

PREFACE: National Taxpayer Advocate’s Introductory Remarks

The Internal Revenue Code requires the National Taxpayer Advocate to submit two annual reports to the House Committee on Ways and Means and the Senate Committee on Finance.¹ The National Taxpayer Advocate is required to submit these reports directly to the Committees without any prior review or comment from the Commissioner of Internal Revenue, the Secretary of the Treasury, the IRS Oversight Board, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget.² The first report, due by June 30 of each year, must identify the objectives of the Office of the Taxpayer Advocate for the fiscal year beginning in that calendar year.

The United States tax system enjoys a high rate of voluntary compliance from its taxpayers, notwithstanding certain pockets of noncompliant behavior. Overall, the IRS estimates that about 84 percent of legal-source tax revenue due and owing is actually collected.³ And of the amount collected — which was \$3.3 trillion in fiscal year (FY) 2016 — more than 98 percent is paid voluntarily.⁴ Thus, less than two percent is collected as a direct result of IRS enforcement action. To maintain and increase high voluntary compliance levels, it is imperative that the tax administrator make tax compliance as simple and painless as possible.

Today, U.S. taxpayers are not treated very well by the U.S. tax system. They must navigate an Internal Revenue Code of extraordinary complexity that confounds most taxpayers and provides others with opportunities for gamesmanship. If a taxpayer wants an answer to even the most foundational tax law question — say, “what are the consequences for a married couple filing jointly or separately (see lines 1–5 of Form 1040)?” — the IRS will refuse to answer, declaring the question “out of scope.” And heaven forbid a taxpayer should seek an answer to a tax law question on the phones or at an IRS Taxpayer “Assistance” Center after the filing season. When it comes to answering tax law questions, the IRS now closes up shop entirely after April 15.⁵

The IRS is rightfully proud of its 79 percent “level of service” (LOS) on the main customer service telephone lines (the Accounts Management lines) during the recent filing season, up from 72 percent during the 2016 filing season. But as we report in our discussion, *Review of the 2017 Filing Season*, this figure masks the extremely poor treatment taxpayers experienced on other important phone lines. In fact, the percentage of *all* calls answered by IRS assistors *declined* from Filing Season (FS) 2016 to 2017.⁶ And for those 4.2 million folks who wanted to talk with an IRS Compliance employee about a collection matter, well, they needed to get in line. Only 44 percent of their calls were answered during the filing season, and they had to wait, on average, 42 minutes.⁷ Similarly, only 40 percent of the 2.7 million people who tried to call the “Installment Agreement/Balance Due” phone number that the IRS puts on

1 Internal Revenue Code (IRC) § 7803(c)(2)(B).

2 IRC § 7803(c)(2)(B)(iii).

3 IRS, *Tax Gap Estimates for Tax Years 2008-2010* (April 2016), <https://www.irs.gov/pub/newsroom/tax%20gap%20estimates%20for%202008%20through%202010.pdf>.

4 See Government Accountability Office (GAO), GAO-17-140, *Financial Audit: IRS’s Fiscal Years 2016 and 2015 Financial Statements* 25 (Nov. 2016), <https://www.gao.gov/assets/690/680957.pdf> (showing the IRS collected \$3.3 trillion in fiscal year (FY) 2016); IRS, *Fiscal Year 2016 Enforcement and Service Results*, https://www.irs.gov/PUP/newsroom/fy_2016_enforcement_and_service_results.pdf (showing the IRS collected \$54.3 billion through enforcement activities in FY 2016).

5 The deadline for filing tax returns without an extension generally falls on April 15. However, it may be extended, as it was this year, when April 15 falls on a weekend or holiday.

6 IRS, Joint Operations Center (JOC), *Snapshot Reports: Enterprise Snapshot, Enterprise Total* (week ending April 22, 2017). The level of service (LOS) on all IRS telephone lines (Enterprise Total) for the filing season was 70.7 percent as of April 22, 2017, as compared with 71.3 percent as of the corresponding date in 2016.

7 IRS, JOC, *Snapshot Reports: Enterprise Snapshot, Consolidated ACS* (week ending April 22, 2017).

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its collection notices were able to get through to an IRS assistor, and then only after waiting 47 minutes, on average.⁸

Interestingly, at a time when the IRS and the Treasury Department are touting the digital products that are supposed to ameliorate this abysmal lack of taxpayer service, many taxpayers seem either uninterested or unable to participate. Hits to the IRS's website, irs.gov, declined by 4.1 percent between FS 2016 and FS 2017.⁹ And of the taxpayers who try to create an online account to obtain a transcript of their returns or check their balances due, only between 18 and 26 percent actually manage to do so.¹⁰ Indeed, the online account and other such services are virtually inaccessible to large numbers of U.S. taxpayers — 33 million do not have broadband access, and 14 million do not have any internet access at all.¹¹ Imagine dealing with your tax issues or researching your tax question on a library computer or via public wifi in a public space. So much for privacy and security.

As of September 30, 2016, the IRS dedicated only 98 employees to conducting education and outreach to the 62 million small business and self-employed taxpayers, and only 365 employees to conducting education and outreach to the nearly 125 million individual taxpayers.¹² There are 14 states that have *no* Stakeholder Liaison employees who conduct outreach to small business and self-employed taxpayers.¹³ The number of Taxpayer Assistance Centers (TACs) is declining each year, and because of the IRS's new *appointment-only* system, taxpayers who show up without an appointment are routinely turned away. The TACs have completely stopped offering free tax preparation for low income, elderly, and disabled taxpayers and, as noted above, will not answer "out-of-scope" tax law questions during the filing season and will not answer *any* tax law questions outside the filing season.

Staffing cuts are not just limited to taxpayer service. Twelve states do not have an Appeals Officer within their borders, and the Office of Appeals recently announced procedures that make it

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- 8 IRS, JOC, *Snapshot Reports: Product Line Detail, Installment Agreement/Balance Due* (week ending April 22, 2017). LOS decreased 47 percent between Filing Season (FS) 2016 and FS 2017.
- 9 IRS, *Filing Season Statistics for Week Ending April 21, 2017*, <https://www.irs.gov/uac/newsroom/filing-season-statistics-for-week-ending-april-21-2017>, and *Filing Season Statistics for Week Ending April 22, 2016*, <https://www.irs.gov/uac/newsroom/filing-season-statistics-for-week-ending-april-22-2016>.
- 10 IRS, JOC, *Online Account External Launch Report*. The rate for passing authentication to access an online account was 26 percent for the week ending May 13, 2017. Between the week ending Jan. 14, 2017 and May 13, 2017, that rate ranged between 18 percent and 26 percent.
- 11 National Taxpayer Advocate 2016 Annual Report to Congress vol. 2 at 4 (Research Study: *Taxpayers' Varying Abilities and Attitudes Toward IRS Taxpayer Service: The Effect of IRS Service Delivery Choices on Different Demographic Groups*). For a discussion the IRS online account and the needs of U.S. taxpayers, see Area of Focus: *The IRS's Heavy Reliance on the Online Account Benefits Taxpayers Who Can Access the Application and Prefer Digital Interaction, But It Burdens Taxpayers Who Need or Prefer More Personalized Service*, *infra*.
- 12 IRS responses to TAS fact checks (Dec. 15 and 16, 2016); the number of individual taxpayers is reported on the intranet site of the IRS's Wage & Investment Division.
- 13 The 14 states are Alaska, Delaware, Hawaii, Kentucky, Mississippi, Montana, North Dakota, Nebraska, New Hampshire, South Dakota, Vermont, West Virginia, Wisconsin, and Wyoming. There also is no liaison in the District of Columbia. IRS response to TAS fact check (Dec. 15, 2016); IRS Human Resources Reporting Center, *Report of Small Business/Self-Employed (SB/SE) Job Series 0526, Stakeholder Liaison Field Employees as of the week ending October 1, 2016* (Dec. 1, 2016).

extraordinarily difficult to obtain a face-to-face meeting.¹⁴ To get a sense of how frustrating these new restrictions are for many taxpayers and their representatives, imagine a court system that doesn't allow litigants to see a judge or a jury. That's what the Office of Appeals has largely become. Field examination and collection employees have declined by 26 and 30 percent between FYs 2011 and 2016, respectively.¹⁵ For individual taxpayers, approximately 76 percent of audits are conducted by correspondence, with no one IRS employee responsible for and accountable for the taxpayer's case.¹⁶ Penalties are often imposed automatically without any consideration of the taxpayer's actual behavior or intent. The geographic presence of the IRS throughout the country has been replaced by large, centralized sites of remote workers. With the exception of the Taxpayer Advocate Service, no part of the IRS focuses on the local needs, conditions, customs, and culture of the diverse states and locales that make up the United States.¹⁷

Finally, the IRS is struggling under the increasing burden of archaic computer and information technology (IT) systems. According to the Government Accountability Office, the nation's tax information is maintained on the government's two oldest databases. There are at least 60 different case management systems in the IRS that generally do not talk with one another, which forces employees to manually retrieve data and create paper files. The decrepitude of the IRS IT systems creates rework and employee and taxpayer burden.¹⁸

This unfortunate state of affairs has come about, in large part, because of sustained budget cuts since 2010; the Taxpayer Advocate Service estimates a reduction of about 20 percent, when adjusted for inflation.¹⁹ And things are likely to get worse. Based on the Administration's proposed FY 2018 budget, *the IRS is projecting it will only be able to answer 39 percent of the calls to IRS assistors in FY 18.*²⁰ The IRS

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- 14 The 12 states that lack a permanent Appeals Officer are Alaska, Arkansas, Delaware, Idaho, Kansas, Montana, North Dakota, New Mexico, Rhode Island, South Dakota, Vermont, and Wyoming. There is also no Appeals Office in the territory of Puerto Rico. IRS Office of Appeals response to TAS information request (June 6, 2016). For a discussion of Appeals' recent policy changes and TAS concerns about them, see National Taxpayer Advocate Fiscal Year 2018 Objectives Report to Congress vol. 2 (Most Serious Problem: *Appeals: The Office of Appeals' Approach to Case Resolution Is Neither Collaborative Nor Taxpayer Friendly and Its "Future Vision" Should Incorporate Those Values*), *infra*.
- 15 There were 11,959 Revenue Agents (RAs) in the last pay period of FY 2011 and 8,871 RAs in the last pay period of FY 2016. There were 4,402 Revenue Officers (ROs) in the last pay period of FY 2011 and 3,072 ROs in the last pay period of FY 2016. *IRS Oversight: Hearing Before Subcomm. on Financial Services and General Government of H. Comm. on Appropriations*, 115th Cong. (May 23, 2017) (statement of Nina E. Olson, National Taxpayer Advocate); see National Taxpayer Advocate 2016 Annual Report to Congress 86-97 (Most Serious Problem: *Geographic Focus: The IRS Lacks an Adequate Local Presence in Communities, Thereby Limiting Its Ability to Meet the Needs of Specific Taxpayer Populations and Improve Voluntary Compliance*).
- 16 IRS, *Fiscal Year 2016 Enforcement and Service Results*, https://www.irs.gov/PUP/newsroom/fy_2016_enforcement_and_service_results.pdf. During FY 2016, the IRS conducted 1,034,955 individual audits. Of that total, 791,233 were Correspondence audits and 243,722 were Field audits.
- 17 For a discussion of TAS's plans to expand its geographic presence in locales of underserved taxpayers, see *Efforts to Improve TAS Advocacy*, *infra*.
- 18 For a discussion of the IRS's information technology challenges, particularly with respect to Enterprise Case Management, see Area of Focus: *While the IRS Has Made Encouraging Progress on Its Enterprise Case Management (ECM) Project, Much Work Remains to Be Done for the Project to Succeed*, *infra*.
- 19 IRS funding is down in dollar terms by 7.5 percent since FY 2010. In FY 2010, the agency's appropriated budget stood at \$12.1 billion. For FY 2016, its budget was \$11.2 billion. Based on the Consumer Price Index measure of inflation, costs have risen by 12 percent over the same period. Bureau of Labor Statistics, Consumer Price Index – Urban (CPI-U) (reflecting inflation from March 2010 through March 2017). Thus, the inflation-adjusted reduction is nearly 20 percent. There are multiple measures of inflation, so the use of a different measure may produce slightly different results.
- 20 Department of the Treasury, *FY 2018 Budget in Brief* 55 (May 2017), <https://www.treasury.gov/about/budget-performance/budget-in-brief/BIB18/FY%202018%20Treasury%20BIB%20Combined%20FINAL.PDF>.

is also planning for additional cuts in other areas due to a projected reduction in full-time equivalent positions of 7.6 percent overall.²¹

While the impact of the budget cuts is significant, there is a related issue that also requires attention. As I discussed in the *Special Focus* section of the National Taxpayer Advocate's 2016 Annual Report to Congress, I believe the IRS historically has viewed itself first and foremost as an enforcement agency, and that approach to tax administration continues to predominate.²² More than 43 percent of the IRS budget is allocated for Enforcement (a figure that rises to more than 60 percent with Operations Support dollars apportioned), as compared with about four percent for Pre-Filing Taxpayer Assistance and Education.²³ The IRS currently has fewer than 500 employees in its Stakeholder Partnerships, Education and Communication and Stakeholder Liaison outreach functions out of a workforce of roughly 80,000 (*i.e.*, about one-half of one percent). We describe how the IRS revised its mission statement in 2009, without any public discussion, to change its focus from “applying” the law to “enforcing” the law. And we point out the IRS has developed and posted on irs.gov four “vignettes” to illustrate the taxpayer experience under its “Future State” vision, where all involve IRS compliance activities and all reach the conclusion that the IRS is right and the taxpayer is wrong. We argue the IRS should shift its approach to tax administration from an “Enforcement First” approach to a “Service First” approach.

The IRS must change its focus to taxpayer service, outreach, and education first. It must revise its mission statement back to an emphasis on taxpayer service and add a focus on taxpayer rights.

In its response to our recommendations, the IRS inaccurately implies we said the IRS's culture is “exclusively” focused on enforcement. We did not and would not make such a statement, as the IRS clearly devotes resources to taxpayer service as well. Rather, it is a question of relative emphasis. By mischaracterizing our report as saying the IRS focuses “exclusively” on enforcement, the IRS response seems intent on creating a straw man and knocking it down rather than addressing the nuances of tax administration priorities and the detailed recommendations we presented.

Given all the challenges I have described, what is to be done? Well, the IRS must change its focus to taxpayer service, outreach, and education first. It must revise its mission statement back to an emphasis on taxpayer service and add a focus on taxpayer rights. It must reinstate a geographic presence for its audit, collection, and appeals functions as well as expand outreach and education. It must pick up the phone and talk with taxpayers, and listen to them when they speak. To enable the IRS to do these things, Congress must provide sufficient funding. And Congress should conduct sufficient oversight over the IRS to ensure that it actually does them.

21 Department of the Treasury, *FY 2018 Budget in Brief* 51 (showing a reduction of 5,803 full-time equivalent positions from 76,838 in FY 2017 to 71,035 in FY 2018).

22 National Taxpayer Advocate 2016 Annual Report to Congress 1-41 (Special Focus: *IRS Future State: The National Taxpayer Advocate's Vision for a Taxpayer-Centric 21st Century Tax Administration*).

23 See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, 129 Stat. 2242 (2015); U.S. Department of the Treasury, *Internal Revenue Service FY 2017 Budget-in-Brief* 1, <https://www.irs.gov/pub/newsroom/IRS%20FY%202017%20BIB.pdf>, which shows FY 2016 enacted funding levels of about \$4.86 billion for Enforcement and about \$630 million for Pre-Filing Taxpayer Assistance and Education out of a total appropriated budget of \$11.235 billion. The Pre-Filing Taxpayer Assistance and Education category includes about \$173 million for Taxpayer Advocate Case Processing, which generally does not involve pre-filing taxpayer assistance or education. After backing out that amount, the remaining Pre-Filing Taxpayer Assistance and Education budget comes to about \$457 million, or four percent of the total IRS budget. In addition, about \$3.75 billion, or 33 percent of the IRS budget, is appropriated for the Operations Support account. After apportioning Operations Support dollars to the Taxpayer Services and Enforcement accounts in rough proportion to their respective allocations (\$2.33 billion for Taxpayer Services and \$4.86 billion for Enforcement), overall spending on Enforcement activities comes to more than 60 percent of the IRS budget.

(As discussed in prior reports, more IRS funding generally translates into more revenue collection, so additional funding almost surely will more than pay for itself.)

I welcome the beginning of discussions on IRS reform.²⁴ So long as it is approached in a bipartisan, non-punitive manner, there will be no shortage of good ideas. We simply can't go on like we have been and think we are delivering to the U.S. taxpayer a 21st century tax administration. U.S. taxpayers deserve so much more.

Respectfully submitted,



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24 See House Republicans' Tax Reform Task Force, *A Better Way: Our Vision for a Confident America* (June 2016), <http://abetterway.speaker.gov>; *IRS Reform: Lessons Learned from the National Taxpayer Advocate: Hearing Before Subcomm. on Oversight of H. Comm. on Ways and Means*, 115th Cong. (May 19, 2017) (statement of Nina E. Olson, National Taxpayer Advocate); National Taxpayer Advocate 2016 Annual Report to Congress 1-41 (Special Focus: *IRS Future State: The National Taxpayer Advocate's Vision for a Taxpayer-Centric 21st Century Tax Administration*).