

**MSP
#13****CORRESPONDENCE EXAMINATION: The IRS Has Overlooked the Congressional Mandate to Assign a Specific Employee to Correspondence Examination Cases, Thereby Harming Taxpayers****RESPONSIBLE OFFICIALS**

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DEFINITION OF PROBLEM

In 1998, Congress directed that the IRS develop a procedure “to the extent practicable and if advantageous to the taxpayer” to assign one IRS employee to handle a taxpayer’s matter until it is closed.¹ Some IRS functions provide one employee to each case, while other IRS units have overlooked or ignored this mandate. For instance, Field Collection employees are reminded to provide their title, last name, and employee identification number during initial contact with a taxpayer.² Yet other IRS programs that involve lengthy interaction with taxpayers, such as Correspondence Examination, do not have a system for assigning cases to one employee.³

- 1 IRS Restructuring and Reform Act of 1998 (RRA 98), Pub. L. No. 105-206 § 3705(b), 112 Stat. 685, 777 (1998). See also Most Serious Problem: *AUDIT NOTICES: The IRS’s Failure to Include Employee Contact Information on Audit Notices Impedes Case Resolution and Erodes Employee Accountability*, *infra*.
- 2 IRM 5.1.10.3(7), *Initial Contact*, (June 7, 2013). The collection process is not ideal, however. By the time an account makes it to assignment in Field Collection, it has potentially gone through a lengthy assessment and collection process. For instance, it may have spent some time in the Queue. For information on the IRS’s reliance on the Queue, see National Taxpayer Advocate 2012 Annual Report to Congress 358-380 (Most Serious Problem: *The Diminishing Role of the Revenue Officer Has Been Detrimental to the Overall Effectiveness of IRS Collection Operations*).
- 3 IRS response to a TAS information request (Sept. 5, 2014). Correspondence exam often sends notices that list the department manager as a general contact or do not contain any contact information. See National Taxpayer Advocate 2011 Annual Report to Congress, Vol. 2, 78. See also National Taxpayer Advocate Blog, *Are IRS Correspondence Audits Really Less Burdensome For Taxpayers?*, available at <http://taxpayeradvocate.irs.gov/Blog/irs-correspondence-examinations-are-they-really-as-effective-as-the-irs-thinks>.

For purposes of this discussion, we will focus on correspondence examinations, because about 70 percent of all audits are correspondence audits.⁴ The National Taxpayer Advocate is concerned about the following problems associated with the IRS correspondence examination process:

- The correspondence examination is designed so that any available employee may assist taxpayers but no one employee is solely responsible for the outcome of the case;
- The lack of a single employee assigned to a case burdens taxpayers with repeat calls;
- The lack of an assigned employee creates downstream costs for taxpayers and the IRS;
- The lack of an assigned employee eliminates employee accountability; and
- The IRS hampers its efforts to improve customer satisfaction by not complying with the congressional directive in RRA98 § 3705(b).

The IRS's failure to provide an assigned employee, as well as the associated downstream consequences imposed on the taxpayer, violates the taxpayer's *right to quality service*, which includes "the right to receive prompt, courteous, and professional assistance."⁵ In particular, 62 percent of calls received in the IRS correspondence examination unit are from repeat callers, which may indicate that taxpayers are not receiving the assistance they require, and their calls are being handled inadequately by employees unfamiliar with the specific issues in the audits.⁶

Not only does this severely impair a taxpayer's *right to quality service*, but it harms a taxpayer's *right to be informed*, as taxpayers may not be able to obtain accurate information about their cases or what they need to do to be compliant with their tax obligations. It also impacts a taxpayer's *right to challenge the IRS's position and be heard*, as having to call back over and over without an assigned employee could indicate that no one is hearing the taxpayer or understanding their issue. Last, this problem can violate a taxpayer's *right to pay no more than the correct amount of tax*, because such a system can lead to incorrect assessments.

4 IRS, 2013 Data Book, table 9a. Similar problems arise in other areas, including identify theft and Automated Collection System (ACS) cases. See, e.g., National Taxpayer Advocate 2013 Annual Report to Congress 75-83 (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*); National Taxpayer Advocate 2012 Annual Report to Congress 42-67 (Most Serious Problem: *The IRS Has Failed to Provide Effective and Timely Assistance to Victims of Identity Theft*); National Taxpayer Advocate 2011 Annual Report to Congress 48-73 (Most Serious Problem: *Tax-Related Identity Theft Continues to Impose Significant Burdens on Taxpayers and the IRS*). In addition, the National Taxpayer Advocate testified at numerous hearings on the topic of identity theft. See, e.g., *Internal Revenue Service Oversight: Hearing Before the Subcomm. on Financial Services and General Government of the H. Comm. on Appropriations*, 113th Cong. 125-76 (2014) (statement of Nina E. Olson, National Taxpayer Advocate); *Examining the Skyrocketing Problem of Identity Theft Related Tax Fraud at the IRS: Hearing Before Subcomm. on Government Operations of the H. Comm. on Oversight and Government Reform*, 113th Cong. 19-41 (2013) (statement of Nina E. Olson, National Taxpayer Advocate). For information on problems related to ACS, see National Taxpayer Advocate 2012 Annual Report to Congress 381-402 (Most Serious Problem: *The Automated Collection System Must Emphasize Taxpayer Service Initiatives to Resolve Collection Workload More Effectively*); National Taxpayer Advocate 2012 Annual Report to Congress, vol. 2 143-48; National Taxpayer Advocate 2011 Annual Report to Congress 336-49 (Most Serious Problem: *The IRS Does Not Emphasize the Importance of Personal Taxpayer Contact as an Effective Tax Collection Tool*).

5 IRS, Publication 1, *Your Rights as a Taxpayer* (June 2014).

6 See IRS, *Phone Optimization Project (POP), POP to the TOP Phone Enhancement Training Participant Guide 1* (2009) (cited by National Taxpayer Advocate 2011 Annual Report to Congress, vol. 2 at 80). See also TIGTA, Ref. No. 2012-30-093, *Improved Toll-Free Telephone Services Should Make It Easier for Taxpayers to Obtain Assistance During a Correspondence Audit 1* (Aug. 17, 2012). The IRS has not performed any follow up studies for this measurement. IRS response to TAS information request (Sept. 5, 2014).

ANALYSIS OF PROBLEM

Background

RRA 98 § 3705(b) requires that the IRS develop a procedure “to the extent practicable and if advantageous to the taxpayer” for assigning one IRS employee to handle a taxpayer’s matter until it is closed.⁷ The Senate specified two reasons for enacting RRA 98 § 3705(b): (1) it was important that “taxpayers receive prompt answers to their questions about their tax liability”; and (2) taxpayers had expressed frustration in not being able to find the appropriate IRS employee to contact.⁸ Senator Domenici described the situation that his constituents faced in 1998:

In New Mexico, a notice can come from the Albuquerque, Dallas, Phoenix, or Ogden IRS center. Taxpayers are often left with no option but to contact my office asking for help in simply identifying who they should talk to at the IRS to settle their tax matter. The caseworkers are experts, but it would take them two days to track down the right IRS office so that the constituent could try and solve their problem. It was so commonly befuddling to constituents that my caseworkers asked that this identification provision be included in this bill.⁹

In response to such concerns, Congress passed RRA 98 § 3705(b). Senator Enzi describes what Congress was trying to achieve when he said, “...the IRS reform bill will bring and demand greater accountability from the more than 100,000 employees who work for the Internal Revenue Service ... Imagine that—being able to talk to the person that knows the problem.”¹⁰

Over time, TAS has seen that some cases involve transactions that can (and should be) handled with one phone call because it is advantageous to the taxpayer.¹¹ Other cases, such as an audit—which may involve problems of substantiation, interpretations of law and other guidance, and applications of law to facts—may not be resolved with one phone call.¹² On multiple occasions Congress and other stakeholders, including the National Taxpayer Advocate, have reported the reasons for assigning work to one employee when a case requires it.¹³

7 RRA 98, Pub. L. No. 105-206 § 3705(b), 112 Stat. 685, 777 (1998).

8 S. REP. No. 105-174, at 103 (1998).

9 144 CONG. REC. S7717-04 (1998) (statement of Sen. Domenici).

10 144 CONG. REC. S4147-01 (1998) (statement of Sen. Enzi).

11 Further, automation can be helpful in such cases. For detailed information on the benefits of automation, see TIGTA, Ref. No. 2012-30-093, *Improved Toll-Free Telephone Services Should Make It Easier for Taxpayers to Obtain Assistance During a Correspondence Audit* 16 (Aug. 17, 2012).

12 The National Taxpayer Advocate has pointed out that when taxpayers receive a notice that is hard to understand, it may be difficult for the taxpayer to reach an IRS employee for an explanation. See National Taxpayer Advocate 2008 Annual Report to Congress 163. When this happens, the IRS misses an opportunity to educate the taxpayer. *Id.*

13 See, e.g. National Taxpayer Advocate 2012 Annual Report to Congress, vol. 2 78; National Taxpayer Advocate 2011 Annual Report to Congress, vol. 2 63-90 (Research Study: *An Analysis of the IRS Examination Strategy: Suggestions to Maximize Compliance, Improve Credibility, and Respect Taxpayer Rights*); National Taxpayer Advocate 2008 Annual Report to Congress 232.

In particular, the National Taxpayer Advocate has advocated for assignment of one employee in cases covering the Earned Income Tax Credit (EITC), which involves a complex statute and generally a relatively unsophisticated taxpayer.¹⁴ Such an approach helps to:

- Reduce repeat taxpayer contacts;
- Reduce costs associated with reworking cases in Appeals, audit reconsideration, or through litigation; and
- Increase employee accountability.

The Correspondence Examination is Designed So That Any Available Employee May Assist Taxpayers But No One Employee is Solely Responsible for the Outcome of the Case.

The IRS assigns correspondence examination cases to an employee to resolve upon receipt of correspondence or a phone call from a taxpayer.¹⁵ However, the taxpayer does not necessarily have contact with this employee for the duration of the case. Instead, the IRS uses a “nationwide routing of calls,” linking multiple call centers into a “virtual” call center.¹⁶ When the taxpayer subsequently calls the correspondence exam unit, the system distributes the call to the next available examiner.¹⁷ For instances involving receipt of taxpayer correspondence prior to the issuance of a statutory notice of deficiency, the correspondence is assigned to an IRS employee for evaluation. If the correspondence does not resolve the issue, the case will be reintroduced to the general inventory, which means no one employee will be assigned to it.¹⁸

If the taxpayer places a phone call, the case will not be assigned if the examiner taking the call resolves the taxpayer’s concerns. For instance, if the taxpayer calls to confirm that the IRS received his or her amended return and receives an answer, then the reason for calling is resolved.¹⁹ The employee who took this call is not the employee who ultimately handles the case and closes the case with an assessment, refund, or no-change letter.

When a correspondence examination employee receives a subsequent taxpayer contact, the employee who receives the contact is directed to resolve the problem himself or herself; if the taxpayer insists on reaching the specific employee, the first employee is instructed to tell the taxpayer that someone will return their call within three business days.²⁰ Unless the taxpayer requests a future date for contact, the assigned employee is expected to call the taxpayer within three business days “with the intent to resolve and close

14 See National Taxpayer Advocate 2012 Annual Report to Congress, vol. 2 78. Also, issues like the sales tax deduction, while very straightforward, could require numerous receipts for substantiation and could benefit from having one assigned employee. See National Taxpayer Advocate 2008 Annual Report to Congress 233.

15 This assignment can change at any time if the assigned examiner is on leave or his or her workload is too high. IRS response to TAS information request (Sept. 5, 2014). The IRS reports that assignment of case work is treated similarly regardless of how the taxpayer initially contacts the IRS. For information on the receipt of correspondence in particular, see IRM 4.19.20.1.6, *Aging*, (Jan. 1, 2009).

16 GAO, Report to the Committee on Finance, U.S. Senate, *IRS Correspondence Audits: Better Management Could Improve Tax Compliance and Reduce Taxpayer Burden* 9 (June 2014).

17 *Id.*

18 IRM 4.19.20.1.6.1, *Taxpayer Correspondence Received PRIOR TO the Issuance of the Statutory Notice of Deficiency Non-CPS*, (April 16, 2008).

19 IRM 4.19.19.6(2), *General Taxpayer Questions*, (Jan. 1, 2014).

20 IRM 4.19.19.3.3.1(4), *CEAS Action Note*, (Jan. 2, 2013). Under this IRM provision the employee is also instructed to leave a note on the taxpayer’s account to summarize the call.

the case or move to the next status.”²¹ IRS employees are also trained to record telephone contacts in case notes so all employees can access the information if the taxpayer writes or calls back.²² The taxpayer is also informed that the acceptability of documentation received can only be made by the employee reviewing the case.²³

The lack of accountability in these correspondence examination cases burdens taxpayers, wastes money, and impairs trust in the fairness and justness of the tax system.

Certainly there are business reasons for adopting these automated call-routing systems. For instance, automation can enhance speed and accuracy while promoting consistency. However, concerns raised by tax practitioners indicate that in some cases, taxpayers can benefit from working with an assigned employee. In 2012, the IRS Oversight Board held a public forum to solicit comments about the correspondence exam process.²⁴ The participants universally identified contact with IRS employees as an obstacle.²⁵

IRS customer satisfaction results validate stakeholders’ concerns. In a 2011 study, taxpayers who contacted the IRS two times or fewer before their correspondence examination cases were resolved were among the most satisfied.²⁶ Those who contacted the IRS six or more times were among the most dissatisfied.²⁷ Additionally, as shown in Figure 1.13.1, below, customer satisfaction ratings for correspondence examination in both the Small Business and Self-Employed (SB/SE) and Wage and Investment (W&I) units are comparatively low.

21 IRM 4.19.19.3.2(1), *Replying to Taxpayer Inquiries*, (Nov. 7, 2013). Managers are required to monitor the cases to ensure the employees are taking timely action. IRM 4.19.19.3.2(3), *Replying to Taxpayer Inquiries*, (Nov. 7, 2013). And if a case is unassigned, the manager will ensure the notes are reviewed and worked. 4.19.19.3.2(4), *Replying to Taxpayer Inquiries*, (Nov. 7, 2013). However, this system may not always ensure contact. In a 2012 TIGTA report, TIGTA found that out of 150 calls that it sampled for its report, 20 calls involved either a taxpayer requesting a return call from the examiner or being promised one from the assistor. There was no evidence of a return call being made in 14 of those cases. See TIGTA, Ref. No. 2012-30-093, *Improved Toll-Free Telephone Services Should Make it Easier for Taxpayers to Obtain Assistance During a Correspondence Audit* 7 (Aug. 17, 2012).

22 IRM 4.19.13.9.2(4), *Evaluating Taxpayer Responses*, (Feb. 13, 2013). See also IRM 4.19.19.2, *Call Requirements*, (March 28, 2013).

23 IRM 4.19.19.2(11), *Call Requirements*, (March 28, 2013).

24 IRS Oversight Board, Public Forum (Feb. 28, 2012).

25 As an example, Lonnie Gary, chair of the Government Relations Committee of the National Association of Enrolled Agents, stated to the Board “The fact that a single person is not assigned to a correspondence audit complicates swift resolution.” Lonnie Gary, *Oral Statement of Lonnie Gary, EA, USTCP Chair, Government Relations Committee National Association of Enrolled Agents Before the Internal Revenue Service Oversight Board* 2 (Feb. 28, 2012), available at <http://www.treasury.gov/IRSOB/Documents/Panel%201-Lonnie%20Gary.pdf>. Likewise, Patricia Thompson, chair of the Tax Executive Committee of the American Institute of Certified Public Accountants (AICPA) identified four issues raised by AICPA members: (1) the excessive time it takes the IRS to resolve a taxpayer’s case; (2) the great difficulties taxpayers face when trying to contact the IRS to obtain information regarding the status of their correspondence audit case; (3) the numerous telephone inquiry calls taxpayers or their tax representative make to the IRS which go unreturned; and (4) the IRS employees routinely closing cases and issuing the statutory notice of deficiency (i.e., the “90 day letter”) without having reviewed correspondence submitted by the taxpayer. Patricia Thompson, *American Institute Of Certified Public Accountants Statement Presented To Internal Revenue Service Oversight Board Public Meeting* 3 (Feb. 28, 2012), available at <http://www.treasury.gov/IRSOB/Documents/Panel%201-Thompson-AICPA.pdf>. Last, Andre L. Re, a tax controversy consultant, testified that it was a problem to have subsequent taxpayer contacts handled by a different IRS employee each time. He recommends, “perhaps once a taxpayer response is received the case should be assigned to one employee from then on who would be responsible for further contact and case resolution.” Andre L. Re, *Presentation Of Andre L. Re* 1 (Feb. 28, 2012), available at <http://www.treasury.gov/IRSOB/Documents/Panel%201-AndreRe.pdf>.

26 IRS, *Internal Revenue Service Customer Satisfaction Survey, Correspondence Exam (CCE) SB/SE National Report, Covering January through March 2011, with Annual Results* 6 (July 2011).

27 *Id.*

FIGURE 1.13.1, Taxpayer satisfaction outcome measures ²⁸

Taxpayer Satisfaction	2009	2010	2011	2012	2013
SB/SE correspondence exam taxpayer satisfaction	45%	47%	47%	47%	48%
W&I correspondence exam taxpayer satisfaction	51%	50%	57%	49%	48%

The Lack of an Assigned Employee Harms Taxpayers' Ability to Resolve Their Cases Expediently, Erodes Taxpayer Rights, May Cause Taxpayers and the IRS to Incur Unnecessary Expenses, and Reduces IRS Employee Accountability.

A taxpayer's *right to quality service* and *right to finality* include the ability to resolve a problem efficiently the first time around, without incurring unnecessary expenses or other burden. Taxpayers may face confusion and frustration when no single employee is assigned to their correspondence exams.²⁹ In particular, as the National Taxpayer Advocate has written in previous reports, the correspondence exam process has inherent obstacles that prevent some low income taxpayers from navigating the process successfully on their own.³⁰

The Lack of an Assigned Employee Burdens Taxpayers with Repeat Calls.

As noted above, 62 percent of those who call the correspondence exam unit are repeat callers.³¹ A recent congressionally requested Government Accountability Office (GAO) audit sheds light on why taxpayers repeatedly call correspondence exam. The report observed that “[a]ll of the documentation sent by the taxpayer is maintained and managed in paper rather than electronic form ... IRS does not keep these data in electronic form because its information system lacks capacity, according to IRS officials.”³²

This system of document retention, combined with call routing, creates problems for taxpayers with ongoing tax problems. Without access to the taxpayer's documentation, the first available examiner who answers the phone will likely not have sufficient information to answer the taxpayer's question. The examiner does have access to the electronic notes from the employee who reviewed the taxpayer's

28 IRS response to TAS information request (Sept. 5, 2014). This data is in comparison to field examination, which scored the following customer satisfaction rates: 60 percent in 2009 through 2011, 62 percent in 2012, and 63 percent in 2013. IRS, *Small Business/Self-Employed (SB/SE) Division, Field Examination Program Customer Satisfaction Survey; Final FY [sic] 2013 Annual National Report; Closed Cases April 2012–March 2013* 11 (July 13, 2013).

29 Here is one recollection from a practitioner:

Ultimately the EA [enrolled agent] constructed not one, not two, but three large mailings, each weighing a few pounds, which she sent to Ogden. During this process, she made several calls to Ogden, which were frustrated by the fact that the staff in Ogden did not have direct extensions and the EA could not leave a direct, detailed message.

Lonnie Gary, *Oral Statement of Lonnie Gary, EA, USTCP Chair, Government Relations Committee National Association of Enrolled Agents Before the Internal Revenue Service Oversight Board 2* (Feb. 28, 2012), available at <http://www.treasury.gov/IRSOB/Documents/Panel%201-Lonnie%20Gary.pdf>.

30 See National Taxpayer Advocate 2007 Annual Report to Congress 222-241 (Most Serious Problem: *EITC Examinations and the Impact of Taxpayer Representation*); National Taxpayer Advocate 2007 Annual Report to Congress, vol. 2 94-117 (*Research Study: IRS Earned Income Credit Audits—A Challenge to Taxpayers*); and National Taxpayer Advocate 2004 Annual Report to Congress, vol. 2 1-45 (*Earned Income Tax Credit (EITC) Audit Reconsideration Study*).

31 IRS, *Phone Optimization Project (POP), POP to the TOP Phone Enhancement Training Participant Guide 1* (2009) (cited by National Taxpayer Advocate 2011 Annual Report to Congress, vol. 2 80). See also TIGTA, Ref. No. 2012-30-093, *Improved Toll-Free Telephone Services Should Make It Easier for Taxpayers to Obtain Assistance During a Correspondence Audit 1* (Aug. 17, 2012). This problem is compounded by the fact that in FY 2014, only 64.4 percent of taxpayers calling to speak to an IRS customer service representative could get through and the average time on hold was 19.55 minutes. IRS, Joint Operations Center, *Snapshot Reports: Enterprise Snapshot* (week ending Sept. 30, 2014).

32 GAO, Report to the Committee on Finance, U.S. Senate, *IRS Correspondence Audits: Better Management Could Improve Tax Compliance and Reduce Taxpayer Burden* 19 (June 2014).

The Senate specified two reasons for enacting § 3705(b) of the IRS Restructuring and Reform Act of 1998: (1) it was important that “taxpayers receive prompt answers to their questions about their tax liability”; and (2) taxpayers had expressed frustration in not being able to find the appropriate IRS employee to contact.

information (if the review has taken place).³³ However, the case notes left by one employee may not make sense to the next, preventing that person from answering the taxpayer’s question correctly.³⁴ Lastly, taxpayers may be calling repeatedly because they do not get consistent information from one tax examiner to the next.³⁵ With no concrete way of knowing when and by whom the review of their records will occur, or if they have sufficiently complied with IRS requests for information, it is understandable that taxpayers repeatedly call for updates.

In 2012, TAS reviewed a sample of cases where taxpayers petitioned the Tax Court for review of IRS disallowance of the Earned Income Tax Credit (EITC) and where the IRS conceded the EITC issue in full without trial (hereafter the 2012 EITC study). The study found that of the cases reviewed, 63 percent of the taxpayers tried to resolve their issues by calling the IRS before filing their petitions, calling five times on average.³⁶ Even with multiple contacts, the taxpayers still had to go to Tax Court to get the right answer. The lack of accountability in these correspondence examination cases burdens taxpayers, wastes money, and impairs trust in the fairness and justness of the tax system.

The high volume of repeat calls erodes the taxpayer’s *right to be informed* because taxpayers cannot obtain answers about what they need to do to comply with tax laws. Likewise, the taxpayer’s *right to quality service* is harmed because taxpayers are denied prompt service. If one employee is assigned to a taxpayer’s case, that employee can give a definitive answer as to when the taxpayer should expect an update and answer questions specific to that case. The taxpayer may wait longer to speak to the assigned employee but the overall process would improve because the taxpayer would have contact with the correct employee who would also be accountable. Moreover, the taxpayer would not have to repeatedly explain his or her situation because the assigned employee would be familiar with the taxpayer’s case and the preceding discussions. This approach supports the taxpayer’s *right to challenge the IRS’s position and be heard*.

The Lack of an Assigned Employee Creates Downstream Costs for Taxpayers and the IRS.

Both the taxpayer and the IRS incur expenses that may be related directly to not having an employee assigned earlier in the case. When a taxpayer cannot reach an employee during an examination to get an answer or to follow up with documentation, mistakes may happen and the taxpayer may appeal a proposed assessment.³⁷ Taxpayers must either hire representatives or work with the IRS on their own, while the IRS must provide trained Appeals staff to rework the cases.

If the taxpayer does not exercise his or her appeal rights, Examination may issue a statutory notice of deficiency (SNOD).³⁸ The SNOD provides the taxpayer with the only opportunity to have judicial review of the case without prepaying the assessment. To exercise this right, the taxpayer must file a petition in

33 GAO, Report to the Committee on Finance, U.S. Senate, *IRS Correspondence Audits: Better Management Could Improve Tax Compliance and Reduce Taxpayer Burden* 19 (June 2014).

34 See National Taxpayer Advocate 2011 Annual Report to Congress, vol. 2 79.

35 GAO, Report to the Committee on Finance, U.S. Senate, *IRS Correspondence Audits: Better Management Could Improve Tax Compliance and Reduce Taxpayer Burden* 18 (June 2014). The GAO obtained this information as a result of a tax examiner focus group interview.

36 See National Taxpayer Advocate 2012 Annual Report to Congress, vol. 2 77.

37 Treas. Reg. § 601.105(b)(4). This is a statement of procedural rule, which provides guidance but is not codified.

38 See IRC § 6212.

the United States Tax Court—so again, taxpayers must either retain representatives during litigation or develop cases on their own; while the IRS incurs the expense of providing Counsel for its representation. The additional costs incurred through Appeals and litigation undermine the *right to a fair and just tax system*.

Taxpayers who do not agree with the audit outcome may also pursue an audit reconsideration, which allows taxpayers to submit information not previously considered in the examination.³⁹ In FY 2013, Correspondence Exam conducted 1,060,779 exams.⁴⁰ In FY 2013, the IRS also conducted 69,037 audit reconsiderations stemming from correspondence exams.⁴¹ Audit reconsiderations are important to measure because these are cases where the IRS is reworking the same issue a second time.

In FY 2014, the IRS performed 857,410 correspondence examinations on individual taxpayers,⁴² and TAS worked 17,373 correspondence examination cases involving individuals.⁴³ Each TAS case that involves a correspondence examination issue represents an instance where two IRS employees are needed to resolve the taxpayer's problem. Many of the TAS correspondence exam cases may result from the IRS's failure to assign one employee who is responsible for and knowledgeable about the facts and issues in the case.

The Lack of an Assigned Employee Reduces Employee Accountability.

The lack of an assigned employee eliminates or reduces IRS employee accountability, which contributes to the problems previously identified. As the National Taxpayer Advocate has pointed out, under current procedures “[n]o one employee must follow up on his or her actions or decisions with respect to a case or speak with the taxpayer about those decisions.”⁴⁴ The absence of accountability impairs the taxpayer's *right to a fair and just tax system*, which provides that the IRS employee will consider the taxpayer's specific facts and circumstances.

The lack of accountability has real costs for both the taxpayer and the IRS. As discussed above, the 2012 EITC study shows that a majority of taxpayers in the study population attempted to work with the IRS earlier in the process. These cases were resolved once a Tax Court petition was filed and IRS Counsel conceded the case without going to trial. Some taxpayers must wait until this lengthy process ends to obtain their refunds. In fact, the 2012 EITC study showed that almost 39 percent of the taxpayers had to wait an average of almost one and a half years for the refund to which they were entitled.⁴⁵ The IRS could avoid this long wait by providing more accountability earlier in the process.

Lack of accountability also contributes to increased costs for the IRS, as higher-paid employees must rework the same cases. In particular, the 2012 EITC study highlighted the fact that the IRS incurs cost in employing higher-grade employees when the correct answer is missed earlier in the process.⁴⁶ In 20 percent of the cases reviewed, a higher-graded employee in Appeals or Chief Counsel accepted

39 For information on audit reconsiderations generally, see IRM 4.13.1.1, *Overview*, (Oct. 1, 2006).

40 IRS, FY 2013 Data Book, Table 9a. This represents 75.5 percent of all examinations on individual tax returns. IRS, FY 2013 Data Book Table 9a.

41 IRS, Individual Master File and the Audit Information Management System, closed case database.

42 Audit Information Management System Closed Case Data on the IRS Compliance Data Warehouse.

43 There were an additional 953 taxpayers who had both a correspondence examination and a non-correspondence examination. This number does not include correspondence examinations of businesses. TAMIS data (Nov. 3, 2014).

44 See National Taxpayer Advocate Blog, *Are IRS Correspondence Audits Really Less Burdensome For Taxpayers?*, available at <http://taxpayeradvocate.irs.gov/Blog/irs-correspondence-examinations-are-they-really-as-effective-as-the-irs-thinks>.

45 See National Taxpayer Advocate 2012 Annual Report to Congress, vol. 2 77.

46 *Id.*, vol 2 75.

documentation from a taxpayer that the examiner rejected.⁴⁷ In addition, in over one third of the cases, the IRS paid interest on the delayed refunds, averaging approximately \$200 per return.⁴⁸

The IRS Has Misplaced Its Efforts to Improve Customer Satisfaction by Overlooking Congressional Intent Behind RRA 98 §3705(b).

The IRS explains that its decision to not adopt an “exclusive assignment of cases” is the result of research showing that universal access to work papers and case histories allows any tax examiner to assist a taxpayer.⁴⁹ However, as practitioner feedback, the GAO study, and customer satisfaction ratings demonstrate, taxpayers do not always receive appropriate service from the first available examiner. While the IRS has studied how to improve the correspondence exam process, its studies do not consider the benefits of assigning one employee to cases once the taxpayer has engaged with the IRS or the amount of rework created by not assigning one employee.⁵⁰

In 2008, the IRS initiated the Phone Optimization Project (POP) team to improve taxpayer satisfaction in correspondence examination. The team focused on:

- Ease of getting through to the right person;
- Length of correspondence exam process;
- Providing consistent information about the case;
- Length of time to get through by phone; and
- Explanation of adjustments.⁵¹

Most of these issues can be addressed (or even eliminated) by assigning an employee to certain cases. Perhaps the length of time to get through by phone would not be improved with an assigned employee because taxpayers may need to leave a message and wait for a call-back. However, because the taxpayer would not need to call multiple times or repeat the same information over and over to different employees, and because the assigned employee would be familiar with the facts of the case and knowledgeable what is *specifically* needed to resolve the case, overall cycle times could be reduced, and the overall experience might improve.

The POP team did not include single employee assignment once the taxpayer engages the IRS (whether through phone, mail, or fax) as a solution. Instead, the team focused on improving phone access and revising correspondence receipt and triage.⁵² This decision may come from an underlying policy determination that any exam employee is the “right” employee for the taxpayer to call, a view that fails to consider the downstream work when taxpayers need one employee assigned to their case.⁵³

The National Taxpayer Advocate finds this policy misguided. While universal call routing may be appropriate for industries such as airlines, the transactions one generally undertakes in those industries are

47 See National Taxpayer Advocate 2012 Annual Report to Congress, vol. 2 89.

48 See *id.*, vol. 2 77.

49 IRS response to TAS information request (Sept. 5, 2014).

50 See IRS, *Correspondence Examination Assessment Project (CEAP)* (Sept. 30, 2013); POP Team Recommendations, *Solutions to Improve Taxpayer Satisfaction in Correspondence Examination, Briefing Document* (June 21, 2010).

51 POP Team Recommendations, *Solutions to Improve Taxpayer Satisfaction in Correspondence Examination, Briefing Document 6* (June 21, 2010).

52 POP Team Recommendations, *Solutions to Improve Taxpayer Satisfaction in Correspondence Examination, Briefing Document 9* (June 21, 2010).

53 IRS, *Phone Optimization Project (POP), POP to the TOP Phone Enhancement Training Participant Guide 5* (2009).

narrow, discrete tasks that usually can be completed in one call, like purchasing an airline ticket. IRS audits, on the other hand, are categorically different from purchasing an airline ticket. Audits involve issues of proof, interpretation of law and guidance, and usually result in a tax assessment that will be collected by the IRS—*i.e.*, multiple enforcement actions. Adopting an approach that works for the airline industry is inappropriate where the assessing and taking of taxpayer property is concerned.

The IRS also implemented the Correspondence Examination Assessment Project with the intent of reviewing and improving the correspondence exam process.⁵⁴ Initially, this review included “single point of contact” as a way to improve the correspondence exam process.⁵⁵ Ultimately, CEAP promoted self-assignment of cases by employees to encourage case resolution during the first interaction with a taxpayer.⁵⁶ This means that employees answering phone lines can assign cases to their own inventory from another campus.⁵⁷

While universal call routing may be appropriate for industries such as airlines, the transactions one generally undertakes in those industries are narrow, discrete tasks that usually can be completed in one call, like purchasing an airline ticket. IRS audits, on the other hand, are categorically different from purchasing an airline ticket.

Without addressing the assignment of cases to a single employee, the IRS overlooks solutions that could improve the taxpayer experience and be “advantageous to the taxpayer.” For instance, the IRS uses Automated Correspondence Examination, a system that processes cases until a response is received from the taxpayer.⁵⁸ Under this system, mail is initially sorted and certain types of correspondence are removed, such as misrouted, undeliverable, or unclaimed mail.⁵⁹ For any mail still remaining after this sort, the IRS will research to determine if the case is assigned to an employee. If the case is unassigned, the mail is routed within five days based on local management procedure.⁶⁰

The IRS could continue to automatically process cases up to the point that the taxpayer engages with the IRS—either via correspondence or via a phone call, when a case would be assigned to a specific employee. Under this recommendation, the IRS would continue to batch and assign cases to general groups of employees. However, once a taxpayer contacts the IRS on an unassigned case, either by correspondence or by calling, local management procedure could dictate that the employee who receives the contact would thereafter “own” the case. That employee would familiarize himself or herself with the case, be accountable for the case outcome, and serve as the contact for any future interactions with the taxpayer. If the initial taxpayer contact completely resolves the issue, the employee would close the case.

54 IRS, *Correspondence Examination Assessment Project (CEAP)* 4 (Sept. 30, 2013). This initiative developed in response to critical feedback about the correspondence exam program from stakeholders including the National Taxpayer Advocate. GAO, *Report to the Committee on Finance, U.S. Senate, IRS Correspondence Audits: Better Management Could Improve Tax Compliance and Reduce Taxpayer Burden* 11 (June 2014).

55 IRS, *Correspondence Examination Assessment Project (CEAP)* 16 (Sept. 30, 2013).

56 IRS, *Correspondence Examination Assessment Project (CEAP) Executive Briefing* 7-8 (April 1, 2014). The GAO pointed out that the CEAP effort to promote self-assignment of cases was not clearly defined or tracked. As a result, the benefits of this effort may not be realized. GAO, *Report to the Committee on Finance, U.S. Senate, IRS Correspondence Audits: Better Management Could Improve Tax Compliance and Reduce Taxpayer Burden* 35 (June 2014). The IRS claims that assignment of one employee was not eliminated, but was “clarified to be more about resolution than providing a specific name.” IRS response to TAS information request (Oct. 23, 2014).

57 For information on self-assignment of cases, see IRM 4.19.19.3.5(1), *Self-Assign General*, (Jan. 1, 2014).

58 See IRM 4.19.20.1, *Automated Correspondence Exam Overview*, (May 21, 2013).

59 See IRM 4.19.21.2(9), *Processing Incoming Correspondence*, (July 30, 2013).

60 See *id.*

Additionally, the IRS could expand use of virtual service delivery (VSD), which includes videoconferencing technology, to mitigate the delays caused by repeat calls.⁶¹ The taxpayer could make an appointment, similar to an office audit, and even if the VSD appointment did not resolve all issues, the taxpayer would walk away knowing what else he or she needs to do. If a taxpayer is offered a virtual office audit, the employee handling the videoconference would then “own” the case until resolution.

CONCLUSION

Automation can assist both the IRS and taxpayers. However, the IRS must use automation in a way that benefits taxpayers and respects taxpayer rights. Systems such as universal call routing may allow a taxpayer to reach an IRS employee relatively quickly, but as described above, the system may not provide the appropriate assistance taxpayers need in audits or collection matters. Taxpayers often require ongoing assistance to resolve their correspondence examinations, particularly because the tax code is so complex. These are the cases Congress had in mind when it passed RRA 98 § 3705(b)—cases where it would be “advantageous to the taxpayer” to assign one employee.

However, the IRS currently treats all correspondence exam cases as if they can be resolved with one contact or by the next available employee. The IRS has chosen to stick with systems that do not meet the needs of taxpayers instead of developing procedures to identify when a taxpayer would benefit from having a single assigned employee. This business practice fails to adhere to the congressional intent of § 3705(b), creates downstream costs for both the IRS and the taxpayer, and undermines *the right to quality service, the right to be informed, the right to challenge the IRS’s position and be heard, and the right to a fair and just tax system*. The IRS can follow the intent expressed in § 3705(b) by reviewing its current practices in light of downstream consequences and using technological advances that have occurred since the passage of the law.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS:

1. Analyze the additional work caused by the current approach taken in correspondence exam. Based on that review, develop procedures and staffing models that enable cases to be assigned to one employee once the taxpayer has contacted the IRS.
2. Allow the taxpayer to individually choose service options to his or her advantage, such as leaving a voicemail for the employee owning the case or speaking with the next available employee.
3. Design extension routing capabilities to enable taxpayers to reach the employee assigned to their cases.
4. Include an option for single employee assignment in all technology developments, including VSD.

61 In RRA 98, Congress intended the IRS to utilize technology to enhance taxpayer services. For more information, see Most Serious Problem: *VIRTUAL SERVICE DELIVERY: Despite a Congressional Directive, the IRS Has Not Maximized the Appropriate Use of Videoconferencing and Similar Technologies to Enhance Taxpayer Services*, *infra*.