

# Strengthen Taxpayer Rights

## #1 **CODIFY THE TAXPAYER BILL OF RIGHTS, A TAXPAYER RIGHTS TRAINING REQUIREMENT, AND THE IRS MISSION STATEMENT AS SECTION 1 OF THE INTERNAL REVENUE CODE**

### Present Law

Internal Revenue Code (IRC) § 7803(a)(3) requires the Commissioner to “ensure that employees of the Internal Revenue Service are familiar with and act in accord with taxpayer rights as afforded by other provisions of this title [the Internal Revenue Code], including –

- (A) *the right to be informed,*
- (B) *the right to quality service,*
- (C) *the right to pay no more than the correct amount of tax,*
- (D) *the right to challenge the position of the Internal Revenue Service and be heard,*
- (E) *the right to appeal a decision of the Internal Revenue Service in an independent forum,*
- (F) *the right to finality,*
- (G) *the right to privacy,*
- (H) *the right to confidentiality,*
- (I) *the right to retain representation, and*
- (J) *the right to a fair and just tax system.”*

The IRS Restructuring and Reform Act of 1998 directed the IRS to revise its mission statement “to place a greater emphasis on serving the public and meeting taxpayers’ needs.”<sup>3</sup> The IRS subsequently adopted the following mission statement: “Provide America’s taxpayers top quality service by helping them understand and meet their tax responsibilities and *by applying the tax law* with integrity and fairness to all” (emphasis added). In 2009, with no public discussion, the IRS quietly made a profound change to its mission statement, which now reads: “Provide America’s taxpayers top quality service by helping them understand and meet their tax responsibilities and *enforce the tax law* with integrity and fairness to all” (emphasis added).

### Reasons for Change

Taxpayer rights serve as the foundation for effective tax administration. The U.S. tax system is frequently characterized as a system of “voluntary compliance.” While taxpayers ultimately may face penalties for noncompliance, we rely in the first instance on the willingness of taxpayers to file returns on which they self-report their income (much of which is not reported to the IRS and is therefore difficult for the IRS to discover in the absence of self-reporting) and to pay the required tax.

More than 150 million individuals and more than ten million business entities file income tax returns and pay our nation’s bills every year, and they are entitled to be treated with respect. Making clear that taxpayers possess rights is not only the right thing to do, but TAS research suggests that when taxpayers have confidence

3 Pub. L. No. 105-206, Title I, § 1002, 112 Stat. 685, 690 (1998).

the tax system is fair, they are more likely to comply voluntarily, which may translate into enhanced revenue collection as well.<sup>4</sup>

The National Taxpayer Advocate recommends that three foundational provisions that would promote respect for taxpayer rights and thereby strengthen tax administration be codified as Section 1 of the IRC.

**First:** The ten rights that make up the Taxpayer Bill of Rights (TBOR) are currently codified in IRC § 7803(a)(3). We believe that relocating these provisions to the front of the tax code would make a strong and important statement about the value Congress places on taxpayer rights.

**Second:** Effective employee training and evaluation is required to ensure that conceptual respect for taxpayer rights is translated into practice. Currently, IRS training materials incorporate taxpayer rights information inconsistently and insufficiently.<sup>5</sup> The Taxpayer First Act of 2019 directed the Commissioner to submit a report to Congress within one year of the date of enactment that outlines a comprehensive training strategy and that contains “a plan to develop annual training regarding taxpayer rights, including the role of the Office of the Taxpayer Advocate, for employees that interface with taxpayers and the direct managers of such employees.”<sup>6</sup> While that provision is helpful, it requires only that the IRS submit a training plan on a one-time basis, and it is an “off-code” provision that is not codified within the IRC. Adding a statutory training and evaluation requirement to Section 1 of the IRC would ensure that agency management places appropriate emphasis on promoting employee awareness of and compliance with taxpayer rights and that employees have the knowledge and incentives to consider the impact of their actions on the taxpayers with whom they are working.

**Third:** The IRS mission statement sends a clear message about the IRS’s priorities and articulates the guiding principles around which the IRS develops its strategic plans.

As noted above, the 2009 change in the IRS’s mission statement from “applying” the tax law to “enforc[ing]” the tax law, while subtle, has significant consequences. If a tax agency views its primary mission as “enforcing” the tax law, it is likely to design its procedures and focus its resources around taking action against the relatively small number of taxpayers it views as noncompliant. By so doing, it may neglect to provide sufficient service and support to maintain and strengthen voluntary compliance among the overwhelming majority of taxpayers who are fully or substantially compliant, and thereby risk lower levels of compliance on their part. In our view, the phrase “applying the tax law” is broad enough to encompass enforcement while also encompassing non-coercive compliance strategies.

To make clear the value Congress places on taxpayer rights, the National Taxpayer Advocate recommends that Congress codify the TBOR, a taxpayer rights training and evaluation requirement, and the IRS mission statement as § 1 of the IRC.

4 See National Taxpayer Advocate 2013 Annual Report to Congress vol. 2, at 34 (Research Study: *Small Business Compliance: Further Analysis of Influential Factors*); National Taxpayer Advocate 2012 Annual Report to Congress vol. 2, at 1 (Research Study: *Factors Influencing Voluntary Compliance by Small Businesses: Preliminary Survey Results*).

5 The IRS currently requires all employees to take annual trainings, known as Mandatory Briefings, on topics such as ethics, unauthorized access of taxpayer accounts, and anti-discrimination laws. Although the Taxpayer Advocate Service has prepared materials to be used in a Mandatory Briefing on the TBOR that likely would take less than 30 minutes per employee to complete, the IRS to date has declined to require all employees who interact with taxpayers to take a briefing on taxpayer rights.

6 Taxpayer First Act, Pub. L. No. 116-25, § 2402, 133 Stat. 981 (2019).

## Recommendation

Amend § 1 of the IRC to read as follows (and renumber existing Sections 1, 2, and 3 accordingly):

### SECTION 1. TAXPAYER BILL OF RIGHTS AND INTERNAL REVENUE SERVICE MISSION STATEMENT.

#### (a) Taxpayer Rights.

- (1) In discharging their duties, every officer and employee of the Internal Revenue Service shall act in accord with taxpayer rights as afforded by other provisions of this title, including —
  - (a) the right to be informed,
  - (b) the right to quality service,
  - (c) the right to pay no more than the correct amount of tax,
  - (d) the right to challenge the position of the Internal Revenue Service and be heard,
  - (e) the right to appeal a decision of the Internal Revenue Service in an independent forum,
  - (f) the right to finality,
  - (g) the right to privacy,
  - (h) the right to confidentiality,
  - (i) the right to retain representation, and
  - (j) the right to a fair and just tax system.<sup>7</sup>
- (2) The National Taxpayer Advocate shall develop annual training regarding taxpayer rights, including the role of the Office of the Taxpayer Advocate, and the Commissioner shall establish procedures to ensure that all officers and employees of the Internal Revenue Service receive such annual training.<sup>8</sup>
- (3) The Commissioner shall establish procedures to ensure that annual performance evaluations of all officers and employees of the Internal Revenue Service address compliance with taxpayer rights.

- (b) **Mission of The Internal Revenue Service.** The Internal Revenue Service shall aim to provide taxpayers with top-quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all and with due regard for taxpayer rights as described in subsection (a)(1) and other provisions of this title.

<sup>7</sup> The provisions of the TBOR were codified at IRC § 7803(a)(3). See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Div. Q, § 401(a), 129 Stat. 2242, 3117 (2015). During the drafting of the TBOR language, we understand staff of the Joint Committee on Taxation (JCT) raised concerns that if the TBOR were codified without limitation, some taxpayers might assert purported violations and seek remedies in administrative and litigated disputes, potentially requiring the IRS and the courts to adjudicate vague claims with no clear standard for resolution. After considering the JCT's concerns, the tax-writing committees ultimately settled on the language enacted as IRC § 7803(a)(3). To avoid reopening this issue, we are proposing to relocate the existing language in IRC § 7803(c)(3) virtually without change. We are recommending a minor refinement to the lead-in language that we think makes it read more clearly and does not substantially change the meaning. However, if the JCT believes our refinement does substantially change the meaning, the text of IRC § 7803(a)(3) could be relocated with no change in language at all.

<sup>8</sup> For legislative language generally consistent with this aspect of the recommendation, see Protecting Taxpayers Act, S. 3278, 115th Cong. § 102(2) (2018).

## #2 PROVIDE THE IRS WITH SUFFICIENT FUNDING TO MEET TAXPAYER NEEDS AND IMPROVE FEDERAL TAX COMPLIANCE

### Present Law

Congress controls the IRS's priorities by dividing its annual appropriation into four accounts: Taxpayer Services, Enforcement, Operations Support, and Business Systems Modernization. With limited exception, the IRS may not reallocate its appropriated funding among its accounts.

Under the Congressional Budget and Impoundment Control Act of 1984, as amended, the federal appropriations process is generally a zero-sum game: Once Congress establishes spending caps for the upcoming fiscal year, a dollar allocated to one agency or program leaves one less dollar available for allocation to another agency or program.

As an exception to the spending caps, Congress in some years has authorized “program integrity cap adjustments,” which allow it to appropriate funding for IRS enforcement initiatives in excess of the caps on the basis that the initiatives are projected to generate a positive return on investment (ROI).<sup>9</sup>

### Reasons for Change

The IRS mission statement says the agency'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.”<sup>10</sup> Since fiscal year (FY) 2010, the IRS budget has been reduced by more than 20 percent after adjusting for inflation.<sup>11</sup> Largely as a result of these budget reductions, the IRS is neither providing top quality service nor enforcing the law with fairness to all.<sup>12</sup> In addition, its information technology (IT) systems are in desperate need of upgrades.

### *The IRS Is Not Providing Top Quality Service*

The IRS received nearly 100 million telephone calls in FY 2019. Its employees answered only 29 percent of these calls, with hold times averaging 16 minutes. The President's Management Agenda emphasizes the importance of high-quality customer service as measured by the American Customer Satisfaction Index (ACSI) and the Forrester U.S. Federal Customer Experience Index™.<sup>13</sup> By these measures, the IRS performs poorly. The ACSI report for 2018 ranked the Treasury Department tied for 10th out of 12 federal departments and says that “most [IRS] programs score ... well below both the economy-wide national ACSI average and the federal government average.”<sup>14</sup> The 2019 Forrester report ranked the IRS 13th out of 15 federal agencies and characterized the IRS's score as “very poor.”<sup>15</sup>

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- 9 See, e.g., Consolidated Appropriations Act, 2010, Pub. L. No. 111-117, 123 Stat. 3034, 3165 (2009) (IRS Administrative Provision § 105 provided a cap adjustment of \$890 million for “enhanced tax law enforcement”); H.R. Con. Res. 218, 103rd Cong. § 25 (1994). For a detailed discussion of the mechanics of cap adjustments, see H.R. REP. No. 103-490, at 58 (1994).
- 10 See IRS, The Agency, its Mission and Statutory Authority (Aug. 9, 2019), <https://www.irs.gov/about-irs/the-agency-its-mission-and-statutory-authority> (last visited Dec. 12, 2019).
- 11 IRS response to TAS information request (Oct. 2, 2019).
- 12 See National Taxpayer Advocate 2019 Annual Report to Congress (Most Serious Problem: *IRS Funding: The IRS Does Not Have Sufficient Resources to Provide Quality Service*).
- 13 Office of Management and Budget, *President's Management Agenda 7*, 28 (2018), [https://www.performance.gov/PMA/Presidents\\_Management\\_Agenda.pdf](https://www.performance.gov/PMA/Presidents_Management_Agenda.pdf).
- 14 American Customer Satisfaction Index, *ACSI Federal Government Report 2018*, at 3-4 (2019).
- 15 Forrester Research, Inc., *The US Federal Customer Experience Index, 2019*, at 15-16 (June 11, 2019).

### *The IRS Is Not Enforcing the Law With Fairness to All*

The IRS recently estimated it was unable to collect an annual average of about \$381 billion in unpaid tax attributable to legal-source income for tax years 2011-2013.<sup>16</sup> With approximately 122 million U.S. households in 2013, that suggests each U.S. household is effectively paying an average annual “surtax” of more than \$3,000 to subsidize noncompliance by others.<sup>17</sup> To be “fair to all,” the IRS should be funded to reduce noncompliance. But equally important, it must be staffed to answer calls from taxpayers against whom it takes collection actions, such as wage garnishments, bank levies, or the filing of notices of federal tax lien. Levies, in particular, often create economic hardships for taxpayers, and the law requires the IRS to release levies in those cases.<sup>18</sup> But taxpayers often cannot reach the IRS to make it aware of their hardships. In FY 2019, the IRS received 15 million calls on its consolidated automated collection system telephone lines. IRS employees were able to answer only about 31 percent, and taxpayers who got through waited on hold an average of about 38 minutes.

### *Upgraded Information Technology Systems Would Improve Service and Enforcement*

The two IRS systems containing the official records of individual and business taxpayer accounts are the oldest major technology systems in the federal government. The IRS also has about 60 case management systems that generally are not interconnected; each function’s employees must transcribe or import information from other electronic systems and mail or fax it to other functions. Obsolete IT systems limit the functionality of online taxpayer accounts, prevent taxpayers from obtaining full details about the status of their cases, and prevent the IRS from selecting the best cases for compliance actions. To modernize its IT systems, the IRS requires gradual, consistent funding increases for its Business Systems Modernization account without significant fluctuations from year to year, which could disrupt IT contracts and increase the long-term cost of the upgrades.

### *The IRS Is an Extraordinary Investment*

In FY 2018, the IRS collected nearly \$3.5 trillion on a budget of about \$11.43 billion, producing a remarkable ROI of more than 300:1.<sup>19</sup> It is economically irrational to underfund the IRS. If a company’s accounts receivable department could generate an ROI of 300:1 and the chief executive officer (CEO) failed to provide enough funding for it to do so, the CEO would be fired. Yet in general, the federal budget rules exclusively take into account outlays and ignore the revenue those outlays generate. The program integrity cap adjustment mechanism gives Congress the ability to provide some funding above the spending caps, but because it historically has been used solely to fund enforcement initiatives, it can lead to imbalances in the IRS’s operations.

### *Balanced Funding Is Needed*

Most initiatives require resources from more than one of the IRS’s budget accounts. When the IRS hires more collection personnel through the Enforcement account, for example, it requires funding for additional office space, equipment, and the like from the Operations Support account. When the IRS takes additional enforcement actions against taxpayers and the taxpayers call or visit the IRS, there needs to be sufficient

16 IRS Pub. 1415, Federal Tax Compliance Research: Tax Gap Estimates for Tax Years 2011–2013, at 8 (Sept. 2019).

17 United States Census Bureau, *Historical Households Tables: Table HH-1: Households by Type: 1940 to Present*, <https://www.census.gov/data/tables/time-series/demo/families/households.html> (last visited Dec. 17, 2019). For purposes of computing this “surtax,” we make the simplifying assumption that the government is seeking to collect a fixed amount of revenue, such that compliant taxpayers pay more to subsidize noncompliance by others.

18 IRC § 6343(a)(1)(D).

19 IRS, 2018 Data Book, Table 1: Collections and Refunds, by Type of Tax (May 2019); Department of the Treasury, *FY 2020 Budget-in-Brief* 69 (2019), <https://home.treasury.gov/system/files/266/FY2020BIB.pdf>.

funding in the Taxpayer Services account to answer the calls and handle the visits. If Congress provides a boost to the Enforcement account without corresponding increases to the Operations Support and Taxpayer Services accounts, the IRS cannot use the funding in a way that is reasonable and fair to taxpayers. Therefore, we believe Congress should not rely on program integrity cap adjustments to fund the IRS unless it takes a holistic view of compliance initiatives and funds the downstream costs as well.

### Recommendations

- Provide sufficient funding for the IRS to increase the “Level of Service” on both its accounts management and compliance telephone lines to 80 percent, with average hold times not to exceed five minutes, and provide sufficient funding for the Business Systems Modernization account to enable the IRS to replace its 1960’s technology systems and create a robust integrated case management system.
- Ensure the IRS receives balanced funding by taking into account the interactive effects of changing the funding level for one IRS account on other IRS accounts, including the downstream increase in telephone calls and TAS cases that are likely to result from increased enforcement funding.
- Revise existing budget rules to fund the IRS in a manner that more closely follows the principles private sector businesses apply in setting funding levels for their accounts receivable departments — while keeping in mind the public sector goal is slightly different and should focus on maximizing tax compliance, especially voluntary compliance, while protecting taxpayer rights and minimizing taxpayer burden.

### #3 REQUIRE THE IRS TO PROVIDE TAXPAYERS WITH A “RECEIPT” SHOWING HOW THEIR TAX DOLLARS ARE BEING SPENT

#### Present Law

Internal Revenue Code (IRC) § 7523 requires the IRS to provide taxpayers with very basic information regarding federal taxes and federal spending. Specifically, the IRS is required to include pie-shaped graphs in its instructions for Form 1040 that show the relative sizes of major budget outlay categories and major income categories. In the 2018 Form 1040 instructions booklet, the IRS published two graphs on page 112 depicting *Major Categories of Federal Income and Outlays for Fiscal Year 2017*.

#### Reasons for Change

IRC § 7523 was enacted for tax years beginning after 1990. The purpose was to help taxpayers understand the connection between the taxes they pay and the benefits they receive. Taxpayers who perceive that connection may be more compliant with their tax obligations.

However, the National Taxpayer Advocate believes the information required by IRC § 7523 is too cursory to achieve its objective. It would be more helpful to provide each taxpayer with personalized information regarding the taxpayer’s own contributions, such as the taxpayer’s marginal tax rate, effective tax rate, and tax benefits claimed.

In addition, the value of even this cursory requirement has diminished over time. In 1990, almost all taxpayers filed their tax returns on paper, so the instructions booklet was widely available and widely used. Today, about 90 percent of individual income tax returns are filed electronically,<sup>20</sup> and the instructions booklet is much less visible. For those reasons, far fewer taxpayers see the Form 1040 instructions booklet today.

If the statute is modified, e-filing has the potential to enhance the value of the requirement. Specifically, tax software is capable of computing and displaying personalized tax information, including the taxpayer’s marginal tax rate, effective tax rate, and tax benefits claimed, and can show how much of each taxpayer’s tax payments go toward major categories of federal spending. If required by Congress and programmed by software companies, this information can be presented in far greater detail than was possible when the statute was enacted in 1990.

To further promote public engagement, once taxpayers are given information regarding their tax payments and their contribution to federal spending, taxpayers could be given an opportunity to voice their opinions about how their tax dollars should be spent in the future. This could be achieved by inviting taxpayers to “vote” on their tax returns regarding how much and on what programs the government should spend its money and by requiring the IRS to report the results of that “voting.” The “voting,” of course, would be non-binding. But this exercise in public engagement could help Americans gain a better understanding of the connection between the federal taxes they pay and the federal benefits they receive. And, as noted, when taxpayers have a clear understanding of the benefits they receive in relation to the taxes they pay, tax morale and tax compliance are likely to increase.

20 IRS, 2019 Filing Season Statistics (week ending May 10, 2019), <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-may-10-2019> (showing that of 141,567,000 returns received by the IRS during filing season 2019 as of May 10th, 127,939,000 had been e-filed).

### Recommendations

- Amend IRC § 7523 to require the IRS to provide each taxpayer with a “taxpayer receipt” that shows, on a single page, how federal dollars are spent and the taxpayer’s own contributions in the form of taxes paid and tax benefits claimed. The IRS should develop these receipts in consultation with TAS. For taxpayers who use tax software to self-prepare their returns, this requirement may be satisfied if the IRS, as part of its Authorized IRS e-file Providers rules,<sup>21</sup> requires e-file providers to include a page displaying the one-page breakdown at the end of the return preparation process. For taxpayers who use paid preparers, the requirement may be satisfied by requiring the preparer to include the one-page breakdown when furnishing the taxpayer with a completed copy of his or her tax return, as required by IRC § 6107(a).
- Consider amending IRC § 7523 to require that (i) the taxpayer receipt contain an online link or a paper “ballot” where the taxpayer can “vote” on which programs he or she believes federal funds should be spent on and in what amounts and (ii) the IRS publish the aggregate results of taxpayer “voting” no later than 30 days after the end of the calendar year.

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21 See Rev. Proc. 2007-40, 2007-1 C.B. 1488; IRS Pub. 3112, IRS e-file Application and Participation (Apr. 2017).