

three years.<sup>22</sup> To address this situation, TAS has proposed allowing taxpayers who receive FTA and who also have a good case for reasonable cause relief to apply for reasonable cause in lieu of the FTA, thus preserving FTA eligibility for future years. TAS refers to this mechanism as “reasonable cause substitution.” The IRS is philosophically resistant to such a policy change and has also indicated that it might not be a feasible option due to programming limitations. TAS will continue to pursue communication with the IRS in this area and explore ways of moving forward.

#### **Objective 4 for FY 2024 – TAS will collaborate with IRS stakeholders to implement systemic FTA in conjunction with recharacterized reasonable cause relief.**

- Activity 1: Provide IRS decision-makers with support via a white paper and follow-up conversations for allocating the requisite information technology funding and moving forward with systemic FTA.
- Activity 2: Conduct a meeting with the IRS Office of Servicewide Penalties aimed at reaching agreement regarding the desirability and feasibility of allowing substituted reasonable cause relief.

### **5. REDUCE BURDEN ON TAXPAYERS APPLYING FOR AN INDIVIDUAL TAXPAYER IDENTIFICATION NUMBER**

The IRS continues to rely on a paper-based system for processing applications for Individual Taxpayer Identification Number (ITIN) applications.<sup>23</sup> Like other paper processing systems at the IRS, processing of paper ITIN applications is subject to backlogs.<sup>24</sup> Backlogs harm taxpayers in a variety of ways, including delayed refunds and disallowance of claimed tax benefits.<sup>25</sup> When the IRS experiences backlogs processing ITIN applications and paper returns, it can delay taxpayer refunds for months. Taxpayers with expired ITINs can experience further delays in processing their tax returns.<sup>26</sup> Because some state agencies calculate benefits based on family size, as reported on a tax return, ITIN delays may impact benefits. If a taxpayer has an eligible dependent but is unable to obtain an ITIN for the dependent, it may result in a reduction of state benefits, increasing taxpayer burden.

In its SOP, the IRS expressed intentions to modernize the ITIN process and expand services for ITIN holders and international taxpayers but did not provide any details.<sup>27</sup> To prevent unnecessary delays, encourage voluntary compliance, and reward these individuals for doing the right thing by filing U.S. tax returns, the National Taxpayer Advocate recommended the IRS develop and implement a procedure that allows applicants

22 IRM 20.1.1.3.6.1, RCA and First Time Abate (FTA) Consideration (Mar. 29, 2023).

23 An ITIN is a unique tax processing number the IRS issues to individuals who need to file a return or have a federal tax reporting obligation but who do not have and are not eligible for a Social Security number from the Social Security Administration. See IRC § 6109; Treas. Reg. § 301.6109-1. All ITIN applications, including renewals, must include a U.S. federal tax return unless the taxpayer meets an exception to the filing requirement. New applicants must apply with a paper tax return if they do not meet one of the narrow exceptions.

24 See, e.g., National Taxpayer Advocate Fiscal Year 2023 Objectives Report to Congress 23-24 (Systemic Advocacy Objective: *Restore Tax Benefits That Were Disallowed Due to Individual Taxpayer Identification Number Renewal Processing Delays*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/06/JRC23\\_SAO\\_SystAdvObjs.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/06/JRC23_SAO_SystAdvObjs.pdf); National Taxpayer Advocate 2022 Annual Report to Congress 34-44 (Most Serious Problem: *Processing Delays: Paper Backlogs Caused Refund Delays for Millions of Taxpayers*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22\\_MSP\\_01\\_Processing-Delays.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MSP_01_Processing-Delays.pdf).

25 See National Taxpayer Advocate Fiscal Year 2023 Objectives Report to Congress 23-24 (Systemic Advocacy Objective: *Restore Tax Benefits That Were Disallowed Due to Individual Taxpayer Identification Number Renewal Processing Delays*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/06/JRC23\\_SAO\\_SystAdvObjs.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/06/JRC23_SAO_SystAdvObjs.pdf). When non-citizens seek U.S. citizenship, immigration authorities view compliance with U.S. tax laws favorably. 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).

26 See Instructions for Form W-7, Application for IRS Individual Taxpayer Identification Number (Nov. 2021).

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

to apply for an ITIN throughout the year and submit alternate proof of a filing requirement other than an annual tax return.<sup>28</sup>

Taxpayers must file Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for or renew an ITIN.<sup>29</sup> The IRS does not offer a way to electronically file (e-file) Form W-7 so taxpayers have no option other than to file 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>30</sup> Taxpayers may mail their Form W-7 and required documents directly to the IRS or receive in-person assistance through an Acceptance Agent (AA).<sup>31</sup> Taxpayers may also make an appointment at a designated IRS Taxpayer Assistance Center (TAC), which can verify original documents and submit verified copies of those documents to the IRS ITIN Unit, allowing the immediate return of documents to the taxpayer.<sup>32</sup>

Another important option that allows taxpayers, including those residing outside of the United States, to apply for an ITIN and retain their identification documents is Certifying Acceptance Agents (CAAs). CAAs are AAs authorized to verify original documentation and certified copies of the documentation from the issuing agency for primary and secondary applicants and their dependents.<sup>33</sup> As of May 11, 2023, there are 7,192 AAs and CAAs in the United States and 347 in 46 countries outside the United States, including 120 in Canada.<sup>34</sup> Beginning August 15, 2022, the IRS imposed a moratorium on the Acceptance Agent Program. The moratorium is scheduled to expire in Summer 2023, but the IRS has not provided an exact date.<sup>35</sup> The IRS also plans to launch an online portal for AAs and CAAs to submit applications and complete Form W-7 applications. The availability of a robust network of CAAs will reduce the need for taxpayers who need an ITIN to comply with their U.S. tax obligations to surrender important documents for seven to 11 weeks.<sup>36</sup>

### **Objective 5 for FY 2024 – TAS will work with the IRS to identify problems and suggest changes to ITIN processing that will reduce delays negatively impacting taxpayers.**

- Activity 1: Collaborate on cross-functional teams with the IRS to modernize the ITIN process and expand services for ITIN holders and international taxpayers as referenced in the IRS's IRA SOP.
- Activity 2: Work with the IRS to develop and implement a procedure prior to the 2024 filing season that allows all applicants to apply for an ITIN throughout the year by submitting proof of a filing requirement.
- Activity 3: Collaborate on cross-functional teams with the IRS in the development and rollout of an online portal for AAs and CAAs to submit applications and complete Form W-7 applications.

28 See Erin M. Collins, Most Taxpayers Needing a New ITIN Are Prohibited From Filing Electronically, Causing Unnecessary Refund Delays, NATIONAL TAXPAYER ADVOCATE BLOG (Feb. 6, 2023), <https://www.taxpayeradvocate.irs.gov/news/nta-blog-most-taxpayers-needing-a-new-itin-are-prohibited-from-filing-electronically-causing-unnecessary-refund-delays/>.

29 Spouses and dependents are not eligible for an ITIN or renewal of an ITIN unless they are claimed for an allowable tax benefit, or they file their own return.

30 IRC § 6109(i)(2); Treas. Reg. § 301.6109-1(d)(3)(iii).

31 Treas. Reg. § 301.6109-1(d)(3)(ii), (iv). See also Instructions for Form W-7, Application for IRS Individual Taxpayer Identification Number (Nov. 2021).

32 See IRS, IRS Taxpayer Assistance Centers Providing In-Person ITIN Document Review, <https://www.irs.gov/help/tac-locations-where-in-person-document-verification-is-provided> (last visited June 1, 2023).

33 CAAs cannot verify foreign military identification cards. For dependents, CAAs can only verify passports and civil birth certificates; however, they must send the original or certified copies of all other documents directly to the IRS. IRM 3.21.263.4.1, Acceptance Agent (AA) or Certifying Acceptance Agent (CAA) (Jan. 16, 2020). For a list of acceptable supporting identification document(s), see IRM 3.21.263.5.6(4), ITIN Documentation Requirements (Nov. 12, 2021).

34 See IRS, Acceptance Agent Program, <https://www.irs.gov/individuals/international-taxpayers/acceptance-agent-program> (last visited May 11, 2023).

35 See IRS, How to Become an Acceptance Agent for IRS ITIN Numbers, <https://www.irs.gov/individuals/international-taxpayers/how-to-become-an-acceptance-agent-for-irs-itin-numbers> (last visited Apr. 24, 2023).

36 See Instructions for Form W-7, Application for IRS Individual Taxpayer Identification Number (Nov. 2021). The instructions tell applicants to “[a]llow 7 weeks for the IRS to notify you of your ITIN application status (9 to 11 weeks if you submit the application during peak processing periods (January 15 through April 30) or if you’re filing from overseas).”