Introductory Remarks by the National Taxpayer Advocate

HONORABLE MEMBERS OF CONGRESS:

I respectfully submit for your consideration the National Taxpayer Advocate's 2020 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 the ten most serious problems encountered by taxpayers and make administrative and legislative recommendations to mitigate those problems. In each of the ten Most Serious Problem discussions in this report, we are including an IRS narrative response. Our intent is to help readers see both TAS's perspective and the IRS's perspective on the source and nature of key challenges and potential solutions.

2020 Filing Season and Economic Impact Payments: The Good News

To say the least, 2020 was an extraordinarily challenging year for tax administration. I was sworn in as the National Taxpayer Advocate in late March — just as the COVID-19 pandemic was erupting and the IRS was closing facilities around the country to comply with local stay-at-home orders and social distancing guidelines. As we detail in the Filing Season Review section of this report, the IRS had to temporarily shut down its mail facilities, call centers, and Taxpayer Assistance Centers (TACs). As a result, paper tax returns and correspondence from taxpayers sat unopened in trailers for months, many taxpayers did not receive timely refunds, taxpayers could not get through to the IRS by phone (for context, the IRS received more than 100 million telephone calls during fiscal year (FY) 2020), and taxpayers could not obtain in-person assistance at TACs.

Adding to the IRS's challenges, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law on March 27, giving the IRS the responsibility to deliver more than 160 million stimulus payments, which the Treasury Department dubbed "economic impact payments" (EIPs). This was no easy task. Eligibility was subject to an income phaseout based on filed tax returns, yet millions of individuals who did not file tax returns were also eligible to receive EIPs. The IRS worked with the Social Security Administration and the Department of Veterans Affairs to obtain lists of beneficiaries and then integrated those lists into its own systems to pay benefits to individuals who did not have a filing obligation.

Despite these unprecedented challenges, the IRS generally performed well. In most cases, the IRS can effectively handle whatever it can automate, and this year was no exception. As of November 20, 2020, the IRS had received about 169 million individual income tax returns, and of those, about 153 million (91 percent) had been e-filed.[1] For taxpayers who e-filed, the IRS processed the overwhelming majority of returns timely and issued the resulting refunds timely. The same was generally true of EIPs — most eligible individuals received their stimulus payments timely and in the correct amounts. The IRS deserves much credit for its overall performance in 2020.

1 IRS, 2020 Filing Season Statistics for Week Ending Nov. 20, 2020, https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-november-20-2020. This total includes about 8.4 million returns submitted through the Non-Filer tool created by the IRS solely to enable eligible individuals who did not have a filing obligation to register online for an EIP.

COVID-19 Challenges: The Bad News

Despite the IRS's overall success in managing the filing season and accurately paying the significant majority of EIPs, some taxpayers experienced major problems, and the agency was not always fully transparent about its struggles. Four areas stand out:

- **Millions of taxpayers experienced lengthy delays in receiving their tax refunds.** The significant majority of taxpayers who file tax returns receive refunds, and the average refund in recent years has exceeded $2,500.[2] Particularly for low-income taxpayers, timely receipt of refunds can be critical. In 2020, there were two significant sources of refund delays. The first was the IRS's inability to timely open and process the roughly 16 million paper tax returns it received.[3] The majority of these taxpayers likely were entitled to refunds, yet they had to wait many months longer than usual to receive them.[4] According to an update posted on the IRS website, there were still 7.1 million unprocessed individual returns and 2.3 million unprocessed business returns as of November 24, with some dated as early as April 15 — more than seven months earlier.[5]

  A second source of refund delays resulted from the IRS's fraud detection filters. Each year, all returns claiming refunds are passed through filters designed to detect fraudulent wage or identity theft-based claims. For many years, the filters have generated high false positive rates, leading to refund delays for those returns flagged.[6] The problem was compounded in 2020 because the IRS notifies taxpayers of refund holds by written correspondence, and the IRS was delayed both in sending notices and in processing taxpayer responses. Overall, the IRS's fraud filters flagged 5.2 million returns claiming refunds.[7] For about 25 percent of the returns flagged for income verification, refunds took longer than 56 days. For about 18 percent of the returns flagged for identity verification, refunds took longer than 120 days.[8] While we support the IRS's goal of identifying and preventing fraudulent refund claims, we encourage the IRS to continue to refine its filters to detect fraudulent claims with greater precision.

- **Millions of eligible individuals did not receive some or all of the EIPs for which they were eligible.** Last spring, the IRS took the position that it generally would not correct EIP mistakes in 2020. We pointed out that the CARES Act directed the IRS to pay EIPs "as rapidly as possible," and we urged the IRS — both internally and externally through our mid-year report and in blogs — to correct EIP underpayments in 2020. As 2020 progressed, the IRS agreed to fix some categories of EIP problems, focusing on problems that could be corrected through automation. The IRS did not create programming to allow manual adjustments of individual accounts until September, and even then, only a limited number of issues could be manually corrected. While the IRS's inclination to use automation wherever possible is understandable in light of its human resource constraints, its approach left taxpayers frustrated and without the funds some of them desperately needed.

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2 IRS, 2020 Filing Season Statistics for Week Ending Nov. 20, 2020, https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-november-20-2020.

3 *Id.*

4 About 77 percent of all returns processed to date have resulted in refunds. IRS, Compliance Data Warehouse, Individual Returns Transaction File (covering returns processed through November 19, 2020).

5 *See* IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue, https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue (last visited Dec. 31, 2020).

6 *See*, *e.g.*, National Taxpayer Advocate 2019 Annual Report to Congress 34-44 (Most Serious Problem: *Processing Delays: Refund Fraud Filters Continue to Delay Taxpayer Refunds for Legitimately Filed Returns, Potentially Causing Financial Hardship*).

7 IRS, Identity Theft (IDT) and Integrity Verification Operations (IVO) Modeling Analysis Performance Report (Oct. 7, 2020) (data as of September 30, 2020).

8 IRS, RRP Non-IDT Performance Report 3 (Oct. 7, 2020); IDT and IVO Performance Report 6 (Oct. 7, 2020).

The IRS is quickly issuing the second round of stimulus payments authorized by the COVID-19 relief provisions included in the Consolidated Appropriations Act, 2021, signed into law on December 27, 2020.[9] I am optimistic the lessons learned from the first round will make the process go more smoothly in 2021, and to the extent there are any inconsistencies or errors, taxpayers will be able to address them with the filing of their 2020 income tax returns rather than waiting for the IRS to correct erroneous payment amounts.

- **Millions of taxpayers received late notices bearing dates that had passed and, in many cases, response deadlines that also had passed.** During the time crucial IRS functions were shut down last spring, the IRS automatically generated more than 31.2 million notices. By the time the IRS was ready to mail them, the dates on the notices had passed, some by several months, and some notices included response deadlines that also had passed. Nevertheless, the IRS mailed 18.9 million of these notices (after purging the balance). The IRS included an "insert" with about 1.8 million notices because it needed to give taxpayers an extension of time to act. However, the IRS failed to include these inserts with other notices that should have contained them and had to issue supplemental letters informing affected taxpayers of additional extensions.

  Late notices caused considerable confusion and anxiety for taxpayers who feared they had missed critical response or payment deadlines. At the time I first blogged about this situation in June, we believed it was a one-time occurrence.[10] We were wrong. During November 2020, the IRS was unable to timely mail out over 11 million additional notices after they were automatically generated. Like the first time, the IRS purged millions of notices that could not be mailed timely. The nearly five million remaining time-sensitive notices are being mailed in December and January. This time, the IRS is including yet another insert extending the response time. The IRS must take steps to ensure this does not happen a third time.

- **Public information about the status of IRS operations and processing backlogs was insufficient.** While the IRS took some steps to keep the public informed about COVID-19-related delays, particularly later in the year, taxpayers often did not understand what was happening with their tax returns, refunds, balances, or EIPs. Many taxpayers called the IRS or TAS simply to get information because they did not have access to the IRS website, did not know how frequently the IRS updated its website information, or did not know where to turn to obtain information. The IRS could have placed a "COVID-19 Dashboard" on its website and updated its estimate of the number of returns it was processing weekly and the anticipated time for payment of refunds.[11] It could have issued weekly news releases to publicize this information. Similarly, the IRS could have posted a chart listing the major sources of EIP problems and indicating which ones it would address and when. It also could have provided more detailed information about the status of its operations.

  For much of the year, relatively limited information was released, and comments made by IRS officials often were incomplete or misleading. For example, IRS officials stated the agency would reopen facilities

9 Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, § 272, Div. N (2020).

10 Erin M. Collins, Keep an Eye on Your Mailbox: Millions of Backlogged Notices Are Being Mailed Over the Next Few Months, Some Reflect Expired Action Dates. But Don't Panic, See Inserts Providing Extended Due Dates, National Taxpayer Advocate Blog, https://www.taxpayeradvocate.irs.gov/news/ntablog-keep-an-eye-on-your-mailbox-millions-of-backlogged-notices-are-being-mailed-over-the-next-few-months-some-reflect-expired-action-dates-but-dont-panic-see-inserts-providing-extende (June 22, 2020).

11 The IRS did post some information about backlogs on its website. *See* IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue, https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue (last visited Dec. 31, 2020). However, this webpage was not well-publicized, and the data was not updated weekly. On December 31, for example, the website stated that "as of November 24, 2020, we had 7.1 million unprocessed individual tax returns and 2.3 million unprocessed business returns." Data that is five weeks old and buried within IRS.gov is not sufficiently informative for taxpayers.

in all states by mid-July.[12] Many observers reasonably interpreted those statements as indicating the IRS would be fully operational. In fact, some operations continued at limited capacity, bringing only a small percentage of employees into offices at a time to allow for adequate social distancing. As we enter the 2021 filing season, I strongly urge the agency to widely disseminate weekly updates on any processing delays and on the status of agency operations both on its website and through weekly news releases.

The challenges created by the COVID-19 pandemic will continue through the 2021 filing season and possibly for months longer, affecting both the IRS and taxpayers. I expect the IRS has learned from the 2020 experience and will improve on its performance in the coming months. The IRS is already heading in that direction in some areas, such as its acceptance of digital signatures on documents, its willingness to communicate externally by email, and its flexibility with collection matters. Indeed, these are successful practices the IRS should refine and continue even after the COVID-19 pandemic ends.

The Most Serious Problems Encountered by Taxpayers Result Primarily From Inadequate Funding, Which Has Led to a Staffing Shortage and an Inability to Modernize the IRS's Antiquated Technology Infrastructure

As required by statute, I identify and discuss in this report what we in TAS believe to be the ten most serious problems encountered by taxpayers. If this year's Most Serious Problems are read in combination, one overriding theme emerges: *To improve taxpayer service, the IRS needs more resources to hire employees and more resources to modernize its information technology (IT) systems*.

Since FY 2010, Congress has reduced the IRS's budget by about 20 percent after adjusting for inflation.[13] The number of IRS employees has decreased by about the same percentage. When funds are tight, organizations need to get creative and find ways to do with less. But there are limits to what can be done with less — particularly with 20 percent less. In FY 2020, the IRS received 100.5 million telephone calls. Employees answered only 24 percent of those calls, with hold times averaging 18 minutes. Put differently, IRS employees did *not* answer more than 75 million telephone calls from taxpayers seeking help in complying with their tax obligations. (The IRS "answered" 23 million calls by routing them for automated responses, while 39 million taxpayers simply hung up.)[14]

The IRS has also reduced other means for taxpayer interaction. Over the past decade, it has curtailed in-person assistance at TACs and eliminated tax return preparation assistance. In addition, it often does not timely process correspondence, a source of considerable frustration that drives taxpayers to seek assistance through the toll-free phone lines or in the TACs, thus fueling spiraling taxpayer discontent.[15]

As we have noted before, the President's Management Agenda emphasizes the importance of high-quality customer service as measured by the American Customer Satisfaction Index (ACSI) and the Forrester U.S. Federal

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12 *See* Michael Cohn, *IRS Employees Are Returning to Offices Amid Coronavirus*, Accounting Today (June 19, 2020), https://www.accountingtoday.com/news/irs-employees-are-returning-to-offices-amid-coronavirus.

13 IRS response to TAS information request (Sept. 30, 2020).

14 IRS, Joint Operations Center, Snapshot Reports: Enterprise Snapshot (week ending Sept. 30, 2020).

15 Similar weaknesses exist on the compliance side. IRS audits and collection actions have declined sharply in recent years. Most notably, the individual audit rate dropped from 1.11 percent in FY 2010 to 0.45 percent in FY 2019. *See* IRS, FY 2010 Enforcement and Service Results 2, https://www.irs.gov/pub/irs-utl/2010_enforcement_results.pdf; IRS Pub. 5382, Internal Revenue Service Progress Update Fiscal Year 2019, at 25 (Dec. 2019), https://www.irs.gov/pub/irs-pdf/p5382.pdf.

Customer Experience Index™.[16] By these measures, the IRS performs poorly relative to other federal agencies. The ACSI report for 2019 ranked the Treasury Department 11th out of 12 federal departments and says that "[m]ost IRS programs score … in line with the overall rating for the Treasury Department."[17] The 2019 Forrester report ranked the IRS 13th out of 15 federal agencies and characterized the IRS's score as "very poor."[18]

To underscore its concerns about taxpayer service, Congress enacted the Taxpayer First Act (TFA) in 2019. Among other things, the TFA directed the IRS to develop comprehensive multiyear plans to improve taxpayer services and modernize its IT systems.[19] These plans will require significant additional funding and staffing redirection to implement. The plan described in the TFA report includes a number of initiatives TAS has proposed for years, including customer callback, robust online accounts, a focus on resolving taxpayer issues at the earliest possible time, and the use of digital tools to improve service. If fully funded and implemented, the plan will be a game-changer for taxpayers and will transform the way the IRS currently operates.

The IRS's IT challenges require immediate and sustained attention as well. The two IRS systems containing the official records of individual and business taxpayer accounts are the oldest major IT systems in the federal government.[20] The IRS also has about 60 case management systems that generally are not interconnected. Obsolete IT systems limit the potential functionality of online taxpayer accounts, prevent taxpayers from obtaining full details about the status of their cases, and impede the IRS's ability to select the best cases for compliance actions.

The IRS has developed a roadmap known as the "Integrated Modernization Business Plan" that would replace legacy systems with modern technology systems and thereby enable the agency to provide improved service to taxpayers and deliver long-term budget efficiencies.[21] The IRS has estimated it will require between $2.3 billion and $2.7 billion in additional funding over the next six years to implement this plan.[22] Yet in FY 2020, the Business Systems Modernization (BSM) account was funded at only $180 million. In July 2020, the Chairman of the Senate Appropriations Committee introduced legislation that would have provided $2 billion to fund IT technology upgrades over the next six years, but the legislation did not advance.[23] Instead, the BSM account was ultimately funded at about $223 million in FY 2021 — an increase of nearly $43 million compared with FY 2020, but still a drop in the bucket compared to the IRS's IT funding needs.[24]

Let's be clear: The IRS is the accounts receivable department of the federal government. In FY 2020, it collected about $3.5 trillion on a budget of about $11.51 billion, producing a remarkable return on investment (ROI) of more than 300:1.[25] For this reason, it is economically irrational to underfund the IRS. If a company's accounts receivable department could generate an ROI of 300:1 and the chief executive officer

16 Office of Management and Budget, *President's Management Agenda* 7, 28 (2018), https://www.performance.gov/PMA/Presidents_Management_Agenda.pdf.
17 ACSI, *ACSI Federal Government Report 2019*, at 4 (2020).
18 Forrester Research, Inc., *The US Federal Customer Experience Index, 2019*, at 15-16 (June 11, 2019).
19 Taxpayer First Act, Pub. L. No. 116-25, §§ 1101 & 2101(a), 133 Stat. 981, 985 & 1008 (2019).
20 Government Accountability Office (GAO), GAO-16-468, *Information Technology: Federal Agencies Need to Address Aging Legacy Systems* 28-30 (May 2016), https://www.gao.gov/assets/680/677436.pdf.
21 IRS, Pub. 5336, IRS Integrated Modernization Business Plan (Apr. 2019), https://www.irs.gov/pub/irs-pdf/p5336.pdf.
22 IRS response to TAS information request (Sept. 30, 2020).
23 Coronavirus Response Additional Supplemental Appropriations Act, 2020, S. 4320, Title V, 116th Cong. (2020), https://www.congress.gov/116/bills/s4320/BILLS-116s4320is.pdf.
24 Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Div. E, Title I (2020).
25 GAO, GAO-21-162, *Financial Audit: IRS's FY 2020 and FY 2019 Financial Statements* 78 (Nov. 2020), https://www.gao.gov/assets/720/710591.pdf; Department of the Treasury, *FY 2021 Budget-in-Brief* 83 (2020), https://home.treasury.gov/system/files/266/FY-2021-BIB.pdf.

(CEO) failed to provide enough funding for it to do so, the CEO would be looking for a new job. Whether Congress provides additional funding for the IRS in supplemental appropriations legislation as Chairman Shelby has proposed, increases the Section 302(b) allocation to the Appropriations' Financial Services and General Government subcommittees to allow greater IRS funding,[26] or finds another mechanism, it is critical for taxpayers that the agency that collects taxes be sufficiently funded to serve them well. Americans deserve a quality tax administration they can trust and have confidence in, which is imperative for a functioning voluntary tax system.

Legislative Recommendations

The National Taxpayer Advocate Purple Book this year makes 66 recommendations to strengthen taxpayer rights and improve tax administration. While our recommendations cover a wide variety of subjects and are all worth consideration, I want to highlight ten for particular attention.

- **Provide the IRS with sufficient funding to meet taxpayer needs and improve tax compliance.** This is my top recommendation, as I discussed above.

- **Authorize the IRS to establish minimum competency standards for federal tax return preparers.** Most taxpayers rely on paid preparers to prepare their returns, yet the Government Accountability Office, the Treasury Inspector General for Tax Administration, and other entities have found that preparers make significant errors that can harm both taxpayers and the public fisc. The IRS sought to implement minimum standards for tax return preparers beginning in 2011, including requiring non-credentialed preparers to pass a basic competency test. However, a federal court held the IRS could not implement key components of its plan without statutory authorization.[27] The IRS's plan was well-thought-out, having been developed after extensive consultation with stakeholders.[28] Minimum preparer standards are still needed to protect taxpayers and improve tax compliance. Statutory authorization would allow the IRS to implement them.

- **Expand the U.S. Tax Court's jurisdiction to hear refund cases**. Under current law, taxpayers who owe tax and wish to litigate a dispute with the IRS must go to the U.S. Tax Court, while taxpayers who have paid their tax and are seeking a refund must file suit in a U.S. district court or the U.S. Court of Federal Claims. All taxpayers should have the option to litigate their tax disputes in the U.S. Tax Court. Tax Court judges are specialists, so they understand the nuances of complex tax issues more clearly, and they are well-accustomed to working with unrepresented taxpayers.

- **Restructure the Earned Income Tax Credit (EITC) to make it simpler for taxpayers and reduce improper payments.** TAS has long advocated for dividing the EITC into two separate credits: (i) a refundable worker credit based on each individual worker's earned income, irrespective of the presence of a qualifying child, and (ii) a refundable child credit that would reflect the costs of caring for one or

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26 Under Section 302(b) of the Congressional Budget and Impoundment Control Act of 1974, the House Appropriations Committee and the Senate Appropriations Committee each allocates the new budget authority and total outlays established in the budget resolution among its subcommittees. In FY 2020, the Financial Services and General Government appropriation came to less than $23.8 billion, which includes funding for all agencies under the subcommittee's jurisdiction. *See* Congressional Budget Office Estimate for House Rules Committee Print 116-43, Consolidated Appropriations Act, 2020, H.R. 1158, 116th Cong. (2019) (enacted as Pub. L. No. 116-93), https://www.cbo.gov/system/files/2019-12/hr1158.pdf. If the $23.8 billion cap is not significantly raised, increasing the IRS's budget by $2 billion would require significant cuts to other agency budgets that cannot reasonably be made. Therefore, if Congress decides to allocate significantly more funding to the IRS through the regular appropriations process, it likely will need to do so by increasing the Financial Services and General Government subcommittees' Section 302(b) allocation by the desired amount.

27 *Loving v. IRS*, 917 F. Supp. 2d 67 (D.D.C. 2013), *aff'd*, 742 F.3d 1013 (D.C. Cir. 2014).

28 *See* IRS, Pub. 4832, Return Preparer Review (Dec. 2009), https://www.irs.gov/pub/irs-pdf/p4832.pdf.

more children. For wage earners, claims for the worker credit could be verified with nearly 100 percent accuracy by matching income information on tax returns against Forms W-2, thereby reducing the improper payments rate on those claims to nearly zero. The portion of the EITC that varies based on family size would be combined with the child tax credit into a single family credit.[29]

- **Increase the annual award cap for Low Income Taxpayer Clinics.** When the Low Income Taxpayer Clinic (LITC) matching grant program was established as part of the IRS Restructuring and Reform Act of 1998 (RRA 98), IRC § 7526 limited annual grants to no more than $100,000 per clinic. The cap was not indexed for inflation, and as a result, the per-clinic grant maximum is now much lower in real-dollar terms. In light of the significant value LITCs provide, we are recommending that Congress increase the per-clinic cap to at least $150,000 and then index it to rise with inflation.[30]
- **Clarify that supervisory approval is required before the IRS imposes certain penalties.** IRC § 6751(b)(1) states: "No penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination..." While it may appear requiring that an "initial determination" be approved by a supervisor would mean the approval must occur before the penalty is proposed, the timing of this requirement has been the subject of considerable litigation. Therefore, to effectuate Congress's intent that the IRS not penalize taxpayers in certain circumstances without supervisory approval, the approval should be required earlier in the process. We recommend that Congress amend IRC § 6751(b)(1) to require that written supervisory approval be provided *before* the IRS sends a written communication to a taxpayer proposing a penalty.
- **Require taxpayer consent before allowing IRS Counsel or Compliance personnel to participate in an Independent Office of Appeals conference.** Historically, the IRS's Counsel and Compliance functions provided input into Appeals conferences via the taxpayer case file and, if the case was particularly large or complex, at a pre-conference. However, Counsel and Compliance generally did not attend Appeals conferences with taxpayers, leaving taxpayers and Appeals Officers free to develop rapport, seek common ground, and pursue case resolution.[31] In October 2016, Appeals revised provisions of the Internal Revenue Manual (IRM) to allow Appeals Officers to include personnel from Counsel and Compliance in taxpayer conferences as a matter of routine. In our view, this has compromised the value of the Independent Office of Appeals and is inconsistent with Congress's intent to "reassure taxpayers of the independence" of Appeals.[32] We recommend that Congress require explicit taxpayer consent regarding the inclusion of Counsel or Compliance personnel in advance of any conference between Appeals and a taxpayer.
- **Clarify that taxpayers may raise innocent spouse relief as a defense in collection proceedings and bankruptcy cases.** Congress has enacted rules to relieve "innocent spouses" from joint and several

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29 In 2019, TAS published a comprehensive report recommending steps to restructure and improve the administration of the EITC, with the twin goals of improving the participation rate among eligible individuals and reducing improper payments. *See* National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress vol. 3 (*Earned Income Tax Credit: Making the EITC Work for Taxpayers and the Government*), www.taxpayeradvocate.irs.gov/reports/2020-objectives-report-to-congress/volume-iii/.

30 For more information regarding the services LITCs provide, see IRS Pub. 5066, Low Income Taxpayer Clinics 2020 Program Report (Nov. 2020).

31 For a more detailed discussion of this topic, see National Taxpayer Advocate 2019 Annual Report to Congress 62-68 (Most Serious Problem: *Appeals: The Inclusion of Chief Counsel and Compliance Personnel in Taxpayer Conferences Undermines the Independence of the Office of Appeals*).

32 H.R. Rep. No. 116-39, pt. 1, at 29 (2019) (accompanying H.R. 1957, which was enacted into law without change to this provision as H.R. 3151).

liability in certain circumstances.[33] If the IRS denies a taxpayer's request for innocent spouse relief, the taxpayer generally may seek review of the adverse determination in the Tax Court. However, the Tax Court does not have jurisdiction over collection suits arising under IRC §§ 7402 or 7403, or over bankruptcy proceedings arising under Title 11 of the U.S. Code. Courts have reached inconsistent decisions about whether taxpayers may raise innocent spouse relief as a defense in those categories of cases, undermining the innocent spouse protections and potentially resulting in differing treatment of similarly situated taxpayers. We recommend Congress clarify that taxpayers may raise innocent spouse claims in all such proceedings.

- **Amend the Combat-Injured Veterans Tax Fairness Act of 2016 to allow veterans of the Coast Guard to file claims for credit or refund of taxes improperly withheld from disability severance pay (DSP).** The 2016 Act created an exception from the statute of limitations to allow otherwise time-barred refunds in cases where the Secretary of Defense wrongfully withheld tax from severance payments to wounded veterans. Although the tax code's definition of "military or naval forces of the United States" includes the Coast Guard, the Act as drafted excluded veterans of the Coast Guard from its scope. It appears that omitting the Coast Guard from the DSP tax relief provision may have resulted from a drafting error. Like members of the services within the Department of Defense, members of the Coast Guard often face perilous circumstances and potential injuries as they perform their mandated duties. While the number of veterans affected by this issue is relatively small, fairness and parity in treatment among the armed forces of the United States require that this apparent drafting error be corrected and that a claims period be opened for this group of taxpayers.
- **Clarify that the National Taxpayer Advocate may hire independent legal counsel.** IRC § 7803(c) requires the National Taxpayer Advocate to operate independently of the IRS in key respects. To help ensure this independence, the conference committee report accompanying RRA 98 stated: "The conferees intend that the National Taxpayer Advocate be able to hire and consult counsel as appropriate." This is similar to the authority Congress has granted inspectors general to ensure their independence. Until 2015, the National Taxpayer Advocate was able to hire attorneys to advise her, advocate for taxpayers, and write key sections of her two statutorily mandated reports to Congress. But the Treasury Department at that time began to enforce a Departmentwide policy that requires all attorney-advisors in the Department to report to the General Counsel absent a statutory exception. To continue to advocate for taxpayers effectively and independently, the National Taxpayer Advocate requires statutory authorization to hire attorney-advisors that do not report to other agency officials.

TAS Accomplishments During Fiscal Year 2020

One nice feature of the position of National Taxpayer Advocate is that I have "two bites at the apple" in advocating for systemic change. Because I report directly to the Commissioner, I can advocate for change within the IRS. At the same time, I have the honor of submitting reports directly to Congress, where I can highlight areas of concern and recommend changes. As a general matter, my preferred approach is to resolve as many issues as I can within the IRS as quickly as possible.

TAS advocates at many levels within the IRS. One key area is in IRM guidance, which provides instructions to employees in the various IRS functions. TAS has been working to incorporate provisions of the Taxpayer Bill of Rights into the IRM, particularly IRM provisions that govern examination and collection activities.

33 *See* IRC § 6015.

During FY 2020, TAS made 782 recommendations to modify draft IRM provisions, and the IRS accepted 473 (60 percent) of our recommended changes.

TAS staff also meet regularly with the IRS operating divisions that interact with taxpayers, most notably the Wage and Investment and the Small Business/Self-Employed Divisions. Although often fruitful, some discussions may result in a stalemate. Where appropriate, I may issue a proposed Taxpayer Advocate Directive (TAD). If the issue remains unresolved, I may issue a final TAD that directs the IRS to make specified administrative or procedural changes. In FY 2020, I issued three proposed TADs. The IRS quickly addressed the issues raised in the proposed TADs, so final TADs were not required. Similarly, Local Taxpayer Advocates who work directly with taxpayers may issue Taxpayer Assistance Orders (TAOs) to advocate forcefully in individual cases. During FY 2020, TAS issued 96 TAOs.[34]

I look forward to continuing open and frank discussions within the IRS and to maintaining multiple advocacy channels on behalf of taxpayers. To improve transparency regarding our advocacy activities, we are including a new section entitled "Highlights of TAS Successes on Our Journey of Taxpayer Advocacy Throughout the Past Year" in this report to highlight some of TAS's accomplishments.

Conclusion

The COVID-19 pandemic has presented frustrations and challenges. It also has pulled back the curtain on the significant limitations the IRS faces with technology and with its workforce. Congress's passage of the TFA demonstrates its recognition that taxpayer service and modernized IT are critical for effective tax administration. But this recognition, by itself, does not solve problems. Continued leadership at the IRS and more funding from Congress are the keys to improving tax administration, which includes both the taxpayer experience and tax compliance.

I want to acknowledge and thank the hardworking members of my TAS team and the IRS employees who have risen to this year's challenges to keep the tax system functioning.

I look forward to working with Congress and the IRS as we begin to face the challenges 2021 will bring. Together with my TAS team, I stand ready to work with you to improve the tax system for the benefit of taxpayers in any way we can.

Respectfully submitted,

Erin M. Collins
National Taxpayer Advocate
December 31, 2020

34 For additional information regarding TAOs issued in FY 2020, see the TAS Case Advocacy section of this report.