

Area of Focus #10 **TAS Is Researching Specific Ways That the IRS Can Improve Its Notices and Letters to Educate Taxpayers and Protect Taxpayer Rights**

TAXPAYER RIGHTS IMPACTED¹

- *The Right to Be Informed*
- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Appeal an IRS Decision in an Independent Forum*
- *The Right to a Fair and Just Tax System*

DISCUSSION

Clear, concise, and accurate correspondence from the IRS to taxpayers is essential to educating and empowering taxpayers. If drafted appropriately, correspondence can cultivate positive relationships and help taxpayers comply with their tax obligations. For example, Letter 3193, *Notice of Determination: Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code*, carries crucial information related to a taxpayer's right to exercise his or her right to appeal a Collection Due Process (CDP) hearing determination to the U.S. Tax Court. With potentially erroneous Earned Income Tax Credit (EITC) claims, correspondence to taxpayers fosters compliance because taxpayers learn the rules.²

The IRS's current approach to correspondence does not maximize these opportunities. It could save time, money, and rework by using direct, specific communication that taxpayers can understand and use. The IRS needs to gain expertise from many fields — psychology, cognitive science, graphic art — to improve its communication to educate taxpayers and protect their rights.

TAS Identified Improvements to the Notices That Include Critical Information About the Right to Appeal a Case to the U.S. Tax Court

The United States Tax Court plays a “unique and critical role as a prepayment forum” that taxpayers can access without having to pay the disputed amount of tax in advance.³ The Tax Court has jurisdiction over a multitude of issues, including appeals from CDP hearings.⁴ The statutory notice of deficiency also brings important information regarding the right to appeal to the Tax Court.⁵ The current

1 See Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR are now listed in the Internal Revenue Code (IRC). See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).

2 National Taxpayer Advocate 2017 Annual Report to Congress vol. 2, 15-39 (Research Study: *Study of Subsequent Filing Behavior of Taxpayers Who Claimed Earned Income Tax Credits (EITC) Apparently In Error and Were Not Audited But Were Sent an Educational Letter From the Taxpayer Advocate Service, Part 2: Validation of Prior Findings and the Effect of an Extra Help Phone Number and a Reminder of Childless-Worker EITC*); National Taxpayer Advocate 2016 Annual Report to Congress vol. 2, 32-52 (Research Study: *Study of Subsequent Filing Behavior of Taxpayers Who Claimed Earned Income Tax Credits (EITC) Apparently in Error and Were Sent an Educational Letter From the National Taxpayer Advocate*).

3 Hon. James S. Halpern, *What Has the U.S. Tax Court Been Doing? An Update*, 2016 TNT 106-8, TAX NOTES TODAY (June 2, 2016).

4 See IRC §§ 6320 and 6330 for Collection Due Process (CDP) jurisdiction.

5 See IRC § 6212 for information on the statutory notice of deficiency.

language in several IRS CDP notices of determination and statutory notices of deficiency confuses taxpayers, especially *pro se* taxpayers.

For example, Letter 3193, *Notice of Determination: Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code*, refers to “a 30-day period beginning the day after the date of this letter” within which taxpayers may petition the Tax Court for review of the IRS’s determination to proceed with collection by lien or levy.⁶ Several recent court cases demonstrate that the language in these notices confuses taxpayers and may cause them to misinterpret the deadline to file a petition with the Tax Court.⁷ If a taxpayer misses the deadline, the Tax Court does not have jurisdiction to review the IRS’s determination, and the taxpayers are deprived of their CDP rights.⁸

To address practitioners’ criticisms of these two groups of notices, TAS started an ongoing review of these notices in fiscal year (FY) 2018. As part of this review, TAS reviewed the legal requirements for each notice and identified the key components that should be conveyed. The team also held discussions with small groups of stakeholders to hear their experiences with the notices and solicit any ideas for improvements. The stakeholders included attorneys, certified public accountants, enrolled agents, and members of the Taxpayer Advocacy Panel.

Research demonstrates that, for the cost of preparing and mailing a letter, the IRS can improve the improper payment rate for the Earned Income Tax Credit (EITC), reduce burden for taxpayers, reduce costs associated with Appeals, and avoid future incorrect EITC claims.

The stakeholders offered useful insights. For instance, some participants said that important deadlines should be displayed on top and in bold format. For the statutory notice of deficiency, the stakeholders recommended that the notice clearly explain that, even if the notice provides the taxpayer with an IRS contact number, contacting the IRS will not extend the timeframe in which to file a petition in Tax Court. Another suggestion from the group is that the CDP notices should include a date by which to file a Tax Court petition. The National Taxpayer Advocate made this legislative recommendation in her 2017 Annual Report to Congress,⁹ and others in the tax field have called for similar reform.¹⁰ TAS will continue this team throughout FY 2019 and will propose fully redesigned notices that address these taxpayer rights concerns.

⁶ IRS Letter L3193, *Notice of Determination: Concerning Collection Action(s) Under Section 6320 and/or 6330 of The Internal Revenue Code* (Dec. 2016).

⁷ In at least four recent cases, taxpayers filed their petitions one day late because they miscalculated the time period for filing their Tax Court petitions. See, e.g., *Duggan v. Comm’r*, Order of Dismissal for Lack of Jurisdiction, Tax Ct. No. 4100-15L (2015); *Pottgen v. Comm’r*, Order of Dismissal for Lack of Jurisdiction, Tax Ct. No. 1410-15L (2016); *Integrated Event Management, Inc. v. Comm’r*, Order of Dismissal for Lack of Jurisdiction, Tax Ct. No. 27674-16SL (2017); *Protter v. Comm’r*, Order of Dismissal for Lack of Jurisdiction, Tax Ct. No. 22975-15SL (2017). These cases are not cited for precedent, rather only for the fact patterns showing taxpayers miscalculated the deadline to file.

⁸ If the taxpayer does not request a hearing within the 30-day period, the taxpayer may still be entitled to an equivalent hearing with Appeals but will not have any appeal rights allowing the taxpayer to file for judicial review of the equivalency hearing determination. Treas. Reg. § 301.6330-1(i).

⁹ National Taxpayer Advocate 2017 Annual Report to Congress 299-306 (Legislative Recommendation: *Collection Due Process and Innocent Spouse Notices: Amend IRC §§ 6320, 6330, and 6015 to Require That IRS Notices Sent to Taxpayers Include a Specific Date by Which Taxpayers Must File Their Tax Court Petitions, and Provide That a Petition Filed by Such Specified Date Will Be Treated As Timely*).

¹⁰ Carl Smith, PROCEDURALLY TAXING, *CDP Notice of Determination Sentence Causing Late Pro Se Petitions*, <http://procedurallytaxing.com/cdp-notice-of-determination-sentence-causing-late-pro-se-petitions> (Mar. 24, 2016).

TAS Research Shows Pre-Filing Season Letters Can Improve Earned Income Tax Credit (EITC) Compliance

The EITC is targeted at low income workers (primarily workers with children)¹¹ and has become one of the government's largest means-tested anti-poverty programs.¹² However, as the Department of Treasury reported, the EITC rules of eligibility are “complex and lead to high overclaim error rates.”¹³ In addition to complex rules, the population eligible to claim the EITC is constantly churning, with approximately one-third of the eligible population changing every year.¹⁴

In 2016, the National Taxpayer Advocate began studying how educational letters sent to EITC taxpayers before the filing season could impact EITC compliance going forward. TAS sent letters to about 6,500 taxpayers who appeared to have erroneously claimed EITC on their 2014 returns. The TAS letter explained the requirements for claiming EITC in plain language, identified the specific requirement the recipient did not appear to meet, and suggested sources of additional information and assistance, including TAS. Results of the study showed the TAS letter averted noncompliance on 2015 returns where the 2014 return appeared erroneous because the relationship test was not met. If the TAS letter had been sent to all taxpayers whose 2014 returns appeared to be erroneous because the relationship test was not met, it would have averted about \$47 million of erroneous EITC claims.

TAS continued this study in 2017.¹⁵ If the results for the 2017 study (in terms of the relationship test) were projected to the entire 2015 population, it would result in a savings of over \$53 million in erroneous EITC claims.¹⁶ In the 2017 study, TAS added an additional sample of 1,197 taxpayers who were offered in the letter the availability of a dedicated “Extra Help” telephone line staffed by TAS employees trained to answer taxpayer questions about the letter and the EITC eligibility rules. If projected to the entire 2015 population who only broke a Dependent Database rule indicating the child may not have resided with the taxpayer, sending the TAS letter with the available Extra Help telephone line would result in a savings of over \$44 million in erroneous EITC claims.¹⁷ TAS also added information about the childless EITC in all letters.

This research demonstrates that, for the cost of preparing and mailing a letter, the IRS can improve the improper payment rate for EITC, reduce burden for taxpayers, reduce costs associated with Appeals,

11 Pub. L. No. 94-12, § 204, 89 Stat. 26 (1975).

12 Congressional Budget Office, *Federal Means-Tested Programs and Tax Credits – Infographic* (Feb. 11, 2013), <https://www.cbo.gov/publication/43935>.

13 Department of Treasury, *Agency Financial Report Fiscal Year 2016* 160 (Nov. 2016).

14 IRS, *EITC Fast Facts*, <https://www.eitc.irs.gov/partner-toolkit/basic-marketing-communication-materials/eitc-fast-facts/eitc-fast-facts>. For a detailed explanation for how EITC eligibility and benefits calculation works, see National Taxpayer Advocate 2015 Annual Report to Congress 240-242.

15 National Taxpayer Advocate 2017 Annual Report to Congress vol. 2 (Research Study: *Study of Subsequent Filing Behavior of Taxpayers Who Claimed Earned Income Tax Credits (EITC) Apparently in Error and Were Not Audited But Were Sent an Educational Letter From the Taxpayer Advocate Service, Part 2: Validation of Prior Findings and the Effect of an Extra Help Phone Number and a Reminder of Childless-Worker EITC*).

16 National Taxpayer Advocate 2017 Annual Report to Congress vol. 2 (Research Study: *Study of Subsequent Filing Behavior of Taxpayers Who Claimed Earned Income Tax Credits (EITC) Apparently in Error and Were Not Audited But Were Sent an Educational Letter From the Taxpayer Advocate Service, Part 2: Validation of Prior Findings and the Effect of an Extra Help Phone Number and a Reminder of Childless-Worker EITC*); National Taxpayer Advocate Blog, *EITC – How a Simple Educational Letter Can Help Avert Noncompliance*, <https://taxpayeradvocate.irs.gov/news/nta-blog-eitc-how-a-simple-educational-letter-can-help-avert-noncompliance>.

17 National Taxpayer Advocate 2017 Annual Report to Congress vol. 2 (Research Study: *Study of Subsequent Filing Behavior of Taxpayers Who Claimed Earned Income Tax Credits (EITC) Apparently in Error and Were Not Audited But Were Sent an Educational Letter From the Taxpayer Advocate Service, Part 2: Validation of Prior Findings and the Effect of an Extra Help Phone Number and a Reminder of Childless-Worker EITC*).

and avoid future incorrect EITC claims. TAS will build on this research in FY 2019. All notices in the study will now include mention of the Extra Help telephone line, and some of the letters will be designed in consultation with a graphics and visual learning expert. In addition, TAS will conduct focus group sessions with notice recipients to learn what they found helpful or confusing about the notice.

CONCLUSION

Correspondence issued by the IRS plays a crucial role in tax administration. If drafted appropriately, it can educate and empower taxpayers, conserve resources by reaching IRS goals early in the process of working a case, and save money by preventing erroneous claims. The IRS's current approach with taxpayers overlooks some valuable opportunities to maximize the benefits of informing, educating, and interacting with taxpayers, and the IRS needs to carefully study how best to communicate with taxpayers. IRS correspondence should consider building a customer-service based relationship with taxpayers. The IRS should study what taxpayers need to know to respond to notices and tailor its notices to the needs of particular taxpayer populations.

FOCUS FOR FISCAL YEAR 2019

In fiscal year 2019, TAS will:

- Pursue further improvements to notices that contain legally significant deadlines; and
- Continue research into the effects of sending pre-filing season correspondence to taxpayers making potentially erroneous EITC claims.