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RETURN PREPARATION: Require the IRS to Provide Return Preparation to Taxpayers in Taxpayer Assistance Centers and Via Virtual Service Delivery

PROBLEM

Beginning in the 2014 filing season, the IRS eliminated tax return preparation services by IRS employees.¹ Low income, disabled, and elderly taxpayers were directed to use Free File or Volunteer Income Tax Assistance and Tax Counseling for the Elderly (VITA/TCE) sites.² Taxpayers can no longer have a tax return prepared by an IRS employee, regardless of their income level or situation. The IRS's decision to cease free tax return preparation at Taxpayer Assistance Centers (TACs) raises the following concerns:

- Returns prepared by IRS employees were more accurate than other sources;³
- Other avenues for free return preparation, such as VITA/TCE sites, are limited with regard to the types and the scope of returns these sites can prepare compared to return preparation services previously offered at TACs;⁴ and
- The IRS awarded seven fewer grants to VITA sites from FY 2013 to FY 2014 while the number remained the same for the TCE sites for the same period.⁵

Failing to provide return preparation by IRS employees undermines *the right to quality service* articulated in the recently adopted Taxpayer Bill of Rights.⁶ Under *the right to quality service*, taxpayers are entitled to professional assistance from the IRS and to receive clear and easily understandable communications. By abandoning return preparation, the IRS has left vulnerable taxpayers to turn either to volunteer sites, who may not prepare the type of returns the taxpayers need, or to paid tax return preparers to prepare and

- 1 IRS, e-News for Tax Professionals – Issue Number 2013-49, Item 4, *Some IRS Assistance and Taxpayer Services Shift to Automated Resources* (Dec. 20, 2013), available at <http://www.irs.gov/uac/Some-IRS-Assistance-and-Taxpayer-Services-Shift-to-Automated-Resources>.
- 2 VITA/TCE sites provide free tax return preparation services for qualified individuals in conjunction with IRS assistance and direction. See IRS, *Some IRS Assistance and Taxpayer Services Shift to Automated Resources*, available at <http://www.irs.gov/uac/Some-IRS-Assistance-and-Taxpayer-Services-Shift-to-Automated-Resources> (last visited Oct. 17, 2014); IRS, Free File: Do Your Federal Taxes for Free, available at <http://www.irs.gov/uac/Free-File-Do-Your-Federal-Taxes-for-Free> (last visited Oct. 27, 2014). The income limitation on eligibility to use Free File changes each taxable year.
- 3 Generally, returns prepared by TACs, where the taxpayers have a household income of less than \$50,000 and do not use schedules E (*Supplemental Income and Loss*), or F (*Profit or Loss From Farming*), or Form 2106 (*Employee Business Expenses*), had lower Discriminant Function (DIF) scores than returns prepared by other preparers or by taxpayers, suggesting that TAC-prepared returns are less likely to understate the tax owed and are thus more accurate. Compliance Data Warehouse, *Individual Returns Transaction File: Tax Year 2010*. TAC criteria for return preparation include returns with income not in excess of \$50,000, and no schedules E, F, or Forms 2106, in addition to other requirements. The DIF score is an IRS calculated estimate of the likelihood that a tax return has understated the amount of tax owed, based on the type of return filed. The only returns that have lower DIF scores than TAC-prepared returns with the caveats listed above are those in Activity Code 272, which are returns with no Schedules C (*Profit or Loss from Business (Sole Proprietorship)*), E, F, or Form 2106 and no claiming of the Earned Income Tax Credit.
- 4 IRS, Publication 4012, *VITA/TCE Volunteer Resource Guide, Scope of Service 8-10* (Oct. 2014). VITAs and TCEs generally cannot prepare IRS Form 1040 Schedule C, *Profit or Loss From Business (Sole Proprietorship)*, complicated and advanced forms such as Schedule D, Capital Gains and Losses, and Schedule F, Profit or Loss From Farming, Form 3903, Moving Expenses, and others. Internal Revenue Manual (IRM) 22.30.1.3.10.2, after the IRM number then *Prior Year Return Preparation* (Oct. 1, 2014). Only experienced volunteer sites with the necessary software and reference materials may prepare prior year returns.
- 5 IRS response to TAS information request (Aug.15, 2014 and Nov. 19, 2014).
- 6 The IRS adopted the Taxpayer Bill of Rights on June 10, 2014. See IRS, Taxpayer Bill of Rights, available at <http://www.irs.gov/Taxpayer-Bill-of-Rights>. See also IRS, Publication 1, *Your Rights as a Taxpayer* (2014).

file their returns, resulting in the taxpayer paying for an essential service that the government previously provided for free.

EXAMPLE

A low income taxpayer resides in a rural area of a state. It is a one-hour drive to the closest TAC, where he has had his tax return prepared for years. The state does not have much coverage from the VITA program and the taxpayer does not qualify for TCE services. The closest VITA site to his home is hosted by a library three hours away. Since the TACs stopped preparing returns, the taxpayer stopped filing his returns. This year he decides to make the long trip to the VITA site. However, once he arrives, he finds out that VITA has no one volunteering that day who can prepare his past returns, and cannot help him with a cancellation of debt income issue. The taxpayer returns home and, because he does not feel competent to prepare his own return, seeks out a local preparer who charges a fee for return preparation that the taxpayer, in prior years, obtained for free.

RECOMMENDATION

To provide taxpayers with access to IRS return preparation, the National Taxpayer Advocate recommends that Congress:

- Require the IRS to provide return preparation for vulnerable populations (including low income, disabled, and elderly taxpayers) in TACs and via virtual service delivery.
- Provide sufficient funding for IRS personnel to offer return preparation in TACs.

PRESENT LAW

The IRS is not currently required to provide return preparation services in TACs or via virtual service delivery.

REASONS FOR CHANGE

VITA and TCE sites provide a valuable service to vulnerable taxpayer populations, including low income, disabled, and the elderly; however, they are not a substitute for IRS return preparation services. Return preparation services offered by the IRS were more comprehensive than those currently available at VITA and TCE sites.⁷ VITA and TCE sites are limited by the IRS guidelines for the types of returns they can prepare.⁸ Generally, VITA and TCE sites cannot prepare an IRS Form 1040 with a Schedule C, *Profit or Loss From Business (Sole Proprietorship)*, complicated and advanced forms such as Schedule D, *Capital Gains and Losses*, Schedule F, *Profit or Loss From Farming*, Form 3903, *Moving Expenses*, and certain Form 1099-C, *Cancellation of Debt* issues.⁹

⁷ For a complete discussion of the National Taxpayer Advocate's concerns about VITA and TCE programs, see Most Serious Problem: *VITA/TCE FUNDING: Volunteer Tax Assistance Programs Are Too Restrictive and the Design Grant Structure Is Not Adequately Based on Specific Needs of Served Taxpayer Populations*, *supra*.

⁸ IRS, Publication 4012, *VITA/TCE Volunteer Resource Guide, Scope of Service*, 8-10 (Oct. 2014).

⁹ *Id.*

In addition to return preparation services being limited in scope by IRS guidelines, services are limited by the certifications of the volunteers at the VITA/TCE sites, which can fluctuate.¹⁰ The IRS offers both basic and advanced certifications to volunteers which determine what types of returns they can prepare.¹¹ The IRS also offers six specialty certifications, three of which can only be achieved by volunteers if they have first passed advanced certification.¹² If a taxpayer arrives at a VITA or TCE site and requires the preparation of a return that needs advanced certification or a specialty certification and no volunteers with that certification are available that day the taxpayer will be turned away. TACs could prepare a broader scope of forms and returns overall, and in earlier years allowed taxpayers to schedule appointments.

TACs could prepare current and prior year returns, as well as amended returns, until filing season 2013, when the IRS terminated the preparation of previous year returns and amended returns.¹³ VITA and TCE sites can only prepare prior year returns at “experienced” sites if they have the necessary software and reference materials.¹⁴ Leading up to the complete termination of return preparation services at TACs, the IRS made several changes to TAC return preparation, including eliminating appointments, reducing the number of days return preparation was available, and narrowing the scope of returns prepared. These service reductions led to a decrease in return preparation in TACs and have since been used to justify the discontinuance of the service entirely.¹⁵

In addition to the termination of return preparation at about 400 TACs, the number of VITA and TCE sites has decreased since the IRS ceased to offer this service, leaving nine percent fewer sites where taxpayers can seek free return preparation.¹⁶ Overall, the number of returns prepared by the two programs increased by almost 12 percent between FY 2013 and FY 2014.¹⁷ The IRS increased funding for the TCE sites while the number of returns prepared by these sites decreased for the first time since the program was created.¹⁸ The shift of funding from VITA to TCE also decreased the dollar amount of matching funds dedicated to volunteer tax preparation by \$100,000 dollars, since TCE programs are not required to provide matching funds in return for their grants.¹⁹ Moreover, since VITA programs actually increased the number of returns prepared in FY 2014 despite funding cuts, the IRS could have served more taxpayers by funding VITA programs at the FY 2013 level.²⁰ It is unclear to the National Taxpayer Advocate why the IRS chose to reduce resources available to VITA grantees and their beneficiaries, the taxpayer.

10 Volunteers are only protected from liability by the Volunteer Protection Act of 1997, Pub. L. No. 105-19, 100 Stat. 218 (1997), if they follow all guidelines and limitations of the program as defined by the IRS. IRS, Publication 4012, *VITA/TCE Volunteer Resource Guide, Scope of Service*, 8 (Oct. 2014). If volunteers prepare returns or forms they are not certified to prepare, they are not protected from liability.

11 IRM 22.30.1.3.7.1, *Types of VITA and TCE Courses (Volunteers)* (Oct. 1, 2014).

12 *Id.*

13 IRS, Field Assistance, *FY 2013 Return Preparation in Taxpayer Assistance Centers*, Slide 5 (Jan. 17, 2013).

14 IRM 22.30.1.3.10.2, *Prior Year Return Preparation* (Oct. 1, 2014).

15 SERP Alert 12A0095 (Jan. 27, 2012).

16 IRS response to TAS research request (Aug. 15, 2014). In fiscal year (FY) 2013, the IRS had 398 TACs where taxpayers could potentially seek free return preparation if the sites were offering return preparation services in that FY. IRS response to TAS research request (Aug. 15, 2014). In FY 2013, 13,081 VITA and TCE sites offered free return preparation. Combined between TACs and VITA/TCE sites, potentially 13,479 sites offered free return preparation in 2013. IRS response to TAS research request (Nov. 26, 2014). Through June 29, 2014, free return preparation was offered at 12,319 VITA and TCE sites.

17 IRS response to TAS information request (Aug. 15, 2014). Supplemented by IRS response to TAS research request (Dec. 12, 2014).

18 IRS response to TAS information request (Aug. 15, 2014 and Nov. 19, 2014).

19 IRS response to TAS information request (Nov. 19, 2014) and IRS response to fact check (Dec. 27, 2014).

20 IRS response to TAS information request (Aug. 15, 2014 and Nov. 19, 2014). VITA grantees prepared 66,182 more returns in FY 2014 than in FY 2013 (1,419,615 vs. 1,353,433), while TCE grantees prepared 251,929 fewer returns over the same period (1,343,931 vs. 1,595,860).

Historically, returns prepared by TACs, where the taxpayers have a household income of less than \$50,000 and do not use schedules E or F or Form 2106, have lower Discriminant Function (DIF) scores than returns prepared by other preparers or self-prepared by taxpayers, suggesting that TAC-prepared returns are less likely to understate the tax owed and are thus more accurate.²¹ Thus, TACs provided a wider scope of services than VITA and TCE sites and the returns prepared at TACs were more accurate.

By ceasing return preparation at the TACs, the IRS has made it more difficult for taxpayers to seek free return preparation and may cause taxpayers to not file returns or to seek assistance from paid preparers, decreasing filing compliance and imposing burden, including transportation costs and the costs of return preparation on predominantly low income, elderly, and disabled taxpayers, previously served by TACs. The IRS may leave these taxpayers with a choice of paying for a previously free service (if their returns are not covered within the scope of the services provided at the local VITA and TCE sites) or of simply ceasing to file returns. Some low income taxpayers who won't be able to prepare and file their returns will bypass credits and deductions they would be otherwise eligible for, such as the Earned Income Tax Credit (EITC)²² and Child Tax Credit (CTC).²³

In summary, failing to provide return preparation in TACs erodes several taxpayer rights, including *the right to be informed, the right to quality service, and the right to pay no more than the correct amount of tax.*

EXPLANATION OF RECOMMENDATION

The IRS currently maintains 382 TACs, down from 401 in 2011 when it began making adjustments to return preparation services offered by TACs.²⁴ Since the IRS continues to close TACs or effectively close them by reducing staff to one or zero employees, requiring the IRS to provide return preparation in just TAC locations will not restore taxpayer access to return preparation. However, the IRS has been piloting the use of virtual service delivery and has established 49 virtual service sites across the country.²⁵ Return preparation offered through both virtual service sites and the remaining TAC locations would improve service to taxpayers and reduce taxpayer burden. While the IRS must continue to improve the technology available for virtual services and to develop a strategic plan to bring additional virtual service sites on line, using existing sites to provide return preparation, in concert with the TACs, will allow the IRS to reach additional taxpayers.²⁶

21 Compliance Data Warehouse, *Individual Returns Transaction File: Tax Year 2010*. TAC criteria for return preparation include returns with income not in excess of \$50,000, and no schedules E, F, or Forms 2106, in addition to other requirements. The DIF score is an IRS calculated estimate of the likelihood that a tax return has understated the amount of tax owed, based on the type of return filed. The only returns that have lower DIF scores than TAC-prepared returns with the caveats listed above are those in Activity Code 272, which are returns with no Schedules C, E, F, or Form 2106 and no claiming of the Earned Income Tax Credit.

22 IRC § 32.

23 IRC § 24.

24 IRS response to TAS research request (Dec. 23, 2014). At the end of FY 2014, there were 382 open TACs.

25 Network Services response to TAS research request (Aug. 6, 2014). See, e.g., FL-2012-06, *Tax Help for Tampa Area Taxpayers* (May 10, 2012) (Virtual Service Delivery for taxpayers to interact with TAS); Interim Guidance Memorandum AP-08-0714-0007, *Implementation of Virtual Service Delivery (VSD)* (July 24, 2014) (Virtual Service Delivery teleconferencing in Campus Appeals).

26 For a complete discussion of the National Taxpayer Advocate's concerns regarding the IRS's implementation of virtual service delivery, see Most Serious Problem: *VIRTUAL SERVICE DELIVERY: Despite a Congressional Directive, the IRS Has Not Maximized the Appropriate Use of Videoconferencing and Similar Technologies to Enhance Taxpayer Services*, *supra*.

Since 2011, the IRS chipped away at the return preparation services provided in the TACs; however, it has not remedied this through other service avenues such as VITAs and TCEs which cannot currently provide the same level or type of service to taxpayers. The National Taxpayer Advocate recommends that Congress remedy this situation by requiring the IRS to provide return preparation in TACs and via virtual service delivery and by providing the funding to allow the IRS to fulfill this mandate.