

Legislative Recommendation #39**Clarify the Taxpayer Advocate Service's Access to Files, Meetings, and Other Information****SUMMARY**

- *Problem:* The IRS has occasionally refused to provide the National Taxpayer Advocate with information she requires to do her job of advocating for taxpayers and prevented TAS employees from attending IRS conferences with taxpayers who have open TAS cases and have requested TAS attendance.
- *Solution:* Require the IRS to give the National Taxpayer Advocate and her staff access to all IRS information relevant to TAS's duties and require the IRS to allow TAS personnel to participate in taxpayer conferences when requested by taxpayers.

PRESENT LAW

IRC § 7803(c)(2) requires TAS to assist taxpayers in resolving problems with the IRS, identify areas in which taxpayers are experiencing problems in their dealings with the IRS, make administrative and legislative recommendations to mitigate those problems, and submit two reports to Congress each year. IRC § 6103 generally prohibits the disclosure of tax returns or return information, but IRC § 6103(h) provides that “returns and return information shall, without written request, be open to inspection by or disclosure to officers and employees of the Department of the Treasury whose official duties require such inspection or disclosure for tax administration purposes.”

TAS employees are authorized by IRC § 6103(h) to review tax return information because their statutory duties require this access. In furtherance of their duties, they may also need to attend meetings between taxpayers or their representatives and other IRS employees and obtain other information from the IRS. Similarly, the National Taxpayer Advocate requires information to analyze systemic problems and provide Congress with a “full and substantive analysis” of such problems in her annual reports to Congress, as required by IRC § 7803(c)(2)(B). However, the law does not expressly state that the National Taxpayer Advocate is authorized to access return information, attend meetings with IRS or Office of Chief Counsel employees, or obtain other information from the IRS or the Office of Chief Counsel.

REASONS FOR CHANGE

In general, the National Taxpayer Advocate has significant access to IRS systems and data.¹ However, the IRS has sometimes declined to provide TAS with access to (1) audit files of taxpayers with cases open in TAS; (2) meetings between the IRS and taxpayers with cases open in TAS, even when a taxpayer has requested TAS's attendance; (3) advice that the Office of Chief Counsel has provided to other business units; and (4) information required by the National Taxpayer Advocate to enable her to analyze systemic problems for

¹ Nina E. Olson, *Institutionalizing Advocacy: Some Reflections on the Taxpayer Advocate Service's Evolution as an Advocate for Taxpayers*, 18 PITT. TAX REV. 11, at 19 (2020) (“In House and Senate hearings, members of Congress struggled to come up with the right design, one that would balance the office's need to be inside the IRS so as to have immediate access to information and planning, with the unremitting pressure to conform to the IRS leadership's point of view.”), <https://taxreview.law.pitt.edu/ojs/taxreview/article/view/122/194>.

reports to Congress.² Lack of access undermines TAS's ability to fully advocate for taxpayers, both individually and collectively.

RECOMMENDATIONS

- Amend IRC § 7803(c) to clarify that for any cases open and pending in TAS, the National Taxpayer Advocate (and authorized TAS employees) are authorized to participate in meetings between taxpayers and employees of the IRS or the Office of Chief Counsel, at the taxpayer's request; and the National Taxpayer Advocate (and authorized TAS employees) shall have access to tax returns, return information, administrative files, and legal advice provided by the Office of Chief Counsel to any IRS employee.
- Amend IRC § 7803(c) to clarify that, in furtherance of her tax administrative duties, the National Taxpayer Advocate (and authorized TAS employees) shall have access to all data, statistical information, legal advice provided by the Office of Chief Counsel to any IRS employee, and documents necessary to perform a "full and substantive analysis" of the issues, as required by IRC § 7803(c)(2)(B).³

2 See, e.g., National Taxpayer Advocate 2018 Annual Report to Congress 42 (Most Serious Problem: *Transparency of the Office of Chief Counsel: Counsel Is Keeping More of Its Analysis Secret, Just When Taxpayers Need Guidance More Than Ever*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/07/ARC18_Volume1_MSP_02_TransparencyOCC.pdf; National Taxpayer Advocate 2016 Annual Report to Congress 34 (Special Focus: *Reinforce the National Taxpayer Advocate's Right of Access to Taxpayer and IRS Information and to Meetings Between the IRS and Taxpayers*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC16_Volume1_SpecialFocus.pdf.

3 This recommendation is not intended to create a waiver of privilege with respect to information the IRS may lawfully keep confidential. When TAS receives information from the IRS, it protects the information from disclosure if it is privileged. Under the Taxpayer First Act of 2019, the Secretary is now required to provide the National Taxpayer Advocate with "statistical support" for the Annual Report to Congress. Pub. L. No. 116-25, § 1301(b), 133 Stat. 981, 991 (2019). However, this requirement only encompasses statistical studies, compilations, and the review of information already obtained by TAS. It does not address TAS's broader need for access to information, including the right to review case files and attend taxpayer meetings. The Taxpayer Rights Act of 2015, H.R. 4128, 114th Cong. § 403 (2015) and S. 2333, 114th Cong. § 403 (2015), would have granted TAS access to case-related files and meetings, but it did not address TAS's need for access to information required to report on systemic issues.