

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

### WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

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, which for many taxpayers included Earned Income Tax Credit (EITC) and Child Tax Credit benefits. Millions of taxpayers rely on these benefits 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.<sup>1</sup>

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 (AdvCTC) 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 (ARPA), 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, particularly if more taxpayers do not file electronically or properly reconcile their monthly AdvCTC payments or the third stimulus payment with their 2021 return.

### EXPLANATION OF THE PROBLEM

The IRS relies on taxpayers to do their part by filing accurate and timely tax returns. In exchange, the IRS pays out refunds – generally quickly – and can focus its resources on compliance efforts for those who do not comply. The pandemic, lack of funding, and depleted staffing has caused a high volume of backlogged inventory, and taxpayers are frustrated with the lengthy delays in the processing of their returns and correspondence with little or no communication from the IRS. 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.<sup>2</sup>

While much of the processing delay is related to tax year 2020 paper returns, some taxpayers are still waiting for resolution of their electronically filed 2020 tax returns, amended returns, and correspondence replying to IRS notices.

The IRS is in crisis and needs to apply resources to its core mission – processing these returns and paying the corresponding refunds. 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.

This issue, like the others discussed throughout this report, is not only due to the pandemic. It is also a direct result of a diminishing budget over the past ten years that has led to a lack of adequate staffing among IRS processing staff.<sup>3</sup> The ongoing processing delays combined with the IRS's loss of its processing staff and inability to hire employees all negatively impact the 2022 filing season. The IRS will be carrying over millions of unprocessed tax returns and taxpayer correspondence into 2022. With its current staffing, the IRS will find itself in the difficult position of trying to timely process 2022 filing season returns while simultaneously trying to resolve its existing backlog. As the IRS entered the 2021 filing season, the IRS estimated that it had more than 11.7 million paper-filed individual and business returns that it still needed to manually process.<sup>4</sup> That additional strain on its resources resulted in delays that continued through the end of the year.

The 2022 filing season is poised to be another difficult one as the IRS also grapples with the reality of operating under a continuing resolution that negatively impacts its ability to hire. In addition, it is anticipated that the COVID-19 vaccine mandate may cause additional staffing shortages at campus locations across the IRS. Similar to the last filing season, taxpayers will be reconciling the Rebate Recovery Credits (RRC) on their tax returns, and for the first time, they will be reconciling advance payments of the Child Tax Credit (CTC) as well. Last year, the IRS manually processed over 11 million returns due to inconsistencies between IRS records of the first and second stimulus payments and the RRC claimed on these returns.<sup>5</sup> With tens of millions of individuals claiming AdvCTC and RRC for the third stimulus payment, we believe the IRS will again be faced with the daunting task of manually reviewing tens of millions of returns, thus causing more processing and refund delays for millions of taxpayers. Without more staffing, these returns and refunds will be delayed even further.

While the IRS can ask taxpayers and practitioners to be patient as the IRS makes its way through its backlog, many have reached the limit of that patience. Taxpayers are doing their part to comply, but the IRS is not fulfilling its end of the bargain. The IRS needs to take immediate steps to fulfill its core mission – timely process tax returns during the filing season and issue refunds to taxpayers in a timely fashion. Moreover, the IRS needs to provide taxpayers with specific information about when to expect the IRS to process their returns, issue their refunds, or answer their correspondence. This past filing season left millions of taxpayers without answers or the monies to which they are rightfully entitled.

## ANALYSIS

### How Did We Get Here?

The IRS backlog results from several issues: the COVID-19 pandemic, a continued reduction in 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 taxpayers, practitioners, and the IRS.<sup>6</sup>

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.<sup>7</sup> At the end of calendar year (CY) 2020, the IRS estimated that it had more than 11.7 million paper-filed individual and business returns that it still needed to manually process.<sup>8</sup> 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.<sup>9</sup> September 2021 marked the official closure of the Fresno paper return processing center. Originally announced in 2016 as part of the IRS's consolidation of its processing centers, the closing of the Fresno location was driven by the continued growth in electronic

filing and IRS efforts to consolidate resources.<sup>10</sup> While the Fresno closure was only recently finalized, the IRS has been working since 2016 to find new positions for its Fresno processing employees, once again leaving the IRS without enough trained employees to deal with the ongoing paper return backlog.

**FIGURE 2.1.1, Tax Returns Received by Type and Year<sup>11</sup>**

Returns Received – Type/Year	CY 2018	CY 2019	CY 2020	CY 2021
Paper Forms 1040	16,513,569	16,948,000	14,852,000	16,202,000
Electronic Forms 1040	133,842,282	138,047,000	152,232,000	151,765,000
Paper Forms 1040-X	3,262,509	2,882,013	2,486,555	2,129,027
Electronic Forms 1040-X	0	0	144,214	1,752,219
Paper Forms 941	10,301,497	12,770,328	11,594,459	10,775,793
Electronic Forms 941	14,138,707	12,093,323	12,939,196	14,199,749
Paper Forms 941-X	330,079	325,718	338,678	738,422
Electronic Forms 941-X	0	0	0	0
Forms 1045	33,540	6,720	28,695	18,825
Forms 1139	22,139	4,360	22,882	16,337

**Pandemic Legislation Drove Additional Paper Return Filings**

Over the past two filing seasons, Congress has passed four major pieces of legislation designed to help mitigate the economic impact of COVID-19 for taxpayers and businesses.<sup>12</sup> 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. Millions of taxpayers either did not receive their stimulus payments or did not receive the correct amount. For these taxpayers, the legislation required them to reconcile on their 2021 tax returns the difference between the amount they received and the amount they should have received. To further complicate matters, the criteria for the three different rounds of stimulus payments included different qualifications or definitions of a dependent, and millions of taxpayers calculated their dependent payments on the incorrect assumption that the last legislation was the standard for the prior two qualifying definitions of a dependent.

The Coronavirus Aid, Relief, and Economic Security (CARES) Act made several modifications to net operating losses (NOLs) and authorized a carryback of any NOL arising in a taxable year beginning after December 31, 2017, and before January 1, 2021, to each of the five taxable years preceding the taxable year in which the loss arose. It also modified the credit for prior-year minimum tax liability of corporations and permitted an election for taxpayers to exclude or waive an IRC § 965(a) tax year from loss carrybacks.<sup>13</sup> To take advantage of these changes, corporations could claim a refund on Form 1139, Corporation Application for Tentative Refund, or by filing an amended return.<sup>14</sup> Individuals could claim a refund from a carryback by filing Form 1045, Application for Tentative Refund, or Form 1040-X, Amended U.S. Individual Income Tax Return.<sup>15</sup> Unfortunately, the tentative refund forms require a paper return that taxpayers cannot file electronically. The IRS is still struggling to process paper returns, and some tentative refund requests have been waiting up to a year or longer.<sup>16</sup>

The goal of the CARES Act was to immediately get money into the hands of businesses suffering during the pandemic. Statutorily, the IRS should process these forms within 90 days.<sup>17</sup> However, this is not happening. Although the IRS had sufficient time to staff a tentative allowance unit, it chose not to do so. As a result, the IRS has not been able to handle the processing and payment of the tentative allowance refunds. Due to delays

in processing, the IRS had to pay nearly \$435 million in interest on these tentative refund claims that were received in 2020, and more interest is still accruing on pending claims.<sup>18</sup>

The IRS itself acknowledges on its operating status page that it continues “to experience inventory backlogs and processing times longer than the normal 90-day statutory period,” and it “cannot provide a timeframe” for how long businesses may have to wait. The IRS’s advice to taxpayers is simply to “consider the significant additional approval time and plan for it.”<sup>19</sup> This is money that businesses may need to pay employees and keep their doors open, yet the IRS is putting the burden on the businesses to plan for the IRS’s own delays. This advice might be more palatable if the IRS could provide a realistic timeframe for processing or even inform taxpayers how many tentative refund claims are in the backlog; unfortunately, the IRS does not have this information available. It is not possible for businesses to plan for additional approval times, as the IRS advises, when they are not given any information about how long those times are. To comply with the statute and provide the financial relief Congress intended, the IRS should immediately establish a unit to solely focus on processing these tentative refund claims. TAS is assisting businesses and practitioners that have been waiting for almost nine months for a response from the IRS on these tentative refunds, and there is no end in sight.

Similar challenges arise in the processing of Form 941-X, Adjusted Employer’s Quarterly Federal Tax Return or Claim for Refund, which employers used to claim certain COVID-19-related employment tax credit benefits.<sup>20</sup> As of November 17, 2021, the IRS reported having approximately 402,000 Forms 941-X that it cannot process until the related Form 941 is processed first. The IRS has 2.4 million unprocessed Forms 941.<sup>21</sup> In assisting taxpayers, TAS has been told that IRS employees are still awaiting guidance on how to process these claims. In one case, the IRS’s response to countless TAS Operations Assistance Requests (OARs) dating back to June was simply that it is still awaiting processing guidance for these claims.<sup>22</sup> It has been close to a year since legislative changes sought to provide relief to employers – relief that necessitated filing Form 941-X to claim it. Lack of guidance is not a sufficient excuse for why the IRS has not processed these returns. The IRS is one agency, and if one part of the agency requires assistance from another part to comply with a legal requirement, IRS management must ensure that there is sufficient coordination to make it happen.

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. The IRS beginning to focus more on compliance activities when it hasn’t finished processing tax returns is unfair to the millions of individual and business taxpayers who are still waiting for their refunds. The IRS should reallocate its resources and assign all hands on deck to process returns (original and amended), issue pending refunds, and reply to the millions of IRS notice responses and inquiries by taxpayers. If the IRS can train new employees to work in the submission processing function, it can certainly train its existing workforce to truly be “all hands on deck” until it catches up with its processing backlog and gets through the upcoming filing season. Until it processes the backlog of returns and correspondence, the IRS should temporarily suspend automated collection activity. Generating notices while issues are still pending only creates additional phone calls and correspondence that cause headaches for many taxpayers and representatives.

### **Taxpayers Are Paying the Price for IRS Delays**

Given the combination of reduced staffing, the pandemic, and multiple legislative changes that required significant resources to implement, the current backlog of paper returns is not surprising. Yet even if understandable, the taxpayer impact is severe. Taxpayers who have filed their tax returns continue to wait, and wait, and wait for any update from the IRS. Over the past few months, as TAS has urged, the IRS has begun to provide updates on processing and other delays on its IRS Operations website.<sup>23</sup> This information is a start, if only because it provides some transparency to the process and gives taxpayers more realistic expectations of when the IRS may process their returns.<sup>24</sup> While the IRS has the Where’s My Refund? and Where’s My Amended Return? tools, as well as 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.<sup>25</sup> TAS has recommended that the IRS improve its online resources to provide taxpayers with specific information about the cause of a refund delay, what information the taxpayer needs to furnish, if any, and a reasonable estimate as to when the IRS expects to issue the refund.<sup>26</sup>

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While keeping taxpayers better informed about the status of their account issues would be a big step forward, it will not, by itself, get refunds to taxpayers more quickly. 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.<sup>27</sup> This means that the economic impact for taxpayers still waiting for their refunds is even greater. In November, one taxpayer reported filing his taxes in March, and he was waiting for an \$8,000 refund. He tried contacting the IRS numerous times only to be told the IRS would process his return in 19 days – but he was still waiting for his refund as of November.<sup>28</sup> Many taxpayers desperately need the money and cannot afford to wait. One taxpayer, who is fighting cancer, noted that with her health deteriorating; she desperately needs her tax refund to pay her mortgage. As of November, she was also still waiting.<sup>29</sup>

Most taxpayers cannot get through to a telephone assistor on the toll-free lines to check on the status of their returns.<sup>30</sup> For those who are lucky enough to get through, the IRS's response often leaves much to be desired. One Certified Public Accountant posted on Twitter a copy of the letter she received from the IRS stating:

Thank you for the inquiry of Oct. 15, 2021 to resolve your account with us. We received your Amended Return on March 22, 2021 and we apologize we are still experiencing processing delays. We do not have a specified timeframe to advise on when the return will be processed...<sup>31</sup>

### **Ongoing Delays Have Broken the Safety Net for Taxpayers**

One of TAS's many roles is to be the safety net for taxpayers – to catch taxpayers when IRS processes break down and taxpayers fall through the cracks. TAS case acceptance criteria focus on cases in which taxpayers are experiencing an economic hardship or current processes are broken, and absent TAS assistance, they may not receive relief.<sup>32</sup> The ongoing backlog in return processing has noticeably shifted TAS case receipts. Despite changes in TAS case acceptance criteria, TAS received 264,343 cases in FY 2021, which is 57,571 more cases than received in FY 2020, an increase of nearly 28 percent.<sup>33</sup> Figure 2.1.2 compares the top ten sources of TAS receipts by issue for FYs 2020-2021.<sup>34</sup>

**FIGURE 2.1.2, Top Ten Issues for FY 2021 Cases Received in TAS Compared to FY 2020<sup>35</sup>**

Rank	Issue Description	FY 2020	FY 2021	FY 2021 Percent of Total	Percent Change FY 2020 to FY 2021
1	Tax Return Filings: Unpostables and Rejects	15,784	45,665	17.3%	189.3%
2	Tax Return Filings: Pre-Refund Wage Verification Hold	68,499	36,937	14.0%	-46.1%
3	Processing Amended Returns	7,676	20,961	7.9%	173.1%
4	Processing Original Returns	8,509	14,766	5.6%	73.5%
5	Earned Income Tax Credit (EITC)	12,176	14,588	5.5%	19.8%
6	Health Insurance Premium Tax Credit for Individuals	8,287	14,550	5.5%	75.6%
7	Other Refund Inquiries and Issues	8,187	11,642	4.4%	42.2%
8	Taxpayer Protection Program (TPP) Issues	7,098	11,412	4.3%	60.8%
9	Identity Theft	5,900	9,234	3.5%	56.5%
10	Math Error	1,505	4,983	1.9%	231.1%
<b>Other TAS Receipts</b>		<b>63,151</b>	<b>79,605</b>	<b>30.1%</b>	<b>26.1%</b>
<b>Total TAS Receipts</b>		<b>206,772</b>	<b>264,343</b>		<b>27.8%</b>

Not surprisingly, much of the increase in TAS cases can be attributed to IRS processing issues – which include unpostable and reject cases.<sup>36</sup> Unfortunately, these are not cases where TAS is performing its core advocacy work. Rather, they are cases where TAS is simply following up with the IRS to get returns processed and refunds issued. For most taxpayers, getting their returns processed so they can receive their refunds is their top priority; however, there is little TAS can do to expedite the processing of a tax return. TAS employees generally can only resolve a taxpayer’s account problem if there is relevant information on IRS systems. If a paper return is sitting in a processing center, TAS has no way to locate the return, and the IRS operating divisions generally cannot locate the return until the IRS processes the return. When TAS accepts a case involving an unprocessed tax return, it can do little more than monitor the taxpayer’s account until the IRS processes the delayed return. This takes valuable time and resources away from other taxpayers with more complex issues where TAS can provide advocacy and move a case toward resolution.

Our congressional cases show the same issues. In FY 2021, TAS congressional receipts totaled 66,453 cases, an 88.5 percent increase from FY 2020 – and a staggering 526 percent increase over the 10,620 congressionally referred cases received in FY 2019, the last pre-pandemic year.<sup>37</sup> Figure 2.1.3 highlights the top five issues in congressional cases for FY 2021. Congressional case receipts involving “Unpostables” and “Rejects” increased by almost 300 percent, and Processing Amended Returns case receipts increased by almost 400 percent.

**FIGURE 2.1.3, Top Five Congressional Receipts by Primary Core Issue Codes for FY 2021 Compared to FY 2020<sup>38</sup>**

Rank	Issue Description	FY 2020	FY 2021	Percent Change
1	Tax Return Filings: Unpostables and Rejects	4,710	18,648	295.9%
2	Processing Original Returns	4,368	9,233	111.4%
3	Processing Amended Returns	919	4,502	389.9%
4	Taxpayer Protection Program Issues	1,704	4,104	140.8%
5	Other Refund Inquiry or Issue	1,823	3,988	118.8%

TAS has essentially become a secondary return processing function. Through OARs and Taxpayer Assistance Orders (TAOs), TAS requests the IRS prioritize the processing of our cases.<sup>39</sup> TAS issued hundreds of TAOs to the IRS’s Submission Processing and Accounts Management functions to expedite the processing of both 2019 and 2020 returns.<sup>40</sup> This is problematic and should not be a significant portion of TAS’s work.

TAS casework is not the only place that is suffering. With the low levels of service on the IRS toll-free lines, TAS’s intake operations have also struggled with a much higher number of calls. Many taxpayers have been unable to get answers about their tax return, refund, or other issues from the IRS, so they turn to TAS for assistance. Calls to the TAS toll-free lines increased from 81,210 in FY 2017 to 212,733 in FY 2021, an increase of 162 percent. TAS simply could not keep up with the number of taxpayer inquiries, and TAS’s intake operations Level of Service dropped to an unacceptable level of 30 percent.<sup>41</sup> Taxpayers quickly overwhelmed voicemail systems in local TAS offices, and TAS was forced to implement a phone gating system designed to manage the number of phone messages left by taxpayers. TAS’s inability to assist all taxpayers is unacceptable, and it is not our mission to pick up the work when the IRS is unable to keep up with it.

This work has strained TAS resources to the point where TAS had to make difficult decisions about which cases to accept. TAS does not accept cases in which we cannot meaningfully expedite or improve assistance to taxpayers. In November, case receipts for amended return issues continued to climb, and the IRS was unable to provide the status on the processing of many of these returns.<sup>42</sup> The IRS had a backlog of more than 2.7 million unprocessed amended returns, and the IRS estimated processing times to take well over 20 weeks.<sup>43</sup> Because of the IRS’s processing delays, TAS could not meaningfully advocate for taxpayers in these amended return cases and found itself unable to expedite processing for taxpayers. In all of FY 2021, TAS issued bulk TAOs to assist 477 taxpayers with processing amended returns. In the first month and a half of FY 2022, we issued bulk TAOs instructing the IRS to process the amended returns for 3,660 taxpayers. On November 9, 2021, the National Taxpayer Advocate issued a Taxpayer Advocate Directive (TAD) directing the IRS to complete processing of all backlogged amended tax returns by December 29, 2021, or provide a detailed plan for completing processing of the backlog.<sup>44</sup>

This is not a position TAS should be in or wants to be in. Our goal is to provide assistance to every taxpayer who meets our criteria. However, TAS does not have the resources to take on the IRS’s work simply because the IRS is overwhelmed, and it is not the mission Congress has given us. Doing so jeopardizes our role in tax administration and prevents us from devoting our resources to help taxpayers in areas where TAS assistance can make a difference. In short, TAS is designed to be the safety net for taxpayers – not the safety net for the IRS.

**The IRS Is Not Proactively Solving the Backlog of Amended Returns**

In its response to the TAD, the IRS stated that it “does not have the resources to complete processing of all backlogged/unprocessed amended returns by December 29, 2021,” and it is “pursuing several approaches to reduce the amended return inventory.”<sup>45</sup> The IRS’s response is disappointing and does not solve the

unprocessed return problem in the near future. While we recognize the resource limitations the IRS is facing, the TAD response failed to provide a detailed plan to address the processing backlog. Drastic times call for drastic measures. The IRS must take extraordinary measures to get the processing backlog resolved and pay the outstanding refunds. It needs to move into the next filing season with minimal backlog and reduce future processing challenges impacting all taxpayers.

**TAS does not have the resources to take on the IRS's work simply because the IRS is overwhelmed, and it is not the mission Congress has given us. ... In short, TAS is designed to be the safety net for taxpayers – not the safety net for the IRS.**

The IRS's efforts to hire are commendable, but as noted elsewhere, hiring is a long-term solution that will not have an immediate impact.<sup>46</sup> And while better control of inventory and the use of overtime will help, they are not enough. In its response, the IRS commits to doing very little to address the processing backlog to ensure taxpayers expeditiously get the refunds to which they are entitled. Instead, it avoids making any firm commitments to address the problem and instead talks about “explor[ing] flexibilities in use of CSR resources” and “continu[ing] to look at innovations we can implement, such as new technology, including tools to automate repetitive transactions and new digital capabilities...”<sup>47</sup> We fully support this exploration and attempts at innovation, but the IRS needs to address this problem now – not a year or more from now. Regarding the processing problems, the IRS is not providing meaningful updates for IRS.gov, instead saying that the Wage and Investment Division “is working with TAS to develop a plan to provide weekly data and to post meaningful updates on IRS.gov.”<sup>48</sup> Taxpayers are seeking updates now – not in the future. Taxpayers are looking for refunds now – not in the future.

The TAD response does not adequately address 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 AdvCTC, it still has not completed its core filing season responsibilities or the processing of amended returns. Based on its response to our TAD, 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.

## CONCLUSION AND RECOMMENDATIONS

The IRS must take extraordinary steps to resolve the backlog of filings and issue long overdue refunds. This filing season should not be repeated or become the norm. Taxpayers who file returns timely should not wait months on end for a refund, with no sign of hope in sight and no communication from the IRS. The IRS should not be forced to choose between answering the phone lines and processing returns or between responding to taxpayer correspondence and providing walk-in service. Unfortunately, as we sit today, the IRS is not performing any of these services well. Until it resolves the correspondence backlog and digs itself out of the hole in which it finds itself, the IRS should stop all automated collection notices until it addresses taxpayer responses to IRS notices.

As the IRS prepares for the 2022 filing season with millions of unprocessed returns and continues to operate without a full-year budget, and as it recognizes millions of taxpayers will need to reconcile their AdvCTC monthly payments and third stimulus payments on their 2021 tax returns, the outlook for the upcoming



filing season is bleak.<sup>49</sup> The IRS relies on taxpayers to timely file accurate tax returns, and in turn, taxpayers rightfully expect the IRS to take timely action on their tax filings. If we want to maximize compliance by individuals and businesses with the tax laws, we need a tax administration agency that is responsive and helpful. That means it must be able to answer taxpayer questions, process returns and issue refunds quickly, and respond to taxpayer correspondence within reasonable timeframes. Over the past year and a half, the IRS has failed to meet taxpayer needs and expectations. Much of its struggles are attributable to insufficient staffing. To improve taxpayer service, Congress must provide the IRS with sufficient resources. For its part, the IRS must take steps to ensure that it is prioritizing taxpayer service – which includes processing tax returns – before it turns its attention to compliance work. The IRS has been continuously asked to do more with less, and it has reached a point where providing basic services is no longer possible. Congress and the IRS will continue to harm the very taxpayers they are trying to serve until they address these issues.

### **Preliminary Administrative Recommendations to the IRS**

The National Taxpayer Advocate recommends that the IRS:

1. Provide 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.
8. Suspend all automated collection notices until the IRS is current on processing original and amended returns and unprocessed correspondence.

### **Legislative Recommendations to Congress**

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.
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.

### **RESPONSIBLE OFFICIAL**

Kenneth Corbin, Commissioner, Wage and Investment Division, and Chief Taxpayer Experience Officer

**IRS COMMENTS**

The IRS faced unprecedented volumes of inventory and phone calls coupled with extraordinary challenges in managing work in a pandemic. In addition to these ongoing challenges, there have been legislative changes that would have increased amended returns and created further backlogs, if proactive steps had not been taken to adjust accounts and issue refunds directly to taxpayers.

We quickly put in place systems to process and distribute over \$800 billion in Economic Impact Payments (EIPs) since the spring of 2020. The February 12, 2021 opening of the filing season was slightly later than in previous years. The delayed start gave the IRS time for additional programming to accommodate tax law changes and a second round of EIPs. This ensured that eligible individuals and families would receive tax refunds and remaining stimulus tax credits as quickly as possible. The later start of the filing season did not impact refunds on returns claiming the Earned Income Tax Credit (EITC) or the Additional Child Tax Credit (ACTC). By law, the IRS cannot issue these refunds before February 15. Taxpayers were encouraged to e-file their returns for the most expeditious processing and to check the Where's My Refund? tool on IRS.gov or the IRS2Go app to find out their estimated refund date. To ease taxpayer burden, the deadline for individuals to file and pay their federal income was extended to May 17, 2021.

Even while processing the tax year 2020 returns, we took proactive steps to reduce taxpayer burden with regard to tax law changes made after the start of the filing season. We systemically analyzed over 14 million 2020 returns to identify and determine eligibility for the unemployment compensation exclusion for people who already filed returns. We used a phased recovery approach based on return complexity to automatically adjust taxpayer accounts and allow the exclusion if it was not claimed on the tax return resulting in millions of refunds without further action by the taxpayers.

The IRS is continually assessing additional ways to reduce paper processing and provide more efficient service for our customers. The IRS took tremendous steps to reduce inventories of unopened mail, returns, and correspondence during the last year. Our employees worked day, night, and weekend shifts, along with overtime, to open mail and process tax returns and taxpayer correspondence in the order we received them. The IRS is now opening mail within normal timeframes. We rerouted tax returns and taxpayer correspondence from locations that are behind to locations where more staff is available. We shifted staffing resources from telephones to inventory when phone demand permitted. We expanded our digital services by allowing taxpayers to electronically file Form 1040-X, Amended U.S. Individual Income Tax Return, using commercial tax-filing software.

Our toll-free telephone lines are an important service delivery channel during the filing season and throughout the year. Demand for telephone services was significantly higher due to the processing delays, changes in legislation, and multiple rounds of EIPs. Through the end of the fiscal year, we answered almost 68 million calls through assistor services and automation, almost 4 million more assistor calls than in the prior year.

The IRS applied an aggressive approach to mitigate the staffing challenges caused by the pandemic. We had record numbers of employees teleworking to provide continuous service for answering phones and processing correspondence, including amended returns. The IRS started the hiring process for the 2021 filing season earlier than normal and continued hiring throughout the summer and will continue our hiring efforts throughout the year, to the extent funding permits and eligible prospects accept job offers, to staff up our processing centers to work through our inventory.

This year, we also used contracted telephone assistants to answer general ACTC inquiries, deployed an automated Voice Bot on the EIP telephone line to answer questions, and employed overtime to cover demand. We are strategically reassigning our work and proactively utilizing technology driven solutions.

We understand that processing delays can pose a hardship to taxpayers. As we continue to address our backlog and provide additional options for taxpayers, we are also working to deliver a better experience during the upcoming 2022 filing season.

## TAXPAYER ADVOCATE SERVICE COMMENTS

The IRS's response continues to ignore the impact and hardship its actions – or in this case lack of action – are having on taxpayers. While the IRS has faced incredible challenges over the past two years, that does not excuse the IRS's failure to address the ongoing processing delays. Taxpayers continue to suffer as they endure unacceptably long waits for refunds. While the IRS may be in desperate need of additional money and staffing, it cannot wait for more resources before it develops plans to address the ongoing backlog. The IRS needs to prioritize its current work, of which processing returns should be one of its highest priorities. This may involve postponing other lesser priority work, but the IRS needs to immediately develop and implement a plan to quickly process this work. As we prepare to enter into another filing season, taxpayers cannot afford to wait for refunds they should have received months ago, and the IRS cannot afford to keep carrying over millions of unprocessed returns from year to year.

## RECOMMENDATIONS

### Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Provide 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.
8. Suspend all automated collection notices until the IRS is current on processing original and amended returns and unprocessed correspondence.

## Legislative Recommendations to Congress

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.
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.

## Endnotes

- 1 See National Taxpayer Advocate Fiscal Year 2022 Objectives Report to Congress 1 (*Review of the 2021 Filing Season*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/06/JRC22\\_FullReport.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/06/JRC22_FullReport.pdf).
- 2 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. 20, 2021). As of December 18, 2021, W&I reported a total of 3.7 million paper business returns which remained unprocessed. IRS, Status of Unopened Mail and Backlog Inventory - Issued December 24, 2021.
- 3 See Most Serious Problem: *IRS Recruitment, Hiring, and Training: The Lack of Sufficient and Highly Trained Employees Impedes Effective Tax Administration*, *infra*.
- 4 Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2021-46-023, *Results of the 2020 Filing Season and Effects of COVID-19 on Tax Processing Operations* 5 (Mar. 22, 2021).
- 5 IRS, Math Error Report Cycle 37 (ending Sept. 16, 2021) (considering Taxpayer Notice Codes 681, 682, and 683).
- 6 See Most Serious Problem: *Filing Season Delays: Millions of Taxpayers Experienced Difficulties and Challenges in the 2021 Filing Season*, *infra*.
- 7 *Id.* IRS Submission Processing deems a return as "processed" when all the steps necessary to post the return to the account have been taken.
- 8 Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2021-46-023, *Results of the 2020 Filing Season and Effects of COVID-19 on Tax Processing Operations* 5 (Mar. 22, 2021).
- 9 See National Taxpayer Advocate 2019 Annual Report to Congress 23-33 (Most Serious Problem: *IRS Funding: The IRS Does Not Have Sufficient Resources to Provide Quality Service*).
- 10 IRS, New Mailing Address for Some Western States as Fresno, California, Paper Tax Return Processing Center Closes (Sept. 14, 2021), <https://www.irs.gov/newsroom/new-mailing-address-for-some-western-states-as-fresno-california-paper-tax-return-processing-center-closes>.
- 11 CIS data for full CY 2018, 2019, 2020, and 2021 through Nov. 22, 2021. Includes Aug. 2020 through Nov. 30, 2020 receipts when Modernized e-File shut down for the year.
- 12 See Families First Coronavirus Response Act, Pub. L. No. 116-127, 134 Stat. 178 (2020); Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136, 134 Stat. 281 (2020); Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020); and American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4 (2021).
- 13 CARES Act, Pub. L. No. 116-136, §§ 2303-2305, 134 Stat. 281, 352-357 (2020).
- 14 Rev. Proc. 2020-24 (2020); IRS, IR-2020-67, IRS provides guidance under the CARES Act to taxpayers with net operating losses (Apr. 9, 2020), <https://www.irs.gov/newsroom/irs-provides-guidance-under-the-cares-act-to-taxpayers-with-net-operating-losses>.
- 15 *Id.*
- 16 IRS, Compliance Data Warehouse (CDW), Business Master File (BMF). Forms 1139 received in CY 2020 (data as of Nov. 25, 2021).
- 17 See IRC § 6411(b).
- 18 IRS, CDW, Individual Master File and BMF. Forms 1045 and 1139 received in CY 2020.
- 19 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. 20, 2021).
- 20 See Instructions for Form 941-X (July 2021).
- 21 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. 20, 2021). The IRS reports that staff in Cincinnati and Ogden trained to work COVID-19 credits are working the inventory.
- 22 In this case, the taxpayer filed a claim for the Employee Retention Credit as part of his or her 941 filing in June 2020. After not receiving the credit amount, he or she reached out to TAS for assistance in early 2021. After TAS sent the OAR in June, the IRS said the OAR would have to remain in inventory until it provided guidance on working Employee Retention Credit cases. In July, TAS was

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- told that the IRS now had guidance to work the case, but then in August, the IRS asked TAS for an additional extension while waiting to hear if the case was workable. The IRS gave the same response in September when it indicated that there was no guidance available on working the case. Again, this was more than a year after the CARES Act was passed. Typically, when TAS lacks the statutory or delegated authority to resolve a taxpayer's problem, TAS coordinates with the responsible IRS Business Operating Division (BOD)/function and advocates for resolution by issuing an OAR. See TAS Case Advocacy, *infra*.
- 23 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. 20, 2021).
- 24 See Most Serious Problem: *Transparency and Clarity: The IRS Lacks Proactive Transparency and Fails to Provide Timely, Accurate, and Clear Information*, *infra*.
- 25 See IRS, Where's My Refund?, <https://www.irs.gov/refunds> (last visited Dec. 27, 2021); IRS, Where's My Amended Return?, <https://www.irs.gov/filing/wheres-my-amended-return> (last visited Dec. 27, 2021); IRS, IRS2Go Mobile App, <https://www.irs.gov/newsroom/irs2goapp> (last visited Dec. 27, 2021).
- 26 See, e.g., Erin M. Collins, Lifecycle of a Tax Return, NATIONAL TAXPAYER ADVOCATE BLOG (May 18, 2021), <https://www.taxpayeradvocate.irs.gov/news/nta-blog-lifecycle-of-a-tax-return/>.
- 27 Ashlea Ebeling, Average Tax Refund Up 11% In 2021, FORBES (Nov. 1, 2021), <https://www.forbes.com/sites/ashleaebeling/2021/11/01/tax-refunds-up-11-in-2021/?sh=6ddd2e0f7739>.
- 28 Diane Wilson & Bella Caracta, "I am Needing the Money Right Now to Pay on My Mortgage": Taxpayers Still Waiting for 2020 Refund, ABC11.COM (Nov. 5, 2021), <https://abc11.com/wheres-my-refund-2020-tax-irs-status/11201371/>.
- 29 *Id.*
- 30 See Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Challenges Reaching IRS Representatives Due to Longstanding Deficiencies and Pandemic Complications*, *infra*.
- 31 @LindseyStarrett, TWITTER (Nov. 1, 2021, 6:11 PM), <https://twitter.com/LindseyStarrett/status/1455296366624788483?s=2>.
- 32 IRS, Form 911, Request for Taxpayer Advocate Service Assistance 3 (May 2019).
- 33 Data obtained from Taxpayer Advocate Management Information System (TAMIS) (Oct. 1, 2020; Oct. 1, 2021).
- 34 Internal Revenue Manual (IRM) 13.1.16.17.1.2, Primary Core Issue Code (Aug. 14, 2020) (stating the primary core issue code is a three-digit code that defines the most significant issue, policy, or process within the IRS that underlies the cause of the taxpayer's problem).
- 35 Data obtained from TAMIS (Oct. 1, 2020; Oct. 1, 2021). The "Other TAS Receipts" category encompasses the remaining issues not in the top ten. Unpostables and Rejects cases involve errors made when filing returns cause the IRS to have to request additional information from the taxpayer before the IRS is able to process the return. Pre-Refund Wage Verification Hold is the IRS program to detect and prevent non-identity theft refund fraud. See IRM 25.25.3.1(1), Program Scope and Objectives (Aug. 30, 2019).
- 36 Unpostable tax returns are commonly caused by problems with the taxpayer's identification number, name, or both. Reject returns include a missing schedule or missing form such as Form 8962, Premium Tax Credit, or Form 1095-A, Health Insurance Marketplace Statement. Both forms are necessary for reconciling the Premium Tax Credit with the Advance Premium Tax Credit.
- 37 For the period between April through September, TAS cases received from congressional offices increased nearly 345 percent from FY 2019 to FY 2020. See TAS Case Advocacy: *IRS Processing Delays Challenge TAS's Already Limited Resources and Impact the Ability to Promptly Assist Taxpayers*, *infra*. Data obtained from TAMIS (Apr. 1, 2019; Oct. 1, 2020; Apr. 1, 2021).
- 38 Data obtained from TAMIS (Oct. 1, 2020; Oct. 1, 2021). Unpostables and Rejects cases involve errors made when filing returns cause the IRS to have to request additional information from the taxpayer before the IRS is able to process the return.
- 39 Typically, when TAS lacks the statutory or delegated authority to resolve a taxpayer's problem, TAS coordinates with the responsible IRS BOD/function and advocates for resolution by issuing an OAR. When an OAR is not sufficient to resolve the case or when time is of the essence, TAS may issue a TAO. The TAO is a powerful statutory tool delegated by the National Taxpayer Advocate to Local Taxpayer Advocates (LTAs) to resolve taxpayer cases. IRC § 7811(f) states that for purposes of this section, the term "National Taxpayer Advocate" includes any designee of the National Taxpayer Advocate. See IRM 1.2.2.12.1 Delegation Order 13-1 (Rev. 1), Authority to Issue, Modify or Rescind Taxpayer Assistance Orders (Mar. 17, 2009). LTAs issue TAOs to order the IRS to take certain actions, cease certain actions, or refrain from taking certain actions. IRC § 7811(b)(2); Treas. Reg. § 301.7811-1(c)(2); IRM 13.1.20.3, Purpose of Taxpayer Assistance Orders (Dec. 15, 2007). A TAO may also order the IRS to expedite consideration of a taxpayer's case, reconsider its determination in a case, or review the case at a higher level. Treas. Reg. § 301.7811-1(c)(3); IRM 13.1.20.3, Purpose of Taxpayer Assistance Orders (Dec. 15, 2007).
- 40 On February 26, 2021, TAS issued 412 TAOs to the IRS Submission Processing function ordering the IRS to fully process the paper return (original, amended, or superseding) filed by the taxpayer within 30 days. As of September 30, 2021, the IRS complied with 345 of the 412 TAOs in an average of 68 days, TAS rescinded one TAO, and 66 remain open. On May 3, 2021, TAS issued 55 TAOs to the IRS Submission Processing function ordering the IRS to fully process amended returns filed by the taxpayer. As of September 30, 2021, the IRS has complied with 34 of the 55 TAOs in an average of 50 days, TAS rescinded five of the TAOs, and 16 remain open.
- 41 FY 2017 and FY 2021 IRS Snapshot Report.
- 42 See, e.g., Erin M. Collins, IRS Delays in Processing Amended Tax Returns Are Impacting TAS's Ability to Assist Taxpayers, NATIONAL TAXPAYER ADVOCATE BLOG (November 10, 2021).
- 43 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. 20, 2021).
- 44 The TAD also directed the IRS to provide weekly updates to TAS on the progress in processing these returns and post weekly updates on IRS.gov.
- 45 The IRS states that its approach to addressing the amended returns backlog includes:
1. Maintaining timely inventory control—We recently controlled the remaining Form 1040X inventory and improved processes so receipts are controlled within five days. We will maintain this time frame going forward. When the forms are controlled, an indicator is placed on the taxpayer's account, allowing taxpayers to know the form has been received and to monitor the status using Where's My Amended Return on [irs.gov](https://www.irs.gov). The control provides transparency for the taxpayer and IRS employees.
  2. Hiring more tax examiners—W&I is hiring 750 tax examiners to address amended returns and paper inventories. Tax examiners do not have telephone requirements as part of their duties and will work paper inventories full-time.
  3. Overtime—As allowed under the Continuing Resolution, we will continue to offer overtime to employees to work amended returns.
  4. Explore flexibilities in use of CSR resources—In addition to hiring and overtime, we will closely monitor telephone demand and use our CSR resources to work amended returns and another inventory.

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5. Create a surge team—W&I will partner with other business units to solicit employees with prior amended return experience that can assist with reducing the inventory.
- 46 See Most Serious Problem: *IRS Recruitment, Hiring, and Training: The Lack of Sufficient and Highly Trained Employees Impedes Effective Tax Administration*, *infra*.
- 47 Memorandum from Douglas O'Donnell to Erin Collins; Taxpayer Advocate Directive (TAD) 2021-2 (Dec. 8, 2021).
- 48 *Id.*
- 49 ARPA authorized the IRS to issue monthly AdvCTC payments to eligible taxpayers with qualifying children. IRS, 2021 Child Tax Credit and Advance Child Tax Credit Payments – Topic A: General Information, <https://www.irs.gov/credits-deductions/2021-child-tax-credit-and-advance-child-tax-credit-payments-topic-a-general-information> (last visited Dec. 2, 2021). IRS, About Schedule 8812 (Form 1040), Additional Child Tax Credit, <https://www.irs.gov/forms-pubs/about-schedule-8812-form-1040> (last visited Dec. 2, 2021).