Area of Focus #6

As the IRS Migrates to More Self-Service Tools and Online Services, Low Income and Other Vulnerable Taxpayer Populations May Face Greater Compliance Challenges

TAXPAYER RIGHTS IMPACTED[1]

- *The right to quality service*
- *The right to be informed*
- *The right to pay no more than the correct amount of tax*

The IRS has identified online account access as one of the key capabilities to achieve its compliance vision.[2] The National Taxpayer Advocate has been advocating for years that the IRS develop an online account system for taxpayers.[3] However, to provide taxpayer service in an effective and efficient manner, the IRS needs to understand the service needs of its entire taxpayer base. While in the current budget environment it may be tempting to migrate taxpayer service toward superficially lower-cost self-assistance options, any efforts to significantly reduce personal service options (both face-to-face and telephone) may ultimately impair voluntary compliance and undermine the taxpayers' *right to quality service, right to be informed*, and *right to pay no more than the correct amount of tax.*[4]

Research has shown individuals and businesses prefer multi-channel service delivery for government services. For example, a survey of German taxpayers showed that even those who ordinarily demand online services prefer to interact in person when they need more individualized services.[5] While the delivery of online services may appear cost-effective at first glance, focusing solely on one method of service delivery is short-sighted, because it does not properly address the actual service needs of the entire taxpayer population. Ignoring the service needs of a significant segment of the population will likely impact voluntary compliance and have far more costly downstream consequences for the IRS.

The IRS Cannot Drastically Reduce Both Face-to-Face and Telephone Services As It Focuses on Online Services Because Taxpayers Will Still Continue to Require Personal Services

A recent Forrester Research survey found the public still uses non-digital channels more than digital ones. In fact, survey recipients indicated they do not want more digital interactions with the federal government because they do not trust it with personal data. Based on the survey findings, Forrester concluded federal agencies must act more strategically. They can win trust by perfecting existing digital channels before expanding and explaining the benefits of new channels as they roll out.[6] However, the recent security breaches pertaining to the IRS's "Get Transcript" online application and the Office of Personnel

1 *See* IRS, Taxpayer Bill of Rights, *available at* http://www.irs.gov/Taxpayer-Bill-of-Rights.

2 Draft IRS Compliance Concept of Operations (CONOPS) 9-12 (June 25, 2014), on file with TAS.

3 *See, e.g.,* National Taxpayer Advocate 2013 Annual Report to Congress vol. 2, 67-96 (Research Study: *Fundamental Changes to Return Filing and Processing Will Assist Taxpayers in Return Preparation and Decrease Improper Payments*).

4 For a detailed discussion of the Taxpayer Bill of Rights, *see* http://www.taxpayeradvocate.irs.gov/About-TAS/Taxpayer-Rights.

5 Julia Klier, Regina Pfleger, and Lea Thiel, *Just Digital or Multi-Channel? The Preferences of E-Government Service Adoption by Citizens and Business Users*, Association for Information Systems (AIS) Electronic Library, Wirtschaftsinformatik Proceedings 2015 at 190 (2015), *available at* http://aisel.aisnet.org/cgi/viewcontent.cgi?article=1012&context=wi2015.

6 Rick Parrish, Forrester Research, *Washington Must Work Harder to Spur the Public's Interest in Digital Government: Federal Agencies Are Spending Millions on Digital CX That Customers May Not Want* (Apr. 28, 2015).

Management (OPM)'s breach of federal employee records will only serve to undermine taxpayers' trust in communicating with the IRS and government online.[7]

Furthermore, additional research has shown individuals and businesses prefer multi-channel service delivery for government services.[8] Individuals prefer online services for information services, because they can gather and receive information or data without a need for further discussion. However, they prefer to interact in-person when they need more individualized services. This multi-channel preference even exists for younger and well-educated individuals who typically have greater preferences for online services. As for businesses, the medium to large companies prefer online services more than small businesses.[9]

The IRS can partially address the demand for more individualized service by offering personalized digital services, such as live chat. Live chat has been found to successfully meet the needs of those who need immediate answers to simple questions. However, a recent survey found demand for live chat falls short of demand for telephone services when addressing complex financial questions.[10]

The IRS Must Balance the Added Convenience of Expanding Online Services Against the Inherent Security Risks

The IRS is understandably eager to expand its online service offerings to meet the public's demand for more convenient methods of interacting with its tax agency. In today's digital age, taxpayers are accustomed to accessing their account information with retailers and financial service providers via the internet or mobile phone applications. With the IRS interacting with well over 100 million individual taxpayers each year,[11] taxpayers would benefit if the IRS could allow taxpayers to:

- Notify the IRS of a change of address;
- Request copies of current and prior year Forms W-2 and Forms 1099;
- Request copies of prior year returns processed by the IRS;
- View the status of recently filed returns;
- View the current balance due, broken out by taxes, penalties, and interest;
- Make payments on a balance due;
- Make estimated payments; and
- Upload documents in response to IRS requests.

The IRS has made some strides in improving the taxpayers' online experience. For example, the IRS2Go application allows mobile phone users to check their refund status by inputting their Social Security number (SSN), filing status, and refund amount. The IRS's "Get Transcript" web application (now

7 IRS, *IRS Statement on the "Get Transcript" Application* (June 2, 2015); OPM, Announcements, *Information About the Recent Cybersecurity Incidents* (June 23, 2015).

8 As noted above, this was a survey of German taxpayers published in 2015. *See* Julia Klier, Regina Pfleger, and Lea Thiel, *Just Digital or Multi-Channel? The Preferences of E-Government Service Adoption by Citizens and Business Users*, AIS Electronic Library, Wirtschaftsinformatik Proceedings 2015 at 190 (2015), *available at* http://aisel.aisnet.org/cgi/viewcontent.cgi?article=1012&context=wi2015.

9 Julia Klier, Regina Pfleger, and Lea Thiel, *Just Digital or Multi-Channel? The Preferences of E-Government Service Adoption by Citizens and Business Users*, AIS Electronic Library, Wirtschaftsinformatik Proceedings 2015 at 190 (2015).

10 A survey conducted by Software Advice found 74 percent of respondents prefer telephone for complex financial questions. Craig Borowski, *The Impact of Demographics on Live Chat Customer Service*, Software Advice (Jan. 6, 2015).

11 *See* IRS, IR-2015-03, *IRS Starts 2015 Tax Season; Free File Opens Tomorrow, E-File Tuesday; Expanded Online Services Enable People to Learn About New Health Care Provisions* (Jan. 15, 2015), *available at* http://www.irs.gov/uac/Newsroom/IRS-Starts-2015-Tax-Season;-Free-File-Opens-Tomorrow,-EFile-Tuesday.

temporarily suspended until further notice) allowed taxpayers the ability to request transcripts of their prior filed returns, after answering some questions to validate their identity.[12]

However, we must be realistic in assessing the risk involved in expanding online services, given the sensitive nature of the information entrusted with the IRS. Security breaches exposing customer data are a regular occurrence; the recent unauthorized access by cybercriminals of the IRS's "Get Transcript" application and resulting theft of the confidential tax return information of approximately 104,000 taxpayers drives home this point.[13] OPM's recent announcement that its database has been hacked, making vulnerable the personal information of an estimated 18 million current or former federal employees, has further undermined public trust.[14]

In the wake of these recent cybersecurity breaches, the IRS should take time to investigate how much risk the public is willing to bear with respect to their tax information. It is one thing for hackers to access, for example, credit card numbers from a retailer, and it is quite another for them to have unfettered access to a taxpayer's SSN, full name, address, wage information, filing status, and dependents – in other words, everything an identity thief would need to file a falsified return posing as the taxpayer. Taxpayers should understand the IRS has a greater responsibility with respect to cybersecurity than, for example, an airline or even a credit card company.[15] Therefore, the IRS must conduct due diligence to balance security concerns with any purported online benefits, simply because the stakes are so high. It also should not impose a digital strategy on taxpayers that erodes taxpayers' trust for the IRS's own convenience.

However, to provide taxpayer service in an effective and efficient manner, the IRS needs to understand the service needs of its entire taxpayer base.

Comprehensive Studies Demonstrate Low Income and Other Vulnerable Taxpayer Populations Need Person-to-Person Assistance to Comply with Their Federal Tax Obligations

In 2014, TAS, which oversees and administers the Low Income Taxpayer Clinic (LITC) grant program for the IRS,[16] commissioned a survey by Russell Research to better understand the needs and circumstances of taxpayers eligible to use the clinics. The survey found 15 percent of LITC-eligible taxpayers reported receiving notices from the IRS. In response, 55 percent called the IRS, 29 percent replied by letter,

12 IRS, *IRS Statement on the "Get Transcript" Application* (June 2, 2015).

13 *See* http://www.irs.gov/uac/Newsroom/IRS-Statement-on-the-Get-Transcript-Application. *See also* Lisa Rein and Jonnelle Marte, *Hackers Stole Personal Information from 104,000 Taxpayers, IRS Says*, Wash. Post, May 26, 2015.

14 Devlin Barrett and Damian Paletta, *Officials Masked Severity of Hack*, Wall St. J., June 24, 2015, *available at* http://www.wsj.com/articles/hack-defined-as-two-distinct-breaches-1435158334; Ellen Nakashima, *Chinese Breach Data of 4 Million Federal Workers*, Wash. Post, June 4, 2015, *available at* http://www.washingtonpost.com/world/national-security/chinese-hackers-breach-federal-governments-personnel-office/2015/06/04/889c0e52-0af7-11e5-95fd-d580f1c5d44e_story.html.

15 *See* Jonnelle Marte, *A Year of Credit Monitoring Won't Put Risk to Rest*, Wash. Post, May 30, 2015.

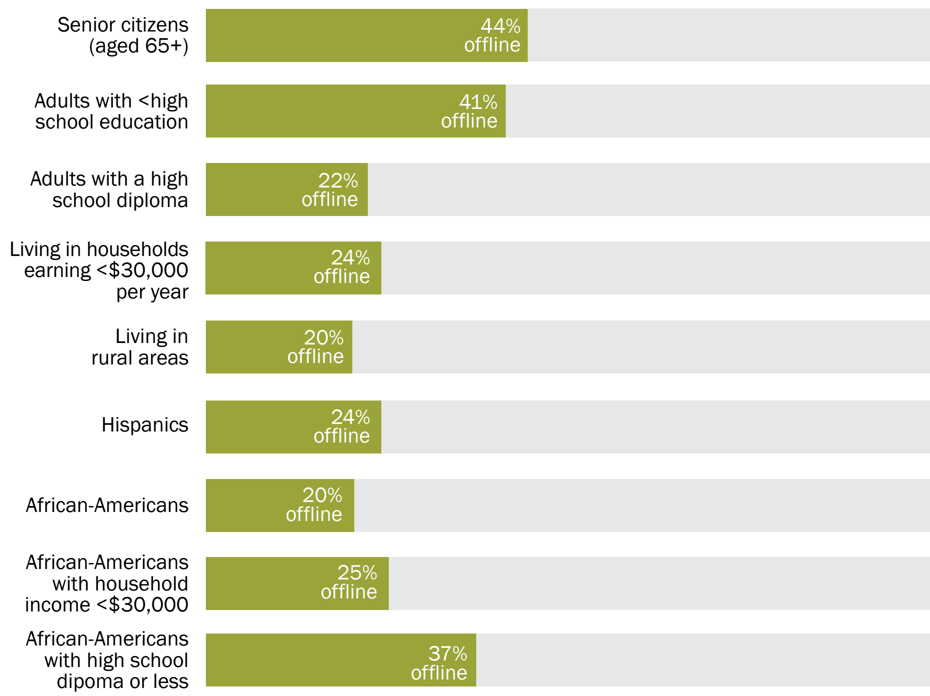
16 The IRS awards matching grants to organizations that provide representation to low income individuals who need help resolving tax problems with the IRS. *See* IRC § 7526. At least 90 percent of the taxpayers represented by an LITC must have incomes that do not exceed 250 percent of the federal poverty level. *See* IRC § 7526(b)(1)(B)(i). The U.S. Department of Health and Human Services publishes yearly poverty guidelines in the Federal Register, which the IRS uses to establish the 250 percent threshold for LITC representation. For the 2015 poverty guidelines, see 80 F.R. 3236-3237 (Jan. 22, 2015).

24 percent contacted their preparers, and nearly 20 percent did nothing (the survey allowed more than one response).[17]

Further, Pew Research Center conducted several surveys to determine the percentage of adult individuals who are offline (not using the internet or email). The following figure shows the categories of individuals found by the surveys to have the highest *offline* rates in 2013.[18]

FIGURE 3.6.1

2013 Pew Research Center Survey Results of Adults Who Are Offline



17 This Random-Digit Dialed (RDD) telephone survey utilized both cell phone numbers and landline numbers to reach participants. This approach was used to make sure all groups of the LITC-eligible taxpayers were represented in the survey. The survey included more than 1,100 individuals and gathered information on eligible taxpayers' awareness and use of LITC services, the types of issues for which they would consider using clinic services, and other items including demographic information. *See* National Taxpayer Advocate 2014 Annual Report to Congress vol. 2, 1-26 (Research Study: *Low Income Taxpayer Clinic Program: A Look at Those Eligible to Seek Help from the Clinics*).

18 Pew Research Center's Internet & American Life Project, *Who's Not Online and Why?* (Sept. 2013) (phone survey conducted in 2013); *see also* Pew Research Center, *Older Adults and Technology Use: Adoption Is Increasing, But Many Seniors Remain Isolated from Digital Life* (Apr. 2014) (phone survey conducted in 2013); Pew Research Center's Internet Project July 18 to September 30 Tracking Survey, *African Americans and Technology Use: A Demographic Portrait* (Jan. 2014).

Finally, a 2014 online survey by Forrester Research explored the use of certain devices to conduct various transactions online. While this study was conducted online and thus excluded responses from offline individuals or those with limited online capabilities, it produced some noteworthy findings:[19]

- On average, only 19 percent of adults search for government services and policies with a personal computer or laptop. This rate drops to 11 percent when using personal tablets and to four percent when using a mobile phone;
- With very few exceptions, those in lower income brackets used all devices to conduct online financial transactions less frequently than the national average; and
- On average, 21 percent of adults use their mobile phones to check financial statements. Only 13 percent use their mobile phones to pay bills or transfer money between accounts.

The LITC-eligible taxpayer survey and Pew and Forrester findings support the need for the IRS to design a taxpayer service strategy based on the actual requirements of the taxpayer population rather than focusing on short-term resource savings. The survey findings show a significant portion of taxpayers may not use online or self-assistance services. While online self-help tools may address the needs of many taxpayers in a lower-cost manner, the IRS is harming offline taxpayers when it significantly decreases the face-to-face and person-to-person telephone services.

Questions Remain Concerning the Legal Implications of Self-Correction Authority

According to the IRS draft Compliance CONOPS, online account access would enable taxpayers, preparers, and authorized third parties to securely interact with the IRS to obtain return information, submit payments, and receive status updates. It would also enable them to perform "self-correction" functions such as verifying return changes made by the IRS, updating or amending returns, and providing additional documents.[20] We remain concerned about the scope of this self-correction authority. For example, it is unclear whether the self-corrections could address adjustments made pursuant to the agency's math error authority.[21] Even more disturbing is the Administration's proposed legislation to give the IRS more flexibility to address "correctable errors" (by regulation); this new category of "correctable errors" would give the IRS the authority to make adjustments not covered by existing math error authority.[22] It is unclear if the IRS will give preparers and third parties the authority to address these correctable errors.[23] The National Taxpayer Advocate will seek a Counsel opinion to determine the boundaries and corresponding legal implications of such authority.

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19 Because this survey was conducted online, the reported usage rates may be higher than for the general population. Forrester Research, *North American Consumer Technographics Online Benchmark Survey,* Part 2 (2014), on file with TAS.

20 Draft IRS Compliance CONOPS 3, 19-22 (June 2014), on file with TAS.

21 The IRS is currently authorized to correct mathematical or clerical errors – arithmetic mistakes and the like – and assess any tax increase using summary assessment procedures that do not provide the taxpayer an opportunity to challenge the proposed deficiency in the United States Tax Court before the tax is assessed. *See* IRC §§ 6213(b)(1), (g)(2). Consequently, the use of math error bypasses critical procedural taxpayer rights protections.

22 The proposed correctable error authority would enable the IRS to assess tax without using the deficiency procedures in the following situations: (1) The information provided by the taxpayer does not match the information in government databases; (2) The taxpayer has exceeded the lifetime limit for claiming a deduction or credit; or (3) The taxpayer has failed to include with his or her return documentation required by statute. Department of the Treasury, General Explanations of the Administration's Fiscal Year 2016 Revenue Proposals 245-46 (Feb. 2015), *available at* http://www.treasury.gov/resource-center/tax-policy/Pages/general_explanation.aspx.

23 For more detail on the National Taxpayer Advocate's position on the proposed correctable error legislation, *see The National Taxpayer Advocate's 2014 Annual Report to Congress: Hearing Before the H. Comm. on Oversight and Government Reform, Subcomm. on Government Operations*, 114th Cong. 34-5 (2015) (written testimony of Nina E. Olson, National Taxpayer Advocate).

We are also concerned about which preparers and third parties will have self-correction authority. As discussed below, there seem to be no current restrictions on access by type of tax practitioner. Therefore, it appears the IRS has no plans to limit the online account access or associated self-correction authority of unregulated preparers who are not subject to IRS oversight pursuant to Circular 230.

Only Circular 230 Preparers Should Have Access to an Online Taxpayer Account System

In the draft CONOPS, the IRS has proposed to provide preparers with access to the taxpayer's online account.[24] Accordingly, the National Taxpayer Advocate has the following concerns related to a preparer's role when accessing a taxpayer's online account:

- How will the taxpayer designate a preparer authorized to gain online account access?;
- How will the taxpayer maintain control over the extent of authority granted to the preparer?;
- Will the IRS safeguard confidential taxpayer return information by implementing strict security requirements on preparer access?;
- What is the scope of the preparer's authority to correct errors through online account access?; and
- How will the IRS ensure that the preparer has not exceeded the authority granted by the taxpayer?

The National Taxpayer Advocate is concerned the IRS will expose taxpayers to potential harm due to incompetence or misconduct if it does not restrict access to those preparers regulated by the IRS under Circular 230.[25] Because we know there are preparers who are committing refund fraud,[26] and we know certain payroll service providers who have access to employer accounts also embezzle funds and change account information to hide this, there is a risk the IRS will create significant compliance problems unless it institutes safeguards.[27]

In addition, the LITC-eligible taxpayer survey findings, discussed above, raise fundamental questions about the appropriateness of relying on preparers (as distinguished from representatives) as intermediaries for the low income population, especially the Spanish speakers in this category, and particularly with respect to the unregulated return preparer population. Pursuant to the survey, a majority of all LITC-eligible taxpayers reported using return preparers, as did approximately 75 percent of Spanish-speaking eligible taxpayers. However, a significant percentage of these preparers did not satisfy the very basic

24 Draft IRS Compliance CONOPS 3, 19-22 (June 2014), on file with TAS.

25 31 C.F.R. Part 10.

26 *See The National Taxpayer Advocate's 2014 Annual Report to Congress: Hearing Before the H. Comm. on Oversight and Government Reform, Subcomm. on Government Operations*, 114th Cong. 18-20 (2015) (written testimony of Nina E. Olson, National Taxpayer Advocate). *See also* National Taxpayer Advocate 2014 Annual Report to Congress 543-44; National Taxpayer Advocate Fiscal Year 2015 Objectives Report to Congress 71-8; National Taxpayer Advocate 2013 Annual Report to Congress 61-74 (Most Serious Problem: *Regulation of Return Preparers: Taxpayers and Tax Administration Remain Vulnerable to Incompetent and Unscrupulous Return Preparers While the IRS Is Enjoined from Continuing Its Efforts to Effectively Regulate Return Preparers*).

27 *The National Taxpayer Advocate's 2014 Annual Report to Congress: Hearing Before the H. Comm. on Oversight and Government Reform, Subcomm. on Government Operations*, 114th Cong. 20-3 (2015) (written testimony of Nina E. Olson, National Taxpayer Advocate); National Taxpayer Advocate 2014 Annual Report to Congress 218-24 (Most Serious Problem: *Offers in Compromise: The IRS Needs to Do More to Comply with the Law Regarding Victims of Payroll Service Provider Failures*); National Taxpayer Advocate 2012 Annual Report to Congress 426-44 (Most Serious Problem: *Early Intervention, Offers in Compromise, and Proactive Outreach Can Help Victims of Failed Payroll Service Providers and Increase Employment Tax Compliance*); National Taxpayer Advocate 2012 Annual Report to Congress 553-59 (Legislative Recommendation: *Protect Taxpayers and the Public Fisc from Third-Party Misappropriation of Payroll Taxes*); National Taxpayer Advocate 2007 Annual Report to Congress 337-54 (Most Serious Problem: *Third Party Payers*); National Taxpayer Advocate 2007 Annual Report to Congress 538-44 (Legislative Recommendation: *Taxpayer Protection from Third-Party Payer Failures*); National Taxpayer Advocate 2004 Annual Report to Congress 394-99 (Legislative Recommendation: *Protection from Payroll Service Provider Misappropriation*).

statutory requirements under IRC § 6695(a) and (b).[28] Participants reported, for example, the preparer either did not sign the return or did not give the taxpayer a copy more than 15 percent of the time. This percentage rose to more than 30 percent for Spanish-speaking eligible taxpayers.[29] Accordingly, TAS will advocate that only return preparers within the scope of Circular 230 should have access to a taxpayer's online account.[30]

While online self-help tools may address the needs of many taxpayers in a lower-cost manner, the IRS is harming offline taxpayers when it significantly decreases the face-to-face and person-to-person telephone services.

FOCUS FOR FISCAL YEAR 2016

- Continue to advocate for low income taxpayers and other vulnerable populations who have significant offline rates by working with the IRS to ensure it maintains meaningful and high-quality service options for these populations;
- Work with the IRS to ensure it incorporates strict security safeguards on preparer access to taxpayer online accounts;
- Work with the IRS to restrict preparer access to taxpayers' online accounts to those preparers who are regulated by Circular 230; and
- Seek a Counsel opinion to determine the boundaries and corresponding legal implications of the self-correction authority provided to preparers.

28 IRC § 6695(a) imposes a penalty on a tax return preparer for failure to provide a copy of the return to the taxpayer, unless the failure is due to reasonable cause and not to willful neglect. IRC § 6695(b) imposes a penalty on a tax return preparer for failure to sign a return when required by regulation to do so, unless the failure is due to reasonable cause and not to willful neglect.

29 For more information on the LITC-eligible taxpayer study, *see* National Taxpayer Advocate 2014 Annual Report to Congress vol. 2, 1-26 (Research Study: *Low Income Taxpayer Clinic Program: A Look at Those Eligible to Seek Help from the Clinics*).

30 Rev. Proc. 2014-42 provides that preparers who have obtained the voluntary record of completion as part of the Annual Filing Season Program are allowed to represent taxpayers before the IRS during an examination of a tax return or claim for refund they prepared. Unenrolled preparers without the voluntary record of completion will no longer be allowed to engage in limited practice on returns they prepare after December 31, 2015. Further, to receive the record of completion, the preparer must consent to be subject to the duties and restrictions relating to practice before the IRS in subpart B and section 10.51 of Circular 230 for the entire period covered by the record of completion.