

PREFACE: Introductory Remarks by the National Taxpayer Advocate, Including an Analysis of the Initial Effects of the Government Shutdown

I respectfully submit for your consideration the National Taxpayer Advocate's 2018 Annual Report to Congress. Section 7803(c)(2)(B)(ii) of the Internal Revenue Code (IRC) requires the National Taxpayer Advocate to submit this report each year and in it, among other things, to identify at least 20 of the most serious problems encountered by taxpayers and to make administrative and legislative recommendations to mitigate those problems. The statute requires the National Taxpayer Advocate to submit the report by December 31, 2018; however, as I discuss later in this preface, the lapse in IRS funding meant that no TAS employees were excepted to work on finalizing the report. Thus, I am submitting the report in February 2019.

This report was conceived, back in February 2018, as a baseline representation of the IRS at that point in time. We thought it would be a helpful document for both Congress and the new Commissioner—to know where things stood, from the perspective of the taxpayers' advocate, on the eve of the first filing season under a new tax law. We wanted to reflect the taxpayer's journey as he or she navigates the tax system, from obtaining answers to tax law questions before filing to litigating tax issues in court. Hence the title of the Most Serious Problems section—"The Taxpayer's Journey"—and the organization of that section reflecting phases of the taxpayer's experience with the IRS, along with a section of "roadmaps" depicting that journey.¹ One of our goals in creating these roadmaps was to help readers understand the complexity of the taxpayer journey. It was challenging for us to create these roadmaps and will probably be difficult for readers to follow them, which hints at the extreme frustration many taxpayers experience when they must interact with the IRS. IRS employees also experience that a frustration as they try to navigate the system. For every step shown on the roadmaps, I note there are multiple sub-steps and detours that we did not represent, for fear of getting ourselves and everyone else completely lost.²

Then came the longest government shutdown in the history of the United States. The Annual Report staff was furloughed, along with most of TAS. On January 28, when my office reopened, it was clear that the IRS baseline had changed. The five weeks could not have come at a worse time for the IRS—facing its first filing season implementing a massive new tax law, with a completely restructured tax form. As I outline below, the IRS is entering the filing season inundated with correspondence, phone calls, and inventories of unresolved prior year audits and identity theft cases.

Lurking under all of these are profound Information Technology (IT) systems issues. The IRS systems that constitute the official record of taxpayer accounts—the Individual Master File and the Business Master File—are the oldest in the federal government and for the last 25 years the IRS has tried—and been unable—to replace them. Taxpayer information is stored in over 60 separate case management systems, so the IRS has no 360-degree view of taxpayer data. The IRS has no enterprise case selection system, so it can't be sure it is focusing on the right taxpayers or the right issues in its outreach, audit, and collection activities.

1 See *The Taxpayer's Journey: Roadmaps of the Taxpayer's Path Through the Tax System*, *infra*.

2 We hope to convert the roadmaps into an electronic version this year, so taxpayers can input a notice or letter number and see where they are on their "journey."

The IRS desperately needs to replace its antiquated technology systems. Indeed, this is the agency’s #1 need. Last year, the IRS experienced a systems crash on the final day of the tax-filing season, forcing the IRS to extend the filing season by a day. The crash prompted talk of the risk of a catastrophic systems collapse, and that risk does, indeed, exist. But there is a greater risk: IRS performance already is significantly limited by its aging systems, and if those systems aren’t replaced, the gap between what the IRS should be able to do and what the IRS is actually able to do will continue to increase in ways that don’t garner headlines but increasingly harm taxpayers and impair revenue collection.

And that matters a great deal because the IRS is effectively the accounts receivable department of the federal government. In fiscal year (FY) 2018, it collected nearly \$3.5 trillion on a budget of \$11.43 billion—a return on investment of about 300:1. Yet funding for IRS technology upgrades—provided through the Business Systems Modernization (BSM) account—has been very limited in both absolute and relative terms. As the following chart shows, BSM funding was reduced by 62 percent from FY 2017 (\$290 million) to FY 2018 (\$110 million) and constituted just one percent of the agency’s overall appropriation in FY 2018.

FIGURE 1, IRS Appropriations – Fiscal Years 2017–2019³

Fiscal Year	BSM Funding	Total IRS Funding	BSM as % of Total IRS Funding
2017	\$290 M	\$11.24 B	2.6%
2018	\$110 M	\$11.43 B	1.0%
2019 (House Bill)	\$200 M	\$11.62 B	1.7%
2019 (Senate Bill)	\$110 M	\$11.26 B	1.0%

Congressional funding for the BSM account has been limited in part because the IRS has not done a good job of planning and executing technology upgrades in the past. More funding should be made available subject to accountability measures. But given the additional revenue and improved taxpayer service state-of-the-art technology is likely to bring in, I believe spending for new systems going forward should be measured in billions—not millions. In this report, our #1 legislative recommendation is that Congress provide the IRS with additional dedicated, multi-year funding to replace its core IT systems—pursuant to a plan that sets forth specific goals and metrics and is evaluated annually by an independent third party so that Congress is not merely writing the agency a blank check.

But that is forward-looking. In recent years, modernization efforts have started and stopped, in part because of funding fluctuations and in part because constant legislative changes have absorbed almost half of the IRS’s IT bandwidth during the last six years, according to IRS officials. In short, the IRS is stretched to its breaking point.

This is the IRS’s baseline. Because our Report was written before the shutdown, in this preface I shall attempt to describe some of the initial effects of the shutdown on the IRS, including TAS, and on U.S.

3 For fiscal year (FY) 2017 IRS funding levels, see Consolidated Appropriations Act, 2017, Pub. L. No. 115-31, Division E, 131 Stat. 135, 331-334 (2017). For FY 2018 IRS funding levels, see Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, Division E (2018). At this writing, the FY 2019 appropriations act that funds the Treasury Department has not been finalized. For House-proposed funding levels, see H.R. REP. No. 115-792, at 14 (2018) (accompanying H.R. 6258, which was subsequently incorporated into and passed by the House as H.R. 6147, Division B, at 168-176, 115th Cong. (2018)). For Senate-proposed funding levels, see S. REP. No. 115-281, at 25 (2018) (accompanying S. 3107, at 12-19, 115th Cong. (2018)).

taxpayers. (The full effect will become clearer months, and even years, down the road.) I will also point out where the shutdown exacerbated trends we already identified in the Most Serious Problems section of this report. I will discuss the impact of these interruptions on IRS IT modernization efforts and advocate for multi-year funding for those efforts. And I will recommend that Congress at the very least exempt the IRS from the operation of the Anti-Deficiency Act.

Before I discuss these issues, I want to express my deep appreciation to, and admiration for, the IRS workforce, including but not limited to employees in the Taxpayer Advocate Service. Most IRS employees experienced financial challenges as a result of missing two pay checks. Some employees could not pay their bills and others were deeply worried they would miss payments if the shutdown continued for much longer. Yet when the shutdown ended, IRS employees returned to work with energy and generally hit the ground running, eager to make sure the agency could deliver the filing season as well as achieve its broader mission. The IRS faces many challenges as an agency—and this report documents many of them—but the dedication of the IRS workforce is a notable bright spot.

IRS Operations Before the Shutdown

On December 21, 2018, the day before the shutdown, the IRS was already struggling with its inventory of work. During 2018, the IRS shuffled resources around to meet the challenge of implementing the new tax law while wrestling with record inventory levels of unresolved cases in its fraud detection programs.⁴ In addition, the IRS was directed to replace all the existing Individual Income Tax Return forms—the 1040, 1040A, and 1040EZ—with a single new Form 1040. This new form was reduced to the size of a postcard, two half pages in length, on which it is estimated approximately 47 million taxpayers (32 percent) could meet their filing requirements. By reducing the 1040 to a postcard size, however, this redesign necessitated the creation of an additional six schedules, some containing only three lines of information. Thus, for approximately 70 percent of taxpayers—nearly 102 million—the six new schedules increase the number of already existing schedules, such as A, B, C, D, or E, that taxpayers must complete.⁵ While many taxpayers will use software to complete the return, the new schedules will force some taxpayers to cross-reference and transfer data such as credits, deductions, and income, increasing the potential for errors to occur since the tax information is dispersed over many pages and needs to be tracked down and reported on different schedules and forms.

The new tax law also required a “surge” of tax instructions and publications, as well as notices, FAQs, and regulations. IRS functions were asked to detail employees to the IRS Forms and Publications office for six months and longer to enable it to keep up with the demand and schedule. Chief Counsel guidance projects that were long scheduled and anticipated were put on hold while Counsel attorneys focused on interpreting major provisions of the new tax law. Once again, as with the Patient Protection and Affordable Care Act (ACA)⁶ and the Foreign Account Tax Compliance Act (FATCA)⁷, key IT personnel were moved from ongoing modernization or enhancement efforts to work on delivery of the

4 See Most Serious Problem: *False Positive Rates: The IRS’s Fraud Detection Systems Are Marred by High False Positive Rates, Long Processing Times, and Unwieldy Processes Which Continue to Plague the IRS and Harm Legitimate Taxpayers*, *infra*.

5 TAS research estimates that 68 percent of taxpayers will need to file one or more schedules of the 2018 Form 1040 based on tax year (TY) 2016 tax return filing data. IRS Compliance Data Warehouse (CDW), Individual Returns Transactions File, TY 2016. For example, using the new 1040, a taxpayer with unemployment compensation, student loan interest deduction, and child and dependent care expenses will now have to file Schedules 1 and 3, whereas with the 2017 1040, they only needed to file the main form, which was two pages.

6 See Patient Protection and Affordable Care Act (ACA) of 2009, Pub. L. No. 111-148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act (HCERA) of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010).

7 See Hiring Incentives to Restore Employment Act, Pub. L. No. 111-147, 124 Stat. 71 (2010) (adding Chapter 4 of Internal Revenue Code (IRC) §§ 1471-1474; 6038D), collectively referred to as the Foreign Account Tax Compliance Act (FATCA).

new tax law and forms. Because of the revamp of the tax forms, the electronic filing requirements were not issued to private tax software vendors and electronic return originators until September 2018, much later than in previous years.

While the 2018 filing season went well for millions of taxpayers (excluding the filing glitch on April 17, 2018, which led to the IRS extending the filing season by a day), the IRS's fraud detection system wreaked havoc for hundreds of thousands of taxpayers and created manual rework for IRS employees. The IRS's fraud detection filters and models identify questionable refund returns. As we recount in the Most Serious Problem *Fraud Detection: The IRS's Fraud Detection Systems Are Marred by High False Positive Rates, Long Processing Times, and Unwieldy Processes Which Continue to Plague the IRS and Harm Legitimate Taxpayers*, however, the part of the process that was supposed to recycle returns back through the wage database as new wage data came in from employers and the Social Security Administration completely failed, requiring the IRS to *manually upload* wage data and *manually process* frozen returns through the system. It was not until late July 2018 that the IRS had waded through all the frozen refund returns and determined which were legitimate and which were not.

The result of this process was an 81 percent False Positive Rate (FPR). *That is, of all the returns initially frozen by this system as suspect, 81 percent were legitimate.* Of the returns still unreleased one month after the initial freeze, 64 percent were legitimate. Not surprisingly, taxpayers did not take this lying down. TAS cases involving this issue increased by 287 percent from January 2018 through September 2018, and for the first time ever, the NTA Case Intake line experienced two-hour wait times, as taxpayers called desperate to figure out when their refunds would be released.⁸

The fraud detection debacle had another consequence—frozen refund returns with Earned Income Tax Credit (EITC) claims were sent to the examination function, which was not prepared for this onslaught of cases. Thus, on December 21, 2018, the day before the shutdown, the IRS had not worked through its inventory of tax year (TY) 2017 EITC audits, meaning it was starting the 2019 filing season already behind in that category of work.

Meanwhile, the perennial staffing declines—well documented in past Annual Reports—continued to negatively affect the IRS's ability to deliver its audit and collection workplans, leading to across-the-board efforts to “streamline” audits and collection.

- With respect to the IRS examination function, we show in this report that the IRS's field audit selection is deeply flawed, resulting in no change rates on average of 23 percent for audits conducted by the Small Business/Self-Employed Division (SB/SE) and 32 percent for audits conducted by the Large Business and International Operating Division (LB&I).⁹
- The IRS correspondence examination function, which conducts 71 percent of all audits (individual and business), has the highest no response and lowest agreement rates of any audit type, and none of the audit streams measure the future compliance of the taxpayers who were audited, or whether those taxpayers understood what they did wrong.¹⁰

⁸ Taxpayer Advocate Management Information System; TAS, Aceyus Phone Reporting System (Feb. 20, 2018).

⁹ IRS, CDW, AIMS FY 2010 through FY 2018 (Dec. 2018). Due to the lapse in appropriations, LB&I did not provide a timely response to our request to verify these figures during the TAS Fact Check process. For a detailed discussion of the field audit process, see Most Serious Problem: *Field Examination: The IRS's Field Examination Program Burdens Taxpayers and Yields High No-Change Rates, Which Waste IRS Resources and May Discourage Voluntary Compliance*, *infra*.

¹⁰ See Most Serious Problem: *Correspondence Exam: The IRS's Correspondence Examination Procedures Burden Taxpayers and are not Effective in Educating the Taxpayer and Promoting Future Voluntary Compliance*, *infra*.

In fact, a study we publish in this report shows that, overall, taxpayers in the study who experienced audits reported higher levels of fear, anger, threat and caution when thinking about the IRS and felt less protected by the IRS.¹¹ Taxpayers who experienced correspondence exams report a lower level of perceived justice compared to those who underwent office and field exams. A 2015 TAS study found that self-employed taxpayers filing a Schedule C who experience a no change audit reduced their reported income by 37 percent three years after the audit.¹² How the IRS conducts audits clearly has an effect on taxpayers' willingness to comply.

In collection, the IRS is *actively* discouraging and avoiding person-to-person conversations with taxpayers. It is intentionally not placing phone numbers on its correspondence or burying that information on the last page of multi-page communications.¹³ Instead, it is pushing taxpayers to the internet to enter into “streamlined” installment agreements (IAs). It has expanded these streamlined IAs to six- and seven-year terms—that is, the taxpayer can agree to make monthly payments by dividing the tax debt by 72 or 84 months, without any financial analysis as to whether a taxpayer can actually afford to make these payments.¹⁴

No surprise, then, that TAS research found that in FY 2018:

- About 40 percent of taxpayers who entered into streamlined IAs within the Automated Collection System (ACS) had incomes at or below their Allowable Living Expenses (ALEs), meaning these taxpayers entered into IAs when they could not afford to pay their basic living expenses, according to the IRS's own definition.¹⁵
- About 39 percent of streamlined IAs within ACS involving taxpayers with income at or below their ALEs defaulted in FY 2018.¹⁶
- This sad situation is reproduced in the Private Debt Collection initiative, which utilizes the IRS's streamlined IA authority. In FY 2018, 37 percent of taxpayers defaulted on IAs entered into while assigned to the Private Collection Agencies (PCAs) and 40 percent of taxpayers who entered into PCA IAs had incomes below their ALEs.

All this taxpayer harm is driven by a lack of resources, and they are justified by the IRS as “efficiencies” and “Future State” initiatives. But these approaches are neither efficient nor effective. They represent a failure to conduct effective tax administration by not engaging with and educating the taxpayer and promoting future voluntary compliance.

This, then, was the state of affairs as of December 21, 2018, when the IRS shut down.

11 See Brian Erard, Matthias Kasper, Erich Kirchler, and Jerome Olsen, Research Study: *What Influence do IRS Audits Have on Taxpayer Attitudes and Perceptions? Evidence from a National Survey*, *infra*.

12 National Taxpayer Advocate 2015 Annual Report to Congress, vol. 2, 88 (Research Study: *Audit Impact Study*).

13 See Most Serious Problem: *Collection Due Process Notices: Despite Recent Changes to Collection Due Process Notices, Taxpayers Are Still at Risk for Not Understanding Important Procedures and Deadlines, Thereby Missing Their Right to an Independent Hearing and Tax Court Review*, *infra*.

14 See Most Serious Problem: *IRS's Automated Collection System (ACS): ACS Lacks a Taxpayer-Centered Approach, Resulting in a Challenging Taxpayer Experience and Generating Less Than Optimal Collection Outcomes for the IRS*, *infra*.

15 *Id.*

16 TAS Research analysis of the Individual Master File and Individual Returns Transaction File on installment agreements established in FY 2018. This figure assumes taxpayers have one IRS-allowed vehicle ownership and operating expense, and a second operating expense if they were married filing jointly. If we assume the taxpayers did not have vehicle ownership expenses, the default rate would be about 32 percent.

A Brief Primer on the Anti-Deficiency Act

Article I of the Constitution provides that “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.”¹⁷ The Anti-Deficiency Act (ADA) implements this provision.¹⁸ Specifically, 31 U.S.C. § 1341(a)(1)(B) forbids any officer or employee of the United States government or of the District of Columbia government to involve his or her respective government employer in a contract or obligation for the payment of money before an appropriation is made unless authorized by law. A significant exception to this rule is provided in 31 U.S.C. § 1342, which permits such government activity “for emergencies involving the safety of human life or the protection of property.”

A 1981 Attorney General opinion clarified that two factors must be present for this exception to apply:

1. A reasonable and articulable connection between the obligation (the opinion involved a contract or grant) and the safety of life or the protection of property; and
2. Some reasonable likelihood that either the safety of life or the protection of property would be compromised to some significant degree by failure to carry out the function in question—and that the threat to life or property can be reasonably said to be near at hand and demanding of immediate response.¹⁹

A 1995 Department of Justice opinion reiterated the two-prong analysis and interpreted the 1990 amendment to the ADA, noting the emergencies exception only applies where the threat is “near at hand and demanding of immediate response.”²⁰ It further concluded the threat must be significant in nature.

OMB guidance from 1981 excepts tax-related activities of the Treasury.²¹ The way in which the IRS interprets this exception—not always consistently—can be seen in its shutdown plans. In 2011, some of the activities that the IRS included in the category of necessary for the safety of human life or protection of property were: processing of tax returns, taxpayer service centers and call sites, and protection of statute expiration, bankruptcy, liens and seizure cases.²² The IRS excepted 57 TAS employees under this category in 2011. It also excepted 1,263 ACS employees to handle levy release calls from taxpayers.²³ In 2013, however, the IRS did not consider taxpayer service centers and call sites necessary for the safety of human life or protection of property exceptions, nor did it except any ACS employees to handle levy release calls from taxpayers. And no TAS employees, including the National Taxpayer Advocate, were excepted under the 2013 shutdown.

The IRS Office of Chief Counsel has adopted the position that the exception for protection of life and property applies only to prevent imminent loss of life or property and the protection of property exception applies only to *government* property.²⁴ Furthermore, Chief Counsel attorneys concluded that activities related to preventing significant hardship to individual taxpayers do not fit the exception. “The types of activities the [National Taxpayer Advocate] performs to prevent taxpayer hardship are

17 U.S. CONST. Art. I, § 9, cl. 7.

18 Pub. L. No. 97-258, 96 Stat. 923 (1982).

19 43 U.S. Op. Atty. Gen. 293, 302 (Jan. 16, 1981).

20 Office of Management and Budget (OMB), Memorandum M-95-18 Assistant Attorney General Walter Dellinger, *Memorandum for Alice Rivlin, Director, Office of Management and Budget* 9 (Aug. 16, 1995).

21 OMB, *Memorandum for Heads of Executive Departments and Agencies* 2 (Nov. 17, 1981).

22 *IRS FY 2011 Shutdown Contingency Plan (During Lapsed Appropriations)* 6 (Apr. 7, 2011).

23 *Id.* at 38.

24 Office of Chief Counsel, General Legal Services, *Points on Government Shutdown Issues Pertaining to National Taxpayer Advocate* (Sept. 27, 2013).

not the types of activities related to protecting the public welfare that OMB has identified.”²⁵ Upon questioning by the National Taxpayer Advocate, Chief Counsel personnel maintained that “safety of life” applied only in the context of public health, such as meat inspectors. Thus, neither of these exceptions would allow personnel to be excepted to issue a refund or release a levy in order to allow the taxpayer to obtain access to funds to receive a life-saving operation, for example. Nor could the IRS use resources to release a levy where it is depriving the taxpayer of funds to pay for basic living expenses, even if the levy could leave the taxpayer homeless.

IRS 2018 Non-Filing Season Lapse Plan

On November 29, 2018, in anticipation of a lapse in funding, Treasury issued *IRS FY2019 Lapsed Appropriations Contingency Plan (Non-Filing Season - December 8-31, 2018)* that would apply in the event of a shutdown due to a lapse in appropriations outside the filing season. The plan identifies 9,946 employees, 12.5 percent of the IRS workforce, who would not be furloughed.

According to the plan:

- 3,337 IT employees would work during the shutdown, 1,457 of whom are in the Associate Chief Information Officer (ACIO) Enterprise Operations function, which is part of the Deputy Chief Information Officer for Tax Reform and Filing Season office. Of these 1,457 employees, 555 are in the Enterprise Computing Center (ECC) Division, which maintains IRS computer applications and prevents IRS computer processing from shutting down completely.
- Another 414 Small Business/Self-Employed (SB/SE) employees would be needed under the nonfiling season plan, 310 of whom work in collection, most often in field collection (165). Among other things, these employees process tax returns which include remittances, protect the government’s interests in the context of statute expirations, bankruptcy, liens, and seizure cases, handle budget matters related to the lapse in appropriations, and administer contracts.
- Another 2,241 Wage and Investment (W&I) employees would be needed under the nonfiling season plan, of whom 1,029 are submission processing employees, to process tax returns that contain remittances; 374 W&I accounts management employees would also be needed to process remittances and for statute protection.

Under the plan, the National Taxpayer Advocate and Local Taxpayer Advocates (LTAs) would be excepted for purposes of periodically checking mail and processing payments. They would not be authorized to intake cases, issue Taxpayer Assistance Orders (TAOs), or take other actions to address significant hardships and emergencies, including ordering the release of liens or levies.

IRS 2019 Filing Season Lapse Plan

On January 15, 2019, the IRS issued the *IRS FY2019 Lapsed Appropriations Contingency Plan (Tax Year 2018 Filing Season)* to apply in the event of a shutdown due to a lapse in appropriations at any time during the TY 2018 filing season (January 1-April 30, 2019). The plan identifies 46,052 employees, 57.4 percent of the IRS workforce, who would not be furloughed.

25 Office of Chief Counsel, General Legal Services, *Points on Government Shutdown Issues Pertaining to National Taxpayer Advocate 3* (Sept. 27, 2013).

According to the filing season plan 3,766 IT employees would work during the shutdown.

- The number of excepted employees in ACIO Enterprise Operations remained the same (1,457), but excepted employees in the ACIO User and Network Services increased to 627 from the nonfiling season plan level of 308. Among other things, these employees provide day-to-day maintenance of the IRS tax infrastructure.
- The number of excepted employees in ACIO, Applications Development, increased to 958 from the nonfiling season plan level of 798. These employees work to prevent loss of data in process and revenue collections, provide application support for critical systems, manage code, perform builds, process transmittals, and complete and test filing year programs.

The filing season shutdown plan calls for 2,938 excepted SB/SE employees, of whom 2,614 are collection employees.

- The number of excepted field collection employees remained the same as in the nonfiling season shutdown plan.
- The number of excepted campus collection employees increased from 64 employees in the nonfiling shutdown plan to 2,229. Most of these employees (1,839) are collection representatives, who respond to taxpayers who have received a collection notice through ACS, assist taxpayers with setting up installment agreements for tax payments, assist taxpayers with general collection processes, serve as the gateway for transferring taxpayers to Accounts Management for appropriate filing season inquiries, and provide assistance with releasing levies and liens as required by law. However, consistent with IRS Chief Counsel's position, later guidance clarified that these employees *are not* authorized to release levies and liens.²⁶

In addition, the filing season shutdown plan provides for an SB/SE Mail Plan, for which 560 employees are needed.

- Of these, 250 collection employees protect statute expiration or assessment activities, protect bankruptcy or other revenue generating issues, oversee the collection of taxes and processing of returns, process tax returns which include remittances, complete computer operations necessary to prevent loss of data in process and revenue collections, handle budget matters related to the lapse in appropriations, and administer contracts.
- An additional 310 SB/SE Exam employees carry out similar tasks.

The filing season shutdown plan provides for 34,357 excepted W&I employees.

- Of these, 17,644 are accounts management employees (compared to 374 accounts management employees excepted under the nonfiling season plan). Of these employees, 17,520 are needed to process Form 1040X's and remittances, provide statute protection, support the Tax Cut and Jobs Act, and staff call sites.
- 13,469 submission processing employees are excepted (compared to 1,029 in the non-filing season plan). Of these, 13,000 are needed to process tax returns, Form 1040X remittances, and refunds.

²⁶ See IRS SERP Alert #19A0017, *Release of Levy and Release of Lien* (Jan. 23, 2019) ("While there is a lapse in funding during the partial shutdown we are not authorized to take this action. We may do so once we are fully opened, so please call us back at that time. Please apologize to the taxpayer and explain we are not authorized to release the levy or lien due to the partial government shutdown. Explain that they may call us back after we are fully reopened.").

Treatment of Taxpayers Experiencing Economic Hardship Under the Lapse Plans

Under the 2018 and 2019 Lapse Plans, the National Taxpayer Advocate, Deputy National Taxpayer Advocate, and LTAs are excepted to check mail in order to process payments. However, with respect to the 2019 Filing Season Plan, Chief Counsel has opined that TAS acts “derivatively” in solving refund problems and addressing collection issues and therefore cannot conduct those activities during a shutdown.²⁷ Thus, despite the requirement under IRC § 6343(a)(1)(D) that the IRS release any levy that creates an economic hardship for a taxpayer, and the explicit charge in IRC § 7811(b)(1) that the National Taxpayer Advocate may issue a TAO “to release property of the taxpayer levied upon” where the taxpayer is experiencing significant hardship, no IRS or TAS employee, including the National Taxpayer Advocate, was excepted to work these cases.

Moreover, the Treasury Department determined that the completion and issuance of the statutorily-mandated National Taxpayer Advocate’s Annual Report to Congress, which identifies at least 20 of the most serious problems facing taxpayers, did not meet the ADA exception as “authorized by necessary implication from the specific terms of duties that have been imposed on, or of authorities that have been invested in, the agency.”²⁸

Thus, during the first part of the shutdown, no IRS employees were authorized to answer the telephone lines, issue refunds, release liens and levies, enter into installment agreements, or review pending IRS actions. On January 22, under the 2019 Filing Season plan, IRS employees were excepted to answer the phone lines, issue refunds, and enter into installment agreements. They were not, however, authorized to release liens and levies, nor were TAS employees authorized to advocate on behalf of taxpayers who were experiencing significant hardship as a result of the IRS’s actions or inactions.

Impact of the Shutdown on IRS Operations

As described earlier, on December 21, 2018, the IRS was already in a position of entering the filing season with a backlog of items and with its resources stretched thin. Figure 2 presents the state of various types of key work and measures on three key dates: December 22, 2018 (the first day of the shutdown); January 26, 2019, (the end of the fifth week of the shutdown when some employees were called back to work under the 2019 Filing Season Lapse Plan); and February 2, 2019 (the end of the first week of the filing season after the shutdown ended).

27 The IRS Office of Chief Counsel opined as follows:

We have determined that TAS may continue to issue manual refunds and enter into streamlined installment agreements, because TAS has authority to take these actions on behalf of IRS.

In contrast, there are a number of functions listed in the Plan where TAS acts derivatively, serving as a conduit or advocate for action by other business units. This includes, for example, fixing refund issues and assisting with general collection processes. As to these derivative functions, we have concluded that there is insufficient evidence that Congress intended for the functions to continue during a lapse in appropriations. In reaching this conclusion, we relied on guidance from the Office of Legal Counsel (OLC). OLC has stated that there is implied authority for an unfunded function to continue during a lapse if the function is “necessary to the effective execution of” a function that has funding or is excepted, “such that suspension of the [unfunded] function[] ... would prevent or significantly damage the execution of [the funded or excepted] function[.]” OLC, *Effect of Appropriations for Other Agencies*, 19 Op. OLC 337, 338 (Dec. 13, 1995). Upon considering TAS’s role and its statutory mandates, we do not believe that Congress has implied that suspension of TAS’s derivative functions would prevent or significantly damage IRS’s execution of its tax collection and refund issuance functions.

Email from Senior Counsel, General Legal Services to Deputy National Taxpayer Advocate (Jan. 17, 2019).

28 See Op. Attorney Gen. 293, 296-301 (1981). “Page 97 of the revised plan shows a number of Taxpayer Advocacy [sic] Service employees excepted to prepare the annual TAS report to Congress. Even though there is a specific statutory deadline for the report, we do not consider a reporting deadline of this type sufficient to create an implied exception to the Anti-Deficiency Act. Therefore, the exception on this basis will need to be removed before I can clear the plan as legally sufficient.” Email from Deputy Director, Office of Emergency Preparedness, U.S. Department of Treasury (Nov. 30, 2018).

On January 24, 2019, the IRS had over 5 million pieces of mail that had not been batched for processing; it had 80,000 responses to FY 2018 Earned Income Tax Credit audits that had not been addressed; it had 87,000 amended returns waiting to be processed.²⁹ During the shutdown, the National Distribution Center's (NDC) inventory grew to about 170,000 orders.³⁰ Despite employees working overtime to process about 11,000 orders a day, the IRS announced that orders for Forms W-2 and W-3 were backlogged and would not be finished shipping out until mid-February. By law, employers are required to file these information returns by January 31; the IRS therefore suggested that employers consider requesting filing extensions.

At key points in the return processing pipeline, inventories were up over 100 percent over the same time in 2018. For the week ending January 26, 2019 (the last week of the shutdown), the level of service (LOS) on the Accounts Management phone lines was 36.8 percent and the average speed of answer (ASA) was 32 minutes. The LOS and ASA for the Installment Agreement/Balance Due phone lines was abysmal—12.8 percent and 93 minutes respectively. By February 2, 2019, the end of the first week after the shutdown ended—that is, the first week of the filing season—most levels only slightly improved. There was one significant exception: the LOS for the Balance Due/Installment Agreement line was 6.7 percent. *This means for that week 93.3 percent of the taxpayers calling to make payment arrangements were unable to speak to a live assistor.*

29 IRS Senior Leadership Appropriations Lapse Daily Call (Jan. 25, 2019).

30 Email from Commissioner, Wage & Investment (W&I) Operating Division, to National Taxpayer Advocate (Jan. 24, 2019).

FIGURE 2, Selected IRS Inventories and Levels of Service Pre-Shutdown and Post-Shutdown

Description	Week Ending 12/22/2018	Week Ending 1/26/2019	% Change from Week Prior to Shutdown to Week Ending 1/26/2019	Week Ending 2/2/2019	% Change from Week Prior to Shutdown to Week Ending 2/2/2019
Level of Service for the Accts. Mgmt. ^a	75.4%	36.8%	-51.2%	48.3%	-35.9%
Average Speed of Answer (AM) ^b	12.8	31.9	149.2%	17.0	32.8%
Level of Service for ACS ^c	69.1%	30.9%	-55.3%	38.3%	-44.6%
Average Speed of Answer (ACS) ^d	15.7	51.9	230.6%	48.3	207.6%
Level of Service for the Installment Agreement/Bal. Due Line ^e	54.6%	12.8%	-76.6%	6.70%	-87.7%
Average Speed of Answer for the Installment Agreement/Bal. Due Line ^f	23.2	93.00	300.9%	80.6	247.4%

- a IRS, Joint Operations Center (JOC), *Snapshot Reports: Enterprise Snapshot* (Dec. 23, 2017, Jan. 27, 2018, Feb. 3, 2018, Dec. 22, 2018, Jan. 26, 2019, and Feb. 2, 2019).
- b *Id.*
- c IRS, JOC, *Snapshot Reports: Product Line Detail* (Dec. 23, 2017, Jan. 27, 2018, Feb. 3, 2018, Dec. 22, 2018, Jan. 26, 2019, and Feb. 2, 2019).
- d *Id.*
- e *Id.*
- f *Id.*

Figure 3 shows where the IRS was in terms of several key work measures and the percentage change for all these activities when compared to the same period for the prior year. Immediately before the shutdown, the IRS’s main phone line was significantly improved over the same period the year before (75.4 percent LOS for FY 2019 compared to 56.8 percent LOS in FY 2018).³¹ But the difference between FY 2018 and FY 2019 for levels of service and wait times for *all phone lines* at the end of the shutdown and the first week all employees returned is ... shocking. For example, the LOS for both the Accounts Management and ACS phone lines experienced at least a 56 percent decrease in FY 2019 from FY 2018 levels.³² For the week ending February 2, 2019, which was the first week of the filing season, these same lines continued to show a decrease of over 40 percent from FY 2018 levels. Specifically, the Accounts Management lines had 48 percent LOS and a 17 minute wait time, compared to 86 percent LOS and a 4 minute wait time in FY 2018; the ACS lines had a 38 percent LOS and 48 minute wait time, compared to a 65 percent LOS and a 19 minute wait time in FY 2018.³³

Make no mistake about it, these numbers translate into real harm to real taxpayers. And they represent increased rework for the IRS downstream, at a time when the IRS is already resource challenged. The IRS will be facing tough decisions as it revises its workplans for FY 2019 in light of the shutdown’s impact.

31 IRS, Joint Operations Center (JOC), *Snapshot Reports: Enterprise Snapshot* (Dec. 22, 2018).
 32 IRS, Joint Operations Center (JOC), *Snapshot Reports: Enterprise Snapshot* (Jan. 26, 2018); IRS, Joint Operations Center (JOC), *Snapshot Reports: Product Line Detail* (Jan. 26, 2018).
 33 IRS, Joint Operations Center (JOC), *Snapshot Reports: Enterprise Snapshot* (Feb. 2 2018); IRS, Joint Operations Center (JOC), *Snapshot Reports: Product Line Detail* (Feb. 2, 2018).

FIGURE 3, Selected IRS Inventories and Levels of Service Pre-Comparison to Last Year for Week Ending Prior to Shutdown, Week Ending at Conclusion of Shutdown, and Week after Operations Resumed

Description	Week Ending 12/23/2017	Week Ending 12/22/2018	Percent Change from Corresponding Week of Prior Year	Week Ending 1/27/2018	Week Ending 1/26/2019	Percent Change from Corresponding Week of Prior Year	Week Ending 2/3/2018	Week Ending 2/2/2019	Percent Change from Corresponding Week of Prior Year
Level of Service for the Accts. Mgmt. Lines	56.8%	75.4%	32.7%	84.2%	36.8%	-56.3%	86.2%	48.3%	-44.0%
Average Speed of Answer (AM) Minutes	16.4	12.8	-22.0%	4.6	31.9	593.5%	4.4	17.0	286.4%
Level of Service for ACS	63.7%	69.1%	8.5%	72.7%	30.9%	-57.5%	64.5%	38.3%	-40.6%
Average Speed of Answer (ACS) Minutes	18.9	15.7	-16.9%	11.4	51.9	355.3%	19.2	48.3	151.6%
Level of Service for the Bal. Due Line	59.8%	54.6%	-8.7%	70.2%	12.8%	-81.8%	57.8%	6.70%	-88.4%
Average Speed of Answer (Bal. Due) Minutes	26.8	23.2	-13.4%	16.3	93.0	470.6%	30.1	80.6	167.8%
total Individual Returns Received (cum.)							18,302,000	16,035,000	-12.4%
Total Individual Returns Processed (cum.)							17,931,000	13,306,000	-25.8%
Individual Master File (IMF) Pipeline (weekly)							229,470	437,183	90.5%
IMF Error Resolution (weekly)							211,868	621,385	193.3%

Impact of the Shutdown on Taxpayers and Taxpayer Rights

As described above and in the Purple Book legislative recommendation, *Authorize the Office of the Taxpayer Advocate to Assist Certain Taxpayers During a Lapse in Appropriations*, neither the 2018 Non-Filing Season nor the 2019 Filing Season Lapse plans excepted TAS employees for the purpose of fulfilling their statutory mission of helping taxpayers resolve their problems with the IRS.³⁴ Moreover, no IRS employee was excepted for the purpose of releasing or withdrawing liens, releasing levies, or returning levy proceeds.

Because of Chief Counsel’s interpretation of “protecting property” to mean protecting only government property, TAS’s work advocating on behalf of taxpayers experiencing refund delays, identity theft, or inappropriate or even unlawful liens and levies was not excepted. Even under the 2019 Filing Season Lapse Plan, in which the IRS would issue refunds—an act that protects *taxpayers’* as opposed to *government* property—TAS was singled out as not being excepted to work with taxpayers experiencing refund delays. This decision was made despite our providing clear evidence of the scope and importance of TAS activity in this area. Below is a list of the highest volume FY 2018 TAS cases that relate to returns processing. These returns show up almost immediately once the filing season opens:

FIGURE 4, FY 2018 TAS Case Receipts³⁵

FY 2018 TAS Case Receipts Relating to Return Processing	
Pre-refund Wage Verification	66,048
Identity Theft Victim Assistance	13,787
Processing Amended Returns (1040Xs)	8,767
Unpostable/Rejected Returns (Error Resolution or ERS)	8,673
Taxpayer Protection Program (suspected identity theft returns) Unpostables	7,947
Other Refund Inquiries/Issues	7,628
Processing Original Return Issues	5,312
Returned/Stopped Refunds	3,398
Injured Spouse Claims	3,231
IRS Refund Offset (economic hardship)	2,739
Math Error Issues	1,994

The IRS’s authority to collect revenue is not unconditional. It is conditioned on statutory protections, and a lapse in appropriations does not eliminate those protections. It is unconscionable for the government to allow its employees to *enforce* collection of taxes without the concomitant taxpayer rights protections enacted by Congress. Chief among those protections is the Taxpayer Advocate Service, along with statutorily mandated releases of levies where a taxpayer is experiencing economic hardship³⁶ and withdrawals of notices of federal tax liens which were premature or otherwise not in accordance with administrative procedures, or in the “best interests of the taxpayer (as determined by the National

34 IRC § 7803(c)(2)(A)(i).

35 Taxpayer Advocate Management Information System (TAMIS).

36 IRC § 6343(a)(1)(D).

Taxpayer Advocate) and the United States” or where it furthers the collection of tax or the taxpayer has entered into an installment agreement.³⁷

None of these protections is considered an excepted activity, leading to bizarre results. For example, a taxpayer with a levy issued against his or her bank account can normally call ACS and have the levy released by entering into an IA. *Under the 2019 Filing Season Lapse Plan, however, ACS employees can put the taxpayer into an installment agreement, but they cannot release the levy.* Further, if a taxpayer called to say he or she could not afford to pay, the employee might be able to put the taxpayer into Currently Not Collectible status, but still could not release the levy, thereby violating IRC § 6343(a).³⁸ This is, of course, absurd. And harmful to the taxpayer. And to trust in the tax system and long term voluntary compliance.

Additional evidence of taxpayer harm is shown in Figure 5, which lists the number of IRS notices issued immediately before and during the shutdown, all of which have significant consequences if deadlines are missed. In fact, for a period of time after the United States Tax Court closed on December 25, 2018, the U.S. mail and private delivery services returned petitions to the original sender. Thus, the IRS will not know that the taxpayer timely filed a Tax Court petition protesting the proposed deficiency or the Collection Due Process hearing determination. In the former case, IRS systems will assess the tax and, in both cases, collection will commence, even though under the law all that activity is stayed. Both the Court and the IRS will have to spend extra resources to unwind all this.

And none of this takes into account taxpayer anxiety. Figure 5 shows the volume of certain notices that were issued both before and during the shutdown. These notices – Notice of Levy, Statutory Notice of Deficiency, and Notice of Right to Collection Due Process Hearing, bear statutory deadlines that have serious consequences for the taxpayer if he or she does not take action during that period. When the IRS is shut down, it is impossible for the taxpayer to get the information and assistance needed to move forward. With respect to notices of levy, if the taxpayer cannot contact the IRS and make other payment arrangements within 21 days of the issuance of the levy, the employer or financial institution must pay over the funds to the IRS. The 21-day period for over 18,000 levies expired during the shutdown.³⁹

37 IRC § 6323(j)(1)(A)-(D).

38 See *Vinatieri v. Comm’r*, 133 T.C. 392, 400 (Dec. 21, 2009), in which the Tax Court held: “When a taxpayer establishes in a pre-levy collection hearing under section 6330 that the proposed levy would create an economic hardship, it is unreasonable for the settlement officer to determine to proceed with the levy which section 6343(a)(1)(D) would require the IRS to immediately release. Rather than proceed with the levy, the settlement officer should consider alternatives to the levy.”

39 Office of Taxpayer Correspondence (Feb. 2019).

FIGURE 5, Selected IRS Correspondence Volumes Where Part of Response Period Occurred During Shutdown and Correspondence Volumes of IRS Correspondence Mailed During Shutdown⁴⁰

Description	Volume of Notices/Letters Issued Prior to Shutdown Where Shutdown Interfered with Response Deadline	Volume of Notices/Letters Issued During Shutdown Period
Statutory Notices of Deficiency (90 Days to Respond) ^a	527,957	9,267
Notice With CDP Rights (30 Days to Respond) ^b	40,657	13,161
Notice to Provide Information Requested by IRS Exam (30 Days to Respond) ^c	18,492	78
Notice of Levy (21 Days to Respond) – Including Copy Mailed to Taxpayer ^d	18,406	0

a CP3219A and Letter 3219.

b ACS Letter LT11.

c CP75, CP75A, and CP75D.

d Forms 668A, 668W, 8519.

The Way Forward: Digging the IRS Out of this Mess

As officials and pundits are fond of saying, the IRS is the federal agency that touches everyone. While it is true that the IRS is the accounts receivable function of the federal government, this description doesn't quite capture its awesome power to audit and assess taxes, and to seize income and assets, without the need to obtain a judgment. It is also a major disburser of federal benefits and payments. Nearly 112 million individual taxpayers received a refund in 2018, averaging about \$2,900.⁴¹ The refundable Earned Income Tax Credit is among the largest federal antipoverty programs, delivering \$63 billion for about 25 million taxpayers in 2018.⁴² Similarly, nearly \$28 billion in Premium Tax Credits helped defray the cost of health insurance for over six million taxpayers.⁴³

It is irresponsible for an agency that touches all aspects of people's lives to be underfunded, understaffed, and at the mercy of shutdowns. As we document in these pages, the IRS is wrestling with its workload. With the best of intentions—namely, trying to do its job—it is making strategic decisions that ultimately burden taxpayers, increase its own rework, and create distance and distrust between taxpayers and the tax agency, thereby undermining voluntary compliance. And it is experiencing a “cycle of frustration” as it tries to soldier on with its important work in the midst of shutdowns and funding stops and starts.

There are steps we can take to change this trajectory:

First, the ADA should be amended to provide that where the government takes enforcement action against a taxpayer during a shutdown (or has taken enforcement action just prior to a shutdown), personnel must be excepted to ensure the taxpayer protections and rights enacted by Congress are

40 Office of Taxpayer Correspondence (Feb. 2019). The IRS also mailed 8,807 copies of the Notice of Levy to taxpayers.

41 IRS, Filing Season Statistics (Nov. 2018).

42 IRS, W&I Earned Income Tax Credit (EITC) Fast Facts (last accessed Feb. 2019). Calendar Half Year Report, June 2018. Historically, half year data represents over 95 percent of EITC returns.

43 Information Returns Master File (IRMF) Compliance Data Warehouse (CDW) TY 2017 returns processed in 2018.

available.⁴⁴ The ADA was enacted in 1981. At that time, the EITC was only 6 years old, and provided a maximum refundable credit of \$500, as opposed to \$6,431 for TY 2018.⁴⁵ There were no Premium Tax Credits, no American Opportunity Tax Credit, no refundable Child Tax Credit. There are no regulations promulgated under the ADA, and the only legal guidance was issued in 1981 and 1990. Neither of these opinions addresses the role of the IRS in terms of public welfare in the 21st century. We offer a recommendation in the 2019 Purple Book that would address part of this problem.⁴⁶

Second, as discussed above and in more detail later in this report, the IRS should be given additional dedicated, multi-year funding to replace its antiquated core information technology systems, so it can deliver the service and compliance activities that are expected of a 21st century tax administration.⁴⁷

Third, the IRS should invest heavily in improving its communications with taxpayers, especially those notices and letters that have legal significance, such as Notices of Deficiency and Collection Due Process hearing notices. By designing a rights-based notice rather than an enforcement-based notice, the IRS will educate taxpayers and encourage greater engagement, which in turn is likely to improve voluntary compliance.⁴⁸

Fourth, Congress should require the IRS to seriously study and report on the possibility of expanding its withholding system to move closer to a hybrid pay-as-you-earn (PAYE) system. We estimate that in TY 2016, 45 percent of nonitemizing filings reported wage earnings subject to withholding as the sole source of income. Thus, even simple PAYE allows for complete withholding of tax at the source for these approximately 59 million filings. With a variety of withholding adjustments, some involving a greater or lesser degree of difficulty, PAYE tax collection could be extended to seven of the primary income sources, covering 62 percent (91 million) of tax returns.⁴⁹ This approach will ease taxpayer and IRS burden alike.

44 See National Taxpayer Advocate 2019 Purple Book (Legislative Recommendation: *Authorize the Office of the Taxpayer Advocate to Assist Certain Taxpayers During a Lapse in Appropriations*) (Dec. 31, 2018).

45 Dennis J. Ventry, Jr., *The Collision of Tax and Welfare Politics: The Political History of the Earned Income Tax Credit, 1969–99*, NAT'L TAX J. (Dec. 2000).

46 See National Taxpayer Advocate 2019 Purple Book (Legislative Recommendation: *Authorize the Office of the Taxpayer Advocate to Assist Certain Taxpayers During A Lapse in Appropriations*) (Dec. 31, 2018).

47 See Legislative Recommendation: *IT Modernization: Provide the IRS with Additional Dedicated, Multi-Year Funding to Modernize Its Core IT Systems Pursuant to a Plan that Sets Forth Specific Goals and Metrics and Is Evaluated Annually by an Independent Third Party*, *infra*.

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

49 These seven income types are wages, interest, pensions, dividends, capital gains, Individual Retirement Account (IRA) income, and unemployment. Study: *A Conceptual Analysis of Pay-As-You-Earn (PAYE) Withholding Systems as a Mechanism for Simplifying and Improving U.S. Tax Administration*, *infra*.

Fifth, the IRS should re-examine how it measures its performance in all its activities—outreach and education, audits, collection—and regularly assess whether its initiatives increase future voluntary compliance or undermine it.⁵⁰

With these five steps, the IRS will have the tools to deliver a robust and useful online accounts while providing meaningful person-to-person assistance to taxpayers via phone, virtual conferences, or in-person. It will have the research to allow it to select appropriate returns for a repertoire of compliance touches and will not waste significant resources on no change audits. It will be able to approach all its compliance touches as an opportunity to educate and gain trust with the taxpayer, because it will be utilizing data and research to understand the causes of noncompliance. And where enforcement action is required, taxpayers will have confidence that IRS employees understand and respect the significant protections afforded by the IRC, including the Taxpayer Bill of Rights.⁵¹

It is true that taxes are the “lifeblood of government,” but as I’ve written elsewhere, it is the taxpayers of the United States who pay that lifeblood.⁵² We need to honor our taxpayers by providing them the best tax administration possible. The report that follows includes our recommendations to improve the taxpayer’s journey through the tax system as well as improve the effectiveness and efficiency of the IRS.

Respectfully Submitted,



Nina E. Olson
National Taxpayer Advocate
12 February 2019

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- 50 See Taxpayer Rights Assessment: *IRS Performance Measures and Data Relating to Taxpayer Rights*, *infra*; Most Serious Problem: *Tax Law Questions: The IRS’s Failure to Answer the Right Tax Law Questions at the Right Time Harms Taxpayers, Erodes Taxpayer Rights, and Undermines Confidence in the IRS*, *infra*; Most Serious Problem: *Navigating The IRS: Taxpayers Have Difficulty Navigating the IRS, Reaching the Right Personnel to Resolve Their Tax Issues, and Holding IRS Employees Accountable*, *infra*; Most Serious Problem: *Correspondence Examination: The IRS’s Correspondence Examination Procedures Burden Taxpayers and are not Effective in Educating the Taxpayer and Promoting Future Voluntary Compliance*, *infra*; Most Serious Problem: *Field Examination: The IRS’s Field Examination Program Burdens Taxpayers and Yields High No-Change Rates, Which Waste IRS Resources and May Discourage Voluntary Compliance*, *infra*; Most Serious Problem: *Field Collection: The IRS Field Collection Function Is Not Appropriately Staffed or Trained to Minimize Taxpayer Burden and Ensure Taxpayer Rights Are Protected*, *infra*.
- 51 See Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR that was adopted by the IRS are now codified in the IRC.
- 52 Nina E. Olson, *Taking the Bull by its Horns: Some Thoughts on Constitutional Due Process in Tax Collection*, 2010 Erwin N. Griswold Lecture Before the American College of Tax Counsel, 63 Tax Law. 227, 234 (2010).