

National Taxpayer Advocate

ANNUAL REPORT TO CONGRESS



Executive Summary – Prologue & Highlights



2021

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Preface: Introductory Remarks by the National Taxpayer Advocate

HONORABLE MEMBERS OF CONGRESS:

Each year, the National Taxpayer Advocate has the privilege of submitting her Annual Report to Congress. I respectfully submit this year's report for your consideration and welcome the opportunity to discuss it in more detail. Section 7803(c)(2)(B)(ii) of the IRC requires the National Taxpayer Advocate to submit an annual report to the House Committee on Ways and Means and the Senate Committee on Finance that, among other things, includes a summary of the ten most serious problems encountered by taxpayers and makes administrative and legislative recommendations to mitigate those problems. In each of the ten Most Serious Problem discussions, we are including an IRS narrative response. By doing so, we intend to help readers see both TAS's perspective and the IRS's perspective on the source and nature of key challenges and potential solutions. Although the annual report focuses on the ten Most Serious Problems, I view my role as requiring continual efforts to improve taxpayer service and tax administration by working collaboratively with the IRS throughout the year on both newly identified problems and longstanding challenges.¹

The statute also requires the report to identify the ten federal tax issues most frequently litigated in court. This year, we took a hybrid approach to that discussion, reviewing decided cases and for the first time, analyzing issues raised in filed petitions with the U.S. Tax Court. This analysis provides a broader perspective on taxpayer problems that are not initially solved at the administrative level.

The year 2021 provided no shortage of taxpayer problems. As I stated in my Fiscal Year 2022 Objectives Report, this past year and the 2021 filing season conjure up every possible cliché for taxpayers, tax professionals, the IRS, and its employees – it was a perfect storm; it was the best of times and the worst of times; patience is a virtue; with experience comes wisdom and with wisdom comes experience; out of the ashes we rise; and we experienced historical highs and lows. Calendar year 2021 was surely the most challenging year taxpayers and tax professionals have ever experienced – long processing and refund delays, difficulty reaching the IRS by phone, correspondence that went unprocessed for many months, collection notices issued while taxpayer correspondence was awaiting processing, limited or no information on the Where's My Refund? tool for delayed returns, and – for full disclosure – difficulty obtaining timely assistance from TAS.

The IRS Deserves Credit for Playing the Hand It Was Dealt

One irony of the past year is that, despite its challenges, the IRS performed well under the circumstances. The imbalance between the IRS's workload and its resources has never been greater. On the workload side, the number of individual taxpayers the IRS serves has increased by about 19 percent since 2010, as the number of Form 1040 series returns rose from about 142 million in that year to about 169 million in 2021.² While there is no perfect measure of the IRS's workload, return filings are a good approximation because most IRS work – including fraud screening, telephone calls, audits, collection actions, TAS cases, Appeals cases, Tax Court cases, and other downstream consequences – keys off the number of taxpayers filing returns. During the last 18 months, Congress charged the IRS with administering several COVID-19 pandemic financial relief programs, including three rounds of stimulus payments (also known as Economic Impact Payments), monthly payments of the Advance Child Tax Credit (AdvCTC), reduction of the taxability of unemployment compensation in the middle of the 2021 filing season, and other provisions directly impacting tax administration. Each financial relief program consumed considerable IRS resources to administer, including overall planning, information technology (IT) programming, implementation, public communications, and responding to taxpayers' questions and account issues. To address these needs, the IRS had to reallocate resources from its core tax administration responsibilities.

Over the last decade, examination coverage has decreased, enforcement efforts have been negatively impacted, and the Level of Service has continued to drop as the IRS's workforce and budget have declined. On the resources side, the IRS's baseline budget has been reduced by about 20 percent on an inflation-adjusted basis since fiscal year (FY) 2010, and its workforce has shrunk by about 17 percent.³ Although Congress provided supplemental funding to help the IRS implement pandemic-relief programs, it is not feasible for an agency the size of the IRS to staff up and train new employees quickly. The IRS also is limited in its ability to hire new employees when funding is provided on a one-time basis because there is no assurance it will have sufficient funding in future years to retain those employees. In addition, the social distancing required during the pandemic forced the agency to close or limit staffing in processing centers where employees work in close quarters, further restricting its production capacity.

Despite its limitations, the IRS processed most e-filed tax returns timely, it issued 130 million refunds totaling \$365 billion,⁴ it issued 478 million stimulus payments totaling \$812 billion,⁵ and it sent AdvCTC payments to over 36 million families that totaled over \$93 billion.⁶ The IRS's leadership and workforce deserve considerable credit for their accomplishments.

Yet 2021 Was the Most Challenging Year Ever for Taxpayers

There is no way to sugarcoat the year 2021 in tax administration: From the perspective of tens of millions of taxpayers, it was horrendous. Among the lowlights:

- **Processing Backlogs Led to Long Refund Delays.** The IRS was behind before the 2021 filing season had even started because it carried over approximately 11.7 million returns from 2020. It took until June 2021 before the IRS had processed virtually all 2019 returns. Then, in 2021, the IRS received approximately 17 million original Form 1040 series returns on paper.⁷ Paper returns have been taking up to at least eight months to process.⁸ In addition, the IRS closed the filing season with 9.8 million individual returns in its Error Resolution System (ERS) that required manual processing for each return. Millions of additional returns were worked in ERS at other points during the year. The IRS also issued over 11 million math error notices relating to Recovery Rebate Credit (RRC) claims, and in many cases, refunds were not released until taxpayers responded in writing, potentially delaying refunds by many months.

Overall, 77 percent of individual taxpayers received refunds in 2021,⁹ so processing delays translated directly into refund delays. Refund delays have a disproportionate impact on low-income taxpayers. (Earned Income Tax Credit (EITC) benefits are worth up to \$6,660, Child Tax Credit benefits are worth up to \$2,000 per qualifying child under tax year 2020 rules, and RRCs are potentially worth several thousand dollars for families who did not receive advance payments.) Millions of taxpayers rely on the benefits from these programs to pay their basic living expenses, and when refunds are substantially delayed, the financial impact can range from mild inconvenience to severe financial hardship.

For taxpayers who filed an amended return, the processing (and refund) delays have been even longer than the delays for original paper returns. As of December 18, 2021, the IRS reported it had a backlog of 2.3 million unprocessed Forms 1040-X, Amended U.S. Individual Income Tax Return, and that processing times "can be more than 20 weeks instead of up to 16."¹⁰ We have seen cases where processing has taken considerably longer than 20 weeks, including more than a year. The manual reviews will take substantial time, preventing the IRS from digging out of that hole in the foreseeable future.

Business returns have also been subject to processing delays. At the close of the filing season, the IRS reported more than seven million business returns that required manual processing. Delays in processing Forms 941, Employer's Quarterly Federal Tax Return, and Forms 941-X, Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund, have been significant. As of December 15, the IRS reported it had 2.8 million unprocessed Forms 941 and about 427,000 Forms 941-X that cannot be processed until the related Forms 941 are processed.¹¹

For individuals, estates, or trusts that file Form 1045, Application for a Tentative Refund, or corporations that file Form 1139, Corporation Application for a Tentative Refund, relating to the carryback of net operating losses, the IRS is not even providing information on refund wait times. As of December 21, the most recent update on IRS.gov had been posted on September 14 and states: “We continue to experience inventory backlogs longer than the normal 90-day statutory period. … Currently, we cannot provide a timeframe.”

- **Telephone Service Was the Worst It Has Ever Been.** During the COVID-19 pandemic, call volume skyrocketed, reaching a historic level of calls, which has made it even harder for taxpayers to receive assistance. In FY 2021, the IRS received about 282 million telephone calls. Customer service representatives (CSRs) only answered about 32 million, or 11 percent, of those calls. That meant most callers could not obtain answers to their tax law questions, get help with account problems, or speak with a CSR to respond to a compliance notice. Among the lucky one in nine callers who was able to reach a CSR, the IRS reported that hold times averaged 23 minutes. Practitioners and taxpayers have reported that hold times were often much longer, and frustration and dissatisfaction was high throughout the year with the low level of phone service.
- **The IRS Took Months to Process Taxpayer Responses to Its Notices, Further Delaying Refunds and in Some Cases Leading to Premature Collection Notices.** The IRS sent tens of millions of notices to taxpayers during 2021. These included nearly 14 million math error notices, Automated Underreporter notices (where an amount reported on a tax return did not match the corresponding amount reported to the IRS on a Form 1099 or other information reporting document), notices requesting a taxpayer authenticate his or her identity where IRS filters flagged a return as potentially fraudulent, correspondence examination notices, and collection notices. In many cases, taxpayer responses were required, and if the IRS did not process a response, it could take adverse action or not release the refund claimed on the tax return.

For many IRS programs, the “normal” processing time for taxpayer correspondence is 45 days. Based on our casework and practitioner feedback, processing time for some categories of correspondence has been running six months or longer. At this writing, the IRS last updated its website with information on the status of processing taxpayer responses to notices or letters on January 13, 2021 – almost a year ago. It states: “We’re getting mail, but it’s taking us longer to process it.”¹² Like return processing delays, correspondence processing delays can harm taxpayers. In cases where the IRS is holding a refund until it receives a taxpayer response, correspondence processing delays mean refund delays.

Where the IRS issued compliance notices, the IRS’s automated systems ordinarily move cases to the next step in the compliance process if a taxpayer’s response is not recorded within a specified number of days. For example, failure to respond to a math error notice within 60 days means the tax is assessed and the taxpayer loses the right to contest it in the U.S. Tax Court. Failure to pay an assessed liability means the case is moved to the collection function. To prevent enforcement actions from taking place before the IRS processed taxpayer responses, the IRS generally reprogrammed its systems to allow additional time. But there were gaps. For example, we are aware of cases where taxpayers received notices of intent to levy while their responses requesting abatement of a math error assessment or disputing a proposed examination adjustment were still awaiting processing, or their amended returns had not been processed. The lack of proactive disclosure of key information or clear guidance created needless confusion and additional work for taxpayers and the IRS.

- **The IRS’s Where’s My Refund? Tool Often Could Not Answer That Question.** The IRS heavily promotes Where’s My Refund? and taxpayers rely on it to determine when they can expect to receive their refunds. However, the program suffers from significant limitations that rendered it non-functional for tens of millions of taxpayers experiencing delays. The tool does not explain any status delays, the reason for the delay, where the return is in the process, or what needs to be done. It just reflects that the return

has been received, that the refund was approved, or that the refund was sent. For millions of taxpayers, that meant many months without any status updates, and some are still waiting for their refunds.

When taxpayers can't get information regarding when they will receive their refunds, they call the IRS. Unfortunately, CSRs rarely have more information than taxpayers can see on Where's My Refund? Particularly for taxpayers who need their refunds to pay for current living expenses, the absence of information can cause deep concern and sometimes panic, leading to more telephone calls that are just as unproductive.

TAS Faced Challenges Providing Timely Assistance to Taxpayers

Congress created TAS to serve as a "safety net" for taxpayers, but over the past few years, the combination of more cases, fewer experienced Case Advocates, and an inability to close cases due to limited IRS resources has caused the TAS safety net to fray. That has increased case cycle times, made it harder for taxpayers to reach TAS, and reduced service levels for taxpayers and congressional offices that refer cases to us. From FY 2017 to FY 2021, TAS's case receipts rose from 167,000 to 264,000 – a 58 percent increase – while our appropriated funding on an inflation-adjusted basis declined by about six percent. When taxpayers cannot get their problems resolved directly with the IRS, they often contact their congressional offices for assistance. The number of cases TAS received from congressional offices demonstrates the magnitude of the challenges taxpayers experienced in 2021. In the three years preceding the pandemic, TAS received between 10,000 and 11,000 congressional referrals annually. Last year, we received more than 66,000 congressional referrals – more than *six times* as many cases as in pre-pandemic years.

Although our employees are resilient and want to help every taxpayer needing assistance, we had to make some difficult decisions during the past year to address our workload challenges. One was to reinstate our prior policy against accepting cases where the sole issue was a delay in the processing of an original or amended tax return so we could focus more of our limited resources on cases where our Case Advocates can have a direct and meaningful impact on the outcome. We are continually reassessing how we can apply our limited resources to provide maximum benefit for the greatest number of taxpayers.

The time our Case Advocates spend on each case has risen because of the pandemic and the difficulty moving cases through the system. TAS employees advocate for the taxpayer but rarely have the delegated authority to implement the relief the taxpayer is seeking. That is for good reason. TAS was not created to serve as a second IRS; rather, it was designed to help taxpayers by advocating and working with the IRS to resolve problems. When the IRS gets behind in responding to TAS case referrals, however, cases back up. Taxpayers must wait longer to receive relief, and our Case Advocates must spend additional time following up with the IRS and updating the taxpayer until the case is ultimately resolved, causing frustration for both taxpayers and TAS employees.

The Most Serious Problems Encountered by Taxpayers in 2021 Were Exacerbated by the COVID-19 Pandemic, But They Resulted From Longstanding Underfunding of the IRS

The Most Serious Problems I identify in this report deal primarily with taxpayer service and IT challenges, including processing and refund delays, inadequate taxpayer service, limited functionality of online taxpayer accounts, and the IRS's inability to date to develop effective procedures to communicate with taxpayers and tax professionals by email. Over the past year, there has been a tendency to focus on the unique challenges posed by the pandemic and to attribute IRS service and technology shortcomings to these circumstances. There is no doubt the pandemic has had a big impact, but taxpayer services and technology at the IRS were inadequate long before the pandemic. In our 2019 report, we wrote:

The President's Management Agenda emphasizes the importance of high-quality customer service and cites the American Customer Satisfaction Index (ACSI) and the Forrester U.S.

Federal CX Index™ as key benchmarks. Those indices find the IRS is among the lowest performing federal agencies when it comes to the customer experience. The ACSI report for 2018 ranks the Treasury Department tied for 10th out of 12 Federal Departments and says that “most [IRS] programs score … well below both the economy-wide national ACSI average and the federal government average.” The 2019 Forrester report ranked the IRS as 13th out of 15 federal agencies and characterized the IRS’s score as “very poor.”¹³

In 2019, Congress passed the Taxpayer First Act (TFA) due to its concerns about the IRS’s performance. The title of the act was intended to send a clear message: The IRS should reassess its business practices to prioritize taxpayer needs. The TFA directed the IRS to develop comprehensive multiyear plans to improve taxpayer services and modernize its IT systems, which the IRS has developed. These plans are thoughtful and ambitious, and if implemented, they have the potential to dramatically transform the IRS’s operations. But aspects of the plan require considerable funding to implement. With limited funding, limited resources, and the impact of the COVID-19 pandemic, the IRS is struggling to timely meet its core mission of delivering a successful filing season.

As I mentioned earlier, the number of individual income tax returns the IRS receives – a reasonable approximation of its workload – has increased by 19 percent since FY 2010, while its baseline appropriation on an inflation-adjusted basis has decreased by nearly 20 percent. This imbalance has left the IRS without enough resources to meet taxpayer needs, let alone to invest in additional personnel and technology. Telephone service is one example. In FY 2019, the most recent pre-pandemic year, the IRS received almost 100 million telephone calls, and CSRs answered just 29 million. That is simply a resource issue. Additional technology resources and more employees are required if the IRS is going to answer more telephone calls.

More funding is also required for the IRS to improve its technology systems. The two IRS systems containing the official records of individual and business taxpayer accounts are the oldest major technology systems in the federal government. The IRS also has about 60 case management systems that generally are not interconnected; each function’s employees must transcribe or import information from other electronic systems and mail or fax it to other functions. Obsolete IT systems limit the functionality of online taxpayer accounts, prevent taxpayers from obtaining full details about the status of their cases, and prevent the IRS from selecting the best cases for compliance actions. Although the IRS is making strides with its case management system, it still has a long way to go.

The FY 2022 Financial Services and General Government appropriations bills working their way through Congress would increase IRS funding by about 14 percent, and the version of the Build Back Better Act passed by the House would provide additional funding of nearly \$80 billion over ten years. As this report is going to press, it is not clear what funding changes will be enacted into law. What is clear is that to meet taxpayer needs, the IRS requires substantial additional funding to timely process returns, timely address taxpayer correspondence, answer taxpayer telephone calls, and develop robust online taxpayer accounts to provide quality taxpayer service and improve tax enforcement and tax administration. I encourage Congress to consider these needs carefully as it makes its final spending decisions.

Legislative Recommendations

The National Taxpayer Advocate 2022 Purple Book makes 68 recommendations to strengthen taxpayer rights and improve tax administration. Most of the recommendations in this volume are non-controversial, common sense reforms that will strengthen taxpayer rights and improve tax administration. We hope the tax-writing committees and other Members of Congress find it useful.

We highlight these ten legislative recommendations for particular attention, in no particular order:

- **Revamp the IRS Budget Structure and Provide Sufficient Funding to Improve the Taxpayer Experience and Modernize the IRS's Information Technology Systems.** Since FY 2010, the IRS budget has been reduced by nearly 20 percent after adjusting for inflation. Largely as a result of these budget reductions, the IRS cannot provide top quality service or enforce the law with fairness to all. For example, the IRS finished the 2021 filing season with a backlog of 35.3 million returns that required manual processing. When taxpayers called the IRS for assistance, only about 11 percent reached a CSR, with hold times for taxpayers who got through averaging about 23 minutes. In addition, the IRS's IT systems desperately need upgrades. In FY 2021, the IRS collected about \$4.1 trillion on a budget of about \$11.9 billion, producing a remarkable average return on investment of about 345:1. Additional funding for the IRS would not only improve taxpayer service but would almost surely increase revenue collection.
- **Amend the Lookback Period for Allowing Tax Credits or Refunds Under IRC § 6511(b)(2)(A) to Include the Period of Any Postponement of Time for Filing a Return Under IRC § 7508A.** Taxes withheld from wages and estimated tax payments are generally deemed paid on the tax return filing deadline of April 15. To be timely, a taxpayer's claim for credit or refund generally must be filed within three years from the date the return was filed or two years from the date the tax was paid, whichever period is longer. If the taxpayer files a refund claim within three years from the date the return was filed, the taxpayer can only get a credit or refund of excess amounts paid within the preceding three years, plus six months (*i.e.*, the lookback period) if the taxpayer obtained a six-month extension for filing the original return. However, a taxpayer who filed pursuant to a "postponement" granted by the IRS because of a federally declared disaster will not recover excess amounts paid within the period of postponement.

Because of the pandemic, the IRS postponed the tax return filing deadline to July 15 in 2020 and to May 17 in 2021.¹⁴ These postponements of the filing deadline limit the amounts that taxpayers can recover in a way that was not intended and that will cause some taxpayers to lose the ability to recover overpayments. For example, a taxpayer who filed her 2019 return by the postponed filing deadline of July 15, 2020, might reasonably believe she would be eligible for a refund if she files a claim before July 15, 2023. However, if her taxes (withholding payments) are deemed paid on April 15, 2020, any claim for credit or refund filed after April 15, 2023, would be disallowed by the IRS. This is a trap for the unwary. We recommend Congress extend the lookback period when the filing deadline is postponed by the IRS due to a disaster declaration to three years *plus the period of the postponement*.

- **Authorize the IRS to Establish Minimum Competency Standards for Federal Tax Return Preparers.** The IRS receives over 160 million individual income tax returns each year, and paid tax return preparers prepare the majority of these returns. Both taxpayers and the tax system depend heavily on the ability of preparers to prepare accurate tax returns. Yet numerous studies have found that non-credentialed tax return preparers routinely prepare inaccurate returns, which harms taxpayers and tax administration. To protect the public, federal and state laws generally require lawyers, doctors, securities dealers, financial planners, actuaries, appraisers, contractors, motor vehicle operators, and even barbers and beauticians to obtain licenses or certifications and, in most cases, to pass competency tests. Taxpayers and the tax system would benefit from requiring tax return preparers to pass minimum competency tests.

The IRS sought to implement minimum standards beginning in 2011, including passing a basic competency test, but a U.S. Court of Appeals affirmed a U.S. district court opinion that held the IRS lacked the authority to impose preparer standards without statutory authorization. The plan the IRS rolled out in 2011 was developed after extensive consultation with stakeholders and was supported by almost all such stakeholders. We recommend Congress authorize the IRS to reinstitute minimum competency standards.

- **Expand the Tax Court’s Jurisdiction to Hear Refund Cases and Assessable Penalties.** Under current law, taxpayers who owe tax and wish to litigate a dispute with the IRS must go to the U.S. Tax Court, while taxpayers who have paid their tax and are seeking a refund must file suit in a U.S. district court or the U.S. Court of Federal Claims. Although this dichotomy between deficiency cases and refund cases has existed for decades, we recommend Congress give all taxpayers the option to litigate their tax disputes in the U.S. Tax Court. Due to the tax expertise of its judges, the Tax Court is often better equipped to consider tax controversies than other courts. It is also more accessible to less knowledgeable and unrepresented taxpayers than other courts because it uses informal procedures, particularly in certain disputes that do not exceed \$50,000 for one tax year or period.
- **Restructure the Earned Income Tax Credit (EITC) to Make It Simpler for Taxpayers and Reduce Improper Payments.** TAS has long advocated for dividing the EITC into two credits: (i) a refundable worker credit based on each individual worker’s earned income, despite the presence of a qualifying child, and (ii) a refundable child credit. For wage earners, claims for the worker credit could be verified with nearly 100 percent accuracy by matching claims on tax returns against Forms W-2, reducing the improper payments rate on those claims to nearly zero. The portion of the EITC that varies based on family size would be combined with a child credit into a larger family credit. The National Taxpayer Advocate published a report making this recommendation in 2019, and we continue to advocate for it.
- **Expand the Protection of Taxpayer Rights by Strengthening the Low Income Taxpayer Clinic (LITC) Program.** The LITC program effectively assists low-income taxpayers and taxpayers who speak English as a second language. When the LITC grant program was established as part of the IRS Restructuring and Reform Act of 1998, IRC § 7526 limited annual grants to no more than \$100,000 per clinic. The law also imposed a 100 percent matching requirement. A clinic cannot receive more in LITC grant funds than it is able to match. The nature and scope of the LITC program has evolved considerably since 1998, and those requirements are preventing the program from providing high quality assistance to the largest possible universe of eligible taxpayers. We recommend that Congress remove the per-clinic cap and allow the IRS to reduce the match requirement to 50 percent if doing so would provide coverage for additional taxpayers.
- **Clarify That Supervisory Approval Is Required Under IRC § 6751(b) Before Proposing Penalties.** IRC § 6751(b)(1) states: “No penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination. . . .” At first, it seems a requirement that an “initial determination” be approved by a supervisor would mean the approval must occur before the penalty is proposed. However, the timing of this requirement has been the subject of considerable litigation, with some courts holding that the supervisor’s approval might be timely even if provided after a case has gone through the IRS Independent Office of Appeals and is in litigation. Very few taxpayers choose to litigate their tax disputes. Therefore, to effectuate Congress’s intent that the IRS not penalize taxpayers in certain circumstances without supervisory approval, the approval must be required earlier in the process. We recommend that Congress amend IRC § 6751(b)(1) to require that written supervisory approval be provided *before* the IRS sends a written communication to the taxpayer proposing a penalty.
- **Require That Math Error Notices Describe the Reason(s) for the Adjustment With Specificity, Inform Taxpayers They May Request Abatement Within 60 Days, and Be Mailed by Certified or Registered Mail.** Under IRC § 6213(b), the IRS may make a summary assessment of tax arising from a mathematical or clerical error, as defined in IRC § 6213(g). When the IRS does so, IRC § 6213(b)(1) requires that it send the taxpayer a notice describing “the error alleged and an explanation thereof.” By law, the taxpayer has 60 days from the date of the notice to request that the summary assessment be abated. Many taxpayers do not understand that failing to respond to an IRS math error notice within 60 days means they may have unknowingly conceded the adjustment and forfeited their right to challenge the IRS’s position in the Tax Court. Amending IRC § 6213(b) to require that the IRS

specifically describe the error giving rise to the adjustment and inform taxpayers that they have 60 days to request that the summary assessment be abated would help ensure taxpayers understand the adjustment and their rights. Additionally, requiring the IRS to send the notice either by certified or registered mail would underscore the significance of the notice and provide an additional safeguard to ensure that taxpayers are receiving this critical information.

- **Amend IRC § 6330 to Provide That “an Opportunity to Dispute” an Underlying Liability Means an Opportunity to Dispute Such Liability in a Prepayment Judicial Forum.** IRC §§ 6320(b) and 6330(b) provide taxpayers with the right to request an independent review of a Notice of Federal Tax Lien (NFTL) filed by the IRS or a proposed levy action. The purpose of these collection due process (CDP) rights is to give taxpayers adequate notice of IRS collection activity and provide a meaningful hearing to determine whether the IRS properly filed an NFTL or proposed a levy. The IRS and the courts interpret the current law to mean that an opportunity to dispute the underlying liability includes a prior opportunity for a conference with the IRS Independent Office of Appeals offered either before or after assessment of the liability, even where there is no opportunity for judicial review of the Appeals conference.

The value of CDP proceedings is undermined when taxpayers who have never had an opportunity to dispute the underlying liability in a prepayment judicial forum are precluded from doing so during their CDP hearing. These taxpayers have no alternative but to pay the tax and then seek a refund by filing a suit in a U.S. district court or the U.S. Court of Federal Claims – an option that not all taxpayers can afford. In our view, the circumstances in which taxpayers may challenge the IRS’s liability determination in a CDP hearing should be expanded to include taxpayers who did not receive a notice of deficiency or the opportunity to dispute the underlying liability in a prepayment judicial forum.

- **Amend IRC § 6212 to Provide That the Assessment of Foreign Information Reporting Penalties Under IRC §§ 6038, 6038A, 6038B, 6038C, and 6038D Is Subject to Deficiency Procedures.** IRC § 6212 requires the IRS to issue a “notice of deficiency” before assessing certain liabilities. IRC § 6671(a) authorizes the IRS to assess some penalties without first issuing a notice of deficiency. These penalties are generally subject to judicial oversight only if taxpayers first pay the penalty and then sue for a refund. The IRS takes the position that various international information reporting penalties are also immediately assessable without issuing a notice of deficiency, including the penalty under IRC § 6038 for failure to file Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations. Taxpayers who are savvy enough to request an abatement based on reasonable cause or to request a conference with the IRS Independent Office of Appeals frequently obtain relief from assessable penalties. Specifying that deficiency procedures apply would prevent the systemic assessments the IRS so often abates. The proposed legislative change would require the IRS to issue a notice of deficiency before assessing penalties under IRC §§ 6038, 6038A, 6038B, 6038C, and 6038D, thus allowing taxpayers to seek prepayment judicial review in the U.S. Tax Court and enhancing the taxpayers’ *right to a fair and just tax system*.

TAS Accomplishments During 2021

Despite extraordinary challenges, TAS employees accomplished a lot for taxpayers during 2021. The significant majority of TAS’s budget and employees are devoted to casework – assisting taxpayers with account-specific problems. In FY 2021, our case advocacy employees closed nearly 252,000 cases – 23 percent more than the nearly 205,000 cases we closed in FY 2020. We also assisted over 30,000 taxpayers whose circumstances did not require us to open a case.

The other main TAS function, systemic advocacy, aims to identify problems affecting groups of taxpayers and devise solutions. Initially, we work with the IRS to solve problems internally. If we are unsuccessful, we raise

our concerns in our reports to Congress. The year 2021 provided no shortage of systemic taxpayer problems, and later in this Prologue, we include a list of “TAS Successes” highlighting just some of our successes.

The following examples illustrate the nature of our systemic work:

- The IRS issued over 11 million math error notices relating to the RRC. However, about 6.5 million math error notices issued last spring assessing additional tax failed to contain critical taxpayer rights information. Under math error procedures, the IRS may assess tax in specified circumstances without going through normal deficiency procedures, but it must abate the assessment if the taxpayer disagrees and makes an abatement request within 60 days. Math error notices generally explain this, but this pool of RRC notices did not. When TAS learned of the omission, we urged the IRS to send a second round of corrected notices that provided the taxpayers with an explanation and a new 60-day period to request abatement. The IRS agreed and sent supplemental letters that provided an apology, explained the rules, and gave taxpayers an additional 60 days to respond, protecting their *rights to be informed and to pay no more than the correct amount of tax*.
- When Congress authorized COVID-19 pandemic-related stimulus payments in 2020, the law characterized the amounts as credits against tax (RRCs), but it also directed the IRS to make advance payments of the credit amounts to the extent possible. It provided that the advance payments should not be offset to satisfy prior-year tax liabilities and non-tax debts (except past-due child support for the first round of advance payments). In December 2020, a change in the law provided that the credits were subject to regular offset rules. This change created an inconsistency in treatment between taxpayers who received advance payments, which were generally not subject to offset, and taxpayers to whom the IRS was not able to make advance payments, who stood to lose some or all of their credit claims to offsets when they claimed the RRC on their 2020 returns. TAS raised the issue of inconsistent treatment, and the IRS ultimately agreed to use its discretionary authority under IRC § 6402(a) to not offset RRCs for outstanding federal tax liabilities. The IRS will be applying the same methodology for the third round of stimulus payments, so taxpayers claiming the RRCs on their 2021 tax returns will be treated consistently with taxpayers who received their stimulus payments as advance payments in 2021.

We are highlighting these examples because they are indicative of the systemic advocacy activities we undertake to protect taxpayer rights and reduce taxpayer burden.

At a Glance

New this year to the report is the “At a Glance” section. For each of the ten Most Serious Problems we identify in this report, At a Glance summarizes what taxpayers want from the IRS, explains why the problem is serious, and provides some key statistics. The section “what taxpayers want from the IRS” comes directly from an IRS survey about taxpayer attitudes and preferences. The goal is to give the reader the ability to quickly glance over the material and grasp some of the impediments that must be overcome to improve service to taxpayers. For those used to long government reports, we hope this three-page format interests you. The more rigorous analysis is included in each Most Serious Problem. Essentially, the At a Glance is a front door of sorts – inviting and welcoming a discussion on why these challenges must be overcome to ensure taxpayers timely receive their refunds, credits, payments, and other services that support their families, communities, and our nation’s way of life. I hope this intrigues you, and if so, please join the discussion on how the IRS can better serve taxpayers.

Conclusion

During the last two years, we have lived through a period of “all COVID-19, all the time” in tax administration, just as we have in our personal lives, communities, and jobs. Many challenges created by the pandemic are highlighted in this report.

But it is important to recognize that, for the most part, the pandemic did not create new challenges for the IRS as much as it highlighted longstanding challenges and areas that require attention. My main recommendation to Congress is to provide the IRS with additional funding to enable it to meet taxpayer needs and to conduct sufficient oversight to ensure the additional funding is well spent. Here are some of my key recommendations that additional funding could support:

- To address the unacceptable processing backlogs and refund delays associated with paper tax returns: (1) reduce barriers to e-filing so all taxpayers who prepare their returns using software can submit them electronically and (2) implement scanning technology so the IRS can machine read paper returns, eliminating the need for manual transcription of all return entries.
- To improve levels of service and reduce frustration for taxpayers and tax professionals trying to reach the IRS by phone: increase CSR staffing and implement “customer callback” technology on all telephone lines so taxpayers and tax professionals don’t have to wait on hold and can receive a return call when the next CSR is available.
- To enable taxpayers to transact business more easily with the IRS: (1) expand the functionality of online taxpayer accounts so individual and business taxpayers can see all relevant information and use the accounts to communicate with the IRS and (2) prioritize development of a system that will allow taxpayers and tax professionals to communicate with IRS personnel by secure email.
- To keep taxpayers informed and set expectations at appropriate levels: be proactively transparent and communicate challenges, as well as successes, to the public. Like many organizations, the IRS tends to accentuate good news and downplay problems. When problems arise that affect taxpayers, however, taxpayers have a right to full and accurate information. We recommend, for example, that the IRS post a filing season dashboard, updated at least weekly, that lists each category of work and the length of time it is taking to complete it (*e.g.*, number of weeks to process paper tax returns, number of weeks to process math error and other taxpayer correspondence by category, percentage of taxpayers who called the IRS the previous week and reached an employee).

I look forward to working with Congress and the IRS, and together with my TAS team, we stand ready to help improve taxpayer service and tax administration to benefit all taxpayers.

Respectfully submitted,



Erin M. Collins
National Taxpayer Advocate
December 31, 2021

Endnotes

- 1 IRC § 7803(c)(2)(A).
- 2 See IRS 2010 Filing Season Statistics (week ending Dec. 31, 2010), <https://www.irs.gov/newsroom/2010-filing-season-statistics> (showing 142 million returns processed); IRS Filing Season Statistics (week ending Dec. 3, 2021) <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-december-3-2021> (showing 169 million returns received).
- 3 IRS response to TAS information request (Dec. 17, 2021).
- 4 See IRS 2010 Filing Season Statistics (week ending Dec. 31, 2010), <https://www.irs.gov/newsroom/2010-filing-season-statistics>.
- 5 The IRS reports it issued 160 million payments worth \$270 billion under the Coronavirus Aid, Relief, and Economic Security (CARES) Act; 147 million payments worth \$142 billion under the COVID-related Tax Relief Act of 2020; and 171 million payments worth \$400 billion under the American Rescue Plan Act of 2021. See IRS News Release, IR-2021-38, As required by law, all first and second Economic Impact Payments issued; eligible people can claim Recovery Rebate Credit (Feb. 16, 2021), <https://www.irs.gov/newsroom/as-required-by-law-all-first-and-second-economic-impact-payments-issued-eligible-people-can-claim-recovery-rebate-credit>; IRS News Release, IR-2021-157, More than 2.2 million additional Economic Impact Payments disbursed under the American Rescue Plan (July 21, 2021), <https://www.irs.gov/newsroom/more-than-2-point-2-million-additional-economic-impact-payments-disbursed-under-the-american-rescue-plan>.
- 6 IRS News Release, IR-2021-249, Families will soon receive their December advance Child Tax Credit payment; those not receiving payments may claim any missed payments on the upcoming 2021 tax return (Dec. 15, 2021), <https://www.irs.gov/newsroom/families-will-soon-receive-their-december-advance-child-tax-credit-payment-those-not-receiving-payments-may-claim-any-missed-payments-on-the-upcoming-2021-tax-return>.
- 7 See IRS Filing Season Statistics (week ending Dec. 3, 2021) <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-december-3-2021> (showing 169 million returns received overall and 152 million returns received through e-file). Because the IRS logged some returns in 2021 that were received in 2020 and has not yet logged all returns received in 2021, the number is approximate.
- 8 IRS Operations During COVID-19: Mission-Critical Functions Continue <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue> (last visited Dec. 22, 2021) (“[A]ll paper and electronic individual refund returns received prior to April 2021 have been processed if the return had no errors or did not require further review. As of December 10, 2021, we had 6.2 million unprocessed individual returns.”).
- 9 See IRS Filing Season Statistics (week ending Dec. 3, 2021) <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-december-3-2021> (showing the IRS has issued 129.8 million refunds out of 168.5 million returns processed).
- 10 IRS Operations During COVID-19: Mission-Critical Functions Continue (“Filed a Tax Return” section updated Dec. 20, 2021), <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue> (last visited Dec. 22, 2021).
- 11 *Id.*
- 12 *Id.*
- 13 National Taxpayer Advocate 2019 Annual Report to Congress iv (footnotes omitted).
- 14 The IRS postponed the filing season due date to June 15, 2021, for taxpayers in certain states (Louisiana, Oklahoma, and Texas) that have been impacted by severe winter storms, following recent disaster declarations issued by the Federal Emergency Management Agency. See IRS, LA-2021-02, IRS Announces Tax Relief for Louisiana Severe Winter Storm Victims (Mar. 10, 2021), <https://www.irs.gov/newsroom/irs-announces-tax-relief-for-louisiana-severe-winter-storm-victims>; IRS, OK-2021-01, IRS Announces Tax Relief for Oklahoma Severe Winter Storm Victims (Feb. 25, 2021), <https://www.irs.gov/newsroom/irs-announces-tax-relief-for-oklahoma-severe-winter-storm-victims>; IRS, TX-2021-02, IRS Announces Tax Relief for Texas Severe Winter Storm Victims (Feb. 22, 2021), <https://www.irs.gov/newsroom/irs-announces-tax-relief-for-texas-severe-winter-storm-victims>.

TAXPAYER RIGHTS AND SERVICE ASSESSMENT: IRS Performance Measures and Data Relating to Taxpayer Rights and Service

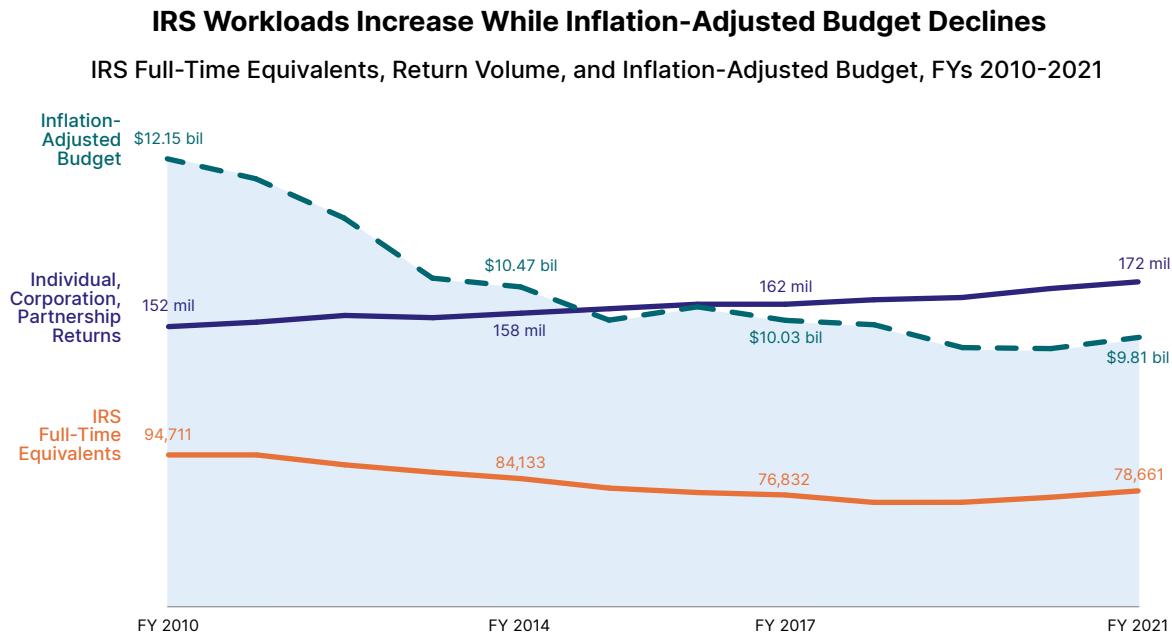
The Taxpayer Rights and Service Assessment provides the IRS, Congress, and other stakeholders with a “report card” to measure how the agency is doing in protecting and furthering taxpayer rights and service while driving voluntary compliance. This report card can be integral to the IRS’s ongoing implementation of the Taxpayer Bill of Rights (TBOR) and may be used to indicate areas where decreasing resources impact the IRS’s ability to maintain a robust adherence to TBOR in practice and provide a high level of customer service. Taxpayer rights and taxpayer customer service are discrete but closely linked considerations.

The Taxpayer First Act (TFA), passed in 2019, requires the IRS to submit a written comprehensive customer service strategy and “identified metrics and benchmarks for quantitatively measuring the progress of the Internal Revenue Service in implementing such strategy.”¹ This strategy includes the recent establishment of the IRS’s Taxpayer Experience Office (TXO), charged with, “focus[ing] on continuously improving the taxpayer experience across all interactions with the IRS.”² Employing the use of metrics is vital to gauging the success of any large public-facing system, and the Taxpayer Rights and Service Assessment can be an aid to the TXO in identifying customer service channels requiring adjustment by comparing fiscal year (FY) data as the new customer service strategy is implemented.³ Traditionally, IRS metrics have focused on “efficiency” – no-change rates, cycle time, etc. As the IRS evolves in its delivery of customer experience, it will require the development of new taxpayer-centric metrics. We look forward to further working with the IRS on its TFA implementation, customer service strategy, and development of measures for gauging successful taxpayer service.

THE IRS’S WORKLOAD IS INCREASING WHILE THE INFLATION-ADJUSTED BUDGET AND STAFFING LEVELS CONTINUE TO DECLINE

- The IRS’s inflation-adjusted budget appropriation has declined by about 20 percent since FY 2010;⁴
- IRS staffing levels have fallen by nearly 17 percent over the same period;⁵ and
- The number of individual and business tax returns has increased by 13 percent over the same period.⁶

In this assessment, we highlight IRS challenges as its inflation-adjusted budget appropriation and staffing levels have declined even as its workload has increased. It’s worth noting the IRS experienced a 2011-2018 hiring freeze,⁷ and it faces an increasing number of retirement-eligible employees. As a result, the IRS continues to fight an uphill battle to improve the quality of its taxpayer customer service while the number of employees available to assist taxpayers has fallen dramatically.⁸ Without sustained, consistent, and dedicated funding, the IRS will be challenged to develop and maintain the workforce needed to achieve its customer service goals. Taxpayers cannot receive the quality of service all Americans are entitled to if the IRS continues to face tough choices reallocating staffing and resources among the tax administrative requirements in the face of rising workloads.

FIGURE 1.2.1⁹

TAXPAYER SERVICE: TAX RETURN PROCESSING¹⁰

Rising Return Inventories and Diminishing Resources Negatively Influence the Quality of Customer Service

Tax return processing is a fundamental IRS function, and return filing metrics are an important measure of IRS workload. Rising return inventories coupled with diminishing resources influence the quality of customer service taxpayers receive, and disruptions to this essential function negatively impact taxpayer rights.¹¹ Large return processing backlogs experienced due to COVID-19 highlight how dramatically taxpayers were impacted when this essential process faltered.¹² The number of returns filed each year is on the rise.¹³ While the majority of taxpayers opt to file electronically, millions of tax returns are still filed on paper, as a percentage of our population lacks the ability or desire to file electronically, such as those without internet or low-income or elderly taxpayers. The IRS must devote staffing and resources to processing these paper submissions and continue to invest in the maintenance and upgrade of its systems to successfully manage electronically filed returns.

FIGURE 1.2.2, Income Tax Returns Filed

Measure/Indicator	FY 2019	FY 2020	FY 2021
Number of Returns Filed (Projected, All Types) ¹⁴	255,249,983	242,093,672	263,977,600
Total Individual Income Tax Returns ¹⁵	154,094,555	157,195,302	160,331,100
Total Individual Income Tax Returns Filed on Paper ¹⁶	16,578,426	8,749,558	17,679,700
Total Individual Income Tax Returns Filed Electronically ¹⁷	137,516,129	148,445,744	142,651,400
Free File Consortium (Tax Year) ¹⁸	2,528,639	4,018,163	4,997,000
Fillable Forms (Tax Year) ¹⁹	283,244	519,133	795,000
Total Corporation Income Tax Returns ²⁰	7,288,019	6,841,771	7,296,300
Total Corporation Income Tax Returns Filed on Paper ²¹	1,325,429	697,421	944,400
Total Corporation Income Tax Returns Filed Electronically ²²	5,962,590	6,144,350	6,352,000

Observation: The total number of returns filed continues to increase, and electronically filed returns accounted for nearly 90 percent of individual filings and at least 80 percent of corporate filings in FYs 2019-2021.

TAXPAYER SERVICE: EXAMINATION AND COLLECTION²³

Without Adequate Staffing, the IRS Must Make Tough Decisions on Where to Focus Compliance Resources

Examination and collection action can lead to taxpayer anxiety, which may be exacerbated if the process is perceived as prolonged or inequitable. Declining IRS staffing levels and high case inventory volumes pose challenges to maintaining acceptable levels of taxpayer customer service. In particular, the strategic allocation of limited workforce resources is challenging yet vital to ensuring equitable treatment across all taxpayer populations, while attention to closed case resolutions can indicate whether the IRS is applying resources appropriately and/or promoting a sense of parity. A higher rate of no-response audit²⁴ closures in the lower income taxpayer category, for example, may warrant consideration for adjustment in approach. Rising no-change audit²⁵ closures might suggest resources may be better targeted toward areas of greater non-compliance. The quality of customer service provided must always respect the taxpayer's *rights to be informed, to quality service, to pay no more than the correct amount of tax, and to a fair and just tax system.*²⁶

FIGURE 1.2.3, Type of Audit, Outcomes, and Time to Complete by Income, FYs 2019-2021

Measure/Indicator	FY 2019	FY 2020	FY 2021
Examination			
Total Number of Open Audits Pending in Exam ²⁷	525,525	614,359	527,353
Total Number of Closed Examinations – Individual Tax Returns ²⁸	680,463	452,510	658,998
Total Positive Income (Under \$50,000)			
No-Change Rate	10.1%	11.4%	8.6%
Agreed Rate ²⁹	23.3%	20.6%	19.8%
Taxpayer Failed to Respond Rate ³⁰	39.8%	44.7%	46.4%
Average Days to Audit Completion	278.7	263.2	339.5
Average Total Exam Time (Hours) Correspondence Audits	1.4	1.4	1.4
Average Total Exam Time (Hours) Field Exams	20.4	25.1	28.8
Percent of Correspondence Audit ³¹	88.1%	90.0%	92.4%
Total Positive Income (Greater Than \$50,000 and Under \$10,000,000)			
No-Change Rate	12.4%	16.0%	11.6%
Agreed Rate	42.8%	44.6%	39.6%
Taxpayer Failed to Respond Rate	20.0%	17.5%	22.7%
Average Days to Audit Completion	288.2	301.2	385
Average Total Exam Time (Hours) Correspondence Audits	2.1	2.2	2.4
Average Total Exam Time (Hours) Field Exams	28.7	28.5	37.1
Percent of Correspondence Audit ³²	67.7%	62.0%	71.4%

Measure/Indicator	FY 2019	FY 2020	FY 2021
Total Positive Income (Greater Than \$10,000,000)			
No-Change Rate	21.3%	19.7%	30.3%
Agreed Rate	50.5%	52.2%	52.1%
Taxpayer Failed to Respond Rate	1.8%	0.8%	0.2%
Average Days to Audit Completion	703.8	994.7	682.9
Average Total Exam Time (Hours) Correspondence Audits	11.2	9.1	8.9
Average Total Exam Time (Hours) Field Exams	117.1	94.3	91.4
Percent of Correspondence Audit ³³	37.0%	43.3%	24.3%

Observation: Taxpayers with incomes below \$50,000 had about 90 percent of their audits conducted by correspondence, 40 percent or more failed to respond to the IRS, and less than 25 percent agreed to the proposed adjustments. As income levels increase, the relative number of correspondence audits and fail-to-respond rates decrease, whereas the agreed rates rise.

FIGURE 1.2.4, Offers in Compromise, Installment Agreements, and the Queue, FYs 2019-2021

Measure/Indicator	FY 2019	FY 2020	FY 2021
Collection			
Offer in Compromise: Number of Offers Submitted ³⁴	54,225	44,809	49,285
Offer in Compromise: Percentage of Offers Accepted ³⁵	36.6%	35.4%	30.9%
Installment Agreements (IAs): Number of Individual & Business IAs ³⁶	2,821,134	1,825,378	2,361,646
Rejected Taxpayer Requests for Installment Agreements ³⁷	32,281	15,483	14,164
Percentage of Cases Pending Assignment (in the Queue) (Taxpayers) ³⁸	24.1%	28.1%	20.9%
Percentage of Cases Pending Assignment (in the Queue) (Modules) ³⁹	33.6%	39.3%	28.5%
Age of Individual Delinquencies Pending Assignment (in the Queue) ⁴⁰	4.8 years	4.6 years	4.3 years

Observation: Offers in compromise and installment agreement submissions declined from FY 2019 levels but rebounded from FY 2020. Fewer taxpayers remained in the queue, and the average age of individual unassigned delinquencies decreased.

TAXPAYER SERVICE: TAXPAYER-FACING COMMUNICATION CHANNELS⁴¹

Taxpayers Attempt to Reach the IRS Via Various Channels, But the IRS Faces Challenges in Timely Responding

Taxpayers are increasingly reaching out to the IRS through a variety of communication channels, particularly since the onset of the pandemic, but the IRS is challenged to efficiently and timely address taxpayer contacts when budget and workforce resources are down.⁴² Individual correspondence processing cycle times are up as are average correspondence percentages.⁴³ Telephone Level of Service (LOS)⁴⁴ measurements are falling. Increases in virtual service contacts are important to note,⁴⁵ but taxpayers' continued preference and need for face-to-face assistance must always be considered and supported. The IRS needs to be supportive in reaching Americans in underserved communities that may not have access to Zoom or other virtual options. Taxpayers have the *rights to quality service, to be informed, to pay no more than the correct amount of tax, and to a fair and just tax system*. These rights are essential to the standard of service a taxpayer receives when working with the IRS, no matter the communication channel.

FIGURE 1.2.5, In-Person Service, Correspondence, Telephone, and Online Service, FYs 2019-2021

Measure/Indicator	FY 2019	FY 2020	FY 2021
In-Person Service			
Number of Taxpayer Assistance ("Walk-In") Centers (TACs) ⁴⁶	358	358	358
Number of Face-to-Face TAC Contacts ⁴⁷	2.3 million	1.0 million	940,000
Correspondence⁴⁸			
Individual Correspondence ⁴⁹	4,134,753	2,765,003	6,222,428
Average Cycle Time to Work Individual Correspondence ⁵⁰ (Master File (IMF))	74 days	96 days	199 days
Inventory Overage ⁵¹	41.8%	41.6%	59.6%
Business Correspondence ⁵²	2,717,819	2,038,291	4,117,705
Average Cycle Time to Work Business Correspondence ⁵³ (Master File (BMF))	101 days	149 days	144 days
Inventory Overage ⁵⁴	57.8%	71.9%	51.5%
Telephone Service			
Total Calls to IRS ⁵⁵	99,373,456	100,514,299	281,708,009
Number of Calls Answered by IRS Employees ⁵⁶	28,558,862	24,192,386	32,039,550
Percentage of Calls Answered by IRS Employees ⁵⁷	28.7%	24.1%	11.4%
IRS LOS ⁵⁸	56.2%	51.2%	21.3%
IRS Average Speed of Answer ⁵⁹	16.2 minutes	18.3 minutes	22.8 minutes
Practitioner Priority: Percentage of Calls Answered (LOS) ⁶⁰	78.3%	56.3%	28.0%
Practitioner Priority: Average Speed of Answer ⁶¹	8.8 minutes	12.7 minutes	16.1 minutes
Online Service			
Number of Visits to IRS.gov ⁶²	650,989,560	1,603,938,876	1,999,988,189
Number of Page Views ⁶³	3,350,072,964	9,225,312,072	11,452,583,281
Online Installment Agreements ⁶⁴	786,505	719,752	1,051,708
Where's My Refund? Inquiries ⁶⁵	368,848,775	505,611,474	632,361,686

Observation: In-person visitations were limited the past two years due to closed or virtual TACs. Correspondence volume increased significantly from FY 2020 to FY 2021, resulting in longer processing delays; the Level of Service for telephones hit an all-time low due to increased volume; and taxpayers used online tools and the IRS website in record numbers.

TAXPAYER SERVICE: INFORMATION TECHNOLOGY

To Provide First-Class Customer Service, the IRS Requires Adequate Funding to Support Information Technology Modernization

This past year, taxpayers have experienced increased frustration and difficulty resolving their IRS issues, receiving timely notices, accessing detailed information on their Online Account or IRS tools, or reaching an IRS employee. Congress must provide an increased funding effort to upgrade the IRS's severely outdated information technology (IT) systems.⁶⁶ Modernization efforts are challenged when a large portion of available funding is required to maintain current operations and legacy systems. The modernization of aging IRS

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information systems and the requisite application of staffing to maintain that effort is integral to improving IRS customer service and respecting taxpayers' *right to quality service*.

FIGURE 1.2.6, IT Funding, FYs 2019-2021

Measure/Indicator	FY 2019	FY 2020	FY 2021
Percentage of IT Funding Available for Operations and Maintenance ⁶⁷	87.5%	89.3%	90.0%
Percentage of IT Funding Available for Business Systems Modernization ⁶⁸	12.5%	10.7%	10.0%

Observation: The overwhelming and consistently increasing majority of IT funding continues to be applied to maintenance rather than IT modernization.

Endnotes

- 1 Taxpayer First Act, Pub. L. No. 116-25, § 1101(a)(5), 133 Stat. 981 (2019).
- 2 IRS, Taxpayer First Act Report to Congress 99 (Jan. 2021).
- 3 These measures are presented as a sample of indicators and are not intended to be read as a comprehensive listing of performance benchmarks.
- 4 IRS response to TAS fact check (Dec. 14, 2020); U.S. Department of the Treasury FY 2022 Budget in Brief.
- 5 IRS response to TAS fact check (Dec. 14, 2020); IRS CFO email response to TAS (Nov. 16, 2021). Staffing comparison was prepared on an FTE basis.
- 6 IRS, Pub. 6292, Table 1, Fiscal Year Return Projections for the United States: 2011-2018, Fall 2011 Update 6 (showing that taxpayers filed 151.5 million individual, corporation, and partnership returns in FY 2010) (Rev. 8-2011); IRS, Pub. 6292, Table 1, Fiscal Year Return Projections for the United States: 2021-2028, Spring 2021, at 4 (projecting that taxpayers will file 172.2 million individual, corporation, and partnership returns in FY 2021) (Rev. 6-2021).
- 7 Hearing Before the H. Subcomm. on Oversight of the H. Comm on Ways and Means, 116th Cong. (Nov. 20, 2020) (statement of Charles Rettig, IRS Commissioner).
- 8 For a discussion of IRS hiring challenges, see Most Serious Problem: *IRS Recruitment, Hiring, and Training: The Lack of Sufficient and Highly Trained Employees Impedes Effective Tax Administration, infra*. See also Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Challenges Reaching IRS Representatives Due to Longstanding Deficiencies and Pandemic Complications, infra*.
- 9 IRS responses to TAS fact checks (Dec. 14, 2020; Dec. 23, 2020). IRS email response to TAS (Nov. 16, 2021). IRS Full-Time Equivalents line: This figure represents the average number of FTE positions actually used to conduct IRS operations, which excludes FTEs attributable to overtime, terminal leave, and those funded by reimbursable agreements from other federal agencies and private companies for services performed for these external parties. It also excludes positions funded by private debt collection funds. Individual, Corporate, Partnership Returns line: IRS, Pub. 6292, Table 1, Fiscal Year Return Projections for the United States: 2011-2018, Fall 2011 Update 6 (Rev. 8-2011), and subsequent annual Fall Pub. 6292 updates through IRS, Pub. 6292, Table 1, Fiscal Year Return Projections for the United States: 2021-2028, Spring 2021, at 4 (Rev. 6-2021). The return volume reported for FY 2021 is a projected number. Inflation-Adjusted Budget line: The budget figures include rescissions and funds provided in the administrative provisions of appropriations bills but exclude supplemental funds passed outside of the normal appropriations bills. The inflation adjustment is computed using the GDP Price Index from the President's Budget FY 2021, Historical Tables, Table 10.1.
- 10 When considering FY 2020 data, note that core IRS services were suspended or reduced for a portion of FY 2020 due to COVID-19.
- 11 The IRS encountered a system outage on April 17, 2018 (the 2017 tax return filing deadline), and had to provide taxpayers an additional day to file and pay their taxes. See IRS, IR-2018-100, IRS Provides Additional Day to File and Pay for Taxpayers Through Wednesday, April 18; IRS Processing Systems Back Online (Apr. 17, 2018); Jeff Stein, Damian Paletta & Mike DeBonis, *IRS to Delay Tax Deadline By One Day After Technology Collapse*, WASH. POST, Apr. 17, 2018, https://www.washingtonpost.com/business/economy/irs-electronic-filing-system-breaks-down-hours-before-tax-deadline/2018/04/17/4c05ecae-4255-11e8-ad8f-27a8c409298b_story.html.
- 12 For a discussion of IRS processing issues, see Most Serious Problem: *Processing and Refund Delays: Excessive Processing and Refund Delays Harm Taxpayers, infra*. See also Most Serious Problem: *Filing Season Delays: Millions of Taxpayers Experienced Difficulties and Challenges in the 2021 Filing Season, infra*.
- 13 The rise in FY 2020 filed individual returns can in part be attributed to returns filed by taxpayers who traditionally are not required to file a return but who filed solely to receive the Recovery Rebate Credit in advance. IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2021-2028, at 4 (June 2021).
- 14 IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2020-2027, at 4 (Sept. 2020); IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2021-2028, at 4 (June 2021). The FY 2020 figure has been updated from what we reported in the 2020 Annual Report to Congress to report actual return counts. The FY 2021 figures are projected numbers. The number of returns and related metrics are proxies for IRS workload and provide context for the environment in which taxpayers seek quality service and other rights from TBOR.
- 15 *Id.* The FY 2020 figure has been updated from what we reported in the 2020 Annual Report to Congress to report actual return counts. The FY 2021 figures are projected numbers.
- 16 *Id.* The FY 2019 and FY 2020 figures were updated to include Form 1040-NR. The FY 2021 figure is a projected number.
- 17 *Id.*

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- 18 FY 2019 and 2021 numbers updated from IRS fact check (Dec. 17, 2021) including returns filed solely to claim Advance Child Tax Credit. FY 2020 numbers are from IRS, Compliance Data Warehouse (CDW), Electronic Tax Administration Research and Analysis System Modernized e-File for Individuals and exclude about 8.5 million returns filed for the purpose of claiming economic incentive payments. The FY 2019 figures represent tax year 2018 tax returns. The FY 2020 figures represent TY 2019 tax returns. The FY 2021 figures represent TY 2020 tax returns.
- 19 FY 2019 and 2021 numbers updated from IRS fact check (Dec. 17, 2021) including some returns filed solely to claim Advance Child Tax Credit. FY 2020 numbers are from IRS, CDW, Electronic Tax Administration Research and Analysis System Modernized e-File for Individuals and exclude returns filed for the purpose of claiming economic incentive payments. The FY 2019 figures represent tax year 2018 tax returns. The FY 2020 figures represent TY 2019 tax returns. The FY 2021 figures represent TY 2020 tax returns.
- 20 IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2020-2027, at 4 (Sept. 2020); IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2021-2028, at 4 (June 2021). The FY 2020 figure has been updated from what we reported in the 2020 Annual Report to Congress to report actual return counts. The FY 2021 figures are projected numbers.
- 21 *Id.* The FY 2020 figure has been updated from what we reported in the 2020 Annual Report to Congress to report actual return counts. The FY 2021 figures are projected numbers.
- 22 *Id.*
- 23 When considering FY 2020 data, note that core IRS services were suspended or reduced for a portion of FY 2020 due to COVID-19.
- 24 A no-response audit occurs when a taxpayer under exam does not respond to IRS communication attempts, and the proposed tax adjustments are subsequently input as if the taxpayer had agreed to the exam determination. This metric includes cases where the audit notice was deemed undeliverable (e.g., a taxpayer may have moved without giving an updated address, and the notice was returned), and there was no response from the taxpayer.
- 25 A no-change audit occurs when a taxpayer substantiates all items being reviewed by the audit, resulting in no change to the reported tax.
- 26 See IRC § 7803(a)(3); see also <https://www.irs.gov/taxpayer-bill-of-rights>.
- 27 IRS response to TAS fact check (Dec. 17, 2021).
- 28 IRS, CDW Audit Information Management System Closed Case Database for FYs 2019 to 2020 (Nov. 2021); IRS responses to TAS fact checks (Dec. 14, 2020; Dec. 17, 2021). These numbers reflect examination cases closed by the IRS and do not account for subsequent appeal or litigation.
- 29 An audit is closed as agreed when the IRS proposes changes and the taxpayer understands and agrees with the changes.
- 30 The non-response rate includes taxpayers with undelivered IRS audit notices or notices of deficiencies and taxpayers who did not respond to the IRS audit notices.
- 31 Represents percentage of correspondence audits for taxpayers with total positive income under \$50,000.
- 32 Represents percentage of correspondence audits for taxpayers with total positive income greater than \$50,000 and under \$10,000,000.
- 33 Represents percentage of correspondence audits for taxpayers with total positive income greater than \$10,000,000.
- 34 IRS, Small Business/Self-Employed (SB/SE), Collection Activity Report (CAR) No. 5000-108, Monthly Report of Offer in Compromise Activity, cumulative through September, FY 2019 (Sept. 30, 2019); FY 2020 (Sept. 28, 2020); and FY 2021 (Oct. 4, 2021).
- 35 *Id.*
- 36 IRS, SB/SE, CAR No. 5000-6, Installment Agreement Cumulative Report, FY 2019 (Sept. 29, 2019); FY 2020 (Sept. 27, 2020); and FY 2021 (Oct. 4, 2021). Number includes short term payment agreements and continuous wage levies.
- 37 IRS, CDW, FY 2019, FY 2020, and FY 2021 (Oct. 2021). The IRS accepts about 99 percent of requests for IAs that meet the processable criteria.
- 38 IRS, SB/SE, CAR No. 5000-2, Taxpayer Delinquent Account Cumulative Report, FY 2019 (Sept. 29, 2019); FY 2020 (Sept. 27, 2020); FY 2021 (Oct. 4, 2021). When taxpayers incur delinquent tax liabilities, the IRS sends them a series of notices during an approximately six-month period in which the taxpayers are in “notice status.” If the taxpayer does not resolve his or her liability during the notice status, the account enters into taxpayer delinquent account status. The IRS then determines whether the case will be referred to the Automated Collection System (ACS), assigned directly for in-person contact by a revenue officer, assigned to the collection queue to await assignment to a revenue officer, or shelved. ACS may also assign cases to the collection queue. The IRS shelves cases prior to assigning the case to a private collection agency.
- 39 *Id.* Modules are the number of accounts attributable to a taxpayer. For example, an individual taxpayer may owe unpaid taxes on the 2017 and 2018 Forms 1040 – this would be one taxpayer with two modules.
- 40 Query by TAS Research of tax delinquent accounts with queue status in IRS, CDW, Accounts Receivable Dollar Inventory, Individual Master File, Modules. Age of balance due cases in the collection queue as of cycle 37 of FY 2019, cycle 38 of FY 2020, and cycle 37 of FY 2021. The age of Taxpayer Delinquency Investigations is not considered.
- 41 When considering FY 2020 data, note that core IRS services were suspended or reduced for a portion of FY 2020 due to COVID-19.
- 42 See Most Serious Problem: *Online Accounts: IRS Online Accounts Do Not Have Sufficient Functionality and Integration With Existing Tools to Meet the Needs of Taxpayers and Practitioners, infra*; Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Challenges Reaching IRS Representatives Due to Longstanding Deficiencies and Pandemic Complications, infra*; Most Serious Problem: *IRS Recruitment, Hiring, and Training: The Lack of Sufficient and Highly Trained Employees Impedes Effective Tax Administration, infra*.
- 43 Certain IRS inventories must be worked within a specific timeframe to be considered timely. If not closed in that timeframe, the inventory item will be classified as “overaged.”
- 44 The IRS generally defines its LOS measure as Numerator = Assistor Calls Answered + Info Messages and Denominator = Assistor Calls Answered + Info Messages + Emergency Closed + Secondary Abandons + (Add either Calculated Busy Signals OR Network Incompletes) + (Add either Calculated Network Disconnects OR Total Disconnects). For a discussion of how the IRS calculates telephone LOS, see Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Challenges Reaching IRS Representatives Due to Longstanding Deficiencies and Pandemic Complications, infra*.
- 45 The IRS shut down due to COVID-19, and its subsequent directing of taxpayers to IRS.gov should be considered when noting the dramatically elevated rise in FY 2020 virtual visits.
- 46 FY 2019 figure from IRS response to TAS fact check (Nov. 15, 2019). FY 2020 figure from IRS response to TAS information request (Sept. 30, 2020). FY 2021 figure from IRS response to TAS information request (Sept. 2021). Due to COVID-19, a total of 49 TACs were unstaffed at some point during FY 2021.

- 47 IRS response to TAS fact check (Dec. 14, 2020). IRS response to TAS information request (Sept. 30, 2020). The FY 2020 number is calculated through September 12, 2020. IRS response to TAS information request (Sept. 16, 2021).
- 48 Correspondence represents Accounts Management inquiries and responses received from taxpayers who do not belong specifically to another area.
- 49 IRS, Joint Operations Center (JOC), Adjustments Inventory Reports: July-September FY Comparison (FY 2020 and FY 2021). This metric measures taxpayer correspondence requesting account adjustment.
- 50 IRS, Research Analysis and Data (RAD), Accounts Management Reports: Collection Information System (CIS) Closed Case Cycle Time (FY 2020 and FY 2021).
- 51 IRS, Weekly Enterprise Adjustments Inventory Report, FY 2020 and FY 2021 (weeks ending Sept. 26, 2020, and Sept. 25, 2021). Certain IRS inventories must be worked within a specific timeframe to be considered timely. If not closed in that timeframe, the inventory item will be classified as "overaged."
- 52 IRS, JOC, Adjustments Inventory Reports: July-September Fiscal Year Comparison (FY 2020 and FY 2021). This metric measures taxpayer correspondence requesting account adjustment.
- 53 IRS, RAD, Accounts Management Reports: CIS Closed Case Cycle Time (FY 2020 and FY 2021).
- 54 IRS, Weekly Enterprise Adjustments Inventory Report, FY 2020 and FY 2021 (weeks ending Sept. 26, 2020, and Sept. 25, 2021).
- 55 IRS, JOC, Snapshot Reports: Enterprise Snapshot (weeks ending Sept. 30, 2020, and Sept. 30, 2021; reports generated Oct. 13, 2021).
- 56 *Id.*
- 57 *Id.*
- 58 *Id.* The IRS generally defines its LOS measure as Numerator = Assistor Calls Answered + Info Messages and Denominator = Assistor Calls Answered + Info Messages + Emergency Closed + Secondary Abandons + (Add either Calculated Busy Signals OR Network Incompletes) + (Add either Calculated Network Disconnects OR Total Disconnects).
- 59 *Id.*
- 60 IRS, JOC, Snapshot Reports: Product Line Detail (weeks ending Sept. 30, 2020, and Sept. 20, 2021).
- 61 *Id.*
- 62 IRS.gov Site Traffic Calculator (FY 2019, FY 2020, and FY 2021).
- 63 *Id.*
- 64 IRS, SB/SE, CAR No. 5000-6, Installment Agreement Cumulative Report, FY 2019 (Sept. 29, 2019), FY 2020 (Sept. 27, 2020), and FY 2021 (Oct. 4, 2021). Number includes short-term payment plans.
- 65 IRS response to TAS fact check for FY 2019 and FY 2021 (Dec. 17, 2021) and IRS Databook for FY 2020.
- 66 For a discussion of IRS IT modernization, see National Taxpayer Advocate 2020 Annual Report to Congress 84 (*Most Serious Problem: Information Technology Modernization: Antiquated Technology Jeopardizes Current and Future Tax Administration, Impairing Both Taxpayer Service and Enforcement Efforts*).
- 67 Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2019-20-083, *Annual Assessment of the Internal Revenue Service's Information Technology Program for Fiscal Year 2019*, at 1-2 (Sept. 27, 2019); TIGTA, Ref. No. 2021-20-001, *Annual Assessment of the Internal Revenue Service's Information Technology Program for Fiscal Year 2020*, at 1-2 (Oct. 30, 2020), TIGTA, Ref. No. 2022-20-5, *Annual Assessment of the Internal Revenue Service's Information Technology Program for Fiscal Year 2021*, at 2 (Dec. 14, 2021). The Operations and Maintenance percentage represents the sum of funding designated as Applications Development, Cybersecurity, Sustaining Infrastructure/Infrastructure Currency, Other Funds, Enterprise Operations, Enterprise-Program Management Office, Enterprise Services, Office of the Chief Information Officer, Strategy and Planning, and User and Network Services. The FY 2020 percentage additionally includes Operations Support COVID-19 and Taxpayer First Act (User Fees) funding.
- 68 *Id.*

Most Serious Problems: At a Glance

Services Taxpayers Want and the Problems the IRS Faces in Delivering Them

This “At a Glance” section covers each of the ten Most Serious Problems we identify in this report. It summarizes the problems taxpayers face, notes why the problem is serious, and provides some key statistics. The section entitled, “what taxpayers want from the IRS” comes directly from the IRS-sponsored Comprehensive Taxpayer Attitude Survey regarding taxpayer attitudes and preferences.

IRS employees have worked admirably throughout the pandemic. However, the IRS still has much work to do including addressing processing delays, hiring and training employees to meet the growing volume of taxpayer needs and improve customer service, assisting more taxpayers by answering a significantly higher percentage of phone calls, being clear about delays and other problems, quickly addressing backlogs, increasing the functionality of online accounts, increasing digital communications with taxpayers, removing barriers to e-filing returns, better engaging low-income taxpayers in the audit process, and protecting low-income taxpayers from burdensome collection procedures.

The goal of At a Glance is to give the reader the ability to quickly glance over the material and grasp some of the impediments that must be overcome to improve service to taxpayers. I hope those who struggle with long government reports will appreciate this concise presentation of key taxpayer challenges – a front door of sorts into the report. For the issues that interest you, the full discussion provides a more complete picture.

Most Serious Problem: Processing and Refund Delays

What Taxpayers Want From the IRS

73%

trust the IRS to fairly enforce the tax laws as enacted by Congress and the President

Why This Is a Most Serious Problem: Taxpayers experience long delays waiting for the IRS to process their tax returns, issue refunds, and process and respond to written taxpayer correspondence. Unfortunately, the IRS received less than two-thirds of the money it needs to modernize systems to efficiently process documents and respond to taxpayers (e.g., \$223 million of the \$383 million of the projected funds needed by the IRS in FY 2021).

Key Statistics: The IRS had a backlog of over 35 million returns at the end of the 2021 filing season. Millions of returns and amended returns still remain unprocessed today. TAS case receipts concerning original processing issues increased by 189%, while receipts concerning amended returns increased by 173%.

Most Serious Problem: IRS Recruitment, Hiring, and Training

What Taxpayers Want From the IRS

69%

trust the IRS to help them understand tax obligations

Why This Is a Most Serious Problem: Budget cuts, an aging workforce, and complicated hiring processes have left the IRS severely understaffed. The IRS needs more employees to improve customer service and bring in additional tax revenue. Its current hiring is barely keeping up with employees who leave or retire.

Key Statistics: The employees of the IRS are responsible for bringing in 95 cents of every \$1 in gross revenue for the federal government. The IRS's budget was reduced by about 20 percent in inflation-adjusted dollars from FY 2010 to FY 2021. In FY 2021, the IRS had 78,661 full-time equivalents, down from 94,711 in FY 2010. In FY 2021, the IRS lost about 14,500 employees due to retirement or separation but gained only about 12,500 external hires.

Most Serious Problem: Telephone and In-Person Service

What Taxpayers Want From the IRS

86%

want a toll-free number to have questions answered

76%

want office locations that can be visited and an IRS representative who will answer questions

71%

want community-based tax clinics at convenient locations

Why This Is a Most Serious Problem:

Problem: Taxpayers say they want to be able to call the IRS and get their questions answered. This past year, the volume of calls skyrocketed and overwhelmed the IRS. Many taxpayers are not getting answers to their questions and are frustrated.

Key Statistics: IRS assistors answered approximately 32 million out of 282 million calls (11%) in FY 2021. This means that only 1 out of 9 taxpayer calls was answered.

Most Serious Problem: Transparency and Clarity

What Taxpayers Want From the IRS

50%

want IRS tax sources on social media and blogs that provide information and assistance

Why This Is a Most Serious Problem: IRS tools and applications do not provide taxpayers the details they need. The last two filing seasons were very frustrating to taxpayers and tax professionals looking for information on the processing of their returns, refunds, and correspondence.

Key Statistics: Millions of taxpayers still have unprocessed returns and do not know the status of their returns. At the end of the 2021 filing season, the IRS's Error Resolution System inventory included 10.3 million individual and business returns, a 544% increase over the 2020 filing season. Further, approximately 16.8 million individual and business paper returns awaited processing, compared with 4.3 million paper returns at the end of the 2020 filing season – a 291% increase.

Most Serious Problem: Filing Season Delays

What Taxpayers Want From the IRS

86%

agree the IRS should be improving phone call assistance to taxpayers

69%

trust the IRS to help them understand tax obligations

Why This Is a Most Serious Problem: The IRS has inadequate resources and a growing workload. Millions of returns are still not processed. Together, the pandemic, antiquated systems, and added complexities with the filing season created many challenges.

Key Statistics: The IRS has not finished processing millions of original and amended returns from TY 2020, even though TY 2021 returns will soon arrive for processing.

Most Serious Problem: Online Accounts

What Taxpayers Want From the IRS

83%

want a personal online account to confirm identity and access information and transactions

Why This Is a Most Serious Problem: The current fragmented set of IRS systems makes it difficult to provide taxpayers the online features they want and need in one location. So far, only 7% of taxpayers are using an IRS online account. Taxpayers want more features (e.g., view all account activity, respond to correspondence, review payment options).

Key Statistics: During FYs 2020-2021, there were about 12 million unique users (taxpayers) who accessed an online account while more than 169 million individual returns were filed in 2021.

Most Serious Problem: Digital Communications

What Taxpayers Want From the IRS

90%

want a website that provides information

81%

want the ability to email questions directly to the IRS

70%

want IRS applications on mobile devices that provide tax information and assistance

Why This Is a Most Serious Problem: Many taxpayers want digital means (e.g., secure email), but the IRS use of these methods is largely confined to its compliance activities.

Key Statistics: The IRS currently has 4.75 million pieces of paper correspondence that have not been worked. This reflects the lack of digital communication options (e.g., secure email) that taxpayers can readily use. Taxpayers would benefit from digital options.

Most Serious Problem: E-Filing Barriers

What Taxpayers Want From the IRS

93%

want opportunities for electronic filing of tax returns

Why This Is a Most Serious Problem: Taxpayers e-file because it is more efficient, more accurate, and faster (it also saves the IRS money). However, there are some tax forms, schedules, attachments, and other documents unavailable for electronic filing. Any taxpayer who happens to use one of these documents is unable to file electronically and misses out on related benefits (i.e., shorter processing times, fewer delays and errors).

Key Statistics: During the 2021 filing season, about 9 out of 10 individual and about 7 out of 10 business returns were electronically filed through October 23, 2021. Nonetheless, millions of taxpayers must still use forms that cannot be e-filed, or they have problems e-filing and must use paper forms.

Most Serious Problem: Correspondence Audits

What Taxpayers Want From the IRS

73%

trust the IRS to fairly enforce the tax laws as enacted by Congress and the President

Why This Is a Most Serious Problem: Lower income taxpayers are audited primarily through the mail, are not assigned a single point of contact, and have a hard time reaching the IRS. The IRS often closes its audits without any contact from the taxpayer. This creates additional downstream consequences for these taxpayers and the IRS.

Key Statistics: Of all the individual audits the IRS conducted in FY 2019, over half (53%) were completed on lower income taxpayers. Almost all (92%) of these audits were done through correspondence (i.e., the mail). In general, the IRS answered only about half of the calls from taxpayers with questions about their audits.

Most Serious Problem: Collection

What Taxpayers Want From the IRS

55%

agree having the option to pay tax in installments influences how honestly they report and pay taxes

Why This Is a Most Serious Problem: IRS Collection policies and procedures prevent low-income taxpayers from receiving relief Congress intended and from accessing relief the IRS can provide.

Key Statistics: The IRS fails to properly classify millions of taxpayers as low-income, to refund thousands of installment agreement user fees, and to adopt procedures for low-income taxpayers to easily request a collection pause or avert a refund offset.

"What Taxpayers Want From the IRS" are preferences or attitudes expressed in the "Comprehensive Taxpayer Attitude Survey 2020;" IRS: Research, Applied Analytics, and Statistics.

Highlights of TAS Successes Throughout the Past Year

Stimulus Payments	
Issue	Advocacy Results
Offsets of the Recovery Rebate Credit (RRC) Against IRS Debts Legislation required the IRS to issue multiple rounds of stimulus payments as an advance payment of the RRC. Individuals who did not receive a payment or received an incorrect amount were entitled to claim the balance on their 2020 tax returns as an RRC. In late December 2020, a law change created an inconsistency with the treatment of RRC claimed on taxpayers' 2020 tax returns and the first two stimulus payments. Unlike stimulus payments issued to individuals, the IRS could apply the refunds of RRC to pay off certain outstanding debts, both for tax and non-tax liabilities. This offset created an inconsistency between the treatment of the first two stimulus payments and the treatment of RRC claimed on tax returns in 2021. As the IRS was not able to correct individuals' stimulus payments in 2020, individuals were treated inconsistently in 2021 from those who received their proper payment in 2020.	TAS advocated for the IRS to use its discretion to stop offsetting RRC to outstanding federal tax debts, ensuring individuals received fast and direct relief in the midst of the pandemic. The IRS agreed to treat taxpayers consistently, with taxpayers who filed 2020 returns on or after March 18, 2021, and claimed the RRC receiving their full RRC, just as those who received their full stimulus payment in 2020 with no reduction or offset for federal tax debts. At TAS's request, the IRS also updated its procedures and FAQs on IRS.gov to provide information on the process. TAS has continued to advocate for and the IRS has agreed that the third round of stimulus payments paid as an RRC with the 2021 filing not be offset for federal taxes, providing these taxpayers the full amount of the third stimulus payment as an RRC.
Low-Income Taxpayers Needed Assistance Getting Their Stimulus Payments Some taxpayers needed extended assistance and looked to Low Income Taxpayer Clinics (LITCs) to pursue their stimulus payment claims.	LITCs offered 1,873 consultations and helped another 2,008 taxpayers with tax return preparation for 2018 and 2019 with assistance rendered through the stimulus payment portal. LITCs verified the receipt of refunds, including stimulus payments, and also opened 210 controversy cases.
Stimulus Payments for Individual Taxpayer Identification Number (ITIN) Holders Under the American Rescue Plan Act of 2021, a married couple filing a joint return would be eligible for the third stimulus payment only when one spouse had a valid Social Security number (SSN). Dependents of ITIN holders with valid SSNs could also receive the stimulus payment even if a parent or guardian did not have a valid SSN. TAS learned that eligible ITIN holders filing 2020 returns were not receiving the stimulus payments.	TAS elevated the issue after determining that the IRS and its systems missed requirements involving stimulus payments and ITIN accounts in its programming. The IRS immediately updated its programming and resolved the issue within two weeks. The IRS also updated its procedures and the Economic Impact Payment FAQs on IRS.gov regarding these ITIN holders, protecting the taxpayers' rights.
Incarcerated Individuals' RRC Refunds Delayed Incarcerated persons could not receive tax forms or authenticate their identities by telephone or online when IRS identity theft filters froze RRC refunds.	TAS advocated to ensure tax forms were provided to correctional institutions and to allow incarcerated individuals to work with their facility staff upon receipt of IRS identity verification letters. The IRS provided instructions to Department of Corrections' staff and updated IRS.gov for incarcerated individuals to instruct them to coordinate with their prison official.

Refundable Credits	
Issue	Advocacy Results
Unintended Consequences of the Consolidated Appropriations Act, 2021, on Refundable Tax Credits The legislation did not specify whether using prior year income to increase the Earned Income Tax Credit (EITC) would also impact the Additional Child Tax Credit (ACTC), lowering the credit amount.	Consistent with the legislation, TAS recommended Treasury and the IRS permit taxpayers to maximize their refundable credits. The IRS agreed and revised its procedures, benefiting taxpayers and avoiding unintended consequences in the next filing season.
Advance Child Tax Credit (AdvCTC) Payments Blocked for Taxpayers Without an ITIN TAS identified an issue with IRS procedures preventing the assignment of ITINs to prospective recipients of the 2021 advance payments. The procedures were not updated to incorporate special instructions for processing ITIN applications as provided in Revenue Procedure 2021-24.	TAS recommended changes to procedures and the IRS's ITIN Real-Time System. The IRS updated its procedures to clarify and permit the filing of ITIN applications with taxpayers' returns. These taxpayers received their ITINs, which qualified them for receiving the 2021 advance payments.
IRS Procedures Did Not Recognize Medicaid Waiver Payments as Wages for EITC TAS identified that IRS procedures did not follow the Tax Court opinion that Medicaid waiver payments received as wages and stipulated to be qualified Medicaid waiver payments, as defined in Notice 2014-7, could be included in earned income for purposes of determining EITC and ACTC.	TAS collaborated with the IRS to update its procedures, publications, and instructions to ensure IRS employees and taxpayers were aware of the Tax Court opinion. The coordinated efforts of TAS and the IRS ensured taxpayers' rights were protected by providing that Medicaid waiver payments received as wages were treated as qualified Medicaid waiver payments.
Part-Year Prisoners' Rights to Refundable Credits Prisoners incarcerated for 11 months within the same calendar year may be eligible for refundable credits if their income was earned before or after the incarceration period. IRS procedures did not permit prisoners to receive the refundable credits under these circumstances.	TAS collaborated with the IRS to update its procedures, providing guidance to tax examiners regarding part-year prisoners and clarifying the issue for taxpayers, thus permitting these individuals to receive their ACTC or EITC. The coordinated efforts of TAS and the IRS protected the taxpayers' rights.
Rollout of the AdvCTC Program Legislation provided for advance payments of Child Tax Credits starting in July 2021. To be eligible, taxpayers needed to have filed their tax return or signed up using the Non-Filer tool on IRS.gov. The IRS and TAS were concerned about low-income taxpayers who did not currently file returns and how to notify underserved communities and educate families how to receive the monthly payments.	The TAS LITC Program Office helped to recruit LITCs to help promote the Advance Child Tax Prep events sponsored and staffed by the IRS, including TAS Local Taxpayer Advocates, across the country. Clinicians also participated in a call with the Government Accountability Office to share their insights about the events and the IRS rollout of the AdvCTC program.

Refunds	
Issue	Advocacy Results
Thousands of Systemic Advocacy Management System (SAMS) Submitters Claimed Significant Hardships From March 12 through March 30, 2021, TAS received more than 3,500 SAMS submissions from many taxpayers claiming financial hardship or stating the IRS was taking longer than 21 days to process their tax refunds. The backlog of unprocessed 2019 and 2020 tax returns was caused by the partial shutdown of many core IRS operations during the COVID-19 pandemic.	TAS promptly responded to SAMS submitters and shared the reasons for the processing delays. Additionally, TAS posted "Refund Information" on its SAMS portal to alert external submitters of the significant backlog and continued processing delays and also thank them for their patience. This response fostered the taxpayer's <i>right to be informed</i> . TAS continues to work with the IRS on the backlog of processing original and amended returns and delayed refunds.

Prologue: Highlights of TAS Successes Throughout the Past Year

Refunds (continued)	
Issue	Advocacy Results
Expired Taxpayer Identification Prevented the IRS From Authenticating Taxpayers' Identities The IRS authenticates taxpayers' identities to prevent refund fraud through identity theft. Filters in IRS systems detect returns that may have been submitted by an identity thief. The IRS notified taxpayers to provide valid forms of identification (ID) to release refunds. The COVID-19 pandemic prevented many taxpayers from timely renewing their IDs, and the IRS could not authenticate and release refunds.	TAS and the IRS collaborated to update taxpayer identity authentication procedures. The change reflects new guidance for IRS employees to allow taxpayers to provide expired IDs for authentication. By providing alternatives in the authentication process, taxpayers could receive their refunds to avoid economic hardship, and the IRS could process these returns without unnecessary delays.
Deceased and Incarcerated Taxpayers' Refunds Delayed by Pseudo-Offsets The Bureau of the Fiscal Service erroneously stopped issuing 2019 tax year refunds to some deceased and incarcerated individuals. The IRS advised these taxpayers it was planning to reissue the refunds systemically, and they did not need to take any action. TAS received hundreds of new cases confirming IRS actions did not generate refunds for the affected taxpayers.	TAS informed the IRS that the lack of guidance for employees to manually correct the affected tax accounts resulted in hardships. The IRS revised its procedures, ensuring the refunds were issued to the affected taxpayers.

Taxpayer Accounts	
Issue	Advocacy Results
Taxpayers at Risk of Losing Healthcare Benefits As a result of COVID-19, the IRS did not timely process many individual tax returns. Incomplete or inaccurate taxpayer information was shared with the Marketplace, putting taxpayers at risk of losing their advance healthcare tax credits for 2021.	TAS discussed with and advocated for Health and Human Services to "turn off" the validation marker that reports whether taxpayers have reconciled their healthcare credits on their tax return. TAS also engaged in a public outreach campaign to advise taxpayers of this issue. The IRS and TAS websites instructed taxpayers on updating their applications at the Marketplace. In December 2020, the Centers for Medicare and Medicaid Services waived the verification and automatically reenrolled taxpayers with a failure to reconcile flag on their accounts. This allowed impacted taxpayers to be eligible for the Advance Premium Tax Credit in 2021.
Taxpayers Potentially Harmed by Erroneous Non-Filer Notices The IRS systemically issued notices to taxpayers who appeared to have failed to file a 2019 tax return. However, many of these notices were erroneous because the IRS was still processing many of these returns.	The IRS agreed to stop the issuance of any additional non-filer notices until the backlog in Submission Processing decreased. The IRS also agreed to stop the second non-filer notice. TAS confirmed there would be no impact to taxpayers seeking collection alternatives. In light of the backlog of unprocessed returns, the IRS did not prepare substitute for returns for taxpayers receiving the erroneous notices.
Transcripts Did Not Identify When Taxpayers Were Experiencing Hardship Through SAMS, TAS was alerted to an increase in requests for account transcripts, specifically the interest in the inclusion of hardship status on taxpayers' transcripts.	TAS collaborated with the IRS to update the Transcript Delivery System to include either "hardship" or "non-hardship" status on transcripts with currently not collectible indicators. This change helped taxpayers understand their tax account status, potential collection options, and their rights.

Prologue: Highlights of TAS Successes Throughout the Past Year

Taxpayer Accounts (continued)	
Issue	Advocacy Results
Practitioner Data Breaches Led to Taxpayer Identity Theft IRS employees had no indication on taxpayers' accounts if the taxpayer was the subject of a tax practitioner data breach. Data breach information was unavailable, which may have led to an IRS employee further compromising taxpayers' information. If an identity thief obtained the taxpayer's information from the practitioner's data breach, it could lead to refund fraud.	TAS collaborated with the IRS to put an indicator on the tax practitioners' client accounts when a data breach occurs. Additionally, on October 1, 2020, the IRS published new procedures. With the new procedures, IRS employees properly identified taxpayers' accounts during the 2021 filing season that may have been involved in a tax practitioner's data breach.
Responding to Foreign Trust Civil Penalty Inquiries Foreign trusts can have multiple U.S. owners, and they can be individuals or entities. The IRS does not currently have a way to cross-reference the accounts and will frequently withhold information from affected taxpayers when they make inquiries.	TAS and the IRS collaborated to establish a cross-reference that will recognize the responsible parties' identification numbers on a tax account when a civil penalty is assessed. The IRS will implement this change by April 16, 2022. This capability will improve the IRS's ability to research assessments, respond to taxpayer inquiries, and supply balance due explanations.
Lack of Information for Designation of Partnership Representative New regulations created the position of Partnership Representative (PR) who is designated to act on behalf of a partnership in circumstances involving the Centralized Partnership Audit Regime. Generally, partnerships that do not opt out of the Regime must designate a representative. IRS Form 2848 is used to appoint a power of attorney to act on behalf of the PR and may not be used to designate a PR. Form 2848 and its instructions did not reflect this rule.	The Taxpayer Advocacy Panel recommended the IRS incorporate the new regulations into Form 2848. The IRS agreed and clarified in the instructions that partnerships appoint their PR on their tax return, and annually the PR may appoint a power of attorney on Form 2848 to act on the partnership's behalf. The revisions will improve taxpayers' <i>rights to be informed and to retain representation</i> .

Appeal Rights	
Issue	Advocacy Results
Appeal Rights Missing From Millions of RRC Notices TAS identified critical appeal rights language missing from approximately five million RRC math error notices issued before July 22, 2021. This omission put taxpayers at risk of losing their right to request an abatement of tax, appeal, and judicial review in the U.S. Tax Court, which is the only pre-payment judicial forum.	To correct the error and inform taxpayers of their rights, the IRS agreed to send over 6.5 million supplemental letters by September 24, 2021. The letter provided an apology along with an additional 60 days to request an abatement. The letter also informed taxpayers of their ability to submit information or documentation to support the RRC claimed on their 2020 return.
IRS Letter Deprived Taxpayers of Collection Due Process Appeal Rights IRS Letter 1058 did not include "Collection Due Process" in its title: Final Notice, Notice of Intent to Levy and Notice of Your Right to a Hearing. Taxpayers may have missed the opportunity to exercise their appeal rights because of the omission. In FY 2019, the IRS issued more than 100,000 Letters 1058.	TAS recommended, and the IRS agreed to revise its letter to include "Collection Due Process" in the title: Final Notice, Notice of Intent to Levy and Notice of Your Right to a Collection Due Process (CDP) Hearing. TAS's efforts emphasized the importance of the taxpayers' <i>rights to be informed and to appeal an IRS decision in an independent forum</i> .
Taxpayer Confusion Over Claim Disallowance or Partial Claim Disallowance Notices In July 2020, the IRS mailed the backlog of Claim Disallowance and Partial Claim Disallowance letters (105C and 106C) after the date originally printed at the top of the notice. This reduced the time taxpayers could request an administrative appeal or file a suit in court to challenge the refund disallowance.	TAS identified the issue and collaborated with the IRS. The IRS mailed new letters to the 9,105 impacted individual taxpayers and 544 impacted business taxpayers, providing an additional 30 days to request an administrative appeal. The supplemental letters also provided the date the initial notice was mailed along with the expiration date of the two-year period in which the taxpayer must file suit.

Collection Alternatives	
Issue	Advocacy Results
Offer in Compromise (OIC) Policies Prevented Needed Relief for Taxpayers Facing Financial Difficulties IRS procedures allow the IRS to keep any refund a taxpayer was entitled to in the tax year an OIC is accepted, and taxpayers with pending OICs did not qualify for an Offset Bypass Refund (OBR). To help taxpayers experiencing hardships, TAS collaborated with the IRS to remove barriers for taxpayers considering the offer program.	Effective November 1, 2021, the IRS will no longer offset, or recoup, refunds for the calendar year in which an OIC is accepted. Systemic offset of overpayments will continue before the OIC acceptance date. For taxpayers who had submitted an OIC, the OBR remedy was unavailable to them, and the IRS retained refunds shown on their tax returns for the calendar year the IRS accepted the OIC. Under the new procedures, the IRS is allowing qualifying taxpayers experiencing financial hardship to seek OBRs while their OICs are pending the IRS's consideration. These individuals will be able to retain their tax refunds if they meet the criteria in the Internal Revenue Manual.
OIC Filing Fees Imposed on Qualified Taxpayers In 2021, nearly 50,000 taxpayers submitted an OIC, and about 45 percent qualified for the low-income fee waiver. The IRS determined taxpayers were ineligible for the waiver and charged taxpayers a fee by including income from members of taxpayers' households but not including the other household members' expenses.	TAS worked with the IRS to revise its procedures, clarifying that if a household member's income is included in the low-income certification calculation, then that household member's expenses must also be allowed in the calculation. This revision ensured consistent application of the appropriate OIC filing fee or waiver.
Installment Agreement (IA) Deadlines Extended Due to Processing Delays Taxpayers must be in compliance with their tax return filing obligation to enter IAs. Due to processing delays, millions of returns were delayed and not on the IRS's system, thereby preventing taxpayers from obtaining an IA.	Due to processing delays, TAS collaborated with the IRS to permit taxpayers reflecting an unfiled 2019 tax return to enter IAs through January 31, 2021. The IRS updated its procedures and promptly extended the deadline for 2019 filing compliance to June 30, 2021, and for 2020 to April 30, 2022, to mitigate taxpayer burden. The procedure also provided an opportunity for taxpayers to resolve seriously delinquent tax debts from certification to the Department of State for the denial or revocation of passports. Without extending the deadline, taxpayers would have been denied an opportunity to pay through an IA, causing unnecessary taxpayer burden and placing taxpayers in non-compliance with filing obligations.
Misdirected Installment Payments During OIC Consideration The IRS applied Direct Deposit Installment Agreement or Payroll Deduction Installment Agreement payments received after taxpayers submitted OICs to the taxpayers' tax liability and did not consider them as payments toward satisfying the OIC.	TAS worked with the IRS to revise its procedures, allowing taxpayers to designate any Direct Deposit Installment Agreement or Payroll Deduction Installment Agreement payment as an OIC payment if received while the offer is pending. These changes allowed taxpayers to pay only the required OIC payments.
Tax Practitioners Did Not Receive OIC Interim Letters Tax practitioners raised concerns that the IRS was not consistently sending duplicate copies of interim letters for their clients with pending OICs. TAS provided the IRS with specific data supporting these concerns.	TAS collaborated with IRS programmers and identified a problem with the generalized systems interface tool. The tool was fixed and tested, and tax practitioners now receive the OIC interim letters. This system repair reinforced taxpayers' right to retain representation.

Examination	
Issue	Advocacy Results
Pandemic Tax Petition Filing Delays Led to Premature Tax Assessments In late 2020, the IRS prepared a high volume of deficiency notices, providing taxpayers the right to petition Tax Court. The notices were held due to the pandemic. Once issued, the substantial volume of backlogged notices was correlated with a rapid increase in Tax Court petitions. TAS found it took an average of 53 days for the Tax Court to process petitions and serve notice on the IRS, which exceeded the normal 15-day period the IRS allotted for notification. The IRS consequently closed its files and assessed the examination deficiencies without the knowledge that the taxpayer filed a timely petition.	Recognizing the need for immediate action, TAS worked with the IRS, Tax Court, and practitioners to identify the problem and craft a temporary solution. While the Tax Court is dealing with a high volume of petitions, it agreed to provide the IRS with limited data needed to identify petitioned cases quickly for the purpose of preventing premature assessments and reversing those that had already been assessed. This interim process has been successful in preventing premature assessments.
Collectibility Concerns During Taxpayer Examinations Because of COVID-19, taxpayers' financial circumstances may have significantly changed. Although not routinely done, IRS examiners may consider collectibility when determining the scope of an audit.	TAS collaborated with the IRS to issue guidance emphasizing the need for management intervention whenever collectibility concerns arise in examination cases. This includes considering whether to limit the scope of the examination, survey the return, or close the examination, and updating its procedures to instruct examiners to exercise extreme sensitivity in their taxpayer contacts during COVID-19.
Taxpayers Needed Guidance on Estate & Gift Tax Treaties TAS identified that IRS.gov did not provide easy access to estate and gift tax treaties for taxpayers to determine their tax obligations. The website only included a list of countries with whom there were treaties, causing a burden to users who had to locate these treaties on their own. IRS employees working international issues also needed easy access to these treaties.	TAS recommended the IRS include links to the specific treaties on the IRS.gov, Estate & Gift Tax Treaties (International) table. The IRS agreed with adding links and revised the website. This change promoted taxpayers' <i>right to quality service</i> .

Penalties	
Issue	Advocacy Results
Guidance in FAQs on IRS.gov Does Not Provide Penalty Protection If Taxpayers Rely Upon It Taxpayers have the right to expect transparency and fairness in dealing with their government. If a taxpayer takes the time to visit a government website to locate information to help comply with tax obligations, the IRS should not penalize the taxpayer for trying to do the right thing. If the IRS updates FAQs, it should track, date, and make them accessible to taxpayers.	In discussions with the National Taxpayer Advocate and Chief Counsel, the IRS agreed that generally taxpayers can rely on FAQs for penalty protection, and it will be dating, tracking, and displaying prior versions of FAQs. On October 15, 2021, the IRS issued a press release that FAQs on newly enacted tax legislation or other topics are not precedential but may offer penalty protection for taxpayers who reasonably and in good faith relied on them. The FAQ process was updated to address concerns regarding transparency and the potential impact on taxpayers when the IRS updates or revises these FAQs. The IRS will maintain prior versions of FAQs on IRS.gov to ensure that taxpayers, who may have relied on prior versions, can locate the version later.

Prologue: Highlights of TAS Successes Throughout the Past Year

Penalties (continued)	
Issue	Advocacy Results
Failure-to-Pay Penalties Generated by Multiple Disaster Extensions The IRS assessed erroneous failure-to-pay penalties on taxpayers' accounts due to a programming problem caused by multiple disaster extensions. The programming did not recognize timely payments made in 2020, which caused systemic late payment penalties. TAS identified over 6,400 erroneous assessments requiring abatement.	Due to TAS's advocacy efforts, the IRS used a systemic correction tool to adjust all affected accounts, protecting the taxpayer's <i>right to pay no more than the correct amount of tax</i> .
Bad Check Penalties Caused Defaulted Payment Plans The IRS permitted many taxpayers to suspend their direct debit installment payments during the COVID-19 suspension period. TAS alerted the IRS that it had erroneously assessed bad check penalties and defaulted taxpayers' suspended installment plans. The IRS estimated tens of thousands of taxpayers were impacted by this problem.	The IRS issued guidance providing taxpayers relief from bad check penalties due to delays in IRS remittance processing. TAS advocated for and the IRS implemented programming to correct this issue in January 2021.
Managerial Approval of Civil Penalties In October 2020, the IRS incorporated guidance that stated, "... attaching the signed Penalty Approval Form to a Statutory Notice of Deficiency is not legally required and not equally applicable to all taxpayers." The form contains the signature and date of managerial concurrence of a civil penalty proposal required under IRC § 6751(b).	In February 2021, TAS worked with the IRS on a reversal of the IRS policy, ensuring taxpayers would continue to receive information regarding the IRS's compliance with IRC § 6751(b) requirements, supporting their <i>right to be informed</i> .
Erroneous Late Filing Penalties for Foreign Corporations TAS identified that IRS programming was reducing filing extensions for foreign corporations without a place of business in the United States from six months to four months. This caused the IRS to erroneously assess late filing penalties against some corporate filers.	TAS collaborated with the IRS to correct the programming, which prevented the late filing penalty from occurring on future filings and protected the taxpayers' <i>right to pay no more than the correct amount of tax</i> .
Erroneous Frivolous Return Penalties TAS informed the IRS its Frivolous Filer unit was erroneously assessing the IRC § 6702 penalty. For the penalty to apply, the information shown on the face of the return must include a position that is patently unsupported by law. The penalty does not apply to a return filed where there is a question of whether the taxpayer reported an item correctly.	TAS and the IRS collaborated to include additional information in IRS procedures to assert frivolous return penalties only if the purported return does not contain information on which the substantial correctness of the self-assessed determination of tax may be judged or contains information that on its face indicates the self-assessed determination of tax is substantially incorrect.

Taxpayer Rights	
Issue	Advocacy Results
Protecting Taxpayer Rights When Dealing With IRS Employees Publication 1 provides the Taxpayer Bill of Rights. These rights are fundamental. All employees should be familiar with these rights and how it impacts their day-to-day activities. Training will be beneficial to improve the institutional knowledge related to IRS employees' interactions both directly and indirectly with taxpayers	TAS collaborated with the IRS to develop Taxpayer Rights training, which includes the Taxpayer Bill of Rights and taxpayer civil rights. This training is mandatory for all IRS employees and provides scenario-based learning to educate employees about common taxpayer interactions and how to ensure they protect taxpayers' rights. The training went live in December 2021. The training is intended to protect taxpayer rights and further improve taxpayers' experiences in working with the IRS.

Taxpayer Rights (continued)	
Issue	Advocacy Results
Issues With Dependents of Head of Household (HOH) Taxpayers Receiving and Renewing Their ITINs For ITIN applicants whose dependents were residents of Canada and Mexico, the IRS procedures incorrectly denied assignment and renewal of ITINs even though they were needed for receiving certain tax benefits, including HOH filing status. IRS procedures did not conform to the post-2017 rules of the Tax Cuts and Jobs Act.	TAS worked with the IRS to correct various procedures relating to ITINs. TAS also identified several web pages on IRS.gov containing the misinformation and alerted the IRS. The IRS corrected its procedures in May and August 2021 and updated its website to reflect current information. These changes supported taxpayers' rights to be informed and to a fair and just tax system.
Alternative Media Formats Needed for TAS Correspondence Some taxpayers require correspondence in braille, large font, or other alternative media.	TAS implemented new procedures for Alternative Media Documentation requests when working with taxpayers requiring correspondence in braille, large font, or other alternative media. In addition to updated published guidance, TAS will be developing content for upcoming filing season readiness training.
Taxpayers Struggled to Send Documents to the IRS During COVID-19 operations, the IRS and TAS experienced substantial delays in receiving and processing mail from taxpayers. Although procedures were developed to instruct taxpayers to send secure attachments by email or electronic fax, many taxpayers were forced to send documents by mail because they could not afford encryption software or faxing services, causing delays and frustrations.	The IRS created and is implementing a Documentation Upload Tool, which allows taxpayers and representatives a new digital path for submitting documents to the IRS from their mobile devices. This tool enables faster document receipt and will reduce mail delays. TAS was one part of the agency selected to assist with finalizing testing and drafting deployment plans, policies, and user guides. This tool provides taxpayers with the ability to send information directly from their mobile devices while speaking with an IRS representative or TAS Case Advocate. TAS anticipates rolling out the tool across the entire organization in 2022 and is encouraged seeing other parts of the agency using the tool while working with taxpayers.
Taxpayers Needed Help Finding Taxpayer Assistance Centers (TACs) The IRS web page created to direct taxpayers to local offices provided the addresses of TACs but did not assist taxpayers with directions. Taxpayers could benefit if they could link to online maps to get directions to visit TAC offices.	The Taxpayer Advocacy Panel advocated to add a Google Maps link on the TAC web page so taxpayers can access detailed directions after finding the TAC offices closest to their zip code. The IRS agreed to adopt this recommendation to help taxpayers travel to TAC offices and keep established appointments, especially those relying on public transportation. These changes will provide a more user-friendly website for taxpayers.

Data Compilation and Validation

Section 7803(c)(2)(B)(ii)(XII) of the IRC directs that the National Taxpayer Advocate, “with respect to any statistical information included in [this annual report to Congress], include a statement of whether such statistical information was reviewed or provided by the Secretary under Section 6108(d) and, if so, whether the Secretary determined such information to be statistically valid and based on sound statistical methodology.”

The data cited in the National Taxpayer Advocate’s annual reports generally comes from one of three sources: (i) publicly available data such as the IRS Data Book, Government Accountability Office reports, and Treasury Inspector General for Tax Administration reports; (ii) IRS databases to which TAS has access; and (iii) IRS data that IRS operating divisions provide pursuant to TAS information requests. After TAS compiles statistical information, TAS’s Office of Research and Analysis validates it. Procedures regarding additional IRS review of statistical information vary by report section as follows:

- **Preface** – The data contained in the Preface is not separately sent to the IRS for validation because it is written at the end of the process and generally pulls data from other sections of the report that have been validated.
- **Taxpayer Rights and Service Assessment** – The data contained in this section was reviewed by the IRS.
- **Most Serious Problems At A Glance** – The data contained in this section is not separately sent to the IRS for validation because it generally pulls data from other sections of the report that have been validated. Data from the Comprehensive Taxpayer Attitude Survey was reviewed by TAS’s Office of Research and Analysis.
- **Highlights of TAS Successes Throughout the Past Year** – The data contained in this section is not separately sent to the IRS for validation. The data was reviewed by TAS’s Office of Research and Analysis.
- **Most Serious Problems** – The data contained in this section was reviewed by the IRS.
- **Most Litigated Issues** – The IRS provided the raw data for taxpayers who filed a petition with the U.S. Tax Court during FY 2021. TAS’s Office of Research and Analysis mapped this data to IRS records to determine the Most Litigated Issues. This further analysis was not submitted to the IRS for review, but the narratives were reviewed by the IRS Office of Chief Counsel.
- **TAS Case Advocacy** – The data contained in this section was not submitted to the IRS for validation because the data pertains almost exclusively to TAS’s internal operations.
- **Purple Book** – All legislative recommendations were reviewed for legal accuracy by the IRS Office of Chief Counsel. The Purple Book contains limited statistical information that was provided by TAS’s Office of Research and Analysis. It was not submitted to the IRS for review.

On the rare occasion where TAS and the IRS have a disagreement about data or the presentation of the data, we generally discuss it, and if a disagreement persists, we note it in the report.

INTRODUCTION: The Most Serious Problems Encountered by Taxpayers

IRC § 7803(c)(2)(B)(ii)(III) requires the National Taxpayer Advocate to prepare an Annual Report to Congress that contains a summary of the ten most serious problems encountered by taxpayers each year. For 2021, the National Taxpayer Advocate has identified, analyzed, and offered recommendations to assist the IRS and Congress in resolving ten such problems.

MOST SERIOUS PROBLEM #1

PROCESSING AND REFUND DELAYS: Excessive Processing and Refund Delays Harm Taxpayers

PROBLEM

During 2021, tens of millions of taxpayers were forced to wait extraordinarily long periods of time for the IRS to process their tax returns, issue their refunds, and address their correspondence. More than 75 percent of individual income tax return filings resulted in refunds that millions of taxpayers rely on to pay their basic living expenses. Therefore, processing delays caused financial hardships for some taxpayers and extreme frustration for many more. At the close of the 2021 filing season, the IRS had 35.3 million returns awaiting manual processing. As the IRS is preparing to begin the 2022 filing season, it is poised to carry over millions of unprocessed returns and millions of pieces of taxpayer correspondence, resulting in even longer delays for taxpayers who have been patiently waiting for far too long. To add complexity, when taxpayers file their 2021 tax returns, millions who received Advance Child Tax Credit payments will have to reconcile the monthly advanced payments they received with the amounts for which they are eligible. Similarly, eligible taxpayers who did not receive some or all of the third round of stimulus payments, as authorized by the American Rescue Plan Act, will have to claim them as credits on their returns. Thus, the unprecedented processing and refund delays taxpayers experienced in 2021 could be as bad, and potentially worse, in 2022 if taxpayers do not file electronically or do not properly reconcile their monthly Advance Child Tax Credit payments or the third stimulus payment with their 2021 returns.

ANALYSIS

The IRS is in crisis and needs to apply resources to its core mission – processing returns and paying the corresponding refunds. As of mid-December, the IRS had:

- 6.2 million unprocessed individual returns (Form 1040);
- 2.8 million unprocessed business returns (Form 941);
- 2.4 million unprocessed amended individual returns (Form 1040-X);
- 427,000 unprocessed amended business returns (Form 941-X); and
- Approximately 4.75 million pieces of general taxpayer correspondence.

While much of the processing delay is related to tax year 2020 paper returns, many taxpayers are still waiting for resolution of their electronically filed 2020 tax returns, amended returns, and correspondence replying to IRS notices. Some of these refunds contain COVID-19-related relief that Congress provided taxpayers over a year ago but for which they are still waiting. For other taxpayers, their refund may provide critical funds for basic living expenses or for employee payroll. And for many taxpayers, their unprocessed tax returns are impacting their ability to obtain a mortgage, refinance their house, or obtain student loans. Without reasonable levels of service on the phones, and with inadequate online accounts, taxpayers are left in the dark.

The IRS backlog results from several issues: the COVID-19 pandemic, continued reduced budgets and staffing levels within the IRS, and the impact of multiple legislative changes over the last two years. The processing of tax returns and issuance of refunds are the IRS's main priorities during the filing season, but the fiscal year (FY) 2021 filing season was an extremely difficult one for the taxpayers, practitioners, and the IRS. Entering the 2021 filing season, the IRS still had not processed a backlog of paper tax returns and taxpayer correspondence received during the 2020 filing season. At the end of the 2020 calendar year, the IRS estimated that it had more than 11.7 million paper-filed individual and business returns that it still needed to manually process. The IRS continued to operate with less than full staffing due to social distancing requirements related to the ongoing pandemic and ongoing insufficient budgets that have not allowed the IRS to fully staff its taxpayer service operations for several years. Over the past two filing seasons, Congress

has passed four major pieces of legislation designed to assist taxpayers and businesses and to mitigate the economic impact of COVID-19. While new tax legislation often challenges the IRS's ability to implement changes quickly, recent pandemic legislation has had a twofold effect: first, the IRS was responsible for quickly implementing several new provisions, and second, some of these provisions resulted in taxpayers having to file paper returns to receive the relief Congress was providing.

While the IRS cannot control the legislative changes it must implement, it can still take steps to mitigate some of its problems and delays. It should prioritize the processing of paper returns and issuing refunds immediately, realigning resources if necessary. If the IRS begins to focus more on compliance activities when it hasn't finished processing tax returns, it is not fair to the millions of individual and business taxpayers who are still waiting for their refunds. Taxpayers who have filed their tax returns continue to wait, and wait, and wait for any update from the IRS. While the IRS has the Where's My Refund? and Where's My Amended Return? tools and the IRS2Go mobile app, neither the tools nor the app provides taxpayers specific information as to what is causing their particular delay or when they may receive their refund. According to the IRS, average tax refunds were up over 11 percent in 2021 due to many of the COVID-19 relief provisions. The 2021 average refund was \$2,775, up from \$2,495 in 2020, and the average direct deposit refund was even higher at \$2,851, compared to \$2,592 the prior year. This means that the economic impact for taxpayers still waiting for their refunds is even greater.

The IRS has not resolved the problem in front of it – that the IRS is harming millions of taxpayers. Although the IRS is to be commended for processing the vast majority of original filed returns, quickly administering three rounds of stimulus payments, and within months commencing payments of Advance Child Tax Credits, it still has not completed its core filing season responsibilities or the processing of amended returns. The IRS does not appear to have any strategic plan in place to immediately address an issue that continues to plague millions – and likely will for the foreseeable future. Taxpayers deserve better than this from the IRS.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS: 1) provide detailed weekly filing season reports on IRS.gov about the status of return processing timeframes so taxpayers know what to expect when they file their returns; 2) improve online resources to provide taxpayers with specific information about the cause of the taxpayer's refund delay, what information the taxpayer needs to provide, and a reasonable estimate regarding when the IRS expects to issue the refund; 3) implement electronic amended return processing to eliminate the delays caused by traditional paper processing; 4) immediately develop and issue guidance for the processing of Forms 941-X claiming COVID-19 employment tax relief; 5) create a dedicated team to process Forms 1139 and 1045 within 90 days of filing; 6) authorize the use of secure email within the campuses for return processing issues, taxpayer questions, or follow up with taxpayers; 7) expand current online account offerings to allow taxpayers to upload documents necessary to resolve any issues associated with their tax returns; and 8) suspend all automated collection notices until the IRS is current on processing original and amended returns and unprocessed correspondence.

The National Taxpayer Advocate recommends that Congress: 1) sufficiently fund the IRS to allow full staffing of Submission Processing and Accounts Management functions so the IRS is not forced to continually shift resources among competing priorities; 2) fully fund the IRS's information technology modernization needs to allow for expedited processing of original and amended tax returns; 3) for FY 2022, provide TAS with additional funding in line with the overall percentage increase in IRS funding; and 4) if legislation passes and increases the IRS's enforcement budget by roughly half over currently appropriated levels, provide a minimum 50 percent increase in TAS's annual budget over the ten-year period to ensure TAS has adequate staffing to help address the downstream consequences of increased enforcement and to identify new systemic problems resulting from the increased enforcement so that TAS can advocate for solutions.

MOST SERIOUS PROBLEM #2

IRS RECRUITMENT, HIRING, AND TRAINING: The Lack of Sufficient and Highly Trained Employees Impedes Effective Tax Administration

PROBLEM

The IRS's budget was reduced by about 20 percent in inflation-adjusted dollars from 2010 to 2021. Between fiscal year (FY) 2010 and FY 2020, the IRS lost over 33,000 full-time personnel. Over the past year, the IRS has faced several staffing-related challenges. In FY 2021, largely due to the pandemic, the IRS saw the lowest telephone Level of Service on record, which it must address through a combination of measures, including additional online capabilities and personnel. Staffing challenges also impacted the filing season backlogs. As the IRS Commissioner affirmed, "the status quo is untenable." If the IRS is not adequately funded, it will face challenges in not only maintaining the status quo but also in attracting talent and training its employees. As the single agency responsible for generating approximately 95 percent of the gross revenue for the federal government, the IRS's ability to attract, hire, and train employees is critical to maintaining operations, providing quality service, and protecting taxpayer rights.

ANALYSIS

Staffing-related challenges have manifested themselves in all aspects of IRS operations and are negatively affecting taxpayers and tax administration. From pre-filing services to return processing through examination of returns, appeals consideration, and litigation and collection activities, taxpayers are not receiving the level of service they need and deserve. Once the IRS hires employees, they need significant training. Recruiting, hiring, and training employees takes time and requires dedicated resources. The Human Capital Office (HCO) will need more resources to ramp up capacity to process more than the current level of 2,600 hiring request actions per month. Although there are process improvements the IRS can make on its own, the IRS still needs the help of stakeholders. To fairly and efficiently administer the tax laws and supply world-class customer service, the IRS will need additional support and flexibilities provided by Congress, the Department of the Treasury, the Office of Personnel Management (OPM), and the National Treasury Employees Union.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that:

- 1) HCO explore opportunities around developing a process to qualify an applicant for a specific job series periodically, *e.g.*, only once every year, which allows applicants to update their information as needed while meeting the requirements of the series. Once qualified for that specific job series, the applicant can be placed on a "prequalified" list for that series that will expire after a set time period, instead of going through the qualification process repeatedly for positions in that series;
- 2) HCO continue to seek critical pay authority for additional positions beyond information technology;
- 3) HCO continue to seek direct-hire authorities for critical positions to meet the demand of the hiring surge expected in FY 2022 and beyond, under the administration's proposal;
- 4) HCO and IRS Next prepare and submit OPM Form 1397, Special Salary Rate Request Form, to request that OPM establish higher rates of basic pay or special rates for a group or category of General Schedule positions;
- 5) HCO improve its communications strategy with IRS Business Operating Divisions (BODs) and with successful applicants to keep both informed of which activities have been completed and which remain for that applicant throughout the hiring process;
- 6) HCO, in consultation with the IRS Next Office and other relevant IRS offices, develop a plan to use data analytics to improve IRS recruitment efforts;
- 7) HCO Strategic Talent Analytics and Recruitment Solutions (STARS) supply more additional logistical support to BODs for recruitment events than is already being provided, including more agencywide recruitment events and access to additional

professional branding and marketing materials (*i.e.*, hiring booth display items and materials to distribute to applicants); 8) HCO STARS collaborate with BODs to improve their external-facing career pages geared toward applicants to describe agency functions, job responsibilities, division roles, potential career ladders, and employee testimonials or spotlights; 9) HCO periodically administer short surveys (“pulse surveys”) to employees to help ensure HCO is building the partnership it needs with other parts of the IRS to improve its hiring processes and successfully implement its new training strategy; 10) the IRS continue to work with OPM to maximize IRS hiring capacity by ensuring systemic capabilities will meet demand (in OPM’s capacity as owner of the USA Staffing program), by providing a full range of hiring authorities and flexibilities (as allowed under OPM statutory authority), and by advocating with OPM for electronic signature approval for health benefit forms; 11) the IRS continue to work with Treasury to advocate for a Department of Homeland Security policy change to allow agencies to permanently inspect I-9 documents virtually rather than in person; 12) the IRS continue to request Congress provide permanent funding to increase HCO’s authorized staffing plan to cover workload throughout the entire employment lifecycle, including securing funding to dual encumber positions to transfer knowledge from employees scheduled to retire, when needed; and 13) the IRS, in developing its training program, work with outside accounting firms, law firms, and other large organizations to learn best practices.

The National Taxpayer Advocate recommends that Congress provide dedicated multiyear funding for IRS hiring, recruitment, and employee training so the IRS can replenish the workforce losses incurred over the past decade and build the workforce of the future to provide best in class tax administration and provide quality service. Congress should provide the IRS permanent funding to increase HCO’s authorized staffing plan to cover workload throughout the entire employment lifecycle, including securing funding to dual encumber positions to transfer knowledge from employees scheduled to retire, when needed.

TELEPHONE AND IN-PERSON SERVICE: Taxpayers Face Significant Challenges Reaching IRS Representatives Due to Longstanding Deficiencies and Pandemic Complications

PROBLEM

Taxpayers and practitioners must have reliable access to telephone assistance to obtain quick, easy, and accurate answers to their inquiries. In most years, taxpayers have difficulty reaching IRS customer service representatives (CSRs) to obtain the help they need, but this past year was worse than usual, as call volume nearly tripled and only 11 percent of calls reached a CSR. In addition, the pandemic curtailed in-person access to IRS Taxpayer Assistance Centers (TACs), making it even harder to get assistance. Without support, taxpayers are disadvantaged and frustrated, and tax compliance is jeopardized.

ANALYSIS

Historically, the IRS has lacked enough CSRs and adequate technology to provide high quality phone service. The COVID-19 pandemic and its aftermath resulted in the IRS receiving a record 282 million calls in fiscal year (FY) 2021. The Level of Service (LOS) for the Accounts Management phone lines fell as low as four percent in March when Congress enacted sweeping legislation impacting taxpayers' 2020 taxes. Phone service went from bad to worse. Taxpayers faced additional difficulties as the pandemic further curtailed in-person access to TACs, which has been dwindling for years. Although in-person operations have resumed, the IRS still faces the challenge of operating TACs in a safe, efficient, and flexible manner. The IRS is in the process of implementing meaningful technological improvements in accordance with the goals of the Taxpayer First Act and is attempting to hire additional CSRs. Sufficient funding from Congress and effective execution of IRS plans will go a long way toward improving the quality of customer service over the phones and in TACs.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS: 1) implement and increase callback technology capacity across all taxpayer-facing telephone lines; 2) prioritize the rollout of a comprehensive Enterprise Case Management system, which is a prerequisite for meeting the IRS's goal of a robust concierge support system; 3) implement flexible hiring and training strategies for CSRs to reach and maintain a telephone LOS of at least 85 percent; 4) engage with outside parties to conduct a study to identify private industry or government best practices and how they might improve IRS phone systems; 5) conduct a postmortem study to identify specific challenges faced during the last two filing seasons to improve the responsiveness and quality of information provided to taxpayers and practitioners calling its phone lines; and 6) conduct a pilot program for "pop-up" mobile TACs, with stakeholders and community partners, to travel to underserved communities and reach vulnerable taxpayers to determine the viability and benefits of this program to taxpayers.

The National Taxpayer Advocate recommends that Congress provide dedicated multiyear funding sufficient to allow the IRS to improve customer experience in general and telephone service, as described in the Taxpayer First Act Report to Congress.

TRANSPARENCY AND CLARITY: The IRS Lacks Proactive Transparency and Fails To Provide Timely, Accurate, and Clear Information

PROBLEM

The COVID-19 pandemic has highlighted the need for the IRS to proactively release critical information to taxpayers in real time. During the past two filing seasons, taxpayers and tax professionals were exasperated by the lack of information on the processing of returns and refunds and correspondence delays. The IRS provided only limited information on delays, and what was available was vague and did not provide the specifics taxpayers needed. Taxpayers faced compounding frustration when trying to locate information on IRS.gov, which is difficult to navigate. The National Taxpayer Advocate believes that many of these problems existed long before the pandemic.

ANALYSIS

The IRS is not consistently transparent and does not provide clear and timely information about what taxpayers *need to know*, leaving taxpayers confused and frustrated. Taxpayers could not access the status details of IRS operations, such as a filing season backlog, delayed refunds, returns pulled for inconsistencies, or amended return processing delays; IRS tools and apps do not provide taxpayers the details they need; taxpayers are confused by unclear notices and IRS guidance; taxpayers don't always understand the IRS's reasons for its decisions, as a rationale is not always provided; taxpayers have difficulty locating information and answers to questions on IRS.gov because the site is challenging to navigate; and the IRS does not inform taxpayers how it will store, safeguard, and use data that artificial intelligence (AI) will analyze as part of its new online services initiative.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS: 1) create a filing season dashboard and provide weekly information on the filing season, including the total number of returns in inventory, number of returns beyond normal processing times, number of returns in suspense status, and the anticipated timeframes for working through them, while acknowledging that the situation is fluid and timeframes may change along with circumstances; 2) improve Where's My Refund?, IRS2Go, or Online Accounts by providing taxpayers specific information about the cause of their refund delay and an estimated date when the IRS might issue their refund; 3) revise math error notices to identify the exact adjustment the IRS is correcting and the time period for requesting abatement, all in the first paragraph of the notice, and include the date by which a taxpayer must request an abatement at the very top of the notice; 4) send all math error notices to taxpayers by certified or registered mail; 5) revise Letter 4464C to include more details about the items the IRS is reviewing and more detail about when the IRS will release the refund; 6) include a roadmap feature on taxpayers' online accounts that will show where a taxpayer's return is in the tax administration process (*i.e.*, Collection or Exam); 7) when extending filing deadlines, ensure taxpayers have the option to e-file their returns; and 8) develop internal procedures for how the IRS will store, use, and safeguard data collected by AI-run programs, and publicly provide this information on its website.

The National Taxpayer Advocate recommends that Congress amend IRC § 6213(b)(1) to require: that all math error notices include an explanation of the specific error being alleged; that all math error notices include a statement that the taxpayer has 60 days from the date of the notice to request that the summary assessment be abated; and that all such notices will be sent either by certified or registered mail.

MOST SERIOUS PROBLEM #5

FILING SEASON DELAYS: Millions of Taxpayers Experienced Difficulties and Challenges in the 2021 Filing Season

PROBLEM

The 2021 filing season was the textbook perfect storm and one of the worst filing seasons experienced by tens of millions of taxpayers. Millions did not receive refunds timely or updates or adequate information regarding their delays, and it was extremely difficult to reach a customer service representative on the toll-free lines for assistance. For many taxpayers and their families, refunds provide financial stability for the entire year. For the 2021 filing season, the COVID-19 pandemic illuminated serious problems with the IRS's reliance on antiquated systems and processes, which stymied tax administration and produced historically low Levels of Service. On May 17, 2021, the postponed filing season due date, over 35 million returns were awaiting manual processing causing refund delays. The delays caused confusion and frustration, infringed on taxpayer rights, and eroded taxpayer trust and confidence in our tax system.

ANALYSIS

The IRS has many responsibilities during the filing season, of which some of the most important are processing tax returns, issuing refunds, and communicating with taxpayers. Pandemic relief legislation added auxiliary responsibilities to the IRS's workload, such as delivering a third round of Economic Impact Payments (EIPs) about a month into the 2021 filing season, and reconciling inconsistencies for millions of stimulus payments paid in 2020. These challenges were compounded as the IRS was forced to close or understaff facilities across the country to comply with local stay-at-home orders and social distancing guidelines, which proved a major obstruction to the IRS's ability to carry out its mission, resulting in challenges for the processing of tax returns and correspondence.

The perfect storm strained the IRS's customer service performance and its operations for the last two filing seasons, which created multiple problems for taxpayers, many of whom were living through financial hardships and uncertainty from significant delays in receiving their refunds. Delays in securing refunds and lack of response to taxpayer correspondence drove taxpayers to call the IRS phone lines in historic volumes. Predictably, when taxpayers could not reach the IRS, many contacted their members of Congress or TAS for assistance.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS: 1) utilize 2-D barcoding and/or optical character recognition technology to improve the accuracy and efficiency of processing of paper tax returns; 2) set a goal of having all correspondence replying to notices resolved or the merits responded to within 45 days of receipt. When the IRS falls short of hitting this target in any of its workstreams, it should ensure that no related compliance or collection actions are taken until the IRS has fairly considered and responded to the merits of the taxpayer's position stated in their correspondence; 3) implement and increase callback technology capacity across all taxpayer-facing telephone lines; 4) develop a dedicated automated phone line where taxpayers can enter their information and upon proper identity authentication may retrieve specific details about their tax accounts, including but not limited to the amount of Advance Child Tax Credit and EIPs received; 5) conduct a postmortem study to identify specific challenges faced during the last two filing seasons to improve the responsiveness and quality of information provided to taxpayers and practitioners calling its phone lines; 6) accelerate permanent implementation allowing for the use of e-signatures and secure email of documents by end of fiscal year 2022; 7) program systemic reconciliation capabilities for refundable credits such as the Recovery Rebate Credit, Additional Child Tax Credit, Child Tax Credit, and systemic lookback capabilities to

Most Serious Problem #5: Filing Season Delays

prior year modified adjusted gross income where a taxpayer claims eligibility for tax credits that are based on prior year adjusted gross income, such as the Earned Income Tax Credit (EITC) lookback rule, and any future tax benefits of similar nature and impact that have potential to delay tax return processing and eliminate the need for manual reviews for computational adjustments; and 8) create a filing season dashboard and provide detailed weekly information on the filing season, including the total amount of return inventory, number of returns beyond normal processing times, number of returns in suspense status, and the anticipated timeframes for working through them, while acknowledging that the situation is fluid and timeframes may change along with circumstances.

The National Taxpayer Advocate recommends that Congress provide dedicated multiyear funding sufficient to allow the IRS to improve customer experience in general and specifically to improve and add functionality to its online and telephone service, as described in the Taxpayer First Act Report to Congress.

ONLINE ACCOUNTS: IRS Online Accounts Do Not Have Sufficient Functionality and Integration With Existing Tools to Meet the Needs of Taxpayers and Practitioners

PROBLEM

In its current state, the IRS's Online Account application provides individual taxpayers some limited functionality focused on payments and compliance but falls short of providing what taxpayers and tax professionals want, need, and expect for service. The severe disruption in IRS operations resulting from the COVID-19 pandemic forced the IRS to quickly deploy several online services with specific functionality. Unfortunately, many of these services were designed as standalone portals – the IRS has yet to develop and adopt a one-stop solution for online and digital services. A robust IRS online account system would transform tax administration.

ANALYSIS

The COVID-19 pandemic has transformed many aspects of American lives and has led to a surge in using digital technology – 90 percent of U.S. adults say the internet has been essential or important to them during the pandemic. As consumer preferences evolve, the IRS must offer a more dynamic set of online services with the means to seamlessly connect to other digital or online products. To its credit, the IRS has steadily incorporated additional features to the Online Account application over the years, but there are still significant limitations.

For example, there is no ability for taxpayers to upload correspondence, attach documents, or chat with an IRS representative from within Online Account. Some of these features are available outside of Online Account, but requiring taxpayers to navigate between several standalone systems is unnecessarily burdensome. A single secure log-in combined with a consolidated resources page or customer hub may increase use and knowledge of online services and products.

Furthermore, there is no comparable version of the Online Account application for business taxpayers. The IRS did roll out phase one of Tax Pro Account for tax professionals in 2021, but it is severely limited in scope.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS: 1) prioritize Tax Pro Account updates to enable practitioners to upload documents and request transcripts on behalf of clients; 2) prioritize and expedite efforts to deliver Business Online Accounts to business taxpayers by the end of fiscal year 2023; 3) expand IRS2Go mobile app functionality, such as displaying account payment information and IRS notices; 4) add links to IRS.gov content and videos where appropriate to allow taxpayers easy access to self-help information and personalized guidance based on their usage of their Online Account; 5) prioritize the development and deployment of more personalized status updates for Where's My Refund? and Where's My Amended Return? online tools; 6) expand the current displays and updates for refund status to include "additional delays in processing" (or similar language) in addition to the current "accepted," "approved," or "sent" statuses; and 7) include Publication 1 in the Online Account application and provide links to TAS, Low Income Taxpayer Clinics, and the Volunteer Income Tax Assistance and Tax Counseling for the Elderly programs on the main landing page and the top banner of the IRS.gov main page.

DIGITAL COMMUNICATIONS: Digital Communication Tools Are Too Limited, Making Communication With the IRS Unnecessarily Difficult

PROBLEM

The COVID-19 pandemic combined with new programs the IRS was directed to administer has led to historically low levels of telephone service and forced the IRS to limit in-person appointments, frustrating taxpayers and leaving them searching for any available way to communicate with the IRS. The IRS had been taking steps to expand digital communication with taxpayers and their representatives before the pandemic struck, but the experience of the last year highlights the urgency of accelerating the implementation and expansion of digital communication options to help taxpayers and their representatives receive the help they need.

ANALYSIS

Currently, there are over 232 million individual taxpayers, and during calendar year 2021, they filed over 168 million individual and jointly filed tax returns, and businesses filed over 12 million corporate and partnership returns. Yet, some digital communications options, such as secure email, Taxpayer Digital Communications Secure Messaging (TDC SM), and the Documentation Upload Tool (DUT) are not available to all taxpayers or tax professionals and are offered on an invite-only basis. The IRS must supplement or expand and make available to all taxpayers and tax professionals the ability to use a digital communication option to interact with the IRS to ensure quality service and an improved taxpayer experience. Digital tools allow taxpayers to:

- Securely sign and submit documents, thereby avoiding mail delays;
- Receive chat answers to questions, thereby avoiding calls to the IRS; and
- Access limited virtual services on a mobile device, providing a way for taxpayers to have a face-to-face interaction with an IRS employee without traveling to an IRS office.

The IRS is addressing the challenges many taxpayers have in accessing secure digital communication services through the transition to the modernized Secure Access Digital Identity (SADI) platform. The SADI platform is the identity proofing and authentication solution for public-facing IRS applications that will replace the legacy Secure Access eAuthentication (Secure Access eAuth). SADI uses one or more Credential Service Providers (CSPs) to provide identity proofing and credential management services for the IRS. Currently, the only CSP servicing the IRS is ID.me. ID.me is limited in its ability to identity proof and issue credentials to those without a Social Security number, such as Individual Taxpayer Identification Number (ITIN) holders. The IRS is conducting vendor capability research to determine if CSP vendors have the basic requirements and capabilities (*e.g.*, in-person customer support, multi-language assistance, fraud detection) to integrate with the IRS to expand user coverage for underserved populations.

As the IRS releases digital service options, it must consider how taxpayers or tax professionals will access such services. In 2019, about 37 percent of U.S. adults mostly used a smartphone when accessing the internet. In addition, about 17 percent of U.S. adults are now “smartphone only” internet users (*i.e.*, they own a smartphone and do not subscribe to broadband internet service at home). However, not all IRS digital applications are either mobile-ready or mobile-optimized. When digital communication tools are easy to find, understand, and use, they help ensure the taxpayer’s *right to quality service* through clear and easily understandable communications.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS: 1) prioritize and expand digital communications to expedite the deployment of taxpayer-facing features by three months from the current Taxpayer Experience Roadmap schedule; 2) develop expanded transactional data-based metrics to determine if taxpayers are completing transactions successfully when choosing a digital channel for service; 3) develop new tools that will satisfy the requirements for electronic signatures and secure document exchange by end of fiscal year (FY) 2022; 4) continue to expand DUT service to other functions within the agency to receive correspondence from taxpayers, including issue resolution documentation from taxpayers for math errors by end of FY 2022 and additional correspondence audit, examination, and Automated Underreporter notices by end of FY 2023; 5) educate taxpayers about digital options such as TDC SM and permit taxpayers to request access in lieu of the current invite-only strategy by end of Quarter 1, FY 2023; 6) partner with additional CSPs before the retirement of Secure Access eAuth and full implementation of SADI and do not rely on a single CSP; 7) establish a process for taxpayers living outside the United States and taxpayers with ITINs to authenticate their identities in SADI or another platform that meets National Institute of Standards and Technology requirements by December 31, 2022; 8) prioritize adding predefined virtual assistants to non-authenticated chat sessions for more digital communication services, such as helping taxpayers determine the best way to resolve a tax liability, including collection alternatives such as offers in compromise, installment agreements, and currently not collectible status by end of FY 2022; 9) expand non-authenticated and authenticated Text Chat (with Virtual Assistant) beyond the Automated Collection System to all taxpayer-facing functions and transactional tools and incorporate expansion plans into Web Services planning and the Taxpayer Experience strategy; 10) prioritize and focus on expansion of virtual face-to-face and self-service kiosks or similar technology to enable taxpayers with limited to no broadband access to interact virtually with the IRS by end of Quarter 1, FY 2023; and 11) make all existing applications mobile-ready so that all web content and assets are accessible, viewable, and usable across all devices. Going forward, standardize the application development process and testing to include mobile-ready access into newly developed applications by end of FY 2022.

E-FILING BARRIERS: Electronic Filing Barriers Increase Taxpayer Burden, Cause Processing Delays, and Waste IRS Resources

PROBLEM

The inability to electronically file (e-file) tax forms, schedules, attachments, and other documents negatively impacts both taxpayers and the IRS. Paper returns require manual processing, which leads to processing delays and potential transcription errors. E-filing significantly benefits taxpayers due to reduced transcription errors and quicker return processing and refund turnaround times. And it takes fewer resources for the IRS to process e-filed returns, which frees up employees to perform other filing season processing tasks, including processing paper returns filed by taxpayers who do not have the ability or desire to e-file. The IRS should remove barriers and provide all taxpayers the option to e-file their returns.

ANALYSIS

During the 2021 filing season, about 91 percent of individual returns and about 69 percent of business returns were e-filed through October 23, 2021. While e-filing significantly benefits both taxpayers and the IRS, the IRS still receives a significant number of paper-filed returns for a variety of reasons. Some commonly used IRS forms are not supported by IRS Modernized e-File (MeF). The IRS rejected millions of electronically submitted returns because they broke one or more of the MeF business rules. Some taxpayers and preparers cannot e-file when their return includes an attachment or an override of a field prepopulated by software. And despite the many benefits of e-file, a significant number of taxpayers still prefer to paper file.

The IRS has not publicized an updated long-term e-file rate goal. As the IRS works to further increase the rate of e-filing, it should also strive to improve the processing of paper returns. Technology, such as optical character recognition and 2-D barcoding, is available that would allow the IRS to scan paper returns prepared with software and capture the data accurately and efficiently.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS: 1) evaluate the overall need to reject an e-filed “imperfect tax return” and determine the feasibility of accepting the imperfect tax return upon filing and directing it to a treatment stream for further review; 2) collaborate with the tax return preparation software industry to reduce e-file rejections; 3) enable the e-file of returns with attachments; 4) enable the e-file of returns with overrides of prepopulated fields; 5) conduct comprehensive research to determine the reasons taxpayers and preparers paper file; 6) minimize any barriers to incorporating 2-D barcode technology; 7) utilize 2-D barcoding and optical character recognition (or similar) technology to improve the accuracy and efficiency of processing of paper tax returns; and 8) set a new long-term electronic filing rate goal.

The National Taxpayer Advocate recommends that Congress provide multiyear funding for the IRS to expand the use of 2-D barcoding and optical character recognition technology to improve the accuracy and efficiency of paper return and correspondence processing.

MOST SERIOUS PROBLEM #9

CORRESPONDENCE AUDITS: Low-Income Taxpayers Encounter Communication Barriers That Hinder Audit Resolution, Leading to Increased Burdens and Downstream Consequences for Taxpayers, the IRS, TAS, and the Tax Court

PROBLEM

In fiscal year (FY) 2019, more than half of the taxpayers subject to correspondence audits had total positive incomes below \$50,000, and most of these low-income taxpayers claimed the Earned Income Tax Credit (EITC). These taxpayers often face particular challenges navigating the correspondence audit process. The IRS correspondence audit process is structured to expend the least amount of resources to conduct the largest number of examinations – resulting in the lowest level of customer service to taxpayers having the greatest need for assistance. Correspondence audits produce the lowest agreement rate, the highest no-response rate, and the highest volume of cases assessed by default. The resulting high volume of unagreed cases leads to use of downstream resources for resolution activities that include audit reconsideration, appeals, litigation, and involvement of other IRS functions such as TAS and Collection. By devoting additional resources at the beginning of the correspondence audit process, the IRS could provide appropriate levels of customer service during the audit, avoiding unnecessary downstream costs and reducing the burden on our nation's least affluent and most vulnerable taxpayers. More importantly, by providing sufficient service to the population having the greatest need of assistance, the IRS could resolve these low-income audits earlier, preventing future compliance issues.

ANALYSIS

IRS compliance data reveals that 53 percent of the individual audits conducted by the IRS in FY 2019 were completed on taxpayers with total positive incomes below \$50,000, with 82 percent of these taxpayers filing returns that claimed the anti-poverty EITC. Taxpayers in this income range are less likely to be represented by tax professionals and are more likely to have difficulty reaching the IRS for audit assistance. The IRS makes little effort to reach these taxpayers if they are unresponsive or if their IRS correspondence is returned as undeliverable, and these taxpayers experience little or no personal interaction throughout the audit process. The IRS must improve the correspondence audit process to increase taxpayer engagement at this income level, to resolve audit issues, and to eliminate downstream consequences for the taxpayer and the IRS.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS: 1) assign the case to an individual examiner who can serve as the taxpayer's point of contact once a taxpayer contacts the IRS in response to his or her initial correspondence audit contact letter and provide the examiner's direct phone number; 2) increase phone staffing to deliver an 80 percent minimum correspondence audit toll-free telephone Level of Service; 3) implement additional external resources to locate taxpayers whose correspondence audit-related mail has been returned undeliverable, similar to resources the IRS uses in its field examinations; 4) implement a personal contact attempt to reach non-responsive taxpayers and taxpayers whose mail has been returned undeliverable; 5) add a consent mechanism to Form 1040, U.S. Individual Income Tax Return, that would allow taxpayers to authorize the IRS to leave telephone messages or make email contacts to reach taxpayers; 6) in collaboration with TAS, establish a working group to explore the root causes that contribute to the low response rates of low-income taxpayers undergoing the correspondence audit process and implement a pilot program to decrease the high default and non-response rates; 7) conduct a proof-of-concept project that would assign correspondence audit cases to an examiner who could serve as the taxpayer's single point of

contact once the taxpayer sends in correspondence or reaches a correspondence audit assist or by phone. This project should involve data collection to determine if the IRS-perceived barriers to correspondence audit case assignment are valid, while also measuring customer satisfaction and responsiveness results; and 8) implement the use of new Online Account features such as text chat, document upload, and address change options in the correspondence audit programs.

The National Taxpayer Advocate recommends that Congress: 1) restructure EITC to make it simpler for taxpayers and reduce improper payments; and 2) authorize the IRS to establish minimum competency standards for federal tax return preparers.

MOST SERIOUS PROBLEM #10

COLLECTION: IRS Collection Policies and Procedures Negatively Impact Low-Income Taxpayers

PROBLEM

Many taxpayers have difficulty paying their tax liabilities. Low-income taxpayers in particular struggle to balance paying their tax debts with paying their basic living expenses. The IRS offers collection alternatives for financially struggling taxpayers, but the alternatives are underutilized. Some taxpayers seeking installment agreements (IAs) do not receive the relief from user fees Congress intended because IRS procedures for identifying low-income taxpayers are flawed. Requests for offers in compromise (OICs) have declined in seven of the past eight years. Currently not collectible (CNC)-Hardship status and offset bypass refund (OBR) relief are unnecessarily difficult to obtain. The IRS continues to issue automated collection notices despite backlogs in processing taxpayer correspondence and amended returns, and some taxpayers are surprised to learn they cannot dispute the merits of their underlying liabilities at a collection due process (CDP) hearing because IRS collection notices do not adequately explain their rights.

ANALYSIS

The IRS's process of identifying low-income taxpayers who may be eligible for a reduced or waived IA user fee is not working as it should. TAS estimates that there are nearly nine million taxpayers who should have a low-income indicator (LII) on their account but do not, and more than one million taxpayers who have the LII on their account but should not. Taxpayers who are experiencing financial hardship may qualify for CNC-Hardship status but under IRS procedures, a taxpayer cannot request CNC consideration without working with an IRS employee. Practitioners report that in their view, taxpayers "must be practically destitute to be granted a CNC." Fiscal year 2020 marked the seventh consecutive year of decline in OIC submissions, yet the IRS does not identify and address factors that may drive OIC receipts. OBR relief is not well publicized and involves such short timeframes that many taxpayers cannot obtain it.

The IRS's computer system continues to initiate collection notices and activity even though the IRS has not caught up on processing paper returns and correspondence. Consequently, taxpayers have been unnecessarily dealing with collection issues. Some IRS notices do not adequately inform taxpayers who seek to dispute a proposed liability. For example, Notice CP 15, Notice of Penalty Charge, informs taxpayers of a penalty assessment under IRC § 6038 but makes only a passing reference to the right to seek a conference with IRS Appeals and does not inform taxpayers they will not be able to dispute the underlying liability in a CDP proceeding or in the U.S. Tax Court.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS: 1) defer collection activity until 45 days after the IRS addresses the merits of a taxpayer's request or response to an adjustment, an assessment, or proposed liability; 2) if requested, provide a six-month hold on collection matters while the taxpayer's correspondence, amended return, or other request is pending; 3) wait for 120 days (rather than 105 days) after issuing a notice of deficiency before assessing additional tax (*i.e.*, amend the Internal Revenue Manual to extend the suspension period from 15 days to 30 days); 4) revise Notice CP 15 and any other correspondence to taxpayers that in the IRS's view constitutes "an opportunity to dispute such liability" for purposes of IRC § 6330(c)(2)(B) to include detailed information about taxpayers' rights and consequences of an administrative appeal, to explain that the notice constitutes their only "opportunity to dispute" the liability, and to explain that the taxpayer will not be permitted to dispute the merits of the liability at a future CDP hearing or before the U.S. Tax Court; 5) adopt procedures that allow the IRS to consider

changes in taxpayers' circumstances when determining the applicable IA user fee, similar to procedures in place for considering whether a taxpayer qualifies for an OIC fee waiver; 6) change IAs to incorporate user fees into the agreed-upon payments over the life of the agreement rather than requiring taxpayers to pay the user fee in the first month; 7) allow taxpayers to request CNC-Hardship consideration either online or by submitting a standardized form; 8) analyze information from submitted OICs and develop a more nuanced outreach to encourage low-income taxpayers to consider OICs when appropriate; 9) continue the practice of processing OICs when the IRS has not yet processed a required return when the taxpayer sends a copy of the return while the COVID-19 processing challenges linger and until the IRS returns to a normal level of inventory backlog; 10) allow IRS employees to freeze refunds while a taxpayer's request for an OBR is under consideration; and 11) make OBRs systemically available to taxpayers to the extent their allowable EITC claims exceed the current year's tax liability where the taxpayer has only federal tax liabilities.

The National Taxpayer Advocate recommends that Congress: 1) amend IRC § 6159 to require the IRS to waive user fees for taxpayers who enter into direct-debit installment agreements or who have an adjusted gross income equal to or less than 250 percent of the Federal Poverty Level; 2) amend IRC § 6402(a) to prohibit offset of the EITC portion of a tax refund; 3) amend IRC § 6330 to provide that "an opportunity to dispute" an underlying liability means an opportunity to dispute such liability in a prepayment judicial forum; and 4) amend IRC § 6212 to provide that the assessment of foreign information reporting penalties under IRC §§ 6038, 6038A, 6038B, 6038C, and 6038D is subject to deficiency procedures.

MOST LITIGATED ISSUES

IRC § 7803(c)(2)(B)(ii)(XI) requires the National Taxpayer Advocate to identify in her Annual Report to Congress the ten tax issues most litigated in federal courts. Historically, TAS utilized commercial legal research databases to review published opinions in multiple courts to determine the ten most litigated issues. This year, to gain a broader view of tax litigation, for the first time, we analyzed the top ten issues petitioned to the Tax Court to compare to the top ten issues that required a court ruling to resolve. Utilizing the new hybrid methodology, we created two lists of the Most Litigated Issues – one focusing on the back end of the Tax Court litigation (*i.e.*, the 224 opinions issued by the Tax Court) and the other focusing on the front end of the litigation. We conducted an analysis of nearly 20,000 taxpayers petitioning Tax Court in fiscal year (FY) 2021 from data provided by the IRS Independent Office of Appeals. We also reviewed issues in other federal courts apart from the Tax Court and separately discussed issues such as the accuracy-related penalty under IRC § 6662 and the frivolous issues penalty under IRC § 6673.

Tax Court individual taxpayer opinions outnumbered business taxpayer opinions by a ratio of 133 cases to 91 cases issued June 1, 2020, to May 31, 2021. This year's most litigated issues decided by the Tax Court between June 1, 2020, and May 31, 2021, and the top ten issues petitioned to the Tax Court in FY 2021, in order from most to least are shown in Figure 1.

FIGURE 1, Historical Approach Based Upon Tax Court's Opinions Issued Between June 1, 2020, and May 31, 2021, Compared With Top Ten Issues Petitioned to the Tax Court in FY 2021

Ranking	Historical Approach – Issue Category	Tax Court Opinions Discussing Issue	Ranking	Top Ten Issues Petitioned Approach – Issue Category	Total Petitions to the Tax Court in FY 2021
1	Gross Income (IRC § 61 and related Code sections)	66	1	Gross Income (IRC § 61 and related Code sections)	13,558
2	Trade or Business Expenses (IRC § 162(a) and related Code sections)	50	2	Trade or Business Expenses (IRC § 162(a) and related Code sections)	2,255
3	Collection Due Process (CDP) Hearings (IRC §§ 6320 and 6330)	35	3	Family Status Issues (IRC §§ 2, 21, 24, 32, 151, and 152) (Includes filing status, Child Tax Credit, Earned Income Tax Credit, and dependency exemptions)	1,838
4	Charitable Contribution Deductions (IRC § 170)	27	4	Schedule A Itemized Deductions (IRC §§ 211-224)	1,722
5	Schedule A Itemized Deductions (IRC §§ 211-224)	27	5	CDP Hearings (IRC §§ 6320 and 6330)	1,191
6	Failure-to-File Penalty (IRC § 6651(a)(1)), Failure-to-Pay Penalty (IRC § 6651(a)(2)), and Failure-to-Pay Estimated Tax Penalty (IRC § 6654)	14	6	Form W-2 or Form 1099 Federal Income Tax Withholding	804
7	Whistleblower Award Determinations (IRC § 7623(b)(1))	12	7	Charitable Contribution Deductions (IRC § 170)	736
8	Innocent Spouse Relief (IRC § 6015)	9	8	Standard Deduction	308

Most Litigated Issues

Ranking	Historical Approach – Issue Category	Tax Court Opinions Discussing Issue	Ranking	Top Ten Issues Petitioned Approach – Issue Category	Total Petitions to the Tax Court in FY 2021
9	Family Status Issues (IRC §§ 2, 21, 24, 32, 151, 152, and other related IRC sections)	3	9	American Opportunity Credit	183
10	Frivolous Tax Submissions (IRC § 6702(a))	3	10	Delinquency Penalty - Failure-to-File Penalty (IRC § 6651(a)(1)) and Failure-to-Pay Penalty (IRC § 6651(a)(2))	173

In FY 2021, about 98 percent of all tax-related litigation was adjudicated in the Tax Court. The Tax Court received at least 65 times as many tax cases as district courts and 108 times as many tax cases as the Court of Federal Claims in FY 2021. In nearly 45 percent of the cases at the Tax Court in FY 2021, there was less than \$50,000 at issue. The vast majority of Tax Court cases (about 82 percent) settled without the necessity of a trial, with about 14,900 cases settled. Additionally, in FY 2021, about 86 percent of cases petitioned to the Tax Court were by *pro se* taxpayers and about 14 percent of the cases were by represented taxpayers. Over the past ten years, an average of 82 percent of taxpayers appearing in Tax Court were not represented by counsel. And about 19,100, or 69 percent, of petitions in the Tax Court, an average of a ten-year period, resulted from a notice of deficiency being issued from the Campuses, bypassing Appeals.

The National Taxpayer Advocate recommends that Congress: 1) Amend IRC § 7403 to preclude IRS employees from requesting that the Department of Justice file a civil action in U.S. District Court seeking to enforce a tax lien and foreclose on a taxpayer's principal residence, except where the employee has determined that (i) the taxpayer's other property or rights to property, if sold, would be insufficient to pay the amount due, including the expenses of the proceedings, and (ii) the foreclosure and sale of the residence would not create an economic hardship due to the financial condition of the taxpayer; 2) amend IRC § 6751(b)(1) to clarify that no penalty under Title 26 shall be assessed or entered in a final judicial decision unless the penalty is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate prior to the first time the IRS sends a written communication to the taxpayer proposing the penalty as an adjustment; 3) amend IRC § 6751(b)(2)(B) to clarify that the exception for "other penalties automatically calculated through electronic means" does not apply to the penalty for "negligence or disregard of rules or regulations" under IRC § 6662(b)(1); and 4) amend IRC § 7602(c) to clarify that the IRS must tell the taxpayer in a third-party contact notice what information it needs and allow the taxpayer a reasonable opportunity to provide the information before contacting a third party, unless doing so would be pointless (*e.g.*, because the taxpayer does not have the information the IRS needs) or an exception applies.

Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration

Section 7803(c)(2)(B)(ii)(IX) of the IRC requires the National Taxpayer Advocate, as part of the annual report to Congress, to propose legislative recommendations to resolve problems encountered by taxpayers. This year, we present 68 legislative recommendations.

We have taken the following steps to make these recommendations as accessible and user-friendly as possible for Members of Congress and their staffs:

- We have consolidated our recommendations from various sections of this year's report, prior reports, and other sources into this single volume.
- We have grouped our recommendations into categories that generally reflect the various stages in the tax administration process so that, for example, return filing issues are presented separately from audit and collection issues.
- We have presented each legislative recommendation in a format like the one used for congressional committee reports, with "Present Law," "Reasons for Change," and "Recommendation(s)" sections.
- Where bills have been introduced in the past that are generally consistent with one of our recommendations, we have included a footnote at the end of the recommendation that identifies those bills. (Because of the large number of bills introduced in each Congress, we almost surely have overlooked some. We apologize for any bills we have inadvertently omitted.)
- We have compiled a table, which appears at the end of this volume as Appendix 1, that identifies additional materials relating to our recommendations, where such materials exist. In addition to identifying a larger number of prior bills than we cite in our footnotes, the table provides references to more detailed issue discussions that have been published in prior National Taxpayer Advocate reports.

By our count, Congress has enacted approximately 50 legislative recommendations that the National Taxpayer Advocate has proposed. See Appendix 2 for a complete listing. That total includes approximately 23 provisions that were included as part of the Taxpayer First Act.¹

The Office of the Taxpayer Advocate is a non-partisan, independent organization within the IRS that advocates for the interests of taxpayers. We have dubbed this the "Purple Book" because the color purple, as a mix of red and blue, has come to symbolize bipartisanship. Historically, tax administration legislation has attracted bipartisan support. Most recently, the Taxpayer First Act was approved by both the House and the Senate on voice votes with no recorded opposition.

We believe most of the recommendations presented in this volume are non-controversial, common sense reforms that will strengthen taxpayer rights and improve tax administration. We hope the tax-writing committees and other Members of Congress find it useful.

We highlight these ten legislative recommendations for particular attention, in no particular order:

- **Revamp the IRS Budget Structure and Provide Sufficient Funding to Improve the Taxpayer Experience and Modernize the IRS's Information Technology Systems.** Since FY 2010, the IRS

¹ Taxpayer First Act, Pub. L. No. 116-25, 133 Stat. 981 (2019). We say Congress enacted "approximately" a certain number of National Taxpayer Advocate recommendations because in some cases, enacted provisions are substantially similar to what we recommended but are not identical. The statement that Congress enacted a National Taxpayer Advocate recommendation is not intended to imply that Congress acted solely because of the recommendation. Congress, of course, receives suggestions from a wide variety of stakeholders on an ongoing basis.

budget has been reduced by nearly 20 percent after adjusting for inflation. Largely as a result of these budget reductions, the IRS cannot provide top quality service or enforce the law with fairness to all. For example, the IRS finished the 2021 filing season with a backlog of 35.3 million returns that required manual processing. When taxpayers called the IRS for assistance, only about 11 percent reached a CSR, with hold times for taxpayers who got through averaging about 23 minutes. In addition, the IRS's IT systems desperately need upgrades. In FY 2021, the IRS collected about \$4.1 trillion on a budget of about \$11.9 billion, producing a remarkable average return on investment of about 345:1. Additional funding for the IRS would not only improve taxpayer service but would almost surely increase revenue collection.

- **Amend the Lookback Period for Allowing Tax Credits or Refunds Under IRC § 6511(b)(2)(A) to Include the Period of Any Postponement of Time for Filing a Return Under IRC § 7508A.** Taxes withheld from wages and estimated tax payments are generally deemed paid on the tax return filing deadline of April 15. To be timely, a taxpayer's claim for credit or refund generally must be filed within three years from the date the return was filed or two years from the date the tax was paid, whichever period is longer. If the taxpayer files a refund claim within three years from the date the return was filed, the taxpayer can only get a credit or refund of excess amounts paid within the preceding three years, plus six months (*i.e.*, the lookback period) if the taxpayer obtained a six-month extension for filing the original return. However, a taxpayer who filed pursuant to a "postponement" granted by the IRS because of a federally declared disaster will not recover excess amounts paid within the period of postponement.

Because of the pandemic, the IRS postponed the tax return filing deadline to July 17 in 2020 and to May 17 in 2021. These postponements of the filing deadline limit the amounts that taxpayers can recover in a way that was not intended and that will cause some taxpayers to lose the ability to recover overpayments. For example, a taxpayer who filed her 2019 return by the postponed filing deadline of July 15, 2020, might reasonably believe she would be eligible for a refund if she files a claim before July 15, 2023. However, if her taxes (withholding payments) are deemed paid on April 15, 2020, any claim for credit or refund filed after April 15, 2023, would be disallowed by the IRS. This is a trap for the unwary. We recommend Congress extend the lookback period when the filing deadline is postponed by the IRS due to a disaster declaration to three years *plus the period of the postponement*.

- **Authorize the IRS to Establish Minimum Competency Standards for Federal Tax Return Preparers.** The IRS receives over 160 million individual income tax returns each year, and paid tax return preparers prepare the majority of these returns. Both taxpayers and the tax system depend heavily on the ability of preparers to prepare accurate tax returns. Yet numerous studies have found that non-credentialed tax return preparers routinely prepare inaccurate returns, which harms taxpayers and tax administration. To protect the public, federal and state laws generally require lawyers, doctors, securities dealers, financial planners, actuaries, appraisers, contractors, motor vehicle operators, and even barbers and beauticians to obtain licenses or certifications and, in most cases, to pass competency tests. Taxpayers and the tax system would benefit from requiring tax return preparers to pass minimum competency tests.

The IRS sought to implement minimum standards beginning in 2011, including passing a basic competency test, but a U.S. Court of Appeals affirmed a U.S. district court opinion that held the IRS lacked the authority to impose preparer standards without statutory authorization. The plan the IRS rolled out in 2011 was developed after extensive consultation with stakeholders and was supported by almost all such stakeholders. We recommend Congress authorize the IRS to reinstitute minimum competency standards.

- **Expand the Tax Court's Jurisdiction to Hear Refund Cases and Assessable Penalties.** Under current law, taxpayers who owe tax and wish to litigate a dispute with the IRS must go to the U.S. Tax Court, while taxpayers who have paid their tax and are seeking a refund must file suit in a U.S. district court or the U.S. Court of Federal Claims. Although this dichotomy between deficiency cases and refund

cases has existed for decades, we recommend Congress give all taxpayers the option to litigate their tax disputes in the U.S. Tax Court. Due to the tax expertise of its judges, the Tax Court is often better equipped to consider tax controversies than other courts. It is also more accessible to less knowledgeable and unrepresented taxpayers than other courts because it uses informal procedures, particularly in certain disputes that do not exceed \$50,000 for one tax year or period.

- **Restructure the Earned Income Tax Credit (EITC) to Make It Simpler for Taxpayers and Reduce the Improper Payments Rate.** TAS has long advocated for dividing the EITC into two credits: (i) a refundable worker credit based on each individual worker's earned income, despite the presence of a qualifying child, and (ii) a refundable child credit. For wage earners, claims for the worker credit could be verified with nearly 100 percent accuracy by matching claims on tax returns against Forms W-2, reducing the improper payments rate on those claims to nearly zero. The portion of the EITC that varies based on family size would be combined with a child credit into a larger family credit. The National Taxpayer Advocate published a report making this recommendation in 2019, and we continue to advocate for it.
- **Expand the Protection of Taxpayer Rights by Strengthening the Low Income Taxpayer Clinic (LITC) Program.** The LITC program effectively assists low-income taxpayers and taxpayers who speak English as a second language. When the LITC grant program was established as part of the IRS Restructuring and Reform Act of 1998, IRC § 7526 limited annual grants to no more than \$100,000 per clinic. The law also imposed a 100 percent matching requirement. A clinic cannot receive more in LITC grant funds than it is able to match. The nature and scope of the LITC program has evolved considerably since 1998, and those requirements are preventing the program from providing high quality assistance to the largest possible universe of eligible taxpayers. We recommend that Congress remove the per-clinic cap and allow the IRS to reduce the match requirement to 50 percent if doing so would provide coverage for additional taxpayers.
- **Clarify That Supervisory Approval Is Required Under IRC § 6751(b) Before Proposing Penalties.** IRC § 6751(b)(1) states: “No penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination....” At first, it seems a requirement that an “initial determination” be approved by a supervisor would mean the approval must occur before the penalty is proposed. However, the timing of this requirement has been the subject of considerable litigation, with some courts holding that the supervisor’s approval might be timely even if provided after a case has gone through the IRS Independent Office of Appeals and is in litigation. Very few taxpayers choose to litigate their tax disputes. Therefore, to effectuate Congress’s intent that the IRS not penalize taxpayers in certain circumstances without supervisory approval, the approval must be required earlier in the process. We recommend that Congress amend IRC § 6751(b)(1) to require that written supervisory approval be provided *before* the IRS sends a written communication to the taxpayer proposing a penalty.
- **Require That Math Error Notices Describe the Reason(s) for the Adjustment With Specificity, Inform Taxpayers They May Request Abatement Within 60 Days, and Be Mailed by Certified or Registered Mail.** Under IRC § 6213(b), the IRS may make a summary assessment of tax arising from a mathematical or clerical error, as defined in IRC § 6213(g). When the IRS does so, IRC § 6213(b)(1) requires that it send the taxpayer a notice describing “the error alleged and an explanation thereof.” By law, the taxpayer has 60 days from the date of the notice to request that the summary assessment be abated. Many taxpayers do not understand that failing to respond to an IRS math error notice within 60 days means they may have unknowingly conceded the adjustment and forfeited their right to challenge the IRS’s position in the Tax Court. Amending IRC § 6213(b) to require that the IRS specifically describe the error giving rise to the adjustment and inform taxpayers that they have 60 days to request that the summary assessment be abated would help ensure taxpayers understand the adjustment and their rights. Additionally, requiring the IRS to send the notice either by certified or

registered mail would underscore the significance of the notice and provide an additional safeguard to ensure that taxpayers are receiving this critical information.

- **Amend IRC § 6330 to Provide That “an Opportunity to Dispute” an Underlying Liability Means an Opportunity to Dispute Such Liability in a Prepayment Judicial Forum.** IRC §§ 6320(b) and 6330(b) provide taxpayers with the right to request an independent review of a Notice of Federal Tax Lien (NFTL) filed by the IRS or a proposed levy action. The purpose of these collection due process (CDP) rights is to give taxpayers adequate notice of IRS collection activity and provide a meaningful hearing to determine whether the IRS properly filed an NFTL or proposed a levy. The IRS and the courts interpret the current law to mean that an opportunity to dispute the underlying liability includes a prior opportunity for a conference with the IRS Independent Office of Appeals offered either before or after assessment of the liability, even where there is no opportunity for judicial review of the Appeals conference.

The value of CDP proceedings is undermined when taxpayers who have never had an opportunity to dispute the underlying liability in a prepayment judicial forum are precluded from doing so during their CDP hearing. These taxpayers have no alternative but to pay the tax and then seek a refund by filing a suit in a U.S. district court or the U.S. Court of Federal Claims – an option that not all taxpayers can afford. In our view, the circumstances in which taxpayers may challenge the IRS’s liability determination in a CDP hearing should be expanded to include taxpayers who did not receive a notice of deficiency or the opportunity to dispute the underlying liability in a prepayment judicial forum.

- **Amend IRC § 6212 to Provide That the Assessment of Foreign Information Reporting Penalties Under IRC §§ 6038, 6038A, 6038B, 6038C, and 6038D Is Subject to Deficiency Procedures.** IRC § 6212 requires the IRS to issue a “notice of deficiency” before assessing certain liabilities. IRC § 6671(a) authorizes the IRS to assess some penalties without first issuing a notice of deficiency. These penalties are generally subject to judicial oversight only if taxpayers first pay the penalty and then sue for a refund. The IRS takes the position that various international information reporting penalties are also immediately assessable without issuing a notice of deficiency, including the penalty under IRC § 6038 for failure to file Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations. Taxpayers who are savvy enough to request an abatement based on reasonable cause or to request a conference with the IRS Independent Office of Appeals frequently obtain relief from assessable penalties. Specifying that deficiency procedures apply would prevent the systemic assessments the IRS so often abates. The proposed legislative change would require the IRS to issue a notice of deficiency before assessing penalties under IRC §§ 6038, 6038A, 6038B, 6038C, and 6038D, thus allowing taxpayers to seek prepayment judicial review in the U.S. Tax Court and enhancing the taxpayers’ *right to a fair and just tax system*.



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