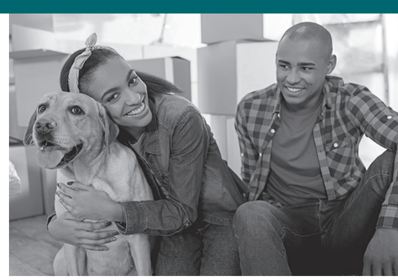
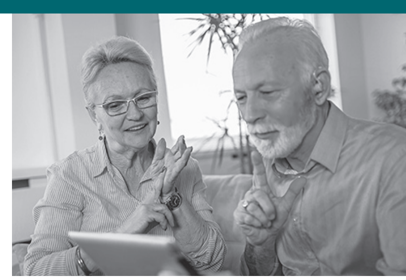
National Taxpayer Advocate

ANNUAL REPORT TO CONGRESS

Executive Summary – Prologue & Highlights

2022





TAXPAYER ADVOCATE SERVICE

YOUR VOICE AT THE IRS

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Preface: Introductory Remarks by the National Taxpayer Advocate

HONORABLE MEMBERS OF CONGRESS:

It is my privilege to submit for your consideration the National Taxpayer Advocate's 2022 Annual Report to Congress. As required by law, this report identifies and discusses what I believe to be the ten most serious problems taxpayers face in their dealings with the IRS, summarizes the most frequently litigated tax issues over the past fiscal year, and makes administrative and legislative recommendations to mitigate taxpayer problems and improve the taxpayer experience.[1] Our legislative recommendations are presented in a companion volume, *National Taxpayer Advocate 2023 Purple Book: Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration*.

The main focus of this year's report is the elephant in the room – the continuing customer service challenges taxpayers are experiencing and the negative impact of the filing season backlog. Last year, I reported that the period since the start of the COVID-19 pandemic has been the most challenging that taxpayers and tax professionals have ever faced. The bad news is that taxpayers and tax professionals experienced more misery in 2022. The good news is that since the close of the 2022 filing season, the IRS has made considerable progress in reducing the volume of unprocessed returns and correspondence. We have begun to see light at the end of the tunnel. I am just not sure how much further we need to travel before we see sunlight.

As we enter 2023, the IRS must focus its resources on its core taxpayer service mission – processing tax returns, paying refunds, answering and addressing telephone calls, and providing in-person assistance to taxpayers who seek it. It is crucial that the IRS eliminate the filing season backlog once and for all. With the additional funding the IRS has received and the Direct Hire Authority provided by Congress and the Office of Personnel Management, the IRS is hiring and training more personnel to provide much-needed relief and assistance to taxpayers. But it still will take time until that relief materializes and taxpayers and tax professionals see the benefits. Being transparent and managing expectations will be important to regain public trust.

2022 WAS ANOTHER DIFFICULT YEAR FOR TAXPAYERS AND TAX PROFESSIONALS

As noted, the IRS has struggled to administer the tax system since the start of the COVID-19 pandemic. Its challenges are due partly to the paper backlogs that developed when the agency closed its processing centers and offices early in the pandemic and partly to the need to divert resources from its core tax processing responsibilities to administer financial relief programs that Congress authorized, including three rounds of stimulus payments, the Advance Child Tax Credit, and the Employee Retention Tax Credit. The imbalance between the IRS's burgeoning workload and its limited resources has affected almost all aspects of its operations. The taxpayer impact has been felt most acutely in the areas of refund delays, delays in processing taxpayer correspondence (which sometimes lead to further refund delays), and difficulty reaching the IRS by phone or in person at its Taxpayer Assistance Centers.

Refund Delays

For the majority of taxpayers, the most important function the IRS performs each year is issuing timely tax refunds. In 2022, about two-thirds of individual taxpayers were entitled to refunds upon filing their returns.[2] The average refund amount was nearly $3,200.[3] For low-income taxpayers entitled to the Earned Income Tax Credit (EITC) and Child Tax Credit (CTC), refunds may sometimes be closer to $10,000 and may serve as a lifeline that enables them to afford housing, transportation, food, or medicine.

For the third year in a row, the IRS failed to meet its responsibility to pay timely refunds to millions of taxpayers. For the majority of taxpayers who e-file their returns and whose returns are processed without issue, refunds were paid timely. But last year about 13 million individual taxpayers filed paper returns, and millions of e-filed returns were "suspended" because they tripped IRS processing filters and required further review by IRS employees. In other words, those returns required human intervention and could not be automated.

On a positive note, the IRS leveraged lessons learned from its experience in 2021; it created and utilized an automated tool to correct errors associated with the Recovery Rebate Credit and changes to refundable credits (EITC and CTC), resulting in quicker refunds for over 12 million taxpayers. Even with the tool's benefits, however, the IRS website said in mid-December: "[W]e've processed all paper and electronic individual returns in the order received if they were received prior to April 2022 and the return had no errors and did not require further review."[4] That suggests that millions of taxpayers who filed paper returns or whose e-filed returns were suspended for further review have been waiting 8.5 months or longer to receive their refunds. That is not acceptable.

Delays in Processing Taxpayer Correspondence

The IRS also struggled to process taxpayer correspondence. During 2022, the IRS sent millions of notices to taxpayers. These included some 17 million math error notices,[5] Automated Underreporter notices (where an amount reported on a tax return did not match the corresponding amount reported to the IRS on a Form 1099 or other information reporting document), notices requesting a taxpayer authenticate identity where IRS filters flagged a return as potentially fraudulent, correspondence examination notices, and some collection notices. Often, written taxpayer responses were required. If the IRS did not process a taxpayer response, it may have taken adverse action against the taxpayer or not released the refund claimed on the tax return.

The IRS reduced its Accounts Management inventories, including cases involving the processing of taxpayer correspondence, by allocating additional resources to resolve them. The Accounts Management function received slightly more cases in fiscal year (FY) 2022 than it had received in FY 2021 (22.7 million cases in FY 2022, as compared with 22.1 million cases in FY 2021), but it closed considerably more cases (23.9 million cases in FY 2022, as compared with 18.3 million in FY 2021), reducing its overall inventory.[6] That was a positive development. But cycle time was still long, and delays in processing correspondence typically translate into delays in paying refunds. During FY 2022, it took the IRS an average of 193 days to process taxpayer responses to proposed adjustments – about six months.[7] That compares with 89 days in FY 2019, the most recent pre-pandemic year.

During 2022, many victims of identity theft faced delays of more than a year in receiving their refunds. Unfortunately, those delays are continuing. As of mid-December, about 2.9 million returns remained suspended (*i.e.*, not processed) because of possible identity theft. If a taxpayer believes he or she has been a victim of tax-related identity theft, the taxpayer is generally required to file a Form 14039, Identity Theft Affidavit. As of mid-December, the IRS website said: "[D]ue to extenuating circumstances caused by the pandemic, our identity theft inventories have increased and on average it is taking about 360 days to resolve identify theft cases."[8] A full year wait is unacceptable. The IRS must assign additional staffing to process these cases expeditiously.

Despite these problems, the IRS made major strides during 2022 in reducing its inventory levels, particularly its backlog of individual paper-filed tax returns, as shown in the following figures.[9]

FIGURE 1.1.1, Status of Inventory Requiring Manual Processing (as of December 31, 2021)[10]

	Individual	Business	Not Specified/ Other	Total
Paper Returns Awaiting Processing	4,700,000	3,200,000	300,000	8,200,000
Paper and Electronic Returns – Processing Suspended	2,900,000	1,300,000		4,200,000
Amended Returns Inventory	2,400,000	1,200,000		3,600,000
Total Unprocessed Returns	10,000,000	5,700,000	300,000	16,000,000
Correspondence/Accounts Management Cases (excluding amended returns)	3,100,000	1,100,000	2,100,000	6,300,000
Total Inventory Requiring Manual Processing	13,100,000	6,800,000	2,400,000	22,300,000

FIGURE 1.1.2, Status of Inventory Requiring Manual Processing (as of December 9, 2022)[11]

	Individual	Business	Not Specified/ Other	Total
Paper Returns Awaiting Processing	1,000,000	1,500,000	100,000	2,600,000
Paper and Electronic Returns – Processing Suspended	4,300,000	1,600,000		5,900,000
Amended Returns Inventory	600,000	900,000		1,500,000
Total Unprocessed Returns	5,900,000	4,000,000	100,000	10,000,000
Correspondence/Accounts Management Cases (excluding amended returns)	2,000,000	800,000	2,300,000	5,100,000
Total Inventory Requiring Manual Processing	7,900,000	4,800,000	2,400,000	15,100,000

As these figures show, the IRS began 2022 with a backlog of 4.7 million original individual returns (Forms 1040) and 3.2 million original business returns. The IRS processed the carryover returns and most paper-filed returns received in 2022, cutting its original individual return and original business return inventories by mid-December to 1.0 million and 1.5 million, respectively, which is more typical of pre-pandemic years. For amended returns, the IRS cut the backlog from 2.4 million to 600,000 for individuals and from 1.2 million to 900,000 for businesses. Because the majority of individual taxpayers receive refunds, the reduction in unprocessed paper tax returns was a significant accomplishment. The IRS also reduced its inventory of Correspondence/Accounts Management cases from 6.3 million to 5.1 million. However, the number of returns in suspense status increased from 4.2 million to 5.9 million, primarily due to an increase of 1.3 million suspected identity theft cases. The backlog of ten million unprocessed tax returns and 5.1 million Accounts Management cases will be carried over into the 2023 filing season, creating challenges for the 2023 filing season before it even starts and continuing frustration and delays for taxpayers.

Difficulty Reaching the IRS on Its Toll-Free Telephone Lines

Overall Calls. Unlike return processing, telephone service did not improve in 2022. In an effort to reduce or eliminate the paper processing backlog carrying into the 2023 filing season, the IRS assigned more customer service representatives and reassigned compliance and enforcement personnel to process paper inventory.[12] The National Taxpayer Advocate, stakeholders, and Members of Congress called on the IRS to prioritize paper processing and eliminate the backlog. In December 2021 and January 2022, the Treasury Department and the IRS received numerous letters signed by more than 200 Members of Congress expressing concerns over the backlog of unprocessed returns from 2020 and 2021 and urging the IRS to prioritize return processing due to the burdens and delays impacting their constituents. I believe the IRS made the right strategic decision in doing this, as the backlog continues to decrease and the IRS starts the 2023 filing season in a far better position, but the resulting impact on telephone service was incredibly frustrating for taxpayers, tax professionals, and employees. In 2021, only 11 percent of callers reached a telephone assistor. In 2022, the percentage ticked up slightly to almost 13 percent. That still meant that about seven out of every eight calls did not get through to a telephone assistor. For those who did get through, the average time spent on hold increased from 23 minutes to 29 minutes. IRS employees answered over ten million fewer calls in 2022 than in 2021, but the percentage of calls answered ticked up because the IRS received about 109 million fewer calls, as shown in Figure 1.1.3.

FIGURE 1.1.3, IRS Enterprise Telephone Results Comparing FYs 2021 and 2022[13]

Fiscal Year	Calls Received	Number of Calls Answered by an IRS Employee	Percentage of Calls Answered by an IRS Employee	Time on Hold
2021	282 million	32 million	11%	23 minutes
2022	173 million	22 million	13%	29 minutes

Calls From Tax Professionals. Last year was also a frustrating year for tax professionals. More than half of individual income tax returns are prepared by tax professionals, and many taxpayers rely on their preparers to address follow-up requests for information. In 2022, we regularly heard complaints from tax professionals and the organizations that represent them about the difficulty of reaching an IRS employee on the Practitioner Priority Service (PPS) telephone lines. Their frustration was understandable. In 2021, IRS employees answered 24 percent of the calls they received on the PPS line, and the average hold time was 16 minutes. In 2022, IRS employees answered only 16 percent of their calls (fewer than one out of six), and the average hold time for those who got through was 25 minutes. Tax professionals are key to a successful tax administration. The challenges of the past three filing seasons have pushed tax professionals to their limits, raising client doubts in their abilities and creating a loss of trust in the system – often through no fault of the tax professional.

FIGURE 1.1.4, IRS Practitioner Priority Service Telephone Results Comparing FYs 2021 and 2022[14]

Fiscal Year	Calls Received	Number of Calls Answered by an IRS Employee	Percentage of Calls Answered by an IRS Employee	Time on Hold
2021	9.3 million	2.2 million	24%	16 minutes
2022	12.7 million	2.0 million	16%	25 minutes

While refund delays, correspondence delays, and telephone service were the most significant and frustrating taxpayer challenges, there were many others. In the Most Serious Problems section of this report, we discuss key challenges in more detail.

TAXPAYER SERVICE SHOULD IMPROVE IN 2023

For the first time since the start of the pandemic, the IRS will begin 2023 in a better position than prior years to improve its performance for three reasons: (1) IRS has largely worked through its backlog of unprocessed tax returns, albeit it remains challenged with the high volume of suspended returns and correspondence; (2) Congress has provided the IRS with significant additional funding to increase its customer service staffing; and (3) with the benefit of Direct Hire Authority, the IRS recently hired 4,000 new customer service representatives and is seeking to hire 700 additional employees to provide in-person help at its Taxpayer Assistance Centers.[15] Direct Hire Authority has enabled the IRS to reduce the number of days from the time it posts an announcement on USAJobs.gov until it onboards a new employee by more than half.

The improvements in service will not happen immediately, and I anticipate that the upcoming filing season will present challenges. These challenges will include the impact of the carryover backlog, improving telephone service operations, and hiring, training, and staffing issues. The IRS also will have to administer several new credits enacted as part of the Inflation Reduction Act (IRA), and as the year progresses, Congress may task it with implementing and administering significant new legislation, as it often does, which would require the IRS to further divert resources from getting current on its inventories. At the same time, implementation of the IRA requires the IRS leadership to devote resources to re-envisioning its business operations and preparing to deliver transformational change that includes dramatically improving taxpayer service and modernizing its technology while enforcing the tax laws in a fair and equitable manner.

Staffing increases come with growing pains. As new employees are added, they must be trained. For most jobs, the IRS does not maintain a separate cadre of instructors. Instead, experienced employees must be pulled off their regular caseloads to provide the initial training and act as on-the-job instructors. In the short run, that may mean that fewer employees are assisting taxpayers, particularly experienced employees who are likely to be the most effective trainers.

Until the number of trained, functional employees increases substantially, taxpayer service will continue to be a zero-sum game. For example, as more Accounts Management employees are assigned to answer the phones, fewer employees will be available to process amended returns and taxpayer correspondence, and vice versa. If more experienced employees are pulled off their regular jobs to train new hires, service will suffer in the short term. The IRS will have to perform a difficult balancing act with its current resources and will need to ensure it does not create a new paper backlog in 2023 by reassigning too many Accounts Management employees from processing case inventories to answering the phones. The IRS needs to end the vicious cycle of paper backlogs. As employees are trained and report for duty, I expect we will start to see improvements in service, probably by the middle of 2023.

PRIORITY RECOMMENDATIONS TO IMPROVE THE TAXPAYER EXPERIENCE OVER THE LONGER TERM

The IRA, which was enacted in August, provided the IRS with supplemental funding of nearly $80 billion over the next ten years. More than half the funding was earmarked for tax law enforcement, and that portion of the funding has attracted considerable attention and some controversy. But critically and not controversially, the legislation also provides supplemental funding of about $3.2 billion for much-needed taxpayer services, including pre-filing assistance and education, filing and account services, and taxpayer advocacy services, and $4.8 billion to enable the IRS to continue modernizing its information technology (IT) systems, including advancement of customer callback and other technology to provide a more personalized customer experience. This additional funding should be a gamechanger for taxpayers and tax professionals. If spent wisely, the funding will give IRS management the tools it needs to bring U.S. tax administration into the 21st century by enabling it to hire and train the workforce of the future, replace antiquated IT systems, and generally revamp the taxpayer experience based on principles of fair and equitable tax administration.

In an August 17 memorandum, the Secretary of the Treasury directed the Commissioner to produce an operational plan within six months that details how the additional IRA funding will be spent. In a blog I posted in September and in internal discussions, I have strongly recommended that the IRS include the following initiatives in its operational plan:[16]

1. **Hire and train more human resources employees to manage hiring all IRS employees**. Ironically, staffing shortages in the IRS's Human Capital Office (HCO) are one of the biggest obstacles to hiring and onboarding more employees. HCO, which coordinates all IRS hiring, does not have enough staff to review and approve new position descriptions, post job announcements, and screen incoming applications. Without HCO involvement, other IRS divisions cannot hire employees even when they

have funding. Bringing on more IRS employees quickly is critical, particularly in the taxpayer service and IT areas. Now that the agency has received additional funding, it should quickly bolster its HCO staff and, in the interim, provide creative alternatives, including enabling the business units to do their own hiring so new employees can be selected, while also working to expedite security checks and the onboarding of new employees.

2. **Ensure all IRS employees – particularly customer-facing employees – are well-trained to do their jobs**. From a taxpayer perspective, getting through to a live IRS telephone assistor or having taxpayer correspondence processed quickly is important, but even more important, the responding IRS employee must have enough knowledge to handle the question or issue properly. The combination of budget cuts beginning in FY 2011 and continuing until the last few years and the COVID-19 pandemic has limited the IRS's ability to provide adequate training to new employees and to provide regular updates and refresher training to its workforce. Training must go hand-in-hand with hiring, and it must continue throughout employees' careers with the IRS, with a continuing focus on taxpayer rights. Doing work incorrectly can be worse than not doing it at all.

3. **Create robust and accessible online accounts with functionality comparable to that of private financial institutions and through which taxpayers and practitioners can access, download, and upload material information**. Of all the steps the IRS can take to improve the taxpayer experience, creating robust online accounts should be the highest priority and will be the most transformational. Most of us have been conducting business with our financial institutions digitally for two decades or more – paying bills, transferring funds, depositing checks, applying for loans, trading stocks and mutual funds, etc. While we occasionally still need to visit, call, or send correspondence to our financial institutions, online transactions have become the norm.

   The IRS must offer online accounts with comparable functionality – the ability to file tax returns, make payments, view transactions, receive or view tax adjustments or other notices, respond to tax adjustments or other notices, upload and download documents, and submit questions or live chat with an IRS employee – which usually will eliminate the need for visiting, calling, or sending correspondence. Online accounts should be available for all taxpayers, including individuals, businesses, and other entities, and should provide practitioners with the ability to access their client's online information. Each year, practitioners assist a high percentage of taxpayers in resolving issues and encourage voluntary compliance. Practitioner efforts are instrumental in effective tax administration.

4. **Temporarily expand uses of the Documentation Upload Tool (DUT) or similar technology**. The IRS has made it possible for taxpayers in some circumstances to provide requested information online rather than by snail mail. For example, an auditor requesting documentation to support a taxpayer's business deductions or charitable contributions may provide the taxpayer with a link and passcode so the taxpayer can upload the documentation and not have to mail it in. Eventually, this functionality should be rolled into IRS online accounts. Until that happens, broader use of the DUT will reduce the burden on taxpayers and allow the IRS to resolve issues more quickly.

5. **Improve the readability of tax transcripts**.[17] The IRS utilizes codes for various transactions, and these codes are included on the transcripts provided to taxpayers, their representatives, and anyone else authorized to receive them. However, the codes are not intelligible to the non-tax professional, and even tax professionals often struggle to understand them. The IRS should revamp the presentation of tax transcripts to substitute descriptions for the codes or at least include a glossary on a separate piece of paper that explains – in plain language – what each code on the transcript means.

6. **Enable all taxpayers to e-file their tax returns**. Over 90 percent of individual taxpayers now e-file their income tax returns, but the IRS still receives millions of paper tax returns each year (about 13 million

individual returns and millions of additional business returns last year), and only 69 percent of business returns were filed electronically in FY 2022.[18] Some taxpayers would prefer to e-file but cannot do so. This can happen if the taxpayer must file a form or schedule that IRS systems are not yet programmed to accept electronically, if a return is rejected by IRS's systems for violating a programming rule, or if a taxpayer must attach documentation to the return (*e.g.*, an appraisal or disclosure) and the tax return software the taxpayer is using does not allow for the transmission of attachments.

There are steps the IRS can take to address all three of these limitations. It can modernize its e-filing platform to accept all IRS forms and schedules and taxpayer attachments. It can accept and review returns that violate some IRS systems' programming rules. (Otherwise, the taxpayer whose return is rejected must file it on paper, requiring the IRS to transcribe it.) And if some software packages allow taxpayers to submit attachments and others do not, the IRS can post a list of software packages that allow attachments online. That way, taxpayers with attachments will know which packages they can use to e-file their returns. If the IRS makes it possible for all taxpayers to e-file their returns, the number of paper-filed returns is likely to drop dramatically.

7. **Implement scanning technology to machine read paper-filed tax returns and correspondence.** Although making e-filing possible for all taxpayers will help, some taxpayers will likely choose to file paper returns or have no choice but to file paper returns for the foreseeable future. The IRS must automate paper processing to increase efficiencies and move toward a paperless work environment, not only to assist taxpayers but for its own benefit.

   Various forms of scanning technology are available that would allow the IRS to machine read paper-filed returns and reduce the current need for employees to type data from the returns digit by digit into IRS systems. This will speed processing, reduce transcription errors, and reduce employee costs. Two of the leading technologies are optical character recognition and 2-D barcoding. During 2022, I issued a Taxpayer Advocate Directive (TAD) to the IRS Deputy Commissioners directing them to implement scanning technology in time for the 2023 filing season. I found their response inadequate, so I appealed it to the Commissioner. On October 31, he responded to say the IRS will be scanning "some" paper returns in early 2023, and "if the scanning is successful, additional [returns] will be scanned later in 2023."[19] Both to prevent future backlogs and to achieve processing efficiencies, I continue to believe the IRS must prioritize the implementation of scanning technology.

8. **Digitize all paper and implement an integrated case management system so all taxpayer information is accessible in a single database.** The IRS currently stores data on about 60 case management systems that generally cannot communicate with each other. If a taxpayer calls the IRS for information about an account issue, the IRS employee often must search multiple systems or transfer the taxpayer to a second employee, and sometimes a third employee, simply because the data is not centrally accessible. This can affect tools like Where's My Refund?, which pulls data from some case management systems but not others, and therefore may not provide taxpayers with much-needed, up-to-date information.

   A single integrated system, with modernized Individual and Business Master File core components, would allow the IRS to provide taxpayers with faster and more complete service and would improve the efficiency of IRS employees. Moving away from paper files will also increase efficiency in working issues, moving information from one part of the organization to another, and reducing the unnecessary strain on the system that paper files create. Various levels of "permissions" should be built into the system so sensitive information would be accessible only by employees with a need to know.

9. **Overhaul the IRS.gov website to make it more user-friendly**.[20] Unlike many internet search engines, the IRS.gov search engine does not allow for plain language and does not adjust for incorrect spelling or use/non-use of hyphens. The frustration is that the information often *does* exist on IRS.gov; a taxpayer

just can't find it. Many IRS employees find it more productive to use a commercial search engine and add "IRS.gov" to the search than to use IRS.gov itself.

10. **Continue to develop and improve voicebots and chatbots**. To its credit, the IRS has developed automated tools that allow taxpayers to pose questions and receive responses from "smart" bots. For example, a bot can walk a taxpayer through the steps required to set up a payment plan. The more these bots can be improved, the less frequently taxpayers will need to speak with an IRS employee to obtain answers. Bots generally are not an adequate substitute for speaking with an IRS employee to address complicated or nuanced issues. But if the simpler issues can be effectively addressed through bots, employees could spend more time assisting taxpayers who genuinely need their help. Bots can be an important addition to the IRS's omnichannel approach to taxpayer service.

11. **Improve transparency**. During the past three filing seasons, taxpayers and tax professionals have complained regularly about the lack of information regarding IRS processing delays and other challenges. The IRS provides some information regarding its processing backlogs on IRS.gov, but much of the information is limited or infrequently updated, and it does not generally tell taxpayers how long they will have to wait to receive their refunds.[21] The IRS should post an easy-to-read dashboard on its website that displays current wait times for numerous categories of work, including paper processing of various types of tax returns, the percentage of taxpayer calls that reached an IRS employee over the preceding week and the average time to get through, and the time it is taking to resolve certain categories of taxpayer correspondence. The IRS's lack of proactive transparency has not only frustrated taxpayers and tax professionals, but it has led to more work for the IRS. When taxpayers and tax professionals do not know whether an unprocessed return or letter is within the IRS's delayed timeframes or may have been lost or misplaced, they call and write the IRS to get the information that a clear dashboard should provide.

12. **Issue clear notices and IRS guidance**. Notices are the primary vehicle by which the IRS provides taxpayers with information. Many notices sent to taxpayers contain critical information about issues, including statutory deadlines, reasons the IRS is holding a refund, and what a taxpayer needs to do to resolve an issue. Over the years, the IRS has struggled to improve the clarity of its notices. Some critical notices remain confusing and vague and don't provide taxpayers with adequate IRS contact information. Sometimes, this happens because the IRS limits the number of characters and words in its notices. Although there are legitimate reasons for limiting the text in a notice that the IRS must consider, it is essential (and possible) for the IRS to develop notices that are clear and concise.

13. **Increase TAS funding**. Although enforcement is a necessary element of a fair and voluntary tax reporting system, increased enforcement will cause challenges and problems for some taxpayers. Sometimes, the IRS will take collection actions that cause economic hardship, leading taxpayers to seek TAS assistance to release levies. In other cases, taxpayers may suffer a significant hardship because of the manner in which the IRS administers the tax laws, including improper enforcement actions or inaction by the IRS on required administrative functions, also leading to more TAS cases. TAS's case advocacy operations are already stretched thin, and we will need to hire additional employees if the IRS ramps up its compliance and enforcement activities, as that inevitably will lead to more TAS cases.

Taxpayers have had to put up with poor taxpayer service for many years due to the IRS's antiquated technology and inadequate taxpayer service staffing. The supplemental funding Congress has provided gives the IRS a once-in-a-generation opportunity to bring its taxpayer service operations into the 21st century. The recommendations I have laid out are critical, but they do not cover the waterfront. The Secretary of the Treasury should share the IRS's operational plan with Congress and the public, and the IRS should provide regular updates so Congress can conduct proper oversight and the public can be assured that the taxpayer experience continues to improve.

LEGISLATIVE RECOMMENDATIONS

The National Taxpayer Advocate Purple Book this year makes 65 recommendations to strengthen taxpayer rights and improve tax administration. Most recommendations in this volume are non-controversial, common-sense reforms. For the first time, we have added a "Summary" section at the beginning of each recommendation that sets out the "Problem" and our suggested "Solution" in concise, layman's terms. We hope the tax-writing committees and other Members of Congress find it useful.

We highlight the following ten legislative recommendations for particular attention, in no specific order:

- **Amend the "Lookback Period" to Allow Tax Refunds for Certain Taxpayers Who Took Advantage of the Postponed Filing Deadlines Due to COVID-19**. Because of the pandemic, the IRS postponed the tax return filing deadline to July 15 in 2020 and to May 17 in 2021. These postponements helped taxpayers by giving them more time to file their returns, but they are inadvertently springing a trap on unwary taxpayers and tax professionals that may cause permanent harm by limiting their ability to obtain refunds for tax years 2019 and 2020. Under IRC § 6511, taxpayers generally must meet a two-part test to receive a refund. First, the claim for refund must be timely; it generally must be filed by the later of three years from the date the return was filed or two years from the date the tax was paid. Second, the monies at issue must have been paid within a specified "lookback period." The lookback period is three years plus the period of any extension of time for filing if the taxpayer filed the claim for refund within three years from the date of filing the return. But a "postponement" of the filing deadline, unlike an "extension" of time to file, does not extend the lookback period. *A taxpayer who filed an original return under a "postponement" granted by the IRS because of the federally declared disaster will not be entitled to a refund if the excess amounts were paid (or deemed paid) outside the lookback period*.

  To illustrate, a taxpayer who filed her 2019 return on the postponed filing deadline of July 15, 2020, might reasonably believe she has until July 15, 2023, to file her claim for refund (three years from the date she filed her return).[22] However, her taxes (withholding and estimated tax payments) were deemed paid on April 15, 2020, which falls outside the lookback period of three years prior to July 15, 2023. The IRS will deny a claim for refund filed after April 15, 2023, in this circumstance. We recommend Congress amend the lookback period so that when the IRS postpones a filing deadline due to a disaster declaration, taxpayers can recover amounts paid within three years plus the period of the postponement, similar to the lookback period when a taxpayer has requested an extension of time to file.

- **Authorize the IRS to Establish Minimum Competency Standards for Federal Tax Return Preparers**. The IRS receives over 160 million individual income tax returns each year, and tax return preparers prepare the majority of them. Both taxpayers and the tax system depend heavily on the ability of preparers to prepare accurate tax returns. Yet no one is required to pass a competency test to become a federal tax return preparer, and numerous studies have found that non-credentialed tax return preparers routinely prepare inaccurate returns, which harms taxpayers and tax administration. To protect the public, federal and state laws generally require lawyers, doctors, securities dealers, financial planners, actuaries, appraisers, contractors, motor vehicle operators, and even barbers and beauticians to obtain licenses or certifications and, in most cases, to pass competency tests. Taxpayers and the tax system would benefit from requiring federal tax return preparers to do so as well. The IRS sought to implement minimum standards beginning in 2011, including passing a basic competency test, but a U.S. Court of Appeals affirmed a U.S. district court opinion that the IRS lacked the authority to impose preparer standards without statutory authorization. The plan the IRS rolled out in 2011 was developed after extensive consultation with stakeholders and was supported by almost all such stakeholders. We recommend Congress authorize the IRS to reinstitute minimum competency standards.

- **Expand the Tax Court's Jurisdiction to Hear Refund Cases and Assessable Penalties**. 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 liability and are seeking a refund must sue in a U.S. district court or the U.S. Court of Federal Claims. Although this dichotomy between deficiency cases and refund cases has existed for decades, we recommend Congress give taxpayers the option to litigate both deficiency and refund disputes in the U.S. Tax Court. Due to the tax expertise of its judges, the Tax Court is often better equipped to consider tax controversies than other courts. It is also more accessible to unsophisticated and unrepresented taxpayers than other courts because it uses informal procedures, particularly in disputes that do not exceed $50,000 for one tax year or period.

- **Restructure the Earned Income Tax Credit to Make It Simpler for Taxpayers and Reduce the Improper Payments Rate**. TAS has long advocated for dividing the EITC into two credits: (i) a refundable worker credit based on each individual worker's earned income, despite 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 claims on tax returns against Forms W-2, reducing the improper payment 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 larger family credit. The National Taxpayer Advocate published a detailed report making this recommendation in 2019,[23] and we continue to advocate for it.[24]

- **Expand the Protection of Taxpayer Rights by Strengthening the Low Income Taxpayer Clinic (LITC) Program**. The LITC Program is an effective means to assist low-income taxpayers and taxpayers who speak English as a second language. When the LITC Program was established as part of the IRS Restructuring and Reform Act of 1998, IRC § 7526 limited annual grants to no more than $100,000 per clinic. The law also imposed a 100 percent "match" requirement so a clinic cannot receive more in grants than it raises from other sources. The nature and scope of the LITC Program has evolved considerably since 1998, and those requirements are preventing the program from expanding assistance to the largest possible universe of eligible taxpayers. We recommend that Congress remove the per-clinic cap and allow the IRS to reduce the match requirement to 25 percent if doing so would provide coverage for additional taxpayers.

- **Modify the Requirement That Written Receipts Acknowledging Charitable Contributions Must Pre-Date the Filing of a Tax Return**. To claim a charitable contribution, a taxpayer must receive a written acknowledgement from the donee organization before filing a tax return. For example, if a taxpayer contributes $5,000 to a church, synagogue, or mosque, files a tax return claiming the deduction on February 1, and receives a written acknowledgement on February 2, the deduction is not allowed – even if the taxpayer had credit card receipts and other documentation that fully and unambiguously substantiates the deduction. This requirement is inconsistent with congressional policy to encourage charitable giving. We recommend that Congress modify the substantiation rules to require reliable – but not necessarily advance – acknowledgement from the donee organization.

- **Clarify That Supervisory Approval Is Required Under IRC § 6751(b) Before Proposing 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… ." At first, it seems a requirement that an "initial determination" be approved by a supervisor would mean the approval must occur before the penalty is proposed. However, the timing of this requirement has been the subject of considerable litigation, with some courts holding that the supervisor's approval might be timely even if provided after a case has gone through the IRS Independent Office of Appeals and is in litigation. Very few taxpayers litigate their tax disputes. Therefore, to effectuate Congress's intent that the IRS not penalize taxpayers in certain circumstances without supervisory approval, the approval must 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 the taxpayer proposing a penalty.

- **Require That Math Error Notices Describe the Reason(s) for the Adjustment With Specificity, Inform Taxpayers They May Request Abatement Within 60 Days, and Be Mailed by Certified or Registered Mail.** Under IRC § 6213(b), the IRS may make a summary assessment of tax arising from a mathematical or clerical error. When the IRS does so, it must send the taxpayer a notice describing "the error alleged and an explanation thereof." By law, the taxpayer has 60 days from the date of the notice to request that the summary assessment be abated. However, many taxpayers do not understand that failing to respond to an IRS math error notice within 60 days means they have conceded the adjustment and forfeited their right to challenge the IRS's position in the U.S. Tax Court. To ensure taxpayers understand the adjustment and their rights to contest it, we recommend that Congress amend IRC § 6213(b) to require that the IRS specifically describe the error causing the adjustment and inform taxpayers they have 60 days to request the summary assessment be abated. Additionally, requiring that the notice be sent either by certified or registered mail would underscore the significance of the notice and provide an additional safeguard to ensure that taxpayers receive this critical information.
- **Provide That "an Opportunity to Dispute" an Underlying Liability Means an Opportunity to Dispute Such Liability in a Prepayment Judicial Forum**. IRC §§ 6320(b) and 6330(b) provide taxpayers with the right to request an independent review of either a Notice of Federal Tax Lien (NFTL) filed by the IRS or a proposed levy action. The purpose of this collection due process (CDP) right is to give taxpayers adequate notice of IRS collection activity and provide a meaningful hearing to determine whether the IRS properly filed an NFTL or proposed or initiated a levy. The IRS and the courts interpret the current law to mean that an opportunity to dispute the underlying liability includes a prior opportunity for a conference with the IRS Independent Office of Appeals offered either before or after assessment of the liability, even where there is no opportunity for judicial review of the Appeals conference. The value of CDP proceedings is undermined when taxpayers who have never had an opportunity to dispute the underlying liability in a prepayment judicial forum are precluded from doing so during their CDP hearing. These taxpayers have no alternative but to pay the tax and then seek a refund by suing in a U.S. district court or the U.S. Court of Federal Claims – an option that not all taxpayers can afford. In our view, judicial and administrative interpretations limiting a taxpayer's ability to challenge the IRS's liability determination in a CDP hearing are inconsistent with Congress's intent when it enacted CDP procedures. We recommend that Congress modify these provisions to ensure taxpayers have a right to pre-payment judicial review.
- **Provide That Assessable Penalties Are Subject to Deficiency Procedures**. IRC § 6212 requires the IRS to issue a "notice of deficiency" before assessing certain liabilities. IRC § 6671(a) authorizes the IRS to assess some penalties without first issuing a notice of deficiency. These penalties are generally subject to judicial review only if taxpayers first pay the penalties and then sue for a refund. Assessable penalties can be substantial, sometimes running into the millions of dollars. Under the IRS's interpretation, these penalties include, but are not limited to, foreign information reporting penalties under IRC §§ 6038, 6038A, 6038B, 6038C, and 6038D. The inability of taxpayers to obtain judicial review on a pre-assessment basis and the requirement that taxpayers pay the penalties in full to obtain judicial review on a post-assessment basis can effectively deprive taxpayers of the right to judicial review at all. To ensure taxpayers have an opportunity to obtain judicial review before they are required to pay often substantial penalties that they do not believe they owe, we recommend that Congress require the IRS to issue a notice of deficiency before imposing assessable penalties.

CONCLUSION

During the last three years, we have lived through a period of "All COVID-19, all the time" in tax administration, just as we have in our personal lives, communities, and jobs. These challenges continued to impact taxpayers significantly during 2022 and will carry over into 2023. Our nation's taxpayers deserve better than the service they have received in recent years. They deserve a responsive and respectful tax administration that serves all taxpayers fairly and timely.

During 2022, the IRS made major strides in reducing its inventory backlogs and increased hiring in its customer service operations. As a result, I expect we will begin to see improvements in taxpayer service by the middle of 2023. Over the longer term, the additional funding the IRS recently received from the IRA provides it with the resources it has needed to staff up its Accounts Management function (telephone assistance and paper processing) and Taxpayer Assistance Centers and to overhaul its operations, particularly by modernizing its technology, to improve the taxpayer experience and protect taxpayer rights. For taxpayers to fulfill their tax obligations, they need clear and timely guidance and the ability to reach the IRS for assistance. Providing quality service is foundational to reducing taxpayer errors, encouraging timely filing and payment, restoring trust in our tax system, and ultimately reducing the tax gap.

I look forward to working with Congress and the IRS, and together with my TAS team, we stand ready to help improve taxpayer service and tax administration for the benefit of all taxpayers.

Respectfully submitted,

Erin M. Collins
National Taxpayer Advocate
December 31, 2022

Endnotes

1 IRC § 7803(c)(2)(B)(ii).
2 IRS Filing Season Statistics (week ending Oct. 28, 2022).
3 *Id*.
4 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. 16, 2022).
5 IRS, Compliance Data Warehouse, Individual Returns Transaction File (returns processed through the week ending Nov. 24, 2022).
6 IRS, Accounts Management Receipt Comparison Report (Oct. 1, 2022) and Accounts Management Closure Comparison Report (Oct. 1, 2022) (both comparing fiscal year-end totals for FY 2022 with fiscal year-end totals for FY 2021).
7 IRS, Research Analysis and Data, Accounts Management Reports: Correspondence Imaging System (CIS) Closed Case Cycle Time (comparing FY 2022 with FY 2019).
8 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. 16, 2022).
9 The data shown in these figures represent the largest portion of the IRS's customer service workload, but there are many other categories of work not included. For example, these figures do not show most work relating to other types of returns, including estate and gift, trust, non-profit organizations, employment tax, informational returns, or tentative allowance for refunds (Forms 1139 or 1045).
10 IRS, Wage and Investment Division (W&I) compiled data (as of Dec. 31, 2021). The data shown in this figure and the following figure come from weekly reports compiled by W&I. However, there are inconsistencies throughout IRS reporting. For example, this figure shows 8.2 million "paper returns waiting to be processed" and 4.2 million "paper and E-file returns suspended during processing." We received this data two days after a Government Accountability Office (GAO) report was issued that, also based on IRS data, stated there were "about 7.9 million [unprocessed] individual and business paper returns" and "2.6 million returns suspended for review due to errors" at the end of 2021. *See* GAO, GAO-23-105880, *2022 Tax Filing: Backlogs and Ongoing Hiring Challenges Led to Poor Customer Service and Refund Delays* 11, at n.19 (2022), https://www.gao.gov/assets/gao-23-105880.pdf. Some data disparities are due to differences in definitions (*e.g.*, the differences in the number of suspended returns reported by GAO and TAS may reflect differences in which categories of suspended returns are included in the total), while other data disparities have not been adequately explained.
11 IRS, W&I compiled data (as of Dec. 9, 2022).
12 The National Taxpayer Advocate, stakeholders, and Members of Congress called on the IRS to prioritize paper processing and eliminate the backlog. In December 2021 and January 2022, the Treasury Department and the IRS received numerous letters signed by more than 200 Members of Congress expressing concerns over the backlog of unprocessed returns from 2020 and 2021 and urging the IRS to prioritize return processing due to the burdens and delays impacting their constituents.
13 IRS, Joint Operations Center (JOC), Snapshot Reports: Enterprise Snapshot/Enterprise Total (as of the end of FYs 2021 and 2022).
14 IRS, JOC, Snapshot Reports: Product Line Detail/PPS (as of the end of FYs 2021 and 2022).
15 IRS, IR-2022-197, IRS Announces Job Openings to Hire Over 700 New Employees Across the Country to Help Taxpayers In Person (Nov. 9, 2022), https://www.irs.gov/newsroom/irs-announces-job-openings-to-hire-over-700-new-employees-across-the-country-to-help-taxpayers-in-person. In a response included in this report, the IRS provided somewhat higher overall hiring numbers than it cited in in this news release. *See* Most Serious Problem: *Processing Delays: Paper Backlogs Caused Refund Delays for Millions of Taxpayers*, *infra* ("Accounts Management onboarded over 5,500 employees in preparation for [Filing Season] 2023 and Submission Processing selected more than 1,200 applicants during October and continues to onboard contractors for clerical support.").
16 *See* Erin M. Collins, The NTA Reimagines the IRS With a Dramatically Improved Taxpayer Experience: Part Two, National Taxpayer Advocate Blog (Sept. 15, 2022), https://www.taxpayeradvocate.irs.gov/news/nta-blog-the-nta-reimagines-the-irs-with-a-dramatically-improved-taxpayer-experience-part-two.
17 *See* Erin M. Collins, Decoding IRS Transcripts and the New Transcript Format: Part I, National Taxpayer Advocate Blog (Oct. 5, 2021), https://www.taxpayeradvocate.irs.gov/news/nta-blog-transcripts-pt1; Erin M. Collins, Decoding IRS Transcripts and the New Transcript Format: Part II, National Taxpayer Advocate Blog (Oct. 6, 2021), https://www.taxpayeradvocate.irs.gov/news/nta-blog-transcripts-pt2.
18 IRS, W&I, Submission Processing: Filing Season Statistics (calendar year 2022 through Dec. 17, 2022).
19 TADs and the IRS responses are posted on the IRS website at https://www.irs.gov/advocate/taxpayer-advocate-directives-and-related-documents. *See* Erin M. Collins, Getting Rid of the Kryptonite: The IRS Should Quickly Implement Scanning Technology to Process Paper Tax Returns, National Taxpayer Advocate Blog (Mar. 30, 2022), https://www.taxpayeradvocate.irs.gov/news/nta-blog-getting-rid-of-the-kryptonite-the-irs-should-quickly-implement-scanning-technology-to-process-paper-tax-returns; Erin M. Collins, IRS Deputy Commissioners Respond to Taxpayer Advocate Directive on Scanning Technology; National Taxpayer Advocate Appeals Decision to IRS Commissioner, National Taxpayer Advocate Blog (Aug. 4, 2022), https://www.taxpayeradvocate.irs.gov/news/nta-blog-irs-deputy-commissioners-respond-to-taxpayer-advocate-directive.
20 For an in-depth discussion regarding the IRS website, see Erin M. Collins, IRS.gov – How Usable Is It? (Part One), National Taxpayer Advocate Blog (Aug. 9, 2022), https://www.taxpayeradvocate.irs.gov/news/nta-blog-irsgov-website-1; Erin M. Collins, IRS.gov – How Usable Is It? (Part Two), National Taxpayer Advocate Blog (Aug. 11, 2022), https://www.taxpayeradvocate.irs.gov/news/nta-blog-irsgov-website-2.
21 *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. 20, 2022).
22 A taxpayer who filed on July 15, 2020, has until July 17, 2023, to file a timely claim for refund for tax year 2020, as July 15, 2023, is a Saturday. When the due date falls on a Saturday, Sunday, or legal holiday, IRC § 7503 provides that a taxpayer has until the next business day to file a timely claim.

23 *See* National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress, vol. 3 (Special Report: *Earned Income Tax Credit: Making the EITC Work for Taxpayers and the Government*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/JRC20_Volume3.pdf.

24 *See* Research Report: *Exploring Earned Income Tax Credit Structures: Dividing the Credit Between a Worker and Child Component and Other Considerations, infra.*

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

INTRODUCTION

The Taxpayer Rights and Service Assessment provides 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 be integral to the IRS's ongoing implementation of the Taxpayer Bill of Rights (TBOR) and may be used to indicate areas where shifting resources impact the IRS's ability to maintain a robust adherence to TBOR in practice and provide a high level of customer service. Taxpayer rights and taxpayer customer service are discrete but closely linked considerations.

FIGURE 1.2.1[1]

The Taxpayer First Act (TFA), passed in 2019, required the IRS to submit a written comprehensive customer service strategy that "identified metrics and benchmarks for quantitatively measuring the progress of the Internal Revenue Service in implementing such strategy."[2] This strategy includes the establishment of the IRS's Taxpayer Experience Office (TXO), charged with, "focus[ing] on continuously improving the taxpayer experience across all interactions with the IRS."[3] Employing the use of metrics is vital to gauging the success of any large public-facing system, and the Taxpayer Rights and Service Assessment can be an aid to the TXO in identifying customer service channels requiring adjustment by comparing fiscal year (FY) data as the customer service strategy is implemented.[4] Traditionally, IRS metrics have focused on "efficiency" – no-change rates, cycle time, etc. As the IRS evolves in its delivery of customer experience and it gains additional funding to realize its customer service goals, it will require the development of new taxpayer-centric metrics. We look forward to working further with the IRS on its TFA implementation, customer service strategy, and development of measures for gauging successful taxpayer service.

The Inflation Reduction Act of 2022 Has Given the IRS a Rare Opportunity to Transform and Dramatically Improve Its Customer Service – But Funding Alone Does Not Guarantee Success

In recent reports, this assessment has highlighted IRS challenges as its inflation-adjusted budget appropriation and staffing levels have declined in the face of rising workloads. TAS has maintained that without sustained, consistent, and dedicated funding, the IRS would remain challenged to develop and maintain the workforce and administrative tools necessary to deliver a high quality of customer service that all taxpayers are entitled to and should reasonably expect from their federal tax administrator.

In FY 2022, Congress passed the Inflation Reduction Act of 2022, which appropriates nearly $80 billion in additional IRS funding, including almost $3.2 billion allotted for taxpayer services, $45.6 billion for enforcement, $25.3 billion for operations support, and nearly $4.8 billion for business systems modernization.[5] This legislation provides the IRS a critical opportunity to significantly improve its delivery of taxpayer services, but increased funding alone will not guarantee improvement. On August 17, 2022, Secretary of the Treasury Janet Yellen formally requested the IRS provide a strategic plan on how the agency intends to apply this funding.[6] The plan should clearly communicate its vision and strategy with defined metrics and benchmarks to determine when resource allocations are or are not successfully improving the taxpayer experience. The choices made regarding the use of this historic funding and the level of transparency exhibited while communicating the intent behind these decisions should significantly impact the quality of IRS customer service as well as taxpayers' perception of the organization as a service-oriented provider.[7] It should be noted while reviewing this assessment that as the Inflation Reduction Act was enacted on August 16, 2022, it will not effect a change when looking at FY 2022 performance metrics. TAS will continue to pay keen attention, however, to determine how the IRS's use of this additional funding will improve taxpayer service moving forward.

FIGURE 1.2.2[8]

IRS Pre-Inflation Reduction Act of 2022 Snapshot

IRS Full-Time Equivalents, Return Volume, and Inflation-Adjusted Budget, FYs 2010-2022

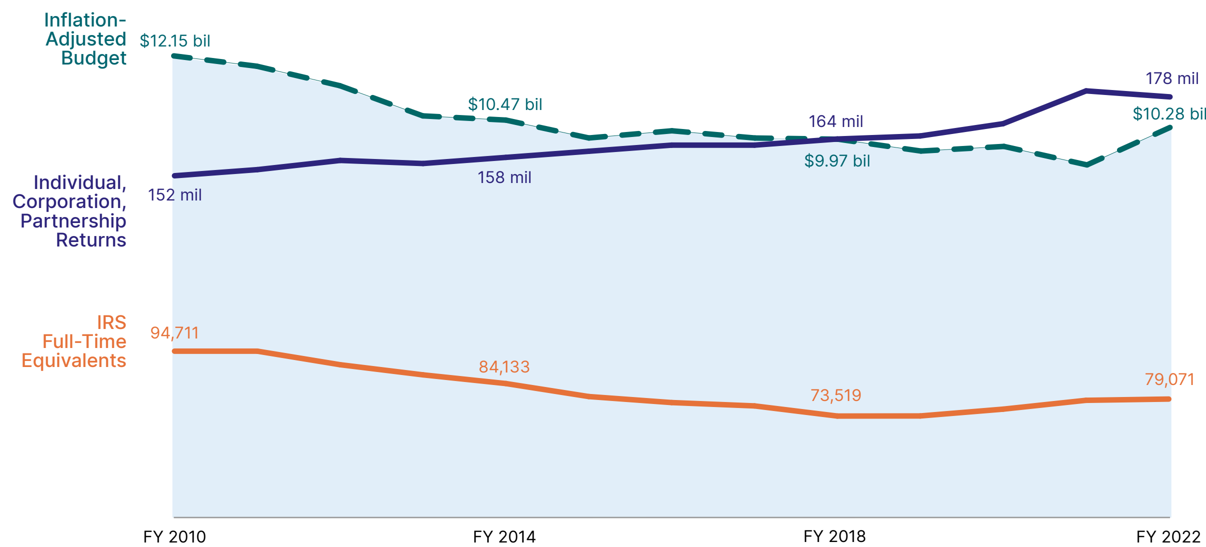
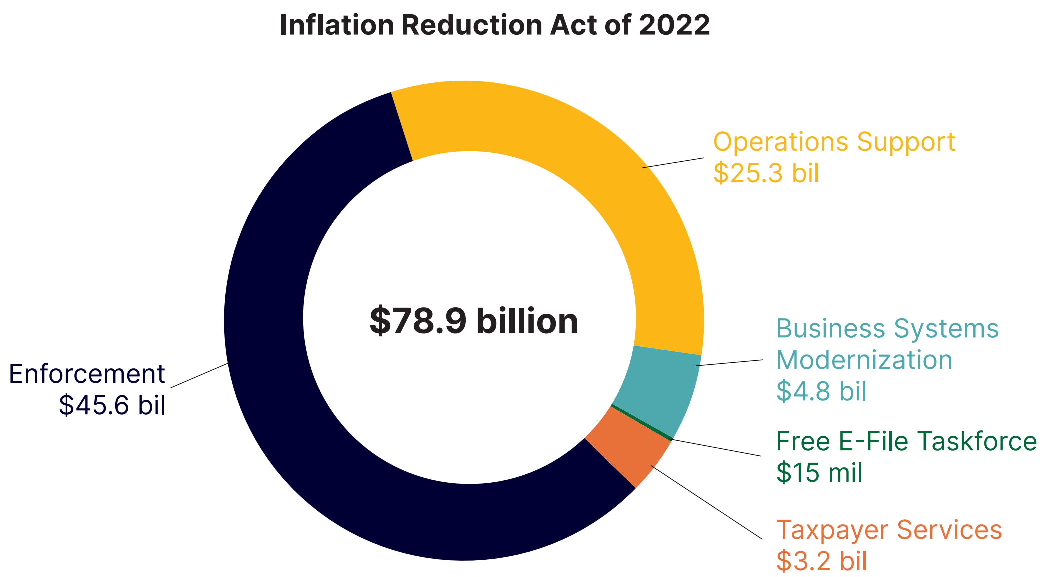


FIGURE 1.2.3[9]



TAXPAYER SERVICE: TAX RETURN PROCESSING[10]

Processing Center Closures, the Impact of COVID-19, Rising Return Inventories, and Diminishing Resources Have Negatively Influenced the Quality of Customer Service

Tax return processing is a fundamental IRS function, and return filing metrics are an important 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.[11] Large paper processing backlogs experienced due to COVID-19 highlight how dramatically taxpayers are impacted when this essential process falters.[12] The number of individual, business, and other returns filed each year is on the rise, growing from 255,249,983 returns filed in FY 2019 to 271,612,000 projected returns filed for FY 2022.[13] While the majority of taxpayers opt to file electronically, millions of tax returns are still filed on paper as a percentage of our population lacks the ability or desire to file electronically, such as those without internet access; low-income or elderly taxpayers; or taxpayers who are required to file using forms that are not currently available in an electronically submittable format. The IRS must devote staffing and resources to processing these paper submissions and continue to invest in the maintenance and modernization of its systems to successfully manage paper *and* electronically filed returns. As noted by the National Taxpayer Advocate in her 2022 Taxpayer Advocate Directive (TAD) to the IRS, this effort should include an expanded use of scanning technology to efficiently speed the processing of paper-filed tax returns.[14]

FIGURE 1.2.4, Income Tax Returns Filed

Measure/Indicator	FY 2019	FY 2020	FY 2021	FY 2022
Number of Returns Filed (Projected, All Types)[15]	255,249,983	242,093,670	269,032,799	271,612,000
Total Individual Income Tax Returns[16]	154,094,555	157,195,302	167,915,264	166,076,400
Total Individual Income Tax Returns Filed on Paper[17]	16,578,426	8,749,558	16,463,292	12,918,800
Total Individual Income Tax Returns Filed Electronically[18]	137,516,129	148,445,744	151,451,972	153,157,600
Free File Consortium (Tax Year)[19]	2,528,639	4,018,163	4,997,000	2,449,458
Fillable Forms (Tax Year)[20]	283,244	519,133	795,000	645,049

Measure/Indicator	FY 2019	FY 2020	FY 2021	FY 2022
Total Corporation Income Tax Returns[21]	7,288,019	6,841,771	7,464,790	7,523,400
Total Corporation Income Tax Returns Filed on Paper[22]	1,325,429	697,421	1,062,200	963,600
Total Corporation Income Tax Returns Filed Electronically[23]	5,962,590	6,144,350	6,402,590	6,559,800

Observation: The total amount of individual and corporate income tax returns filed electronically remains high. Electronically filed returns now account for over 92 percent of individual filings and approximately 87 percent of corporate filings in FY 2022 (please note FY 2022 return counts are projected numbers).

TAXPAYER SERVICE: EXAMINATION AND COLLECTION[24]

Without Adequate Staffing, the IRS Has Had to Make Tough Decisions on Where to Focus Compliance Resources

IRS examination and collection action can lead to taxpayer anxiety, which may be exacerbated if the process is perceived as prolonged or inequitable. Declining IRS staffing levels and high case inventory volumes have posed challenges to maintaining acceptable levels of taxpayer customer service. 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 the IRS is applying resources appropriately and/or promoting a sense of parity. A higher rate of no-response audit[25] closures in the lower-income taxpayer category, for example, warrants consideration for adjustments in approach. Rising no-change audit[26] closures might suggest resources would be better targeted toward areas of greater non-compliance. The Inflation Reduction Act has allotted $45.6 billion in additional IRS enforcement funding through the end of FY 2031, giving the IRS's collection function a tremendous boost in its ability to hire.[27] Additional hiring addresses a critical IRS need, but hiring alone will not guarantee an improved taxpayer experience. New IRS employees must be adequately trained to perform their duties, and that training must include guidance on recognizing, understanding, and integrating a respect for taxpayer rights into the essential work they do.[28] The quality of customer service provided must always respect the taxpayers' *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.*[29]

FIGURE 1.2.5, Type of Audit, Outcomes, and Time to Complete by Income, FYs 2019-2022

Measure/Indicator	FY 2019	FY 2020	FY 2021	FY 2022
Examination				
Total Number of Open Audits Pending in Exam[30]	525,525	614,359	527,353	425,704
Total Number of Closed Examinations – **Individual Tax Returns**[31]	680,463	452,510	658,998	625,947
Total Positive Income (Under $50,000)				
No-Change Rate	10.1%	11.4%	8.6%	12.8%
Agreed Rate[32]	23.3%	20.6%	19.8%	17.1%
Taxpayer Failed to Respond Rate[33]	39.8%	44.7%	46.4%	44.2%
Average Days to Audit Completion	278.7	263.2	339.5	269.6
Average Total Exam Time (Hours) Correspondence Audits	1.4	1.4	1.4	1.4
Average Total Exam Time (Hours) Field Exams	20.4	25.1	28.8	28.8
Percent of Correspondence Audit[34]	88.1%	90.0%	92.4%	91.3%

Measure/Indicator	FY 2019	FY 2020	FY 2021	FY 2022
Total Positive Income (Greater than $50,000 and under $10,000,000)				
No-Change Rate	12.4%	16.0%	11.6%	13.1%
Agreed Rate	42.8%	44.6%	39.6%	40.3%
Taxpayer Failed to Respond Rate	20.0%	17.5%	22.7%	21.3%
Average Days to Audit Completion	288.2	301.2	385	317.6
Average Total Exam Time (Hours) Correspondence Audits	2.1	2.2	2.4	2.3
Average Total Exam Time (Hours) Field Exams	28.7	28.5	37.1	38.2
Percent of Correspondence Audit[35]	67.7%	62.0%	71.4%	72.2%
Total Positive Income (Greater than $10,000,000)				
No-Change Rate	21.3%	19.7%	30.3%	31.1%
Agreed Rate	50.5%	52.2%	52.1%	51.5%
Taxpayer Failed to Respond Rate	1.8%	0.8%	0.2%	0.2%
Average Days to Audit Completion	703.8	994.7	682.9	982.0
Average Total Exam Time (Hours) Correspondence Audits	11.2	9.1	8.9	7.7
Average Total Exam Time (Hours) Field Exams	117.1	94.3	91.4	110.6
Percent of Correspondence Audit[36]	37.0%	43.3%	24.3%	32.2%

Observation: Taxpayers with incomes below $50,000 had about 90 percent of their audits conducted by correspondence, nearly 40 percent or more failed to respond to the IRS, and less than 25 percent agreed to the proposed adjustments. As income levels increase, the relative number of correspondence audits and failure-to-respond rates decrease, whereas the agreed rates rise.

FIGURE 1.2.6, Offers in Compromise, Installment Agreements, and the Queue, FYs 2019-2022

Measure/Indicator	FY 2019	FY 2020	FY 2021	FY 2022
Collection				
Offer in Compromise: Number of Offers Submitted[37]	54,225	44,809	49,285	36,022
Offer in Compromise: Percentage of Offers Accepted[38]	35.3%	34.3%	30.9%	28.7%
Installment Agreements (IAs): Number of Individual & Business IAs[39]	2,821,134	1,825,378	2,361,646	2,383,849
Number of IAs With Bots[40]	0	0	0	8,505
Rejected Taxpayer Requests for IAs[41]	32,281	15,483	14,164	8,800
Percentage of Cases Pending Assignment (in the Queue) (Taxpayers)[42]	24.1%	28.1%	20.9%	17.5%
Percentage of Cases Pending Assignment (in the Queue) (Modules)[43]	33.6%	39.3%	28.5%	24.0%
Age of Individual Delinquencies Pending Assignment (in the Queue)[44]	4.8 years	4.6 years	4.3 years	4.9 years

Observation: Offers in compromise decreased by nearly 27 percent from FY 2021 to FY 2022 while IA submissions increased by less than one percent during this same period. Fewer taxpayers remained in the queue, but the average age of individual unassigned delinquencies increased by about one-half year.

TAXPAYER SERVICE: TAXPAYER-FACING COMMUNICATION CHANNELS[45]

Taxpayers Attempt to Reach the IRS Via Various Channels, But the IRS Faces Challenges in Timely Responding

Taxpayers are increasingly reaching out to the IRS through a variety of communication channels, particularly since the onset of COVID-19, but the IRS is challenged to efficiently and timely address taxpayer contacts when budget and workforce resources are down[46] or have been temporarily redirected to address the processing of paper return backlogs.[47] Individual correspondence processing cycle times, for instance, have risen considerably since FY 2019, while percentages of calls answered by IRS employees have dropped from 28.7 percent in FY 2019 to only 12.5 percent in FY 2022.[48] Increases in virtual service contacts are also important, but taxpayers' continued preference and need for face-to-face assistance must always be considered and supported. It's worth noting that while the IRS has maintained at least 358 Taxpayer Assistance Centers (TACs) since FY 2018, COVID-19 protocols and limited staffing have meant that not all TACs have remained open or staffed throughout each year.[49]

Additional funding provided under the Inflation Reduction Act of 2022 will supplement and enhance IRS efforts to improve its customer service across all service channels, and the IRS announced in October that it had already successfully hired 4,000 new customer service representatives (CSRs) to help answer phones and provide other services for the next filing season.[50] A portion of these new hires will be filling positions opened though CSR attrition and turnover, so efforts to maintain a bolstered customer service workforce remain an ongoing challenge. The IRS will need to be strategic and monitor customer service measures to be sure its application of resources is generating the improvements in taxpayer service it seeks and that it maintains a balance across all service areas. 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 are essential to the standard of service a taxpayer receives when working with the IRS, no matter the communication channel.

FIGURE 1.2.7, In-Person Service, Correspondence, Telephone, and Online Service, FYs 2019-2022

Measure/Indicator	FY 2019	FY 2020	FY 2021	FY 2022
In-Person Service				
Number of Taxpayer Assistance ("Walk-In") Centers (TACs)[51]	358	358	358	360
Number of Face-to-Face TAC Contacts[52]	2.3 million	1.0 million	940,000	1.3 million
Number of Calls to the TAC Appointment Line That Did Not Result in a Scheduled Appointment[53]	1.4 million	694,000	922,000	501,000
Correspondence[54]				
Individual Correspondence[55]	4,134,753	2,765,003	6,306,488	6,950,094
Average Cycle Time to Work Individual Correspondence[56] (Master File (IMF))	74 days	96 days	201 days	207 days
Inventory Overage[57]	41.8%	41.6%	59.6%	44.6%
Business Correspondence[58]	2,717,819	2,038,291	4,197,132	4,599,806
Average Cycle Time to Work Business Correspondence[59] (Master File (BMF))	101 days	149 days	145 days	163 days
Inventory Overage[60]	57.8 %	71.9%	51.5%	60.4%

Measure/Indicator	FY 2019	FY 2020	FY 2021	FY 2022
Telephone Service				
Total Calls to IRS[61]	99,373,456	100,514,299	281,708,009	173,265,572
Number of Calls Answered by IRS Employees[62]	28,558,862	24,192,386	32,039,550	21,740,474
Percentage of Calls Answered by IRS Employees[63]	28.7%	24.1%	11.4%	12.5%
IRS Level of Service (LOS)[64]	56.2%	51.2%	21.3%	21.3%
IRS Average Speed of Answer[65]	16.2 minutes	18.3 minutes	22.8 minutes	28.6 minutes
Practitioner Priority: Percentage of Calls Answered (LOS)[66]	78.3%	56.3%	28.0%	16.9%
Practitioner Priority: Average Speed of Answer[67]	8.8 minutes	12.7 minutes	16.1 minutes	25.4 minutes
Online Service				
Number of Visits to IRS.gov[68]	650,989,560	1,603,938,876	1,999,988,189	1,087,210,500
Number of Page Views[69]	3,350,072,964	9,225,312,072	11,452,583,281	5,310,673,611
Online Installment Agreements[70]	786,505	719,752	1,051,708	1,184,711
Where's My Refund? Inquiries[71]	368,848,775	505,611,474	632,361,686	447,729,355

Observation: In-person visitations remain limited due to closed or virtual TACs as FYs 2020, 2021, and 2022 numbers all remain significantly less than FY 2019 levels; FYs 2021 and 2022 correspondence volumes remained significantly higher than prior years, contributing to longer processing delays; the percentage of FY 2022 calls answered by an IRS employee remained below 50 percent of FY 2019 pre-pandemic levels; and taxpayers continued to use online tools and the IRS website in dramatically greater numbers than they did prior to COVID-19.

TAXPAYER SERVICE: INFORMATION TECHNOLOGY

Taxpayers have continued to experience increased frustration and difficulty resolving their IRS issues, receiving timely notices, accessing detailed information on their Online Account or IRS tools, or reaching an IRS employee,[72] and modernization efforts are challenged when a large portion of available funding is required to maintain current operations and legacy systems. The Inflation Reduction Act budgets the IRS an additional $4.8 billion in funding for business modernization, which is key for the IRS to successfully update its systems.[73] TAS looks forward to seeing the IRS use this opportunity to advance its modernization initiatives and establish more effective systems to serve taxpayers quickly and comprehensively. 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 taxpayers' *right to quality service*.

Endnotes

1 See TBOR, www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in TBOR are also codified in the IRC. *See* IRC § 7803(a)(3).
2 Taxpayer First Act, Pub. L. No. 116-25, § 1101(a)(5), 133 Stat. 985-986 (2019).
3 IRS, Taxpayer First Act Report to Congress 99 (Jan. 2021).
4 These measures are presented as a sample of indicators and are not intended to be read as a comprehensive listing of performance benchmarks.
5 An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14, Pub. L. No. 117-169, 136 Stat. 1831-32 (2022) [hereinafter referred to as the "Inflation Reduction Act"].
6 Memorandum from Janet L. Yellen, Sec'y of the Treasury, to Charles P. Rettig, Comm'r. Internal Revenue (Aug. 17, 2022) (on file with TAS).
7 For a further discussion of IRS transparency, *see* Most Serious Problem: *IRS Transparency: Lack of Transparency About Processing Delays and Other Key Data Frustrates Taxpayers and May Undermine Voluntary Compliance*, *infra*.

8 IRS responses to TAS fact checks (Dec. 14, 2020; Dec. 23, 2020; Dec. 8, 2022). IRS email response to TAS (Oct. 20, 2022). IRS Full-Time Equivalents (FTE) line: 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. Individual, Corporate, Partnership Returns line: IRS, Pub. 6292, Table 1, Fiscal Year Return Projections for the United States: 2011-2018, Fall 2011 Update 6 (Rev. 8-2011), and subsequent annual Fall Pub. 6292 updates through IRS, Pub. 6292, Table 1, Fiscal Year Return Projections of the Number of Returns To Be Filed with IRS, 2022-2029, at 4 (Rev. 9-2022). The return volume reported for FY 2022 is a projected number. Inflation-Adjusted Budget line: 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 Gross Domestic Product Price Index from the President's Budget FY 2022, Historical Tables, Table 10.1.

9 An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14, Pub. L. No. 117-169, 136 Stat. 1831-32 (2022).

10 When considering FY 2020 data, note that core IRS services were suspended or reduced for a portion of FY 2020 due to COVID-19.

11 For example, 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, IR-2018-100, IRS Provides Additional Day to File and Pay for Taxpayers Through Wednesday, April 18; IRS Processing Systems Back Online (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.

12 For a discussion of IRS processing issues, *see* Most Serious Problem: *Processing Delays: Paper Backlogs Caused Refund Delays for Millions of Taxpayers*, *infra*. *See also* National Taxpayer Advocate 2021 Annual Report to Congress 37 (Most Serious Problem: *Processing and Refund Delays: Excessive Processing and Refund Delays Harm Taxpayers*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_MSP_01_Processing-Delays.pdf); National Taxpayer Advocate 2021 Annual Report to Congress 95 (Most Serious Problem: *Filing Season Delays: Millions of Taxpayers Experienced Difficulties and Challenges in the 2021 Filing Season*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_MSP_05_FilingDelays.pdf).

13 The sudden rise in FY 2021 filed individual returns can in part be attributed to returns filed by taxpayers who traditionally are not required to file a return but who filed solely to receive the Recovery Rebate Credit in advance. IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2022-2029, at 4 (Rev. 9-2022).

14 In March 2022, the National Taxpayer Advocate issued a TAD directing the IRS "to implement 2-D barcoding or other scanning technology to automate the transcription of paper tax returns." Despite a non-committal IRS response, Secretary of the Treasury Janet Yellen subsequently pledged that "[i]n this coming filing season, the IRS will automate the scanning of millions of individual paper returns into a native digital copy." *See* Department of the Treasury, *Remarks by Secretary of the Treasury Janet L. Yellen at the IRS facility in New Carrollton, Maryland* (Sept. 15, 2022), https://home.treasury.gov/news/press-releases/jy0952.

15 IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2020-2027, at 4 (Rev. 9-2020); IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2021-2028, at 4 (Rev. 9-2021); IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2022-2029, at 4 (Rev. 9-2022). The FY 2020 figure has been updated from what was reported in the 2021 Annual Report to Congress. The FY 2021 figure has been updated from what was reported in the 2021 Annual Report to Congress to report actual return counts. The FY 2022 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 TBOR.

16 *Id.* The FY 2021 figure has been updated from what we reported in the 2021 Annual Report to Congress to report actual return counts. The FY 2022 figures are projected numbers.

17 *Id.*

18 *Id.*

19 FY 2019 and 2021 numbers updated from IRS response to TAS fact check (Dec. 17, 2021) including returns filed solely to claim the Advance Child Tax Credit (AdvCTC). FY 2020 and FY 2022 numbers are from IRS, Compliance Data Warehouse (CDW), Electronic Tax Administration Research and Analysis System Modernized e-File for Individuals and exclude about 8.5 million returns filed for the purpose of claiming Economic Impact Payments in FY 2020. The FY 2019 figures represent TY 2018 tax returns. The FY 2020 figures represent TY 2019 tax returns. The FY 2021 figures represent TY 2020 tax returns. The FY 2022 figures represent TY 2021 tax returns.

20 FY 2021 numbers updated from IRS response to TAS fact check (Dec. 17, 2021), including some returns filed solely to claim the AdvCTC. FY 2020 and FY 2022 numbers are from IRS, CDW, Electronic Tax Administration Research and Analysis System Modernized e-File for Individuals and exclude returns filed for the purpose of claiming Economic Impact Payments. The FY 2020 figures represent TY 2019 tax returns. The FY 2021 figures represent TY 2020 tax returns. The FY 2022 figures represent TY 2021 tax returns.

21 IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2020-2027, at 4 (Rev. 9-2020); IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2020-2027, at 4 (Rev. 9-2021); IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2022-2029, at 4 (Rev. 9-2022). The FY 2021 figure has been updated from what was reported in the 2021 Annual Report to Congress to report actual return counts. The FY 2022 figures are projected numbers.

22 *Id.* The FY 2021 figure has been updated from what was reported in the 2021 Annual Report to Congress to report actual return counts. The FY 2022 figures are projected numbers.

23 *Id.*

24 When considering FY 2020 data, note that core IRS services were suspended or reduced for a portion of FY 2020 due to COVID-19.

25 A no-response audit occurs when a taxpayer under exam does not respond to IRS communication attempts, and the proposed tax adjustments are subsequently input as if the taxpayer had agreed to the exam determination. This metric includes cases where the audit notice was deemed undeliverable (*e.g.*, a taxpayer may have moved without giving an updated address, and the notice was returned), and there was no response from the taxpayer.

26 A no-change audit occurs when a taxpayer substantiates all items being reviewed by the audit, resulting in no change to the reported tax.
27 An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14, Pub. L. No. 117-169, 136 Stat. 1832 (2022).
28 The National Taxpayer Advocate recently partnered with the IRS in developing a mandatory IRS-wide TBOR training course and will continue to advance training opportunities that promote taxpayer rights awareness.
29 *See* IRC § 7803(a)(3); *see also* www.taxpayeradvocate.irs.gov/taxpayer-rights.
30 IRS response to TAS fact checks (Dec. 17, 2021; Dec. 9, 2022).
31 IRS response to TAS fact checks (Dec. 14, 2020; Dec. 17, 2021; Dec. 9, 2022). These numbers reflect examination cases closed by the IRS and do not account for subsequent appeal or litigation.
32 An audit is closed as agreed when the IRS proposes changes and the taxpayer understands and agrees with the changes.
33 The non-response rate includes taxpayers with undelivered IRS audit notices or statutory notices of deficiencies and taxpayers who did not respond to the IRS audit notices.
34 Represents percentage of correspondence audits for taxpayers with total positive income under $50,000.
35 Represents percentage of correspondence audits for taxpayers with total positive income greater than $50,000 and under $10,000,000.
36 Represents percentage of correspondence audits for taxpayers with total positive income greater than $10,000,000.
37 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 2019 (Sept. 30, 2019); FY 2020 (Sept. 28, 2020); FY 2021 (Oct. 4, 2021); FY 2022 (Oct. 3, 2022).
38 *Id.*
39 IRS, SB/SE, CAR No. 5000-6, Installment Agreement Cumulative Report, FY 2019 (Sept. 29, 2019); FY 2020 (Sept. 27, 2020); FY 2021 (Oct. 4, 2021); FY 2022 (Oct. 2, 2022). Number includes short-term payment agreements and continuous wage levies.
40 Weekly ACI and Voice Bot Reports for Week Ending 9/30/2022 (Cumulative). This service was not offered until July 2022.
41 IRS, CDW, FY 2019 (Oct. 2021); FY 2020 (Oct. 2021); FY 2021 (Oct. 2021); FY 2022 (Oct. 2022). The IRS accepts about 99 percent of requests for IAs that meet the processable criteria.
42 IRS, SB/SE, CAR No. 5000-2, Taxpayer Delinquent Account Cumulative Report, FY 2019 (Sept. 29, 2019); FY 2020 (Sept. 27, 2020); FY 2021 (Oct. 4, 2021); FY 2022 (Oct. 2, 2022). When taxpayers incur delinquent tax liabilities, the IRS sends them a series of notices during an approximately six-month period in 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.
43 *Id.* Modules are the number of accounts attributable to a taxpayer. For example, an individual taxpayer may owe unpaid taxes on the 2017 and 2018 Forms 1040 – this would be one taxpayer with two modules.
44 Query by TAS Research of tax delinquent accounts with queue status in IRS, CDW, Accounts Receivable Dollar Inventory, Individual Master File (IMF), Modules. Age of balance due cases in the collection queue as of cycle 37 of FY 2019, cycle 38 of FY 2020, cycle 37 of FY 2021, and cycle 37 of FY 2022. The age of Taxpayer Delinquency Investigations is not considered.
45 When considering FY 2020 data, note that core IRS services were suspended or reduced for a portion of FY 2020 due to COVID-19.
46 *See* Most Serious Problem: *Inadequate Digital Services Impede Efficient Case Resolution and Force Millions of Taxpayers to Call or Send Correspondence to the IRS*, *infra*; Most Serious Problem: *Telephone and In-Person Service: Taxpayers Continue to Experience Difficulties and Frustration Obtaining Telephone and Face-to-Face Assistance to Resolve Their Tax Issues and Questions*, *infra*; Most Serious Problem: *IRS Hiring and Training: Weaknesses in the Human Capital Office's Hiring, Recruitment, and Training Programs Are Undermining the IRS's Efforts to Achieve Appropriate Staffing to Meet Taxpayer Needs*, *infra*.
47 *See* Oversight Subcomm. Hearing With IRS Commissioner Rettig on the 2022 Filing Season 5, 117th Congress (written testimony of Charles P. Rettig, Commissioner, Internal Revenue), "We are temporarily moving approximately 900 employees with previous relevant experience back into key areas from other organizations. In addition to this accounts management surge team, we are working to assemble a similar surge team for our submission processing area with 700 employees," https://www.irs.gov/newsroom/written-testimony-of-charles-p-rettig-commissioner-internal-revenue-service-before-the-house-ways-and-means-committee-subcommittee-on-oversight-on-the-filing-season-and-irs-operations (Mar. 17, 2022).
48 One aspect of this drop in service may be attributable to the sharp rise in volume of calls made to the IRS in FYs 2021 and 2022.
49 Secretary of the Treasury Janet Yellen has pledged that "[b]y next year, every single [Taxpayer Assistance] center will be fully staffed." *See* Department of the Treasury, *Remarks by Secretary of the Treasury Janet L. Yellen at the IRS facility in New Carrollton, Maryland* (Sept. 15, 2022), https://home.treasury.gov/news/press-releases/jy0952.
50 IR-2022-191, IRS quickly moves forward with taxpayer service improvements; 4,000 hired to provide more help to people during 2023 tax season on phones (Oct. 27, 2022), https://www.irs.gov/newsroom/irs-quickly-moves-forward-with-taxpayer-service-improvements-4000-hired-to-provide-more-help-to-people-during-2023-tax-season-on-phones.
51 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). FY 2021 figure from IRS response to TAS information request (Sept. 2021). Due to COVID-19, a total of 49 TACs were unstaffed at some point during FY 2021. FY 2022 figure from IRS response to TAS fact check (Dec. 12, 2022). As of October 31, 2022, 326 of the 360 TACs were open, and 34 were closed or unstaffed. IRS, Status of Unopened Mail and Backlog Inventory Report (Nov. 4, 2022).
52 Wage and Investment Division, Business Performance Review, 4th Quarter, FY 2021 (Nov. 2021); FY 2021 and FY 2022 figures from IRS response to TAS fact check (Dec. 12, 2022).
53 IRS response to TAS information request (Oct. 2022); IRS response to TAS fact check (Dec. 12, 2022). Please note these numbers include both calls resolved by the CSR (thus negating the need for a TAC appointment) and calls where the taxpayer could not schedule an appointment at the available times.

54 Correspondence represents Accounts Management inquiries and responses received from taxpayers who do not belong specifically to another area.

55 IRS, Joint Operations Center (JOC), Adjustments Inventory Reports: July-September FY Comparison (FY 2020, FY 2021, FY 2022). The FY 2021 figure have been updated from what was reported in the 2021 Annual Report to Congress. These are IMF cumulative fiscal year receipts for Correspondence, Amended, Carryback, Injured Spouse and Individual Taxpayer Identification Number (ITIN). This metric measures taxpayer correspondence requesting account adjustment.

56 IRS, Research Analysis and Data (RAD), Accounts Management Reports: Collection Imaging System (CIS) Closed Case Cycle Time (FY 2020, FY 2021, and FY 2022). The FY 2021 figure has been updated from what was reported in the 2021 Annual Report to Congress.

57 IRS, Weekly Enterprise Adjustments Inventory Report, FYs 2019-2022 (weeks ending Sept. 28, 2019; Sept. 26, 2020; Sept. 25, 2021; Sept. 24, 2022). 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."

58 IRS, JOC, Adjustments Inventory Reports: July-September Fiscal Year Comparison (FY 2020, FY 2021, FY 2022). This metric measures taxpayer correspondence requesting account adjustment. The FY 2021 figures have been updated from what was reported in the 2021 Annual Report to Congress.

59 IRS, RAD, Accounts Management Reports: CIS Closed Case Cycle Time (FY 2020, FY 2021, and FY 2022). The FY 2021 figure has been updated from what was reported in the 2021 Annual Report to Congress.

60 IRS, Weekly Enterprise Adjustments Inventory Report, FYs 2019-2022 (weeks ending Sept. 28, 2019; Sept. 26, 2020; Sept. 25, 2021; Sept. 24, 2022).

61 IRS, JOC, Snapshot Reports: Enterprise Snapshot (weeks ending Sept. 30, 2020; Sept. 30, 2021; Sept, 30, 2022; reports generated Oct. 18, 2022, and Nov. 27, 2022).

62 *Id.*

63 *Id.*

64 *Id.* The IRS generally defines its LOS measure as Numerator = Assistor Calls Answered + Info Messages and Denominator = Assistor Calls Answered + Info Messages + Emergency Closed + Secondary Abandons + (Add either Calculated Busy Signals OR Network Incompletes) + (Add either Calculated Network Disconnects OR Total Disconnects).

65 *Id.*

66 IRS, JOC, Snapshot Reports: Product Line Detail (weeks ending Sept. 30, 2020; Sept. 20, 2021; Sept. 30, 2022; reports generated Oct. 18, 2022, and Nov. 27, 2022).

67 *Id.*

68 IRS.gov Site Traffic Calculator (FYs 2019-2022).

69 *Id.*

70 IRS, SB/SE, CAR No. 5000-6, Installment Agreement Cumulative Report, FY 2020 (Sept. 27, 2020); FY 2021 (Oct. 4, 2021); FY 2022 (Oct. 2, 2022). Number includes short-term payment plans.

71 IRS response to TAS fact check for FY 2019 (Dec. 17, 2021); IRS Databook for FY 2020 and 2021; IRS response to TAS fact check for FY 2022 (Dec. 14, 2022). This metric measures the number of successful Where's My Refund? queries (as opposed to the total number of Where's My Refund? query attempts).

72 For a discussion of IRS information technology modernization, see National Taxpayer Advocate 2020 Annual Report to Congress 84 (Most Serious Problem: *Information Technology Modernization: Antiquated Technology Jeopardizes Current and Future Tax Administration, Impairing Both Taxpayer Service and Enforcement Efforts*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_MSP_06_ITmod.pdf. *See also* Most Serious Problem: *Inadequate Digital Services Impede Efficient Case Resolution and Force Millions of Taxpayers to Call or Send Correspondence to the IRS, infra*.

73 An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14, Pub. L. No. 117-169, 136 Stat. 1832 (2022).

Data Compilation and Validation

Section 7803(c)(2)(B)(ii)(XII) of the IRC directs that the National Taxpayer Advocate, "with respect to any statistical information included in [this annual report to Congress], include a statement of whether such statistical information was reviewed or provided by the Secretary under Section 6108(d) and, if so, whether the Secretary determined such information to be statistically valid and based on sound statistical methodology."

The data cited in the National Taxpayer Advocate's annual reports generally comes from one of three sources: (i) publicly available data such as the IRS Data Book, Government Accountability Office reports, and Treasury Inspector General for Tax Administration reports; (ii) IRS databases to which TAS has access; and (iii) IRS data that IRS operating divisions provide pursuant to TAS information requests. After TAS compiles statistical information, TAS's Office of Research and Analysis validates it. Procedures regarding additional IRS review of statistical information vary by report section as follows:

- **Preface** – The data contained in the Preface was not separately sent for validation because it is written at the end of the process and generally pulls data from other sections of the report that have been validated.
- **Taxpayer Rights and Service Assessment** – The data contained in this section was reviewed by the IRS.
- **Most Serious Problems section** – The data contained in this section was reviewed by the IRS.
- **Most Litigated Issues section** – The IRS provides the raw data for taxpayers who filed a petition with the U.S. Tax Court during fiscal year 2022. TAS's Office of Research and Analysis maps this data to IRS records to determine the Most Litigated Issues. This further analysis was not submitted to the IRS for review, but the narratives were reviewed by the IRS Office of Chief Counsel.
- **TAS Advocacy section** – The data contained in this section was not submitted to the IRS for review because the data pertains almost exclusively to TAS's internal operations.
- **TAS Research Reports** – Time did not permit a review of either report by the IRS.
- **Purple Book** – Legislative recommendations with substantive changes from prior years, as well as all new legislative recommendations, were reviewed for legal accuracy by the IRS Office of Chief Counsel. The Purple Book contains limited statistical information that was provided by TAS's Office of Research and Analysis. It was not submitted to the IRS for review.

On the rare occasion where TAS and the IRS have a disagreement about data or the presentation of the data, we generally discuss it, and if a disagreement persists, we note the incongruity in the report.

The Most Serious Problems Encountered by Taxpayers

IRC § 7803(c)(2)(B)(ii)(III) requires the National Taxpayer Advocate to submit an Annual Report to Congress that contains a summary of the ten most serious problems encountered by taxpayers.[1] For 2022, the National Taxpayer Advocate has identified, analyzed, and offered recommendations to assist the IRS and Congress in resolving ten such problems.

Endnote

1 Prior to 2019, Congress tasked the National Taxpayer Advocate with identifying at least 20 of the most serious problems encountered by taxpayers. This change was the result of the passage of the Taxpayer First Act, Pub. L. No. 116-25, 133 Stat. 981 (2019).

Most Serious Problems: At a Glance

Services Taxpayers Want and the Problems the IRS Faces in Delivering Them

This “At a Glance” covers each of the ten Most Serious Problems we identify in this report. It summarizes the problems taxpayers face, notes why the problem is serious, and provides some key statistics. The “Taxpayer Perspective” for each Most Serious Problem includes statistics primarily sourced from the IRS-sponsored Comprehensive Taxpayer Attitude Survey regarding taxpayer attitudes and preferences.

IRS employees have worked admirably throughout the pandemic. However, the IRS still has much work to do including addressing staffing challenges, removing barriers to e-filing returns, supporting taxpayers living overseas, hiring and training employees to meet the growing volume of taxpayer needs and improve customer service, addressing processing delays, increasing transparency, expanding the functionality of online accounts, improving digital communication with taxpayers, improving competency standards for return preparers, simplifying and modernizing the tax code, and assisting more taxpayers by answering a significantly higher percentage of phone calls.

Most Serious Problem: **Processing Delays**

Taxpayer Perspective

66%
of returns resulted in refunds

Why This Is a Most Serious Problem: The IRS is understaffed, has antiquated technology, and has an inventory backlog of nearly six million paper tax returns. Together with the pandemic, these issues have caused lengthy refund delays for millions of taxpayers, some lasting ten months or longer.

Key Statistics: At the end of filing season, the IRS had not finished processing about 29 million items that it will need to manually process while taxpayers continue to wait for their refunds.

Most Serious Problem: **Complexity of the Tax Code**

Taxpayer Perspective

33%
"completely" or "mostly" disagree that they trust the IRS to help them understand their tax obligations

Why This Is a Most Serious Problem: Simplifying the tax code means making it easy to understand, easy for the IRS to administer, and less burdensome on everyone, whether they are preparing tax returns or being audited. Simplifying the tax code is the most important step Congress can take to reduce taxpayer compliance burdens, increase voluntary compliance, and improve the processing efficiency and verification of annual tax returns.

Key Statistics: The IRC contains 9,834 code sections – many containing detailed subsections – and a six-volume set of corresponding regulations. An individual taxpayer is estimated to spend 13 hours and $240 out-of-pocket costs just to prepare and file one annual tax return. For a small business, the amount of time and money spent on tax compliance is roughly 82 hours and $2,900. Individual taxpayers spent a total of 897 million hours in FY 2022 just on recordkeeping. This is in addition to the 1.15 billion hours spent on tax preparation of individual returns. Business entities spent about 1.14 billion hours and $48.3 billion on tax preparation in FY 2022.

“Taxpayer Perspectives” are preferences or attitudes expressed in the "Comprehensive Taxpayer Attitude Survey 2021;" IRS: Research, Applied Analytics, and Statistics.

Most Serious Problem: **IRS Hiring and Training**

Taxpayer Perspective

34%

do not trust the IRS to fairly enforce tax laws, the highest percentage since 2014

Why This Is a Most Serious Problem: Failure to hire and properly train employees harms taxpayer rights, erodes crucial taxpayer services, and undermines confidence in tax administration. Current hiring practices are barely keeping up with employees who leave or retire. The IRS needs more employees to provide the best possible customer service.

Key Statistic: An estimated 50,000 IRS employees are expected to be lost through attrition within the next six years.

Most Serious Problem: **Telephone and In-Person Service**

Taxpayer Perspective

88%

agree the IRS should focus on improving in-person and phone call assistance

81%

agree that it is important for the IRS to provide office locations with an onsite IRS representative

75%

agree that it is important to provide community-based tax clinics at convenient locations

Why This Is a Most Serious Problem: Taxpayers need the IRS to increase staffing and technology and explore ways to improve the quality of service on phones and in person. Lack of sufficient service jeopardizes compliance, frustrates taxpayers, and impacts the taxpayers' *right to quality service*.

Key Statistics: In FY 2022, only about 15 percent of phone calls made to the IRS reached live assistance, a small improvement compared to 11 percent in FY 2021. The IRS serviced about 15 percent of the 10.8 million callers attempting to schedule a Taxpayer Assistance Center appointment in FY 2022.

Most Serious Problem: **Online Access for Taxpayers and Tax Professionals**

Taxpayer Perspective

84%

find a personal online account valuable

81%

want to be able to email questions to the IRS

Why This Is a Most Serious Problem: A robust online account and easy-to-use digital communication tools are highly desired among taxpayers, their representatives, and IRS employees. Taxpayers who cannot find an answer online may face long delays if they decide to phone the IRS, visit a Taxpayer Assistance Center, or send a letter.

Key Statistics: Only about 20 million unique taxpayers accessed their Online Account in FY 2022. The most used function within Online Account is viewing an account transcript. Users did not complete any actions beyond viewing basic account information in about 74 percent of sessions.

Most Serious Problem: **E-File and Free File**

Taxpayer Perspective

93%

rated e-filing tax returns as an important IRS service

Why This Is a Most Serious Problem: When taxpayers cannot e-file their tax returns and other IRS forms or schedules, they face delays in processing, the possibility of transcription errors, and longer waits for their refunds. Unlike paper returns, e-filing benefits taxpayers and the IRS by reducing errors and speeding up return processing and refund payments.

Key Statistics: Individual taxpayers e-filed approximately 92 percent of returns received by the IRS in 2022. However, those who e-filed experienced almost 34 million rejected e-file attempts, and roughly 31 percent of these taxpayers endured more than one rejection. In 2022, only two percent of all taxpayers used Free File even though approximately 70 percent of taxpayers qualify for Free File.

Most Serious Problem: **IRS Transparency**

Taxpayer Perspective

86%

agree that the more information and guidance the IRS provides, the more likely people are to correctly file their tax returns

Why This Is a Most Serious Problem: Transparency is critical to having a fair and effective tax administration. Congress has given the IRS substantial funding to improve tax administration, and the IRS should be transparent about how it plans to use the funding fairly, equitably, and prudently.

Key Statistics: There are nearly 41,000 webpages comprising IRS.gov, making it difficult for taxpayers to find answers to their questions. In FY 2022, the IRS only answered less than 15 percent of the calls received, and taxpayers had to wait on hold for an average of 24 minutes.

Most Serious Problem: **Return Preparer Oversight**

Taxpayer Perspective

88%

categorized paid tax professionals as a valuable source of getting tax advice or information

Why This Is a Most Serious Problem: Return preparers prepare over half of individual income tax returns and play a key role in tax administration. Return preparers without credentials are not required to pass any competency tests or take any educational courses on tax return preparation, and they are not subject to any ethical rules.

Key Statistics: Paid return preparers prepared 53 percent of individual income tax returns in 2021. Of those, approximately 58 percent were prepared by non-credentialed return preparers. Paid return preparers prepared about 79 percent of Earned Income Tax Credit returns, but over 92 percent of the total amount of audit adjustments occurred on returns prepared by non-credentialed return preparers.

Most Serious Problem: **Appeals**

Taxpayer Perspective

40%

feel too many resources are devoted to enforcement and not enough to customer service

Why This Is a Most Serious Problem: Taxpayers wishing to review their case by the IRS Independent Office of Appeals have been experiencing long delays, with the average case spending more than a year in Appeals' inventory.

Key Statistics: Once Appeals receives a case, it sits for an average of nearly seven weeks before being assigned to an Appeals Officer. Between FY 2010 and FY 2017, the number of Appeals employees fell by approximately 40 percent. Unsurprisingly, cycle times have increased by 111 percent from FY 2017 to FY 2022. Taxpayers with cases in Appeals can currently expect a resolution in an average of 379 days – over six months longer than in 2017.

Most Serious Problem: **Overseas Taxpayers**

Taxpayer Perspective

93%

want the ability to file taxes electronically

91%

want to read information on the IRS website

86%

want a toll-free number to ask questions

Why This Is a Most Serious Problem: Overseas taxpayers face more burdens and are less able to access IRS services by phone, online, or in person. Their e-file rates are significantly lower, and limited availability of tax products in languages other than English hamper their ability to understand their complex tax obligations.

Key Statistics: The U.S. Department of State estimates that there are approximately nine million U.S. citizens living abroad. In tax year 2020, over 260,000 overseas taxpayers claimed the foreign earned income and housing exclusion tax benefit and nearly 250,000 overseas taxpayers claimed the foreign tax credit. Overseas taxpayers lack access to affordable tax preparation services, with only 11 full service Volunteer Income Tax Assistance sites open overseas, all on U.S. military bases.

PROCESSING DELAYS

Paper Backlogs Caused Refund Delays for Millions of Taxpayers

PROBLEM

A combination of the COVID-19 pandemic and the IRS relying on antiquated manual processes rather than modern technology has caused unprecedented paper processing delays and significant refund delays for millions of impacted taxpayers. The IRS has been operating with staffing shortages, using antiquated technology, relying on a human assembly line, and deploying outdated manual practices where modern technology offers a practical alternative. During the pandemic, taxpayers continued to mail paper returns and correspondence, even during the period the IRS closed its offices for health and safety reasons. In 2020, the IRS quickly fell behind in processing paper-filed tax returns, resulting in tremendous backlogs of unprocessed paper that carried over into 2021 and 2022. Even though the IRS tried to clear its paper backlogs through additional hiring, mandatory overtime for staff, and "surge teams" of employees reassigned from other IRS business units, IRS processing delays and paper backlogs continued to be a Most Serious Problem for taxpayers.

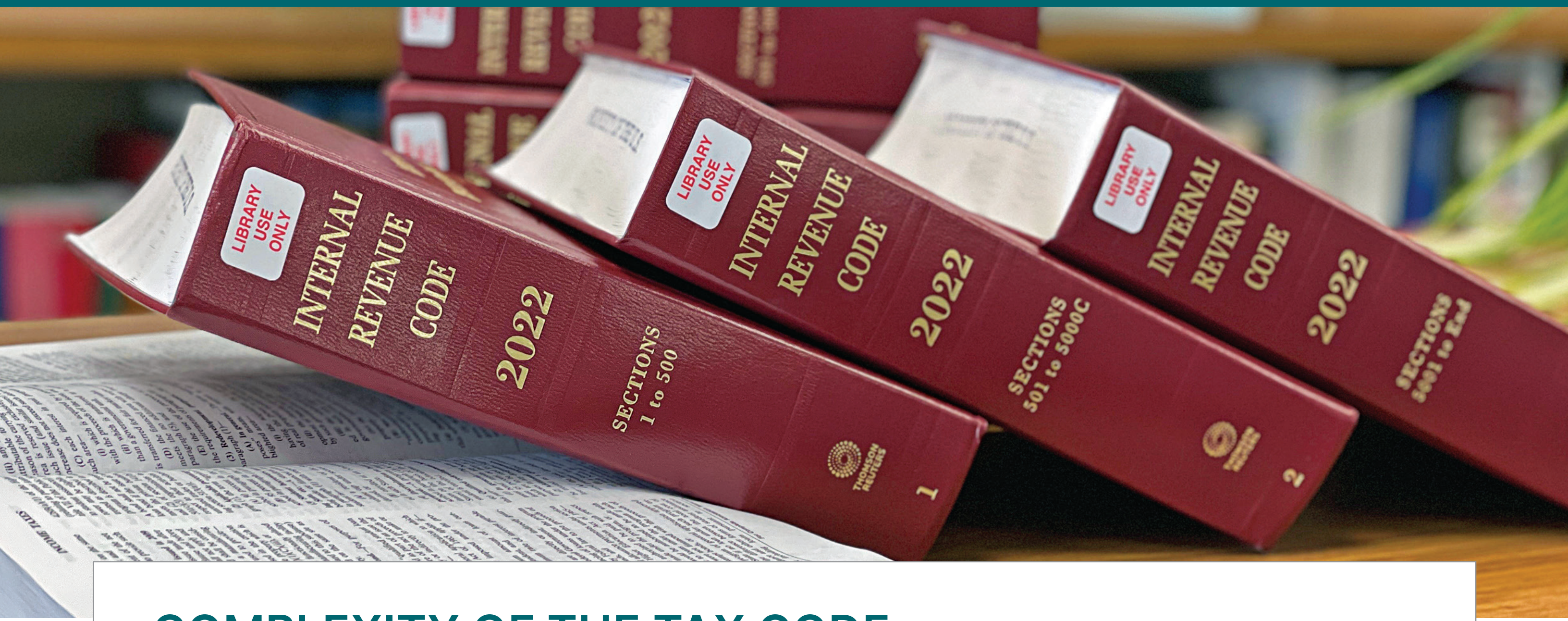
ANALYSIS

Today, the IRS still relies on its employees to manually transcribe all required digits from millions of paper tax returns into its systems, despite scanning technology being a long-available and cost-effective solution. In addition, some taxpayers that would prefer to e-file their returns cannot because the IRS's systems are not programmed to electronically accept some of its own forms. Expanding electronic filing to include more taxpayers will reduce the volume of paper returns the IRS must manually process. But until the IRS implements modernization upgrades that allow it to operate efficiently and paperless, it must manage and timely process the paper it receives or else taxpayers will continue to experience unacceptable delays in receiving their refunds and IRS responses to their inquiries. The Inflation Reduction Act provided the IRS funding that, if prudently spent, should enable it to improve the immediate health of its processing operations and develop a solid strategic plan for its long-term health, especially how it processes paper documents, which is critical for the IRS to be efficient in 21st century tax administration.

Paper is Kryptonite to the IRS, and for nearly the past three years it has been buried in it. For the past decade, the IRS has been operating with staffing shortages, using antiquated technology, relying on a human assembly line, and deploying outdated manual practices where modern technology offers a practical alternative. The IRS needs to timely process paper returns, eliminate its paper processing inventory levels, and be healthier than ever to best serve taxpayers. Therefore, modernizing antiquated IRS paper processing procedures and improving related taxpayer services must be a top priority both to clear existing paper backlogs and to streamline processing for the future.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS: 1) expedite the processing of paper tax returns by developing a plan to implement optical character recognition, 2-D bar coding, or similar technology to automate the processing of these returns during the 2023 filing season or, if that is not feasible, by the start of the 2024 filing season; 2) prioritize the processing of refund returns prior to returns with tax due or no tax during the 2023 filing season; 3) automate error resolution for all error codes and conditions using the FixERS tool or other tool during the 2023 filing season or, if that is not feasible, by the start of the 2024 filing season; 4) develop and post on IRS.gov an easy-to-read dashboard that provides weekly information on the filing season, including the total number of returns in inventory, the number of returns beyond normal processing times, the number of returns in suspense status, and the anticipated timeframes for working through the backlog; and 5) provide inventory level status updates for each specific area of Submission Processing in a weekly report distributed to all impacted business units, including TAS.



COMPLEXITY OF THE TAX CODE

The Complexity of the Tax Code Burdens Taxpayers and the IRS Alike

PROBLEM

U.S. tax laws are overly complex. As a result, they burden America's taxpayers and negatively impact voluntary compliance. The current system of preparing and filing tax returns is too difficult because it is costly and time consuming. This is especially true for taxpayers who access social programs through the IRS and for small business taxpayers. Some of this complexity exists because the Internal Revenue Code (the Code) is antiquated and does not mirror modern life. The tax code can be simplified by making it easy to understand, which would make it easier for the IRS to administer and easier for taxpayers to comply with their tax obligations. Simplifying the Code is the most important step Congress can take to reduce taxpayer compliance burdens. Simplification is essential to the integrity of the U.S. tax system and will enhance self-assessment and voluntary compliance.

ANALYSIS

Time and Financial Burdens

An individual taxpayer is estimated to spend 13 hours and $240 out of pocket just to prepare and file an annual tax return. For a small business, this amount is 82 hours and $2,900. In FY 2022, U.S. taxpayers collectively spent $89.7 billion on tax preparation and 3.2 billion hours on recordkeeping and tax preparation. If this time were to be monetized, this constitutes $94.6 billion spent on tax preparation in FY 2022 alone.

Complexity Undermines Trust and Reduces Voluntary Compliance

The complexity of the Code undermines public trust in government and the IRS; conversely, simplifying the Code would enhance understanding and public confidence in the fairness of the tax system. Taxpayers may make inadvertent mistakes and the IRS may assess penalties against people who made every effort to comply with the law. This erodes trust in the system and may inhibit voluntary compliance, the bedrock upon which our tax system is based. It further erodes public trust in our government. Complexity also creates opportunities to engage in tax fraud or aggressive tax avoidance maneuvers. Fraudsters seek refuge behind the complexity, as it may be hard for the IRS to detect noncompliance. In FY 2022 alone, the IRS assessed fraud penalties totaling over $306 million. Complexity contributes to the "tax gap," the difference between the amount of tax liability owed and what is voluntarily paid. It is currently $496 billion.

Importance of Modernizing the Code

The American family has changed, and the Code has not kept up, as divorce, cohabitation, blended families, and multigenerational family arrangements are more common. Only 51.6 percent of children living in families with incomes at or below 200 percent of the Federal Poverty Level were in families with married couples. The qualifying child rules for Earned Income Tax Credit (EITC) and the Additional Child Tax Credit should more accurately reflect their target population.

It is not only families that have changed dramatically since the enactment of the Internal Revenue Code of 1986. The existing tax laws do not fully reflect the current business environment. In 2021, 16 percent of Americans earned money from the gig economy as independent contractors without withholding. Self-employed individuals, which includes gig workers, sole proprietorships, and independent contractors, are required to submit quarterly estimated tax payments. The quarterly due dates are illogical. Furthermore, it is very hard for self-employed individuals with incomes that are highly variable to estimate and pay for periods of time that are inconsistent.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that Congress: 1) use uniform definitions throughout the IRC; 2) adopt a consistent and more modern definition of "qualifying child" throughout the IRC; 3) restructure the EITC and Child Tax Credit by allowing separate worker and child credits to make it simpler for taxpayers and reduce improper payments; and 4) amend IRC § 6654(c)(2) to set the estimated tax installment deadlines 15 days after the end of each calendar quarter (*i.e.*, April 15, July 15, October 15, and January 15).

IRS HIRING AND TRAINING

Weaknesses in the Human Capital Office's Hiring, Recruitment, and Training Programs Are Undermining the IRS's Efforts to Achieve Appropriate Staffing to Meet Taxpayer Needs

PROBLEM

Many of the IRS's challenges stem from inadequate staffing and insufficient employee training. Over the past decade, the IRS's budget was reduced by more than 15 percent in inflation-adjusted terms, resulting in reduced staffing levels not seen since the 1970s. As staffing has declined, so have taxpayer service levels. The IRS has not had enough employees to transcribe paper-filed returns, resulting in refund delays of ten months or longer for millions of taxpayers. It has not had enough employees to answer taxpayer telephone calls, with the result that only about one out of every ten calls is being answered by an IRS telephone assistor. It has not had enough employees to staff its Taxpayer Assistance Centers (TACs), causing some TACs to close and others to limit appointments. It has not had enough employees to process taxpayer correspondence, with delays of eight months or more common. To add to the problem, the IRS has had a tough time keeping up with the pace of attrition. The IRS estimates 63 percent (52,000 of 83,000) of employees are eligible to retire in the next six years. Inadequate taxpayer service makes it more difficult for taxpayers to comply with their tax filing and reporting obligations, which can reduce tax compliance. Top quality service is fundamental to the IRS mission, and the success of this mission begins with its current employees, future hiring, and continuous training. Hiring and adequately training the right quantity and quality of new employees while keeping up with the pace of retirements cannot be overstated as it will not only enhance taxpayer service but also protect taxpayer rights.

ANALYSIS

The Inflation Reduction Act (IRA) of 2022 provided the IRS with much-needed funding and presents an excellent opportunity to improve taxpayer service. With this new funding, the IRS must prioritize and revolutionize its hiring, recruitment, and training processes. It should invest in revamping Human Capital

Office (HCO) as a foundation to its success. The IRS must be able to show Congress and the American public that the IRA funding is a good investment providing measurable and immediate impact. To improve IRS taxpayer service, HCO will need to recruit, hire, and train new employees on a historic scale the IRS has never attempted beyond its current capacities. HCO must do this while also keeping pace with the rate of attrition and accounting for the estimated 52,000 IRS employees expected to be lost through attrition within the next six years. To hire thousands of new employees over the next decade and replace employees who have retired or otherwise left, the IRS must increase its current hiring capacity to meet this demand and focus on the training of its employees. In addition, the IRS must prioritize recruitment and counter recruitment challenges it faces in a competitive job market. The agency must work to revamp its training quality and overall training efficiency. The IRS has yet to start its long-awaited IRS University (IRSU) that was announced in response to a Taxpayer First Act requirement. As the IRS faces the realities that come with an aging workforce, its inability to attract, hire, and retain younger generations of workers threatens its ability to administer the tax laws fairly and efficiently and provide the best possible customer service to our nation's taxpayers. There is no doubt that certain hurdles are outside of the IRS's control. However, to achieve success, the IRS needs to make significant changes and reallocate more resources to HCO's hiring and training efforts to support the mission of the IRS and prevent further harm of taxpayer service.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS: 1) pursue Direct Hire Authority for more critical positions across the agency, beyond what has been requested to date, because the IRS will also need the appropriate support staff (*e.g.*, secretaries and managers) to support significant increases in technical and critical positions; 2) continue to raise awareness internally about the process for special pay rates and encourage submission of Office of Personnel Management (OPM) Form 1397, Special Salary Rate Request Form, to request that OPM establish higher rates of basic pay or special rates as needed for a group or category of GS positions; 3) reallocate budgetary resources to invest in a web-based personnel security inventory management system to upgrade current IRS background investigation system technology to eliminate antiquated processes, reduce manual workload, and improve interconnection with other systems; 4) reallocate additional budgetary resources to the HCO Strategic Talent Analytics & Recruitment Solutions team so it can implement an updated Strategic Recruitment Plan that will increase recruitment partnerships with private sector recruiting firms, universities, community colleges, and any other sources where diverse and qualified applicants may be underemployed; 5) update its FYs 2022-2025 Corporate Leadership Engagement Action Plan to include specific actions the IRS will take to improve retention rates of employees with less than one year of service and employees under the age of 30 and specific actions to further reduce the overall turnover rates of employees; and 6) reallocate budgetary resources to provide the necessary dedicated operational budget to HCO's teams leading the implementation of IRSU to establish the infrastructure to fully open IRSU and to better align IRS long-term training capacity with long-term hiring capacity.

TELEPHONE AND IN-PERSON SERVICE

Taxpayers Continue to Experience Difficulties and Frustration Obtaining Telephone and Face-to-Face Assistance to Resolve Their Tax Issues and Questions

PROBLEM

Each year, millions of taxpayers call the IRS's tax assistance phone lines and visit IRS Tax Assistance Centers (TACs) to obtain the help needed to meet tax filing and payment obligations. Though the IRS is working to increase staffing and implement technology designed to improve the customer experience, processing backlogs caused the demand for telephone and in-person service to remain high, while customer service levels continued to remain unacceptably low. In fiscal year (FY) 2021, the IRS Enterprise telephone lines reached an all-time service low, with only 11 percent of calls reaching a live assistor. The FY 2022 post-pandemic filing season brought little improvement with only 13 percent of callers reaching live assistance. Face-to-face appointments at the IRS's TACs similarly declined and showed little improvement during the FY 2022 filing season. Taxpayers and practitioners alike rely heavily on the ability to reach an IRS employee for account actions and answers to their inquiries. Lack of sufficient service jeopardizes compliance, frustrates taxpayers, and impacts the taxpayers' *right to quality service*.

ANALYSIS

As the IRS continued to focus limited employee resources on the resolution of pandemic related processing backlogs, telephone tax assistance services remained compromised, leading to little improvement during the FY 2022 post pandemic filing season. Because the IRS's customer service representatives (CSRs) divide their time between two critical roles during the filing season: (1) answering calls and (2) assisting with the processing of returns and taxpayer correspondence, the more time spent working one means less time spent working the other. TAS has historically recommended the IRS improve telephone customer service levels to reach an 85 percent Level of Service, a goal the IRS has stated it will seek to achieve during the 2023 filing season. To accomplish the 85 percent goal, however, the IRS will logically have to assign most or even all of its CSRs to answer phone calls. The potential sacrifices the IRS will have to make and the collateral effects to achieve this goal are concerning. Time CSRs spend answering phone calls means time CSRs are not spending on their other key filing season role: processing original and amended returns and paper correspondence. Although the IRS should accomplish both and deliver quality service, in the short term, CSRs must rotate between two key roles during the 2023 filing season to minimize processing delays, prevent a new backlog from developing, and provide the best possible service for taxpayers in the long term.

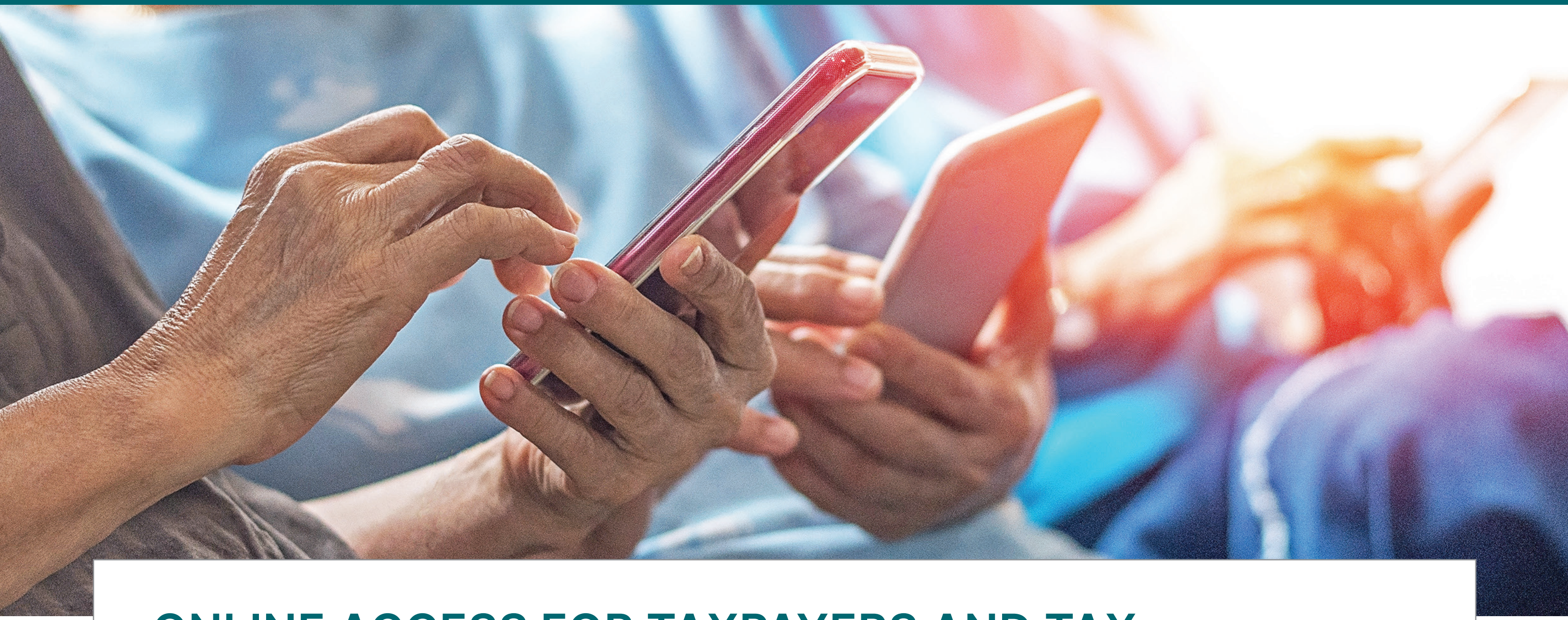
Inventory backlogs create processing delays that result in increased TAC visits from taxpayers requesting the status of their tax returns and correspondence and result in increased call volume. Similarly, shifting employees from telephone assistance toward return and correspondence processing causes a decline in telephone service, which may promote an increase in correspondence receipts that contribute to processing backlogs. Dual CSR phone and processing responsibilities have a circular effect on IRS customer service delivery – necessitating a balanced approach rather than a singular focus on one to the detriment of the other.

Taxpayers need the IRS to increase staffing and technology and explore opportunities to minimize barriers that create obstacles to telephone and TAC office service delivery. Currently, taxpayers seeking alternatives to the IRS's difficult to reach phone assistance are hindered by limited service offerings and the need to first reach the IRS's struggling appointment telephone line to schedule TAC visits or utilize the IRS's virtual appointment options. Though the IRS may have the capacity to accommodate appointments, many taxpayers are prevented from obtaining service due to an inability to reach the appointment telephone line. Similarly, taxpayers also encounter difficulty reaching the IRS's Taxpayer Protection Program (TPP) telephone line. The TPP telephone line provides assistance to taxpayers whose returns the IRS has halted in the processing stream due to suspected identity theft. Taxpayers unable to authenticate their identity by telephone or online generally must also make an appointment to authenticate in person at one of the IRS's TAC office locations – a task not easily accomplished and a task that results in increased call volume, taxpayer burden, and delayed refunds.

To better meet customer service needs, the IRS should increase TAC office staffing, consider extended TAC hours, explore technology-based solutions for TAC appointment scheduling and paper document submissions, expand virtual appointment services, and implement additional TPP identity verification options. Telephone and TACs are essential services, as is the processing of returns and taxpayer correspondence. The IRS must juggle phone service with inventory processing demands while providing for all taxpayers seeking assistance.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS: 1) fully staff all TAC office locations and offer extended or Saturday hours in high volume locations; 2) automate the TAC appointment scheduling process; 3) expand WebSD services to include TPP verification and other high demand TAC services; 4) implement a process similar to the IRS's Acceptance Agent program for purposes of conducting TPP identity verification, and to increase taxpayer service and location options, consider utilizing IRS employees from other functions (Compliance, TAS, etc.) to perform collateral identity verification duties; and 5) explore opportunities for TAC offices to digitalize document and tax return submissions on site.



ONLINE ACCESS FOR TAXPAYERS AND TAX PROFESSIONALS

Inadequate Digital Services Impede Efficient Case Resolution and Force Millions of Taxpayers to Call or Send Correspondence to the IRS

PROBLEM

Providing tax information and services accessible through a robust online account and seamlessly integrated digital communication tools are essential for taxpayers, their representatives, and IRS employees. Taxpayers or their representatives who cannot find an answer or resolve their issue using digital self-help tools are facing long delays when phoning the IRS, visiting a Taxpayer Assistance Center, or sending a letter. Taxpayers or their representatives wanting to interact online need and deserve quality service options and quick responses from the IRS. Today, most taxpayers and tax professionals can't depend on receiving either, causing dissatisfaction that can lead to distrust in tax administration. When taxpayers can quickly communicate with the IRS to resolve issues and receive answers to their questions simply and securely, it has a positive effect on the taxpayer experience, which in turn raises taxpayers' overall satisfaction and trust in the IRS.

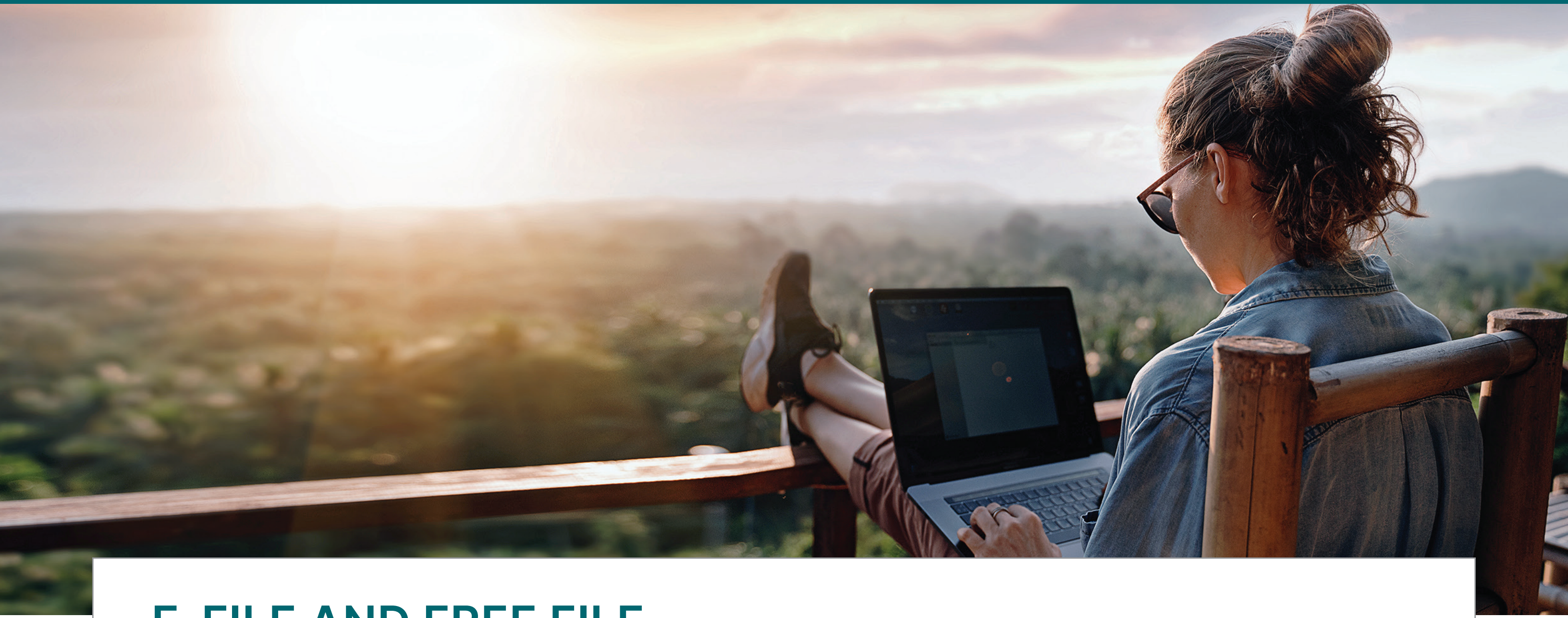
ANALYSIS

As the IRS continues to introduce new self-assistance applications and improve existing ones, it should determine its priorities using a taxpayer-centric approach. A critical element is making all self-assistance applications available to individual and business taxpayers through an intuitive central hub with one-click access between applications. Another part of a taxpayer-centric approach is meeting taxpayers where they are. The IRS should leverage routine taxpayer contacts, such as return filing, to inform taxpayers about the IRS's digital tools and ensure employees are educated about the latest updates.

Some self-assistance applications require taxpayers to provide identity verification documents. Twenty-one percent of would-be IRS online services users could not complete identity proofing and were denied access. For those unable (or unwilling) to complete online identity proofing with a Credential Service Provider (CSP), the IRS should provide in-person alternatives to assist taxpayers with identity proofing and obtaining credentials for future access to IRS online applications that require secure access. A taxpayer-centric approach also means the IRS must empower tax professionals with a Tax Pro Account that allows them to provide fast, efficient service to their clients.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS: 1) provide individual and business taxpayers an intuitive central hub with one-click access to all authenticated and unauthenticated self-assistance applications; 2) require mandatory annual training for all taxpayer-facing IRS employees on Online Account and digital communication tools so they can educate taxpayers about them and allow employees to view taxpayer information as the taxpayer views it in Online Account; 3) deploy a robust Online Account for business taxpayers by fiscal year 2024, including features such as populating due dates for upcoming tax return or information return filings, sending reminders, and listing payment due dates and payment options; 4) for those unable to complete online identity proofing with a CSP, provide in-person authentication alternatives to assist taxpayers with identity proofing and obtaining credentials for future access to IRS online applications that require secure access; and 5) add increased capabilities and functionality to Tax Pro Account, such as viewing notices and letters and uploading requested documents, to provide authorized representatives seamless access to their clients' Online Accounts through Tax Pro Account.



E-FILE AND FREE FILE

E-Filing Barriers and the Absence of a Free, Easy-to-Use Tax Software Option Cause Millions of Taxpayers to Continue to File Paper Tax Returns

PROBLEM

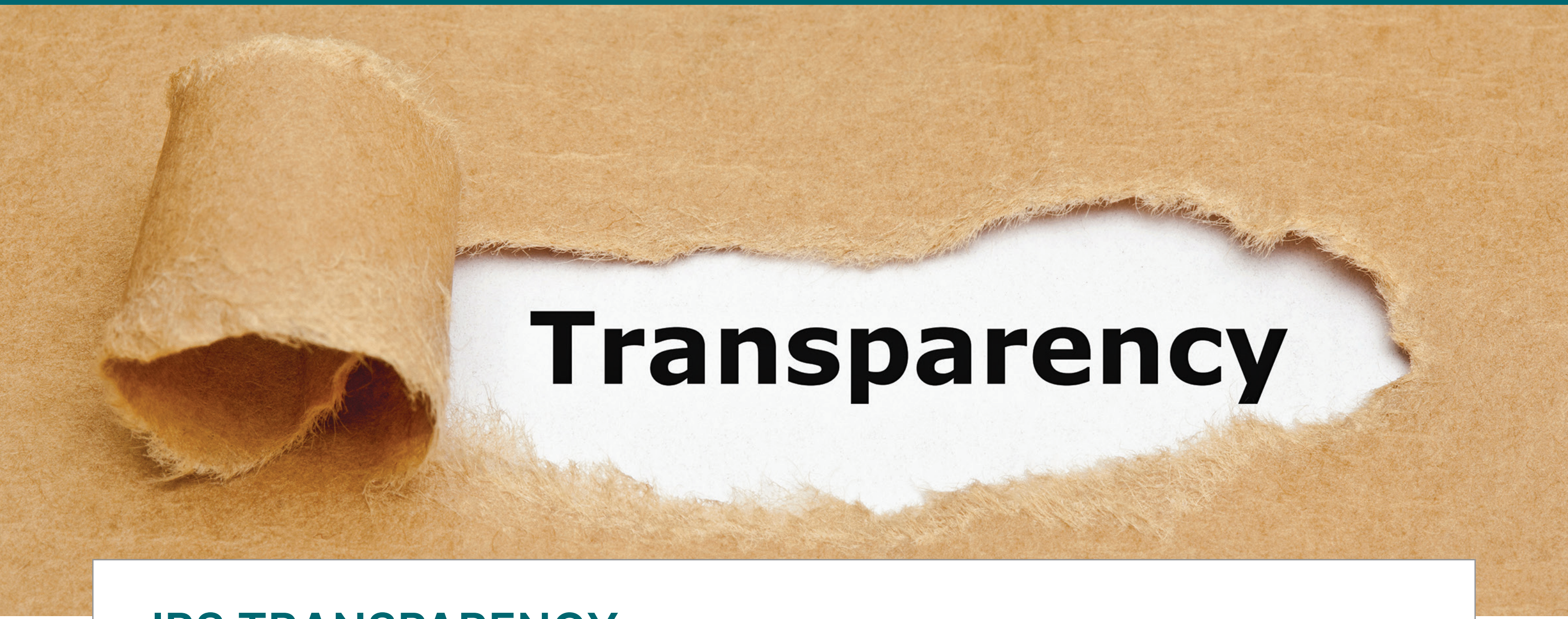
When taxpayers cannot electronically file (e-file) their tax returns, they face delays in processing, the possibility of transcription errors, and longer waits for their refunds. Although the e-file rate for individuals is high at 92 percent, individuals still face unnecessary costs and challenges in e-filing, which should be as easy as possible. The barriers are higher for business and employment tax returns, and those returns correspondingly have lower e-file rates. The result is a mountain of paper that takes more time and money to process than e-filed returns, even though e-filed returns outnumber paper returns.

ANALYSIS

Individual taxpayers are committed to e-filing but still face burdens in doing so. The IRS's public-private partnership with the tax preparation industry, known as the Free File Alliance, has not achieved widespread adoption; even after 20 years, only about two percent of taxpayers used Free File in 2022. This means that most taxpayers must purchase tax preparation software that may require pricey upgrades to accommodate their specific tax situations. If taxpayers discover that one of their required forms or schedules is not available for e-filing, or if their e-filed return contains an error that precludes e-filing, they must paper file. While e-filed returns outnumber paper returns 11 to one, paper returns cost twice as much to process, in aggregate, as e-filed returns. The IRS should develop its own free, direct e-file system, and at the same time, provide taxpayers with their tax documents in a format that can be uploaded to the tax software of their choice. Business taxpayers e-file at lower rates – approximately 70 percent for business income tax returns and 58 percent for employment tax returns. This likely is attributable to higher costs associated with e-filing, which can be a deterrent for taxpayers who are comfortable with the paper filing process. The IRS is taking constructive steps by replacing the current information return filing portal with a more user-friendly option for Forms 1099, and eventually the IRS plans to accept all information returns through that portal. It needs to continue this momentum across the board to better serve taxpayers with faster, more accurate tax return processing that reduces costs and sends refunds and refundable credits out more quickly.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS: 1) evaluate the feasibility of accepting imperfect e-filed tax returns and directing them to appropriate treatment streams for further review; 2) provide taxpayers with access via an online account to Forms W-2 and 1099 as well as IRS prior year payments or credits early in the filing season in a downloadable format that taxpayers can upload to the tax software of their choice; 3) make all IRS forms and schedules compatible with e-filing; 4) implement necessary IT upgrades to enable business taxpayers to more easily e-file information and employment tax returns, including amended employment tax returns; and 5) use lessons learned from the congressionally funded e-filing study to begin development of a comprehensive, direct e-file system that encompasses many of the attributes already adopted by other countries.



IRS TRANSPARENCY

Lack of Transparency About Processing Delays and Other Key Data Frustrates Taxpayers and May Undermine Voluntary Compliance

PROBLEM

Since fiscal year (FY) 2010, the IRS budget has been reduced by nearly 20 percent after adjusting for inflation, and its staffing has declined as well. To address some of these deficiencies, Congress recently has given the IRS significant additional funding to improve tax administration by passage of the Inflation Reduction Act (IRA). It is incumbent on the IRS to be transparent about its plans and outcomes, thereby demonstrating that it is using the funding fairly, equitably, and prudently. Moreover, the IRS also needs to improve the information it provides taxpayers regarding return and refund status and how to voluntarily comply with their tax obligations. Additionally, taxpayers struggle to find the information they need on a cluttered IRS.gov, and when they do find this information, they are surprised to learn they cannot fully rely on some of the information.

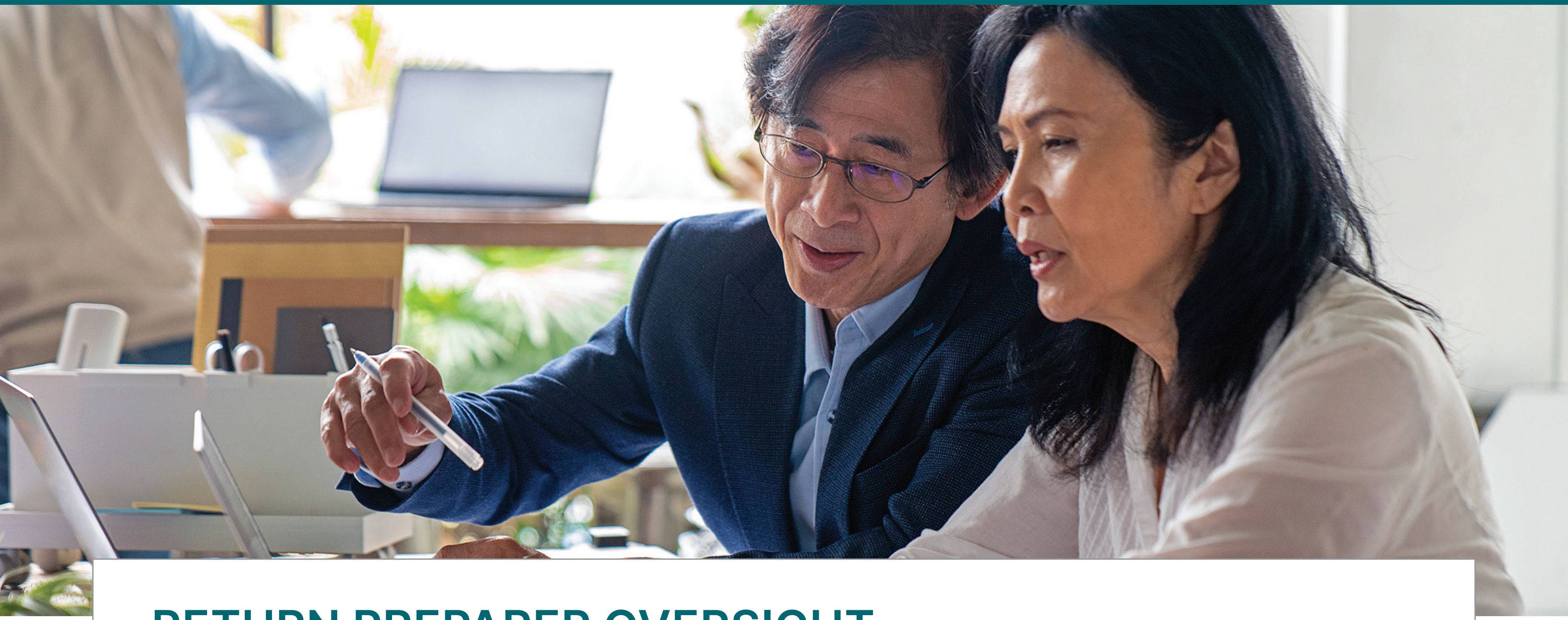
ANALYSIS

The Treasury Department put constraints on how the IRS could use IRA funds in the area of enforcement. For taxpayers and the public to have confidence that the IRS is using this funding fairly and equitably, it must be fully transparent to taxpayers, Congress, and other oversight agencies. Additionally, the Secretary of the Treasury directed that the IRS develop an operational plan that will include how it will allocate IRA funding. This operational plan must contain details and provide specific performance metrics that outside parties can monitor and verify to measure the results. The IRS also needs to improve its transparency around the status of taxpayer refunds and essential information taxpayers need to comply with their tax obligations. Despite Where's My Refund? being accessed 557.2 million times in FY 2022, Where's My Amended Return? being accessed 20.8 million times, and IRS.gov reporting about 5.3 billion page views, the information taxpayers obtained from these tools was either limited or difficult to locate, thus diminishing their value. If taxpayers ultimately find the information they need, such as publications, instructions, or FAQs, the IRS does not clearly identify the extent to which the information can be relied upon either for penalty relief or in an audit situation.

Communication is key to trust. Taxpayers and practitioners desire open and regular communication, updates on key factors impacting the filing season, informal and binding guidance, clear language in communications, and the status of their cases throughout the compliance and enforcement processes.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS: 1) make the operational plan, due six months from the enactment of the Inflation Reduction Act, available to the public by posting it on IRS.gov and allowing stakeholder comments on the plan and future improvements; 2) commit to providing regular reports regarding the allocation of the increased funding and include performance metrics that show the results of how the IRS has applied the funds; 3) improve Where's My Refund?, IRS2Go, and online accounts by providing taxpayers increased functionality including specific information about the cause of their refund delay and an estimated date when the IRS might issue their refund; 4) post a filing season dashboard and provide weekly information throughout the year on the filing season statistics, including the total number of returns in inventory, number of returns held beyond normal processing times, number of returns in suspense status, and the anticipated timeframes for working through them, acknowledging that the situation is fluid and timeframes may change along with circumstances; 5) clearly state on all guidance the extent to which the taxpayer can rely upon it for either penalty relief or in an audit situation; and 6) update the Priority Guidance Plan to be a living document that says the type of guidance the IRS is developing, the issues it will address, the current status of the guidance, and the estimated date of completion.



RETURN PREPARER OVERSIGHT

Taxpayers Are Harmed by the Absence of Minimum Competency Standards for Return Preparers

PROBLEM

Return preparers prepare over half of individual income tax returns and play a key role in tax administration. Many taxpayers are ill-equipped to assess a preparer's expertise in tax laws and tax return preparation. Anyone can hold themselves out to be a return preparer, and not all return preparers have professional credentials. Return preparers without credentials are not required to pass any competency tests or take any educational courses on tax return preparation, and they are not subject to any ethical rules.

The absence of minimum competency standards for preparers of federal tax returns leaves taxpayers, particularly low-income taxpayers, vulnerable to return preparers' inadvertent errors that could cause them to overpay their tax – or to underpay their tax and face IRS enforcement action subjecting them to additional tax, penalties, and interest. Such standards would also likely professionalize the return preparation industry and weed out unscrupulous return preparers. Because taxpayers are ultimately financially responsible for inaccurately prepared returns, minimum competency standards for return preparers are an important taxpayer protection measure.

ANALYSIS

Recent IRS data shows that taxpayers are harmed by non-credentialed return preparers. Non-credentialed paid return preparers prepared about 79 percent of 2020 Earned Income Tax Credit (EITC) returns prepared by a paid return preparer but accounted for over 92 percent of the total amount of EITC audit adjustments (in dollars) of those returns subject to audit. In addition, during calendar year 2021, the IRS assessed approximately 76 percent of the return preparer penalties for individual income tax returns against non-credentialed paid return preparers. Finally, based on a review of IRS Discriminant Index Function (DIF) scores – an IRS estimate of the likelihood that an audit of the taxpayer's return would produce an adjustment – it appears that non-credentialed paid return preparers are preparing returns with a higher level of noncompliance.

Numerous studies have consistently found significant noncompliance on returns prepared by non-credentialed return preparers. For example, the Government Accountability Office, the Treasury Inspector General for Tax Administration, and the New York State Department of Taxation and Finance conducted "shopping visits" during which officials posed as taxpayers seeking return preparation assistance. Each of the shopping visit studies found significant inaccuracies reported on the returns prepared during those visits by non-credentialed return preparers.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS: 1) conduct a robust outreach and education campaign on how to report suspected violations of Circular 230, with the targeted recipients of these outreach and education efforts to include taxpayers, tax professionals, and IRS employees; 2) strengthen its taxpayer awareness campaign immediately before and during the filing season to ensure that taxpayers understand what to expect from their return preparer (*e.g.*, sign return, provide Preparer Tax Identification Number (PTIN), furnish copy of return) and where to report preparers who violate the requirements; and 3) prioritize the assessment and collection of the IRC § 6695 return preparer penalties, especially the IRC § 6695(b) penalty for failure to sign the return and the IRC § 6695(c) penalty for failure to furnish a PTIN.

The National Taxpayer Advocate recommends that Congress amend title 31, section 330 of the U.S. Code to authorize the Secretary to establish minimum standards for federal tax return preparers.

APPEALS

Staffing Challenges and Institutional Culture Remain Barriers to Quality Taxpayer Service Within the IRS Independent Office of Appeals

PROBLEM

A review by the IRS Independent Office of Appeals (Appeals) represents taxpayers' last, and often best, chance to settle their cases administratively within the IRS. However, case delays, inflexible policies, and an apparent lack of independence are hampering this process. For example, taxpayers may find IRS Counsel and Compliance invited to their Appeals conference without their consent or may be frustrated to learn that Compliance sometimes has more transparency into the rationale behind their case settlements than they do.

ANALYSIS

For years, increasing cycle times and case delays have been a challenge for Appeals. Currently, once a case reaches Appeals, it sits for an average of 48 days before being assigned to an Appeals Officer (AO), and overall cycle times have increased by 103 percent from fiscal year (FY) 2017 to FY 2022. Because of attrition, AOs are often inexperienced and overworked, which exacerbates case delays. Additionally, Appeals' culture does not always preserve an appearance of independence. Sometimes taxpayers may feel that the assigned AO is simply a conduit between the taxpayer and a technical guidance coordinator who is deciding the case. Appeals' policy of inviting Counsel and Compliance personnel to the conference in large cases, even if taxpayers object, also jeopardizes the appearance and the reality of independence. Further, at the conclusion of some Appeals proceedings, the AO provides an explanatory Appeals Case Memorandum (ACM) to the Compliance team or even holds a post-settlement conference, both of which are denied to taxpayers. Although many of Appeals' challenges are not of its own making, taxpayers should still have a right to expect Appeals proceedings and policies that are timely, fair, and independent.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS: 1) continue efforts to increase hiring of Account and Processing Support personnel and AOs while designing career paths that encourage advancement and retention within Appeals; 2) dedicate resources, including circuit riding to cities without an Appeals presence, to provide meaningful in-person conferences expeditiously and without the need for burdensome travel on the part of taxpayers and practitioners; 3) empower AOs to make independent decisions on their assigned cases, with technical guidance coordinators and other subject matter experts limited to advisory roles in all but the rarest situations; and 4) change the Internal Revenue Manual to require that all ACMs be shared with both the taxpayer and the Compliance function and, where post-settlement conferences are held, taxpayers must be invited to attend, even if in a monitoring capacity.

The National Taxpayer Advocate recommends that Congress amend IRC § 7803(e) to provide that, where taxpayers whose cases are nondocketed have a right to a conference with the Independent Office of Appeals, this conference will only include personnel from the Office of Chief Counsel or the compliance functions of the IRS if taxpayers consent to that participation.

OVERSEAS TAXPAYERS

Taxpayers Outside of the United States Face Significant Barriers to Meeting Their U.S. Tax Obligations

PROBLEM

All taxpayers face challenges understanding their tax obligations and accessing information and services from the IRS. However, taxpayers living overseas face additional challenges in virtually every aspect of their taxpayer experience. Whether they are U.S. citizens or resident aliens living abroad or foreign persons with U.S. tax obligations, these taxpayers are subject to highly complicated rules for determining whether they need to file a U.S. tax return and, if they are required to file, determining the correct amount of their U.S. tax liability. Further compounding their challenges, these taxpayers also have more limited access to support and resources from both the IRS and private industry.

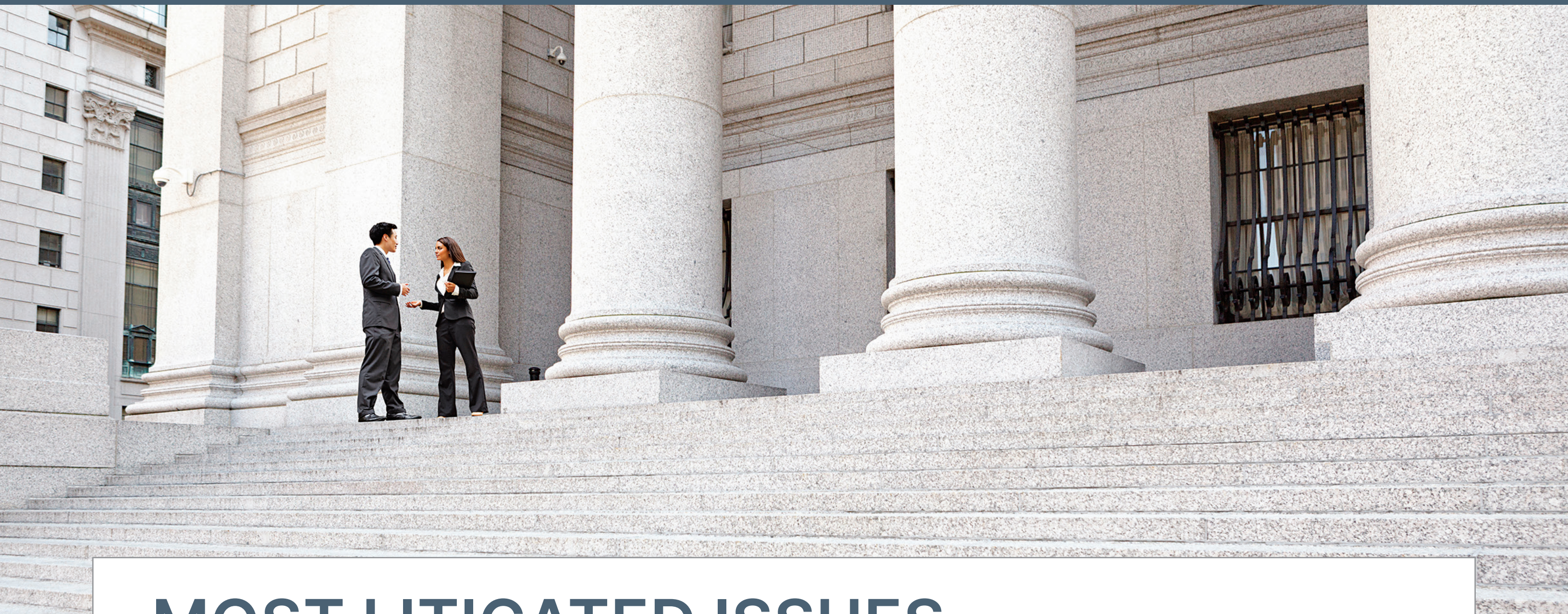
ANALYSIS

U.S. tax law, as it applies to foreign persons and U.S. citizens and resident aliens living overseas, is highly complex. This makes compliance challenging for these populations under the best of circumstances. Unfortunately, taxpayers living overseas lack access to many of the supports available to domestic taxpayers. Taxpayers living overseas have more limited tax preparation software options and face challenges in locating qualified return preparers whose services they can afford. They also e-file at substantially lower rates than domestic taxpayers. The process for obtaining an Individual Taxpayer Identification Number, which many foreign taxpayers need to file a return, is very long and arduous. Taxpayers living overseas also have more limited access to customer service: only one telephone line that is not toll-free, long delays in receiving mail, and no option to receive face-to-face customer service.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS: 1) develop a comprehensive customer service strategy for both U.S. citizens and resident aliens living abroad and foreign individuals with U.S. tax obligations; 2) explore ways to partner with the U.S. Department of State to provide customer service and tax information to U.S. citizens abroad; 3) conduct a study to identify barriers to e-filing for taxpayers overseas, and use the results of that study to formulate a strategy to reduce barriers and increase e-filing by that population; 4) ensure that identity proofing requirements do not prevent taxpayers who need to e-file information returns from accessing the IRS's platform for electronically filing information returns; 5) offer customer callback on the international customer service line and provide more detailed information on the IRS website about the services offered on the international telephone line; 6) to account for postal delays, provide an extended time for taxpayers living overseas to respond to IRS letters and notices; and 7) offer virtual Taxpayer Assistance Center appointments to taxpayers living overseas so that such taxpayers have a face-to-face customer service option.

The National Taxpayer Advocate recommends that Congress amend the IRC § 6213(b)(2)(A) to give taxpayers living overseas a longer time to request abatement of an assessment made by the IRS under its math error authority.



MOST LITIGATED ISSUES

RC § 7803(c)(2)(B)(ii)(XI) requires the National Taxpayer Advocate to identify in her Annual Report to Congress the ten tax issues most litigated in federal courts. To identify the top ten Most Litigated Issues, TAS used commercial legal research databases to locate and review published opinions involving a substantive civil tax issue decided on the merits in federal courts during the fiscal year (FY) 2022 period from October 1, 2021, through September 30, 2022 (the reporting period). To provide a more complete picture, we also reviewed the Statutory Notices of Deficiency (SNDs) for which petitions were filed with the U.S. Tax Court (Tax Court) during the reporting period.

For the first time this year, we divided our top ten lists by individual and business taxpayers. We also revisited the most inclusive categories and narrowed the definitions we have used in past reports. We believe this will provide more nuanced, useful data to readers. Our analysis identified 368 court opinions, with a large portion, 177 opinions, issued by the Tax Court in the reporting period. We also reviewed 191 court opinions from other federal courts, including opinions from U.S. District Courts, U.S. Courts of Appeals, the U.S. Court of Federal Claims, U.S. Bankruptcy Courts, and the U.S. Supreme Court. The total number of opinions is a 20 percent increase from the 306 cases we identified last year. The second part of our analysis used data provided by the IRS Independent Office of Appeals and involved the review of 28,807 petitions seeking judicial review in the Tax Court submitted by taxpayers in FY 2022. Of the 29,254 cases closed in the Tax Court in FY 2022, more than 99 percent were resolved without a court ruling on the merits.

Figure 3.1 shows the most litigated issues decided by the Tax Court in FY 2022, divided by individual and business taxpayers, in order from most to least.

FIGURE 3.1, Top Ten Tax Court Opinions Issued for Individual and Business Taxpayers During FY 2022

Ranking	Top Ten Tax Court Opinions Issued for Individual Taxpayers	Tax Court Opinions Discussing Issue
1	Gross Income (IRC § 61 and related Code sections)	17
2	Schedule A Deductions (IRC §§ 211-224)	15
3	Failure-to-File Penalty (IRC § 6651(a)(1)), Failure-to-Pay Penalty (IRC § 6651(a)(2)), and Failure-to-Pay Estimated Tax Penalty (IRC § 6654)	14
4	Innocent Spouse Relief (IRC § 6015)	10
5	Adjusted Gross Income (AGI) Exclusions and Deductions	7
6	Whistleblower award determinations (IRC § 7623(b)(1))	7
7	Charitable Contribution Deductions (IRC § 170)	5
8	Fraud Penalty (IRC § 6663)	4
9	Alimony and Separate Maintenance Payments (IRC § 71)	3
10	Foreign Earned Income Exclusion (IRC § 911)	3

Ranking	Top Ten Tax Court Opinions Issued for Business Taxpayers	Tax Court Opinions Discussing Issue
1	Sole Proprietorship Related Schedule C Income	20
2	Corporate Income (excluding COGS) or Expenses	10
3	Failure-to-File Penalty (IRC § 6651(a)(1)), Failure-to-Pay Penalty (IRC § 6651(a)(2)), and Failure-to-Pay Estimated Tax Penalty (IRC § 6654)	10
4	Gross Income (IRC § 61 and related Code sections)	9
5	Charitable Contribution Deductions (IRC § 170)	8
6	Passive Activity (Schedule E) Income and Expenses	5
7	Schedule A Deductions (IRC §§ 211-224)	5
8	Fraud Penalty (IRC § 6663)	5
9	Employment Tax Issues	4
10	Partnership Income (excluding Cost of Goods Sold) or Expenses	4

Figure 3.2 shows the top ten issues petitioned to the Tax Court in FY 2022, divided by individual and business taxpayers, in order from most to least.

FIGURE 3.2, Top Ten Individual and Business Taxpayer Issues Petitioned to the Tax Court During FY 2022

Ranking	Top Ten Individual Taxpayer Issues Petitioned to the Tax Court	Total Petitions to the Tax Court
1	Gross Income (IRC § 61 and related Code sections)	21,215
2	Statutory Adjustment	5,897
3	Filing Status and Dependents (including personal exemptions for spouses, dependent children, and other dependents)	1,739
4	Payments and Credits	1,456
5	Family Status Related Credits (including the Child Tax Credit, Child and Dependent Care Credit, Additional Child Tax Credit, and the Adoption Credit)	1,364
6	Earned Income Tax Credit	1,224
7	Schedule A Itemized Deductions under (IRC §§ 211-224)	1,162
8	Passive Activity (Schedule E) Income and Expenses	973
9	Federal Income Tax Withholding	956
10	Taxes and Other Credits	675

Ranking	Top Ten Business Taxpayer Issues Petitioned to the Tax Court	Total Petitions to the Tax Court
1	Sole Proprietorship Trade or Business Expense	2,834
2	Sole Proprietor Gross Income	1,223
3	Corporate or Partnership Trade or Business Expense	371
4	Corporate or Partnership Gross Income	297
5	Schedule K-1 Flow-Through Items	74
6	Charitable Contributions	41
7	Farming and Agriculture Activities – Trade or Business Expenses	34
8	Balance Sheet – Assets	33
9	Balance Sheet – Stockholder Equity	25
10	Balance Sheet – Liabilities	24

Comparing the number of docketed cases among the courts in which taxpayers may litigate federal tax disputes (*i.e.*, petitions filed), the Tax Court received at least 56 times as many tax cases as district courts and 94 times as many tax cases as the Court of Federal Claims in FY 2022. In nearly 84 percent of the Tax Court cases docketed in FY 2022, there was less than $50,000 at issue. About one percent of the total docketed Tax Court cases involved an amount in dispute of more than $10 million, but that represents nearly 84 percent of all dollars in dispute in the Tax Court. Additionally, the vast majority of cases were settled in FY 2022, as has been the trend for the past ten years. While the Tax Court docket has the majority of cases, there is more money at stake in tax litigation in the district courts and the Court of Federal Claims. Of the dollars in dispute, Tax Court cases compare about 4:1 to tax cases in the district courts and about 7:1 to tax cases in the Court of Federal Claims based on the ten-year average. Based on Tax Court petitions from FYs 2013 to 2022, the majority of petitions were settled by Appeals at 52.6 percent while the remainder was split between settlements by Chief Counsel (23.5 percent), defaults and dismissals (20.1 percent), and trial/other dispositions (3.1 percent). In FY 2022, about 90 percent of cases petitioned to the Tax Court involved *pro se* taxpayers, and in about ten percent of the cases the taxpayers were represented. This is a larger percentage of *pro se* taxpayers relative to the ten years prior. Over the past ten years, an average of 83.5 percent of taxpayers appearing in Tax Court were not represented by counsel. Correspondence and automated underreporting investigations from campuses continue to outnumber other sources for cases petitioned to the Tax Court. Looking at an average of a ten-year period, about 19,900, or 72 percent, of petitions in the Tax Court resulted from an SND being issued from a correspondence or automated underreporting investigation. This is an area that the IRS should focus on to resolve more issues administratively without the need to incur the time and expense of litigation. Assuming there is sufficient time remaining on the assessment statute, the IRS should provide these taxpayers more follow up correspondence and additional time to respond prior to the issuance of the SND.

TAS RESEARCH REPORTS

A Review of Online Accounts and Web Services Offered by U.S. State and Foreign Country Taxing Authorities

As part of its vested interest in IRS online operations, TAS Research and Analysis employees completed a broad overview of state taxing authority websites and review of a few foreign taxing authority websites during Spring and Summer 2022. Specifically, TAS reviewed the IRS website along with websites of 41 U.S. states that have an individual income tax, the District of Columbia, Puerto Rico, and three countries – Canada, Australia, and the United Kingdom (UK) ("entities").

Overall, the IRS website offered several services in common with other states and the three countries reviewed, but there were notable differences. Commonly available services across nearly all states included the option to set up an online payment plan, conduct refund inquiries, receive and respond to notices online, and provide third-party access.

The IRS website was a leader in secure features for online account creation, online payment options, and language translation options. The IRS website included the most secure requirements for setting up an online account compared to other taxing authority websites. Though requiring documentation and verifying identity via a photo or video is more time-consuming for taxpayers, it results in a higher level of security. The IRS exceeded the payment options offered by state and country taxing authority websites. The IRS offered online payment options even if a taxpayer had not established an online account. Taxpayers could pay online or over the phone, using bank transfers, credit cards, debit cards, and digital wallets such as PayPal and Click to Pay. The IRS emerged as a leader in offering language translation options, with information for basic tax questions in 20 languages and the IRS homepage in English and seven other languages.

However, we identified three areas in which the IRS website lags behind other taxing authority websites.

- First is the lack of a full online filing option. There is an ongoing discussion and consideration of adding such an option to the IRS website.
- Second, the IRS Taxpayer Online Account website lacks the ability to receive most notices online. The IRS does not permit a taxpayer to submit an online response to a notice. However, the IRS was not the only entity lacking such options. This is anticipated to improve during the 2023 filing season. In addition to increasing the functionality of the online accounts, the IRS should incorporate its 18-plus standalone applications. The IRS should consolidate these features into taxpayers' online accounts and provide access to their representatives – a one-stop shop.
- Lastly, we found several differences between in-person or digital contact options on the IRS website and the options available on state and foreign country websites. Unfortunately, despite the clear demand for the ability to contact the IRS via email, the IRS does not make this a contact option available for general information or request for appointments. Moreover, the IRS has limited availability for telephone or in-person appointments, made even more difficult by consistently low levels of telephone customer service, whereas U.S. states offered taxpayers the ability to schedule an in-person appointment, and a few entities went above and beyond by providing taxpayers with contact options via social media platforms.

The IRS can learn much from a review of its own digital services and that of others, finding common ground as well as inspiration and lessons learned for future improvements. This report can form a basis for reviews of future changes and can build upon future reviews of other local tax agencies, states, and countries.

Exploring Earned Income Tax Credit Structures: Dividing the Credit Between a Worker and Child Component and Other Considerations

In tax year (TY) 2019, over 26 million low- and middle-income taxpayers received the Earned Income Tax Credit (EITC). These taxpayers claimed over 32 million qualifying children and received an average amount of $2,424 per return for a total amount of nearly $64 billion. The EITC is one of the largest anti-poverty programs in the United States. Unfortunately, in FY 2020 the IRS estimates over $16 billion of the EITC was improperly claimed – over a quarter of the total EITC outlays.

The National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress recommended that the EITC be split between a worker portion and a child portion. This report explores possible options for bifurcating the EITC by discussing seven new EITC structures. Each of the structures sets the worker portion of the EITC at 15.3 percent of earned income while exploring different formulas for determining the child portion of the credits. Two possible EITC structures considerably increase the expected EITC payments, and we designed five other possible new EITC structures to produce similar outlays to the existing tax law.

This report explains each of the new structures and explores which types of taxpayers would benefit from the proposed structure and which taxpayers would receive a loss of benefits. We explore these changes both graphically, as the structure would apply to any eligible taxpayer, and we look at the actual effects on existing EITC claimants. To this end, we calculate the total outlays and the disbursements depending on filing status, income ranges, and number of qualifying children.

The IRS continues to spend significant resources auditing taxpayer returns claiming the EITC. The IRS audits a higher percentage of taxpayers with the EITC than any other taxpayers, except those with at least $5 million of total positive income. Therefore, we explored another data source that could potentially be used as a proxy suggesting that the child meets the residency requirement. Our analyses show that the IRS could potentially use Affordable Care Act data to validate the EITC claims of many additional taxpayers, and exploring this data source is worth further study, especially since a child's residency is necessary for other credits including the Child Tax Credit, where significant noncompliance is also likely.

The report highlights data from the Census Bureau's match with IRS data, which estimates the number of eligible taxpayers who claim the EITC. Taxpayers are much more likely to claim EITC when they can claim the credit for one or more children. However, millions more taxpayers with purported qualifying children claim the EITC than Census Bureau data suggest actually qualify. The complex structures of today's families undoubtedly contribute to this situation.

Finally, the report highlights the positive benefit that splitting the EITC between a worker and child credit could have on the EITC improper payment rate. While the data from the most recent IRS EITC compliance study is dated, our estimates suggest that these new EITC structures could reduce the EITC improper payment rate by nearly 40 percent.

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 65 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.
- This year, for the first time, we have added a summary section at the beginning of each legislative recommendation. It describes the "Problem" and our suggested "Solution" in layman's terms. Our objective is to allow readers to quickly get a feel for all 65 of our recommendations by scanning the summaries.
- Where bills have been introduced in the past that are generally consistent with one of our recommendations, we have included a footnote at the end of the recommendation that identifies one or more of those bills. (Because of the large number of bills introduced in each Congress, we may 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 published in prior National Taxpayer Advocate reports.

By our count, Congress has enacted approximately 50 legislative recommendations that the National Taxpayer Advocate has proposed. See Appendix 2 for a complete listing. This total includes approximately 23 provisions that were included as part of the Taxpayer First Act.[1]

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. For example, the Taxpayer First Act was approved by both the House and the Senate in 2019 on voice votes with no recorded opposition.

We believe most 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, other Members of Congress, and their staffs find it useful, and we would be happy to discuss these recommendations in more detail with interested committees or Member offices.

We highlight the following ten legislative recommendations for particular attention:

- **Amend the "Lookback Period" to Allow Tax Refunds for Certain Taxpayers Who Took Advantage of the Postponed Filing Deadlines Due to COVID-19.** Because of the pandemic, the IRS postponed the tax return filing deadline to July 15 in 2020 and to May 17 in 2021. These postponements helped taxpayers by giving them more time to file their returns, but they are inadvertently springing a trap on unwary taxpayers and tax professionals that may cause permanent harm by limiting their ability to obtain refunds. Under IRC § 6511, taxpayers generally must meet a two-part test to receive a refund. First, the claim for refund must be timely; it generally must be filed by the later of three years from the date the return was filed or two years from the date the tax was paid. Second, the monies at issue must have been paid within a specified "lookback period." The lookback period is three years plus the period of any extension of time for filing if the taxpayer filed the claim for refund within three years from the date of filing the return. But a "postponement" of the filing deadline, unlike an "extension" of time to file, does not extend the lookback period. *A taxpayer who filed his or her original return under to a "postponement" granted by the IRS because of the federally declared disaster will not be entitled to a refund if the excess amounts were paid (or deemed paid) outside the lookback period.*

  To illustrate, a taxpayer who filed her 2019 return by the postponed filing deadline of July 15, 2020, might reasonably believe she has until July 15, 2023, to file her claim for refund (three years from the date she filed her return).[2] However, her taxes (withholding and estimated tax payments) were deemed paid on April 15, 2020, which falls outside the lookback period of three years from July 15, 2023. The IRS will deny a claim for refund filed after April 15, 2023, in this circumstance. We recommend Congress amend the lookback period so that when the IRS postpones a filing deadline due to a disaster declaration, taxpayers can recover amounts paid within three years *plus the period of the postponement, similar to the law for extensions to file*.

- **Authorize the IRS to Establish Minimum Competency Standards for Federal Tax Return Preparers.** The IRS receives over 160 million individual income tax returns each year, and paid tax return preparers prepare the majority of them. Both taxpayers and the tax system depend heavily on the ability of preparers to prepare accurate tax returns. Yet no one is required to pass a competency test to become a federal tax return preparer, and numerous studies have found that non-credentialed tax return preparers routinely prepare inaccurate returns, which harms taxpayers and tax administration. To protect the public, federal and state laws generally require lawyers, doctors, securities dealers, financial planners, actuaries, appraisers, contractors, motor vehicle operators, and even barbers and beauticians to obtain licenses or certifications and, in most cases, to pass competency tests. Taxpayers and the tax system would benefit from requiring federal tax return preparers to do so as well. The IRS sought to implement minimum standards beginning in 2011, including passing a basic competency test, but a U.S. Court of Appeals affirmed a U.S. district court opinion that the IRS lacked the authority to impose preparer standards without statutory authorization. The plan the IRS rolled out in 2011 was developed after extensive consultation with stakeholders and was supported by almost all such stakeholders. We recommend Congress authorize the IRS to reinstitute minimum competency standards.

- **Expand the Tax Court's Jurisdiction to Hear Refund Cases and Assessable Penalties.** 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 sue in a U.S. district court or the U.S. Court of Federal Claims. Although this dichotomy between deficiency cases and refund cases has existed for decades, we recommend Congress give taxpayers the option to litigate both deficiency and refund tax disputes in the U.S. Tax Court. Due to the tax expertise of its judges, the Tax Court is often better equipped to consider tax controversies than other courts. It is also more accessible to unsophisticated and unrepresented taxpayers than other courts because it uses informal procedures, particularly in disputes that do not exceed $50,000 for one tax year or period.

- **Restructure the Earned Income Tax Credit (EITC) to Make It Simpler for Taxpayers and Reduce the Improper Payments Rate.** TAS has long advocated for dividing the EITC into two credits: (i) a refundable worker credit based on each individual worker's earned income, despite 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 claims on tax returns against Forms W-2, reducing the improper payment 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 larger family credit. The National Taxpayer Advocate published a report making this recommendation in 2019,[3] and we continue to advocate for it.[4]

- **Expand the Protection of Taxpayer Rights by Strengthening the Low Income Taxpayer Clinic (LITC) Program.** The LITC Program is an effective means to assist low-income taxpayers and taxpayers who speak English as a second language. When the LITC Program was established as part of the IRS Restructuring and Reform Act of 1998, IRC § 7526 limited annual grants to no more than $100,000 per clinic. The law also imposed a 100 percent "match" requirement so a clinic cannot receive more in grants than it raises from other sources. The nature and scope of the LITC Program has evolved considerably since 1998, and those requirements are preventing the program from expanding assistance to the largest possible universe of eligible taxpayers. We recommend that Congress remove the per-clinic cap and allow the IRS to reduce the match requirement to 25 percent if doing so would provide coverage for additional taxpayers.

- **Modify the Requirement That Written Receipts Acknowledging Charitable Contributions Must Pre-Date the Filing of a Tax Return.** To claim a charitable contribution, a taxpayer must receive a written acknowledgment from the donee organization before filing his or her tax return. For example, if a taxpayer contributes $5,000 to a church, synagogue, or mosque; files a tax return claiming the deduction on February 1; and receives a written acknowledgment on February 2, the deduction is not allowed – even if the taxpayer had credit card receipts and other documentation that fully and unambiguously substantiate the deduction. This requirement is inconsistent with congressional policy to encourage charitable giving. We recommend that Congress modify the substantiation rules to require reliable – but not necessarily advance – acknowledgment from the donee organization.

- **Clarify That Supervisory Approval Is Required Under IRC § 6751(b) Before Proposing 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… ." At first, it seems a requirement that an "initial determination" be approved by a supervisor would mean the approval must occur before the penalty is proposed. However, the timing of this requirement has been the subject of considerable litigation, with some courts holding that the supervisor's approval might be timely even if provided after a case has gone through the IRS Independent Office of Appeals and is in litigation. Very few taxpayers litigate their tax disputes. Therefore, to effectuate Congress's intent that the IRS not penalize taxpayers in certain circumstances without supervisory approval, the approval must 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 the taxpayer proposing a penalty.

- **Require That Math Error Notices Describe the Reason(s) for the Adjustment With Specificity, Inform Taxpayers They May Request Abatement Within 60 Days, and Be Mailed by Certified or Registered Mail.** Under IRC § 6213(b), the IRS may make a summary assessment of tax arising from a mathematical or clerical error. When the IRS does so, it must send the taxpayer a notice describing "the error alleged and an explanation thereof." By law, the taxpayer has 60 days from the date of the notice to request that the summary assessment be abated. However, many taxpayers do not understand that failing to respond to an IRS math error notice within 60 days means they have conceded the adjustment and forfeited their right to challenge the IRS's position in the U.S. Tax Court. To ensure taxpayers understand the adjustment and their rights to contest it, we recommend that Congress amend IRC § 6213(b) to require that the IRS specifically describe the error causing to the adjustment and inform taxpayers they have 60 days to request the summary assessment be abated. Additionally, requiring that the notice be sent either by certified or registered mail would underscore the significance of the notice and provide an additional safeguard to ensure that taxpayers receive this critical information.

- **Provide That "an Opportunity to Dispute" an Underlying Liability Means an Opportunity to Dispute Such Liability in a Prepayment Judicial Forum.** IRC §§ 6320(b) and 6330(b) provide taxpayers with the right to request an independent review of either a Notice of Federal Tax Lien (NFTL) filed by the IRS or a proposed levy action. The purpose of this collection due process (CDP) right is to give taxpayers adequate notice of IRS collection activity and provide a meaningful hearing to determine whether the IRS properly filed an NFTL or proposed or initiated a levy. The IRS and the courts interpret the current law to mean that an opportunity to dispute the underlying liability includes a prior opportunity for a conference with the IRS Independent Office of Appeals offered either before or after assessment of the liability, even where there is no opportunity for judicial review of the Appeals conference. The value of CDP proceedings is undermined when taxpayers who have never had an opportunity to dispute the underlying liability in a prepayment judicial forum are precluded from doing so during their CDP hearing. These taxpayers have no alternative but to pay the tax and then seek a refund by suing in a U.S. district court or the U.S. Court of Federal Claims – an option that not all taxpayers can afford. In our view, judicial and administrative interpretations limiting a taxpayer's ability to challenge the IRS's liability determination in a CDP hearing are inconsistent with Congress's intent when it enacted CDP procedures. We recommend that Congress modify these provisions to ensure taxpayers have a right to prepayment judicial review.

- **Provide That Assessable Penalties Are Subject to Deficiency Procedures.** IRC § 6212 requires the IRS to issue a "notice of deficiency" before assessing certain liabilities. IRC § 6671(a) authorizes the IRS to assess some penalties without first issuing a notice of deficiency. These penalties are generally subject to judicial review only if taxpayers first pay the penalties and then sue for a refund. Assessable penalties can be substantial, sometimes running into the millions of dollars. Under IRS interpretation, these penalties include, but are not limited to, foreign information reporting penalties under IRC §§ 6038, 6038A, 6038B, 6038C, and 6038D. The inability of taxpayers to obtain judicial review on a pre-assessment basis and the requirement that taxpayers pay the penalties in full to obtain judicial review on a post-assessment basis can effectively deprive taxpayers of the right to judicial review at all. To ensure taxpayers have an opportunity to obtain judicial review before they are required to pay often huge penalties that they do not believe they owe, we recommend that Congress require the IRS to issue a notice of deficiency before imposing assessable penalties.

Endnotes

1 Taxpayer First Act, Pub. L. No. 116-25, 133 Stat. 981 (2019). We say Congress enacted "approximately" a certain number of National Taxpayer Advocate recommendations because in some cases, enacted provisions are substantially similar to what we recommended but are not identical. The statement that Congress enacted a National Taxpayer Advocate recommendation is not intended to imply that Congress acted solely because of the recommendation. Congress, of course, receives suggestions from a wide variety of stakeholders on an ongoing basis and makes decisions based on the totality of the input it receives.

2 This year, a taxpayer has until July 17, 2023, to file a timely claim for refund, as July 15, 2023, is a Saturday. When the due date falls on a Saturday, Sunday, or legal holiday, IRC § 7503 provides that a taxpayer has until the next business day to file a timely claim.

3 *See* National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress, vol. 3 (Special Report: *Earned Income Tax Credit: Making the EITC Work for Taxpayers and the Government*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/JRC20_Volume3.pdf.

4 *See* Research Report: *Exploring Earned Income Tax Credit Structures: Dividing the Credit Between a Worker and Child Component and Other Considerations, supra*.

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