

## Introduction: The Most Serious Problems Encountered by Taxpayers

IRC § 7803(c)(2)(B)(ii)(III) requires the National Taxpayer Advocate to submit an annual report to Congress that contains a summary of the ten “Most Serious Problems” encountered by taxpayers.<sup>1</sup> While we use the method described below to identify the Most Serious Problems, the list remains inherently subjective in many respects.

### METHODOLOGY OF THE MOST SERIOUS PROBLEMS LIST

The National Taxpayer Advocate is in a unique position to identify the most serious problems facing taxpayers because we receive input from a wide variety of sources. Through our Case Advocacy operations, TAS helps hundreds of thousands of taxpayers to resolve their account problems with the IRS every year. We help many types of taxpayers, including individuals, businesses, and exempt organizations, and we work with both unrepresented taxpayers and taxpayers represented by tax professionals. Some cases come to us directly while others come through referrals from congressional offices and the IRS.

As part of our Systemic Advocacy operations, TAS leaders meet frequently with organizations that work in the tax administration field, and we maintain an online portal through which members of the public and IRS employees can call our attention to systemic problems that affect groups of taxpayers or all taxpayers.<sup>2</sup> We receive hundreds of submissions each year. We review them all and create “advocacy projects” to address priority problems. TAS employees also work on cross-functional teams with other parts of the IRS to address areas that impact taxpayer rights and taxpayer service.

The National Taxpayer Advocate considers the input from these sources and assesses the following factors in selecting the Most Serious Problems encountered by taxpayers:

- Impact on taxpayer rights;
- Number of taxpayers impacted;
- Financial impact on taxpayers;
- Visibility, sensitivity, interest to stakeholders and Congress, and external indicators (*e.g.*, media);
- Barriers to tax law compliance, including cost, time, and burden;
- Taxpayer Advocate Management Information System inventory data;
- Emerging issues; and
- Input from TAS Local Taxpayer Advocates.

---

1 Prior to 2019, Congress tasked the National Taxpayer Advocate with identifying at least 20 of the most serious problems encountered by taxpayers. The Taxpayer First Act, enacted in 2019, amended the law to require the National Taxpayer Advocate to identify the ten most serious problems encountered by taxpayers. See Pub. L. No. 116-25, 133 Stat. 981 (2019).

2 The Systemic Advocacy Management System is a database through which IRS employees and members of the public can submit issues for TAS’s consideration and on which TAS employees record subsequent action on those issues. IRS, Systemic Advocacy Management System (SAMS), <https://www.irs.gov/advocate/systemic-advocacy-management-system-sams>. TAS reviews and analyzes all SAMS submissions and determines a course of action, which may include information-gathering projects, immediate interventions, and advocacy projects. Internal Revenue Manual 1.4.13.4.9.2, Systemic Advocacy Management System (SAMS) (July 16, 2021), [https://www.irs.gov/irm/part1/irm\\_01-004-013](https://www.irs.gov/irm/part1/irm_01-004-013).

## #1 Employee Retention Credit

Congress created the Employee Retention Credit (ERC) to support struggling businesses and exempt organizations during the COVID-19 pandemic. Due to what the IRS believes is a high number of improper claims submitted by taxpayers, it implemented a moratorium on processing claims on September 14, 2023, and has been slow to process claims ever since. Taxpayers have been frustrated by the IRS's lack of information and transparency as to its plan for processing the remaining nearly 1.2 million claims as of October 26, 2024.



Considering ERC claims closed in 2024 through September, the IRS's average processing time for ERC claims is now more than a year.

## #2 Return Processing

The IRS burdens millions of taxpayers each year with issues related to return processing, including rejections of electronically filed returns, slow processing of paper returns, difficulty correcting errors after filing, the glacial pace for processing of amended returns, challenges obtaining information from their online accounts, and confusion responding to notices and letters.



The IRS receives about 76 million paper-filed tax forms and information returns annually, but in 2024, it was only able to scan 58 percent of them electronically (as of October 2024).

## #3 Identity Theft

Tax-related identity theft has long been a threat to tax administration for victims who are experiencing significant IRS processing and refund delays. The IRS's lengthy delays in resolving Identity Theft Victim Assistance (IDTVA) cases burden identity theft victims and is inconsistent with the fundamental rights of taxpayers.



Among cases closed in fiscal year 2024, identity theft victims waited on average over 22 months for the IRS to resolve their IDTVA cases – almost two years!

## #4 IRS Service

When taxpayers need assistance from the IRS to meet their filing and payment obligations, many do not receive the quality experience that taxpayers and tax professionals need, leading to delays, frustration, and unnecessary costs. As the IRS continues to transform, it must develop measures of service that reflect the actual taxpayer experience across all communication methods and improve the service experience for all.



On the Accounts Management phone lines, only 32 percent of callers reached an IRS employee during the 2024 filing season.

## #5 Tax-Related Scams

Every year, people from all walks of life fall victim to increasingly complex tax-related scams that are both sophisticated and financially devastating. Victims often experience shattered financial security, indefinitely frozen IRS refunds that disrupt their lives, and confusion due to a lack of understanding of the process and consequences.



As of the end of fiscal year 2024, approximately 739,000 taxpayers were still waiting for the IRS to unfreeze their refund due to potential frivolous credits, many of which likely resulted from tax scams or schemes.

## #6 Hiring

The IRS faces significant challenges hiring and retaining the qualified employees essential for fulfilling its mission. Significant staffing shortages over the past decade have led to poor taxpayer service and operational inefficiencies, impacting both taxpayers and the agency's effectiveness.



Although the IRS has increased the number of customer service representatives, attrition for this position was 24 percent in fiscal year 2023 and 19 percent in fiscal year 2024, and 63 percent of the IRS workforce is eligible to retire within six years.

## #7 Individual Taxpayer Identification Number Processing

Citing concerns about potential fraud, the IRS has long rejected recommendations to digitalize the Individual Taxpayer Identification Number (ITIN) application process, insisting on the use of paper applications and manual verification of identification documents. The result for taxpayers is long delays in processing times, inconsistent treatment of applications, mistakes by tax examiners that may permanently deprive taxpayers of benefits they qualify for under law, and sometimes the loss or destruction of taxpayer identification documents.



From fiscal years 2020 through 2023, the IRS received over a million ITIN applications annually.

## #8 Tax and Financial Literacy

Tax literacy is a key component of financial literacy, and insufficient tax knowledge can lead to a range of financial and related consequences that negatively affect individuals, families, and small businesses. Insufficient tax literacy is a widespread problem that has significant costs to taxpayers and the government.



A recent Tax Foundation survey of U.S. taxpayers found that “on average, over 61 percent of respondents did not know or were not sure of basic concepts related to income tax filing.”

## #9 Civil Penalty Administration

Though penalties are a necessary tool for tax compliance, the IRS does not always administer them according to its own policies or in a fair and consistent manner, which harms taxpayers and erodes their confidence in the U.S. tax system. Some of these penalties are immense, causing life-changing and even insurmountable events for taxpayers.



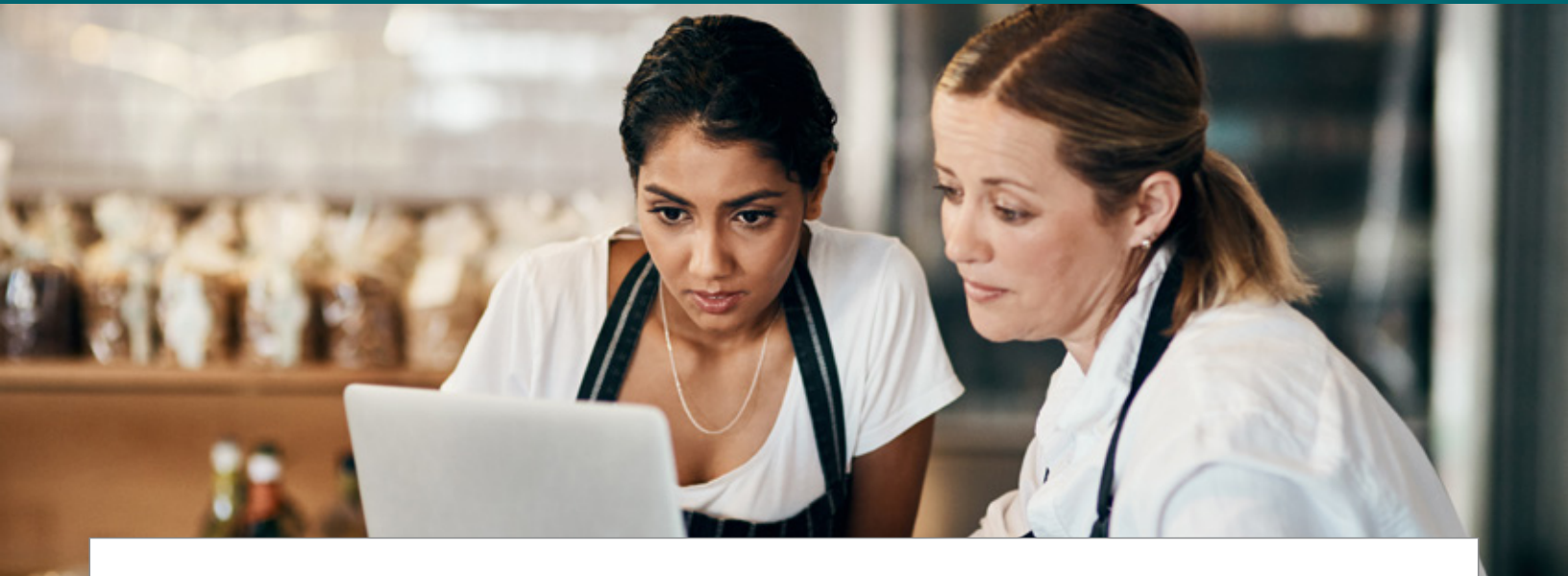
IRS records reflect over 55 percent of accuracy-related penalties proposed by Exam for calendar years 2018-2022 were either not sustained in Appeals or were abated.

## #10 Criminal Voluntary Disclosure

The IRS's changes to its criminal voluntary disclosure practice (VDP) leave taxpayers in a quandary over whether and how to come into compliance. This does not effectively encourage voluntary compliance and therefore exacerbates the overall tax gap and makes it harder to collect the taxes owed.



As of August 31, 2024, the IRS has only completed 161 criminal VDP cases since the beginning of fiscal year 2019.



## EMPLOYEE RETENTION CREDIT

### IRS Processing Delays Are Resulting in Uncertainty and Are Harming and Frustrating Business Owners

#### WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

At the onset of the COVID-19 pandemic, Congress enacted the Employee Retention Credit (ERC) to support struggling businesses and exempt organizations impacted by government-imposed restrictions by providing a tax credit intended to keep employees on the payroll.<sup>1</sup> However, the ERC statutes are complicated and difficult to administer. Bad actors have taken advantage of this complexity by misleading some taxpayers to believe they are eligible for the credit. Thus, the IRS has been inundated with ERC claims and struggled to discern which were valid or invalid.

In the summer of 2023, the IRS drastically slowed ERC processing, culminating in a moratorium on processing new claims starting September 14, 2023. This moratorium continues to aggravate processing delays and cause harm and frustration for many business owners. To make matters worse, over the past four years, taxpayers have not received adequate information from the IRS about delays or the status of their ERC claims. Thousands of business owners have reached out to TAS and/or their congressional representatives for guidance on how to proceed. More than a year from the implementation of the moratorium, the IRS still has not processed many claims filed prior to September 14, 2023. Many businesses with legitimate ERC claims are depending on the funds to aid in their recovery from the pandemic. While waiting for the IRS to process these claims, businesses have been forced to close, experienced significant financial hardship, or taken out loans that continue to accrue interest.

---

<sup>1</sup> Henceforth, all references in this Most Serious Problem to businesses will necessarily include exempt organizations.

## EXPLANATION OF THE PROBLEM

During the pandemic, Congress created significant tax benefits, including the ERC.<sup>2</sup> Congress intended this credit to provide financial assistance to businesses and exempt organizations impacted by government-imposed restrictions meant to stop the spread of the virus by incentivizing employers to keep employees on their payroll. This much-needed relief was significant for struggling businesses greatly impacted by the pandemic.

Unfortunately, when Congress delivers relief through the tax code, scammers, and bad actors all too often take advantage hoping to illegally obtain large refunds or promoter fees. Specifically, in the case of the ERC, bad actors and scammers targeted desperate business owners using aggressive advertising campaigns that provided inaccurate or incomplete information regarding their eligibility for the credit. To address this, the IRS drastically slowed its processing of these claims, culminating in a moratorium to give itself time to sort out the good claims from the bad. Since the IRS's implementation of the moratorium, the backlog of unprocessed ERC claims has grown. Also, IRS communications with affected businesses awaiting their ERC funds have been woefully inadequate. The IRS's failure to process ERC claims timely and provide taxpayers with regular updates has frustrated and burdened taxpayers and compromises their *rights to a fair and just tax system and to be informed*.<sup>3</sup>

Key issues include:

- *Lengthy processing times:* As of October 26, 2024, about 1.2 million claims remain unprocessed, leaving taxpayers without claim status updates or knowing what to expect going forward;<sup>4</sup>
- *Downstream consequences:* IRS delays in processing ERC claims have negative downstream consequences and force taxpayers to make difficult decisions. For example, a taxpayer may have to choose whether to amend their individual income tax return to account for an ERC refund not yet received;
- *Poor communication:* IRS disallowance notices issued prior to an examination are confusing and omit critical information;
- *Abandonment of standard exam procedures:* The IRS largely abandoned its standard procedures when reviewing ERC claims in favor of curtailed processes that do not provide taxpayers adequate opportunities to respond to the IRS while also running the risk of exceeding the time the IRS has to issue a refund;
- *Stolen check delays:* Some eligible businesses experienced additional delays when their ERC refund checks were stolen. These businesses had to wait months or longer for the IRS to conclude an investigation and issue a new check; and
- *Low participation in voluntary disclosure programs:* Taxpayer participation in the IRS's ERC disclosure programs has been low, and the IRS has not acted swiftly to approve taxpayer applications.

The Taxpayer Bill of Rights contains ten taxpayer rights, including the *rights to be informed, to pay no more than the correct amount of tax, and to challenge the IRS's position and be heard*. A taxpayer can only fully exercise these critical rights if the IRS clearly explains its position by being transparent and providing regular guidance and updates. Additionally, to ensure it protects taxpayer rights, the IRS must commit that all its employees – especially its Exam employees – are adequately trained and informed on the complex rules surrounding the ERC.

2 The acts include the Coronavirus Aid, Relief, and Economic Security Act (CARES) Act, Pub. L. No. 116-136, § 2301, 134 Stat. 281, 347-51 (2020); Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Div. EE, Title II, §§ 206-207, 303, 134 Stat. 1181, 3059-65, 3075-79 (Div. EE is known as the Taxpayer Certainty and Disaster Tax Relief Act of 2020); American Rescue Plan Act of 2021 (ARPA), Pub. L. No. 117-2, § 9651, 135 Stat. 4, 176-82 (2021); Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, § 80604, 135 Stat. 429, 1341 (2021). For this purpose, exempt organizations are those organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, educational, or other specified purposes that meet certain other requirements and are tax exempt under IRC § 501(c)(3).

3 See Taxpayer Bill of Rights (TBOR), <https://www.taxpayeradvocate.irs.gov/taxpayer-rights> (last visited Dec. 4, 2024). The rights contained in TBOR are also codified in IRC § 7803(a)(3).

4 IRS, Accounts Management (AM), Research, Analysis and Data (RAD) Reports, COVID Business Credits (week ending Oct. 26, 2024).

## Background

During the height of the pandemic, many employers had to make significant changes to their operations because of public health orders designed to protect the public. To help employers absorb the financial impact of these orders and retain their employees, Congress created the ERC, which it amended throughout 2020 and 2021.<sup>5</sup>

### *Who Is Eligible for the Employee Retention Credit?*

The rules governing eligibility for the ERC are complex and nuanced. Generally speaking, eligible employers who paid qualified wages between March 13, 2020, and December 31, 2021, can claim the ERC if their business or tax-exempt organization:

- Was fully or partially suspended by a government order due to the pandemic during 2020 or the first three calendar quarters of 2021, or
- Experienced the required decline in gross receipts during the eligibility periods during 2020 or the first three calendar quarters of 2021.

Additionally, employers may be eligible for the ERC if they are considered a recovery startup business. An employer must have started a recovery startup business by carrying on a new trade or business after February 15, 2020, and paid Form W-2 employees in the third or fourth quarters of 2021.<sup>6</sup> And, if the business had 100 or more employees in 2019, taxpayers were only allowed to claim the credit for wages paid to employees who were not providing services in 2020.<sup>7</sup> For the 2021 ERC, only employers with 500 or fewer employees in 2019 were allowed to claim the credit on wages paid to employees not providing services.<sup>8</sup>

Employers meeting these eligibility requirements might qualify for a credit of up to \$5,000 per employee in calendar year 2020.<sup>9</sup> For 2021, Congress increased the credit to \$7,000 per employee for each eligible quarter, adding up to a maximum credit of \$21,000 per employee for most eligible employers in the first three calendar quarters of 2021.<sup>10</sup> For the last two calendar quarters in 2021, the IRS limited recovery startup businesses to an aggregate credit of \$50,000 per quarter, potentially adding up to a total of \$100,000.<sup>11</sup>

Initially, employers had to choose between claiming the ERC or receiving a loan under the Paycheck Protection Program (PPP).<sup>12</sup> Congress eventually changed the law and permitted eligible employers who received a PPP loan to also claim the ERC. However, employers cannot count the same wages both for seeking forgiveness of the PPP loan *and* calculating the ERC.<sup>13</sup> This change allowed many more employers to qualify for the ERC but also increased confusion for many business owners and practitioners.

5 Initially, the law provided employers who qualified for the ERC a refundable credit against an employer's 6.2 percent share of Federal Insurance Contribution Act (FICA) taxes or Railroad Retirement Tax Act (RRTA) taxes. CARES Act, Pub. L. No. 116-136, § 2301, 134 Stat. 347 (2020). IRC §§ 3111(a) and 3221(a) impose FICA and RRTA taxes on employers. Most employers report this liability on Form 941, Employer's Quarterly Federal Tax Return.

6 A recovery startup business is a business or organization that began carrying on a trade or business after February 15, 2020, and had average annual gross receipts of \$1 million or less for the three years preceding the quarter for which they are claiming the ERC. See IRS, Coronavirus FAQs, <https://www.irs.gov/coronavirus/frequently-asked-questions-about-the-employee-retention-credit#recovery> (last updated Dec. 2, 2024).

7 CARES Act, Pub. L. No. 116-136, § 2301(c)(3)(A), 134 Stat. 347 (2020).

8 CARES Act, Pub. L. No. 116-136, § 2301(c)(3)(A), 134 Stat. 347 (2020), as amended by Pub. L. No. 116-260, Div. EE, Title II, § 207(b) and (c), 134 Stat. 3062 (2020).

9 The ERC has been amended several times since Congress originally enacted it as part of the CARES Act. See IRS, Employee Retention Credit – 2020 vs 2021 Comparison Chart, <https://www.irs.gov/newsroom/employee-retention-credit-2020-vs-2021-comparison-chart> (last updated Jan. 30, 2024).

10 CARES Act, Pub. L. No. 116-136, § 2301(a) and (b), 134 Stat. 347 (2020), as amended by Pub. L. No. 116-260, Div. EE, Title II, § 207(b) and (c), 134 Stat. 3062 (2020); IRC § 3134(a) and (b), as enacted by ARPA, Pub. L. No. 117-2, § 9651, 135 Stat. 176 (2021).

11 IRC § 3134(b)(1)(B).

12 CARES Act, Pub. L. No. 116-136, §§ 1102, 2301(j), 134 Stat. 286, 350 (2020).

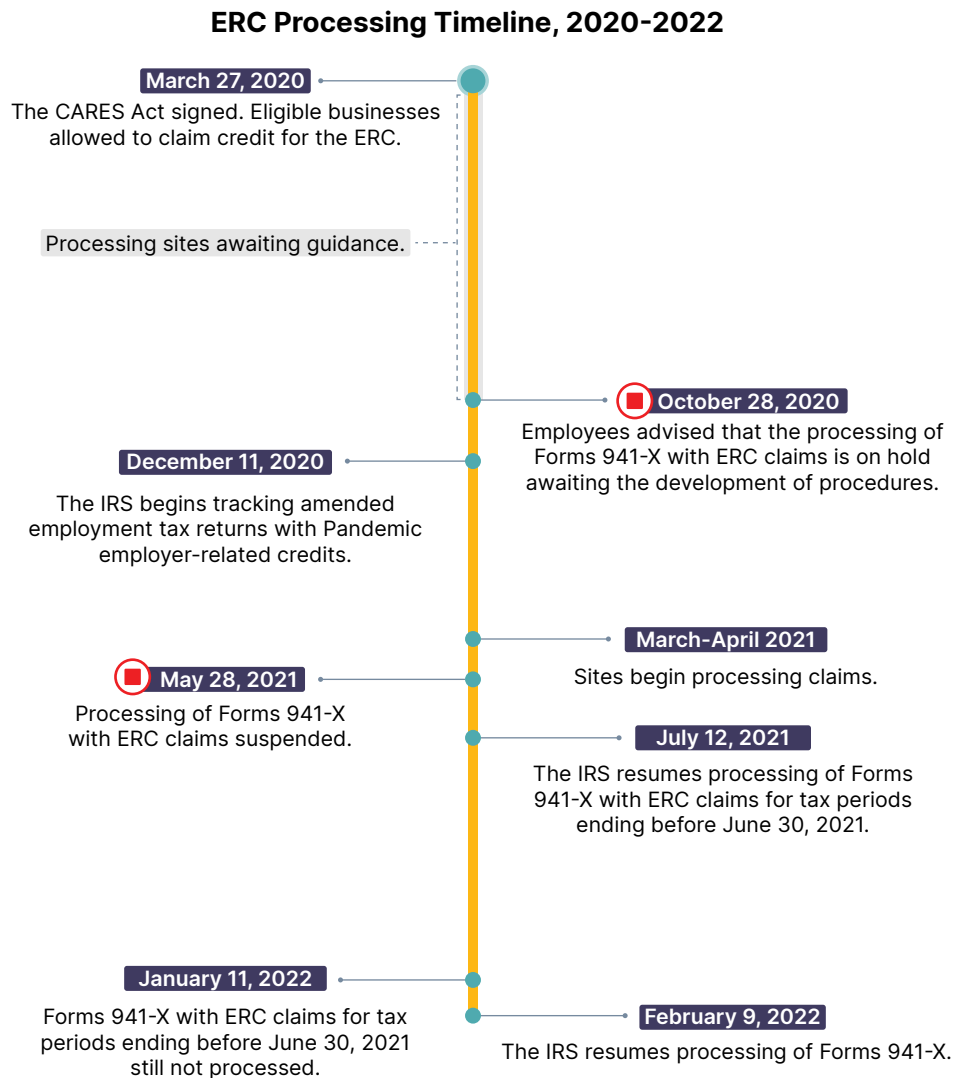
13 Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Div. EE, § 206(c), 134 Stat. 3060 (2020).



## The IRS Has Been Slow to Process Employee Retention Credit Claims, Leaving Taxpayers Without Claim Status Updates or Knowledge of What to Expect Going Forward

Even though Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act in March 2020, the IRS did not process its first ERC claims until around August 2020, and ERC claims processing did not really accelerate until around the first week of April 2021.<sup>14</sup> Figure 2.1.1 illustrates the IRS’s stop-and-go processing of ERC claims.

**FIGURE 2.1.1<sup>15</sup>**



<sup>14</sup> IRS, Compliance Data Warehouse (CDW), Business Master File (BMF), as of Sept. 2024.

<sup>15</sup> Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2024-400-068, *Management Took Actions to Address Erroneous Employee Retention Credit Claims; However, Some Questionable Claims Still Need to Be Addressed* (2024), <https://www.tigta.gov/sites/default/files/reports/2024-11/2024400068fr.pdf>.

## After the Stop-and-Go Processing Timeline

Once the IRS resumed processing ERC claims in February 2022, it really picked up the pace. For example, in 2022, it processed approximately three times as many claims as it processed in 2021. During the first eight months of 2023, the IRS processed almost as many claims as it processed in all of 2022. However, concerns about bad actors generating an increasing number of improper claims caused the IRS to bring the processing of ERC claims down to a trickle beginning the summer of 2023, then to a complete standstill. The potentially large amount of the credit along with its complexity attracted unscrupulous promoters taking advantage of the situation by aggressively advertising the ERC program to businesses in hopes of collecting large fees based upon the amount of the claims.<sup>16</sup>

The IRS announced on September 14, 2023, that it was imposing a moratorium on processing new ERC claims, and it pivoted from processing claims to using analytics to assess them. The IRS intended for the moratorium to provide it with time to conduct a risk scoring analysis to distinguish between valid and invalid claims.<sup>17</sup> In its news release announcing the moratorium, the IRS indicated it suspected many of the claims were improper, stating:

The IRS believes many of the applications currently filed are likely ineligible, and tax professionals note anecdotally that they are seeing instances where 95 percent or more of claims coming in recent months are ineligible as promoters continue to aggressively push people to apply regardless of the rules.<sup>18</sup>

The IRS's lack of transparency coupled with it citing to "anecdotal information" in a news release has created the impression – quite possibly a misconception – that 95 percent of all pending ERC claims were fraudulent.<sup>19</sup> It is unclear how the IRS could make this assertion since to establish fraud, the IRS must demonstrate an intentional violation of a known legal duty, which requires careful scrutiny of the case's facts and circumstances. An erroneous return is not necessarily fraudulent. The National Taxpayer Advocate acknowledges there may be some claims that do not qualify, and some may be fraudulent. For that reason, it is understandable why the IRS would believe it was appropriate to temporarily press the pause button on claims processing and take time to develop better methods to identify non-qualifying claims. But the IRS cannot make taxpayers wait indefinitely to receive their credits. It should accelerate the processing of ERC claims, and it should be transparent and provide details on its plans.

Nevertheless, the moratorium had an impact and caused a sharp decline in the number of new claims filed. It also negatively impacted the number of processed ERC claims in 2024.<sup>20</sup>

<sup>16</sup> IRS, CDW, BMF and Business Returns Transaction File (BRTF), as of Sept. 2024. For additional ERC processing data, see Figure 2.1.2.

<sup>17</sup> IRS response to TAS information request (Sept. 23, 2024). As of August 30, 2023, the IRS had completed an initial risk assessment of approximately 1.1 million claims, and about 300,000 claims were awaiting this initial risk assessment.

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

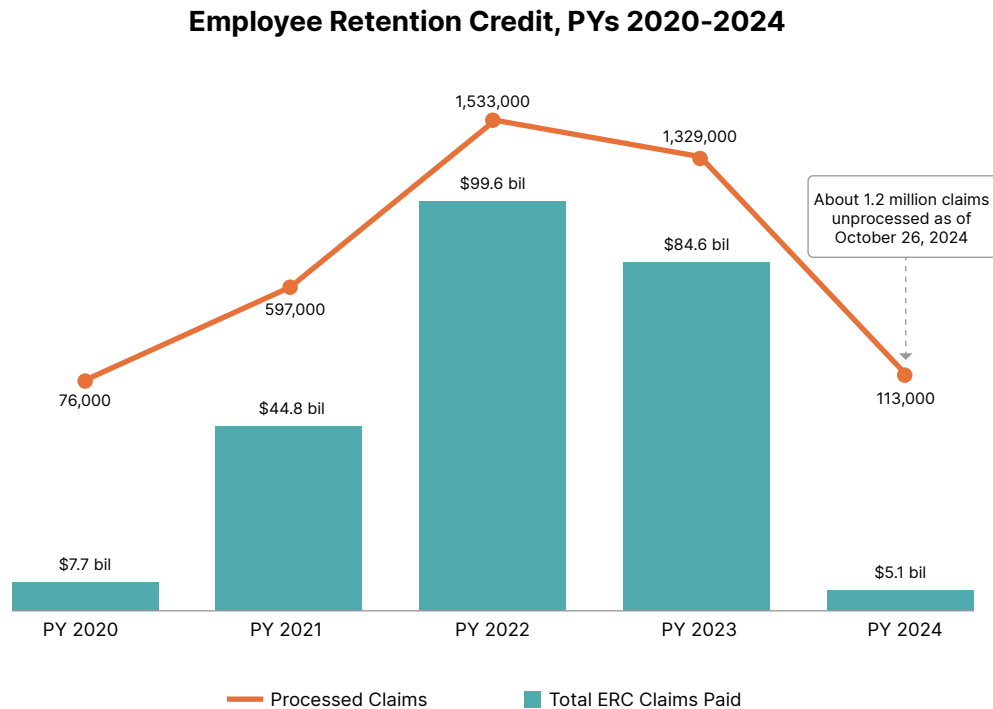
<sup>19</sup> Proposed Taxpayer Advocate Directive 2024-1: Accelerate the Processing of Backlogged Employee Retention Tax Credit Claims, Lift the Moratorium, and Provide Greater Public Transparency Regarding Processing Status (June 14, 2024).

<sup>20</sup> IRS, CDW, BMF and BRTF, as of Sept. 2024. See also IRS News Release IR-2023-169, To Protect Taxpayers From Scams, IRS Orders Immediate Stop to New Employee Retention Credit Processing Amid Surge of Questionable Claims; Concerns From Tax Pros (Sept. 14, 2023), <https://www.irs.gov/newsroom/to-protect-taxpayers-from-scams-irs-orders-immediate-stop-to-new-employee-retention-credit-processing-amid-surge-of-questionable-claims-concerns-from-tax-pros>. Some have questioned the legality of the IRS moratorium.



By the start of the moratorium in September 2023, the IRS had processed a total of approximately 3.6 million ERC claims.<sup>21</sup> Since the implementation of the moratorium, the number of ERC claims processed has dropped to a trickle. Figure 2.1.2 illustrates the fluctuation in the IRS’s processing of ERC claims over the past several years and how processing came to a near standstill in 2024.

**FIGURE 2.1.2<sup>22</sup>**



The slow processing of ERC claims has not only created financial hardship for businesses, but it has also cost the government fisc. The IRS has issued a total of about \$242 billion in ERC, as shown in Figure 2.1.2, and paid an estimated \$8.1 billion in interest.<sup>23</sup>

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

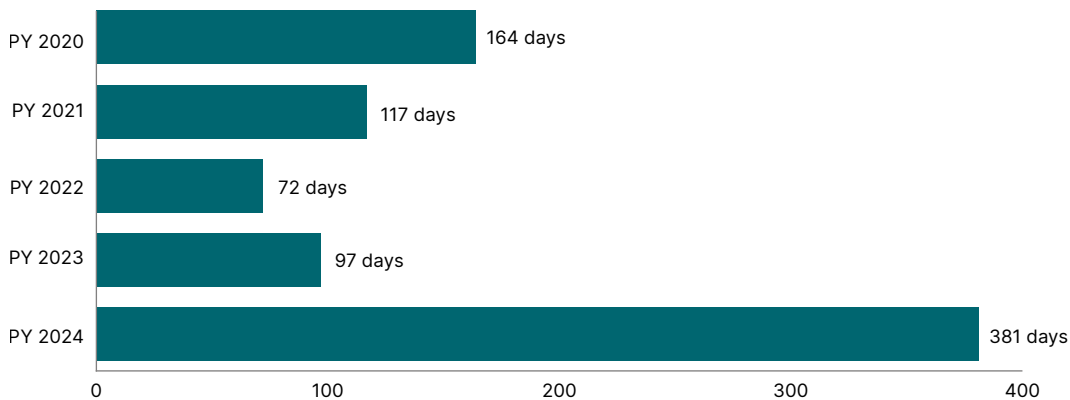
22 IRS, CDW, BMF and BRTF, as of Sept. 2024. ERC processed claims and credit amounts reflect claims that have not been reversed as of the end of September 2024. IRS, AM RAD Reports, COVID Business Credits (week ending Oct. 26, 2024). IRS News Release, IR-2023-40, IRS Issues Renewed Warning On Employee Retention Credit Claims; False Claims Generate Compliance Risk For People And Businesses Claiming Credit Improperly (Mar. 7, 2023), <https://www.irs.gov/newsroom/irs-issues-renewed-warning-on-employee-retention-credit-claims-false-claims-generate-compliance-risk-for-people-and-businesses-claiming-credit-improperly>.

23 The IRS paid \$6.4 billion in interest that accrued between the time the taxpayer filed an original Form 941 and when they filed a Form 941-X. The remaining \$1.7 billion accrued between the time the taxpayer filed a Form 941-X and when the IRS issued a refund on the claim, where the IRS took more than 45 days to issue the refund from when the claim was filed. Based on the IRS’s response to the TAS fact check, modifications were made to the interest calculations. However, due to time constraints, the IRS was not able to review the final interest calculations. IRS, CDW, BMF, as of Sept. 2024. See IRC § 6611(b). The IRS is required to pay interest on overpayments; however, under IRC § 6611(e)(2), interest will not accrue between the time a claim is filed to when a refund is issued if the refund is issued within 45 days of the claim being filed. See also Treas. Reg. § 301.6611-1.

*Some good news:* The IRS began processing ERC claims it identified ranging from very high to low risk. And on October 10, 2024, it announced it had 400,000 claims processed or ready to process that taxpayers had filed prior to January 31, 2024.<sup>24</sup> The 400,000 claims included 28,000 claims the IRS disallowed and 50,000 valid claims it had previously announced it was processing.<sup>25</sup> However, there are still over one million claims awaiting IRS processing, and it is unclear when these taxpayers can expect the IRS to act on their claims. All other businesses continue to wait without any guidance or information regarding the status of their claims. As the IRS exercises heightened caution with ERC processing, the average processing time has increased from under 120 days in processing years 2021-2023 to now more than a year, as shown in Figure 2.1.3.<sup>26</sup>

**FIGURE 2.1.3<sup>27</sup>**

**Average Number of Days for Processing ERC Claims, PYs 2020-2024**



As of October 26, 2024, about 98 percent of the slightly over one million unprocessed ERC claims were over 120 days old, compared to only about five percent that were more than 120 days old prior to the moratorium.<sup>28</sup>

For the one million claims still awaiting IRS action, the IRS has provided little to no information on processing. Throughout the moratorium, it has not provided the public with regular updates on its progress evaluating claims or with any estimate of when it expects to resume normal processing. Another challenge facing these businesses is the inability to check the status of their claim. In fact, IRS procedures instruct employees to inform taxpayers who call inquiring about the status of their Forms 941 or 941-X that “...we cannot provide any additional information at this time as to the status or timeframe for processing their form.”<sup>29</sup> This leaves taxpayers wondering when – if ever – the IRS will process their claim. Unfortunately, the IRS has stated that it has no intention of providing regular, real-time updates to taxpayers regarding their claims.<sup>30</sup>

24 Telephone conversation with Director, IRS Campus Examination (Oct. 30, 2024). Processed claims are either allowed, partially allowed, disallowed, partially disallowed, or assigned for a future audit.  
 25 IRS News Release, IR-2024-203, IRS Moves Forward With Employee Retention Credit Claims: Agency Accelerates Work On Complex Credit As More Payments Move Into Processing; Vigilance, Monitoring Continues on Potentially Improper Claims (Aug. 8, 2024), <https://www.irs.gov/newsroom/irs-moves-forward-with-employee-retention-credit-claims-agency-accelerates-work-on-complex-credit-as-more-payments-move-into-processing-vigilance-monitoring-continues-on-potentially-improper-claims>.  
 26 A *processing year* is based on the cycle when the transaction posts to the IRS Master File.  
 27 IRS, CDW, BMF, as of Sept. 2024.  
 28 IRS, AM RAD Report, COVID Business Credits (week ending Oct. 26, 2024).  
 29 Internal Revenue Manual (IRM) 21.7.2.7.2(5), Employee Retention Credit (ERC) (Feb. 28, 2024), [https://www.irs.gov/irm/part21/irm\\_21-007-002r](https://www.irs.gov/irm/part21/irm_21-007-002r).  
 30 IRS response to TAS information request (Sept. 23, 2024).

Not surprisingly, the processing delays and IRS's lack of transparency regarding claims has led to an influx of TAS cases from taxpayers seeking assistance with their pending ERC claims. Prior to the October 26, 2024, announcement, the IRS provided status updates at TAS's request showing that it had processed fewer than 25 percent of TAS taxpayers' claims. As of November 26, 2024, the IRS advised TAS it had worked approximately 10,500 of 26,000 taxpayer claims from TAS taxpayers – just about 40 percent of the outstanding inventory.<sup>31</sup> However, a number of the remaining TAS cases include refund claims filed after the January 31, 2024, revised moratorium date.

### **IRS Delays in Processing Claims Create Negative Downstream Consequences and Force Taxpayers to Make Difficult Decisions**

As a general rule, the tax system favors parity. For purposes of the ERC, this means taxpayers filing claims for ERC are not entitled to claim a wage deduction on their individual or business income tax returns if they claimed the ERC on their original or amended employment tax returns, such as Forms 941 or 941-X.<sup>32</sup> Congress apparently viewed a taxpayer's receipt of an ERC and deduction for wage expenses to be an unwarranted double benefit. The law required taxpayers who were retroactively claiming the ERC by amending their employment tax returns to also make a corresponding adjustment on their individual or business income tax returns, removing any wage deductions for the corresponding amount of ERC claimed.<sup>33</sup> In other words, no double-dipping – taxpayers cannot claim the ERC for the amount of wages claimed as a wage deduction on either their individual or business income tax returns.

Many business owners and practitioners are hesitant to reduce their wage deduction until the IRS acts upon their ERC claim. This is a reasonable approach because the IRS still has a backlog of ERC claims, and taxpayers have a limited timeframe to amend their individual and business income tax returns and claim the wage deductions if the IRS ultimately denies their ERC claim.<sup>34</sup> Thus, taxpayers are concerned that by the time the IRS reviews their ERC claim and potentially disallows it, the taxpayer could be time-barred from amending their individual or business income tax returns where they could have claimed a wage deduction. This could result in the taxpayer paying more income tax than what they truly owed, compromising the taxpayer *right to pay no more than the correct amount of tax*.<sup>35</sup>

However, it is also a matter of fairness that in situations where the IRS has finally allowed the ERC, taxpayers must amend their individual or business income tax return to remove the wage deduction. Otherwise, these taxpayers would doubly benefit, which Congress did not grant and negatively impacts the government fisc. It is critical the IRS fairly administer the tax code; therefore, it should send these taxpayers a notice reminding them they must amend their individual or business income tax return to remove the previously claimed wage deduction now that the IRS has allowed their ERC claim. The IRS should treat taxpayers consistently and not place those businesses that followed the law and made the required corresponding adjustments at a competitive disadvantage to businesses that did not make the corresponding adjustments.

31 IRS response to TAS fact check (Nov. 26, 2024).

32 Congress imposed limitations on wage expenses for income tax purposes by enacting in the ERC statutes a provision applying rules similar to the rules in IRC § 280C(a). See CARES Act, Pub. L. No. 116-136, § 2301(e), 134 Stat. 349 (2020); IRC § 3134(e). Generally, most taxpayers claim wage expense as a deduction on their income tax returns. See IRC § 162.

33 IRS, Coronavirus, Frequently Asked Questions About the Employee Retention Credit, <https://www.irs.gov/coronavirus/frequently-asked-questions-about-the-employee-retention-credit> (last updated Dec. 2, 2024). Taxpayers in certain circumstances may reduce the prior amount capitalized (and make any resulting adjustment, such as reducing a depreciation deduction) rather than reducing the prior wage deduction. See, e.g., CARES Act, Pub. L. No. 116-136, § 2301(e), 134 Stat. 349 (2020); IRC § 3134(e).

34 IRC § 6511(a).

35 See Taxpayer Bill of Rights (TBOR), <https://www.taxpayeradvocate.irs.gov/taxpayer-rights> (last visited Dec. 4, 2024). The rights contained in TBOR are also codified in IRC § 7803(a)(3).

Taxpayers who appropriately reduced their wage deduction on their individual or business income tax returns by the amount of ERC claimed are now in a difficult position if they are still waiting for the IRS to process their ERC claim.<sup>36</sup> For example, if a taxpayer amended their income tax return in January 2023 by reducing the amount of their wage deduction by the amount of the ERC credit claimed, thus generating a liability that they were unable to pay, they have been accruing interest and penalties on their income tax liability for almost two years while awaiting their ERC refund. Many taxpayers who are already financially strapped may have been relying on the ERC refund to pay their increased income tax liability. Further, if this business receives a claim disallowance in January 2025, taxpayers are concerned that there may be no remedy for them to amend their individual or business income tax returns and remove the IRC § 280C adjustment (*i.e.*, amending the income tax return to claim a deduction for wages paid), since the refund statute will have expired for most tax year (TY) 2020 individual or business income tax returns, and the 2021 individual or business income tax returns will expire in 2025.<sup>37</sup>

Some have suggested administrative remedies to this problem to put all ERC recipients on par with each other. One such remedy would be to allow taxpayers to make any necessary adjustments on their individual or business income tax returns for the same year they either receive the ERC refund or the IRS disallows the claim.<sup>38</sup> For example, if taxpayers receive their ERC refund in TY 2025 and cannot adjust their income tax return for the years they claimed the ERC (2020 or 2021) because the period for amending the income tax return has expired, they would remedy this by reducing their wage deduction by the appropriate amount on their 2025 income tax return. Conversely, if the tax years remain the same as in the previous example but the IRS disallowed the ERC claim, and the taxpayer can no longer claim the wage deduction on the earlier income tax return they claimed the ERC because the period for amending the income tax return has expired, the IRS should allow taxpayers to take this deduction on their 2025 income tax return or the year of the resolution of the disallowance.<sup>39</sup> The IRS allowing these adjustments on the taxpayer's 2025 income tax return will rectify the incorrect claim or omission on the prior income tax return as a result of the outcome of the taxpayer's ERC claim, which will result in either a reduction or increase in the taxpayer's income tax liability and possibly create a larger income tax refund for the taxpayer – or a balance due to the IRS.<sup>40</sup>

### IRS Notices Are Confusing and Omit Critical Information

Although the IRS had almost a year from the issuance of the moratorium to perfect both its ERC processes and notices, when it finally issued post-moratorium notices, they were unclear and contained errors. In the summer of 2024, the IRS issued nearly 28,000 notices of ERC disallowance, which contained several significant problems, such as:

- Omitting information about the taxpayer right to seek review by the Independent Office of Appeals (Appeals), a U.S. district court, or the U.S. Court of Federal Claims;<sup>41</sup>
- Including inaccurate or vague explanations about why the IRS disallowed the claim;<sup>42</sup> and

36 See CARES Act, Pub. L. No. 116-136, § 2301, 134 Stat. at 347-51; IRC § 3134(e); IRS Notice 2021-49, 2021-34 I.R.B. 316, Guidance on the Employee Retention Credit under Section 3134 of the Code and on Miscellaneous Issues Related to the Employee Retention Credit, <https://www.irs.gov/pub/irs-drop/n-21-49.pdf>.

37 IRC §§ 6511, 280C. Under IRC § 6511, taxpayers have three years from the due date of the original return or three years from the date they filed the return if they filed it after the due date to amend the original return. Additionally, taxpayers have two years from the time they paid the tax to file a claim for refund under IRC § 6511(a). The applicable time period for filing the claim is whichever time period is later. The IRC § 280C deduction allows a business to take a deduction for wages and salaries paid to employees.

38 See Matt Kelley, *The 280C(a) Timing Conundrum and the IRS Solution*, LINKEDIN BLOG (Oct. 1, 2024).

39 See *id.*

40 See *id.*

41 See TBOR, <https://www.taxpayeradvocate.irs.gov/taxpayer-rights> (last visited Dec. 4, 2024). The rights contained in the TBOR are also codified at IRC § 7803(a)(3).

42 IRS News Release, IR-2024-203, IRS Moves Forward With Employee Retention Credit Claims: Agency Accelerates Work on Complex Credit as More Payments Move Into Processing; Vigilance, Monitoring Continues on Potentially Improper Claims (Aug. 8, 2024), <https://www.irs.gov/newsroom/irs-moves-forward-with-employee-retention-credit-claims-agency-accelerates-work-on-complex-credit-as-more-payments-move-into-processing-vigilance-monitoring-continues-on-potentially-improper-claims>.

- Failing to inform the taxpayer that the IRS would subject the responses to an exam-like review prior to sending the matter to Appeals.

As a result of these omissions and inaccuracies, taxpayers and practitioners questioned whether they could seek assistance from Appeals or if they would have to litigate the matter. The incorrect or vague explanations also left taxpayers and practitioners wondering what information they should submit to the IRS. For example, if the notice explained that the IRS could not verify the existence of the business, should the taxpayer or practitioner only provide information to show the business existed during the specified time period for which the IRS disallowed the claim, or should they also provide supporting documentation for the claim more broadly, including all of the quarters, even if the IRS has not disallowed the related quarters? Or should the business only address what they believe the IRS is disallowing?

It was not until Friday, September 20, 2024 – more than a month after the IRS sent notices to taxpayers disallowing the ERC claims – that it addressed the omissions made in the notices of claim disallowance and provided taxpayers with more in-depth information on how to dispute the disallowance.<sup>43</sup> The IRS requested that in addition to providing documentation to support the reason for the disallowance in the notice that the taxpayer provide documentation supporting **at least one** of three specific eligibility factors **for each quarter** they had claimed the ERC.<sup>44</sup> Many taxpayers and practitioners felt pressured to meet the 30-day time period to request an appeal of a notice of claim disallowance and had already responded to the notices prior to the IRS releasing this information. This left taxpayers and practitioners wondering if they should supplement their response by proactively sending in the additional information that the IRS was now requesting via its webpage or if they should wait for the IRS to formally request these additional documents.<sup>45</sup>

Both taxpayers and the IRS would benefit from the IRS providing taxpayers with clear information from the start, preserving the taxpayer *right to be informed*, rather than supplementing notices via webpages.<sup>46</sup> In addition to unclear notices, TAS has heard complaints that some of the notices sent by the IRS are inaccurate. For example, TAS has heard on more than one occasion that the notices incorrectly state that the taxpayer erroneously calculated the gross receipts test or that the claim filed by the taxpayer was untimely.<sup>47</sup>

Another example of notices that omitted critical information is in the ERC recapture notices.<sup>48</sup> The IRS issued regulations allowing it to recapture wrongly paid or applied ERC claims through erroneous refund procedures.<sup>49</sup> On August 15, 2024, the IRS announced it intended to mail up to 30,000 new letters to taxpayers reversing or recapturing potentially more than \$1 billion in ERC claims.<sup>50</sup> Unfortunately, the recapture notices did not inform taxpayers of their administrative appeal rights, such as their right to a

43 IRS, Understanding Letter 105-C, Disallowance of the Employee Retention Credit, <https://www.irs.gov/coronavirus/understanding-letter-105-c-disallowance-of-the-employee-retention-credit> (last updated Dec. 2, 2024).

44 See *id.*

45 See *id.*

46 See TBOR, <https://www.taxpayeradvocate.irs.gov/taxpayer-rights> (last visited Dec. 4, 2024). The rights contained in the TBOR are also codified at IRC § 7803(a)(3).

47 Conversations with outside stakeholders (June 4, 2024; Sept. 5, 2024; Sept. 17, 2024; Oct. 31, 2024). IRS errors in notices of claim disallowance create frustration for the taxpayer, ultimately forcing them to spend more time and/or money to resolve their problem and creating rework for the IRS. Additionally, to correct the problem, taxpayers may be forced to file a refund suit in a U.S. district court or the U.S. Court of Federal Claims, ultimately creating unnecessary work for the U.S. Department of Justice.

48 IRS Letter 6577-C, Employee Retention Credit Recapture.

49 Treas. Reg. § 31.3111-6. The IRS's recapture authority is the one clear instance in which it could assert penalties against the taxpayer for wrongly claiming the ERC. These include failure-to-pay penalties under IRC § 6651(a)(2) and failure-to-deposit penalties under IRC § 6656. See also Telephone conversation with Director, IRS Campus Examination (Oct. 30, 2024).

50 IRS News Release, IR-2024-212, IRS Reopens Voluntary Disclosure Program To Help Businesses With Problematic Employee Retention Credit Claims; Sending Up To 30,000 Letters To Address More Than \$1 Billion in Errant Claims, (Aug. 15, 2024), <https://www.irs.gov/newsroom/irs-reopens-voluntary-disclosure-program-to-help-businesses-with-problematic-employee-retention-credit-claims-sending-up-to-30000-letters-to-address-more-than-1-billion-in-errant-claims>.

Collection Due Process hearing or the Collection Appeals Program.<sup>51</sup> The IRS failed to observe the taxpayer *right to challenge the IRS's position and be heard* by omitting information on these Appeals programs in its recapture notices.

### **The IRS Has Largely Abandoned Its Standard Exam Procedures in Favor of Compressed Review Processes That in Some Circumstances Risk Running Up Against the Time Period in Which It Can Issue a Refund**

The IRS has primarily relied on three processes to review ERC claims, including:

- *Standard audits:* For fiscal year (FY) 2024, the IRS selected 2,300 ERC claims for field audits, and IRS Campus Examination (Exam) closed about 1,400 of these claims.<sup>52</sup>
- *Streamlined audits:* The IRS developed a streamlined correspondence audit process for ERC claims and selected 1,375 claims for the new compliance workstream, as of September 30, 2024.<sup>53</sup>
- *Reverse audit-like process:* In the summer of 2024, the IRS issued about 28,000 notices of claim disallowance after running ERC claims through its risk scoring model analysis. When taxpayers respond to these notices, the IRS will conduct an audit-like review process prior to sending the case to Appeals.

*Standard audits:* When the IRS reviews an ERC claim as part of a field examination, Exam issues a notice of claim disallowance only after it considers the facts and circumstances of the case as well as documentation and substantiation provided by the taxpayer. If the taxpayer and IRS cannot reach an agreement, the taxpayer will receive a 30-day letter advising them of their right to respond to the notice by requesting an administrative appeals hearing.<sup>54</sup> Upon receiving this request, Exam refers the case to Appeals, but typically it does not issue a formal claim disallowance notice at this stage.<sup>55</sup>

*Streamlined audits:* The IRS developed a new ERC streamlined audit process in which the IRS sends the taxpayer a letter and a request for information. Taxpayers who do not respond and/or do not provide adequate information receive Letter 105C, Notice of Claim Disallowance. This deviates from a standard employment tax examination where the taxpayer receives a report that includes an explanation of adjustments.

This streamlined correspondence audit skips the standard administrative steps and the IRS issues the taxpayer Letter 105C, Claim Disallowance, or Letter 106C, Partial Claim Disallowance, immediately after the taxpayer responds to the information request. The IRS only sends a formal notice of claim disallowance when the taxpayer does not execute their right to appeal or once the Appeals process is complete and Appeals has determined that the IRS should disallow the claim. The streamlined correspondence audit skips several steps, most notably providing the taxpayer the right to have Appeals weigh in prior to issuing a formal claim disallowance notice.<sup>56</sup>

51 IRS Letter 6577C, Employee Retention Credit Recapture. See also Tom Cullinan, *Proposed Regs on Erroneous ERC Refunds Won't Fly, Firm Warns*, TAX NOTES, Aug. 15, 2024, <https://www.taxnotes.com/research/federal/other-documents/public-comments-regulations/proposed-regs-erroneous-erc-refunds-wont-fly-firm-warns/714pf>.

52 IRS response to TAS information request (Oct. 24, 2024). Of the 2,300 claims selected for examination, about 600 were in the Small Business/Self-Employed (SB/SE) Division and roughly 1,700 were in the Tax Exempt/Government Entities (TE/GE) Division. Of the 2,300 claims, Exam closed approximately 1,400, SB/SE closed about 1,000, and TE/GE closed roughly 400.

53 Telephone conversation with Director, IRS Campus Examination (Oct. 30, 2024). See also IRS response to TAS information request (Oct. 24, 2024).

54 These letters give a taxpayer 30 days from the date of the letter to provide the requested information or request a conference with the IRS Independent Office of Appeals if the taxpayer disagrees with the proposed changes to their tax return.

55 IRM 4.23.22.6, 30-Day Letters: Unagreed Case Procedures (May 16, 2018), [https://www.irs.gov/irm/part4/irm\\_04-023-022](https://www.irs.gov/irm/part4/irm_04-023-022); IRM 4.23.10.10.11, Explanation of Adjustments: Form 886-A, Form 5701, and Employment Tax Lead Sheet (ETLS) Copies (June 1, 2023), [https://www.irs.gov/irm/part4/irm\\_04-023-010](https://www.irs.gov/irm/part4/irm_04-023-010).

56 IRM 4.10.11.2.2.2(1), Claims for Refund – Letters (Sept. 29, 2022), [https://www.irs.gov/irm/part4/irm\\_04-010-011](https://www.irs.gov/irm/part4/irm_04-010-011); and IRM 8.7.7.5(7), Closing Refund Claim Cases (No Additional Tax) (Dec. 17, 2019), [https://www.irs.gov/irm/part8/irm\\_08-007-007](https://www.irs.gov/irm/part8/irm_08-007-007).



*Reverse audit-like process:* The IRS deviated from its standard exam process for the majority of ERC claims reviewed in favor of a more hands-off approach in the new ERC streamlined audit process and recent ERC disallowance notice process. The IRS issued 28,000 ERC notices disallowing the ERC to taxpayers before anyone in the IRS requested supporting documentation, laid eyes on the case, or considered the specific facts and circumstances. It ran these cases through its risk scoring model analysis and deemed them “improper claims.”<sup>57</sup>

Although this hands-off approach may have been easier for the IRS up front, it has led to several problems for both the IRS and taxpayers later in the review process. First, the automatic process the IRS used to issue these notices of disallowance seems flawed, as a number of taxpayers report receiving notices of claim disallowance they believe are clearly erroneous. Second, the IRS issuance of these notices of claim disallowance prior to conducting any meaningful review (*i.e.*, requesting information from the taxpayer to verify the validity of the claim) created administrative problems.

Since the IRS had not requested or reviewed any taxpayer documentation, under its own procedures the case could not go directly to Appeals. Appeals is not a finder of fact and cannot consider or review documentation that an Exam employee has not first reviewed.<sup>58</sup> Therefore, the IRS had to develop a new review process which would not be considered a formal examination, but rather something similar. This review process allowed the IRS to consider information provided by the taxpayer in response to the ERC notices of claim disallowance issued by the risk scoring model analysis. The new review process also provided the IRS with the opportunity to review and consider the taxpayer’s information prior to sending the taxpayer’s response to Appeals.<sup>59</sup>

In essence, the IRS is subjecting these taxpayers to a reverse audit of sorts. It first issues notices of claim disallowance to taxpayers and then asks them to substantiate their claim if they disagree with the notice, when it will conduct a review of such documents.<sup>60</sup> This is a reverse process because taxpayers usually attempt to substantiate their claim during an examination, and the IRS issues a notice of claim disallowance only if it remains unpersuaded that the taxpayer qualifies for the claimed credit or deduction. In the reverse audit, the IRS has disallowed the claim, and taxpayers will need to provide support after receiving the claim disallowance. If the IRS employee agrees with the support provided, they will allow some or all of the credit.

If the IRS employee fully allows the credit, there is no reason for the case to be forwarded to Appeals, even if the taxpayer requested an Appeals conference. If the business did not request an appeal and the IRS disagrees with the response, the IRS will not forward the case to Appeals. Instead, it will send Letter 916-C, Claim Incomplete for Processing; No Consideration, stating that the disallowance stands. Although the notice of claim disallowance only instructs taxpayers on their right to request an appeal, and not that they can submit information to the IRS for review, it is unclear how many taxpayers would actually elect this review option.

In some cases, after reviewing the taxpayer’s arguments, the IRS may issue Letter 3064-C, Special Letter, to the taxpayer requesting additional information. More commonly, if a business requests an appeal and the IRS employee disagrees with the taxpayer’s position, the IRS will forward the file directly to Appeals and send

57 IRS News Release, IR-2024-212, IRS Reopens Voluntary Disclosure Program to Help Businesses With Problematic Employee Retention Credit Claims; Sending Up to 30,000 Letters to Address More Than \$1 Billion in Errant Claims (Aug. 15, 2024), <https://www.irs.gov/newsroom/irs-reopens-voluntary-disclosure-program-to-help-businesses-with-problematic-employee-retention-credit-claims-sending-up-to-30000-letters-to-address-more-than-1-billion-in-errant-claims>.

58 For ERC claims, the IRS is considering any appeal request made within the two-year period for filing suit under IRC § 6532, which begins from the date listed on the notice of claim disallowance. IRS response to TAS information request (Sept. 23, 2024).

59 Erin M. Collins, Notice of Claim Disallowance: Don’t Make This Mistake, NATIONAL TAXPAYER ADVOCATE BLOG (Apr. 6, 2022), <https://www.taxpayeradvocate.irs.gov/news/nta-blog/nta-blog-notice-of-claim-disallowance-dont-make-this-mistake/2022/04>.

60 IRS, Understanding Letter 105-C, Disallowance of the Employee Retention Credit, <https://www.irs.gov/coronavirus/understanding-letter-105-c-disallowance-of-the-employee-retention-credit> (last updated Dec. 2, 2024). The IRS guidance instructed taxpayers to provide detailed written explanations regarding how government orders resulted in the suspension of their business, along with a written explanation as to why the taxpayer believes they are entitled to the ERC, a description of the taxpayer’s trade or business, copies of worksheets showing how they computed the ERC, etc. Additionally, the IRS asked taxpayers who claimed the ERC due to either a decline in gross receipts or as a recovery startup business to provide other documentation to substantiate their claim.

Letter 86-C.<sup>61</sup> If Appeals agrees that the IRS should disallow the taxpayer's credit, the taxpayer will still have the right to dispute the IRS's disallowance by filing suit in a U.S. district court or the U.S. Court of Federal Claims, but they must do so within two years of receiving Letter 105-C.<sup>62</sup>

The National Taxpayer Advocate believes that when a taxpayer responds to the ERC streamline audit document request or reverse audit claim disallowance notice by providing information requested by the IRS, the IRS should respond to the taxpayer in a manner that more closely mirrors an examination report that provides taxpayers with a clear understanding of its conclusions. For claim disallowance responses, the IRS should also offer taxpayers 30 days to respond with additional documentation prior to sending the case to Appeals. Taxpayers can avoid a time-consuming back-and-forth between the IRS and Appeals if they can provide the documentation. The National Taxpayer Advocate is concerned that the potential volume of ERC cases referred to Appeals as well as the increased workload will cause further delays for taxpayers with cases under review and consideration.

Along with the reverse exam process providing taxpayers with fewer opportunities to dispute the IRS's conclusion, putting Exam's review after the IRS sends the notices of disallowance elongates the time it takes a taxpayer's claim to get to Appeals. An appeal is already a lengthy process, as it can take months before Appeals assigns an officer to the case; it also can take five months or more from the issuance of Letter 86C to hold an initial Appeals conference.<sup>63</sup>

This drawn-out process is especially concerning because the IRS's issuance of a notice of disallowance begins the running of a two-year period during which the IRS must issue any refund. Specifically, the two-year timeframe in which the taxpayer can either file suit or the IRS can issue a refund begins from the date on the notice of claim disallowance.<sup>64</sup> Under the law, any refund the IRS issues after this two-year time period is considered erroneous.<sup>65</sup> The taxpayer can extend the two-year time period under IRC § 6532 for the IRS to issue a refund only when they submit Form 907, which requires both the IRS and taxpayer to agree and sign.<sup>66</sup>

The IRS could address this lengthy review process by sending taxpayers a letter prior to the official notice of claim disallowance informing them that it is inclined to disallow their claim. The letter could provide taxpayers an opportunity to send the IRS necessary documentation to support the claim and request an Appeals hearing. If the taxpayer does not respond, the IRS can move forward and issue the official notice of claim disallowance. If the taxpayer responds to the notice and sends in documentation to support the claim, the IRS will not issue a notice of claim disallowance until an Exam employee has reviewed the taxpayer's information and Appeals has reviewed the IRS's decision. Only after that process should the IRS issue an official notice of claim disallowance, which would essentially move the entire claim review process before the two-year clock starts. The IRS could easily do this by substituting an initial letter for the notices of claim disallowance requesting additional information and reserving the IRS's issuance of a notice of claim disallowance until after Exam and Appeals complete their reviews.

---

61 IRS, Coronavirus, Frequently Asked Questions About the Employee Retention Credit, <https://www.irs.gov/coronavirus/frequently-asked-questions-about-the-employee-retention-credit> (last updated Dec. 2, 2024). IRS Letter 86-C is an interim letter notifying a taxpayer when the IRS transfers their case to another office or function. Currently this webpage is the only formal guidance the IRS has provided on these procedures, as it has not yet developed IRMs that formally spell out this process for either taxpayers or IRS employees.

62 IRC § 6532(a)(2); Erin M. Collins, Notice of Claim Disallowance: Don't Make This Mistake, NATIONAL TAXPAYER ADVOCATE BLOG (Apr. 6, 2022), <https://www.taxpayeradvocate.irs.gov/news/nta-blog/nta-blog-notice-of-claim-disallowance-dont-make-this-mistake/2022/04>.

63 IRS response to TAS information request (Sept. 7, 2023).

64 IRC § 6532. Taxpayers have two years from the date on the notice of claim disallowance to file a refund suit in either a U.S. district court or the U.S. Court of Federal Claims. The IRS must issue a refund within this two-year period as any refund that falls outside of this period is considered "erroneous" under IRC § 6514.

65 IRC § 6514.

66 IRC § 6532(a)(2). See also Erin M. Collins, Notice of Claim Disallowance: Don't Make This Mistake, NATIONAL TAXPAYER ADVOCATE BLOG (Apr. 6, 2022), <https://www.taxpayeradvocate.irs.gov/news/nta-blog/nta-blog-notice-of-claim-disallowance-dont-make-this-mistake/2022/04>.

Another process the IRS should consider to reduce the amount of time it takes to review these claims is the Appeals Fast Track Settlement (FTS) option. FTS is a voluntary mediation process available to taxpayers when the IRS conducts an examination, but issues remain unresolved. Although Appeals has said it will consider an FTS application and determine how to move forward with such a request in accordance with established procedures, Small Business/Self-Employed (SB/SE) Field Compliance is the gatekeeper of offering such an option to taxpayers, and it is unclear if or when it will make this option available for ERC cases.<sup>67</sup> In fact, during a recent conference, an Appeals official stated that SB/SE believes the majority of cases where the IRS sent a notice of claim disallowance are bad claims. Specifically, the Appeals official indicated that it is SB/SE's view that the IRS's algorithms for selection "are so good that they don't want to compromise them in their cases. They're only taking to Exam the rotten apples of the ERC cases . . . and basically if you're not going to compromise, there's nothing to do in ERC" cases.<sup>68</sup> It is interesting that the IRS believes that its algorithms are so good, considering the number of issues taxpayers and practitioners have raised regarding problems with the notices of claim disallowance.

It is unlikely that FTS will be available for the ERC streamline audits and the ERC disallowances since there is no point prior to the IRS issuing the disallowance notice for the taxpayer to request FTS. Further, it is uncertain if the IRS considers the examiner review of the claim as a Compliance function or as something that falls short of this FTS requirement, even though it is not an official audit that would meet the eligibility requirements of FTS. When taxpayers respond to the notice of claim disallowance, an examiner first reviews their documents and protests but does not subject the taxpayer to an official exam. Any effort on the IRS's part to deem these cases ineligible based on an Exam-like process it created would be unfair and carry the risk of appearing as if it intentionally disqualified these taxpayers for FTS.

ERC cases seem tailor-made for the FTS option (*i.e.*, rules surrounding ERC are notoriously complex and contain many gray areas) where a mediator can consider the unique facts and circumstances along with the hazards of litigation. The IRS should ensure that taxpayers whose ERC claims it has disallowed receive the option to participate in FTS.<sup>69</sup>

### Eligible Businesses Experienced Additional Delays When Their Employee Retention Credit Refund Checks Were Stolen

A number of eligible businesses relying on the ERC have faced additional delays and frustrations when they reported not receiving their checks, even though IRS systems show the checks were issued. As of September 30, 2024, over 21,000 taxpayers reported to the IRS that they had not received their ERC checks.<sup>70</sup> It is likely that many taxpayers did not receive these checks because they were destroyed, stolen, or sent to the wrong address.<sup>71</sup>

67 Rev. Proc. 2017-25, 2017-14 I.R.B. 1039; IRS response to TAS information request (Sept. 24, 2024); Lauren Loricchio, *Appeals Open to Using Mediation for ERC Cases*, TAX NOTES, Nov. 18, 2024, <https://www.taxnotes.com/tax-notes-federal/tax-system-administration/appeals-open-using-mediation-erc-cases/2024/11/18/7n86n>; IRS, Fast Track, <https://www.irs.gov/appeals/fast-track> (last updated July 15, 2024).

68 Lauren Loricchio, *Appeals Open to Using Mediation for ERC Cases*, TAX NOTES, Nov. 18, 2024, <https://www.taxnotes.com/tax-notes-federal/tax-system-administration/appeals-open-using-mediation-erc-cases/2024/11/18/7n86n>.

69 Others have suggested the IRS create a new forum in which taxpayers can have their claim for refund considered in a hearing-like setting. The recommendation is for the IRS to create an "opt-in hearing program" that would allow taxpayers an opportunity for an administrative hearing to establish their eligibility for their previously submitted refund claim. James Creech, *Proposed Changes to Improve Refund Claim Processing*, TAX NOTES, Oct. 9, 2024, <https://www.taxnotes.com/tax-notes-federal/litigation-and-appeals/proposed-changes-improve-refund-claim-processing/2024/10/14/7lspw>.

70 IRS, CDW, BMF, as of Sept. 2024. Upon receiving a taxpayer complaint that their ERC check was not received, the IRS then posts Transaction Code 971, Action Code 011, Nonreceipt of Refund Check, to the taxpayer's IRS account. This indicates the check could have been stolen, lost, or destroyed.

71 U.S. Dep't of Justice, U.S. Attorney's Off., E.D.N.Y., Press Release, *Two Former Postal Workers Charged With Stealing U.S. Treasury Checks Valued at More than \$4 Million From Kennedy Airport Mail Facility* (July 10, 2024), <https://www.justice.gov/usao-edny/pr/two-former-postal-workers-charged-stealing-us-treasury-checks-valued-more-4-million>.

When taxpayers believe someone has stolen their ERC refund check, they need to contact the IRS to investigate. If the IRS determines it issued the check, it sends the taxpayer Form 3911, Taxpayer Statement Regarding Refund, with instructions on how to request that the Bureau of the Fiscal Service (BFS) investigate to determine whether anyone ever deposited the check and into what account; these investigations can take up to nine months. For taxpayers who reported their ERC checks stolen in calendar year 2024, the average time until the IRS issued a new check was about nine weeks from the time the taxpayer filed Form 3911, further delaying an already protracted process.<sup>72</sup>

When BFS resolves the missing check issue, the IRS again issues a paper check. Under its procedures, the taxpayer cannot request that the IRS electronically deposit the second refund to their account. It will only issue a paper check each time because IRS automated processes require a manual override to issue the funds into the taxpayer's account electronically. The IRS should work with BFS to provide taxpayers an option to elect to deposit funds electronically in lieu of a replacement paper check.

### Taxpayer Participation in the IRS's Employee Retention Credit Disclosure Programs Has Been Low

After it announced the moratorium, the IRS offered several disclosure programs for improper ERC claims. First, on October 19, 2023, it announced a withdrawal process for unprocessed ERC claims.<sup>73</sup> As of September 30, 2024, the IRS had received 11,832 withdrawal requests.<sup>74</sup> As of September 30, 2024, the IRS had closed 10,873 withdrawal requests, with 959 still awaiting processing.<sup>75</sup>

Second, on December 21, 2023, the IRS announced it would open a voluntary disclosure program (VDP) for taxpayers who received their claimed refund but subsequently determined their ERC claim was invalid.<sup>76</sup> Under this VDP, the IRS required taxpayers to pay back 80 percent of the credit with no penalties or interest on the repaid amount.<sup>77</sup> The VDP closed on March 22, 2024, and the IRS received 2,609 applications for the program prior to this date; yet as of September 30, 2024, it has only executed closing agreements for 782 of these submissions.<sup>78</sup> On August 15, 2024, the IRS announced a second VDP that requires taxpayers to pay back 85 percent of the credit.<sup>79</sup> As of September 30, 2024, for the second round of the ERC VDP, which expired on November 22, 2024, the IRS had received just 48 applications.<sup>80</sup>

72 IRS, CDW, BMF, as of Sept. 2024.

73 IRS News Release, IR-2023-193, IRS Announces Withdrawal Process for Employee Retention Credit Claims; Special Initiative Aimed at Helping Businesses Concerned About an Ineligible Claim Amid Aggressive Marketing, Scams (Oct. 19, 2023), <https://www.irs.gov/newsroom/irs-announces-withdrawal-process-for-employee-retention-credit-claims-special-initiative-aimed-at-helping-businesses-concerned-about-an-ineligible-claim-amid-aggressive-marketing-scams>.

74 IRS response to TAS information request (Oct. 24, 2024). These withdrawal requests represented multiple filing quarters. Unfortunately, the IRS was unable to provide TAS with the average time for processing taxpayers' withdrawal requests.

75 IRS response to TAS information request (Oct. 24, 2024).

76 IRS News Release, IR-2023-247, IRS: New Voluntary Disclosure Program Lets Employers Who Received Questionable Employee Retention Credits Pay Them Back At Discounted Rate; Interested Taxpayers Must Apply By March 22 (Dec. 21, 2023), <https://www.irs.gov/newsroom/irs-new-voluntary-disclosure-program-lets-employers-who-received-questionable-employee-retention-credits-pay-them-back-at-discounted-rate-interested-taxpayers-must-apply-by-march-22>.

77 See *id.* ("Those that the IRS accepts into the [voluntary disclosure] program will need to repay only 80 percent of the credit they received.")

78 IRS response to TAS information request (Oct. 24, 2024).

79 IRS News Release, IR-2024-212, IRS Reopens Voluntary Disclosure Program to Help Businesses With Problematic Employee Retention Credit Claims; Sending Up to 30,000 Letters to Address More Than \$1 Billion in Errant Claims (Aug. 15, 2024), <https://www.irs.gov/newsroom/irs-reopens-voluntary-disclosure-program-to-help-businesses-with-problematic-employee-retention-credit-claims-sending-up-to-30000-letters-to-address-more-than-1-billion-in-errant-claims>.

80 IRS response to TAS information request (Oct. 24, 2024); IRS Tax Tip 2024-78, Second ERC Voluntary Disclosure Program for Improper Claims is Open Through Nov. 22 (Sept. 23, 2024), <https://www.irs.gov/newsroom/second-erc-voluntary-disclosure-program-for-improper-claims-is-open-through-nov-22>.

## CONCLUSION AND RECOMMENDATIONS

The ERC was meant to be a lifeline for businesses and nonprofits battered by the pandemic. Instead, for many it has become a source of confusion and hardship. Due to the IRS's delays, inefficiency, and lack of clarity, countless eligible businesses are still awaiting relief. While administering the ERC is no small task, the IRS's missteps – including lengthy delays, limited guidance and communication, unclear notices, and non-standard examination processes – have prolonged businesses' hardships unnecessarily. Many employers have been left without the funds they need to stay afloat, pay employees, or plan for the future.

This issue is not just about processing claims – it is about fulfilling a promise to American businesses and communities while protecting against fraud. The IRS must prioritize taxpayer needs, streamline claim processing, handle disputes fairly and promptly, and deliver the relief Congress intended. The time for action is *now*. Businesses can't wait any longer.

### Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. *Provide transparent training and guidance:* Ensure it provides internal subject matter training and guidance to all IRS employees working on processing, conducting an audit, or in Appeals considering an ERC claim, and post IRS training materials online on IRS.gov within 30 days of issuance to the employees.
2. *Expedite claim processing:* Process all ERC claims filed before January 31, 2024, by April 30, 2025, and claims pending for over six months by July 31, 2025. Processing includes paying the claim, denying the claim, or notifying the taxpayer that the claim is under audit.
3. *Prioritize economic hardship cases:* Process claims from businesses in financial hardship first and then process the remaining claims in the order received.
4. *Lift the moratorium:* Resume processing post-January 31, 2024, claims and process future claims within six months of receipt.
5. *Enhance communication:* Provide regular updates on IRS.gov on the processing of outstanding ERC claims and include specific anticipated timeframes.
6. *Provide clear disallowance explanation:* Provide a detailed factual and legal explanation in Letter 86C as to why the ERC claim disallowance is being upheld and provide the taxpayer more time to submit additional information before referring the case to Appeals.
7. *Request supporting documentation proactively:* When taxpayers have not been subject to an exam, issue a letter allowing taxpayers to send in documentation and seek an appeal prior to the notice of claim disallowance being issued for the ERC.
8. *Track and extend statutes:* In Appeals, track the two-year IRC § 6532 statute cases on ERC claims in inventory and notify taxpayers of this pending statute expiration six months prior to the two-year deadline. Also, provide taxpayers an explanation of the impact of the expiration of the statutory period to file suit and the option of executing Form 907 to extend the statute.
9. *Offer Fast Track:* Allow ERC taxpayers to utilize the Fast Track process.
10. *Enable direct deposit for replacement checks:* Partner with BFS to provide taxpayers an option to elect to have funds deposited electronically in lieu of receiving a replacement paper check.

**RESPONSIBLE OFFICIALS**

Kenneth Corbin, Chief, Taxpayer Services Division

Elizabeth Askey, Chief, Independent Office of Appeals

Lia Colbert, Chief, Small Business/Self-Employed Division

John McNelly, Director, IRS Campus Examination





## RETURN PROCESSING

### Continuing Delays in IRS Return Processing Are Frustrating Taxpayers and Causing Refund Delays

#### WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

The primary way hundreds of millions of Americans interact with the IRS every year is through their submission of a tax return. For this reason, Submission Processing is the “bread and butter” of the IRS; the 10,400 employees working in that function are responsible for processing returns, depositing the payments that fund our government, and issuing the refunds upon which families rely.<sup>1</sup> Simply put, without Submission Processing, our economy would grind to a halt. Yet, this crucial function relies on ancient technology and decades-old processes that hinder its ability to work efficiently. The IRS burdens millions of taxpayers each year with issues related to return processing. Taxpayers can experience challenges with rejections of electronically filed (e-filed) returns, slow processing of paper returns, difficulty correcting errors after filing, the glacial pace for processing of amended returns, challenges obtaining information from their online accounts, and confusion responding to notices and letters. With the notable exception of e-filed returns, many submissions still rely on manual IRS processing, which can be time-consuming and costly, and is subject to errors that can create or further exacerbate delays. These types of challenges can lead to delayed refunds and frustrating and slow processes for remedying filing issues, such as proving eligibility for credits and deductions. In addition to the negative impact delayed refunds have on taxpayers waiting to receive them, the IRS must pay interest on overpayments it does not timely refund; while that may be favorable for taxpayers, it is an additional cost to the government.<sup>2</sup>

1 Email from the Taxpayer Services Division (Nov. 13, 2024) (on file with TAS).

2 IRC § 6611.

TAS has reported on processing delays among the most serious problems facing taxpayers in the past five Annual Reports to Congress, even before the onset of the COVID-19 pandemic.<sup>3</sup>

## EXPLANATION OF THE PROBLEM

The processes that underpin vital government functions must evolve to meet contemporary demands, and the IRS is no exception. Yet, the IRS still processes paper returns similar to past decades. Congress allocated \$4.8 billion for Business Systems Modernization for the IRS to invest in customer service technology.<sup>4</sup> That funding represented a mandate from Congress to innovate and pursue new technologies.<sup>5</sup> In April 2023, the IRS published a Strategic Operating Plan outlining how it intends to spend those funds.<sup>6</sup>

Although it would be a huge lift, the IRS must transform its Submission Processing and Accounts Management functions to enhance efficiency, improve the taxpayer experience, and reduce errors, which would encourage compliance and reduce operational costs. It must embrace technology and transform its outdated practices into a streamlined, secure, and user-friendly tax system that serves all Americans effectively. Modernization of tax processing requires:

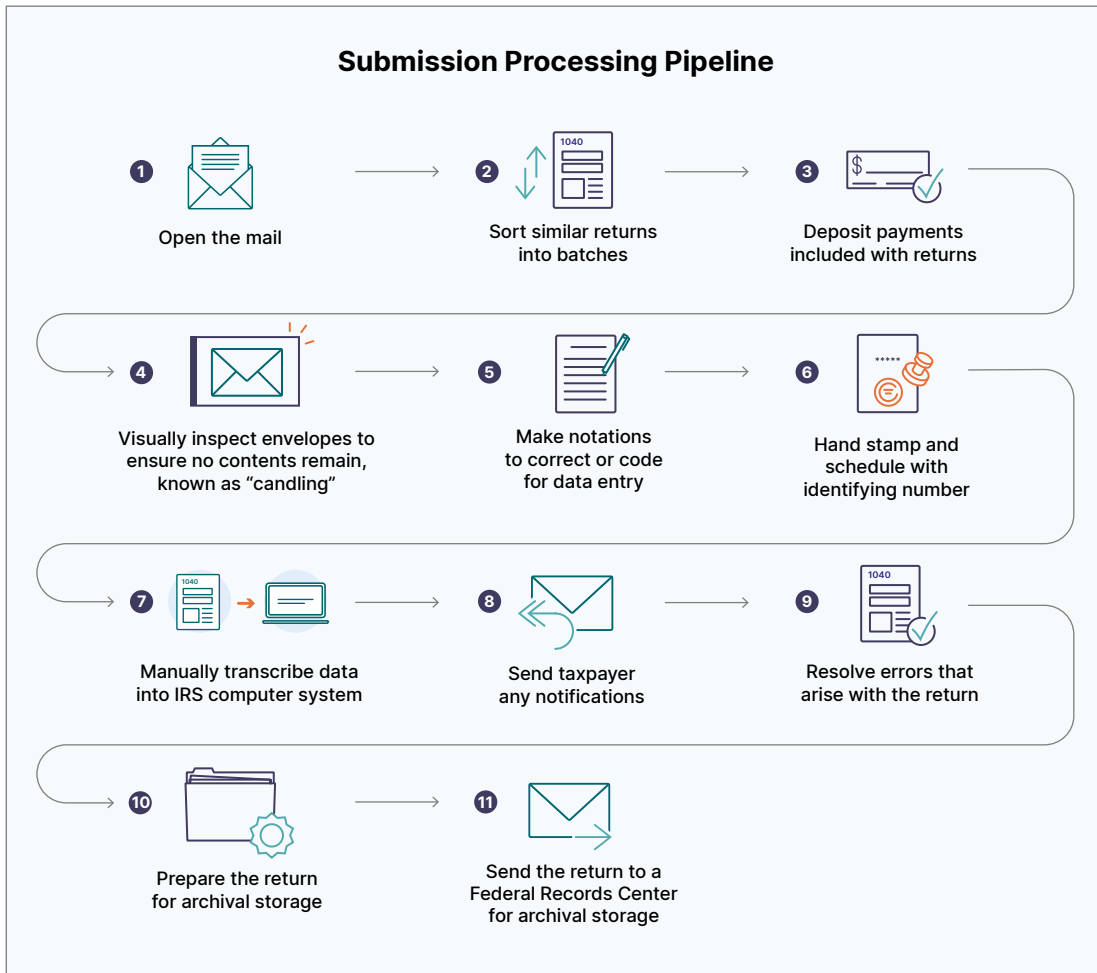
- Implementing widespread scanning of paper submissions;
- Reducing e-filing rejections for legitimate taxpayers who file legally valid returns;
- Electronic processing of paper-filed returns;
- Integrating online tools;
- Providing more options for taxpayers who want to communicate with the IRS digitally, including the ability to respond to a notice or letter or receive answers to tax questions; and
- Automating manual processes.

## ANALYSIS

The IRS currently processes paper tax returns using a series of steps it refers to as the “pipeline,” which requires more than a dozen humans to physically handle each return. In simple terms, at least one employee handles each of the following steps for an individual Form 1040:

- 
- 3 National Taxpayer Advocate 2019 Annual Report to Congress 34 (Most Serious Problem: *Processing Delays: Refund Fraud Filters Continue to Delay Taxpayer Refunds for Legitimately Filed Returns, Potentially Causing Financial Hardship*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC19\\_Volume1\\_MSP\\_04\\_PROCESSINGDELAYS.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC19_Volume1_MSP_04_PROCESSINGDELAYS.pdf); National Taxpayer Advocate 2020 Annual Report to Congress 132 (Most Serious Problem: *Amended Returns: The IRS Processes Most Amended Returns Timely But Some Linger for Months, Generating Over a Million Calls That the IRS Cannot Answer and Thousands of TAS Cases Each Year*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20\\_MSP\\_09\\_AmendReturns.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_MSP_09_AmendReturns.pdf); National Taxpayer Advocate 2021 Annual Report to Congress 37 (Most Serious Problem: *Processing and Refund Delays: Excessive Processing and Refund Delays Harm Taxpayers*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21\\_MSP\\_01\\_Processing-Delays.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_MSP_01_Processing-Delays.pdf); National Taxpayer Advocate 2022 Annual Report to Congress 34 (Most Serious Problem: *Processing Delays: Paper Backlogs Caused Refund Delays for Millions of Taxpayers*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22\\_MSP\\_01\\_Processing-Delays.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MSP_01_Processing-Delays.pdf); National Taxpayer Advocate 2023 Annual Report to Congress 5 (Most Serious Problem: *Processing: Ongoing Processing Delays Burden and Frustrate Taxpayers Awaiting Refunds and Other Account Actions*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23\\_MSP\\_01\\_Processing-Delays\\_FINAL\\_01292024.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23_MSP_01_Processing-Delays_FINAL_01292024.pdf).
  - 4 An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14 (commonly referred to as the “Inflation Reduction Act of 2022”), Pub. L. No. 117-169, 136 Stat. 1818 (2022).
  - 5 BRENDAN McDERMOTT, CONG. RSCH. SERV., IN11977, *IRS-Related Funding in the Inflation Reduction Act 3* (2022), <https://crsreports.congress.gov/product/pdf/IN/IN11977>.
  - 6 IRS, Pub. 3744, *IRS Inflation Reduction Act Strategic Operating Plan* (Apr. 2023), <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.

FIGURE 2.2.1<sup>7</sup>



Even in the best of circumstances, it takes many days for a document to move through this pipeline. Under more challenging conditions (when processing volume is at its peak and the IRS must correspond with a taxpayer to resolve errors), it can take months.

As the National Taxpayer Advocate has said before, paper is the IRS’s kryptonite. It is expensive, labor-intensive, and time-consuming to process. But it does not have to be this way. Since the last time the IRS updated its processes, new technology has emerged that can transform the way Submission Processing works. The National Taxpayer Advocate wants to recognize and thank the Submission Processing employees and the work they do every day on behalf of Americans. It is not an easy job and the challenges they face are not of the employees doing, rather it is due to the challenges of the antiquated process.

### The IRS Must Expand Its Use of Scanning Technology

When taxpayers send paper documents to the IRS, many of the initial processing steps in the pipeline, including scanning and sorting, take place in Submission Processing at IRS campus facilities. The IRS has introduced new equipment and is testing new technology to improve these processes, but many areas still

<sup>7</sup> See Internal Revenue Manual (IRM) 21.2.1.6, Pipeline Processing (Paper Returns) (Oct. 1, 2006), [https://www.irs.gov/irm/part21/irm\\_21-002-001r](https://www.irs.gov/irm/part21/irm_21-002-001r).

require substantial improvement to meet the IRS's own goals. The IRS scans and digitizes forms, such as certain information returns, Affordable Care Act information returns, Schedules K-1, and Forms 940 and 941, via the Service Center Recognition/Image Processing System (SCRIPS). The IRS has begun an effort to modernize and expand SCRIPS, a decades-old system for digitally processing paper returns. During 2023 and 2024, the IRS also replaced its Service Center Automated Mail Processing System equipment that was older than five years in the highest volume locations and added more mail sorters to campus locations with lower volumes of mail. Following initial deployment, the new equipment failed to perform optimally, and the IRS addressed the performance issues by implementing post-deployment maintenance checks, regular practice runs for employees, and periodic check-ins with employees and vendors.<sup>8</sup>

The IRS receives about 76 million paper-filed tax forms and information returns annually and set a lofty goal of scanning 99.9 percent of paper-filed tax forms and information returns by 2025.<sup>9</sup> But as of October 2024, the IRS had only achieved a benchmark of 58 percent.<sup>10</sup> It receives annually about 125 million paper correspondence submissions, non-tax forms, and notice responses.<sup>11</sup> The IRS set a goal of digitally processing up to 50 percent of these paper correspondence submissions by 2025, and it is little more than halfway (53 percent) toward achieving that goal as of October 2024.<sup>12</sup> IRS progress toward meeting these goals is important because reducing and eventually eliminating manual data entry will reduce errors and processing delays.<sup>13</sup>

Although the IRS has been testing scanning technology for processing individual tax returns for some time now, it has struggled to demonstrate that it can implement the technology at scale. It selected several vendors to participate in this pilot, but currently the IRS has not indicated that any can accommodate the millions of individual paper returns and schedules the IRS currently processes manually each year. For example, the Submission Processing Modernization Pilot performed the digital intake of nearly 326,000 paper Form 1040s between March and October 2024.<sup>14</sup> While modernizing SCRIPS to accommodate Forms 1040 and associated schedules would be an improvement over the current manual process, limitations remain. The IRS has encountered difficulties securing a vendor that can provide the necessary technical capabilities.<sup>15</sup> Initially the modernization project allowed Submission Processing to transcribe certain return data, but in the long-term the IRS plans to implement technology that would enable it to capture all return data through a complete scan, thereby eliminating the need to retain the original paper document. In the National Taxpayer Advocate's opinion investing in long-term benefits of capturing all the data is a better choice than going for a quick win that does not accomplish long-term results. The IRS should prioritize technology upgrades that allow it to digitize all return data for processing, compliance, and enforcement purposes. Using technology with limited functionality to scan limited data will fail to achieve the transformational change the IRS desperately needs.

8 IRS, Taxpayer Services Office Advisory Committee (Nov. 13, 2024) (on file with TAS).

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

10 IRS, Portfolio Dashboard Overview (Oct. 16, 2024) (on file with TAS).

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

12 IRS, Portfolio Dashboard Overview (Oct. 16, 2024) (on file with TAS).

13 See, e.g., Erin M. Collins, Are You Still Waiting on a Refund From a Deceased Taxpayer's Return?, NATIONAL TAXPAYER ADVOCATE BLOG (Aug. 13, 2024), <https://www.taxpayeradvocate.irs.gov/news/nta-blog/are-you-still-waiting-on-a-refund-from-a-deceased-taxpayers-return/2024/08/>.

14 IRS response to TAS fact check (Nov. 21, 2024).

15 Email from Submission Processing (Nov. 26, 2024) (on file with TAS).

### *The IRS Struggles to Meet Its Own Timeliness Goals in Submission Processing*

Although Submission Processing has made tremendous progress in recovering from the pandemic, it is still not where it needs to be. Submission Processing uses a performance metric called Program Completion Dates (PCDs). Essentially, a PCD is a measure of whether the IRS has processed the bulk of a specified type of return within a specified period. For example, the IRS has a PCD for full-paid timely filed individual returns; to meet this PCD, it must process nearly all such returns by a certain date.

Prior to the pandemic, Submission Processing met nearly all its PCDs. In 2020 during the pandemic, the IRS was incapable of meeting PCDs since the staff that processed paper were not in the office. However, it has been several years since the majority of IRS workstreams have returned to normal operations, and Submission Processing reported that its end-of-year inventory has returned to typical levels in all but one category.<sup>16</sup> During fiscal year (FY) 2024, Submission Processing met 18 of its 20 Individual Master File (IMF) and 312 of its 329 Business Master File (BMF) PCDs.<sup>17</sup> But it continues to struggle to meet many of its other key metrics. Although the IRS defines a period upon which inventory exceeds normal processing times and becomes overage, it also sets a benchmark for the percentage of overage inventory. When the overage inventory exceeds the benchmark, the IRS refers to this as exceeding the “boiling point.” IMF and BMF rejections have a boiling point of 20 percent, and nearly 21 percent of IMF and 32 percent of BMF inventory was overage in FY 2024, exceeding the established boiling point.<sup>18</sup> Submission Processing also fell short of its 80 percent goal for deposit timeliness, achieving only 61.5 percent in FY 2024.<sup>19</sup> Deposit timeliness is particularly important because the faster the IRS can deposit remittances, the faster those funds begin earning interest for the Treasury. For taxpayers, the IRS’s challenges meeting these metrics means that refund issuance takes longer than expected and the IRS may not resolve return issues promptly.

### **Forms That Taxpayers Cannot Electronically File and Electronic Files That the IRS Rejects Create More Paper Processing Demands on the IRS**

Most individual filers – over 93 percent in the 2024 filing season – choose to file their returns electronically.<sup>20</sup> The IRS efficiently processes e-filed returns by skipping nearly all the steps in the Submission Processing pipeline. Only e-filed returns triggering errors go through the additional steps of an error resolution process. Thus, the IRS spends most of its return processing resources on processing the relatively small number of tax returns it receives on paper.

During 2024, the IRS added 20 forms to its Modernized e-File (MeF) platform, but there are more than 100 IRS forms taxpayers still cannot e-file.<sup>21</sup> It should continue progressing toward including all IRS forms and schedules in MeF for automated processing and continue encouraging taxpayers to file electronically.

During FY 2024, over 151.7 million individuals filed electronic Forms 1040, and the IRS rejected the returns of nearly 18 million taxpayers.<sup>22</sup> Approximately 13 million taxpayers were ultimately able to achieve electronic return acceptance, while 4.9 million taxpayers either did not file a Form 1040 return or filed it on paper.<sup>23</sup> Figure 2.2.2 lists the top five most common e-filing rejection reasons that individual taxpayers experienced for tax year (TY) 2023.<sup>24</sup> MeF rules that cause the IRS to reject returns protect against fraud but can increase

16 IRS, Miscellaneous Monitoring Report (MMR) (Oct. 25, 2024; Oct. 27, 2023; Oct. 28, 2022; Oct. 25, 2019). The unpostables workstream has not yet returned to pre-2020 levels. IRS response to TAS fact check (Nov. 21, 2024).

17 Email from Submission Processing, Program Management/Process Assurance (Nov. 5, 2024) (on file with TAS).

18 IRS, MMR (Oct. 25, 2024).

19 Email from Program Management/Process Assurance Monitoring (Nov. 26, 2024) (on file with TAS).

20 IRS, Filing Season Statistics for Week Ending Oct. 18, 2024 (Oct. 25, 2024), <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-oct-18-2024>.

21 IRS responses to TAS information requests (Oct. 8, 2024; Aug. 10, 2023).

22 IRS, Compliance Data Warehouse (CDW), Electronic Tax Administration Research and Analysis System (ETARAS) (Oct. 2024).

23 IRS, CDW, ETARAS (Oct. 2024).

24 *Id.*

taxpayer burden. Noting that the IRS rejects a significant volume of valid returns solely based on e-filing criteria, the National Taxpayer Advocate continues to advocate that the IRS accept these electronic returns and direct them to an appropriate treatment stream for resolving discrepancies.<sup>25</sup>

**FIGURE 2.2.2, Top Five Most Common E-Filing Rejects for Individual Taxpayers, TY 2023<sup>26</sup>**

Rank	Reject Reason	Taxpayers Impacted
1	Primary prior year PIN or primary prior year adjusted gross income amount does not match the e-File database	3,463,276
2	Missing Form 8962, Premium Tax Credit, or written explanation	2,945,119
3	Invalid primary taxpayer Identity Protection PIN	2,031,540
4	The primary Taxpayer Identification Number is the same as the Taxpayer Identification Number of a previously accepted electronic individual return filed for the same tax period	2,011,610
5	Primary name does not match e-File database	1,172,304

Tax practitioners have raised concerns about whether it is legally permissible for the IRS to reject e-filed returns under many of the current rejection scenarios. The National Taxpayer Advocate shares these concerns. The Tax Court’s four-part test (the *Beard* test) for determining whether a document is sufficient for statute of limitations purposes should be the standard for e-filed returns.<sup>27</sup> In other words, did the document constitute a “return”? To be a valid return, the document must: 1) provide sufficient data to calculate tax liability; 2) purport to be a return; 3) be an honest and reasonable attempt to satisfy the requirements of the tax law; and 4) be executed by the taxpayer under penalties of perjury.<sup>28</sup> Though the need to perfect a return may still result in delays, the taxpayer would receive an acknowledgment of receipt and avoid the additional burden and delays associated with filing a paper return. The IRS can accept the e-filed return, assign it for issue resolution, determine if it can process the return, or determine if the return is potentially fraudulent.

Although the National Taxpayer Advocate applauds the IRS’s efforts to decrease fraud and correct errors on original electronic submissions, she thinks there are multiple options to accomplish that goal without the IRS rejecting valid e-filed returns, especially returns requesting refunds. Because filing a tax return is also a significant trigger for determining whether the taxpayer filed the return timely, the application of penalties, and the start of assessment and refund statutes, this is an important issue. Unfortunately, the rejection of valid tax returns for e-filing purposes has been a topic of controversy for some time.

***Allowing Taxpayers to Address Return Errors to Prevent Rejection Benefits Both Taxpayers and the IRS***

One common reason the IRS rejects a taxpayer’s e-filed return attempt is because the return claims a dependent already claimed for the same tax year on a different taxpayer’s return. Historically, the IRS would reject any subsequent e-filed returns claiming the same dependent, and the taxpayer would have to file a paper return instead. This occurred regardless of whether the taxpayer filing the first accepted e-file return was entitled to claim the dependent. In circumstances where the subsequent filer was rightly claiming the duplicate dependent, the IRS penalized the taxpayer by requiring them to file on paper and delaying their refund. Two taxpayers who both believed they had the right to claim the same dependent would need to race to file their return first in this scenario to avoid having to file a paper return to resolve the situation.

25 National Taxpayer Advocate 2021 Annual Report to Congress 139 (Most Serious Problem: *E-Filing Barriers: Electronic Filing Barriers Increase Taxpayer Burden, Cause Processing Delays, and Waste IRS Resources*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21\\_MSP\\_08\\_Efiling.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_MSP_08_Efiling.pdf).

26 IRS, CDW, ETARAS (Oct. 2024).

27 *Beard v. Comm’r*, 82 T.C. 766, 777 (1984), *aff’d per curiam*, 793 F.2d 139 (6th Cir. 1986).

28 *Beard*, 82 T.C. at 777.



In a positive step for these taxpayers, the IRS is changing the way it processes electronically filed returns claiming the same dependent, as long as the return contains an Identity Protection PIN (IP PIN), a six-digit number that once issued to a taxpayer must be included on their tax return prior to filing electronically. Beginning in the 2025 filing season for TY 2024 returns, taxpayers who claim duplicate dependents electronically on originally filed TY 2024 Forms 1040, 1040-NR, and 1040-SS will not trigger an electronic rejection. The returns will be electronically accepted but worked post-filing. This includes duplicate dependents claimed on forms such as Forms 2441, Child and Dependent Care Expenses; 1040 Schedule EIC, Earned Income Credit Qualifying Child Information; and 8863, Education Credits (American Opportunity and Lifetime Learning Credits).<sup>29</sup> The IRS will send a notice to taxpayers and preparers who e-file with a duplicate dependent to inform them of the issue and request that they check their return to ensure the information is correct. If the dependent was claimed incorrectly, the notice advises the taxpayer to amend their return for the tax year referenced in the notice.<sup>30</sup> This change will provide taxpayers an opportunity to receive their refund faster than having to file a paper return. Taxpayers attempting to e-file with a duplicate dependent will need to obtain an IP PIN if they do not already have one, which can be obtained quickly through their Individual Online Account (IOLA) but takes four to six weeks to receive through the mail.<sup>31</sup> Since IOLA's launch in November 2016, nearly 18 million unique users have accessed their IOLA (as of September 2024), but if taxpayers are unsuccessful completing the identity authentication procedures they are unable to access their account.<sup>32</sup> The IRS must continue to educate taxpayers about the benefits, such as this, of having an IP PIN. Over 10.4 million taxpayers have taken the steps to obtain an IP PIN, which has been promoted as a protection against identity theft, rather than a tool to facilitate e-filing.<sup>33</sup>

The new procedures for processing an e-filed return claiming a duplicate dependent could potentially benefit more than a half million taxpayers each year and reduce the number of paper returns, as duplicate dependents was the ninth most common reason for e-file rejections in TYs 2022, affecting over 711,000 taxpayers, and 2023, affecting about 543,000 taxpayers.<sup>34</sup> Congress intended several tax credits with a dependent requirement to provide financial relief for some of the most financially vulnerable taxpayers, and the IRS should do more to assist these taxpayers in claiming their entitled credits. The IRS must assist taxpayers who need help determining their eligibility or understanding why they do not qualify. The National Taxpayer Advocate recommends the IRS apply similar processes to accept rather than reject e-filed returns that otherwise satisfy the *Beard* test.

### **Modernizing Self-Service Tools Will Empower Taxpayers With Information About Their Accounts and Reduce Demands on IRS Submission Processing and Accounts Management**

In an era characterized by rapid technological advancements and a growing emphasis on convenience, the IRS has significantly enhanced its service delivery through various self-service tools, such as IOLA, Direct File, Where's My Refund?, and Where's My Amended Return? These tools empower taxpayers by providing them with immediate access to crucial information and services that enhance the taxpayer experience and efficiency.

29 IRS response to TAS information request (Oct. 8, 2024).

30 See IRM 21.5.10.4.2, Exam Soft Notices CP 87A, CP 87B, CP 87C, and CP 87D (Nov. 13, 2024), [https://www.irs.gov/irm/part21/irm\\_21-005-010r](https://www.irs.gov/irm/part21/irm_21-005-010r).

31 IRS, Get an Identity Protection PIN (IP PIN), <https://www.irs.gov/identity-theft-fraud-scams/get-an-identity-protection-pin> (last updated Nov. 25, 2024).

32 See IRS, Individual Online Account (IOLA) & Tax Pro Account Status Briefing (Sept. 25, 2024) (on file with TAS); National Taxpayer Advocate 2023 Annual Report to Congress 34 (Most Serious Problem: *Online Account Access for Taxpayers and Tax Professionals: Digital Services Remain Inadequate, Impeding Efficient Case Resolution and Forcing Millions of Taxpayers to Call or Send Correspondence to the IRS*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23\\_MSP\\_07\\_Online-Accounts.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23_MSP_07_Online-Accounts.pdf).

33 IRS News Release, IR-2024-200, Security Summit: Identity Protection PINs, IRS Online Account Protect Against Tax-Related Identity Theft (July 30, 2024) <https://www.irs.gov/newsroom/security-summit-identity-protection-pins-irs-online-account-protect-against-tax-related-identity-theft>.

34 IRS, CDW, ETARAS (Oct. 2024).

However, to date, some of these tools, like the Where's My Refund? tool, do not provide information with sufficient detail to truly help taxpayers understand where they are in the process. These tools do not provide real-time data or estimates on when taxpayers can expect the IRS to process their return.

A 2022 TAS research report compared online accounts and the digital services available for individuals on IRS.gov to the taxing authorities of 41 U.S. states, the District of Columbia, Puerto Rico, and three foreign countries.<sup>35</sup> The report identified three areas where the IRS website lacked features commonly found on other taxing authority websites:

1. Filing options on the taxing authority's own website;<sup>36</sup>
2. The ability to receive and respond to most notices online; and
3. Robust in-person and digital contact options.

The absence of a robust suite of digital tools available from the IRS online results in taxpayers using more resource-intensive and time-consuming methods to engage with the IRS on processing and accounts management issues. While it has made progress toward getting these capabilities, the IRS's digital services still lag behind industry standards. It must make robust and fully integrated digital services a central component of the suite of options a taxpayer can use to file their return and resolve filing issues.

### ***The IRS Must Leverage Features in Individual Online Account***

TAS concluded in prior reports that integrating online self-help tools encourages more taxpayers to use them.<sup>37</sup> Leveraging the capabilities of IOLA with e-filing software would allow the IRS to create a powerful tool that would revolutionize the e-filing experience for taxpayers and substantially decrease taxpayer burden. The IRS projected nearly 6.2 billion information and withholding documents were sent to taxpayers and the IRS in calendar year 2024, including nearly 284 million Forms W-2, Wage and Tax Statement, and over 58 million Forms 1099-NEC, Nonemployee Compensation.<sup>38</sup> In 2025, the IRS plans to add the capability for taxpayers to download, print, and digitally access certain information returns via IOLA to make it easier to file tax returns and reduce the likelihood of inaccurate filings.<sup>39</sup>

Information returns and withholding documents are generally due to the IRS no later than March 31 of each calendar year (depending on the document type and filing method). However, to provide the best experience, the IRS must update IOLA with Forms W-2 and 1099 data earlier in the filing season. The IRS is still finalizing the

---

35 National Taxpayer Advocate 2022 Annual Report to Congress 222 (TAS Research Report: *A Review of Online Accounts and Web Services Offered by U.S. State and Foreign Country Taxing Authorities*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22\\_CA\\_Online-Accounts.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_CA_Online-Accounts.pdf). These foreign countries are the United Kingdom, Australia, and Canada.

36 For purposes of the study, online filing did not include those websites that simply referred visitors to third-party filing options, such as Free File or commercial service providers. National Taxpayer Advocate 2022 Annual Report to Congress 229 (TAS Research Report: *A Review of Online Accounts and Web Services Offered by U.S. State and Foreign Country Taxing Authorities*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22\\_CA\\_Online-Accounts.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_CA_Online-Accounts.pdf). The IRS conducted a Direct File pilot during the 2024 filing season and has announced that Direct File will be available for taxpayers in 24 participating states for the 2025 filing season. IRS, Pub. 5788, Inflation Reduction Act § 10301(1)(B) IRS-run Direct e-File Tax Return System (May 2023), <https://www.irs.gov/pub/irs-pdf/p5788.pdf>; IRS, IRS Direct File: File Taxes Online Directly With IRS For Free (last updated Nov. 6, 2024), <https://www.irs.gov/filing/irs-direct-file>.

37 See, e.g., National Taxpayer Advocate 2017 Annual Report to Congress 22 (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*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC17\\_Volume1\\_MSP\\_02\\_Telephones.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC17_Volume1_MSP_02_Telephones.pdf); National Taxpayer Advocate 2022 Annual Report to Congress 90 (Most Serious Problem: *Online Access for Taxpayers and Tax Professionals: Inadequate Digital Services Impede Efficient Case Resolution and Force Millions of Taxpayers to Call or Send Correspondence to the IRS*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22\\_MSP\\_05\\_Online-Access.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MSP_05_Online-Access.pdf).

38 IRS, Pub. 6961, Calendar Year Projections of Information and Reporting Documents for the United States and IRS Campuses: 2024 Update, at 6 (Sept. 2024), <https://www.irs.gov/pub/irs-pdf/p6961.pdf>. The FY 2024 figure is a projected number. The IRS only publishes information and withholding document volumes on a calendar year basis; however, these documents are generally due to the IRS no later than March 31 of each calendar year (depending on document type and filing method).

39 IRS response to TAS information request (Oct. 8, 2024).

specific information return documents that will be available with the initial upgrade and subsequent releases as well as tentative deployment dates.<sup>40</sup> It must turn its attention next to integrating information return documents available in IOLA into e-filing software programs. To accomplish this feat, the IRS must coordinate its efforts with the Social Security Administration. This capability would launch the next generation of e-filing tools, reduce filing errors, save IRS resources, and substantially improve the taxpayer experience.

In addition to reducing barriers to e-filing and the accompanying benefits of faster processing and reduced errors, integrating information returns with commercial e-filing software would reduce the number of underserved taxpayers.<sup>41</sup> Challenges with filing or proving eligibility for a claimed credit or deduction may cause some taxpayers to give up rather than navigate burdensome processes to prove their claims are legitimate.

The IRS has added capabilities for taxpayers to receive many notices in IOLA, yet taxpayers cannot respond to all notices electronically, which has become standard practice for many state and large national tax authorities.<sup>42</sup> Taxpayers must use the IRS's Document Upload Tool (DUT) or send paper correspondence through the mail. Replies sent through the mail or through the DUT require some amount of manual effort on the part of IRS employees to route the correspondence and associate it with the correct taxpayer account. It is commendable that as of September 1, 2024, taxpayers could view 216 notices and letters within IOLA.<sup>43</sup> The IRS plans to add an additional 45 notices in calendar year (CY) 2024 and 16 notices in CY 2025, bringing the total number of notices and letters available in IOLA to 277.<sup>44</sup>

To establish parity with other taxing authorities, the IRS should add capabilities that allow taxpayers to respond to these notices and letters, including uploading documents within IOLA, within Business Online Account for business taxpayers, and within TaxPro Account for tax professionals. It is the National Taxpayer Advocate's opinion that increasing online account functionality by providing robust self-help options will eliminate paper, speed up correspondence processing, and ultimately decrease telephone demand freeing up customer service representatives to assist taxpayers who need additional assistance.<sup>45</sup>

### ***The IRS Must Expand Access to the Where's My Amended Return? Tool for Overseas Taxpayers***

During 2024, the IRS made enhancements to the Where's My Amended Return? tool, such as providing amended return status in IOLA. However, the Where's My Amended Return? tool is still not available for overseas taxpayers.<sup>46</sup> The approximately nine million individuals with a U.S. tax filing obligation living abroad face additional burdens at virtually every step of the process to comply with their U.S. tax obligations.<sup>47</sup> As the IRS acknowledged in its Taxpayer First Act Report to Congress, individuals living abroad have minimal access to IRS services by phone, online, or in person; their e-file rates are significantly lower, and they have limited

40 IRS response to TAS information request (Oct. 8, 2024).

41 Exec. Order No. 13,985, 86 Fed. Reg. 7009, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (Jan. 20, 2021), <https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0202-0010> (stating that the term underserved communities "refers to populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life.").

42 See National Taxpayer Advocate 2022 Annual Report to Congress 222 (TAS Research Report: *A Review of Online Accounts and Web Services Offered by U.S. State and Foreign Country Taxing Authorities*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22\\_CA\\_Online-Accounts.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_CA_Online-Accounts.pdf). The TAS research report compared online accounts and the digital services available for individuals on IRS.gov to the taxing authorities of 41 U.S. states, the District of Columbia, Puerto Rico, and the United Kingdom, Australia, and Canada.

43 IRS response to TAS information request (Oct. 8, 2024).

44 *Id.*

45 See Most Serious Problem: *IRS Service: Taxpayer Service Is Often Not Timely or Adequate*, *infra*.

46 IRS Response to TAS Information Request (Oct. 8, 2024).

47 See National Taxpayer Advocate 2022 Annual Report to Congress 157 (Most Serious Problem: *Overseas Taxpayers: Taxpayers Outside of the United States Face Significant Barriers to Meeting Their U.S. Tax Obligations*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22\\_MSP\\_10\\_Overseas.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MSP_10_Overseas.pdf).

availability of tax products in languages other than English, all of which hamper their ability to understand their complex tax obligations.<sup>48</sup> The IRS should prioritize expanding services and accessibility to improve the taxpayer experience for overseas taxpayers.

### Automated Processing in Accounts Management Would Reduce Burdensome Delays

After Submission Processing processes returns, related documents, and payments, the Accounts Management function is responsible for responding to taxpayer inquiries on a variety of tax law and procedural questions, account inquiries and adjustments, and responses to notices the IRS receives via telephone, correspondence, and email at 25 Accounts Management sites.<sup>49</sup>

As shown in Figure 2.2.3, at about the end of October 2024, the IRS had over four million pieces of correspondence requiring manual processing. Although the IRS is taking steps to be current with its processing inventory by the 2025 filing season, over 72 percent of its inventory in Accounts Management exceeded normal processing timeframes (which classifies it as overage) as of October 26, 2024. Among individual returns, unprocessed international amended returns and carryback claims totaled 223,000, with 68 percent of the inventory at least 120 days old.<sup>50</sup> Among business returns, 76 percent of the over 1.7 million unprocessed amended returns in inventory were at least 120 days old.<sup>51</sup>

A significant portion of the Total Unprocessed Accounts Management Inventory from 2021 forward result from Employee Retention Credit (ERC) claims that business taxpayers primarily claimed on amended Forms 941. The backlog of ERC claims is also a significant factor in the percentage classified as overage. As of October 26, 2024, the IRS still had nearly 1.2 million ERC claims in its Accounts Management inventory, as it implemented a moratorium on processing ERC claims on September 14, 2023 that nearly halted ERC processing for a year – and about 98 percent of these claims were over 120 days old.<sup>52</sup>

**FIGURE 2.2.3, Unprocessed Amended Returns, Correspondence, and Accounts Management Cases, CYs 2020–2024 Through October 26, 2024<sup>53</sup>**

Inventory Type	12/26/2020	12/25/2021	12/31/2022	12/30/2023	10/26/2024
Unprocessed Correspondence and Accounts Management Cases (Requests for Account Adjustments)	3.2 mil	5.5 mil	4.9 mil	5.0 mil	4.1 mil
Unprocessed Accounts Management Amended Returns (Individual and Business)	0.8 mil	2.5 mil	1.3 mil	2.0 mil	2.3 mil
<b>Total Unprocessed Accounts Management Inventory</b>	<b>4.0 mil</b>	<b>8.0 mil</b>	<b>6.2 mil</b>	<b>7.0 mil</b>	<b>6.4 mil</b>
Percentage of Unprocessed Inventory Classified as Overage	44.6%	60.3%	49.7%	63.2%	72.2%

48 IRS, Pub. 5426, Taxpayer First Act Report to Congress (Jan. 2021), <https://www.irs.gov/pub/irs-pdf/p5426.pdf>.

49 IRS, Taxpayer Services At-a-Glance (June 25, 2024), <https://www.irs.gov/about-irs/taxpayer-services-at-a-glance>.

50 IRS, AMIR, National Inventory Age Report (week ending Oct. 26, 2024).

51 *Id.*

52 IRS, Accounts Management, Research, Analysis and Data Reports, COVID Business Credits (week ending Oct. 26, 2024). For more information on the ERC, see Most Serious Problem: *Employee Retention Credit: IRS Processing Delays Are Resulting in Uncertainty and Are Harming and Frustrating Business Owners*, *supra*.

53 IRS, Accounts Management Inventory Report (AMIR), National Inventory Age Report (weeks ending Dec. 26, 2020; Dec. 25, 2021; Dec. 31, 2022; Dec. 30, 2023; Oct. 26, 2024). Amended returns in this table include Forms 940-X, 941-X, 1120-X, 1040-X, and carryback claims on Forms 1139 and 1045.

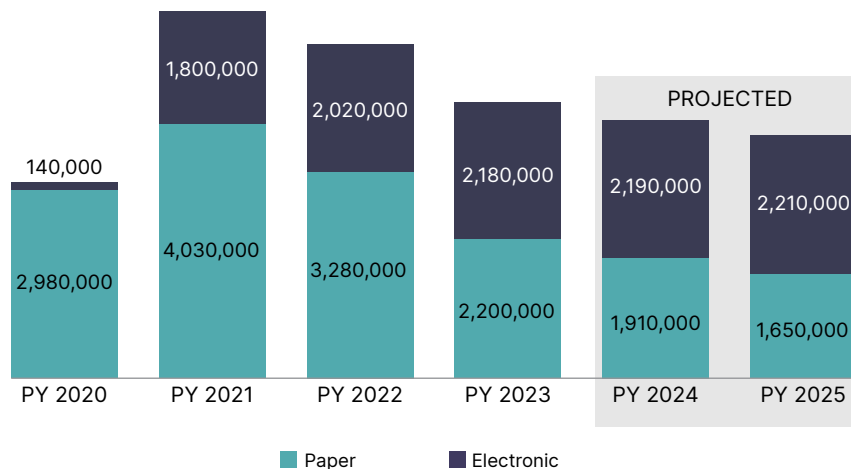
**Automated Processing of Amended Returns Would Dramatically Reduce Processing Delays and Simplify Amendments for Taxpayers**

When new tax information becomes available or tax law changes require a change to a tax position (or provide a path to a more advantageous position), the IRS expects taxpayers to recognize this and potentially file an amended return. As shown in Figure 2.2.4, taxpayers filed nearly 4.4 million Form 1040-X amended returns in processing year (PY) 2023.<sup>54</sup> Of those amended returns, taxpayers e-filed 2.2 million.<sup>55</sup> However, unlike e-filing an original Form 1040, the IRS does not automate the processing of an amended return. It digitizes those returns filed on paper via scanning, but it does not capture the data systemically. Whether taxpayers file Form 1040-X on paper or electronically, processing amended returns requires manual screening, research, and adjustment processes through the IRS Integrated Data Retrieval System. Employees must follow Internal Revenue Manual guidance and perform numerous manual steps before making any necessary adjustments to the taxpayer’s account. Additionally, handoffs between business functions create redundant reviews of case information and further delays in processing. This is not a transparent process, leaving taxpayers wondering why amended returns take so long and where their amended return is in the process.

Since 2022, the IRS has begun each filing season with an inventory of over one million unprocessed amended returns and ended each filing season with over two million unprocessed amended returns.<sup>56</sup> Forms 1040-X and 941-X represent more than 99 percent of the amended returns workload. Of the millions of amended returns processed annually, Forms 1040-X can range from 70-90 percent of that population, with Forms 941-X the remaining 10-30 percent.<sup>57</sup> As shown in Figure 2.2.4, taxpayers filed more than half of Forms 1040-X on paper in PYs 2020 to 2023. Taxpayers filing these amended returns typically wait extended periods for the IRS to process their refunds, with the average refund processing time going beyond 120 days. For instance, the IRS took an average of 132 days to process refunds on Form 1040-X amended returns filed in CY 2023.<sup>58</sup>

**FIGURE 2.2.4<sup>59</sup>**

**Form 1040 Amended Return Volumes, PYs 2020-2025**



54 IRS, Return Modifications Enterprise Strategy Commissioner Briefing (July 15, 2024) (on file with TAS).

55 *Id.*

56 IRS, AMIR, National Inventory Age Report (weeks ending Dec. 25, 2021; Dec. 31, 2022; Dec. 30, 2023); IRS, AMIR, National Inventory Age Report (weeks ending Apr. 23, 2022; Apr. 22, 2023; Apr. 20, 2024).

57 IRS, Return Modifications Enterprise Strategy Commissioner Briefing (July 15, 2024) (on file with TAS).

58 IRS, CDW, IMF (Oct. 2024).

59 IRS, Return Modifications Enterprise Strategy Commissioner Briefing (July 15, 2024) (on file with TAS).



Delays in processing amended returns and associated refunds can impact individual taxpayers who rely on refunds to pay necessary living expenses and lead to financial difficulties for businesses relying on refunds for the payment of operating expenses, affecting their *rights to be informed, to finality, and to quality service*.<sup>60</sup>

As shown in Figure 2.2.5, refund delays have a costly ramification for the government. Based on average processing timeframes and refund amounts, delays in processing amended Forms 1040, 1120, and 941 filed in CY 2023 resulted in the IRS paying an estimated \$573 million in additional interest.<sup>61</sup>

**FIGURE 2.2.5, Refund Processing and Interest for Forms 1040-X, 941-X, and 1120-X Filed in CY 2023<sup>62</sup>**

Return Type	Volume of Returns Processed	Volume of Refunds Issued	Processing Timeframe in Days (Mean)	Total Refund Amount	Estimated Interest Due to Processing Delays
Form 1040-X	3.7 mil	1.9 mil	132	\$9.6 bil	\$150.4 mil
Form 941-X	2.4 mil	1.0 mil	147	\$53.9 bil	\$394.9 mil
Form 1120-X	.12 mil	.02 mil	189	\$6.9 bil	\$27.9 mil
<b>Total</b>	<b>6.3 mil</b>	<b>3.0 mil</b>	<b>-</b>	<b>\$70.4 bil</b>	<b>\$573.2 mil</b>

In 2025, the IRS will begin automating the processing of simple amendments, which should allow it to process amendments in four to five days, although issuing a refund may take additional time.<sup>63</sup> This will mark a major step forward and an improvement in the service the IRS provides to taxpayers. The IRS will focus the automation of processing amended returns on three areas over Filing Seasons 2025-2027: improving processing times during Filing Season 2025; expanding digitalization and electronic processing during Filing Season 2026; and enabling return modifications through online accounts in Filing Season 2027.<sup>64</sup>

As part of the project to modernize the processing of amended returns, the IRS has considered leveraging existing e-filing automation. In lieu of filing a Form 1040-X, the IRS could allow a taxpayer to amend their return by simply adding a box to Form 1040 that the taxpayer could check to indicate it is an amended return. The taxpayer would prepare the return as they would an original Form 1040, but with the corrected entries, and file it electronically. The IRS could then process it systemically, eliminating many of the time-consuming processes currently involved in processing a Form 1040-X. This would dramatically reduce processing delays and simplify amendments for taxpayers.

## CONCLUSION AND RECOMMENDATIONS

The modernization and automation of the IRS’s tax processing system is not just an opportunity; it is an imperative to improve tax administration, protect taxpayer rights and provide quality service. By enhancing processing efficiency, improving taxpayer experiences, reducing errors, encouraging compliance, and reducing operational costs, the IRS can position itself as a forward-thinking agency ready to meet the needs of a digital age. The time has come for the IRS to utilize technology to transform its outdated practices into a streamlined, secure, and user-friendly tax system that serves all Americans effectively. The future of tax administration depends on this critical evolution in a safe and secure environment.

60 See Taxpayer Bill of Rights (TBOR), <https://www.taxpayeradvocate.irs.gov/taxpayer-rights> (last visited Nov. 27, 2024). The rights contained in TBOR are also codified in IRC § 7803(a)(3).

61 IRS, CDW, IMF and BMF (Oct. 2024).

62 *Id.* For more information on the ERC, which taxpayers primarily claimed on amended Form 941, see Most Serious Problem: *Employee Retention Credit: IRS Processing Delays Are Resulting in Uncertainty and Are Harming and Frustrating Business Owners, supra.*

63 IRS response to TAS information request (Oct. 8, 2024).

64 IRS, Return Modifications Enterprise Strategy Commissioner Briefing (July 15, 2024) (on file with TAS).



## Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. By the end of FY 2025, ensure Submission Processing's scanning technology captures the same data elements on paper returns as from e-filed returns.
2. Conduct an analysis by the end of FY 2025 to identify the root causes of the missed PCDs and other business measure targets from Filing Seasons 2023 and 2024 and develop an action plan to meet them for the upcoming filing season.
3. Broaden business rules for e-filed returns to accept submissions where they satisfy the *Beard* test and direct them to an appropriate treatment stream for resolving discrepancies by FY 2027.
4. Work with the Social Security Administration to integrate information return documents available in IOLA with e-filing software by FY 2027 and post it by March 1 each year.
5. Add capabilities that allow taxpayers to respond to notices and letters, including uploading documents within IOLA by (or in) FY 2026, and within TaxPro Account and Business Online Account by FY 2027.
6. Upgrade the Where's My Amended Return? tool to allow international taxpayers to use it for any pending amended returns by FY 2026.
7. Revise Form 1040 to add a box indicating it is an amended return and allow taxpayers to file it electronically by FY 2027.

## RESPONSIBLE OFFICIALS

Kenneth Corbin, Chief, Taxpayer Services

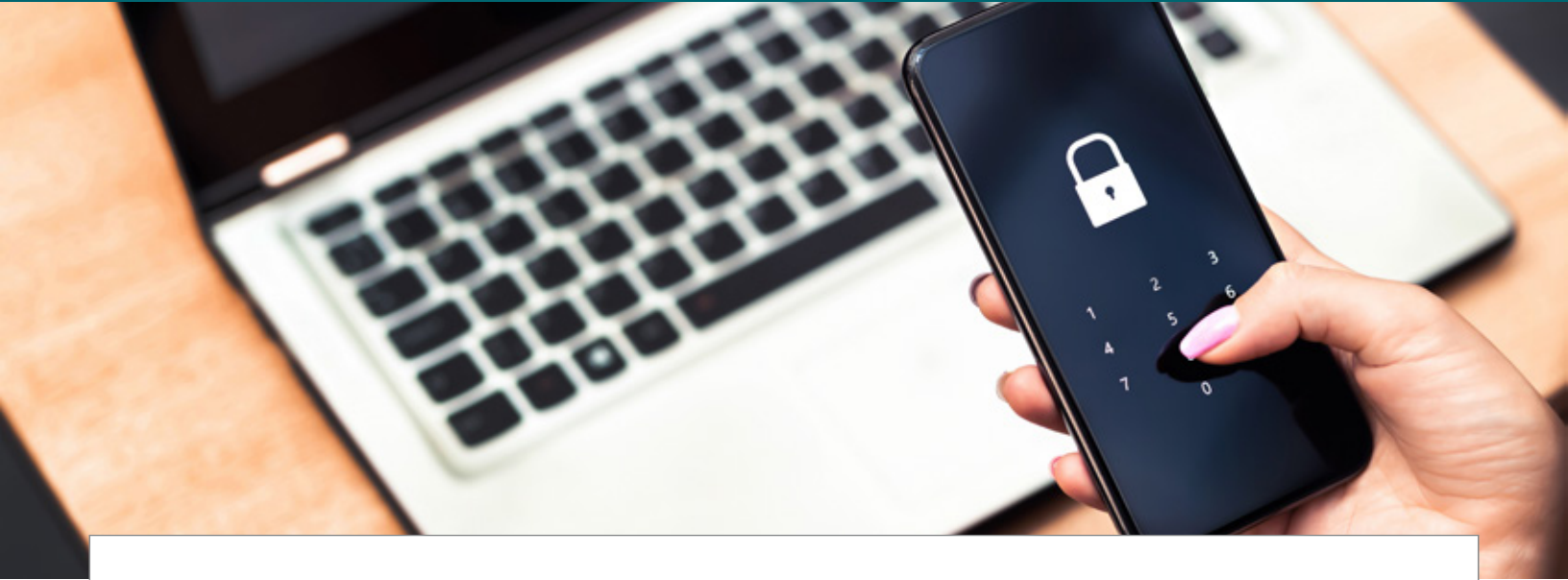
David Padrino, Chief Transformation and Strategy Officer

Fumi Tamaki, Chief Taxpayer Experience Officer

Rajiv Uppal, Chief Information Officer

Joseph Dianto, Director, Customer Account Services

James Fish, Director, Submission Processing



## IDENTITY THEFT

### Processing and Refund Delays Are Harming Victims of Tax-Related Identity Theft

#### WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Once again, we are highlighting the challenges for victims of tax-related identity theft as a most serious problem impacting taxpayers. These victims are still experiencing unconscionable delays waiting for the IRS to process their returns and pay their refunds with no immediate resolution in sight.<sup>1</sup> In the 2023 Annual Report to Congress, we pointed out that the IRS's processing times for resolving Identity Theft Victim Assistance (IDTVA) cases as of the end of fiscal year (FY) 2023 was 556 days, nearly 19 months. At the end of FY 2024, the average processing time to resolve IDTVA cases for many victims jumped to **676 days, or over 22 months** – *almost two years!*<sup>2</sup> Although the IRS is taking steps to try to reduce processing times and appears to have closed more IDTVA cases, those steps have not yet affected the average processing time, which increased by 120 days from FY 2023 to FY 2024. Tax-related identity theft has been more prevalent, but the IRS's outdated practices and prioritization of other service areas are contributing factors to the unprecedented delays victims experience. Until the IRS prioritizes providing timely resolution in identity theft cases, it will continue to burden victims with significant delays that have real financial consequences.

- 1 The focus of this discussion is for Identity Theft Victim Assistance (IDTVA) cases that IRS Accounts Management (AM) works that make up the vast majority of IDTVA cases. These cases include individual IDTVA cases worked in AM but do not include individual IDTVA cases involving a compliance issue worked in AM.
- 2 IRS, Joint Operation Center (JOC), AM IDTVA, Research Analysis and Data (RAD), Correspondence Imaging System (CIS) Closed Case Cycle Time for the Identity Theft Victims Unit Reports, AM Identity Theft, FY 2024. Cycle time begins with IDTVA receipt of the identity theft claim and ends when the IDTVA employee takes action to correct the taxpayer's account.

## EXPLANATION OF THE PROBLEM

Identity thieves and fraudsters engage in an array of harsh scams and deceptive tactics to unjustly enrich themselves by harming other people.<sup>3</sup> Generally, tax-related identity theft is the stealing of another taxpayer's identifying information and using it to file fraudulent tax returns to get fraudulent refunds. Every year, hundreds of thousands of taxpayers are victims of tax-related identity theft, typically through no fault of their own, and they must work with the IRS to fix their tax issues.<sup>4</sup> Most concerning, the IRS burdens identity theft victims with unprecedented delays of nearly two years for it to process their returns and send their refunds.<sup>5</sup> The IRS must prioritize timely resolution of IDTVA cases and allocate resources to help these victims facing unthinkable issues that may also include problems beyond taxes.

## ANALYSIS

Tax-related identity theft has long been a threat to tax administration, as evidenced by its continuous appearance as a most serious problem for victims who are experiencing significant IRS processing and refund delays.<sup>6</sup> Delays got so bad in 2024 that Congress raised concerns regarding the IDTVA case delays, and Commissioner Werfel stated that the IRS plans to study slow IDTVA processing times, challenges, and potential solutions.<sup>7</sup> It is time for the IRS to stop studying the problem and fix it.

The National Taxpayer Advocate appreciates that the IRS has worked on the difficult challenges of trying to keep pace with and prevent illegal activity, but it cannot lose focus on the victims drifting slowly through the IDTVA resolution process with no end in sight. In addition to preventing illegal activity, the IRS must concurrently overcome the IDTVA processing and refund delays, preventing such delays, assisting victims with their challenges, and ensuring timely service for victims consistent with their fundamental taxpayer rights.<sup>8</sup>

<sup>3</sup> See Most Serious Problem: *Tax-Related Scams: More Taxpayers Are Falling Victim to Tax-Related Scams*, *infra*.

<sup>4</sup> IRS, JOC, Customer Account Service (CAS), AM Paper Inventory Reports, IDTVA Report, FY 2024.

<sup>5</sup> IRS, AM IDTVA, RAD, CIS Closed Case Cycle Time for the Identity Theft Victims Unit Reports, FY 2024.

<sup>6</sup> See National Taxpayer Advocate 2023 Annual Report to Congress 78 (Most Serious Problem: *Identity Theft: Lengthy Issue Resolution Delays and Inadequate Notices Burden Taxpayers Who Are Victims of Identity Theft or Whose Returns the IRS Has Flagged for Possible Identity Theft*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23\\_MSP\\_06\\_Identity-Theft.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23_MSP_06_Identity-Theft.pdf); National Taxpayer Advocate 2017 Annual Report to Congress 211 (Most Serious Problem: *Identity Theft: As Tax-Related Identity Theft Schemes Evolve, the IRS Must Continually Assess and Modify Its Victim Assistance Procedures*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC17\\_Volume1\\_MSP\\_19\\_IDTheft.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC17_Volume1_MSP_19_IDTheft.pdf); National Taxpayer Advocate 2015 Annual Report to Congress 180 (Most Serious Problem: *Identity Theft (IDT): The IRS's Procedures for Assisting Victims of IDT, While Improved, Still Impose Excessive Burden and Delay Refunds for Too Long*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC15\\_Volume1\\_MSP\\_16\\_Identity-Theft.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC15_Volume1_MSP_16_Identity-Theft.pdf); National Taxpayer Advocate 2013 Annual Report to Congress 75 (Most Serious Problem: *Identity Theft: The IRS Should Adopt a New Approach to Identity Theft Victim Assistance that Minimizes Burden and Anxiety for Such Taxpayers*), <https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/2013-ARC-VOL-1-S1-MSP-6.pdf>; National Taxpayer Advocate 2012 Annual Report to Congress 42 (Most Serious Problem: *The IRS Has Failed to Provide Effective and Timely Assistance to Victims of Identity Theft*), <https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/Most-Serious-Problems-Identity-Theft.pdf>; National Taxpayer Advocate 2011 Annual Report to Congress 48 (Most Serious Problem: *Tax-Related Identity Theft Continues to Impose Significant Burdens on Taxpayers and the IRS*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/2011\\_ARC\\_MSP-2-6.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/2011_ARC_MSP-2-6.pdf); National Taxpayer Advocate 2009 Annual Report to Congress 307 (Most Serious Problem: *Status Update: IRS's Identity Theft Procedures Require Fine-Tuning*) [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/1\\_09\\_tas\\_arc\\_vol\\_1\\_preface\\_toc\\_msp.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/1_09_tas_arc_vol_1_preface_toc_msp.pdf); National Taxpayer Advocate 2008 Annual Report to Congress 79 (Most Serious Problem: *IRS Process Improvements to Assist Victims of Identity Theft*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/tas\\_arc\\_intro\\_toc\\_msp.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/tas_arc_intro_toc_msp.pdf); National Taxpayer Advocate 2007 Annual Report to Congress 96 (Most Serious Problem: *Identity Theft Procedures*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/arc\\_2007\\_vol\\_1\\_cover\\_msp.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/arc_2007_vol_1_cover_msp.pdf); National Taxpayer Advocate 2005 Annual Report to Congress 180 (Most Serious Problem: *Identity Theft*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/section\\_1.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/section_1.pdf).

<sup>7</sup> *The President's Fiscal Year 2025 IRS Budget and the IRS 2024 Filing Season*, Hearing Before the S. Fin. Comm., 118th Cong. (Apr. 16, 2024) (statement of Danny Werfel, Comm'r, Internal Revenue), <https://www.finance.senate.gov/hearings/the-presidents-fiscal-year-2025-irs-budget-and-the-irs-2024-filing-season>. Benjamin Valdez, *IRS Looking for Solutions to Identity Theft Case Delays*, TAX NOTES, June 14, 2024, <https://www.taxnotes.com/tax-notes-today-federal/fraud-civil-and-criminal/irs-looking-solutions-identity-theft-case-delays/2024/06/14/7kchj>.

<sup>8</sup> See Taxpayer Bill of Rights (TBOR), <https://www.taxpayeradvocate.irs.gov/taxpayer-rights> (last visited Nov. 18, 2024). The rights contained in TBOR are also codified in IRC § 7803(a)(3).

## Identity Theft Fraud Targets and Harms Taxpayers of All Demographics

Taxpayers often become aware they are identity theft victims when they attempt to electronically file a tax return that IRS systems reject because another filing already used their Social Security number. Other times, the IRS discovers and notifies taxpayers of suspected identity theft.<sup>9</sup> Regardless, tax-related identity theft is a stressful and frustrating experience for any victim. In addition to tax issues, identity theft victims may experience challenges in other areas, such as securing a vehicle loan or a home mortgage, and the problem may also impact subsequent tax years.<sup>10</sup>

Processing and refund delays may exacerbate existing hardships and can be powerful enough to cause significant hardships for certain taxpayers, principally low-income taxpayers. In FY 2024, low-income taxpayers comprised an estimated 64 percent of all resolved IDTVA cases and reported experiencing economic burden in about 62 percent of TAS identity theft case receipts.<sup>11</sup>

Stress levels amplify for low-income taxpayers who rely on their refunds to afford basic necessary living expenses. Research shows that food insecurity is one consequence for low-income taxpayers, but refund delays may also jeopardize other critical necessities, such as maintaining housing stability or ensuring they can meet health-related needs.<sup>12</sup> Refund delays may push some low-income taxpayers to seek financial relief while in a position of desperation, potentially increasing the likelihood of further victimization if enticed into a fraud scam or risky lending, such as with car title loans or other short-term, high-interest loans.<sup>13</sup>

Fraud trends reflect that identity thieves will target all taxpayer demographics, including dependents.<sup>14</sup> Recent trends show taxpayers in vulnerable populations such as the elderly, disabled, and students are at increased risk for tax-related identity theft.<sup>15</sup> Taxpayers with higher wealth are emerging targets for identity thieves because they often have complex financial operations to track and keep orderly.<sup>16</sup> The IRS has realized some successes in the realm of fraud and identity theft detection and prevention and should continue the positive momentum of those efforts.<sup>17</sup>

Unfortunately, not all identity theft is preventable, and some taxpayers will become victims who need assistance from the IRS as part of their recovery process. Identity theft victims must rely on the IRS to resolve their tax issues and are at the mercy of the time it takes.

## Victims of Identity Theft Wait an Average of Over 22 Months for the IRS to Process Their Returns and Issue Their Refunds

The IRS must safeguard taxpayer information and detect and prevent fraud while also protecting the taxpayer *rights to quality service, to be informed, and to finality*.<sup>18</sup> The IRS's IDTVA program specializes in serving

9 IRS, IRS Identity Theft Victim Assistance: How It Works, <https://www.irs.gov/individuals/how-irs-id-theft-victim-assistance-works> (last updated Nov. 1, 2024).

10 Internal Revenue Manual (IRM) 21.2.3.5.8(4), Transcripts and Identity Theft (Apr. 29, 2022), [https://www.irs.gov/irm/part21/irm\\_21-002-003r](https://www.irs.gov/irm/part21/irm_21-002-003r). When a taxpayer has an identity theft indicator on their account, they will not be able to have the IRS send tax transcripts directly to a third party, such as a mortgage lender. In these situations, IRS assistants are instructed to inform the taxpayer: "In cases of identity theft, the financial community has been made aware we will only release transcripts to the taxpayer. A mortgage company or lender does not need to obtain the transcript directly from the IRS." See Regulation 12 CFR § 1026.43(c)(4)."

11 IRS, Compliance Data Warehouse (CDW), Individual Master File (IMF) and Individual Returns Transaction File (IRTF) (as of Sept. 2024). Low-income describes taxpayers with an adjusted gross income at or below 250 percent of the Federal Poverty Level in FY 2024. Data obtained from Taxpayer Advocate Management Information System (Nov. 1, 2024).

12 O. Kondratjeva et al., *The Impact of Tax Refund Delays on the Experience of Hardship Among Lower-Income Households*, J. OF CONSUMER POL'Y, 45:239-280 (2022), <https://link.springer.com/content/pdf/10.1007/s10603-021-09501-4.pdf>.

13 See Most Serious Problem: Tax-Related Scams: *More Taxpayers Are Falling Victim to Tax-Related Scams*, *infra*.

14 IRS Criminal Investigation (CI) Division, presentation at IRS Nationwide Tax Forum, Baltimore, Maryland (Aug. 2024); IRM 25.23.2.3.1, Dependent Identity Theft (Feb. 2, 2024), [https://www.irs.gov/irm/part25/irm\\_25-023-002r](https://www.irs.gov/irm/part25/irm_25-023-002r). On November 9, 2020, the IRS began working cases where someone had improperly used a dependent's identity. This opened an entirely new subset of the identity theft population for the IRS to work.

15 IRS CI Division presentation at IRS Nationwide Tax Forum, Baltimore, Maryland (Aug. 2024).

16 *Id.*

17 IRS, Security Summit, <https://www.irs.gov/newsroom/security-summit> (last updated Nov. 22, 2024).

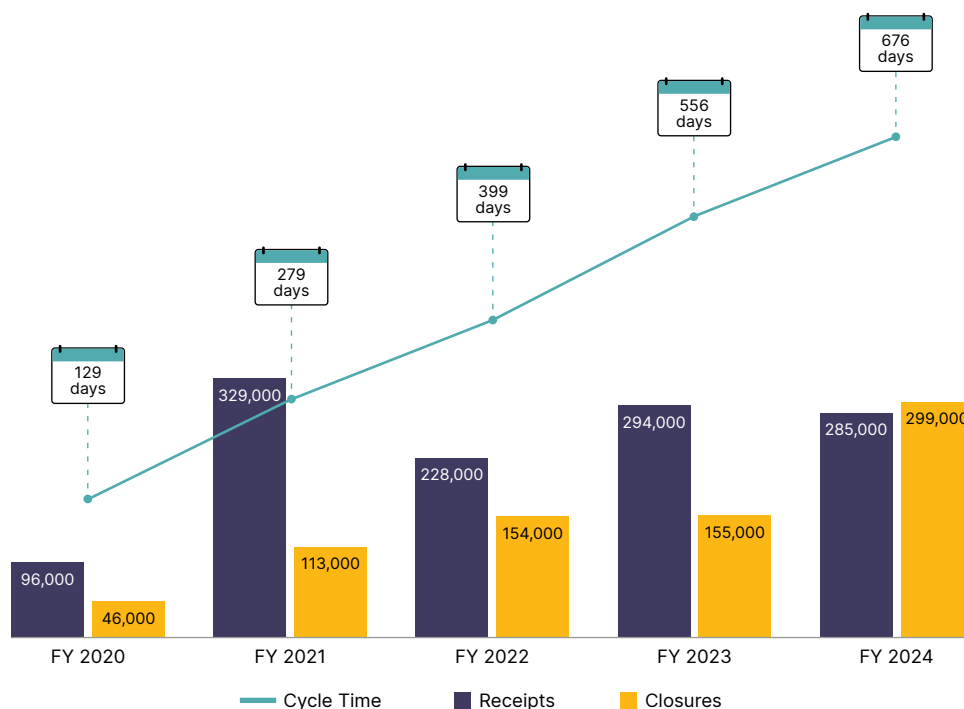
18 See TBOR, <https://www.taxpayeradvocate.irs.gov/taxpayer-rights> (last visited Nov. 18, 2024). The rights contained in TBOR are also codified in IRC § 7803(a)(3).

identity theft victims, but its service has been unacceptably slow, with average cycle times extremely delayed for the last several years, reaching 556 days in 2023.<sup>19</sup> As IDTVA cycle times averaged 676 days in FY 2024, the forecast for identity theft victims waiting for relief has not improved since we identified this Most Serious Problem in our 2023 Annual Report to Congress.<sup>20</sup>

The pandemic exacerbated the problem for the identity theft victims because lucrative pandemic tax relief benefits attracted fraudsters, which resulted in an increase in IDTVA case receipts. Other factors, including IRS policy decisions that shifted priorities and diluted resources, have aggravated the situation.<sup>21</sup> Figure 2.3.1 depicts the yearly increases in Accounts Management (AM) IDTVA case receipts, cycle times, and case closures since FY 2020.

FIGURE 2.3.1<sup>22</sup>

IDTVA Cycle Time, Receipts, and Closures, FYs 2020-2024



19 IRS, IRS Identity Theft Victim Assistance: How It Works, <https://www.irs.gov/individuals/how-irs-id-theft-victim-assistance-works> (last visited Nov. 18, 2024); IRM 25.23.1.3, Identity Theft and the IRS (Oct. 1, 2024), [https://www.irs.gov/irm/part25/irm\\_25-023-001](https://www.irs.gov/irm/part25/irm_25-023-001). The IRS will prioritize and work identity theft cases expeditiously. IRS, JOC, AM IDTVA, RAD, CIS Closed Case Cycle Time for AM Individual Taxpayer Identity Theft Victims Report, FY 2023.

20 Cycle time begins with IDTVA receipt of the identity theft claim and ends when the IDTVA employee takes action to correct the taxpayer's account. The 676-day average time period in FY 2024 is for IDTVA cases AM works that make up the vast majority of IDTVA cases. These cases include individual IDTVA cases worked in AM but do not include individual IDTVA cases involving a compliance issue worked in AM. The time period for all IDTVA cases averaged slightly less at 637 days to reach resolution. IRS, JOC, AM IDTVA, RAD, CIS Closed Case Cycle Time for AM Individual Taxpayer Identity Theft Victims Reports, FY 2024. See also National Taxpayer Advocate 2023 Annual Report to Congress 78 (Most Serious Problem: *Identity Theft: Lengthy Issue Resolution Delays and Inadequate Notices Burden Taxpayers Who Are Victims of Identity Theft or Whose Returns the IRS Has Flagged for Possible Identity Theft*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23\\_MSP\\_06\\_Identity-Theft.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23_MSP_06_Identity-Theft.pdf).

21 See National Taxpayer Advocate 2023 Annual Report to Congress 78 (Most Serious Problem: *Identity Theft: Lengthy Issue Resolution Delays and Inadequate Notices Burden Taxpayers Who Are Victims of Identity Theft or Whose Returns the IRS Has Flagged for Possible Identity Theft*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23\\_MSP\\_06\\_Identity-Theft.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23_MSP_06_Identity-Theft.pdf).

22 IRS, JOC, AM RAD, CIS Closed Case Cycle Time for the AM Individual Taxpayer Identity Theft Victims Unit Reports, FYs 2020-2024. CAS, AM IDT Paper Inventory Report for Individuals, FYs 2020-2024.



Although the IRS's goal is to resolve IDTVA cases in 120 days, it has not done so since 2020, and delays have progressively worsened since then. Presently, the IRS informs identity theft victims that it may take an average of 640 days to resolve their cases.<sup>23</sup> Yet, the average IDTVA cycle time was 676 days in FY 2024, still longer than the IRS tells victims to expect, and over five times the 120-day resolution goal.<sup>24</sup> These delays in IDTVA case cycle times are unacceptable, burden identity theft victims, and are inconsistent with the fundamental rights of taxpayers.<sup>25</sup>

### **Outdated IRS Practices and Technology Contribute to the Significant Delays in Identity Theft Victim Assistance Cases**

Identity theft is a complex issue that often requires IDTVA employees to conduct extensive manual research using an array of systems and tools to put the details of each case puzzle together one piece at a time.<sup>26</sup>

The IDTVA program provided TAS with a casework demonstration that yielded two primary takeaways. First, IDTVA employees must possess a deep breadth of knowledge and skills to navigate and understand how to resolve identity theft cases for victims – we appreciate the complexities of the work. Second, IDTVA employees would benefit if the IRS introduced technologies such as automation to help perform research tasks. Automation could assemble pieces of information into a comprehensive view that would normally require tedious research to reduce the effort and time IDTVA employees spend switching between systems and sifting through documents to find each piece of information.

Despite the limitations of manual research and review, the IRS reports the average case resolution time after assignment to an IDTVA employee is only 30-40 days.<sup>27</sup> It begs the question: what is causing the unprecedented IDTVA delays? When will the IDTVA backlog be eliminated? What, if any, updates will taxpayers receive during the delay?

While a reasonable percentage of identity theft cases are complex in nature and need longer to resolve, factors other than complexity must be contributing to extreme cycle times and refund delays for identity theft victims. In reconciling the average resolution time for IDTVA employees compared to the average IDTVA cycle time, it is apparent the IRS needs to address how it handles IDTVA cases before it assigns them.

### ***The IRS Should Improve Its Inventory Management Strategy and Develop an Initial Screening Process for Identity Theft Victim Assistance Cases***

At the end of FY 2024, the IRS had a total inventory of over 470,000 IDTVA cases to triage.<sup>28</sup> The IRS sends all cases of suspected identity theft to the IDTVA program. As such, IRS employees sometimes mistakenly send cases that do not belong in IDTVA inventory. Because the IRS does not screen cases in IDTVA inventory until after it assigns them to an employee, non-IDTVA cases that belong elsewhere in the IRS sit undiscovered. Therefore, many cases are likely aged by the time IDTVA employees complete their initial review, harming taxpayers whose cases are delayed solely because of misrouting. At a minimum, the IRS should develop an initial screening process to screen cases prior to loading into the IDTVA case inventory holding queue to enable earlier identification and routing of non-identity theft cases to the correct IRS destination. Under the current practice of screening cases only upon assignment to an employee, these erroneously routed cases sit unworked unnecessarily and inflate IDTVA inventory.

23 IRM 25.23.2.2.3, IDT Case Processing Time Frames (July 16, 2024), [https://www.irs.gov/irm/part25/irm\\_25-023-002r](https://www.irs.gov/irm/part25/irm_25-023-002r).

24 IRS, JOC, AM IDTVA, RAD, CIS Closed Case Cycle Time for AM Individual Taxpayer Identity Theft Victims Reports, FY 2024.

25 See TBOR, <https://www.taxpayeradvocate.irs.gov/taxpayer-rights> (last visited Nov. 18, 2024). The rights contained in TBOR are also codified in IRC § 7803(a)(3).

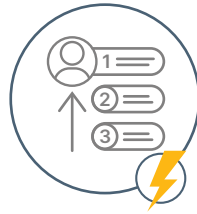
26 The IRS IDTVA program provided a casework demonstration for TAS on September 25, 2024.

27 IRS response to TAS information request (Sept. 10, 2024). The average IDTVA case resolution time after employee assignment includes periods of time that IRS systems require to process updates.

28 IRS, JOC, CAS, AM Identity Theft Paper Inventory Report for Individuals, FY 2024.



The IRS generally treats all IDTVA cases the same by processing them in chronological order of first-in, first-out, though it has recently prioritized some potential refund cases.<sup>29</sup> Processing IDTVA cases in this manner does not consider the actual complexity of respective cases but broadly imposes delays upon IDTVA cases regardless of their true complexity. Some cases may need considerable time to resolve but not every case – and never two years. An initial screening of IDTVA cases would provide insight into their complexity and provide the IRS a better method for assigning cases that considers complexity along with employee skillsets and levels of training.



**The IRS could provide the swiftest possible resolution for victims if it adopted an initial screening process to prioritize cases into categories and assign them to Identity Theft Victim Assistance employees based on their skillsets and training.**

Assigning IDTVA cases based on their complexity will get cases to employees with the proper level of training to resolve them and reduce the likelihood of internal reassignment. For example, IDTVA cases where the IRS issued an erroneous refund are often more challenging, take longer to resolve, and are likely more appropriate for employees with more training.<sup>30</sup> In contrast, the IRS could categorize less complex IDTVA cases as quick closures and resolve them in a timeframe reasonably aligned with their difficulty.

In general, the IRS does not consider the specific hardships, facts, or circumstances of victims in deciding case processing order. The impact of identity theft is harsher for some victims, but they have no way to provide the IRS with critical updates that potentially affect the working priority of their case. The ability to share updates, especially in cases with deteriorating circumstances, would enable the IRS to prioritize cases for identity theft victims experiencing significant hardships and expedite service when appropriate.

The IRS could provide the swiftest possible resolution for victims and mitigate many of the issues that contribute to the unprecedented IDTVA delays if it adopted an initial screening process to review and screen cases, prioritize them into categories, and assign them to IDTVA employees based on their skillsets and levels of training. The IRS appears to be working toward making some of these changes, and TAS strongly encourages it to make every effort to improve its processing of these returns and help these individuals deal with difficult challenges. The National Taxpayer Advocate recommends the IRS continue to prioritize all IDTVA cases with potential refunds as it works through its backlog and consider this change to IDTVA processing procedures going forward.

### ***The IRS Allocates Limited Staffing Resources for the Benefit of Other Taxpayer Service Areas at the Risk of Worsening the Significant Processing Delays for Identity Theft Victims***

To help achieve its goal of achieving an 85 percent Level of Service (LOS) on its toll-free phone lines during the 2023 filing season, the IRS temporarily siphoned IDTVA employees from working identity theft cases over to answering phone calls.<sup>31</sup> Despite unconscionable delays in IDTVA processing, the IRS again made

29 IRM 25.23.4, IDTVA Paper Process (Sept. 5, 2024), [https://www.irs.gov/irm/part25/irm\\_25-023-004r](https://www.irs.gov/irm/part25/irm_25-023-004r). Email from IRS Senior Advisor to the Chief, Taxpayer Services (Nov. 4, 2024) (on file with TAS) (providing a statement regarding identity theft case inventory updates).

30 IRS response to TAS information request (Sept. 10, 2024).

31 IRS response to TAS information request (Sept. 10, 2024). TAS continues to advocate for the IRS to adopt a more comprehensive measure for phone service. See Most Serious Problem: *IRS Service: Taxpayer Service Is Often Not Timely or Adequate*, *infra*. The IRS's formula for determining LOS is more complex than just number of calls received divided by number of calls answered. The LOS formula is: (Assistor Calls Answered + Automated Calls Answered (Info Messages)) divided by (Assistor Calls Answered + Automated Calls Answered (Info Messages) + Emergency Closed + Secondary Abandons + (Add either Calculated Busy Signal or Network Incompletes) + (Add either Calculated Network Disconnects or Total Disconnects)).

the business decision to siphon IDTVA employees from casework to answer phones during the 2024 filing season.<sup>32</sup> Staffing and training have been major problems for the IRS, and the IDTVA program is not immune to the effects of employee turnover.<sup>33</sup> In total, the IRS lost 552 IDTVA employees to attrition in FYs 2023 and 2024.<sup>34</sup> During the same time, it hired 663 new IDTVA employees.<sup>35</sup>

When the IRS loses trained employees, it must expend time and resources to hire and train new employees. In general, training IDTVA employees to work identity theft cases is often a multiyear process, and full scope training does not begin until year three.<sup>36</sup> Given the staffing turnover and the amount of time it takes to train new employees, the IDTVA program needs all its resources dedicated to reducing delays for victims; the IRS should prioritize this work over answering the general phone lines.

TAS agrees the IRS should improve the timeliness and quality of taxpayer service provided on its phone lines but not at the detriment of IDTVA case processing and identity theft victims. The IRS should maintain IDTVA employees on IDTVA casework until it significantly reduces average cycle times to a reasonable level of 90 days or fewer.<sup>37</sup>

### ***The IRS Makes Temporary Changes to Prioritize Resolving Identity Theft Victim Assistance Cases That Show Potential Refunds for Victims***

In October, the IRS briefed TAS on the corrective actions it has planned to speed up processing of overaged IDTVA cases.<sup>38</sup> Based on the briefing, the IRS made an exception to its first-in, first-out processing rule and prioritized roughly 45,000 IDTVA cases where it was holding potential refunds.<sup>39</sup> As of October 16, 2024, the IRS had resolved approximately 28,400 IDTVA cases with potential refunds.<sup>40</sup> The IRS estimates that 7,500 of the IDTVA cases it closed resulted in the issuance of refunds to victims totaling \$45.7 million, an average of over \$6,000 per refund.<sup>41</sup>

The IRS indicates that it intends to keep fully skilled IDTVA employees focused on closing the tens of thousands of cases where victims are awaiting refunds and not reassigning them to work the IRS phone lines. The National Taxpayer Advocate recommends that IDTVA employees stay in the IDTVA unit through the 2025 filing season to work through the backlog and prevent future delays for victims.

The National Taxpayer Advocate understands the IRS must navigate various business challenges and manage competing priorities. There is concern the IRS will again prioritize LOS goals on its phone lines over IDTVA return and refund processing during the upcoming filing season. The IRS needs to balance competing priorities, but these victims have waited long enough, and it should make every effort to expediently assist them. While these changes are a start, the IRS still has a long way to go to eliminate the backlog of IDTVA cases and reduce average cycle times to a reasonable level.

32 IRS response to TAS information request (Sept. 10, 2024). The IRS dually trains IDTVA customer service representatives (CSRs) to answer toll-free applications and process IDTVA paper inventory and generally assigns them to toll-free phones when needed on a last-on, first-off basis.

33 See Most Serious Problem: *IRS Hiring: The IRS's Continuing Challenges in Employee Recruitment, Hiring, Training, and Retention Are Hindering Its Ability to Achieve Transformational Change in Taxpayer Service and Tax Administration*, *infra*. IRS response to TAS information request (Sept. 10, 2024).

34 IRS response to TAS information request (Sept. 10, 2024). The IRS lost 377 IDTVA employees in FY 2023, and the FY 2024 data is current through June 29, 2024.

35 IRS response to TAS information request (Sept. 10, 2024).

36 *Id.* The IRS reported it has 870 technicians and 107 leads who are full scope trained and certified; certification time varies from employee to employee because it requires employees to demonstrate the ability to work independently and correctly close cases without defects.

37 TAS also made this recommendation in 2023. See National Taxpayer Advocate 2023 Annual Report to Congress 78 (Most Serious Problem: *Identity Theft: Lengthy Issue Resolution Delays and Inadequate Notices Burden Taxpayers Who Are Victims of Identity Theft or Whose Returns the IRS Has Flagged for Possible Identity Theft*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23\\_MSP\\_06\\_Identity-Theft.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23_MSP_06_Identity-Theft.pdf).

38 Email from IRS Senior Advisor to the Chief, Taxpayer Services (Nov. 4, 2024) (on file with TAS) (providing a statement regarding identity theft case inventory updates).

39 *Id.*

40 Email from IRS Senior Advisor to the Chief, Taxpayer Services (Nov. 4, 2024) (on file with TAS) (providing a statement regarding identity theft case inventory updates).

41 *Id.*

### *The IRS Should Timely Notify All Identity Theft Victims When It Receives Their Case*

Taxpayers who suspect tax-related identity theft should file Form 14039, Identity Theft Affidavit, with the IRS.<sup>42</sup> The timely acknowledgment of identity theft claims informs affected taxpayers and their appointed representatives about the status of their case, what to expect, and any required follow-up actions. Presently, IRS processes for sending acknowledgment letters in identity theft claims are inconsistent and differ based on how taxpayers filed the claims.

The IRS systemically sends acknowledgment letters to victims when they file their identity theft affidavit with their tax return.<sup>43</sup> Identity theft affidavits taxpayers send directly to the IDTVA unit are acknowledged differently.<sup>44</sup> IRS procedures provide that it does not send acknowledgment letters to victims until the IDTVA unit determines they are an identity theft victim; it does not send a letter if it resolves the case within 30 days of assignment.<sup>45</sup> It is concerning that as of November 8, 2024, the IRS was processing identity theft affidavit forms it received in August 2023.<sup>46</sup>

Considering the delays in assigning IDTVA cases, waiting to send acknowledgment letters until the IRS assigns cases and makes an identity theft determination means some victims go through the entirety of their case receiving only one letter from the IRS at the time when it closes their case. As a result, some identity theft victims wait months and possibly years without knowing the status of claims or even whether the IRS received it.

Timely acknowledgment and updates give victims valuable assurance that the IRS received their identity theft claim, reduces costly follow-up activities by taxpayers and their representatives, and protects the taxpayer *rights to quality service* and *to be informed*.<sup>47</sup> For many victims, the unknown is just as difficult as the theft itself.

### **Victims of Tax-Related Identity Theft Are Often Without Important Safeguards Until the IRS Finally Resolves Their Case**

An overlooked element of IDTVA acknowledgment letters is the information it provides victims about obtaining an Identity Protection (IP) PIN. An IP PIN is a secret number known only by the IRS and the taxpayer, and it serves as an added protection when filing a return.<sup>48</sup> Though taxpayers can independently request an IP PIN from the IRS, the IRS automatically assigns IP PINs to protect verified tax-related identity theft victims. But it does not do so until after it resolves their case.<sup>49</sup> Because the IRS does not screen IDTVA cases earlier, it cannot issue IP PINs sooner, leaving these vulnerable victims unprotected from further harm.

Although taxpayers can enroll in the IP PIN program at any time, victims should not have to self-enroll because of IRS delays. A better approach may be for the IRS to research and determine the validity of identity theft claims during its new initial screening process so it can timely send IDTVA acknowledgment letters and lock in IP PIN

42 IRS, IRS Identity Theft Victim Assistance: How It Works, <https://www.irs.gov/individuals/how-irs-id-theft-victim-assistance-works> (last visited Nov. 1, 2024). Taxpayers may also submit the form at <https://www.irs.gov/dmaf/form/f14039> (last updated Nov. 18, 2024).

43 IRM 25.23.2.3, Identity Theft Claims – General Guidelines, (Oct. 1, 2024), [https://www.irs.gov/irm/part25/irm\\_25-023-002r](https://www.irs.gov/irm/part25/irm_25-023-002r). IRM 25.23.4.18.1, General IDTVA Letter Procedures (Oct. 1, 2024), [https://www.irs.gov/irm/part25/irm\\_25-023-004r](https://www.irs.gov/irm/part25/irm_25-023-004r).

44 IRM 25.23.2.3, Identity Theft Claims – General Guidelines, (Oct. 1, 2024), [https://www.irs.gov/irm/part25/irm\\_25-023-002r](https://www.irs.gov/irm/part25/irm_25-023-002r). IRM 25.23.4.18.1, General IDTVA Letter Procedures (Oct. 1, 2024), [https://www.irs.gov/irm/part25/irm\\_25-023-004r](https://www.irs.gov/irm/part25/irm_25-023-004r).

45 IRM 25.23.2.3, Identity Theft Claims – General Guidelines, (Oct. 1, 2024), [https://www.irs.gov/irm/part25/irm\\_25-023-002r](https://www.irs.gov/irm/part25/irm_25-023-002r). IRM 25.23.4.18.1, General IDTVA Letter Procedures (Oct. 1, 2024), [https://www.irs.gov/irm/part25/irm\\_25-023-004r](https://www.irs.gov/irm/part25/irm_25-023-004r). The IRS provides exceptions for sending IDTVA acknowledgment letters, e.g., if the assigned CSR can close the case within 30 days of receipt or in certain situations when the IRS issued a systemically generated acknowledgment letter. The IRS will consider the closing letter the acknowledgment letter; thus, it does not require a separate acknowledgment letter.

46 IRS, Processing Status for Other Tax Forms, <https://www.irs.gov/help/processing-status-for-tax-forms> (last updated Nov. 15, 2024).

47 See TBOR, <https://www.taxpayeradvocate.irs.gov/taxpayer-rights> (last visited Nov. 18, 2024). The rights contained in TBOR are also codified in IRC § 7803(a)(3).

48 IRS, Get an Identity Protection PIN (IP PIN), <https://www.irs.gov/identity-theft-fraud-scams/get-an-identity-protection-pin> (last visited Nov. 18, 2024).

49 IRM 25.23.2.9.1.1, Automatic Enrollment in the IP PIN Program (Feb. 2, 2023), [https://www.irs.gov/irm/part25/irm\\_25-023-002r](https://www.irs.gov/irm/part25/irm_25-023-002r). The IRS annually updates IP PINs with new numbers.

protection for confirmed victims.<sup>50</sup> It is understandable that the IRS does not want to improperly correspond with the bad actor, but it could start with a subset of lower risk taxpayers with identity theft claims, such as those without a recent address change and whose previously used address matches the Form 14039 they submitted.

### **The IRS Must Balance Its Identity Theft Prevention Efforts to Minimize Burden on Innocent Taxpayers Who File Legitimate Tax Returns But Trigger Fraud Filters**

Inherently, effective tax administration requires the IRS to balance many aspects that it knows will affect taxpayer rights. For identity theft, it must balance the value of preventing fraudulent refunds for identity thieves against the impact on the rights of taxpayers who filed legitimate returns. To detect and prevent fraud, the IRS programs its systems with filters and a scoring model that screen returns to determine whether it should route a return through normal processing channels or reroute it to the IRS's Taxpayer Protection Program (TPP) when it suspects identity theft.<sup>51</sup>

The IRS flagged nearly 1.9 million returns as potential identity theft fraud in filing season 2024 as of February 29, 2024.<sup>52</sup> When TPP identifies a suspicious return, the IRS sends the taxpayer a letter notifying them of the potential issue and the steps they need to take.<sup>53</sup> The IRS sends each selected taxpayer only one letter, typically with instructions on the specific actions taxpayers must take to complete an online identity authentication and return verification process before the IRS will process their return and issue their refund.<sup>54</sup> The IRS presumes that returns selected to the TPP are fraudulent until the taxpayer completes the identity authentication and return verification process with the IRS. However, barriers in the TPP authentication and verification process often cause delays for taxpayers with legitimate returns. Taxpayers have struggled to authenticate their identity by calling, as the IRS mustered only a 20 percent LOS on its TPP phone lines in FY 2024.<sup>55</sup>

There are also flaws with how the IRS mails the TPP authentication letter to taxpayers. Sending taxpayers only one authentication letter to the address on the TPP-selected return is problematic because the address comes from the return the IRS suspects to involve identity theft. The National Taxpayer Advocate questions the "one and done" approach in reaching these taxpayers.<sup>56</sup> Taxpayers must receive that lone letter to even know a potential issue exists, what the issue is, and what actions they may need to take. The IRS receives many TPP letters returned as undeliverable, but it does not track the quantity or conduct any follow-up research to try to locate an accurate address for the taxpayer.<sup>57</sup> Taxpayers who do receive their TPP letter may find both its contents and the required authentication process confusing, delaying their ability to properly respond and consequently, their refunds. The IRS did make notable improvements by adding TPP messaging to its Where's My Refund? tool and a link in IRS Individual Online Account that most taxpayers can use for authentication.<sup>58</sup>

50 Enrollment is permanent for taxpayers the IRS enrolls in the IP PIN program due to tax-related identity theft.

51 IRM 25.25.6.1.7, Taxpayer Protection Program (TPP) Overview (June 24, 2024), [https://www.irs.gov/irm/part25/irm\\_25-025-006r](https://www.irs.gov/irm/part25/irm_25-025-006r). TPP is responsible for identifying potential identity theft cases that the Dependent Database scores using a set of identity theft models; the Return Review Program system selects through filters; or the Return Integrity Verification Operations manually selects.

52 Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2024-408-024, *Interim Results of the 2024 Filing Season 8* (2024), <https://www.tigta.gov/reports/audit/interim-results-2024-filing-season>.

53 The IRS typically sends one of the following letters that instructs the taxpayer as to the specific format they must use to authenticate their identity: either online (Letter 5071C), by phone (Letter 4883C), or in person at a Taxpayer Assistance Center (Letter 5747C).

54 IRS, Letter 5071C, Potential Identity Theft during Original Processing with Online Option (Jan. 3, 2023).

55 The IRS's Levels of Service on its TPP line for FYs 2021, 2022, 2023, 2024 were 13.2, 12.6, 31.0, and 20.2 percent, respectively. IRS, JOC, Snapshot Reports: Product Line Detail (weeks ending Sept. 30, 2021; Sept. 30, 2022; Sept. 30, 2023; Sept. 30, 2024). See Most Serious Problem: *IRS Service: Taxpayer Service Is Often Not Timely or Adequate*, *infra*.

56 For detailed discussion, see Research Report: *Some Legitimate Taxpayers Did Not Receive a Tax Year 2020 Refund Because They Did Not Respond to an IRS Letter Requesting Identity Verification*, *infra*. The study's primary purpose was to determine if legitimate taxpayers are not receiving refunds to which they are entitled due to IRS fraud filters. TAS outreach efforts determined that based on our response rates and analysis, a meaningful percentage of taxpayers selected by identity theft filters who did not timely authenticate their identity with the IRS are indeed legitimate taxpayers.

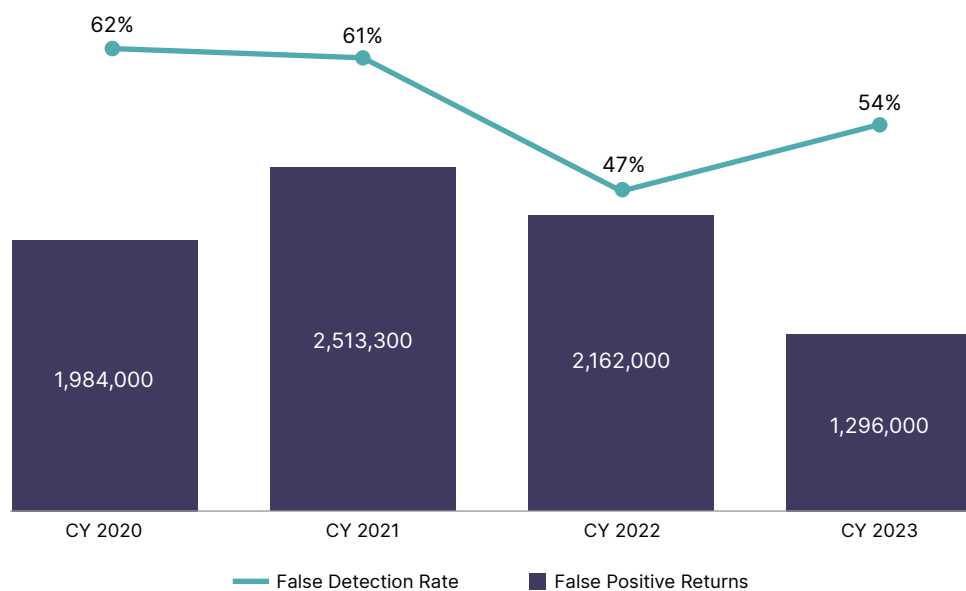
57 IRS response to TAS information request (Sept. 10, 2024).

58 IRS News Release, IR-2024-24, 2024 Tax Filing Season Starts as IRS Begins Accepting Tax Returns Today; Taxpayer Help Expands This Year With More In-Person Hours, Better Service, Improved Tools (Jan. 29, 2024), <https://www.irs.gov/newsroom/2024-tax-filing-season-starts-as-irs-begins-accepting-tax-returns-today-taxpayer-help-expands-this-year-with-more-in-person-hours-better-service-improved-tools>.

While the objective is to prevent fraud, the goal should be to minimize any negative impact to the rights of innocent taxpayers in the process. To minimize potential harm to taxpayer rights, the IRS must operate at an appropriate false detection rate (FDR), which is considered as the acceptable percentage of legitimate returns the IRS’s fraud prevention efforts mistakenly selects to the TPP.<sup>59</sup> For several years the IRS has set its FDR goal well above 50 percent, and it has achieved an FDR below 50 percent only once in the last four years.<sup>60</sup> Recent data shows the FDR was 54 percent in 2023.<sup>61</sup> Figure 2.3.2 shows the TPP false positive volumes and FDR since 2020.

**FIGURE 2.3.2<sup>62</sup>**

**TPP False Detection Rates and False Positives, CYs 2020-2023**



### The IRS, States, and Tax Industry Allies Join Forces to Combat the Axis of Illegal Activity in Taxation

The hostility and sophistication of the methods that identity thieves use to gain access to sensitive information are constantly evolving. About a decade ago, public and private sectors united to form the Security Summit to combat identity theft refund fraud in tax administration.<sup>63</sup> Soon thereafter, the Security Summit developed the Identity Theft Refund Fraud Information Sharing and Analysis Center (ISAC) that enabled alliance members to securely disclose data and cohesively use analytics to strengthen its unified effort.<sup>64</sup>

59 *Id.*

60 IRS, Wage and Investment (W&I) Business Performance Review (BPR) Q3, FY 2023 (Aug. 16, 2023). IRS response to TAS information request (Sept. 10, 2024).

61 IRS response to TAS information request (Sept. 10, 2024). IRS, W&I BPR Q4, FY 2023 (Nov. 20, 2023); IRS W&I BPR Q3, FY 2023 (Aug. 16, 2023); IRS, W&I BPR Q4, FY 2022 (Nov. 21, 2022).

62 IRS, W&I BPR Q4, FY 2023 (Nov. 20, 2023); IRS, W&I BPR Q3, FY 2023 (Aug. 16, 2023); IRS, W&I BPR Q4, FY 2022 (Nov. 21, 2022). Due to the discontinuation of the W&I BPR, the data for calendar year 2023 reflects the planned FDR and number of false positive returns as of the November 20, 2023, BPR.

63 IRS, Security Summit, <https://www.irs.gov/newsroom/security-summit> (last updated July 10, 2024).

64 ISAC, Identity Theft Refund Fraud ISAC 2023 Annual Report 2, 4 (Dec. 4, 2023), <https://www.irs.gov/pub/newsroom/2023-isac-annual-report.pdf>.



The Security Summit holds an annual National Tax Security Awareness Week prior to filing season to educate taxpayers and tax professionals about security, identity theft, and tax scams.<sup>65</sup> In 2024, the Security Summit held its ninth annual summer awareness campaign series, Protect Your Clients; Protect Yourself, designed to educate tax professionals about security concerns and defensive countermeasures.<sup>66</sup> The series provides tax professionals the opportunity to learn from security industry experts, news releases with best practice tips, and guidance to help ensure a secure practice. For example, federal law requires tax professionals to maintain a written information security plan (WISP) and likely can benefit from the updated WISP template, which was a key focus of the most recent awareness campaign.<sup>67</sup>

TAS applauds the IRS, industry, and tax professionals for being strong players in the fight against identity theft fraud and implementing its security-related outreach efforts on the frontlines of tax administration. It truly takes a village.

### Identity Theft Fraudsters Are Brought to Justice

The Department of Justice (DOJ) Tax Division prosecutes civil and criminal violations of the tax code.<sup>68</sup> Depending on the extent of the fraud involved, it may take law enforcement years to detect, track, and bring an identity thief to justice. The following are just some of the many examples that demonstrate the scope and seriousness of identity theft in recent years:

- In 2022, a federal jury delivered a guilty verdict to identity thieves who stole and used taxpayer identifying information to file fraudulent tax returns that claimed refunds totaling more than \$12 million.<sup>69</sup>
- In 2023, identity thieves, including one who owned a tax preparation business, pled guilty to a scheme of filing fraudulent tax returns that used the stolen identities of paying clients and other innocent victims.<sup>70</sup>
- In 2024, identity thieves pled guilty to an illegal scheme that targeted and stole information from victims and their authorized representatives. The identity thieves then posed as legitimate representatives to gain control over taxpayer records. They filed more than 370 fraudulent tax returns to claim refunds totaling over \$111 million.<sup>71</sup>
- In 2024, an identity thief who stole a former coworker's identity and used it in all facets of life for over 30 years pled guilty. The fraudster severely harmed the victim, who was falsely imprisoned as the alleged identity thief when the actual thief pretended to be the victim to authorities.<sup>72</sup>

It is generally accepted that it may take years to bring an identity thief to justice under the law. However, the IRS taking years to resolve IDTVA cases for taxpayer victims is wholly unacceptable.

65 IRS, National Tax Security Awareness Week 2023, <https://www.irs.gov/newsroom/national-tax-security-awareness-week-2023> (last updated Oct. 15, 2024).

66 IRS, Protect Your Clients; Protect Yourself – Summer 2024, <https://www.irs.gov/tax-professionals/protect-your-clients-protect-yourself-summer-2024> (last updated Aug. 27, 2024).

67 IRS, Pub. 5708, Creating a Written Information Security Plan for your Tax & Accounting Practice (Aug. 2024), <https://www.irs.gov/pub/irs-pdf/p5708.pdf>.

68 Dep't of Justice (DOJ) Tax Division, <https://www.justice.gov/tax> (last visited Nov. 18, 2024).

69 DOJ, Press Release, *Atlanta Man Convicted of Laundering Over \$12 Million in Stolen Identity Tax Refund Fraud Scheme* (Nov. 7, 2022), <https://www.justice.gov/usao-ndga/pr/atlanta-man-convicted-laundering-over-12-million-stolen-identity-tax-refund-fraud>.

70 DOJ, Press Release, *Owner of D.C.-Area Tax Preparation Business Pleads Guilty to Tax Refund Fraud Scheme* (Apr. 3, 2023), <https://www.justice.gov/opa/pr/owner-dc-area-tax-preparation-business-pleads-guilty-tax-refund-fraud-scheme>.

71 DOJ, Press Release, *Final Texas Defendants Plead Guilty to Conspiracy to Commit Mail and Wire Fraud and Aggravated Identity Theft* (May 30, 2024), <https://www.justice.gov/opa/pr/final-texas-defendants-plead-guilty-conspiracy-commit-mail-and-wire-fraud-and-aggravated>.

72 DOJ, Press Release, *Former Hospital Administrator Pleads Guilty in Identity Theft Scheme That Spanned Three Decades* (Apr. 1, 2024), <https://www.justice.gov/usao-ndia/pr/former-hospital-administrator-pleads-guilty-identity-theft-scheme-spanned-three>.



## CONCLUSION AND RECOMMENDATIONS

Tax-related identity theft is an active threat to tax administration that is difficult to combat, prevent, and detect. The IRS has proactively worked to become more formidable in those areas and has realized success. However, there is no justification for how long the IRS is taking to serve taxpayers who are identity theft victims. It must improve its IDTVA inventory management practices to gain control over outrageous cycle times, especially for victims suffering from refund delays and seeking peace of mind.

### Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Prioritize keeping all IDTVA employees working identity theft cases until the average cycle time for resolving IDTVA cases is less than 90 days.
2. Develop and implement an initial screening process for IDTVA cases to timely review tax account information, categorize and prioritize refund cases for assignment to appropriately trained employees, send timely acknowledgment letters, and quickly forward misrouted cases to the correct IRS Business Operating Division/Function when necessary.
3. Upon receipt of a taxpayer's Form 14039, Identity Theft Affidavit, timely acknowledge receipt of the form and communicate estimated timeframes for case resolution. Consider procedures for providing updates while cases are pending under review.
4. Explore technologies, such as automation or artificial intelligence, and develop tools to improve research capabilities and efficiency for IDTVA employees.
5. Establish hardship criteria for expediting IDTVA cases and provide a reliable way for identity theft victims with significant hardships who meet the criteria to notify the IRS to prioritize work assignment.
6. Conduct an analysis of the accuracy of TPP filters and models and establish a plan to consistently achieve an FDR of 50 percent or less.

### RESPONSIBLE OFFICIAL

Kenneth Corbin, Chief, Taxpayer Services



## IRS SERVICE

### Taxpayer Service Is Often Not Timely or Adequate

#### WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

When taxpayers need assistance from the IRS to meet their filing and payment obligations, many do not receive the quality service that taxpayers and tax professionals need, leading to delays, frustration, and unnecessary costs. Generally, taxpayers obtain service through IRS phone lines, Taxpayer Assistance Centers (TACs), and IRS online accounts and digital services.<sup>1</sup> When taxpayers and tax professionals cannot get answers to their questions, they experience additional burdens or an inability to resolve their issues, violating their *rights to quality service* and *to be informed*.<sup>2</sup>

#### EXPLANATION OF THE PROBLEM

When taxpayers need assistance from the IRS, they expect and deserve quality service using their chosen communication method without suffering delays, long wait times, or the inability to get answers. Taxpayers also reasonably expect that at the end of their interaction with the IRS, the IRS will have answered their questions or resolved their issue.<sup>3</sup>

The Taxpayer First Act requires the IRS to develop and implement strategies to improve the service experience for taxpayers.<sup>4</sup> During fiscal year (FY) 2024, the IRS has continued to use the multiyear funding to hire added customer service representatives (CSRs), maintain the Level of Service (LOS) for its telephone lines, provide additional TAC hours and services, and expand online account functionality.<sup>5</sup>

1 See IRS, Service to Taxpayers (Aug. 19, 2024), <https://www.irs.gov/statistics/service-to-taxpayers>.

2 See Taxpayer Bill of Rights (TBOR), <https://www.taxpayeradvocate.irs.gov/taxpayer-rights> (last visited Sept. 16, 2024). The rights contained in TBOR are also codified in IRC § 7803(a)(3).

3 *Id.*

4 Taxpayer First Act, Pub. L. No. 116-25, 133 Stat. 981 (2019).

5 An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14, Pub. L. No. 117-169, 136 Stat. 1818 (2022) [hereinafter referred to as the "Inflation Reduction Act"].

*Phone Service:* The IRS continues to rely on its LOS measurement to evaluate performance and staff its Accounts Management (AM) phone lines. However, the IRS’s filing season 85 percent LOS goal does not accurately determine how to best provide quality service and paints a picture far more optimistic than the reality of the taxpayer experience when calling for assistance.<sup>6</sup> A high LOS requires CSRs to idly wait for the phone to ring. The time of CSRs is better spent working paper processing to provide better overall service to taxpayers.

The LOS measure does not reflect the actual taxpayer experience or account for the service provided on all IRS phone lines. During the filing season, the IRS does not fully staff or prioritize the Taxpayer Protection Program and Automated Collection System phone lines as they fall outside the AM LOS measurement. As a result, some of the most vulnerable taxpayers, facing issues like identity theft and economic hardship, experienced some of the worst serviced phone lines.<sup>7</sup> The IRS must do a better job of identifying and implementing a balanced suite of performance measures to ensure it effectively calculates its success across all phone lines rather than stretching to meet the LOS goal that does not accurately measure the taxpayer experience or other downstream processing consequences.

But there is good news. During the 2024 filing season, the IRS achieved an 88 percent LOS on its AM phone lines.<sup>8</sup> In the past two years, it hired approximately 20,000 Taxpayer Services employees.<sup>9</sup> These accomplishments were a welcome relief for taxpayers. However, even with the improved service, the IRS needs to do more to meet taxpayer demands, including measuring phone service through a comprehensive measure that includes the quality of the caller’s experience and allows the IRS to apply a more balanced allocation of resources.

*Taxpayer Assistance Centers:* Taxpayers may wish to seek face-to-face assistance at a TAC, but not all taxpayers live near a TAC location or are available during the traditional TAC operating hours.<sup>10</sup> The IRS has continued to offer extended weekday and Saturday hours during parts of the year, Community Assistance Visits (CAVs), and virtual options. During the 2024 filing season, the IRS provided over 11,000 extended hours on Tuesdays and Thursdays and assisted 21,531 taxpayers at Saturday events.<sup>11</sup> This is a win for taxpayers. The IRS needs to continue expanding these programs, which would provide a great benefit to more taxpayers.

*Online Accounts:* By using online accounts and digital services, taxpayers and practitioners may get answers to their questions or resolve issues quickly at the most convenient time for them. The IRS continued to expand the functionality of online accounts and digital services in FY 2024, but it still has work to do to provide taxpayers with robust services and functionality that incorporate the Office of Management and Budget (OMB) digital-first public experience best practices.<sup>12</sup>

Despite continued improvements during FY 2024, taxpayers still lack quality service due to the following issues:

- The IRS continues to depend and focus on an LOS measurement that does not reflect the taxpayer experience, including whether the IRS resolved the taxpayer’s issue.

6 See Dep’t of the Treasury, Press Release, *IRS Achieves Key Paperless Processing Initiative Goal, Outlines Improvements for Filing Season 2024* (Nov. 7, 2023), <https://home.treasury.gov/news/press-releases/jy1890>.

7 See Figure 2.4.3, *infra*.

8 See Dep’t of the Treasury, Press Release, *Filing Season 2024 Report Card: IRS Builds on 2023 Progress, Delivers World Class Customer Service Thanks to Inflation Reduction Act* (Apr. 15, 2024), <https://home.treasury.gov/news/press-releases/jy2250>.

9 Email from Taxpayer Services Division (Nov. 14, 2024) (on file with TAS).

10 TACs generally operate Monday through Friday, 8 a.m. to 4:30 p.m.

11 IRS response to TAS information request (Sept. 26, 2024); IRS News Release, *IR 2024-223, Inflation Reduction Act 2-Year Report Card: IRS Continues to Improve Service, Modernize Online Tools, Pursue Complex Taxpayer Arrangements Used to Evade Taxes* (Aug. 23, 2024), <https://www.irs.gov/newsroom/inflation-reduction-act-2-year-report-card-irs-continues-to-improve-service-modernize-online-tools-pursue-complex-taxpayer-arrangements-used-to-evade-taxes>.

12 OMB Memorandum No. M-23-22, *Delivering a Digital-First Public Experience* (Sept. 22, 2023) (implementing the 21st Century Integrated Digital Experience Act, Pub. L. No. 115-336, 132 Stat. 5025 (2018)), <https://www.whitehouse.gov/omb/management/ofcio/delivering-a-digital-first-public-experience/>.

- The IRS allocates resources to achieve an LOS measure on certain phone lines while excluding other key phone lines from the calculation, causing a low LOS for some of the most vulnerable taxpayers.
- The IRS does not sufficiently staff many TACs or offer sufficient options and times for taxpayers to use their services.
- The IRS needs to continue expanding online account and digital services functionality to provide taxpayers and practitioners with additional choices for service and robust self-service tools.
- In FY 2025, the IRS is likely to exhaust the multiyear service funding needed to support its current LOS goals and efforts to continue improving the taxpayer service experience.

As the IRS continues to transform, it must develop measures of service that reflect the actual taxpayer experience across all communication methods and improve the experience for all taxpayers.<sup>13</sup>

## ANALYSIS

### The IRS Level of Service Measure Does Not Accurately Reflect the Taxpayer Experience Resulting in an Imbalance of Resources

In FY 2024, phone service continued to improve, but throughout the year, it still did not provide the service experience that many taxpayers and tax professionals needed. The National Taxpayer Advocate commends the IRS for improving its phone service, reallocating resources to assist taxpayers, hiring more CSRs, providing callback service options, and reducing the wait times to save taxpayers time and reduce frustration. But even with these changes, the IRS still has more work to do as tens of millions of taxpayers rely on the ability to speak with CSRs to meet their tax obligations.

**FIGURE 2.4.1, IRS Enterprise Phone Lines: Call Attempts, Calls Answered, Calls Answered by an IRS Employee, and LOS, FYs 2020-2024<sup>14</sup>**

IRS Enterprise Phone Lines	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Enterprise Net Call Attempts	100.5 mil	281.7 mil	173.3 mil	92.9 mil	98.9 mil
Enterprise Calls Answered	47.5 mil	72.2 mil	51.8 mil	44.3 mil	48.8 mil
Enterprise Calls Answered by a Live Assistor	24.2 mil (24%)	32.0 mil (11%)	21.7 mil (13%)	27.3 mil (29%)	30.5 mil (31%)
Enterprise Calls Answered With Automated Assistance	23%	14%	17%	18%	18%
Enterprise LOS	51%	21%	21%	51%	56%

13 For similar recommendations, see IRS, Pub. 5316, Internal Revenue Service Advisory Council Public Report 36-41 (Nov. 2024), <https://www.irs.gov/pub/irs-pdf/p5316.pdf>.

14 IRS, Joint Operations Center (JOC), Snapshot Reports: Enterprise Snapshot, Enterprise Total (weeks ending Sept. 30, 2020; Sept. 30, 2021; Sept. 30, 2022; Sept. 30, 2023; Sept. 30, 2024). All numbers in Figure 2.4.1 are rounded. "Percentage of Enterprise Calls Answered by a Live Assistor" is calculated by dividing "Enterprise Calls Answered by a Live Assistor" by "Enterprise Net Call Attempts." "Percentage of Enterprise Calls Answered With Automated Assistance" is calculated by dividing ("Net Calls Answered" minus "Enterprise Calls Answered by a Live Assistor") by "Enterprise Net Call Attempts." "Enterprise Net Call Attempts" refers to all calls across all IRS phone lines. The IRS's formula for determining LOS is more complex than just number of calls received divided by number of calls answered. The LOS formula is: (Assistor Calls Answered + Info Messages) divided by (Assistor Calls Answered + Info Messages + Emergency Closed + Secondary Abandons) + (Add either Calculated Busy Signal or Network Incompletes) + (Add either Calculated Network Disconnects or Total Disconnects).

TAS has advocated and continues to advocate for the IRS to adopt a more comprehensive measure of phone service that includes the quality of the caller's experience and allows the IRS to apply a more balanced allocation of resources.<sup>15</sup> The LOS measure is overly technical and does not present an accurate picture of what taxpayers – or tax professionals – experience or should experience.

OMB guidance identifies seven factors that affect how customers experience federal services, none of which the IRS address in its LOS measure. The LOS fails to measure several industry standard factors such as:

- Satisfaction (whether the customer is satisfied with service received);<sup>16</sup>
- Confidence/trust (whether the interaction increased confidence in the federal program/service or the ability to serve its relevant population);
- Effectiveness/quality (whether the customer's need was addressed or issue was resolved);
- Ease/simplicity (whether it was easy to complete what needed to be done);
- Efficiency/speed (whether it took a reasonable amount of time to complete what needed to be done);
- Equity/transparency (whether the customer was treated fairly/understood what was being asked of the customer throughout the process); and
- Employee helpfulness (whether employees the customer interacted with were helpful).<sup>17</sup>

Many observers assume the LOS reflects the percentage of calls the IRS answers, but it does not. On its AM phone lines, the IRS achieved an 88 percent LOS during the 2024 filing season and 65 percent for FY 2024.<sup>18</sup> But looking at the AM phone lines data using a different metric, only 32 percent of callers reached an IRS employee during the filing season, and only 29 percent of callers reached an IRS employee during the full fiscal year.<sup>19</sup> Using this data as a measurement is not as favorable.

- 
- 15 See National Taxpayer Advocate 2023 Annual Report to Congress 48 (Most Serious Problem: *Telephone and In-Person Service: Despite Improvements in Its Service Levels, the IRS Still Does Not Provide Taxpayers and Tax Professionals With Adequate, Timely Telephone and In-Person Service*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23\\_MSP\\_04\\_Telephone-InPerson.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23_MSP_04_Telephone-InPerson.pdf). See also IRS, Pub. 5316, Internal Revenue Service Advisory Council Public Report 36-41 (Nov. 2024), <https://www.irs.gov/pub/irs-pdf/p5316.pdf>. It is our understanding that Taxpayer Services is exploring alternative measurements for phone service, which the National Taxpayer Advocate is appreciative of and strongly encourages.
- 16 After a taxpayer speaks with a CSR, the IRS selects and invites some callers to participate in customer satisfaction and experience surveys. IRS responses to TAS information requests (Sept. 26, 2024; Oct. 10, 2024). However, the IRS fails to use the responses in phone performance calculations, take corrective actions to improve the taxpayer experience, or provide information when it takes any corrective actions. Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2024-100-053, *Customer Satisfaction Survey Results Are Not Used Effectively to Improve Taxpayer Services* (2024), <https://www.tigta.gov/sites/default/files/reports/2024-09/2024100053fr.pdf>.
- 17 See OMB Circular No. A-11, *Preparation, Submission, and Execution of the Budget*, Section 280 (July 10, 2020), <https://trumpadministration.archives.performance.gov/cx/assets/files/a11-280.pdf>. OMB developed this list of factors using leading practices from the private and public sectors, including Fortune 500 companies, market research institutions, and international organizations. The IRS has aligned transactional surveys, such as the AM toll-free survey, to these standards since 2020; however, the IRS lacks transparency about how the results of these surveys guide operational planning, as it places the majority of focus on LOS measures. The IRS also specifies that it will measure phone calls for Timeliness, Professionalism, Customer Accuracy, Regulatory/Statutory Accuracy, and Procedural Accuracy. See Internal Revenue Manual (IRM) 21.10.1.4.1.1, Accounts Phones Measure (Oct. 1, 2006), [https://www.irs.gov/irm/part21/irm\\_21-010-001](https://www.irs.gov/irm/part21/irm_21-010-001).
- 18 Approximately 35 phone lines reside within the IRS's Taxpayer Services AM function, which typically accounted for about 71 percent of the total call volume the IRS received during the 2024 filing season. IRS, JOC, Snapshot Reports: Enterprise Snapshot, Enterprise Total (week ending Apr. 20, 2024); IRS, JOC, Snapshot Reports, AM (week ending Apr. 20, 2024); IRS, JOC, Snapshot Reports: Enterprise Snapshot, Enterprise Total (week ending Sept. 30, 2024); IRS, JOC, Snapshot Reports, AM (week ending Sept. 30, 2024). The IRS's formula for determining LOS is more complex than just number of calls received divided by number of calls answered. The LOS formula is: (Assistor Calls Answered + Automated Calls Answered (Info Messages)) divided by (Assistor Calls Answered + Automated Calls Answered (Info Messages) + Emergency Closed + Secondary Abandons + (Add either Calculated Busy Signal or Network Incompletes) + (Add either Calculated Network Disconnects or Total Disconnects)). Net AM attempts divided by net Enterprise attempts for the 2024 filing season produced a percentage of 71. Net AM attempts divided by net Enterprise attempts for FY 2024 produced a percentage of 70. PP denotes Filing Season or Planning Period data, and FY denotes fiscal year data.
- 19 IRS, JOC, Snapshot Reports: Enterprise Snapshot, AM (week ending Apr. 20, 2024); IRS, JOC, Snapshot Reports: Enterprise Snapshot, AM (week ending Sept. 30, 2024). PP denotes Filing Season or Planning Period data, and FY denotes fiscal year data.

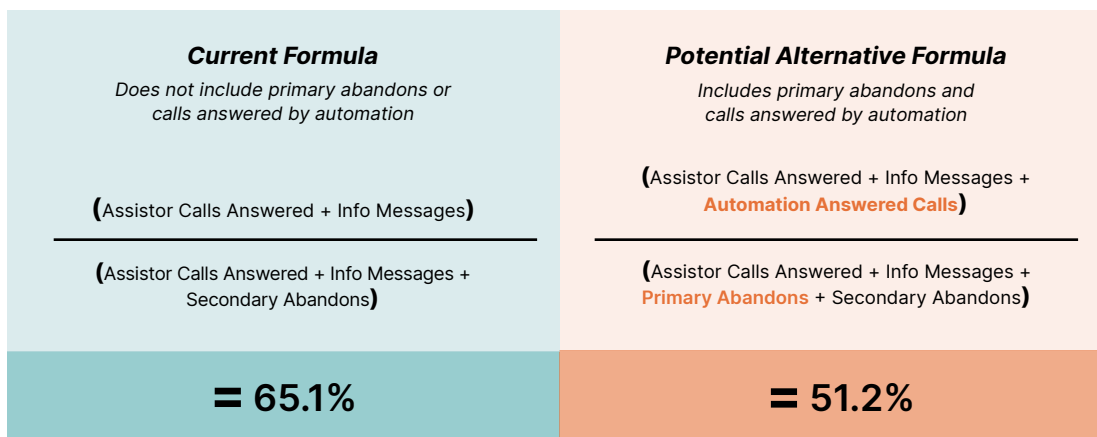


Some of the shortcomings of the LOS are the exclusion of:

- **Non-AM phone line calls.** The publicized LOS measure only includes calls routed to the AM function. But the IRS routed almost one-third of its callers during FY 2024 to its compliance lines and other functions, and those callers often faced longer hold times and lower levels of service.<sup>20</sup> Some of these non-AM phone lines, like the Taxpayer Protection Program and Automated Collection System lines, provide services to vulnerable taxpayers but experience unacceptably low levels of service.
- **Automated responses.** The IRS phone tree automatically routes many taxpayer calls for automated responses, and it excludes those calls from the LOS calculation.<sup>21</sup>
- **Taxpayer hang-ups.** If a taxpayer calls the IRS to discuss an account problem and hangs up before it places them into a calling queue, the IRS does not count the call, referred to as a primary abandoned call. But how many taxpayers calling the IRS suddenly change their minds and decide they do not need to speak with the IRS after all? They generally hang up because something about the process – perhaps the waiting time, perhaps the phone tree, perhaps the routing to an automated response – deters them from proceeding.
- **Disconnects.** If the CSR disconnects the call once speaking to a taxpayer, regardless of whether they resolved the issue, the IRS considers it a completed call that can positively impact LOS.

FIGURE 2.4.2

**Current Level of Service Formula vs. Potential Alternative Formula for AM Lines, FY 2024**



*Note: The denominator for both formulas also includes a calculation of calls that represent network busies and emergency disconnects.*

The IRS’s LOS measure tells taxpayers nothing about how many calls the IRS transferred, whether taxpayers had to call multiple times, whether the IRS disconnected them, and whether the taxpayer ultimately received the information they needed. The LOS does not measure whether CSRs:

- Provide dependable and accurate assistance;
- Provide responsive assistance;
- Provide knowledgeable and courteous service; or
- Have the ability or training to answer taxpayer questions at the initial point of contact.

20 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Enterprise Total (week ending Sept. 30, 2024); IRS, JOC, Snapshot Reports, AM (week ending Sept. 30, 2024).

21 The IRS measures automated calls through LOS (Automation). See IRS, Pub. 55-B, IRS Data Book, 2023, at 24 (Apr. 2024), <https://www.irs.gov/pub/irs-pdf/p55b.pdf>.



Any measure of IRS phone performance should focus on whether the IRS has resolved the taxpayer’s problem or addressed their questions. Private sector phone call centers often use measures like “first-contact resolution” to assess whether they have resolved the caller’s problem or whether it remains outstanding. The IRS should measure outcomes at least as much as it measures the ability to get through on phone lines. TAS is conducting a study to ascertain the metrics businesses and other government agencies with large call centers use to evaluate their performance and will share our observations with the IRS. The National Taxpayer Advocate was delighted to learn that the Taxpayer Services Division is evaluating other possible measurements to improve service, and we encourage the IRS to continue down this path and eliminate its dependency on the LOS calculation.

The LOS is neither a good measurement of service nor an accurate reflection of the taxpayer experience, and more importantly, it is not a good allocation of resources. To achieve high phone service levels, the IRS must staff its phone lines so there are enough CSRs to handle calls during peak periods.<sup>22</sup> But that means that during quiet periods, CSRs are sitting around waiting for the phone to ring. During the 2024 filing season, CSRs spent 1.1 million hours (29 percent of their time) waiting to receive calls.<sup>23</sup> The IRS cannot easily switch employees between answering phones and processing correspondence, so over-assigning employees to staff the phone lines meant that CSRs were not processing taxpayer correspondence. The IRS needs to look toward developing and measuring the taxpayer experience rather than utilizing a measure that merely checks a box and balance those results with the resources utilized and percentage of CSR idle time.

### Non-Accounts Management Lines Receive Low Levels of Service

The IRS’s LOS only includes phone calls directed to the AM phone lines – not calls directed to other lines.<sup>24</sup> Approximately 35 of the IRS’s phone lines fall under the AM umbrella, but the IRS has dozens of other phone lines that do not.<sup>25</sup> The IRS should report the demand across all of its phone lines rather than using an arbitrary LOS for only AM phone lines and prioritize those phone lines that provide vital assistance.

In FY 2024, non-AM lines accounted for about 30 percent of the IRS total call volume.<sup>26</sup> Non-AM phone line callers include:

- Taxpayers calling the Installment Agreement/Balance Due line to make payment arrangements or otherwise resolve their tax debts (48 percent LOS);
- Taxpayers calling the Taxpayer Protection Program line because IRS filters suspended the processing of their returns on suspicion of identity theft, and they needed to authenticate their identities to receive their refunds (20 percent LOS);<sup>27</sup> and
- Taxpayers calling the IRS’s Automated Collection System line after receiving a collection notice who may need urgent help getting a levy released to alleviate an economic hardship (51 percent LOS).

22 The IRS uses historic phone data to calculate and predict demand based upon the time of year and assigns CSRs accordingly. But the IRS cannot predict demand based upon unexpected changes in the tax law, impact of disasters, or other unusual events.

23 IRS, Ready Agent Hours Report (Jan. 1, 2024, through Apr. 20, 2024).

24 See National Taxpayer Advocate 2023 Annual Report to Congress 48 (Most Serious Problem: *Telephone and In-Person Service: Despite Improvements in Its Service Levels, the IRS Still Does Not Provide Taxpayers and Tax Professionals With Adequate, Timely Telephone and In-Person Service*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23\\_MSP\\_04\\_Telephone-InPerson.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23_MSP_04_Telephone-InPerson.pdf).

25 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Enterprise Total (week ending Sept. 30, 2024); IRS, JOC, Snapshot Reports, AM (week ending Sept. 30, 2024). See National Taxpayer Advocate 2023 Annual Report to Congress 52 (Most Serious Problem: *Telephone and In-Person Service: Despite Improvements in Its Service Levels, the IRS Still Does Not Provide Taxpayers and Tax Professionals With Adequate, Timely Telephone and In-Person Service*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23\\_MSP\\_04\\_Telephone-InPerson.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23_MSP_04_Telephone-InPerson.pdf).

26 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Enterprise Total (week ending Sept. 30, 2024); IRS, JOC, Snapshot Reports, AM (week ending Sept. 30, 2024).

27 For a discussion of the burdens taxpayers experiencing identity theft issues encounter, see Most Serious Problem: *Identity Theft: Processing and Refund Delays Are Harming Victims of Tax-Related Identity Theft*, *supra*.

To meet the LOS benchmarks, the IRS has allocated resources to answer calls on AM lines while neglecting calls to non-AM phone lines not included in its LOS calculation. In concept, the IRS should give many non-AM calls higher priority than AM calls. Taxpayers calling the Taxpayer Protection Program and Automated Collection System lines are some of the most vulnerable taxpayers facing issues like identity theft and economic hardship, yet as shown in Figure 2.4.3, they experienced some of the worst Levels of Service. One would expect a caller facing eviction because an IRS levy is leaving her unable to pay her rent to receive priority over a caller requesting an account transcript. Taxpayers waiting for their refunds but needing to verify their identity because of potential identity theft should receive priority. However, because the IRS measures its LOS goals solely on the percentage of calls it answers on AM phone lines, the agency places a lower priority on staffing calls that do not factor into the LOS calculation. The IRS must change its metrics, analyze taxpayer needs, and prioritize staffing to serve taxpayers facing collection or fraud issues.

**FIGURE 2.4.3, Top Ten IRS Enterprise Phone Lines by Volume of Calls, FY 2024<sup>28</sup>**

IRS Phone Lines	Calls Received	Calls Answered by an IRS Employee	Level of Service	Time on Hold	Accounts Management Line
Individual Income Tax Services (Primary Line for Individual Taxpayers)	15.7 mil	4.5 mil (29%)	68%	5 min	Yes
Installment Agreement/Balance Due	11.0 mil	5.3 mil (48%)	48%	23 min	No
Business and Specialty Tax Services	6.3 mil	3.0 mil (47%)	67%	9 min	Yes
Taxpayer Protection Program	6.2 mil	1.2 mil (19%)	20%	20 min	No
Automated Collection System	6.0 mil	1.5 mil (25%)	51%	8 min	No
Taxpayer Assistance Center Appointment	5.9 mil	2.5 mil (43%)	69%	8 min	Yes
Practitioner Priority Service	5.2 mil	2.8 mil (55%)	60%	12 min	Yes
Wage and Investment Individual Master File Customer Response	3.3 mil	755,000 (23%)	56%	10 min	Yes
Refund Call Back	2.8 mil	642,000 (23%)	69%	6 min	Yes
Wage and Investment Identity Theft	2.0 mil	834,000 (41%)	74%	5 min	Yes

**The Implementation of Taxpayer 360 Has the Potential to Dramatically Improve Service**

The National Taxpayer Advocate would like to express her gratitude to the people who work as CSRs. It is a difficult but vital job and places many demands on them throughout the day. One of the challenges CSRs face when answering taxpayers’ questions is that CSRs need to navigate through several databases or systems to get a complete view of the caller’s tax account. As CSRs navigate several screens for the same taxpayer, they must memorize (or take notes) and synthesize this information to provide the taxpayer a complete answer to their inquiry and often must place the caller on hold for five to seven minutes while they navigate the system.<sup>29</sup> This process results in delays and frustration for both CSRs and taxpayers and creates a risk that the CSR will miss something in the taxpayer history that is relevant to their inquiry. Following a call, the CSR must close the applications and start over before initiating the next call. The available technology adds to the inefficiencies and challenges of the job.

28 IRS, JOC, Snapshot Reports: Product Line Detail (Enterprise Performance) (week ending Sept. 30, 2024). All numbers in Figure 2.4.3 are rounded. TAS excluded automated phone lines from this list. In March 2024, the IRS launched the Conversational 1040 voicebot on this line to better route callers to the most appropriately trained CSRs. As of August 17, 2024, the Conversational 1040 voicebot has received over 1.8 million calls. IRS response to TAS information request (Sept. 26, 2024).

29 IRM 21.1.1.4, Communication Skills (Oct. 1, 2024), [https://www.irs.gov/irm/part21/irm\\_21-001-001](https://www.irs.gov/irm/part21/irm_21-001-001).

In 2024, the IRS began developing Taxpayer 360, a transformation effort to modernize the IRS's systems into a single, streamlined interface.<sup>30</sup> For example, the effort will give live assistors a personalized, one-stop access point to the right data, at the right time, in the right format. Taxpayer 360 will empower employees to improve service delivery, leading to shorter hold times, and allow assistors to support more taxpayers in the same amount of time. In FY 2025, Taxpayer 360 will stand up a prototype with limited functionality. As the program matures, the interface will expand to all calls and paper processing functions.<sup>31</sup>

In Taxpayer 360, embedded artificial intelligence (AI) bots can assist live staff in finding relevant information or automating tasks such as capturing call notes while still ensuring a trained employee is validating the information AI provides before sharing with a taxpayer. Ultimately, this collaboration between AI bots and staff will improve service speed and accuracy to ensure a smoother experience for taxpayers. This approach presents a broader transformation within the IRS where cutting-edge technology like AI works together with skilled employees to enhance taxpayer services across the board.<sup>32</sup>

Taxpayer 360 is a potential game-changer for taxpayers, IRS employees, and tax administration. TAS is hopeful that the implementation of Taxpayer 360 will lead to faster service with the ability for CSRs to have key information at their fingertips and result in an increase in more first-contact issue resolutions.

### **Taxpayer Assistance Centers Must Continue Expansion of Extended Hours and Virtual Service Programs to Adequately Serve Taxpayers**

TACs provide face-to-face taxpayer assistance throughout the country, the District of Columbia, and Puerto Rico, generally during normal business hours.<sup>33</sup> The IRS has 363 TAC locations, but the IRS had to close 17 of those locations during the 2024 filing season due to staffing shortages. Additionally, 155 TACs only have one or two employees, so the operating status varies based on staff availability.<sup>34</sup> This is an improvement from prior years, but the IRS needs to continue bringing in additional resources to assist taxpayers.

The IRS trains TAC employees to provide select services, including account inquiries, basic tax law assistance, acceptance of payments, and identity authentication for potential victims of tax-related identity theft. Like CSRs, it takes several years of training and experience for a TAC employee to effectively provide the quality of service taxpayers need. In FY 2024, three of the top five issues TACs handled related to identity theft and identity verification.<sup>35</sup>

30 IRS, Pub. 3744-A, Inflation Reduction Act (IRA) Strategic Operating Plan Annual Update Supplement (Apr. 2024), <https://www.irs.gov/pub/irs-pdf/p3744a.pdf>.

31 Email from the Transformation & Strategy Office (Oct. 22, 2024) (on file with TAS). Taxpayer 360 will provide an integrated view of taxpayer accounts and data. CSRs will have the ability to view taxpayer accounts holistically without toggling and memorizing material input in different systems, thus allowing them to perform their jobs more efficiently. They will be able to view information previously collected in authenticated voicebots or chatbots, which eliminates the need for taxpayers to repeat information when they reach a CSR. IRS response to TAS information request (Sept. 19, 2024). The IRS anticipates launching the ability to view authenticated chatbot and voicebot interactions in Taxpayer 360 during FY 2026 but cautioned that budget issues could push this beyond FY 2026. IRS response to TAS information request (Sept. 19, 2024).

32 Email from the Transformation & Strategy Office (Oct. 22, 2024) (on file with TAS).

33 IRS, Taxpayer Assistance Center Office Locator, <https://apps.irs.gov/app/office-locator/> (last visited Sept. 9, 2024).

34 TIGTA, Ref. No. 2024-408-024, *Interim Results of the 2024 Filing Season 12* (2024), <https://www.tigta.gov/sites/default/files/reports/2024-05/2024408024fr.pdf>. When TACs cancel these appointments, taxpayers struggle to make new appointments. TIGTA, Ref. No. 2024-100-022, *Taxpayer Assistance Centers Generally Provided Quality Service, But Additional Actions Are Needed to Reduce Taxpayer Burden* (2024), <https://www.tigta.gov/sites/default/files/reports/2024-05/2024100022fr.pdf>.

35 IRS response to TAS information request (Oct. 28, 2024).

Due to the importance of providing face-to-face assistance to taxpayers outside of normal business hours, the IRS again offered Saturday service at certain TACs one Saturday a month during the filing season to allow taxpayers to receive assistance without an appointment.<sup>36</sup> In total, 111 TAC locations held 250 Saturday events, serving over 21,000 taxpayers.<sup>37</sup> Although a relief for many taxpayers in the available cities, taxpayers experienced difficulties due to the high volume of participants and the IRS's inability to timely service these taxpayers, leaving some frustrated.<sup>38</sup> Saturday walk-in events relied on IRS employees who volunteered to meet staffing needs and thus did not have consistent hours or frequency.<sup>39</sup> During the 2024 filing season, 242 TAC locations also provided over 11,000 extended hours on Tuesdays and Thursdays.<sup>40</sup>

Tens of thousands of taxpayers continue to use TAC service outside of traditional business hours. However, the IRS scheduled Saturday events only once a month at a limited number of TACs during the filing season, ended extended Tuesday and Thursday hours on April 16, and relied on IRS volunteers to meet staffing needs. Considering most taxpayers work during traditional TAC business hours, the IRS should provide year-round Saturday and extended hour TAC service to taxpayers.

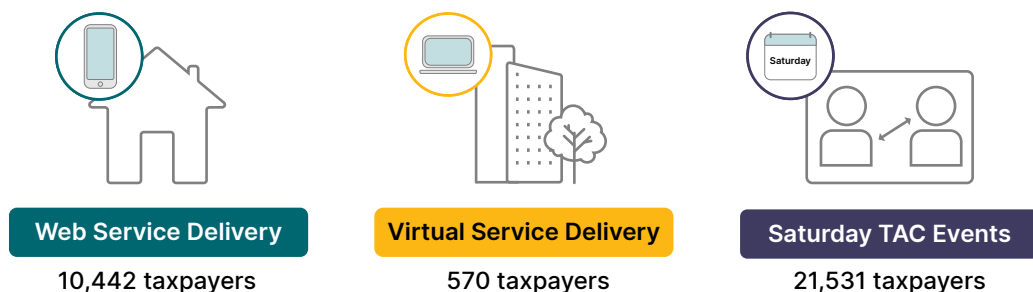
In addition to in-person service, another assistance option the IRS has begun offering is virtual TAC service through Virtual Service Delivery (VSD) and Web Service Delivery (WebSD). These programs allow taxpayers to interact with IRS employees in real time. When using VSD, a taxpayer receives face-to-face assistance via IRS-provided videoconferencing equipment at a community partner location, such as a public library. The IRS offers VSD at 13 locations and held 166 virtual appointments in FY 2022, 191 appointments in FY 2023, and 570 appointments in FY 2024.<sup>41</sup> While VSD requires taxpayers to travel, WebSD allows taxpayers to meet with IRS representatives in a virtual conference using personal devices. The IRS assisted 7,239 taxpayers through WebSD in FY 2022; 11,102 in FY 2023; and 10,442 in FY 2024, far more than VSD during the same period.<sup>42</sup> WebSD Pilot 2 virtual conferencing began March 15, 2022, and ended

- 
- 36 IRS News Release, IR-2024-99, Special Saturday Help Available April 13 at 70 IRS Taxpayer Assistance Centers Nationwide; No Appointment Needed (Apr. 8, 2024), <https://www.irs.gov/newsroom/special-saturday-help-available-april-13-at-70-irs-taxpayer-assistance-centers-nationwide-no-appointment-needed>; IRS News Release, IR-2024-66, IRS Continues Special Saturday Hours on March 16 for Face-to-Face Help at 70 Taxpayer Assistance Centers (Mar. 7, 2024), <https://www.irs.gov/newsroom/irs-continues-special-saturday-hours-on-march-16-for-face-to-face-help-at-70-taxpayer-assistance-centers>; IRS News Release, IR-2024-41, IRS Announces Special Saturday Hours for Face-to-Face Help; More Than 50 Taxpayer Assistance Centers Open Across the Nation (Feb. 14, 2024), <https://www.irs.gov/newsroom/irs-announces-special-saturday-hours-for-face-to-face-help-more-than-50-taxpayer-assistance-centers-open-across-the-nation>. The Department of the Treasury had set a Filing Season 2024 goal of increasing the hours available at TACs by more than 8,500 hours. Dep't of the Treasury, Press Release, IRS Achieves Key Paperless Processing Initiative Goal, Outlines Improvements for Filing Season 2024 (Nov. 7, 2023), <https://home.treasury.gov/news/press-releases/jy1890>.
- 37 IRS response to TAS information request (Sept. 26, 2024).
- 38 See TIGTA, Ref. No. 2024-100-022, *Taxpayer Assistance Centers Generally Provided Quality Service, But Additional Actions Are Needed to Reduce Taxpayer Burden* (2024), <https://www.tigta.gov/sites/default/files/reports/2024-05/2024100022fr.pdf> (during the 2023 filing season TIGTA conducted unannounced visits; auditors experienced long waits and high customer demand); Jacqueline Francis, *Hundreds Frustrated by Line at Tax Assistance Event Held by IRS in Detroit*, [CLICK ON DETROIT](https://www.clickondetroit.com/news/local/2024/04/14/hundreds-frustrated-by-line-at-tax-assistance-event-held-by-irs-in-detroit/), Apr. 14, 2024, <https://www.clickondetroit.com/news/local/2024/04/14/hundreds-frustrated-by-line-at-tax-assistance-event-held-by-irs-in-detroit/>; Luke Jones, *Long Lines After IRS Tax Center in Southwest Houston Abruptly Closes*, ABC 13 Eyewitness News, Apr. 15, 2024, <https://abc13.com/tax-day-2024-irs-taxpayer-assistance-center-line-filing-deadline-closed-in-southwest-houston/14659329/>; Eric Mock, *Hundreds Turned Away From Atlanta IRS office as Tax Deadline Looms*, Fox 5 Atlanta, Apr. 15, 2024, <https://www.fox5atlanta.com/news/atlanta-irs-office-tax-deadline-hundreds-turned-away>; TIGTA, Ref. No. 2024-408-024, *Interim Results of the 2024 Filing Season 12-13* (2024), <https://www.tigta.gov/sites/default/files/reports/2024-05/2024408024fr.pdf>.
- 39 See TIGTA, Ref. No. 2024-100-022, *Taxpayer Assistance Centers Generally Provided Quality Service, But Additional Actions Are Needed to Reduce Taxpayer Burden* (2024), <https://www.tigta.gov/sites/default/files/reports/2024-05/2024100022fr.pdf>.
- 40 IRS response to TAS information request (Sept. 26, 2024); IRS News Release, IR 2024-223, *Inflation Reduction Act 2-Year Report Card: IRS Continues to Improve Service, Modernize Online Tools, Pursue Complex Taxpayer Arrangements Used to Evade Taxes* (Aug. 23, 2024), <https://www.irs.gov/newsroom/inflation-reduction-act-2-year-report-card-irs-continues-to-improve-service-modernize-online-tools-pursue-complex-taxpayer-arrangements-used-to-evade-taxes>; IRS News Release, IR-2024-25, *IRS Offering Additional Time at Taxpayer Assistance Centers for Face-to-Face Help* (Jan. 29, 2024), <https://www.irs.gov/newsroom/irs-offering-additional-time-at-taxpayer-assistance-centers-for-face-to-face-help/>.
- 41 IRS response to TAS information request (Sept. 26, 2024); IRS response to TAS information request (Oct. 28, 2024); TIGTA, Ref. No. 2024-408-024, *Interim Results of the 2024 Filing Season 13* (2024), <https://www.tigta.gov/sites/default/files/reports/2024-05/2024408024fr.pdf>.
- 42 IRS response to TAS information request (Oct. 28, 2024).

on December 31, 2024.<sup>43</sup> Virtual conferencing allows taxpayers to access TAC services when they cannot visit a TAC office in person. The IRS should continue to offer options for virtual appointments at TACs permanently and should work to increase the public’s awareness of these programs.

**FIGURE 2.4.4<sup>44</sup>**

**Taxpayers Assisted Via Expanded Service Options at TACs, FY 2024**



Following a 2021 National Taxpayer Advocate recommendation, the IRS relaunched its CAV program in June 2023.<sup>45</sup> CAVs act as temporary TACs, providing outreach to underserved communities and taxpayers living in rural communities identified as traditionally underserved, generally in areas over 120 minutes driving distance from the nearest TAC.<sup>46</sup> Generally, pop-up TACs operate for three days to offer walk-in one-on-one assistance to individual and business taxpayers with similar services as TACs.<sup>47</sup> In calendar year (CY) 2023, the IRS offered nine CAV locations that served approximately 119 taxpayers per location.<sup>48</sup> In CY 2024, the IRS offered 11 CAV events, with plans to offer 20 percent more CAV events in CY 2025.<sup>49</sup> Although the number of events may not seem large, the assistance to the vulnerable taxpayers at these events is a huge benefit to those taxpayers.

When selecting locations for CAVs, the IRS considers many factors, including number of Form 1040 filers, number of late-filed or balance due returns, number of identity theft notices, population size of limited English proficiency taxpayers, population size of those self-identifying as belonging to a Native American/ American Indian tribe or an Alaskan Native Corporation, locations with social vulnerability based on

43 IRS response to TAS information request (Sept. 26, 2024); TIGTA, Ref. No. 2024-408-024, *Interim Results of the 2024 Filing Season 13* (2024), <https://www.tigta.gov/sites/default/files/reports/2024-05/2024408024fr.pdf>.  
 44 IRS response to TAS information request (Sept. 26, 2024); IRS response to TAS information request (Oct. 28, 2024).  
 45 TAS Recommendations and IRS Responses, TAS Recommendation 3-6 (2021), <https://www.taxpayeradvocate.irs.gov/news/directory-entry/2021-msp-03-telephone-and-in-person-service/>; National Taxpayer Advocate 2023 Annual Report to Congress 62-63 (Most Serious Problem: *Telephone and In-Person Service: Despite Improvements in Its Service Levels, the IRS Still Does Not Provide Taxpayers and Tax Professionals With Adequate, Timely Telephone and In-Person Service*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23\\_MSP\\_04\\_Telephone-InPerson.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23_MSP_04_Telephone-InPerson.pdf).  
 46 See IRS, Pub. 5426, Taxpayer First Act Report to Congress (Jan. 2021), <https://www.irs.gov/pub/irs-pdf/p5426.pdf>.  
 47 CAVs can assist taxpayers with making payment arrangements but cannot accept payments. IRS News Release, IR-2023-127, IRS Continues Reopening Closed Taxpayer Assistance Centers; Begins Special Series of Community Assistance Visits to Help Taxpayers in 8 States to Expand Service for People Who Aren't Near Agency Offices (July 14, 2023), <https://www.irs.gov/newsroom/irs-continues-reopening-closed-taxpayer-assistance-centers-begins-special-series-of-community-assistance-visits-to-help-taxpayers-in-8-states-to-expand-service-for-people-who-arent-near-agency-offices>. See also TIGTA, Ref. No. 2024-IE-R014, *Opportunities Exist to Improve Taxpayer Service to Underserved, Underrepresented, and Rural Communities 6* (2024), <https://www.tigta.gov/sites/default/files/reports/2024-06/2024ier014fr.pdf>.  
 48 TIGTA, Ref. No. 2024-IE-R014, *Opportunities Exist to Improve Taxpayer Service to Underserved, Underrepresented, and Rural Communities 6* (2024), <https://www.tigta.gov/sites/default/files/reports/2024-06/2024ier014fr.pdf>.  
 49 IRS response to TAS information request (Oct. 28, 2024).



demographic and economic factors, and proximity to current TAC locations.<sup>50</sup> CAVs provide a critical component of the IRS's taxpayer service model by providing access and meeting taxpayers where they are. The IRS should continue to expand its efforts to secure public facilities through partnership with local businesses and city officials and provide frontline assistance to bring in-person service to taxpayers located remotely.

### **Continued Expansion of Online Account and Digital Services Provides Taxpayers and Practitioners With Additional Service Options**

In FY 2024, the IRS continued to expand the functionality of online accounts and available digital services.<sup>51</sup> Some FY 2024 improvements the IRS implemented include:

- In Individual Online Accounts, expansion of the functionality to provide the taxpayer with an audit status for certain audits conducted by mail;<sup>52</sup>
- In Business Tax Accounts, the ability for businesses that qualify for accounts to view balance due information and make a payment in the same place;<sup>53</sup>
- Additional improvements to the Where's My Refund? tool, including plain language messages with detailed refund status and notifications letting the taxpayer know if the IRS needs additional information;<sup>54</sup> and
- Continued expansion of available chatbots.<sup>55</sup>

If the IRS provides taxpayers and practitioners with the choice to use self-service options to answer questions or resolve issues, the National Taxpayer Advocate believes improved functionality on the online accounts will result in shorter wait times for other taxpayers who need or want in-person or phone assistance. Providing multiple, fully functional service channel options would allow the IRS to provide faster service and responses and eliminate delays, which would improve service for all taxpayers. The IRS should continue developing additional online account and digital service functionality with a taxpayer-centric approach that incorporates stakeholder feedback and prioritizes the taxpayer experience with efficient, understandable tools that allow taxpayers to receive quality service using their chosen communication method.

### **Tax Pro Accounts Still Lack Robust Functionality**

Despite the FY 2024 additions, Tax Pro Accounts still require additional functionality. As a former practitioner, the National Taxpayer Advocate strongly believes that providing a robust Tax Pro Account is essential to improving taxpayer service. Tax professionals play a vital role in the tax system. They assist with

50 National Taxpayer Advocate 2023 Annual Report to Congress 63 (Most Serious Problem: *Telephone and In-Person Service: Despite Improvements in Its Service Levels, the IRS Still Does Not Provide Taxpayers and Tax Professionals With Adequate, Timely Telephone and In-Person Service*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23\\_MSP\\_04\\_Telephone-InPerson.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23_MSP_04_Telephone-InPerson.pdf).

51 Collectively Individual Online Accounts, Business Tax Accounts, and Tax Pro Accounts. See IRS News Release, IR-2024-196, IRS Continues to Expand Taxpayer Services and Online Tools, Key Milestones Reached With Inflation Reduction Act Funding (July 25, 2024), <https://www.irs.gov/newsroom/irs-continues-to-expand-taxpayer-services-and-online-tools-key-milestones-reached-with-inflation-reduction-act-funding>; IRS, Pub. 3744-A, IRA Strategic Operating Plan Annual Update Supplement (Apr. 2024), <https://www.irs.gov/pub/irs-pdf/p3744a.pdf>; IRS, Pub. 3744-B, IRA Strategic Operating Plan Annual Update (Apr. 2024), <https://www.irs.gov/pub/irs-pdf/p3744b.pdf>.

52 IRS, Online Account for Individuals (Dec. 9, 2024), <https://www.irs.gov/payments/online-account-for-individuals>.

53 IRS News Release, IR-2024-196, IRS Continues to Expand Taxpayer Services and Online Tools, Key Milestones Reached With Inflation Reduction Act Funding (July 25, 2024), <https://www.irs.gov/newsroom/irs-continues-to-expand-taxpayer-services-and-online-tools-key-milestones-reached-with-inflation-reduction-act-funding>.

54 IRS News Release, IR-2024-53, Tax Time Guide: IRS Enhances Where's My Refund? Tool for 2024 Filing Season (Feb. 28, 2024), <https://www.irs.gov/newsroom/tax-time-guide-irs-enhances-wheres-my-refund-tool-for-2024-filing-season>.

55 On IRS.gov, the IRS offers unauthenticated and authenticated chatbots that provide assistance to taxpayers on procedural and tax questions. The IRS saw a 150 percent increase in taxpayer use of these tools on key IRS.gov pages during the 2024 filing season. IRS News Release, IR-2024-109, IRS Delivers Strong 2024 Tax Filing Season; Expands Services for Millions of People on Phones, In-Person and Online With Expanded Funding (Apr. 15, 2024), <https://www.irs.gov/newsroom/irs-delivers-strong-2024-tax-filing-season-expands-services-for-millions-of-people-on-phones-in-person-and-online-with-expanded-funding>. The IRS plans to continue expanding the available chatbots. IRS response to TAS information request (Sept. 26, 2024).



tax administration issues and alleviate taxpayer barriers to compliance. Expanding the functionality of Tax Pro Accounts would support tax professionals and the taxpayers who rely on these professionals. When a representative cannot perform the necessary functions to service a client's tax account through Tax Pro Accounts, the representative must contact the IRS. Time-intensive contacts, such as drafting correspondence and making phone calls with lengthy hold times, inhibit quick resolution of issues and can increase the cost the taxpayer must pay for the representative's services.

Providing tax professionals with more capabilities in Tax Pro Account would not only benefit tax professionals but could also improve the adoption rate of taxpayers using Individual Online Accounts and Business Tax Accounts. The National Taxpayer Advocate strongly encourages the IRS to prioritize the ability for tax professionals to view their clients' Individual Online Account or Business Tax Account information from within Tax Pro Account. This one improvement would significantly improve tax professionals' ability to assist taxpayers in meeting their filing and payment needs and provide much-needed assistance and guidance on tax issues. A win-win for taxpayers, tax professionals, and tax administration.

### **Taxpayer Services Need Continued Funding to Maintain and Improve Service**

The multiyear funding has provided the IRS with the ability to hire additional CSRs, maintain a high LOS, provide additional TAC hours and services, and expand online account functionality.<sup>56</sup> According to the IRS, currently available multiyear funds will allow it to maintain the staffing levels required to provide expanded live assistance on phones and at TACs through FY 2025. With current funding, the IRS cannot sustain these expanded services in FY 2026 or meet the high LOS goals. It estimates the 85 percent LOS target will drop to less than 30 percent in FY 2026, "meaning that less than three out of every 10 taxpayers will get through to the IRS when they call" and join a calling queue for an AM phone line.<sup>57</sup> The IRS also "estimates that its business systems modernization (BSM) account is currently short by nearly \$3 billion through FY 2031, which means the IRS will only partially modernize, leaving a sizable legacy footprint that will prevent the IRS from enabling a near real-time tax processing system that provides taxpayers with instant account updates, faster refund processing and payment posting, and near real-time status updates."<sup>58</sup> Taxpayers have a *right to quality service*, but the IRS cannot provide that service without dedicated, multiyear funding for improving the taxpayer experience.<sup>59</sup>

## **CONCLUSION AND RECOMMENDATIONS**

After four years in her role, the National Taxpayer Advocate cannot believe she is still discussing phone service as one of the most serious problems impacting taxpayers. However, she is hopeful that the future will provide better quality service for all taxpayers.

The IRS must continue to improve service throughout all available channels. For all methods of service, the IRS needs to establish better performance metrics that reflect the actual taxpayer experience and whether the IRS addresses taxpayer needs while balancing its resources with an eye toward better and more efficient measures. Answering the phone is simply not enough. Taxpayers need their issues resolved quickly and easily using the service channel they prefer.

56 Inflation Reduction Act, Pub. L. No. 117-169, § 10301, 136 Stat. 1818, 1831 (2022).

57 IRS, Pub. 3744-A, IRA Strategic Operating Plan Annual Update Supplement 11 (Apr. 2024), <https://www.irs.gov/pub/irs-pdf/p3744a.pdf>. The predicted low LOS is only for taxpayers and practitioners who actually make it to an IRS phone queue. The percentage of all taxpayers that will get through to the IRS is far lower than 30 percent when considering those who hang up during the calling tree options.

58 IRS, Pub. 3744-A, IRA Strategic Operating Plan Annual Update Supplement 42 (Apr. 2024), <https://www.irs.gov/pub/irs-pdf/p3744a.pdf>. See also IRS, Pub. 5530, IRS Budget in Brief (Feb. 2024), <https://www.irs.gov/pub/irs-pdf/p5530.pdf>.

59 See TBOR, <https://www.taxpayeradvocate.irs.gov/taxpayer-rights> (last visited Sept. 16, 2024). The rights contained in TBOR are also codified in IRC § 7803(a)(3).

## **Administrative Recommendations to the IRS**

The National Taxpayer Advocate recommends that the IRS:

1. Adopt an alternate measure of service for phones that measures the taxpayer experience, including metrics related to the quality of service provided and whether the IRS resolved the taxpayer's issue, and balance its resources to provide quality service more efficiently by the end of FY 2025.
2. Prioritize staffing and answering phone lines that service the most vulnerable taxpayers, including the Installment Agreement/Balance Due, Taxpayer Protection Program, and Automated Collection System lines.
3. Prioritize the implementation of Taxpayer 360 so CSRs can provide faster, more comprehensive service to taxpayers.
4. Offer expanded access to fully staffed TACs via extended and Saturday hours during the entire year, with more locations, virtual options, and additional CAVs.
5. Continue to expand capabilities and functionality of online accounts using stakeholder feedback to provide taxpayers and tax professionals with robust self-service options.
6. On all phone lines, provide useful information during phone wait periods including advertising the availability and benefits of online accounts.

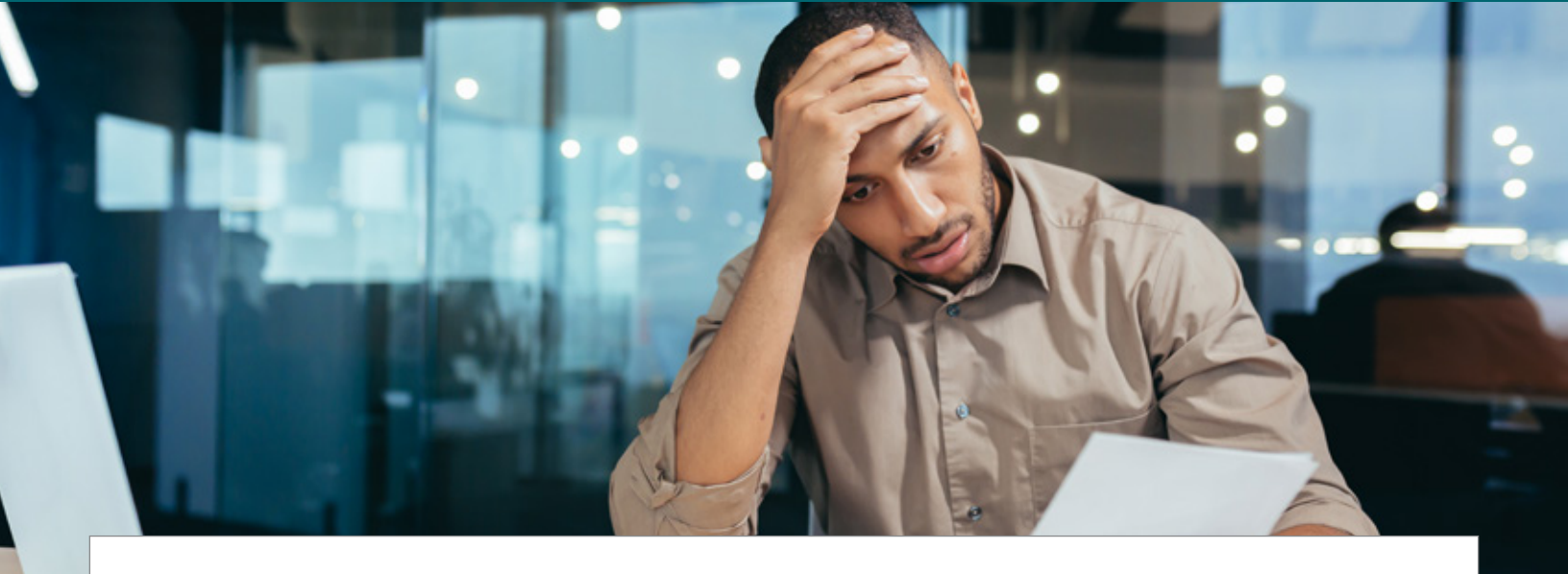
## **RESPONSIBLE OFFICIALS**

Kenneth Corbin, Chief, Taxpayer Services

Lia Colbert, Commissioner, Small Business/Self-Employed Division

David Padrino, Chief Transformation and Strategy Officer

Fumi Tamaki, Chief Taxpayer Experience Officer



## TAX-RELATED SCAMS

### More Taxpayers Are Falling Victim to Tax-Related Scams

#### WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Taxpayers face a growing threat.<sup>1</sup> Every year, people from all walks of life fall victim to increasingly complex tax-related scams that are both sophisticated and financially devastating. Scammers use tactics like phishing, IRS impersonation, and promotion of incorrect tax credit claims. Victims often experience shattered financial security, indefinitely frozen IRS refunds, and confusion due to lack of understanding of the process and consequences. The growing sophistication and reach of tax-related scams demands an increasingly robust response from the IRS.

#### EXPLANATION OF THE PROBLEM

Scams not only hurt individuals and businesses but also tax administration and the fisc.<sup>2</sup> Types of scams continuously evolve, and perpetrators target a wide variety of taxpayers across different communication platforms, making it difficult for both the IRS and potential targets to identify emerging schemes. To address the problem, the IRS has taken a multi-pronged approach to combating scams, such as information sharing with external stakeholders to detect and prevent fraud, data analytics, and a public education and outreach strategy.

- 1 IRS News Release, IR-2024-302, National Tax Security Awareness Week, Day 2: IRS, Security Summit Partners Urge People to Watch Out for Bad Tax Advice on Social Media (Dec. 3, 2024), <https://www.irs.gov/newsroom/national-tax-security-awareness-week-day-2-irs-security-summit-partners-urge-people-to-watch-out-for-bad-tax-advice-on-social-media> (quoting Commissioner Danny Werfel as saying, “[t]he growth of bad tax advice on social media continues to grow, luring unsuspecting taxpayers into filing bad tax returns. [...] We urge people to do some research before falling for these scams. Finding a trusted tax professional or visiting IRS.gov is a better way to research a tax issue than relying on someone talking in their car or their kitchen about a non-existent tax hack.”).
- 2 See IRS, Recognize Tax Scams and Fraud, <https://www.irs.gov/newsroom/tax-scamsconsumer-alerts> (last updated Dec. 17, 2024).

Although preventing scams is one of the IRS Commissioner's top areas of focus, there are still problems facing taxpayers:<sup>3</sup>

- The evolving sophistication and proliferation of tax-related scams hinder IRS detection and prevention;
- Prolonged refund freezes cause economic hardship for scam victims who receive no clear guidance on what actions they must take to resolve their account;
- Older taxpayers are more susceptible to scams;
- The limited tax deductibility of scam-related losses exacerbates the financial impact;
- The IRS scam reporting process can be confusing;
- Insufficient tax preparer oversight increases scam vulnerability; and
- The IRS lacks a centralized office for scam prevention and victim assistance.

## ANALYSIS

The variety, sophistication, and evolving nature of scams make it difficult for the IRS to timely identify improper activity, take preventative measures, and assist victims. In the face of escalating tax scams circulating on social media, IRS Commissioner Danny Werfel embarked on a campaign to warn taxpayers about the dangers of falling victim to these schemes. The Commissioner has included scam messaging in his speeches and press interviews and conducted numerous interviews with local press and television stations.<sup>4</sup>

Although the IRS has prioritized the issue and taken proactive steps to minimize the harm imposed on taxpayers, tax professionals, and tax administration, there is more work to do. Stopping and preventing scams will require tax professionals, industry, and stakeholders to join the anti-scam campaign and be the guardrails and conscience for tax administration.

This Most Serious Problem examines IRS tax-related scam activities, focusing on the challenges victims face and providing administrative and legislative recommendations to reduce taxpayer burden. Our discussion centers on the impact to taxpayers whom scammers victimize rather than those who intend to defraud the government. We cover two distinct categories of tax-related scams:

1. *Direct tax-related scams:* These involve taxpayers being misled into claiming tax credits for which they are not eligible. Such misinformation often originates from social media platforms and/or aggressive marketing campaigns, usually from non-credentialed tax return preparers. Due to the complexity of tax laws, many taxpayers fall victim to misleading claims from preparers, promoters, and social media influencers who falsely promise tax credits and benefits for which these taxpayers do not actually qualify. These claims often result in frozen refunds and potential penalties.

3 The Commissioner has prioritized communication about tax-related scams to make sure taxpayers are aware of them. For example, in a recent statement, he reported:

What they're doing is they're reaching out to vulnerable populations, like the elderly, and they're threatening them with a tax debt that doesn't exist. And they're convincing these individuals, these innocent individuals, to pull out their credit cards and or give their financial information over. It's a big headache for these individuals, and we want to get the word out so these individuals can protect themselves.

Christina Watkins, *IRS Commissioner Sends Warning About Impersonation Scams*, WESH 2 (ORLANDO) (July 24, 2024), <https://www.wesh.com/article/irs-impersonation-scams/61690576>.

4 See, e.g., Christina Watkins, *IRS Commissioner Sends Warning About Impersonation Scams*, WESH 2 (ORLANDO) (July 24, 2024), <https://www.wesh.com/article/irs-impersonation-scams/61690576>. See also Derick Fox, *Beware of Tax Scams: IRS Commissioner Warns Scams Can Hit In Offseason*, ABC4.COM (SALT LAKE CITY) (June 27, 2024), <https://www.abc4.com/news/local-news/beware-of-tax-scams-irs-commissioner-warns-scams-can-hit-in-offseason/>; Kristina Miller, *Tips to Avoid Tax Scams from IRS Commissioner Danny Werfel*, WGN 9 (CHICAGO) (July 10, 2024), <https://wgntv.com/midday-news/tips-to-avoid-tax-scams-from-irs-commissioner-danny-werfel/>.

2. *Indirect tax-related scams:* These situations arise when third parties defraud taxpayers. For example, taxpayers are tricked into withdrawing substantial sums from their tax-deferred retirement plans only to lose the funds, resulting in significant tax liabilities and potential early withdrawal penalties. These situations cause double hardships as the taxpayer not only loses their retirement investment but is now also dealing with the tax consequences on monies scammers stole.

## Background

The economic toll of tax-related scams is more than just a number on a balance sheet. It is a devastating reality for taxpayers whose lives these increasingly sophisticated crimes upend.<sup>5</sup> For many, the first sign that something is wrong comes in the form of a frozen tax refund – not just the portion of the refund attributable to the scam but the entire refund, which could include over-withholding, the Earned Income Tax Credit (EITC), or the Child Tax Credit. Many financially vulnerable taxpayers rely on their annual refunds to survive. When the IRS freezes their entire refund, they lose a lifeline with little or no explanation from the IRS. These taxpayers, already victimized once, now face the added burden of delays due to improper return positions and complexities with administrative challenges in processing their returns.

## The Evolving Sophistication and Proliferation of Tax-Related Scams Hinders IRS Detection and Prevention

Tax-related scams have evolved from simple cons into sophisticated, multifaceted operations using advanced technology, particularly identity theft and IRS impersonation. Scammers employ artificial intelligence-generated documents, phishing emails, and social media to target taxpayers. Their methods include:

- Convincing IRS impersonation schemes, going so far as to use fake badges and documents;<sup>6</sup>
- Advanced phishing attacks targeting taxpayers and tax professionals;<sup>7</sup>
- Social media misinformation and false tax advice, especially targeting younger or unsophisticated taxpayers;<sup>8</sup>

---

5 IRS News Release, IR-2024-215, IRS, States, Tax Industry Announce New Joint Effort to Combat Growing Scams and Schemes; Ongoing Coordination to Follow In Footsteps of Security Summit's Identity Theft Efforts to Help Taxpayers and Protect Revenue (Aug. 16, 2024), <https://www.irs.gov/newsroom/irs-states-tax-industry-announce-new-joint-effort-to-combat-growing-scams-and-schemes-ongoing-coordination-to-follow-in-footsteps-of-security-summits-identity-theft-efforts-to-help-taxpayers-and-protect-revenue>.

6 See IRS, Tax Tip 2023-99, Knowing How Scammers Pose as the IRS Can Help Taxpayers Protect Themselves (Aug. 8, 2023), <https://www.irs.gov/newsroom/knowing-how-scammers-pose-as-the-irs-can-help-taxpayers-protect-themselves>. See also Kate Schubel, *IRS Back Taxes Scam Call Steals Millions*, KIPLINGER, (Sept. 3, 2024), <https://www.kiplinger.com/taxes/irs-back-taxes-phone-call-scam>. See also IRS News Release, IR-2024-183, New, Evolving Scams Threaten Tax Professionals; Security Summit Warns Extra Attention Needed on Trending Threats That Could Affect Businesses, Clients (July 9, 2024), <https://www.irs.gov/newsroom/new-evolving-scams-threaten-tax-professionals-security-summit-warns-extra-attention-needed-on-trending-threats-that-could-affect-businesses-clients>.

7 Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2025-IE-R001, *Actions Were Not Taken to Timely Strengthen Practitioner Priority Service Telephone Line Authentication Controls* (Oct. 22, 2024), <https://www.tigta.gov/sites/default/files/reports/2024-10/2025ier001fr.pdf>; IRS News Release, IR-2024-188, Security Summit Warns Tax Pros to Remain Vigilant Against Phishing Emails and Cloud-Based Attacks (July 16, 2024), <https://www.irs.gov/newsroom/security-summit-warns-tax-pros-to-remain-vigilant-against-phishing-emails-and-cloud-based-attacks>; IRS News Release, IR-2024-186, IRS Reminds Car Dealers and Sellers to be Aware of Phishing Scams (July 11, 2024), <https://www.irs.gov/newsroom/irs-reminds-car-dealers-and-sellers-to-be-aware-of-phishing-scams>; IRS News Release, IR-2024-183, New, Evolving Scams Threaten Tax Professionals; Security Summit Warns Extra Attention Needed on Trending Threats That Could Affect Businesses, Clients (July 9, 2024), <https://www.irs.gov/newsroom/new-evolving-scams-threaten-tax-professionals-security-summit-warns-extra-attention-needed-on-trending-threats-that-could-affect-businesses-clients>.

8 Jacob Bogage & Julie Zauzmer Weil, *Bad Tax Advice is Multiplying on TikTok*, WASH. POST (Apr. 8, 2024), <https://www.washingtonpost.com/business/2024/04/08/tiktok-tax-advice-misinformation>. For more information on the most egregious social media tax scams, see IRS Fact Sheet, FS-2024-24, *Misleading Social Media Advice Leads to False Claims for Fuel Tax Credit, Sick and Family Leave Credit, Household Employment Taxes; FAQs Help Address Common Questions, Next Steps for Those Receiving IRS Letters* (July 2024), <https://www.irs.gov/newsroom/misleading-social-media-advice-leads-to-false-claims-for-fuel-tax-credit-sick-and-family-leave-credit-household-employment-taxes-faqs-help-address-common-questions-next-steps-for-those-receiving-irs>.



- Ghost preparers who vanish after filing fraudulent returns;<sup>9</sup> and
- Investment, romance, and scare tactic scams that use emotional manipulation, especially targeting older taxpayers.<sup>10</sup>

In each of these cases, the taxpayer is left financially injured. Worse, some also face significant tax liabilities for funds from which they never received a monetary benefit, compounding their losses with tax consequences that can last the rest of their lives.

These scams pose a significant threat to the taxpayer *rights to be informed* and *to finality*.<sup>11</sup> While the IRS prioritizes fighting these schemes, the agency struggles to keep pace with rapidly shifting tactics employed by scammers.<sup>12</sup> In fiscal year (FY) 2024, the IRS saw a marked increase in claims involving the Fuel Tax Credit, the Sick and Family Leave Credit, and household employment taxes.<sup>13</sup> It identified hundreds of thousands of questionable returns where taxpayers appeared to claim credits for which they were not eligible, resulting in the IRS freezing their entire refunds and requiring them to provide additional documentation to substantiate their identity and their return positions.<sup>14</sup> This process is difficult and time-consuming.

The IRS faces the dual challenge of protecting taxpayers exploited by scammers while also preventing erroneous payments, all without causing undue delays for taxpayers with legitimate, verifiable refund claims. Without significant technological improvements and the reallocation of agency resources to address this issue, the IRS risks falling short in its commitment to provide taxpayers quality service and maintain a fair and just tax system.<sup>15</sup>

Scammers and ghost preparers hurt everyone. Their actions disrupt tax administration, cause financial losses to the fisc, and harm honest taxpayers caught up in multiple time-consuming IRS review streams, with some who need to pay back the improper claim amounts facing penalties and interest. In the end, the greed of these scammers, promoters, and ghost preparers is a loss for everyone but themselves.

### **Prolonged Refund Freezes Cause Economic Hardship for Scam Victims Who Receive No Clear Guidance on What Actions They Must Take to Resolve Their Account**

The IRS reports that bad tax advice is leading more people to file inaccurate returns.<sup>16</sup> Yet, measuring this problem's scope remains challenging. The IRS cannot distinguish between taxpayers who intentionally deceive the government and those misled by unscrupulous preparers and social media influencers. While the IRS flags

9 IRS News Release, IR-2024-96, Dirty Dozen: IRS Urges Taxpayers to Not Fall Prey to Untrustworthy Tax Preparers; "Ghost Preparers" Can Disappear With Taxpayer Cash, Information (Apr. 5, 2024), <https://www.irs.gov/newsroom/dirty-dozen-irs-urges-taxpayers-to-not-fall-prey-to-untrustworthy-tax-preparers-ghost-preparers-can-disappear-with-taxpayer-cash-information>.

10 Better Business Bureau (BBB) Institute for Marketplace Trust, 2023 BBB Scam Tracker Risk Report 6, 12 (Apr. 2024), <https://bbbmarketplacetrust.org/wp-content/uploads/2024/04/2023-BBBScamTracker-RiskReport-US-040224.pdf>. The BBB combined investment and cryptocurrency scams into one category because most cryptocurrency scams involved investment opportunities. According to the report, investment/cryptocurrency scams became the riskiest type of scam during 2023, with about 80 percent of those targeted reporting a monetary loss averaging \$3,800.

11 See Taxpayer Bill of Rights (TBOR), <https://www.taxpayeradvocate.irs.gov/taxpayer-rights> (last visited Nov. 18, 2024). The rights contained in TBOR are also codified in IRC § 7803(a)(3).

12 For a list of scams identified by the IRS, see IRS, Recognize Tax Scams and Fraud, <https://www.irs.gov/help/tax-scams/recognize-tax-scams-and-fraud> (last updated Dec. 17, 2024). See also IRS News Release, IR-2024-89, Dirty Dozen: IRS Warns About False Fuel Tax Credit Claims; Taxpayers Should be Wary of Scammers, Heightened Review (Apr. 2, 2024), <https://www.irs.gov/newsroom/dirty-dozen-irs-warns-about-false-fuel-tax-credit-claims-taxpayers-should-be-wary-of-scammers-heightened-review>.

13 IRS News Release, IR-2024-215, IRS, States, Tax Industry Announce New Joint Effort to Combat Growing Scams and Schemes; Ongoing Coordination to Follow In Footsteps of Security Summit's Identity Theft Efforts to Help Taxpayers and Protect Revenue (Aug. 16, 2024), <https://www.irs.gov/newsroom/irs-states-tax-industry-announce-new-joint-effort-to-combat-growing-scams-and-schemes-ongoing-coordination-to-follow-in-footsteps-of-security-summits-identity-theft-efforts-to-help-taxpayers-and>.

14 *Id.*

15 Taxpayers have the *right to quality service*. See TBOR, <https://www.taxpayeradvocate.irs.gov/taxpayer-rights> (last visited Nov. 18, 2024). The rights contained in TBOR are also codified in IRC § 7803(a)(3).

16 IRS News Release, IR-2024-302, National Tax Security Awareness Week, Day 2: IRS, Security Summit Partners Urge People to Watch Out for Bad Tax Advice on Social Media (Dec. 3, 2024), <https://www.irs.gov/newsroom/national-tax-security-awareness-week-day-2-irs-security-summit-partners-urge-people-to-watch-out-for-bad-tax-advice-on-social-media> (warning the public "about the growing threat of bad tax advice on social media that continues to dupe people into filing inaccurate tax returns.").



returns with suspected inaccurate credits, it cannot identify which of these taxpayers are scam victims. This means victims face the same excessive refund delays as non-victims, without clear guidance about why the IRS froze their refunds or how to resolve the issue. The National Taxpayer Advocate recognizes the complexities and far-reaching impacts of scams on tax administration, but no taxpayer should be left to find their way through the situation without IRS assistance.

If the IRS suspects a return contains a frivolous claim, agency controls prevent it from processing the return until the taxpayer verifies their identity. For many taxpayers, the first indication that they have been duped into a direct tax-related scam comes with the freeze of their anticipated tax refund.<sup>17</sup> When the IRS freezes a taxpayer's refund, it freezes the entire amount, not just the portion related to the suspected scheme, often for lengthy periods with little or no adequate explanation or information on how taxpayers can resolve their problem. Delays can last for months and sometimes years, causing substantial harm to affected taxpayers. The IRS should communicate sooner and better so these taxpayers can amend mistakes on their original returns and receive the refunds to which they are legally entitled.

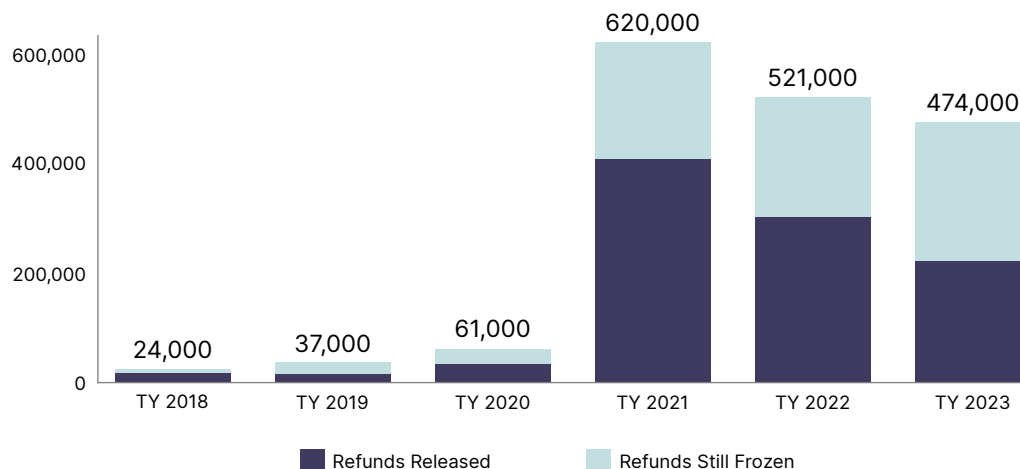
For example, a taxpayer who has a questionable credit on their return for \$5,000 but also has the EITC and an Additional Child Tax Credit for their two children who live with them for \$6,000 will not receive the \$6,000 refund until they have provided supporting documents for the questionable credit or filed an amended return. The National Taxpayer Advocate does not believe the IRS should pay erroneous refunds but recognizes that delays and lack of information in the process are causing financial difficulty for taxpayers caught up in a scam or victimized due to their misplaced trust in a ghost preparer, promoter, or tax advice received from social media.

While the IRS cannot differentiate between legitimate claims, intentional deceptions, or scam victims, the rise in tax scams reported by the IRS suggests a corresponding increase in scam-related refund freezes.<sup>18</sup> Refunds frozen for potentially frivolous credits increased tenfold from 2020 to 2021. For tax year (TY) 2020, the IRS froze approximately 61,000 refunds related to potentially inaccurate tax positions. For TY 2021, that number grew to almost 620,000 before dropping to just over 520,000 for TY 2022.<sup>19</sup> Although these returns contain questionable credits, many also include legitimate refundable credits, over-withholding, or estimated payments. The freezing of the entire refund results in substantial financial hardship for many taxpayers.<sup>20</sup>

- 
- 17 The IRS freezes the refund because it assumes identity theft. Most of these taxpayers must then authenticate their identity in person at a local Taxpayer Assistance Center (TAC). But even after authentication, the IRS will continue to freeze their refunds. See IRS Fact Sheet, FS-2024-24, Misleading Social Media Advice Leads to False Claims for Fuel Tax Credit, Sick and Family Leave Credit, Household Employment Taxes; FAQs Help Address Common Questions, Next Steps for Those Receiving IRS Letters, Q1 (Aug. 27, 2024), <https://www.irs.gov/newsroom/misleading-social-media-advice-leads-to-false-claims-for-fuel-tax-credit-sick-and-family-leave-credit-household-employment-taxes-faqs-help-address-common-questions-next-steps-for-those-receiving-irs> ("Some taxpayers may receive a letter 5747C and/or 4883C/5071C with instructions to verify their identity and tax return information so we can continue processing their tax return. Even after this verification, questionable refunds will continue to be held until credit eligibility is verified.").
- 18 Transaction code (TC) 810-4 is only used if a return meets potentially frivolous return criteria. Internal Revenue Manual (IRM) 21.5.6.4.10, -E Freeze (July 24, 2024), [https://www.irs.gov/irm/part21/irm\\_21-005-006r](https://www.irs.gov/irm/part21/irm_21-005-006r).
- 19 IRS, Compliance Data Warehouse (CDW), Individual Master File (IMF) Transaction History (Oct. 28, 2024). These numbers represent tax returns with an "-E freeze" with a reason code of 4 on the account. IRS Compliance or the Return Integrity and Compliance Services function places an Integrated Data Retrieval System code for an -E freeze on an IMF account. IRM 21.5.6.4.10(2), -E Freeze (July 24, 2024), [https://www.irs.gov/irm/part21/irm\\_21-005-006r](https://www.irs.gov/irm/part21/irm_21-005-006r).
- 20 TAS's inventory has also increased considerably. Current open case volumes with TC 810-4 for TY 2020 were 210. This jumped to 1,288 for TY 2021; 2,314 for TY 2022; and 3,036 for TY 2023. Taxpayer Advocate Management Information System (Oct. 2024).

FIGURE 2.5.1<sup>21</sup>

## Refunds Frozen Due to Potential Frivolous Credits, TYs 2018-2023



The taxpayer experience with the IRS's current process for resolving these cases is complex and lengthy.<sup>22</sup> Many taxpayers with frozen refunds first get a letter requesting that they verify their identity before the IRS accepts their return as filed, what the IRS calls "posting" the return to the taxpayer's account. As of September 2024, taxpayers with such frozen refunds from TY 2021 who the IRS required to authenticate their identity waited an average of 126 days just for their return to post in the IRS system.<sup>23</sup>

In cases where the taxpayer filed an amended return to self-correct a questionable claim, they waited an average of 200 days from filing the amended return to the removal of their refund freeze. Taxpayers who did not file an amended return to self-correct waited an average of 413 days for the IRS to open an audit. Therefore, on average, taxpayers with frozen refunds due to questionable credit claims waited a total of 539 days (almost 1.5 years) before they received a letter letting them know the IRS was auditing them.<sup>24</sup> For most taxpayers, this audit letter is their first explanation from the IRS as to why it froze the refund.

21 IRS, CDW, IMF Transaction History (Oct. 28, 2024).

22 Again, it is difficult to separate tax returns with frozen refunds due to scams and those from taxpayers intentionally attempting to defraud the government. The IRS freezes both types of refunds and marks them with TC 810-4. This means those who are victims are caught in the same protracted process as those who are not. The inability to distinguish between victims and wrongdoers underscores the need for greater IRS transparency and improved service procedures for all taxpayers.

23 IRS, CDW, IMF Transaction History and IMF Transaction Code 150 History (Oct. 28, 2024). This is because the IRS treats most taxpayers subject to this treatment as potential identity thieves and thus initially required taxpayers to authenticate their identity at a local TAC, which resulted in a flood of frustrated taxpayers at various TACs throughout the country this year. See Brittany Ford, *'I Want My Money': People Spend Hours in Line Outside Atlanta Tax Center for IRS Help*, ATLANTA NEWS FIRST (Apr. 13, 2024), <https://www.atlantaneWSfirst.com/2024/04/13/i-want-my-money-people-spend-hours-line-outside-atlanta-tax-center-irs-help/> ("A majority of the people in line had received an email or letter from the IRS stating they had to verify their identity in person. The notification went on to say their refund was being held until they did so."); Jacqueline Francis, *Hundreds Frustrated by Line at Tax Assistance Event Held by IRS in Detroit*, WDIV CLICK ON DETROIT (Apr. 14, 2024), <https://www.clickondetroit.com/news/local/2024/04/14/hundreds-frustrated-by-line-at-tax-assistance-event-held-by-irs-in-detroit/> ("Many waiting in line Saturday were frustrated [...]"). The IRS currently uses three methods to authenticate taxpayers: online (5071C), telephone (4883C), and in person (5747C). IRM 25.25.6.1.7, Taxpayer Protection Program Overview (June 24, 2024), [https://www.irs.gov/irm/part25/irm\\_25-025-006r](https://www.irs.gov/irm/part25/irm_25-025-006r).

24 IRS, CDW, IMF Transaction History and IMF Transaction Code 150 History (Oct. 28, 2024).

As of the end of FY 2024, approximately 739,000 taxpayers were still waiting for resolution of their frozen refund, many with no clear communication from the IRS as to why it was suspended in the first place or how to cure any inaccuracies.<sup>25</sup> Also, for the first year the IRS began suspending these refunds with a unique code (TY 2021), taxpayers waited an average of 570 days (more than 1.5 years) for the IRS to release their refund.<sup>26</sup>

Consider the case of a taxpayer who files a Form 1040 tax return with Schedule C as a self-employed hairdresser. A ghost preparer or social media influencer incorrectly advises the taxpayer they qualify for the Fuel Tax Credit, and the taxpayer subsequently claims a \$7,000 credit on their 2021 tax return. The IRS first labels the taxpayer's return as a potential identity theft case and sends a letter requesting the taxpayer make an in-person visit to an IRS office to verify their identity. The taxpayer schedules the appointment, verifies their identity, and reasonably expects to receive their refund within a month or two. However, this is not the case. The IRS keeps the entire refund frozen, concluding that the taxpayer does not qualify for the Fuel Tax Credit.

Eventually, the IRS sends the taxpayer Letter 3176C, Frivolous Returns Response, which explains that the IRS froze the refund due to a frivolous position. The letter warns that if the taxpayer does not amend their return, they will face a \$5,000 penalty.<sup>27</sup> This letter is the first clear communication the taxpayer receives explaining the delay. The IRS gives the taxpayer 60 days to amend their return. If they do not amend, the agency refers the return to Exam for audit. However, the IRS often fails to send this letter, let alone in a timely manner.<sup>28</sup> In fact, for Fuel Tax Credit returns selected by the IRS as potentially frivolous and held pre-refund, the agency only sent Letter 3176C in 29 percent of cases.<sup>29</sup>

Imagine a struggling single parent misled into believing they qualified for a benefit on their return. Relying on their annual tax refund to cover essential expenses such as rent or a car payment, they receive a vague IRS notice indicating a freeze on their refund, only to wait over a year before discovering the specific reason.<sup>30</sup> For these taxpayers, the agency's silence is as painful as the scam itself, turning an already dire financial situation into an urgent crisis.<sup>31</sup>

Although the IRS faces significant challenges in combating scams, it should more effectively manage the aftermath, improve its internal processes, and keep taxpayers timely informed about their refund status and potential delays.

25 IRS, CDW, IMF Transaction History (Oct. 28, 2024). The IRS sends initial return verification letters to some taxpayers. IRS response to TAS fact check (Nov. 20, 2024). However, these do not explain that the IRS has frozen their tax refund due to suspicious credits claimed on their return. Only when taxpayers receive a subsequent notice, usually Letter 3176C, do they clearly understand the actual reason for their refund delay.

26 IRS, CDW, IMF Transaction History (Oct. 28, 2024).

27 IRS response to TAS information request (Oct. 16, 2024).

28 The IRS says it sends Letters 3176C to explain to taxpayers why the agency has frozen their refund, asks them to fix any mistakes on their return, and warns about the \$5,000 frivolous return penalty. Data for the number of Letters 3176C sent to taxpayers is not available for all identified scams or schemes causing a frozen refund. For this reason, it is difficult for TAS to determine why the IRS is not sending these letters. IRS response to TAS information request (Oct. 16, 2024). There are instances where the IRS does not send Letter 3176C as a matter of course. For example, if the IRS detects unusually high tax withholding amounts on a return, the agency typically follows a different notification process. High withholding situations are not the same as Fuel Tax Credit claims. IRS response to TAS fact check (Nov. 20, 2024).

29 From the approximately 283,000 Fuel Tax Credit returns selected by the IRS and held pre-refund, the agency sent only 81,886 Letters 3176C. The remaining 71 percent received no clear written communication explaining why the IRS froze their refund or what taxpayers should do to remedy the situation. IRS response to TAS fact check (Dec. 6, 2024). The IRS notes that in addition to Letter 3176C, telephone assistants sometimes inform taxpayers about their refund freeze and advise them to file an amended return. TAS has not received data confirming how often this happens.

30 The IRM instructs employees to tell taxpayers that the wait, at a minimum, is nine months. IRM 21.5.6.4.10(3), -E Freeze (July 24, 2024), [https://www.irs.gov/irm/part21/irm\\_21-005-006r](https://www.irs.gov/irm/part21/irm_21-005-006r).

31 The same taxpayers may also owe penalties to the IRS, such as the \$5,000 frivolous return penalty under IRC § 6702, and an erroneous claim for refund or credit of 20 percent of excessive amount claimed under IRC § 6676.

## Older Taxpayers Are More Susceptible to Scams

The rising tide of indirect tax-related scams has found a particularly vulnerable shore in America's older population.<sup>32</sup> These are situations where a third party scams a taxpayer out of money, leaving the taxpayer with an IRS debt and other disastrous financial consequences. For example, a retiree who liquidated their 401(k) to invest in what they thought was a safe, guaranteed-return opportunity now finds themselves both defrauded of the money withdrawn and liable for the full tax on those distributions,<sup>33</sup> not to mention potential penalties.<sup>34</sup> For those in or near retirement, the ability to earn back these losses is severely limited, if not impossible.

## The Limited Tax Deductibility of Scam-Related Losses Exacerbates the Financial Impact

The Tax Cuts and Jobs Act (TCJA) of 2017<sup>35</sup> dramatically altered tax relief for indirect tax-related scam victims for TYs 2018-2025, exacerbating their financial hardship. Prior to the TCJA, victims could offset some losses through casualty and theft loss deductions. Currently, the law restricts these deductions mainly to federally declared disasters, which leaves many scam victims without recourse.<sup>36</sup>

While IRC § 165(c)(2) still allows deductions for losses in trade, business, or profit-seeking transactions, this provision is inadequate for most victims, as the requirement to demonstrate a profit motive excludes victims of most indirect tax-related scams.<sup>37</sup> Even for investment-related scams, timing issues and lack of clear guidance create significant obstacles.<sup>38</sup> The IRS's limited guidance, such as the safe harbor provision for Ponzi scheme victims, falls short of addressing the diverse array of modern schemes.<sup>39</sup>

The National Taxpayer Advocate urges Congress to allow the casualty and theft loss provisions of the TCJA to lapse after TY 2025, giving a broader range of scam victims the ability to deduct their losses in the future.<sup>40</sup> Additionally, the National Taxpayer Advocate calls on the IRS to provide comprehensive guidance on loss treatment for all scam types. These actions are about financial relief as well as maintaining public trust in the IRS and supporting taxpayers when they are most vulnerable.<sup>41</sup>

- 
- 32 The reasons for this vulnerability are complex and heartbreaking. One is social isolation. See, e.g., Bryan D. James et al., *Correlates of Susceptibility to Scams in Older Adults Without Dementia*, 26 J. ELDER ABUSE & NEGL. 107-122 (2014), <https://pubmed.ncbi.nlm.nih.gov/24499279/>. A second is a more trusting nature in older taxpayers. See, e.g., Marilyn Horta et al., *Age-Group Differences in Trust-Related Decision-Making and Learning*, 14 SCI. REPS. 68 (2024), <https://pubmed.ncbi.nlm.nih.gov/38167997/>. A third is difficulties in reporting suspected fraud. See, e.g., B. Havers et al., *A Qualitative Study Exploring Factors Preventing Older Adults From Reporting Cybercrime and Seeking Help* (CrimRxiv, Working Paper, 2024), <https://www.crimrxiv.com/pub/g7u4rb9v/release/1>.
- 33 If the victim is under 59½ years old, they may also face an additional ten percent tax, commonly referred to as an early withdrawal penalty, for amounts taken out of a qualified plan. See IRC § 72(t)(1).
- 34 For indirect tax-related scams, penalties may include a failure-to-pay penalty of 0.5 percent per month up to 25 percent under IRC § 6651(a)(2) and an accuracy-related penalty of 20 percent of the underpayment under IRC § 6662.
- 35 An Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018 (commonly referred to as the "Tax Cuts and Jobs Act"), Pub. L. No. 115-97, § 11044, 131 Stat. 2054, 2087 (2017).
- 36 See IRC § 165(h).
- 37 The IRS Office of Chief Counsel expects to release Chief Counsel Advice with specific guidance on when taxpayers may be able to take a deduction under IRC § 165 by the end of calendar year 2024. IRS response to TAS information request (Oct. 16, 2024).
- 38 IRC § 165(e) requires that the taxpayer take a deduction in the year they discover the loss (i.e., the scam), which may not align with the tax year in which they reported the related income. This misalignment can create additional complexities for taxpayers trying to move through an already confusing situation.
- 39 The IRS has provided some guidance in this area, but it has been limited in scope. In 2009, in response to the Bernie Madoff Ponzi scheme, the IRS issued guidance specifically for victims of that fraud. This guidance included a safe harbor provision that allowed victims to treat their losses as resulting from transactions entered into for profit. Rev. Rul. 2009-9, 2009-14 I.R.B. 735; Rev. Proc. 2009-20, 2009-14 I.R.B. 749, as modified by Rev. Proc. 2011-58, 2011-50 I.R.B. 849. No such safe harbor or clear guidance exists for victims of other types of scams.
- 40 See National Taxpayer Advocate 2025 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (Allow the Limitation on Theft Loss Deductions in the Tax Cuts and Jobs Act to Expire So Scam Victims Are Not Taxed on Amounts Stolen from Them)*.
- 41 For further discussion on this recommendation, see *id.*

## The IRS Scam Reporting Process Can Be Confusing

The IRS should encourage taxpayers to come forward and share what they have learned or observed about scams, including information on promoters or ghost preparers, to help the agency identify and stop scammers. However, finding relevant information on how to report different scams proves difficult. The IRS’s scattered guidance complicates the process, especially for taxpayers unfamiliar with tax administration terminology.<sup>42</sup>

For instance, a taxpayer victimized in a romance scam might mistakenly follow IRS guidance for reporting a retirement or employee benefit plan scam as an “abusive transaction,” even though they actively withdrew their entire retirement account and deposited it into a digital asset fund under the influence of a scammer. This situation is not classified as a tax shelter or an abusive transaction, yet the IRS’s website offers guidance as if it were.<sup>43</sup> Many victims are not tax-savvy, which makes them especially vulnerable. Confusing, hard-to-find, and vague guidance leads many frustrated victims to inaccurately report the scam or abandon the process altogether.

The IRS lacks a centralized scam/scheme webpage or interactive tool to guide taxpayers through the scam reporting process. An interactive tool should include scam-specific reporting guidance to clarify options. In some scams, taxpayers can report the preparer or promoter, while in others, they can report the actual scam promoted on social media.

Although the IRS uses interactive tools in other areas of tax administration, it has not allocated resources toward creating a tool for assisting scam victims. Such a tool should offer clear, direct guidance. For example, if the tool determines that a taxpayer fell into a romance scam and withdrew their entire 401(k) and deposited the money with the scammer, it should provide instructions on reporting the distribution and possible collection alternatives. If social media misled a taxpayer into claiming the Fuel Tax Credit they did not qualify for, the tool should offer both steps for reporting the scheme and information on amending the tax return to remove the credit. The tool should also cover potential repercussions for failing to amend. The IRS should prioritize the creation of an interactive assistance tool for scam reporting, and all IRS outreach related to tax scams should link directly to this resource.

## Insufficient Tax Preparer Oversight Increases Scam Vulnerability

The lack of oversight on tax return preparers represents a hole in the IRS’s defense against direct tax-related scams.<sup>44</sup> Currently, there are no federal standards for non-credentialed tax preparers.<sup>45</sup> The lack of regulation allows unscrupulous and unqualified individuals to prepare tax returns for a fee with no minimum qualifications. This puts taxpayers at significant risk.

Non-credentialed preparers, often operating with little to no training or accountability, can easily fall into the role as scam facilitators. They promise big refunds, exploit non-existent loopholes, and misrepresent credits and deductions to lure clients and earn fees.<sup>46</sup> When the IRS selects these returns for further scrutiny due to error or fraud, it is the taxpayer, not the preparer, who faces audits, penalties, and legal consequences.

42 IRS, Dirty Dozen, <https://www.irs.gov/newsroom/dirty-dozen> (June 12, 2024).

43 IRS, Report a Tax Scam or Fraud, <https://www.irs.gov/help/tax-scams/report-a-tax-scam-or-fraud> (Dec. 12, 2024) (describing the scam reporting as “tax shelter scams involving retirement or employee benefit plans” or “Employee benefit plans abusive transactions,” which are not the same as romance or similar scams).

44 See National Taxpayer Advocate 2023 Annual Report to Congress 65, 66 (Most Serious Problem: *Return Preparer Oversight: The Lack of Return Preparer Oversight Endangers Taxpayers, Burdens the IRS, and Harms Tax Administration*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23\\_MSP\\_05\\_Return-Preparer.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23_MSP_05_Return-Preparer.pdf) (reporting IRS data suggesting a significant portion of EITC improper payments are attributable to returns prepared by non-credentialed return preparers).

45 Credentialed individuals are those who are not attorneys, certified public accountants, or enrolled agents. See 5 U.S.C. § 500 *et seq*; Treas. Dept. Circular No. 230, 31 C.F.R. Part 10 § 10.3.

46 See Michelle Singletary, *Five Signs Your Tax Preparer May Be a Fraud*, WASH. POST, Mar. 6, 2024, <https://www.washingtonpost.com/business/2024/03/06/irs-tax-preparer-fraud/>.

The exploitation of Form 7202, Credits for Sick Leave and Family Leave for Certain Self-Employed Individuals, by unscrupulous non-credentialed preparers offers a stark example of how this problem affects both taxpayers and the tax system.<sup>47</sup> Congress provided relief in the form of a credit for sick leave to certain self-employed individuals affected by the COVID-19 pandemic.<sup>48</sup> Although Congress enacted the law with good intentions, scammers and promoters took advantage of the legislation and seized on naïve or unsophisticated taxpayers to make a profit for themselves and put taxpayers in the IRS's crosshairs for disallowance, potential tax, and interest and penalties.

IRS statistics show that while non-credentialed preparers were responsible for 83 percent of prepared tax returns claiming this credit, they accounted for 98 percent of the credits disallowed by IRS Examination.<sup>49</sup> These numbers represent real taxpayers who sought assistance only to be led into a crisis of improper claims, penalties, interest, and potentially legal jeopardy.

This is not a problem at the margins. About 61 percent of unique Preparer Tax Identification Numbers (PTINs) reported on TY 2023 returns belonged to non-credentialed preparers, who are currently not subject to minimum standards.<sup>50</sup> The oversight gap has made the tax preparation industry a fertile ground for abuse, perpetuating the same cycle of fraud the IRS struggles to contain.

To address this issue, the National Taxpayer Advocate recommends Congress grant the Treasury Department authority to regulate and establish minimum standards for all federal tax return preparers.<sup>51</sup> Such authority would make it significantly more difficult for unscrupulous preparers to operate. It would also simplify a taxpayer's ability to verify preparers in the IRS's Directory of Federal Tax Return Preparers.<sup>52</sup> Without a statutory change by Congress, the IRS cannot regulate these preparers or provide a higher level of protection for taxpayers.<sup>53</sup>

### The IRS Lacks a Centralized Office for Scam Prevention and Victim Assistance

After becoming victims of scammers, taxpayers often turn to the IRS for help only to find that there is no clear path to assistance.<sup>54</sup> The IRS is a vast institution with numerous departments and overlapping responsibilities. As a result, it lacks a centralized office dedicated to scam prevention and victim support.<sup>55</sup> Taxpayers must slog through phone numbers, forms, and automated responses that offer little in the way of real guidance,<sup>56</sup> which increases taxpayer burden and leads to additional confusions.

- 
- 47 IRS, Form 7202, Credits for Sick Leave and Family Leave for Certain Self-Employed Individuals (2021), <https://www.irs.gov/pub/irs-prior/f7202--2021.pdf>. Congress created this tax credit, which allows qualified self-employed individuals to claim up to \$15,110 in 2020, under the Families First Coronavirus Response Act (FFCRA), Pub. L. No. 116-127, § 3, 134 Stat. 177, 178 (2020), <https://www.congress.gov/bill/116th-congress/house-bill/6201/text>.
- 48 IRS News Release, IR-2021-31, New IRS Form Available for Self-Employed Individuals to Claim COVID-19 Sick and Family Leave Tax Credits Under FFCRA (Feb. 8, 2021), <https://www.irs.gov/newsroom/new-irs-form-available-for-self-employed-individuals-to-claim-covid-19-sick-and-family-leave-tax-credits-under-ffcra>.
- 49 IRS, CDW, Sick and Family Leave Data from Form 7202 in IRTF, IMF (Oct. 29, 2024).
- 50 IRS, CDW, IRTF, IMF TYs 2018-2023 (Oct. 29, 2024).
- 51 National Taxpayer Advocate 2025 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (Authorize the IRS to Establish Minimum Competency Standards for Federal Tax Return Preparers and Revoke the Identification Numbers of Sanctioned Preparers)*.
- 52 IRS, Directory of Federal Tax Return Preparers with Credentials and Select Qualifications, <https://irs.treasury.gov/rpo/rpo.jsf> (last visited Nov. 18, 2024).
- 53 Courts have held that the IRS can only regulate practitioners representing taxpayers before it. Simply acting as a return preparer does not, in the eyes of the courts, rise to the level of "practice before the IRS." See *Loving v. IRS*, 917 F.Supp. 2d 67 (D.D.C. 2013), *aff'd*, 742 F.3d 1013 (D.C. Cir. 2014); *Sexton v. Hawkins*, 119 A.F.T.R.2d 2017-1187, (D. Nev. 2017); *Ridgely v. Lew*, 55 F.Supp. 3d 89 (D.D.C. 2014).
- 54 The IRS has no scam victim assistance group. Although the agency has the Identity Theft Victim Assistance program, this group does not handle issues of frozen refunds for taxpayers who are victims of tax-related scams. IRS response to TAS information request (Oct. 16, 2024).
- 55 Although the IRS has the Frivolous Return Program, it is a compliance function rather than a scam victim assistance function. See generally IRM 25.25.10, Frivolous Return Program (Dec. 13, 2023), [https://www.irs.gov/irm/part25/irm\\_25-025-010r](https://www.irs.gov/irm/part25/irm_25-025-010r).
- 56 Collection alternatives remain for victims who owe taxes because of scams. These include currently not collectible status, installment agreements, and offers in compromise. These only provide temporary relief in some instances, and often penalties and interest still accrue, but they are alternatives the IRS can and should be helping scam victims understand. For more information on all collection alternatives, see TAS, Collection Alternatives Station, <https://www.taxpayeradvocate.irs.gov/notices/collection-alternatives-station/> (last updated Sept. 4, 2024).



The current IRS response is fragmented and inconsistent. Scam victims often receive conflicting information, if any at all, about frozen refunds and other IRS actions. They must explain and reexplain their situation to different employees who lack the authority or expertise to provide real help. For example, if a taxpayer experiences a scheme-related frozen refund and calls the IRS's toll-free number, the Internal Revenue Manual (IRM) instructs the IRS employee to give the following advice to the taxpayer.

Note that the following is the National Taxpayer Advocate's plain language interpretation of the IRM instructions for the sake of this report. The actual IRM language is much more complicated, but even the following plain language version can confuse the average taxpayer:

*If a taxpayer's return is frozen and they have received a Letter 3176C, they should respond quickly and correct their return within 30 days. If no letter has been issued, the IRS may still be reviewing the return. The taxpayer might need to provide more documentation, and they should wait up to 180 days for a letter or further instructions. If the letter has not arrived after 180 days, the taxpayer should contact the IRS, and the agent will prepare Form 4442 to escalate the issue. The taxpayer then must wait another 90 days for a response.<sup>57</sup>*

Moreover, the taxpayer only receives these instructions if they proactively call the IRS toll-free line, but they may face issues with long hold times, the potential to get disconnected,<sup>58</sup> and once connected to a live assistor, the ability of the assistor to find this IRM section. IRS procedures allow for the total time the taxpayer could wait to get a resolution to a frozen refund to be almost a year. This piecemeal approach to communicating with scammed taxpayers prolongs the emotional and financial suffering of victims.<sup>59</sup>

To its credit, the IRS has amended its Strategic Operating Plan to allocate additional funds in FY 2025 toward two key objectives: improving victim assistance and prioritizing analytics to detect tax return scams before issuing refunds.<sup>60</sup> However, implementing more rigorous fraud detection measures will inevitably lead to increased delays in refund processing for some taxpayers. Therefore, the IRS should simultaneously bolster its capacity to assist potential scam victims and provide clear and timely communication regarding the status of their refunds. The establishment of a centralized office will help balance these dual priorities and ensure a coordinated approach.

Taxpayers have a *right to be informed* of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.<sup>61</sup> A centralized office would streamline the victim experience, providing clear communication, faster resolution times, and tailored support. Such an office would serve as both a lifeline for victims and a signal by the agency that it is proactively addressing tax-related fraud.<sup>62</sup> Until such a centralized office exists, victims will be left in a state of uncertainty, struggling against a system that treats them as an adversary. These victims need help coming into compliance and understanding why their actions were inappropriate based upon the law.

57 IRM 21.5.6.4.10(3), -E Freeze (July 24, 2024), [https://www.irs.gov/irm/part21/irm\\_21-005-006r](https://www.irs.gov/irm/part21/irm_21-005-006r).

58 See Most Serious Problem: *IRS Service: Taxpayer Service Is Often Not Timely or Adequate*, *supra*.

59 The IRS disconnecting a taxpayer's telephone call is a significant problem. See *id.*

60 IRS, Pub. 3744-A, IRS IRA Strategic Operating Plan Annual Update Supplement (Apr. 2024), <https://www.irs.gov/pub/irs-pdf/p3744a.pdf>. See also Lauren Loricchio, *IRS Seeks Outside Help to Thwart Scams and Schemes*, 183 TAX NOTES 2025 (June 6, 2024), <https://www.taxnotes.com/tax-notes-today-federal/tax-system-administration/irs-seeks-outside-help-thwart-scams-and-schemes/2024/06/06/7k9c4>.

61 See TBOR, <https://www.taxpayeradvocate.irs.gov/taxpayer-rights> (last visited Nov. 19, 2024). The rights contained in TBOR are also codified in IRC § 7803(a)(3).

62 See also H.R. 6452, 118th Cong. § 2 (2024) (establishing a Veterans Scam and Fraud Evasion Officer in the Department of Veterans Affairs).

## IRS Efforts to Combat Scams Need Improvement

### *Multi-Sector Approach to Scam Detection*

The IRS has recognized that it cannot fight the growing surge of tax-related scams alone. In recent years, it has expanded its efforts by forming alliances that bring together subject matter experts from government, state tax agencies, private sector partners, and industry leaders. At the forefront of these efforts is the Security Summit, a coalition formed in 2015 that represents a groundbreaking public-private partnership aimed at combating stolen identity refund fraud.<sup>63</sup> The Security Summit has established data-sharing agreements that have enabled swift action against emerging threats. As a result, the IRS and its partners are identifying suspicious activity faster than ever before.<sup>64</sup>

Building on the successes of the Security Summit, the IRS has also launched the Coalition Against Scam and Scheme Threats.<sup>65</sup> The coalition, which includes software providers, financial companies, and professional associations, plans to take a three-pronged approach to this problem: (1) expand outreach about emerging scams, (2) develop new methods to detect scams at the point of filing, and (3) enhance the infrastructure needed to protect taxpayers.<sup>66</sup>

Though impactful, the IRS's collaborative efforts are not enough to keep pace with the rapidly evolving tactics of scammers. Every new task force, partnership, and coalition represents an important step forward, but these efforts still face significant challenges that prevent them from fully protecting taxpayers.

### *Data Analytics and Fraud Detection*

The IRS has also turned to advanced data analytics and technology-driven fraud detection methods to combat tax-related scams. By leveraging vast amounts of data shared through the Security Summit and other partnerships, the IRS can identify patterns and anomalies that signal fraudulent behavior. Algorithms flag suspicious filings by cross-referencing data from multiple sources to spot inconsistencies that could indicate identity theft or other forms of tax fraud.<sup>67</sup> These efforts have disrupted some of the more common schemes, protecting both taxpayers and the integrity of the tax system.<sup>68</sup>

But once the IRS identifies suspicious activity on the frontend, its outdated backend technology often causes unreasonable delays for taxpayers. The agency's case management systems rely on legacy infrastructure that struggles to integrate and communicate across platforms.<sup>69</sup> As a result, IRS staff must sometimes manually transfer taxpayer returns from one system in one unit to another in a different unit. This setup also prevents the IRS from effectively tracking returns and generating data that could further support scam detection, prevention, and the ability to separate legitimate returns from fraudulent ones in a shorter period for the benefit of taxpayers.

63 IRS, Security Summit, <https://www.irs.gov/newsroom/security-summit> (Nov. 22, 2024).

64 IRS, About the Security Summit, [https://www.irs.gov/pub/newsroom/about\\_the\\_security\\_summit.pdf](https://www.irs.gov/pub/newsroom/about_the_security_summit.pdf).

65 IRS News Release, IR-2024-215, IRS, States, Tax Industry Announce New Joint Effort to Combat Growing Scams and Schemes; Ongoing Coordination to Follow in Footsteps of Security Summit's Identity Theft Efforts to Help Taxpayers and Protect Revenue (Aug. 16, 2024), <https://www.irs.gov/newsroom/irs-states-tax-industry-announce-new-joint-effort-to-combat-growing-scams-and-schemes-ongoing-coordination-to-follow-in-footsteps-of-security-summits-identity-theft-efforts-to-help-taxpayers-and>.

66 *Id.*

67 IRS, Security Summit, <https://www.irs.gov/newsroom/security-summit> (Nov. 22, 2024).

68 IRS response to TAS information request (Oct. 16, 2024).

69 The IRS still uses its 30-year-old Electronic Fraud Detection System for case management and movement. TAS discussions with IRS Business Operating Divisions (Oct. 22, 2024).

### Outreach and Public Education

Public education is a cornerstone of the IRS's strategy to combat scams. Each year, the IRS releases its "Dirty Dozen" list of the most common tax scams.<sup>70</sup> These warn taxpayers about the latest schemes and offer advice on how to protect themselves. The IRS disseminates the Dirty Dozen campaigns across multiple platforms, including its website, press releases, and traditional media. The IRS has also ventured into social media, using Instagram posts and YouTube videos to reach younger taxpayers who might be especially vulnerable to tax-related scams spread through similar platforms.<sup>71</sup>

Still, these outreach efforts face multiple hurdles. For direct tax-related scams, the current TikTok ban is hurting the IRS's detection and outreach efforts. An increasing demographic, particularly younger taxpayers, now primarily receives information through platforms like TikTok.<sup>72</sup> But recent Office of Management and Budget (OMB) guidance prohibits the IRS from accessing, monitoring, or posting correct tax information on TikTok using federal devices.<sup>73</sup> This policy, which was intended to protect government systems, inadvertently blinds the IRS to a hotbed of tax misinformation and scam activity while also preventing it from flooding the same platform with correct tax information and public education.

This disconnect between where scams proliferate and where the IRS can monitor and respond is a mission-critical vulnerability in our tax system's defenses. Scammers exploit this gap, spreading false tax advice through viral posts that can reach millions before the IRS is even aware of their existence.

To bridge this divide, the IRS has explored ways to address the OMB prohibition by seeking a waiver for activities related to tax scam detection, public outreach, and enforcement, all with proper data security measures in place.<sup>74</sup> The agency needs the ability to identify tax scams in real time, respond to inaccurate tax advice swiftly, and provide counter messaging on the same platforms where misinformation thrives. The goal is to reach taxpayers where they are most likely to encounter these scams and fall under their influence.

For indirect tax-related scams, the IRS can do a better job of educating taxpayers on their filing obligations, such as the need to report the income and any additional tax on the withdrawal of money from a tax-deferred account such as a 401(k) plan. This could include partnering with agencies like the Consumer Financial Protection Bureau to warn taxpayers of these scams and their consequences. Also, the IRS can improve its communication of collection alternatives at the same time it presents the unexpected bill to taxpayers.

Another hurdle is the complexity of the information the IRS presents to the public. Not surprisingly, most taxpayers do not have IRS.gov on their list of favorites. The National Taxpayer Advocate suspects many taxpayers would not even know where or what to search. The IRS needs to continue increasing its outreach through social media, local newspapers, and local news and leveraging other creative outlets, its stakeholders, and industry.

70 IRS, Dirty Dozen, <https://www.irs.gov/newsroom/dirty-dozen> (June 12, 2024).

71 Leslie Gaydos, *IRS Commissioner on Scams, Social Media, and His Cat*, NBCBOSTON.COM (July 2, 2024), <https://www.nbcboston.com/investigations/consumer/irs-commissioner-on-scams-social-media-and-his-cat/3417051/>.

72 Josh Howarth, *TikTok Users by Age, Gender & Demographics*, EXPLODING TOPICS (June 12, 2024), <https://explodingtopics.com/blog/tiktok-demographics>.

73 OMB, M-23-13, "No TikTok on Government Computers" Implementation Guidance (Feb. 27, 2023), [https://www.whitehouse.gov/wp-content/uploads/2023/02/M-23-13-No-TikTok-on-Government-Devices-Implementation-Guidance\\_final.pdf](https://www.whitehouse.gov/wp-content/uploads/2023/02/M-23-13-No-TikTok-on-Government-Devices-Implementation-Guidance_final.pdf). The OMB implementation guidance provides that new contracts should not contain requirements that may include the use of TikTok in performance of the contract, so the IRS cannot contract out monitoring TikTok.

74 Erin Slowey, *IRS Seeks to Bypass TikTok Ban to Fight Tax Scams, Fallacies*, DAILY TAX RPT. (Sept. 11, 2024), <https://news.bloombergtax.com/daily-tax-report/irs-seeks-to-bypass-tiktok-ban-to-fight-tax-scams-fallacies>. See also TIGTA, Ref. No. 2024-IE-R003, *The Internal Revenue Service is Not Fully Complying With the No TikTok on Government Devices Implementation Guidance* 8-9 (2023), <https://www.tigta.gov/sites/default/files/reports/2023-12/2024ier003fr.pdf> (discussing IRS Criminal Investigation's need to access TikTok for monitoring purposes).

## CONCLUSION AND RECOMMENDATIONS

Tax-related scams pose a significant and growing threat. The sophisticated and ever-evolving nature of these scams, coupled with their wide-reaching impact across various demographics, presents a formidable challenge for the IRS and taxpayers alike. While the IRS has made commendable efforts to combat these scams through multi-sector collaborations, enhanced detection methods, and public outreach, there remains room for improvement.

### Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Enhance transparency by creating an online dashboard that provides up-to-date information to taxpayers regarding their tax returns, amended returns, the estimated date on which a taxpayer can expect to receive a refund, and the reason why the IRS suspended its processing of a refund.<sup>75</sup>
2. Implement a policy to promptly mail meaningful plain language written notices to taxpayers affected by refund freezes or delays that clearly explain the problem and the next steps taxpayers must take to resolve the issue.
3. Provide guidance to scam victims on how to treat losses, whether they had a profit motive or not, similar to guidance provided to Ponzi scheme victims.
4. Develop an interactive online tool to help victims correctly report tax-related scams to the IRS.
5. Evaluate whether the IRS can implement appropriate security measures to eliminate concerns regarding access to TikTok or similar websites on federal devices for activities related to scam detection, outreach, and enforcement.
6. Create a specialized Scam Prevention and Victim Assistance Office staffed with employees trained to address issues specific to scam victim assistance and provide administrative remedies within the IRS.

### Legislative Recommendations to Congress

The National Taxpayer Advocate recommends that Congress:<sup>76</sup>

1. Allow the theft loss deduction under IRC § 165(h) of the TCJA to expire after TY 2025 so that a taxpayer can claim a theft loss deduction regardless of whether the loss occurred in a federally declared disaster area.
2. Amend IRC §165(e) to enable taxpayers to deduct the loss in the same year as any associated income inclusion event and amend IRC § 6511 to extend the refund statute of limitations to allow for related refund claims.
3. Amend IRC § 72(t)(2) to create an exception to the ten percent additional tax (the “early withdrawal penalty”) on distributions from qualified tax deferred plans that taxpayers withdrew from because of a scam.
4. Amend Title 31, § 330 of the U.S. Code to authorize the Secretary to establish minimum standards for paid federal tax return preparers.

<sup>75</sup> Cf. Improving IRS Customer Service Act, S. 5280, 118th Cong. § 3 (2024).

<sup>76</sup> For the corresponding legislative recommendation for administrative recommendations one through three, see National Taxpayer Advocate 2025 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (Allow the Limitation on Theft Loss Deductions in the Tax Cuts and Jobs Act to Expire So Scam Victims Are Not Taxed on Amounts Stolen from Them)*. For the corresponding legislative recommendations to administrative recommendation four, see National Taxpayer Advocate 2025 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (Authorize the IRS to Establish Minimum Competency Standards for Federal Tax Return Preparers and Revoke the Identification Numbers of Sanctioned Preparers)*. The latter includes a recommendation to amend IRC § 6109 to authorize the Secretary to revoke PTINs concurrently with the assessment of actions for violations of established minimum standards for paid federal tax return preparers.

**RESPONSIBLE OFFICIALS**

David Padrino, Chief Transformation and Strategy Officer

Lia Colbert, Commissioner, Small Business/Self-Employed Division

Kimberly Rogers, Director, Return Preparer Office

Kenneth Corbin, Chief, Taxpayer Services

Fumi Tamaki, Chief Taxpayer Experience Officer



## HIRING

**The IRS's Continuing Challenges in Employee Recruitment, Hiring, Training, and Retention Are Hindering Its Ability to Achieve Transformational Change in Taxpayer Service and Tax Administration**

### WHY IS THIS A SERIOUS PROBLEM FOR TAXPAYERS

Taxpayers are entitled to quality service and a fair and just tax system under the Taxpayer Bill of Rights (TBOR).<sup>1</sup> However, due to underinvestment in the IRS and critically low staffing levels over the past decade, taxpayers have faced:

- Prolonged wait times for assistance;
- Delays in processing returns and refunds;
- Reduced access to knowledgeable IRS employees; and
- Inconsistent application of tax laws and increasing errors.<sup>2</sup>

Although Congress provided multiyear funding in 2022 to address these issues, IRS success hinges on its ability to recruit, hire, train, and retain a skilled workforce. With high attrition rates in key divisions, taxpayers risk ongoing poor service and tax administration inefficiencies if these challenges persist. If the IRS fails to strengthen its recruitment, hiring, training, and retention practices, taxpayers may continue to face inadequate service, inefficient tax processing, limited access to knowledgeable IRS representatives, and potential errors in tax administration, resulting in potential harm to filing season services and collection of tax dollars.

1 See TBOR, <https://www.taxpayeradvocate.irs.gov/taxpayer-rights> (last visited Nov. 27, 2024). These rights are also codified in IRC § 7803(a)(3).

2 See generally National Taxpayer Advocate 2023 Annual Report to Congress 48 (Most Serious Problem: *Telephone and In-Person Service: Despite Improvements in Its Service Levels, the IRS Still Does Not Provide Taxpayers and Tax Professionals With Adequate, Timely Telephone and In-Person Service*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23\\_MSP\\_04\\_Telephone-InPerson.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23_MSP_04_Telephone-InPerson.pdf); National Taxpayer Advocate 2023 Annual Report to Congress 5 (Most Serious Problem: *Processing: Ongoing Processing Delays Burden and Frustrate Taxpayers Awaiting Refunds and Other Account Actions*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23\\_MSP\\_01\\_Processing-Delays\\_FINAL\\_01292024.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23_MSP_01_Processing-Delays_FINAL_01292024.pdf).



## EXPLANATION OF THE PROBLEM

The IRS faces significant challenges recruiting, hiring, training, and retaining qualified employees essential for fulfilling its mission.<sup>3</sup> Significant staffing shortages over the past decade have led to poor taxpayer service and operational inefficiencies, impacting both taxpayers and the agency's effectiveness in tax administration. Hiring is just the beginning of the quest to improve service and provide taxpayers the experience and assistance they deserve. However, it takes time to develop the skillset necessary to give taxpayers a good experience. With additional funding, over the past two-plus years, the IRS has been able to bring in additional resources, but many of the taxpayer service programs deal with complex challenges such as identity theft, Individual Taxpayer Identification Numbers, Employee Retention Credits, Earned Income Tax Credits, large dollar refunds, or credit transfer refunds taking years of experience and training to master. To understand and work these complex account issues, employees need training and experience in a combination of modernized tools and systems. The typical investment in these employees takes at least three years, and that assumes the IRS has experienced frontline managers, senior managers, or executives with the experience or bandwidth to provide the support necessary for the new employees.

The IRS Strategic Operating Plan (SOP) aims to enhance taxpayer services through improved support, clearer guidance, expanded electronic filing options, and better in-person, telephone, or self-service through online accounts.<sup>4</sup> It focuses on enforcing tax laws for large corporations, complex partnerships, and high-net-worth individuals while also modernizing its technology, information technology systems, and applications.<sup>5</sup>

Implementing the improvements envisioned by the SOP will require skilled personnel. Even with technological advancements intended to automate manual human-driven work, the IRS needs skilled employees to build and maintain these automated systems. Recognizing the importance of employees to the IRS's vision for taxpayer service, the SOP includes an objective focused on the IRS workforce.<sup>6</sup> While the IRS has made some progress since the plan's April 2023 announcement, significant work remains before the SOP's workforce-related goals are fully realized.<sup>7</sup>

To meet the expectations of a modern, efficient, and service-oriented workforce, the IRS must transform its recruitment, hiring, training, and retention strategies to address the following challenges:

- Current job postings are not reaching the desired candidates;
- The IRS faces competitive disadvantages in talent acquisition;
- Inflexible hiring and onboarding processes deter applicants;
- The IRS lacks comprehensive data on which recruitment strategies are most effective, making it difficult to optimize hiring efforts and allocate recruitment resources;
- IRS training is not ready for the influx of new employees;
- The tax industry talent pool is shrinking;
- A permanent leadership vacuum stifles innovation and threatens employee morale; and
- Current IRS retention efforts are promising but still inadequate.

The IRS needs a skilled, service-oriented workforce to reduce taxpayer frustration, improve accuracy, and build trust in the tax system. Without transformative action, taxpayers will continue to bear the burden of inefficiencies and delays.

3 The IRS's mission is to "[p]rovide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all." Internal Revenue Manual (IRM) 1.1.1.2(1), IRS Mission (July 29, 2019), [https://www.irs.gov/irm/part1/irm\\_01-001-001](https://www.irs.gov/irm/part1/irm_01-001-001).

4 IRS, Pub. 3744, IRS IRA Strategic Operating Plan (Apr. 2023), <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.

5 *Id.*

6 *Id.* at 102-121 (encompassing SOP Objective 5: Attract, retain, and empower a highly skilled, diverse workforce and develop a culture that is better equipped to deliver results for taxpayers).

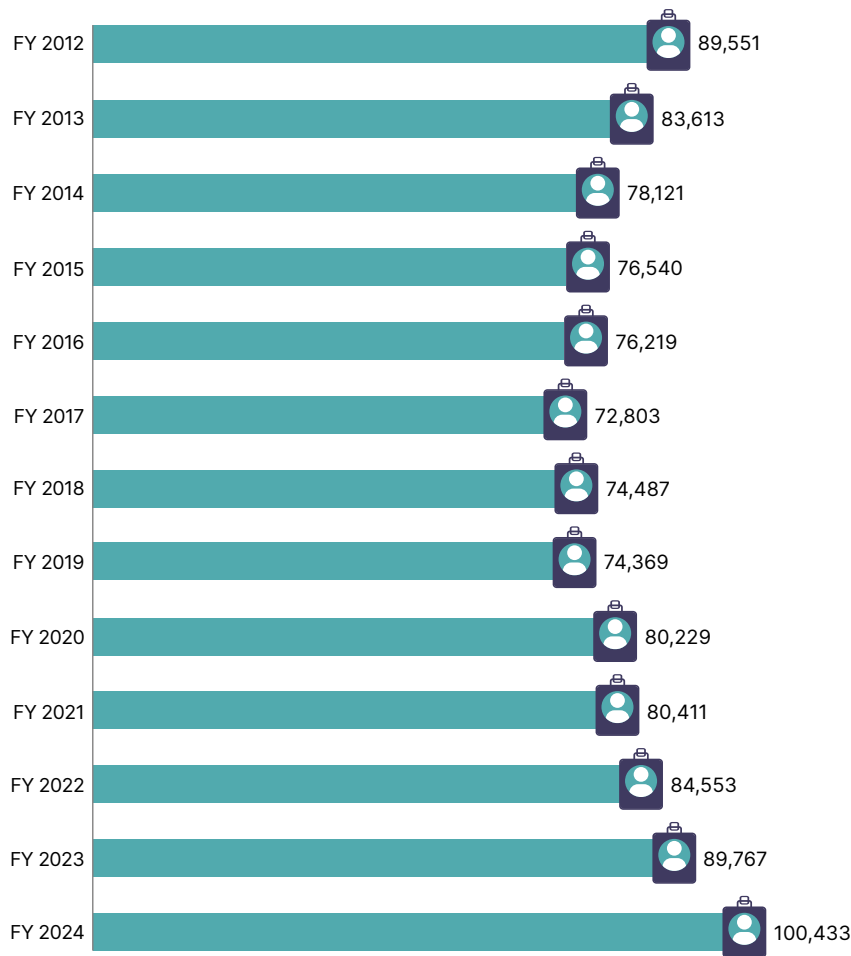
7 IRS response to TAS information request (Sept. 27, 2024).

## ANALYSIS

Though the IRS has made some improvements because of additional multiyear funding, it faces ongoing challenges in attracting and retaining skilled employees. Its persistent struggle to attract and retain qualified employees necessitates a fundamental shift in its human capital strategy, and the agency is the first to acknowledge this. From fiscal years (FYs) 2012-2021, the workforce shrank by 13 percent, with attrition outpacing hiring for much of that time.<sup>8</sup> Although the additional funding has helped the IRS exceed hiring goals for some positions in FY 2024,<sup>9</sup> deeper issues persist.

**FIGURE 2.6.1<sup>10</sup>**

**IRS Employees Onboard at the End of Each Fiscal Year, FYs 2012-2024**



8 The average number of positions the IRS realized for FY 2012 was 90,280. The average number of positions the IRS realized for FY 2021 was 78,661, for a decrease of 12.87 percent. The number of positions the IRS realized was greater than the number of employees at the close of the fiscal year for 2012 through 2017. IRS, FYs 2012-2018 Data Books, Table 30 (Mar. 2013, Mar. 2014, Mar. 2015, Mar. 2016, Mar. 2017, Mar. 2018, May 2019); IRS, FYs 2019-2022 Data Books, Table 32 (June 2020, June 2021, May 2022, Mar. 2023); IRS FY 2023 Data Book, Table 34 (Apr. 2024), <https://www.irs.gov/statistics/soi-tax-stats-all-years-irs-data-books>.

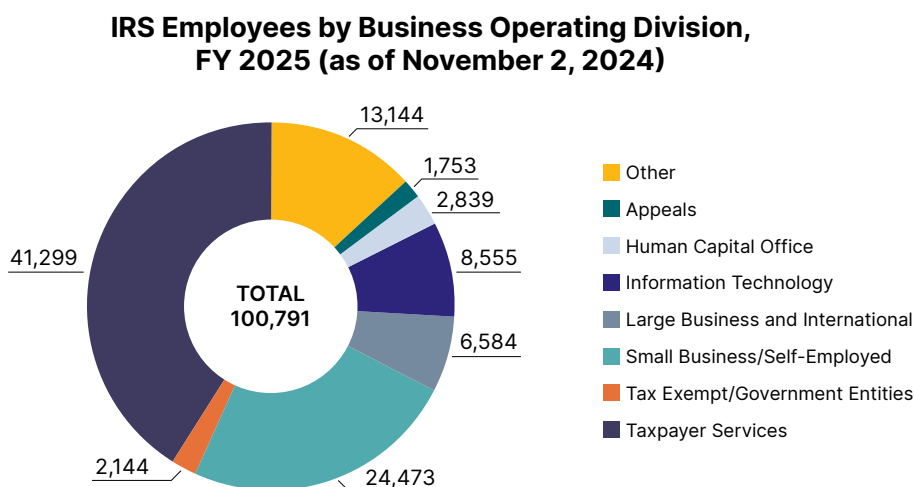
9 The IRS's headcount goal for FY 2024 was 106,491. IRS response to TAS information request (Sept. 27, 2024). The agency almost met the goal, with a final headcount for FY 2024 of 100,433, an increase of 10,097 since the beginning of FY 2024. IRS, The Wire: Human Capital Enterprise Data Hub End of Week Newsletter (Oct. 18, 2024) (on file with TAS); IRS response to TAS information request (Sept. 27, 2024). For FY 2024, the IRS goal was to hire 5,155 Revenue Agents and 865 Revenue Officers. As of September 8, 2024, the IRS had hired 6,144 Revenue Agents and 1,418 Revenue Officers.

10 IRS, FYs 2012-2018 Data Books, Table 30 (Mar. 2013, Mar. 2014, Mar. 2015, Mar. 2016, Mar. 2017, Mar. 2018, May 2019); IRS, FYs 2019-2022 Data Books, Table 32 (June 2020, June 2021, May 2022, Mar. 2023); IRS FY 2023 Data Book, Table 34 (Apr. 2024), <https://www.irs.gov/statistics/soi-tax-stats-all-years-irs-data-books>.

Since April 2023, the IRS has improved its hiring capacity by continuing to fill positions in its Human Capital Office (HCO) that directly support hiring activities.<sup>11</sup> This IRS investment and continued use of expanded Direct-Hire Authority (DHA) has expedited some hiring processes, yet the agency’s time-to-hire metric remains higher than the Office of Personnel Management’s (OPM’s) 80-day goal, showing the IRS still has improvements to make.<sup>12</sup>

- Time to hire was 88 days with DHA;<sup>13</sup>
- Time to hire was 93 days without DHA for external hires;<sup>14</sup> and
- Overall external time to hire increased nine percent (85 to 93 days) from FY 2023 to FY 2024.<sup>15</sup>

FIGURE 2.6.2<sup>16</sup>



Despite the improvements made by the IRS, attrition continues to operate as a damper on progress. An estimated 63 percent of the current IRS workforce is eligible to retire within six years, and the challenges associated with maintaining a sufficient employee headcount may worsen.<sup>17</sup> In the Taxpayer Services Division alone, attrition for the past two years ranges from 16 percent to 36 percent, depending upon the job position.

11 IRS response to TAS information request (Sept. 27, 2024). Through September 7, 2024, HCO has hired 313 external Human Resources Specialists.

12 OPM, *End to End Hiring Initiative 10* (Mar. 2017), <https://www.opm.gov/policy-data-oversight/human-capital-management/hiring-reform/reference/end-to-end-hiring-initiative.pdf>.

13 IRS response to TAS information request (Oct. 23, 2024).

14 *Id.* Including internal hires, *i.e.*, those already employed by the IRS, changes these numbers because there are fewer hurdles to overcome if the IRS hires internally. For example, the average time-to-hire for Q1 through Q3 of FY 2024 was 74 days for internal and external hires combined, below the OPM standard of 80 days. Still, this does not necessarily indicate an overall improvement. For FY 2021, the combined internal and external average time-to-hire was 98.6 days. For FY 2022, it was 80.63 days, and for FY 2023, it was 69.22 days. While the regression line is trending downward, which is good, FY 2024 combined averages are still higher than the previous year. IRS Human Capital Office (HCO), Business Performance Review 11 (Aug. 27, 2024).

15 IRS HCO, Time to Hire Dashboard, as of September 9, 2024.

16 IRS HCO, Headcount and Hiring (Nov. 13, 2024) (on file with TAS).

17 IRS, Pub. 3744, IRS IRA Strategic Operating Plan 108 (Apr. 2023), <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.

**FIGURE 2.6.3, Attrition in IRS Taxpayer Services Positions, FYs 2023-2024<sup>18</sup>**

	Population at Start of FY 2023 Closing Out PP20 (10/8/22)	FY 2023 Attrition Percentage	Population at Start of FY 2024 Closing Out PP20 (10/7/23)	FY 2024 Attrition Percentage (as of 10/5/24)
Customer Service Representatives (GS-0962)	17,395	24.14%	19,460	19.05%
Tax Examiners (GS-0592)	2,313	17.38%	3,072	16.80%
Clerks (GS-0303/0305/0356)	976	24.28%	1,069	36.30%
Accounts Management (All PP and Series)	22,949	23.32%	26,121	17.29%
<b>Total Taxpayer Services</b>	<b>37,551</b>	<b>21.87%</b>	<b>41,231</b>	<b>18.21%</b>

Ever-present barriers to hiring and retaining employees are the competitive job market for skilled professionals and the pay disparity between government jobs and comparable positions in the private sector. As of 2022, federal employees with professional degrees earned almost 29 percent less than non-federal counterparts, a widening gap hampering competitiveness.<sup>19</sup>

Without proper staffing levels, taxpayers face longer wait times, delayed return processing and issuance of refunds, and reduced access to experienced assistance. To meet staffing needs, the IRS should continue transforming its recruitment, hiring, training, and retention practices. Failure to do so will result in continued shortages in the number of skilled employees, ultimately harming taxpayers who deserve a fair and just tax system.

**Current Job Postings Are Not Reaching the Desired Candidates**

The IRS struggles to attract qualified applicants, which hinders its ability to build a skilled workforce essential for quality taxpayer service. This problem stems largely from the limited visibility and presentation of job postings. The IRS primarily advertises positions on USAJobs.gov, a government-specific site, while most job seekers rely on social media and popular job boards.<sup>20</sup> This lack of visibility reduces the quantity and quality of applicants.

The IRS has made some strides in this area, trying to think outside the proverbial box. In 2024, the IRS revamped its Careers website,<sup>21</sup> restructured HCO to include dedicated recruiters for each Business Operating Division (BOD), and encouraged job seekers to follow the agency on popular social media sites, such as LinkedIn and X, to reach broader audiences.<sup>22</sup> The National Taxpayer Advocate commends these initiatives and encourages further efforts.

**Most Position Descriptions Are Vague**

IRS job descriptions are often ambiguous and overly standardized, failing to accurately reflect specific duties and responsibilities, thereby making it difficult for applicants to understand the roles of the job. This standardization, which is part of OPM’s goal of fair compensation and opportunities across agencies, makes it difficult for applicants to understand and evaluate positions.

18 Discussion with Business Operating Division (BOD) executive (Nov. 21, 2024).

19 Cong. Budget Off. (CBO), Pub. 60235, COMPARING THE COMPENSATION OF FEDERAL AND PRIVATE-SECTOR EMPLOYEES IN 2022, at 11 (2024), <https://www.cbo.gov/system/files/2024-04/59970-Compensation.pdf>.

20 Brett Anderson et al., *Making the Federal Government an Employer of Choice for Early Career Professionals*, P’SHIP FOR PUB. SERV., <https://ourpublicservice.org/publications/making-the-federal-government-an-employer-of-choice-for-early-career-professionals> (last visited Nov. 27, 2024).

21 IRS News Release, IR-2024-165, IRS Updated Careers Website Aims to Better Connect With Job Seekers; Part of Larger Agency Recruiting Efforts to Serve Taxpayers, the Nation (June 13, 2024), <https://www.irs.gov/newsroom/irs-updated-careers-website-aims-to-better-connect-with-job-seekers-part-of-larger-agency-recruiting-efforts-to-serve-taxpayers-the-nation>.

22 *Id.*

For example, the IRS recently listed a Revenue Agent position hoping to fill 3,772 vacancies across several major IRS BODs at 252 locations.<sup>23</sup> However, the job description provided only vague and generic information, making it challenging for qualified candidates to assess their fit, which is true of many IRS employment opportunities. Job descriptions lack specificity about the job responsibilities and offer insufficient information for informed decision-making on the part of the applicant.<sup>24</sup> Further, the agency offers limited options for obtaining additional details on the position prior to applying, usually listing a generic email address for inquiries or a single IRS employee who does not work in the same BOD as the announced position.<sup>25</sup> This creates a poor first impression for experienced professionals.

To attract highly qualified candidates, the IRS should enhance its job postings, provide accessible support, and add visual content. For example, the agency could create tailored postings for each BOD and specialty area that include a detailed description of job responsibilities and expectations. It could also offer avenues for applicants to get role-specific information, including contacts within the hiring division to learn additional information from knowledgeable staff.

Job postings would also benefit from developing and posting “day in the life” videos that exemplify the job duties of the role specific to the role’s BOD and specialty area.<sup>26</sup> By addressing these issues, the IRS can better showcase its diverse opportunities and attract highly qualified candidates. These changes would make IRS opportunities more transparent, appealing, and competitive in the modern job market.

### ***The Current Process Makes Applying for Jobs Difficult***

The USAJobs.gov application process can be overly complex and confusing, discouraging qualified candidates and undermining IRS recruitment efforts. This disconnect between candidate expectations and the process significantly limits the agency’s ability to attract top talent. This mismatch between candidate expectations and the actual application experience may discourage qualified applicants and further hinder the IRS’s recruitment efforts.

To modernize and improve its recruitment strategy, the IRS should evaluate other available approaches to job postings, position descriptions, and applications. These might include:

- *Expand visibility:* Use popular professional networks, job boards, and industry-specific platforms to reach a broader audience.
- *Tailor job descriptions:* Provide clear, detailed, and specialized role descriptions to help candidates assess their fit.
- *Improve accessibility:* Offer multiple channels for candidates to seek information or express interest, such as direct contacts or virtual Q&A sessions.
- *Streamline applications:* Simplify the process to align with private sector standards, reducing barriers to entry.

23 USAJOBS.GOV, *Internal Revenue Agent (Examiner) – DIRECT HIRE (12 Month Register) AMENDED, Announcement number 24-12160039-EHD-0512-13, 11/07/2023 to 11/06/2024*, <https://www.usajobs.gov/job/759198000> (last visited Nov. 27, 2024). See also IRS, Pub. 5316, *Internal Revenue Service Advisory Council Public Report 42* (Nov. 2024), <https://www.irs.gov/pub/irs-pdf/p5316.pdf> (stating that “in September 2023, the IRS announced its intent to hire 3,700 ‘higher-graded revenue agents’ for positions in over 250 locations throughout the U.S.”).

24 See also IRS, Pub. 5316, *Internal Revenue Service Advisory Council Public Report 45* (Nov. 2024), <https://www.irs.gov/pub/irs-pdf/p5316.pdf> (stating that “it is not clear what experience is needed for the different listed Revenue Agent positions, leaving viewers to guess that the lowest starting salary of \$39,576 is entry level whereas the listing for \$98,496 is for an experienced hire but there is no indication of what experience is needed until the user pursues more clicks but may find references to “grade” positions that are unlikely to be understood by anyone outside of the IRS”).

25 Additionally, the IRS posts some positions at multiple grade levels, and then based on the applicant’s qualifications, it determines the appropriate grade. The difference between the starting salaries for General Schedule (GS)-13, GS-14, and GS-15 positions can be tens of thousands of dollars. This substantial differential combined with the intricacies of the GS pay scale may confuse applicants and deter them from applying if they are unable to decipher an approximation of the compensation for the role.

26 Conversations with outside stakeholders (Oct. 11, 2024). One professional expert in private sector hiring reported job postings with videos were exponentially more successful in attracting candidate interest.

In essence, to attract top talent, the IRS should modernize its recruitment strategy by creating a more efficient and user-friendly hiring process by meeting job seekers where they are, accurately describing positions, and simplifying the application process for qualified candidates, attracting the skilled professionals needed to improve taxpayer service.

### The IRS Faces Competitive Disadvantages in Talent Acquisition

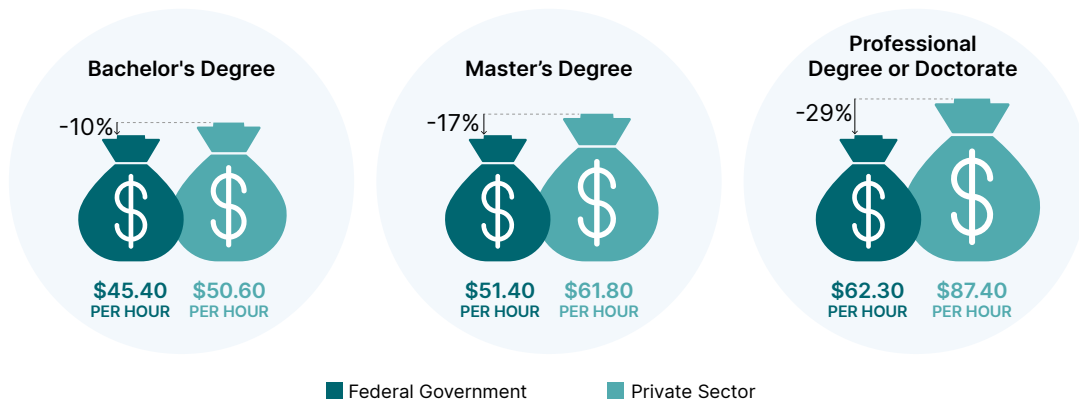
The IRS struggles to attract and retain skilled professionals due to significant competitive disadvantages compared to both private sector and other federal agencies. This dual challenge hampers its ability to build and maintain a skilled service-centered workforce essential for quality taxpayer service and a fair and just tax system.

#### Private Sector Competition

The private sector competition comes mainly in the form of compensation. Federal employees with bachelor's degrees earn ten percent less than their private sector counterparts, increasing to 17 percent for master's degrees and an alarming 29 percent for those with professional degrees or doctorates.<sup>27</sup> Current civil service laws and regulations prevent the IRS from matching law firm and corporate salaries and financial benefits,<sup>28</sup> limiting its competitiveness and making it impossible to compete in a direct bidding war.<sup>29</sup>

FIGURE 2.6.4

#### Federal Government vs. Private Sector Compensation by Education Level



27 CBO, PUB. 60235, COMPARING THE COMPENSATION OF FEDERAL AND PRIVATE-SECTOR EMPLOYEES IN 2022, at 11 (2024), <https://www.cbo.gov/system/files/2024-04/59970-Compensation.pdf>.

28 In theory, the IRS has a tool to help compensate for private sector pay discrepancies. When the IRS hires a new external employee, it generally hires at the lowest pay rate for that role. For example, each grade within the GS schedule has ten steps; thus, a new employee hired at the GS-13 level would typically onboard at step 1. However, the IRM does permit so-called "Superior Qualifications and Special Needs Appointments" for employees who have a greater level of experience, education, or skill than a typical employee entering that grade. Significant discrepancies between federal and public sector for the type of position, existing labor market conditions, recruitment challenges for the role in question, or geographic locations where it is difficult to hire, among other factors, may justify a higher step entry level. IRM 6.531.1.2.6, Superior Qualifications and Special Needs Pay-Setting Authority (Oct. 1, 2020), [https://www.irs.gov/irm/part6/irm\\_06-531-001](https://www.irs.gov/irm/part6/irm_06-531-001). This authority ultimately comes from 5 U.S.C. § 5333 and is operationalized in 5 C.F.R. § 531.212. This special pay-setting authority is a valuable tool to onboard candidates who are unable to accept a role at the entry-level step compared to the private sector salary prospects, but IRS BODs reported that HCO frequently disapproves Special Qualifications Appointments despite the applicant meeting the requirements of the superior qualifications or special needs pay-setting authority.

29 According to the CBO, federal workers with a professional degree or doctorate, which is about ten percent of the federal workforce, on average earn about 29 percent less than their private-sector counterparts. CBO, PUB. 60235, COMPARING THE COMPENSATION OF FEDERAL AND PRIVATE-SECTOR EMPLOYEES IN 2022, at 11 (2024), <https://www.cbo.gov/system/files/2024-04/59970-Compensation.pdf>. Similarly, those with a bachelor's degree earn ten percent less, and those with a master's degree earn 17 percent less.



### ***Federal Agency Disparities***

The challenge extends beyond the private sector, as the IRS also struggles to compete with some federal agencies. Agencies like the Federal Deposit Insurance Corporation, Securities and Exchange Commission, and Treasury's Office of the Comptroller of the Currency offer higher salaries outside the General Schedule (GS) pay scale, further disadvantaging the IRS.<sup>30</sup>

Staffing shortages are particularly acute in specialized areas, such as economists in the Large Business and International (LB&I) BOD. The Treasury Inspector General for Tax Administration (TIGTA) reports that the IRS frequently denies specialist assistance requests during an examination due to IRS understaffing; for example, it rejected requests for assistance from economists more than half the time.<sup>31</sup> IRS management consistently identifies pay disparity as a major contributor to the agency's inability to recruit and retain highly skilled specialists.<sup>32</sup>

But the IRS still has opportunities to leverage its unique strengths to overcome these challenges.

### ***Highlight Non-Monetary Benefits by Promoting Satisfaction of Public Service and Quality of Life Advantages***

While the agency cannot win dollar-for-dollar bidding wars, it can focus on distinctive non-monetary benefits that set the IRS apart from other employers.<sup>33</sup> The satisfaction of contributing to public service and making a difference, combined with quality-of-life advantages, can attract professionals willing to accept reduced pay for meaningful work.<sup>34</sup> The IRS can excel in enhancing professional growth opportunities and professional development through initiatives like IRS University (IRSU) to attract candidates seeking meaningful careers that many private sector companies find difficult to match due to profit-driven priorities.

### ***Advocate for Legislative Changes***

To address these challenges effectively, the IRS should pursue a two-pronged approach. First, the agency should enhance its focus on professional development and quality-of-life benefits, creating compelling career paths and flexible work opportunities that appeal to modern workforce preferences. Second, it should advocate for structural changes and seek legislative approval for more flexible pay structures to better compete for specialized talent. Lastly, it should develop targeted recruitment strategies for high-demand roles.

Rather than directly competing on salary, the IRS should focus on creating a compelling value proposition that emphasizes career development, work-life balance, and the opportunity to contribute to a fair and just tax system. By combining these efforts with structural changes, the IRS can better attract and retain talented professionals dedicated to servicing taxpayers effectively and providing quality taxpayer service and a fair and just tax system.

30 Such agencies are outside of the restriction of any congressional appropriations act because they are funded by other means, such as fees paid by specific industries. See generally David Scholl, *Federal Jobs and Compensation at Financial Regulatory Agencies*, FED. GOV'T JOBS (Jan. 14, 2022), <https://federaljobs.net/blog/federal-jobs-and-compensation-at-financial-regulatory-agencies> (explaining how some agencies pay employees significantly higher than those with similar federal jobs in agencies subject to GS and Senior Executive Service pay scales).

31 TIGTA, Ref. No. 2024-400-045, *The IRS Faces Challenges to Address Tax Avoidance Strategies of Large Multinational Corporations* 18 (2024), <https://www.tigta.gov/sites/default/files/reports/2024-08/2024400045fr.pdf>.

32 *Id.* at 19.

33 See CBO, PUB. 60235, *COMPARING THE COMPENSATION OF FEDERAL AND PRIVATE-SECTOR EMPLOYEES IN 2022*, at 3 (2024), <https://www.cbo.gov/system/files/2024-04/59970-Compensation.pdf> ("When searching for a job, most workers are willing to accept lower wages and smaller benefits if the job offers other attributes that they value.").

34 See, e.g., Mark A. Nickerson, *The Conflict Surrounding Work-Life Balance in Public Accounting Firms*, CPA J. (Feb. 2024), <https://www.cpajournal.com/2024/02/12/the-conflict-surrounding-work-life-balance-in-public-accounting-firms> (finding that 92 percent of accounts surveyed indicated they make use of flexible and remote work arrangements). In FY 2024, HCO worked with a recruitment and marketing contractor to develop an employee value proposition and a branding/marketing strategy for publicizing this proposition. HCO anticipates implementing the results of this work in FY 2025. IRS response to TAS information request (Sept. 27, 2024).

## Inflexible Hiring and Onboarding Processes Deter Applicants

The IRS's complex hiring and onboarding processes, while designed for fairness and transparency, create significant barriers to attracting and retaining talent, particularly from the private sector. The IRS's hiring process is widely perceived as overly complex and bureaucratic, which often results in extended time-to-hire periods.<sup>35</sup> This complexity can discourage potential applicants from outside the government, particularly those seeking a quicker transition to IRS employment.<sup>36</sup> Though the intricate nature of federal hiring procedures is designed to ensure fairness and transparency, it may inadvertently deter qualified candidates accustomed to a more agile recruitment experience.

To address this issue, the IRS should explore ways to streamline and simplify its hiring process without compromising necessary vetting procedures. It may need to advocate for legislative or regulatory changes to allow for more flexibility in federal hiring practices.

Sometimes BODs employ cohort onboarding, where groups of new employees onboard and begin their training on the same day.<sup>37</sup> The agency's standard cohort onboarding process, while efficient from an administrative standpoint, often fails to account for the practical realities of changing jobs. BOD stakeholders report that the IRS often does not give new employees adequate notice prior to their start date.<sup>38</sup> For example, one stakeholder reported that the IRS did not notify candidates of their start date in time for the new hires to give their current employer a customary two-week notice.<sup>39</sup> This one-size-fits-all approach can lead to early job dissatisfaction and potentially contribute to higher turnover rates among experienced hires.

## The IRS Lacks Comprehensive Data on Which Recruitment Strategies Are Most Effective, Making It Difficult to Optimize Hiring Efforts and Allocate Recruitment Resources

A significant gap in the IRS's hiring strategy is the lack of comprehensive data collection and analysis on the effectiveness of its recruitment efforts. Without this information, the agency is unable to refine its approaches or identify which methods yield the best results. Implementing robust data collection mechanisms, such as conducting focus groups with new hires and collecting data on why employees choose to accept various positions, can equip hiring managers with targeted talking points that emphasize the most attractive aspects of the agency.<sup>40</sup>

The IRS should also tailor its recruitment approach to align with the position for which it is recruiting, based on a robust system of data collection.

## IRS Training Is Not Ready for the Influx of New Employees

The prolonged delay in establishing IRSU has been a significant setback in the IRS's efforts to enhance its workforce capabilities, which threatens its ability to meet taxpayer service expectations. At the end of FY 2024, IRSU was still in the early stages of its development, with only three out of 24 demonstration projects completed; however, the IRS closed out the remainder of these projects and opened the IRSU doors in October 2024.<sup>41</sup>

35 NEOGOV, *Public Sector Time-to-Hire is 3x as Long as the Private Sector* (Aug. 19, 2020), <https://info.neogov.com/resources/time-to-hire-report> (asserting that "[t]he best candidates are snagged within ten days of entering the job market").

36 Discussion with BOD representatives involved with hiring and onboarding (Oct. 24, 2024). This topic came up from multiple hiring subject matter experts that there is an extensive time between steps in the hiring process compared to those outside of the government deterred applicants.

37 *Id.*; see also IRS response to TAS information request (Oct. 23, 2024).

38 Discussion with BOD representatives involved with hiring and onboarding (Oct. 24, 2024).

39 *Id.*

40 Brett Anderson et al., *Making the Federal Government an Employer of Choice for Early Career Professionals*, P'SHIP FOR PUB. SERV., <https://ourpublicservice.org/publications/making-the-federal-government-an-employer-of-choice-for-early-career-professionals> (last visited Nov. 27, 2024).

41 IRS response to TAS fact check (Dec. 14, 2022).

This delay has had far-reaching implications for the agency's ability to deliver consistent, high-quality training across its diverse operations and has posed a significant risk to the IRS's ability to effectively onboard, develop, and retain its workforce during a period of potential historic growth and transformation. Training is key to the agency's performance and ability to deliver quality service. It provides employees a better understanding of their responsibilities and the knowledge and skills they need to do their job. Trained employees will have better skills and confidence which can positively impact service for our taxpayers.

Since IRSU just started operating, we cannot yet tell if its training methods will work well for the agency. Early feedback from BODs during IRSU's trial projects shows several areas that need attention as the program develops.

### ***Fragmented Training Design***

The current fragmented training design has led to inconsistencies in training quality and content, with some BODs reporting they receive very little of the training support they ask for from IRSU.<sup>42</sup>

### ***Declining Training Effectiveness***

Additionally, the effectiveness of IRSU training has shown a troubling decline. When employees returned to their jobs after training, they found it increasingly difficult to apply what they learned. This trend has been consistent since FY 2021, with both managers and employees reporting lower success rates in implementing training concepts in their daily work.<sup>43</sup>

Training gaps exacerbate onboarding challenges for higher-graded roles. The patchwork approach is particularly concerning as the IRS prepares to onboard a significant number of new employees, potentially leading to subpar onboarding experiences, inconsistent skill development, and negative impacts on employee performance and retention. Tax administration is complex, and it is unrealistic to expect employees to adequately assist taxpayers without proper training and experience. On average, it takes customer service representatives (individuals answering the phones) and TAS Case Advocates a minimum of two to three years of training and experience to provide quality service.<sup>44</sup>

And yet, the extended timeline for full IRSU implementation offers a unique opportunity. The IRS can use what it has learned so far to hone its focus and develop a robust data collection and metrics program to measure training performance effectively. Some aspects of this opportunity include:

- Conducting baseline assessments of current training effectiveness;
- Engaging stakeholders in defining success criteria for IRSU;
- Developing comprehensive metrics and data collection systems; and
- Piloting and testing reporting frameworks.

### ***Missed Metrics Opportunities***

Lack of robust data collection and performance metrics for training effectiveness remains a serious problem. By developing comprehensive metrics to measure performance and success rates, a fully operational IRSU can ensure that it has a robust program from the beginning to systematically measure and report on its effectiveness, which will better prepare it for the influx of new employees and continued demand to provide taxpayers quality service.

42 Discussion with BOD executive (Oct. 22, 2024). See also TIGTA, Ref. No. 2023-30-054, *The IRS Needs to Leverage the Most Effective Training for Revenue Agents Examining High-Income Taxpayers* (2023), <https://www.tigta.gov/sites/default/files/reports/2024-11/202330054fr.pdf>.

43 IRS response to TAS information request (Sept. 27, 2024) (showing Level 3 favorability declining for both managers and employees since FY 2021).

44 Discussion with BOD executive (Nov. 21, 2024).

## The Tax Talent Pool Is Shrinking

The IRS's recruitment struggles are exacerbated by an industry-wide decline in accounting graduates. The American Institute of CPAs (AICPA) reports a significant decline in accounting graduates, with a 7.8 percent drop in bachelor's degrees and a 6.4 percent decrease in master's degrees between 2020 and 2021.<sup>45</sup> This shrinking talent pool compounds the IRS's existing recruitment challenges, suggesting that the agency cannot simply rely on competitive hiring practices to meet its staffing needs.

Traditional methods may not be adequate in an increasingly competitive market. To address this issue, the IRS should explore creative solutions to train employees for specialized roles. One promising approach is the "train then employ" model, similar to apprenticeship programs used in specialized trade industries. Such a model could involve the IRS providing education and training to otherwise qualified candidates who lack specific tax and accounting backgrounds.<sup>46</sup>

Similar initiatives might include:

- Internal training programs to upskill existing employees for more sophisticated compliance work;
- Improved tuition reimbursement programs for employees pursuing relevant degrees or certifications;<sup>47</sup> and
- Public-private partnerships within the tax and accounting industry to address the talent shortage collectively.

By adopting proactive workforce development strategies, the IRS can expand its talent pool and create a pipeline of qualified professionals. It can also enhance employee retention through career development opportunities and position itself as a thought leader in addressing industry-wide challenges. Investing in employee development will allow the IRS to adapt to a changing tax profession and ensure a robust workforce capable of providing quality service to taxpayers and position it as an industry leader.

## A Permanent Leadership Vacuum Stifles Innovation and Threatens Employee Engagement

The IRS faces a leadership crisis, with almost a quarter of compliance director roles vacant or temporarily filled, particularly in its examination and collection operations, creating permanent leadership gaps that affect the agency's ability to innovate and retain qualified talent.

### Leadership Instability

Acting directors lack authority and long-term vision, and frequent turnover hampers innovation and decision-making. In the LB&I and Small Business/Self-Employed (SB/SE) BODs, approximately 24 percent of all compliance director positions are either vacant or filled by an acting director.

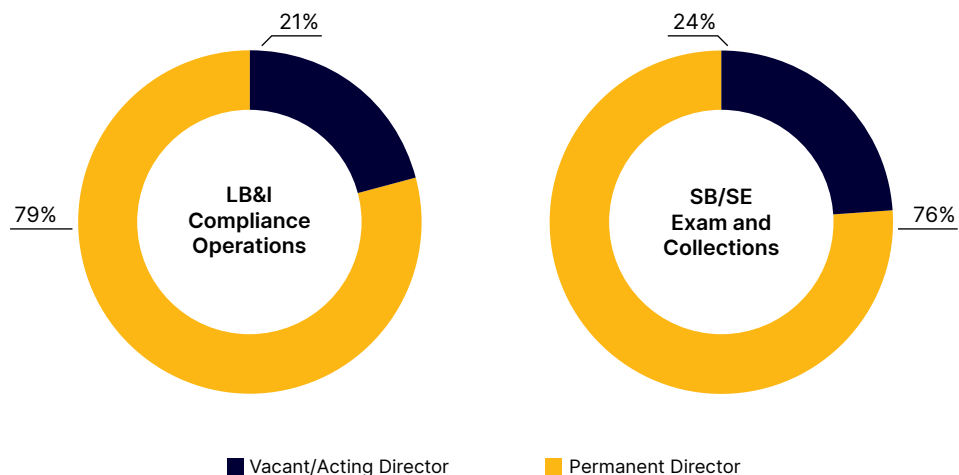
45 AICPA, *2023 Trends: A Report on Accounting Education, the CPA Exam, and Public Accounting Firms' Hiring of Recent Graduates* 5 (2023), <https://www.aicpa-cima.com/professional-insights/download/2023-trends-report>.

46 Several state tax agencies are already implementing innovative programs to tackle similar hiring challenges. See Danielle Muoio Dunn, *States Try Boot Camps to Address Tax and Audit Staff Shortages*, DAILY TAX REP. (Sept. 3, 2024), <https://www.bloomberglaw.com/product/tax/bloombergtaxnews/daily-tax-report/BNA%2000000191-9444-dc22-abb7-9ede35420001>.

47 OPM has partnerships with certain colleges and universities to provide federal employees degree programs that align with mission critical and high-risk skills. These partnerships offer reduced tuition, ranging from five percent to 50 percent, with many extending the discounts to spouses and dependents. OPM, *Federal Academic Alliance*, <https://www.opm.gov/policy-data-oversight/training-and-development/federal-academic-alliance> (last visited Nov. 27, 2024).

FIGURE 2.6.5<sup>48</sup>

**Compliance and Enforcement Director Positions, as of November 2024**



This leadership situation presents challenges given the funding increase from Congress that earmarks over half for compliance and enforcement operations. The Congressional Budget Office estimated this funding would generate an additional \$200 billion in revenue from 2022 to 2031.<sup>49</sup> Achieving these results requires consistent, strategic leadership to guide the agency through challenges and implement innovative solutions.

**Negative Impact on Employees**

Temporary directors often lack the experience, formal training, and authority of their permanent counterparts. Even if acting directors have participated in training programs such as Candidate Development and Executive Readiness, they still may perceive themselves as having limited authority to lead transformational change compared to their permanent counterparts. In short, they tend not to rock the boat. Leaders in temporary roles may be more cautious about making long-term decisions, implementing bold strategies, or adopting new technologies that will improve efficiency. As a result, innovation may be stifled and outdated processes may linger, ultimately impacting taxpayer service.

The prevalence of acting directors also significantly impacts employee engagement, morale, and productivity, which in turn degrades the quality of service provided to taxpayers. While leadership helps shape workplace culture, frequent changes in temporary leadership can create instability.<sup>50</sup> Acting directors may face challenges in providing comprehensive support and direction to compliance and enforcement employees, leading to:

48 The two largest compliance divisions within the IRS are LB&I and SB/SE. Of the three Field Operations sections within LB&I, 50 percent of Field Operations East director positions, 33 percent of Field Operations Northeast director positions, and none of Field Operations West director positions are either vacant or filled with an acting director. For all compliance operations in LB&I, over 21 percent of director positions are either vacant or filled with actors. For SB/SE, the breakdown is similar. A significant number of director positions in key audit areas, such as Headquarters examination (40 percent) and Campus Examination (33 percent), are either vacant or occupied by temporary actors. Over 24 percent of all SB/SE director positions for examination and collections operations are vacant or filled with acting directors. These counts come from the LB&I Organizational Chart (Nov. 2024) and the SB/SE Organizational Chart (Nov. 2024) (on file with TAS). IRS response to TAS fact check (Nov. 18, 2024).

49 Phill Swagel, *The Effects of Increased Funding for the IRS*, CBO Blog (Sept. 2, 2021), <https://www.cbo.gov/publication/57444>.

50 P'SHIP FOR PUB. SERV., *Leading Together* (Feb. 23, 2022), <https://presidentialtransition.org/reports-publications/exploration-relationship-leadership-employee-engagement>.

- Inconsistencies in taxpayer treatment;
- Unclear priorities;
- Disconnection between employees and managers;
- Decline in quality of service to taxpayers;
- Increased turnover; and
- Greater likelihood of staff burnout.

To address this issue, the IRS should fill leadership vacancies with qualified, permanent directors who can provide stability, vision, and support. If filling positions proves difficult, the IRS should identify and address the root causes preventing the appointment of permanent directors.

While acting assignments can be helpful in filling temporary positions or in providing short-term employee development, operations built on long-term acting assignments may not provide the stability needed for consistent quality service to taxpayers.<sup>51</sup>

### **Current IRS Retention Efforts Are Promising But Still Inadequate**

The IRS struggles with high attrition rates, which offset hiring successes. The agency is constantly fighting a war of attrition and taking two steps forward and one step back when it comes to hiring and retaining talent. While the agency is seeing some successes in actively recruiting new hires, it struggles with a steady stream of departures.

In FY 2024, the IRS made 19,482 external hires and 9,741 external separations – so nearly half of its external additions were offset by separations.<sup>52</sup> Attrition remains a major obstacle in the IRS reaching its employee staffing goals, underscoring the importance of employee retention in maintaining a fair and just tax system that provides quality service to taxpayers.

### **Leadership Engagement Plan Initiatives**

There are signs of improvement in this area. For example, the IRS has implemented proactive measures through its FYs 2022-2025 Corporate Leadership Engagement Plan (LEAP) that aim to create a “meaningful workplace that attracts and retains top talent.”<sup>53</sup> Key initiatives include:

- Creating a retention branch within IRS HCO;
- Establishing an internal employee retention presence on the IRS intranet; and
- Adopting workplace culture best practices from public and private sectors.<sup>54</sup>

Despite promising LEAP initiatives, the IRS has yet to address the root causes of employee attrition. Insufficient data collection limits the agency’s current approach and hampers its ability to understand why employees leave or stay.<sup>55</sup> To ensure that its continued high levels of attrition do not overshadow its hiring, the IRS should implement more robust data collection and analysis, such as:

- Conducting comprehensive exit and stay interviews;<sup>56</sup>
- Using predictive analytics to identify attrition risks;

---

51 Discussion with BOD executive (Oct. 22, 2024).

52 IRS response to TAS information request (Oct. 24, 2024).

53 IRS HCO, Corporate Leadership Engagement Action Plan (updated July 24, 2024).

54 *Id.*

55 Departing employees are offered two voluntary exit surveys, one from the Department of Treasury and one from the IRS. Both surveys ask one question about why the employee is leaving. IRS response to TAS information request (Sept. 27, 2024).

56 See also IRS, Pub. 5316, Internal Revenue Service Advisory Council Public Report 44 (Nov. 2024), <https://www.irs.gov/pub/irs-pdf/p5316.pdf> (“Exit interviews are used for some employees as well as “stay” interviews to help with retention.”).



- Benchmarking against peer or industry standards; and
- Establishing a feedback loop to incorporate insights into retention strategies.

The IRS should adapt its retention strategies to address changing employee tenure patterns. While historical paradigms focused on lifetime careers in civil service, recent trends show shorter employee tenures that align with private sector patterns. It appears the IRS faces challenges in encouraging employees to stay beyond three to five years, though the agency needs more specific data to confirm this trend.

While the IRS has made commendable progress with its initiatives, it must address root causes of attrition to maintain a stable, experienced workforce capable of meeting its mission and long-term goals while providing quality service to taxpayers.

## **CONCLUSION AND RECOMMENDATIONS**

The IRS must modernize its human capital operations to deliver improved service and enhance tax compliance. Success depends on hiring, training, and retaining skilled and experienced employees. Improved service includes making IRS assistance available through in-person, telephone, or self-service options; early and clear guidance; education; easy-to-follow instructions; and state-of-the-art technology, all of which are critical components to quality service and would translate to improved tax compliance with our extraordinarily complex tax system. The IRS can accomplish this task through improved service that requires qualified, well trained, and experienced employees. The IRS has faced numerous challenges in hiring and retaining skilled employees to fulfill its promise of transforming tax administration while safeguarding taxpayer rights. Traditional approaches have proven insufficient in competing for talent in the modern workforce. To address these challenges, the IRS should modernize its human capital operations and continue to focus on key areas such as recruitment, hiring, training, and retention.

The IRS must take a modernized and strategic approach if it wishes to build a capable and resilient workforce.

### **Administrative Recommendations to the IRS**

The National Taxpayer Advocate recommends that the IRS:

1. Revise job descriptions to better reflect the roles and responsibilities of positions.
2. Explore alternative recruitment platforms beyond USAJobs.
3. Study and report on the other pay systems utilized in the executive branch of the federal government and consider whether to petition Congress and OPM to grant the IRS flexibility to operate outside the GS pay scale to offer more competitive salaries for highly specialized positions.
4. Analyze the issue and come up with a plan to reduce the number of acting or vacant IRS senior leader positions, especially in compliance operations.
5. Collect and analyze data from exit and stay interviews to learn why people are leaving or staying and use that data to implement additional retention strategies to address the attrition problem.

### **RESPONSIBLE OFFICIAL**

Traci DiMartini, IRS Human Capital Officer



## INDIVIDUAL TAXPAYER IDENTIFICATION NUMBER PROCESSING

### IRS Dependence on Paper Forms and Manual Document Review Is Causing Delays, Mistakes, and Potential Security Risks

#### WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

From fiscal years 2020 through 2023, taxpayers filed over a million Individual Taxpayer Identification Number (ITIN) applications each year, asking the IRS to verify their identity and provide them with an ITIN that they need to file their federal tax return.<sup>1</sup> Citing concerns about potential fraud, the IRS has long rejected recommendations to digitalize the ITIN application process, insisting on the use of paper applications and the manual verification of identification documents. The results for taxpayers are long delays in processing times, inconsistent treatment of applications, mistakes by tax examiners that may permanently deprive taxpayers of benefits they qualify for under law, and sometimes the loss or destruction of taxpayer identification documents. The irony for the IRS is that by not modernizing its identity verification processes, the agency risks falling behind in its capacity to detect fraud, as scammers have increasingly greater access to sophisticated image-generating and document-forging technology.

#### EXPLANATION OF THE PROBLEM

All individual taxpayers who need to file returns or other documents with the IRS must use a Taxpayer Identification Number (TIN).<sup>2</sup> For many people, this is straightforward – they use their Social Security number (SSN). Those who are not eligible for an SSN must request an ITIN from the IRS by completing a paper application and submitting identification documents to prove their identity.<sup>3</sup>

1 The average number of ITIN applications received per calendar year from 2018 to 2023 is 1,264,508. IRS, Compliance Data Warehouse (CDW), Entity Application Programs (EAP) Calendar Year (CY) 2018-2023, Form\_W7 Table (through Aug. 22, 2024).

2 IRC § 6109(a)(1); Treas. Reg. § 301.6109-1(b).

3 Treas. Reg. § 301.6109-1(a)(1)(ii)(B).

Verifying identification documents is an unusual task for the IRS, falling outside the agency's primary duties of administering, interpreting, and applying tax law. The IRS lacks access to the document verification technology of more security-focused agencies like the Transportation Security Administration (TSA).<sup>4</sup> Virtually all identity verification at the IRS involves the use of non-digital tools, essentially relying on what tax examiners can detect by eye.

The IRS's insistence on paper processing and manual review results in long wait times and other hardships for taxpayers. The timeframe for a taxpayer to obtain an ITIN if there are no problems with the application is seven to 11 weeks, although processing times can fluctuate throughout the year.<sup>5</sup> Compare this to the instantaneous result for a business applying for an Employer Identification Number (EIN) online.<sup>6</sup> There is no comparable online application process for an ITIN.

## ANALYSIS

### Fighting High-Tech Fraud With a Loupe and Grit<sup>7</sup>

Consider how you would approach the following problem: You need to verify the identities of 1.26 million people who have submitted paper ITIN applications and attached identification documents. For security purposes, it is imperative that you do not issue an ITIN to a bad actor who has submitted a fraudulent application with fake identification documents, potentially created with the assistance of image-generating artificial intelligence.<sup>8</sup> The identification documents you review, such as passports and birth certificates, come from all over the world. The catch is that you cannot use any digital processes to help you – you will not get access to computer databases that detect forged documents or be able to electronically track any of the applications or documents you receive. However, you will receive a magnifying glass, a black light, a commercially available guidebook on world identification documents that fraudsters can also access, construction paper, carts, folders, and rubber bands.

For a visual, the stack of paper applications that you receive will be over 3,300 feet tall,<sup>9</sup> or roughly 11 times the height of the Statue of Liberty.<sup>10</sup> You should complete these reviews as quickly as you can and correctly return all original taxpayer identification documents to the applicants who sent them. Taxpayers get understandably frustrated if you lose their passports, birth certificates, visas, or other important documents, as they are costly and difficult to replace.

---

4 For example, at airport security checkpoints, TSA uses "Credential Authentication Technology," which provides almost immediate identity authentication and has fraudulent identity detection capabilities. See TSA, Credential Authentication Technology, <https://www.tsa.gov/travel/security-screening/credential-authentication-technology> (last visited Nov. 6, 2024).

5 IRS, ITIN Expiration Frequently Asked Questions, <https://www.irs.gov/individuals/itin-expiration-faqs> (last updated Aug. 19, 2024).

6 IRS, How to Apply for an EIN, <https://www.irs.gov/businesses/small-businesses-self-employed/how-to-apply-for-an-ein> (last updated Oct. 2, 2024).

7 A loupe is a type of magnifying glass designed to be held close to the eye.

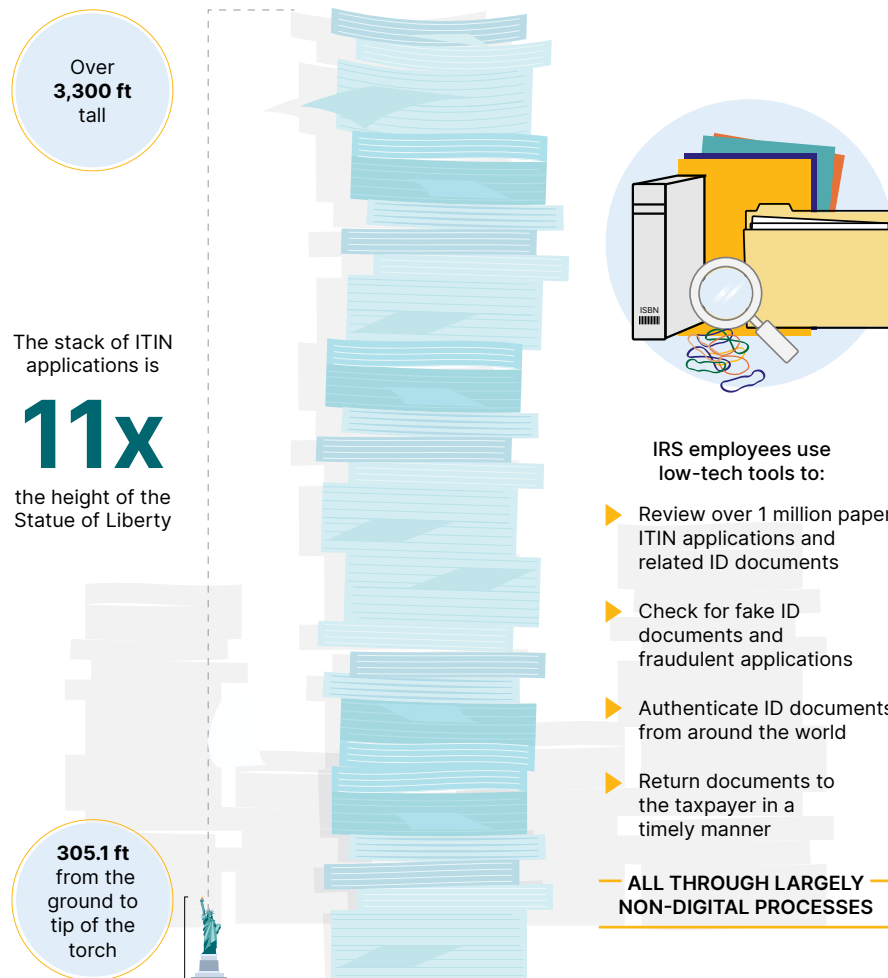
8 Although the IRS intends that taxpayers use ITINs only for federal tax purposes, ITINs can have other direct uses. For example, some financial institutions and state and city governments accept ITINs as a form of identification for applications for loans, driver's licenses, credit cards, or bank accounts. See Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2024-400-012, *Administration of the Individual Taxpayer Identification Number Program 1* (2023), <https://www.tigta.gov/sites/default/files/reports/2023-12/2024400012fr.pdf>.

9 This estimate is based on 1.26 million applications X eight sheets of paper per application X 0.004 inch thickness per sheet of paper. Actual ITIN application thickness will vary depending on the types of identification documents included, such as passports or visas and whether those documents are originals or copies.

10 305.1 feet from ground to tip of torch. National Park Service, Statue Statistics, <https://www.nps.gov/stli/learn/historyculture/statue-statistics.htm> (last updated June 1, 2021).

FIGURE 2.7.1

### FIGHTING HIGH-TECH FRAUD WITH LOW-TECH TOOLS Individual Taxpayer Identification Numbers



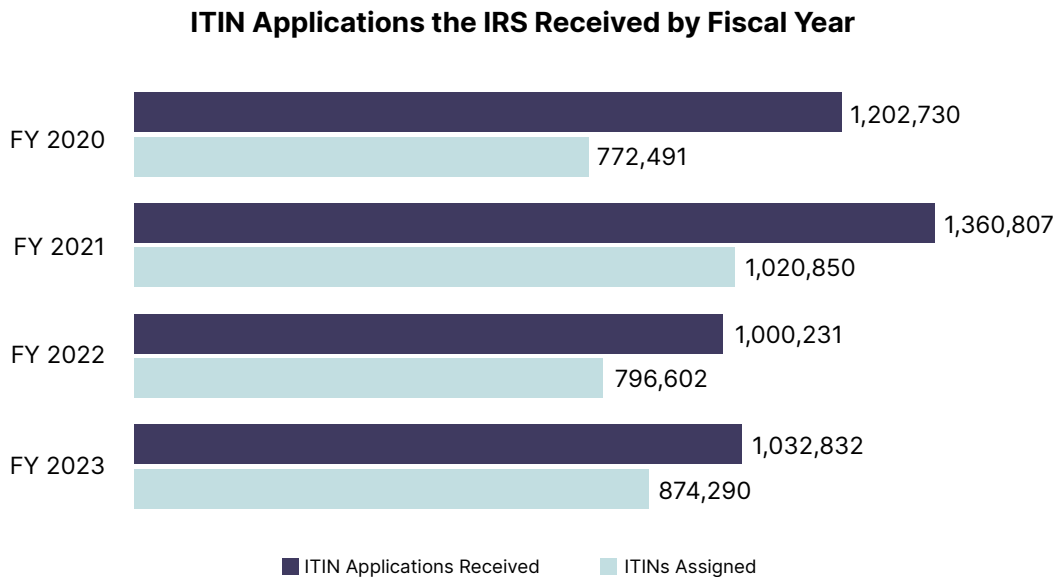
This is the task assigned to the IRS’s ITIN processing unit in Austin, Texas. Remarkably, year after year, the industrious employees in the ITIN unit find a way to make this work under these challenging circumstances, and the National Taxpayer Advocate expresses her appreciation to them. But there is an inherently low ceiling for how well anyone can perform this task without the use of modern tools, namely digital review of identification documents, e-filing of applications, and the digital tracking of applications and correspondence.

The current non-digital approach to ITIN processing is largely a result of IRS policy decisions. Although the National Taxpayer Advocate and other commentators have for years recommended changes,<sup>11</sup> the IRS has insisted on requiring paper applications without providing an online option, accepting ITIN applications only if filed with a tax return rather than at any time of year,<sup>12</sup> and manually reviewing original identification documents. The IRS justifies these policy choices as necessary to prevent unauthorized applicants from obtaining ITINs. However, even viewing these issues only from the perspective of fraud prevention, the IRS’s policies have put the ITIN unit at a significant disadvantage in detecting fraud when faced with the technology now accessible to many fraudsters.<sup>13</sup>

### The Big Scope of the Problem

In tax year 2022, the IRS received approximately 3.8 million returns that included an ITIN, with total income tax after credits of approximately \$14.4 billion and total Social Security and Medicare taxes of \$6.5 billion. This was roughly 2.4 percent of all Forms 1040 filed.<sup>14</sup>

**FIGURE 2.7.2<sup>15</sup>**



11 ITIN processing has been a Most Serious Problem in the National Taxpayer Advocate’s Annual Report to Congress seven times since 2003. See, e.g., National Taxpayer Advocate 2012 Annual Report to Congress 154 (Most Serious Problem: *The IRS’s Handling of ITIN Applications Imposes an Onerous Burden on ITIN Applicants, Discourages Compliance, and Negatively Affects the IRS’s Ability to Detect and Deter Fraud*), <https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/Most-Serious-Problems-ITIN-Individual-Taxpayer-Identification-Number.pdf>. TIGTA by law must audit the ITIN program every two years. Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Div. Q, Title IV, § 203(b), 129 Stat. 2242, 3079 (2015) [hereinafter referred to as the Protecting Americans from Tax Hikes Act of 2015 (PATH Act)]. Other recent analysis includes recommendations by the IRS Advisory Council and a symposium issue of the *Pittsburgh Tax Review* on immigration and taxation. See IRS, Pub. 5316, Internal Revenue Service Advisory Council Public Report 163 (Rev. Nov. 2023), <https://www.irs.gov/pub/irs-pdf/p5316.pdf>; *Immigration & Taxation*, 21 PITT. TAX REV. (2024), <https://taxreview.law.pitt.edu/ojs/taxreview/issue/view/38>.

12 There are limited exceptions for nonresidents claiming the benefits of a tax treaty and having income, payments, or transactions subject to third-party reporting or withholding. See Internal Revenue Manual (IRM) 3.21.263.5.2, Filing Tax Return Versus Exception Criteria (Jan. 1, 2023), [https://www.irs.gov/irm/part3/irm\\_03-021-263r](https://www.irs.gov/irm/part3/irm_03-021-263r).

13 See, e.g., Wayne Chang, *AI Is the Final Blow for an ID System Whose Time Has Passed*, FORBES, Mar. 28, 2024, <https://www.forbes.com/councils/forbestechcouncil/2024/03/28/ai-is-the-final-blow-for-an-id-system-whose-time-has-passed/>.

14 IRS, CDW, Individual Returns Transaction File Table (IRTF), IRTF\_F1040 Table, IRTF\_TIN\_INFO Table Tax Years (TYs) 2019-2022 (through June 27, 2024).

15 IRS, CDW, EAP Fiscal Years 2020-2023, Form\_W7 Table (through Aug. 22, 2024). The totals of ITINs assigned per fiscal year may include ITIN assignments resulting from applications submitted in a prior fiscal year.

The IRS requires ITINs not only for primary taxpayers filing returns but also for spouses and dependents who are not eligible for SSNs. Many taxpayer families include a mix of family members with SSNs and ITINs – in 2022, roughly 2.2 million Forms 1040 included at least one family member with an SSN and another with an ITIN.<sup>16</sup>

### What Taxpayers Experience

Taxpayers might expect that getting an ITIN would be fast and easy, similar to how many businesses can quickly obtain an EIN. After all, the ITIN is just the starting point of compliance that provides taxpayers with the unique number that lets them file returns and documents with the IRS. In reality, the ITIN application experience can be surprisingly burdensome. The following stories illustrate the types of issues that ITIN applicants deal with, based on information reported to TAS.<sup>17</sup>

#### *Edward – Lost Documents and Lost Benefits*

Edward, a U.S. permanent resident with an SSN, needs to obtain an ITIN for his child to claim certain benefits on the family’s tax return.<sup>18</sup> Edward schedules an appointment at the nearest Taxpayer Assistance Center (TAC) that offers help with ITIN applications, which is a long drive from his home.<sup>19</sup> He takes the day off work to get there because the only available appointment is during business hours. The TAC employee verifies the documents and sends them to the IRS ITIN unit with the completed application, assuring Edward that the application is in good shape.

A month later, Edward receives a notice from the IRS that it did not accept his supporting documents and that he needs to resubmit them. Rather than travel back to the TAC, since it was not easy to reach and was not helpful the first time, Edward mails his child’s original identification documents, including a visa and passport, directly to the IRS for verification. To ensure delivery, Edward sends the documents through certified mail with a tracking number. After another month, Edward receives a notice stating that the IRS rejected the ITIN application because he did not submit his child’s documents to the IRS, even though the tracking on the mail delivery showed that the IRS received the documents and an IRS employee signed for them. Edward provides the tracking information, but the IRS unit cannot locate Edward’s documents and admits they are lost. Getting a replacement for the visa will be difficult and may take years. Because Edward cannot claim his child on his tax return, he loses out not only on tax benefits but also on other state and federal benefits programs that look to federal tax return information to determine family size.

#### *Bridgette – Complications for Foreign Students*

Bridgette is a foreign student who accepts an athletic scholarship to attend a university in the United States and play on the basketball team, coming to the United States on a student visa. Because her home country’s system of taxation is different from that of the United States, she is surprised to learn that a portion of her scholarship may be taxable and that her university must withhold and pay some of her scholarship money to the IRS, even though Bridgette does not even have a U.S. TIN.<sup>20</sup> Not only will she need to file a tax return to claim the withheld amounts, she will also need to file an ITIN application.

<sup>16</sup> IRS, CDW, IRTF, TY 2022 (through Aug. 22, 2024).

<sup>17</sup> The two examples do not describe actual taxpayers to avoid disclosing taxpayer information, but they are based on issues raised in TAS cases and in discussions with tax practitioners.

<sup>18</sup> In this example, the child is not a U.S. permanent resident. For information on how the child might apply to become one, see U.S. Citizenship and Immigration Services, Green Card for Family Preference Immigrants, <https://www.uscis.gov/green-card/green-card-eligibility/green-card-for-family-preference-immigrants> (last updated Oct. 11, 2024).

<sup>19</sup> IRS, IRS Taxpayer Assistance Centers Providing In-Person ITIN Document Review, <https://www.irs.gov/help/irs-taxpayer-assistance-centers-providing-in-person-itin-document-review> (last updated Aug. 23, 2024).

<sup>20</sup> See IRS, Withholding Federal Income Tax on Scholarships, Fellowships and Grants Paid to Aliens, <https://www.irs.gov/individuals/international-taxpayers/withholding-federal-income-tax-on-scholarships-fellowships-and-grants-paid-to-aliens> (last updated Oct. 16, 2024).



While her university offers some general legal and tax preparation assistance, no one on staff has certification to assist her with the ITIN application. Bridgette looks on the IRS website to find someone certified to help,<sup>21</sup> but the only such person nearby would charge her \$2,000, which is more than Bridgette can afford.<sup>22</sup> Filling out the ITIN application on her own would require Bridgette to mail her identification documents to the IRS, but her parents are in poor health, and she does not want to lose access to her identification documents in case she needs to travel home. She gives up on the idea of claiming the withheld tax and decides not to file a tax return, not only for that year but for the three subsequent years that she attends university in the United States.

### Taxpayers Have Many Reasons to Need an Individual Taxpayer Identification Number

The U.S. tax code's application is broad and captures many types of taxpayers both inside and outside of the United States. Individuals who are U.S. resident aliens for tax purposes must pay U.S. income tax on their worldwide income, and nonresident aliens are subject to tax on their U.S.-source income.<sup>23</sup> As such, many people around the world who are not eligible for a U.S. SSN must nonetheless file a return or statement with the IRS. In 1996, to address the needs of these taxpayers, the IRS created the ITIN system, following extensive discussions between the IRS, the Social Security Administration, the Immigration and Naturalization Service,<sup>24</sup> and the State Department, in which they agreed that the IRS would be the best agency to establish a new numbering system dedicated solely for tax purposes.<sup>25</sup>

Some reasons why taxpayers may need ITINs include:<sup>26</sup>

- To file a U.S. federal income tax return,
- To elect to file a joint U.S. federal income tax return with a spouse who is a U.S. citizen or U.S. resident alien,
- To allow someone else to claim them as a dependent on a U.S. federal income tax return,
- To avoid mandatory withholding on some types of U.S.-source income<sup>27</sup> and on the disposition of U.S. real property interests,<sup>28</sup>
- To claim tax treaty benefits to obtain reduced withholding rates, and
- To meet the requirements of third parties such as banks, who request ITINs for information reporting and withholding purposes.<sup>29</sup>

More fundamentally, taxpayers need ITINs to comply with tax laws because they cannot file tax returns without them. Thus, taxpayers also need ITINs to be able to prove tax compliance for business purposes or to qualify for certain benefits or licenses. For example, the Coalition for Immigrant Taxpayer Experience in a letter to the IRS Commissioner described some downstream effects of ITIN processing issues, including:<sup>30</sup>

21 IRS, Acceptance Agent Program, <https://www.irs.gov/individuals/international-taxpayers/acceptance-agent-program> (last updated Oct. 15, 2024).

22 Based on discussions with the IRS ITIN unit, the IRS does not govern CAA pricing, and some CAAs charge thousands of dollars for the service.

23 See IRS, Topic No. 851, Resident and Nonresident Aliens, <https://www.irs.gov/taxtopics/tc851> (last updated June 11, 2024).

24 The government later disbanded the Immigration and Naturalization Service, with its constituent parts folded into three new federal agencies serving under the newly formed Department of Homeland Security: Customs and Border Protection, Immigration and Customs Enforcement, and U.S. Citizenship and Immigration Services. See U.S. Citizenship and Immigration Services, Post-9/11, <https://www.uscis.gov/post-911> (last updated Dec. 4, 2019).

25 See Taxpayer Identifying Numbers (TINs), T.D. 8671, 61 Fed. Reg. 26,788, 26,788-26,789 (May 29, 1996), <https://www.govinfo.gov/content/pkg/FR-1996-05-29/pdf/96-13397.pdf>.

26 IRS, Pub. 1915, Understanding Your IRS Individual Taxpayer Identification Number ITIN 6 (June 2023), <https://www.irs.gov/pub/irs-pdf/p1915.pdf>. These are not the only reasons that a taxpayer might need to request an ITIN.

27 Chapter 3 of the IRC generally requires withholding agents to collect the substantive tax liability of nonresident aliens imposed under IRC §§ 871(a), 881(a), and 4948 by withholding on certain payments of U.S.-source fixed or determinable annual or periodical income. See IRC §§ 1441-1443. See also IRC §§ 1471-1474 (Chapter 4).

28 Foreign Investment in Real Property Tax Act (FIRPTA) of 1980, Pub. L. No. 96-499, Subtitle C, 94 Stat. 2599, 2682 (1980). FIRPTA imposes income tax on foreign persons disposing of U.S. real property interests.

29 See IRC § 6041.

30 Letter from Coalition for Immigrant Taxpayer Experience, to Danny Werfel, Comm'r, Internal Revenue (Mar. 4, 2024) (on file with TAS).

- City agencies that are seeking to provide opportunities but cannot issue stipends to a student whose family lacks an ITIN,
- Nonprofits offering training for childcare providers but whose members need ITINs to obtain state professional licenses,
- Taxpayers who have quarterly tax obligations but lack the ability to file for ITINs as they do not yet have a completed federal return in hand and thus may face tax penalties, and
- Small entrepreneurs whose prospective clients demand they must have ITINs to hire and pay for services using a 1099 tax form.

### ***United States Residency Under Tax Law Versus Immigration Law***

People can become U.S. resident aliens for tax purposes if they are present in the United States for a minimum number of days, even if they do not have lawful status under immigration law.<sup>31</sup> The difference in the meaning of “residency” for tax and immigration law purposes is a common reason that someone in the United States might need to file tax returns but not be eligible for an SSN. There are many complications specific to this category of ITIN filer. However, the discussion in this report focuses on the difficulties with ITIN processing that are common to all ITIN filers, not just to those present in the United States without a lawful immigration status.

### **All the Usual Paper Problems**

Although digitalization is a centerpiece of many of the IRS’s modernization plans, the IRS continues to require taxpayers to file ITIN applications on paper, without providing an e-file option.<sup>32</sup> In addition, with some limited exceptions, applicants may only submit their ITIN applications at the time they file their federal tax return, which they must also file on paper.<sup>33</sup> Taxpayers cannot submit an ITIN application on paper and separately e-file their tax return for the same tax year.

The IRS must then process the paper ITIN application before processing the paper tax return. If multiple family members on the return apply for an ITIN, the IRS must process all the ITIN applications before getting to the return. Even if the primary filer already has an ITIN or SSN but needs to apply for an ITIN just for a spouse or dependent, all of the above-mentioned rules apply: the taxpayer must file both the ITIN application and return at the same time.<sup>34</sup>

As in many other areas involving paper processing, IRS review of paper ITIN applications can lead to delays, keystroke errors, and lost documents.<sup>35</sup> The IRS’s vision statement for taxpayer service is that “[a]ll taxpayers can meet all of their responsibilities, including all interactions with the IRS, in a completely digital manner if they prefer.”<sup>36</sup> It is not clear why this vision would exclude ITIN applicants. It should not. As the IRS recognizes, digitalizing internal processes “reduce[s] time-consuming, manual processes and free[s] up employees to focus on more complex issues, such as helping victims of scams ... [and] reduces errors.”<sup>37</sup>

31 Under the substantial presence test, in general, individuals may become resident aliens for U.S. tax purposes if they are present in the United States for at least 183 days (as adjusted by an applicable multiplier) during a three-year period that includes the current year. See generally IRC § 7701(b); Treas. Reg. § 301.7701(b)-1(c).

32 See, e.g., IRS, Pub. 3744-A, 2024 IRA Strategic Operating Plan Annual Update Supplement 3 (Apr. 2024), <https://www.irs.gov/pub/irs-pdf/p3744a.pdf> (“[T]o bring the IRS into the modern era, we need to become a digital-first agency.”).

33 See IRM 3.21.263.5.2, Filing Tax Return Versus Exception Criteria (Jan. 1, 2023), [https://www.irs.gov/irm/part3/irm\\_03-021-263r](https://www.irs.gov/irm/part3/irm_03-021-263r).

34 See *id.*

35 See TIGTA, Ref. No. 2024-400-012, *Administration of the Individual Taxpayer Identification Number Program* 9 (2023), <https://www.tigta.gov/sites/default/files/reports/2023-12/2024400012fr.pdf>.

36 See IRS, Pub. 3744-A, 2024 IRA Strategic Operating Plan Annual Update Supplement 3 (Apr. 2024), <https://www.irs.gov/pub/irs-pdf/p3744a.pdf>.

37 See *id.*

Even if the IRS is not ready to fully authorize the e-filing of ITIN applications and supporting documents, it must take meaningful steps toward digitalization. For example, many ITIN applicants are not fluent in English and face challenges understanding the complex ITIN application rules and requirements for supporting documentation.<sup>38</sup> It would be helpful for those applicants to have access to an online tool on IRS.gov that would guide them through the ITIN application process using interview-style questions in their preferred language and let them know whether their supporting documentation meets IRS requirements. If this tool then allowed taxpayers to print the completed application, the printout could include features that help IRS tax examiners digitally scan or extract the information rather than type it in manually. While the end goal should be a fully digital application process, in the meantime the IRS must pursue incremental digitalization improvements that fit within current IRS policies.

### ***Need for Year-Round Individual Taxpayer Identification Number Application Processing***

Since 2003, the IRS has generally required taxpayers to apply for an ITIN at the time they file their federal tax return rather than at any time of the year.<sup>39</sup> This means that the IRS performs most ITIN processing during filing season, the busiest period for the IRS. The IRS has consistently declined to allow for year-round filing of ITIN applications, generally citing concerns for fraud. It recently described its reasoning as follows: “To maintain the integrity of the ITIN program and protect revenue we must determine an individual’s federal tax purpose prior to issuing or renewing an ITIN. Therefore, we decline a pre-filing ITIN application procedure that allows for the submission of a Form W-7 separately and ahead of a tax return.”<sup>40</sup>

There are multiple problems with the IRS’s reasoning. First, a federal tax return is not the only reliable document to provide evidence of a federal tax need for an ITIN. For example, taxpayers could show wage documents from an employer or other evidence of income or property transactions. Second, a federal tax return is not itself particularly reliable evidence in this regard, particularly if the goal is to prevent fraud – a scammer could easily prepare a return that looks valid but is fraudulent. Finally, Congress in 2015 addressed the issue of federal tax purpose by requiring ITINs to automatically deactivate if they do not appear on a tax return for three consecutive years.<sup>41</sup> Before that 2015 statutory change, ITINs did not expire. Now, by law, any ITIN that ceases to have a federal tax purpose terminates on its own.

Specifying a federal tax purpose for ITIN applicants became more complicated after the Tax Cuts and Jobs Act in 2017, which reduced to zero the deduction for personal exemptions for dependents, eliminating one of the most straightforward reasons that a dependent might seek an ITIN.<sup>42</sup> Following this legislative change, the IRS added controversial language to its guidance, requiring taxpayers to prove that a dependent ITIN applicant would produce some sort of “allowable tax benefit” as shown on the taxpayer’s federal tax return.<sup>43</sup>

ITIN unit tax examiners generally do not have the expertise to evaluate the accuracy of facially valid tax returns, and practitioners have reported that ITIN denials due to “allowable tax benefit” are not always accurate or consistent.<sup>44</sup> ITIN denials based on the substantive evaluation of a tax return can infringe on

38 See Letter from Coalition for Immigrant Taxpayer Experience, to Danny Werfel, Comm’r, Internal Revenue (Mar. 4, 2024) (on file with TAS) (explaining that the IRS may reject supporting medical and educational documentation if it lacks a minor but required detail, such as a phone number, student home address, or school official signature).

39 There are limited exceptions. See IRM 3.21.263.5.2, Filing Tax Return Versus Exception Criteria (Jan. 1, 2023), [https://www.irs.gov/irm/part3/irm\\_03-021-263r](https://www.irs.gov/irm/part3/irm_03-021-263r). For a discussion of policy developments beginning in 2003, see Jackie Vimo, *The History and Future of ITINs and Taxigration Policy for Undocumented Taxpayers in the United States*, 21 PITT. TAX REV. 169, 173-174 (2024), <https://taxreview.law.pitt.edu/ojs/taxreview/article/download/234/285>.

40 IRS response to TAS information request (Sept. 24, 2024).

41 PATH Act, Pub. L. No. 114-113, Div. Q, Title IV, § 203(a), 129 Stat. 2242, 3079 (2015); IRC § 6109(i)(3)(A).

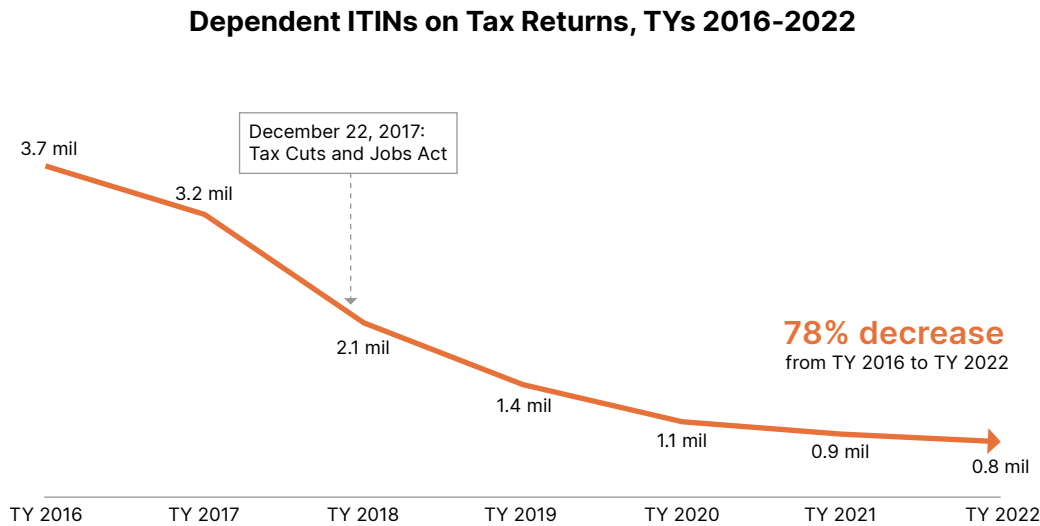
42 Pub. L. No. 115-97, § 11041, 131 Stat. 2054, 2082 (2017) (adding IRC § 151(d)(5)).

43 For a discussion of the changes, see Letter from Am. Bar Ass’n Tax Section, to Charles Rettig, Comm’r, Internal Revenue (Feb. 11, 2021) (comments concerning Form W-7 and instructions), <https://law.lclark.edu/live/files/31534-aba-section-comments-that-litc-submitted>.

44 Conversations with outside stakeholders (Aug. 20, 2024).

taxpayer rights, including the *rights to be informed* and *to appeal an IRS decision in an independent forum*.<sup>45</sup> When the IRS rejects a dependent’s or spouse’s ITIN application, the IRS may use math error authority to strip the return of the claimed benefits relating to the spouse or dependent.<sup>46</sup> Math error notices often do not clearly explain the reasons for adjustments, and if taxpayers do not request abatement within 60 days from the date of a math error notice they lose the opportunity to challenge the IRS’s position through deficiency procedures and file a petition in Tax Court.<sup>47</sup>

**FIGURE 2.7.3<sup>48</sup>**



There are many legitimate reasons why dependents need ITINs that are not immediately apparent from a quick skim of a tax return. For example, if taxpayers need to file an offer in compromise, their reasonable collection potential could be overstated without an accurate count of family size.<sup>49</sup> Some governmental programs that base benefits on family size require applicants to submit proof of federal tax filings, such as Medicaid. Because federal tax return information plays an integral evidentiary role in many aspects of people’s legal and financial lives, the downstream effects of ITIN denials can be wide-ranging.

After receiving pushback on the “allowable tax benefit” policy, the IRS is now working with Chief Counsel and Treasury to reconsider its position in some of its guidance.<sup>50</sup> Nonetheless, TAS still receives reports from practitioners that the IRS is denying ITIN applications on these grounds, and TAS will keep investigating these issues and advocating for solutions.

45 IRC § 7803(a)(3)(A), (E).

46 See IRC § 6213(g)(2)(O).

47 See National Taxpayer Advocate 2025 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (Require That Math Error Notices Describe the Reason(s) for the Adjustment With Specificity, Inform Taxpayers They May Request Abatement Within 60 Days, and Be Mailed by Certified or Registered Mail)*.

48 IRS, CDW, IRTF, TY 2016-2022 (through Aug. 22, 2024).

49 IRS response to TAS fact check (Nov. 12, 2024); see Sarah Lora, *Righting Tax Wrongs for Immigrants*, 21 PITT. TAX REV. 193, 194-195 (2024), <https://taxreview.law.pitt.edu/ojs/taxreview/article/view/235/287>; IRS, Pub. 5316, Internal Revenue Service Advisory Council Public Report 165 (Nov. 2023), <https://www.irs.gov/pub/irs-pdf/p5316.pdf>.

50 IRS response to Systemic Advocacy Management System (SAMS) issue 75999 (Sept. 17, 2024).

The IRS should allow taxpayers to file ITIN applications at any time of the year. Limiting ITIN applications to the filing season creates an unnecessary time crunch for both the IRS and taxpayers, limits IRS flexibility in modernizing ITIN application processes, provides little discernable protection against fraud, and invites practices that infringe on taxpayer rights.

### ***Untimely Processing Can Lead to Permanent Loss of Benefits***

The consequence of slow ITIN processing for taxpayers is not just delay; it can also result in the loss of benefits. For example, the Child Tax Credit, Additional Child Tax Credit, and Credit for Other Dependents require the primary filer, and spouse if filing jointly, to have an ITIN by the due date of the tax return.<sup>51</sup> As long as a taxpayer applies for the ITIN by the due date of the return and the IRS issues the taxpayer an ITIN, the IRS is supposed to treat the ITIN as issued by the due date of the return.<sup>52</sup> Nonetheless, TAS routinely sees cases in which IRS processing delays lead to the issuance of an ITIN after the due date of the return, resulting in the denial of these credits, even though the taxpayers qualified for them and timely filed their documents accurately and in good faith.

The IRS is generally responsive and fixes the error when TAS Case Advocates show that the taxpayer timely filed the ITIN application, and that the IRS was responsible for the delay. However, this relief should be automatic and not just for taxpayers who seek assistance from TAS. Taxpayers should not have to proactively seek help to get these issues resolved. Taxpayers have the *right to pay no more than the correct amount of tax*.<sup>53</sup>

### ***Erroneous Deactivations of Individual Taxpayer Identification Numbers***

By law, the IRS must deactivate ITINs that do not appear on a federal tax return for three consecutive years.<sup>54</sup> IRS systems do not count ITINs as appearing on a tax return for this purpose if the taxpayer files the return late or e-files it.<sup>55</sup> This can result in the erroneous deactivations of ITINs for filers who have complied with the law and continue to have a federal tax purpose for the ITIN, along with resulting complications for their tax returns, such as the unexpected denial of refunds. TAS has worked with the IRS to reactivate ITINs for taxpayers in this situation and release refunds. However, this relief has been limited to taxpayers who have come to TAS for assistance, as the IRS has not sought on its own to identify all affected ITIN filers. Based on a preliminary review of the data, the IRS may have erroneously deactivated almost 70,000 ITINs since 2021.<sup>56</sup> The IRS needs to not only identify all affected filers but also update its systems to prevent this issue from recurring. Taxpayers have the *right to a fair and just tax system*.<sup>57</sup>

### **The IRS Must Continue Improving Identity Verification Processes**

The core of an ITIN application is the verification of the applicant's identity. An IRS examiner must review and verify the applicant's identification documents, such as passports, birth certificates, or visas.<sup>58</sup> To submit identification documents for review, in general, taxpayers must either mail the documents directly to the IRS or find someone authorized to certify the documents and submit copies to the IRS.

51 See IRS, 2023 Instructions for Schedule 8812, at 1 (Dec. 6, 2023), <https://www.irs.gov/pub/irs-pdf/i1040s8.pdf>.

52 IRS, Instructions for Form W-7, at 2 (Nov. 2023), <https://www.irs.gov/pub/irs-pdf/iw7.pdf>.

53 IRC § 7803(a)(3)(C).

54 IRC § 6109(i)(3)(A).

55 Advocacy Project 69777, ITIN Deactivated Incorrectly, Both Systemically and Manually.

56 IRS, CDW, IRTF, Data Master-1, CYs 2016-2023 (through Aug. 22, 2024). This estimate counts ITINs that the IRS deactivated despite taxpayers having used them on a Form 1040 within the three tax years prior to the deactivation. We do not include years prior to 2021 in this estimate because the IRS at that time was also deactivating ITINs issued prior to 2013 on the basis of IRC § 6109(i)(3) (B). See TIGTA, Ref. No. 2022-40-013, *Processes Do Not Ensure That Individual Taxpayer Identification Numbers Are Issued Only to Qualifying Individuals With a Tax Administration Need* 15 (2020) (explaining that the IRS planned to deactivate all ITINs issued prior to 2013 by January 1, 2021), <https://www.tigta.gov/sites/default/files/reports/2022-02/202040064fr.pdf>.

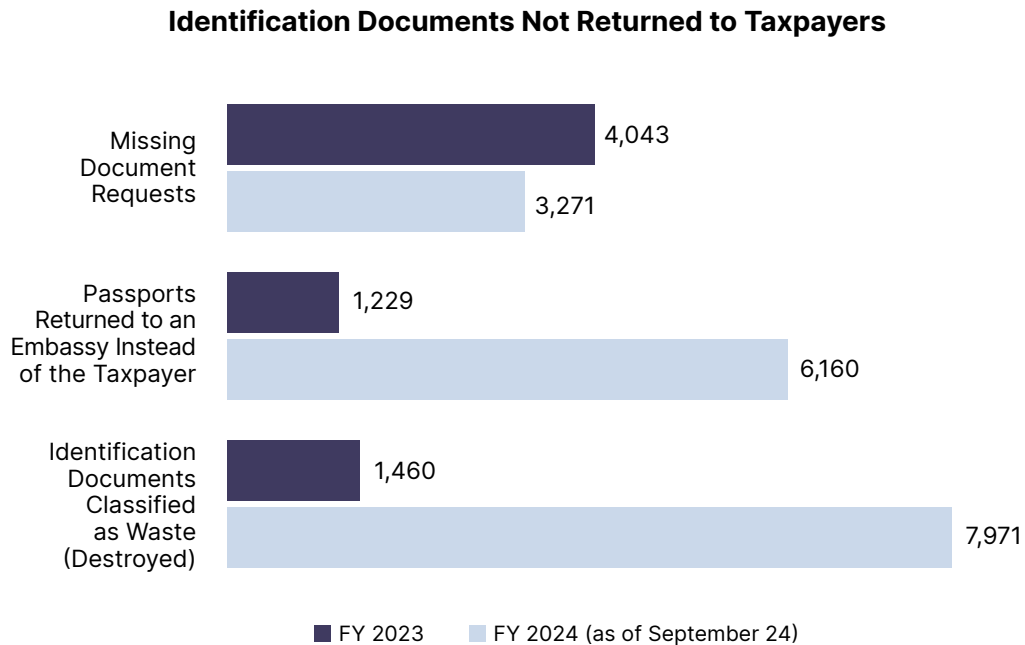
57 IRC § 7803(a)(3)(J).

58 IRC § 6109(i)(2). The IRS accepts 13 types of identification documents. See IRM 3.21.263.5.6(4), ITIN Documentation Requirements (Sept. 10, 2024), [https://www.irs.gov/irm/part3/irm\\_03-021-263r](https://www.irs.gov/irm/part3/irm_03-021-263r).

**Welcome New IRS Process Speeds Return of Identification Documents**

The most common way that ITIN applicants submit their documents for review is by mailing their original identification documents to the IRS. Historically, taxpayers in this situation risked losing access to their documents for months and potentially never receiving them back. Although the number of lost documents has been relatively low compared to the overall number of applications, the consequences for affected taxpayers can be catastrophic. Even in the best-case scenario of ITIN processing, taxpayers would have to live without their identification documents for seven to 11 weeks, with no real possibility of recalling the documents earlier if needed, such as for emergency travel or legal issues.<sup>59</sup>

**FIGURE 2.7.4<sup>60</sup>**



*Some good news:* In July 2024, the IRS instituted a major change in how the ITIN unit processes and verifies original identification documents, with the result that the IRS can now return identification documents to taxpayers within ten days of receipt, compared with the previous minimum of seven weeks.<sup>61</sup> This is a favorable and welcome change. Historically, the IRS waited until the completion of the ITIN application review to return identification documents. Under the new process, IRS examiners verify documents in an initial step, make a photocopy for later use, and mail the identification documents back to taxpayers before evaluating the rest of the ITIN application.

59 The IRS cannot track an ITIN application and the associated documents before it processes the application. When the IRS receives an ITIN application, it places it in a batch that is not numbered or controlled by individual application. The IRS cannot trace the application and supporting documents until it assigns the ITIN and inputs it on the ITIN real-time system.

60 IRS response to TAS information request (Sept. 24, 2024). While the IRS records the number of lost document requests, it does not track its responses to those requests or the number of documents that it successfully returns to taxpayers. The IRS explains the significant increases from 2023 to 2024 as follows: “The Loose Document Database (LODO) tracking mechanism failed resulting in limited purging of documents in 2023. Using an Excel spreadsheet as the current tracking mechanism, purging classified waste has resumed.” IRS response to TAS information request (Sept. 24, 2024). See also TIGTA, Ref. No. 2024-400-012, *Administration of the Individual Taxpayer Identification Number Program 12* (2023) (discussing the failure of the Loose Document Database and the IRS’s development of a workaround tracking system), <https://www.tigta.gov/sites/default/files/reports/2023-12/2024400012fr.pdf>.

61 IRS response to TAS information request (Sept. 24, 2024).



The IRS instituted this change recently, after peak filing season, so it may take longer to return documents during peak times. Nonetheless, this is a clear win for taxpayers. Cutting down the time that documents remain on IRS shelves should also reduce the potential for complicating issues that may result in taxpayers not getting their documents back, such as if taxpayers move to a new address during the ITIN application review or need to travel abroad.

Although this is a much-needed improvement, it still involves a paper-based, manual review of documents and is thus subject to many of the issues that have historically plagued paper processing. The IRS creates paper photocopies rather than digital scans of the identification documents, and the ITIN unit may need additional photocopiers to perform this efficiently in peak times.<sup>62</sup> If a copy is not legible or gets smudged or misplaced, the IRS must request that the taxpayer resubmit the original documents. While this change speeds up the return of original identification documents, it does not improve the overall processing time for ITIN applications.<sup>63</sup> It also does not completely ensure that the IRS will not misplace a taxpayer's vital identification documents.

As a next phase in modernization, the IRS is considering how to fully digitalize the verification of identification documents. The IRS has not provided TAS with concrete plans on what this would entail or when the IRS could implement it. One possibility is outsourcing identification verification to a third-party provider, potentially comparable to how taxpayers use a third-party verification service to access individual online accounts.<sup>64</sup> The IRS would need to consider how to make this service accessible to ITIN applicants because not all of them may have convenient access to digital resources. The IRS would likely need to continue to provide some level of manual document review as an alternative. However, a digital process that eliminates much of the need for physical review of identification documents has the potential to fundamentally transform ITIN processing.

### ***Current Alternatives to Mailing Original Identification Documents***

Taxpayers submitting ITIN applications have several alternatives to mailing their original identification documents to the IRS, primarily:<sup>65</sup>

- Sending certified copies;
- Getting help from a TAC; and
- Getting help from a Certifying Acceptance Agent (CAA).

Even when applicants use one of these alternative methods for document verification, they must still submit both the tax return and ITIN application on paper.

### ***Problems With Certified Copies and Taxpayer Assistance Centers***

Taxpayers may submit certified copies of identification documents with their ITIN applications instead of the originals. However, the IRS will only accept these copies if the issuing agency of the document certifies it as an exact copy of the original and includes an official stamped seal.<sup>66</sup> Because many government offices that provide this service have only a few locations, taxpayers may need to travel to reach one, which is often impractical and burdensome. There is also no guarantee that the IRS will accept the copies even when properly issued. For example, the Canadian government recently stopped including an official seal on passport

---

62 Discussion from ITIN unit site visit (Sept. 10, 2024).

63 *Id.*

64 *Id.* See also TIGTA, Ref. No. 2024-400-012, *Administration of the Individual Taxpayer Identification Number Program 10* (2023) (discussing a study on the potential use of third-party equipment in the ITIN application process to validate government-issued documents electronically), <https://www.tigta.gov/sites/default/files/reports/2023-12/2024400012fr.pdf>.

65 See IRM 3.21.263.6.3.4.2, *Reviewing Supporting Identification Documents* (Aug. 8, 2024), [https://www.irs.gov/irm/part3/irm\\_03-021-263r](https://www.irs.gov/irm/part3/irm_03-021-263r). Taxpayers may also submit notarized copies if the applicant is a dependent or spouse of a U.S. military member stationed overseas.

66 IRC § 6109(i)(2); IRS, *Instructions for Form W-7*, at 3 (Nov. 2023), <https://www.irs.gov/pub/irs-pdf/iw7.pdf>.

certifications. The IRS will not accept Canadian certified copies that lack the seal. The IRS explained that without the seal, there is nothing to distinguish certified from non-certified copies.<sup>67</sup> For the time being, Canadian taxpayers seeking to use this option are simply out of luck.

Taxpayers may also seek ITIN application assistance from TACs. TAC employees can provide initial verification of identification documents and submit photocopies to the IRS, allowing taxpayers to keep their original documents. Not all TACs offer this service, so taxpayers may need to travel to reach the nearest available office.<sup>68</sup> When taxpayers bring ITIN cases to TAS, Case Advocates have noted that TAC employees do not always complete the ITIN application correctly and that TAC employees sometimes send mail to the ITIN unit without a direct contact or tracking information, resulting in the mail getting lost. TAS Case Advocates have also identified cases in which ITIN employees rejected TAC-submitted forms because identification documents were not originals, although this is contrary to Internal Revenue Manual procedures.<sup>69</sup>

### ***Certifying Acceptance Agents***

The most flexible and unique option for ITIN applicants is the service of a Certifying Acceptance Agent (CAA), which, like a TAC, can assist taxpayers in completing the application, provide the initial review of certain taxpayer identification documents, and submit photocopies of the taxpayer's identification documents to the IRS.<sup>70</sup> Unlike TACs and agencies that issue certified copies, CAAs are not government employees and do not need to have any specific professional degree. To become a CAA, an applicant must take an acceptance agent training course and forensic training course, submit an application, receive IRS approval, and sign an agreement.<sup>71</sup> CAAs must periodically renew their authorization and are subject to IRS compliance reviews, although the Treasury Inspector General for Tax Administration (TIGTA) has repeatedly raised concerns about the IRS's oversight of CAAs.<sup>72</sup>

The IRS ITIN unit reviews the photocopies of the original documents that CAAs submit, but the IRS cannot independently verify from copies certain elements of the original documents that could indicate fraud. Thus, it is important that CAAs operate diligently, competently, and in good faith.

CAAs have additional resources not available to individual ITIN applicants, including access to a phone line that reaches employees in the ITIN Austin office. Individual ITIN applicants seeking assistance must call the main IRS Accounts Management phone lines, the employees for which are not located in the ITIN unit and may not have the same level of access to information or similar capacity to address and resolve problems.<sup>73</sup> Additionally, if the IRS suspends or rejects an ITIN application, the IRS will submit a copy of the notice to the CAA as well as the applicant, which can lead to more efficient resolution of certain mistakes or needed clarifications.

Applications submitted through CAAs have lower rejection rates than applications submitted by other means, even outperforming IRS employees at TACs. In 2023, the IRS rejected 28.9 percent of applications with original mailed documents, 19.3 percent of applications submitted with TAC assistance, and 13.6 percent of applications submitted with CAA assistance.<sup>74</sup>

67 SAMS issue 75609.

68 IRS, IRS Taxpayer Assistance Centers Providing In-Person ITIN Document Review, <https://www.irs.gov/help/irs-taxpayer-assistance-centers-providing-in-person-itin-document-review> (last updated Aug. 23, 2024).

69 Local Taxpayer Advocate comments to ITIN Unit Planning & Analysis Analyst (July 30, 2024).

70 IRS, Pub. 4520, ITIN Acceptance Agents' Guide for Individual Taxpayer Identification Number 9 (Oct. 2023), <https://www.irs.gov/pub/irs-pdf/p4520.pdf>.

71 See IRS, ITIN Acceptance Agent Program Changes, <https://www.irs.gov/individuals/itin-acceptance-agent-program-changes> (last updated Sept. 6, 2024).

72 See TIGTA, Ref. No. 2024-400-012, *Administration of the Individual Taxpayer Identification Number Program 7* (2023), <https://www.tigta.gov/sites/default/files/reports/2023-12/2024400012fr.pdf>.

73 IRS response to TAS information request (Sept. 24, 2024).

74 IRS, CDW, EAP CY 2023, Form\_W7 Table (through Aug. 22, 2024).

With the right oversight and quality controls, CAAs perform a valuable service for taxpayers and save government resources. However, there are drawbacks. First, the IRS does not govern the price that CAAs may charge. Some CAAs are nonprofits that charge applicants little to nothing, but some CAAs charge thousands of dollars for the service.<sup>75</sup> Also, while the IRS has some capacity to oversee CAA work and revoke CAA authorizations, there is no built-in guarantee that CAAs will perform their work with the utmost diligence and candor.

### ***Insufficient Certifying Acceptance Agent Services at Volunteer Income Tax Assistance Sites***

CAA service providers are subject to additional forms of quality review when they partner with the Volunteer Income Tax Assistance (VITA) program for tax return preparation. VITA and Tax Counseling for the Elderly (TCE) partners provide free basic income tax return preparation to taxpayers who generally earned \$67,000 or less, persons with disabilities, taxpayers with limited English proficiency, Native Americans, taxpayers in rural areas, military and their family, and elderly taxpayers. VITA and TCE partners must commit to provide services at no cost to the taxpayer, and tax returns they prepare are subject to screening and quality control. VITA and TCE partners can receive grant funding for free tax return preparation.<sup>76</sup>

Unfortunately, currently only 91 VITA partners offer CAA services, which accounts for just 1.2 percent of all CAAs in the United States.<sup>77</sup> Under current law, VITA grant funding cannot be applied to the cost of CAA services, which limits the ability of VITA partners to expand in this area and makes it more difficult for the IRS to recruit new CAA service providers at VITA sites. Congress should consider amending the tax code to allow for supplemental grant funding specifically targeting CAA services through VITA partners. Find further details on this legislative recommendation in the National Taxpayer Advocate 2025 Purple Book.<sup>78</sup>

Providing CAA services at VITA sites may also increase the number of ITIN filers who use VITA tax return preparation services, resulting in improved accuracy of tax reporting. Currently ITIN filers disproportionately rely on non-credentialed tax return preparers compared with non-ITIN filers. In 2023, among taxpayers who used return preparers, 90.3 percent of ITIN filers used non-credentialed tax return preparers, compared with 59.5 percent of non-ITIN filers.<sup>79</sup> Non-credentialed return preparers are more likely to subject taxpayers to unanticipated tax deficiencies, penalties, interest, overpaid taxes, or lost refunds.<sup>80</sup>

### ***Improvements to the Certifying Acceptance Agent Application Process***

The IRS launched a new digital application process for CAAs in January 2024.<sup>81</sup> Although the IRS has had to iron out a few minor issues since its release, the new system is a positive development and an important step toward creating digital options for all aspects of ITIN processing. The online portal allows applicants to complete their CAA applications online and submit supporting documents digitally through the Document Upload Tool.<sup>82</sup>

75 Discussions from ITIN site visit (Sept. 10, 2024); IRS response to TAS fact check (Nov. 12, 2024).

76 IRS, Free Tax Return Preparation for Qualifying Taxpayers, <https://www.irs.gov/individuals/free-tax-return-preparation-for-qualifying-taxpayers> (last updated Oct. 17, 2024).

77 IRS response to TAS information request (Oct. 9, 2024). The IRS did not yet have 2024 data for total CAAs in the United States. We based this percentage on the 2023 number of 7,613.

78 National Taxpayer Advocate 2025 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (Authorize the Use of Volunteer Income Tax Assistance Grant Funding to Assist Taxpayers With Applications for Individual Taxpayer Identification Numbers)*.

79 IRS, CDW, IRTF, IMF, Return Review Program Preparer Tax Identification Number Table, TY 2019-2023, (through Aug. 22, 2024).

80 See National Taxpayer Advocate 2023 Annual Report to Congress 65 (Most Serious Problem: Return Preparer Oversight: The Lack of Return Preparer Oversight Endangers Taxpayers, Burdens the IRS, and Harms Tax Administration), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23\\_MSP\\_05\\_Return-Preparer.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23_MSP_05_Return-Preparer.pdf).

81 See Erin M. Collins, IRS Resumes Processing “Acceptance Agent” Applications to Assist With ITINs, NATIONAL TAXPAYER ADVOCATE BLOG (Jan. 30, 2024), <https://www.taxpayeradvocate.irs.gov/news/nta-blog/nta-blog-irs-resumes-processing-acceptance-agent-applications-to-assist-with-itins/2024/01/>.

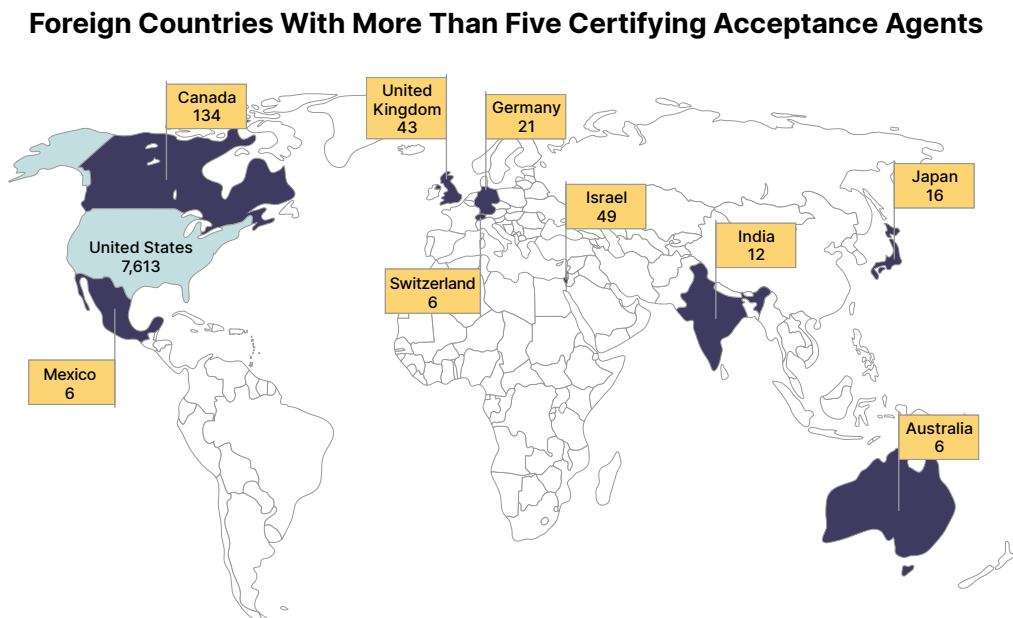
82 See IRS, ITIN Acceptance Agent Program Changes, <https://www.irs.gov/individuals/itin-acceptance-agent-program-changes> (last updated Sept. 6, 2024).

The IRS could have been more transparent in its rollout of the new system. While the IRS was developing the new application process, it stopped allowing CAA applications under the prior paper-based method, imposing an indefinite moratorium on new CAA applications beginning August 15, 2022.<sup>83</sup> The IRS explained that processing paper applications during that time would not have been feasible due to the phaseout of the prior system and the potential for duplication of data.<sup>84</sup> The moratorium ended up lasting 17 months. When the IRS finally launched the new application system, it did not issue a news release to announce either the opening of the new process or the end of the moratorium.<sup>85</sup>

### Limited Certifying Acceptance Agent Services Abroad

Taxpayers abroad have fewer resources for assistance with ITIN applications and document verification than taxpayers in the United States. There are relatively few CAAs abroad, and there are no TACs outside of the United States and Puerto Rico. Taxpayers abroad seeking ITIN application assistance might have to travel hundreds of miles, potentially to another country, to find a CAA. As of December 2023, only nine countries had more than five CAAs.<sup>86</sup>

**FIGURE 2.7.5<sup>87</sup>**



83 IRS response to TAS information request (Oct. 9, 2024).

84 Discussion from ITIN unit site visit (Sept. 10, 2024).

85 See Erin M. Collins, IRS Resumes Processing “Acceptance Agent” Applications to Assist With ITINs, NATIONAL TAXPAYER ADVOCATE BLOG (Jan. 30, 2024), <https://www.taxpayeradvocate.irs.gov/news/nta-blog/nta-blog-irs-resumes-processing-acceptance-agent-applications-to-assist-with-itins/2024/01/>. The IRS stated that although it did not issue a news release, it communicated with external stakeholders through “numerous outreach events to prepare [them] for deployment” of the new application system. IRS response to TAS fact check (Nov. 12, 2024).

86 IRS response to TAS information request (Oct. 9, 2024). Just before this report went to print, the IRS explained that five international Certified Public Accountant (CPA) firms may also provide CAA services in countries in which they have offices, which would be in addition to the numbers included in this report. IRS response to TAS fact check (Nov. 12, 2024); see also IRS, Acceptance Agent Program, <https://www.irs.gov/individuals/international-taxpayers/acceptance-agent-program> (last updated Oct. 15, 2024) (listing the five firms).

87 IRS response to TAS information request (Oct. 9, 2024). The “United Kingdom” category combines separate totals in IRS records for “Great Britain” and “United Kingdom.” Just before this report went to print, the IRS explained that five international CPA firms may also provide CAA services in countries in which they have offices, which would be in addition to the numbers included in this report. IRS response to TAS fact check (Nov. 12, 2024); see also IRS, Acceptance Agent Program, <https://www.irs.gov/individuals/international-taxpayers/acceptance-agent-program> (last updated Oct. 15, 2024) (listing the five firms).

Oversight of foreign CAAs presents additional challenges to the IRS. TIGTA has described IRS oversight of foreign CAAs as inadequate and has suggested that the IRS instead use designees at a U.S. diplomatic mission or consular post to authenticate ITIN applicants' documents.<sup>88</sup>

## CONCLUSION AND RECOMMENDATIONS

The IRS must simplify the process for individuals who need ITINs. Although the IRS has improved how quickly it can return mailed identification documents to taxpayers, ITIN processes overall remain inefficient and overly dependent on paper. Without investments in e-filing and digital identity verification technology, the IRS risks falling behind the curve in its capacity to detect and prevent increasingly sophisticated schemes of identity and tax fraud.

For taxpayers, antiquated paper-based processes result in delays, inconsistent treatment of applications, and mistakes that may permanently deprive them of benefits they qualify for under law. An ITIN is only the starting point of tax compliance for the taxpayers who need them, allowing these taxpayers to file returns and other documents with the IRS. The more difficult it is to obtain an ITIN, the more likely it is these taxpayers will fall out of the tax system altogether. For both security and service purposes, the IRS must modernize ITIN processing, end its reliance on paper, and focus on increasing digitalization.

### Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Incorporate a method to verify government-issued identification documents electronically as part of the ITIN application process.
2. As an incremental step toward allowing e-filing for both ITIN applications and accompanying tax returns, develop a multilingual online tool that guides taxpayers through the ITIN application process and helps them verify whether their supporting documentation will meet IRS requirements.
3. Allow ITIN applications to be processed year-round with proof of a federal tax need, including but not limited to the submission of a federal tax return.
4. Create a systemic fix to prevent ITINs from being deactivated if taxpayers have used them on a federal tax return within the three prior years.
5. Modernize the Real-Time System the IRS uses to process ITIN applications to enhance data quality and management, including a process for logging documents upon receipt.
6. Develop a system for tracking original identification documents, responses to missing document requests, and the actions the IRS has taken to address missing documents.
7. Expand high-quality CAA services, with particular emphasis on communities with high concentrations of ITIN filers who have little access to TACs or other forms of ITIN application assistance.

### Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Authorize the use of VITA grant funding to assist taxpayers with applications for ITINs.

## RESPONSIBLE OFFICIAL

Kenneth Corbin, Chief, Taxpayer Services

---

88 See TIGTA, Ref. No. 2024-400-012, *Administration of the Individual Taxpayer Identification Number Program 7* (2023), <https://www.tigta.gov/sites/default/files/reports/2023-12/2024400012fr.pdf>; TIGTA, Ref. No. 2022-40-013, *Administration of the Individual Taxpayer Identification Number Program 21* (2022), <https://www.tigta.gov/sites/default/files/reports/2022-02/202240013fr.pdf>.





## TAX AND FINANCIAL LITERACY

### Limited Tax and Financial Knowledge Is Causing Serious Consequences for Taxpayers

#### WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Insufficient knowledge about taxes leads to serious consequences for taxpayers. It can cause taxpayers to make mistakes on their taxes, which can have significant costs for those who fail to claim benefits for which they are eligible and for those who claim benefits they should not. Limited tax literacy imposes a variety of other costs that burden taxpayers, resulting in compliance costs and lost revenue for the government. Further, the consequences are not just tax related. Tax literacy is a key component of financial literacy, and insufficient tax knowledge can lead to a range of financial and related consequences that negatively affect individuals, families, and small businesses.

#### EXPLANATION OF THE PROBLEM

Limited tax and financial literacy are a significant problem in this country. It is estimated that in 2023 alone insufficient financial literacy in the United States cost more than \$388 billion, or about \$1,506 per adult.<sup>1</sup> It is easy to see how this can commonly occur:

- A low-income family who does not understand how to claim the Child Tax Credit misses out on thousands of dollars for which it was otherwise eligible;
- A stressful tax situation overwhelms parents, so they do not file a tax return, not realizing that their failure to file could prevent their children from receiving college financial aid;
- A young mother without a driver's license does not know how to open a checking account and obtain government benefits for her and her child; and
- A young adult renting his first apartment financially overcommits because he did not understand how much of his paycheck would go to withholding and benefits.

1 Nat'l Fin. Educators Council, *Financial Illiteracy Cost Americans \$1,506 in 2023*, <https://www.financialeducatorsCouncil.org/financial-illiteracy-costs> (last visited Oct. 9, 2024).



Tax literacy and financial literacy are fundamentally intertwined when it comes to everyday financial decision-making such as household spending, investing for retirement, paying for education, buying a house, or starting or growing a business. Yet, many Americans have a limited understanding of taxes and the U.S. tax system. This is understandable as the U.S. tax system is complicated, and the tax code is estimated to be an eye-popping 4,000,000 words.<sup>2</sup> Nonetheless, while understandable, limited tax literacy is a serious problem.

- It results in taxpayers making costly errors when they do not claim tax benefits to which they are entitled or when they claim tax benefits for which they are ineligible.
- It leads to taxpayers making tax-related decisions without fully understanding the consequences, resulting in people not making the best financial decision for their circumstances.
- It imposes other costs and burdens on taxpayers, including stress from fear of making mistakes when filing their taxes.
- It is costly for the government in the form of compliance costs and improper payments, contributing to the country's \$696 billion tax gap.<sup>3</sup>
- It can undermine Congress's policy goals, such as when taxpayers do not understand how to take advantage of tax benefits intended to encourage activities such as saving.
- It leads to non-tax consequences that can be particularly devastating for families and small businesses.
- It can be a challenging problem to address as people generally have limited opportunities to learn about taxes.
- It can cause people to feel disconnected from the U.S. tax system and the purpose of paying taxes, which can discourage compliance.

## ANALYSIS

Limited tax literacy is a widespread problem in this country. A 2024 Tax Foundation survey of U.S. taxpayers found that “[o]n average, over 61 percent of respondents did not know or were not sure of basic tax concepts related to income tax filing.”<sup>4</sup> This survey and others have highlighted gaps in basic tax knowledge, such as:

- *When are taxes due?* In one survey, almost half of the youngest cohort of respondents did not know about the April 15 deadline.<sup>5</sup>
- *How much income to report?* That same survey found 62 percent of first-time filers were not sure where to get their Forms W-2 and 1099.<sup>6</sup>
- *What records and receipts do they need?* In a survey of small businesses and the self-employed, 15 percent of respondents did not know or were unsure of what kinds of records and receipts they must keep for tax purposes.<sup>7</sup>
- *What is more valuable: a \$1,000 tax credit or a \$1,000 tax deduction?* Given a hypothetical in which a taxpayer with \$10,000 of income was taxed at a rate of ten percent, 64 percent of survey respondents answered incorrectly that the tax deduction was worth more than the credit or were unsure of the answer.<sup>8</sup>

2 See National Taxpayer Advocate 2017 Annual Report to Congress 84 (Most Serious Problem: *Employee Training: Changes to and Reductions in Employee Training Hinder the IRS's Ability to Provide Top Quality Service to Taxpayers*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC17\\_Volume1\\_MSP\\_07\\_EmployeeTraining.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC17_Volume1_MSP_07_EmployeeTraining.pdf).

3 IRS, Research, Applied Analytics and Statistics, Pub. 5869, Federal Tax Compliance Research: Tax Gap Projections for Tax Year 2022 (Oct. 2024), <https://www.irs.gov/pub/irs-pdf/p5869.pdf>.

4 Zoe Callaway, *New National Tax Literacy Poll Highlights Need for Better Tax Education*, TAX FOUND. (Apr. 8, 2024), <https://taxfoundation.org/blog/national-tax-literacy-poll-education>.

5 Suzanne Blake, *Gen Z Expects Parents to Help Them With Their Taxes*, NEWSWEEK (Mar. 26, 2024) (reporting on Cash App Taxes survey), <https://www.newsweek.com/gen-z-expects-parents-file-taxes-them-1883584>.

6 *Id.*

7 Caroline Bruckner, Collin Coil, & Barbara J. Robles, *Using AI to Measure and Mitigate Tax Literacy Challenges* (2024) (on file with TAS).

8 Zoe Callaway, *New National Tax Literacy Poll Highlights Need for Better Tax Education*, TAX FOUND. (Apr. 8, 2024), <https://taxfoundation.org/blog/national-tax-literacy-poll-education>.

- *What is the highest tax bracket?* In one survey, only 33 percent of respondents correctly chose 37 percent as the highest tax bracket when given a choice among 22 percent, 32 percent, 37 percent, 43 percent, or not sure.<sup>9</sup>
- *How do tax brackets work?* In the same survey, over half of respondents did not understand how graduated income tax rates operate.<sup>10</sup>

### Limited Tax Literacy Leads to Costly Tax Consequences for Taxpayers

A key part of tax literacy is people understanding their own tax situation. The tax code and tax system are complicated, and trying to understand them is a daunting task, but such knowledge is fundamental to taxpayer rights. Taxpayers have the *right to be informed*, meaning they have the right to know what they need to do to comply with the tax laws, as well as the *right to pay no more than the correct amount of tax*.<sup>11</sup>

When families and businesses fail to claim the benefits for which they are eligible, they lose out and potentially pay more taxes than required. For example, around 20 percent of eligible taxpayers fail to claim the Earned Income Tax Credit (EITC), which is a refundable credit intended to assist low-income workers.<sup>12</sup> Workers who are at heightened risk of missing out on the credit include those who live in rural areas, the self-employed, and grandparents raising grandchildren.

On the other side, taxpayers who mistakenly claim tax benefits they should not can face unexpected costs, as the mistake may lead to audits and additional tax liabilities, plus penalties and interest. In some cases, taxpayers do not meet their tax obligations because they are unaware of them, such as the information reporting requirements on certain foreign accounts and transactions. The failure to file these information returns can lead to life-altering penalties that overwhelmingly impact lower- and middle-income individuals who voluntarily come forward and file their return, albeit late.<sup>13</sup>

Certain groups of taxpayers face particular burdens due to the U.S. tax system's complexity, and limited tax literacy exacerbates these challenges. One key example is small businesses, including the self-employed. This is a significant cohort of taxpayers. Small businesses number more than 33 million, account for 99.9 percent of U.S. businesses, and employ 61.6 million employees (45.9 percent of the country's workforce overall and 56.6 percent in rural areas).<sup>14</sup> Roughly ten percent of U.S. workers are self-employed, and an estimated 16 percent of U.S. workers have earned money from the gig economy.<sup>15</sup>

Small businesses and the self-employed must deal with complicated tax situations, yet stakeholders regularly stress there is a lack of IRS resources available to educate them in a meaningful way. Further, small business owners are often not familiar with tax benefits intended to assist them. For example, a survey by the National

9 Zoe Callaway, *New National Tax Literacy Poll Highlights Need for Better Tax Education*, TAX FOUND. (Apr. 8, 2024), <https://taxfoundation.org/blog/national-tax-literacy-poll-education>.

10 *Id.*

11 See Taxpayer Bill of Rights (TBOR), <https://www.taxpayeradvocate.irs.gov/taxpayer-rights> (last visited Oct. 9, 2024). The rights contained in TBOR are also codified in IRC § 7803(a)(3).

12 IRS, EITC Participation Rate by States Tax Years 2014 Through 2021, <https://www.eitc.irs.gov/eitc-central/participation-rate-by-state/eitc-participation-rate-by-states> (last updated Aug. 9, 2024).

13 See Most Serious Problem: *Civil Penalty Administration: The IRS's Administration of Penalties Is Often Unfair, Is Inconsistently Detering Improper Behavior, Is Not Promoting Efficient Administration, and Thus Is Discouraging Tax Compliance, infra*; National Taxpayer Advocate 2023 Annual Report to Congress 101 (Most Serious Problem: *International: The IRS's Approach to International Information Return Penalties Is Draconian and Inefficient*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23\\_MSP\\_08\\_International.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23_MSP_08_International.pdf).

14 U.S. SMALL BUS. ADMIN. OFF. OF ADVOC., 2023 SMALL BUSINESS PROFILE FOR THE UNITED STATES 1 (2023), <https://advocacy.sba.gov/wp-content/uploads/2023/11/2023-Small-Business-Economic-Profile-US.pdf>. In rural areas, small businesses account for 56.6 percent of employment. See U.S. SMALL BUS. ADMIN. OFF. OF ADVOC., 2024 RURAL AREAS SMALL BUSINESS PROFILE (2024), [https://advocacy.sba.gov/wp-content/uploads/2024/08/Rural-Areas-Profile-2024\\_080524.pdf](https://advocacy.sba.gov/wp-content/uploads/2024/08/Rural-Areas-Profile-2024_080524.pdf).

15 U.S. BUREAU OF LAB. STATS., LABOR FORCE STATISTICS (CPS), tbl. A-9 Selected Employment Indicators, <https://www.bls.gov/webapps/legacy/cpsatab9.htm> (last visited Aug. 19, 2024); Bd. of Govs. of the Fed. Rsrv. Sys., ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2022, at 26 (May 2023), <https://www.federalreserve.gov/publications/2023-economic-well-being-of-us-households-in-2022-employment.htm>.

Federation of Independent Business (NFIB) found that nearly half of small business owners were unfamiliar with the small business deduction, which provides a 20 percent tax deduction on qualified business income.<sup>16</sup> Small business owners are at a competitive disadvantage when they do not understand the tax benefits for which they qualify.

### **Example of Costly Tax Consequences for Newly Self-Employed Worker**

In 2023, Sally starts as a driver for a rideshare app, becoming an independent contractor for the first time. In early 2024, she gets Form 1099-NEC from the company reporting her income and heads to a return preparer to do her taxes. The return preparer asks for her business records and the amounts she paid in quarterly estimated taxes. Sally panics as this is all new to her. In previous jobs, her employers kept track of things and withheld money from her paycheck. Sally explains she was unaware of the requirement to pay estimated taxes, and her heart sinks as she realizes she is going to have to pay penalties. She is not alone, as one survey found approximately one-third of small business owners and self-employed respondents did not know they needed to make quarterly payments and set aside money for taxes.<sup>17</sup>

A survey of small business owners also reported that 13.2 percent of respondents indicated the thing that *most* concerned them when filing any type of Form 1099 income was whether they had correctly paid their estimated taxes.<sup>18</sup>

Sally's preparer explains complicated rules regarding expenses and deductions. She tells the preparer she has Form 1099-NEC and can log into the rideshare app to see her trips but otherwise hadn't kept records during the year, thinking the app tracked everything. Sally did not keep a mileage record of trips from her home to her first ride each day or records relating to a home office. Her incomplete records are a costly mistake as her preparer cannot determine if she qualifies for various tax benefits, including home office and business mileage deductions. She is not alone in her failure to keep adequate records. The same survey noted above found that 16 percent of respondents reported the thing that *most* concerned them when filing their return claiming Form 1099 income was not knowing what qualifies as a deduction, and 12 percent reported it was not having kept track of expense receipts.<sup>19</sup>

### **Limited Tax Literacy Can Lead Taxpayers to Make Poor Tax-Related Financial Decisions**

Limited tax literacy can lead to taxpayers making tax-related decisions without fully understanding the consequences, perhaps resulting in people not making the best financial decision for their circumstances.

- *Is a large refund good or bad?* Financial experts and tax professionals routinely advise taxpayers that it is generally not a good idea to make excess tax payments because they are, in effect, giving the government an interest-free loan that the government pays back when the taxpayer receives a tax refund.<sup>20</sup> A recent survey found that while 48 percent of respondents disagreed with the statement

16 See, e.g., NFIB RSCH. CTR., NFIB TAX SURVEY 2021, at 12, Q10 (2021), <https://assets.nfib.com/nfibcom/NFIB-Tax-Survey-Full-Report.pdf>.

17 See Caroline Bruckner & Collin Coil, *AI and the Modern Tax Agency: Adopting and Deploying AI to Improve Tax Administration* (Jan. 2024) (on file with TAS); see also Caroline Bruckner, *Shortchanged: The Tax Compliance Challenges of Small Business Operators Driving the On-Demand Platform Economy* 12 (May 2016), <https://ssrn.com/abstract=2784243> (a survey of gig economy workers found 34 percent did not know they needed to submit quarterly payments and 43 percent had not set aside money to pay their taxes and did not know how much they owed).

18 See Caroline Bruckner, Collin Coil, & Barbara J. Robles, *Using AI to Measure and Mitigate Tax Literacy Challenges* (2024) (on file with TAS). The fact that quarterly due dates are illogical does not help this confusion. See National Taxpayer Advocate 2025 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* (Legislative Recommendation: *Adjust Individual Estimated Tax Payment Deadlines to Occur Quarterly*).

19 See Caroline Bruckner, Collin Coil, & Barbara J. Robles, *Using AI to Measure and Mitigate Tax Literacy Challenges* (2024) (on file with TAS).

20 See, e.g., Emmie Martin, *Suze Orman: Getting a Tax Refund Means You're Making a Big Mistake*, CNBC MAKE IT (Mar. 21, 2019), <https://www.cnbc.com/2019/03/21/suze-orman-getting-a-tax-refund-means-youre-making-a-big-mistake.html>; Aimee Picchi, *The Great Tax Refund Debate: Is It Financially Wiser to Get a Big Refund – or Nothing?*, CBS NEWS MONEYWATCH (Mar. 21, 2023), <https://www.cbsnews.com/news/tax-refund-debate-big-refund-zero-refund-cbs-news-explains>.

that large tax refunds are a good thing, 28 percent agreed with it, and 24 percent were not sure.<sup>21</sup> If a taxpayer wants to adjust withholding to get a smaller refund, stakeholders emphasize that many struggle with the process.

- *What are the effects of filing for an extension?* When taxpayers file for an extension to file their tax return because they cannot meet the April 15 deadline, they must still pay any taxes owed by April 15. An extension to file is not an extension to pay. This can be a costly mistake for unaware taxpayers, leading to the assessment of unexpected interest and penalties.
- *Are refund anticipation loans worth it?* Taxpayers without a strong foundation in tax and financial literacy might not understand the disadvantages of refund anticipation loans (RALs), which are short-term loans based on the expected tax refund. Although a RAL may be a convenient way to get cash quickly during filing season depending upon the terms of the loan, these loans may make little financial sense for taxpayers and can have deceptively high fees. Data shows an uptick in the use of RALs. In tax year (TY) 2023, over 639,000 individual electronic filers had a RAL, up 33.6 percent from over 478,000 in TY 2022.<sup>22</sup> Taxpayers should understand the risks and benefits when agreeing to a RAL.
- *Are taxpayers aware of the risk of tax scams?* Insufficient tax literacy can make taxpayers vulnerable to falling victim to scams, which can have huge financial and emotional costs for those individuals. Scams are another Most Serious Problem facing taxpayers, with millions of Americans losing billions of dollars to tax-related scams.<sup>23</sup> A key aspect of scams is social media influencers spreading disinformation, and insufficient tax literacy can make taxpayers vulnerable. The IRS can help counter this disinformation by establishing itself as a trusted source of fundamental tax knowledge.

### Limited Tax Literacy Imposes Other Costs and Burdens on Taxpayers

The tax laws are overly complex, and insufficient tax literacy only makes understanding and complying with them all that more difficult. Many taxpayers struggle with preparing their tax returns and face associated burdens and costs, such as:

- *Stress.* Stakeholders repeatedly emphasize the stress and fear that people feel about filing taxes, particularly younger taxpayers.<sup>24</sup> Improving tax literacy could alleviate stress as people would be better informed of their tax obligations, their eligibility for tax benefits, and the process for filing and paying taxes.
- *Time.* The IRS estimates that taxpayers spend, on average, 13 hours to prepare and file the Form 1040 tax return.<sup>25</sup>
- *Money.* The IRS estimates that the average cost for taxpayers to prepare and file the Form 1040 is \$270.<sup>26</sup>

Most filers pay someone to do their taxes for them. A 2021 IRS survey of individuals found that 53 percent used a paid preparer.<sup>27</sup> For small businesses, that rate increases to more than 90 percent.<sup>28</sup> Paid preparers and software provide valuable services to taxpayers. However, concerns arise when taxpayers, due to limited

21 Zoe Callaway, *New National Tax Literacy Poll Highlights Need for Better Tax Education*, TAX FOUND. (Apr. 8, 2024), <https://taxfoundation.org/blog/national-tax-literacy-poll-education>.

22 IRS, Compliance Data Warehouse (CDW), Electronic Tax Administration Research and Analysis System (as of Sept. 2024).

23 See IRS, Tax Scams/Consumer Alerts, <https://www.irs.gov/newsroom/tax-scamsconsumer-alerts> (last updated Aug. 12, 2024). The Federal Trade Commission estimates 2.6 million fraud incidents with a total loss of \$10 billion in 2023 alone. See FED. TRADE. COMM'N, 2023 CONSUMER SENTINEL NETWORK DATA BOOK 10 (Feb. 2024), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/CSN-Annual-Data-Book-2023.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/CSN-Annual-Data-Book-2023.pdf). See also Most Serious Problem: Tax-Related Scams: More Taxpayers Are Falling Victim to Tax-Related Scams, *supra*.

24 See also Andrew Marder, *NerdWallet 2024 Tax Report*, NERDWALLET (Jan. 30, 2024), <https://www.nerdwallet.com/article/taxes/taxes-study-2024>.

25 IRS, Tax Year 2023 Form 1040 (and 1040 SR) Instructions 108.

26 *Id.*

27 IRS, Research, Applied Analytics and Statistics, Pub. 5296, Comprehensive Taxpayer Attitude Survey (CTAS) 2021, at 39 (Jan. 2022), <https://www.irs.gov/pub/irs-pdf/p5296.pdf>.

28 See, e.g., NFIB RSCH. CTR., NFIB TAX SURVEY 2021, at 9 (2021), <https://assets.nfib.com/nfibcom/NFIB-Tax-Survey-Full-Report.pdf>.

tax and financial literacy, may not know a fair price for the services, may not understand the prevalence of and potential risk in using uncredentialed preparers, and may not know what to do if they get conflicting advice from preparers. Taxpayers might also agree to suboptimal payment arrangements, such as paying the preparer a percentage of their refund, where the cost might be less apparent versus paying the fee up front. Highlighting these concerns, a recent survey of U.S. adults found that slightly more than 25 percent did not know how much it would cost them to prepare their taxes, and another survey found that one-third of small business respondents did not ask their preparers basic questions about their return or whether the preparer would assist in the event of an audit.<sup>29</sup>

### ***Example of Costs and Burdens on Taxpayers Living Abroad to Comply***

John and Queena moved to France in July 2020 to be closer to their clients in Europe and to expand their architecture firm. After settling in, they realized they needed to pay taxes to France for the six months they lived there and likely the United States as well. What they needed to do was not clear, so they found themselves trying to navigate a complex tax system they did not really understand. They contacted the IRS but found a lack of accessible real-time assistance and limited guidance for their tax inquiries. They downloaded and read through IRS publications online but found more questions than answers and became even more confused.

John had read they could take a Foreign Earned Income Exclusion that would help to exempt them from U.S. taxes while living abroad. Queena prepared and paid their taxes to the French government online, which was fairly straightforward. They also filed a return with the IRS, claiming the exclusion; that return was not so straightforward. Several months passed, and the couple received an IRS notice stating they could not take the exclusion and that they owed more in taxes as well as an assessed penalty. They consulted with an accountant in the United States who confirmed they did not meet the exclusion's complicated tests and did in fact owe taxes and penalties to the IRS.

Frustrated, John and Queena decided to hire a private tax preparer in France specializing in expatriate tax preparation to take care of their future business returns, personal French tax returns, and U.S. tax returns. This proved to be costly each year at around \$1,600 for all of their filings. In years when they had a U.S. tax refund, John and Queena received a paper check from the IRS, which they could not deposit in a European bank. In the years when they owed a small amount to the IRS, the cost to mail their filings was often greater than what they owed.

In some cases, the costs of using a paid preparer may be unnecessary because the taxpayer could file the return for free. There are several free filing options for qualifying taxpayers, including IRS Free File, where taxpayers file their returns for free via certain software providers; Direct File, which allows taxpayers in certain states to file for free directly with the IRS; the Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) programs; MilTax, which the Department of Defense provides for members of the military; and free services provided by some software providers for simple returns.<sup>30</sup> But many taxpayers are unaware of the programs. For example, while 70 percent of taxpayers (100 million) are eligible to use Free File, only about three percent generally do, and a recent survey indicates that 13 percent of filers do not even know if they are eligible for the program.<sup>31</sup>

- 
- 29 See Andrew Marder, *NerdWallet 2024 Tax Report*, NERDWALLET (Jan. 30, 2024), <https://www.nerdwallet.com/article/taxes/taxes-study-2024>; Caroline Bruckner & Barbara J. Robles, *Understanding Tax Literacy Gaps for Small Business and the Growing Gig Workforce*, AM. UNIV. (Apr. 2023), [https://8614653.fs1.hubspotusercontent-na1.net/hubfs/8614653/Small-Business-Literacy-Infographic\\_rd1.pdf](https://8614653.fs1.hubspotusercontent-na1.net/hubfs/8614653/Small-Business-Literacy-Infographic_rd1.pdf); Caroline Bruckner, Collin Coil, & Barbara J. Robles, *Using AI to Measure and Mitigate Tax Literacy Challenges* (2024) (on file with TAS).
- 30 See IRS, IRS Free File: Do Your Taxes for Free, <https://www.irs.gov/filing/free-file-do-your-federal-taxes-for-free> (last updated Dec. 16, 2024); IRS, IRS Direct File: File Taxes for Free Directly With IRS, <https://www.irs.gov/filing/irs-direct-file> (last updated Dec. 11, 2024); IRS, Free Tax Return Preparation for Qualifying Taxpayers, <https://www.irs.gov/individuals/free-tax-return-preparation-for-qualifying-taxpayers> (last updated Oct. 17, 2024); Military OneSource, MilTax: Free Software and Support, <https://www.militaryonesource.mil/financial-legal/taxes/miltax-military-tax-services> (last visited Nov. 7, 2024); Sabrina Parys, *7 Free Tax Filing Options for 2024*, NERDWALLET (Oct. 7, 2024), <https://www.nerdwallet.com/article/taxes/free-tax-filing-how-to-file-taxes-for-free>.
- 31 See IRS, IRS Free File: Do Your Taxes for Free, <https://www.irs.gov/filing/free-file-do-your-federal-taxes-for-free> (last updated Dec. 16, 2024); Government Accountability Office (GAO), *Why Don't More Taxpayers Take Advantage of Free Help Filing Taxes Online*, WATCHBLOG (May 10, 2022), <https://www.gao.gov/blog/why-dont-more-taxpayers-take-advantage-free-help-filing-taxes-online>; IRS News Release, IR-2024-58, IRS Free File Program Sees Early Increase in Use; Filings Up Nearly 10% (Mar. 1, 2024), <https://www.irs.gov/newsroom/irs-free-file-program-sees-early-increase-in-use-filings-up-nearly-10-percent>; Caroline Bruckner, Collin Coil, & Barbara J. Robles, *Using AI to Measure and Mitigate Tax Literacy Challenges* (2024) (on file with TAS).



One unexpected consequence of using paid preparers is the degree to which it further undermines tax literacy, as taxpayers come to rely on their preparer's tax knowledge rather than developing their own. For example, the NFIB has noted that "[t]he widespread use of tax professionals to ensure compliance with tax laws may be eroding [small business] owners' familiarity with the tax provisions available to them..., especially owners of smaller businesses."<sup>32</sup> While not a reason to discourage the use of paid preparers, it is something to consider when developing ways to improve tax literacy.

### Limited Tax Literacy Is Costly to the Government, Raising Compliance Costs and Reducing Revenue

When taxpayers make mistakes due to insufficient tax knowledge, there are compliance costs for the government, such as the IRS expending resources to audit and otherwise ensure compliance.

The U.S. tax system relies heavily on withholdings, estimated payments, and self-assessments. Evidence shows that increasing tax morale (the intrinsic willingness to pay tax), which tax literacy and education can strengthen, can increase compliance.<sup>33</sup>

Taxpayer mistakes also contribute to the rate of improper payments, which are payments the government should not have made or made in incorrect amounts.<sup>34</sup> Four refundable tax credits – the EITC, the American Opportunity Tax Credit, the Premium Tax Credit, and the Additional Child Tax Credit – have estimated improper payment rates exceeding ten percent, costing the government an estimated \$26 billion in fiscal year (FY) 2022.<sup>35</sup>

Relatedly, taxpayer mistakes also contribute to the tax gap, which is the difference between taxes owed and taxes not paid on time. The most recent estimated projection of the gross tax gap is \$696 billion for tax year 2022, with individual income tax underreporting estimated to account for over half of that amount.<sup>36</sup> While taxpayer mistakes are just one factor, improving tax literacy would reduce the number of mistakes and serve as a useful tool to reduce the amount of improper payments and the tax gap.

Improving tax literacy should go hand-in-hand with other actions to improve taxpayers' understanding of the tax gap and the government's finances. For example, the IRS Advisory Council recommends the IRS take steps to provide reliable and accessible information to the public about the tax gap, such as by developing a dedicated webpage on IRS.gov with visually interesting graphics, so the public better understands how the tax gap impacts them and how actions to reduce it can benefit them.<sup>37</sup>

### Limited Tax Literacy Undermines Congress's Policy Goals

Limited tax literacy can directly undermine congressional intent in enacting tax policies. For example, Congress has created tax-advantaged savings accounts to encourage individuals and families to save for retirement, college and other education costs, and health-related needs.<sup>38</sup> While multiple factors affect taxpayers' use of these accounts, one factor may be that some taxpayers are simply not aware of them or do

32 See, e.g., NFIB RSCH. CTR., NFIB TAX SURVEY 2021, at 9 (2021), <https://assets.nfib.com/nfibcom/NFIB-Tax-Survey-Full-Report.pdf> (a survey found that about half of the small business respondents were unfamiliar with the small business deduction).

33 See, e.g., Marina Bornman & Pushetso Ramutumbu, *A Conceptual Framework of Tax Knowledge*, MEDITARI ACCT'ANCY RSCH. 826-27 (Mar. 6, 2019) (summarizing various research studies), <https://doi.org/10.1108/MEDAR-09-2018-0379>; GAO, GAO-11-439, *Information on Selected Foreign Practices That May Provide Useful Insights* (2011), <https://www.gao.gov/assets/files.gao.gov/assets/gao-11-439.pdf>.

34 See 31 U.S.C. § 3351(4) for the definition of improper payment.

35 DEP'T OF THE TREASURY, AGENCY FINANCIAL REPORT FISCAL YEAR 2023, at 244 fig.8 (2023), <https://home.treasury.gov/system/files/266/Treasury-FY-2023-AFR-111523.pdf>.

36 IRS, Research, Applied Analytics & Statistics, Pub. 5869, *Federal Tax Compliance Research: Tax Gap Projections for Tax Year 2022* (Oct. 2024), <https://www.irs.gov/pub/irs-pdf/p5869.pdf>.

37 IRS, Pub. 5316, *IRS Advisory Council Public Report 22-24* (Nov. 2024), <https://www.irs.gov/pub/irs-pdf/p5316.pdf>.

38 See, e.g., BRENDAN McDERMOTT, CONG. RSCH. SERV., R47492, *Tax-Advantaged Savings Accounts: Overview and Policy Considerations* (Mar. 31, 2023), <https://crsreports.congress.gov/product/pdf/R/R47492>.



not understand how they work. Those taxpayers not only lose out on the tax benefits of the accounts (thus paying more tax than they would otherwise) but may also face significant impacts on their lives, such as having inadequate savings when they reach retirement.

Another example concerns the EITC, which is one of the country's main anti-poverty programs. Limited tax literacy can impact the EITC's policy goals by causing eligible taxpayers to fail to claim the credit, undermining the program's anti-poverty effect. It can also lead taxpayers to decide to pay for tax preparation. When taxpayers expend resources to obtain the EITC, it drains resources from households, an outcome that can seem particularly odd as taxpayers are paying a professional to figure out whether they qualify for a public benefit targeted to improve the financial circumstances of low-income workers and their families.<sup>39</sup>

### **The IRS Should Develop a Concerted Plan to Improve Tax Literacy for Taxpayers**

In light of these significant costs to taxpayers and the government, the IRS should prioritize a plan of action to improve tax literacy for taxpayers. It is already taking actions that are commendable. For example, the IRS reports that all VITA and TCE sites include some type of financial education and asset building activities, which the IRS Stakeholder Partnerships, Education and Communication function facilitates.<sup>40</sup> Financial education and asset building activities include helping taxpayers understand the benefits of direct deposit and how to use the split refund option to fund a saving-type account such as an individual retirement account.<sup>41</sup> Additionally, the IRS has built strong relationships with key stakeholders, including state agencies, non-profit groups, tax practitioners, and software providers, and has leveraged these relationships into successful outreach and taxpayer educational activities.<sup>42</sup>

While recognizing the IRS's significant efforts in taxpayer outreach and education, there is an opportunity for a more concerted effort focused on improving tax literacy. Stakeholders within and outside the IRS have exhibited enthusiasm for the agency taking a more active and focused role in improving tax literacy. Being able to effectively message tax literacy requires a variety of skills as well as an understanding of different taxpayers and the ways to effectively communicate with them. There are significant useful resources available to the IRS, and stakeholders with a range of expertise are willing to assist.

The IRS should commit to improving tax literacy by establishing a task force with stakeholders to take advantage of the wealth of knowledge these individuals and entities hold and their specialized experiences working with different cohorts of taxpayers, seeing the pain points, and successfully messaging strategies. The IRS and members of the task force should develop a comprehensive strategy to:

- Develop standardized metrics for measuring tax literacy and regularly conduct surveys to evaluate tax literacy among specific types of taxpayers;
- Identify metrics to gauge the success of tax literacy outreach efforts;
- Identify opportunities to seek input from stakeholders and the public;
- Create customized tax literacy outreach, including for platforms inside and outside IRS.gov for specific types of taxpayers and their individual circumstances;
- Identify strategies to partner with state agencies (including state departments of revenue, secretaries of states, and state treasurers) to provide accessible tax education at key moments during the lives of individuals and families and the lifecycles of businesses;

39 See Tax Pol'y Ctr., *Why Do Low-Income Families Use Tax Preparers?*, TAX POL'Y CTR. BRIEFING BOOK, <https://www.taxpolicycenter.org/briefing-book/why-do-low-income-families-use-tax-preparers> (last visited Oct. 8, 2024).

40 IRS response to TAS information request (Oct. 3, 2024).

41 *Id.*

42 IRS response to TAS information request (Oct. 11, 2024).

- Develop accessible tax education materials in consultation with tax preparer communities, including enrolled agents, VITA and TCE programs, and software providers, that these communities can integrate into their existing communications with taxpayers; and
- Develop tax education materials targeted to vulnerable populations including the elderly, immigrants, individuals with disabilities, and low-income taxpayers.

Improving tax literacy will necessitate changes in the way IRS.gov presents information. Taxpayers, practitioners, and other stakeholders frequently note the difficulties they have in finding information on IRS.gov, with a common criticism being that the site contains too little or too much information that is often duplicative, unclear, and difficult to search. One challenge the IRS will face is determining how to sustain a long-term effort to reimagine IRS.gov with a focus on promoting tax literacy.

### **Limited Tax Literacy Leads to Non-Tax Consequences That Can Be Particularly Devastating for Families and Small Businesses**

Limited tax literacy does not just impact a person's taxes. Having a basic understanding of taxes and the U.S. tax system is important because it can influence how people make decisions that impact so many different areas of their lives. Tax and financial literacy are intertwined when it comes to people's financial decision-making, including managing a household budget, saving for retirement, paying for education, buying a house, or starting or expanding a small business.

There are many important ways that failing to file tax returns or otherwise comply with tax obligations can impact people's lives, as these examples illustrate:

- *Education:* Families must generally provide federal income tax returns, Forms W-2, and other records of income to file the Free Application for Federal Student Aid.<sup>43</sup>
- *Small business loans:* The Small Business Administration (SBA) may require the submission of copies of federal tax returns to determine eligibility for various types of loans and contracting preferences.<sup>44</sup>
- *Mortgages:* Lenders may require prospective homebuyers to provide copies of tax returns to qualify for residential mortgages.
- *Immigrants:* The Department of Homeland Security may treat permanent residents who fail to file a tax return or who file as a nonresident alien as having abandoned their permanent resident status.<sup>45</sup>
- *Passports:* The State Department generally cannot issue passports to taxpayers with seriously delinquent tax debts and may deny such a taxpayer's passport application or renewal or revoke their current passport.<sup>46</sup>

These examples highlight that financial decision-making often involves other agencies. TAS commends the IRS for its sustained efforts to coordinate with other federal agencies, such as the Department of Education, the Federal Emergency Management Agency, the SBA, the Federal Trade Commission, the Social Security Administration, and the Department of Veteran Affairs.<sup>47</sup> The IRS has identified numerous examples of its ongoing partnership efforts on issues important to the public, including the cross-marketing of critical messaging on tax issues and non-tax issues.<sup>48</sup>

43 U.S. Dep't of Educ., *What Information Will I Need to Fill Out a FAFSA Form?*, <https://studentaid.gov/help/info-needed> (last visited Oct. 8, 2024).

44 See, e.g., 13 C.F.R. §§ 123.104, 127.203.

45 8 CFR § 316.5(c)(2).

46 IRC § 7345.

47 IRS responses to TAS information requests (Oct. 3, 2024; Oct. 11, 2024).

48 *Id.*

However, stakeholders have emphasized that there are some serious gaps in the way federal agencies sometimes present information together. The IRS and other federal agencies need a more coordinated approach to provide tax-focused education in a meaningful systemic way and incorporate tax literacy content into other agencies' financial literacy programming. Other federal agencies, including the Federal Deposit Insurance Corporation, the Consumer Financial Protection Bureau, and the Department of Defense, have already taken steps to provide accessible financial education to the public.<sup>49</sup> The IRS can include tax literacy in these efforts and raise awareness to taxpayers of the work these other agencies are doing. The IRS does not have to reinvent the wheel, just focus on creating a coordinated approach with other agencies to promote tax and financial literacy. A key component of these interagency efforts should be education targeted to specific types of taxpayers, including small businesses, taxpayers living abroad, and families.

In 2003, Congress took a significant step in improving financial literacy by creating the Financial Literacy and Education Commission (FLEC).<sup>50</sup> FLEC is a multi-agency task force responsible for developing a national strategy on financial education. In its two decades of existence, FLEC has put together an impressive array of work, including developing the financial education website MyMoney.gov, holding public hearings on important issues, and issuing research and other informational reports that look at financial literacy from a variety of perspectives.<sup>51</sup> The IRS's interaction with FLEC is limited,<sup>52</sup> which is not surprising given FLEC's statutory mandate and focus on consumer issues. Nonetheless, FLEC can serve as a model for the type of capacity building needed to effectively coordinate the promotion of tax literacy across federal agencies. Congress should show a similar commitment to tax literacy by creating a similar type of interagency commission focused on tax literacy or considering amending the 2003 law that created FLEC to include duties related to promoting tax literacy.

### **There Is a Need to Expand Opportunities to Learn about Taxes and the Tax System**

A big shock for many young adults starting their first job is the difference between how much they earn and how much they actually see in their paycheck. Things become even more confusing at tax filing time when they have to figure out deductions, credits, dependent status, split refund options, etc.

There are limited opportunities to learn about taxes and the U.S. tax system in a meaningful way. A recent survey found that 62 percent of the respondents reported learning how to do taxes on their own and only 7.5 percent learned how to do taxes in high school.<sup>53</sup> And the numbers for higher education are not much better. A survey of small business owners and the self-employed found only 13.5 percent of the respondents who had at least a college degree learned about filing their taxes in college.<sup>54</sup>

People do want to learn about these topics. A 2022 survey found that 88 percent of the respondents agreed that their state should require a personal finance course for high school graduation, and 80 percent wish they had been required to take such a class.<sup>55</sup> Improvements in tax literacy cannot just focus on educating taxpayers when they are actively being taxpayers, *i.e.*, when they are preparing and filing their taxes or making tax-related decisions.

49 Fed. Deposit Ins. Comm., *Money Smart*, <https://www.fdic.gov/consumer-resource-center/money-smart> (last visited Oct. 8, 2024); Consumer Fin'l Prot. Bureau, *Money Milestones*, <https://www.consumerfinance.gov/consumer-tools/money-as-you-grow/teen-young-adult/money-milestones/> (last visited Oct. 10, 2024); Military OneSource, *MilTax*, <https://www.militaryonesource.mil/financial-legal/taxes/miltax-military-tax-services> (last visited Oct. 8, 2024).

50 Financial Literacy and Education Improvement Act, Pub. L. No. 108-159, Title V, 117 Stat. 1952, 2003 (2003) (codified at 20 U.S.C. §§ 9701-9707); see also U.S. Dep't of the Treasury, *Financial Literacy and Education Commission*, <https://home.treasury.gov/policy-issues/consumer-policy/financial-literacy-and-education-commission>.

51 For examples of FLEC's reports, see U.S. Dep't of the Treasury, *Financial Literacy and Education Commission, Resources*, <https://home.treasury.gov/policy-issues/consumer-policy/financial-literacy-and-education-commission>.

52 IRS responses to TAS information requests (Oct. 3, 2024; Oct. 11, 2024).

53 Caroline Bruckner & Barbara J. Robles, *Understanding Tax Literacy Gaps for Small Business and the Growing Gig Workforce*, AM Univ. (Apr. 2023), [https://8614653.fs1.hubspotusercontent-na1.net/hubfs/8614653/Small-Business-Literacy-Infographic\\_rd1.pdf](https://8614653.fs1.hubspotusercontent-na1.net/hubfs/8614653/Small-Business-Literacy-Infographic_rd1.pdf).

54 Caroline Bruckner, Collin Coil, & Barbara J. Robles, *Using AI to Measure and Mitigate Tax Literacy Challenges* (2024) (on file with TAS).

55 Nat'l Endowment for Fin'l Educ. (NEFE), *High School Personal Finance Education Poll March 17-21, 2022* (2022), <https://www.nefe.org/research/polls/Financial-Capability-Month-Poll-summary.pdf>.

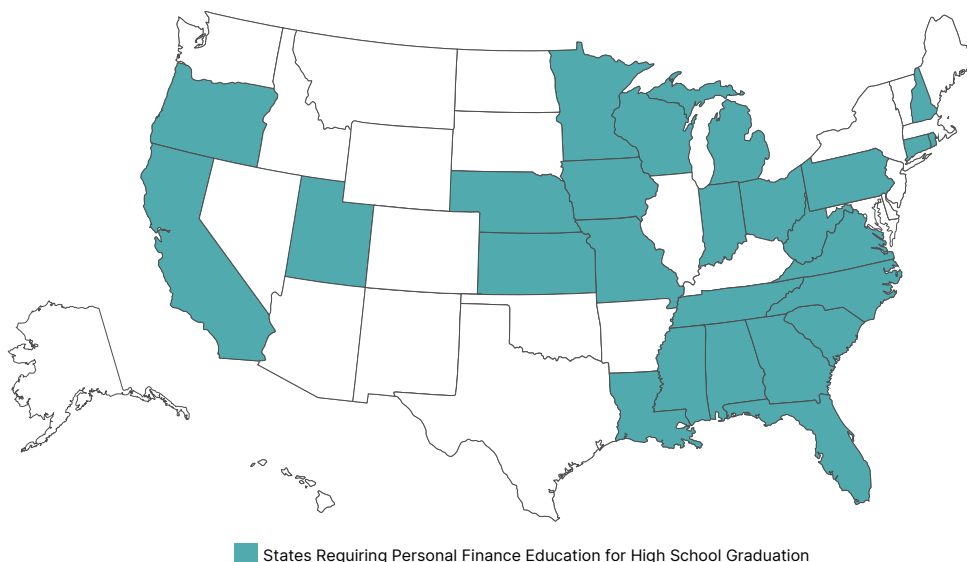
Another critical component of tax literacy is ensuring that the population at large has the opportunity to learn about taxes and the U.S. tax system. This includes teaching young people about taxes to prepare them for their obligations as future taxpayers while also helping them understand the role of taxes in their everyday lives and future financial decision-making. Relatedly, taxes play a critical role in our society as the means to fund the government; thus, improving tax literacy also requires ensuring people have a big-picture view of the tax system, the U.S. economy, and how the government spends their tax dollars.

### *Opportunities Exist to Expand Tax Education for Students*

There is opportunity for the IRS to play a significant role in expanding tax education for students, as states have been responsive to the public’s desire to know more about financial literacy. In recent years, there has been a marked increase in states providing financial literacy to high school students. As illustrated in Figure 2.8.1, 26 states have requirements that high schoolers take a course in financial education to graduate.<sup>56</sup> The prevalence of these state requirements is welcome news. Other states without such a requirement may take other actions, such as integrating personal finance materials into a related class, such as economics.<sup>57</sup>

**FIGURE 2.8.1**

### **States Requiring Personal Finance Education for High School Graduation**



While many states do not expressly address tax literacy in their required coursework or educational standards, there is a growing interest in teaching high school students about tax literacy. As just one example, Washington, D.C., adopted Financial Literacy Standards in March 2024 to help ensure that students know how to, among other things, “[u]nderstand the various forms and functions of taxation and requirements for paying taxes” and “[a]nalyze factors which impact individual housing decisions, including individual preferences, discriminatory practices, costs, tax credits, budgets and housing availability.”<sup>58</sup>

56 See NEFE, *Existing K-12 Financial Education Requirements*, <https://www.nefe.org/impact/policy-and-advocacy/exisiting-k12-fin-ed-requirements.aspx> (last visited Oct. 30, 2024); NextGen Personal Finance, *NGPF’s 2024 State of Financial Education Report* (Mar. 2024), [https://d3f7q2msm2165u.cloudfront.net/aaa-content/user/files/Files/NGPF\\_Annual\\_Report\\_2024.pdf](https://d3f7q2msm2165u.cloudfront.net/aaa-content/user/files/Files/NGPF_Annual_Report_2024.pdf).

57 See, e.g., Council for Econ. Educ., *2024 Survey of the States*, <https://www.councilforeconed.org/wp-content/uploads/survey-of-states-2024.pdf>.

58 D.C. Off. of the State Superintendent of Educ., *OSSE Adopts Financial Literacy Standards for District of Columbia High School Students* (Mar. 21, 2024), <https://osse.dc.gov/release/osse-adopts-financial-literacy-standards-district-columbia-high-school-students>.

Stakeholders have emphasized there is a real need for the IRS to develop straightforward, non-biased materials that schools can incorporate into these high school financial literacy courses. The IRS would not be starting from scratch as it currently has an “Understanding Taxes” website that contains a lot of good information developed by an external vendor and a team of individuals with educational experience and expertise.<sup>59</sup> But the IRS presents the information in a dated fashion and has not regularly updated it due to IRS staffing and budget issues; this year, the IRS updated it for the first time in a decade.<sup>60</sup>

The IRS should not leave out states that have decided not to require financial literacy coursework. In developing materials, it should aim to include materials where schools can incorporate tax literacy into standard coursework, including math and government or civics courses. An added bonus to this approach is that the IRS can develop the integrated tax literacy materials to apply to younger students as well; tax literacy is not just for high schoolers.

The IRS should also develop materials targeted toward college students. College students have their own unique set of challenges as they get ready to enter the workforce and get closer to no longer being dependents on their parents’ returns. The IRS should develop materials that colleges can integrate into courses, orientation materials, and work-study programs. In addition to helping young adults understand their filing obligations and the purpose of our tax system, these materials should emphasize the importance of keeping tax information and related data secure. Stakeholders have shared alarming stories of college students falling for refund scams or providing their Social Security numbers to private entities in exchange for items of minimal value such as T-shirts. The IRS should help young adults establish safe habits at this important juncture in their lives.

### **Limited Tax Literacy Can Cause People to Feel Disconnected From the U.S. Tax System**

Tax literacy is not restricted to people understanding their own tax situation. Another important component is understanding the role of the U.S. tax system in the government. Undoubtedly, taxes and the tax system can be confusing and frustrating. When people do not understand something, they do not feel connected to it. Improving tax literacy will increase people’s connectedness to the tax system, providing taxpayers with a better understanding of where their money is going. It is likely that some taxpayers who perceive that connection will be more compliant with their tax obligations.

The public benefits from seeing where the money that funds the government comes from and how the government uses it.<sup>61</sup> IRC § 7523 currently requires the IRS to include in the instructions for Form 1040 two pie charts showing the relative sizes of major income and outlay categories, as illustrated in Figure 2.8.2. Enacted in 1990 when paper instructions were the norm,<sup>62</sup> the statute reflects a dated view of data visualization. Put simply, there are better ways to visualize and present data to the public.

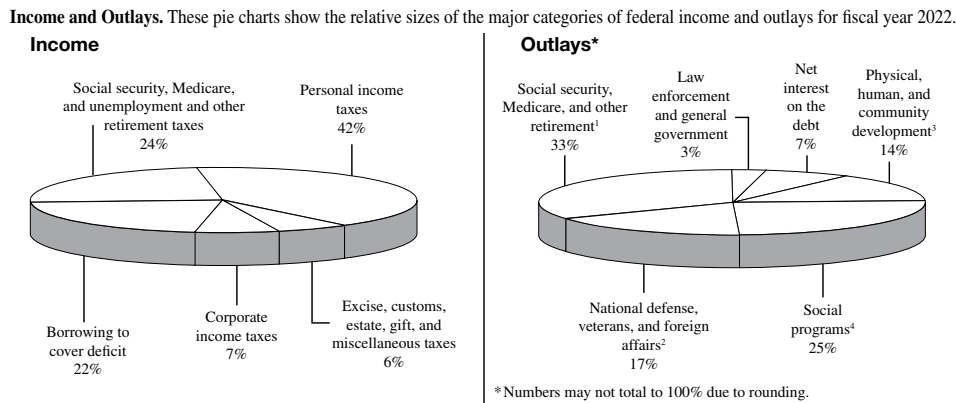
59 IRS, Understanding Taxes, <https://apps.irs.gov/app/understandingTaxes/index.jsp> (last visited Oct. 8, 2024); IRS response to TAS information request (Oct. 3, 2024). There were 601,437 engaged sessions where people viewed 10,360,563 content items through the Understanding Taxes application from October 1, 2023, to September 30, 2024. IRS response to TAS fact check (Nov. 12, 2024).

60 IRS response to TAS information request (Oct. 3, 2024).

61 See, e.g., GAO, GAO-11-439, *Information on Selected Foreign Practices That May Provide Useful Insights* (2011), <https://www.gao.gov/assets/a318727.html>.

62 Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, Title XI, § 11622(a), 104 Stat. 1388, 1388-504 (1990).

**FIGURE 2.8.2, Pie Charts the IRC Requires the IRS to Include in Form 1040 Instructions<sup>63</sup>**



Additional graphics and other communications could be added beyond the current requirements of IRC § 7523 to provide information to the public on government revenue and spending.<sup>64</sup> Congress should amend IRC § 7523 to require the IRS publish graphics on government revenue and spending on IRS.gov.<sup>65</sup> Data visualization is evolving, and there have been recent technological developments and improved digital literacy across the population. The IRS should consider how to take advantage of these developments and use technology to provide people with a bigger picture of the role of taxes in society by using updated graphics.

## CONCLUSION AND RECOMMENDATIONS

Insufficient tax literacy is a widespread problem that has significant costs to taxpayers and the government. Having a basic understanding of taxes and the U.S. tax system is important, not only so taxpayers have the knowledge to understand their own taxes but also because it can influence how people make decisions that impact so many different areas of their lives. It is important for the government, as higher levels of tax literacy can promote tax compliance and improve tax administration. Yet, many Americans have a limited understanding of taxes and the U.S. tax system. People generally have few opportunities to meaningfully learn about taxes and the practical role that tax plays in financial literacy.

There has been a focused effort in recent years to improve financial literacy in this country. Some key examples are Congress’s creation of FLEC in 2003 and the impressive work this interagency commission has done since then as well as the growing number of states requiring high school students to learn about financial literacy. The IRS should contribute to this important effort by taking further actions to promote tax literacy focused on helping taxpayers better understand their own tax situations and the real-world consequences of the interaction between tax and financial literacy. Providing tax and financial literacy education and informing the public of the impact of their tax dollars are key components of providing quality service.

63 The pie charts in Figure 2.8.2 are taken from the Form 1040 Instructions for TY2023. IRS, Instructions for Form 1040, U.S. Individual Income Tax Return 109 (Dec. 2023), <https://www.irs.gov/pub/irs-pdf/i1040qi.pdf>.

64 The National Taxpayer Advocate has previously recommended that Congress require the IRS to provide taxpayers with a personalized receipt showing their taxes paid and tax benefits claimed. National Taxpayer Advocate 2019 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration 6 (Require the IRS to Provide Taxpayers with a “Receipt” Showing How Their Tax Dollars Are Being Spent)*, [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC19\\_PurpleBook\\_01\\_StrengthRights\\_3.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC19_PurpleBook_01_StrengthRights_3.pdf). The Obama Administration offered a similar type of receipt for several years. See Obama Admin. White House, *Your 2014 Taxpayer Receipt*, <https://obamawhitehouse.archives.gov/2014-taxreceipt> (last visited Oct. 9, 2024); see also Annette Nellen, *Transparency for Individual Taxes*, THE TAX ADVISOR (Apr. 14, 2016), <https://www.thetaxadviser.com/newsletters/2016/apr/transparency-for-individual-taxes.html>.

65 See National Taxpayer Advocate 2025 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (Improve Tax and Financial Literacy by Promoting Interagency Collaboration and Modernizing the Requirement That the IRS Publish Graphics Summarizing Government Revenue and Spending)*.



## Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Develop a strategic plan to improve tax literacy among U.S. taxpayers, which should include the establishment of a task force with public and private stakeholders. The plan should include:
  - a. Developing standardized metrics for measuring tax literacy and regularly conducting surveys to evaluate tax literacy among specific types of taxpayers.
  - b. Identifying metrics to gauge the success of tax literacy outreach efforts.
  - c. Identifying opportunities to seek input from stakeholders and the public.
  - d. Creating customized tax literacy outreach, including for platforms inside and outside IRS.gov, for specific types of taxpayers and their individual circumstances.
  - e. Identifying and implementing strategies to partner with state agencies (including state departments of revenue, secretaries of state, and state treasurers) to develop and provide accessible tax education at key moments during the lives of individuals and families and the lifecycles of businesses.
  - f. Developing accessible tax education materials in consultation with tax preparer communities, including enrolled agents, VITA/TCE programs, and software providers, to integrate into their existing communications with taxpayers.
  - g. Developing tax education materials targeted to vulnerable populations including the elderly, immigrants, individuals with disabilities, and low-income taxpayers.
2. Develop tax education materials that states can incorporate into high school financial literacy coursework and integrate into other types of courses, such as math and government or civics, at various educational levels, including elementary school, high school, and higher education.
3. Partner with federal agencies (including the Social Security Administration, the Department of Education, the Department of Labor, and the Department of Health and Human Services) and state agencies, in coordination with Recommendation 1.e., to provide IRS tax education materials at key moments during the lives of individuals and families and the lifecycles of businesses and to incorporate tax literacy content into financial literacy programming across federal agencies.
4. Develop and post graphics on IRS.gov and develop and distribute other communications to provide basic information on the U.S. tax system's role in society, including where the money that funds the government comes from and how the government uses it.

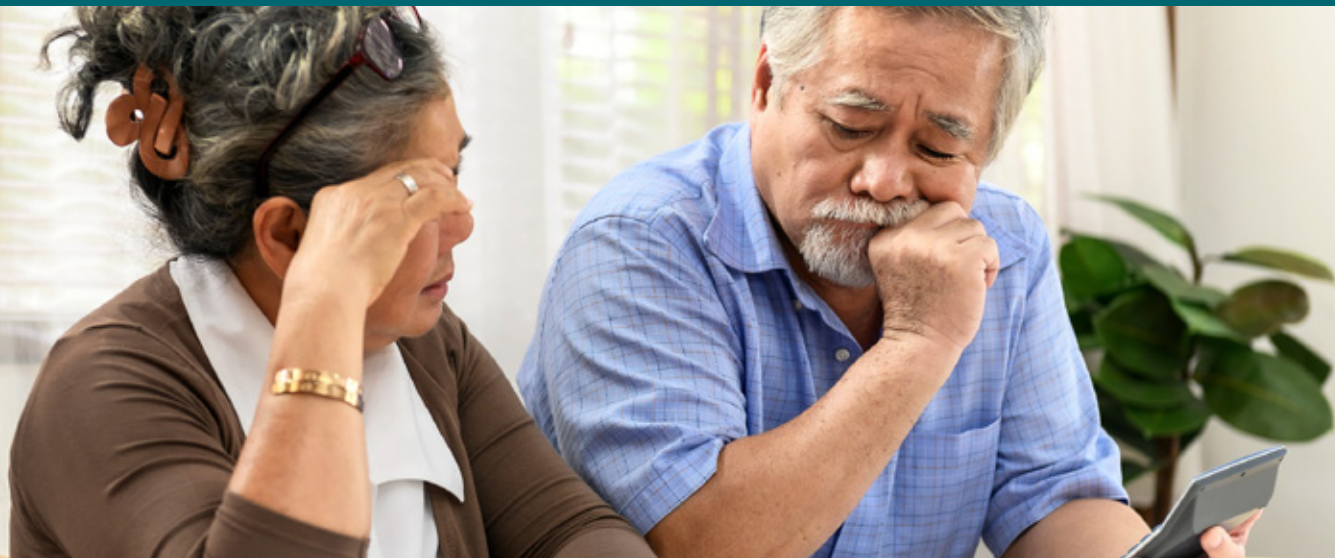
## Legislative Recommendations to Congress

The National Taxpayer Advocate recommends that Congress:

1. Consider amending 20 U.S.C. § 9703 to include the promotion of tax literacy among the duties of FLEC or creating a similar multi-agency commission focused on tax literacy.
2. Amend IRC § 7523 to require the IRS to develop, post on IRS.gov, and update at least annually, graphics that present information on government revenue and spending in an accessible way that uses interactive data visualization to provide taxpayers with an understanding of the U.S. tax system and require the IRS to publicize the availability of this information.

## RESPONSIBLE OFFICIAL

Doug O'Donnell, Deputy Commissioner



## CIVIL PENALTY ADMINISTRATION

**The IRS's Administration of Penalties Is Often Unfair, Is Inconsistently Deterring Improper Behavior, Is Not Promoting Efficient Administration, and Thus Is Discouraging Tax Compliance**

### WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

During fiscal year (FY) 2023, the IRS assessed almost 46 million civil penalties totaling almost \$66 billion against taxpayers.<sup>1</sup> Some of these penalties are immense, causing the total tax liability including penalties and interest to be life-changing and even insurmountable for some taxpayers. Taxpayers may not understand why the IRS penalized them or their right to invoke defenses such as reasonable cause to excuse their noncompliance. The IRS often does not timely consider their defenses. In the case of assessable penalties, the IRS does not provide taxpayers the right to have their defenses considered prior to assessment, causing harm and downstream consequences to both taxpayers and the IRS. These taxpayers must attempt to undo the penalty assessment that the IRS often should not have made. The use of penalties should encourage tax compliance while also discouraging intentional or reckless noncompliance. Though penalties are a necessary tool, the IRS does not always administer them according to its own policies or in a fair and consistent manner, which harms taxpayers and erodes their confidence in the U.S. tax system.

<sup>1</sup> IRS, 2023 Data Book, Table 28, Civil Penalties Assessed and Abated by Type of Tax and Type of Penalty, Fiscal Year 2023, at 62 (2024), <https://www.irs.gov/pub/irs-pdf/p55b.pdf>.

## EXPLANATION OF THE PROBLEM

In 1955, the IRC contained approximately 14 penalty provisions.<sup>2</sup> The IRS is now responsible for administering almost 200 penalties, more than 14 times that number.<sup>3</sup> Further, some tax provisions, while not technically penalties, are for all practical purposes considered penalties and function as such.<sup>4</sup> While the penalties themselves are statutory and any underlying penalty reform lies with Congress, the administration of those penalties lies entirely with the IRS. With close to 200 penalties, the IRS recognizes it is essential that its administration of penalties is fair, comprehensive, and consistently applied to all taxpayers.<sup>5</sup> However, the IRS's procedures regarding penalties are not always consistent with its own penalty policies, it does not always strictly follow the law, and it does not always administer civil penalties in a consistent, fair, and effective manner.

The IRS's current procedures regarding penalties often do not encourage compliance and, in some instances, actually do the opposite:

- The IRS's failure to follow certain procedural penalty laws violates taxpayer rights, is unfair to taxpayers, and enhances the perception of an uneven playing field; and
- The IRS's "assess first, ask questions later" culture and approach to many penalties are unfair and serve to deter compliance.<sup>6</sup>

## ANALYSIS

### Background and Brief History

Penalties have long been part of the U.S. tax system, with the instructions for the first Form 1040 for tax year (TY) 1913 including both civil and criminal penalties.<sup>7</sup> Encouraging compliance is essential to the tax system as taxpayers self-report and timely pay approximately 85 percent of all taxes due.<sup>8</sup>

The penalties in the IRC have grown substantially in both number and severity.<sup>9</sup> By the 1980s, a great deal of controversy and concern about civil tax penalties prompted studies by Congress, the IRS, and outside stakeholders including practitioner and taxpayer groups.<sup>10</sup> In November 1987, the IRS Commissioner

2 Internal Revenue Manual (IRM) 20.1.1.1(1), Background (Nov. 25, 2011), [https://www.irs.gov/irm/part20/irm\\_20-001-001r](https://www.irs.gov/irm/part20/irm_20-001-001r).

3 IRS response to TAS information request (Oct. 10, 2024). These include penalties for failures to file, pay, and deposit timely; estimated taxes; accuracy-related penalties and penalties on preparers, promoters, material advisors, and appraisers involved in tax schemes; information returns, including international information returns (IIRs); and specialty areas such as employee plans, exempt organizations, excise taxes, and estate and gift. *Id.*

4 For example, the early withdrawal penalty under IRC § 72(t) is actually a ten percent additional tax for taking an early distribution from a qualified retirement plan. See IRC § 72(t).

5 IRM 20.1.1.1(1), Background (Nov. 25, 2011), [https://www.irs.gov/irm/part20/irm\\_20-001-001r](https://www.irs.gov/irm/part20/irm_20-001-001r).

6 While there are numerous issues and considerations regarding penalty administration, this is not an exhaustive discussion of all issues. Rather, we highlight the IRS's administration of penalties in certain areas with a focus on the ultimate goal of enhancing compliance.

7 The instructions for the TY 1913 Form 1040 state 50 percent shall be added to the tax as penalty for failure to timely file a return, and 100 percent shall be added to the tax for filing a false or fraudulent return. Additionally, any person who makes any false or fraudulent return or statement with intent to defeat or evade the assessment of tax "shall be guilty of a misdemeanor, and shall be fined not exceeding \$2,000 or be imprisoned not exceeding one year, or both." Instructions for 1040, Annual Return by Individuals (1040), #7 (1914), reprinted in Jim Martin, *The First Form 1040*, in CUSTODIA LEGIS LAW LIBRARIANS OF CONGRESS BLOG (Apr. 18, 2017), <https://blogs.loc.gov/law/2017/04/the-first-form-1040>.

8 The IRS recently measured compliance for TY 2022 and determined that the voluntarily compliance rate (VCR) was about 85 percent for all federal taxes due each year. The VCR is defined as the amount of tax paid voluntarily and timely divided by total true tax, expressed as a percentage. For TY 2022, this translates to just over \$3.9 trillion collected through compliance. See IRS, Pub. 5869, Tax Gap Projections for Tax Year 2022 (Oct. 2024), <https://www.irs.gov/pub/irs-pdf/p5869.pdf>.

9 Executive Task Force for Internal Revenue Commissioner's Penalty Study, *A Philosophy of Civil Tax Penalties* (Discussion Draft) (1988), reprinted in DAILY TAX REP. (BNA) Issue No. 111, at L-2 (June 9, 1988).

10 *Id.*

implemented a task force consisting of employees from the IRS and the Department of Treasury to study civil tax penalties.<sup>11</sup> The task force also received input from key stakeholders, some of whom completed studies or reports with recommendations regarding penalty reform of their own.

In June 1988, the Executive Task Force for Internal Revenue Commissioner's Penalty Study released a discussion draft of its study.<sup>12</sup> It looked not only at the rationales behind penalties but also the purposes that penalties should serve.<sup>13</sup> The task force determined four criteria for evaluating penalties:

1. Fairness – “A penalty should be perceived as fair both by the taxpayer upon whom the penalty is imposed and by compliant taxpayers;”
2. Simplicity – “Penalties need to be both understandable and understood, as do the standards of conduct contravention of which result in the imposition of a penalty;”
3. Administrability – “Penalties should be administrable...;” and
4. Effectiveness – “A penalty should be effective in achieving both specific and general deterrence.”<sup>14</sup>

In further articulating the goals for administering penalties, it provided that the IRS should administer penalties in a way that is responsive, reasonable, and reproducible.<sup>15</sup> The conclusion of the task force was that “the sole purpose of civil tax penalties should be to enhance voluntary compliance.”<sup>16</sup>

Outside stakeholder studies were consistent with the findings of the IRS Task Force. For example, the Civil Penalty Task Force of the American Bar Association's (ABA) Section on Taxation prepared a study on penalty reform that it presented to Congress in July 1988.<sup>17</sup> In conjunction with the report, the ABA's Section on Taxation adopted a resolution identifying six guiding principles for civil tax penalty reform, which also focused on compliance, simplicity, and fairness, among other things.<sup>18</sup> In February 1989, the IRS's task force published its final report.<sup>19</sup> The ultimate conclusion was that “[c]ivil tax penalties should exist for the purpose

11 Letter from Stuart M. Lewis, Chair-Elect, American Bar Ass'n Tax Section, to S. Comm. on Finance and H. Comm. on Ways & Means (Apr. 21, 2009) (on file with TAS).

12 Executive Task Force for Internal Revenue Commissioner's Penalty Study, *A Philosophy of Civil Tax Penalties* (Discussion Draft) (1988), reprinted in DAILY TAX REP. (BNA) Issue No. 111 (June 9, 1988).

13 In doing so, it noted that “confusion as to the purposes that penalties should serve has led to confused administration, as IRS employees attempt to implement a confused and confusing system to achieve conflicting and sometimes unknown policies.” Executive Task Force for Internal Revenue Commissioner's Penalty Study, *A Philosophy of Civil Tax Penalties* (Discussion Draft) (1988), reprinted in DAILY TAX REP. (BNA) Issue No. 111, at L-2 (June 9, 1988).

14 Executive Task Force for Internal Revenue Commissioner's Penalty Study, *A Philosophy of Civil Tax Penalties* (Discussion Draft) (1988), reprinted in DAILY TAX REP. (BNA) Issue No. 111, at L5-L6 (June 9, 1988).

15 To be responsive, the “IRS should hear the taxpayer's case (and make the taxpayer aware of this hearing), give proper weight to the taxpayer's point of view, and resolve penalty cases, all without unnecessary effort on the taxpayer's part;” to be reasonable, “written rules should be applied to reach the substantively correct result in light of their purpose and the scope of administrative discretion granted;” and to be reproducible, “a particular set of facts should give rise to the same outcome, regardless of what office or individual makes the final decision.” Executive Task Force for Internal Revenue Commissioner's Penalty Study, *A Philosophy of Civil Tax Penalties* (Discussion Draft) (1988), reprinted in DAILY TAX REP. (BNA) Issue No. 111, at L-7 (June 9, 1988).

16 Executive Task Force for Internal Revenue Commissioner's Penalty Study, *A Philosophy of Civil Tax Penalties* (Discussion Draft) (1988), reprinted in DAILY TAX REP. (BNA) Issue No. 111, at L-4 (June 9, 1988).

17 Letter from Stuart M. Lewis, Chair-Elect, American Bar Ass'n Tax Section, to S. Comm. on Finance and H. Comm. on Ways & Means (Apr. 21, 2009) (on file with TAS).

18 Letter from Stuart M. Lewis, Chair-Elect, American Bar Ass'n Tax Section, to S. Comm. on Finance and H. Comm. on Ways & Means (Apr. 21, 2009) (on file with TAS). The Section identified the following guiding principles:

(1) Penalties are appropriate elements of an overall administrative effort to achieve voluntary compliance. (2) To be effective in achieving voluntary compliance, the penalty provisions must be understandable and consistent. This requires that penalties be relatively simple and logical. (3) The total penalty imposition should be perceived to be fair and reasonable in relation to the particular misconduct. (4) To contribute to a sense of fairness, penalties should be applied, and perceived to be applied, for the purpose of deterring and punishing specifically and clearly defined misconduct. Accordingly, penalties should not be imposed to serve as an independent source of revenue. (5) Since it is not fair to punish acts that may reasonably be believed to be permitted prior to specifying the identified misconduct, nor acts deterred by penalties not even in existence when the conduct occurred, penalties should not be adopted retroactively. (6) Penalties should not be imposed to punish conduct which is proper, reasonable, appropriate, or not clearly prohibited.

19 Executive Task Force for Internal Revenue Commissioner's Penalty Study, *Report on Civil Tax Penalties* (Feb. 22, 1989), reprinted in *IRS Task Force Releases Penalty Reform Proposals*, TAX NOTES, Doc. 89-1586 (Feb. 27, 1989).

of encouraging voluntary compliance and not for other purposes, such as raising revenue.”<sup>20</sup> The task force made various administrative recommendations consistent with this conclusion, including for the IRS to develop both a penalty policy statement and a penalty handbook.<sup>21</sup>

In 1989, Congress passed the Improved Penalty Administration and Compliance Tax (IMPACT) Act of 1989 to revise the then-current civil penalty regime and reform information reporting penalties, accuracy-related penalties, preparer penalties, promoter penalties, protester penalties, and penalties for failure to file, pay, withhold, and make timely tax deposits.<sup>22</sup> In 1998, in connection with the IRS Restructuring and Reform Act of 1998 (RRA 98), Congress required both the Secretary of the Treasury and the Joint Commission on Taxation to conduct studies reviewing the IRS’s administration and implementation of the penalty and interest provisions of the 1986 IRC to “examine whether the current penalty and interest provisions encourage voluntary compliance” and make recommendations to simplify administration and ease taxpayer burden.<sup>23</sup> The studies reiterated many of the same principles of the prior task force reports.<sup>24</sup> While Congress held hearings to discuss the recommendations, it did not enact sweeping civil penalty reform. Thus, the last major reform of the civil tax penalty regime was 35 years ago with IMPACT. Since that time, Congress has enacted even more penalties, some of which do not focus solely on compliance.<sup>25</sup> Clearly, penalty reform is needed. To this end, the IRS should initiate a task force consisting of IRS and Treasury Department employees and stakeholders to conduct a comprehensive review and study of the Title 26 penalty regime as well as provide administrative and legislative recommendations for sound legal and administrative policies that promote fairness and effective administration.

### The IRS’s Policy Statement – “Penalties Are Used to Enhance Voluntary Compliance”

Consistent with recommendations of the IRS Task Force, the IRS developed a penalty policy statement and a penalty handbook, which are included in the Internal Revenue Manual (IRM).<sup>26</sup> The IRS’s penalty policy set forth in Policy Statement P-1-18 was consistent with the findings of the studies and stated: “Penalties support the [IRS’s] mission **only if** penalties enhance voluntary compliance.” The IRS amended its penalty policy statement in 2004. The IRS’s current penalty policy is set forth in Policy Statement 20-1, which states:

20 Executive Task Force for Internal Revenue Commissioner’s Penalty Study, *Report on Civil Tax Penalties* (Feb. 22, 1989), reprinted in *IRS Task Force Releases Penalty Reform Proposals*, TAX NOTES, Doc. 89-1586 at 15 (Feb. 27, 1989).

21 Executive Task Force for Internal Revenue Commissioner’s Penalty Study, *Report on Civil Tax Penalties* 1 (Feb. 22, 1989), reprinted in *IRS Task Force Releases Penalty Reform Proposals*, TAX NOTES, Doc. 89-1586, at 214-215 (Feb. 27, 1989). See also H.R. Rep. No. 101-386, at 661 (1989) (Conf. Rep.) (“The IRS should develop a policy statement emphasizing that civil tax penalties exist for the purpose of encouraging voluntary compliance.”).

22 See Omnibus Budget Reconciliation Act of 1989, Pub. Law No. 101-239, Title VII, Subtitle G, §§ 7701-7743, 103 Stat. 2106, 2388-2406 (1989). Subtitle G is known as the Improved Penalty Administration and Compliance Tax (IMPACT) Act.

23 RRA 98, Pub. L. No. 105-206, § 3801, 112 Stat. 685, 782 (1998); H.R. Rep. No. 105-599, at 323 (1998) (Conf. Rep.).

24 See, e.g., DEP’T OF THE TREASURY, REPORT TO THE CONGRESS ON PENALTY AND INTEREST PROVISIONS OF THE INTERNAL REVENUE CODE 18 (1999), <https://home.treasury.gov/system/files/131/Report-Penalty-Interest-Provisions-1999.pdf> (stating that the fundamental objective “should be to foster and enhance the high degree of voluntary compliance that presently exists... without undue burden or complexity”); STAFF OF J. COMM. ON TAX’N, 106TH CONG., STUDY OF PRESENT-LAW PENALTY AND INTEREST PROVISIONS AS REQUIRED BY SECTION 3801 OF THE IRS RESTRUCTURING AND REFORM ACT OF 1998 (INCLUDING PROVISIONS RELATING TO CORPORATE TAX SHELTERS) vol. 1, at 31, JCS-3-99 (J. Comm. Print 1999), <https://www.jct.gov/getattachment/9cae8146-a598-490b-a522-6852fd32dfb2/jcs-3-99-vol1-2896.pdf> (stating that tax penalties should “(1) encourage voluntary compliance, (2) operate fairly, (3) deter undesired behavior, and (4) be designed in a manner that promotes efficient and effective administration of the provisions by the IRS”).

25 See, e.g., AM’N INST. OF CPAs, REPORT ON CIVIL TAX PENALTIES: THE NEED FOR REFORM 1, 2013, <https://us.aicpa.org/content/dam/aicpa/advocacy/tax/taxlegislationpolicy/downloadabledocuments/aicpa-report-civil-tax-penalty-reform-2013.pdf> (noting that since IMPACT, “numerous penalty provisions have been enacted that are not directed toward, and do not achieve, the core goal of encouraging voluntary compliance. In part, this likely is due to the government’s understandable interest in combating tax shelters. However, this loss of direction has resulted from ad hoc efforts to craft penalties and an increase in the use of penalties, rather than substantive tax laws, to drive taxpayer behavior. The use of penalties to ‘raise revenues’ contributes to this loss of direction.”).

26 See IRM 20.1.1.1(2), Background (Nov. 25, 2011), [https://www.irs.gov/irm/part20/irm\\_20-001-001r](https://www.irs.gov/irm/part20/irm_20-001-001r); IRM 20.1, Penalty Handbook (Mar. 29, 2023), [https://www.irs.gov/irm/part20/irm\\_20-001-001r](https://www.irs.gov/irm/part20/irm_20-001-001r); IRM 1.2.1.12.1(1), Policy Statement 20-1 (Formerly P-1-18), Penalties Are Used to Enhance Voluntary Compliance (June 29, 2004), [https://www.irs.gov/irm/part1/irm\\_01-002-001](https://www.irs.gov/irm/part1/irm_01-002-001).



“**Penalties are used to enhance voluntary compliance.**”<sup>27</sup> Thus, the IRS changed the focus of penalty policy away from only enhancing voluntary compliance. While the IRS can encourage compliance in different ways including assessing and enforcing penalties or mitigating penalties through voluntary disclosure programs, it does not always administer penalties consistent with its policy.<sup>28</sup>

## The IRS Does Not Always Follow the Law on Penalties

### *The IRS Does Not Always Provide the Requisite Penalty Information in Penalty Notices*

One of the fundamental ways penalties encourage tax compliance is by “demonstrating the fairness of the tax system.”<sup>29</sup> Implicit in the concept of “fairness” is the expectation that all parties play by the rules. However, the IRS does not always follow the rules for the procedural protections regarding penalties provided to taxpayers under IRC § 6751, which Congress enacted as part of RRA 98.<sup>30</sup> Congress was concerned the IRS had no requirements to show how it was computing penalties, and in some cases, imposing penalties without supervisory approval.<sup>31</sup> IRC § 6751 created two procedural requirements the IRS must follow with respect to certain penalties: (a) the notice and computation requirement and (b) the supervisory approval requirement.

The IRC § 6751 notice provision requires the IRS to include certain specific information with each notice of penalty including the name of the penalty, the IRC section under which it is imposed, and a computation of the penalty.<sup>32</sup> Because Congress believed that “taxpayers are entitled to an explanation of the penalties imposed on them,”<sup>33</sup> the goal of IRC § 6751(a) was to provide taxpayers with the information critical to understanding the penalties the IRS assessed against them. Practitioners note, however, that the IRS frequently fails to include a penalty computation in penalty notices it issues to taxpayers, especially in the case of immediately assessable penalties.<sup>34</sup> These penalty amounts can be substantial,<sup>35</sup> and the computations can be complex. The requirement of the statute is clear – the IRS “shall” include the penalty information with “*each notice of penalty* under this title.”<sup>36</sup> According to the IRS, it provides the required notice information for all penalties when

27 IRM 1.2.1.12.1(1), Policy Statement 20-1 (Formerly P-1-18), Penalties Are Used to Enhance Voluntary Compliance (June 29, 2004) (emphasis in the original), [https://www.irs.gov/irm/part1/irm\\_01-002-001](https://www.irs.gov/irm/part1/irm_01-002-001). Thus, the focus of penalties is no longer “only” to enhance voluntary compliance. For a comparison of former Policy Statement P-1-18 and current Policy Statement 20-1, along with a discussion regarding the shift away from solely encouraging voluntary compliance, see National Taxpayer Advocate 2008 Annual Report to Congress vol. 2, at 11 (*A Framework for Reforming the Penalty Regime*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/08\\_tas\\_arc\\_vol2.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/08_tas_arc_vol2.pdf).

28 While there are numerous issues and considerations regarding penalty administration as evidenced by the various studies, our discussion is not an exhaustive discussion of all issues. Rather, we focus on the IRS’s administration of penalties in certain areas with a focus on the ultimate goal of enhancing voluntary compliance. One way of enhancing voluntary compliance is through programs aimed at noncompliant taxpayers. For a discussion on the IRS’s Criminal Voluntary Disclosure Practice (VDP), including recommendations to enhance compliance through the VDP, see Most Serious Problem: *Criminal Voluntary Disclosure: Changes to the IRS’s Criminal Voluntary Disclosure Practice Requirements May Be Reducing Voluntary Compliance and Negatively Impacting the Tax Gap*, *infra*. However, the IRS can and should consider civil disclosure programs similar to the VDP to encourage voluntary and future compliance for emerging issues such as digital assets.

29 IRM 1.2.1.12.1(3), Policy Statement 20-1 (Formerly P-1-18), Penalties Are Used to Enhance Voluntary Compliance (June 29, 2004), [https://www.irs.gov/irm/part1/irm\\_01-002-001](https://www.irs.gov/irm/part1/irm_01-002-001).

30 RRA 98, Pub. L. No. 105-206, § 3306, 112 Stat. 685, 744 (1998).

31 S. REP. NO. 105-174, at 65 (1998).

32 IRC § 6751(a). This requirement is incorporated into the IRM at 20.1.5.2.3(1), Supervisory Approval of Penalties – IRC 6751 Procedural Requirements (Aug. 31, 2021), [https://www.irs.gov/irm/part20/irm\\_20-001-005](https://www.irs.gov/irm/part20/irm_20-001-005).

33 S. REP. NO. 105-174, at 65 (1998).

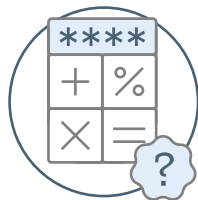
34 Conversations with outside stakeholders (Aug. 21, 22, and 28, 2024). See also Andrew Velarde, *Lack of Penalty Computation Issue Lurking in Litigation Again*, TAX NOTES (July 1, 2024), <https://www.taxnotes.com/tax-notes-today-international/penalties/lack-penalty-computation-issue-lurking-litigation-again/2024/07/01/7kdzy> (“Attorneys have argued that the lack of computation notices is a pervasive problem for several Ogden-campus-issued penalties, including for foreign trust reporting penalties.”).

35 In *Groves v. Comm’r*, Docket No. 9974-22L, a case currently pending in the U.S. Tax Court, the IRS assessed a penalty against the petitioner totaling \$4,351,138 under IRC § 6707, Failure to Furnish Information Regarding Reportable Transactions, and issued several notices to the taxpayer but did not include a computation of the penalty in any of the notices. See Brief of the Center for Taxpayer Rights as Amicus Curiae in Support of Petitioner, *Groves v. Comm’r*, Docket No. 9974-22L (T.C. May 2, 2024), <https://kostelanez.com/wp-content/uploads/2024/05/Groves-Amicus-Brief.pdf>.

36 IRC § 6751(a) (emphasis added). This “title” is Title 26, the Internal Revenue Code of 1986.



available.<sup>37</sup> However, it acknowledges that it does not include the information when IRS systems “are unable to provide a computation of the penalty assessment.”<sup>38</sup>



**Taxpayers need to see the IRS’s penalty computation so they understand why the IRS is penalizing them. Otherwise, how can they effectively challenge the amounts? And how can IRS employees help verify the calculation?**

The IRS’s failure to provide the required penalty computation and other information is fundamentally unfair to taxpayers, infringes on due process, and violates the taxpayer *rights to be informed, to pay no more than the correct amount of tax, and to a fair and just tax system.*<sup>39</sup> Taxpayers need this information to understand why the IRS is penalizing them. If taxpayers cannot see how the IRS computed the penalties, how can they effectively challenge the amounts? And how can the IRS verify its calculation and ensure that it has correctly computed the penalty?<sup>40</sup> Further compounding the problem for taxpayers is that IRC § 6751(a) does not provide any consequences if the IRS fails to comply. Without consequences, the law has no “bite;” thus, the IRS has no real incentive to comply.

IRC § 6751(a) is a significant procedural safeguard that the IRS should not be able to ignore or selectively apply. It should conduct a thorough review of its penalty notices to determine which ones do not comply with IRC § 6751(a) and develop procedures to ensure that all penalty notices comply, along with remedial procedures for those that do not.

### ***The IRS’s Approach to the Supervisory Approval of Penalty Requirements of IRC § 6751(b) Harms Taxpayers***

The supervisory approval provision of IRC § 6751(b)(1) provides: “No penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate.” The IRC excepts two types of penalties from this requirement: (i) additions to tax for failure to file, pay, and make estimates under IRC §§ 6651, 6654, and 6655 and penalties for the overstatement or disallowance of certain contribution deductions, and (ii) any other penalty that is “automatically calculated through electronic means.”<sup>41</sup> Congress enacted IRC § 6751(b) because it believed that “penalties should only be imposed where appropriate and not as a bargaining chip,”<sup>42</sup> thus preventing the IRS “from threatening unjustified penalties to encourage taxpayers to settle.”<sup>43</sup> Unfortunately, the “initial determination of such

37 IRS response to TAS information request (Oct. 10, 2024).

38 *Id.*

39 See Taxpayer Bill of Rights (TBOR), <https://www.taxpayeradvocate.irs.gov/taxpayer-rights> (last visited Nov. 15, 2024). The rights contained in TBOR are also codified in IRC § 7803(a)(3).

40 “It is crucial that the IRS inform taxpayers regarding the computation of the penalties it imposes so taxpayers can evaluate their accuracy and decide whether to challenge them. Equally important is that the IRS ‘show its work’ to catch common, yet avoidable, errors that can have significant detrimental effects on taxpayers.” Brief of the Center for Taxpayer Rights as Amicus Curiae in Support of Petitioner 1, *Groves v. Comm’r*, Docket No. 9974-22L (T.C. May 2, 2024), <https://kostelanez.com/wp-content/uploads/2024/05/Groves-Amicus-Brief.pdf>.

41 IRC § 6751(b)(2). A penalty is generally considered as automatically calculated through electronic means if an IRS computer program proposes it without human involvement. See, e.g., *Walquist v. Comm’r*, 152 T.C. 61 (2019).

42 See S. REP. No. 105-174, at 65 (1998).

43 *Chai v. Comm’r*, 851 F.3d 190, 219 (2d Cir. 2017).

assessment” language of IRC § 6751(b)(1) is unclear.<sup>44</sup> This ambiguity led to much litigation regarding what constitutes a determination along with when and who must make written approval, with courts coming to differing conclusions.<sup>45</sup>

The IRS has interpreted IRC § 6751(b)(1) broadly to require supervisory approval late in the process.<sup>46</sup> After significant litigation, the IRS changed its policy to require written supervisory approval prior to the IRS issuing taxpayers any written communication of penalties that offers the opportunity to sign an agreement or consent to assessment or proposal of the penalty.<sup>47</sup> Thus, an IRS agent can share written communication of proposed penalties *before* obtaining a supervisor’s approval as long as the employee does not include a letter that allows the taxpayer to agree.<sup>48</sup>

The law is still unclear regarding when the IRS must obtain written supervisory approval, and taxpayers have successfully litigated and challenged the IRS’s position on supervisory signature in several instances.<sup>49</sup> All concerned parties need clarification of the law. On March 11, 2024, the Treasury Department released its Fiscal Year 2025 Green Book of revenue proposals.<sup>50</sup> One of the proposals essentially erodes almost all taxpayer protections provided in IRC § 6751(b)(1). Most detrimentally, it eliminates the written supervisory approval requirement for penalties for underpayments of tax under IRC § 6662, understatements with respect to reportable transactions under IRC § 6662A, and fraud under IRC § 6663.<sup>51</sup> It is important to note that the IRC already exempts approximately 98 percent of penalties assessed against individuals, estates, and trusts in connection with income tax liabilities from supervisory approval, and this proposal would essentially eliminate almost all remaining requirements to obtain supervisory approval for these penalties.<sup>52</sup>

44 The IRS makes a “determination” when it investigates a taxpayer’s tax liability and applies the penalty statutes thereto, while an “assessment” is merely when the IRS enters a penalty on its books. Thus, it is not possible to “determine” an “assessment.”

45 See, e.g., *Graev v. Comm’r*, 147 T.C. 460, 477-478 (2016), superseded by 149 T.C. 485 (2017); *Chai v. Comm’r*, 851 F.3d 190, 221 (2d Cir. 2017); *Clay v. Comm’r*, 152 T.C. 223, 248-249 (2019), *aff’d on other grounds*, 990 F.3d 1296 (11th Cir. 2021); *Belair Woods v. Comm’r*, 154 T.C. 1 (2020).

46 Previously, the IRS’s policy was to obtain written supervisory approval prior to the issuance of a notice of deficiency. See IRS, Interim Guidance Memorandum (IGM) SBSE-04-0922-0075, Reissue Interim Guidance (IG) for Timing of Supervisory Approval of Penalties Subject to IRC 6751(b) (Sept. 28, 2022), <https://www.irs.gov/pub/foia/ig/sbse/sbse-04-0922-0075.pdf>. The IRS issues a notice of deficiency at the end of an examination if it did not reach an agreement and notifies the taxpayer that the IRS has determined a deficiency.

47 IRM 20.1.1.2.3.1(1), Timing of Supervisory Approval (Oct. 19, 2020), [https://www.irs.gov/irm/part20/irm\\_20-001-001r](https://www.irs.gov/irm/part20/irm_20-001-001r).

48 See IRS, IGM SBSE-04-0922-0075, Reissue Interim Guidance (IG) for Timing of Supervisory Approval of Penalties Subject to IRC 6751(b) (Sept. 28, 2022), <https://www.irs.gov/pub/foia/ig/sbse/sbse-04-0922-0075.pdf>, which provides the following guidance: “Example: At the conclusion of the fact-finding phase of the examination (during a face-to-face appointment), the examiner determines an accuracy-related penalty applies. Supervisory approval of the penalty has not yet been obtained, so to facilitate discussion of the proposed adjustments and penalty, the examiner prepares Form 5278 [Statement – Income Tax Changes] and shares it with the taxpayer.”

49 In one notable case, *LakePoint Land II, LLC v. Comm’r*, T.C. Memo. 2023-111, the Tax Court imposed sanctions against the IRS with respect to filings that included a false declaration with a backdated supervisory approval document and IRS Counsel’s failures to notify the Court of the backdated document and timely correct the error.

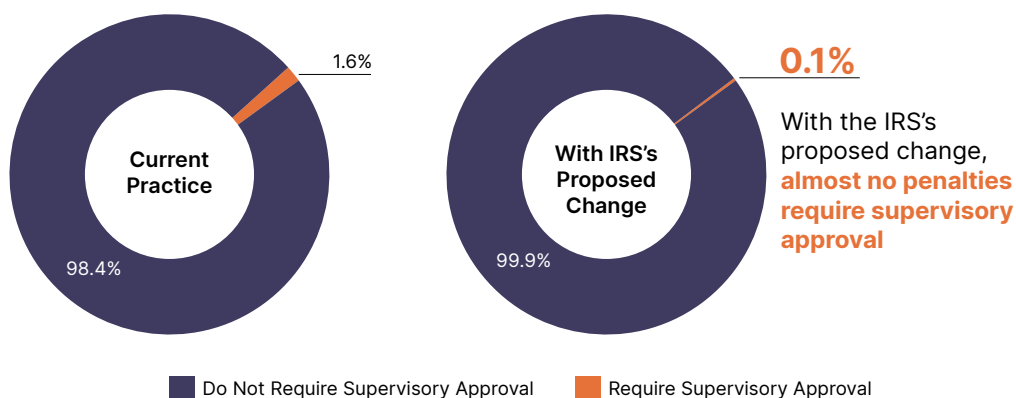
50 Dep’t of the Treasury, *General Explanations of the Administration’s Fiscal Year 2025 Revenue Proposals* (Mar. 2024), <https://home.treasury.gov/system/files/131/General-Explanations-FY2025.pdf>.

51 *Id.* at 176. For an in-depth look at how Treasury’s Green Book proposal would harm taxpayers, see Erin M. Collins, Treasury FY 2025 Green Book Proposes to Essentially Eliminate Written Supervisory Approval for Penalties, NATIONAL TAXPAYER ADVOCATE BLOG (May 2, 2024), <https://www.taxpayeradvocate.irs.gov/news/nta-blog/treasury-fy-2025-green-book-proposes-to-essentially-eliminate-written-supervisory-approval-for-penalties/2024/05/>.

52 For FY 2023, more than 98 percent of the penalties the IRS assessed against individuals, estates, and trusts in connection with income tax liabilities were exempt from supervisory approval requirements. For a discussion of the particular types and numbers of penalties subject to supervisory approval in FY 2022, see Erin M. Collins, Treasury FY 2025 Green Book Proposes to Essentially Eliminate Written Supervisory Approval for Penalties, NATIONAL TAXPAYER ADVOCATE BLOG (May 2, 2024), <https://www.taxpayeradvocate.irs.gov/news/nta-blog/treasury-fy-2025-green-book-proposes-to-essentially-eliminate-written-supervisory-approval-for-penalties/2024/05/>.

FIGURE 2.9.1<sup>53</sup>

**Individual, Estate, and Trust Income Tax Liability Penalties Requiring Supervisory Approval, CY 2023 – Now and Under IRS's Proposed Change**



The proposal would allow the IRS to obtain written supervisory approval of penalties at the latest possible time in the penalty process.<sup>54</sup> Also, it would allow *any supervisor* to approve the penalty as opposed to an immediate supervisor or higher level official. The Green Book proposals are consistent with the proposed regulations under IRC § 6751(b), which the Treasury Department published on April 11, 2023.<sup>55</sup>

The IRS's policy and procedures regarding the written supervisory approval of penalties, including the proposed regulations, harm taxpayers and are inconsistent with the statute and its legislative history. It is almost inconceivable that Congress intended supervisory approval to apply to only one-tenth of one percent of all civil penalties assessed against individuals, estates, and trusts. Allowing an IRS agent to communicate proposed penalties to taxpayers prior to any review and approval by a supervisor leaves open the possibility of the very conduct which Congress meant to prohibit – *i.e.*, the possible use of penalties as a bargaining chip. Taxpayers, especially unrepresented ones, may not understand that the penalties are not yet officially approved and feel pressure to resolve their case to avoid the penalties. Further, requiring approval at the latest possible time does not allow taxpayers sufficient opportunity to challenge the penalties, especially those not subject to deficiency procedures. Finally, allowing a supervisor who is unfamiliar with the case to approve the penalty would arguably defeat the purpose of the statute to ensure that the IRS only impose penalties where

53 IRS, 2023 Data Book, Table 28, Civil Penalties Assessed and Abated by Type of Tax and Type of Penalty, Fiscal Year 2023, at 62 (2023), <https://www.irs.gov/pub/irs-pdf/p55b.pdf>.

54 Under the proposal: 1) The IRS can approve penalties up until the time it issues a notice of deficiency; 2) if the taxpayer petitions the court, the IRS may raise a penalty at any time as long as a supervisor approves it; and 3) the IRS can approve a penalty any time prior to assessment if the penalty is not subject to deficiency procedures. Penalties not subject to deficiency procedures include all IIR penalties.

55 Rules for Supervisory Approval of Penalties, 88 Fed. Reg. 21,564 (Apr. 11, 2023) (to be codified at Treas. Reg. § 301.6751(b)-1), <https://www.federalregister.gov/documents/2023/04/11/2023-07232/rules-for-supervisory-approval-of-penalties>. According to Treasury, the regulations are “intended to clarify the application of section 6751(b) in a manner that is consistent with the statute and its legislative history, has nationwide uniformity, is administrable for the IRS, and is easily understood by taxpayers.” *Id.* at 21, 566 (emphasis added). It is difficult to see how the proposed elimination of taxpayer rights is consistent with the statute and its legislative history.

appropriate.<sup>56</sup> To ensure that the IRS follows the spirit of the law and only applies penalties when warranted, Congress should amend IRC § 6751(b)(1) to require that the IRS obtain written supervisory approval prior to the first time that the IRS sends a written communication to the taxpayer proposing the penalty.<sup>57</sup>

The IRS also takes the position that it can assess accuracy-related penalties, including the negligence penalty under IRC § 6662(b)(1), without supervisory approval if it calculates them through electronic means.<sup>58</sup> While some penalties calculated through electronic means are purely computational (*e.g.*, failure-to-file and failure-to-pay), the imposition of a negligence penalty is different. It requires an employee to analyze the taxpayer's state of mind, the actions the taxpayer took to comply, and why the taxpayer took those actions. A person must conduct this analysis, not a computer.<sup>59</sup> Requiring supervisory review of such a subjective penalty would help ensure that the IRS assesses the penalty only if warranted, consistent with Congress's intent when enacting the statute. Therefore, Congress should amend IRC § 6751(b)(2)(B) to clarify that the exception for "other penalties automatically calculated through electronic means" does not apply to the penalty for "negligence or disregard of rules or regulations" under IRC § 6662(b)(1).<sup>60</sup>

### The IRS's Culture of "Assess First, Ask Questions Later" Is Unfair and Inefficient and Does Not Encourage Compliance

When the IRS changed its policy statement in 2004, it changed the focus of the penalty policy away from *only* enhancing voluntary compliance<sup>61</sup> to ensuring that it always developed and applied penalties,<sup>62</sup> especially in the tax shelter area.<sup>63</sup> However, "[p]enalties should apply only to negligent, reckless or intentional conduct ... should be subject to a reasonable cause and good faith defense and no penalty should be imposed without affording an opportunity to the party who may be sanctioned to defend the conduct."<sup>64</sup> While adopting a more aggressive penalty approach, the policy also states that the IRS will demonstrate the

- 
- 56 It is important to note that while IRM 4.10.9.8.6.2(1) provides that a group manager "must perform a meaningful review of the penalty determination," the IRS has argued, and courts have agreed, that the only requirement is the timely written approval or signature of a supervisor and that the IRS does not need to establish extent or comprehensiveness of the review. IRM 4.10.9.8.6.2(1), Penalties: Supervisory Approval (Apr. 22, 2024), [https://www.irs.gov/irm/part4/irm\\_04-010-009](https://www.irs.gov/irm/part4/irm_04-010-009); see, *e.g.*, *Raifman v. Comm'r*, T.C. Memo 2018-101; *Belair Woods, LLC v. Comm'r*, 154 T.C. 1 (2020); *Estate of Glassman v. Comm'r*, T.C. Memo. 2024-51. See also Stephen J. Olsen, *Is Rubber-Stamping All That's Required For Supervisory Approval?*, *PROCEDURALLY TAXING* (July 26, 2024), <https://www.taxnotes.com/procedurally-taxing/rubber-stamping-all-thats-required-supervisory-approval/2024/07/26/7khsc?highlight=rubber-stamping>.
- 57 See National Taxpayer Advocate 2025 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (Clarify That Supervisory Approval Is Required Under IRC § 6751(b) Before Proposing Penalties)*.
- 58 IRC § 6662(b)(1) imposes a penalty equal to 20 percent of any underpayment of tax the IRC requires a tax return to show that is attributable to negligence or disregard of the rules and regulations. IRC § 6662(c) defines negligence to include "any failure to make a reasonable attempt to comply with the provisions of this title" and "disregard" to include "any careless, reckless, or intentional disregard."
- 59 Both the IRS Automated Underreporter and Correspondence Examination Automation Support programs calculate negligence penalties through electronic means. See IRM 20.1.1.2.3.2, Automated Underreporter and Correspondence Automation Support Programs (Oct. 19, 2020), [https://www.irs.gov/irm/part20/irm\\_20-001-001r](https://www.irs.gov/irm/part20/irm_20-001-001r).
- 60 See National Taxpayer Advocate 2025 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (Require an Employee to Determine and a Supervisor to Approve All Negligence Penalties Under IRC § 6662(b)(1))*.
- 61 For a history of penalty reform and the IRS's penalty policy, including the shift away from solely enhancing voluntary compliance, see National Taxpayer Advocate 2008 Annual Report to Congress vol. 2, at 1 (*A Framework for Reforming the Penalty Regime*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/08\\_tas\\_arc\\_vol2.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/08_tas_arc_vol2.pdf). While the recommendations are old, there has been no sweeping penalty reform since then, and many of the penalty problems still exist today.
- 62 See, *e.g.*, IRM 1.2.1.12.1(4), Policy Statement 20-1 (Formerly P-1-18), Penalties Are Used to Enhance Voluntary Compliance (June 29, 2004), [https://www.irs.gov/irm/part1/irm\\_01-002-001](https://www.irs.gov/irm/part1/irm_01-002-001) ("[E]xaminers and their managers must consider the applicability of penalties in each case, and fully develop the penalty issue, when the initial consideration indicates that penalties should apply. That is, [they] must consider the elements of each applicable penalty and then fully develop the facts to support the application of the penalty. . . . Full development of the penalty issue is important for Appeals to sustain a penalty and for Counsel to successfully defend that penalty in litigation.").
- 63 National Taxpayer Advocate 2008 Annual Report to Congress vol. 2, at 11 (*A Framework for Reforming the Penalty Regime*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/08\\_tas\\_arc\\_vol2.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/08_tas_arc_vol2.pdf). See also IRM 1.2.1.12.1(5) and (6), Policy Statement 20-1 (Formerly P-1-18), Penalties Are Used to Enhance Voluntary Compliance (June 29, 2004), [https://www.irs.gov/irm/part1/irm\\_01-002-001](https://www.irs.gov/irm/part1/irm_01-002-001) (addressing specifically abusive transactions and listed transactions).
- 64 Letter from Stuart M. Lewis, Chair-Elect, American Bar Ass'n Tax Section, to S. Comm. on Finance and H. Comm. on Ways & Means (Apr. 21, 2009) (on file with TAS).

fairness of the tax system by providing “every taxpayer against whom the Service proposes to assess penalties with a reasonable opportunity to provide evidence that the penalty should not apply” and giving “full and fair consideration to evidence in favor of not imposing the penalty.”<sup>65</sup>

Although these statements are part of the IRS’s policy, it does not follow this policy with many penalties. According to practitioners, the current culture in the IRS is that penalties apply unless taxpayers establish otherwise – a guilty until proven innocent philosophy.<sup>66</sup> This policy is clear from the “assess first, ask questions later” tactics the IRS uses with various penalties. Only an extremely small number of penalties are subject to the supervisory approval requirements leaving approximately 98 percent of penalties assessed against individuals, estates, and trusts in connection with income tax liabilities exempt from the requirement that a manager review and approve the penalty.<sup>67</sup> These exempt penalties include penalties that the IRS automatically assesses either systemically or manually without any substantive analysis.<sup>68</sup>

### ***The IRS’s Automatic Assessment of International Information Return Penalties Causes Undue Hardship, Creates Unnecessary Work, and Discourages Compliance***

The “assess first, ask questions later” procedures employed by the IRS, both through the automated matching systems and automatic assessments on delinquently filed returns, harm taxpayers and reflect the IRS’s current culture that penalties apply until taxpayers prove otherwise. These procedures do not provide a mechanism for the IRS to first determine whether the taxpayer’s error resulted from particular conduct that warrants a penalty, whether reasonable cause exists to excuse the penalty, or whether the penalty is proportional to the misconduct the IRS is penalizing. This is especially evident in the international information returns (IIRs) area.<sup>69</sup>

U.S. persons who receive money from abroad or who have cross-border activities or foreign financial interests may potentially be subject to a wide range of U.S. reporting requirements for IIRs. The IRS may assess significant penalties against taxpayers for failing to timely file or for filing incomplete or inaccurate IIRs. Often taxpayers do not know they are subject to IIR requirements. For example, some “accidental Americans” who were born in the United States but lived the bulk of their lives abroad have faced huge tax liabilities

65 IRM 1.2.1.12.1(9), Policy Statement 20-1 (Formerly P-1-18), Penalties Are Used to Enhance Voluntary Compliance (June 29, 2004), [https://www.irs.gov/irm/part1/irm\\_01-002-001](https://www.irs.gov/irm/part1/irm_01-002-001).

66 Conversations with outside stakeholders (Aug. 5, 8, 21, 22, and 28, 2024).

67 For FY 2023, more than 98 percent of the penalties the IRS assessed against individuals, estates, and trusts in connection with income tax liabilities were exempt from supervisory approval requirements. For a discussion of the particular types and numbers of penalties subject to supervisory approval in FY 2022, see Erin M. Collins, Treasury FY 2025 Green Book Proposes to Essentially Eliminate Written Supervisory Approval for Penalties, NATIONAL TAXPAYER ADVOCATE BLOG (May 2, 2024), <https://www.taxpayeradvocate.irs.gov/news/nta-blog/treasury-fy-2025-green-book-proposes-to-essentially-eliminate-written-supervisory-approval-for-penalties/2024/05>.

68 Systemically assessed penalties are those the IRS automatically assessed electronically without initial review or action from IRS personnel. Assessments that IRS personnel take actions to make are referred to as “manual assessments.” The IRS makes many manual assessments automatically without reviewing whether the penalties should apply. Hereinafter, “automatically” will include both systemic and manual assessments made without any substantive review of the applicability of the penalty.

69 The National Taxpayer Advocate has highlighted the serious problems with IIRs many times. For in-depth discussions of the IRS’s harmful approach to assessment and collection of IIRs, see National Taxpayer Advocate 2023 Annual Report to Congress 101 (Most Serious Problem: *International: The IRS’s Approach to International Information Return Penalties Is Draconian and Inefficient*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23\\_MSP\\_08\\_International.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23_MSP_08_International.pdf); National Taxpayer Advocate 2020 Annual Report to Congress 119 (Most Serious Problem: *International: The IRS’s Assessment of International Penalties Under IRC §§ 6038 and 6038A Is Not Supported by Statute, and Systemic Assessments Burden Both Taxpayers and The IRS*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20\\_MSP\\_08\\_International.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_MSP_08_International.pdf); Erin M. Collins, Foreign Information Penalties: Provide Taxpayers Their Rights Before Assessment, NATIONAL TAXPAYER ADVOCATE BLOG (May 21, 2024), <https://www.taxpayeradvocate.irs.gov/news/nta-blog/foreign-information-penalties-provide-taxpayers-their-rights-before-assessment/2024/05/>; Erin M. Collins, Chapter 61 Foreign Information Penalties: Part One: Taxpayers and Tax Administration Need a Legislation Fix, NATIONAL TAXPAYER ADVOCATE BLOG (Apr. 17, 2023), <https://www.taxpayeradvocate.irs.gov/news/nta-blog/nta-blog-chapter-61-foreign-information-penalties-part-one/2023/04/>; Erin M. Collins, Chapter 61 Foreign Information Penalties: Part Two: Taxpayers and Tax Administration Need Finality, Which Requires Legislation, NATIONAL TAXPAYER ADVOCATE BLOG (Apr. 20, 2023), <https://www.taxpayeradvocate.irs.gov/news/nta-blog/nta-blog-chapter-61-foreign-information-penalties-part-two/2023/04/>; Erin M. Collins, Foreign Information Penalties: Part Three: Keeping a Watchful Eye on the FBAR Guard Dog, NATIONAL TAXPAYER ADVOCATE BLOG (Apr. 20, 2023), <https://www.taxpayeradvocate.irs.gov/news/nta-blog/nta-blog-chapter-61-foreign-information-penalties-part-three/2023/05/>.



and IIR penalties, even though they never thought of themselves as U.S. citizens.<sup>70</sup> A U.S. person holding a controlling interest in a foreign partnership can face significant penalties, even though the partnership generates no taxable income.<sup>71</sup> Similarly, a taxpayer receiving a tax-free gift or inheritance can lose a substantial portion of it to penalties simply because they had no idea that they had to report it.<sup>72</sup>

Typically, when taxpayers learn of the IIR requirements, they voluntarily file the forms late, only to have the IRS reward their compliance with harsh penalties, even if they have attached a reasonable cause statement asking for the IRS not to assess the penalty. This is because the IRS's policy is to automatically assess many of the IIR penalties upon receipt of the late IIR return.<sup>73</sup>

Congress established the IIR penalty regime primarily to combat tax avoidance and discourage U.S. taxpayers from hiding income and assets abroad. While these objectives are commendable, the penalties often do not affect high net worth individuals and large companies; they have sophisticated advisors and generally avoid these penalties or successfully obtain abatements. Rather, lower-income individuals, immigrants, and small businesses who generally lack advisors with the same expertise are the ones to inadvertently trigger the penalty. The IRS imposes a substantial number of IIR penalties on the non-wealthy. For instance, for calendar years (CYs) 2018-2022, the IRS assessed 70 percent of individual IRC § 6038 penalties against lower- to middle-income taxpayers (those reporting under \$400,000 in income).<sup>74</sup> Likewise, the IRS assessed 84 percent of systemic business IRC §§ 6038 and 6038A penalties against small and midsize businesses (those with assets under \$10 million) over this same period.<sup>75</sup>

One area of particular concern regarding IIR penalties is with gifts and inheritances subject to IRC § 6039F reporting. IRC § 6039F generally requires U.S. persons who receive large foreign gifts or inheritances to submit information returns (Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts, Part IV) to the IRS. Because gifts and inheritances are excludable from income, taxpayers may not realize they have to report them. There are many examples of taxpayers who received a once-in-a-lifetime tax-free gift or inheritance and were unaware of their reporting requirement. When they learned of the filing requirement, these taxpayers did the right thing and filed a late information return only to find that the IRS greets them with substantial penalties it automatically assessed upon the late filing of Form 3520. Depending on how late the taxpayer filed, they face penalties of up to 25 percent of their gift or inheritance despite owing no actual tax.

In the foreign gift context, the penalties can be huge; over 2018-2021, even taxpayers who reported \$400,000 or less in income received an average penalty of over \$235,000.<sup>76</sup> However, as shown in Figure 2.9.2, over this same four-year period, the IRS abated 68 percent of the individual IRC § 6039F penalties assessed with respect to Form 3520, Part IV, averaging almost \$181 million (79 percent of the dollars assessed).<sup>77</sup>

70 See, e.g., Vivienne Walt, *Why 'Accidental Americans' Are Desperate to Give Up Their U.S. Citizenship*, TIME, Dec. 23, 2020, <https://time.com/5922972/accidental-americans-fatca/>; Darla Mercado, *Why 'Accidental Americans' Have an Uphill Battle With the IRS*, CNBC, Oct. 3, 2019, <https://www.cnbc.com/2019/10/03/why-accidental-americans-have-an-uphill-battle-with-the-irs.html>.

71 IRC § 6038(a).

72 IRC § 6039F.

73 See National Taxpayer Advocate 2023 Annual Report to Congress 101, 110-111 (Most Serious Problem: *International: The IRS's Approach to International Information Return Penalties Is Draconian and Inefficient*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23\\_MSP\\_08\\_International.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23_MSP_08_International.pdf).

74 IRS, Compliance Data Warehouse (CDW), Individual Master File (IMF) and Individual Return Transaction File (IRTF), Calendar Years 2018-2022 (Oct. 30, 2024). Because of such factors as the broad penalty relief provided in IRS Notice 2022-36, 2022-36 I.R.B. 188, Penalty Relief for Certain Taxpayers Filing Returns for Taxable Years 2019 and 2020, and processing delays due to COVID-19, penalty data in any given recent year may not be illustrative of long-term trends. For this reason, we are presenting data from four years.

75 IRS, CDW, Business Master File (BMF) and Business Return Transaction File (BRTF) (Oct. 30, 2024).

76 IRS, CDW, IMF/BMF, IRTF/BRTF (Oct. 30, 2024). Penalty statistics associated with total assets/income stratification reflect data from the most common income tax returns, representing about 94 percent of businesses filing Forms 1120, 1120F, or 1065 and at least 77 percent of individuals filing Form 1040 for which the IRS assessed IIR penalties.

77 IRS, CDW, IMF (Oct. 28, 2024).



**FIGURE 2.9.2, Average Assessment and Abatement Rates for Individual IRC § 6039F Penalties, CYs 2018-2021<sup>78</sup>**

Form 3529 Part IV	Average for CYs 2018-2021
Penalties Assessed	1,016
Dollars Assessed	\$229 mil
Abatements	688
Dollars Abated	\$181 mil
Abatement Percent by Number	68%
Abatement Percent by Dollars	79%

The automatic assessment of IIR penalties for late filed Parts I-III of Forms 3520 and 3520-A is also concerning. IRC § 6048 requires taxpayers to report information about certain reportable events of foreign trust, which they report on Forms 3520, Parts I-III, and 3520-A. IRC § 6677 imposes a penalty for failure to timely file these forms. When taxpayers delinquent file Forms 3520 and 3520-A, the IRS automatically assesses the IRC § 6677 penalty, generally assessing the maximum penalty amount.<sup>79</sup> Again, these penalties can be substantial.<sup>80</sup> To add insult to injury, while the IRS can waive the IRC § 6677 penalty if taxpayers show that they had reasonable cause<sup>81</sup> for filing the returns late, the IRS does not consider any reasonable cause statements or other information provided by taxpayers prior to assessing the penalties, even when attached to the returns.<sup>82</sup> After assessment, these taxpayers must either challenge the penalties with the IRS Independent Office of Appeals (Appeals) or pay the penalties in full and challenge them in court. Once taxpayers show reasonable cause, the IRS abates the penalty.

For foreign trust reporting penalties, the IRS abates a significant number of penalties it automatically assessed but should not have. As shown in Figure 2.9.3, over CYs 2018-2021, the IRS abated IRC § 6677 penalties assessed against individuals with respect to Forms 3520 and 3520-A, averaging almost \$225 million.<sup>83</sup> The abatement rate was 68 percent of the penalties assessed and 54 percent of the dollars assessed.

78 IRS, CDW, IMF (Oct. 28, 2024).

79 See Daniel N. Price, *Response to Request for Public Comments on Forms 3520 and 3520-A*, OMB No. 1545-0159 (Feb. 9, 2023), [https://www.pricetaxlaw.com/\\_files/ugd/6311c3\\_2d54fe7a201141bb9b89af2da098e83e.pdf](https://www.pricetaxlaw.com/_files/ugd/6311c3_2d54fe7a201141bb9b89af2da098e83e.pdf).

80 The penalty for failing to file Form 3520, Parts I-III, is generally the greater of \$10,000 or 35 percent of the amount transferred to, or distributed from, the foreign trust. The IRS assesses additional penalties of \$10,000 each 30 days if the taxpayer fails to comply more than 90 days after the IRS mails a notice of failure to comply. The penalty for failing to file Form 3520-A is the greater of \$10,000 or five percent of the gross value of the foreign trust's assets held as of the end of the year. IRC § 6677.

81 IRC § 6677(d) provides that "[n]o penalty shall be imposed ... on any failure which is shown to be due to reasonable cause and not willful neglect."

82 See National Taxpayer Advocate 2023 Annual Report to Congress 101, 110-111 (Most Serious Problem: *International: The IRS's Approach to International Information Return Penalties Is Draconian and Inefficient*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23\\_MSP\\_08\\_International.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23_MSP_08_International.pdf). See also Andrew Velarde, *Ex-Official Confirms IRS Ignores Some Reasonable Cause Statements*, TAX NOTES, Feb. 14, 2022, <https://www.taxnotes.com/taxpractice/penalties/ex-official-confirms-irs-ignores-some-reasonable-cause-statements/2022/02/14/7d5fm> (quoting a former IRS employee confirming "[t]he IRS is not analyzing reasonable cause when it is attached to a late filing. No IRS person at Ogden [Utah] reviews reasonable cause on the front end."); Daniel N. Price, *Response to Request for Public Comments on Forms 3520 and 3520-A*, OMB No. 1545-0159 (Feb. 9, 2023), [https://www.pricetaxlaw.com/\\_files/ugd/6311c3\\_2d54fe7a201141bb9b89af2da098e83e.pdf](https://www.pricetaxlaw.com/_files/ugd/6311c3_2d54fe7a201141bb9b89af2da098e83e.pdf).

83 IRS, CDW, IMF (Oct. 28, 2024).

**FIGURE 2.9.3, Average Assessment and Abatement Rates for Individual IRC § 6677 Penalties, CYs 2018-2021<sup>84</sup>**

Form 3520 Parts I-III and Form 3520-A	Average for CYs 2018-2021
Penalties Assessed	3,573
Dollars Assessed	\$415 mil
Abatements	2,416
Dollars Abated	\$225 mil
Abatement Percent by Number	68%
Abatement Percent by Dollars	54%

The significant abatement rates for IRC §§ 6039F and 6677 penalties relating to Forms 3520 and 3520-A illustrate how often the IRS erroneously assesses these penalties. The automatic assessment of the penalties causes undue hardship, burdens taxpayers, and creates unnecessary work for the IRS.

But there is good news for taxpayers with respect to some international penalties. After hearing concerns raised by the National Taxpayer Advocate and practitioners, the IRS is making favorable changes to the foreign gifts and inheritance filing penalties.<sup>85</sup> On October 24, 2024, IRS Commissioner Danny Werfel announced that the IRS has ended its practice of automatically assessing penalties at the time of late filing for reporting foreign gifts and bequests on Form 3520, Part IV.<sup>86</sup> Also, by the end of 2024, the IRS will begin reviewing any reasonable cause statements taxpayers attach to late filed Form 3520, Parts I-III, and Form 3520-A (*i.e.*, for the trust portion of the form) before assessing any IRC § 6677 penalty.<sup>87</sup> TAS has recommended these changes for years, and the IRS listened. These are favorable changes for taxpayers that will reduce unwarranted assessments and relieve burden by giving them the opportunity to explain their situation before the IRS assesses a penalty.

While the IRS is heading in the right direction on penalties related to Forms 3520 and 3520-A, it has not made changes in its administration of other IIR penalties. The IRS's automatic assessment of penalties when taxpayers willingly come forward and file their late returns, without any consideration of reasonable cause, is unfair to taxpayers, violates their *right to pay no more than the correct amount of tax*, and discourages compliance. When taxpayers know that voluntarily filing returns leads to the IRS automatically assessing crushing penalties that may be impossible to challenge and may even bankrupt them, how many of them will decide not to file and simply hope the IRS does not find them? The IRS needs to stop its automatic assessment of penalties prior to considering the taxpayer's specific facts and circumstances and provide taxpayers their rights to a conference with Appeals. Additionally, the IRS should develop procedures to review reasonable cause relief requests prior to assessment, including exploring an option to check a box on the return if the taxpayer attached a reasonable cause statement.

Not only does the IRS automatically assess IIR penalties without reviewing reasonable cause, it often erroneously classifies these penalties as assessable. Therefore, taxpayers must first pay the penalties in full and then incur the costs of filing suit in a U.S. district court or the Court of Federal Claims to recover the payments.<sup>88</sup> Full payment many times is impossible as some of these penalties are huge and have no bearing on the underlying tax liabilities. This deprives taxpayers of preassessment review in the U.S. Tax Court and

<sup>84</sup> IRS, CDW, IMF (Oct. 28, 2024).

<sup>85</sup> See Erin M. Collins, IRS Hears Concerns From TAS and Practitioners, Makes Favorable Changes to Foreign Gifts and Inheritance Filing Penalties, NATIONAL TAXPAYER ADVOCATE BLOG (Oct. 24, 2024), <https://www.taxpayeradvocate.irs.gov/news/nta-blog/irs-hears-concerns-from-tas-and-practitioners-makes-favorable-changes-to-foreign-gifts-and-inheritance-filing-penalties/2024/10>.

<sup>86</sup> See *id.*

<sup>87</sup> See *id.*

<sup>88</sup> See IRC § 7422 for requirements relating to refund suits.

impairs the taxpayer *right to challenge the IRS's position and be heard*.<sup>89</sup> As Title 26, Subtitle F, Chapter 61, Subchapter A, Part III penalties are not subject to deficiency procedures the IRS has taken the position that these penalties are assessable. The IRS's assessment of these penalties rests on a questionable legal foundation.<sup>90</sup> The National Taxpayer Advocate's position, consistent with the U.S. Tax Court's holding in *Farhy v. Commissioner*, *Mukhi v. Commissioner*, and *Mukhi v. Commissioner* ("*Mukhi II*"), is that the tax code does not contain or cross-reference language authorizing the IRS to treat these penalties as assessable, and therefore, the Department of Justice must institute a civil suit to recover the penalties.<sup>91</sup>

Although the U.S. Court of Appeals for the D.C. Circuit reversed the Tax Court's decision in *Farhy* and held that the penalties are assessable,<sup>92</sup> the Tax Court is only required to follow that decision in cases appealable to the D.C. Circuit.<sup>93</sup> In a case appealable to the U.S. Court of Appeals for the Eighth Circuit, the Tax Court, in a full court opinion, reaffirmed its position that the IRS lacks authority to assess the IRC § 6038(b)(1) penalties, which could result in a split opinion between the circuits.<sup>94</sup> In the meantime, it appears, the IRS is not changing its litigation position leaving taxpayers in a quandary on how to proceed while the IRS continues to assess these penalties.

Putting aside the litigation, the National Taxpayer Advocate is concerned that IIR penalties are systemically assessed without any prior review or opportunity to establish reasonable cause or other defenses; are often erroneously classified as assessable and therefore must be paid before judicial review, which deprives taxpayers of review in the U.S. Tax Court and causes financial hardship; and are disproportionate in comparison with any potential underlying tax and fall particularly hard on lower-income taxpayers and small businesses. To protect taxpayer rights, the National Taxpayer Advocate recommends Congress clarify that the IRS cannot assess these penalties before it issues a notice giving taxpayers the right to a prepayment judicial review in the U.S. Tax Court.<sup>95</sup> This would help ensure that the IRS only imposes penalties where appropriate rather than automatically applying them in every situation.

### ***The IRS's Penalty Culture Harms Taxpayers***

According to practitioners, the current IRS culture that penalties automatically apply is pervasive even in examinations.<sup>96</sup> They report that in the majority of cases, IRS examiners propose and IRS managers approve penalties at the end of the examination, and to get fair consideration of the penalties, taxpayers need to request a hearing with Appeals.<sup>97</sup> They note that IRS Revenue Agents appear to have less discretion and seem to act in accordance with a policy that penalties should apply by default.<sup>98</sup> This assertion is borne out in data regarding accuracy-related penalties proposed by Examination. From CYs 2018 to 2022, there were 6,432 cases in which the IRS recommended the IRC § 6662 accuracy-related penalty at examination and the taxpayers appealed. Of these, the IRS ultimately did not assess 50.6 percent, and of those assessed, it abated 10.6 percent.<sup>99</sup> While the numbers include only accuracy-related penalties, a reversal or abatement rate of over

89 See TBOR, <https://www.taxpayeradvocate.irs.gov/taxpayer-rights> (last visited Nov. 15, 2024). The rights contained in TBOR are also codified in IRC § 7803(a)(3).

90 See National Taxpayer Advocate 2020 Annual Report to Congress 119 (Most Serious Problem: *International: The IRS's Assessment of International Penalties Under IRC §§ 6038 and 6038A Is Not Supported by Statute, and Systemic Assessments Burden Both Taxpayers and the IRS*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20\\_MSP\\_08\\_International.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_MSP_08_International.pdf).

91 See *Farhy v. Comm'r*, 160 T.C. 399 (2023), *rev'd and remanded*, 100 F.4th 223 (D.C. Cir. 2024); *Mukhi v. Comm'r*, 162 T.C. No. 8 (Apr. 8, 2024), *adhered to on recons.*, 163 T.C. No. 8 (Nov. 18, 2024); *Mukhi v. Comm'r* ("*Mukhi II*"), 163 T.C. No. 8 (Nov. 18, 2024), *adhering to on recons.*, 162 T.C. No. 8 (Apr. 8, 2024).

92 *Farhy*, 100 F.4th at 236 (D.C. Cir. 2024).

93 See *Golsen v. Comm'r*, 54 T.C. 742 (1970); *Mukhi v. Comm'r* ("*Mukhi II*"), 163 T.C. No. 8 (Nov. 18, 2024), *adhering to on recons.*, 162 T.C. No. 8 (Apr. 8, 2024).

94 *Mukhi v. Comm'r* ("*Mukhi II*"), 163 T.C. No. 8 (Nov. 18, 2024), *adhering to on recons.*, 162 T.C. No. 8 (Apr. 8, 2024). See also orders in *Safdieh v. Comm'r*, Docket No. 11680-20L (T.C. Dec. 5, 2024) and *Cauchon v. Comm'r*, Docket No. 23863-22L (T.C. Dec. 5, 2024).

95 See National Taxpayer Advocate 2025 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (Provide That Assessable Penalties Are Subject to Deficiency Procedures)*.

96 Conversations with outside stakeholders (Aug. 5, 8, 21, 22, and 28, 2024).

97 *Id.*

98 Conversations with outside stakeholders (Aug. 21, 22, and 28, 2024).

99 IRS, CDW, Examination Operational Automation Database and IMF Transaction History (Oct. 28, 2024).

50 percent suggests that the IRS is often applying unwarranted penalties. For taxpayers, having to challenge penalties at the Appeals level is stressful, time-consuming, and expensive, and it is inefficient for the IRS and a drain on its resources.

If taxpayers do not challenge the penalties, however, the IRS assesses them. Once assessed, taxpayers are left with no option but to get the IRS to abate an assessment, which is much more difficult and expensive than challenging penalties on the front end.<sup>100</sup> If the taxpayer is successful in convincing the IRS to abate the penalty, it leaves taxpayers wondering why the IRS assessed it in the first place.<sup>101</sup> This culture is unfair to taxpayers and can detrimentally impact the perception of fairness and proportionality, which does little to promote compliance. Taxpayers must expend significant resources either challenging the penalties in Appeals or in court. To challenge them judicially, they will need to pay many of these penalties first and then file suit in a district court or the Court of Claims. This is especially unfair to lower-income taxpayers or small businesses who either are unrepresented or where it just does not make economic sense to hire an attorney to challenge the penalties in a district court or the Court of Claims.

The IRS needs to change its penalty policy and culture from the top down, according to external stakeholders, and the National Taxpayer Advocate is in full agreement.<sup>102</sup> To do this, the IRS should return to the policy that penalties exist *only* for encouraging compliance and give meaning to the provisions that allow taxpayers a reasonable opportunity to provide evidence that the penalty should not apply by giving “full and fair consideration to evidence in favor of not imposing the penalty.”<sup>103</sup>

## CONCLUSION AND RECOMMENDATIONS

Penalties are a necessary component of tax compliance. While penalties themselves are statutory and any underlying penalty reform lies with Congress, the administration of those penalties lies entirely with the IRS. It is therefore essential that the IRS’s administration of penalties be fair, comprehensive, and consistently applied to all taxpayers.

To encourage compliance, the IRS should show that the tax system is fair through its penalty administration. It should be beyond reproach when it comes to following the law. How can taxpayers see the system as fair if the IRS penalizes them for failing to follow the law while not strictly following the law itself? Further, how can taxpayers feel it is fair when the IRS assesses penalties against them automatically without even considering their facts and circumstances in defense of the penalty? The IRS needs to change its current culture of assuming penalties apply unless taxpayers prove otherwise. It needs to stop its “assess first, ask questions later” approach by stopping the automatic assessment of penalties prior to considering taxpayers’ defenses. This is unfair and erodes taxpayers’ confidence in the federal tax system, which arguably affects compliance. Finally, the IRS needs to refocus its policy on administering penalties in a manner *solely* for the purpose of encouraging compliance.

100 The IRS has some penalty relief programs, including first-time abatement (FTA). IRS, Administrative Penalty Relief, <https://www.irs.gov/payments/penalty-relief-due-to-first-time-abate-or-other-administrative-waiver> (last updated Dec. 17, 2024). FTA is an administrative program under which the IRS will abate certain penalties if a taxpayer shows they did not have to file a return, or if required to file, had no penalties assessed against them in the prior three years (or the IRS removed any penalty for an acceptable reason other than FTA, for example, due to reasonable cause); have timely filed all required returns (or filed a valid extension); and have paid or have a valid payment plan to pay all taxes due for years other than the year for which the taxpayer requests relief. However, FTA applies only to certain penalties (failure-to-file, failure-to-pay, failure-to-deposit). The IRS should extend this program to include other penalties including estimated tax penalties under IRC §§ 6654 and 6655 and penalties the IRS automatically calculated through electronic means.

101 “In the application of penalties, the IRS should make a correct substantive decision in the first instance rather than mechanically assert penalties with the idea that they will be corrected later.” H.R. REP. NO. 101-386, at 661 (1989) (Conf. Rep.).

102 Conversations with outside stakeholders (Aug. 21, 22, and 28, 2024). Relatedly, the IRS Advisory Council in its 2024 report recommends the IRS take several actions to improve penalty administration, including that the IRS increase transparency by publishing more specific details in the IRS Data Book about assessment and abatement of penalties that are commonly asserted or are an IRS enforcement priority, among others, and that the IRS create a Director of Civil Penalties position whose duties include commissioning an advisory task force to study ways to make IRS policies and procedures regarding penalties more consistent. See IRS, Pub. 5316, Internal Revenue Service Advisory Council Public Report 177-78 (Nov. 2024), <https://www.irs.gov/pub/irs-pdf/p5316.pdf>.

103 IRM 1.2.1.12.1(9), Policy Statement 20-1 (Formerly P-1-18), Penalties Are Used to Enhance Voluntary Compliance (June 29, 2004), [https://www.irs.gov/irm/part1/irm\\_01-002-001](https://www.irs.gov/irm/part1/irm_01-002-001).

It has been 35 years since the last comprehensive overhaul of federal tax penalties. Congress has enacted more penalties and amendments to penalties, and the IRS has implemented regulations interpreting the penalties. Some regulations, like the ones proposed regarding supervisory approval of penalties, aim to decrease statutory protections for taxpayers that Congress intended. Despite the studies, collaboration, and work that resulted in the 1989 penalty reform in IMPACT, subsequent civil penalty legislation and administration of the penalties by the IRS has veered from the policies and principles outlined by the studies. The focus of the federal civil tax penalty regime has shifted away from utilizing civil penalties only to enhance compliance. The National Taxpayer Advocate believes it is time to reconsider the existing penalty regime and develop better information concerning the administration and impact of penalties to effectively promote compliance.

### **Administrative Recommendations to the IRS**

The National Taxpayer Advocate recommends that the IRS:

1. Create a task force consisting of IRS, other Treasury Department personnel, and stakeholders to study the current tax penalties regime and make administrative and legislative recommendations to ensure penalties are applied more fairly and consistently for the purpose of improving tax compliance.
2. Consider establishing civil voluntary disclosure programs to encourage voluntary and future compliance for emerging issues such as digital assets.
3. Conduct a thorough review of all penalty notices issued to taxpayers to determine whether they comply with IRC § 6751(a) and develop procedures to ensure that all penalty notices comply with IRC § 6751(a) along with remedial procedures for those that do not.
4. Stop the automatic assessment of all IIR penalties prior to considering the taxpayer's specific facts and circumstances, including providing taxpayers their appeal rights with Appeals.
5. Update the IRM to require review of any reasonable cause relief requests before assessing penalties including exploring an option to check a box on the return if the taxpayer attaches a reasonable cause statement.
6. Extend eligibility for first-time abatement administrative relief to estimated tax penalties under IRC §§ 6654 and 6655 and to any other penalties automatically assessed through electronic means.

### **Legislative Recommendations to Congress**

The National Taxpayer Advocate recommends that Congress:

1. Amend IRC § 6751(b)(1) to clarify that no penalty under Title 26 shall be assessed or entered in a final judicial decision unless the penalty is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate, prior to the first time the IRS sends a written communication to the taxpayer proposing the penalty as an adjustment.
2. Amend IRC § 6751(b)(2)(B) to clarify that the exception for "other penalties automatically calculated through electronic means" does not apply to the penalty for negligence or disregard of rules of regulations under IRC § 6662(b)(1).
3. Amend IRC § 6212 to require the Secretary to establish procedures to send a notice of IIR penalties to the taxpayer by certified mail or registered mail for adjudication with the U.S. Tax Court prior to assessing any IIR penalty or other IIR penalty listed in Chapter 61, Subchapter A, Part III, Subpart A of the IRC.

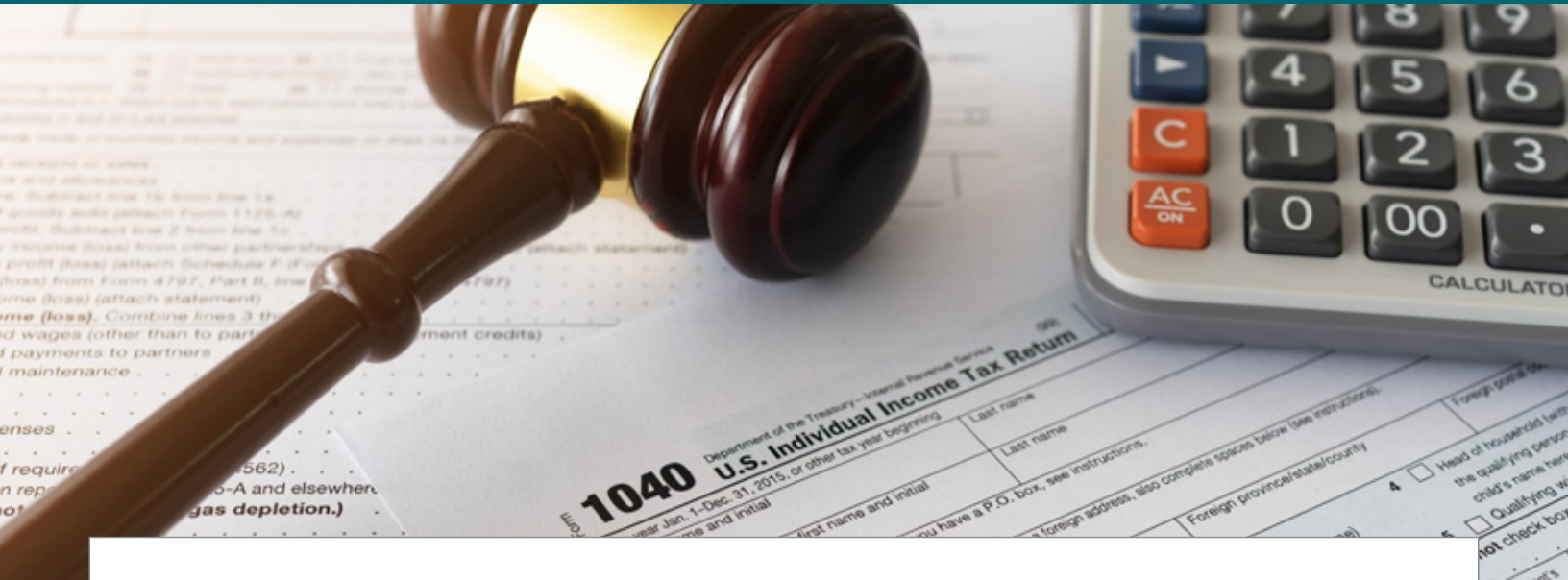
### **RESPONSIBLE OFFICIALS**

Lia Colbert, Commissioner, Small Business/Self-Employed Division

Holly Paz, Commissioner, Large Business and International Division

Heather Maloy, Chief Tax Compliance Officer





## CRIMINAL VOLUNTARY DISCLOSURE

Changes to the IRS's Criminal Voluntary Disclosure Practice Requirements May Be Reducing Voluntary Compliance and Negatively Impacting the Tax Gap

### WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Some of the most severe and potentially life-altering tax penalties are in the criminal arena. Taxpayers who are caught filing false or fraudulent returns or failing to file altogether can face extremely high penalties. These penalties can be far more severe than civil penalties and lead to criminal prosecution.<sup>1</sup> In addition to the financial burden, they can result in the loss of civil rights, the potential for asset forfeiture, and even imprisonment. This makes the stakes particularly high for taxpayers who are noncompliant.

To mitigate the impact of severe penalties and encourage noncompliant taxpayers to come forward, the IRS has established voluntary disclosure programs. These programs offer the possibility of reduced penalties for taxpayers who voluntarily disclose their noncompliance. Often, these taxpayers are ones the IRS would not find on its own and include some taxpayers living “under the radar” as they have failed to file returns that might alert the IRS to their existence.

While the IRS has had a criminal voluntary disclosure practice (VDP) for decades, the VDP in its current form is not working as effectively as intended and the IRS's inability to track the progress of the VDP program makes it nearly impossible to determine its effectiveness. Lack of enthusiasm for the program is partly due to recent changes the IRS has implemented that have made taxpayers and tax professionals wary of using the program and many professionals uncomfortable recommending it to taxpayers.<sup>2</sup> The changes have made the program less accessible and effective, which discourages taxpayers from participating. As a result, fewer taxpayers are coming forward, and the program is failing to achieve its goal of encouraging voluntary compliance. When taxpayers perceive penalties for noncompliance as too severe, they may not come forward, thus creating a paradox where taxpayers are so fearful of the consequences that they may avoid coming into compliance altogether.

1 Although still civil, the penalty amounts involved where the taxpayer's conduct is considered more culpable are considerably higher. For example, IRC § 6662(b)(1) imposes a penalty equal to 20 percent of the underpayment where the taxpayer was negligent while IRC § 6663 imposes a penalty equal to 75 percent of the underpayment in cases where the taxpayer's conduct was fraudulent.

2 Conversations with outside stakeholders (Aug. 21, 22, and 28, 2024).



## EXPLANATION OF THE PROBLEM

The U.S. tax system relies on taxpayers self-reporting and paying the amount of tax they owe with the understanding that they may incur several different penalties for failing to do so. Encouraging compliance is therefore essential as taxpayers voluntarily and timely pay approximately 85 percent of all taxes due.<sup>3</sup> But sometimes the potential penalties associated with noncompliance are so severe that they may actually deter noncompliant taxpayers from coming into compliance.<sup>4</sup> To alleviate this problem, the IRS has established the VDP to encourage noncompliant taxpayers to come forward by lessening some of the more drastic penalties and other impacts that the taxpayer would otherwise incur. However, over time, changes made by the IRS have arguably eroded taxpayer interest in the program, and very few taxpayers currently participate. Specifically:

- Changes made by the IRS to its criminal VDP discourage voluntary compliance and leave taxpayers in a quandary over whether and how to come into compliance; and
- The IRS's current VDP is not effectively encouraging voluntary compliance and therefore it can exacerbate the overall tax gap making it harder for the IRS to collect the taxes owed.<sup>5</sup>

The IRS must comprehensively track and evaluate its VDP and craft a program that makes it more appealing and effective by encouraging noncompliant taxpayers to come into compliance. A more user-friendly and less intimidating VDP would likely lead to increased participation and ensure that more noncompliant taxpayers pay what they owe. The IRS must design a program that balances penalty reduction with effective enforcement, ensuring both compliance and fairness in the system.

## ANALYSIS

### Changes Made by the IRS to Its Criminal Voluntary Disclosure Practice Discourage Voluntary Compliance and Leave Taxpayers in a Quandary

#### Background

Voluntary disclosure has long been part of the IRS's Criminal Investigation (CI) arm, and it provides taxpayers who may have criminal exposure with a means to come into compliance, pay past due taxes, and potentially avoid criminal prosecution.<sup>6</sup> Voluntary disclosure programs are purely administrative programs offered by the IRS; there is no statutory provision for voluntary disclosures, but they serve an important administrative function and contribute to reducing the tax gap.<sup>7</sup> The related administrative programs, policies, terms, and

3 The IRS recently measured compliance for tax year (TY) 2022 and determined that the voluntarily compliance rate (VCR) was about 85 percent for all federal taxes due each year. The VCR is defined as the amount of tax paid voluntarily and timely divided by total true tax, expressed as a percentage. For TY 2022, this translates to just over \$3.9 trillion collected through voluntary compliance. See IRS, Pub. 5869, Tax Gap Projections for Tax Year 2022, at 10 (Oct. 2024), <https://www.irs.gov/pub/irs-pdf/p5869.pdf>.

4 For an in-depth discussion of the IRS's current civil penalty administration and the effects on voluntary compliance, see Most Serious Problem: *Civil Penalty Administration: The IRS's Administration of Penalties Is Often Unfair, Is Inconsistently Detering Improper Behavior, Is Not Promoting Efficient Administration, and Thus Is Discouraging Tax Compliance*, *supra*.

5 The tax gap is a measure of overall tax noncompliance. The gross tax gap is the amount of true tax liability for a given tax year that is not paid voluntarily and/or timely. See IRS, Pub. 5456, 2024 Agency Financial Report 111 (Nov. 2024), <https://www.irs.gov/pub/irs-pdf/p5456.pdf>. The projected annual gross tax gap for TY 2022 is \$696 billion, consisting of 1) \$63 billion due to nonfiling (tax not filed and paid on time); 2) \$539 billion due to underreporting (tax understated on timely returns); and 3) \$94 billion due to underpayment (tax reported but not paid on time). See IRS, Pub. 5869, Tax Gap Projections for Tax Year 2022 (Oct. 2024), <https://www.irs.gov/pub/irs-pdf/p5869.pdf>.

6 Internal Revenue Manual (IRM) 9.5.11.9(1), Voluntary Disclosure Practice (Sept. 17, 2020), [https://www.irs.gov/irm/part9/irm\\_09-005-011](https://www.irs.gov/irm/part9/irm_09-005-011).

7 Part of the IRS's penalty policy provides that "[i]n limited circumstances where doing so will promote sound and efficient tax administration, the Service may approve a reduction of otherwise applicable penalties or penalty waiver for a group or class of taxpayers as part of a Service-wide resolution strategy to encourage efficient and prompt resolution of cases of noncompliant taxpayers." IRM 1.2.1.12.1(7), Policy Statement 20-1 (Formerly P-1-18), Penalties Are Used to Enhance Voluntary Compliance (June 29, 2004), [https://www.irs.gov/irm/part1/irm\\_01-002-001](https://www.irs.gov/irm/part1/irm_01-002-001). Voluntary disclosure programs are consistent with this.

conditions are completely at the IRS's discretion.<sup>8</sup> Like civil penalty administration, criminal voluntary disclosure programs involve a difficult balancing of objectives.<sup>9</sup> Although voluntary disclosure does not create substantive or procedural rights for taxpayers or guarantee amnesty or immunity, it has long existed as a key factor in determining whether the IRS will recommend criminal prosecution.<sup>10</sup>

VDP procedures were traditionally informal. The IRS's voluntary disclosure protocols did not require any particular format for voluntary disclosure communications, and taxpayers could make them orally or in writing as long as they met the voluntary disclosure requirements.<sup>11</sup> The IRS considered a taxpayer as making a voluntary disclosure when they made a communication that was truthful, timely, and complete and when they cooperated with the IRS in determining their correct tax liability and made good faith arrangements to pay in full the tax, interest, and any penalties determined by the IRS to be applicable.<sup>12</sup>

In practice, practitioners report that the VDP process was fairly simple: contact CI and if the taxpayer was not already on the IRS's radar, file true and correct tax returns and pay the taxes, interest, and penalties, if any. It is our understanding that in the past many practitioners simply followed the qualified amended return (QAR) rules of Treas. Reg. § 1.6664-2(c)(3) to satisfy the VDP requirements.<sup>13</sup> Although the IRS had the ability to examine the returns, practitioners report that it audited few taxpayers and did not require the taxpayer to agree to the civil fraud penalty.<sup>14</sup> The IRS processed the returns, cashed the checks, and got the taxpayers into the system. The program was accomplishing its long-standing goal of providing taxpayers with criminal exposure a means to come into tax compliance and potentially avoid criminal prosecution with the goal of past, present, and future compliance. The program had guardrails such as excluding those with illegal income, and it was conditioned on taxpayers making truthful, timely, and complete disclosures prior to the commencement of a civil examination, criminal investigation, or receipt of third-party information by the IRS.

8 For a discussion and history on the IRS's VDP and a recommendation for codification of the program, see Jay A. Soled, *The IRS's Voluntary Disclosure Program: Need For Codification*, 37 GA. ST. U. L. REV. 957 (2021).

9 See *id.* (stating that “[h]istorically, the voluntary disclosure program has had to strike a difficult balance between being attractive enough to entice tax scofflaws to participate and not being too attractive lest ordinary taxpayers feel that their compliance efforts were for naught”). For a discussion on the objectives of civil tax penalties and IRS's civil penalty administration, see Most Serious Problem: *Civil Penalty Administration: The IRS's Administration of Penalties Is Often Unfair, Is Inconsistently Detering Improper Behavior, Is Not Promoting Efficient Administration, and Thus Is Discouraging Tax Compliance*, *supra*.

10 Prior to 1952, the Treasury Department refrained from recommending prosecution of taxpayers who voluntarily disclosed their tax violations if the disclosure was timely, truthful, and complete, and the taxpayer cooperated with the IRS in determining their correct tax liability. However, this policy was officially abandoned on January 10, 1952, and the IRS's practice became that which exists today – the IRS will consider a voluntary disclosure along with all other factors in the case in determining whether it will recommend criminal prosecution. See IRM 342.141, Background (Apr. 10, 1990) (as in effect Oct. 1997), 1997 WL 34656668. See also IRS News Release, IR-92-114, IRS Says Nonfilers Who Come Forward Are Not Prosecuted (Dec. 7, 1992), <https://www.unclefed.com/Tax-News/1992/Nr92-114.html> (stating that “[w]hile the IRS will not assure that it would never, under any circumstances, recommend the criminal prosecution of an individual who comes forward voluntarily to report the failure to file ... tax returns, the IRS' practice has been not to do so where the person: a. informed the IRS that he/she has not filed tax returns for one of more taxpayer periods; b. had only legal source income ...; c. made the disclosure prior to being contacted by the IRS ...; d. either filed a true and correct tax return or cooperated with the IRS in ascertaining the correct tax liability; and, e. either paid in full the amount due or, in those situations where the taxpayer was unable to make full payment, made *bona fide* arrangements to pay.”).

11 IRM 9.5.11.9.1(1), Voluntary Disclosure Protocols (Sept. 9, 2004) (on file with TAS).

12 IRM 9.5.11.9(3), Voluntary Disclosure Practice (Sept. 9, 2004) (on file with TAS). Prior IRM provisions did not include the requirement regarding payment. See, e.g., IRM 342.142(3), Guidelines (Aug. 25, 1995) (as in effect Oct. 1997), 1997 WL 34656668.

13 Conversations with outside stakeholders (Aug. 22 and 28, 2024). A QAR is an amended return filed after the due date and before the date on which the IRS contacts the taxpayer regarding an examination; the IRS contacts any person described in IRC § 6700 (relating to tax shelters) about an examination for an activity which the taxpayer claimed any tax benefit under IRC § 6700(a)(1)(A); the IRS contacts a pass-through entity in connection with an examination of a return to which the pass-through item relates; or the IRS serves a John Doe summons under IRC § 7609(f) regarding the taxpayer's tax liability. Treas. Reg. § 1.6664-2(c)(3). The effect of a QAR is that the additional amount shown on the QAR is not subject to the IRC § 6662 accuracy-related penalty. Treas. Reg. § 1.6664-2(c)(2). While a QAR protects taxpayers against IRC § 6662 accuracy-related penalties on the underpayment disclosed in the return, it does not protect against fraud penalties if the underpayment relates to a fraudulent position on the original return. See Treas. Reg. § 1.6664-2(c)(2). Many tax practitioners advise their clients to file QARs if the client is not in danger of a criminal proceeding.

14 Conversations with outside stakeholders (Aug. 21, 22, and 28, 2024).

### Targeted Voluntary Disclosure Programs

In the early 2000s, the IRS initiated targeted voluntary disclosure programs to address specific areas of noncompliance.<sup>15</sup> In 2003, in response to increasing noncompliance due to unreported offshore income activities, it initiated an offshore voluntary compliance initiative specifically targeting taxpayers with credit cards linked to unreported offshore bank accounts.<sup>16</sup> The IRS then administered other offshore voluntary disclosure programs (OVDs) in 2009, 2011, 2012, and 2014. These were formal programs with uniform requirements including specific procedures, a specified disclosure period, and a standard penalty structure. With each iteration, the program’s participation requirements generally increased along with the amount of the penalties. Figure 2.10.1 shows the requirements of the programs in 2009-2014 program.

**FIGURE 2.10.1, Offshore Voluntary Disclosure Program Requirements and Proceeds, 2009, 2011, 2012, and 2014<sup>17</sup>**

Year	Filing Requirements	Penalty Structure/Rate	Additional Details	Amounts Collected as of June 28, 2024
2009	Accurate filing of the prior six years of income tax returns and Reports of Foreign Bank and Financial Accounts (FBARs) (2003–2008)	Either an accuracy and/or delinquency penalty on all years AND miscellaneous offshore penalty of 20% of the amount in foreign bank accounts/entities in the year with the highest aggregate/account value	-	\$4.2 bil
2011	Accurate filing of the prior eight years of income tax returns and FBARs (2003–2010)	Either an accuracy or delinquency penalty on all years AND miscellaneous offshore penalty of 25% of the amount in foreign bank accounts/entities in the year with the highest aggregate/account value	-	\$2.5 bil

15 These targeted programs were in addition to the standard VDP. IRS News Release, IR-2003-5, IRS Unveils Offshore Voluntary Compliance Initiative; Chance for “Credit-Card Abusers” to Clear Up Their Tax Liabilities (Jan. 14, 2003), <https://www.irs.gov/newsroom/irs-unveils-offshore-voluntary-compliance-initiative-chance-for-credit-card-abusers-to-clear-up-their-tax-liabilities>.

16 *Id.* See also Government Accountability Office (GAO), GAO 13-318, *Offshore Tax Evasion: IRS Has Collected Billions of Dollars, But May Be Missing Continued Evasion* 36 (Mar. 2013), <https://www.gao.gov/assets/gao-13-318.pdf>.

17 Figure 2.10.1 uses information from the following sources: Jay A. Soled, *The IRS’s Voluntary Disclosure Program: Need For Codification*, 37 GA. ST. U. L. REV. 957, 975-977, 998 (2021); GAO, GAO 13-318, *Offshore Tax Evasion: IRS Has Collected Billions of Dollars, But May Be Missing Continued Evasion* (Mar. 2013), <https://www.gao.gov/assets/gao-13-318.pdf>; National Taxpayer Advocate 2014 Annual Report to Congress 79 (Most Serious Problem: *Offshore Voluntary Disclosure (OVD): The OVD Programs Initially Undermined the Law and Still Violates Taxpayer Rights*, [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/2014-ARC\\_VOL-1\\_S1\\_MSP-7-508.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/2014-ARC_VOL-1_S1_MSP-7-508.pdf)); IRS, LB&I-09-1118-014, Memorandum For Division Commissioners Chief, Criminal Investigation, (Nov. 20, 2018), reprinted at *IRS Updates Voluntary Disclosure Practice*, TAX NOTES (Nov. 20, 2018), <https://www.taxnotes.com/research/federal/other-documents/other-irs-documents/irs-updates-voluntary-disclosure-practice/28mzj>; Memorandum from Linda E. Stiff, Deputy IRS Comm’r for Servs. & Enf’t, to Comm’r, Large & Mid-Size Bus. Div., and Comm’r, Small Bus./Self-Employed Div. (Mar. 23, 2009), [https://www.irs.gov/pub/newsroom/memorandum\\_authorizing\\_penalty\\_framework.pdf](https://www.irs.gov/pub/newsroom/memorandum_authorizing_penalty_framework.pdf); IRS News Release, IR-2011-14, Second Special Voluntary Disclosure Initiative Opens; Those Hiding Assets Offshore Face Aug. 31 Deadline (Feb. 8, 2011), <https://www.irs.gov/newsroom/second-special-voluntary-disclosure-initiative-opens-those-hiding-assets-offshore-face-aug-31-deadline>; IRS News Release, IR-2012-5, IRS Offshore Programs Produce \$4.4 Billion To Date for Nation’s Taxpayers; Offshore Voluntary Disclosure Program Reopens (Jan. 9, 2012), <https://www.irs.gov/newsroom/irs-offshore-programs-produce-4-4-billion-to-date-for-nations-taxpayers-offshore-voluntary-disclosure-program-reopens>. The amount collected is based upon an IRS response to TAS information request (Oct. 15, 2024). In the 2011, 2012, and 2014 programs, offshore accounts or assets that did not exceed \$75,000 in any of the applicable years would qualify for a 12.5 percent penalty in lieu of the miscellaneous offshore penalty. In limited situations taxpayers may qualify for a five percent penalty in lieu of the miscellaneous offshore penalty.

## Most Serious Problem #10: Criminal Voluntary Disclosure

2012	Accurate filing of the prior eight years of income tax returns and FBARs	Either an accuracy or delinquency penalty on all years AND miscellaneous offshore penalty of 27.5% of the amount in foreign bank accounts/entities in the year with the highest aggregate/account value	No set deadline to apply and terms of the program can change at any time  The IRS introduced a separate streamlined program that allowed qualifying taxpayers to resolve their tax issues with no penalties	\$3.7 bil
2014	Accurate filing of the prior eight years of income tax returns and FBARs	Either an accuracy or delinquency penalty on all years AND miscellaneous offshore penalty of 27.5% of the amount in foreign bank accounts/entities in the year with the highest aggregate/account value (or 50% in certain situations involving an IRS/ Department of Justice investigation)	The IRS expanded the streamlined program to include non-willful taxpayers residing in the United States and remove other eligibility requirements	\$2.0 bil

The 2014 OVDP was the last targeted voluntary disclosure program aimed solely at offshore noncompliance. Due to declining participation, the IRS closed the OVDP on September 28, 2018.<sup>18</sup>

### Current Voluntary Disclosure Program

After the IRS terminated the 2014 OVDP, it announced new VDP guidelines that changed the traditional voluntary disclosure practice.<sup>19</sup> These guidelines are applicable to all voluntary disclosures made after September 28, 2018, and do not target a specific area of noncompliance.<sup>20</sup> The objective of the VDP is “to provide taxpayers concerned that their conduct is willful or fraudulent, and that may rise to the level of tax and tax-related criminal acts, with a means to come into compliance with the law and potentially avoid criminal prosecution.”<sup>21</sup> To this end, if a taxpayer makes a timely voluntary disclosure prior to the IRS identifying them, they may avoid criminal prosecution and mitigate exposure to civil tax penalties.<sup>22</sup> As with the prior VDP, while a voluntary disclosure does not automatically mean immunity from prosecution, the IRS will consider the disclosure in deciding whether to recommend prosecution.<sup>23</sup>

To participate in the VDP, taxpayers must make a timely, accurate, and complete voluntary disclosure regarding their noncompliance.<sup>24</sup> To be timely, taxpayers must make the disclosure before the IRS has information about their noncompliance (*i.e.*, before the IRS has started a civil or criminal examination, received information from a third party regarding their noncompliance, or received information directly related to their noncompliance from a criminal enforcement action such as a subpoena or search warrant).<sup>25</sup>

18 IRS response to TAS information request (Oct. 15, 2024). The IRS recently initiated targeted voluntary disclosure programs with respect to abuses surrounding the Employee Retention Credit (ERC). As these are specifically targeted to ERC claims and are separate from the general VDP, we do not discuss them here. For a detailed discussion on the ERC, see Most Serious Problem: *Employee Retention Credit: IRS Processing Delays Are Resulting in Uncertainty and Are Harming and Frustrating Business Owners*, *supra*.

19 IRS, LB&I-09-1118-014, Memorandum For Division Commissioners Chief, Criminal Investigation, (Nov. 20, 2018), reprinted at *IRS Updates Voluntary Disclosure Practice*, TAX NOTES (Nov. 20, 2018), <https://www.taxnotes.com/research/federal/other-documents/other-irs-documents/irs-updates-voluntary-disclosure-practice/28mzl>.

20 *Id.*

21 *Id.* This encompasses domestic and/or offshore noncompliance.

22 *Id.* Mitigation of civil penalties occurs through the VDP penalty structure.

23 IRM 9.5.11.9(3), Voluntary Disclosure Practice (Sept. 17, 2020), [https://www.irs.gov/irm/part9/irm\\_09-005-011](https://www.irs.gov/irm/part9/irm_09-005-011). Stakeholders note that the IRS did not refer taxpayers they represented for prosecution if they completed the VDP. Conversations with outside stakeholders (Aug. 22 and 28, 2024). As a practical matter, if taxpayers fully cooperate and complete the program, the taxpayers and the IRS enter into a closing agreement for the tax years at issue, thus foreclosing the possibility of criminal prosecution except in the event of fraud. As of October 15, 2024, the IRS reports that it has not referred any taxpayers who applied to participate in the current VDP (*i.e.*, beginning in 2018) to CI for investigation. IRS response to TAS information request (Oct. 15, 2024).

24 See IRM 9.5.11.9(6), Voluntary Disclosure Practice (Sept. 17, 2020), [https://www.irs.gov/irm/part9/irm\\_09-005-011](https://www.irs.gov/irm/part9/irm_09-005-011).

25 See *id.*

The rationale for this is obvious – if the IRS already knows about a taxpayer or their discovery is anticipated or imminent, their disclosure is arguably not really voluntary. Taxpayers must submit (or amend) all returns and reports for the disclosure period, which generally includes the six most recent tax years, if applicable.<sup>26</sup> The IRS will examine the disclosure and determine all tax, penalties, and interest due. It will impose the 75 percent civil fraud penalty (either IRC §§ 6651(f)(1) or 6663) on the year with the highest tax liability; accuracy-related penalties (IRC § 6662) and failure-to-file and failure-to-pay penalties (IRC §§ 6651(a)(1) and (a)(2)) will not apply.<sup>27</sup> Taxpayers must also cooperate with the IRS to determine their tax liabilities and pay the tax, interest, and penalties they owe.<sup>28</sup>

Taxpayers make a voluntary disclosure by submitting Part I – Preclearance Request, of Form 14457, Voluntary Disclosure Practice Preclearance Request and Application.<sup>29</sup> IRS CI reviews Part I and determines whether a taxpayer is eligible. If eligible, CI sends a preclearance letter to the taxpayer, but preclearance does not guarantee the IRS will accept a taxpayer into the VDP.<sup>30</sup> Taxpayers must then complete and submit Part II of the Form 14457 – Voluntary Disclosure within 45 days. After review, if CI approves the taxpayer to participate in the VDP, it sends a Preliminary Acceptance Letter and sends the case to the IRS’s civil section for examination.<sup>31</sup> Preliminary acceptance means just that, however. The IRS can revoke the preliminary acceptance if it determines that a taxpayer fails to timely and fully cooperate with the civil examination.<sup>32</sup> The IRS specifies that cooperation includes but is not limited to:

- Promptly and fully responding to all information document requests;
- Submitting to interviews and providing access to related party witnesses;
- Providing statute extensions or waivers as necessary for tax and tax-related issues;
- Providing signed delinquent or amended returns, information returns, supporting documents, workpapers, etc.;
- Providing unrestricted instructions to foreign banks to provide full and complete records (for offshore cases);
- Resolving all compliance matters covered by the disclosure agreement; and
- Full payment of all determined taxes, additions to tax, interest, and penalties; or entrance into a payment arrangement acceptable to the IRS.<sup>33</sup>

If the IRS determines that a taxpayer has failed to meet any of the above conditions, the IRS examiner can request that CI revoke the taxpayer’s preliminary acceptance. If revoked, the taxpayer can no longer benefit from the VDP limited scope (*i.e.*, disclosure period) or penalty structure. Therefore, the IRS can expand the scope of the examination to all noncompliance years and assert the 75 percent fraud penalty against taxpayers for all years

26 See IRM 9.5.11.9(6), Voluntary Disclosure Practice (Sept. 17, 2020), [https://www.irs.gov/irm/part9/irm\\_09-005-011](https://www.irs.gov/irm/part9/irm_09-005-011); IRS, Instructions for Form 14457, Voluntary Disclosure Practice Preclearance Request and Application (Nov. 2024), <https://www.irs.gov/pub/irs-pdf/f14457.pdf>.

27 IRS, LB&I-09-1118-014, Memorandum For Division Commissioners Chief, Criminal Investigation, (Nov. 20, 2018), reprinted at IRS Updates Voluntary Disclosure Practice, TAX NOTES (Nov. 20, 2018), <https://www.taxnotes.com/research/federal/other-documents/other-irs-documents/irs-updates-voluntary-disclosure-practice/28mzl>. See also IRM 4.63.3.26.2, Penalty Framework (Apr. 27, 2021), [https://www.irs.gov/irm/part4/irm\\_04-063-003r](https://www.irs.gov/irm/part4/irm_04-063-003r). The IRS will impose a willful FBAR penalty if applicable. While this is the general penalty structure, examiners still maintain discretion.

28 See IRM 9.5.11.9(6), Voluntary Disclosure Practice (Sept. 17, 2020), [https://www.irs.gov/irm/part9/irm\\_09-005-011](https://www.irs.gov/irm/part9/irm_09-005-011).

29 See IRS, IRS Criminal Investigation Voluntary Disclosure Practice, How to Disclose, <https://www.irs.gov/compliance/criminal-investigation/irs-criminal-investigation-voluntary-disclosure-practice> (Nov. 7, 2024); see also IRS, Form 14457, Voluntary Disclosure Practice Preclearance Request and Application (Nov. 2024), <https://www.irs.gov/pub/irs-pdf/f14457.pdf>.

30 See IRS, IRS Criminal Investigation Voluntary Disclosure Practice, How to Disclose, <https://www.irs.gov/compliance/criminal-investigation/irs-criminal-investigation-voluntary-disclosure-practice> (Nov. 7, 2024).

31 IRM 9.5.11.9.1, Voluntary Disclosure Process (Feb. 6, 2024), [https://www.irs.gov/irm/part9/irm\\_09-005-011](https://www.irs.gov/irm/part9/irm_09-005-011).

32 IRM 9.5.11.9.7, Revocation of Voluntary Disclosure (Sept. 17, 2020), [https://www.irs.gov/irm/part9/irm\\_09-005-011](https://www.irs.gov/irm/part9/irm_09-005-011).

33 See IRM 4.63.3.26.1(4), Voluntary Disclosure Practice Requirements (Apr. 27, 2021), [https://www.irs.gov/irm/part4/irm\\_04-063-003r](https://www.irs.gov/irm/part4/irm_04-063-003r); IRS, Instructions for Form 14457, Voluntary Disclosure Practice Preclearance Request and Application (Nov. 2024), <https://www.irs.gov/pub/irs-pdf/f14457.pdf>.



of noncompliance.<sup>34</sup> As the VDP creates no substantive or procedural rights for taxpayers, “CI’s determinations, including but not limited to determinations concerning timeliness, completeness, truthfulness, rejection, and revocation decisions, are not subject to any administrative or judicial review or appeal process.”<sup>35</sup>

***The IRS’s Revisions to the Voluntary Disclosure Practice Have Made It Much Less Attractive to Taxpayers, Resulting in Fewer Participants Coming Into Compliance***

Unfortunately, in 2018, the IRS incorporated many of the 2014 OVDP disclosure requirements into the IRS’s traditional VDP. These changes imposed severe unfavorable disclosure requirements on taxpayers willing to “come in from the cold” to file true and correct tax returns. In this regard, the IRS imposed a strict penalty structure and burdensome filing requirements not present in the prior VDP. Figure 2.10.2 shows the requirements of the current VDP announced in 2018.

**FIGURE 2.10.2, Current VDP Requirements<sup>36</sup>**

Year	Filing Requirements	Penalty Structure/Rate	Additional Details	Amounts Collected as of June 28, 2024
2018	Accurate filing of the prior six years of income tax returns and FBARs	In lieu of accuracy-related and delinquency penalties, the civil fraud (IRC § 6663) or fraudulent failure-to-file (IRC § 6651(f)) penalty of 75% for the period with the highest tax liability will be applied; willful FBAR penalty if applicable	Program for voluntary compliance to provide taxpayers with criminal exposure a means to come into compliance with the law and potentially avoid criminal prosecution	No collection reports are generated for VDP

When compared to Figure 2.10.1, Figure 2.10.2 reflects that the requirements announced in 2018 changed the VDP from an informal program with no set disclosure period or penalties to one with strict procedures and timeframes and a penalty structure that is significantly harsher than any in the OVDPs. And where taxpayers could previously cooperate with the IRS to determine appropriate penalties based upon their individual circumstances under the prior VDP, taxpayers must accept a 75 percent civil fraud penalty on the year with the highest tax liability in the revised VDP.<sup>37</sup> This penalty is significantly higher than before and has caused many to question whether the program is worth entering. This one-size-fits-all penalty structure, which applies regardless of the taxpayer’s specific circumstances, is inappropriate. The 75 percent fraud penalty can be devastating, and for many taxpayers, the penalty is too severe to make participation in the program attractive.

The 2018 changes are significant departures from the prior VDP, and these new procedures and requirements are burdensome, which negatively impacts the program from the perspective of taxpayers and practitioners.<sup>38</sup> As the targeted OVDPs addressed a specific type of conduct, a one-size-fits-all penalty structure was arguably appropriate. However, that may not necessarily be the case in VDP. To encourage voluntary compliance, the IRS should review the current VDP, determine whether the penalty structure is deterring participation in the VDP, and reconsider the 75 percent civil fraud penalty with the goal of encouraging noncompliant taxpayers to enter the program without discouraging compliant taxpayers from maintaining their compliance.

34 See IRM 4.63.3.26.1(6), Voluntary Disclosure Practice Requirements (Apr. 27, 2021), [https://www.irs.gov/irm/part4/irm\\_04-063-003r](https://www.irs.gov/irm/part4/irm_04-063-003r).  
 35 IRM 9.5.11.9(4), Voluntary Disclosure Practice (Sept. 17, 2020), [https://www.irs.gov/irm/part9/irm\\_09-005-011](https://www.irs.gov/irm/part9/irm_09-005-011).  
 36 See IRS, LB&I-09-1118-014, Memorandum For Division Commissioners Chief, Criminal Investigation, (Nov. 20, 2018), reprinted at *IRS Updates Voluntary Disclosure Practice*, TAX NOTES (Nov. 20, 2018), <https://www.taxnotes.com/research/federal/other-documents/other-irs-documents/irs-updates-voluntary-disclosure-practice/28mz1>; IRM 9.5.11.9.1(1), Voluntary Disclosure Practice (Feb. 6, 2024), [https://www.irs.gov/irm/part9/irm\\_09-005-011](https://www.irs.gov/irm/part9/irm_09-005-011); IRS, Instructions for Form 14457, Voluntary Disclosure Practice Preclearance Request and Application (Nov. 2024), <https://www.irs.gov/pub/irs-pdf/f14457.pdf>.  
 37 See IRM 4.63.3.26.2, Penalty Framework (Apr. 27, 2021), [https://www.irs.gov/irm/part4/irm\\_04-063-003r](https://www.irs.gov/irm/part4/irm_04-063-003r).  
 38 Conversations with outside stakeholders (Aug. 22 and 28, 2024).

### ***The Addition of a New Checkbox on the Voluntary Disclosure Practice Form Has Taxpayers Concerned Their Application Could Result in Criminal Culpability If the IRS Does Not Accept Them Into the Program***

Changes to Form 14457 requirements only served to make the VDP even more formal and burdensome and less attractive to taxpayers, causing the program to lose much of its effectiveness.<sup>39</sup> One of the most controversial changes is the addition of the new “willfulness checkbox” on Form 14457. Since June 2024, taxpayers must explicitly admit under penalty of perjury that they were willful in their actions that led to their noncompliance. Taxpayers and practitioners describe this requirement as a game-changer for the program as they are concerned about the legal implications of making such an admission before the IRS accepts them into the program.<sup>40</sup>

The IRS issued the first revision to Form 14457 used in the current VDP program in March 2019.<sup>41</sup> It has revised the form several times since (most recently in March, June, September, and November 2024), added FAQs in March 2024, and updated its VDP website most recently in November 2024.<sup>42</sup> Although the IRS made some significant changes to Form 14457, it made them quietly without public announcement, leaving many practitioners and taxpayers unaware.<sup>43</sup> This lack of transparency has created confusion and frustration and caused many taxpayers and practitioners to navigate a more complex and burdensome process without proper guidance. The IRS’s decision not to publicize the changes is concerning and impacts the taxpayer *right to be informed*.<sup>44</sup> More disturbing, however, is the perception from taxpayers and practitioners that the IRS is applying the changes retroactively, thus “changing the rules” on taxpayers midstream who entered the program in good faith prior to the changes.<sup>45</sup>

The IRS steadfastly maintains that it has made “no changes” to the program since its inception in 2018, and accordingly, it is not applying anything retroactively.<sup>46</sup> However, the IRS cannot dispute that it made revisions to Form 14457.<sup>47</sup> Taxpayers and practitioners perceive that the effects of these revisions are resulting in changes to the program, both in theory and practice.<sup>48</sup> Instead of encouraging taxpayers to come forward voluntarily, the changes have made it harder for noncompliant taxpayers to make a successful disclosure. The increased complexity, higher penalties, and fear of criminal prosecution have created a deterrent effect, undermining the VDP’s goal of encouraging compliance and reducing the tax gap.

39 Conversations with outside stakeholders (Aug. 22 and 28, 2024). See discussions on changes, *infra*.

40 Conversations with outside stakeholders (Aug. 22 and 28, 2024).

41 IRS response to TAS information request (Oct. 15, 2024).

42 See IRS, IRS Criminal Investigation Voluntary Disclosure Practice, <https://www.irs.gov/compliance/criminal-investigation/irs-criminal-investigation-voluntary-disclosure-practice> (Nov. 7, 2024); IRS, Instructions for Form 14457, Voluntary Disclosure Practice Preclearance Request and Application (Nov. 2024), <https://www.irs.gov/pub/irs-pdf/f14457.pdf>.

43 Andrew Velarde, *Voluntary Disclosure Form Changes Could Threaten Practice*, TAX NOTES (Sept. 3, 2024), <https://www.taxnotes.com/tax-notes-today-federal/penalties/voluntary-disclosure-form-changes-could-threaten-practice/2024/09/03/715q9>.

44 See Taxpayer Bill of Rights (TBOR), <https://www.taxpayeradvocate.irs.gov/taxpayer-rights> (last visited Sept. 4, 2024). The rights contained in TBOR are also codified in IRC § 7803(a)(3).

45 Practitioners have cited instances where they believe that the IRS is applying the changes it made to the Form 14457 retroactively to taxpayers who had already received preliminary acceptance letters and has threatened to revoke the preliminary acceptance if taxpayers do not comply with the new requirements, including admitting willfulness and making full payment. Conversations with outside stakeholders (Aug. 22 and 28, 2024). See also Andrew Velarde, *Voluntary Disclosure Form Changes Could Threaten Practice*, TAX NOTES (Sept. 3, 2024), <https://www.taxnotes.com/tax-notes-today-federal/penalties/voluntary-disclosure-form-changes-could-threaten-practice/2024/09/03/715q9>.

46 IRS response to TAS information request (Oct. 15, 2024).

47 See Andrew Velarde, *Voluntary Disclosure Form Changes Could Threaten Practice*, TAX NOTES (Sept. 3, 2024), <https://www.taxnotes.com/tax-notes-today-federal/penalties/voluntary-disclosure-form-changes-could-threaten-practice/2024/09/03/715q9> (stating that “[t]he IRS told Tax Notes that the changes were made to address several issues the agency was seeing once taxpayers were approved to enter the VDP”).

48 Conversations with outside stakeholders (Aug. 22 and 28, 2024).

According to taxpayers and practitioners, the most significant change to the VDP process is requiring taxpayers to affirmatively confess to willfulness. Previously, the IRS only required the taxpayer to make a statement of facts surrounding their noncompliance.<sup>49</sup> However, in June 2024, the IRS added a checkbox requirement regarding willfulness. Taxpayers must now explicitly admit “I was willful in the actions that led to my tax noncompliance and understand that willfulness is a requirement to be considered for entry into the VDP.”<sup>50</sup> Taxpayers must make this admission “under penalties of perjury” before the IRS even preliminarily accepts them into the VDP. If they fail to check the box, the IRS will automatically deny acceptance into the VDP without appeal or reinstatement.<sup>51</sup>

While taxpayers and practitioners see this willfulness admission as a game-changer, the IRS maintains that this is not a change at all. Rather, the IRS states that willfulness has always been a requirement for participation in the VDP.<sup>52</sup> The IRS does not define willful on Form 14457 and provides no assurances or expectations that it will accept the taxpayer into the program if they admit willfulness. However, the IRS added an FAQ to its website in March 2024 that states: “Willfulness is not simply making a mistake. It is the intentional, purposeful, deliberate act to hide income or assets and therefore evade filing requirements or payment of tax.”<sup>53</sup> According to the IRS, VDP is a compliance option only for those taxpayers “who have willfully failed to comply with tax or tax-related obligations or committed tax or tax-related crimes and have criminal exposure due to their willful violation of the law.”<sup>54</sup> Therefore, the IRS says if the violation of the law was not willful, taxpayers should not be in the VDP.<sup>55</sup>

While the IRS maintains that it has always required admission of willfulness for entry into the VDP, taxpayers and practitioners are understandably wary of the implications of this new requirement to check the box. Taxpayers question if they are admitting to a civil or criminal standard of willfulness and if criminal, whether the IRS will use this admission against them in a potential criminal prosecution if it does not approve them for the program or it subsequently revokes their preliminary acceptance. Taxpayers also question the purpose of the admission if they are willing to come into compliance by voluntarily disclosing their potentially criminal noncompliance, filing their returns, and paying the liability. Should this not be the IRS’s overall goal with the VDP – to bring taxpayers into the system, reduce the tax gap, and encourage voluntary compliance?

TAS asked the IRS these questions, but the IRS’s responses probably will not quell the concerns of taxpayers and practitioners. TAS pointedly asked the IRS: “Does the IRS consider the willfulness standard to which taxpayers are required to admit [the] civil or criminal [standard]?” The IRS responded: “Intentional, purposeful, and or deliberate actions taken by the taxpayer that result in noncompliance are considered.”<sup>56</sup> This vague non-answer may only serve to reinforce taxpayer concerns regarding this affirmative admission. While the IRS did not clarify the nature of the willfulness standard of the required admission, it did confirm that it does use the taxpayer’s admission.<sup>57</sup> Specifically, the IRS stated that CI uses it to determine a taxpayer’s

49 See, e.g. prior Form 14457 (April 2020), Voluntary Disclosure Request Preclearance Request and Application, Part II - Voluntary Disclosure, 7.c. This remained unchanged in subsequent revisions in February 2022 and March 2024. While the *Non-Compliance Narrative* section stated: “The noncompliance narrative must include a thorough discussion of all Title 26 and Title 31 willful failures to report income, pay tax, and submit all required information returns and reports,” there was no requirement to affirmatively admit to willfulness.

50 See IRS, Form 14457, Voluntary Disclosure Practice Preclearance Request and Application (Nov. 2024), <https://www.irs.gov/pub/irs-pdf/f14457.pdf>. While the IRS added the willfulness box in June 2024, it has revised the form twice since then and retains the willfulness box as a requirement.

51 See *id.*

52 “Taxpayers have always been required to include in the narrative portion of Part II of Form 14457 an admission of their willful conduct.” IRS response to TAS information request (Oct. 15, 2024).

53 See IRS, IRS Criminal Investigation Voluntary Disclosure Practice, FAQ How Do I Know if I Was Willful in Not Complying With the Tax Laws? (added Mar. 20, 2024), <https://www.irs.gov/compliance/criminal-investigation/irs-criminal-investigation-voluntary-disclosure-practice>.

54 IRS response to TAS information request (Oct. 15, 2024).

55 *Id.*

56 *Id.*

57 *Id.*

eligibility for VDP, and the IRS's civil section uses the affirmation in developing civil fraud and the willful FBAR penalty.<sup>58</sup> By affirming willfulness, taxpayers risk self-incriminating themselves, especially if the IRS decides to deny participation or revokes preliminary acceptance. Further, if it revokes a taxpayer's preliminary acceptance, "the taxpayer remains under examination and the affirmation stays in the examination case file as direct evidence of willful conduct."<sup>59</sup> Thus, it appears that the IRS does use this affirmation against taxpayers, and by making this affirmative admission of willfulness, taxpayers greatly simplify the IRS's development of a fraud case against them.<sup>60</sup>

The IRS asserts that it is not applying any program changes "retroactively" because it has not made any program changes. However, practitioners report that the IRS is applying this willfulness admission requirement retroactively and requiring the statement from taxpayers who were already in the VDP prior to the changes to Form 14457.<sup>61</sup> The IRS is reportedly threatening taxpayers who are rightly balking at what they perceive to be a new program requirement with having their preliminary acceptance revoked (*i.e.*, removal from the VDP).<sup>62</sup> It is not unreasonable for taxpayers to believe that in determining a taxpayer's intent, a trier of fact in a criminal proceeding may likely attach more weight to the taxpayer's affirmative admission of willfulness as evidenced by the checkbox compared to a response to a willfulness instruction on a narrative box buried on later pages of Form 14457. Requiring taxpayers to make an admission that could have serious legal implications without knowing the potential consequences is unfair, will certainly curtail the number of people willing to enter the VDP, and therefore is defeating the purpose of encouraging voluntary compliance.<sup>63</sup> In fact, practitioners have expressed their concerns that it may be borderline malpractice to recommend that their clients make this admission.<sup>64</sup> In light of this new requirement, many practitioners have expressed that they are less likely to recommend the VDP to clients as the changes add complexity and intimidation to the process. These changes have the opposite effect of compliance as it discourages taxpayers to comply and creates a situation where they are unsure whether coming forward is worth the potential consequences.<sup>65</sup>

The willfulness admission may also have implications on penalty deviation. Prior to the 2018 changes to the VDP, there was no specific penalty structure. Under the 2018 changes, although there was a defined structure, taxpayers could request a deviation from it.<sup>66</sup> While this applied only in "exceptional" cases according to a

58 IRS response to TAS information request (Oct. 15, 2024).

59 *Id.*

60 The IRS bears the burden of proving fraud against a taxpayer. IRC § 7454(a). If a taxpayer affirmatively admits that their tax noncompliance was willful, the IRS's burden is clearly much more easily met. As noted, since the affirmation remains in the file, it appears that the IRS could potentially use this admission in a criminal case if it revoked the taxpayer's preliminary acceptance. Fraud has other implications besides the application of the 75 percent civil fraud penalty – it serves to keep the statute of limitations on assessment of tax open indefinitely. See IRC § 6501(c)(1), (2).

61 Conversations with outside stakeholders (Aug. 22 and 28, 2024).

62 *Id.* See also Andrew Velarde, *Voluntary Disclosure Form Changes Could Threaten Practice*, TAX NOTES (Sept. 3, 2024), <https://www.taxnotes.com/tax-notes-today-federal/penalties/voluntary-disclosure-form-changes-could-threaten-practice/2024/09/03/715g9> (quoting a practitioner who notes "many tax professionals discovered the willfulness change only after they had submitted a prior version of the form and were contacted during processing by an IRS employee asking for an admission of willfulness under threat of being removed from the VDP" and calling the process a "bait and switch").

63 See Andrew Velarde, *Voluntary Disclosure Form Changes Could Threaten Practice*, TAX NOTES (Sept. 3, 2024), <https://www.taxnotes.com/tax-notes-today-federal/penalties/voluntary-disclosure-form-changes-could-threaten-practice/2024/09/03/715g9> (quoting a practitioner who notes that "[p]eople who were willful and have a fear of criminal prosecution are going to not want to come in because if there's a risk that they don't get accepted into the program, but they've checked the box that they're willful now, they're between a rock and a hard place").

64 Conversations with outside stakeholders (Aug. 22 and 28, 2024).

65 *Id.*

66 For example, taxpayers could request application of the IRC § 6662 accuracy-related penalty rather than the IRC § 6663 fraud penalty. IRS, LB&I-09-1118-014, Memorandum For Division Commissioners Chief, Criminal Investigation, (Nov. 20, 2018), reprinted at *IRS Updates Voluntary Disclosure Practice*, TAX NOTES (Nov. 20, 2018), <https://www.taxnotes.com/research/federal/other-documents/other-irs-documents/irs-updates-voluntary-disclosure-practice/28mzl>.

prior IRS official, it did occur.<sup>67</sup> However, the new affirmative willfulness admission requirement appears to preclude the possibility of penalty deviation altogether. If taxpayers admit that they willfully failed to comply with the tax laws, it seems unlikely that they can then establish that their noncompliance was not willful for purposes of obtaining a lesser penalty.

The change also now leaves no gray area with respect to culpability. Taxpayers whose noncompliance was arguably negligent as opposed to criminal or who had justifiable defenses regarding their noncompliance arguably could enter the VDP in the past.<sup>68</sup> Now, however, if they do not admit that their noncompliance was willful, they cannot participate. Although taxpayers with offshore noncompliance issues have other options,<sup>69</sup> domestic taxpayers do not – they can either file their original or amended returns with the hope that the IRS does not examine them or do nothing and hope the IRS does not catch them. This results in disparate treatment for taxpayers with domestic noncompliance issues and taxpayers who were not willful being liable for far greater penalties than those who were actually criminal.<sup>70</sup> Thus, for VDP purposes, it appears that crime does pay as bad actors have a chance of getting a much better deal than less culpable taxpayers.

Not surprisingly, the IRS's new requirement that VDP applicants explicitly admit willfulness has already had a chilling effect on practitioners' perceptions of the VDP, eroded the program's goals, and discouraged voluntary compliance.<sup>71</sup> The IRS should revise Form 14457 to remove the willfulness checkbox requirement for VDP.

### ***Payment Inflexibility May Mean Fewer Taxpayers Can Afford to Participate in the Voluntary Disclosure Practice***

Another significant concern raised by practitioners is the full payment requirement.<sup>72</sup> Again, the IRS insists that this is not a change; the VDP always required taxpayers to fully pay the amount of tax, interest, and penalties the IRS determined due.<sup>73</sup> While the IRS has always expected taxpayers coming into the VDP to pay their liabilities in full, it acknowledged in the past that some taxpayers making voluntary disclosures

67 IRS, LB&I-09-1118-014, Memorandum For Division Commissioners Chief, Criminal Investigation, (Nov. 20, 2018), reprinted at *IRS Updates Voluntary Disclosure Practice*, TAX NOTES (Nov. 20, 2018), <https://www.taxnotes.com/research/federal/other-documents/other-irs-documents/irs-updates-voluntary-disclosure-practice/28mzl>. See also Andrew Velarde, *Voluntary Disclosure Form Changes Could Threaten Practice*, TAX NOTES (Sept. 3, 2024), <https://www.taxnotes.com/tax-notes-today-federal/penalties/voluntary-disclosure-form-changes-could-threaten-practice/2024/09/03/715g9> (wherein the former IRS official noted that they approved “several nonwillful no-fraud penalties during [the individual's] time at the agency”). While TAS requested the number of penalty deviations that the IRS granted, the IRS does not track the requests and recommendations for penalty deviations. IRS response to TAS information request (Oct. 15, 2024); IRS response to fact check (Nov. 21, 2024).

68 According to the IRS, VDP has always been only for taxpayers whose actions were criminal or who were willful in not complying with their obligations. IRS response to TAS information request (Oct. 15, 2024). Practitioners, however, report that taxpayers in this “gray” area previously participated in the program. Conversations with outside stakeholders (Aug. 22 and 28, 2024).

69 See, e.g., IRS, Delinquent FBAR Submission Procedures (Aug. 22, 2024), <https://www.irs.gov/individuals/international-taxpayers/delinquent-fbar-submission-procedures> (last visited Dec. 17, 2024); IRS Delinquent International Information Return Submission Procedures (Nov. 25, 2024), <https://www.irs.gov/individuals/international-taxpayers/delinquent-international-information-return-submission-procedures> (last visited Dec. 17, 2024); IRS, Streamlined Filing Compliance Procedures (July 9, 2024), <https://www.irs.gov/individuals/international-taxpayers/streamlined-filing-compliance-procedures> (last visited Sept. 21, 2024). See also Andrew Velarde, *Voluntary Disclosure Form Changes Could Threaten Practice*, TAX NOTES (Sept. 3, 2024), <https://www.taxnotes.com/tax-notes-today-federal/penalties/voluntary-disclosure-form-changes-could-threaten-practice/2024/09/03/715g9>.

70 For example, in the situation of a non-filer, the taxpayer will be liable for one civil fraud penalty at 75 percent for the highest tax year through VDP, in lieu of potential 20 percent accuracy-related penalties (IRC § 6662) each tax year and failure-to-file and failure-to-pay penalties totaling up to a combined 47.5 percent per tax year (IRC § 6651(a)(1) and (a)(2)) if they file delinquent returns outside of VDP. Depending on the amounts involved in the noncompliance, the financial implications of this can be staggering. Practitioners note that this lack of a viable alternative for taxpayers who wanted to resolve past tax noncompliance but whose noncompliance might not have risen to the criminal standard led them to VDP. However, the new willfulness admission requirement will most likely prevent these individuals from coming in now. See Andrew Velarde, *Voluntary Disclosure Form Changes Could Threaten Practice*, TAX NOTES (Sept. 3, 2024), <https://www.taxnotes.com/tax-notes-today-federal/penalties/voluntary-disclosure-form-changes-could-threaten-practice/2024/09/03/715g9>.

71 Conversations with outside stakeholders (Aug. 22 and 28, 2024).

72 *Id.* See also Andrew Velarde, *Voluntary Disclosure Form Changes Could Threaten Practice*, TAX NOTES (Sept. 3, 2024), <https://www.taxnotes.com/tax-notes-today-federal/penalties/voluntary-disclosure-form-changes-could-threaten-practice/2024/09/03/715g9>.

73 IRS response to TAS information request (Oct. 15, 2024).



would not have the ability to do so.<sup>74</sup> While the inability to fully pay was not fatal, the IRS noted that it was important for taxpayers to raise that issue early in the process.<sup>75</sup> Form 14457 reflects that taxpayers agreed to make “good faith arrangements to pay” all taxes, interest, and penalties. Consistent with this, in 2022, the IRS revised Form 14457 to include a checkbox for “Inability to pay in full” and instructions that specifically addressed the inability to pay in full.<sup>76</sup> While the June 2024 revision to Form 14457 still has the checkbox, the IRS deleted the “good faith” language from the signature section; and the IRS’s new FAQs state taxpayers must either pay in full or secure a full-pay installment agreement.<sup>77</sup> Further, practitioners report that the IRS is also applying this full pay requirement retroactively and threatening taxpayers who came into the program prior to the change to the payment language with removal if they cannot pay in full.<sup>78</sup>

As with willfulness, there appears to be a disconnect between the IRS and taxpayers and tax practitioners regarding the requirements of the VDP. The IRS claims that the “inability to pay” means an inability to fully pay by the time that it completes the examination and that “full payment or an alternative full payment arrangement is required to close the case inside VDP with a Form 906 Closing Agreement.”<sup>79</sup> If taxpayers cannot pay in full and cannot reach an alternative full payment arrangement, the IRS revokes the taxpayer’s preliminary acceptance and closes the examination under standard examination procedures without consideration of the VDP settlement terms.<sup>80</sup> So, in the absence of full payment, taxpayers cannot benefit from the VDP’s limited scope (*i.e.*, disclosure period) or penalty structure. The IRS can expand the examination to all noncompliance years and assert the 75 percent fraud penalty against taxpayers for all years of noncompliance.<sup>81</sup> The rationale behind this is unclear. If taxpayers are unable to pay the amount due under the VDP limited scope, how can they possibly pay even more? And how does this benefit tax administration if the IRS must invest more time and resources where it has already determined that it cannot collect? Would it not make more sense for the IRS to accept what the taxpayer can pay and get the taxpayer back into compliance for the future?

Whether or not this reflects a change, the full pay requirement gives the perception that the VDP is only for the wealthy or those that can afford it.<sup>82</sup> Is this really a perception that the IRS wants to project? This policy serves to exclude taxpayers who want to come forward and resolve their tax noncompliance but are unable to fully pay their liability. This is not a policy that leads to voluntary compliance. Taxpayers outside of VDP have payment alternatives including partial payment installment agreements and offers in compromise.<sup>83</sup> Both of these programs acknowledge the reality that some taxpayers cannot pay their liabilities in full. While the IRS

74 See Andrew Velarde, *IRS Offers Insights on Voluntary Disclosure Cooperation*, TAX NOTES (Nov. 22, 2021), <https://www.taxnotes.com/taxpractice/penalties/irs-offers-insights-voluntary-disclosure-cooperation/2021/11/22/7cmbx>. This is especially true with respect to unpaid employment tax liabilities.

75 See Andrew Velarde, *IRS Offers Insights on Voluntary Disclosure Cooperation*, TAX NOTES (Nov. 22, 2021), <https://www.taxnotes.com/taxpractice/penalties/irs-offers-insights-voluntary-disclosure-cooperation/2021/11/22/7cmbx>; Nathan J. Richman, *IRS Updates Electronic Disclosure Form With Electronic Bent*, TAX NOTES (Feb. 21, 2022), <https://www.taxnotes.com/taxpractice/criminal-violations/irs-updates-voluntary-disclosure-form-electronic-bent/2022/02/21/7d6c8>.

76 See IRS, Instructions for Form 14457, Voluntary Disclosure Request Preclearance Request and Application 12 (Feb. 2022) (“A taxpayer who is unable to make full payment may request that the IRS consider other payment arrangements. . . . If the IRS determines that the inability to fully pay is genuine, the taxpayer must work out other financial arrangements, acceptable to the IRS, to resolve all outstanding liabilities. Additionally, any closing agreement resolving cases with less than [sic] full payment will require the waiver of collection due process rights.”).

77 IRS, *IRS Criminal Investigation Voluntary Disclosure Practice*, <https://www.irs.gov/compliance/criminal-investigation/irs-criminal-investigation-voluntary-disclosure-practice> (Nov. 7, 2024).

78 Conversations with outside stakeholders (Aug. 21, 22, and 28, 2024). See also Andrew Velarde, *Voluntary Disclosure Form Changes Could Threaten Practice*, TAX NOTES (Sept. 3, 2024), <https://www.taxnotes.com/tax-notes-today-federal/penalties/voluntary-disclosure-form-changes-could-threaten-practice/2024/09/03/715g9>.

79 IRS response to TAS information request (Oct. 15, 2024).

80 *Id.*

81 Outside of the VDP, the IRS could potentially also refer taxpayers for criminal prosecution.

82 Conversations with outside stakeholders (Aug. 22 and 28, 2024).

83 See IRS, Offer in Compromise, <https://www.irs.gov/payments/offer-in-compromise> (last updated Dec. 5, 2024); IRS, Additional Information on Payment Plans, <https://www.irs.gov/payments/payment-plans-installment-agreements> (last updated Nov. 12, 2024).

should continue to highly encourage full payment of all liabilities determined through VDP, it should also allow taxpayers to enter other non-full payment arrangements if they establish they cannot full pay all tax, penalties, and interest that the IRS determines is due.

To restore the effectiveness of the VDP and encourage voluntary compliance, the IRS should:

- Reevaluate the 75 percent civil penalty to determine if it is deterring participation and explore more flexible, case-by-case approaches to encourage more taxpayers to come forward;
- Remove the willfulness checkbox requirement or at least clarify its meaning and implications, ensuring it does not force taxpayers to make an admission that could have serious legal consequences;
- Increase transparency around any future changes to the VDP and its procedures, ensuring that taxpayers are well informed and can trust the process; and
- Consider more flexible payment options to make the program accessible to a wider range of taxpayers, particularly those who may not have the financial means to pay their full tax liability.

By addressing these issues, the IRS could make the VDP a more attractive and effective tool for encouraging tax compliance, ultimately reducing the tax gap.

### ***Extensive Collection of Information About Digital Asset Transactions Is Burdensome***

One additional notable change to the VDP procedures is the cryptocurrency reporting requirements. Part I, Line 13 of the updated Form 14457 requires taxpayers to provide significantly more information regarding digital assets than before.<sup>84</sup> The new requirements extend to transactions involving cryptocurrencies, stablecoins, and other digital assets, requiring taxpayers to report a far greater scope of activity than previously required. In addition to associated accounts or wallets, the IRS now requires “ALL domestic and foreign digital asset transactions related to tax noncompliance that you owned or controlled or were the beneficial owner of, either directly or indirectly” for the entire disclosure period.<sup>85</sup> The requirement to disclose every asset transaction and account associated with noncompliance for several years could amount to a huge volume of information that may take months to obtain and assemble.<sup>86</sup> Gathering this information, especially for taxpayers with extensive or complex cryptocurrency holdings, could be incredibly burdensome. The IRS requires this information prior to preclearance and acceptance into the program, which concerns taxpayers.<sup>87</sup> Providing such an extensive amount of potentially incriminating information at this stage will no doubt discourage taxpayers from coming into the VDP.<sup>88</sup> These changes, the harsh penalty structure, willfulness checkbox requirement, and rigid payment terms are significant deterrents.

The time this extensive information requires to gather could create delays in the VDP approval process, further discouraging taxpayers from coming forward. In some cases, taxpayers may decide that the process is too cumbersome and choose to stay out of the VDP altogether, which could lead to a greater exposure to

84 The IRS began requiring taxpayers to list virtual currency on the February 2022 revision to Form 14457. See, e.g. prior Form 14457, Voluntary Disclosure Practice Preclearance Request and Application (Feb. 2022).

85 IRS, Form 14457, Voluntary Disclosure Practice Preclearance Request and Application (Nov. 2024), <https://www.irs.gov/pub/irs-pdf/f14457.pdf>. Part 1, Line 13 of the form also requires taxpayers to list “all aliases, usernames, monikers, mobile phone numbers, and email accounts used by you (and your spouse if a joint disclosure) to facilitate acquisition or disposition or any tax noncompliant digital assets” and “assets held through entities you owned or controlled, or were the beneficial owner of, either directly or indirectly.”

86 Conversations with stakeholders (Aug. 22 and 28, 2024); see also Nathan J. Richman, *Voluntary Disclosure Tweaks May Chase Away Taxpayers With Crypto*, TAX NOTES (Sept. 23, 2024), <https://www.taxnotes.com/tax-notes-today-federal/criminal-violations/voluntary-disclosure-tweaks-may-chase-away-taxpayers-crypto/2024/09/23/7lmht>.

87 See Nathan J. Richman, *Voluntary Disclosure Tweaks May Chase Away Taxpayers With Crypto*, TAX NOTES (Sept. 23, 2024), <https://www.taxnotes.com/tax-notes-today-federal/criminal-violations/voluntary-disclosure-tweaks-may-chase-away-taxpayers-crypto/2024/09/23/7lmht>.

88 See *id.* (quoting one practitioner explaining “[t]he prospect that a taxpayer could disclose that data, be denied preclearance, and then have investigators use all that information could change the calculus for tax professionals considering recommending the program, let alone potential applicants”).

penalties and criminal prosecution. As the heavy burden of documenting cryptocurrency transactions may be discouraging taxpayers from entering the VDP, the IRS should consider a streamlined process for disclosing digital asset transactions and simplify the reporting requirements.

### The IRS’s Current Voluntary Disclosure Practice Is Not Effectively Encouraging Voluntary Compliance and Therefore Fails to Effectively Reduce the Tax Gap

The goal of voluntary disclosure programs should be to bring noncompliant taxpayers into compliance both currently and in the future. Many noncompliant taxpayers are ones that the IRS would likely never find on its own – they include taxpayers that have failed to file returns and are not in the “system” so they are not easy to identify. Alternatively, the IRS may be aware of these taxpayers but does not have the resources to pursue them. By bringing these taxpayers into compliance, the IRS not only helps taxpayers resolve their tax issues, it also collects past due taxes and gets these taxpayers back into the system, thus increasing the chance that they will comply with their tax obligations in the future. This directly promotes voluntary compliance and contributes to reducing the tax gap.

The statistics from prior OVDPs reflect the success of voluntary disclosure programs and their contribution to reducing the tax gap. From fiscal years (FYs) 2009-2018 (*i.e.*, the period from October 1, 2008, through September 30, 2018), the IRS preliminarily accepted 51,231 taxpayers into the OVDPs.<sup>89</sup> As Figure 2.10.3 shows, the IRS has collected more than \$12.4 billion dollars as of June 28, 2024, through the 2009, 2011, 2012, and 2014 OVDPs.<sup>90</sup>

**FIGURE 2.10.3, Total Dollars Collected for 2009, 2011, 2012, and 2014 OVDPs**

OVDP	Dollars Collected
2009 OVDP	\$4,172,380,918
2011 OVDP	\$2,512,681,467
2012 OVDP	\$3,689,453,141
2014 OVDP	\$2,033,114,224
<b>Total Dollars Collected</b>	<b>\$12,407,629,750</b>

There is obviously potential for increased compliance and additional taxes collected through voluntary disclosure. The value of voluntary disclosure programs is reflected by the fact that practically every state has one.<sup>91</sup> While the OVDPs targeted specifically identified areas of noncompliance and therefore cannot be directly compared to the current VDP, the current VDP does not appear to be heading in the same direction. From FY 2019, the start of the current VDP, through FY 2024 (*i.e.*, the period from October 1, 2018, through September 30, 2024), only 1,626 taxpayers applied for the VDP, and the IRS preliminarily accepted only 1,188 of those taxpayers into the VDP.<sup>92</sup> And as of August 31, 2024, only 161 VDP cases have been completed since the beginning of the current program on September 28, 2018.<sup>93</sup> It is unknown how much the IRS has collected from these VDP participants since it does not keep records of the amount it has collected.<sup>94</sup> Further, the IRS has not conducted any studies on the effect any of the OVDP or VDP programs have had on

89 IRS response to TAS information request (Oct. 15, 2024). The 2014 OVDP closed on September 28, 2018, which was the last business day of FY 2018. The IRS included all voluntary disclosures it received after that date in the current VDP.

90 IRS response to TAS information request (Oct. 15, 2024).

91 See Timothy P. Noonan, K. Craig Reilly and Brandon J. Bourg, *Charting the Course for Multistate Voluntary Disclosures*, TAX NOTES (Sept. 18, 2023), <https://www.taxnotes.com/special-reports/compliance/charting-course-multistate-voluntary-disclosures/2023/09/14/7h8gq>.

92 IRS response to TAS information request (Oct. 15, 2024).

93 *Id.*

94 *Id.*

compliance.<sup>95</sup> While the IRS’s goal through the VDP is “for taxpayers with criminal exposure to come forward voluntarily to resolve past noncompliance and remain in compliance with future tax obligations,” aside from verifying current compliance during the examination, the IRS does not follow up on compliance after taxpayers complete the program.<sup>96</sup>

The National Taxpayer Advocate believes the IRS designed its new onerous requirements in the VDP for the truly bad actors, who are not the type of taxpayers who would even consider coming into the program. The IRS needs to design a program for taxpayers who have seen the error of their ways and see the benefits of coming clean. These are the taxpayers we want to encourage to do the right thing, pay their past tax liabilities, and be compliant going forward – in effect, give these taxpayers a second chance. Taxpayers who are aware of an underpayment on their tax return can avoid the imposition of an accuracy-related penalty by filing a QAR. If the taxpayer files a QAR, the IRS treats the amount of tax reported on the QAR as if it were reported on the original tax return. Thus, there is no underpayment for purposes of the accuracy-related penalty, but a QAR does not apply to civil or criminal fraud penalties.<sup>97</sup>

The IRS should consider other civil disclosure programs to encourage voluntary and future compliance for emerging issues such as digital assets where noncompliance may not rise to the level of criminal fraud.<sup>98</sup> As it stands, people who are unwilling to admit that their actions were criminal will not come into compliance. Should the goal not be to encourage voluntary compliance for all noncompliant taxpayers, not just the criminals?

## CONCLUSION AND RECOMMENDATIONS

Voluntary disclosure programs are critical tools for encouraging noncompliant taxpayers to voluntarily come forward and resolve their past noncompliance. The IRS’s VDP has significant potential to help close the tax gap, encourage future compliance, and bring additional revenue into the public fisc. However, as currently structured, the program has significant shortcomings that hinder its ability to encourage widespread voluntary compliance. The recent changes to the program – particularly those made in 2018 and 2024 – have made it more burdensome, reduced its attractiveness to many taxpayers, and caused many tax practitioners to hesitate to recommend it to their clients. While the IRS maintains that it has not made any changes to the VDP since 2018, and the changes to the IRM, forms, and website only clarify the practice, taxpayers and practitioners vehemently disagree. What is clear is that the changes from the traditional practice and the recent modifications to the forms and procedures are discouraging tax practitioners from recommending their clients enter the VDP. The changes to the eligibility criteria, the introduction of a 75 percent civil fraud penalty, the willfulness admission requirement, and increased documentation requirements have all contributed to decreased participation in the program.

With only 161 cases completed since the beginning of the current program on September 28, 2018, it is evident that the program in its current form is failing to achieve its intended goal of encouraging widespread voluntary compliance.<sup>99</sup> While it remains to be seen, based on initial comments from practitioners, it appears that fewer taxpayers will enter the current VDP due to the legal risk associated with the new disclosure

95 IRS response to TAS information request (Oct. 15, 2024).

96 *Id.*

97 A QAR is defined in Treas. Reg. Section 6664-2(c)(3).

98 Stakeholders also emphasize the need for programs to allow non-willful taxpayers to come into compliance. For example, the IRS Advisory Council highlights the need for “a streamlined compliance mechanism” to help taxpayers correct non-willful errors or omissions with respect to international information reporting requirements, emphasizing “[i]t is ... in both the IRS’s and taxpayers’ interests, for there to be options to resolve non-willful non-compliance.” IRS, Pub. 5316, Internal Revenue Service Advisory Council Public Report 155-156 (Nov. 2024), <https://www.irs.gov/pub/irs-pdf/p5316.pdf>.

99 IRS response to TAS information request (Oct. 15, 2024).

practice eligibility criteria changes.<sup>100</sup> This ultimately undermines the effectiveness of the program in reducing the tax gap and bringing taxpayers into compliance. VDP has tremendous possibility to be an effective program. It encourages voluntary compliance for taxpayers that the IRS might otherwise not find, conserves IRS resources, and helps close the tax gap. The IRS should also introduce mechanisms for tracking taxpayers' compliance after they have completed the VDP process. This would ensure that the program is contributing to long-term compliance, not just resolving past issues.

At a time when the tax gap is estimated at approximately \$696 billion, it is critical that the IRS reevaluate its approach to voluntary disclosures. While the VDP has the potential to be an effective mechanism for bringing noncompliant taxpayers into the system, the IRS needs to supplement it with other civil voluntary disclosure programs to ensure that it encourages all types of taxpayers – including those who are non-willful or negligent – to come forward without the fear of severe penalties. The IRS should work with stakeholders and not only focus on taxpayers who have committed criminal violations but also consider other voluntary disclosure programs that provide a fair path for those who may have made mistakes in evolving issues like cryptocurrency that may not rise to the level of criminal fraud. Reforming the program to reduce fear and provide a clear, fair pathway for compliance would better serve taxpayers and strengthen the overall tax system. By designing a more reasonable program, the IRS could better encourage noncompliant taxpayers to come forward and comply with the tax laws, thus reducing the tax gap and ensuring a fairer, more efficient tax system.

### Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Convene a working group with stakeholders to include tax practitioners, tax policy experts, and others to comprehensively review the current VDP and provide recommendations for reforming the program to make it more accessible and fair, and recommend narrowing the definition of illegal source income to the extent possible to encourage greater participation in the VDP and clarifying other terms such as non-willful.
2. Review the current VDP structure to determine whether the penalty structure is deterring participation in the VDP and reconsider the 75 percent civil fraud penalty with the goal of encouraging noncompliant taxpayers to enter the program without discouraging compliant taxpayers from remaining in compliance (similar to pre-2018 IRM 9.5.11.9, Voluntary Disclosure Practice).
3. Revise Form 14457 to eliminate the willfulness checkbox requirement for VDP.
4. Provide flexible payment options and allow taxpayers to enter alternative payment options, including partial payment installment agreements and offers in compromise, when they establish that they cannot full pay all tax, penalties, and interest.
5. Extend appeal rights to VDP participants who disagree with positions taken by the civil examination agent.
6. Evaluate shifting the internal ownership of the VDP after acceptance from CI to the Tax Compliance Office to ensure the program's administration focuses on compliance and taxpayer support rather than criminal enforcement.
7. Consider establishing other civil disclosure programs to encourage voluntary and future compliance for emerging issues such as digital assets where noncompliance may not rise to the level of criminal fraud.

100 Conversations with outside stakeholders (Aug. 21, 22, and 28, 2024). Attorneys for taxpayers expressed that it is more difficult than ever to recommend that a taxpayer enter the VDP with the new changes. See also Daniel N. Price, *Is the IRS Trying to Terminate the Voluntary Disclosure Practice?*, TAX NOTES (Nov. 19, 2024), <https://www.taxnotes.com/tax-notes-today-federal/criminal-violations/irs-trying-terminate-voluntary-disclosure-practice/2024/11/19/7n585> (stating “[t]he recent changes to the VDP threaten to effectively terminate the VDP”).



8. Begin collecting robust data on VDP participation to measure program effectiveness that includes at minimum the amount of money collected through the VDP.
9. Introduce mechanisms for tracking taxpayer compliance after taxpayers complete the VDP process to ensure that the program is contributing to long-term compliance.

### **RESPONSIBLE OFFICIALS**

Guy Ficco, Chief, Criminal Investigation Division

Heather Maloy, Chief Tax Compliance Officer

Lia Colbert, Commissioner, Small Business/Self-Employed Division

Holly Paz, Commissioner, Large Business and International Division