

1. PROTECT TAXPAYER RIGHTS AS THE IRS IMPLEMENTS ITS STRATEGIC OPERATING PLAN

Section 10301 of the Inflation Reduction Act of 2022 (IRA) provided the IRS approximately \$79 billion to modernize technology, improve taxpayer service, enhance enforcement, and cover operational costs between FYs 2022 and 2031.¹ On April 5, 2023, the Treasury Department and the IRS released the IRS IRA Strategic Operating Plan (SOP), a report outlining how the IRS plans to transform tax administration over the next decade.² While the planned taxpayer service initiatives are intended to dramatically improve the delivery of services to the taxpayer population in general, TAS will evaluate the anticipated impact of such planned changes on taxpayers, especially the more vulnerable populations with limited access to online services. The enforcement initiatives in the SOP are intended to quickly resolve taxpayer issues and improve tax compliance, particularly among high-income taxpayers, large businesses, and pass-through entities. TAS will evaluate the implementation of such enforcement initiatives to safeguard taxpayer rights and advocate for a fair and equitable distribution of IRS resources that will benefit all taxpayers.

Of the initial supplemental IRA funding, Congress allocated only \$3.2 billion for Taxpayer Services and \$4.8 billion for Business Systems Modernization (BSM). Combined, such allocations amount to only ten percent of the original funding allocation, with the remaining 90 percent allocated for Enforcement (\$45.6 billion) and Operations Support (\$25.3 billion).³ The SOP includes a discussion on the expected depletion of the IRS Taxpayer Services allocation in less than four years. It also expresses concerns about the adequacy of BSM funding to modernize the agency's antiquated technology.⁴ TAS will continue to advocate for adequate funding for Taxpayer Services, BSM, and operational overhead that enables the IRS to meet the needs of all taxpayers.

Objective 1 for FY 2024 – TAS will evaluate the IRS's implementation of the IRA SOP to maximize protection of taxpayer rights.

- Activity 1: Participate on cross-functional teams implementing the IRS IRA SOP, evaluate planned initiatives, and make administrative recommendations to maximize protection of taxpayer rights and minimize IRS burden imposed on taxpayers.
- Activity 2: Analyze the findings of focus groups conducted at the 2023 IRS Nationwide Tax Forums to understand tax professionals' thoughts, opinions, and concerns on the IRS's plans to implement the IRA funding as outlined by the IRS's SOP and make recommendations based upon our findings.

2. PROTECT TAXPAYER PRIVACY AND ENSURE THE IRS DOES NOT DISCLOSE TAXPAYER INFORMATION WITHOUT CONSENT

Tax return preparers, including tax return preparation software providers, cannot use or disclose tax return information to third parties without taxpayer consent.⁵ Any unauthorized use or disclosure of such information can result in civil or criminal penalties.⁶ Some have raised concerns as to whether tax return preparation software providers shared tax return information with third parties without explicit taxpayer consent.⁷

¹ An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14, Pub. L. No. 117-169, § 10301, 136 Stat. 1818, 1831 (2022) [hereinafter referred to as the "Inflation Reduction Act"]. As part of the Fiscal Responsibility Act of 2023 and related agreements, IRA funding is expected to be reduced by about \$21 billion.

² IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan (Apr. 2023).

³ IRA, Pub. L. No. 117-169, § 10301, 136 Stat. 1818, 1831-1832 (2022).

⁴ IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan 128, 130 (Apr. 2023).

⁵ IRC §§ 6103(c), 6713, 7216; Treas. Reg. § 301.7216-3.

⁶ IRC §§ 6713, 7216.

⁷ Colin Lecher & Simon Fondrie-Teitler, *Meta Sued for Collecting Financial Information Through Tax Filing Websites*, THE MARKUP (Dec. 2, 2022), <https://themarkup.org/pixel-hunt/2022/12/02/meta-sued-for-collecting-financial-information-through-tax-filing-websites>; Class Action Complaint & Demand for Jury Trial, *Doe v. Meta Platforms, Inc.*, No. 3:22-cv-07557 (N.D. Cal. filed Dec. 1, 2022).

It is critical that the IRS, TAS, and other appropriate oversight organizations protect taxpayer rights by conducting regular reviews to ensure third parties are not receiving tax return information without explicit taxpayer consent.⁸ This is especially important due to the limited ability of taxpayers to hold return preparers or the tax return preparation software industry accountable for unauthorized use or disclosure of their tax return information. Specifically, many tax return preparation software products have mandatory arbitration clauses in the “terms of use” boilerplate language, and taxpayers must agree to such terms before using the product. Such arbitration clauses would effectively prevent taxpayers from bringing a civil action against a tax return preparation software company for any unlawful use or disclosure of their tax return information. IRS review of and comment on the providers’ consent language and placement of the consent could help prevent possible IRC §§ 7216 or 6713 violations.

Objective 2 for FY 2024 – TAS (1) will evaluate how the IRS is protecting taxpayers’ right to confidentiality and preventing unlawful uses and disclosures of their tax return information and (2) will advocate to ensure waivers follow IRS rules and regulations; are clear, concise, and written in plain language; and provide taxpayers an avenue by which they can hold parties accountable if their return information is disclosed to a third party without their consent.

- Activity 1: Create a team to review any existing IRS processes for ensuring that return preparers and tax return preparation software companies are in full compliance with the rules and regulations governing taxpayer consent for using and disclosing tax return information; if appropriate, TAS will make recommendations as to how the IRS can strengthen this review process.
- Activity 2: Explore what options are available to taxpayers to hold return preparers and tax return preparation software companies accountable for unauthorized uses or disclosures of their information and research any potential legislative changes that may be necessary to protect tax return information; if appropriate, TAS will make legislative recommendations to Congress in the National Taxpayer Advocate’s Annual Report to Congress.
- Activity 3: Review tax return preparation software companies’ consents to share tax return information and recommend changes to the consent statements to better protect taxpayer rights.
- Activity 4: Review and consider the need for legislation, similar to the California Privacy Rights Act, which added the right to correct inaccurate personal information and the right to limit the use and disclosure of sensitive personal information.

3. IMPROVE CORRESPONDENCE AUDIT PROCESSES, TAXPAYER PARTICIPATION, AND AGREEMENT AND DEFAULT RATES

Taxpayers often face significant challenges navigating the correspondence audit process and are limited to calling a representative on a toll-free phone line for assistance. Issues include difficulties understanding the notice, gathering and providing documentation, responding within the stated deadlines, and having limited options to interact with an IRS employee. The IRS correspondence audit process is designed to expend the least amount of examination resources to conduct the largest number of examinations, often resulting in deficient levels of customer service to taxpayers and the use of costly downstream resources for the IRS.⁹

8 See IRC § 7803(a)(3)(H). “Taxpayers have the right to expect that any information they provide to the IRS will not be disclosed unless authorized by the taxpayer or by law. Taxpayers have the right to expect the IRS to investigate and take appropriate action against its employees, return preparers, and others who wrongfully use or disclose taxpayer return information.” *Taxpayer Bill of Rights: The Right to Confidentiality*, TAXPAYER ADVOCATE SERVICE, <https://www.taxpayeradvocate.irs.gov/get-help/taxpayer-rights/>.

9 See National Taxpayer Advocate 2020 Annual Report to Congress 105-106 (Most Serious Problem: *Correspondence Exams: Taxpayers Encounter Unnecessary Delays and Difficulties Reaching an Accountable and Knowledgeable Contact for Correspondence Audits*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_MSP_07_Correspondence.pdf. See also IRS, Joint Operations Center (JOC), Snapshot Reports: Product Line Detail (week ending Apr. 22, 2023). As of the week ending April 22, 2023, the Wage and Investment (W&I) Exam phone line reflected a fiscal year Level of Service (LOS) of 42.4 percent.