

MSP
#10**The Preservation of Fundamental Taxpayer Rights is Critical as the IRS Develops a Real-Time Tax System****RESPONSIBLE OFFICIALS**

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DEFINITION OF PROBLEM

In the 2011 and 2009 Annual Reports, the National Taxpayer Advocate wrote about the benefits of accelerated third-party information reporting to both taxpayers and tax administration.¹ In late 2011, the IRS held two public meetings to solicit suggestions and concerns from external stakeholders regarding a potential real-time tax system (RTTS).² Further, in the IRS's response to the 2011 Most Serious Problem, it committed to working with the National Taxpayer Advocate as it takes steps to realize its long-term vision of a real-time system.³ We commend the IRS for prioritizing this issue and look forward to contributing to any future project. However, as the IRS continues to evaluate the idea of a real-time system, the National Taxpayer Advocate has the following concerns:

- When the IRS identifies a mismatch between third-party data and tax return information, it is unclear what type of compliance contact the IRS would make during the filing season before making an assessment. In addition, the level of taxpayer burden hinges upon the accuracy of the data, as well as the level of staffing allocated to problem resolution.
- We caution against the expansion of math error authority to cover mismatched third-party data. The National Taxpayer Advocate has written extensively about her concerns with the expansion of this authority.⁴ This issue was also raised by the taxpayer and consumer advocate panel at the first RTTS public meeting.⁵
- The IRS should provide taxpayers with electronic access to the third-party data to help them prepare returns. To avoid inadvertent omissions of tax items on filed returns,

¹ National Taxpayer Advocate 2011 Annual Report to Congress 284-295 (Most Serious Problem: *Accelerated Third-Party Information Reporting and Pre-Populated Returns Would Reduce Taxpayer Burden and Benefit Tax Administration But Taxpayer Protections Must Be Addressed*); National Taxpayer Advocate 2009 Annual Report to Congress 338-345 (Legislative Recommendation: *Direct the Treasury Department to Develop a Plan to Reverse the "Pay Refunds First, Verify Eligibility Later" Approach to Tax Return Processing*).

² IRS, IR-2011-114, *IRS to Host Public Meeting Dec. 8 on Real-Time Tax System* (Nov. 30, 2012), available at <http://www.irs.gov/uac/IRS-to-Host-Public-Meeting-Dec.-8-on-Real-Time-Tax-System> (last visited Oct. 24, 2012).

³ National Taxpayer Advocate 2011 Annual Report to Congress 284-295 (Most Serious Problem: *Accelerated Third-Party Information Reporting and Pre-Populated Returns Would Reduce Taxpayer Burden and Benefit Tax Administration But Taxpayer Protections Must Be Addressed*).

⁴ *Id.* 74-92 (Most Serious Problem: *Expansion of Math Error Authority and Lack of Notice Clarity Create Unnecessary Burden and Jeopardize Taxpayer Rights*).

⁵ IRS, Transcript of the Public Meeting on Real Time Tax System Initiative 92-94 (Dec. 8, 2011), available at <http://www.irs.gov/Tax-Professionals/December-8,-2011-Meeting> (last visited Oct. 24, 2012).

taxpayers and their representatives should have electronic access to a real-time transcript of data received by the IRS. The IRS would drive compliance rates even higher by providing a way for taxpayers to download the third-party data directly into their return preparation software and by developing a pre-populated return option for taxpayers.

ANALYSIS OF PROBLEM

Background

Approximately 97 percent of taxpayers receive at least one information return. Traditionally, the IRS has not matched this data with the items reported on the taxpayers' tax returns until long after the filing season has ended. The IRS has held several meetings with external stakeholders to solicit comments and suggestions regarding a potential real-time tax system. In general, any future RTTS would enable the IRS to match the information during the filing season and before releasing the associated refunds.⁶

In 2010, the IRS closed 4.3 million cases in which it identified a discrepancy between the taxpayer's return and third-party information, leading to \$7.2 billion in additional assessments.⁷ The real volume of mismatches is significantly larger, because this data only reflects mismatches large enough for the IRS to actually work them, and does not include others that did not reach the established threshold. For example, the IRS identified almost 23.8 million mismatches on tax year (TY) 2010 returns, but only worked about 5.3 million cases (22 percent).⁸ If the IRS identified mismatches before releasing the refunds claimed on the returns, taxpayers would avoid the downstream consequences of these assessments.⁹

There is a General Consensus that Accelerated Information Reporting is Necessary.

In the 2011 and 2009 Annual Reports, the National Taxpayer Advocate wrote about the benefits of accelerated third-party information reporting to both taxpayers and tax administration.¹⁰ The IRS solicited additional comments from a variety of stakeholders at two public meetings. During the meeting held on December 8, 2011, the IRS heard statements from the members of three panels: (1) tax practitioners, (2) federal and state government

⁶ IRS, PowerPoint, Real Time Tax System Initiative, Public Meeting 2 (Dec. 8, 2011), available at http://www.irs.gov/pub/irs-utl/rtts_deck.pdf (last visited Oct. 24, 2012).

⁷ *Id.*

⁸ IRS response to TAS information request (Oct. 17, 2012).

⁹ When the IRS's Automated Underreporter (AUR) system identifies a mismatch between items reported on the taxpayer's return and information reports, it generates a CP 2000 notice to be mailed to the taxpayer. In TY 2010, the IRS mailed 3,823,766 of these notices to taxpayers with an estimated 45 percent response rate. These numbers have actually decreased from 4,546,817 notices in TY 2009 (with an estimated response rate of 60 percent) and 4,788,360 notices in TY 2008 (with an estimated response rate of 57 percent). IRS response to TAS information request (Oct. 17, 2012) (data through Oct. 16, 2012).

¹⁰ National Taxpayer Advocate 2011 Annual Report to Congress 284-295 (Most Serious Problem: *Accelerated Third-Party Information Reporting and Pre-Populated Returns Would Reduce Taxpayer Burden and Benefit Tax Administration But Taxpayer Protections Must Be Addressed*); National Taxpayer Advocate 2009 Annual Report to Congress 338-345 (Legislative Recommendation: *Direct the Treasury Department to Develop a Plan to Reverse the "Pay Refunds First, Verify Eligibility Later" Approach to Tax Return Processing*).

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representatives, and (3) taxpayer and consumer advocates. The second meeting held on January 25, 2012 solicited comments from four panels comprised of (1) payroll/W-2 filers, (2) Form 1099 issuers, (3) software providers, and (4) state revenue agencies.¹¹ While the participants expressed concerns about how the IRS would achieve a real-time tax system, there was consensus that the goal of the initiative would serve both taxpayers and tax administration.¹²

Matching Third-Party Data to Filed Return Data Upfront Will Benefit Taxpayers and Save Resources for the Government.

If implemented properly, an RTTS could benefit taxpayers and the government. Matching third-party data upfront would substantially reduce taxpayer burden in several ways.

- First, taxpayers will be better equipped to answer questions about an underlying economic transaction if the IRS identifies the mismatch within months rather than a year or more after the fact.
- Second, matching data before the IRS releases refunds will prevent taxpayers from facing IRS collection actions long after they have spent the refunds.
- Third, taxpayers will save money by avoiding the long-term accrual of penalties and interest on unintentionally omitted or under-reported items.
- Fourth, upfront matching can potentially reduce taxpayers' vulnerability to identity theft-related refund fraud.¹³
- Finally, giving taxpayers access to third-party data before the return filing deadline will help them prepare returns and prevent inadvertent omissions and understatements.

The government also benefits from the revenue protection aspect of upfront matching. A real-time tax system would allow the IRS to protect revenue by resolving mismatches at the outset and preventing the release of erroneous refunds. The IRS would devote fewer resources to compliance and collection activities on these basic omission and understatement cases, and could use the savings to resolve more complex issues.¹⁴

¹¹ For written and oral statements of panelists at the two RTTS public meetings, see <http://www.irs.gov/Tax-Professionals/Real-Time-Tax-Initiative> (last visited Oct. 24, 2012).

¹² *Id.*

¹³ IRS, PowerPoint, Real Time Tax System Initiative, Public Meeting 1 (Dec. 8, 2011), available at http://www.irs.gov/file_source/pub/irs-utl/rtts_deck.pdf (last visited Oct. 24, 2012). For more information on identity-theft refund fraud, see Most Serious Problem: *The IRS Has Failed to Provide Effective and Timely Assistance to Victims of Identity Theft*, *supra*.

¹⁴ IRS, PowerPoint, Real Time Tax System Initiative 1, Public Meeting (Dec. 8, 2011), available at http://www.irs.gov/file_source/pub/irs-utl/rtts_deck.pdf (last visited Oct. 24, 2012).

The Preservation of Taxpayer Rights is Crucial as the IRS Identifies Mismatches Early in the Process.

As the IRS continues to solicit comments from stakeholders on a potential RTTS, the National Taxpayer Advocate raises the following concerns:

1. The IRS should carefully consider which type of compliance contact to make upon identifying a mismatch and ensure that it has adequate staffing to address taxpayer responses during the filing season;
2. The use of math error authority in this context could harm taxpayers, especially low income taxpayers; and
3. Taxpayers and representatives would benefit from electronic access to this data to assist in return preparation.

The Type of Compliance Contact Will Impact Taxpayer Burden.

The IRS has not committed to any particular compliance contact once it identifies a mismatch between the data reported by the taxpayer on the return and the data reported by third parties on information returns. Under the IRS's traditional Automated Underreporter (AUR) system,¹⁵ an assessment of tax is already reported on the original return and the IRS applies deficiency procedures when it identifies a mismatch after the filing season. However, it is unclear exactly what would happen when the IRS identifies the mismatch *before* making an assessment.

While we agree that upfront matching will reduce taxpayer burden and save IRS resources in the long term, it will also prompt taxpayers to respond to the IRS no matter which compliance action the IRS takes. In customer satisfaction surveys conducted in fiscal year (FY) 2007 for the Wage and Investment (W&I) Division AUR program, at least 24 percent of taxpayers stated that their primary reason for calling the IRS was to have an employee explain the AUR notice.¹⁶ Thus, sufficient staffing to handle the anticipated increase in taxpayer contacts is imperative to a successful initiative.¹⁷ Any planned action by the IRS will occur during filing season when resources are already stretched. The IRS could cause significant upfront burden on taxpayers if it does not prepare for the increase in contacts during an already busy time.

The consequences of understaffing are illustrated by the IRS Wage Verification Program, in which the IRS holds the taxpayer's refund until it can verify the wages reported on the

¹⁵ The AUR program compares amounts shown on a taxpayer's return with third-party reports such as Forms W-2 and 1099 received and uploaded by the IRS. IRM 4.19.3.1.

¹⁶ This survey result indicates that the AUR notice and process was confusing to those taxpayers. Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2008-40-180, *Most Automated Underreporter Program Notices are Correct; However, Additional Oversight is Needed* (Sept. 25, 2008).

¹⁷ Similarly, the National Taxpayer Advocate has expressed concern regarding increasing volume of questionable refund claims that the Electronic Fraud Detection System (EFDS) stops without increasing AMTAP staffing to perform the required reviews. This leads to freezing taxpayer refunds for extended lengths of time while the IRS attempts to verify entitlements to claimed refunds. See National Taxpayer Advocate 2011 Annual Report to Congress 41. See also Most Serious Problem: *Despite Some Improvements, the IRS Continues to Harm Taxpayers by Unreasonably Delaying Processing of Refunds That Trigger Systemic Filters*, *infra/supra*.

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tax return, by either matching them to the Form W-2, *Wage and Tax Statement*, or contacting third parties directly. If the IRS verifies the wages and withholding as accurate, it releases the refund. When the IRS cannot initially verify wage and withholding documents systemically by comparing them to the Information Returns Master File (IRMF), it freezes the account. In the meantime, the IRS mails the taxpayer a letter requesting additional documentation and attempts to manually verify the wages by contacting the employer.¹⁸

For the most recent filing season, despite having access to third-party data earlier than in the past, the IRS froze approximately 142,000 accounts from April 28, 2012 through June 23, 2012.¹⁹ In a review of TAS wage verification cases in FY 2012, TAS was able to obtain full relief in 78 percent and partial relief in two percent of these cases.²⁰ According to the IRS's own reports, nine percent of the cases the Accounts Management Taxpayer Assurance Program (AMTAP) selected for review (more than 92,000 as of June 31, 2012) were legitimate refund claims.²¹ We suspect AMTAP is using hard freezes (refund holds that do not expire) as an inventory management tool due to overwhelming caseloads. Once it places a hard freeze on the account, the IRS can leave the returns to languish, as there is no pressure to work the case quickly.

Likewise, in the thick of the filing season when taxpayers are anticipating their refunds, any upfront matching associated with a real-time tax system could quickly overload IRS employees with inventory and jeopardize the taxpayers' due process rights, as follows:

- The IRS could inappropriately freeze many legitimate refunds.
- The IRS could issue unnecessary Statutory Notices of Deficiency, which would increase Tax Court litigation or audit reconsiderations. It is also unclear whether these taxpayers would receive pre-deficiency administrative appeal rights.
- Rather than freezing refunds, the IRS might use this increased workload to justify using math error authority to make any necessary adjustments.

The IRS Must Have Confidence in the High Degree of Accuracy of the Third-Party Data to Avoid Significant Taxpayer Burden.

For any future initiative to benefit both taxpayers and the IRS, the third-party data used to match to the taxpayers' returns must have a high degree of accuracy. In reality, the data received on information returns is not perfect. Although the IRS does not track corrected information documents, it guesses that less than one percent of information reports are

¹⁸ See also Most Serious Problem: *Despite Some Improvements, the IRS Continues to Harm Taxpayers by Unreasonably Delaying Processing of Refunds That Trigger Systemic Filters*, *supra*.

¹⁹ Email from AMTAP (May 10 2012). In general, the IRS receives over 200 million valid W-2s for each tax year. SB/SE response to TAS information request (Sept. 12, 2012). For example, in calendar year 2011, the IRS received 228,231,132 Forms W-2. IRS Publication 6961, *2012 Update: Calendar Year Projections of Information and Withholding Documents for the United States and IRS Campuses, 2012-2020, Table 2*.

²⁰ TAS analysis of CDW data from the Individual Returns Transaction File of 474 closed TAS cases with PIC 045 (Pre-Refund Wage Verification) pulled on October 5, 2012 (hereinafter "TAS 2012 Study").

²¹ W&I response to TAS information request (Aug. 28, 2012).

subject to subsequent amendments or corrections. Even if we accept the IRS's estimate, the number is still significant considering that the IRS receives approximately 1.8 billion information reports per year, of which only approximately 49 million were received on paper. Further, IRS projections show the number of information reports steadily increasing through 2020.²² The taxpayers associated with these corrected reports might be entangled in the IRS enforcement procedures during the filing season through no fault of their own.²³ In addition, approximately 4.3 percent of AUR assessments in FY 2010 were abated. Specifically, 139,652 taxpayers received abatements on AUR assessments in FY 2010.²⁴ Therefore, the IRS already entangles compliant taxpayers in enforcement initiatives based on third-party data. This unnecessary burden is imposed on compliant taxpayers in the following scenarios:

1. The third-party data is inaccurate;
2. The taxpayer reported the income elsewhere on the return and the IRS did not review it closely enough; and
3. The IRS did not use its own internal information to verify the information reported on the return.

To illustrate the third point, in the 2011 annual report, TAS reviewed a sample of 2009 accounts in which the IRS reversed its math error adjustments related to dependent Taxpayer Identification Numbers (TINs). In these cases, the taxpayers received math error notices related to incorrect or missing dependent TINs that affected the dependency exemption, the related non-refundable additional child tax credit, or the Earned Income Tax Credit (EITC). The results of TAS's sample review showed that the IRS already had the information necessary to resolve 56 percent of these 2009 dependent TIN math errors and could have avoided the math error adjustments. Using readily available information to resolve TIN errors, such as information reported on prior year returns, would have prevented math error notices and delays in nearly 75,000 refunds. In addition, the IRS paid more than \$2.3 million in interest for corrected math errors in these cases.²⁵

Further, in cases before the Tax Court, the burden of proof for a deficiency of tax shifts to the IRS if the deficiency is based solely on information included on a third-party information report.²⁶ Therefore, the IRS has an additional incentive to adopt procedures to attempt

²² IRS Publication 6961, *2012 Update: Calendar Year Projections of Information and Withholding Documents for the United States and IRS Campuses, 2012-2020*, Tables 2, 3.

²³ IRS, PowerPoint, Real Time Tax System Initiative 2, Public Meeting (Dec. 8, 2011), available at http://www.irs.gov/pub/irs-utl/rtts_deck.pdf (last visited Oct. 24, 2012).

²⁴ In FY 2010, approximately \$1.05 billion of the approximately \$6.9 billion tax assessed through AUR was abated (15.2 percent). In FY 2011, 68,984 taxpayers (or 2.1 percent) received approximately \$307 million in abatements (5.2 percent of the tax assessed through AUR was abated). IRS Enforcement Revenue Information System's FY 2011 database.

²⁵ See National Taxpayer Advocate 2011 Annual Report to Congress, vol. 2, 119-120.

²⁶ IRC § 6201(d). In order for the burden to shift to the IRS in a Tax Court case, the taxpayer must assert a reasonable dispute to the IRS within a reasonable time and must have fully cooperated with the IRS.

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to verify third-party data through other means, especially through information available internally, to screen out false positives or mismatches before taking enforcement actions.

The burden on these taxpayers will increase if they are dealing with these issues during the filing season when IRS resources are already scarce and the taxpayer must wait to receive a legitimate refund. These problems will worsen as the IRS increases the volume of third-party data it receives under new initiatives, including several new third-party information reporting requirements. Most notably, credit card issuers generally must report the aggregate amount of reportable payments they process for businesses,²⁷ and brokerage firms generally must report the cost bases (as well as gross proceeds) of stock, bond, and mutual fund sales.²⁸ Thus, not only will the IRS receive significantly more data in the future, but it will also be expected to process it earlier. Therefore, even a low error rate will translate into substantial costs to the IRS and increased burden on the taxpayers.

Any Acceleration of Third-Party Information Report Processing May Impact Third-Party Payers.

While the acceleration of the processing of third-party information reports will benefit both taxpayers and the IRS, the impact on third-party payers cannot be overlooked. Any acceleration of deadlines will potentially burden this population. Therefore, the IRS should work with these stakeholders to determine the best way to accomplish a real-time tax system.

The following table sets forth the deadlines for common information reports. With most of the forms listed below, the payer must submit the form to the payee by January 31, which is generally one or two months before the deadline to submit it to the IRS, depending whether the payer files the form on paper or electronically.

²⁷ IRC § 6050W. The projected filings of Form 1099-K, *Merchant Card and Third Party Payments*, will see an increase from approximately nine million projected filings in calendar year 2012 to almost 22 million projected filings in CY 2020. IRS Publication 6961, *2012 Update: Calendar Year Projections of Information and Withholding Documents for the United States and IRS Campuses, 2012-2020, Table 2.*

²⁸ IRC § 6045(g).

TABLE 1.10.1, Current Deadlines for Filing Information Reports²⁹

Type of Information Report	Deadline to Submit to Payee	Deadline for Paper Filing	Deadline for Electronic Filing
1098-T	January 31st	February 28th	April 1st
1099-DIV	January 31st	February 28th	April 1st
1099-INT	January 31st	February 28th	April 1st
1099-Misc	January 31st (extended to Feb. 15th in certain circumstances)	February 28th	April 1st
1099-R	January 31st	February 28th	April 1st
W-2 (to SSA)	January 31st	February 28th	March 31st

The National Payroll Reporting Consortium has noted that the March 31 / April 1 deadline was initially established as an e-file incentive, which may not be necessary today. The group also points out that the later deadline is likely responsible for the low level of amendments to W-2s, as an earlier deadline would probably translate into a higher rate of amendments. The Consortium estimated the rate would rise from approximately one percent to a range of six to eight percent, due to the complex compensation and benefits offerings of large employers, but added that six states and the District of Columbia already require employers to report W-2s by January 31.³⁰ Thus, it would be in the IRS's best interest to evaluate the amendment rates experienced by these jurisdictions in determining the most effective method to accelerate third-party reporting.

In addition, if the IRS experiences a high amendment rate for certain information reports, it should evaluate different ways to reduce amendments, with a customized approach for each type of report. For example:

- **Bifurcate Information Report Filing Deadlines.** If certain data on an information report lends itself to delays in reporting due to complexity or record-keeping issues, the IRS could bifurcate the information report deadlines. For example, if employers need more time to report pension benefit calculations, the IRS could require earlier reporting of the basic Form W-2 data such as wages and withholdings and give employers time to file a supplemental earnings statement with the more complicated items later. Taxpayers and the IRS would receive the information they need for return filing early in the filing season and the IRS would receive the other, more complex information soon enough for compliance purposes.

²⁹ IRS, *General Instructions for Certain Information Returns – Main Contents*, available at <http://www.irs.gov/instructions/i1099gj/ar02.html#d0e400> (last visited Oct. 12, 2012); *Instructions to IRS Form 1098-T, Tuition Statement; Instructions to 1099-DIV, Instructions to IRS Form 1099-INT, Interest Income; Instructions to IRS Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*, Social Security Administration, *Deadline Dates to Submit W-2s*, available at <http://www.ssa.gov/employer/filingDeadlines.htm> (last visited Oct. 12, 2012).

³⁰ IRS Public Hearing, *Proposed Real-Time Tax System, Comments from the National Payroll Reporting Consortium* (Jan. 25, 2012).

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- **Build flexibility into the reporting period.** The IRS should evaluate the feasibility of providing an option for payers to report certain complex transactions occurring during the last two months of the year on the return for the subsequent tax year.³¹

Any Planned Expansion of Math Error Authority in This Context Could Harm Low Income Taxpayers.

We caution against the expansion of math error authority in the context of real-time information reporting.³² In the 2011 Annual Report, the National Taxpayer Advocate discussed how the inappropriate expansion of math error authority places significant burden on taxpayers and erodes taxpayer protections.³³ Moreover, serious concerns about the application of math error authority to RTTS were raised by the consumer and taxpayer advocate panel of the December 8, 2011 public meeting for RTTS. Specifically, in his written statement, Keith Fogg, Director of the Villanova Law School Federal Tax Clinic, stated:

Another factor to consider with the Real Time information concerns its use in the absence of taxpayer consent. Many taxpayers will not agree to an additional liability based on the finding of a mismatch of information either because of genuine disagreement, a failure to respond or a lack of comprehension. Faced with a return that appears wrong at a point prior to assessment (and refund), the Service will want to include this information into the liability calculus. It may quickly turn to the math error process as a source of increasing the assessment over the liability shown on the return.

The Government Accountability Office has recently proposed increasing the authority of the Service to make math error adjustments for certain refundable credits. The math error process sings a siren song of efficient tax administration yet it holds significant problems particularly for low income taxpayers who do not understand and do not respond quickly to these notices. The math error process gives taxpayers less time to react before a proposed adjustment is assessed than the notice of deficiency process (60 versus 90 days); less notice of what is proposed; and fewer rights with respect to information returns — the very subject of the Real Time initiative. In a shorter period of time, with less explanation than exists in a notice of deficiency, a taxpayer can see rights cut off and an assessment made.

Low income taxpayers are more likely than other taxpayers to fail to speak up during the period of math error adjustment and more likely to lose their right to contest the adjustment in Tax Court. Once they lose their prepayment forum, low income taxpayers also possess less financial capability to pay the tax and sue

³¹ IRS Public Hearing, *Proposed Real-Time Tax System, Comments from the National Payroll Reporting Consortium* (Jan. 25, 2012). The IRS already allows this for certain fringe benefits. See Announcement 85-113, 1985-31 I.R.B. 31 (Aug. 5, 1985).

³² IRC § 6213.

³³ See National Taxpayer Advocate 2011 Annual Report to Congress 74-92 (Most Serious Problem: *Expansion of Math Error Authority and Lack of Notice Clarity Create Unnecessary Burden and Jeopardize Taxpayer Rights*).

for refund when faced with an incorrect assessment. This forces them into the audit reconsideration process where no recourse to the courts exists. If math error authority expands to include the types of adjustments suggested by mismatches of data, the Real Time program simply accelerates the AUR process into a pre-assessment time frame. This would significantly disadvantage low income taxpayers who are the least responsive to notices received from the Service. Safeguards must exist to keep this from becoming the result of this change. Those safeguards could involve use of the deficiency process rather than the math error process, significant enhancements in the math error notices or other processes that will adequately safeguard low income taxpayers and their opportunities to contest proposed adjustments.³⁴

The National Taxpayer Advocate shares concerns that the application of math error authority to upfront matching during the filing season would erode taxpayer rights. She is also concerned about the impact such an initiative would have on the low income taxpayer population.

Direct Electronic Access for Taxpayers Would Improve Compliance.

Providing taxpayers and their representatives with direct electronic access to their third-party information would prevent mismatches from occurring in the first place. Consider taxpayers who have worked several different jobs during the tax year and moved after completing one job early in the year. If the W-2 or 1099 associated with the first job is not properly forwarded to the taxpayer's current address, he or she could inadvertently omit the item from the return and not realize it until the IRS sends the taxpayer a CP 2000 notice. To address this issue of inadvertent omissions, the IRS should provide access to real-time transcripts of third-party data to aid in return preparation. Taxpayers and preparers could refer to the transcript to make sure they do not inadvertently omit any income. In fact, this issue was raised on the practitioner panel during the December 8 public meeting.³⁵

One step above the transcript would be to provide a platform from which taxpayers and preparers could download third-party data submitted to the IRS or the Social Security Administration directly into tax preparation software. This second option would eliminate transcription errors and provide a one-stop-service to taxpayers who would not need to download the data separately from each third party. Finally, the IRS should follow the lead of other countries and provide taxpayers with an option to use a preliminary return pre-populated with information submitted to the IRS through third party reports.³⁶

³⁴ Comments of T. Keith Fogg, Director, Villanova Law School Federal Tax Clinic, Real Time Tax System Initiative (Dec. 8, 2011), available at http://www.irs.gov/pub/irs-utl/t_keith_fogg_aba_tax_section_and_low_income_tax_clinic.pdf (last visited Aug. 2, 2012).

³⁵ IRS, Transcript of the Public Meeting on Real Time Tax System Initiative 42 (Dec. 8, 2011), available at <http://www.irs.gov/Tax-Professionals/December-8,-2011-Meeting> (last visited Oct. 24, 2012).

³⁶ For a detailed discussion of the pre-filled return options available in other countries in 2009 and expected in 2012, see Organisation for Economic Co-operation and Development, Centre for Tax Policy and Administration, Forum On Tax Administration: Taxpayer Services Sub-Group, *Survey of Trends and Developments in the Use of Electronic Services for Taxpayer Service Delivery* 34-38 (March 2010).

CONCLUSION

The IRS is evaluating the feasibility of developing a real-time tax system. The National Taxpayer Advocate continues to believe that accelerating third-party data matching to occur during the filing season would reduce taxpayer burden and save government resources. However, it is imperative that any such system maintain taxpayer protections.

IRS COMMENTS

As discussed in the report, the IRS has been taking steps toward the early development of a real-time tax system. The goal of this initiative is to improve the tax filing process by both reducing burden for taxpayers and improving overall compliance upfront.

This is a long-term vision that will take years to fully realize. Over the last year, the IRS has been soliciting feedback and input from outside stakeholders on issues related to the concept. We have held public meetings and talked to a variety of groups representing varying perspectives and will continue these dialogues into the future.

The IRS recognizes that taxpayer rights must be preserved in any changes that may take place. While it is premature to speculate on the specifics of any future state, the IRS will continue to ensure that taxpayer rights are respected. We look forward to working with the National Taxpayer Advocate in this effort.

Taxpayer Advocate Service Comments

The National Taxpayer Advocate is pleased that the IRS recognizes the value of a real-time tax system in reducing taxpayer burden and increasing overall compliance. We believe the IRS is taking appropriate steps by soliciting comments and perspectives from a variety of internal and external stakeholders in the planning stages of the initiative. However, we are concerned that the IRS has not shared the findings of any discussions held since the public meetings and has not publicly committed to any goals with specific timeframes. We accept the IRS's offer to actively engage the participation of the Taxpayer Advocate Service as it continues to plan and subsequently develop specific procedures for the initiative to ensure that taxpayers' rights are protected.

In addition to upfront matching in a real-time tax system, we believe that the IRS could minimize taxpayer burden and drive compliance rates even higher by providing taxpayers with electronic access to the third-party data to assist in return preparation. Taxpayers and their representatives would avoid inadvertent omissions of tax items on filed returns if they had access to a real-time transcript of data received by the IRS. The IRS could further reduce burden and increase compliance by providing a way for taxpayers to download the

third-party data directly into their return preparation software and by developing a pre-populated return option for taxpayers.

Recommendations

The National Taxpayer Advocate recommends that the IRS:

1. Work with the National Taxpayer Advocate in developing a real-time tax system. Legislative action may be necessary to accelerate third-party reporting deadlines, tighten e-file mandates, and enable the IRS to receive Form W-2 data at the same time taxpayers receive forms from their employers.
2. Develop accelerated information-reporting procedures that afford taxpayers the same rights that accrue during a traditional examination.
3. Allocate sufficient staffing to handle the anticipated increased in taxpayer contacts during the filing season.
4. Provide taxpayers and their representatives access to a real-time transcript of third-party information to assist in return preparation.
5. Provide taxpayers with the ability to download third-party data directly from the IRS into their return preparation software.
6. Develop a pre-populated return option for taxpayers.
7. Track corrected information reports, by count, dollar amount, and percentage of total reports by type as well as the rate of abatements for AUR assessments. In addition, track the abatement rate for any new assessments arising from real-time matching.