

## INTRODUCTION

IRC § 7803(c)(2)(B)(i) requires the National Taxpayer Advocate to annually submit a report to Congress that describes the objectives outlined by the Office of the Taxpayer Advocate for the upcoming fiscal year (FY) by June 30. This report is known as the Objectives Report to Congress. The following sections present TAS's key goals and planned activities for FY 2023 in three areas: Systemic Advocacy Objectives, TAS Case Advocacy and Other Business Objectives, and TAS Research Objectives.

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

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

TAS Research Objectives focus on understanding how IRS procedures affect taxpayers and how taxpayers react to IRS actions. The objectives of TAS Research are to improve IRS operations and assist the IRS with balancing its compliance efforts with taxpayer rights while also reducing taxpayer burden. Three research projects are scheduled for FY 2023.

### 1. USE AUTOMATION TO PROCESS PAPER-FILED TAX RETURNS

The COVID-19 pandemic has contributed to an exceptionally high volume of backlogged inventory for the IRS, and paper-filed tax returns continue to be the IRS's Kryptonite,<sup>1</sup> causing long delays and frustration for taxpayers and practitioners. As Figure 1 shows, the IRS had approximately 18.1 million tax returns, 3.2 million amended returns,<sup>2</sup> and 5.3 million pieces of taxpayer correspondence that require manual processing in its backlog as of May 27, 2022.

**FIGURE 1, Status of Inventory Requiring Manual Processing (as of May 27, 2022)<sup>3</sup>**

|   | Individual        | Business         | Not Specified    | Total             |
|---|-------------------|------------------|------------------|-------------------|
| <b>Paper Returns Awaiting Processing</b>                                    |                   |                  |                  |                   |
| Received in Calendar Year 2021  | 353,000           | 334,000          | -                | 687,000           |
| Received in Calendar Year 2022  | 7,800,000         | 6,200,000        | 3,400,000        | 17,400,000        |
| <b>Total Paper Returns Awaiting Processing</b>                              | <b>8,200,000</b>  | <b>6,500,000</b> | <b>3,400,000</b> | <b>18,100,000</b> |
| <b>Paper and Electronic Returns – Processing Suspended</b>                  | <b>3,800,000</b>  | <b>1,600,000</b> | <b>-</b>         | <b>5,400,000</b>  |
| <b>Amended Returns Inventory</b>  | <b>2,300,000</b>  | <b>884,000</b>   | <b>-</b>         | <b>3,200,000</b>  |
| <b>Total Unprocessed Returns</b>  | <b>14,300,000</b> | <b>9,000,000</b> | <b>3,400,000</b> | <b>26,700,000</b> |
| <b>Correspondence/Accounts Management Cases (Excluding Amended Returns)</b> | <b>2,200,000</b>  | <b>900,000</b>   | <b>2,200,000</b> | <b>5,300,000</b>  |
| <b>Total Inventory Requiring Manual Processing</b>                          | <b>16,500,000</b> | <b>9,900,000</b> | <b>5,600,000</b> | <b>32,000,000</b> |

IRS processing delays combined with attrition in its processing staff workforce, inability to hire new employees, and the lack of automation of paper filings all negatively impacted the 2020, 2021, and 2022 filing seasons. This year, with its current staffing levels, the IRS once again found itself having to process the prior filings (from 2021) before processing the 2022 paper filings. As a result, taxpayers who file paper returns requesting a refund in 2022 will have to wait five months or longer to receive their refunds.

When taxpayers experience challenges and delays with the processing of their returns and claims for refunds, they lose trust in the agency and may become less likely to voluntarily comply. From a tax administration perspective, the IRS cannot continue to function year after year carrying a large inventory backlog and must get current in its processing of original and amended returns. The IRS needs to reconsider its entire process for paper-filed returns, including historical business reasons for rejecting e-file returns. Rather than rejecting an e-filed return upon attempted submission, the IRS could implement a systemic change that would allow it to accept the return and pull it out of the automated resolution and processing functions. The IRS should also develop tools to enable taxpayers to e-file more complex returns.<sup>4</sup>

Additionally, the IRS could reduce its backlog of paper tax returns by using scanning technology to machine-read paper returns and prevent future delays for subsequent filing seasons. On March 29, 2022, the National Taxpayer Advocate issued Taxpayer Assistance Directive (TAD) 2022-1 directing the IRS to work with the tax return software industry to implement 2-D barcoding for the 2023 filing season.<sup>5</sup> The TAD also directed the IRS to implement optical character recognition or similar technology for the 2023 filing season if possible or, if not, for the following filing season.

**Objective 1 for FY 2023 – TAS will work with the IRS to explore the viability of utilizing scanning technology to assist with processing paper-filed tax returns.**

- Activity 1: Continue working with the IRS on implementing and utilizing 2-D barcoding, optical character recognition, or similar technology for upcoming filing seasons to automate the processing of paper returns and reduce delays.
- Activity 2: Review and revisit the IRS's acceptance or rejection policy of e-filed returns, with the objective to increase the number of e-filed returns.

## 2. SEEK IMPROVEMENTS IN IRS HIRING AND RECRUITMENT PROCESSES AND PURSUE IMPROVEMENTS IN IRS EMPLOYEE TRAINING STRATEGY

The IRS continues to experience significant challenges with timely recruiting, hiring, and training employees to effectively carry out its mission. Since the publication of the National Taxpayer Advocate's 2021 Annual Report to Congress, the IRS has addressed some hiring and recruiting challenges. However, several challenges still persist.

On February 24, 2022, the U.S. Office of Personnel Management (OPM) granted the IRS direct-hire authority (DHA) for up to 10,000 employees to address immediate hiring needs in the IRS Wage and Investment Division's Accounts Management and Submission Processing organizations.<sup>6</sup> This hiring authority expires on December 31, 2023.<sup>7</sup> The IRS is also seeking to expand use of Streamlined Critical Pay and increase the scope of positions designated for Critical Position Pay beyond the allowed Information Technology (IT) positions. This request is awaiting approval from OPM.<sup>8</sup> Consistent with the TAS recommendation, the IRS is also working on the necessary documentation and justification required for IRS business units' request that OPM establish higher rates of basic pay or special rates for groups or categories of General Schedule positions.<sup>9</sup> To increase the IRS Human Capital Office's (HCO's) hiring capacity, in FY 2021, HCO was authorized to hire an additional 250 employees.<sup>10</sup> The HCO Strategic Talent Analytics and Recruitment Solutions Office has plans to add another 15 recruiters in FY 2022 to meet IRS recruiting needs.<sup>11</sup> The IRS is also developing a comprehensive new training strategy as described in the IRS's Taxpayer First Act Report to Congress, including an ambitious plan to create a new corporate university, IRS University.<sup>12</sup>

TAS will continue advocating for the IRS to pursue higher rates of basic pay or special rates of pay under existing authorities to increase compensation for certain critical positions, minimize the duration of time it takes to bring on a new employee, and augment the quality of its training. TAS will continue participating in the IRS Next Office's "Employee Experience" team to collaborate on developing strategies to strengthen the IRS's onboarding process. Finally, TAS will continue advocating for adequate sustained multiyear funding to increase IRS hiring and to rebuild the IRS workforce. This effort will include proposing legislative and administrative recommendations as appropriate.

### Objective 2 for FY 2023 – TAS will continue to advocate for improvements in IRS hiring, recruitment, and employee training processes.

- Activity 1: Propose strategies to better leverage the IRS's limited DHA, including increasing virtual recruiting events and improving the pace of hiring needed to achieve the level of staffing to the full extent authorized.
- Activity 2: Propose strategies to minimize the duration of time it takes to bring on a new employee, including increasing IRS staffing to support the often lengthy background investigations, credentialing, and onboarding processes.
- Activity 3: Propose potential options to improve and streamline the IRS interview and selection process.
- Activity 4: Consult with outside stakeholders such as large accounting firms to learn about best training practices, including best practices in operating a corporate university similar to the IRS University, and make recommendations to improve IRS training processes.

## 3. IMPROVE IRS TELEPHONE SERVICE

Taxpayers must be able to reach the IRS by phone to get answers to questions and receive necessary assistance. They understandably become frustrated and demoralized when their good-faith efforts to reach the IRS are met with extended hold times, courtesy disconnects, and customer service representatives (CSRs) who are unable to provide useful information. Tax compliance depends on prompt, high-quality customer service, and when compliance becomes unduly burdensome, the IRS runs the risk that taxpayers will simply quit trying.

Taxpayers historically have had difficulty reaching CSRs to obtain tax assistance and account information, but FY 2021 presented extreme challenges, some of which have continued into FY 2022. In FY 2021, ongoing staffing issues and an upsurge of questions about COVID-19 relief legislation strained IRS capacity and exacerbated shortcomings in phone service.<sup>13</sup> Call volume exploded by over 300 percent from the 2019 to the 2021 filing season, with the number of calls received rising from approximately 41 million during the 2019 filing season to 167 million in the 2021 filing season.<sup>14</sup> The overall Level of Service (LOS) for the full FY 2021 plummeted to 21 percent, and the percentage of calls answered by CSRs dropped to 11 percent.<sup>15</sup> Given that LOS averaged only 18 percent for the 2022 filing season, with only ten percent of calls answered by CSRs, these challenges have not disappeared, even though the IRS only received 73 million calls this filing season.<sup>16</sup> FY 2023 presents no immediate prospect of improvement.

Because CSRs are also responsible for processing certain paper returns and correspondence, the unprecedented level of phone calls in FY 2021 pulled CSR attention away from these returns and contributed to the backlog of inventory. This created a vicious cycle in which additional taxpayers began calling to find out about the status of their unprocessed paperwork.<sup>17</sup> At that point, the IRS was forced to shift staff from across the agency to address the return and correspondence backlog, thus completing the cycle of dysfunction.<sup>18</sup>

Two parallel strategies exist for remedying deficiencies in IRS phone service. The first is to hire more CSRs to help minimize the imbalance between calls coming in and the personnel to answer them. The other approach is to more effectively employ technologies, including callback capacity, chatbots, online services, and IRS.gov functionality.<sup>19</sup> These developments will improve the customer experience and ensure that the only calls fielded by CSRs are those that require live support. Although the IRS is rightly pursuing these strategies in tandem, both are facing significant obstacles.<sup>20</sup> The IRS has launched an aggressive CSR hiring initiative, but TAS understands that these efforts have not yet met with meaningful success.<sup>21</sup> Further, both hiring and technology upgrades require significant long-term funding, and Congress has so far been unwilling to commit to anything beyond incremental increases.

### **Objective 3 for FY 2023 – TAS will work with the IRS to improve phone service and advocate for multiyear funding from Congress.**

- Activity 1: Provide analysis and recommendations in the 2022 Annual Report to Congress and congressional testimony for enhanced IRS phone service, measured in terms of percentage of calls answered, average hold times, first-contact resolution, and LOS.
- Activity 2: Work with IRS Collection and IT on the rollout and effectiveness of chatbots and make recommendations for implementation within other IRS functions including TAS.

## **4. ENHANCE TRANSPARENCY BY PROVIDING REGULAR PUBLIC UPDATES ON THE PROCESSING OF RETURNS AND FORMS AND THE STATUS OF TAXPAYER REFUNDS**

The taxpayer's *right to be informed* is the first of the ten fundamental taxpayer rights in the Taxpayer Bill of Rights.<sup>22</sup> The IRS's provision of timely, accurate, and clear information is a key component of this right and helps taxpayers to voluntarily comply with their tax filing and payment obligations. Unfortunately, during the past two filing seasons – times in which taxpayers desperately needed information – the IRS failed to provide timely updates regarding the status of IRS operations, the challenges it was facing, and what taxpayers could expect during their IRS interactions.

This lack of transparency often left taxpayers confused and frustrated. Over the past several filing seasons, taxpayers struggled to obtain information about the status of the IRS's return processing operations, such as a filing season backlog, delayed refunds, returns pulled for inconsistencies, or amended return processing delays. IRS tools and apps did not provide taxpayers the details they sought about their refund status. After much prompting by the National Taxpayer Advocate and outside stakeholders, the IRS began providing taxpayers

with more information by establishing a webpage entitled “IRS Operations During COVID-19: Mission-critical functions continue” (hereafter called the Operational page), where it posts information about several processing issues, such as delays in processing returns and amended returns.<sup>23</sup> Though this page provides taxpayers and tax professionals with some useful information, the information remains vague and difficult to navigate in some cases. Most significantly, the page still lacks a clear, easy-to-read dashboard that would provide updates on where the IRS is at in processing returns. Further, some of the data on the Operational page has not been updated since July 20, 2020.

Taxpayers have difficulty obtaining specific information about their refund status from the IRS’s Where’s My Refund? tool. Although it provides taxpayers with some information, the tool still lacks specificity and fails to provide taxpayers facing delays with the answers they seek, causing them to call the IRS with the hope of obtaining more information.<sup>24</sup>

Ensuring the IRS provides taxpayers with timely, clear, and accurate information will enhance their confidence in the tax system and aid in generating fewer calls to the IRS when taxpayers search for additional information.

**Objective 4 for FY 2023 – TAS will continue to evaluate the IRS’s transparency by reviewing the IRS’s progress in processing returns and other forms as well as its progress in providing taxpayers as much information as possible about processing delays or their refund status.**

- Activity 1: Continue participation on a cross-functional team that will work toward developing an easy-to-read dashboard that would 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 the backlog.
- Activity 2: Work with the IRS to establish a cross-functional team that will explore enhancements to Where’s My Refund? and IRS2Go that will enable these applications to provide taxpayers specific information about the cause of their refund delay and an estimated date when the IRS might issue their refund.

## **5. IDENTIFY WAYS TO ALLEVIATE THE BACKLOG OF PAPER-FILED TAX RETURNS**

The COVID-19 pandemic challenged tens of millions of taxpayers attempting to meet their tax filing and payment obligations during the 2021 and 2022 filing seasons, as well as the IRS and its workforce attempting to deliver tax information, provide service, and issue refunds. Pandemic relief legislation in 2021 added auxiliary responsibilities to the IRS’s workload, which led to more phone calls to the toll-free telephone lines than the IRS could handle and caused an unprecedented backlog of unprocessed tax returns and correspondence.

Compounding these challenges, the pandemic forced the IRS to close or understaff facilities across the country to comply with local stay-at-home orders and social distancing guidelines, resulting in multiple challenges for the processing of returns and correspondence during the 2020 filing season that carried over into the subsequent filing seasons. As of the close of the 2021 filing season, there was a backlog of 16.8 million unprocessed paper returns.<sup>25</sup>

The 2022 filing season has proven to be another difficult one as the IRS has struggled to work through its backlog of paper-filed tax returns and correspondence. As of April 22, 2022, the backlog is an estimated 13.3 million paper-filed returns.<sup>26</sup> When the IRS is behind on processing tax returns, taxpayers are harmed because of the delays in receiving their tax refunds. Without sufficient staffing and an automated system to process paper-filed returns, the IRS will continue to encounter delays in the filing season and beyond.

### **Objective 5 for FY 2023 – TAS will assist the IRS in identifying ways to alleviate the backlog of paper-filed tax returns.**

- Activity 1: Review and analyze the source of processing backlogs.
- Activity 2: Recommend actions the IRS can take to alleviate the backlog of paper-filed tax returns, including the use of automation.

## **6. DEVELOP MORE ROBUST DIGITAL CHANNELS TO MEET THE NEEDS OF TAXPAYERS AND PRACTITIONERS**

In today's digital environment, consumers have certain expectations of their service providers, and the IRS needs to improve its customer service and raise the bar to meet those needs. Every day, consumers use their computers or mobile devices to access financial and other accounts and to conduct transactions without the need for face-to-face or telephone assistance. They pay bills, make changes to their account information, add/cancel services, purchase/return products, conduct banking or investment transactions, review credit card statements, order food deliveries, meet virtually with family members or friends, make inquiries, and even chat with a business CSR.

Surprisingly, similar options are not yet available for taxpayers wishing to engage online with the IRS. As the nation's tax administrator, the IRS needs to bridge the gap of digital disparity between it and the private sector and provide improved functionality of its online account offerings to individual taxpayers, business taxpayers, and taxpayer representatives.<sup>27</sup> Online service offerings are even more important for taxpayers as the IRS continues to deal with processing disruptions, low levels of telephone service, delays in correspondence, and limited options for walk-in assistance – taxpayers simply do not have many viable options for offline service.

Providing taxpayers and practitioners an efficient digital path to IRS services is critical to IRS modernization and efforts to build the workforce of the future and provide the types of digital services to which Americans are entitled. TAS will focus efforts to offer engagement with the IRS at all levels to bring the voice of the taxpayer to digital services.

### **Objective 6 for FY 2023 – TAS will work with the IRS to influence the digital services implementation plans to emphasize proactive capabilities for taxpayers.**

- Activity 1: Create a team and analyze Systemic Advocacy Management System submissions to identify obstacles to achieving widespread participation in using IRS digital services offered by the IRS.
- Activity 2: Continue to participate on IRS teams to improve and expand the functionality of the IRS Online Account, Business Online Account, and Tax Pro Account applications.
- Activity 3: Collaborate with Case Advocacy frontline employees to analyze interactions with business taxpayers who reach out to TAS to identify capabilities and features needed in Business Online Account and provide the findings to the IRS.
- Activity 4: Conduct focus groups at IRS forums with tax practitioners to identify the online needs for them and their clients.

## **7. IMPROVE OMNICHANNEL SERVICE BY INCREASING AVAILABILITY AND FUNCTIONALITY OF DIGITAL COMMUNICATION TOOLS**

Over the past two years, the IRS has struggled to process paper communications it receives from taxpayers as well as original and amended returns, leading to taxpayer frustration.<sup>28</sup> When the IRS does not process mail promptly, taxpayers are uncertain whether the IRS has received and is acting on their communications. The IRS may also send notices to taxpayers containing incorrect information because it has not processed associated correspondence. Solving these problems requires multifaceted solutions that must include digital communication tools that are easy to access and easy to use.

There are over 232 million potential individual taxpayers, and during calendar year 2021, this group filed over 169 million individual and jointly filed tax returns, while businesses filed over 12 million corporate and partnership returns.<sup>29</sup> In the 2021 Taxpayer First Act Report to Congress, the IRS committed to expanding digital communication options for the millions of taxpayers who interact with the IRS yearly.<sup>30</sup> For example, the IRS can use digital tools to allow taxpayers to securely sign and submit documents and verify the IRS has received them. It can use text chat to provide answers to taxpayer inquiries and reduce the number of phone calls to the IRS. Artificial intelligence bots can answer basic questions with automated responses, while IRS employees can address more complex questions via live chat.

Yet, the IRS offers certain digital communications options, such as secure email, Taxpayer Digital Communications Secure Messaging, and the Documentation Upload Tool, by invitation only for a limited number of programs and operations. And while digital tools enable taxpayers to bypass IRS mailroom backlogs, the IRS is not yet able to automatically process some electronically submitted documents, thus requiring the IRS to manually process these documents, which can result in backlogs.

Every digital communication portal the IRS uses requires authentication of the identity of the individual transmitting potentially sensitive information. To achieve this, the IRS implemented the modernized Secure Access Digital Identity (SADI) platform during 2021. The SADI platform is the identity proofing and authentication solution for public-facing IRS applications that will replace the legacy platform, Secure Access eAuthentication. This process creates verification obstacles for taxpayers who want to use digital communication services but are international taxpayers or are Individual Taxpayer Identification Number (ITIN) holders. As the IRS implements new digital communication services and enhances existing technologies, it is critical that it integrate these services and tools into an omnichannel service environment as the foundation for a seamless communication experience that is secure and consistent across all platforms and devices.

**Objective 7 for FY 2023 – TAS will continue to encourage the IRS to develop secure digital communication tools for taxpayers. These tools should allow taxpayers to communicate more easily with the IRS and enable the IRS to confirm receipt of submissions.**

- Activity 1: Meet with IRS officials responsible for the expansion of digital communication and encourage them to expand the use of authenticated and non-authenticated bots that will provide taxpayers with answers to general or specific inquiries regarding their account.
- Activity 2: Meet with IRS leaders to expand the process for taxpayers living outside the United States and allow taxpayers with ITINs to authenticate themselves in a platform that meets National Institute of Standards and Technology requirements by the end of FY 2022.

## **8. IDENTIFY AND MINIMIZE ELECTRONIC FILING BARRIERS**

The IRS deserves considerable credit for raising the e-file rate for individual returns to about 90 percent in the 2021 filing season. During the 2022 filing season, as of May 20, 2022, 94 percent of individual returns have been e-filed.<sup>31</sup> However, historically, filers who file early e-file, and paper filers file later in the filing season and on extension. For example, last year as of May 22, 2021, 94 percent of returns were e-filed, but by December 3, 2021, the e-file rate decreased to 90 percent due to the subsequent paper filings.<sup>32</sup>

Despite the significant benefits of e-filing, taxpayers continue to file paper returns for a variety of reasons. While some taxpayers prefer to paper file, others prefer to e-file but are prevented from doing so. For example, some taxpayers who want to e-file may not have that option because the IRS Modernized E-File (MeF) system does not support the IRS forms that the taxpayers are required to file. In addition, the IRS rejects millions of electronically submitted returns each year because they broke one or more of the MeF business rules.<sup>33</sup>

During 2021, the IRS received approximately 17 million paper individual income tax returns and about 21 million paper business tax returns.<sup>34</sup> Taxpayers who file on paper deal with return processing delays, longer refund delivery times, and potential transcription errors made by IRS employees as they manually enter return information into the system. Transcription errors can also trigger unwarranted compliance actions, which lead to unnecessary correspondence and increased work for both the taxpayer and the IRS.<sup>35</sup>

As the IRS works to enable more taxpayers to e-file, it must strive to improve the processing of the millions of paper returns it continues to receive. 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. We support implementation of scanning technology on a widescale basis to reduce the burden imposed on taxpayers who file by paper.<sup>36</sup>

**Objective 8 for FY 2023 – TAS will identify and work with the IRS to minimize e-filing barriers and improve the accuracy and efficiency of paper return processing.**

- Activity 1: Meet with the IRS to discuss the need for IRS MeF to support commonly used forms for both individual and business taxpayers.
- Activity 2: Meet with representatives of the tax return preparation software industry to identify and evaluate the e-file barriers their customers experience and to determine how the IRS can minimize such barriers.
- Activity 3: Meet with the IRS and representatives of the tax return preparation software industry to discuss the overall need to reject an e-filed “imperfect tax return” and evaluate the feasibility of accepting the imperfect tax return upon e-filing and directing it to a treatment stream for further review.
- Activity 4: Meet with representatives of the tax return preparation software industry to determine how to minimize any barriers to incorporate scanning technology into the processing of electronically prepared returns that are printed out and filed on paper.

**9. ELIMINATE CORRESPONDENCE AUDIT COMMUNICATION BARRIERS THAT HINDER LOW-INCOME TAXPAYER AUDIT RESOLUTION AND LEAD TO INCREASED BURDEN AND USE OF DOWNSTREAM RESOURCES**

In FY 2019, more than half of 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).<sup>37</sup> These taxpayers often face challenges navigating the correspondence audit process and may encounter difficulties reaching assistance on IRS toll-free phone lines that operate with limited levels of service. The IRS correspondence audit process is structured to expend the least amount of examination 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.<sup>38</sup> The resulting high volume of unagreed cases leads to the use of downstream resources for resolution activities that include audit reconsideration and involvement of other IRS functions such as the IRS Office of Chief Counsel, the IRS Independent Office of Appeals, and TAS.

Appropriate correspondence audit customer service is necessary to reduce the burden on our nation’s least affluent and most vulnerable taxpayers. Increased customer service would improve low-income taxpayer audit participation, and education would help taxpayers better understand how to comply. Resulting increases in audit participation and compliance could reduce downstream unagreed audit resource costs. Taxpayers deserve increased access to assistance and personal interaction during the correspondence audit process to ensure their taxpayer *rights to quality service and a fair and just tax system* are protected.<sup>39</sup>

**Objective 9 for FY 2023 – TAS will continue to work with the IRS to eliminate correspondence audit barriers that hinder low-income taxpayer audit resolution, increase burden, and increase the use of downstream resources.**

- Activity 1: Participate on a recently created IRS cross-functional team designed to explore and address the root causes of high default and non-response rates experienced by low-income taxpayers involved in the correspondence audit process.
- Activity 2: Participate on a recently created IRS cross-functional team designed to explore and address the root causes of increased correspondence audit and Automated Underreporter program petitions filed without prior administrative review.

**10. IMPROVE COLLECTION POLICIES AND PROCEDURES**

As discussed in the National Taxpayer Advocate’s 2021 Annual Report to Congress,<sup>40</sup> the COVID-19 pandemic exacerbated preexisting collection policies and procedures that harm taxpayers. The IRS declined to adopt most of the recommendations to improve collection policies and procedures. It cited temporary measures it took considering the COVID-19 pandemic to show that it has addressed some of the National Taxpayer Advocate’s concerns. The IRS cited a lack of resources to implement some recommendations and did not agree that other recommended changes were appropriate. TAS will continue to advocate for the recommendations in the 2021 report to address longstanding problems, propose ways the IRS can implement the recommendations, and urge the IRS to reconsider its positions.

**Objective 10 for FY 2023 – In discussions with IRS Collection policy leaders and in reviewing Internal Revenue Manual (IRM) provisions and correspondence to taxpayers, TAS will continue to advocate for improved collection policies and procedures.**

- Activity 1: Propose specific revisions to IRM procedures to require the IRS to wait for 120 days (up from the current 105 days) after issuing a notice of deficiency before assessing additional tax to prevent premature assessments.
- Activity 2: Propose specific revisions to IRM procedures to require the IRS to defer collection activity until 45 days after the IRS addresses the merits of a taxpayer’s correspondence and if requested, provide a six-month hold on collection matters while the taxpayer’s correspondence, amended return, or other request is pending to minimize confusion and taxpayer frustrations.
- Activity 3: Propose revisions to Notice CP 15, Civil Penalty Notice, when issued for assessable penalties, to include detailed information about taxpayers’ rights and consequences of an administrative appeal, to explain that the notice constitutes their only prepayment “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 Collection Due Process (CDP) hearing or before the U.S. Tax Court to protect taxpayer rights.
- Activity 4: Propose specific revisions to IRM procedures to allow the IRS to consider changes in taxpayers’ circumstances when determining the installment agreement user fee.
- Activity 5: Draft and share with the IRS a proposed standardized form taxpayers can use to request Currently Not Collectible-Hardship consideration either online or by submitting the form to a dedicated fax number.
- Activity 6: Identify any obstacles (other than resource-related) that would prevent the IRS from programing its computer systems to allow employees to immediately freeze refunds while a taxpayer’s request for an offset bypass refund (OBR) is under consideration to prevent denials of an OBR due to IRS processing times.
- Activity 7: Identify any obstacles (other than resource-related) that would prevent the IRS from making OBRs systemically available to taxpayers to the extent their allowable EITC claims exceed the current year’s tax liability.

- Activity 8: Work with the IRS to conduct the pilot that Offer in Compromise Policy has agreed to champion, expected to take place in filing season of FY 2023 or FY 2024, targeting a specific pool of taxpayers to determine if specific messaging will lead to an increase in offer submissions.

## 11. ASSESS THE EFFECTIVENESS OF THE IRS'S EFFORTS TO REDUCE ITS BACKLOG OF AMENDED RETURNS AND WORK WITH THE IRS TO IMPROVE PROCESSING

The IRS continues to struggle with an exceptionally high volume of backlogged return inventory, causing long refund and processing delays and frustration for taxpayers and tax professionals. A significant portion of the backlog consists of unprocessed amended tax returns. As Figure 2 shows, the IRS had approximately 3.2 million amended tax returns that require manual processing in its backlog as of May 27, 2022.

**FIGURE 2, Backlog of Amended Returns Processing (as of May 27, 2022)<sup>41</sup>**

|                           | Individual | Business | Not Specified | Total     |
|---------------------------|------------|----------|---------------|-----------|
| Amended Returns Inventory | 2,340,384  | 883,630  | -             | 3,224,014 |

On November 9, 2021, the National Taxpayer Advocate issued TAD 2021-2 directing the IRS to complete processing of all backlogged amended tax returns by December 29, 2021, or provide a detailed plan by December 8, 2021, for completing processing of the backlog.<sup>42</sup> In its response to the TAD, the IRS stated that while it did not have the resources to clear its backlog of unprocessed amended returns, it was “pursuing several approaches to reduce the amended return inventory.”<sup>43</sup>

Historically, taxpayers and tax professionals had been unable to file amended tax returns electronically, which required the IRS to manually process such paper returns. The National Taxpayer Advocate’s 2021 Annual Report to Congress included a recommendation to implement electronic amended return processing.<sup>44</sup> The IRS responded that, beginning in January 2022, taxpayers could electronically file amended tax returns for tax years 2019, 2020, and 2021, but these returns still require manual processing.<sup>45</sup>

### **Objective 11 for FY 2023 – TAS will assess the effectiveness of the IRS’s plans to reduce its backlog of amended returns.**

- Activity 1: Review and comment on the effectiveness of the multifaceted approach to addressing the amended returns backlog outlined in the IRS’s response to TAD 2021-2.
- Activity 2: Identify and propose changes to IRS processes that would reduce barriers to e-filing amended returns, such as having the IRS prepopulate some fields on Form 1040-X, Amended U.S. Individual Income Tax Return, providing downloadable data, or allowing taxpayers to file Forms 1040-X via Online Account.

## 12. MITIGATE THE UNINTENDED EFFECTS OF THE 2020 AND 2021 FILING DEADLINE POSTPONEMENTS ON TIMELY FILED CLAIMS FOR CREDIT OR REFUND

To address the effects of the COVID-19 pandemic, the IRS exercised its authority under IRC § 7508A and postponed filing deadlines for both the 2020 and 2021 filing seasons (*i.e.*, the 2019 tax return filing deadline for individuals was postponed from April 15 to July 15, 2020; the 2020 tax return filing deadline for individuals was postponed from April 15 to May 17, 2021).<sup>46</sup> Millions of calendar-year taxpayers took advantage of the postponement of the filing deadlines; in fact, taxpayers filed nearly 35 million returns during the postponed period for the 2020 filing season and over 29 million returns during the postponed period for the 2021 filing season.<sup>47</sup> Taxpayers appreciated the extra time to file, considering the challenging circumstances many faced as a result of the pandemic, but as is sometimes the case, good intentions come with unintended consequences. In this case, the postponement of the filing season deadlines caused a

mismatch between two critical time periods in the rules concerning claims for credit or refund, resulting in the potential barring of claims for those taxpayers who took advantage of the postponed filing deadlines.

Under IRC § 6511(b), a taxpayer generally must file a claim for credit or refund within three years from the time the return was filed or two years from the time the tax was paid, whichever expires later. If a taxpayer files his or her claim within the three-year period, then the amount of the credit or refund cannot “exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to three years plus the period of any *extension* of time for filing the return.”<sup>48</sup>

Because IRC § 6511(b)(2) only includes *extensions* in the three-year lookback period and not *postponements*, some payments may fall outside the three-year lookback period. Specifically, for calendar-year taxpayers, IRC § 6513(b) provides that any tax deducted and withheld on wages and any amount paid as estimated tax are deemed to have been paid on April 15 in the year following the close of the taxable year to which the tax is allowable as a credit. The courts have held that IRC § 6513(b) also applies to amounts deemed refunded through the application of the EITC.<sup>49</sup> If the millions of calendar-year taxpayers who took advantage of the postponed filing deadlines file claims for credit or refund three years from that date, the claims would be considered timely under IRC § 6511(b)(1); however, the payments deemed paid on April 15 would fall outside the three-year lookback period.

*Example:* In 2019, a taxpayer had income tax withheld from his paycheck every two weeks. In 2020, the taxpayer filed his 2019 return on the postponed filing deadline of July 15. The taxpayer’s 2019 tax liability was fully paid through withholding, which was deemed paid on April 15, 2020, the due date of the return. Based upon the filing deadline postponement to July 15, the taxpayer timely files a claim for refund on July 14, 2023.

Under IRC § 6511(a), the claim for refund is timely. Under the three-year lookback period of IRC § 6511(b), however, the amount of the taxpayer’s refund is limited to payments made in the three years prior to filing the claim (*i.e.*, payments made on or after July 15, 2020). The withholding deemed paid on April 15, 2020, falls outside that period (as would any estimated tax payments) so the claim for refund will be denied. By contrast, if the taxpayer had requested a filing extension until October 15, 2020, the taxpayer would have had until October 16, 2023 (October 15, 2023, is a Sunday),<sup>50</sup> to be eligible to receive a refund.

This was most likely the unanticipated result of the interaction between the rules governing the filing of a claim for credit or refund and the rules limiting the amount of a credit or refund that may be allowed. These timeframes typically align, but this alignment is aggravated by the postponement of the filing season deadlines for filing seasons 2020 and 2021.

**Objective 12 for FY 2023 – TAS will continue to advocate for mitigation of the unintended impact of the filing season postponements on taxpayers who took advantage of the postponed filing season and whose advance payments (including withholding and quarterly payments) no longer align with the due date for 2019 and 2020 tax returns, resulting in the payments falling outside the three-year lookback period.**

- Activity 1: Meet with the IRS to discuss the need for published guidance that will provide when the Secretary postpones a filing deadline pursuant to IRC § 7508A, amounts paid in the three-year period preceding the filing of a claim for credit or refund plus the period of any postponement of the filing deadline are eligible for credit or refund.<sup>51</sup>
- Activity 2: If guidance is not issued to address this issue before tax filing season 2023, work with the IRS to ensure the public is informed of the refund payment risks associated with the tax return due dates postponed in 2020 and 2021 to prevent denial or reduction of refunds pursuant to the “lookback” rule.

### 13. RESTORE TAX BENEFITS THAT WERE DISALLOWED DUE TO INDIVIDUAL TAXPAYER IDENTIFICATION NUMBER RENEWAL PROCESSING DELAYS

When non-citizens seek U.S. citizenship, immigration authorities view compliance with U.S. tax laws favorably.<sup>52</sup> The IRC requires some individuals who are not eligible for Social Security numbers (SSNs), such as nonresident aliens, to file U.S. tax returns and pay taxes. When they file their returns, these taxpayers who are ineligible for an SSN may be eligible to claim important tax benefits, such as the Child Tax Credit. They also may have a dependent who qualifies them for federal and state tax benefits even though the dependent is ineligible for an SSN. Examples include the Credit for Other Dependents, the American Opportunity Tax Credit, the Premium Tax Credit, Head of Household filing status, and state benefits.

Taxpayers and their dependents who are ineligible for SSNs must use an ITIN to file returns, claim credits, and pay taxes required under the law.<sup>53</sup> Taxpayers apply for an ITIN, either on their own behalf or on behalf of a dependent, by submitting Form W-7, Application for IRS Individual Taxpayer Identification Number.<sup>54</sup> *Form W-7 must be filed on paper.* The application must be supported by original documents such as a birth certificate or passport, or copies of original documents that have been certified by the issuing agency, that establish, for example, the taxpayer's alien status and identity, foreign status, and residency.<sup>55</sup> Taxpayers may mail their Form W-7 and required documentation directly to the IRS or may visit an Acceptance Agent (AA) for assistance in completing the application and submitting it and the required documentation to the IRS.<sup>56</sup> A Certifying Acceptance Agent (CAA) is an AA authorized by the IRS to authenticate documents and submit authenticated copies of those documents to the IRS ITIN Unit.<sup>57</sup> Taxpayers may also submit their application in person by making an appointment at an IRS Taxpayer Assistance Center (TAC), which can verify original documents and submit verified copies of those documents to the IRS ITIN Unit.<sup>58</sup>

We have reported on the IRS's recent backlog for processing Forms W-7 as well as on the IRS's backlog for processing paper returns.<sup>59</sup> Backlogs in processing first-time ITIN applications (as opposed to a renewal application) *delay* taxpayer refunds. However, as explained below, backlogs in processing renewal applications result in *disallowance* of claimed tax benefits.

#### ***Some Individual Taxpayer Identification Numbers Expire, and the IRS Processed Some Returns Without Regard to Pending Renewal Applications***

ITINs issued after December 31, 2012, expire after three consecutive years of non-use.<sup>60</sup> ITINs issued before January 1, 2013, also expire after three consecutive years of non-use, *or* on the "applicable date" if the applicable date is earlier.<sup>61</sup> For example, the applicable date for ITINs issued before January 1, 2008, was January 1, 2017; the applicable date for ITINs issued in 2011 or 2012 was January 1, 2020.<sup>62</sup> Taxpayers request an ITIN renewal by submitting Form W-7 with the same documentation required of first-time applicants. If the IRS approves an ITIN renewal application, the approval is retroactive to the original assignment date of the ITIN before it expired.<sup>63</sup>

Unlike first-time applications for an ITIN, which require an accompanying tax return, until recently ITIN renewal applications could be filed separately from a tax return (and the return could be filed electronically) if the IRS had not yet deactivated the ITIN.<sup>64</sup> When the renewal application is filed separately from the tax return, the ITIN Unit located in Austin processes the renewal application and an IRS Submission Processing function located in Austin, Kansas City, or Ogden processes the return.

As required by the American Rescue Plan Act of 2021 (ARPA), the IRS distributed Advance Child Tax Credit payments to qualifying taxpayers, including ITIN holders, generally based on information contained in their 2019 or 2020 tax return.<sup>65</sup> This made it essential for ITIN holders to file returns, including any delinquent 2019 or 2020 returns, to qualify for the Child Tax Credit in 2020 and receive advance payments in 2021 as well as any other tax benefits to which they were entitled in 2021. Taxpayers with expiring ITINs had to renew the ITIN before they could file their returns.

### ***Processing Backlogs of Renewal Applications Caused Disallowance of Important Tax Benefits***

When processing tax returns with an ITIN, the IRS uses its math error authority to disallow the claimed tax benefits if the ITIN included on the return has expired, even if the ITIN was unexpired when the return was filed, or the taxpayer submitted an ITIN renewal application that remained unprocessed when the return was processed.<sup>66</sup> IRS math error procedures provide taxpayers who receive a math error notice 60 days to respond to the disallowance.<sup>67</sup> If the taxpayer does not respond, the disallowance will stand without the IRS issuing a notice of deficiency.

In 2021, the IRS issued 214,105 math error notices because it appeared the taxpayer filed a return with an expired ITIN. As of April 30, 2022, the IRS had issued 61,312 such notices.<sup>68</sup> We expect this number to rise as the IRS processes more backlogged returns. The IRS acknowledges that it sends math error notices to taxpayers who filed a return with an unexpired ITIN but whose ITIN lapsed by the time the IRS processed the return.<sup>69</sup> In this situation, the taxpayer must request renewal of the ITIN. The IRS also recognizes that it sends math error notices to taxpayers whose ITIN renewal application was not processed by the time the IRS processed the return.<sup>70</sup> In either of these situations, the IRS can restore the disallowed tax benefits after it processes the ITIN renewal application but will do so only in response to an inquiry by the taxpayer.

At the end of processing year (PY) 2019, there were more than 26,511 unassigned (and unworked) renewal applications that carried over to 2020.<sup>71</sup> During 2020, the IRS renewed about 418,190 ITINs, and by the end of PY 2020, there were 104,771 unassigned applications for renewals. At the end of PY 2021, the IRS had renewed 566,402 ITINs but carried over 37,050 unassigned renewal applications to 2022.<sup>72</sup> Moreover, during 2020 and 2021, the rates at which the IRS rejected ITIN renewal applications were 20.5 percent and 17.9 percent, but the rejection rate increased to 37.6 percent for January-April 28, 2022.<sup>73</sup>

The IRS does not automatically restore the disallowed tax benefits when, as it clears its ITIN renewal backlog and its return processing backlog, it learns that the taxpayer renewed his or her ITIN or that the ITIN was still valid when the taxpayer filed the return. If a taxpayer in this situation does not contact the IRS, the IRS will not rectify the error. The National Taxpayer Advocate does not believe this outcome is fair to taxpayers when the disallowance of a tax benefit resulted from IRS processing backlogs.

### **Objective 13 for FY 2023 – TAS will work with the IRS to assist taxpayers whose requested ITIN renewal was not processed timely.**

- Activity 1: Investigate how many ITIN holders' claimed tax benefits the IRS disallowed because it did not timely process their ITIN renewal application or tax return.
- Activity 2: Work with the IRS to restore affected taxpayers' claimed tax benefits.
- Activity 3: Work with the IRS to investigate the reason for the increased rate of ITIN renewal application rejections.
- Activity 4: Identify obstacles to allowing CAAs to use a digital upload tool to provide supporting documents for Form W-7 and the associated tax return, which would increase the efficiency of processing Forms W-7.

## **14. END SYSTEMIC ASSESSMENTS OF INTERNATIONAL INFORMATION RETURN PENALTIES, WHICH HARM TAXPAYERS AND BURDEN THE IRS**

The IRS's systemic assessment of disproportionate international information return (IIR) penalties disadvantages taxpayers because they have no preassessment mechanism for disputing the penalty. The IRS assesses IIR penalties on returns it considers to be filed late, but many systemically assessed IIR penalties, particularly IRC §§ 6038 and 6038A penalties, are abated because the returns were filed timely, because reasonable cause relief was granted, or because of other administrative reasons. Taxpayers and the IRS expend

significant time, energy, and money addressing penalties that the IRS should not have assessed. Thus, these systemic assessments are ineffective in promoting taxpayer compliance and do not promote equity and fairness.

Because the penalties are systemically assessed, taxpayers' recourse is to rely on IRS discretion to grant an abatement of the penalties, request a CDP hearing, or pay the assessed penalty and sue for a refund in a federal district court or the U.S. Court of Federal Claims. The IRS use of systemic penalties in the context of IIRs not only creates hardships for taxpayers, but TAS believes rests on a legally questionable foundation.<sup>74</sup> Accordingly, for FY 2023, TAS will work with the IRS to develop a more sound approach to this penalty regime.

One means of proactively addressing the current burdensome regime is to send preassessment correspondence, giving impacted taxpayers the opportunity to explain why the IRS should not assess the penalty. This approach would educate taxpayers and minimize the inefficient and burdensome practice of first assessing and then abating these penalties. Further, it would contribute to tax equity by placing the IRS in a better position to distinguish between good-faith mistakes and intentional tax noncompliance.

### **Objective 14 for FY 2023 – TAS will work with the IRS to end systemic assessment of IIR penalties and replace that system with a more efficient and equitable program.**

- Activity 1: Participate in the Office of Servicewide Penalties working group to propose administrative reviews in lieu of systemic assessment of IIR penalties and to develop more efficient mechanisms for taxpayers to mitigate IIR penalties by showing reasonable cause, proof of timely filing, or application of the first-time abatement administrative relief prior to assessment.
- Activity 2: Review and analyze IIR penalties to distinguish trends in penalties abated or otherwise not sustained from those penalties that are ultimately upheld and share the results with the IRS.
- Activity 3: Propose and participate in a new TAS-IRS working group to explore a civil penalty-free version of the Delinquent International Information Return Submission Procedures, under which taxpayers who are not under audit and have no income to report can come forward, file delinquent information returns, and remain compliant for future years to avoid penalties.

### Endnotes

- 1 See, e.g., Erin M. Collins, Getting Rid of the Kryptonite: The IRS Should Quickly Implement Scanning Technology to Process Paper Tax Returns, NATIONAL TAXPAYER ADVOCATE BLOG (Apr. 15, 2022), <https://www.taxpayeradvocate.irs.gov/news/nta-blog-getting-rid-of-the-kryptonite-the-irs-should-quickly-implement-scanning-technology-to-process-paper-tax-returns/>.
- 2 Amended returns inventory includes Forms 1045, Application for Tentative Refund, and Forms 1139, Corporation Application for Tentative Refund.
- 3 Email from Wage and Investment (W&I) Division (June 6, 2022); IRS, Status of Unopened Mail and Backlog Inventory (May 27, 2022). The sum of individual returns or case category volumes may exceed totals due to rounding. Figure 1 has been updated as of May 27, 2022, and contains data that differs from the figure shown in the *Review of the 2022 Filing Season*, *supra*, and Systemic Advocacy Objective: *Identify Ways to Alleviate the Backlog of Paper-Filed Tax Returns*, *infra*.
- 4 See Systemic Advocacy Objective: *Identify and Minimize Electronic Filing Barriers*, *infra*.
- 5 TAD 2022-1 (Mar. 29, 2022), <https://www.irs.gov/pub/irs-utl/tad-2022-1-memo-from-nta.pdf>.
- 6 IRS Response to the National Taxpayer Advocate's 2021 Annual Report to Congress (Apr. 25, 2022). See also *Filing Season and IRS Operations*, Hearing Before the H. Ways and Means Comm., Subcomm. on Oversight, 117th Cong. (Mar. 17, 2022) (statement of Charles P. Rettig, Commissioner of Internal Revenue), <https://www.irs.gov/newsroom/written-testimony-of-charles-p-rettig-commissioner-internal-revenue-service-before-the-house-ways-and-means-committee-subcommittee-on-oversight-on-the-filing-season-and-irs-operations>. For the definition of DHA, see 5 C.F.R. § 337.202. DHA enables an agency to hire, after public notice is given, any qualified applicant without regard to 5 U.S.C. 3309-3318, 5 C.F.R. part 211, or 5 C.F.R. part 337, subpart A. A DHA expedites hiring by eliminating competitive rating and ranking, veterans' preference, and traditional ranking procedures. See OPM, *Direct-Hire Authority Fact Sheet*, <https://www.opm.gov/policy-data-oversight/hiring-information/direct-hire-authority/#url=Fact-Sheet> (last visited May 25, 2022).
- 7 IRS Response to the National Taxpayer Advocate's 2021 Annual Report to Congress (Apr. 25, 2022).
- 8 *Id.* Critical position pay authority is an authority provided under 5 U.S.C. 5377 and 5 C.F.R. Part 535. Section 2103 of the Taxpayer First Act, titled *Streamlined Critical Pay Authority for Information Technology Positions*, added § 7812 to the IRC, reinstating streamlined critical pay authority for positions in IRS IT operations (which had lapsed in 2013) until September 30, 2025. Pub. L. No. 116-25, Title II, § 2103(a), 133 Stat. 1011 (2019). IRC § 7812 also allows the IRS to pay recruitment, retention, relocation incentives, and performance bonuses to streamlined critical pay appointees in positions in IT operations.

## TAS Systemic Advocacy Objectives

- 9 IRS Response to the National Taxpayer Advocate's 2021 Annual Report to Congress (Apr. 25, 2022). See also National Taxpayer Advocate 2021 Annual Report to Congress 51, 58-59 (Most Serious Problem: *IRS Recruitment, Hiring, and Training: The Lack of Sufficient and Highly Trained Employees Impedes Effective Tax Administration*).
- 10 IRS Response to the National Taxpayer Advocate's 2021 Annual Report to Congress (Apr. 25, 2022).
- 11 *Id.*
- 12 IRS, Pub. 5426, Taxpayer First Act Report to Congress (Jan. 2021), <https://www.irs.gov/pub/irs-pdf/p5426.pdf>. The Taxpayer First Act, Pub. L. No. 116-25, § 2402, 133 Stat. 1014 (2019), required that the Commissioner of Internal Revenue submit to Congress a written report providing a comprehensive training strategy for employees of the IRS.
- 13 National Taxpayer Advocate 2021 Annual Report to Congress 66-80 (Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Challenges Reaching IRS Representatives Due to Longstanding Deficiencies and Pandemic Complications*).
- 14 IRS, Joint Operations Committee (JOC), Snapshot Reports: Enterprise Snapshot for Enterprise Total, Accounts Management, and Consolidated Automated Collection Service data (weeks ending Apr. 20, 2019; June 30, 2020; and May 22, 2021). The weeks for which TAS pulled data correspond to the final week of the filing season in each of these years. These numbers are for enterprise total. See also National Taxpayer Advocate Fiscal Year 2022 Objectives Report to Congress 9 (*Review of the 2021 Filing Season*).
- 15 IRS, JOC, Snapshot Reports: Enterprise Snapshot (Sept. 30, 2021). For a definition of LOS and a discussion of its shortcomings, see National Taxpayer Advocate 2021 Annual Report to Congress 67 (Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Challenges Reaching IRS Representatives Due to Longstanding Deficiencies and Pandemic Complications*).
- 16 IRS, JOC, Snapshot Reports: Enterprise Snapshot (Apr. 23, 2022).
- 17 National Taxpayer Advocate 2021 Annual Report to Congress 67 (Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Challenges Reaching IRS Representatives Due to Longstanding Deficiencies and Pandemic Complications*).
- 18 Department of the Treasury, *Treasury and IRS Announce Aggressive Plan to End Pandemic Inventory Backlog This Year* (Mar. 10, 2022), <https://home.treasury.gov/news/press-releases/jy0648>.
- 19 See National Taxpayer Advocate 2021 Annual Report to Congress 109-121 (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*).
- 20 The IRS has announced a plan to hire 10,000 CSRs before the end of the year to process the tax return backlog and improve phone service. Department of the Treasury Office of Public Affairs, *Treasury and IRS Announce Aggressive Plan to End Pandemic Inventory Backlog This Year* (Mar. 10, 2022) <https://home.treasury.gov/news/press-releases/jy0648>. Voice and chatbots have been deployed on a number of IRS phone lines to help taxpayers set up payments and understand notices. This is a step in the right direction, although the actual time savings to taxpayers has yet to be determined. IRS, IRS unveils voice and chat bots to assist taxpayers with simple collection questions and tasks; provides faster service, reduced wait times, IR-2022-56 (Mar. 10, 2022) <https://www.irs.gov/newsroom/irs-unveils-voice-and-chat-bots-to-assist-taxpayers-with-simple-collection-questions-and-tasks-provides-faster-service-reduced-wait-times>.
- 21 National Taxpayer Advocate 2021 Annual Report to Congress 66-80 (Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Challenges Reaching IRS Representatives Due to Longstanding Deficiencies and Pandemic Complications*).
- 22 See IRC § 7803(a)(3); IRS, Pub. 1, Your Rights as a Taxpayer, <https://www.irs.gov/pub/irs-pdf/p1.pdf>.
- 23 See IRS, IRS Operations During COVID-19: Mission-critical functions continue, <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue> (last visited June 7, 2022). This page addresses how long taxpayers may have to wait for Form 1040 return processing; the status of Form 941 processing; updates on submitting a missing form or document to the IRS; and Individual Taxpayer Identification Number application processing timeframes.
- 24 See, e.g., National Taxpayer Advocate 2021 Annual Report to Congress 81 (Most Serious Problem: *Transparency and Clarity: The IRS Lacks Proactive Transparency and Fails to Provide Timely, Accurate, and Clear Information*). Where's My Refund?, Where's My Amended Return?, and the IRS2Go app give taxpayers only these responses: return received, refund approved, or refund sent.
- 25 National Taxpayer Advocate Fiscal Year 2022 Objectives Report to Congress 5 (*Review of the 2021 Filing Season*) (excluding amended returns).
- 26 Email from W&I (May 2, 2022); IRS, Status of Unopened Mail and Backlog Inventory (Apr. 22, 2022).
- 27 See National Taxpayer Advocate 2021 Annual Report to Congress 109-121 (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*).
- 28 National Taxpayer Advocate 2021 Annual Report to Congress 66 (Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Difficulty Reaching IRS Representatives Due to Longstanding Deficiencies and Pandemic Complications*); National Taxpayer Advocate 2021 Annual Report to Congress 95 (Most Serious Problem: *Filing Season Delays: Millions of Taxpayers Experienced Difficulties and Challenges in the 2021 Filing Season*).
- 29 U.S. Census Bureau, *American Community Survey*, 2019 ACS 1 Year Estimates, Table S0101, Ages 18-74; derived as "age 18 and over" minus "age 75 and over;" Submission Processing (SP) Program Management/Process Assurance (PMPA) Branch Filing Season Statistics Report Individual Returns (cycle ending Dec. 17, 2021); SP PMPA Branch Filing Season Statistics Report Corporate and Partnership Returns (cycle ending Dec. 8, 2021).
- 30 Taxpayer First Act, Pub. L. No. 116-25, 133 Stat. 981 (2019). See also IRS, Pub. 5426, Taxpayer First Act Report to Congress 41 (Jan. 2021).
- 31 IRS, SP PMPA Branch Filing Season Statistics for Week Ending May 20, 2022; IRS SP PMPA Branch Filing Season Statistics Report for Week Ending May 22, 2021.
- 32 IRS, Filing Season Statistics for Week Ending December 3, 2021, <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-december-3-2021>.
- 33 National Taxpayer Advocate 2021 Annual Report to Congress 136-148 (Most Serious Problem: *E-Filing Barriers: Electronic Filing Barriers Increase Taxpayer Burden, Cause Processing Delays, and Waste IRS Resources*).
- 34 IRS, Filing Season Statistics Report for Week Ending December 18, 2021.
- 35 National Taxpayer Advocate 2021 Annual Report to Congress 136-148 (Most Serious Problem: *E-Filing Barriers: Electronic Filing Barriers Increase Taxpayer Burden, Cause Processing Delays, and Waste IRS Resources*).

- 36 See Systemic Advocacy Objective: *Use Automation to Process Paper-Filed Tax Returns*, *supra*; National Taxpayer Advocate 2021 Annual Report to Congress 136-148 (Most Serious Problem: *E-Filing Barriers: Electronic Filing Barriers Increase Taxpayer Burden, Cause Processing Delays, and Waste IRS Resources*). See also Taxpayer Advocate Directive 2022-1: Implement Scanning Technology to Machine Read Paper Tax Returns and Address the Paper Return Backlog (Mar. 29, 2022); Erin M. Collins, Getting Rid of the Kryptonite: The IRS Should Quickly Implement Scanning Technology to Process Paper Tax Returns, NATIONAL TAXPAYER ADVOCATE BLOG (Mar. 30, 2022), <https://www.taxpayeradvocate.irs.gov/news/nta-blog-getting-rid-of-the-kryptonite-the-irs-should-quickly-implement-scanning-technology-to-process-paper-tax-returns/>.
- 37 IRS, Compliance Data Warehouse (CDW), Automated Information Management System (AIMS) Closed Case Data FY 2019 individual audits and Individual Returns Transaction File (Nov. 2021). Internal Revenue Manual 4.1.1.1.6, Terms (Oct. 25, 2017).
- 38 IRS, CDW, AIMS Closed Case Data FY 2019 individual audits (Nov. 2021). Correspondence audits include audits closed by campus tax examiners in either the W&I or Small Business/Self-Employed operating divisions.
- 39 See IRC § 7803(a)(3)(B). See also TAS, Taxpayer Bill of Rights, [www.taxpayeradvocate.irs.gov/taxpayer-rights](http://www.taxpayeradvocate.irs.gov/taxpayer-rights).
- 40 See National Taxpayer Advocate 2021 Annual Report to Congress, Most Serious Problems, <https://www.taxpayeradvocate.irs.gov/reports/2021-annual-report-to-congress/most-serious-problems/>.
- 41 Email from W&I (June 6, 2022); IRS, Status of Unopened Mail and Backlog Inventory (May 27, 2022). Amended Business Returns are Accounts Management only.
- 42 TAD 2021-2 (Nov. 9, 2021), <https://www.irs.gov/pub/irs-utl/tad-2021-2.pdf>.
- 43 IRS Response to TAD 2021-2 (Dec. 8, 2021), <https://www.irs.gov/pub/irs-utl/tad-2021-2-memo-from-dcse.pdf>.
- 44 National Taxpayer Advocate 2021 Annual Report to Congress 47 (Most Serious Problem: *Processing and Refund Delays: Excessive Processing and Refund Delays Harm Taxpayers*).
- 45 IRS Response to TAD 2021-2 (Dec. 8, 2021), <https://www.irs.gov/pub/irs-utl/tad-2021-2-memo-from-dcse.pdf>.
- 46 See Notice 2020-23, 2020-18 I.R.B. 742 (cross referencing Rev. Proc. 2018-58, 2018-50 I.R.B. 990); Notice 2021-21, 2021-15 I.R.B. 986. Under IRC § 7508A, when the Secretary determines that a taxpayer has been affected by a federally declared disaster, the Secretary is authorized to “disregard” for up to one year certain acts a taxpayer is required to undertake under the IRC, including the filing of a tax return. See also Treas. Reg. § 301.7508A-1.
- 47 IRS CDW, Individual Master File transaction history (Mar. 31, 2022).
- 48 IRC § 6511(b)(2)(A) (emphasis added).
- 49 See *Israel v. U.S.*, 356 F.3d 221 (2d Cir 2004).
- 50 See IRC § 7503 (when the last day for filing falls on a Saturday, Sunday, or legal holiday, the act will be timely if performed on the next business day). See also Rev. Rul. 2003-41, 2003-1 C.B. 814 (when a return is filed on the next day after a weekend or legal holiday, the lookback period is adjusted accordingly).
- 51 The National Taxpayer Advocate has recommended the legislative solution to this problem. See National Taxpayer Advocate 2022 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration 22 (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)*.
- 52 See, e.g., 8 U.S.C. § 1427(a); 8 C.F.R. § 316.10; *Abuhekal v. U.S. Citizenship & Immigr. Servs.*, 2011 WL 2600709, at \*5 (D. Minn. June 30, 2011) (“Timely payment of taxes supports a finding of good moral character... . Conversely, failure to file or make timely payment of taxes may support a finding of a lack of good moral character.”) (internal citations omitted).
- 53 Any person required to make a return, statement, or other document to the IRS is required to include in such return, statement, or other document a taxpayer identifying number. See IRC § 6109; Treas. Reg. § 301.6109-1. See also IRC §§ 1, 2, 61, 871, 7701(b).
- 54 Spouses and dependents are not eligible for an ITIN or to renew an ITIN unless they are claimed for an allowable tax benefit, or they file their own return.
- 55 IRC § 6109(i)(2); Treas. Reg. § 301.6109-1(d)(3)(iii).
- 56 Treas. Reg. § 301.6109-1(d)(3)(ii)&(iv). See also Instructions for Form W-7, Application for IRS Individual Taxpayer Identification Number (rev. Nov. 2021).
- 57 IRM 3.21.263.4.1, Acceptance Agent (AA) or Certifying Acceptance Agent (CAA) (Jan. 16, 2020), provides “CAAs can authenticate 12 of the 13 acceptable identification documents for primary and secondary (spouse) applicants. CAAs cannot authenticate foreign military identification cards and must submit the original or copies certified by the issuing agency. CAAs can ONLY authenticate passports and birth certificates for dependent applicants. They must submit the original or copies certified by the issuing agency of all other documents for dependent applicants. CAAs must attach Form W-7 Certificate of Accuracy (COA) to each Form W-7 as evidence of the documents they authenticated.” CAAs are located throughout the United States, and the 6,168 active CAAs as of Jan. 2021 included 181 foreign CAAs. In addition, 47,344 of the 1.1 million ITINs issued in 2020 were based on a CAA application. Treasury Inspector General for Tax Administration, Ref. No. 2022-40-013, *Administration of the Individual Taxpayer Identification Number Program 20* (Jan. 26, 2022).
- 58 The IRS maintains 358 TACs, but due to attrition and resource limitations, 39 are presently not staffed on a full-time basis (24 TACs presently provide a virtual service delivery alternative to an in-person visit). All staffed TACs offer appointments as well as the ability to walk in. *IRS Filing Season and the IRS Budget, Hearing Before the Senate Finance Committee, 117th Cong.* (Apr. 7, 2022), (statement of Charles P. Rettig, Commissioner of Internal Revenue), <https://www.irs.gov/newsroom/written-testimony-of-charles-p-rettig-commissioner-internal-revenue-service-before-the-senate-finance-committee-on-the-filing-season-and-the-irs-budget>. The relevant IRS webpage, <https://www.irs.gov/help/itin-authenticating-tacs-link>, does not list the specific TACs that are open and provide ITIN services. The telephone number given on the webpage for taxpayers to call to schedule an appointment is not functional “due to extremely high call volume.”
- 59 See, e.g., National Taxpayer Advocate Fiscal Year 2022 Objectives Report to Congress 44 (Systemic Advocacy Objective: *Advocate for Efficiencies and Additional IRS Resources to Timely Process Individual Taxpayer Identification Number Applications*); National Taxpayer Advocate 2021 Annual Report to Congress 37 (Most Serious Problem: *Processing and Refund Delays: Excessive Processing and Refund Delays Harm Taxpayers*).
- 60 IRC § 6109(i)(3)(A).
- 61 IRC § 6109(i)(3)(B).

- 62 IRC § 6109(i)(3)(C). The IRS was unable to meet the statutory schedule and adopted a deactivation schedule. The IRS began deactivating ITINs issued prior to 2013 in phases based on the middle digit of the ITIN, if they were not already deactivated due to nonuse. See, e.g., IRS, IRS Now Accepting ITIN Renewal Applications; Taxpayers Encouraged to Act Soon to Avoid Processing Delays in 2017, <https://www.irs.gov/newsroom/irs-now-accepting-itin-renewal-applications-taxpayers-encouraged-to-act-soon-to-avoid-processing-delays-in-2017>; IRS, Taxpayers should renew expiring ITINs early to avoid a refund delay next year, <https://www.irs.gov/newsroom/taxpayers-should-renew-expiring-itins-early-to-avoid-a-refund-delay-next-year>.
- 63 IRS, ITIN Expiration Frequently Asked Questions, Q10, <https://www.irs.gov/individuals/itin-expiration-faqs> (last visited June 11, 2022).
- 64 Effective Jan. 1, 2022, ITIN holders must generally attach a tax return to their ITIN renewal application. IRM 3.21.263.5.2, Filing Tax Return Versus Exception Criteria (Jan. 1, 2022). When the return is attached to the ITIN renewal request, the ITIN Unit holds the return until the ITIN renewal request is processed, and once the ITIN is renewed forwards the return to Submission Processing.
- 65 ARPA, Pub. L. No. 117-2, § 9611, 135 Stat. 359 (2021). Taxpayers' qualifying children are required to have an SSN. IRC § 24(h)(7). In addition, some joint filers with SSNs were eligible to receive 2020 Recovery Rebate Credits (RRCs) even though one spouse was an ITIN holder. See IRC §§ 6428(g)(2)(A), 6428A(g)(2)(A) (providing for a reduced amount where only one spouse had an SSN); IRC §§ 6428(g)(4), 6428A(g)(5) (providing for an unreduced amount in the case of military spouses when only one spouse had an SSN). The 2021 RRC follows the same rules for joint filers but is also allowed to ITIN holders for their dependents with an SSN or IRS Adoption Taxpayer Identification Number. IRC § 6428B(e)(2).
- 66 IRC § 6213(g)(2)(O).
- 67 IRC § 6213(b)(2).
- 68 Math Error Reports 480-62-61 (Dec. 30, 2021; Apr. 30, 2022). See also IRM 21.6.1.6.6.2, ITIN Renewal Math Error Adjustments (Oct. 18, 2021), for definitions of Taxpayer Notice Codes 315-323, 642-646, 709-710, and 817 for ITIN-related math errors.
- 69 IRM 21.6.1.6.6.2, ITIN Renewal Math Error Adjustments (Oct. 18, 2021).
- 70 *Id.*
- 71 A processing year, which corresponds roughly to the calendar year, refers to the period in which the IRS processes previous tax year returns. For example, the IRS began processing returns filed in 2020 (such as tax year 2019 and prior year returns) in the 2020 processing year.
- 72 ITIN Production Reports (Dec. 31, 2020; Dec. 31, 2021).
- 73 ITIN Production Reports (Dec. 31, 2020; Dec. 31, 2021; Apr. 30, 2022).
- 74 See National Taxpayer Advocate 2020 Annual Report to Congress 119-131 (Most Serious Problem: *International: The IRS's Assessment of International Penalties Under IRC §§ 6038 and 6038A Is Not Supported by Statute, and Systemic Assessments Burden Both Taxpayers and the IRS*); see also *id.* at 129 (IRS Comments).