

## **IRS Future State Public Forum**

**Harrisburg, Pennsylvania, April 8, 2016**

### **Statement of Robert Hamilton, Esq., MidPenn Legal Services Low Income Taxpayer Clinic**

The Low Income Taxpayer Clinic at MidPenn Legal Services provides free legal advice and representation to qualifying taxpayers located throughout 18 counties in the Central Pennsylvania region. This large swath of the Commonwealth spans an area stretching from as far north as State College, south to the Maryland line, west to Bedford, and as far east as Reading. Our clients live in rural, suburban, and urban environments, and no one region, county or city is overly represented. They seek our help in resolving a variety of federal income tax matters, including assistance with the denial of refundable credits (for example, the Earned Income Tax Credit), collection alternatives, identity theft, tax problems related to a former spouse, audit reconsideration, and advocating for the removal of tax liens and levies, just to name a few. In general, they seek out our services after their own efforts to resolve their tax matters with the IRS have broken down.

I'm here today to provide commentary on the IRS' proposed "Future State" plan, including various ways I believe that it will affect our clients and their experiences with the IRS moving forward, and to address the current needs of our clients in dealing with IRS controversy matters. I will devote particular focus toward the plan's goal of promoting online communication with taxpayers, and providing greater access to taxpayers' online accounts by third parties.

Before I jump into my concerns, I think that the plan addresses the real need for the IRS to provide a "more complete online experience," as stated in the "Future State" plan, for taxpayers and tax professionals. A major source of delay in helping our clients is attempting to locate their notices, letters, or records that the IRS already has (or should have) on file, particularly those documents submitted in connection with an audit. The Form 2848, Power of Attorney, which our clients fill out at the beginning of representation, allows me to have access to their online transcripts, where I can obtain a clearer picture of what has transpired on their IRS account in any given tax year, and where that taxpayer stands in the audit process. However, these transcripts only provide me with the dates that a notice or letter was issued, a short phrase summarizing the notice, and the amount of an adjustment made to the client's account. It would be much more useful if all of these documents could actually be opened and viewed directly online through e-Services.

While some clients save every document they receive in the mail, these individuals are the exception. Many of our clients do not keep complete records, whether due to economic circumstances (for example, families who are evicted), or the necessary paperwork is being held by another individual (such as a former, abusive spouse). Many are renters who need to relocate every so often, which increases the chances that their paperwork will be lost in the move. Some are homeless, which usually means that any relevant paperwork has long since been lost or otherwise discarded. By providing direct access to view these files through a centralized online account, I eliminate the need of waiting for the taxpayer to produce documents that they may not even have. In addition, the transcripts provided through e-Services on [irs.gov](http://irs.gov) do not indicate what documents the taxpayer has submitted in response to an audit notice. More often than not, the taxpayer uses what I refer to as the "kitchen sink" approach, meaning they submit every

document in their possession to support their claim, whether relevant or not. I typically hear complaints of “I sent them everything I had! What more could they want?” If I could review exactly what they sent, perhaps with a label as descriptive as “taxpayer submitted documents”, this could be incredibly beneficial in helping the client understand why an audit did not turn out in their favor, and how to resolve the matter moving forward in audit reconsideration.

However, while this upgrade in online interface could surely enhance my representation of taxpayers, I have serious doubts about taxpayers utilizing and relying exclusively on online services as a replacement to direct, person-to-person contact with IRS representatives. The “Future State” plan assumes that since other financial transactions, such as those involving a transfer of funds from a bank account or a consumer purchase, have shifted online, every American will prefer online interactions when dealing with issues concerning the IRS. Not only is this assumption based on shaky logic, in my experience the majority of low income taxpayers either do not have equal access to online services, or they overwhelmingly prefer a human connection to assist them with their tax problem.

For some of our clients, an internet connection is a luxury they simply cannot afford. They are scraping by, living paycheck to paycheck, trying to support their families, and they often rely on a single source of income. I notice that many of the Collection Information Statements I submit on behalf of clients in connection with an Installment Agreement, Offer in Compromise, or request for Currently Not Collectible status will not include monthly household expenses for internet or TV access. The reason for this is straight-forward: clients experiencing financial hardship need to cut out unnecessary expenses, including internet access, just to be able to afford food and shelter for their families. How does the IRS expect these individuals to resolve their tax problems if they do not have access to the internet in their homes? Where do their actual needs fit into the “Future State” plan?

In addition, some of our elderly clients do not use the internet to access information. Many others simply do not trust providing financial or personal information through a computer. This reasoning seems justified given the fact that seemingly every month they hear news of a data breach at a major bank, retailer, health care provider, or even the IRS itself. As you may recall, last year the IRS reported that cyber criminals gained access to personal information contained on over 300,000 taxpayer accounts through the online “Get Transcript” tool. The “Future State” plan does not elaborate or properly explain how the IRS’ security features will be improved to ensure that taxpayer information is safe from these individuals. It appears these concerns have not subsided in recent months. Interestingly, just last week the Government Accountability Office (GAO), as part of an audit it conducted on the IRS’ fiscal year 2014 and 2015 financial statements, issued a report finding that “weaknesses in the controls limited [the IRS’] effectiveness in protecting the confidentiality, integrity, and availability of financial and sensitive taxpayer data.”<sup>1</sup> How will these weaknesses be addressed and corrected moving forward, and how does the IRS expect public confidence in submitting personal information online to improve given these recent events and reports?

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<sup>1</sup> Joe Davidson, *Weak IRS Controls Leave Taxpayer Data Vulnerable, Report Says*, WASHINGTON POST, available at <https://www.washingtonpost.com/news/powerpost/wp/2016/03/30/weak-irs-controls-leave-taxpayer-data-vulnerable-report-says/> (March 30, 2016).

Although some of our clients may be more “tech savvy” than others and thus fit into the archetype of the “Future State” taxpayer, the overwhelming majority first contact the IRS by calling the number listed on their notice or letter. It is rare that one of them will read the entire notice and know exactly what they need to do in order to comply with IRS demands. Rather, *they want a live person to explain to them exactly what they need to do.* They want an individual to review their account, and set them on the right path. This makes logical sense: for there is an inherent trust that exists when a communication is between two people rather than one person and a computer.

Sadly, I believe most of our clients would report below average customer service experiences with the IRS, which erodes this trust. Two clients in particular come to mind, each with similar characteristics and facing similar circumstances. Both are single women in their late 60s, and both are working full-time to support their grandchildren who live with them. Each received IRS notices requesting evidence to support their claim of the Earned Income Tax Credit; namely, that their grandchildren are related to them, that they lived with them for more than one-half of the year, and that they provided more than one-half of their support. Neither was fortunate enough to actually speak to a representative when they called the IRS when they first received this notice. Whenever they had time to call, whether on break at their jobs or on their way home from work, they experienced long wait times, or their calls were disconnected as “courtesy” hang-ups. They anticipated that an IRS representative would be able to tell them exactly what to send. Instead, since they were never able to make direct contact, they gathered what they thought would be sufficient, hoping for a positive outcome. Without ever having spoken to an actual person, their claims were denied and Statutory Notices of Deficiency were eventually issued. We are currently assisting both in audit reconsideration requests.

If expansion of online access to taxpayer accounts does occur, such access should not extend to tax preparers that are not currently subject to IRS oversight. Each year many taxpayers, including those for whom English is a second language, use tax preparers whose only background in tax law includes internet access and the desire to provide false information on a tax return in the hopes of personal financial gain. Last year I represented a disabled woman who was referred to an unscrupulous preparer that offered to file her taxes for a small fee. My client, a single woman with no dependents, was expecting a modest refund representing her withholding amount from her job. Several months later she received an audit notice requesting more information on the three dependents she claimed on her return for purposes of the Earned Income Tax Credit (EITC). At first my client thought the IRS screwed up: “what dependents?” she asked. Not only had she never claimed any dependents for any tax year, she’d lived alone for almost twenty years. Unbeknownst to her, the preparer had changed her filing status and claimed these three dependents after my client had signed the return. Fortunately, the IRS froze the EITC and Child Tax Credit amounts claimed on the initial return, and after the examination was closed my client owed a small amount of interest and penalty, which she was able to afford. However, we never found the preparer, and she could be engaged in this same type of ruse with other taxpayers this year. Thus, I am very much opposed to any “Future State” plan that does not restrict access to such individuals.

I think that the IRS “Future State” plan that envisions a simple, self-explanatory online experience where the taxpayer is both informed and up-to-date about tax rules and regulations

and tech-savvy enough to navigate a revised online interface, is more idealized fantasy than accurate portrayal. While I welcome upgrades to the IRS online accounts system, it cannot realistically be expected to replace the in-person contact that so many of our clients heavily rely upon, particularly the elderly and those who speak English as a second language. Additionally, public concern over the security of their tax records by the IRS remains high, and any expansion of these records to third parties must be more fully vetted and addressed before such access is granted.