

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.<sup>8</sup> 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.<sup>9</sup>

<sup>8</sup> 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/>.

<sup>9</sup> 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](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.

In FY 2022, correspondence audits continued to produce the lowest agreement rate (20.8 percent), the highest no-response rate (41.6 percent), and the highest volume of cases assessed by default (20.4 percent).<sup>10</sup> The IRS has implemented technology to aid taxpayers in the correspondence audit experience such as customer callback, Taxpayer Digital Correspondence, and the introduction of the Documentation Upload Tool – technology tools that allow taxpayers to request a call back rather than waiting on hold and to electronically submit documentation. The IRS, however, continues to refrain from interjecting any additional human interactions that could serve to assist, educate, and engage taxpayers during the correspondence audit process, and taxpayers are not assigned a specific point of contact responsible for their audit. Increased taxpayer engagement could lead to increased audit agreement rates, reduced taxpayer burden, and reduced IRS resources associated with revisiting completed audits. Instead, the volume of unagreed correspondence audit cases remains high and continues to necessitate the use of costly downstream resolution actions that include audit reconsiderations, appeals, and litigation. These cases also frequently require the involvement of additional offices such as the IRS’s Office of Chief Counsel, the Independent Office of Appeals, IRS Collections, and TAS.<sup>11</sup>

The IRS must do more to increase taxpayer correspondence audit participation and minimize the delays and burdens associated with its current processes. High no-response, unagreed, and correspondence audit default rates are particularly concerning because a high percentage of the taxpayers subjected to correspondence audits have total positive incomes below \$50,000.<sup>12</sup> Many of these low-income taxpayers claim the Earned Income Tax Credit and will not receive their credit until the conclusion of the audit. Appropriate correspondence audit customer service is necessary to increase taxpayer participation in the audit process, build trust, and engage taxpayers, particularly low-income taxpayers who frequently lack representation and must rely solely on the IRS for audit assistance.<sup>13</sup>

**Objective 3 for FY 2024 – TAS will work with the IRS to improve taxpayer correspondence audit participation and agreement and default rates.**

- Activity 1: Participate on IRS cross-functional teams designed to analyze IRS procedures and other factors contributing to correspondence audit low response, low agreement, and high default rates.
- Activity 2: Develop strategies from cross-functional team analysis for IRS consideration and implementation.
- Activity 3: Via cross-functional team participation, advocate for increased human interaction, increased education, increased ease and access to taxpayer assistance, and improved service levels on the IRS’s Wage and Investment (W&I) Correspondence Exam assistance telephone line.

10 IRS, Compliance Data Warehouse (CDW), Automated Information Management System Closed Case Data, FY 2022 (Mar. 2023). Correspondence audits include audits closed by campus tax examiners in either the W&I or Small Business/Self-Employed Operating Divisions.

11 See National Taxpayer Advocate 2022 Annual Report to Congress 174, 187 (Most Litigated Issues), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22\\_MostLitigatedIssues.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MostLitigatedIssues.pdf). Similar to previous years, in FY 2022, 78 percent of the cases petitioned were the product of an audit or review conducted via correspondence.

12 See National Taxpayer Advocate 2020 Annual Report to Congress 102-118 (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](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_MSP_07_Correspondence.pdf).

13 *Id.*