STRENGTHEN TAXPAYER RIGHTS AND TAXPAYER SERVICE

Legislative Recommendation #1

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

PRESENT LAW

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

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

REASONS FOR CHANGE

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

More than 160 million individuals and more than ten million business entities file income tax returns and pay our nation's bills every year, and they are entitled to be treated with respect. Making clear that taxpayers possess rights is not only the right thing to do, but TAS research suggests that when taxpayers have confidence the tax system is fair, they are more likely to comply voluntarily, which may translate into enhanced revenue collection as well.[1]

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

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

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

RECOMMENDATION

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

SECTION 1. TAXPAYER BILL OF RIGHTS.

(a) Taxpayer Rights.

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

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

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

Legislative Recommendation #2

Revamp the IRS Budget Structure and Provide Sufficient Funding to Improve the Taxpayer Experience and Modernize the IRS's Information Technology Systems[1]

PRESENT LAW

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

Under the Congressional Budget and Impoundment Control Act of 1974,[2] as amended, the federal appropriations process is generally a zero-sum game: Once Congress establishes spending caps for the upcoming fiscal year, a dollar allocated to one agency or program leaves one less dollar available for allocation to another agency or program.

As an exception to the spending caps, Congress in some years has authorized a "program integrity allocation adjustment" (PIAA), which allows it to appropriate funding for IRS enforcement initiatives in excess of the caps on the basis that the initiatives are projected to generate a positive return on investment (ROI).[3] Although Congress has not authorized a PIAA since fiscal year (FY) 2010, when it gave the IRS an additional $890 million, almost every administration budget proposal has requested one.[4]

REASONS FOR CHANGE

The IRS mission statement says the agency's mission is to "[p]rovide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all."[5] Since FY 2010, the IRS budget has been reduced by nearly 20 percent after adjusting for inflation (excluding one-time supplemental funding the IRS received to administer COVID-19-related stimulus programs).[6] Largely as a result of these budget reductions, the IRS is neither providing top quality service nor enforcing the law with fairness to all.[7] In addition, its information technology (IT) systems are in desperate need of upgrades.

The IRS Is Not Providing Top Quality Service

The American Customer Satisfaction Index (ACSI) and the Forrester U.S. Federal Customer Experience Index™ have consistently ranked the Treasury Department and the IRS the worst or among the worst

1 At our publication deadline, Congress was still working to finalize fiscal year (FY) 2022 appropriations levels and was still considering the Build Back Better (BBB) legislation. Appropriations legislation passed by the House and posted as a draft bill by the Senate Appropriations Committee would increase IRS funding by 13.88 percent in FY 2022. The BBB Act would provide the IRS with supplemental funding of nearly $80 billion to be used over the next 10 years.

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

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

4 IRS response to TAS information request (Sept. 30, 2020). In prior years, the mechanism was referred to as a "program integrity cap adjustment."

5 *See* IRS, The Agency, Its Mission and Statutory Authority, https://www.irs.gov/about-irs/the-agency-its-mission-and-statutory-authority (last visited Dec. 21, 2021).

6 IRS response to TAS information request (Dec. 17, 2021).

7 *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*).

performing federal agencies from a customer experience perspective.[8] (Treasury rankings are largely a measure of IRS performance, as more Americans interact with the IRS each year than with any other federal agency.) In 2020, the most recent year for which data is available, the ACSI report ranked the Treasury Department last among the federal departments it assessed.[9]

Because of the COVID-19 pandemic, taxpayer service in 2021 was historically poor. The IRS finished the 2021 filing season with a backlog of 35.3 million returns that required manual processing, delaying refunds for millions of taxpayers. Among taxpayers who called the IRS for assistance, only about 11 percent reached a customer service representative, with hold times for taxpayers who got through averaging about 23 minutes.

To underscore its longstanding concerns about taxpayer service, Congress enacted the Taxpayer First Act (TFA) in 2019.[10] Among other things, the TFA directed the IRS to develop comprehensive multiyear plans to improve taxpayer services and modernize its IT systems. The plans the IRS developed in response to this directive will require significant additional funding to implement. The IRS will not be able to make much progress in improving either its taxpayer services or its IT systems with its current funding level and with current restrictions on transferring funds among its accounts.

Upgraded Information Technology Systems Are Needed to Improve Service and Enforcement

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

The IRS is taking steps to improve its technology. It has developed a roadmap known as the "Integrated Modernization Business Plan" that would replace legacy systems with modern technology systems and thereby enable the agency to provide superior service to taxpayers and deliver long-term budget efficiencies.[11] However, the IRS has estimated it will require between $2.3 billion and $2.7 billion in additional funding over the next six years to implement this plan.[12] In FY 2021, the Business Systems Modernization (BSM) account was funded at only about $223 million.

While the level of BSM funding is critical, so is the predictability of funding. Significant fluctuations from year to year can disrupt IT contracts and increase the long-term cost of upgrades. Over the last five years, the funding level for the BSM account was $290 million in FY 2017, $110 million in FY 2018, $150 million in FY 2019, $180 million in FY 2020, and about $223 million in FY 2021.[13] The IRS cannot effectively plan and execute a long-term IT overhaul if it does not know whether there will be enough funds in future years to support its current commitments.

8 *See*, *e.g.*, American Customer Satisfaction Index, *ACSI Federal Government Report 2019*, at 4 (2020) (ranking the Treasury Department 11th out of 12 federal agencies assessed); Forrester Research, Inc., *The U.S. Federal Customer Experience Index, 2019*, at 15-16 (June 11, 2019) (ranking the IRS 13th out of 15 federal agencies assessed and characterizing the IRS's score as "very poor.").

9 American Customer Satisfaction Index, *ACSI Federal Government Report 2020*, at 4 (2021), https://www.theacsi.org/images/stories/images/reports/21feb_GOV-report.pdf.

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

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

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

13 *See* Department of the Treasury, FY 2022 Budget in Brief 79 (2021) (showing BSM level in FYs 2021 and 2020); Department of the Treasury, FY 2021 Budget in Brief 83 (2020) (showing BSM level in FY 2019); Department of the Treasury, FY 2020 Budget in Brief 69 (2019) (showing BSM level in FY 2018); Department of the Treasury, FY 2019 Budget in Brief 61 (2018) (showing BSM level in FY 2017).

The IRS Is an Extraordinary Investment

In FY 2021, the IRS collected about $4.1 trillion on a budget of about $11.9 billion (excluding one-time supplemental funding the agency received to administer COVID-19-related stimulus programs).[14] That translates to an average ROI of about 345:1. It is economically irrational to underfund the IRS. If a company's accounts receivable department could generate an ROI of 345:1 and the chief executive officer (CEO) failed to provide enough funding for it to do so, the CEO would be fired. Yet in general, the federal budget rules exclusively take into account outlays and ignore the revenue those outlays generate. The program integrity allocation adjustment mechanism gives Congress the ability to provide some funding above the spending caps, but because it historically has been used solely to fund enforcement initiatives, it can lead to imbalances in the IRS's operations.

Changes to the IRS Budget Structure and Funding Levels Are Needed

Separate from funding levels, the IRS would benefit from a revamped budget structure. Most IRS initiatives require resources from more than one of the IRS's budget accounts. When the IRS hires more collection personnel through the Enforcement account, for example, it requires funding for additional office space, equipment, and the like from the Operations Support account. When the IRS takes additional enforcement actions against taxpayers and the taxpayers call or visit the IRS, there needs to be sufficient funding in the Taxpayer Services account to answer the calls and handle the visits. If Congress provides a boost to the Enforcement account without corresponding increases to the Operations Support and Taxpayer Services accounts, the IRS cannot use the funding in a way that is reasonable and fair to taxpayers. Similarly, when Congress requires that all IT equipment be funded from the Operations Support account and it does not adequately fund that account, or it does not provide sufficient flexibility for the IRS to reprogram funds from Enforcement or Taxpayer Services to the Operations Support account, it significantly limits the IRS's ability to use technology to improve taxpayer service and to equip its employees with the technology they need to be successful.[15]

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

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14 IRS Pub. 5456, IRS FY 2021 Financial Report 8 (Nov. 2021), https://www.irs.gov/pub/irs-pdf/p5456.pdf; Department of the Treasury, FY 2022 Budget in Brief 79 (2021), https://home.treasury.gov/system/files/266/FY-2022-BIB.pdf. This calculation reflects the average ROI on the IRS's FY 2021 operating plan appropriation and is based on gross federal tax collections before reduction for refunds. The marginal ROI that would be generated by additional IRS funding varies by program and has recently been estimated in the range of roughly 3:1 to 6:1. IRS response to TAS information request (Dec. 17, 2021). Marginal ROI projections include direct revenue from enforcement activities but do not include compliance gains resulting from either improved taxpayer service or the indirect (deterrent) effects of additional enforcement activities.

15 The annual appropriations acts give the IRS some, but limited, ability to transfer funds among its accounts. The acts allow the IRS to transfer up to four percent of funds made available for Enforcement and up to five percent of funds made available for Taxpayer Services, Operations Support, and Business Systems Modernization to other accounts, but only with the advance approval of the House and Senate Appropriations Committees. *See* Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, 1387 (2020).

RECOMMENDATIONS[16]

- Provide sufficient funding for the IRS to implement its Integrated Modernization Business Plan so it can replace its 1960s technology systems, create an integrated case management system, develop robust online accounts for taxpayers and practitioners, deploy scanning technology that can machine read paper returns to reduce the need for manual data transcription, and implement customer callback technology on all of its telephone lines so taxpayers can elect to receive return calls without waiting on hold.
- Provide sufficient funding for the IRS to implement the Taxpayer First Act, which will change how the IRS engages with taxpayers and increase digital interactions.
- Replace the current IRS budget structure with a new structure that better reflects how the IRS operates and gives the IRS more flexibility to move funds among its accounts so it can pay for the full costs associated with its programs and initiatives (*e.g.*, the overhead and downstream taxpayer service costs associated with a compliance initiative).
- If Congress retains the current budget structure, ensure the IRS receives balanced funding by taking into account the interactive effects of changing the funding level for one IRS account on other IRS accounts, including the downstream increase in telephone calls and TAS cases that are likely to result from increased enforcement funding.

16 The four recommendations presented herein are relatively high-level. In the "Most Serious Problems" section of the National Taxpayer Advocate's 2021 Annual Report to Congress, we address more specific funding needs. Among them are funding to increase the IRS's workforce and funding to increase the "Level of Service" on the IRS's telephone lines to at least 85 percent. *See* National Taxpayer Advocate 2021 Annual Report to Congress (Most Serious Problem: *IRS Recruitment, Hiring, and Training*: *The Lack of Sufficient and Highly Trained Employees Impedes Effective Tax Administration*; Most Serious Problem: *Telephone and In-Person Service*: *Taxpayers Face Significant Challenges Reaching IRS Representatives Due to Longstanding Deficiencies and Pandemic Complications)*.