# Review of the 2018 Filing Season

## INTRODUCTION

During the 2018 filing season, the IRS processed most returns successfully, with most taxpayers receiving a timely refund. For many taxpayers who needed help from the IRS, however, the experience was challenging. Although the IRS benchmark telephone measure shows the agency answered 80 percent of its calls for the first time in over ten years, that measure does not take into account the majority of the calls the IRS receives. Taxpayers calling the IRS's compliance telephone lines had a much lower percentage of calls answered, and callers who managed to get through on those lines waited on hold for an average of 24 minutes. The IRS served fewer taxpayers who sought help at Taxpayer Assistance Centers (TACs) and continued its policy of answering only a limited scope of tax-law questions on its toll-free telephone lines and in TACs. Additionally, its identity theft and pre-refund wage verification filters and certain processing glitches significantly delayed refunds for hundreds of thousands of taxpayers who filed legitimate returns, causing frustration, additional work for the IRS and, in some cases, financial hardship.

### Filing Season Performance

The filing season began on January 29, 2018. That was one of the latest starts in recent years. It ended late as well. On the final day of the filing season, hardware failures in the IRS's processing systems prevented taxpayers and practitioners from filing their tax returns, over 90 percent of which are submitted electronically,[1] forcing them to decide to either wait for the systems to come back online or mail their tax returns and payment, if required.[2] To its credit, the IRS responded quickly and was able to get the systems operational by late afternoon, and it communicated that it would extend the filing deadline by one day — from the April 17, 2018 due date for individuals and businesses with a filing or payment requirement to April 18.[3]

Although a relatively new piece of hardware caused the April 17 crash, the incident illustrates the fragility of the IRS's aging technology infrastructure.[4] The National Taxpayer Advocate and other

1 The IRS's filing season statistics indicate that 124.5 million individual returns were filed electronically, out of 136.9 million. IRS, *Filing Season Statistics for Week Ending April 20, 2018*, https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-april-20-2018. *See also* Figure 2.1, Filing Season Statistics Comparing Weeks Ending April 22, 2016; April 21, 2017; and April 20, 2018.

2 Direct Pay is an option available to taxpayers on the irs.gov website. On April 17, taxpayers saw an error message "Planned Outage: April 17, 2018 – December 31, 9999." Alan Rappeport, *I.R.S. Website Crashes on Tax Day as Millions Tried to File Returns*, N.Y. Times, Apr. 17, 2018, https://www.nytimes.com/2018/04/17/us/politics/want-to-pay-your-taxes-come-back-later-says-irs.html.

3 IRS, *IRS Systems are Back Up and Running; Millions of Tax Returns Accepted; Taxpayers Have Until Midnight Wednesday to File Their Taxes*, IR-2018-101 (April 18, 2018).

4 *See*, *e.g.*, Jeff Stein, Damian Paletta, and Mike DeBonis, *IRS to Delay Tax Deadline by One Day After Technology Collapse*, Wash. Post, Apr. 17, 2018, https://www.washingtonpost.com/business/economy/irs-electronic-filing-system-breaks-down-hours-before-tax-deadline/2018/04/17/4c05ecae-4255-11e8-ad8f-27a8c409298b_story.html?noredirect=on&utm_term=.fc6604bd294b, and Alan Rappeport, *I.R.S. Website Crashes on Tax Day as Millions Tried to File Returns*, N.Y. Times, Apr. 17, 2018, https://www.nytimes.com/2018/04/17/us/politics/want-to-pay-your-taxes-come-back-later-says-irs.html.

stakeholders have recommended for years[5] that Congress act to provide necessary funding and oversight to bring IRS technology into the 21st century.[6]

For most taxpayers, the IRS consistently does an excellent job of processing their returns. Figure 2.1 presents an overview of returns processing and refunds during the 2016, 2017, and 2018 filing seasons.

**FIGURE 2.1, Filing Season Statistics Comparing Weeks Ending April 22, 2016; April 21, 2017; and April 20, 2018**[7]

| | | 2016 | 2017 | 2018 | % Change 2017–2018 |
|---|---|---|---|---|---|
| Individual Income Tax Returns | Total Receipts | 136,528,000 | 135,638,000 | 136,919,000 | 0.9% |
| | Total Processed | 129,456,000 | 128,847,000 | 130,477,000 | 1.3% |
| e-Filing Receipts | Total e-Filing | 122,546,000 | 122,164,000 | 124,515,000 | 1.9% |
| | Tax Professionals | 70,864,000 | 70,401,000 | 70,983,000 | 0.8% |
| | Self-Prepared | 51,682,000 | 51,763,000 | 53,532,000 | 3.4% |
| Total Refunds | Number | 97,079,000 | 97,104,000 | 95,434,000 | -1.7% |
| | Amount | $263.2 bil | $268.3 bil | $265.3 bil | -1.1% |
| | Average Refund | $2,711 | $2,763 | $2,780 | 0.6% |
| Direct Deposit Refunds | Number | 81,221,000 | 81,646,000 | 80,491,000 | -1.4% |
| | Amount | $234.3 bil | $239.4 bil | $236.9 bil | -1.1% |
| | Average Refund | $2,884 | $2,932 | $2,943 | 0.4% |

5 *See, e.g.*, National Taxpayer Advocate 2016 Annual Report to Congress 109-120 (Most Serious Problem: *Enterprise Case Management (ECM): The IRS's ECM Project Lacks Strategic Planning and Has Overlooked the Largely Completed Taxpayer Advocate Service Integrated System (TASIS) As a Quick Deliverable and Building Block for the Larger ECM Project*); *Continued Oversight Over the Internal Revenue Service: Joint Hearing Before the H. Subcomm. on Health Care, Benefits, and Administrative Rules and the H. Subcomm. on Government Operations*, 115th Cong. 46-48 (2018) (statement of Nina E. Olson, National Taxpayer Advocate). *See also* Government Accountability Office (GAO), GAO-16-468, *Information Technology: Federal Agencies Need to Address Aging Legacy Systems* (May 2016) (discussing aging Information Technology (IT) systems throughout the government and listing the IRS's Individual Master File and Business Master File as the two oldest investments or systems at 56 years old each).

6 See, National Taxpayer Advocate 2017 Annual Report to Congress 1-11 (*Preface: Introductory Remarks by the National Taxpayer Advocate*) (discussion on the IRS Funding Landscape and its "Present State,") and National Taxpayer Advocate 2016 Annual Report to Congress 1-41 (Special Focus: *IRS Future State: The National Taxpayer Advocate's Vision for a Taxpayer-Centric 21st Century Tax Administration*) (discussion on Budget and Oversight). *See also* Area of Focus: *The IRS's Enterprise Case Management Project Shows Promise But to Achieve 21st Century Tax Administration, the IRS Needs an Overarching Information Technology Strategy With Proper Multi-Year Funding, infra*.

7 IRS, *Filing Season Statistics for Week Ending April 20, 2018*, https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-april-20-2018, *Filing Season Statistics for Week Ending April 21, 2017*, https://www.irs.gov/uac/newsroom/filing-season-statistics-for-week-ending-april-21-2017.

From January 1 through April 21, 2018, the IRS received 42.5 million telephone calls overall,[8] of which 35.7 million were directed to its "Accounts Management" (AM) telephone lines.[9] Just over 13 million of those calls were directed to telephone assistors, and the IRS answered 80 percent of them,[10] nearly the same as the 79 percent level in Filing Season (FS) 2017,[11] although this performance measure does not account for the majority of calls the IRS receives. (As discussed in more detail below, the IRS routes most calls to automated responses.) Among taxpayers who got through to AM telephone assistors, hold times declined from 6.5 minutes in FS 2017 to 5.1 minutes in FS 2018.[12]

Telephone service was considerably worse on IRS telephone lines outside the Accounts Management category, particularly on the compliance lines. For example, the IRS received over 1.9 million calls on its "Installment Agreement/Balance Due" line, which taxpayers generally call if they cannot pay their tax liabilities in full and are seeking to arrange a payment plan.[13] The IRS answered only 49 percent of these calls during FS 2018, and taxpayers who got through waited an average of 28.7 minutes on hold.[14]

In 2017, the IRS provided face-to-face assistance to taxpayers in the 50 states, the District of Columbia, and Puerto Rico at 371 TACs, of which 24 were unstaffed, 87 had only one employee, and five were only staffed seasonally.[15] In fiscal year (FY) 2017, the first full year the IRS required taxpayers to schedule appointments in advance of visiting any TACs to receive face-to-face service,[16] taxpayer visits to TACs decreased by 27 percent from the previous year.[17] While the IRS has given TAC managers the discretion to make exceptions to the advance scheduling requirement in response to complaints from TAS and others, the general rule requiring advance appointments remains, and taxpayers receiving same-day appointments declined by 49 percent during the first half of FY 2018 compared with the same period in FY 2017.[18] We continue to hear from practitioners that walk-in taxpayers (and even practitioners trying to make payments on behalf of their clients) are often turned away.

Both on the phones and in the TACs, the IRS has continued a policy adopted in 2014 that sharply limits the authority of IRS employees to answer tax-law questions. During filing season, telephone assistors answer only "basic" questions and are generally prohibited from answering any tax-law questions outside the filing season, other than those related to the recently enacted tax reform law for the remainder of

8 IRS, Joint Operations Center (JOC), *Snapshot Reports: Enterprise Snapshot, Enterprise Total* (week ending Apr. 21, 2018).

9 IRS, JOC, *Snapshot Reports: Enterprise Snapshot, Accounts Management (AM)* (week ending Apr. 21, 2018).

10 *Id.*

11 *Id.*

12 *Id.*

13 IRS, JOC, *Snapshot Reports: Product Line Detail Snapshot* (week ending Apr. 21, 2018).

14 *Id.*

15 National Taxpayer Advocate 2017 Annual Report to Congress 117-127 (Most Serious Problem: *Taxpayer Assistance Centers (TACs): Cuts to IRS Walk-In Sites Have Left the IRS With a Substantially Reduced Community Presence and Have Impaired the Ability of Taxpayers to Receive In-Person Assistance*).

16 IRS News Release IR-2016-172, *Tax Preparedness Series: IRS Face-To-Face Help Now by Appointment* (Dec. 20, 2016). IRS response to TAS fact check (Dec. 20, 2016).

17 National Taxpayer Advocate 2017 Annual Report to Congress 117-127 (Most Serious Problem: *Taxpayer Assistance Centers (TACs): Cuts to IRS Walk-In Sites Have Left the IRS With a Substantially Reduced Community Presence and Have Impaired the Ability of Taxpayers to Receive In-Person Assistance*).

18 IRS Wage & Investment (W&I) Division, *Business Performance Review* 12 (May 10, 2018).

2018 or specifically related to an account issue about which the taxpayer is calling.[19] TAS has conducted spot testing of the tax-law line, and while the IRS has kept that line open beyond the filing season, TAS callers have found assistors unable to answer basic questions. Moreover, one assistor told us he did not expect to receive more detailed training until later in the year.[20]

Also during FS 2018, the IRS delayed issuing hundreds of thousands of refunds associated with legitimate tax returns because the returns were flagged as potentially fraudulent. As discussed below and later in this report, the IRS uses more than 200 "filters"[21] to identify potentially fraudulent returns, and these filters produce high "false detection" rates over 50 percent.[22]

In the narrative that follows, we will address the taxpayer experience during FS 2018 under the following major themes:

- The impact of several changes in the Protecting Americans from Tax Hikes Act of 2015 (PATH Act) that Congress directed the IRS to implement;
- Interactions with the IRS through phones, correspondence, face-to-face meetings (TACs), and online access; and
- Special topics, including identity theft and refund fraud, the Affordable Care Act (ACA), and services for U.S. taxpayers living abroad.

As a threshold matter, we note that Congress passed the Tax Cuts and Jobs Act, the largest overhaul of the Internal Revenue Code (IRC) since 1986,[23] in December 2017. Because most provisions of the law did not take effect until January 1, 2018, taxpayers will not feel the law's main impact until they file their 2018 tax returns during the 2019 filing season.[24] However, certain changes, such as a lower threshold for deducting medical expenses, apply for 2017 returns. Additionally, some taxpayers adjusted charitable contributions, property and income tax payments, and mortgage interest payments in 2017 to maximize benefits based on the change in the law.[25]

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19 For a more detailed discussion on telephone and TAC service, see National Taxpayer Advocate Fiscal Year 2019 Objectives Report to Congress vol. 2 IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in the 2017 Annual Report to Congress, 10–18 Telephones, and 105–111 TACs. *See also,* National Taxpayer Advocate 2017 Annual Report to Congress 22-35 (Most Serious Problem: *Telephones: The IRS Needs to Modernize the Way It Serves Taxpayers Over the Telephone, Which Should Become an Essential Part of an Omnichannel Customer Service Environment*), and 117-127 (Most Serious Problem: *Taxpayer Assistance Centers (TACs): Cuts to IRS Walk-In Sites Have Left the IRS With a Substantially Reduced Community Presence and Have Impaired the Ability of Taxpayers to Receive In-Person Assistance*).

20 Area of Focus: *Taxpayers Need More Guidance and Service to Understand and Comply with the Tax Cuts and Jobs Act*, *infra*.

21 TIGTA, *Interim Results of the 2018 Filling Season*, 2018-40-028, 14 (Apr. 5, 2018).

22 Area of Focus: *High False Detection Rates Associated with Fraud Detection and Identity Theft Filters Unnecessarily Burden Legitimate Taxpayers*, *infra*. *See also* National Taxpayer Advocate 2017 Annual Report to Congress 219-26 (Most Serious Problem: *Fraud Detection: The IRS Has Made Improvements to Its Fraud Detection Systems, But a Significant Number of Legitimate Taxpayer Returns Are Still Being Improperly Selected by These Systems, Resulting in Refund Delays*).

23 Tax Cuts and Jobs Act, Pub. L. No. 115-97.

24 For planning purposes, the impact of the new law is immediate. To the extent that taxpayers — both individuals and businesses — take tax considerations into account in their decision-making, changes that took effect on January 1, 2018 are already relevant. The new law also may affect the amount of estimated tax payments paid by self-employed persons throughout 2018.

25 Dave Gardner, *What to Do Now About the New Tax Law*, The Daily Camera, Dec. 23, 2017.

## IMPACT OF THE PROTECTING AMERICANS FROM TAX HIKES ACT

The PATH Act, enacted by Congress in December 2015, included several provisions that directly impact taxpayers, employers, and IRS processes. These provisions:

- Advanced the due date to January 31 for employers to report wage information on Forms W-2 to the Social Security Administration (SSA) and for payors of non-employee compensation to report that income on Forms 1099-MISC to the IRS;[26]
- Directed the IRS to hold the refunds of taxpayers claiming either the Earned Income Tax Credit (EITC) or the Additional Child Tax Credit (ACTC) until February 15;[27] and
- Required the deactivation of Individual Taxpayer Identification Numbers (ITINs).

We will address the continuing impact of each of these provisions below.

### Earlier Deadline for Information Reporting Documents

The PATH Act accelerated the due dates to January 31 for certain information reporting documents, such as Form W-2, *Wage and Tax Statement*, and Form 1099-MISC, *Miscellaneous Income,* reporting non-employee compensation. Prior to 2017, the due date for these information reporting forms was the last day of February (or March, if filed electronically).

Employers file Forms W-2 with the SSA, which sends the W-2 data to the IRS. Prior to the PATH Act, the IRS received W-2 data after the filing season when it had already issued most refunds. Moving up the W-2 filing deadline was to allow the IRS more time to verify the legitimacy of tax returns claiming refunds by comparing the return data against the data reported on Forms W-2 filed by employers before paying out refunds. In practice, however, some employers, including federal agencies, do not file their Forms W-2 by the deadline, and others file them on paper, which means the data is not available until the SSA enters and transmits it to the IRS.[28] These delays have undermined some of the projected benefits of the law and caused the IRS to hold returns. During FS 2018, the IRS selected about 369,300 EITC and ACTC returns as potentially fraudulent because it had not received the third-party wage information needed for matching.[29]

Further exacerbating the issue are problems inherent in the IRS's aging legacy systems. In the above case, the IRS had anticipated that it could release these held returns in bulk using the Electronic Fraud Detection System (EFDS) once it received and verified the information.[30] However, the IRS third-party information file did not communicate with EFDS, so employees had to manually release refunds one at a time as they entered the third-party information into EFDS.[31]

26 Protecting Americans from Tax Hikes (PATH) Act of 2015, Pub. L. No. 114-113 § 201 (codified at IRC § 6071).

27 PATH Act, § 201(b) (codified at IRC § 6402(m)).

28 Government Accountability Office, GAO-18-90R, *Tax Information Returns: Shared Service Centers Generally Transmitted Federal Wage and Tax Data on Time for Tax Year 2016* 2 (Nov. 2017) (noting "[o]ne factor for the new January 31 deadline was testimony given in a 2015 Senate Finance Committee hearing indicating that federal agencies were not sending W-2 data soon enough for states' tax authorities to use before issuing tax refunds.").

29 IRS, *IDT [Identity Theft] & IVO [Integrity Verification and Operation] Selections Performance Reports*, slide 16 (May 9, 2018).

30 The Electronic Fraud Detection System previously selected returns for fraud detection and is in the process of being retired. It is currently used only as a case management system of fraud detection inventory.

31 *Continued Oversight Over the Internal Revenue Service: Joint Hearing Before the H. Subcomm. on Health Care, Benefits, and Administrative Rules & the H. Subcomm. on Government Operations*, 115th Cong. (Apr. 17, 2018) (statement of Nina E. Olson, National Taxpayer Advocate).

The Treasury Inspector General for Tax Administration (TIGTA) has reported that in the 2017 filing season the IRS was able to match tax returns against Forms W-2 at the time of return processing for 87 percent of returns (through mid-June).[32] Not surprisingly, however, the percentage was much lower early in the filing season. Of note, the IRS could data match only about half the returns filed between January 23 and February 2, 2017.

Figure 2.2 summarizes the timing of the receipt of Forms W-2 compared with the filing of tax returns for tax year (TY) 2016 through June 15, 2017.

### FIGURE 2.2, Timing of Forms W-2 Compared to Filing of the Tax Return, Tax Year 2016 Forms Filed in 2017[33]

| Filing Period | Tax Returns Filed | Forms W-2 Available at Time of Tax Return Processing | Percent of Tax Returns | Forms W-2 Available After Processing | Percent of Tax Returns | Total Tax Returns With a Form W-2 | Percent of Tax Returns |
|---|---|---|---|---|---|---|---|
| January 23 to February 2 | 11,249,701 | 5,501,889 | 49% | 5,653,144 | 50% | 11,155,033 | 99% |
| February 3 to February 16 | 19,270,837 | 16,152,107 | 84% | 2,973,088 | 15% | 19,125,195 | 99% |
| February 17 to April 20 | 56,218,819 | 52,982,909 | 94% | 2,797,655 | 5% | 55,780,564 | 99% |
| April 21 to May 18 | 6,321,191 | 6,053,928 | 96% | 180,592 | 3% | 6,234,520 | 99% |
| May 19 to June 15 | 1,435,991 | 1,385,374 | 96% | 19,450 | 1% | 1,404,824 | 98% |
| **Total** | **94,496,539** | **82,076,207** | **87%** | **11,623,929** | **12%** | **93,700,136** | **99%** |

32 TIGTA, Ref. No. 2018-40-025, *Late Receipt of Wage Reporting Documents Reduces Fraud Detection Capabilities and Increases Taxpayer Burden* (Mar. 26, 2018).

33 *Id.*

In summarizing its findings, TIGTA wrote:

> Forms W-2 that are not available at the time of tax return filing can result in the IRS selecting legitimate tax returns as potentially fraudulent which increases taxpayer burden. For example, we analyzed the 11,623,929 tax returns with Forms W-2 on file after the tax return was filed and identified that 56,610 (0.5 percent) tax returns were selected for fraud treatment, of which 41,993 (74 percent) were determined to be a legitimate taxpayer and not fraudulent. If the IRS had the Forms W-2 at the time the tax returns were filed, these tax returns would likely have not been selected for fraud treatment.[34]

As TIGTA suggests, the inability to data match a significant number of returns early in the filing season undermines the benefits Congress envisioned. When the IRS processes tax returns before performing data matching, it pays more improper claims and delays more legitimate refunds.

### Late Information Reporting and Unconnected Systems Adversely Affect the Release of Refunds on Returns Claiming the Earned Income Tax Credit (EITC) and Additional Child Tax Credit

The EITC was enacted as a work incentive in the Tax Reduction Act of 1975 and has become one of the government's largest means-tested anti-poverty programs. In processing year 2017,[35] more than 27 million taxpayers received about $65 billion in EITC benefits. However, the EITC program has a relatively high improper payment rate.[36] To reduce the improper payment rate, Congress included a directive in the PATH Act that requires the IRS to delay payment of any refund that includes the EITC or the refundable ACTC until February 15 of each filing year.[37] Combined with the requirement that employers accelerate the issuance of Forms W-2 and that other payors accelerate the issuance of Forms 1099-MISC, the refund hold until February 15 is intended to reduce the improper payment rate by permitting time for income data matching before paying out EITC and ACTC claims. Taxpayers claiming these benefits can submit their returns prior to February 15, but the IRS holds the returns until that date.[38] Figure 2.3 shows the impact of the PATH provisions on taxpayers claiming the EITC.

34 TIGTA, Report 2018-40-025, *Late Receipt of Wage Reporting Documents Reduces Fraud Detection Capabilities and Increases Taxpayer Burden* (Mar. 26, 2018).

35 IRS, *Statistics for Tax Returns with EITC [Earned Income Tax Credit]*, https://www.eitc.irs.gov/eitc-central/statistics-for-tax-returns-with-eitc/statistics-for-tax-returns-with-eitc (last visited Jun. 12, 2018).

36 An improper payment is defined as "any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements" and ''any payment to an ineligible recipient." Improper Payments Elimination and Recovery Act of 2010, Pub. L. No. 111–204, § 2(e) (2010) amending Improper Payments Information Act of 2002, Pub. L. No. 107-300 (2002) by striking § 2(f) and adding (f)(2). The IRS estimates that for fiscal year (FY) 2016, between 22.2 percent ($15.5 billion) and 25.9 percent ($18.1 billion) of the total EITC program payments of $69.8 billion were improper. Department of Treasury, *Agency Financial Report Fiscal Year 2016*, 49 (Nov. 2016).

37 Unlike traditional anti-poverty and welfare programs, the EITC was designed to have an easy "application" process by allowing an individual to claim the benefit on his or her tax return. This approach virtually eliminates the significant costs associated with up-front eligibility verification in traditional social welfare programs, but results in a high improper payment rate.

38 IRC § 6402(m).

**FIGURE 2.3, Comparison of Refund Issuance Dates on Returns Receiving EITC, Filing Seasons 2016–2018**[39]

| Week Ending | 2016 Cumulative | 2017 Cumulative | 2018 Cumulative | Percentage Difference 2016–2018 |
|---|---|---|---|---|
| Jan. 25, 2018 | 855,083 | | | |
| Feb. 1, 2018 | 7,424,783 | | | |
| Feb. 8, 2018 | 11,104,413 | | | |
| Feb. 15, 2018 | 13,627,831 | 11,260,446 | 10,645,675 | -21.9% |
| Feb. 22, 2018 | 15,533,821 | 13,367,603 | 12,727,288 | -18.1% |
| Mar. 1, 2018 | 16,995,981 | 15,265,718 | 14,507,455 | -14.6% |
| Mar. 8, 2018 | 18,166,010 | 16,691,389 | 15,948,693 | -12.2% |
| Mar. 15, 2018 | 19,134,737 | 17,814,073 | 17,104,596 | -10.6% |
| Mar. 22, 2018 | 19,971,655 | 18,775,735 | 18,065,972 | -9.5% |
| Mar. 29, 2018 | 20,713,482 | 19,635,955 | 18,906,548 | -8.7% |
| Apr. 5, 2018 | 21,468,224 | 20,459,066 | 19,653,263 | -8.5% |
| Apr. 12, 2018 | 22,323,775 | 21,351,318 | 20,487,404 | -8.2% |
| Apr. 19, 2018 | 23,494,074 | 22,534,564 | 21,568,297 | -8.2% |

The IRS added two additional filters to screen returns in the 2018 filing season, and EITC and ACTC taxpayers who already experienced delays of their refunds until February 15 under the PATH Act faced further delays of 60 days or longer if one of these filters flagged their returns. Filter "I" detects mismatches between items reported on the return and those reported by third parties, and filter "J" identifies returns with unverifiable data.[40] These filters, in addition to those already in place, have contributed to a 495 percent increase in cases selected for pre-refund wage verification.[41]

In fact, cases associated with these and other filters caused a 180 percent increase in TAS's Pre-Refund Wage Verification Program case receipts in FY 2018, compared to the same period in FY 2017,[42] making it TAS's number one case issue. In the eight-month period from October 2017 through the end of May, receipts increased from 14,132 cases in 2017 to 39,497 cases in 2018,[43] showing the downstream consequences of refund delays as most of these taxpayers contact TAS for assistance due to economic hardships from delayed refunds.

39 IRS, Compliance Data Warehouse (CDW), Individual Returns Transaction File and Individual Master File (Tax Year (TY) 2015 returns filed in 2016, TY 2016 returns filed in 2017, and TY 2017 returns filed in 2018). For TY 2018, there were 17 tax returns processed prior to Feb. 15, 2018. The reason these refunds were processed earlier than the IRS processing guidelines could not be determined so these counts are included in the Feb. 15, 2018 cumulative total.

40 TIGTA, Ref. No. 2018-40-015, *Employer Noncompliance with Wage Reporting Requirements Significantly Reduces the Ability to Verify Refundable Tax Credit Claims Before Refunds Are Paid* (Feb. 26, 2018).

41 *Continued Oversight Over the Internal Revenue Service: Joint Hearing Before the H. Subcomm. on Health Care, Benefits, and Administrative Rules & the H. Subcomm. on Government Operations*, 115th Cong. (Apr. 17, 2018) (statement of Nina E. Olson, National Taxpayer Advocate).

42 Data obtained from Taxpayer Advocate Management Information System (TAMIS) (Jun. 1, 2017; Jun. 1, 2018).

43 *Id.*

### Deactivation of Individual Taxpayer Identification Numbers and Related Math Error Authority

The PATH Act requires ITINs to expire based on the year of issue or lack of use in the last three tax years.[44] The IRS began implementing this requirement at the end of 2016, but as detailed in the related Area of Focus,[45] it adopted a slower schedule than the legislation required. In 2016 and 2017, the IRS deactivated 15.2 million ITINs, deactivating approximately 1.5 million solely due to the middle digits (roughly tied to age of issuance), not lack of use.[46] TAS is concerned about the IRS's erroneous deactivation of ITINs for non-use, and TIGTA reports that the IRS erroneously deactivated over 130,000 ITINs because of flaws in its systems.[47] TAS will be reviewing submissions on its Systemic Advocacy Management System to identify issues related to erroneous deactivations and will be advocating for those taxpayers.

The PATH Act also authorizes the IRS to disallow credits and exemptions for returns with an expired, revoked, or otherwise invalid ITIN through its math error procedures.[48] The IRS's notices regarding these math errors may not have been effective because of the 152,000 tax returns that received a math error for an expired ITIN last year, taxpayers subsequently renewed the expired ITINs for only 33,056 (22 percent) of these returns.[49] TAS will be reviewing math errors for expired ITINs that occurred during and directly after the current filing season. As discussed in the Area of Focus, TAS will pursue changes to the related math error notices.

## TAXPAYER INTERACTIONS WITH THE IRS

### Telephones

The IRS relies primarily on the Accounts Management (AM) Customer Service Representative (CSR) Level of Service (LOS) as its benchmark measure of taxpayer access to telephone assistance. The IRS received more than 42.5 million telephone calls during the filing season[50] and reported an overall LOS of 80 percent on its AM telephone lines.[51] This level marks a slight improvement from the IRS's performance during FS 2017.[52] While the IRS should be commended for these results, the LOS statistics viewed in isolation can be misleading because they do not reflect the overall experience of taxpayers seeking telephone assistance.

44 PATH Act § 203(d).

45 Area of Focus: *Recent Legislation Provides Opportunities for Needed Changes to the Individual Taxpayer Identification Number Program, But the IRS Must Ensure Any Changes Preserve Taxpayer Rights*, *infra*.

46 IRS response to TAS information request (Oct. 12, 2017).

47 TIGTA, *Some Legal Requirements to Deactivate Individual Taxpayer Identification Numbers Have Not Been Met*, 2018-40-011, 9-10 (Jan. 29, 2018).

48 Under these procedures, the IRS can summarily assess and immediately collect tax without first providing the taxpayer access to the Tax Court unless the taxpayer requests an abatement within 60 days. PATH Act § 203(e) (codified at IRC § 6213(g)(2)).

49 To determine these numbers, TAS assumed a successful renewal occurred if the renewed ITIN was issued in the same or later month when the math error notice was generated. CDW (data retrieved by TAS Research Nov. 14, 2017).

50 IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (week ending Apr. 21, 2018). Note that filing season numbers are drawn from the "Planning Period" statistics 2018 reported on the JOC website for the period beginning on January 1, which correlates with the start of filing season.

51 *Id*. The IRS reports the Accounts Management (AM) Customer Service Representative Level of Service (LOS) as its benchmark measure of telephone performance.

52 For the same period in filing season 2017, the IRS provided an overall LOS of 70.7 percent and a 79.1 percent LOS on its AM lines. IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (week ending Apr. 21, 2018).

### *Breakout of IRS Telephone Lines*

To understand the IRS's telephone statistics, a few concepts are important:

- The IRS tracks the total number of calls it receives, which is known as the "Enterprise Total." The Accounts Management (AM) telephone lines are the largest subset of the Enterprise Total, accounting for 84 percent of all calls during the filing season. The IRS generally directs calls to the AM lines for account inquiries and answers to tax-law questions, among other things.[53] The remaining 16 percent of calls reflect a combination of calls to the Consolidated Automated Collection System lines, which include most of the IRS's compliance service operations, and certain other low-volume telephone lines.[54]
- Calls generally are directed either to telephone assistors or to receive an automated response. Whether a call is routed to a telephone assistor or to automation generally depends on the telephone number the taxpayer calls and how the caller responds to the automated prompts he or she encounters.
- The benchmark LOS measure generally reflects only calls routed to CSRs on the AM telephone lines. Notably, this measure does not reflect calls directed to non-AM telephone lines or AM calls directed to automation.

Figure 2.4 shows the IRS's performance during the 2017 and 2018 filing seasons for the AM total, many of the filing season-related phone lines that are components of the AM total, a few lines of special interest, and the Enterprise total. Most phone lines show an improvement in service, marked by a higher LOS and shorter times on hold ("Average Speed of Answer"). At the same time, there were one million fewer call attempts on the AM lines, falling from 36.9 million in 2017 to 35.7 million in 2018. There was a five percent increase in calls answered by an assistor, from 9.9 million calls to 10.4 million. Generally, shorter wait times may mean that fewer taxpayers hang up and attempt a repeat call.[55]

53 IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (week ending Sept. 30, 2017). For the Jan. 1- Apr. 21, 2018 period the IRS received 42.5 million calls Enterprise-wide, and of that total, 35.7 million calls were directed to the AM telephone lines (84 percent). IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (Apr. 21, 2018).

54 IRM 21.1.1.1.3 (May 21, 2018).

55 IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (Apr. 21, 2018) (source of AM and Enterprise Total data); IRS, JOC, *Snapshot Reports: Product Line Detail* (Apr. 21, 2018) (source of all other data except the Taxpayer Protection Program (TPP) line); IRS, JOC, *FY 2018 Weekly TPP Snapshot Report* (Apr. 21, 2018) (source of TPP line data). Data from Jan. 1–Apr. 21, 2018. Dialed attempts, sometimes called Net Attempts, is the number of callers intended for a given product line. Dialed attempts excludes callers who dialed the number, but should have dialed another number, and includes callers who dialed another number but should have dialed this number. IRS, FY17 *Snapshot & ELS Reporting Guidelines*, Version 2017.02 (Mar. 3, 2017).

**FIGURE 2.4, 2017 AND 2018 Filing Season Statistics for Toll-Free Telephone Lines[56]**

| | 2017 | | | | 2018 | | | | Percent Change | |
|---|---|---|---|---|---|---|---|---|---|---|
| Telephone Line | Dialed Attempts | Assistor Calls Answered | Average Speed of Answer (Minutes) | Level of Service | Dialed Attempts | Assistor Calls Answered | Average Speed of Answer (Minutes) | Level of Service | ASA Percentage Change | LOS Percentage Change |
| Accounts Management (AM) [SUM of 29 Lines] | 36,853,126 | 9,872,802 | 6.5 | 79.1% | 35,668,223 | 10,422,742 | 5.1 | 80.0% | -22% | 1% |
| Refund Hotline 800-829-1954 | 13,155,827 | 138,167 | 5.4 | 74.9% | 12,713,310 | 115,577 | 3.9 | 83.0% | -27% | 11% |
| Individual Income Tax Services 800-829-1040 | 8,121,605 | 2,238,786 | 5.1 | 81.3% | 7,894,684 | 2,434,719 | 3.5 | 79.1% | -31% | -3% |
| Transcript 800-908-9946 | 2,073,759 | 159,197 | 6.0 | 86.6% | 1,568,196 | 206,723 | 7.1 | 75.2% | 19% | -13% |
| Wage & Investment IMF Customer Response 800-829-0922 | 1,818,893 | 749,240 | 5.1 | 80.5% | 1,797,884 | 820,456 | 3.5 | 82.0% | -31% | 2% |
| Refund Call Back 800-829-0582 | 1,787,379 | 539,793 | 6.6 | 74.9% | 1,482,996 | 538,468 | 4.3 | 80.7% | -34% | 8% |
| Business & Specialty Tax Services Line 800-829-4933 | 1,440,368 | 719,092 | 10.3 | 77.0% | 1,587,233 | 787,089 | 8.5 | 77.3% | -18% | 0% |
| Identity Protection Specialized Unit (IPSU) 800-908-4490 | 1,079,399 | 663,230 | 8.3 | 82.8% | 906,515 | 507,904 | 3.5 | 83.3% | -59% | 1% |
| Self Employed IMF Customer Response 800-829-8374 | 864,595 | 338,973 | 5.1 | 79.3% | 876,086 | 388,652 | 3.8 | 80.4% | -26% | 1% |
| ACA Hotline 800-919-0452 | 737,028 | 495,149 | 8.5 | 76.7% | 817,981 | 547,746 | 8.1 | 81.1% | -5% | 6% |
| Tax Law 866-883-0217 | 718,472 | 459,566 | 10.5 | 71.8% | 659,111 | 467,691 | 8.9 | 79.1% | -15% | 10% |
| PPS 866-860-4259 | 683,674 | 487,346 | 6.9 | 81.0% | 886,265 | 692,443 | 3.3 | 90.7% | -51% | 12% |
| BMF Customer Response 800-829-0115 | 683,239 | 486,811 | 10.0 | 82.1% | 691,943 | 500,688 | 8.5 | 83.7% | -15% | 2% |
| International 8775 (855-790-8775) | 223,201 | 140,284 | 4.4 | 78.8% | 215,713 | 148,192 | 3.0 | 81.9% | -32% | 4% |
| Tax Exempt and Government Entities (TE/GE) 877-829-5500 | 199,771 | 122,162 | 8.4 | 74.0% | 205,323 | 123,777 | 8.4 | 72.7% | 0% | -2% |
| Individual Taxpayer Identification Number (ITIN) 800-908-9982 | 189,254 | 121,148 | 7.6 | 73.6% | 203,591 | 137,935 | 6.0 | 79.1% | -21% | 7% |
| NTA 877-777-4778 | 175,879 | 91,629 | 2.7 | 77.2% | 308,477 | 167,734 | 3.7 | 75.2% | 40% | -3% |
| VITA Location 800-906-9887 | 53,428 | 35,390 | 3.3 | 74.4% | 48,890 | 35,115 | 2.2 | 82.5% | -32% | 11% |
| TAC Appointment 844-545-5640 | 2,188,336 | 1,514,657 | 4.8 | 80.3% | 2,232,666 | 1,438,502 | 5.7 | 76.0% | 18% | -5% |
| *Installment Agreement/Balance Due* | 2,656,759 | 1,071,182 | 46.8 | 40.3% | 1,941,044 | 947,294 | 28.7 | 49.0% | -39% | 21% |
| Taxpayer Protection Program 800-830-5084 | 1,368,597 | 879,273 | 13.8 | 77.8% | 1,753,421 | 1,051,828 | 12.4 | 70.1% | -10% | -10% |
| Forms Order Line 800-829-3676 (800-TAX-FORM) | 886,921 | 554,807 | 1.6 | 90.9% | 994,055 | 506,605 | 7.4 | 69.0% | 356% | -24% |
| Amended Return Hotline 866-464-2050 | 518,197 | 337,970 | 7.4 | 78.4% | 447,167 | 325,396 | 4.1 | 88.6% | -45% | 13% |
| Enterprise Total (Includes AM, Compliance, Forms Order Line, ASK TAS, and EPSS) | 44,327,213 | 13,176,265 | 11.6 | 70.7% | 42,512,830 | 13,521,301 | 8.7 | 72.9% | -25% | 3% |

56 IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (Apr. 21, 2018) (source of AM and Enterprise Total data); IRS, JOC, *Snapshot Reports: Product Line Detail* (Apr. 21, 2018) (source of all other data except the Taxpayer Protection Program (TPP) line); IRS, JOC, *FY 2018 Weekly TPP Snapshot Report* (Apr. 21, 2018) (source of TPP line data). Data from Jan. 1–Apr. 21, 2018.

### *Telephone Service Observations*

As noted above, favorable top-line numbers mask significant weaknesses in IRS telephone service. Consider the following:

- **The LOS was not uniformly high across all IRS telephone lines.** During FS 2018, the IRS received 6.8 million calls to telephone lines not included in the AM umbrella, such as those directed to the compliance functions. These calls accounted for 16 percent of the total calls IRS received this filing season. Taxpayers calling the IRS's compliance functions to discuss payment options waited 24 minutes on average to speak with a telephone assistor, and the LOS on these lines was 54 percent.[57] Of particular note, the "Installment Agreement/Balance Due" line had an LOS below 50 percent for FS 2018, meaning that more than half of all taxpayers did not receive assistance at the time of the call, and wait times for taxpayers who got through were nearly 30 minutes.[58]
- **Although we believe most taxpayers calling the IRS want to speak to an employee, the IRS phone tree appears to direct most calls to automation. Indeed, of AM calls answered, 55 percent were deemed "answered" by automated messages.**[59] Callers generally have no choice regarding how and where their calls are routed — the IRS programs transfers based on the caller's response to pre-recorded telephone prompt options. The IRS call tree generally does not present the taxpayer with an option to speak to a live assistor. Thus, the LOS data reflects where taxpayers have been directed by the IRS, not where and how taxpayers need or would like to be assisted.
- **A significant number of calls to the IRS are not included in the benchmark LOS figure.** As noted above, the benchmark LOS only measures the results of "net attempts" to the AM lines that are routed to telephone assistors. Since the IRS routed 16 percent of "net attempts" to non-AM telephone lines and 55 percent of AM calls were answered by automated lines (rather than telephone assistors), the benchmark LOS reflects the results of only about 31 percent of the calls the IRS received.[60]
- **IRS telephone assistors answered only about 29 percent of the calls the IRS received on its AM lines.** When the IRS reports its LOS was 80 percent, that is widely understood to mean telephone assistors answered 80 percent of the calls the IRS received. In fact, telephone assistors answered only about 10.4 million calls out of 35.7 million calls received on the AM lines, or 29 percent. We are not suggesting that the IRS only served 29 percent of callers. While we believe

57 The LOS for the Consolidated Automated Collection Service (ACS) lines, which taxpayers call to reach the IRS's compliance functions and discuss payment options, was just 54 percent during FS 2018, with average wait times of 24 minutes. IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (week ending Apr. 21, 2018).

58 *Id*. The Installment Agreement/Balance Due line was grouped with AM until 2017, when it was moved to the Consolidated ACS lines. This move allowed the IRS to show a higher LOS on its AM lines, while the LOS on the Consolidated ACS lines decreased drastically.

59 Of the 23.2 million calls considered "answered" during the filing season, 10.4 million were answered by telephone assistors (45 percent), with the balance considered "answered" with automated messages. IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (week ending Apr. 21, 2018).

60 During filing season 2018, the IRS received 42.5 million calls overall. About 35.7 million were routed to the AM lines. Of the 35.7 million calls routed to the AM lines, about 13.0 million were routed to telephone assistors and about 10.4 million were answered by telephone assistors. The balance of the AM calls (22.6 million) were either routed to automation or reflected taxpayer hang-ups. The AM Customer Service Representative Level of Service generally is computed by dividing the number of calls answered by telephone assistors by the number or AM calls routed to telephone assistors. Calls made to IRS telephone lines outside the Accounts Management umbrella and calls routed to automation are excluded from that calculation. Because the number of calls routed to telephone assistors was about 13.0 million and the number of calls received by the IRS overall was about 42.5 million, the AM LOS reflected the results of only about 31 percent of taxpayer calls. IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (week ending Apr. 21, 2018).

almost all taxpayers who call are seeking to speak with a telephone assistor, some are adequately served through automation and some quickly hang up for personal reasons *(e.g.,* a call-waiting notification is received just after the start of the call). But when telephone assistors answer only 29 percent of taxpayer calls during a period when the IRS reports a "Level of Service" of 80 percent, the need for more reliable and robust performance measures is apparent.

- **Measures like the LOS do not provide qualitative information about the assistance a taxpayer receives on a telephone call.** Achieving a high LOS does not mean much if the IRS is unable to answer taxpayers' questions over the phone or guide them to an appropriate solution to resolve their issues. To more thoroughly evaluate the IRS's telephone service and its service on other communication channels, the IRS should incorporate additional measures aimed at assessing taxpayer satisfaction. The "single biggest driver of customer satisfaction" is First Contact Resolution (FCR).[61] Almost 40 percent of taxpayers calling the IRS felt one call did not fully resolve their problems.[62] These results show taxpayers are not getting the full assistance they need over the phone, jeopardizing their *rights to quality service* and *to be informed*, while potentially undermining voluntary compliance.[63]

## Correspondence

There is a pool of AM employees that the IRS shifts between answering the phones and responding to taxpayer correspondence.[64] As a result, the IRS faces a difficult choice in deciding which service to prioritize. If it assigns more employees to answer taxpayer telephone calls, it will fall further behind in processing taxpayer responses to proposed adjustment notices. If it assigns more employees to process taxpayer responses to proposed adjustment notices, it will answer fewer telephone calls. Since 2008, the IRS has received an average of nearly ten million letters annually responding to proposed adjustments and other notices (*e.g.*, requesting penalty abatements, responding to math error notices, and making payment arrangements).[65] The failure to timely process taxpayer responses to proposed increases in tax liability can have a significant impact on the taxpayer.

Figure 2.5 shows examples of key AM correspondence inventory levels at the conclusion of recent filing seasons. The "IMF Overall" category includes all taxpayer correspondence from individual taxpayers that is not handled by another function within the IRS; the "Amended Return/Duplicate Filing" category includes correspondence in which taxpayers are seeking to file amended returns;[66] and the "Injured Spouse" category includes Forms 8379, *Injured Spouse Allocation,* received from taxpayers.[67]

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61 Jeff Rumburg & Eric Zbikowski, MetricNet, *The Five Most Important KPI's for the Call Center*, 5 (Feb. 20, 2013), https://ccng.com/uploads/five_most_important_kpis_for_the_call_center_metricnet.pdf.

62 National Taxpayer Advocate 2017 Annual Report to Congress vol. 2, 62, 85 (Research Study: *A Further Exploration of Taxpayers' Varying Abilities and Attitudes Toward IRS Options for Fulfilling Common Taxpayer Service Needs*).

63 For further discussion on IRS phone service, see Area of Focus: *The IRS's Failure to Create an Omnichannel Service Environment Restricts Taxpayers' Ability to Get Assistance Using the Communication Channels That Best Meet Their Needs and Preferences*, *infra*. *See also* IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in the 2017 Annual Report to Congress: *Telephones*, *infra*. *See also* National Taxpayer Advocate 2017 Annual Report to Congress 22-35 (Most Serious Problem: *Telephones: The IRS Needs to Modernize the Way It Serves Taxpayers Over the Telephone, Which Should Become an Essential Part of an Omnichannel Customer Service Environment*).

64 Internal Revenue Manual (IRM) 21.1.1.6, *Customer Service Representative (CSR) Duties* (Oct. 1, 2016).

65 Over the past decade, annual taxpayer correspondence in response to proposed adjustments has ranged from a low of 7.3 million letters to a high of 11.8 million letters and has averaged approximately ten million per year. *See* IRS, JOC, *Adjustments Inventory Reports: July-September Fiscal Year Comparison* (FY 2006 through FY 2017).

66 Amended returns are not accepted through e-file and thus must be filed on paper.

67 A taxpayer who participated in the filing of a joint return may request that his or her share of the credit balance be refunded where it otherwise would be applied to a past-due obligation of the other spouse.

The amended return inventory and percentage of overaged amended return inventory (more than 45 days old) has shown a significant increase from 2017 to 2018.[68] This increase is reflected in TAS receipts which increased about 25 percent from the 2017 filing season compared to 2018.[69]

**FIGURE 2.5, Selected Correspondence Inventory Levels, April**[70]

| | Week Ending 4/23/16 | Week Ending 4/22/17 | Week Ending 4/21/18 | % Change 2017–2018 |
|---|---|---|---|---|
| IMF Correspondence | 226,996 | 192,522 | 153,440 | -20.30% |
| Overage | 38.8% | 29.9% | 35.0% | 17.1% |
| Amended Return/Duplicate Filing | 237,445 | 273,567 | 356,988 | 30.5% |
| Overage | 42.60% | 15.9% | 23.1% | 45.3% |
| Injured Spouse | 107,821 | 93,136 | 95,127 | 2.1% |
| Overage | 37.70% | 15.0% | 20.4% | 36.0% |

## Face-to-Face Service at Taxpayer Assistance Centers

This filing season, the IRS continued its policy of requiring taxpayers to schedule an appointment to receive assistance at any of its 371 TACs.[71] Thus, the TACs, previously known as "walk-in" sites, have been completely transformed to become "appointment only" sites.[72] To schedule an appointment, a taxpayer must call the TAC Appointment Line (844-545-5640).[73] The telephone assistor determines the taxpayer's need and, if possible, directs taxpayers to resources where they may find answers to their questions.[74] The telephone assistor schedules an appointment for the taxpayer if the assistor determines the need meets the criteria for visiting a TAC — not simply because the taxpayer requests an appointment.[75] During this filing season, TAS received complaints from taxpayers regarding the

68 TAS has expressed concern about overage inventories in the past. *See, e.g.*, National Taxpayer Advocate Fiscal Year 2017 Objectives Report to Congress 65-66. Similarly, TIGTA issued an audit report in February 2016, Ref. No. 2016-40-023, *Continued Inconsistent Use of Over-age Correspondence Lists Contributes to Taxpayer Burden and Unnecessary Interest Payments* (Feb. 2016).

69 TAS received 2,070 Amended Return cases in filing season 2017 (January through April) compared to 2,591 cases in FY 2018 (January through April). Data obtained from TAMIS (Feb. 1; 2017; Mar. 1; 2017; Apr. 1, 2017; Feb. 1, 2018; Mar. 1, 2018; and Apr. 1, 2018).

70 IRS, JOC, Customer Account Services, Accounts Management Paper Inventory Reports, *National Inventory Age Report* (weeks ending Apr. 23, 2016; Apr. 22, 2017; and Apr. 21, 2018). The Injured Spouse figures reflect taxpayers affected by offsets from the Debtor Master File or from the Financial Management Service and covers debts related to child support, student loans, *etc*.

71 IRS News Release IR-2018-29, *Avoid the Rush: Visits to Taxpayer Assistance Centers Require Appointments* (Feb.18, 2018).

72 For a more detailed discussion, see National Taxpayer Advocate 2017 Annual Report to Congress 117-127 (Most Serious Problem: *Taxpayer Assistance Centers (TACs): Cuts to IRS Walk-In Sites Have Left the IRS With a Substantially Reduced Community Presence and Have Impaired the Ability of Taxpayers to Receive In-Person Assistance*).

73 The TAC Appointment Line achieved a 76.0 percent LOS during filing season 2018 with an average wait time of 5.7 minutes. Total calls to the appointment line rose by nearly 45,000 from filing season 2017 to 2,232,666 in filing season 2018. IRS, JOC, *Snapshot Reports: Product Line Detail Snapshot* (week ending Apr. 21, 2018).

74 IRM 21.1.1.6, *Customer Service Representative (CSR) Duties* (Oct. 1, 2016).

75 IRS, *Field Assistance Appointment Desk Guide* (Dec. 5, 2016) (noting the phone assistor will first try to provide direct assistance, and second, provide information on alternative service options). Even if offered an appointment, the taxpayer may decline if the available dates and times do not work. In those instances, the taxpayer may be left with having to choose a "second best" option.

assertiveness of telephone assistors when steering the taxpayer away from a TAC appointment and toward online services.[76]

The IRS view is it is serving more taxpayers under the appointment-only approach since Accounts Management employees who staff the TAC appointment line can assist many taxpayers by either answering their questions or directing them to a self-help option. For example, an assistor may save a trip to an IRS office for taxpayers looking for forms or publications by telling them how to download from IRS.gov or giving a centralized number to call to request mailed copies. The IRS says its staff is thereby freed up to assist taxpayers who truly require face-to-face assistance. In addition to the push toward using online self-help options, taxpayers visiting TACs are greeted with a sign on the door that appointments are required, with an exception only for limited services such as making a "limited payment," picking up a tax form, or dropping off a current year tax return.[77]

The appointment-only approach can negatively impact taxpayers who need assistance urgently and cannot wait to obtain an appointment.[78] TAS has previously reported examples of the IRS turning taxpayers without an appointment away from a TAC in situations where a focus on assisting the taxpayer might have resulted in a different outcome.[79] TAS is pleased that the IRS's current guidance to employees includes managerial discretion to assist taxpayers without appointments if the taxpayer has a hardship or can be assisted without affecting other scheduled appointments.[80] However, serving taxpayers without appointments remains an exception — and one that is granted on a case-by-case basis. As noted previously, the number of taxpayers receiving same-day appointments declined by 49 percent during the first half of FY 2018 compared with the same period in FY 2017.[81]

TAS remains concerned that the IRS data captures interactions with taxpayers but does not capture the full taxpayer experience. For instance, in the example above where a CSR instructs the taxpayer to download forms or publications, there is no way to know if the taxpayer ultimately located and downloaded the publication needed.

The IRS made these changes in conjunction with several reductions in service, such as limiting the scope of tax law questions and terminating its longstanding service of assisting taxpayers with tax return

76 Systemic Advocacy Management System (SAMS) Issue 37328. SAMS is an online tool through which IRS employees and the public may report systemic problems to TAS, https://www.irs.gov/advocate/systemic-advocacy-management-system-sams.

77 *See* National Taxpayer Advocate 2017 Annual Report to Congress 117-127 (Most Serious Problem: *Taxpayer Assistance Centers (TACs): Cuts to IRS Walk-In Sites Have Left the IRS With a Substantially Reduced Community Presence and Have Impaired the Ability of Taxpayers to Receive In-Person Assistance*). The IRS updated Publication 5202, *Appointment Only Poster for Field Assistance Taxpayer Assistance Centers (English-Spanish Version)* in February 2017. The prior August 2015 version contained no exceptions, stating only the following: "To provide the best possible service, taxpayer assistance is by appointment only."

78 The IRS will, in some circumstances, "double book" an appointment if the taxpayer has an urgent need. However, this will happen only when the taxpayer is able to explain the need, and the phone assistor is able to recognize the urgency. There are exception criteria for taxpayers who show up at a TAC without an appointment. Likewise, the taxpayer will need to explain the need, and a TAC employee needs to recognize the taxpayer should receive service.

79 National Taxpayer Advocate Fiscal Year 2017 Objectives Report to Congress 68-70.

80 IRM 21.3.4.2.4.2, *TAC Appointment Exception Procedures* (July 29, 2016).

81 IRS Wage and Investment Division (W&I), *Business Performance Review* 12 (May 10, 2018).

preparation.[82] Regarding tax law questions, the IRS moved 55 topics from in-scope to out-of-scope between 2006 and 2018.[83]

If the IRS's current trend continues, taxpayers soon may not have the option for in-person assistance from an IRS employee. For at least the decade preceding FY 2016, more than five million taxpayers sought in-person assistance at TACs every year.[84] Subsequent to its new "appointment only" policy, the number of taxpayers visiting a TAC declined from about 5.4 million in FY 2015 to nearly 3.2 million in FY 2017, and visits have declined by an additional 15 percent this year.[85] At the same time, the IRS has reduced the number of TACs from 401 to 371 since 2011.[86] At the end of FY 2017, 24 TACs had no staff, while 87 had only one employee.[87]

The IRS has completed a pilot where TAC employees provided face-to-face assistance to taxpayers using SSA office space.[88] These sites differ from typical TACs in that the location information is provided only to those who have a scheduled appointment, and the office does not stock tax forms and publications. But it may provide a less costly means of providing face-to-face assistance in remote areas, and we appreciate the IRS's efforts in this regard.

As a separate matter, the IRS is developing a proof of concept where SSA employees will assist with identity verification for taxpayers.[89] Taxpayers impacted by identity theft may need to visit a TAC to authenticate their identities in some instances before the IRS can release their tax refunds. Completing the verification process at an SSA office may be more convenient for the taxpayer, especially if the nearest TAC is further away.

We continue to be concerned about the limitations on walk-in service for taxpayers. An "appointments preferred" approach would be reasonable, but the "appointments required" approach the IRS has adopted (notwithstanding permitted managerial discretion that seems to be infrequently exercised) sends the wrong message to taxpayers. If a taxpayer takes the time to travel to an IRS assistance site, the IRS should do everything it can to assist that taxpayer. If the TAC has too many taxpayers to assist at the time, the IRS should utilize the process it used for decades, namely, have Revenue Agents or Revenue Officers on call to assist during these overload times.

82 GAO has reported the number of tax law questions answered by the IRS during the filing season alone dropped from 795,000 in 2004 to 110,000 in 2013. GAO-14-133, *2013 Tax Filing Season: IRS Needs to Do More to Address the Growing Imbalance between the Demand for Services and Resources* 26 (Dec. 2013); GAO, GAO-07-27, *Tax Administration: Most Filing Season Services Continue to Improve, but Opportunities Exist for Additional Savings* 29 (Nov. 2006) (supplemented with more precise IRS data provided to TAS by the IRS W&I for 2004 through 2006).

83 During the 2018 filing season, TAS conducted a review of in-scope and out-of-scope questions between 2006 to 2018. TAS comparison of the 2006 Publication Method Guide with the 2018 Interactive Tax Law Assistant (ITLA) (Feb. 16, 2018) (indicating that 55 more questions were deemed out of scope in 2018).

84 IRS W&I, *Business Performance Review* 7 (Nov. 9, 2016), showing 5.5 million visits in FY 2014 and 5.6 million visits in FY 2015. The figure dropped to 4.5 million visits for FY 2016 as additional TACs transitioned to appointment-only.

85 IRS W&I Division, *Business Performance Review* 12 (May 10, 2018). National Taxpayer Advocate 2017 Annual Report to Congress 119 (Most Serious Problem: *Taxpayer Assistance Centers (TACs): Cuts to IRS Walk-In Sites Have Left the IRS With a Substantially Reduced Community Presence and Have Impaired the Ability of Taxpayers to Receive In-Person Assistance*).

86 In 2011, the IRS operated 401 TACs. IRS response to TAS information request (Dec. 23, 2014). The IRS operated 371 TACs, a reduction of 7.5 percent. IRS response to TAS fact check (Nov. 3, 2017).

87 IRS response to TAS fact check (Nov. 3, 2017).

88 IRS W&I, *Business Performance Review* 29 (Feb. 9, 2017).

89 *Id.*

### Availability of Tax Forms and Publications

While a majority of taxpayers continue to file electronically, about 20 million taxpayers mail in paper tax returns.[90] Many of these taxpayers, along with a number of other taxpayers, rely on printed versions of forms and publications. Taxpayers may request forms and publications if they lack broadband internet service or if the internet is not accessible to them. A 2016 TAS survey found that more than 41 million U.S. taxpayers lack broadband access at home, including 14 million taxpayers with no internet access at home at all.[91]

Furthermore, Congress enacted the Bipartisan Budget Act of 2018 on February 9, 2018,[92] which extended and modified certain tax provisions retroactively for the 2017 tax year. Consequently, the IRS issued Notice 1437 announcing that "updated versions of tax forms will only be available on IRS.gov" since "most tax forms were printed for distribution prior to the signing of [the] new legislation."[93] This means that taxpayers who lacked access to the internet had no direct option for obtaining the correct forms. Additionally, even taxpayers who *can* access forms online experienced the delayed availability of forms. For example, the IRS did not finalize the instructions to claim a qualified plug-in electric vehicle credit in 2017 until March 1, 2018.[94] While this may be understandable, given the late enactment date, these delays create taxpayer burden.

### Online and Self-Service Tools

Online tools have become a more significant part of the filing season experience over time.[95] This trend will continue, especially in light of the IRS's "Future State" initiative that includes directing taxpayers to more online and self-help tools.[96] Broadly, there are two categories of online tools: general access tools and taxpayer account tools.

General access tools allow taxpayers to obtain general information that is not case-specific. A few examples of what a taxpayer might accomplish on the IRS website (IRS.gov) include:

- Downloading tax forms, instructions, and publications;[97]
- Locating the TAC nearest to where the taxpayer lives;[98] and
- Using the Interactive Tax Assistant to find answers to general tax law questions such as who may be claimed as a dependent or whether a taxpayer may deduct medical expenses.[99]

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90 The IRS received 152.2 million returns in calendar year 2017. Approximately 132.3 million of these (87 percent) were E-filing receipts. IRS, *Filing Season Statistics for Week Ending December 29*, 2017 (updated Jan. 12, 2018), https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-december-29-2017.

91 National Taxpayer Advocate 2017 Annual Report to Congress vol. 2, 63 (*A Further Exploration of Taxpayers' Varying Abilities and Attitudes Toward IRS Options for Fulfilling Common Taxpayer Service Needs*) (TAS based the analysis in this report on 3,735 survey responses obtained as of February 2017).

92 Bipartisan Budget Act of 2018, Pub. L. No. 115-123.

93 IRS, Notice 1437, *Information About Your Tax Forms*, (Feb. 2018).

94 IRS, Instructions for Form 8936, *Qualified Plug-in Electric Drive Motor Vehicle Credit (Including Qualified Two-Wheeled Plug-in Electric Vehicles)*, Cat. No. 67912V (Mar. 1, 2018).

95 See Area of Focus: *The IRS's Failure to Create an Omnichannel Service Environment Restricts Taxpayers' Ability to Get Assistance Using the Communication Channels That Best Meet Their Needs and Preferences*, *infra*.

96 IRS, *Future State Initiative*, https://www.irs.gov/uac/newsroom/future-state-initiative (last visited June 13, 2018).

97 IRS, *Forms & Publications*, https://www.irs.gov/forms-pubs (last visited June 13, 2018).

98 IRS, *Contact Your Local IRS Office*, https://www.irs.gov/help-resources/contact-your-local-irs-office (last visited June 13, 2018).

99 IRS, *Interactive Tax Assistant (ITA)*, https://www.irs.gov/uac/interactive-tax-assistant-ita-1 (last visited June 13, 2018).

Taxpayer account tools generally require that the taxpayer pass an authentication test before getting any information or accessing features. Examples of account tools include:

- *Get Transcript*, where the taxpayer can view tax account information;[100]
- *Direct Pay*, where the taxpayer can make payments to the IRS;[101] and
- *View Your Tax Account Information*, where the taxpayer may view payment histories and remaining balance due for certain tax years.[102]

A general access tool can meet relatively simple needs, such as obtaining and printing tax forms or instructions — if the taxpayer has the ability to access the website. As noted above, 14 million individual taxpayers do not have internet access in their homes, and more than 41 million do not have broadband.[103] Even if a taxpayer does have internet access to obtain forms and instructions, he or she is left to determine on his or her own the answer to a question. Interactive tools are helpful, but locating the correct answer is dependent on the series of filtering questions matching the taxpayer's circumstances. As noted in the prior discussion on telephone service, the IRS will not answer tax law questions after the filing season that are unrelated to tax reform, so these tools are the only option available to taxpayers for much of year.

Taxpayers wishing to access account tools face a different challenge. Generally, these tools require that the taxpayer pass "multi-factor authentication." This security measure is intended to ensure the person requesting access is the true taxpayer and not an imposter. For example, to access an account transcript online for the first time, the taxpayer will need:

- His or her Social Security number (SSN), date of birth, filing status, and mailing address from the latest tax return,
- An email account,
- An account number from a credit card, mortgage, home equity loan, home equity line of credit, or car loan, and
- A mobile phone with the taxpayer's name on the account (*i.e.,* not pay-as-you-go minutes).

After the user enters some initial information to validate his or her identity, the IRS will send a one-time use security code via text message to the taxpayer's cell phone.[104] Since the launch of the program in November 2016, only about one in five taxpayers who attempt to create an account pass the necessary e-authentication requirements. Through May of this year, about 6.7 million attempts to establish online accounts have been made.[105]

100 IRS, *Welcome to Get Transcript*, https://www.irs.gov/individuals/get-transcript (last visited June 13, 2018).

101 IRS, *Welcome to Direct Pay!*, https://www.irs.gov/payments/direct-pay (last visited June 13, 2018).

102 IRS, *View Your Tax Account Information*, https://www.irs.gov/uac/view-your-tax-account (last visited June 13, 2018).

103 See National Taxpayer Advocate 2017 Annual Report to Congress vol. 2, 62, 63 (Research Study: *A Further Exploration of Taxpayers' Varying Abilities and Attitudes Toward IRS Options for Fulfilling Common Taxpayer Service Needs*).

104 The taxpayer has the option of requesting that the activation code be mailed to the address of record. IRS, *Secure Access: How to Register for Certain Online Self-Help Tools*, https://www.irs.gov/individuals/secure-access-how-to-register-for-certain-online-self-help-tools (last visited June 9, 2018). However, waiting "5 to 10 days for mail delivery of the activation code" hinders the taxpayer's ability to immediately resolve the issue.

105 IRS, JOC Reports, *Monthly Accounts Dashboard* (period ending May 31, 2018).

Not all taxpayer account tools require multi-factor authentication. For example, *Where's My Refund* allows the taxpayer to check when the IRS is likely to issue his or her tax refund.[106] The only information the user needs to provide is the SSN (or Individual Taxpayer Identification Number), filing status, and expected refund amount.[107] As the IRS tries to transition taxpayers from using personal service to using online service, it is incumbent on the agency to develop ways to measure the effectiveness of online services at meeting taxpayer needs. To date, adequate measures do not exist.

## SPECIAL TOPICS

### Identity Theft and Refund Fraud

The nature of stolen identity refund fraud, also referred to as tax-related identity theft (IDT), and refund fraud as a whole continues to evolve as the IRS implements various filters (consisting of rules and data mining models) to combat increasingly sophisticated refund fraud schemes. As mentioned above, TAS has seen a spike in case receipts due to the addition of new filters and the overly broad filters in place from prior years.

For purposes of analyzing the taxpayer experience, it is useful to divide taxpayers into two categories: (1) taxpayers whose returns are flagged on suspicion of refund fraud *unrelated to IDT* and (2) taxpayers whose returns are flagged on suspicion of refund fraud *related to IDT*. A more detailed discussion of the two categories follows.

### Pre-Refund Wage Verification

One way the IRS screens for fraud is by looking for misreported income or tax withholding. For example, a taxpayer may file a return that misstates income or the amount of tax withheld by the employer to generate an inflated refund. Under the IRS's Pre-Refund Wage Verification Program, the IRS will freeze a claimed refund if electronic filters and rules flag the income or withholding as suspicious until it can verify the amounts. While these screens are essential to combat the epidemic of refund fraud, they delay the processing of legitimate returns as well. Even a short delay in receiving a refund can have significant impact for a low income taxpayer who may be relying on the refund to assist with day-to-day living expenses.[108]

Over the past two calendar years (CYs), well over half of the returns held by the IRS for pre-refund wage verification have been determined to be false detections. In CY 2016 (through September), the false detection rate was 54 percent, increasing to 66 percent in CY 2017 for the same period.[109]

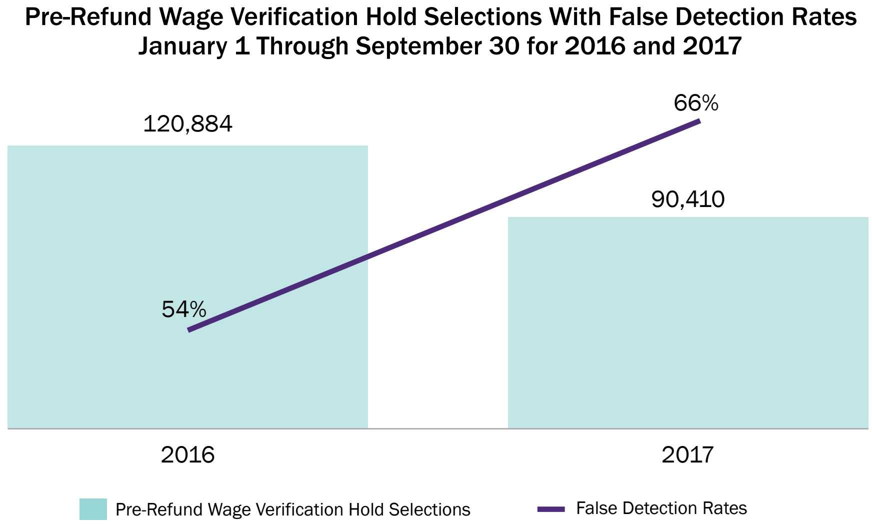
106 IRS, *"About Where's My Refund?,"* https://www.irs.gov/refunds/about-wheres-my-refund (last visited June 23, 2018).

107 IRS Publication 2043, *IRS Refund Information Guidelines for the Tax Preparation Community*.

108 Area of Focus: *High False Detection Rates Associated with Fraud Detection and Identity Theft Filters Unnecessarily Burden Legitimate Taxpayers*, *infra*. *See also* IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in the 2017 Annual Report to Congress: *Fraud Detection: The IRS Has Made Improvements to Its Fraud Detection Systems, But a Significant Number of Legitimate Taxpayer Returns Are Still Being Improperly Selected by These Systems, Resulting in Refund Delays*, *infra*.

109 IRS Response to TAS Information Request (Oct. 19, 2017).

**FIGURE 2.6**[110]




As discussed above, for 2018, the IRS implemented changes to its fraud filters and created two additional fraud filters (referred to as filters "I" and "J") that increased Pre-Refund Wage Verification inventory. *As of May 2, 2018, the non-identity theft filters selected in excess of 1.1 million returns for verification in CY 2018 compared to 186,419 for the same period in CY 2017, which reflects a 495 percent increase.*[111] Additionally, the IRS anticipated that its case management system, EFDS, would have the ability to release returns in bulk when it could systematically verify the income and withholding against third-party information. Systemic limitations did not allow this to occur, resulting in a less efficient manual release process further delaying taxpayers' receipt of refunds.[112]

These program flaws also generate downstream costs to TAS and the IRS. Taxpayers whose refunds are delayed will likely call the IRS to find out why, which in turn ties up the phone lines, making it more difficult for other taxpayers to reach the IRS to get their questions answered (or their correspondence processed timely, since many employees handle both correspondence and phone lines). Taxpayers who are suffering economic hardships or cannot obtain information about their refunds, are contacting TAS to ask for help in obtaining a refund release. *TAS pre-refund wage verification refund hold cases from January 1, 2018, through May 31, 2018, have increased from 10,937 to 36,980 cases, or 238 percent, when compared to the same period last year.*[113] Of the 36,980 TAS pre-refund wage verification refund hold cases in this five month period, 33,182 (90 percent) involved economic hardships and 463 cases necessitated the issuance of Taxpayer Assistance Orders — more than the *total* number of TAOs issued in any year since 2000.[114]

110 IRS Response to TAS Information Request (Oct. 19, 2017).

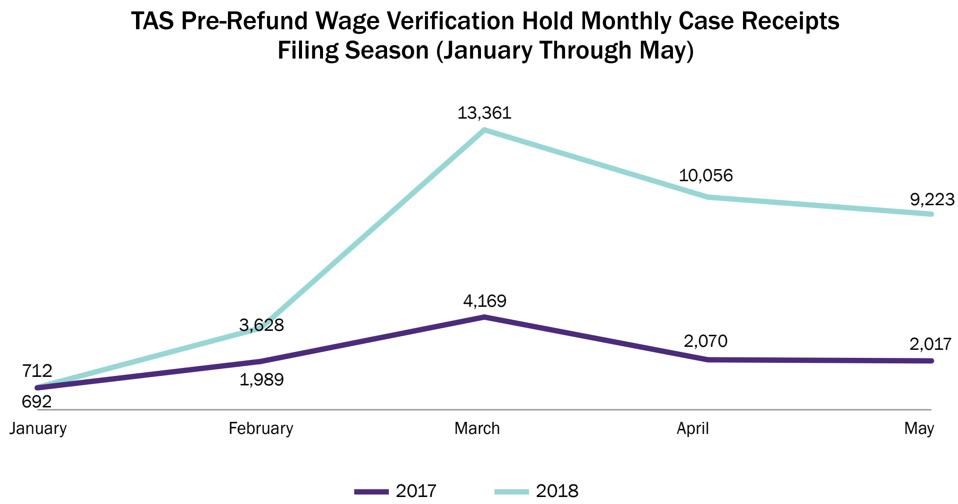
111 *IDT & IVO Selections Performance Report* slide 2 (May 9, 2018).

112 Area of Focus: *High False Detection Rates Associated With Fraud Detection and Identity Theft Filters Unnecessarily Burden Legitimate Taxpayers*, *infra*; *Continued Oversight Over the Internal Revenue Service: Joint Hearing Before the H. Subcomm. on Health Care, Benefits, and Administrative Rules and the H. Subcomm. on Government Operations*, 115th Cong. 46-48 (2018) (statement of Nina E. Olson, National Taxpayer Advocate).

113 Data obtained from TAMIS (Jun. 1, 2017; Jun. 1, 2018).

114 Data obtained from TAMIS (Oct. 1, 2010; Oct. 1, 2011; Oct. 1, 2012; Oct. 1, 2013; Oct. 1, 2014; Oct. 1, 2015; Oct. 1, 2016, Oct. 1, 2017; Jun. 1, 2018).

**FIGURE 2.7**[115]




## Identity Verification

As of May 2, 2018, the Taxpayer Protection Program (TPP) selected 1.6 million returns in CY 2018 compared to 1.5 million returns over the same period in CY 2017, an increase of five percent. The IRS sends a letter instructing the taxpayer to verify his or her identity by calling the TPP phone line, and the taxpayer must provide certain information from a prior-year return and successfully answer certain authentication questions. Taxpayers failing oral authentication with a phone assistor, or for taxpayers deemed at high risk for identity impersonation, are required to visit a TAC. As a result, taxpayers desperate to complete this process and receive their refunds need to make an appointment at a TAC, as discussed above.

As tax-related identity theft refund fraud schemes become more sophisticated, the ongoing challenge for the IRS is to refine its filters and screening methods in real time. Currently, the IRS is heavily focused on a phishing scam where a criminal takes control of tax practitioners' computers to steal the information that was used on prior-year returns.[116] Seventy-five companies reported taxpayer data breaches in January and February of this year, a nearly 60 percent increase from the same time last year.[117] Data breach incidents, where identity thieves have access to sensitive taxpayer information, make it more difficult for the IRS to create filters that can differentiate between legitimate and illegitimate tax returns.

115 Data obtained from TAMIS (Jun. 1, 2017; Jun. 1, 2018).

116 *See, e.g.*, IRS, *Protect Yourself; Protect Your Clients*, https://www.irs.gov/tax-professionals/protect-your-clients-protect-yourself (last visited June 23, 2018).

117 *See, e.g.*, IRS News Release IR-2018-68, *Summit partners warn tax pros to be on alert; step up security measures* (Mar. 22, 2018).

At the same time, as discussed in detail later in this report, the IRS's fraud detection systems have a history of high false detection rates.[118] In calendar year 2017 (through September), the false detection rate for IDT filters was 62 percent, meaning that of all returns flagged as potentially fraudulent, nearly two-thirds were legitimate.[119] High false detection rates lead to significant downstream consequences for both the IRS and taxpayers. When legitimate taxpayers are ensnared by over-inclusive IRS identity theft and refund fraud detection filters, they may experience protracted refund delays as they navigate the authentication processes to prove they are the true tax return filers.

## AFFORDABLE CARE ACT

### The IRS No Longer Accepts Tax Returns Silent on Health Care Coverage, Thereby Minimizing Downstream Processing Delays and Reducing Taxpayer Burden

The Patient Protection and Affordable Care Act of 2009 (ACA)[120] requires individuals to obtain qualifying minimum essential coverage (MEC), receive an exemption from the coverage requirement, or pay an individual shared responsibility payment (ISRP). Under the recently-enacted Tax Cuts and Jobs Act, taxpayers must continue to report coverage, qualify for an exemption, or pay the ISRP for tax years 2017 and 2018. Tax returns that didn't report a full-year MEC, attach an exemption (Form 8965, *Health Coverage Exemptions*), or pay an ISRP, are referred to as "silent returns."

For the 2018 filing season, the IRS announced it would no longer accept electronically filed tax returns where the taxpayer does not address the health coverage requirements of the ACA, stating, "After a review of our process and discussions with the National Taxpayer Advocate, the IRS has determined identifying omissions and requiring taxpayers to provide health coverage information at the point of filing makes it easier for the taxpayer to successfully file a tax return and minimizes related refund delays."[121] The National Taxpayer Advocate supports this decision, because taxpayers who e-file now find out immediately that they have omitted this information, rather than receiving an IRS letter weeks down the road while their refunds are frozen.

### In 2017, the IRS Inadvertently Issued Letter 6002, *Silent Return Filers – ACA*, to Certain Taxpayers

In September 2017, the IRS inadvertently mailed Letter 6002, *Silent Return Filers – ACA*, to many taxpayers who had, in fact, filed Form 8965 with their returns to report an exemption secured from the Health Insurance Marketplace. The letter requested that the taxpayers file an amended return to report full-year coverage, claim a coverage exemption, or report a shared responsibility payment. Although the Wage and Investment (W&I) division of the IRS did not accommodate TAS's request to send corrected

118 Area of Focus: *High False Detection Rates Associated with Fraud Detection and Identity Theft Filters Unnecessarily Burden Legitimate Taxpayers*, *infra*. *See also* IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in the 2017 Annual Report to Congress: *Fraud Detection*: *The IRS Has Made Improvements to Its Fraud Detection Systems, But a Significant Number of Legitimate Taxpayer Returns Are Still Being Improperly Selected by These Systems, Resulting in Refund Delays, infra.*

119 IRS Wage & Investment Division, *Business Performance Review* 9 (Feb. 9, 2017). A false detection occurs when a system selects a legitimate return and delays the refund past the prescribed review period.

120 Affordable Care Act of 2009 (ACA), Pub. L. No. 111-148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010).

121 IRS, ACA Information Center for Tax Professionals, https://www.irs.gov/tax-professionals/aca-information-center-for-tax-professionals (last visited June 18, 2018).

letters to impacted taxpayers, TAS partnered with W&I to draft guidance on the IRS website for impacted taxpayers, and an alert was issued to help IRS employees address this issue.[122]

### Employer Shared Responsibility Payment Letters Sent Out to Applicable Large Employers

IRC § 4980H(a)(1) provides that an Applicable Large Employer (ALE) must offer MEC to its full-time employees. In general, an employer is considered an ALE if it employs 50 or more full-time workers (or FTEs), or a combination of full-time and part-time employees that equals at least 50 FTEs.[123]

IRC § 4980H provides that ALEs will be subject to an employer shared responsibility payment (ESRP) if (1) it fails to offer its full-time employees the opportunity to enroll in MEC under an eligible employer-sponsored plan, and (2) a Premium Tax Credit (PTC) was paid to at least one full-time employee. The amount of the ESRP under IRC § 4980H(a) is $2,000 per full-time employee per year (determined on a monthly basis).[124] If an ALE offers MEC but it is not considered affordable, it will be assessed an ESRP of $3,000 for each employee (determined on a monthly basis) that purchases health insurance from the exchange and is granted a tax credit and/or subsidy for health insurance.[125]

The President issued an executive order on January 20, 2017, requiring all agencies in the executive branch with responsibilities under the ACA to "minimize the unwarranted economic and regulatory burdens of the Act."[126] The order stated that the agencies should "exercise all authority and discretion available to them to waive, defer, grant exemptions from, or delay the implementation of any provision or requirement of the Act" that would impose a burden.[127]

On November 1, 2017, the IRS began sending letters to certain ALEs, advising them of potential assessments of the ESRP under IRC § 4980H.[128] In the Fiscal Year 2018 Objectives Report to Congress, the National Taxpayer Advocate raised a concern that even though the ESRP and related information reporting requirements became effective in TY 2015, the IRS had not set forth procedures it will use to propose and assess the ESRP.[129]

On March 21, 2018, TIGTA issued a report on the IRS's implementation of processes to ensure compliance with the ESRP.[130] TIGTA reported that the delayed implementation of the ESRP assessment process was due in part to unissued guidance on the ESRP procedures.

The fact the IRS began sending ESRP assessment letters, with no advanced notice to employers, was a major topic of concern and discussion during an April 17, 2018, House Oversight and Government

122 IRS, *New ACA Soft Notices*, SERP Alert 17A0236 (Sept. 8, 2017).

123 IRC § 4980H(c)(2).

124 IRC § 4980H(c)(1). The employer shared responsibility payment (ESRP) provisions provide an inflation adjustment mechanism beginning in years after 2014. IRC § 4980H(c)(5).

125 IRS § 4980H(b)(1).

126 White House, Executive Order 13765, *Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal* (Jan. 20, 2017).

127 *Id.*

128 As of March 23, 2018, the IRS had mailed 8,747 letters to certain Applicable Large Employers (ALEs), advising them of potential assessments of the ESRP, and had processed just over $10M in payments. *See* IRS, *Small Business/Self-Employed (SB/SE) Business Performance Report* (1st Qtr. FY 2018).

129 National Taxpayer Advocate Fiscal Year 2018 Objectives Report to Congress 92-97 (Area of Focus: *While the IRS Continues to Do a Reasonable Job in Administering the Affordable Care Act (ACA), Taxpayers Still Encounter Difficulties Attempting to Comply with the Complex Provisions*).

130 TIGTA, Ref. No. 2018-43-022, *Affordable Care Act: Processes to Identify Employers Subject to the Employer Shared Responsibility Payment Need Improvement* (Mar. 2018).

Reform Committee hearing attended by the National Taxpayer Advocate and the Acting Commissioner of the IRS.[131] Chairman Meadows noted that there were concerns with how the ESRP assessments were implemented, and asked the Acting Commissioner to work with the National Taxpayer Advocate to take a second look at the process.

Following the hearing, a coalition of organizations representing employers sent a letter to the U.S. Department of the Treasury, the Department of Health and Human Services, and the IRS expressing their concern "regarding the unlawful and deeply flawed process by which the Administration has begun assessing tax penalties" under the Affordable Care Act's employer mandate."[132]

### Extension of Time to Provide Health Coverage Forms

In Notice 2018-06, the IRS extended the 2018 due date for certain entities to provide 2017 health coverage information forms to individuals. These entities had until March 2, 2018, to provide Forms 1095-B and 1095-C to individuals instead of the original due date of January 31, 2018. Because of this extension, individuals may not have received their Forms 1095-B or 1095-C by the time they were ready to file their 2017 individual income tax returns. While taxpayers could use other information about their health coverage to complete their filings, the purpose of these forms is to make calculating and reporting coverage easier for the taxpayer. Thus, the extension likely increased both taxpayer burden and the risk of taxpayer misreporting.

### General ACA Tax Return Data

The following figure provides information regarding the comparison of individual taxpayers who claimed the PTC on their TY 2016 and TY 2017 returns through April 2017 and April 2018.

**FIGURE 2.8, Comparison of Premium Tax Credit Returns on Forms 8962 for TY 2016 & TY 2017 (Filed Jan. 1 Through Apr. 27, 2017 & Jan. 1 Through Apr. 26, 2018)**[133]

| | TY 2016 | TY 2017 | Percent Change from TY 2016 to TY 2017 |
|---|---|---|---|
| Forms 8962 | 5.1 million | 4.9 million | -3.9% |
| Total PTC Claimed | 17.6 billion | $22.1 billion | 25.6% |
| Average PTC | 3,455 | $4,558 | 31.9% |
| Returns Reporting APTC | 4.9 million (96% of returns with Forms 8962) | 4.7 million (96% of returns with Forms 8962) | -4.1% |
| Total APTC Reported | 19.4 billion | $24.4 billion | 25.8% |
| Forms 8962 Submitted With Prepared Returns | 3.2 million (63% of returns with Forms 8962) | 3.1 million (63% of returns with Forms 8962) | -3.1% |

131 *Continued Oversight Over the Internal Revenue Service: Joint Hearing Before the H. Subcomm. on Health Care, Benefits, and Administrative Rules and the H. Subcomm. on Government Operations*, 115th Cong. (2018) (transcript of testimony).

132 *See* Ad Hoc Coalition Letter to Treasury-HHS on Employer Mandate Issues (May 30, 2018).

133 IRS, CDW, Individual Returns Transaction File (IRTF) TY 2016 (data extracted May 2017) and TY 2017 (data extracted June 2018). This preliminary data is based on TY 2016 returns that posted as of April 27, 2017 and TY 2017 returns that had posted as of April 26, 2018; and is subject to change as the IRS reviews the data, processes additional TY 2017 returns, and conducts compliance activities.

Individual taxpayers who did not have minimum essential coverage or qualify for an exemption were required to report an ISRP on their tax returns. Figure 2.9 provides comparison of ISRPs on TY 2016 and TY 2017 returns through April 2017 and April 2018.

**FIGURE 2.9, Comparison of Individual Shared Responsibility Payment Returns for TY 2016 & TY 2017 (Filed Jan. 1 Through Apr. 27, 2017 & Jan. 1 Through Apr. 26, 2018)**[134]

| | TY 2016 | TY 2017 | Percent Change from TY 2016 to TY 2017 |
|---|---|---|---|
| Returns With ISRP | 4.0 milllion | 3.6 million | -10.0% |
| Average ISRP | $708 | $766 | 8.2% |
| Prepared Returns Reporting ISRP (Paid or Volunteer) | 2.6 million (65%) | 2.3 million (64%) | -11.5% |
| Returns Filed With Forms 8965, *Health Coverage Exemptions* | 10.7 million | 10.4 million | -2.8% |
| Returns Filed With Forms 8965 Claiming Household Coverage Exemption (Form 8965 Part II) | 3.9 million | 3.6 million | -7.7% |
| Returns Filed With Forms 8965 Claiming Coverage Exemption (Form 8965 Part III) | 8.0 million | 8.0 million | 0.0% |
| Prepared Returns Filed With Forms 8965 | 5.8 million (54%) | 5.4 million (52%) | -6.9% |

## SERVICE OPTIONS FOR U.S. TAXPAYERS LIVING ABROAD

TAS remains concerned about service options for taxpayers located overseas.[135] In 2016, approximately nine million U.S. citizens lived abroad, compared with about 6.8 million in 2013.[136] The number of U.S. citizens living abroad continues to grow, while current services are limited. There are also many international U.S. taxpayers who are neither residents nor citizens of the United States, as evidenced by the increase in individual tax returns filed by nonresident aliens during the filing season from tax years 2013 through 2017.[137]

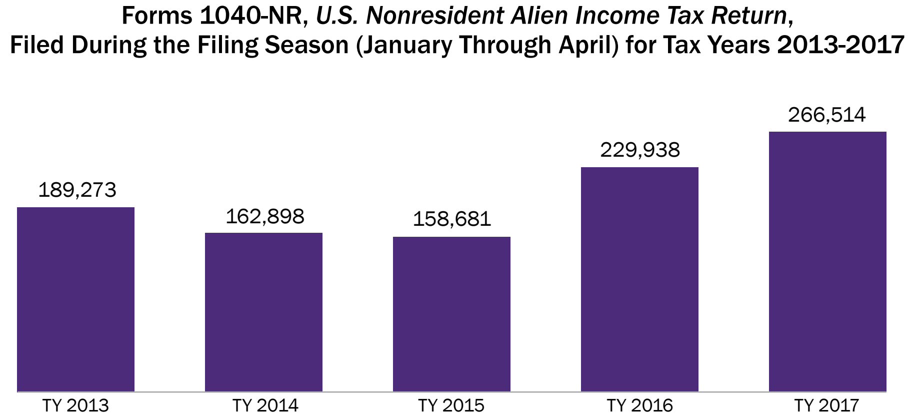
134 IRS, CDW, IRTF TY 2016 (data extracted May 2016) and TY 2017 (data extracted June 2018). This preliminary data is based on TY 2016 returns that had posted as of April 27, 2017 returns and TY 2017 returns that had posted as of April 26, 2018; and is subject to change as the IRS reviews the data, processes additional TY 2016 and TY 2017 returns, and conducts compliance activities.

135 For past reporting on these concerns, see National Taxpayer Advocate Fiscal Year 2017 Objectives Report to Congress 78-79. *See also* National Taxpayer Advocate 2015 Annual Report to Congress 72-81 (Most Serious Problem: *International Taxpayer Service: The IRS's Strategy for Service on Demand Fails to Compensate for the Closure of International Tax Attaché Offices and Does Not Sufficiently Address the Unique Needs of International Taxpayers*).

136 *See* U.S. Department of State, Bureau of Consular Affairs, *Consular Affairs by the Numbers* (Mar. 2018), https://travel.state.gov/content/dam/travel/CA_By_the_NumbersCA-By-the-Numbers-2018-FINAL.pdf. U.S. Department of State, Bureau of Consular Affairs, *Who We Are and What We Do: Consular Affairs by the Numbers* (Jan. 2013), https://travel.state.gov/content/dam/ca_fact_sheettravel/CA%20Fact%20Sheet%202014.pdf.

137 IRS, CDW, Individual Returns Transaction File for TY 2015 (as of Apr. 29, 2017, cycle 201717).

**Figure 2.10**[138]




Taxpayers living abroad generally cannot call U.S. toll-free telephone lines, yet in 2015, the IRS terminated the Electronic Tax Law Assistance program through which taxpayers could submit tax law questions to the IRS on its website and receive a response via email. In recent years, the IRS closed its overseas tax attaché offices, which eliminated the last face-to-face option for taxpayers.[139]

## CONCLUSION

The IRS delivered a generally successful filing season for most taxpayers, but results were mixed for taxpayers who required assistance. The IRS's benchmark measure of telephone performance shows the IRS answered 80 percent of its calls for the first time since 2007, but that performance measure fails to account for the majority of telephone calls the IRS received. The IRS answered fewer calls on its compliance telephone lines, and those who got through waited an average of 24 minutes. Moreover, the IRS served fewer taxpayers in its TACs and continued its policy of answering only a limited scope of tax law questions on the phone and in-person. Lastly, the IRS's identity theft and pre-refund wage verification filters and processing problems significantly delayed refunds for hundreds of thousands of taxpayers who had filed legitimate returns, harming some taxpayers and creating additional work for the IRS.

138 IRS, CDW, IRTF Form 1040-NR, U.S. Nonresident Alien Income Tax Return for TY 2013 filed through Apr. 24, 2014; TY 2014 filed through Apr. 30, 2015; TY 2015 filed through Apr. 28, 2016; TY 2016 returns filed through Apr. 27, 2017; and TY 2017 filed through Apr. 26, 2018.

139 IRS had 15 attaché offices at one time. The last was closed in December 2015. Memorandum from Acting Deputy Commissioner, International (LB&I), *Post Closures of Frankfurt, London and Paris* (Feb. 18, 2015) (on file with TAS). For a detailed discussion, see National Taxpayer Advocate 2015 Annual Report to Congress 72-81 (Most Serious Problem: *International Taxpayer Service: The IRS's Strategy for Service on Demand Fails to Compensate for the Closure of International Tax Attaché Offices and Does Not Sufficiently Address the Unique Needs of International Taxpayers*).