

Area of Focus #6 **TAS Plans to Design Sample Notices to Better Protect Taxpayer Rights and Reduce Taxpayer Burden**

TAXPAYER RIGHTS IMPACTED¹

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to Appeal an IRS Decision in an Independent Forum*
- *The Right to Finality*
- *The Right to Privacy*
- *The Right to Confidentiality*
- *The Right to a Fair and Just Tax System*

DISCUSSION

In the 2018 Annual Report to Congress, the National Taxpayer Advocate expressed concerns about IRS notices that fail to adequately inform taxpayers about their rights, responsibilities, and procedural requirements. She identified three types of notices as Most Serious Problems: Collection Due Process (CDP) Notices, Math Error Notices, and Statutory Notices of Deficiency (SNODs).² Notices are key to informing taxpayers of important events, such as the IRS's intent to increase the taxpayer's tax liability, the IRS's filing of a Notice of Federal Tax Lien (NFTL) against the taxpayer's property, or of the IRS's intent to levy the taxpayer's wages or bank account. Collection notices also inform taxpayers of the right to a hearing to challenge the IRS's collection actions—the CDP hearing.³ Failure to respond to notices can often lead to the loss of core taxpayer rights, such as the *right to pay no more than the correct amount of tax, to appeal an IRS decision in an independent forum, and to a fair and just tax system.*

Many IRS notices fail to adequately inform taxpayers of their rights and effectively guide taxpayers through what they must do in response to receiving a notice. The IRS designs its notices with collection and compliance at the forefront, while often burying or omitting vital information about taxpayers'

1 See Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR are also codified in the Internal Revenue Code (IRC). See IRC § 7803(a)(3).

2 See National Taxpayer Advocate 2018 Annual Report to Congress 170-173 (Most Serious Problem: *Introduction to Notices: Notices Are Necessary to Inform Taxpayers of Their Rights and Obligations, Yet Many IRS Notices Fail to Adequately Inform Taxpayers, Leading to the Loss of Taxpayer Rights*); National Taxpayer Advocate 2018 Annual Report to Congress 174-197 (Most Serious Problem: *Math Error Notices: Although the IRS Has Made Some Improvements, Math Error Notices Continue to Be Unclear and Confusing, Thereby Undermining Taxpayer Rights and Increasing Taxpayer Burden*); National Taxpayer Advocate 2018 Annual Report to Congress 198-211 (Most Serious Problem: *Statutory Notices of Deficiency: The IRS Fails to Clearly Convey Critical Information in Statutory Notices of Deficiency, Making it Difficult for Taxpayers to Understand and Exercise Their Rights, Thereby Diminishing Customer Service Quality, Eroding Voluntary Compliance, and Impeding Case Resolution*); National Taxpayer Advocate 2018 Annual Report to Congress 212-222 (Most Serious Problem: *Collection Due Process Notices: Despite Recent Changes to Collection Due Process Notices, Taxpayers Are Still at Risk for Not Understanding Important Procedures and Deadlines, Thereby Missing Their Right to an Independent Hearing and Tax Court Review*); National Taxpayer Advocate 2018 Annual Report to Congress vol. 2 194-210 (Literature Review: *Improving Notices Using Psychological, Cognitive, and Behavioral Science Insights*).

3 See IRC §§ 6320 & 6330.

rights to challenge an IRS decision or the services available to help them resolve their issues with the IRS. Further, as discussed in a literature review in the 2018 Annual Report to Congress, the IRS does not adequately utilize insights from available psychological, cognitive, and behavioral science research to design its notices.⁴ The language and design of notices can help taxpayers understand what they may owe and how to resolve their tax balance, or it can confuse taxpayers.

In this upcoming fiscal year, TAS plans to develop new sample notices based on the recommendations made in the 2018 Annual Report to Congress. The National Taxpayer Advocate has reviewed many IRS notices and will design sample notices to address both specific and general improvements to three important notice types described below.

Math Error Notices

Math error authority allows the IRS to make summary changes to a taxpayer's return when there are mathematical or clerical errors that are obvious by looking at the face of the return.⁵ However, the range of issues that fall under these definitions has steadily expanded and the IRS is using math error authority to summarily resolve more complex issues.⁶ This has led the IRS to erroneously deny tax benefits to some taxpayers.⁷

Math error notices inform taxpayers of the additional tax the IRS has assessed because of a purported mathematical or clerical error on their return. If the taxpayer disagrees with the assessed tax or believes the IRS made a mistake in its assessment, taxpayers must respond to these notices within 60 days and request abatement. If they do not respond within 60 days, they will lose their right to appeal the IRS's assessment in the Tax Court before paying it. These notices, if not properly drafted and presented, could result in either an inaccurate tax assessment or the taxpayer giving up important procedural rights.

The National Taxpayer Advocate's specific concerns about math error notices are that the deadline to request abatement of the tax and retain the right to petition the Tax Court is not mentioned in some math error notices. This lack of information limits the ability of some taxpayers to know about and exercise that right.⁸ Further, many math error notices lack clarity as to the specific error the taxpayer made and the change the IRS made to their return. They only give taxpayers short, generic explanations of the purported errors, and do not direct taxpayers to the exact issue with their return.⁹ The IRS also does not attempt to correct possible errors by referring to its historical data, which leads the IRS to send many math error notices to taxpayers who are actually entitled to the tax benefits the IRS has summarily denied.

4 National Taxpayer Advocate 2018 Annual Report to Congress vol. 2 194-210 (Literature Review: *Improving Notices Using Psychological, Cognitive, and Behavioral Science Insights*).

5 IRC §§ 6213(b), (g).

6 Compare the Revenue Act of 1926, Pub. L. 69-20 § 274(f) (1926) with Tax Reform Act of 1976, Pub. L. 94-455 and IRC § 6213(g) (which lists all current definitions of mathematical or clerical errors).

7 See, e.g., National Taxpayer Advocate 2011 Annual Report to Congress vol. 2 114, 120 (Research Study: *Math Errors Committed on Individual Tax Returns: A Review of Math Errors Issued for Claimed Dependents*).

8 See CP11, *Math Error Balance Due of \$5 or More*.

9 See Taxpayer Notice Codes (TPNCs).

To address these concerns, TAS plans to design a sample math error notice that:

- Improves the clarity of the math error explanation by better describing the specific error on the notices, along with including the line on the taxpayer's return where the error was made;
- Includes and emphasizes taxpayers' right to petition the Tax Court if they disagree with the IRS's change to their returns; and
- Includes, on the first page of the notice, the deadline date by which taxpayers must request abatement to retain their right to make a prepayment petition in Tax Court.

Statutory Notices of Deficiency

SNODs notify taxpayers if there is a proposed additional tax due and give taxpayers the right to challenge the proposed deficiency in the Tax Court without prepayment, but only if they petition within 90 days. The SNOD is the “ticket” to Tax Court. If the taxpayer does not petition the Tax Court within 90 days, the IRS will assess the tax, send the taxpayer the tax bill, and start collection. The SNOD is critical to many low income and middle income taxpayers because generally without it they would be required to pay the tax first and go to refund fora, such as federal district courts or the United States Court of Federal Claims, in order to challenge the tax adjustment.¹⁰ TAS found that many taxpayers may not be availing themselves of their rights, in part because of faulty design and poor presentation of information in the notices.¹¹

The National Taxpayer Advocate's specific concerns about SNODs are that they do not effectively communicate the information needed for taxpayers to understand their rights and the consequences of not exercising them, the relevant tax issues, or how to respond.¹² SNODs do not sufficiently apply plain writing principles or incorporate behavioral research insights, as directed by the Plain Writing Act¹³ and Executive Order 13707.¹⁴ Finally, the IRS continues to omit Local Taxpayer Advocate (LTA) information required by law on certain SNODs, thereby violating taxpayer rights.¹⁵

10 Nearly 59 percent of those receiving a non-automated substitute for returns (ASFR) statutory notice of deficiency (SNOD) make less than \$50,000 per year. Yet low income taxpayers, who may be eligible for representation through Low Income Taxpayer Clinics (LITCs), are less likely to petition the Tax Court. In fiscal year (FY) 2018, the median total positive income for individuals who did not petition the Tax Court in response to a SNOD issued after an audit was about \$24,000. See National Taxpayer Advocate 2018 Annual Report to Congress 199 (Most Serious Problem: *Statutory Notices of Deficiency: The IRS Fails to Clearly Convey Critical Information in Statutory Notices of Deficiency, Making it Difficult for Taxpayers to Understand and Exercise Their Rights, Thereby Diminishing Customer Service Quality, Eroding Voluntary Compliance, and Impeding Case Resolution*).

11 See National Taxpayer Advocate 2018 Annual Report to Congress 198-211 (Most Serious Problem: *Statutory Notices of Deficiency: The IRS Fails to Clearly Convey Critical Information in Statutory Notices of Deficiency, Making it Difficult for Taxpayers to Understand and Exercise Their Rights, Thereby Diminishing Customer Service Quality, Eroding Voluntary Compliance, and Impeding Case Resolution*).

12 See, e.g., CP3219A, *Automated Underreporter (AUR) Statutory Notice of Deficiency*. For example, one notice directs taxpayers to an IRS website, which tells taxpayers to submit to the IRS the same form whether they agree or disagree with the tax changes the IRS made. See also IRS website at <https://www.irs.gov/individuals/understanding-your-cp3219a-notice> (last visited Dec. 13, 2018).

13 5 U.S.C. § 301.

14 80 Fed. Reg. 56,365 (Sept. 15, 2015).

15 See National Taxpayer Advocate Proposed Taxpayer Advocate Directive (TAD) 2019-2, *Include Local LTA Addresses on All Notices of Deficiency Sent By the IRS* (Apr. 18, 2019); National Taxpayer Advocate 2014 Annual Report to Congress 237–244 (Most Serious Problem: *Statutory Notices of Deficiency: Statutory Notices of Deficiency Do Not Include Local Taxpayer Advocate Office Contact Information on the Face of the Notice*).

To remedy these flaws, TAS plans to design a sample SNOD that:

- Uses plain language to clearly inform taxpayers of their rights, the results of inaction, and how to respond to the SNOD;
- Clearly conveys taxpayers' proposed tax increase, their right to challenge the IRS's determination before the Tax Court, and their ability to obtain TAS or Low Income Taxpayer Clinic (LITC) assistance; and
- Includes the relevant LTA information as is required by law.

Collection Due Process Notices

CDP rights provide taxpayers with an independent review by the IRS Office of Appeals of the decision to file an NFTL or the IRS's proposal to undertake a levy action,¹⁶ which can be appealed to Tax Court.¹⁷ The IRS communicates these important rights during two critical times. The IRS communicates the right to request a CDP hearing via the intent to levy notice or the NFTL.¹⁸ Following the CDP hearing, the IRS communicates its determination to the taxpayer via a notice of determination.¹⁹ Perhaps because the notices provide confusing instructions regarding the due date to file a response, the response rate for CDP notices ranges from under one percent to around ten percent.²⁰ Moreover, CDP notices emphasize collection actions and under-emphasize the statutory due process protections afforded by the hearings, leading unrepresented taxpayers to forego the exercise of important taxpayer rights.

The National Taxpayer Advocate's specific concerns about CDP notices are that the design and wording in these notices underemphasizes the importance of a taxpayer's CDP rights. The notices do not sufficiently explain what a hearing is or why a taxpayer may want to request one.²¹ Additionally, the notices do not clearly mention important information, such as the deadline to file a hearing request. The notice of determination lacks a specific date by which a taxpayer must file a petition in the Tax Court and does not explain why the notice is salient to taxpayers.

16 IRC § 6330(b).

17 IRC § 6330(d)(1).

18 IRC § 6330(a).

19 See, e.g., IRS Letter L3193, *Notice of Determination: Concerning Collection Action(s) Under Section 6320 and/or 6330 of The Internal Revenue Code* (July 2018).

20 See National Taxpayer Advocate 2018 Annual Report to Congress 212-222 (Most Serious Problem: *Collection Due Process Notices: Despite Recent Changes to Collection Due Process Notices, Taxpayers Are Still at Risk for Not Understanding Important Procedures and Deadlines, Thereby Missing Their Right to an Independent Hearing and Tax Court Review*).

21 For instance, during the collection due process (CDP) hearing, the Appeals Officer (AO) must obtain verification that "requirements of any applicable law or administrative procedure have been met." The AO also must consider "whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary." Taxpayers are given the opportunity to raise a collection alternative, such as an installment agreement or offer in compromise, and in some instances, they can contest the underlying liability. IRC § 6330(c).

To address these shortcomings, TAS plans to design a sample CDP notice that:

- Includes information about why a taxpayer may want to request a CDP hearing and why the notice is relevant to the taxpayer;
- Explains the importance of these CDP hearings in terms relating to taxpayer rights and protections;
- Provides more accurate notification of the due date for CDP hearing requests with respect to NFTL filings;
- Includes the exact date on the notices of determination by which the taxpayer must file a petition in Tax Court;
- Highlights the specific deadline date to file a petition in the Tax Court in bold font; and
- Additionally, test these notices, both as part of a Small Business/Self-Employed Division (SB/SE)-led study²² and a TAS study.²³

General Improvements to Notices

In addition to the more specific concerns discussed above, there are many improvements that can and should be made to all IRS notices. The following are general improvements to notices that TAS will incorporate into its new sample notices:

- Framing notices with a taxpayer rights focus (including and emphasizing taxpayer rights and the necessary steps taxpayers must take);
- Improving notice clarity using plain language principles;
- Designing notices using psychological, cognitive, and behavioral science insights to improve taxpayer understanding and reduce taxpayer burden;
- Prominently including important deadlines, such as the deadline date to retain appeal rights;
- Including information about the availability of Low Income Taxpayer Clinics (LITCs) and TAS to help taxpayers;
- Including the Tax Court website and telephone number where relevant;
- Including links in the notices to additional explanations and content on TAS's toolkit and irs.gov websites; and
- Translating notices to languages other than English and including information on notices to direct taxpayers to those translated notices.

The IRS's Wage and Investment division is hosting a Taxpayer Correspondence Summit, most recently scheduled to take place in Summer 2019, to discuss plans to improve notices. This is a welcome step in the upcoming fiscal year.

22 Small Business/Self-Employed Division (SB/SE) is leading a study on Automated Collection System (ACS) LT11 notices (which explain CDP rights). The study will test four sample letters designed by SB/SE, as well as two letters designed by TAS, sending out the sample letters and evaluating their effectiveness based on a variety of metrics.

23 TAS will be designing additional sample LT11 notices and testing them in its own study, where notice design is not limited by an SB/SE template, as it is in the SB/SE-led study mentioned above. See National Taxpayer Advocate FY 2020 Objectives Report to Congress (TAS Research Initiatives), *infra*.

CONCLUSION

The National Taxpayer Advocate has many concerns with the current design of IRS notices, particularly the ones that have legal significance. The IRS must improve the design of its notices, and in the coming fiscal year, TAS plans to develop its own sample notices to demonstrate how certain notices may be improved to benefit taxpayer rights and understanding, as well as lessen taxpayer burden.

FOCUS FOR FISCAL YEAR 2020

In fiscal year 2020, TAS will:

- Establish teams to design sample notices to conform with TAS's suggestions to make rights-based notices for notices that have legal significance;
- Incorporate general improvements, including design insights from psychological, cognitive, and behavioral science and plain language principles in its sample notices;
- Translate select notices to languages other than English and provide information on notices to direct taxpayers to those translated notices;
- Solicit advice from the tax community on the design of TAS's sample notices; and
- Create links in the notices to additional explanations and content on TAS's toolkit and irs.gov websites.²⁴

²⁴ See National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress (Area of Focus: *TAS Is Developing an Electronic Roadmap Tool to Assist Taxpayers As They Navigate Through the Complex Tax System*), *supra*, for a discussion of efforts to create an electronic roadmap that will allow taxpayers to input their letter or notice number and see where they are in the tax administration roadmap, as well as receiving a plain language description of the purpose of the notice and what taxpayers need to do.