

Although the IRS's administration of the two-year bans showed some increased adherence with the internal procedures for imposing the ban designed to ensure that it meets the statutory requirements, our most recent review of a sample of two-year ban cases still found significant problems, including:⁵

- In 53 percent of the cases, required managerial approval for imposing the ban was not secured;
- In 82 percent of the cases, the IRS did not adequately explain to the taxpayer why the ban was imposed, as required;
- In 61 percent of the cases in which the auditor was required to speak to the taxpayer before imposing the ban, no such conversation took place; and
- In 54 percent of the cases in which taxpayers submitted documents, it appeared from the documents submitted that the taxpayers believed they qualified for the credit.

This FY 2024 study will again review the IRS's recent imposition of these two-year bans to determine how often the IRS is complying with the requirements necessary to impose the bans.

Objective 1 for FY 2024 – TAS will determine how often the IRS is meeting its procedural guidance for implementing bans preventing a taxpayer from claiming EITC, ACTC, or AOTC for two years and report the results to the National Taxpayer Advocate.

- Activity 1: Analyze IRS data to determine the number of two-year bans the IRS imposed.
- Activity 2: Determine how often the IRS imposed bans even though the taxpayer did not participate in the audit or mail to the taxpayer was undeliverable.
- Activity 3: Determine how often the IRS fails to follow its own internal procedures for implementing two-year bans for claiming EITC, ACTC, or AOTC.

2. STUDY TAXPAYERS WHO DO NOT RESPOND TO IRS LETTERS REQUESTING IDENTITY AND RETURN VERIFICATION

In 2021, the IRS estimated that its identity theft filters prevented it from releasing about \$1.6 billion of illegitimate refunds.⁶ While the IRS originally selected 4.1 million returns as suspected to involve identity theft, it subsequently determined that 55 percent were false detections.⁷ Each year, TAS receives numerous inquiries from legitimate taxpayers who never received their refunds because the IRS had suspended processing the return, suspecting it was a product of identity theft. Oftentimes, the taxpayer claims to have not received the IRS letter containing the notification about the suspended refund return and informing the taxpayer to verify their identity and the return before the IRS can complete processing of the return. In other cases, taxpayers' circumstances prevented them from contacting the IRS, and considerable time elapsed before the taxpayers inquired about the refund.

The IRS presumes identity thieves submitted all suspected illegitimate returns if taxpayers do not respond to the suspended refund return notice.⁸ However, when examining the accounts of these suspended refund returns, TAS finds that the taxpayer often files a refund return in the following year, which the IRS allows, suggesting that the frozen return was legitimate. Some taxpayers have indicated to TAS that they never received an IRS notice about suspension of the refund return, while other taxpayers may be afraid to respond

5 National Taxpayer Advocate 2019 Annual Report to Congress vol. 2, at 239-256 (Research Studies: *Study of Two-Year Bans on the Earned Income Tax Credit, Child Tax Credit, and American Opportunity Tax Credit*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC19_Volume1_TRRS_02_EITCban.pdf.

6 All returns where at least 204 days have elapsed since the letter was mailed requesting the taxpayer authenticate his or her identity are presumed illegitimate returns and removed from the Individual Returns Transaction File (IRTF). IRS, Identity Theft (IDT) and Integrity & Verification Operations (IVO) Performance Report (Dec. 2022).

7 IRS, Wage and Investment Business Performance Review First Quarter FY 2023, at 13 (Feb. 2023).

8 All returns where at least 204 days have elapsed since the letter was mailed requesting the taxpayer authenticate his or her identity are presumed illegitimate returns and removed from the IRTF. IRS, IDT and IVO Performance Report (Dec. 2022).

to the IRS or presume the IRS disallowed the refund for some other reason.⁹ The study will attempt to quantify the number of suspended refund returns without a taxpayer response that are legitimate, the amount of legitimate refunds the IRS did not pay out, and why the taxpayer never responded to the IRS notice.

Objective 2 for FY 2024 – TAS will provide a report to the National Taxpayer Advocate estimating the volume and amount of legitimate tax year (TY) 2020¹⁰ refund returns still held by the IRS because of taxpayer non-response with a goal of advocating for the IRS to implement additional procedures to release legitimate refund claims to taxpayers.

- Activity 1: Estimate the number and amount of likely legitimate refund returns the IRS still has suspended.
- Activity 2: Estimate the number and amount of legitimate TY 2020 refund returns the IRS is holding by contacting a sample of these taxpayers to determine if they can successfully show their TY 2020 refund claim was valid.

3. ASSESS THE ACCESSIBILITY OF PARTICIPATION IN TAX PROGRAMS DESIGNED TO IMPROVE THE ECONOMIC CIRCUMSTANCES OF TAXPAYERS AND THEIR CHILDREN AS WELL AS THE BARRIERS TO PARTICIPATION IN THESE PROGRAMS

In conjunction with another taxpayer rights agency, TAS will measure access to programs designed to assist financially struggling taxpayers and their children, such as the EITC or ACTC. The study will explore the types of barriers to access taxpayers faced, whether the barriers are more prevalent among certain demographic groups, and steps the IRS could initiate to reduce or eliminate these barriers. TAS plans to conduct a nationwide survey of affected individuals about their awareness of these tax benefits and their willingness to engage with the IRS to receive these benefits. The survey will also address digital literacy and accessibility, preference of service delivery channels, sources of tax information and assistance relating to tax benefit programs, tax return filing experiences, and dispute resolution with the IRS.

The sample population will include first-time filers claiming the credits and likely eligible non-filers. Another part of the survey group will be taxpayers who have claimed the EITC, ACTC, or another credit designed to assist financially disadvantaged taxpayers who were recently audited or had credits disallowed subject to math error processes or who were required to file on paper because someone else claimed the children. TAS is particularly interested in the experiences of these taxpayers in navigating the IRS's audit, fraud, and error detection systems and the impact of these systems on their willingness to file future returns as well as attitudes toward the IRS and the benefits it administers.

Objective 3 for FY 2024 – TAS will conduct and report the findings of a survey along with additional qualitative data from subsequent focus groups to IRS stakeholders that assess the accessibility of tax credits designed to improve the financial circumstances of taxpayers, particularly those with children, and identify the barriers that increase the difficulty or even prevent taxpayers from claiming these credits.

- Activity 1: Survey taxpayers claiming these credits to measure the accessibility of these credits, barriers to claiming these credits, and their experiences dealing with the IRS about their eligibility for these credits.
- Activity 2: Survey non-filers likely eligible for these credits to assess their barriers to claiming these credits.

⁹ Comments from TAS's Focus Groups at the 2022 IRS Nationwide Tax Forums, *Responding to IRS Notices* (Oct. 2022) (on file with TAS).

¹⁰ TY 2020 is the most recent tax year where the IRS has archived suspected identity theft returns.