STRENGTHEN TAXPAYER RIGHTS AND TAXPAYER SERVICE

Legislative Recommendation #1

Elevate the Importance of the Taxpayer Bill of Rights by Redesignating It as Section 1 of the Internal Revenue Code

PRESENT LAW

IRC § 7803(a)(3) requires the Commissioner to "ensure that employees of the Internal Revenue Service are familiar with and act in accord with taxpayer rights as afforded by other provisions of this title [the Internal Revenue Code], including –

(A) *the right to be informed,*
(B) *the right to quality service,*
(C) *the right to pay no more than the correct amount of tax,*
(D) *the right to challenge the position of the Internal Revenue Service and be heard,*
(E) *the right to appeal a decision of the Internal Revenue Service in an independent forum,*
(F) *the right to finality,*
(G) *the right to privacy,*
(H) *the right to confidentiality,*
(I) *the right to retain representation, and*
(J) *the right to a fair and just tax system."*

REASONS FOR CHANGE

Taxpayer rights serve as the foundation for effective tax administration. The U.S. tax system is frequently characterized as a system of "voluntary compliance." While taxpayers ultimately may face penalties for noncompliance, we rely in the first instance on the willingness of taxpayers to file returns on which they self-report their income (some of which is not reported to the IRS and is therefore difficult for the IRS to discover in the absence of self-reporting) and to pay the required tax.

More than 150 million individuals and more than ten million business entities file income tax returns and pay our nation's bills every year, and they are entitled to be treated with respect. Making clear that taxpayers possess rights is not only the right thing to do, but TAS research suggests that when taxpayers have confidence the tax system is fair, they are more likely to comply voluntarily, which may translate into enhanced revenue collection as well.[1]

1 *See* National Taxpayer Advocate 2013 Annual Report to Congress vol. 2, at 33-55 (Research Study: *Small Business Compliance: Further Analysis of Influential Factors*); National Taxpayer Advocate 2012 Annual Report to Congress vol. 2, at 1-70 (Research Study: *Factors Influencing Voluntary Compliance by Small Businesses: Preliminary Survey Results*).

The National Taxpayer Advocate recommends that the ten rights that make up the Taxpayer Bill of Rights (TBOR) codified in IRC § 7803(a)(3) be relocated and re-codified as Section 1 of the tax code. Doing so would make a strong and important statement about the value Congress places on taxpayer rights.[2]

RECOMMENDATION

- Amend § 1 of the IRC to read as follows (and renumber existing IRC §§ 1, 2, and 3 accordingly):

SECTION 1. TAXPAYER BILL OF RIGHTS.

(a) Taxpayer Rights.

(1) In discharging their duties and responsibilities, every officer and employee of the Internal Revenue Service shall act in accordance with taxpayer rights as afforded by other provisions of this title, including —

(a) the right to be informed,
(b) the right to quality service,
(c) the right to pay no more than the correct amount of tax,
(d) the right to challenge the position of the Internal Revenue Service and be heard,
(e) the right to appeal a decision of the Internal Revenue Service in an independent forum,
(f) the right to finality,
(g) the right to privacy,
(h) the right to confidentiality,
(i) the right to retain representation, and
(j) the right to a fair and just tax system.[3]

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2 When we first proposed codifying the Taxpayer Bill of Rights in 2007, we recommended enacting ten taxpayer rights and five taxpayer responsibilities. The responsibilities included (i) the responsibility to be honest, (ii) the responsibility to be cooperative, (iii) the responsibility to provide accurate information and documents on time, (iv) the responsibility to keep records, and (v) the responsibility to pay taxes on time. National Taxpayer Advocate 2007 Annual Report to Congress 478-489 (Legislative Recommendation: *Taxpayer Bill of Rights and* De Minimis *"Apology" Payments*). When Congress added the ten rights to IRC § 7803(a)(3), it did not include the responsibilities.

3 The provisions of the TBOR were codified at IRC § 7803(a)(3). *See* Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Div. Q, § 401(a), 129 Stat. 2242, 3117 (2015). During the drafting of the TBOR language, we understand staff of the Joint Committee on Taxation (JCT) raised concerns that if the TBOR were codified without limitation, some taxpayers might assert purported violations and seek remedies in administrative and litigated disputes, potentially requiring the IRS and the courts to adjudicate vague claims with no clear standard for resolution. After considering the JCT's concerns, the tax-writing committees ultimately settled on the language enacted as IRC § 7803(a)(3). To avoid reopening this issue, we are proposing to relocate the existing language in IRC § 7803(a)(3) virtually without change. We are recommending a minor refinement to the lead-in language that we think makes it read more clearly and does not substantially change the meaning. However, if the JCT believes our refinement does substantially change the meaning, the text of IRC § 7803(a)(3) could be re-designated as IRC § 1 with no change in language at all.

Legislative Recommendation #2

Revamp the IRS Budget Structure and Provide Sufficient Funding to Improve the Taxpayer Experience and Modernize the IRS's Information Technology Systems

PRESENT LAW

Congress controls the IRS's priorities by dividing its annual appropriation into four accounts: Taxpayer Services, Enforcement, Operations Support, and Business Systems Modernization. With limited exceptions, the IRS may not reallocate its appropriated funding among its accounts.

Under the Congressional Budget and Impoundment Control Act of 1974,[1] as amended, the federal appropriations process is generally a zero-sum game: Once Congress establishes spending caps for the upcoming fiscal year, a dollar allocated to one agency or program leaves one less dollar available for allocation to another agency or program.

As an exception to the spending caps, Congress in some years has authorized a "program integrity cap adjustment" (PIC), which allows it to appropriate funding for IRS enforcement initiatives in excess of the caps on the basis that the initiatives are projected to generate a positive return on investment (ROI).[2] Although Congress has not authorized a PIC since fiscal year (FY) 2010, when it gave the IRS an additional $600 million, almost every administration budget proposal has requested a PIC.[3]

REASONS FOR CHANGE

The IRS mission statement says the agency's mission is to "[p]rovide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all."[4] Since FY 2010, the IRS budget has been reduced by about 20 percent after adjusting for inflation.[5] Largely as a result of these budget reductions, the IRS is neither providing top quality service nor enforcing the law with fairness to all.[6] In addition, its information technology (IT) systems are in desperate need of upgrades.

1 Pub. L. No. 93-344, 88 Stat. 297 (1974).

2 *See*, *e.g.*, Consolidated Appropriations Act, 2010, Pub. L. No. 111-117, Div. C, 123 Stat. 3034, 3165 (2009) (IRS Administrative Provision § 105 provided a cap adjustment of $890 million for "enhanced tax law enforcement"); H.R. Con. Res. 218, 103rd Cong. § 25 (1994). For a detailed discussion of the mechanics of cap adjustments, see H.R. Rep. No. 103-490, at 58 (1994).

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

4 *See* IRS, The Agency, Its Mission and Statutory Authority (Aug. 9, 2019), https://www.irs.gov/about-irs/the-agency-its-mission-and-statutory-authority.

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

6 *See* National Taxpayer Advocate 2019 Annual Report to Congress 23-33 (Most Serious Problem: *IRS Funding: The IRS Does Not Have Sufficient Resources to Provide Quality Service*).

The IRS Is Not Providing Top Quality Service

In FY 2020, the IRS received 100.5 million telephone calls. Its employees answered only 24 percent of these calls, with hold times averaging 18 minutes.[7] 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 Customer Experience Index™.[8] By these measures, the IRS performs poorly. 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."[9] The 2019 Forrester report ranked the IRS 13th out of 15 federal agencies and characterized the IRS's score as "very poor."[10]

To underscore its concerns about taxpayer service, Congress enacted the Taxpayer First Act (TFA) in 2019.[11] Among other things, the TFA directed the IRS to develop comprehensive multiyear plans to improve taxpayer services and modernize its IT systems. These plans will require significant additional funding to implement. The IRS will not be able to make much progress in improving either its taxpayer services or its IT systems with its current funding level and with current restrictions on transferring funds among its accounts.

Upgraded Information Technology Systems Are Needed to Improve Service and Enforcement

The two IRS systems containing the official records of individual and business taxpayer accounts are the oldest major technology systems in the federal government. The IRS also has about 60 case management systems that generally are not interconnected. Each function's employees must transcribe or import information from electronic systems and mail or fax it to other functions. Obsolete IT systems limit the functionality of online taxpayer accounts, prevent taxpayers from obtaining full details about the status of their cases, and prevent the IRS from selecting the best cases for compliance actions.

The IRS is taking steps to improve its technology. It 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 superior service to taxpayers and deliver long-term budget efficiencies.[12] However, 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.[13] In FY 2020, the Business Systems Modernization (BSM) account was funded at only $180 million. In July 2020, the Chairman of the Senate Appropriations

7 While telephone performance in FY 2020 partially reflected the impact of the COVID-19 pandemic on IRS operations, the IRS's telephone performance in FY 2019 was not much better. In FY 2019, the IRS received 99.4 million telephone calls and answered only 29 percent, with hold times averaging 16 minutes. IRS, Joint Operations Center, Snapshot Reports: Enterprise Snapshot (week ending Sept. 30, 2020). It should be noted that the IRS and TAS measure taxpayers' ability to reach IRS telephone assistors differently. The IRS's "Level of Service" measure generally divides the number of taxpayers who reach a live assistor by the number of calls the IRS system routes to live assistors. Calls routed for automated assistance and callers who hang up before they are placed in a queue are excluded from the IRS's denominator. By contrast, TAS assumes callers generally want to speak with a live assistor and would not hang up if the IRS provided prompt service. For that reason, TAS's measure of percentage of calls answered divides the number of taxpayers who reach a live assistor by total calls received. In FY 2020, the IRS reports a Level of Service of 51 percent. TAS reports that live assistors answered 24 percent of taxpayer calls. For discussion of the different measurements, see National Taxpayer Advocate 2020 Annual Report to Congress (Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Difficulty Reaching IRS Representatives Due to Outdated Information Technology and Insufficient Staffing*).

8 Office of Management and Budget, *President's Management Agenda* 7, at 28 (2018), https://www.performance.gov/PMA/Presidents_Management_Agenda.pdf.

9 American Customer Satisfaction Index, *ACSI Federal Government Report 2019*, at 4 (2020).

10 Forrester Research, Inc., *The US Federal Customer Experience Index, 2019*, at 15-16 (June 11, 2019).

11 Taxpayer First Act, Pub. L. No. 116-25, §§ 1101 & 2101(a), 133 Stat. 981, 985 & 1008 (2019).

12 IRS Pub. 5336, IRS Integrated Modernization Business Plan (Apr. 2019).

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

Committee introduced legislation that would provide $2 billion to fund IT technology upgrades over the next six years, but the legislation did not pass.[14]

While the level of BSM funding is critical, so is the predictability of funding. Significant fluctuations from year to year can disrupt IT contracts and increase the long-term cost of upgrades. Over the last four years, the funding level for the BSM account was $290 million in FY 2017, $110 million in FY 2018, $150 million in FY 2019, and $180 million in FY 2020.[15] The IRS cannot effectively plan and execute a long-term IT overhaul if it does not know whether there will be enough funds in future years to support its current commitments.

The IRS Is an Extraordinary Investment

In FY 2020, the IRS collected about $3.5 trillion on a budget of about $11.51 billion, producing a remarkable ROI of more than 300:1.[16] 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 (CEO) failed to provide enough funding for it to do so, the CEO would be fired. Yet in general, the federal budget rules exclusively take into account outlays and ignore the revenue those outlays generate. The program integrity cap adjustment mechanism gives Congress the ability to provide some funding above the spending caps, but because it historically has been used solely to fund enforcement initiatives, it can lead to imbalances in the IRS's operations.

Changes to the IRS Budget Structure and Funding Levels Are Needed

Separate from funding levels, the IRS would benefit from a revamped budget structure. Most IRS initiatives require resources from more than one of the IRS's budget accounts. When the IRS hires more collection personnel through the Enforcement account, for example, it requires funding for additional office space, equipment, and the like from the Operations Support account. When the IRS takes additional enforcement actions against taxpayers and the taxpayers call or visit the IRS, there needs to be sufficient funding in the Taxpayer Services account to answer the calls and handle the visits. If Congress provides a boost to the Enforcement account without corresponding increases to the Operations Support and Taxpayer Services accounts, the IRS cannot use the funding in a way that is reasonable and fair to taxpayers. Similarly, when Congress requires that all IT equipment be funded from the Operations Support account and it does not adequately fund that account, or it does not provide sufficient flexibility for the IRS to reprogram funds from Enforcement or Taxpayer Services to the Operations Support account, it significantly limits the IRS's ability to use technology to improve taxpayer service and to equip its employees with the technology they need to be successful.[17]

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14 Coronavirus Response Additional Supplemental Appropriations Act, 2020, S. 4320, Title V, 116th Cong. (2020).

15 *See* Department of the Treasury, FY 2021 Budget in Brief 83 (2020) (showing BSM level in FYs 2020 and 2019); Department of the Treasury, FY 2020 Budget in Brief 69 (2019) (showing BSM level in FY 2018); Department of the Treasury, FY 2019 Budget in Brief 61 (2018) (showing BSM level in FY 2017).

16 Government Accountability Office, GAO-21-162, *Financial Audit: IRS's FY 2020 and FY 2019 Financial Statements* 78 (Nov. 2020); Department of the Treasury, FY 2021 Budget-in-Brief 83 (2020), https://home.treasury.gov/system/files/266/FY-2021-BIB.pdf.

17 The annual appropriations acts give the IRS some, but limited, ability to transfer funds among its accounts. The acts allow the IRS to transfer up to four percent of funds made available for Enforcement and up to five percent of funds made available for Taxpayer Services, Operations Support, and Business Systems Modernization to other accounts, but only with the advance approval of the House and Senate Appropriations Committees. *See* Consolidated Appropriations Act, 2020, Pub. L. No. 116-93, 133 Stat. 2317, 2441 (2019).

Therefore, we believe Congress should not rely on program integrity cap adjustments to fund the IRS unless it takes a holistic view of compliance initiatives and funds the associated downstream costs as well. Ideally, Congress should revisit the current IRS budget structure and develop one that is more in line with the restructured IRS being proposed under TFA and gives the IRS more flexibility to transfer funds among its accounts so it can pay for the full costs associated with its programs and initiatives (*e.g.,* the overhead and downstream taxpayer service costs associated with a compliance initiative).

RECOMMENDATIONS[18]

- Provide sufficient funding for the IRS to implement its Integrated Modernization Business Plan so it can replace its 1960s technology systems, create an integrated case management system, and offer robust online accounts for taxpayers and practitioners.[19]
- Provide sufficient funding for the IRS to implement the Taxpayer First Act, which will change how the IRS engages with taxpayers and increase digital interactions.[20]
- Replace the current IRS budget structure with a new structure that better reflects how the IRS operates and gives the IRS more flexibility to move funds among its accounts so it can pay for the full costs associated with its programs and initiatives (*e.g.,* the overhead and downstream taxpayer service costs associated with a compliance initiative).
- If Congress retains the current budget structure, ensure the IRS receives balanced funding by taking into account the interactive effects of changing the funding level for one IRS account on other IRS accounts, including the downstream increase in telephone calls and TAS cases that are likely to result from increased enforcement funding.[21]

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18 The four recommendations presented herein are relatively high-level. In the "Most Serious Problems" facing taxpayers, discussed in the National Taxpayer Advocate 2020 Annual Report to Congress, we address more specific funding needs. Among them are funding to increase the IRS's workforce and funding to increase the "Level of Service" on the IRS's telephone lines to at least 80 percent, with average hold times not to exceed five minutes. *See* National Taxpayer Advocate 2020 Annual Report to Congress (Most Serious Problem: *IRS Recruitment, Hiring, and Employee Retention: Taxpayer Service and Taxpayer Rights Are Directly Linked to the IRS's Need to Improve Its Recruitment, Hiring, and Retention Strategies*); National Taxpayer Advocate 2020 Annual Report to Congress (Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Difficulty Reaching IRS Representatives Due to Outdated Information Technology and Insufficient Staffing*).

19 The IRS's IT challenges are discussed in more detail in the "Most Serious Problems" section of the National Taxpayer Advocate 2020 Annual Report to Congress. *See* National Taxpayer Advocate 2020 Annual Report to Congress (Most Serious Problem: *Information Technology Modernization: Antiquated Technology Jeopardizes Current and Future Tax Administration, Impairing Both Taxpayer Service and Enforcement Efforts*); National Taxpayer Advocate 2020 Annual Report to Congress (Most Serious Problem: *Online Records Access: Limited Electronic Access to Taxpayer Records Through an Online Account Makes Problem Resolution Difficult for Taxpayers and Results in Inefficient Tax Administration*); National Taxpayer Advocate 2020 Annual Report to Congress (Most Serious Problem: *Refund Delays: Taxpayers Whose Legitimate Returns Are Flagged by IRS Fraud Filters Experience Excessive Delays and Frustration in Receiving Their Refunds*).

20 The IRS's funding needs to implement the Taxpayer First Act are discussed in more detail in the "Most Serious Problems" section of the National Taxpayer Advocate 2020 Annual Report to Congress. *See* National Taxpayer Advocate 2020 Annual Report to Congress (Most Serious Problem: *Digital Communications: Limited Digital Communications With the IRS Make Problem Resolution Unnecessarily Difficult for Taxpayers*).

21 The importance of balanced funding among the IRS's budget accounts is discussed in more detail in the "Most Serious Problems" section of the National Taxpayer Advocate 2020 Annual Report to Congress. *See* National Taxpayer Advocate 2020 Annual Report to Congress (Most Serious Problem: *Information Technology Modernization: Antiquated Technology Jeopardizes Current and Future Tax Administration, Impairing Both Taxpayer Service and Enforcement Efforts*).