires the IRS to include in its written comprehensive customer service strategy “identified metrics and benchmarks for quantitatively measuring the progress of the Internal Revenue Service in implementing such strategy.”² Taxpayer customer service and 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.³ 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) 2010,⁴ 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.⁵ It’s worth noting the IRS also experienced a 2011-2018 hiring freeze,⁶ 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 Processing⁸

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.⁹ The number of returns filed each year is on the rise,¹⁰ 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) ¹¹	254,001,709	255,249,983	259,995,800
Total Individual Income Tax Returns ¹²	152,937,949	154,094,555	160,423,600
Total Individual Income Tax Returns Filed on Paper ¹³	17,673,132	15,927,227	15,029,800
Total Individual Income Tax Returns Filed Electronically ¹⁴	134,261,551	137,203,455	144,413,200
Free File Consortium (Tax Year) ¹⁵	2,361,591	2,528,639	4,018,163
Fillable Forms (Tax Year) ¹⁶	294,723	283,244	519,133
Total Corporation Income Tax Returns ¹⁷	7,209,185	7,288,019	7,119,800
Total Corporation Income Tax Returns Filed on Paper ¹⁸	1,430,754	1,325,429	1,155,900
Total Corporation Income Tax Returns Filed Electronically ¹⁹	5,778,431	5,962,590	5,963,900

TAXPAYER SERVICE: Examination and Collection²⁰

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 audit²¹ closures in the lower income taxpayer category, for example, may warrant consideration for adjustment in approach. Rising no change audit²² 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
Examination			
Total Number of Closed Examinations – Individual Tax Returns ²³	892,065	680,463	452,510
Total Positive Income (under \$50,000)			
No Change Rate	8.3%	10.1%	11.4%
Agreed Rate ²⁴	21.6%	23.3%	20.6%
Taxpayer Failed to Respond Rate ²⁵	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 ²⁶	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 ²⁷	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 ²⁸	46.1%	37.0%	43.3%

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

TAXPAYER SERVICE: Taxpayer-Facing Communication Channels³⁵

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 Service³⁶ measurements are falling. Rises in virtual service contacts are important to note,³⁷ 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
In-Person Service			
Number of Taxpayer Assistance ("Walk-In") Centers (TACs) ³⁸	359	358	358
Number of Face-to-Face TAC Contacts ³⁹	2.9 million	2.3 million	1.0 million
Correspondence⁴⁰			
Individual Correspondence Volume (Adjustments) ⁴¹	4,485,906	4,134,753	2,765,003
Average Cycle Time to Work Individual Correspondence ⁴² (Master File (IMF))	66 days	74 days	96 days
Inventory Overage ⁴³	37.9%	41.8%	41.6%
Business Correspondence Volume (Adjustments) ⁴⁴	2,595,131	2,717,819	2,038,291
Average Cycle Time to Work Business Correspondence ⁴⁵ (Master File (BMF))	51 days	101 days	149 days
Inventory Overage ⁴⁶	23.5%	57.8%	71.9%
Telephone Service			
Total Calls to IRS ⁴⁷	98,532,231	99,373,456	100,514,299
Number of Calls Answered by IRS Employees ⁴⁸	34,703,578	28,558,862	24,192,386
Percentage of Calls Answered by IRS Employees ⁴⁹	35.2%	28.7%	24.1%
IRS Level of Service (LOS) ⁵⁰	69.0%	56.2%	51.2%
IRS Average Speed of Answer ⁵¹	11.3 minutes	16.2 minutes	18.3 minutes
Practitioner Priority: Percentage of Calls Answered (LOS) ⁵²	84.9%	78.3%	56.3%
Practitioner Priority: Average Speed of Answer ⁵³	7.5 minutes	8.8 minutes	12.7 minutes

Measure/Indicator	FY 2018	FY 2019	FY 2020
Virtual Service			
Number of Visits to IRS.gov ⁵⁴	608,776,283	650,989,560	1,603,938,876
Number of Page Views ⁵⁵	3,219,660,310	3,350,072,964	9,225,312,072
Online Installment Agreements ⁵⁶	714,901	786,505	719,752
Where's My Refund? Inquiries ⁵⁷	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.⁵⁸ 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 ⁵⁹	87.2%	87.5%	89.3%
Percentage of IT Funding Available for Business Systems Modernization ⁶⁰	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.

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*.



TAS Protects
Taxpayer Rights



TAS Reduces
Taxpayer Burden



TAS Advocates
for Change



TAS Improves
Access to Resources

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*.



TAS Protects Taxpayer Rights



TAS Reduces Taxpayer Burden



TAS Advocates for Change



TAS Improves Access to Resources

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 Protects Taxpayer Rights |  TAS Reduces Taxpayer Burden |
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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**



TAS Protects
Taxpayer Rights



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TAS Advocates
for Change



TAS Improves
Access to Resources

THE MOST SERIOUS PROBLEMS ENCOUNTERED BY TAXPAYERS

IRC § 7803(c)(2)(B)(ii)(III) requires the National Taxpayer Advocate to prepare an Annual Report to Congress that contains a summary of the ten most serious problems (MSPs) encountered by taxpayers each year. For 2020, the National Taxpayer Advocate has identified, analyzed, and offered recommendations to assist the IRS and Congress in resolving ten such problems.

Most Serious Problem #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****PROBLEM**

As the IRS faces the realities that come with an aging and shrinking 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. 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 while also administering social programs and implementing congressional mandates. Unfortunately, the IRS has been unable to simultaneously fill and maintain its employee base, while also trying to replenish the losses incurred over the past decade.

ANALYSIS

The IRS has been facing human capital management issues for over a decade. According to IRS data, at the end of fiscal year (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) when adding those who would be eligible to retire within the next year. Adding the average number of employees who leave the IRS each year for the private sector or another job (on average 5,576 employees), approximately 32 percent of IRS employees could leave over the next year. These figures are devastating and cannot be ignored. Something must change and change quickly.

The National Taxpayer Advocate is concerned that, due in part to insufficient staffing and hiring restrictions outside of its control, the IRS's Human Capital Office (HCO) is not equipped to handle the influx of hiring the IRS needs. While the Office of Personnel Management's (OPM's) End to End Hiring initiative goal of 80 days from identifying a need to fill a position to the day the selected candidate starts on the job was adopted by HCO, it continues to fall short as its actual hiring cycle time for FY 2020 was approximately 120 days, nearly 50 percent longer than its target goal for the year.

That National Taxpayer Advocate also believes that significant improvements are needed in the areas of recruitment and employee retention. Rather than simply posting a position and waiting for potential candidates to apply, the IRS should strengthen efforts to attract high-caliber students by utilizing external recruiters, career fairs, and networking with professional groups. Other potential recruitment strategies would include targeted ad campaigns and incentivized recruitment. The successes and best practices of other federal agencies and the private sector support these and other approaches. Regarding employee retention, having employee retention work focused at the corporate level does not seem to work, and the National Taxpayer Advocate believes that both recruitment efforts and employee retention efforts should be done primarily by

the individual IRS divisions with support from HCO, rather than having the majority of that work done at the corporate level.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS hire additional Human Resource (HR) Specialists to meet hiring demand; restructure internal hiring processes to improve cycle times; renegotiate the hiring process with the National Treasury Employees Union to allow for up to 50 percent of all hiring announcements to be filled externally; provide the IRS divisions with a single point of contact in the assigned HCO Employment Office for each of their hiring packages; 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 proper processes; conduct a research study to learn from successful recruitment strategies used by other federal agencies and the private sector; invest more time, effort, and money, and be more proactive in its recruitment efforts; rather than hiring out contractors, bring background check staff back to the IRS as full-time employees; and work with the Department of Treasury to seek approval for additional direct-hire authority for critical IRS positions beyond IRS information technology (IT), and consider seeking legislative changes to expand critical pay authority for IRS positions beyond IRS IT. These or similar changes must take place immediately to prevent the foreseeable consequences at issue. Proper staffing consisting of the appropriate skillset is essential for taxpayer service, protection of taxpayers rights, and proper tax administration.

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

The ability to speak to an IRS employee over the phone or in person and receive quality service is critical to meeting taxpayer needs. However, the current budget requested by the IRS and approved by Congress targets level of service (LOS) measurements for fiscal year (FY) 2021 at 60 percent, which means that four out of every ten taxpayers calling the IRS cannot get through to a customer service representative (CSR). Additionally, there were 401 Taxpayer Assistance Centers (TACs) in 2011, and now only 358. With the enactment of the Taxpayer First Act (TFA), the IRS can pursue novel approaches to improve customer service via an omnichannel approach, however, it lacks sufficient resources. Problems with IRS customer service were exacerbated during the COVID-19 pandemic. For example, nearly all free tax preparation sites for elderly and low-income taxpayers closed, resulting in a nearly 30 percent drop in free returns filed compared to last year.

ANALYSIS

The IRS uses innovative technology on a limited basis but needs more funding to expand. For example, customer callback technology lets taxpayers choose between waiting on the line or receiving a call back when an assistor is available. The IRS estimates that using the callback feature saved 50,973 hours on hold in January 2020. To address long wait times, the IRS launched a text chat pilot in 2017, with an average wait time of 35 seconds in FY 2020. In early 2021 the IRS will be introducing a “natural language” pilot, which allows interaction with the taxpayer by having the phone system ask an open-ended question and wait for a response.

TACs are unique because they provide a wide range of key IRS services with a physical presence in local communities where resources and support are lacking. TACs use Virtual Service Delivery, which provides video conferencing technology to assist taxpayers at IRS partner sites. The IRS is shifting to video conferencing technology that allows taxpayers to attend a virtual appointment from any computer, tablet, or mobile phone. Videoconferencing technology could fill voids in TAC services or provide service in remote areas.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS prioritize expanding customer callback technology and providing taxpayers with the option of receiving face-to-face service through videoconferencing technology. The IRS should 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. The IRS should continue to explore the feasibility of incorporating and providing incentives for partner sites to implement the use of videoconferencing software into the free tax preparation programs for elderly and low-income taxpayers and ensure meaningful

Most Serious Problems

performance measures to objectively measure customer service. The National Taxpayer Advocate recommends that Congress provide dedicated multiyear funding to increase the LOS by establishing clear measurements and decreasing average hold times. For these tools to work, the IRS will need to boost the CSR skillset and staffing levels.

Most Serious Problem #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****PROBLEM**

To provide top quality service, as measured through the eyes of the taxpayers, the IRS must improve 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 and deal with the toll-free line challenges, or use a patchwork of electronic online applications to gather necessary information to meet their tax obligations. This system leads to inefficiencies and causes unnecessary burdens as taxpayers cannot access essential information, resulting in delays and dissatisfaction.

ANALYSIS

Taxpayers have no consolidated place to view all their information online. The current Online Account only contains limited information and does not incorporate all the other IRS online applications. As the IRS continues to steer taxpayers towards the internet, taxpayers face limitations in what they can accomplish online. For example, only taxpayers with debts below a certain threshold can use the Online Payment Agreement, and taxpayers seeking an installment agreement outside of the IRS's streamline criteria must mail or fax in their forms. Currently only six notices are available in the Online Account, with another five planned for 2021. Of the notices chosen, most are purely informational notices about adjustments or other past actions. Several Online Account features are currently not planned, and we would recommend the IRS consider robustly building up the tool, such as including the ability to view images of past tax returns or to file documents and request actions such as an Appeals conference, or the other features listed below. The COVID-19 pandemic highlighted the urgent need for a robust Online Account. This spring when the IRS shut down its printing sites, it accumulated a backlog of approximately 31.2 million notices that were digitally created but unable to be mailed for an extended period of time. Additionally, in November, the IRS amassed a second backlog of about 11 million notices that could not be timely mailed, which is not discussed in the Most Serious Problem because this backlog arose subsequent to the writing of this report. An Online Account would have allowed the IRS to electronically post the notices and alert taxpayers to provide timely information and help mitigate confusion from the late notices.

RECOMMENDATIONS

The National Taxpayer Advocate recommends the IRS make the following Online Account additions: provide taxpayers access to all self-assistance online applications; include and consolidate information from all other IRS online applications; integrate secure messaging so that taxpayers can initiate and view messages and upload and download documents; place taxpayer-specific alert banners on the main dashboard to provide information regarding the status of their cases and highlight important deadlines; allow taxpayers to add,

change, or remove authorized representatives; allow taxpayers to give authorized representatives access to Online Account records for the authorized tax years; allow taxpayers to update their address and other contact information; allow taxpayers to make certain requests and file forms; prioritize posting notices that provide the taxpayer with key statutory or administrative rights, deadlines for actions, or notice of a potential enforcement action; develop a timeline for when all remaining notices, outside the 11 notices already scheduled, will be available; and provide business taxpayers access to an online account similar to individual taxpayers.

Most Serious Problem #4**DIGITAL COMMUNICATIONS: Limited Digital Communications With the IRS Make Problem Resolution Unnecessarily Difficult for Taxpayers****PROBLEM**

The COVID-19 related closures and resulting challenges exposed critical shortcomings in IRS service and communication channels. Going forward, the IRS must increase the availability and use of digital communications. To improve taxpayer service and avoid widescale service shutdowns during a future national or local emergency, the IRS should address:

- 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.

ANALYSIS

The IRS addressed many COVID-19 related service shortcomings by developing temporary workaround procedures. It issued guidance, effective through 2020, authorizing employees to accept and transmit documents related to the determination or collection of a tax liability by email. It also expanded the list of forms on which it will temporarily accept electronic signatures. 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.

The IRS should also expand other digital service options. The success of the Taxpayer Digital Communications (TDC) eGain Text Chat pilot illustrates the need to further expand this program. Increasing the availability of videoconferencing software would benefit taxpayers, especially those taxpayers who live in remote geographic locations or simply prefer this means of communication. However, for taxpayers to benefit from expanded digital service options, the IRS must continually assess the feasibility of increasing e-authentication verification rates while also maintaining strict compliance with National Institute of Standards and Technology guidelines. Finally, the provision of high-quality digital services necessitates a shift in IRS culture, in which IRS employees embrace a new way of communicating with taxpayers.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS maintain a robust omnichannel service environment as it enhances its digital offerings; accept electronic signatures on all documents that require a signature, once the IRS assesses, identifies, and eliminates any data security vulnerabilities; make permanent the use of a secured messaging system with taxpayers and their representatives; make permanent and expand the list of documents the IRS will accept and transmit by email using an established secured messaging system; assess how the new Secure Access Digital Identity platform will impact different demographics and determine the feasibility of increasing accessibility to digital applications; expand the availability of TDC eGain Text Chat; continue to develop digital service tools that are mobile-ready; and expand the use of virtual face-to-face technology to taxpayer-facing functions as permitted.

The National Taxpayer Advocate recommends that Congress 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.

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

The IRS's antiquated information technology systems and infrastructure present significant obstacles to expanding electronic filing (e-filing) and digitizing paper returns. 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. 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. 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.

ANALYSIS

Under the IRS's Modernized e-File (MeF) System, 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. 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. 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.

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. Expanded use of technology such as Optical Character Recognition (OCR) and 2-D barcoding will allow the IRS to automate processing and reduce the need for costly manual transcription, which would allow it to accept more forms and attachments electronically.

The coronavirus pandemic reinforced the importance of the IRS embracing digitalization technology to allow taxpayers to transmit documents to the IRS electronically. The IRS temporarily permitted the use of electronic signatures for more than a dozen forms, allowing 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. We recommend that the IRS continue to expand the use of all possible electronic filings and communication.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS make and publish an e-file plan for the forms that taxpayers cannot e-file and reevaluate the MeF System to allow for e-filing of all forms, schedules, and attachments. The IRS should also expand the use of optical character recognition and 2-D barcoding to improve processing of paper filings and reduce processing transcription errors, and make permanent all temporary changes to electronic or digital signature requirements the IRS implemented in response to the COVID-19 pandemic.

Most Serious Problem #6**INFORMATION TECHNOLOGY MODERNIZATION: Antiquated Technology Jeopardizes Current and Future Tax Administration, Impairing Both Taxpayer Service and Enforcement Efforts****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. As the nation's tax collector, the IRS can ill-afford to have its systems crash. The IRS will require significant, sustained multi-year funding from Congress to modernize its IT systems. Disruptions in IRS operations can erode taxpayer confidence in the tax administration system and ultimately lead to reduced levels of tax compliance.

ANALYSIS

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), or lack vendor support, training, or resources to maintain. The Treasury Inspector General for Tax Administration 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. In a recent congressional hearing, the Government Accountability Office noted that the IRS was still reliant on the Individual Master File, a system initially developed over 50 years ago, to update taxpayer account data, assess taxes, and generate refunds.

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. However, the IRS cannot implement its modernization plan until Congress provides adequate funding — which is outside of the IRS's control. 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.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS continue to compile data on the operations and maintenance costs of all legacy systems to assist in prioritizing decommissioning decisions; expedite the development of a Servicewide centralized system to store digital tax records; create Chief Information Officer liaisons for each IRS division; compile a list of IT lessons learned during COVID-19; expand modernization efforts to provide a comparable level of service to business taxpayers; ensure the amount requested for its

IT budget is sufficient and sustainable to fully fund its multiyear modernization plan; and consider seeking financial assistance from the Technology Modernization Fund.

The National Taxpayer Advocate recommends that Congress 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, and 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.

Most Serious Problem #7**CORRESPONDENCE AUDITS: Taxpayers Encounter Unnecessary Delays and Difficulties Reaching an Accountable and Knowledgeable Contact for Correspondence Audits****PROBLEM**

In response to taxpayer complaints about the inability to contact IRS staff directly, section 3705(a) of the Restructuring and Reform Act of 1998 (RRA 98), 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 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 receiving 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.

ANALYSIS

More than 70 percent of the audits conducted by the IRS are correspondence audits. Although the number of taxpayers selected for examination has declined in recent years, the percentage of IRS audits conducted by correspondence has increased from fiscal years (FYs) 2016 to 2018 with a slight decrease in 2019. 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.

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. Taxpayers undergoing a correspondence audit are referred to a toll-free number where they may discuss their case with an IRS phone assistor who generally holds no responsibility for the actions or determinations made with their audit. 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*.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS 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. Further, IRS should provide taxpayers

with the employee's secure email address or the Taxpayer Digital Communication (TDC) Secure Messaging access necessary to send and receive documents and communicate electronically with the assigned examiner. TDC Secure Messaging capabilities (or similar electronic communication capabilities) should be expanded to all correspondence audit programs.

The National Taxpayer Advocate also recommends that IRS 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.

Most Serious Problem #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****PROBLEM**

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. Because the penalties are immediately assessed, taxpayers' only recourse is to rely on IRS discretion and request a reasonable cause abatement of the penalties or pay them and seek a refund in federal court. This approach is particularly unsuited to these penalties, as demonstrated by abatement rates in excess of 55 percent when measured by number of penalties and 71 percent when measured by dollar value. Thus, both taxpayers and the IRS are expending significant time, energy, and money addressing penalties that ideally should not be assessed in the first instance.

ANALYSIS

IRC §§ 6038 and 6038A impose harsh penalties for failure to file required international information returns. Thus, the IRS's treatment of the penalties as summarily assessable is burdensome for taxpayers. The IRS adopts the circular argument that because it lacks statutory authority to assert the penalties using deficiency procedures, this, by definition, must confer authority to undertake summary assessments. The National Taxpayer Advocate and several commentators, however, find nothing in the IRC or the case law to support this reading. Given the existing hazards of litigation, the IRS should refer assessment and collection of these penalties to the Department of Justice, while seeking legislation providing authority to use the deficiency procedures. Administratively, the IRS could send soft notices to taxpayers upon discovery of late-filed international information returns to enhance compliance and minimizing the number of penalties being asserted. Further, the IRS should establish a first-time abatement for all Chapter 61 penalties, including the IRC §§ 6038 and 6038A penalties, to educate taxpayers and streamline tax administration.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS 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; 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; and 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.

The National Taxpayer Advocate recommends that Congress expand deficiency procedures to cover Chapter 61, including the IRC §§ 6038 and 6038A penalties.

Most Serious Problem #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****PROBLEM**

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. The IRS's published expected processing time for amended returns is 16 weeks. However, the IRS fails to advise taxpayers that if their amended returns are audited, processing will take significantly longer. One of the steps in the process, assigning an amended return that has been selected for audit to an examiner (who contacts the taxpayer) and opening the audit, alone took an estimated median of three to nine weeks for individual amended returns, and 14 to 16 weeks for corporate amended returns. Moreover, when taxpayers file an amended return to request a reduction in an assessed tax that remains unpaid, *i.e.*, a request for abatement, the IRS sometimes refuses to consider the claim and issues a form letter rejecting the claim without an adequate explanation to the taxpayer. Although the IRS has the authority to consider these claims, the form letter 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 analysis of information on IRS databases shows that 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. However, when these amended returns were audited, the estimated median processing time stretched to 35 weeks in FY 2017, *i.e.*, these taxpayers waited over eight months to receive their refunds. Estimated median processing time for these amended returns decreased to 20 weeks in FY 2019, a significant improvement compared to FY 2017, but still 25 percent longer than taxpayers were told to expect.

For individual and corporate amended returns that were audited and 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.

An analysis of TAS cases in which taxpayers filed an amended return to request a tax abatement shows that the IRS often — over 40 percent of the time — refused to consider the claim, giving as the only reason for not considering the claim that the law does not allow claims for abatements.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS 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. If the IRS determines the taxpayer is not entitled to an abatement, it should issue a 30-day letter providing taxpayers the right to file a protest with the Independent Office of Appeals for abatement of tax and update and clarify the IRM's No Immediate Tax Consequence provisions by referencing abatement cases. The IRS should 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), and 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. The IRS should identify and address the cause of lengthy examination times for amended returns and the increase in processing time for corporations' unaudited amended returns. Additional status updates should be added 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, and the IRM and Form 1120X instructions should be revised to more accurately reflect the expected processing time for amended returns.

Most Serious Problem #10**REFUND DELAYS: Taxpayers Whose Legitimate Returns Are Flagged by IRS Fraud Filters Experience Excessive Delays and Frustration in Receiving Their Refunds****PROBLEM**

The IRS issues most refunds promptly, but its pre-refund fraud filters delay millions of legitimate refund claims. In 2020, these filters flagged about 1.9 million returns for identity verification and 3.3 million to verify income and withholding. But the IRS ultimately issued most refunds requested on returns it flagged in calendar year 2019. Taxpayers whose refunds were delayed had trouble getting specific and timely information about the status their refunds.

ANALYSIS

For about 25 percent of the returns flagged by fraud filters, the IRS took longer than 56 days in 2020 to issue refunds, and for about 18 percent of those flagged for identity verification, refunds took longer than 120 days. In some cases, returns got stuck between functions (*e.g.*, between the Return Integrity Verification Operation and Exam). As of September 24, 2020, 20 percent of the returns processed in 2019 had still not reached the function — they were still sitting in transit between functions, which has caused an unacceptable delay.

When taxpayers called the IRS about their refunds or used the Where's My Refund tool on the IRS website or the IRS2go app, they could not get specific information about the cause of the delay, what the IRS needed, and when they could expect the refund. When they tried to verify their identities by uploading documents to the IRS's electronic system (called ID Verify), they were frustrated because they could not reach ID Verify without first going through the IRS's authentication protocol (called Secure Access). Most people who tried could not get through Secure Access in 2020. The inability to obtain specific information about their refunds 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. And these delays are the number one reason that taxpayers asked TAS for help over the last three years.

RECOMMENDATIONS

The National Taxpayer Advocate recommends technology upgrades to expedite legitimate refund requests, changes to the IRS Wage and Investment Division's performance measures, and process changes to improve communications with taxpayers. The IRS's Customer Service Representatives and electronic communications should provide taxpayers with more accurate estimates of when they can expect their refunds, the information the IRS needs, whom the taxpayer can contact with questions. The IRS should make it easier for taxpayers to submit identity verification information electronically without going through Secure Access. The National Taxpayer Advocate also recommends that Congress provide the IRS with multiyear funding for technology upgrades needed to implement these recommendations.

MOST LITIGATED ISSUES

IRC § 7803(c)(2)(B)(ii)(x) requires the National Taxpayer Advocate to include in her Annual Report to Congress the ten tax issues most litigated in the federal courts, classified by the type of taxpayer affected. The cases we reviewed were decided during the 12-month period that began on June 1, 2019, and ended on May 31, 2020.

Most Litigated Issue #1

Appeals From Collection Due Process Hearings Under IRC §§ 6320 and 6330

A Collection Due Process (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. 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.

Once Appeals issues a determination, a taxpayer has the right to judicial review of that determination if the taxpayer timely requests a CDP hearing and timely petitions the U.S. Tax Court. Generally, the IRS suspends levy actions during a levy hearing and any subsequent judicial review of the Appeals determination that follows the hearing.

CDP has been one of the federal tax issues most frequently litigated in the federal courts since 2001; however, only a small fraction of eligible taxpayers exercises their right to an administrative hearing, and far fewer taxpayers petition the Tax Court to review their case.

Our review of litigated issues found 74 opinions on CDP cases during the review period of June 1, 2019, through May 31, 2020. Taxpayers prevailed in full in five of these cases (seven percent) and, in part, in five others (about seven percent). Forty-five taxpayers (61 percent) appeared *pro se* (unrepresented). Cognizant of the distinct disadvantage that *pro se* litigants face, federal courts routinely read their submissions liberally and interpret them to raise the strongest arguments that they suggest. The IRS prevailed fully in 64 cases (about 86 percent) of the opinions.

Most Litigated Issue #2**Civil Actions to Enforce Federal Tax Liens or to Subject Property to Payment of Tax Under IRC § 7403**

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.

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, a 37 percent increase from the 52 cases reported last year. Of the 71 lien enforcement cases adjudicated during this reporting period, 44 taxpayers were unrepresented (*pro se*). Taxpayers prevailed in just six of the 71 lien enforcement cases, with four cases resulting in split decisions where the IRS and taxpayers each prevailed in part.

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.

Most Litigated Issue #3**Accuracy-Related Penalty Under IRC § 6662(b)(1) and (b)(2)**

The accuracy-related 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, or if an underpayment exceeds a computational threshold called a substantial understatement. The accuracy-related penalty does not apply to any portion of an underpayment where the taxpayer acted with reasonable cause and in good faith. 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."

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. 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.

Most Litigated Issue #4**Trade or Business Expenses Under IRC § 162**

Trade or business deductions have been among the most litigated issues ever since TAS started tracking such activity. TAS identified 64 cases involving a trade or business expense issue that were litigated in federal courts between June 1, 2019, and May 31, 2020. 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.

Most Litigated Issue #5**Gross Income Under IRC § 61**

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. TAS identified 62 cases in the federal courts in which gross income was at issue. Of these cases, 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.

Most Litigated Issue #6**Summons Enforcement Under IRC §§ 7602, 7604, and 7609**

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. Of these 40 opinions reviewed, seven cases applied the standards for summons enforcement set forth in *United States v. Powell*, five cases involved the assertion of a privilege by the taxpayer, and two cases involved the issuance of a John Doe summons under IRC § 7609(f) (where the taxpayer(s) under investigation is not specifically identified or is unknown). 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. 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.

In fiscal year (FY) 2020, at least 433 summons cases were in the Office of Chief Counsel's inventory. A total of 34 cases were referred to DOJ in FY 2020. Subtracting those 34 from the total inventory means that 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 cases TAS identified for the period June 1, 2019, through May 31, 2020).

Most Litigated Issue #7**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**

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. 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, to pay an amount shown as tax on a return or underpay installments of estimated taxes. 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. 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.

Most Litigated Issue #8**Itemized Deductions Reported on Schedule A (Form 1040)**

Itemized deductions reported on Schedule A of IRS Form 1040 were among the ten Most Litigated Issues for the fourth time since the National Taxpayer Advocate's 2000 Annual Report to Congress. 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. All but four of these cases were litigated in the U.S. Tax Court. 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 nine of the 21 (or 43 percent) while 12 of 21 cases (or 57 percent) had *pro se* (without counsel) taxpayers. During this same period, taxpayers petitioned Tax Court in 1,120 cases where itemized deductions was an issue during the examination.

Most Litigated Issue #9**Charitable Contribution Deductions Under IRC § 170**

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 was an issue during the examination.

IRS court victories in conservation easement cases do not appear to have deterred taxpayers from engaging in these transactions. 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. In June 2020, the IRS offered to settle docketed Tax Court cases with this issue. 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.

Most Litigated Issue #10**Frivolous Issues Penalty Under IRC § 6673 and Related Appellate-Level Sanctions**

Pursuant to IRC § 6673, federal courts may issue a penalty for taxpayers who maintain a case primarily for delay, raise arguments deemed frivolous by the courts, unreasonably fail to pursue administrative remedies, or file a frivolous appeal. From June 1, 2019, through May 31, 2020, 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. 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.

Update of the Review Published in the Fiscal Year 2021 Objectives Report to Congress

The COVID-19 pandemic severely impacted the 2020 filing season. 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. The extended time applied to all Americans, including those who live and work abroad.

In the National Taxpayer Advocate's Fiscal Year 2021 Objectives Report to Congress, we included a partial review of the 2020 filing season. 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, with data updated through the end of the extended 2020 filing season.

The IRS Can Systemically Identify Taxpayers at Risk of Economic Hardship and Screen Them Before They Enter Into Installment Agreements They Cannot Afford

The majority of IRS installment agreements (IAs) with individual taxpayers are streamlined agreements, 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. 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. ALEs include groceries and other incidentals such as apparel or cleaning supplies, housing and utilities, transportation, and out-of-pocket health care expenses. 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 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.

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.

Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration

Section 7803(c)(2)(B)(ii)(IX) of the IRC requires the National Taxpayer Advocate, as part of the annual report to Congress, to propose legislative recommendations to resolve problems encountered by taxpayers. This year, we present 66 legislative recommendations.

We have taken the following steps to make these recommendations as accessible and user-friendly as possible for Members of Congress and their staffs:

- We have consolidated our recommendations from various sections of this year’s report, prior reports, and other sources into this single volume.
- We have grouped our recommendations into categories that generally reflect the various stages in the tax administration process so that, for example, return filing issues are presented separately from audit and collection issues.
- We have presented each legislative recommendation in a format like the one used for congressional committee reports, with “Present Law,” “Reasons for Change,” and “Recommendation(s)” sections.
- Where bills have been introduced in the past that are generally consistent with a recommendation, we have included a footnote at the end of the recommendation that identifies those bills. (Because of the large number of bills introduced in each Congress, we almost surely have overlooked some. We apologize for any bills we have inadvertently omitted.)
- We have compiled a table, which appears at the end of this volume as Appendix 1, that identifies additional materials relating to our recommendations, where such materials exist. In addition to identifying a larger number of prior bills than we cite in our footnotes, the table provides references to more detailed issue discussions that have been included in prior National Taxpayer Advocate reports.

By our count, Congress has enacted approximately 46 legislative recommendations that the National Taxpayer Advocate has proposed. See Appendix 2 for a complete listing. That total includes approximately 23 provisions that were included as part of the Taxpayer First Act.

The Office of the Taxpayer Advocate is a non-partisan, independent organization within the IRS that advocates for the interests of taxpayers. We have dubbed this the “Purple Book” because the color purple, as a mix of red and blue, has come to symbolize bipartisanship. Historically, tax administration legislation has attracted bipartisan support. Most recently, the Taxpayer First Act was approved by both the House and the Senate on voice votes with no recorded opposition.

We believe most of the recommendations presented in this volume are non-controversial, common sense reforms that will strengthen taxpayer rights and improve tax administration. We hope the tax-writing committees and other Members of Congress find it useful.

We highlight the following ten legislative recommendations for particular attention:

- **Provide the IRS with sufficient funding to meet taxpayer needs and improve tax compliance.** Since fiscal year (FY) 2010, the IRS’s budget has been reduced by about 20 percent after adjusting for inflation. As a result, the IRS has been unable to meet taxpayer needs (*e.g.*, the IRS received over 100 million telephone calls in FY 2020, yet employees were only able to answer about 24 percent). The

IRS also has been unable to modernize its information technology (IT) systems. Antiquated IT, in turn, limits the ability of customer service representatives to effectively assist taxpayers and prevents the IRS from offering fully functional online taxpayer accounts. In FY 2020, the IRS collected about \$3.5 trillion on a budget of about \$11.51 billion, producing a remarkable return on investment of more than 300:1. Thus, additional funding for the IRS would not only improve taxpayer service but would almost surely increase revenue collection as well.

- **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. The IRS’s plan was well-thought-out, having been developed after extensive consultation with stakeholders. 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 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.
- **Increase the annual award cap for Low Income Taxpayer Clinics.** When the 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.
- **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. In October 2016, Appeals revised provisions of the Internal Revenue Manual 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. 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 liability in certain circumstances. 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 who do not report to other agency officials.

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