

## TAS Systemic Advocacy Objectives

### INTRODUCTION

IRC § 7803(c)(2)(B)(i) requires the National Taxpayer Advocate to annually submit a report to Congress that describes the objectives outlined by the Office of the Taxpayer Advocate for the coming fiscal year (FY) by June 30. This report is known as the Objectives Report. The following sections present TAS's key goals and planned activities for FY 2022 in three areas: Systemic Advocacy Objectives, TAS Case Advocacy and Other Business Objectives, and TAS Research Objectives.

Systemic Advocacy Objectives describe the objectives TAS will pursue to address systemic issues causing taxpayer burden or harm. Similar to the way Most Serious Problems are identified in the Annual Report to Congress, the National Taxpayer Advocate calls upon a multitude of sources to assist in identifying Systemic Advocacy Objectives including the experience of TAS staff, trends in advocacy efforts and TAS casework, and interactions with practitioners and external stakeholders.

TAS Case Advocacy and Other Business Objectives describe activities TAS will pursue to advance its advocacy efforts for individual taxpayers through casework. This section also details planned TAS activities for organizational improvement and promotion of its advocacy efforts. Local case advocates work directly with taxpayers on identifying issues, researching solutions, and advocating on taxpayers' behalf within the IRS. TAS's goal is to continuously improve its internal processes and business operations on behalf of taxpayers.

TAS Research Objectives focus on understanding how IRS procedures and tax laws affect taxpayers and how taxpayers react to IRS actions. The objectives of TAS Research are to improve IRS operations and assist the IRS with balancing its compliance efforts with taxpayer rights. Four research projects are scheduled for FY 2022.

### 1. IMPROVE IRS RECRUITMENT, HIRING, AND RETENTION STRATEGIES

The IRS's success relies heavily upon its workforce and employee skillsets to accomplish its mission and provide quality taxpayer service. Therefore, it is imperative the IRS not only receive the funding necessary to support programs but also be able to attract, hire, and retain the right individuals to deliver these programs. The size of the IRS workforce has declined significantly since FY 2010.<sup>1</sup> During this decline, the IRS has been unable to keep pace with its projected hiring, causing positions that help carry out its crucial mission of tax administration to go unfilled.<sup>2</sup> Nearly 5,600 employees on average leave the IRS each year for the private sector or another job;<sup>3</sup> when added to the number of employees eligible to retire, approximately 32 percent of

1 The number of full-time equivalent (FTE) positions declined from 94,711 in FY 2010 to 73,554 in FY 2019. IRS, 2019 Data Book, Table 31: Collections, Costs, Personnel, and U.S. Population, Fiscal Years 1990-2019 (2020).

2 Between FYs 2017 and 2019, the IRS failed to hire over 5,000 FTEs for which it had allocated funding. Chief Financial Office (CFO) FY 2017-2020 Operational Plan vs. Actual Full-Time Equivalent (FTE); IRS response to TAS information request (Sept. 16, 2020) (Derived from: Integrated Financial System).

3 Each year on average, 5,576 employees leave the IRS. IRS HCO, IRS Gains and Losses Report by BOD FYs 2017-2020 Pay Period 17; IRS response to TAS information request (Oct. 2, 2020). This data was derived from IRS National Finance Center (NFC) transactions from Oct. 2, 2016 to Aug. 29, 2020 (Dashboard available internally to IRS).

employees could leave the IRS over the next year.<sup>4</sup> If the IRS does not make significant changes, these staffing shortages will compound and pose significant threats to the U.S. Treasury and indirectly harm taxpayer services and voluntary compliance.

All IRS hiring is centralized under the Human Capital Office (HCO), including staffing that supports hiring in the IRS's Business Operating Divisions (BODs). With the decline in IRS budgets over recent years, the staffing of HCO's employment office that supports BOD hiring has also declined.<sup>5</sup> HCO has taken steps to mitigate this by hiring additional staff and implementing organizational and process changes. However, the National Taxpayer Advocate is concerned that a potential ten percent increase<sup>6</sup> in IRS funding in FY 2022 will leave HCO unprepared to manage the increased hiring demand without additional resources. This may lead to HCO having to prioritize certain hiring over the total need of the IRS.

**Objective 1 for FY 2022 – TAS will continue to dialogue with the IRS about hiring, recruitment, and retention and will review IRS HCO strategies for measurable improvement and strategies, and if appropriate, make recommendations for improvement.**

- Activity 1: Continue to advocate for adequately sustained, multiyear funding to allow for increased IRS hiring capacity and to overcome employee attrition.
- Activity 2: Determine if “direct-hire” is needed, and if so, continue to advocate for additional “direct-hire” authority.
- Activity 3: Review changes HCO has implemented to determine if it achieved measurable results to the improvement of the hiring process. This could include making recommendations for further change and improvement.
- Activity 4: Collaborate with HCO, assist and comment on its plans for recruitment and hiring, and make recommendations that will meet the upcoming IRS hiring challenges while also increasing its level of customer service for taxpayers and stakeholders.

**2. COLLABORATE WITH THE IRS IN THE DEVELOPMENT OF ITS TRAINING STRATEGY TO ENHANCE THE TAXPAYER EXPERIENCE**

As required by the Taxpayer First Act (TFA), in January 2021, the IRS submitted its Taxpayer First Act Report to Congress.<sup>7</sup> The report outlines the IRS's vision for a new training strategy, among other strategic plans required by TFA. The IRS training strategy includes creating a centralized educational organization, or “IRS University,” and developing “Taxpayer-First Training.” Taxpayer-First Training includes:

- Training on “civility, inclusive behaviors, cultural competency, taxpayer rights, understanding taxpayer needs, and multi-language access;”<sup>8</sup> and

4 At the end of FY 2020, 81,115 employees were on payroll and 20,767 were eligible to retire or eligible within one year. IRS HCO, Human Capital Analytics and Technology, IRS Workforce Retirement Insight (Oct. 21, 2020).

5 IRS HCO, HCO 2022 (Phase 1) Project Charter (Draft Version 5) (May 24, 2019); IRS response to TAS information request (Oct. 2, 2020).

6 The President's FY 2022 Discretionary Budget Proposal for the IRS provides \$13.2 billion, an increase of \$1.2 billion, or 10.4 percent, above the 2021 enacted level, to administer the nation's tax system fairly, collect \$3.5 trillion in taxes to fund the government, and strengthen tax compliance. See Office of Management and Budget, *The President's Fiscal Year (FY) 2022 Discretionary Budget Proposal* (Apr. 9, 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/04/FY2022-Discretionary-Request.pdf>.

7 Taxpayer First Act, Pub. L. No. 116-25, § 2402, 133 Stat. 1014 (2019); IRS, Taxpayer First Act Report to Congress (Jan. 2021).

8 IRS, Taxpayer First Act Report to Congress § 5.01 (Jan. 2021).

- Taxpayer Bill of Rights training for all employees “relying on the Taxpayer Advocate Service as a key partner and primary subject matter expert. Taxpayer Bill of Rights training will be delivered to all IRS Employees beginning in FY2021.”<sup>9</sup>

Although not explicitly addressed in the IRS training strategy, the IRS must have efficient hiring practices for the training strategy to succeed.<sup>10</sup> Accomplishing the culture shift contemplated in the strategy may require hiring new employees with competencies more typical of social workers and providing training in related areas. Additional areas of training content should include data analytics, data mining, and utilization of other technical tools while also emphasizing emerging areas of law or patterns of potential abuses, all with an eye toward an increase in hiring over the next decade to replace retiring employees and increase staffing.

### **Objective 2 for FY 2022 – TAS will collaborate in developing the IRS’s training strategy.**

- Activity 1: Continue to participate in IRS teams that develop and implement the IRS’s training strategy for its workforce of the future.
- Activity 2: Identify obstacles the IRS faces in meeting its training goals and identify practices the IRS can adopt to overcome or minimize obstacles to effective training.
- Activity 3: Work with the IRS to provide recommendations for improved training, levels of training, subject matter training courses, and timing of training, and work with the IRS to determine the effectiveness of its training strategy over the next five years.

## **3. EXPAND THE FUNCTIONALITY OF ONLINE ACCOUNT SERVICES FOR TAXPAYERS AND PRACTITIONERS**

Technology is reshaping how end-users interact with service providers — customers have come to expect secure, convenient access to their personal information and the ability to engage in communications and transactions with financial services providers and governmental agencies. The disruptions in IRS operations due to the COVID-19 pandemic highlighted the need for robust online services, including digital access to notices.

Certainly, the IRS has embarked into the digital self-help realm; the IRS had 9.5 million unique users access its individual Online Account platform in FY 2021 through May 2021, an increase of 113 percent over the same period in FY 2020.<sup>11</sup> The IRS also has other online offerings (*e.g.*, Direct Pay, Electronic Federal Tax Payment System, IRS2Go, Where’s My Refund), but many are standalone systems that do not fully meet the needs of taxpayers and practitioners.

Of the IRS’s many technology needs, the development of robust, secure online accounts is most critical, as they would change how practitioners and taxpayers communicate and work with the IRS. Although the IRS’s individual Online Account platform has basic functionality, TAS’s recommended version of a robust online account for practitioners and taxpayers would allow taxpayers and their authorized representatives full or partial access to the taxpayer’s online account records and include account balance and tax year or account period details; view estimated payments and credits before filing a return; view payment history; view

<sup>9</sup> IRS, Taxpayer First Act Report to Congress § 5.03 (Jan. 2021).

<sup>10</sup> See Systemic Advocacy Objective: *Improve IRS Recruitment, Hiring, and Retention Strategies*, *supra*.

<sup>11</sup> IRS Online Accounts Monthly Account Dashboard (May 2021).

a list and images of tax returns; view a list and images of all notices and correspondence; view and update contact information; view proposed assessments; view a list of authorized representatives (tax professional or a tax professional with a power of attorney) and manage who can access the taxpayer's account; view a list of activities that occurred on the account, such as the last time the taxpayer or his or her authorized representative accessed the account; calculate a balance due for a date in the future; file a nonresident withholding waiver request; protest a proposed assessment; chat with a customer service representative about confidential matters; send a secure message with attachments; and receive an email when the IRS sends a notice or correspondence. Without a substantial improvement to the functionality of its online account offerings, the IRS will be unable to provide first-rate taxpayer service and efficiently carry out its enforcement and collection efforts.

### **Objective 3 for FY 2022 – TAS will develop a strategy to gain insights into taxpayer needs that will inform a more robust prioritization plan for digital notice delivery.**

- Activity 1: Work with the IRS on its timeline for when all notices issued by the IRS will be viewable within Online Accounts and Tax Pro Online Accounts.
- Activity 2: Work with the IRS to identify additional functionalities for Online Accounts.
- Activity 3: Review and comment on non-IRS online service offerings available to practitioners and work with the IRS in its development of the Tax Pro Online Account to provide the tools needed to effectively assist taxpayers.
- Activity 4: In collaboration with the IRS, find ways to integrate the various online services into a seamless platform (from the taxpayer/practitioner point of view).

## **4. EXPAND TECHNOLOGY CAPABILITIES AND ACCESS TO CUSTOMER SERVICE**

The ability to speak to an IRS employee and receive quality service, whether over the phone or in person, is critical to meeting the IRS's mission to provide "top quality service."<sup>12</sup> The IRS received more telephone calls during the 2021 filing season than it had ever received in a full fiscal year; although IRS employees have answered more calls than last year, they have not been able to manage the flood of calls.<sup>13</sup> Through May 22 of the tax year 2020 filing season, the IRS reported a "Level of Service" on its Accounts Management telephone lines of 15 percent with only seven percent of taxpayer calls reaching a telephone assistor.<sup>14</sup> In October 2011, the IRS began offering Virtual Service Delivery (VSD) for in-person service at Taxpayer Assistance Centers (TACs); VSD provides "video conferencing technology to assist taxpayers at IRS partner sites to provide alternative service delivery channels."<sup>15</sup> The IRS also started a Web Service Delivery pilot staffed by a group of TAC assistors that allows taxpayers to attend a virtual appointment from any remote location.<sup>16</sup>

12 IRS, The Agency, Its Mission and Statutory Authority, <https://www.irs.gov/about-irs/the-agency-its-mission-and-statutory-authority> (last visited May 26, 2021).

13 Until this year, the IRS had received its highest number of telephone calls in FY 2008 when it logged about 166.6 million net attempts. As of May 22 (five days after the end of the 2021 filing season) — with more than four months still left in FY 2021 — the IRS had received about 167 million calls. IRS, JOC Snapshot Reports, Enterprise Total (comparing FY ending Sept. 30, 2008, with week ending May 22, 2021).

14 IRS, JOC Snapshot Reports, Accounts Management (week ending May 22, 2021).

15 Internal Revenue Manual (IRM) 21.3.4.2.3, Virtual Services Delivery (VSD) (Oct. 1, 2020). See also IRM 21.3.4.2.3 for types of service available through VSD. See also TIGTA, Ref. No. 2019-IE-R002, *Although Virtual Face-to-Face Service Shows Promise, Few Taxpayers Use It* 410-412 (Nov. 13, 2018).

16 IRS, Wage and Investment (W&I) Division, Business Performance Review Q1 FY 2020, at 10 (Jan. 31, 2020).

While the IRS has made progress, it needs to do more to improve telephone and in-person service. With the much-anticipated start of Advance Child Tax Credit payments in July 2021 and the opening of the associated portals, TAS is concerned about the potential increase in taxpayer calls to the IRS from affected taxpayers searching for advice and answers.

#### **Objective 4 for FY 2022 – TAS will collaborate with the IRS to ensure continued improvement of the IRS’s telephone and in-person service.**

- Activity 1: Review the outcomes of the Security Summit Initiative, a partnership between the IRS, state revenue departments, private sector tax industry leaders, and other government agencies, and work with the IRS to consider potential strategies to manage high demand communications.
- Activity 2: Work with the IRS to determine the full scope of customer service representative work and expand avenues to collect real-time feedback from taxpayers to assist the IRS and strategize how best to meet the needs of taxpayers.
- Activity 3: Work with the IRS in its efforts to expand text chat, callback technology, virtual face-to-face technology, and other technology advancements to allow for scheduled video chats and a more personalized customer service experience, using computers, tablets, or mobile phones.
- Activity 4: Continue to advocate for adequate, sustained multiyear funding for IRS customer service to better meet taxpayers’ needs.
- Activity 5: Continue to advocate that the IRS provide timely and useful information for at least 85 percent of those taxpayers needing phone assistance.

### **5. PROVIDE TAXPAYERS A BETTER UNDERSTANDING OF IRS PROCESSES AND PROCEDURES BY PROMOTING DETAILED AND TIMELY IRS TRANSPARENCY**

The vast majority of taxpayers will receive their refunds in a matter of weeks, or sometimes even days, and never give another thought as to what happened to their return from the time they filed it until the time they received their refund. However, during the 2021 filing season, primarily due to the pandemic, millions of taxpayers had their refunds delayed. Specifically, the IRS had over 35 million returns awaiting a human touch to be processed.<sup>17</sup> The specific reasons for the delays are not always clearly communicated to taxpayers, leaving them to wonder when they will receive their refund, what is causing the delays, and what they can do to expedite the process.

Although there are a number of tools for taxpayers to obtain updates on the status of their refunds (most notably the Where’s My Refund tool and the IRS2Go app), the refund updates provided by these tools, such as “Your return is being processed,” provide taxpayers only limited information without providing an estimated date of the issuance of their refund. IRS written correspondence informing taxpayers of their refund delays or changes made to their tax returns are in some cases unclear and do not provide taxpayers with key information as to why their refund is delayed, what change has been made to their return, or what

<sup>17</sup> Data from IRS systems and W&I as of May 22, 2021, showing 32.6 million returns either waiting to be processed or where processing was suspended and from Customer Account Services. Form 1040-X Consolidated Inventory Report for week ending May 22, 2021, showing 2.7 million unprocessed amended returns for individuals in either IRS Submission Processing or Accounts Management functions. See *Review of the 2021 Filing Season*, *supra*.

they need to do if they disagree.<sup>18</sup> This lack of information often drives taxpayers to call the IRS, but assistors cannot provide them with details as they cannot view the precise reason for the delay on IRS systems.<sup>19</sup>

Taxpayers need clear, concise information from the IRS when preparing their return or dealing with issues that arise after they have filed their return and received their refund, such as examination or collection issues. The IRS posts a vast amount of information on its website and disburses information through multiple social media outlets. Although the IRS's placement and disbursement of information is extensive, it can also be difficult to navigate and the content can be challenging to understand. For example, the IRS posted about 160 frequently asked questions (FAQs) on economic impact payments but did not create a search engine to query these questions, leaving taxpayers to scroll through different categories of questions over several pages to find the answers to a particular issue.<sup>20</sup> In addition, when taxpayers locate an answer to their question in the FAQs, the extent to which they can rely upon the guidance is limited because FAQs do not rise to the level of "published guidance." Therefore, taxpayers cannot rely on FAQs to establish substantial authority to avoid penalties for inaccurate reporting.<sup>21</sup> Thus, taxpayers and practitioners are understandably reluctant to rely upon the FAQs published by the IRS.

To address some of these issues, the IRS needs additional resources to enhance technology and systems, such as taxpayer and practitioner online accounts, while other issues require the IRS to make a greater commitment to transparency, such as improving the quality of the search engine for the IRS website; more timely, informative, and clearer written correspondence; and specificity on the extent to which taxpayers can rely on FAQs.<sup>22</sup>

### Objective 5 for FY 2022 – TAS will work with the IRS to increase its transparency.

- Activity 1: Advocate for Congress to appropriate more funding for the IRS to enhance its outdated systems and to modernize its technology, which will ultimately aid in making IRS processes more transparent to taxpayers.
- Activity 2: Work with the IRS to improve written correspondence informing taxpayers of changes such as refund delays and what they can do, if anything, to expedite processing.

18 See National Taxpayer Advocate 2020 Annual Report to Congress 148 (Most Serious Problem: *Refund Delays: Taxpayers Whose Legitimate Returns Are Flagged by IRS Fraud Filters Experience Excessive Delays and Frustration in Receiving Their Refunds*); National Taxpayer Advocate 2014 Annual Report to Congress 163 (Most Serious Problem: *Math Error Notices: The IRS Does Not Clearly Explain Math Error Adjustments, Making It Difficult for Taxpayers to Understand and Exercise Their Rights*).

19 Even if the taxpayer can get through on the IRS's phone lines, the IRS may not be able to provide the information the taxpayer needs. In certain circumstances, the reason for the delay has not been input on IRS systems, or in other circumstances, the IRS assistor may not have access to the specific system where the reason for the delay is specified. During the 2021 filing season, about three percent of taxpayer calls reached a telephone assistor of the roughly 85 million taxpayer calls to the IRS's 1040 telephone line, with the IRS reporting an official level of service of six percent of calls answered. ("CSR Level of Service" is an IRS performance measure that reflects the number of calls answered by CSRs divided by the number of calls directed to CSRs (*i.e.*, it excludes primary abandons, taxpayers who encounter busy signals or are disconnected, and calls routed for automated responses)). IRS, JOC Snapshot Reports, Accounts Management (week ending May 22, 2021).

20 IRS, Economic Impact Payment Information Center, <https://www.irs.gov/coronavirus/economic-impact-payment-information-center> (last visited June 9, 2021). IRS, Questions and Answers about the Second Economic Impact Payment, <https://www.irs.gov/coronavirus/second-eip-faqs> (last visited June 9, 2021). IRS, Questions and Answers About the Third Economic Impact Payment, <https://www.irs.gov/newsroom/questions-and-answers-about-the-third-economic-impact-payment> (last visited June 9, 2021).

21 National Taxpayer Advocate 2021 Fiscal Year Objectives Report to Congress 35 (Systemic Advocacy Objective: *Protecting the Rights of Taxpayers Impacted by the COVID-19 National Emergency and Restoring Much-Needed Taxpayer Services*). To address this issue, TAS has encouraged the IRS to publicly state that it will abide by its own FAQs. See also IRS, Understanding IRS Guidance – A Brief Primer, <https://www.irs.gov/newsroom/understanding-irs-guidance-a-brief-primer> (last visited June 16, 2021).

22 See Systemic Advocacy Objective: *Expand the Functionality of Online Account Services for Taxpayers and Practitioners, supra*.

- Activity 3: Advocate that the IRS specify the extent to which taxpayers can rely on FAQs, number and provide effective dates for all FAQs, and not delete previously issued guidance from its website even if its position has changed.

## 6. IMPROVE TAXPAYER ACCESS TO DIGITAL COMMUNICATION OPTIONS AND PERMIT DIGITAL SIGNATURES

Last year's closure of the telephone call centers and TACs and the challenges resulting therefrom exposed critical shortcomings in IRS service and communication channels. The pandemic highlighted the necessity for the IRS to increase the availability and use of digital communications, including the electronic exchange of correspondence and documents in a secure environment for critical services while still providing telephone service for taxpayers who are unable or choose to call rather than use technology. The IRS is working to improve access as mandated by the Taxpayer First Act, and it outlined its vision for improved digital communication options in its Taxpayer First Act Report to Congress.<sup>23</sup> On a positive note, the IRS anticipates implementing Secure Access Digital Identification (SADI) in conjunction with its Child Tax Credit Upload Portal and then implementing it for other systems beginning FY 2022. SADI is anticipated to modernize the e-authentication platform and improve online access for all taxpayers.

To improve its customer service, the IRS must continue moving forward its efforts to expand and make permanent options to digitally transmit and sign documents, reduce authentication barriers for many digital applications, use email or other similar communication tools in a secure environment, provide digital communication options for all taxpayers (individuals and businesses), provide mobile-ready digital options, and continue virtual face-to-face service options.

During the pandemic, social distancing measures separated practitioners from clients, which led the IRS to allow the use of digital signatures. Most recently, the IRS has extended through December 31, 2021, the option for taxpayers and representatives to use electronic or digital signatures when signing more than 40 forms that currently require a handwritten signature.<sup>24</sup> The National Taxpayer Advocate continues to recommend the IRS make permanent all temporary changes to electronic or digital signature requirements implemented in response to the pandemic.<sup>25</sup> In response to the National Taxpayer Advocate's recommendation, the IRS agreed only in part, stating "[n]ot all temporary changes may be made permanent due to National Institute for Standards & Technology (NIST) requirements." However, the IRS will continue to work toward "identifying permanent signature solutions that allow for electronic submission of forms and digital transactions in a secure manner that meets NIST requirements."<sup>26</sup> The National Taxpayer Advocate encourages the IRS to quickly identify viable signature solutions and implement them expeditiously.

23 Taxpayer First Act, Pub. L. No. 116-25, 133 Stat. 981 (2019). Pub. 5426, Taxpayer First Act Report to Congress (Jan. 2021).

24 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#digitalsignature> (last visited June 10, 2021).

25 National Taxpayer Advocate 2020 Annual Report to Congress 71 (Most Serious Problem: *Digital Communications: Limited Digital Communications With the IRS Make Problem Resolution Unnecessarily Difficult for Taxpayers*).

26 NIST, NIST Special Publication 800-63-3, *Digital Identity Guidelines* (June 2017), <https://doi.org/10.6028/NIST.SP.800-63-3> (Revision 3 includes updates as of March 2, 2020).

### **Objective 6 for FY 2022 – TAS will advocate for an expanded range of improved options for accessing IRS services and information using digital communications.**

- Activity 1: Continue to advocate that the IRS maintain a robust omnichannel service environment while concurrently enhancing its digital offerings.
- Activity 2: Continue to advocate that the IRS accept electronic signatures on all documents that require a signature, once the IRS assesses, identifies, and eliminates any data security vulnerabilities, if applicable.
- Activity 3: Continue to advocate for the permanent use of a secure messaging system with taxpayers and their representatives.
- Activity 4: Continue to advocate for an expanded list of documents the IRS will accept and transmit by email using an established secure messaging system, once the IRS assesses, identifies, and eliminates any data security vulnerabilities and file size limitation issues, if applicable.
- Activity 5: Continue to work with the IRS on implementation of the above recommendation and ensure taxpayer rights are protected by the technology changes.

## **7. MITIGATE THE IMPACT OF THE 2021 FILING SEASON CHALLENGES AND REFUND DELAYS**

While the IRS continued to handle challenges associated with the COVID-19 pandemic (including programming changes to comply with legislation), the IRS delivered a historically-low level of taxpayer service on its toll-free telephone lines during the tax year 2020 filing season, the due date for which was postponed to May 17, 2021.<sup>27</sup> Although the IRS processed nearly 137 million individual and business income tax returns this filing season,<sup>28</sup> the processing of millions of taxpayer returns,<sup>29</sup> including those claiming refunds, were delayed. During 2021, the IRS has struggled to work through over 35 million tax returns requiring manual processing,<sup>30</sup> including several million paper tax returns filed in 2020.<sup>31</sup> Because the vast majority of tax returns seek refunds, such delays in processing are not a mere inconvenience — they pose a direct impact on taxpayers' wallets. Despite the IRS's best efforts, taxpayers did not receive the help or information they needed regarding delayed refunds this filing season.

### **Objective 7 for FY 2022 – TAS will identify and propose recommendations to mitigate future filing season delays and improve taxpayer service.**

- Activity 1: Continue to urge Congress to ensure the IRS has sufficient funding, staffing, and technology to provide a high level of service to taxpayers while protecting their rights.
- Activity 2: Continue working with the IRS on TAS's recommendation for a robust online account for individuals and practitioners, which would reduce the strain on IRS resources.

<sup>27</sup> IRS, JOC Snapshot Reports, Accounts Management (week ending May 22, 2021).

<sup>28</sup> IRS, Filing Season Statistics for Week Ending May 21, 2021, <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-may-21-2021>; Submission Processing Program Management and Process Assurance Branch Filing Season Statistics Report (May 21, 2021) for Business Income Tax returns (Form 1065 and 1120 series).

<sup>29</sup> Data from IRS systems and W&I as of May 22, 2021, showing 32.6 million returns either waiting to be processed or where processing was suspended. In addition, data from the Customer Account Services. Form 1040X Consolidated Inventory Report for the week ending May 22, 2021, showed approximately 2.7 million amended returns of individuals awaiting processing by the Submission Processing or Accounts Management functions.

<sup>30</sup> *Id.*

<sup>31</sup> Data from IRS systems and W&I as of April 16, 2021, showing 4.2 million returns received in 2020 waiting to be processed.



## 8. MINIMIZE REFUND DELAYS FOR TAXPAYERS WHOSE LEGITIMATE RETURNS ARE DELAYED BY IRS FRAUD FILTERS

The IRS issues most refunds promptly, but its pre-refund fraud filters delay millions of legitimate refund claims. In 2020, these filters flagged over two million returns for identity theft (IDT) verification and 3.3 million for verification of income and withholding for potential fraud.<sup>32</sup> The IRS's automated (systemic) checks are quick — two days on average for IDT filter selections after the taxpayer authenticates his or her identity and five days on average for automated fraud filter selections in calendar year 2020.<sup>33</sup> The flagged non-automated fraud filters are delayed longer — 39 days on average for certain manual filters used by the IRS because they require manual reviews — and some of these reviews take much longer, in part, because they require third-party contacts.<sup>34</sup> For returns flagged by the non-automated fraud filters for income and withholding verification through September 2020, refunds took more than 56 days for about 25 percent, and for those flagged for identity verification, 120 days for 18 percent.<sup>35</sup>

When the IRS cannot validate income and withholding reported on a tax return using third-party contacts or data, it forwards the return to a compliance treatment stream for further evaluation. Some returns get stuck in transit, as we reported in last year's Annual Report to Congress.<sup>36</sup> Approximately 20,000 of the 2018 tax returns filed in 2019 remain unresolved and in transit to a compliance treatment as of May 17, 2021, which is an unacceptable delay.<sup>37</sup>

The National Taxpayer Advocate recognizes that IDT and fraud screens are necessary to prevent the issuance of fraudulent refunds. However, many taxpayers whose legitimate refunds are delayed have trouble getting specific and timely information regarding the delay. As noted, the Where's My Refund tool on the IRS website and the IRS2go app do not provide specific information as to the reasons for a refund delay. When taxpayers try to verify their identity through the ID Verify online tool, many cannot pass the IRS Secure Access authentication requirements.<sup>38</sup> The IRS should enhance the accessibility of these tools and the information they provide to increase transparency to taxpayers whose refunds are delayed.

### **Objective 8 for FY 2022 – TAS will continue to work with the IRS to minimize refund delays for taxpayers whose legitimate tax returns are delayed by IRS fraud filters.**

- Activity 1: Continue to work with the IRS to improve IRS correspondence notices and letters for clarity, including information posted on IRS.gov Understanding Your Notice pages. TAS will continue to advocate for enhancements to IRS tools, such as Where's My Refund and IRS2go, to include the reasons for the refund delay, any documents or information the taxpayer may need to provide for the IRS to process the claim for refund, and reasonable estimates of when taxpayers can expect to receive their refund.

32 IRS, IDT and Integrity and Verification Operation (IVO) Performance Report (Dec. 31, 2020).

33 IRS response to TAS information request (Oct. 23, 2020).

34 IRS, Return Review Program (RRP) Non-IDT Performance Report 3 (Oct. 7, 2020).

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

36 See National Taxpayer Advocate 2020 Annual Report to Congress 148-161 (Most Serious Problem: *Refund Delays: Taxpayers Whose Legitimate Returns Are Flagged by IRS Fraud Filters Experience Excessive Delays and Frustration in Receiving Their Refunds*). As of September 24, 2020, approximately 30,000 returns remained unresolved and were still in transit to a compliance treatment function.

37 IRS, Compliance Data Warehouse (CDW) Individual Master File (IMF) Transaction History and IMF Status History files as of May 17, 2021.

38 IRM 21.2.1.58, Secure Access eAuthentication (Apr. 13, 2020).

- Activity 2: Continue involvement on IRS cross-functional teams including advocating for an improved e-authentication method for taxpayers selected by IDT filters.
- Activity 3: Continue to advocate for the widespread use of the digital document upload portal or other technology that will allow taxpayers to securely submit identity and income verification documents electronically.
- Activity 4: Continue reviewing our local TAS cases and external submissions in the Systemic Advocacy Management System (SAMS) to identify potential programming errors or taxpayer burden deficiencies with IRS fraud filters or the processing and release of refunds for those associated taxpayers.

## 9. EXPAND ELECTRONIC FILING CAPABILITIES

The IRS received approximately 17 million paper Form 1040 returns and 22.3 million business returns, including over 1.6 million business income tax returns during calendar year 2020 that required manual transcription.<sup>39</sup> It could not timely process millions due to the work constraints created by the pandemic,<sup>40</sup> illustrating the need for expanded electronic filing and automated processing of tax returns. The tax return processing delays have persisted into 2021, with 6.1 million individual tax returns, 5.6 million business tax returns, and 5.1 million unspecified returns still waiting to be processed at the end of the filing season.<sup>41</sup> These extended delays and the burdens on taxpayers who rely on their timely processing demand a fundamental change in IRS standards for the forms and schedules it will process electronically and through automation. Namely, the IRS should make a greater array of forms eligible for electronic filing to allow more taxpayers the ability to use the e-file option.

The National Taxpayer Advocate recommended that the IRS reevaluate the Modernized e-File system to allow for e-filing of all forms, schedules, and attachments,<sup>42</sup> to which the IRS agreed to do a feasibility study by October 31, 2021.<sup>43</sup> We look forward to working with the IRS to determine next steps toward making more forms available for electronic filing and fast tracking the development and implementation of additional digital forms.

### **Objective 9 for FY 2022 – TAS will work with the IRS to identify enhanced e-filing and digital signature options.**

- Activity 1: Advocate for the prioritization of the e-filing of forms, schedules, and attachments identified by the IRS study.
- Activity 2: Advocate for the expeditious implementation of new digital forms.
- Activity 3: Work with the IRS to implement scanning technology to reduce transcription errors on individual income tax returns prepared electronically but filed on paper.

39 IRS, Filing Season Statistics for Week Ending December 11, 2020, <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-december-11-2020>; for business tax returns, see Submission Processing Program Management and Process Assurance Branch Filing Season Statistics Report (Dec. 26, 2020).

40 Data from IRS systems and W&I as of April 16, 2021, showing 14.7 million paper returns waiting to be processed, including 4.2 million returns received in 2020. See also TIGTA, Ref. No. 2021-40-038, *Interim Results of the 2021 Filing Season 2* (May 6, 2021).

41 Data from IRS systems and W&I as of May 21, 2021.

42 National Taxpayer Advocate 2020 Annual Report to Congress 75-83, at 83 (Most Serious Problem: *E-Filing and Digitalization Technology: Failure to Expand Digitalization Technology Leaves Millions of Taxpayers Without Access to Electronic Filing and Wastes IRS Resources*). The National Taxpayer Advocate identified more than 40 active forms for which the IRS provided no e-filing opportunity.

43 IRS, IRS Response to the National Taxpayer Advocate 2020 Annual Report to Congress 20 (Mar. 16, 2021).

## 10. PROVIDE ADMINISTRATIVE APPEAL RIGHTS TO TAXPAYERS REQUESTING ABATEMENT AND INCLUDE ADDITIONAL STATUS INFORMATION ON THE WHERE'S MY AMENDED RETURN TOOL

Taxpayers file an amended return to request a refund of tax they paid.<sup>44</sup> If the IRS denies a taxpayer's refund claim, the taxpayer may seek review by the Independent Office of Appeals and if necessary, bring a refund suit in district court or in the Court of Federal Claims. A taxpayer can also file an amended return to reduce an assessed tax that remains unpaid, *i.e.*, a request for abatement.<sup>45</sup> However, there is no administrative review available when the IRS denies a request for abatement. In her 2020 Annual Report to Congress, the National Taxpayer Advocate recommended that the IRS issue a 30-day letter giving taxpayers whose claims for abatement the IRS denies the right to file a protest with the Independent Office of Appeals. The IRS did not agree to this recommendation.<sup>46</sup> The National Taxpayer Advocate continues to assert that taxpayers who request an abatement of tax should not be required to first pay the tax and then seek a refund before having access to an administrative appeal.

Since 2013, the IRS has provided taxpayers with the Where's My Amended Return tool.<sup>47</sup> The tool allows taxpayers to receive minimal information on the status of their amended return such as whether the IRS has received the amended return, whether it has made adjustments, and whether it has completed processing. The National Taxpayer Advocate has recommended updates to the tool to include identifying when the IRS has selected an amended return for an audit, when it assigns an auditor, and the estimated completion date of the audit process.<sup>48</sup> The IRS indicated that expanding the Where's My Amended Return tool beyond its original use may provide inaccurate and/or confusing information to taxpayers, as it may not audit all amended returns selected (or referred) for examination.<sup>49</sup> The National Taxpayer Advocate continues to encourage the IRS to provide relevant information about the status of amended returns with sufficient clarity so taxpayers are not confused. For example, the IRS could inform taxpayers that it has *selected* an amended return for audit and that it may or may not *actually* audit the return, and provide a timeframe within which the IRS usually decides whether it will actually audit a return selected for audit.

### Objective 10 for FY 2022 – TAS will continue to advocate for allowing taxpayers requesting an abatement the opportunity for administrative review with the Independent Office of Appeals, issuance of a 30-day letter, and improved online tools.

- Activity 1: Continue to advocate for an appeal process for denied requests for abatement and if appropriate, issuance of revised IRM procedures, and make recommendations as appropriate.
- Activity 2: Continue to advocate for changes and updates to online tools such as Where's My Amended Return to give taxpayers necessary information about the status of their amended returns.

44 See National Taxpayer Advocate 2020 Annual Report to Congress 134 (Most Serious Problem: *Amended Returns: The IRS Processes Most Amended Returns Timely But Some Linger for Months, Generating Over a Million Calls That the IRS Cannot Answer and Thousands of TAS Cases Each Year*).

45 IRC § 6404(a) authorizes the IRS to abate the unpaid portion of the assessment of any tax which "is excessive in amount" meaning "in excess of the correct tax liability." Treas. Reg. § 301.6404-1(a).

46 See Appendix 1: *IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in the 2020 Annual Report to Congress, infra*.

47 IRM 21.2.1.59, Where's My Amended Return (WMAR) (Mar. 30, 2016).

48 See National Taxpayer Advocate 2020 Annual Report to Congress 141 (Most Serious Problem: *Amended Returns: The IRS Processes Most Amended Returns Timely But Some Linger for Months, Generating Over a Million Calls That the IRS Cannot Answer and Thousands of TAS Cases Each Year*).

49 See Appendix 1: *IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in the 2020 Annual Report to Congress, infra*.

- Activity 3: Collaborate with the IRS on reviewing current language for improvements to information provided to taxpayers via online tools.

## 11. ANALYZE MATH ERRORS ATTRIBUTABLE TO THE 2020 RECOVERY REBATE CREDIT/ECONOMIC IMPACT PAYMENTS TO ELIMINATE FUTURE RECOVERY REBATE CREDIT ERRORS

Taxpayers who did not receive their advance recovery rebate credit (first Economic Impact Payment (EIP) during 2020 or second EIP in January 2021) are eligible to claim the Recovery Rebate Credit (RRC) on their 2020 income tax returns. As of May 21, 2021,<sup>50</sup> the IRS determined that over five million returns had potential RRC errors, including dependents listed on multiple returns, missing or invalid Social Security numbers or Individual Taxpayer Identification Numbers, missing military indicators, individuals who were deceased prior to the tax period, dependents who exceeded the age limitation, or an incorrectly computed RRC amount, resulting in the issuance of math error notices.<sup>51</sup>

Some of the barriers causing taxpayers inaccuracies or confusion involved navigation of the RRC worksheet, issues with tracing missing payments prior to taxpayers filing their returns, and a lack of understanding of the different legislative standards for dependents between the three rounds of EIPs. And, even if taxpayers reached out to the Customer Service Accounts Management toll-free lines, it was unlikely that calling the IRS for assistance would have yielded additional information during the tax year 2020 filing season because through May 22, 2021, the IRS reported a Level of Service (LOS) on its Accounts Management telephone lines of 15 percent.<sup>52</sup> Only seven percent of taxpayer calls reached a telephone assistor.

The statute requires taxpayers to respond within 60 days of the math error notice.<sup>53</sup> This filing season, taxpayers faced an additional challenge in reaching the Customer Service Accounts Management Toll-Free lines after receiving a math error notice. Many taxpayers may not be able to speak with an IRS employee before the 60-day period expires. With the large influx of calls and the dismal 20 percent LOS during the filing season for the math error phone lines,<sup>54</sup> IRS employees will have difficulty addressing all inquiries within the 60-day timeframe established to protect taxpayers' *right to challenge the IRS's position and be heard*.<sup>55</sup>

### Objective 11 for FY 2022 – TAS will work with the IRS with the goal of preventing RRC math errors in the next filing season.

- Activity 1: Educate taxpayers on how to compute the credit correctly to prevent errors and delays in processing their 2021 return for an EIP 3 not received in 2021 and claimed as RRC.

50 IRS Math Error Report (May 21, 2021), considering Taxpayer Notice Codes 681, 682, 683 occurring through May 21, 2021. See also Erin M. Collins, Lifecycle of a Tax Return, NATIONAL TAXPAYER ADVOCATE BLOG (May 18, 2021), <https://www.taxpayeradvocate.irs.gov/news/nta-blog-lifecycle-of-a-tax-return/>.

51 IRM 21.6.3.4.2.14.2, RRC Taxpayer Notice Codes (TPNC) (May 23, 2021) (currently available only on Servicewide Electronic Research Program).

52 JOC Snapshot Reports: Accounts Management Snapshot (week ending May 22, 2021).

53 IRC § 6213(b)(2).

54 JOC Snapshot Reports: Accounts Management Snapshot (week ending May 22, 2021). For the filing season, the LOS for the W&I IMF Customer Response Line average of 19.6 percent and the LOS for the Self-Employed IMF Customer Response Line averaged 20.7 percent.

55 See Taxpayer Bill of Rights (TBOR), <https://www.taxpayeradvocate.irs.gov/get-help/taxpayer-rights/>. The rights contained in TBOR are also codified in the IRC. See IRC § 7803(a)(3).

- Activity 2: Review the RRC Worksheet in the tax year 2021 Form 1040 Instructions and work with the IRS to determine if clarifications in computing the RRC are needed, and if so, recommend updating the form before the next filing season.
- Activity 3: Conduct research to identify the most common math errors for the RRC and work with the IRS to educate taxpayers including the use of FAQs on IRS.gov and the tax year 2021 Form 1040 instructions.
- Activity 4: Analyze RRC math errors and related programming to determine if there were any procedural defects for RRC processing and if so, propose corrections.
- Activity 5: If appropriate, submit recommendations for IRM updates through the normal reviews and the Out of Clearance Process.

## 12. MONITOR THE IRS'S RECOVERY FOR THE UNEMPLOYMENT COMPENSATION EXCLUSION

On March 11, 2021, Congress enacted the American Rescue Plan Act (ARPA) of 2021. Section 9042 of ARPA created a partial exclusion to the taxation of unemployment benefits, providing that the first \$10,200 of these benefits received in 2020 are exempt from taxation (\$20,400 for married couples filing joint returns) with modified adjusted gross income (AGI) below \$150,000.

The IRS and tax preparation software companies updated their forms, instructions, and guidance for unemployment compensation recipients for returns not yet filed. However, by the time this legislation was signed into law, an estimated 43 percent of all tax year 2020 individual income tax returns had been filed with the IRS.<sup>56</sup> The IRS reprogrammed its systems to automatically reduce a taxpayer's income up to \$10,200 for each taxpayer who received unemployment compensation and included it in income (up to \$20,400 for married couples filing joint returns). On March 31, the IRS announced that it will automatically recompute any deficiencies or refunds for these early filer taxpayers.<sup>57</sup> It began making those computations after the close of the 2021 filing season, and the first batch of payments began in late May and will continue through the summer. These credit adjustments eliminated the need for millions of taxpayers to file amended returns. However, the IRS did not calculate all other federal credits or deductions not claimed on the original tax return for taxpayers with qualifying children who might now be eligible for those credits. These taxpayers will need to file amended returns if they did not originally claim the Earned Income Tax Credit with qualifying children or other federal credits but now are eligible because the exclusion reduced their AGI.

### **Objective 12 for FY 2022 – TAS will continue working with the IRS in FY 2021 on the implementation of the unemployment compensation recovery process and ensure the recovery is complete into FY 2022.**

- Activity 1: Continue to monitor the systemic recovery process for programming or procedural defects on any return identified or processed after October 1, 2021.

<sup>56</sup> As of March 12, 2021, the IRS had received about 66.1 million returns. IRS, Filing Season Statistics for Week Ending March 12, 2021, <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-march-12-2021> (last visited May 27, 2021). The three-year average of the number of federal individual income tax returns filed for tax years 2017, 2018, and 2019 (less returns filed solely for the purpose of receiving economic incentive payments) is 153.1 million. IRS CDW Individual Returns Transaction File (Apr. 29, 2021).

<sup>57</sup> IRS, IR-2021-71, IRS to Recalculate Taxes on Unemployment Benefits; Refunds to Start in May, (Mar. 31, 2021), <https://www.irs.gov/newsroom/irs-to-recalculate-taxes-on-unemployment-benefits-refunds-to-start-in-may>.

- Activity 2: Advocate for continued education for taxpayers who have filed or need to file an amended return for additional credits, deductions, or income not reported on the original return and continue to review and monitor procedures and processing of those amended returns.
- Activity 3: Monitor the downstream effects on other IRS programs related to the unemployment compensation exclusion, such as the Automated Underreporter Program and Exam.

### 13. ASSIST TAXPAYERS WHO EXPERIENCE CHANGES RELATING TO THE CHILD TAX CREDIT DURING 2021

ARPA makes several temporary changes (for tax year 2021 only) that expand the Child Tax Credit (CTC), primarily for low-income taxpayers, such as expanding eligibility to 17-year-olds; eliminating the Advance CTC phase-in based on earned income; and increasing the credit for low- and moderate-income taxpayers, with larger increases for younger children to \$3,600 per child for a young child (0-5 years old at the end of 2021) and \$3,000 per child for an older child (6-17 years old at the end of 2021). These changes will increase the amount of the credit for low- and moderate-income taxpayers, while higher-income families will generally receive the same benefit as under prior law (unless they have an eligible 17-year-old). The changes also mandate that the IRS issue advance payments to qualifying families starting as early as July 2021 (although families may unenroll). ARPA directs the Treasury to issue half of the expected 2021 credit in periodic payments beginning after July 1, 2021. The amount of the payments advanced in 2021 are estimated based on 2020 income tax data, or if unavailable, 2019 income tax data. Eligible families who do not normally file a tax return can register on the Non-Filer Sign-Up tool in 2021.<sup>58</sup>

The IRS determines the qualification and the amount of the CTC using taxpayers' filed tax returns. However, many taxpayers experienced life events such as a change to marital status or family composition in 2021 that is not reflected on a filed return. Taxpayers may have divorced or separated, experienced the birth of a child, changed bank account numbers, or have a court-recognized agreement to alternate years for claiming dependents on their returns.

To address these life events, the IRS has designed and developed a Child Tax Credit Update Portal, which is anticipated to allow taxpayers the ability to opt out of receiving advance payments and to make life event updates through the portal impacting either their eligibility or amount of the CTC, and will provide the ability to change their address or change their bank information. This online portal, anticipated by July 1, 2021, will allow taxpayers to interact with the IRS and make these updates to their information.<sup>59</sup>

TAS is a member of the IRS working group tasked with launching the online portal. The group is also drafting necessary guidance, anticipating required policy changes, and addressing information technology concerns to ensure appropriate levels of authentication to safeguard against fraud.

<sup>58</sup> ARPA, Pub. L. No. 117-2, 135 Stat. 4 (2021).

<sup>59</sup> *The 2021 Filing Season and 21st Century IRS: Hearing Before the United States Senate Committee on Finance*, 117th Cong. (Apr. 13, 2021) (statement of Charles P. Rettig, Commissioner of Internal Revenue).

### Objective 13 for FY 2022 – TAS will ensure the Child Tax Credit Update Portal and periodic payments are accurate and timely.

- Activity 1: Participate on Servicewide teams to identify, monitor, and evaluate any issues arising with the CTC Update Portal, the Non-Filers Sign-Up tool, or periodic payments.
- Activity 2: Assist the IRS with development of IRM updates, correspondence products, self-help guidance, and other materials to reflect the legislative mandates and procedures.
- Activity 3: Work with the IRS to develop targeted outreach to taxpayers and tax professionals to provide education about the options and benefits of the CTC Update Portal and the Non-Filers Sign-Up tool.

## 14. IMPROVE CORRESPONDENCE AUDIT COMMUNICATIONS AND FOCUS ON HIGH DEFAULT RATES FOR TAXPAYERS WITH ADJUSTED GROSS INCOMES BELOW \$50,000

Correspondence audits represent more than 70 percent of the audits the IRS conducts and are one of the most significant tools the IRS uses to achieve voluntary compliance.<sup>60</sup> However, they have the lowest “no change” rate, the lowest agreed rate, the lowest appeal rate, and the highest non-response and default rates of all audits.<sup>61</sup> These disparities worsen when the audited taxpayer is low-income or when there are other barriers that hinder communication during the audit, such as undeliverable mail. Although a correspondence audit is mail-based, some taxpayers may need to contact the IRS via a toll-free number, which the IRS places on each audit notice. It considers this as the most efficient method to address correspondence inquiries and to meet the requirements of the IRS Restructuring and Reform Act of 1998.<sup>62</sup> But the IRS’s correspondence audit toll-free lines are staffed insufficiently to adequately support the quantity of audits conducted.

Correspondence audits have higher default rates and non-response rates and result in more “audit reconsiderations” and lower agreement rates.<sup>63</sup> Moreover, individual taxpayers with total positive income below \$50,000 are much more likely to be examined by correspondence audit when compared to taxpayers with higher incomes.<sup>64</sup> The IRS should utilize the implementation of its new telephone callback technology, email, or Taxpayer Digital Communications (TDC) technology to enhance its ability to provide taxpayers a single point of contact for correspondence audit assistance. Providing responsive taxpayers with the contact information of the assigned examiner will improve the customer experience and efficiency.

The high volume of correspondence audits combined with limited communication alternatives, insufficient levels of service, and the inability to contact a knowledgeable and accountable IRS employee often cause

60 See National Taxpayer Advocate 2020 Annual Report to Congress 102-118 (Most Serious Problem: *Correspondence Exams: Taxpayers Encounter Unnecessary Delays and Difficulties Reaching an Accountable and Knowledgeable Contact for Correspondence Audits*).

61 *Id.*

62 National Taxpayer Advocate Fiscal Year 2016 Objectives Report to Congress vol. 2, at 48-50 (*IRS Responses and National Taxpayer Advocate’s Comments Regarding Most Serious Problems Identified in the 2014 Annual Report to Congress*). See IRS Restructuring and Reform Act of 1998 (RRA 98), Pub. L. No. 105-206, § 3705(a), 112 Stat. 685, 777 (1998).

63 See National Taxpayer Advocate 2020 Annual Report to Congress 102-118 (Most Serious Problem: *Correspondence Exams: Taxpayers Encounter Unnecessary Delays and Difficulties Reaching an Accountable and Knowledgeable Contact for Correspondence Audits*).

64 National Taxpayer Advocate 2020 Annual Report to Congress, at xiv (*Taxpayer Rights and Service Assessment: IRS Performance Measures and Data Relating to Taxpayer Rights and Service*).

unnecessary taxpayer burden and hinder several taxpayer rights, including the *right to quality service*.<sup>65</sup> The IRS needs to reconsider its current approach to the correspondence audit process.

### **Objective 14 for FY 2022 – TAS will strategize with the IRS to connect and better communicate with taxpayers involved in the correspondence audit process.**

- Activity 1: Continue to advocate for providing taxpayers responding to correspondence audit notices the name, telephone number, and unique identifying number of an IRS employee who can serve as their direct contact throughout the correspondence audit process, along with the employee's secure email address or the TDC Secure Messaging access needed to send and receive documents and communicate electronically with the assigned examiner.
- Activity 2: Continue to advocate for use of email or similar technology such as TDC Secure Messaging capabilities for all correspondence audit programs.
- Activity 3: Conduct research to identify the factors triggering the high rate of defaults in correspondence audits.
- Activity 4: Review and analyze current IRS procedures to determine if they add to the high rate of defaults.
- Activity 5: Examine the downstream consequences of the high rate of defaults on audit reconsideration, Tax Court petitions, and collections.
- Activity 6: Work with the IRS to develop a strategy to identify potential non-responsive taxpayers early in the audit process and propose recommendations to decrease defaults based upon our research.

## **15. IDENTIFY POTENTIAL COLLECTION BARRIERS FOR LOW-INCOME TAXPAYERS**

The National Taxpayer Advocate has advocated that taxpayers who owe a tax debt should be responsible for that debt but not at the expense of suffering economic hardship.<sup>66</sup> To its credit, the IRS has taken steps to alleviate the burden on taxpayers struggling to balance paying their basic living expenses with their tax debt. But a low-income taxpayer may experience obstacles in navigating collection issues with the IRS. TAS will continue to work with the IRS to identify potential collection barriers and recommend solutions for low-income taxpayers with outstanding tax debts facing an economic hardship.

### **Objective 15 for FY 2022 – TAS will work with the IRS to identify any areas needing improvement in collection practices and communication, specifically for low-income taxpayers.**

- Activity 1: Continue to work with the IRS to permit low-income taxpayers experiencing an economic hardship to request a bypass of a refund offset on a pending offer in compromise (OIC) and pursue the termination of the refund recoupment requirement in the year of the OIC acceptance.

<sup>65</sup> See TBOR, <https://www.taxpayeradvocate.irs.gov/get-help/taxpayer-rights/>. The rights contained in TBOR are also codified in the IRC. See IRC § 7803(a)(3).

<sup>66</sup> For an example of TAS advocacy related to collection practices and low-income taxpayers, see National Taxpayer Advocate 2018 Annual Report to Congress 228-239 (Most Serious Problem: *Economic Hardship: The IRS Does Not Proactively Use Internal Data to Identify Taxpayers at Risk of Economic Hardship Throughout the Collection Process*).



- Activity 2: If appropriate, work with the IRS on updating its internal guidance and communications to taxpayers for any agreed changes to its collection procedures or policies.
- Activity 3: Continue to work with the IRS to improve communication with low-income taxpayers to help them avoid unexpected economic hardship when they request waivers of installment agreement user fees and to identify sources of delays with user fee waiver requests.

## 16. CONTINUE ADVOCACY EFFORTS TO CORRECT ERRONEOUS COLLECTION STATUTE EXPIRATION DATES DUE TO PENDING INSTALLMENT AGREEMENTS

In general, the IRS can collect a tax debt ten years from the date of assessment, which is referred to as the Collection Statute Expiration Date (CSED).<sup>67</sup> The IRS can suspend the CSED during certain events, *e.g.*, while a request for an installment agreement (IA) is pending, resulting in an extension of the tax debt collection period.<sup>68</sup> The problem TAS identified centers around a computer glitch that tolled the CSED for an improper amount of time after the suspension should have been lifted. Unfortunately, many taxpayers or representatives are unaware of the suspension and impact to the general ten-year CSED.<sup>69</sup>

In 2017, TAS identified a population of taxpayer accounts with unreversed or improperly reversed pending IAs that led to incorrect CSED calculations and erroneously added time to the tax debt collection period. TAS also found inconsistent IRS procedures related to CSED guidance.<sup>70</sup> The IRS agreed to correct taxpayer accounts with erroneous CSEDs and the underlying problems that led to the miscalculations.

In July 2020, TAS identified and provided the IRS with over 6,000 taxpayer accounts with CSEDs erroneously extended by one year or more.<sup>71</sup> As of December 2020, the IRS had not finished reviewing and correcting these cases.<sup>72</sup> TAS has recently provided the IRS with several thousand more taxpayer accounts that appear to have the CSED incorrectly extended by a year or more.<sup>73</sup> Despite efforts to find and correct unreversed and improperly reversed pending IAs, TAS continues to find errors, resulting in incorrect CSED extensions of a year or more.

### Objective 16 for FY 2022 – TAS will continue to work with the IRS to resolve the issues contributing to erroneous CSEDs resulting from unreversed pending IAs.

- Activity 1: Raise awareness of CSEDs in external outreach and in TAS training.

<sup>67</sup> IRC § 6502.

<sup>68</sup> The CSED is suspended while a request for an IA is pending, or 30 days after an IA is terminated or rejected, and if appealed, during any appeal of that decision. IRC § 6331(i)(5), (k)(2), (k)(3); Treas. Reg. § 301.6159-1(g). IRC § 6502(a)(2)(A) allows for an extension of the CSED when there is an IA in place and the taxpayer and the IRS agree to the extension. Other events that suspend the CSED are OICs, bankruptcy, innocent spouse, collection due process, combat zone, and waiver to extend the CSED.

<sup>69</sup> Nina E. Olson, As a Result of TAS Advocacy, the IRS Is Working to Address a Computer Glitch That Allowed Collection Activity on Accounts With Expired Collection Statute Expiration Dates But Many Issues Remain Unresolved, NATIONAL TAXPAYER ADVOCATE BLOG (Sept. 7, 2018), <https://www.taxpayeradvocate.irs.gov/news/ntablog-as-a-result-of-tas-advocacy-the-irs-is-working-to-address-a-computer-glitch-that-allowed-collection-activity-on-accounts-with-expired-collection-statute-expiration-dates-but-many-issues-remain/>.

<sup>70</sup> In FYs 2018 to 2021, TAS submitted 57 IRM updates. The IRS accepted 32 (data on file with TAS).

<sup>71</sup> TAS email communication to the IRS (July 9, 2020).

<sup>72</sup> Email communication from the IRS (Dec. 14, 2020).

<sup>73</sup> TAS email communication to the IRS (Apr. 9, 2021).

- Activity 2: Collaborate with the IRS to include CSED training in Continuing Professional Education courses for collection employees.
- Activity 3: Recommend that the IRS insert CSED information in publications, notices, and forms, specifically Form 9465, Installment Agreement Request.
- Activity 4: Monitor the implementation of the Integrated Automation Technology CSED Calculator Tool.<sup>74</sup>
- Activity 5: Monitor proposed program changes through Unified Work Requests (UWRs) to prevent erroneous CSEDs.<sup>75</sup>
- Activity 6: Monitor cases with incorrect CSEDs to make sure the IRS has corrected them.
- Activity 7: Monitor cases containing erroneous CSEDs with payments that are not barred by the refund statute to make certain the payments are returned to taxpayers.

## 17. INCREASE TAXPAYER PARTICIPATION IN THE OFFER IN COMPROMISE PROGRAM

The IRS received 44,809 OICs in FY 2020, its lowest total receipts since 2008.<sup>76</sup> While it is unclear what impact the COVID-19 pandemic may have had on OIC receipts, FY 2020 marked the seventh consecutive year of decline.<sup>77</sup> There is currently no method available for the IRS to identify and measure factors that may drive OIC receipts.

During the same seven-year period, the IRS inventory of currently not collectible (CNC) accounts rose from \$82.8 billion to \$145.8 billion.<sup>78</sup> When the IRS puts accounts into CNC status, it removes the accounts from active inventory and suspends collection actions.<sup>79</sup> Many of these accounts become inactive tax receivables and are required to be assigned for collection to private collection agencies (PCAs).<sup>80</sup> PCAs do not secure financial information from the taxpayer or secure and investigate collection alternatives such as OICs.<sup>81</sup> Therefore, taxpayers who may have been eligible for OICs are not informed of collection alternatives the IRS may offer based on their current financial situation.

### Objective 17 for FY 2022 – TAS will work with the IRS to determine if it can develop a more targeted approach to reach taxpayers for whom OICs may be a viable option.

- Activity 1: Review prior test programs the IRS has used in attempts to increase OIC receipts.
- Activity 2: Conduct research to identify taxpayer segments who are prime candidates for OICs.

74 The tool was developed and sponsored by TAS and adopted by W&I in December 2019 but was paused in FY 2020 due to the implementation of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and the COVID-19 pandemic. Implementation of the tool is expected in FY 2022.

75 Under consideration by the Small Business/Self-Employed Division, Collection Policy, Case Resolution Alternatives are four TAS proposals for UWRs.

76 IRS, Collection Activity Report (CAR) 5000-108, Monthly Report of Offer in Compromise Activity (Sept. 28, 2020, and Sept. 29, 2008).

77 IRS, CAR 5000-108, Monthly Report of Offer in Compromise Activity (Sept. 29, 2008; Oct. 6, 2009; Oct. 4, 2010; Oct. 3, 2011; Oct. 3, 2012; Sep. 30, 2013; Sept. 29, 2014; Oct. 5, 2015; Oct. 3, 2016; Oct. 2, 2017; Oct. 1, 2018; Sept. 30, 2019; and Sept. 28, 2020).

78 IRS, CAR 5000-149, Monthly Recap of Accounts Currently Not Collectible Report (Sept. 28, 2013 and Sept. 26, 2020).

79 IRM 1.2.1.6.14, Policy Statement 5-71, Reporting Accounts Receivable as Currently Not Collectible – General (Nov. 19, 1980); IRM 5.16.1.1.1, Background (Sept. 18, 2018).

80 IRC § 6306(c). See also IRM 5.19.1.5.21.1, Private Debt Collection Overview (Sept. 9, 2019).

81 IRS, Private Debt Collection Frequently Asked Questions, <https://www.irs.gov/businesses/small-businesses-self-employed/private-debt-collection-faqs-0> (last visited Apr. 28, 2021).

- Activity 3: Work with the IRS to develop targeted outreach to identified taxpayers.
- Activity 4: Establish a method to monitor and measure any targeted outreach endeavors.

## 18. MITIGATE THE UNINTENDED EFFECTS OF THE 2020 AND 2021 FILING SEASON POSTPONEMENTS ON TIMELY FILED REFUND CLAIMS

To assist taxpayers during the COVID-19 pandemic, the IRS postponed the 2019 tax return filing deadline from April 15 to July 15, 2020, and postponed the 2020 tax return filing deadline for individuals from April 15 to May 17, 2021,<sup>82</sup> together with several other disaster postponements. These modifications to the 2020 and 2021 filing seasons were much needed and appreciated by taxpayers, but good intentions can lead to unintended consequences. Taxpayers who file a claim for refund after April 15 for tax years 2019 or 2020 may have a timely filed claim, but the amount may be *unexpectedly rejected* in 2023 or 2024 because the IRS *postponed* the filing deadlines in 2020 and 2021 rather than *extended* them.

IRC § 6511 provides a two-prong test for filing a claim for credit or refund:

- First, a date by which a taxpayer must file a claim with the IRS, and
- Second, a limitation on the amount the taxpayer may claim, which is determined by “looking back” from the date of the claim to an earlier payment date.<sup>83</sup>

Under the first prong, a taxpayer generally must file a claim for credit or refund within three years from the time the return was filed, or two years from the time the tax was paid, whichever expires later. If a taxpayer files his or her claim within the three-year period, then the amount of the credit or refund cannot “exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to three years plus the period of any extension of time for filing the return.”<sup>84</sup> The IRS deems advance payments made during any calendar year through withholding as paid by an employee on the 15th day of the fourth month following the close of the taxable year, which typically coincides with the return due date for a taxpayer.<sup>85</sup> Therefore, the second prong of this test for tax year 2019 and 2020 returns will cause unanticipated denials of timely refund claims filed after April 15 (of 2023 or 2024) if not corrected for taxpayers who did not submit a timely extension request, as the withholding will not have been paid within the three years plus the period of an extension prior to the filing of the claim.

### **Objective 18 for FY 2022 – TAS will continue to advocate to mitigate the unintended impact of the filing season postponements to taxpayers whose advance payments (including withholding and quarterly payments) no longer correspond to the due date for 2019 and 2020 tax returns.**

- Activity 1: Advocate for publicized administrative guidance, such as the issuance of a Treasury regulation, revenue ruling, revenue procedure, notice, or other administrative guidance to provide relief to taxpayers whose refund claims may be affected by the postponed tax year 2019 and 2020 filing due dates.

82 See IRS, Notice 2020-23, 2020-18 I.R.B. 742 (cross referencing Rev. Proc. 2018-58, 2018-50 I.R.B. 990); IRS, Notice 2021-21, 2021-15 I.R.B. 986.

83 IRM 25.6.1.10.2.7, Claims for Credit or Refund – General Time Period for Submitting a Claim (Apr. 28, 2017).

84 IRC § 6511(b)(2)(A).

85 IRC § 6513(b)(1).

- Activity 2: Analyze possible negative impact on refund claims of other postponements including weather-related natural disaster relief provided during the last three filing seasons.
- Activity 3: If appropriate, advocate for additional publicized administrative guidance to provide relief to taxpayers whose refund claims may be affected by other disaster relief postponements.
- Activity 4: If relief is not provided before the tax filing season 2023, inform the public of the refund payment risks associated with the tax return due dates postponed in 2020 and 2021 to prevent denial or reduction of refunds pursuant to the “look-back” rule, and communicate the risk with stakeholders to ensure consistent messaging on this time-sensitive issue.

## 19. IMPROVE TIMELINESS OF TENTATIVE ALLOWANCE REFUNDS DURING NATIONAL EMERGENCIES

The net operating loss (NOL) deduction provisions in IRC § 172 have been through significant changes in the last few years. Prior to the Tax Cuts and Jobs Act (TCJA), an NOL generally could be carried back two years and forward 20 years and claimed as a deduction in the carryback/carryforward years. Under TCJA, most NOLs incurred in years after 2017 could be carried forward only and not carried back, and the amount of an NOL deduction from such NOLs was limited to 80 percent of taxable income without taking into account any NOL deduction.<sup>86</sup> Section 2303 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act amended IRC § 172 to create opportunities for business and individuals to get an infusion of cash by allowing taxpayers to carry back NOLs, including non-farm NOLs, arising from tax years beginning in 2018, 2019, and 2020, to the five prior tax years.<sup>87</sup>

The IRS has 90 days to process an application for a tentative refund based on a carryback (Forms 1045 or 1139) filed within 12 months of the end of the year in which the NOL arose.<sup>88</sup> Historically, the IRS has processed most tentative applications and issued refunds within 45 days and avoided incurring, calculating, and paying interest on the refund amount.<sup>89</sup> This past year, many individuals and businesses took advantage of the changes to IRC § 172 made by the CARES Act to carry back NOLs and filed an application for tentative refund. TAS anticipates many taxpayers will file applications for refunds for the 2020 taxable year. Significant delays have occurred in the processing and payment of these applications for refunds as IRS employees processing these paper-filed NOL applications for refund must manually input the claims. With reduced staff and increased workload, claims have been backing up, and most are not being paid within the 45-day window, triggering additional delays for the calculation and payment of interest.

### Objective 19 for FY 2022 – TAS will work with the IRS to identify delays and propose recommendations to improve the timely payment of tentative allowances.

- Activity 1: Work with the IRS to identify issues causing delays, expedite relief to taxpayers, propose recommendations, and collaborate on improved timely payments, including monitoring inventory levels for Form 1045 for individuals and Form 1139 for businesses; monitoring Carryback/Carryforward

<sup>86</sup> Pub. L. No. 115-97, § 13302, 131 Stat. 2054 (2017).

<sup>87</sup> See CARES Act, Pub. L. No. 116-136, § 2303, 134 Stat. 281 (2020).

<sup>88</sup> IRM 21.5.9.5(3), Carryback Processing (Oct. 1, 2020).

<sup>89</sup> Under IRC § 6611(e)(1), the IRS is not allowed to pay interest when the refund is issued within 45 days. See also IRM 21.5.9.5.7, Carryback Interest (Oct. 1, 2020).

Claims (NOLs and Forms 1045 and 1139) cases over 45 days old; and evaluating the effect of other issues on the timely processing of claims, *e.g.*, mail delays, staffing challenges, interest computations, etc.

- Activity 2: Advocate for a dedicated fax line or other means of delivery to expedite the processing of paper forms.
- Activity 3: Recommend the IRS assign a specific employee unit dedicated to processing Forms 1139 and 1045, similar to its pre-TCJA processing.
- Activity 4: Work with the IRS to develop a communication strategy to ensure the IRS is transparent and keeps taxpayers informed about the status of their application for refund and the anticipated delays.

## 20. ADVOCATE FOR EFFICIENCIES AND ADDITIONAL IRS RESOURCES TO TIMELY PROCESS INDIVIDUAL TAXPAYER IDENTIFICATION NUMBER APPLICATIONS

Individual Taxpayer Identification Numbers (ITINs) allow taxpayers who are ineligible for Social Security numbers to file returns and pay taxes required under the law.<sup>90</sup> In 2007, the IRS assigned almost 1.77 million ITINs to resident and nonresident alien taxpayers.<sup>91</sup> By October 2008, it had assigned over 14 million ITINs in about the first 12 years of the ITIN program.<sup>92</sup> Yet, during 2019, the IRS assigned fewer than 375,000 new ITINs on about 333,000 tax returns submitted that year and renewed about 719,000 ITINs originally assigned from applications filed and processed in previous years.<sup>93</sup> In 2020, the IRS assigned only 292,000 ITINs on nearly 267,000 returns received and renewed only about 418,000 ITINs.<sup>94</sup> Since 2012, the IRS has steadily underdelivered on the number of ITIN applications and associated returns it projected it would process each year.<sup>95</sup>

Despite a drop in overall applications and the filing of returns associated with them, the IRS is falling further behind in timely processing and assigning ITINs. In January 2020, the IRS carried over about 39,000 unworked Forms W-7, Application for IRS Individual Taxpayer Identification Number, from 2019,<sup>96</sup> but this year, partially attributable to the COVID-19 pandemic and the general backlog of correspondence at the

90 Any person required to make a return, statement, or other document to the IRS is required to include in such return, statement, or other document a taxpayer identifying number (TIN). See IRC § 6109; Treas. Reg. 301.6109-1. See also IRC §§ 1, 2, 61, 871, 7701(b).

91 IRS response to TAS information request (July 25, 2008). The IRS assigned 1,768,902 ITINs. Note that the majority of ITINs are assigned to resident aliens. See also National Taxpayer Advocate 2008 Annual Report to Congress 126-140, at 127 (Most Serious Problem: *Taxpayer Service Issues: IRS Handling of ITIN Applications Significantly Delays Taxpayer Returns and Refunds*).

92 IRS, ITIN Operations Controls Report ITIN 4340 (Oct. 25, 2008); total assigned records: 14,235,915; total primary assigned: 7,196,338; total other assigned: 7,040,231. See also National Taxpayer Advocate 2008 Annual Report to Congress 126-140, at 127 (Most Serious Problem: *Taxpayer Service Issues: IRS Handling of ITIN Applications Significantly Delays Taxpayer Returns and Refunds*).

93 IRS, ITIN Production Report (Dec. 28, 2019). The IRS assigned 374,394 new ITINs on 332,899 returns processed and renewed 719,126 ITINs. The IRS received a total of 402,410 ITIN applications with returns; however, the IRS rejected 69,511 ITIN applications associated with returns.

94 IRS, ITIN Production Report (Dec. 26, 2020). The IRS assigned 292,006 new ITINs on 267,310 returns processed and renewed 418,190 ITINs. The IRS received a total of 347,302 ITIN applications with returns; however, the IRS rejected 79,992 ITIN applications associated with returns.

95 National Taxpayer Advocate 2017 Annual Report to Congress 181-194, at 190 (Most Serious Problem: *Individual Taxpayer Identification Numbers (ITINs): The IRS's Failure to Understand and Effectively Communicate with the ITIN Population Imposes Unnecessary Burden and Hinders Compliance*).

96 IRS, ITIN Production Report (Dec. 28, 2019). At the end of processing year (PY) 2019, there were 12,765 unworked Forms W-7 for new ITINs on 8,410 suspended tax returns and 26,511 unassigned renewal applications.

IRS campuses, it carried over nearly 150,000 unworked applications from 2020.<sup>97</sup> By May 2021, the IRS inventory of unworked Forms W-7 exceeded 236,000.<sup>98</sup>

The continuing IRS delays in assigning ITINs from applications that taxpayers submitted in 2020 have caused delays in the processing of the associated paper tax returns and the refunds of any overpayments. Moreover, the delays prevent these same taxpayers from electronically filing their tax year 2020 returns. Taxpayers and certified acceptance agents (CAAs) who prepare the ITIN applications have received no personal updates from the IRS regarding the delays in processing their ITIN applications, and there has been only one update on IRS.gov since March acknowledging the backlog and asking applicants to wait indefinitely for the IRS to process their applications and the associated returns.<sup>99</sup>

At a time when ITIN-eligible taxpayers file tax returns to both comply with federal filing requirements and to qualify for federal and state COVID-19 relief payments,<sup>100</sup> the IRS should be prepared to process more ITIN applications than it did in 2019 and 2020. But it is neither meeting the current demand nor allocating sufficient resources.

### **Objective 20 for FY 2022 – TAS will provide recommendations to improve timely processing of ITIN applications and associated tax returns and promote communications and education for the resident alien community.**

- Activity 1: Advocate for sufficient staffing for processing of Forms W-7.
- Activity 2: Identify ITIN processing procedures that unduly delay or deny the assignments of ITINs and provide recommendations to improve the timeliness of the processing of ITINs.
- Activity 3: Encourage adoption of new measures for CAAs to facilitate documentation requirements and expedite ITIN processing, such as permitting CAAs to authenticate documentation presented in virtual conferences, and continue to advocate for the IRS to develop and implement a procedure that allows all applicants to apply for an ITIN throughout the year and submit alternative proof of a filing requirement other than an annual tax return.
- Activity 4: Work with the IRS to develop outreach messages to the undocumented immigrant community to assist with timely filing of tax returns and an understanding of the ITIN application procedures.

## **21. END SYSTEMIC ASSESSMENT OF INTERNATIONAL INFORMATION RETURN PENALTIES THAT HARM TAXPAYERS AND BURDEN THE IRS**

The National Taxpayer Advocate recognizes the importance of international information return (IIR) penalties in fostering voluntary tax compliance. However, the IRS's systemic assessment of these penalties often produces excessively large penalties disproportionate to any underlying income tax liability. The IRS assesses IIR penalties on returns it considers to be filed late, but more than 55 percent of systemically assessed IRC §§

<sup>97</sup> IRS, ITIN Production Report (Dec. 26, 2020). At the end of PY 2020, there were 45,193 unassigned Forms W-7 for new ITINs on 32,646 suspended tax returns and 104,771 applications for renewals.

<sup>98</sup> IRS, ITIN Production Report (May 15, 2021). There were 103,300 unassigned Forms W-7 for new ITINs on 98,664 tax returns and 133,008 unassigned applications for renewals.

<sup>99</sup> IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue, <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue> (last visited May 25, 2021).

<sup>100</sup> See SAMS issue 49233, referencing the California Golden State stimulus payment.

6038 and 6038A penalties are abated because the returns were timely, because reasonable cause relief was granted, or in situations where the failure-to-file penalty on the related Form 1120 or Form 1065 filing is abated under the First Time Abatement (FTA) provisions or the return has no tax due.<sup>101</sup> Taxpayers and the IRS expend significant time, energy, and money addressing penalties that the IRS should not have assessed. Thus, these systemic assessments are ineffective in promoting taxpayer compliance and do not promote equity and fairness.

Because the penalties are immediately assessed, taxpayers' recourse is to rely on IRS discretion to grant a reasonable cause abatement of the penalties, request a Collection Due Process proceeding, or pay the assessed penalty and file suit in district court or the Court of Federal Claims seeking a refund. One means of proactively addressing this disadvantage to taxpayers is to send preassessment correspondence, giving potentially impacted taxpayers the opportunity to explain why the IRS should not assess the penalty. This approach would educate taxpayers and minimize the inefficient and burdensome practice of first assessing and then abating these penalties. Further, it would contribute to tax equity by placing the IRS in a better position to distinguish between good-faith mistakes and intentional tax noncompliance.

### **Objective 21 for FY 2022 – TAS will work with the IRS to end systemic assessment of IIR penalties and replace that system with an improved, fair program.**

- Activity 1: Recommend the IRS send taxpayers a proposed penalty notice to allow them to provide mitigating evidence such as reasonable cause; if timely filed, proof of timely filing; or application of the FTA administrative relief.
- Activity 2: Recommend the IRS provide taxpayers 60 days to respond to proposed penalty notices and give IRS employees time to review and consider reasonable cause relief, FTA relief, or the issue of timeliness.
- Activity 3: Advocate for the IRS to reinstitute a penalty-free voluntary disclosure program, similar to the former FAQ 18 of the 2012 Offshore Voluntary Disclosure Program, in which taxpayers will be encouraged to come forward, file delinquent information returns, and be compliant for future years. Specifically address those taxpayers who do not have other tax liabilities besides penalties associated with the missing IIRs, are not under examination, and have not been contacted for the delinquent IIRs.
- Activity 4: Continue advocating for the IRS to stop systemic assessment of IIR penalties.<sup>102</sup>

<sup>101</sup> As of the end of FY 2020, the IRS had abated 55 percent of IRC §§ 6038 and 6038A penalties systemically assessed in 2018. The number of penalty abatements may increase as additional time elapses. The annual abatement rate for systemic §§ 6038 and 6038A IIR penalties assessed from calendar years 2014 through 2017 was at least 64 percent. See National Taxpayer Advocate 2020 Annual Report to Congress 119-131 (Most Serious Problem: *International: The IRS's Assessment of International Penalties Under IRC §§ 6038 and 6038A Is Not Supported by Statute, and Systemic Assessments Burden Both Taxpayers and the IRS*). See also IRM 20.1.9.3.5(3)(b), Reasonable Cause (Jan. 29, 2021).

<sup>102</sup> Systemic penalties are those that are electronically asserted as an automatic matter whenever a late-filed corporate or partnership tax return includes an information return required by IRC §§ 6038 and 6038A and other foreign information reporting provisions in Chapter 61.

## 22. ADVOCATE FOR IMPROVED VOLUNTARY DISCLOSURE PRACTICE TO REDUCE TAXPAYER UNCERTAINTY AND ENCOURAGE PARTICIPATION

For about 70 years, taxpayers have had the opportunity to participate in an informal voluntary disclosure practice (VDP) that allows taxpayers with potential criminal exposure for prior tax and reporting issues to voluntarily file correct returns.<sup>103</sup> If taxpayers' disclosures were timely, truthful, and complete, the program provided taxpayers protection from criminal prosecution and the ability to come into compliance in exchange for payment of tax, interest, and civil penalties. VDP is a matter of IRS internal policy that encourages and rewards taxpayers who self-correct prior unreported income or erroneous filing positions before the IRS contacts them. The IRS welcomes voluntary disclosures as a low-cost source of revenue that continues through future tax years, helps reduce current and future tax gap impact, and utilizes IRS resources efficiently. But recent changes to the VDP unnecessarily put taxpayers at risk of criminal prosecution simply to determine whether their disclosure is eligible for the VDP and give revenue agents excessive discretion to assert penalties.

On November 20, 2018, the IRS released a new interim guidance memorandum (IGM) to address updated VDP procedures.<sup>104</sup> The new VDP procedures are significantly different than any prior VDP and substantially more onerous and uncertain than the program it replaced. The principles underlined in the IGM were incorporated in Form 14457, Voluntary Disclosure Practice Preclearance Request and Application, its Instructions, and in IRM 9.5.11.9, Voluntary Disclosure Practice.<sup>105</sup>

To determine eligibility in the new VDP, taxpayers are now required to admit potentially incriminating details of their tax fraud in a written questionnaire that is signed under penalties of perjury *before obtaining preliminary acceptance* into the VDP, raising risks of self-incrimination without certainty from the IRS. If the taxpayer's disclosure is timely and satisfies voluntary disclosure requirements, the IRS's Criminal Investigation (CI) division will issue a "preclearance letter" to the taxpayer and transfer the taxpayer's case to IRS Examination for an audit. Preclearance was not a requirement under the historical VDP. Rather, the determining factor was whether the IRS was already investigating the taxpayer.

Once taxpayers are assigned to a civil revenue agent, their case will undergo an audit that follows standard examination procedures. Examiners are instructed to develop cases, use information gathering tools, and determine proper tax liabilities and applicable penalties. Taxpayers must fully cooperate but have the right to appeal the examination results to the IRS Independent Office of Appeals. The IRS expects voluntary disclosures will be resolved by agreement with full payment of all taxes, interest, and penalties for the disclosure period.

Presumably, if a taxpayer refuses to ultimately agree to all proposed tax and penalty computations, the examiner may label the taxpayer as "uncooperative" and may request that CI revoke preliminary acceptance.<sup>106</sup>

<sup>103</sup> For a discussion of the evolution and history of voluntary disclosure, see *United States v. Tenzer*, 127 F.3d 222 (2d Cir. 1997) and *United States v. Tenzer*, 213 F.3d 34 (2d Cir. 2000) (*Tenzer II*). See also IRM 9.5.11.9, Voluntary Disclosure Practice (Dec. 02, 2009) (the last version of the original VDP).

<sup>104</sup> Updated IRS Voluntary Disclosure Practice: Interim Guidance Memorandum (IGM) LB&I-09-1118-014 (Nov. 20, 2018). The memorandum expired on November 20, 2020 and has been removed from the IRS website.

<sup>105</sup> IRM 9.5.11.9, Voluntary Disclosure Practice (Sept. 17, 2020); Form 14457, Voluntary Disclosure Practice Preclearance Request and Application (Apr. 2020); Scott D. Michel and Mark E. Matthews, *The 2020 Revision to the Internal Revenue Manual's Voluntary Disclosure Practice: More Consistency with Greater Risk*, BLOOMBERG LAW NEWS (Jan. 12, 2021).

<sup>106</sup> See IRM 9.5.11.9, Voluntary Disclosure Practice (Sept. 17, 2020) (discussing cooperation).



The new VDP penalty regime provides general guidance to IRS examiners while still leaving agents with substantial discretion. If taxpayers cooperate and their disclosures are timely and accurate, they should anticipate a 75 percent civil fraud penalty<sup>107</sup> or fraudulent failure-to-file penalty<sup>108</sup> on the largest tax deficiency in the disclosure period; a 50 percent willful penalty for failure to file the Report of Foreign Bank and Financial Accounts (FBAR)<sup>109</sup> for the tax year during the disclosure period that had the highest aggregate balance of offshore assets; and penalties for estate and gift taxes, employment taxes, and excise taxes, based on the facts and circumstances. But if taxpayers do not agree to all proposed changes or failures are evident, revenue agents may expand the audit to include additional tax years outside the normal six-year disclosure period and penalty assertions to include additional civil fraud penalties, international information return penalties, and FBAR penalties on up to all tax years.<sup>110</sup>

The changes raise the question of whether the new VDP program achieves the IRS's historical policy to encourage taxpayers to voluntarily identify themselves. The new VDP lacks certainties for taxpayers, exposes them to possible criminal prosecution, and gives revenue agents broad penalty discretion. These changes may discourage taxpayers from participating in the VDP and undermine the program's chance for success.

**Objective 22 for FY 2022 – TAS will research the effectiveness of the new VDP, announced November 20, 2018, as compared to the earlier VDP it replaced.**

- Activity 1: Propose program changes, if appropriate, based upon TAS findings and data-driven analysis, including impact to years affected by the VDP, applicable penalties, and possible changes to the preclearance process.

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<sup>107</sup> IRC § 6663.

<sup>108</sup> IRC § 6651(f).

<sup>109</sup> 31 U.S.C. § 5321(a)(5)(C). See also IRM 4.63.3.26.2(7), Penalty Framework (Apr. 27, 2021). A willful FBAR penalty can be assessed, which is the larger of 50 percent of the unreported foreign account balance at the time of the violation or a penalty of \$136,399 for penalties assessed on or after January 28, 2021. 31 U.S.C. § 5321(a)(5)(C)(i) and 31 C.F.R. § 1010.821 (2021).

<sup>110</sup> See IRM 4.63.3.26.1, Voluntary Disclosure Practice Requirements (Apr. 27, 2021).