

## Protecting the Rights of Taxpayers Impacted by the COVID-19 National Emergency and Restoring Much-Needed Taxpayer Services

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### TAXPAYER RIGHTS IMPACTED<sup>1</sup>

- *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 a Fair and Just Tax System*

### OVERVIEW

In the middle of the tax filing season COVID-19 presented the IRS with an extraordinary challenge: to safeguard the health and safety of taxpayers and employees while administering the tax laws. To further complicate the matter, the IRS was tasked with disbursing Economic Impact Payments (EIPs) during the pandemic. Given the IRS's constraints, the IRS did an impressive job.

The IRS's main obstacles stemmed from its inability to staff core IRS functions due to the lack of portability of duties, such as answering phones, issuing notices, and opening and processing taxpayer correspondence and paper-filed returns. In the early weeks, the IRS announced the People First Initiative, which suspended many enforcement actions and provided taxpayers with much-needed filing and payment deadline postponements until July 15, 2020, among other relief. The IRS diligently issued guidance throughout the pandemic to keep taxpayers informed of its status as well as provide detailed instructions on what they should expect and how to proceed given their particular tax issues.

Despite the IRS's efforts, taxpayers still faced significant challenges. Many taxpayers experienced a sudden change in their financial status and either desperately needed their tax refund to pay bills or suddenly could not pay their tax liabilities. At the same time, taxpayers could not contact the IRS in person or by phone for months, and their mailed correspondence and paper-filed returns sat unopened and unprocessed or were even returned in some instances. In addition, the IRS could not mail notices to taxpayers for months. When it resumed notice production, some backlogged notices included outdated information, requiring the IRS to include informational inserts in the envelopes.

As a result of the complete or partial shutdown of certain core IRS operations, TAS did not have the ability to resolve many taxpayer issues, and the cases will remain outstanding until the IRS resumes operations. From the very beginning of the pandemic, TAS advocated to protect taxpayer rights. We worked with the IRS to ensure that its modified operations minimally impacted taxpayers. We

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

quickly raised issues to the IRS that arose in cases and through submissions to TAS's Systemic Advocacy Management System (SAMS). We will continue to work with the IRS as it resumes operations to ensure that the agency provides as much relief, flexibility, and guidance to taxpayers as possible to minimize taxpayer burden. The COVID-19 impact on the IRS and taxpayers will be significant and long-lasting. Because of the scope of the impact to taxpayers and the IRS, we anticipate that much of fiscal year (FY) 2021 will involve the aftermath of the COVID-19 crisis.

Moving forward, the IRS must plan for the next significant emergency to avoid some of the challenges it faced during COVID-19. The IRS's current arcane computer systems and infrastructure could not handle tax administration remotely, and it has not established across-the-board electronic communication procedures between the taxpayer and the IRS. The IRS needs to improve its infrastructure, hardware, and software to continue its mission-critical operations if another situation arises so that taxpayers do not have to put their lives on hold while the IRS recovers from the effect of the next crisis. As the IRS climbs out of the proverbial operational hole, the National Taxpayer Advocate recommends the IRS consider implementing additional procedures and increase the use of electronic exchange of documents and correspondence with taxpayers, institute the necessary improvements to its telephone systems allowing assistants to handle calls remotely, and continue to upgrade its computer systems to work in a secure remote environment.

## DISCUSSION

As the pandemic unfolded, IRS executives, like those in many agencies, weighed the health and safety of taxpayers and its employees as the highest priority in making business and operational decisions. Below, we describe the IRS and TAS responses to the national emergency and discuss its impact to current and anticipated future operations. These operational changes will inevitably result in delays, reevaluation of business priorities, and staffing decisions impacting taxpayers at all stages of tax administration, from pre-filing services through audits, appeals, collection, and litigation.

On March 25, 2020, the IRS announced the People First Initiative, which provided much-needed relief to taxpayers on a variety of issues ranging from postponing filing and payment deadlines to postponing compliance actions.<sup>2</sup> During the remainder of the COVID-19 pandemic, and as the IRS resumes operations, TAS will continue to assist the IRS and taxpayers to minimize the challenges they face and to ensure that taxpayer rights are protected during this transition period.

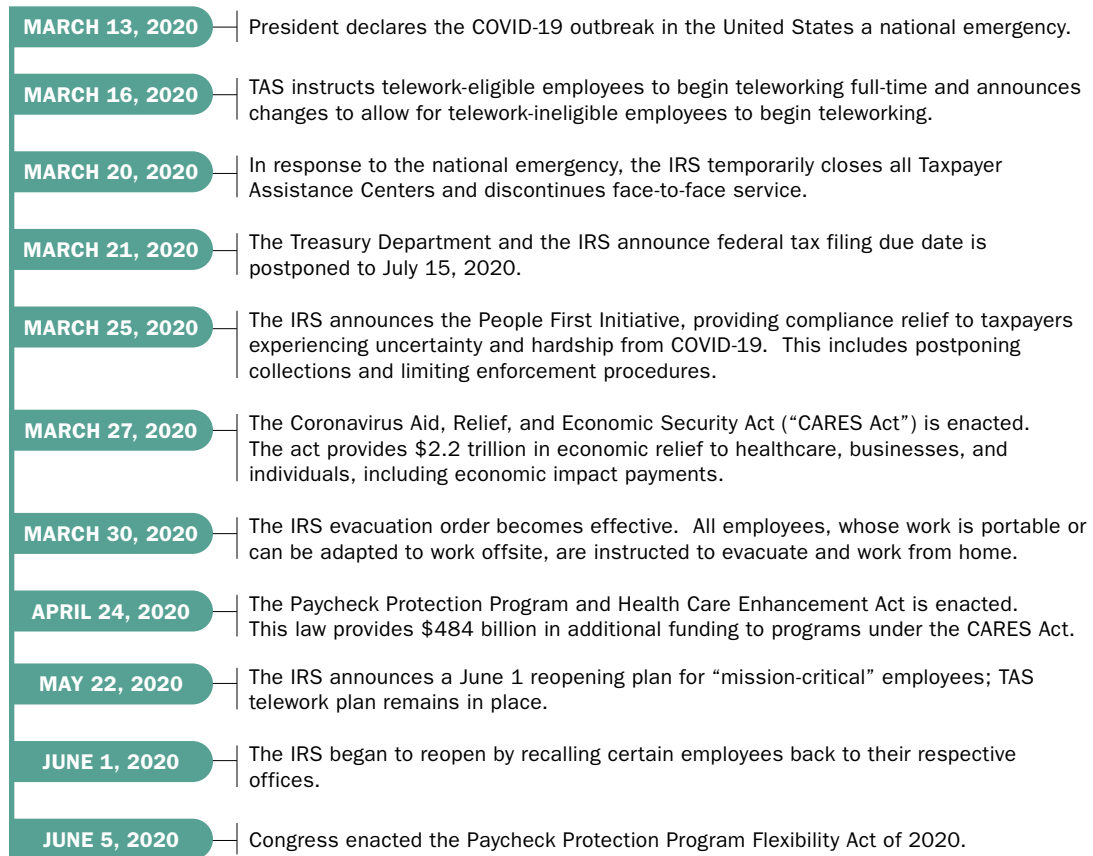
On March 27, 2020, the President signed into law the Coronavirus Aid, Relief, and Economic Security (CARES) Act.<sup>3</sup> The primary goal of this act was to provide fast and direct economic assistance for American workers, families, and small businesses, including getting cash into the hands of citizens as quickly as possible.<sup>4</sup> Figure 1.2.1 provides major dates impacting taxpayers and IRS operations.

<sup>2</sup> IRS, IR-2020-59, IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>.

<sup>3</sup> The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), Pub. L. No. 116-136, 134 Stat. 281 (2020).

<sup>4</sup> See Systemic Advocacy Objective: *Reducing Burden Resulting From the Implementation of the Coronavirus Aid, Relief, and Economic Security (CARES) Act*, *infra*.

**FIGURE 1.2.1, COVID-19 Timeline<sup>5</sup>**



5 Proclamation No. 9994, 85 Fed. Reg. 15,337 (Mar. 13, 2020); TAS, TAS Takes Measures to Protect Employees and Taxpayers (Mar. 16, 2020); IRS, Taxpayer Assistance Center Statement, <https://www.irs.gov/newsroom/taxpayer-assistance-center-statement> (Mar. 20, 2020); IRS, Tax Day Now July 15: Treasury, IRS Extend Filing Deadline and Federal Tax Payments Regardless of Amount Owed (Mar. 21, 2020), <https://www.irs.gov/newsroom/tax-day-now-july-15-treasury-irs-extend-filing-deadline-and-federal-tax-payments-regardless-of-amount-owed>; IRS, IR-2020-59, IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>; CARES Act, Pub. L. No. 116-136, 134 Stat. 281; IRS, Human Capital Office (HCO), New Work at Home Directive Begins March 30 (Mar. 30, 2020); Paycheck Protection Program and Health Care Enhancement Act, Pub. L. No. 116-139, 134 Stat. 620; TAS, TAS Telework Flexibilities Remain in Place as IRS Offices Begin to Reopen (May 22, 2020). While the IRS officially started recalling some employees on June 1, 2020, some IRS employees returned to their offices before that date.

## The IRS's Social Distancing in Response to Presidential Declaration of a National Emergency Negatively Impacted Taxpayer Service and Tax Administration

After the presidential declaration of a national emergency on March 13, 2020, the IRS took steps to maximize social distancing to protect the personal health and safety of taxpayers, employees, contractors, and stakeholders.<sup>6</sup> As the pandemic increased in severity and spread across the nation, the IRS significantly modified operations through the following actions:

- Closed Taxpayer Assistance Centers (TACs) by ending walk-in and in-person appointments;<sup>7</sup>
- Ceased walk-in services at local TAS offices;<sup>8</sup>
- For mission-critical operations that required employees to work in a campus or IRS office setting, reduced staffing by approximately 50 percent to enhance social distancing;<sup>9</sup> and
- Subsequently directed all employees to telework if their work duties are portable or could be adapted to work offsite, even if such employees were not telework-eligible.<sup>10</sup>

Understandably, as a result of these actions, the operations of many IRS functions temporarily ceased. Although the IRS worked to try to obtain laptops and needed software to give over 14,000 employees the ability to work remotely, telework was not an option for many employees.<sup>11</sup> Many employees had to adapt their work duties or were unable to work altogether, as some assignments were impossible to perform at home (*e.g.*, receiving or sending taxpayer correspondences by mail, accessing computer systems, and answering toll-free phone lines). In some instances, these operational adaptations resulted in the partial or complete cessation of core IRS functions throughout the entire country. Like prior government shutdowns, the impact to the IRS's business operations will be felt over an extended period.

## Taxpayer Limitations as a Result of the COVID-19 Crisis

For TAS and the IRS to effectively assist taxpayers in resolving their tax issues, it is essential to recognize that the COVID-19 crisis caused taxpayers' lives to significantly change and, as a result, impacted the way taxpayers interact with the agency, including:

- *Unexpected Change in Financial Status.* Between the state and local restrictions imposed on business operations, the sudden spike in unemployment, and the dramatic drop in the stock market during the COVID-19 crisis, many taxpayers had an unexpected change in financial status and were more likely to experience economic hardship. In addition, the crisis caused many businesses to close with all the resulting tax issues.
- *Limited Communication Channels.* For weeks, taxpayers experienced problems communicating with the IRS in person, through the mail, and by phone. The IRS tried to steer taxpayers

6 Proclamation No. 9994, 85 Fed. Reg. 15,337 (Mar. 13, 2020).

7 IRS Commissioner, Protecting You; Protecting the Nation: New Steps to Safeguard Employees (Mar. 19, 2020).

8 *Id.*

9 *Id.*

10 IRS, New Work at Home Directive Begins March 30 (Only Employees Directed by Their Supervisor to Perform Mission Essential Work May Work From an IRS POD) (Mar. 27, 2020), <https://www.irs.gov/newsroom/new-work-at-home-directive-begins-march-30-only-employees-directed-by-their-supervisor-to-perform-mission-essential-work-may-work-from-an-irs-pod>.

11 HCO, Continuity of Operations Meeting (Mar. 12, 2020).

toward online tools to the extent possible; however, not all taxpayers are comfortable interacting with the IRS through this service channel for a variety of reasons.<sup>12</sup> While the IRS encouraged taxpayers to submit documents by fax, not all taxpayers had access to a fax machine while social distancing.<sup>13</sup> Therefore, it might appear a taxpayer is unresponsive even though he or she made several previous attempts to respond.

- *Access to Requested Documentation.* Due to widespread business closures as well as limited operations at other governmental offices, taxpayers faced obstacles in accessing documentation requested by the IRS. As a result, resolution of tax issues may require thinking “outside the box” to identify acceptable alternative documentation. To effectively assist taxpayers, TAS will continue to work with the IRS to ensure flexibility in the acceptance of alternative documentation given the obstacles taxpayers are facing during the national emergency.
- *Changes in Address.* The state and local mandated “stay-at-home” orders coupled with sudden changes in financial status may have caused taxpayers to quickly change their living arrangements, leaving the IRS or TAS unable to reach them. The National Taxpayer Advocate recommends the IRS consider extending response deadlines before deeming the taxpayer unresponsive and either closing the matter or taking the next compliance action.
- *Increased Anxiety.* The uncertainty surrounding the pandemic causes anxiety for most people. Add in unemployment and tax compliance issues, and it might be too much for many people to handle. Given the prolonged closures of core IRS functions, it is likely that taxpayers have experienced or will experience delays in resolving their tax issues, which will add to this anxiety. The IRS should be patient and increasingly flexible wherever possible while working with taxpayers to help resolve their issues (*e.g.*, accepting alternate documentation, postponing information requests deadlines, etc.).

### Lessons Learned From Previous Disasters

Disasters subject taxpayers to a variety of challenges, including compliance with tax filing and payment obligations. These difficulties, in turn, give rise to downstream complications. In the past, taxpayers who have fallen victim to disasters have not always received optimal service from the IRS. The pandemic presents an opportunity for the IRS to learn from mistakes made in the past, protect taxpayer rights, and support those whose filings and payments may have been adversely impacted by the crisis.

After Hurricanes Maria and Irma in 2017, the IRS postponed certain filing and payment deadlines and limited some field examinations to account for the communications disruptions, infrastructure failures, and traumas suffered by individual taxpayers. However, the IRS made assessments against Puerto Rican taxpayers without taking sufficient steps to ensure that they were effectively engaged in

12 IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue, <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue> (last visited May 13, 2020). See National Taxpayer Advocate 2019 Annual Report to Congress 6-7 (Most Serious Problem: *Customer Service Strategy: The IRS Needs to Develop a Comprehensive Customer Service Strategy That Puts Taxpayers First, Incorporates Research on Customer Needs and Preferences, and Focuses on Measurable Results*).

13 IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue (Apr. 21, 2020), <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue>.

their audits and that all required notices were in fact delivered.<sup>14</sup> Because of this lack of engagement, audits of these taxpayers had unusually poor outcomes, evidenced by the audit non-response rate that increased by eight percent and the default assessment rate that increased by nine percent following the hurricanes.<sup>15</sup>

Going forward, when deciding how to address the COVID-19 pandemic as well as future disasters and pandemics, the IRS must examine and learn from past experiences. The IRS will need to demonstrate understanding and flexibility when conducting compliance initiatives over subsequent months and possibly years. Many taxpayers will unavoidably encounter challenges in accurately reporting their tax obligations and may miss filing and payment deadlines. This reality will inevitably lead to increased enforcement actions against taxpayers whose tax preparers may no longer be available or who may themselves still be living in the wake of tragedy.<sup>16</sup> As the IRS develops further procedures to address the COVID-19 crisis as well as future disasters, TAS will work with the IRS to ensure that taxpayer rights are protected, especially by demonstrating flexibility when conducting compliance initiatives (*e.g.*, flexibility in determining reasonable cause for penalty relief, increased information request deadlines, flexibility in the acceptance of more alternative types of documentation).

### **How Temporary Adaptations in IRS, Chief Counsel, and Tax Court Operations Impacted Taxpayers**

The IRS made significant changes to its operations in response to the COVID-19 crisis. However, the operational changes created challenges for taxpayers as they interacted with the IRS at all stages of their journey through the tax system. The IRS's People First Initiative attempted to address some of the compliance issues, as discussed below.

#### *Taxpayer Service Limitations as a Result of the COVID-19 Crisis*

The IRS's operational adaptations in response to the pandemic significantly impacted how it provided taxpayer services. Beginning in March, taxpayers and practitioners had difficulties contacting the IRS in person and on the phone as the IRS maximized social distancing and, as a result, rendered many taxpayer-facing functions partially or completely shut down. In the meantime, the IRS steered taxpayers to use self-help online tools, which is not necessarily accessible or preferred by some taxpayers. The impact of such decline in taxpayer services could have significant downstream consequences for taxpayers.

14 SERP Alert 17A0222, Tax Relief for Taxpayers Affected by Hurricane Harvey, Hurricane Irma, and Hurricane Maria (Aug. 29, 2017, rev. Dec. 6, 2017); IRS, Tax Relief for Victims of Hurricane Maria in Puerto Rico (Sept. 22, 2017), <https://www.irs.gov/newsroom/tax-relief-for-victims-of-hurricane-maria-in-puerto-rico>.

15 IRS Compliance Data Warehouse (CDW), Automated Information Management System (Apr. 2020) for Puerto Rican taxpayers. The audit non-response rate is determined by looking to the number of audits in which taxpayers do not reply to IRS inquiries. The default assessment rate is calculated by looking to assessments made after taxpayers do not pursue their administrative or judicial appeal rights.

16 Examinations, including substitutes for return, can be generated by unfiled returns when third-party information returns cannot be matched to a tax return. Likewise, collection activity can be, and typically is, triggered by late payment of tax liabilities.

### LIMITED TELEPHONE SERVICE PREVENTED TAXPAYERS FROM DISCUSSING THEIR TAX ISSUES WITH AN IRS EMPLOYEE

For weeks, taxpayers had extremely limited ability to reach the IRS by phone. The IRS closed all of its Accounts Management (AM) phone lines supported by Customer Service Representatives (CSRs) for both taxpayers and tax professionals beginning on April 1, 2020, and slowly resumed service beginning on April 27, 2020.<sup>17</sup> Automated phone lines remained operational during the crisis, and the IRS encouraged taxpayers and professionals to use online self-help tools.

The Practitioner Priority Service line (PPS) was temporarily closed until May 13, 2020, and the IRS was unable to process third-party authorizations in the Centralized Authorization File (CAF).<sup>18</sup> The IRS encouraged practitioners to use self-help tools, such as e-Services accounts.<sup>19</sup> The IRS e-Services application includes several useful tools for practitioners, such as Transcript Delivery System and Taxpayer Identification Number Matching; however, it does not provide a platform where practitioners can directly discuss taxpayer-specific issues with an IRS employee. In addition, to access the online tool, they must first pass rigorous e-authentication requirements.<sup>20</sup>

Figure 1.2.2 details the number of call attempts, calls answered by assistors, and level of service for several IRS phone product lines for the week of February 16, 2020, to February 22, 2020 (before the declaration of the national emergency), and for the week of March 15, 2020, to March 21, 2020 (after the national emergency declaration and just as the IRS began to social distance) compared to similar weeks in 2019. The number of call attempts varied by product line in comparison to last year, but the number of calls answered by assistors noticeably dropped as the IRS began to social distance in March.

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17 IRS SERP Alert 20A0135, Product Line Closure (Rev. Apr. 1, 2020); IRS SERP Alert 20A0191, TPP Guidance During Continued COVID-19 Closures (Apr. 29, 2020) (TPP line opened on April 27, 2020); IRS SERP Alert 20A0207, Accounts Management to Open Some Phone Lines on Monday May 18, 2020 (May 19, 2020).

18 IRS SERP Alert 20A0201, PPS Phone Line; Processing of Forms 2848/8821 (May 13, 2020). The IRS CAF Unit processes IRS Form 2848, Power of Attorney and Declaration of Representative, and Form 8821, Tax Information Authorization. IRS, The Centralized Authorization File (CAF) – Authorization Rules, <https://www.irs.gov/businesses/small-businesses-self-employed/the-centralized-authorization-file-caf-authorization-rules> (last visited May 19, 2020).

19 IRS SERP Alert 20A0201, PPS Phone Line; Processing of Forms 2848/8821 (May 13, 2020); IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue (Apr. 21, 2020), <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue>.

20 IRS, FAQs About e-Services and Secure Access, <https://www.irs.gov/individuals/faqs-about-e-services-and-secure-access> (last visited June 4, 2020).

**FIGURE 1.2.2, IRS Telephone Service Before and After the IRS Closed the Phone Lines<sup>21</sup>**

Phone Line and Measure	Week Ending 2/23/19	Week Ending 2/22/20	% Change From 2019 to 2020	Week Ending 3/23/2019	Week Ending 3/21/20	% Change From 2019 to 2020
Enterprise Call Attempts	5,192,337	4,123,411	-20.6%	2,884,693	2,916,295	1.1%
Enterprise Assistor Calls Answered	783,988	837,537	6.8%	921,440	631,918	-31.4%
Enterprise Level of Service (LOS)	42.6%	54.8%	28.6%	74.8%	50.8%	-32.1%
Accounts Management (AM) Call Attempts	4,735,874	3,579,144	-24.4%	2,453,746	2,413,341	-1.6%
AM Assistor Calls Answered	655,887	701,188	6.9%	739,708	494,658	-33.1%
AM LOS	44.7%	64.1%	43.4%	83.1%	57.8%	-30.4%
Consolidated Automated Collection System (ACS) Call Attempts	276,003	362,724	31.4%	243,550	327,441	34.4%
Consolidated ACS Assistor Calls Answered	62,538	65,862	5.3%	100,653	63,909	-36.5%
Consolidated ACS LOS	25.1%	20.0%	-20.3%	47.4%	21.8%	-54.0%
PPS Call Attempts	55,213	95,943	73.8%	67,142	116,187	73.0%
PPS Assistor Calls Answered	37,489	38,585	2.9%	41,578	39,229	-5.6%
PPS LOS	88.2%	78.8%	-10.7%	80.8%	57.1%	-29.3%

Once the IRS closed the AM and PPS phone lines in April, the number of call attempts and assistor-answered calls dropped, as indicated in Figure 1.2.3. However, both numbers increased as the IRS slowly began to restore service in May.

21 Data includes only calls within a particular week and is non-cumulative for the fiscal year or planning period. IRS, JOC Snapshot Reports: Enterprise Snapshot (weeks ending Feb. 23, 2019; Mar. 23, 2019; Feb. 22, 2020; Mar. 21, 2020). IRS, JOC Snapshot Reports: Product Line Detail (weeks ending Feb. 23, 2019; Mar. 23, 2019; Feb. 22, 2020; Mar. 21, 2020).



**FIGURE 1.2.3, IRS Telephone Service After Phone Lines Closed and Slowly Resumed Service<sup>22</sup>**

Line and Measure	Week Ending 04/20/19	Week Ending 04/18/20	% Change From 2019 to 2020	Week Ending 05/25/19	Week Ending 05/23/20	% Change From 2019 to 2020
Enterprisewide Call Attempts	2,941,224	618,167	-79.0%	2,309,403	3,485,718	50.9%
Enterprisewide Assistor Calls Answered	798,510	53,142	-93.3%	631,382	326,889	-48.2%
Enterprisewide LOS	59.6%	82.7%	38.8%	52.6%	28.8%	-45.3%
AM Call Attempts	2,401,478	474,973	-80.2%	1,852,730	3,184,487	71.9%
AM Assistor Calls Answered	632,267	0	-100.0%	474,284	239,486	-49.5%
AM LOS	66.9%	0%	-100.0%	56.7%	26.1%	-47.3%
Consolidated ACS Call Attempts	367,798	64,433	-82.5%	308,841	212,341	-31.2%
Consolidated ACS Assistor Calls Answered	99,605	35,065	-64.8%	105,848	54,568	-48.5%
Consolidated ACS LOS	29.8%	75.9%	154.7%	38.2%	29.9%	-21.7%
PPS Call Attempts	62,285	32	-99.9%	80,221	76,478	-4.7%
PPS Assistor Calls Answered	42,529	0	-100.0%	47,782	32,492	-32.0%
PPS LOS	87.6%	0%	-100.0%	74.5%	58.0%	-22.1%

While the number of call attempts for the week ending April 18, 2020, dropped significantly compared to the same period in 2019, a large number of taxpayers — over 600,000 during the week ending April 18, 2020 — continued to call the IRS even when it was highly publicized that phone lines were closed, most lines were unanswered, and the IRS steered taxpayers online. It appears that no matter how much the IRS attempts to drive taxpayers to the internet, many taxpayers will still attempt to use their service channel of preference. We will continue to monitor how this crisis impacts call volumes once the IRS fully reopens and determine if we can extrapolate data as to whether the IRS converted more taxpayers to use online tools or if taxpayers reverted to using the more personalized service channels.

#### **CLOSURE OF TAXPAYER ASSISTANCE CENTERS PREVENTED MUCH-NEEDED TAXPAYER IN-PERSON ASSISTANCE**

Effective March 19, 2019, the IRS closed all TACs indefinitely. Before the call centers closed, all CSRs who staff the TAC toll-free applications were instructed to stop scheduling TAC appointments. The Taxpayer Protection Program CSRs were also instructed to stop making appointments at TACs for taxpayer identity verification.<sup>23</sup> To deal with pre-scheduled appointments, employees of the IRS

<sup>22</sup> Note that where AM answered zero calls, the IRS calculated level of service to be 100 percent, while we calculated it to be zero percent. AM calculated 100 percent because when the lines were closed, the callers just heard an initial upfront message. The calls never made it into the AM LOS calculation, meaning they answered zero of zero calls, or 100 percent. Data includes only calls within a particular week and is non-cumulative for the fiscal year or planning period. IRS, JOC Snapshot Reports: Enterprise Snapshot (weeks ending Apr. 20, 2019; May 25, 2019; Apr. 18, 2020; May 23, 2020) and IRS, JOC Snapshot Reports: Product Line Detail (weeks ending Apr. 20, 2019; May 25, 2019; Apr. 18, 2020; May 23, 2020).

<sup>23</sup> IRS SERP Alert 20A0131, All TAC Locations Closed (Mar. 19, 2020). The IRS Taxpayer Protection Program (TPP) identifies suspicious tax returns as potential identity theft. TPP sends the impacted taxpayer a letter that may instruct the taxpayer to call the TPP toll-free line. IRS, IRS Identity Theft Victim Assistance: How It Works, <https://www.irs.gov/individuals/how-irs-id-theft-victim-assistance-works> (last visited May 17, 2020).

Field Assistance function in the Wage and Investment (W&I) Division were instructed to contact taxpayers with existing appointments and attempt to resolve their issues by phone, if possible.<sup>24</sup> As of the date this report went to print, the IRS did not open TACs for face-to-face taxpayer service.<sup>25</sup>

#### LIMITED ISSUANCE OF TRANSCRIPTS TO TAXPAYERS

Tax transcripts are often used to validate income and tax filing status for mortgage applications, student loans, and small business loan applications. They can also be useful to taxpayers and preparers in the return preparation process. Under normal circumstances, taxpayers can request transcripts either by mail on Form 4506-T, Request for Transcript of Tax Return, by calling the automated phone transcript service, or through an online application called Get Transcript Online (accessible either as a standalone application or through the Online Account application).<sup>26</sup>

During the crisis, the IRS stopped processing transcript requests by mail. For those who submitted an online request for the IRS to mail the transcript, the IRS notice distribution centers were not operating, so taxpayers' requests were not honored, at least on a timely basis. Alternatively, taxpayers could download an electronic copy, but that required the taxpayers to pass the stringent e-authentication requirements. This placed many taxpayers in difficult situations without access to their transcripts. Taxpayers could potentially visit a tax professional who could electronically access their transcripts through the Transcript Delivery System on e-Services, an online tool for tax professionals;<sup>27</sup> however, a professional is likely to charge for that service. In cases where taxpayers experienced economic hardship and could not access Get Transcript Online, TAS would assist in obtaining their transcripts.<sup>28</sup>

#### *Postponement of Filing and Payment Deadlines for Certain Returns and Types of Payments*

After the President declared a national emergency on March 13, 2020, the IRS quickly provided relief by issuing multiple pieces of guidance to postpone filing and payment deadlines until July 15, 2020.<sup>29</sup> While the postponed deadlines certainly provided relief, the American Bar Association (ABA) recommended that the IRS postpone the relief period to the fullest extent authorized by IRC § 7508A. Specifically, the ABA recommended that the IRS postpone deadlines falling on or after January 20, 2020, to the later of (i) July 15, 2020, or (ii) the latest day of the

24 IRS SERP Alert 20A0131, All TAC Locations Closed (Mar. 19, 2020).

25 See IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue (June 8, 2020), <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue>.

26 See IRS, Welcome to Get Transcript, <https://www.irs.gov/individuals/get-transcript> (last visited May 6, 2020); IRS, Get Transcript FAQs, <https://www.irs.gov/individuals/get-transcript-faqs> (last visited May 6, 2020).

27 IRS, e-Services, <https://www.irs.gov/e-services> (last visited May 6, 2020).

28 Internal Revenue Manual (IRM) 13.1.16.10, Contacts Not Meeting TAS Criteria (Nonfrivolous Inquiries) (Mar. 28, 2017); IRM 13.1.16.11.2 (1), Quick Closure Cases (Mar. 28, 2017). As of June 6, 2020, TAS opened 1,030 transcript request cases in FY 2020, which is down 7.6 percent from the same period in 2019 (1,115 cases). TAS, Year to Date (YTD) Receipts to June 6, 2020 by Primary Core Issue Code and Special Case Code.

29 See IRS Notice 2020-17, 2020-15 I.R.B. 590; Notice 2020-18, 2020-15 I.R.B. 590; Notice 2020-20, 2020-16 I.R.B. 660; Notice 2020-23, 2020-18 I.R.B. 742; Notice 2020-35, 2020-25 I.R.B. 948. The postponement applies to income, estate, and gift taxes, generation-skipping transfer taxes, some excise taxes, and employment taxes. In addition, the IRS postponed judicial and refund claim filing deadlines, as discussed in more detail below.

Incident Period of the federally declared disaster plus 60 days.<sup>30</sup> Considering that some Volunteer Income Tax Assistance sites and all Tax Counseling for the Elderly sites were closed due to COVID-19, TAS will work with the IRS to ensure that the agency protects the taxpayer's *right to a fair and just tax system* by encouraging it to apply the maximum amount of flexibility with taxpayers, especially low-income and elderly taxpayers, who miss the postponed filing deadlines (*e.g.*, penalty relief).<sup>31</sup> In addition, for taxpayers who mailed checks before the IRS campuses closed that the IRS does not attempt to process until months later, TAS will ensure that the IRS does not assess a bad check penalty against those taxpayers.<sup>32</sup>

### *Suspension of Processing Paper Tax Returns Delays the Issuance of Refunds*

The IRS suspended the processing of paper tax returns, including amended returns, at the end of March.<sup>33</sup> Of the estimated ten million pieces of mail sitting unopened as of May 16, 2020, it estimates that about half were paper-filed tax returns. (The additional pieces of mail were a combination of taxpayer correspondence, information returns, payment vouchers and payments, etc.).<sup>34</sup> While the overwhelming majority of taxpayers file electronically, taxpayers who file paper returns are experiencing extreme delays in processing their returns.<sup>35</sup> Those taxpayers who already filed a paper return were discouraged from filing a second tax return.<sup>36</sup> While many refund returns are e-filed, those taxpayers who chose to file a paper return are required to wait until the IRS

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30 Letter from Tom Callahan, Chair, Section of Taxation, ABA, to Charles P. Rettig, Comm'r, I.R.S., Specific Substantive and Procedural Provisions Impacted by the COVID-19 Emergency (Apr. 29, 2020), <https://www.americanbar.org/content/dam/aba/administrative/taxation/policy/2020/042920comments.pdf>. The ABA noted that IRC § 7508A(d)(1) mandates a defined postponement period for “qualified taxpayers” from the earliest incident date of the federally declared disaster until the latest incident date plus 60 days. The ABA also noted that every Federal Emergency Management Agency (FEMA) Major Disaster Declaration with respect to the COVID-19 emergency lists January 20, 2020, as the start date of the “Incident Period.” Despite the ABA’s recommendation, the IRS has indicated that it does not plan to further postpone the deadlines. Aaron Lorenzo, *Rettig: No Plans to Further Delay Tax Filing Deadline*, POLITICO (May 18, 2020).

31 IRS, Free Tax Return Preparation for Qualifying Taxpayers, <https://www.irs.gov/individuals/free-tax-return-preparation-for-you-by-volunteers> (last visited May 13, 2020).

32 IRC § 6657.

33 The IRS recently announced that it will begin to accept electronically filed Form 1040-X, Amended U.S. Tax Return, in Summer 2020. IRS, IR-2020-107, IRS Announces Form 1040-X Electronic Filing Options Coming This Summer; Major Milestone Reached for Electronic Returns (May 28, 2020), <https://www.irs.gov/newsroom/irs-announces-form-1040-x-electronic-filing-options-coming-this-summer-major-milestone-reached-for-electronic-returns>.

34 Allyson Versprille, *Virus Fears, Unopened Mail Await IRS Employees Returning to Work*, BLOOMBERG LAW: TAX (June 1, 2020), [https://www.bloomberglaw.com/product/tax/document/XF00Q66000000?bna\\_news\\_filter=daily-tax-report&jcsearch=BNA%2520000001726082d211a37fed86a38f0001#jcite](https://www.bloomberglaw.com/product/tax/document/XF00Q66000000?bna_news_filter=daily-tax-report&jcsearch=BNA%2520000001726082d211a37fed86a38f0001#jcite) (citing data provided by the IRS to the U.S. House Committee on Ways and Means in a report titled “Internal Revenue Service Operations (Report on May 27, 2020)”).

35 IRS, Submission Processing, Program Management/Process Assurance, Filing Season Statistics Report for Week Ending May 23, 2020, Cumulative Individual Income Tax Returns as of May 22, 2020.

36 IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue, <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue> (last visited May 13, 2020).

can process paper returns and issue refunds.<sup>37</sup> Figure 1.2.4 details the Form 1040-series returns processed by the IRS as of May 22, 2020, compared to the projected number and the number received by that date in 2019. Not unexpected, but the comparison of 2019 filings to 2020 filings is impacted by the postponement of 2020 filing deadlines, which did not occur in 2019.

**FIGURE 1.2.4, Total Form 1040-Series Returns Processed as of May 22, 2020<sup>38</sup>**

Filing Method	2019 Actual (mil)	2020 Projected (mil)	2020 Actual (mil)	% Change From 2020 Projected to Actual (mil)	% Change From 2019 to 2020 (mil)
Paper	10.8	10.2	2.7	-73 %	-75%
E-Filed	128.1	130.6	117.0	-10%	-9%
<b>TOTAL</b>	<b>138.8</b>	<b>140.8</b>	<b>119.7</b>	<b>-15%</b>	<b>-14%</b>

Many taxpayers are facing financial hardship associated with the COVID-19 crisis and need the IRS to process their paper-filed returns as soon as possible and release their refunds. In addition, because a taxpayer's return for tax year (TY) 2019 was potentially relevant in determining his or her eligibility for an EIP (as discussed later in this report), the IRS's suspension of paper return processing caused confusion for many taxpayers.<sup>39</sup>

Furthermore, some taxpayers who initially elected to apply their TY 2019 refund to their TY 2020 tax liability may have had second thoughts, preferring to receive their refunds as soon as possible due to financial hardship brought on by the COVID-19 crisis. Taxpayers cannot reverse an election to apply the 2019 overpayments against the 2020 tax on an *amended* return.<sup>40</sup> However, if they filed a second return before the filing deadline (*i.e.*, July 15, 2020, or October 15 on extension), the second return "supersedes" the first return. The second (superseding) return is treated as the original filed return, and the taxpayer may elect to receive the overpayment as a refund.<sup>41</sup> During normal economic times, taxpayers usually do not think about revoking this credit election. But this year, some taxpayers who elected to apply 2019 overpayments against 2020 tax did so before the pandemic affected the economy. These taxpayers may have since been rendered unemployed or insolvent, or they may be earning less (taxable) income than they expected. As a result, they may owe less tax

37 As of May 29, 2020, about 1.7 percent (1,632,700) of the total refund returns filed for TY 2019 (91,615,955) have been filed on paper. Through the corresponding cycle in 2019 (as of May 31, 2019), 7.5 percent (8,410,760) of the total TY 2018 returns (111,937,024) were paper returns. Looking only at this data, the number of processed paper refund returns has decreased about 80 percent. While the IRS was expecting paper refund returns to decline to 6,462,900 in calendar year 2020, the number of paper returns filed by this date is only about 25 percent of this projection. Individual Master File (IMF) Customer Account Data Engine; TY 2019 data as of cycle 20202301, TY 2018 data as of cycle 20192301; IRS Publication 6187, Calendar Year Projections of Individual Returns by Major Processing Categories: 2019 Update, Table 3. Calendar Year Projections of the Number of Individual Refund Returns: U.S., IRS Campuses, and Electronically Filed.

38 IRS, Submission Processing, Program Management/Process Assurance, Filing Season Statistics Report for Week Ending May 23, 2020, Cumulative Individual Income Tax Returns as of May 22, 2020.

39 See Systemic Advocacy Objective: *Reducing Burden Resulting From the Implementation of the Coronavirus Aid, Relief, and Economic Security (CARES) Act*, *infra*; IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue, <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue> (Apr. 21, 2020).

40 IRM 1.2.1.4.14, Policy Statement 3-14 (Formerly P-2-88), Elections to apply income tax overpayments to estimated tax may be reversed upon showing of undue financial hardship (Oct. 21, 1971).

41 IRM 21.6.7.4.10, Superseding Returns (July 22, 2019).

than they anticipated for 2020, and if so, they need to recover their 2019 tax overpayments now to help meet their basic financial needs.

It is important to note that for individuals, a superseding individual return must be filed on paper and mailed to an IRS processing center.<sup>42</sup> As noted above, processing centers were closed at the end of March to mitigate the spread of COVID-19, creating a considerable logjam of paper returns and other correspondence that will likely take the IRS months to work.<sup>43</sup> Despite these processing delays, filing a superseding return to request the issuance of the refund in 2020 will provide necessary financial relief to taxpayers sooner. In addition, the IRS may be able to manually adjust the taxpayer's account to issue the refund in 2020 upon the taxpayer demonstrating undue financial hardship.<sup>44</sup> Finally, taxpayers can further speed up the payment by requesting direct deposit rather than a paper check.

### ***Limitations in Options to Authenticate Identity (Taxpayer Protection Program) Prevented Taxpayers From Receiving Timely Refunds***

Under normal procedures, when the IRS Taxpayer Protection Program (TPP) flags a tax return as potential identity theft, it sends a letter to the taxpayer to request confirmation of his or her identity.<sup>45</sup> The IRS suspends processing the refund return until the taxpayer successfully authenticates his or her identity. Based on the type of letter issued by TPP, taxpayers are required to authenticate their identity using either the TPP telephone line, visiting a TAC, or online through the Identity Verification Service.<sup>46</sup> Because the IRS phone lines were down for weeks and taxpayers could not schedule TAC appointments, the IRS requested that any taxpayers who received one of these letters (issued before the notice production centers closed) confirm their identities online.<sup>47</sup> Unfortunately, taxpayers must pass rigorous e-authentication requirements to access the online program.<sup>48</sup> Only after a taxpayer has tried and failed to access the online application would the IRS instruct him or her to fax the required documentation.<sup>49</sup>

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42 Erin M. Collins, The Value of “Superseding” Returns and Processing the Additional \$500 Stimulus Benefit for Certain Non-Filers, NTA Blog, [https://taxpayeradvocate.irs.gov/news/NTA\\_Blog\\_The\\_Value\\_of\\_a\\_Superseding\\_Tax\\_Return](https://taxpayeradvocate.irs.gov/news/NTA_Blog_The_Value_of_a_Superseding_Tax_Return) (Apr. 29, 2020).

43 IRS, New Work at Home Directive Begins March 30 (Mar. 28, 2020), <https://www.irs.gov/newsroom/new-work-at-home-directive-begins-march-30-only-employees-directed-by-their-supervisor-to-perform-mission-essential-work-may-work-from-an-irs-pod>.

44 IRM 1.2.1.4.14, Policy Statement 3-14 (Formerly P-2-88), Elections to Apply Income Tax Overpayments to Estimated Tax May Be Reversed Upon Showing of Undue Financial Hardship (Oct. 21, 1971).

45 TPP is in W&I's Return Integrity and Compliance Services (RICS) organization.

46 The TPP phone line reopened on April 27, 2020. IRS SERP Alert 20A0135, Product Line Closure (Rev. Apr. 28, 2020). Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2019-40-004, *The Taxpayer Protection Program Includes Processes and Procedures That Are Generally Effective in Reducing Taxpayer Burden* (Oct. 17, 2018); IRS, Identity Verification Service <https://www.irs.gov/identity-theft-fraud-scams/identity-verification> (last visited May 14, 2020).

47 IRS, Identity Verification Service, <https://www.irs.gov/identity-theft-fraud-scams/identity-verification>, last visited May 14, 2020). Limited phone service resumed on the TPP hotline on April 27, 2020. IRS SERP Alert 20A0191, TPP Guidance During Continued COVID-19 Closures (Apr. 24, 2020).

48 See National Taxpayer Advocate 2019 Annual Report to Congress 6-7 (Most Serious Problem: *Customer Service Strategy: The IRS Needs to Develop a Comprehensive Customer Service Strategy That Puts Taxpayers First, Incorporates Research on Customer Needs and Preferences, and Focuses on Measurable Results*).

49 SERP ALERT 20A0144, Treatment of TPP Taxpayers Sent to TAC during COVID-19 Shutdown (May 18, 2020).

### *Suspension of the Timely Issuance of Notices and Correspondences*

Due to the pandemic-related closure of notice production centers, the IRS stopped printing notices and correspondence on April 8, 2020, and did not resume until June 1, 2020.<sup>50</sup> Over 20 million IRS notices were queued up in the system but were not mailed on the date indicated on the letter and taxpayer account. The IRS is working fervently to prioritize the 20+ million IRS notices to be issued. While under normal circumstances the IRS has the capacity to print about four million notices per week, it is unclear when the IRS will completely work through its entire backlog due to uncertainties surrounding staffing levels, vendor support, and the ability to purge certain backlogged notices.<sup>51</sup>

The suspension of timely issuance of notice and correspondence has significant consequences to taxpayers at points throughout the tax system. First, taxpayers were not adequately informed of the status of their returns, refunds, or compliance actions, as applicable. Second, many time-sensitive notices were computer-generated with the dates that have since expired (on the letters themselves and on taxpayers' accounts). While the IRS is providing additional time for payment (July 10, 2020 or July 15, 2020), it will still lead to widespread taxpayer confusion about deadlines to take certain actions.<sup>52</sup>

TAS is working with the IRS as it develops and implements a communications strategy to issue guidance, such as phone line messaging, Frequently Asked Questions (FAQs), social media posts, and notice inserts, to alleviate some of the associated confusion. Taxpayers will find the original notice or correspondence and an additional document (insert) providing specific relief for compliance reflecting the new due date in the same envelope. For example, TAS worked with the IRS as it developed insert language to include with the issuance of backlogged notice and demand letters to explain the postponed deadlines to make payment and the relief provided on the accrual of penalty and interest.<sup>53</sup> We also worked with the IRS to develop inserts to include with the issuance of backlogged math error notices, which ensure taxpayers have the full time provided under the law to request abatement of a math error assessment that increases the amount of tax.<sup>54</sup> As the IRS works through the inventory of backlogged notices, especially time-sensitive notices, and issues appropriate guidance, TAS will ensure that taxpayer rights are protected.

### *Examinations and Pre-Refund Reviews*

The IRS temporarily stopped opening most new examinations as part of the People First Initiative.<sup>55</sup> However, taxpayers undergoing existing examinations and pre-refund reviews still face challenges.

50 IRS Operations During COVID-19: Mission-Critical Functions Continue (June 8, 2020), <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue>.

51 CPS Not Mailed Report Cycle 20 for processing year 2020; IRS SERP Alert 20A0158, CRX Letters (Rev. Apr. 10, 2020); COVID-19 Correspondence Recovery Team Meetings (TAS has four representatives on the team) (May 2020).

52 SERP Alert 20A0242, IRS Issuing Backdated Correspondence (June 6, 2020).

53 See, e.g., IRS Notice 1052-A, Important! You Have More Time to Make Your Payment (May 2020), and the corresponding Spanish version, IRS Notice 1052-A (SP) (May 2020).

54 IRS, Notice 1052-B, Important! You Have More Time to Make Your Payment (June 2020). Under IRC § 6213(b)(2)(A), a taxpayer has 60 days after a notice is sent to request abatement of a math error assessment.

55 IRS, IR-2020-59, IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>.

### SUSPENSION OF NEW EXAMINATIONS

The IRS announced as part of its People First Initiative that between April 1 and July 15, 2020, it would not start new field, office, and correspondence examinations, unless deemed necessary to protect the government's interest in preserving the applicable statute of limitations.<sup>56</sup> It also announced the suspension of all in-person meetings in ongoing examinations. Figure 1.2.5 illustrates the number of audits by type that the IRS started at the beginning of the period of the People First Initiative, compared to the same period in 2019.

**FIGURE 1.2.5, Examinations Started Between April 1 and June 1, 2020, Compared to the Same Period in 2019<sup>57</sup>**

Type of Audit	2019 (Apr. 1 to Jun. 1, 2019)	2020 (Apr. 1 to Jun. 1, 2020)	% Change
Corporations	2,445	716	-71
Employment Tax	1,185	683	-42
Individual Tax	14,188	5,013	-65
Partnership	534	114	-79
Other	1,218	332	-73
<b>TOTAL</b>	<b>19,570</b>	<b>6,858</b>	<b>-65</b>

Between April 1 and July 15, 2020, the IRS has continued to work existing examination cases and refund claims remotely, where possible. The IRS advised taxpayers to continue to respond to any IRS examination notices already received, even if just to explain their inability to fully comply with the IRS's request.<sup>58</sup> However, with phone lines temporarily closed and mail left unopened at the IRS, taxpayers were limited in the response methods they could use to avoid significant delays. Taxpayers and representatives could respond by e-fax, and as discussed in more detail below, the IRS accepted digital signatures and email in certain circumstances.<sup>59</sup> Many taxpayers may have trouble obtaining acceptable requested documentation in a timely manner. This leads to delays in examinations, and the IRS may request an extension of the statute of limitations on assessment.<sup>60</sup> Taxpayers and representatives will have to weigh the pros and cons of signing such statute extensions,

56 IRS, IR-2020-59, IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>. In addition, for those taxpayers who meet with examination employees by phone, IRC § 7521 permits taxpayers to make an audio recording of an interview relating to the determination of any tax.

57 IRS, CDW, Examination Returns Control System (June 2020). In a small number of instances, a taxpayer is included in more than one category (e.g., both in a corporate income tax return and in an employment tax return).

58 IRS, IR-2020-59, IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>. In addition, for those taxpayers who meet with examination employees by phone, IRC § 7521 permits taxpayers to make an audio recording of an interview relating to the determination of any tax.

59 Memorandum for All Services and Enforcement Employees, (1) Approval to Accept Images of Signatures and Digital Signatures (2) Approval to Receive Documents and Transmit Encrypted Documents by Email, by IRS Deputy Commissioner, Services and Enforcement (June 12, 2020).

60 IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue (June 8, 2020), <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue>. IRC § 6501.

especially where the delay was solely caused by the shutdown in IRS operations. TAS plans to protect taxpayer's *right to challenge the IRS's position and be heard* by ascertaining the status of their audits when the IRS fully reopens and working with the IRS to accept alternative documentation.

#### DELAYS IN PROCESSING TAXPAYER CORRESPONDENCE AND IMPACT ON OPEN CORRESPONDENCE EXAMINATIONS

Due to the disruption of mail operations and the temporary inability to process correspondence during the pandemic, TAS anticipates taxpayers who mailed correspondence to the IRS during this period will experience significant delays. Once normal operations resume, it will likely take the IRS a significant amount of time to work through the correspondence backlog. Some correspondence sent to IRS offices was even returned to the taxpayer if the recipient office was closed and no one was available to accept delivery.<sup>61</sup> Fortunately, the tide of incoming mail has slowed due to the suspension of opening new examinations. Unfortunately, the taxpayers currently under examination may find that their examinations are taking longer to complete — not only because of the large amount of mail to work through but also because it will take the mail processing functions time to sort the examination mail from the other types of mail accumulated. TAS will protect the taxpayer's *right to challenge the IRS's position and be heard* by working with the IRS to be flexible with those taxpayers who had difficulties timely responding to IRS information requests caused by the crisis.

While the suspension of new examinations and face-to-face meetings affected all IRS examination functions, the closure of IRS campuses has and will have the greatest impact on open examinations. The campuses conduct about 75 percent of all IRS examinations, and these campus exams are conducted almost exclusively through correspondence (ground mail) using an automated system. The automated system generates and mails letters from the examining campus at various phases of the audit, including the initial contact letter informing the taxpayer of the audit and requesting additional information or documentation.<sup>62</sup> A taxpayer under correspondence examination then mails the requested information to the campus conducting the examination.

With the campus closings beginning in late March, ground mail services were unable to deliver the mail to the campuses because IRS personnel was not available to receive it. This undelivered mail was either returned to the taxpayer or has been accumulating in annexes, alternate locations, and large trailers awaiting the return of campus mail-processing personnel. TAS has estimated that nearly 100,000 taxpayers undergoing a campus correspondence audit could have unprocessed mail.<sup>63</sup> This is in addition to the existing 63,000 pieces of mail previously logged by campus correspondence examination prior to the suspension of mail processing awaiting consideration.<sup>64</sup> In fact, between

61 IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue (Apr. 21, 2020), <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue>; SAMS Issue 42283, USPS Returning Mail to TPs for Andover Stop 360 RP.

62 IRS, 2018 IRS Data Book, Table 9a (May 2019), Examination Coverage: Recommended and Average Recommended Additional Tax After Examination, by Type and Size of Return, Fiscal Year 2018.

63 Extrapolated using the percent of correspondence received in the month following the issuance of an initial contact letter, a 30-day letter, a revised audit report, or a request for additional information. AIMS Centralized Information System (ACIS) Campus Open Case Count by Status Code 201902–202003, and ACIS Campus Open Case Count by Prior Status Code 201903–202004, ACIS Campus Closed Case Monitoring by Disposal Code 201901–202003.

64 IRS, W&I, Refundable Credit Examination Operations (RCEO), RCEO Weekly Mail Report for TAS (May 25, 2020).



April 4 and May 30, 2020, the IRS received about 205,000 pieces of correspondence, which is about 14 percent of the correspondence it received during the same period of FY 2019 (almost 1.5 million).<sup>65</sup>

Examiners also experienced difficulties working on open correspondence examinations in which the IRS received and processed the information and documentation submitted by taxpayers and representatives. Campus examiners do not have remote access to case files because casework is largely based on paper documents housed at the campus and, at least initially, campus examiners did not have laptops to take home. W&I Refundable Credits Examination Operations prioritized TAS hardship cases, and managers went to the Atlanta campus to convert paper documents or faxes into an electronic format before examiners could address them while teleworking.<sup>66</sup>

### **IN MANY CASES, TAXPAYERS WHOSE RETURNS WERE BEING SUBJECTED TO WAGE VERIFICATION OR THE EARNED INCOME TAX CREDIT AND ADDITIONAL CHILD TAX CREDIT REVIEW WERE UNAWARE THEIR REFUND WAS BEING HELD AND WHAT STEPS WERE NECESSARY TO ACHIEVE THE RELEASE OF THEIR REFUND**

Due to the suspension of notice production,<sup>67</sup> in certain circumstances, taxpayers were not aware that the Pre-Refund Wage Verification Hold (PRWVH) program was holding their refunds and that they may need to provide the IRS with documentation verifying information on the return (*e.g.*, wages and withholding) or submit an amended return to get their refunds released.<sup>68</sup> Additionally, if a taxpayer's return was transferred to another IRS treatment stream because it was unable to verify information on the return, the receiving office was not able to send an initial contact letter.<sup>69</sup> In many cases, taxpayers were unaware as to why their refunds were held or what they could do to get them released.

Pursuant to the People First Initiative, the IRS postponed taxpayer response deadlines until July 15, 2020, for taxpayers who received notices requesting additional documentation to verify information on their return or claiming of the Earned Income Tax Credit (EITC) or Additional Child Tax Credit (ACTC) and had deadlines that fell after April 1, 2020. The IRS encouraged taxpayers to exercise their best efforts to obtain and submit all requested information, and if unable to do so, instructed taxpayers to provide any reason such information is unavailable. It advised taxpayers that “[u]ntil July 15, 2020, the IRS will not deny these credits for a failure to provide

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65 IRS, Joint Operations Center, Enterprise Adjustments – Fiscal Year Comparison, 2nd Planning Period – April through May 30, 2020 (FY 2019 and FY 2020).

66 W&I, RCEO Employees Keep the Work Moving During the COVID-19 Pandemic, W&I Offline, Atlanta Campus 4 (May/June 2020).

67 IRS Operations During COVID-19: Mission-Critical Functions Continue (June 8, 2020), <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue>.

68 IRS Notice CP 05, We're Holding Your Refund Until We Finish Reviewing Your Return; IRS Letter 4464C, Questionable Refund Letter (Dec. 2019).

69 The Return Integrity Verification Operations (RIVO) of W&I manages the Pre-Refund Wage Verification Hold Program (PRWVH), which relies on a number of filters to screen returns for possible refund fraud. When returns are selected into the PRWVH, the IRS seeks to verify information on the return, namely wages and withholding. This verification process is done by either confirming the information on the return by comparing it to W-2 data provided by the Social Security Administration, or by contacting the taxpayer's employer(s) to verify the wages. If the wages cannot be verified, they will be assigned to one of three treatment streams: Wage and Withholding Only, Automated Questionable Credit, or Exam. Which treatment stream it will be assigned to depends upon whether or not the EITC or ACTC has been claimed on the return.

requested information.”<sup>70</sup> However, to fairly enforce this postponed response deadline, the IRS will need to account for the delays in processing taxpayer correspondence.

In addition to the extension of these deadlines, the IRS established an e-fax number for taxpayers receiving notice CP 05A, *We’re Holding Your Refund Until We Finish Reviewing Your Tax Return*, to submit requested documents.<sup>71</sup> On cases where the taxpayer was experiencing extreme hardship, TAS encouraged the IRS to accept alternative documentation, resulting in the earlier release of the refund.

Despite these modifications to the IRS’s normal procedures, taxpayers’ refunds continue to be frozen during the extension, and in some cases, taxpayers still don’t know the reason for the refund hold. In fact, both EITC audits and PRWVH issues continue to be the top two issues in TAS case receipts in FY 2020 through June 6, 2020.<sup>72</sup>

#### **WELCOME CHANGE: DIGITAL ACCEPTANCE AND TRANSMISSION OF DOCUMENTS AND DIGITAL SIGNATURES**

Between March 27, 2020, and December 31, 2020, IRS employees can accept documents and transmit documents via email using an established secured messaging system. Employees are permitted to accept images of signatures (scanned or photographed) and digital signatures on documents related to the determination or collection of a tax liability.<sup>73</sup> TAS issued similar guidance regarding digital communications and transmission of documents in connection with open TAS cases.<sup>74</sup> This change is good for tax administration and, in fact, TAS has previously encouraged the IRS to digitally communicate with taxpayers. Historically, however, the IRS has resisted electronic communication due to authentication and security concerns.<sup>75</sup> In light of COVID-19 and closing IRS offices across the country, the IRS temporarily created an exception to its communication procedures. The National Taxpayer Advocate strongly recommends the IRS prioritize, evaluate, and determine the feasibility of extending the practice beyond 2020, and consider utilizing electronic

70 IRS, IR-2020-59, *IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program* (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>.

71 SERP Alert 20A0148, *R Freeze with RIVO Involvement – RIVO Notice CP 05A Issued New E-FAX Option* (Mar. 27, 2020).

72 In FY 2020 through June 6, 2020, TAS received 50,866 PRWVH cases, and 7,188 open EITC audits. TAS, *YTD Receipts to June 6, 2020*, by PCIC and Special Case Code.

73 The IRS accepted digital signatures on the following exam-related documents: extensions of statute of limitations on assessment, waivers of statutory notices of deficiency and consents to assessment; and any other statement or form needing the signature of a taxpayer or representative traditionally collected by IRS personnel outside of standard filing procedures (e.g., a case-specific Power of Attorney). Memorandum for All Services and Enforcement Employees, (1) Approval to Accept Images of Signatures and Digital Signatures (2) Approval to Receive Documents and Transmit Encrypted Documents by Email, by IRS Deputy Commissioner, Services and Enforcement (June 12, 2020).

74 Deputy National Taxpayer Advocate, *Interim Guidance, Digital Signatures and External Email Communications* (Apr. 13, 2020), [https://www.irs.gov/pub/foia/ig/tas/tas-13-0420-0009\\_digital\\_signatures\\_and\\_external\\_email\\_communications.pdf](https://www.irs.gov/pub/foia/ig/tas/tas-13-0420-0009_digital_signatures_and_external_email_communications.pdf).

75 See National Taxpayer Advocate, *Fiscal Year 2019 Objectives Report to Congress* vol. 2, at 36 (*IRS Responses and National Taxpayer Advocate’s Comments Regarding Most Serious Problems Identified in the 2017 Annual Report to Congress: Recommendation 3-3*).

communication procedures and exchange of digital documents after COVID-19 for all functions within the IRS.<sup>76</sup>

### PENALTY RELIEF

The IRS should revisit certain penalty regimes that, in times of disaster, can cause unduly harsh outcomes for taxpayers. For example, penalties arising when taxpayers fail to respond to notices of unfiled or incomplete international information returns can accumulate to \$50,000 or more if taxpayers are unresponsive.<sup>77</sup> Taxpayers affected by disasters like COVID-19 may have legitimate reasons to be unresponsive to initial notices, and the IRS should consider suspending or waiving the application of these continuation penalties for impacted taxpayers. The IRS suspended the original deadline for filing many international information returns in case of disaster, and it would be a sensible measure to bring the treatment of the continuation penalty into line with this practice of extending time-sensitive deadlines during a disaster.<sup>78</sup> Accordingly, to the extent that the IRS has requested that taxpayers produce any delinquent information during this pandemic, the period for doing so should be extended beyond the 90-day window provided by the statute.<sup>79</sup>

### Collection

As part of the IRS's People First Initiative, the IRS announced widespread changes to its normal collection procedures between April 1, 2020, and July 15, 2020, to help taxpayers face the challenges of COVID-19.<sup>80</sup> However, the IRS's near-shutdown placed taxpayers undergoing collection actions in a difficult position, especially if they were attempting to resolve their tax debts. Taxpayers faced significant issues due to mail stoppage, suspension of notices, and inability to interact with the IRS in person and by phone. In the meantime, the interest and penalties continued to accrue on their debts. Once normal collection activities resume, the IRS will find taxpayers in even worse financial shape due to unemployment and business closures. Pursuant to the People First Initiative, taxpayers will be expected to be compliant by July 15, 2020, and many may not have financially recovered by then.

Figure 1.2.6 illustrates that the dollars posted from taxpayer delinquency accounts (TDAs) during the initial months of the national emergency were significantly less than during the same period in 2019.<sup>81</sup> With the challenges to many businesses and the level of unemployment encountered due to COVID-19, TAS anticipates a higher rate of delinquent accounts in the foreseeable future and

76 See also Taxpayer First Act (TFA), Pub. L. No. 116-25, § 2302, 133 Stat. 1013 (2019) (Mandating the IRS to publish guidance within six months of enactment establishing uniform standards and procedures for the acceptance of taxpayers' digital signatures for powers of attorneys and disclosure authorizations.); Sally P. Schreiber, *AICPA Recommends Changes to e-Signature Requirements*, JOURNAL OF ACCOUNTANCY (June 8, 2020), <https://www.journalofaccountancy.com/news/2020/jun/aicpa-recommends-changes-to-irs-e-signature-requirements.html>.

77 See, e.g., IRC § 6038D. This code section imposes an initial \$10,000 penalty for failure to file complete international information returns. Upon notice of the penalty, taxpayers are given 90 days to provide the delinquent information. They are subject to an additional continuation penalty of \$10,000 for each 30-day period in which they do not comply, up to a maximum of \$50,000.

78 See IRS, Notice 2020-23, 2020-18 I.R.B. 742 (cross referencing Rev. Proc. 2018-58, 2018-50 I.R.B. 990).

79 IRC §§ 6038(b)(2), 6038A(d)(2), 6038C(c)(2), 6038D(d)(2), 6677(a), 6679(a)(2).

80 IRS, IR-2020-59, IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>.

81 A Taxpayer Delinquency Account (TDA) is a case assigned to or awaiting assignment to Collection personnel.

will monitor the impact to taxpayers moving forward and assist those seeking help resolving their collection issues.

**FIGURE 1.2.6, Dollars Collected From TDAs, March Through May 2020<sup>82</sup>**

	March	April	May
FY 2019	\$1.069 bil	\$851 mil	\$901 mil
FY 2020	\$1.125 bil	\$300 mil	\$330 mil
Percent Change From 2019 to 2020	5.2%	-64.8%	-63.3%

### INSTALLMENT AGREEMENTS

The IRS suspended payments due on existing installment agreements (IAs) between April 1, 2020, and July 15, 2020; however, interest continues to accrue on any unpaid balances.<sup>83</sup> Taxpayers who had existing IAs or planned to apply for a new IA were impacted as follows:

- **Direct Debit Installment Agreements (DDIAs).** To stop automatic withdrawals on DDIAs, IRS FAQs instructed taxpayers to contact their bank directly to suspend direct debits. However, the FAQs also note that if taxpayers stop payments on DDIAs, they should provide enough notice to the bank to resume payments after July 15 to avoid a possible default of the IA.<sup>84</sup> This is a potential source of taxpayer confusion and could result in unintended IA defaults for taxpayers who simply forgot to timely resume payments.
- **Streamlined IAs.** Between April 1 and July 15, taxpayers who were eligible for streamlined IAs were still able to enter into those agreements online. Currently, the term for such streamlined IAs is up to 72 months.<sup>85</sup> To provide economic relief to taxpayers impacted by the COVID-19 crisis, the IRS could make a policy call to extend the term of streamlined IAs to up to 84 months. A streamlined 84-month IA would speed up the application process and eliminate the need for the taxpayer requiring a longer payoff term to submit financials on a Collection Information Statement.<sup>86</sup>
- **Application for Non-Streamlined IAs.** Taxpayers who want to enter into an IA but are not eligible for a streamlined IA can mail Form 9465, Installment Agreement Request, as directed in the form's instructions and begin (and continue) to make payments until the IRS responds to

82 IRS Collection Activity Report 5000-1, FY 2020 (Apr. 2, 2020; Apr. 28, 2020; May 26, 2020), FY 2019 (Apr. 1, 2019; Apr. 30, 2019; May 28, 2019). Percentage change based on actual (non-rounded) dollars collected.

83 IRS, People First Initiative FAQs: Installment Agreements/Payment Plans, <https://www.irs.gov/newsroom/people-first-initiative-faqs-installment-agreements-payment-plans> (last visited June 14, 2020).

84 IRS, Installment Agreement Direct Debit Frequently Asked Questions, <https://www.irs.gov/newsroom/installment-agreement-direct-debit-frequently-asked-questions> (last visited May 8, 2020).

85 See IRS, Streamlined and Expanded Installment Agreements, <https://www.irs.gov/businesses/small-businesses-self-employed/streamlined-processing-of-installment-agreements> (last visited May 8, 2020). The availability of streamlined IAs is limited to: (1) individuals and out-of-business sole proprietors with an assessed balance of tax, penalties and interest up to \$50,000; (2) out-of-business taxpayers with assessed balances up to \$25,000; and (3) in-business taxpayers with income tax only assessed balances up to \$25,000.

86 IRM 5.19.1.6.4(11), Installment Agreements (IAs) (Sept. 26, 2018). Taxpayers whose debts were transferred to a private debt collection agency are already offered the option to enter 84-month IAs. IRC § 6306. See Caleb Smith, *Payment Alternatives in the COVID Era: A Humble Plea for Easier Access to Installment Agreements*, PROCEDURALLY TAXING BLOG, <https://procedurallytaxing.com/payment-alternatives-in-the-covid-era-a-humble-plea-for-easier-access-to-installment-agreements/> (May 6, 2020).

the Form 9465.<sup>87</sup> Due to the backlog of mail and taxpayer correspondence, processing of such applications will be delayed.

- Modifications of IAs.** Taxpayers whose financial circumstances have changed since setting up an IA may find it difficult to adhere to its terms. These taxpayers can attempt to modify their IAs. If the taxpayer has an assigned revenue officer (RO), he or she can work with the RO. For cases without an assigned RO, the taxpayer can attempt to modify the IA online. If the taxpayer requests a new monthly payment amount that does not meet the minimum required payment amount, the taxpayer will need to complete and submit IRS Form 433-F, Collection Information Statement. Unfortunately, the IRS will experience significant delays in processing these paper forms. In the meantime, the taxpayer should continue to pay to the extent possible. The taxpayer may need to wait until the IRS resumes operations to renegotiate the terms of the IA, including potentially converting from a full pay IA to a partial pay IA, if eligible.<sup>88</sup>

Figure 1.2.7 shows the impact such changes have had on the dollars collected from IAs during the initial months of the national emergency compared to the same period in FY 2019.

**FIGURE 1.2.7, Dollars Collected From IAs, March 2020 Through May 2020, Compared to Same Period in 2019<sup>89</sup>**

Year	March	April	May
FY 2019	\$1.302 bil	\$1.029 bil	\$980 mil
FY 2020	\$1.324 bil	\$778 mil	\$846 mil
Percent Change From 2019 to 2020	1.7%	-24.4%	-13.7%

**OFFERS IN COMPROMISE**

The People First Initiative provides the following relief for taxpayers with pending offer in compromise (OIC) requests and accepted OICs:<sup>90</sup>

- Pending OICs.** The initiative permits taxpayers with pending OICs to provide requested additional information to support the OIC until July 15, 2020.<sup>91</sup> Pursuant to the initiative, the IRS would not close any pending OIC requests before July 15, 2020, without the taxpayer’s consent. In addition, the IRS would not default a pending OIC for a taxpayer who has not filed 2018 or 2019 tax returns before July 15, 2020. TAS will assist eligible taxpayers who experience difficulty or extreme delays submitting such documentation for pending OICs.

87 IRS, Apply Online for a Payment Plan, <https://www.irs.gov/individuals/online-payment-agreement-application> (last visited May 11, 2020).

88 IRS, Additional Information on Payment Plans, <https://www.irs.gov/payments/payment-plans-installment-agreements#changeplan> (last visited May 9, 2020).

89 IRS Collection Activity Report 5000-5, FY 2020 (Apr. 2, 2020; Apr. 28, 2020; May 26, 2020), FY 2019 (Apr. 1, 2019; Apr. 30, 2019; May 28, 2019).

90 IRS, IR-2020-59, IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>.

91 Note that the IRS has permitted the limited acceptance and transmission of documents electronically. Memorandum for All Services and Enforcement Employees, (1) Approval to Accept Images of Signatures and Digital Signatures (2) Approval to Receive Documents and Transmit Encrypted Documents by Email, by IRS Deputy Commissioner, Services and Enforcement (June 12, 2020).

- Accepted OICs.** The initiative gives taxpayers with accepted OICs the option to suspend all payments until July 15, 2020, although interest will continue to accrue on any unpaid balances. Taxpayers can expect to experience delays and confusion as they try to navigate the extension. Payments need to commence once the suspension period ends, which could create a hardship for which the taxpayer is not prepared. Taxpayers wishing to communicate with the IRS about these payments might experience delays getting through the phone lines. In addition, the IRS will not default an OIC for taxpayers who have not filed their delinquent TY 2018 return during this period. However, the IRS warned that they need to file their TY 2019 return (if not on extension) and any delinquent TY 2018 returns to prevent the IRS from defaulting their OIC after July 15, 2020. While the initiative provides temporary relief to taxpayers, they are still responsible for making payments after July 15, which may prove difficult if a taxpayer lost a job or had a reduction in income during this time and is unable to make payments. TAS will monitor the OIC default rate, SAMS submissions, and individual TAS cases to determine how taxpayers are impacted after July 15, 2020.

### LIENS

The IRS suspended most liens initiated by field ROs and new automatic systemic liens between April 1, 2020, and July 15, 2020.<sup>92</sup> Thus, the IRS generally did not file Notices of Federal Tax Lien (NFTLs) from April 1 through July 15, 2020. However, the IRS emphasized that ROs would continue to pursue high-income non-filers and perform other similar activities where warranted.<sup>93</sup>

Due to mail disruptions in Florence, Kentucky, the IRS did not process mailed certificate applications for lien discharges, withdrawals, and subordinations. Until normal mail operations commenced, the IRS encouraged taxpayers to submit such certificate applications by fax.<sup>94</sup>

### LEVIES

The IRS's People First Initiative provided relief to taxpayers by suspending levies between April 1, 2020, and July 15, 2020.<sup>95</sup> However, taxpayers still faced challenges getting releases on levies issued before April 1, 2020, as discussed below.

- Suspension of New Levies.** The IRS suspended levies (including any seizure of personal residence) initiated by field ROs during the People First Initiative period. However, the IRS emphasized that field ROs would continue to pursue high-income non-filers and perform other similar activities where warranted. In addition, the IRS suspended automated levies like the Federal Payment Levy Program and the State Income Tax Levy Program, and the Automated

92 IRS, IR-2020-59, IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>. Note that some NFTLs were filed in April and May 2020.

93 *Id.*

94 IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue (May 11, 2020), <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue>.

95 IRS, IR-2020-59, IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>.

Collection System suspended issuing new paper levies.<sup>96</sup> Because the associated IRS notices are typically computer-generated in advance, some taxpayers may still have received them. TAS is currently monitoring the list of IRS backlogged notices to identify post-levy notices that were generated by automated levies that were stopped yet notices appeared to have generated. If a levy was issued before April 1 and the due date for requesting an administrative collection due process (CDP) hearing falls on or after April 1, 2020, and before July 15, 2020, under the relief provided in Notice 2020-23, that due date was postponed to July 15, 2020. Because the notices provided a different date than the postponed due date, it may cause taxpayers confusion.<sup>97</sup>

- **Release of Levies.** The IRS did not automatically release levies issued before April 1, 2020. Taxpayers can request a release of a levy if they can demonstrate that the levy is causing an economic hardship (*i.e.*, the levy is preventing the taxpayer from meeting basic reasonable living expenses). To submit such a request, the taxpayer should work with the assigned RO, if any; call the number on the notice of levy; or fax the request.<sup>98</sup> Taxpayers can experience delays making such requests, and if the taxpayers' attempts are unsuccessful, TAS could assist them in obtaining a release.

Taxpayers also have limited ability to request a collection alternative to stop a levy (*e.g.*, IA, OIC). However, once the IRS resumes operations, taxpayers should determine whether they qualify for a return of levy proceeds.<sup>99</sup>

### OFFSET BYPASS REFUNDS NOT AVAILABLE DURING CRISIS

The IRS has the authority to offset a taxpayer's overpayment against any outstanding federal tax liability before issuing a refund.<sup>100</sup> The IRS has made a policy decision to bypass such offset if the taxpayer can demonstrate hardship.<sup>101</sup> For nearly a week in April, while all campuses were closed, W&I did not have the ability to process Offset Bypass Refund (OBR) requests.<sup>102</sup> When the function resumed operations, taxpayers might have had difficulty obtaining the documentation necessary to establish a hardship. Therefore, recognizing each taxpayer's fact and circumstances are unique, TAS recommends the IRS to be flexible in working with taxpayers and the type of documentation it deems acceptable.

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96 IRS, IR-2020-59, IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>.

97 IRS, Filing and Payment Deadlines Questions and Answers, <https://www.irs.gov/newsroom/filing-and-payment-deadlines-questions-and-answers> (last visited June 9, 2020).

98 IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue (May 11, 2020), <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue>.

99 IRC § 6343(b).

100 IRC § 6402(a).

101 See IRM 21.4.6.5.11.1, Offset Bypass Refund (OBR) (Nov. 8, 2017). Hardship for this purpose means economic hardship within the meaning of IRC § 6343 and the regulations thereunder.

102 The Ogden campus was the last manual refunds center to close and the first to reopen (remotely). As a result, manual refunds were not available from April 6, 2020 to April 10, 2020.

Once an offset has occurred, the IRS can only reverse the offset and issue a refund if a clerical error prevented the processing of the OBR request.<sup>103</sup> The IRS Office of Chief Counsel has opined that the closure of an IRS campus that processes manual refund requests does not constitute a clerical error for purposes of OBRs.<sup>104</sup> Therefore, if a taxpayer's refund was offset during the office closure, currently there is no way to reverse it, and the overpayment is applied to outstanding liabilities. The National Taxpayer Advocate recommends the IRS reconsider its decision and reverse the offset when the relevant OBR processing campus was closed during the time of the offset and the taxpayer can document (or the Local Taxpayer Advocate can attest to) a hardship. The closure of the IRS campus was out of the taxpayer's control and should not have impacted the hardship analysis for him or her to receive an OBR.

### LIMITED ABILITY TO QUALIFY FOR PASSPORT DECERTIFICATIONS

During the period of the People First Initiative, the IRS suspended new passport certifications to the State Department for taxpayers who have “seriously delinquent tax debt.”<sup>105</sup> This generally applies to taxpayers who owe more than \$53,000 (adjusting for inflation) in tax, interest, and penalties and who do not qualify for one of several exceptions, including taxpayers under an existing IA or OIC.<sup>106</sup> Certification to the State Department prevents taxpayers from receiving or renewing passports.

The People First Initiative did not impact existing certifications, which remain in place. The IRS has indicated that the emergency decertification procedures are currently unavailable to taxpayers.<sup>107</sup> Taxpayers with existing certifications face difficulty qualifying for a non-emergency decertification if they experience problems resolving their tax liabilities due to the delays in getting an amended return processed or an IA reviewed.<sup>108</sup>

### LIMITED RELIEF FOR TAXPAYERS WITH DEBTS FORWARDED TO PRIVATE COLLECTION AGENCIES

Pursuant to the People First Initiative, the IRS did not forward any new delinquent accounts to private collection agencies (PCAs) during the period of the People First Initiative.<sup>109</sup> PCAs are refraining from making outgoing calls to taxpayers with the exception of when the taxpayer has

103 IRM 13.1.24.6.2, *Advocating for Taxpayers Seeking Offset Bypass Refunds* (May 11, 2020); IRM 3.17.79.3.16(5), *Offset Bypass Refunds* (Mar. 22, 2020); IRM 21.4.6.5.11.1, *Offset Bypass Refund (OBR)* (Nov. 11, 2017). There is nothing in the Code or the Treasury regulations that gives the IRS the authority to reverse the offset when there is no longer any overpayment. A doctrine known as “clerical error,” however, has been relied upon as authority for the IRS to reverse certain errors. See, e.g., *Crompton-Richmond Co. v. United States*, 311 F. Supp. 1184 (S.D.N.Y. 1970); *Bugge v. United States*, 99 F.3d 740 (5th Cir. 1996).

104 TAS, *Guidance on Offset Bypass Refund Requests During COVID-19* (Apr. 16, 2020).

105 IRS, IR-2020-59, *IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program* (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>.

106 IRC § 7345; IRM 5.1.12.27.4, *Discretionary Exclusions From Certification* (Dec. 20, 2017) (providing a discretionary exception for pending OICs).

107 The law provides that the Department of State may issue a passport to a certified taxpayer in emergency circumstances or for humanitarian reasons. Fixing America's Surface Transportation (FAST) Act Pub. L. No. 114-94, Div. C, Title XXII, § 32101(e)(1)(B), 129 Stat. 1312, 1729-32 (2015); IRS, *IRS Operations During COVID-19: Mission-Critical Functions Continue* (May 11, 2020), <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue>.

108 IRC § 7345.

109 IRS, IR-2020-59, *IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program* (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>.



requested that the PCA return his or her call and have suspended the mailing of missed/late payment reminders. Further, when a taxpayer indicates he or she is not able to pay because of the effects of the pandemic, the PCA will place a hold on the account through July 15, 2020, and the PCAs will not terminate or modify existing payment arrangements during the suspension period.<sup>110</sup> It is not clear if this suspension period will be extended beyond July 15, 2020, and if the PCAs will be instructed to follow these more flexible guidelines in the months to come. We recommend that the IRS consider instructing the PCAs to follow these guidelines at least through the end of 2020.

### *IRS Independent Office of Appeals*

As part of the People First Initiative, the IRS suspended in-person conferences.<sup>111</sup> IRS Notice 2020-23 provided relief to taxpayers by postponing the deadlines to request CDP hearings.<sup>112</sup>

#### **SUSPENSION OF APPEALS IN-PERSON CONFERENCES**

Throughout the pandemic, employees of the IRS Independent Office of Appeals continued to work their cases. However, as part of the People First Initiative, the IRS announced that Appeals would not hold in-person conferences with taxpayers between April 1, 2020, and July 15, 2020. Instead, conferences would be held over the telephone or by videoconference.<sup>113</sup> We will advocate that Appeals provide the taxpayer the option of postponing conferences until in-person meetings can be conducted safely. We acknowledge that this will often lead the IRS to request an extension of the statute of limitations on assessment, of which taxpayers and practitioners need to balance the pros and cons of such approach.

While the IRS was justified in canceling in-person conferences to protect the health and safety of taxpayers, representatives, and employees, we encourage the IRS Independent Office of Appeals to resume in-person conferences as soon as it is safe to commence normal operations to protect the taxpayer's *right to appeal an IRS decision in an independent forum*. For years, TAS has stressed the importance of in-person conferences to both taxpayers and the IRS Independent Office of Appeals.<sup>114</sup> An in-person conference can be essential to properly explaining and settling a controversy, particularly for cases involving factual or legal complexity, credibility of witnesses, or hazards of litigation settlements.<sup>115</sup>

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<sup>110</sup> IRS, Filing and Payment Deadlines Questions and Answers, <https://www.irs.gov/newsroom/filing-and-payment-deadlines-questions-and-answers> (last visited June 10, 2020).

<sup>111</sup> IRS, IR-2020-59, IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>.

<sup>112</sup> IRS, Notice 2020-23 2020-18 I.R.B. 742.

<sup>113</sup> IRS, IR-2020-59, IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>.

<sup>114</sup> See, e.g., National Taxpayer Advocate 2017 Annual Report to Congress 197-202 (Most Serious Problem: *Appeals: The IRS Office of Appeals Imposes Unreasonable Restrictions on In-Person Conferences for Campus Cases, Even As It Is Making Such Conferences More Available for Field Cases*).

<sup>115</sup> We also continue to support the expansion of virtual conferences. Taxpayers should have the option to choose the type of conference.

### COLLECTION DUE PROCESS HEARINGS

Under IRC §§ 6330 and 6320, the first time the IRS issues an NFTL or an intent to levy notice to a taxpayer, it must provide the taxpayer with an opportunity to request a CDP hearing. Under normal circumstances, the taxpayer has 30 days to timely request a CDP hearing with Appeals.<sup>116</sup> In a CDP hearing, the taxpayer can raise (1) appropriate spousal defenses, such as innocent spouse claims; (2) challenges to the appropriateness of the NFTL filing; or (3) offers of collection alternatives, which may include posting of bond, the substitution of other assets, an IA, or an OIC.<sup>117</sup> In certain instances, the taxpayer can also challenge the existence or amount of the tax liability that arose provided the taxpayer has not otherwise had an opportunity to do so.

If the deadline for requesting an administrative CDP hearing falls on or after April 1, 2020, and before July 15, 2020, the IRS postponed that deadline to July 15, 2020.<sup>118</sup> Even with this temporary relief, it is crucial for taxpayers to keep a proof of such filing to preserve their rights, especially considering the delays in processing such requests. Also, if the taxpayer has a pending CDP hearing, his or her facts and circumstances may have changed substantially as a result of COVID-19-related issues. If a taxpayer's financial circumstances have changed drastically, he or she should consider supplementing his or her existing collection proposal. This could include a lower IA payment or OIC.

Following the CDP hearing, the IRS informs the taxpayer of its decision on a notice of determination, which also notifies the taxpayer of the right to appeal the determination to the U.S. Tax Court.<sup>119</sup> As discussed below, the IRS and the Tax Court postponed this filing deadline. Once a taxpayer petitions the Tax Court, he or she will often go back to Appeals to resolve the case. Many cases do not actually get litigated in court. However, it is crucial to timely file the petition to preserve the right to go to court. It is crucial that taxpayers are educated of the importance to file a timely petition even if the case will eventually be resolved through negotiation.

### *Office of Chief Counsel Diligently Worked to Issue Much-Needed Guidance*

The IRS Office of Chief Counsel acted quickly to issue guidance to taxpayers as the COVID-19 crisis unfolded. The Families First Coronavirus Response Act (FFCRA) enacted on March 18, 2020, and the CARES Act enacted on March 27, 2020, generated guidance projects for Counsel requiring immediate attention.<sup>120</sup> As of June 8, 2020, over 35,500 hours had been billed to those projects with 42 pieces of guidance issued and 40 more identified for issuance.<sup>121</sup> However, the issuance of some guidance in the format of FAQs creates potential issues. The tolling of judicial filing deadlines in

<sup>116</sup> IRC §§ 6320, 6330(a), and (b).

<sup>117</sup> IRC § 6330(c)(2).

<sup>118</sup> IRS, Notice 2020-23 2020-18 I.R.B. 742; Keith Fogg, *Further Thoughts on Notice 2020-23*, PROCEDURALLY TAXING BLOG, <https://procedurallytaxing.com/further-thoughts-on-notice-2020-23/> (Apr. 14, 2020). The IRS informs the taxpayer of the right to request a CDP administrative hearing on notices such as Letter 1058, Final Notice of Intent to Levy and Notice of Your Right to a Hearing (notice of intent to levy), or Letter 3172, Notice of Federal Tax Lien and Your Rights to a Hearing Under IRC 6320.

<sup>119</sup> See, e.g., IRS Letter 3193, Notice of Determination: Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code (notice of determination).

<sup>120</sup> FFCRA, Pub. L. No. 116-127, 134 Stat. 178 (2020); CARES Act, Pub. L. No. 116-136, 134 Stat. 281 (2020).

<sup>121</sup> Information Provided by Division Counsel/Associate Chief Counsel (National Taxpayer Advocate Program) (June 13, 2020).

IRS Notice 2020-23 was supplemented by FAQs to account for the uncertainty surrounding the date on which the U.S. Tax Court will reopen.

### THE PROS AND CONS OF INFORMAL GUIDANCE

In an effort to issue guidance quickly in the face of widespread closures of core IRS functions as well as the enactment of the FFCRA and CARES Act, the IRS issued guidance in the form of FAQs.<sup>122</sup> FAQs do not rise to the level of “published guidance,” and taxpayers cannot rely on them to establish substantial authority to avoid penalties for inaccurate reporting.<sup>123</sup> Actual reliance on an FAQ, however, is a factor in determining whether the taxpayer took a tax position with reasonable cause and in good faith so as to avoid a penalty. We will work to protect the taxpayer’s *right to be informed* by encouraging the Office of Chief Counsel to issue more formal guidance for legally significant issues. However, we acknowledge that the time to draft, review, and allow for public comment is lengthy, which will not allow for formal guidance to be issued before temporary relief measures have expired. Nevertheless, formal guidance is necessary for substantive issues.

In the meantime, taxpayers and practitioners are understandably concerned about relying upon the FAQs published by the IRS. To alleviate this concern, TAS will encourage the IRS to publicly state that they will follow the FAQs issued during the COVID-19 pandemic. TAS will encourage the IRS to publish a statement in the *Federal Register* that says (1) the IRS must number and provide effective dates for all FAQs and will be prohibited from deleting previously issued guidance from its website even if it has changed its position (indicating when an FAQ is obsolete, if applicable), and (2) for penalty relief purposes, taxpayers can rely on FAQs as authority for returns filed for taxable periods ending before an FAQ is obsoleted.<sup>124</sup> The former will add permanence and prevent the IRS from changing an FAQ without leaving any evidence.<sup>125</sup> If the IRS decides to change an FAQ, it should add to the FAQ instead of deleting it. For example, if the IRS changes its position with respect to the guidance included in FAQ 10, it will provide the effective dates of FAQ 10, and add FAQ 10.1 with the new position and applicable effective dates. The IRS should also consider moving obsolete FAQs to a taxpayer-accessible archive, which can be used for historical purposes, but would be presented in a way that would not confuse taxpayers as to which rule is applicable.

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122 See, e.g., IRS, Filing and Payment Deadlines Questions and Answers, <https://www.irs.gov/newsroom/filing-and-payment-deadlines-questions-and-answers> (last visited May 12, 2020).

123 Taxpayers can sometimes avoid penalties with respect to tax return positions that are supported by “substantial authority” even if the IRS disagrees with the positions. IRC § 6662(d)(2)(B); Treas. Reg. §§ 1.6662-4(a) and -4(d). For this purpose, “authorities” include, among other sources, the IRC, Treasury regulations, other guidance published in the Internal Revenue Bulletin (IRB), and “IRS information or press releases.” Treas. Reg. § 1.6662-4(d)(3)(iii). FAQs are not always published in the IRB and the scope of “IRS information” is undefined. Therefore, taxpayers cannot be sure that they can treat FAQs posted to an IRS website as “authority” for the purpose of avoiding penalties.

124 Alternatively, the IRS could clarify that FAQs are equivalent to “IRS information” under Treas. Reg. § 1.6662-4(d)(3)(iii).

125 Currently, the lack of permanence for FAQs leads many practitioners to print or take screen shots of every FAQ upon which they rely. However, this practice is burdensome and is not intuitive for unsophisticated taxpayers. Nina E. Olson, *IRS Frequently Asked Questions Can Be a Trap for the Unwary*, NTA Blog, <https://taxpayeradvocate.irs.gov/news/irs-frequently-asked-questions-can-be-a-trap-for-the-unwary> (July 16, 2017).

### TOLLING OF JUDICIAL DEADLINES

IRS Notice 2020-23 postponed until July 15 deadlines for filing petitions or complaints with the U.S. Tax Court that expire on or after April 1 and before July 15, 2020.<sup>126</sup> The IRS has also stated that taxpayers can take full advantage of the relief provided by Notice 2020-23 as well as the relief provided in *Guralnik v. Commissioner*.<sup>127</sup> Thus, taxpayers have until the later of the agency's postponed deadline or the Court's reopening date to file their petitions.<sup>128</sup> Because the Court's clerk office closed on March 19, 2020, the relief period recognized by the IRS is extended to start on March 19, per *Guralnik*, rather than April 1, per Notice 2020-23. It is also possible that *Guralnik* will extend the end date of the relief beyond July 15, depending on the date the clerk's office reopens.<sup>129</sup>

Considering that the deadline to file a petition with the U.S. Tax Court has serious legal consequences, the ABA Section of Taxation suggested that the relief in Notice 2020-23 did not go far enough. The ABA recommended tolling judicial filing deadlines between January 20, 2020, and July 14, 2020, until 60 days after the later of (1) July 15 or (2) the date on which the relevant court clerk's office opens, in accordance with IRC § 7508A(d)(1)(B).<sup>130</sup> To protect the taxpayer's *right to appeal an IRS decision in an independent forum*, TAS plans to encourage the Office of Chief Counsel to explore the feasibility of further tolling the judicial filing deadlines to the full extent authorized by IRC § 7508A.

### FLEXIBILITY WITH TAXPAYERS WHO MISS DEADLINES

Given the uncertainty inherent in the U.S. Tax Court closure, taxpayers who do not diligently check the Court's website might miss notification of its opening. While the Court will not have jurisdiction on a case if the associated petition is untimely filed, TAS will encourage the Office of Chief Counsel and the IRS to exercise flexibility by continuing to work with those taxpayers who no longer have a prepayment forum for judicial review.<sup>131</sup> For example, the IRS and Office of Chief Counsel could continue to work with the taxpayer to find an administrative remedy, such as educating the taxpayer about the audit reconsideration process rather than forcing the taxpayer to pay the liability and sue for a refund.

<sup>126</sup> Specifically, Notice 2020-23 postpones the deadlines for the time for filing all petitions with the Tax Court, for review of a decision rendered by the Tax Court, filing a claim for credit or refund of any tax, and bringing suit upon a claim for credit or refund of any tax. IRS Notice 2020-23 2020-18 I.R.B. 742.

<sup>127</sup> *Guralnik v. Comm'r*, 146 T.C. 230 (2016). This relief includes the time for filing all petitions with the Tax Court, or for review of a decision rendered by the Tax Court, filing a claim for credit or refund of any tax, and bringing suit upon a claim for credit or refund of any tax. In *Guralnik*, the Tax Court held that its jurisdictional court filing deadlines cannot elapse on days when the court is unavailable. In *Guralnik*, the problem had been a blizzard, whereas now it is the pandemic.

<sup>128</sup> The Tax Court has indicated that the court will post an announcement on its website about reopening its building and mailing address as early as possible in order to avoid a sudden *Guralnik* deadline, if applicable. Nathan J. Richman, *IRS Embraces Later Tax Court Filing Deadlines*, 167 TAX NOTES TODAY 879 (May 4, 2020).

<sup>129</sup> IRS, Filing and Payment Deadlines Questions and Answers, <https://www.irs.gov/newsroom/filing-and-payment-deadlines-questions-and-answers> (last visited May 12, 2020).

<sup>130</sup> The ABA chose January 20, 2020 as the beginning of the recommended relief period because every FEMA Major Disaster Declaration related to the COVID-19 emergency lists January 20, 2020 as the start date of the "Incident Period." Letter from Tom Callahan, Chair, Section of Taxation, ABA, to Charles P. Rettig, Comm'r, I.R.S., Specific Substantive and Procedural Provisions Impacted by the COVID-19 Emergency (Apr. 29, 2020), <https://www.americanbar.org/content/dam/aba/administrative/taxation/policy/2020/042920comments.pdf>.

<sup>131</sup> IRC § 6213.

### *U.S. Tax Court*

The U.S. Tax Court closed its doors and canceled trial sessions in response to COVID-19 but has encouraged the parties to continue to address pending issues.<sup>132</sup> The Virtual Settlement Days program is aimed at accomplishing the resolution of cases before litigation, albeit remotely.<sup>133</sup>

#### CANCELED TRIAL SESSIONS AND MAIL DISRUPTION

The Tax Court closed on March 19, 2020, and canceled trial sessions from March 16, 2020, through June 30, 2020.<sup>134</sup> On May 29, 2020, the Court adopted procedures for conducting Court proceedings remotely. These procedures will be in effect until further notice.<sup>135</sup>

For those taxpayers and practitioners who attempted to file documents with the Tax Court after it closed, the court did not open mail and, in some cases, the mail was returned as undeliverable. The Tax Court's website instructed taxpayers to resend any returned documents, including the original envelope, to the court as soon as possible after the court announces it has resumed receiving mail. Returned mail will likely cause anxiety for taxpayers. It is crucial that taxpayers keep a copy of the submitted document, proof of timely mailing through a designated delivery service, and an original envelope, if applicable, to preserve important judicial appeal rights.<sup>136</sup>

#### VIRTUAL SETTLEMENT DAYS

The Tax Court press releases canceling the trial sessions state that the court expects that parties will continue to work together to exchange information and address pending issues.<sup>137</sup> The IRS Office of Chief Counsel recently announced that the Virtual Settlement Days program will continue remotely enabling unrepresented taxpayers to work toward resolving their pending Tax Court cases despite “stay-at-home” orders in many jurisdictions. Virtual Settlement Days are a coordinated effort to resolve Tax Court cases by giving *pro se* taxpayers the opportunity to receive free tax advice and possible representation from Low Income Taxpayer Clinics (LITCs) or other *pro bono* organizations. The program is geared to help unrepresented taxpayers receive free assistance in discussing a potential fair settlement of their tax disputes in an informal setting without the need for further litigation or a trial in the Tax Court. Taxpayers can discuss their cases and other federal tax issues with members of the IRS Office of Chief Counsel, Appeals, and Collections.

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<sup>132</sup> U.S. Tax Court, Press Release (Mar. 11, 2020); U.S. Tax Court, Press Release (Mar. 13, 2020); U.S. Tax Court, Press Release (Mar. 18, 2020); U.S. Tax Court, Press Release (Mar. 23, 2020); U.S. Tax Court, Welcome, <https://www.ustaxcourt.gov/> (last visited May 12, 2020).

<sup>133</sup> IRS, IR-2020-87, IRS Retools Settlement Days Program in Response to COVID-19 Pandemic; Allows Unrepresented Taxpayers to Settle Their Cases Virtually and Reach Finality (May 5, 2020), <https://www.irs.gov/newsroom/irs-retools-settlement-days-program-in-response-to-covid-19-pandemic-allows-unrepresented-taxpayers-to-settle-their-cases-virtually-and-reach-finality>.

<sup>134</sup> U.S. Tax Court, Press Release (Mar. 11, 2020); U.S. Tax Court, Press Release (Mar. 13, 2020); U.S. Tax Court, Press Release (Mar. 18, 2020); U.S. Tax Court, Press Release (Mar. 23, 2020); U.S. Tax Court, Welcome, <https://www.ustaxcourt.gov/> (last visited May 12, 2020).

<sup>135</sup> U.S. Tax Court, Administrative Order No. 2020-02, [https://www.ustaxcourt.gov/admin\\_orders/Admin\\_Order\\_No\\_2020-02.pdf](https://www.ustaxcourt.gov/admin_orders/Admin_Order_No_2020-02.pdf) (June 2, 2020). Public access to the Court's remote proceedings will be made available via real-time audio with dial-in information for each session posted on the Court website.

<sup>136</sup> U.S. Tax Court, Welcome, <https://www.ustaxcourt.gov/> (last visited May 12, 2020).

<sup>137</sup> See, e.g., U.S. Tax Court, Press Release (Mar. 23, 2020).

The first Virtual Settlement Days events were held in May in Detroit and Atlanta. Between both offices, more than 50 taxpayer cases were resolved. As a result of the program's success, the Office of Chief Counsel expanded Virtual Settlement Days to other offices and will host events more frequently. Additional offices scheduled to participate in the program include Los Angeles and Washington, D.C., as well as more events in Atlanta.<sup>138</sup>

TAS plans to work with the other participating organizations to have an official role in the initiative.<sup>139</sup> TAS can assist taxpayers in resolving tax issues relating to tax years not yet before the court. By having TAS present with the Office of Chief Counsel, Appeals, Collection, and LITCs, the Virtual Settlement Days program can truly provide a one-stop resolution experience for taxpayers in a remote environment.

### Impact of the COVID-19 Crisis on TAS Operations

TAS took early action to ensure its employees were telework-ready. By the time the IRS mandated that employees work at home, TAS had already made all of its employees telework-eligible and asked them to work remotely, allowing TAS operations to continue with fewer disruptions than most other IRS functions.<sup>140</sup> While TAS was in a better position than many IRS functions to quickly adapt to working remotely, moving all employees out of the offices did have serious consequences to our operations and advocacy efforts. Despite all the obstacles, TAS employees continued to assist taxpayers. In addition, TAS created a COVID-19 Rapid Response Team to address systemic issues by identifying emerging tax problems caused by the pandemic, raising the issues to the relevant IRS functions, and monitoring progress toward resolution.<sup>141</sup>

### *Inability to Access Paper Case Files and Send or Receive Mail*

TAS employees, including employees in the Case Advocacy function in the local offices, could not access paper case files while teleworking. In addition, they could not receive or send mail for many weeks during the crisis. Initially, designated TAS employees would visit the offices to open and scan incoming mail as well as print correspondence and mail letters to taxpayers and representatives.<sup>142</sup> However, this practice quickly stopped as state and local governments imposed stay-at-home restrictions on individuals and business operations across the country, and the IRS ultimately ceased most mail processing and ordered employees to telework. As the IRS is beginning to reopen offices and resume mail service, TAS is sending designated employees into those offices to process the mail

138 IRS, IR-2020-112, IRS Chief Counsel Goes Virtual With National Settlement Days; Helps Dozens of Taxpayers Settle Their Tax Court Cases (June 4, 2020), <https://www.irs.gov/newsroom/irs-chief-counsel-goes-virtual-with-national-settlement-days-helps-dozens-of-taxpayers-settle-their-tax-court-cases>.

139 IRS, IR-2020-87, IRS Retools Settlement Days Program in Response to COVID-19 Pandemic; Allows Unrepresented Taxpayers to Settle Their Cases Virtually and Reach Finality (May 5, 2020), <https://www.irs.gov/newsroom/irs-retools-settlement-days-program-in-response-to-covid-19-pandemic-allows-unrepresented-taxpayers-to-settle-their-cases-virtually-and-reach-finality>.

140 TAS Special Edition, TAS Takes Measures to Protect Employees and Taxpayers (Mar. 16, 2020); TAS Interim Guidance Memorandum (IGM), TAS-13-0320-0006, Interim Guidance – Advocating for Taxpayers While Preventing the Spread of COVID-19 (Mar. 17, 2020).

141 Taxpayer, practitioners, and other IRS employees submit systemic COVID issues through TAS's Systemic Advocacy Management System (SAMS).

142 TAS Special Edition, TAS Takes Measures to Protect Employees and Taxpayers (Mar. 16, 2020); TAS IGM, TAS-13-0320-0006, Interim Guidance - Advocating for Taxpayers While Preventing the Spread of COVID-19 (Mar. 17, 2020).

and send correspondence to taxpayers. TAS employees still do not have regular access to review critical paper case files necessary to take action on cases, causing delays in certain cases.

### *NTA Toll-Free Line Closure and Negative Impact on TAS Centralized Case Intake Operations*

Taxpayers seeking TAS assistance can reach TAS by phone by either calling the National Taxpayer Advocate Toll-Free (NTATF) phone line or by calling the local TAS office phone lines. The NTATF phone line is staffed by W&I, which initially screens the calls to determine if the case meets TAS case criteria and then directly transfer the calls to TAS's Centralized Case Intake (CCI) function. While teleworking, TAS CCI employees could not initially take direct transfer calls from the NTATF phone line.<sup>143</sup> To address this issue, TAS negotiated workaround procedures with W&I to enable CCI employees to receive referrals electronically. These workaround procedures were short-lived due to the temporary closure of the phone line on March 23, 2020.<sup>144</sup> Without W&I answering calls on the NTATF line, the only way for taxpayers to contact TAS about their tax problems was for them to call their local TAS office, leading to a spike in call volumes on those local lines, as discussed below. TAS quickly reassigned CCI Intake Advocates to assist with retrieving messages and returning taxpayer calls from the local phone lines. In the interim, TAS partnered with the IRS to provide its CCI employees with the capability to remotely answer phone calls from a telework location. When W&I reopened the NTATF line on May 18, 2020, TAS was immediately able to resume answering calls transferred directly from the NTATF line, even while teleworking, and ensure continued service to taxpayers in need of TAS assistance.<sup>145</sup>

### *Increased Call Volumes on TAS Local Office Lines*

The COVID-19 crisis occurred during the 2020 filing season, a time when TAS was already experiencing high call volumes on our phone line.<sup>146</sup> During the period that the IRS closed the phone lines supported by CSRs, the IRS began administering EIPs.<sup>147</sup> Many taxpayers and congressional offices directed their EIP questions to the local TAS office because they did not have anywhere else to call to talk to an IRS employee. The NTATF line was not staffed by W&I during initial distributions of EIPs, resulting in taxpayers calling their local TAS office, causing a spike in the calls the local offices receive and overwhelming their voice messaging systems. Due to the lack of an IRS process to address EIP issues, TAS could not work those cases.<sup>148</sup> TAS instituted a gating process on its local office phone lines to direct taxpayers with EIP questions to the IRS website. To

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143 TAS Special Edition, *TAS Takes Measures to Protect Employees and Taxpayers* (Mar. 16, 2020); TAS IGM, *TAS-13-0320-0006, Interim Guidance - Advocating for Taxpayers While Preventing the Spread of COVID-19* (Mar. 17, 2020).

144 TAS, *Daily CCI/NTATF*, as of Monday 3/23/2020 (Mar. 24, 2020).

145 IRS SERP Alert 20A0204, *W&I Will Staff NTA Applications on May 18, 2020* (May 15, 2020).

146 For example, on Monday, March 16, the NTATF line received 5,055 calls and, of those calls, 2,359 calls were transferred to CCI. TAS, *Daily CCI/NTATFL*, as of Monday 3/16/2020 (Mar. 17, 2020). In addition, the local office phone lines received 2,164 calls (the local office call volumes were manually collected based on the contact records entered in TAMIS).

147 On May 18, 2020, the IRS began to add about 3,500 customer service representatives on the phones to answer EIP common questions. IRS, *IR-2020-97, IRS Adds Phone Operators to Answer Economic Impact Payment Questions* (May 18, 2020), <https://www.irs.gov/newsroom/irs-adds-phone-operators-to-answer-economic-impact-payment-questions>. See Systemic Advocacy Objective: *Reducing Burden Resulting From the Implementation of the Coronavirus Aid, Relief, and Economic Security (CARES) Act*, *infra*.

148 See Systemic Advocacy Objective: *Reducing Burden Resulting From the Implementation of the Coronavirus Aid, Relief, and Economic Security (CARES) Act*, *infra*.

best serve taxpayers, we further gated calls between taxpayers with an existing TAS case and those looking to open a new case to enable TAS to efficiently respond to taxpayers. As noted above, while the NTATF line was closed, CCI staff assisted with retrieving messages and returning taxpayer calls to the local phone lines.

Figure 1.2.8 details the number of calls to the local TAS phone lines during the initial months of the national emergency across the United States, compared to the same period in 2019.

**FIGURE 1.2.8, Calls Answered by Local TAS Office<sup>149</sup>**

Week Ending	Total Calls Answered on Local Lines 2020	Total Calls Answered on Local Lines 2019	% Change From 2019 to 2020
March 9, 2020	2,404	2,168	10.9%
March 15, 2020	2,164	1,959	10.5%
March 22, 2020	2,033	2,036	-0.1%
March 29, 2020	3,571	1,762	102.7%
April 5, 2020	5,748	1,749	228.6%
April 12, 2020	6,355	2,028	213.4%
April 19, 2020	6,545	1,908	243.0%
April 26, 2020	9,017	1,987	353.8%
May 3, 2020	8,074	1,711	371.9%
May 10, 2020	7,514	1,920	291.4%
May 17, 2020	6,507	2,048	217.7%
May 24, 2020	4,085	2,027	101.5%
May 31, 2020	3,144	1,646	91.0%

### *Closure of IRS Functions Limited Ability to Send Operations Assistance Requests*

When a taxpayer seeks assistance from TAS but TAS lacks the statutory or delegated authority to resolve the taxpayer's problem, it works with the responsible IRS business operating division (BOD) or function to resolve the issue. For example, if a taxpayer seeks a penalty abatement based on reasonable cause, TAS can perform all the necessary research and analysis to determine if the taxpayer qualifies for such abatement, but it cannot make the adjustment, so it advocates for the taxpayer by issuing an Operations Assistance Request (OAR) requesting the IRS abate the penalty. Generally, TAS completes IRS Form 12412, Operations Assistance Request (OAR), to request the IRS take the specified action on a taxpayer's account.<sup>150</sup> To effectively advocate for taxpayers in the continuously evolving environment, TAS employees were required to triage case workload to assist those taxpayers experiencing an economic burden where TAS had the ability to take actions

<sup>149</sup> TAS BOE Report (weeks ending Mar. 9, 2020, through May 31, 2020, and weeks ending Mar. 9, 2019 through June 1, 2019). The call volumes were manually collected based on the contact records entered in TAMIS. Because these calls were manually collected, they reflect only a small percentage of the number of calls received by TAS. For example, for the week ending May 31, 2020, TAS manually collected a total of 3,144 calls. However, a systemic collection showed a total of 28,493 of which only 41 percent (11,771) were calls requesting TAS assistance. TAS Application Summary (week ending May 31, 2020).

<sup>150</sup> IRM 13.1.19.1, TAS OAR Process Overview (Nov. 14, 2014).



to resolve the taxpayer’s issue.<sup>151</sup> Many IRS operations were completely closed and unable to receive or process OAR requests. Others were working with significantly reduced staffing. Because the status of IRS functions changed on a daily basis, TAS developed and continually updated an internal online tool, the COVID-19 Case Processing Changes site, to enable employees to easily determine the status of IRS functions in different offices, including any special instructions or limitations on the work the functions could perform. Case Advocacy employees used this online tool to determine how to handle cases and where to send OARs. TAS met weekly with representatives from the IRS BODs to identify new ways to resolve taxpayer issues. As part of the discussions, TAS determined the types of work the IRS could perform while teleworking, the IRS units that have staff returning to specific locations (even if staffing is reduced), and resources available to perform the work. When an IRS function resumed operations and began processing OARs, TAS prioritized its cases to first send to the BOD or function the OARS for taxpayers experiencing the most extreme hardships.<sup>152</sup>

TAS recognized the need to manage expectations and provide information to taxpayers. To accomplish this, TAS created a Coronavirus (COVID-19) Tax Relief page on the TAS website to keep taxpayers updated. The webpage provides TAS customers case-related alerts.<sup>153</sup>

***Decline in Case Receipts and Closures***

Prior to the COVID-19 crisis, in FY 2020, TAS case receipts had increased nine percent when compared to the same period in FY 2019.<sup>154</sup> However, during the pandemic, despite the increase in phone calls to the local lines, TAS receipts dropped by eight percent through May 2, 2020, compared to the same period in FY 2019.<sup>155</sup> Figure 1.2.9 shows that TAS received nearly 50 percent fewer cases in April 2020 compared to April 2019. Figure 1.2.9 shows that TAS case closures dropped by 17 percent when comparing April 2020 to April 2019, due mainly to the inability of IRS functions to take actions to resolve the tax issues. TAS is closely monitoring IRS operations for reopening to initiate actions needed to assist taxpayers.

**FIGURE 1.2.9, TAS Receipts and Closures, April 2019 and 2020<sup>156</sup>**

	Receipts	Closures
April 2019	28,253	24,149
April 2020	14,256	20,096
Percent Change	-49.5%	-16.8%

151 TAS IGM, TAS-13-0320-0008, Interim Guidance – Strong Advocacy in the COVID-19 Environment (Mar. 27, 2020).

152 *Id.*

153 TAS, Coronavirus (COVID-19) Tax Relief, <https://taxpayeradvocate.irs.gov/get-help/taxupdates> (last visited May 31, 2020).

154 Through March 14, 2020, TAS received 84,741 cases compared to 77,677 cases for the same period in FY 2019. Data obtained from TAMIS.

155 Through May 2, 2020, TAS received 115,109 cases compared to 125,258 cases for the same period in FY 2019. Data obtained from TAMIS (May 3, 2019; May 3, 2020). TAS did not take EIP cases during the initial months. Memorandum from Deputy National Taxpayer Advocate for Taxpayer Advocate Service Employees: Interim Guidance – Economic Impact Payments and TAS Case Acceptance (May 14, 2020).

156 Data obtained from TAMIS (May 1, 2019; May 1, 2020).

The COVID-19 crisis has had a significant impact on how TAS received new cases. While taxpayers previously accessed TAS assistance through various means, their options were temporarily limited. In FY 2019 through April 2019, 63 percent of TAS case receipts were referrals from IRS BODs and 18 percent came from calls to the NTATF Line. With the closure of IRS offices and the shutdown of toll-free telephone operations, including the NTATF Line, cases received through those methods dramatically dropped. The impact on TAS case receipts is shown in Figure 1.2.10. Comparing April 2019 to April 2020, case receipts from IRS BOD referrals decreased by 97 percent. Cases received through calls to the NTATF Line decreased by 77 percent, and cases received through calls to the TAS CCI line decreased by 99 percent. At the same time, cases received from calls to TAS local offices increased by 286 percent and cases received through congressional calls increased by 433 percent.<sup>157</sup>

**FIGURE 1.2.10, TAS Case Receipts by Method Received, Percent Change From April 2019 to April 2020**<sup>158</sup>

How Received	Percent Change April 2019 to April 2020
Form 911 or Correspondence	23.5%
NTA Toll-Free	-76.8%
IRS Referral	-97.0%
TAS Phone Call	286.3%
Congressional	433.4%
TAS Walk-In	-93.8%
Centralized Case Intake	-98.7%
<b>TOTAL</b>	<b>-49.5%</b>

### *Inability to Conduct Face-to-Face Training*

During the COVID-19 crisis, TAS suspended all face-to-face training classes, including sessions with On-the-Job Instructors for new hires. While TAS diligently develops virtual training, the temporary suspension of training has impacted and will continue to impact the readiness of employees, especially new hires, during the remainder of the 2020 filing season as well as post-filing season when examination and collection cases increase.<sup>159</sup>

### *Inability to Conduct Face-to-Face Outreach*

All face-to-face taxpayer and tax practitioner outreach and education activities, including the TAS Mobile Outreach Van, were canceled during the COVID-19 crisis to maximize social distancing and comply with state and local orders. Even though face-to-face outreach is an effective way to inform taxpayers of their rights as well as the availability of TAS assistance in resolving tax problems with the IRS, COVID-19 left us no choice but to cancel.<sup>160</sup> TAS moved to a virtual outreach model and

<sup>157</sup> Data obtained from TAMIS (May 1, 2019; May 1, 2020).

<sup>158</sup> *Id.*

<sup>159</sup> TAS, TAS Transitioning to Virtual Training During COVID-19 (Apr. 22, 2020).

<sup>160</sup> See TAS Research: *Identifying Prospective TAS Taxpayers, infra*; *Case Advocacy and TAS Business Objectives: Efforts to Improve Advocacy, infra.*

will continue to conduct virtual outreach to the extent possible, including congressional outreach and other online resources.

### PREPARATION FOR THE NEXT SIGNIFICANT EMERGENCY

Once the IRS resumes normal operations, it is crucial to evaluate the challenges the agency faced in providing taxpayer services and conducting mission-critical functions including compliance initiatives during the COVID-19 crisis. The IRS must prepare for the next national emergency, based on the lessons it learned from this crisis. While the circumstances of the next incident will differ, the IRS can take actions now to ensure that the agency's core operations will continue in the face of similar challenges. This will require each function taking a hard look at what worked and what did not in the face of this unexpected and unprecedented event.

IRS BODs and functions that were able to quickly adapt to teleworking and transact digitally with each other and with taxpayers were more adaptable than those with operations that were less portable. Improved technology (both hardware and software) and the ability to work and interact digitally will allow the IRS to be flexible and agile and move its operations between offices or even to remote locations when a disaster hits an area. Not all operations will function seamlessly in a remote environment, but the IRS will be better positioned if it is not such a paper-based organization. Accordingly, the National Taxpayer Advocate recommends that the IRS prioritize the modernization of its technology as well as increase the use of digital communications and the electronic production of documents in a secure environment. While we continue to believe that the IRS should provide taxpayer services in an omnichannel environment, it must have the ability to continue operations should one or more of the service channels shut down through no fault of the agency. The IRS should analyze all of the core functions to determine how to improve technology to make the duties more portable in the future. While the next crisis will certainly present different challenges, the IRS will be in a better position to address it if it takes the steps now rather than as the crisis unfolds in the future.

### OBJECTIVES FOR FISCAL YEAR 2021

In fiscal year 2021, TAS will:

- Work with the IRS to reduce taxpayer burden as it develops further procedures to address the COVID-19 crisis as well as future disasters, especially by demonstrating flexibility when conducting compliance initiatives (*e.g.*, accepting alternative documentation, extending information request response deadlines, relaxing the definition of reasonable cause for penalty relief, postponing time-sensitive deadlines to the extent authorized under IRC § 7508A, etc.);
- Work with the IRS to alleviate taxpayer confusion resulting from the backlog of time-sensitive notices;
- Encourage the IRS to prioritize, evaluate, and determine the feasibility of extending the use of electronic communications, including emails, the exchange of digital documents, and digital signatures beyond 2020 for all functions within the IRS;

- Encourage the IRS to extend the term of streamlined IAs to up to 84 months. A streamlined 84-month IA would speed up the application process and eliminate the need for the taxpayer requiring a longer pay-off term to submit financials on a Collection Information Statement;
- Encourage the IRS Office of Appeals to resume in-person conferences once it is safe to do so to protect the taxpayer's *right to appeal an IRS decision in an independent forum*;
- Encourage the Office of Chief Counsel to issue more formal guidance for legally significant issues occurring during the COVID-19 pandemic. TAS will encourage the IRS to publish a statement in the *Federal Register* that says (1) the IRS must number and provide effective dates for all FAQs and will be prohibited from deleting previously issued guidance from its website even if it has changed its position (indicating when an FAQ is obsolete, if applicable), and (2) for penalty relief purposes, taxpayers can rely on FAQs as authority for returns filed for taxable periods ending before an FAQ is obsoleted;
- Encourage the Office of Chief Counsel to explore the feasibility of further tolling judicial filing deadlines to the full extent authorized by IRC § 7508A to protect the taxpayer's *right to appeal an IRS decision in an independent forum*;
- Encourage the Office of Chief Counsel and the IRS to exercise flexibility by continuing to work with those taxpayers who missed the judicial filing deadlines and thus no longer have a prepayment forum for judicial review; and
- Utilize TAS's COVID-19 Rapid Response Team and other mechanisms to address disaster-related systemic issues by monitoring and identifying emerging tax problems associated with disasters of all sorts and raise these issues with the IRS.