National Taxpayer Advocate

ANNUAL REPORT TO CONGRESS

2022

TAXPAYER ADVOCATE SERVICE

YOUR VOICE AT THE IRS

TABLE OF CONTENTS

TAS RESEARCH REPORTS

APPENDICES

NATIONAL TAXPAYER ADVOCATE 2023 PURPLE BOOK: Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration *(published as separate volume)*

Preface: Introductory Remarks by the National Taxpayer Advocate

HONORABLE MEMBERS OF CONGRESS:

It is my privilege to submit for your consideration the National Taxpayer Advocate's 2022 Annual Report to Congress. As required by law, this report identifies and discusses what I believe to be the ten most serious problems taxpayers face in their dealings with the IRS, summarizes the most frequently litigated tax issues over the past fiscal year, and makes administrative and legislative recommendations to mitigate taxpayer problems and improve the taxpayer experience.[1] Our legislative recommendations are presented in a companion volume, *National Taxpayer Advocate 2023 Purple Book: Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration*.

The main focus of this year's report is the elephant in the room – the continuing customer service challenges taxpayers are experiencing and the negative impact of the filing season backlog. Last year, I reported that the period since the start of the COVID-19 pandemic has been the most challenging that taxpayers and tax professionals have ever faced. The bad news is that taxpayers and tax professionals experienced more misery in 2022. The good news is that since the close of the 2022 filing season, the IRS has made considerable progress in reducing the volume of unprocessed returns and correspondence. We have begun to see light at the end of the tunnel. I am just not sure how much further we need to travel before we see sunlight.

As we enter 2023, the IRS must focus its resources on its core taxpayer service mission – processing tax returns, paying refunds, answering and addressing telephone calls, and providing in-person assistance to taxpayers who seek it. It is crucial that the IRS eliminate the filing season backlog once and for all. With the additional funding the IRS has received and the Direct Hire Authority provided by Congress and the Office of Personnel Management, the IRS is hiring and training more personnel to provide much-needed relief and assistance to taxpayers. But it still will take time until that relief materializes and taxpayers and tax professionals see the benefits. Being transparent and managing expectations will be important to regain public trust.

2022 WAS ANOTHER DIFFICULT YEAR FOR TAXPAYERS AND TAX PROFESSIONALS

As noted, the IRS has struggled to administer the tax system since the start of the COVID-19 pandemic. Its challenges are due partly to the paper backlogs that developed when the agency closed its processing centers and offices early in the pandemic and partly to the need to divert resources from its core tax processing responsibilities to administer financial relief programs that Congress authorized, including three rounds of stimulus payments, the Advance Child Tax Credit, and the Employee Retention Tax Credit. The imbalance between the IRS's burgeoning workload and its limited resources has affected almost all aspects of its operations. The taxpayer impact has been felt most acutely in the areas of refund delays, delays in processing taxpayer correspondence (which sometimes lead to further refund delays), and difficulty reaching the IRS by phone or in person at its Taxpayer Assistance Centers.

Refund Delays

For the majority of taxpayers, the most important function the IRS performs each year is issuing timely tax refunds. In 2022, about two-thirds of individual taxpayers were entitled to refunds upon filing their returns.[2] The average refund amount was nearly $3,200.[3] For low-income taxpayers entitled to the Earned Income Tax Credit (EITC) and Child Tax Credit (CTC), refunds may sometimes be closer to $10,000 and may serve as a lifeline that enables them to afford housing, transportation, food, or medicine.

For the third year in a row, the IRS failed to meet its responsibility to pay timely refunds to millions of taxpayers. For the majority of taxpayers who e-file their returns and whose returns are processed without issue, refunds were paid timely. But last year about 13 million individual taxpayers filed paper returns, and millions of e-filed returns were "suspended" because they tripped IRS processing filters and required further review by IRS employees. In other words, those returns required human intervention and could not be automated.

On a positive note, the IRS leveraged lessons learned from its experience in 2021; it created and utilized an automated tool to correct errors associated with the Recovery Rebate Credit and changes to refundable credits (EITC and CTC), resulting in quicker refunds for over 12 million taxpayers. Even with the tool's benefits, however, the IRS website said in mid-December: "[W]e've processed all paper and electronic individual returns in the order received if they were received prior to April 2022 and the return had no errors and did not require further review."[4] That suggests that millions of taxpayers who filed paper returns or whose e-filed returns were suspended for further review have been waiting 8.5 months or longer to receive their refunds. That is not acceptable.

Delays in Processing Taxpayer Correspondence

The IRS also struggled to process taxpayer correspondence. During 2022, the IRS sent millions of notices to taxpayers. These included some 17 million math error notices,[5] Automated Underreporter notices (where an amount reported on a tax return did not match the corresponding amount reported to the IRS on a Form 1099 or other information reporting document), notices requesting a taxpayer authenticate identity where IRS filters flagged a return as potentially fraudulent, correspondence examination notices, and some collection notices. Often, written taxpayer responses were required. If the IRS did not process a taxpayer response, it may have taken adverse action against the taxpayer or not released the refund claimed on the tax return.

The IRS reduced its Accounts Management inventories, including cases involving the processing of taxpayer correspondence, by allocating additional resources to resolve them. The Accounts Management function received slightly more cases in fiscal year (FY) 2022 than it had received in FY 2021 (22.7 million cases in FY 2022, as compared with 22.1 million cases in FY 2021), but it closed considerably more cases (23.9 million cases in FY 2022, as compared with 18.3 million in FY 2021), reducing its overall inventory.[6] That was a positive development. But cycle time was still long, and delays in processing correspondence typically translate into delays in paying refunds. During FY 2022, it took the IRS an average of 193 days to process taxpayer responses to proposed adjustments – about six months.[7] That compares with 89 days in FY 2019, the most recent pre-pandemic year.

During 2022, many victims of identity theft faced delays of more than a year in receiving their refunds. Unfortunately, those delays are continuing. As of mid-December, about 2.9 million returns remained suspended (*i.e.*, not processed) because of possible identity theft. If a taxpayer believes he or she has been a victim of tax-related identity theft, the taxpayer is generally required to file a Form 14039, Identity Theft Affidavit. As of mid-December, the IRS website said: "[D]ue to extenuating circumstances caused by the pandemic, our identity theft inventories have increased and on average it is taking about 360 days to resolve identify theft cases."[8] A full year wait is unacceptable. The IRS must assign additional staffing to process these cases expeditiously.

Despite these problems, the IRS made major strides during 2022 in reducing its inventory levels, particularly its backlog of individual paper-filed tax returns, as shown in the following figures.[9]

FIGURE 1.1.1, Status of Inventory Requiring Manual Processing (as of December 31, 2021)[10]

	Individual	Business	Not Specified/ Other	Total
Paper Returns Awaiting Processing	4,700,000	3,200,000	300,000	8,200,000
Paper and Electronic Returns – Processing Suspended	2,900,000	1,300,000		4,200,000
Amended Returns Inventory	2,400,000	1,200,000		3,600,000
Total Unprocessed Returns	10,000,000	5,700,000	300,000	16,000,000
Correspondence/Accounts Management Cases (excluding amended returns)	3,100,000	1,100,000	2,100,000	6,300,000
Total Inventory Requiring Manual Processing	13,100,000	6,800,000	2,400,000	22,300,000

FIGURE 1.1.2, Status of Inventory Requiring Manual Processing (as of December 9, 2022)[11]

	Individual	Business	Not Specified/ Other	Total
Paper Returns Awaiting Processing	1,000,000	1,500,000	100,000	2,600,000
Paper and Electronic Returns – Processing Suspended	4,300,000	1,600,000		5,900,000
Amended Returns Inventory	600,000	900,000		1,500,000
Total Unprocessed Returns	5,900,000	4,000,000	100,000	10,000,000
Correspondence/Accounts Management Cases (excluding amended returns)	2,000,000	800,000	2,300,000	5,100,000
Total Inventory Requiring Manual Processing	7,900,000	4,800,000	2,400,000	15,100,000

As these figures show, the IRS began 2022 with a backlog of 4.7 million original individual returns (Forms 1040) and 3.2 million original business returns. The IRS processed the carryover returns and most paper-filed returns received in 2022, cutting its original individual return and original business return inventories by mid-December to 1.0 million and 1.5 million, respectively, which is more typical of pre-pandemic years. For amended returns, the IRS cut the backlog from 2.4 million to 600,000 for individuals and from 1.2 million to 900,000 for businesses. Because the majority of individual taxpayers receive refunds, the reduction in unprocessed paper tax returns was a significant accomplishment. The IRS also reduced its inventory of Correspondence/Accounts Management cases from 6.3 million to 5.1 million. However, the number of returns in suspense status increased from 4.2 million to 5.9 million, primarily due to an increase of 1.3 million suspected identity theft cases. The backlog of ten million unprocessed tax returns and 5.1 million Accounts Management cases will be carried over into the 2023 filing season, creating challenges for the 2023 filing season before it even starts and continuing frustration and delays for taxpayers.

Difficulty Reaching the IRS on Its Toll-Free Telephone Lines

Overall Calls. Unlike return processing, telephone service did not improve in 2022. In an effort to reduce or eliminate the paper processing backlog carrying into the 2023 filing season, the IRS assigned more customer service representatives and reassigned compliance and enforcement personnel to process paper inventory.[12] The National Taxpayer Advocate, stakeholders, and Members of Congress called on the IRS to prioritize paper processing and eliminate the backlog. In December 2021 and January 2022, the Treasury Department and the IRS received numerous letters signed by more than 200 Members of Congress expressing concerns over the backlog of unprocessed returns from 2020 and 2021 and urging the IRS to prioritize return processing due to the burdens and delays impacting their constituents. I believe the IRS made the right strategic decision in doing this, as the backlog continues to decrease and the IRS starts the 2023 filing season in a far better position, but the resulting impact on telephone service was incredibly frustrating for taxpayers, tax professionals, and employees. In 2021, only 11 percent of callers reached a telephone assistor. In 2022, the percentage ticked up slightly to almost 13 percent. That still meant that about seven out of every eight calls did not get through to a telephone assistor. For those who did get through, the average time spent on hold increased from 23 minutes to 29 minutes. IRS employees answered over ten million fewer calls in 2022 than in 2021, but the percentage of calls answered ticked up because the IRS received about 109 million fewer calls, as shown in Figure 1.1.3.

FIGURE 1.1.3, IRS Enterprise Telephone Results Comparing FYs 2021 and 2022[13]

Fiscal Year	Calls Received	Number of Calls Answered by an IRS Employee	Percentage of Calls Answered by an IRS Employee	Time on Hold
2021	282 million	32 million	11%	23 minutes
2022	173 million	22 million	13%	29 minutes

Calls From Tax Professionals. Last year was also a frustrating year for tax professionals. More than half of individual income tax returns are prepared by tax professionals, and many taxpayers rely on their preparers to address follow-up requests for information. In 2022, we regularly heard complaints from tax professionals and the organizations that represent them about the difficulty of reaching an IRS employee on the Practitioner Priority Service (PPS) telephone lines. Their frustration was understandable. In 2021, IRS employees answered 24 percent of the calls they received on the PPS line, and the average hold time was 16 minutes. In 2022, IRS employees answered only 16 percent of their calls (fewer than one out of six), and the average hold time for those who got through was 25 minutes. Tax professionals are key to a successful tax administration. The challenges of the past three filing seasons have pushed tax professionals to their limits, raising client doubts in their abilities and creating a loss of trust in the system – often through no fault of the tax professional.

FIGURE 1.1.4, IRS Practitioner Priority Service Telephone Results Comparing FYs 2021 and 2022[14]

Fiscal Year	Calls Received	Number of Calls Answered by an IRS Employee	Percentage of Calls Answered by an IRS Employee	Time on Hold
2021	9.3 million	2.2 million	24%	16 minutes
2022	12.7 million	2.0 million	16%	25 minutes

While refund delays, correspondence delays, and telephone service were the most significant and frustrating taxpayer challenges, there were many others. In the Most Serious Problems section of this report, we discuss key challenges in more detail.

TAXPAYER SERVICE SHOULD IMPROVE IN 2023

For the first time since the start of the pandemic, the IRS will begin 2023 in a better position than prior years to improve its performance for three reasons: (1) IRS has largely worked through its backlog of unprocessed tax returns, albeit it remains challenged with the high volume of suspended returns and correspondence; (2) Congress has provided the IRS with significant additional funding to increase its customer service staffing; and (3) with the benefit of Direct Hire Authority, the IRS recently hired 4,000 new customer service representatives and is seeking to hire 700 additional employees to provide in-person help at its Taxpayer Assistance Centers.[15] Direct Hire Authority has enabled the IRS to reduce the number of days from the time it posts an announcement on USAJobs.gov until it onboards a new employee by more than half.

The improvements in service will not happen immediately, and I anticipate that the upcoming filing season will present challenges. These challenges will include the impact of the carryover backlog, improving telephone service operations, and hiring, training, and staffing issues. The IRS also will have to administer several new credits enacted as part of the Inflation Reduction Act (IRA), and as the year progresses, Congress may task it with implementing and administering significant new legislation, as it often does, which would require the IRS to further divert resources from getting current on its inventories. At the same time, implementation of the IRA requires the IRS leadership to devote resources to re-envisioning its business operations and preparing to deliver transformational change that includes dramatically improving taxpayer service and modernizing its technology while enforcing the tax laws in a fair and equitable manner.

Staffing increases come with growing pains. As new employees are added, they must be trained. For most jobs, the IRS does not maintain a separate cadre of instructors. Instead, experienced employees must be pulled off their regular caseloads to provide the initial training and act as on-the-job instructors. In the short run, that may mean that fewer employees are assisting taxpayers, particularly experienced employees who are likely to be the most effective trainers.

Until the number of trained, functional employees increases substantially, taxpayer service will continue to be a zero-sum game. For example, as more Accounts Management employees are assigned to answer the phones, fewer employees will be available to process amended returns and taxpayer correspondence, and vice versa. If more experienced employees are pulled off their regular jobs to train new hires, service will suffer in the short term. The IRS will have to perform a difficult balancing act with its current resources and will need to ensure it does not create a new paper backlog in 2023 by reassigning too many Accounts Management employees from processing case inventories to answering the phones. The IRS needs to end the vicious cycle of paper backlogs. As employees are trained and report for duty, I expect we will start to see improvements in service, probably by the middle of 2023.

PRIORITY RECOMMENDATIONS TO IMPROVE THE TAXPAYER EXPERIENCE OVER THE LONGER TERM

The IRA, which was enacted in August, provided the IRS with supplemental funding of nearly $80 billion over the next ten years. More than half the funding was earmarked for tax law enforcement, and that portion of the funding has attracted considerable attention and some controversy. But critically and not controversially, the legislation also provides supplemental funding of about $3.2 billion for much-needed taxpayer services, including pre-filing assistance and education, filing and account services, and taxpayer advocacy services, and $4.8 billion to enable the IRS to continue modernizing its information technology (IT) systems, including advancement of customer callback and other technology to provide a more personalized customer experience. This additional funding should be a gamechanger for taxpayers and tax professionals. If spent wisely, the funding will give IRS management the tools it needs to bring U.S. tax administration into the 21st century by enabling it to hire and train the workforce of the future, replace antiquated IT systems, and generally revamp the taxpayer experience based on principles of fair and equitable tax administration.

In an August 17 memorandum, the Secretary of the Treasury directed the Commissioner to produce an operational plan within six months that details how the additional IRA funding will be spent. In a blog I posted in September and in internal discussions, I have strongly recommended that the IRS include the following initiatives in its operational plan:[16]

1. **Hire and train more human resources employees to manage hiring all IRS employees**. Ironically, staffing shortages in the IRS's Human Capital Office (HCO) are one of the biggest obstacles to hiring and onboarding more employees. HCO, which coordinates all IRS hiring, does not have enough staff to review and approve new position descriptions, post job announcements, and screen incoming applications. Without HCO involvement, other IRS divisions cannot hire employees even when they

have funding. Bringing on more IRS employees quickly is critical, particularly in the taxpayer service and IT areas. Now that the agency has received additional funding, it should quickly bolster its HCO staff and, in the interim, provide creative alternatives, including enabling the business units to do their own hiring so new employees can be selected, while also working to expedite security checks and the onboarding of new employees.

2. **Ensure all IRS employees – particularly customer-facing employees – are well-trained to do their jobs**. From a taxpayer perspective, getting through to a live IRS telephone assistor or having taxpayer correspondence processed quickly is important, but even more important, the responding IRS employee must have enough knowledge to handle the question or issue properly. The combination of budget cuts beginning in FY 2011 and continuing until the last few years and the COVID-19 pandemic has limited the IRS's ability to provide adequate training to new employees and to provide regular updates and refresher training to its workforce. Training must go hand-in-hand with hiring, and it must continue throughout employees' careers with the IRS, with a continuing focus on taxpayer rights. Doing work incorrectly can be worse than not doing it at all.

3. **Create robust and accessible online accounts with functionality comparable to that of private financial institutions and through which taxpayers and practitioners can access, download, and upload material information**. Of all the steps the IRS can take to improve the taxpayer experience, creating robust online accounts should be the highest priority and will be the most transformational. Most of us have been conducting business with our financial institutions digitally for two decades or more – paying bills, transferring funds, depositing checks, applying for loans, trading stocks and mutual funds, etc. While we occasionally still need to visit, call, or send correspondence to our financial institutions, online transactions have become the norm.

   The IRS must offer online accounts with comparable functionality – the ability to file tax returns, make payments, view transactions, receive or view tax adjustments or other notices, respond to tax adjustments or other notices, upload and download documents, and submit questions or live chat with an IRS employee – which usually will eliminate the need for visiting, calling, or sending correspondence. Online accounts should be available for all taxpayers, including individuals, businesses, and other entities, and should provide practitioners with the ability to access their client's online information. Each year, practitioners assist a high percentage of taxpayers in resolving issues and encourage voluntary compliance. Practitioner efforts are instrumental in effective tax administration.

4. **Temporarily expand uses of the Documentation Upload Tool (DUT) or similar technology**. The IRS has made it possible for taxpayers in some circumstances to provide requested information online rather than by snail mail. For example, an auditor requesting documentation to support a taxpayer's business deductions or charitable contributions may provide the taxpayer with a link and passcode so the taxpayer can upload the documentation and not have to mail it in. Eventually, this functionality should be rolled into IRS online accounts. Until that happens, broader use of the DUT will reduce the burden on taxpayers and allow the IRS to resolve issues more quickly.

5. **Improve the readability of tax transcripts**.[17] The IRS utilizes codes for various transactions, and these codes are included on the transcripts provided to taxpayers, their representatives, and anyone else authorized to receive them. However, the codes are not intelligible to the non-tax professional, and even tax professionals often struggle to understand them. The IRS should revamp the presentation of tax transcripts to substitute descriptions for the codes or at least include a glossary on a separate piece of paper that explains – in plain language – what each code on the transcript means.

6. **Enable all taxpayers to e-file their tax returns**. Over 90 percent of individual taxpayers now e-file their income tax returns, but the IRS still receives millions of paper tax returns each year (about 13 million

individual returns and millions of additional business returns last year), and only 69 percent of business returns were filed electronically in FY 2022.[18] Some taxpayers would prefer to e-file but cannot do so. This can happen if the taxpayer must file a form or schedule that IRS systems are not yet programmed to accept electronically, if a return is rejected by IRS's systems for violating a programming rule, or if a taxpayer must attach documentation to the return (*e.g.*, an appraisal or disclosure) and the tax return software the taxpayer is using does not allow for the transmission of attachments.

There are steps the IRS can take to address all three of these limitations. It can modernize its e-filing platform to accept all IRS forms and schedules and taxpayer attachments. It can accept and review returns that violate some IRS systems' programming rules. (Otherwise, the taxpayer whose return is rejected must file it on paper, requiring the IRS to transcribe it.) And if some software packages allow taxpayers to submit attachments and others do not, the IRS can post a list of software packages that allow attachments online. That way, taxpayers with attachments will know which packages they can use to e-file their returns. If the IRS makes it possible for all taxpayers to e-file their returns, the number of paper-filed returns is likely to drop dramatically.

7. **Implement scanning technology to machine read paper-filed tax returns and correspondence.** Although making e-filing possible for all taxpayers will help, some taxpayers will likely choose to file paper returns or have no choice but to file paper returns for the foreseeable future. The IRS must automate paper processing to increase efficiencies and move toward a paperless work environment, not only to assist taxpayers but for its own benefit.

   Various forms of scanning technology are available that would allow the IRS to machine read paper-filed returns and reduce the current need for employees to type data from the returns digit by digit into IRS systems. This will speed processing, reduce transcription errors, and reduce employee costs. Two of the leading technologies are optical character recognition and 2-D barcoding. During 2022, I issued a Taxpayer Advocate Directive (TAD) to the IRS Deputy Commissioners directing them to implement scanning technology in time for the 2023 filing season. I found their response inadequate, so I appealed it to the Commissioner. On October 31, he responded to say the IRS will be scanning "some" paper returns in early 2023, and "if the scanning is successful, additional [returns] will be scanned later in 2023."[19] Both to prevent future backlogs and to achieve processing efficiencies, I continue to believe the IRS must prioritize the implementation of scanning technology.

8. **Digitize all paper and implement an integrated case management system so all taxpayer information is accessible in a single database.** The IRS currently stores data on about 60 case management systems that generally cannot communicate with each other. If a taxpayer calls the IRS for information about an account issue, the IRS employee often must search multiple systems or transfer the taxpayer to a second employee, and sometimes a third employee, simply because the data is not centrally accessible. This can affect tools like Where's My Refund?, which pulls data from some case management systems but not others, and therefore may not provide taxpayers with much-needed, up-to-date information.

   A single integrated system, with modernized Individual and Business Master File core components, would allow the IRS to provide taxpayers with faster and more complete service and would improve the efficiency of IRS employees. Moving away from paper files will also increase efficiency in working issues, moving information from one part of the organization to another, and reducing the unnecessary strain on the system that paper files create. Various levels of "permissions" should be built into the system so sensitive information would be accessible only by employees with a need to know.

9. **Overhaul the IRS.gov website to make it more user-friendly**.[20] Unlike many internet search engines, the IRS.gov search engine does not allow for plain language and does not adjust for incorrect spelling or use/non-use of hyphens. The frustration is that the information often *does* exist on IRS.gov; a taxpayer

just can't find it. Many IRS employees find it more productive to use a commercial search engine and add "IRS.gov" to the search than to use IRS.gov itself.

10. **Continue to develop and improve voicebots and chatbots**. To its credit, the IRS has developed automated tools that allow taxpayers to pose questions and receive responses from "smart" bots. For example, a bot can walk a taxpayer through the steps required to set up a payment plan. The more these bots can be improved, the less frequently taxpayers will need to speak with an IRS employee to obtain answers. Bots generally are not an adequate substitute for speaking with an IRS employee to address complicated or nuanced issues. But if the simpler issues can be effectively addressed through bots, employees could spend more time assisting taxpayers who genuinely need their help. Bots can be an important addition to the IRS's omnichannel approach to taxpayer service.

11. **Improve transparency**. During the past three filing seasons, taxpayers and tax professionals have complained regularly about the lack of information regarding IRS processing delays and other challenges. The IRS provides some information regarding its processing backlogs on IRS.gov, but much of the information is limited or infrequently updated, and it does not generally tell taxpayers how long they will have to wait to receive their refunds.[21] The IRS should post an easy-to-read dashboard on its website that displays current wait times for numerous categories of work, including paper processing of various types of tax returns, the percentage of taxpayer calls that reached an IRS employee over the preceding week and the average time to get through, and the time it is taking to resolve certain categories of taxpayer correspondence. The IRS's lack of proactive transparency has not only frustrated taxpayers and tax professionals, but it has led to more work for the IRS. When taxpayers and tax professionals do not know whether an unprocessed return or letter is within the IRS's delayed timeframes or may have been lost or misplaced, they call and write the IRS to get the information that a clear dashboard should provide.

12. **Issue clear notices and IRS guidance**. Notices are the primary vehicle by which the IRS provides taxpayers with information. Many notices sent to taxpayers contain critical information about issues, including statutory deadlines, reasons the IRS is holding a refund, and what a taxpayer needs to do to resolve an issue. Over the years, the IRS has struggled to improve the clarity of its notices. Some critical notices remain confusing and vague and don't provide taxpayers with adequate IRS contact information. Sometimes, this happens because the IRS limits the number of characters and words in its notices. Although there are legitimate reasons for limiting the text in a notice that the IRS must consider, it is essential (and possible) for the IRS to develop notices that are clear and concise.

13. **Increase TAS funding**. Although enforcement is a necessary element of a fair and voluntary tax reporting system, increased enforcement will cause challenges and problems for some taxpayers. Sometimes, the IRS will take collection actions that cause economic hardship, leading taxpayers to seek TAS assistance to release levies. In other cases, taxpayers may suffer a significant hardship because of the manner in which the IRS administers the tax laws, including improper enforcement actions or inaction by the IRS on required administrative functions, also leading to more TAS cases. TAS's case advocacy operations are already stretched thin, and we will need to hire additional employees if the IRS ramps up its compliance and enforcement activities, as that inevitably will lead to more TAS cases.

Taxpayers have had to put up with poor taxpayer service for many years due to the IRS's antiquated technology and inadequate taxpayer service staffing. The supplemental funding Congress has provided gives the IRS a once-in-a-generation opportunity to bring its taxpayer service operations into the 21st century. The recommendations I have laid out are critical, but they do not cover the waterfront. The Secretary of the Treasury should share the IRS's operational plan with Congress and the public, and the IRS should provide regular updates so Congress can conduct proper oversight and the public can be assured that the taxpayer experience continues to improve.

LEGISLATIVE RECOMMENDATIONS

The National Taxpayer Advocate Purple Book this year makes 65 recommendations to strengthen taxpayer rights and improve tax administration. Most recommendations in this volume are non-controversial, common-sense reforms. For the first time, we have added a "Summary" section at the beginning of each recommendation that sets out the "Problem" and our suggested "Solution" in concise, layman's terms. We hope the tax-writing committees and other Members of Congress find it useful.

We highlight the following ten legislative recommendations for particular attention, in no specific order:

- **Amend the "Lookback Period" to Allow Tax Refunds for Certain Taxpayers Who Took Advantage of the Postponed Filing Deadlines Due to COVID-19**. Because of the pandemic, the IRS postponed the tax return filing deadline to July 15 in 2020 and to May 17 in 2021. These postponements helped taxpayers by giving them more time to file their returns, but they are inadvertently springing a trap on unwary taxpayers and tax professionals that may cause permanent harm by limiting their ability to obtain refunds for tax years 2019 and 2020. Under IRC § 6511, taxpayers generally must meet a two-part test to receive a refund. First, the claim for refund must be timely; it generally must be filed by the later of three years from the date the return was filed or two years from the date the tax was paid. Second, the monies at issue must have been paid within a specified "lookback period." The lookback period is three years plus the period of any extension of time for filing if the taxpayer filed the claim for refund within three years from the date of filing the return. But a "postponement" of the filing deadline, unlike an "extension" of time to file, does not extend the lookback period. *A taxpayer who filed an original return under a "postponement" granted by the IRS because of the federally declared disaster will not be entitled to a refund if the excess amounts were paid (or deemed paid) outside the lookback period*.

  To illustrate, a taxpayer who filed her 2019 return on the postponed filing deadline of July 15, 2020, might reasonably believe she has until July 15, 2023, to file her claim for refund (three years from the date she filed her return).[22] However, her taxes (withholding and estimated tax payments) were deemed paid on April 15, 2020, which falls outside the lookback period of three years prior to July 15, 2023. The IRS will deny a claim for refund filed after April 15, 2023, in this circumstance. We recommend Congress amend the lookback period so that when the IRS postpones a filing deadline due to a disaster declaration, taxpayers can recover amounts paid within three years plus the period of the postponement, similar to the lookback period when a taxpayer has requested an extension of time to file.

- **Authorize the IRS to Establish Minimum Competency Standards for Federal Tax Return Preparers**. The IRS receives over 160 million individual income tax returns each year, and tax return preparers prepare the majority of them. Both taxpayers and the tax system depend heavily on the ability of preparers to prepare accurate tax returns. Yet no one is required to pass a competency test to become a federal tax return preparer, and numerous studies have found that non-credentialed tax return preparers routinely prepare inaccurate returns, which harms taxpayers and tax administration. To protect the public, federal and state laws generally require lawyers, doctors, securities dealers, financial planners, actuaries, appraisers, contractors, motor vehicle operators, and even barbers and beauticians to obtain licenses or certifications and, in most cases, to pass competency tests. Taxpayers and the tax system would benefit from requiring federal tax return preparers to do so as well. The IRS sought to implement minimum standards beginning in 2011, including passing a basic competency test, but a U.S. Court of Appeals affirmed a U.S. district court opinion that the IRS lacked the authority to impose preparer standards without statutory authorization. The plan the IRS rolled out in 2011 was developed after extensive consultation with stakeholders and was supported by almost all such stakeholders. We recommend Congress authorize the IRS to reinstitute minimum competency standards.

- **Expand the Tax Court's Jurisdiction to Hear Refund Cases and Assessable Penalties**. Under current law, taxpayers who owe tax and wish to litigate a dispute with the IRS must go to the U.S. Tax Court, while taxpayers who have paid their tax liability and are seeking a refund must sue in a U.S. district court or the U.S. Court of Federal Claims. Although this dichotomy between deficiency cases and refund cases has existed for decades, we recommend Congress give taxpayers the option to litigate both deficiency and refund disputes in the U.S. Tax Court. Due to the tax expertise of its judges, the Tax Court is often better equipped to consider tax controversies than other courts. It is also more accessible to unsophisticated and unrepresented taxpayers than other courts because it uses informal procedures, particularly in disputes that do not exceed $50,000 for one tax year or period.

- **Restructure the Earned Income Tax Credit to Make It Simpler for Taxpayers and Reduce the Improper Payments Rate**. TAS has long advocated for dividing the EITC into two credits: (i) a refundable worker credit based on each individual worker's earned income, despite the presence of a qualifying child, and (ii) a refundable child credit that would reflect the costs of caring for one or more children. For wage earners, claims for the worker credit could be verified with nearly 100 percent accuracy by matching claims on tax returns against Forms W-2, reducing the improper payment rate on those claims to nearly zero. The portion of the EITC that varies based on family size would be combined with the child tax credit into a larger family credit. The National Taxpayer Advocate published a detailed report making this recommendation in 2019,[23] and we continue to advocate for it.[24]

- **Expand the Protection of Taxpayer Rights by Strengthening the Low Income Taxpayer Clinic (LITC) Program**. The LITC Program is an effective means to assist low-income taxpayers and taxpayers who speak English as a second language. When the LITC Program was established as part of the IRS Restructuring and Reform Act of 1998, IRC § 7526 limited annual grants to no more than $100,000 per clinic. The law also imposed a 100 percent "match" requirement so a clinic cannot receive more in grants than it raises from other sources. The nature and scope of the LITC Program has evolved considerably since 1998, and those requirements are preventing the program from expanding assistance to the largest possible universe of eligible taxpayers. We recommend that Congress remove the per-clinic cap and allow the IRS to reduce the match requirement to 25 percent if doing so would provide coverage for additional taxpayers.

- **Modify the Requirement That Written Receipts Acknowledging Charitable Contributions Must Pre-Date the Filing of a Tax Return**. To claim a charitable contribution, a taxpayer must receive a written acknowledgement from the donee organization before filing a tax return. For example, if a taxpayer contributes $5,000 to a church, synagogue, or mosque, files a tax return claiming the deduction on February 1, and receives a written acknowledgement on February 2, the deduction is not allowed – even if the taxpayer had credit card receipts and other documentation that fully and unambiguously substantiates the deduction. This requirement is inconsistent with congressional policy to encourage charitable giving. We recommend that Congress modify the substantiation rules to require reliable – but not necessarily advance – acknowledgement from the donee organization.

- **Clarify That Supervisory Approval Is Required Under IRC § 6751(b) Before Proposing Penalties**. IRC § 6751(b)(1) states: "No penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination… ." At first, it seems a requirement that an "initial determination" be approved by a supervisor would mean the approval must occur before the penalty is proposed. However, the timing of this requirement has been the subject of considerable litigation, with some courts holding that the supervisor's approval might be timely even if provided after a case has gone through the IRS Independent Office of Appeals and is in litigation. Very few taxpayers litigate their tax disputes. Therefore, to effectuate Congress's intent that the IRS not penalize taxpayers in certain circumstances without supervisory approval, the approval must be required earlier in the process. We recommend that Congress amend IRC § 6751(b)(1) to require that written supervisory approval be provided before the IRS sends a written communication to the taxpayer proposing a penalty.

- **Require That Math Error Notices Describe the Reason(s) for the Adjustment With Specificity, Inform Taxpayers They May Request Abatement Within 60 Days, and Be Mailed by Certified or Registered Mail.** Under IRC § 6213(b), the IRS may make a summary assessment of tax arising from a mathematical or clerical error. When the IRS does so, it must send the taxpayer a notice describing "the error alleged and an explanation thereof." By law, the taxpayer has 60 days from the date of the notice to request that the summary assessment be abated. However, many taxpayers do not understand that failing to respond to an IRS math error notice within 60 days means they have conceded the adjustment and forfeited their right to challenge the IRS's position in the U.S. Tax Court. To ensure taxpayers understand the adjustment and their rights to contest it, we recommend that Congress amend IRC § 6213(b) to require that the IRS specifically describe the error causing the adjustment and inform taxpayers they have 60 days to request the summary assessment be abated. Additionally, requiring that the notice be sent either by certified or registered mail would underscore the significance of the notice and provide an additional safeguard to ensure that taxpayers receive this critical information.

- **Provide That "an Opportunity to Dispute" an Underlying Liability Means an Opportunity to Dispute Such Liability in a Prepayment Judicial Forum**. IRC §§ 6320(b) and 6330(b) provide taxpayers with the right to request an independent review of either a Notice of Federal Tax Lien (NFTL) filed by the IRS or a proposed levy action. The purpose of this collection due process (CDP) right is to give taxpayers adequate notice of IRS collection activity and provide a meaningful hearing to determine whether the IRS properly filed an NFTL or proposed or initiated a levy. The IRS and the courts interpret the current law to mean that an opportunity to dispute the underlying liability includes a prior opportunity for a conference with the IRS Independent Office of Appeals offered either before or after assessment of the liability, even where there is no opportunity for judicial review of the Appeals conference. The value of CDP proceedings is undermined when taxpayers who have never had an opportunity to dispute the underlying liability in a prepayment judicial forum are precluded from doing so during their CDP hearing. These taxpayers have no alternative but to pay the tax and then seek a refund by suing in a U.S. district court or the U.S. Court of Federal Claims – an option that not all taxpayers can afford. In our view, judicial and administrative interpretations limiting a taxpayer's ability to challenge the IRS's liability determination in a CDP hearing are inconsistent with Congress's intent when it enacted CDP procedures. We recommend that Congress modify these provisions to ensure taxpayers have a right to pre-payment judicial review.

- **Provide That Assessable Penalties Are Subject to Deficiency Procedures**. IRC § 6212 requires the IRS to issue a "notice of deficiency" before assessing certain liabilities. IRC § 6671(a) authorizes the IRS to assess some penalties without first issuing a notice of deficiency. These penalties are generally subject to judicial review only if taxpayers first pay the penalties and then sue for a refund. Assessable penalties can be substantial, sometimes running into the millions of dollars. Under the IRS's interpretation, these penalties include, but are not limited to, foreign information reporting penalties under IRC §§ 6038, 6038A, 6038B, 6038C, and 6038D. The inability of taxpayers to obtain judicial review on a pre-assessment basis and the requirement that taxpayers pay the penalties in full to obtain judicial review on a post-assessment basis can effectively deprive taxpayers of the right to judicial review at all. To ensure taxpayers have an opportunity to obtain judicial review before they are required to pay often substantial penalties that they do not believe they owe, we recommend that Congress require the IRS to issue a notice of deficiency before imposing assessable penalties.

CONCLUSION

During the last three years, we have lived through a period of "All COVID-19, all the time" in tax administration, just as we have in our personal lives, communities, and jobs. These challenges continued to impact taxpayers significantly during 2022 and will carry over into 2023. Our nation's taxpayers deserve better than the service they have received in recent years. They deserve a responsive and respectful tax administration that serves all taxpayers fairly and timely.

During 2022, the IRS made major strides in reducing its inventory backlogs and increased hiring in its customer service operations. As a result, I expect we will begin to see improvements in taxpayer service by the middle of 2023. Over the longer term, the additional funding the IRS recently received from the IRA provides it with the resources it has needed to staff up its Accounts Management function (telephone assistance and paper processing) and Taxpayer Assistance Centers and to overhaul its operations, particularly by modernizing its technology, to improve the taxpayer experience and protect taxpayer rights. For taxpayers to fulfill their tax obligations, they need clear and timely guidance and the ability to reach the IRS for assistance. Providing quality service is foundational to reducing taxpayer errors, encouraging timely filing and payment, restoring trust in our tax system, and ultimately reducing the tax gap.

I look forward to working with Congress and the IRS, and together with my TAS team, we stand ready to help improve taxpayer service and tax administration for the benefit of all taxpayers.

Respectfully submitted,

Erin M. Collins
National Taxpayer Advocate
December 31, 2022

Endnotes

1 IRC § 7803(c)(2)(B)(ii).

2 IRS Filing Season Statistics (week ending Oct. 28, 2022).

3 *Id*.

4 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 Dec. 16, 2022).

5 IRS, Compliance Data Warehouse, Individual Returns Transaction File (returns processed through the week ending Nov. 24, 2022).

6 IRS, Accounts Management Receipt Comparison Report (Oct. 1, 2022) and Accounts Management Closure Comparison Report (Oct. 1, 2022) (both comparing fiscal year-end totals for FY 2022 with fiscal year-end totals for FY 2021).

7 IRS, Research Analysis and Data, Accounts Management Reports: Correspondence Imaging System (CIS) Closed Case Cycle Time (comparing FY 2022 with FY 2019).

8 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 Dec. 16, 2022).

9 The data shown in these figures represent the largest portion of the IRS's customer service workload, but there are many other categories of work not included. For example, these figures do not show most work relating to other types of returns, including estate and gift, trust, non-profit organizations, employment tax, informational returns, or tentative allowance for refunds (Forms 1139 or 1045).

10 IRS, Wage and Investment Division (W&I) compiled data (as of Dec. 31, 2021). The data shown in this figure and the following figure come from weekly reports compiled by W&I. However, there are inconsistencies throughout IRS reporting. For example, this figure shows 8.2 million "paper returns waiting to be processed" and 4.2 million "paper and E-file returns suspended during processing." We received this data two days after a Government Accountability Office (GAO) report was issued that, also based on IRS data, stated there were "about 7.9 million [unprocessed] individual and business paper returns" and "2.6 million returns suspended for review due to errors" at the end of 2021. *See* GAO, GAO-23-105880, *2022 Tax Filing: Backlogs and Ongoing Hiring Challenges Led to Poor Customer Service and Refund Delays* 11, at n.19 (2022), https://www.gao.gov/assets/gao-23-105880.pdf. Some data disparities are due to differences in definitions (*e.g.*, the differences in the number of suspended returns reported by GAO and TAS may reflect differences in which categories of suspended returns are included in the total), while other data disparities have not been adequately explained.

11 IRS, W&I compiled data (as of Dec. 9, 2022).

12 The National Taxpayer Advocate, stakeholders, and Members of Congress called on the IRS to prioritize paper processing and eliminate the backlog. In December 2021 and January 2022, the Treasury Department and the IRS received numerous letters signed by more than 200 Members of Congress expressing concerns over the backlog of unprocessed returns from 2020 and 2021 and urging the IRS to prioritize return processing due to the burdens and delays impacting their constituents.

13 IRS, Joint Operations Center (JOC), Snapshot Reports: Enterprise Snapshot/Enterprise Total (as of the end of FYs 2021 and 2022).

14 IRS, JOC, Snapshot Reports: Product Line Detail/PPS (as of the end of FYs 2021 and 2022).

15 IRS, IR-2022-197, IRS Announces Job Openings to Hire Over 700 New Employees Across the Country to Help Taxpayers In Person (Nov. 9, 2022), https://www.irs.gov/newsroom/irs-announces-job-openings-to-hire-over-700-new-employees-across-the-country-to-help-taxpayers-in-person. In a response included in this report, the IRS provided somewhat higher overall hiring numbers than it cited in in this news release. *See* Most Serious Problem: *Processing Delays: Paper Backlogs Caused Refund Delays for Millions of Taxpayers*, *infra* ("Accounts Management onboarded over 5,500 employees in preparation for [Filing Season] 2023 and Submission Processing selected more than 1,200 applicants during October and continues to onboard contractors for clerical support.").

16 *See* Erin M. Collins, The NTA Reimagines the IRS With a Dramatically Improved Taxpayer Experience: Part Two, National Taxpayer Advocate Blog (Sept. 15, 2022), https://www.taxpayeradvocate.irs.gov/news/nta-blog-the-nta-reimagines-the-irs-with-a-dramatically-improved-taxpayer-experience-part-two.

17 *See* Erin M. Collins, Decoding IRS Transcripts and the New Transcript Format: Part I, National Taxpayer Advocate Blog (Oct. 5, 2021), https://www.taxpayeradvocate.irs.gov/news/nta-blog-transcripts-pt1; Erin M. Collins, Decoding IRS Transcripts and the New Transcript Format: Part II, National Taxpayer Advocate Blog (Oct. 6, 2021), https://www.taxpayeradvocate.irs.gov/news/nta-blog-transcripts-pt2.

18 IRS, W&I, Submission Processing: Filing Season Statistics (calendar year 2022 through Dec. 17, 2022).

19 TADs and the IRS responses are posted on the IRS website at https://www.irs.gov/advocate/taxpayer-advocate-directives-and-related-documents. *See* 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; Erin M. Collins, IRS Deputy Commissioners Respond to Taxpayer Advocate Directive on Scanning Technology; National Taxpayer Advocate Appeals Decision to IRS Commissioner, National Taxpayer Advocate Blog (Aug. 4, 2022), https://www.taxpayeradvocate.irs.gov/news/nta-blog-irs-deputy-commissioners-respond-to-taxpayer-advocate-directive.

20 For an in-depth discussion regarding the IRS website, see Erin M. Collins, IRS.gov – How Usable Is It? (Part One), National Taxpayer Advocate Blog (Aug. 9, 2022), https://www.taxpayeradvocate.irs.gov/news/nta-blog-irsgov-website-1; Erin M. Collins, IRS.gov – How Usable Is It? (Part Two), National Taxpayer Advocate Blog (Aug. 11, 2022), https://www.taxpayeradvocate.irs.gov/news/nta-blog-irsgov-website-2.

21 *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 Dec. 20, 2022).

22 A taxpayer who filed on July 15, 2020, has until July 17, 2023, to file a timely claim for refund for tax year 2020, as July 15, 2023, is a Saturday. When the due date falls on a Saturday, Sunday, or legal holiday, IRC § 7503 provides that a taxpayer has until the next business day to file a timely claim.

23 *See* National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress, vol. 3 (Special Report: *Earned Income Tax Credit: Making the EITC Work for Taxpayers and the Government*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/JRC20_Volume3.pdf.

24 *See Research Report: Exploring Earned Income Tax Credit Structures: Dividing the Credit Between a Worker and Child Component and Other Considerations, infra.*

Taxpayer Rights and Service Assessment: IRS Performance Measures and Data Relating to Taxpayer Rights and Service

INTRODUCTION

The Taxpayer Rights and Service Assessment provides the IRS, Congress, and other stakeholders with a "report card" to measure how the agency is doing in protecting and furthering taxpayer rights and service while driving voluntary compliance. This report card can be integral to the IRS's ongoing implementation of the Taxpayer Bill of Rights (TBOR) and may be used to indicate areas where shifting resources impact the IRS's ability to maintain a robust adherence to TBOR in practice and provide a high level of customer service. Taxpayer rights and taxpayer customer service are discrete but closely linked considerations.

FIGURE 1.2.1[1]

The Taxpayer First Act (TFA), passed in 2019, required the IRS to submit a written comprehensive customer service strategy that "identified metrics and benchmarks for quantitatively measuring the progress of the Internal Revenue Service in implementing such strategy."[2] This strategy includes the establishment of the IRS's Taxpayer Experience Office (TXO), charged with, "focus[ing] on continuously improving the taxpayer experience across all interactions with the IRS."[3] Employing the use of metrics is vital to gauging the success of any large public-facing system, and the Taxpayer Rights and Service Assessment can be an aid to the TXO in identifying customer service channels requiring adjustment by comparing fiscal year (FY) data as the customer service strategy is implemented.[4] Traditionally, IRS metrics have focused on "efficiency" – no-change rates, cycle time, etc. As the IRS evolves in its delivery of customer experience and it gains additional funding to realize its customer service goals, it will require the development of new taxpayer-centric metrics. We look forward to working further with the IRS on its TFA implementation, customer service strategy, and development of measures for gauging successful taxpayer service.

The Inflation Reduction Act of 2022 Has Given the IRS a Rare Opportunity to Transform and Dramatically Improve Its Customer Service – But Funding Alone Does Not Guarantee Success

In recent reports, this assessment has highlighted IRS challenges as its inflation-adjusted budget appropriation and staffing levels have declined in the face of rising workloads. TAS has maintained that without sustained, consistent, and dedicated funding, the IRS would remain challenged to develop and maintain the workforce and administrative tools necessary to deliver a high quality of customer service that all taxpayers are entitled to and should reasonably expect from their federal tax administrator.

In FY 2022, Congress passed the Inflation Reduction Act of 2022, which appropriates nearly $80 billion in additional IRS funding, including almost $3.2 billion allotted for taxpayer services, $45.6 billion for enforcement, $25.3 billion for operations support, and nearly $4.8 billion for business systems modernization.[5] This legislation provides the IRS a critical opportunity to significantly improve its delivery of taxpayer services, but increased funding alone will not guarantee improvement. On August 17, 2022, Secretary of the Treasury Janet Yellen formally requested the IRS provide a strategic plan on how the agency intends to apply this funding.[6] The plan should clearly communicate its vision and strategy with defined metrics and benchmarks to determine when resource allocations are or are not successfully improving the taxpayer experience. The choices made regarding the use of this historic funding and the level of transparency exhibited while communicating the intent behind these decisions should significantly impact the quality of IRS customer service as well as taxpayers' perception of the organization as a service-oriented provider.[7] It should be noted while reviewing this assessment that as the Inflation Reduction Act was enacted on August 16, 2022, it will not effect a change when looking at FY 2022 performance metrics. TAS will continue to pay keen attention, however, to determine how the IRS's use of this additional funding will improve taxpayer service moving forward.

FIGURE 1.2.2[8]

IRS Pre-Inflation Reduction Act of 2022 Snapshot

IRS Full-Time Equivalents, Return Volume, and Inflation-Adjusted Budget, FYs 2010-2022

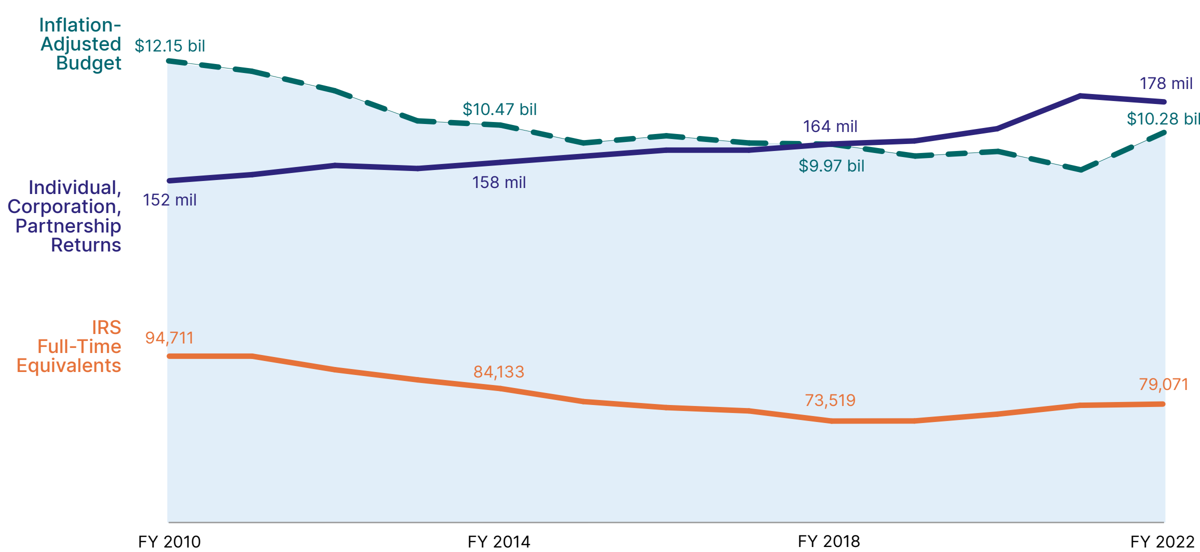
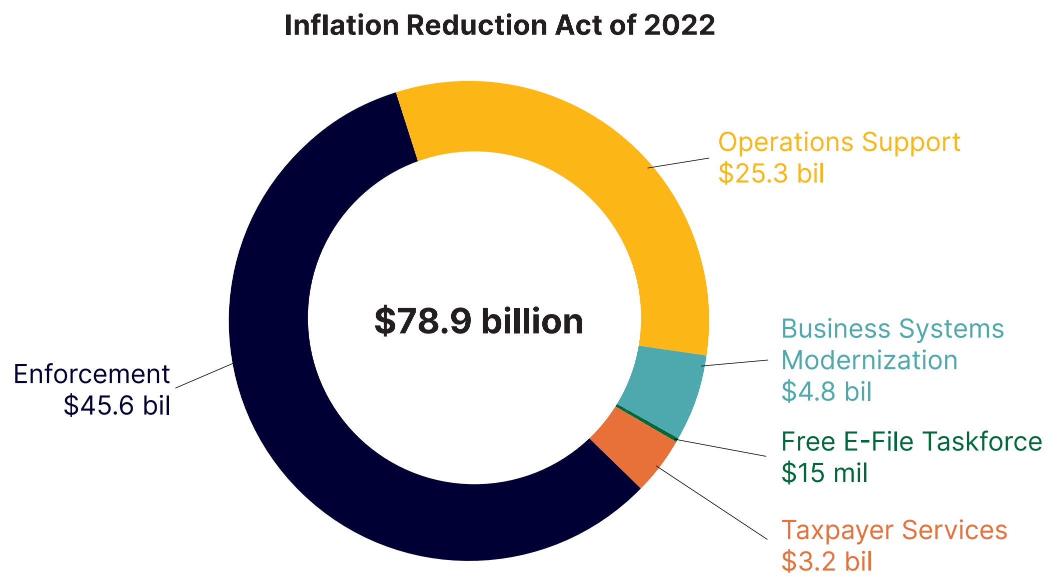


FIGURE 1.2.3[9]



TAXPAYER SERVICE: TAX RETURN PROCESSING[10]

Processing Center Closures, the Impact of COVID-19, Rising Return Inventories, and Diminishing Resources Have Negatively Influenced the Quality of Customer Service

Tax return processing is a fundamental IRS function, and return filing metrics are an important measure of IRS workload. Rising return inventories coupled with diminishing resources influence the quality of customer service taxpayers receive, and disruptions to this essential function negatively impact taxpayer rights.[11] Large paper processing backlogs experienced due to COVID-19 highlight how dramatically taxpayers are impacted when this essential process falters.[12] The number of individual, business, and other returns filed each year is on the rise, growing from 255,249,983 returns filed in FY 2019 to 271,612,000 projected returns filed for FY 2022.[13] While the majority of taxpayers opt to file electronically, millions of tax returns are still filed on paper as a percentage of our population lacks the ability or desire to file electronically, such as those without internet access; low-income or elderly taxpayers; or taxpayers who are required to file using forms that are not currently available in an electronically submittable format. The IRS must devote staffing and resources to processing these paper submissions and continue to invest in the maintenance and modernization of its systems to successfully manage paper *and* electronically filed returns. As noted by the National Taxpayer Advocate in her 2022 Taxpayer Advocate Directive (TAD) to the IRS, this effort should include an expanded use of scanning technology to efficiently speed the processing of paper-filed tax returns.[14]

FIGURE 1.2.4, Income Tax Returns Filed

Measure/Indicator	FY 2019	FY 2020	FY 2021	FY 2022
Number of Returns Filed (Projected, All Types)[15]	255,249,983	242,093,670	269,032,799	271,612,000
Total Individual Income Tax Returns[16]	154,094,555	157,195,302	167,915,264	166,076,400
Total Individual Income Tax Returns Filed on Paper[17]	16,578,426	8,749,558	16,463,292	12,918,800
Total Individual Income Tax Returns Filed Electronically[18]	137,516,129	148,445,744	151,451,972	153,157,600
Free File Consortium (Tax Year)[19]	2,528,639	4,018,163	4,997,000	2,449,458

Measure/Indicator	FY 2019	FY 2020	FY 2021	FY 2022
Fillable Forms (Tax Year)[20]	283,244	519,133	795,000	645,049
Total Corporation Income Tax Returns[21]	7,288,019	6,841,771	7,464,790	7,523,400
Total Corporation Income Tax Returns Filed on Paper[22]	1,325,429	697,421	1,062,200	963,600
Total Corporation Income Tax Returns Filed Electronically[23]	5,962,590	6,144,350	6,402,590	6,559,800

Observation: The total amount of individual and corporate income tax returns filed electronically remains high. Electronically filed returns now account for over 92 percent of individual filings and approximately 87 percent of corporate filings in FY 2022 (please note FY 2022 return counts are projected numbers).

TAXPAYER SERVICE: EXAMINATION AND COLLECTION[24]

Without Adequate Staffing, the IRS Has Had to Make Tough Decisions on Where to Focus Compliance Resources

IRS examination and collection action can lead to taxpayer anxiety, which may be exacerbated if the process is perceived as prolonged or inequitable. Declining IRS staffing levels and high case inventory volumes have posed challenges to maintaining acceptable levels of taxpayer customer service. The strategic allocation of limited workforce resources is challenging yet vital to ensuring equitable treatment across all taxpayer populations, while attention to closed case resolutions can indicate whether the IRS is applying resources appropriately and/or promoting a sense of parity. A higher rate of no-response audit[25] closures in the lower-income taxpayer category, for example, warrants consideration for adjustments in approach. Rising no-change audit[26] closures might suggest resources would be better targeted toward areas of greater non-compliance. The Inflation Reduction Act has allotted $45.6 billion in additional IRS enforcement funding through the end of FY 2031, giving the IRS's collection function a tremendous boost in its ability to hire.[27] Additional hiring addresses a critical IRS need, but hiring alone will not guarantee an improved taxpayer experience. New IRS employees must be adequately trained to perform their duties, and that training must include guidance on recognizing, understanding, and integrating a respect for taxpayer rights into the essential work they do.[28] The quality of customer service provided must always respect the taxpayers' *rights to be informed, to quality service, to pay no more than the correct amount of tax,* and *to a fair and just tax system.*[29]

FIGURE 1.2.5, Type of Audit, Outcomes, and Time to Complete by Income, FYs 2019-2022

Measure/Indicator	FY 2019	FY 2020	FY 2021	FY 2022
Examination				
Total Number of Open Audits Pending in Exam[30]	525,525	614,359	527,353	425,704
Total Number of Closed Examinations – **Individual Tax Returns**[31]	680,463	452,510	658,998	625,947
Total Positive Income (Under $50,000)				
No-Change Rate	10.1%	11.4%	8.6%	12.8%
Agreed Rate[32]	23.3%	20.6%	19.8%	17.1%
Taxpayer Failed to Respond Rate[33]	39.8%	44.7%	46.4%	44.2%
Average Days to Audit Completion	278.7	263.2	339.5	269.6
Average Total Exam Time (Hours) Correspondence Audits	1.4	1.4	1.4	1.4
Average Total Exam Time (Hours) Field Exams	20.4	25.1	28.8	28.8

Measure/Indicator	FY 2019	FY 2020	FY 2021	FY 2022
Percent of Correspondence Audit[34]	88.1%	90.0%	92.4%	91.3%
Total Positive Income (Greater than $50,000 and under $10,000,000)				
No-Change Rate	12.4%	16.0%	11.6%	13.1%
Agreed Rate	42.8%	44.6%	39.6%	40.3%
Taxpayer Failed to Respond Rate	20.0%	17.5%	22.7%	21.3%
Average Days to Audit Completion	288.2	301.2	385	317.6
Average Total Exam Time (Hours) Correspondence Audits	2.1	2.2	2.4	2.3
Average Total Exam Time (Hours) Field Exams	28.7	28.5	37.1	38.2
Percent of Correspondence Audit[35]	67.7%	62.0%	71.4%	72.2%
Total Positive Income (Greater than $10,000,000)				
No-Change Rate	21.3%	19.7%	30.3%	31.1%
Agreed Rate	50.5%	52.2%	52.1%	51.5%
Taxpayer Failed to Respond Rate	1.8%	0.8%	0.2%	0.2%
Average Days to Audit Completion	703.8	994.7	682.9	982.0
Average Total Exam Time (Hours) Correspondence Audits	11.2	9.1	8.9	7.7
Average Total Exam Time (Hours) Field Exams	117.1	94.3	91.4	110.6
Percent of Correspondence Audit[36]	37.0%	43.3%	24.3%	32.2%

Observation: Taxpayers with incomes below $50,000 had about 90 percent of their audits conducted by correspondence, nearly 40 percent or more failed to respond to the IRS, and less than 25 percent agreed to the proposed adjustments. As income levels increase, the relative number of correspondence audits and failure-to-respond rates decrease, whereas the agreed rates rise.

FIGURE 1.2.6, Offers in Compromise, Installment Agreements, and the Queue, FYs 2019-2022

Measure/Indicator	FY 2019	FY 2020	FY 2021	FY 2022
Collection				
Offer in Compromise: Number of Offers Submitted[37]	54,225	44,809	49,285	36,022
Offer in Compromise: Percentage of Offers Accepted[38]	35.3%	34.3%	30.9%	28.7%
Installment Agreements (IAs): Number of Individual & Business IAs[39]	2,821,134	1,825,378	2,361,646	2,383,849
Number of IAs With Bots[40]	0	0	0	8,505
Rejected Taxpayer Requests for IAs[41]	32,281	15,483	14,164	8,800
Percentage of Cases Pending Assignment (in the Queue) (Taxpayers)[42]	24.1%	28.1%	20.9%	17.5%
Percentage of Cases Pending Assignment (in the Queue) (Modules)[43]	33.6%	39.3%	28.5%	24.0%
Age of Individual Delinquencies Pending Assignment (in the Queue)[44]	4.8 years	4.6 years	4.3 years	4.9 years

Observation: Offers in compromise decreased by nearly 27 percent from FY 2021 to FY 2022 while IA submissions increased by less than one percent during this same period. Fewer taxpayers remained in the queue, but the average age of individual unassigned delinquencies increased by about one-half year.

TAXPAYER SERVICE: TAXPAYER-FACING COMMUNICATION CHANNELS[45]

Taxpayers Attempt to Reach the IRS Via Various Channels, But the IRS Faces Challenges in Timely Responding

Taxpayers are increasingly reaching out to the IRS through a variety of communication channels, particularly since the onset of COVID-19, but the IRS is challenged to efficiently and timely address taxpayer contacts when budget and workforce resources are down[46] or have been temporarily redirected to address the processing of paper return backlogs.[47] Individual correspondence processing cycle times, for instance, have risen considerably since FY 2019, while percentages of calls answered by IRS employees have dropped from 28.7 percent in FY 2019 to only 12.5 percent in FY 2022.[48] Increases in virtual service contacts are also important, but taxpayers' continued preference and need for face-to-face assistance must always be considered and supported. It's worth noting that while the IRS has maintained at least 358 Taxpayer Assistance Centers since FY 2018, COVID-19 protocols and limited staffing have meant that not all TACs have remained open or staffed throughout each year.[49]

Additional funding provided under the Inflation Reduction Act of 2022 will supplement and enhance IRS efforts to improve its customer service across all service channels, and the IRS announced in October that it had already successfully hired 4,000 new customer service representatives (CSRs) to help answer phones and provide other services for the next filing season.[50] A portion of these new hires will be filling positions opened though CSR attrition and turnover, so efforts to maintain a bolstered customer service workforce remain an ongoing challenge. The IRS will need to be strategic and monitor customer service measures to be sure its application of resources is generating the improvements in taxpayer service it seeks and that it maintains a balance across all service areas. Taxpayers have the *rights to quality service, to be informed, to pay no more than the correct amount of tax*, and *to a fair and just tax system*. These rights are essential to the standard of service a taxpayer receives when working with the IRS, no matter the communication channel.

FIGURE 1.2.7, In-Person Service, Correspondence, Telephone, and Online Service, FYs 2019-2022

Measure/Indicator	FY 2019	FY 2020	FY 2021	FY 2022
In-Person Service				
Number of Taxpayer Assistance ("Walk-In") Centers (TACs)[51]	358	358	358	360
Number of Face-to-Face TAC Contacts[52]	2.3 million	1.0 million	940,000	1.3 million
Number of Calls to the TAC Appointment Line That Did Not Result in a Scheduled Appointment[53]	1.4 million	694,000	922,000	501,000
Correspondence[54]				
Individual Correspondence[55]	4,134,753	2,765,003	6,306,488	6,950,094
Average Cycle Time to Work Individual Correspondence[56] (Master File (IMF))	74 days	96 days	201 days	207 days
Inventory Overage[57]	41.8%	41.6%	59.6%	44.6%
Business Correspondence[58]	2,717,819	2,038,291	4,197,132	4,599,806
Average Cycle Time to Work Business Correspondence[59] (Master File (BMF))	101 days	149 days	145 days	163 days
Inventory Overage[60]	57.8 %	71.9%	51.5%	60.4%

Measure/Indicator	FY 2019	FY 2020	FY 2021	FY 2022
Telephone Service				
Total Calls to IRS[61]	99,373,456	100,514,299	281,708,009	173,265,572
Number of Calls Answered by IRS Employees[62]	28,558,862	24,192,386	32,039,550	21,740,474
Percentage of Calls Answered by IRS Employees[63]	28.7%	24.1%	11.4%	12.5%
IRS Level of Service (LOS)[64]	56.2%	51.2%	21.3%	21.3%
IRS Average Speed of Answer[65]	16.2 minutes	18.3 minutes	22.8 minutes	28.6 minutes
Practitioner Priority: Percentage of Calls Answered (LOS)[66]	78.3%	56.3%	28.0%	16.9%
Practitioner Priority: Average Speed of Answer[67]	8.8 minutes	12.7 minutes	16.1 minutes	25.4 minutes
Online Service				
Number of Visits to IRS.gov[68]	650,989,560	1,603,938,876	1,999,988,189	1,087,210,500
Number of Page Views[69]	3,350,072,964	9,225,312,072	11,452,583,281	5,310,673,611
Online Installment Agreements[70]	786,505	719,752	1,051,708	1,184,711
Where's My Refund? Inquiries[71]	368,848,775	505,611,474	632,361,686	447,729,355

Observation: In-person visitations remain limited due to closed or virtual TACs as FYs 2020, 2021, and 2022 numbers all remain significantly less than FY 2019 levels; FYs 2021 and 2022 correspondence volumes remained significantly higher than prior years, contributing to longer processing delays; the percentage of FY 2022 calls answered by an IRS employee remained below 50 percent of FY 2019 pre-pandemic levels; and taxpayers continued to use online tools and the IRS website in dramatically greater numbers than they did prior to COVID-19.

TAXPAYER SERVICE: INFORMATION TECHNOLOGY

Taxpayers have continued to experience increased frustration and difficulty resolving their IRS issues, receiving timely notices, accessing detailed information on their Online Account or IRS tools, or reaching an IRS employee,[72] and modernization efforts are challenged when a large portion of available funding is required to maintain current operations and legacy systems. The Inflation Reduction Act budgets the IRS an additional $4.8 billion in funding for business modernization, which is key for the IRS to successfully update its systems.[73] TAS looks forward to seeing the IRS use this opportunity to advance its modernization initiatives and establish more effective systems to serve taxpayers quickly and comprehensively. The modernization of aging IRS information systems and the requisite application of staffing to maintain that effort is integral to improving IRS customer service and respecting taxpayers' *right to quality service*.

Endnotes

1 See TBOR, www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in TBOR are also codified in the IRC. *See* IRC § 7803(a)(3).
2 Taxpayer First Act, Pub. L. No. 116-25, § 1101(a)(5), 133 Stat. 985-986 (2019).
3 IRS, Taxpayer First Act Report to Congress 99 (Jan. 2021).
4 These measures are presented as a sample of indicators and are not intended to be read as a comprehensive listing of performance benchmarks.
5 An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14, Pub. L. No. 117-169, 136 Stat. 1831-32 (2022) [hereinafter referred to as the "Inflation Reduction Act"].
6 Memorandum from Janet L. Yellen, Sec'y of the Treasury, to Charles P. Rettig, Comm'r. Internal Revenue (Aug. 17, 2022), (on file with TAS).
7 For a further discussion of IRS transparency, *see* Most Serious Problem: *IRS Transparency: Lack of Transparency About Processing Delays and Other Key Data Frustrates Taxpayers and May Undermine Voluntary Compliance*, *infra*.

8 IRS responses to TAS fact checks (Dec. 14, 2020; Dec. 23, 2020; Dec. 8, 2022). IRS email response to TAS (Oct. 20, 2022). IRS Full-Time Equivalents (FTE) line: This figure represents the average number of FTE positions actually used to conduct IRS operations, which excludes FTEs attributable to overtime, terminal leave, and those funded by reimbursable agreements from other federal agencies and private companies for services performed for these external parties. It also excludes positions funded by private debt collection funds. Individual, Corporate, Partnership Returns line: IRS, Pub. 6292, Table 1, Fiscal Year Return Projections for the United States: 2011-2018, Fall 2011 Update 6 (Rev. 8-2011), and subsequent annual Fall Pub. 6292 updates through IRS, Pub. 6292, Table 1, Fiscal Year Return Projections of the Number of Returns To Be Filed with IRS, 2022-2029, at 4 (Rev. 9-2022). The return volume reported for FY 2022 is a projected number. Inflation-Adjusted Budget line: The budget figures include rescissions and funds provided in the administrative provisions of appropriations bills but exclude supplemental funds passed outside of the normal appropriations bills. The inflation adjustment is computed using the Gross Domestic Product Price Index from the President's Budget FY 2022, Historical Tables, Table 10.1.

9 An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14, Pub. L. No. 117-169, 136 Stat. 1831-32 (2022).

10 When considering FY 2020 data, note that core IRS services were suspended or reduced for a portion of FY 2020 due to COVID-19.

11 For example, the IRS encountered a system outage on April 17, 2018 (the 2017 tax return filing deadline), and had to provide taxpayers an additional day to file and pay their taxes. *See* IRS, IR-2018-100, IRS Provides Additional Day to File and Pay for Taxpayers Through Wednesday, April 18; IRS Processing Systems Back Online (Apr. 17, 2018); Jeff Stein, Damian Paletta & Mike DeBonis, *IRS to Delay Tax Deadline By One Day After Technology Collapse*, Wash. Post (Apr. 17, 2018), https://www.washingtonpost.com/business/economy/irs-electronic-filing-system-breaks-down-hours-before-tax-deadline/2018/04/17/4c05ecae-4255-11e8-ad8f-27a8c409298b_story.html.

12 For a discussion of IRS processing issues, *see* Most Serious Problem: *Processing Delays: Paper Backlogs Caused Refund Delays for Millions of Taxpayers*, *infra*. *See also* National Taxpayer Advocate 2021 Annual Report to Congress 37 (Most Serious Problem: *Processing and Refund Delays: Excessive Processing and Refund Delays Harm Taxpayers*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_MSP_01_Processing-Delays.pdf); 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*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_MSP_05_FilingDelays.pdf).

13 The sudden rise in FY 2021 filed individual returns can in part be attributed to returns filed by taxpayers who traditionally are not required to file a return but who filed solely to receive the Recovery Rebate Credit in advance. IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2022-2029, at 4 (Rev. 9-2022).

14 In March 2022 the National Taxpayer Advocate issued a TAD directing the IRS "to implement 2-D barcoding or other scanning technology to automate the transcription of paper tax returns." Despite a non-committal IRS response, Secretary of the Treasury Janet Yellen subsequently pledged that "[i]n this coming filing season, the IRS will automate the scanning of millions of individual paper returns into a native digital copy." *See* Department of the Treasury, *Remarks by Secretary of the Treasury Janet L. Yellen at the IRS facility in New Carrollton, Maryland* (Sept. 15, 2022), https://home.treasury.gov/news/press-releases/jy0952.

15 IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2020-2027, at 4 (Rev. 9-2020); IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2021-2028, at 4 (Rev. 9-2021); IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2022-2029, at 4 (Rev. 9-2022). The FY 2020 figure has been updated from what was reported in the 2021 Annual Report to Congress. The FY 2021 figure has been updated from what was reported in the 2021 Annual Report to Congress to report actual return counts. The FY 2022 figures are projected numbers. The number of returns and related metrics are proxies for IRS workload and provide context for the environment in which taxpayers seek quality service and other rights from TBOR.

16 *Id.* The FY 2021 figure has been updated from what we reported in the 2021 Annual Report to Congress to report actual return counts. The FY 2022 figures are projected numbers.

17 *Id.*

18 *Id.*

19 FY 2019 and 2021 numbers updated from IRS response to TAS fact check (Dec. 17, 2021) including returns filed solely to claim the Advance Child Tax Credit (AdvCTC). FY 2020 and FY 2022 numbers are from IRS, Compliance Data Warehouse (CDW), Electronic Tax Administration Research and Analysis System Modernized e-File for Individuals and exclude about 8.5 million returns filed for the purpose of claiming Economic Impact Payments in FY 2020. The FY 2019 figures represent TY 2018 tax returns. The FY 2020 figures represent TY 2019 tax returns. The FY 2021 figures represent TY 2020 tax returns. The FY 2022 figures represent TY 2021 tax returns.

20 FY 2021 numbers updated from IRS response to TAS fact check (Dec. 17, 2021), including some returns filed solely to claim the AdvCTC. FY 2020 and FY 2022 numbers are from IRS, CDW, Electronic Tax Administration Research and Analysis System Modernized e-File for Individuals and exclude returns filed for the purpose of claiming Economic Impact Payments. The FY 2020 figures represent TY 2019 tax returns. The FY 2021 figures represent TY 2020 tax returns. The FY 2022 figures represent TY 2021 tax returns.

21 IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2020-2027, at 4 (Rev. 9-2020); IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2020-2027, at 4 (Rev. 9-2021); IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2022-2029, at 4 (Rev. 9-2022). The FY 2021 figure has been updated from what was reported in the 2021 Annual Report to Congress to report actual return counts. The FY 2022 figures are projected numbers.

22 *Id.* The FY 2021 figure has been updated from what was reported in the 2021 Annual Report to Congress to report actual return counts. The FY 2022 figures are projected numbers.

23 *Id.*

24 When considering FY 2020 data, note that core IRS services were suspended or reduced for a portion of FY 2020 due to COVID-19.

25 A no-response audit occurs when a taxpayer under exam does not respond to IRS communication attempts, and the proposed tax adjustments are subsequently input as if the taxpayer had agreed to the exam determination. This metric includes cases where the audit notice was deemed undeliverable (*e.g.*, a taxpayer may have moved without giving an updated address, and the notice was returned), and there was no response from the taxpayer.

26 A no-change audit occurs when a taxpayer substantiates all items being reviewed by the audit, resulting in no change to the reported tax.

27 An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14, Pub. L. No. 117-169, 136 Stat. 1832 (2022).

28 The National Taxpayer Advocate recently partnered with the IRS in developing a mandatory IRS-wide TBOR training course and will continue to advance training opportunities that promote taxpayer rights awareness.

29 *See* IRC § 7803(a)(3); *see also* www.taxpayeradvocate.irs.gov/taxpayer-rights.

30 IRS response to TAS fact checks (Dec. 17, 2021; Dec. 9, 2022).

31 IRS response to TAS fact checks (Dec. 14, 2020; Dec. 17, 2021; Dec. 9, 2022). These numbers reflect examination cases closed by the IRS and do not account for subsequent appeal or litigation.

32 An audit is closed as agreed when the IRS proposes changes and the taxpayer understands and agrees with the changes.

33 The non-response rate includes taxpayers with undelivered IRS audit notices or statutory notices of deficiencies and taxpayers who did not respond to the IRS audit notices.

34 Represents percentage of correspondence audits for taxpayers with total positive income under $50,000.

35 Represents percentage of correspondence audits for taxpayers with total positive income greater than $50,000 and under $10,000,000.

36 Represents percentage of correspondence audits for taxpayers with total positive income greater than $10,000,000.

37 IRS, Small Business/Self-Employed (SB/SE), Collection Activity Report (CAR) No. 5000-108, Monthly Report of Offer in Compromise Activity, cumulative through September, FY 2019 (Sept. 30, 2019); FY 2020 (Sept. 28, 2020); FY 2021 (Oct. 4, 2021); FY 2022 (Oct. 3, 2022).

38 *Id.*

39 IRS, SB/SE, CAR No. 5000-6, Installment Agreement Cumulative Report, FY 2019 (Sept. 29, 2019); FY 2020 (Sept. 27, 2020); FY 2021 (Oct. 4, 2021); FY 2022 (Oct. 2, 2022). Number includes short-term payment agreements and continuous wage levies.

40 Weekly ACI and Voice Bot Reports for Week Ending 9/30/2022 (Cumulative). This service was not offered until July 2022.

41 IRS, CDW, FY 2019 (Oct. 2021); FY 2020 (Oct. 2021); FY 2021 (Oct. 2021); FY 2022 (Oct. 2022). The IRS accepts about 99 percent of requests for IAs that meet the processable criteria.

42 IRS, SB/SE, CAR No. 5000-2, Taxpayer Delinquent Account Cumulative Report, FY 2019 (Sept. 29, 2019); FY 2020 (Sept. 27, 2020); FY 2021 (Oct. 4, 2021); FY 2022 (Oct. 2, 2022). When taxpayers incur delinquent tax liabilities, the IRS sends them a series of notices during an approximately six-month period in which the taxpayers are in "notice status." If the taxpayer does not resolve his or her liability during the notice status, the account enters into taxpayer delinquent account status. The IRS then determines whether the case will be referred to the Automated Collection System (ACS), assigned directly for in-person contact by a revenue officer, assigned to the collection queue to await assignment to a revenue officer, or shelved. ACS may also assign cases to the collection queue. The IRS shelves cases prior to assigning the case to a private collection agency.

43 *Id.* Modules are the number of accounts attributable to a taxpayer. For example, an individual taxpayer may owe unpaid taxes on the 2017 and 2018 Forms 1040 – this would be one taxpayer with two modules.

44 Query by TAS Research of tax delinquent accounts with queue status in IRS, CDW, Accounts Receivable Dollar Inventory, Individual Master File (IMF), Modules. Age of balance due cases in the collection queue as of cycle 37 of FY 2019, cycle 38 of FY 2020, cycle 37 of FY 2021, and cycle 37 of FY 2022. The age of Taxpayer Delinquency Investigations is not considered.

45 When considering FY 2020 data, note that core IRS services were suspended or reduced for a portion of FY 2020 due to COVID-19.

46 *See* Most Serious Problem: *Inadequate Digital Services Impede Efficient Case Resolution and Force Millions of Taxpayers to Call or Send Correspondence to the IRS*, *infra*; Most Serious Problem: *Telephone and In-Person Service: Taxpayers Continue to Experience Difficulties and Frustration Obtaining Telephone and Face-to-Face Assistance to Resolve Their Tax Issues and Questions*, *infra*; Most Serious Problem: *IRS Hiring and Training: Weaknesses in the Human Capital Office's Hiring, Recruitment, and Training Programs Are Undermining the IRS's Efforts to Achieve Appropriate Staffing to Meet Taxpayer Needs*, *infra*.

47 *See* Oversight Subcomm. Hearing With IRS Commissioner Rettig on the 2022 Filing Season 5, 117th Congress (written testimony of Charles P. Rettig, Commissioner, Internal Revenue), "We are temporarily moving approximately 900 employees with previous relevant experience back into key areas from other organizations. In addition to this accounts management surge team, we are working to assemble a similar surge team for our submission processing area with 700 employees," 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 (Mar. 17, 2022).

48 One aspect of this drop in service may be attributable to the sharp rise in volume of calls made to the IRS in FYs 2021 and 2022.

49 Secretary of the Treasury Janet Yellen has pledged that "[b]y next year, every single [Taxpayer Assistance] center will be fully staffed." *See* Department of the Treasury, *Remarks by Secretary of the Treasury Janet L. Yellen at the IRS facility in New Carrollton, Maryland* (Sept. 15, 2022), https://home.treasury.gov/news/press-releases/jy0952.

50 IR-2022-191, IRS quickly moves forward with taxpayer service improvements; 4,000 hired to provide more help to people during 2023 tax season on phones (Oct. 27, 2022), https://www.irs.gov/newsroom/irs-quickly-moves-forward-with-taxpayer-service-improvements-4000-hired-to-provide-more-help-to-people-during-2023-tax-season-on-phones.

51 FY 2019 figure from IRS response to TAS fact check (Nov. 15, 2019); FY 2020 figure from IRS response to TAS information request (Sept. 30, 2020). FY 2021 figure from IRS response to TAS information request (Sept. 2021). Due to COVID-19, a total of 49 TACs were unstaffed at some point during FY 2021. FY 2022 figure from IRS response to TAS fact check (Dec. 12, 2022). As of October 31, 2022, 326 of the 360 TACs were open, and 34 were closed or unstaffed. IRS, Status of Unopened Mail and Backlog Inventory Report (Nov. 4, 2022).

52 Wage and Investment Division, Business Performance Review, 4th Quarter, FY 2021 (Nov. 2021); FY 2021 and FY 2022 figures from IRS response to TAS fact check (Dec. 12, 2022).

53 IRS response to TAS information request (Oct. 2022); IRS response to TAS fact check (Dec. 12, 2022). Please note these numbers include both calls resolved by the CSR (thus negating the need for a TAC appointment) and calls where the taxpayer could not schedule an appointment at the available times.

54 Correspondence represents Accounts Management inquiries and responses received from taxpayers who do not belong specifically to another area.

55 IRS, Joint Operations Center (JOC), Adjustments Inventory Reports: July-September FY Comparison (FY 2020, FY 2021, FY 2022). The FY 2021 figure have been updated from what was reported in the 2021 Annual Report to Congress. These are IMF cumulative fiscal year receipts for Correspondence, Amended, Carryback, Injured Spouse and Individual Taxpayer Identification Number (ITIN). This metric measures taxpayer correspondence requesting account adjustment.

56 IRS, Research Analysis and Data (RAD), Accounts Management Reports: Collection Imaging System (CIS) Closed Case Cycle Time (FY 2020, FY 2021, and FY 2022). The FY 2021 figure has been updated from what was reported in the 2021 Annual Report to Congress.

57 IRS, Weekly Enterprise Adjustments Inventory Report, FYs 2019-2022 (weeks ending Sept. 28, 2019; Sept. 26, 2020; Sept. 25, 2021; Sept. 24, 2022). Certain IRS inventories must be worked within a specific timeframe to be considered timely. If not closed in that timeframe, the inventory item will be classified as “overaged.”

58 IRS, JOC, Adjustments Inventory Reports: July-September Fiscal Year Comparison (FY 2020, FY 2021, FY 2022). This metric measures taxpayer correspondence requesting account adjustment. The FY 2021 figures have been updated from what was reported in the 2021 Annual Report to Congress.

59 IRS, RAD, Accounts Management Reports: CIS Closed Case Cycle Time (FY 2020, FY 2021, and FY 2022). The FY 2021 figure has been updated from what was reported in the 2021 Annual Report to Congress.

60 IRS, Weekly Enterprise Adjustments Inventory Report, FYs 2019-2022 (weeks ending Sept. 28, 2019; Sept. 26, 2020; Sept. 25, 2021; Sept. 24, 2022).

61 IRS, JOC, Snapshot Reports: Enterprise Snapshot (weeks ending Sept. 30, 2020; Sept. 30, 2021; Sept, 30, 2022; reports generated Oct. 18, 2022, and Nov. 27, 2022).

62 *Id.*

63 *Id.*

64 *Id.* The IRS generally defines its LOS measure as Numerator = Assistor Calls Answered + Info Messages and Denominator = Assistor Calls Answered + Info Messages + Emergency Closed + Secondary Abandons + (Add either Calculated Busy Signals OR Network Incompletes) + (Add either Calculated Network Disconnects OR Total Disconnects).

65 *Id.*

66 IRS, JOC, Snapshot Reports: Product Line Detail (weeks ending Sept. 30, 2020; Sept. 20, 2021; Sept. 30, 2022; reports generated Oct. 18, 2022, and Nov. 27, 2022).

67 *Id.*

68 IRS.gov Site Traffic Calculator (FYs 2019-2022).

69 *Id.*

70 IRS, SB/SE, CAR No. 5000-6, Installment Agreement Cumulative Report, FY 2020 (Sept. 27, 2020); FY 2021 (Oct. 4, 2021); FY 2022 (Oct. 2, 2022). Number includes short-term payment plans.

71 IRS response to TAS fact check for FY 2019 (Dec. 17, 2021); IRS Databook for FY 2020 and 2021; IRS response to TAS fact check for FY 2022 (Dec. 14, 2022). This metric measures the number of successful Where’s My Refund? queries (as opposed to the total number of Where’s My Refund? query attempts).

72 For a discussion of IRS information technology modernization, see National Taxpayer Advocate 2020 Annual Report to Congress 84 (Most Serious Problem: *Information Technology Modernization: Antiquated Technology Jeopardizes Current and Future Tax Administration, Impairing Both Taxpayer Service and Enforcement Efforts*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_MSP_06_ITmod.pdf. *See also* Most Serious Problem: *Inadequate Digital Services Impede Efficient Case Resolution and Force Millions of Taxpayers to Call or Send Correspondence to the IRS, infra*.

73 An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14, Pub. L. No. 117-169, 136 Stat. 1832 (2022).

Data Compilation and Validation

Section 7803(c)(2)(B)(ii)(XII) of the IRC directs that the National Taxpayer Advocate, "with respect to any statistical information included in [this annual report to Congress], include a statement of whether such statistical information was reviewed or provided by the Secretary under Section 6108(d) and, if so, whether the Secretary determined such information to be statistically valid and based on sound statistical methodology."

The data cited in the National Taxpayer Advocate's annual reports generally comes from one of three sources: (i) publicly available data such as the IRS Data Book, Government Accountability Office reports, and Treasury Inspector General for Tax Administration reports; (ii) IRS databases to which TAS has access; and (iii) IRS data that IRS operating divisions provide pursuant to TAS information requests. After TAS compiles statistical information, TAS's Office of Research and Analysis validates it. Procedures regarding additional IRS review of statistical information vary by report section as follows:

- **Preface** – The data contained in the Preface was not separately sent for validation because it is written at the end of the process and generally pulls data from other sections of the report that have been validated.
- **Taxpayer Rights and Service Assessment** – The data contained in this section was reviewed by the IRS.
- **Most Serious Problems section** – The data contained in this section was reviewed by the IRS.
- **Most Litigated Issues section** – The IRS provides the raw data for taxpayers who filed a petition with the U.S. Tax Court during fiscal year 2022. TAS's Office of Research and Analysis maps this data to IRS records to determine the Most Litigated Issues. This further analysis was not submitted to the IRS for review, but the narratives were reviewed by the IRS Office of Chief Counsel.
- **TAS Advocacy section** – The data contained in this section was not submitted to the IRS for review because the data pertains almost exclusively to TAS's internal operations.
- **TAS Research Reports** – Time did not permit a review of either report by the IRS.
- **Purple Book** – Legislative recommendations with substantive changes from prior years, as well as all new legislative recommendations, were reviewed for legal accuracy by the IRS Office of Chief Counsel. The Purple Book contains limited statistical information that was provided by TAS's Office of Research and Analysis. It was not submitted to the IRS for review.

On the rare occasion where TAS and the IRS have a disagreement about data or the presentation of the data, we generally discuss it, and if a disagreement persists, we note the incongruity in the report.

INTRODUCTION: The Most Serious Problems Encountered by Taxpayers

IRC § 7803(c)(2)(B)(ii)(III) requires the National Taxpayer Advocate to submit an annual report to Congress that contains a summary of the ten "Most Serious Problems" encountered by taxpayers.[1] While we use the method described below to identify the Most Serious Problems, the list remains inherently subjective in many respects.

A. METHODOLOGY OF THE MOST SERIOUS PROBLEM LIST

The National Taxpayer Advocate is in a unique position to identify the most serious problems facing taxpayers because we receive input from a wide variety of sources. Through our Case Advocacy operations, TAS helps hundreds of thousands of taxpayers to resolve their account problems with the IRS every year. We help many types of taxpayers including individuals, businesses, and exempt organizations, and we work with both unrepresented taxpayers and taxpayers represented by tax professionals. Some cases come to us directly, while others come through congressional referrals.

As part of our Systemic Advocacy operations, TAS leaders meet frequently with organizations that work in the tax administration field, and we maintain an online portal through which members of the public and IRS employees can call our attention to systemic problems that affect groups of taxpayers or all taxpayers.[2] We receive hundreds of submissions each year. We review them all, and we create "advocacy projects" to address priority problems. TAS employees also work on cross-functional teams with other parts of the IRS to address areas that impact taxpayer rights and taxpayer service.

The National Taxpayer Advocate considers the input from these sources and assesses the following factors in selecting the Most Serious Problems encountered by taxpayers:

- Impact on taxpayer rights;
- Number of taxpayers impacted;
- Financial impact on taxpayers;
- Visibility, sensitivity, and interest to stakeholders, Congress, and external indicators (*e.g.*, media);
- Barriers to tax law compliance, including cost, time, and burden;
- Taxpayer Advocate Management Information System (TAMIS) inventory data; and
- Emerging issues.

B. TAXPAYER ADVOCATE MANAGEMENT INFORMATION SYSTEM LIST

The identification of the Most Serious Problems reflects not only the mandates of Congress and the IRC but also TAS's integrated approach to advocacy – using individual cases to detect trends and identifying systemic problems in IRS policy and procedures or the IRC. TAS tracks individual taxpayer cases on its internal system, TAMIS.

C. THE MOST SERIOUS PROBLEMS ENCOUNTERED BY TAXPAYERS IN 2022

For the 2022 annual report, the ten Most Serious Problems are:

1. PROCESSING DELAYS: Paper Backlogs Caused Refund Delays for Millions of Taxpayers

The IRS still depends on outdated manual practices and a human assembly line for its paper processing operations, and paper is its Kryptonite. For the past 2.5 years, millions of taxpayers have experienced significant delays waiting for the IRS to process paper-filed tax returns and issue corresponding refunds. These unprecedented paper processing and refund delays are the product of the IRS falling behind during the pandemic, combined with its reliance on antiquated processing technology and manual data entry. Collectively, this resulted in backlogs that overwhelmed the IRS and even caused it to have to transform a campus cafeteria, conference rooms, and hallways into makeshift paper storage space. The IRS needs to modernize its antiquated paper processing procedures to clear the paper backlogs, streamline processing for the future, and improve related taxpayer services and the taxpayer experience.

2. COMPLEXITY OF THE TAX CODE: The Complexity of the Tax Code Burdens Taxpayers and the IRS Alike

The tax laws are overly complex, burden America's taxpayers, and negatively impact voluntary compliance. The system of preparing and filing taxes is too difficult because it is costly and time-consuming. This is especially problematic for taxpayers who access social programs through the IRS and for small business taxpayers. Some of this complexity exists because the IRC is antiquated and does not mirror modern life. The tax code can be simplified by making it easy to understand, which would make it easier for the IRS to administer, and easier for taxpayers to comply with their tax obligations. Simplifying the Code is the most important step Congress can take to reduce taxpayer compliance burdens. Simplification is essential to the integrity of the U.S. tax system and will enhance voluntary compliance.

3. IRS HIRING AND TRAINING: Weaknesses in the Human Capital Office's Hiring, Recruitment, and Training Programs Are Undermining the IRS's Efforts to Achieve Appropriate Staffing to Meet Taxpayer Needs

Over the past decade, the IRS's budget was reduced by more than 15 percent in inflation-adjusted terms, resulting in reduced staffing levels not seen since the 1970s. As staffing declined, so did taxpayer service levels. The Inflation Reduction Act of 2022 provided the IRS with much-needed funding and presented an excellent opportunity to improve taxpayer service. With this new funding, the IRS will need to recruit, hire, and train new employees on a historic scale as the IRS has never attempted to hire beyond its current capacities. It must do this while also keeping pace with the rate of attrition and accounting for the estimated 50,000 IRS employees expected to be lost through attrition within the next six years. To hire thousands of new employees over the next decade and replace employees who have retired or otherwise left, the IRS must increase its current hiring capacity to meet this demand and focus on the training of its employees. The IRS must also prioritize recruitment and counter recruitment challenges it faces in a competitive job market. The agency must work to revamp its training quality and overall efficiency. New IRS employees cannot provide an appropriate level of service on day one; they need significant resources and time to receive quality training, which can often mean both classroom-type and on-the-job training over an extended period. A workforce equipped with next-generation skills needs advanced training throughout their careers, which requires investment and dedicated budgetary resources. For years, the IRS has been developing and implementing a comprehensive training strategy as described in the IRS's Taxpayer First Act

Report to Congress. However, the IRS Human Capital Office (HCO) did not have dedicated budgetary resources needed to launch this vision. Without the appropriate reallocation of funding and a long-term investment in training strategy, HCO will continue to struggle. Although TAS is encouraged by the incremental progress recently in the areas of hiring, recruitment, and training, the IRS has much more work to do to increase HCO hiring capacity, improve recruitment strategies, and start implementation of its robust training program.

4. TELEPHONE AND IN-PERSON SERVICE: Taxpayers Continue to Experience Difficulties and Frustration Obtaining Telephone and Face-to-Face Assistance to Resolve Their Tax Issues and Questions

Though the IRS is increasing staffing and implementing technology designed to improve the customer experience, processing backlogs caused the demand for telephone and in-person service to remain high, while customer service levels continued to remain unacceptably low. The fiscal year 2022 post-pandemic filing season saw little improvement in telephone and Taxpayer Assistance Center services. Taxpayers and practitioners rely heavily on the ability to reach an IRS employee for account actions and answers to their inquiries. Lack of sufficient service jeopardizes compliance, frustrates taxpayers, and impacts the taxpayers' *right to quality service*.

5. ONLINE ACCESS FOR TAXPAYERS AND TAX PROFESSIONALS: Inadequate Digital Services Impede Efficient Case Resolution and Force Millions of Taxpayers to Call or Send Correspondence to the IRS

Providing tax information and services accessible through a robust online account and seamlessly integrated digital communication tools are essential for taxpayers, their representatives, and IRS employees. Taxpayers or their representatives wanting to interact online need and deserve quality service options and quick responses from the IRS. Today, most taxpayers and tax professionals can't depend on receiving either, causing dissatisfaction that can lead to distrust in tax administration. In recent years, the IRS developed standalone self-assistance web applications that allow taxpayers to perform a single task, such as resolving their inquiries via an automated voicebot or chatbot, sending and receiving secure digital messages, uploading documents, and viewing basic account information. While each application and tool has standalone value and facilitates a particular interaction, the IRS has not leveraged its utility by making them accessible from a central hub that provides a seamless taxpayer experience. As the IRS continues to introduce new self-assistance applications and improve existing ones, it should determine its priorities using a taxpayer-centric approach. The IRS must prioritize the experience of individual and business taxpayers as customers and provide an intuitive central hub with one-click access to all authenticated and unauthenticated self-assistance applications.

6. E-FILE AND FREE FILE: E-Filing Barriers and the Absence of a Free, Easy-to-Use Tax Software Option Cause Millions of Taxpayers to Continue to File Paper Tax Returns

The high number of e-filed returns shows that taxpayers are committed to e-filing, despite the obstacles they sometimes encounter. It is in the IRS's best interest to encourage this trend by making the e-file process more straightforward and user-friendly. By making all forms and schedules compatible with e-filing, as well as making taxpayers' information returns and payment histories downloadable from their online accounts, the IRS can facilitate quick and accurate e-filing for individuals. Opportunities for improvement also exist for business taxpayers, who are sometimes discouraged from e-filing information returns and employment tax returns on account of cumbersome technology. Enhancing this capacity while developing an IRS-run direct e-file option could take a creaky system still managing to produce good results and create a comprehensive e-file system that would benefit both taxpayers and the IRS. This transformation would improve the taxpayer experience, remove barriers to tax filing, improve the timeliness of refunds, and further voluntary compliance.

7. **IRS TRANSPARENCY: Lack of Transparency About Processing Delays and Other Key Data Frustrates Taxpayers and May Undermine Voluntary Compliance**

This Most Serious Problem addresses the importance of transparency and providing taxpayers with access to information. These bedrock principles of tax administration are especially critical since the IRS has recently received a significant increase in funding to be used for enforcement, customer service, and technology enhancements. It is also critical that the IRS provide taxpayers with complete, accurate, and timely information about the status of their refunds, and clear, concise, and reliable guidance on a variety of complex tax issues. A tax administration agency fully transparent and clear about how taxpayers can comply with their tax obligations and where their return is in the processing pipeline results in trust between the IRS and taxpayers, ultimately yielding optimal voluntary compliance.

8. **RETURN PREPARER OVERSIGHT: Taxpayers Are Harmed by the Absence of Minimum Competency Standards for Return Preparers**

Return preparers prepare over half of individual income tax returns and play a key role in tax administration. Many taxpayers are ill-equipped to assess a preparer's expertise in tax laws and tax return preparation. The absence of minimum competency standards for preparers of federal tax returns leaves taxpayers, particularly low-income taxpayers, vulnerable to return preparers' inadvertent errors that could cause them to overpay their tax – or to underpay their tax and face subsequent IRS enforcement action. Recent IRS data shows that taxpayers are harmed by non-credentialed return preparers. For example, about 92 percent of the total amount of 2020 Earned Income Tax Credit audit adjustments (in dollars) occurred on returns prepared by non-credentialed paid return preparers. Because taxpayers are financially responsible for inaccurately prepared returns, minimum competency standards for return preparers are an important taxpayer protection measure. Taxpayers should be able to rely on and trust qualified preparers.

9. **APPEALS: Staffing Challenges and Institutional Culture Remain Barriers to Quality Taxpayer Service Within the IRS Independent Office of Appeals**

Appeals plays a crucial role in administrative case resolution within the IRS. However, over the past decade, Appeals has faced challenges with funding and employee attrition that made providing top-notch taxpayer service difficult. The average Appeals case takes about a year to resolve, which means that taxpayers may be frustrated and discouraged with the process by the time it runs its course. With increased hiring and training and modernized systems for electronic case files, Appeals can improve cycle times, an important step toward quality taxpayer service. Appeals can also make important strides in reinforcing its role as an independent office within the IRS by adopting more taxpayer-friendly practices regarding conferences, by empowering Appeals Officers as final decision makers, and by providing taxpayers with access to Appeals Case Memoranda and post-settlement conferences, where applicable.

10. **OVERSEAS TAXPAYERS: Taxpayers Outside of the United States Face Significant Barriers to Meeting their U.S. Tax Obligations**

Many taxpayers face challenges understanding their tax obligations and accessing information and services from the IRS. However, taxpayers living overseas face additional challenges in virtually every aspect of their taxpayer experience. Whether they are U.S. citizens, resident aliens living abroad, or foreign persons with U.S. tax obligations, the laws that apply to these taxpayers are very complex.

These taxpayers are subject to highly complicated rules for determining whether they need to file a U.S. tax return and, if so, their correct U.S. tax liability. They have even more limited access to IRS customer service than domestic taxpayers, and they routinely face delays in receiving correspondence. They also face barriers in obtaining Taxpayer Identification Numbers, electronically filing returns, and accessing assistance from both the IRS and private industry. The National Taxpayer Advocate urges the IRS to take concrete steps to reduce the burden on these taxpayers and to better support them in their attempts to comply with U.S. law.

Endnotes

1 Prior to 2019, Congress tasked the National Taxpayer Advocate with identifying at least 20 of the most serious problems encountered by taxpayers. This change was the result of the passage of the Taxpayer First Act, Pub. L. No. 116-25, 133 Stat. 981 (2019).

2 The Systemic Advocacy Management System (SAMS) is a database of systemic issues and information reported online to TAS by IRS employees and members of the public. IRS, SAMS, https://www.irs.gov/advocate/systemic-advocacy-management-system-sams. TAS reviews and analyzes the submissions and determines a course of action, which may include information-gathering projects, immediate interventions, and advocacy projects. Internal Revenue Manual 1.4.13.4.9.2, Systemic Advocacy Management System (SAMS) (July 16, 2021).

Most Serious Problems: At a Glance

Services Taxpayers Want and the Problems the IRS Faces in Delivering Them

This "At a Glance" covers each of the ten Most Serious Problems we identify in this report. It summarizes the problems taxpayers face, notes why the problem is serious, and provides some key statistics. The "Taxpayer Perspective" for each Most Serious Problem includes statistics primarily sourced from the IRS-sponsored Comprehensive Taxpayer Attitude Survey regarding taxpayer attitudes and preferences.

IRS employees have worked admirably throughout the pandemic. However, the IRS still has much work to do including addressing staffing challenges, removing barriers to e-filing returns, supporting taxpayers living overseas, hiring and training employees to meet the growing volume of taxpayer needs and improve customer service, addressing processing delays, increasing transparency, expanding the functionality of online accounts, improving digital communication with taxpayers, improving competency standards for return preparers, simplifying and modernizing the tax code, and assisting more taxpayers by answering a significantly higher percentage of phone calls.

Most Serious Problem: **Processing Delays**

Taxpayer Perspective

66%

of returns resulted in refunds

Why This Is a Most Serious Problem: The IRS is understaffed, has antiquated technology, and has an inventory backlog of nearly six million paper tax returns. Together with the pandemic, these issues have caused lengthy refund delays for millions of taxpayers, some lasting ten months or longer.

Key Statistics: At the end of filing season, the IRS had not finished processing about 29 million items that it will need to manually process while taxpayers continue to wait for their refunds.

Most Serious Problem: **Complexity of the Tax Code**

Taxpayer Perspective

33%

"completely" or "mostly" disagree that they trust the IRS to help them understand their tax obligations

Why This Is a Most Serious Problem: Simplifying the tax code means making it easy to understand, easy for the IRS to administer, and less burdensome on everyone, whether they are preparing tax returns or being audited. Simplifying the tax code is the most important step Congress can take to reduce taxpayer compliance burdens, increase voluntary compliance, and improve the processing efficiency and verification of annual tax returns.

Key Statistics: The IRC contains 9,834 code sections – many containing detailed subsections – and a six-volume set of corresponding regulations. An individual taxpayer is estimated to spend 13 hours and $240 out-of-pocket costs just to prepare and file one annual tax return. For a small business, the amount of time and money spent on tax compliance is roughly 82 hours and $2,900. Individual taxpayers spent a total of 897 million hours in FY 2022 just on recordkeeping. This is in addition to the 1.15 billion hours spent on tax preparation of individual returns. Business entities spent about 1.14 billion hours and $48.3 billion on tax preparation in FY 2022.

"Taxpayer Perspectives" are preferences or attitudes expressed in the "Comprehensive Taxpayer Attitude Survey 2021;" IRS: Research, Applied Analytics, and Statistics.

Most Serious Problem: **IRS Hiring and Training**

Taxpayer Perspective

34%

do not trust the IRS to fairly enforce tax laws, the highest percentage since 2014

Why This Is a Most Serious Problem: Failure to hire and properly train employees harms taxpayer rights, erodes crucial taxpayer services, and undermines confidence in tax administration. Current hiring practices are barely keeping up with employees who leave or retire. The IRS needs more employees to provide the best possible customer service.

Key Statistic: An estimated 50,000 IRS employees are expected to be lost through attrition within the next six years.

Most Serious Problem: **Telephone and In-Person Service**

Taxpayer Perspective

88%

agree the IRS should focus on improving in-person and phone call assistance

81%

agree that it is important for the IRS to provide office locations with an onsite IRS representative

75%

agree that it is important to provide community-based tax clinics at convenient locations

Why This Is a Most Serious Problem: Taxpayers need the IRS to increase staffing and technology and explore ways to improve the quality of service on phones and in person. Lack of sufficient service jeopardizes compliance, frustrates taxpayers, and impacts the taxpayers' *right to quality service*.

Key Statistics: In FY 2022, only about 15 percent of phone calls made to the IRS reached live assistance, a small improvement compared to 11 percent in FY 2021. The IRS serviced about 15 percent of the 10.8 million callers attempting to schedule a Taxpayer Assistance Center appointment in FY 2022.

Most Serious Problem: **Online Access for Taxpayers and Tax Professionals**

Taxpayer Perspective

84%

find a personal online account valuable

81%

want to be able to email questions to the IRS

Why This Is a Most Serious Problem: A robust online account and easy-to-use digital communication tools are highly desired among taxpayers, their representatives, and IRS employees. Taxpayers who cannot find an answer online may face long delays if they decide to phone the IRS, visit a Taxpayer Assistance Center, or send a letter.

Key Statistics: Only about 20 million unique taxpayers accessed their Online Account in FY 2022. The most used function within Online Account is viewing an account transcript. Users did not complete any actions beyond viewing basic account information in about 74 percent of sessions.

Most Serious Problem: **E-File and Free File**

Taxpayer Perspective

93%

rated e-filing tax returns as an important IRS service

Why This Is a Most Serious Problem: When taxpayers cannot e-file their tax returns and other IRS forms or schedules, they face delays in processing, the possibility of transcription errors, and longer waits for their refunds. Unlike paper returns, e-filing benefits taxpayers and the IRS by reducing errors and speeding up return processing and refund payments.

Key Statistics: Individual taxpayers e-filed approximately 92 percent of returns received by the IRS in 2022. However, those who e-filed experienced almost 34 million rejected e-file attempts, and roughly 31 percent of these taxpayers endured more than one rejection. In 2022, only two percent of all taxpayers used Free File even though approximately 70 percent of taxpayers qualify for Free File.

Most Serious Problem: **IRS Transparency**

Taxpayer Perspective

86%

agree that the more information and guidance the IRS provides, the more likely people are to correctly file their tax returns

Why This Is a Most Serious Problem: Transparency is critical to having a fair and effective tax administration. Congress has given the IRS substantial funding to improve tax administration, and the IRS should be transparent about how it plans to use the funding fairly, equitably, and prudently.

Key Statistics: There are nearly 41,000 webpages comprising IRS.gov, making it difficult for taxpayers to find answers to their questions. In FY 2022, the IRS only answered less than 15 percent of the calls received, and taxpayers had to wait on hold for an average of 24 minutes.

Most Serious Problem: **Return Preparer Oversight**

Taxpayer Perspective

88%

categorized paid tax professionals as a valuable source of getting tax advice or information

Why This Is a Most Serious Problem: Return preparers prepare over half of individual income tax returns and play a key role in tax administration. Return preparers without credentials are not required to pass any competency tests or take any educational courses on tax return preparation, and they are not subject to any ethical rules.

Key Statistics: Paid return preparers prepared 53 percent of individual income tax returns in 2021. Of those, approximately 58 percent were prepared by non-credentialed return preparers. Paid return preparers prepared about 79 percent of Earned Income Tax Credit returns, but over 92 percent of the total amount of audit adjustments occurred on returns prepared by non-credentialed return preparers.

Most Serious Problem: **Appeals**

Taxpayer Perspective

40%

feel too many resources are devoted to enforcement and not enough to customer service

Why This Is a Most Serious Problem: Taxpayers wishing to review their case by the IRS Independent Office of Appeals have been experiencing long delays, with the average case spending more than a year in Appeals' inventory.

Key Statistics: Once Appeals receives a case, it sits for an average of nearly seven weeks before being assigned to an Appeals Officer. Between FY 2010 and FY 2017, the number of Appeals employees fell by approximately 40 percent. Unsurprisingly, cycle times have increased by 111 percent from FY 2017 to FY 2022. Taxpayers with cases in Appeals can currently expect a resolution in an average of 379 days – over six months longer than in 2017.

Most Serious Problem: **Overseas Taxpayers**

Taxpayer Perspective

93%

want the ability to file taxes electronically

91%

want to read information on the IRS website

86%

want a toll-free number to ask questions

Why This Is a Most Serious Problem: Overseas taxpayers face more burdens and are less able to access IRS services by phone, online, or in person. Their e-file rates are significantly lower, and limited availability of tax products in languages other than English hamper their ability to understand their complex tax obligations.

Key Statistics: The U.S. Department of State estimates that there are approximately nine million U.S. citizens living abroad. In tax year 2020, over 260,000 overseas taxpayers claimed the foreign earned income and housing exclusion tax benefit and nearly 250,000 overseas taxpayers claimed the foreign tax credit. Overseas taxpayers lack access to affordable tax preparation services, with only 11 full service Volunteer Income Tax Assistance sites open overseas, all on U.S. military bases.

PROCESSING DELAYS

Paper Backlogs Caused Refund Delays for Millions of Taxpayers

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Several decades into the information age, the IRS found itself knee-deep in *paper*. The IRS is hamstrung by a lack of electronic scanning technology and a resulting reliance on manual data entry. Its technology challenges created an inventory backlog early in the pandemic that carried over from one filing season to the next. For the past 2.5 years, millions of taxpayers have experienced financial hardships and inconvenience as the IRS has taken ten months or longer to process paper-filed tax returns and issue related refunds, six months or longer to process taxpayer correspondence,[1] and an average of more than a full year to issue refunds to victims of identity theft.[2]

When taxpayers experience refund delays, they call the IRS. Largely because of the processing delays, the IRS has received more than half a billion telephone calls over the past 2.5 years. Only 13 percent reached an IRS telephone assistor. Other taxpayers sought to speak with an IRS employee in person at one of the agency's hundreds of Taxpayer Assistance Centers (TACs), but due to limited staffing, the IRS requires taxpayers to make advance appointments, which have been limited or sometimes not available. Overall, the unprecedented processing delays created by a combination of the pandemic and the IRS's antiquated processing technology have led to widespread taxpayer frustration and both individual and business financial hardships for millions of taxpayers.[3]

EXPLANATION OF THE PROBLEM

The IRS has been operating with staffing shortages, using antiquated technology, relying on a human assembly line, and deploying outdated manual practices where modern technology offers a practical alternative.[4] During the pandemic, taxpayers continued to mail paper returns and correspondence, even during the period the IRS closed its offices for health and safety reasons. In 2020, it quickly fell behind in processing paper-filed tax returns as paper-filled trucks and containers lined its parking lots and developed unprecedented processing backlogs that carried over into 2021 and then 2022.[5] This year, the IRS tried to work through its paper backlogs through additional hiring, mandatory overtime for staff, and "surge teams" of employees reassigned from other IRS business units. Despite these efforts, IRS processing delays and paper backlogs have continued to be a Most Serious Problem for taxpayers.

Paper processing delays cause refund delays to impacted taxpayers. Most individual taxpayers receive refunds, and some depend upon timely refunds to meet critical day-to-day living expenses.[6] All want their refunds as quickly as possible. Until the IRS implements modernization upgrades that allow it to operate efficiently and paperless, it must manage and timely process the paper it receives, or taxpayers will continue to experience refund delays.

Today, the IRS still relies on employees to manually transcribe all required digits from millions of paper tax returns to get the information into its systems. This is an antiquated process at a time when most financial activity is conducted digitally, and many state revenue agencies have long since moved away from manual data entry.[7] Data transcription is meticulous work and prone to data-entry errors, and it is not an efficient use of limited IRS resources. Regardless of whether taxpayers choose to paper file returns or are forced to do so because of limitations of IRS systems, it is unacceptable that millions of taxpayers have endured months-long delays before receiving the refunds they are owed.

Practical solutions exist. While the IRS commendably has sought to achieve "healthy" paper inventory levels by end of 2022, it is important to note that its baseline for measuring "healthy" is pre-pandemic inventory levels. That would be an improvement compared with the last two years, but the agency needs to do better.[8] The IRS should be working toward a goal of eliminating its antiquated processes for processing paper returns. Modernizing IRS paper processing procedures and improving related taxpayer services should be a priority both to clear existing paper backlogs and to streamline processing for the future.

ANALYSIS

In 2019, prior to the COVID-19 pandemic, the IRS used aged technology programmed with legacy computer systems in its paper tax return processing operations. Within IRS Submission Processing, the centralized system the IRS uses to process returns is outdated and decades old. While the IRS used some automation technology in its processing of paper before the pandemic, much of it was already outdated and inefficient. Paper processing challenges caused refund delays to impacted taxpayers. Most individual taxpayers receive refunds, some depend upon timely refunds to meet critical day-to-day living expenses, and all want their refunds as quickly as possible.[9]

The IRS still relies on staff to manually input all required digits from millions of paper tax returns to get the information into its systems. That must change. But until the IRS implements modernization upgrades that allow it to operate efficiently and paperless, it must manage and timely process the paper it receives or else taxpayers will continue to experience unacceptable delays in receiving their refunds and IRS responses to their inquiries.

Staffing inadequacies occurred during the pandemic and continue to persist. During the last two filing seasons, IRS employees were only able to answer about 11 percent of taxpayer telephone calls, meaning that most taxpayers received no service when trying to call the IRS.[10] Hiring remains a significant challenge, and inadequate staffing of IRS Submission Processing operations is contributing to the IRS's taxpayer service deficiencies.[11] In fiscal year 2022, the IRS received Direct Hire Authority and onboarded over 2,800 new Submission Processing employees and 1,600 contractors.[12] In addition, the IRS temporarily reassigned approximately 2,000 employees from other IRS functions to Submission Processing.[13] Despite these efforts, the IRS had other options and actions it could have taken, and still can take, that would positively impact the taxpayer service experience.

FIGURE 2.1.1, Cafeteria of an IRS Facility in Austin[14]

IRS cafeterias should be permanently reserved for hard-working staff, not used to store overflow paper tax returns.

Additionally, the IRS missed opportunities before and during the pandemic, including not expeditiously using the $1.5 billion of additional funds provided by the American Rescue Plan Act of 2021 to hire additional employees and not implementing technology solutions such as return scanning.[15] Instead of utilizing more technology to unbury itself from under its paper mountain, the IRS mainly relied on trying to hire and reassigning its limited staff to surge teams to assist with paper backlogs.[16]

Legislative Changes Contributed to Delays During the 2022 Filing Season

Similar to the prior filing season, the 2022 filing season was affected by COVID-19 legislative changes. Many taxpayers needed to reconcile the Recovery Rebate Credit (RRC) on their tax returns in the 2022 filing season. In addition, many taxpayers had to navigate reconciling the Advance Child Tax Credit (AdvCTC) for the first time, and many had to reconcile both the RRC and AdvCTC on their tax returns. At the end of the filing season, the IRS remained buried in a backlog of work of about 29 million tax returns and pieces of correspondence.[17] The processing inventory backlog the IRS needed to manually work included about 5.3 million pieces of taxpayer correspondence and Accounts Management cases (excluding amended tax returns) and over 13 million paper tax returns, including over two million filed in the prior year.[18] As of December 9, 2022, the IRS had about 5.1 million pieces of taxpayer correspondence and Accounts Management cases (excluding amended returns) as well as 2.6 million paper tax returns and an additional 1.5 million amended returns awaiting processing.[19]

The inventory level and calendar year in which a return was filed are relevant because the IRS generally processes tax returns on a first-in, first-out basis.[20] Thus, even if the taxpayer was due a refund, the IRS did not begin processing the paper returns it received in calendar year (CY) 2022 until it first processed all the paper returns received in CY 2021.[21] While processing delays primarily affected taxpayers who filed paper returns, millions of taxpayers who e-filed their returns were also adversely impacted.

Taxpayers who e-file error-free tax returns and provide accurate direct deposit information typically received refunds promptly. But millions of e-filed returns were not error free, which meant they required employee review for issues such as math errors, thus suspending the payment of the refund. In these cases, refunds were delayed, often by months and in some cases over a year.

Taxpayers made the largest number of errors trying to reconcile the RRC and/or AdvCTC.[22] When IRS systems detected disparities, math error notices were generated. During the 2022 filing season, the IRS issued over 11 million math error notices to taxpayers, and as of November, the IRS had issued over 17 million during 2022.[23] When taxpayers responded to the math error notices, the responses often were added to the backlog of paper submissions. This resulted in paper processing delays for taxpayers, including those who acted timely to protect their taxpayer rights, and further refund delays.

Return Statistics Associated With 2022

During 2022, the IRS processed items carried over from 2021 plus most returns filed and correspondence received in 2022. The National Taxpayer Advocate appreciates the efforts of IRS employees and management to move closer toward being current and understands that returns or correspondence inventories carried over into 2023 will be less than the carryover inventories during the last two years. However, taxpayers whose returns are still awaiting processing; are sitting in the Error Resolution unit, the reject unit, or the unpostable unit; are awaiting verification for potential identity theft; or are still waiting for the IRS to process their correspondence have unmet priority needs. The IRS must continue to follow an all-hands-on-deck strategy to end the backlog once and for all.

Figure 2.1.2 depicts the large volume of original and amended individual and employment tax returns and claims for refund the IRS received during the last four years. Thereafter, Figures 2.1.3-5 illustrate the challenges and delays that impacted taxpayers in 2022. The data in these figures reflects a point in time and does not show the total number of returns filed, correspondence received, or items processed during the preceding periods.

FIGURE 2.1.2, Tax Returns Received by Type and Year[24]

Returns Received – Type/Year	CY 2019	CY 2020	CY 2021	CY 2022
Paper Forms 1040	16,948,000	14,852,000	16,202,000	12,798,000
Electronic Forms 1040	138,047,000	152,232,000	151,765,000	151,429,000
Paper Forms 1040-X	2,882,013	2,486,555	2,129,027	1,029,097
Electronic Forms 1040-X	0	144,214	1,802,284	2,016,412
Paper Forms 941	12,770,328	11,594,459	10,775,793	1,942,919
Electronic Forms 941	12,093,323	12,939,196	14,199,749	15,629,173
Forms 941-X	325,718	338,678	738,422	1,369,000
Forms 1045	6,720	28,695	18,825	25,000
Forms 1139	4,360	22,882	16,337	14,000

FIGURE 2.1.3, Status of Inventory Requiring Manual Processing (as of April 22, 2022)[25]

	Individual	Business	Not Specified	Total
Paper Returns Awaiting Processing				
Received in Calendar Year 2021	1,600,000	700,000		2,300,000
Received in Calendar Year 2022	4,600,000	4,500,000	2,000,000	11,000,000
Total Paper Returns Awaiting Processing	**6,200,000**	**5,200,000**	**2,000,000**	**13,300,000**
Paper and Electronic Returns – Processing Suspended	**5,300,000**	**1,600,000**		**6,800,000**
Amended Returns Inventory	**2,600,000**	**1,100,000**		**3,700,000**
Total Unprocessed Returns	**14,100,000**	**7,900,000**	**2,000,000**	**23,800,000**
Correspondence/Accounts Management Cases (excluding amended returns)	**2,200,000**	**1,000,000**	**2,100,000**	**5,300,000**
Total Inventory Requiring Manual Processing	**16,300,000**	**8,900,000**	**4,100,000**	**29,300,000**

FIGURE 2.1.4, Status of Inventory Requiring Manual Processing (as of October 14, 2022)[26]

	Individual	Business	Not Specified	Total
Paper Returns Awaiting Processing				
Received in Calendar Year 2021				
Received in Calendar Year 2022	3,300,000	4,600,000	100,000	7,900,000
Total Paper Returns Awaiting Processing	**3,300,000**	**4,600,000**	**100,000**	**7,900,000**
Paper and Electronic Returns – Processing Suspended	**4,500,000**	**1,500,000**		**6,000,000**
Amended Returns Inventory	**1,400,000**	**700,000**		**2,100,000**
Total Unprocessed Returns	**9,200,000**	**6,800,000**	**100,000**	**16,100,000**
Correspondence/Accounts Management Cases (excluding amended returns)	**1,900,000**	**800,000**	**1,900,000**	**4,600,000**
Total Inventory Requiring Manual Processing	**11,100,000**	**7,600,000**	**2,000,000**	**20,700,000**

FIGURE 2.1.5, Status of Inventory Requiring Manual Processing (as of December 9, 2022)[27]

	Individual	Business	Not Specified	Total
Paper Returns Awaiting Processing				
Received in Calendar Year 2021				
Received in Calendar Year 2022	1,000,000	1,500,000	100,000	2,600,000
Total Paper Returns Awaiting Processing	**1,000,000**	**1,500,000**	**100,000**	**2,600,000**
Paper and Electronic Returns – Processing Suspended	**4,300,000**	**1,600,000**		**5,900,000**
Amended Returns Inventory	**600,000**	**900,000**		**1,500,000**
Total Unprocessed Returns	**5,900,000**	**4,000,000**	**100,000**	**10,000,000**
Correspondence/Accounts Management Cases (excluding amended returns)	**2,000,000**	**800,000**	**2,300,000**	**5,100,000**
Total Inventory Requiring Manual Processing	**7,900,000**	**4,800,000**	**2,400,000**	**15,100,000**

IRS Processing Operations Must Be Healthier Than Ever to Best Serve Taxpayers

Improving the immediate health and developing a solid strategic plan for the long-term health of its processing operations, especially how it works paper, is critical for the IRS to be an efficient 21st century tax administration. Notably, the IRS needs to reimagine itself as a modern agency and move on from considering the pre-pandemic inventory levels as the benchmark for a healthy inventory.[28] To better serve taxpayers in the future, the IRS should seek to become healthier than before by improving the processing of its inventory while enhancing its customer service levels and options.

Funding Brings Hope of Modernization to IRS Processing Operations

In August, Congress passed the Inflation Reduction Act, which provides the IRS with supplemental funding of nearly $80 billion over the next ten years.[29] The legislation includes about $3.2 billion to improve taxpayer services, $4.8 billion to modernize the IRS's information technology (IT) systems, $25.3 billion to support taxpayer services and enforcement operations, and the balance for enforcement.[30] The paper backlogs and broader customer service deficiencies require priority attention.[31] If this additional funding is prudently spent, the IRS should be able to bring about a complete modernization makeover of its paper processing operations, with the ability to hire and train an advanced workforce, replace outdated technology and systems, and dramatically improve taxpayer services and the taxpayer experience.[32]

Automated Solutions Can Mitigate Hiring and Training Issues

As the IRS continues to struggle to hire and train new staff, automated solutions are an option to mitigate staffing issues. One example of such automation is the IRS's adoption of its FixERS tool, an automated way to process the IRS's Error Resolution System case inventory that historically the IRS processed manually.[33] The FixERS tool worked over 12 million individual returns that otherwise would have waited to be worked by an IRS tax examiner, which is the equivalent of 108 full-time employees using the antiquated IRS manual processing methods.[34] Automation enabled the IRS to work nearly 97 percent of eligible return errors within three days of receipt.[35] Improvements brought about by using modern automation had clear benefits for the IRS, but most importantly, it helped reduce delays for taxpayers. Automation is the best solution to help the IRS improve its processing health. TAS recommends that the IRS continue to leverage additional FixERS capabilities and other IT upgrades to improve the filing season experience and achieve efficiencies.

The IRS Should Expand Electronic Filing for Taxpayers to Help Digitally Divert the Paper Returns It Receives[36]

Presently, taxpayers e-file over 90 percent of individual tax returns and only about 69 percent of business tax returns.[37] Although some taxpayers choose not to e-file their federal tax returns, e-filing is the best choice for those who are able to do so. Some taxpayers would prefer to e-file their returns but cannot for a variety of reasons, including that IRS systems are not programmed to electronically accept some of its own forms.[38] Expanding electronic filing so more taxpayers can use it will reduce the IRS's volume of manual paper processing. Taxpayers are likely to quickly reap the benefits of an IRS that is less reliant on staff to manually transcribe returns from paper to computer.

Scanning Technology Can Digitally Clear Current Paper Jams and Prevent Future Ones

Scanning technology has been available for years and is cost-effective. If the IRS had used it during the pandemic, processing and refund delays would have been less extreme. While the IRS has contemplated the use of scanning in its processing operations, its indecisiveness and lack of strategy never produced follow-through or meaningful pursuit of it.[39] The lack of scanning technology as part of its data intake process puts the IRS several decades behind a significant number of state revenue agencies that incorporated this technology years ago.[40]

In March 2022, the National Taxpayer Advocate issued a Taxpayer Advocacy Directive (TAD) to the IRS, instructing it to implement scanning technology with the goal of substantially reducing or eliminating the challenges of processing paper-filed tax returns.[41] More machine-read returns mean fewer returns that require manual data transcription. Several months later, the IRS Deputy Commissioners responded to the TAD by partially modifying and partially rescinding the TAD's directed actions, but the response lacked specificity.[42] Due to the magnitude of the backlog and its negative impact on taxpayers, the National Taxpayer Advocate appealed the IRS Deputy Commissioners' decision to the IRS Commissioner.[43] After several months, the IRS Commissioner provided the National Taxpayer Advocate a general response indicating that the IRS planned to conduct further scanning of some, but not all, individual and business paper returns, and that detailed plans were in development.[44]

Scanning technology is an immediately available solution that will improve the processing pipeline with fewer transcription errors. Modern scanning technology does not sacrifice accuracy for speed and makes minimal errors, in contrast to the IRS's manual transcription error rate for paper returns of 22 percent.[45] IRS staff spent approximately 2.4 million direct hours preparing and manually inputting paper tax returns in its systems in 2022. Scanning would help the IRS accomplish this work in much less time and with greater accuracy.[46] And although the IRS slowly tested various scanning pilot programs during the pandemic, taxpayers experiencing refund delays were not the focal point.[47] The IRS should have used its scanning pilots as a possible solution to expedite refund delivery.

CURRENT IRS PROCESSING TECHNOLOGY
MANUAL • COSTLY • PRONE TO ERRORS

22%	2.4 mil
manual transcription error rate	hours spent preparing and manually inputting paper returns

The Negative Impacts of IRS Processing Delays

With most taxpayers eligible to receive refunds, the impact of IRS processing delays may affect taxpayers in important and financially damaging ways.[48] For individual taxpayers and families, refund delays may leave them unable to afford rent, food, or medicine. For business taxpayers, delays in providing congressionally authorized pandemic relief may have required some businesses to lay off workers or even to shutter operations.[49] For various reasons, taxpayers claimed many pandemic relief benefits via paper filing. This was also the case with refunds claimed on IRS Form 1139, Corporation Application for Tentative Refund, which taxpayers cannot e-file and where at one point taxpayers faced average IRS processing wait times over 165 days, far exceeding the 90-day statutory requirement.[50]

Collateral Impact on Congress

Taxpayers who cannot connect with the IRS or have difficulty resolving a tax issue often contact their members of Congress for help. Members of Congress have routinely been reaching out to the IRS or referring constituents to TAS to provide advocacy services for case resolution. Congressional offices and ultimately TAS should not be overburdened with constituent/taxpayer cases that are easily avoidable. Members of Congress and their constituents need TAS to focus its limited resources on taxpayer advocacy issues where it is uniquely positioned to add value and not divert its resources to serve as a backup IRS processing function.

CONCLUSION AND RECOMMENDATIONS

The IRS must modernize its processing operations to create a paperless work environment built on a solid foundation and designed for present and future success. To achieve this, the IRS must leave the era of the Flintstones and advance to the era of the Jetsons and beyond. The IRS must develop and execute a detailed and specific strategic plan to deploy its additional funding in a swift, tactical way that eliminates delays in paper processing and refund delivery and improves all facets of the taxpayer experience involving the processing of tax returns and related taxpayer correspondence.

Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Expedite the processing of paper tax returns by developing a plan to implement optical character recognition, 2-D bar coding, or similar technology to automate the processing of these returns during the 2023 filing season or, if that is not feasible, by the start of the 2024 filing season.
2. Prioritize the processing of refund returns prior to returns with tax due or no tax during the 2023 filing season.
3. Automate error resolution for all error codes and conditions using the FixERS tool or other tool during the 2023 filing season or, if that is not feasible, by the start of the 2024 filing season.
4. Develop and post on IRS.gov an easy-to-read dashboard that provides weekly information on the filing season, including the total number of returns in inventory, the number of returns beyond normal processing times, the number of returns in suspense status, and the anticipated timeframes for working through the backlog.

5. Provide inventory level status updates for each specific area of Submission Processing in a weekly report distributed to all impacted business units, including TAS.

RESPONSIBLE OFFICIALS

Kenneth Corbin, Commissioner, Wage and Investment Division

Amalia Colbert, Commissioner, Small Business/Self-Employed Division

IRS COMMENTS

The IRS is not only committed to becoming healthy with our inventories and enhancing our customer service levels and options but also to comprehensively modernizing paper processing. The Inflation Reduction Act provides the IRS with supplemental funding of nearly $80 billion over the next ten years, part of which is earmarked to improve and support taxpayer services and modernize information technology systems. The IRS has been collaborating with a third-party vendor to pilot a scanning and digitalization solution. As of September 30, 2022, the IRS scanned and processed almost 135,000 tax returns through the pilot. For the 2023 filing season (FS) and beyond, the IRS is hoping to scan and process millions of tax returns using a digitalization solution. In the interim, we continue to develop and expand automated options such as the FixERS tool to process Error Resolution System (ERS) cases effectively and efficiently. During processing year (PY) 2022, the tool processed five error codes (13.2 million through 10/26/2022) with 100% accuracy. Only about 3% of the cases required manual intervention. For PY 2023, the IRS is planning to add 16 additional error codes to FixERS for a total of 21, including 9 of the 11 highest volume that come to the ERS.

Millions of taxpayers rely on their refunds for a variety of financial obligations. The Service's goal for FS 2023 is to return to pre-COVID processing guidelines, which means prioritizing returns that request a refund. The IRS continues to explore ways to deliver transparent messaging to taxpayers about their refunds by facilitating quicker responses to delays, increasing the use of lower-level authentication tools, reducing the need to involve other service channels such as the telephones, and identifying actions taxpayers may take to resolve delays. We are targeting the Where's My Refund (WMR) and Where's my Amended Return (WMAR) applications for enhancements in three key areas. Those enhancements include:

- Remove identify theft restrictions for certain scenarios that prevent users from accessing WMAR.
- Import ERS records into the WMR database and then tailor simple messages about the delay and possible actions taxpayers can take to speed up the processing of their return and refund.
- Enable WMR to receive and recognize specific return codes for certain types of return filtering delays and provide more specific and transparent messaging, including possible actions taxpayers may take to take action to resolve delays.

The IRS continues to expand Document Upload Tool (DUT) capabilities and has requested funding to develop a DUT for victims of identity theft to submit Form 14039, Identity Theft Affidavit.

Hiring and positioning our staff to best serve taxpayers is critical to bringing processing inventories to a healthy level and achieving our mission. Accounts Management onboarded over 5,500 employees in preparation for FS 2023 and Submission Processing selected more than 1,200 applicants during

October and continues to onboard contractors for clerical support. Options such as Direct Hire Authority and surge teams were invaluable to securing the necessary manpower to work inventories and staff the telephones. We are considering using surge teams in 2023 and are analyzing data to determine our needs. Even with adequate levels of funding, there are collateral challenges such as hiring clerical staff, lead technicians, and managers to support the new employees. Our Human Capital Office continues to provide strategies and tools for recruiting, hiring, developing, retaining, and transitioning a highly skilled and high-performing workforce to support the IRS mission accomplishments.

TAXPAYER ADVOCATE SERVICE COMMENTS

The IRS's response presents fewer answers for taxpayers than it does questions. Taxpayers need more transparency; they need clear answers as to how the IRS will quickly fix its problems and reasons to be optimistic for the future. While the IRS has been confronted with remarkable challenges during the pandemic, that does not justify the duration of its unprecedented processing delays and the significant refund delays impacting and harming taxpayers for a third straight year. Good news, the IRS has made considerable progress reducing the inventory backlog and is starting the 2023 filing season in an improved position from the two prior years. But millions of taxpayers are still waiting for their refunds and returns to be processed. Those taxpayers do not see the IRS as "healthy." Notably, the IRS continues to use "healthy" in the context of pre-pandemic inventory levels and guidelines as a benchmark for success. Although the pre-pandemic health of the IRS is certainly an improvement compared to the last 2.5 years, the IRS and taxpayers deserve better. From a taxpayer's point of view, the last three filing seasons have been brutal, resulting in delayed refunds, unanswered calls, inability to meet face-to-face, and failure of the IRS to post transparent updates, which leaves taxpayers in limbo. As we prepare to enter another filing season, the IRS once again is positioned to carry over a large volume of processing inventory. Taxpayers cannot afford to wait for refunds they should have received months sooner, and the IRS cannot continue the practice of carrying over millions of unprocessed returns every year. The backlog must be eliminated once and for all.

RECOMMENDATIONS

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Expedite the processing of paper tax returns by developing a plan to implement optical character recognition, 2-D bar coding, or similar technology to automate the processing of these returns during the 2023 filing season or, if that is not feasible, by the start of the 2024 filing season.
2. Prioritize the processing of refund returns prior to returns with tax due or no tax during the 2023 filing season.
3. Automate error resolution for all error codes and conditions using the FixERS tool or other tool during the 2023 filing season or, if that is not feasible, by the start of the 2024 filing season.

4. Develop and post on IRS.gov an easy-to-read dashboard that provides weekly information on the filing season, including the total number of returns in inventory, the number of returns beyond normal processing times, the number of returns in suspense status, and the anticipated timeframes for working through the backlog.
5. Provide inventory level status updates for each specific area of Submission Processing in a weekly report distributed to all impacted business units, including TAS.

Endnotes

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14 Photograph of the cafeteria of an IRS facility in Austin, Texas. Courtesy of the Department of the Treasury.

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COMPLEXITY OF THE TAX CODE

The Complexity of the Tax Code Burdens Taxpayers and the IRS Alike

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

U.S. tax laws are overly complex. As a result, they burden America's taxpayers and negatively impact voluntary tax compliance. The current system of preparing and filing tax returns is too difficult, costly, and time-consuming. This is especially true for small businesses and taxpayers accessing social benefits through the tax system. Some of this complexity exists because the Internal Revenue Code (hereinafter "the Code") does not mirror modern life and has failed to evolve with the times. Making the rules easier to understand and follow would improve tax administration and compliance.

This Most Serious Problem looks at legislative and informational improvements to simplify and modernize the Code. Simplifying the Code means making it easy to understand, easy for the IRS to administer, and less burdensome on everyone, whether they are preparing tax returns, trying to comply with tax laws, or being audited. Simplifying the Code is the most important step Congress can take to reduce taxpayer compliance burdens, increase self-assessment and voluntary compliance, and improve the processing efficiency and verification of annual income tax returns.[1] Simplification is essential to the integrity of the U.S. tax system and to the broader civic participation of American taxpayers.[2]

EXPLANATION OF THE PROBLEM

The Code contains 9,834 code sections – many containing detailed subsections – and a six-volume set of corresponding regulations.[3] Many of these sections are unnecessarily complex and archaic as they were drafted decades ago, and the tax laws impose a complex system of requirements that do not match today's world. Complexity is a problem because complex rules lead to confusion, errors, and distrust, which reduces self-assessment and voluntary compliance. Some examples of how family structures are changing, and families, businesses, and taxpayers earn a living in the 21st century include:

- Family units are increasingly diverse with multigenerational households, split custody, blended families, and nonmarried cohabitating partners.
- We conduct business in new ways. The internet has expanded opportunities for people to start new types of businesses.
- Families and businesses are more mobile than ever. Especially during the COVID-19 pandemic, taxpayers may have relocated frequently. Individuals may be "digital nomads" whose residency may not be fixed. Businesses may operate remotely without fixed business locations.
- The concept of work has changed. The internet has allowed for more flexible work arrangements. Those earning income may not be tied to just one employer or fixed location. There are many gig economy workers, independent contractors, and small or microbusiness owners.

While technological innovation reduces barriers to entry for starting a business, the tax burdens endure. The Code must be modernized and adapted.

ANALYSIS

Simplicity matters so that taxpayers understand the rules and can comply with them efficiently.[4] However, "simple" does not necessarily equate to fewer words; in the context of the Code, it means the tax laws should be clear and easy for a taxpayer to understand, rely on, and use. The goal should be to draft clear and easy to understand laws. But just as important, Congress should draft fair, easily administrable laws with an eye toward reducing burden on both taxpayers and the IRS.

While the Code Does More Than Raise Revenues, Complexity Is Avoidable

The Code is the product of legislative changes throughout the decades. Much of the complexity stems from the desire to use the tax laws for more than raising revenue. It is a method of implementing social and economic policy objectives.[5] For example, Congress has entrusted the IRS to administer many social benefits through the tax system, such as the Earned Income Tax Credit (EITC), Child Tax Credit (CTC), Additional Child Tax Credit (ACTC), and the American Opportunity Tax Credit (AOTC). These programs provide critical financial assistance to American taxpayers.

The realities of the legislative process have produced a complex set of sunsets and phase-outs. As tax provisions are enacted through the reconciliation process, the "Byrd Rule" creates the need for expiration dates on laws that affect the budget.[6] This means many tax provisions are what have been called by one external stakeholder "Hokey Pokey" provisions: one year they are in the Code, and one year they are out.[7] The uncertainty jeopardizes tax compliance and administration of the tax system, and taxpayers struggle to learn the rules from one year to the next. It makes it difficult for individual taxpayers to plan. It makes it hard for small businesses to plan capital expenditures.[8] It is also hard for the IRS to keep up with the changes. It must edit forms, publish guidance, train staff, and update computer systems.[9] This is important as taxpayers look to the IRS to provide explanations via its publications, website, customer service telephone lines, and online chat functions.

Some argue this complexity is inevitable, given the use of tax expenditures and non-revenue-raising uses of the Code, and may even be necessary to achieve fairness or provide social benefits.[10] However, it is the position of the National Taxpayer Advocate that there is room to simplify and modernize the current Code to make it more accessible to America's taxpayers and more administrable by the IRS.

Complexity creates the following issues, as shown in Figure 2.2.1.

FIGURE 2.2.1

TAX COMPLEXITY CHALLENGES

Burdens Taxpayers

- Creates onerous compliance burdens on individuals and businesses. Taxpayers devote excessive time and resources to preparing and filing tax returns.
- Forces taxpayers to bear monetary costs to comply by hiring tax return preparers or buying tax preparation software.
- Rewards taxpayers who can afford expensive tax advice and discriminates against taxpayers who cannot.

Undermines Trust in the Tax System and Reduces Voluntary Compliance

- Alienates taxpayers as they do not understand the rules.
- Confuses taxpayers who do not understand how their taxes are computed and creates a perception people are not paying their fair share.
- Leads to lower levels of tax compliance, as taxpayers make inadvertent and deliberate errors.
- Facilitates tax avoidance by enabling taxpayers to structure transactions to reduce liabilities or commit fraud.

Difficult to Administer

- Requires the IRS to update forms, publications, and computer systems, train employees on changes, and respond to millions of taxpayer questions regarding rule changes.
- Impedes the IRS's ability to detect noncompliance through audits or other means.
- Requires the IRS to spend valuable resources answering questions and providing guidance regarding the Code's complex provisions.

Out of Touch With Modern Life

- Excludes families and businesses from credits and deductions because the Code does not reflect life in the 21st century.
- Impacts economic growth.

Americans Spend So Much Time and Money on Tax Preparation Because the Code is Burdensome

Time and Financial Burdens

The financial burden and time commitment for complying with our nation's complex tax system is astronomical. For example:

- An individual taxpayer is estimated to spend 13 hours and $240 out-of-pocket costs to prepare and file one annual tax return.[11]
- For a small business, the time and money spent on tax compliance is roughly 82 hours and $2,900.[12]
- Individual taxpayers spent a total of 897 million hours in fiscal year (FY) 2022 on recordkeeping. This is in addition to the 1.15 billion hours spent on tax preparation of individual returns.[13]
- Business entities spent about 1.14 billion hours and $48.3 billion on tax preparation in FY 2022.[14]
- Many small businesses/sole proprietorships file a Schedule C to report their business income and expenses. For tax year (TY) 2021, about 16 percent of individual income tax returns filed for that year included a Schedule C.[15]
- For many small businesses, time is their most valuable asset. As an external stakeholder stated in a discussion with TAS, each hour spent on tax compliance is an hour less they can spend assisting a customer.[16] Some are spending the equivalent of two full weeks a year on tax return preparation.[17]
- In FY 2022, U.S. taxpayers collectively spent $89.7 billion on tax preparation and 3.2 billion hours on recordkeeping and tax preparation.[18] If this time were monetized, this constitutes $94.6 billion spent on tax preparation in FY 2022 alone.[19] The enormity of the dollars spent on this roughly equals the gross domestic product of the Dominican Republic.[20]
- The IRS hourly paperwork compliance burden is over six billion hours.[21]
- It is estimated that tax compliance burden is 71 percent of the annual federal paperwork burden.[22]

The time spent on recordkeeping and tax preparation is excessive. This is time business owners could spend on growing their businesses. It is time individual taxpayers could earn wages or care for family members. The estimates may be low as they only include the cost of preparing federal income tax returns, not state tax documents. They do not include the costs of education, government administration, and tax litigation.[23]

Since the National Taxpayer Advocate last addressed complexity as one of the Most Serious Problems in the 2014 Annual Report to Congress, we can reflect on some progress toward simplification.[24] The Tax Cuts and Jobs Act (TCJA) of 2017 increased the standard deduction significantly while eliminating certain itemized deductions.[25] As a result, we can see a significant shift toward claiming the standard deduction rather than itemizing deductions (see Figure 2.2.2). Pre-TCJA, 31 percent of tax returns claimed itemized deductions, and 69 percent used the standard deduction. Since TCJA, only 9.7 percent of returns claim itemized deductions, and 90.3 percent of returns use the standard deduction.[26] This signifies a reduced time burden for individual taxpayers, who no longer have to collect records or compute itemized deductions. This is a small step on the path toward simplification. Yet, the National Taxpayer Advocate notes this was a policy decision with a negative financial impact on many who previously benefited from Schedule A deductions like uncapped state and local taxes and unreimbursed employee business expenses.

FIGURE 2.2.2, Tax Returns Claiming Standard Deduction Versus Itemized Deductions[27]

	Pre-TCJA		Post-TCJA							
	TY 2017		TY 2018		TY 2019		TY 2020		TY 2021 (Through September 2022)	
	Count	Percent	Count	Percent	Count	Percent	Count	Percent	Count	Percent
Standard Deduction	105,674,873	69.0	137,121,824	88.7	148,776,754	89.5	145,883,368	90.3	132,909,065	91.3
Itemized Deduction	47,453,918	31.0	17,471,552	11.3	17,455,642	10.5	15,745,379	9.7	12,701,725	8.7
Total	153,128,791	100.0	154,593,376	100.0	166,232,396	100.0	161,628,747	100.0	145,610,790	100.0

Costs and Risks

It is costly to keep records, comply with the Code, and prepare and file tax returns, and additional complexities arise regarding the time necessary to retain records. The whole process is stressful. Most taxpayers want to do the right thing; they want to comply. But it is difficult to do it on their own. Often, they are compelled to pay for tax software or tax professionals to help them understand their tax obligations. In TY 2020, 92.7 percent of taxpayers filed returns using tax software.[28] For TY 2021, of the individual tax returns filed through October 2022, 96 percent were filed via tax software.[29] This imposes a monetary cost on those taxpayers who paid for software to prepare and file their returns. Because the law requires filing annual tax returns, the government should bear the costs associated with filing. The high cost of return preparation driven by the complexity of the Code creates a disparity between those who can afford tax professional assistance and those who cannot. Low-income filers face higher compliance costs relative to their resources.[30]

Complex rules make claiming refundable credits too difficult without software or professional assistance. This costs money and drains resources from households.[31] For TY 2020, over half of the taxpayers claiming the EITC (50.4 percent), used a paid tax return preparer.[32] For TY 2021, over 15.2 million people claiming the EITC paid for tax return preparation essentially to claim a public benefit provided by Congress.[33] The high cost of tax return preparation may drive taxpayers to rely on noncredentialled tax return preparers who may not adhere to the rules either intentionally or unintentionally, potentially causing problems for taxpayers down the road. The Department of the Treasury and the National Taxpayer Advocate believe unscrupulous and unregulated tax return preparers contribute to refundable credit noncompliance, fraud, and improper payments.[34] An improper payment is any payment that should not have been made, was made in an incorrect amount, or was made to an ineligible recipient.[35] For FY 2021, the IRS calculated and reported the following dollar amount and percentage rate of improper payments for three of its high-priority programs susceptible to improper payments:

- EITC: The IRS estimates 28 percent ($19.0 billion) of the total EITC payments of $68.3 billion were improper.[36]
- ACTC: The IRS estimates 13 percent ($5.2 billion) of the total ACTC payments of $39.4 billion were improper.[37]
- AOTC: The IRS estimates 26 percent ($1.9 billion) of the total AOTC payments of $7.1 billion were improper.[38]

Taxpayers suffer the consequences, as they are ultimately responsible for any tax liabilities resulting from these improperly prepared returns.[39] Moreover, these errors increase burdens to tax administration and negatively impact the tax gap.

Complexity Undermines Public Trust, Self-Assessment, and Voluntary Compliance

The complexity of the Code undermines public trust in government and the IRS; conversely, simplifying the Code would enhance understanding and public confidence in the fairness of the tax system.[40]

Taxpayers may make inadvertent mistakes due to misunderstanding the law. The IRS may assess penalties against people who made every effort to comply with the law. This erodes trust in the system and may inhibit self-assessment and voluntary compliance, the bedrock upon which our tax system is based. It further erodes public trust in our government. The Code should be drafted clearly and administered fairly and equitably by the IRS with timely guidance to inform taxpayers.

"…[E]nforcement of the law is not only a means to raise revenue. It is also a matter of fundamental fairness. It is important for honest taxpayers to know that, when they file their taxes accurately with the IRS, other people are doing the same." -Secretary Janet Yellen[41]

Complexity also creates opportunities to engage in tax fraud or aggressive tax avoidance maneuvers. Fraudsters seek refuge behind the complexity, as it may be difficult for the IRS to detect noncompliance. In FY 2022 alone, the IRS assessed fraud penalties totaling $306,823,808.[42]

The combination of inadvertent mistakes, reduced self-assessment and voluntary compliance, and outright fraud generates a significant financial risk to tax administration. Complexity contributes to the "tax gap," which is the tax liability owed versus what is voluntarily paid.[43] The most recent estimates of the tax gap place it at $496 billion, with projections growing to $540 billion per year.[44]

Modernize the Internal Revenue Code: The Code Is Outdated and Does Not Reflect Modern Society

Outdated Code Does Not Fit Modern Families

The American family has changed, and the Code has not kept up, as divorce, cohabitation, blended families, and multigenerational family arrangements have become more common.[45]

BLENDED • COHABITATION • DIVORCE
MULTIGENERATIONAL
The American family has changed, and the Internal Revenue Code has not kept up.

Childcare arrangements are increasingly challenging,[46] as it has become common for children to split their time between different households, and an increasing number live with or are supported by non-parent relatives.[47] Only 51.6 percent of children living in families with incomes at or below 200 percent of the Federal Poverty Level were in families with married couples.[48] Children of low-income households were more likely to live with a single parent or in multigenerational households, a cohabitating household, or a family with at least one non-biological child, as compared to children of higher income families.[49] The qualifying child rules for EITC and ACTC should more accurately reflect their target population.[50]

The individual income tax laws are structured so an individual taxpayer files a return once a year based on a filing status such as being single or part of a family unit. The unit is based on legal relationships, child residency, and support. There are five child-related provisions that use the definition of qualifying child: Head of Household (HoH) filing status, Child and Dependent Care Credit, CTC, EITC, and the dependency exemption.[51] The Code and the way child credits are structured were established when the traditional family was a married two-parent household. Determining who can claim a child, given the outmoded standards, leads to administrative conflicts, with many children being excluded entirely.[52] The rules do not allow for more than one caregiver to claim the same child; they instead have a complicated system of tiebreaker rules that are hard for even tax professionals to apply.[53]

Selecting the applicable filing status is also difficult to understand. Many taxpayers are not formally divorced or legally separated but are living separate lives. The IRS prohibits them from claiming HoH filing status unless they meet additional requirements of IRC § 7703(b).[54] If they select the married filing separately status but do not have access to the Social Security number for their estranged spouse, they are forced to paper file.[55] Unfortunately, for the 2020 through 2022 filing seasons, paper filing a tax return prolonged the time it took to receive a refund by many months.[56] That delay has an impact on those already facing financial hardships. A study has shown that even a one-week delay in the refund would put 30 percent of families in a financial situation that would prevent them from paying bills on time.[57] The National Taxpayer Advocate continues to call for the IRS to enable all taxpayers to e-file tax returns.[58]

Outdated Code Excludes Children

Congress should adapt the Code to ensure children can access tax benefits. As the cost of housing increases, households may also include multiple unrelated working adults and cohabitating families. Data shows families are moving to less fixed household types where the composition changes through the course of the year.[59] The standards used to determine eligibility may exclude children not in traditional childcare or housing arrangements.

The refundable credits, including EITC and ACTC, are meant to provide financial support to those caring for children. However, the current requirements for these credits leave claimants who make errors exposed to examination and exclude children in need of aid from accessing tax benefits.[60] Furthermore, EITC and ACTC are directed toward a population of taxpayers least equipped to navigate its complexity.[61]

Qualifying Child: Uniform Definitions Should Be Uniform

The term qualifying child is defined in IRC § 152(c). It is meant to be a common definition throughout the Code, yet there are confusing and complicated deviations from this uniform definition. Figure 2.2.3 illustrates the complexity of these deviations.

For example, a qualifying child for EITC must be under 19 (or 24 if a student), while a qualifying child for the CTC must be under 17.[62] IRC § 152(c)(2) lists different qualifying "relationships" that would make someone a qualifying child for benefits like the CTC or EITC. This list includes children, grandchildren, stepchildren, nieces, and nephews. In the case of a taxpayer who is married but seeking to be treated as unmarried for claiming the HoH status, the list is more limited. Only a child or stepchild – *not* a grandchild – will allow the taxpayer to meet the requirements to be considered unmarried for HoH filing status.[63] These variations are complex and needlessly confusing. Not surprisingly, many taxpayers do not understand the differences in requirements, so they assume qualifying for one automatically means they qualify for the other.[64] Uniformity on qualified child requirements throughout the Code would reduce complexity. The National Taxpayer Advocate recommends modernizing the definition of a qualifying child so the rules should reflect real-life living arrangements.[65]

FIGURE 2.2.3, Definitions of Qualifying Child[66]

	IRC § 152 Qualifying Child Common Definition	Deviations
Relationship Test	Child or descendant of such a child, or brother, sister, stepbrother, stepsister, or descendant of any such relative	**Head of Household:** For a married person seeking to be treated as unmarried for claiming HoH status: only child or stepchild; not grandchild
Residency Test	Same principal place of abode as the taxpayer for more than one-half of the year	**EITC:** Abode must be in the United States
Age Requirement	Must be under 19 or 24 if a student	**CTC:** Must be under 17
Support Test	Has not provided over one-half of individual's own support for the calendar year	**EITC:** Does not apply this test
Other Requirements		**EITC and HoH:** Do not apply special rules for divorced parents from IRC 152(e) **Dependent:** Must be a citizen, national of the United States, resident of the United States, or a contiguous country (*i.e.*, Mexico or Canada) unless adopted by a citizen or national of United States **CTC:** Must be a citizen, national, or resident of the United States

Illustration of How the Requirements Exclude Taxpayers

IRC § 152(c)(1)(B) requires the qualifying child to have the same principal place of abode for more than one-half of the year as the individual claiming the child as a dependent. This residency test results in the greatest number of erroneous EITC claims.[67] This may result from more complicated custody and childcare arrangements. If a child lives between parents or other caregivers' homes, the child may be excluded entirely from receiving tax benefits.

Example: Children Are Excluded From Social Benefits

A taxpayer who is a single mother works in a hospital on the night shift every weekday. She has two children and earns $31,200 a year. She relies on the grandmother of the children for childcare. The children stay with the grandmother for part of the year and attend school in the school district where the grandmother lives. The children live with their father for three months over the summer. However, this mother provides most of the financial support for her children throughout the year.

When this taxpayer prepares her taxes, she attempts to figure out if she can claim the EITC and CTC for her children. She reads the instructions for Form 1040 (114 pages), which informs her she may need a Schedule 8812. She reads the section on EITC, which points her to IRS.gov/EITC. She visits the website, which provides a dizzying array of links about the credit. She looks at Publication 596, Earned Income Credit (44 pages). She has spent several hours learning that her children must reside with her for over six months (183 days) to be able to claim them on her return.[68] A year of 365 days minus 90 days with their father over the summer leaves 275 days. Her children are with her mother 180 nights a year (five nights a week for nine months). The children reside with her only 95 days a year. She wonders if her mother would be able to claim her children to receive the EITC funds. She decides to pay a tax preparer to help her figure this out. She pays $240. The preparer explains that no adult meets the 183-day requirement. Even if the children had stayed with their grandmother enough days to meet the threshold, she was retired and only received Social Security, which does not count as earned income. The children will not have access to those funds since no parent or caregiver meets the criteria. This taxpayer just spent about

13 hours and at least $240 on tax preparation services to determine she is not entitled to credits that would help her support her family, a result inconsistent with Congress's intent when creating these credits.[69]

Complex Rules Are Difficult for the IRS to Administer

The web of rules that govern qualifying children are inconsistent, unintuitive, and outdated. The IRS lacks independent sources of information to verify whether the taxpayer claiming a child meets the multitude of requirements.[70] The shift to administering social benefits through the Code places tax return preparers in difficult positions. They are not social workers; yet they are now engaged in a due diligence process of reconciling all the benefits to which a taxpayer may or may not be entitled.[71]

According to the Department of the Treasury's FY 2020 Report, EITC claimants account for more than 40 percent of audits conducted on individual taxpayers.[72] In more than 40 percent of cases where the IRS originally flagged the EITC claim as invalid, and the taxpayer received assistance from TAS, the IRS ruling was reversed.[73] Claiming EITC involves over 20 separate determinations, including tiebreaker rules.[74] Seventy percent of improper EITC payments are from authentication errors.[75] This involves authenticating the relationship, residency, filings status, and custodial arrangements. "Qualifying child" errors are the most significant EITC overclaim in terms of dollars, caused by the failure to provide proof of the residency test and the relationship test.[76] The IRS does not have a database to show relationships between taxpayers or verify where children live or the other information necessary to validate the accuracy of this refundable credit prior to issuing a refund. The IRS does not have the statutory authority to address these issues at the point of receiving the return; instead, it addresses the overclaims through a long audit process.[77]

To reduce complexity in administering the rules around the EITC, the National Taxpayer Advocate has recommended separating the EITC into two credits: a worker credit and a child credit.[78] When Congress enacts a provision, the data used to substantiate entitlement to the provision should be data that is accessible, such as using the vehicle identification number to confirm entitlement to electric vehicle credits.[79] The annual wage data (Forms W-2) required to verify the worker credit is already available to the IRS, and it can easily use the data to verify entitlement to the worker credit.

Furthermore, complexity is hard for the IRS to manage. With each addition to the Code, the IRS must generate forms, draft publications, update computer codes, train staff, and answer millions of telephone calls. The IRS cannot handle the volume of inquiries it receives currently.[80]

Contemporary Small Businesses

It is not only families that have changed dramatically since the enactment of the Internal Revenue Code of 1986. Modern businesses also pose a new reality. The existing tax laws do not reflect the current work environment.[81] In 2021, 16 percent of Americans earned money from the gig economy as independent contractors without withholding.[82] Taxpayers may take on multiple gigs to make ends meet. They receive information from multiple third-party platforms, making tax compliance difficult.[83] It can take 40 hours to learn about depreciation methods, recordkeeping, and reporting it on tax forms.[84] These gig economy workers do not receive tax guidance from the service platforms.[85] The National Association for the Self-Employed reported:

- Thirty-four percent of those who reported earning income from the gig economy did not know they needed to file quarterly estimated tax payments;[86]
- Forty-three percent had not set aside money to pay their taxes and did not know how much they owed;[87] and
- Ninety percent indicated they used a tax preparer or software, and over 50 percent of those who relied on the preparer or software paid over $150.[88]

Self-employed individuals, which includes gig workers, sole proprietorships, and independent contractors, must submit quarterly estimated tax payments.[89] The quarterly due dates are illogical. The first and fourth estimated payments are due two weeks after the close of the quarter while the second and third are due two weeks before the close of the quarter.[90] This is confusing and does not set up taxpayers for success. It is challenging for self-employed individuals with incomes that are highly variable to estimate and pay for periods of time that are inconsistent.[91] To address this inconsistency, Congress should amend IRC § 6654(c)(2) to reflect a standard date of the 15th day after the quarter ends.[92]

Another example of complexity was the legislative change reducing the reporting requirements from $20,000 to $600 on Form 1099-K.[93] On December 23, 2022, the IRS postponed changing this threshold until 2023 due to lack of guidance and taxpayer confusion.[94] In light of the challenges, the National Taxpayer Advocate would ask that Congress carefully consider the threshold and that the IRS issue guidance quickly.

Example: Small Business Taxpayers Burdened by the Code

In need of a more flexible schedule, in 2021, a taxpayer became a rideshare driver for a rideshare app. Before then, he had never been an independent contractor. In 2022, he must complete his annual taxes. The driver believed the rideshare app was tracking everything. In January 2022, he gets a Form 1099-NEC from the company reporting his income. In March, he goes to a return preparer to do his taxes. The return preparer asks for his records and the amount he paid in estimated tax payments. The driver tells the preparer he only has a Form 1099-NEC and can log into the rideshare app to see his trips. He did not keep any other records because he did not know anything else would be required. He also did not pay any estimated taxes because this is his first time hearing about such payments.

In the past, he had worked as an employee and was accustomed to having withholding taken from his paycheck. His preparer can glean from the app the total number of miles driven while on routes. The preparer can use that with the standard mileage rate of 62.5 cents per mile.[95] But the preparer tells him there is an option of using actual expenses with depreciation or an IRC § 179 deduction. They will have to run the numbers both ways to see which is more advantageous. This doubles the time it takes to calculate the expense deduction. The driver did not keep a mileage record of trips from his home to his first ride each day. His preparer informs him that if there were a home office, the mileage would be considered business mileage, but if not, those amounts would be considered personal.[96] This further complicates the ability to compute the allowable IRC § 179 deduction for the vehicle. The preparer tells the driver it may be too late for him and that he may face penalties for this year but explains his obligations for the next year.

A gig economy worker like the one described above and more traditional small business owners face many recordkeeping obligations. An alternative to this time-consuming burden could be a standard business deduction that would be a percentage of gross receipts.[97] It functions much like the option between claiming a standard deduction or itemizing deductions. Schedule C small businesses could have the option of claiming a standard deduction or, if their expenses are greater, they could maintain the necessary records and compute their actual expenses. A standard business deduction would accommodate gig economy workers, especially those paid by online platforms and who receive Forms 1099.[98] They could easily calculate gross receipts, take a standard deduction against it, and within minutes comply with their tax obligations. This could radically reduce the time burdens facing many small businesses.

CONCLUSION AND RECOMMENDATIONS

The issues raised above are only a fraction of the challenges caused by complexities throughout the Code. Other taxpayers, including overseas taxpayers, large corporations, multinational companies, partnerships, estates, and exempt organizations face their own issues due to Code complexity.[99] The tax laws should be simple enough for people and business owners to prepare their own returns or at least understand their returns. The Code should not inadvertently entrap taxpayers; rather, it should clearly delineate each taxpayer's obligations and benefits. The tax laws should identify and minimize areas of noncompliance. The Code should make it easy for the IRS to administer the tax laws while also reducing burdens on taxpayers and practitioners.

Congress has the unique opportunity to update the Code and simplify it in the process. Congress must remove the complexity in the Code and eliminate burdens on taxpayers. The National Taxpayer Advocate recommends simplifying and modernizing the tax laws to enhance understanding and public confidence in the fairness of the tax system, reduce taxpayer compliance burdens, and improve tax administration.

Legislative Recommendations to Congress

The National Taxpayer Advocate recommends that Congress:

1. Use uniform definitions throughout the Code.
2. Adopt a consistent and more modern definition of "qualifying child" throughout the Code.
3. Restructure the EITC and CTC by allowing separate worker and child credits to make it simpler for taxpayers and reduce improper payments.[100]
4. Amend IRC § 6654(c)(2) to set the estimated tax installment deadlines 15 days after the end of each calendar quarter (*i.e.*, April 15, July 15, October 15, and January 15).[101]

Endnotes

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IRS HIRING AND TRAINING

Weaknesses in the Human Capital Office's Hiring, Recruitment, and Training Programs Are Undermining the IRS's Efforts to Achieve Appropriate Staffing to Meet Taxpayer Needs

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

The *right to quality service* is a fundamental taxpayer right. High quality taxpayer service enables taxpayers to voluntarily comply with their tax filing and reporting obligations and thus facilitates tax compliance. Conversely, inadequate taxpayer service makes it more difficult for taxpayers to comply with their tax filing and reporting obligations, which can reduce tax compliance.

To improve taxpayer service, the IRS must have more employees and must ensure its employees are well trained. Over the past decade, the IRS's budget was reduced by more than 15 percent in inflation-adjusted terms, resulting in reduced staffing levels not seen since the 1970s.[1] As staffing has declined, so have taxpayer service levels. The IRS has not had enough employees to transcribe paper-filed returns, resulting in refund delays of ten months or longer for millions of taxpayers. It has not had enough employees to answer taxpayer telephone calls, with the result that only about one out of every ten calls is being answered by an IRS telephone assistor. It has not had enough employees to staff its Taxpayer Assistance Centers (TACs), causing some TACs to close and others to limit appointments. It has not had enough employees to process taxpayer correspondence, with delays of eight months or more common.

Not surprisingly, the IRS has ranked poorly in customer satisfaction surveys. The American Customer Satisfaction Index's ranking of federal agencies placed the Treasury Department, which interacts with the public primarily through the IRS, "dead last."[2] Forrester Research's U.S. Customer Experience Index ranked 221 companies and federal agencies and similarly found the IRS ranked last among all brands and agencies in customer satisfaction.[3]

With the additional funding Congress provided in the Inflation Reduction Act (IRA), the IRS now has sufficient resources to hire more employees and to train them. However, all IRS business units must work through the IRS's Human Capital Office (HCO) to hire employees, and the current pressures that HCO faces result in HCO being a bottleneck that impedes hiring across the agency. The IRS is taking too long to approve, process, and list job announcements, the quality of the announcements is often inadequate, and its initial screening of applications is taking too long and sometimes results in selecting candidates for consideration who are not, in the view of the business units, the most qualified.

EXPLANATION OF THE PROBLEM

The IRS is not only the nation's tax administrator but also a service provider and administrator of social benefits. Top quality service is fundamental to the IRS mission, and the success of this mission begins with its employees, future hiring, and continuous training. The pandemic contributed to the undermining of taxpayer service, notably with taxpayers experiencing significant delays in getting their returns processed, receiving their refunds, and receiving service in person and on its toll-free lines.[4] This past filing season,[5] the IRS received 73 million calls, telephone assistors answered ten percent of calls, and hold times averaged 29 minutes.[6] Simply put, nine out of ten phone calls to the IRS went unanswered by telephone assistors. Many of the IRS's challenges stem from inadequate staffing, including limited staffing in Submission Processing and telephone call centers. In addition, the IRS estimates 63 percent (52,000 of 83,000) of employees are eligible to retire in the next six years.[7] Hiring and adequately training the right quantity and quality of new employees while keeping up with the pace of retirements cannot be overstated as it will not only enhance taxpayer service but also protect taxpayer rights.

To gain further insight on hiring, recruitment, and training hurdles from the perspective of some of HCO's customers (IRS business, service, enforcement, and operations divisions) and to identify remaining obstacles that the IRS needs to address, TAS once again interviewed subject matter experts from various IRS Business Operating Divisions (BODs) in September and October 2022. These interviews gathered information on their experiences with IRS hiring, recruitment, and training, including barriers encountered and recommendations to strengthen the process for the future. In our discussions with the subject matter experts from different divisions, dissatisfaction was a theme, and several issues stood out:

- Hiring delays were a common issue raised in all interviews with varying levels of concern and significance;
- Issues with vetting of candidates by HCO including instances where an applicant was referred to the selecting official in a BOD but did not qualify despite HCO vetting;
- Delays in the hiring process due to fingerprinting and background checks;
- Issues with the bundling of hiring announcements caused BODs to compete for the same applicants;
- More resources and investment needed in overall IRS recruitment efforts;
- The lack of communication on what is happening with IRS University and long-term IRS training strategy and plans; and
- Difficulty securing training space, especially without enough advance notice.

While anecdotal, these comments by the BOD hiring and training officials are indicative that there is much the IRS must do internally to improve how it handles the hiring, recruitment, and training processes. While respondents were generally appreciative of the hard work of HCO staff and its willingness to help overall, respondents believed that there was significant room for improvement. This was consistent with our analysis from discussions with HCO and the responses to our information requests that constituted the core of our research.

As the IRS faces the realities that come with an aging workforce, its inability to attract, hire, and retain younger generations of workers threatens its ability to fairly and efficiently administer the tax laws and provide the best possible customer service to our nation's taxpayers. There is no doubt that certain hurdles are outside of the IRS's control. However, to alleviate the problems highlighted above, the IRS needs to make significant changes and reallocate more resources to HCO's hiring and training efforts to support the mission of the IRS and prevent further harm to taxpayer service.

ANALYSIS

The IRA[8] provided the IRS with much-needed funding (approximately $80 billion over the next decade) and presents an excellent opportunity to improve taxpayer service. In September 2022, the Secretary of the Treasury announced plans for the IRS to first hire 5,000 more customer service representatives to enhance its telephone operations and triple the number of taxpayers served at TACs.[9] Both services are fundamental to basic taxpayer service.

With this new funding, the IRS must prioritize and revolutionize its hiring, recruitment, and training processes. It should invest in revamping HCO as a foundation to its success. To improve IRS taxpayer service, HCO will need to recruit, hire, and train new employees on a historic scale the IRS has never attempted beyond its current capacities. HCO must do this while also keeping pace with the rate of attrition and accounting for the estimated 52,000 IRS employees expected to be lost through attrition within the next six years.[10] To hire thousands of new employees over the next decade and replace employees who have retired or otherwise left, the IRS must increase its current hiring capacity to meet this demand and focus on the training of its employees. The IRS must be able to show Congress and the American public that the IRA funding is a good investment providing measurable and immediate impact. In addition to addressing hiring challenges with the new funding, the IRS must prioritize recruitment and counter recruitment challenges it faces in a competitive job market. The agency must work to revamp its training quality and overall training efficiency. The IRS has yet to start its long-awaited IRS University that was announced in response to a Taxpayer First Act requirement.[11]

The IRS has recently made progress to address some recruitment and hiring challenges. On February 24, 2022, the U.S. Office of Personnel Management (OPM) granted the IRS limited Direct Hire Authority (DHA) for up to 10,000 employees to address immediate hiring needs more quickly within the IRS Wage and Investment (W&I) Division's Accounts Management and Submission Processing organizations.[12] The IRS has been working to hire up to 10,000 employees before this hiring flexibility ends on December 31, 2023.[13] The IRS is also seeking to expand the use of Streamlined Critical Pay beyond information technology (IT) employees and increase the number of positions designated for Critical Position Pay beyond IT; this proposal is awaiting approval from the Treasury Department and OPM.[14] Per our recommendation, the IRS is working on the documentation and justification required for submission of OPM Form 1397, Special Salary Rate Request Form, to request that OPM establish higher rates of basic pay or special rates for a group or category of General Schedule (GS) positions.[15] To increase HCO's hiring capacity, in fiscal year (FY) 2021, HCO was given the authority to hire an additional 250 employees within HCO.[16] The HCO Strategic Talent Analytics & Recruitment Solutions Office (HCO STARS) is also increasing staffing, with plans to add 15 recruiters in 2022 to meet IRS recruiting demands.[17] Although TAS is encouraged to see incremental progress, the IRS has much more work to do to increase HCO hiring capacity, improve recruitment strategies, and start implementation of a robust training program. Below, we will highlight some of these remaining challenges that the IRS needs to address and offer recommendations to address them.

Hiring

As the IRS acknowledged in its Strategic Plan for FYs 2022-2026, attrition remains a significant challenge for the IRS because of its aging workforce.[18] The majority of IRS hiring is simply to backfill positions due to retirements while there are relatively fewer planned new hires aimed at enhancing current staffing levels. Until the IRS releases its updated planning estimates, which take into account the enactment of the IRA, TAS does not have access to estimates or final hiring objectives within the IRS. TAS will continue to focus on hiring challenges and successes.

FIGURE 2.3.1, IRS Workforce Planning Estimates for FY 2023 Prior to Enactment of the IRA[19]

Business Operating Division	Planned Attrition Hires (100% Backfill)	FY 2023 New Hires (Pre-IRA)
Chief Financial Officer	37	41
Communications & Liaison	23	29
Criminal Investigation	238	274
Enterprise Digitalization & Case Management Office	5	61
Facilities Management & Security Services	79	0
Human Capital Office	180	252
Independent Office of Appeals	146	247
Information Technology	456	212
IRS NEXT	0	1
Large Business and International	338	559
National Headquarters (Reserved)	11	5
National Taxpayer Advocate (Taxpayer Services)	306	103
Office of Equity, Diversity & Inclusion	18	9
Office of Chief Procurement Officer	36	0
Office of Professional Responsiblity	0	6
Office of Online Services	7	108
Office of the Chief Risk Officer	0	0
Privacy, Governmental Liaison & Disclosure	33	11
Research, Applied Analytics & Statistics	31	36
Return Preparer Office	15	16
Small Business/Self-Employed	3,164	2,280
Tax Exempt and Government Entitities	106	183
Taxpayer Experience Office	1	35
Wage and Investment Taxpayer Services	6,276	4,400
Wage and Investment (Operations Support and Enforcement)	167	181
Whistleblower Office	1	5
Grand Total	**11,674**	**9,054**

Figure 2.3.1 shows the estimated attrition hiring and FY 2023 new hiring that the different BODs made prior to the enactment of the IRA. As illustrated, the IRS planned to backfill 11,674 positions in FY 2023, with the majority of those projected for the W&I and Small Business/Self-Employed Divisions. The IRS had also planned to hire 9,054 new hires prior to the enactment of the IRA in FY 2023. This figure shows how much of hiring is done to just keep up with the pace of attrition relative to new hires. It also provides a breakdown of the parts of the IRS for which the backfills and new hires are planned.

Figure 2.3.2 outlines the hiring activities of the IRS over the past three fiscal years. As illustrated in Figure 2.3.2, in the past three fiscal years, the IRS lost 2,986; 3,852; and 3,714 employees, respectively, due to retirement. The IRS made progress in FY 2022 in hiring more external hires than the two previous fiscal years. It lost fewer employees due to non-retirement separations relative to the two preceding years. Although these figures show an improvement, there is a lot to be done; as the IRS acknowledged in its Strategic Plan FY 2022-2026, it has an estimated 63 percent (52,000 of 83,000) of employees eligible to retire in the next six years.[20] Many of these positions will need to be filled to maintain the status quo in addition to any new hiring the IRS plans as a result of the increase in appropriations.

FIGURE 2.3.2, IRS Human Capital Office Processing of Hires, Non-Retirement Separations, and Retirements for FYs 2020-2022[21]

	FY 2020	FY 2021	FY 2022
Total External Hires	8,290	14,644	15,248
Non-Retirement Separations	8,775	10,610	8,031
Retirements	2,986	3,852	3,714
Sum of Non-Retirement Separations and Retirements	11,761	14,462	11,745
Total Hires (Internal and External)	17,007	23,506	23,821

The Human Capital Office Needs to Reduce the Average Cycle Time for Hires

The IRS has increased hiring efforts as a result of recent appropriation increases. With increased funding provided by the IRA, Treasury Secretary Janet Yellen committed to fully staffing all IRS TAC offices, increasing IRS telephone Level of Service to 85 percent, and cutting wait times for telephone service in half over the coming filing season.[22] As of October 27, 2022, W&I had onboarded 4,000 new employees to help answer telephones, with the goal of hiring another 1,000 by year-end.[23] In FY 2022, the IRS hired 5,950 new hires, which includes the employees hired to assist with telephones via its DHA as of September 2022.[24]

HCO made improvements to the hiring process in FY 2022. It expanded its use of contractors to support hiring and personnel security processes.[25] HCO entered into interagency agreements with OPM to support hiring and the U.S. Department of Veterans Affairs to support personnel security.[26] Additionally, in FY 2022, to support a surge in hiring activity, the IRS created a surge team of 58 individuals from different BODS to volunteer to assist with the onboarding portion of the hiring process in HCO.[27] HCO hired an additional 133 human resource specialists in FY 2022 as of September 24, 2022.[28] TAS commends HCO's efforts in these improvements.

However, TAS continues to remain concerned about the delays in hiring and the average cycle time for hires. The current hiring process remains lengthy and burdensome. The IRS needs to significantly shorten its average time-to-hire so it can compete better with the pace of other employers in the labor market. To measure success in this arena, OPM has set a time-to-hire goal – measured by the number of days that lapse after a request to hire is sent to an agency's Human Resources function until the day of a new employee's entrance on duty – of 80 calendar days.[29]

FIGURE 2.3.3, Average Time to Hire and Average Cycle Time of All Regular Hiring and Filing Season Hiring for FY 2022[30]

Type of Hire	Average Cycle Time From Announcement to Start Date (Entry on Duty)	Time to Hire (Overall Average)	Time to Hire (Without DHA)	Time to Hire (With DHA)
IRS Wide	109.16 Days	80.63 Days	87.04 Days	57.53 Days
IRS-Internal	94.42 Days	54.64 Days	54.64 Days	N/A
IRS-External	172.14 Days	90.41 Days	104.44 Days	57.53 Days

As shown in Figure 2.3.3, in FY 2022, the IRS's time-to-hire averaged 81 days overall, with 104 days for external hires without using DHA authority and 58 days for external hires using DHA.[31] For a comparison, the IRS's time-to-hire average overall was about 88 days in FY 2021 (about 94 days when hiring external candidates), which is beyond the OPM goal but a significant improvement over the 120 days in FY 2019.[32] Although the FY 2022 results of this measure are an improvement for the IRS, it does not show a complete picture of the hiring process. In FY 2022, the average cycle time from the start of a job announcement to the start date (entry on duty) of the new employee was 109 days overall but 172 days for external hires.[33] The background check and personnel security process, which are not under HCO's control, add time to this measure. Under the time-to-hire metric, external hires that applied to positions that were not DHA approved had to wait on average about 104 days before starting their new job.

One of the best ways to expedite the current hiring process is to allow the IRS additional flexibilities in hiring that bypass some of the most time-consuming and frustrating parts of the hiring process. One such method is via DHA, which refers to hiring individuals into the Competitive Civil Service (GS-15 and below or equivalent) in permanent or nonpermanent positions by bypassing some of the hiring processes to allow for quicker hiring.[34] Figure 2.3.3 also illustrates that DHA improves the average IRS time-to-hire relative to the overall time to hire. Based on these results, TAS recommends that the IRS pursue DHA for more critical positions across the service, beyond what has been requested to date, because the IRS will also need the appropriate support staff (*e.g.*, secretaries, analysts, managers) to support significant increases in technical and critical positions.[35] Given that many of these potential applicants applying externally may not be incentivized to wait 104 days (as shown above for hires without DHA) or a full 172 days (as shown above for average cycle time for external applicants), DHA, which averaged about 58 days for external hires, reduced the waiting period and placed the IRS in a much better position. Accordingly, TAS advocates for the IRS to expand this flexibility in hiring. TAS also advocates for more flexibilities, such as special pay rates. TAS recommends that the IRS continue to raise awareness internally about the process for special pay rates and encourage submission of OPM Form 1397, Special Salary Rate Request Form, to request that OPM establish higher rates of basic pay or special rates as needed for a group or category of GS positions.

The Human Capital Office Should Improve Communication With Business Operating Divisions on Applicant Qualifications and Improve Human Resources Specialist Training

During our interviews with subject matter experts from various BODs, several IRS organizations expressed concern that, in some cases, applicants for certain positions are determined to be unqualified when they are qualified and those who are not qualified are determined to be qualified. Some applicants were initially determined to be qualified for the position and subsequently selected; later, it was determined they were unqualified and had to be told they were no longer selected for the position. These errors and time delays are not good for the applicant or the IRS. TAS believes these mistakes are attributable to a lack of communication between HCO and the BODs and the need for better training for human resources specialists. It is imperative that human resources specialists be appropriately trained before qualifying applicants for positions. Failure to do so may negatively impact the organization, and in some cases, the applicants. This is a work in progress, and HCO is working to address these concerns, but quick improvement is imperative to its success. TAS will continue to monitor the results of these efforts.

The IRS Should Invest in Upgrading the Current IRS Background Investigation System Technology to Eliminate Delays and Reduce Manual Workload

The IRS made improvements in the hiring process as highlighted above. However, barriers still exist in some areas, including the security clearance and fingerprinting processes. Fingerprinting appointment availability continues to be a challenge. Based on anecdotal information from interviews, some applicants must wait up to several weeks before they can get a fingerprint appointment to continue through the hiring process. TAS commends the IRS for launching a real-time Telephone Assistance Call Line in the Personnel Security office to assist applicants, employees, and contractors with background investigation issues that resulted in rejection.[36] The IRS also implemented an internal training plan for new hires to improve operations and supplemented staffing with contractor support, and in FY 2023, personnel security processes will undergo a review to determine areas for enhancement and improvement.[37] Although these measures will hopefully reduce the burden, more work is needed to improve this process as employees cannot be onboarded without necessary background checks and security clearance. To further streamline the personnel security and employee screening processes, TAS recommends that the IRS reallocate budgetary resources to invest in a web-based personnel security inventory management system to upgrade current IRS background investigation system technology to eliminate antiquated processes, reduce manual workload, and improve interconnection with other systems. A centralized, web-based personnel security inventory management system is a good investment that will help reduce the current delays in the hiring process.

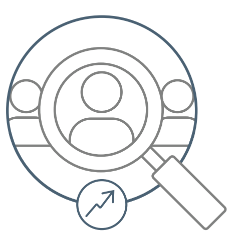
TAS also encourages HCO to work with IRS Facilities Management and Security Services, the Treasury Department, and other stakeholders to consider additional ways to shorten the security clearance, background check, and fingerprinting processes, including by considering outsourcing parts of the process to additional contractors.

Recruitment

The IRS Needs to Brand Itself as a Desired Agency to Work for and Reallocate Additional Budgetary Resources to the Human Capital Office's Strategic Talent Analytics and Recruitment Solutions Division to Expand Recruitment Efforts

In FY 2022, the IRS used digital tools to reach 47,338 potential candidates, with 2,891 candidates applying for positions.[38] It shared recruitment events and announcements with 1,558 public interest organizations.[39] It hosted 16 in-person direct-hire events and ten virtual direct hire events in FY 2022, engaging more than 24,900 people, with offers made for 5,363 positions for Clerks and Tax Examiners and 2,878 positions for Contact Representatives.[40]

TAS commends the IRS for these recruitment efforts; however, the IRS has room for improvement in branding and marketing itself and developing long-lasting partnerships with academia and industry.



The IRS needs to recruit numerous high quality applicants promptly and needs to dramatically ramp up its recruitment efforts from current levels to meet its goal.

The IRS needs to recruit numerous high quality applicants promptly and dramatically ramp up its recruitment efforts from current levels to meet its goal. In today's job market, with employee expectations in a post-COVID-19 work environment, the average employee values having competitive benefits and more remote work flexibility. The IRS has made strides to increase attractive benefits such as its recent adoption of childcare subsidies for employees who meet certain income guidelines. The IRS is also offering recruitment bonuses and employee referral bonuses and exploring the use of student loan repayment, eldercare subsidies, and remote working options to attract talent.[41] This is a great start, but the IRS needs to do more to market and advertise these benefits to potential job seekers.

The IRS should increase focus on and devote resources to marketing and branding itself to potential applicants as a great employer. Successful marketing and branding should demonstrate to prospective employees what the agency represents and what career paths are available and highlight current employee experiences through multiple channels. These efforts require a long-term investment by the agency.

While the IRS has made progress in recent years to deepen and expand collaborative partnerships with industry and academia, budget constraints have limited the resources dedicated to such partnerships. The IRS can do more to attract critically needed talent for a next-generation workforce prepared to deal with new challenges that originate from multiple interdisciplinary areas of study beyond the traditional degrees upon which the agency has long relied. More than ever, the IRS needs employees with backgrounds in statistics, applied mathematics, computer science and artificial intelligence, engineering, economics, finance, physics, and social sciences. To be competitive in recruiting top-notch talent, the IRS will need to dedicate even more resources to recruitment than it has done to date, including further expanding its current recruitment cadre and moving beyond the traditional recruitment tactics upon which it has relied. TAS recommends that the IRS reallocate additional budgetary resources to the HCO STARS team so it can implement an updated Strategic Recruitment Plan that will increase recruitment partnerships with private sector recruiting firms, universities, community colleges, and any other sources where diverse and qualified applicants may be underemployed.

Employee Retention

The IRS Needs to Reduce Employee Turnover Rates and Improve Employee Retention Rates

Once the IRS can recruit and hire employees, it must focus on employee retention to preserve the resources spent in the hiring and training processes. According to the IRS's Corporate Leadership Engagement Action Plan, it has an average estimated turnover cost of $10,000 per employee.[42] These are dollars wasted that the IRS has spent on recruiting, hiring, and training the departing employees. The IRS understands the importance of retaining employees and to demonstrate this, includes a strategy in its FYs 2022-2026 Strategic Plan to enhance retention through increased focus and analysis on mission-critical positions and improve succession planning to maintain institutional knowledge and reduce workload disruptions.[43] TAS commends the IRS for focusing on retention and implementing the action plan to ensure IRS leadership is focused on engaging its employees. However, TAS is concerned that the action plan may not be robust enough to retain employees with less than one year of service. In FY 2020, the IRS retained close to 80 percent of employees with less than one year of service, but that number decreased to less than 70 percent in FY 2021.[44] Further, the IRS had issues retaining employees under the age of 30 as retention rates between FYs 2020-2021 were between 63-68 percent for this age group, lower than employees above age 30.[45] TAS recommends that the IRS update its FYs 2022-2025 Corporate Leadership Engagement Action Plan to include specific actions the IRS will take to improve retention rates of employees with less than one year of service and employees under the age of 30 and specific actions to further reduce the overall turnover rates of employees. Perhaps if the IRS puts a greater focus on improving the employee experience and creating a sense of employee growth and community, it will not only help it build a healthier workforce but will also help reduce employee turnover costs in the long term.

Training

The IRS Needs to Provide a Dedicated Operational Budget for the Implementation and Operationalization of IRS University

New IRS employees cannot start working on day one – they need significant resources and time to receive quality training, which can often mean both classroom-type and on-the-job training over an extended period of time. A workforce equipped with next-generation skills needs advanced training, which requires investment and dedicated budgetary resources. For years, the IRS has been in the process of developing and implementing a comprehensive training strategy as described in the IRS's Taxpayer First Act Report to Congress.[46] It is the National Taxpayer Advocate's opinion that training and leveraging of existing skillsets are critical to the success of any organization. The IRS has the challenge of providing up-to-date training to existing employees and also training and developing a new workforce. The National Taxpayer Advocate has concerns as to the vision, organizational buy-in, and slow implementation of IRS University (IRSU) to be successfully implemented to meet the needs of the IRS workforce of the future and to reach the standing of a quality service organization.

However, despite the lack of dedicated funding in the past few years for this project, the IRS made some advancements in its implementation of IRSU. According to HCO's responses to TAS information requests, HCO is partnering with the business units to implement IRSU in three phases.[47] In phase one, the IRS developed a training strategy, IRSU structure, and employee development life cycle.[48] The IRS designed, developed, and released new hire training and created a Customer Service/Taxpayer Experience school.[49] Phase two saw the completion of the job analysis and development of all 14 mission critical occupation competency models, skills assessments, and career paths.[50] Additionally, the IRS developed an IRSU playbook outlining how HCO will establish IRSU and its roles and responsibilities.[51] While TAS has yet to review the materials or see concrete outcomes from the first two phases of IRSU, we are hopeful that the IRS is moving in the right direction and look forward to partnering with the IRS to improve its training program.

The IRS has yet to implement phase three of the IRSU plan, which includes acquiring a solution for automated skills assessments and career paths; fully operationalizing, opening, and utilizing IRSU; and standing up a Center of Excellence for the Treasury Department in FY 2023.[52] According to HCO's responses to TAS information requests, the IRS has neither a timeline for completion of phase three nor the required budgetary resources, leaving the agency at a critical juncture as timely completion of this phase is necessary to ensure an adequate training mechanism is operating and fully functional.[53] The IRS must be prepared to properly onboard its new employees and have robust training courses and options available to hit the ground running as new employees are hired. Hiring and training are foundational to the IRS's mission and must be priority one for the agency. TAS plans to monitor the IRS progress in this area in FY 2023.

The IRS should work with the Department of the Treasury and the U.S. General Services Administration to expedite the federal procurement process for the implementation of IRSU. This should include requesting approval of blanket purchase agreements (BPAs) for facilities for training so HCO can fully implement phases one and two of its plan. BPAs are a type of federal procurement contract agreement established by a government buyer with a schedule contractor to fill repetitive needs for supplies or services under the Federal Acquisition Regulation.[54] The IRS has been allowed to award BPA contracts in IT in the past.[55] The use of BPAs would significantly reduce the time to acquire training expertise for both building IRSU and delivering technical, professional, and leadership training.[56] BPAs would also allow HCO to streamline current training acquisition and ensure the use of best-in-class vendors.[57]

Without the appropriate reallocation of funding and a long-term investment in IRSU, the IRS will continue to struggle to build the envisioned workforce of the future. According to HCO's responses to TAS information requests, HCO estimates that it will need $123 million over five years to stand up and run IRSU.[58] In addition to standup costs, IRSU needs a dedicated and adequate operating budget.[59] The IRS spends approximately $45 million per year on training, which includes equipment, contracts, vendor fees, and training travel.[60] Funding for training has not increased for many years and is not sufficient to deliver the training IRS employees need.[61] To meet demand, IRSU would require an initial operational budget of at least $90 million, with a ten percent increase each year the IRS expands under the IRA.[62] According to HCO, this is a great investment because it is just $1,125 per employee per year on training and development.[63] TAS recommends that the IRS reallocate budgetary resources to provide an adequate, dedicated operational budget to HCO's teams leading the implementation of IRSU to establish the infrastructure to fully open IRSU and to better align IRS long-term training capacity with long-term hiring capacity.

Given the opportunity to create a new training program, the IRS must focus on a comprehensive plan that delivers both technical knowledge and practical experience to employees. Embedded in this strategy should be the means for employee career mobility and continued development of technical skills as employees shift their professional goals. A comprehensive training plan that interplays with a comprehensive hiring and recruitment strategy is key to a proper functioning IRS to ensure it has a pipeline of incoming and future talent that is trained and ready to achieve its mission year after year. The agency cannot accomplish that goal without first investing in the full implementation of IRSU. The implementation of IRSU was not funded in the past two years and was dependent on reallocating funding from other sectors.[64] Using the newly appropriated funds, the IRS must capitalize on the momentum to invest in IRSU to implement its corporate training model, actualize plans for reducing training time, and ensure training efficacy improves to meet all its employees' needs.

CONCLUSION AND RECOMMENDATIONS

With new funding provided by Congress, the IRS must prioritize, overhaul, and revolutionize its hiring, recruitment, and training processes. It should invest more in revamping HCO as a foundation to its success and gaining the trust of IRS leadership and employees. The IRS must implement further improvements in HCO's hiring capacity than it has to date. It must streamline processes to shorten the amount of time that it takes to hire new employees and hire the right employees. HCO must also dramatically increase its recruitment efforts and seek ways to be more competitive in its hiring. Furthermore, the IRS needs to demonstrate its successes, lead by example for current and future employees and leaders, expand efforts to brand itself as a desired agency to work for, and develop partnerships with academia and industry to attract top talent. To reduce delays in the hiring process attributable to personnel security and background checks, the IRS should invest in and upgrade its current background investigation system technology to eliminate delays and reduce manual workload. Additionally, the IRS needs to reduce employee turnover rates to better improve employee retention rates, especially among younger age employees. Finally, the IRS should invest in IRSU and provide a dedicated operational budget for the implementation and operationalization of IRSU and work within the organization to gain buy-in for its vision.

Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Pursue DHA authority for more critical positions across the service, beyond what has been requested to date, because the IRS will also need the appropriate support staff (*e.g.*, secretaries, analysts, managers) to support significant increases in technical and critical positions.
2. Continue to raise awareness internally about the process for special pay rates and encourage submission of OPM Form 1397, Special Salary Rate Request Form, to request that OPM establish higher rates of basic pay or special rates as needed for a group or category of GS positions.
3. Reallocate budgetary resources to invest in a web-based personnel security inventory management system to upgrade current IRS background investigation system technology to eliminate antiquated

processes, reduce manual workload, and improve interconnection with other systems. This will further streamline the Personnel Security process and reduce delays during the employee background check and employee screening processes.

4. Reallocate additional budgetary resources to the HCO STARS team so it can implement an updated Strategic Recruitment Plan that will increase recruitment partnerships with private sector recruiting firms, universities, community colleges, and any other sources where diverse and qualified applicants may be underemployed.
5. Update its FYs 2022-2025 Corporate Leadership Engagement Action Plan to include specific actions the IRS will take to improve retention rates of employees with less than one year of service and employees under the age of 30 and specific actions to further reduce the overall turnover rates of employees.
6. Reallocate budgetary resources to provide the necessary dedicated operational budget to HCO's teams leading the implementation of IRSU to establish the infrastructure to fully open IRSU and to better align IRS long-term training capacity with long-term hiring capacity.

RESPONSIBLE OFFICIALS

Jeffrey Tribiano, Deputy Commissioner for Operations Support

Kevin McIver, IRS Human Capital Officer

Nikole Flax, Director, Inflation Reduction Act 2022 Transformation and Implementation Office

IRS COMMENTS

The IRS agrees that recruitment, hiring, and training are foundational to its ability to provide taxpayers with quality service and fair enforcement. This priority is reflected in both the IRS Strategic Plan FY 2022-2026 and the Human Capital Operating Plan. The Inflation Reduction Act provided significant multiyear funding that will allow the IRS to address critical human capital challenges in innovative and impactful ways. Our strategy to improve in these areas will be a key component in the agency's transformation plans, and our goal is a redesigned hiring process that is simplified, digitized, and automated, where possible, in order to reduce unnecessary applicant workload and minimize unnecessary delays.

Despite the challenges noted in the report, the IRS continues to make major strides in enhancing recruitment strategies and streamlining hiring activities. Time-to-hire has decreased from 120 days in FY20 to 81 days in FY22, while overall hiring has increased. Much of this improvement resulted from executing the Direct Hire Authority (DHA) OPM granted the IRS to hire up to 10,000 Accounts Management and Submission Processing employees through December 31, 2023.

In November 2022, OPM granted the IRS DHA for 14,300 positions, including 9,800 in enforcement, taxpayer service, technology modernization, and delivery of critical services, and 4,500 Operations Support positions including IT, Procurement, Human Resources, and Personnel Security. The IRS is developing a recruitment and hiring action plan for DHA positions and planning to increase DHA events.

These DHAs will further reduce the time-to-hire, and the IRS is pursuing innovative solutions to relieve bottlenecks in the post-selection process. For example, each DHA selectee requires appropriate pre-employment background investigation to ensure suitability and credentialing for sensitive positions. In addition to hiring more personnel security specialists to conduct background investigations, the IRS is outsourcing parts of the process and exploring expanding alternate fingerprinting locations and improving technology. Executing these new DHAs will permit the IRS to quickly fill these positions and begin the transformation envisioned by the Inflation Reduction Act.

We have improved our ability to predict and prepare for hiring needs by improving hiring capacity and workforce planning processes and adding 400+ foundational hires in HCO in FY22. We have completed an assessment of our ability to retain employees and continue to expand programs to address challenges in this area and improve the employee experience, including a childcare subsidy program, student loan repayment program, and a roadmap for requesting special pay authorities. Still, we recognize that additional improvements are necessary to allow us to meet the challenges ahead.

We recognize the importance of a well-trained workforce in serving the taxpayer as well as the impact of career development and training on employee retention. As part of the 2021 Taxpayer First Act Report to Congress, the IRS outlined the framework for a new IRS University (IRSU) to serve as an innovative, centralized learning function to improve training and encourage collaboration across the organization. We appreciate the Advocate's support to fully fund IRSU.

TAXPAYER ADVOCATE SERVICE COMMENTS

TAS appreciates and has noted the IRS's efforts to date. However, based on our analysis, including interviews of HCO customers from across the IRS, the IRS has much more work to do to increase HCO hiring capacity, improve recruitment strategies, and start implementation of a robust training program. As the IRS noted, DHA has improved the time-to-hire, but the numbers have not improved much for non-DHA position hires. We encourage the IRS to continue to request that Congress and OPM provide DHA authority and additional hiring flexibilities as needed for more positions. One area of concern that still remains is the fingerprinting and background check processes, which need to be improved and the length of time for these processes be reduced. We hope the IRS makes significant changes in this area including by providing for more opportunities to implement automation "in order to reduce unnecessary applicant workload and minimize unnecessary delays," as the IRS envisions in its response.

The IRS states that it has "improved [its] ability to predict and prepare for hiring needs by improving hiring capacity and workforce." We have not seen that yet but look forward to seeing the results of these efforts in the coming years. We commend HCO in adding over 400 foundational hires in FY 2022, and we anticipate HCO will be able to make progress as a result of its increased capacity. We commend the IRS in recognizing the need to fully invest in IRSU so that it can implement its IRSU vision outlined in the Taxpayer First Act Report to Congress.

TAS will continue to advocate with internal and external stakeholders that the IRS receive the support and flexibilities it needs to meet its hiring needs so it can better serve taxpayers. TAS will also continue to offer insight and collaborate with the IRS so the IRS can achieve its mission of providing quality service and protecting taxpayer rights. TAS will continue to advocate for the IRS's hiring, recruitment, and training needs and push the IRS to ensure it is providing adequate funding for IRSU.

RECOMMENDATIONS

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Pursue DHA authority for more critical positions across the service, beyond what has been requested to date, because the IRS will also need the appropriate support staff (*e.g.*, secretaries, managers) to support significant increases in technical and critical positions.
2. Continue to raise awareness internally about the process for special pay rates and encourage submission of OPM Form 1397, Special Salary Rate Request Form, to request that OPM establish higher rates of basic pay or special rates as needed for a group or category of GS positions.
3. Reallocate budgetary resources to invest in a web-based personnel security inventory management system to upgrade current IRS background investigation system technology to eliminate antiquated processes, reduce manual workload, and improve interconnection with other systems. This will further streamline the Personnel Security process and reduce delays during the employee background check and employee screening processes.
4. Reallocate additional budgetary resources to the HCO STARS team so it can implement an updated Strategic Recruitment Plan that will increase recruitment partnerships with private sector recruiting firms, universities, community colleges, and any other sources where diverse and qualified applicants may be underemployed.
5. Update its FYs 2022-2025 Corporate Leadership Engagement Action Plan to include specific actions the IRS will take to improve retention rates of employees with less than one year of service and employees under the age of 30 and specific actions to further reduce the overall turnover rates of employees.
6. Reallocate budgetary resources to provide the necessary dedicated operational budget to HCO's teams leading the implementation of IRSU to establish the infrastructure to fully open IRSU and to better align IRS long-term training capacity with long-term hiring capacity.

Endnotes

1 *On IRS Operations and Improving the Taxpayer Experience: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways and Means*, 117th Cong. (2022) (statement of Kenneth Corbin, Comm'r, Wage and Investment Division, and Chief Taxpayer Experience Officer, IRS).

2 American Customer Satisfaction Index, *Federal Government Report 2021*, at 3 (2022).

3 Katie Deighton, *Customer Experience Is Getting Worse*, Wall Street J. (June 7, 2022), https://www.wsj.com/articles/customer-experience-is-getting-worse-11654639388.

4 For a more in-depth discussion of IRS processing delays, *see* Most Serious Problem: *Processing Delays: Paper Backlogs Caused Refund Delays for Millions of Taxpayers*, *supra*. For a more in-depth discussion of IRS telephone and in-person service, *see* Most Serious Problem: *Telephone and In-Person Service: Taxpayers Continue to Experience Difficulties and Frustration Obtaining Telephone and Face-to-Face Assistance to Resolve Their Tax Issues and Questions*, *infra*.

5 The IRS 2022 tax filing season for individuals began January 24, 2022, and ran until April 18, 2022. IRS, IR-2022-08, 2022 Tax Filing Season Begins Jan. 24; IRS Outlines Refund Timing and What to Expect in Advance of April 18 Tax Deadline (Jan. 10, 2022), https://www.irs.gov/newsroom/2022-tax-filing-season-begins-jan-24-irs-outlines-refund-timing-and-what-to-expect-in-advance-of-april-18-tax-deadline.

6 IRS, Joint Operations Center, Snapshot Reports: Enterprise Snapshot/Enterprise Total (week ending Apr. 23, 2022).

7 IRS, Pub. 3744, Strategic Plan Fiscal Year 2022-2026, at 14 (July 2022).

8 An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14, Pub. L. No. 117-169, § 10301, 136 Stat. 1818 (2022).

9 Janet Yellen, Sec'y of Treasury, Remarks at IRS facility in New Carrollton, Maryland, (Sept. 15, 2022), https://home.treasury.gov/news/press-releases/jy0952.

10 *The Filing Season and IRS Budget: Hearing Before the S. Comm. on Finance*, 117th Cong. (Apr. 7, 2022) (statement of Charles Rettig, Comm'r, 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. In his testimony, the Commissioner explains the IRS needs to hire 52,000 IRS employees to maintain current levels, due to losses through attrition within the next six years.

11 *See* IRS, 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. 981, 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.

12 IRS response to the National Taxpayer Advocate's 2021 Annual Report to Congress (Apr. 25, 2022); *see* 5 C.F.R. § 337.202 for the definition of Direct Hire Authority (DHA). As one federal agency website explains, DHA "expedites hiring by eliminating rating and ranking, veterans' preference, as well as typical selection procedures. All applicants who meet the minimum qualification requirements will be referred to the hiring manager for consideration and may be selected." Department of the Interior, *Direct Hire Authority Quick Reference Guide*, https://www.doi.gov/sites/doi.gov/files/direct-hire-authority-quick-reference-guide.pdf (May 4, 2021).

13 TAS Recommendations and IRS Responses, TAS Recommendation 2-3 (2021), https://www.taxpayeradvocate.irs.gov/news/directory-entry/2021-msp-02-irs-recruitment-hiring-and-training/ (last visited Dec. 19, 2022); IRS response to the National Taxpayer Advocate's 2021 Annual Report to Congress (Apr. 25, 2022).

14 *Id.*; Critical pay authority is an authority provided under 5 U.S.C. § 5377 and 5 C.F.R. § 535. Section 2103 of the Taxpayer First Act, *Streamlined Critical Pay Authority for Information Technology Positions*, reinstated streamlined critical pay authority for positions in IRS IT operations (which had lapsed in 2013) until Sept. 30, 2025. This section also allows the IRS to pay recruitment, retention, relocation incentives, and performance bonuses to streamlined critical pay appointees in positions in IT operations. *See* IRC § 7812.

15 TAS Recommendations and IRS Responses, TAS Recommendation 2-4 (2021), https://www.taxpayeradvocate.irs.gov/news/directory-entry/2021-msp-02-irs-recruitment-hiring-and-training/ (last visited Dec. 19, 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*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_MSP_02_Recruitment.pdf.

16 TAS Recommendations and IRS Responses, TAS Recommendation 2-12 (2021), https://www.taxpayeradvocate.irs.gov/news/directory-entry/2021-msp-02-irs-recruitment-hiring-and-training/ (last visited Dec. 19, 2022).

17 *Id.*

18 IRS, Pub. 3744, Strategic Plan FY 2022-2026, at 14 (July 2022).

19 IRS response to TAS information request (Oct. 31, 2022). The numbers in this figure are planning estimates and are based on 100 percent attrition backfills, the projected FY 2023 new hires, and on end-of-year Chief Financial Officer hiring ceiling guidance provided to the HCO Workforce Planning Office on August 24, 2022. These estimates do not reflect IRA planned increases, which HCO anticipates will result in larger increases in planned hiring.

20 IRS, Pub. 3744, Strategic Plan FY 2022-2026, at 14 (July 2022).

21 The data in this figure is derived from the HCO Human Capital Data Management & Technology Database and includes all employees – permanent, temporary, and seasonal. IRS responses to TAS information requests (Aug. 13, 2021; Oct. 29, 2021; Nov. 8, 2021; Dec. 15, 2021). HCO provided the FY 2022 data on October 31, 2022. IRS response to TAS information request (Oct. 31, 2022).

22 An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14 (commonly referred to as the "Inflation Reduction Act of 2022"), Pub. L. No. 117-169, 136 Stat. 1818 (2022); *see* Janet Yellen, Sec'y of Treasury, Remarks at the IRS facility in New Carrollton, Maryland, https://home.treasury.gov/news/press-releases/jy0952 (last visited Sept. 20, 2022).

23 IRS, IR-2022-191, IRS Quickly Moves Forward with Taxpayer Service Improvements; 4,000 Hired to Provide More Help to People During 2023 Tax Season on Phones (Oct. 27, 2022), https://www.irs.gov/newsroom/irs-quickly-moves-forward-with-taxpayer-service-improvements-4000-hired-to-provide-more-help-to-people-during-2023-tax-season-on-phones. For a more in-depth discussion of IRS telephone and in-person service, *see* Most Serious Problem: *Telephone and In-Person Service: Taxpayers Continue to Experience Difficulties and Frustration Obtaining Telephone and Face-to-Face Assistance to Resolve Their Tax Issues and Question*, *infra*.

24 IRS response to TAS information request (Oct. 31, 2022).

25 *Id.*

26 *Id.*

27 *Id.*

28 *Id.*

29 Erich Wagner, *OPM Announces Adjustments to Annual Time-to-Hire Metrics*, GovExec (Feb. 26, 2020) https://www.govexec.com/management/2020/02/opm-announces-adjustments-annual-time-hire-metrics/163361/. *See also* OPM, *Memorandum: Time-to-Hire Reporting Requirements* (Feb. 25, 2020), https://www.chcoc.gov/content/time-hire-reporting-requirements-1; Chief Human Capital Officers Counsel, *Updated Instructions for Reporting Annual Time-to-Hire* (T2H) 3 (Dec. 2019), https://chcoc.gov/sites/default/files/Time-to-Hire%20Instructions.pdf.

30 IRS response to TAS information request (Oct. 31, 2022). This data was compiled by HCO using USA Staffing for the period between October 1, 2021, through September 30, 2022. Entry on Duty dates were only included in this count if an announcement was posted, and the announcement open period was fewer than 100 days.

31 IRS response to TAS information request (Oct. 31, 2022).

32 IRS responses to TAS information requests (Aug. 13, 2021; Nov. 8, 2021).

33 It is important to distinguish cycle time from time to hire. Cycle time is a measure that includes applicants who apply to rosters and can take longer as a result compared to time to hire because an applicant could apply to a roster 99 days after it opened. This is because for rosters and registers, the applicant does not apply to an announcement within a two-week window. In comparison, the measure of time to hire is based on the definition by OPM. It is measured by the number of days it takes to hire from the day a hiring request is sent to an agency's Human Resources function until the day of a new employee's entrance on duty. Erich Wagner, *OPM Announces Adjustments to Annual Time-to-Hire Metrics*, GovExec (Feb. 26, 2020), https://www.govexec.com/management/2020/02/opm-announces-adjustments-annual-time-hire-metrics/163361/. *See also OPM, Memorandum: Time-to-Hire Reporting Requirements* (Feb. 25, 2020), https://www.chcoc.gov/content/time-hire-reporting-requirements-1; Chief Human Capital Officers Counsel, *Updated Instructions for Reporting Annual Time-to-Hire* (T2H) 3 (Dec. 2019), https://chcoc.gov/sites/default/files/Time-to-Hire%20Instructions.pdf.

34 *See* 5 C.F.R. § 337.202 for the definition of DHA. As one federal agency website explains, DHA "expedites hiring by eliminating rating and ranking, veterans' preference, as well as typical selection procedures. All applicants who meet the minimum qualification requirements will be referred to the hiring manager for consideration and may be selected." Department of the Interior, *Direct Hire Authority Quick Reference Guide*, https://www.doi.gov/sites/doi.gov/files/direct-hire-authority-quick-reference-guide.pdf (May 4, 2021).

35 The IRS has requested additional DHA for critical Services and Enforcement and Operations Support positions. The Treasury Department submitted these requests to OPM on October 17, 2022. IRS response to TAS information request (Oct. 31, 2022). However, TAS believes that the IRS will require DHA for more positions.

36 IRS response to TAS information request (Oct. 31, 2022).

37 *Id.*

38 *Id.*

39 *Id.*

40 *Id.*

41 *Id.*

42 IRS, FYs 2022-2025 Corporate Leadership Engagement Action Plan 16 (July 13, 2022).

43 IRS, Pub. 3744, Strategic Plan FY 2022-2026 (July 2022).

44 IRS, FYs 2022-2025 Corporate Leadership Engagement Action Plan 29 (July 13, 2022).

45 *Id.*

46 *See* IRS, Taxpayer First Act Report to Congress (Jan. 2021), https://www.irs.gov/pub/irs-pdf/p5426.pdf.

47 IRS responses to TAS information requests (Oct. 20, 2022; Oct. 31, 2022).

48 *Id.*

49 *Id.*

50 *Id.*

51 *Id.*

52 *Id.*

53 *Id.*

54 *See* 48 C.F.R. § 8.405-3.

55 *See*, *e.g.*, Alexandra Kelley, *IRS Awards $70 Million Contract For Digital Modernization*, NextGov (Apr. 1, 2022), https://www.nextgov.com/it-modernization/2022/04/irs-awards-70-million-contract-digital-modernization/363938/.

56 IRS response to TAS information request (Oct. 31, 2022).

57 *Id.*

58 IRS responses to TAS information requests (Oct. 20, 2022; Oct. 31, 2022).

59 IRS response to TAS information request (Oct. 31, 2022).

60 *Id.*

61 *Id.*

62 *Id.*

63 *Id.*

64 IRS responses to TAS information requests (Oct. 20, 2022; Oct. 31, 2022).

TELEPHONE AND IN-PERSON SERVICE

Taxpayers Continue to Experience Difficulties and Frustration Obtaining Telephone and Face-to-Face Assistance to Resolve Their Tax Issues and Questions

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Each year, millions of taxpayers call the IRS's tax assistance phone lines and visit IRS Tax Assistance Centers (TACs) to obtain the help needed to meet tax filing and payment obligations. Though the IRS is working to increase staffing and implement technology designed to improve the customer experience, processing backlogs caused the demand for telephone and in-person service to remain high, while customer service levels continued to remain unacceptably low. In fiscal year (FY) 2021, the IRS Enterprise telephone lines reached an all-time service low, with only 11 percent of calls reaching a live assistor.[1] The FY 2022 post-pandemic filing season brought little improvement with only 13 percent of callers reaching live assistance.[2] Face-to-face appointments at the IRS's TACs similarly declined and showed little improvement during the FY 2022 filing season.[3] Taxpayers and practitioners alike rely heavily on the ability to reach an IRS employee for account actions and answers to their inquiries. Lack of sufficient service jeopardizes compliance, frustrates taxpayers, and impacts the taxpayers' *right to quality service*.[4] Taxpayers need the IRS to increase staffing and technology and explore opportunities to eliminate processes that create obstacles and hinder telephone and TAC office service delivery. Phone and in-person assistance are fundamental services that taxpayers expect and deserve. Until these services are provided, taxpayers cannot trust in our tax system.

EXPLANATION OF THE PROBLEM

Undoubtedly, the pandemic sparked a host of challenges impacting the delivery of IRS services. In March 2020, the IRS closed its offices and processing centers, severely diminishing or halting in-person services and many processing activities for several months.[5] As TAC sites reopened and telephone assistance resumed, unresolved FY 2020 tax return and correspondence processing backlogs, exacerbated by the American Rescue

Plan Act legislative changes and increased FY 2021 and FY 2022 inventory receipts, continued to stretch IRS resources thin, further hindering the IRS's ability to provide adequate telephone and face-to-face TAC services to our nation's taxpayers.

As of October 27, 2022, the IRS's Wage and Investment (W&I) Division had onboarded 4,000 new employees to help answer telephones, with the goal of hiring another 1,000 by year-end, an effort that should ultimately increase telephone assistance.[6] To further increase access to telephone assistance, the IRS has expanded customer callback technology to 31 of its toll-free telephone applications and implemented the use of chatbots to service callers on several Accounts Management (AM) toll-free telephone lines.[7] The IRS also introduced chatbots on Automated Collection System telephone lines, where most taxpayers owing less than $25,000 can now set up payment plans using chatbot services.[8] To more efficiently assist callers inquiring about refunds, the IRS also updated its self-help Where's My Refund? automated tool to allow taxpayers to check the status of current year refunds and those of two prior years.[9] Additionally, the IRS provided a new Where's My Amended Return? automated tool to provide general information on amended returns.[10] Despite these measures, FY 2022 IRS Enterprise telephone assistance remained deficient, while as of October 31, 2022, 34 of the IRS's 360 TAC locations still remained closed or unstaffed.[11] Tax issues can be complex, and while automated services can be helpful, taxpayers deserve the ability to reach live telephone and in-person TAC office assistance when needed, and the IRS must work toward meeting these basic taxpayer needs.

ANALYSIS

There are about 62 telephone lines that comprise the IRS's agencywide telephone "Enterprise." Approximately 35 of these phone lines reside within the IRS's W&I AM function, which typically accounts for about 80 to 85 percent of the total call volume IRS receives.[12] In addition to answering calls, AM is responsible for processing activities related to original and amended tax returns and associated correspondence.[13] Because AM customer service representatives (CSRs) divide their time between two key roles during the filing season: (1) answering calls and (2) assisting with the processing of returns and taxpayer correspondence, the more time spent working one means less time spent working the other. Further, the IRS pulled many seasoned CSRs offline to provide training for new hires and training updates for existing CSRs before the start of the next filing season. Albeit short-term, taking CSRs offline to complete training duties further strained already limited resources. It is well-known that the percentage of calls the IRS answered was unacceptably low prior to the COVID-19 pandemic, and with the high call volume experienced during the last couple of years, the percent of phone calls answered has plummeted even lower.[14]

TAS has historically recommended the IRS improve telephone customer service levels to reach an 85 percent Level of Service (LOS), a goal the IRS has stated it will seek to achieve during the 2023 filing season.[15] To accomplish the 85 percent goal, however, the IRS will logically have to assign most or even all of its CSRs to answer phone calls. The potential sacrifices the IRS will have to make and the collateral effects to achieve this goal are concerning. Time CSRs spend answering phone calls means time CSRs are not spending on their other key filing season role: processing original and amended returns and paper correspondence. Taxpayers, many quite literally, cannot afford to have the IRS take steps that have potential for increasing or creating a new processing backlog.

Answering taxpayer phone calls and processing tax returns and correspondence are two core aspects of the IRS mission that it must be able to handle. The IRS must continue to learn from the lessons of past filing seasons, to improve taxpayer service, to avoid causing self-inflicted challenges, and to not aim to achieve the highest LOS if it comes at the cost of creating processing backlogs. Although the IRS should accomplish both – a high percentage of calls answered and elimination of backlogs – in the short term, CSRs must rotate between both key roles during the 2023 filing season to minimize processing delays and provide the best possible service for taxpayers in the long term.[16]

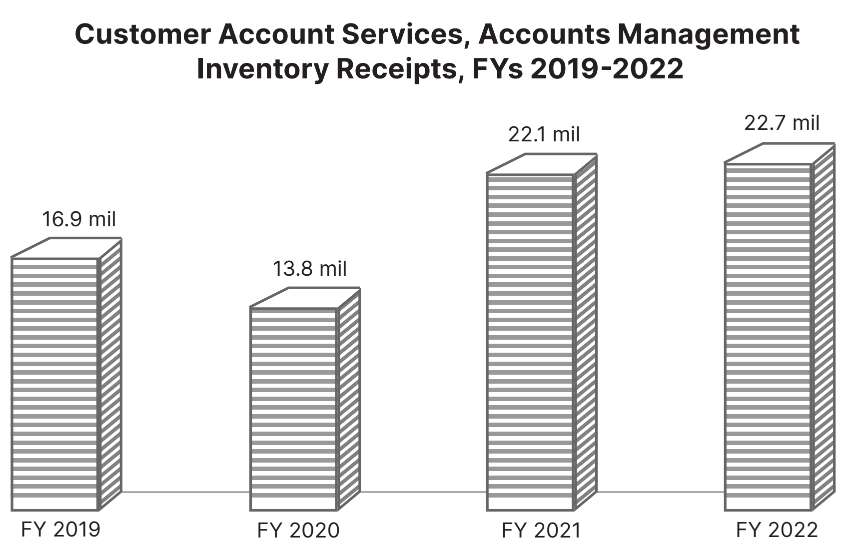
We all share the goal of a fully staffed and modernly equipped IRS that operates with 21st century technology and efficiency. But the IRS must get current in processing returns and correspondence and put the backlog behind us once and for all. Backlogs create processing delays that result in increased TAC visits from taxpayers requesting the status of their tax returns and correspondence and increased call volume, as shown in Figure 2.4.1. Similarly, shifting employees from telephone assistance toward return and correspondence processing causes a decline in telephone service, which may promote an increase in correspondence receipts as shown in Figure 2.4.2. It is important to note that AM's dual phone and processing responsibilities have a circular effect on IRS customer service delivery – necessitating a balanced approach rather than a singular focus on one responsibility to the detriment of the other.

FIGURE 2.4.1, IRS Enterprise Call Attempts, Calls Answered, Percentage of Calls Answered by an IRS Employee, and Total LOS for IRS Phones, FYs 2019-2022[17]

	FY 2019	FY 2020	FY 2021	FY 2022
Enterprise Total Call Attempts	99.4 mil	100.5 mil	281.7 mil	173.3 mil
Enterprise Total Calls Answered	51.5 mil	47.5 mil	72.2 mil	51.8 mil
Enterprise Calls Answered by a Live Assistor	28.6 mil	24.2 mil	32.0 mil	21.7 mil
Percentage of Enterprise Calls Answered by a Live Assistor	29%	24%	11%	13%
Percentage of Enterprise Calls Answered With Automated Assistance	27%	26%	10%	8%
Enterprise LOS	56%	51%	21%	21%

In FY 2022, only 21.7 million of the 173.3 million calls placed to an IRS telephone line were answered by an assistor (13 percent). Another eight percent of these callers received automated assistance, rendering the total service on all IRS telephone lines at 21 percent – similar to the service experienced in FY 2021, when call volume reached 281.7 million calls. The key difference between the two years was that in FY 2022, the IRS shifted the primary focus of its CSRs from phones to inventory backlog reduction. Though the IRS received 108.4 million fewer calls, 20.4 million fewer calls were answered – thus maintaining the same service level experienced in FY 2021. Additionally, as the volume of calls answered declined, FY 2022 AM paper correspondence and return receipts increased, surpassing the FY 2021 volume, and adding challenges to the clearance of the existing IRS processing backlog.[18]

FIGURE 2.4.2[19]



As shown in Figure 2.4.3, 134.9 million (78 percent) of the calls the IRS received were directed to ten telephone lines in the IRS Enterprise. The remaining 38.4 million calls (22 percent) were spread across the IRS's remaining 52 telephone lines in varying volumes.[20] "Net Attempts" reflects the attempts made to reach each of the ten highest volume telephone lines. "Assistor Calls Answered" reflects the number of calls that reached a live assistor, while "Total Calls Answered" refers to all calls answered live and via automated assistance. The LOS is based on calls that are serviced both by live assistance and through automation and provides an indication of how well the IRS is meeting caller demand. Service levels suggest that the IRS should explore options to improve service on these telephone lines. The IRS should consider whether it could consolidate any of the remaining 52 telephone lines within the main 1-800-829-1040 number, service them with chatbot technology, or operate them on a reduced schedule, freeing resources for improved access to the IRS's higher volume telephone lines, particularly those lines that directly impact face-to-face customer service delivery at IRS TAC offices.

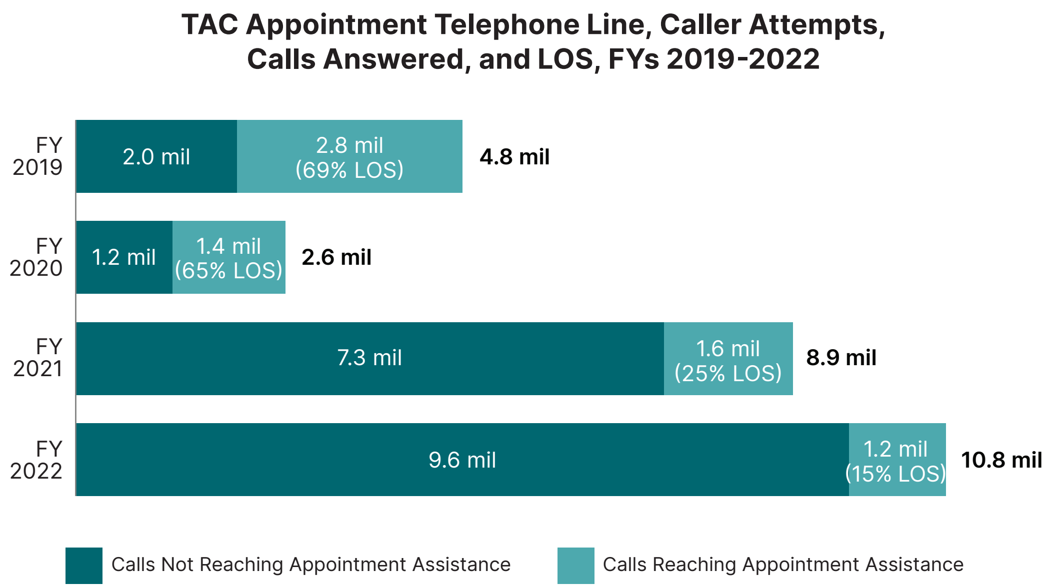
FIGURE 2.4.3, Top Ten IRS Enterprise Telephone Lines by Volume of Call, FY 2022[21]

Telephone Line	Phone Number	Net Attempts	Assistor Calls Answered	Percentage of Calls Answered by a Live Assistor	Total Calls Answered (Live and by Automation)	LOS
Individual Income Tax	800-829-1040	30.9 mil	3.0 mil	10%	4.4 mil	18%
Refund Hotline – Automated Only	800-829-1954	27.5 mil	0.0 mil	0%	20.9 mil	11%
Practitioner Priority Service	866-860-4259	12.7 mil	2.0 mil	16%	2.0 mil	17%
Refund Call Back	800-829-0582	11.3 mil	0.8 mil	7%	3.7 mil	13%
TAC Appointment Scheduling	844-545-5640	10.8 mil	1.2 mil	11%	1.2 mil	15%
AM Installment Agreement/ Balance Due	Enterprise Transfer	10.4 mil	2.9 mil	28%	2.9 mil	28%
Wage and Investment IMF Customer Response	800-829-0922	10.0 mil	0.7 mil	7%	2.0 mil	13%
Taxpayer Protection Program	800-830-5084	8.8 mil	1.0 mil	11%	1.0 mil	13%
Business and Specialty Tax Services	800-829-4933	8.0 mil	1.5 mil	19%	1.6 mil	26%
Automated Collection Service	800-829-3903, 800-829-7650	4.4 mil	1.9 mil	43%	2.2 mil	52%

Insufficient Telephone Service Negatively Impacts Taxpayer Assistance Center Office Service Delivery

The continued reduction in telephone services experienced during FYs 2021 and 2022 likely led to the substantial increases experienced in the volume of taxpayers seeking face-to-face assistance at IRS TAC office locations and the declines in service experienced on the TAC appointment scheduling telephone line. During FY 2022, the volume of callers attempting to schedule TAC appointments ranked the TAC appointment telephone line the fifth highest in volume of the 62 lines comprising the IRS Enterprise. As shown in Figure 2.4.4, after FY 2020 TAC office shutdowns, surges occurred in FYs 2021 and 2022 appointment demand. In FY 2022, call attempts exceeded ten million callers, up from the 4.8 million calls received during the FY 2019 pre-pandemic period.[22]

FIGURE 2.4.4[23]



During FY 2022, the IRS only serviced about 15 percent of the 10.8 million callers attempting to schedule a TAC appointment. On its website, the IRS instructs taxpayers to locate their local TAC office and make an appointment by calling the "appointment number for that office."[24] The IRS provides an automated locator tool for taxpayers to find their local office; however, there is only one phone number (844-545-5640) for scheduling all TAC office appointments across the United States. While local TAC offices may have the capacity to accommodate an appointment, the inability to reach scheduling assistance on the IRS's TAC appointment scheduling telephone line prevented many taxpayers and representatives from scheduling an appointment.

Taxpayers visiting an IRS TAC office in hopes of obtaining assistance often experience more frustration upon learning they cannot receive assistance without an appointment. The IRS recognized this difficulty, and on April 13, 2022, it implemented a virtual appointment referral process (Web Service Delivery (WebSD)) to assist these taxpayers.[25] To take advantage of the referral process, however, the taxpayer's issue must be one that the IRS can resolve through virtual interaction, and the taxpayer must possess the necessary technology to participate in the appointment via a computer or other personal device with internet connectivity. The IRS advised taxpayers referred for virtual appointments that it would contact them within one business day.[26] Though this process assisted some taxpayers, it did not sufficiently serve all taxpayers, as shown in the following example, and did little to address the underlying problem – the inability to schedule a TAC appointment. TAS received the following correspondence from an 88-year-old mother after filing a tax return for her deceased son.

> *My son died Sept. 8, 2021, leaving the need for a tax return for income covering Jan. 1, 2021, to Sept. 7, of 2021. The return was completed by a CPA and needed fiduciary documents added, so was mailed classified to Kansas City, MO, IRS March 14, 2022.*
>
> *March ended, so did April and May and I became concerned there was no correspondence. Then began the phone calls, emails, and conversations to elicit information about the status of the return. Phone call after phone call and punching numbers would get to a point and then exit without explanation. I then began a search for an appointment for someone to help me find the status of my son's return. Eventually I*

could get to the point of identifying [the] return and give them my identity. At that point the answer was (computer) we can't help you and a cut off.

MORE SEARCHING BROUGHT ME TO AN APPOINTMENT WITH A PERSON TO HELP!!!! After waiting and waiting and cut offs, "enough" I said and walked into the Federal Building in Richmond Va. in search of the IRS. What I found was a huge open office space with 30 plus chairs in rows and at least 8 cubicles for interviews. ONLY ONE AGENT, ONE TAXPAYER AND ONE YOUNG EMPLOYEE were there. I explained my troubles and held out my documents of proof---the girl would not look at them as she explained I MUST have an appointment! She took my name, told me to go home and I would have a call in 48 hours for the appointment!!!! 48 hours and on --- no call! ---- from March to the middle of July and no one seems to care!...[27]

Taxpayers fortunate enough to reach assistance on the IRS's TAC appointment telephone line are generally provided alternatives to TAC appointments when other resolution options are available.[28] If an appointment is necessary, the telephone assistor will determine the nature of the appointment and schedule an appointment based on TAC office appointment availability. If the IRS can handle the visit outside of a TAC location, it may instead offer taxpayers a Virtual Service Delivery (VSD) appointment or an opportunity to utilize the WebSD option.[29] A VSD appointment is an appointment held using IRS-provided videoconferencing equipment that the taxpayer can access at a community partner location, such as a public library. A WebSD appointment is a more recently introduced option that now provides taxpayers the opportunity to meet with a TAC representative virtually via a personal computer or device with internet access, in lieu of an in-office appointment.[30] Whether the taxpayer seeks a virtual appointment or an in-office appointment, taxpayers generally must first be able to reach the TAC appointment telephone line to schedule an appointment.

Access to Taxpayer Assistance Center Help Should Be Easier

As the IRS continues its efforts to divert call volume away from its limited in-person telephone assistance and toward self-help technology-driven alternatives such as automated tools and chatbot services, it is reasonable to offer taxpayers the ability to schedule virtual or in-office appointments online. The IRS should provide taxpayers with options. Businesses commonly use electronic appointment scheduling, as do many taxpayers when making medical appointments, reservations, and the like. The use of electronic appointment scheduling would not only reduce calls to the IRS's struggling TAC appointment telephone line but would also enhance the customer experience. Self-scheduling would eliminate the bottleneck experienced when trying to access the TAC appointment telephone line, reduce call volume, improve telephone line accessibility for taxpayers who do not have internet, and reduce taxpayer burden. The IRS should design an appointment scheduling tool to capture any information necessary for the IRS to determine the specific reason for the appointment, the appropriate type of appointment (virtual, in-person, or both if appropriate, allowing the taxpayer to choose), prepare for the appointment, or contact the taxpayer in advance of the appointment to provide any necessary guidance or assistance. Electronic appointment scheduling should further screen taxpayers' service needs and direct them to alternative assistance for issues that an IRS TAC office cannot handle.

The IRS Should Expand Web Service Delivery Services and Make Web Service Delivery Readily Accessible

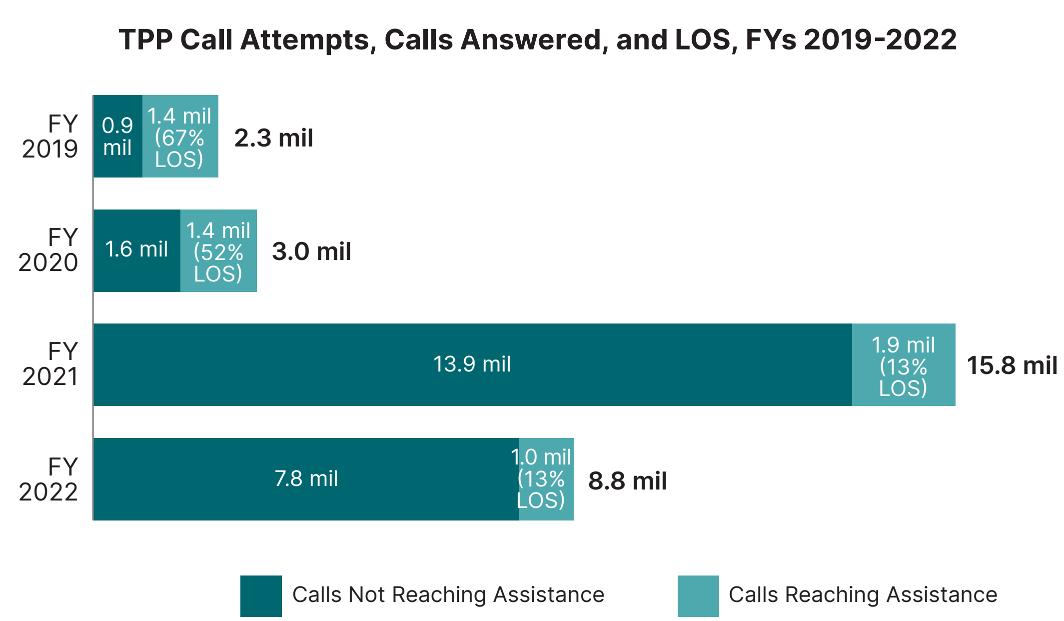
The IRS launched Phase 2 of its WebSD virtual appointment pilot on March 15, 2022, with the goal of expanding WebSD virtual appointments to a permanent nationwide program that provides taxpayers another option for receiving assistance.[31] Though the IRS increased the number of employees providing WebSD services from 16 to 32, the demand for WebSD appointments has been low while walk-in demand at IRS TAC offices has increased.[32] Currently, the IRS offers WebSD appointments only to taxpayers who can first reach an assistor on the IRS's TAC appointment telephone line or taxpayers who walk into a TAC office without an appointment.[33] WebSD appointments are further limited to taxpayers with a single issue, which must involve an Economic Impact Payment, a balance due, math errors/notices, refund inquiries, Automated Underreporter (CP 2000) notices, prior year returns, or an individual income tax law question – many topics for which the IRS maintains a separate telephone line or that the IRS can generally resolve over the phone, provided the taxpayer can reach assistance.[34]

Virtual WebSD appointments provide a promising option for taxpayers to meet and interact with the IRS without needing to travel to IRS TAC offices, which may be located a considerable distance from their homes. WebSD appointments also have the potential to produce lower no-show rates than in-office appointments while producing similar customer satisfaction results, as determined by a recent telehealth study comparing no-show rates and customer satisfaction results between virtual and in-office medical appointments.[35] To fully capitalize on the WebSD initiative, the IRS must make taxpayers aware of the availability of WebSD services on its website, afford taxpayers a means to self-schedule without first contacting the TAC appointment telephone line, and expand WebSD services to include a wider range of services that would otherwise bring taxpayers into an IRS TAC office, such as identity verification activities associated with the IRS's Taxpayer Protection Program (TPP). Potential WebSD benefits such as reduced call volume and increased taxpayer telephone access are currently diminished because most WebSD candidates must first reach the TAC appointment scheduling telephone line. Due to the limited nature of the inquiries qualifying for WebSD services, these inquiries are often screened and resolved by phone, which highlights both the need for improved levels of phone service and the limited usefulness of the current WebSD services offered.

Taxpayer Protection Program Verification Must Be Easier to Accomplish

During FY 2022, the volume of calls received on the IRS's TPP telephone line ranked this line the eighth highest in call volume in the IRS Enterprise. The TPP telephone line provides assistance to taxpayers whose returns the IRS has halted in the processing stream due to suspected identity theft. Though many taxpayers can authenticate their identity by phone, the inability to reach such assistance prevented many taxpayers from doing so.[36] Taxpayers unable to reach the IRS's TPP telephone line and those unable to authenticate their identity by telephone or online e-Services generally must make an appointment to authenticate in person at one of the IRS's TAC office locations – a task not easily accomplished.[37]

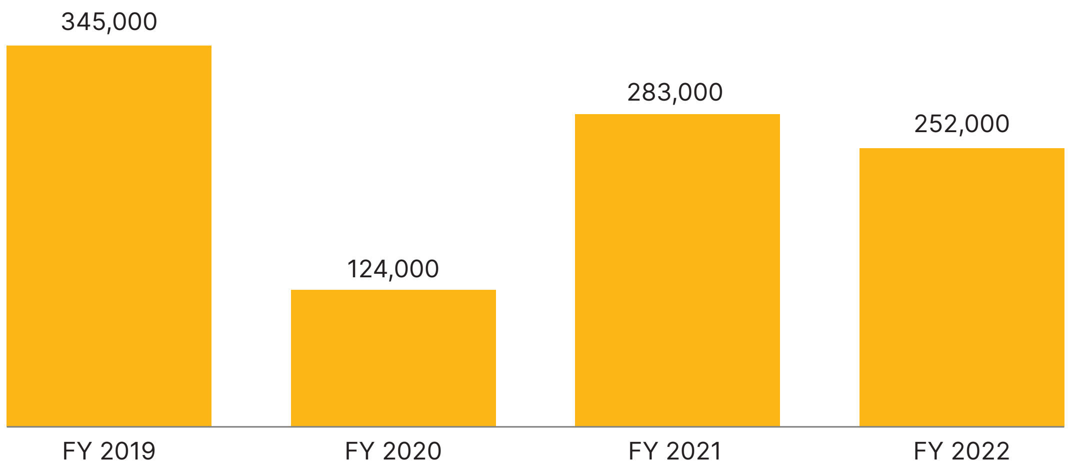
FIGURE 2.4.5[38]



In FY 2022, only about one million of the 8.8 million taxpayers trying to reach the IRS's TPP telephone line were successful, resulting in a service level of only 13 percent and an increase in TAC office appointment demand. As Figure 2.4.6 shows, thousands of taxpayers seek TAC appointments each year for the purpose of TPP identity verification. Though 252,000 taxpayers completed the identity verification process in TAC offices during FY 2022, approximately 2.4 million individual income tax returns still remained suspended awaiting taxpayer identity verification at the end of FY 2022.[39]

FIGURE 2.4.6[40]

TPP Identity Verifications Completed by TAC Offices, FYs 2019-2022



With limited service on both the IRS's TPP and TAC appointment scheduling telephone lines, the IRS should expand WebSD to include TPP identity verification activities while also exploring the implementation of an alternate identity verification process similar to the Acceptance Agent Program already in use by the IRS. The IRS currently uses Certifying Acceptance Agents (CAAs) and Acceptance Agents (AAs) to verify the identity and foreign/alien status of individuals applying for an Individual Taxpayer Identification Number (ITIN). CAAs and AAs are persons or entities (businesses or organizations) who, pursuant to a written agreement with the IRS, are authorized to assist individuals and other foreign persons who do not qualify for a Social Security number but who still need a Taxpayer Identification Number to process a Form 1040 and other tax schedules.[41] The CAA and AA conduct in-person interviews with each applicant to facilitate the application process by reviewing the necessary documents and forwarding completed Forms W-7 to the IRS.[42] Though CAAs providing ITIN assistance often charge for their services, any similarly crafted TPP identity verification program should seek to reduce or eliminate any fees associated with this process. Use of CAAs and AAs for some or all types of TPP identity verifications would provide an alternative to TAC appointments for TPP identity verification, alleviate taxpayer burden, minimize the volume of taxpayers calling the TPP and TAC appointment telephone lines, and minimize the volume of taxpayers requiring TAC office appointments for identity verification purposes. Furthermore, until the IRS is caught up with the existing identity verification backlog, it should consider other options to include utilizing revenue agents, revenue officers, or TAS employees to assist with these verifications as well as the processing and release of any associated refunds.

The IRS Should Staff All Taxpayer Assistance Center Offices to Meet Customer Demand

Per the IRS, "TAC staffing levels have fallen significantly since 2014, resulting in several closures and severely understaffed TACs. Increasing staffing levels will allow the IRS to re-open TACs and restore office hours, improving the ability for taxpayers to schedule appointments sooner, and ultimately fostering more productive exchanges with the IRS."[43] Though there is consensus that the IRS needs to increase staffing to meet TAC office customer demand, determining the level of TAC office demand and the volume of actual face-to-face appointments can be a challenge. The IRS reports TAC assistance as "Total TAC Contacts," a term that lacks transparency. Total TAC contacts include both face-to-face and non-face-to-face contacts.[44] Face-to-face contacts involve providing assistance to taxpayers who are physically present in the TAC office for an appointment and those visiting a TAC office to pick up forms, make payments, and drop off current year tax returns and documents.[45] Non-face-to-face contacts involve answering taxpayer correspondence and working tax account related inventory.[46] When comparing the volume of calls on the IRS's TAC appointment line to the actual face-to-face appointments conducted, the volume of face-to-face appointments is surprisingly low, as shown in Figure 2.4.7.

FIGURE 2.4.7, TAC Appointment Telephone Line Data and TAC Contact Analysis, FY 2022[47]

1.	**Number of Calls to the IRS TAC Appointment Line**	10,779,159
2.	**Number of Calls That Did Not Reach Live Assistance on the IRS TAC Appointment Line**	9,592,307
3.	**Number of Calls Reaching Live Appointment Assistance** (Row 1 Minus Row 2)	1,186,852
4.	**Calls Reaching Appointment Assistance With No Appointment Scheduled (Calls Resolved by Phone or Appointment Availability Did Not Meet Taxpayer Scheduling Needs)**	500,729
5.	**Number of Calls Resulting in a Scheduled Appointment** (Row 3 Minus Row 4)	686,123
6.	**Walk-In Appointments (Appointments Conducted Without a Scheduled Appointment)**	18,214
7.	**No-Shows (Taxpayer Did Not Attend Scheduled Appointment)**	36,629
8.	**Face-to-Face Appointments Provided to Taxpayers** (Row 5 Plus Row 6, Minus Row 7. This is a TAS Computation – IRS TAC Offices Do Not Track Face-to-Face Contacts by Appointment Status)	667,708
9.	**Other Face-to-Face Contacts (Taxpayer Obtained Tax Forms, Dropped Off a Current Year Return/Documents, Made a Payment or Received Other Services Not Classified as an Appointment)** (Row 10 minus Row 8. TAS Computation – IRS TAC Offices Do Not Track Face-to-Face Contacts by Appointment Status)	628,128
10.	**Total Face-to-Face Appointments and Other Face-to-Face Contacts** (Row 8 plus Row 9)	1,295,836
11.	**Non-Face-to-Face Contacts Completed (Correspondence and Tax Account Related Inventory)**	60,609
12.	**Total FY 2022 TAC Contacts Reported** (Row 10 Plus Row 11)	1,356,445

In FY 2022, taxpayers made 10,779,159 calls to the TAC office appointment telephone line, with only 1,186,852 calls (11 percent) reaching an employee for assistance. Of the calls reaching assistance, 500,729 were either resolved by phone or the IRS did not schedule an appointment because appointment availability did not meet the caller's scheduling needs (IRS data does not make a quantifying distinction between the two). Only 686,123 calls (58 percent) reaching assistance were resolved with a scheduled TAC appointment. As shown, over nine million calls did not reach a live assistor for appointment scheduling services. Should access to appointment scheduling improve, the volume of face-to-face appointments will increase; however, increased demand beyond existing TAC appointment capacity would result in a reduced service level, a measure not currently captured for face-to-face appointment services. Most notable is that only 667,708 (49 percent) of the FY 2022 total TAC contacts reported represented taxpayers who attended an actual face-to-face appointment. The remaining 688,737 (51 percent) were non-face-to-face contacts that resulted from TAC office employees working correspondence and tax account related inventory or taxpayers simply visiting the TAC office to pick up forms, drop off a current year tax return, or make a payment.

As it works to increase telephone staffing, the IRS is also working to increase TAC office staffing to meet increased face-to-face appointment demand. The IRS should make all efforts to open and staff closed and unstaffed offices and resume its Community Assistance Visits (CAV) initiative. The IRS CAV initiative is an effort that involves mobilizing TAC employees to visit low-income and underserved communities that do not have access to an IRS TAC office. The IRS postponed the CAV initiative initially slated to begin in March 2020 with visits to six low-income and underserved communities due to the pandemic. The CAV initiative was not resumed in FY 2022.[48]

Taxpayer Assistance Center Offices Should Offer Expanded Hours

During FY 2022, IRS Field Assistance offered taxpayers the opportunity to seek Saturday assistance during its Taxpayer Experience Day events. These events occurred on the second Saturday of each month from February through August at participating TAC office locations. The Saturday events provided service to 17,924 taxpayers without requiring an appointment (with 5,100 taxpayers receiving needed TPP identity verification assistance).[49] Though these Taxpayer Experience Day events utilized volunteers from various IRS business units including TAS, the success of these events demonstrated that there is both demand and need for TAC offices to be available to the public during timeframes outside of the traditional work week. To improve the taxpayer experience and fulfill taxpayer in-person service needs, the IRS should explore the possibility of maintaining extended office hours and regular Saturday hours throughout the filing season, particularly at select offices where appointment volumes are high, and the IRS often cannot meet demand during the business week alone.

Taxpayer Assistance Center Office Submissions Contribute to the IRS's Paper Inventory

Paper is the IRS's "kryptonite," and COVID-19 processing backlogs highlighted the detrimental impact that high volumes of paper-filed tax returns, amended returns, and paper documents have on the IRS as an agency.[50] TAC offices contribute to paper document receipts because they often receive current year tax return submissions and frequently secure taxpayer documentation for the resolution of taxpayer account issues.[51] The IRS manually documents tax returns and other paper documents received in IRS TAC offices for tracking purposes and ships them to IRS campuses.[52] The receiving campus employees complete the tracking process and manually direct the documents to the appropriate work unit, which may involve scanning prior to assignment and processing.[53] This results in additional work for TAC and campus employees and additional processing delays for taxpayers. In the interest of reducing paper inventory, processing delays, shipping costs, and manual processing burdens, the IRS should explore methods for converting paper documents received in TAC offices to electronic submissions at the initial point of receipt. Implementing a process that would allow TAC offices to forward documents and tax return submission electronically at the point of receipt (perhaps directly into the processing stream) would reduce the volume of paper inventory backlogs, improve efficiency, reduce mailing delays, and increase customer satisfaction, while also advancing the IRS's goals of going paperless and increasing the percentage of tax returns filed electronically.[54]

CONCLUSION AND RECOMMENDATIONS

Despite FY 2022 budget and staffing limitations, the IRS has continued to reduce the backlog, increase alternatives to telephone and in-person service, improve processing functions, and increase staffing. As the IRS continues to hire and train more employees and implement technology to improve its processes, it must continue to explore new opportunities to improve customer services, fulfill in-person customer service demand, and reduce taxpayer burden. With increased funding provided by the Inflation Reduction Act, Treasury Secretary Janet Yellen committed to fully staffing all IRS TAC offices, increasing IRS telephone LOS to 85 percent, and cutting wait times for telephone service in half over the coming filing season.[55] Though

TAS has advocated for and wholeheartedly agrees with the Treasury Secretary's commitments, concern exists regarding the IRS's ability to accomplish these commitments during the 2023 filing season given the IRS's current challenges. To better meet customer service needs, CSRs must juggle phone service with inventory processing demands. In addition to increased TAC office staffing, the IRS should further consider extended TAC hours, technology-based solutions for TAC appointment scheduling and paper document submissions, expanded WebSD services, and implementation of an AA program for TPP identity verification. Telephone and TACs are essential services that the IRS must provide for all taxpayers seeking assistance.

Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Fully staff all TAC office locations and offer extended or Saturday hours in high volume locations.
2. Automate the TAC appointment scheduling process.
3. Expand WebSD services to include TPP verification and other high demand TAC services.
4. Implement a process similar to the IRS's AA program for purposes of conducting TPP identity verification. To increase taxpayer service and location options, consider utilizing IRS employees from other functions (Compliance, TAS, etc.) to perform collateral identity verification duties.
5. Explore opportunities for TAC offices to digitalize document and tax return submissions on site.

RESPONSIBLE OFFICIALS

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Melanie Krause, Acting Deputy Commissioner, Services Enforcement

Nancy Sieger, Chief Information Officer

Harrison Smith, Co-Director, Enterprise Digitalization and Case Management Office

IRS COMMENTS

The pandemic created unprecedented challenges with our ability to service customers through normal telephone and face-to-face assistance channels. The IRS would like to thank the National Taxpayer Advocate for recognizing our initiatives to expand services for taxpayers seeking telephone and face-to-face assistance. The IRS is aggressively pursuing year-round hiring and streamlining the process through Direct Hire Authority. To achieve the approved filing season Level of Service, we directed remote locations to complete their annual refresher, skill-up, and continuing professional education training in the October through December period and limited the amount of training scheduled for January. This will allow us to focus on inventory closures in our campus locations prior to the start of the official filing season. To help reduce additional call backs and help mitigate telephone demand on the Practitioner Priority Service line, we increased the number of Transcript Delivery System transcripts tax professionals were permitted to order over the phone from ten per client to 30. In 2023, chatbot services will expand to an intent engine which provides users the ability to type a question directly into a text field. Chatbot logic will then guide the customer to the best resource. We will continue to expand voicebot and chatbot services to redirect taxpayer telephone demand, allow taxpayers to self-service, and give us more flexibility scheduling inventory work. Eliminating labor intensive paper return processing is fundamental to improving the taxpayer experience. The agency is actively taking steps to accelerate the digitalization of paper which includes expanded scanning services and allowing processing centers to scan Forms 1040 with up to 15 attachments in 2023.

As it relates to in-person service, we currently have 361 Taxpayer Assistance Centers (TAC) to service taxpayers compared to 358 TACs last year. We are also working toward finalizing our Optimal Staffing Strategy, a two-year staffing plan which will establish appropriate staffing levels to ensure cash payments can be made in every state and enable full staffing at locations that are currently unstaffed or staffed by a single technical employee. In the meantime, we will continue to offer expanded hours and services to taxpayers through our successful Taxpayer Experience Day initiatives and Community Assistance Visits in 2023.

The current appointment process remains efficient and effective as it provides us an opportunity to educate taxpayers on alternative service options and, in some cases, precludes the need to travel to a TAC for service. For those taxpayers who are unable to call for an appointment or who arrive at a TAC with an emergency or immediate issue, they still may receive assistance, subject to staffing and capacity. No appointment is necessary when making a non-cash payment, dropping off a federal tax return, or requesting forms.

We understand that some taxpayers in remote locations still prefer or need to interact with us in person, and for them we offer virtual assistance through Web Service Delivery. We are in phase two of the pilot with plans to transition to a long-term sustainable program in fiscal year 2023. The pilot continues to provide the necessary data to determine the needs and demand of virtual service in our TACs. Preliminary results from the test show that many of our TAC services can be provided virtually for taxpayers unable to schedule an appointment through the toll-free lines.

The IRS is dedicated to providing excellent service and to delivering the best service possible to the widest range of taxpayers. We will continue to explore ways to balance telephone demand, work paper cases, and provide in-person service to reduce taxpayer burden and help taxpayers and their representatives understand and meet their tax obligations. Examples of additional actions to support an improved taxpayer experience next filing season include hiring 5,000 more Customer Service Representatives to achieve a higher level of telephone service, detail employees from functions outside of Accounts Management to assist with answering calls, expand customer callback options to cover almost all calls, increase scanning services so that by 2023 filing season we will begin to scan a portion of TY 2022 paper Forms 1040, U.S. Individual Income Tax Return, expand the use of the document upload tool to allow taxpayers to respond to some notices digitally by simply uploading a picture onto IRS.gov, continue deploying surge teams to allocate more resources for services, and continue hiring to expand the number of staffed TAC locations.

TAXPAYER ADVOCATE SERVICE COMMENTS

Year-round hiring, expanded chatbot services, and accelerated digitalization of paper and scanning services are all positive steps toward increasing LOS. Staffing strategies that will enable full staffing of unstaffed or understaffed TAC offices is likewise key toward improving IRS in-person service.

Though the continuation of Taxpayer Experience Day initiatives that enlist the participation of several IRS functions to offer expanded hours is a positive interim solution, long-term staffing strategies should also provide for extended hours or Saturday hours in high volume TAC locations as needed to meet customer demand.

The efficiency and effectiveness of the current TAC appointment process remains questionable. Requiring taxpayers to first reach an appointment scheduling telephone line to obtain in-person or virtual appointment services creates a bottleneck, frustrates taxpayers, and severely hampers taxpayer access to TAC appointment services. Though the current process may be efficient and effective for the IRS, the efficiency and effectiveness of this process from a taxpayer perspective appears limited. In FY 2022, there were over ten million calls to the TAC appointment scheduling telephone line, with only 11 percent of these calls reaching live assistance. Only 58 percent of taxpayers reaching assistance obtained a scheduled appointment. For those reaching appointment assistance, the current process does afford the IRS an opportunity to resolve the taxpayer's issue – possibly precluding the need for an appointment; however, the volume of these resolutions cannot be clearly determined. Because the number of successful resolutions is combined with the number of taxpayers unable to obtain an acceptable appointment, actual resolution volume alone is not available. However, judging by the combined number, successful resolutions would appear relatively low when compared to overall appointment demand. Though pre-appointment contact is a positive step toward reducing unnecessary appointments, it is noted that pre-contact efforts could be conducted upon the electronic scheduling of an appointment, preserving the taxpayer's appointment if needed, while reducing the call volume and taxpayer burden associated with the current scheduling process.

WebSD further offers a convenient alternative to telephone and in-office appointments. It is acknowledged that WebSD is in phase two of its pilot process and that the IRS is currently gathering necessary data to determine the needs and demand of virtual service in IRS TAC offices. With preliminary results showing that many TAC services can be provided virtually, we are hopeful that WebSD and other alternatives, such as the creation of a process similar to the IRS's Acceptance Agent Program, can offer taxpayers in need of TPP verification improved service, reduced processing delays, and less taxpayer burden.

The National Taxpayer Advocate remains concerned that the IRS will focus on increasing the LOS on the telephones at the expense of not working the existing paper backlog, paper returns, and correspondence expected to be received during the 2023 filing season. The IRS must focus on long-term results and put the paper backlog behind us once and for all. In 2023, the IRS must not sacrifice paper processing at the expense of answering more calls to meet an artificial goal. It is a difficult balancing act between phones and processing but at this point, paper is the main disrupter, and it must be eliminated. Good customer service cannot be achieved with the level of the paper inventory the IRS has been carrying month after month. The IRS has no option but to clear the paper backlog before CSRs can provide quality service to taxpayers at the level and quality taxpayers deserve.

RECOMMENDATIONS

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Fully staff all TAC office locations and offer extended or Saturday hours in high volume locations.
2. Automate the TAC appointment scheduling process.
3. Expand WebSD services to include TPP verification and other high demand TAC services.
4. Implement a process similar to the IRS's AA program for purposes of conducting TPP identity verification. To increase taxpayer service and location options, consider utilizing IRS employees from other functions (Compliance, TAS, etc.) to perform collateral identity verification duties.
5. Explore opportunities for TAC offices to digitalize document and tax return submissions on site.

Endnotes

1 IRS, Joint Operations Center (JOC), Snapshot Reports: Enterprise Snapshot, Enterprise Total (week ending Sept. 30, 2021). "Enterprise telephone lines" refers to all calls across all IRS phone lines. Calls reaching a live assistor is the sum of "Assistor Calls Answered" divided by the "Net Attempts" to a telephone line.

2 *Id.*

3 IRS, Calendar Year (CY) Individual Return Filing and Services Report, Cumulative Statistics (week ending Oct. 8, 2022). The report shows that although total TAC contacts increased by 24.3 percent, TAC face-to-face appointments declined by 18 percent when compared to the same period in 2021. Total contacts include non-face-to-face contacts (correspondence and tax account related inventory) and taxpayer TAC visits to make payments, obtain forms, and drop off current year returns or documents – actions that do not require an appointment. *See* Internal Revenue Manual (IRM) 21.3.4.2.4.2(10), TAC Appointment Exception Procedures (June 27, 2022).

4 *See* Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR are also codified in the IRC. *See* IRC § 7803(a)(3).

5 National Taxpayer Advocate 2021 Annual Report to Congress 68 (Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Challenges Reaching IRS Representatives Due to Longstanding Deficiencies and Pandemic Complications*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_MSP_03_Telephone.pdf.

6 IRS, IR-2022-191, IRS Quickly Moves Forward with Taxpayer Service Improvements; 4,000 Hired to Provide More Help to People During 2023 Tax Season On Phones, https://www.irs.gov/newsroom/irs-quickly-moves-forward-with-taxpayer-service-improvements-4000-hired-to-provide-more-help-to-people-during-2023-tax-season-on-phones (last visited Dec. 9, 2022).

7 IRS, W&I, Business Performance Review (BPR) Q2, FY 2022, at 14 (May 16, 2022); IRS, W&I, BPR Q3, FY 2022, at 5 (Aug. 10, 2022). Customer callback is an automated feature that allows taxpayers to provide their telephone numbers and opt for an IRS employee to call them back rather than wait on hold. *See* National Taxpayer Advocate 2021 Annual Report to Congress 72 (Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Challenges Reaching IRS Representatives Due to Longstanding Deficiencies and Pandemic Complications*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_MSP_03_Telephone.pdf.

8 Jory Heckman, *IRS Expands AI-Powered Bots to Set Up Payment Plans with Taxpayers Over the Phone*, Fed. News Network, https://federalnewsnetwork.com/artificial-intelligence/2022/06/irs-expands-ai-powered-bots-to-set-up-payment-plans-with-taxpayers-over-the-phone/ (last visited Dec. 9, 2022); IRS, W&I, BPR Q2, FY 2022, at 14 (May 16, 2022).

9 IRS, Where's My Refund?, https://www.irs.gov/refunds (last visited Dec. 9, 2022).

10 IRS, Where's My Amended Return?, https://www.irs.gov/filing/wheres-my-amended-return (last visited Dec. 9, 2022).

11 IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending Sept. 30, 2022); IRS, Status of Unopened Mail and Backlog Inventory Report (Nov. 4, 2022). November 4, 2022 Status of Unopened Mail and Backlog Inventory Report states "TAC Update. As of October 31, 2022, of the 360 TAC locations, 326 are open and 34 are closed or unstaffed."

12 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Enterprise Total; IRS, JOC, Snapshot Reports: Accounts Management (weeks ending Sept. 30, 2020; Sept. 30, 2021; Sept. 30, 2022). Net AM attempts divided by net Enterprise attempts for FY 2020, FY 2021, and FY 2022 produced percentages of 82 percent, 85 percent, and 82 percent, respectively.

13 *See* IRM 21, Customer Account Services. The IRMs in part 21 discuss the various processing activities for which AM is responsible.

14 National Taxpayer Advocate 2021 Annual Report to Congress 75 (Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Challenges Reaching IRS Representatives Due to Longstanding Deficiencies and Pandemic Complications*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_MSP_03_Telephone.pdf; Erin M. Collins, Update on IRS Progress in Working Through Its Backlog of Paper-Filed Tax Returns and Correspondence, National Taxpayer Advocate Blog (Nov. 10, 2022), https://www.taxpayeradvocate.irs.gov/news/nta-blog-update-on-irs-progress-in-working-through-its-backlog-of-paper-filed-tax-returns-and-correspondence-part-3/.

15 *Id.*

16 *Id.*

17 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Enterprise Total (weeks ending Sept. 30, 2019; Sept. 30, 2020; Sept. 30, 2021; Sept. 30, 2022). "Percentage of Enterprise Calls Answered by a Live Assistor" is calculated by dividing "Enterprise Calls Answered by a Live Assistor" by "Enterprise Total Call Attempts." "Enterprise Total Call Attempts" refers to all calls across all IRS phone lines. The IRS's formula for determining LOS is more complex than just number of calls received divided by number of calls answered. The LOS formula is: (Assistor Calls Answered + Automated Calls Answered (Info Messages)) divided by (Assistor Calls Answered + Automated Calls Answered (Info Messages) + Emergency Closed + Secondary Abandons + (Add either Calculated Busy Signal or Network Incompletes) + (Add either Calculated Network Disconnects or Total Disconnects)). LOS cannot be computed with the numbers provided in Figure 2.4.1 alone.

18 IRS, Customer Account Services (CAS), CAS AM Paper Inventory Reports; Receipt Comparison Report (weeks ending Oct. 2, 2021; Oct. 1, 2022).

19 *Id.*

20 IRS, JOC, Snapshot Reports: Product Line Detail (week ending Sept. 30, 2022).

21 *Id.* The IRS's formula for determining LOS is more complex than just number of calls received divided by number of calls answered. The LOS formula is: (Assistor Calls Answered + Automated Calls Answered (Info Messages)) divided by (Assistor Calls Answered + Automated Calls Answered (Info Messages) + Emergency Closed + Secondary Abandons + (Add either Calculated Busy Signal or Network Incompletes) + (Add either Calculated Network Disconnects or Total Disconnects)). LOS cannot be computed with the data provided in Figure 2.4.3 alone.

22 IRS, JOC, Snapshot Reports: Product Line Detail, TAC Appointment (weeks ending Sept. 30, 2019; Sept. 30, 2020; Sept. 30, 2021; Sept. 30, 2022); IRS, JOC, Snapshot Reports: Enterprise Snapshot, Enterprise Total (week ending Sept. 30, 2019).

23 IRS, JOC, Snapshot Reports: Product Line Detail, TAC Appointment (weeks ending Sept. 30, 2019; Sept. 30, 2020; Sept. 30, 2021; Sept. 30, 2022). The IRS's formula for determining LOS is more complex than just number of calls received divided by number of calls answered. The LOS formula is: (Assistor Calls Answered + Automated Calls Answered (Info Messages)) divided by (Assistor Calls Answered + Automated Calls Answered (Info Messages) + Emergency Closed + Secondary Abandons + (Add either Calculated Busy Signal or Network Incompletes) + (Add either Calculated Network Disconnects or Total Disconnects)). LOS cannot be computed with the data provided in Figure 2.4.4 alone.

24 IRS, Contact Your Local IRS Office, https://www.irs.gov/help/contact-your-local-irs-office (last visited Dec. 9, 2022).

25 IRS, W&I, BPR Q2, FY 2022, at 11 (May 16, 2022).

26 *Id.*

27 Personal communication provided to TAS (July 30, 2022). Consent to release statement signed July 30, 2022 (on file with TAS).

28 IRM 21.3.4.2.4.5.1, Addressing, Targeting and Resolving Issues Without an Appointment (June 27, 2022).

29 IRS, SERP Alert 22A0077, Web Service Delivery (WebSD) Virtual TAC (Mar. 9, 2022).

30 *Id.*

31 IRS, W&I, BPR Q2, FY 2022, at 11 (May 16, 2022).

32 *Id.*

33 *Id.*

34 IRS, SERP Alert 22A0077, Web Service Delivery (WebSD) Virtual TAC (Mar. 9, 2022); Web Service Delivery (WebSD) Pilot 2 Questions and Answers.

35 Brenden Drerup et al., *Reduced No-Show Rates and Sustained Patient Satisfaction of Telehealth During the COVID-19 Pandemic*, Telemedicine and E-Health, Dec. 2021, https://www.liebertpub.com/doi/10.1089/tmj.2021.0002 (last visited Dec. 9, 2022).

36 IRM 25.25.6.1.7(3), Taxpayer Protection Program Overview (Oct. 1, 2022).

37 *Id.*; IRM 21.3.4.2.4.5.5, Taxpayer Issues That Require a TAC Visit (Jan. 11, 2021). The five issues are alien clearance (sailing permits); Individual Taxpayer Identification Number; immediate levy or lien release; Letter 5747C - TAC authentication only and Letter 5071C/4883C only if failed telephone authentication; and Secure Access authentication.

38 IRS response to TAS information request (Sept. 14, 2022); IRS, JOC, Snapshot Reports: Enterprise Snapshot, Product Line Detail, TPP (weeks ending Sept. 30, 2020; Sept. 30, 2021; Sept. 30, 2022). The IRS's formula for determining LOS is more complex than just number of calls received divided by number of calls answered. The LOS formula is: (Assistor Calls Answered + Automated Calls Answered (Info Messages)) divided by (Assistor Calls Answered + Automated Calls Answered (Info Messages) + Emergency Closed + Secondary Abandons + (Add either Calculated Busy Signal or Network Incompletes) + (Add either Calculated Network Disconnects or Total Disconnects)). LOS cannot be computed with the data provided in Figure 2.4.5 alone.

39 IRS response to TAS information request (Oct. 24, 2022); IRS, Taxpayer Protection Program Inventory Report (Sept. 29, 2022).

40 IRS response to TAS information requests (Sept. 14, 2022; Oct. 24, 2022).

41 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 Dec. 9, 2022); IRS, New ITIN Acceptance Agent Program Changes, https://www.irs.gov/individuals/new-itin-acceptance-agent-program-changes (last visited Dec. 9, 2022).

42 *Id.*

43 IRS PowerPoint presentation, FY 2024 Treasury Departmental Budget Request 15 (June 24, 2022).

44 IRS, Wage & Investment Data Dictionary 113 (Dec 14, 2020).

45 *Id.* at 107.

46 *Id.* at 109.

47 IRS, JOC, Snapshot Reports: Product Line Detail, TAC Appointment (Sept. 30, 2022); IRS responses to TAS fact check, rows 4 through 7, and rows 10 through 12 (Nov. 30, 2022); note: line 8 is the mathematical result of row 3 minus row 4, plus row 6, minus row 7; row 9 is the mathematical result of row 10 minus row 8. TAS performed the computations in rows 8 and 9 to make a distinction between the volume of face-to-face contacts that could have resulted from an appointment and the face-to-face contacts not requiring an appointment. IRS Field Assistance only tracks face-to-face contacts without regard to appointment status.

48 TAS Recommendations and IRS Responses, TAS Recommendation 3-6 (2021), https://www.taxpayeradvocate.irs.gov/news/directory-entry/2021-msp-03-telephone-and-in-person-service/ (last visited Dec. 9, 2022).

49 IRS response to TAS information requests (Sept. 14, 2022; Oct. 24, 2022).

50 *See* David Hood et al., *Fixing the IRS: Paper Addiction Remains Agency's 'Kryptonite*,' Bloomberg Tax, https://news.bloombergtax.com/daily-tax-report/fixing-the-irs-paper-addiction-remains-agencys-kryptonite (last visited Dec. 9, 2022).

51 IRM 21.3.4.2.4.2, TAC Appointment Exception Procedures (June 27, 2022).

52 IRM 21.3.4.8.7, Non-Remittance Acknowledgment Transmittals Form 3210 Process (Oct. 1, 2018).

53 *Id*.

54 National Taxpayer Advocate 2021 Annual Report to Congress 136 (Most Serious Problem: *E-Filing Barriers: Electronic Filing Barriers Increase Taxpayer Burden, Cause Processing Delays, and Waste IRS Resources*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_MSP_08_Efiling.pdf.

55 An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14 (commonly referred to as the "Inflation Reduction Act of 2022"), Pub. L. No. 117-169, 136 Stat. 1818 (2022); *see* Janet L. Yellen, Secretary of the Treas., Remarks at the IRS Facility in New Carrollton, Maryland (Sept. 15, 2022), https://home.treasury.gov/news/press-releases/jy0952 (last visited Dec. 9, 2022).

ONLINE ACCESS FOR TAXPAYERS AND TAX PROFESSIONALS

Inadequate Digital Services Impede Efficient Case Resolution and Force Millions of Taxpayers to Call or Send Correspondence to the IRS

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Providing tax information and services accessible through a robust online account and seamlessly integrated digital communication tools are essential for taxpayers, their representatives, and IRS employees. Taxpayers or their representatives who cannot find an answer or resolve their issue using digital self-help tools are facing long delays when phoning the IRS, visiting a Taxpayer Assistance Center (TAC), or sending a letter. During the last three years, IRS customer service representatives (CSRs) answered an all-time low of 11 percent of calls to IRS toll-free telephone lines.[1] As the IRS struggles to resolve its processing backlog, some taxpayers' refunds from the 2021 filing season have been delayed more than ten months, leaving taxpayers confused and frustrated.[2] Despite the IRS's efforts to resolve the paper correspondence processing backlog since the start of the pandemic, 52 percent of correspondence remains unworked in IRS inventory beyond standard processing timeframes.[3] Taxpayers or their representatives wanting to interact online need and deserve quality service options and quick responses from the IRS. Today, most taxpayers and tax professionals can't depend on receiving either, causing dissatisfaction that can lead to distrust in tax administration.

EXPLANATION OF THE PROBLEM

Annual Organisation for Economic Co-operation and Development (OECD) surveys reveal a fast-growing trend of tax administrations worldwide incorporating digital tools such as virtual assistants, video communication, and electronic document submission.[4] The survey showed significant increases in online account use, email, and digital assistance and decreases in phone, in-person, and mail transactions.[5] Over 40 percent of administrations reported shifts of 75 percent or more from paper to digital communications.[6] The 2022 OECD survey identified three emerging trends: greater understanding of taxpayer preferences, more self-service options, and a joined-up approach for tax administration services and across the government.[7] Those three goals echo the guidance the U.S. government gives to federal agencies like the IRS on managing the customer experience and improving service delivery to strengthen public trust in federal agencies.[8] Public trust in the IRS is at the core of our nation's system of self-assessment and voluntary tax compliance. When taxpayers can quickly communicate with the IRS to resolve issues and receive answers to their questions simply and securely, it has a positive effect on the taxpayer experience, which in turn raises taxpayers' overall satisfaction and trust in the IRS.[9]

The IRS, along with tax agencies around the world, accelerated implementation of digital communications, services, and products because of the challenges brought on with the COVID-19 global pandemic. To its credit, the IRS rapidly implemented several new applications to meet the demands of the COVID-19 relief legislation, such as applications to manage the disbursement of Economic Impact Payments and advance payments of the Child Tax Credit to eligible taxpayers. During the rapid implementation, the IRS developed standalone self-assistance web applications that allowed taxpayers to perform a single task, such as resolving their inquiries via an automated voicebot or chatbot, sending and receiving secure digital messages, uploading documents, and viewing basic account information. However, the IRS did not integrate all its new tools into a central hub with one-click access along with other existing digital tools such as Where's My Refund?, Where's My Amended Return?, and Online Account that can be accessed from the IRS.gov home page. While each application and tool has standalone value and facilitates a particular kind of interaction, the IRS has not leveraged their utility by making them all accessible from a central hub that provides a seamless taxpayer experience.

Depending on several factors, including the sensitive or private nature of the information that can be accessed, applications require different levels of identity authentication, pursuant to National Institute of Standards and Technology (NIST) guidelines.[10] IRS Online Account requires higher levels of authentication than digital tools such as Where's My Refund? and Where's My Amended Return?, which is necessary to protect taxpayer data but results in fewer taxpayers with access to their Online Account. Twenty-one percent of would-be IRS online services users could not complete identity proofing and were denied access.[11] Some taxpayers were able to complete the identity proofing process using the online self-service process or video chat verification. Taxpayers who are unable (or unwilling) to verify their identity online need an in-person option to verify their identity and obtain credentials for future online access to Online Account and other applications requiring authentication.

Suppose a taxpayer has completed the identity proofing process by providing acceptable documentation that assures he or she is whom he or she claims to be and accessed his or her own Online Account.[12] If that taxpayer wanted to find out the status of his or her refund from his or her most recent return, the status of an amended return he or she filed for the prior year, and change his or her email address in Online Account, the taxpayer would have to find and access three different log-in processes: one for Online Account, a second for Where's My Refund?, and again for Where's My Amended Return?.

In 2021, the IRS launched the Tax Pro Account.[13] Although, the title – Tax Pro Account – is a bit of a misnomer. Tax Pro Account only provides basic functions for a tax professional to digitally sign and transmit a Power of Attorney or Tax Information Authorization through the client's Online Account. Depending on the type of the authorization, the tax professional may view the client's tax information, and in some cases, take certain actions on his or her behalf. Within Tax Pro Account, the tax professional can view and retrieve the completed authorizations and access transcripts of clients' tax accounts, if authorized, through the Transcript Delivery System (TDS). However, Tax Pro Account does not offer secure messaging, document upload, or chatbots. These limited capabilities do not provide tax professionals the tools needed to help their clients effectively. Authorized representatives are a key component of successful tax administration; they assist with efficient resolution of issues. The IRS should upgrade Tax Pro Account to allow authorized representatives to access all information in their client's Online Account.[14] The IRS has a thorough process in place to ensure only authorized representatives have access to client information.[15] Once a representative has been duly authorized, the representative should be able to:

- View all clients' Online Accounts through their Tax Pro Account portal;
- View all changes and new information posted in the taxpayer's account;
- View all notices and letters mailed to the taxpayer;
- View the status of pending refunds and requests;
- View information on digital payment options;
- Upload requested documents relating to notices or correspondence on a tax issue; and
- Send messages to an IRS employee working his or her client's case.

Integrating other tools into Online Account and Tax Pro Account to become a one-stop solution for online and digital offerings that combine communications and interactions with individual and business taxpayers as well as with tax professionals who represent these taxpayers may sound like a common sense solution. However, one of the underlying challenges to integrating technology servicewide is the IRS's siloed approach for managing digital tools among its various operating divisions. The IRS's Office of Online Services works with the operating divisions to maintain consistency and adherence to standards for digital products; however, operating divisions within the IRS provide guidance to division employees about how digital tools may be used to communicate with taxpayers.

An individual taxpayer may want to perform multiple tasks on a single visit to IRS.gov, such as uploading a document to prove eligibility for a credit claimed on last year's return and then seeking information on claiming dependents for next year's return using the Interactive Tax Assistant. The IRS does not provide a simple way to navigate between those tasks. From the IRS's perspective, it makes sense to group taxpayers by the type of taxes they pay and returns they file, but from the taxpayer's perspective, it's all one IRS, and all IRS tools should be accessible from a central hub, regardless of the entry point for the taxpayer on IRS.gov. As the IRS continues to improve Online Account functionality and enhance digital communication tools, it must do so using a taxpayer-centric approach.

The Inflation Reduction Act provided much-needed funding to the IRS, including $4.75 billion, or six percent, of its total funding, to "business systems modernization."[16] TAS and the newly created Taxpayer Experience Office are well-suited to the task of ensuring that modernization is taxpayer-centric, with its mission to ensure enterprise-wide focus on improving taxpayer experience.

ANALYSIS

Increased digital functionality will improve the taxpayer experience and support the IRS's mission of providing America's taxpayers top-quality service. These options play a role greater than mere efficiency and convenience. When taxpayers lack digital service options, the option to communicate with the IRS online, or the ability to provide digital signatures or documents, they are relegated to methods such as paper, mail, or calling crowded customer service lines. In 2022, taxpayers experienced long wait times, with average wait times of 25 minutes outside of filing season, over 27 minutes during filing season, and CSRs only answering about 11 percent of the calls, frustrating taxpayers and tax professionals.[17]

In September 2021, the Taxpayer Experience Office released a Taxpayer Experience Strategy Roadmap, a high-level plan that outlined its priorities for the next four years.[18] Improved online service offerings fall within two of the six focus areas articulated in the roadmap: Expanded Digital Services and Seamless Taxpayer Experience.[19] As the IRS implements its multiyear strategy outlined in the Taxpayer Experience Strategy Roadmap and plans how to use Inflation Reduction Act funding to modernize tax return processing and tax administration, it must prioritize upgrades from the perspective of the taxpayer as a customer. When government interactions are unnecessarily protracted, it costs Americans time and represents a "time tax" as referenced by President Biden's Executive Order to transform the federal customer experience.[20]

Taxpayer-Centric Approach

Congress, the Office of Management and Budget, and the White House have unequivocally instructed the IRS to improve the customer experience.[21] An example of the IRS falling short of a taxpayer-centric approach has been the implementation of the Taxpayer Digital Communication (TDC) program. The IRS intends TDC to enable taxpayers and their representatives to communicate and securely share files and documents with the IRS. A Treasury Inspector General for Tax Administration (TIGTA) report noted that "the IRS's management of the TDC program was more focused on completing the installations than maximizing the IRS's ability to communicate digitally with taxpayers."[22] When launching TDC, the IRS did not proactively identify functions or operations for which digital communication may have provided sizable benefits for both taxpayers and IRS employees.[23] Instead, the IRS allowed any IRS program, function, or business unit wishing to explore a digital communication installation to express interest.[24] As the IRS makes further technological upgrades, it must prioritize the experience of individual and business taxpayers as customers and provide an intuitive central hub with one-click access to all authenticated and unauthenticated self-assistance applications.

TAS held focus groups in 2022 to gather ideas from tax professionals about taxpayers' needs and preferences for online services. Participants expressed feeling frustrated, exasperated, disappointed, and angry with their inability to effectively communicate with the IRS.[25] Common themes from participants revealed through the focus groups included difficulty transmitting information to the IRS and uncertainty about whether the IRS received and processed correspondence from the taxpayer.[26] Another theme was that many taxpayers have legitimate fears of the IRS that make them reluctant to interact with it.[27] Participants gave examples of how clients experienced panic upon receiving any IRS correspondence.[28] Some taxpayers simply do not want to talk to the IRS unless they absolutely must. Even if a portion of taxpayers prefer traditional methods of phone and mail for communicating, the IRS should strive to provide an Online Account capable of completing all taxpayer interactions in an easy, user-friendly, and intuitive way. Taxpayers who prefer to self-help and not to speak with an IRS employee should be able to find out general information on a tax topic, see how it impacts their personal situation, and obtain assistance, if needed, to complete required interactions online.

Online Account

We commend the IRS for launching Online Account for individual taxpayers in 2016 and for the continued upgrades to add functions and capabilities within Online Account, but there is still a long way to go before achieving robust functionality. Prior to FY 2022, Online Account allowed users to view their account balance, request copies of transcripts, and view payment options. The IRS has added capabilities that allow taxpayers to view notices within Online Account; however, taxpayers can currently view only 17 notices (including two Spanish notices), and there are plans to only add three more during FY 2023.[29] The IRS updates Online Account approximately every nine weeks but does not provide all users with notification of upgrades.[30] It should inform users of any upgrades since their most recent login.

As shown in Figure 2.5.1, the IRS has seen a 63 percent increase in unique visitors to Online Account in FY 2022 compared to FY 2021. After logging in, users can view basic account information displayed on the main page within Online Account. The most used function within Online Account is viewing an account transcript, which occurred in over 19 percent of logged-in sessions. Users made payments in 5.2 percent of sessions and set up a payment plan in 0.7 percent of sessions. However, users did not complete any actions beyond viewing basic account information in about 74 percent of sessions.

FIGURE 2.5.1[31]

Online Account FY 2022 Statistics

Activity	Increase over FY 21
119.5M sessions of users accessed View Your Account Information Page	▲15%
79.1M authenticated user sessions	▲57%
19.9M unique users have accessed their online account	▲63% *Nov. 14, 2021 - Sept. 30, 2022 compared to Oct. 1, 2020 - Sept. 30,2021*

Actions taken after viewing balance information	Increase over FY 21
6.3M payments worth **$42.8B** made directly within Online Account • **712K** payments that resulted from being directed out from Online Account to Direct Pay	▲214% *when transactions were only available through Direct Pay*
848K payment plans established or revisions made via Online Account • **129K** established within Online Account • **718K** that were directed out of Online Account to complete transaction in Online Payment Agreement	▲42%
98K notices generated digital-only and avoided printing because of going paperless through Online Account Profile preferences	
• **23.6M** sessions navigated to Get Transcript	▲55%
• **17M** sessions with a download	▲56%

As shown in Figure 2.5.2, there are 17 active IRS self-assistance applications, and only four are available within Online Account.[32] During FY 2022, the IRS added an option to make a payment and view additional notices within Online Account.[33] While those capabilities are certainly useful to taxpayers who need them, a customer-focused analysis of the needs of the average taxpayer would also prioritize answering questions, challenging a tax bill, and obtaining a refund status.[34]

FIGURE 2.5.2, IRS Online Self-Assistance Applications[35]

Application Name	Available Tool(s)	Information From Application Reflected in Online Account	Type of User	Number of Transactions or Sessions, FY 2021	Number of Transactions or Sessions, FY 2022
Online Account	View key information such as balance due and payment history, make a payment online, request a plan via Online Payment Agreement or access tax records via Get Transcript	N/A	Individual	50,494,907	79,052,719
Get Transcripts Online	Retrieve a variety of transcripts online to view, print, or download	Yes	Individual	75,800,782	89,123,005
Get Transcripts by Mail	Receive a return or account transcript through mail	Yes	Individual and Business	2,335,174	923,528
Where's My Refund?	Learn status of refund	No	Individual	632,361,686	447,729,355

Application Name	Available Tool(s)	Information From Application Reflected in Online Account	Type of User	Number of Transactions or Sessions, FY 2021	Number of Transactions or Sessions, FY 2022
Where's My Amended Return?	Verify receipt and processing status for amended return (Form 1040X)	No	Individual	13,636,740	18,146,178
Direct Pay	Pay directly from bank account	Yes	Individual	16,517,988	13,678,621
Online Payment Agreements	Request a payment agreement for certain taxpayers	Yes	Individual	1,483,003	1,582,486
ID Verify	Verify identity so the IRS can process a federal income tax return filed with the taxpayer's name and taxpayer identification number	No	Individual	588,026	885,957
IP PIN	Validate identity and retrieve an Identity Protection PIN online	No	Individual	617,865	1,333,572
Modernized Internet Employer Identification Number	Apply for and receive an employer identification number over the web	No	Individual and Business	7,149,000	7,000,247
Transcript Delivery Service - Reporting Agents	Retrieve a variety of account transcripts through mail, fax, or online	No	Individual and Business	401,377	683,699
Transcript Delivery Service - States	Retrieve a variety of account transcripts through mail, fax, or online	No	Individual and Business	336,042	309,581
Transcript Delivery Service - Third Parties	Retrieve a variety of account transcripts through mail, fax, or online	No	Individual and Business	240,613,460	588,169,518
Income Verification Express Service	Retrieve transcripts from an online secure mailbox to verify income of a borrower	No	Individual and Business	15,370,941	8,279,561
Free Application for Federal Student Aid (FAFSA) on the Web	Access tax return information and transfer it directly to the FAFSA form	No	Individual	15,310,299	13,936,090
Tax Withholding Estimator	Estimate income tax for current tax year and compare that estimate with current withholding	No	Individual	4,771,417	3,893,705
Interactive Tax Assistant	Receive answers to basic tax law questions	No	Individual and Business	2,238,380	1,407,997

One of our 2020 recommendations the IRS declined to adopt was to make all self-assistance applications available through Online Account.[36] Our recommendation was not to make self-assistance applications available exclusively within Online Account but rather accessible from Online Account. The IRS responded that adopting our recommendation would add to taxpayer burden because Online Account requires a more thorough authentication process than some of the more basic self-assistance applications (*e.g.*, Where's My Refund?, Where's My Amended Return?, Tax Withholding Calculator). Once a user authenticates and logs into a secure application such as Online Account or Tax Pro Account, the user should have one-click access to applications and tools that both do and do not require authentication. That is the kind of taxpayer-centric approach the IRS needs to embrace to improve the taxpayer experience and reduce taxpayer burden.

Business Online Account

The IRS strategic plan includes the development of a Business Online Account (BOLA). Unfortunately, due to complexity, budget, and resources constraints, the IRS has not implemented the first iteration. In our 2021 Annual Report to Congress, we recommended that the IRS prioritize and expedite efforts to deliver BOLA to business taxpayers by the end of fiscal year (FY) 2023.[37] The IRS agreed to the recommendation, dependent on adequate funding, with features that would allow business taxpayers to make, schedule, cancel, and view tax payments online.[38] The IRS expects to launch an early version in FY 2023; however, it will only have basic functionality that will allow business taxpayers to view and manage tax record authorizations related to the Income Verification Express Service (IVES).[39] Once the IRS receives funding provided through the Inflation Reduction Act,[40] it must accelerate deployment of additional features, such as reminders for upcoming tax return or information return filing due dates, payment options, and document upload capability. Unless BOLA provides a suite of useful tools, the IRS should not expect large numbers of business taxpayers to sign up and use it. We recommend the IRS develop a robust Online Account for business taxpayers by FY 2024, including features such as providing due dates for upcoming tax return or information return filings, sending reminders, and listing payment due dates and payment options.

Promoting Awareness of Online Account

The IRS must improve awareness of Online Account, Tax Pro, BOLA (when launched), and the suite of standalone digital services among taxpayer-facing employees and must try to educate those employees about how to make the most of the digital services available. The IRS offers information to employees monthly during “Digital Day” information sharing events. However, attendance at the events is optional, and only approximately 2,000 of the IRS’s approximately 86,000 employees attend Digital Day events annually.[41] If IRS employees are not familiar with Online Account capabilities, their ability to assist taxpayers and educate them about Online Account will be severely limited. We recommend providing mandatory training on Online Account to all taxpayer-facing employees.

The IRS faces parallel challenges of adding functionality to Online Account and attracting new users. Among the over 20 million unique users who have accessed Online Account, the median age is 39, and the median adjusted gross income is $62,000.[42] The ability to attract new users may be hindered by the limited number of applications available within Online Account. However, it’s unclear because although the IRS gathers some detailed data about the quality of taxpayers’ experiences when using Online Account and whether their needs were met, other variables may contribute to the challenge of attracting new users.

As the IRS continues to improve the functionality of Online Account, it must also raise awareness of Online Account. Currently, the IRS’s primary ways of promoting Online Account are through a link on the IRS.gov homepage and a short video about setting up an Online Account on the IRS YouTube channel. It has undertaken some additional practices to inform taxpayers about Online Account. For example, when the IRS mails paper copies of digitally available notices to taxpayers that they can view in Online Account, it includes an additional paper notice in the envelope that informs taxpayers about Online Account.[43] All taxpayer communications present opportunities to inform taxpayers about Online Account. For example, if a taxpayer receives a notice with an invitation to use the unauthenticated Documentation Upload Tool (DUT), the IRS should offer the taxpayer an opportunity to register for an Online Account after he or she finishes using DUT. If the taxpayer is invited to use the TDC portal, the IRS should leverage most taxpayer interactions to raise awareness of Online Account. A taxpayer that creates an account to access Secure Messaging in the TDC portal can use the same credentials to access their IRS Online Account.

The IRS should also collaborate with stakeholders who provide tax return preparation software to educate taxpayers about Online Account when they file their tax returns. If the tax return preparation industry included information about Online Account in tax return software, it could reach a broader range of taxpayers and encourage them to use Online Account as their first stop for tax information.

Identity Authentication Procedures

Through the implementation of the Secure Access Digital Identity initiative, the IRS has increased taxpayers' ability to access online services. During FY 2022, only about 20 million unique users accessed Online Account.[44]

ONLY ABOUT 20 MILLION UNIQUE USERS accessed Online Account during FY 2022.

Over 98 percent of users who successfully completed the identity proofing process and received credentials subsequently used those credentials to log in to an online IRS tool requiring authentication.[45] Twenty-one percent of would-be users either abandoned the process, or could not complete identity proofing and were denied access.[46] Some taxpayers were able to complete the identity proofing process using the online self-service process or video chat verification. The IRS outsources identity proofing and credential management services to a Credential Service Provider (CSP), and the CSP is also responsible for assisting taxpayers who have difficulty completing the process.[47] Individuals who provide identity proofing assistance are known as "trusted referees." Because the CSP is completing those processes, the IRS is unable to obtain detailed data on the customer experience when undergoing identity proofing.

Identity Proofing Taxpayers With Individual Taxpayer Identification Numbers

The IRS must continue to expand access to online services to taxpayers who face additional obstacles. While some users fail the identity proofing process because they are not who they claim to be, legitimate taxpayers can fail the identity proofing process because of barriers to providing acceptable identity documentation. They may fail identity proofing because they have difficulty using technology to complete the process, *e.g.*, if the digital image of their documents is of insufficient quality.

Following a recommendation in our 2021 Annual Report to Congress,[48] the IRS has implemented a solution for some taxpayers with an Individual Taxpayer Identification Number (ITIN) to complete identity proofing with the CSP by uploading their IRS CP565 notice containing their ITIN and providing the required identity proofing documents (*e.g.*, non-U.S. passport, certificate of naturalization, national identification card).[49] Taxpayers living overseas may now create an account with the CSP, including ITIN holders.[50] On December 4, 2022, the IRS implemented a process for ITIN holders to register with the CSP to access IRS online services. However, taxpayers living abroad still face challenges communicating with the IRS.[51]

In-Person Identity Proofing

The IRS has identified a need for an in-person identity proofing capability for those who experience challenges completing the process online. This should be a priority to improve access for those taxpayers. If a taxpayer cannot complete the identity proofing process to access his or her Online Account, that taxpayer can visit a TAC and attempt to complete the action he or she attempted to do through Online Account. However, the TAC cannot provide the taxpayer with credentials to access his or her IRS Online Account or any IRS digital service requiring high-level authentication and credentials. The IRS should offer alternatives for in-person identity proofing and obtaining credentials for future access to IRS online applications that require secure access.[52] The IRS should ensure services are available to customers through a channel of their choosing.

Tax Pro Account

Tax professionals are a vital part of the U.S. tax system; in calendar year 2021, there were over 783,000 individuals authorized to prepare tax returns for a fee.[53] They assist with other tax administration issues and alleviate taxpayer barriers to compliance. Improving the functionality of Tax Pro Account would support tax professionals and taxpayers who rely on them. When a representative cannot perform the necessary functions to service his or her client's tax account through Tax Pro Account, the representative must contact the IRS. Time-intensive contacts such as drafting correspondence and making phone calls with lengthy hold times inhibits quick resolution of issues and can increase the cost the taxpayer must pay for the representative's services.

The IRS rolled out Tax Pro Account in 2021 for use by tax professionals with a Centralized Authorization File (CAF) number in good standing assigned as an individual and a CAF address in the 50 United States or the District of Columbia. A CAF number is a unique nine-digit identification number and is assigned the first time a representative files a third-party authorization with IRS.

The IRS should expand Tax Pro Account's features to allow authorized representatives access to all their client's tax records through the representative's Tax Pro Account to provide and perform the full scope of assistance. Through a Tax Pro Account and appropriate authorization, tax professionals should have the ability to perform actions such as request an installment payment agreement, view the status of a tax return, respond to a notice, request penalty relief or abatement for their client, apply for an extension of time to file, obtain a tax balance, and much more. While the IRS ultimately plans to expand functionality, this must be a priority as the agency moves toward a digital tax system.

One action that tax professionals can complete in Tax Pro Account is initiating a representation authorization. To digitally complete an authorization for representation through Tax Pro Account, a tax professional must have an active Tax Pro Account and receive approval from a taxpayer with an active Online Account.[54] The IRS processes representation authorizations initiated in Tax Pro Account and signed by the taxpayer in Online Account much faster than any other submission methods, which can take several days to several weeks.[55] However, the benefits of fast processing are limited. Even after the IRS has recorded the taxpayer's authorization that the representative can review his or her tax information, the tax professional has no way to access the information available in the taxpayer's Online Account.

Since its July 2021 launch through December 1, 2022, there were 284,013 sessions where a representative logged into the Tax Pro Account. Although the primary function available through Tax Pro Account is completing representation agreements, there have only been 18,930 completed power of attorney requests.[56] Tax Pro Account helps the IRS avoid one-at-a-time paper processing of representation authorizations that led to processing backlogs that began during the pandemic and infringed upon the taxpayers' *right to retain representation*.[57] In its current state, the most useful function for certain authorized representatives is providing them direct access to TDS to retrieve transcripts of taxpayer accounts. Enhancing features and capabilities and adding access to self-assistance and digital communication tools within Tax Pro Account may make this application more appealing to taxpayers' representatives and help boost usage.

CONCLUSION AND RECOMMENDATIONS

After decades of severe underfunding,[58] the IRS has the opportunity to make improvements in digital tax administration services in both customer service and compliance areas. TAS made 36 recommendations related to digital communication tools and Online Account since 2020. The IRS has agreed to adopt or partially adopt 33 but has pointed to funding limitations in implementing 20 of the recommendations. Prioritizing TAS prior recommendations early in the planning would start the IRS on the right path toward making historic improvements in taxpayer experience and service and would allow the IRS to continue to be a worldwide leader in tax administration.

As the IRS continues to introduce new self-assistance applications and improves existing ones, it should determine its priorities using a taxpayer-centric approach. A critical element is making all self-assistance applications available to individual and business taxpayers through an intuitive central hub with one-click access between applications. Another part of a taxpayer-centric approach is meeting taxpayers where they are. The IRS should leverage routine taxpayer contacts, such as return filing, to inform taxpayers about the IRS's digital tools and ensure employees are educated about the latest updates. Some self-assistance applications require taxpayers to provide identity verification documents. For those unable to complete online identity proofing with a CSP, provide in-person alternatives to assist taxpayers with identity proofing and obtaining credentials for future access to IRS online applications that require secure access. A taxpayer-centric approach also means the IRS must empower tax professionals with a Tax Pro Account that allows them to provide fast, efficient service to their clients.

Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Provide individual and business taxpayers an intuitive central hub with one-click access to all authenticated and unauthenticated self-assistance applications.
2. Require mandatory annual training for all taxpayer-facing IRS employees on Online Account and digital communication tools so they can educate taxpayers about them and allow employees to view taxpayer information as the taxpayer views it in Online Account.
3. Deploy a robust Online Account for business taxpayers by FY 2024, including features such as populating due dates for upcoming tax return or information return filings, sending reminders, and listing payment due dates and payment options.
4. For those unable to complete online identity proofing with a CSP, provide in-person alternatives, such as training TAC staff or other IRS employees to act as trusted referees to assist taxpayers with identity proofing and obtaining credentials for future access to IRS online applications that require secure access.
5. Add increased capabilities and functionality to Tax Pro Account, such as viewing notices and letters and uploading requested documents to provide authorized representatives seamless access to their clients' Online Accounts through Tax Pro Account.

RESPONSIBLE OFFICIALS

Kenneth Corbin, Commissioner, Wage and Investment Division, and Chief Taxpayer Experience Officer

Amalia C. Colbert, Commissioner, Small Business/Self-Employed Division

Karen Howard, Director, Office of Online Services

Nancy Sieger, Chief Information Officer

Harrison Smith, Co-Director Digitalization, Enterprise Digitalization and Case Management Office

Kathleen Walters, Chief Privacy Officer, Privacy, Governmental Liaison and Disclosure

IRS COMMENTS

The IRS is strongly committed to expanding digital services. We share the National Taxpayer Advocate's vision for online accounts for individual and business taxpayers that allow them to view their personalized tax information and transact via self-service. The Inflation Reduction Act funding affords the IRS the funding and opportunity to implement numerous improvements to the online services offered to taxpayers and tax professionals. In the IRS Strategic Plan FY2022-2026, the agency expressed commitment to the goal to "provide quality and accessible services to enhance the taxpayer experience." This objective includes expanding and promoting digital services, including online accounts, digital filing, and taxpayer self-service options.

In FY2022, the IRS launched many new online account features, some of which are listed below. Digital options for taxpayers, tax professionals, and IRS employees are fundamental to effective tax administration. We are working toward a future where taxpayers who wish to do so may transact much of their business with the IRS digitally in a safe and secure environment. We acknowledge the NTA's recognition that effective authentication of those who interact with the IRS is critical to preventing identity theft and protecting the integrity of the tax system. The IRS continues to collaborate with our Credential Service Providers to assess and improve their in-person proofing capabilities to ensure compliance with federal guidelines and IRS requirements.

The IRS agrees that expanding Tax Pro Account capabilities and integrating additional features such as ability to view letters and notices, view payment information, and communicate with IRS, and evolving the Tax Pro Account into a "one-stop solution" serving individual and business taxpayers, will benefit taxpayers, tax professionals, and the agency. Over the course of three releases the IRS has expanded the offerings available through Tax Pro Account to include submission and processing of Power of Attorney and Tax Information Authorizations online, increased visibility into the progress and status of pending authorizations and will soon expand capabilities to view and revoke authorizations.

The IRS plans to continue expanding the array of digital services available through Tax Pro Account and has developed a list of possible future features that was developed based on the feedback received from the tax professional community. Possible future features and enhancements include: (1) viewing taxpayer info; (2) acting on behalf of a taxpayer; (3) integrating with secure messaging and chat; (4) supporting business taxpayers, international filers, and overseas taxpayers; (5) supporting tax professionals working as part of the business; (6) supporting additional authorization types; (7) providing access to case status and contact history; (8) allowing taxpayers to view and revoke active authorizations; and (9) allowing taxpayers to initiate a POA/TIA.

In FY 2022, the IRS continued to improve online account with the addition of several new features such as the ability to sign up to receive email notifications for new notices and when there is a pending authorization request from a tax professional, the option to go paperless for notices available online, in-app notifications that help taxpayers stay up to date with relevant and timely information regarding their tax account, the addition of advance child tax credit information, and online account in Spanish.

Between FY 21 and FY 22, the IRS was able to provide taxpayers with digital copies of 17 IRS notice types in their online account through the Notices and Letters feature. The Notices and Letters feature provide taxpayers with access to a set of digital notices within their online accounts and includes relevant links to Frequently Asked Question pages to help answer questions taxpayers may have regarding the notice or their tax account. The Wage & Investment Office of Taxpayer Correspondence has prioritized 72 additional notices for inclusion into online account. With the launch of the Notices and Letters feature in November 2020, the IRS published Notice 1450 to inform taxpayers receiving paper notices of the availability of digital copies of those notices online.

Business Online Account development is planned to begin in early 2023. The initial and subsequent product releases will include product features based on customer research and business needs.

Since 2019, IRS has promoted the awareness of online account with employees via Digital Day, which is a monthly, virtual product demo and Q&A event. Employee polling indicates that significantly more employees are aware of online account in 2022 than in 2019. IRS plans to continue monthly product demo events promoting online account.

TAXPAYER ADVOCATE SERVICE COMMENTS

TAS appreciates that the IRS shares the National Taxpayer Advocate's vision for online accounts for individual and business taxpayers that allows them to view their personalized tax information and transact via self-service. TAS looks forward to the vision becoming a reality with the additional funding provided by the Inflation Reduction Act. The planned improvements described in the IRS response will improve online access for taxpayers and tax professionals. However, the reason online access continues to be a most serious problem for taxpayers is that today, taxpayers and tax professionals who want to interact online lack easy access to the digital tools they need to fully manage their tax account online and communicate quickly with the IRS through a central hub.

The Inflation Reduction Act funding allows the IRS to improve the experience of taxpayers and tax professionals when interacting with the IRS. As the IRS continuously brings on new users of online services, it should provide support and instructions as new users familiarize themselves with the operation of IRS digital tools. Taxpayer-facing employees should be educated with the tools and applications so they can assist with technical assistance requests. Merely providing product demo events on a voluntary attendance basis may be insufficient to adequately train employees helping taxpayers learning to use IRS digital tools.

RECOMMENDATIONS

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Provide individual and business taxpayers an intuitive central hub with one-click access to all authenticated and unauthenticated self-assistance applications.
2. Require mandatory annual training for all taxpayer-facing IRS employees on Online Account and digital communication tools so they can educate taxpayers about them and allow employees to view taxpayer information as the taxpayer views it in Online Account.
3. Deploy a robust Online Account for business taxpayers by FY 2024, that includes features such as populating due dates for upcoming tax return or information return filings, sending reminders, and listing payment due dates and payment options.
4. For those unable to complete online identity proofing with a CSP, provide in-person authentication alternatives to assist taxpayers with identity proofing and obtaining credentials for future access to IRS online applications that require secure access.

5. Add increased capabilities and functionality to Tax Pro Account, such as viewing notices and letters and uploading requested documents to provide authorized representatives seamless access to their clients' Online Accounts through Tax Pro Account.

Endnotes

1 IRS, Snapshot Reports, Fiscal Year (FY) 2020-2022 Accounts Management (Assistor Calls Answered / Net Attempts); *see also* Erin M. Collins, Hello, Is Anyone There? Frustration over Phone Service, National Taxpayer Advocate Blog (Feb. 1, 2022), https://www.taxpayeradvocate.irs.gov/news/nta-blog-hello-is-anyone-there-taxpayers-and-practitioners-continue-to-experience-frustration-over-lack-of-adequate-phone-service/; and Most Serious Problem: *Telephone and In-Person Service: Taxpayers Continue to Experience Difficulties and Frustration Obtaining Telephone and Face-to-Face Assistance to Resolve Their Tax Issues and Questions*, *supra*.

2 See Erin M. Collins, IRS Deputy Commissioners Respond to Taxpayer Advocate Directive on Scanning Technology; National Taxpayer Advocate Appeals Decision to IRS Commissioner, National Taxpayer Advocate Blog (Aug. 4, 2022), https://www.taxpayeradvocate.irs.gov/news/nta-blog-irs-deputy-commissioners-respond-to-taxpayer-advocate-directive/; *see also* Most Serious Problem: *Processing Delays: Paper Backlogs Caused Refund Delays for Millions of Taxpayers*, *supra*.

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9 OMB Circular No. A-11, 280.3 (Aug. 2022).

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15 *See, e.g.*, IRM 21.3.7.5.1, Essential Elements for Form 2848 and Form 8821 (Sept. 1, 2022).

16 Pub. L. No. 117-169, § 10301, 136 Stat. 1818, 1831-32 (2022); GOP Sen. Fin. letter to Charles P. Rettig, Comm'r, Internal Revenue (Sept. 22, 2022).

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19 *Id.* at 13.

20 Executive Order 14058, Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government (Dec. 13, 2021).

21 *See* OMB Circular No. A-11, 280.3 (Aug. 2022); Executive Order 14058, Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government (Dec. 13, 2021); 21st Century IDEA, Pub. L. No. 115-336, 132 Stat. 5025; TFA, Pub. L. No. 116-25, 133 Stat. 981 (2019).

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23 *Id.* at 1.

24 *Id.*

25 TAS Tax Forum Focus Groups (2022).

26 *Id.*

27 *Id.*

28 TAS Tax Forum Focus Groups (2022).
29 IRS response to TAS information request (Nov. 1, 2022).
30 *Id.*
31 *Id.*
32 *Id.* The first digital notices were made available in November 2020. IRS response to TAS fact check (Dec. 14, 2022).
33 Online Account Status Briefing (Aug. 31, 2022).
34 *See* OMB Circular No. A-11, 280.3 (Aug. 2022); Executive Order 14058, Transforming Federal Customer Experience and Service Delivery To Rebuild Trust in Government (Dec. 13, 2021).
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38 *Id.*
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42 IRS response to TAS information request (Nov. 1, 2022).
43 *Id.*

44 IRS response to TAS information request (Oct. 27, 2022).
45 *Id.*
46 *Id.*
47 *See* IRM 21.2.1.58.2, Secure Access Digital Identity (SADI) (Mar. 1, 2022). Our 2021 Annual Report to Congress recommended that the IRS add additional CSPs. TAS Recommendations and IRS Responses, TAS Recommendation 7-6 (2021), https://www.taxpayeradvocate.irs.gov/news/directory-entry/2021-msp-07-digital-communications (last visited Dec. 2, 2022). The IRS is engaged and working collaboratively with Treasury and the Government Services Administration to prepare for integrating Login.gov as an additional CSP. IRS response to TAS information request (Oct. 27, 2022).
48 TAS Recommendations and IRS Responses, TAS Recommendation 7-7 (2021), https://www.taxpayeradvocate.irs.gov/news/directory-entry/2021-msp-07-digital-communications/ (last visited Dec. 2, 2022); *see also* Taxpayer Advocacy Panel 2020 Annual Report 62 (recommending the IRS should establish a system whereby overseas taxpayers can communicate, file documents, and conduct other interactions with the IRS via electronic means, such as email).
49 An ITIN is a tax processing number issued by the IRS to an individual who is required to have a U.S. Taxpayer Identification Number but who does not have and is not eligible to obtain a Social Security number from the Social Security Administration.
50 IRS response to TAS information request (Oct. 27, 2022); IRS response to TAS fact check (Dec. 14, 2022).
51 *See* Most Serious Problem: *Overseas Taxpayers: Taxpayers Outside of the United States Face Significant Barriers to Meeting Their U.S. Tax Obligations*, *infra*.
52 NIST, Special Publication 800-63-3(a), 4.4.2 IAL2 Trusted Referee Proofing Requirements (June 2017). NIST provides CSPs latitude to use "trusted referees — such as notaries, legal guardians, medical professionals, conservators, persons with power of attorney, or some other form of trained and approved or certified individuals — that can vouch for or act on behalf of the applicant in accordance with applicable laws, regulations, or agency policy."
53 IRS Response, Most Serious Problem: *Return Preparer Oversight: Taxpayers Are Harmed by the Lack of Minimum Competency Standards for Return Preparers*, *infra* (Sept. 15, 2022).
54 IRS, Who Can Use This Service, https://www.irs.gov/tax-professionals/use-tax-pro-account (last visited Dec. 2, 2022). To submit an authorization equivalent to a Form 2848 using the Tax Pro Account, practitioners must have a license to practice in the 50 United States or the District of Columbia as an attorney or certified public accountant and authority to practice before the IRS or be enrolled with the IRS as an enrolled agent, enrolled actuary, or enrolled retirement plan agent.
55 *See* Erin M. Collins, The IRS Hasn't Processed My Power of Attorney Form. Should I Submit Another?, National Taxpayer Advocate Blog (Jan. 19, 2022), https://www.taxpayeradvocate.irs.gov/news/nta-blog-the-irs-hasnt-processed-my-power-of-attorney-form-should-i-submit-another/. Signed agreements initiated through the Tax Pro account go through a verification that the tax professional is in good standing and are recorded to the CAF within 48 hours of the taxpayer's acknowledgement.
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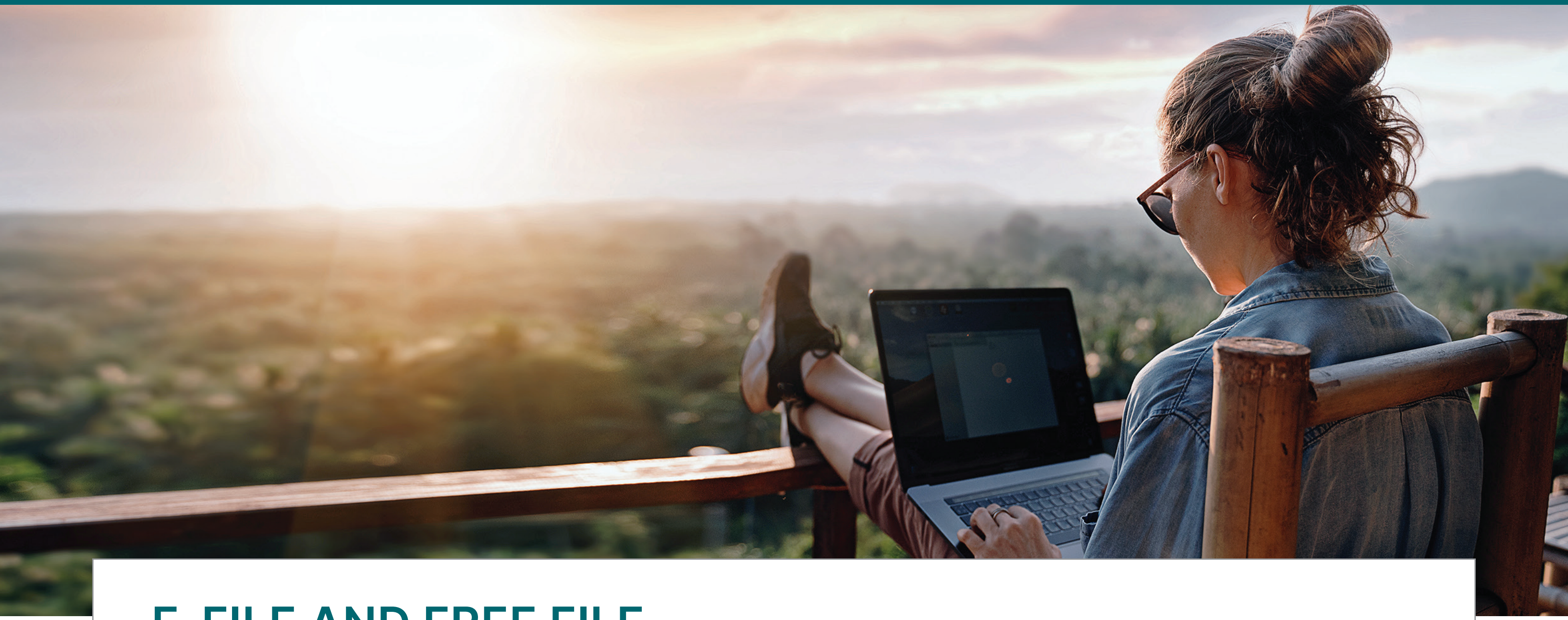


E-FILE AND FREE FILE

E-Filing Barriers and the Absence of a Free, Easy-to-Use Tax Software Option Cause Millions of Taxpayers to Continue to File Paper Tax Returns

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

When taxpayers cannot electronically file (e-file) their tax returns, including IRS forms or schedules, attachments, and other documents, they face delays in processing, the possibility of transcription errors, and longer waits for their refunds. Unlike paper returns, e-filing benefits taxpayers and the IRS with reduced errors and quicker return processing and refund payments. The mechanism for undertaking e-filing, however, can be unduly burdensome and often places significant obstacles in the paths of otherwise willing e-filers.

EXPLANATION OF THE PROBLEM

Most U.S. adults are legally required to file federal income tax returns, which are essential to determining the amount of their liabilities and obtaining refunds.[1] Taxpayers have a right to expect that this process will be as easy and straightforward as possible, and the IRS has an interest in facilitating it, because the U.S. tax system relies on self-assessment and voluntary compliance for the collection of revenue.

Approximately 92 percent of individual taxpayers e-filed during processing year (PY) 2022.[2] All too often, however, the e-file process was unnecessarily frustrating and costly for many taxpayers.[3] In PY 2022, only two percent of all taxpayers used Free File, the result of the IRS's Free File Inc. partnership with the tax return preparation industry.[4] This is the case even though the IRS targets Free File eligibility at 70 percent of taxpayers.[5] Many businesses also faced obstacles to e-filing.[6]

Although the IRS has achieved good e-file numbers among individual taxpayers and is taking meaningful steps to enhance e-filing by businesses, significant room for improvement remains. Among other things, it should aggressively pursue innovations that other countries have long embraced.[7] The IRS should facilitate e-filing by enhancing the functionality of the process, both by making shorter-term improvements and by pursuing longer-term systemic transformation to lessen the delays associated with paper returns.

A high-quality e-file system, designed and provided by the IRS, will streamline the filing process for taxpayers, encourage compliance, and help prevent future paper return backlogs.

ANALYSIS

Taxpayers Are E-Filing Despite Obstacles

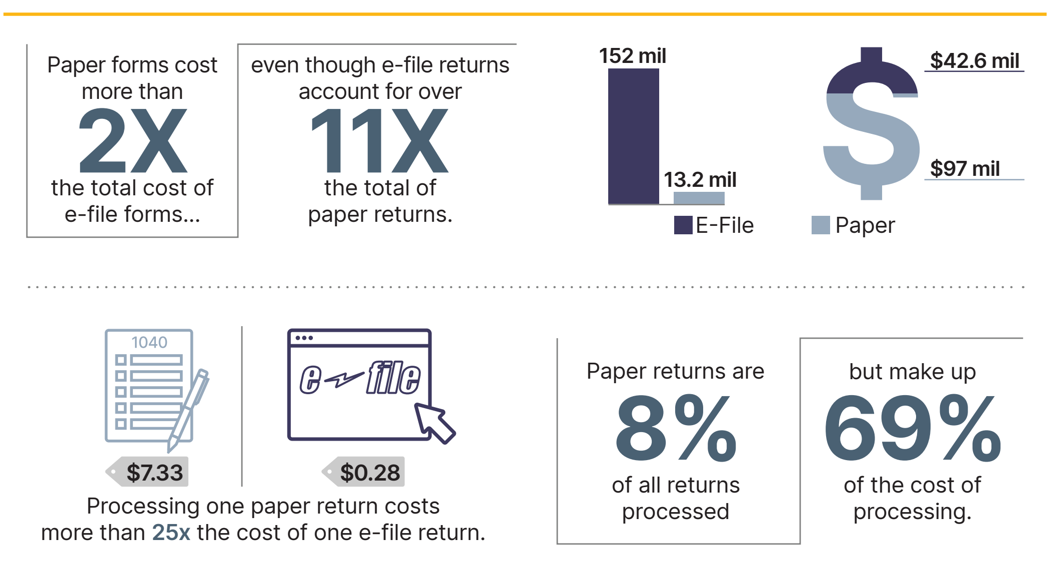
The Overwhelming Majority of Individual Returns Are E-Filed

During 2022, individual taxpayers e-filed approximately 92 percent of returns received by the IRS.[8] Specifically, 152 million returns were e-filed, while 13.2 million were filed on paper.[9] Even though the paper filings appear insignificant on a proportionate basis, they have nevertheless caused huge processing backlogs, disruptions to taxpayer service, and extraordinary delays in processing and payment of refunds.[10] Thus, taxpayers are well advised to e-file whenever they can, and the IRS has a significant interest in reducing the volume of paper returns to the smallest possible number while respecting the need or desire of taxpayers who choose to file paper returns.

Not only does e-filing result in quicker and better service from a taxpayer perspective, but it also saves the IRS resources. A paper-filed return may need to be handled by multiple employees during processing, whereas the IRS processes an e-filed return using automation and only requires human intervention if the return has an issue. According to the IRS, a paper-filed Form 1040 costs $7.33 to process, whereas an equivalent e-filed return costs only $0.28.[11] In the aggregate, this means that the total cost of processing all e-filed Forms 1040 was approximately $42.6 million, whereas the total cost of processing paper Forms 1040 was approximately $97 million. Even though paper returns account for only about eight percent of the total number of returns, they represent about 69 percent of the total costs of processing returns.[12]

FIGURE 2.6.1[13]

Cost Comparison of E-Filed Versus Paper-Filed Tax Returns



Taxpayers have demonstrated their eagerness to e-file, and the IRS desperately needs to increase e-filing capabilities for all taxpayers, whether individuals, businesses, tax-exempt entities, estates, trusts, or filers of employment tax returns or information returns. The IRS must eliminate the need for paper filing. The logical next step is for the IRS to facilitate this by continuing to make e-filing easier and more seamless.

Individual Taxpayers Face Needless Effort and Cost to E-File

Even though overall e-filing numbers are encouraging, individual horror stories abound. Some commenters to a *Washington Post* editorial related their experiences and observations as follows: "On Tax Day, as I worked toward a free file on TurboTax, I had to add one item of miscellaneous income from a small court settlement. Simple, right? Not to TurboTax. I was forced into paying for the Deluxe edition which ended up costing me over $100. ..."[14] "I pay taxes in both Sweden and the US. My US taxes take weeks with lots of frustration. In Sweden maybe five minutes and sending off an SMS [text message]."[15]

One challenge encountered by some taxpayers is that they attempt to e-file but are unexpectedly blocked from doing so. This happens when a return triggers an IRS business processing rule in the Modernized e-File (MeF) system. The IRS generally designs these rules to prevent identity theft and refund fraud, but the most commonly triggered MeF rules, many of which seek to validate taxpayer identity, can also be the result of a simple typo or misplaced prior year records. Each year, these rules generate millions of rejected e-file returns.

In PY 2022, just under 21 million taxpayers have collectively experienced approximately 33.8 million rejected e-file attempts.[16] Roughly 31 percent of these taxpayers endured more than one rejection in attempting to e-file their return. Among taxpayers experiencing this rejection, only approximately half were able to rectify the issues and successfully e-file.[17] For the unsuccessful half of taxpayers, these rejections generally ended up as paper returns, or, in some cases, as nonfiled returns.[18] A few errors are common across many of these rejected returns, and for taxpayers who cannot fix them, these returns make a significant contribution to the paper return processing load.[19] This is particularly unfortunate because the IRS is forcing taxpayers who are eager to e-file to instead file paper returns, which take longer for the IRS to process and can result in transcription errors.[20]

TAS has recommended that the IRS consider ways to adjust the MeF rules to accommodate e-filing more easily.[21] The IRS could accept a return that it has rejected several times due to a particular business rule violation and then route the electronic return directly to a unit for manual processing. If needed information is missing, it is not necessarily an improvement for a taxpayer to simply paper file the flawed return without understanding that there is a deficiency in the return. The IRS should consider the possibility that accepting those flawed returns electronically and segregating them for manual attention may represent an improvement in processing over the current paper system. Going forward, the IRS needs to consider options to decrease paper while ensuring the accuracy of returns.

The IRS and e-file software providers should emphasize continued education informing taxpayers of the types and importance of prior year data necessary for e-filing. These pieces of information are not arbitrarily chosen but instead are intended as controls to prevent identity theft. While identity thieves should not have an open invitation to steal someone's tax refund, this concern could be better balanced by allowing taxpayers the opportunity to e-file, followed by a subsequent manual review.[22] At a minimum, this approach would still be more seamless and convenient for taxpayers when compared with paper filing and would be more efficient for the IRS.

Additional frustrations for taxpayers often come from the tax software they purchase to assist in accurately preparing their returns. As one personal finance columnist has observed, "People pay to get their tax returns prepared because the 1040 form – and most IRS schedules and forms – are incomprehensible to a normal person."[23] However, the tax software, which should simplify matters and facilitate e-filing, does not always do so. For example, since most tax return preparation software relies on a question-and-answer (Q&A) format, it can sometimes generate forms with incorrect values that taxpayers need to override. Depending on the software and the particular override, the software company may include disclaimers that warn that the override will prevent e-filing. This is based on a business decision of the company rather than on an IRS rule or program and can lead to unnecessary stress, frustration, and paper filing.[24]

It is reasonable for the costs of tax return preparation software to rise as the sophistication of its services increases. However, these escalating costs are a reoccurring complaint that has been raised regarding commercial tax return preparation software. Commercial software includes features based on a cost-benefit analysis, which means that taxpayers whose tax situations are uncommon may get halfway through their tax returns only to find that they need to shop around for a different product or pay for an upgrade to enter all their dependents or claim a credit to which they are entitled. Allegations were raised that the "Free Edition" of one software product "comes with traps that can push customers lured with the promise of 'free' into paying, some more than $200."[25]

Although the IRS has a good working relationship with the tax software industry, the IRS has no direct control over the business decisions made by commercial tax return preparation software companies. Nevertheless, tax software has become an inextricable part of the self-assessment and voluntary tax compliance system, and software providers and the IRS currently exist in a mutually dependent partnership. As a result, the IRS should continue to work closely with these companies to encourage transparency and fairness in their dealings with taxpayers.

Free File Is Underutilized and Has Not Met Expectations

In 2002, the IRS and certain commercial tax return preparation software providers (known as the Free File Alliance) entered a public-private partnership.[26] Its purpose was to induce software providers to make available free tax return preparation to a broad swath of the American public. After negotiations between the Free File Alliance and the IRS, it was agreed that the alliance would offer software enabling free tax return preparation to at least 60 percent of taxpayers in exchange for a commitment from the IRS not to develop systems that would directly compete with the software providers.[27]

The Free File Alliance offers two methods for free e-filing, "IRS Free File" and "Free File Fillable Forms." Free File consists of a variety of software provided by the members of the Alliance, and it enables taxpayers below a certain adjusted gross income (AGI) threshold to file for free using Q&A-type software similar to paid options.[28] Free File Fillable Forms, which is less widely known, is also designed by an industry partner and allows taxpayers of any income level to e-file, but it is not a software program; instead, it is a digitized set of tax forms that require the taxpayer to fill out the forms manually but with the benefit of e-filing for quicker processing and refunds.[29] Taxpayers using Free File Fillable Forms require a degree of sophistication and patience, as this method does not offer additional guidance beyond existing IRS instructions and publications, which means that some eligible taxpayers may be uncomfortable with or intimidated by this option.

Both programs have fallen short of expectations. There is no standardization of Free File software, with the result that not all eligible taxpayers can file using any given program.[30] Some eligible taxpayers, due to their specific tax situations, may discover that no Free File offering contains the forms or schedules they require, and those taxpayers have no choice but to pay to e-file, redo their returns in Free File Fillable Forms, or paper file.[31] Free File Fillable Forms is little-used and contains limitations that make it hit-or-miss for taxpayers, who might find that a key option is unavailable on one of their schedules.[32] Again, these taxpayers are left with no option other than to pay to e-file or paper file their returns. For all these reasons, only about two percent of taxpayers used Free File to e-file their 2021 returns, even though the assortment of Free File programs is targeted at 70 percent of filers based upon their AGI.[33] The Treasury Inspector General for Tax Administration concluded that complexity and insufficient oversight of the Free File program were causal factors of this low taxpayer participation.[34]

The portion of the agreement prohibiting the IRS from competing with the industry was removed in 2019.[35] As a result, the IRS can explore a range of alternative solutions that would better accommodate the needs of taxpayers and more comprehensively facilitate e-filing. Congress recognized the importance of this endeavor in 2022 as part of the Inflation Reduction Act, which appropriated funding for the IRS to study the costs of developing and running a free direct e-file tax return system.[36] Some expressed hope that this could be the impetus for improving a broken system.[37] The IRS should embrace this obligation as an opportunity to chart a course toward a reenvisioned and revitalized tax system.[38]

The Biggest Short-Term Opportunity to Improve E-Filing Exists in the Business Returns Space

The number of e-filed business returns, although good, has lagged in comparison with individual returns. For instance, in 2022, individuals had an e-file rate of 92 percent, whereas business income tax returns had an e-file rate of 70 percent.[39] Employment tax returns had an e-file rate of only 58 percent.[40] Accordingly, focusing on ways of facilitating additional e-filing of business returns could yield significant benefits for this group of taxpayers as well as the IRS.

One source of difficulty for many businesses has been the Filing Information Returns Electronically (FIRE) system. Registering with FIRE requires numerous stages of authentication that, for some business owners, become more burdensome than beneficial, leading to abandonment and paper filing of information returns.[41] Further, as the Electronic Tax Administration Advisory Committee (ETAAC) noted in its annual report to Congress, in 2021, FIRE suffered "performance issues throughout the information return filing season and outages throughout the day on the critical filing deadline," highlighting the need for "a plan to upgrade FIRE with a modern platform."[42]

The Taxpayer First Act (TFA) included a phased threshold to require employers filing a certain number of information returns to do so electronically, but the system remains too convoluted to be an attractive option for many employers below that threshold, and the lowered threshold of ten information returns has yet to take effect.[43] TFA also mandated an online portal for filing Forms 1099, which is expected to go live in January 2023 and will be available to replace FIRE first for Forms 1099, and then in January 2024, for all information returns currently accepted by FIRE.[44] This portal should represent a major forward step for taxpayers and the IRS, and according to ETAAC, "This progress is an excellent example of what the IRS can accomplish with a properly funded technology initiative."[45] Modernizing these components of information return e-filing will be crucial in engaging paper filers and creating the information technology (IT) infrastructure needed to carry out Congress's vision. Currently, approximately 99.5 percent of all information returns, such as Forms 1099, are e-filed.[46] This additional progress will help deal with the anticipated upswing in information returns occurring on account of digital asset reporting and other investments.[47]

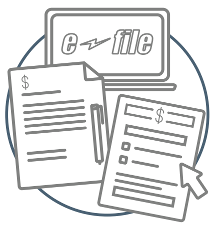
Where employment tax returns are concerned, barriers are both behavioral and structural. Research undertaken by the IRS Small Business/Self-Employed Division indicates some of the main reasons why companies file their employment tax returns on paper are because it appears cheaper and easier, because they have always done so, and because their tax return preparers advise them to do so.[48] An important factor in this behavior can be traced to the circumstance that businesses are only able to e-file employment tax returns through the use of payroll software providers.[49] This dependence has a number of downsides, including increased costs and security concerns. Until businesses can e-file directly with the IRS, these obstacles will remain, and many businesses will continue to opt to file on paper. If the IRS developed this capacity and made strong educational efforts about the benefits of e-filing, behavioral barriers, such as habit, would likely quickly reverse themselves.

The IRS has taken meaningful strides regarding the e-filing of business income tax returns and information returns. There is still room for progress, however, particularly in the case of employment tax returns.[50]

Significant improvement in this area will require continued determination on the part of the IRS and the allocation of additional long-term resources by either the IRS or Congress.

The Way Forward

The IRS can and should take note of obstacles to e-filing and strive to mitigate those challenges, especially in the business return space. These efforts are important but should also parallel an initiative to develop a more comprehensive solution. The Inflation Reduction Act takes initial steps in this regard, as it appropriated funds for the IRS to study and report to Congress within nine months of the bill's passage on the costs of an agency-run free return filing system.[51] The study must include taxpayer opinions and the views of an independent third party on the IRS's ability to deliver such a system.



The National Taxpayer Advocate strongly supports providing taxpayers with more free options to prepare and file their tax returns. While many taxpayers will continue to use preparers or commercial software, taxpayers should not be required to incur fees to comply with their tax return filing obligations.

This study could well represent the beginning of an e-file transformation within the United States. Conversations of a similar nature have been going on since the time of the Reagan administration but have resulted in little progress on account of the reluctance of a resource-starved IRS and the opposition of the tax return preparation industry.[52] Over time, a groundswell of support has developed toward a more direct relationship between the IRS and taxpayers in the e-file process.

This relationship has been conceptualized as taking one of two broad forms. The more limited of these approaches would allow taxpayers to log into an IRS online account, see all the information returns and wage statements that have been provided by third parties to the IRS, and use that information to e-file directly with the IRS for free. Taxpayers would still calculate their own taxes, but the burden of information-gathering would be significantly decreased and transparency would be increased. Taxpayers would still be responsible for the ultimate accuracy of their returns and retain a filing obligation.

The broader approach, variously referred to as "pre-fill," "auto-fill," or "return-free filing," would involve the IRS using the information returns and wage statements that it already receives from third parties to estimate a taxpayer's taxable income. Taxpayers would need to only make any appropriate corrections; report any additional income, deductions, or credits not already captured by the IRS; sign the return; and electronically submit it to the IRS. One recent study based on Treasury Department data estimated that over 40 percent of tax returns could be accurately populated using only current year information returns and the prior year return.[53] Over 30 countries have adopted variants of this system, with large swaths of their populations being able to avoid the tax return preparation and filing burden by simply validating the correctness of the government-populated returns.[54]

Based on the experiences of other countries, there are a variety of ways to achieve a return-free filing environment.[55] For instance, the United Kingdom has developed a widespread real-time withholding system that adjusts from one paycheck to the next so that many taxpayers do not have to file a return at all because their withholding accurately captures their income and credits.[56] Finland sends precompleted tax returns to all taxpayers, who only need to take action if the furnished return is not accurate; if it is correct, taxpayers simply do nothing.[57] Australia, which offers prefilled tax returns through an online portal for easy, free e-filing, offers return-free filing to low-income people who owe no tax and have had no tax withheld, although people in that situation need to provide a form verifying that they do not need to file.[58] Taxpayers benefit by the time and money saved on simplified tax return preparation, and with accurate and widespread withholding, governments benefit from low tax gaps and reduced expenditures on revenue collection and enforcement.[59] However, these countries generally enact simpler tax laws than the United States, which facilitates this type of tax administration, and the complexities of the U.S. tax code pose a challenge to prepopulated returns for many taxpayers.[60]

Some have advocated for the United States to move toward similar streamlining. President Ronald Reagan introduced the idea of a prefilled simple return as part of his tax reform plan in 1985, and the IRS Restructuring and Reform Act of 1998 directed the IRS to study the possibility of return-free filing.[61] Currently, a bill has been proposed that would require the IRS to send all taxpayers a prefilled return and allow those taxpayers for whom the return is correct to avoid filing altogether.[62]

The National Taxpayer Advocate strongly supports providing taxpayers with more free options to prepare and file their tax returns. While many taxpayers will continue to use preparers or commercial software, taxpayers should not be required to incur fees to comply with their tax return filing obligations. A free direct e-file tax return system will provide taxpayers with more options. In addition, taxpayers should be able to timely access third-party information returns, such as Forms W-2 and 1099, and download that information into their tax software.

However, the National Taxpayer Advocate is concerned about proposals to create prepopulated returns that taxpayers simply sign and submit. Tax liabilities are partly based on factors that the IRS cannot know, including changes to marital status, number of dependents, or cash receipts. Also, taxpayers may fail to furnish a required form such as Form 8962 or attach required information returns. Rather than providing taxpayers with a prepopulated form and expecting taxpayers to understand the complexities of the tax code or make corrections, we believe it is more appropriate to allow taxpayers to fill in those details themselves through prompts or a Q&A format, aided by the improved digital availability of downloadable third-party information returns, and e-file their returns for free.

CONCLUSION AND RECOMMENDATIONS

As evidenced by the overwhelming number of e-filed returns, taxpayers are willing to e-file and desire to receive refunds quickly and accurately. It is in the IRS's best interest to encourage this trend by making the e-file process more straightforward and user-friendly for taxpayers. Opportunity for improvement exists in the context of business taxpayers, who are sometimes discouraged from e-filing information returns and employment tax returns on account of cumbersome technology. Enhancing this capacity while at the same time developing an IRS-run direct e-file option could take a creaky system that is still managing to produce good results and create a comprehensive e-file system that would benefit both taxpayers and the IRS. This transformation would significantly improve the taxpayer experience, remove barriers to tax filing, improve the timeliness of refunds, and further self-assessment and voluntary compliance.

Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Evaluate the feasibility of accepting imperfect e-filed tax returns and directing them to appropriate treatment streams for further review.
2. Provide taxpayers with access via an online account to Forms W-2 and 1099 as well as IRS prior year payments or credits early in the filing season in a downloadable format that taxpayers can upload to the tax software of their choice.

3. Make all IRS forms and schedules compatible with e-filing.
4. Implement necessary IT upgrades to enable business taxpayers to more easily e-file information and employment tax returns, including amended employment tax returns.
5. Use lessons learned from the congressionally funded e-filing study to begin development of a comprehensive, direct e-file system that encompasses many of the attributes already adopted by other countries.

RESPONSIBLE OFFICIALS

Kenneth Corbin, Commissioner, Wage and Investment Division

Harrison Smith, Co-Director, Enterprise Digitalization and Case Management Office

Nancy Sieger, Chief Information Officer

IRS COMMENTS

The IRS agrees that expanding the individual and business electronic filing process to accept more forms digitally, as well as navigating in a paperless direction through digitalization, will benefit both the taxpayer and the agency. The Inflation Reduction Act (IRA) affords us the funding and opportunity to implement digital initiatives. In the IRS Strategic Plan FY2022-2026, one of the objectives of the agency is to "increase digitalization to streamline processes, improve access to digital data, and lessen our environmental impact."

The IRS continues to expand the e-file system to improve the taxpayer's experience, while working to prevent fraudulent tax filings. The IRS is working to add more forms to the e-file platform, building on paperless capabilities. Our development strategy includes soliciting input from internal and external stakeholders and working with the Taxpayer Experience Office (TXO) on sequencing the top priority forms.

We continue to partner with Free File Incorporated (FFI) to offer multiple Guided Free File options targeted to 70% of the population with a qualifying Adjusted Gross Income (AGI) and the Free File Fillable Forms program available to all income levels. IRS Free File is well positioned to deliver for the 2023 filing season and will promote the program via news releases, social media, and other channels. The IRS remains focused on working with FFI and others to continue enhancing and growing the e-file program.

The IRS constantly monitors all business rules in the Modernized Electronic Filing (MeF) system to verify that returns containing erroneous data are in fact rejecting back to the transmitter. In some situations, the taxpayer receives an explanation about what they can do to correct their return and resubmit electronically. For example, during the last filing season we established a business rule identifying when the Form 8962, Premium Tax Credit (PTC), was not included. This afforded taxpayers the opportunity to correct the omission, resubmit the return electronically and prevent a simple mistake from delaying their refunds, and aligns with the previous recommendation to provide this upfront opportunity to correct the error. It also eliminated the need for the IRS to issue downstream correspondence. These business rules are in place to support our commitment to prevent the electronic filing of fraudulent tax returns and promote an improved taxpayer experience.

The business e-file rate continues to increase, and the electronic filing of employment tax returns remain a priority. Education efforts are ongoing to remove some of the perceived barriers to filing business returns electronically. Employment tax returns continue to experience organic growth of approximately 2-3% yearly. Absent any legislative mandate requirement to e-file employment tax returns, companies have the choice to mail the return. The lack of mandate is affecting the growth of e-file rate for employment tax returns, which currently stands around 50%. This equates to us receiving over 14 million paper employment tax returns each quarter.

To overcome difficulties our customers encounter when using the Filing Information Returns Electronically (FIRE) system, the IRS Information Returns Modernization (IR Mod) Program is launching a user friendly Online 1099 portal geared towards small business taxpayers. In January 2024, the IR Mod platform will expand the Online 1099 portal to support additional information returns (IR) currently processed through FIRE and will eventually support all information returns in later releases.

TAXPAYER ADVOCATE SERVICE COMMENTS

TAS agrees with the IRS regarding the importance of e-filing. Moving from paper returns to e-filing reduces processing time, removes the possibility of transcription errors, facilitates taxpayer refunds, and preserves IRS resources. Individual e-file rates are excellent, and business e-file rates are good. Nevertheless, these rates still have room for improvement and the taxpayer experience could still be enhanced.

TAS applauds the IRS for its current efforts and future plans for improving e-filing access. Providing the maximum amount of feedback, consistent with fraud protections, when MeF rules are violated gives good-faith taxpayers an opportunity to correct inadvertent errors and contributes to quality tax administration. In addition to providing taxpayers information in cases such as a missing Form 8962, the IRS should also consider accepting imperfect e-filed tax returns and directing them to appropriate treatment streams for further review. Where information returns are concerned, the IRS initiative to launch the Online 1099 portal, which will one day be expanded to support all information returns, holds great promise.

To improve the tax return e-filing experience, the IRS should work toward providing taxpayers with access to their Form W-2 and 1099 information early in the filing season via their Online Account as well as IRS prior year payments in a downloadable format that taxpayers can upload to the tax software of their choice. TAS also suggests that the IRS include all information from the Form W-2, including state and local tax information to use in preparing state or local returns, to improve the experience for the taxpayer and ease the filing process. As a longer-term strategy, the IRS should take what it learns from the congressionally funded e-filing study and begin development of a comprehensive, direct e-file system that encompasses many of the attributes already adopted by other countries. TAS credits the IRS for its current efforts to improve e-filing and urges continued long-term initiatives that will enhance the e-file experience for both individuals and businesses while generating a continued rise in e-file rates that will benefit both taxpayers and the IRS.

RECOMMENDATIONS

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Evaluate the feasibility of accepting imperfect e-filed tax returns and directing them to appropriate treatment streams for further review.
2. Provide taxpayers with access via an online account to Forms W-2 and 1099 as well as IRS prior year payments or credits early in the filing season in a downloadable format that taxpayers can upload to the tax software of their choice.
3. Make all IRS forms and schedules compatible with e-filing.
4. Implement necessary IT upgrades to enable business taxpayers to more easily e-file information and employment tax returns, including amended employment tax returns.
5. Use lessons learned from the congressionally funded e-filing study to begin development of a comprehensive, direct e-file system that encompasses many of the attributes already adopted by other countries.

Endnotes

1 IRS, Pub. 17, Your Federal Income Tax (For Individuals) (Dec. 2021); IRS, Pub. 501, Dependents, Standard Deduction, and Filing Information (Jan. 2021).

2 IRS, Filing Season Statistics Weekly Report (week ending Nov. 26, 2022).

3 Michelle Singletary, *Tax Season is Hell. We Should All Be Able to E-File for Free*, Washington Post (Apr. 20, 2022), https://www.washingtonpost.com/business/2022/04/20/tax-season-frustration/.

4 IRS response to TAS information request (Oct. 12, 2022); IRS response to TAS fact check (Nov. 17, 2022).

5 IRS response to TAS fact check (Nov. 17, 2022).

6 For a detailed discussion of these obstacles, see *The Biggest Short-Term Opportunity to Improve E-Filing Exists in the Business Returns Space*, *infra*.

7 For a detailed discussion of these possibilities, see *The Way Forward*, *infra*.

8 IRS, Filing Season Statistics Weekly Report (week ending Nov. 26, 2022).

9 *Id.*

10 National Taxpayer Advocate 2021 Annual Report to Congress 37-50 (Most Serious Problem: *Processing and Refund Delays: Excessive Processing and Refund Delays Harm Taxpayers*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_MSP_01_Processing-Delays.pdf; 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*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_MSP_08_Efiling.pdf.

11 IRS response to TAS information request (Oct. 12, 2022).

12 *Id.*; IRS, Filing Season Statistics Weekly Report (week ending Nov. 26, 2022).

13 IRS response to TAS information request (Oct. 12, 2022); IRS, Filing Season Statistics Weekly Report (week ending Nov. 26, 2022).

14 Michelle Singletary, *Tax Season is Hell. We Should All Be Able to E-File for Free*, Washington Post (Apr. 20, 2022), https://www.washingtonpost.com/business/2022/04/20/tax-season-frustration/ (see comments).

15 *Id.* Due to the complexities of the U.S. tax code, U.S. tax returns are not simple when compared to most returns of other countries. *See also* National Taxpayer Advocate 2022 Annual Report to Congress (Most Serious Problem: *Complexity of the Tax Code: The Complexity of the Tax Code Burdens Taxpayers and the IRS Alike*), *supra*.

16 IRS, Compliance Data Warehouse (CDW) Electronic Tax Administration Research and Analysis System (ETARAS). The ETARAS_MEF1544 database was searched for entries with the date of submission into the Modernized e-File (MeF) between January 1, 2022, and September 29, 2022.

17 *Id.*

18 Tax returns that could not be e-filed generally resulted in paper filing unless taxpayers chose not to persist. For example, they may have been seeking to file fraudulent returns.

19 The numbers of triggered MeF rules are not equal to the number of rejected e-file returns since a rejected return may have triggered multiple MeF rules. IRS response to TAS information request (Oct. 12, 2022).

20 The IRS utilizes MeF rules for several reasons, including to combat identity theft and refund fraud.

21 National Taxpayer Advocate 2021 Annual Report to Congress 141 (Most Serious Problem: *E-Filing Barriers: Electronic Filing Barriers Increase Taxpayer Burden, Cause Processing Delays, and Waste IRS Resources*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_MSP_08_Efiling.pdf.

22 Based on TAS research, it appears that there is no e-file lockout based on MeF triggers, and taxpayers can attempt to e-file as many times as they wish before either successfully correcting the problematic errors or giving up and paper filing.

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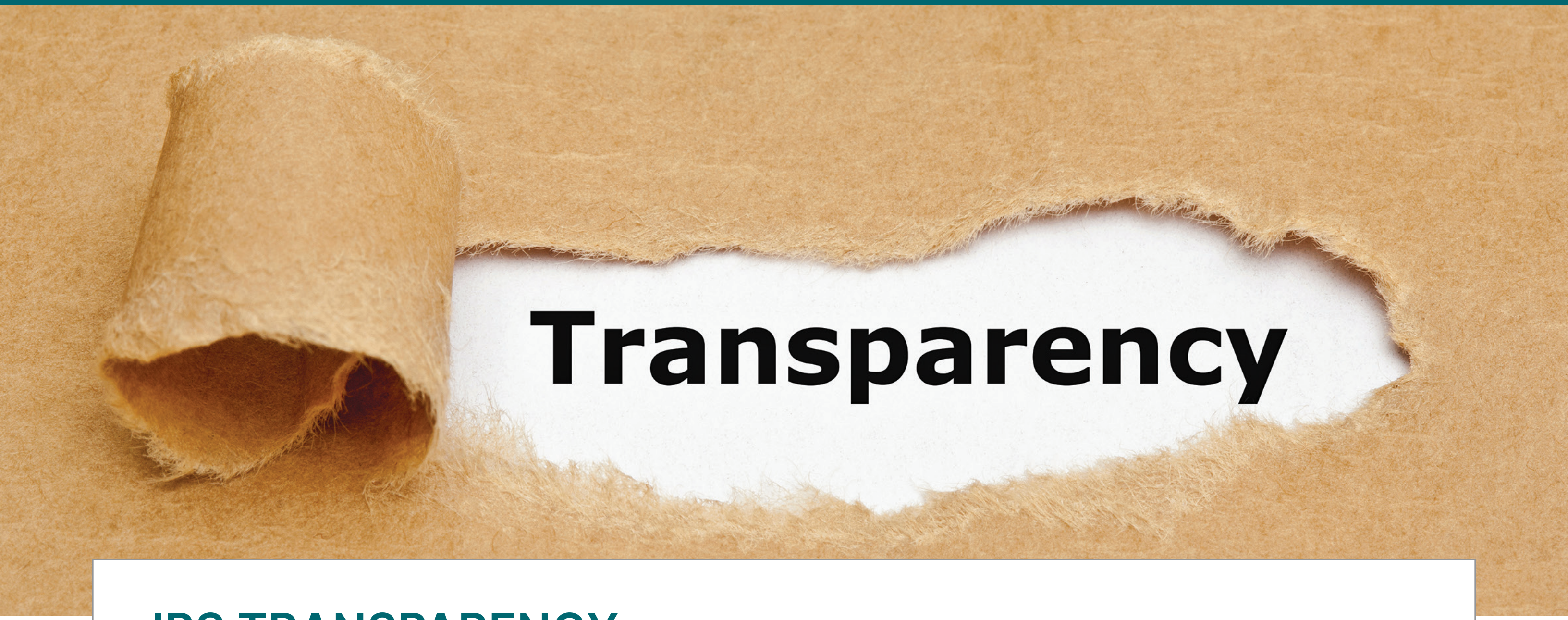
MOST SERIOUS PROBLEM #7



IRS TRANSPARENCY

Lack of Transparency About Processing Delays and Other Key Data Frustrates Taxpayers and May Undermine Voluntary Compliance

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Transparency is a critical element of a fair and effective tax administration system. Access and transparency have never been more important than now. Congress has given the IRS significant additional funding to improve tax administration, and it is incumbent on the IRS to be transparent about its plans and outcomes to demonstrate to Congress and the taxpaying public that it is using the funding fairly, equitably, and prudently.

The IRS provides taxpayers with access to certain information about the status of their refunds and delays in processing returns, and it provides answers to basic tax law questions. But many in the tax community believe the IRS does not adequately communicate with taxpayers and is too limited in what it discloses publicly. Historically, taxpayers have struggled to get precise information about when the IRS would process their returns, pay refunds, and address their correspondence, along with the reasons for delays. The pandemic has exacerbated that issue.

While the IRS provides taxpayers with voluminous amounts of information on IRS.gov to assist them in complying with their tax filing and payment obligations, a cluttered website causes taxpayers to struggle to find the information they are looking for. When taxpayers do find information they are seeking, they sometimes are surprised to discover they cannot rely on all IRS guidance. When taxpayers cannot find any guidance on their issue, they often are not able to find out whether the IRS is in the process of developing such guidance and, if so, when it will be issued. The IRS's lack of transparency and lack of access regarding updated communications and guidance are barriers to taxpayers voluntarily complying with their tax obligations and have led to frustration with the tax system.

EXPLANATION OF THE PROBLEM

Since fiscal year (FY) 2010, the IRS budget has been reduced by nearly 20 percent after adjusting for inflation, and its staffing has declined as well.[1] Reduced budget and staffing caused challenges for taxpayers and the IRS. During this time, the IRS has not provided taxpayers clear explanations of the challenges or the impact to overall service. The IRS was recently appropriated a significant amount of funding to use over the next ten years to improve taxpayer service, modernize its systems, improve operations, and increase enforcement against certain taxpayers, and it must provide regular updates on the use of this funding.[2] The IRS must be fully transparent to taxpayers, tax practitioners, stakeholders, the public, and all oversight organizations that it is applying the funds wisely, fairly, and equitably, particularly in the area of enforcement.[3] Any failure of the IRS to fully embrace providing access and transparency risks eroding the public's confidence in the IRS, thereby threatening the bedrock principle upon which tax administration is based – taxpayers voluntarily complying through self-assessment.

Another aspect of transparency is whether the IRS provides taxpayers with information regarding the status of their return and how to voluntarily comply with their tax obligations. Despite the IRS's efforts to provide such information, taxpayers all too often feel in the dark about their interactions with the IRS and how to best comply with their obligations. Taxpayers need access to phone assistance, in-person assistance, timely responses to correspondence inquiries or replies, and accessible IRS.gov information.

FIGURE 2.7.1

A lack of transparency causes problems for taxpayers in many areas, including:

- Difficulty accessing specific information about their refunds, processing delays, and their case before the IRS;
- Difficulty obtaining answers to questions;
- Difficulty determining upon what IRS guidance they can rely; and
- Difficulty identifying what new guidance the IRS is developing and its projected completion date.

ANALYSIS

Taxpayers and the Public Need Regular Updates on How the IRS Plans to Use the Inflation Reduction Act Funding

As part of the Inflation Reduction Act, the IRS is scheduled to receive a significant influx of funding over the next decade for improvements to technology, customer service, and enforcement and to cover operational costs.[4] After the President signed this legislation into law, the Treasury Department put certain constraints on how the IRS could use the funding in the area of enforcement.[5] For taxpayers and the public to have confidence that the IRS is using this funding fairly and equitably – particularly in the area of enforcement – the IRS must be fully transparent to taxpayers, practitioners, the American public, Congress, and other oversight agencies, including TAS.[6] If the IRS is not fully transparent as to how it will apply the funds, there is a risk that the public could believe the IRS is not allocating the money in a fair and equitable manner. A lack of transparency could jeopardize one of the bedrock principles of our tax system: taxpayers voluntarily complying with their tax obligations through self-assessment.[7]

The Secretary of the Treasury made clear this expectation of transparency when she directed that the IRS's operational plan include how it will allocate the recent increase in funding it receives through the Inflation Reduction Act.[8] In response, the IRS announced on August 19, 2022, the creation of the Inflation Reduction Act 2022 Transformation & Implementation Office, charged with developing this operational plan.[9] This plan will undoubtedly be a useful roadmap as the IRS moves forward over the next decade implementing long-lasting improvements to tax administration. However, for the initial operational plan to be meaningful, it must contain details and provide specific performance metrics that outside parties can monitor and verify to measure the results of how the IRS has applied the funds and the success of its efforts to transform the IRS.[10] Objective timeframes and milestones of the implementation of the funds must be specific and clear. The National Taxpayer Advocate recommends that the operational plan be a living document, regularly updated and modified as the IRS accomplishes transformational changes and identifies new objectives. Requiring and updating such performance measures, timeframes, and objectives will reassure the public that the IRS is using the funds appropriately.

Further, as the implementation process proceeds, there will likely be modifications made to the plan as new priorities are identified and unforeseen circumstances arise. Thus, the IRS should regularly update this operational plan, making the public and external stakeholders aware of any changes to its implementation, and provide the opportunity for external suggestions and comments. Such a level of transparency will give taxpayers and external stakeholders confidence that the IRS is using the funds in a fair, efficient, and equitable manner.

Taxpayers Need More Transparency on the Status of the Filing Season, Processing Delays, Refund Delays, and How to Comply With Their Tax Obligations

Taxpayers Have Difficulty Obtaining Information on Their Refunds, Processing Delays, and Their Cases Before the IRS

During the past several years, millions of taxpayers have experienced return processing and refunds delays due to an IRS backlog.[11] These delays drove many taxpayers to Where's My Refund?, which they accessed 557.2 million times in FY 2022, and Where's My Amended Return?, which was accessed 20.8 million times during the same timeframe.[12] However, the information these tools provide taxpayers is limited, as it will only tell taxpayers one of three things: return received; refund approved; or refund sent.[13] If there was an issue, the taxpayer was not provided any details about what needed to be done or the timing involved with the delay.

The IRS has made some enhancements to the Where's My Refund? tool recently, such as allowing taxpayers to check their refund status for prior tax years.[14] The IRS plans to make further upgrades to the Where's My Refund? tool for the 2023 filing season, including information about refunds that the IRS has adjusted through its math error authority.[15] Despite these upgrades, limitations to the Where's My Refund? tool remain, such as not providing taxpayers with information regarding processing delays caused by errors on the return or by possible identity theft concerns. Until the applications, tools, or taxpayers' online accounts have additional functionality, the combination of processing delays along with limited or no specific information as to the status of the taxpayer's refund will likely drive taxpayers to their phones seeking answers from an IRS assistor. This further burdens an already overwhelmed phone system, as the IRS only answered 14 percent of calls to the IRS's 1040 telephone line for FY 2022.[16]

The IRS has taken steps to add more information to Where's My Refund? about refund delays. In 2021, the IRS's Return Integrity and Compliance Service submitted a unified work request (UWR) to update Where's My Refund? to provide taxpayers with more information about refund delays, such as the IRS reviewing their return for accuracy, but the IRS denied the UWR. However, recently upgrades to Where's My Refund? have received initial approval as a Development, Modernization, and Enhancement project, but implementation is contingent on a final funding decision.[17]

During the COVID-19 pandemic, the IRS began providing taxpayers with more general information regarding processing delays. After much prompting by the National Taxpayer Advocate and outside stakeholders, the IRS created a webpage, "IRS Operations During COVID-19: Mission-critical functions continue" (hereafter called the Operational page), where it posts information about a number of processing issues, such as delays in processing returns and amended returns.[18] For example, the page says:

> As of October 21, 2022, we had 5.1 million unprocessed individual returns received this year. These include tax year 2021 returns and late filed prior year returns. Of these, 2.1 million returns require error correction or other special handling, and 3.0 million are paper returns waiting to be reviewed and processed. This work does not typically require us to correspond with taxpayers, but it does require special handling by an IRS employee so, in these instances, it is taking the IRS more than 21 days to issue any related refund.[19]

Although this is a good start at transparency, the operational page does not provide specifics such as how far along the IRS is in processing these 5.1 million returns (*e.g.*, were they filed in April? June?) and does not provide reliable estimates as to when the IRS will complete the processing of these returns. In fact, the section entitled, "How long you may have to wait," describes what steps the IRS takes to process returns and provides taxpayers only limited information about how long it might take the IRS to process the remaining returns.[20] It would be more helpful to taxpayers if the IRS formatted these numbers to allow taxpayers to see the progress the IRS has made in processing returns and issuing refunds. Adding this information in a more user-friendly format, such as a dashboard, would provide taxpayers with more transparency regarding the status of processing returns and make it easier for oversight organizations and congressional committees to monitor the IRS's progress in processing returns.[21]

A more user-friendly format, such as a dashboard, would provide taxpayers with more transparency regarding the status of processing returns.

It is the National Taxpayer Advocate's understanding that the IRS had agreed to provide more detailed information about the processing of returns in a dashboard format for the 2023 filing season. Unfortunately, this project is inexplicably delayed or no longer moving forward.[22] Taxpayers are entitled to access key information impacting their tax obligations, tax filings, and overall tax administration.

Beyond information on the status of their refunds or where the IRS is in processing returns, taxpayers could also benefit from being able to determine the status of an issue they are trying to resolve with the IRS. Recently, the IRS created a Documentation Upload Tool (DUT) that allows taxpayers who are subject to a correspondence exam to upload documentation in support of their position, but the correspondence examination DUT only tells taxpayers that the IRS has received their documents. To be even more useful, the IRS should expand the tool to inform taxpayers that the IRS has reviewed the documentation they submitted.[23] Alternatively, the IRS should add such a feature to a taxpayer's online account where they could receive updates regarding documentation they submitted via the DUT or their online account. Once reviewed, the system could update the taxpayer as to whether the items were sufficient, or if not, why.

The IRS could expand a similar tool to other areas where taxpayers have submitted a form or documentation for IRS consideration, such as when taxpayers submit Form 14039, Identity Theft Affidavit, requesting relief from tax-related identity theft.[24] Providing access to information and making these tools more available to taxpayers would provide them with important information regarding the status of the documentation they submitted to the IRS and alleviate the frustration taxpayers experience when calling the IRS to obtain a status update on their issue. Reaching the IRS to obtain such information is extremely difficult. In FY 2022, the IRS only answered about 14 percent of the calls received, and taxpayers had to wait long periods of time to reach a customer service representative (CSR), with an average hold time of about 24 minutes.[25] As the IRS moves forward in reinventing and transforming customer service, it should seriously consider expanding the use of these types of tools, whether it be through a taxpayer's online account or some other application.[26] Access is key to achieving transparency, whether through CSRs, walk-in Taxpayer Assistance Centers, online accounts, other applications or tools, or IRS.gov.

Taxpayers Have Difficulty Obtaining Answers to Questions

IRS.gov provides taxpayers with a wealth of information, including:

- Forms, instructions, and publications;
- Press releases;
- FAQs; and
- Discussions on popular topics such as deductions and credits.

In FY 2022, the IRS reported about 5.3 billion page views on IRS.gov.[27] The information taxpayers need to answer their questions and comply with their tax filing and payment obligations might be available somewhere on the nearly 41,000 webpages comprising IRS.gov, but pinpointing the exact information is so challenging that the website's value is reduced.[28] The volume of webpages and amount of inconsistent and duplicate information may be due in part to the fact that each Operating Division (OD) controls the specific areas on the IRS website for which that OD is responsible. In other words, there is no specific group overseeing and approving each OD's contributions to IRS.gov to ensure that webpages are user-friendly, consistent, and free of content duplication. The IRS is aware of the challenges facing IRS.gov, and its Online Services function is working to reduce duplication of the webpages. But Online Services must negotiate this effort with the ODs. The IRS could improve the process by giving a specific group within the IRS, such as Online Services, the authority to approve or deny web content, which would streamline website consistency.

In the long term, to assist taxpayers in navigating the nearly 41,000 webpages, the IRS should consider placing a chatbot on the IRS.gov landing page, which would allow taxpayers to ask questions, and the chatbot would provide a brief answer linking to the relevant IRS.gov pages. This would eliminate the need for taxpayers to sift through thousands of webpages to find what they need.

Despite the voluminous amounts of information provided to taxpayers on IRS.gov, there are instances where the IRS has omitted information taxpayers need from the website. For example, when taxpayers want to extend the two-year period for filing a refund suit in a U.S. district court or the U.S. Court of Federal Claims to dispute a notice of claim disallowance, they must sign and submit a Form 907, Agreement to Extend the Time to Bring Suit, to the IRS for its consideration.[29] If the IRS agrees to the extension, an authorized IRS official will sign Form 907 prior to the expiration of the two-year period to file suit. However, there is currently no information regarding this process on IRS.gov, including where to send the form. Thus, many taxpayers and even some taxpayers' representatives are not aware of the option of extending the two-year period or how to request such an extension. Failure to secure an extension before the expiration of the two-year period for filing suit means the IRS is barred from issuing a refund, even if the taxpayer is entitled to one.[30]

Taxpayers Have Difficulty Determining If They Can Rely on IRS Guidance

It is reasonable for taxpayers to believe that they can rely on all guidance the IRS provides with equal amounts of confidence, whether it is a publication on its webpage, FAQs, or instructions on how to complete a form.

The reality is that taxpayers can rely on different types of guidance to different degrees. Most IRS guidance, such as instructions, publications, and FAQs, are informal, and taxpayers may not rely upon the guidance in all circumstances. Thus, if taxpayers are later audited or seek relief from accuracy-related penalties, they may find the support for their position is limited since the guidance was informal (*i.e.*, taxpayers can only rely on such guidance that is reasonable and in good faith to support a reasonable cause defense from accuracy-related penalties).[31] Conversely, guidance the IRS publishes in the Internal Revenue Bulletin (Bulletin) is considered "formal," meaning taxpayers can rely upon it in an audit situation or use it to obtain penalty relief.[32] Although not published in the Bulletin, on October 15, 2021, the IRS clarified that taxpayers can rely on certain FAQs for purposes of penalty relief.[33] This includes FAQs developed in connection with recently enacted tax legislation or emerging issues.[34]

Although this development is welcome to taxpayers who use FAQs to find answers to their tax law questions, determining which FAQs possess a higher degree of reliability remains confusing. For example, the FAQs site for the Advance Child Tax Credit (AdvCTC) lacks a disclaimer at the top of the page explaining that the IRS developed the FAQs to help provide guidance on recently enacted changes to the AdvCTC, meaning taxpayers can rely on those FAQs for certain types of penalty relief. Instead, there is a hyperlink to a fact sheet that opens in a separate window that explains to what extent taxpayers can rely upon the AdvCTC FAQs.[35] It would be much clearer to label these FAQs at the top of each page.[36]

Further, the extent to which taxpayers can rely upon other informal guidance, such as forms and instructions, is equally unclear. Thus, the IRS should clearly state that reliance upon such informal guidance provides taxpayers with a reasonable cause defense against any negligence or other component of the accuracy-related penalty. In regard to formal guidance, the IRS must make clear to taxpayers that they can rely upon other guidance published in the Bulletin for the purposes of penalty relief and support in an audit situation for positions they have taken on their returns.

The IRS could make publications and instructions more useful to taxpayers by providing information about the laws and regulations upon which they are based. Current IRS publications omit any discussion of passed laws or regulations and do not direct taxpayers to the precise origins of the rules with which they must comply. The primary reason for this omission is to keep the publications simple. Although this objective is justified, the publications and instructions should, at a minimum, hyperlink to relevant statutes and regulations so taxpayers and tax professionals can easily locate the laws upon which the IRS bases guidance. Additionally, IRS publications could contain QR codes that would direct taxpayers to the laws and regulations referenced within them.

Taxpayers and Tax Professionals Have Difficulty Determining What New Guidance the IRS Is Developing and the Expected Completion Date

Each year, the IRS and the Treasury Department release a Priority Guidance Plan (PGP) that identifies what topics it intends to produce additional guidance on, usually in the form of regulations, notices, revenue rulings, or revenue procedures. Both internal and external stakeholders can provide recommendations for inclusion in this plan. The IRS and Treasury consider recommendations using a variety of factors,[37] and if a recommendation is ultimately adopted, the IRS will add it to the PGP.[38]

The current layout of the PGP makes it difficult for taxpayers, their representatives, and outside stakeholders to easily assess what guidance is currently under development and its current status.[39] The IRS could improve the layout of the PGP and make it more useful and navigable if it took the form of a living spreadsheet or dashboard that showed:

- The type of guidance the IRS will issue,
- The types of issue(s) the guidance will address,

- When the PGP received the recommendation, and
- The current status of the guidance.

In addition to improving the display of formal guidance under development, the IRS could share with taxpayers and tax professionals what informal guidance – such as forms, instructions, and publications – are under development, so they can provide comment and prepare for any last-minute changes that may require them to devote more time to completing returns and complying with tax obligations. Recently, the IRS made major revisions to the instructions for filing Form 1065 Schedule K-2, Partners' Distributive Share Items – International, and Schedule K-3, Partner's Share of Income, Deductions, Credits, etc. – International.[40] These significant revisions took some taxpayers and representatives by surprise. It would be beneficial to develop an informal guidance plan similar to the PGP that would let taxpayers and those in the tax community know that the IRS is revising certain documents and when the IRS will release new updates.

CONCLUSION AND RECOMMENDATIONS

As the IRS moves forward with developing and implementing its plan for how it will use the influx of funds it is scheduled to receive over the next ten years, transparency is a critical part of this process to foster trust between the IRS and the public. Full transparency will give taxpayers and the public at large confidence that the IRS is using the funds wisely, fairly, and equitably.

FULL TRANSPARENCY
will give taxpayers and the public at large confidence that the IRS is using the funds wisely, fairly, and equitably.

The IRS needs to ensure it is fully transparent as to the status of taxpayers' refunds, return processing delays, and where taxpayer cases or issues reside before the IRS. Further, the challenges in finding relevant, reliable information on IRS.gov impedes transparency by making it more difficult for taxpayers to get answers to their questions. The IRS is not fully transparent as to what guidance taxpayers can rely on, what new guidance the IRS is in the process of developing, and when the IRS plans to release the guidance. Lack of transparency undermines taxpayer trust, thereby potentially compromising self-assessment and voluntary compliance.

Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Make the operational plan due six months from the enactment of the Inflation Reduction Act available to the public by posting it on IRS.gov.
2. Commit to providing to the public and oversight organizations regular reports regarding the allocation of the increased funding and include performance metrics that show the results of how the IRS has applied the funds.
3. Improve Where's My Refund?, IRS2Go, and online accounts by providing taxpayers increased functionality, including specific information about the cause of their refund delay and an estimated date when the IRS might issue their refund.
4. Post a filing season dashboard and provide weekly information throughout the year on the filing season statistics, including the total number of returns in inventory, number of returns held beyond normal processing times, number of returns in suspense status, and the anticipated timeframes for working through them, while acknowledging that the situation is fluid and timeframes may change along with circumstances.
5. Clearly state on all guidance the extent to which the taxpayer can rely upon it either for penalty relief or in an audit.

6. In conjunction with IRS Chief Counsel, update the PGP to be a living document that specifies the type of guidance the IRS is developing, the issues it will address, the current status of the guidance, and the estimated date of completion.

RESPONSIBLE OFFICIALS

Kenneth Corbin, Commissioner, Wage and Investment Division

Amalia Colbert, Commissioner, Small Business/Self-Employed Division

IRS COMMENTS

The pandemic posed unprecedented challenges to our ability to service customers through normal telephone, inventory, and processing avenues. We established, and continue to post, information on IRS.gov giving the public updates about operational and processing timeframes.

In August 2022, the IRS established the Inflation Reduction Act (IRA) 2022 Transformation & Implementation Office and immediately began developing operational and strategic plans to implement legislative provisions. The influx of funding from IRA 2022, will allow the IRS to pursue significant improvements to our technology and customer service channels with an eye toward greater transparency. Once the IRS prepares the strategic operational plan for the Secretary of the Treasury we will work with Treasury to ensure there is transparency to the public on the IRS's plan to transform tax administration and improve service to taxpayers.

Prior to the passage of IRA 2022, the Service continually took steps to process returns timely and give taxpayers refund information through quick, easy to use, low level authentication tools such as Where's my Refund? (WMR) and Where's my Amended Return? (WMAR). Many taxpayers get the information they need from these applications and never have to contact us again. However, in our continuous efforts to improve transparency, we requested funding to enhance WMR. We added two prior years of data to the available information. Additional planned enhancements include providing explanations for frequent math errors, return received, refund approved, and refund sent statuses for accounts where the IRS received the return, but the refund is delayed, and improved messaging for returns delayed in the Taxpayer Protection Program or Error Resolution System (ERS). In addition, there are plans to update the look and feel of WMR to more closely mirror other IRS.gov content, improve navigation, translate content into six additional languages, and allow married filing joint taxpayers and taxpayers who choose direct deposit the ability to initiate their own refund trace.

Making the IRS healthy in terms of inventories and communicating account statuses/resolutions to taxpayers are the IRS's top priorities. The IRS deployed surge teams with resources from all over the agency to target and resolve correspondence, amended returns, and ERS inventories. These teams will continue their work through the end of 2022. To improve timeframes for identity theft cases, we requested funding to develop a Document Upload Tool (DUT) so taxpayers can self-submit Form 14039, Identity Theft Affidavit. Since May 2022, Certified Acceptance Agents (CAA) submitted several hundred Forms 13551, Application to Participate in the IRS Acceptance Agent Program, through the DUT.

To assist in taxpayers' understanding of IRS' forms, instructions, and publications, we apply the concepts outlined in the Plain Writing Act to every product we produce. We solicit public input on our products by working with the Taxpayer Advocacy Panel and Internal Revenue Service Advisory Council. An early draft of our products' revisions is forwarded to the Taxpayer Advocate Service and hundreds of others for review and comment, from which we get many comments on simplifying language, which we work to address. We also provide early release drafts of our products at IRS.gov/DraftForms. Each of those draft postings has a cover page that gives the link of IRS.gov/FormsComments for the public to provide comments about draft or final forms. We conclude each of our instructions and publications with a paragraph encouraging taxpayers to send us comments and suggestions on how to make the product simpler, either by mail or via our website.

Notably, regulations and documents published in the Internal Revenue Bulletin (IRB) are the authoritative position of Treasury and the IRS and therefore, are generally authorities on which a taxpayer may rely to the extent they are not outweighed by other contrary authorities. Other forms of guidance not published in the IRB or otherwise identified in Treas. Reg. § 1.6662-4(d)(3) may not provide penalty relief unless, under facts and circumstances of each case, they help support a reasonable cause defense. These less formal forms of guidance are intended to provide information to taxpayers more quickly.

When considering the Priority Guidance Plan (PGP), it is important to remember that it is issued jointly with Treasury and is a living document that is updated on a quarterly basis as projects are completed and others are added. Items are generally added to the PGP if they are expected to be completed during the plan year. Thus, any changes to the PGP process would require Treasury's input.

Additionally, partnering with key external stakeholders such as the Federation of Tax Administrators and the Council for Electronic Revenue Communication Advancement board of directors affords the IRS opportunities to further explore transparency. Our quarterly meetings allow us to maintain and build relationships, provide a strategic forum to share high-level key messages and emerging issues, and gather feedback to improve services.

TAXPAYER ADVOCATE SERVICE COMMENTS

The National Taxpayer Advocate understands the enormous challenges the COVID-19 pandemic has caused the IRS over the past three years. The recent increase in funding through the passage of the Inflation Reduction Act will aid the IRS in addressing many of these challenges and ideally transform the IRS into a more modern tax administration agency. The immediate steps the IRS took after passage of the IRA put the agency on the right path to implementing these funds. However, as the IRS moves forward with this implementation process, it is critical that it is fully transparent as to how these funds will be applied, particularly in the area of enforcement; it is equally important that the IRS measures the performance of the outcomes of how these funds have been applied. The IRS can take an important step toward embracing transparency by ensuring that the Strategic Operational Plan is made available to the public and by providing a real and meaningful opportunity for the public to offer its observations and opinions on the plan.

The National Taxpayer Advocate acknowledges that the IRS has made several significant changes over the years to provide taxpayers with more information regarding the processing of their returns and when they can expect their refunds and is pleased that it continues to make strides in this direction. Yet, too many taxpayers – far too often – feel in the dark about when their return will be processed and what might be causing delays. The IRS could ease these concerns by providing taxpayers with more information on either its Where's My Refund? tool or the taxpayer's Online Account about reasons for delays. For example, the IRS could inform a taxpayer that it is reviewing his or her return for possible identity theft or errors and provide timeframes or action items. The more information the IRS provides taxpayers and the more transparent it is, the less likely taxpayers are to call the IRS to inquire about refund delays.

The IRS offers a multitude of resources for taxpayers to access and use when complying with their tax obligations, and it needs to ensure that this information is consistent and easy to access. Most taxpayers likely believe that they can rely on information created by the IRS and posted on its website and are not aware of the different degrees to which they can rely upon certain information. Thus, at a minimum, the IRS should clearly identify on its guidance the extent to which taxpayers can rely upon it.

Transparency is a bedrock principle of tax administration and the foundation upon which voluntary compliance through self-assessment rests. Although the IRS has made progress, it needs to do more to ensure that it is fully transparent by providing timely, easily accessible information to taxpayers. Silence is not golden when taxpayers and representatives are looking for guidance, assistance, or answers.

RECOMMENDATIONS

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Make the operational plan, due six months from the enactment of the Inflation Reduction Act, available to the public by posting it on IRS.gov and allow for stakeholder comments on the plan and future improvements.
2. Commit to providing to the public and oversight organizations regular reports regarding the allocation of the increased funding and include performance metrics that show the results of how the IRS has applied the funds.
3. Improve Where's My Refund?, IRS2Go, and online accounts by providing taxpayers increased functionality, including specific information about the cause of their refund delay and an estimated date when the IRS might issue their refund.
4. Post a filing season dashboard and provide weekly information throughout the year on the filing season statistics, including the total number of returns in inventory, number of returns held beyond normal processing times, number of returns in suspense status, and the anticipated timeframes for working through them, while acknowledging that the situation is fluid and timeframes may change along with circumstances.
5. Clearly state on all guidance the extent to which the taxpayer can rely upon it either for penalty relief or in an audit.
6. In conjunction with IRS Chief Counsel, update the PGP to be a living document that specifies the type of guidance the IRS is developing, the issues it will address, the current status of the guidance, and the estimated date of completion.

Endnotes

1 *See* National Taxpayer Advocate 2022 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 3 (Legislative Recommendation: *Revamp the IRS Budget Structure and Provide Sufficient Funding to Improve the Taxpayer Experience and Modernize the IRS's Information Technology Systems*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_PurpleBook_01_StrengthRights_2.pdf.

2 An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14 (commonly referred to as the "Inflation Reduction Act of 2022"), Pub. L. No. 117-169, 136 Stat. 1818 (2022).

3 "[I]t is important to understand the difference between providing data, which is often difficult to decipher, and providing information which makes the tax story understandable. The real challenge is to take a very complex situation – which is largely particular to the individual group – and make it understandable to a wider audience." Quattrochi, Zahira, Group Head of Tax at Anglo American, presenting at KPMG's Responsible Tax Project webinar (June 24, 2021), https://responsibletax.kpmg.com/article/understanding-tax-transparency.

4 Inflation Reduction Act of 2022, Pub. L. No. 117-169, 136 Stat. 1818 (2022). The Inflation Reduction Act appropriates the funding as follows: $3.2 billion for taxpayer services; $45.6 billion for enforcement; $25.3 billion for operations support; and $4.8 billion for business systems modernization (amounts have been rounded).

5 Memorandum from Janet L. Yellen, Sec'y of the Treasury, to Charles P. Rettig, Comm'r, Internal Revenue (Aug. 17, 2022), https://www.taxcontroversy360.com/wp-content/uploads/2022/08/2022-27034_TNT_Docs_treasury.pdf (last visited Dec. 13, 2022). For example, Secretary Yellen directed the IRS to not increase the audit rates of taxpayers earning under $400,000 annually, stating "that audit rates will not rise relative to recent years for households making under $400,000 annually."

6 Government Accountability Office (GAO), GAO-22-106032, *Tax Compliance: IRS Audit Trends for Individual Taxpayers Vary by Income* (2022). Even prior to the passage of the Inflation Reduction Act, GAO noted some raised concerns about who the IRS selects for audit, stating that, "Because audit rates for higher-income taxpayers have seen a larger decline than audit rates for lower-income taxpayers, the tax community has raised concerns about whether IRS is equitably selecting taxpayers for audit." *Id.* at 1.

7 IRS, IR-2019-159, IRS Releases New Tax Gap Estimates; Compliance Rates Remain Substantially Unchanged from Prior Study (Sept. 26, 2019), https://www.irs.gov/newsroom/irs-releases-new-tax-gap-estimates-compliance-rates-remain-substantially-unchanged-from-prior-study.

8 Memorandum to Charles P. Rettig, IRS Commissioner, from Janet L. Yellen, Secretary of the Treasury, IRS Operational Plan (Aug. 17, 2022). The Inflation Reduction Act contained a similar provision before it was stricken during the Byrd process. Cong. Pascrell, Chair, Subcommittee on Oversight, made a similar request that the IRS provide him with an outline of how it intends to use the additional resources by August 30, 2022. *See* Letter from Rep. Bill Pascrell, Jr., Chair, Subcomm. on Oversight, to Charles P. Rettig, Comm'r, Internal Revenue (Aug. 16, 2022), https://pascrell.house.gov/uploadedfiles/2022.08.16_bp_to_irs_re_ira_.pdf (last visited Dec. 13, 2022).

9 Email from IRS Commissioner Charles P. Rettig to all IRS and TAS employees, "New Office to Oversee Landmark Legislation" (Aug. 19, 2022).

10 Letter from Sen. Mike Crapo, Ranking Member, Comm. on Fin. et al., to Charles P. Rettig, Comm'r, Internal Revenue 8 (Sept. 22, 2022), https://www.finance.senate.gov/download/sfc-gop-letter-to-commr-rettig-wrt-80b-funding (last visited Dec. 13, 2022).

11 *See* Most Serious Problem: *Processing Delays: Paper Backlogs Caused Refund Delays for Millions of Taxpayers*, *supra*.

12 IRS response to TAS information request (Oct. 19, 2022). This sum represents the total number of successful and unsuccessful Where's My Refund? query attempts.

13 *See* IRS, What to Expect for Refunds This Year, https://www.irs.gov/refunds/what-to-expect-for-refunds-this-year (last visited July 14, 2022).

14 The IRS has provided several tools through which taxpayers can check their refund status, including Where's My Refund?, Where's My Amended Return?, and the IRS2Go app. Where's My Refund? now provides refund information for the 2021, 2020, and 2019 tax years. Taxpayers should still view their Online Account to see payment history, prior year adjusted gross income, or other tax records. *See* IRS, Where's My Refund?, https://www.irs.gov/refunds (last visited Oct. 31, 2022). *See also* Most Serious Problem: *Online Access for Taxpayers and Tax Professionals: Inadequate Digital Services Impede Efficient Case Resolution and Force Millions of Taxpayers to Call or Send Correspondence to the IRS*, *supra*.

15 IRS response to TAS information request (Oct. 19, 2022). Under IRC § 6213, the IRS is allowed to make an assessment upon discovering a mathematical or clerical error without having to use deficiency procedures. Unfortunately, the IRS won't be able to specify on Where's My Refund? the nature of the math error that allows for the adjustment because the IRS states such an explanation is "Official Use Only."

16 IRS, Joint Operations Center (JOC), Snapshot Reports: Product Line Detail for the 800-829-1040 telephone line (Sept. 30, 2022). *See also* Most Serious Problem: *Telephone and In-Person Service: Taxpayers Continue to Experience Difficulties and Frustration Obtaining Telephone and Face-to-Face Assistance to Resolve Their Tax Issues and Questions*, *supra*.

17 IRS response to TAS information request (Oct. 19, 2022).

18 *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 Sept. 7, 2022).

19 *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 Nov. 1, 2022), at "Filed a Tax Return" (updated Oct. 28, 2022).

20 *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 Oct. 24, 2022). The section entitled, "What you need to do" states, "If you filed electronically and received an acknowledgement, you do not need to take any further action other than promptly responding to any requests for information. If you are due a refund, filed on paper more than six months ago, and Where's My Refund? does not indicate we received your return, you should resubmit your tax return, electronically if possible."

21 Letter from Sen. Ron Wyden, Chair, U.S. Senate Comm. on Fin., to Charles P. Rettig, Comm'r, Internal Revenue (Sept. 13, 2022). "Keep taxpayers better informed electronically. The IRS has been expanding the information available to taxpayers and

practitioners on IRS.gov, the "Where's my Refund?" tool, the "Where's my Amended Return?" tool, and in online accounts. These tools save many from the frustration of having to call or write to the IRS."

22 TAS Recommendations and IRS Responses, TAS Recommendation 4-1 (2021), https://www.taxpayeradvocate.irs.gov/news/directory-entry/2021-msp-04-transparency-and-clarity/ (last visited Nov. 1, 2022). "The IRS is in the process of launching a "Filing Season Processing Times" page on IRS.gov to regularly provide updated information for the most commonly filed individual and business tax return types, letters, notices, and other forms."

23 *See* Most Serious Problem: *Online Access for Taxpayers and Tax Professionals: Inadequate Digital Services Impede Efficient Case Resolution and Force Millions of Taxpayers to Call or Send Correspondence to the IRS*, *supra*.

24 *See* IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue, at "Victims of Identity Theft who Sent a Form 14039 or Form 14039-B, Identity Theft Affidavit" (updated Sept. 16, 2022), https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue (last visited Oct. 24, 2022).

25 *See* Most Serious Problem: *Telephone and In-Person Service: Taxpayers Continue to Experience Difficulties and Frustration Obtaining Telephone and Face-to-Face Assistance to Resolve Their Tax Issues and Questions*, *supra*; IRS, JOC, Snapshot Reports: Product Line Detail for the 800-829-1040 telephone line (Sept. 30, 2022).

26 *See* Most Serious Problem: *Online Access for Taxpayers and Tax Professionals: Inadequate Digital Services Impede Efficient Case Resolution and Force Millions of Taxpayers to Call or Send Correspondence to the IRS*, *supra*.

27 IRS response to TAS information request (Oct. 19, 2022).

28 *Id.*

29 IRC § 6532(a)(2).

30 IRC § 6514(a)(2). "A refund of any portion of an internal revenue tax shall be considered erroneous and a credit of any such portion shall be considered void … (2) In the case of a claim filed within the proper time and disallowed by the Secretary, if the credit or refund was made after the expiration of the period of limitation for filing suit, unless within such period suit was begun by the taxpayer."

31 *See* Treas. Reg. § 1.6664-4(b) (certain facts and circumstances, such as consulting IRS guidance including publications, FAQs, or instructions, may be considered by the IRS to demonstrate that the taxpayer reasonably relied upon this guidance and acted in good faith).

32 Although items published in the Bulletin do not have the force and effect of Treasury Regulations, they may nonetheless be used as precedents. This includes Revenue Rulings and Revenue Procedures.

33 IRS, IR-2021-202, IRS Updates Process for Frequently Asked Questions on New Tax Legislation and Addresses Reliance Concerns (Oct. 15, 2021), https://www.irs.gov/newsroom/irs-updates-process-for-frequently-asked-questions-on-new-tax-legislation-and-addresses-reliance-concerns (last visited Sept. 12, 2022).

34 *Id.* This announcement goes on to say that FAQs will now be announced in a news release and posted on IRS.gov in a separate Fact Sheet. These Fact Sheet FAQs will be dated to enable taxpayers to confirm the date on which any changes to the FAQs were made. Additionally, prior versions of Fact Sheet FAQs will be maintained on IRS.gov.

35 The statement in the FAQ Fact Sheet refers to Treas. Reg. § 1.6664-4(b) and is consistent with the analysis in the prior comment, which describes what facts and circumstances may be taken into account when the IRS is considering reasonable cause relief.

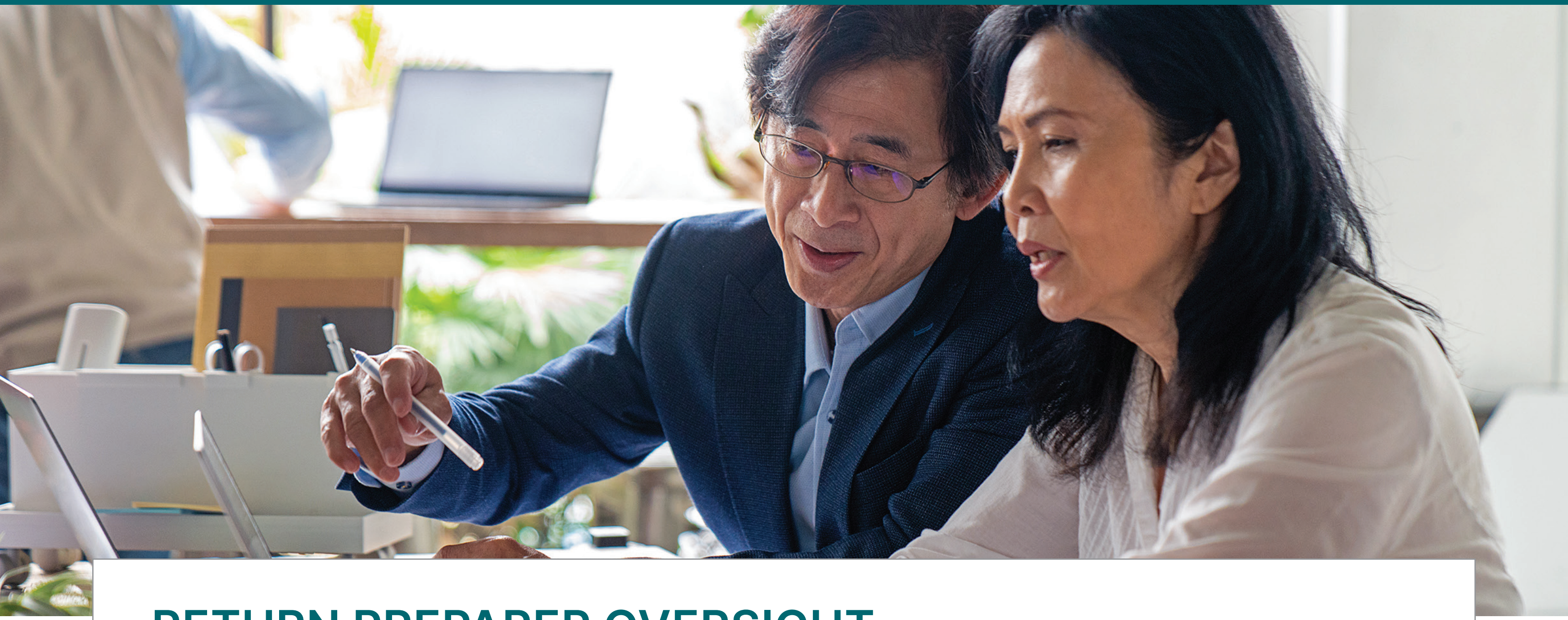
36 *See, e.g.*, IRS Fact Sheet FS-2022-32, IRS Revises the 2021 Child Tax Credit and Advance Child Tax Credit Frequently Asked Questions (July 2022), https://www.irs.gov/pub/taxpros/fs-2022-32.pdf (last visited Sept. 6, 2022).

37 Internal Revenue Manual 32.1.1.4.1, Priority Guidance Plan (Aug. 2, 2018).

38 *Id.*

39 Treasury Department Priority Guidance Plan, 2021-2022 Fourth Quarter Update, (Aug. 17, 2022), https://www.irs.gov/pub/irs-utl/2021-2022-pgp-4th-quarter-update.pdf.

40 *See* IRS, Changes to the 2021 Partnership Instructions for Schedules K-2 and K-3 (Form 1065), https://www.irs.gov/forms-pubs/changes-to-the-2021-partnership-instructions-for-schedules-k-2-and-k-3-form-1065 (last visited Nov. 14, 2022).



RETURN PREPARER OVERSIGHT

Taxpayers Are Harmed by the Absence of Minimum Competency Standards for Return Preparers

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Return preparers prepare over half of individual income tax returns and play a key role in a successful tax administration. Taxpayers, with limited tax knowledge themselves, are ill-equipped to assess a preparer's expertise in tax laws and tax return preparation. Anyone can hold themselves out to be a return preparer, and not all return preparers have professional credentials. Return preparers without credentials are not required to pass any competency tests or take any educational courses on tax return preparation, and they are not subject to any ethical rules.

The absence of minimum competency standards for preparers of federal tax returns leaves taxpayers, particularly low-income taxpayers, vulnerable to return preparers' inadvertent errors that could cause them to overpay their tax – or to underpay their tax and face IRS enforcement action subjecting them to additional tax, penalties, and interest. In fact, about 92 percent of the total amount of dollars of audit adjustment made on 2020 returns claiming the Earned Income Tax Credit (EITC) occurred on returns prepared by non-credentialed return preparers. Those errors harm our most vulnerable taxpayers. Minimum competency standards would also likely professionalize the return preparation industry and weed out unscrupulous return preparers. Because taxpayers are ultimately financially responsible for inaccurately prepared returns, minimum competency standards for return preparers are an important taxpayer protection measure.

EXPLANATION OF THE PROBLEM

Both taxpayers and the tax system depend heavily on the ability of return preparers to prepare accurate tax returns. Taxpayers are often ill-equipped to navigate the complicated tax laws and must seek the services of return preparers to prepare and file their tax returns. For example, the IRS received 146 million 2021 individual income tax returns through September 29, 2022, and paid return preparers prepared 53 percent of those returns.[1] Of the 2021 individual income tax returns that paid return preparers prepared through September 29, 2022, non-credentialed return preparers prepared approximately 58 percent.[2] Of the approximate 12.9 million 2021 business returns received through September 29, 2022, paid return preparers prepared nearly 79 percent.[3]

Anyone can hold themselves out to be a return preparer, and not all return preparers have professional credentials. Return preparers who hold attorney, certified public accountant (CPA), or enrolled agent (EA) credentials must pass competency examinations, satisfy continuing education requirements, and are subject to standards of conduct in 31 C.F.R. Part 10, which are reprinted in Treasury Department Circular 230, Regulations Governing Practice Before the Internal Revenue Service. In addition, the IRS requires volunteer preparers to pass competency examinations as part of the Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) programs.[4] However, most paid preparers are non-credentialed and are not required to pass any competency tests or take any educational courses on tax return preparation, and they are not subject to any ethical rules.[5]

The evolution of the commercial tax return preparation and filing industry has made it easier for inexperienced and untrained preparers to enter into the business. Tax return preparation software is widely available, reasonably priced, and the user-friendly question-and-answer format enables a person with almost no knowledge or skill to prepare a tax return by simply working through the software's prompts. Undoubtedly, software has opened the doors to enable anyone, with good or ill intent, to present oneself as a return preparer.[6]

The lack of minimum competency standards harms taxpayers in the following ways:

- Taxpayers may not understand the differences in the education and training requirements of various return preparer credentials;
- Taxpayers are ultimately financially responsible for inaccurately prepared tax returns;
- Low-income taxpayers are at significant risk of harm caused by incompetent or unscrupulous return preparers;
- Research studies and IRS data found more noncompliance among non-credentialed return preparers;
- Non-credentialed preparers cannot represent taxpayers on audits of prepared returns;
- Not all return preparers are subject to standards of conduct or ethical rules; and
- The lack of minimum competency standards forces the IRS to take a reactive approach to return preparer noncompliance.

ANALYSIS

Background

National Taxpayer Advocate's Legislative Proposals

Since 2002, the National Taxpayer Advocate has been a strong proponent of legislation providing the IRS authority to establish a return preparer oversight program that would include minimum competency standards for paid return preparers.[7] The National Taxpayer Advocate's legislative proposals included a program to register, test, and certify unenrolled preparers. To strengthen the program, the proposals provided for increased preparer penalties and improved due diligence requirements. The National Taxpayer Advocate also recommended that the IRS mount a comprehensive taxpayer education campaign to inform taxpayers how to choose a competent preparer and remind them to obtain a copy of the tax return with the preparer's signature.[8] Such proposed oversight has received widespread support from various practitioner groups and members of Congress.[9]

*Pre-*Loving *Return Preparer Program*

Pursuant to 31 U.S.C. § 330, the Secretary is authorized to regulate the practice of representatives before the Department of the Treasury. Circular 230 defines "practice" and prescribes who may practice before the IRS. In 2009, the IRS determined that it had administrative authority to regulate paid tax return preparation as "practice" before the IRS.[10] The IRS initiated extensive hearings and discussions with stakeholder groups to receive comments and develop a system within which all parties believed they could operate. The IRS, together with Treasury, implemented the program in 2011. However, it was terminated in 2013 after a U.S. district court held, and the U.S. Court of Appeals for the D.C. Circuit affirmed, in *Loving v. Internal Revenue Service* that the IRS does not have the authority to impose preparer standards without statutory authorization.[11]

Since the 2011 IRS return preparer program was terminated, the Department of the Treasury has supported return preparer oversight in its "Greenbook" of revenue proposals.[12] House and Senate members have introduced legislation to provide the IRS with the statutory authority to establish and enforce minimum standards. Most recently, Congressmen Panetta and Rice sponsored bipartisan authorizing legislation, the Taxpayer Protection and Preparer Proficiency Act of 2021.[13]

The IRS's Voluntary Annual Filing Season Program

Absent mandatory minimum competency standards, the IRS created the voluntary Annual Filing Season Program (AFSP) to encourage the accurate preparation of individual income tax returns by unenrolled preparers. In addition to satisfying annual continuing education requirements and annually renewing their Preparer Tax Identification Number (PTIN),[14] participating preparers must consent to adhere to the duties, restrictions, and sanctions relating to practice before the IRS in Circular 230.[15] Upon completion of these requirements, preparers receive a Record of Completion, which enables them to represent taxpayers before the IRS during an examination of a tax return or claim for refund they prepared and signed (or prepared if there is no signature space on the form).[16] They are included in a public database of return preparers on the IRS website.[17] Unfortunately, participation in the program is low as the IRS only issued approximately 62,000 AFSP Records of Completion in calendar year (CY) 2021.[18]

Several States Have Return Preparer Oversight Programs

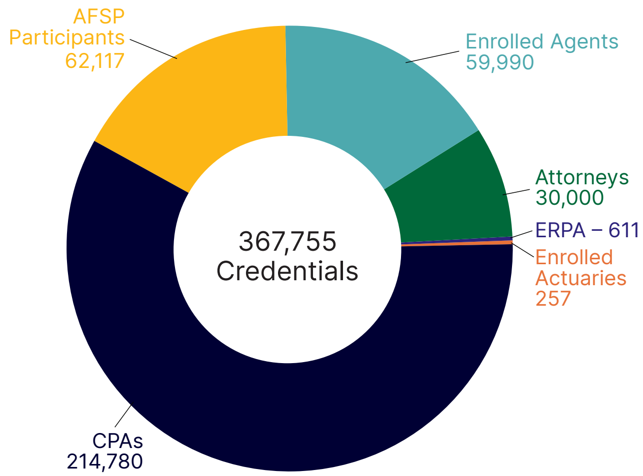
Six states have varying degrees of oversight over return preparers who prepare state tax returns: California, Connecticut, Iowa, Maryland, New York, and Oregon.[19] Approximately 17,000 preparers who prepared 2020 individual income tax returns were subject to the requirements of at least one of these six states.[20] The stringency of the requirements varies among the states. Of the six states, only Maryland and Oregon have minimum competency examinations. California, New York, and Oregon have qualifying minimum education or training requirements to enter the profession. Further, five states have continuing education requirements, with the exception being Connecticut.[21] However, oversight in six out of 50 states is not enough to protect taxpayers, especially when there is no uniformity among the requirements imposed by each state.

Taxpayers May Not Understand the Differences in the Education and Training Requirements of the Various Return Preparer Credentials

Selecting a return preparer can be a daunting task for many taxpayers. There are many different types of paid return preparers, including attorneys, CPAs, EAs, enrolled retirement plan agents (ERPAs), enrolled actuaries, AFSP participants, and non-credentialed preparers (also called unenrolled return preparers).[22] Many taxpayers are confused by the options and do not understand the difference between the preparers' credentials. Figure 2.8.1 provides the number of individuals with each of the different paid return preparer credentials.

FIGURE 2.8.1[23]

Individuals With Paid Return Preparer Credentials, CY 2021



Total Preparer Tax Identification Numbers: 783,794

Some preparers have more than one credential. Therefore, we can only say with certainty that in CY 2021, the number of non-credentialed return preparers was *more than* 416,039.

Note that the sum of the credentials in Figure 2.8.1 is 367,755, which is significantly lower than the total number of PTINs, 783,794. The difference (416,039) is not the number of non-credentialed return preparers because some return preparers possess more than one credential. Therefore, we can only say with certainty that in CY 2021, the number of non-credentialed returns preparers was *more than* 416,039.

The different return preparer credentials listed in Figure 2.8.1 have varying degrees of required training. Attorneys and CPAs are subject to education and examination requirements set by state licensing authorities. EAs must pass a three-part IRS examination and complete continuing education requirements.[24] The IRS requires AFSP participants to complete continuing education requirements to participate in the program. It no longer accepts ERPA applications, but existing ERPAs had to pass an examination in the past, and to renew the credential, they must satisfy continuing education requirements.[25] The Joint Board of Enrollment of Actuaries administers the enrolled actuary program and sets the standards, which include experience and knowledge requirements.[26] Even volunteer preparers who participate in the VITA or TCE programs must complete training courses, pass an examination before the IRS certifies them, and complete annual training to ensure they are current on new tax laws.[27] In contrast, non-credentialed return preparers, the largest category of paid return preparers, have no required training.

We are not advocating that taxpayers select one type of return preparer over another. Taxpayers should have the ability to make informed decisions upon entering into a transaction that could have serious financial consequences. A substantial portion of non-credentialed return preparers are very knowledgeable and highly skilled, but nothing prevents inept or unscrupulous return preparers from joining the profession and causing harm to taxpayers. Unfortunately, taxpayers may not understand the differences in the credentials or have the ability to assess the competency of a preparer's expertise in tax return preparation. A 2017 national poll conducted by a coalition of consumer advocates and community organizations found that 68 percent of respondents believed that either the state or federal government already required paid return preparers to be licensed, when in reality, at that time, only four states (California, Maryland, New York, and Oregon) required mandatory standards for paid tax return preparers.[28]

Each year, the IRS publishes tips on selecting a tax return preparer, including these practical tips: check with the Better Business Bureau, ask about fees, make sure the preparer signs and enters the PTIN on the return, be wary of promises to obtain larger refunds, check the preparer's credentials, etc.[29] However, merely warning taxpayers about the potential incompetence or outright fraud in the return preparer population is insufficient. Congress should authorize the IRS to do more to protect taxpayers.

Taxpayers Are Ultimately Financially Responsible for Inaccurately Prepared Tax Returns

Without any federal oversight in place, taxpayers must conduct their own due diligence when choosing a tax professional. As noted above, it is difficult for an average taxpayer to understand the difference between the various types of return preparer credentials. Further, if a return preparer prepares an inaccurate return, the taxpayer is ultimately financially responsible for the resulting balance due. Many taxpayers possess a false sense of security when they mistakenly believe that their return preparer is responsible for a mistake on the tax return they prepared. It is the taxpayer who must pay the IRS any additional amounts due, including penalties and interest. Taxpayers cannot simply point a finger at their return preparer to avoid liability for an inaccurately prepared return. In addition, the IRS may not necessarily abate a penalty for reasonable cause merely because the taxpayer relied on an inept return preparer.[30]

Low-Income Taxpayers Are at Significant Risk of Harm Caused by Incompetent or Unscrupulous Return Preparers

Refundable tax credits, such as the EITC, Child Tax Credit, Additional Child Tax Credit, and American Opportunity Tax Credit have brought into the tax system low-income and other vulnerable taxpayers who would not otherwise need to file a return or who would file very simple returns with no tax return preparation assistance. Due to the complexity of refundable credits, many taxpayers who are eligible to claim the credits reach out to paid return preparers to prepare and file their tax returns. These taxpayers are susceptible to the harm created by incompetent or unscrupulous return preparers. A 2014 TAS phone survey of taxpayers eligible for assistance from Low Income Taxpayer Clinics found that "the low-income population is vulnerable and more likely than the population at large to be taken advantage of by unskilled or unscrupulous tax return preparers."[31]

As illustrated in Figure 2.8.2, non-credentialed return preparers prepared a substantial percentage of prepared 2020 returns claiming EITC.

FIGURE 2.8.2, Tax Year (TY) 2020, Forms 1040 Filed With and Without Schedule EIC (Form 1040), Earned Income Credit, by Type of Paid Preparer Credential (Through September 29, 2022)[32]

Preparer Credential	EITC Returns Prepared	EITC Paid Preparer Returns	Non-EITC Returns Prepared	Non-EITC Paid Preparer Returns
CPA	1,199,411	9.29%	23,109,202	31.64%
EA	1,125,029	8.71%	9,751,250	13.35%
Unknown	368,001	2.85%	1,803,486	2.47%
Attorney	42,408	0.33%	741,791	1.02%
Enrolled Actuary	3,319	0.03%	10,449	0.01%
ERPA	79	0.00%	224	0.00%
Non-Credentialed/Unenrolled	10,172,519	78.79%	37,617,464	51.51%
Total	**12,910,766**	**100.00%**	**73,033,866**	**100.00%**

As indicated in Figure 2.8.2, paid non-credentialed return preparers prepared almost 79 percent of the prepared 2020 individual income tax returns with Schedule EIC (Form 1040), Earned Income Credit, compared to only 52 percent of the prepared individual income tax returns without a Schedule EIC.

The negative impact of no federal minimum competency standards on low-income taxpayers is illustrated in the data on TY 2020 EITC audit adjustments in Figure 2.8.3.

FIGURE 2.8.3, TY 2020 EITC Audit Adjustments by Paid Preparer Credential (Through September 29, 2022)[33]

Preparer Credential	EITC Returns Prepared by Paid Return Preparers Under Audit	Paid Return Preparer EITC Returns Under Audit	Total EITC Audit Adjustments	Dollars Adjusted in EITC Audits
Attorney	207	0.17%	$765,044	0.14%
CPA	4,523	3.68%	$13,295,650	2.38%
Enrolled Actuary	36	0.03%	$173,341	0.03%
EA	5,888	4.80%	$21,643,327	3.88%
ERPA	2	0.00%	$8,936	0.00%
Non-Credentialed/ Unenrolled	110,377	89.91%	$515,024,295	92.22%
Unknown	1,726	1.41%	$7,552,133	1.35%
Total	**122,759**	**100.00%**	**$558,462,726**	**100.00%**

Paid return preparers prepared about 79 percent of 2020 EITC returns, but over 92 percent of the total amount of audit adjustments (in dollars) occurred on returns prepared by non-credentialed paid return preparers. Requiring all paid return preparers to demonstrate minimum competency in the tax laws and return preparation could reduce the amount of errors made on returns, especially those claiming EITC, and the impacted taxpayers would avoid the burdens associated with enforcement actions.

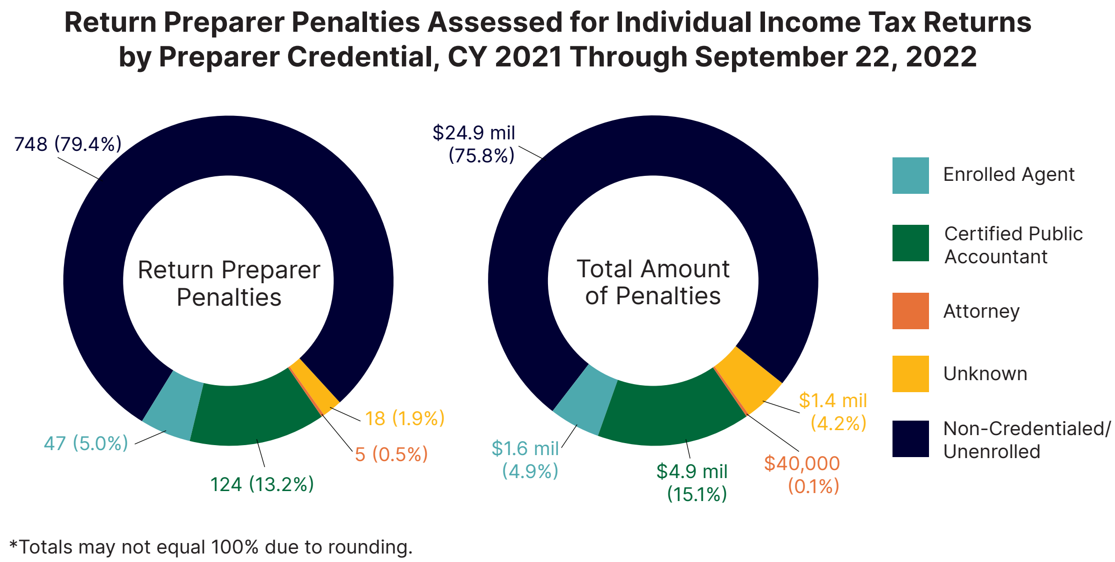
Research Studies and IRS Data Found Noncompliance Among Non-Credentialed Preparers

Numerous studies have consistently found significant noncompliance on returns prepared by non-credentialed return preparers.[34] For example, the Government Accountability Office,[35] the Treasury Inspector General for Tax Administration (TIGTA),[36] and the New York State Department of Taxation and Finance[37] conducted "shopping visits" during which officials posed as taxpayers seeking return preparation assistance. Each of the shopping visit studies found significant inaccuracies reported on the returns prepared during those visits.

A 2014 IRS study found that non-credentialed return preparers not affiliated with a national tax return preparation firm were responsible for "the highest frequency and percentage of EITC overclaims." The IRS study found that half of the EITC returns prepared by unaffiliated non-credentialed return preparers contained overclaims, and the overclaim averaged between 33 percent and 40 percent.[38] Again, as stated above, the impacted taxpayer clients have the ultimate financial responsibility to pay the resulting balance due when they are subject to enforcement action by the IRS.

IRS data also shows that it assessed a significant percentage of return preparer penalties for individual income tax returns against non-credentialed paid return preparers. As illustrated in Figure 2.8.4, the IRS assessed approximately 76 percent of the return preparer penalties during CY 2021 for individual income tax returns against non-credentialed paid return preparers.

FIGURE 2.8.4[39]



Further, a review of IRS Discriminant Index Function (DIF) scores – an IRS estimate of the likelihood that an audit of the taxpayer's return would produce an adjustment – showed that the returns prepared by non-credentialed paid return preparers are more likely noncompliant than those prepared by credentialed paid return preparers. Specifically, non-credentialed paid return preparers prepared about 44 percent of 2020 individual income tax returns in the three highest deciles of DIF scores. This is compared to 36 percent of the returns in those same DIF score deciles prepared by credentialed preparers. Thus, based on DIF scores, it appears that non-credentialed paid return preparers are preparing returns with a higher level of noncompliance.[40]

Non-Credentialed Preparers Cannot Represent Taxpayers on Audits of the Prepared Return

The IRS has taken steps within its statutory authority to limit the ability of certain types of return preparers to represent taxpayers before the IRS. Attorneys, CPAs, and EAs have unlimited representation rights, meaning with the proper authorizations, they can represent their clients on any matters including audits, payment/collection issues, and appeals.[41] AFSP participants have limited representation rights, meaning they can represent clients whose returns they prepared and signed, but only before revenue agents, customer service representatives, and similar IRS employees, including TAS.[42] Non-credentialed return preparers can only prepare tax returns and cannot represent taxpayers before the IRS.[43] While the IRS does provide information about the different representation abilities among the credentials on its website,[44] it is reasonable for many taxpayers to assume that the person who prepares their return would also be able to represent them on an audit of that return.

Not All Return Preparers Are Subject to Standards of Conduct or Ethical Rules

Non-credentialed return preparers are not necessarily subject to any ethical rules or standards of conduct. Authorizing IRS oversight over non-credentialed return preparers would bring these return preparers under the purview of Circular 230, which the Office of Professional Responsibility (OPR) administers and enforces.[45] Circular 230 is a body of regulations that provide standards of conduct for the profession and details the covered tax professionals' duties and obligations, sanctions for violations, and administrative procedures for discipline.[46] In addition, the proposed IRS-developed minimum competency exam should include ethics topics and introduce return preparers to the standards of conduct required under Circular 230.

To strengthen the enforcement of these standards of conduct, the IRS should conduct a robust outreach and education campaign on how to report suspected violations of Circular 230.[47] The targeted recipients of these outreach and education efforts should be taxpayers, tax professionals, and IRS employees.

The Lack of Minimum Competency Standards Forces the IRS to Take a Reactive Approach to Return Preparer Noncompliance

Without a proactive program requiring minimum competency standards, the IRS is left with a reactive approach to return preparer oversight. The IRS has Title 26 penalties and sanctions under Circular 230 at its disposal.[48] However, these enforcement measures only allow the IRS to intervene *after* harm to a taxpayer has occurred.

The most effective preventive approach is to ensure that the return preparers are competent in the tax laws. Return preparers should demonstrate their competency before they even begin to prepare taxpayers' returns. A competency test would ensure that the preparers have basic tax law knowledge, the skills to complete tax forms, and the ability to find information in the tax form instructions, publications, and other IRS guidance. In addition, because the tax laws continually evolve, annual continuing education requirements are key to ensuring that return preparers stay informed on the latest tax law changes. Thus, the establishment of minimum standards would professionalize the industry, protect taxpayers by ensuring that return preparers are competent in the tax laws, and likely get rid of a majority of unprofessional or unethical individuals.

Preventing Return Preparers From Going Underground and Maintaining Accessibility of Return Preparation Services

Requiring non-credentialed paid return preparers to demonstrate competency will impose a monetary cost that they will ultimately pass on to their taxpayer clients. Requiring these return preparers to pass a competency examination and complete continuing education courses will demand a significant time commitment from them. As a result, some preparers might opt to "go underground." That is, they will continue to prepare returns, but they will not provide the appropriate preparer signature and PTIN on the prepared return, in many cases making it appear as if the taxpayer self-prepared the tax return. The IRS refers to preparers who do not adequately identify themselves on returns they prepare as "ghost preparers." Each year, the IRS issues a warning to taxpayers about the harm imposed by ghost preparers.[49] While there is a real risk of driving some preparers underground, the IRS can address this risk in a variety of ways. First, the IRS can strengthen its taxpayer awareness campaign immediately before and during the filing season to ensure that taxpayers understand what to expect from their return preparer and where to report preparers who violate the requirements.[50] Second, the IRS is working on improving its ability to effectively identify ghost preparers. Third, to send a clear message to potential ghost preparers, the IRS should prioritize the assessment and collection of the IRC § 6695 return preparer penalties, especially the IRC § 6695(b) penalty for failure to sign the return and the IRC § 6695(c) penalty for failure to furnish a PTIN.[51]

There is also a risk that the burdens imposed on return preparers by the proposed oversight program would drive some return preparers out of the profession. This is a concern that the IRS should address once it obtains the legislative authority to design and implement the program. Taxpayers have the *right to retain representation*.[52] While it is important that such representation is competent, it must also be accessible. As the IRS designs each aspect of the oversight program, it is crucial that it strives to minimize the burden imposed on return preparers. The benefit of imposing each program requirement must be weighed against the risk that it could ultimately harm taxpayers by impacting the accessibility or affordability of return preparation services, especially for low-income and international taxpayers. It must also consider the administrability of each requirement. For example, if the IRS obtains legislative authority to impose minimum standards on paid return preparers, after it consults all impacted stakeholders, it must balance the benefits gained by imposing the requirements on nonsigning return preparers against the burden imposed on these tax professionals. It must also consider how the IRS would be able to identify violations and enforce the requirements.[53]

CONCLUSION AND RECOMMENDATIONS

The absence of minimum competency standards for paid return preparers leaves taxpayers vulnerable to inadvertent errors that could cause them to overpay their tax – or to underpay their tax and face IRS collection action. It leaves some taxpayers open to unscrupulous preparers, many of whom the IRS could eliminate if it professionalized the return preparation industry.

IRS data and external research studies support the need for minimum competency standards for paid return preparers as a taxpayer protection measure. To minimize the harm inflicted on taxpayers and the tax system, Congress must provide the IRS statutory authority to establish minimum competency standards for paid federal tax return preparers. Minimum competency standards are an important and necessary taxpayer protection measure because such standards would increase the accuracy of tax returns and protect taxpayers from unqualified return preparers. Such an oversight program would also provide taxpayers with more certainty that individuals who hold themselves out as return preparers actually have the basic skills necessary to prepare the tax return. Enacting appropriate legislation is common sense to ensure accuracy in tax return filings and protect U.S. taxpayers.

Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Conduct a robust outreach and education campaign on how to report suspected violations of Circular 230, with the targeted recipients of these outreach and education efforts to include taxpayers, tax professionals, and IRS employees.
2. Strengthen its taxpayer awareness campaign immediately before and during the filing season to ensure that taxpayers understand what to expect from their return preparer (*e.g.*, sign return, provide PTIN, furnish copy of return) and where to report preparers who violate the requirements.
3. Prioritize the assessment and collection of the IRC § 6695 return preparer penalties, especially the IRC §6695(b) penalty for failure to sign the return and the IRC § 6695(c) penalty for failure to furnish a PTIN.

Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Amend title 31, section 330 of the U.S. Code to authorize the Secretary to establish minimum standards for federal tax return preparers.

RESPONSIBLE OFFICIALS

Amalia Colbert, Commissioner, Small Business/Self-Employed Division

Kimberly Rogers, Director, Return Preparer Office

Timothy McCormally, Acting Director, Office of Professional Responsibility

Kenneth Corbin, Commissioner, Wage and Investment Division

IRS COMMENTS

The IRS agrees that statutory authority to implement and enforce minimum competency standards for return preparers would yield new and important opportunities to serve taxpayers and safeguard the tax system. As GAO, IRS and TAS have observed since the *Loving v. IRS* decision, the Office of Professional Responsibility (OPR) currently only has jurisdiction over individuals who represent taxpayers before the IRS (*i.e.*, attorneys, CPAs, enrolled agents, or participants in the IRS's Annual Filing Season Program). Thus, OPR cannot prevent incompetent or unscrupulous return preparers from preparing tax returns unless they engage in representational activities.

That said, the IRS has used its extant return preparer authority to ensure return preparers apply for and use Preparer Tax Identification Numbers (PTINs) on returns they prepare for compensation and sign the returns they prepare. The Return Preparer Office's (RPO) mission is to improve taxpayer compliance by ensuring minimum standards for tax professionals and providing them with ongoing support. Moreover, OPR addresses whether tax practitioners are fit to practice before the IRS by investigating allegations of misconduct (including violating the Internal Revenue Code's return preparer provisions), making disciplinary determinations, and promoting awareness of the requirements of Treasury Circular 230. Under *Loving*, however, these efforts cannot extend to uncredentialed preparers.

To coordinate the IRS response to non-compliance concerning return preparation, the IRS established the IRS Servicewide Preparer Strategy (SWPS) in November 2020.[54] The SWPS identified six strategic goals related to encouraging preparer compliance.[55] In April 2022 the IRS provided TAS with the SWPS Communication Plan in response to the 2018 TAS MSP recommendation #7-3.[56] The SWPS Communication Plan outlines the IRS's intent to facilitate return preparer compliance through communication with return preparers and industry groups as well as taxpayers, using a variety of communication channels designed to reach these audiences where they are, such as IRS.gov, news releases, social media, filing season outreach, and paid ads (if funding is available). Thus, Stakeholder Liaison has engaged in filing season awareness campaigns targeted to business taxpayers through various industry organizations and individual taxpayers through community-based organizations. New for filing season 2023 are two related publications — P4717, *Help your preparer get your tax return right*, and P5610, *How to Report Suspected Abusive Tax Promotions or Preparers*.

The OPR's Outreach Communications Plan contemplates extensive outreach and education efforts to external and internal stakeholders on Circular 230 standards, due diligence and other obligations of tax practitioners, and when and how effective referrals to OPR and RPO should be made (*e.g.*, IRS enforcement personnel are required to make referrals to OPR when certain penalties are imposed).

TAXPAYER ADVOCATE SERVICE COMMENTS

Minimum competency standards for paid return preparers are an important taxpayer protection measure. The absence of such standards leaves taxpayers, especially low-income taxpayers, vulnerable to inadvertent errors that could cause them to file inaccurate tax returns and potentially face IRS enforcement action. It also leaves some taxpayers open to unscrupulous preparers, many of whom the IRS could eliminate if it professionalized the return preparation industry.

The IRS, including the RPO and OPR, currently has limited jurisdiction to protect taxpayers from the harm caused by non-credentialed paid return preparers. Authorizing IRS oversight would enable RPO to ensure that this category of return preparers has the training they need to prepare accurate federal income tax returns. It would bring these return preparers under the purview of Circular 230, and OPR would be able to enforce ethical rules and standards of conduct against them.

To protect taxpayers both before and after it receives return preparer oversight authority, the IRS must ensure that taxpayers are well informed about return preparer requirements and the differences between the various return preparer credentials. The IRS must provide information to taxpayers before and during the filing season each year on what they have the right to expect from their return preparer and where to report preparers who violate the requirements. Such taxpayer awareness is especially crucial to protect them against the harm caused by ghost preparers. In addition to educating taxpayers, the IRS should leverage its relationship with the software industry to assist in identifying ghost preparers.

RECOMMENDATIONS

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Conduct a robust outreach and education campaign on how to report suspected violations of Circular 230, with the targeted recipients of these outreach and education efforts to include taxpayers, tax professionals, and IRS employees.
2. Strengthen its taxpayer awareness campaign immediately before and during the filing season to ensure that taxpayers understand what to expect from their return preparer (*e.g.*, sign return, provide PTIN, furnish copy of return) and where to report preparers who violate the requirements.
3. Prioritize the assessment and collection of the IRC § 6695 return preparer penalties, especially the IRC § 6695(b) penalty for failure to sign the return and the IRC § 6695(c) penalty for failure to furnish a PTIN.

Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

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Endnotes

1 IRS, Compliance Data Warehouse (CDW) Individual Returns Transaction File Table (IRTF) Tax Year (TY) 2021 (Nov. 2022).

2 IRS, CDW, IRTF TY 2021, Return Review Program (RPP) Preparer Tax Identification Number Table (PTIN) (Nov. 2022).

3 IRS, CDW, Business Return Transaction File TY 2021 (Nov. 2022). Form 990 series preparer indicator or preparer tax identification numbers were not available for TY 2021.

4 IRS, Pub. 5166, VITA/TCE Volunteer Quality Site Requirements 5 (Oct. 2022); IRS, Pub. 5101, Intake/Interview & Quality Review Training (Aug. 2022); IRS, Pub. 4961, VITA/TCE Volunteer Standards of Conduct – Ethics Training, 2022 Returns (Oct. 2022).

5 In CY 2021, of the 783,794 professionals with PTINs, more than 416,039 did not possess a credential. IRS response to TAS information request (Sept. 30, 2022).

6 For a detailed discussion of the participants in the tax preparation industry, see Government Accountability Office (GAO), GAO-19-269, *Tax Refund Products: Product Mix Has Evolved and IRS Should Improve Data Quality* 4-9 (2019).

7 *See, e.g.*, National Taxpayer Advocate 2002 Annual Report to Congress 216-230 (Legislative Recommendation: *Regulation of Federal Tax Return Preparers*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/arc2002_section_two.pdf.

8 *See, e.g.*, National Taxpayer Advocate 2013 Annual Report to Congress 61-74 (Most Serious Problem: *Regulation of Return Preparers: Taxpayers and Tax Administration Remain Vulnerable to Incompetent and Unscrupulous Return Preparers While the IRS Is Enjoined From Continuing its Efforts to Effectively Regulate Unenrolled Preparers*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/2013-ARC_VOL-1_S1-MSP-5.pdf; National Taxpayer Advocate 2009 Annual Report to Congress 41-69 (Most Serious Problem: *The IRS Lacks a Servicewide Return Preparer Strategy*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/1_09_tas_arc_vol_1_preface_toc_msp.pdf; National Taxpayer Advocate 2002 Annual Report to Congress 216-230 (Legislative Recommendation: *Regulation of Federal Tax Return Preparers*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/arc2002_section_two.pdf; *Fraud in Income Tax Return Preparation: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways and Means*, 109th Cong. 6-19 (2005) (statement of Nina E. Olson, National Taxpayer Advocate).

9 For more details, see National Taxpayer Advocate 2023 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 5-8 (Legislative Recommendation: *Authorize the IRS to Establish Minimum Competency Standards for Federal Tax Return Preparers*).

10 *See* IRS, Pub. 4832, Return Preparer Review 33 (Dec. 2009).

11 *Loving v. IRS*, 917 F. Supp. 2d 67 (D.D.C. 2013), *aff'd*, 742 F.3d 1013 (D.C. Cir. 2014).

12 *See, e.g.*, Department of the Treasury, *General Explanations of the Administration's Fiscal Year 2023 Revenue Proposals* 83-86 (Mar. 2022).

13 Taxpayer Protection and Preparer Proficiency Act of 2021, H.R. 4184, 117th Cong. (2021).

14 A PTIN is an identification number that anyone who is paid to prepare or assist in preparing federal tax returns or claims for refund must use on returns or claims for refund. IRS, PTIN Requirements for Tax Return Preparers, https://www.irs.gov/tax-professionals/ptin-requirements-for-tax-return-preparers (last visited Dec. 1, 2022).

15 31 C.F.R. Part 10; IRS, General Requirements for the Annual Filing Season Program Record of Completion, https://www.irs.gov/tax-professionals/general-requirements-for-the-annual-filing-season-program-record-of-completion (last visited Dec. 1, 2022); Rev. Proc. 2014-42, 2014-29 I.R.B. 192.

16 Rev. Proc. 2014-42, 2014-29 I.R.B. 192.

17 IRS, Directory of Federal Tax Return Preparers with Credentials and Select Qualifications, https://irs.treasury.gov/rpo/rpo.jsf (last visited Dec. 1, 2022).

18 IRS response to TAS information request (Sept. 30, 2022).

19 *Registered Tax Preparers*, State of Cal. Franchise Tax Bd., https://www.ftb.ca.gov/tax-pros/california-tax-education-council.html (last visited Dec. 1, 2022); *Paid Preparers and Facilitators*, Conn. State Dep't of Revenue Servs., https://portal.ct.gov/DRS/TSC/Paid-Preparers/Preparers (last visited Dec. 1, 2022); *Guidance: Income Tax Return Preparers*, Iowa Dep't of Revenue, https://tax.iowa.gov/guidance-tax-return-preparers (last visited Dec. 1, 2022); *Registration – Individual Tax Preparers*, Md. Dep't of Labor, https://www.dllr.state.md.us/license/taxprep/taxpreplic.shtml (last visited Dec. 1, 2022); *Tax Preparer and Facilitator Registration and Continuing Education*, N.Y. State Dep't of Taxation and Fin., https://www.tax.ny.gov/tp/reg/tpreg.htm (last visited Dec. 1, 2022); *Exam Requirements*, Or. Bd. of Tax Practitioners, https://www.oregon.gov/obtp/Pages/ExamRequirements.aspx (last visited Dec. 1, 2022).

20 IRS, CDW, PTIN, IRTF (Nov. 2022).

21 For a summary of the various state requirements, see *Tax Preparer Regulations by State*, Surgent, https://www.theincometaxschool.com/preparer-regulations-by-state/ (last visited Dec. 1, 2022).

22 For an explanation of the various credentials, see IRS, Understanding Tax Return Preparer Credentials and Qualifications, https://www.irs.gov/tax-professionals/understanding-tax-return-preparer-credentials-and-qualifications (last visited Dec. 1, 2022).

23 IRS response to TAS information request (Sept. 30, 2022).

24 IRS, Enrolled Agent Information, https://www.irs.gov/tax-professionals/enrolled-agents/enrolled-agent-information (last visited Dec. 1, 2022).

25 IRS, Enrolled Retirement Plan Agent (ERPA) Program Changes, https://www.irs.gov/retirement-plans/enrolled-retirement-plan-agent-erpa-program-changes (last visited Dec. 1, 2022).

26 IRS, Enrolled Actuary Information, https://www.irs.gov/tax-professionals/enrolled-actuaries/enrolled-actuary-information (last visited Dec. 1, 2022).

27 IRS, Pub. 5166, IRS Volunteer VITA/TCE Volunteer Quality Site Requirements 4-6 (Oct. 2022); IRS, Pub. 5101, Intake/Interview & Quality Review Training (Aug. 2022); IRS, Pub. 4961, VITA/TCE Volunteer Standards of Conduct – Ethics Training, 2022 Returns (Oct. 2022).

28 Michael Best, *Public Views on Paid Tax Preparation 2017: Strong Public Support Continues for New Consumer Protections to Prevent Errors and Fraud*, Consumer Fed'n of Am. 3 (Mar. 2017).

29 *See, e.g.*, IRS, Tax Tip 2021-14, Tips to Help People Choose a Reputable Tax Preparer (Feb. 5, 2021).

30 *United States v. Boyle*, 469 U.S. 241 (1985); IRC § 6664(c)(1); Treas. Reg. § 1.6664-4.

31 National Taxpayer Advocate 2014 Annual Report to Congress vol. 2, at 1-26 (Research Study: *Low Income Taxpayer Clinic Program: A Look at Those Eligible to Seek Help from Clinics*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/2014-ARC_VOL-2_1-LITC-Program-508.pdf.

32 IRS, CDW, IRTF TY 2018-2021, PTIN, and Audit Information Management System Table (through Sept. 29, 2022).

33 *Id.*

34 For a more detailed discussion of the findings of these studies, see National Taxpayer Advocate 2023 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 5-8 (Legislative Recommendation: *Authorize the IRS to Establish Minimum Competency Standards for Federal Tax Return Preparers*).

35 GAO, GAO-06-563T, *Paid Tax Return Preparers: In a Limited Study, Chain Preparers Made Serious Errors* (2006). Of the 19 returns prepared during the visits, 17 computed the wrong tax liability.

36 TIGTA, Ref. No. 2008-40-171, *Most Tax Returns Prepared by a Limited Sample of Unenrolled Preparers Contained Significant Errors* (2008). Of the 28 returns prepared by non-credentialed preparers visited, 61 percent were prepared incorrectly.

37 Statement of Jamie Woodward, Acting Comm'r, N.Y. Dep't of Taxation and Fin., before IRS Tax Return Preparer Review Pub. Forum (Sept. 2, 2009). In the 2008 and 2009 visits, they found "an epidemic of unethical and criminal behavior," and they made over 20 arrests and secured 13 convictions.

38 IRS, Pub. 5162, Compliance Estimates for the Earned Income Tax Credit Claimed on 2006-2008 Returns 24-26 (Aug. 2014).

39 IRS, CDW, IRTF TY 2018-2021, PTIN, and Individual Master File Transaction History table (through Sept. 29, 2022).

40 IRS, CDW, IRTF, PTIN. A sample of one million TY 2020 individual income tax returns prepared by credentialed and non-credentialed preparers was used to perform propensity score matching to protect against self-selection bias since a taxpayer could intentionally select a non-credentialed preparer. Preparers who had an AFSP effective date in CY 2021 were placed in the credentialed category. A propensity score was calculated based on the following variables: adjusted gross income quartiles, total positive income (TPI) class, head of household and married filing joint filing statuses, an EITC indicator, a Schedules C or F indicator, and an age over 50 indicator. These characteristics were used to create a matched sample of returns prepared by credentialed and non-credentialed preparers. DIF deciles of TY 2020 returns were then calculated for each TPI class, and each return was placed in its respective DIF decile within the credentialed and non-credentialed preparer groups.

41 31 C.F.R. § 10.3.

42 IRS, AFSP, https://www.irs.gov/tax-professionals/annual-filing-season-program (last visited Dec. 1, 2022).

43 Rev. Proc. 2014-42, 2014-29 I.R.B. 192.

44 IRS, Understanding Tax Return Preparer Credentials and Qualifications, https://www.irs.gov/tax-professionals/understanding-tax-return-preparer-credentials-and-qualifications (last visited Dec. 1, 2022).

45 Before the IRS was enjoined from administering the return preparer program in *Loving v. IRS*, 917 F. Supp. 2d 67 (D.D.C. 2013), *aff'd*, 742 F.3d 1013 (D.C. Cir. 2014), registered tax return preparers were subject to Circular 230. 31 C.F.R. § 10.8(c).

46 31 C.F.R. Part 10.

47 During the last three fiscal years, the number of cases in OPR's inventory is significantly lower than immediately preceding years. In fiscal year (FY) 2022, OPR had 54 cases in its inventory; in FY 2021, 56 cases; in FY 2020, 47; in FY 2019, 171; and in FY 2018, 227. IRS response to TAS information request (Oct. 13, 2022).

48 31 C.F.R. Part 10; IRC §§ 6694, 6695, 6700, 6701, 6713, 7216.

49 *See*, *e.g.*, IRS, Tax Scams/Consumer Alerts, https://www.irs.gov/newsroom/tax-scams-consumer-alerts (last visited Dec. 1, 2022); IRS, IRS Criminal Investigation Issues 10 Tips to Avoid Tax Season Fraud (Jan. 19, 2022), https://www.irs.gov/compliance/criminal-investigation/irs-criminal-investigation-issues-10-tips-to-avoid-tax-season-fraud.

50 Complaints are filed on IRS Form 14157, Return Preparer Complaint, https://www.irs.gov/pub/irs-pdf/f14157.pdf.

51 *See* TIGTA, Ref. No. 2020-30-027, *Tax Return Preparer With Delinquent Tax Returns, Tax Liabilities, and Preparer Penalties Should Be More Effectively Prioritized* (2020), https://www.tigta.gov/reports/audit/tax-return-preparers-delinquent-tax-returns-tax-liabilities-and-preparer-penalties.

52 IRC § 7803(a)(3)(I).

53 *See* IRS Notice 2011-6, 2011-3 I.R.B. 315.

54 IRS, Deputy Commissioner Services and Enforcement, Approved IRS Servicewide Preparer Strategy (Nov. 2020).

55 Specifically, the six strategic goals are:

- Establish governance, improve leverage and centralize compliance activities.
- Reduce opportunities for preparer misconduct and identify non-compliance.
- Make a multi-year commitment to preparer related research.
- Continue improvements in information technology and information sharing.
- Coordinate Servicewide to enhance communication and coordination to ensure our employees are engaged and understand the overall SWPS.
- Communicate key messages with external partners and stakeholder groups that advance the goals of SWPS to improve preparer conduct and access to information.

56 IRS, Communication Plan: Servicewide Preparer Strategy (Apr. 2022).

APPEALS

Staffing Challenges and Institutional Culture Remain Barriers to Quality Taxpayer Service Within the IRS Independent Office of Appeals

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Taxpayers wishing to obtain review of their case by the IRS Independent Office of Appeals (Appeals) have been experiencing long delays, with the average case spending more than a year in Appeals' inventory.[1] When Appeals hears cases, taxpayers encounter policies determined more for the convenience of Appeals than the needs of taxpayers. A timely appeal in a fair and unbiased forum, carrying the perception and reality of independence, is an essential aspect of taxpayer rights and quality tax administration.

EXPLANATION OF THE PROBLEM

An Appeals review represents taxpayers' last, and often best, chance to settle their cases administratively within the IRS. Such resolutions constitute the ideal scenario for taxpayers and the IRS, as they minimize costs and expedite finality. However, case delays, inflexible policies by Appeals, and an apparent lack of independence are hampering this process, which leaves some taxpayers with concerns and doubts about Appeals' independence.

Once a case is transferred to Appeals,[2] it sits for an average of 48 days before being assigned to an Appeals Officer (AO).[3] These AOs are themselves overwhelmed, as their numbers have fallen by approximately 33 percent since fiscal year (FY) 2010.[4] Unsurprisingly, cycle times have increased by 103 percent from FY 2017 to FY 2022.[5] Once AOs are able to focus on a taxpayer's case, they may lack general training and specific subject matter expertise, which have been diminishing on account of institutional attrition. Practitioners report that in many instances they feel an added burden to educate AOs on administrative procedures, the IRC, the law, or evidentiary rules, and this additional work causes taxpayers to incur extra costs. This scenario, although not Appeals' fault, is taxpayers' problem, as they are left wondering what has become of their cases, why they should pay additional costs, and how to capture the attention of overworked AOs.

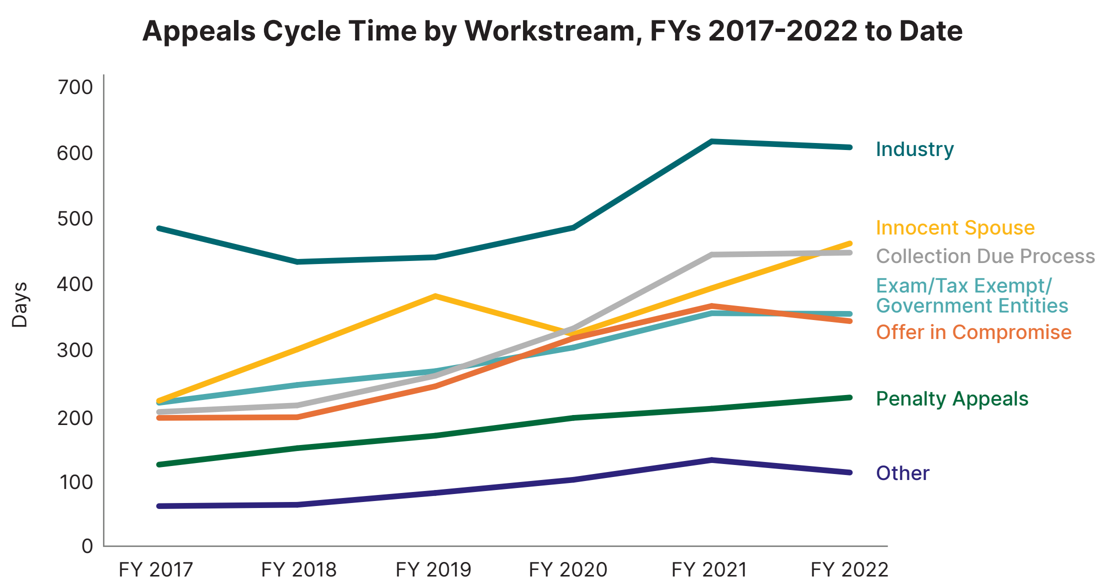
After waiting out initial delays, taxpayers are subject to certain Appeals policies that represent a "take it or leave it" proposition. For example, taxpayers sometimes find that the AO with whom they are interacting lacks the practical authority to settle their case.[6] Sometimes, taxpayers may feel that the assigned AO is simply a conduit between the taxpayer and a technical guidance coordinator who is actually deciding the case. Other procedures impact independence, such as situations in which the IRS Office of Chief Counsel (IRS Counsel) and Compliance are invited to Appeals hearings beyond the pre-conference,[7] even if taxpayers object.[8] In these cases, it is possible or even probable that the AO has a prior working relationship with the Compliance agent or Counsel attorney. Further, at the conclusion of many Appeals proceedings, the AO provides an explanatory Appeals Case Memorandum (ACM) to the Compliance team but does not provide a copy to the taxpayer. Although many of Appeals' challenges are not of its own making, taxpayers should still have a right to expect Appeals proceedings that are timely, fair, and independent.

ANALYSIS

Appeals' Delays Have Adverse Consequences for Taxpayers

Taxpayers with nondocketed cases in Appeals can currently expect a resolution in an average of 365 days – 103 percent (185 days) longer than in FY 2017.[9] Cycle times, which vary depending on the complexity and type of case involved, have generally been trending upward for all major Appeals workstreams, as shown in Figure 2.9.1.[10]

FIGURE 2.9.1[11]



These expanding cycle times have a real-world impact on taxpayers. As related by one practitioner who focuses on collection cases, her clients generally come to Appeals eager to quickly resolve their issues.[12] Although taxpayers provide the requisite information, delays of various sorts within Appeals can cause cases to linger on for months and even years. In some situations, so much time is wasted that taxpayers have to repeatedly submit new and updated financial information. They are left frustrated and angry as their financial lives remain on hold while they wait for Appeals to conclude their cases.

Another practitioner lamented that taxpayers sometimes bear the negative consequences from AOs' inability to keep up with their inventories.[13] The result can be that taxpayers are left in limbo. In one situation, even though the taxpayer wanted to drop the appeal and move forward by fully paying the balance, it was impossible to do so until an AO was finally assigned and able to pick up the case.[14]

An additional complication, exacerbated by the pandemic, is that taxpayers whose refund claims have been disallowed by the IRS generally have two years to obtain the refund or to file a petition in a U.S. district court or the U.S. Court of Federal Claims, unless they enter into an extension agreement with the IRS by signing Form 907, Agreement to Extend the Time to Bring Suit.[15] This two-year period is sometimes nearing a close by the time taxpayers conclude their dealings with Appeals, and taxpayers, practitioners, and AOs may not know of the need for a Form 907 extension or may face bureaucratic hurdles within Appeals when attempting to obtain such an extension.[16] TAS has been working with Appeals to streamline these procedures and to develop alternative solutions that would mitigate these timing issues.[17] Of course, taxpayers can protect themselves by filing a petition in the U.S. Tax Court, but such a step imposes unnecessary burdens on taxpayers wishing to obtain timely and fair case resolutions. The National Taxpayer Advocate has suggested that the IRS issue guidance pursuant to IRC § 7508A to postpone the deadline under IRC § 6532 for notices of claim disallowance that the IRS issued since the start of the COVID-19 pandemic and for which the period of filing suit has not yet expired.[18] At this time, IRS Counsel is not interested in providing a postponement.[19]

Account and Processing Support Currently Represents a Bottleneck Within Appeals

When cases arrive at Appeals, they go to Account and Processing Support (APS) for intake, technical processing, and transfer to an Appeals office, where they are assigned to individual AOs. If a petition has already been filed by the taxpayer in the U.S. Tax Court, APS sends the case to IRS Counsel, which will file an answer with the Tax Court before the case comes back to APS to continue in the Appeals workflow.[20] As described more fully below, Appeals temporarily prioritized cases docketed in the Tax Court over non-docketed cases, to address increased inventory arising from communications challenges during the COVID-19 pandemic, causing longer delays for non-docketed cases.[21] Regardless, APS is the gateway to Appeals, and the gate has become perilously narrow.

During FY 2022, approximately 74,000 cases arrived at Appeals.[22] Each of these cases had to await the attention of someone in APS, which had only 195 employees by the end of FY 2022.[23] APS has experienced a "brain drain," with many of its senior employees moving into other parts of the IRS where there was the possibility for career advancement and enhanced compensation.[24] Finding themselves with an overwhelming workload and no meaningful career path within Appeals, many APS employees looked for better alternatives elsewhere. A well-staffed and experienced group of APS personnel is essential to the smooth and efficient operation of Appeals, and the lack of such a group helps explain the average 48 days in APS inventory before a case is first transferred to an Appeals office.[25] This is important because while cases sit with APS, taxpayers are in limbo, unable to contact anyone in Appeals about the status of their cases.

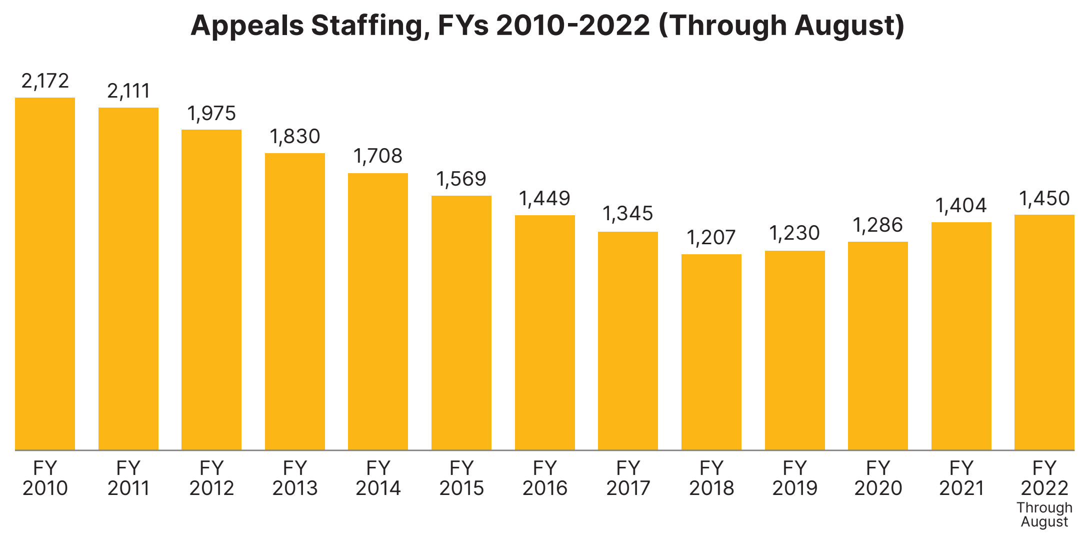
To its credit, Appeals recognizes this problem and is attempting to develop a more attractive career path for APS personnel within Appeals.[26] Further, Appeals is striving to hire additional APS employees.[27] This effort is somewhat undercut, however, by the circumstance that entry-level IRS personnel in general earn roughly the same as new Waffle House employees and others just starting out in the retail industry.[28] To the extent possible, the IRS should allocate some of the Inflation Reduction Act of 2022 funds to implement a competitive tiered pay structure, which would provide opportunities for advancement and retention of experienced APS personnel and AOs.[29]

Appeals is also instituting steps to increase the efficiency of APS's efforts, including leveraging modernization and technology. These steps include working with Compliance to receive electronic case files, which can be more quickly processed and transferred to Appeals offices.[30] Likewise, Appeals is seeking ways in which APS can eliminate some extraneous duties, allowing employees to focus on their core tasks.[31] Successfully staffing APS and enhancing its productivity is a crucial starting point in reducing the long cycle times within Appeals.

Appeals Officers Are Understaffed and Overwhelmed

Another component of the delay issue is a lack of AOs, which has been a problem for years. Between FYs 2010 and 2017, the population of Appeals employees fell by approximately 40 percent.[32] Staffing has remained relatively constant since then with some recent improvements.[33] However, maintaining or even moderately increasing staffing levels, especially as case receipts begin to rise after the height of the COVID-19 pandemic, is a recipe for expanding backlogs and delays.[34]

FIGURE 2.9.2[35]



In real-life terms, this means AOs, who are confronted with daunting caseloads, may not give taxpayers and their arguments the full attention they deserve and may simply rush them through to clear inventories. One practitioner described recent proceedings in which he had requested the case files, but the AOs were pushing hard to hold the hearings before they had even furnished the files.[36] Another practitioner remarked that in numerous Collection Due Process cases, his clients had been hurried through proceedings held by AOs who did not seem familiar with their cases and were uninterested in discussing the specifics, instead appearing to value their own efficiency of process above considerations of fair and just tax administration.[37]

Various factors have affected AO workloads. Among other things, Appeals has been flooded with cases from the Automated Underreporter (AUR) program and Correspondence Exam, which have increased the demands on AOs.[38] In many current cases, a statutory notice of deficiency is issued before a case is developed or worked, and the case goes straight to assessment and potentially collection or to the U.S. Tax Court if the taxpayer files a petition. For docketed cases, Counsel sends the case to Appeals for assignment. Approximately 60 percent of Campus docketed cases currently result from a statutory notice of deficiency issued by the AUR unit.[39] Most of these cases are only minimally developed, if at all, and, as a group, they significantly increase the burden on taxpayers, the Court, Counsel, and AOs. To deal with this problem, some have even suggested that the IRS suspend the issuance of most new AUR and Correspondence Exam notices.[40] TAS has urged the AUR and Correspondence unit to undertake additional contact attempts before issuing a statutory notice of deficiency for those cases with 12 months or more on the statute of limitations for assessment.[41]

Appeals has agreed to examination assistance procedures with Exam for certain docketed cases in which Appeals receives new information that must be evaluated.[42] For historical context,[43] this approach is consistent with the principles underlying the adoption of the Appeals Judicial Approach and Culture (AJAC) program in 2014.[44] To facilitate Appeals' workflow and protect its independence, AJAC allowed Appeals to return matters to Compliance for additional factual development when taxpayers raised new issues or presented new evidence.[45]

Appeals has also adopted strategies to expedite the resolution of docketed cases. These procedures include deploying additional AOs, prioritizing docketed casework in Exam Appeals, streamlining initial contact with taxpayers or their representatives through the use of telephone calls, and encouraging a greater use of oral testimony where appropriate.[46]

Another challenge for Appeals has been retaining experienced AOs. Appeals has been working hard to increase staffing and has been relatively successful in hiring new AOs.[47] The problem, though, is that they have been losing AOs on account of attrition. Hiring and training AOs is not a quick process, which means that as Appeals rebuilds its workforce, taxpayers experience delays and uncertainty. Figure 2.9.3 shows this pattern.

FIGURE 2.9.3[48]

Appeals Hiring vs. Attrition, FYs 2017-2022 to Date

	Hiring	Attrition	Net Employees
FY 2017	+24	-71	-47
FY 2018	+3	-88	-85
FY 2019	+140	-77	+63
FY 2020	+100	-83	+17
FY 2021	+153	-90	+63
FY 2022	+163	-105	+58

=5 employees

This attrition has not only largely offset Appeals' energetic hiring efforts, but, in practice, has meant that veteran AOs are routinely replaced by inexperienced AOs. This is problematic because fledgling AOs must initially spend time in training before they can start handling cases, which can be especially challenging when it comes to more complex cases. Even then, it inevitably takes time to overcome the learning curve and approach the productivity of the veteran employees they are replacing. Further, the subject matter expertise that is lost as AOs retire or otherwise move out of Appeals can take years to recover.

Appeals has hired heavily from the Compliance side of the IRS, which has its benefits and its drawbacks, as those employees possess important IRS knowledge but may also hold ingrained biases. One practitioner commented that some AOs, particularly newer AOs, often consider Appeals an extension of Exam without the ability to consider new information.[49] Compliance personnel tend to look at issues as being right or wrong, whereas an AO's function is to weigh nuanced factors in determining the hazards of litigation and to resolve even those cases that fall into a gray area. Because many AOs are not attorneys, they must develop the skillset to review a case and analyze it the way that a court would evaluate it, reaching a decision based on facts, credibility of witnesses, applicable law, and the rules of evidence – not an easy task, especially for non-lawyers. The same practitioner has observed inconsistency in quality among Appeals' personnel in understanding the application of law and described a case in which the AO refused to accept canceled checks from a bank statement as proof of payment. On the other hand, hiring from outside the IRS raises its own quality issues, as it takes time to learn IRS internal procedures, administrative guidance, tax returns, and schedules. Another practitioner referenced a situation in which the AO seemed like she had never seen a Schedule C before, and the practitioner essentially had to educate her.[50]

Appeals can remedy some of these problems with a careful blend of internal and external hires and with more comprehensive training of new and inexperienced AOs. Among other things, this training should focus on the proper role of an AO, the importance of independence, the nuances of hazards of litigation settlements, and an understanding of both the letter and spirit of *ex parte* limitations. AOs should receive ongoing training throughout their careers and not just at the onset of their employment.[51] Such training can represent a crucial step in helping to improve the consistency and quality of AO performance.

Appeals must also find ways of limiting attrition, which it has done by creating career ladders for lower-graded employees.[52] It has also attempted to create higher-graded career ladders, but the IRS Human Capital Office (HCO) halted these efforts due to requirements of the Office of Personnel Management.[53] Beyond these efforts, Appeals also must be able to ramp up hiring so that it can restore AO numbers to near-2010 levels with qualified applicants. For this broad hiring to occur, the IRS must allocate Appeals the necessary funding, and IRS HCO must function more effectively and efficiently than it has in recent years.[54] If Appeals is able to achieve critical mass, this will help stabilize institutional knowledge and ensure sufficient staffing to address daunting case receipts and spiraling cycle times.

Appeals' Culture Prioritizes the IRS Over Taxpayers[55]

Appeals Must Operate Independently of IRS Influence

Many of the delays discussed above are beyond Appeals' direct control. Nevertheless, the National Taxpayer Advocate appreciates that Appeals is working to address these issues and expedite the Appeals process. Just as important as a timely appeal, however, is an accessible forum in which taxpayers can obtain an even-handed outcome. Appeals must be independent, both in fact and in appearance. Its mission of achieving the maximum number of fair case resolutions requires that Appeals favor neither the IRS nor taxpayers. This unbiased outlook is essential to arrive at objective evaluations of IRS positions and to negotiate case settlements with taxpayers.

Congress has long understood the importance of an independent Appeals function within the IRS as a means of minimizing litigation, which is burdensome and expensive to both taxpayers and the government. Accordingly, Congress codified Appeals' operations as part of the IRS Restructuring and Reform Act of 1998 (RRA 98).[56] Later, the IRS took steps to preserve Appeals' independence by placing parameters around *ex parte* communications between IRS personnel and Appeals.[57] In 2019, Congress then weighed in by codifying the office and retitling it the "Internal Revenue Service **Independent** Office of Appeals"[58] (emphasis added). As explained in the legislative history of the Taxpayer First Act, the intent of the provision was to "reassure taxpayers of the independence" of Appeals.[59] The National Taxpayer Advocate does not believe that anyone assumes that changing the name to include "independent" actually makes the organization independent; rather, it is the actions that will support this conclusion and sway the taxpayer's perception of an unbiased Appeals function. "Independent" should not be in name only.

Congress's legislative efforts are based in the recognition that Appeals is in constant jeopardy of having its culture subsumed within the larger IRS culture. Appeals must guard against this gravitational pull if it is to fulfill its mission. For example, Appeals has some offices that are located in the same posts of duty as other IRS personnel in many cities and also receives advice from IRS Counsel.[60] While Appeals is generally not bound by this advice,[61] these repeated interactions almost inevitably create a combined institutional comfort, familiarity, and credibility that can unintentionally put taxpayers at a disadvantage and negatively impact the appearance of objectivity. As a result, Appeals should at least consider the desirability and feasibility of seeking segregated office space and having its own independent Counsel, similar to that currently sought by TAS.[62] The lack of apparent independence will negatively impact its mission.

A more immediately achievable step that would further the perception of evenhandedness is to require AOs share the ACM with taxpayers at the close of the case.[63] AOs draft the ACM at the end of an appeals proceeding to explain the analysis and support the outcome. The ACM, which can be quite detailed, is shared within the IRS but not with affected taxpayers. Arguably, circulation of the ACM does not represent *ex parte* communication, as the matter has been administratively concluded within the IRS. Nevertheless, the failure to share the ACM with taxpayers does impact taxpayers' perception of Appeals' objectivity. These cases are resolved based upon a taxpayers' request for administrative appeal, and it seems reasonable that taxpayers should be allowed to see the documentation setting forth the reasoning that governed their outcomes. In some instances, the issue impacts a tax position on a future tax return, and taxpayers should have an understanding of how the Appeals resolution impacts subsequent return positions. Failure to do so makes Appeals look very much like an IRS operating division, functioning to support the larger IRS institution. Such a relationship and all such appearances greatly impede the fact and appearance of independence.

Once Appeals has closed a case, AOs in certain situations have the option of holding a post-settlement conference with the originating function.[64] The purpose of this conference is to help Compliance understand the rationale for the Appeals decision and to allow Compliance to use delegated authority to settle cases with the same or related taxpayers in a manner consistent with the Appeals decision. However, this post-settlement conference is not open to the taxpayer, and the taxpayer is kept in the dark regarding discussions that may impact the future actions of Compliance. Further, if the Compliance team provides negative feedback to the AO, the possibility exists that the AO may be inclined to settle similar cases differently in the future to avoid conflict with other IRS personnel.[65] By routinely sharing the ACM with both Compliance and the taxpayer and by allowing taxpayers to attend the post-settlement conference, even if only in a monitoring capacity, Appeals can ensure transparency in the decision-making process and defuse potential conflict from Compliance.

Taxpayers Should Be Able to Meet in Person With Their Decisionmaker

Taxpayers and their representatives have historically recognized the importance of the right to sit down across a table and discuss their case with an AO who can independently bring about its ultimate resolution. For example, the American Bar Association Section of Taxation has explained, "In order for taxpayers to be amenable to the administrative Appeals process, they must feel that their legal arguments and perspective on an issue have been heard – and for that, there is no substitute for a face-to-face conference."[66] Likewise, a member of the American Institute of Certified Public Accountants (AICPA) commented, "For many taxpayers… Appeals is the first opportunity they have to present their case and have a discussion about their particular situation. By limiting face-to-face conferences, taxpayers lose the sense that their tax positions and perspectives are considered impartially."[67]

To its credit, Appeals now makes an effort to facilitate such meetings, and taxpayers are generally entitled to an in-person conference.[68] In practice, however, that right is subject to some meaningful limitations, such as the ability of the assigned office to accommodate an in-person conference or the availability of a local AO with subject matter expertise. Absent a conjunction of these circumstances, taxpayers can only obtain an in-person conference if they request a case transfer and are willing to travel to an available location.[69]

The need to seek a case transfer to accommodate an in-person conference often carries a steep price in terms of delay. One practitioner explained that if taxpayers have been waiting a year for Appeals consideration, they don't want to hear that it will take months to reassign the case for an in-person conference.[70]

Even when in-person conferences are actually held, practitioners have expressed frustration regarding the increasing prevalence of decisions being taken out of the hands of the assigned AO. They lament that settlements, rather than being determined by AOs with specific case knowledge, are increasingly governed by Appeals subject matter experts and technical guidance coordinators who are based in different field offices and who are not necessarily made available to taxpayers.[71] Among other things, settlement authority is limited when issues are designated for litigation by Counsel or established as coordinated issues, which theoretically maintains the independence of AOs but creates an environment in which that independence is highly likely to be underutilized.[72]

Practitioners have expressed to TAS the perception that these subject matter experts take a meaningfully different approach, compared to the AOs assigned to their cases. One practitioner commented that these people are sometimes not trained as AOs, don't have the same priorities, and often don't understand hazards settlements. Sometimes they aren't even at the Appeals conference, especially in the case of coordinated issues, in which, according to the practitioner, all that is provided is a broad memo applicable to all taxpayers.[73] Another practitioner raised the core issue of who is the real decisionmaker – Appeals or subject matter experts?[74] AOs themselves have apparently complained of their hands being tied, with one veteran AO reportedly telling a taxpayer off the record that he couldn't settle the case and that if he offered the taxpayer anything beyond what was approved by Counsel, he would get fired.[75]

The inability to engage directly with an independent decisionmaker in hopes of obtaining a case-specific settlement generates the same type of frustration as practical limitations in receiving an in-person conference. The desire of taxpayers and practitioners is straightforward, although admittedly difficult for Appeals to accommodate. The reoccurring theme arising in TAS's interaction with taxpayers and tax practitioners is their wish to sit across the table from a knowledgeable, unbiased party who possesses the authority to resolve the case based on the prevailing facts and circumstances.

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To be fair, in most appeals, the assigned AO has general discretion to resolve a case, and taxpayers are well-served by, and content with, appeals conferences held by phone or videoconference. Given this reality, it is even more important that Appeals' generally good work not be obscured by the quantitatively small number of cases in which taxpayers are unable to obtain a timely in-person appeal or where an AO lacks the authority to negotiate a specific settlement.[76] Even though limited in numbers, these cases fuel the public impression of lack of independence, which negatively impacts Appeals.

To increase the accessibility and timeliness of in-person conferences, as Appeals gains additional resources, it should make a priority of expanding its general staffing, its specialized expertise among AOs, and its geographic footprint. Appeals should also realize that actual or practical limitations on AOs' settlement authority cause significant consternation within the practitioner community and jeopardize the perception of Appeals as an independent office within the IRS. Accordingly, Appeals should work with the IRS to ensure that the discretion of AOs is abridged in only the most essential of situations and should make every effort to locate settlement authority with AOs rather than with subject matter experts or other national office personnel, even where such personnel are called upon to assist.[77] This discretion should include the right to determine that a taxpayer's specific facts and circumstances fall outside of coordinated issue guidelines.

Appeals Should Respect the Wishes of Taxpayers When Inviting IRS Employees to Conferences

Historically, Counsel and Compliance provided input into Appeals conferences via the case file and, if the case was particularly large or complex, at a pre-conference. The subsequent Appeals conference, sometimes referred to as the hearing, then was devoted to presentation of the taxpayer's case and settlement negotiations between the taxpayer (or the taxpayer's representative) and the AO. Counsel and Compliance personnel often did not attend such conferences, leaving taxpayers and AOs free to develop rapport, seek common ground, and pursue case resolution.

In 2016, Appeals revised provisions of the Internal Revenue Manual (IRM) to highlight AOs' discretion to include personnel from Counsel and Compliance in conferences, particularly in large and complex cases.[78] These personnel are not made a party to the actual settlement discussions, which occur near the conclusion of the conference, but they are typically given the opportunity to present an oral argument, and some even question taxpayers and their representatives during the hearing. Although Appeals has agreed to solicit and consider the views of taxpayers before inviting Counsel and Compliance to attend a conference, it has so far declined to make taxpayer consent a prerequisite for such attendance.[79]

Including Counsel and Compliance personnel over taxpayer objections violates the spirit of RRA 98 and dilutes the ability of taxpayers to present their cases in an independent forum.[80] It also runs counter to the purpose of an independent appeals conference, which is neither to give Compliance a second chance nor to transform Appeals into a mediation forum. Instead, the mission and credibility of Appeals rest on its ability to undertake direct and unbiased settlement negotiations with taxpayers and their representatives, apart from other IRS functions.

AOs should be expert enough and empowered enough to hold conferences without Counsel or Compliance involvement. The hesitancy or inability to deal with these challenging cases without bringing in outside experts points to training and staffing deficiencies in Appeals' current workforce. Likewise, it hints at a culture in which Appeals is reluctant to make unpopular decisions that potentially draw the ire of Counsel or Compliance. Appeals justifies Counsel and Compliance participation on efficiency grounds, but in cases where taxpayers object to this inclusion, Appeals should seek ways of understanding IRS positions and clarifying disputes with taxpayers that do not imperil its independence, either in perception or in fact.[81]

Appeals points to positive customer satisfaction surveys and argues that many taxpayers find the inclusion of Counsel and Compliance in hearings to be helpful in the resolution of their cases.[82] TAS has been told, however, that such proceedings do not always operate as intended, and their success rests with the personal strength of the AO in charge of the case. One practitioner observed that stronger AOs ask Compliance to leave the room when appropriate, but in some cases, more vocal or aggressive Counsel attorneys have remained in the room even into the settlement discussion, interrupting and pushing back on those negotiations, making the conference a bad experience.[83]

Even accepting, for the sake of argument, that the rosy picture painted by Appeals is correct and that most taxpayers appreciate the involvement of Counsel and Compliance in conferences, this is all the more reason why such participation should only occur if taxpayers consent. If the vast majority of taxpayers and their representatives do, in fact, welcome Counsel and Compliance participation and are persuaded that AOs are trained and empowered to prevent IRS personnel from interfering with settlement discussions, then Appeals has little to lose from allowing the small minority of taxpayers who feel differently to have the right to decline such inclusion. Giving taxpayers no choice in such a central aspect of their own conference is heavy-handed and runs counter to the taxpayer-centric model of tax administration that an Independent Office of Appeals should embrace.

CONCLUSION AND RECOMMENDATIONS

A common refrain from taxpayers, practitioners, and stakeholders is that Appeals has a crucial role to play within the IRS and that AOs generally bring a high degree of skill and professionalism to their cases. However, over the past decade, Appeals has faced challenges with funding and employee attrition that have made providing top-notch taxpayer service difficult. Currently, the average Appeals case takes about a year to resolve, which means that by the time taxpayers hear from an AO to discuss their cases, they may already be frustrated and exhausted by the process. With increased hiring and training, as well as modernized systems for electronic case files, Appeals will be able to improve cycle times, an important step toward quality taxpayer service. Appeals can also make important strides in reinforcing its role as an independent office within the IRS by adopting more taxpayer-friendly practices regarding conferences and by empowering AOs as final decisionmakers.

Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Continue efforts to increase hiring of APS personnel and AOs while designing career paths that encourage advancement and retention within Appeals.
2. Dedicate resources, including circuit riding to cities without an Appeals presence, to provide meaningful in-person conferences expeditiously and without the need for burdensome travel on the part of taxpayers and practitioners.
3. Empower AOs to make independent decisions on their assigned cases, with technical guidance coordinators and other subject matter experts limited to advisory roles in all but the rarest situations.
4. Change the IRM to require that all ACMs be shared with both the taxpayer and the Compliance function and, where post-settlement conferences are held, taxpayers must be invited to attend, even if in a monitoring capacity.

Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Amend IRC § 7803(e) to provide that, where taxpayers whose cases are nondocketed have a right to a conference with the Independent Office of Appeals, this conference will only include personnel from the Office of Chief Counsel or the Compliance functions of the IRS if taxpayers consent to that participation.[84]

RESPONSIBLE OFFICIAL

Andrew Keyso, Chief, Independent Office of Appeals

IRS COMMENTS

The IRS Independent Office of Appeals (Appeals) is proud of our unique role within tax administration of fairly and impartially resolving tax disputes without litigation, and we are committed at every level of the organization to enriching the taxpayer experience. We appreciate the National Taxpayer Advocate's input on how Appeals can improve its service to taxpayers and their representatives.

The Covid-19 pandemic imposed unprecedented demands on Appeals, and we are pleased with the creativity and ingenuity our employees showed in adapting work processes to ensure that Appeals continued to fulfill its responsibility to hear taxpayer appeals. Appeals employees transitioned cases to paperless formats, created electronic case closing processes to facilitate remote work, and conducted Appeals hearings through videoconference to provide taxpayers with a "face to face" option. Appeals reprioritized its work to address a spike in cases docketed in the U.S. Tax Court that resulted from difficulties taxpayers faced communicating with the IRS during the pandemic, and our employees worked and closed over 7,500 of these docketed cases using streamlined procedures that focused on quick resolutions for taxpayers. The efforts of our employees are reflected in the fact that many of these process changes will continue as best practices post-pandemic, and that cycle times, after peaking in 2021, began decreasing in 2022 and will continue to do so in 2023.

Appeals takes very seriously our mandate under the Taxpayer First Act to be independent from the IRS compliance functions and impartial in our consideration of taxpayer cases. Promoting an independent and impartial mindset requires continued emphasis, which Appeals provides through regular employee training and through the tone set by Appeals management. We are actively recruiting applicants from industry and public accounting, on the theory that an Appeals which is independent of IRS Compliance should have a workforce with a diversity of professional backgrounds. We will continue, within the bounds of our allocated budget, to strive to hire the best and brightest into Appeals, and to ensure these employees recognize their role as impartial arbiters who take the time to listen to, and hear, taxpayer concerns with an eye toward resolving cases consistent with the hazards of litigation faced by each side. In certain specialized cases, the Appeals Officer may coordinate with other Appeals employees, such as technical guidance coordinators, engineers, appraisers, and economists, for assistance – akin to how a law or accounting firm may employ in-house experts on specialty topics. It is essential to taxpayer fairness for Appeals to have a way to coordinate issues and ensure consistency in settlements nationwide.

Conferences are the key way in which Appeals hears the taxpayer's position, understands the legal and factual considerations informing the taxpayer's dispute with the IRS, and is able to propose a resolution to the taxpayer. During the conference, the taxpayer and their representative engage with Appeals in discussing potential settlements. At the conclusion of their case, the taxpayer and representative should clearly understand exactly how and why their case was resolved. Compliance is generally not present for the settlement discussions. Appeals shares the Appeals Case Memorandum memorializing the case resolution with Compliance so that Compliance can also understand the reasons for the settlement reached between the taxpayer and Appeals. Similarly, informational post-settlement conferences help Compliance understand the rationale for the Appeals decision. Post-settlement conferences are available only in cases originating from the IRS's Large Business & International (LB&I) Division and worked by an Appeals Team Case Leader (ATCL), some of the largest and most complex cases received in Appeals. These conferences are not a forum for Compliance to express disagreement with or critique the Appeals resolution.

Appeals' policies and procedures are informed by regular feedback from external stakeholders. We participate every year in the Nationwide Tax Forums, this year engaging with an audience of almost 8,000 tax practitioners about our ongoing efforts to improve the taxpayer experience. We also launched a *Practitioners Perspectives* series of panel discussions (available for playback on IRS.gov), in which practitioners share insights and input with Appeals technical employees on key workstreams and issues. In addition, every taxpayer or representative with a pending appeal is invited to participate in our customer satisfaction survey. Our survey results consistently show that the majority of Appeals customers are satisfied with the service they receive from Appeals, including the fairness of Appeals employees.

We recognize there is always room for improvement. Based on the feedback from external stakeholders, we recently updated our initial contact letters to provide the contact information of the assigned Appeals Officer's manager so that taxpayers and their representatives have a second point of contact should additional help be needed. We are also updating our policies and communications to ensure taxpayers and representatives understand that Appeals offers conferences by telephone, video, and in person, and that it is generally their choice how to meet with us. We will continue to listen to taxpayer and practitioner feedback and prioritize improvements to the taxpayer experience in Appeals during 2023.

TAXPAYER ADVOCATE SERVICE COMMENTS

TAS applauds Appeals' efforts to address challenges, many of which are not of its own making. The COVID-19 pandemic presented Appeals' personnel and operations with substantial obstacles that it has successfully navigated. Appeals has also energetically addressed the flood of docketed appeals arriving in its inventory and is actively engaged in hiring additional AOs. This hiring will help alleviate case delays, but the attrition of veteran AOs sometimes leaves taxpayers with inconsistent experiences when bringing cases to Appeals. Training that focuses on the proper role of an AO, the importance of independence, the nuances of hazards of litigation settlements, and an understanding of both the letter and spirit of *ex parte* limitations, along with designing career paths that encourage advancement and retention within Appeals, will go a long way toward continuing to improve the consistency and quality of Appeals proceedings.

TAS agrees with Appeals regarding the importance of independent and unbiased case resolutions. Appeals deserves credit for its willingness to engage with the tax community and for the circumstance that the majority of taxpayers coming before Appeals are satisfied with their interactions and case outcomes. Nevertheless, additional steps need to be taken to preserve Appeals' independence and to foster a culture of taxpayer service. For example, although there is a role for technical experts and case coordination in certain situations, the pervasive use of these resources creates the perception, if not the reality, that Appeals is part of a larger IRS institution that simply dictates settlement terms to taxpayers. As a result, Appeals should empower AOs to make independent decisions on their assigned cases with technical guidance coordinators and other subject matter experts limited to advisory roles in all but the rarest situations.

Similarly, Counsel and Compliance actively participate in only a small portion of Appeals conferences and in many of those cases are welcomed, or at least accepted, by taxpayers and their representatives. This circumstance should make it easy for Appeals to respect the wishes of taxpayers who object to such participation. AOs routinely resolve legal issues and factual disputes without having Counsel and Compliance actively engaged in conferences, and AOs should be able to cope, even in the most complicated proceedings, where, for whatever reason, taxpayers prefer to seek case resolution without other IRS personnel.

Once Appeals proceedings are closed, taxpayers should receive a copy of the ACM and an invitation to attend the post settlement conference, if it is held. The National Taxpayer Advocate does not believe Appeals' role is to assuage or educate Compliance. While Compliance may well have a legitimate interest in understanding the rationale for an Appeals settlement and the impact this may have on future years, taxpayers are likewise entitled to this reasoning. Appeals explains that the communications occurring via these mechanisms are purely informational, but this only reinforces the need for transparency regarding the outcomes of taxpayers' own cases.

Appeals would benefit from continued progress toward a culture of improved taxpayer service and reinforcement of taxpayer rights. This would enhance the perception that Appeals provides an independent review in a fair and equitable forum while costing Appeals relatively little in terms of resources and efficiency. Appeals is essential to achieving administrative case resolutions within the IRS, and these steps will help ensure that taxpayers continue to value Appeals as a way to resolve their cases impartially, independent of the perspectives of Counsel and Compliance.

RECOMMENDATIONS

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Continue efforts to increase hiring of APS personnel and AOs while designing career paths that encourage advancement and retention within Appeals.
2. Dedicate resources, including circuit riding to cities without an Appeals presence, to provide meaningful in-person conferences expeditiously and without the need for burdensome travel on the part of taxpayers and practitioners.
3. Empower AOs to make independent decisions on their assigned cases, with technical guidance coordinators and other subject matter experts limited to advisory roles in all but the rarest situations.
4. Change the IRM to require that all ACMs be shared with both the taxpayer and the Compliance function and, where post-settlement conferences are held, taxpayers must be invited to attend, even if in a monitoring capacity.

Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Amend IRC § 7803(e) to provide that, where taxpayers whose cases are nondocketed have a right to a conference with the Independent Office of Appeals, this conference will only include personnel from the Office of Chief Counsel or the Compliance functions of the IRS if taxpayers consent to that participation.[85]

Endnotes

1 Cycle time is defined as the time between when Appeals receives a case and when Appeals closes a case. IRS response to TAS information request (Aug. 24, 2022).

2 For simplicity, there are three main types of Appeals cases: (1) administrative appeals (non-docketed cases), (2) cases docketed in the U.S. Tax Court (docketed cases), and (3) collection and bankruptcy matters.

3 IRS response to TAS information request (Aug. 24, 2022). Appeals Technical Employee (ATE) is the umbrella term used to refer to any Appeals employee who is assigned a case for settlement consideration. This includes both Settlement Officers and Appeals Officers. For purposes of this Most Serious Problem, TAS will adopt the commonly used term "Appeals Officer" as a collective reference for ATEs. Internal Revenue Manual (IRM) Exhibit 8.1.1-1, Common Terms Used in Appeals (Oct. 1, 2016).

4 Government Accountability Office (GAO), GAO-18-6549, *Tax Administration: Opportunities Exist to Improve Monitoring and Transparency of Appeal Resolution Timeliness* (2018), www.gao.gov/assets/700/694840.pdf; IRS response to TAS information request (Aug. 24, 2022).

5 IRS response to TAS information request (Aug. 24, 2022); IRS response to TAS fact check (Nov. 25, 2022).

6 *See*, *e.g.*, TAS conversation with practitioner group (July 13, 2022).

7 For more background regarding the steps in an Appeals proceeding, including the pre-conference, see National Taxpayer Advocate 2017 Annual Report to Congress 204-205 (Most Serious Problem: *Appeals*: T*he IRS's Decision to Expand the Participation of Counsel and Compliance Personnel in Appeals Conferences Alters the Nature of Those Conferences and Will Likely Reduce the Number of Agreed Case Resolutions*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC17_Volume1_MSP_18_AppealsCounsel.pdf.

8 The Examination and Collection functions of the IRS comprise IRS Compliance. For an in-depth discussion of the process that led to the IRS's current practice regarding Counsel and Compliance participation in conferences, see National Taxpayer Advocate 2017 Annual Report to Congress 203-210 (Most Serious Problem: *Appeals*: *The IRS's Decision to Expand the Participation of Counsel and Compliance Personnel in Appeals Conferences Alters the Nature of Those Conferences and Will Likely Reduce the Number of Agreed Case Resolutions*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC17_Volume1_MSP_18_AppealsCounsel.pdf. For TAS's current recommendation to Congress on this topic, see National Taxpayer Advocate 2022 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 78-80 (Legislative Recommendation: *Require Taxpayers' Consent Before Allowing IRS Counsel or Compliance Personnel to Participate in Appeals Conferences*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_PurpleBook_05_StrengthTPRappeals_39.pdf. *See also* Appeals, Appeals Team Case Leader Conferencing Initiative: Summary of Findings and Next Steps (Sept. 2021), www.irs.gov/pub/irs-utl/atcl_update.pdf.

9 IRS response to TAS information request (Aug. 24, 2022); IRS response to TAS fact check (Nov. 25, 2022).

10 Appeals notes that the 35-day shutdown in FY 2019 and the COVID-19 pandemic for FYs 2020-2022 significantly impacted cycle time, as Appeals employees were mandatorily kept out of the office, creating delays in moving case files and other case-related materials. IRS response to TAS fact check (Nov. 26, 2022).

11 IRS response to TAS information request (Aug. 24, 2022). This figure excludes one workstream, coordinated industry cases, for the sake of clarity because while the cycle times of these cases follow the same trend, the 61 cases from this workstream closed in FY 2021 took an average of 1,589 days to resolve, and since this is so much higher than all other workstreams, the inclusion of coordinated industry cases in this figure would render the trends difficult to portray.

12 TAS conversation with practitioner group (June 21, 2022).

13 *Id.*

14 *Id.*

15 IRC § 6532(a)(1), (2). If the taxpayer does not file a timely refund suit, any refund issued after the period for filing suit is an erroneous refund. IRC § 6514(a)(2). Any extension must be executed by the taxpayer and the IRS before the two-year period has expired. Rev. Rul. 71-57, 1971-1 C.B. 405.

16 *See* Erin M. Collins, Notice of Claim Disallowance: Don't Make This Mistake, National Taxpayer Advocate Blog (Apr. 15, 2022), https://www.taxpayeradvocate.irs.gov/news/nta-blog-notice-of-claim-disallowance-dont-make-this-mistake/.

17 *Id.*

18 National Taxpayer Advocate Priority Guidance Plan Recommendation #2 (June 3, 2022) (on file with TAS). *See* IRS, Office of Tax Policy and Internal Revenue Service Priority Guidance Plan, https://www.irs.gov/privacy-disclosure/priority-guidance-plan (last visited Oct. 27, 2022).

19 IRS response to TAS fact check (Nov. 25, 2022).

20 IRM 8.20.5.5.1.1(4), (6), Docketed List Responsibilities (July 1, 2017). According to Appeals, this should be changing, as Counsel no longer wants the administrative file shipped to them in most cases. *See* IRS response to TAS fact check (Nov. 25, 2022).

21 IRS response to TAS fact check (Nov. 25, 2022).

22 *Id.*

23 *Id.*

24 *Id.*

25 IRS response to TAS information request (Aug. 24, 2022).

26 *Id.*

27 *Id.*

28 Naomi Jagoda, *IRS or Waffle House? Hot Market Fuels Struggle to Fill Key Roles*, Bloomberg Daily Tax Rep. (Apr. 19, 2022), https://news.bloomberglaw.com/daily-tax-report/irs-or-waffle-house-hot-market-fuels-struggle-to-fill-key-roles.

29 An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14 (commonly referred to as the "Inflation Reduction Act of 2022"), Pub. L. No. 117-169, § 10301, 136 Stat. 1818, 1831-32 (2022).

30 IRS response to TAS information request (Aug. 24, 2022).

31 IRS response to TAS information request (Aug. 24, 2022).
32 GAO, GAO-18-6549, *Tax Administration: Opportunities Exist to Improve Monitoring and Transparency of Appeal Resolution Timeliness* (2018), www.gao.gov/assets/700/694840.pdf.
33 IRS response to TAS information request (Aug. 24, 2022).
34 In FY 2021, cases receipts were 72,216, while in FY 2022 they increased to 74,000. IRS response to TAS information request (Aug. 24, 2022); IRS response to TAS fact check (Nov. 25, 2022).
35 IRS response to TAS information request (Aug. 24, 2022).
36 TAS conference call with practitioner group (July 13, 2022).
37 *Id.*
38 IRS response to TAS information request (Aug. 24, 2022).
39 *Id.*
40 Letter from the American Bar Association (ABA) Section of Tax'n to the Comm'r of Internal Revenue (Apr. 5, 2022).
41 National Taxpayer Advocate 2021 Annual Report to Congress 153-154 (Most Serious Problem: *Correspondence Audits*: *Low-Income Taxpayers Encounter Communication Barriers That Hinder Audit Resolution, Leading to Increased Burdens and Downstream Consequences to Taxpayers, the IRS, TAS, and the Tax Court*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_MSP_09_Correspondence.pdf.
42 *See* IRM 4.19.13.17.3, Docketed Case Examination Assistance (Apr. 6, 2022), recently updated to mirror IRM 8.4.4.1, Docketed Case Examination Assistance Request Overview (Jan. 17, 2017).
43 National Taxpayer Advocate 2015 Annual Report to Congress 82-90 (Most Serious Problem: *Appeals*: *The Appeals Judicial Approach and Culture Project Is Reducing the Quality and Extent of Substantive Administrative Appeals Available to Taxpayers*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC15_Volume1_MSP_08_Appeals.pdf.
44 IRS, Internal Guidance Memorandum AP-08-0714-0005, Implementation of the Appeals Judicial Approach and Culture (AJAC) Project, Collection – Phase 2 (July 10, 2014).
45 *Id.*
46 Memorandum to all Independent Office of Appeals Employees from Andrew Keyso, Chief, Office of Appeals (Apr. 19, 2022). Note that the flip side of prioritizing docketed casework inevitably is additional delay for nondocketed cases.
47 IRS, Pub. 6511, Independent Office of Appeals Focus Guide (Nov. 2022).
48 IRS response to TAS information request (Aug. 24, 2022).
49 TAS conference call with practitioner group (July 13, 2022).
50 *Id.*
51 Appeals points out that it engages in this kind of training at hiring. Appeals also provides some ongoing training in various substantive areas, frequently in the form of workshops. IRS response to TAS fact check (Nov. 25, 2022).
52 IRS response to TAS information request (Aug. 24, 2022).
53 *Id.*
54 National Taxpayer Advocate 2021 Annual Report to Congress 51-65 (Most Serious Problem: *IRS Recruitment, Hiring, and Training: The Lack of Sufficient and Highly Trained Employees Impedes Effective Tax Administration*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_MSP_02_Recruitment.pdf.
55 Appeals suspended in-person conferences on account of the pandemic in March 2020 and recommenced such conferences in May 2022. IRS response to TAS information request (Aug. 24, 2022). The issues discussed in this section have long challenged taxpayers and their representatives, and there is no reason to believe that anything has improved during the pandemic. IRS, IR-2020-59, Appeals Conferences Stopped: IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program (Mar. 25, 2020).
56 RRA 98, Pub. L. No. 105-206, § 1001(a)(4), 112 Stat. 685, 689 (1998); 144 Cong. Rec. S7622 (July 8, 1998) (statement of Sen. Roth).
57 *See* Rev. Proc. 2012-18, 2012-10 I.R.B. 455, *amplifying, modifying, and superseding* Rev. Proc. 2000-43, 2000-43 I.R.B. 404; *see also* Notice 2011-62, 2011-32 I.R.B. 126.
58 Taxpayer First Act, Pub. L. No. 116-25, § 1001, 133 Stat. 981, 983 (2019) (codified at IRC § 7803(e)); H.R. No. 116-39, pt. 1, at 29 (2019) (accompanying H.R. 1957, which was enacted into law without change to this provision as H.R. 3151).
59 H.R. No. 116-39, pt. 1, at 29 (2019) (accompanying H.R. 1957, which was enacted into law without change to this provision as H.R. 3151).
60 IRC § 7803(e)(6)(B). *See also* H.R. No. 116-39, pt. 1, at 30 (2019) (accompanying H.R. 1957, which was enacted into law without change to this provision as H.R. 3151).
61 IRM 8.1.10.4.4(3), Communications with Counsel (Oct. 1, 2012).
62 National Taxpayer Advocate 2022 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 81-83 (Legislative Recommendation: *Clarify That the National Taxpayer Advocate May Hire Legal Counsel to Enable Her to Advocate More Effectively for Taxpayers*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_PurpleBook_07_StrengthTAS_40.pdf.
63 IRM 8.6.2.2, Introduction to Appeals Case Memos (ACMs) (Aug. 17, 2017). The ACM is a report the AO prepares to adequately explain and support the basis on which a work unit is disposed. Every Appeals work unit requires an ACM. IRM 8.6.2.3.5, 5402 and ACM Case Closing Procedures (July 26, 2022); IRM 8.6.2.3.4, Routing Form 5402 and ACM Feedback to LB&I for Non-ATCL Cases (Mar. 16, 2015).
64 IRM 8.1.10.4.1.4, Post-Settlement Conferences (June 21, 2012). These post-settlement conferences are only available in cases originating from the LB&I Division that are worked by an Appeals Team Case Leader. *See* IRS response to TAS fact check (Nov. 25, 2022); IRM 8.7.11.13.1(1), Post Settlement Conference Scope (Sept. 4, 2018).
65 These conferences are not intended to provide an opportunity for Compliance to critique Appeals' determinations or to replace existing formal dissent procedures available to LB&I. IRS response to TAS fact check (Nov. 25, 2022). *See* IRM 8.7.11.13(3), Post Settlement Conference (Sept. 4, 2018).

66 *ABA Members Comment on Recent Appeals Division Practice Changes*, Tax Notes Today, 2017 TNT 89-10 (May 10, 2017); National Taxpayer Advocate 2017 Annual Report to Congress 195-202 (Most Serious Problem: *Appeals*: *The IRS Office of Appeals Imposes Unreasonable Restrictions on In-Person Conferences for Campus Cases, Even As It Is Making Such Conferences More Available for Field Cases*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC17_Volume1_MSP_17_AppealsRestrictions.pdf.

67 *IRS Reform: Resolving Taxpayer Disputes: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways and Means*, 115th Cong. (2017) (statement of Chastity K. Wilson, AICPA); National Taxpayer Advocate 2017 Annual Report to Congress 195-202 (Most Serious Problem: *Appeals*: *The IRS Office of Appeals Imposes Unreasonable Restrictions on In-Person Conferences for Campus Cases, Even As It Is Making Such Conferences More Available for Field Cases*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC17_Volume1_MSP_17_AppealsRestrictions.pdf.

68 IRM 8.6.1.5.1, Conference Practice (Sept. 25, 2019). For an in-depth discussion of Appeals' conference practices, see National Taxpayer Advocate 2017 Annual Report to Congress 195-202 (Most Serious Problem: *Appeals*: *The IRS Office of Appeals Imposes Unreasonable Restrictions on In-Person Conferences for Campus Cases, Even As It Is Making Such Conferences More Available for Field Cases*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC17_Volume1_MSP_17_AppealsRestrictions.pdf.

69 IRM 8.6.1.5.1, Conference Practice (Sept. 25, 2019). This IRM encourages AOs to use conference locations that are reasonably convenient for taxpayers, their representatives, and Appeals. Difficult choices arise for taxpayers, however, when no such convenient locations are available in the near-term.

70 TAS conversation with practitioner group (July 13, 2022).

71 IRS response to TAS fact check (Nov. 25, 2022).

72 Proposed Reg. § 301.7803–2(c)(21); IRM 4.10.28, Examination of Returns, Designation of Cases for Litigation (Apr. 4, 2022); IRM 8.7.3, Appeals, Technical and Procedural Guidelines, Domestic and International Operations Programs (Dec. 1, 2022). Appeals states that Appeals Coordinated Issues are needed to help to ensure consistency in settlements throughout the country. *See* IRM 8.7.3.3, Coordinated Issues (Oct. 1, 2012); IRS response to TAS fact check (Nov. 25, 2022).

73 TAS conversation with practitioner group (June 7, 2022). Appeals states, "Our international issue coordinators are all trained as AOs and many, but not all (*i.e.*, some of our recent external hires straight out of private consulting and law firms, etc.) of our TGCs have been trained as AOs. All of the specialists attend Appeals Basic Training if they had not previously attended before joining our area focused on internal work (Area 11) or Technical Guidance." IRS response to TAS fact check (Nov. 25, 2022).

74 TAS conversation with practitioner group (July 13, 2022).

75 TAS conversation with practitioner group (July 14, 2022).

76 As previously discussed, this lack of authority can be either explicit or implicit. *See* Proposed Reg. § 301.7803–2(c)(1)-(24).

77 Appeals states that settlement authority always rests with Appeals Team Case Leaders or Appeals Team Managers and that subject matter experts or other technical experts do not have settlement authority. However, TAS is concerned that increased reliance on subject matter experts and increased issue coordination abridges settlement authority in practice, even if a boundary exists on paper. IRS response to TAS fact check (Nov. 25, 2022).

78 IRM 8.6.1.5.4, Participation in Conferences by IRS Employees (Oct. 1, 2016). For a more in-depth discussion of this topic, see National Taxpayer Advocate 2019 Annual Report to Congress 62-68 (Most Serious Problem: *Appeals: The Inclusion of Chief Counsel and Compliance Personnel in Taxpayer Conferences Undermines the Independence of the Office of Appeals*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC19_Volume1_MSP_07_APPEALS.pdf; National Taxpayer Advocate 2022 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 78-80 (Legislative Recommendation: *Require Taxpayers' Consent Before Allowing IRS Counsel or Compliance Personnel to Participate in Appeals Conferences*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_PurpleBook_05_StrengthTPRappeals_39.pdf.

79 Appeals, Appeals Team Case Leader Conferencing Initiative: Summary of Findings and Next Steps (Sept. 2021), www.irs.gov/pub/irs-utl/atcl_update.pdf.

80 "This legislation requires the agency to establish an independent Office of Appeals – one that may not be influenced by tax collection employees or auditors." 144 Cong. Rec. S7622 (July 8, 1998) (statement of Sen. Roth). Appeals states that the ATCL Conferencing Initiative applies to the most complex cases, which represent less than one percent of Appeals' caseload. IRS response to TAS fact check (Nov. 25, 2022). TAS's primary concern in this context, however, is not with the number of cases in which Counsel and Compliance participate, but with the circumstance that this participation can occur without the consent of taxpayers.

81 IRS response to TAS fact check (Nov. 25, 2022).

82 Appeals, Appeals Team Case Leader Conferencing Initiative: Summary of Findings and Next Steps (Sept. 2021).

83 TAS conversation with practitioner group (July 13, 2022).

84 National Taxpayer Advocate 2022 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 78-80 (Legislative Recommendation: *Require Taxpayers' Consent Before Allowing IRS Counsel or Compliance Personnel to Participate in Appeals Conferences*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_PurpleBook_05_StrengthTPRappeals_39.pdf.

85 *Id.*

OVERSEAS TAXPAYERS

Taxpayers Outside of the United States Face Significant Barriers to Meeting Their U.S. Tax Obligations

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

All taxpayers face barriers to accessing information and services from the IRS, a situation only exacerbated by the COVID-19 pandemic.[1] At all times, however, overseas taxpayers face additional burdens at virtually every step of the process in complying with their U.S. tax obligations. This group includes U.S. citizens and resident aliens living or working abroad, as well as foreign individuals and businesses with U.S. tax obligations. These taxpayers are subject to highly complicated rules for determining whether they need to file a U.S. tax return and, if so, the correct amount of their U.S. tax liability. They also face barriers in obtaining Taxpayer Identification Numbers (TINs), electronically filing tax and information returns, and accessing assistance from both the IRS and private industry.

EXPLANATION OF THE PROBLEM

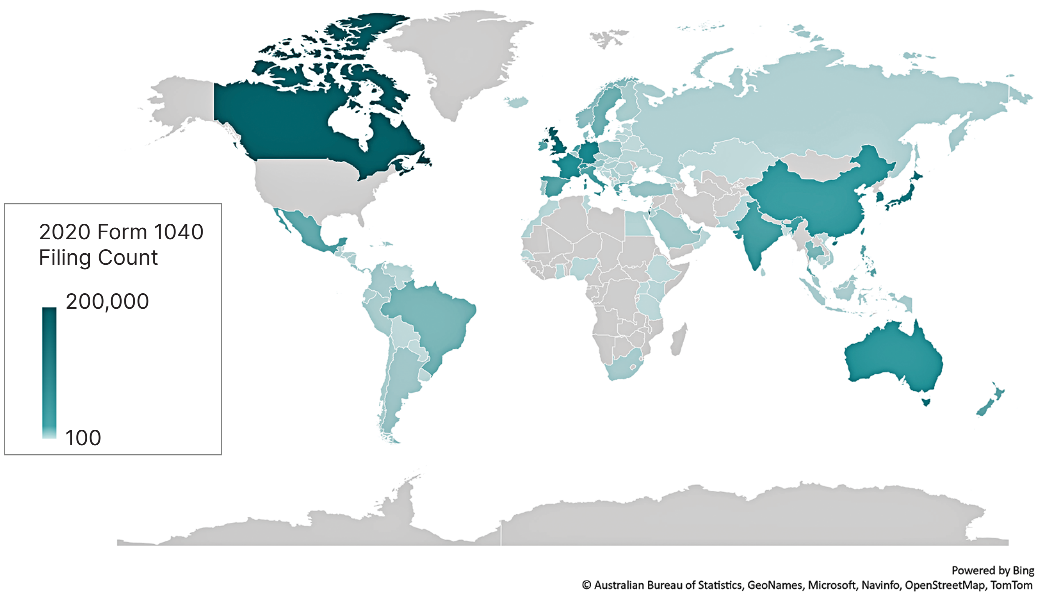
Who Is Impacted. The U.S. Department of State estimates that there are approximately nine million U.S. citizens living abroad.[2] This diverse group includes approximately 196,000 military personnel stationed all over the world,[3] 9,000 overseas State Department employees,[4] and 163,000 U.S. students attending school abroad.[5] It also includes U.S. citizens who move abroad to work for a foreign company, "digital nomads" who move abroad but continue to work remotely for their U.S.-based employer, and U.S. citizens who move overseas after retirement. The population of U.S. citizens abroad also includes so-called accidental Americans, individuals who hold U.S. citizenship despite being born outside of the United States or with an otherwise tenuous connection with the United States; a study commissioned by American Citizens Abroad estimates there may be nearly half a million such individuals.[6]

According to the Federal Voting Assistance Program, the foreign country with the largest number of U.S. citizen residents is Canada, followed by the United Kingdom, Israel, France, and Australia.[7] Because U.S.

tax obligations apply to U.S. citizens and U.S. resident aliens located anywhere in the world, these taxpayers abroad are subject to U.S. tax on their worldwide income, regardless of their country of residence. And these U.S. tax obligations may be in addition to tax obligations imposed by their country of residence.

FIGURE 2.10.1[8]

Country of Residence of Form 1040 Filers Living Overseas



U.S. citizens and resident aliens residing abroad are not the only overseas taxpayers with U.S. tax obligations. Foreign individuals and businesses with U.S.-source income or operations may also have U.S. tax obligations. This group includes not only multinational businesses but also foreign citizens, often referred to as non-resident aliens, with U.S.-source income such as interest, dividends, rents, royalties, pensions, annuities, or compensation for personal services.[9] For example, this group might include an Australian citizen who worked temporarily in the United States during the tax year, a Mexican citizen with U.S.-source interest or dividend payments, or a Chinese retiree who worked in the United States and who is now receiving U.S.-source pension or annuity payments.[10]

Challenges Faced: Overseas taxpayers face heightened barriers to their ability to meet their U.S. tax obligations. The laws to which they are subject are extremely complex, yet they have access to less support and fewer resources than taxpayers in the United States. As the IRS acknowledged in the Taxpayer First Act Report to Congress, foreign taxpayers are less able to access IRS services by phone, online, or in person; their e-file rates are significantly lower; and limited availability of tax products in languages other than English hampers their ability to understand their complex tax obligations.[11]

ANALYSIS

Complex Tax Laws and Inadequate Service Make Compliance Challenging Even for Conscientious Taxpayers

The Laws Applicable to U.S. Taxpayers Abroad Are Very Complicated

Overseas taxpayers are subject to an alphabet soup of confusing and complicated tax law provisions, such as GILTI,[12] FIRPTA,[13] PFIC,[14] and FATCA.[15] While some of these regimes are applicable primarily to large businesses and high-income taxpayers, complexity abounds for both U.S. citizens and residents abroad and foreign persons with U.S. tax obligations.

One of the most commonly claimed tax benefits available to U.S. citizens and resident aliens living abroad is the foreign earned income and housing exclusion in IRC § 911. In tax year (TY) 2020, for example, over 260,000 taxpayers living overseas filed a Form 2555, Foreign Earned Income, to claim this benefit.[16] This provision allows eligible taxpayers to exclude from gross income a certain amount of income earned overseas and the value of certain overseas housing benefits provided by an employer. To be eligible for the foreign earned income and housing exclusion, taxpayers must determine that their tax home is in a foreign country, that they had foreign earned income, and that they were a *bona fide* resident of a foreign country or were physically present in a foreign country for the requisite number of days.[17] Taxpayers must apply a complex set of rules to determine the location of their tax home, whether or not certain days count in meeting the *bona fide* resident or substantial presence test, whether different types of income are eligible for exclusion, and, for the housing exclusion, country- and even city-specific limitations on the exclusion amount.[18]

Another common tax benefit claimed by U.S. citizens abroad is the foreign tax credit, which allows an eligible taxpayer to claim a credit against U.S. tax for certain taxes paid to a foreign government.[19] For TY 2020, nearly 250,000 overseas taxpayers filed a Form 1116, Foreign Tax Credit, to claim this benefit.[20] The rules governing the foreign tax credit are so complex that the IRS has created the 32-page Publication 514, Foreign Tax Credit for Individuals – in addition to the 24-page instructions to the Form 1116, Foreign Tax Credit – to assist individual taxpayers in determining their eligibility for and the amount of their foreign tax credit.

A significant number of U.S. citizens abroad are also subject to information reporting requirements under the Foreign Account Tax Compliance Act (FATCA), the Bank Secrecy Act (which requires filing a Report of Foreign Bank and Financial Accounts (FBAR)),[21] or both. These regimes both come with the risk of large monetary penalties. Specified persons, which include U.S. citizens, resident aliens, and certain non-resident aliens, are subject to FATCA and required to attach Form 8938, Statement of Specified Foreign Assets, to their income tax return if they have specified foreign financial assets exceeding specified thresholds.[22] There is no single reporting threshold for FATCA; instead, the asset value at which reporting is required depends on whether or not the individual is living in the United States or abroad and whether the individual files a joint return with a spouse.[23]

The FBAR reporting regime requires U.S. citizens and residents to report each foreign account in which they have a financial interest or over which they have signature or other authority when the combined value of those accounts exceeds $10,000 at any time during the calendar year.[24] While there is a uniform reporting threshold for FBAR, the definition of foreign financial accounts is complex and could include assets that are not obviously financial accounts, such as foreign pensions.[25] Individuals subject to FBAR must file FinCEN Form 114, Report of Foreign Bank and Financial Accounts, separately from their tax return by submitting it electronically through the Financial Crimes Enforcement Network's (FinCEN's) Bank Secrecy Act E-Filing System.[26]

While the rules for determining who is subject to these reporting regimes and what assets are subject to reporting are complex, the stakes are very high from the perspective of penalties. In FATCA, civil penalties begin at $10,000 for taxpayers who fail to file a complete Form 8938 and max out at $50,000.[27] In FBAR, non-willful violations of reporting requirements are subject to penalties of up to $10,000 (adjusted yearly for inflation);[28] willful violations are subject to penalties of up to the greater of 50 percent of the account balance or $100,000 (adjusted for inflation), whichever is higher.[29] Both FATCA and FBAR violations might also give rise to criminal penalties. While the purpose of these regimes may be to prevent tax avoidance by requiring reporting of "offshore" holdings, they can be a substantial financial trap for the unwary, particularly for "accidental Americans" who were born and reside overseas.[30]

U.S. citizens and resident aliens are not alone in facing tax compliance challenges. Foreign persons with income or activities connected with the United States must follow complicated rules to determine whether their income is from U.S. sources or is effectively connected with the conduct of a U.S. trade or business, and subject to U.S. tax. Different rules apply for determining whether different types of income must be included in the U.S. gross income of non-resident aliens and how that income is taxed. For example, whether pension benefits paid to a non-resident alien are considered U.S.-source income depends on what percentage of the benefits are attributable to services performed in the United States.[31] To the extent the pension benefits paid to a non-resident alien are subject to U.S. tax, the benefits are considered income effectively connected with a U.S. trade or business and taxed at the rates that apply to U.S. persons.[32] By contrast, U.S. Social Security benefits – 85 percent of which non-resident aliens are required to include in their U.S. gross income – are considered fixed or determinable annual or periodic income and subject to tax at a flat rate of 30 percent.[33] Taxpayers must apply complicated rules like these for each type of income – such as interest, dividends, rents, royalties, or compensation for personal services – to determine whether the income is U.S.-source and includable in U.S. gross income. Taxpayers must then apply another complicated set of rules for each type of income to determine whether they can exclude some or all of that type of income. To further add to the complexity, overlaying the generally applicable rules are an entirely different set of rules set forth in various tax treaties between the United States and foreign countries.[34] Whether a foreign individual will ultimately be subject to U.S. tax will depend to a large extent on their country of residence and the terms of the tax treaty, if any, between that country and the United States.

Overseas Taxpayers Have Little Support in Understanding Complicated Tax Laws

Despite the extreme complexity of the tax laws that apply to this population, taxpayers abroad have access to very limited support from the IRS. As of 2015, the IRS had closed its last four overseas tax attaché offices, in London, Frankfurt, Paris, and Beijing.[35] As the National Taxpayer Advocate noted in her 2015 Annual Report, these closures deprived overseas taxpayers of valuable and necessary services.[36] Domestic taxpayers have the option of making an appointment at a local Taxpayer Assistance Center (TAC) but, with the closure of the last overseas attaché offices, taxpayers living overseas no longer have access to face-to-face customer service. In 2014 and 2015, the attachés collectively hosted 19 formal outreach events focusing on topics like filing requirements, FBAR, the foreign tax credit, and tax law changes; they were attended by approximately 1,500 individuals.[37] In fiscal year (FY) 2014 alone, the London attaché office received over 5,000 taxpayer visits, and the Frankfurt office had over 3,000 phone contacts.[38] Taxpayers who relied on these services, especially older, less digitally savvy taxpayers, struggled to find alternative assistance,[39] and the closure of these offices cut the IRS off from a valuable source of feedback about issues facing taxpayers abroad.[40]

Overseas taxpayers also lack access to affordable tax preparation services. The Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) programs provide free tax preparation assistance for qualifying taxpayers. However, during the most recent filing season, only 11 full service VITA sites operated overseas, and they were all on U.S. military bases.[41] No VITA and TCE sites offer virtual tax preparation services to taxpayers located outside the United States.[42] Overseas taxpayers report struggling to locate paid tax return preparers in their country of residence.[43] Although the IRS website includes a directory of credentialed tax professionals in a large number of foreign countries, it is difficult to locate on the website.[44] Taxpayers who do locate a preparer who is qualified to assist with their U.S. return must often pay high fees to have even a basic U.S. tax return prepared and will likely need to engage a different preparer to assist them in meeting their tax obligations in their country of residence.[45]

Another challenge, particularly for non-resident aliens, is that most IRS tax products continue to be in English only. Although the IRS's multilingual initiative has made significant progress in making tax information available in more languages, there is still much progress to be made. So far, only 71 tax products have been translated into one or more foreign languages.[46] While some products important to taxpayers abroad, like Publication 519, U.S. Tax Guide for Aliens, have been translated into multiple languages – Korean, Russian, Spanish, Vietnamese, and Chinese (Simplified and Traditional) – other products of relevance to overseas taxpayers, such as the Forms 1040-NR, U.S. Nonresident Alien Income Tax Return, and W-7, Application for U.S. Individual Taxpayer Identification Number, are available only in English and Spanish.[47] Other commonly used forms, like Forms 2555, Foreign Earned Income, and 1116, Foreign Tax Credit, are available only in English.[48]

Ultimately, taxpayers who are unable to find the assistance that they need in understanding their U.S. tax obligations, either from the IRS or from paid preparers, are more likely to seek assistance from unreliable sources like social media, or they may avoid filing at all.

Taxpayers Living Overseas Face Delays and Other Challenges in Obtaining Taxpayer Identification Numbers

One prerequisite to filing a tax return with the IRS is obtaining a TIN. For entities, that means obtaining an Employer Identification Number (EIN). For individuals who are not eligible to receive a Social Security number (SSN), that means obtaining an Individual Taxpayer Identification Number (ITIN). Individuals who need an ITIN might include foreign nationals with U.S. filing requirements, non-citizen spouses or dependents of U.S. citizens or U.S. resident aliens living abroad, or foreign investors in U.S. businesses who need an ITIN to avail themselves of tax treaty benefits. Even without COVID-19 delays, the processing time for TIN applications can be long, and, for ITIN applicants, the process is very burdensome. Inability to obtain a TIN can ultimately hamper taxpayers' ability to comply with their U.S. tax obligations.

Taxpayers who need an ITIN to file a return, claim a credit, or pay taxes must apply for the ITIN, either on their own or on behalf of a dependent, by submitting Form W-7. They must submit Form W-7 on paper, and, unless an exception applies, a copy of the tax return on which the applicant's ITIN is required must accompany it.[49] The applicant must also provide original supporting identity documents, such as a birth certificate or passport.[50] Taxpayers must mail these highly sensitive documents, along with the application, to the IRS.[51] Alternatively, a taxpayer may provide copies of the required identity documents, but the copies must have been certified by the issuing agency.[52]

Taxpayers who are uncomfortable mailing sensitive identity documents to the IRS or who cannot obtain certified copies of the requisite identity documents have the option of using a Certifying Acceptance Agent (CAA) to authenticate their identity documents and submit the authenticated copies to the IRS ITIN Unit.[53] However, CAA services are not always convenient. As the Taxpayer Advocacy Panel pointed out in its 2021 Annual Report, a taxpayer might have to travel hundreds of miles to a CAA, potentially to another country.[54] Access to CAA services is unlikely to improve in the near term, either. The IRS announced a one-year moratorium on new CAA applications starting on August 15, 2022.[55] Even if taxpayers have access to a CAA, their services are not generally provided free of charge. As of the 2021 filing season, 67 VITA/TCE partners offered CAA services.[56] Of those, only one operated outside of the United States, on the Ramstein Air Force Base in Germany.[57] U.S.-based taxpayers who need to apply for an ITIN may submit their application in person by making an appointment at a TAC, which can verify original documents free of charge and submit verified copies of those documents to the IRS ITIN Unit.[58] But this option is not available to taxpayers abroad.

As of the week of September 10, 2022, the average processing timeframe for ITIN applications submitted with a return was 60 days and 49 days for applications submitted without a return.[59] However, because this time is measured from the date when the IRS receives the application to the date when an employee enters the ITIN into the system and puts the taxpayer's original documents in the mail to be returned, it doesn't capture the full length of the application process from the perspective of the taxpayer.[60] For example, this cycle time doesn't include the time during which the application was in the mail to or from the IRS.[61] It also doesn't account for any time that the application is in suspense awaiting additional information from the taxpayer, even though IRS guidelines assume that it will take 45 days to receive a response from the taxpayer.[62] Taxpayers applying for an ITIN could easily be without their passport for months.

The process for applying for an EIN is less arduous than applying for an ITIN, but the fastest and easiest method for obtaining an EIN is not available to businesses with foreign owners. The IRS offers four methods for obtaining an EIN: (1) submitting a Form SS-4, Application for Employer Identification Number, by mail, (2) submitting Form SS-4 by fax, (3) applying by telephone, or (4) applying online.[63] In FY 2021, the IRS issued approximately 7.7 million EINs, 93 percent of which it issued through the online application tool, which provides the applicant with an EIN almost instantaneously.[64] However, to use the online application tool, the responsible party for the entity must have an SSN or ITIN.[65] Foreign responsible parties who do not have an SSN or ITIN must submit their application by mail or by fax or must call a non-toll-free telephone number to request an EIN.[66] For FY 2021, the Level of Service on that telephone line was 40 percent.[67]

According to the IRS website, the IRS processes faxed EIN requests within four business days and mailed requests within four weeks.[68] As of the week of September 17, 2022, the IRS was actually exceeding these processing timeframes, working faxed applications within two days of receipt and working mailed applications within 21 days of receipt.[69] However, the IRS also acknowledged that COVID-19 had significant impacts on its EIN inventory, preventing it from providing an average processing time for faxed and mailed EIN applications over FYs 2020 and 2021.[70] While current processing of EIN requests submitted by mail and by fax appear to be consistent with the timeframes on the IRS website, future disruptions could again cause delays for overseas taxpayers, delays they would not face if they were able to use the online application tool.

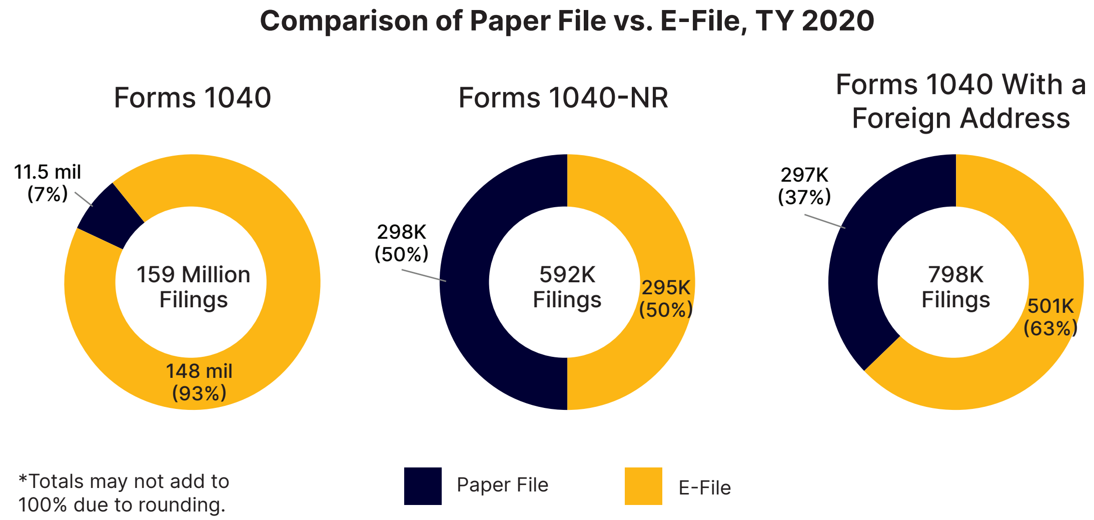
Delays in receiving a TIN can negatively impact taxpayers in a variety of ways. Businesses cannot meet their filing obligations until they receive an EIN. For individuals, delays in issuing or renewing ITINs can result in the disallowance of credits and other tax benefits.[71] Such delays can also cause problems with reporting and recouping of tax withholding. For example, when a foreign person sells real property located in the United States, proceeds from the sale are subject to income tax withholding under the Foreign Investment in Real Property Tax Act (FIRPTA).[72] Generally, the buyer of the property must withhold the appropriate amount of tax, remit the tax to the IRS, and file Form 8288, U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests, by the 20th day after the date of the transfer.[73] Form 8288 must include the seller's TIN.[74] The IRS uses this information to match the withholding reported on Form 8288 with the withholding reported by the seller on the seller's U.S. income tax return. However, if the seller doesn't already have an ITIN, it is virtually impossible for the seller to obtain an ITIN within the 20-day period between the sale and Form 8288 due date. Furthermore, it is extremely difficult for the IRS to connect the FIRPTA withholding credit to the correct income tax return and to give the seller credit for the withholding when the seller's ITIN is not included on the original Form 8288.

Overseas Taxpayers Face Barriers to E-Filing

E-filing is crucial to avoiding refund delays and the numerous other negative outcomes associated with paper processing backlogs.[75] Unfortunately, international individual taxpayers face additional obstacles and, therefore, e-file at substantially lower rates than domestic individuals. For example, in TY 2020, only 63 percent of taxpayers residing overseas e-filed their Forms 1040.[76] For Forms 1040-NR, the e-file rates were even lower at 50 percent.[77] By contrast, the overall e-file rate for TY 2020 was 93 percent.[78]

The IRS noted in the Taxpayer First Act Report that the disparity between domestic and international e-file rates presented a tremendous opportunity to increase use of the IRS e-file program by international taxpayers.[79] Although the report didn't identify any potential root causes for the disparity,[80] we have identified several possibilities. As discussed in the previous section, taxpayers who need to apply for an ITIN must submit a paper ITIN application or Form W-7. Taxpayers who apply for an ITIN cannot electronically file a return during the same calendar year that the IRS assigns their ITIN.[81] This means that all new ITIN applicants are essentially prevented from e-filing.

FIGURE 2.10.2[82]



Another possible barrier to e-filing could be the need to attach self-created statements to returns. For example, U.S. citizen taxpayers and resident aliens married to non-resident aliens may elect to file jointly with their non-resident alien spouse.[83] To make the joint filing election, the taxpayers must attach a taxpayer-generated election statement to their return.[84] The IRS's Modernized E-File System accepts PDF attachments to returns. However, if the software that the taxpayer uses doesn't accommodate taxpayer-generated statements, he or she cannot e-file his or her return. Overseas taxpayers must often attach other self-generated statements, such as those reporting income from a foreign employer or other source not reported to the IRS through standard information reporting channels.[85] E-file may also be unavailable for the form the taxpayer needs to file. While the IRS has made significant progress in expanding the number of tax forms that taxpayers can e-file, some forms, such as the Form 3520, Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts, must still be filed exclusively on paper.[86]

Lower e-filing rates may also be attributable to other software limitations. Overseas taxpayers report struggling to find tax return preparers with knowledge in U.S. tax law. The IRS website offers a searchable directory of e-file providers, but unlike the preparer directory, this directory does not allow the user to search by foreign country or to otherwise locate foreign e-file providers.[87] The ability of an overseas taxpayer to use commercial software is also limited by the variety of forms that each vendor supports. For example, many large commercial software vendors do not support the filing of Forms 1040-NR. Even the IRS Free File Fillable Forms application doesn't offer taxpayers the option of filing Form 1040-NR.[88] Similarly, taxpayers abroad who meet Free File eligibility criteria may be unable to use the Free File program because the Free File provider whose services they qualify for doesn't support a form that they need.[89] While several Free File participants do support Forms 1040-NR, 1116, and 2555,[90] each Free File participant has different eligibility criteria, and supported forms for each offer are not listed on the IRS website.[91] This can make it extremely challenging for taxpayers to determine whether there is a Free File offer that will meet their needs. Overseas users also report challenges in accessing Free File because vendors require U.S.-based credentials, like a U.S. telephone number.[92] VITA and TCE sites, which offer free e-filing of returns that are within the scope of service for the VITA/TCE program, have a limited overseas presence, operating only on U.S. military bases.[93]

Foreign businesses also face barriers to meeting their information return filing obligations. Beginning in September 2021, the IRS replaced Form 4419, Application for Filing Information Returns Electronically (FIRE), with a new online-only application platform.[94] Taxpayers use this platform to obtain a Transmitter Control Code (TCC) and access FIRE, the IRS's information return filing system. To better protect the integrity of the information return system, a FIRE user must create a Secure Access account to access the new application platform.[95] This requires the user to verify his or her identity with ID.me, a third-party vendor. Until recently, users were required to provide an SSN to have their identity validated by ID.me for access to IRS applications.[96] As of December 4, 2022, ID.me will also validate the identity of users with an ITIN who are seeking access to IRS applications.[97] This is a positive change that will expand access to both FIRE and other IRS online applications for foreign taxpayers. However, it does not provide a solution for entities with foreign responsible officials who do not have and are not eligible for an SSN or an ITIN.[98] As a consequence, such entities cannot create a new Secure Access account, obtain a new TCC, or get access to the FIRE system. Eventually, the IRS will require all FIRE users, including those who already have a TCC, to validate their identities using the IRS authentication process.[99] This means that more foreign FIRE users are potentially at risk of losing access to the FIRE system, too. These limitations on access are particularly consequential given that the law requires taxpayers to file many information returns electronically and that the IRS and Treasury recently proposed regulations that would lower the threshold for mandatory e-filing and expand the number of forms required to be electronically filed.[100]

Customer Service Challenges Are Magnified for Taxpayers Abroad

Many taxpayers struggle to access the resources they need, whether it's responding to a notice, accessing information online, or reaching a live human on the phone. And these customer service challenges have been further magnified by the pandemic. For overseas taxpayers, though, customer service challenges have long been a regular facet of the taxpayer experience.

Unlike domestic taxpayers who have access to a variety of toll-free lines, the IRS provides *one* telephone line for taxpayers outside of the United States, and it is not toll-free.[101]

Unlike domestic taxpayers who have access to a variety of toll-free lines, **the IRS provides one telephone line for taxpayers outside of the United States, and it is not toll-free.**

In apparent recognition of time differences between the United States and overseas taxpayers' locations, the international line offers extended hours; it is staffed from 6 a.m. to 8 p.m. Eastern Time for tax law questions, and from 6 a.m. to 11 p.m. Eastern Time for all other inquiries.[102] Free, real-time, over-the-phone-interpreter services are also available in over 350 languages.[103] However, during FY 2021, the Level of Service on the international line was 40 percent and, for callers who were eventually connected with an employee, the average time they waited for assistance was 17 minutes.[104] While 17 minutes isn't an exorbitant amount of time to be waiting in the queue, it could easily be costly for a taxpayer calling from overseas. Because customer callback isn't available on the international line, taxpayers must stay in queue and don't have the option of requesting a call back instead.[105]

Even if taxpayers can reach an IRS employee, they often find that the employee is unable to help them with their particular issue.[106] The IRS doesn't post any information on its website about what tax law issues are within the scope of service on the international line, so there is no way for taxpayers to determine prior to calling and waiting on hold whether the IRS customer service representative will be able to answer their question or otherwise provide the assistance that they need.

Taxpayers outside of the United States face challenges receiving and responding to IRS postal correspondence. In FY 2021, the IRS issued over 1.3 million notices and other correspondence to foreign addresses.[107] The law requires the IRS to send many IRS notices, such as notices of deficiency and notices of federal tax lien, by postal mail.[108] But postal systems and address conventions vary widely by country, and mail delivery takes longer, in some cases significantly longer, to reach its destination when the recipient is in a foreign country. However, IRS system limitations may be contributing to the problem. Although the IRS has a variety of instructions and job aids for use by employees in correctly inputting foreign addresses, its information technology infrastructure is ultimately designed to accommodate domestic addresses.[109] Foreign address information must be input into fields formatted for domestic addresses.[110] When correspondence for an overseas taxpayer is generated, there is no programming in place that specifically identifies the address as foreign and makes any corresponding adjustments to the way the address is formatted or printed.[111]

Mail delays can prevent the taxpayer from responding within the designated period or otherwise taking timely action as required by the IRS notice or letter. In some cases, mail arrives after the response deadline. For example, a taxpayer might receive a letter seeking additional information in connection with the processing of his or her amended return. If the letter provides a response date within 30 days, and that 30-day period has already passed when the taxpayer receives the letter, the taxpayer might conclude that it is too late to respond and decline to pursue the issue further. Even if the IRS is willing to accept the late response, the taxpayer does not know this. The IRS can – and should – remedy this problem by revising IRS correspondence and employee procedures to allow a longer response time for taxpayers residing outside of the United States.

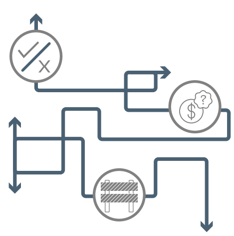
In some circumstances, however, the response timeframe is set forth by statute, making mailing delays consequential. For example, IRC § 6213(b)(1) creates an exception to the general rule that, before assessing a deficiency, the IRS must issue to the taxpayer a statutory notice of deficiency giving the taxpayer the opportunity to dispute the deficiency in the U.S. Tax Court. In the case of mathematical and clerical errors, as defined in IRC § 6213(g)(2), the IRS may assess the resulting deficiency without having to issue a deficiency notice. Instead, the IRS must provide notice of the assessment to the taxpayer, and the taxpayer then has 60 days to contest the assessment.[112] If the taxpayer contests the assessment within the designated period, the IRS must abate it and issue the taxpayer a deficiency notice if it intends to assess the deficiency again.[113] However, if the taxpayer doesn't contest the assessment within the 60-day period, the taxpayer loses the right to have the assessment abated.[114] With statutory notices of deficiency, the IRC recognizes that taxpayers located outside the United States need more time to receive and respond to correspondence; IRC § 6213(a) gives taxpayers located outside of the United States 150 days from the mailing date of the deficiency notice, instead of the standard 90 days, to file a petition with the Tax Court. But no such exception exists for math error notices issued to taxpayers overseas. The lack of an extended response time for math error notices issued to taxpayers located abroad meaningfully disadvantages those taxpayers. In FY 2021, over 63,000 taxpayers with foreign addresses received at least one math error notice, so the population at risk is far from trivial.[115]

Postal problems and delays also appear to interfere with the ability of overseas taxpayers to receive refunds. During FY 2021, the IRS issued over 13,000 taxpayers with foreign addresses a replacement refund check.[116] The IRS also issued nearly 70,000 letters to taxpayers with foreign addresses alerting them that their refund check had expired and instructing them to request a new one.[117] Even if foreign taxpayers can receive their mail, they often report challenges cashing checks mailed to them by the IRS. Outside stakeholders reported that banks in a variety of countries were unable or unwilling to cash checks issued by the U.S. Treasury, leaving taxpayers without access to their tax refund.[118] The IRS has recently taken steps to facilitate direct deposit refunds to taxpayers abroad. In March 2022, the IRS switched to using the International Treasury Service (ITS) for international direct deposit.[119] Unlike with the prior platform, there are no longer any limits on the refund amount the IRS can deposit directly, and ITS does not require the taxpayer to maintain an account with a U.S. intermediary or third-party domestic bank.[120] The transition to ITS is a positive change with the potential to alleviate some problems overseas taxpayers are having in accessing their refunds.

The IRS recently implemented another policy change with the potential to alleviate customer service burdens on taxpayers outside of the United States by expanding access to online tools and applications. To access public-facing IRS applications, the IRS requires individuals to authenticate their identity. In 2021, the IRS implemented the Secure Access Digital Identity platform as the new identity proofing and authentication solution.[121] And, until December 4, 2022, individuals who did not have an SSN could not authenticate their identity using the identity proofing solution offered by the current IRS vendor, ID.me.[122] As a result, foreign individuals without an SSN could not access IRS applications that require a taxpayer to authenticate his or her identity. However, as of December 4, 2022, ID.me began authenticating the identity of ITIN holders so that those individuals could access IRS online applications that require identity proofing.[123] Such applications include IRS Online Account, which provides self-help solutions for taxpayers who need to designate a representative, make a payment, manage a payment plan, or access certain IRS notices and letters; the Get IP PIN portal, which taxpayers use to request or retrieve an Identity Protection Personal Identification Number (IP PIN); and the online Identity and Tax Return Authentication portal, which taxpayers whose returns are identified as potentially fraudulent can use to verify their identity with the IRS.[124] While it is too soon to evaluate the full impact of this change in policy, this is a step in the right direction toward improving the taxpayer experience for taxpayers living overseas.

CONCLUSION AND RECOMMENDATIONS

The tax law, as it applies to taxpayers outside of the United States, is extremely complex and procedurally and administratively difficult. Whether it's determining what income taxpayers need to report, what forms they need to file, or whether there is even a requirement to file, U.S. citizens abroad and foreign persons with U.S. tax obligations must navigate a landscape of complex rules, nuanced analyses, and exceptions to exceptions. At the same time, these taxpayers have limited access to IRS support and resources.



U.S. citizens abroad and foreign persons with U.S. tax obligations must navigate a landscape of complex rules, nuanced analyses, and exceptions to exceptions. At the same time, these taxpayers have limited access to IRS support and resources.

They face barriers to obtaining TINs and to electronically filing returns. They have even more limited access to telephone customer service than domestic taxpayers, and they face long delays in receiving IRS correspondence through the mail, if it arrives at all.

Some burdens on overseas taxpayers, such as time differences and postal delays, are beyond the control of the IRS to resolve. And others, like tax law complexity, would require a significant act of Congress. We also recognize that the need to authenticate the identity of individuals who interact with the IRS is critical to preventing identity theft and protecting the integrity of the tax system. However, there are meaningful steps that the IRS can and should take to better accommodate the needs of taxpayers outside of the United States and to better facilitate their ability to meet their U.S. tax obligations. First and foremost, the IRS must develop a comprehensive agencywide customer service strategy for both U.S. citizens and resident aliens abroad and foreign individuals with U.S. tax obligations. As part of this strategy, the IRS should address how the agency can better support overseas taxpayers in understanding their U.S. tax obligations. The IRS should build on existing informational resources, including forms, publications, and FAQs, that can be helpful for overseas taxpayers and create a true "one-stop shop" for taxpayers outside of the United States on IRS.gov. The IRS should also look to partner with the Department of State to more effectively connect with taxpayers who need tax information. Overseas taxpayers often look to U.S. embassies and consulates for assistance with issues involving the U.S. government. The IRS could leverage that channel of communication by partnering with the Department of State to post U.S. tax information or links to IRS.gov on State Department webpages.

The IRS also needs to do more to help with electronic filing by taxpayers abroad. Many overseas taxpayers cannot electronically file because of e-file system and software limitations. While the IRS has made great progress in expanding the number of forms taxpayers can e-file, it should continue to expand the number of forms that taxpayers can file electronically. The IRS should conduct a study, which includes outreach to private industry, to better understand why overseas taxpayers are e-filing at such low rates and how to remove the barriers causing this. The IRS should also be sure to include common international forms, such as Forms 1040-NR, 1116, and 2555, in the design for the free online filing platform it has announced plans to study.[125]

The IRS needs to do more to improve customer service for overseas taxpayers. Expanding online identity proofing to include users with ITINs was a big step in the right direction, making many online tools available to foreign taxpayers for the first time. However, the IRS still needs to ensure that foreign entities whose responsible officials do not have and are not eligible for an SSN or ITIN are able to access the FIRE system and file their information returns electronically. The IRS should implement customer callback on the international line and provide more detailed information on IRS.gov about the scope of services available on the international telephone line. It must do more to provide face-to-face customer service options for overseas taxpayers. This should include the option to make a virtual TAC appointment and should allow the taxpayer to receive all the services provided by an in-person TAC visit, including identity proofing for individuals whose returns the IRS flagged for potential identity theft and review of identity documents for ITIN applications. The IRS should also consider building on the success of existing programs, like VITA and TCE, and look to partner with the State Department and other agencies to host VITA sites overseas. The IRS might also build on the success of its Taxpayer Experience Day initiative and offer something similar at U.S. embassies or consulates abroad. While the challenges facing taxpayers living overseas will continue to be great, the IRS must do more to reduce the burden on these taxpayers and to better support them in their attempts to comply with U.S. law.

Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Develop a comprehensive customer service strategy for both U.S. citizens and resident aliens abroad and foreign individuals with U.S. tax obligations.
2. Explore ways to partner with the U.S. Department of State to make tax information available through State Department platforms and to provide tax customer service at U.S. embassies and consulates.
3. Conduct a study to identify barriers to e-filing for overseas taxpayers. The IRS should use the results to formulate a strategy to reduce those barriers and to increase e-file rates by taxpayers located outside of the United States.
4. Deploy an identity proofing solution available to individuals who do not have and are not eligible for an SSN or ITIN and who need to access the FIRE system.
5. Offer customer callback on the international telephone line and provide more detailed information on the IRS website about the services offered on the international telephone line.
6. Revise correspondence and employee procedures to give overseas taxpayers an extended timeframe within which to provide responses to all requests for information or to otherwise take action.
7. Offer virtual TAC appointments to taxpayers overseas. These appointments should offer all services available to taxpayers in the United States, including identity verification for individuals whose returns were flagged for possible ID theft and verification of identity documents for ITIN applicants.

Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Amend IRC § 6213(b)(2)(A) to allow taxpayers 120 days to request an abatement of tax when a math error notice is mailed to them outside the United States.

RESPONSIBLE OFFICIALS

Kenneth Corbin, Commissioner, Wage and Investment Division

Nikole Flax, Commissioner, Large Business and International Division

Kathleen Walters, Chief Privacy Officer, Privacy, Governmental Liaison and Disclosure

IRS COMMENTS

The IRS continues to address service challenges strategically and operationally for overseas taxpayers. The IRS Taxpayer First Act Report to Congress identified a Taxpayer Experience Strategy, including an international strategy, for reaching underserved communities and the IRS FY 2022-2026 Strategic Plan identifies as a specific objective, addressing the needs of underserved communities, including international taxpayers, to improve their ability to participate in the tax system.

Furthermore, the funding provided under the Inflation Reduction Act (IRA) will allow the agency to significantly improve service to all taxpayers, including those located overseas. We are currently in the process of planning our strategic priorities and will have more specifics to share in the coming months. As we make additional progress on taxpayer service tools, including online account and digital services, this will afford additional opportunities for issue resolution for taxpayers located overseas.

The IRS provides a variety of services and resources tailored to the needs of overseas taxpayers. The International Call Center, staffed Monday through Friday, answers tax law and account related calls from overseas taxpayers. There is also a separate number specifically for tax professionals or software providers calling about an e-file issue that is not account related. Assistors on these lines have the option of conferencing in an interpreter, if necessary. The IRS will evaluate the ability to implement Customer Callback options for international callers based on available technology and in conjunction with the overall Taxpayer Experience Strategy.

The IRS website (IRS.gov) houses online tools and information for both individual and business overseas taxpayers. Landing pages are present for both individual and business taxpayers that include a wealth of information regarding tax administration. For example, the Interactive Tax Assistant self-directed tool allows taxpayers to find answers to eight common individual tax questions such as claiming the Foreign Tax Credit, Earned Income Exclusion, and Individual Tax Identification Number eligibility, and we continually explore adding additional tax law topics. Taxpayers may also use the Online Account feature to secure account balances, make payments, and view or establish payment agreements. The IRS is exploring virtual appointments via Web Service Delivery for taxpayers outside the United States. Currently, Web Service Delivery is a pilot program designed to test our capability to provide an additional service channel to this taxpayer segment.

In 2022, the IRS conducted virtual Volunteer Income Tax Assistance (VITA) training at 22 military bases in Europe and Asia. The military established regular VITA sites in Kosovo, Japan, Korea, United Kingdom, Netherlands, and Germany that generated 3,497 returns. The IRS also had stand-alone Facilitated Self-Assistance sites in Italy, Kuwait, Korea, Turkey, Saudi Arabia, Egypt, and Germany. Additionally, we take proactive steps for international taxpayers such as updating foreign addresses from e-filed returns and assisting with identify theft. During FY 2022, the IRS proactively issued over 1,700 identity protection personal identification numbers to taxpayers with foreign addresses who experienced identity theft or who were at risk. In addition, during FY 2022, over 1,000 foreign taxpayers were able protect their account by voluntarily opting into the identity protection personal identification numbers program.

The IRS imposed a moratorium on the Certifying Acceptance Agent program in August 2022. The Certifying Acceptance Agents assist with the Individual Tax Identification Number application process by authenticating identity documents and submitting applications. The moratorium will allow us to implement significant modernization efforts resulting in more efficient processing of properly submitted applications that will shorten processing times from months to weeks.

While it is true that e-filing rates for taxpayers residing overseas are lower than taxpayers overall, the IRS has made strides in this area. According to the Taxpayer First Act Report to Congress, only 48.8% of taxpayers residing overseas e-filed, but in 2020, the number was 63%, reflecting an increase of 15 percentage points. The IRA requires the IRS to conduct a study, which includes outreach to private industry, to better understand why overseas taxpayers e-file at lower rates, and how to remove barriers. These findings will allow the IRS to identify steps to improve the e-file rate and international taxpayer experience, consistent with the overarching objective in the IRS FY 2022-2026 Strategic Plan to address the needs of underserved international taxpayers.

TAXPAYER ADVOCATE SERVICE COMMENTS

The National Taxpayer Advocate recognizes that the IRS currently provides some services and resources specifically directed at taxpayers living overseas. The IRS has also recently implemented changes with the potential to improve customer service for overseas taxpayers, such as making identity proofing available to taxpayers with ITINs and transitioning to the ITS system for international direct deposit payments. We are pleased to see that the IRS already has plans to implement some of our recommendations, like an e-file study and virtual TAC service for taxpayers abroad. Ultimately, however, taxpayers living overseas continue to face significant barriers to meeting their tax obligations. While recent changes are encouraging, our recommendations reflect the importance of continuing to find ways to better meet the overall needs of these taxpayers.

RECOMMENDATIONS

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Develop a comprehensive customer service strategy for both U.S. citizens and resident aliens abroad and foreign individuals with U.S. tax obligations.

2. Explore ways to partner with the U.S. Department of State to make tax information available through State Department platforms and to provide tax customer service at U.S. embassies and consulates.
3. Conduct a study to identify barriers to e-filing for overseas taxpayers. The IRS should use the results to formulate a strategy to reduce those barriers and to increase e-file rates by taxpayers located outside of the United States.
4. Deploy an identity proofing solution available to individuals who do not have and are not eligible for an SSN or ITIN and who need to access the FIRE system.
5. Offer customer callback on the international telephone line and provide more detailed information on the IRS website about the services offered on the international telephone line.
6. Revise correspondence and employee procedures to give overseas taxpayers an extended timeframe within which to provide responses to all requests for information or to otherwise take action.
7. Offer virtual TAC appointments to taxpayers overseas. These appointments should offer all services available to taxpayers in the United States, including identity verification for individuals whose returns were flagged for possible ID theft and verification of identity documents for ITIN applicants.

Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Amend IRC § 6213(b)(2)(A) to allow taxpayers 120 days to request an abatement of tax when a math error notice is mailed to them outside the United States.

Endnotes

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14 Passive foreign investment company. *See* § IRC 1297.

15 Foreign Account Tax Compliance Act. *See* IRC § 6038D.

16 IRS, CDW, IRTF, IRTF Entity Database (Oct. 12, 2022).

17 IRC § 911
18 *Id.* *See also* IRS, Pub. 54, Tax Guide for U.S. Citizens and Resident Aliens Abroad (Jan. 26, 2022); IRS, Instructions to Form 2555, Foreign Earned Income (Nov. 1, 2021).
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21 The Bank Secrecy Act is not a part of the IRC. *See* 31 U.S.C. 5311, *et seq*. However, in 2003, FinCEN delegated FBAR enforcement authority to the IRS. Specifically, the IRS is responsible for investigating possible civil FBAR violations, assessing and collecting civil FBAR penalties, and issuing administrative rulings on FBAR issues. *See* 31 C.F.R. § 1010.810(g) and IRS, Pub. 5569, Report of Foreign Bank & Financial Accounts (FBAR) Reference Guide (Mar. 2022).
22 *See* IRC § 6038D(a) & (b); Treas. Reg. § 1.6038D-2(a).
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53 *Id.*
54 Taxpayer Advocacy Panel, Taxpayer Advocacy Panel 2021 Annual Report (Mar. 2022).

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80 IRS, Pub. 5426, Taxpayer First Act Report to Congress (Jan. 2021).
81 IRS, Instructions for Form W-7, Application for IRS Individual Taxpayer Identification Number (Dec. 22, 2021).
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117 *Id.*
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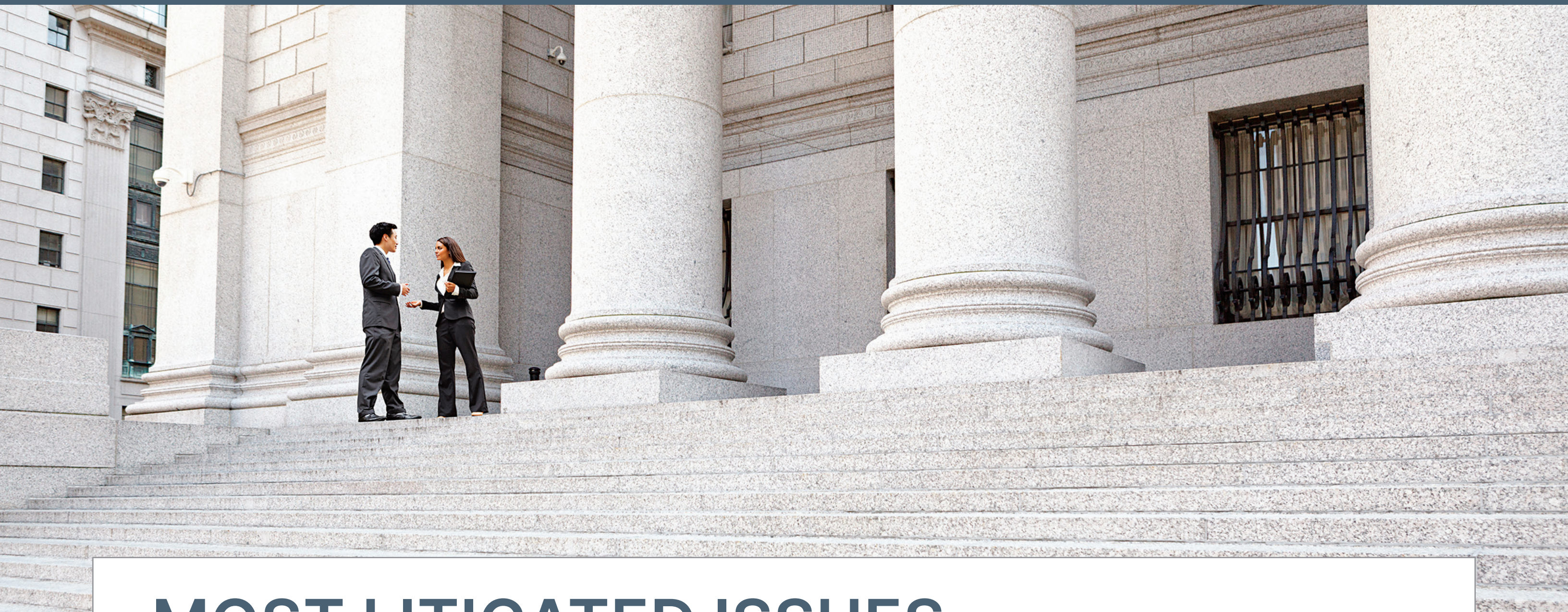


MOST LITIGATED ISSUES

OVERVIEW

IRC § 7803(c)(2)(B)(ii)(XI) requires the National Taxpayer Advocate to identify in her Annual Report to Congress the ten tax issues most litigated in federal courts. A variety of courts share concurrent jurisdiction over federal tax litigation. They include Article I (*i.e.*, special courts created by Congress) and Article III (*i.e.*, constitutional) courts. Litigation generally includes an automatic right of appeal to the U.S. Courts of Appeals,[1] although some taxpayers elect to give up their appeal rights and pursue binding but less formal proceedings.[2] The taxpayer's choice of judicial forum depends on many factors, including whether the taxpayer is required to prepay the tax before litigation, the court's procedures, the burden of proof, and the controlling precedent. Tax litigation takes place in:

- The U.S. Tax Court;
- U.S. District Courts;
- U.S. Courts of Appeals;
- The U.S. Court of Federal Claims;
- U.S. Bankruptcy Courts; and
- The U.S. Supreme Court.

The U.S. District Courts and the U.S. Court of Federal Claims have concurrent jurisdiction over tax matters in which (1) the tax has been assessed and paid in full[3] and (2) the taxpayer has filed an administrative claim for refund.[4] The U.S. District Courts, along with the bankruptcy courts in very limited circumstances, provide the only forum in which a taxpayer can request a jury trial.[5] Bankruptcy courts can adjudicate tax matters not adjudicated before filing a bankruptcy case.[6]

Congress created the Tax Court as a forum where taxpayers can bring suit to contest IRS proposed assessments and determinations without prepayment.[7] It has jurisdiction over a variety of issues, including deficiencies, certain declaratory judgment actions, appeals from administrative hearings, relief from joint and several liability, and determination of employment status.[8] The Tax Court is a "prepayment" forum, which is one major advantage for taxpayers as their case can be adjudicated on the merits without paying the disputed tax in advance.[9] In fiscal year (FY) 2022, about 98 percent of all tax-related litigation was adjudicated in the Tax Court.[10]

To identify the top ten Most Litigated Issues, TAS used commercial legal research databases to locate and review published opinions involving a substantive civil tax issue decided on the merits in federal courts during the FY 2022 period from October 1, 2021, through September 30, 2022 (the reporting period).[11]

We also reviewed the issued Statutory Notices of Deficiency (SNDs) regarding which petitions were filed with the U.S. Tax Court (Tax Court) during the reporting period. An SND, also called a notice of deficiency, a 90-day letter, or ticket-to-Tax Court, is a legal notice in which the IRS Commissioner determines a taxpayer's tax deficiency. IRC § 6212 requires the IRS to issue a notice of deficiency before assessing additional income tax, estate tax, gift tax, and certain excise taxes unless the taxpayer agrees to the additional assessment. A notice of deficiency also starts the 90-day period in which the taxpayer can file a petition with the U.S. Tax Court.[12]

METHODOLOGY

Our analysis identified 368 court opinions, with a large portion, 177 opinions, issued by the Tax Court in the reporting period.[13] We also reviewed 191 court opinions from other federal courts, including from U.S. District Courts, U.S. Courts of Appeals, the U.S. Court of Federal Claims, U.S. Bankruptcy Courts, and the U.S. Supreme Court.[14] The total number of opinions is a 20 percent increase from the 306 cases we identified last year.

The second part of our analysis used data provided by the IRS Independent Office of Appeals (Appeals) to review petitions seeking judicial review in the Tax Court from 28,807 petitions submitted by taxpayers in FY 2022 to identify the issues appearing most frequently.[15] Only a small fraction of petitions result in a trial or court ruling on the merits. Of the 29,254 cases closed in the Tax Court in FY 2022,[16] more than 99 percent were resolved without a ruling on the merits.[17] We identified the issues in the SND to determine the unagreed audit issues.[18] Our research team extrapolated the data for our analysis using information from the Compliance Data Warehouse (CDW), Individual Master File (IMF) Transaction History table for FY 2022, and the Examination Operational Automation Database.

Defining the Issues

In our analysis of court opinions, we define tax "issues" that lead to litigation by subject matter, such as gross income, filing status and dependents, and itemized deductions, although each subject may include many IRC sections. In our analysis of Tax Court petitions, we grouped issues based on Standard Audit Index Number (SAIN) codes, which are tracking numbers the IRS uses to provide a consistent numbering system for examination workpapers.[19] For this report, we revisited the most inclusive categories and narrowed the definitions we have used in past reports. We believe this will provide more nuanced, useful data to readers. Other issue categories are narrowly defined but frequently occur along with other underlying issues. We discuss those issues separately from the top ten Most Litigated Issues. The accuracy-related penalty (IRC § 6662), the frivolous issues penalty (IRC § 6673), and Collection Due Process (CDP) (IRC §§ 6320, 6330) are the subject of much litigation, although rarely without another underlying issue.

TOP TEN ISSUE CATEGORIES IN TAX COURT PETITIONS AND OPINIONS

We reviewed all Tax Court opinions issued during the reporting period that ruled on the merits of a substantive tax issue to identify the top ten Most Litigated Issues in the Tax Court. We identified the issues before the court and whether the litigant was an individual or business taxpayer. Tax Court cases involving individual taxpayers outnumbered business taxpayers 131 to 46 cases.

FIGURE 3.1, Top Ten Tax Court Opinions Issued for Individual Taxpayers During FY 2022[20]

Ranking	Issue Category	Tax Court Opinions Discussing Issue
1	Gross Income (IRC § 61 and related Code sections)	17
2	Schedule A Deductions (IRC §§ 211-224)	15
3	Failure-to-File Penalty (IRC § 6651(a)(1)), Failure-to-Pay Penalty (IRC § 6651(a)(2)), and Failure-to-Pay Estimated Tax Penalty (IRC § 6654)	14
4	Innocent Spouse Relief (IRC § 6015)	10
5	Adjusted Gross Income (AGI) Exclusions and Deductions	7
6	Whistleblower Award Determinations (IRC § 7623(b)(1))	7
7	Charitable Contribution Deductions (IRC § 170)	5
8	Fraud Penalty (IRC § 6663)	4
9	Alimony and Separate Maintenance Payments (IRC § 71)	3
10	Foreign Earned Income Exclusion (IRC § 911)	3

FIGURE 3.2, Top Ten Tax Court Opinions Issued for Business Taxpayers During FY 2022[21]

Ranking	Issue Category	Tax Court Opinions Discussing Issue
1	Sole Proprietorship Related Schedule C Income	20
2	Corporate Income (Excluding COGS) or Expenses	10
3	Failure-to-File Penalty (IRC § 6651(a)(1)), Failure-to-Pay Penalty (IRC § 6651(a)(2)), and Failure-to-Pay Estimated Tax Penalty (IRC § 6654)	10
4	Gross Income (IRC § 61 and related Code sections)	9
5	Charitable Contribution Deductions (IRC § 170)	8
6	Passive Activity (Schedule E) Income and Expenses	5
7	Schedule A Deductions (IRC §§ 211-224)	5
8	Fraud Penalty (IRC § 6663)	5
9	Employment Tax Issues	4
10	Partnership Income (Excluding Cost of Goods Sold) or Expenses	4

TOP TEN ISSUES PETITIONED TO THE TAX COURT

We identified the top ten issues petitioned to the Tax Court to provide insight into the matters that taxpayers bring before the Tax Court and to let us compare those issues to the top ten issues that required a court ruling to resolve. We analyzed the issues appearing on the SND to determine the unagreed issues in each petition.[22] Figure 3.3 shows this year's most petitioned issues to the Tax Court from most to least.[23]

FIGURE 3.3, Top Ten Individual Taxpayer Issues Petitioned to the Tax Court in FY 2022[24]

Ranking	Issue Category	Total Petitions to the Tax Court
1	Gross Income (IRC § 61 and related Code sections)	21,215
2	Statutory Adjustment[25]	5,897
3	Filing Status and Dependents	1,739
4	Payments and Credits	1,456
5	Family Status Related Credits	1,364
6	Earned Income Tax Credit (EITC)	1,224
7	Schedule A Itemized Deductions Under IRC §§ 211-224	1,162
8	Passive Activity (Schedule E) Income and Expenses	973
9	Federal Income Tax Withholding	956
10	Taxes and Other Credits	675

FIGURE 3.4, Top Ten Business Taxpayer Issues Petitioned to the Tax Court in FY 2022[26]

Ranking	Issue Category	Total Petitions to the Tax Court
1	Sole Proprietorship Trade or Business Expense	2,834
2	Sole Proprietorship Gross Income	1,223
3	Corporate or Partnership Trade or Business Expense	371
4	Corporate or Partnership Gross Income	297
5	Schedule K-1 Flow-Through Items	74
6	Charitable Contributions	41
7	Farming and Agriculture Activities – Trade or Business Expenses	34
8	Balance Sheet – Assets	33
9	Balance Sheet – Stockholder Equity	25
10	Balance Sheet – Liabilities	24

Gross Income (IRC § 61 and Related Code Sections)

As required under IRC § 7803(c)(2)(B)(ii)(XI), TAS has tracked the most litigated tax issues for the last 20 years, and controversies involving gross income or unreported income have been at or near the top of this list since the first report.[27] This year, it was the number one issue among those litigated in the Tax Court with 17 substantive opinions issued in cases with individuals and ten with business taxpayers where corporate income was at issue. This issue was also the largest category of cases with individual taxpayers (21,215) who petitioned the Tax Court.[28] The second highest total among business taxpayers was sole proprietorship gross income (1,223), and the fourth highest total among business taxpayers was corporate or partnership gross income (297) for taxpayers who petitioned the Tax Court.[29]

Schedule A Deductions (IRC §§ 211-224)

Itemized deductions reported on Schedule A of IRS Form 1040 were frequently the subject of litigation for individual taxpayers and were among the ten most litigated issues for the sixth time since the National Taxpayer Advocate's 2000 Annual Report to Congress.[30] In FY 2022, we identified 15 decisions in which itemized deductions were litigated in the Tax Court.[31] Additionally, in FY 2022, taxpayers petitioned the Tax Court in 1,162 cases where itemized deductions were an issue during the examination, making it the seventh most common issue petitioned to the Tax Court in FY 2022.[32]

Failure-to-File Penalty (IRC § 6651(a)(1)), Failure-to-Pay Penalty (IRC § 6651(a)(2)), and Failure-to-Pay Estimated Tax Penalty (IRC § 6654)

We identified and reviewed 14 opinions involving individuals and ten opinions involving businesses contesting the imposition of penalties and additions to tax for failure to timely file a tax return, failure to pay an amount shown as tax on a return, or underpayment of estimated taxes.

Sole Proprietorships and Schedule C Income and Expenses

This litigation typically focuses on applying well-settled legal principles and statutes and regulations to taxpayers' particular facts and circumstances. We identified and reviewed 20 business cases where this category of issues was litigated in the Tax Court. Taxpayers petitioned the Tax Court in 2,834 instances where sole proprietorships' trade or business expenses were at issue during the examination in FY 2022.[33] This category ranked top among petitioned issues for business taxpayers and ranks high for issues found in opinions issued by the Tax Court. Trade or business deductions have been among the most litigated issues since TAS has tracked such activity.[34]

Innocent Spouse Relief (IRC § 6015)

We identified ten opinions issued in the Tax Court during the reporting period where taxpayers challenged an IRS determination on innocent spouse relief under IRC § 6015. A taxpayer may seek relief from liability arising from a joint return if the taxpayer can prove the taxpayer's spouse or former spouse should be held solely liable under IRC § 6015. IRC § 6015 provides three ways for a taxpayer to obtain partial or full relief from a tax liability arising from a return filed jointly with a spouse or ex-spouse. IRC § 6015(b) provides complete relief for deficiencies arising from a jointly filed return. IRC § 6015(c) provides limited relief from a joint liability for spouses who are divorced, separated, widowed, or not living together by allocating the liability between the spouses. If relief is unavailable under IRC § 6015(b) or (c), subsection (f) provides a third opportunity for "equitable" relief from both deficiencies and underpayments. The issue does not appear within our analysis of petitions to the Tax Court because the IRS does not record denial of innocent spouse relief as the underlying issue in an SND; rather, it issues a notice of determination regarding innocent spouse claims.

Adjusted Gross Income Exclusions and Deductions

We identified seven cases involving individual taxpayers where the taxpayer claimed a portion of his or her income could be excluded from the calculation of AGI and not subject to federal income tax. For example, these cases may involve a claimed net operating loss. In other cases, taxpayers argued that income was excludable under IRC §§ 121 and 132(a)(1). Some taxpayers in this category also claimed deductions for casualty losses.

Whistleblower Award Determinations (IRC § 7623(b)(1))

Whistleblower award determinations under IRC § 7623(b)(1) made our list for the second consecutive year. We identified seven opinions issued in the Tax Court where individuals challenged an IRS determination on issuing whistleblower awards during the reporting period. The IRS Whistleblower Office pays monetary awards to eligible individuals if the IRS uses information from the whistleblower to take judicial or administrative action – an audit or investigation resulting in the collection of proceeds.[35] Final determinations of the IRS Whistleblower Office regarding awards under IRC § 7623(b) may, within 30 days of such determination, be appealed to the Tax Court.[36] In FY 2021, the Whistleblower Office made 179 awards to whistleblowers totaling over $36 million, which included 20 post-petition whistleblower awards awarded under IRC § 7623(b).[37]

Charitable Contribution Deductions (IRC § 170)

We identified five opinions in individual cases and eight in business cases issued during the reporting period on the deductibility of charitable contributions under IRC § 170. Again this year, most of these cases arose due to the increased IRS focus on curtailing abuse in the syndicated conservation easement arena, including by designating syndicated conservation easements as a listed transaction and aggressively auditing taxpayers.[38] In FY 2022, business taxpayers petitioned the Tax Court in 41 cases where charitable contributions were an issue and 438 total for individual taxpayer cases.[39]

Passive Activities (Schedule E) Income and Expenses

We identified five cases where passive activity income and expenses reported on Schedule E were at issue before the Tax Court. Schedule E (Form 1040) is used to report income or loss from rental real estate, royalties, partnerships, S corporations, estates, trusts, and residual interests in Real Estate Mortgage Investment Conduits. Like business activities reported on Schedule C, taxpayers must keep records to support items reported on Schedule E, and unsubstantiated deductions can be the reason underlying the SND. Passive activities were the subject of an SND in 973 petitions during FY 2022.

Fraud Penalty (IRC § 6663)

We identified four cases with individual taxpayers and five with business taxpayers where the civil fraud penalty under IRC § 6663 was at issue. IRC § 6663(a) provides that "[i]f any part of any underpayment of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 75 percent of the portion of the underpayment which is attributable to fraud." The IRS has the burden of proving by clear and convincing evidence that (1) an underpayment of tax exists and (2) the underpayment was due to fraud.[40] If the IRS establishes that any portion of the underpayment is attributable to fraud, the entire underpayment shall be treated as attributable to fraud and subject to a 75 percent penalty unless the taxpayer establishes by a preponderance of the evidence that some part of the underpayment is not attributable to fraud.[41] The civil fraud penalty was the subject of an SND in 41 individual and six business petitions during FY 2022.

Filing Status and Dependents

The filing status and dependent issues category includes personal exemptions for individual taxpayers and spouses, dependent children, and other dependents, along with filing status. This category did not make the top ten list in our analysis of Tax Court opinions but ranked number three on individual taxpayer issues petitioned to the Tax Court with 1,739 petitions.

Family Status Related Credits

The family status related credits category includes the Child Tax Credit, Child and Dependent Care Credit, Additional Child Tax Credit, and the Adoption Credit. This category did not make the top ten list in our analysis of Tax Court opinions but ranked fifth on individual taxpayer issues petitioned to the Tax Court with 1,364 petitions. EITC, in its own category, ranked sixth on individual taxpayer issues petitioned to the Tax Court with 1,224 petitions by individual taxpayers in FY 2022.

OTHER ISSUES

This year, we tracked the issues litigated in federal courts and the Tax Court separately. We also analyzed the accuracy-related penalty under IRC § 6662, the frivolous issues penalty under IRC § 6673, and CDP litigation under IRC §§ 6320 and 6330 outside of the top ten issues framework. As the penalties are not standalone issues, we did not include these in the top ten list of Most Litigated Issues. Likewise, due to the unique nature of CDP, it is discussed separately.

Accuracy-Related Penalty (IRC § 6662(b)(1)-(2))[42]

We identified 24 total opinions issued by the Tax Court for individual and business taxpayers during the reporting period where taxpayers litigated the negligence or substantial understatement parts of the accuracy-related penalty. In FY 2022, 1,050 individual and 91 business taxpayers petitioned the Tax Court where the accuracy-related penalty for negligence or substantial understatement of tax was an issue during the examination.[43]

Supervisory Pre-Assessment Penalty Approval Under IRC § 6751(b)(1)

IRC § 6751(b)(1) provides: "No penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate."[44] IRC § 6751(b)(2) carves out two categories of exceptions from this supervisory approval requirement: (i) the additions to tax for failure to file a tax return or pay the tax due (IRC § 6651) and the additions to tax for failure to pay sufficient estimated tax (IRC §§ 6654 and 6655) and (ii) any other penalty that is "automatically calculated through electronic means."[45] IRC § 6751(b) protects taxpayers' *right to a fair and just tax system* by ensuring that penalties are only imposed in appropriate circumstances and are not used as a bargaining chip to encourage settlement.[46] However, the phrase "initial determination of [an] assessment" is unclear. A "determination" is made based on the IRS's investigation of the taxpayer's liability and an application of the penalty statutes. An "assessment" is merely the entry of a decision on IRS records. Therefore, while a penalty can be determined and a penalty can be assessed, "one cannot 'determine' an 'assessment.'"[47] Due to this ambiguity in the statute, an increasing number of courts have had to grapple with when written supervisory approval must be provided.[48] Thus, we continue to see litigation on this issue.[49]

For the first time, we are creating the category Supervisory Pre-Assessment Penalty Approval Under IRC § 6751(b)(1) but listing it here in "other issues" because this type of issue arises in conjunction with other underlying issues in litigation. If it were to be included in the top ten list for opinions, this category would be tied for the tenth spot for opinions involving individual taxpayers as there were three opinions involving individual taxpayers during FY 2022. Similarly, if it were included in the top ten list for opinions involving business taxpayers, it would be tied for the fifth spot with eight opinions involving business taxpayers during FY 2022.

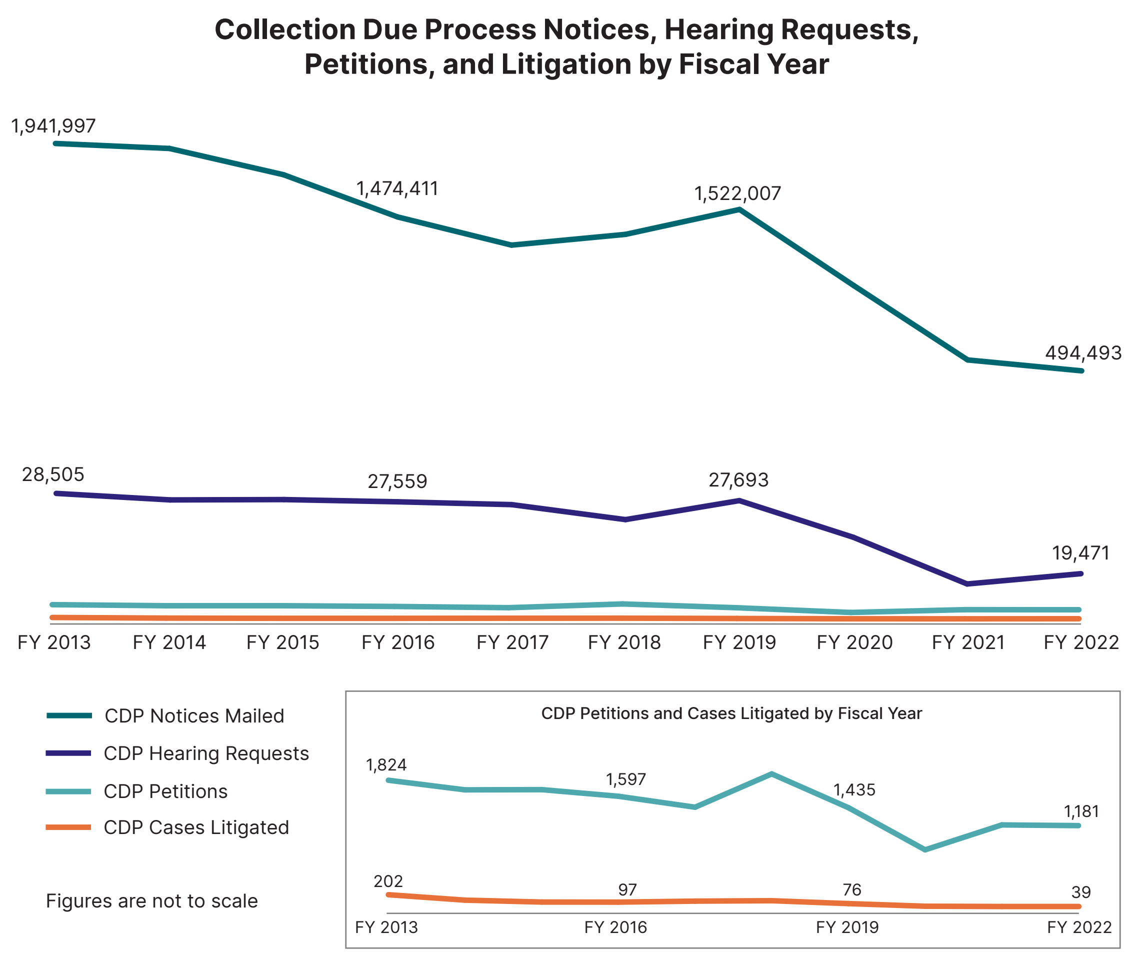
Frivolous Issues Penalty (IRC § 6673)

During the reporting period, the Tax Court decided seven cases involving the IRC § 6673 frivolous issues penalty. This penalty is imposed on a taxpayer maintaining a case primarily for delay, raising arguments considered frivolous by the courts, unreasonably failing to pursue administrative remedies, or filing a frivolous appeal.[50] Occasionally, when the IRS has not requested the penalty, and the facts are appropriate, the court has nonetheless raised the issue *sua sponte*.[51] The Tax Court imposed a total of $9,070,664 in frivolous issues penalties under IRC §§ 6673(a) and (b) on 457 taxpayers in FY 2022.[52]

Collection Due Process Hearings (IRC §§ 6320 and 6330)

Our review of litigated issues found 39 substantive opinions issued on CDP cases in the Tax Court. Each year, only a small fraction of taxpayers exercise their right to request an administrative hearing or petition for judicial review. Figure 3.5 depicts the filing trends for CDP cases over the last ten years. We recorded a slight decrease in CDP petitions, with 1,181 in FY 2022, down from 1,191 petitions in FY 2021.[53] *Pro se* taxpayers continue to make up a majority of the total cases, with 928 of 1,181 cases having unrepresented taxpayers compared to 253 represented taxpayers in FY 2022.[54] This trend is also true of the ten-year average, where an average of 1,051 cases were *pro se* compared to an average of 482 involving represented taxpayers over a ten-year period, from FYs 2013 to 2022.[55]

FIGURE 3.5[56]



In FY 2022, 424,012 individual taxpayers received a CDP notice, a decline from the 563,975 individual taxpayers receiving a CDP notice in FY 2021.[57] In FY 2022, 70,481 business taxpayers received a CDP notice, down from 107,359 in FY 2021.[58] The IRS issued 494,493 CDP notices in FY 2022.[59] In FY 2022, 39 cases involving CDP were litigated.[60] CDP hearings continue to play a vital role in overall tax administration by allowing taxpayers to contest a lien or levy before (or soon after) the IRS takes the collection action.

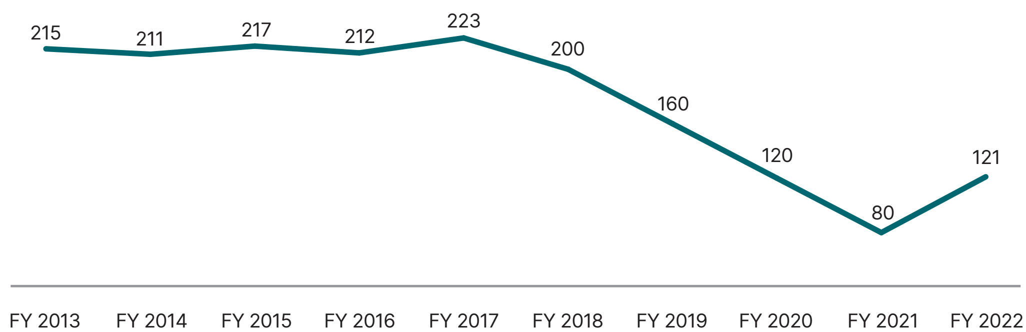
TOP ISSUES IN OTHER FEDERAL COURTS

Civil Actions to Enforce Federal Tax Liens or to Subject Property to Payment of Tax (IRC §§ 7403 and 6321)

During the reporting period in FY 2022, we identified 19 opinions that involved civil actions to enforce liens under IRC §§ 7403 and 6321. This is a 37 percent decrease from the 30 opinions reported last year.[61] In FY 2022, 121 federal tax lien cases were referred to the Department of Justice (DOJ) for enforcement and foreclosure, up 51 percent from the 80 cases referred in FY 2021.[62] This is a slight upward tick in the trend in referrals to the DOJ since last year but not as high as the peak in FY 2017, as shown in Figure 3.6.

FIGURE 3.6[63]

Liens Cases Referred to the U.S. Department of Justice



Summons Enforcement (IRC §§ 7602(a), 7604(a), and 7609(a))

During FY 2022, 43 proceedings to quash or enjoin enforcement of a summons were filed and 19 summons enforcement proceedings were filed for 62 summons enforcement cases that either were (1) newly filed by the DOJ Tax Division or (2) filed by third parties and received by the DOJ Tax Division.[64] The DOJ handles motions to quash summonses (the United States is listed as a defendant), and the U.S. Attorneys' Offices handle suits to enforce the summons (the United States is listed as a plaintiff).

SETTLEMENTS OF CASES PETITIONED TO THE TAX COURT

Both employees at the IRS Office of Chief Counsel, who represent the IRS in the Tax Court, and Appeals have the authority to settle cases on behalf of the IRS. Figure 3.7 shows the number of Tax Court cases settled by Appeals and the number settled by the IRS Office of Chief Counsel during the last ten fiscal years.

FIGURE 3.7[65]

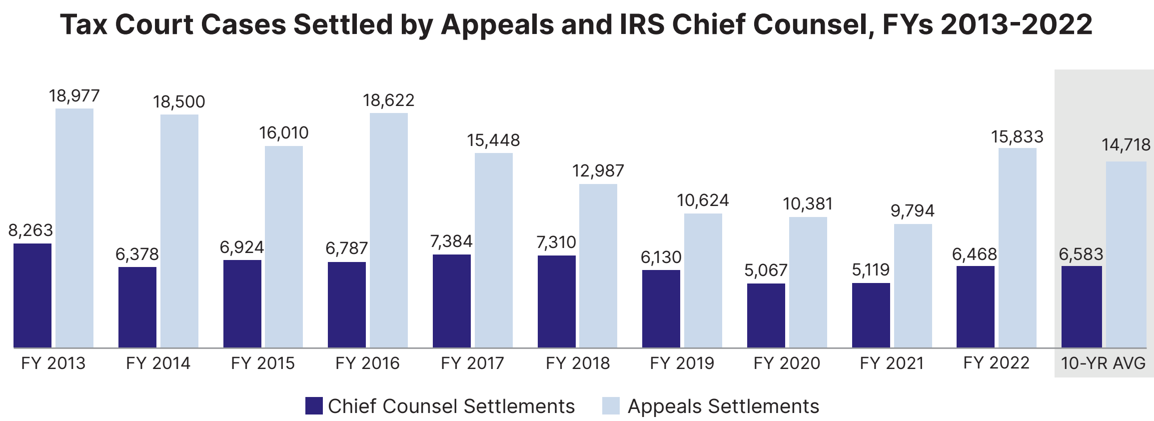
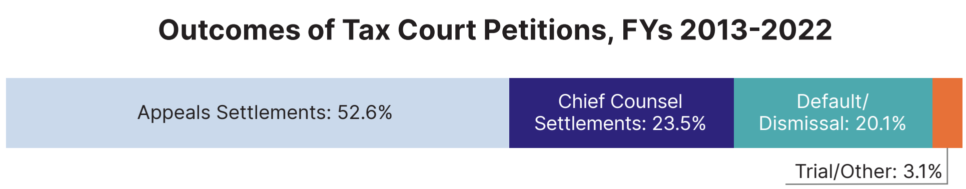


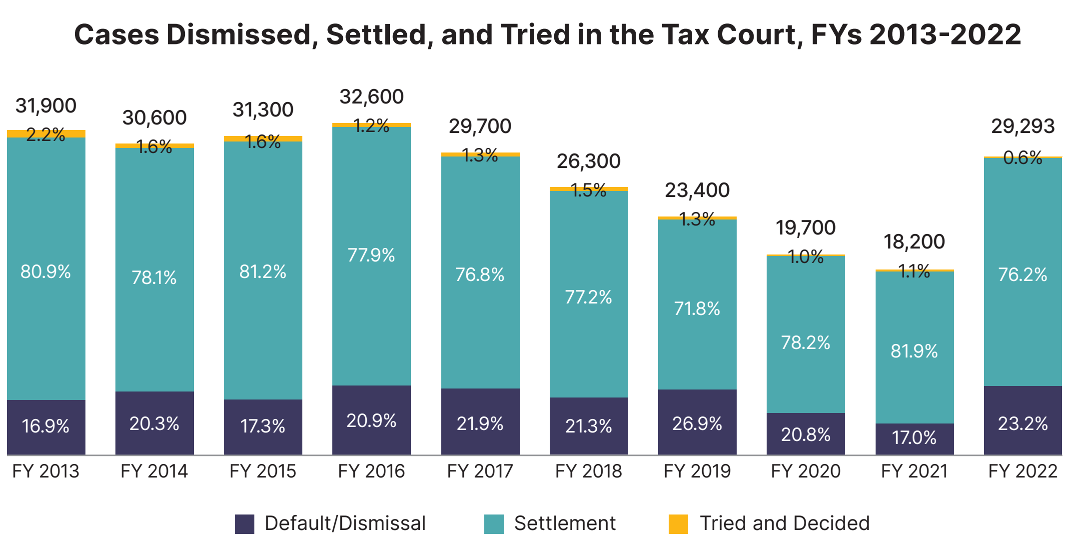
Figure 3.8 shows the ten-year average outcome of Tax Court petitions from FYs 2013 to 2022. The majority of petitions were settled by Appeals at 52.6 percent while the remainder was divided up by settlements by Chief Counsel (23.5 percent), then defaults and dismissals of cases (20.1 percent), and finally the trial/other dispositions (3.1 percent).

FIGURE 3.8[66]



As Figure 3.9 illustrates, the vast majority of cases petitioned to the Tax Court (about 76 percent) in FY 2022 settled by agreement between the parties with about 22,300 cases settled by Appeals and Chief Counsel combined.

FIGURE 3.9[67]



The IRS Office of Chief Counsel continued to partner with Low Income Taxpayer Clinics (LITCs),[68] American Bar Association volunteer attorneys, and other *pro bono* organizations to offer "Settlement Days" in FY 2022. In FY 2022, the IRS Office of Chief Counsel held 50 Settlement Day events.[69] Four of these events were held in person, and 46 were conducted via video conferencing.[70] The IRS Office of Chief Counsel invited 217 taxpayers to Settlement Day conferences, 185 of whom attended.[71] Of the 185 conferences, 120 resulted in settlement of the case.[72] This is a settlement rate of 64 percent.[73] Those taxpayers whose cases were not resolved had the opportunity to obtain free legal advice from *pro bono* volunteers or LITCs and were in a better position to understand their cases and the process of litigating in the Tax Court.

ANALYSIS OF *PRO SE* LITIGATION

When a taxpayer appears before the court without a representative, it's called appearing *pro se*.[74] In FY 2022, about 90 percent of cases petitioned to the Tax Court involved *pro se* taxpayers, and in about ten percent of the cases the taxpayers were represented.[75] Over the past ten years, an average of 83.5 percent of taxpayers appearing in Tax Court were not represented by counsel.[76] Self-represented taxpayers are disadvantaged in tax litigation as they are unfamiliar with the Tax Court's Rules of Practice and Procedure, Federal Rules of Evidence, and the nuances of negotiating with the IRS. The dollars, along with the taxpayer's income level, are two key determinants of whether a taxpayer obtains representation to navigate the litigation process. Hiring a representative can be expensive. Even if a taxpayer has the means to do so, the amount at issue may not justify the cost.

Figure 3.10 compares the ratio of Tax Court cases where taxpayers proceeded *pro se* to the cases where taxpayers appeared with a representative over the past ten fiscal years.

FIGURE 3.10[77]

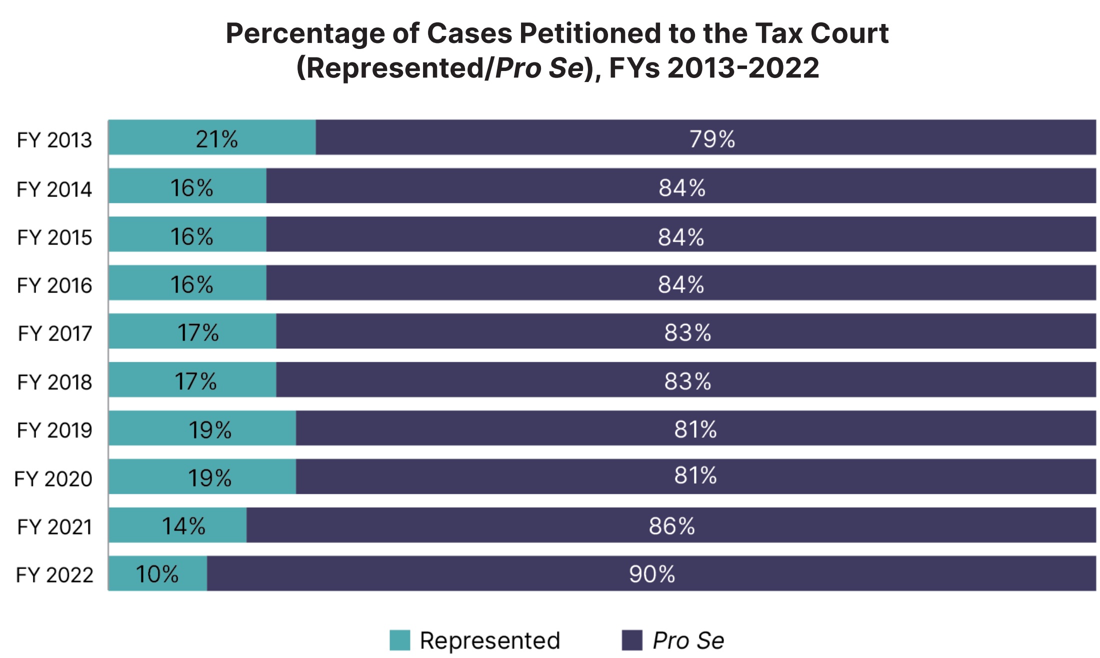
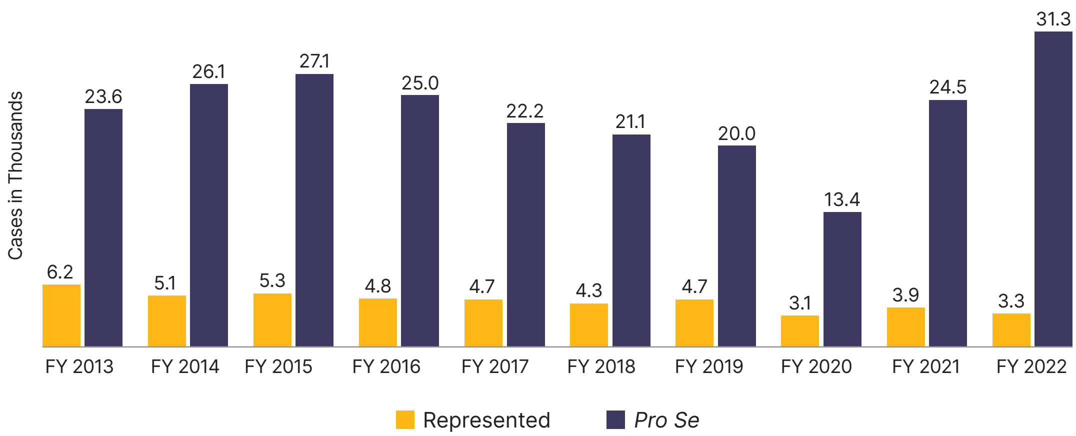


Figure 3.11 shows the number of Tax Court petitions over the past ten fiscal years, broken down by whether the taxpayers proceeded *pro se* or with a representative.

FIGURE 3.11[78]

Total Cases Petitioned to the Tax Court (Represented/*Pro Se*), FYs 2013-2022



Impact of Low Income Taxpayer Clinics on Tax Court Litigation

To provide more support to unrepresented petitioners, Congress enacted IRC § 7526 in 1998 to provide grants of up to $100,000 per year for eligible low-income taxpayer clinics.[79] The Tax Court administers the Tax Clinics and Bar-Sponsored Calendar Call programs that provide advice and assistance to many low-income, self-represented taxpayers.[80] The Tax Clinics and Bar-Sponsored Calendar Call Program enables eligible taxpayers to receive free legal advice and representation at a trial session.

Each year, LITCs provide crucial assistance to low-income taxpayers in U.S. Tax Court cases. For the taxpayers they help, paying for legal representation is not an option, and the LITCs' free assistance levels the playing field. The Tax Court can be an intimidating place, especially with complicated tax laws and facts difficult to convey or substantiate. Without representation, many taxpayers abandon their right to challenge a tax liability in court. However, with the assistance of LITC attorneys, students, and volunteers, taxpayers are able to exercise their rights and are afforded the opportunity to reach a fair and just outcome. LITCs provide access to justice and assistance that helps low-income taxpayers obtain much-needed refunds and protects their *right to pay no more than the correct amount of tax*.[81]

During 2021, 124 LITCs participated in the U.S. Tax Court Clinical Program. LITC practitioners litigated 1,477 cases in the Tax Court on behalf of low-income taxpayers and 45 cases in other federal courts.[82] LITC practitioners assisted taxpayers in many cases without litigation, entering appearances in 1,010 cases, representing taxpayers in 465 cases that did not require an entry of appearance, and providing informal advice through consultation at the Tax Court in 445 cases.[83] In addition to the services LITCs provide through direct assistance, they help court proceedings run more smoothly, reduce litigation, and ease the administrative burden on the courts.

Considering the increase in the number of LITCs since the enactment of IRC § 7526 and that the $100,000 limit on grant funding was not indexed for inflation and has never been raised, TAS recommends changes to the LITC Program that would allow for even more taxpayers to receive assistance in resolving their controversies with the IRS.[84] Across the LITC Program, many LITC practitioners helped clients when they were ready to give up. For example, a taxpayer was struggling to provide documentation that her children lived with her during the tax year, jeopardizing her entitlement to Head of Household filing status, EITC, and the Child Tax Credit.[85] With LITC representation, she successfully contested the $7,800 assessment and negotiated a positive resolution with the Chief Counsel representative.[86] In another case involving

EITC, an LITC and TAS helped the parent of a disabled child obtain a $3,000 frozen refund by helping the parent prove that the state payments reported on the parent's return were, in fact, wages for purposes of EITC.[87] Outside of the refundable credit context, LITCs helped taxpayers prevail in other factually and legally complex cases, such as one where an LITC helped a victim of a workplace injury demonstrate that the settlement he received from his employer was not taxable, or a case where an LITC helped a sexual assault survivor with Post-Traumatic Stress Disorder obtain an otherwise barred refund under the financial disability exception to the refund statute of limitations in IRC § 6511(h).[88] In these cases and many more, LITCs helped taxpayers achieve the fair and just result they deserved.

PUBLIC ONLINE ACCESS TO TAX COURT FILINGS

As we highlighted in this section, through its engagement with LITCs and *pro bono* lawyer organizations, the U.S. Tax Court provides unrepresented taxpayers greater access to legal representation and much-needed information and assistance. However, work remains to be done in improving access to information for all taxpayers, including full access to case dockets on par with what the Public Access to Court Electronic Records (PACER) system provides for dockets in other U.S. courts.

On December 18, 2020, the U.S. Tax Court announced use of its new online case management system, Docket Access Within A Secure Online Network (DAWSON).[89] Under this system, the Tax Court allows parties to a case to access case records online. However unlike PACER, DAWSON does not allow nonparties (*i.e.*, the public) online access to anything beyond opinions and orders.[90] To safeguard taxpayer privacy, DAWSON does not allow nonparties to access non-sealed briefs, pleadings, or motions.[91]

IRC § 7461 governs the accessibility and publication of documents that enter the Tax Court system.[92] This section directs the Tax Court to make all non-sealed documents "public records open to the inspection of the public." There is an exception to the general rule that allows for sealing or redacting of information on the docket when disclosure would involve trade secrets or other confidential information or when the taxpayer requests the return of evidence, under IRC § 7461(b).[93] Enacted in 1954 and last amended in 1984, IRC § 7461 was written long before lawmakers contemplated issues related to online access.[94]

The Tax Court only makes non-sealed evidence, briefs, pleadings, and transcripts of proceedings available to nonparties who visit the Washington, D.C., Tax Court building in person, Monday through Friday (excluding federal holidays), between 8 a.m. and 4:30 p.m.[95] A nonparty who visits the building and who seeks to view the non-sealed documents on a particular docket can visit the Tax Court's record office on its ground floor (after clearing an identity check at the security office), which allows access to this unsealed information through a single desktop computer.[96] Printouts of non-sealed records must be requested from the Tax Court records department at a cost of 50 cents per page, with a maximum charge of $3 per document.[97]

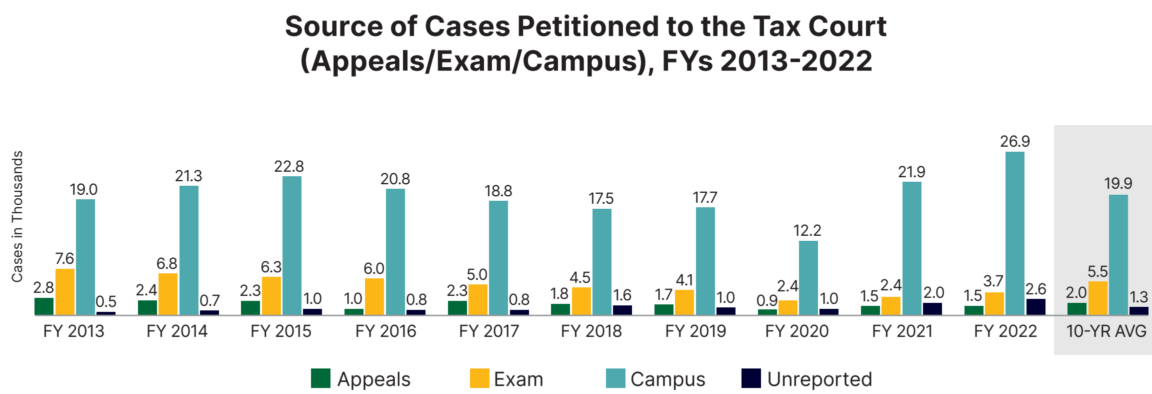
A nonparty can also call the Tax Court records department and make a request for items on a particular docket by telephone; however, the nonparty would need to provide information about the specific document, date, and docket number for the request. Without first seeing the docket, the nonparty may be unable to provide the necessary information to request the correct records by phone.

We appreciate the Tax Court's goal of protecting taxpayers' data and protecting all litigants from unnecessary disclosure of private data by limiting access to court records in an electronic format. However, we believe the Tax Court can provide access to non-sealed documents on dockets without violating privacy rights. We encourage the Tax Court to use DAWSON to increase public access to electronic filings (1) by considering using redacting software that would automatically redact certain types of sensitive or protected information, even when inadvertently included in a filing, and (2) by improving awareness and educational materials for unrepresented taxpayers so they know to alert the Tax Court before filing documents with the Tax Court if they have a special need to redact information from publicly available filings. We believe that a balance can be achieved by allowing nonparties access to public materials while also preventing inadvertent disclosures of taxpayers' sensitive information.

SOURCES OF CASES PETITIONED TO THE TAX COURT

Depending on the taxpayer's actions after receiving a notice from the IRS, an IRS Service Center (Campus), Field Exam, or Appeals may issue an SND. The SND is the typical "ticket to Tax Court" and the document that starts the procedural clock for timely filing a petition. In a CDP case, taxpayers file a petition based upon a notice of determination from a CDP hearing. The notice of determination, like the SND, starts the period in which a taxpayer must file a petition with the Tax Court.[98] Figure 3.12 shows Tax Court petition filings over the last ten fiscal years based on the IRS function that issued the notice attached to each petition.

FIGURE 3.12[99]



From FY 2021 to FY 2022, all categories saw a nearly 23 percent increase except Appeals, which stayed flat at about 1,500 cases resulting in a Tax Court petition. SNDs from the Campuses saw the largest real increase, with about 5,000 additional petitions compared to last year. About 19,900, or 72 percent, of petitions in the Tax Court, an average of a ten-year period, resulted from an SND being issued from a Campus, bypassing Appeals, as shown in Figure 3.12.[100]

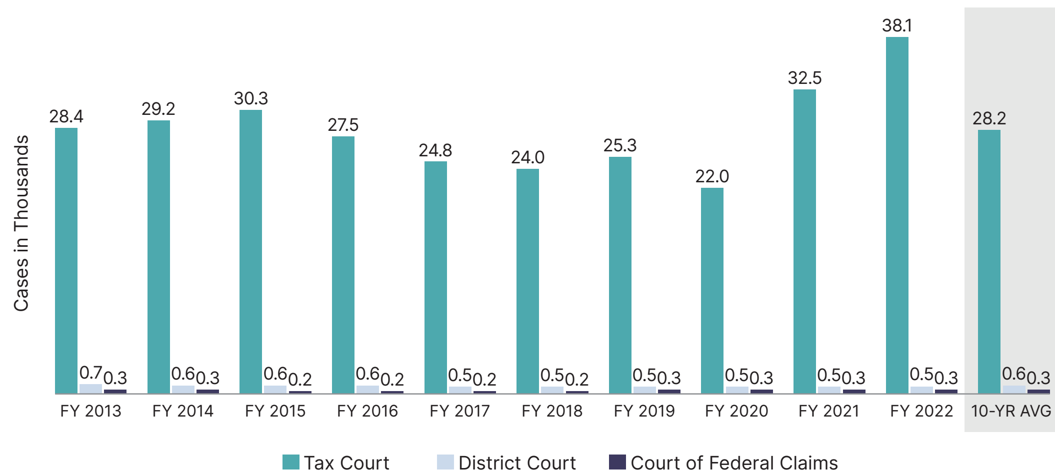
When the SND is issued from a campus, it is highly unlikely that a taxpayer has even spoken with an IRS employee. Even for taxpayers who seek interaction at the Examination or Appeals level, some have had difficulty reaching an IRS employee who could assist. Many faced delays when communicating with the IRS, and others encountered inflexible policies that represent a "take it or leave it" proposition.[101] Many of those taxpayers missed an opportunity for achieving a resolution at the administrative level before seeking Tax Court review.

COMPARATIVE ANALYSIS

Comparing the number of docketed cases amongst the courts in which taxpayers may litigate federal tax disputes (*i.e.*, petitions filed), the Tax Court received at least 56 times as many cases as district courts and 94 times as many cases as the Court of Federal Claims in FY 2022, as illustrated in Figure 3.13. Figure 3.13 compares the number of docketed cases in inventory in the Tax Court, the Court of Federal Claims, and the district courts at the end of the past ten fiscal years and calculates a ten-year average.

FIGURE 3.13[102]

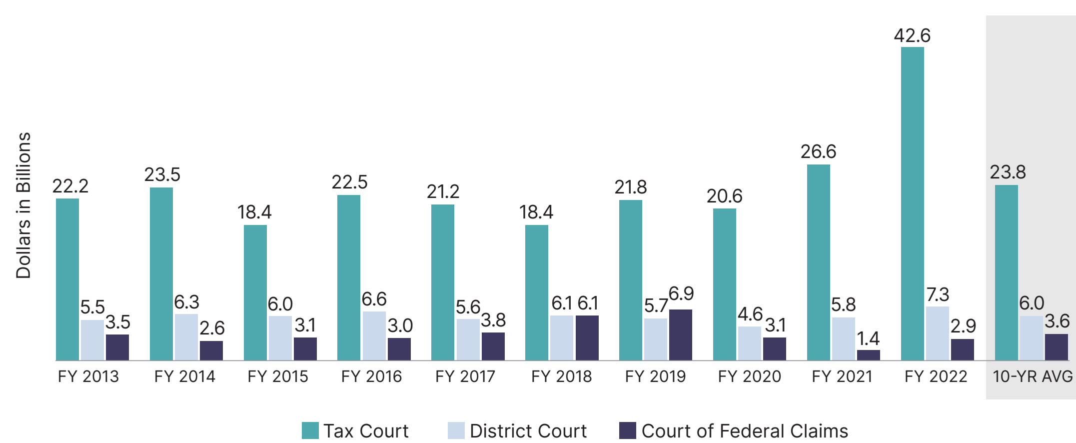
Docketed Inventory in Tax Court, District Court, and Court of Federal Claims, FYs 2013-2022



While the Tax Court docket has the majority of cases, there is more money at stake in tax litigation in the district courts and the Court of Federal Claims. Comparing the dollars in dispute, Tax Court cases compare about 4:1 to district courts and about 7:1 to the Court of Federal Claims based on the ten-year average.[103] Figure 3.14 shows the dollars in dispute for the docketed case inventory in these courts over the past ten fiscal years.

FIGURE 3.14[104]

Dollars in Dispute in Tax Court, District Court, and Court of Federal Claims, FYs 2013-2022



Looking more closely at the Tax Court cases litigated during FY 2022, in nearly 84 percent of the cases, there was less than $50,000 at stake.[105] About one percent of the total docketed Tax Court cases involved an amount in dispute of more than $10 million, but that represents nearly 84 percent of all dollars in dispute in the Tax Court. Figure 3.15 shows the breakdown of FY 2022 Tax Court cases by dollars in dispute.

FIGURE 3.15[106]

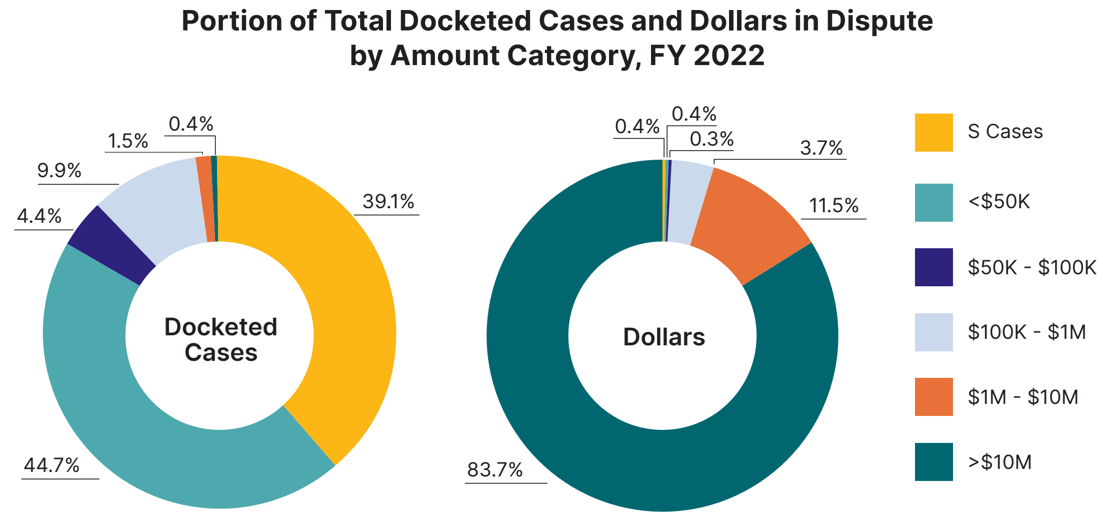
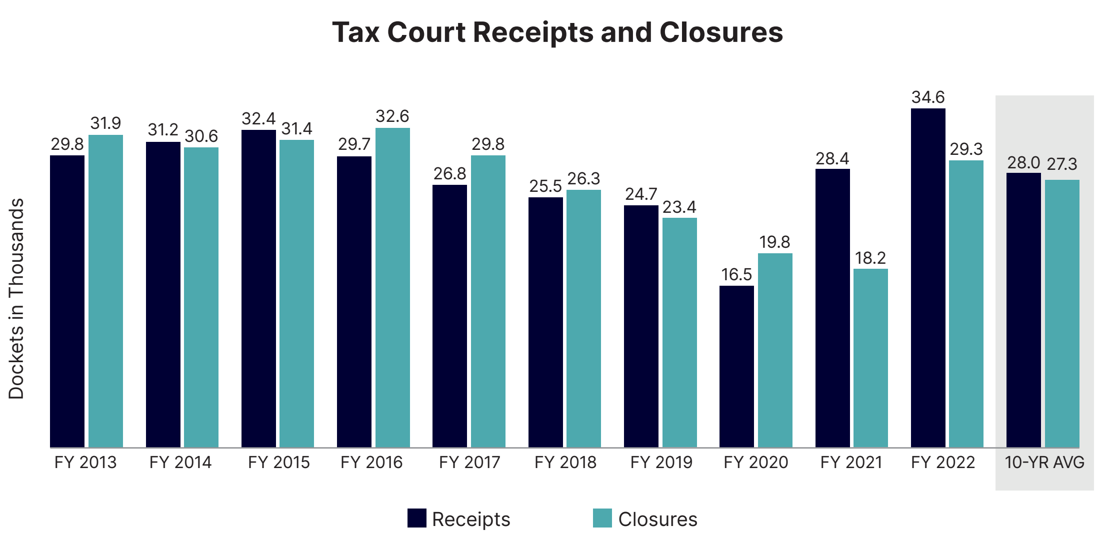


Figure 3.16 shows the Tax Court receipts and closures of cases over a ten-year period. This data shows how receipts and closures fell to all-time lows in FY 2020 but increased in 2021 and again in 2022. In FY 2022, the receipts were the highest in the ten-year period, and closures were highest since FY 2017.

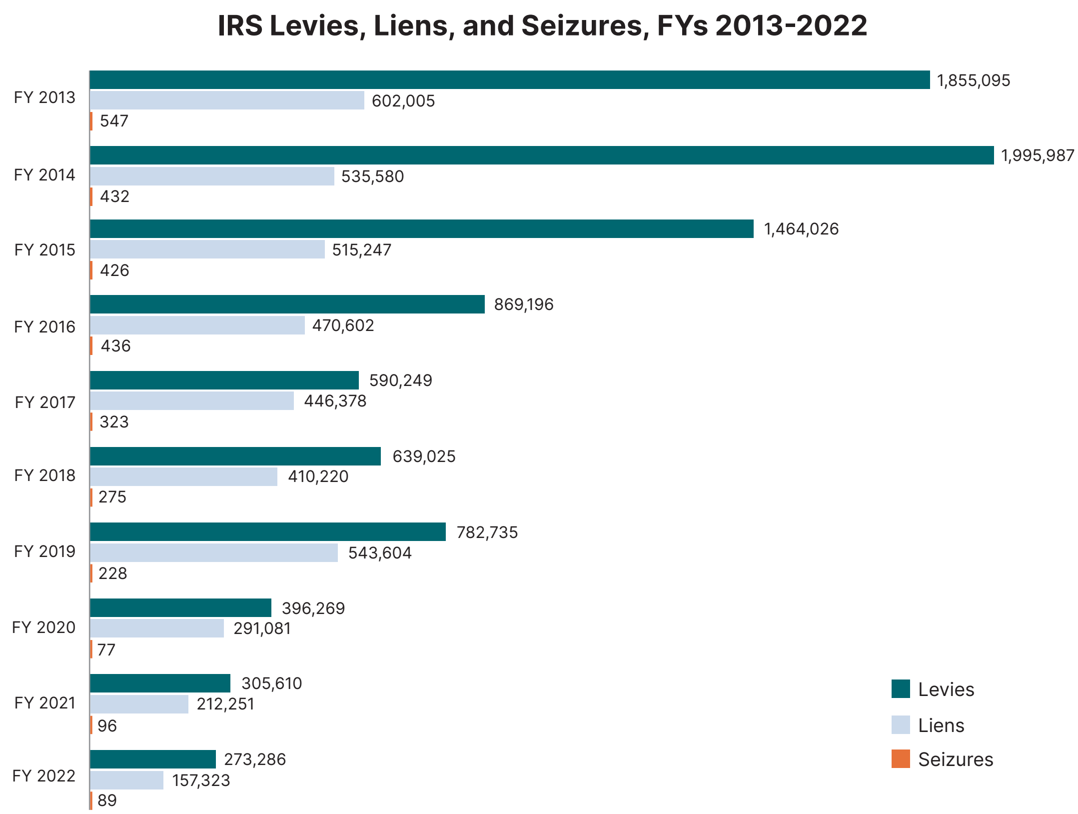
FIGURE 3.16[107]



Tax Court cases begin with a taxpayer filing a petition to the Court.[108] However, in a U.S. district court, both taxpayers and the IRS, or the DOJ acting on behalf of the United States, can initiate proceedings as part of enforcement actions.

The DOJ, on behalf of the United States, files suit for actions for the IRS including summons enforcement actions to produce books, papers, records, or other data or to give testimony as required by the summons.[109] The DOJ may bring a civil action to enforce a federal tax lien and to foreclose on taxpayer property, including a personal residence, to satisfy an outstanding tax liability.[110] If the United States proves the lien is valid, the court will typically issue an order of sale that (1) authorizes the United States to foreclose on the taxpayer's subject property and (2) describes how the proceeds of sale should be distributed. Taxpayers can initiate a suit in a U.S. district court to oppose those enforcement actions or to sue for a refund.[111] The number of U.S. district court cases has declined on par with the number of Tax Court cases during the last ten years, following a similar decline in IRS collection enforcement actions. Figure 3.17 shows the number of levies, liens, and seizures during the past ten fiscal years.

FIGURE 3.17[112]



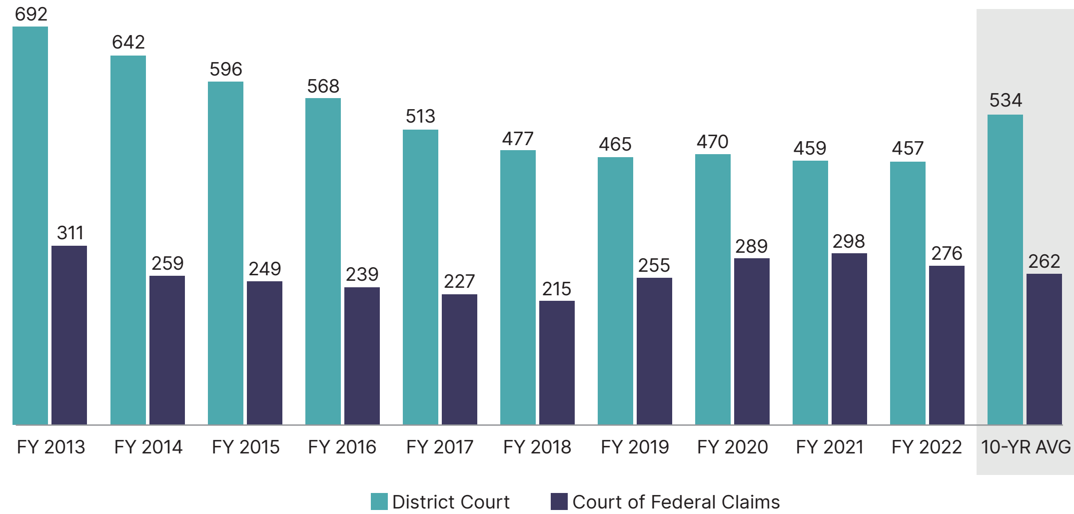
REFUND LITIGATION

The IRC permits taxpayers to file suit for refund under IRC § 6511. IRC § 7422(a) requires that taxpayers file a timely claim with the IRS before suing for refund.[113] Taxpayers may file a refund suit if a timely filed claim for refund is disallowed in full or part or if the IRS does not act on a claim for refund within six months after the claim is filed.[114] When IRS findings result in claim disallowance, the taxpayer is generally allowed to appeal administratively. If an agreement is not reached during the examination or the appeals process (if protested), a statutory notice of claim disallowance (claim disallowance) is issued explaining the taxpayer's right to file a refund suit.[115] IRC § 6532 imposes a general two-year time limit for filing a refund suit, which can be extended upon written agreement between the taxpayer and the IRS. The mailing date of the claim disallowance begins this two-year period.[116] A taxpayer may sue in a U.S. district court or the U.S. Court of Federal Claims under 28 U.S.C. § 1346(a)(1) to recover "any sum" that the taxpayer believes has been erroneously assessed or collected. In *Flora v. United States*,[117] however, the U.S. Supreme Court held that, with limited exceptions, a taxpayer must have "fully paid" the assessment (called the "full payment rule") before suing in these courts. The full payment rule impacts whether taxpayers have the financial means to file suit and/or hire an attorney to represent them. Equal access to justice should allow taxpayers who cannot pay what the IRS says they owe to challenge an adverse determination and have the same opportunities as wealthier taxpayers who can pay.[118]

As shown in Figure 3.18, in FY 2022, 733 refund cases remained in inventory, down slightly from 757, the FY 2021 total. The U.S. District Courts presided over 457 of these cases, while 276 went before the U.S. Court of Federal Claims.[119]

FIGURE 3.18[120]

Tax Refund Case Inventory Before the District Courts and Court of Federal Claims in FYs 2013-2022



CRIMINAL TAX VIOLATIONS

The Criminal Investigation (CI) Division is the IRS function charged with investigating criminal tax violations and other related financial crimes. CI initiates investigations, often in collaboration with other federal, state, local, and foreign law enforcement agencies, and refers cases to the DOJ for prosecution. During FY 2022, IRS CI referred to the DOJ 1,837 cases for prosecution.[121] Of those cases, 789 were for tax crimes, including refund fraud, employment tax fraud, general tax fraud, and abusive tax schemes.[122] The remaining 1,048 cases referred for prosecution were for non-tax crimes, such as money laundering, public corruption, corporate fraud, general fraud, and violations of the Bank Secrecy Act.[123]

Of cases that were resolved in FY 2022, 1,564 of them resulted in a conviction, and the overall conviction rate for that period was nearly 96 percent.[124] During that period, 699 defendants were sentenced for tax crimes, and 792 were sentenced for non-tax crimes.[125] IRS CI identified $5.7 billion in tax fraud and $26.9 billion in other financial crimes during FY 2022.[126]

According to U.S. Courts' 2021 and 2022 Federal Judicial Caseload Statistics, there were 381 criminal tax fraud cases that began in U.S. District Courts in 2022,[127] an increase of 15 percent compared to 331 in 2021.[128] Furthermore, 370 of 396 (93 percent) of criminal tax fraud defendants were convicted or sentenced in U.S. District Courts in 2022.[129] Three hundred seventy of the 382 cases resulted in a guilty plea while the remainder of the cases saw criminal tax fraud defendants convicted via a bench or jury trial in 2022.[130] For comparison, in 2021, 249 of 256 (97 percent) of criminal tax fraud defendants pled guilty, and only seven were convicted or sentenced via a bench or jury trial.[131]

MOST LITIGATED ISSUES – NATIONAL TAXPAYER ADVOCATE RECOMMENDATIONS TO MITIGATE DISPUTES

The National Taxpayer Advocate recommends that Congress:

- Amend IRC § 6751(b)(1) to clarify that no penalty under Title 26 shall be assessed or entered in a final judicial decision unless the penalty is approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate prior to the first time the IRS sends a written communication to the taxpayer proposing the penalty as an adjustment.[132]
- Amend IRC § 6751(b)(2)(B) to clarify that the exception for "other penalties automatically calculated through electronic means" does not apply to the penalty for "negligence or disregard of rules or regulations" under IRC § 6662(b)(1).
- Amend IRC § 7602(c) to clarify that the IRS must tell the taxpayer in a third-party contact notice what information it needs and allow the taxpayer a reasonable opportunity to provide the information before contacting a third party, unless doing so would be pointless (*e.g.*, because the taxpayer does not have the information the IRS needs) or an exception applies.[133]
- Amend IRC § 7433(d)(3) to allow taxpayers who file an administrative claim with the IRS within two years from the date a right of action accrues to file a civil action in a U.S. district court (i) no earlier than six months from the date on which the administrative claim was filed and (ii) no later than two years from the date on which the IRS sends its decision on the administrative claim to the taxpayer by certified or registered mail.[134]
- Amend IRC § 6532(a) to remove subsection (a)(4) and to provide that, where a taxpayer has submitted a written request for reconsideration of a disallowed claim by Appeals within two years of the mailing of a notice of claim disallowance, the time to bring a suit for refund shall not expire before the later of (1) the standard two-year period provided in IRC § 6532(a)(1) or (2) the date that is six months after the date of the Appeals closing letter.[135]
- Amend IRC § 7403 to preclude IRS employees from requesting that the DOJ file a civil action in U.S. District Court seeking to enforce a tax lien and foreclose on a taxpayer's principal residence, unless the employee has determined that (1) the taxpayer's other property or rights to property, if sold, would be insufficient to pay the amount due, including the expenses of the proceedings, and (2) the foreclosure and sale of the residence would not create an economic hardship due to the financial condition of the taxpayer.[136]
- Amend IRC §§ 7442 and 7422 to give the Tax Court jurisdiction to determine liabilities in refund suits to the same extent as the U.S. district courts and the U.S. Court of Federal Claims.[137]
- Amend IRC § 6330(c)(2)(B) to allow taxpayers to raise challenges to the existence or amount of the underlying tax liability at a CDP hearing for any tax period if the taxpayer did not receive a valid notice of deficiency for such liability, or in a non-deficiency case, the taxpayer did not have an opportunity to dispute the liability in the U.S. Tax Court.[138]
- Amend IRC § 6212 to require the IRS to issue a notice of deficiency before assessing any "assessable penalty."[139]

SIGNIFICANT CASES

This section describes a number of cases decided in FY 2022 that involve issues of general importance to federal tax administration.[140] These decisions are summarized below.

In *Boechler v. Commissioner*, the Supreme Court ruled that the time limit on filing a CDP petition is not jurisdictional.[141]

In a unanimous opinion, the Supreme Court ruled that the 30-day time limit on filing a petition for review of a collection due process determination in IRC § 6330(d)(1) is non-jurisdictional. The Court held further that, because the time limit to petition the Tax Court is non-jurisdictional, it is potentially subject to equitable tolling. The case involved a North Dakota law firm whose petition to the Tax Court was filed one day late. The Tax Court dismissed the petition for lack of jurisdiction, and the Eighth Circuit affirmed. Under *Boechler*, taxpayers filing CDP petitions will now have the opportunity to argue that special circumstances justify extending the deadline to petition and that their case should be heard notwithstanding the late filing.

The Ninth Circuit held in *Laidlaw's Harley Davidson Sales, Inc. v. Commissioner* that written supervisory approval of penalties may occur after the proposed penalty is communicated to the taxpayer.[142]

A divided three-judge panel of the Ninth Circuit held for the IRS in a case concerning IRC § 6751(b)'s written supervisory approval requirement. The case involved an IRC § 6707A penalty for failing to disclose participation in a reportable transaction. The penalty was initially proposed in a 30-day letter to the taxpayer. In response, the taxpayer submitted a protest and requested a hearing with Appeals. The supervisor of the Revenue Agent who prepared the 30-day letter executed a written approval of the IRC § 6707A penalty before sending the case to Appeals. Appeals ultimately agreed that the taxpayer was liable for the IRC § 6707A penalty, and the penalty was assessed. The majority found that the IRS complied with the requirements of IRC § 6751(b) because the supervisor approved the penalty determination before the penalty was assessed and while the supervisor still retained discretion about whether the penalty should be assessed. One judge dissented, arguing that, for the supervisory approval requirement to have any operative effect, supervisory approval should have been required before the 30-day letter was sent.

The Sixth and Eleventh Circuits reached different conclusions as to the validity of Treasury Regulations governing the donation of conservation easements.

The Sixth and Eleventh Circuits reached opposite conclusions about the validity of Treas. Reg. § 1.170A-14(g)(6)(ii), a provision of the regulations governing judicial extinguishment of a conservation easement and limitations on how proceeds from the sale of the property must be disbursed in the event of judicial extinguishment and sale of the property. In *Oakbrook Land Holdings LLC v. Commissioner*,[143] the Sixth Circuit affirmed the Tax Court's initial decision, finding that the regulation satisfied the procedural requirements of the Administrative Procedure Act, was not arbitrary and capricious, and was entitled to judicial deference. In *Hewitt v. Commissioner*,[144] the Eleventh Circuit found the same portion of the regulation invalid because, in issuing the regulation, the Treasury did not adequately respond to a "significant comment" specifically pertaining to the regulatory section at issue. These decisions create a clear circuit split as to the validity of Treas. Reg. § 1.170A-14(g)(6)(ii). The taxpayer in *Oakbrook* has appealed the decision to the Supreme Court, so the issue may be resolved next term.[145]

In *Li v. Commissioner*, the D.C. Circuit narrows the Tax Court's jurisdiction over whistleblower cases.[146]

The D.C. Circuit held that the Tax Court does not have jurisdiction to hear appeals from threshold rejections of whistleblower award requests. The claimant in *Li* submitted a whistleblower award claim providing vague and speculative information. The Whistleblower Office did not forward the information provided by the claimant for further action, and the IRS did not take any action against the target taxpayer. The court held there was no "award determination" for the Tax Court to review. Because the IRS simply rejected the claim, the Tax Court did not have jurisdiction to hear the claimant's appeal. In reaching this conclusion, the D.C. Circuit explicitly overruled the prior Tax Court decisions in *Cooper*[147] and *Lacey*,[148] which the Tax Court relied on in determining that it had jurisdiction to hear the claimant's appeal in *Li*.

In *Seaview Trading LLC v. Commissioner*, the Ninth Circuit found a partnership filed its return when it provided a delinquent copy of the return to a Revenue Agent during an audit.[149]

In *Seaview Trading, LLC. v. Commissioner*, a divided panel on the Ninth Circuit held that a partnership filed a valid return sufficient to begin the running of the statute of limitations on assessment when the partnership provided a copy of the partnership's Form 1065 to a Revenue Agent who requested it during audit. The majority held that a delinquent return could be treated as having been validly filed notwithstanding the fact that it was not submitted in the manner provided for in the relevant regulations. Although the taxpayer was a partnership, there is nothing in the court's reasoning or holding that would make the decision inapplicable to cases involving other types of taxpayers.

Endnotes

1 *See* IRC § 7482, which provides that the U.S. Courts of Appeals (other than the U.S. Court of Appeals for the Federal Circuit) have jurisdiction to review the decisions of the Tax Court. There are exceptions to this general rule. *See* 28 U.S.C. § 1294 (appeals from a U.S. district court are to the appropriate U.S. Court of Appeals); 28 U.S.C. § 1295 (appeals from the U.S. Court of Federal Claims are heard in the U.S. Court of Appeals for the Federal Circuit); 28 U.S.C. § 1254 (appeals from the U.S. Courts of Appeals may be reviewed by the U.S. Supreme Court).

2 For example, IRC § 7463 provides special procedures for small Tax Court cases (where the amount of deficiency or claimed overpayment totals $50,000 or less) for which appellate review is not available.

3 28 U.S.C. § 1346(a)(1). *See Flora v. United States*, 362 U.S. 145 (1960), *reh'g denied*, 362 U.S. 972 (1960). *See* National Taxpayer Advocate 2023 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 95-96 (Legislative Recommendation: *Expand the Tax Court's Jurisdiction to Hear Refund Cases*).

4 IRC § 7422(a).

5 The bankruptcy court may only conduct a jury trial if the right to a trial by jury applies, all parties expressly consent, and the district court specifically designates the bankruptcy judge to exercise such jurisdiction. 28 U.S.C. § 157(e).

6 *See* 11 U.S.C. § 505(a)(1) and (a)(2)(A).

7 *See* IRC § 7441.

8 IRC §§ 6214, 7476-7479, 6330(d), 6015(e), and 7436.

9 IRC § 6213(a). For example, a taxpayer who wishes to contest the validity of an SND has the opportunity to do so in the Tax Court without needing to pay the disputed tax first; in contrast, if the taxpayer wanted to, the taxpayer could also pay the tax and file a suit for refund in another forum, such as a U.S. district court. The taxpayer must generally pre-pay the entire amount in dispute.

10 Data compiled by the IRS Office of Chief Counsel (Nov. 1 and Nov. 4, 2022). IRS, Counsel Automated Tracking System, TL-711 and TL-712. Does not include cases on appeal and declaratory judgments.

11 For the first time this year, we reviewed opinions issued from October 1, 2021, through September 30, 2022, which is the period referred to as fiscal year (FY) 2022. This marks a departure from prior Annual Reports to Congress, in which we analyzed opinions issued between June 1 and May 31.

12 Note that if the SND is addressed to a person outside of the United States, the period for filing a petition with the Tax Court is 150 days from the date of mailing instead of 90 days. *See* IRC § 6213(a).

13 Our analysis does not include cases on appeal and declaratory judgments.

14 Many cases are resolved before the court issues an opinion. Some taxpayers reach a settlement with the IRS before trial, while the courts dismiss other taxpayers' cases for a variety of reasons, including lack of jurisdiction and lack of prosecution. Courts can issue less formal "bench opinions," which are not published or precedential. We did not include bench orders and summary judgments in this report.

15 IRS response to TAS information request (Nov. 1, 2022) (showing cases petitioned to the Tax Court during FY 2022).

16 A fiscal year runs from October 1 to September 30 of the following calendar year.

17 Data compiled by the IRS Office of Chief Counsel (Nov. 1, 2022). IRS, Counsel Automated Tracking System, TL-711. Inventory pending as of September 30, 2022.

18 IRS response to TAS information request (Oct. 28, 2022). TAS matched this data to information from CDW, IMF Transaction History table for FY 2022, and the Examination Operational Automation Database (Nov. 2022).

19 *See* Internal Revenue Manual (IRM) 4.46.6.2.2, Standard Audit Index Number (SAIN) (Dec. 26, 2019).

20 In cases of a tie between categories, we listed them in alphabetical sequence. Some opinions resolved multiple substantive tax issues in the same opinion. We removed CDP hearings cases, accuracy-related penalties, and frivolous issues penalties from this list and separately discuss them under *Collection Due Process Hearings (IRC §§ 6320 and 6330)* and *Other Issues*, *infra*. The total number of individual and business issues in the top ten lists exceeds the total number of opinions we reviewed because if an opinion ruled on a Schedule C self-employment issue and another issue from the individual category, such as filing status, we included the opinion in both the individual and business tallies.

21 In cases of a tie between categories, we listed them in alphabetical sequence. Some opinions resolved multiple substantive tax issues in the same opinion. Similarly for this list, we removed CDP cases, accuracy-related penalties, and frivolous issues penalties and separately discuss them under *Collection Due Process Hearings (IRC §§ 6320 and 6330)* and *Other Issues*, *infra*.

22 IRS response to TAS information request (Oct. 28, 2022). TAS matched this data to information from CDW, IMF Transaction History table for FY 2022, and the Examination Operational Automation Database (Nov. 2022).
23 Our approach was calculated using IRS SAIN codes designed to consistently track issues for tax administration.
24 IRS response to TAS information request (Oct. 28, 2022). TAS matched this data to information from CDW, IMF Transaction History table for FY 2022, and the Examination Operational Automation Database (Nov. 2022).
25 Statutory adjustments are automatically generated adjustments due to the correct application of the tax law, such as the statutory eligibility requirements (*e.g.*, maximum allowable income) for claiming credits.
26 IRS response to TAS information request (Oct. 28, 2022). TAS matched this data to information from CDW, IMF Transaction History table for FY 2022, and the Examination Operational Automation Database (Nov. 2022).
27 *See*, *e.g.*, National Taxpayer Advocate 2000 Annual Report to Congress 65, 69, 152, https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/pub2104-2000.pdf.
28 IRS response to TAS information request (Oct. 28, 2022); IRS, CDW, IMF Transaction History table for FY 2022.
29 *Id.*
30 This year and in previous years, charitable contribution deductions have been classified separately as a Most Litigated Issue category.
31 We excluded cases involving charitable deductions as they are counted under other categories. Cases involving charitable deductions are counted under *Charitable Contribution Deductions*, *supra*.
32 IRS response to TAS information request (Oct. 28, 2022); IRS CDW, IMF Transaction History table for FY 2022, and the Examination Operational Automation Database (Nov. 2022).
33 *Id.*
34 *See*, *e.g.*, National Taxpayer Advocate 2000 Annual Report to Congress 70, https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/pub2104-2000.pdf.
35 *See* IRS, Whistleblower Office, https://www.irs.gov/compliance/whistleblower-office (last visited Dec. 8, 2022).
36 *See* IRC § 7623(b)(4). *See also* IRM 25.2.2.8.2.2(7), IRC § 7623(b) Claims (May 28, 2020).
37 *See* IRS, Pub. 5241, Fiscal Year 2021 Annual Report IRS Whistleblower Office (Dec. 2021).
38 *See* IRS Notice 2017-10, 2017-4 I.R.B. 544, Syndicated Conservation Easement Transactions. Note that some courts have recently ruled that the IRS lacks the authority to identify a listed transaction in a notice such as Notice 2017-10, but Treasury and the IRS continue to defend Notice 2017-10.
39 IRS response to TAS information request (Oct. 28, 2022); IRS, CDW, IMF Transaction History table, and the Examination Operational Automation Database (Nov. 2022).
40 *Sadler v. Comm'r*, 113 T.C. 99, 102 (1999) (citation omitted); *Katz v. Comm'r*, 90 T.C. 1130, 1143 (1988) (citations omitted).
41 IRC § 6663(b).
42 IRC § 6662 also includes (b)(3) through (8), but because those types of accuracy-related penalties were not heavily litigated, we have analyzed only subsections (b)(1) and (2).
43 IRS response to TAS information request (Oct. 28, 2022); IRS, CDW, IMF Transaction History table, and the Examination Operational Automation Database (Nov. 2022).
44 IRC § 6751(b)(1).
45 IRC § 6751(b)(2).
46 *See* S. Rep No. 105-174, at 65 (1998).
47 *Chai v. Comm'r*, 851 F.3d 190, 218-19 (2d Cir. 2017) (quoting *Graev v. Comm'r*, 147 T.C. 460 (2016) (Gustafson, J., dissenting)).
48 *See* National Taxpayer Advocate 2019 Annual Report to Congress 149-157 (Most Litigated Issue: *Accuracy-Related Penalty Under IRC § 6662(b)(1) and (2)*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC19_Volume1_MLI_03_Accuracy.pdf); National Taxpayer Advocate 2018 Annual Report to Congress 447-457 (Most Litigated Issue: Accuracy-Related Penalty Under IRC § 6662(b)(1) and (2)), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/07/ARC18_Volume1_MLI_01_AccuracyRelatedPenalty.pdf).
49 For a legislative recommendation on this topic, *see* National Taxpayer Advocate 2023 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 70-72 (Legislative Recommendation: *Clarify That Supervisory Approval Is Required Under IRC § 6751(b) Before Proposing Penalties*).
50 The Tax Court generally imposes the penalty under IRC § 6673(a)(1). Other courts may impose the penalty under IRC § 6673(b)(1). U.S. Courts of Appeals are authorized to impose sanctions under IRC § 7482(c)(4) or Rule 38 of the Federal Rules of Appellate Procedure, although some appellate-level penalties may be imposed under other authorities.
51 "*Sua sponte*" means without prompting or suggestion; on its own motion. Black's Law Dictionary (2nd ed.), https://thelawdictionary.org/?s=sua+sponte (last visited Dec. 16, 2022). For conduct that it finds particularly offensive, the Tax Court can choose to impose a penalty under IRC § 6673 even if the IRS has not requested the penalty. *See*, *e.g.*, *Wells v. Comm'r*, T.C. Memo. 2019-134.
52 IRS, CDW, IMF Transaction History table for FY 2022, and the Examination Operational Automation Database (Dec. 18, 2022).
53 IRS, CDW, IMF Transaction History table (FYs 2013-2022). The total number of CDP petitions to the Tax Court was compiled by the IRS Office of Chief Counsel (Nov. 1, 2022). IRS, Counsel Automated Tracking System, Subtype DU.
54 The total number of CDP petitions to the Tax Court was compiled by the IRS Office of Chief Counsel (Nov. 1, 2022). IRS, Counsel Automated Tracking System, Subtype DU.
55 *Id.*
56 IRS, Counsel Automated Tracking System; IRS, CDW, IMF Transaction History table (FYs 2010-2021). There were 24 cases with a trial that had CDP issues during FY 2022. We identified 39 CDP case opinions issued during FY 2022. The 39 opinions include cases decided on summary judgment without a trial.
57 IRS, Counsel Automated Tracking System. On February 9, 2022, the IRS announced it will temporarily suspend certain notices that may account for part of the decline in CDP notices mailed in FY 2022. IRS, Press Release IR-2022-31, IRS Continues Work to Help Taxpayers; Suspends Mailing of Additional Letters (Feb. 9, 2022), https://www.irs.gov/newsroom/irs-continues-work-to-help-taxpayers-suspends-mailing-of-additional-letters (last visited Dec. 16, 2022).

58 IRS, Counsel Automated Tracking System; IRS, CDW, IMF Transaction History table (FYs 2010-2022).
59 *Id.*
60 Data compiled by IRS Chief Counsel. IRS, Counsel Automated Tracking System, Subtype DU, as of September 30, 2022. These figures do not include cases on appeal.
61 National Taxpayer Advocate 2021 Annual Report to Congress 183, 189 (*Most Litigated Issues*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/10/ARC21_Most-Litigated-Issues.pdf.
62 Based on data provided by the DOJ to the IRS Office of Chief Counsel (Nov. 14, 2022).
63 *Id.*
64 Data provided by the DOJ to the IRS Office of Chief Counsel (Nov. 14, 2022). The Tax Division generally only has a record of summons enforcement cases if the IRS Office of Chief Counsel refers the matter to the Tax Division. Under the Justice Manual, the vast majority of summons enforcement cases are referred directly to U.S. Attorney Offices, and the Tax Division does not have a record of those matters. Similarly, the DOJ generally only tracks proceedings to quash a summons filed with taxpayers or third parties if the DOJ Tax Division's attorneys will be appearing in the case. Thus, the information does not reflect the total number of summons enforcement cases filed in FY 2022 but only those for which the DOJ Tax Division opened a matter.
65 Data compiled by the IRS Office of Chief Counsel (Nov. 1, 2022). IRS, Counsel Automated Tracking System, TL-708D, TL-709. Inventory pending as of September 30, 2022. Does not include cases on appeal or declaratory judgments.
66 *Id.*
67 Data compiled by the IRS Office of Chief Counsel (Nov. 1 and Nov. 4, 2022). IRS, Counsel Automated Tracking System, TL-711. Inventory pending as of September 30, 2022. Does not include cases on appeal and declaratory judgments.
68 *See* IRC § 7526.
69 IRS response to TAS information request (Oct. 3, 2022).
70 *Id.*
71 *Id.*
72 *Id.*
73 *Id.*
74 "*Pro se*" means "for oneself; on one's own behalf; without a lawyer." Black's Law Dictionary (2nd ed.), https://thelawdictionary.org/?s=pro+se (last visited Dec. 16, 2022).
75 Counsel Automated Tracking System, TL-708A. Note that non-attorneys may be admitted to practice before the Tax Court provided they satisfy the requirements in the Tax Court Rules of Practice and Procedure, including passing a written examination.
76 *Id.*
77 Data compiled by the IRS Office of Chief Counsel (Nov. 1, 2022). IRS, Counsel Automated Tracking System, TL-708A. Inventory pending as of September 30, 2022. Does not include cases on appeal or declaratory judgments. Totals may not add up to 100 percent due to rounding.
78 *Id.*
79 TAS administers and over*see*s the grant program through its LITC Program Office.
80 *See* U.S. Tax Court, Clinics & Pro Bono Programs, https://www.ustaxcourt.gov/clinics.html (last visited Dec. 8, 2022). The Tax Court continues to invite academic and non-academic tax clinics and bar-sponsored programs to consider participating and representing *pro se* taxpayers.
81 *See* IRC § 7803(a)(3)(C).
82 Email from Acting Director of the TAS LITC Program Office (Nov. 10, 2022).
83 *Id.*
84 National Taxpayer Advocate 2023 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 145-147 (Legislative Recommendation: *Expand the Protection of Taxpayer Rights by Strengthening the Low Income Taxpayer Clinic Program*).
85 Email from Acting Director of the TAS LITC Program Office (Nov. 10, 2022).
86 *Id.*
87 *Id.*
88 *Id.*
89 *See* U.S. Tax Court, Press Release (Dec. 18, 2020), https://ustaxcourt.gov/resources/press/12182020.pdf; *see also* Keith Fogg, Procedurally Taxing Blog, *DAWSON Continues to Evolve* (Feb. 3, 2022), https://procedurallytaxing.com/*dawson*-continues-to-evolve/.
90 *See* U.S. Tax Court, *DAWSON*, https://ustaxcourt.gov/*dawson*.html (last visited Dec. 8, 2022); *see also* Keith Fogg, Procedurally Taxing Blog, *Protecting Tax Court Litigants and Revealing Records: A Conundrum for the Tax Court with a Simple Solution* (July 7, 2022), https://procedurallytaxing.com/protecting-tax-court-litigants-and-revealing-records-a-conundrum-for-the-tax-court-with-a-simple-solution/; Keith Fogg, Procedurally Taxing Blog, *DAWSON Continues to Evolve* (Feb. 3, 2022), https://procedurallytaxing.com/dawson-continues-to-evolve/; Maggie Goff and Keith Fogg, Tax Analysts, *Nonparty Remote Electronic Access to Tax Court Records* (May 4, 2020).
91 *See* U.S. Tax Court, *DAWSON*, https://ustaxcourt.gov/*dawson*.html (last accessed Oct. 27, 2022); *see also* Keith Fogg, Procedurally Taxing Blog, P*rotecting Tax Court Litigants and Revealing Records: A Conundrum for the Tax Court with a Simple Solution* (July 7, 2022), https://procedurallytaxing.com/protecting-tax-court-litigants-and-revealing-records-a-conundrum-for-the-tax-court-with-a-simple-solution/; Keith Fogg, Procedurally Taxing Blog, *DAWSON Continues to Evolve* (Feb. 3, 2022), https://procedurallytaxing.com/*dawson*-continues-to-evolve/; Maggie Goff and Keith Fogg, Tax Analysts, *Nonparty Remote Electronic Access to Tax Court Records* (May 4, 2020).
92 IRC § 7461.
93 IRC § 7461(b).
94 68A Stat. 887, Ch. 736 (1954); Pub. L. No. 98–369, div. A, title IV, § 465(a), 98 Stat. 825 (1984).

95 U.S. Tax Court Rules, Rule 27(b) (Oct. 26, 2020), https://www.ustaxcourt.gov/rules.html. The U.S. Tax Court Rule 27(b) grants parties and their counsel remote online access to the entire docket. However, the rule does not grant the public remote electronic access to parties case files on the docket but just to court opinions and court orders. *See also* Keith Fogg, Procedurally Taxing Blog, *Protecting Tax Court Litigants and Revealing Records: A Conundrum for the Tax Court with a Simple Solution* (July 7, 2022), https://procedurallytaxing.com/protecting-tax-court-litigants-and-revealing-records-a-conundrum-for-the-tax-court-with-a-simple-solution/; Keith Fogg, Procedurally Taxing Blog, *DAWSON Continues to Evolve* (Feb. 3, 2022), https://procedurallytaxing.com/*dawson*-continues-to-evolve/; Maggie Goff and Keith Fogg, Tax Analysts, *Nonparty Remote Electronic Access to Tax Court Records* (May 4, 2020); *see also* U.S. Tax Court, *Guidance for Petitions: About the Court*, https://ustaxcourt.gov/petitioners_about.html (last visited Dec. 8, 2022).

96 *See* Keith Fogg, Procedurally Taxing Blog, *Protecting Tax Court Litigants and Revealing Records: A Conundrum for the Tax Court with a Simple Solution* (July 7, 2022), https://procedurallytaxing.com/protecting-tax-court-litigants-and-revealing-records-a-conundrum-for-the-tax-court-with-a-simple-solution/; Keith Fogg, Procedurally Taxing Blog, *DAWSON Continues to Evolve* (Feb. 3, 2022), https://procedurallytaxing.com/*dawson*-continues-to-evolve/; Maggie Goff and Keith Fogg, Tax Analysts, *Nonparty Remote Electronic Access to Tax Court Records* (May 4, 2020).

97 *See* U.S. Tax Court, *Transcript and Copies*, https://ustaxcourt.gov/transcripts_and_copies.html (last visited Dec. 8, 2022).

98 If a taxpayer receives an SND and wishes to have the Tax Court hear the case, he or she must file a petition with the Tax Court within 90 days of the date that the SND was mailed (or 150 days if the SND is addressed to a person outside the United States). *See* IRC § 6213. Note that if the last day of the 90 days (or 150 days) falls on a Saturday, Sunday, or legal holiday, the petition will be timely if filed on the next day that is not a Saturday, Sunday, or legal holiday. *See* IRC § 7503. *See also* IRC §§ 6320 and 6330 for the timeframes in which to petition the Tax Court for review of a CDP notice of determination.

99 Data compiled by the IRS Office of Chief Counsel (Nov. 1, 2022). IRS, Counsel Automated Tracking System, TL-708B. This includes declaratory judgments. The unreported category includes cases where no statutory notice was attached to the petition. The petition data was provided by Appeals and the IRS Office of Chief Counsel. Data from the IRS Office of Chief Counsel included cumulative data on litigation in all jurisdictions of the United States. Data from Appeals only included data from petitions filed with the Tax Court.

100 Data compiled by the IRS Office of Chief Counsel (Nov. 1, 2022). IRS, Counsel Automated Tracking System, TL-708B. This includes declaratory judgments. The unreported category includes cases where no statutory notice was attached to the petition.

101 *See* Most Serious Problem: *Appeals: Staffing Challenges and Institutional Culture Remain Barriers to Quality Taxpayer Service Within the IRS Independent Office of Appeals*, *supra*.

102 Data compiled by the IRS Office of Chief Counsel (Nov. 1, 2022). IRS, Counsel Automated Tracking System, TL-708B.

103 *Id.*

104 *Id.* These dollar amounts may be affected greatly from year to year by frivolous, high-dollar lawsuits. Does not include cases on appeal and declaratory judgments.

105 Disputes involving $50,000 or less can be selected for special, less formal proceedings under IRC § 7463. These are referred to as "small tax" or "S" cases. The Tax Court's decision in a small tax case is nonreviewable and becomes final 90 days from the date the decision is entered. The Tax Court may remove the S case designation on its own motion or on the motion of any party in the case at any time before the commencement of trial. *See* T.C. Rules of Practice and Procedure, Rule 171.

106 Data compiled by the IRS Office of Chief Counsel (Nov. 1 and Nov. 4, 2022). IRS, Counsel Automated Tracking System, TL-711. Inventory pending as of September 30, 2022. Does not include cases on appeal or declaratory judgements. Totals may not add up to 100 percent because of rounding.

107 Data compiled by the IRS Office of Chief Counsel (Nov. 18, 2021). IRS, Counsel Automated Tracking System, TL-711. Inventory pending as of September 30, 2021. Does not include cases on appeal or declaratory judgments.

108 IRC § 6213(a), (c).

109 IRC § 7604(b) (providing that if any taxpayer or third party is summoned to appear, testify, or produce records, the U.S. District Court for the district in which the taxpayer resides or is found has jurisdiction to compel the taxpayer or third party to appear, testify, or produce the records).

110 IRC § 7403.

111 Refund suits will be discussed separately in this section.

112 IRS Data Book FY 2010 through IRS Data Book FY 2020 (Table 25 Delinquent Collection Activities, Fiscal Years); IRS, Activity Report 5000-24 (Oct. 11, 2022); IRS, Activity Report 5000-25 (Oct. 3, 2022).

113 *See generally* IRC § 7422(a).

114 *See* IRC § 6532(a)(1). *See also* IRM 4.10.11.2(1), Claims for Refund (Sept. 4, 2020).

115 IRM 4.10.11.2.16(1), Claims for Refund – Post Examination Appeal Rights (Sept. 29, 2022).

116 *Id.* IRM 4.10.11.2.16(2), Claims for Refund – Post Examination Appeal Rights (Sept. 29, 2022). For a discussion of the refund jurisdiction of the district courts and the U.S. Court of Federal Claims, *see* Chief Counsel Directives Manual (CCDM) 34.1.1, Jurisdiction of the District Courts (Apr. 22, 2021), and CCDM 34.2.1, Jurisdiction of the Court of Federal Claims (Aug. 11, 2004).

117 *Flora v. United States*, 362 U.S. 145 (1960).

118 *See Flora v. United States*, 362 U.S. 145 (1960), *reh'g denied*, 362 U.S. 972 (1960). *See* National Taxpayer Advocate 2022 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 96-98 (Legislative Recommendation: *Repeal* Flora: *Give Taxpayers Who Cannot Pay the Same Access to Judicial Review as Those Who Can*); National Taxpayer Advocate 2022 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 94-95 (Legislative Recommendation: *Expand the Tax Court's Jurisdiction to Hear Refund Cases and Assessable Penalties*).

119 Data compiled by the IRS Office of Chief Counsel (Nov. 1, 2022). IRS, Counsel Automated Tracking System, TL-712. This includes declaratory judgments.

120 *Id.*

121 IRS Criminal Investigation, Annual Report 2022, Publication 3583 (Nov. 2022), at 4, https://www.irs.gov/pub/irs-pdf/p3583.pdf.

122 *Id.* at 5.
123 *Id.* at 6.
124 *Id.* at 4.
125 *Id.* at 5-6.
126 *Id.* at 4.
127 U.S. Courts' 2022 Federal Judicial Caseload Statistics, Table D-2, U.S. District Courts – Criminal Defendants Commenced (Excluding Transfers), by Offense. Data is from the 12-month period between March 31, 2021, and March 31, 2022.
128 U.S. Courts' 2021 Federal Judicial Caseload Statistics, Table D-2, U.S. District Courts – Criminal Defendants Commenced (Excluding Transfers), by Offense. Data is from the 12-month period between March 31, 2020, and March 31, 2021.
129 U.S. Courts' 2022 Federal Judicial Caseload Statistics, Table D-4, U.S. District Courts – Criminal Defendants Disposed of, by Type of Disposition and Offense. Data is from the 12-month period between March 31, 2021, and March 31, 2022.
130 *Id.*
131 U.S. Courts' 2021 Federal Judicial Caseload Statistics, Table D-4, U.S. District Courts – Criminal Defendants Disposed of, by Type of Disposition and Offense. Data is from the 12-month period between March 31, 2020, and March 31, 2021.
132 For further discussion, *see* National Taxpayer Advocate 2023 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 70-72 (Legislative Recommendation: *Clarify That Supervisory Approval Is Required Under IRC § 6751(b) Before Proposing Penalties*).
133 For further discussion, *see* National Taxpayer Advocate 2023 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 143-144 (Legislative Recommendation: *Require the IRS to Specify the Information Needed in Third-Party Contact Notices*).
134 For further discussion, *see* National Taxpayer Advocate 2023 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 56-57 (Legislative Recommendation: *Extend the Time Limit for Taxpayers to Sue for Damages for Improper Collection Actions*). While a claim for damages under IRC § 7433(d)(3) is pending at the administrative level, the two-year period for filing suit in a U.S. district court continues to run. If a taxpayer files an administrative claim during the final six months of the two-year period the taxpayer has to sue, the taxpayer may be forced to file suit in a U.S. district court before the IRS has an opportunity to render a decision on the administrative claim (or else will forfeit the right to do so). This legislative recommendation would eliminate the need to file suit until the IRS has fully considered the claim. If the claim is settled, it would eliminate the need for litigation.
135 For further discussion, *see* National Taxpayer Advocate 2023 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 104-106 (Legislative Recommendation: *Extend the Deadline for Taxpayers to Bring a Refund Suit When They Have Requested Appeals Reconsideration of a Notice of Claim Disallowance But the IRS Has Not Acted Timely to Decide Their Claims*). If the IRS issues a notice of claim disallowance, the statute of limitations for filing a refund suit runs even if a request for reconsideration is made to Appeals. This discourages taxpayers from seeking administrative resolution of disputed issues because of the risk that their refund claims could become time-barred while the issue is being considered by Appeals. It encourages unnecessary litigation by requiring taxpayers to sue to protect the refund statute of limitations in cases that otherwise could be resolved administratively. This legislative recommendation would toll the statute to file suit while Appeals considers the request to reconsider the notice of claim disallowance.
136 For legislative language generally consistent with this recommendation, *see* Small Business Taxpayer Bill of Rights Act of 2015, H.R. 1828, 114th Cong. § 16 (2015); Small Business Taxpayer Bill of Rights Act of 2015, S. 949, 114th Cong. § 16 (2015); and Eliminating Improper and Abusive IRS Audits Act of 2014, S. 2215, 113th Cong. § 8 (2014).
137 For further discussion, *see* National Taxpayer Advocate 2023 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 95-96 (Legislative Recommendation: *Expand the Tax Court's Jurisdiction to Hear Refund Cases*).
138 For further discussion, *see* National Taxpayer Advocate 2023 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 32-33 (Legislative Recommendation: *Provide That "An Opportunity to Dispute" an Underlying Liability Means an Opportunity to Dispute Such Liability in the U.S. Tax Court*).
139 For further discussion, *see* National Taxpayer Advocate 2023 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 26-28 (Legislative Recommendation: *Provide That Assessable Penalties Are Subject to Deficiency Procedures*).
140 When identifying the ten most litigated issues, TAS analyzed federal decisions issued during the fiscal year period beginning on October 1, 2021, through September 30, 2022. For purposes of this section, we used the same period.
141 *Boechler v. Commissioner*, 142 S.Ct. 1493 (Apr. 21 2022) (*reversed* and *remanded*).
142 *Laidlaw's Harley Davidson Sales, Inc. v. Commissioner*, 29 F.4th 1066 (9th Cir. 2022) (*reversed* and *remanded*).
143 *Oakbrook Land Holdings, LLC v. Commissioner*, 28 F.4th 700 (6th Cir. 2022).
144 *Hewitt v. Commissioner*, 21 F.4th 1336 (11th Cir. 2021).
145 *See* Petition for Writ of Certiorari, *Oakbrook Land Holdings v. Commissioner*, 28 F.4th 700 (6th Cir. 2022).
146 *Li v. Commissioner*, 22 F.4th 1014 (D.C. Cir. 2022).
147 *Cooper v. Commissioner*, 135 T.C. 70 (2010).
148 *Lacey v. Commissioner*, 153 T.C. 146 (2010).
149 *Seaview Trading, LLC v. Commissioner*, 34 F.4th 666 (9th Cir. 2022) (*rehearing en banc* granted on Nov. 10, 2022).

TAS ADVOCACY

INTRODUCTION

In this section, TAS reports on some of its 2022 advocacy updates and highlights. We begin with a report from our Case Advocacy function, followed by a new report from our Systemic Advocacy function. We recount the National Taxpayer Advocate's fiscal year (FY) 2022 Taxpayer Advocate Directives and are also happily sharing some of our success stories that represent advocacy work from many different aspects of the TAS organization.

TAS is an advocacy ombudsman organization established to work for taxpayers and whose operation is based around four central statutorily mandated objectives:[1]

- To assist taxpayers in resolving problems with the IRS;
- To identify areas in which taxpayers are experiencing problems with the IRS;
- To propose changes in the administrative practices of the IRS to mitigate problems taxpayers are experiencing with the IRS; and
- To identify potential legislative changes that may be appropriate to mitigate such problems.

TAS is strategically structured to best deliver on this mandate through the establishment of its Case Advocacy and Systemic Advocacy functions. TAS Case Advocacy is devoted to assisting taxpayers one-on-one with the resolution of their account-specific tax issues and needs while TAS Systemic Advocacy works to identify areas where IRS administrative practice is adversely affecting a wide population of taxpayers and advocates for change to address those problems. Both functions operate in concert with all of TAS's advocacy departments, such as the Low Income Taxpayer Clinic program, the Taxpayer Advocacy Panel, and TAS Research, and each group contributes to TAS's wider organizational mission to assist taxpayers and to protect and promote taxpayer rights.

TAS CASE ADVOCACY

The first role of our mission is to help taxpayers one-on-one in resolving their IRS problems. Our Case Advocates work with all types of taxpayers (including individuals, businesses, and tax-exempt entities), their representatives, and congressional staff to resolve specific problems taxpayers are experiencing with the IRS.

Information from our discussions and case results are vital to TAS's statutory mission to propose changes in IRS's administrative practices and identify potential legislative changes to relieve taxpayers' problems.[2]

Throughout 2022, TAS continued to experience challenges helping taxpayers and fulfilling our mission of assisting taxpayers with their specific issues and concerns involving IRS systems and procedures due to IRS processing delays and its inventory backlog. Fundamentally, obtaining resolution for taxpayers involves protecting taxpayer rights and reducing taxpayer burden.[3]

TAS Continues to Assist Taxpayers Impacted by IRS Processing Delays

The IRS began FY 2022 with a voluminous backlog of unprocessed paper returns and correspondence. During the 2022 filing season, the IRS timely processed the original returns of most taxpayers who filed electronically without errors.[4] However, for taxpayers with inconsistencies or errors in their electronic returns or those who filed paper returns, the 2022 filing season was not much better than last year. Although the IRS is making progress addressing the inventory backlog, taxpayers still face long delays in obtaining the processing of paper original returns, electronic returns with inconsistencies, both electronic and paper-filed amended returns, and correspondence awaiting a response. Processing delays resulted in long refund delays for millions of taxpayers and confusion and frustration for many.

The IRS's backlog continued to impact taxpayers in FY 2022.[5] Recognizing we were facing yet another challenging filing season, TAS evaluated case receipts to strategize how we could best focus our limited resources. TAS hired 35 additional Case Advocates,[6] streamlined our case acceptance criteria and processes, and consistently met with IRS officials to address systemic problems.[7] Through these actions, TAS focused on taxpayers with the greatest need for our services.

In FY 2022, TAS received 41,116 fewer cases than in FY 2021, when TAS received 57,571 more cases than in FY 2020,[8] indicating that changes to case acceptance criteria helped TAS better manage its limited resources to focus on taxpayer issues where we could actively advocate and provide relief to Case Advocates overwhelmed with high inventories. However, it directly translated into many taxpayers continuing to experience long wait times because of IRS processing delays.

Even with new efficiencies and temporary case acceptance changes, TAS could not consistently meet the needs of taxpayers, particularly during peak times, due to the IRS inventory backlogs.[9] However, in FY 2022, TAS still provided relief to approximately 187,000 individuals, families, non-profit entities, and businesses struggling with IRS challenges.[10]

Taxpayers have multiple ways to access TAS services,[11] but more taxpayers are referred to TAS by calls into the IRS or National Taxpayer Advocate toll-free lines than from any other source.[12] IRS employees refer taxpayers to TAS electronically by entering the taxpayer's information and issues into the Accounts Management System (AMS). TAS Intake Advocates review the referrals to determine if the taxpayer's issue qualifies for TAS assistance and if so, transfers the taxpayer's information into the Taxpayer Advocate Management Information System (TAMIS) for assignment to a Case Advocate. TAS reallocated resources and provided overtime to mitigate delays in screening AMS referrals to determine eligibility, but the delays were unacceptable.

To better help taxpayers, TAS pivoted and reallocated its Centralized Case Intake (CCI) employees from the phone lines in late February 2022 to process AMS referrals and assist local offices with handling referrals mailed or faxed to TAS. From the end of March through mid-May 2022, TAS AMS inventory remained at a manageable level until TAS adjusted its case acceptance to accept certain paper or other return processing issues.[13] TAS made this change based on the IRS's progress in processing its backlog of returns, but it caused TAS AMS inventory levels to quickly become unmanageable. TAS CCI operations continued to remain offline to address AMS inventory levels. TAS offered employees overtime and hired nearly 30 more Intake

Advocates, which helped with the processing of AMS referrals.[14] The IRS provided the overtime cost to cover TAS employees' efforts. These issues caused TAS leadership to reevaluate TAS's intake processes to determine if future changes are needed to minimize delays.

In addition to contacting the IRS and TAS, taxpayers also sought assistance from their congressional representatives and senators. TAS's FY 2022 congressional receipts totaled 61,792, a decrease of seven percent compared to FY 2021.[15] Initially, TAS could only track return processing delay cases received from congressional offices.[16] In May 2022, TAS negotiated the "fast-track" Operations Assistance Request (OAR) process with the Wage and Investment (W&I) Division to provide expedited original and amended return processing for congressional cases.[17] On August 23, 2022, TAS successfully negotiated with W&I to expand the use of the fast-track OAR process for non-congressional TAS cases.[18] As of September 30, 2022, TAS issued 1,760 fast-track OARs requesting W&I expedite return processing. To date, W&I has processed 1,546 returns.

TAS also issued 3,961 bulk Taxpayer Assistance Orders (TAOs) ordering the IRS to process amended returns. Of the 3,961 issued, the IRS complied with 3,811 TAOs, and TAS rescinded 150.[19] Additionally, TAS used bulk OARs to efficiently provide relief to taxpayers for 35,498 Pre-Refund Wage Verification Hold cases and 9,673 Taxpayer Protection Program cases.[20]

TAS continued to support the IRS's Taxpayer Experience Strategy and sought ways to expand digital services to taxpayers. In FY 2022, TAS partnered with IRS Information Technology to:

- Implement the Documentation Upload Tool (DUT) allowing congressional offices to submit documentation to TAS using a digital mailbox on IRS.gov. TAS performed a controlled rollout of DUT and is expanding to taxpayers and their representatives;[21] and
- Design a chatbot that taxpayers and their representatives can use to describe their tax issues and determine their eligibility for TAS services in real-time. TAS anticipates implementing this technology in FY 2023.

In FY 2022, TAS developed and introduced the Case Advocate Training Support program, which provided maximum support for newly hired case advocates by streamlining the curriculum and allowing trainees to apply learned skills and work live cases more promptly.

Case Receipt Trends in FY 2022

TAS received 223,227 cases in FY 2022, which was 41,116 fewer cases than received in FY 2021, a decrease of nearly 16 percent.[22] Additionally, Intake Advocates assisted and resolved the issues of another 14,341 taxpayer calls without the need to establish a TAS case.[23]

FIGURE 4.1, TAS Case and Intake Receipts and Relief Rates, FYs 2021-2022[24]

Case Categories	Receipts FY 2021	Receipts FY 2022	Percent Change	Relief Rates FY 2021	Relief Rates FY 2022	Percent Change
Economic Burden	133,766	109,434	-18.2%	80.1%	78.6%	-1.9%
Systemic Burden	116,744	103,079	-11.7%	81.1%	80.8%	-0.4%
Best Interest of the Taxpayer	501	1,361	171.7%	76.8%	77.5%	1.0%
Public Policy	13,332	9,353	-29.8%	66.3%	80.5%	21.4%
Subtotal	**264,343**	**223,227**	**-15.6%**	**79.9%**	**79.7%**	**-0.3%**
Calls Resolved With Alternative Assistance	31,768	14,541	-54.9%			
Grand Total Receipts	**296,111**	**237,568**	**-19.8%**			

FIGURE 4.2, Top Ten Issues in Cases Received in TAS for FYs 2021-2022[25]

Rank	Issue Description	FY 2021	FY 2022	Percent Change FY 2021 to FY 2022
1	Pre-Refund Wage Verification Hold	36,937	35,498	-3.9%
2	Processing Amended Returns	20,961	25,706	22.6%
3	Earned Income Tax Credit	14,588	14,782	1.3%
4	Processing Original Returns	14,766	13,035	-11.7%
5	Error Resolution System/Reject	45,665	11,461	-74.9%
6	Other Refund Inquiries and Issues	11,642	9,780	-16.0%
7	Taxpayer Protection Program Issues	11,412	9,673	-15.2%
8	Identity Theft	9,234	8,682	-6.0%
9	Decedent Account Refunds		7,001	
10	Math Error	4,983	6,130	23.0%
Other TAS Receipts		**94,155**	**81,479**	**-13.5%**
Total TAS Receipts		**264,343**	**223,227**	**-15.6%**

Most Prevalent Issues in TAS Cases, With a Focus on Economic Burden Cases

Over 46 percent of TAS's case receipts involve taxpayers experiencing an economic burden.[26] Because these taxpayers face potential immediate adverse financial consequences, TAS requires employees to prioritize these cases. Figure 4.3 shows the top five issues driving economic burden receipts in FY 2022 compared to FY 2021. TAS dedicates significant resources to resolving the systemic causes of these issues throughout the year, and as discussed in the Most Serious Problems section of this and past reports, provides recommendations to the IRS to improve processes that cause taxpayers to experience economic or systemic burdens.

FIGURE 4.3, Top Five Case Issues Causing Economic Burden (EB) Receipts, FYs 2021-2022[27]

Rank	Issue Description	FY 2021	FY 2022	EB Percent Change FY 2021 to FY 2022
1	Pre-Refund Wage Verification Hold	23,993	23,564	-1.8%
2	Processing Amended Return	12,408	15,202	22.5%
3	Earned Income Tax Credit	10,893	11,102	1.9%
4	Error Resolution System/Reject	21,393	6,560	-69.3%
5	Identity Theft	5,360	4,526	-15.6%

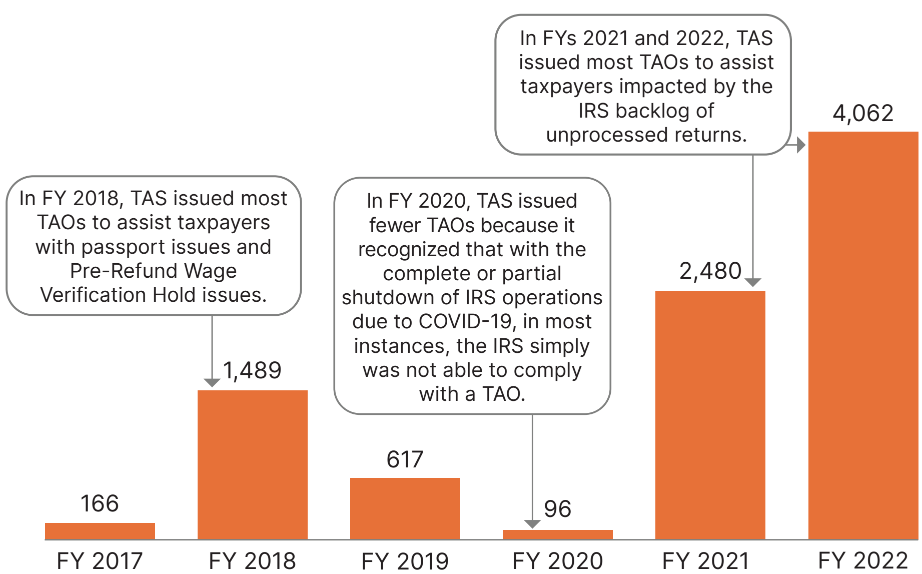
In FY 2021, IRS processing delays caused TAS to experience a shift in the top issues for which taxpayers sought TAS assistance. As shown in Figures 4.2 and 4.3, greater numbers of taxpayers are seeking help with not only the processing of original and amended returns but also with issues that rely on the taxpayer submitting additional documentation to resolve, such as verification of the income or withholding claimed on a tax return. While TAS continues to receive return processing issues, we expect to see an increase in post-return processing issues, such as Earned Income Tax Credit examinations and collection issues.

Taxpayer Assistance Orders

The TAO is a powerful advocacy tool that gives priority resolution to taxpayers experiencing a significant hardship. Typically, when TAS lacks the statutory or delegated authority to resolve a taxpayer's problem, TAS coordinates with the responsible IRS Business Operating Division (BOD) and advocates for resolution by issuing an OAR. If time is of the essence or when an OAR cannot resolve the case, TAS may issue a TAO.[28] Local Taxpayer Advocates (LTAs) issue TAOs to order the IRS to take certain actions or refrain from taking certain actions.[29] A TAO may also order the IRS to expedite consideration of a taxpayer's case, reconsider its determination in a case, or review the case at a higher level.[30] If a taxpayer faces significant hardship and the facts and law support relief, an LTA may issue a TAO if the IRS must take expedited action to prevent further harm to the taxpayer or if the IRS refuses or otherwise fails to take the action TAS requested to resolve the case.[31] Once TAS issues a TAO, the BOD must take the actions ordered or appeal it for resolution at higher management levels.[32] Only the National Taxpayer Advocate or Commissioner or Deputy Commissioner of Internal Revenue may rescind a TAO issued by the National Taxpayer Advocate, and unless a rescission occurs, the BOD must take the action(s) ordered in the TAO.[33] In addition, when modification or rescission occurs, the IRS must provide a written explanation of the reasons to the National Taxpayer Advocate.[34]

FIGURE 4.4[35]

TAOs Issued, FYs 2017-2022

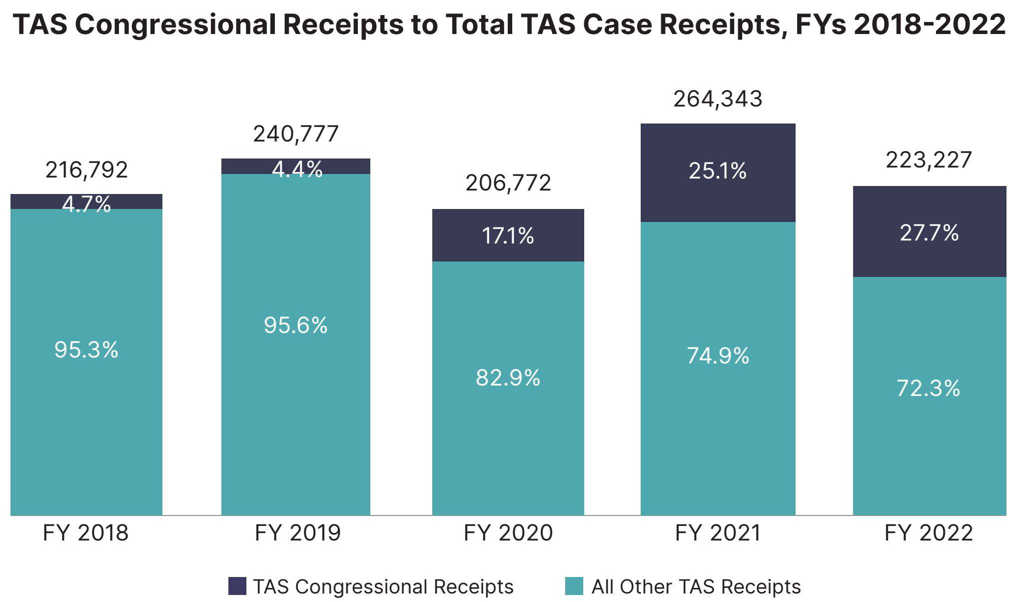


In FY 2022, TAS issued 4,062 TAOs. The IRS complied with 3,885 in approximately 41 days. This included 3,961 bulk TAOs instructing the IRS to process taxpayers' amended returns within 14 days. However, with its limited resources, the IRS took nearly a month to 49 days to comply. Taxpayers could have obtained relief sooner if the IRS had resources as it did not have any significant disagreements with the resolutions. During this same period, TAS continued to meet with IRS W&I leadership to negotiate better procedures for all taxpayers, not just those with open TAS cases, awaiting the processing of their 2021 and prior year amended returns.

Congressional Case Trends

TAS reviews all constituent tax account inquiries it receives from members of Congress. The shutdown of IRS operations due to COVID-19 in FY 2020 and the subsequent delays in return and correspondence processing caused many taxpayers to seek assistance from their congressional representatives and senators. In FY 2022, 61,792 inquiries were referred by congressional offices, which was almost 28 percent of TAS's total receipts.[36] As shown in Figure 4.5, congressional referrals accounted for more than 17 percent of TAS's case receipts in FYs 2020-2022, significantly higher than FYs 2018-2019 where less than five percent of TAS's case receipts were congressional referrals.[37]

FIGURE 4.5[38]



TAS was challenged with long delays in resolving many taxpayer issues because of the IRS backlog.[39] Processing original and amended returns in addition to Pre-Refund Wage Verification Holds remained the most common issues taxpayers faced. TAS issued TAOs to advocate on behalf of taxpayers facing amended return processing issues until the IRS agreed to the "fast-track" OAR process for congressional referrals.

FIGURE 4.6, TAS Top Ten Congressional Receipts by Primary Core Issue Codes, FYs 2021-2022[40]

Rank	Issue Description	FY 2021	FY 2022	Percent Change
1	Processing Original Returns	9,233	8,728	-5.5%
2	Processing Amended Returns	4,502	7,204	60.0%
3	Pre-Refund Wage Verification Hold	3,930	6,934	76.4%
4	Taxpayer Protection Program Issues	4,104	3,881	-5.4%
5	Error Resolution System/Reject	18,648	3,590	-80.7%
6	Other Refund Inquiry or Issue	3,988	3,499	-12.3%
7	Decedent Account Refunds		2,525	
8	Identity Theft	1,862	2,354	26.4%
9	Math Error	1,934	2,296	18.7%
10	Lost or Stolen Refund	1,344	2,230	65.9%
Other Issues		**16,908**	**18,551**	**9.7%**
Total Congressional Receipts		**66,453**	**61,792**	**-7.0%**

Until the IRS resolves its processing backlog, including correspondence and original, amended, and suspended returns, and is better prepared to answer telephone calls, TAS expects the large volume of congressional inquiries to continue in 2023.

Reaching Underserved Populations Through Outreach

TAS is fervent about completing outreach and education events for taxpayers, representatives, community stakeholders, and IRS employees. Outreach is key to raising awareness about TAS as a free advocacy organization and to taxpayers receiving pertinent tax information in an understandable way. In FY 2022, TAS conducted 5,750 outreach events reaching over 210,000 individuals.[41] TAS identified and focused these efforts on four sectors of underserved communities: current and past members of the military, senior citizens, Native Americans, and the chronic or suddenly homeless.

TAS met with key stakeholders, including Taxpayer Advocacy Panel (TAP) members, to understand the needs of these taxpayers and determine how best to reach these four sectors through outreach. We collaborated with Low Income Taxpayer Clinics (LITCs), Volunteer Income Tax Assistance sites, TAP, legal services, homeless shelters, and organizations who provide services to the aging and their caregivers, in addition to state agencies, non-profit organizations, food distribution centers, libraries, and community centers, to educate taxpayers about their eligibility for tax credits, explain TAS services, provide onsite problem resolution, and accept eligible taxpayers for TAS assistance.

We partnered with the IRS and congressional offices to reach Native American tribal communities. We participated in nearly 340 Problem Solving Days providing onsite assistance to over 7,500 taxpayers.[42] We also collaborated with the IRS to resolve taxpayer issues during "Face-to-Face Saturdays."[43]

In January, TAS completed two campaigns. First, on EITC Awareness Day, we partnered with community organizations, state agencies providing services to the low-income, and IRS Stakeholder Partnerships, Education and Communication division to educate taxpayers about refundable credits. Second, TAS focused on voluntary compliance, taxpayer rights, tax obligations, tax credit eligibility, and avoidance of tax filing pitfalls through Pre-Filing Season Readiness outreach events.

In FY 2023, our outreach strategy will continue to include in-person and virtual activities to continue to raise awareness about TAS services and provide tax information to taxpayers in real-time.

The National Taxpayer Advocate wants to thank our TAS employees who have worked tirelessly over the past couple of years to help taxpayers impacted by the IRS processing backlog. Despite our best efforts, however, we have sometimes fallen short of being a safety net for taxpayers because we lacked the resources. TAS was created and designed for helping taxpayers who fell through the cracks. TAS is not a mini-IRS and does not have the resources to step in when the crack in the system turns into a chasm.

TAS SYSTEMIC ADVOCACY

While TAS Case Advocacy works one-on-one with individual taxpayers or their representatives to resolve the specific problems they are experiencing with the IRS, TAS Systemic Advocacy (SA) works to identify and mitigate IRS issues that are systemic in nature, generally understood to be those impacting multiple individuals or taxpayer groups. The mission and structure of SA allows TAS to proactively advocate on these issues.

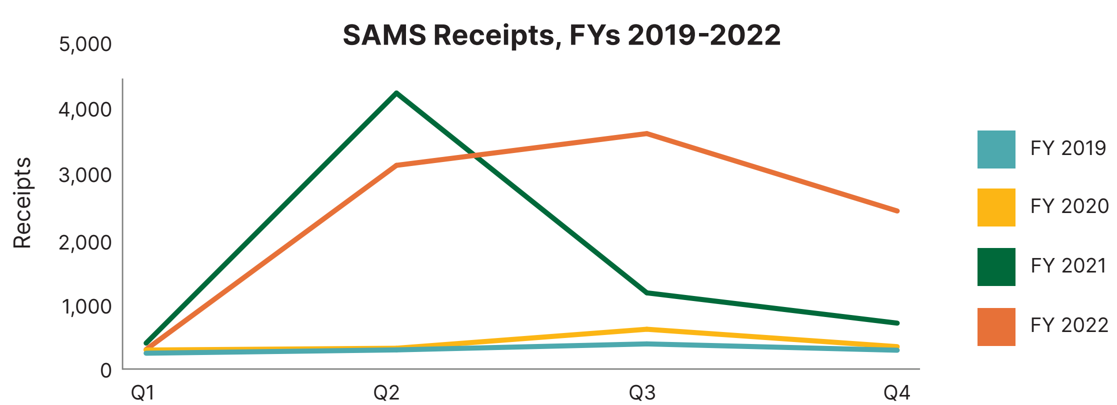
TAS employs a number of methods to identify systemic issues, including the review of items raised directly through its issue submission database; through partnership with TAP and LITCs; and through close collaboration with its Case Advocacy counterparts to elevate trends identified through reviews of TAS casework and during outreach events. TAS analysts and attorneys also participate on cross-functional IRS teams where they may learn firsthand of potential issues, identify problems, and propose administrative solutions. TAS employees work to support one of TAS's primary statutory missions, to identify areas in which taxpayers are experiencing problems in their dealings with the IRS and to propose changes in the IRS's administrative practices to mitigate those problems.[44]

Return Processing Backlogs and Refund Issues Continue to Drive Receipts of Taxpayer-Submitted Concerns

One tool used to identify emerging systemic issues is the Systemic Advocacy Management System (SAMS), a web-based method of receiving and prioritizing systemic issues and problems. SAMS allows taxpayers and other stakeholders to bring systemic issues directly to TAS's attention and is open to anyone aware of a tax problem that affects more than one taxpayer, involves IRS processes, or affects taxpayer rights.[45] Through SAMS, TAS draws on observations and suggestions directly from individuals, businesses, academic and research institutions, professional organizations, practitioners, IRS employees, and all other interested parties in its effort to improve tax law and administration.

As shown in Figure 4.7, SAMS has seen a marked increase in receipts from pre-COVID-19 numbers. IRS processing backlogs and operational delays continue to impact taxpayers' ability to secure tax return processing and timely receive much-needed refunds, and this has impacted the number of submissions made to SAMS. SAMS receipts have risen from 897 submissions received in FY 2019 to 9,433 submissions received in FY 2022, a 952 percent increase. This steep rise in receipts does not meaningfully reflect an increase in the number of identified systemic issues; rather, it illustrates how taxpayers' frustration and inability to communicate directly with the IRS to resolve their tax issues has prompted them to seek assistance wherever they believe they can find help. Of the 897 SAMS submissions received in FY 2019, only 43 were classified as individual or non-systemic issues.[46] By comparison, of the 9,433 SAMS submissions received in FY 2022, 7,355 were classified as individual issues, meaning these taxpayers coming through SAMS were not reporting systemic problems but were simply looking for help related to their individual or business tax returns.[47] This increase in submissions not only reflects a rise in taxpayer desperation but also illustrates a drain on TAS resources as SAMS analysts must spend time to review innumerable submissions that are not intended for this program.[48] SAMS received a notable increase in systemic submissions, showing a 143 percent increase in FY 2022 systemic receipts compared to FY 2019.[49]

FIGURE 4.7[50]



From items raised through SAMS determined to be systemic in nature, TAS subject matter experts (SMEs), attorneys, and technical liaisons are assigned to research the issues and, when appropriate, develop potential steps for resolution. Complex issues may be worked through Information Gathering Projects, Advocacy Projects, or Immediate Interventions, depending on the circumstances surrounding the issue and its urgency. All, however, have the common elements of analysts and experts working together to address systemic issues, researching the underlying causes of problems, and proposing corrective actions. Developing solutions in this fashion and acting in collaboration with the IRS oftentimes preempts the necessity of TAS elevating many of these issues to the status of a Most Serious Problem in the National Taxpayer Advocate's Annual Report to Congress.

Taxpayer Advocacy Panel

While SAMS is a primary collection and processing source of systemic issues, it is *not* the only means taxpayers have to voice their concerns regarding systemic tax issues. TAS has another venue, TAP. TAP is a Federal Advisory Committee established in 2002 under the authority of the U.S. Department of the Treasury.[51] Although independent from TAS in its work, TAS provides essential funding, technical, administrative, and clerical support to this critical grassroots organization. TAP consists of a rotating body of volunteer members made up of a cross-section of the taxpayer public who serve on committees dedicated to reviewing specific areas of the IRS and taxpayer service. TAP committees hold monthly meetings that are open to the public and provide a forum for taxpayers to speak directly on the systemic IRS issues that give them concern.[52] The committees research and develop these issues before they are potentially elevated directly to the IRS for its consideration and response. TAP provides the taxpayer perspective on critical tax administrative programs and helps identify grassroots issues through community outreach. TAP also provides opportunities to gather independent taxpayer comments and suggestions regarding IRS service, customer satisfaction, and process improvements. In FY 2022, TAP submitted 147 recommendations to the IRS suggesting improvements to the taxpayer experience.[53]

For example, TAP was concerned the IRS's Where's My Refund? webpage did not clearly indicate next steps for some taxpayers experiencing a refund delay and recommended the IRS add specificity to the online guidance. The IRS agreed, and the webpage was updated so taxpayers would be better informed of when they should contact the IRS directly for a refund update. In another instance, TAP recommended the IRS evaluate the effectiveness of its voicebot technology and provide prompts for taxpayers whose issues were not resolved, directing them to use online account options or contact customer service representatives as additional means for resolution. The IRS agreed to review its voicebot messaging to determine if they could improve taxpayers' experience by advertising the use of the Online Account tool.

TAP recently celebrated its 20th anniversary. It has partnered with over 700 citizen volunteers who have worked more than 200,000 volunteer hours and submitted more than 2,200 recommendations to the IRS to help it improve services for taxpayers.[54]

TAS Reviews IRS Publications and Guidance to Relieve Burden and Protect Taxpayer Rights

The IRS's forms and publications constitute about two-thirds of the government-wide paper burden imposed on taxpayers; that burden has been decreasing since 2017 thanks, in part, to new legislation, administrative changes, and TAS's systemic review of those publications to identify areas of taxpayer burden or confusion.[55] Systemic Advocacy is proactive in its efforts to ensure that IRS employee guidance and instructions contain the key elements necessary to protect taxpayers' rights. TAS works collaboratively with the IRS to review Internal Revenue Manual (IRM) guidance as well as external IRS products, such as IRS notices, forms, and publications, to identify and address items that might unintentionally cause taxpayer burden or harm. The collaborative review of IRS guidance, procedures, and materials by TAS SMEs allows TAS to review and negotiate with the IRS BODs to make changes that relieve taxpayer burden, protect and promote taxpayer rights, and ensure the IRS is an efficient tax administrator. TAS reviews materials prepared by the IRS in advance of publication or may open its own negotiations with the IRS if problems are discovered in a forum during TAS's work with taxpayers.[56]

During FY 2022, TAS made 344 recommendations to modify draft IRM provisions, and the IRS accepted 248 (72 percent) of our recommended changes.[57] As a result, in FY 2022, TAS:

- Updated 142 IRMs;
- Incorporated the Taxpayer Bill of Rights into 113 IRMs;
- Helped revise 13 taxpayer notices;
- Helped revise 15 tax forms; and
- Helped revise five publications, all strengthening the taxpayers' *right to a fair and just tax system*.

Through this review process, for example, TAS advocated for changes to IRS Publication 519, U.S. Tax Guide for Aliens, addressing discrepancies found between the publication and internal IRS guidance that led to rejected refund claims for nonresident alien students. The IRS revised Publication 519 in April 2022, enabling students to successfully submit, complete, and correct refund claims and avoid further delays in receiving their refunds. As noted, TAS also reviews and collaborates on internal IRS guidance, *e.g.*, the implementation of a written update for IRS employees handling Identity Protection Personal Identification Number (IP PIN) Program Telephone Inquiries. The updated guidance directed IRS employees to promote the availability of an IP PIN Assignment Notice, scanned into their Online Accounts if the "Retrieve Your IP PIN" tool was unavailable, allowing taxpayers to file electronically and avoid paper processing delays.

TAS Proposes Administrative Remedies and Legislative Change to Mitigate Taxpayer Problems

One of the National Taxpayer Advocate's channels for communicating recommendations to the IRS and Congress is through the submission of her Annual Report to Congress. To meet the statutory requirements of the Annual Report to Congress, almost every area of the TAS organization contributes to the development of the report's narrative; from the investigation of potential systemic issues to the analysis of data and trends, TAS capitalizes on all of its resources to produce two reports to Congress each year. In this year's Annual Report, TAS makes 46 administrative recommendations to the IRS, covering a range of adjustments to improve taxpayers' experience with the IRS.[58] The report additionally proposes 65 legislative recommendations to Congress, highlighting issues the IRS cannot address through administrative remedy.[59]

Making formal recommendations in the Annual Report to Congress is only one of TAS's means of advocating for administrative change. TAS SMEs and technical liaisons participate on cross-functional teams with the IRS to raise issues identified by TAS, propose remedies, and work collaboratively to resolve specific problems and reduce taxpayer burden.[60] See *Highlights of TAS Successes Throughout FY 2022*, which includes some examples of systemic advocacy issues and results for the past year.

TAXPAYER ADVOCATE DIRECTIVES

IRS Delegation Order 13-3 authorizes the National Taxpayer Advocate to issue a Taxpayer Advocate Directive (TAD) "to mandate administrative or procedural changes to improve the operation of a functional process or to grant relief to groups of taxpayers (or all taxpayers) when implementation will protect the rights of taxpayers, prevent undue burden, ensure equitable treatment, or provide an essential service to taxpayers."[61]

Under the Delegation Order, the authority to issue a TAD is provided solely to the National Taxpayer Advocate and may not be redelegated. The authority to modify or rescind a TAD is delegated to the Deputy Commissioner for Operations Support, the Deputy Commissioner for Services and Enforcement, and the National Taxpayer Advocate. Before a TAD is issued, TAS works with the responsible BOD or function to try to resolve the pertinent issues. Under procedures prescribed in the IRM, the National Taxpayer Advocate generally issues a "proposed TAD" before issuing a TAD to apprise senior IRS leaders of her concerns and give them an opportunity to address them.[62] However, the National Taxpayer Advocate may dispense with the issuance of a proposed TAD if she "determines that the problem is immediate in nature and a delay in addressing it would have significant negative impact on taxpayers."[63] If the responsible BOD or function does not agree to take actions delineated in the proposed TAD to address the problem or if it offers a counterproposal to address the problem, it will provide a written explanation of the reasons in the form of a memorandum or email communication from the head of office to the National Taxpayer Advocate.[64] In the case of any TAD issued by the National Taxpayer Advocate, IRC § 7803(c)(5)(A) requires the Commissioner or Deputy Commissioner to modify, rescind, or ensure compliance with such directive not later than 90 days after issuance of such directive.[65] If the TAD is modified or rescinded by a Deputy Commissioner, the National Taxpayer Advocate may (not later than 90 days after such modification or rescission) appeal to the Commissioner, and the Commissioner must (not later than 90 days after such appeal is made) either (1) ensure compliance with such directive as issued by the National Taxpayer Advocate, or (2) provide the National Taxpayer Advocate with the reasons in writing for any modification or rescission made or upheld by the Commissioner, as required by IRC § 7803(c)(5)(B).

Taxpayer Advocate Directives Issued in Fiscal Year 2022

The National Taxpayer Advocate issued two TADs and one appeal of a TAD in FY 2022.

In FY 2022, TAS issued:

- Taxpayer Advocate Directive 2021-2: Backlog of Unprocessed Amended Tax Returns (Nov. 9, 2021);
- Taxpayer Advocate Directive 2022-1: Implement Scanning Technology to Machine Read Paper Tax Returns and Address the Paper Return Backlog (March 29, 2022); and
- Appeal of Taxpayer Advocate Directive 2022-1: Implement Scanning Technology to Machine Read Paper Tax Returns and Address the Paper Return Backlog (Aug. 2, 2022).

The IRS Deputy Commissioner for Services and Enforcement responded to TAD 2021-2 on December 8, 2021, stating that while the IRS did not have resources to complete processing of all backlogged and unprocessed amended returns by December 29, 2021, as had been directed by the National Taxpayer Advocate, it identified several approaches it was pursuing to reduce the amended return inventory.[66] The National Taxpayer Advocate did not appeal the response to this TAD. It was not until June 2022 that the IRS processed the paper-filed return backlog.[67] The IRS continued with these approaches throughout 2022 in an effort to eliminate the inventory backlog.[68] Unfortunately, the IRS will still have millions of unprocessed returns carrying over into the FY 2023 filing season.[69]

The IRS Deputy Commissioner for Services and Enforcement responded to TAS TAD 2022-1 on July 18, 2022, by partially modifying and partially rescinding the directed actions.[70] The response provided that the IRS is testing several pilot programs to test barcoding and other technologies but declined to make a commitment to implement scanning technology to machine read v-coded returns and expressly rejected implementing scanning technology to machine read handwritten returns.[71] The response further stated the IRS would not implement any single option until it is confident in the delivery system. In accordance with IRC § 7803(c)(5)(B), because of the magnitude of the IRS's return processing backlog and because the IRS response did not provide specific reasons for modifying or rescinding the directed actions in the TAD, the National Taxpayer Advocate appealed the partial modification and partial rescission of TAD 2022-1 to the IRS Commissioner on August 2, 2022.[72] On October 31, 2022, the IRS Commissioner modified the initial IRS response to the TAD 2022-1 dated July 18, 2022, stating that with the additional funding provided by the Inflation Reduction Act of 2022,[73] the IRS will begin scanning some paper individual income tax returns as well as some employment tax returns early in 2023.[74] In addition, the Commissioner added, if the scanning is successful, additional individual income tax returns and employment tax returns will be scanned later in 2023.[75] TAS will continue to monitor the IRS's progress and work with the IRS to resolve any issues that may arise.

HIGHLIGHTS OF TAS SUCCESSES THROUGHOUT FISCAL YEAR 2022

Refunds	
Issue	**Advocacy Results**
The IRS Was Not Processing Amended Tax Year (TY) 2020 Returns That Reported the Unemployment Compensation Exclusion, Delaying the Release of Refunds ***Explanation:*** Unemployment compensation received is normally taxable. The American Rescue Plan Act (ARPA), enacted March 11, 2021, provided eligible taxpayers an exclusion from income up to $10,200 of unemployment benefits.[76] On April 2021, the IRS announced that for taxpayers who had already filed a 2020 tax return that included the full amount of the unemployment compensation, it would automatically determine the correct taxable amount of unemployment compensation, reduce the benefits, correct the tax, and issue taxpayers' refunds if appropriate.[77] Early on, the IRS also advised taxpayers not to file an amended tax return. However, some taxpayers filed amended tax returns to exclude unemployment income, and in 2022, the IRS instructed taxpayers who have not received a refund to file an amended return. The IRS did not have procedures to process these amended returns, resulting in a backlog of unprocessed amended returns and delays in issuing refunds.	***Result:*** TAS identified the issue and advocated for the IRS to establish procedures for processing these amended tax returns. The IRS issued guidance in October 2021.[78] The procedures allowed IRS employees to process amended returns and release over 675,000 affected refunds.[79]
Lookback Period for Allowing Tax Credits or Refunds Does Not Include Any Postponement or Additional Time for Timely Filing a Tax Return ***Explanation:*** A taxpayer's refund claim must be (1) filed within three years from the date the return was filed or two years from the date the tax was paid, whichever period is later, and (2) the monies must be available pursuant to the "lookback period."[80] Because of the COVID-19 pandemic, the IRS postponed the TYs 2019 and 2020 filing deadlines to July 15, 2020, and May 17, 2021, respectively. However, the postponement period does not extend the lookback period for purposes of refund claims filed three years later. Any tax deducted and withheld on wages and any amount paid as estimated tax are deemed to have been paid on April 15. Taxpayers who file claims for credit or refund within three years from the date the original return was filed will have their credits or refunds limited to the amounts paid within the three-year period before the filing of the claim plus the period of any extension of time for filing the original return (the "three year lookback period"). Specifically, the postponement filing date would harm taxpayers who paid their taxes by April 15. For example, if a taxpayer filed a 2019 return by the postponed filing deadline of July 15, 2020, and then submitted a refund claim by July 15, 2023, the claim would be timely. The irony is that although the claim would be timely, the amount could be limited to zero as April 15 would fall outside the lookback period. This is a trap for the unsophisticated. Most taxpayers do not understand the legal nuances of the lookback rule, will assume they have three years from the filing of the original return, and will have a rude awakening when the amount of the refund could be denied if the amount was due to estimated taxes or withholdings.	***Result:*** TAS submitted a recommendation to the Department of the Treasury to move the lookback period to be consistent with the postponement period for the 2019 and 2020 tax returns. Treasury agreed to include this issue in the Fiscal Year (FY) 2022-2023 Priority Guidance Plan.[81] Each year, the Treasury Department's Office of Tax Policy and the IRS use the Priority Guidance Plan to identify and prioritize the tax issues that should be addressed through regulations, revenue rulings, revenue procedures, notices, and other published administrative guidance. TAS also included a legislative recommendation on this topic in the 2022 and 2023 Purple Books for all federally declared disaster zones.[82]

Refunds	
Issue	**Advocacy Results**
The IRS Was Not Committed to Implementing the Use of Scanning Technology to Expedite the Processing of Paper Returns by the 2023 Filing Season ***Explanation:*** The IRS delays in processing tax returns has been a Most Serious Problem since the 2020 filing season, in part because of the pandemic, but more importantly, due to IRS's archaic methods of processing returns. As of the end of the 2022 filing season, the IRS had a backlog of 29 million unprocessed individual tax returns.[83] Although the IRS had some resources to automate tax return digitization, the IRS was not committed to implementing scanning technology to digitize paper returns by the 2023 filing season.	***Result:*** The National Taxpayer Advocate has been making the case to the IRS to implement scanning technology, but the IRS has failed to implement automated digitization of tax returns. As a result, in March 2022, the National Taxpayer Advocate issued a Taxpayer Advocate Directive (TAD) to the IRS directing it to implement scanning technology to machine-read paper-filed tax returns in time for the 2023 filing season.[84] Specifically, the TAD directed the IRS to (1) implement technology to automate the processing of paper-filed returns prepared with tax software by the start of the 2023 filing season and (2) automate the processing of handwritten paper-filed returns by the start of the 2023 filing season if possible or, if not, by the start of the 2024 filing season. In July 2022, the Deputy Commissioner responded to the TAD by stating that the IRS was testing several pilot programs, but the response declined to make a commitment to implement scanning technology to machine-read returns.[85] In September 2022, Senator Wyden, Chairman of the Senate Finance Committee, wrote to the IRS Commissioner urging the IRS to expedite common sense upgrades to improve customer service before the 2023 filing season.[86] Acting Commissioner O'Donnell responded to Senator Wyden's letter on November 22, 2022, and stated that in the next filing season, the IRS will automate scanning individual paper returns into a digital copy, among other upgrades that it is in the process of implementing.[87] For taxpayers this could mean faster processing and faster refunds.
Some Individual Taxpayer Identification Number (ITIN) Renewals Led to Refunds Being Withheld ***Explanation:*** There were no IRS procedures in place to reactivate ITIN renewals in the IRS's main processing and information system for taxpayers who requested an ITIN renewal along with another update, such as a name change. As a result, taxpayers could not receive refunds systemically and had to request manual refunds.	***Result:*** TAS collaborated with the IRS to add procedures for resolving accounts where ITIN renewals were not being reactivated in these types of situations.[88] This corrected the affected accounts and will prevent future delays in taxpayers' refund release.
The IRS Erroneously Held Some Coast Guard Members' Refunds ***Explanation:*** Coast Guard personnel stationed in Puerto Rico had their TY 2020 tax refunds, which included the Recovery Rebate Credit (RRC), withheld for over a year. The IRS erroneously classified these Coast Guard members as *bona fide* residents of Puerto Rico, who had allegedly received their stimulus checks from the Puerto Rican tax authority, making them ineligible to claim the RRC. Generally, U.S. Armed Forces personnel stationed in a territory, in compliance with military orders, do not qualify as *bona fide* residents of the territory.	***Result:*** TAS collaborated with the IRS to identify the impacted Coast Guard personnel and release their refunds. On September 22, 2022, TAS received confirmation that the refunds for TYs 2020 and 2021 were released. Additionally, the IRS updated the programming to prevent future misclassification of armed forces personnel.

COVID-19 Stimulus Payments	
Issue	**Advocacy Results**
Taxpayers Misidentified as U.S. Territory Residents Did Not Receive Their Third Stimulus Payment ***Explanation:*** Residents of U.S. territories, such as Puerto Rico, Guam, and the U.S. Virgin Islands, received their third stimulus check from local tax authorities instead of the IRS. To prevent duplicate stimulus checks from being issued, the IRS identified tax returns filed by territory residents and placed markers on these accounts. The IRS, however, erroneously placed markers on accounts of taxpayers who had never lived in a U.S. territory or filed a U.S. territory tax return. Consequently, these taxpayers did not receive their third stimulus check.	***Result:*** TAS worked with the IRS to develop procedures to correct this problem. The IRS reversed markers on 369,000 accounts, which in turn generated the issuance of the third stimulus checks to these taxpayers before the statutory deadline of December 31, 2021.[89]
Taxpayers Did Not Receive Their Stimulus Checks Due to Computer Errors ***Explanation:*** Direct deposits of stimulus payments between August 5 and August 26, 2020, were misdirected to the wrong bank accounts, even though the correct taxpayer's name and bank account information were in the IRS database system.[90] The IRS's procedures for correcting this issue did not cover all impacted accounts, and the IRS recommended that taxpayers who did not receive the stimulus check instead claim the RRC on their 2020 tax return or file an amended tax return.	***Result:*** TAS advocated for the IRS to reconsider its proposal that taxpayers claim the RRC on their future tax return instead of receiving a stimulus check. The IRS agreed to change its position and revise its procedures to allow stimulus payments to be reissued instead of placing the burden on taxpayers to claim the RRC on their returns. TAS collaborated with the IRS to issue updated procedures in October 2021.[91]
The IRS Issued Duplicate Third Stimulus Payments in Certain Cases ***Explanation:*** Due to programming errors in matching taxpayers' names with their bank account information, banks rejected some third stimulus payment direct deposits. Because the IRS could not reissue the stimulus payments as direct deposits, to give relief to taxpayers with hardships, TAS received permission to issue manual refunds. After the manual refunds were issued, however, the IRS computers systemically issued duplicate stimulus payments as checks, which taxpayers needed to return or pay back.	***Result:*** TAS alerted the IRS to the programming error. The IRS corrected the programming in November 2021 to prevent more duplicate stimulus checks from being systemically issued.

Collections	
Issue	**Advocacy Results**
The Delayed Processing of Collection Due Process (CDP) Requests Caused Some Taxpayers to Face Premature Collection Action ***Explanation:*** Due to the IRS mail backlog, the IRS was delayed in processing taxpayers' requests for a CDP appeal. Taxpayers who receive a Notice of Intent to Levy and Notice of Your Right to a Collection Due Process Hearing (Final Notice) are advised to request a hearing with Appeals. When the notice is issued, it is recorded on the IRS's central taxpayer account database. However, if the taxpayer's response is not entered into the database within ten weeks, the IRS's Automated Levy Program (ALP) generates a levy. Many taxpayers' CDP requests remained unopened until after the ten-week deadline, resulting in the issuance of erroneous automated levies.	***Result:*** TAS urged the IRS to extend the ten-week timeframe due to the backlog. In February 2022, the IRS made the decision to temporarily suspend ALP until the mail backlog is current to ensure that taxpayers are not subject to premature levy and their right to an appeal is protected.[92]
The IRS Was Assigning Some Vulnerable Taxpayers to Private Collection Agencies (PCAs) in Error[93] ***Explanation:*** Taxpayers who received Supplemental Security Income (SSI) and owed the IRS taxes were subject to collection actions of PCAs when they should not have been. Since 2018, TAS has been urging the IRS to exclude from assignment to PCAs the accounts of taxpayers who receive SSI or Social Security Disability Income (SSDI). In 2019, Congress passed the Taxpayer First Act, which required the IRS to exclude these accounts.[94] Although the IRS can systemically exclude the accounts of taxpayers who receive SSDI because SSDI payments are reported to the IRS by the Social Security Administration (SSA), the IRS was not able to systemically exclude the accounts of taxpayers who receive SSI benefits because SSA did not provide information to IRS for these taxpayers. SSA took the position that privacy laws prohibited sharing the names of SSI recipients with the IRS.	***Result:*** In December 2020, Congress passed the Consolidated Appropriations Act of 2021 to authorize SSI identity sharing.[95] The IRS and SSA worked to create a procedure to share the identities of SSI recipients who are assigned to the Private Debt Collection (PDC) program. As a result, starting in June 2022, the IRS began to systemically exclude taxpayers who were identified as currently receiving SSI from assignment to PCAs. Additionally, the accounts of any taxpayers receiving SSI that were assigned to a PCA have been recalled, and these taxpayers have been sent a letter informing them of this recall.
Collection Statute Expiration Dates Were Erroneously Extended on Some Accounts With Pending Installment Agreements ***Explanation:*** When a taxpayer submits a request for an installment agreement (IA), the IRS suspends the collection statute expiration date (CSED) for the relevant tax periods until the IRS decides to accept or reject the request. If the taxpayer's account information is incorrectly input into the IRS's database, the CSEDs may be erroneously extended. The erroneous extension of a CSED leaves taxpayers exposed to invalid IRS collection action and violates the taxpayer's *right to finality*. Some CSEDs were prolonged for many years.	***Result:*** TAS advocated for TAS and IRS employees to receive training in identifying the CSED issue and in correctly calculating the CSED. The IRS and TAS employees who assist taxpayers with balances due are responsible for verifying the validity of the CSED to ensure that the IRS is collecting the correct amount of tax within the legal time limit. Moreover, TAS contributed specific recommendations for the IRS and TAS websites and IRS publications concerning collections, IAs, bankruptcy, and taxpayer rights. Finally, TAS recommended some programming modifications to the electronic case processing system used by Revenue Officers. These changes will alert Collection employees about unreversed pending IA indicators.

Collections

Issue	Advocacy Results
Taxpayers Facing Financial Difficulties Pending an Offer in Compromise (OIC) Acceptance Were Still Subject to Refund Offsets ***Explanation:*** Generally, the IRS will keep any tax refunds including interest due to the taxpayer through the calendar year the IRS accepts the OIC. In FY 2021, TAS advocated for the IRS to allow taxpayers whose OICs were pending and who were experiencing a financial hardship to receive their refunds without the refund being applied to their outstanding tax liability. This type of refund is called an offset bypass refund (OBR). While the IRS agreed to allow OBRs, the IRS did not establish any procedures to process OBR requests leaving taxpayers subject to refund offsets.	***Result:*** TAS negotiated with the IRS to create procedures to process these OBRs as well as TAS OBR referrals. The OBR procedure for taxpayers with OICs was updated in September 2022.
The IRS Erroneously Extended CSEDs on PDC Terminated Payment Agreements ***Explanation:*** When a taxpayer defaults an IRS IA, the IRS extends the CSED 30 days during the time designated for the taxpayer to appeal the termination of the IA. Taxpayers assigned to the PDC program may enter a payment arrangement with a PCA but are not afforded appeal rights when they default and those arrangements are terminated, as they are not considered "installment agreements" under IRC § 6159. TAS discovered taxpayers who defaulted on payment arrangements with a PCA had 30 days erroneously added to their CSEDs, despite not being afforded any right to appeal the terminated payment arrangement. Since inception of the PDC program in 2017, more than 145,000 taxpayers have had CSEDs erroneously extended, putting them at risk of making payments beyond the correct CSED if their payment arrangement had been terminated.[96]	***Result:*** TAS advocated for correcting the CSED on accounts of terminated payment arrangements with the PCA by removing the additional 30-day period. The IRS agreed to adjust the programming to prevent CSED extension if the account is assigned to a PCA. Until the correction is made, TAS is working with the IRS to ensure taxpayers who make payments after the correct CSED has expired will have the option to have those payments refunded.

Taxpayer Accounts

Issue	Advocacy Results
Despite IRS Processing Delays, the IRS Continued to Systemically Issue Notices to Taxpayers ***Explanation:*** The IRS's processing delays caused tax returns and taxpayer correspondence to be unprocessed for several months, which resulted in the IRS's records of taxpayer accounts being inaccurate. This led to the IRS automatically sending erroneous collection and return non-filing notices, causing many taxpayers confusion over the status of their accounts.	***Result:*** The National Taxpayer Advocate together with outside stakeholders advocated for the IRS to suspend the issuance of automatic notices while the IRS worked through its mail backlog.[97] On February 5, 2022, the IRS announced that it was suspending more than a dozen letters, including the mailing of automated collection notices normally issued when a taxpayer owes additional tax and when the IRS has no record of a taxpayer filing a tax return.[98] Nevertheless, taxpayers who owed tax, interest, or penalties were still required to pay their taxes, and, if applicable, interest and penalties continued to accrue until they made the payment.

Taxpayer Accounts	
Issue	**Advocacy Results**
Taxpayers' Confusion Over IRS Instructions Prevented Many Taxpayers From Completing Return Verification on the IRS Website ***Explanation:*** When the IRS's Taxpayer Protection Program identifies a suspicious tax return, it sends taxpayers a letter requesting that taxpayers verify their identity and their return. Taxpayers can verify their identity and return online using a video conference option through a third-party Credential Service Provider (CSP). Many taxpayers who used the video conferencing method, however, were unable to complete the verification process online because they were confused by the instructions provided concerning the return verification portion. As a result, there were delays in processing the taxpayers' returns and refunds.	***Result:*** TAS elevated the issue and made recommendations to the IRS's Secure Access Digital Identification (SADI) program to clarify the instructions given to taxpayers, specifically to state in detail the taxpayers' next steps upon successful video verification. The instructions were revised in June 2022 through a collaborative effort between TAS; Privacy, Governmental Liaison and Disclosure; Online Services; and the CSP contractors.[99] Consequently, taxpayers were able to complete the return verification process and have their refunds released without further delays.
Some Puerto Rican Taxpayers Were Unable to Complete Verification of Their Identity and Tax Return on the IRS's Website ***Explanation:*** The IRS's Identity and Tax Return Verification (ID Verify) webpage was only programmed to provide verification questions for line items on Forms 1040 or 1040SR tax returns. As a result, Puerto Rican taxpayers who filed Form 1040-SS, U.S. Self-Employment Tax Return, or Form 1040-PR, Federal Self-Employment Contribution Statement for Residents of Puerto Rico, were unable to complete the verification process online and receive their refunds. [100]	***Result:*** TAS collaborated with the IRS to update the programming for the IRS's verification webpage to include questions for Form 1040-SS and Form 1040-PR. In April 2022, the IRS updated its ID Verify webpage, enabling Puerto Rican taxpayers to verify their tax returns online and receive their refunds without further delays.[101]
IP PIN Tool Was Not Working for Taxpayers Living Abroad ***Explanation:*** The IP PIN, a six-digit number assigned to taxpayers to help prevent the misuse of their Social Security numbers (SSNs) on federal income tax returns, assists the IRS in identifying valid returns filed by taxpayers who were previously identified by the IRS as being victims of identity theft. Although taxpayers living abroad were able to verify their identity through the IRS's SADI program, they received error messages when attempting to retrieve their IP PIN because of their foreign addresses, impeding them from electronically filing their 2021 tax returns.	***Result:*** TAS worked with the IRS to correct the programming within the tool to ensure that taxpayers with foreign addresses could retrieve their IP PIN through the IRS website. On September 11, 2022, the IRS deployed the programming fix. As a result, these taxpayers were then able obtain their IP PIN and file their tax returns electronically, if not already filed.
Small Business Administration (SBA) Loan Applicants Had Difficulties Obtaining IRS Transcripts ***Explanation:*** Taxpayers applying for the SBA Economic Injury Disaster Loans had difficulties qualifying for loans because of the requirement to prove income by providing IRS tax return transcripts. Some taxpayers were unable to secure transcripts due to a computer glitch during a one-week period resulting in some tax returns not showing on the Transcript Delivery System (TDS). Also, some taxpayers had difficulties with the IRS sending the transcripts directly to the SBA per the SBA guidelines.	***Result:*** When taxpayers were unsuccessful in obtaining transcripts to submit to the SBA, they reached out to their congressional offices, TAS Case Advocacy, and TAS Systemic Advocacy to receive assistance. First, TAS collaborated with the IRS to resolve the TDS programming problem in May 2022. TAS also worked with the SBA and the IRS to have taxpayers prepare and secure their transcript requests through their SBA caseworker. In cases where the taxpayer decided not to work with the SBA caseworker, TAS created a procedure to assist taxpayers in securing their tax return transcripts.

Taxpayer Accounts	
Issue	**Advocacy Results**
Online Payment Tool Errors Led to Balance Due Notices for Some Taxpayers ***Explanation:*** Some married taxpayers who filed a joint return and full paid their TY 2021 taxes online received balance due notices. Specifically, taxpayers who made online payments using the secondary taxpayer's SSN did not receive credit for these payments on the joint account because the tool failed to move the payment from the single account to the joint account automatically.	***Result:*** TAS collaborated with the IRS to correct an error in programming for these married filing joint accounts. TAS also requested that the IRS issue interim procedures to its employees while the update was being developed and implemented. On August 25, 2022, the IRS implemented the programming change, and on September 7, 2022, the IRS began the systemic transfer of the payments to the 144,634 joint accounts.[102] Because of TAS's diligent research and effective partnering with the IRS, the programming correction avoided additional erroneous balance due notices from being generated, protecting the taxpayers' *right to pay no more than the correct amount of tax*.
Individuals Received Balance Due Notices Even Though They Paid Taxes on Time ***Explanation:*** TAS discovered that taxpayers who filed Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return, were receiving erroneous balance due notices after filing their tax returns with the payment.	***Result:*** TAS identified a gap in IRS programming that caused tax returns to be processed before the application of the payments, resulting in balance due notices being issued. TAS collaborated with the IRS and the programming was updated on April 11, 2022. The correction will prevent future erroneous balance due notices from generating.

Penalties	
Issue	**Advocacy Result**
The IRS Assessed the Failure-to-File (FTF) Penalty on Some Late-Filed Returns Affected by the COVID-19 Pandemic ***Explanation:*** Because of the COVID-19 pandemic, taxpayers faced unprecedented obstacles to timely filing their 2019 and 2020 tax returns. Late-filed returns were charged with FTF penalties, absent a reasonable cause for filing late, and FTF penalties were also charged on some timely-filed returns.[103]	***Result:*** The National Taxpayer Advocate, members of Congress, and tax practitioner groups called on the IRS to implement a comprehensive remedy, which would include reversing and removing penalties. To its credit, the IRS acted and announced a broad late-filing administrative penalty relief program.[104] The IRS's penalty relief program commenced on August 25, 2022, and automatically provided late-filing penalty relief without the need for taxpayers to request the relief and continued to be applied to returns received through September 30, 2022. Ultimately, the IRS waived millions of late-filing penalties and issued refunds to taxpayers who previously paid the FTF penalty.

Penalties	
Issue	**Advocacy Result**
Non-Compliance With the Coronavirus Aid Relief and Economic Security (CARES) Act Put Taxpayers at Risk for Revocation of Payment Deferrals and Severe Penalties ***Explanation:*** Congress acted to provide cash flow relief to businesses struggling to cope with the COVID-19 pandemic by allowing them to defer the employer's portion of Social Security taxes for a defined period of time.[105] Section 2302 of the CARES Act provides that employers may defer the deposit and payment of the employer's portion of certain Social Security taxes for TY 2020 over the next two years. Half of the deferred social security tax was due by December 31, 2021, and the remainder was due December 31, 2022. Throughout FY 2022, TAS maintained a dialogue with the Office of Servicewide Penalties to protect taxpayers who, by mistake, by oversight, or in hardship, failed to meet the first deposit deadline. Because the CARES Act deferral was conditioned on timely payments of deferred amounts in 2021 and 2022, if either of those payments were late, then the entire deferral would be invalidated, the whole amount deferred would be considered late, and the late payment penalties would apply.	***Result:*** Through the advocacy of TAS, the American Institute of Certified Public Accountants, and other stakeholders, the IRS elected to neither enforce the maximum penalties nor revoke the second-year deferral payment if employers made late or insufficient payments. Moreover, the IRS agreed through the end of TY 2022 to refrain from assessing penalties against underpaid accounts that had unprocessed amended employment tax returns since these unprocessed amended returns meant that the IRS had not yet assessed the correct tax.
The IRS Erroneously Assessed Failure-to-Pay (FTP) Penalties Before Bankruptcy Cases Were Closed ***Explanation:*** Generally, no FTP penalties can be assessed against taxpayers while their bankruptcy case is still pending in court under IRC § 6658. The IRS, however, was erroneously assessing the FTP penalty prior to the legal closing of Chapter 7 bankruptcy cases.	***Result:*** TAS elevated the issue to the IRS, and the IRS agreed to correct its closing procedures to ensure that the FTP assessment is resumed only after the case is closed by the court.

TAS Website & Services	
Issue	**Advocacy Results**
TAS Offered Two Main Websites in English Only ***Explanation:*** TAS's websites were only available in English, making them inaccessible to Spanish-speaking taxpayers.	***Result:*** TAS's websites, www.TaxpayerAdvocate.irs.gov and www.improveirs.org, are now available in Spanish, enabling Spanish-speakers to learn about their taxpayer rights; read updates on the IRS; discover how TAS can assist them with tax issues; get tax tips, news and information; read important information on the National Taxpayer Advocate's blog; navigate the IRS by using TAS's digitally interactive Taxpayer Roadmap; and obtain legal assistance from LITCs.
TAS's Website Offered Limited Accessibility Options ***Explanation:*** TAS's website offered most information in text only, which limited accessibility to many people, including those with literacy difficulties, learning disabilities, reduced vision, and language learners.	***Result:*** TAS's website now offers text-to-speech (TTS) capabilities for some features, and TAS is in the process of updating the entire website to offer TTS. This will ensure that a wider array of audiences will have access to valuable information on TAS's website.

TAS Website & Services	
Issue	**Advocacy Results**
Taxpayers Needed Timely and Relevant Tax Information ***Explanation:*** Tax laws are complicated and constantly changing. Taxpayers need timely and relevant tax information to assist them in complying with their tax obligations and resolving tax problems.	***Result:*** TAS published almost 50 Tax Tips on its website. These timely articles were written in plain language, addressed urgent issues taxpayers faced, and offered TAS's unique perspective on various tax topics.
Individuals Had Issues Verifying Their Identity With the IRS, Delaying Their Refunds ***Explanation:*** Taxpayers with returns triggering potential fraud filters are required to verify their identities and returns by telephone or in person. However, taxpayers were often unable to complete the verification process because they could not reach an IRS representative by telephone due to a shortage of IRS telephone assistors and high call volume. As a result, taxpayers experienced long delays in receiving their refunds.	***Result:*** The LITC Program Office and TAS Systemic Advocacy collaborated with the IRS to establish a taxpayer identification verification pilot program that allowed LITCs to verify the identities of taxpayers whose refunds the IRS froze pending verification of their identities. This innovative pilot program allowed 17 participating and specially trained LITCs to authenticate more than 200 taxpayers' identities.[106] Consequently, the IRS processed these taxpayers' returns more expeditiously and released the much-needed refunds faster. This successful initiative will be implemented as an agencywide program in which all LITCs will be given the opportunity to participate.

Endnotes

1 *See* IRC § 7803(c)(2)(A).

2 Case Advocacy's discussions and case results form the basis for many of the Most Serious Problems and Legislative Recommendations in the National Taxpayer Advocate's Annual Report to Congress and Purple Book.

3 *See* Taxpayer Bill of Rights (TBOR), https://www.taxpayeradvocate.irs.gov/taxpayer-rights. The rights contained in TBOR are also codified in the IRC. *See* IRC § 7803(a)(3).

4 The 2022 filing season is with respect to the processing of individual tax returns for tax year 2021. The 2022 filing season began on January 24, 2022, and closed on April 18, 2022. *See* IRS, IR-2022-08, 2022 Tax Filing Season Begins Jan. 24; IRS Outlines Refund Timing and What to Expect In Advance of April 18 Tax Deadline (Jan. 10, 2022).

5 *See* Most Serious Problem: *Processing Delays: Paper Backlogs Caused Refund Delays for Millions of Taxpayers*, *supra*; National Taxpayer Advocate 2021 Annual Report to Congress 32-36 (Most Serious Problem: *Processing and Refund Delays: Excessive Processing and Refund Delays Harm Taxpayers*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_MSP_01_Processing-Delays.pdf; Erin M. Collins, Electronically Filing Your Return This Filing Season is Crucial and What You Need to Do if Your 2020 Return is Still Unprocessed, National Taxpayer Advocate Blog (Apr. 14, 2022), https://www.taxpayeradvocate.irs.gov/news/nta-blog-electronically-filing-your-return-this-filing-season-is-crucial/. *See*, Most Serious Problem: *Telephone and In-Person Service: Taxpayers Continue to Experience Difficulties and Frustration Obtaining Telephone and Face-to-Face Assistance to Resolve Their Tax Issues and Questions*, *supra*.

6 TAS, On Rolls Tracking Sheet, pay period 19 (2021, 2022), includes Case Advocates and Lead Case Advocates.

7 *See* Interim Guidance Memo (IGM) TAS-13-0222-0002, Interim Guidance on Changes to TAS Case Acceptance Criteria for the Fiscal Year (FY) 2022 Filing Season and Temporary Modification of TAS Case Procedures (Feb. 2, 2022); IGM TAS-13-0222-0004, Interim Guidance on Changes to TAS Case Processing for Fiscal Year (FY) 2022 Filing Season (Feb. 14, 2022).

8 Data obtained from the Taxpayer Advocate Management Information System (TAMIS) (Oct. 1, 2020; Oct. 1, 2021; Oct. 1, 2022). TAS received 206,772 cases in FY 2020; 264,343 in FY 2021; and 223,227 in FY 2022.

9 *See* National Taxpayer Advocate 2021 Annual Report to Congress 51-65 (Most Serious Problem: *IRS Recruitment, Hiring, and Training: The Lack of Sufficient and Highly Trained Employees Impedes Effective Tax Administration*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_MSP_02_Recruitment.pdf.

10 In FY 2022, TAS closed 234,293 cases, providing full or partial relief in 186,717 cases. Data obtained from TAMIS (Oct. 1, 2022).

11 TAS receives taxpayer inquiries from a variety of sources: telephone contacts to local TAS offices, correspondence (mail or fax), referrals from the IRS Business Operating Divisions (BODs)/functions, calls to the National Taxpayer Advocate toll-free line, congressional office contacts, etc. *See* IRM 13.1.16.8, Sources of TAS Cases and Initial Intake Actions (Oct. 4, 2021).

12 In FY 2022, TAS received 44 percent of its cases from IRS referrals, 28 percent from congressional referrals, and 28 percent from taxpayers or representatives contacting TAS directly. Data obtained from TAMIS (Oct. 1, 2022).

13 *See* IGM TAS-13-0522-0007, Interim Guidance on Changes to TAS Case Acceptance Criteria (May 13, 2022), modified by IGM TAS-13-0622-0010, Interim Guidance on Changes to TAS Case Acceptance Criteria (June 27, 2022).

14 TAS, On Rolls Tracking Sheet, pay period 19 (2021, 2022).

15 Data obtained from TAMIS (Oct. 1, 2021; Oct. 1, 2022). *See also Congressional Case Trends*, *infra*.

16 TAS monitors congressional cases involving original and amended return processing using a central organization code (1X).

17 As TAS lacks the statutory or delegated authority to resolve most taxpayers' problems, it coordinates with the responsible IRS BODs/functions for resolution. TAS issues OARs supported by facts, research, and necessary documentation to aid the BOD/function in understanding TAS's position and facilitate action. *See* IRM 13.1.19, Advocating With Operations Assistance Requests (OARs) (Sept. 29, 2021).

18 *See* IGM TAS-13-0922-0012, Interim Guidance on TAS Case Procedures to Secure Documentation for Org. 1X Cases (Sept. 27, 2022).

19 Data obtained from TAMIS (Dec. 1, 2022). When an OAR is not sufficient to resolve the case or when time is of the essence, TAS may issue a TAO. *See* IRC § 7811. *See also* IRM 13.1.20.2, Determining When to Issue a TAO (Feb. 2, 2011). For more information concerning TAOs, *see Taxpayer Assistance Order*s, *infra*.

20 As TAS lacks the statutory or delegated authority to resolve most taxpayers' problems, it coordinates with the responsible IRS BODs/functions for resolution. TAS issues OARs supported by facts, research, and necessary documentation to aid the BOD/function in understanding TAS's position and facilitate action. *See* IRM 13.1.19, Advocating With Operations Assistance Requests (OARs) (Sept. 29, 2021).

21 *See* IGM TAS-13-1221-0010, Interim Guidance – Document Upload Tool for Submissions from External Sources (Dec. 21, 2021).

22 Data obtained from TAMIS (Oct. 1, 2021; Oct. 1, 2022).

23 The TAS CCI function serves as the first contact for most taxpayers coming to TAS for assistance. Intake Advocates are responsible for answering calls and conducting in-depth interviews with taxpayers to determine the correct disposition of their issue(s). Intake Advocates take actions where possible to resolve the issue up front, create cases after validating the taxpayer meets TAS criteria, and offer taxpayers information and assistance with self-help options. *See* IRM 13.1.16.2, TAS Intake Strategy (Oct. 4, 2021).

24 Data obtained from TAMIS (Oct. 1, 2021; Oct. 1, 2022). Relief rates are based on the cases closed during FY 2022 that TAS may have received in a prior fiscal year. Regarding the Public Policy category designation, under Internal Revenue Code (IRC) § 7803(c)(2)(C)(ii), IRC § 7811(a)(1)(B), Treas. Reg. 301.7811-1 (a)(4)(ii), the National Taxpayer Advocate has the sole authority to determine whether compelling public policy warrants TAS' assistance to an individual or group of taxpayers.

25 Data obtained from TAMIS (Oct. 1, 2021; Oct. 1, 2022). The "Other TAS Receipts" category encompasses the remaining issues not in the top ten. Pre-Refund Wage Verification Hold is the IRS program to detect and prevent non-identity theft refund fraud. *See* IRM 25.25.3.1(1), Program Scope and Objectives (Aug. 30, 2019). Error Resolution System/Reject issues occur when errors made when filing returns cause the IRS to have to request additional information from the taxpayer before the IRS is able to process the return. On March 3, 2022, TAS split the issue code 315, Unpostable and Reject, into issue code 315, Error Resolution System/Reject, and issue code 317, Unpostables. Prior to March 3, 2022, these issues where combined; therefore, the data compiled after this date will no longer have unpostable issues. On March 3, 2022, TAS created a new issue code, Decedent Account Refund; prior to that date, these issues were captured as Other Refund issues.

26 Data obtained from TAMIS (Oct. 1, 2022).

27 Data obtained from TAMIS (Oct. 1, 2021; Oct. 1, 2022). Pre-Refund Wage Verification Hold is the IRS program to detect and prevent non-identity theft refund fraud. *See* IRM 25.25.3.1(1), Program Scope and Objectives (Aug. 30, 2019). Error Resolution System/Reject issues occur when errors made when filing returns cause the IRS to have to request additional information from the taxpayer before it is able to process the return. On March 3, 2022, TAS split the issue code 315, Unpostable and Reject, into issue code 315, Error Resolution System/Reject, and issue code 317, Unpostables. Prior to March 3, 2022, these issues where combined; therefore, the data compiled after this date will no longer have unpostable issues.

28 IRC § 7811(f) states that for purposes of this section, the term "National Taxpayer Advocate" includes any designee of the National Taxpayer Advocate. *See* IRM 1.2.2.12.1 Delegation Order 13-1 (Rev. 1), Authority to Issue, Modify or Rescind Taxpayer Assistance Orders (Mar. 17, 2009).

29 IRC § 7811(b)(2); Treas. Reg. § 301.7811-1(c)(2); IRM 13.1.20.3, Purpose of Taxpayer Assistance Orders (Dec. 15, 2007).

30 Treas. Reg. § 301.7811-1(c)(3); IRM 13.1.20.3, Purpose of Taxpayer Assistance Orders (Dec. 15, 2007).

31 IRC § 7811(a)(1)(A); Treas. Reg. § 301.7811-1(a)(1) and (c).

32 IRM 13.1.20.5(2), TAO Appeal Process (Dec. 9, 2015).

33 IRC § 7811(c)(1); Treas. Reg. § 301.7811-1(b).

34 *Id*.

35 Data obtained from TAMIS (Oct. 1, 2017; Oct. 1, 2018; Oct. 1, 2019; Oct. 1, 2020; Oct. 1, 2021; Oct. 1, 2022). *See* National Taxpayer Advocate 2018 Annual Report to Congress 562-563 (TAS Case Advocacy: *Passport Certification Due to Seriously Delinquent Tax Debt*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/07/ARC18_Volume1_TASCaseAdvocacy.pdf; National Taxpayer Advocate 2018 Annual Report to Congress 556-557 (TAS Case Advocacy: *Pre-Refund Wage Verification Hold (PRWVH)*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/07/ARC18_Volume1_TASCaseAdvocacy.pdf; National Taxpayer Advocate 2020 Annual Report to Congress 244-246 (TAS Case Advocacy: *TAS Uses Taxpayer Assistance Orders to Advocate Effectively*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_CA_TASCaseAdvocacy.pdf; National Taxpayer Advocate 2021 Annual Report to Congress 210-211 (TAS Case Advocacy: *IRS Backlogs Also Impacted TAS's Use of Taxpayer Assistance Orders*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/10/ARC21_CA_TASCaseAdvocacy.pdf.

36 Data obtained from TAMIS (Oct. 1, 2021; Oct. 1, 2022).

37 Data obtained from TAMIS (Oct. 1, 2020; Oct. 1, 2021; Oct. 1, 2022).

38 Data obtained from TAMIS (Oct. 1, 2018; Oct. 1, 2019; Oct. 1, 2020; Oct. 1, 2021; Oct. 1, 2022).

39 *See* National Taxpayer Advocate 2021 Annual Report to Congress 37-50 (Most Serious Problem: *Processing and Refund Delays: Excessive Processing and Refund Delays Harm Taxpayers*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_MSP_01_Processing-Delays.pdf; Most Serious Problem: *Processing Delays: Paper Backlogs Caused Refund Delays for Millions of Taxpayers*, *supra*; Case Advocacy: *TAS Continues to Assist Taxpayers Impacted by IRS Processing Delays*, *supra*.

40 Data obtained from TAMIS (Oct. 1, 2021; Oct. 1, 2022). Pre-Refund Wage Verification Hold is the IRS program to detect and prevent non-identity theft refund fraud. *See* IRM 25.25.3.1(1), Program Scope and Objectives (Aug. 30, 2019). Error Resolution System/Reject issues occur when errors made when filing returns cause the IRS to have to request additional information from the taxpayer before the IRS is able to process the return. On March 3, 2022, TAS split the issue code 315, Unpostable and Reject, into issue code 315, Error Resolution System/Reject, and issue code 317, Unpostables. Prior to March 3, 2022, these issues where combined; therefore, the data compiled after this date will no longer have unpostable issues. On March 3, 2022, TAS created a new issue code, Decedent Account Refund; prior to that date, these issues were captured as Other Refund issues.

41 Data obtained from the TAS Outreach database.

42 *Id.*

43 *See* IRS, IR-2022-51, Face-to-face IRS help available in more than 30 cities on Saturday, March 12, https://www.irs.gov/newsroom/face-to-face-irs-help-available-in-more-than-30-cities-on-saturday-march-12 (last visited Nov. 21, 2022).

44 IRC § 7803(c)(2)(A)(ii). IRC § 7803(c)(2)(A)(iii).

45 *See* SAMS, https://www.irs.gov/advocate/systemic-advocacy-management-system-sams (last visited Nov. 8, 2022).

46 Data obtained from SAMS (Nov. 30, 2022). SAMS non-systemic issues include individual, duplicate, systemic problem not validated, potential legislative recommendation, transferred, and not a systemic issue.

47 *Id.*

48 The sharp increase in SAMS submissions shown in the second quarter of FY 2021 can, in part, be attributed to external (non-TAS) social media posts instructing taxpayers concerned about delays in receiving their refund and advising them how to submit an issue in SAMS.

49 Data obtained from SAMS (Nov. 30, 2022). The top five systemic issues submitted to SAMS for FYs 2021-2022 were refunds, return processing, collection issues regarding tax payments not posted to taxpayers' accounts causing balance due issues or inability to setup installment agreements due to unprocessed tax returns, COVID-19 issues regarding stimulus payments, and amended return issues regarding delayed tax refunds or waiting for transcripts to reflect amendments.

50 Data obtained from SAMS (Nov. 30, 2022).

51 *See* TAP, https://www.improveirs.org/.

52 Taxpayers may also submit issues online through TAP's website, https://www.improveirs.org/.

53 Data obtained from TAP (Nov. 18, 2022). Note that each year TAP produces an annual report to highlight TAP's accomplishments. *See*, *e.g.*, IRS, Pub. 4444 (Rev. 3-2022).

54 *See* Erin M. Collins, The Taxpayer Advocacy Panel Celebrates 20 Years of Making the IRS Work Better for You, National Taxpayer Advocate Blog (Oct. 12, 2022), https://www.taxpayeradvocate.irs.gov/news/nta-blog-the-taxpayer-advocacy-panel-celebrates-20-years/.

55 *See* National Taxpayer Union Foundation, *Tax Complexity 2021: Compliance Burdens Ease for Third Year Since Tax Reform*, https://www.ntu.org/foundation/detail/tax-complexity-2021-compliance-burdens-ease-for-third-year-since-tax-reform (Apr. 15, 2021).

56 IRM 13.2.1.5.1, IMD/SPOC Reviews (Sep. 29, 2020).

57 Data obtained from Internal Management Document/Single Point of Contact (Nov. 22, 2022).

58 For a discussion of the top ten Most Serious Problems this year, *see* Introduction: *The Most Serious Problems Encountered by Taxpayers*, *supra*.

59 *See* National Taxpayer Advocate 2023 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration*.

60 *See* IRM 13.2.7.4, Types of Collaborative Efforts (Nov. 3, 2020). TAS relationships with the IRS include participation in cross-functional teams, IRS Task Forces, Rapid Response Teams, IRS Executive Steering Committees, and more.

61 IRM 1.2.2.12.3, Delegation Order 13-3 (formerly DO-250, Rev. 1), Authority to Issue Taxpayer Advocate Directives (Jan. 17, 2001). Section 1301 of the Taxpayer First Act, Pub. L. No. 116-25, 133 Stat. 981 (2019) amended IRC § 7803(c) to codify the process for the IRS to respond to a TAD and for the National Taxpayer Advocate to appeal a modified or rescinded TAD, and it imposed a reporting requirement on the National Taxpayer Advocate for any TAD not honored by the IRS in a timely manner.

62 A proposed TAD is a written communication from the National Taxpayer Advocate that recommends action (or forbearance of action) to address a systemic problem that affects multiple taxpayers that TAS has brought to the attention of the responsible head of office. IRM 13.9.1.1.4, Terms (Oct. 8, 2020).

63 IRM 13.9.1.3(2), The TAD Process (Oct. 8, 2020); IRM 13.9.1.3.1(2), Examples of When TADS May Be Issued and to Whom (Oct. 8, 2020).

64 IRM 13.9.1.3.2, The Content of a TAD (Oct. 8, 2020).

65 IRM 13.9.1.4, The TAD Appeal Process (Oct. 8, 2020).

66 IRS Response to TAD 2021-2: Backlog of Unprocessed Amended Tax Returns (Dec. 8, 2021).

67 For an in-depth discussion on this topic, *see* Most Serious Problem: *Processing Delays: Paper Backlogs Caused Refund Delays for Millions of Taxpayers*, *supra*.

68 *Id.*

69 *Id.*

70 IRS Response to TAD 2022-1: Implement Scanning Technology to Machine Read Paper Tax Returns and Address the Paper Return Backlog (July 8, 2022).

71 *Id.*

72 Appeal of TAD 2022-1: Implement Scanning Technology to Machine Read Paper Tax Returns and Address the Paper Return Backlog (Aug. 2, 2022).

73 An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14 (commonly referred to as the "Inflation Reduction Act of 2022"), Pub. L. No. 117-169, § 10301, 136 Stat 1831-32 (2022).

74 Commissioner's Response to TAD 2022-1 Appeal (Oct. 31, 2022).

75 *Id.*
76 ARPA, Pub. L. No. 117-2; IRS Fact Sheet, FS-2022-21, IRS updates 2020 unemployment compensation exclusion FAQs (March 2022), https://www.irs.gov/pub/taxpros/fs-2022-21.pdf.
77 IRS, COVID-19 Tax Tip 2021-46, IRS will recalculate taxes on 2020 unemployment benefits and start issuing refunds in May (Apr. 8, 2021), https://www.irs.gov/newsroom/irs-will-recalculate-taxes-on-2020-unemployment-benefits-and-start-issuing-refunds-in-may.
78 IRM 3.11.6.10.1.1.9, Unemployment Compensation Exclusion (UCE) - Tax Year 2020 (Line 1) (Oct. 7, 2021); IRM 21.5.6.4.35.3.2, -R Freeze Paper Procedures for Accounts With Return Integrity Verification Operations (RIVO) Involvement (Oct. 3, 2022).
79 IRS, Compliance Data Warehouse (CDW), Individual Returns Transaction File (IRTF) and Individual Master File (IMF) (data as of Sept. 2022).
80 *See* IRC § 6511(a)(b).
81 Department of the Treasury, *2022-2023 Priority Guidance Plan* 18 (Nov. 4, 2022), https://www.irs.gov/pub/irs-utl/2022-2023-pgp-initial.pdf.
82 National Taxpayer Advocate 2022 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 21-22 (Legislative Recommendation: *Amend the Lookback Period for Allowing Tax Credits or Refunds Under IRC § 6511(b)(2)(A) to Include the Period of Any Postponement or Additional or Disregarded Time for Timely Filing a Tax Return Under IRC § 7508A*, https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_PurpleBook_02_ImproveFiling_10.pdf; National Taxpayer Advocate 2023 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 132-134 (Legislative Recommendation: *Amend the Lookback Period for Allowing Tax Credits or Refunds to Include the Period of Any Postponement or Additional or Disregarded Time for Timely Filing a Tax Return)*.
83 Email from W&I (May 2, 2022) (on file with TAS); IRS, Status of Unopened Mail and Backlog Inventory (Apr. 29, 2022) (showing data as of Apr. 22, 2022).
84 *See* Erin M. Collins, Getting Rid of 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/.
85 *See* Erin M. Collins, IRS Deputy Commissioners Respond to Taxpayer Advocate Directive on Scanning Technology; National Taxpayer Advocate Appeals Decision to IRS Commissioner, National Taxpayer Advocate Blog (Aug. 4, 2022), https://www.taxpayeradvocate.irs.gov/news/nta-blog-irs-deputy-commissioners-respond-to-taxpayer-advocate-directive/.
86 Letter from Sen. Ron Wyden, Chair, Comm. on Fin., to Charles P. Rettig, Comm'r, Internal Revenue (Sept. 13, 2022) (on file with TAS).
87 Letter from Doug O'Donnell, Acting Comm'r Internal Revenue, to Sen. Ron Wydman, Chair, Comm. on Fin., (Nov. 22, 2022) (on file with TAS).
88 IRM 3.21.263.2.3, Request to Reactivate an ITIN (Nov. 12, 2021).
89 IRS responses to TAS information requests (Sept. 2, 2021; Nov. 22, 2021).
90 Service Electronic Research Program (SERP) Alert 20A0400 (Sept. 23, 2020).
91 IRM Procedural Update 21U1167 (Oct. 2021) stated IRS employees will treat these misdirected deposit cases as a non-receipt of direct deposited refunds and follow IRM 21.4.1.5.7.5(3), Refund Inquiries, Refund Research.
92 SERP Alert 22A0049 (Feb. 11, 2022).
93 See Erin M. Collins, Beginning Today, Some of Our Nation's Most Vulnerable Taxpayers Will Automatically Have Their Accounts Excluded From Assignment to Private Collection Agencies, National Taxpayer Advocate Blog (June 24, 2022), https://www.taxpayeradvocate.irs.gov/news/nta-blog-private-collection-agencies/.
94 Taxpayer First Act, Pub. L. No. 116-25, § 1205, 133 Stat. 989 (2019). Congress amended IRC § 6306 to exclude from assignment to PCAs where the taxpayer's gross income is at or below 200 percent of the Federal Poverty Level or where the taxpayer receives SSI or SSDI, beginning January 1, 2021.
95 The Consolidated Appropriations Act of 2021 Pub. L. No. 116-260, § 283, 134 Stat. 1984 (2021).
96 IRS, CDW, IRTF, and IMF FY 2019-2022.
97 National Taxpayer Advocate 2021 Annual Report to Congress 37-50 (Most Serious Problem: *Processing and Refund Delays: Excessive Processing and Refund Delays Harm Taxpayers*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_MSP_01_Processing-Delays.pdf. *See*, Erin M. Collins, An Overloaded IRS Stops Certain Automated Notices, But Taxpayers Still Need to File Federal Tax Returns and Pay Outstanding Taxes, National Taxpayer Advocate Blog (Mar. 2, 2022), https://www.taxpayeradvocate.irs.gov/news/nta-blog-an-overloaded-irs-stops-certain-automated-notices-but-taxpayers-still-need-to-file-federal-tax-returns-and-pay-outstanding-taxes/.
98 IRS News Release, IR-2022-31 (Feb. 9, 2022), IRS continues work to help taxpayers; suspends mailing of additional letters, https://www.irs.gov/newsroom/irs-continues-work-to-help-taxpayers-suspends-mailing-of-additional-letters.
99 Email from ID.me (June 2, 2022).
100 SERP Alert 22A0081 (Mar. 11, 2022) (rescinded on Apr. 22, 2022).
101 *Id.*
102 TAS Research (Sept. 21, 2022).
103 IRC § 6651(a)(1).
104 *See* Erin M. Collins, Good News: The IRS Is Automatically Providing Late Filing Penalty Relief for Both 2019 and 2020 Tax Returns. Taxpayers Do Not Need to Do Anything to Receive This Administrative Relief, National Taxpayer Advocate Blog (Aug. 24, 2022), https://www.taxpayeradvocate.irs.gov/news/nta-blog-the-irs-is-automatically-providing-late-filing-penalty-relief-for-both-2019-and-2020-tax-returns/.
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TAS RESEARCH REPORTS

A Review of Online Accounts and Web Services Offered by U.S. State and Foreign Country Taxing Authorities

EXECUTIVE SUMMARY

As part of its vested interest in IRS online operations, TAS Research and Analysis employees completed a broad overview of state taxing authority websites and review of a few foreign taxing authority websites during Spring and Summer 2022. Specifically, TAS reviewed the IRS website along with websites of 41 U.S. states that have an individual income tax, the District of Columbia, Puerto Rico, and three countries – Canada, Australia, and the United Kingdom (UK) ("entities").

Overall, the IRS website offered several services in common with U.S. states and the three countries reviewed, but there were notable differences. Commonly available services across nearly all states included the option to set up an online payment plan, conduct refund inquiries, receive and respond to notices online, and provide third-party access.

The IRS website was a leader in secure features for online account creation, online payment options, and language translation options. The IRS website included the most secure requirements for setting up an online account compared to other taxing authority websites. Though requiring documentation and verifying identity via a photo or video is more time-consuming for taxpayers, it results in a higher level of security. The IRS exceeded the payment options offered by state and country taxing authority websites. The IRS offered online payment options even if a taxpayer had not established an online account. Taxpayers could pay online or over the phone, using bank transfers, credit cards, debit cards, and digital wallets such as PayPal and Click to Pay. The IRS emerged as a leader in offering language translation options, with information for basic tax questions in 20 languages and the IRS homepage in English and seven other languages.

However, we identified three areas in which the IRS website lags behind other taxing authority websites.

- First is the lack of a full online filing option. There is an ongoing discussion and consideration of adding such an option to the IRS website.
- Second, the IRS Taxpayer Online Account website lacks the ability to receive most notices online. The IRS does not permit a taxpayer to submit an online response to a notice. However, the IRS was not the only entity lacking such options. This is anticipated to improve during the 2023 filing season. In addition to increasing the functionality of the online accounts, the IRS should incorporate its 18-plus standalone applications. The IRS should consolidate these features into the taxpayer's online account and provide access to their representatives – a one-stop shop.
- Lastly, we found several differences between in-person or digital contact options on the IRS website and the options available on state and foreign country websites. Unfortunately, despite the clear demand for the ability to contact the IRS via email, the IRS does not make this a contact option available for general information or requests for appointments. Moreover, the IRS has limited availability for telephone or in-person appointments, made even more difficult by consistently low levels of telephone customer service, whereas U.S. states offered taxpayers the ability to schedule an in-person appointment, and a few entities went above and beyond by providing taxpayers with contact options via social media platforms.

The IRS can learn much from a review of its own digital services and that of others, finding common ground as well as inspiration and lessons learned for future improvements. This report can form a basis for reviews of future changes and can build upon future reviews of other local tax agencies, states, and countries.

BACKGROUND

The National Taxpayer Advocate's 2020 and 2021 Annual Reports to Congress include online accounts, digital services, and barriers in electronic filing as three of the ten Most Serious Problems facing taxpayers. In the IRS's 2021 Comprehensive Taxpayer Attitude Survey, 84 percent of taxpayers reported the desire for a personal IRS online account to access their tax information, and 81 percent wanted to email questions to the IRS. Eighty-six percent agreed with the statement, "The more information and guidance the IRS provides, the more likely people are to correctly file their tax returns."[1] TAS has a vested interest in the success of the IRS's online operations as it can provide taxpayers the ability to resolve issues without assistance from IRS or TAS employees, which can decrease workload demands, and provide prompt answers. But more importantly, a robust online account together with a tax professional online account will provide the level of quality service taxpayers deserve and crave.

According to the Organisation for Economic Co-operation and Development (OECD) 2022 Report, there has been a significant trend toward e-administration with an increasing uptake of online filing of tax returns, online payments, and, in many jurisdictions, a move toward the full or partial prefilling of tax returns.[2] This report also highlighted that around 75 percent of administrations have a digital transformation strategy in place.

TAS has worked with IRS Online Services (OLS) to stress the needs of taxpayers and preparers for a robust online system. TAS requested copies of research studies OLS completed when determining new features or offerings. It should be noted that a systemic review of similar systems from tax collecting authorities was not conducted. As part of this study, TAS collected information on the online services offered by state and foreign country taxing authorities as a comparison to the online services available at the IRS.

We supplemented this review with recent focus groups held by TAS to gather ideas from tax practitioners about taxpayers' needs and preferences for online services. Participants expressed feeling frustrated, exasperated, disappointed, and angry with their inability to effectively communicate with the IRS.[3] The

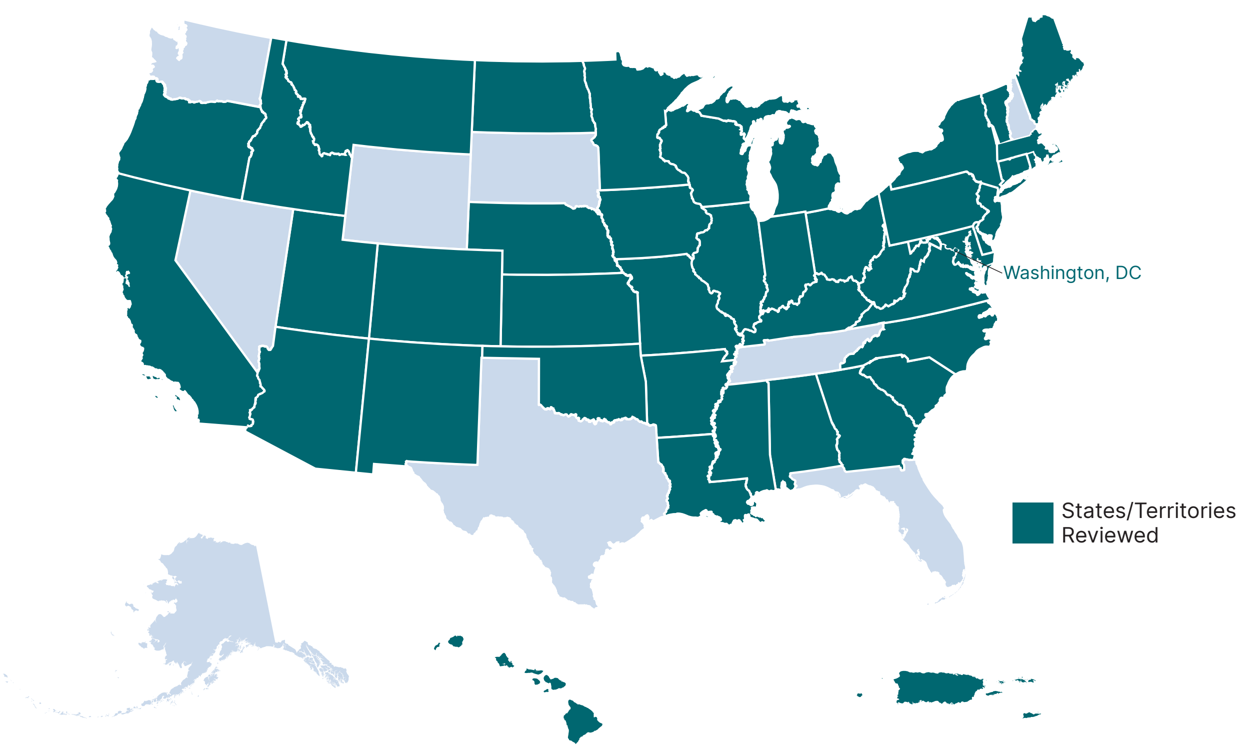
National Taxpayer Advocate has been consistently advocating for a robust online account for taxpayers and their representatives. Along with this report, TAS is leading several other research efforts including collecting information on other financial institutions, offering online account access, and conducting taxpayer focus groups on online services and authentication requirements. TAS plans to use the information gleaned from these focus groups to design surveys of taxpayers to better understand their needs and preferences for establishing an IRS Online Account and the desired functionality associated with that account. As the IRS makes further technological upgrades, it must prioritize the customer experience and make Online Account a hub for all taxpayer-IRS interactions. Through our research efforts, we hope the IRS implements highly desirable and easy-to-use online account features while ensuring the process to create an account is straightforward and painless.

INTRODUCTION

This report summarizes a review of state and foreign country taxing authority websites and compares the online services available on the IRS website from May to August 2022. Our review included the taxing authority websites of 41 U.S. states that have an individual income tax, the District of Columbia, and Puerto Rico. Figure 5.1.1 displays the states with individual income tax in this report.

FIGURE 5.1.1

Map of States and Territories Reviewed



We also reviewed the taxing authority websites of three countries – Canada, Australia, and the UK. Please see Figures 5.1.7 and 5.1.8 in Appendix A for the states and countries reviewed as well as the links to their websites.

We reviewed all entity websites to determine the online services available to taxpayers. Our objective was to survey the online services widely accessible to taxpayers and identify which services had limited availability. The findings section first summarizes the availability of the online service among state taxing authority websites, followed by foreign country taxing authority websites, and lastly, the availability of the online service on the IRS website. Where applicable, we have included responses from TAS's focus group interviews that occurred during the 2022 IRS Nationwide Tax Forums to illustrate some issues taxpayers experienced interacting with online services on the IRS website.

METHODOLOGY

TAS Research designed a data collection instrument (DCI) to capture information about online services offered on each entity website. Several TAS Research analysts reviewed U.S. state and foreign country government-sponsored taxing authority websites and captured data in the DCIs, and one analyst completed final review and edits for consistency.

Limitations and Disclaimer

Throughout this report, numerical references to U.S. states will include the District of Columbia and Puerto Rico in the count. In the self-governing commonwealth of Puerto Rico, *bona fide* residents are generally exempt from U.S. income tax on Puerto Rico-sourced income. Puerto Rico's tax system is patterned after the U.S. tax system, but there are variations in law and tax rates. U.S. citizens who have income derived from Puerto Rican sources may be liable for payment of Puerto Rican taxes. Though we considered other countries to include in this report, and their taxing authorities deserve future attention, language and access barriers prevented further review for this report.

The reviews were conducted during Spring and Summer 2022. Changes and enhancements to websites are likely and expected and are not reflected in this report. Limited interaction with the websites was possible, but we did not evaluate how well the websites worked in practice but rather focused on the services offered on the websites.

Some services were only available upon successfully logging into accounts, so it is possible there were services we could not determine without account access. TAS did not have account access to the states reviewed and relied on items posted on the website to determine services available for accounts. On many websites, help videos and how-to documents provided details about services that the reviewer could not see due to the lack of account access.

While payment and filing options existed, we did not make payments or file returns. Some sites offered notice responses; however, we could not determine the effectiveness or timeliness of processing those responses. Additionally, we did not test chat and other communication features on some websites. We merely noted chat and other features were or were not available, but we did not test their efficacy. We also did not evaluate the complexity of the tax obligations required of taxpayers.

FINDINGS

We provide findings in eight areas of online service functionality including creating an online account, online filing services, online payment options and payment plans, refund inquiries, online notice receipt and response, providing access to third parties, contact options, and language options. In each area, we include subheadings, which discuss the online account functionality offered by state taxing authorities, three foreign countries, and the IRS.

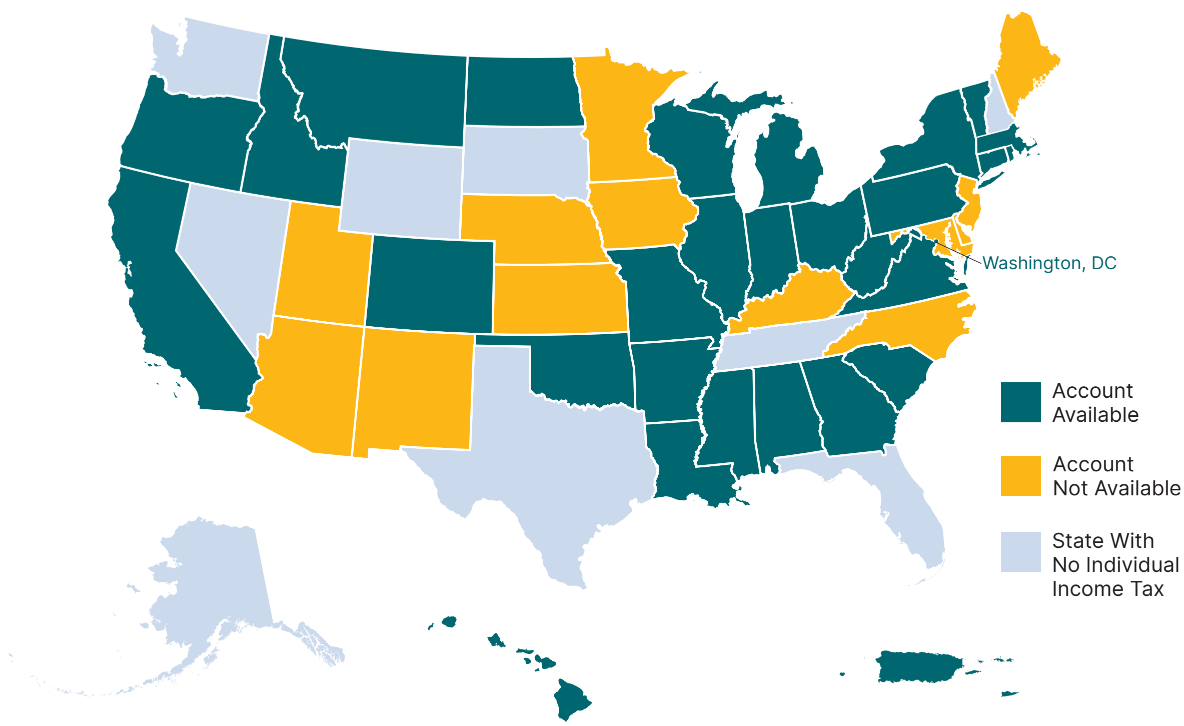
Creating Online Accounts

U.S. States

Seventy percent of states reviewed (30 of 43) offered an account setup using various verification methods. At a minimum, taxpayers were asked for identifying information, such as name and Social Security number. Figure 5.1.2 displays the states with and without an online account service on their taxing authority website.

FIGURE 5.1.2

Online Account Availability



Several states offered account registrations by sending a letter to the taxpayer with an access code. For some states, any tax-related notice provided a reference number while other entities sent specific account setup notices. Many required information from filed tax returns, and a few asked for information about prior payments sent to the taxing agency.

We found no state requiring the use of photos or other biometric information to establish an online account. Figure 5.1.3 details the requirements by category, and several states offer multiple options.

- Tax Return Information. This can require specific line items from past filings, typically the adjusted gross income (AGI) amount.
- Account Registration Letter. This indicates the organization will mail a letter upon request specifically to set up an account.
- Tax Account Letter. This indicates taxpayers can refer to a tax-related notice that includes a number or PIN that taxpayer can use to enable access.
- Past Payment Information. This indicates a taxpayer needs to verify a prior amount paid to the state.
- Online Registration. This indicates there is a method for a signup without the need for receipt of a letter in the mail. As the figure indicates, some states have a choice of an online or letter receipt method.

FIGURE 5.1.3, Online Account Creation Requirements for U.S. State Taxing Authority Websites

ST	U.S. State or Territory	Tax Return Information Required	Account Registration Letter Option	Tax Account Letter Option	Past Payment Information Option	Online Registration Option
AL	Alabama	X				X
AR	Arkansas	X				X
CA	California	X	X			X
CO	Colorado	X	X	X		X
CT	Connecticut	X				X
DC	District of Columbia	X		X		X
GA	Georgia	X				X
HI	Hawaii	X		X	X	
ID	Idaho		X			
IL	Illinois		X	X		
IN	Indiana	X	X	X		X
LA	Louisiana		X	X	X	X
MA	Massachusetts	X	X			X
MI	Michigan	X				X
MO	Missouri	X	X			
MS	Mississippi	X				X
MT	Montana	X	X	X		
ND	North Dakota		X			X
NY	New York	X		X		X
OH	Ohio	X				X
OK	Oklahoma					X
OR	Oregon	X		X	X	X
PA	Pennsylvania		X			
PR	Puerto Rico	X		X	X	X
RI	Rhode Island		X	X		
SC	South Carolina	X		X	X	X
VA	Virginia	X				X
VT	Vermont					X
WI	Wisconsin	X	X			
WV	West Virginia	X		X		

As displayed in the figure, most states offered an online registration process to create an account. In addition, the user typically needed to have tax return information available to complete the registration process. Multifactor authentication was required for one-half of the states (15 of 30), and about one-quarter did not require it (seven of 30); it was unclear if it was required or not for the remaining eight states.

Countries

To create an online account in the Canada Revenue Agency Portal, taxpayers needed to:

- Provide personal information: social insurance number, date of birth, postal code;
- Enter an amount from a filed and assessed income tax and benefit return; and
- Create a user ID, password, and security questions and answers.

These initial steps provided access to limited features in the portal. As a final level of security, Canada would send taxpayers a security code they would then need to enter on the website to gain access to all features in the portal. In Australia, taxpayers could create an online account to link to a range of services with the Australian Taxation Office. Information required included an email address that only the taxpayers had access to and an Australian mobile number to receive SMS security codes to sign in. Taxpayers verified their identity by taking a live photo and providing information from identity documents such as their passport and birth certificate. In the UK, many government services are available through a Government Gateway account, requiring a name, email address, password, and a recovery word. Optional multifactor authentication is offered by receiving access codes by text message, by voice call, or through an app.

IRS

In contrast to many states and countries, the process for creating an IRS account is more involved, requiring more steps and information with the added benefit of providing a high level of security.[4] To sign up for an IRS account, taxpayers are required to use the ID.me service, a private third-party company. This self-service process requires a photo of a government ID and either a video selfie, still photo selfie, or a live call with an ID.me video chat agent.[5]

The company administering the process, ID.me, explains the process:

> The Internal Revenue Service (IRS) has partnered with ID.me, an IRS-trusted technology provider, to provide identity verification for IRS applications. Individual taxpayers and tax professionals are required to verify with ID.me to National Institute of Standards and Technology (NIST) 800-63-3 IAL2+Liveness and AAL2 for secure login. These identity proofing services are crucial for the IRS to ensure millions of taxpayers and tax professionals can securely access the IRS and its applications.
>
> Taxpayers and tax professionals will be able to prove their identity with ID.me by uploading government documents, taking a video selfie, and filling out personal information. Once complete, taxpayers can access the IRS application for which they verified.[6]

For self-service, taxpayers need their email address, Social Security number, photo ID (driver's license, passport, passport card, or state ID), and a smartphone or computer with a camera to establish an IRS Online Account. After submitting the documentation, taxpayers must set up multifactor authentication to continue using one of the following multifactor authentication methods:

- Phone call;
- Text message;
- Push notification;
- Code generator; or
- Security key.

For those preferring an alternative to self-service, a live call with an ID.me video chat agent that does not require biometric data is available.

Participants from the tax forum focus groups shared that the process for setting up an online account was unintuitive and seemed to change frequently.[7] Some participants stated they set up their account in ten to 15 minutes, while others had spent weeks trying to get an account.

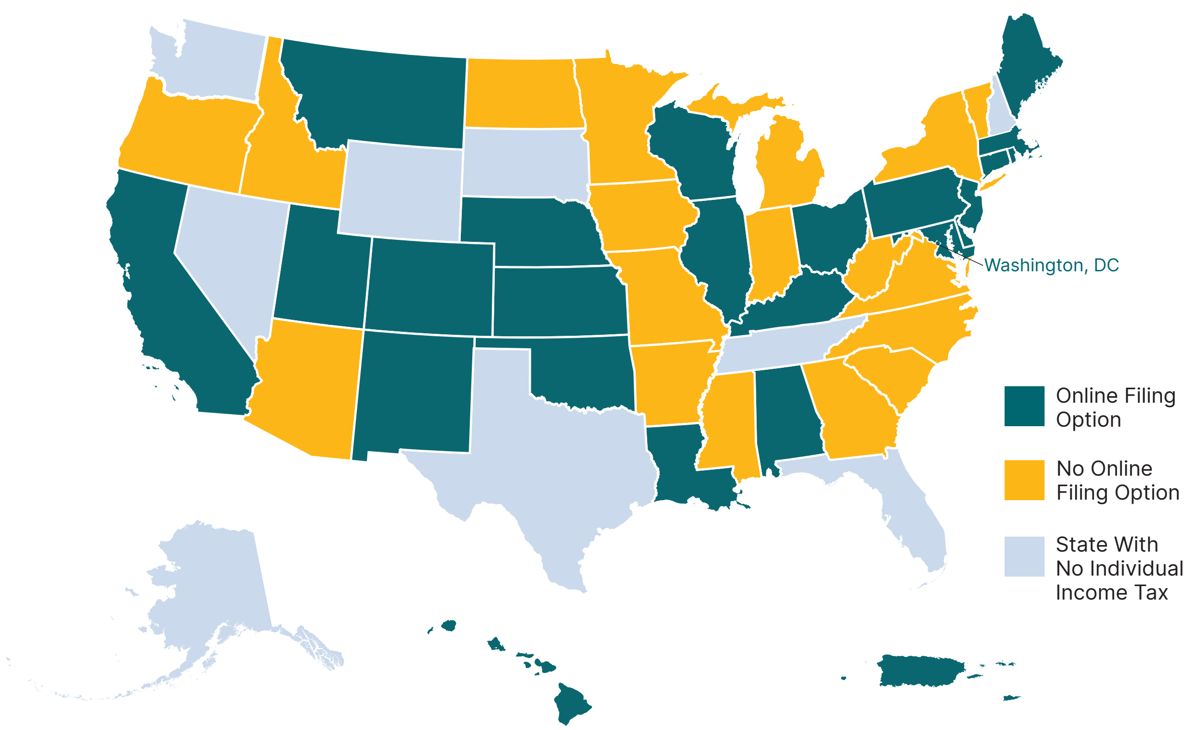
Online Filing Options

U.S. States

Over half of the states reviewed (25 of 43, or 58 percent) offered an online filing option for individuals. We did not include those websites that simply referred visitors to third-party filing options, such as Free File or commercial service providers. Figure 5.1.4 displays the states with and without the online filing service on their taxing authority website.

FIGURE 5.1.4

Online Filing Option Availability



Several state websites included logos to signify their own specific online filing platforms, while other states provided an option for filing directly by logging into their online account. While some states offered online filing for all taxpayers, several states had limiting requirements, such as residency, income levels and types, and histories of prior filings on their websites. For example, to complete online filing in Nebraska, taxpayers could not have any income or withholding from another state, claim a refund for a deceased taxpayer who is not their spouse, file married filing jointly with their deceased spouse, or claim certain credits or adjustments.

Countries

Australia and Canada offered online filing options on their websites. Despite tax information being directly reported to the government, making individual filing rarely required, the UK still lists an online filing option on its website for those who need to file.

IRS

When we compared onsite filing on state websites to the IRS, we found that although the IRS website was not set up to accept online filings of Form 1040, it offered Fillable Forms and links to Free File partners available to taxpayers whose AGI was $73,000 or less in 2022. When completing Fillable Forms, taxpayers are required to know how to prepare their own tax return using form instructions and IRS publications. Taxpayers are able to submit Fillable Forms electronically; however, Fillable Forms doesn't provide an option to walk the taxpayer through the process with a question-and-answer type experience.

The Inflation Reduction Act mandates the IRS to study options to provide a free tax filing option for all taxpayers. The bill provides $15 million to study how the IRS could implement such a program, how much it would cost, and how taxpayers would view it. The report, which must include the input of an independent third party, is due to Congress by May 2023.[8]

Online Payment Options

U.S. States

All states reviewed offered online payment options for individual taxpayers. Most states did not require taxpayers to create an account before accessing the payment portal. All payment portals accepted direct payments from bank accounts, and 42 accepted payments via credit cards. Only 16, or about 37 percent, accepted payments via debit cards.

Countries

All three countries provided online payment options. Australia and Canada accepted credit cards and direct transfers from bank accounts. In the UK, bank transfers and personal debit cards were accepted, but personal credit cards were not. Australia required logging into an account to pay, but Canada and the UK did not.

IRS

The IRS matched or exceeded the offerings of the websites reviewed. The website did not require taxpayers to create an account before accessing the payment portal. The IRS accepted payments via bank transfers, credit cards, debit cards, and digital wallets such as PayPal and Click to Pay.

Online Payment Plans

U.S. States

The majority of states reviewed (41 of 43, or 95 percent) provided information on online payment plans for taxpayers who could not fulfill their tax obligations. Of those 41 states, 33 (80 percent) provided an option for requesting the payment plan directly through the website. Only three states allowed for online modification of existing plans, with most requiring contact by mail or phone for modifications.

Countries

Australia and the UK offered the option to set up an online payment plan depending on the amount and time needed to pay. Canada required a phone call to set up or modify a plan.

IRS

Similar to state-sponsored websites, taxpayers were able to request online payment plans through the IRS website.[9] The IRS provided taxpayers the ability to view their outstanding balance, due date, and payment history in their online accounts. Taxpayers could also make modifications to their payment plans under certain conditions, including a request for reinstatement if in default. Fees applied to plans and modifications, depended on the outstanding amount, payment type, repayment length of time, and taxpayer income level.[10]

Refund Inquiry

U.S. States

All states with an individual income tax offered an online refund inquiry service on their websites. The service was typically an onsite form for taxpayers to enter personal information along with the expected refund amount for the latest, and possibly earlier, tax years.

Consider the examples of three states:

- In Hawaii, taxpayers needed to enter the Social Security number and the refund amount requested on the original tax return. Refund status was provided online for returns filed within the last six months. For older returns, taxpayers needed to contact the Customer Service Administration to inquire about the status of their refund. We could not determine the types of responses online, but the site indicated taxpayers can access their online account and offered a refund tracing option.
- In Indiana, taxpayers could check the status of a refund online by providing their Social Security number and exact amount of refund. Refund status updates were available for returns filed as early as 2017. The service asks taxpayers "to allow two to three weeks before inquiring about status, as some returns may take longer due to factors like return errors or incomplete information. Every return is screened to protect taxpayer identities and refunds. You can rest assured that DOR is processing your return and refund as quickly as possible while ensuring your information is accurate and safe. Once DOR initiates a direct deposit, our system will reflect the date it was processed. Normally, it takes seven business days for your financial institution to receive and process the funds."
- In New York, taxpayers could check the status of a refund online by entering their Social Security number, identifying the form filed from a dropdown menu, and entering the exact amount of refund. Possible responses included:
  - We do not have any information about your return at this time.
  - We have received your return and it is being processed.
  - We received your return and may require further review. This may result in your New York State return taking longer to process than your federal return.
  - A refund is scheduled to be issued or mailed on mm/dd/yyyy.

Countries

All three countries allowed for online refund inquiries under their respective tax systems. Taxpayers needed to provide their ID number, amount expected, and filing information.

IRS

In comparison, for an online refund inquiry, the IRS required the tax year (2019, 2020, or 2021), Social Security number, filing status, and refund amount as shown on the tax return. The service was available for original returns 24 hours after e-filing for tax year 2021 and three or four days after e-filing for tax years 2019 or 2020. System updates were made daily, usually overnight. Inquiries resulted in a personalized refund date after processing the return and approving the refund. Inquiries provided progress updates through three stages: Return Received, Refund Approved, and Refund Sent. In other cases, when the IRS was still reviewing the return, the response screen would display instructions if further action was needed by the taxpayer or provide a progress update.

Refund information regarding Form 1040X, Amended U.S. Individual Income Tax Return, was not available on Where's My Refund?, but the Where's My Amended Return? service provided the status of an amended return that could reflect "in process" for months at a time without any explanation.

Online Notice Receipt

U.S. States

Sixty percent (26 of 43) of the states offered taxpayers the option to receive notices within taxpayer online accounts. Not all notices were available for this option, and it did not necessarily opt taxpayers out of receiving such notices via U.S. mail.

Countries

All three countries offered an option to receive notices in their online accounts.

IRS

The IRS offered taxpayers an option to receive certain notices in their online accounts, but we could not find a specific list on the website. For some notices, taxpayers could opt out of having them mailed to them.

Online Notice Response

U.S. States

Of the states that provided online notices, 24 of 26 (92 percent) offered taxpayers the option to respond to notices with an online method of communication, such as replying by email, filling out an online form, or even using a chat function. For the remaining two states, we could not determine if an online response option was available. For some states, taxpayers could respond to all notices through an online method of communication. For others, the availability of online response options was limited by the type of notice. For example, the New York website included instructions for responding to at least ten notices. The Ohio website had an Online Notice Response Service portal for taxpayers to securely respond to most notices through an online account.

Countries

Canada offered taxpayers the ability to respond to notices through their online accounts. Australia and the UK did not appear to offer a response service in their online accounts.

IRS

Although the IRS allowed some notices to be received and viewed online, taxpayers could not respond with an online method of communication. However, this is expected to change for the 2023 filing season.[11]

Providing Access to Third Parties

U.S. States

Sixty-three percent of states (27 of 43) offered online methods to authorize third-party representatives to access accounts. For many, it was a matter of adapting an authorization form for online submission. Others had specific user login features for third parties. Fourteen states did not appear to have an online method, and we could not determine the answer for two states. Of the 27 states with an online method to authorize third parties, 22 states (81 percent) allowed the taxpayer to view the authorization online.

Access could expire or be canceled for nearly all the states by submitting a paper form, while an in-app or online option was noted for at least 16 states. Access expired automatically for some states: Ohio expired after one year; Indiana expired after five years; and California expired after six years.

Countries

Australia and Canada provided online methods for approving, viewing, and changing access to third parties. The UK required taxpayers to send a form by mail to establish and modify account access.

IRS

The IRS allowed two methods for authorizing third-party representatives. Taxpayers could submit a paper version of Form 2848, Power of Attorney and Declaration of Representative, via fax or U.S. mail. Alternatively, taxpayers could submit an authorization with taxpayer signature through their online account. The authorization remained in effect until the taxpayer revoked the authorization or the representative withdrew it.

Practitioners are a vital part of the U.S. tax system; there are over 783,000 tax professionals who prepare tax returns for a fee.[12] They also assist with other tax administration issues and alleviate taxpayer barriers to compliance. Through a Tax Pro Online Account and appropriate authorization, tax professionals should have the ability to perform actions such as request an installment payment agreement, view the status of a tax return, respond to a notice, request penalty relief or abatement for their client, apply for an extension of time to file, obtain a tax balance, and much more. While the IRS ultimately plans to expand additional functionality, a robust Tax Pro Online Account must be a priority as the agency moves toward a digital tax system. Participants from the tax forum focus groups shared a desire to review a list of all client accounts to which they have access in one location. Additionally, practitioners want to request and receive power of attorney access through their online accounts without the need for their clients to establish their own online account.[13]

Contact Options

U.S. States

State websites displayed several methods for contacting the tax organizations for assistance. All states provided a contact option by telephone. Most state websites displayed this option prominently, though a few required some searching to find the phone number. A few state websites offered a callback service. Seventy-seven percent of state websites listed email as another contact option, via a specific address or through an online contact form. In-person locations for taxpayer assistance were listed on 74 percent of state websites, with some offering or requiring the scheduling of an appointment. Fax numbers were listed on 13 state websites. An online chat feature was a contact option on at least one state website, and another state included several social media options. Figure 5.1.6 displays the contact options available by state website.

FIGURE 5.1.6, Contact Options Provided on U.S. State Taxing Authority Websites

U.S. State	Phone	Email	In Person	Other
Alabama	X		X	
Arizona	X	X	X	
Arkansas	X	X		
California	X		X	Chat
Colorado	X	X	X	
Connecticut	X	X	X	
Delaware	X	X	X	
District of Columbia	X		X	Social media
Georgia	X	X	X	
Hawaii	X	X	X	
Idaho	X	X	X	
Illinois	X	X	X	
Indiana	X	X	X	

U.S. State	Phone	Email	In Person	Other
Iowa	X	X	X	
Kansas	X	X	X	
Kentucky	X	X	X	
Louisiana	X		X	
Maine	X	X		
Maryland	X	X	X	Virtual appointment
Massachusetts	X	X	X	
Michigan	X			
Minnesota	X	X		
Mississippi	X	X		
Missouri	X	X		Scheduled call back
Montana	X	X		
Nebraska	X		X	
New Jersey	X	X	X	
New Mexico	X	X	X	
New York	X	X		
North Carolina	X		X	
North Dakota	X	X	X	
Ohio	X	X	X	
Oklahoma	X	X	X	
Oregon	X		X	
Pennsylvania	X	X	X	Scheduled call back
Puerto Rico	X		X	
Rhode Island	X	X	X	
South Carolina	X	X	X	
Utah	X	X	X	
Vermont	X	X		
Virginia	X			
West Virginia	X	X		
Wisconsin	X	X	X	

Countries

Each country's taxing authority website listed several contact methods taxpayers could use for assistance. In Australia, online and phone methods were promoted first. Further options include office visits, with or without an appointment, and mail. The website also offered the opportunity to participate in online discussion groups via social media platforms, though with several cautions about privacy and information sharing. In Canada, taxpayers could use their online account, call by phone, use postal mail, or visit an office in person. In the UK, options varied by topic, with options to use online services available for most of them. Its website presented an extensive list of topics with specific methods allowed. Methods included online forms, email, and webchat. Taxpayers could also call by telephone or send postal mail.

IRS

The IRS website included phone and in-person contact options for taxpayers to seek assistance. Phone numbers were listed on the IRS homepage. The website listed phone and address information for each walk-in Taxpayer Assistance Center nationwide along with a national number for requesting appointments. Even though the website included phone and address information, according to the IRS's 2021 Comprehensive Taxpayer Attitude Survey, 81 percent of taxpayers surveyed wanted to be able to email questions to the IRS. Despite such preferences, there was no option to email the IRS.

When discussing the payment options in the tax forum focus groups, participants gave examples of having the client in the office and being on hold for an hour or longer.[14] Participants expressed that if there was an option for online chat or email or availability to self-help through a Tax Pro account, they could resolve the issue more quickly and reduce the client's frustration with the process.

Language Options

U.S. States

Twenty-four state websites (57 percent) offered language translation from English. The most common option offered was translation via Google Translate. While many languages were offered, a disclaimer was commonly added to note that incorrect translation that misrepresented the intended meaning was not the responsibility of the taxing authority. The taxing authority website for Puerto Rico was only available in Spanish and English.

Countries

Australia provided 35 language options, listed as follows:

> Arabic, Assyrian, Bengali, Burmese, Chaldean, Chinese, Hrvatski Croatian, Dari, Dinka, Filipino, Greek, Gujarati, Hazaragi, Hindi, Indonesian, Italian, Japanese, Karen, Khmer, Korean, Macedonian, Nepali, Persian (Farsi), Portuguese, Punjabi, Russian, Serbian, Sinhalese, Somali, Spanish, Tamil, Thai, Turkish, Urdu, and Vietnamese.

Canada provided an option for a version of its website in French, and the UK provided a version in Welsh. No disclaimers were noted on the three country websites.

IRS

The IRS website displayed answers to basic tax questions in 20 languages, and the homepage allowed taxpayers to select from eight languages in a dropdown list: English, Spanish, Chinese (Simplified), Chinese (Traditional), Korean, Russian, Vietnamese, and Haitian Creole. Unlike most states, the website did not have a disclaimer.

Unique Website Features

Several state websites featured unique methods for providing taxpayer assistance that went above and beyond offerings on the IRS website. In Montana, taxpayers could watch a video of Director Brendan Beatty describing Montana values and reminding them to file an income tax return:

> We leave gates how we find them. We wave to the people we meet on our country roads. And we're good neighbors. And, if you worked in Montana in the last year, and if you earned any income – including by teleworking – you need to file a Montana income tax return.

In Georgia, taxpayers could receive a notification by email or phone when a return was filed with their Social Security number. In Louisiana, taxpayers could electronically submit penalty waivers via an online form. In Nebraska, taxpayers could e-file a Petition for Redetermination (Protest). This applied to Notices of Deficiency Determination issued by the Nebraska Department of Revenue. In Ohio, the Ohio Attorney General website included a link to apply for an offer in compromise. A speaker service was also available. In Puerto Rico, taxpayers could view W-2s directly in their online accounts after the forms had been processed.

SUMMARY OF FINDINGS AND DISCUSSION

Overall, the IRS offered several services in common with U.S. states and the three foreign countries reviewed, but there were notable differences.

The most notable difference was the IRS's more stringent requirements for **setting up an online account** through the ID.me process. While this partnership with a private entity raised concerns from Congress and others, it is currently in place and active. More stringent verification by other governmental entities is a trend attracting more adherents, such as the requirement to obtain a REAL ID by the Department of Homeland Security.[15] Compared to the IRS website, Canada, Australia, and the UK had similar processes for taxpayers to create online accounts. All three countries required taxpayers to provide personal information such as full name, date of birth, and an email address. Like the IRS, taxpayers were required to complete a multistep authentication process, either by entering a code sent to their email or phone or by receiving a voice call through an app. Only Australia required taxpayers to take a live photo, similar to the ID.me registration process at the IRS.

A second difference between the IRS and other entities was the lack of **online filing** options. Congress recently mandated that the IRS conduct a study of its ability to offer direct online filing to taxpayers without using an intermediary, which is currently available with the IRS Free File Alliance. Specifically, the Inflation Reduction Act set aside $15 million for the Treasury Department to study a free federal tax-filing website. Treasury Secretary Janet Yellen expressed support for simplifying the process, saying: "Tax filing should be simple: I recently came across a statistic it takes an average American 13 hours to file a tax return," she said during a visit to an IRS facility in Maryland. "Compare that with Sweden. Some taxpayers can file simply by replying to a text message. We can and must do better."[16] While the IRS is exploring the feasibility of direct online filing of federal income, there is still no certainty on when or if such an option is feasible or will be made available. This is not a simple task, as there are many considerations that must be accounted for in the short term and long term. And if the IRS designs and creates a direct online filing option, questions remain:

- Will it be for simple returns such as Form W-2 wage earners only?
- Will it have a dollar limitation?
- Will it be for individuals only or will it include joint returns, Head of Household returns?
- Will it apply to returns with a Schedule A or Schedule C, or will it expand to business returns?
- Would the direct file online software be designed for federal income tax returns only, leaving taxpayers in the position of having to use different software for federal and state returns and having to access multiple websites to file all of their annual filings?
- Will the taxpayer be able to download third-party forms such as Forms W-2 and 1099 provided to the IRS and directly download into the online filing option?
- Will the taxpayer be able to upload his or her federal return information into a state return direct file online software?

Another difference was the **lack of online notice receipt and response options**, though the IRS was not the only entity lacking such an option. While some notices can be received and viewed in a taxpayer's IRS online account, there is no online response option. This may change for the 2023 filing season. On September 15, Treasury Secretary Yellen stated, "The IRS will also build online capabilities to enable taxpayers to fully interact with the agency digitally. Currently, when taxpayers receive a notice from the IRS, they generally must respond via mail."[17] Adding online capabilities would provide taxpayers access to key data, provide a portal for responses and chats, and reduce the need for telephone contacts.

The option to provide **third-party access** to individual accounts was commonly available for nearly all sites, including the IRS. Over half of individual federal income tax returns are prepared by a tax professional.[18] However, these professionals cannot generally interface with the IRS regarding their clients' returns unless their clients also have an online account. This prevents many tax professionals from providing adequate service to their clients. Through a Tax Pro Account and appropriate authorization, tax professionals should have the ability to access all of their client's tax information in one portal. That would be a game changer for tax administration.

As for **payment options**, the IRS exceeded the options offered by the entities reviewed. The IRS offered online payment options regardless of whether a taxpayer had established an online account. Taxpayers could pay online or over the phone, using bank transfers, credit cards, debit cards, and digital wallets such as PayPal and Click to Pay, or use a self-assisted voicebot to create an installment agreement with a **payment plan**. The option for setting up a payment plan was common to most, including the IRS.

All states and the three countries, along with the IRS, allow for online **refund inquiries** under their respective tax systems. The information required was relatively simple with the need for an ID number, amount expected, and filing information. However, the IRS's Where's my Refund? application was not able to address any outstanding issues that may be holding up the refund, the timeframe involved with the delay, or actions required by a taxpayer. If there were no delays or issues, the application provided useful information such as return received, payment made, and date of payment.

Reviewing in-person or electronic **contact options**, we found several differences between current offerings on the IRS website and the options available on state and foreign country websites. One difference was that the IRS required a phone call to set up an in-person appointment, made difficult by consistently low levels of telephone customer service. Several states offered taxpayers the ability to schedule an in-person appointment via an online appointment system, while others did not require an appointment. Another difference captured was how non-IRS entities allowed in-app communications that included account information. This was another contact option not available in IRS online accounts. Finally, the District of Columbia and Australia went above and beyond by providing taxpayers with contact options via social media platforms. Unfortunately, despite the clear demand for the ability to contact the IRS via email, the IRS did not make this a contact option for general information or request for appointments.

The IRS emerged as a leader in offering language translation options, with information for basic tax questions in 20 languages and the homepage in eight languages, including English.

Throughout the review process, we saw the advancement of offerings on the websites, as many seemed to add or refine features as we collected the information. The IRS was no exception, with more features expected to roll out. Much more can be learned from additional reviews of those websites in this report as well as from additional countries and taxing authorities beyond income tax-based agencies. The IRS should be the gold standard for tax agencies and needs to find innovative ways to successfully interact with taxpayers and their representatives in the digital environment while also ensuring it provides the online functionality that taxpayers need, expect, and deserve in a secure environment.

Appendix A

FIGURE 5.1.7, State Taxing Authorities and Their Websites

State	Link
Alabama	https://revenue.alabama.gov/
Arkansas	https://www.dfa.arkansas.gov/
Arizona	https://azdor.gov/
California	https://www.ftb.ca.gov/
Colorado	https://tax.colorado.gov/
Connecticut	https://portal.ct.gov/drs
District of Columbia	https://otr.cfo.dc.gov/
Delaware	https://revenue.delaware.gov/
Georgia	https://dor.georgia.gov/
Hawaii	https://tax.hawaii.gov/
Iowa	https://tax.iowa.gov/
Idaho	https://tax.idaho.gov/index.cfm
Illinois	https://tax.illinois.gov
Indiana	https://www.in.gov/dor/
Kansas	https://www.ksrevenue.gov/
Kentucky	https://revenue.ky.gov/Pages/index.aspx
Louisiana	https://revenue.louisiana.gov/
Massachusetts	https://www.mass.gov/orgs/massachusetts-department-of-revenue
Maryland	https://www.marylandtaxes.gov/index.php
Maine	https://www.maine.gov/revenue/
Michigan	https://www.michigan.gov/taxes
Minnesota	https://www.revenue.state.mn.us
Missouri	https://dor.mo.gov/online-services
Mississippi	https://www.dor.ms.gov/
Montana	https://mtrevenue.gov/
North Carolina	https://www.ncdor.gov/
North Dakota	https://www.tax.nd.gov/
Nebraska	https://revenue.nebraska.gov/
New Jersey	https://www.nj.gov/treasury/taxation/
New Mexico	https://www.tax.newmexico.gov/
New York	https://www.tax.ny.gov/
Ohio	https://tax.ohio.gov/
Oklahoma	https://oklahoma.gov/tax.html
Oregon	https://www.oregon.gov/dor/Pages/index.aspx
Pennsylvania	https://www.revenue.pa.gov/Pages/default.aspx

State	Link
Puerto Rico	https://hacienda.pr.gov/
Rhode Island	https://tax.ri.gov/
South Carolina	https://dor.sc.gov/
Utah	https://incometax.utah.gov/
Virginia	https://www.tax.virginia.gov
Vermont	https://tax.vermont.gov/
Wisconsin	https://www.revenue.wi.gov/Pages/home.aspx
West Virginia	https://mytaxes.wvtax.gov/

FIGURE 5.1.8, Countries and Their Websites

Country	Link
Australia	https://www.ato.gov.au/
Canada	https://www.canada.ca/en/revenue-agency.html
United Kingdom	https://www.gov.uk/income-tax

Appendix B

DATA COLLECTION INSTRUMENT – STATE AND COUNTRY WEBSITE REVIEWS

A. Who is completing this DCI? Select your initials

B. State or Country (if outside U.S.)

C. Organization Name:

D. Web Link for organization:

E. Are other languages offered? If yes, (please list, if any in addition to English)

F. Is website available to the following user type? Choose only one and complete a separate DCI for each.

- Individual
- Business
- Tax Professional

G. Can an account be established on the website?

Describe process for setting up account

Are communication preferences available?

H. Can a POA be designated on the website?

Can user view any authorization requests from tax professionals?

Can user approve and electronically sign Power of Attorney and Tax Information Authorization for your tax professional?

How can the POA Expire?

- Form submittal
- Timed Expiration
- Other method (If Other Method, please list)

I. Is a Terms of Service available to read?

J. Is account Information available on the website?

Can the user see the account refund status?

What can be viewed?

- View key data from the most recently filed tax return,
- Account Transcripts
- View digital copies of notices
- View the amount you owe and a breakdown by tax year
- View payment history, including your estimated tax payments
- Paste any other account features not listed above

What can be changed?

K. What communication options are available?

- Receive In App notifications
- Receive SMS Alerts
- Received notices digitally
- Chat or correspond In App
- Callback feature
- Other (If Other, please list)

L. Is a Notice Response option available?

If yes, how can user respond?

M. Describe Authentication Requirements?

What are the Authentication Methods?

- In-person
- Online
- Phone
- Other
- If other, please describe

N. Can a payment be made from the website?

What payment methods are available?

- Credit Card
- Debit Card
- Direct from Bank Account
- PayPal or other online Service
- Other (If other, please describe)
- What are Payment Plan Options?
- Learn about payment plan options
- Apply for a new payment plan
- View details of your existing payment plan
- View any pending or scheduled payments
- Renegotiate or Reinstate Plan
- Receive payment reminders
- Other (If other, please describe)

What is cost to set up plan?

O. Can a user file on the website?

- What types of filings are available?
- Original Filing
- Amended Filing
- Are there qualifications to file?
- What is the cost to file?

P. What Other Features are available?

Q. Are there any other items you thought were interesting or useful on the website that were not part of this form?

Endnotes

1 IRS, Pub. 5296, Comprehensive Taxpayer Attitude Survey (CTAS) 2021, at 34, 41, 43 (Apr. 2022), https://www.irs.gov/pub/irs-pdf/p5296.pdf, (last visited Nov. 22, 2022).

2 OECD, *Tax Administration 2022: Comparative Information on OECD and Other Advanced and Emerging Economies*, https://www.oecd-ilibrary.org/sites/3991b5f3-en/index.html?itemId=/content/component/3991b5f3-en#section-d1e985, (last visited Nov. 22, 2022).

3 Observations from TAS's Focus Group Interviews, 2022 IRS Nationwide Tax Forums.

4 In 1996, Congress directed the National Institute of Standards and Technology (NIST) to develop and issue best practices and other guidance for secure operation of U.S. Government systems. Six years later, Congress further strengthened requirements by enacting the Federal Information Security Management Act (FISMA) of 2002. FISMA requires federal agencies to safeguard systems based on the impact categorization (FIPS 199) such that residual information security risk is mitigated to an acceptable level.

5 IRS, Accessibility and Compatibility Features for Signing In and Creating an Account, https://www.irs.gov/help/accessibility-and-compatibility-features-for-signing-in-and-creating-an-account (last visited Dec. 19, 2022).

6 ID.me, IRS – What does ID.me do for the IRS? – ID.me Help Center, https://help.id.me/hc/en-us/articles/4402754222615-IRS-What-does-ID-me-do-for-the-IRS (last visited Nov. 22, 2022).

7 Observations from TAS's Focus Group Interviews, 2022 IRS Nationwide Tax Forums.

8 An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14 (commonly referred to as the "Inflation Reduction Act of 2022"), Pub. L. No. 117-169, 136 Stat. 1818 (2022).

9 IRS, Apply Online for a Payment Plan, https://www.irs.gov/payments/online-payment-agreement-application (last visited Nov. 22, 2022).

10 *Id.*

11 On September 15, 2022, Treasury Secretary Yellen stated, "The IRS will also build online capabilities to enable taxpayers to fully interact with the agency digitally. Currently, when taxpayers receive a notice from the IRS, they generally must respond via mail. During this coming filing season [FY 2023], millions of taxpayers will be able to receive and respond to notices online." U.S. Department of the Treasury, Remarks by Secretary of the Treasury Janet L. Yellen at the IRS facility in New Carrollton, Maryland (Sept. 15, 2022), https://home.treasury.gov/news/press-releases/jy0952 (last visited Dec. 20, 2022).

12 IRS response to 2022 Return Preparer Oversight Most Serious Problem (Sept. 30, 2022).

13 *Id.*

14 Observations from TAS's Focus Group Interviews, 2022 IRS Nationwide Tax Forums.

15 U.S. Department of Homeland Security, REAL ID Information Page, https://www.dhs.gov/real-id (last visited Nov. 22, 2022).

16 U.S. Department of the Treasury, Remarks by Secretary of the Treasury Janet L. Yellen at the IRS facility in New Carrollton, Maryland (Sept. 15, 2022), https://home.treasury.gov/ news/press-releases/jy0952 (last visited Dec. 20, 2022).

17 *See* U.S. Department of the Treasury, Remarks by Secretary of the Treasury Janet L. Yellen at the IRS Facility in New Carrollton, Maryland (Sept. 15, 2022), https://home.treasury.gov/news/press-releases/jy0952 (last visited Nov. 22, 2022).

18 IRS, Compliance Data Warehouse (CDW) Individual Returns Transaction File Table (IRTF) Tax Year (TY) 2021 (Dec. 20, 2022).

Exploring Earned Income Tax Credit Structures: Dividing the Credit Between a Worker and Child Component and Other Considerations

EXECUTIVE SUMMARY

In tax year (TY) 2019, over 26 million low- and middle-income taxpayers received the Earned Income Tax Credit (EITC). These taxpayers claimed over 32 million qualifying children and received an average amount of $2,424 per return for a total amount of nearly $64 billion.[1] The EITC is one of the largest anti-poverty programs in the United States. Unfortunately, in FY 2020 the IRS estimates over $16 billion of the EITC was improperly claimed – over a quarter of the total EITC outlays.

The National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress recommended that the EITC be split between a worker portion and a child portion. This report explores possible options for bifurcating the EITC by discussing seven new EITC structures. Each of the structures sets the worker portion of the EITC at 15.3 percent of earned income while exploring different formulas for determining the child portion of the credits. Two possible EITC structures considerably increase the expected EITC payments, and we designed five other possible new EITC structures to produce similar outlays to the existing tax law.

This report explains each of the new structures and explores which types of taxpayers would benefit from the proposed structure and which taxpayers would receive a loss of benefits. We explore these changes both graphically, as the structure would apply to any eligible taxpayer, and we look at the actual effects on existing EITC claimants. To this end, we calculate the total outlays and the disbursements depending on filing status, income ranges, and number of qualifying children.

The IRS continues to spend significant resources auditing taxpayer returns claiming the EITC. The IRS audits a higher percentage of taxpayers with the EITC than any other taxpayers, except those with at least $5 million of total positive income. Therefore, we explored another data source that could potentially be used as a proxy suggesting that the child meets the residency requirement. Our analyses show that the IRS could potentially use Affordable Care Act (ACA) data to validate the EITC claims of many additional taxpayers, and exploring this data source is worth further study, especially since a child's residency is necessary for other credits including the Child Tax Credit, where significant noncompliance is also likely.

The report highlights data from the Census Bureau's match with IRS data, which estimates the number of eligible taxpayers who claim the EITC. Taxpayers are much more likely to claim EITC when they can claim the credit for one or more children. However, millions more taxpayers with purported qualifying children claim the EITC than Census Bureau data suggest actually qualify. The complex structures of today's families undoubtedly contribute to this situation.

Finally, the report highlights the positive benefit that splitting the EITC between a worker and child credit could have on the EITC improper payment rate. While the data from the most recent IRS EITC compliance study is dated, our estimates suggest that these new EITC structures could reduce the EITC improper payment rate by about 35 percent.

INTRODUCTION

The EITC[2] stems from a policy designed for low- and moderate-income working taxpayers by providing the opportunity for struggling individuals and families to step out of poverty toward meaningful economic security. The credit reduces the tax owed by taxpayers, and any additional amounts beyond the filer's tax liability will be paid to the taxpayer in the same way that excess withholding is refunded. Nearly 26.4 million income tax filers received approximately $64 billion in EITC in TY 2019.[3] Researchers have consistently shown that the EITC reduces poverty, encourages work, and improves the health and education of lower-income taxpayers.[4]

Overall, the EITC participation rate is relatively high at over 79 percent,[5] while the cost for the IRS to administer the program is about one percent of the benefits distributed.[6] Unfortunately, however, even though the EITC program costs little to administer and many taxpayers file returns to claim the credit, the improper payment amount is estimated to have exceeded $16 billion in FY 2020.[7] As a result, the IRS audits a number of tax returns with EITC claims (EITC returns). For TY 2019, the IRS examined about 203,000 EITC returns. While this audit rate was only 0.8 percent, it was four times greater than the audit rate for all individual income tax returns, and only taxpayers making more than $5 million had a higher audit rate. Audits on EITC returns comprised nearly 60 percent of the TY 2019 individual income tax return audits that had begun by FY 2021. However, in TY 2019, EITC returns comprised less than 17 percent of all individual returns filed.[8]

The National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress included a third volume, a special report that proposed a variety of reforms to both the EITC structure and its administration by the IRS. The prior report recommended splitting the EITC into a worker component and a child component. This report will explore the impact of this bifurcation on the amount of EITC paid to taxpayers, possible new ways to verify the eligibility of a child claimed for EITC, observations about the EITC participation rate, and the effect of splitting the EITC into a component based solely on income and a component based on the presence of a qualifying child. Planned objectives of this study originally included:[9]

1. Identify possible options for a new earnings-based per-worker credit and per-child credit to replace the existing EITC credit.
2. Compare the existing EITC to the credit amount afforded by possible new per-worker and per-child structures and the effect on taxpayers not currently eligible for EITC.
3. Analyze the hypothetical outcomes of prior EITC audits if the rules for the proposed per-worker and per-child credit were in place.
4. Explore IRS and Census Bureau data to quantify the number of children who would qualify their parents for a per-child tax credit under various definitions of a "qualifying child."
5. Estimate the new improper payment rate for the EITC based on the rules for the proposed per-worker and per-child credit.

Primarily, this report details the effect on the amount of the EITC if the credit were split into a worker portion and a child portion. While the National Taxpayer Advocate Fiscal Year 2020 special report on EITC recommended a separate child credit, our first approach is to split the existing EITC into two components – a credit based solely on earned income and a credit based on the number of qualifying children. We explore seven possible EITC structures depending on whether the child portion of the credit is a flat rate for up to three children, a flat rate that decreases as the number of qualifying children increases (up to three), or a variable amount per child that decreases in the higher income ranges. We explore the significant features of each of these possible structures. We also look at the effects of these various structures on actual TY 2019 taxpayers receiving the EITC by comparing these total credits to each other and to the EITC paid out for TY 2019 returns based on the existing law. We examine underutilized data sources that could enable the IRS to validate EITC claims and reduce the volume of EITC returns with questionable validity. We then analyze the effects if these data sources had been used on previous EITC audits and identify whether this data could also quantify the number of EITC claims where the additional data could validate the qualifying child(ren). We examine the results of the TY 2019 data provided to the IRS from the Census Bureau, which estimate the EITC participation rate based on information provided in the Current Population Survey. Finally, we will estimate the effect of the new EITC structures on the improper payment rate.

We used TY 2019 data to explore the effects of new EITC structures on the EITC received by taxpayers. We chose TY 2019 because it was the most recent year of complete data prior to the COVID-19 pandemic. We believe 2019 data is the most current data best reflecting the employment and income of taxpayers. However, it would also be worthwhile to repeat these analyses after the data is available for most 2022 tax returns.

BACKGROUND

EITC was implemented on a temporary basis in 1975 and made a permanent feature of the U.S. tax code in 1978. The Tax Reform Act of 1986 adjusted the formula for EITC, significantly increasing the credit and providing for continual adjustments to the credit based on inflation. In 1990, the credit formula was modified to account for family size – one formula for families with one child and a different formula for families with two or more children. In 1993, Congress increased the amount of the credit and also expanded the credit to include families without qualifying children. In 1996, a tax law required EITC claimants to provide valid Social Security numbers (SSNs) for themselves, a spouse if married filing jointly, and any qualifying children. In 2002, the EITC for married claimants phased out at a higher income level to provide "marriage penalty relief."[10] Then, in 2009, a larger EITC amount was temporarily provided for claimants with three qualifying children and ultimately made a permanent feature of EITC.[11] The rules for all potential EITC claimants in TY 2019 include:[12]

1. Your adjusted gross income (AGI) must be less than:
   - $50,162 ($55,952 for married filing jointly) if you have three or more qualifying children,
   - $46,703 ($52,493 for married filing jointly) if you have two qualifying children,
   - $41,094 ($46,884 for married filing jointly) if you have one qualifying child, or
   - $15,570 ($21,370 for married filing jointly) if you don't have a qualifying child.
2. You must have a valid SSN by the due date of your 2019 return (including extensions).
3. Your filing status can't be married filing separately.
4. You must be a U.S. citizen or resident alien all year.
5. You can't file Form 2555 (relating to foreign earned income).
6. Your investment income must be $3,600 or less.
7. You must have earned income.

Figure 5.2.1 describes the computation of the EITC in TY 2019.

FIGURE 5.2.1, Existing EITC Thresholds by Number of Qualifying Children, TY 2019[13]

	0 Children	1 Child	2 Children	3 Children
Credit Rate (Phase-in)	7.65%	34%	40%	45%
Maximum EITC	$529	$3,526	$5,828	$6,557
Income Phase-out Threshold for EITC				
Single	$8,650	$19,030	$19,030	$19,030
Married	$14,450	$24,820	$24,820	$24,820
Income Threshold for EITC				
Single	$15,570	$41,094	$46,703	$50,162
Married	$21,370	$46,884	$52,493	$55,952

In 1975, the EITC did not exceed $400 and was only available to taxpayers with children.[14] In TY 2021, the maximum amount of EITC for taxpayers with three or more children was $6,728, and taxpayers with no children could qualify for $1,502 of EITC.[15] Adjusting for inflation, the maximum amount of EITC received in 2022 is over three times as large as the maximum EITC amount in 1976.[16]

Taxpayers with qualifying children must meet four requirements to claim the EITC. These requirements include the age test, joint return test, the relationship test, and the residency test. The age test states that qualifying children must be either under 19 years of age, 24 years of age if the child is a full-time student, or any age if the child is permanently disabled. To meet the joint return test, the qualifying child must not file a joint return (or file a joint return only to claim a refund of all taxes paid). The relationship test states that qualifying children must have a qualifying relationship to the EITC claimant.[17] The residency test states that a qualifying child must have lived in the same home with the claimant for more than half of the year. The joint return test and the age test are relatively easy for the IRS to verify. The IRS can easily verify if a qualifying child is a son or daughter of the claimant, but other qualified relationships are more difficult to verify such as nieces and nephews.

Unfortunately, the residency test is very difficult for the IRS to verify. While it is generally easy to determine that a qualifying child is being claimed by both parents on a jointly filed return, this occurred in less than 21 percent of the EITC claims in TY 2019.[18] A claimed qualifying child on a married filing joint return may stem from a second marriage, meaning that a former spouse would also have the necessary relationship to claim the child for EITC. The rightful EITC claimant would depend on which parent the child lived with for more than half of the year. Only one person can claim EITC benefits for a qualifying child.

Determining if a child resided with the EITC claimant for over half of the tax year is very difficult for the IRS. The IRS can determine if the child is being claimed by both of his or her biological parents or legal guardians; however, the IRS would not know if financial or other circumstances dictated that the child lived with other relatives during the majority of the tax year. The IRS has access to federal case registry data that rolls up custody information from the courts in all 50 states and can generally determine if the child is claimed by the custodial parent. However, the IRS will not know if the custody arrangements for the child have changed unless the parents involve the courts, or the taxpayer provides the information to the IRS during an examination.

While EITC amounts have significantly increased in the last 45 years, the family structure in the United States has changed considerably. The divorce rate increased by 55 percent from 1975 to 2019,[19] while the marriage rate decreased by 63 percent.[20] Just about 20 percent of EITC claimants are married taxpayers filing jointly, suggesting that the majority of EITC qualifying children reside in single parent households or blended families.[21] Taxpayers rarely understand the requirements to identify qualifying children. Therefore, the IRS has the difficult responsibility of verifying residency even as children are less likely to live with both parents. The IRS is placed in the unenviable position of trying to determine if the child claimed for EITC purposes resided with the claimant for more than half of the year.

The results of a 2014 IRS EITC compliance study from National Research Program data demonstrates that the residency test is the most likely reason that a claimed child is not a qualifying child for EITC purposes. Misidentifying a child as a qualifying child without any other error in the EITC claim accounted for more than a quarter of known EITC errors and accounted for 38 percent of overclaimed EITC attributable to qualifying children and other errors.[22] Fifteen percent of EITC claims with qualifying children claimed at least one qualifying child in error.[23] Failure of the residency test accounted for 75 percent of all EITC qualifying child errors while the relationship test only accounted for 20 percent of EITC child errors.[24] Overall, qualifying child errors account for over half of the EITC overclaim amount – between $7 and $10 billion.[25]

OBJECTIVES AND DEVIATIONS

The first two objectives remain unchanged from the those originally envisioned for the project.

1. Identify possible options for a new earnings-based per-worker credit and per-child credit to replace the existing EITC credit.
2. Compare the existing EITC to the credit amount afforded by possible new per-worker and per-child structures and the effect to taxpayers not currently eligible for EITC.

The EITC research study published by TAS in 2019 recommended a worker-based credit and a separate fixed credit for each qualifying child. In this report, we explore the outcome of this EITC structure with a worker credit and a fixed per-child credit. We also explore bifurcating the existing structure of EITC between a worker credit based on income and a per-child credit also based on income instead of only a fixed amount. While the new structures do not change the number of taxpayers eligible for the EITC, these possible formulas alter the amount of the EITC to which they are entitled.

When we originally formulated the objectives for this research study, we envisioned exploring different rules for determining if a child was a qualifying child for EITC. After reviewing the eligibility rules for other credits depending on a qualifying child, we found these other credits also involved criteria the IRS could not easily verify without becoming extremely obtrusive into taxpayers' private lives. Therefore, we have modified the third objective to focus on which returns selected for audit could have been cleared using other data and how the available data on potentially qualifying children could narrow the population of EITC returns that should be considered for audit.

3. Analyze the selection of TY 2019 EITC audits to determine in what percentage of these audits the EITC claim could have been validated without the need for an audit and determine the total number of TY 2019 EITC claims requiring an audit to verify eligibility of the child claimed.

Since various definitions of an EITC qualifying child would generally require the IRS to significantly intrude into taxpayers' lives, for Objective 4, we show the results of a Census Bureau study estimating the number of taxpayers eligible for EITC under the current definition for an EITC qualifying child so we can compare the number of likely eligible EITC claimants to the actual number of claimants.

4. Explore IRS and Census Bureau data to quantify the number of children who would qualify their parents for a per-child tax credit under the current IRC definition of a "qualifying child."

Objective 5 also remains unchanged.

5. Estimate the new improper payment rate for EITC based on the rules for the proposed per-worker and per-child credit.

METHODOLOGY

We created a base file of taxpayers receiving EITC on a TY 2019 return processed as of the end of calendar year 2021. We also extracted various other data for these taxpayers including filing status, AGI, the IRS computed amount of earned income,[26] the number of claimed EITC qualifying children, and other credits claimed on the return. We supplemented this data with the Dependent Database rules broken and final score and with the results of EITC audits for TY 2019.

For the first objective, we computed the worker component of the EITC at 15.3 percent. Several commentators have recommended this percentage for childless workers, and Congress actually increased the childless worker EITC phase-in credit rate from 7.65 percent to 15.3 percent for TYs 2020 and 2021, although the amount is slated to return to 7.65 percent in TY 2022.[27] For the child portion of the credit, we considered a flat rate amount per child (up to three children), a flat rate per child that decreased as the number of children increases, a child portion that fluctuated based on income and number of children, and using percentages that maintained the existing EITC credit but split it into a worker component based solely on income and a child component based on income and the number of qualifying children. Overall, we considered seven possible EITC structures.

While we explore the effect of these different EITC structures graphically across all eligible income ranges and numbers of qualifying children (up to three) in the second objective, we also compare the actual effect of the possible new EITC structures on taxpayers who received EITC in TY 2019. This approach allows us to determine the cost of each structure and the actual effects on various groups of taxpayers.

To accomplish the third objective on reducing the population of EITC claims for audit, we extracted the insurance coverage data for household members from ACA Forms 1095-B, Health Form, and 1095-C, Employer-Provided Health Insurance Offer and Coverage.[28] We matched the individuals on these ACA information documents to the children claimed by the taxpayer as EITC qualifying children.[29] We compared this data to the taxpayers claiming EITC (after the IRS exercised its math error authority) to determine how many of the EITC claims had EITC qualifying children also provided with health insurance coverage for at least six months of the year. We also determined the number of claimed children provided health insurance coverage by the taxpayer for four and five months of the year. The IRS may allow a taxpayer's EITC claim if he or she can verify the eligibility of a claimed child for most of the six-month period. The ACA data was compared both to the returns audited because of their EITC claim in TY 2019 and to all TY 2019 returns receiving EITC.

To accomplish the fourth objective, we relied on the Census Bureau match of IRS EITC claims to sample census data. This match forms an estimate of the number of EITC eligible taxpayers based on the Census Bureau Current Population Survey sample data. This sample estimates the EITC participation rate by the number of qualifying children. The match also estimates the number of childless workers eligible for the credit in TY 2019.

The fifth objective was accomplished by quantifying the portion of the EITC stemming from the proposed EITC worker credit based solely on income and then estimating the improper payment rate percentages attributable to unreported income detected in the EITC Compliance Study published in 2014.[30] We project a new estimated improper payment rate for FY 2020 based on these factors:

1. The IRS-estimated EITC improper payment percentage for FY 2020.
2. The EITC attributable to the worker component of the proposed structure, which the IRS can more easily verify.
3. The EITC attributable to the child component of the proposed structure, which the IRS has more difficulty verifying.
4. The percent of the dollars of EITC non-compliance attributable to income misreporting.
5. The percent of the dollars of EITC non-compliance attributable to claiming children ineligible to be a qualifying child for EITC.
6. The total EITC expected to be paid out under each EITC structure considered.

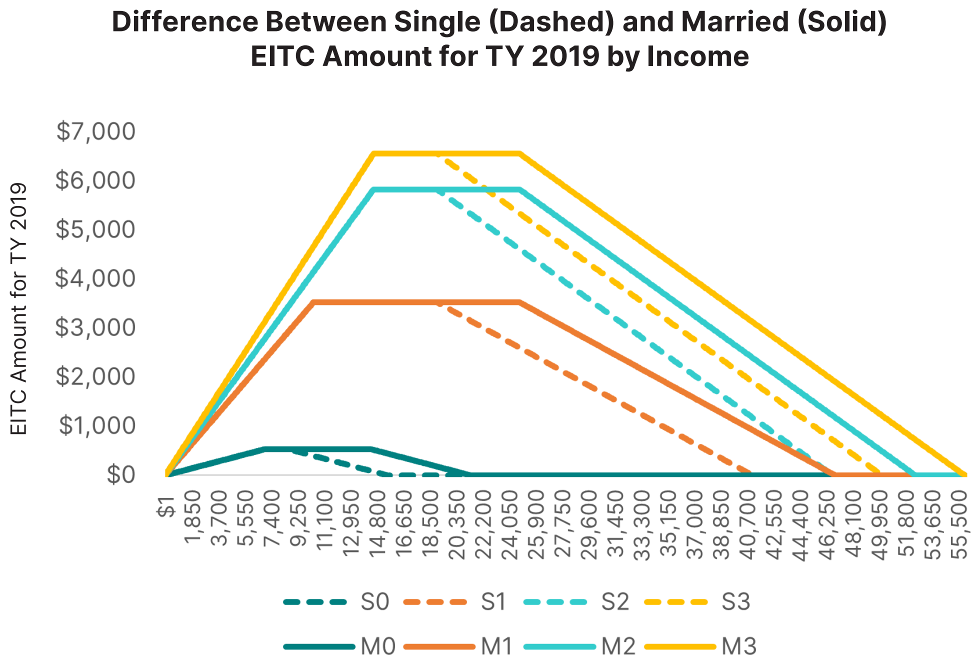
FINDINGS

We have developed our findings from TY 2019 data. Overall, we considered the data reported on TY 2019 income tax returns, Dependent Database scoring, administrative audit data, and information documents associated with ACA. In order, this section discusses the findings for each of the five study objectives (shown in bold).

Objective 1: Identify possible options for a new earnings-based per-worker credit and per-child credit to replace the existing EITC credit.

Figure 5.2.2 depicts the existing EITC amount depending on income and number of children and compares the credit amount for single and married filing jointly taxpayers.[31]

FIGURE 5.2.2



We explored seven possible options for a new structure of determining the EITC amount. Each of the structures is based on splitting the EITC into a worker component based on income and a child portion, providing a credit amount for up to three children. In all scenarios, we set the worker component of EITC at 15.3 percent, although we also examine the effects if this amount were reduced by half to 7.65 percent.[32] The possible EITC structures we explore look at differing amounts for the child portion of the credit, including a flat, stable credit per child, a flat credit per child that decreases as the number of qualifying children increases, and different variations of a structure where the portion of the EITC credit attributable to qualifying children fluctuates based on income.

Option 1: A Worker-Based Credit and a Constant Allowance for Each Qualifying Child

The first structure we considered was a worker component of the credit based on 15.3 percent of earned income and a flat, unchanging child-based portion of the credit at $2,000 per child, regardless of income, up to the existing maximum of three children. Figures 5.2.3 and 5.2.4 separately explore the effect of this possible EITC structure on single and married taxpayers in greater detail.

FIGURE 5.2.3

Difference for Single Taxpayers Between Current (Solid) and Proposed (Dotted) EITC Amount for TY 2019 by Income

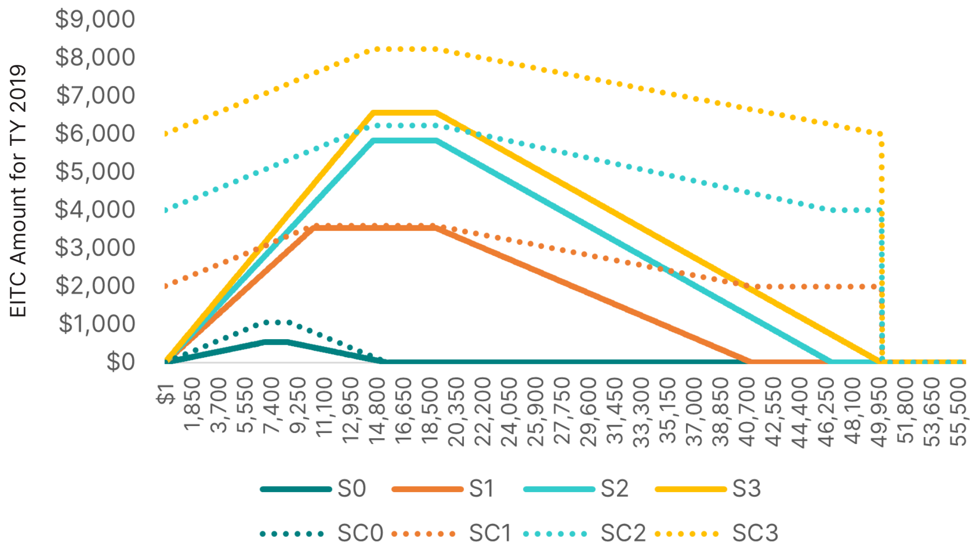
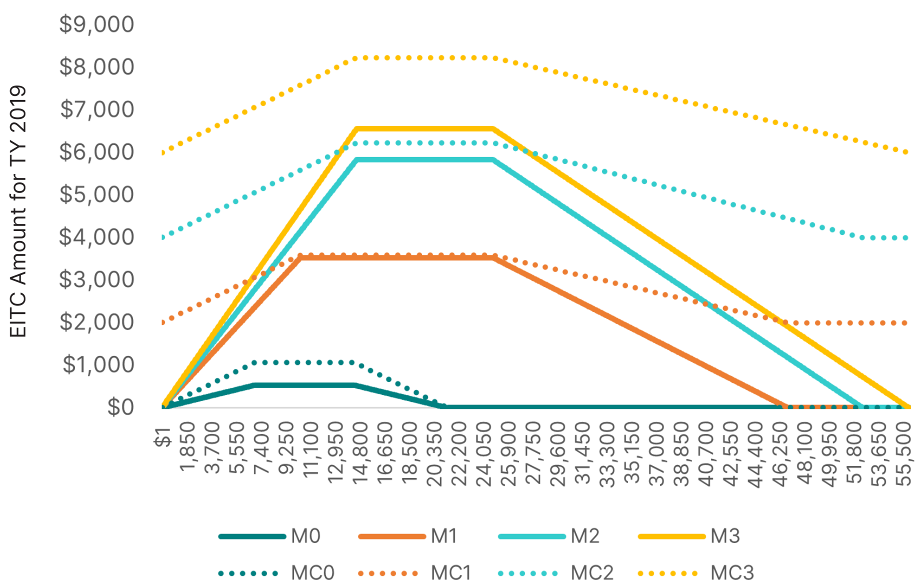


FIGURE 5.2.4

Difference for Married Taxpayers Between Current (Solid) and Proposed (Dotted) EITC Amount for TY 2019 by Income



We have these observations for this possible structure's effect on the EITC.

- The EITC amount increases for the lowest income taxpayers with children as the flat child credit boosts the starting amount.
- The EITC amount increases for higher income taxpayers with children as only the worker portion of the credit phases out.

Option 2: A Worker-Based Credit and a Decreasing Allowance for Each Additional Qualifying Child

The second possible structure we explore also splits EITC between a worker and child portion but decreases the flat rate allowed per child as the number of qualifying children increases. The existing EITC structure operates in a similar fashion, where the maximum credit for one child is about $3,000 and increases by about $2,300 when claiming two qualifying children instead of one, but the maximum credit only increases by about $700 when claiming three qualifying children instead of two. For this possible structure, we set the worker portion of the credit to phase in at 15.3 percent of income and to also phase out at this same rate. The credit amount was $3,000 for one qualifying child, $2,000 for the second qualifying child, and $1,000 for the third qualifying child. Figures 5.2.5 and 5.2.6 depict the amount of this possible EITC at the possible eligible incomes and number of qualifying children for both single and married taxpayers claiming the credit.

FIGURE 5.2.5

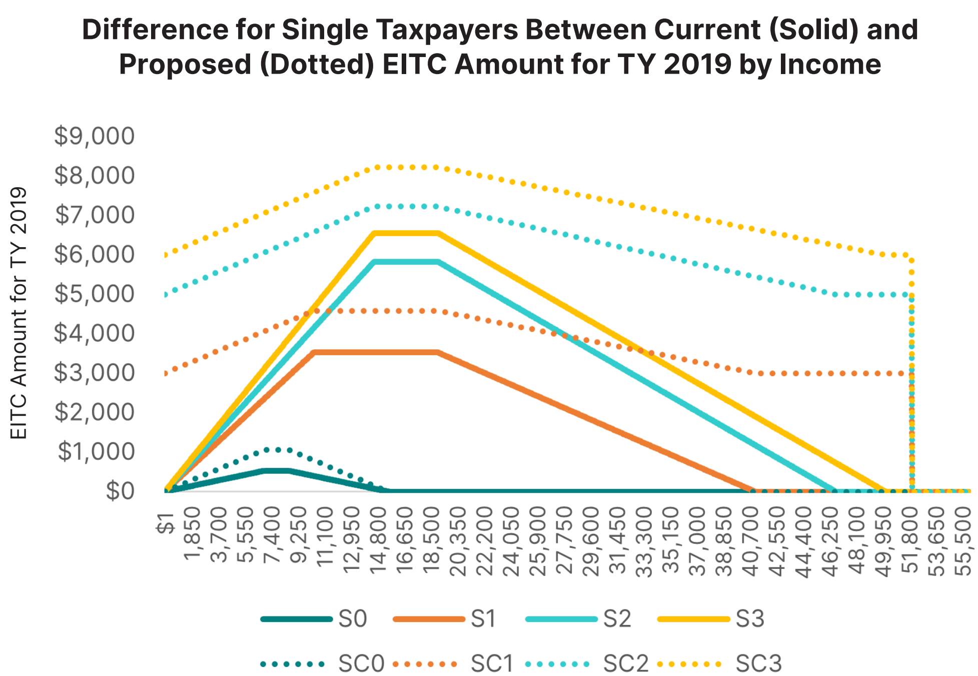
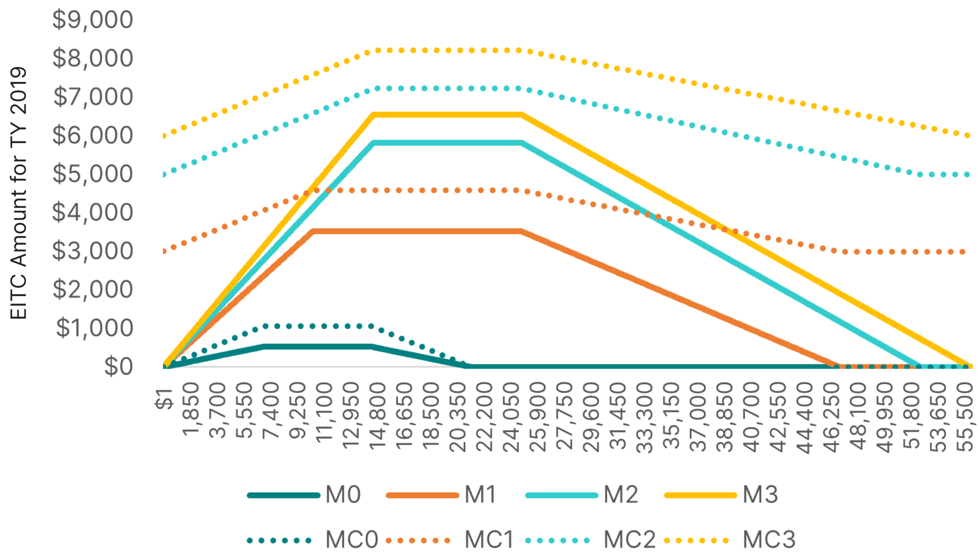


FIGURE 5.2.6

Difference for Married Taxpayers Between Current (Solid) and Proposed (Dotted) EITC Amount for TY 2019 by Income



Additional observations for this possible EITC structure, specifically related to whether the taxpayer files a single or married filing jointly return include:

- Since this structure awards an amount for each qualifying child, the credit amounts do not continue to decrease past the flat amounts awarded for one, two, or three qualifying children ($1,000; $2,000; and $3,000).
- EITC claimants in the lowest and highest income ranges would be entitled to significantly more credit.
- Because there are more EITC claims with one qualifying child (than two or three qualifying children), this proposed structure leads to significantly more EITC outlays.
- Overall, the EITC benefit under this structure is about 70 percent more than what is afforded by the existing EITC structure for TY 2019.

We designed the third, fourth, and fifth possible EITC structures to generally mimic the total amount of EITC that was paid out for TY 2019 returns. Through the end of 2021, taxpayers received approximately $63.8 billion in EITC for TY 2019 returns.[33]

Option 3: A Worker-Based Credit and a Constant Allowance for Each Additional Qualifying Child – Similar EITC Paid Out as in TY 2019

A third possible EITC structure retains the split between a worker and child portion of the EITC but also uses a smaller constant flat rate per qualifying child to produce a similar EITC payout to what occurred for TY 2019. The structure we considered allowed a 15.3 percent worker credit and a flat credit for each qualifying child (up to three) of $1,092 per child. Figures 5.2.7 and 5.2.8 depict the amount of this possible EITC at the possible eligible incomes and number of qualifying children for both single and married taxpayers claiming the credit.

FIGURE 5.2.7

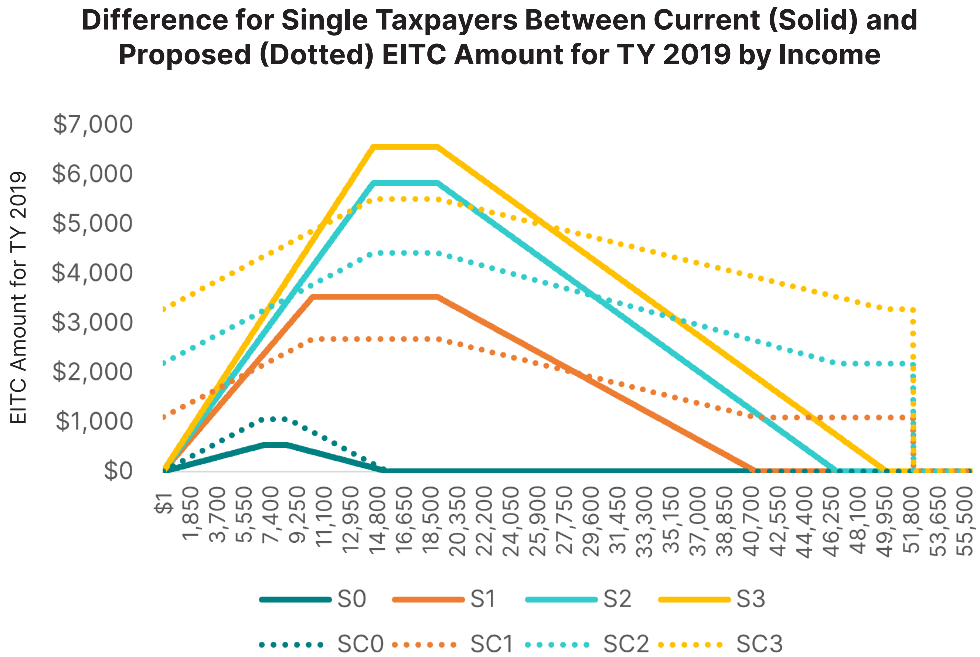
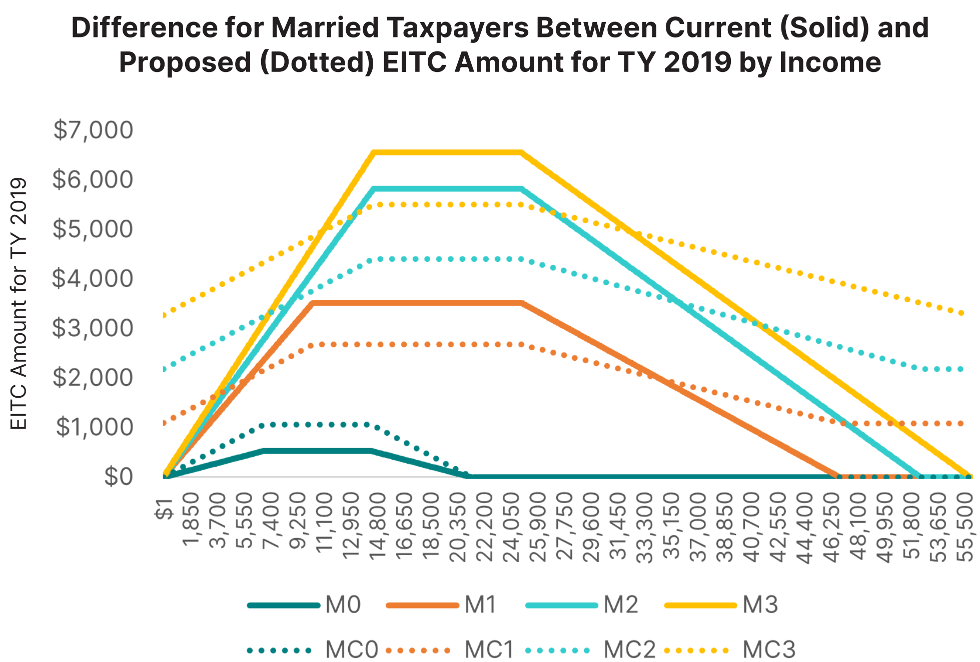


FIGURE 5.2.8



Even though the flat rate option for all qualifying children and the flat rate option (see next section) that decreases the allowance per qualifying child as more children are claimed (up to three) represent rather different EITC structures, because most taxpayers claim only one qualifying child, the observations for both options are very similar and will be discussed at the end of the next section.[34]

Option 4: A Worker-Based Credit and a Decreasing Allowance for Each Additional Qualifying Child – Similar EITC Paid Out as in TY 2019

The fourth possible structure we explore also splits the EITC between a worker and child portion but decreases the flat rate allowed per child as the number of qualifying children increases. For this possible structure, we set the worker portion of the credit to phase in at 15.3 percent of income and to also phase out at this same rate. The credit amount was $1,290 for one qualifying child, $995 for the second qualifying child, and $315 for the third qualifying child. Figures 5.2.9 and 5.2.10 depict the amount of this possible EITC at the possible eligible incomes and number of qualifying children for both single and married taxpayers claiming the credit.

FIGURE 5.2.9

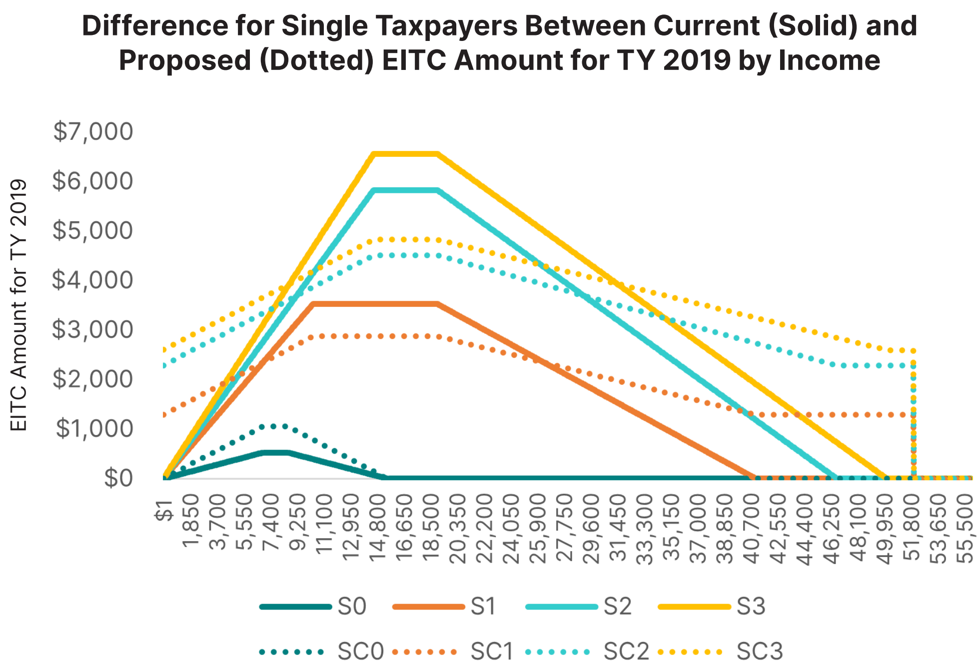
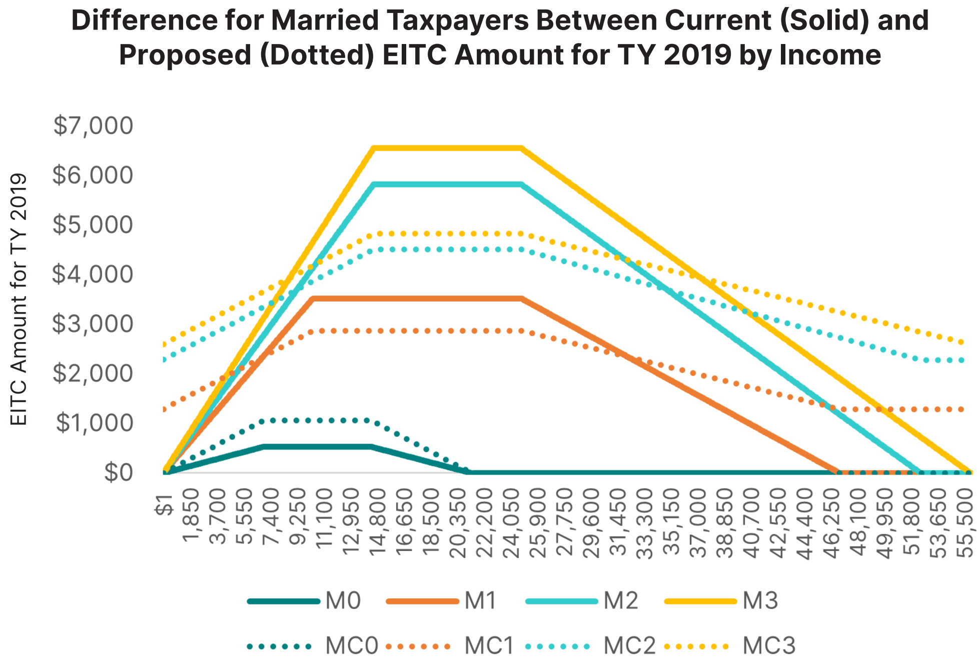


FIGURE 5.2.10



We have these observations for the EITC structure of options three and four on the amount of EITC allowed.

- Over 85 percent of taxpayers with incomes less than $10,000 will receive a larger credit under these options.
- All taxpayers with incomes greater than $40,000 will receive a larger credit.
- Fifty-seven percent of married taxpayers will receive a larger credit.
- EITC decreases for taxpayers with qualifying children and incomes roughly between $10,000 and $30,000.

Option 5: A Worker-Based Credit and a Decreasing Allowance for Each Additional Qualifying Child That Also Phases Out as Incomes Increase Past the Plateau Range

The fifth possible structure we explore also splits the EITC between a worker and child portion and again the amount of the credit per child decreases as the number of qualifying children increases (up to three); however, in this structure, the amount of the credit also phases out as the income increases beyond a maximum amount. For this possible structure, we set the worker portion of the credit to phase in at 15.3 percent of income, and it also phases out at this same rate. The credit amount was $1,758 for the first child, $1,350 for the second qualifying child, and $428 for the third qualifying child. We phased out the EITC at $4 per $50 increase in income for taxpayers with one qualifying child and at $6 per $50 increase in income for taxpayers with two or more qualifying children. The phase-out income ranges remain roughly the same as under the TY 2019 tax law (see Figure 5.2.1). Figures 5.2.11 and 5.2.12 depict the amount of this possible EITC at the possible eligible incomes and number of qualifying children for both single and married taxpayers claiming the credit.

FIGURE 5.2.11

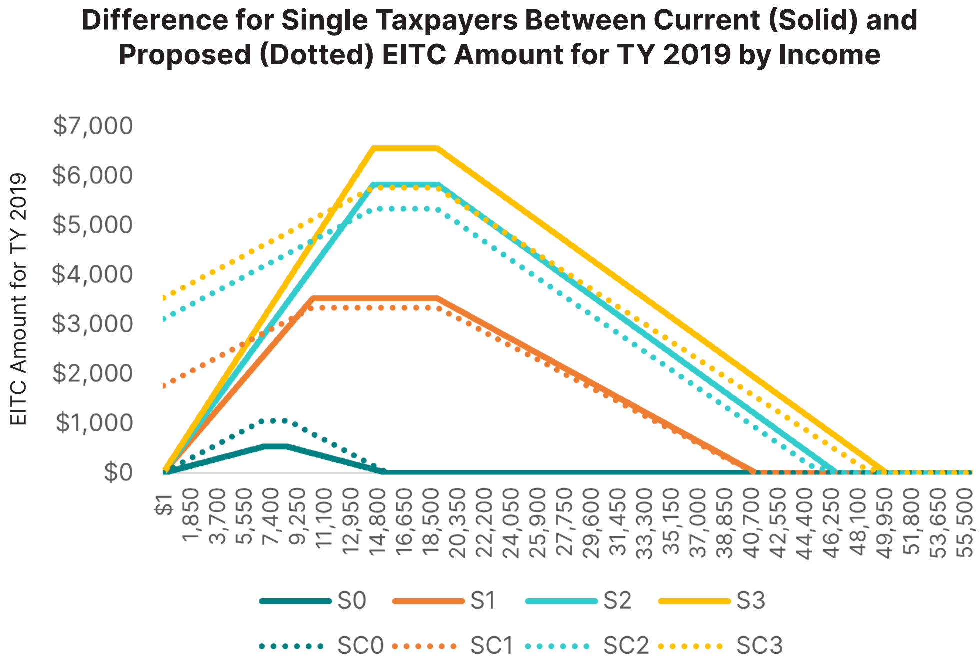
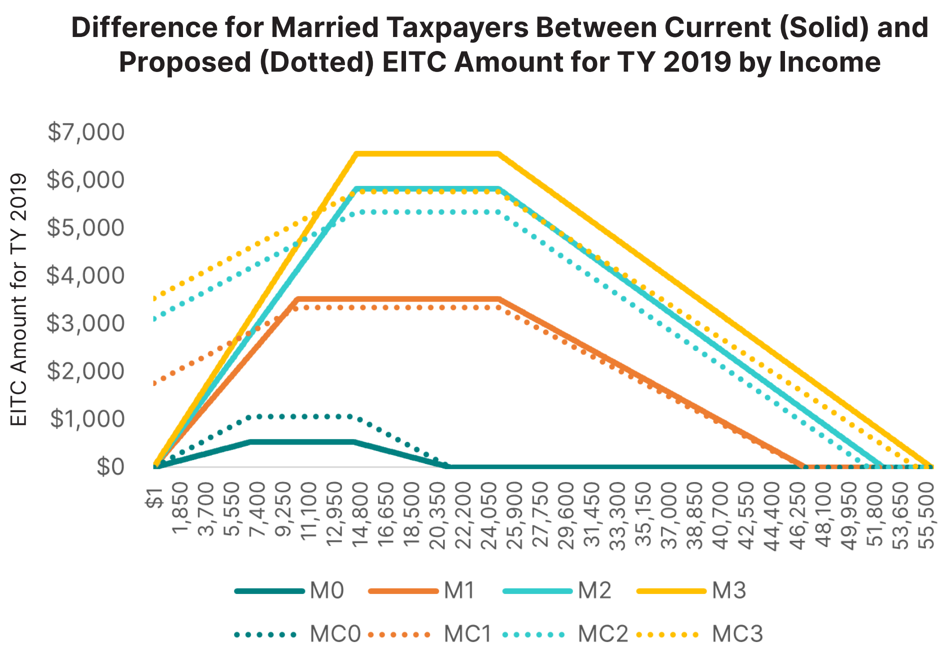


FIGURE 5.2.12



We have these observations for the EITC structure of option five on the amount of EITC allowed.

- Ninety-eight percent of taxpayers with incomes less than $10,000 will receive a larger credit.
- Five percent of taxpayers with incomes greater than $40,000 will receive a larger credit.
- Taxpayers with qualifying children generally received less EITC to compensate for the increase in the childless worker's EITC.
- Single taxpayers benefit more than married taxpayers from child tax credits that phase-out.
- EITC decreases for most taxpayers with qualifying children and incomes greater than $10,000.

Option 6: A Worker-Based Credit and a Decreasing Allowance for Each Additional Qualifying Child – Increases EITC Paid Out to Childless Workers

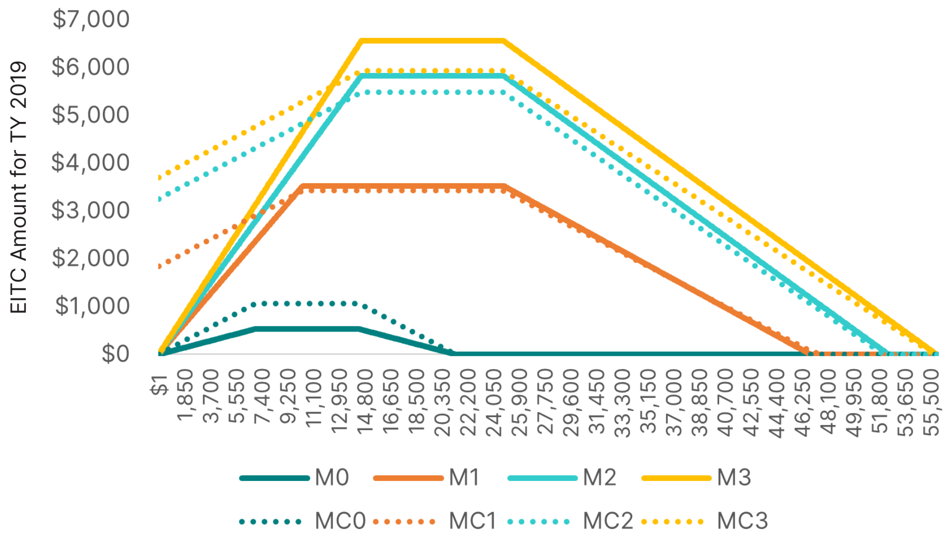
The sixth possible structure we explore is identical to the previous structure explored except that the total outlays may increase to approximately $66 billion to account for doubling the childless worker credit phase-in amount from 7.65 percent to 15.3 percent. The amounts offered per qualifying children are not diminished as much as in the structure we just discussed. Specifically, the credit amounts per qualifying child are: $1,839 for one child; $1,413 for the second qualifying children, and $447 for the third qualifying child. Figures 5.2.13 and 5.2.14 depict the possible EITC at the possible eligible incomes and number of qualifying children for both single and married taxpayers claiming the credit.

FIGURE 5.2.13

Difference for Single Taxpayers Between Current (Solid) and Proposed (Dotted) EITC Amount for TY 2019 by Income

FIGURE 5.2.14

Difference for Married Taxpayers Between Current (Solid) and Proposed (Dotted) EITC Amount for TY 2019 by Income



Option six is similar to option five but is different because it allows for an increase in the total EITC outlays by about $2 billion to account for doubling the childless worker EITC amount. On the other hand, option five tries to mimic the total TY 2019 EITC outlays so the increase in the childless worker EITC is compensated by a reduction in the amount of EITC per qualifying child. We have these observations for the EITC structure of option six on the amount of EITC allowed.

- At least 99 percent of taxpayers with incomes less than $10,000 will receive a larger credit.
- Single taxpayers benefit more than married taxpayers from child tax credits that phase out.
- EITC decreases for most taxpayers with multiple qualifying children and incomes greater than $10,000.

Finally, we have a few general observations about the first six options.

- All taxpayers with incomes less than $5,000 will receive a larger credit.
- The childless worker EITC doubles; however, this amounts to only about $2 billion.
- Married taxpayers benefit more from flat child tax credits.

Option 7: A Worker-Based Credit and a Child-Based Credit Paying the Same Amount of EITC at the Same Income Levels Except for Also Increasing EITC Paid Out to Childless Workers

Finally, we considered a seventh EITC structure where the total EITC amount is nearly identical to the credit amount afforded under the existing EITC structure, yet the credit is split between a component based on income and a component based on qualifying children, resulting in the payout of about $2 billion more EITC.[35] In this structure, the portion of the credit based on income is 15.3 percent, even for childless workers. The income phase-ins, phase-outs, plateau ranges, and maximum credit amount do not change; however, we adjust the percentages attributable to the number of qualifying children so the amount of EITC does not change. The benefit of this structure over the existing structure is that the IRS can much more easily verify the portion of the credit based on income. Therefore, the portion of the EITC based on qualifying children is reduced, lowering the improper payment rate without altering the amount of the credit. We do not show figures for the variation of the amount of EITC structure by income and number of qualifying children because it is identical to Figure 5.2.1, except that the childless worker EITC doubles, allowing about $2 billion more EITC.

Objective 2: Compare the existing EITC to the credit amount afforded by possible new per-worker and per-child structures and the effect on taxpayers not currently eligible for EITC.

While we explored the effects of the proposed EITC structures across all income ranges and numbers of qualifying children (up to three), in this second objective we compare the actual effect of the proposed changes on those taxpayers receiving EITC from the IRS in TY 2019. The income groupings are defined as follows:

1. < $5,000
2. ≥ $5,000 & < $10,000
3. ≥ $10,000 & < $20,000
4. ≥ $20,000 & < $30,000
5. ≥ $30,000 & < $40,000
6. ≥ $40,000

Figure 5.2.15 depicts the total amount of EITC outlays and the amount of EITC afforded by the first six of the seven structures we explored by filing status (FS: married or single), number of qualifying children (QC: up to three), and income category (IC: amount of earned income). The appendix contains various combinations of filing status, number of qualifying children (up to three), and income categories.

FIGURE 5.2.15, Total EITC Outlays by Indicated Combinations of Filing Status, Number of Qualifying Children, and Income Category[36]

Total Credit Outlay (in Millions)									
FS	QC	IC	TY 2019 Existing EITC Structure	Flat Rate Per Child	Decreasing Flat Rate	Flat Rate Per Child Similar Outlay	Decreasing Flat Rate Similar Outlay	Decreasing Flat Rate With Income Phase-out Similar Outlay	Decreasing Flat Rate With Income Phase-out and Increase Childless Worker Phase-in Rate to 15.3%
Total Outlay			$63,624	$92,587	$108,245	$63,622	$63,625	$63,623	$65,809
M			$23,635	$26,793	$15,695	$15,204	$14,569	$14,302	$14,866
S			$68,951	$81,452	$47,928	$48,421	$49,055	$49,320	$50,943
	0		$4,370	$4,370	$4,370	$4,370	$4,370	$4,370	$4,370
	1		$28,727	$38,024	$20,286	$22,034	$21,406	$22,459	$23,212
	2		$34,900	$41,261	$23,348	$23,895	$24,372	$23,729	$24,632
	3		$24,590	$24,590	$15,618	$13,326	$13,476	$13,064	$13,595
		1	$2,833	$3,378	$2,014	$2,053	$2,415	$2,434	$2,499
		2	$7,863	$9,067	$6,053	$6,141	$6,940	$6,982	$7,125
		3	$31,922	$36,986	$23,005	$23,114	$26,913	$27,111	$27,797
		4	$24,021	$28,250	$16,514	$16,590	$17,330	$17,537	$18,113
		5	$17,003	$20,409	$10,810	$10,835	$7,802	$7,888	$8,361
		6	$8,946	$10,155	$5,225	$4,893	$2,224	$1,672	$1,915

Instead of displaying the actual EITC outlay amount by filing status, number of qualifying children, and income category, Figure 5.2.16 shows the percentage increase or decrease by these same groupings. Increases in EITC outlays at or above 50 percent are shaded in green. Decreases in outlays are shaded in red.

FIGURE 5.2.16, Difference in Total EITC Outlays (From Actual) by Indicated Combinations of Filing Status, Number of Qualifying Children, and Income Category

Total Credit Outlay (millions)								
FS	QC	IC	Flat Rate Per Child	Decreasing Flat Rate	Flat Rate Per Child Similar Outlay	Decreasing Flat Rate Similar Outlay	Decreasing Flat Rate With Income Phase-out Similar Outlay	Decreasing Flat Rate With Income Phase-out and Increase Childless Worker Phase-in Rate to 15.3%
M			60%	82%	6%	3%	(3%)	1%
S			41%	67%	(2%)	(1%)	1%	4%
	0		100%	100%	100%	100%	100%	100%
	1		28%	69%	(10%)	(2%)	(0%)	3%
	2		41%	67%	(6%)	(3%)	(4%)	(0%)
	3		73%	73%	10%	(6%)	(8%)	(4%)
		1	173%	226%	94%	98%	135%	141%
		2	58%	82%	21%	23%	40%	43%
		3	14%	32%	(18%)	(18%)	(3%)	(1%)
		4	27%	50%	(12%)	(12%)	(7%)	(4%)
		5	97%	136%	25%	25%	(9%)	(3%)
		6	336%	395%	155%	138%	(19%)	(7%)

An analysis of the difference in EITC outlays by filing status and number of qualifying children indicates:

- The first two EITC structures considered, a flat rate per qualifying child and a flat rate per child that decreases per additional qualifying children, both show a significant increase in the total EITC outlay, by about $29 billion and $44 billion respectively.
- The third through fifth EITC structures create a similar total outlay as the existing structure.
- Because of doubling the childless worker credit, the EITC outlay for taxpayers without qualifying children increases by 100 percent or about $2 billion more.
- The EITC significantly increases in the lowest two income categories and increases in the highest income category in the flat rate per child structure and the decreasing flat rate per child structure.

The seventh possible EITC structure we considered is not included in Figure 5.2.16 because the EITC outlays are the same as what occurred for TY 2019, except the childless EITC worker amount doubled from slightly over $2 billion to a little over $4 billion.

Objective 3: Analyze a selection of TY 2019 EITC audits to determine in what percentage of these audits the EITC claim could have been validated without the need for an audit and determine the total number of TY 2019 EITC claims not requiring an audit to verify eligibility of the child claimed.

An analysis of Form 1095-B and Form 1095-C data indicates that taxpayers claimed over 7.1 million qualifying children for whom they also provided health insurance coverage for at least six months of the year. This number increases to 7.6 million if only five months of health coverage are required, and 8.1 million if only four months of health insurance coverage are required. However, IRS systems did not always question the residency of these individuals. Considering those children not deemed to meet the residency requirement, the Form 1095 data could verify that the taxpayer provided health insurance coverage for roughly 500,000 (about seven percent) of the children where the IRS could not verify residency, but where the IRS could confirm relationship. If this verification were allowed, the IRS could verify over $1.6 billion of EITC claims. If health insurance coverage were only required for five months, Form 1095 data could verify that the taxpayer provided health insurance coverage for roughly 536,000 of the children where the IRS could previously not verify residency, but where the IRS could confirm relationship. And if health insurance coverage was only required for four months, Form 1095 data could verify that the taxpayer provided health insurance coverage for roughly 572,000 of the children where the IRS could previously not verify residency, but where the IRS could confirm relationship. When considering the lesser verification requirement of only five or four months of provided health insurance coverage, the total EITC claims that could be verified rises to $1.8 and $1.9 billion, respectively.

We also explored the number of EITC audits where the Form 1095 data shows that the taxpayer provided health insurance coverage for the child claimed for EITC purposes; however, we found these documents could only verify the children claimed on about one percent of the audited returns. Further research could be done to determine the efficacy of states providing information documents from schools to verify a child's residency with the taxpayer for over half of the year. The IRS could also use math error authority for relationship only when the information from the Social Security Administration did not verify the claimant was a parent of the child being claimed for EITC purposes and the taxpayer did not provide information with the return for another qualified relationship, including being an adopted child. Qualifying children not meeting the relationship test represented about 20 percent of qualifying child errors in the most recent IRS EITC compliance study.[37]

Objective 4: Explore IRS and Census Bureau data to quantify the number of children who would qualify their parents for a per-child tax credit under the current definition of a "qualifying child."

Based on data provided to the Census Bureau by the IRS, Figure 5.2.17 estimates the EITC participation rate by number of qualifying children.

FIGURE 5.2.17, EITC Participation Rate by Number of Qualifying Children, TY 2019[38]

Number of Qualifying Children	Estimated Eligible Taxpayers (in Thousands)	Participation Rate	Margin of Error
0	7,436	65.9%	2%
1	6,399	86.9%	1%
2	4,386	86.5%	1%
3 or more	3,587	84.0%	2%

About 21.8 million filers were eligible to claim EITC on TY 2019 returns; however, over 26 million taxpayers claimed EITC on their TY 2019 tax returns. The IRS estimates that about 34 percent of EITC-eligible TY 2019 filers had no qualifying children, while the remaining approximately 66 percent had at least one qualifying child. As expected, the percentage of filers eligible for but not claiming EITC decreased as the number of qualifying children increased. Interestingly, almost 4.7 million more taxpayers claimed EITC with qualifying children than what the IRS estimates are eligible. This high number of ineligible EITC claims is consistent with the fact that many children's living arrangements and family structures do not fit nicely into the eligibility rules for qualifying children.

Objective 5: Estimate the new improper payment rate for EITC based on the proposed rules for the per-worker and per-child credit.

We made some rudimentary estimates of the effect of bifurcating the EITC credit between a worker credit based solely on income and a component based on the number of qualifying children. In all EITC structures we explored, the worker portion of the credit phased in and out at 15.3 percent. The child portion of the credit was a flat rate credit, a flat rate credit that decreased as the number of qualifying children increased, or a decreasing credit per child that phases out at higher income ranges. We did not change the phase-in or phase-out income ranges in effect for TY 2019, although for ease of computation we did phase out the credit similar to how the existing phase-out of the child tax credit occurs, where the credit decreases for every $50 increase in income over the phase-out income threshold.

We used the percentages of EITC non-compliance detected in the last EITC compliance study for misreported income and qualifying child errors. Because of other errors such as an incorrect filing status, the tie-breaker rule, and other overall EITC requirements such as having a valid SSN, being a U.S. citizen or resident alien all year, not filing Form 2555 or Form 2555-EZ, and not being a qualifying child of another person were presumed to continue under the new structure, we calculated these errors to continue under the possible new structures.

For the worker component of the proposed EITC structure, we used the IRS Compliance Study upper-bound noncompliance percentages for income and qualifying child errors. We then created a proportion of the estimated EITC improper payments for FY 2020 (generally corresponds to TY 2019 returns) to the total EITC outlays from TY 2019. We set this proportion of improper payments under the various EITC structures we explored equal to the amount of total EITC outlay attributable to the worker component and solved for the improper payment rate of the new structure. We computed the improper payment amount in the same way for the child portion of the credit. Since the credit is limited for both the income and child portions of the credit, the improper payment rate is reduced. The IRS has a greater opportunity to verify income since the passage of the Protecting Americans from Tax Hikes (PATH) Act,[39] so the improper payment rate attributable to income may actually be less that what was observed in the prior IRS EITC compliance study. Figure 5.2.18 shows the estimated total outlays, improper payment amounts attributable to income, child, and other components of the EITC regulations, as well as the estimated improper payment rate, and the percent decrease from the current improper payment rate.

FIGURE 5.2.18, Estimated EITC Outlays, Improper Payments, and Improper Payment Rates (Dollars in Millions)[40]

	Flat Rate Per Child	Dec. Flat Rate	Flat Rate Per Child Similar Outlay	Dec. Flat Rate Similar Outlay	Dec. Flat Rate with Income Phase-out Similar Outlay	Dec. Flat Rate With Income Phase-out and Increase Childless Worker Phase-in Rate to 15.3%	TY 2019 EITC Structure Split Between a Worker and Child Component and Increase Childless Worker Phase-in Rate to 15.3%	Unchanged TY 2019 EITC Structure
Total Outlays	$92,587	$108,245	$63,622	$63,625	$63,623	$65,809	$65,924	$63,624
Total Estimated Improper Payments - Existing EITC Structure	$21,786	$25,470	$14,970	$14,971	$14,970	$15,485	$15,512	$14,971
Proposed Structure - Income Estimated Improper Payments	$2,413	$2,820	$1,616	$1,606	$1,605	$1,664	$1,641	
Proposed Structure - Child Estimated Improper Payments	$4,493	$5,251	$3,009	$2,991	$2,988	$3,099	$3,177	
Other Non-Compliance Issues Causing Improper Payments	$7,407	$8,660	$5,090	$5,090	$5,090	$5,265	$5,274	
Estimated Total Improper Pay. Amt.	$14,313	$16,731	$9,715	$9,688	$9,682	$10,028	$10,092	
Estimated Improper Pay. Rate	15.5%	15.5%	15.3%	15.2%	15.2%	15.2%	15.3%	23.5%
Estimated Reduction in Improper Pay. Rate	34.3%	34.3%	35.1%	35.3%	35.3%	35.2%	34.9%	0.0%

We note these changes in the EITC improper payment rate are merely estimates. The information used to determine the percent of EITC non-compliance (by amount) is from the IRS's most recent EITC compliance study published in 2014 using data from tax returns and audits at least five years prior.[41] Additionally, there are other economic factors not explored, most notably the effect of the changes in the EITC structure on economic incentives, which may affect taxpayer claims of EITC. For instance, doubling the size of the childless worker EITC may incentivize some childless taxpayers to fraudulently claim EITC. Nevertheless, the data clearly show that splitting EITC between a worker and child component can have a positive effect in reducing its improper payment rate.

CONCLUSIONS

The EITC structure is plagued by a high improper payment rate. Exacerbating this issue is that often the existing rules for qualifying children do not coincide with the modern family structure. According to a 2016 study by the Tax Policy Center, only slightly over half of children in families earning not more than 200 percent of poverty level income live in married couple household and over 20 percent of the children in these households are not the biological child of at least one of the spouses.[42] The National Taxpayer Advocate 2020 Objectives Report to Congress also recommended splitting EITC between a worker and child component. While this prior report envisioned moving the child portion of the credit, this report has continued to treat the child portion of the credit as a component of EITC, although policy makers could consider transferring the child portion of the EITC to another credit, such as the Child Tax Credit. The National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress also recommended that the worker component of the credit be offered to both parents of the child, if eligible. The calculations in this report continue to allow the EITC to only one parent if the child resides in a single parent household. However, reducing the worker credit to 7.65 percent would allow for the possibility of paying the worker credit to both eligible parents without increasing the total EITC outlay shown in Figure 5.2.18. We also propose using ACA information reporting documents to validate EITC claims. While this method of validating claims would not necessarily verify the child's residency with the taxpayer, it would ensure that the parent claiming the child was contributing to the support of the child for at least half the year, which is presumably a primary reason for the residence requirement. However, legislative change would need to occur to formalize this change. Future research could be conducted to determine how likely a child included as a member of a taxpayer's health insurance plan is to reside with the taxpayer. Specific findings from this study include:

- Both the flat rate of $2,000 per child EITC structure and a flat rate of EITC per child that decreases from $3,000 to $2,000 to $1,000 as the number of children increase from one to two to three significantly increase the EITC outlays.
- A new EITC structure can be designed as either a smaller flat rate per child or a smaller flat rate per child that decreases as the number of qualifying children increases, with or without the presence of income-based phase-outs, to provide credit outlays similar to the EITC afforded by the current guidelines.
- The amount of credit for childless workers offered by the proposed EITC structures doubles since we double the EITC phase-in rate; however, the actual dollar amount of the increase only amounts to about $2 billion.
- An analysis of the EITC participation rate shows that the rate for childless workers significantly lags behind EITC claimants with children and that at least 4.4 million ineligible taxpayers claimed the credit in TY 2019.
- Splitting the credit between a worker and child component can significantly reduce the improper payment rate.

RECOMMENDATION

The EITC is an important lifeline for many low-income taxpayers and for the children they support; however, the qualifying child eligibility rules are difficult for taxpayers to navigate, particularly considering the modern-day living arrangements of many families, and intrusive for the IRS to audit. Therefore, we recommend that Congress retain the EITC, but alter its structure so the IRS can reduce the EITC improper payment rate by facilitating the IRS's ability to enforce the requirements without being overly burdensome to taxpayers.

APPENDIX A

FIGURE 5.2.19, Total Credit Outlay (in Millions)[43]

Total Credit Outlay (in Millions)										
FS	QC	IC	TY 2019 Existing EITC Structure	Flat Rate per Child	Decreasing Flat Rate	Flat Rate Per Child Similar Outlay	Decreasing Flat Rate Similar Outlay	Decreasing Flat Rate with Income Phase-out Similar Outlay	Decreasing Flat Rate with Income Phase-out and Increase Childless Worker Phase-in Rate to 15.3%
Total Outlay			$63,624	$92,587	$108,245	$63,622	$63,625	$63,624	$65,810
M			$23,635	$26,793	$15,695	$15,204	$14,569	$15,140	$14,739
S			$68,951	$81,452	$47,928	$48,421	$49,055	$50,670	$48,885
	0		$4,370	$4,370	$4,370	$4,370	$4,370	$4,370	$2,186
	1		$28,727	$38,024	$20,286	$22,034	$21,406	$22,119	$22,515
	2		$34,900	$41,261	$23,348	$23,895	$24,372	$25,301	$24,721
	3		$24,590	$24,590	$15,618	$13,326	$13,476	$14,019	$14,202
		1	$2,833	$3,378	$2,014	$2,053	$2,415	$2,481	$1,037
		2	$7,863	$9,067	$6,053	$6,141	$6,940	$7,086	$4,992
		3	$31,922	$36,986	$23,005	$23,114	$26,913	$27,611	$28,028
		4	$24,021	$28,250	$16,514	$16,590	$17,330	$17,916	$18,867
		5	$17,003	$20,409	$10,810	$10,835	$7,802	$8,248	$8,648
		6	$8,946	$10,155	$5,225	$4,893	$2,224	$2,468	$2,052
M	0		$603	$603	$603	$603	$603	$603	$302
M	1		$4,634	$6,158	$3,251	$3,537	$3,346	$3,461	$3,526
M	2		$8,736	$10,369	$5,769	$5,909	$5,704	$5,943	$5,755
M	3		$9,663	$9,663	$6,072	$5,154	$4,916	$5,133	$5,157
S	0		$3,767	$3,767	$3,767	$3,767	$3,767	$3,767	$1,885
S	1		$24,093	$31,866	$17,035	$18,497	$18,060	$18,659	$18,989
S	2		$26,164	$30,892	$17,579	$17,985	$18,668	$19,358	$18,966
S	3		$14,927	$14,927	$9,546	$8,171	$8,560	$8,886	$9,045
M		1	$389	$461	$257	$257	$313	$323	$120
M		2	$931	$1,062	$682	$680	$785	$804	$566
M		3	$4,787	$5,400	$3,449	$3,401	$3,951	$4,051	$4,017
M		4	$6,035	$6,822	$4,179	$4,085	$4,689	$4,827	$5,048
M		5	$5,675	$6,505	$3,697	$3,594	$3,235	$3,382	$3,459
M		6	$5,818	$6,542	$3,431	$3,188	$1,597	$1,754	$1,528
S		1	$2,443	$2,917	$1,756	$1,797	$2,102	$2,158	$917
S		2	$6,932	$8,004	$5,371	$5,461	$6,156	$6,282	$4,425
S		3	$27,135	$31,587	$19,555	$19,713	$22,962	$23,560	$24,011
S		4	$17,985	$21,427	$12,336	$12,505	$2,640	$13,089	$13,819
S		5	$11,328	$13,904	$7,114	$7,241	$4,567	$4,866	$5,189
S		6	$3,128	$3,612	$1,795	$1,704	$628	$715	$524

Total Credit Outlay (in Millions)									
FS	QC	IC	TY 2019 Existing EITC Structure	Flat Rate per Child	Decreasing Flat Rate	Flat Rate Per Child Similar Outlay	Decreasing Flat Rate Similar Outlay	Decreasing Flat Rate with Income Phase-out Similar Outlay	Decreasing Flat Rate with Income Phase-out and Increase Childless Worker Phase-in Rate to 15.3%
	0	1	$754	$754	$754	$754	$754	$754	$377
	1	1	$959	$1,351	$603	$677	$855	$887	$389
	2	1	$681	$834	$403	$416	$538	$560	$181
	3	1	$439	$439	$253	$206	$268	$279	$90
	0	2	$2,270	$2,270	$2,270	$2,270	$2,270	$2,270	$1,135
	1	2	$2,755	$3,619	$1,971	$2,133	$2,526	$2,597	$2,284
	2	2	$1,762	$2,102	$1,145	$1,174	$1,445	$1,494	$1,052
	3	2	$1,076	$1,076	$668	$563	$700	$724	$520
	0	3	$1,341	$1,341	$1,341	$1,341	$1,341	$1,341	$671
	1	3	$10,916	$13,980	$8,133	$8,709	$10,089	$10,344	$10,636
	2	3	$12,214	$14,214	$8,581	$8,753	$10,340	$10,632	$11,013
	3	3	$7,452	$7,452	$4,950	$4,311	$5,143	$5,295	$5,708
	0	4	$6	$6	$6	$6	$6	$6	$3
	1	4	$8,131	$10,693	$5,805	$6,287	$6,112	$6,325	$6,681
	2	4	$9,660	$11,327	$6,632	$6,775	$7,302	$7,546	$7,818
	3	4	$6,224	$6,224	$4,072	$3,522	$3,909	$4,040	$4,364
	1	5	$5,180	$7,233	$3,315	$3,701	$1,752	$1,886	$2,384
	2	5	$6,853	$8,207	$4,396	$4,512	$3,708	$3,906	$3,766
	3	5	$4,970	$4,970	$3,099	$2,621	$2,342	$2,456	$2,498
	1	6	$786	$1,148	$458	$526	$72	$80	$140
	2	6	$3,730	$4,578	$2,191	$2,264	$1,039	$1,163	$891
	3	6	$4,429	$4,429	$2,576	$2,102	$1,113	$1,226	$1,021

Endnotes

1 IRS, Compliance Data Warehouse (CDW), Individual Returns Transaction File (IRTF) including returns processed through November 24, 2022.

2 IRC § 32.

3 IRS, CDW, IRTF including returns processed through August 25, 2022.

4 Austin Nichols & Jesse Rothstein, *The Earned Income Tax Credit, in* 1 Economics of Means-Tested Transfer Programs in the United States 137 *(Robert A. Moffitt ed., 2016)*, https://www.nber.org/chapters/c13484.pdf.

5 In this, we combined EITC/CP09-27 recipient files, CPS ASEC, Form 1040, and Form W-2, TY 2019. The release authorization for this is CBDRB-FY2022-CES010-010.

6 National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress vol. 3, Figure 1 (June 2019).

7 PaymentAccuracy.gov (last visited Nov. 27, 2022). Fiscal year (FY) 2020 primarily includes TY 2019 returns.

8 IRS, FY 2021 Data Book Table 17, Examination Coverage and Recommended Additional Tax After Examination, by Type and Size of Return, Tax Years 2011-2019. Overall, the COVID-19 pandemic reduced the number of IRS audits, including EITC audits.

9 National Taxpayer Advocate Fiscal Year 2022 Objectives Report to Congress vol. 3, at 57 (June 2019).

10 When a taxpayer's earned income exceeds a certain threshold, the amount of the EITC begins to decrease from its maximum amount. *See* Figure 5.2.1, *supra*.

11 Congressional Research Service, *The Earned Income Tax Credit (EITC) For Childless Workers* 2 (June 18, 2019).

12 IRS, Pub. 596, Earned Income Tax Credit, Tax Year 2019 (Jan. 28, 2020).

13 Congressional Research Service, *The Earned Income Tax Credit (EITC): Legislative History* (Apr. 2022).

14 *Id.*

15 IRS, Pub. 596, Earned Income Tax Credit, Tax Year 2021 (Jan. 10, 2022). The EITC for childless workers was temporarily doubled for TYs 2020 and 2021 but will return to the lower amount in FY 2022.

16 U.S. Bureau of Labor Statistics, Inflation Calculator, https://www.bls.gov/data/inflation_calculator.htm (last visited Dec. 19, 2022). The inflation adjusted value of $6,728 in 2022 is over $1,289, which is over three times the maximum of $400 in EITC that could be received in 1976 (note that this calculation is from June 2022 to June 1976).

17 IRS, Pub. 596, Earned Income Tax Credit, Tax Year 2021 (Jan. 10, 2022). Qualifying children must be a son, daughter, stepchild, foster child, or a descendant of these individuals. Qualifying children may also be a brother, sister, half-brother, half-sister, stepbrother, stepsister, or any descendant of these individuals.

18 IRS, CDW, IRTF including returns processed through August 25, 2022.

19 U.S. Department of Health Education and Welfare, National Center for Health Statistics, Divorce and Divorce Rates (United States), Series 21 No. 29 (Mar. 1978). U.S. Census Bureau, U.S. Marriage and Divorce Rates by State (Oct. 20, 2020), https://www.census.gov/library/visualizations/interactive/marriage-divorce-rates-by-state-2009-2019.html, (last accessed Dec. 27, 2022).

20 U.S. Department of Health Education and Welfare, Vital Statistics of the United States 1975, vol. III – Marriage and Divorce (1979). Centers for Disease Control and Prevention National Center for Health Statistics (Mar. 25, 2022), https://www.cdc.gov/nchs/fastats/marriage-divorce.htm (last accessed Dec. 27, 2022).

21 IRS, CDW, Individual Master File for Tax Year 2019 (Nov. 2022).

22 IRS, Pub. 5162, Compliance Estimated for Earned Income Tax Credit Claimed on 2006-2008 Returns (Aug. 2014).

23 *Id.* at 21.

24 *Id.* at 23.

25 *Id.* at 19.

26 The amount of wages, salaries, tips, and other taxable employee pay computed by the IRS. Employee pay is earned income only if it is taxable.

27 Tax Policy Center, *How to Sensibly Expand the Child Tax Credit and the Earned Income Tax Credit* (Aug. 2021). Jim Nunns, Elaine Maag, and Hang Nguyen; *see also* Center on Budget and Policy Priorities, *Strengthening the EITC for Childless Workers Would Promote Work and Reduce Poverty* (Feb. 2015), Chuck Marr and Chye-Ching Huang.

28 Form 1095-A data available to TAS did not have information to verify the length of time a dependent was a part of the taxpayer's household for insurance coverage purposes.

29 While the possibility exists that a child who is claimed as a member of a household for ACA purposes does not meet all the requirements to be an EITC qualifying child, a likelihood exists that the child is a member of the taxpayer's household and thus meets the residency requirement necessary to be an EITC qualifying child. Furthermore, the fact that the taxpayer has provided insurance coverage for the child indicates providing at least some of the support for the child, which is the underlying reason for the residency requirement (the taxpayer is providing for over half of the support for the child). While it is nearly impossible for the IRS to verify the residency status of a child claimed for EITC purposes, the IRS generally has internal data to verify the income of a taxpayer who is claiming a child for EITC purposes.

30 IRS, Pub. 5162, Compliance Estimated for Earned Income Tax Credit Claimed on 2006-2008 Returns (Aug. 2014). The IRS expects to release a new EITC compliance study in 2023.

31 Married taxpayers filing separate returns are ineligible to claim EITC.

32 In TY 2019, childless workers received 7.65 percent of generally earned income up to a maximum amount of $8,649. We examine effects of EITC if the portion of the credit based on income is 15.3 percent (up to the plateau and phase-out range of the existing credit).

33 This refers to an amount received after math error authority but prior to audit.

34 In TY 2019, the volume of taxpayers claiming one qualifying child was nearly half again as large as the number of taxpayers claiming two qualifying children and nearly three times the volume of taxpayers claiming three qualifying children.

35 Because of rounding, the new credit can differ by up to two dollars from the existing credit.

36 Appendix A contains a figure showing the effect of various combinations of filing status, number of qualifying children, and income category.

37 IRS, Pub. 5162, Compliance Estimated for Earned Income Tax Credit Claimed on 2006-2008 Returns 23 (Aug. 2014).

38 At the 95 percent confidence level.

39 IRC § 6109(i)(1)(A).

40 We excluded 105,252 with an IRS-computed EITC amount of $144,891,984 because data was not available on either these taxpayers' amount of earned income or the number of qualifying dependents claimed.

41 IRS, Pub. 5162, Compliance Estimated for Earned Income Tax Credit Claimed on 2006-2008 Returns 23 (Aug. 2014).

42 Elaine Maag, H. Elizabeth Peters, and Sara Edelstein, *Increasing Family Complexity and Volatility: The Difficulty in Determining Child Tax Benefits,* Urban Institute (Mar. 3, 2016), https://www.urban.org/research/publication/increasing-family-complexity-and-volatility-difficulty-determining-child-tax-benefits.

43 In all figures, S0 represents a Single, Head of Household, or Qualifying Widow(er) taxpayer with no qualifying children; S1 represents a Single, Head of Household, or Qualifying Widow(er) taxpayer with one qualifying child; S2 represents a Single, Head of Household, or Qualifying Widow(er) taxpayer with two qualifying children; S3 represents a Single, Head of Household, or Qualifying Widow(er) taxpayer with three qualifying children; M0 represents a Married Filing Jointly taxpayer with no qualifying children; M1 represents a Married Filing Jointly taxpayer with one qualifying child; M2 represents a Married Filing Jointly taxpayer with two qualifying children; and M3 represents a Married Filing Jointly taxpayer with three qualifying children. In this table, FS represents filing status Married or single); QC represents the number of qualifying children; and IC represents the income category (*see* Findings Objective 2).

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TAS Performance Measures and Indicators

The Taxpayer Advocate Service (TAS) has established measures, targets, and indicators in support of its strategic goals and the three balanced measures: customer satisfaction, employee satisfaction, and business results. Our measures and indicators are used to understand our strategic, operational, and organizational performance and support business decisions. TAS leadership remains dedicated to exploring new ways to improve our internal procedures and processes to make them more efficient for both our employees and taxpayers.

Resolve Taxpayer Problems Accurately and Timely

Due to the COVID-19 pandemic, the IRS had to suspend operations, which resulted in a backlog of inventory. As a result, TAS receipts increased and TAS had to take the unprecedented action to suspend its Quality Review Program (QRP). Effective September 2021, TAS reassigned its QRP staff to provide assistance to Case Advocates, therefore there is no data available for TAS Case Advocacy or Systemic Advocacy quality metrics.

Measure	Description	FY 2022 Target	FY 2022 Cumulative[1]
Overall Quality of Case Advocacy (CA) Closed Cases	Percentage of sampled closed cases meeting the prescribed attributes of advocacy, customer, and procedural focus.	87%	
Advocacy Focus of CA Closed Cases	Percentage of sampled closed cases where TAS advocated effectively in resolving taxpayers' issue, protecting taxpayers' rights, taking substantive actions, issuing Operations Assistance Requests (OARs) and Taxpayer Assistance Orders (TAOs), and keeping taxpayers informed.	90.5%	
Procedural Focus of CA Closed Cases	Percentage of sampled closed cases where TAS took actions in accordance with the tax code, Internal Revenue Manual (IRM), and technical and procedural requirements.	87.5%	
Customer Focus of CA Closed Cases	Percentage of sampled closed cases where TAS took timely actions and adhered to disclosure requirements.	83%	
Taxpayer Advocate Management Information System (TAMIS) Accuracy Review of CA Closed Cases[2]	Percentage of sampled closed cases with the correct TAMIS codes.	82%	
Customers Satisfied in CA Closed Cases[3]	Percentage of taxpayers who indicate they are very satisfied or somewhat satisfied with the service provided by TAS.	84%	
Customers Dissatisfied in CA Closed Cases	Percentage of taxpayers who indicate they are somewhat dissatisfied or very dissatisfied with the service provided by TAS.	Indicator	

Measure	Description	FY 2022 Target	FY 2022 Cumulative[1]
Solved Taxpayer Problem in CA Closed Cases[4]	Percentage of taxpayers from the customer satisfaction survey who indicate the TAS employee did their best to solve the taxpayer's problems.	85%	
Operations Assistance Request (OAR) Reject Rate[5]	Percentage of TAS's rejected OAR requests for IRS operating division or function's actions.	Indicator	4.9%
Expired OAR Rate[6]	Percentage of OARs that were open at the end of a period where the Requested Completion Date or (if present) Negotiated Completion Date is more than five workdays overdue.	Indicator	8.5%
Relief Granted[7]	Percentage of closed cases where TAS provided full or partial relief.	Indicator	79.7%
TAOs Issued[8]	Count of TAOs issued by TAS.	Indicator	4,062
Median – Closed Case Cycle Time	Median number of days taken to close TAS cases. This indicator *does not* include reopened cases.	Indicator	89
Mean – Closed Case Cycle Time	Mean number of days taken to close TAS cases. This indicator includes reopened cases.	Indicator	121.5
Closed Cases per CA full-time equivalents (FTEs)	Number of closed cases divided by total Case Advocacy FTEs realized. (This includes all labor hours reported to the Executive Director of Case Advocacy).	Indicator	193.4
Closed Cases per Direct FTE	Number of closed cases divided by direct CA FTEs realized.	Indicator	552
Systemic Burden Receipts	Percentage of systemic burden receipts, Criteria 5 through 7, compared to all receipts excluding reopened case receipts.	Indicator	46.2%
Percentage of NTA Toll-Free Calls Answered by Centralized Case Intake (CCI)	Percentage of NTA Toll-Free calls answered compared to the total number of NTA Toll-Free calls transferred to CCI.	Indicator	25.9%
CCI Created Cases	Number of cases created from intake advocate calls that meet the TAS case acceptance criteria.	Indicator	6,920
Quick Closures	Number of quick closures by all Intake Advocates.	Indicator	619
CCI Assistance Provided and No Case Created[9]	Number of calls CCI provided assistance on without creating a case or completing a quick closure.	Indicator	14,541

Protect Taxpayer Rights and Reduce Burden

Measure	Description	FY 2022 Target	FY 2022 Cumulative
Overall Quality for Systemic Advocacy (SA) Projects[10]	Percentage of SA projects and immediate interventions (II) meeting the advocacy, customer, and procedural quality attributes' measures.	90.0%	
Advocacy Focus for SA Projects	Percentage of SA projects and IIs where SA took the appropriate actions to resolve taxpayer problems.	90.0%	
Customer Focus for SA Projects	Percentage of SA projects and IIs where SA provided substantive updates to the submitter during the initial and subsequent contacts, contacted internal and external stakeholders, wrote correspondence following established guidelines, and took outreach and education actions when appropriate.	90.0%	
Procedural Focus for SA Projects	Percentage of SA projects and IIs where SA resolved submitter's inquiries efficiently within the guidelines and timeframes prescribed and through proper workload management.	90.0%	
Satisfaction of Taxpayer Advocacy Panel (TAP) members[11]	Percentage of satisfaction of TAP members who indicate they agree or strongly agree to the member survey question, "I have been satisfied as a member of the TAP."	85%	
Satisfaction of Users of Systemic Advocacy Management System (SAMS)	Percentage of SAMS users who indicate they agree or strongly agree to the survey question, "I would recommend SAMS to others as a way to elevate systemic issues."	80%	76%
SAMS Review Process Median Days[12]	Median count of days it takes SA to complete the three-level review process from the issue submission date to the date issue is closed on SAMS.	Indicator	0
Projects Validated as Involving a Systemic Issue	Percentage of overall advocacy projects closed that an SA Technical Advocacy Director validates as a systemic issue.	Indicator	100%
Internal Management Document (IMD) Recommendations Accepted by the IRS	Count and percentage of TAS's IMD recommendations accepted by the IRS.	Indicator	263 (65%)
Advocacy Effort Recommendations Made to the IRS	Count of advocacy effort recommendations. Advocacy efforts include projects, task forces, collaborative teams, Advocacy Issue Teams, and rapid response teams (excludes IMD/SPOC and Annual Report to Congress).	Indicator	16
Advocacy Effort Recommendations Accepted by the IRS	Count of advocacy effort recommendations accepted by the IRS.	Indicator	15

Measure	Description	FY 2022 Target	FY 2022 Cumulative
TAP Recommendations Fully or Partially Accepted[13]	Percentage of fully or partially accepted TAP recommendations accepted by the IRS.	Indicator	
Number of Proposed Taxpayer Advocate Directives (TADs)	Count of Proposed TADs. As defined in IRM 13.9.1, Procedures for Taxpayer Advocate Directives, a proposed TAD is a written communication from the National Taxpayer Advocate that recommends action (or forbearance of action) to address a systemic problem that affects multiple taxpayers, which TAS has brought to the attention of the responsible IRS head of office. A Proposed TAD is marked "Proposed TAD."	Indicator	0
Number of TADs Issued	Count of formal TADs. Per IRM 13.9.1, Procedures for Taxpayer Advocate Directives, a TAD is a statutory tool the National Taxpayer Advocate may use to elevate systemic issues that affect multiple taxpayers to ensure that IRS senior leadership is fully informed of urgent and significant issues and the National Taxpayer Advocate's recommendations to address those issues.	Indicator	2

Sustain and Support a Fully-Engaged and Diverse Workforce

Measure	Description	FY 2022 Target	FY 2022 Cumulative
Employee Satisfaction	Percentage of satisfaction of employees who respond satisfied or very satisfied to the employee satisfaction survey question, "Considering everything, how satisfied are you with your job?"	71%	70%
Employee Participation	Percentage of employees who take the employee satisfaction survey.	68%	53%

Annual Report to Congress (ARC) Recommendations

Measure	Description	FY 2022 Target	CY 2020 Cumulative	CY 2021 Cumulative
ARC Most Serious Problem (MSP) Recommendations Made to IRS	Count of ARC MSP recommendations made by TAS to the IRS each year through the ARC.	Indicator	73	88
Number of ARC MSP Recommendations Accepted by IRS[14]	Count of MSP recommendations in ARC accepted by IRS.	Indicator	48	61

Measure	Description	FY 2022 Target	CY 2020 Cumulative	CY 2021 Cumulative
Percentage of ARC MSP Recommendations Accepted by IRS	Percentage of total ARC MSP recommendations accepted by IRS each year in the ARC compared to the total number of recommendations made.	Indicator	66%	69%
ARC MSP Recommendations Implemented by IRS[15]	Count of the recommendations accepted by IRS and implemented.	Indicator	21	29
ARC Legislative Recommendations Enacted by Congress[16]	Count of Legislative Recommendations provided in the ARC and enacted by Congress.	Indicator	0	4

Endnotes

1 Effective September 13, 2021, TAS suspended the entire quality review process performed by QRP to provide assistance to CAs.

2 *Id.*

3 TAS administers an internally developed customer satisfaction survey annually. FY 2022 results are not available at the time of this report.

4 *Id.*

5 OAR Reject Rate excludes reject reason Business Operating Division/function disagrees.

6 This metric is a point estimate as of the date the report is run and is not cumulative. Results will vary depending on report run date. FY 2022 report run date was October 1, 2022.

7 TAS tracks resolution of taxpayer issues through codes entered on TAMIS at the time of closing. IRM 13.1.21.2, Closing Criteria (Apr. 1, 2021) requires case advocates to indicate the type of relief or assistance they provided to the taxpayer. The codes reflect full relief, partial relief, or assistance provided. This indicator *includes* reopened cases.

8 IRC § 7811 authorizes the National Taxpayer Advocate to issue a TAO when a taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the tax laws are being administered.

9 Data only reflects activity of intake advocates in CCI sites using the Aspect phone system and does not include activity of intake advocates in local offices that do not have the Aspect system.

10 Effective September 13, 2021, TAS suspended the entire quality review process performed by QRP to provide assistance to CAs by completing the closure process for their cases and monitoring for returns to be processed.

11 The TAP survey is administered to all Panel members. Results are not available at the time of this report.

12 For FY 2022, TAS closed more than 9,400 SAMS issues. New procedures allowed TAS to close immediately 7,411 SAMS submissions classified as Individual Issues in less than one day. Therefore, a majority of the days open were calculated as zero, resulting in zero for the SAMS Review Process Median Days. Removal of the Individual Issues skewing the data would result in a SAMS Review Process Median Days of 32 days.

13 Results are not available at the time of this report.

14 The IRS's responses to recommendations for CY 2021 are available online in the ARC Recommendations Tracker, https://www.taxpayeradvocate.irs.gov/arc-recommendations-tracker/.

15 The counts are not final as the IRS is continually working open recommendations.

16 The annual count is derived from the year legislation is enacted/passed and not the year recommendation was made. The CY count is updated after the release of Appendix 2 of the National Taxpayer Advocate's Purple Book in December.

Fiscal Year 2022 Objectives Report to Congress: Objectives Status Update

In its Fiscal Year 2022 Objectives Report to Congress, TAS outlined 34 key organizational objectives for the coming fiscal year (FY). This table presents status updates to each of the 34 objectives, which are grouped within three categories – Systemic Advocacy Objectives (SAOs), TAS Case Advocacy and Other Business Objectives, and TAS Research Objectives. For more detailed information on each objective and its activities, please visit the TAS Operational Plan website.

Objective #	Systemic Advocacy Objective	FY 2022 TAS Actions and Accomplishments
1	TAS will continue to dialogue with the IRS about hiring, recruitment, and retention and will review IRS Human Capital Office (HCO) strategies for measurable improvement, and if appropriate, make recommendations for improvement.	TAS continued discussions related to hiring, recruitment, and retention with IRS HCO. TAS reviewed HCO strategies for measurable improvement and made recommendations for improvement as necessary. TAS leadership continued to advocate for adequately sustained, multiyear funding to allow for increased IRS hiring capacity and to overcome employee attrition through the Congressional Affairs Program (CAP) Conference and the National Taxpayer Advocate's Annual Report to Congress, Most Serious Problems, and Legislative Recommendations. For example, in the 2021 Annual Report to Congress, the National Taxpayer Advocate published the Most Serious Problem, *The Lack of Sufficient and Highly Trained Employees Impedes Effective Tax Administration*, and the 2022 Purple Book Legislative Recommendation, *Revamp the IRS Budget Structure and Provide Sufficient Funding to Improve the Taxpayer Experience and Modernize the IRS's Information Technology Systems*, to urge Congress to ensure the IRS has sufficient funding, staffing, and technology to provide a high level of service to taxpayers while protecting their rights. Also, we reviewed changes made and implemented by IRS HCO to determine if it achieved measurable results to the improvement of the hiring process. Additionally, TAS continued to work with HCO to assist and comment on plans for recruitment and hiring and make recommendations that will meet the upcoming IRS hiring challenges while also increasing the level of customer service for taxpayers and stakeholders.
2	TAS will collaborate in developing the IRS's training strategy.	TAS's cross-functional team continued working on the next iteration of taxpayer rights training, which was released in October 2022. TAS completed the taxpayer rights scenarios, modernizing the training using the latest training development software. Further, TAS is highlighting this topic in the 2022 Most Serious Problem, *IRS Hiring and Training: Weaknesses in the Human Capital Office's Hiring, Recruitment, and Training Programs Are Undermining the IRS's Efforts to Achieve Appropriate Staffing to Meet Taxpayer Needs, supra.*

Objective #	Systemic Advocacy Objective	FY 2022 TAS Actions and Accomplishments
3	TAS will develop a strategy to gain insights into taxpayer needs that will inform a more robust prioritization plan for digital notice delivery.	TAS partnered with the IRS on prioritization of digital notice delivery based on taxpayer needs by collaborating with IRS on its timeline for when all notices issued by the IRS will be viewable within Online Account and Tax Pro Online Account and identified additional functionalities for Online Account. Also, TAS reviewed and commented on non-IRS online service offerings available to practitioners and worked with the IRS in its development of the Tax Pro Online Account. Through our collaboration with the IRS, TAS found ways to integrate the various online services into a seamless platform.
4	TAS will collaborate with the IRS to ensure continued improvement of the IRS's telephone and in-person service.	TAS worked with the IRS to improve its telephone and in-person service (Taxpayer Assistance Centers) through joint efforts on projects, direct advocacy, and inclusion of this issue in the 2021 Annual Report to Congress Most Serious Problem, *Taxpayers Face Significant Challenges Reaching IRS Representatives Due to Longstanding Deficiencies and Pandemic Complications* along with blogs from the National Taxpayer Advocate. TAS executives meet at least monthly with the IRS's Wage and Investment (W&I) Division to discuss and collaborate on emerging customer service issues.
5	TAS will work with the IRS to increase its transparency.	Transparency: For information on this objective, please visit the TAS Operational Plan website.
6	TAS will advocate for an expanded range of improved options for accessing IRS services and information using digital communications.	This advocacy effort was addressed in numerous ways including presentation in the 2021 Annual Report to Congress Most Serious Problem, *Digital Communication Tools Are Too Limited, Making Communication With the IRS Unnecessarily Difficult*, and the 2022 Purple Book Legislative Recommendation, *Revamp the IRS Budget Structure and Provide Sufficient Funding to Improve the Taxpayer Experience and Modernize the IRS's Information Technology Systems*. Additionally, TAS participated in sessions to identify business needs and requirements for tools to enable the delivery of externally facing IRS services across all channels while protecting taxpayer data from potential fraudsters and identity thieves; participated in the Omni-Channel Integrated Project Team to develop strategies to secure user access to the right IRS services; and completed the update of a memorandum to implement a deviation allowing taxpayers and representatives to use electronic or digital signatures.

Objective #	Systemic Advocacy Objective	FY 2022 TAS Actions and Accomplishments
7	TAS will identify and propose recommendations to mitigate future filing season delays and improve taxpayer service.	TAS Local Taxpayer Advocates (LTAs) played a critical role in Congress approving an increased budget for TAS by meeting with congressional offices weekly, sharing the status and effect of the IRS backlogs on taxpayers, and providing the National Taxpayer Advocate's blogs and talking points. The LTAs conducted virtual office visits during the CAP Conference and continued discussing the Annual Report to Congress, Most Serious Problems, and Legislative Recommendations. The LTAs focused their message on the 2021 Annual Report to Congress Most Serious Problem, *The Lack of Sufficient and Highly Trained Employees Impedes Effective Tax Administration,* and 2022 Legislative Recommendation, *Revamp the IRS Budget Structure and Provide Sufficient Funding to Improve the Taxpayer Experience and Modernize the IRS's Information Technology Systems*.
8	TAS will continue to work with the IRS to minimize refund delays for taxpayers whose legitimate tax returns are delayed by IRS fraud filters.	TAS participated with the IRS on initiatives such as Secure Access Digital Identity (SADI) authentication and the Documentation Upload Tool (DUT) expansion efforts. Taxpayers selected by the identity theft (IDT) filters will use SADI to authenticate their identities and validate their tax return filing. Some of the fraud (non-IDT) filter workstreams now accept taxpayer substantiation through the DUT. SADI is easier to use than Secure Access, and uploading documents to DUT is quicker than mailing or faxing. TAS identified issues with SADI that prevented taxpayers from successfully completing authentication through the Video Agent (virtual) method. TAS elevated the issue to the IRS and collaborated with it to clarify the taxpayer's next steps upon successful video authentication. Additionally, the IRS expanded DUT to allow taxpayers who received the IRS Notice "Information Regarding Your Refund – Refund Being Held Pending More Thorough Review" to respond to the IRS.
9	TAS will work with the IRS to identify enhanced e-filing and digital signature options.	Enhanced e-filing and digital signature options: For information on this objective, please visit the TAS Operational Plan website.
10	TAS will continue to advocate for allowing taxpayers requesting an abatement the opportunity for administrative review with the Independent Office of Appeals, issuance of a 30-day letter, and improved online tools.	The IRS removed a selectable paragraph in Letter 916C that states the law does not allow taxpayers to file a claim to reduce the tax they owe or appears to advise taxpayers they cannot seek an abatement of tax without first paying the amount of tax already assessed. The corresponding Internal Revenue Manual 21.5.3.4.6 has been revised to no longer suggest the use of this paragraph. TAS continued to advocate for an appeal process for denied requests for abatement and made recommendations as appropriate by starting preliminary discussions with various stakeholders including Chief Counsel and the Independent Office of Appeals about possible revisions to the letter. TAS anticipates that securing approvals of the various Business Operating Divisions who use the letter, and making actual changes to the letter will be a multiyear effort.

Objective #	Systemic Advocacy Objective	FY 2022 TAS Actions and Accomplishments
11	TAS will work with the IRS with the goal of preventing Recovery Rebate Credit (RRC) math errors in the next filing season.	TAS continued educating taxpayers through outreach opportunities. TAS completed nationwide outreach to educate taxpayers about filing season topics and ways to avoid common filing errors during 65 pre-filing season events. The topics included the RRC, the Advance Child Tax Credit (AdvCTC), and additional filing season reminders to prevent delays in the processing of returns. Taxpayers were encouraged to file tax returns electronically and use IRS online resources to reconcile the RRC and/or AdvCTC payments. TAS partnered with the IRS to provide face-to-face assistance to taxpayers nationally during 20 "Taxpayer Experience Days" held on Saturdays. Also, TAS leadership partnered with the IRS during the "Hearing All Voices" events to cultivate relationships with small business owners by educating them about the filing season preparations and by listening to their tax issues. TAS analysts completed review of the 2021 RRC Form 1040 instructions and worksheets and found no errors in the instructions. TAS will continue to monitor the RRC and AdvCTC and provide input as issues arise.
12	TAS will continue working with the IRS in FY 2021 on the implementation of the unemployment compensation recovery process and ensure the recovery is complete into FY 2022.	Unemployment compensation recovery process: For information on this objective, please visit the TAS Operational Plan website.
13	TAS will ensure the Child Tax Credit Update Portal (CTCUP) and periodic payments are accurate and timely.	TAS participated on servicewide teams until the CTCUP and CTC non-filer sign-up tool closed, and periodic payments ended December 2021. TAS collaborated with the IRS to provide IRM updates, correspondence products, self-help guidance, and other materials to reflect the legislative mandates and procedures. The team completed updates to the IRMs, forms, publications and letters dealing with the American Rescue Plan Act. Additionally, TAS worked with the IRS to develop targeted outreach for taxpayers and tax professionals regarding the options and benefits of the CTCUP and the Non-Filers Sign-Up tool.
14	TAS will strategize with the IRS to connect and better communicate with taxpayers involved in the correspondence audit process.	Correspondence audit process: For information on this objective, please visit the TAS Operational Plan website.
15	TAS will work with the IRS to identify any areas needing improvement in collection practices and communication, specifically for low-income taxpayers.	TAS developed a method to identify taxpayers with defaulted installment agreements (IAs) whose necessary living expenses exceeded their gross income and who may be eligible for an offer in compromise (OIC). The IRS accepted TAS's method and will test the effectiveness of soliciting OICs from a statistically valid sample of these taxpayers.

Objective #	Systemic Advocacy Objective	FY 2022 TAS Actions and Accomplishments
16	TAS will continue to work with the IRS to resolve the issues contributing to erroneous Collection Statute Expiration Dates (CSEDs) resulting from unreversed pending IAs.	The Integrated Automation Technology (IAT) Compliance Suite Payment Calculator was used to verify that an IA will fully pay all amounts for which the taxpayer is liable prior to the CSED. The IAT CSED Calculator Tool was used to determine the length of the CSED extension for each tax module or for extending the CSED to one date for all modules, ensuring no CSED extension is longer than five years (plus up to one year to account for changes in the agreement). The IRS paused use of the IAT CSED Calculator Tool; however, if it restarts, TAS will reengage in its efforts. Additionally, the IRS has established a process to ensure payments are returned to taxpayers when they are not barred by the refund statute. TAS will monitor the progress.
17	TAS will work with the IRS to determine if it can develop a more targeted approach to reach taxpayers for whom OICs may be a viable option.	OICs: For information on this objective, please visit the TAS Operational Plan website.
18	TAS will continue to advocate to mitigate the unintended impact of the filing season postponements to taxpayers whose advance payments (including withholding and quarterly payments) no longer correspond to the due date for 2019 and 2020 tax returns.	The Department of the Treasury agreed to include this recommendation in its Priority Guidance Plan. Please see page 18, #21, https://www.irs.gov/pub/irs-utl/2022-2023-pgp-initial.pdf.
19	TAS will work with the IRS to identify delays and propose recommendations to improve the timely payment of tentative allowances.	TAS created and worked a project to evaluate the adequacy of IRS systems reporting on the status of taxpayer applications for refund and anticipated delays. TAS collaborated with the IRS to identify issues causing delays, expedite relief to taxpayers, and propose recommendations. Some of TAS's actions included monitoring inventory levels of Form 1045, Application for Tentative Refund, for individuals and Form 1139, Corporation Application for Tentative Refund, for businesses. TAS advocated for a dedicated fax line, or other means of delivery to expedite processing of paper forms, recommended the IRS assign a specific employee unit to process the forms, and developed a communication strategy to guarantee the IRS is transparent and informs taxpayers regarding the status of their application for refund and any anticipated delays. Additionally, TAS published the 2021 Annual Report to Congress Most Serious Problem, *Electronic Filing Barriers Increase Taxpayer Burden, Cause Processing Delays, and Waste IRS Resources,* where the National Taxpayer Advocate recommended that the IRS invest in 2-D bar code technology and enhanced optical character recognition software to expedite and optimize the processing of paper-filed tax returns and forms.

Objective #	Systemic Advocacy Objective	FY 2022 TAS Actions and Accomplishments
20	TAS will provide recommendations to improve timely processing of Individual Taxpayer Identification Number (ITIN) applications and associated tax returns and promote communications and education for the resident alien community.	ITINs: For information on this objective, please visit the TAS Operational Plan website.
21	TAS will work with the IRS to end systemic assessment of International Information Return (IIR) penalties and replace that system with an improved, fair program.	The IRS incorporated the relief from systemic assessment of IIR penalties in paragraph 12 of IRM 21.8.2.19.2. Although it was made official in October 2022, the relief was contemplated in late 2021 and for the most part was effective immediately. Moreover, the relief provided a systemic abatement for most tax year (TY) 2019 and 2020 systemically-assessed IIR penalties, and in reality, the IRS did not assert the IRC § 6677 penalty for TY 2020 filings in anticipation of the IRM change. Aged penalty abatement requests for TY 2018 and prior have been and are still being considered by the IRS as it has worked through its backlogs.
22	TAS will research the effectiveness of the new Voluntary Disclosure Program (VDP), announced November 20, 2018, as compared to the earlier VDP it replaced.	TAS researched the effectiveness of the new VDP and developed recommendations to improve the process. TAS finalized a project to monitor issues related to the ending of the Offshore Voluntary Disclosure Program in 2018 and the changes in November 2020 to the Delinquent International Information Return Submission Procedures. Although no issues specific to the program or preclearance process have been identified, and most TAS cases in the VDP appear to be due to general IRS processing delays attributable to the COVID-19 pandemic, TAS continues analyzing data of the VDP accounts opened by IRS's Examination Division since September 2018 and the small percentage of instances for which TAS has a case.

Objective #	TAS Case Advocacy and Other Business Objectives	FY22 TAS Actions and Accomplishments
1	TAS will expand its use of digital tools to interact with taxpayers, practitioners, and congressional offices.	TAS expanded the use and availability of several digital tools among TAS employees to enhance interactions with taxpayers, practitioners, and congressional offices. These included the testing and expansion of DUT in our Hartford, CT office. The rollout will continue to other areas. Also, IRS's Enterprise Case Management (ECM) led a team analysis of case advocacy needs and opportunities for case management, with representatives from TAS and W&I staff involved in call handling, case intake, and case management. TAS monitored ECM progress on components for external referrals that have potential for reuse. Additionally, TAS continues to monitor the implementation of Taxpayer Digital Communication (TDC) across all business units and channels, including TAS. Work on this objective will continue in FY 2023 by evaluating if further expansion and enhancements of DUT beyond the initial rollout are possible and beneficial, collaborating within the ECM office to modernize system capabilities using "ride-along" processes, and working with the IRS to expand the TDC channels. Also, the funding request for the TAS case status advisor advanced to the next selection round. TAS submitted the full application for funding prioritization before the Enterprise deadline.
2	TAS will identify case process efficiencies.	TAS leadership approved three improvements identified by the Lean Six Sigma team. Implementation of the improvements will begin in FY 2023. TAS completed negotiations and reached agreement with W&I on an updated Service Level Agreement (SLA). Further, the risk assessment and management strategy were approved by leadership with implementation planned for FY 2023. During FY 2023, we will continue to identify and address the impact of the pandemic on our work processes. Also, we will continue tracking the progress of an Integrated Action Tool programming change to calculate the CSED and correct erroneous accounts, identifying additional delegated authorities for regular use by TAS to improve taxpayer service, and developing our intake strategy.
3	TAS will update existing SLAs.	TAS updated our SLAs and collaborated with four IRS organizations to replicate and finalize the existing SLAs into unique sections within the IRM. TAS will continue to work with the other IRS organizations to replicate their SLAs into the IRM and to finalize a new IRM section outlining the SLA negotiation and update process during FY 2023.
4	TAS will develop a proposal to expand its delegated authorities.	Delegated Authorities: For information on this objective, please visit the TAS Operational Plan website. The National Taxpayer Advocate plans to revisit delegated authorities in FY 2023.

Objective #	TAS Case Advocacy and Other Business Objectives	FY22 TAS Actions and Accomplishments
5	TAS will expand its outreach efforts with a focus on reaching the underserved and giving taxpayers the tools to help resolve their issues sooner.	To expand the use of virtual outreach, the TAS Case Advocacy function partnered with the Low Income Taxpayer Clinic (LITC) program to garner support to deploy Virtual Service Delivery kiosks on two Native American reservations. Further, Case Advocacy continued to expand Native Americans' ability to reach TAS through outreach and our digital platforms. TAS continued the expansion of the digital Taxpayer Roadmap Online Tool to include additional IRS processes and explore providing the tool in Spanish by reviewing the existing Roadmap content. New content was identified and is under consideration by leadership. Also, TAS identified 127 notice pages for review on the Taxpayer Roadmap located on the TAS website to make certain the content is current and accurate. If content changes are needed, TAS will publish and coordinate all updates.
6	TAS will use new platforms to recruit qualified candidates to address ongoing staffing needs.	Although the IRS-imposed hiring pause was lifted for TAS, the announcement for the TAS recruitment analyst position was moved to the first quarter of FY 2023. As of July 2022, TAS temporarily detailed an employee into the TAS Human Resources office to take initial actions to get the TAS Recruitment and Workforce Planning Strategy up and running. While our goal for FY 2022 was to hire 20 to 25 employees through the Non-Paid Work Experience (NPWE) program, we have encountered issues filling these positions and have submitted hiring requests to bring on eight NPWE. Some of the applicants declined employment due to the length of time it took to get the background check completed or because the temporary job offers were rescinded by IRS HCO. TAS will continue work related to hiring a recruitment analyst during the first quarter of FY 2023.
7	TAS will modernize and expand its training to ensure all employees, especially new hires, receive timely training to be successful in their position.	TAS completed activities for revamping existing case advocate and intake advocate training, deploying a self-study course for all lead case advocates, designing new manager training curriculum, expanding the implementation of virtual training methods, providing external training and continuing professional education credits, and training for managers on leading in a virtual environment. During FY 2023, TAS will continue to support the IRS's Taxpayer First Act training initiatives and develop a consistent and streamlined onboarding process for new hires.
8	TAS will continue to support and expand leadership development.	TAS created a dedicated Coaching SharePoint resource page for TAS coaches and program participants and updated the professional development section of the TAS Welcome Screen. During the first quarter of FY 2023, TAS will continue monitoring HCO's progress in the Leadership Succession Review cycle.

Objective #	TAS Research Objectives	FY22 TAS Actions and Accomplishments
1	TAS will determine taxpayer needs and preferences for establishing online accounts with the IRS and authenticating secure access to those accounts.	TAS Research issued a report to Online Services regarding the focus group moderators guide and data collection instrument. TAS will continue to work other issues on this objective in FY 2023 with additional deliverables in the first quarter.
2	TAS will analyze why taxpayers often do not respond to various types of IRS notices and letters and how to improve the response rate.	TAS compiled the response rates for several IRS notices and letters with high non-response rates. Further, TAS began reviewing IRS procedures for handling incoming taxpayer correspondence to identify ways to improve efficiency when processing taxpayer responses. Also, TAS held focus groups with tax preparers at the IRS Tax Forums. The focus groups solicited suggestions to clarify IRS written communications, so taxpayers understand what actions they need to take. Lastly, TAS contracted with a private vendor to conduct focus groups and surveys with taxpayers who have not responded to specific types of IRS correspondence to determine and quantify the reasons for non-response.
3	TAS will analyze tax return data, administrative Earned Income Tax Credit (EITC) audit files, and census data to recommend a credit structure that is easier to administer while generating similar benefits to low-income families.	TAS interviewed IRS Research personnel who have worked extensively on EITC compliance studies to obtain their insights and suggestions for changes in the structure of EITC guidelines while preserving the benefit to low-income taxpayers brought by this credit.
4	TAS will determine causes of Form 4029, Application for Exemption of Social Security and Medicare Taxes and Waiver of Benefits, processing errors and work with the IRS to implement changes to its processing procedures. TAS will share the data and our research with the IRS for outreach endeavors to educate taxpayers on potential errors and best practices in filing Form 4029.	TAS Research analyzed Form 4029 processing errors and found no systemic issues. The project was subsequently closed.

Glossary of Acronyms

ACRONYM	DEFINITION
AA	Acceptance Agent
ABA	American Bar Association
ACA	American Citizens Abroad
ACS	Automated Collection System
ACTC	Additional Child Tax Credit
ACM	Appeals Case Memorandum
AdvCTC	Advance Child Tax Credit
AFSP	Annual Filing Season Program
AGI	Adjusted Gross Income
AICPA	American Institute of Certified Public Accountants
AJAC	Appeals Judicial Approach and Culture
ALE	Allowable Living Expense
ALP	Automated Levy Program
AM	Accounts Management
AMS	Accounts Management System
AO	Appeals Officer
AOD	Action on Decision
AOTC	American Opportunity Tax Credit
APF	Appropriated Fund
APS	Account and Processing Support
APTC	Advance Premium Tax Credit
ARC	Annual Report to Congress
ARPA	American Rescue Plan Act
ASEC	Annual Social and Economic Supplement
ATCL	Appeals Team Case Leader
ATE	Appeals Technical Employee
ATIN	Adoption Taxpayer Identification Number
ATO	Australian Tax Office
AUR	Automated Underreporter
BLS	Bureau of Labor Statistics
BMF	Business Master File
BOD	Business Operating Division
BOLA	Business Online Account
BPA	Blanket Purchase Agreement
BPMS	Business Performance Management System
BPR	Business Performance Review
CA	Case Advocacy

ACRONYM	DEFINITION
CAA	Certified Acceptance Agent
CAF	Centralized Authorization File
CAP	Collection Appeals Program or Congressional Affairs Program
CAR	Collection Activity Report
CARES Act	Coronavirus Aid, Relief, and Economic Security Act
CAS	Customer Account Services
CAV	Community Assistance Visit
CCDM	Chief Counsel Directives Manual
CCH	Commerce Clearing House
CCI	Centralized Case Intake
CDP	Collection Due Process
CDW	Compliance Data Warehouse
CET	Correspondence Examination Technician
CI	Criminal Investigation (Division)
CIS	Collection Information Statement
CNC	Currently Not Collectible
COGS	Cost of Goods Sold
COVID-19	Coronavirus Disease 2019
CPA	Certified Public Accountant
CPS	Current Population Survey
CSED	Collection Statute Expiration Date
CSP	Credential Service Provider
CSR	Customer Service Representative
CTAS	Comprehensive Taxpayer Attitude Survey
CTC	Child Tax Credit
CTCUP	Child Tax Credit Update Portal
CWA	Contemporaneous Written Acknowledgement
CY	Calendar Year
DAWSON	Docket Access Within a Secure Online Network
DCI	Data Collection Instrument
DCIA	Debt Collection Improvement Act of 1996
DDIA	Direct Debit Installment Agreement
DHA	Direct Hire Authority
DHS	Department of Homeland Security
DIF	Discriminant Index Function

ACRONYM	DEFINITION
DIIRSP	Delinquent International Information Return Submission Procedures
DMDC	Defense Manpower Data Center
DO	Delegation Order
DOJ	Department of Justice
DOR	Department of Revenue
DUT	Documentation Upload Tool
EA	Enrolled Agent
EB	Economic Burden
EC	Error Code
ECM	Enterprise Case Management
EFTPS	Electronic Federal Tax Payment System
EIC	Earned Income Credit
EIN	Employer Identification Number
EITC	Earned Income Tax Credit
ERPA	Enrolled Retirement Plan Agents
ERS	Error Resolution System
ESL	English as a Second Language
ET	Eastern Time
ETA	Effective Tax Administration
ETAAC	Electronic Tax Administration Advisory Committee
ETARAS	Electronic Tax Administration Research and Analysis System
EV	Electric Vehicle
FAFSA	Free Application for Federal Student Aid
FAQ	Frequently Asked Question
FATCA	Foreign Account Tax Compliance Act
FBAR	Report of Foreign Bank and Financial Accounts
FFI	Free File Incorporated
FICA	Federal Insurance Contributions Act
FinCEN	Financial Crimes Enforcement Network
FIPS	Federal Information Processing Standard
FIRE	Filing Information Returns Electronically
FIRPTA	Foreign Investment in Real Property Tax Act
FISMA	Federal Information Security Management Act
FPLP	Federal Payment Levy Program
FRCP	Federal Rules of Civil Procedure
FS	Filing Status
FTE	Full-Time Equivalent

ACRONYM	DEFINITION
FTF	Failure-to-File
FTP	Failure-to-Pay
FY	Fiscal Year
GAO	Government Accountability Office
GDP	Gross Domestic Product
GILTI	Global Intangible Low-Taxed Income
GOP	Grand Old Party
GS	General Schedule
HAB	Highest Aggregate Balance
HCO	Human Capital Office
HoH	Head of Household
HR	Human Resources
IA	Installment Agreement
IAT	Integrated Automation Technology
IC	Income Category
ID	Identification
IDEA	Integrated Digital Experience Act
IDT	Identity Theft
IGM	Interim Guidance Memorandum
II	Immediate Intervention
IMD	Internal Management Document
IMF	Individual Master File
IP PIN	Identity Protection Personal Identification Number
IR	Information Return
IRA	Inflation Reduction Act
IRB	Internal Revenue Bulletin
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
IR Mod	Information Returns Modernization
IRS	Internal Revenue Service
IRSU	IRS University
IRTF	Individual Return Transaction File
IT	Information Technology
ITIN	Individual Taxpayer Identification Number
ITS	International Treasury Service
IVES	Income Verification Express Service
JCT	Joint Committee on Taxation
JOC	Joint Operations Center
KDA	Knowledge Development and Application

ACRONYM	DEFINITION
LB&I	Large Business and International Operating Division
LII	Low-Income Indicator
LITC	Low Income Taxpayer Clinic
LLC	Limited Liability Company
LOS	Level of Service
LR	Legislative Recommendation
LTA	Local Taxpayer Advocate
MeF	Modernized e-File
MFA	Multifactor Authentication
MLI	Most Litigated Issue
MOU	Memorandum of Understanding
MSP	Most Serious Problem
NASE	National Association for the Self-Employed
NDS	Notice Delivery System
NEC	Nonemployee Compensation
NFTL	Notice of Federal Tax Lien
NIST	National Institute of Standards and Technology
NMP	Net Misreporting Percentage
NPWE	Non-Paid Work Experience
NR	Non-Resident
NRP	National Research Program
NTA	National Taxpayer Advocate
OAR	Operations Assistance Request
OBR	Offset Bypass Refund
OCC	Office of the Comptroller of the Currency
OCR	Optical Character Recognition
OD	Operating Division
ODC	Credit for Other Dependents
OECD	Organisation for Economic Co-operation and Development
OIC	Offer in Compromise
OLS	Online Services
OMB	Office of Management and Budget
OPA	Online Payment Agreement
OPM	Office of Personnel Management
OPR	Office of Professional Responsibility
OSP	Office of Servicewide Penalties
OVDP	Offshore Voluntary Disclosure Program
PACER	Public Access to Court Electronic Records
PATH	Protecting Americans from Tax Hikes

ACRONYM	DEFINITION
PAYE	Pay as You Earn
PCA	Private Collection Agency
PDC	Private Debt Collection
PDF	Portable Document Format
PFIC	Passive Foreign Investment Company
PGP	Priority Guidance Plan
PIN	Personal Identification Number
PLR	Private Letter Ruling
PMPA	Program Management/Process Assurance
PMTA	Program Manager Technical Advice
POA	Power of Attorney
PPS	Practitioner Priority Service
PR	Puerto Rico
PRWVH	Pre-Refund Wage Verification Hold
PTA	Parent Teacher Association
PTC	Premium Tax Credit
PTIN	Preparer Tax Identification Number
PY	Processing Year
Q&A	Question and Answer
QBI	Qualified Business Income
QC	Qualifying Children
QRP	Quality Review Program
RAAS	Research, Applied Analytics, and Statistics
RAD	Research Analysis and Data
RCP	Reasonable Collection Potential
RIVO	Return Integrity Verification Operation
RO	Revenue Officer
RPO	Return Preparer Office
RPP	Return Review Program
RRA 98	IRS Restructuring and Reform Act of 1998
RRC	Recovery Rebate Credit
SA	Systemic Advocacy
SADI	Secure Access Digital Identity
SAIN	Standard Audit Index Number
SAMS	Systemic Advocacy Management System
SAO	Systemic Advocacy Objective
SB/SE	Small Business/Self-Employed Operating Division
SBA	Small Business Administration
SECA	Self-Employment Contributions Act
SERP	Servicewide Electronic Research Program

ACRONYM	DEFINITION
SITLP	State Income Tax Levy Program
SLA	Service Level Agreement
SME	Subject Matter Expert
SMS	Short Message Service
SND	Statutory Notice of Deficiency
SPOC	Single Point of Contact
SSA	Social Security Administration
SSDI	Social Security Disability Income
SSI	Supplemental Security Income
SSN	Social Security Number
STARS	Strategic Talent Analytics and Recruitment Solutions
SWPS	Servicewide Preparer Strategy
TAC	Taxpayer Assistance Center
TAD	Taxpayer Advocate Directive
TAMIS	Taxpayer Advocate Management Information System
TAO	Taxpayer Assistance Order
TAP	Taxpayer Advocacy Panel
TAS	Taxpayer Advocate Service
TASIS	Taxpayer Advocate Service Integrated System
TBOR	Taxpayer Bill of Rights
TCC	Transmitter Control Code
TCE	Tax Counseling for the Elderly
TCJA	Tax Cuts and Jobs Act
TCMP	Tax Compliance Measurement Program
TDC	Taxpayer Digital Communication
TDS	Transcript Delivery System
TEFRA	Tax Equity and Fiscal Responsibility Act
TFA	Taxpayer First Act
TIA	Tax Information Access
TIGTA	Treasury Inspector General for Tax Administration
TIN	Taxpayer Identification Number
TPC	Third-Party Contact
TPI	Total Positive income
TPP	Taxpayer Protection Program
TTS	Text-to-Speech
TXO	Taxpayer Experience Office
TY	Tax Year
UC	Unemployment Compensation

ACRONYM	DEFINITION
UCE	Unemployment Compensation Exclusion
UK	United Kingdom
UWR	Unified Work Request
VDP	Voluntary Disclosure Program
VITA	Volunteer Income Tax Assistance
VSD	Virtual Service Delivery
W&I	Wage and Investment Operating Division
WebSD	Web Service Delivery
WMAR	Where’s My Amended Return
WMR	Where’s My Refund

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Publication 2104 (Rev. 12-2022) Catalog Number 23655L Department of the Treasury Internal Revenue Service www.irs.gov