

MSP
#10**COMPLEXITY: The IRS Has No Process to Ensure Front-Line Technical Experts Discuss Legislation with the Tax Writing Committees, as Requested by Congress****RESPONSIBLE OFFICIALS**

John A. Koskinen, Commissioner of Internal Revenue
Terry Lemons, Chief, Communications and Liaison

DEFINITION OF PROBLEM

Pursuant to the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98), the tax-writing committees in Congress should hear from “front-line technical experts” at the IRS with respect to the “administrability” of pending amendments to the tax code.¹ However, the IRS has not established a process to encourage such discussions. Congress is more likely to enact tax laws that are simpler, more taxpayer-focused, and easier for taxpayers to comply with and for the IRS to administer if it receives current and relevant information from front-line technical experts who communicate with taxpayers on a regular basis. If such information empowered Congress to write tax laws that were more fair and easier to understand and administer, it would also promote the taxpayer rights to a *fair and just tax system* and to *quality service*.² The IRS should seize the opportunity to implement RRA 98’s recommendation to help Congress write better laws.

ANALYSIS OF PROBLEM**Front-line Technical Experts at the IRS Are in a Good Position to Identify Ways to Improve Tax Administration.**

When developing recommendations to restructure and reform the IRS in 1997, the National Commission on Restructuring met privately with over 500 individuals, including senior-level and front-line IRS employees across the country.³ The Commission apparently felt that front-line employees were uniquely qualified to offer good suggestions about how to improve tax administration because they could see how the law affected taxpayers one at a time.⁴

1 RRA 98, Pub. L. No. 105-206, Title IV, § 4021, 112 Stat. 685, 785 (1998).

2 See IRS, *Publication 1, Your Rights as a Taxpayer* (2014).

3 The Report of the National Commission on Restructuring the Internal Revenue Service, *A Vision for a New IRS* 5 (June 25, 1997). The National Commission included bipartisan representatives from Congress, the IRS, Treasury, and major external stakeholder groups. *Id.*

4 Similarly, in his first four months on the job, the current IRS Commissioner visited 25 cities and met about 10,000 IRS employees because “leaders can learn a lot by talking with and listening to people on the front lines.” Email from IRS Commissioner to all IRS employees, *Listening to you in 25 cities and finding improvements* (Apr. 24, 2014); *IRS improvement recommendations* (Apr. 14, 2014). As a result of suggestions the Commissioner received from front-line employees, the IRS immediately initiated a wide range of reforms. *Id.*

Congress Asked to Hear from Front-line Technical Experts About How Pending Tax Legislation Could Be Simpler and Easier to Administer.

The bipartisan report of the National Commission on Restructuring the IRS recommended that: “Congress hear an uncensored view of the administrability of all tax legislative proposals from the IRS,” just as it had done in formulating its own recommendations.⁵ According to the House Report:

The Committee also believes that encouraging the participation of IRS personnel in drafting legislation will help to highlight administrative and complexity issues while legislation is being developed.⁶

Then-Representative Portman, a co-chairman of the Commission, further explained:

Despite claims of the Treasury Department to the contrary, *front-line* IRS employees consider the complexity of the Internal Revenue Code to be a major obstacle. The commission conducted a survey of almost 300 front-line IRS employees, and they overwhelmingly felt that the complexity of the Tax Code impedes their work... The commission proposes to give the IRS a voice in the legislative process. In a very real sense, the IRS will serve as an advocate for Tax Code simplicity.⁷

Congress refined the proposal and asked to hear directly from “front-line technical experts” at the IRS. Section 4021 of RRA 98 provides:⁸

It is the sense of the Congress that the Internal Revenue Service should provide Congress with an independent view of tax administration, and that during the legislative process, the tax writing committees of Congress should hear from front-line technical experts at the Internal Revenue Service with respect to the administrability of pending amendments to the Internal Revenue Code of 1986.

By discussing proposals with “front-line” employees who, by definition, regularly interact with taxpayers, Congress could get a sense of how proposals might affect such interactions. If the employees were also “technical experts,” they would be more likely to understand how changes to the law might affect these contacts and other IRS procedures.

In addition, if the IRS could facilitate more uncensored, unfiltered group discussions between members of Congress and their staffs and front-line technical experts in various areas of tax administration on an ongoing basis, Congress would gain a better foundational understanding of tax administration.⁹ Congress might also better understand the challenges facing employees charged with administering an almost impossibly complex tax code, and be less likely to vilify them. Thus, RRA 98 provided the IRS with an opportunity to open this important dialogue, which could help Congress draft better laws.

⁵ The Report of the National Commission on Restructuring the Internal Revenue Service, *A Vision for a New IRS* § 6 (June 25, 1997), <http://www.house.gov/natcommirs/report1.pdf>.

⁶ H.R. Rept. 105-364 at 86-67 (1997).

⁷ 105 Cong. Rec. E1605 (Aug. 1, 1997) (statement of Cong. Portman) (emphasis added). See also 105 Cong. Rec. S4187 (May 4, 1998) (statement of Sen. Johnson) (“front-line IRS technical experts should be heard during congressional consideration of tax legislation in an effort to avoid additional complexity to the Tax Code.”).

⁸ RRA 98, Pub. L. No. 105-206, Title IV, § 4021, 112 Stat. 685, 785 (1998).

⁹ The IRS Commissioner could still select the specific front-line technical experts to represent the IRS in discussing issues with members of Congress and their staff, just like the National Taxpayer Advocate selects Local Taxpayer Advocates who sometimes meet with them. See, e.g., Internal Revenue Manual (IRM) 13.1.8, *Congressional Affairs Program* (Feb. 27, 2012).

Such laws would probably be more fair or at least easier to understand and administer. If so, then establishing a process to facilitate discussions between Congress and front-line technical experts would also promote the taxpayer rights to a *fair and just tax system* and to *quality service*.¹⁰

The IRS Does Not Have a Process to Ensure Front-line Technical Experts Offer Comments on Pending Legislation or Communicate with Congress.

When legislation is crafted with smooth tax administration in mind, and is informed by discussions with the front-line employees who may have to explain it to taxpayers, it is likely to be simpler, less burdensome, more taxpayer-focused, and easier to administer.

Following enactment of RRA 98, the IRS did not implement section 4021.¹¹ When the IRS receives a request to comment on pending legislation, the Office of Legislative Affairs generally seeks the views of the business operating divisions (BODs).¹² It does not specifically seek the views of front-line technical experts.¹³ Nor does it ask to bring them before Congress or even identify them for Congress.

According to the IRS, Legislative Affairs “shares these requests with the appropriate [Business Operating Divisions] BOD(s) on a case-by-case basis. The BOD(s) will solicit comments from ‘front line technical experts’ as needed, again on a case-by-case basis.” The IRS could not identify any front-line technical expert(s) who had ever been consulted.¹⁴ Thus, the IRS has no process to ensure that front-line technical experts are consulted, given the opportunity to discuss the administrability of pending legislation with the tax-writing committees, or even identified for these committees or their staff either on a regular basis or in connection with specific pending legislation.

The IRS Could Simply Expand Existing Procedures to Ensure Congress Can Hear From Front-line Technical Experts.

When Legislative Affairs identifies pending tax legislation that Congress would like to discuss, it could simply ask the BODs to identify front-line technical experts who could address administrability issues, rather than waiting for Congress to ask to hear from them.¹⁵ Once Legislative Affairs identifies these experts, it could suggest that Congress convene a group discussion with them. Even if Congress declines such an offer, once the IRS identifies the front-line technical experts, Congress may be more likely to open a dialogue with them about tax administration. Such communications can be critically important. When legislation is crafted with smooth tax administration in mind, and is informed by discussions with

¹⁰ See IRS, *Publication 1, Your Rights as a Taxpayer* (2014).

¹¹ According to an IRS database that tracks the steps it takes to implement various provisions, the IRS’s only activity in response to RRA 98 § 4021 was to “[A]dvice JCT and Treasury that Legislative Affairs is the contact point” on December 28, 1998. IRS, *Enacted Law Report – Actions*, AT-2009-13387 (May 28, 2014). When asked about what other actions it took to implement this provision, the IRS did not identify any. IRS response to TAS information request (July 15, 2014).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* The IRS later clarified that it does not maintain a list of these communications and did not create one in response to TAS’s information request. IRS response to TAS information request (Nov. 20, 2014). It asserted that technical experts may be consulted and described a recent situation in which a legislative liaison solicited comments on pending legislation from a Revenue Officer Technical Advisor (RATA) in response to a request from Congress. *Id.* However, the response did not indicate that the RATA was a front-line employee. *Id.*

¹⁵ There would be no need to change the IRS’s existing policy of authorizing only certain employees to comment on legislation. See, e.g., IRM 11.5.2.5, *Legal and Policy Considerations* (Sept. 1, 2014) (“Comments on legislation may only be made with the approval of the Commissioner or designee, and must be limited to the administrative aspects of the legislation”); Policy Statement 11-87 (Formerly P-1-24) (Aug. 12, 1976). Currently, only the Director of Legislative Affairs has been delegated this authority. IRS response to TAS information request (July 15, 2014). This restriction is inapplicable to TAS, given its statutory mandate, and the Governmental Liaison function. IRM 11.5.2.5, *Legal and Policy Considerations* (Sept. 1, 2014).

the front-line employees who may have to explain it to taxpayers, it is likely to be simpler, less burdensome, more taxpayer-focused, and easier to administer.

CONCLUSION

If the IRS establishes a process by which it automatically identifies specific front-line technical experts who can discuss the administrability of pending (or existing) legislation directly with the tax-writing committees, then members of Congress and their staff are more likely to consult with these experts before finalizing legislation, and that legislation is likely to be simpler, easier for taxpayers to understand and for IRS employees to administer. Such laws would better effectuate the taxpayer rights to *a fair and just tax system* and *quality service*.¹⁶

RECOMMENDATION

The National Taxpayer Advocate recommends the IRS establish a process to automatically provide the tax writing committee staff with a list of specific front-line technical experts who can discuss the administrability of pending (or existing) legislation directly with the tax-writing committees, as provided by RRA 98, without waiting for a specific request from the tax-writing committees.

¹⁶ See IRS, *Publication 1, Your Rights as a Taxpayer* (2014).