

**MSP
#23****STATUTORY NOTICES OF DEFICIENCY: Statutory Notices of Deficiency Do Not Include Local Taxpayer Advocate Office Contact Information on the Face of the Notice****RESPONSIBLE OFFICIALS**

Debra Holland, Commissioner, Wage and Investment Division
 Karen Schiller, Commissioner, Small Business/Self-Employed Division
 William J. Wilkins, Chief Counsel

DEFINITION OF PROBLEM

Section 1102(b) of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98) provides that statutory notices of deficiency (SNODs) “shall include a notice to the taxpayer of the taxpayer’s right to contact a local office of the taxpayer advocate and the location and phone number of the appropriate office.”¹ However, our review of existing IRS SNODs found that more than half, or eleven out of 17 types of SNODs, fail to comply with the statutory requirements and instead include this information in a “stuffer” or insert. This noncompliance could impact millions of taxpayers. For example, the IRS issued almost 2.7 million Notices CP 3219A, *Statutory Notice of Deficiency*, in FY 2014.² While these notices are still valid, the failure of the IRS to comply with RRA 98 requirements harms taxpayers and violates the taxpayer’s *right to a fair and just tax system*.³

Congress enacted this provision of RRA 98 to ensure that taxpayers are aware of their right to contact the local office of the Taxpayer Advocate Service (TAS) at a crucial point in their tax controversy. Taxpayers need to know that they can talk to someone who is located in their state and has knowledge of the underlying local economic conditions that might affect the case. When the taxpayer receives a SNOD, the IRS has not actually assessed the additional tax, and the taxpayer still has a limited opportunity to address the issue directly with the IRS or petition the Tax Court. Seeking assistance from TAS at this juncture could prevent unnecessary burden on the taxpayer and unnecessary litigation for the IRS.

The IRS should provide the local contact information in an easily accessible and highly visible location on the face of all SNODs. Including the necessary contact information in a stuffer rather than on the face of the notice increases the risk that the taxpayer will not even see it.⁴ Moreover, eliminating the stuffer could

- 1 Pub. L. 105-206, 112 Stat. 703 (1998). The RRA 98 provision amends IRC § 6212(a) to require the additional language on statutory notices of deficiency.
- 2 Notice CP 3219A is used when the Automatic Underreporter (AUR) program identifies a mismatch between what is reported on an individual’s return and a third-party information report. IRS Compliance Data Warehouse (CDW), Notice Delivery System, fiscal year 2014 (Nov. 2014).
- 3 See Taxpayer Bill of Rights, IRS Publication 1, *Your Rights as a Taxpayer*. The statutory notice is still valid without the language required by IRC § 6212(a). *John C. Hom & Associates, Ltd. v. Comm’r*, 140 T.C. 2010 (2013).
- 4 TAS, *2011 IRS Nationwide Tax Forums TAS Focus Group Report: Publication 1 – Taxpayer Rights*, 26-27 (2011) (overwhelming theme that taxpayers do not read the publication that is stuffed in the envelope with IRS notices).

potentially save mailing and printing costs or enable the IRS to apply those mailing and printing costs to notifying low income taxpayers about the availability of Low Income Taxpayer Clinics (LITCs).⁵

ANALYSIS OF PROBLEM

Background

The IRS issues a SNOD to notify a taxpayer that the IRS intends to assess a tax deficiency. The notice also informs the taxpayer of the right to petition the Tax Court to dispute the proposed adjustments. The taxpayer has 90 days from the date of the notice to file a petition in the Tax Court before the tax is assessed.⁶

Section 1102(b) of RRA 98 amended Internal Revenue Code (IRC) § 6212(a) to provide that SNODs “shall include a notice to the taxpayer of the taxpayer’s right to contact a local office of the taxpayer advocate and the location and phone number of the appropriate office.”⁷ Furthermore, the Conference Report for RRA 98 states “The IRS would be required to publish the taxpayer’s right to contact the local Taxpayer Advocate on the statutory notice of deficiency.”⁸

By requiring the IRS to include TAS local office contact information on the Statutory Notice of Deficiency, Congress wanted taxpayers to know that they have the right to go to the local office of TAS to receive assistance at this important stage in their tax controversy.

In response to a request for legal opinion by TAS, the IRS Office of Chief Counsel has opined that the IRS complies with § 1102(b) of RRA 98 when it provides Notice 1214, *Helpful Contacts for Your “Notice of Deficiency,”* as an insert in the SNOD. Counsel reasoned that Notice 1214 was developed by the IRS for the purpose of complying with RRA 98. In fact, the description of the notice on the IRS Forms Repository site includes the following language: “This notice is issued to conform with the IRS restructuring and reform act of 1998 section 1102(b). It was included as an insert with all statutory notices of deficiency (90-Day Letters).” Counsel also supported its opinion by stating that the SNOD includes language regarding TAS and the Notice 1214 is listed as an enclosure on the SNOD.⁹ The National Taxpayer Advocate vigorously disagrees with the legal reasoning of Counsel’s opinion.

The IRS Legislative Analysis, Tracking, and Implementation Services (LATIS) shows the IRS attempted to bring the notices into compliance between 1998 and 2002. Initially, TAS created, Notice 1214, that includes the addresses and phone numbers of the local TAS offices, and was initially designed to be included in the envelope with the SNOD. However, to conform with the actual language of the Conference Report, the IRS and TAS later acted to include the contact language *on* the SNODs themselves.¹⁰

- 5 The Printing and Postage Budget Reduction (PPBR) Implementation Team proposed eliminating all non-mandatory inserts as a way to reduce printing and postage costs. IRS Media & Publications, *PPBR Proposals Approved for Implementation (2010)*. Low Income Taxpayer Clinics represent low income individuals in disputes with the IRS, including audits, appeals, collection matters, and federal tax litigation. LITCs can also help taxpayers respond to IRS notices and correct account problems. Some LITCs provide education for low income taxpayers and taxpayers who speak English as a second language (ESL) about their taxpayer rights and responsibilities. IRC § 7526.
- 6 If the notice is addressed to a taxpayer outside the United States, the taxpayer has 150 days after the IRS mails the notice to file a Tax Court petition. IRC § 6213.
- 7 Pub. L. 105-206, 112 Stat. 703 (1998). The RRA 98 provision amends IRC § 6212(a) to require the additional language on statutory notices of deficiency.
- 8 H.R. CONF. REP. NO. 105-599, Title I, Section D (1998).
- 9 Email from Office of Counsel to the National Taxpayer Advocate (Nov. 20, 2014).
- 10 IRS, LATIS, Action ID No. AT-2009-12065 to -12076.

Noncompliance with RRA 98 Requirements Will Harm Taxpayers at a Critical Point in a Tax Controversy.

The tenth taxpayer right in the Taxpayer Bill of Rights is *the right to a fair and just tax system*. That means, in part, that taxpayers have the right to receive assistance from the Taxpayer Advocate Service if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels.¹¹ The IRS violates this right by not complying with the RRA 98 requirement to publish current and accurate information on the taxpayer's right to contact TAS, as well as accurate contact information for the closest office.¹² Providing the contact information as a stuffer in the SNOD envelope is not an effective way to deliver this information.

In focus groups about "Publication 1, Do Your Clients Understand Their Rights?" conducted by the Taxpayer Advocate Service (TAS) at IRS tax forums in 2011, an overwhelming theme heard throughout the six sessions was that nobody read the publication. The IRS sends the publication to taxpayers along with notices on issues ranging from audits to collection, but the focus group participants noted that the publication usually ended up in the trash can or was never even taken out of the envelope.¹³ Furthermore, the use of inserts did not test well with focus groups in the Department of Treasury's Go Direct campaign to drive adoption of direct deposit.¹⁴

Congress required TAS to have at least one office in every state for two main reasons: (1) the convenience of the taxpayer and (2) the local office's awareness of underlying economic or other conditions in that state and how they might impact the taxpayer's case.¹⁵ By requiring the IRS to include TAS local office contact information on the SNOD, Congress wanted taxpayers to know that they have the right to go to the local office of TAS to receive assistance at this important stage in their tax controversy.

Congress was very clear that it did not intend the IRS to merely give out a national contact number for TAS. Instead, by requiring the National Taxpayer Advocate to ensure that the phone numbers of the local offices are published, Congress specifically wanted taxpayers to know how to seek assistance from the local TAS office.¹⁶ The Conference Report also provided further clarification by stating that the IRS should publish the information "on" the SNOD, as opposed to "with" the notice.¹⁷

The taxpayer's receipt of a SNOD is a critical point in the audit or appeals process. The taxpayer needs information about what he or she must do to protect the right to an independent review of the proposed deficiency prior to assessment. The SNOD is a pre-assessment document, which means the taxpayer may still have the opportunity resolve the issue before going to Tax Court.

11 See Taxpayer Bill of Rights, IRS Publication 1, *Your Rights as a Taxpayer*.

12 See IRS Publication 1, *Your Rights as a Taxpayer*.

13 TAS, *2011 IRS Nationwide Tax Forums TAS Focus Group Report: Publication 1 – Taxpayer Rights*, 26-27 (2011).

14 With Treasury's Go Direct campaign, which began in 2005, the use of inserts did not achieve desired results in terms of convincing people to transition to direct deposit. In late 2012, Treasury opted to create new inserts, many of which did not test well with focus groups. However, the campaign did find that inserts can be effective if they include a clear message and strong visual graphic tailored specifically to each target audience. Information provided by Weber Shandwick to TAS (Oct. 10, 2014) (Weber Shandwick was a contractor for Treasury and provided services for the Go Direct campaign).

15 IRC § 7803(c)(2)(D)(i)(I); H.R. CONF. REP. No. 105-599, Title I, Section D (1998); *Practices and Procedures of the Internal Revenue Service: Hearing Before the S. Comm. on Finance*, 105th Cong. 102 (1997).

16 Pub. L. 105-206, § 1102, 112 Stat. 699 (1998).

17 H.R. CONF. REP. No. 105-599, Title I, Section D (1998).

Case advocates in local TAS offices are trained to inform taxpayers of their rights and options once they receive a SNOD.¹⁸ A case advocate can take any of the following steps to assist the taxpayer and relieve burden:

- Request that the IRS rescind the notice;¹⁹
- Explain that the Tax Court is a traveling court and the case will be heard in a location near the taxpayer (not Washington, DC, which is what many taxpayers think and may result in them not seeking judicial review);
- Direct the taxpayer to the Tax Court website, have the taxpayer pull up the petition, and explain what is needed without providing legal guidance; and
- Explain the small tax case (S case) process and how to get the Tax Court fee waived if the taxpayer cannot afford it.

Taxpayers' awareness of the Local Taxpayer Advocate (LTA) office within their community is even more important today, when so much of the IRS is centralized and remote from the taxpayer and the IRS is limiting its geographically-based interaction with taxpayers.²⁰ Most importantly, the local office can resolve some of the fear and mystery of the tax controversy process, especially with regard to petitioning the Tax Court. If TAS walks the taxpayer through the process, he or she may realize filing a petition is easier than expected. Therefore, by not clearly providing information about their right to contact a local office as well as accurate contact information in the notice, the IRS is preventing some taxpayers from seeking the assistance necessary to protect their rights.

Taxpayers' awareness of the Local Taxpayer Advocate office within their community is even more important today, when so much of the IRS is centralized and remote from the taxpayer and the IRS is limiting its geographically-based interaction with taxpayers.

The importance of this provision was illustrated in testimony by a public witness in the hearings leading up to RRA 98. Monsignor Lawrence Ballweg testified before the Senate Finance Committee (on September 24, 1997) about the obstacles he faced while trying to resolve issues related to a tax return he filed in his capacity as trustee. Two months after he filed the return, the IRS sent it back with a request to fill out additional forms. Shortly after responding to the request, Monsignor Ballweg received an IRS notice stating that he owed more than \$18,000 in taxes and penalties. Because he was away from home for an extended period and had no access to a copy of the filed return, he requested a copy from the IRS in order to respond. His attempts to obtain return copies were either ignored or met with inaccurate reasons as to why he did not have the authority to act as trustee. After he received a collection notice, he wrote a letter to Chairman Roth and his case was presented on CNN.

¹⁸ See, e.g., *TAS Roadmap to Tax Controversy Level One* (2012).

¹⁹ Rev. Proc. 98-54, 1998-43 I.R.B. 7; IRM 4.8.9.28 (Jul. 9, 2013).

²⁰ See Most Serious Problem: *IRS LOCAL PRESENCE: The Lack Of A Cross-Functional Geographic Footprint Impedes the IRS's Ability to Improve Voluntary Compliance and Effectively Address Noncompliance*, *supra*.

The day after the CNN story aired, he received a call from the IRS taxpayer advocate, who resolved his case within days with no additional taxes owed.²¹ At the hearing, Monsignor Ballweg stated:

I just wanted to say that the best kept secret of the IRS is that taxpayers have an advocate. I do not know of anybody who pays taxes who ever heard of an advocate. I would not have known about the existence of such a person until that person contacted me.²²

Had the first notice to Monsignor Ballweg clearly and prominently stated that he had the right to contact a Local Taxpayer Advocate, he would have saved time, reduced frustration, and resolved his issue faster. While Monsignor Ballweg did not receive a SNOD, taxpayers who receive SNODs are often in the same position—they have sent in information to the IRS, which responds with a notice of deficiency.

In 2012, TAS reviewed a random sample of Tax Court cases in which the taxpayer petitioned the court for review of IRS disallowance of the Earned Income Tax Credit (EITC) and the IRS conceded the EITC issue *in full* without trial. The objective of the study was to determine why the IRS fails to resolve cases, including full concessions, before taxpayers are forced to file Tax Court petitions.

The findings suggest that taxpayers are willing to talk with the IRS before they petition the Tax Court and can provide acceptable supporting documentation, but do not find out how to substantiate their claims in their conversations with IRS examiners. Therefore, if the SNOD contains local TAS office contact information, the taxpayer may be able to receive the assistance necessary to submit documentation the IRS will accept, and to avoid litigation.²³

TAS Evaluated the Inventory of SNODs and Found Significant Noncompliance with RRA 98.

TAS reviewed the IRS inventory of current SNODs to determine compliance with the requirements in RRA 98. The findings are detailed in the following figure:

21 *Practices and Procedures of the Internal Revenue Service: Hearing Before the S. Comm. on Finance, 105th Cong.* 102 (1997). Monsignor Ballweg publicly testified about receiving assistance from the taxpayer advocate before the Senate Finance Committee and the facts cited herein are public knowledge.

22 *Id.*

23 National Taxpayer Advocate 2012 Annual Report to Congress vol. 2, 71-104 (*Study of Tax Court Cases In Which the IRS Conceded the Taxpayer was Entitled to Earned Income Tax Credit (EITC)*).

FIGURE 1.23.1, Findings of TAS Evaluation of IRS Inventory of SNODS

Form number	Form title	Compliance with RRA 98?	Taxpayer Advocate Service information provided in notice
Ltr 3219 SC/CG	Notice of Deficiency – Income Tax	Yes	Includes paragraph with spaces for the LTA information
CP 3219A	Notice of Deficiency – AUR IMF	No	Includes paragraph with spaces for the LTA information. However, every notice auto-populates with TAS Austin, TX office information
CP 3219B	Notice of Deficiency – AUR BMF	Yes	Includes paragraph with spaces for the LTA information
Ltr 3219C	Notice of Deficiency – AUR (Used to remove credits if income increases)	No	Includes paragraph with spaces for the Atlanta, GA LTA information
CP 3219N	Notice of Deficiency - ASFR	No	TAS agreed to include Notice 1214 with specific addresses until IRS programming could automatically add the LTA office to the notice
Ltr 3219 SC/CG SP	Notice of Deficiency - Spanish	Yes	Paragraph included with spaces for the LTA information
Ltr 531	Notice of Deficiency (SNOD with direction on recent bankruptcy filing)	Yes	Includes paragraph with spaces for the LTA information
Ltr 531A	90-Day Letter Form 1040 or 1120 Discrepancy Adjustments	No	Contains a reference to the enclosed Notice 1214
Ltr 531B	90-Day Letter Form 5330 Excise Tax and Form 990 Tax	No	Contains a reference to the enclosed Notice 1214
Ltr 531C	Notice of Deficiency for Open Criminal Cases	No	Contains a reference to the enclosed Notice 1214
Ltr 531J	Statutory Notice of Deficiency - No Waiver Needed (Jeopardy Assessment Cases)	No	Contains a reference to the enclosed Notice 1214
Ltr 894 (CG)	Notice of Deficiency (Innocent Spouse)	Yes	Includes paragraph with spaces for the LTA information
Ltr 901 (CG)	Statutory Notice Letter (Form 1120)	Yes	Includes paragraph with spaces for the LTA information
Ltr 902 (DO)	Notice of Deficiency (Estate and Gift Taxes)	No	Contains a reference to the enclosed Notice 1214
Ltr 902 -T	Notice of Liability (Estate and Gift Taxes)	No	Contains a reference to the enclosed Notice 1214
Ltr 1384 (SC)	Notice of Deficiency (Bankruptcy)	No	Contains a reference to the enclosed Notice 1214
Ltr 3523	Notice of Determination of Worker Classification (NDWC)	No	TAS contact information is included in Publication 3953 which is sent along with Letter 3523

As shown, six out of 17 notices comply with the requirements of RRA 98, while eleven do not. We acknowledge that TAS has previously approved of the IRS's efforts to include a Notice 1214, *Helpful Contacts for Your Notice of Deficiency*, in the envelope with the SNOD.²⁴ However, this approach was

24 National Taxpayer Advocate 1998 Annual Report to Congress 6.

never intended to be a permanent solution to comply with RRA 98. The immediate focus of the first National Taxpayer Advocate in 1998 was to increase taxpayers' access to LTAs within the means available. Including Notice 1214 in the envelope with the SNOD was a feasible way to address the requirements quickly, particularly given the lead time required to program notice revisions on IRS systems. TAS has continually maintained that the IRS does not meet the requirements of RRA 98 until it places the contact information on the notice itself.²⁵ In fact, the IRS itself, in tracking post-RRA 98 actions, planned a progression from initially using the stuffer to programming systems to prepopulate the contact information on the face of the notice.²⁶

While many SNODs have been brought into compliance since 1998, a wholesale effort is still needed to address the remaining noncompliant inventory. The IRS's tracking system LATIS shows the revision of SNODs is complete, while our own analysis reveals that many notices have not been adequately revised.²⁷ We acknowledge that the IRS regularly updates and even creates new SNODs, as need arises. Therefore, to ensure that all current SNODs accurately and consistently address this RRA 98 requirement, the IRS, in conjunction with the National Taxpayer Advocate, should develop an agreed-upon set of rules and language to appear on each SNOD.

The IRS needs to consistently populate the appropriate language and contact information onto the face of the SNOD. The inclusion of Notice 1214 as a stuffer should only be temporary as the IRS programs its systems accordingly. As the IRS revises all SNODs to comply with statutory requirements, it should program each one to auto-populate the contact information based on ZIP code to maintain consistency with how TAS aligns taxpayers to local offices.²⁸ In conjunction with these actions, the IRS should develop a method to track its progress in bringing these notices into full compliance.

CONCLUSION

By not clearly providing information about a taxpayers' right to contact TAS, as well as placing accurate contact information on the face of the Statutory Notice of Deficiency, the IRS is preventing some taxpayers from seeking the assistance necessary to protect their rights and avoid undue burden. The IRS has made limited progress since 1998 in placing the appropriate language on less than half of the current SNODs. Taxpayers will continue to be harmed until the IRS brings the remaining notices into compliance.

25 For example, TAS had discussions with the IRS about Notice 3219N (rev. March 2014) not containing specific contact information on the face of the notice, but approved the inclusion of Notice 1214 as a stuffer until system programming changes (a Unified Work Request or UWR) could be made to the notice to automatically add the local office contact information.

26 IRS, LATIS, Action ID No. AT-2009-12065 to -12076.

27 *Id.*

28 By including local TAS office contact information on the face of the notice instead of inserting Notice 1214 as a stuffer, the IRS could use any postage savings to include the LITC contact information as a stuffer in those SNODs with deficiencies that by definition impact low income taxpayers. LITC contact information may change from year to year but the 75 LTA offices are very stable. IRS Notice 1214, *Helpful Contacts for Your Notice of Deficiency*. We are mindful that the Printing and Postage Budget Reduction Implementation Team proposed that the IRS eliminate all non-mandatory inserts in all correspondences. IRS Media & Publications, *PPBR Proposals Approved for Implementation* (Sept. 2010). Accordingly, we have made a legislative recommendation that limits the inclusion of LITC contact information as a SNOD insert for a targeted population. See Legislative Recommendation: *Revise IRC § 6212 to Require the IRS to Place Taxpayer Advocate Service Contact Information on the Face of the Statutory Notice of Deficiency as well as Include Low Income Taxpayer Clinic Information with the Notices Impacting that Population, infra.*

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS:

1. Evaluate every SNOD to determine which ones comply with RRA 98.
2. In conjunction with the National Taxpayer Advocate, develop an agreed-upon set of rules and language to appear on each SNOD.
3. Revise all SNODs not in full compliance with RRA 98 to include the taxpayer's right to contact TAS and the name and telephone number of the local office on the face of the notice in a way that is consistent with how TAS aligns taxpayers to local offices.
4. Require all employees involved in issuing SNODs or answering incoming calls about them to take technical training developed by TAS on issues including SNOD rescission and the taxpayers' rights to file a petition in the U.S. Tax Court and to contact their LTAs.