

National Taxpayer Advocate  
**ANNUAL REPORT  
TO CONGRESS**

*Executive Summary – Preface & Highlights*

2023



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 2023 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 tax issues most frequently litigated in the Tax Court and other federal courts, and makes administrative and legislative recommendations to mitigate taxpayer problems and improve the taxpayer experience.<sup>1</sup> Our legislative recommendations are presented in a companion volume, National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration*.

The year 2023 was one of extraordinary transition for the IRS and therefore for taxpayers. Despair has turned to cautious optimism. Because of the COVID-19 pandemic, the three preceding years had been the most challenging years the agency and most taxpayers had ever experienced. The IRS shut its offices and stopped processing paper-filed tax returns and correspondence for several months after the onset of the pandemic in 2020, and it then reopened those functions only partially for several months to comply with social distancing requirements. Tax returns and taxpayer correspondence sat unopened in trailers for months on end.

By the close of the 2021 filing season, the agency faced a backlog of over 35 million tax returns that required manual data entry or employee review.<sup>2</sup> Millions of taxpayers waited ten months or more to receive their refunds, resulting in financial hardships for many. A record 282 million telephone calls came into the IRS during fiscal year (FY) 2021. IRS employees only answered 11 percent of them.<sup>3</sup> As a result, many taxpayers were doubly harmed. The IRS wasn't meeting taxpayer needs, and when frustrated and sometimes frantic taxpayers called the IRS for help, they couldn't get through.

By the end of FY 2022, the clouds began to part. The IRS had worked through most of its processing backlog of original individual income tax returns (Forms 1040). Congress had not implemented late-year or retroactive changes in law that would have required the IRS to reprogram its systems and caused confused taxpayers to inundate the IRS with telephone calls seeking clarification. Congress had provided significant additional funding through the Inflation Reduction Act (IRA) for the IRS to modernize and transform its operations.<sup>4</sup> For the first time since I began serving as the National Taxpayer Advocate in March 2020, discussions about improving the taxpayer experience and modernizing the IRS's information technology (IT) systems do not seem like merely wishful thinking. Realistically, however, the IRS has a tall mountain to climb to achieve its goals of rebuilding the agency, modernizing its systems, and providing the quality service taxpayers deserve.

During the early part of FY 2023, the IRS developed and published a Strategic Operating Plan (SOP) that details key objectives to improve the taxpayer experience and modernize IRS operations.<sup>5</sup> The SOP was the culmination of intense agency-wide discussions, analysis, and planning. The IRS has begun to

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<sup>1</sup> IRC § 7803(c)(2)(B)(ii).

<sup>2</sup> National Taxpayer Advocate Fiscal Year 2022 Objectives Report to Congress 1, 6 (*Review of the 2021 Filing Season*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/06/JRC22\\_FullReport.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/06/JRC22_FullReport.pdf) (citing data provided by the IRS Wage and Investment (W&I) Division).

<sup>3</sup> IRS, Joint Operations Center (JOC), Snapshot Reports: Enterprise Snapshot, Enterprise Total (week ending Sept. 30, 2021).

<sup>4</sup> An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14, Pub. L. No. 117-169, § 10301, 136 Stat. 1818, 1831-1833 (2022) [hereinafter referred to as the "Inflation Reduction Act"].

<sup>5</sup> IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan (Apr. 2023), <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.

implement some of the SOP initiatives and has established implementation dates for others. Among the accomplishments to date: The IRS has begun to implement scanning technology so IRS employees in the future will no longer have to manually transcribe all paper-filed tax returns, and the IRS offers a Document Upload Tool (DUT) so most taxpayers can submit requested documentation to the IRS electronically rather than being forced to use snail mail. I am pleased to say the taxpayer experience is slowly improving, and more positive changes are on the horizon.

Some of the additional funding the IRS received through the IRA has been controversial, and during 2023, there were efforts to reduce it. But I think it's important to point out that the disagreement over IRA funding has concerned only the portion of the funding allocated to the IRS's Enforcement account.<sup>6</sup> There has continued to be broad bipartisan support for the portion of IRA funding allocated to the Taxpayer Services and Business Systems Modernization (BSM) accounts and the related portion of the Operations Support account. These are the funding streams that will enable continuing improvements in taxpayer service and technology. However, these accounts received only a small portion of the IRA funding; Taxpayer Services and BSM together received just ten percent of the total.

As I discussed in a blog posted in March, I believe some of the funding provided for Enforcement should be redirected to the Taxpayer Services and BSM accounts to enable the IRS to make the changes necessary to transform the taxpayer experience and modernize its IT systems in the next few years.<sup>7</sup> It is critical that Congress, the Government Accountability Office, the Treasury Inspector General for Tax Administration, and my office conduct diligent oversight to ensure the funding Congress provides is well spent. But I want to emphasize that additional funding is essential for continued improvement in taxpayer interactions with the IRS. Replacing antiquated technology systems and ensuring the IRS has enough employees to perform basic services such as answering telephone calls and processing correspondence simply can't be done without sufficient resources.

## SUCCESSSES AND CONTINUED AREAS OF WEAKNESS IN 2023

Overall, the magnitude of successes exceeded the areas of weakness in 2023, and most metrics showed significant improvement from the depths of the pandemic. The two most important improvements were eliminating the backlog of paper-filed Forms 1040 and answering a much higher percentage of taxpayer telephone calls.

- **Good News About Form 1040 Processing.** At the close of the 2021 filing season, the IRS had a backlog of about 17 million paper-filed Forms 1040.<sup>8</sup> All paper-filed Forms 1040 had to be transcribed, digit by digit, into IRS systems. By the end of 2023, the backlog of paper-filed Forms 1040 had been virtually eliminated.<sup>9</sup>
- **Good News About Telephone Service.** During FY 2021, IRS employees answered just 11 percent of its calls.<sup>10</sup> In FY 2023, IRS employees answered 29 percent of its calls – an increase of more than

6 The IRS receives its appropriations through four accounts. The accounts and the amounts of supplemental ten-year funding provided by the IRA are as follows: Enforcement (\$45.6 billion), Taxpayer Services (\$3.2 billion), Operations Support (\$25.3 billion), and Business Systems Modernization (\$4.8 billion). According to the IRS's Chief Financial Officer, the majority of Operations Support dollars support taxpayer services and information technology modernization (including hiring and training, rent, computers, and maintenance of existing technology systems). BSM dollars fund the development of new technology systems.

7 See Erin M. Collins, National Taxpayer Advocate Urges Congress to Maintain IRS Appropriations But Re-Direct Some Funds Toward Taxpayer Service and Information Technology Modernization, NATIONAL TAXPAYER ADVOCATE BLOG (Mar. 16, 2023), <https://www.taxpayeradvocate.irs.gov/news/nta-blog-nta-urges-congress-to-maintain-irs-appropriations-but-re-direct-some-funds-toward-taxpayer-service-and-it-modernization>.

8 National Taxpayer Advocate Fiscal Year 2022 Objectives Report to Congress 6 (*Review of the 2021 Filing Season*) (citing data provided by W&I), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/06/JRC22\\_FullReport.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/06/JRC22_FullReport.pdf).

9 IRS, Wage & Investment Inventory Report (week ending Sept. 30, 2023).

10 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Enterprise Total (week ending Sept. 30, 2021).

150 percent. The IRS’s benchmark “Level of Service” measure reached 85 percent for the filing season.<sup>11</sup> The IRS also substantially reduced average wait times on its toll-free lines from 29 minutes in FY 2022 to 13 minutes in FY 2023.<sup>12</sup> The improved performance was mostly attributable to two factors: i) the IRS hired more employees to answer the phones and ii) incoming calls dropped by two-thirds – from 282 million in FY 2021 to 93 million in FY 2023.<sup>13</sup> Taxpayers generally call the IRS when they are experiencing problems, so the drop in call volume last year was a good sign that overall taxpayers’ problems have declined. (But see *Bad News About Telephone Service* below.)

Despite these vast improvements, challenges remain.

- **Amended Tax Returns and Taxpayer Correspondence.** The IRS’s success in eliminating its backlog of Forms 1040 did not translate into eliminating its backlog of individual amended tax returns (Forms 1040-X), business amended tax returns, or correspondence. Those backlogs remain at more than double their pre-pandemic levels. In addition, the percentage of taxpayer correspondence classified as “overage” has reached its highest level in recent memory, as shown in Figure 1.1.1.

**FIGURE 1.1.1, Volume of Unprocessed Amended Returns, Correspondence, and Accounts Management Cases Comparing Calendar Years 2018-2022 and 2023 Through October 28, 2023<sup>14</sup>**

	12/29/2018	12/28/2019	12/26/2020	12/25/2021	12/31/2022	10/28/2023
Unprocessed Correspondence and AM Cases (Requests for Account Adjustments)	1.3 mil	1.9 mil	3.2 mil	5.5 mil	4.9 mil	4.3 mil
Unprocessed Amended Returns (Individual and Business)	0.4 mil	0.5 mil	0.8 mil	2.5 mil	1.3 mil	1.9 mil
Total Unprocessed AM Inventory	1.7 mil	2.4 mil	4.0 mil	8.0 mil	6.2 mil	6.2 mil
Percentage of Unprocessed Inventory Classified as Overage	35.2%	42.7%	44.6%	60.3%	49.7%	69.5%

Delays in processing amended returns translate into delays in receiving refunds. Delays in processing taxpayer correspondence also have financial implications for taxpayers. These continued high paper inventory levels stem largely from the IRS’s decision to prioritize answering phone calls over processing amended returns and correspondence. Both functions are performed by IRS customer service representatives (CSRs) in the agency’s Accounts Management (AM) function. When CSRs are assigned to answer phones, they aren’t processing paper. When CSRs are assigned to process paper, they aren’t answering phones. It’s a zero-sum game. To achieve high telephone service levels, the IRS must staff its phone lines so there are enough CSRs to handle calls during peak periods. But that means that during quiet periods, CSRs are simply sitting around waiting for the phone to ring.

11 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Accounts Management (week ending Apr. 22, 2023).

12 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Enterprise Total (weeks ending Sept. 30, 2022, and Sept. 30, 2023).

13 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Enterprise Total (weeks ending Sept. 30, 2021, and Sept. 30, 2023).

14 IRS, AM Inventory Report (AMIR), National Inventory Age Report (weeks ending Dec. 29, 2018; Dec. 28, 2019; Dec. 26, 2020; Dec. 25, 2021; Dec. 31, 2022; and Oct. 28, 2023, respectively).

To achieve an LOS of 85 percent during the filing season on its AM telephone lines, CSRs spent 3.73 million hours staffing those lines. Of the 3.73 million hours, CSRs spent 1.27 million hours (34 percent of their time) simply waiting to receive calls.<sup>15</sup> The IRS cannot easily shuffle employees back and forth between answering phones and processing correspondence, so unproductive employee time was the price it had to pay to improve telephone service levels. Going forward, the IRS needs to find a way to move employees between those two functions more nimbly. For present purposes, however, we need to keep in mind that backlogs in processing tax returns and taxpayer correspondence drive much of the phone volume. I encourage the IRS to put more emphasis on reducing its paper processing backlog in 2024.

- **Employee Retention Credit (ERC) Processing.** As of early December, the IRS had a backlog of approximately one million ERC claims.<sup>16</sup> Congress authorized the ERC to provide relief to employers that were shut down by a government order due to the COVID-19 pandemic during 2020 or the first three calendar quarters of 2021; that experienced a specified decline in gross receipts from the beginning of the pandemic through the third quarter of 2021; or that qualified as a recovery start-up business for the third or fourth quarters of 2021.<sup>17</sup> The maximum credit amount was \$26,000 per employee (\$50,000 credit per calendar quarter for recovery start-up businesses).

The IRS reports it has received a raft of fraudulent and otherwise nonqualifying claims, making the ERC difficult to administer. If it pays claims quickly without adequate review, it could pay billions of dollars to nonqualifying persons. If it takes the time to review claims carefully, eligible employers will experience significant delays in receiving the credit, and in extreme cases, employers who need the funds immediately could go out of business. Some employers are tax-exempt organizations, including tax-exempt hospitals that serve areas where residents don't have other comparable health care options.

On September 14, 2023, the IRS announced it would freeze the processing of all claims from that date forward until at least the early part of 2024, and it will slow the processing of claims received before that date to review them more carefully.<sup>18</sup> The IRS's decision to slow the processing of ERC claims and increase its reviews was reasonable, but I am concerned that many taxpayers who are entitled to the ERC will have to wait extended periods of time to receive their refunds, regardless of whether they submitted their claims before or after the IRS imposed the moratorium. While the IRS needs to stop improper or fraudulent claims, it must continue to process and pay refunds to eligible employers.

- **Bad News About Telephone Service.** As I mentioned earlier, the IRS did a much better job of answering taxpayer telephone calls in 2023 than during the pandemic years, and it deserves credit for doing so. But it is important to point out that the metrics it uses to measure its telephone performance are highly technical and don't present a complete picture of what taxpayers – or tax professionals – experience. The IRS measures its performance primarily by using a metric known as the Level of Service (LOS) on its AM telephone lines. Many observers assume the LOS reflects the percentage of calls the IRS answers. It does not. During the 2023 filing season, the IRS achieved

<sup>15</sup> IRS, Ready Agent Hours Report (Jan. 1, 2023, through Apr. 22, 2023).

<sup>16</sup> As of December 6, 2023, the IRS reported it had an inventory of approximately 1.03 million unprocessed Forms 941-X, Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund. See IRS, IRS Operations: Status of Mission-Critical Functions, <https://www.irs.gov/newsroom/irs-operations-status-of-mission-critical-functions> (last visited Dec. 15, 2023). Employers use Form 941-X to claim the ERC, and about 95 percent of Forms 941-X contained ERC claims. IRS, Research, Analysis, and Data (RAD) Report, COVID Business Credits (week ending Sept. 30, 2023).

<sup>17</sup> IRS, Employee Retention Credit (Dec. 6, 2023), <https://www.irs.gov/coronavirus/employee-retention-credit>.

<sup>18</sup> IRS News Release, IR-2023-169, To Protect Taxpayers From Scams, IRS Orders Immediate Stop to New Employee Retention Credit Processing Amid Surge of Questionable Claims; Concerns From Tax Pros (Sept. 14, 2023), <https://www.irs.gov/newsroom/to-protect-taxpayers-from-scams-irs-orders-immediate-stop-to-new-employee-retention-credit-processing-amid-surge-of-questionable-claims-concerns-from-tax-pros>.



an LOS of 85 percent.<sup>19</sup> Yet only 35 percent of callers reached an IRS employee during the filing season,<sup>20</sup> and only 29 percent of callers reached an IRS employee during the full fiscal year.<sup>21</sup>

The LOS calculation excludes three categories of calls. First, it excludes taxpayer hang-ups. If a taxpayer calls the IRS to discuss an account problem and hangs up before being placed into a calling queue, the call isn't counted. But taxpayers calling the IRS rarely have a spontaneous epiphany and decide they don't need to speak with the IRS after all. They generally hang up because something about the interaction – perhaps the waiting time, perhaps the phone tree, perhaps being routed for an automated response – deters them from proceeding. Second, the IRS's benchmark LOS measure only includes calls routed to the AM function. But the IRS routed almost one quarter of its callers last year to its compliance lines and other functions, and those callers often face longer hold times and lower levels of service. Third, the IRS phone tree automatically routes many taxpayer calls for automated responses, and those calls are also excluded from the LOS calculation.

Figure 1.1.2 shows the breakdown of telephone performance for all lines combined and for the AM phone lines.

**FIGURE 1.1.2, Results on All Telephone Lines and Accounts Management Telephone Lines, FY 2023<sup>22</sup>**

Telephone Lines	Calls Received	Number of Calls Answered by an IRS Employee	Percentage of Calls Answered by an IRS Employee	IRS-Reported Level of Service	Time on Hold Before Speaking With an Employee
All Calls	92.9 mil	27.3 mil	29%	51%	13 min
Calls Routed to AM Lines	71.6 mil	17.9 mil	25%	52%	10 min

The IRS offers tax professionals a separate phone line known as the Practitioner Priority Service (PPS) telephone line to reach the IRS. The rationale is that the majority of taxpayers use paid tax return preparers, and a high percentage of taxpayers hire representatives to handle audit and other more complex matters. Tax professionals are more informed than the average taxpayer and sometimes try to resolve issues for several taxpayers on a single call. For those reasons, the IRS tries to ensure they can speak with more highly trained employees. But in FY 2023, the PPS telephone line was harder to reach than most other lines, as shown in Figure 1.1.3.

**Figure 1.1.3, Results on the Practitioner Priority Service Telephone Line, FY 2023<sup>23</sup>**

Telephone Line	Calls Received	Number of Calls Answered by an IRS Employee	Percentage of Calls Answered by an IRS Employee	IRS-Reported Level of Service	Time on Hold Before Speaking With an Employee
Practitioner Priority Service	6.7 mil	1.9 mil	29%	34%	16 min

19 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Accounts Management (week ending Apr. 22, 2023).

20 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Enterprise Total (week ending Apr. 22, 2023).

21 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Enterprise Total (week ending Sept. 30, 2023).

22 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Enterprise Total and Accounts Management (week ending Sept. 30, 2023).

23 IRS, JOC, Snapshot Reports: Product Line Detail, PPS (week ending Sept. 30, 2023).

Tax professionals are essential to tax administration. Roughly 500,000 tax professionals prepare returns for more than 85 million taxpayers, so the IRS derives considerable benefit from working collaboratively with the pool of tax professionals.<sup>24</sup> Requiring tax professionals to call back repeatedly and wait on hold not only inconveniences them but often results in additional costs to taxpayers for the time their tax professionals bill for waiting on hold. The IRS should prioritize improving service on this phone line.

Discussions of IRS telephone performance measures typically focus on the ease of reaching the IRS and on hold times. Ultimately, the quality of the service provided is at least as important. As the IRS continues to refine its SOP, it should ensure there are proper metrics in place to measure quality, such as the percentage of taxpayer issues that are resolved with a single phone call, to assess whether the agency's telephone operations are successfully meeting taxpayer needs.

- **Unconscionable Delays in Assisting Victims of Tax-Related Identity Theft.** When a taxpayer notifies the IRS that he or she has been a victim of identity theft, the IRS creates a case that it works in its Identity Theft Victims Assistance (IDTVA) unit. During FY 2023, the IRS took an average of about *19 months* to resolve self-reported identity theft cases and send refunds to the affected taxpayers.<sup>25</sup> I'll restate that for emphasis: Victims of identity theft have to wait more than a year and a half for the IRS to resolve their cases and receive the monies they are owed. The IRS closed the year with an inventory of about 484,000 of these cases.<sup>26</sup>

If it weren't for the significant number of challenges affecting larger groups of taxpayers, this would be headline news, and it should be. Many taxpayers depend on their tax refunds to meet their living expenses, particularly low-income taxpayers who receive Earned Income Tax Credit (EITC) benefits that may approach \$7,000 for tax year 2022. IRS data shows that *69 percent* of taxpayers whose identity theft cases the IRS resolved had adjusted gross incomes at or below 250 percent of the Federal Poverty Level.<sup>27</sup> These delays were largely a consequence of the IRS prioritizing telephone service. In FY 2023, the IRS reassigned 572 employees who previously had been handling identity theft cases to answer the phones.<sup>28</sup> Moving into 2024, I strongly urge the IRS to place a higher priority on resolving IDTVA cases, clean out the backlog, reduce the time to resolve these issues, and help taxpayers with the variety of challenges they face resulting from the theft.

## PRIORITY ADMINISTRATIVE RECOMMENDATIONS TO IMPROVE THE TAXPAYER EXPERIENCE

At the end of each of the ten “most serious problem” sections in this report, I make administrative recommendations to address the problems. As the IRS refines its SOP and begins to implement significant changes in its technology and procedures, there are several recommendations from this report and prior writings that I believe deserve priority attention.<sup>29</sup>

24 As of December 1, 2023, about 476,000 individuals held current Preparer Tax Identification Numbers. IRS, Return Preparer Office Federal Tax Return Preparer Statistics (Dec. 5, 2023), <https://www.irs.gov/tax-professionals/return-preparer-office-federal-tax-return-preparer-statistics>. During 2023, tax professionals filed more than 85 million returns. IRS, Compliance Data Warehouse (CDW), Individual Returns Transaction File (IRTF) (Oct. 26, 2023).

25 IRS, AM IDTVA, RAD, Correspondence Imaging System Closed Case Cycle Time for the Identity Theft (IDT) Victims Unit Reports, FY 2023.

26 IRS, AMIR, National Inventory Age Report (week ending Sept. 30, 2023).

27 IRS, CDW, Individual Master File and IRTF (Sept. 28, 2023).

28 IRS response to TAS information request (Sept. 21, 2023). The 572 employees were permitted to work IDTVA cases during their allotted overtime.

29 See Erin M. Collins, The NTA Reimagines the IRS With a Dramatically Improved Taxpayer Experience (Part 2), 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>.

- **Prioritize the improvement of online accounts for individual taxpayers, business taxpayers, and tax professionals to provide functionality comparable to that of private financial institutions.**

Of all the steps the IRS can take to improve the taxpayer experience, creating robust online accounts has the potential to be the most transformational and should receive the highest priority. The IRS faces two significant challenges with respect to online accounts. First, the accounts require significant improvements so more taxpayers will see the benefits of using them. Second, the IRS will have to do a much better job of promoting online accounts. During 2023, individual taxpayers filed more than 160 million income tax returns, yet only 16.8 million users accessed individual online accounts.<sup>30</sup> That's just over ten percent. To better serve these taxpayers and persuade the other 90 percent of taxpayers to consider creating and using online accounts, the IRS should aim to provide online accounts through which taxpayers and tax professionals, among other things, can see full information about their accounts, receive and respond to IRS notices, and elect to receive payment reminders. That will enable taxpayers and tax professionals to keep fully informed about federal tax matters and to interact more smoothly with the agency, and it will substantially reduce the volume of telephone calls and mail the IRS receives.

- **Improve the IRS's ability to attract, hire, and retain qualified employees.** The IRS continues to struggle to hire qualified candidates in many key areas. Three of the main reasons are failure to advertise positions to the optimal target audience by job series, the slow pace of the hiring process, and non-competitive pay.

- *Regarding advertising:* Most Americans don't put "Check USAJobs.gov" at the top of their daily to-do lists, and even for those who use the website, it contains thousands of jobs; individuals without knowledge of a specific job are not likely to come across a given listing. To be effective, recruitment strategies must be tailored distinctly to each job series (*e.g.*, the IRS must market in different ways to hire submission processing employees, revenue agents, and attorneys). For priority jobs, the IRS needs to be more creative in identifying and conducting outreach to target audiences.
- *Regarding the onboarding process:* Notwithstanding recent improvements in the clearance process, selected candidates must often wait three months or longer for background checks and related onboarding prerequisites to be completed. Most candidates don't have the financial resources to wait that long for a paycheck. Many end up taking other jobs while they are waiting for the clearance process to play out. The hiring lag is shorter than it used to be, but the IRS still needs to find ways to make it shorter.
- *Regarding pay:* Many studies have been conducted that attempt to compare federal pay with private sector pay. The reality is that federal pay is competitive for some jobs but not for others. In some job categories (*e.g.*, revenue agents who audit large partnerships and corporations), the IRS seemingly has trouble hiring qualified employees because the pay isn't competitive. The IRS should work with the Office of Personnel Management and, if necessary, with Congress to ensure it has the pay flexibilities it needs to recruit and maintain a workforce equipped to do the job.

30 IRS, 2023 Filing Season Statistics for Week Ending Oct. 27, 2023, <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-oct-27-2023>; IRS response to TAS information request (Oct. 25, 2023).

- Ensure all IRS employees – particularly customer-facing employees – are well-trained.** Just as important as hiring the optimal workforce is ensuring that current and newly hired employees are given the training they need to do their jobs well. Anecdotally, some taxpayers and tax professionals who reached the IRS by phone over the past year have complained that the CSRs with whom they spoke did not have enough knowledge to resolve their issues. That is not surprising. To answer more telephone calls, the IRS hired 5,626 new CSRs in its AM function;<sup>31</sup> employees require both training and experience to provide top-quality service. The IRS has always had challenges with training, and those challenges are greater when the agency is staffing up. Results from the 2023 Federal Employee Viewpoint Survey show nearly a quarter of IRS employees provided a negative response to the statement, “I receive the training I need to do my job well.”<sup>32</sup> It is critical that the IRS make comprehensive training a priority and ensure that new hires receive adequate training before they are assigned to tasks with taxpayer impact.
- Upgrade the backend of the Document Upload Tool to fully automate the processing of taxpayer correspondence.** The IRS created the DUT to allow taxpayers to upload documents electronically in response to an IRS notice, phone conversation, or visit.<sup>33</sup> For many taxpayers, the rollout of the DUT is great news. They can respond from any location with internet access, avoid a trip to the post office, and be certain the IRS has received their information. Once taxpayers’ documents reach the IRS, however, they are still processed as if they came in on paper. All documents go to a central location and then must be parceled out to the appropriate function for processing and response. As part of its Paperless Processing Initiative, the IRS says that “[h]alf of paper-submitted correspondence, non-tax forms, and notice responses will be processed digitally” by the 2025 filing season.<sup>34</sup> Digital processing will shorten response times and enable the IRS to reassign employees to other high priority areas. The IRS should continue its efforts to digitalize the processing of more taxpayer submissions.
- Enable all taxpayers to e-file their federal tax returns.** About 93 percent of individual taxpayers now e-file their federal income tax returns, but the IRS still receives millions of paper-filed returns each year (more than 11 million individual returns and 15 million business returns last year).<sup>35</sup> Notably, some taxpayers who would like to e-file their returns cannot do so. This can happen if the taxpayer has to file a form or schedule that IRS systems are not programmed to accept electronically, if a return is rejected by IRS systems for violating a programming rule, or if a taxpayer is required to attach documentation to the return (*e.g.*, an appraisal or disclosure statement) 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. For example, there are about 150 to 200 IRS forms that taxpayers cannot e-file with the IRS.<sup>36</sup> The IRS plans to make them electronically fileable as part of its Paperless Processing Initiative, and it should address all other barriers to electronic filing.<sup>37</sup>

31 IRS response to TAS information request (Oct. 3, 2023).

32 Office of Personnel Management, 2023 Federal Employee Viewpoint Survey Results, Department of the Treasury, Internal Revenue Service, Question 10 (2023).

33 IRS, IRS Document Upload Tool (Oct. 27, 2023), <https://www.irs.gov/help/irs-document-upload-tool>.

34 IRS Fact Sheet, FS-2023-18, IRS Launches Paperless Processing Initiative (Aug. 2023), <https://www.irs.gov/newsroom/irs-launches-paperless-processing-initiative>.

35 IRS, Submission Processing, Filing Season Statistics Report (week ending Nov. 4, 2023).

36 IRS response to TAS information request (Aug. 10, 2023).

37 IRS Fact Sheet, FS-2023-18, IRS Launches Paperless Processing Initiative (Aug. 2023), <https://www.irs.gov/newsroom/irs-launches-paperless-processing-initiative>.

- **Extend eligibility for first-time penalty abatement to all international information return penalties regardless of whether the underlying return was filed late and stop automatic assessments prior to considering the taxpayer's specific facts and circumstances.** U.S. persons who receive gifts or inheritances from foreign persons or who own interests in certain foreign partnerships and corporations and engage in cross-border business activities are potentially subject to a wide range of U.S. reporting requirements. Many of these requirements come with significant penalty exposure when a filing is late, incomplete, or inaccurate. International information return penalties are automatically assessed, broadly applied, needlessly harsh, and often unexpected, and they sometimes harm lower-income taxpayers and immigrants. Rather than promoting tax compliance through taxpayer education and support, the IRS has opted to flex its administrative muscle and bring down the enforcement hammer on good-faith taxpayers and bad actors alike. As a result of this approach, some taxpayers are exposed to potentially life-changing penalties for failure to meet information filing requirements that are obscure and complex. First-time penalty abatement should be available in these circumstances.

## LEGISLATIVE RECOMMENDATIONS

The National Taxpayer Advocate Purple Book this year makes 66 recommendations to strengthen taxpayer rights and improve tax administration. Most recommendations in this volume are non-controversial, common-sense reforms. I highlight the following ten legislative recommendations for particular attention, in no specific order:

- **Require the IRS to Timely Process Claims for Credit or Refund (Recommendation #2).** Millions of taxpayers file claims for credit or refund with the IRS each year. Under current law, there is no requirement that the IRS pay or deny them. It may simply ignore them. The taxpayers' remedy is to file a refund suit in a U.S. district court or the U.S. Court of Federal Claims. For many taxpayers, that is not a realistic or affordable option, as full payment of the disputed amount is generally required, and there can be a sizeable filing fee. The absence of a processing requirement is a poster child for non-responsive government. While the IRS generally does process claims for credit or refund, the claims can, and sometimes do, spend months and even years in administrative limbo within the IRS. Providing symmetry between the assessment statute, which has a clear ending date, and a statute requiring the IRS to timely process claims for credit or refund would be good tax administration and would protect taxpayers' *rights to be informed, to pay no more than the correct amount of tax, and to finality*. We recommend Congress require the IRS to act on claims for credit or refund in a timely manner and impose certain consequences for failing to do so.
- **Authorize the IRS to Establish Minimum Competency Standards for Federal Tax Return Preparers and Revoke the Identification Numbers of Sanctioned Preparers (Recommendation #4).** The IRS receives over 160 million individual income tax returns each year, and most are prepared by paid tax return preparers. While some tax return preparers must meet licensing requirements (*e.g.*, certified public accountants, attorneys, and enrolled agents), most tax return preparers are not credentialed. Numerous studies have found that non-credentialed preparers disproportionately prepare inaccurate returns, causing some taxpayers to overpay their taxes and other taxpayers to underpay their taxes, which may lead to penalties and interest charges. This harms taxpayers financially and undermines the taxpayers' *right to pay no more than the correct amount of tax*. It also harms the government by reducing revenue collection overall. In FY 2022, for example, the IRS estimated the improper payments rate attributable to improper EITC claims was 32 percent,

amounting to \$18.2 billion.<sup>38</sup> Among tax returns claiming the EITC prepared by paid tax return preparers, 94 percent of the total dollar amount of EITC audit adjustments was attributable to returns prepared by non-credentialed preparers.<sup>39</sup>

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. To protect taxpayers and the public fisc, we recommend Congress authorize the IRS to establish minimum competency standards for tax return preparers and to revoke the Preparer Tax Identification Numbers (PTINs) of preparers who have been sanctioned for improper conduct.<sup>40</sup>

- **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 (Recommendation #8).** When the IRS proposes to assess additional tax, it ordinarily must issue a notice of deficiency to the taxpayer, which gives the taxpayer an opportunity to seek judicial review in the U.S. Tax Court if the taxpayer disagrees with the IRS’s position. In limited cases where a taxpayer commits a “mathematical or clerical error,” however, the IRS may bypass deficiency procedures and issue a “math error” notice that summarily assesses additional tax. If a taxpayer does not respond to a math error notice within 60 days, the assessment becomes final, and the taxpayer will have forfeited the right to challenge the IRS’s position in the Tax Court. Math error notices often do not clearly explain the reason for the adjustment and do not prominently explain the consequences of failing to respond within 60 days. We recommend Congress require the IRS to describe the error giving rise to the adjustment with specificity and inform taxpayers they have 60 days (or 120 days if addressed to a person outside the United States)<sup>41</sup> to request that a summary assessment be abated, or they will forfeit their right to judicial review.
- **Provide That Assessable Penalties Are Subject to Deficiency Procedures (Recommendation #13).** The IRS ordinarily must issue a notice of deficiency giving taxpayers the right to appeal an adverse IRS determination in the U.S. Tax Court before it may assess tax.<sup>42</sup> In limited situations, however, the IRS may assess certain 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, international information reporting penalties under IRC §§ 6038, 6038A, 6038B, 6038C, and 6038D. The inability of taxpayers to obtain judicial review on a preassessment 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, impairing the taxpayers’ *right to challenge the IRS’s position and be heard*. To

38 Government Accountability Office, GAO-23-106285, *Improper Payments: Fiscal Year 2022 Estimates and Opportunities for Improvement* 34 (2023), <https://www.gao.gov/assets/gao-23-106285.pdf>.

39 IRS CDW, IRTF (Return Preparers and Providers PTIN database and Audit Information Management System - Closed Cases database) (as of Sept. 28, 2023).

40 In general, a PTIN must be obtained by a tax return preparer who is compensated for preparing or assisting in the preparation of all or substantially all of a federal tax return or claim for refund. The preparer must then include the PTIN on any returns or claims for refund they prepared.

41 A taxpayer is given 60 additional days to respond to a notice of deficiency when the notice “is addressed to a person outside the United States.” IRC § 6213(a). By contrast, a taxpayer abroad is given no additional time to respond to a math error notice. To protect taxpayer rights and promote consistency, we recommend providing 60 additional days for taxpayers located outside the United States to respond to a math error notice. See National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (Give Taxpayers Abroad Additional Time to Request Abatement of a Math Error Assessment)*.

42 In the case of “mathematical or clerical errors,” the IRS may issue a “math error” notice that assesses tax without providing the right to judicial review. The taxpayer has 60 days to request that the math error assessment be abated. If the taxpayer makes the request, the IRS is required to abate the assessment, and if the IRS decides to challenge the taxpayer’s position, it must then issue a notice of deficiency. See IRC § 6213(b).

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 Congress require the IRS to issue a notice of deficiency before imposing assessable penalties.

- **Extend the Reasonable Cause Defense for the Failure-to-File Penalty to Taxpayers Who Rely on Return Preparers to E-File Their Returns (Recommendation #31).** The law imposes a penalty of up to 25 percent of the tax due for failing to file a timely tax return, but the penalty is waived where a taxpayer can show the failure was due to “reasonable cause.”<sup>43</sup> Most taxpayers pay tax return preparers to prepare and file their returns for them. In 1985, when all returns were filed on paper, the Supreme Court held that a taxpayer’s reliance on a preparer to file a tax return did not constitute “reasonable cause” to excuse the failure-to-file penalty if the return was not filed.<sup>44</sup> In 2023, a U.S. Court of Appeals held that “reasonable cause” is also not a defense when a taxpayer relies on a preparer to file a tax return electronically.<sup>45</sup>

For several reasons, it is often much more difficult for taxpayers to verify that a return preparer has e-filed a return than to verify that a return has been paper-filed. Unfortunately, many taxpayers are not familiar with the electronic filing process and do not have the tax knowledge to ask for the right document or proof of filing. Penalizing taxpayers who engage preparers and do their best to comply with their tax obligations is grossly unfair and undermines the congressional policy that the IRS encourage e-filing. Under the recent Court of Appeals’ ruling, astute taxpayers would be well advised to ask their preparers to give them paper copies of their prepared returns and then transmit the returns by certified or registered mail themselves so they can prove compliance. We recommend Congress clarify that reliance on a preparer to e-file a tax return may constitute “reasonable cause” for penalty relief and require the Secretary to issue regulations detailing what constitutes ordinary business care and prudence to evaluate reasonable cause requests.

- **Clarify That Supervisory Approval Is Required Under IRC § 6751(b) Before Proposing Penalties (Recommendation #33).** 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 blush, 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 choose to 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 take place earlier in the process. We recommend 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.
- **Expand the U.S. Tax Court’s Jurisdiction to Hear Refund Cases (Recommendation #43).** Under current law, taxpayers seeking to challenge an IRS tax-due adjustment can file a petition in the U.S. Tax Court, while taxpayers who have paid their tax and are seeking a refund must file suit in a U.S. district court or the U.S. Court of Federal Claims. Litigating in a U.S. district court or the Court of Federal Claims can be very challenging – filing fees are relatively high, rules of civil procedure are complex, the judges generally do not have tax expertise, and proceeding without a lawyer is difficult.

43 IRC § 6651(a)(1). The penalty increases to 15 percent per month up to a maximum of 75 percent in the case of a fraudulent failure to file. See IRC § 6651(f)(2).

44 *United States v. Boyle*, 469 U.S. 241 (1985).

45 *Lee v. United States*, No. 22-10793, 2023 WL 6979257 (11th Cir. Oct. 24, 2023).

By contrast, taxpayers litigating their cases in the Tax Court face a low \$60 filing fee,<sup>46</sup> may follow less formal procedural rules, are generally assured their positions will be fairly considered even if they don't present them well because of the tax expertise of the Tax Court's judges, and can more easily represent themselves without a lawyer. For these reasons, the requirement that refund claims be litigated in a U.S. district court or the Court of Federal Claims effectively deprives many taxpayers of the right to judicial review of an IRS refund disallowance. About 97 percent of all tax-related litigation is adjudicated in the Tax Court.<sup>47</sup> We recommend Congress expand the jurisdiction of the Tax Court to give taxpayers the option to litigate all tax disputes, including refund claims, in that forum.

- **Promote Consistency With the Supreme Court's *Boechler* Decision by Making the Time Limits for Bringing All Tax Litigation Subject to Equitable Judicial Doctrines (Recommendation #45).** Taxpayers who seek judicial review of adverse IRS determinations generally must file petitions in court by statutorily imposed deadlines. The courts have split over whether filing deadlines can be waived under extraordinary circumstances. Most tax litigation takes place in the U.S. Tax Court, where taxpayers are required to file petitions for review within 90 days of the date on the notice of deficiency (150 days if addressed to a person outside the United States). The Tax Court has held it lacks the legal authority to waive the 90-day (or 150-day) filing deadline even, to provide a stark example, if the taxpayer had a heart attack on Day 75 and remained in a coma until after the filing deadline. The Supreme Court recently held that filing deadlines are subject to "equitable tolling" in Collection Due Process hearings. We recommend Congress harmonize the conflicting court rulings by providing that all filing deadlines to challenge the IRS in court are subject to equitable tolling where timely filing was impossible or impractical.
- **Remove the Requirement That Written Receipts Acknowledging Charitable Contributions Must Be Contemporaneous (Recommendation #59).** 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 allowable – even if the taxpayer has credit card receipts and other documentation that fully and unambiguously substantiate the deduction. This requirement can harm civic-minded taxpayers who do not realize how strict the timing requirements are and undermines congressional policy to encourage charitable giving. We recommend Congress modify the substantiation rules to require reliable – but not necessarily advance – acknowledgement from the donee organization.
- **Enable the Low Income Taxpayer Clinic (LITC) Program to Assist More Taxpayers in Controversies With the IRS (Recommendation #64).** The LITC Program assists 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, the law 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 LITC grant funds 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 a larger universe of eligible taxpayers. We recommend Congress remove the per-clinic cap and allow the IRS to reduce the match requirement to 25 percent where doing so would expand coverage to additional taxpayers.

<sup>46</sup> The filing fee can be waived if the taxpayer establishes an inability to pay to the satisfaction of the Tax Court.

<sup>47</sup> Data compiled by the IRS Office of Chief Counsel (Oct. 20, 2023); IRS, Counsel Automated Tracking System, TL-711 and TL-712. This data does not include cases on appeal and declaratory judgments.



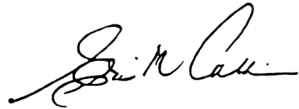
## CONCLUSION

After several difficult years for taxpayers, the IRS, and society in general, tax administration in 2023 mostly managed to leave its COVID-19 problems behind. The IRS eliminated most of its processing backlog, generally paid refunds timely, and answered taxpayer telephone calls at pre-pandemic levels. The good news is that, with limited exceptions, we are back to business as usual.

The bad news is that the baseline level of “business as usual” was not good enough. Our nation’s taxpayers deserve a 21st century tax administration agency that is fair and equitable, provides timely and clear guidance, makes it possible for all taxpayers to electronically file their tax returns, answers its phones and resolves most issues at the first point of contact, and allows taxpayers to conduct business on any follow-up matters through online accounts in the same way they conduct business with their financial institutions.

With the infusion of funding the IRS received through the Inflation Reduction Act and the planning that has gone into its Strategic Operating Plan, the IRS has taken major strides forward this year. As the IRS continues to prioritize its SOP and initiatives, I am pleased that the initial focus covers several of the most serious problems identified in this report. I look forward to working with Congress and the IRS as the agency refines and implements its plans, and together with my TAS team, we stand ready to help improve taxpayer service and tax administration for the benefit of all taxpayers and to continue to serve as their safety net when the system fails.

Respectfully submitted,



**Erin M. Collins**  
National Taxpayer Advocate  
December 31, 2023

## 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 performing to protect and further 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<sup>1</sup>



### Recent Legislation Has Provided the IRS a Tremendous Opportunity to Improve Its Taxpayer Service

- In July 2019, Congress passed the Taxpayer First Act (TFA), directing the IRS to focus on improving its taxpayer services and requiring the IRS “to submit to Congress a written comprehensive customer service strategy.”<sup>2</sup> This strategy, the Taxpayer First Act Report to Congress, included 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.”<sup>3</sup>
- In August 2022, Congress passed the Inflation Reduction Act of 2022 (IRA), appropriating 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.<sup>4</sup> Though subsequent legislation has rescinded \$1.4 billion from the original IRA funding<sup>5</sup> and an additional \$20 billion in cuts have been slated to span fiscal years (FYs) 2024 and 2025,<sup>6</sup> the remaining monies still provide the IRS a unique opportunity to significantly improve its delivery of taxpayer services.

- In April 2023, the IRS presented its IRA Strategic Operating Plan (SOP), communicating how it would use IRA funding to deliver palpable improvements to its mission as a tax administrator, with a strong emphasis on improving its customer service experience.<sup>7</sup>

With TXO dedicated to improving customer experience, two IRS reports road mapping a path to improved customer service, and the addition of sorely needed funding that empowers the IRS to turn that path into a reality, the IRS must now demonstrate to the taxpayers it serves how this funding is worth the investment.

### **The IRS Race for Improved Customer Service Has Begun, But This is a Marathon, Not a Sprint**

Buoyed with IRA funding, the IRS has shown initial progress in improving its customer service delivery. For example, the IRS dramatically reduced call wait times on certain Accounts Management (AM) phone lines during the 2023 filing season; expanded callback and chatbot capabilities to help taxpayers get answers to certain collection notices; increased staffing and reopened a number of Taxpayer Assistance Centers (TACs);<sup>8</sup> and expanded various online taxpayer service options for individuals, tax professionals, and business entities.<sup>9</sup> All are welcome advances for taxpayer service, but the IRS must do so much more and do it thoughtfully while keeping an eye on the taxpayer experience picture. The reallocation of IRS resources to improve one service area can lead to diminished service levels elsewhere. The IRS, for example, focused customer service representative (CSR) resources to bolster its phone service during the 2023 filing season, but those same CSRs were no longer processing paper correspondence or amended returns, creating new backlogs and a fresh host of calls from taxpayers and tax professionals looking for answers and issue resolution.<sup>10</sup> The IRS must be adaptable in its approach to implementing service initiatives, balance resources between competing service priorities, be ready for unanticipated outcomes, and be flexible enough to course correct in real time. An important key to identifying and maintaining this level of balanced taxpayer-centric service is to accurately measure, analyze, and react to shifts in taxpayer experience and impact.

As the IRS begins implementation of multiple taxpayer service initiatives, monitoring customer service metrics is more vital than ever. Employing the use of metrics is essential to gauging the success of any large public-facing system, and the Taxpayer Rights and Service Assessment can aid TXO in identifying customer service channels requiring adjustment by comparing fiscal year data as the IRS implements the customer service strategy.<sup>11</sup> Traditionally, IRS metrics have focused on “efficiency” – no-change rates, cycle time, etc. As the IRS evolves in its delivery of customer experience, it will require the development of new taxpayer-centric metrics. TAS looks forward to working with the IRS on the implementation of its SOP and the development of measures for gauging the success of its taxpayer service initiatives.

### **TAXPAYER SERVICE: TAX RETURN PROCESSING**

Tax return processing is a fundamental IRS function, and return filing metrics are an important measure of IRS workload. For many taxpayers, preparing and timely filing a tax return comes with some level of cost and effort, but once filed, taxpayers should feel satisfaction that they’ve done their part and that the IRS will follow through on its end of the bargain – by timely processing the return. When taxpayers experience delays in processing, however, their confidence in the system may erode and serious harm may threaten some taxpayers who rely on timely refund issuance to cover rent, meals, and other essential living costs. Large paper processing backlogs experienced due to the pandemic highlight how dramatically taxpayers are impacted when this essential process falters.<sup>12</sup> The IRS’s projected number of individual tax returns to be filed in FY 2023 is up nearly eight million from the number of individual tax returns filed in FY 2022. And as the number of return receipts grows, so grows the potential need for taxpayers to contact the IRS when processing goes awry, further stressing IRS resources. Expanded efforts to employ scanning technology and the promotion of digital filing options are very welcome,<sup>13</sup> but the IRS must thoughtfully balance its resources between processing strategies to mitigate backlogs and assisting taxpayers and tax professionals with questions when they encounter delays.

**FIGURE 1.2.2, Income Tax Returns Filed, FYs 2021-2023**

Measure/Indicator	FY 2021	FY 2022	FY 2023
Number of Returns Filed (Projected, All Types) <sup>14</sup>	269,032,799	260,325,402	276,967,900
Total Individual Income Tax Returns <sup>15</sup>	167,915,264	160,577,401	168,483,100
Total Individual Income Tax Returns Filed on Paper <sup>16</sup>	16,463,292	12,080,017	13,936,900
Total Individual Income Tax Returns Filed Electronically <sup>17</sup>	151,451,972	148,497,384	154,546,100
Free File Consortium (Tax Year) <sup>18</sup>	4,997,000	2,449,458	2,607,800
Fillable Forms (Tax Year) <sup>19</sup>	795,000	645,049	449,653
Total Corporation Income Tax Returns <sup>20</sup>	7,464,790	7,783,235	7,917,400
Total Corporation Income Tax Returns Filed on Paper <sup>21</sup>	1,062,200	1,155,810	1,116,200
Total Corporation Income Tax Returns Filed Electronically <sup>22</sup>	6,402,590	6,627,425	6,801,200

**Observation:** The total amount of individual and corporation income tax returns filed electronically remains high. Electronically filed returns now account for nearly 92 percent of individual filings and approximately 86 percent of corporation filings in FY 2023 (please note FY 2023 return counts are projected numbers). FY 2023 showed a considerable increase in fillable forms submissions over prior years.

## TAXPAYER SERVICE: EXAMINATION AND COLLECTION

IRS examination and collection action can lead to taxpayer anxiety, which may increase if taxpayers perceive the process as prolonged or inequitable. Perceptions of equity in IRS audit selection, for instance, were challenged this year when a Stanford University report identified racial disparities linked to aspects of the IRS’s examination selection algorithm and Earned Income Tax Credit (EITC) audits.<sup>23</sup> The IRS, to its credit, reviewed and concurred with the report’s findings, announcing it was working to “restore fairness in tax compliance by shifting more attention onto high-income earners, partnerships, large corporations and promoters abusing the nation’s tax laws.”<sup>24</sup> The IRS has also indicated for FY 2024 it would “substantially reduce the number of correspondence audits focused specifically on certain refundable credits, including the EITC, American Opportunity Tax Credit, Health Insurance Premium Tax Credit, and Additional Child Tax Credit.”<sup>25</sup> Acknowledging issues with an open commitment to course correction is an important step in maintaining taxpayer faith in its tax system, especially as it works to update and reposition enforcement resources and priorities. Exhibiting a commitment to equitable enforcement practices is not just a favorable administrative decision – it’s a basic taxpayer right, the *right to a fair and just tax system*.

The strategic allocation of limited workforce resources, however, will remain challenging but vital to ensuring equitable treatment across all taxpayer populations. 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<sup>26</sup> closures in the lower-income taxpayer category, for example, warrants consideration for adjustments in approach. Rising no-change audit<sup>27</sup> closures might suggest resources would be better directed toward areas of greater non-compliance. Existing IRS employees, together with the newly hired employees, are the IRS managers and leaders of tomorrow. As the IRS hires new employees to support proposed enforcement initiatives, it must adequately train them to perform their duties, upgrade its training for existing employees, and ensure that training includes guidance on recognizing, understanding, and integrating a respect for taxpayer rights into the essential work they perform. Implicit in a taxpayer’s *right to quality service* is that examination and collection activities respect all provisions of TBOR.<sup>28</sup>

**FIGURE 1.2.3, Type of Audit, Outcomes, and Time to Complete by Income, FYs 2021-2023**

Measure/Indicator	FY 2021	FY 2022	FY 2023
<b>Examination</b>			
Total Number of Open Audits Pending in Exam <sup>29</sup>	527,353	425,704	323,401
Total Number of Closed Audits – <b>Individual Tax Returns</b> <sup>30</sup>	658,998	625,947	518,811
Total Positive Income (Under \$50,000)			
No-Change Rate	8.6%	12.8%	11.6%
Agreed Rate <sup>31</sup>	19.8%	17.1%	16.2%
Taxpayer Failed to Respond Rate <sup>32</sup>	46.4%	44.2%	47.2%
Average Days to Audit Completion	339.5	269.6	259.9
Average Total Exam Time (Hours) Correspondence Audits	1.4	1.4	1.5
Average Total Exam Time (Hours) Field Exams	28.8	28.8	31.3
Percent of Correspondence Audits <sup>33</sup>	92.4%	91.3%	91.6%
Total Positive Income (Greater than or equal to \$50,000 and under \$10,000,000)			
No-Change Rate	11.6%	13.1%	13.1%
Agreed Rate	39.6%	40.3%	41.0%
Taxpayer Failed to Respond Rate	22.7%	21.3%	18.7%
Average Days to Audit Completion	385.0	317.6	295.2
Average Total Exam Time (Hours) Correspondence Audits	2.4	2.3	2.7
Average Total Exam Time (Hours) Field Exams	37.1	38.2	37.4
Percent of Correspondence Audits <sup>34</sup>	71.4%	72.2%	68.0%
Total Positive Income (Greater than or equal to \$10,000,000)			
No-Change Rate	30.3%	31.1%	36.3%
Agreed Rate	52.1%	51.5%	46.0%
Taxpayer Failed to Respond Rate	0.2%	0.2%	0.7%
Average Days to Audit Completion	682.9	982.0	679.3
Average Total Exam Time (Hours) Correspondence Audits	8.9	7.7	8.6
Average Total Exam Time (Hours) Field Exams	91.4	110.6	115.4
Percent of Correspondence Audits <sup>35</sup>	24.3%	32.2%	18.3%

**Observation:** Taxpayers with incomes below \$50,000 had about 90 percent of their audits conducted by correspondence, 44 percent or more failed to respond to the IRS, and fewer than 20 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 1.2.4, Offers in Compromise (OICs), Installment Agreements (IAs), and the Queue, FYs 2021-2023**

Measure/Indicator	FY 2021	FY 2022	FY 2023
<b>Collection</b>			
Number of OICs Submitted <sup>36</sup>	49,285	36,022	30,163
Percentage of OICs Accepted <sup>37</sup>	30.9%	28.7%	28.5%
Number of Individual and Business IAs <sup>38</sup>	2,361,646	2,383,849	2,696,963
Number of IAs With Bots <sup>39</sup>	0	8,505	16,379
Rejected Taxpayer Requests for IAs <sup>40</sup>	14,164	8,800	8,625
Percentage of Cases Pending Assignment (in the Queue) (Taxpayers) <sup>41</sup>	20.9%	17.5%	22.6%
Percentage of Cases Pending Assignment (in the Queue) (Modules) <sup>42</sup>	28.5%	24.0%	29.5%
Age of Individual Delinquencies Pending Assignment (in the Queue) <sup>43</sup>	4.3 years	4.9 years	4.9 years

**Observation:** The number of submitted OICs has dropped nearly 39 percent from FY 2021 to FY 2023 while IA submissions have increased by roughly 14 percent during the same period. The number of taxpayers in the collection queue are on the rise over the last fiscal year while the average age of individual unassigned delinquencies appears to have steadied. The number of IAs with bots has nearly doubled since FY 2022.

## TAXPAYER SERVICE: TAXPAYER-FACING COMMUNICATION CHANNELS

Supplemented with IRA funding, the IRS is set to exhibit service improvements in its taxpayer communication channels. The IRS, for example, increased its number of TACs as well as its TAC face-to-face taxpayer service contacts over FY 2022. However, as noted in a September 2023 Treasury Inspector General for Tax Administration (TIGTA) report, efforts to increase hiring and fully staff its TAC operations fell short as employee attrition diminished the breadth of new-hire gains.<sup>44</sup> The cycle time to process taxpayer correspondence is down since the last fiscal year, a welcome change, but the level of *average* correspondence left for the IRS to work is significantly higher. Phone service has shown the greatest improvement with a general rise in the number of calls answered by an IRS employee and a quicker average speed of answer, but the shuffling of phone assistor resources may have led to increased processing times in other service areas.<sup>45</sup> One year after enactment of the IRA, the IRS is working very hard to improve its taxpayer service. While it will inevitably encounter obstacles as it implements further change, the IRS must strategically monitor and develop customer service measures to ensure its application of resources is generating the improvements in taxpayer service it seeks and that it maintains a balance across all service areas. Using TBOR as the core of this development process is important as these rights are essential to the standard of service a taxpayer receives when working with the IRS, no matter the service area or communication channel.

**FIGURE 1.2.5, In-Person Service, Correspondence, Telephone Service, and Online Service, FYs 2021-2023**

Measure/Indicator	FY 2021	FY 2022	FY 2023
<b>In-Person Service</b>			
Number of TACs <sup>46</sup>	358	360	363
Number of Face-to-Face TAC Contacts <sup>47</sup>	940,000	1.3 million	1.6 million
Number of Calls to the TAC Appointment Line That Did Not Result in a Scheduled Appointment <sup>48</sup>	922,000	501,000	913,000
<b>Correspondence<sup>49</sup></b>			
Individual Correspondence <sup>50</sup>	6,306,488	6,950,094	6,690,427
Average Cycle Time to Work Individual Correspondence <sup>51</sup> (Master File (IMF))	201 days	207 days	138 days
Inventory Overage <sup>52</sup>	59.6%	44.6%	63.2%
Business Correspondence <sup>53</sup>	4,197,132	4,599,806	5,750,123
Average Cycle Time to Work Business Correspondence <sup>54</sup> (Master File (BMF))	144 days	163 days	148 days
Inventory Overage <sup>55</sup>	51.5%	60.4%	74.5%
<b>Telephone Service</b>			
Total Calls to IRS <sup>56</sup>	281,708,009	173,265,572	92,875,396
Number of Calls Answered by IRS Employees <sup>57</sup>	32,039,550	21,740,474	27,257,751
Percentage of Calls Answered by IRS Employees <sup>58</sup>	11.4%	12.5%	29.3%
IRS Level of Service (LOS) <sup>59</sup>	21.3%	21.3%	51.30%
IRS Average Speed of Answer <sup>60</sup>	22.8 minutes	28.6 minutes	13.3 minutes
Practitioner Priority: Percentage of Calls Answered (LOS) <sup>61</sup>	28.0%	16.9%	34.0%
Practitioner Priority: Average Speed of Answer <sup>62</sup>	16.1 minutes	25.4 minutes	16.2 minutes
<b>Online Service</b>			
Number of Visits to IRS.gov <sup>63</sup>	1,999,988,189	1,087,210,500	880,940,703
Number of Page Views <sup>64</sup>	11,452,583,281	5,310,673,611	3,761,006,353
Online IAs <sup>65</sup>	1,491,083	1,858,004	2,020,102
Where's My Refund? Inquiries <sup>66</sup>	632,361,686	447,729,355	303,132,000

**Observation:** In-person TAC visitations have steadily increased between FY 2021 and FY 2023. Individual correspondence inventories have fallen slightly between FY 2022 and FY 2023, while business correspondence inventories and overage inventories for both individual and business categories are on the rise. The IRS saw a drop in total calls in FY 2023 with an increase in the percentage of calls answered by IRS employees and a significant drop in the average speed of answer.

## **TAXPAYER SERVICE: INFORMATION TECHNOLOGY**

The IRS is expanding options for taxpayers to interact with the agency digitally, but taxpayers continue to experience frustration and difficulty resolving their IRS issues, receiving timely notices, or accessing detailed information on their online account or IRS tools. The continued implementation of new and substantive digital options for taxpayer service is essential and eagerly anticipated.<sup>67</sup> IRS modernization efforts, however, are challenged when a large portion of available funding is required to maintain current operations and legacy systems, and while the IRA budgeted the IRS an additional \$4.8 billion in funding for business systems modernization, a key element to the updating of IRS systems,<sup>68</sup> IRS budgeting remains a current source of much debate. TAS continues to maintain that without sustained, consistent, and dedicated funding, the IRS will 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. 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, <https://www.taxpayeradvocate.irs.gov/taxpayer-rights> (last visited Nov. 22, 2023). The rights contained in TBOR are also codified in IRC § 7803(a)(3).
- 2 TFA, Pub. L. No. 116-25, § 1101(a)(1)-(5), 133 Stat. 981, 985-86 (2019).
- 3 IRS, Pub. 5426, Taxpayer First Act Report to Congress 99 (Jan. 2021), <https://www.irs.gov/pub/irs-pdf/p5426.pdf>.
- 4 An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14, Pub. L. No. 117-169, 136 Stat. 1818 (2022) [hereinafter referred to as the “Inflation Reduction Act”].
- 5 Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, 137 Stat. 10 (2023). The Fiscal Responsibility Act of 2023 rescinded almost \$1.4 billion from the nearly \$80 billion in additional funding granted to the IRS as part of the IRA.
- 6 The \$20 billion in IRA rescission is currently understood per an informal agreement at time of publication. White House Press Briefing, *Background Press Call on the Bipartisan Budget Agreement* (May 28, 2023), <https://www.whitehouse.gov/briefing-room/press-briefings/2023/05/28/background-press-call-on-the-bipartisan-budget-agreement/>.
- 7 IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan (Apr. 2023), <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.
- 8 IRS News Release, IR-2023-148, Inflation Reduction Act 1-Year Report Card: IRS Delivers Dramatically Improved 2023 Filing Season Service, Modernizes Technology, Pursues High-Income Individuals Evading Taxes (Aug. 16, 2023), <https://www.irs.gov/newsroom/inflation-reduction-act-1-year-report-card-irs-delivers-dramatically-improved-2023-filing-season-service-modernizes-technology-pursues-high-income-individuals-evading-taxes>; IRS News Release, IR-2023-178, IRS Expands Use of Chatbots to Help Answer Questions on Key Notices; Expands on Technology That’s Served 13 Million Taxpayers (Sept. 26, 2023), <https://www.irs.gov/newsroom/irs-expands-use-of-chatbots-to-help-answer-questions-on-key-notices-expands-on-technology-thats-served-13-million-taxpayers>. For a further discussion of IRS phone service, see Most Serious Problem: *Telephone and In-Person Service: Despite Improvements in Its Service Levels, the IRS Still Does Not Provide Taxpayers and Tax Professionals With Adequate, Timely Telephone and In-Person Service*, *infra*.
- 9 IRS News Release, IR-2023-194, IRS Launches New Initiatives Using Inflation Reduction Act Funding to Ensure Large Corporations Pay Taxes Owed; Continues to Improve Service and Modernize Technology With Launch of Business Tax Account (Oct. 20, 2023), <https://www.irs.gov/newsroom/irs-launches-new-initiatives-using-inflation-reduction-act-funding-to-ensure-large-corporations-pay-taxes-owed-continues-to-improve-service-and-modernize-technology-with-launch-of-business-tax-account>. For a deeper discussion of online accounts, see Most Serious Problem: *Online Account Access for Taxpayers and Tax Professionals: Digital Services Remain Inadequate, Impeding Efficient Case Resolution and Forcing Millions of Taxpayers to Call or Send Correspondence to the IRS*, *infra*.
- 10 For further backlog discussion, see Most Serious Problem: *Processing: Ongoing Processing Delays Burden and Frustrate Taxpayers Awaiting Refunds and Other Account Actions*, *infra*.
- 11 These measures are presented as a sample of indicators and are not intended to be read as a comprehensive listing of performance benchmarks.
- 12 For further discussion of backlogs, see Most Serious Problem: *Processing: Ongoing Processing Delays Burden and Frustrate Taxpayers Awaiting Refunds and Other Account Actions*, *infra*. See also National Taxpayer Advocate 2022 Annual Report to Congress 34 (Most Serious Problem: *Processing Delays: Paper Backlogs Caused Refund Delays for Millions of Taxpayers*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22\\_MSP\\_01\\_Processing-Delays.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MSP_01_Processing-Delays.pdf); 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](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](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_MSP_05_FilingDelays.pdf).
- 13 IRS News Release, IR-2023-194, IRS Launches New Initiatives Using Inflation Reduction Act Funding to Ensure Large Corporations Pay Taxes Owed; Continues to Improve Service and Modernize Technology With Launch of Business Tax Account (Oct. 20, 2023), <https://www.irs.gov/newsroom/irs-launches-new-initiatives-using-inflation-reduction-act-funding-to-ensure-large-corporations-pay-taxes-owed-continues-to-improve-service-and-modernize-technology-with-launch-of-business-tax-account>. See also Janet L. Yellen, Sec’y of the Treasury, Remarks at IRS Headquarters in Washington, D.C. (Nov. 7, 2023), <https://home.treasury.gov/news/press-releases/jy1888>.
- 14 IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2022-2029, at 4 (Sept. 2022). IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2023-2030, at 4 (June 2023), <https://www.irs.gov/pub/irs-pdf/p6292.pdf>. The FY 2022 figure has been updated from what was reported in the 2022 Annual Report to Congress to report actual return counts. The FY 2023 figure is a projected number. Data for FY 2021 and FY 2022 for each table was accurate as of the close of each fiscal year; however, the IRS often refines the data as additional information becomes available. Therefore, this data may differ slightly from other data sources with a later publication date. 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.
- 15 IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2022-2029, at 4 (Sept. 2022). IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2023-2030, at 4 (June 2023). The FY 2022 figure has been updated from what was reported in the 2022 Annual Report to Congress to report actual return counts. The FY 2023 figure is a projected number.
- 16 IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2022-2029, at 4 (Sept. 2022). IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2023-2030, at 4 (June 2023). The FY 2022 figure has been updated from what was reported in the 2022 Annual Report to Congress to report actual return counts. The FY 2023 figure is a projected number.
- 17 IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2022-2029, at 4 (Sept. 2022). IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2023-2030, at 4 (June 2023). The FY 2022 figure has been updated from what was reported in the 2022 Annual Report to Congress to report actual return counts. The FY 2023 figure is a projected number.

- 18 FY 2021 number updated from IRS response to TAS fact check (Dec. 17, 2021), including returns filed solely to claim the Advance Child Tax Credit (AdvCTC). The FY 2022 number is from IRS, Compliance Data Warehouse (CDW), Electronic Tax Administration Research and Analysis System Modernized e-File for Individuals, and excludes about 8.5 million returns filed for the purpose of claiming Economic Impact Payments in FY 2020. The FY 2021 figures represent tax year (TY) 2020 tax returns. The FY 2022 figures represent TY 2021 tax returns. The FY 2023 figures represent TY 2022 tax returns through September 28, 2023.
- 19 FY 2021 number updated from IRS response to TAS fact check (Dec. 17, 2021), including some returns filed solely to claim the AdvCTC. FY 2022 and FY 2023 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 2021 figures represent TY 2020 tax returns. The FY 2022 figures represent TY 2021 tax returns. The FY 2023 figures represent TY 2022 tax returns through September 28, 2023.
- 20 IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2022-2029, at 4 (Sept. 2022). IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2023-2030, at 4 (June 2023). The FY 2022 figure has been updated from what was reported in the 2022 Annual Report to Congress to report actual return counts. The FY 2023 figure is a projected number.
- 21 IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2022-2029, at 4 (Sept. 2022). IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2023-2030, at 4 (June 2023). The FY 2022 figure has been updated from what was reported in the 2022 Annual Report to Congress to report actual return counts. The FY 2023 figure is a projected number.
- 22 IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2022-2029, at 4 (Sept. 2022). IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2023-2030, at 4 (June 2023). The FY 2022 figure has been updated from what was reported in the 2022 Annual Report to Congress to report actual return counts. The FY 2023 figure is a projected number.
- 23 Hadi Elzayn et al., *Measuring and Mitigating Racial Disparities in Tax Audits* (Stanford Inst. For Econ. Pol'y Rsch., Working Paper, 2023), <https://siepr.stanford.edu/publications/working-paper/measuring-and-mitigating-racial-disparities-tax-audits>.
- 24 IRS News Release, IR-2023-166, IRS Announces Sweeping Effort to Restore Fairness to Tax System With Inflation Reduction Act Funding; New Compliance Efforts Focused on Increasing Scrutiny on High-Income, Partnerships, Corporations and Promoters Abusing Tax Rules on the Books (Sept. 8, 2023), <https://www.irs.gov/newsroom/irs-announces-sweeping-effort-to-restore-fairness-to-tax-system-with-inflation-reduction-act-funding-new-compliance-efforts>.
- 25 *Hearing on IRS Operations Before the Subcomms. on Government Operations and the Federal Workforce and Health Care and Financial Services of the H. Oversight and Accountability Comm.*, 118th Cong. (Oct. 24, 2023) (written statement of Danny Werfel, Comm'r, Internal Revenue).
- 26 A no-response audit occurs when a taxpayer under examination does not respond to IRS communication attempts, and the proposed tax adjustments are subsequently input as if the taxpayer had agreed to the examination 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.
- 27 A no-change audit occurs when a taxpayer substantiates all items being reviewed by the audit, resulting in no change to the reported tax.
- 28 See IRC § 7803(a)(3). See also TBOR, <https://www.taxpayeradvocate.irs.gov/get-help/taxpayer-rights/> (last visited Nov. 16, 2023).
- 29 IRS responses to TAS fact checks (Dec. 17, 2021; Dec. 9, 2022); IRS response to TAS information request (Oct. 16, 2023).
- 30 IRS responses to TAS fact checks (Dec. 17, 2021; Dec. 9, 2022); IRS response to TAS information request (Oct. 16, 2023). These numbers reflect examination cases closed by the IRS and do not account for subsequent appeals or litigation.
- 31 An audit is closed as agreed when the IRS proposes changes and the taxpayer understands and agrees with the changes.
- 32 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.
- 33 This represents the percentage of correspondence audits for taxpayers with total positive income under \$50,000.
- 34 This represents the percentage of correspondence audits for taxpayers with total positive income greater than or equal to \$50,000 and under \$10,000,000.
- 35 This represents the percentage of correspondence audits for taxpayers with total positive income greater than or equal to \$10,000,000.
- 36 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 2021 (Oct. 4, 2021); FY 2022 (Oct. 3, 2022); FY 2023 (Oct. 2, 2023).
- 37 *Id.* The figure is calculated using all dispositions, including not-processable dispositions.
- 38 IRS, SB/SE, CAR No. 5000-6, FY 2021 (Oct. 3, 2021); FY 2022 (Oct. 2, 2022); FY 2023 (Oct. 1, 2023). This number includes short-term payment agreements and continuous wage levies.
- 39 Weekly Automated Collection System Conversational Interactive Voice Response (ACI) and Voice Bot Reports (week ending Sept. 30, 2022) (Cumulative); Weekly ACI and Voice Bot Reports (week ending Sept. 30, 2023) (Cumulative). This service was not offered until July 2022.
- 40 IRS, CDW, FY 2021 (Oct. 2021); FY 2022 (Oct. 2022); FY 2023 (Oct. 2023). The IRS accepts about 99 percent of requests for IAs that meet the processable criteria.
- 41 IRS, SB/SE, CAR No. 5000-2, Taxpayer Delinquent Account Cumulative Report, FY 2021 (Oct. 3, 2021); FY 2022 (Oct. 2, 2022); FY 2023 (Oct. 1, 2023). 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 other collection status, 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.
- 42 IRS, SB/SE, CAR No. 5000-2, Taxpayer Delinquent Account Cumulative Report, FY 2021 (Oct. 3, 2021); FY 2022 (Oct. 2, 2022); FY 2023 (Oct. 1, 2023). 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.

- 43 Query by TAS Research of tax delinquent accounts with queue status in IRS, CDW, Accounts Receivable Dollar Inventory, Individual Master File, Modules. Age of balance due cases in the collection queue as of cycle 37 of FY 2021, cycle 37 of FY 2022, and cycle 37 of FY 2023. The age of Taxpayer Delinquency Investigations is not considered.
- 44 See TIGTA, Ref. No. 2023-IE-R010, *Inflation Reduction Act: Assessment of the IRS's Efforts to Deliver Expected Improvements for the 2023 Filing Season* (2023), <https://www.tigta.gov/sites/default/files/reports/2023-09/2023ier010fr.pdf>. For a further discussion of TACs, see *Most Serious Problem: Telephone and In-Person Service: Despite Improvements in Its Service Levels, the IRS Still Does Not Provide Taxpayers and Tax Professionals With Adequate, Timely Telephone and In-Person Service*, *infra*.
- 45 See *Most Serious Problem: Identity Theft: Lengthy Issue Resolution Delays and Inadequate Notices Burden Taxpayers Who Are Victims of Identity Theft or Whose Returns the IRS Has Flagged for Possible Identity Theft*, *infra*.
- 46 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 August 1, 2022, 317 of the 358 TACs were open, and 41 were closed or unstaffed. As of September 2023, 266 of the 363 TACS (73 percent) were less than fully staffed, limiting service appointments available to taxpayers. Janet L. Yellen, Sec'y of the Treasury, Remarks at the IRS Facility in New Carrollton, Maryland (Sept. 15, 2022), <https://home.treasury.gov/news/press-releases/jy0952>; IRS response to TAS information request (Dec. 4, 2023).
- 47 FY 2021 and FY 2022 figures from IRS response to TAS fact check (Dec. 12, 2022); FY 2023 figure from IRS response to TAS fact check (Dec. 4, 2023).
- 48 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. IRS response to TAS fact check (Dec. 4, 2023).
- 49 Correspondence represents AM inquiries and responses received from taxpayers who do not belong specifically to another area.
- 50 IRS, Joint Operations Center (JOC), Adjustments Inventory Reports: July-September FY Comparison (FY 2021, FY 2023). The FY 2021 figure has been updated from what was reported in the 2021 Annual Report to Congress. These are Individual Master File cumulative fiscal year receipts for Correspondence, Amended, Carryback, Injured Spouse, and Individual Taxpayer Identification Number. This metric measures taxpayer correspondence requesting account adjustment.
- 51 IRS, Research Analysis and Data (RAD), AM Reports: Correspondence Imaging System (CIS) Closed Case Cycle Time (FY 2022, FY 2023). The FY 2021 figure has been updated from what was reported in the 2021 Annual Report to Congress. IRS response to TAS fact check (Dec. 4, 2023).
- 52 IRS, Weekly Enterprise Adjustments Inventory Report (weeks ending Sept. 25, 2021; Sept. 24, 2022; Sept. 30, 2023). 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."
- 53 IRS, JOC, Adjustments Inventory Reports: July-September Fiscal Year Comparison (FY 2021, FY 2023). 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.
- 54 IRS, RAD, AM Reports: CIS Closed Case Cycle Time (FY 2022, FY 2023). The FY 2021 figure has been updated from what was reported in the 2022 Annual Report to Congress per IRS response to TAS fact check (Dec. 4, 2023).
- 55 IRS, Weekly Enterprise Adjustments Inventory Report (weeks ending Sept. 25, 2021; Sept. 24, 2022; Sept. 30, 2023).
- 56 IRS, JOC, Snapshot Reports: Enterprise Snapshot (weeks ending Sept. 30, 2022; Sept. 30, 2023; reports generated Oct. 5, 2023).
- 57 *Id.*
- 58 *Id.*
- 59 *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).
- 60 IRS, JOC, Snapshot Reports: Product Line Detail (weeks ending Sept. 30, 2022; Sept. 30, 2023; reports generated Oct. 5, 2023).
- 61 *Id.*
- 62 *Id.*
- 63 IRS.gov Site Traffic Calculator (FYs 2021-2023).
- 64 *Id.*
- 65 IRS, SB/SE, CAR No. 5000-6, Installment Agreement Cumulative Report, FY 2021 (Oct. 3, 2021); FY 2022 (Oct. 2, 2022); FY 2023 (Oct. 1, 2023). This number includes short-term payment plans. The online IA numbers were updated from what was reported in prior year reports. IRS response to TAS fact check (Dec. 4, 2023).
- 66 IRS Databook for FY 2021 (table 10), <https://www.irs.gov/pub/irs-soi/21dbs02t10ap.xlsx>; IRS Databook for FY 2022 (table 10), <https://www.irs.gov/pub/irs-soi/22dbs02t10ap.xlsx>; the FY 2022 figure has been updated from what was reported in the 2022 Annual Report to Congress; IRS Wage and Investment Division Filing & Services Report (FY 2023).
- 67 For a deeper discussion of online accounts, see *Most Serious Problem: Online Account Access for Taxpayers and Tax Professionals: Digital Services Remain Inadequate, Impeding Efficient Case Resolution and Forcing Millions of Taxpayers to Call or Send Correspondence to the IRS*, *infra*.
- 68 IRA, Pub. L. No. 117-169, 136 Stat. 1818 (2022).

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## Introduction: The Most Serious Problems Encountered by Taxpayers

IRC § 7803(c)(2)(B)(ii)(III) requires the National Taxpayer Advocate to submit an annual report to Congress that contains a summary of the ten “Most Serious Problems” encountered by taxpayers.<sup>1</sup> For 2023, the National Taxpayer Advocate has identified, analyzed, and offered recommendations to assist the IRS and Congress in resolving ten such problems.

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<sup>1</sup> Prior to 2019, Congress tasked the National Taxpayer Advocate with identifying at least 20 of the most serious problems encountered by taxpayers. The Taxpayer First Act, enacted in 2019, amended the law to require the National Taxpayer Advocate to identify the ten most serious problems encountered by taxpayers. See 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 been working admirably to improve IRS service. However, the IRS still has much work to do including addressing processing delays; mitigating staffing challenges like hiring and training employees to meet the growing volume of taxpayer needs; transparently delivering clear and timely taxpayer guidance; developing qualitative metrics to better assess and improve taxpayer telephone and in-person service delivery; better educating taxpayers to the importance of relying on credentialed return preparers while vigorously enforcing preparer penalties; providing prompt resolution for taxpayers affected by identity theft; expanding IRS online account functionality; protecting international taxpayers from harsh penalties; supporting taxpayers living overseas; and ensuring taxpayers and tax professionals perceive the IRS Independent Office of Appeals as sufficiently independent.

\* IRS Filing Statistics for the week ending Oct. 27, 2023. All other “Taxpayer Perspectives” are preferences or attitudes expressed in the “Comprehensive Taxpayer Attitude Survey 2022;” IRS: Research, Applied Analytics, and Statistics.

### Most Serious Problem: Processing

#### Taxpayer Perspective

**65%**

of returns resulted in refunds\*

**Why This Is a Most Serious Problem:** In 2023, millions of taxpayers once again experienced significant burden and frustration while awaiting refunds or other IRS actions necessary to comply with their tax obligations and resolve tax account issues. These delays not only have negative financial implications for taxpayers awaiting refunds but also for the government, as the IRS must pay interest on overpayments it does not timely refund.

**Key Statistics:** The IRS had an inventory backlog of over six million pieces of Accounts Management correspondence and amended tax returns as of October 28, 2023. This backlog was identical in size to the backlog of these items at the end of 2022, but nearly 70% of this inventory was overage, almost 20% higher than last year. Refund processing delays resulted in the IRS paying approximately \$1.4 billion in additional interest on individual and business amended returns and applications for tentative refunds.

### Most Serious Problem: IRS Hiring, Recruitment, and Training

#### Taxpayer Perspective

**26%**

do not trust the IRS to fairly enforce tax laws

**92%**

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

**Why This Is a Most Serious Problem:** IRS staffing levels in the past decade have fallen to lows not seen since the 1970s. Insufficient staffing has caused the quality of taxpayer service to decline on telephone lines and at Taxpayer Assistance Centers and significant IRS processing delays to arise.

**Key Statistics:** In FY 2023, the IRS hired 30,742 employees (including internal hires), but 18% of current IRS employees are eligible for retirement, with estimates of 37% in the next five years. The IRS's time to hire averaged 134 days overall but was over 193 days for external hires where no direct hiring authority exists, likely causing the IRS to lose qualified candidates.

### Most Serious Problem: IRS Transparency

Taxpayer Perspective

**90%**

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:** Some taxpayers and tax professionals still struggle to access information from the IRS, including finding clear and timely guidance on which they can rely, determining the status of pending issues, understanding IRS correspondence and whether they must respond to it, and reaching an IRS employee with the knowledge to answer their questions and the authority to resolve their problems.

**Key Statistic:** Through April 22, 2023, the IRS achieved an 85% Level of Service on key toll-free lines but had only answered 35% of the calls it received. Achieving this high level of service resulted in customer service representatives being idle 34% of the time, contributing to a growth in the backlog of Forms 1040-X. As of the end of the 2023 filing season, it took the IRS about seven months to process Forms 1040-X.

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

Taxpayer Perspective

**92%**

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

**83%**

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

**Why This Is a Most Serious Problem:** The way the IRS calculates its Level of Service is far more optimistic than the reality taxpayers face when calling the IRS. Several states have just one Taxpayer Assistance Center location for in-person service, and many are not fully staffed or operate on a limited schedule.

**Key Statistics:** Although the IRS reported a 51% Level of Service in FY 2023, live assistors answered only 29% of total calls. Automated responses answered 18% of the total calls, and the IRS did not answer the rest, or the caller disconnected. The IRS initiated a disconnect on 16.3 million calls in FY 2023. The IRS answered only 34% of the calls seeking an appointment at a Taxpayer Assistance Center.

### Most Serious Problem: Return Preparer Oversight

Taxpayer Perspective

**89%**

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

**Why This Is a Most Serious Problem:** Even though tax return preparers prepare over half of the individual returns filed each year, many have no credentials and are subject to no minimum standards. Because taxpayers bear responsibility for the accuracy of their own returns, inept or dishonest preparers harm taxpayers by subjecting them to unanticipated tax deficiencies, penalties, interest, overpaid taxes, or lost refunds.

**Key Statistics:** For TY 2022, almost 60% of Preparer Tax Identification Numbers, which the IRS requires a tax return preparer to use to file a return, belonged to non-credentialed preparers. In the prior tax year, non-credentialed preparers filed about 79% of prepared returns claiming the Earned Income Tax Credit (EITC); their returns account for 91% of the associated audits and generate 94% of EITC audit adjustments.

### Most Serious Problem: Identity Theft

Taxpayer Perspective

**77%**

trust the IRS to protect their tax account records from cyber criminals

**Why This Is a Most Serious Problem:** Each year, the IRS flags millions of returns for potential fraud. Before receiving their refunds, taxpayers who have filed legitimate returns deal with inadequate notices and difficulties authenticating their identity. Meanwhile, victims of tax related identity theft experience long delays to have their returns processed and receive their refunds.

**Key Statistics:** In 2022, the IRS suspended processing of 4.8 million tax returns, most with adjusted gross incomes less than 250% of the Federal Poverty Level and requested these taxpayers authenticate their identities before it would release their refunds. In 2023, victims of tax-related Identity theft waited nearly 19 months to have their returns processed and receive their refunds.

### Most Serious Problem: Online Account Access for Taxpayers and Tax Professionals

#### Taxpayer Perspective

**90%**

find a personal online account valuable

**86%**

want to be able to email questions to the IRS

**Why This Is a Most Serious Problem:** Taxpayers and tax professionals lack a comprehensive online account with integrated digital communication tools to access tax information and services. When taxpayers cannot quickly communicate with the IRS to resolve issues digitally, it negatively affects the taxpayer experience, which in turn impacts taxpayers' overall satisfaction and trust in the IRS.

**Key Statistics:** During FY 2023, nearly 17 million individuals accessed their online accounts; however, that represents only 11% of the taxpayers who filed a TY 2022 return. Since the IRS launched online services for tax professionals and their clients, Tax Pro, in July 2021, tax professionals and their clients have completed only 11,342 power of attorney authorizations and 3,705 tax information authorizations through Tax Pro while over 3.5 million were filed by paper, e-fax, or Taxpayer Digital Communication.

### Most Serious Problem: International

#### Taxpayer Perspective

**44%**

feel the IRS devotes too many resources to enforcement

**Why This Is a Most Serious Problem:** U.S. persons who receive money from abroad or who have certain foreign financial interests and cross-border business activities are potentially subject to a wide range of U.S. reporting requirements. Many of these requirements come with significant penalty exposure when a filing is late, incomplete, or inaccurate. Moreover, the IRS automatically assesses and broadly applies these harsh and often unexpected penalties.

**Key Statistics:** Between 2018 and 2021, the IRC § 6039F penalty for undisclosed gifts from foreign sources created over 4,000 penalties totaling \$1.7 billion, with an average penalty of over \$425,000 and 92% assessed against individuals most commonly earning \$400,000 or less. During this same period, a yearly average of over 10,000 IRC §§ 6038 and 6038A penalties were assessed against both sole proprietors, over 71% with incomes not exceeding \$400,000, and other business structures, over 60% with less than \$1 million of total assets, for failure to file certain documents totaling nearly \$435 million per year.

### Most Serious Problem: Compliance Challenges for Taxpayers Abroad

#### Taxpayer Perspective

**90%**

agree that the more guidance from the IRS, the more likely people are to correctly file taxes

**89%**

want a toll-free number to ask questions

**Why This Is a Most Serious Problem:** Taxpayers abroad face vast difficulties in complying with their U.S. tax obligations, as they face filing requirements not typically applicable to taxpayers living in the United States. The IRS offers limited assistance and guidance, and taxpayers often lack accessible, real-time customer service assistance from the IRS.

**Key Statistics:** According to the U.S. Department of State, roughly nine million U.S. citizens reside abroad as of 2020. The IRS issued over 1.3 million notices and other correspondence to foreign addresses in FY 2021 and over 1.6 million in FY 2022.

### Most Serious Problem: Appeals

#### Taxpayer Perspective

**74%**

trust the IRS to fairly enforce the tax laws

**Why This Is a Most Serious Problem:** The lack of independence and operational efficiency in the IRS Independent Office of Appeals (Appeals) undermines taxpayer trust and prolongs dispute resolution.

**Key Statistics:** In FY 2023, Appeals hired 91 new Appeals Officers. Of those, 87% were current IRS employees, and only 13% were external hires. Of the internal hires, 77% came directly from IRS Compliance positions. From FY 2022 to FY 2023, the average wait for a taxpayer to receive an Appeals conference after assignment to an Appeals Officer increased from 116 days to 146 days, a nearly 26% increase in states with a permanent Appeals presence. In areas with little or no Appeals presence assigned, the average wait time doubled from 120 days to 243 days.





## PROCESSING

### Ongoing Processing Delays Burden and Frustrate Taxpayers Awaiting Refunds and Other Account Actions

#### PROBLEM

In 2023, millions of taxpayers once again experienced significant burden and frustration while awaiting refunds or other IRS actions necessary to comply with their tax obligations and resolve tax account issues. Throughout 2023, the IRS's backlog associated with paper-filed original and amended returns continued to delay the processing of much-needed taxpayer refunds and assistance with tax account issues. However, there was some good news during the 2023 filing season. Returns filed without errors were processed quicker than previous years, and by the end of September, the IRS had processed all but 169,000 individual and business paper and electronic original returns. Taxpayers calling the 1040 toll-free telephone line experienced shorter wait times and were more likely to get through to speak with a customer service representative (CSR), but answering the phones is only half the battle. Because the IRS prioritized telephone service over other IRS operations such as processing amended returns, working identity theft returns, and responding to taxpayer correspondence, Accounts Management (AM) CSRs responsible for answering calls were not able to process amended returns and answer taxpayer correspondence. This created a new backlog by the end of the 2023 filing season. As a result, individual and business taxpayers experienced delays. These delays not only have negative financial implications for taxpayers awaiting refunds but also for the government, as the IRS must pay interest on overpayments it does not timely refund.

#### ANALYSIS

For several years, processing and refund delays, coupled with inadequate service, have plagued taxpayers, rendering it difficult for them to resolve their tax issues, obtain responses to inquiries, or timely receive their refunds. Due to varied filing due dates and constant receipts throughout the year, it is normal for the IRS to carry some volume of unprocessed inventory into the next calendar year. For this reason, both the volume of inventory and processing timeliness determine the success of the IRS's processing effort. Typically, year-end overage inventory and backlogs grow during the subsequent filing season as new tax return filings generate additional taxpayer correspondence and the need for more processing actions. However, during the pandemic, the inventory backlog reached all-time highs. As of October 28, 2023, unprocessed amended returns, correspondence, and AM cases totaled 6.2 million, with 69.5 percent of this inventory classified as overage, an indication that the IRS must do more to reduce the backlog and overage cases carried over into

each new filing season. Though technology may improve communication methods and reduce some portion of the IRS's manual processing activities, the complexity of the tax system will always present a need for human interaction and human processing intervention. Taxpayers deserve quality services that allow for the timely processing of tax returns, correspondence, tax account adjustments, and the ability to reach the IRS in person or by phone. Telephone service should not come at the cost of processing delays.

## **RECOMMENDATIONS**

The National Taxpayer Advocate recommends that the IRS: 1) expediently address the processing of valid Employee Retention Credit claims, particularly for taxpayers experiencing financial hardships; 2) train remote call center CSRs to perform processing duties to increase AM processing capacity; reduce amended return, correspondence, and AM case processing delays; minimize backlogs; and improve the taxpayer experience; 3) program information technology systems to systemically apply first-time abatement to all eligible taxpayers beginning in the 2024 filing season while also providing taxpayers the ability to substitute a reasonable cause defense when substantiated by the taxpayer; 4) prioritize the acceptance of amended business and employment tax returns and applications for tentative refund requests for inclusion in the e-file program and electronic processing, along with the electronic processing of e-filed Forms 1040-X, which the IRS accepts electronically but processes manually; and 5) electronically process those returns otherwise required to be paper-filed upon rejection and direct these imperfect e-filed returns to treatment streams for resolution.



## IRS HIRING, RECRUITMENT, AND TRAINING

**Shortcomings in the IRS's Employee Hiring, Retention, Recruitment, and Training Programs Adversely Affect the Quality of Taxpayer Service the IRS Provides and Undermine Effective Tax Administration**

### PROBLEM

When IRS staffing or training falls to insufficient levels, service quality suffers and taxpayers experience burden and frustration, which undermine voluntary compliance and burden tax administration. The IRS operating at less than full strength harms taxpayers' *rights to challenge the IRS's position and be heard and to a fair and just tax system*. Many of the IRS's challenges are traceable to simply not having adequate staffing levels, which in the past decade have fallen to lows not seen since the 1970s. Insufficient staffing has caused the quality of taxpayer service to decline in various forms. Even when the IRS can recruit enough staff, it struggles to attract, onboard, retain, and train the talent it needs.

### ANALYSIS

The IRS's mission is to “[p]rovide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.” Fulfilling that mission requires the IRS to overcome the challenge of employee attrition, attract and hire the right talent at the right time, and timely train all employees. Consistent, significant employee attrition combined with the often lengthy hiring process have left the IRS severely understaffed and unable to adequately recruit, hire, and train much-needed new employees over the past decade. Attrition compounds cause for concern because about 18 percent of IRS employees are currently retirement eligible and can leave at any time, with 37 percent of IRS employees estimated as retirement eligible in the next five years. In fiscal year (FY) 2023, the IRS was able to use Direct Hire Authority (DHA) to expedite the hiring process; however, there were still delays that may have caused good candidates to take jobs elsewhere before the IRS was even able to offer them a job. Hiring new employees fills staffing needs, but replacing experienced employees with new ones is typically not an equal trade because of decreases in productivity and customer service quality. Although employee turnover is part of the normal course of business, the elevated rate of current IRS employee turnover should concern taxpayers and the IRS alike. Coordination between the Human Capital Office (HCO) and other parts of the IRS is integral to a smooth training process and is an area in need of considerable improvement because inadequately trained IRS employees may be at risk of giving taxpayers incomplete or wrong information,

making incorrect determinations, or mistakenly recording information inaccurately into IRS databases. If the IRS does not make significant changes, these staffing shortages will compound and pose significant threats to federal tax administration and taxpayer rights.

## RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS: 1) invest in more technological capabilities to assist the hiring process; 2) develop a robust plan to expand or eliminate limits on aggregate amounts for employee awards and bonuses to improve employee retention rates and allow the agency to better compete with other agencies on employee benefits; 3) explore providing additional recruitment and relocation bonuses, retention bonuses, merit awards, and incentives for critical skills and expand current incentives for employees to allow the agency to better compete with other agencies on employee benefits; 4) consider contracting with recruiting firms that would better assist the IRS in reaching qualified candidates for employment in the higher General Schedule grade level positions; 5) hire more staffing for HCO's Strategic Talent Acquisition and Recruiting Solutions program, in particular to allow for more staffing at DHA events and to expedite processes where the IRS is using hiring authorities to speed up hiring processes; 6) allocate more staffing resources to HCO Talent Acquisition so it can provide more timely communication to its customers; 7) provide training for HCO hiring personnel to improve the selection process and ensure IRS Business Operating Divisions (BODs) receive only qualified applicants; 8) allocate more support and personnel in the Classroom Learning Services (CLS) located within the Enterprise Talent Development Division of HCO so it can provide classroom services, conduct and schedule trainings, increase or reestablish training support at sites CLS no longer supports, and alleviate the pressure on BODs from competing for classroom training space and equipment; 9) work with the Office of Legislative Affairs and relevant offices within Treasury to develop a legislative recommendation to provide the IRS with broad legislative DHA to address the current DHA limits and expiration dates because the administrative process to get extensions for DHA through the Office of Personnel Management burdens the agency; and 10) during FY 2025, require the IRS Chief Diversity Officer to complete a comprehensive review of the agency's reasonable accommodation (RA) program, including but not limited to case processing procedures, staffing utilization, training, and management oversight of case monitoring; provide a written report to the IRS Commissioner on her findings and recommendations for improving the RA program at the IRS; and reduce the processing time of RA requests consistent with applicable law and the Internal Revenue Manual.

# Transparency

## IRS TRANSPARENCY

**The IRS Still Does Not Provide Sufficient Clear and Timely Information to the Public, Causing Confusion and Frustration and Complicating Agency Oversight**

### PROBLEM

Some taxpayers and tax professionals still struggle to access information from the IRS. They have difficulty finding clear and timely guidance on which they can rely, determining the status of pending issues, understanding IRS correspondence and whether they must respond to it, and reaching an IRS employee with the knowledge to answer their questions and the authority to resolve their problems. Additionally, IRS communications in 2023 on its modernization efforts did not always include sufficient detail, leading to confusion and unrealistic expectations. Without more specific and measurable data on the use of funds and future IRS plans, Congress and stakeholders will not have enough information to provide informed oversight and help guide the IRS in its decision-making.

### ANALYSIS

The IRS Strategic Operating Plan acknowledges that the IRS in recent years has only been able to provide guidance on certain priority issues, “leaving many taxpayers unaware of how the IRS views the application of the law and whether certain positions will be accepted.” The IRS similarly struggled to provide clarity when taxpayers reached out directly, according to tax professionals speaking in focus group sessions on IRS Transparency at the 2023 IRS Nationwide Tax Forums who described having difficulties reaching someone at the IRS on the phone, getting the IRS to respond to correspondence, and receiving explanations on the reason for IRS delays.

IRS communications in 2023 at times omitted relevant context when describing progress in critical areas, including IRS phone service, the Paperless Processing Initiative, the Direct File pilot, and processing of Employee Retention Credit claims. For example, while the IRS described achieving an 85 percent Level of Service (LOS) in responding to taxpayer phone calls in the 2023 filing season, it selectively defines this metric to exclude certain types of calls. Although the IRS achieved an 85 percent LOS based upon its metrics, it answered just 35 percent of all taxpayer calls received.

## RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS: 1) provide quarterly updates of milestones accomplished and an annual report updating the Strategic Operating Plan, including performance metrics for stated objectives that will allow for the evaluation of outcomes, including specific deadlines on when the IRS will meet these objectives; 2) provide specific and verifiable details on the Direct File pilot, the number of taxpayers utilizing the tool, processing successes, issues, and lessons learned associated with the tool, and the costs of a direct e-file system; 3) set up a centralized location on IRS.gov to inform the public of requests for feedback on modernization initiatives, with information on how to submit comments; 4) add information to IRS tools notifying taxpayers when the IRS has made material changes and updated features; 5) develop processes to more consistently and timely acknowledge the receipt of taxpayer correspondence and provide accurate timelines on when the IRS expects to respond or act; 6) provide weekly information throughout the year on 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 while acknowledging that the situation is fluid and timeframes may change along with circumstances; and 7) publicly disclose the findings of its review of syndicated conservation easement cases on the potential backdating of penalty documents.



## TELEPHONE AND IN-PERSON SERVICE

**Despite Improvements in Its Service Levels, the IRS Still Does Not Provide Taxpayers and Tax Professionals With Adequate, Timely Telephone and In-Person Service**

### PROBLEM

When taxpayers call the IRS, they expect and deserve quality service without suffering long wait times. In 2023, telephone service was considerably better; however, it is still not providing the level of service that taxpayers and tax professionals need throughout the year. Based upon its Level of Service (LOS) measurement, the IRS is not able to accurately determine how to best provide that quality service. The way the IRS calculates LOS paints a picture far more optimistic than the reality of the taxpayer's experience when calling for assistance and does not address "quality service." The IRS's LOS metrics tell taxpayers nothing about how many calls the IRS transferred, whether taxpayers had to call multiple times, and whether the taxpayer ultimately received the information they needed. Tax professionals have also been frustrated with the wait times and low customer service representative (CSR) LOS, incurring unnecessary costs due to IRS delays or CSRs' inability to answer questions.

Taxpayers who need face-to-face service can make an appointment to visit Taxpayer Assistance Centers (TACs) for free tax help to address their tax questions and receive support if they face language barriers. Although TACs exist throughout the United States, several states have just one TAC location, and many are not fully staffed or operate on a limited schedule causing challenges for taxpayers. Many TACs do not meet the needs of taxpayers who live too far away or can't make an appointment at a time that works for them.

### ANALYSIS

The IRS reports CSR LOS as a key indicator of how well it is providing phone service. As it directs increasing numbers of taxpayers to self-service options, the IRS needs better measures of the taxpayer experience to ensure that those who need to speak with a live assistor can reach one and resolve their issue. The CSR LOS the IRS reports suffers from these deficiencies:

- CSR LOS accounts for about 77 to 85 percent of the total call volume the IRS receives, but it excludes important phone lines, such as those that taxpayers call with questions about balances owed and requests for help making payment arrangements, where LOS in fiscal year (FY) 2023 was 53 percent;

- CSR LOS doesn't measure whether the IRS resolved the caller's issue; and
- Without a comprehensive measure of service, CSR LOS hinders the IRS from making effective decisions on allocating taxpayer services resources to improve the taxpayer experience.

The IRS continuously selects and invites some toll-free callers to participate in customer satisfaction and experience surveys. It uses an automated Interactive Voice Recognition system to invite select callers to take a survey immediately after speaking with a CSR. Callers who only interacted with the automated telephone system are not eligible to participate in the survey. Thus, the IRS has no way of measuring whether callers routed to automated assistance would have preferred the IRS route them to a live assistor, potentially generating additional follow-up calls to the IRS.

CSRs answering calls need to be prepared to encounter a wide variety of issues. Taxpayers who speak with a CSR may not resolve their issue because the CSR lacks the information or the tools to help them do so. For example, CSRs on Accounts Management phone lines cannot view all notices and letters the IRS has mailed the taxpayer, which can limit the CSR's ability to provide information about the taxpayer's specific circumstances.

In addition to live assistors, the IRS provides phone service to taxpayers using bots and other automated assistance. Voicebots answer taxpayer inquiries about payments, collection notices, and general collection issues. Voicebots handled more than 2.7 million calls in FY 2023, and 48 percent were contained within the voicebot without the need to escalate to a live assistor. However, the IRS has not been able to implement a survey to measure customer satisfaction with the assistance taxpayers receive from voicebots.

Taxpayers seeking face-to-face assistance at a TAC may experience difficulties. Some taxpayers do not live or work close to a TAC location. Some taxpayers can't get assistance from TACs because TAC standard operating hours are 8 a.m. to 4:30 p.m., Monday through Friday. As of September 2023, 266 of the 363 TACs (73 percent) were less than fully staffed, limiting service appointments available to taxpayers. The IRS's inability to fully staff all TAC locations emphasizes the need to provide alternative methods of service.

## RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS: 1) adopt alternate measures of service on telephones that combine the existing CSR LOS calculation with the seven customer experience factors outlined in Office of Management and Budget Circular No. A-11, Section 280, by the end of FY 2024; 2) add questions to the toll-free customer satisfaction surveys to measure satisfaction with IRS phone tree choices by the end of FY 2024; 3) provide CSRs with a holistic view of taxpayers' accounts in real time during a phone call, including correspondence sent to or received from the taxpayer, information discussed during a voicebot interaction, and tax account data by the end of FY 2025; 4) implement comprehensive measures of the taxpayer experience when interacting with voicebots and chatbots by the end of FY 2024 and allow taxpayers to provide feedback to identify ways to improve the technology and determine core reasons for the requests to elevate the call to a live person; 5) increase availability of TAC in-person assistance to ensure taxpayers can obtain an appointment within seven days and extend hours of operation beyond 8 a.m. to 4:30 p.m., Monday through Friday, including regular Saturday hours, by the end of FY 2025; and 6) establish a metric to measure the number of hours TACs were available for in-person service.





## RETURN PREPARER OVERSIGHT

### The Lack of Return Preparer Oversight Endangers Taxpayers, Burdens the IRS, and Harms Tax Administration

#### PROBLEM

Tax return preparers prepare over half of the individual income tax returns filed on an annual basis. Many of them, however, have no credentials and are subject to no minimum standards, such as competency tests and continuing education. Judicial decisions currently prevent the IRS from implementing practice requirements and conducting preparer oversight. This situation exposes taxpayers to incompetent or unethical actions by preparers. Taxpayers are left to deal with potential tax adjustments, interest, and penalties due to their preparers' actions.

#### ANALYSIS

IRS statistics show that non-credentialed preparers often generate a disproportionate level of audit adjustments. For example, approximately 94 percent of the total dollar value of audit adjustments made on prepared tax year 2021 returns claiming the Earned Income Tax Credit were made to returns prepared by non-credentialed preparers. Recent data indicates that unscrupulous preparers, 92 percent of whom are non-credentialed, are a significant driver of disproportionate audit rates for racial minority taxpayers and may be contributing to a racial disparity within tax administration. The IRS's inability to oversee return preparation places taxpayers and the tax system at risk. While it awaits Congress to enact corrective legislation, the IRS should use the tools at its disposal to encourage ethical return preparers and discourage bad behavior. For example, the IRS should be more aggressive in its application of return preparer penalties when appropriate.

#### RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS: 1) expand the scope of its efforts to educate taxpayers regarding the importance of relying on credentialed preparers, including Annual Filing Season Program participants, rather than non-credentialed preparers; 2) increase publicity for the Volunteer Income Tax Assistance and Tax Counseling for the Elderly programs and seek additional annual funding from Congress to support and develop those programs; 3) vigorously enforce return preparer penalties where appropriate, including through the use of systemically assessed IRC § 6695(c) penalties and letters to

taxpayers whose preparers have received return preparer penalties; and 4) establish a single function within the IRS to be responsible for all matters regarding tax return preparation to consolidate authority and better protect taxpayers from incompetent or unscrupulous return preparers.

The National Taxpayer Advocate recommends that Congress: 1) amend Title 31 § 330 of the U.S. Code to authorize the Secretary to establish minimum standards for paid federal tax return preparers; and 2) amend IRC § 6109 to authorize the Secretary to revoke Preparer Tax Identification Numbers concurrently with the assessment of sanctions for violations of established minimum standards for paid federal tax return preparers.



## IDENTITY THEFT

**Lengthy Issue Resolution Delays and Inadequate Notices Burden Taxpayers Who Are Victims of Identity Theft or Whose Returns the IRS Has Flagged for Possible Identity Theft**

### PROBLEM

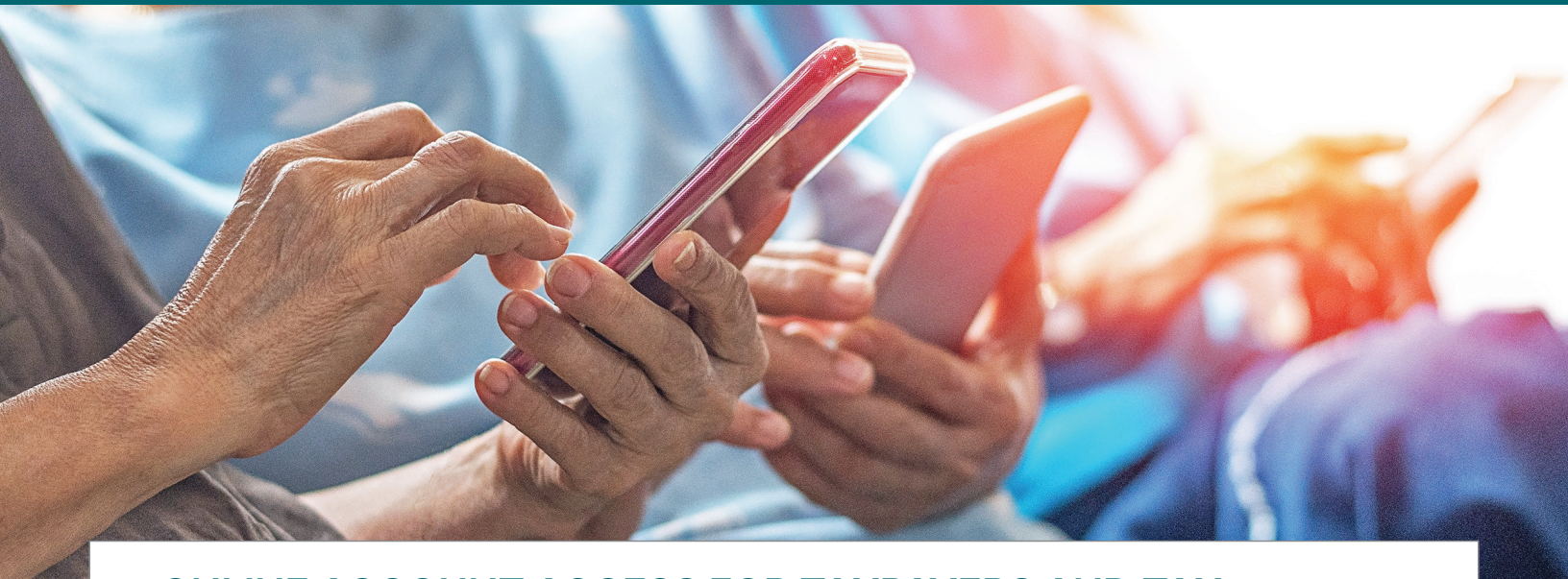
Individuals who are victims of tax-related identity theft are waiting an average of nearly *19 months* for the IRS to process their returns and send their refunds. During the pandemic, the IRS's policy decisions to prioritize other areas (such as shuffling employees to answer telephone lines) contributed to these unreasonable processing delays, which continued throughout 2023 and are expected to continue into 2024. Additionally, each year, the IRS flags millions of returns for potential identity theft. Taxpayers who have filed legitimate returns deal with inadequate notices and difficulties authenticating their identity. Until a taxpayer completes authentication, the IRS cannot process their tax return or send their refund.

### ANALYSIS

Tax-related identity theft is a continuous problem that plagues taxpayers and the IRS, and its prevalence has increased in recent years due to pandemic-related circumstances that enticed many bad actors. The IRS has taken steps to prevent tax-related identity theft; however, these efforts have resulted in taxpayers facing significant problems, including refund delays. Both the Identity Theft Victim Assistance (IDTVA) program and IRS efforts to prevent identity theft are experiencing significant challenges, including taxpayers who are victims of tax-related identity theft often must wait nearly 19 months for the IRS to send their refunds and process their returns; IRS systems for detecting and preventing identity theft have struggled with high false detection rates, subjecting taxpayers who filed legitimate returns to refund delays; taxpayers receive only one letter asking them to authenticate their identity when the IRS suspects an identity thief may have filed a tax return, and taxpayer response rates to these letters are low; and some taxpayers are having to wait too long to receive their Identity Protection Personal Identification Numbers (IP PINs), delaying access to an underutilized tool for preventing tax-related identity theft.

## RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS: 1) refrain from having IDTVA employees perform other duties unrelated to working identity theft cases until the average cycle time for resolving IDTVA cases is less than 90 days; 2) program identity theft filters to consistently have a false detection rate below 50 percent; 3) conduct a pilot where the IRS sends taxpayers authentication letters using different versions of plain language and tests sending multiple letters in close proximity of one another to determine if these changes improve the taxpayer response rate; 4) track when the IRS receives authentication letters returned as “undeliverable” and develop procedures to have IRS employees conduct research to verify a taxpayer’s most recent address; 5) provide a process by which taxpayers can electronically submit Form 15227 and ensure the process routes the forms to the appropriate unit within 48 hours of receipt; 6) conduct outreach to private-public stakeholders making them aware of the availability of IP PINs and how taxpayers can request them; and 7) provide taxpayers who voluntarily opt into the IP PIN program a means by which they can opt out of the program.



## ONLINE ACCOUNT ACCESS FOR TAXPAYERS AND TAX PROFESSIONALS

**Digital Services Remain Inadequate, Impeding Efficient Case Resolution and Forcing Millions of Taxpayers to Call or Send Correspondence to the IRS**

### PROBLEM

Taxpayers and tax professionals lack a comprehensive online account with integrated digital communication tools to access tax information and services that are essential for tax administration and quality service. Taxpayers and tax professionals wanting to interact online need and deserve quality self-service options and quick responses from the IRS. When taxpayers cannot quickly communicate with the IRS to resolve issues and receive answers to their questions simply and securely, it negatively affects the taxpayer experience, which in turn impacts taxpayers' overall satisfaction and trust in the IRS. The lack of an intuitive, self-service avenue to interact online with the IRS forces taxpayers and tax professionals to pursue alternative methods that delay resolution, such as calling for assistance, seeking in-person assistance at a Taxpayer Assistance Center, forgoing assistance, or submitting paper documents.

### ANALYSIS

The IRS has the potential to transform tax administration and bring the IRS into the 21st century using Inflation Reduction Act funding and its Strategic Operating Plan (SOP). Many of the SOP objectives have the potential to transform the modernization of online accounts and digital services through projects, such as improving self-service options, building status-tracking tools, and expanding digital response options. This year, the IRS launched Business Tax Accounts (BTAs) and expanded the services available in Individual Online Accounts (IOLAs) and Tax Pro, but it has more work to do. Taxpayers and tax professionals still need more robust self-service features for online accounts, including the ability to track submissions throughout the entire lifecycle of a tax return, request penalty relief or abatement, and request an offer in compromise. As the IRS continues to expand the services and functionality available in online accounts, it should remain focused on improving the taxpayer experience with efficient, understandable tools developed with input from stakeholders and tax professionals.

## RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS: 1) add increased capabilities and functionality to IOLA, including the ability to track submissions through the entire process, submit offers in compromise online, and calculate payoffs for any balances due, to provide individuals with robust self-service options available at the convenience of the taxpayer; 2) provide individual and business taxpayers with one-click access to all authenticated and unauthenticated self-assistance applications from an intuitive, centralized location; 3) deploy a comprehensive online account for business taxpayers by fiscal year (FY) 2025, including features such as due date reminders for upcoming tax return or information return filings, payment options, and refund tracking; 4) add increased capabilities and functionality to Tax Pro, such as viewing notices and letters and uploading requested documents, to provide authorized representatives seamless access to their clients' online accounts through Tax Pro; 5) provide reporting agents with access to online services with the ability to file Form 8655, Reporting Agent Authorization, electronically, access return transcripts, and verify business name and Employer Identification Numbers electronically; 6) in FY 2024, create an IRS-wide digital backend workflow for processing Document Upload Tool submissions and integrate submissions with an enterprise case management system to deliver the document quickly and efficiently to the correct IRS employees; 7) require mandatory annual training for IRS employees on IOLA, Tax Pro, BTA, and digital communication tools to allow employees to educate taxpayers about the applications; 8) timely notify taxpayers, tax professionals, and IRS employees of new features and upgrades available in IOLA, Tax Pro, BTA, and digital communication tools; 9) expand taxpayer identity proofing options, including increasing the number of credential service providers and expanding in-person identity assistance to taxpayers; 10) provide kiosks in central locations to give taxpayers access to their online account; and 11) incorporate best practices set forth in Office of Management and Budget Memorandum M-23-22, *Delivering a Digital-First Public Experience*.



## INTERNATIONAL

### The IRS's Approach to International Information Return Penalties Is Draconian and Inefficient

#### PROBLEM

U.S. persons who receive money from abroad or who have certain foreign financial interests and cross-border business activities are potentially subject to a wide range of U.S. reporting requirements. Many of these requirements come with significant penalty exposure when a filing is late, incomplete, or inaccurate. Although Congress intended these requirements to prevent wealthy taxpayers and corporations from hiding income and assets abroad, the international information return (IIR) regime also harms unsuspecting lower-income taxpayers, small businesses, and immigrants. Most of these penalties are automatically assessed, broadly applied, needlessly harsh, and often unexpected.

#### ANALYSIS

Rather than promoting compliance with IIR requirements through taxpayer education and support, the IRS has opted to flex its administrative muscle and bring down the enforcement hammer on good-faith taxpayers and bad actors alike. As a result of this approach, many taxpayers are exposed to potentially life-changing penalties for failure to meet information filing requirements that are obscure and complex. For example, a U.S. taxpayer who receives a \$500,000 inheritance from a foreign relative might think that inheritance, since it is excludable from income, requires no information reporting. However, under IRC § 6039F, failure to report a foreign gift, inheritance, or bequest carries a penalty of five percent of the total amount of the gift, up to a maximum of 25 percent. For IRC § 6039F penalties assessed in calendar years 2018-2021, the average IRC § 6039F penalty for taxpayers was \$426,000, and the IRS assessed 36 percent of these penalties against individuals reporting \$50,000 or less in income. Many of these IIR penalties are systemically assessed when taxpayers attempt to become compliant by submitting late returns. When taxpayers provide a reasonable cause statement for their late filing, the IRS routinely ignores the statement until after it assesses the penalty. Although the IRS furnishes taxpayers with the right to go to the IRS Independent Office of Appeals, which often concedes these penalties, taxpayers do not have access to prepayment review in the U.S. Tax Court, leaving taxpayers subject to penalties that are often disproportionate and extraordinarily harsh when compared with the underlying tax liabilities involved.

## RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS: 1) stop automatic assessment and collection of Chapter 61 IIR penalties prior to considering the taxpayer's specific facts and circumstances, including providing the taxpayer their appeal rights with the Independent Office of Appeals; 2) update the Internal Revenue Manual to require review of any reasonable cause relief requests before assessing penalties when these requests are submitted in conjunction with IIRs potentially giving rise to penalties; 3) extend eligibility for first-time abatement to all IIR penalties regardless of whether the underlying return was filed late; 4) revise Notice 97-34 or issue guidance to make the administrative \$100,000 threshold subject to the same inflation adjustments as the \$10,000 threshold set forth in IRC § 6039F; and 5) update Schedule B and the related instructions to include foreign gifts as potentially reportable transfers.

The National Taxpayer Advocate recommends that Congress: 1) amend IRC § 6212 to require the Secretary establish procedures to send a notice of IIR penalties to the taxpayer by certified mail or registered mail for adjudication with the U.S. Tax Court prior to assessing any "assessable penalty" or other IIR penalty listed in Chapter 61, Subchapter A, Part III, Subpart A; 2) clarify that the government has the burden to establish willfulness by clear and convincing evidence before asserting a civil willful Report of Foreign Bank and Financial Accounts (FBAR) penalty and that the government cannot meet this burden by relying on the Schedule B attached to a return; 3) eliminate 31 U.S.C. § 5321(a)(5)(C)(i)(I), which would have the effect of narrowing the statutory maximum civil penalty for a willful FBAR violation to no greater than 50 percent of the balance in the account at the time of the violation so that a \$100,000 penalty is not imposed with respect to low-balance accounts; and 4) amend IRC § 6038D and 31 U.S.C. § 5314 to eliminate duplicative reporting of assets on Form 8938 where a foreign financial account is correctly reported or reflected on an FBAR while ensuring continued IRS access to foreign financial asset data for both tax compliance and financial crime enforcement purposes.





## COMPLIANCE CHALLENGES FOR TAXPAYERS ABROAD

### Taxpayers Abroad Continue to Be Underserved and Face Significant Challenges in Meeting Their U.S. Tax Obligations

#### PROBLEM

Taxpayers abroad face vast difficulties in complying with their U.S. tax obligations. Many find themselves trying to navigate a complicated tax system they do not understand, and the IRS offers limited assistance and guidance. Taxpayers abroad lack accessible, real-time customer service assistance from the IRS, and help from private tax professionals, if available, is often expensive; both contribute to additional burden for these taxpayers. They face a complex tax code that, combined with the lack of IRS service and a comprehensive plan targeted at fixing these issues, results in frustration and non-compliance. The burden and expense of filing tax and international information returns (IIRs) further the problem. The frustrations, time, expense, and complexity domestic taxpayers face are magnified for taxpayers abroad and exacerbated by the added layer of another country's tax laws and the potential for severe penalties for mistakes and omissions. The complexity of the tax code, the inability to easily comply, and the fear of severe penalties are so great that some taxpayers choose to relinquish their U.S. citizenship.

#### ANALYSIS

U.S. taxation of individual taxpayers abroad is extremely complex. The average American taxpayer finds the tax code extremely difficult to understand; this is equally true for taxpayers abroad. Taxpayers abroad continue to face challenges in meeting their U.S. federal tax obligations. These challenges include significant difficulties complying with complex tax laws and filing requirements, finding affordable and competent help to ensure compliance, and accessing declining IRS customer service options, with no access to in-person IRS assistance and almost no ability to access free IRS return preparation assistance. Additionally, they struggle to obtain Individual Taxpayer Identification Numbers (ITINs) and efficiently check their application status. Timeframes for taxpayers abroad to respond to key IRS notices are insufficient and, in some cases, non-existent. Lack of timely notification causes them to lose critical administrative, due process, and judicial rights. Because of the complexity of the tax laws and lack of IRS service and assistance, the number of taxpayers abroad who may not comply, either inadvertently or intentionally, is unknown but potentially sizeable. Until the IRS assesses the international population and makes a concerted effort to educate and assist this population in meeting its U.S. tax obligations, noncompliance will continue.

## RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS: 1) clarify the scope of Rev. Proc. 2020-17 to provide certainty regarding the reporting requirements of foreign workplace retirement plans under IRC § 6048, including foreign pensions where deferral of tax on earnings is available under a U.S. tax treaty; 2) translate the most common international tax forms and instructions, starting with Publication 54, into multiple languages other than English; 3) provide in-person services abroad including reopening foreign tax attachés and/or Taxpayer Assistance Centers (TACs), beginning with cities with the highest number of filers; until it does, the IRS should offer or facilitate virtual TAC, Volunteer Income Tax Assistance (VITA), and Tax Counseling for the Elderly appointments to taxpayers outside of the United States, with the same services available to domestic taxpayers; 4) develop a cross-functional team solely focused on assisting international taxpayers; the team should have regular meetings, objectives, and measurable results; 5) provide a toll-free international telephone line or alternative free service dedicated solely to taxpayers abroad; 6) provide greater accessibility to online accounts for taxpayers abroad who cannot authenticate through the current credential service provider; 7) modernize the ITIN application process to: i) allow taxpayers to apply for an ITIN throughout the year and submit alternate proof of a filing requirement other than an annual tax return, ii) allow Certifying Acceptance Agents to electronically file Form W-7 with copies of the supporting documentation, and iii) improve the system the IRS uses to process W-7 forms to enhance data quality and management, including a process for logging documents upon receipt; the IRS should also provide dedicated resources and a phone number to the Austin ITIN unit and prominently display current estimates of ITIN processing times on the ITIN landing page of the IRS website; 8) explore expanding the scope of the VITA program to allow grant funds to be used to provide ITIN certification services for taxpayers at VITA sites; 9) allow taxpayers located outside the United States an additional 60 days upfront to respond to all IRS correspondence that requires a response or other action from the taxpayer; and 10) provide a precertification notice to taxpayers that allows them to attempt to resolve tax liabilities and appeal a proposed IRS certification of a seriously delinquent tax debt before the IRS sends a certification regarding passport revocation to the Department of State (the notice should give taxpayers outside of the United States an additional 60-day response time beyond that provided domestically).

The National Taxpayer Advocate recommends that Congress: 1) amend IRC § 6038D and 31 U.S.C. § 5314 to eliminate duplicative reporting of assets on IRS Form 8938 where a foreign financial account is correctly reported or reflected on a Report of Foreign Bank and Financial Accounts while ensuring continued IRS access to foreign financial asset data for both tax compliance and financial crime enforcement purposes; 2) amend IRC §§ 6320(a)(3)(B), 6330(a)(3)(B), and 6330(d)(1) to allow 90 days (*i.e.*, an additional 60 days) (i) to request a Collection Due Process (CDP) hearing after the issuance of a CDP lien or levy notice and (ii) to file a petition for review in the U.S. Tax Court after the IRS issues a notice of determination if the notice is addressed to a person outside the United States; and 3) amend IRC § 6213(b)(2)(A) to allow taxpayers 120 days to request an abatement of tax when a math error notice is addressed to a person outside the United States.



## APPEALS

### Despite Some Improvements, Many Taxpayers and Tax Professionals Continue to Perceive the IRS Independent Office of Appeals as Insufficiently Independent

#### PROBLEM

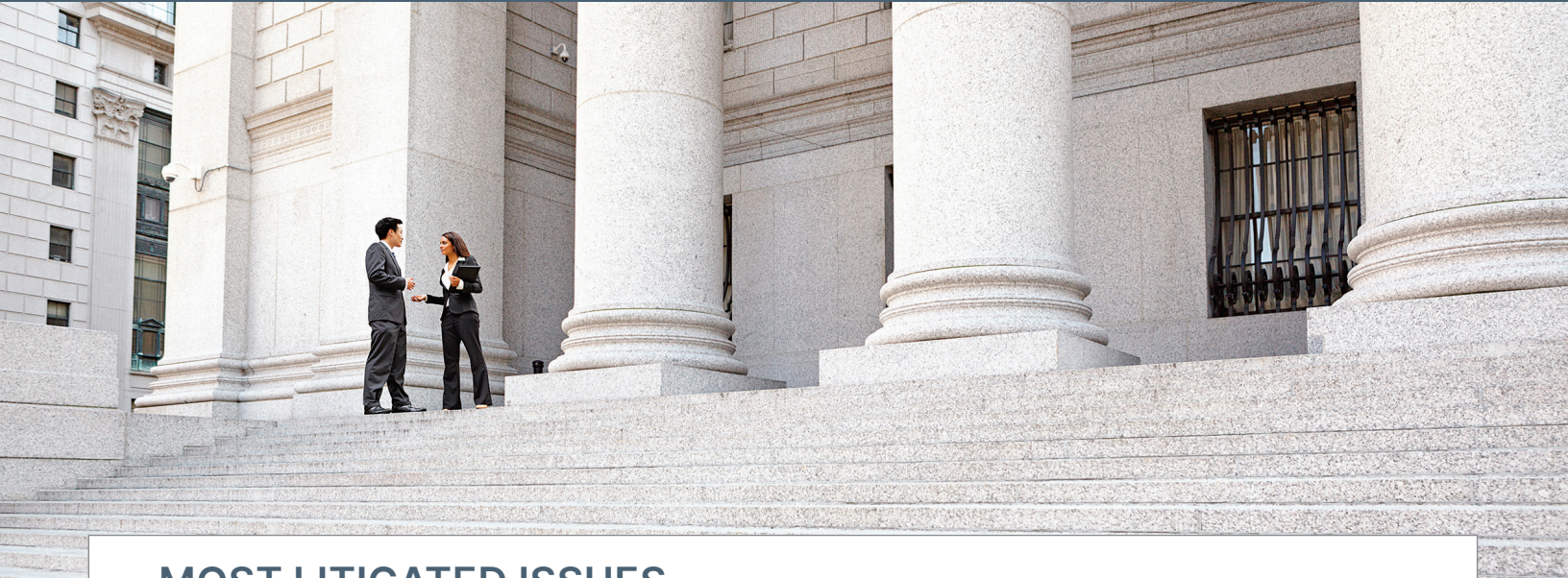
The IRS Independent Office of Appeals (Appeals) continues to face challenges impacting its perceived independence and operational efficiency, thereby undermining taxpayer trust and prolonging dispute resolution. Taxpayers and tax professionals often resort to costly litigation if they cannot resolve their case in Appeals or if they doubt the impartiality of the process. Increased burdens and an erosion of confidence in Appeals' independence compromise a taxpayer's statutory right to an independent appeal and can lead to unnecessary and costly litigation.

#### ANALYSIS

Appeals Officers (AOs) often lack autonomy in decision-making, particularly in coordinated issues where settlement standards are not disclosed to taxpayers and their representatives. This lack of transparency can lead to situations where AOs are unable to exercise their independent judgment to offer an equitable settlement because there exists a "wizard behind the curtain" who is the actual Appeals decision-maker. Further, the participation of Chief Counsel attorneys in initial Appeals conferences often hinders meaningful negotiation and negatively affects impartial settlements by creating an impression that part of the Appeals process is to allow IRS lawyers to develop issues for trial rather than to resolve disputes without litigation. Proposed regulations enacting the Taxpayer First Act also limit Appeals' independence by restricting AOs from considering otherwise proper taxpayer arguments in assessing the hazards of litigation. Significant wait times for scheduling conferences, especially for taxpayers in states without a permanent Appeals presence, delay resolution and can lead to unnecessary litigation. Also, many AOs, who are often recruited from IRS Compliance, retain a compliance mindset, potentially impacting their impartiality in a taxpayer appeal. Lastly, there is a significant decline in the use of Alternative Dispute Resolution (ADR) programs. Comprehensive data collection, analysis, and transparency in sharing the results can improve these programs. Without these data management improvements, taxpayer options remain limited for resolving the disputes in advance of the full Appeals process.

## RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS: 1) prioritize in-office availability of AOs to reduce wait times and increase taxpayer access to in-person conferences; 2) require technical guidance coordinators and other specialists, whose advice the AO relies upon, be available in person if requested so taxpayers can address their unique facts and circumstances directly with those specialists; 3) provide additional budget to contract outside experts on complex matters and hire attorneys that report to the Chief of Appeals; 4) revise the Internal Revenue Manual to require Appeals to share all Appeals Case Memoranda with taxpayers and establish policies and mandatory procedures to effectively track these efforts; 5) hire more AOs from outside the IRS who have the necessary qualifications and experience to reduce the influence of a compliance mindset on Appeals' culture; 6) provide continuous education for all AOs emphasizing a judicial attitude toward settlement to reduce a compliance mindset; 7) in collaboration with Compliance, restructure the current ADR process to provide (a) an ability to appeal the initial determination to Compliance upper management, (b) the creation of a centralized group within Appeals responsible for reviewing Compliance denials of ADR requests, (c) clearer guidance on issues excluded from ADR consideration, and (d) a written explanation to taxpayers citing the basis for the denial; and 8) in collaboration with Compliance, collect consistent, reliable data on what happens to taxpayer requests to use ADR as well as the results of each ADR program, such as resolutions achieved for the time and costs invested.



## MOST LITIGATED ISSUES

IRC § 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 and provide recommendations to mitigate litigation. 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) 2023 period from October 1, 2022, through September 30, 2023 (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.

Our analysis identified 488 court opinions, with a large portion, 202 opinions, issued by the Tax Court in the reporting period. We also reviewed 286 court opinions from other federal courts, including 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 represent a 33 percent increase from the 368 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 20,839 petitions seeking judicial review in the Tax Court submitted by taxpayers in FY 2023. Of the 34,912 cases closed in the Tax Court in FY 2023, more than 99 percent were resolved or dismissed without a ruling on the merits.

Figure 3.1 shows the most litigated issues decided by the Tax Court in FY 2023, divided by individual and business taxpayers, in order from most to least.

**FIGURE 3.1, Top Tax Court Opinions Issued for Individual and Business Taxpayers, FY 2023**

Ranking	Top Tax Court Opinions Issued for Individual Taxpayers	Tax Court Opinions Discussing Issue	Ranking	Top Tax Court Opinions Issued for Business Taxpayers	Tax Court Opinions Discussing Issue
1	Gross Income (IRC § 61 and Related IRC Sections) and Unreported/ Underreported Income	28	1	Schedule C Income and Expenses	19
2	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)	9 (tie)	2	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
3	Innocent Spouse Relief (IRC § 6015)	9 (tie)	3	Charitable Contribution Deductions (IRC § 170)	12 (tie)
4	Whistleblower Award Determinations (IRC § 7623(b)(1))	8	4	Gross Income (IRC § 61 and Related IRC Sections)	12 (tie)
5	Adjusted Gross Income (AGI) Exclusions and Deductions	6 (tie)	5	Schedule A Deductions (IRC §§ 211-224)	11
6	Judicial Review of Passport Revocation (IRC § 7345(e))	6 (tie)	6	Corporate Income (Excluding Cost of Goods Sold (COGS)) or Expenses	10 (tie)
7	Schedule A Itemized Deductions (IRC §§ 211-224)	5	7	Passive Activity (Schedule E) Income and Expenses	10 (tie)
8	Premium Tax Credit (IRC § 36B)	3 (tie)	8	Schedule K-1 Flow-Through Items for Forms 1120-S and 1065	9
9	Ten Percent Additional Tax on Early Distributions From Qualified Retirement Plans (IRC § 72(t))	3 (tie)	9	AGI Exclusions and Deductions	8
10	Attorney Fees (IRC § 7430)	2 (tie)	10	Partnership Income (Excluding COGS) or Expenses	5
11	Charitable Contribution Deductions (IRC § 170)	2 (tie)			

Figure 3.2 shows the top ten issues petitioned to the Tax Court in FY 2023, 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, FY 2023**

Ranking	Top Ten Individual Taxpayer Issues Petitioned to the Tax Court	Total Petitions to the Tax Court	Ranking	Top Ten Business Taxpayer Issues Petitioned to the Tax Court	Total Petitions to the Tax Court
1	Gross Income (IRC § 61 and Related IRC Sections)	13,475	1	Sole Proprietorship Trade or Business Expense	1,707
2	Statutory Adjustment	5,409	2	Sole Proprietorship Gross Income	1,228
3	Filing Status and Dependents	2,088	3	Passive Activity (Schedule E) Income and Expenses	903
4	Family Status Related Credits	1,772	4	Corporate or Partnership Trade or Business Expense	358
5	Payments and Credits	1,669	5	Corporate or Partnership Gross Income	303
6	Earned Income Tax Credit (EITC)	1,608	6	Taxes and Other Credits	214
7	Federal Income Tax Withholding	1,036	7	Schedule K-1 Flow-Through Items	68
8	Schedule A Itemized Deductions Under IRC §§ 211-224	916	8	Charitable Contributions	47
9	AGI Exclusions and Deductions	778	9	Farming and Agriculture Activities – Gross Income	31
10	Taxes and Other Credits	617	10	Balance Sheet – Stockholder Equity	29

Comparing the number of docketed cases amongst the courts in which taxpayers may litigate federal tax disputes (*i.e.*, petitions filed), the Tax Court received at least 64 times as many tax cases as district courts and 86 times as many tax cases as the Court of Federal Claims in FY 2023. Looking to the pending inventory of Tax Court cases at the end of FY 2023, in nearly 68 percent of the cases, there was less than \$50,000 at stake. About two percent of the total docketed Tax Court cases involved an amount in dispute of more than \$10 million, but that represents nearly 83 percent of all dollars in dispute in the Tax Court. Additionally, most cases were settled in FY 2023, as has been the trend for the past ten years. While the Tax Court docket has the majority of cases, there is on average more money at stake in tax litigation in the district courts and the Court of Federal Claims. For Tax Court cases settled in FY 2023, the majority were settled by the Independent Office of Appeals (48.6 percent) while the remainder was split between settlements by IRS Chief Counsel (17.6 percent), defaults and dismissals (33.2 percent), and trial/other dispositions (0.5 percent). In FY 2023, about 91 percent of cases petitioned to the Tax Court involved *pro se* taxpayers, and in about nine 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 84.6 percent of taxpayers appearing in Tax Court were not represented by counsel.

Correspondence and automated underreporting audits from campuses continue to outnumber other sources for cases petitioned to the Tax Court. On average over the past ten fiscal years, about 72 percent of petitions in the Tax Court resulted from a Campus issuing an SND. 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 ADVOCACY

TAS is an independent organization within the IRS that serves as the advocacy ombuds for taxpayers. TAS operates around four central statutorily mandated objectives:

- To assist taxpayers in resolving problems with the IRS;
- To identify areas in which taxpayers are experiencing problems with the IRS;
- To propose changes in the administrative practices of the IRS to mitigate problems taxpayers are experiencing with the IRS; and
- To identify potential legislative changes that may be appropriate to mitigate such problems.

In this section, we include information from our Case Advocacy and Systemic Advocacy functions and share some of our success stories and initiatives that represent advocacy work from across the TAS organization.

### TAS CASE ADVOCACY

Central to the mission of TAS is protecting taxpayer rights and providing assistance to all types of taxpayers (*e.g.*, individuals, business owners, exempt entities) when they have issues interacting with the IRS. To accomplish these vital mission components, we help taxpayers one-on-one in resolving problems with the IRS. Our Intake Advocates and Case Advocates work with taxpayers, their representatives, and congressional staffs to resolve specific tax problems. TAS also learns from the problems we see and resolve by using information from our discussions and case results to inform and support two other components of TAS's statutory mission: proposing changes in IRS administrative practices and identifying potential legislative changes to relieve taxpayers' problems.

### TAS SYSTEMIC ADVOCACY

TAS strives to improve the taxpayer experience and ensure that the IRS is respecting taxpayers and their rights. As a part of this, TAS makes administrative recommendations to the IRS and legislative recommendations to Congress. These recommendations often endorse actions that create positive resolutions to mitigate problems, reduce taxpayer burden, and ensure the IRS treats all taxpayers fairly.

TAS does not limit itself to a single approach in its advocacy work for taxpayers. While TAS Case Advocacy focuses on work with individual taxpayers or their representatives to resolve their specific problems with the IRS, TAS Systemic Advocacy works to identify systemic issues that affect large numbers of taxpayers. These systemic issues involve systems, processes, policies, procedures, or legislation.

## **TAXPAYER ADVOCATE DIRECTIVES**

A Taxpayer Advocate Directive (TAD) is a mechanism that provides the National Taxpayer Advocate the opportunity to formally raise systemic issues before IRS officials, requesting that they address her concerns and implement improvements to processes that affect taxpayer rights. IRS Delegation Order 13-3 authorizes the National Taxpayer Advocate to issue a TAD “to mandate administrative or procedural changes to improve the operation of a functional process or to grant relief to groups of taxpayers (or all taxpayers) when implementation will protect the rights of taxpayers, prevent undue burden, ensure equitable treatment, or provide an essential service to taxpayers.” The National Taxpayer Advocate issued no TADs or proposed TADs in fiscal year 2023.

## **HIGHLIGHTS OF TAS SUCCESSES AND INITIATIVES**

Each year, TAS helps thousands of people resolve their tax problems. TAS had success in 2023 in the following tax administration areas: issuing filing guidance, resolving collection cases, working taxpayer account issues, collaborating with the IRS, resolving penalty cases, and improving the TAS website.

## National Taxpayer Advocate 2023 Research Reports

### **TAXPAYER OPINIONS OF IRS INDIVIDUAL ONLINE ACCOUNTS AND A REVIEW OF ONLINE ACCOUNTS AND WEB SERVICES OFFERED TO BUSINESSES AND TAX PROFESSIONALS BY U.S. STATE AND FOREIGN COUNTRY TAXING AUTHORITIES**

This report is a continuation of our study published in 2022 detailing the features of online accounts offered by state taxing authorities and a few foreign countries. The prior report focused on online accounts for individuals. The first part of this year's report discusses the findings of a small number of targeted interviews conducted with individual taxpayers about their preferences and opinions of IRS online account resources and features as well as the authentication criteria necessary to access their account information. The second part of the report is similar to last year's report but focuses on online accounts offered to businesses and tax professionals by the taxing authorities of states and some foreign countries.

### **STUDY OF THE TWO-YEAR BANS ON THE EARNED INCOME TAX CREDIT, CHILD TAX CREDIT, AND AMERICAN OPPORTUNITY TAX CREDIT**

The IRC authorizes the IRS to ban taxpayers from claiming certain refundable credits – the Earned Income Tax Credit, the Child Tax Credit, or the American Opportunity Tax Credit – for two years if it determines that the taxpayer claimed the credit recklessly or with intentional disregard of rules and regulations. Over the years, TAS has conducted several research projects to examine whether the IRS is following its own procedures when imposing the two-year ban on one of these credits. This study follows up on those earlier projects and revisits the IRS's adherence to its procedures when imposing the two-year ban. TAS reviewed a representative sample of 352 cases where the IRS imposed the two-year ban as a result of audits closed in fiscal year (FY) 2022 or the first eight months of FY 2023. This review showed the IRS often did not follow its own procedures.

### **STUDY OF POTENTIALLY LEGITIMATE TAXPAYERS WHO DID NOT RECEIVE A TAX YEAR 2020 REFUND BECAUSE THEY DID NOT RESPOND TO AN IRS LETTER REQUESTING THEY VERIFY THEIR IDENTITY AND TAX RETURN**

This brief report details a recently implemented TAS Research study on taxpayers likely eligible for refunds the IRS froze because of suspected identity theft. Each year, the IRS freezes a few million refund returns with characteristics possibly indicative of an identity thief having filed the return. However, at least half of these returns are shown to be submitted by the legitimate taxpayer. The IRS sends a single letter asking the taxpayer filing a return suspected of identity theft to authenticate their identity and verify their tax return information before it will release the claimed refund. But each year, some taxpayers wait months to complete this process with the IRS, and many other taxpayers contact TAS months after they should have received their refund to find out where it is. TAS believes many legitimate taxpayers may be entitled to refunds still frozen by the IRS and is exploring the effect of sending a letter to a sample of likely legitimate taxpayers offering TAS assistance to complete the IRS identity verification process. TAS mailed these outreach letters in early December 2023 and will send a follow-up letter in early January to taxpayers who did not respond to the first outreach letter. TAS will track both the number of respondents and whether the taxpayer could successfully verify their identity and tax return information. TAS will report the results of this study in a future report.

*Full Research Reports available online after January 31, 2024*

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

Section 7803(c)(2)(B)(ii)(IX) of the Internal Revenue Code requires the National Taxpayer Advocate, as part of her Annual Report to Congress, to propose legislative recommendations to resolve problems encountered by taxpayers. This year, we present 66 legislative recommendations in the National Taxpayer Advocate 2024 Purple Book.

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 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. In addition, we begin each recommendation with a concise summary that describes the “Problem” and our suggested “Solution” in layman’s terms to the extent possible. Our objective is to allow readers to quickly get a feel for all 66 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 the 2024 Purple Book 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 discussions of the issues that have been published in prior National Taxpayer Advocate reports.

By our count, Congress has enacted approximately 51 legislative recommendations that the National Taxpayer Advocate has proposed. See Appendix 2 of the 2024 Purple Book for a complete listing. This total includes approximately 23 provisions that were enacted as part of the Taxpayer First Act.<sup>1</sup>

The Office of the Taxpayer Advocate is a non-partisan, independent organization within the IRS that assists taxpayers in resolving problems with the IRS and makes administrative and legislative recommendations to mitigate taxpayer problems and protect taxpayer rights. 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. In 2019, for example, the Taxpayer First Act was approved by both the House and the Senate on voice votes with no recorded opposition.

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<sup>1</sup> 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 feedback it receives.

We believe most of the recommendations presented in this volume are non-controversial, common-sense reforms that will strengthen taxpayer rights and improve tax administration. We are happy to discuss these recommendations in more detail with Members of Congress and their staffs. We highlight the following ten legislative recommendations for particular attention:

- **Require the IRS to Timely Process Claims for Credit or Refund (Recommendation #2).** Millions of taxpayers file refund claims with the IRS each year. Under current law, there is no requirement that the IRS pay or deny them. It may simply ignore them. The taxpayers' remedy is to file suit in a U.S. district court or the U.S. Court of Federal Claims. For many taxpayers, that is not a realistic or affordable option. The absence of a processing requirement is a poster child for non-responsive government. While the IRS generally does process refund claims, the claims can, and sometimes do, spend months and even years in administrative limbo within the IRS. Providing symmetry between the assessment statute, which has a clear ending date, and a statute requiring the IRS to timely process claims for credit or refund would be good tax administration and would protect taxpayers' *right to be informed*, *right to pay no more than the correct amount of tax*, and *right to finality*. We recommend Congress require the IRS to act on claims for credit or refund in a timely manner and impose certain consequences for failing to do so.
- **Authorize the IRS to Establish Minimum Competency Standards for Federal Tax Return Preparers and Revoke the Identification Numbers of Sanctioned Preparers (Recommendation #4).** The IRS receives over 160 million individual income tax returns each year, and most are prepared by paid tax return preparers. While some tax return preparers must meet licensing requirements (*e.g.*, certified public accountants, attorneys, and enrolled agents), most tax return preparers are not credentialed. Numerous studies have found that non-credentialed preparers disproportionately prepare inaccurate returns, causing some taxpayers to overpay their taxes and other taxpayers to underpay their taxes, which may lead to penalties and interest charges. This harms taxpayers financially and undermines the taxpayers' *right to pay no more than the correct amount of tax*. It also harms the government by reducing revenue collection overall. In fiscal year 2022, for example, the IRS estimated the improper payments rate attributable to wrongful Earned Income Tax Credit (EITC) claims was 32 percent, amounting to \$18.2 billion.<sup>2</sup> Among tax returns claiming the EITC prepared by paid tax return preparers, *94 percent* of the total dollar amount of EITC audit adjustments was attributable to returns prepared by non-credentialed preparers.<sup>3</sup>

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. To protect taxpayers and the public fisc, we recommend Congress authorize the IRS to establish minimum competency standards for tax return preparers and to revoke the Preparer Tax Identification Numbers (PTINs) of preparers who have been sanctioned for improper conduct.<sup>4</sup>

2 Government Accountability Office, GAO-23-106285, *Improper Payments: Fiscal Year 2022 Estimates and Opportunities for Improvement* 34 (2023), <https://www.gao.gov/assets/gao-23-106285.pdf>.

3 IRS CDW, IRTF (Return Preparers and Providers PTIN database and Audit Information Management System - Closed Cases database) (as of Sept. 28, 2023).

4 In general, a PTIN must be obtained by a tax return preparer who is compensated for preparing or assisting in the preparation of all or substantially all of a federal tax return or claim for refund. The preparer must then include the PTIN on any returns or claims for refund prepared.

- 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 (Recommendation #8).** When the IRS proposes to assess additional tax, it ordinarily must issue a notice of deficiency to the taxpayer, which gives the taxpayer an opportunity to seek judicial review in the U.S. Tax Court if the taxpayer disagrees with the IRS's position. In limited cases where a taxpayer commits a "mathematical or clerical error," however, the IRS may bypass deficiency procedures and issue a "math error" notice that summarily assesses additional tax. If a taxpayer does not respond to a math error notice within 60 days, the assessment becomes final, and the taxpayer will have forfeited the right to challenge the IRS's position in the Tax Court. Currently, math error notices often do not clearly explain the reason for the adjustment and do not prominently explain the consequences of failing to respond within 60 days. We recommend Congress require the IRS to describe the error giving rise to the adjustment with specificity and inform taxpayers they have 60 days (or 120 days if addressed to a person outside the United States)<sup>5</sup> to request that a summary assessment be abated or will forfeit their right to judicial review.
- Provide That Assessable Penalties Are Subject to Deficiency Procedures (Recommendation #13).** The IRS ordinarily must issue a notice of deficiency giving taxpayers the right to appeal an adverse IRS determination in the U.S. Tax Court before it may assess tax.<sup>6</sup> In limited situations, however, the IRS may assess certain 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 current IRS interpretation, these penalties include, but are not limited to, international information reporting penalties under IRC §§ 6038, 6038A, 6038B, 6038C, and 6038D. The inability of taxpayers to obtain judicial review on a preassessment 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, impairing the taxpayers' *right to challenge the IRS's position and be heard*. 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 Congress require the IRS to issue a notice of deficiency before imposing assessable penalties.
- Extend the Reasonable Cause Defense for the Failure-to-File Penalty to Taxpayers Who Rely on Return Preparers to E-File Their Returns (Recommendation #31).** The law imposes a penalty of up to 25 percent of the tax due for failing to file a timely tax return, but the penalty is waived where a taxpayer can show the failure was due to "reasonable cause."<sup>7</sup> Most taxpayers pay tax return preparers to prepare and file their returns for them. In 1985, when all returns were filed on paper, the Supreme Court held that a taxpayer's reliance on a preparer to file a tax return did not constitute "reasonable cause" to excuse the failure-to-file penalty if the return was not filed.<sup>8</sup> In 2023, a U.S. Court of

5 A taxpayer is given 60 additional days to respond to a notice of deficiency when the notice "is addressed to a person outside the United States." IRC § 6213(a). By contrast, a taxpayer abroad is given no additional time to respond to a math error notice. To protect taxpayers' rights and promote consistency, we recommend providing 60 additional days for taxpayers located outside the United States to respond a math error notice. See National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (Give Taxpayers Abroad Additional Time to Request Abatement of a Math Error Assessment)*.

6 In the case of "mathematical or clerical errors," the IRS may issue a "math error" notice that assesses tax without providing the right to judicial review. The taxpayer has 60 days to request that the math error assessment be abated. If the taxpayer makes the request, the IRS is required to abate the assessment, and if the IRS decides to challenge the taxpayer's position, it must then issue a notice of deficiency. See IRC § 6213(b).

7 IRC § 6651(a)(1). The penalty increases to 15 percent per month up to a maximum of 75 percent in the case of a fraudulent failure to file. See IRC § 6651(f)(2).

8 *United States v. Boyle*, 469 U.S. 241 (1985).

Appeals held that “reasonable cause” is also not a defense when a taxpayer relies on a preparer to file a tax return electronically.<sup>9</sup>

For several reasons, it is often much more difficult for taxpayers to verify that a return preparer has e-filed a return than to verify that a return has been paper-filed. Unfortunately, many taxpayers are not familiar with the electronic filing process and do not have the tax knowledge to ask for the right document or proof of filing. Penalizing taxpayers who engage preparers and do their best to comply with their tax obligations is grossly unfair and undermines the congressional policy that the IRS encourage e-filing. Under the court’s ruling, astute taxpayers would be well advised to ask their preparers to give them paper copies of their prepared returns and then transmit the returns by certified mail themselves so they can prove compliance. We recommend Congress clarify that reliance on a preparer to e-file a tax return may constitute “reasonable cause” for penalty relief and require the Secretary to issue regulations detailing what constitutes ordinary business care and prudence for purposes of evaluating reasonable cause requests.

- Clarify That Supervisory Approval Is Required Under IRC § 6751(b) Before Proposing Penalties (Recommendation #33).** 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 blush, 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 choose to 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 take place earlier in the process. We recommend 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.
- Expand the U.S. Tax Court’s Jurisdiction to Hear Refund Cases (Recommendation #43).** Under current law, taxpayers seeking to challenge an IRS tax-due adjustment can file a petition in the U.S. Tax Court, while taxpayers who have paid their tax and are seeking a refund must file suit in a U.S. district court or the U.S. Court of Federal Claims. Litigating in a U.S. district court or the Court of Federal Claims can be very challenging – filing fees are relatively high, rules of civil procedure are complex, the judges generally do not have tax expertise, and proceeding without a lawyer is difficult. By contrast, taxpayers litigating their cases in the Tax Court face a low \$60 filing fee,<sup>10</sup> may follow less formal procedural rules, are generally assured their positions will be fairly considered even if they don’t present them well because of the tax expertise of the Tax Court’s judges, and can more easily represent themselves without a lawyer. For these reasons, the requirement that refund claims be litigated in a U.S. district court or the Court of Federal Claims effectively deprives many taxpayers of the right to judicial review of an IRS refund disallowance. Currently, about 97 percent of all tax-related litigation is adjudicated in the Tax Court.<sup>11</sup> We recommend Congress expand the jurisdiction of the Tax Court to give taxpayers the option to litigate all tax disputes, including refund claims, in that forum.

<sup>9</sup> *Lee v. United States*, No. 22-10793, 2023 WL 6979257 (11th Cir. Oct. 24, 2023).

<sup>10</sup> The filing fee can be waived if the taxpayer establishes an inability to pay to the satisfaction of the Tax Court.

<sup>11</sup> Data compiled by the IRS Office of Chief Counsel (Oct. 20, 2023); IRS, Counsel Automated Tracking System, TL-711 and TL-712. This data does not include cases on appeal and declaratory judgments.

- **Promote Consistency With the Supreme Court’s *Boechler* Decision by Making the Time Limits for Bringing All Tax Litigation Subject to Equitable Judicial Doctrines (Recommendation #45).** Taxpayers who seek judicial review of adverse IRS determinations generally must file petitions in court by statutorily imposed deadlines. The courts have split over whether filing deadlines can be waived under extraordinary circumstances. Most tax litigation takes place in the U.S. Tax Court, where taxpayers are required to file petitions for review within 90 days of the date on the notice of deficiency (150 days if addressed to a person outside the United States). The Tax Court has held it lacks the legal authority to waive the 90-day (or 150-day) filing deadline even, to provide a stark example, if the taxpayer had a heart attack on Day 75 and remained in a coma until after the filing deadline. The Supreme Court recently held that filing deadlines are subject to “equitable tolling” in the context of Collection Due Process hearings. We recommend Congress harmonize the conflicting court rulings by providing that all filing deadlines to challenge the IRS in court are subject to equitable tolling where timely filing was impossible or impractical.
- **Remove the Requirement That Written Receipts Acknowledging Charitable Contributions Must Be Contemporaneous (Recommendation #59).** 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 allowable – even if the taxpayer has credit card receipts and other documentation that fully and unambiguously substantiate the deduction. This requirement can harm civic-minded taxpayers who do not realize how strict the timing requirements are and undermines congressional policy to encourage charitable giving. We recommend Congress modify the substantiation rules to require reliable – but not necessarily advance – acknowledgement from the donee organization.
- **Enable the Low Income Taxpayer Clinic Program to Assist More Taxpayers in Controversies With the IRS (Recommendation #64).** The LITC Program assists 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, the law 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 a larger universe of eligible taxpayers. We recommend Congress remove the per-clinic cap and allow the IRS to reduce the match requirement to 25 percent where doing so would expand coverage to additional taxpayers.







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