National Taxpayer Advocate

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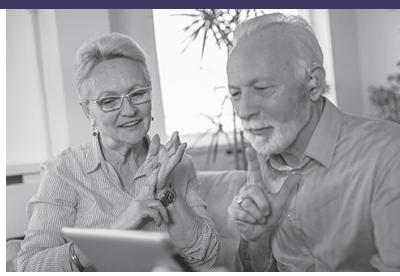

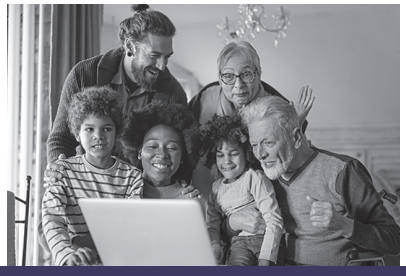

TAXPAYER ADVOCATE SERVICE

YOUR VOICE AT THE IRS

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(published as separate volume)

NATIONAL TAXPAYER ADVOCATE 2023 RESEARCH REPORTS
(published as a separate volume; available online after January 31, 2024)

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 2023 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 tax issues most frequently litigated in the Tax Court and other federal courts, 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 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration*.

The year 2023 was one of extraordinary transition for the IRS and therefore for taxpayers. Despair has turned to cautious optimism. Because of the COVID-19 pandemic, the three preceding years had been the most challenging years the agency and most taxpayers had ever experienced. The IRS shut its offices and stopped processing paper-filed tax returns and correspondence for several months after the onset of the pandemic in 2020, and it then reopened those functions only partially for several months to comply with social distancing requirements. Tax returns and taxpayer correspondence sat unopened in trailers for months on end.

By the close of the 2021 filing season, the agency faced a backlog of over 35 million tax returns that required manual data entry or employee review.[2] Millions of taxpayers waited ten months or more to receive their refunds, resulting in financial hardships for many. A record 282 million telephone calls came into the IRS during fiscal year (FY) 2021. IRS employees only answered 11 percent of them.[3] As a result, many taxpayers were doubly harmed. The IRS wasn't meeting taxpayer needs, and when frustrated and sometimes frantic taxpayers called the IRS for help, they couldn't get through.

By the end of FY 2022, the clouds began to part. The IRS had worked through most of its processing backlog of original individual income tax returns (Forms 1040). Congress had not implemented late-year or retroactive changes in law that would have required the IRS to reprogram its systems and caused confused taxpayers to inundate the IRS with telephone calls seeking clarification. Congress had provided significant additional funding through the Inflation Reduction Act (IRA) for the IRS to modernize and transform its operations.[4] For the first time since I began serving as the National Taxpayer Advocate in March 2020, discussions about improving the taxpayer experience and modernizing the IRS's information technology (IT) systems do not seem like merely wishful thinking. Realistically, however, the IRS has a tall mountain to climb to achieve its goals of rebuilding the agency, modernizing its systems, and providing the quality service taxpayers deserve.

During the early part of FY 2023, the IRS developed and published a Strategic Operating Plan (SOP) that details key objectives to improve the taxpayer experience and modernize IRS operations.[5] The SOP was the culmination of intense agency-wide discussions, analysis, and planning. The IRS has begun to

1 IRC § 7803(c)(2)(B)(ii).
2 National Taxpayer Advocate Fiscal Year 2022 Objectives Report to Congress 1, 6 (*Review of the 2021 Filing Season*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/06/JRC22_FullReport.pdf (citing data provided by the IRS Wage and Investment (W&I) Division).
3 IRS, Joint Operations Center (JOC), Snapshot Reports: Enterprise Snapshot, Enterprise Total (week ending Sept. 30, 2021).
4 An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14, Pub. L. No. 117-169, § 10301, 136 Stat. 1818, 1831-1833 (2022) [hereinafter referred to as the "Inflation Reduction Act"].
5 IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan (Apr. 2023), https://www.irs.gov/pub/irs-pdf/p3744.pdf.

implement some of the SOP initiatives and has established implementation dates for others. Among the accomplishments to date: The IRS has begun to implement scanning technology so IRS employees in the future will no longer have to manually transcribe all paper-filed tax returns, and the IRS offers a Document Upload Tool (DUT) so most taxpayers can submit requested documentation to the IRS electronically rather than being forced to use snail mail. I am pleased to say the taxpayer experience is slowly improving, and more positive changes are on the horizon.

Some of the additional funding the IRS received through the IRA has been controversial, and during 2023, there were efforts to reduce it. But I think it's important to point out that the disagreement over IRA funding has concerned only the portion of the funding allocated to the IRS's Enforcement account.[6] There has continued to be broad bipartisan support for the portion of IRA funding allocated to the Taxpayer Services and Business Systems Modernization (BSM) accounts and the related portion of the Operations Support account. These are the funding streams that will enable continuing improvements in taxpayer service and technology. However, these accounts received only a small portion of the IRA funding; Taxpayer Services and BSM together received just ten percent of the total.

As I discussed in a blog posted in March, I believe some of the funding provided for Enforcement should be redirected to the Taxpayer Services and BSM accounts to enable the IRS to make the changes necessary to transform the taxpayer experience and modernize its IT systems in the next few years.[7] It is critical that Congress, the Government Accountability Office, the Treasury Inspector General for Tax Administration, and my office conduct diligent oversight to ensure the funding Congress provides is well spent. But I want to emphasize that additional funding is essential for continued improvement in taxpayer interactions with the IRS. Replacing antiquated technology systems and ensuring the IRS has enough employees to perform basic services such as answering telephone calls and processing correspondence simply can't be done without sufficient resources.

SUCCESSES AND CONTINUED AREAS OF WEAKNESS IN 2023

Overall, the magnitude of successes exceeded the areas of weakness in 2023, and most metrics showed significant improvement from the depths of the pandemic. The two most important improvements were eliminating the backlog of paper-filed Forms 1040 and answering a much higher percentage of taxpayer telephone calls.

- **Good News About Form 1040 Processing.** At the close of the 2021 filing season, the IRS had a backlog of about 17 million paper-filed Forms 1040.[8] All paper-filed Forms 1040 had to be transcribed, digit by digit, into IRS systems. By the end of 2023, the backlog of paper-filed Forms 1040 had been virtually eliminated.[9]
- **Good News About Telephone Service.** During FY 2021, IRS employees answered just 11 percent of its calls.[10] In FY 2023, IRS employees answered 29 percent of its calls – an increase of more than

6 The IRS receives its appropriations through four accounts. The accounts and the amounts of supplemental ten-year funding provided by the IRA are as follows: Enforcement ($45.6 billion), Taxpayer Services ($3.2 billion), Operations Support ($25.3 billion), and Business Systems Modernization ($4.8 billion). According to the IRS's Chief Financial Officer, the majority of Operations Support dollars support taxpayer services and information technology modernization (including hiring and training, rent, computers, and maintenance of existing technology systems). BSM dollars fund the development of new technology systems.

7 *See* Erin M. Collins, National Taxpayer Advocate Urges Congress to Maintain IRS Appropriations But Re-Direct Some Funds Toward Taxpayer Service and Information Technology Modernization, NATIONAL TAXPAYER ADVOCATE BLOG (Mar. 16, 2023), https://www.taxpayeradvocate.irs.gov/news/nta-blog-nta-urges-congress-to-maintain-irs-appropriations-but-re-direct-some-funds-toward-taxpayer-service-and-it-modernization.

8 National Taxpayer Advocate Fiscal Year 2022 Objectives Report to Congress 6 (*Review of the 2021 Filing Season*) (citing data provided by W&I), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/06/JRC22_FullReport.pdf.

9 IRS, Wage & Investment Inventory Report (week ending Sept. 30, 2023).

10 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Enterprise Total (week ending Sept. 30, 2021).

150 percent. The IRS's benchmark "Level of Service" measure reached 85 percent for the filing season.[11] The IRS also substantially reduced average wait times on its toll-free lines from 29 minutes in FY 2022 to 13 minutes in FY 2023.[12] The improved performance was mostly attributable to two factors: i) the IRS hired more employees to answer the phones and ii) incoming calls dropped by two-thirds – from 282 million in FY 2021 to 93 million in FY 2023.[13] Taxpayers generally call the IRS when they are experiencing problems, so the drop in call volume last year was a good sign that overall taxpayers' problems have declined. (But see *Bad News About Telephone Service* below.)

Despite these vast improvements, challenges remain.

- **Amended Tax Returns and Taxpayer Correspondence.** The IRS's success in eliminating its backlog of Forms 1040 did not translate into eliminating its backlog of individual amended tax returns (Forms 1040-X), business amended tax returns, or correspondence. Those backlogs remain at more than double their pre-pandemic levels. In addition, the percentage of taxpayer correspondence classified as "overage" has reached its highest level in recent memory, as shown in Figure 1.1.1.

FIGURE 1.1.1, Volume of Unprocessed Amended Returns, Correspondence, and Accounts Management Cases Comparing Calendar Years 2018-2022 and 2023 Through October 28, 2023[14]

	12/29/2018	12/28/2019	12/26/2020	12/25/2021	12/31/2022	10/28/2023
Unprocessed Correspondence and AM Cases (Requests for Account Adjustments)	1.3 mil	1.9 mil	3.2 mil	5.5 mil	4.9 mil	4.3 mil
Unprocessed Amended Returns (Individual and Business)	0.4 mil	0.5 mil	0.8 mil	2.5 mil	1.3 mil	1.9 mil
Total Unprocessed AM Inventory	1.7 mil	2.4 mil	4.0 mil	8.0 mil	6.2 mil	6.2 mil
Percentage of Unprocessed Inventory Classified as Overage	35.2%	42.7%	44.6%	60.3%	49.7%	69.5%

Delays in processing amended returns translate into delays in receiving refunds. Delays in processing taxpayer correspondence also have financial implications for taxpayers. These continued high paper inventory levels stem largely from the IRS's decision to prioritize answering phone calls over processing amended returns and correspondence. Both functions are performed by IRS customer service representatives (CSRs) in the agency's Accounts Management (AM) function. When CSRs are assigned to answer phones, they aren't processing paper. When CSRs are assigned to process paper, they aren't answering phones. It's a zero-sum game. To achieve high telephone service levels, the IRS must staff its phone lines so there are enough CSRs to handle calls during peak periods. But that means that during quiet periods, CSRs are simply sitting around waiting for the phone to ring.

11 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Accounts Management (week ending Apr. 22, 2023).
12 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Enterprise Total (weeks ending Sept. 30, 2022, and Sept. 30, 2023).
13 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Enterprise Total (weeks ending Sept. 30, 2021, and Sept. 30, 2023).
14 IRS, AM Inventory Report (AMIR), National Inventory Age Report (weeks ending Dec. 29, 2018; Dec. 28, 2019; Dec. 26, 2020; Dec. 25, 2021; Dec. 31, 2022; and Oct. 28, 2023, respectively).

To achieve an LOS of 85 percent during the filing season on its AM telephone lines, CSRs spent 3.73 million hours staffing those lines. Of the 3.73 million hours, CSRs spent 1.27 million hours (34 percent of their time) simply waiting to receive calls.[15] The IRS cannot easily shuffle employees back and forth between answering phones and processing correspondence, so unproductive employee time was the price it had to pay to improve telephone service levels. Going forward, the IRS needs to find a way to move employees between those two functions more nimbly. For present purposes, however, we need to keep in mind that backlogs in processing tax returns and taxpayer correspondence drive much of the phone volume. I encourage the IRS to put more emphasis on reducing its paper processing backlog in 2024.

- **Employee Retention Credit (ERC) Processing.** As of early December, the IRS had a backlog of approximately one million ERC claims.[16] Congress authorized the ERC to provide relief to employers that were shut down by a government order due to the COVID-19 pandemic during 2020 or the first three calendar quarters of 2021; that experienced a specified decline in gross receipts from the beginning of the pandemic through the third quarter of 2021; or that qualified as a recovery start-up business for the third or fourth quarters of 2021.[17] The maximum credit amount was $26,000 per employee ($50,000 credit per calendar quarter for recovery start-up businesses).

  The IRS reports it has received a raft of fraudulent and otherwise nonqualifying claims, making the ERC difficult to administer. If it pays claims quickly without adequate review, it could pay billions of dollars to nonqualifying persons. If it takes the time to review claims carefully, eligible employers will experience significant delays in receiving the credit, and in extreme cases, employers who need the funds immediately could go out of business. Some employers are tax-exempt organizations, including tax-exempt hospitals that serve areas where residents don't have other comparable health care options.

  On September 14, 2023, the IRS announced it would freeze the processing of all claims from that date forward until at least the early part of 2024, and it will slow the processing of claims received before that date to review them more carefully.[18] The IRS's decision to slow the processing of ERC claims and increase its reviews was reasonable, but I am concerned that many taxpayers who are entitled to the ERC will have to wait extended periods of time to receive their refunds, regardless of whether they submitted their claims before or after the IRS imposed the moratorium. While the IRS needs to stop improper or fraudulent claims, it must continue to process and pay refunds to eligible employers.

- **Bad News About Telephone Service.** As I mentioned earlier, the IRS did a much better job of answering taxpayer telephone calls in 2023 than during the pandemic years, and it deserves credit for doing so. But it is important to point out that the metrics it uses to measure its telephone performance are highly technical and don't present a complete picture of what taxpayers – or tax professionals – experience. The IRS measures its performance primarily by using a metric known as the Level of Service (LOS) on its AM telephone lines. Many observers assume the LOS reflects the percentage of calls the IRS answers. It does not. During the 2023 filing season, the IRS achieved

15 IRS, Ready Agent Hours Report (Jan. 1, 2023, through Apr. 22, 2023).
16 As of December 6, 2023, the IRS reported it had an inventory of approximately 1.03 million unprocessed Forms 941-X, Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund. *See* IRS, IRS Operations: Status of Mission-Critical Functions, https://www.irs.gov/newsroom/irs-operations-status-of-mission-critical-functions (last visited Dec. 15, 2023). Employers use Form 941-X to claim the ERC, and about 95 percent of Forms 941-X contained ERC claims. IRS, Research, Analysis, and Data (RAD) Report, COVID Business Credits (week ending Sept. 30, 2023).
17 IRS, Employee Retention Credit (Dec. 6, 2023), https://www.irs.gov/coronavirus/employee-retention-credit.
18 IRS News Release, IR-2023-169, To Protect Taxpayers From Scams, IRS Orders Immediate Stop to New Employee Retention Credit Processing Amid Surge of Questionable Claims; Concerns From Tax Pros (Sept. 14, 2023), https://www.irs.gov/newsroom/to-protect-taxpayers-from-scams-irs-orders-immediate-stop-to-new-employee-retention-credit-processing-amid-surge-of-questionable-claims-concerns-from-tax-pros.

an LOS of 85 percent.[19] Yet only 35 percent of callers reached an IRS employee during the filing season,[20] and only 29 percent of callers reached an IRS employee during the full fiscal year.[21]

The LOS calculation excludes three categories of calls. First, it excludes taxpayer hang-ups. If a taxpayer calls the IRS to discuss an account problem and hangs up before being placed into a calling queue, the call isn't counted. But taxpayers calling the IRS rarely have a spontaneous epiphany and decide they don't need to speak with the IRS after all. They generally hang up because something about the interaction – perhaps the waiting time, perhaps the phone tree, perhaps being routed for an automated response – deters them from proceeding. Second, the IRS's benchmark LOS measure only includes calls routed to the AM function. But the IRS routed almost one quarter of its callers last year to its compliance lines and other functions, and those callers often face longer hold times and lower levels of service. Third, the IRS phone tree automatically routes many taxpayer calls for automated responses, and those calls are also excluded from the LOS calculation.

Figure 1.1.2 shows the breakdown of telephone performance for all lines combined and for the AM phone lines.

FIGURE 1.1.2, Results on All Telephone Lines and Accounts Management Telephone Lines, FY 2023[22]

Telephone Lines	Calls Received	Number of Calls Answered by an IRS Employee	Percentage of Calls Answered by an IRS Employee	IRS-Reported Level of Service	Time on Hold Before Speaking With an Employee
All Calls	92.9 mil	27.3 mil	29%	51%	13 min
Calls Routed to AM Lines	71.6 mil	17.9 mil	25%	52%	10 min

The IRS offers tax professionals a separate phone line known as the Practitioner Priority Service (PPS) telephone line to reach the IRS. The rationale is that the majority of taxpayers use paid tax return preparers, and a high percentage of taxpayers hire representatives to handle audit and other more complex matters. Tax professionals are more informed than the average taxpayer and sometimes try to resolve issues for several taxpayers on a single call. For those reasons, the IRS tries to ensure they can speak with more highly trained employees. But in FY 2023, the PPS telephone line was harder to reach than most other lines, as shown in Figure 1.1.3.

Figure 1.1.3, Results on the Practitioner Priority Service Telephone Line, FY 2023[23]

Telephone Line	Calls Received	Number of Calls Answered by an IRS Employee	Percentage of Calls Answered by an IRS Employee	IRS-Reported Level of Service	Time on Hold Before Speaking With an Employee
Practitioner Priority Service	6.7 mil	1.9 mil	29%	34%	16 min

19 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Accounts Management (week ending Apr. 22, 2023).
20 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Enterprise Total (week ending Apr. 22, 2023).
21 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Enterprise Total (week ending Sept. 30, 2023).
22 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Enterprise Total and Accounts Management (week ending Sept. 30, 2023).
23 IRS, JOC, Snapshot Reports: Product Line Detail, PPS (week ending Sept. 30, 2023).

Tax professionals are essential to tax administration. Roughly 500,000 tax professionals prepare returns for more than 85 million taxpayers, so the IRS derives considerable benefit from working collaboratively with the pool of tax professionals.[24] Requiring tax professionals to call back repeatedly and wait on hold not only inconveniences them but often results in additional costs to taxpayers for the time their tax professionals bill for waiting on hold. The IRS should prioritize improving service on this phone line.

Discussions of IRS telephone performance measures typically focus on the ease of reaching the IRS and on hold times. Ultimately, the quality of the service provided is at least as important. As the IRS continues to refine its SOP, it should ensure there are proper metrics in place to measure quality, such as the percentage of taxpayer issues that are resolved with a single phone call, to assess whether the agency's telephone operations are successfully meeting taxpayer needs.

- **Unconscionable Delays in Assisting Victims of Tax-Related Identity Theft.** When a taxpayer notifies the IRS that he or she has been a victim of identity theft, the IRS creates a case that it works in its Identity Theft Victims Assistance (IDTVA) unit. During FY 2023, the IRS took an average of about *19 months* to resolve self-reported identity theft cases and send refunds to the affected taxpayers.[25] I'll restate that for emphasis: Victims of identity theft have to wait more than a year and a half for the IRS to resolve their cases and receive the monies they are owed. The IRS closed the year with an inventory of about 484,000 of these cases.[26]

  If it weren't for the significant number of challenges affecting larger groups of taxpayers, this would be headline news, and it should be. Many taxpayers depend on their tax refunds to meet their living expenses, particularly low-income taxpayers who receive Earned Income Tax Credit (EITC) benefits that may approach $7,000 for tax year 2022. IRS data shows that *69 percent* of taxpayers whose identity theft cases the IRS resolved had adjusted gross incomes at or below 250 percent of the Federal Poverty Level.[27] These delays were largely a consequence of the IRS prioritizing telephone service. In FY 2023, the IRS reassigned 572 employees who previously had been handling identity theft cases to answer the phones.[28] Moving into 2024, I strongly urge the IRS to place a higher priority on resolving IDTVA cases, clean out the backlog, reduce the time to resolve these issues, and help taxpayers with the variety of challenges they face resulting from the theft.

PRIORITY ADMINISTRATIVE RECOMMENDATIONS TO IMPROVE THE TAXPAYER EXPERIENCE

At the end of each of the ten "most serious problem" sections in this report, I make administrative recommendations to address the problems. As the IRS refines its SOP and begins to implement significant changes in its technology and procedures, there are several recommendations from this report and prior writings that I believe deserve priority attention.[29]

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24 As of December 1, 2023, about 476,000 individuals held current Preparer Tax Identification Numbers. IRS, Return Preparer Office Federal Tax Return Preparer Statistics (Dec. 5, 2023), https://www.irs.gov/tax-professionals/return-preparer-office-federal-tax-return-preparer-statistics. During 2023, tax professionals filed more than 85 million returns. IRS, Compliance Data Warehouse (CDW), Individual Returns Transaction File (IRTF) (Oct. 26, 2023).

25 IRS, AM IDTVA, RAD, Correspondence Imaging System Closed Case Cycle Time for the Identity Theft (IDT) Victims Unit Reports, FY 2023.

26 IRS, AMIR, National Inventory Age Report (week ending Sept. 30, 2023).

27 IRS, CDW, Individual Master File and IRTF (Sept. 28, 2023).

28 IRS response to TAS information request (Sept. 21, 2023). The 572 employees were permitted to work IDTVA cases during their allotted overtime.

29 *See* Erin M. Collins, The NTA Reimagines the IRS With a Dramatically Improved Taxpayer Experience (Part 2), 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.

- **Prioritize the improvement of online accounts for individual taxpayers, business taxpayers, and tax professionals to provide functionality comparable to that of private financial institutions.** Of all the steps the IRS can take to improve the taxpayer experience, creating robust online accounts has the potential to be the most transformational and should receive the highest priority. The IRS faces two significant challenges with respect to online accounts. First, the accounts require significant improvements so more taxpayers will see the benefits of using them. Second, the IRS will have to do a much better job of promoting online accounts. During 2023, individual taxpayers filed more than 160 million income tax returns, yet only 16.8 million users accessed individual online accounts.[30] That's just over ten percent. To better serve these taxpayers and persuade the other 90 percent of taxpayers to consider creating and using online accounts, the IRS should aim to provide online accounts through which taxpayers and tax professionals, among other things, can see full information about their accounts, receive and respond to IRS notices, and elect to receive payment reminders. That will enable taxpayers and tax professionals to keep fully informed about federal tax matters and to interact more smoothly with the agency, and it will substantially reduce the volume of telephone calls and mail the IRS receives.
- **Improve the IRS's ability to attract, hire, and retain qualified employees.** The IRS continues to struggle to hire qualified candidates in many key areas. Three of the main reasons are failure to advertise positions to the optimal target audience by job series, the slow pace of the hiring process, and non-competitive pay.
    - *Regarding advertising:* Most Americans don't put "Check USAJobs.gov" at the top of their daily to-do lists, and even for those who use the website, it contains thousands of jobs; individuals without knowledge of a specific job are not likely to come across a given listing. To be effective, recruitment strategies must be tailored distinctly to each job series (*e.g.*, the IRS must market in different ways to hire submission processing employees, revenue agents, and attorneys). For priority jobs, the IRS needs to be more creative in identifying and conducting outreach to target audiences.
    - *Regarding the onboarding process:* Notwithstanding recent improvements in the clearance process, selected candidates must often wait three months or longer for background checks and related onboarding prerequisites to be completed. Most candidates don't have the financial resources to wait that long for a paycheck. Many end up taking other jobs while they are waiting for the clearance process to play out. The hiring lag is shorter than it used to be, but the IRS still needs to find ways to make it shorter.
    - *Regarding pay:* Many studies have been conducted that attempt to compare federal pay with private sector pay. The reality is that federal pay is competitive for some jobs but not for others. In some job categories (*e.g.*, revenue agents who audit large partnerships and corporations), the IRS seemingly has trouble hiring qualified employees because the pay isn't competitive. The IRS should work with the Office of Personnel Management and, if necessary, with Congress to ensure it has the pay flexibilities it needs to recruit and maintain a workforce equipped to do the job.

30 IRS, 2023 Filing Season Statistics for Week Ending Oct. 27, 2023, https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-oct-27-2023; IRS response to TAS information request (Oct. 25, 2023).

- **Ensure all IRS employees – particularly customer-facing employees – are well-trained.** Just as important as hiring the optimal workforce is ensuring that current and newly hired employees are given the training they need to do their jobs well. Anecdotally, some taxpayers and tax professionals who reached the IRS by phone over the past year have complained that the CSRs with whom they spoke did not have enough knowledge to resolve their issues. That is not surprising. To answer more telephone calls, the IRS hired 5,626 new CSRs in its AM function;[31] employees require both training and experience to provide top-quality service. The IRS has always had challenges with training, and those challenges are greater when the agency is staffing up. Results from the 2023 Federal Employee Viewpoint Survey show nearly a quarter of IRS employees provided a negative response to the statement, "I receive the training I need to do my job well."[32] It is critical that the IRS make comprehensive training a priority and ensure that new hires receive adequate training before they are assigned to tasks with taxpayer impact.
- **Upgrade the backend of the Document Upload Tool to fully automate the processing of taxpayer correspondence.** The IRS created the DUT to allow taxpayers to upload documents electronically in response to an IRS notice, phone conversation, or visit.[33] For many taxpayers, the rollout of the DUT is great news. They can respond from any location with internet access, avoid a trip to the post office, and be certain the IRS has received their information. Once taxpayers' documents reach the IRS, however, they are still processed as if they came in on paper. All documents go to a central location and then must be parceled out to the appropriate function for processing and response. As part of its Paperless Processing Initiative, the IRS says that "[h]alf of paper-submitted correspondence, non-tax forms, and notice responses will be processed digitally" by the 2025 filing season.[34] Digital processing will shorten response times and enable the IRS to reassign employees to other high priority areas. The IRS should continue its efforts to digitalize the processing of more taxpayer submissions.
- **Enable all taxpayers to e-file their federal tax returns.** About 93 percent of individual taxpayers now e-file their federal income tax returns, but the IRS still receives millions of paper-filed returns each year (more than 11 million individual returns and 15 million business returns last year).[35] Notably, some taxpayers who would like to e-file their returns cannot do so. This can happen if the taxpayer has to file a form or schedule that IRS systems are not programmed to accept electronically, if a return is rejected by IRS systems for violating a programming rule, or if a taxpayer is required to attach documentation to the return (*e.g.*, an appraisal or disclosure statement) 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. For example, there are about 150 to 200 IRS forms that taxpayers cannot e-file with the IRS.[36] The IRS plans to make them electronically fileable as part of its Paperless Processing Initiative, and it should address all other barriers to electronic filing.[37]

31 IRS response to TAS information request (Oct. 3, 2023).
32 Office of Personnel Management, 2023 Federal Employee Viewpoint Survey Results, Department of the Treasury, Internal Revenue Service, Question 10 (2023).
33 IRS, IRS Document Upload Tool (Oct. 27, 2023), https://www.irs.gov/help/irs-document-upload-tool.
34 IRS Fact Sheet, FS-2023-18, IRS Launches Paperless Processing Initiative (Aug. 2023), https://www.irs.gov/newsroom/irs-launches-paperless-processing-initiative.
35 IRS, Submission Processing, Filing Season Statistics Report (week ending Nov. 4, 2023).
36 IRS response to TAS information request (Aug. 10, 2023).
37 IRS Fact Sheet, FS-2023-18, IRS Launches Paperless Processing Initiative (Aug. 2023), https://www.irs.gov/newsroom/irs-launches-paperless-processing-initiative.

- **Extend eligibility for first-time penalty abatement to all international information return penalties regardless of whether the underlying return was filed late and stop automatic assessments prior to considering the taxpayer's specific facts and circumstances.** U.S. persons who receive gifts or inheritances from foreign persons or who own interests in certain foreign partnerships and corporations and engage in cross-border business activities are potentially subject to a wide range of U.S. reporting requirements. Many of these requirements come with significant penalty exposure when a filing is late, incomplete, or inaccurate. International information return penalties are automatically assessed, broadly applied, needlessly harsh, and often unexpected, and they sometimes harm lower-income taxpayers and immigrants. Rather than promoting tax compliance through taxpayer education and support, the IRS has opted to flex its administrative muscle and bring down the enforcement hammer on good-faith taxpayers and bad actors alike. As a result of this approach, some taxpayers are exposed to potentially life-changing penalties for failure to meet information filing requirements that are obscure and complex. First-time penalty abatement should be available in these circumstances.

LEGISLATIVE RECOMMENDATIONS

The National Taxpayer Advocate Purple Book this year makes 66 recommendations to strengthen taxpayer rights and improve tax administration. Most recommendations in this volume are non-controversial, common-sense reforms. I highlight the following ten legislative recommendations for particular attention, in no specific order:

- **Require the IRS to Timely Process Claims for Credit or Refund (Recommendation #2).** Millions of taxpayers file claims for credit or refund with the IRS each year. Under current law, there is no requirement that the IRS pay or deny them. It may simply ignore them. The taxpayers' remedy is to file a refund suit in a U.S. district court or the U.S. Court of Federal Claims. For many taxpayers, that is not a realistic or affordable option, as full payment of the disputed amount is generally required, and there can be a sizeable filing fee. The absence of a processing requirement is a poster child for non-responsive government. While the IRS generally does process claims for credit or refund, the claims can, and sometimes do, spend months and even years in administrative limbo within the IRS. Providing symmetry between the assessment statute, which has a clear ending date, and a statute requiring the IRS to timely process claims for credit or refund would be good tax administration and would protect taxpayers' *rights to be informed*, *to pay no more than the correct amount of tax*, and *to finality*. We recommend Congress require the IRS to act on claims for credit or refund in a timely manner and impose certain consequences for failing to do so.

- **Authorize the IRS to Establish Minimum Competency Standards for Federal Tax Return Preparers and Revoke the Identification Numbers of Sanctioned Preparers (Recommendation #4).** The IRS receives over 160 million individual income tax returns each year, and most are prepared by paid tax return preparers. While some tax return preparers must meet licensing requirements (*e.g.*, certified public accountants, attorneys, and enrolled agents), most tax return preparers are not credentialed. Numerous studies have found that non-credentialed preparers disproportionately prepare inaccurate returns, causing some taxpayers to overpay their taxes and other taxpayers to underpay their taxes, which may lead to penalties and interest charges. This harms taxpayers financially and undermines the taxpayers' *right to pay no more than the correct amount of tax*. It also harms the government by reducing revenue collection overall. In FY 2022, for example, the IRS estimated the improper payments rate attributable to improper EITC claims was 32 percent,

amounting to $18.2 billion.[38] Among tax returns claiming the EITC prepared by paid tax return preparers, *94 percent* of the total dollar amount of EITC audit adjustments was attributable to returns prepared by non-credentialed preparers.[39]

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. To protect taxpayers and the public fisc, we recommend Congress authorize the IRS to establish minimum competency standards for tax return preparers and to revoke the Preparer Tax Identification Numbers (PTINs) of preparers who have been sanctioned for improper conduct.[40]

- **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 (Recommendation #8).** When the IRS proposes to assess additional tax, it ordinarily must issue a notice of deficiency to the taxpayer, which gives the taxpayer an opportunity to seek judicial review in the U.S. Tax Court if the taxpayer disagrees with the IRS's position. In limited cases where a taxpayer commits a "mathematical or clerical error," however, the IRS may bypass deficiency procedures and issue a "math error" notice that summarily assesses additional tax. If a taxpayer does not respond to a math error notice within 60 days, the assessment becomes final, and the taxpayer will have forfeited the right to challenge the IRS's position in the Tax Court. Math error notices often do not clearly explain the reason for the adjustment and do not prominently explain the consequences of failing to respond within 60 days. We recommend Congress require the IRS to describe the error giving rise to the adjustment with specificity and inform taxpayers they have 60 days (or 120 days if addressed to a person outside the United States)[41] to request that a summary assessment be abated, or they will forfeit their right to judicial review.
- **Provide That Assessable Penalties Are Subject to Deficiency Procedures (Recommendation #13).** The IRS ordinarily must issue a notice of deficiency giving taxpayers the right to appeal an adverse IRS determination in the U.S. Tax Court before it may assess tax.[42] In limited situations, however, the IRS may assess certain 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 IRS interpretation, these penalties include, but are not limited to, international information reporting penalties under IRC §§ 6038, 6038A, 6038B, 6038C, and 6038D. The inability of taxpayers to obtain judicial review on a preassessment 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, impairing the taxpayers' *right to challenge the IRS's position and be heard*. To

38 Government Accountability Office, GAO-23-106285, *Improper Payments: Fiscal Year 2022 Estimates and Opportunities for Improvement* 34 (2023), https://www.gao.gov/assets/gao-23-106285.pdf.

39 IRS CDW, IRTF (Return Preparers and Providers PTIN database and Audit Information Management System - Closed Cases database) (as of Sept. 28, 2023).

40 In general, a PTIN must be obtained by a tax return preparer who is compensated for preparing or assisting in the preparation of all or substantially all of a federal tax return or claim for refund. The preparer must then include the PTIN on any returns or claims for refund they prepared.

41 A taxpayer is given 60 additional days to respond to a notice of deficiency when the notice "is addressed to a person outside the United States." IRC § 6213(a). By contrast, a taxpayer abroad is given no additional time to respond to a math error notice. To protect taxpayer rights and promote consistency, we recommend providing 60 additional days for taxpayers located outside the United States to respond to a math error notice. *See* National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* (*Give Taxpayers Abroad Additional Time to Request Abatement of a Math Error Assessment*).

42 In the case of "mathematical or clerical errors," the IRS may issue a "math error" notice that assesses tax without providing the right to judicial review. The taxpayer has 60 days to request that the math error assessment be abated. If the taxpayer makes the request, the IRS is required to abate the assessment, and if the IRS decides to challenge the taxpayer's position, it must then issue a notice of deficiency. *See* IRC § 6213(b).

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 Congress require the IRS to issue a notice of deficiency before imposing assessable penalties.

- **Extend the Reasonable Cause Defense for the Failure-to-File Penalty to Taxpayers Who Rely on Return Preparers to E-File Their Returns (Recommendation #31).** The law imposes a penalty of up to 25 percent of the tax due for failing to file a timely tax return, but the penalty is waived where a taxpayer can show the failure was due to "reasonable cause."[43] Most taxpayers pay tax return preparers to prepare and file their returns for them. In 1985, when all returns were filed on paper, the Supreme Court held that a taxpayer's reliance on a preparer to file a tax return did not constitute "reasonable cause" to excuse the failure-to-file penalty if the return was not filed.[44] In 2023, a U.S. Court of Appeals held that "reasonable cause" is also not a defense when a taxpayer relies on a preparer to file a tax return electronically.[45]

  For several reasons, it is often much more difficult for taxpayers to verify that a return preparer has e-filed a return than to verify that a return has been paper-filed. Unfortunately, many taxpayers are not familiar with the electronic filing process and do not have the tax knowledge to ask for the right document or proof of filing. Penalizing taxpayers who engage preparers and do their best to comply with their tax obligations is grossly unfair and undermines the congressional policy that the IRS encourage e-filing. Under the recent Court of Appeals' ruling, astute taxpayers would be well advised to ask their preparers to give them paper copies of their prepared returns and then transmit the returns by certified or registered mail themselves so they can prove compliance. We recommend Congress clarify that reliance on a preparer to e-file a tax return may constitute "reasonable cause" for penalty relief and require the Secretary to issue regulations detailing what constitutes ordinary business care and prudence to evaluate reasonable cause requests.

- **Clarify That Supervisory Approval Is Required Under IRC § 6751(b) Before Proposing Penalties (Recommendation #33).** 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 blush, 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 choose to 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 take place earlier in the process. We recommend 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.

- **Expand the U.S. Tax Court's Jurisdiction to Hear Refund Cases (Recommendation #43).** Under current law, taxpayers seeking to challenge an IRS tax-due adjustment can file a petition in the U.S. Tax Court, while taxpayers who have paid their tax and are seeking a refund must file suit in a U.S. district court or the U.S. Court of Federal Claims. Litigating in a U.S. district court or the Court of Federal Claims can be very challenging – filing fees are relatively high, rules of civil procedure are complex, the judges generally do not have tax expertise, and proceeding without a lawyer is difficult.

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43 IRC § 6651(a)(1). The penalty increases to 15 percent per month up to a maximum of 75 percent in the case of a fraudulent failure to file. *See* IRC § 6651(f)(2).
44 *United States v. Boyle*, 469 U.S. 241 (1985).
45 *Lee v. United States*, No. 22-10793, 2023 WL 6979257 (11th Cir. Oct. 24, 2023).

By contrast, taxpayers litigating their cases in the Tax Court face a low $60 filing fee,[46] may follow less formal procedural rules, are generally assured their positions will be fairly considered even if they don't present them well because of the tax expertise of the Tax Court's judges, and can more easily represent themselves without a lawyer. For these reasons, the requirement that refund claims be litigated in a U.S. district court or the Court of Federal Claims effectively deprives many taxpayers of the right to judicial review of an IRS refund disallowance. About 97 percent of all tax-related litigation is adjudicated in the Tax Court.[47] We recommend Congress expand the jurisdiction of the Tax Court to give taxpayers the option to litigate all tax disputes, including refund claims, in that forum.

- **Promote Consistency With the Supreme Court's *Boechler* Decision by Making the Time Limits for Bringing All Tax Litigation Subject to Equitable Judicial Doctrines (Recommendation #45).** Taxpayers who seek judicial review of adverse IRS determinations generally must file petitions in court by statutorily imposed deadlines. The courts have split over whether filing deadlines can be waived under extraordinary circumstances. Most tax litigation takes place in the U.S. Tax Court, where taxpayers are required to file petitions for review within 90 days of the date on the notice of deficiency (150 days if addressed to a person outside the United States). The Tax Court has held it lacks the legal authority to waive the 90-day (or 150-day) filing deadline even, to provide a stark example, if the taxpayer had a heart attack on Day 75 and remained in a coma until after the filing deadline. The Supreme Court recently held that filing deadlines are subject to "equitable tolling" in Collection Due Process hearings. We recommend Congress harmonize the conflicting court rulings by providing that all filing deadlines to challenge the IRS in court are subject to equitable tolling where timely filing was impossible or impractical.
- **Remove the Requirement That Written Receipts Acknowledging Charitable Contributions Must Be Contemporaneous (Recommendation #59).** 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 allowable – even if the taxpayer has credit card receipts and other documentation that fully and unambiguously substantiate the deduction. This requirement can harm civic-minded taxpayers who do not realize how strict the timing requirements are and undermines congressional policy to encourage charitable giving. We recommend Congress modify the substantiation rules to require reliable – but not necessarily advance – acknowledgement from the donee organization.
- **Enable the Low Income Taxpayer Clinic (LITC) Program to Assist More Taxpayers in Controversies With the IRS (Recommendation #64).** The LITC Program assists 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, the law 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 LITC grant funds 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 a larger universe of eligible taxpayers. We recommend Congress remove the per-clinic cap and allow the IRS to reduce the match requirement to 25 percent where doing so would expand coverage to additional taxpayers.

46 The filing fee can be waived if the taxpayer establishes an inability to pay to the satisfaction of the Tax Court.
47 Data compiled by the IRS Office of Chief Counsel (Oct. 20, 2023); IRS, Counsel Automated Tracking System, TL-711 and TL-712. This data does not include cases on appeal and declaratory judgments.

CONCLUSION

After several difficult years for taxpayers, the IRS, and society in general, tax administration in 2023 mostly managed to leave its COVID-19 problems behind. The IRS eliminated most of its processing backlog, generally paid refunds timely, and answered taxpayer telephone calls at pre-pandemic levels. The good news is that, with limited exceptions, we are back to business as usual.

The bad news is that the baseline level of "business as usual" was not good enough. Our nation's taxpayers deserve a 21st century tax administration agency that is fair and equitable, provides timely and clear guidance, makes it possible for all taxpayers to electronically file their tax returns, answers its phones and resolves most issues at the first point of contact, and allows taxpayers to conduct business on any follow-up matters through online accounts in the same way they conduct business with their financial institutions.

With the infusion of funding the IRS received through the Inflation Reduction Act and the planning that has gone into its Strategic Operating Plan, the IRS has taken major strides forward this year. As the IRS continues to prioritize its SOP and initiatives, I am pleased that the initial focus covers several of the most serious problems identified in this report. I look forward to working with Congress and the IRS as the agency refines and implements its plans, and together with my TAS team, we stand ready to help improve taxpayer service and tax administration for the benefit of all taxpayers and to continue to serve as their safety net when the system fails.

Respectfully submitted,

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National Taxpayer Advocate
December 31, 2023

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 performing to protect and further 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]

Recent Legislation Has Provided the IRS a Tremendous Opportunity to Improve Its Taxpayer Service

- In July 2019, Congress passed the Taxpayer First Act (TFA), directing the IRS to focus on improving its taxpayer services and requiring the IRS "to submit to Congress a written comprehensive customer service strategy."[2] This strategy, the Taxpayer First Act Report to Congress, included 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]
- In August 2022, Congress passed the Inflation Reduction Act of 2022 (IRA), appropriating 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.[4] Though subsequent legislation has rescinded $1.4 billion from the original IRA funding[5] and an additional $20 billion in cuts have been slated to span fiscal years (FYs) 2024 and 2025,[6] the remaining monies still provide the IRS a unique opportunity to significantly improve its delivery of taxpayer services.

- In April 2023, the IRS presented its IRA Strategic Operating Plan (SOP), communicating how it would use IRA funding to deliver palpable improvements to its mission as a tax administrator, with a strong emphasis on improving its customer service experience.[7]

With TXO dedicated to improving customer experience, two IRS reports road mapping a path to improved customer service, and the addition of sorely needed funding that empowers the IRS to turn that path into a reality, the IRS must now demonstrate to the taxpayers it serves how this funding is worth the investment.

The IRS Race for Improved Customer Service Has Begun, But This is a Marathon, Not a Sprint

Buoyed with IRA funding, the IRS has shown initial progress in improving its customer service delivery. For example, the IRS dramatically reduced call wait times on certain Accounts Management (AM) phone lines during the 2023 filing season; expanded callback and chatbot capabilities to help taxpayers get answers to certain collection notices; increased staffing and reopened a number of Taxpayer Assistance Centers (TACs);[8] and expanded various online taxpayer service options for individuals, tax professionals, and business entities.[9] All are welcome advances for taxpayer service, but the IRS must do so much more and do it thoughtfully while keeping an eye on the taxpayer experience picture. The reallocation of IRS resources to improve one service area can lead to diminished service levels elsewhere. The IRS, for example, focused customer service representative (CSR) resources to bolster its phone service during the 2023 filing season, but those same CSRs were no longer processing paper correspondence or amended returns, creating new backlogs and a fresh host of calls from taxpayers and tax professionals looking for answers and issue resolution.[10] The IRS must be adaptable in its approach to implementing service initiatives, balance resources between competing service priorities, be ready for unanticipated outcomes, and be flexible enough to course correct in real time. An important key to identifying and maintaining this level of balanced taxpayer-centric service is to accurately measure, analyze, and react to shifts in taxpayer experience and impact.

As the IRS begins implementation of multiple taxpayer service initiatives, monitoring customer service metrics is more vital than ever. Employing the use of metrics is essential to gauging the success of any large public-facing system, and the Taxpayer Rights and Service Assessment can aid TXO in identifying customer service channels requiring adjustment by comparing fiscal year data as the IRS implements the customer service strategy.[11] Traditionally, IRS metrics have focused on "efficiency" – no-change rates, cycle time, etc. As the IRS evolves in its delivery of customer experience, it will require the development of new taxpayer-centric metrics. TAS looks forward to working with the IRS on the implementation of its SOP and the development of measures for gauging the success of its taxpayer service initiatives.

TAXPAYER SERVICE: TAX RETURN PROCESSING

Tax return processing is a fundamental IRS function, and return filing metrics are an important measure of IRS workload. For many taxpayers, preparing and timely filing a tax return comes with some level of cost and effort, but once filed, taxpayers should feel satisfaction that they've done their part and that the IRS will follow through on its end of the bargain – by timely processing the return. When taxpayers experience delays in processing, however, their confidence in the system may erode and serious harm may threaten some taxpayers who rely on timely refund issuance to cover rent, meals, and other essential living costs. Large paper processing backlogs experienced due to the pandemic highlight how dramatically taxpayers are impacted when this essential process falters.[12] The IRS's projected number of individual tax returns to be filed in FY 2023 is up nearly eight million from the number of individual tax returns filed in FY 2022. And as the number of return receipts grows, so grows the potential need for taxpayers to contact the IRS when processing goes awry, further stressing IRS resources. Expanded efforts to employ scanning technology and the promotion of digital filing options are very welcome,[13] but the IRS must thoughtfully balance its resources between processing strategies to mitigate backlogs and assisting taxpayers and tax professionals with questions when they encounter delays.

FIGURE 1.2.2, Income Tax Returns Filed, FYs 2021-2023

Measure/Indicator	FY 2021	FY 2022	FY 2023
Number of Returns Filed (Projected, All Types)[14]	269,032,799	260,325,402	276,967,900
Total Individual Income Tax Returns[15]	167,915,264	160,577,401	168,483,100
Total Individual Income Tax Returns Filed on Paper[16]	16,463,292	12,080,017	13,936,900
Total Individual Income Tax Returns Filed Electronically[17]	151,451,972	148,497,384	154,546,100
Free File Consortium (Tax Year)[18]	4,997,000	2,449,458	2,607,800
Fillable Forms (Tax Year)[19]	795,000	645,049	449,653
Total Corporation Income Tax Returns[20]	7,464,790	7,783,235	7,917,400
Total Corporation Income Tax Returns Filed on Paper[21]	1,062,200	1,155,810	1,116,200
Total Corporation Income Tax Returns Filed Electronically[22]	6,402,590	6,627,425	6,801,200

Observation: The total amount of individual and corporation income tax returns filed electronically remains high. Electronically filed returns now account for nearly 92 percent of individual filings and approximately 86 percent of corporation filings in FY 2023 (please note FY 2023 return counts are projected numbers).

TAXPAYER SERVICE: EXAMINATION AND COLLECTION

IRS examination and collection action can lead to taxpayer anxiety, which may increase if taxpayers perceive the process as prolonged or inequitable. Perceptions of equity in IRS audit selection, for instance, were challenged this year when a Stanford University report identified racial disparities linked to aspects of the IRS's examination selection algorithm and Earned Income Tax Credit (EITC) audits.[23] The IRS, to its credit, reviewed and concurred with the report's findings, announcing it was working to "restore fairness in tax compliance by shifting more attention onto high-income earners, partnerships, large corporations and promoters abusing the nation's tax laws."[24] The IRS has also indicated for FY 2024 it would "substantially reduce the number of correspondence audits focused specifically on certain refundable credits, including the EITC, American Opportunity Tax Credit, Health Insurance Premium Tax Credit, and Additional Child Tax Credit."[25] Acknowledging issues with an open commitment to course correction is an important step in maintaining taxpayer faith in its tax system, especially as it works to update and reposition enforcement resources and priorities. Exhibiting a commitment to equitable enforcement practices is not just a favorable administrative decision – it's a basic taxpayer right, the *right to a fair and just tax system*.

The strategic allocation of limited workforce resources, however, will remain challenging but vital to ensuring equitable treatment across all taxpayer populations. 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[26] closures in the lower-income taxpayer category, for example, warrants consideration for adjustments in approach. Rising no-change audit[27] closures might suggest resources would be better directed toward areas of greater non-compliance. Existing IRS employees, together with the newly hired employees, are the IRS managers and leaders of tomorrow. As the IRS hires new employees to support proposed enforcement initiatives, it must adequately train them to perform their duties, upgrade its training for existing employees, and ensure that training includes guidance on recognizing, understanding, and integrating a respect for taxpayer rights into the essential work they perform. Implicit in a taxpayer's *right to quality service* is that examination and collection activities respect all provisions of TBOR.[28]

FIGURE 1.2.3, Type of Audit, Outcomes, and Time to Complete by Income, FYs 2021-2023

Measure/Indicator	FY 2021	FY 2022	FY 2023
Examination			
Total Number of Open Audits Pending in Exam[29]	527,353	425,704	323,401
Total Number of Closed Audits – **Individual Tax Returns**[30]	658,998	625,947	518,811
Total Positive Income (Under $50,000)			
No-Change Rate	8.6%	12.8%	11.6%
Agreed Rate[31]	19.8%	17.1%	16.2%
Taxpayer Failed to Respond Rate[32]	46.4%	44.2%	47.2%
Average Days to Audit Completion	339.5	269.6	259.9
Average Total Exam Time (Hours) Correspondence Audits	1.4	1.4	1.5
Average Total Exam Time (Hours) Field Exams	28.8	28.8	31.3
Percent of Correspondence Audits[33]	92.4%	91.3%	91.6%
Total Positive Income (Greater than or equal to $50,000 and under $10,000,000)			
No-Change Rate	11.6%	13.1%	13.1%
Agreed Rate	39.6%	40.3%	41.0%
Taxpayer Failed to Respond Rate	22.7%	21.3%	18.7%
Average Days to Audit Completion	385.0	317.6	295.2
Average Total Exam Time (Hours) Correspondence Audits	2.4	2.3	2.7
Average Total Exam Time (Hours) Field Exams	37.1	38.2	37.4
Percent of Correspondence Audits[34]	71.4%	72.2%	68.0%
Total Positive Income (Greater than or equal to $10,000,000)			
No-Change Rate	30.3%	31.1%	36.3%
Agreed Rate	52.1%	51.5%	46.0%
Taxpayer Failed to Respond Rate	0.2%	0.2%	0.7%
Average Days to Audit Completion	682.9	982.0	679.3
Average Total Exam Time (Hours) Correspondence Audits	8.9	7.7	8.6
Average Total Exam Time (Hours) Field Exams	91.4	110.6	115.4
Percent of Correspondence Audits[35]	24.3%	32.2%	18.3%

Observation: Taxpayers with incomes below $50,000 had about 90 percent of their audits conducted by correspondence, 44 percent or more failed to respond to the IRS, and fewer than 20 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 1.2.4, Offers in Compromise (OICs), Installment Agreements (IAs), and the Queue, FYs 2021-2023

Measure/Indicator	FY 2021	FY 2022	FY 2023
Collection			
Number of OICs Submitted[36]	49,285	36,022	30,163
Percentage of OICs Accepted[37]	30.9%	28.7%	28.5%
Number of Individual and Business IAs[38]	2,361,646	2,383,849	2,696,963
Number of IAs With Bots[39]	0	8,505	16,379
Rejected Taxpayer Requests for IAs[40]	14,164	8,800	8,625
Percentage of Cases Pending Assignment (in the Queue) (Taxpayers)[41]	20.9%	17.5%	22.6%
Percentage of Cases Pending Assignment (in the Queue) (Modules)[42]	28.5%	24.0%	29.5%
Age of Individual Delinquencies Pending Assignment (in the Queue)[43]	4.3 years	4.9 years	4.9 years

Observation: The number of submitted OICs has dropped nearly 39 percent from FY 2021 to FY 2023 while IA submissions have increased by roughly 14 percent during the same period. The number of taxpayers in the collection queue are on the rise over the last fiscal year while the average age of individual unassigned delinquencies appears to have steadied. The number of IAs with bots has nearly doubled since FY 2022.

TAXPAYER SERVICE: TAXPAYER-FACING COMMUNICATION CHANNELS

Supplemented with IRA funding, the IRS is set to exhibit service improvements in its taxpayer communication channels. The IRS, for example, increased its number of TACs as well as its TAC face-to-face taxpayer service contacts over FY 2022. However, as noted in a September 2023 Treasury Inspector General for Tax Administration (TIGTA) report, efforts to increase hiring and fully staff its TAC operations fell short as employee attrition diminished the breadth of new-hire gains.[44] The cycle time to process taxpayer correspondence is down since the last fiscal year, a welcome change, but the level of *overage* correspondence left for the IRS to work is significantly higher. Phone service has shown the greatest improvement with a general rise in the number of calls answered by an IRS employee and a quicker average speed of answer, but the shuffling of phone assistor resources may have led to increased processing times in other service areas.[45] One year after enactment of the IRA, the IRS is working very hard to improve its taxpayer service. While it will inevitably encounter obstacles as it implements further change, the IRS must strategically monitor and develop customer service measures to ensure its application of resources is generating the improvements in taxpayer service it seeks and that it maintains a balance across all service areas. Using TBOR as the core of this development process is important as these rights are essential to the standard of service a taxpayer receives when working with the IRS, no matter the service area or communication channel.

FIGURE 1.2.5, In-Person Service, Correspondence, Telephone Service, and Online Service, FYs 2021-2023

Measure/Indicator	FY 2021	FY 2022	FY 2023
In-Person Service			
Number of TACs[46]	358	360	363
Number of Face-to-Face TAC Contacts[47]	940,000	1.3 million	1.6 million
Number of Calls to the TAC Appointment Line That Did Not Result in a Scheduled Appointment[48]	922,000	501,000	913,000
Correspondence[49]			
Individual Correspondence[50]	6,306,488	6,950,094	6,690,427
Average Cycle Time to Work Individual Correspondence[51] (Master File (IMF))	201 days	207 days	138 days
Inventory Overage[52]	59.6%	44.6%	63.2%
Business Correspondence[53]	4,197,132	4,599,806	5,750,123
Average Cycle Time to Work Business Correspondence[54] (Master File (BMF))	144 days	163 days	148 days
Inventory Overage[55]	51.5%	60.4%	74.5%
Telephone Service			
Total Calls to IRS[56]	281,708,009	173,265,572	92,875,396
Number of Calls Answered by IRS Employees[57]	32,039,550	21,740,474	27,257,751
Percentage of Calls Answered by IRS Employees[58]	11.4%	12.5%	29.3%
IRS Level of Service (LOS)[59]	21.3%	21.3%	51.30%
IRS Average Speed of Answer[60]	22.8 minutes	28.6 minutes	13.3 minutes
Practitioner Priority: Percentage of Calls Answered (LOS)[61]	28.0%	16.9%	34.0%
Practitioner Priority: Average Speed of Answer[62]	16.1 minutes	25.4 minutes	16.2 minutes
Online Service			
Number of Visits to IRS.gov[63]	1,999,988,189	1,087,210,500	880,940,703
Number of Page Views[64]	11,452,583,281	5,310,673,611	3,761,006,353
Online IAs[65]	1,491,083	1,858,004	2,020,102
Where's My Refund? Inquiries[66]	632,361,686	447,729,355	303,132,000

Observation: In-person TAC visitations have steadily increased between FY 2021 and FY 2023. Individual correspondence inventories have fallen slightly between FY 2022 and FY 2023, while business correspondence inventories and overage inventories for both individual and business categories are on the rise. The IRS saw a drop in total calls in FY 2023 with an increase in the percentage of calls answered by IRS employees and a significant drop in the average speed of answer.

TAXPAYER SERVICE: INFORMATION TECHNOLOGY

The IRS is expanding options for taxpayers to interact with the agency digitally, but taxpayers continue to experience frustration and difficulty resolving their IRS issues, receiving timely notices, or accessing detailed information on their online account or IRS tools. The continued implementation of new and substantive digital options for taxpayer service is essential and eagerly anticipated.[67] IRS modernization efforts, however, are challenged when a large portion of available funding is required to maintain current operations and legacy systems, and while the IRA budgeted the IRS an additional $4.8 billion in funding for business systems modernization, a key element to the updating of IRS systems,[68] IRS budgeting remains a current source of much debate. TAS continues to maintain that without sustained, consistent, and dedicated funding, the IRS will 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. 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, https://www.taxpayeradvocate.irs.gov/taxpayer-rights (last visited Nov. 22, 2023). The rights contained in TBOR are also codified in IRC § 7803(a)(3).

2 TFA, Pub. L. No. 116-25, § 1101(a)(1)-(5), 133 Stat. 981, 985-86 (2019).

3 IRS, Pub. 5426, Taxpayer First Act Report to Congress 99 (Jan. 2021), https://www.irs.gov/pub/irs-pdf/p5426.pdf.

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

5 Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, 137 Stat. 10 (2023). The Fiscal Responsibility Act of 2023 rescinded almost $1.4 billion from the nearly $80 billion in additional funding granted to the IRS as part of the IRA.

6 The $20 billion in IRA recission is currently understood per an informal agreement at time of publication. White House Press Briefing, *Background Press Call on the Bipartisan Budget Agreement* (May 28, 2023), https://www.whitehouse.gov/briefing-room/press-briefings/2023/05/28/background-press-call-on-the-bipartisan-budget-agreement/.

7 IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan (Apr. 2023), https://www.irs.gov/pub/irs-pdf/p3744.pdf.

8 IRS News Release, IR-2023-148, Inflation Reduction Act 1-Year Report Card: IRS Delivers Dramatically Improved 2023 Filing Season Service, Modernizes Technology, Pursues High-Income Individuals Evading Taxes (Aug. 16, 2023), https://www.irs.gov/newsroom/inflation-reduction-act-1-year-report-card-irs-delivers-dramatically-improved-2023-filing-season-service-modernizes-technology-pursues-high-income-individuals-evading-taxes; IRS News Release, IR-2023-178, IRS Expands Use of Chatbots to Help Answer Questions on Key Notices; Expands on Technology That's Served 13 Million Taxpayers (Sept. 26, 2023), https://www.irs.gov/newsroom/irs-expands-use-of-chatbots-to-help-answer-questions-on-key-notices-expands-on-technology-thats-served-13-million-taxpayers. For a further discussion of IRS phone service, see Most Serious Problem: *Telephone and In-Person Service: Despite Improvements in Its Service Levels, the IRS Still Does Not Provide Taxpayers and Tax Professionals With Adequate, Timely Telephone and In-Person Service*, *infra*.

9 IRS News Release, IR-2023-194, IRS Launches New Initiatives Using Inflation Reduction Act Funding to Ensure Large Corporations Pay Taxes Owed; Continues to Improve Service and Modernize Technology With Launch of Business Tax Account (Oct. 20, 2023), https://www.irs.gov/newsroom/irs-launches-new-initiatives-using-inflation-reduction-act-funding-to-ensure-large-corporations-pay-taxes-owed-continues-to-improve-service-and-modernize-technology-with-launch-of-business-tax-account. For a deeper discussion of online accounts, see Most Serious Problem: *Online Account Access for Taxpayers and Tax Professionals*: *Digital Services Remain Inadequate, Impeding Efficient Case Resolution and Forcing Millions of Taxpayers to Call or Send Correspondence to the IRS*, *infra*.

10 For further backlog discussion, see Most Serious Problem: *Processing*: *Ongoing Processing Delays Burden and Frustrate Taxpayers Awaiting Refunds and Other Account Actions*, *infra*.

11 These measures are presented as a sample of indicators and are not intended to be read as a comprehensive listing of performance benchmarks.

12 For further discussion of backlogs, see Most Serious Problem: *Processing*: *Ongoing Processing Delays Burden and Frustrate Taxpayers Awaiting Refunds and Other Account Actions*, *infra*. *See also* National Taxpayer Advocate 2022 Annual Report to Congress 34 (Most Serious Problem: *Processing Delays*: *Paper Backlogs Caused Refund Delays for Millions of Taxpayers*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MSP_01_Processing-Delays.pdf; 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 IRS News Release, IR-2023-194, IRS Launches New Initiatives Using Inflation Reduction Act Funding to Ensure Large Corporations Pay Taxes Owed; Continues to Improve Service and Modernize Technology With Launch of Business Tax Account (Oct. 20, 2023), https://www.irs.gov/newsroom/irs-launches-new-initiatives-using-inflation-reduction-act-funding-to-ensure-large-corporations-pay-taxes-owed-continues-to-improve-service-and-modernize-technology-with-launch-of-business-tax-account. *See also* Janet L. Yellen, Sec'y of the Treasury, Remarks at IRS Headquarters in Washington, D.C. (Nov. 7, 2023), https://home.treasury.gov/news/press-releases/jy1888.

14 IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2022-2029, at 4 (Sept. 2022). IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2023-2030, at 4 (June 2023), https://www.irs.gov/pub/irs-pdf/p6292.pdf. The FY 2022 figure has been updated from what was reported in the 2022 Annual Report to Congress to report actual return counts. The FY 2023 figure is a projected number. Data for FY 2021 and FY 2022 for each table was accurate as of the close of each fiscal year; however, the IRS often refines the data as additional information becomes available. Therefore, this data may differ slightly from other data sources with a later publication date. 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.

15 IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2022-2029, at 4 (Sept. 2022). IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2023-2030, at 4 (June 2023). The FY 2022 figure has been updated from what was reported in the 2022 Annual Report to Congress to report actual return counts. The FY 2023 figure is a projected number.

16 IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2022-2029, at 4 (Sept. 2022). IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2023-2030, at 4 (June 2023). The FY 2022 figure has been updated from what was reported in the 2022 Annual Report to Congress to report actual return counts. The FY 2023 figure is a projected number.

17 IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2022-2029, at 4 (Sept. 2022). IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2023-2030, at 4 (June 2023). The FY 2022 figure has been updated from what was reported in the 2022 Annual Report to Congress to report actual return counts. The FY 2023 figure is a projected number.

18 FY 2021 number updated from IRS response to TAS fact check (Dec. 17, 2021), including returns filed solely to claim the Advance Child Tax Credit (AdvCTC). The FY 2022 number is from IRS, Compliance Data Warehouse (CDW), Electronic Tax Administration Research and Analysis System Modernized e-File for Individuals, and excludes about 8.5 million returns filed for the purpose of claiming Economic Impact Payments in FY 2020. The FY 2021 figures represent tax year (TY) 2020 tax returns. The FY 2022 figures represent TY 2021 tax returns. The FY 2023 figures represent TY 2022 tax returns through September 28, 2023.

19 FY 2021 number updated from IRS response to TAS fact check (Dec. 17, 2021), including some returns filed solely to claim the AdvCTC. FY 2022 and FY 2023 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 2021 figures represent TY 2020 tax returns. The FY 2022 figures represent TY 2021 tax returns. The FY 2023 figures represent TY 2022 tax returns through September 28, 2023.

20 IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2022-2029, at 4 (Sept. 2022). IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2023-2030, at 4 (June 2023). The FY 2022 figure has been updated from what was reported in the 2022 Annual Report to Congress to report actual return counts. The FY 2023 figure is a projected number.

21 IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2022-2029, at 4 (Sept. 2022). IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2023-2030, at 4 (June 2023). The FY 2022 figure has been updated from what was reported in the 2022 Annual Report to Congress to report actual return counts. The FY 2023 figure is a projected number.

22 IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2022-2029, at 4 (Sept. 2022). IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2023-2030, at 4 (June 2023). The FY 2022 figure has been updated from what was reported in the 2022 Annual Report to Congress to report actual return counts. The FY 2023 figure is a projected number.

23 Hadi Elzayn et al., *Measuring and Mitigating Racial Disparities in Tax Audits* (Stanford Inst. For Econ. Pol'y Rsch., Working Paper, 2023), https://siepr.stanford.edu/publications/working-paper/measuring-and-mitigating-racial-disparities-tax-audits.

24 IRS News Release, IR-2023-166, IRS Announces Sweeping Effort to Restore Fairness to Tax System With Inflation Reduction Act Funding; New Compliance Efforts Focused on Increasing Scrutiny on High-Income, Partnerships, Corporations and Promoters Abusing Tax Rules on the Books (Sept. 8, 2023), https://www.irs.gov/newsroom/irs-announces-sweeping-effort-to-restore-fairness-to-tax-system-with-inflation-reduction-act-funding-new-compliance-efforts.

25 *Hearing on IRS Operations Before the Subcomms. on Government Operations and the Federal Workforce and Health Care and Financial Services of the H. Oversight and Accountability Comm.*, 118th Cong. (Oct. 24, 2023) (written statement of Danny Werfel, Comm'r, Internal Revenue).

26 A no-response audit occurs when a taxpayer under examination does not respond to IRS communication attempts, and the proposed tax adjustments are subsequently input as if the taxpayer had agreed to the examination 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.

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

28 *See* IRC § 7803(a)(3). *See also* TBOR, https://www.taxpayeradvocate.irs.gov/get-help/taxpayer-rights/ (last visited Nov. 16, 2023).

29 IRS responses to TAS fact checks (Dec. 17, 2021; Dec. 9, 2022); IRS response to TAS information request (Oct. 16, 2023).

30 IRS responses to TAS fact checks (Dec. 17, 2021; Dec. 9, 2022); IRS response to TAS information request (Oct. 16, 2023). These numbers reflect examination cases closed by the IRS and do not account for subsequent appeals or litigation.

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

32 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.

33 This represents the percentage of correspondence audits for taxpayers with total positive income under $50,000.

34 This represents the percentage of correspondence audits for taxpayers with total positive income greater than or equal to $50,000 and under $10,000,000.

35 This represents the percentage of correspondence audits for taxpayers with total positive income greater than or equal to $10,000,000.

36 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 2021 (Oct. 4, 2021); FY 2022 (Oct. 3, 2022); FY 2023 (Oct. 2, 2023).

37 *Id.* The figure is calculated using all dispositions, including not-processable dispositions.

38 IRS, SB/SE, CAR No. 5000-6, FY 2021 (Oct. 3, 2021); FY 2022 (Oct. 2, 2022); FY 2023 (Oct. 1, 2023). This number includes short-term payment agreements and continuous wage levies.

39 Weekly Automated Collection System Conversational Interactive Voice Response (ACI) and Voice Bot Reports (week ending Sept. 30, 2022) (Cumulative); Weekly ACI and Voice Bot Reports (week ending Sept. 30, 2023) (Cumulative). This service was not offered until July 2022.

40 IRS, CDW, FY 2021 (Oct. 2021); FY 2022 (Oct. 2022); FY 2023 (Oct. 2023). The IRS accepts about 99 percent of requests for IAs that meet the processable criteria.

41 IRS, SB/SE, CAR No. 5000-2, Taxpayer Delinquent Account Cumulative Report, FY 2021 (Oct. 3, 2021); FY 2022 (Oct. 2, 2022); FY 2023 (Oct. 1, 2023). 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 other collection status, 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.

42 IRS, SB/SE, CAR No. 5000-2, Taxpayer Delinquent Account Cumulative Report, FY 2021 (Oct. 3, 2021); FY 2022 (Oct. 2, 2022); FY 2023 (Oct. 1, 2023). 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.

43 Query by TAS Research of tax delinquent accounts with queue status in IRS, CDW, Accounts Receivable Dollar Inventory, Individual Master File, Modules. Age of balance due cases in the collection queue as of cycle 37 of FY 2021, cycle 37 of FY 2022, and cycle 37 of FY 2023. The age of Taxpayer Delinquency Investigations is not considered.

44 *See* TIGTA, Ref. No. 2023-IE-R010, *Inflation Reduction Act: Assessment of the IRS's Efforts to Deliver Expected Improvements for the 2023 Filing Season* (2023), https://www.tigta.gov/sites/default/files/reports/2023-09/2023ier010fr.pdf. For a further discussion of TACs, see Most Serious Problem: *Telephone and In-Person Service: Despite Improvements in Its Service Levels, the IRS Still Does Not Provide Taxpayers and Tax Professionals With Adequate, Timely Telephone and In-Person Service*, *infra*.

45 *See* Most Serious Problem: *Identity Theft: Lengthy Issue Resolution Delays and Inadequate Notices Burden Taxpayers Who Are Victims of Identity Theft or Whose Returns the IRS Has Flagged for Possible Identity Theft*, *infra*.

46 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 August 1, 2022, 317 of the 358 TACs were open, and 41 were closed or unstaffed. As of September 2023, 266 of the 363 TACS (73 percent) were less than fully staffed, limiting service appointments available to taxpayers. Janet L. Yellen, Sec'y of the Treasury, Remarks at the IRS Facility in New Carrollton, Maryland (Sept. 15, 2022), https://home.treasury.gov/news/press-releases/jy0952; IRS response to TAS information request (Dec. 4, 2023).

47 FY 2021 and FY 2022 figures from IRS response to TAS fact check (Dec. 12, 2022); FY 2023 figure from IRS response to TAS fact check (Dec. 4, 2023).

48 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. IRS response to TAS fact check (Dec. 4, 2023).

49 Correspondence represents AM inquiries and responses received from taxpayers who do not belong specifically to another area.

50 IRS, Joint Operations Center (JOC), Adjustments Inventory Reports: July-September FY Comparison (FY 2021, FY 2023). The FY 2021 figure has been updated from what was reported in the 2021 Annual Report to Congress. These are Individual Master File cumulative fiscal year receipts for Correspondence, Amended, Carryback, Injured Spouse, and Individual Taxpayer Identification Number. This metric measures taxpayer correspondence requesting account adjustment.

51 IRS, Research Analysis and Data (RAD), AM Reports: Correspondence Imaging System (CIS) Closed Case Cycle Time (FY 2022, FY 2023). The FY 2021 figure has been updated from what was reported in the 2021 Annual Report to Congress. IRS response to TAS fact check (Dec. 4, 2023).

52 IRS, Weekly Enterprise Adjustments Inventory Report (weeks ending Sept. 25, 2021; Sept. 24, 2022; Sept. 30, 2023). 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."

53 IRS, JOC, Adjustments Inventory Reports: July-September Fiscal Year Comparison (FY 2021, FY 2023). 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.

54 IRS, RAD, AM Reports: CIS Closed Case Cycle Time (FY 2022, FY 2023). The FY 2021 figure has been updated from what was reported in the 2022 Annual Report to Congress per IRS response to TAS fact check (Dec. 4, 2023).

55 IRS, Weekly Enterprise Adjustments Inventory Report (weeks ending Sept. 25, 2021; Sept. 24, 2022; Sept. 30, 2023).

56 IRS, JOC, Snapshot Reports: Enterprise Snapshot (weeks ending Sept, 30, 2022; Sept. 30, 2023; reports generated Oct. 5, 2023).

57 *Id.*

58 *Id.*

59 *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).

60 IRS, JOC, Snapshot Reports: Product Line Detail (weeks ending Sept. 30, 2022; Sept. 30, 2023; reports generated Oct. 5, 2023).

61 *Id.*

62 *Id.*

63 IRS.gov Site Traffic Calculator (FYs 2021-2023).

64 *Id.*

65 IRS, SB/SE, CAR No. 5000-6, Installment Agreement Cumulative Report, FY 2021 (Oct. 3, 2021); FY 2022 (Oct. 2, 2022); FY 2023 (Oct. 1, 2023). This number includes short-term payment plans. The online IA numbers were updated from what was reported in prior year reports. IRS response to TAS fact check (Dec. 4, 2023).

66 IRS Databook for FY 2021 (table 10), https://www.irs.gov/pub/irs-soi/21dbs02t10ap.xlsx; IRS Databook for FY 2022 (table 10), https://www.irs.gov/pub/irs-soi/22dbs02t10ap.xlsx; the FY 2022 figure has been updated from what was reported in the 2022 Annual Report to Congress; IRS Wage and Investment Division Filing & Services Report (FY 2023).

67 For a deeper discussion of online accounts, see Most Serious Problem: *Online Account Access for Taxpayers and Tax Professionals: Digital Services Remain Inadequate, Impeding Efficient Case Resolution and Forcing Millions of Taxpayers to Call or Send Correspondence to the IRS*, *infra*.

68 IRA, Pub. L. No. 117-169, 136 Stat. 1818 (2022).

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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.

METHODOLOGY OF THE MOST SERIOUS PROBLEMS 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 referrals from congressional offices and the IRS.

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 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, interest to stakeholders and Congress, and external indicators (*e.g.*, media);
- Barriers to tax law compliance, including cost, time, and burden;
- Taxpayer Advocate Management Information System inventory data;
- Emerging issues; and
- Input from TAS Local Taxpayer Advocates.

1 Prior to 2019, Congress tasked the National Taxpayer Advocate with identifying at least 20 of the most serious problems encountered by taxpayers. The Taxpayer First Act, enacted in 2019, amended the law to require the National Taxpayer Advocate to identify the ten most serious problems encountered by taxpayers. *See* Pub. L. No. 116-25, 133 Stat. 981 (2019).

2 The Systemic Advocacy Management System (SAMS) is a database through which IRS employees and members of the public can submit issues for TAS's consideration and on which TAS employees record subsequent action on those issues. IRS, Systemic Advocacy Management System (SAMS), https://www.irs.gov/advocate/systemic-advocacy-management-system-sams. TAS reviews and analyzes all SAMS 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), https://www.irs.gov/irm/part1/irm_01-004-013.

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 been working admirably to improve IRS service. However, the IRS still has much work to do including addressing processing delays; mitigating staffing challenges like hiring and training employees to meet the growing volume of taxpayer needs; transparently delivering clear and timely taxpayer guidance; developing qualitative metrics to better assess and improve taxpayer telephone and in-person service delivery; better educating taxpayers to the importance of relying on credentialed return preparers while vigorously enforcing preparer penalties; providing prompt resolution for taxpayers affected by identity theft; expanding IRS online account functionality; protecting international taxpayers from harsh penalties; supporting taxpayers living overseas; and ensuring taxpayers and tax professionals perceive the IRS Independent Office of Appeals as sufficiently independent.

* IRS Filing Statistics for the week ending Oct. 27, 2023. All other "Taxpayer Perspectives" are preferences or attitudes expressed in the "Comprehensive Taxpayer Attitude Survey 2022;" IRS: Research, Applied Analytics, and Statistics.

Most Serious Problem: **Processing**

Taxpayer Perspective

65%
of returns resulted in refunds*

Why This Is a Most Serious Problem: In 2023, millions of taxpayers once again experienced significant burden and frustration while awaiting refunds or other IRS actions necessary to comply with their tax obligations and resolve tax account issues. These delays not only have negative financial implications for taxpayers awaiting refunds but also for the government, as the IRS must pay interest on overpayments it does not timely refund.

Key Statistics: The IRS had an inventory backlog of over six million pieces of Accounts Management correspondence and amended tax returns as of October 28, 2023. This backlog was identical in size to the backlog of these items at the end of 2022, but nearly 70% of this inventory was overage, almost 20% higher than last year. Refund processing delays resulted in the IRS paying approximately $1.4 billion in additional interest on individual and business amended returns and applications for tentative refunds.

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

Taxpayer Perspective

26%
do not trust the IRS to fairly enforce tax laws

92%
agree that the IRS should focus on improving in-person and phone assistance

Why This Is a Most Serious Problem: IRS staffing levels in the past decade have fallen to lows not seen since the 1970s. Insufficient staffing has caused the quality of taxpayer service to decline on telephone lines and at Taxpayer Assistance Centers and significant IRS processing delays to arise.

Key Statistics: In FY 2023, the IRS hired 30,742 employees (including internal hires), but 18% of current IRS employees are eligible for retirement, with estimates of 37% in the next five years. The IRS's time to hire averaged 134 days overall but was over 193 days for external hires where no direct hiring authority exists, likely causing the IRS to lose qualified candidates.

Most Serious Problem: **IRS Transparency**

Taxpayer Perspective

90%

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: Some taxpayers and tax professionals still struggle to access information from the IRS, including finding clear and timely guidance on which they can rely, determining the status of pending issues, understanding IRS correspondence and whether they must respond to it, and reaching an IRS employee with the knowledge to answer their questions and the authority to resolve their problems.

Key Statistic: Through April 22, 2023, the IRS achieved an 85% Level of Service on key toll-free lines but had only answered 35% of the calls it received. Achieving this high level of service resulted in customer service representatives being idle 34% of the time, contributing to a growth in the backlog of Forms 1040-X. As of the end of the 2023 filing season, it took the IRS about seven months to process Forms 1040-X.

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

Taxpayer Perspective

92%

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

83%

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

Why This Is a Most Serious Problem: The way the IRS calculates its Level of Service is far more optimistic than the reality taxpayers face when calling the IRS. Several states have just one Taxpayer Assistance Center location for in-person service, and many are not fully staffed or operate on a limited schedule.

Key Statistics: Although the IRS reported a 51% Level of Service in FY 2023, live assistors answered only 29% of total calls. Automated responses answered 18% of the total calls, and the IRS did not answer the rest, or the caller disconnected. The IRS initiated a disconnect on 16.3 million calls in FY 2023. The IRS answered only 34% of the calls seeking an appointment at a Taxpayer Assistance Center.

Most Serious Problem: **Return Preparer Oversight**

Taxpayer Perspective

89%

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

Why This Is a Most Serious Problem: Even though tax return preparers prepare over half of the individual returns filed each year, many have no credentials and are subject to no minimum standards. Because taxpayers bear responsibility for the accuracy of their own returns, inept or dishonest preparers harm taxpayers by subjecting them to unanticipated tax deficiencies, penalties, interest, overpaid taxes, or lost refunds.

Key Statistics: For TY 2022, almost 60% of Preparer Tax Identification Numbers, which the IRS requires a tax return preparer to use to file a return, belonged to non-credentialed preparers. In the prior tax year, non-credentialed preparers filed about 79% of prepared returns claiming the Earned Income Tax Credit (EITC); their returns account for 91% of the associated audits and generate 94% of EITC audit adjustments.

Most Serious Problem: **Identity Theft**

Taxpayer Perspective

77%

trust the IRS to protect their tax account records from cyber criminals

Why This Is a Most Serious Problem: Each year, the IRS flags millions of returns for potential fraud. Before receiving their refunds, taxpayers who have filed legitimate returns deal with inadequate notices and difficulties authenticating their identity. Meanwhile, victims of tax related identity theft experience long delays to have their returns processed and receive their refunds.

Key Statistics: In 2022, the IRS suspended processing of 4.8 million tax returns, most with adjusted gross incomes less than 250% of the Federal Poverty Level and requested these taxpayers authenticate their identities before it would release their refunds. In 2023, victims of tax-related Identity theft waited nearly 19 months to have their returns processed and receive their refunds.

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

Taxpayer Perspective

90% find a personal online account valuable

86% want to be able to email questions to the IRS

Why This Is a Most Serious Problem: Taxpayers and tax professionals lack a comprehensive online account with integrated digital communication tools to access tax information and services. When taxpayers cannot quickly communicate with the IRS to resolve issues digitally, it negatively affects the taxpayer experience, which in turn impacts taxpayers' overall satisfaction and trust in the IRS.

Key Statistics: During FY 2023, nearly 17 million individuals accessed their online accounts; however, that represents only 11% of the taxpayers who filed a TY 2022 return. Since the IRS launched online services for tax professionals and their clients, Tax Pro, in July 2021, tax professionals and their clients have completed only 11,342 power of attorney authorizations and 3,705 tax information authorizations through Tax Pro while over 3.5 million were filed by paper, e-fax, or Taxpayer Digital Communication.

Most Serious Problem: **International**

Taxpayer Perspective

44% feel the IRS devotes too many resources to enforcement

Why This Is a Most Serious Problem: U.S. persons who receive money from abroad or who have certain foreign financial interests and cross-border business activities are potentially subject to a wide range of U.S. reporting requirements. Many of these requirements come with significant penalty exposure when a filing is late, incomplete, or inaccurate. Moreover, the IRS automatically assesses and broadly applies these harsh and often unexpected penalties.

Key Statistics: Between 2018 and 2021, the IRC § 6039F penalty for undisclosed gifts from foreign sources created over 4,000 penalties totaling $1.7 billion, with an average penalty of over $425,000 and 92% assessed against individuals most commonly earning $400,000 or less. During this same period, a yearly average of over 10,000 IRC §§ 6038 and 6038A penalties were assessed against both sole proprietors, over 71% with incomes not exceeding $400,000, and other business structures, over 60% with less than $1 million of total assets, for failure to file certain documents totaling nearly $435 million per year.

Most Serious Problem: **Compliance Challenges for Taxpayers Abroad**

Taxpayer Perspective

90% agree that the more guidance from the IRS, the more likely people are to correctly file taxes

89% want a toll-free number to ask questions

Why This Is a Most Serious Problem: Taxpayers abroad face vast difficulties in complying with their U.S. tax obligations, as they face filing requirements not typically applicable to taxpayers living in the United States. The IRS offers limited assistance and guidance, and taxpayers often lack accessible, real-time customer service assistance from the IRS.

Key Statistics: According to the U.S. Department of State, roughly nine million U.S. citizens reside abroad as of 2020. The IRS issued over 1.3 million notices and other correspondence to foreign addresses in FY 2021 and over 1.6 million in FY 2022.

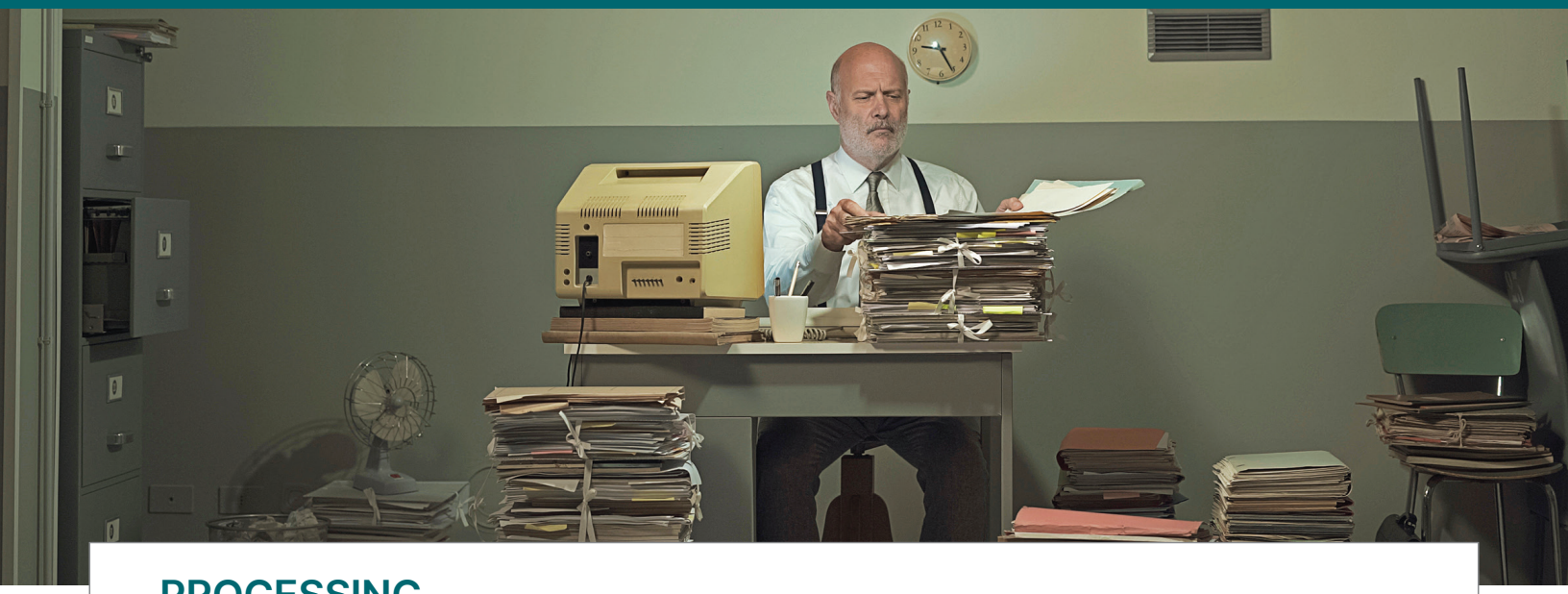
Most Serious Problem: **Appeals**

Taxpayer Perspective

74% trust the IRS to fairly enforce the tax laws

Why This Is a Most Serious Problem: The lack of independence and operational efficiency in the IRS Independent Office of Appeals (Appeals) undermines taxpayer trust and prolongs dispute resolution.

Key Statistics: In FY 2023, Appeals hired 91 new Appeals Officers. Of those, 87% were current IRS employees, and only 13% were external hires. Of the internal hires, 77% came directly from IRS Compliance positions. From FY 2022 to FY 2023, the average wait for a taxpayer to receive an Appeals conference after assignment to an Appeals Officer increased from 116 days to 146 days, a nearly 26% increase in states with a permanent Appeals presence. In areas with little or no Appeals presence assigned, the average wait time doubled from 120 days to 243 days.



PROCESSING

Ongoing Processing Delays Burden and Frustrate Taxpayers Awaiting Refunds and Other Account Actions

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

In 2023, millions of taxpayers once again experienced significant burden and frustration while awaiting refunds or other IRS actions necessary to comply with their tax obligations and resolve tax account issues.[1] Throughout 2023, the IRS's backlog associated with paper-filed original and amended returns continued to delay the processing of much-needed taxpayer refunds and assistance with tax account issues. However, there was some good news during the 2023 filing season. Taxpayers calling the 1040 toll-free telephone line[2] experienced shorter wait times and were more likely to get through to speak with a customer service representative (CSR), but answering the phones is only half the battle.[3] Because the IRS prioritized telephone service over other IRS operations such as processing amended returns, working identity theft returns, and responding to taxpayer correspondence, Accounts Management (AM) CSRs responsible for answering calls were not able to process amended returns and answer taxpayer correspondence. This created a new backlog by the end of the 2023 filing season.[4] As a result, individual and business taxpayers experienced delays. These delays not only have negative financial implications for taxpayers awaiting refunds but also for the government, as the IRS must pay interest on overpayments it does not timely refund.[5]

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1 National Taxpayer Advocate Fiscal Year 2024 Objectives Report to Congress iii (Preface: *National Taxpayer Advocate's Introductory Remarks*), https://www.taxpayeradvocate.irs.gov/reports/2024-objectives-report-to-congress/preface/.

2 Individual taxpayers can call 1-800-829-1040, 7 a.m. to 7 p.m. local time, Monday through Friday.

3 IRS, Joint Operations Center (JOC), Snapshot Reports: Enterprise Snapshot, Accounts Management (AM) (week ending Apr. 22, 2023); *see* Most Serious Problem: *Telephone and In-Person Service: Despite Improvements in Its Service Levels, the IRS Still Does Not Provide Taxpayers and Tax Professionals With Adequate, Timely Telephone and In Person Service*, *infra*.

4 National Taxpayer Advocate Fiscal Year 2024 Objectives Report to Congress iii (Preface: *National Taxpayer Advocate's Introductory Remarks*), https://www.taxpayeradvocate.irs.gov/reports/2024-objectives-report-to-congress/preface; *see* Most Serious Problem: *Identity Theft: Lengthy Issue Resolution Delays and Inadequate Notices Burden Taxpayers Who Are Victims of Identity Theft or Whose Returns the IRS Has Flagged for Possible Identity Theft*, *infra*.

5 IRC § 6611.

EXPLANATION OF THE PROBLEM

The IRS typically enters each new calendar year with a carryover inventory of unprocessed original and amended returns, correspondence, and AM cases (*e.g.*, requests for account adjustments). Figure 2.1.1 shows the carryover inventory for 2018 through 2022, along with the existing unprocessed inventory on October 28, 2023. Due to varied filing due dates and constant receipts throughout the year, it is normal for the IRS to carry some volume of unprocessed inventory into the next calendar year. For this reason, both the volume of inventory and processing timeliness determine the success of the IRS's processing effort. Typically, year-end overage inventory and backlogs grow during the subsequent filing season as new tax return filings generate additional taxpayer correspondence and the need for more processing actions.[6] However, during the pandemic, the inventory backlog reached all-time highs. Unfortunately, overage inventory is not just a product of the pandemic.[7] As of October 28, 2023, unprocessed amended returns, correspondence, and AM cases totaled 6.2 million, with 69.5 percent of this inventory classified as overage, an indication that the IRS must do more to reduce the backlog and overage cases carried over into each new filing season.

FIGURE 2.1.1, Volume of Unprocessed Amended Returns, Correspondence, and AM Cases Comparing Calendar Years (CYs) 2018-2022 and 2023 Through October 28, 2023[8]

	12/29/2018	12/28/2019	12/26/2020	12/25/2021	12/31/2022	10/28/2023
Unprocessed Correspondence and AM Cases (Requests for Account Adjustments)	1.3 mil	1.9 mil	3.2 mil	5.5 mil	4.9 mil	4.3 mil
Unprocessed Amended Returns (Individual and Business)	0.4 mil	0.5 mil	0.8 mil	2.5 mil	1.3 mil	1.9 mil
Total Unprocessed AM Inventory	1.7 mil	2.4 mil	4.0 mil	8.0 mil	6.2 mil	6.2 mil
Percentage of Unprocessed Inventory Classified as Overage	35.2%	42.7%	44.6%	60.3%	49.7%	69.5%

In September 2022, to improve customer service, Treasury Secretary Janet Yellen committed to increasing IRS telephone service by answering 85 percent of calls to the toll-free 1040 line, cutting wait times for telephone service in half during Filing Season (FS) 2023, and fully staffing all IRS Taxpayer Assistance Center (TAC) offices.[9] Though resulting improvements to customer service were praiseworthy, the shifting of resources from processing activities to telephone service detracted from the IRS's previous backlog progress, rendering the volume of AM unprocessed amended returns, cases, and taxpayer correspondence on April 22, 2023, similar to the volume experienced during the same April 22, 2022, time period, as shown in Figure 2.1.2. During this time, the IRS transferred resources from one IRS activity to another, creating a new problem to solve an old one.

6 IRS, AM Inventory Report (AMIR), National Inventory Age Report (weeks ending Dec. 31, 2022, and Apr. 22, 2023).
7 Overage inventory refers to correspondence, amended returns, AM cases, and other work products that the IRS has not processed within the prescribed processing timeframe for the identified work product.
8 IRS, AMIR, National Inventory Age Report (weeks ending Dec. 29, 2018; Dec. 28, 2019; Dec. 26, 2020; Dec. 25, 2021; Dec. 31, 2022; and Oct. 28, 2023, respectively).
9 *See* Janet L. Yellen, Sec'y of the Treasury, Remarks at the IRS Facility in New Carrollton, Maryland (Sept. 15, 2022), https://home.treasury.gov/news/press-releases/jy0952.

FIGURE 2.1.2, Volume of AM Unprocessed Amended Tax Returns, Correspondence, and AM Cases, Weeks Ending April 23, 2022, and April 22, 2023[10]

	4/23/2022	4/22/2023
Unprocessed Correspondence and AM Cases	5.3 mil	5.0 mil
Unprocessed Amended Returns	2.0 mil	2.4 mil
Total Unprocessed AM Inventory	**7.3 mil**	**7.4 mil**

Refund delays can have a devasting impact for many taxpayers, but they also have a costly ramification for the government. Based on average processing timeframes and refund amounts, CY 2022 amended returns and tentative refund application processing delays resulted in the IRS paying approximately $1.4 billion in additional interest, as shown in Figure 2.1.3.

FIGURE 2.1.3, Return Volume, Refund Volume, Average Processing Timeframe, Average Refund Amount, and Interest Paid by Return Type, CY 2022[11]

Return Type	Volume of Returns Processed	Volume of Refunds Issued	Average Processing Timeframe in Days	Average Refund Amount	Interest Paid Due to Processing Delays
Form 1040-X, Amended U.S. Individual Income Tax Return	4.2 mil	2.3 mil	162	$4,317	$135.9 mil
Form 1045, Application for Tentative Refund	439	385	150	$47,679	$295,934
Form 1139, Corporation Application for Tentative Refund	3,003	2,792	87	$952,011	$33.3 mil
Form 941-X, Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund	2.1 mil	1.6 mil	124	$68,581	$1.2 bil
Form 1120X, Amended U.S. Corporation Income Tax Return	88,134	23,668	168	$359,710	$27.4 mil
Total	**6.4 mil**	**3.9 mil**			**$1.4 bil**

10 IRS, AMIR, National Inventory Age Report (weeks ending Apr. 23, 2022, and Apr. 22, 2023).

11 IRS, Compliance Data Warehouse (CDW), Individual Master File (IMF) and Business Master File (BMF) (Sept. 2023); IRS response to TAS information request (Sept. 2, 2023). Form 1045 data: Because CDW's IMF extract does not contain the carryback claim date, we approximated the Form 1045 refund processing time based on the date of the most relevant adjustment transaction code (TC) 295. Additionally, we made a downward adjustment to the Form 1045 processing time in the amount of 88 days, which is derived from the average number of days between the carryback claim date and the TC 295 date for Form 1139 filers in BMF who received a refund. This adjustment reflects an approximation and was necessary due to the carryback claim date most often exceeding the TC 295 adjustment date. Refunds generated from Forms 1045 and 1139 began accruing interest on the 46th day after the form was received. As such, we adjusted to estimate the amount of the interest that accrued after the filing of the amended return or application for tentative refund. Form 941-X data: A significant portion of Form 941-X filings include claims for COVID-19-related credits, the bulk of which stems from Employee Retention Credits (ERCs). Interest on these credits and other amended returns, such as Forms 1040-X and 1120X, generally accrue from the presumptive date of the return filing. We produced the interest estimate for these amended returns by computing a daily interest amount – equal to the total interest subsequent to the amended return date divided by the total days between the ERC transaction date (presumptive filing date) and the date of the refund – and multiplying by the total days elapsed between the amended return date and the date of the refund. For interest paid data, average processing timeframes are based on those returns that have completed processing as of September 28, 2023, and do not consider timeframes associated with returns that the IRS received that remain unprocessed. Amounts greater than one million have been rounded.

Additionally, refund-related processing delays can lead to financial difficulties for businesses relying on refunds for the payment of operating expenses, and such delays impact individual taxpayers who rely on refunds to pay necessary living expenses. Delayed responses and processing actions hinder individual and business taxpayers, affecting their *rights to be informed*, *to finality*, and *to quality service*.[12]

Though the largest portion of the IRS's FS 2023 backlog resided in AM, it is necessary to view the backlog from a wider perspective when exploring the factors that contribute to processing backlogs. Areas where backlogs continue to persist include:

- Processing of amended returns;
- Processing of correspondence and AM cases;
- Processing of paper returns; and
- Resolution of returns suspended in the processing stream.

Increasing CSR training and implementing a balanced workload approach could improve processing productivity without causing high CSR idle time or the creation of new backlogs, but we acknowledge it may decrease the speed at which a CSR can answer a call. It is a delicate workload balancing act, but the IRS must put the year-after-year backlog behind us once and for all.

ANALYSIS

As shown in Figure 2.1.4, the IRS backlog has a variety of components, with each component typically resulting from a processing activity requiring human intervention. At the end of FS 2023, the IRS's processing backlog consisted of approximately 16.9 million documents. Of these documents, 2.6 million (15 percent) were originally filed paper individual and business tax returns while 3.4 million (20 percent) were individual and business amended tax returns, and 5.0 million (30 percent) involved paper correspondence from individual and business taxpayers providing the IRS with documentation, seeking account information, or requesting account resolution.[13] The remaining 5.9 million (35 percent) was attributable to individual and business tax returns suspended in the processing stream due to IRS filters and processing difficulties.[14] The IRS has made progress in several of these processing areas but has continued to face challenges with the timely processing of amended returns, correspondence, and AM casework.

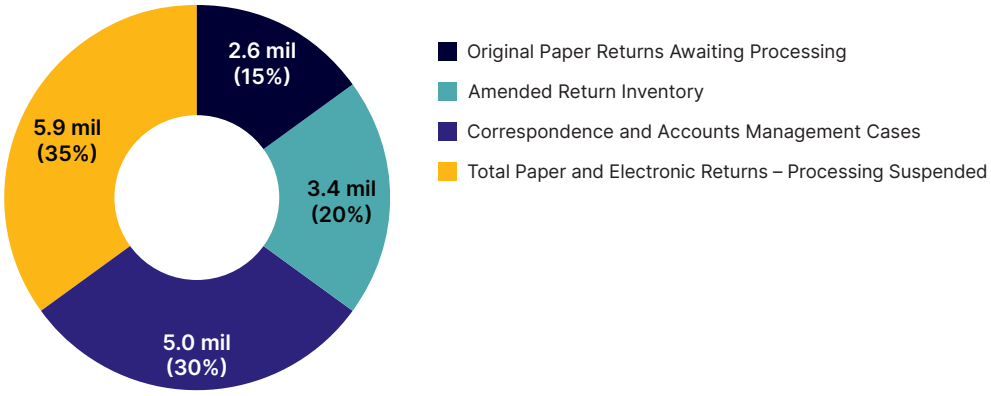
12 *See* Taxpayer Bill of Rights (TBOR), https://www.taxpayeradvocate.irs.gov/taxpayer-rights (last visited Dec. 6, 2023). The rights contained in TBOR are also codified in IRC § 7803(a)(3).

13 IRS, AMIR National Inventory Age Report (week ending Apr. 22, 2023). Row totals and column totals may differ because of rounding.

14 Suspended return totals include potential or suspected identity theft cases that are fully processed returns prevented from posting to the IRS's Master File pending authentication of the taxpayer's identity. The IRS retains these cases in its "unpostable" inventory and permits their release to post upon taxpayer authentication.

FIGURE 2.1.4[15]

Components of the IRS Backlog at the End of Filing Season 2023



Amended Returns and Applications for Tentative Refund

The processing backlog associated with amended returns and the application for tentative refunds resulted in refund delays for millions of taxpayers. This backlog included Forms 1040-X, 1045, 1139, 941-X, and 1120X. Many taxpayers filed refund claims associated with the Employee Retention Credit (ERC), net operating losses, or other relief provisions of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).[16] Of the amended returns and applications for tentative refunds filed from January 1, 2022, through December 31, 2022, and processed as of September 28, 2023, individuals waited approximately 5.5 months for Form 1040-X refunds with average refunds exceeding $4,000 and five months for Form 1045 refunds averaging almost $48,000.[17] Similarly, businesses waited almost three months to receive Form 1139 refunds with refunds averaging more than $950,000, about four months to receive Form 941-X refunds that averaged approximately $69,000, and 5.5 months for Form 1120X refunds that averaged almost $360,000.[18]

Employee Retention Credit

During the COVID-19 pandemic, Congress provided relief to incentivize employers to keep employees on the payroll despite pandemic-related difficulties. It further extended and expanded ERC provisions that helped businesses combat pandemic-related hardships and retain employees during the period of March 12, 2020, though December 31, 2020, allowing for the continuation of the credit through the end of 2021.[19] These legislative changes increased the number of amended returns filed to claim the ERC credit and significantly contributed to the IRS's already existing backlog of amended returns.

Since the inception of the ERC, taxpayers have struggled to determine eligibility, and the IRS has likewise struggled to process these claims, due to both the volume and the complexity of the law. This complexity and the lucrative nature of the credit led to a host of scams marketed by unscrupulous actors providing bad

15 IRS, AMIR National Inventory Age Report (week ending Apr. 22, 2023). Row totals and column totals may differ because of rounding.
16 *See* Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, §§ 2301-2308, 134 Stat. 281 (2020).
17 IRS, CDW, IMF and BMF (Sept. 2023). Note that average processing timeframes are based on those returns that have completed processing as of September 28, 2023, and do not consider timeframes associated with returns that were received yet remain unprocessed.
18 IRS, CDW, IMF and BMF (Sept. 2023). Note that average processing timeframes are based on those returns that have completed processing as of September 28, 2023, and do not consider timeframes associated with returns that were received yet remain unprocessed.
19 *See* Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020); American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4 (2021); Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 § 80604, 135 Stat. 429 (2021).

or misleading advice or encouraging small business owners to claim the credit regardless of eligibility. ERC claim processing timeframes had declined to a nine- to ten-week average (down from the 55-week average experienced when the credit was introduced), but the IRS later stalled the processing as it was concerned that business owners were being victimized. As of September 28, 2023, TAS Research estimates that the IRS had processed over 3.5 million ERC claims filed on original and amended Forms 941, 943, and 944 and had credited approximately $230 billion on these claims – claims originally estimated by the Congressional Budget Office to cost the government only $85 billion.[20] As shown in Figure 2.1.5, taxpayers filed the vast majority of ERC claims on original or amended Forms 941, with a significant volume of unprocessed Form 941-X filings still awaiting processing at the end of fiscal year (FY) 2023.

FIGURE 2.1.5, Forms 941-X Received; ERC Claims Processed and Credited; and Average Weeks for Processing, CYs 2020-2022 and 2023 Through September 30, 2023[21]

Year Claim Filed	Total 941-X Claims Filed	Total Processed Forms 941-X With ERC Credits Reflected on Taxpayer Accounts	Total Amount of Forms 941-X ERC Claims Paid	Average Weeks for ERC Processing
2020	338,678	13,145	$2,579,434,147	55
2021	738,422	718,462	$52,138,381,872	19
2022	1,369,000	1,483,432	$99,950,193,819	9
January 1, 2023, Through July 31, 2023	1,743,353	785,832	$38,022,480,920	10
August 1, 2023, Through September 30, 2023	439,043	841	$57,093,317	1
Total	**4,628,496**	**3,001,712**	**$192,747,584,075**	
Form 941-X Claims Still Pending on September 30, 2023	**800,224**			

Starting in mid-July, the IRS all but stopped processing these returns while it revised its procedures to handle the complexity and increase in aggressive and misleading marketing that may have lured honest small businesses and organizations into erroneously claiming the credit.[22] In September 2023, the IRS encouraged businesses to review IRS guidance to determine eligibility and worked to develop initiatives to

20 IRS, CDW, BMF and Business Return Transaction File (BRTF) (Sept. 28, 2023); letter from Congressional Budget Office, to Sen. Kyrsten Sinema, *Re: The Budgetary Effects of the Employee Retention Tax Credit During the Coronavirus Pandemic* (July 16, 2021), https://www.cbo.gov/system/files/2021-07/57365-Sinema.pdf.

21 IRS, CDW, BMF and BRTF (Sept. 28, 2023); IRS, JOC, AM Research, Analysis and Data (RAD) Reports: COVID, COVID Business Credits (FY 2023 through Sept. 30, 2023); National Taxpayer Advocate 2022 Annual Report to Congress 37 (Most Serious Problem: *Processing Delays: Paper Backlogs Caused Refund Delays for Millions of Taxpayers*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MSP_01_Processing-Delays.pdf; IRS, JOC, AM RAD Report: COVID, COVID Business Credits (Nov. 18, 2023). As of November 18, 2023, 966,345 unprocessed 941-X ERC claims were pending.

22 IRS, IRS Operations: Status of Mission-Critical Functions, Status of Processing Form 941, Employers Quarterly Federal Tax Returns (Oct. 27, 2023), https://www.irs.gov/newsroom/irs-operations-status-of-mission-critical-functions.

allow businesses that fell victim to aggressive promoters to withdraw unprocessed erroneous claims while formulating a settlement program to make it easier for victims to make repayment of improperly received ERC refunds.[23]

Also in September 2023, the IRS announced a moratorium on the processing of ERC claims newly filed between September 14, 2023, and December 31, 2023.[24] Though it indicated it would continue to process ERC claims filed before the moratorium at a slower pace due to stricter compliance reviews, the IRS has all but ceased processing as taxpayers continue to file new ERC claims at a significant rate.

At the end of FY 2023, the IRS had about 800,000 unprocessed Form 941-X claims, 95 percent (762,000) of which contained claims for the ERC credit.[25] Though over 86 percent of these unprocessed claims were less than 120 days old at FY 2023 year-end, the dynamics of this inventory are changing rapidly. From mid-August through mid-October 2023, taxpayers filed ERC claims at an average weekly rate of approximately 45,000 while IRS processing of these claims slowed to an average weekly rate of just 150.[26] Continuing at this rate, the IRS will carry over almost 1.3 million ERC claims into FS 2024. With FS 2024 quickly approaching and Treasury's continued commitment to deliver an 85 percent level of telephone service, the National Taxpayer Advocate is very concerned that the IRS will not begin working the majority of these claims until after the close of FS 2024.

These stoppages and delays have left taxpayers with legitimate ERC claims no way to check on the status of their claims and no idea how long processing might take. Neither the IRS nor business taxpayers experiencing financial hardship can afford to wait for illegitimate claims to be voluntarily withdrawn before the IRS addresses and processes legitimate claims. To provide the relief Congress intended, it is critical that the IRS develop an improved screening process to better identify legitimate claims and significantly increase the volume of ERC claims it processes (allows or disallows in full or part) or assigns to an auditor to begin an examination.

Correspondence and Accounts Management Cases

The IRS Needs to Improve the Balance Between Telephone and Processing Services, Train Customer Service Representatives in Remote Call Centers to Perform Processing Duties, and Provide Taxpayers the Service to Which They Are Entitled

Taxpayer correspondence, AM cases, and amended returns combined comprised about 50 percent of the IRS's processing backlog at the end of FS 2023.[27] The IRS's Submission Processing function receives and works the least complex amended returns. The remaining paper correspondence and paper-filed amended returns are then sorted, scanned, and converted to digital images that CSRs primarily in the IRS's ten campus-based call

23 IRS News Release, IR-2023-169, To Protect Taxpayers From Scams, IRS Orders Immediate Stop to New Employee Retention Credit Processing Amid Surge of Questionable Claims; Concerns From Tax Pros (Sept. 14, 2023), https://www.irs.gov/newsroom/to-protect-taxpayers-from-scams-irs-orders-immediate-stop-to-new-employee-retention-credit-processing-amid-surge-of-questionable-claims-concerns-from-tax-pros; IRS News Release, IR-2023-193, IRS Announces Withdrawal Process for Employee Retention Credit Claims; Special Initiative Aimed at Helping Businesses Concerned About an Ineligible Claim Amid Aggressive Marketing Scams (Oct. 19, 2023), https://www.irs.gov/newsroom/irs-announces-withdrawal-process-for-employee-retention-credit-claims-special-initiative-aimed-at-helping-businesses-concerned-about-an-ineligible-claim-amid-aggressive-marketing-scams.

24 IRS News Release, IR-2023-169, To Protect Taxpayers From Scams, IRS Orders Immediate Stop to New Employee Retention Credit Processing Amid Surge of Questionable Claims; Concerns From Tax Pros (Sept. 14, 2023), https://www.irs.gov/newsroom/to-protect-taxpayers-from-scams-irs-orders-immediate-stop-to-new-employee-retention-credit-processing-amid-surge-of-questionable-claims-concerns-from-tax-pros.

25 IRS, RAD Report, COVID Business Credits (week ending Sept. 30, 2023).

26 IRS, RAD Report, COVID Business Credits (week ending Sept. 30, 2023). The time period covers August 19, 2023, through October 14, 2023.

27 IRS, Wage and Investment (W&I) Division data (week ending Apr. 22, 2023). Row totals and column totals may differ because of rounding.

centers use to work.[28] Approximately 14,800 campus-based call center CSRs performed both processing and phone assistance duties and accounted for about 70 percent of the IRS's total AM CSR staff at the end of FS 2023.[29] Although another 6,500 CSRs staffed an additional 15 remote calls centers across the United States, the IRS did not train these remote call center CSRs to complete processing duties, thus limiting them to providing only telephone assistance.[30]

Increased CSR telephone staffing during FS 2023 worked to meet Treasury's goal of answering 85 percent of the calls to its 1040 toll-free line; however, results were less favorable on numerous other phone lines and less than favorable from a processing perspective. The increased ratio of CSRs staffing telephones triggered and perpetuated a greater imbalance between phones and processing, resulting in backlogs that continue to negatively impact taxpayer service. From January through April 22, 2023, CSRs spent 3.73 million hours staffing telephones to achieve a Level of Service in excess of 85 percent, but it came with a huge cost.[31] CSRs spent 1.27 million of those hours waiting for the phone to ring (idle time) while amended return, correspondence, and AM case inventories continued to climb.[32] At the conclusion of FS 2023, the IRS redirected campus-based CSR resources to address processing backlogs, but lack of training prevented remote call center CSRs from contributing to this paper reduction effort.[33]

The IRS needs to strike a better balance between telephone service and processing inventory. With increased hiring and paperless processing, the IRS should reexamine the use of CSRs in its remote call centers. By providing remote CSRs with the training needed to perform processing activities, the IRS could improve its flexibility between telephone and processing duties (reducing available time between phone calls when telephone demand is low), expand CSR authority to perform more account resolution actions while assisting taxpayers over the phone, and reduce the volume of unprocessed cases, correspondence, and amended returns carried into each new filing season. Though increased technology may reduce some portion of the IRS's processing and telephone demand, increased training and utilization of remote call center CSRs could improve processing and telephone service levels throughout the year, improving the taxpayer experience for all taxpayers who call and correspond with the IRS.

Systemic First-Time Penalty Abatements Would Increase Fairness and Reduce Correspondence and Calls to the IRS's Toll-Free Telephone Line

Calls and correspondence received in AM often concern taxpayer requests for penalty abatement. Though CSRs field many of these requests over the toll-free telephone line, taxpayers frequently submit these requests in writing, necessitating CSR consideration and account action and increasing the volume of paper the IRS must process. In other cases, taxpayers who are unaware the IRS will consider penalty relief miss abatement opportunities and are left to unfairly pay more than those taxpayers aware of the administrative relief available.[34]

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28 Internal Revenue Manual (IRM) 3.13.6.1.1, Background (Dec. 1, 2017), https://www.irs.gov/irm/part3/irm_03-013-006; IRM 3.13.6.2.4 Batch Cover Sheet - Outside the Scope of the Campus Work Type (Sept. 2, 2021), https://www.irs.gov/irm/part3/irm_03-013-006; and IRM 21.1.1.3, Customer Service Representative (CSR) Duties (June 2, 2023), https://www.irs.gov/irm/part21/irm_21-001-001. "All employees assigned to Accounts Management, Field Assistance and Compliance Services are considered CSRs."

29 IRS response to TAS information request (Oct. 2, 2023). As of April 22, 2023, the IRS indicated that 14,763 CSRs staffed campus-based call centers while 6,451 CSRs worked in IRS remote call centers.

30 IRS response to TAS information request (Sept. 2, 2023). As of April 22, 2023, the IRS indicated that 14,763 CSRs staffed campus-based call centers while 6,451 CSRs worked in IRS remote call centers.

31 IRS, Ready Agent Hours (RAH) Report (Jan. 1, 2023, through Apr. 22, 2023).

32 *Id.*

33 IRS response to TAS information request (Oct. 2, 2023). CSRs at remote call centers are only trained to handle telephone traffic while campus CSRs are trained on telephone inquiries, correspondence, and adjustment inventory. This is in keeping with the longstanding decision to have remote call site CSRs maintain their primary focus on phone calls to service post-filing season customer demand while allowing campus-based CSR resources to address the paper reduction effort.

34 IRC § 7803(a)(3)(C) provides that taxpayers have the "*right to pay no more than the correct amount of tax*."

Each year, millions of taxpayers file untimely returns or make late payments resulting in the IRS assessing failure-to-file, failure-to-pay, or failure-to-deposit penalties.[35] Under existing administrative procedures, the IRS will provide "first-time abatement" (FTA) penalty relief for failure-to-file, failure-to-pay, and failure-to-deposit penalties. The administrative abatement is provided if a taxpayer is otherwise compliant and has not used FTA within the prior three years.[36] However, many taxpayers are unaware of this administrative relief provision. The IRS generally provides FTA only if a taxpayer requests it or requests reasonable cause relief.[37]

As of October 2023, the IRS had granted FTA to nearly 125,000 taxpayers for penalties associated with filing their 2022 tax returns.[38] Another 1.4 million taxpayers appeared to be eligible for FTA penalty relief but did not request it.[39] A relatively small percentage of sophisticated taxpayers (or perhaps taxpayers paying for professional assistance) received penalty abatements just by asking while the overwhelming majority of taxpayers unaware of FTA did not request or receive such relief. The National Taxpayer Advocate strongly recommends that for FS 2024 the IRS systemically apply FTA to all eligible taxpayers. The systemic application of FTA would have the two-fold benefit of increasing taxpayer fairness while reducing the volume of calls and correspondence received regarding these penalty abatement requests.

Relatedly, TAS proposes the IRS grant taxpayers who qualify for both reasonable cause and FTA penalty relief the ability to substitute a reasonable cause defense in lieu of FTA. The IRS should not force taxpayers to use their once-in-three-years FTA waiver when reasonable cause applies. The IRS is considering, and TAS supports, systemically applying FTA to promote fairness and reduce burdens for both taxpayers and the IRS. TAS plans to continue working with the IRS to ensure that similarly situated taxpayers receive equitable treatment in the abatement of these penalties. Until then, taxpayers who are assessed one of these penalties may still have time to request penalty abatement and should contact the IRS for abatement consideration.

Paper Returns Awaiting Processing

At the end of FS 2023, original paper returns awaiting processing comprised only 15 percent of the backlog, down from 46 percent at the end of FS 2022.[40] This was a welcome change. But those who experienced delays still faced multiple challenges. Historically, original paper returns were a significant portion of the IRS's processing backlog, primarily due to the human resources required for manual data entry of return information. TAS has long advocated for improvements that would alleviate paper processing delays resulting from the IRS's manual data entry method of processing paper-filed tax returns.[41] The good news is that the IRS is moving in the right direction to reduce paper processing delays, which will translate to quicker refunds and faster IRS responses. Two solutions that have figured prominently in discussions for combating paper return backlogs involve the implementation of document scanning and the expansion of electronic filing.

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35 IRS, 2022 Data Book, Table 26, Civil Penalties Assessed and Abated, by Type of Tax and Type of Penalty, Fiscal Year 2022, at 60 (2023), https://www.irs.gov/pub/irs-pdf/p55b.pdf.

36 IRM 20.1.1.3.3.2.1, First Time Abate (FTA) (Mar. 29, 2023) (providing an administrative waiver from failure-to-file penalties under IRC §§ 6651(a)(1), 6698(a)(1), or 6699(a)(1)); failure-to-pay penalties under IRC § 6651(a)(2) and 6651(a)(3); and failure-to-deposit penalties under IRC § 6656), https://www.irs.gov/irm/part20/irm_20-001-001r. *See also* IRS, Penalty Relief Due to First Time Abate or Other Administrative Waiver, https://www.irs.gov/payments/penalty-relief-due-to-first-time-abate-or-other-administrative-waiver (last visited Dec. 20, 2023).

37 IRM 20.1.1.3.3.2.1(3), First Time Abate (FTA) (Mar. 29, 2023), https://www.irs.gov/irm/part20/irm_20-001-001r. IRS personnel can apply FTA unilaterally if they identify taxpayer eligibility on their own initiative.

38 IRS, CDW, IMF, TY 2022 Returns (Oct. 2023). Data reflects FTAs for returns with tax periods ending in 2022. The number of FTAs may increase as time progresses, allowing for additional taxpayers to request and receive FTA relief. The IRS confirmed the TAS estimate but was unable to complete the verification necessary to arrive at the exact number.

39 *Id.*

40 IRS, W&I, Weekly Report (weeks ending Apr. 22, 2022, and Apr. 22, 2023). Row totals and column totals may differ because of rounding.

41 National Taxpayer Advocate 2022 Annual Report to Congress 39 (Most Serious Problem: *Processing Delays: Paper Backlogs Caused Refund Delays for Millions of Taxpayers*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MSP_01_Processing-Delays.pdf.

Implementation of Scanning Technology

In 2023, the IRS implemented the use of scanning technology to digitize and process certain returns, starting with Forms 1040, 940, and 941. If successful, full implementation of Form 1040 scanning, along with the scanning of Forms 940 and 941, would dramatically reduce the number of paper tax returns that require manual data entry. Reducing and eventually eliminating manual data entry will reduce errors and processing delays. In the next phase, the IRS will need to expand document scanning to other high volume, paper-filed individual and business tax returns. The IRS has high aspirations for accomplishing the paperless processing of all tax returns by FS 2025 and will provide taxpayers the option to submit paperless correspondence to the IRS as early as FS 2024.[42] By July 14, 2023, however, the IRS had scanned only about 500,000 Forms 940, just over 200,000 Forms 941, and 38,000 paper Forms 1040 into the IRS's Modernized e-File (MeF) processing system.[43] That is a small portion compared to the nearly 55 million paper tax returns the IRS receives each year.[44] But it is a start. As part of its Strategic Operating Plan (SOP), the IRS stated a goal to scan and digitize millions of business and individual tax returns in 2023; however, with less than one million scanned by mid-July, reaching this goal looks unlikely, but one can hope.[45]

It is imperative that the IRS get this right, as paperless processing will not only improve processing time for issuing taxpayer refunds but also reduce filing, storage, and retrieval costs and delays and conserve IRS resources it can redirect to other post-processing activities to improve the customer experience. If successful, it would be a win-win for taxpayers and tax administration.

Electronic Filing Considerations

Electronic filing further reduces the volume of paper-filed returns IRS campuses receive that require manual processing. E-filing generally provides a faster, more error-free processing experience. As of October 20, 2023, taxpayers filed approximately 12.7 million (eight percent) individual income tax returns on paper.[46] Considering about ten years ago only 83 percent of individuals filed electronically, we have made progress.[47] Unfortunately, many taxpayers still cannot electronically file the IRS's own forms due to the IRS's own systems. The IRS is painfully aware of these challenges; therefore, several SOP initiatives focus on correcting and removing these barriers to allow these taxpayers a path forward. However, we must not forget that many taxpayers choose to or have no other option but to file paper returns for a variety of reasons. In these instances, the IRS must accommodate taxpayers' choices without imposing unreasonable delays.

Direct File

One solution the IRS is exploring is a pilot, Direct File, to provide an agency-run, free, direct e-file tool as an option for taxpayers. The IRS is looking to implement the test pilot of the system during FS 2024.[48] The IRS does not intend the initiative to replace existing electronic filing options, rather to provide an additional option for taxpayers. As part of this initiative, the IRS will need to address the impact of its Direct File tool's inability to file state tax returns and potential negative consequences to state taxing authorities. And it will need to build configuration-driven software; update the software to keep pace with tax law changes;

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42 U.S. Department of the Treasury Press Release, IRS Launches Paperless Processing Initiative (Aug. 2, 2023), https://home.treasury.gov/news/press-releases/jy1666.

43 IRS News Release, IR-2023-126, Building on [FS] 2023 Success, IRS Continues to Improve Service, Pursue High-Income Individuals Evading Taxes, Modernize Technology (July 14, 2023), https://www.irs.gov/newsroom/building-on-filing-season-2023-success-irs-continues-to-improve-service-pursue-high-income-individuals-evading-taxes-modernize-technology.

44 IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2023–2030, 4 (June 2023), https://www.irs.gov/pub/irs-pdf/p6292.pdf.

45 IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan 12 (Apr. 2023), https://www.irs.gov/pub/irs-pdf/p3744.pdf.

46 IRS, FS Statistics Weekly Report (week ending Oct. 20, 2023).

47 IRS, Pub. 55-B, Internal Revenue Service 2013 Data Book iii (Mar. 2014), https://core.publish.no.irs.gov/pubs/pdf/p55-b--2014-03-00.pdf.

48 IRS, Pub. 5788, IRS Report to Congress: Inflation Reduction Act § 10301(1)(B) IRS-Run Direct E-File Tax Return System 20 (May 2023), https://www.irs.gov/pub/irs-pdf/p5788.pdf.

and ensure taxpayer information is private, secure, and protected from fraud. The IRS will also need to devote substantial customer service and support for its e-file tool for this program to be a success. As the IRS develops and implements its Direct File pilot, TAS will continue to work with the IRS to provide comments and recommendations.

Electronic Filing Expansion

Despite the significant benefits of electronic filing, there are approximately 150 to 200 IRS forms that taxpayers cannot e-file with the IRS.[49] During 2023, the IRS worked with internal and external stakeholders to determine which additional returns it would pursue to include in its 2024 electronic filing program, considering factors such as tax return volume, cost, and the effort involved in making the return acceptable via electronic filing.

Because of resources and existing backlogs, the IRS should consider the work involved in the processing of paper returns in addition to the effort required to simply develop the return for electronic filing acceptance. Backlogs in processing amended returns and applications for tentative refund, along with interest costs, suggest that the IRS should prioritize these returns when determining forms to include in the IRS's electronic filing program. And the IRS should include all returns it accepts electronically to the IRS's MeF for automated processing – including Form 1040-X, which taxpayers can e-file, but the IRS still must manually process, resulting in unnecessary refund delays and potential errors.

Electronic Filing Rejections

Although the National Taxpayer Advocate applauds the IRS's efforts to decrease fraud and correct errors on original electronic submissions, she thinks there are multiple options to accomplish that goal without the IRS rejecting proper electronically filed valid returns, especially returns requesting refunds. Because filing a tax return is also a significant trigger for determining the application of penalties and the start of assessment and refund statutes, this is an important issue. Unfortunately, the rejection of valid tax returns for electronic filing purposes has been a topic of controversy for some time.

The Tax Court's four-part test (the *Beard* test) for determining whether a document is sufficient for statute of limitation purposes should be the standard.[50] In other words, did the document constitute a "return?" To be a valid return, the document must: 1) provide sufficient data to calculate tax liability; 2) purport to be a return; 3) be an honest and reasonable attempt to satisfy the requirements of the tax law; and 4) be executed by the taxpayer under penalties of perjury.[51] Noting that the IRS rejects a significant volume of valid returns solely based on electronic filing criteria, the National Taxpayer Advocate continues to advocate that the IRS accept these electronic returns and direct them to an appropriate treatment stream for resolving discrepancies.[52] Though the need for return perfection may still result in delays, the taxpayer would receive an acknowledgement of receipt and avoid the additional burden and delays associated with filing a paper return. The IRS can accept the e-filed return, assign it for issue resolution, determine if it can process the return, or determine if the return is potentially fraudulent.

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49 IRS response to TAS information request (Aug. 10, 2023).
50 *Beard v. Comm'r*, 82 T.C. 766, 777 (1984), *aff'd per curiam*, 793 F.2d 139 (6th Cir. 1986).
51 *Id.*
52 National Taxpayer Advocate 2021 Annual Report to Congress 139 (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.

During FY 2023, 150.9 million individuals filed an electronic Form 1040, and 19.4 million taxpayers experienced rejection of their return.[53] Nearly 14 million taxpayers were able to achieve return acceptance while nearly 5.6 million taxpayers had a Form 1040 return that went unfiled or was filed on a paper form. Over 3.7 million taxpayers could not resubmit their Form 1040 electronically because the primary Social Security number (SSN) was already used on a previously accepted return.[54] In many cases, taxpayers were readily able to correct the rejected return and resubmit the return electronically. In other cases, taxpayers had no choice and had to resubmit the return on paper.

For these electronic filing rejections, TAS strongly encourages the IRS change its filters and allow taxpayers to file the returns electronically. Many of these rejected documents are valid returns, though there may be an error or problem with the information reflected on the return. For example, one type of rejection occurs when a return is filed reflecting a dependent's SSN that has already been included on another tax return as a dependent. The rejection requires the taxpayer to file a paper return even though that taxpayer may be entitled to claim the dependent. Likewise, once a return is filed reflecting a primary SSN, the IRS will reject any e-filed return reflecting the same primary SSN – even if the previous filing was erroneous or fraudulent and the second submission was that of the legitimate taxpayer. If a taxpayer was the victim of fraud, the IRS still requires the taxpayer to file a paper return adding additional burden for the victim. In tax year (TY) 2022, the volume of individual returns electronically rejected because the primary SSN was used on a previously filed electronic return for the same tax period made this the second most frequent reason for electronic filing rejection.[55] Duplicated dependency SSNs were the ninth most frequent cause for electronic filing rejection.[56]

These rejections cause additional burden and delay for taxpayers who are potentially victims of identity theft. In addition, they often impact separated or divorced taxpayers who may not claim legitimate dependents and credits on e-filed returns because the non-qualifying parent or other non-qualifying individual already claimed the dependents on a previously filed return. Figure 2.1.6 shows the most common reasons that the IRS rejects e-filed returns.

53 IRS, CDW, Electronic Tax Administration Research and Analysis System (ETARAS) (Sept. 2023).
54 *Id.*
55 *Id.*
56 *Id.*

FIGURE 2.1.6[57]

Top Five Most Common Electronic Filing Rejects for Individual Taxpayers, TY 2022

- Primary prior year personal identification number or primary prior year adjusted gross income amount does not match the e-File database
- The primary Social Security number is the same as the Taxpayer Identification Number of a previously accepted electronic individual return filed for the same tax period
- Missing Form 8962, Premium Tax Credit, or Affordable Care Act document
- Invalid Identity Protection Personal Identification Number
- Primary birthdate does not match e-File database

The IRS should accept these returns electronically and assign them to a workstream to address either the missing or duplicated information. For example, if both parents separately claim their child, the IRS could audit both parents and determine which parent is entitled to claim the child and any associated credits. The IRS should not reject the valid e-filed return of the parent who happened to file second and require the submission of a paper return. Similarly, victims of identity theft should not have to deal with the additional challenges of paper filing because someone stole their identity and filed a false return. The IRS can address several issues by flagging these valid returns and working to perfect the return after electronic acceptance and before it releases any overpayments.

Paper and Electronic Returns – Processing Suspended

Delays resulting from returns suspended in the processing stream due to processing difficulties or IRS filters (processing programs designed to stop the IRS from issuing refunds on questionable returns) negatively affect taxpayers. Processing difficulties accounted for 5.9 million (35 percent) of the returns delayed or unprocessed as of April 22, 2023.[58] Previously these issues required human intervention. But the IRS implemented technology to address several processing difficulties that caused many tax returns to fall out of the processing stream for corrective actions, allowing for reduced processing time and quicker refunds.

57 IRS, CDW, ETARAS (Sept. 2023).
58 IRS, W&I Weekly Report, Suspended Returns IMF and Suspended Returns BMF (week ending Apr. 22, 2023). Note that suspended return totals include potential identity theft cases that are fully processed returns prevented from posting to the IRS's Master File pending authentication of the taxpayer's identity. The IRS retains these cases in its "unpostable" inventory.

Processing Difficulties – Processing Rejects and Error Resolution

Processing rejects (not associated with electronic filing) and error resolution cases accounted for 2.4 million of the returns suspended in the processing stream.[59] Employees in the IRS's Submission Processing function typically work these issues. In 2022, the IRS implemented the use of an Integrated Automation Technology tool aptly named "FixERS" because it provides an automated means to *fix* returns sent to the IRS's Error Resolution System (ERS). The FixERS tool is a great example of what the IRS can do with technology. In 2022, the tool processed six types of errors, enabling ERS tax examiners to correct 55 errors an hour for a total of 13.5 million returns – work that would have otherwise required an additional 118 full-time equivalents (FTEs) to complete.[60] In 2023, the IRS expanded the use of the FixERS tool for the correction of an additional 15 error types, nine of which comprise the top errors by volume.[61] Continued successful expansion of the IRS's FixERS tool should substantially reduce processing difficulties and delays experienced by taxpayers with returns requiring correction in the ERS portion of the IRS's processing backlog. The ability to use technology during the processing of tax returns has significantly improved taxpayer service and reduced processing times.

Return Filters and Unpostables

Of the remaining 3.5 million returns suspended in processing on April 22, 2023, 1.4 million involved returns flagged by the IRS's Taxpayer Protection Program identity theft filters and 2.1 million returns that went "unpostable."[62] Unpostables are transactions, payments, and returns unable to post to the IRS's Master File due to the programming of specific conditions.[63] Though unpostables can occur for a variety of reasons, identity theft was the highest volume cause of unpostable return conditions in FY 2023.[64]

Identity theft issues impact millions of taxpayers each year, resulting in considerable delays and taxpayer burden.[65] Between identity theft return filters and unpostables, a large portion of the IRS's suspended and delayed returns are derived from the IRS's identity theft precaution measures. Historically, the IRS's identity theft filters have had a high false detection rate, resulting in the IRS delaying legitimate returns until taxpayers verify their identity. TY 2023 looks to be similar, with the IRS anticipating a false detection rate of 54 percent during CY 2023.[66] Based on the high volume of false detections, taxpayers and the IRS would benefit from improvements to IRS systems that would reduce false identity theft detection rates and identity theft unpostable conditions.

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59 IRS, W&I Weekly Report, Suspended Returns IMF and Suspended Returns BMF (week ending Apr. 22, 2023).
60 IRS, Business Performance Review (BPR), Q1 FY 2023, at 6 (Feb. 23, 2023). An FTE is equal to the number of hours a full-time employee works for an organization.
61 IRS, BPR, Q1 FY 2023, at 6 (Feb. 23, 2023).
62 IRS, W&I Weekly Report, Suspended Returns IMF and Suspended Returns BMF (week ending Apr. 22, 2023).
63 IRM, 3.12.279.1.1, Background (Jan. 1, 2021), https://www.irs.gov/irm/part3/irm_03-012-279r.
64 IRS, CDW, IRTF and BRTF (Sept. 28, 2023).
65 *See* Most Serious Problem: *Identity Theft: Lengthy Issue Resolution Delays and Inadequate Notices Burden Taxpayers Who Are Victims of Identity Theft or Whose Returns the IRS Has Flagged for Possible Identity Theft*, *infra*.
66 IRS, BPR, Q3 FY 2023, at 14 (Aug. 16, 2023). False detection rates were 61 percent and 47 percent for CYs 2021 and 2022, respectively. Though not yet determined, IRS calendar year planning projected a 54 percent false detection rate for FY 2023.

CONCLUSION AND RECOMMENDATIONS

For several years, processing and refund delays, coupled with inadequate service, have plagued taxpayers, rendering it difficult for them to resolve their tax issues, obtain responses to inquiries, or receive timely receipt of their refunds. During FS 2023, the IRS prioritized its 1040 toll-free telephone service, which made it easier for many taxpayers to reach the IRS by phone but resulted in difficulties obtaining timely refunds or responses to their correspondence and account resolution requests. By accepting and processing a wider range of amended returns electronically and systemically applying FTA relief, the IRS could reduce manual processing activities and delays. These actions along with the acceptance of valid rejected e-filed returns would reduce taxpayer burden for thousands of taxpayers. Though technology may improve communication methods and reduce some portion of the IRS's manual processing activities, the complexity of our nation's tax system will always present a need for human interaction and human processing intervention. Taxpayers deserve quality services that allow for the timely processing of tax returns, correspondence, tax account adjustments, and the ability to reach the IRS in person or by phone. Telephone service should not come at the cost of processing delays. The IRS should train and use remote call center CSRs for expanded processing activities to provide more timely processing actions and adopt a balanced workload approach that acknowledges necessary tradeoffs between telephones and processing services. These actions would complement the IRS's stated SOP objectives while improving efficiency and reducing taxpayer burden.[67]

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Expediently address the processing of valid ERC claims, particularly for taxpayers experiencing financial hardships.
2. Train remote call center CSRs to complete processing duties to increase AM processing capacity; reduce amended return, correspondence, and AM case processing delays; minimize backlogs; and improve the taxpayer experience.
3. Program information technology systems to systemically apply FTA to all eligible taxpayers beginning in FS 2024 while also providing taxpayers the ability to substitute a reasonable cause defense when substantiated by the taxpayer.
4. Prioritize the acceptance of amended business and employment tax returns and applications for tentative refund requests for inclusion in the e-file program and electronic processing, along with the electronic processing of e-filed Forms 1040-X, which the IRS accepts electronically but processes manually.
5. Electronically process those returns otherwise required to be paper-filed upon rejection and direct these imperfect e-filed returns to treatment streams for resolution.

RESPONSIBLE OFFICIALS

Kenneth Corbin, Commissioner, Wage and Investment Division

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

67 IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan (Apr. 2023), https://www.irs.gov/pub/irs-pdf/p3744.pdf.

IRS HIRING, RECRUITMENT, AND TRAINING

Shortcomings in the IRS's Employee Hiring, Retention, Recruitment, and Training Programs Adversely Affect the Quality of Taxpayer Service the IRS Provides and Undermine Effective Tax Administration

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Public trust in the IRS is at the core of our nation's system of voluntary tax compliance and self-assessment. Taxpayers have the *right to quality service* from the IRS,[1] and that service is substantially reliant upon proper staffing and training of its employees so the IRS can assist taxpayers. When IRS staffing or training falls to insufficient levels, service quality suffers and taxpayers experience burden and frustration, which undermine voluntary compliance and burden tax administration.[2] Further, the IRS operating at less than full strength harms taxpayers' *rights to challenge the IRS's position and be heard* and *to a fair and just tax system*. IRS staffing levels in the past decade have fallen to lows not seen since the 1970s.[3] Insufficient staffing has caused the quality of taxpayer service to decline on telephone lines and at Taxpayer Assistance Centers (TACs) and significant IRS processing delays to arise.[4] Even when the IRS can recruit enough staff, it struggles to attract, onboard, retain, and train the talent it needs because of "[i]neffective and outdated policies,

1 *See* Taxpayer Bill of Rights (TBOR), https://www.taxpayeradvocate.irs.gov/taxpayer-rights (last visited Nov. 22, 2023). The rights contained in TBOR are also codified in IRC § 7803(a)(3).

2 The IRS is primarily responsible for the Treasury Department's public interaction, and the Treasury Department continues to rank in last place in the American Customer Satisfaction Index for consecutive years. *See* American Customer Satisfaction Index, *Federal Government Report 2021*, at 3 (2022), https://theacsi.org/news-and-resources/reports/2022/01/25/acsi-federal-government-report-2021/; American Customer Satisfaction Index, *Federal Government Report 2022*, at 2 (2023), https://theacsi.org/news-and-resources/reports/2023/01/31/federal-government-report-2022/.

3 *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 Div., and Chief Taxpayer Experience Officer, IRS).

4 For a more in-depth discussion of IRS customer service and telephone related issues, see Most Serious Problem: *Telephone and In-Person Service*: *Despite Improvements in Its Service Levels, the IRS Still Fails to Provide Taxpayers and Tax Professionals With Adequate, Timely Telephone and In-Person Service*, *infra*. For a more in-depth discussion of IRS processing delays, see Most Serious Problem: *Processing*: *Ongoing Processing Delays Burden and Frustrate Taxpayers Awaiting Refunds and Other Account Actions*, *supra*.

technologies and processes."[5] To protect and enhance the taxpayers' *right to quality service*, the IRS must attract top talent to its workforce and appropriately train its employees.

EXPLANATION OF THE PROBLEM

Providing top quality service is integral to the IRS's mission, and success hinges on its ability to recruit, hire, train, and retain employees and develop its future managers and leaders. Many of the IRS's challenges are traceable to simply not having adequate staffing. Attrition compounds cause for concern because about 18 percent of IRS employees are currently retirement eligible and can leave at any time, with 37 percent of IRS employees estimated as retirement eligible in the next five years.[6] The IRS must move quickly and efficiently to not fall further behind in its race against attrition and to fill the void of future managers and leaders.

Yet, the IRS takes much too long to approve, process, and list job announcements, and its initial screening of applications sometimes results in selecting candidates for consideration who may not be the most qualified.[7] Consistent, significant employee attrition combined with the often lengthy hiring process have left the IRS severely understaffed and unable to adequately recruit, hire, and train much-needed new employees over the past decade.[8] Inadequately trained IRS employees may be at risk of giving taxpayers incomplete or wrong information, making incorrect determinations, or mistakenly recording information inaccurately into IRS databases.

Furthermore, the ongoing challenges with recruiting and hiring employees continue to compromise the IRS's ability to collect revenue, which may erode confidence in the tax system over time, leading to noncompliance. The IRS must use the new funding provided by the Inflation Reduction Act (IRA)[9] as an opportunity to significantly improve its hiring, recruitment, and training processes. Thus far, the IRS believes the IRA funding has made a difference, enabling it to hire more employees to improve its telephone customer service. But this effort is a marathon, not a sprint, and the Human Capital Office (HCO) still has numerous hurdles to jump.[10]

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5 IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan 102 (Apr. 2023), https://www.irs.gov/pub/irs-pdf/p3744.pdf.

6 Email dated Dec. 19, 2023 from the IRS Chief Human Capital Officer. The volume of IRS retirement eligible employees within the next five years varies and estimates are as high as 63 percent. IRS, Pub. 5530, Fiscal Year 2024 Budget in Brief (Feb. 2023), https://www.irs.gov/pub/irs-pdf/p5530.pdf. Attrition is defined as the departure of employees from an organization for any reason (voluntary or involuntary), including resignation, termination, death, or retirement, in a fiscal year and is used interchangeably with the term employee turnover. *See* Human Resources Glossary, Gartner, https://www.gartner.com/en/human-resources/glossary/attrition (last visited Nov. 28, 2023).

7 We used information from our interviews with IRS Business Operating Divisions (BODs) and functions, hiring and training subject matter experts (SMEs), and other data obtained from information requests to support this statement.

8 *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 Div., and Chief Taxpayer Experience Officer, IRS). For a more in-depth discussion of IRS hiring challenges over the past decade, see National Taxpayer Advocate 2022 Annual Report to Congress 59 (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*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MSP_03_Recruitment.pdf.

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

10 *IRS Oversight Hearing*, *Joint Hearing Before the House Subcomm. on Oversight and Subcomm. on Accountability*, 117th Congress, at 26:52 (Oct. 24, 2023) (statement of Danny Werfel, Comm'r, Internal Revenue), https://www.c-span.org/video/?531340-1/irs-oversight-hearing.

ANALYSIS

The IRS's mission is to "[p]rovide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all."[11] Fulfilling that mission requires the IRS to overcome the challenge of employee attrition, attract and hire the right talent at the right time, and timely train all employees. If the IRS does not make significant changes, these staffing shortages will compound and pose significant threats to federal tax administration and taxpayer rights.

To gain direct insight on issues encountered with hiring, recruitment, and training, TAS interviewed subject matter experts (SMEs) on hiring and training from various IRS Business Operating Divisions (BODs) and functions again this year. Consistent with prior years, these interviews yielded that several challenges remain, and though anecdotal, the issues and recommendations that follow highlight some of those TAS considered paramount. The IRS must increase hiring capacity and continue to remove obstacles in the hiring process. It should work in support of reducing the pay disparity between federal and non-federal employees to help deepen the talent pool from which it can recruit. The IRS should continue to enhance its benefits package to help it attract and compete for desired recruits, improve employee retention rates, and reduce employee turnover rates. In the training realm, the IRS must make customer service a priority in training its employees; it needs HCO to increase its own staffing so it can meet the training needs of IRS BODs.

Hiring

The IRS Should Increase Hiring Capacity and Continue to Remove Obstacles in the Hiring Process

The IRA provided the IRS with much-needed funding that allowed the IRS to ramp up hiring efforts to add thousands of new employees over the next decade.[12] In fiscal year (FY) 2023, HCO made a series of improvements to the hiring process, including creating a new hiring calculator to measure the additional hiring resources needed to meet demand.[13] HCO was able to use Direct Hire Authority (DHA),[14] which expedites parts of the hiring process, to expand its own personnel to meet the hiring demand of the BODs.[15] This authority provides agencies the ability to hire more efficiently and quickly into the federal government's Competitive Civil Service (General Schedule (GS) 15 and below or equivalent) in permanent or nonpermanent positions.[16] But even with DHA, the delays still caused good candidates to take jobs elsewhere before the IRS was even able to offer them a job. With the personnel hired with this authority, HCO was able to complete over 31,880 hiring actions in FY 2023, which include making final job offers, compared to about 23,800 in FY 2022.[17] HCO was also able to provide BODs new hiring dashboards and tracking models for planning ahead and keeping track of their hires.[18] Figure 2.2.1 shows the breakdown of the IRS internal and external hiring gains for FY 2023. The IRS Wage and Investment Division hired the most internal and external hires, with a total of 19,063 combined hires out of the total 31,880 hires for all BODs combined in

11 Internal Revenue Manual (IRM) 1.1.1.2(1), IRS Mission (July 29, 2019), https://www.irs.gov/irm/part1/irm_01-001-001.
12 Inflation Reduction Act, Pub. L. No. 117-169, 136 Stat. 1818 (2022).
13 IRS response to TAS information request (Sept. 27, 2023).
14 *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." Office of Personnel Management (OPM), Direct Hire Authority, https://www.opm.gov/policy-data-oversight/hiring-information/direct-hire-authority/#url=Fact-Sheet (last visited Nov. 21, 2023). DHA enables an agency to hire, after public notice is given, any qualified applicant without regard to 5 U.S.C. §§ 3309-3318, 5 CFR pt. 211, or 5 CFR pt. 337, subpt. A.
15 IRS response to TAS information request (Sept. 27, 2023).
16 *See generally* 5 C.F.R. pt. 337, subpt. B. *See also* 5 C.F.R. § 337.202.
17 IRS response to TAS fact check (Dec. 11, 2023); IRS response to TAS information request (Sept. 27, 2023). According to HCO, the IRS defines "hiring action" as an "Actual Hire," which results in a person filling a position – this could be an internal or external hire. The number of actual hires is calculated by counting records that have an established start date. IRS response to TAS fact check (Dec. 11, 2023).
18 IRS response to TAS information request (Sept. 27, 2023).

FY 2023.[19] The Small Business/Self-Employed Division followed with 4,924 combined hires out of the total 31,880 hires for all BODs combined in FY 2023.[20] But HCO still lacks the necessary resource investments, including core human resources technology and sufficient staffing, to be able to keep up with the hiring demand.

FIGURE 2.2.1, IRS Internal and External Hiring Gains, FY 2023[21]

IRS Business Operating Division	External Total	Internal Total	Grand Total
Appeals	61	496	557
Communications and Liaison	25	36	61
Chief Financial Office	12	124	136
Criminal Investigation	298	383	681
Enterprise Case Management Office	1	5	6
Equity, Diversity and Inclusion	32	17	49
Facilities Management and Security Services	35	215	250
Human Capital Office	322	411	733
Headquarters	37	66	103
Information Technology	1,428	752	2,180
Large Business and International	259	1,248	1,507
Office of the Chief Risk Officer	3	6	9
Office of Online Services	27	40	67
Office of Professional Responsibility	0	2	2
Privacy, Government Liaison, and Disclosure	24	223	247
Procurement	80	44	124
Research, Applied Analytics, and Statistics	85	97	182
Return Preparer Office	4	36	40
Small Business/Self-Employed	1,879	3,045	4,924
Taxpayer Advocate Service	117	499	616
Tax Exempt and Government Entities	102	215	317
Taxpayer Experience Office	6	13	19
Wage and Investment	11,568	7,495	19,063
Whistleblower Office	0	7	7
Grand Total	**16,405**	**15,475**	**31,880**

One advancement was the IRS's ability to improve the employee security clearance and fingerprinting processes by employing new functionality that bridged the divide between the personnel security software system, Automated Background Investigation System, and the hiring software system, USA Staffing (USAS),

19 IRS response to TAS fact check (Dec. 11, 2023); IRS response to TAS information request (Sept. 27, 2023).
20 IRS response to TAS fact check (Dec. 11, 2023); IRS response to TAS information request (Sept. 27, 2023).
21 IRS response to TAS fact check (Dec. 11, 2023); IRS response to TAS information request (Sept. 27, 2023). HCO provided TAS with FY 2023 hiring data derived from USAS hiring data through September 30, 2023.

helping to speed up this previously lagging area of the process.[22] Additionally, HCO worked with Facilities Management and Security Services (the IRS owners of the employee fingerprinting process) to obtain fingerprint scheduling data and align it with hiring data to provide insight and address delays in the process.[23] Even though HCO hired 419 hiring personnel in FY 2023, HCO Talent Acquisition was on a hiring pause and currently has over 100 vacancies, as well as a need for 57 more positions, just to keep pace with projected growth due to hiring demand.[24] Without a strong HCO, building the IRS workforce of the future will continue to face obstacles and experience challenges because all parts of the IRS depend upon HCO's success.

Although TAS commends the recent improvements HCO has made, the National Taxpayer Advocate recognizes that the IRS still faced significant challenges in FY 2023 and anticipates challenges in FY 2024. These challenges included HCO's current capacity to meet the increased hiring demand and the length of time it took to hire, measured by the time-to-hire and average cycle time indicators. As a result, HCO must make significant improvements in FY 2024 and beyond to outpace current attrition and meet this demand. In addition, the length of the hiring process continues to burden the IRS. According to some IRS SMEs on hiring, HCO must increase the number of HCO hiring personnel or supplement current HCO personnel with contractors to meet the increased hiring demands.

Another part of the problem the IRS can address with more staffing is significantly shortening its hiring process time to better compete with the pace of other federal, state, and private sector employers in the labor market. The Office of Personnel Management (OPM) has set a time-to-hire goal for all federal agencies – 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.[25] Cycle time is a different measure that includes the number of days the announcement is posted and can include applicants who apply to rosters. This means that cycle time includes 12-month open, continuous roster announcements.[26] This can take longer as compared to time to hire because an applicant may apply to a longstanding announcement or a roster long after it opened. TAS analyzed the data using both measures.

FIGURE 2.2.2, Average Cycle Time and Time to Hire for Regular and Filing Season Hiring, FY 2023[27]

Type of Hire	IRS-Wide (Internal and External)	IRS – Internal	IRS – External
Average Cycle Time From Announcement to Start Date (Entry on Duty) (Without DHA)	134 days	118 days	193 days
Average Cycle Time From Announcement to Start Date (Entry on Duty) (With DHA)	110 days	89 days	115 days
Time to Hire (Overall Average Combined)	68 days	51 days	85 days
Average Time to Hire (Without DHA)	61 days	52 days	98 days
Average Time to Hire (With DHA)	75 days	45 days	82 days

22 IRS response to TAS fact check (Dec. 11, 2023); IRS response to TAS information request (Sept. 27, 2023).
23 IRS response to TAS fact check (Dec. 11, 2023); IRS response to TAS information request (Sept. 27, 2023).
24 IRS response to TAS fact check (Dec. 11, 2023); IRS response to TAS information request (Sept. 27, 2023).
25 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.
26 IRS response to TAS fact check (Dec. 11, 2023).
27 IRS response to TAS information request (Sept. 27, 2023).

As shown in Figure 2.2.2, in FY 2023, the IRS's time to hire averaged 68 days overall, with 98 days for external hires not using DHA and 82 days for external hires using DHA.[28] For comparison, the IRS's time-to-hire average overall was about 88 days in FY 2022, with 104 days for external hires not using DHA and 58 days for external hires using DHA.[29] The 98 days for time to hire without DHA in FY 2023 (an improvement from 104 days in FY 2022) and 82 days with DHA for external hires in FY 2023 (an increase from 58 days in FY 2022) are both beyond the OPM goal of 80 days.[30] When thinking about the length of the hiring process, ask yourself: how long would you be willing to wait for a final job offer?

To show a complete picture of the hiring process, we also must examine the average cycle time from announcement to start date (entry on duty).[31] In FY 2023, the average cycle time from the start of a job announcement to the start date (entry on duty) for a new employee without DHA was 134 days overall and 193 days for external hires. The average cycle time with DHA was 110 days overall and 115 days for external hires.[32] For comparison, in FY 2022, the average cycle time from the start of a job announcement to the start date (entry on duty and without DHA) of a new employee was 109 days overall and 172 days for external hires.[33] Due to the increase in demand for hiring, the hiring process took longer in FY 2023 than in FY 2022, but because of DHA, the IRS was able to fill some specific positions faster than before.

Because the administrative process to get extensions for DHA burdens the agency, the IRS needs broad and flexible legislative DHA to address limitations resulting from the current DHA, including the quantity of eligible positions and the duration a DHA position is open.[34] Some IRS SMEs on hiring explained that they wished DHA was for a longer period of time and was broader, allowing the use of DHA for more positions within the agency.

HCO also pointed to technological improvements needed to better serve its customers. HCO explained that the IRS needs additional investment in technological capabilities to assist with hiring.[35] It needs a mechanism for hiring officials to see a vacancy status from start to finish, the absence of which often causes frustration for hiring officials within the BODs and results in inquiries to HCO, slowing down the process.[36] An automated mechanism with this capability would reduce the frustration and resulting burden on HCO.[37]

Some IRS SMEs on hiring and training stated that there is a need for HCO Talent Acquisition to provide more timely communication to its customers. TAS encourages the IRS to provide more resources to HCO Talent Acquisition so that it can improve the timeliness of its communications with all parties during the hiring process. Another frustration from SMEs was the inconsistency with the way HCO certifies certain

28 IRS response to TAS information request (Sept. 27, 2023).
29 IRS response to TAS information request (Oct. 31, 2022).
30 IRS responses to TAS information request (Oct. 31, 2022; Sept. 27, 2023).
31 It is important to look at both the cycle time and time-to-hire calculations to get a more accurate assessment of IRS hiring measures due to the complexity of types of IRS announcements and different definitions used.
32 IRS response to TAS information request (Sept. 27, 2023).
33 IRS responses to TAS information request (Oct. 31, 2022; Sept. 27, 2023). It is important to distinguish cycle time from time to hire. Cycle time, a measure that includes applicants who apply to rosters, can take longer as a result compared to time to hire because an applicant could apply to a roster long 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 IRS response to TAS information request (Sept. 27, 2023).
35 *Id.*
36 *Id.*
37 *Id.*

applicants who are qualified versus those not qualified. TAS urges the IRS to provide resources for additional training to HCO hiring personnel to ensure they qualify or disqualify applicants for positions in a consistent manner and eliminate frustrating discrepancies and inconsistencies.

Recruitment

Reducing Pay Disparity Between Federal and Non-Federal Employees Will Likely Deepen the Talent Pool From Which the IRS Can Recruit

In current form, it would be unreasonable to expect the IRS to consistently out-recruit the competition. For many job seekers, pay is the initial, and often most critical, point of consideration when deciding whether to apply for a position or pursue a career path. Pay may represent the highest hurdle the IRS has to overcome to receive serious consideration in recruiting today's job seekers. The Federal Salary Council reported that on average in 2023, federal employees earned over 27.54 percent less pay than non-federal employees earned for performing the same level of work, an increase compared to the 24.09 percent difference in 2022.[38]

Congress enacted the Federal Employees Pay Comparability Act (FEPCA) decades ago to reduce this pay disparity down to five percent, but the act has not addressed the problem it was enacted to solve.[39] Because the FEPCA has not been followed since 1994 primarily due to budgetary concerns and an unreliable statutory formula, it is more of a symbolic solution to the pay disparity issue than a literal one.[40] While budgetary concerns are perpetual and require a heavier lift, developing a credible methodology to produce outcomes consistent with the spirit of the FEPCA is an important step in furthering the law's purpose. Raising pay for federal employees to minimize the difference in pay should help the IRS and other federal agencies better attract talented employees.

Enhancing the IRS's Benefits Package Can Help It Attract and Compete for Desired Recruits

Although the IRS's current benefits package is valuable, recruits likely undervalue it, as they may not consider the sum of its total value as sufficient to offset lower pay.[41] Per OPM, federal agencies have flexibility to adjust benefits packages for competitive purposes.[42] Therefore, the IRS must continue to enhance its benefits package to make it more attractive so it can compete for the quantity and quality of employees it needs. TAS commends the IRS for recently implemented offerings to its benefits package, including a student loan repayment program and expanded eligibility for its childcare subsidy program.[43]

Beyond increased pay, the IRS could expand the eligibility scope and value of bonus awards while maintaining a high performance bar for its employees to earn them. It could also expand pay opportunities for certain positions to allow employees to grow in their careers, which helps retention by showing recruits there is a pathway to higher pay when committing their career to the IRS.[44] The IRS should consider contracting with recruiting firms that would help it reach solid candidates at the higher GS grade levels. This would give the IRS flexibility and free up recruitment staff to focus on other priorities, such as providing staffing for DHA

38 Federal Salary Council, *Report of the Federal Salary Council Working Group* 4 (Nov. 14, 2023), https://federalnewsnetwork.com/wp-content/uploads/2023/11/FSC-Working-Group-Report-2025.pdf; Federal Salary Council, *Recommendations for 2024* (Feb. 4, 2023), https://www.opm.gov/policy-data-oversight/pay-leave/pay-systems/general-schedule/federal-salary-council/recommendation22.pdf.

39 Federal Employees Pay Comparability Act of 1990, Pub. L. 101-509, Title V, § 529 [Title I, § 101(a)(1)], 104 Stat. 1427, 1431 (1990) (codified at 5 U.S.C. § 5304).

40 *See generally* The President's Pay Agent, *Annual Report of the President's Pay Agent for Locality Pay in 2024: Report on Locality-Based Comparability Payments for the General Schedule* (Oct. 3, 2023), https://www.opm.gov/media/qyhbgbox/report-on-locality-based-comparability-payments-for-the-general-schedule.pdf.

41 Some SMEs on hiring that TAS interviewed indicated that recruits may likely undervalue the IRS's current benefits package.

42 *See* OPM, Federal Employee Compensation Package, https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/federal-employee-compensation-package/ (last visited Dec. 4, 2023).

43 IRS response to TAS information request (Sept. 27, 2023).

44 The GS pay cap is statutory. *See* 5 U.S.C. § 5547(b)(2) and 5 C.F.R. §§ 550.106 - 550.107.

events. TAS encourages the IRS to hire more staffing for HCO's Strategic Talent Acquisition and Recruiting Solutions (STARS) program in particular so it can increase staffing at DHA events and expedite processes where the IRS is using hiring authorities to speed up hiring processes.

The IRS must account for attrition and quickly race to recruit, hire, and train employees before experienced IRS staff retire or depart. It recognized that its own workforce may be a recruiting resource and created the Employee Referral Bonus Program (ERBP). ERBP boasts a financial incentive for IRS employees to tap into their own professional networks and refer an unlimited number of potential candidates for certain hard-to-fill positions.[45] However, the referral bonus is only $500 per new hire and may not be as attractive as it could be to achieve the best results from employee-driven recruiting. Likewise, HCO stated that having additional authority over recruitment and relocation bonuses, retention bonuses, merit awards, incentives for critical skills, and student loan repayments would bolster the IRS's competitiveness.[46]

Inherent challenges that apply to working in government, such as uncertainty about government shutdowns, may dissuade some job seekers from considering working in federal service. For the undeterred job seekers, revamping the culture and public perception of the IRS is especially critical to the IRS gaining time and consideration as a career landing spot. Out of 432 subagencies ranked on the annual Best Places to Work list, the IRS placed an uninspiring 285th.[47] Because long-tenured employees heavily comprise the current IRS workforce, the IRS must interest younger employees and its future workforce in careers with the agency so it can better recruit and retain talented employees and build its managers and leaders of the future.[48]

The IRS should efficiently utilize all hiring authorities in its toolkit, including OPM's Pathways Recent Graduates and Presidential Management Fellow programs.[49] These programs, designed under Schedule D authority,[50] help agencies recruit and hire well-qualified students and recent graduates by streamlining and shortening the hiring process and creating a pipeline for new talent. Prioritizing these programs will help the IRS to replenish its aging workforce with fresh talent it can put into career tracks and address key knowledge competency gaps. For these reasons, the IRS should prioritize employee recruitment.

Employee Retention

The IRS Should Improve Employee Retention Rates and Reduce Employee Turnover Rates

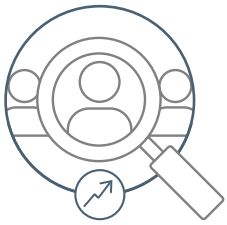
Just as recruiting and hiring quality talent is crucial to the success of the IRS workforce, retaining its workforce is imperative to maintaining continuous success and stability. Hiring new employees fills staffing needs, but replacing experienced employees with new ones is typically not an equal trade because of decreases in productivity and customer service quality.[51] Employee turnover is part of the normal course of business, but the elevated rate of IRS employee turnover should concern taxpayers and the IRS alike. Information on

45 IRS response to TAS information request (Sept. 27, 2023).
46 National Treasury Employees Union (NTEU), NTEU Chapter 73, Employee Referral Bonus Program (ERBP), https://www.nteu73.org/employee-referral-bonus-program-erbp (last visited Nov. 30, 2023).
47 IRS response to TAS information request (Sept. 27, 2023); IRS, FYs 2022-2025 Corporate Leadership Engagement Action Plan (updated May 1, 2023).
48 Traci DiMartini, IRS Chief Human Capital Officer, FedGov Today, at 07:00 and 7:20 (Sept. 8, 2023), https://fedgovtoday.com/2023/09/08/irs-is-hiring-impact-of-logjam-at-pentagon-latest-from-the-u-s-maritime-administration/.
49 *See* OPM, Student and Recent Graduates, https://www.opm.gov/policy-data-oversight/hiring-information/students-recent-graduates/#url=graduates (last visited Oct. 20, 2023); OPM, Presidential Management Fellow Program, Value Proposition and Overview (last visited Oct. 20, 2023), https://www.pmf.gov/agencies/value-proposition-and-overview/.
50 The general Schedule D provisions were designed to appoint individuals to the excepted service under the programs. Schedule D Provisions, 5 C.F.R, pt. 213. *See generally* 5 C.F.R. § 213.3402.
51 This information is from our interviews with IRS BODs and hiring and training SMEs. This topic was a discussion that came up several times with the overarching theme being that new employees take time and training to reach the same level of productivity as that of an experienced employee.

the IRS's retention index shows the challenges the IRS faces retaining employees of certain demographics.[52] IRS employees aged 39 and younger have the lowest rates of retention, specifically employees aged 29 and younger, and the IRS has challenges retaining early stage career employees with four to ten years of service.[53]

Employee turnover doesn't just reduce the number of trained and experienced employees the IRS has ready to serve taxpayers and fulfill its mission; it also wastes money. The IRS estimates an average cost of $10,350 per employee that it recruits, hires, and trains but who later departs the agency.[54] Although enhancing retention is part of its FYs 2022-2026 Strategic Plan, the IRS should update its strategy by making it a higher priority.

The IRS will benefit by adopting a more competitive strategic approach to employee retention, especially for mission-critical and notoriously difficult to staff positions. To achieve improved retention rates, the IRS must use available resources to essentially re-recruit existing employees with a goal of keeping its trained and experienced talent within its workforce. While the IRS may not have the most extensive array of resources at its disposal, it should use all that it has.



To achieve improved retention rates, the IRS must use available resources to essentially re-recruit existing employees with a goal of keeping its trained and experienced talent within its workforce.

Special payment incentives may not solve all of the staffing problems, but they do provide the IRS a valuable and immediately available resource to recruit, relocate, and retain employees, and the IRS should use this resource to the fullest reasonable extent possible.[55] Generally, the law provides federal agencies compensation flexibility to use special payment incentives for the purpose of building and maintaining a quality workforce.[56] Increasing the deployment of special payment incentives may help persuade more IRS employees to remain with the IRS and thus result in higher retention rates. At a minimum, using special payment incentives will cause employees to consider more strongly keeping their career with the IRS because it shows employees the value the agency places on their skillset and commitment. The IRS should be using special payment incentives to keep valuable employees and their institutional knowledge from taking their talents elsewhere.

The IRS would benefit from developing a robust plan to eliminate or expand limits on aggregate amounts for employee awards and bonuses to improve employee retention rates and allow the agency to better compete with other agencies on employee benefits. Through such a plan, the IRS can develop additional employee incentives it can provide to become more competitive. For example, it can study the feasibility of providing

52 Although the IRS has increased its pace of hiring, the rate of employee turnover and attrition continues to be a problem. IRS response to TAS information request (Sept. 27, 2023); IRS, FYs 2022-2025 Corporate Leadership Engagement Action Plan 16 (updated May 1, 2023).

53 IRS response to TAS information request (Sept. 27, 2023); IRS, FYs 2022-2025 Corporate Leadership Engagement Action Plan 16 (updated May 1, 2023); IRS response to TAS information request (Sept. 27, 2023); FYs 2022-2025 Corporate Leadership Engagement Action Plan (July 13, 2022).

54 IRS response to TAS information request (Sept. 27, 2023); IRS, FYs 2022-2025 Corporate Leadership Engagement Action Plan 16 (updated May 1, 2023); IRS response to TAS information request (Sept. 27, 2023); FYs 2022-2025 Corporate Leadership Engagement Action Plan (July 13, 2022).

55 *See* Treasury Inspector General for Tax Administration, Ref. No. 2023-10-043, *Expanded Use of Special Payment Incentives Could Help Improve Recruitment and Retention Efforts* (2023); IRM 6.575.1, IRS Recruitment, Relocation, Retention, and Extended Assignment Incentives (Nov. 8, 2023), https://www.irs.gov/irm/part6/irm_06-575-001.

56 5 U.S.C. § 5753; 5 C.F.R., pt. 575, subpts. A-C; IRM 6.575.1, IRS Recruitment, Relocation, Retention, and Extended Assignment Incentives (Nov. 8, 2023), https://www.irs.gov/irm/part6/irm_06-575-001.

more recruitment and relocation bonuses, retention bonuses, merit awards, incentives for critical skills, and expanding upon current incentives for employees to allow the agency to better compete with other agencies on employee benefits.

Retention is also impacted by how employers meet employee needs, and improving the reasonable accommodation (RA) process will benefit both the IRS and its employees. An RA is an adjustment or alteration to work duties that enables an otherwise qualified individual with a substantially limiting impairment to apply for a job, perform job duties, or enjoy benefits and privileges of employment.[57] There are a range of regulations and laws that require federal agencies to ensure all qualified individuals with limitations have the same equal opportunities as other employees.[58] In essence, RAs are important because they provide employees with equal opportunity to perform their best.

Different limitations typically require different solutions so RAs are not workable with a one-size-fits-all approach. Ideally, the RA process should focus on providing comprehensive solutions tailored to the unique needs of the individual. The IRS should view every RA request as unique because although persons may have similar limitations, they may not have the same challenges or job duties. Therefore, employee customers should be the central focus of the RA process. The IRS should consider developing customer satisfaction surveys to secure input from employee customers as a simple way for it to gain valuable insight on how to improve its RA process. The RA process is inherently an employee retention issue because employees who request RAs may become frustrated at the lack of timeliness addressing their needs and could decide to leave the IRS.

At minimum, speeding up the pace of the RA process is a must.[59] In FY 2023, the IRS took an average of nearly 160 workdays (not calendar days) to process RA requests for its employees.[60] By improving efficiency in its RA process, the IRS can ensure employee needs are timely addressed and that all employees have equal opportunity to perform at their best, which is likely to positively impact employee retention and taxpayer service quality.

Training

The Office of Management and Budget (OMB) notes that training and development are among the most critical areas that contribute to the success of an organization and its workforce in accomplishing its mission.[61] It is well-known that the tax code and tax administration are complex.[62] Consequently, newly hired IRS employees must complete a training process that requires significant time and resources to produce quality results, with delivery often requiring the IRS to utilize virtual and in-person settings, and to provide on-the-job training over an extended period of time. The time it takes for the IRS to onboard and fully train a

57 IRS, Equity, Diversity and Inclusion at IRS (Mar. 16, 2023), https://www.irs.gov/about-irs/equity-diversity-and-inclusion-at-irs; IRS, Pub. 5339, Affirmative Action Plan for the Recruitment, Hiring, Advancement, and Retention of Persons with Disabilities (Mar. 2023), https://www.irs.gov/pub/irs-pdf/p5339.pdf.

58 IRS, Equity, Diversity and Inclusion at IRS (Mar. 16, 2023), https://www.irs.gov/about-irs/equity-diversity-and-inclusion-at-irs; IRS, Pub. 5339, Affirmative Action Plan for the Recruitment, Hiring, Advancement, and Retention of Persons with Disabilities (Mar. 2023), https://www.irs.gov/pub/irs-pdf/p5339.pdf.

59 IRM 1.20.2, Providing Reasonable Accommodation for Individuals with Disabilities (June 11, 2021), https://www.irs.gov/irm/part1/irm_01-020-002. This IRM establishes guidance that the IRS must follow in processing requests for reasonable accommodation, including timeframes.

60 Information provided by Deputy Director of TAS Equity, Diversity & Inclusion (Nov. 28, 2023). Failure to provide the accommodation in a prompt manner may result in a violation of the Rehabilitation Act. *See* 29 C.F.R. § 1614.203(d)(3)(i)(O).

61 *See* OPM, Training and Development Policy Wiki, https://www.opm.gov/WIKI/training/Index.aspx (last visited Nov. 28, 2023).

62 For a more in-depth discussion, see National Taxpayer Advocate 2022 Annual Report to Congress 45 (Most Serious Problem: *Complexity of the Tax Code*: *The Complexity of the Tax Code Burdens Taxpayers and the IRS Alike*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MSP_02_Complexity.pdf.

new employee varies, but for some IRS positions, it can be a lengthy process before the IRS considers a new employee fully trained.[63] The time that elapses during hiring and onboarding has a direct impact on training and ultimately when new IRS employees can begin working and to what degree.

The Human Capital Office Must Ensure It Can Meet the Training Needs of IRS Business Operating Divisions

HCO plays a vital and central role in pooling resources and providing all forms of support including technical, procedural, and customer service training through the IRS.[64] As such, coordination between HCO and BODs is integral to a smooth process but is an area in need of considerable improvement.[65] Generally, IRS SMEs on training indicated that the right HCO support immensely helps their training efforts, according to those TAS interviewed. However, HCO's accessibility, particularly onsite at training locations and its capability to properly support training needs have declined over the years, per the IRS SMEs on training TAS interviewed. To keep training moving, some BODs filled the voids by simply absorbing the work from HCO. While this has temporarily enabled some BODs to maintain the status quo of their respective training regimens, the absence of HCO support has left little structure for training, where the individual IRS BODs fend for their own interests and sometimes struggle to secure basic needs such as reserving training space and getting proper technology equipment. To alleviate these constraints, the IRS should revamp the Classroom Learning Services (CLS) located within the Enterprise Talent Development Division of HCO by providing more personnel and resources. This will allow it to provide more classroom services, conduct and schedule training, increase or reestablish training support at sites CLS no longer supports, and alleviate pressure on BODs that compete for classroom training space and equipment.

The IRS can learn from historic and current stakeholder information to improve its confusing training system. It is essential to satisfy the training needs of BODs to ensure that the new employees coming onboard are timely trained. By partnering closely with the BODs throughout the process, HCO can efficiently prioritize specific needs and make sure the necessary resources are timely so the BODs can meet the training challenges posed by this historic hiring surge.

The IRS Should Make Customer Service a Priority Focus of Its Training Efforts

In 2019, Congress enacted the Taxpayer First Act (TFA) mandating the IRS to submit to Congress a written report providing a comprehensive training strategy, which the IRS described in its 2021 Taxpayer First Act Report to Congress.[66] Among the requirements, the TFA report contains IRS proposals to focus training of employees who interface with taxpayers and their direct managers on early, fair, and efficient resolution for taxpayers. Nonetheless, obstacles such as ineffective communication and coordination between HCO and the BODs result in a lack of transparency and confusion within the training arena.[67] To provide this level of high quality, comprehensive customer service, the IRS must ensure it has enough employees and that its employees are always properly equipped with the tools and resources the law and its mission demands.

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63 *See also* National Taxpayer Advocate 2021 Annual Report to Congress 51, 58 (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.

64 IRS response to TAS information request (Sept. 27, 2023) (highlighting HCO's vital role in the training process).

65 This information is from our interviews with IRS BODs and hiring and training SMEs, who indicated that coordination between HCO and BODs is integral to a smooth training process.

66 *See* Taxpayer First Act of 2019, Pub. L. No. 116-25, § 2402, 133 Stat. 981, 1014 (2019). *See also* IRS, Pub. 5426, Taxpayer First Act Report to Congress (Jan. 2021), https://www.irs.gov/pub/irs-pdf/p5426.pdf.

67 To support this statement, we used information from our interviews with IRS BODs and functions and hiring and training SMEs, who indicated that coordination between HCO and BODs is integral to a smooth training process.

Customer service, when done correctly, improves the culture of an organization, and culture is an area that the IRS needs to improve. The IRS must understand the difficulties of tax administration from the customers' perspective; its employees need to demonstrate empathy toward understanding and resolving taxpayer issues. The IRS should ensure its employees consistently exhibit timely and clear communication skills and knowledge of the tax law and its internal procedures, which will allow it to provide faster resolution and shorter turnaround times to build a reputation for having efficient customer service. Good customer service includes usage of the latest technology and regular follow-up while being available and transparent. These qualities are key to exhibiting quality customer service and earning the trust of taxpayers. The newest employees to the most seasoned executives must demonstrate these qualities and reinforce them through the IRS's training curriculum and daily activities.

Keys to Exhibiting Good Customer Service and Earning Taxpayer Trust

Understanding of the difficulties of tax administration from the taxpayer perspective

Expressing empathy and understanding while resolving taxpayer issues

Timely and clear communication skills

Knowledge of tax law and internal procedures

Use of the latest technology

Regular follow-up contacts with taxpayers

CONCLUSION AND RECOMMENDATIONS

To ensure fairness, efficiency, and protection of taxpayer rights, the IRS must urgently focus on resolving challenges with employee hiring, recruitment, retention, and training. Its employees are its greatest asset and deserve quicker hiring and onboarding, robust training, and defined career paths with ongoing support and continuing education throughout their careers. This comprehensive approach requires the IRS to increase hiring capacity and continue to remove obstacles in the hiring process. To help deepen the talent pool from which it can recruit, the IRS should work to support competitive ways to reduce the pay disparity between federal and non-federal employees and continue to enhance its benefits package to help attract and compete for desired recruits. The IRS must use the competitive resources it has available now, such as special payment incentives, and develop new strategies to improve its employee retention rates to outpace employee turnover and attrition. Investing in the training of skilled professionals means that HCO should increase staffing to ensure it can meet the current training needs of the IRS BODs, with customer service and taxpayer rights priority focal points of its efforts. The effectiveness of this vital agency hinges not only on the efficiency of its procedures but also on the caliber of training of its employees.

Overcoming these challenges is not just a matter of bureaucratic efficiency; it is paramount for the bedrock of our federal tax system and the quality of customer service that taxpayers have the right to receive. A well-trained, customer-focused, and mission-committed IRS workforce is fundamental to ensuring the fair and accurate administration of tax laws that in turn sustain our vital government functions. By prioritizing these issues and developing strategic solutions to address them, the IRS can become more efficient and invest in the solutions that help guarantee it treats taxpayers equitably, enforces tax laws justly, and strengthens trust in our tax system.

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Invest in more technological capabilities to assist the hiring process. HCO needs an automated mechanism for hiring officials to see their real-time vacancy status from start to finish to improve hiring, reduce frustration for BOD hiring officials, and reduce the resulting inquiries to HCO.
2. Develop a robust plan to expand or eliminate limits on aggregate amounts for employee awards and bonuses to improve employee retention rates and allow the agency to better compete with other agencies on employee benefits.
3. Explore providing additional recruitment and relocation bonuses, retention bonuses, merit awards, and incentives for critical skills and expand current incentives for employees to allow the agency to better compete with other agencies on employee benefits.
4. Consider contracting with recruiting firms that would better assist the IRS in reaching qualified candidates for employment in the higher GS grade level positions.
5. Hire more staffing for HCO's STARS program, in particular to allow for more staffing at DHA events and to expedite processes where the IRS is using hiring authorities to speed up hiring processes.
6. Allocate more staffing resources to HCO Talent Acquisition so it can provide more timely communication to its customers.
7. Provide training for HCO hiring personnel to improve the selection process and ensure BODs receive only qualified applicants.
8. Allocate more support and personnel in the CLS located within the Enterprise Talent Development Division of HCO so it can provide classroom services, conduct and schedule trainings, increase or reestablish training support at sites CLS no longer supports, and alleviate the pressure on BODs from competing for classroom training space and equipment.
9. Work with the Office of Legislative Affairs and relevant offices within Treasury to develop a legislative recommendation to provide the IRS with broad legislative DHA to address the current DHA limits and expiration dates because the administrative process to get extensions for DHA through OPM burdens the agency.[68]
10. During FY 2025, require the IRS Chief Diversity Officer to complete a comprehensive review of the agency's RA program, including but not limited to case processing procedures, staffing utilization, training, and management oversight of case monitoring; provide a written report to the IRS Commissioner on her findings and recommendations for improving the RA program; and reduce the processing time of RA requests consistent with applicable law and the Internal Revenue Manual.

68 IRS response to TAS information request (Sept. 27, 2023).

RESPONSIBLE OFFICIALS

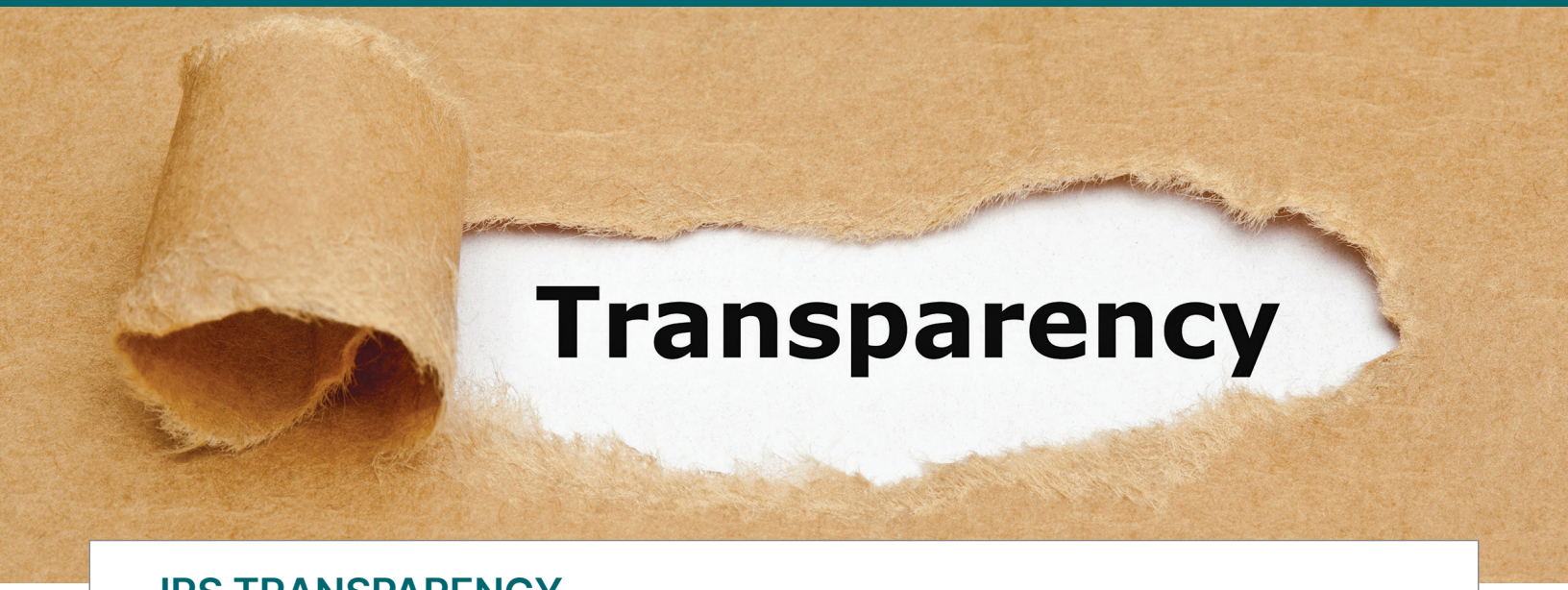
Jeffrey Tribiano, Deputy Commissioner, Operations Support

Douglas O'Donnell, Deputy Commissioner, Services and Enforcement

Traci DiMartini, Human Capital Officer

David Padrino, Chief Transformation and Strategy Officer

Carrie Holland, Chief Diversity Officer, IRS Office of Equity, Diversity and Inclusion



IRS TRANSPARENCY

The IRS Still Does Not Provide Sufficient Clear and Timely Information to the Public, Causing Confusion and Frustration and Complicating Agency Oversight

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Although the IRS made great strides during the 2023 filing season, some taxpayers and tax professionals still struggle to access information from the IRS. They have difficulty finding clear and timely guidance on which they can rely, determining the status of pending issues, understanding IRS correspondence and whether they must respond to it, and reaching an IRS employee with the knowledge to answer their questions and the authority to resolve their problems. These issues stem from the lack of effective two-way communication between the IRS and the taxpayers who have to interact with it, creating the potential for confusion, mistrust, and frustration with the tax system.

To properly set and manage expectations, taxpayers and tax professionals need clear and detailed information. While the IRS has communicated certain service improvements and objectives to the public, agency messaging on some issues has portrayed IRS modernization in ways that omit relevant context or sufficient detail, causing confusion and false expectations. As a result, there is a risk that overly optimistic messaging may erode trust over time if the taxpayer experience differs from what the IRS claims to have accomplished. Also, without more specific and measurable data on the use of funds and future IRS plans, Congress and stakeholders will not have enough information to provide informed oversight and help guide the IRS in its decision-making.

EXPLANATION OF THE PROBLEM

The IRS's Strategic Operating Plan (SOP)[1] acknowledges numerous problems impacting taxpayers and tax professionals and lays out a high-level framework for how the agency intends to transform its operations to address the challenges it faces. The National Taxpayer Advocate commends the IRS for recognizing problems

1 IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan (Apr. 2023), https://www.irs.gov/pub/irs-pdf/p3744.pdf.

and working toward improving service and tax administration but is concerned with the lack of specificity and broad scope of the initiatives in the published plan. As the IRS progresses with the initiatives identified in the SOP, it presents IRS leadership the opportunity to be transparent throughout the process, share its prioritization of initiatives, and provide updates and detailed information to the public and IRS employees to gauge feedback.

Properly implementing Inflation Reduction Act (IRA) funding does not just involve revitalizing certain IRS services.[2] It involves establishing a framework that will allow the IRS to remain responsive to taxpayer needs going forward and rebuilding the agency to provide quality service by improving its customers' experience based upon the foundation of taxpayer rights. But just as important to transforming the agency, the IRS should continue to foster closer relationships with stakeholders and create open two-way lines of communication so that taxpayers and tax professionals can continue to provide insights on the problems that the IRS needs to address, both now and as the IRS implements initiatives and looks to understand what has worked and what has not. Open and clear communication with taxpayers and stakeholders is not a one-time fix for the agency; rather, it is an opportunity for continuous collaboration to ensure the agency can remain responsive to the needs of the tax community.

Problems from inadequate transparency include:

- IRS messaging on some aspects of its reform progress omits relevant details and sets incorrect expectations;
- The IRS has not done enough to consistently and proactively engage stakeholders to timely obtain and consider their feedback;
- The IRS is often not proactive in issuing timely legal guidance, which requires taxpayers and tax professionals to figure out the relevant law or procedures on their own, and it sometimes issues guidance inconsistent with the expectations of the tax community, requiring taxpayers, tax professionals, related businesses, and stakeholders to reverse course at the last minute;
- The IRS does not always notify taxpayers of errors or programming changes to IRS tools;
- The IRS does not provide enough transparency to taxpayers seeking information from the IRS on the status of claims, refunds, and the resolution of issues; and
- On rare occasion, the IRS has acted inappropriately. While occasional mishaps are hard to prevent in an agency as large as the IRS, the agency's reluctance to quickly acknowledge a mistake may create the perception that mishaps are commonplace, which is not reality. Candor and prompt acknowledgement of errors build credibility. Lack of candor and delay in correcting a mistake can erode it.

ANALYSIS

What Is Transparency, and Why Does It Matter?

"Transparency" is the government's obligation to share with citizens the information they need to make informed decisions and hold officials accountable for the conduct of the people's business.[3] Government accountability means that public officials have an obligation to explain their decisions and actions to citizens.

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, §10301, 136 Stat. 1818, 1831-32 (2022).

3 The Freedom of Information Act reflects the belief that citizens have a right to know what their government is doing and that the burden is on the government to prove otherwise. *See* 5 U.S.C. § 552; Benny L. Kass, *The New Freedom of Information Act*, 53 A.B.A. J. 667 (1967), https://www.jstor.org/stable/25724099. It requires that the government operate on the presumption of disclosure and that the public may readily obtain information from the government, subject to certain exemptions. In general, sunshine laws require transparency and disclosure in government or business by making meetings, records, votes, deliberations, and other official actions available for public observation, participation, and/or inspection.

At its core, transparency is about establishing trust and improving the communication of the IRS with the tax community and with Congress. All relationships depend on honest and straightforward communication, and one's mandatory relationships with government institutions are no exception.[4] Full transparency is important for:

- *Accountability*: The IRS needs to provide straightforward and detailed information about its decisions, actions, and reform plans so stakeholders can give informed feedback, and Congress can take any action needed to modify the law.
- *Simplicity*: Taxpayers need clear answers to their questions so they do not have to spend time struggling to understand tax law requirements.
- *Trust*: Taxpayers will be increasingly willing to engage with the IRS when they know IRS employees can provide them with prompt and knowledgeable answers, help find fair and effective resolutions to issues, and help them be compliant with the tax laws.

Accountability: Specific, Clear Information From the IRS Allows for Better Stakeholder Feedback and Improved IRS Decision-Making

In Promoting Its Efforts Toward Reform, the IRS Has Sought to Sell Its Successes in Ways That Do Not Provide Sufficient Detail About Its Progress

Some IRS communications in 2023 portray IRS modernization in ways that omit relevant context or sufficient detail and that some may perceive as an overly optimistic version of actual progress, sometimes leading to unrealistic expectations. While this type of messaging may be reassuring in the short term, taxpayers and tax professionals must deal with the underlying realities; the gap between messaging and actual progress, along with unrealistic expectations, over time erode trust in tax administration. As a non-partisan administrator of the U.S. tax system, the IRS should provide full and candid information about the state of its operations, not just pick and choose the data that makes the agency look best. In the words of Commissioner Werfel, the IRS "must be transparent about [its] work, be responsible stewards of the taxpayer dollars we receive, and collaborate with Congress and other oversight entities."

One example of the lack of detail is how the IRS touted its successes with its Paperless Processing Initiative[5] but omitted important context. The IRS has said that "taxpayers are now able to digitally submit all correspondence and responses to notices."[6] However, the IRS did not explain that while taxpayers and tax professionals may submit documents digitally through the Document Upload Tool (DUT), the agency has not yet developed an IRS-wide streamlined backend system to manage the processing of those submissions. The IRS must still do some manual sorting and processing for documents submitted through DUT, which has created delays and unrealistic expectations of timing.[7] Some notices do not fit the criteria to allow for a digital response, such as when the notice requires a pen/ink signature. IRS messaging silently omits those notices from the definition of "all" for this purpose, which is confusing to taxpayers and tax professionals who expect to be able to submit documents digitally but find that this option is not available for some notices. Elimination of paper is a good thing for tax administration, but it is only the first step in the paperless process.

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4 *See* White House, Fifth U.S. Open Government National Action Plan (Dec. 2022), https://open.usa.gov/assets/files/NAP5-fifth-open-government-national-action-plan.pdf; George Yin, *Reforming (and Saving) the IRS by Respecting the Public's Right to Know*, 100 Va. L. Rev. 1115 (2014), https://virginialawreview.org/articles/reforming-and-saving-irs-respecting-publics-right-know/.

5 *See, e.g.*, IRS Fact Sheet, FS-2023-25, IRS Achieves Key Paperless Processing Initiative Goal, Outlines Improvements for Filing Season 2024 (Nov. 2023), https://www.irs.gov/newsroom/irs-achieves-key-paperless-processing-initiative-goal-outlines-improvements-for-filing-season-2024.

6 *Id.*

7 *See* Most Serious Problem: *Online Account Access for Taxpayers and Tax Professionals: Digital Services Remain Inadequate, Impeding Efficient Case Resolution and Forcing Millions of Taxpayers to Call or Send Correspondence to the IRS*, *infra*.

The IRS needs to properly manage the expectations of taxpayers and tax professionals while it works on establishing a more efficient backend system for processing DUT receipts before creating the next backlog of documents.

Similarly, the IRS announced that taxpayers may electronically submit Form 1040-X, Amended U.S. Individual Tax Return, but it has not emphasized that the agency continues to process these forms manually, resulting in long delays in both data intake and the issuance of refunds. As of the end of the 2023 filing season, it took the IRS about seven months to process Forms 1040-X[8] and, as of November 11, 2023, about 770,000 Forms 1040-X remain unprocessed.[9] While any step taken toward reduction of paper submissions is positive, IRS messaging should not overstate what it has accomplished, and it needs to set realistic expectations regarding timing. Taxpayers and tax professionals who submit documents electronically likely expect faster processing times than with paper submissions and are confused and surprised to find that significant delays still occur.

IRS communications have also celebrated the agency's 85 percent Level of Service (LOS) responding to taxpayer phone calls in 2023. That was a significant achievement and a vast improvement over the prior year. However, the IRS selectively chooses data for its LOS metric in several ways, and the LOS metric does not equate to the percentage of total calls that live assistors answered. While it achieved its 85 percent LOS based upon its metrics, it answered just 35 percent of all taxpayer calls received.[10] The LOS measure is also not the same for all lines, with some lines having a lower LOS than others. Notably, the LOS in fiscal year (FY) 2023 on the Practitioner Priority Service (PPS) line, the primary phone line for taxpayers' representatives, was only 34 percent, with an average wait time of 16 minutes.[11] Additionally, achieving the 85 percent LOS during the 2023 filing season came at a cost to millions of taxpayers. To reach 85 percent, the IRS temporarily reassigned employees to focus on answering phones even when call volumes were low, shifting them away from their other responsibilities, which include processing amended returns and handling taxpayer correspondence. Having customer service representatives (CSRs) primarily working the phone caused the CSRs to be idle 34 percent of the time.[12] Being idle essentially means the CSRs were waiting for the phone to ring and not working on other tasks. Not surprisingly, the focus on the phones once again led to a growth in the backlog of amended returns and paper correspondence.[13] Despite this temporary increase in attention to phones, tax professionals in focus group sessions on IRS Transparency at the 2023 IRS Nationwide Tax Forums reported continuing dissatisfaction with IRS phone service both in terms of wait times and in receiving knowledgeable answers from the IRS employees with whom they spoke.[14] In the National Taxpayer Advocate's conversations with tax professionals at the IRS Nationwide Tax Forums, many expressed confusion and displeasure with the IRS's representation that it was answering 85 percent of calls in under four minutes; this was not the experience they had when calling the PPS line.

8 IRS, Accounts Management (AM) Research, Analysis, and Data Reports, Form 1040-X (week ending Apr. 22, 2023).
9 IRS, IRS Operations: Status of Mission-Critical Functions (Dec. 8, 2023), https://www.irs.gov/newsroom/irs-operations-status-of-mission-critical-functions.
10 *See* National Taxpayer Advocate Fiscal Year 2024 Objectives Report to Congress vi (Preface: *National Taxpayer Advocate's Introductory Remarks*), https://www.taxpayeradvocate.irs.gov/reports/2024-objectives-report-to-congress/.
11 IRS, Joint Operations Center (JOC), Snapshot Reports: Product Line Detail for the 866-860-4259 Telephone Line (Sept. 30, 2023). *See also* Most Serious Problem: *Telephone and In-Person Service*: *Despite Improvements in Its Service Levels, the IRS Still Does Not Provide Taxpayers and Tax Professionals With Adequate, Timely Telephone and In-Person Service*, *infra*.
12 IRS, Ready Agent Hours Report (Jan. 1-Apr. 22, 2023).
13 From December 2022 through the filing season, the inventory of amended tax returns more than doubled from 1.5 million to 3.4 million, and the inventory of taxpayer responses to IRS notices and other AM cases awaiting processing increased from 4.9 million to 5.0 million. IRS, Wage and Investment data (weeks ending Dec. 23, 2022; Apr. 22, 2023).
14 2023 IRS Nationwide Tax Forums TAS Focus Groups, IRS Transparency 5 (Oct. 2023).

The IRS has described its progress on developing a Direct File pilot that will allow taxpayers to e-file returns directly with the IRS, suggesting that the success and expansion of Direct File is all but certain.[15] However, according to a report by the Treasury Inspector General for Tax Administration (TIGTA), the IRS's public survey on Direct File may have overestimated taxpayer interest in the possibility of such a tool and led taxpayers to think the tool would have more options than will immediately be available, such as the ability to file state tax returns. Additionally, the IRS could not provide TIGTA with any supporting documentation for how the IRS estimated the tool's costs.[16] The IRS needs to be transparent and provide detailed information to the public on the specifics of the pilot, its successes, its challenges, the associated costs, and the usage of the pilot program.

The IRS has highlighted its improvements to in-person assistance, noting that it has opened or reopened 50 Taxpayer Assistance Centers (TACs) since the start of November 2022.[17] TAS commends this much-needed improvement; however, the public statements do not tell the whole story. On the positive side, the IRS exceeded the number of taxpayers assisted at TACs in the prior year, but it closed or was unable to open 43 TACs because of staffing shortages at some point during the 2023 filing season, and it did not fully staff 230 TACs.[18] Falling well short of Secretary Yellen's directive to fully staff all TACs by 2023, as of September 2023, 266 of the 363 TACs (73 percent) were less than fully staffed, limiting service appointments available to taxpayers.[19] Again, the National Taxpayer Advocate is appreciative of the IRS providing these much-needed services but is concerned that the representations fall short on the details, misleading the public. Also, these resources are largely unavailable to taxpayers living, working, or doing business outside of the United States.[20]

High-profile statements on the status of Employee Retention Credit (ERC) claims have also not always matched reality. For example, in September 2023, the IRS announced a moratorium on the processing of newly filed claims but indicated it would continue to process ERC claims filed prior to the moratorium.[21] However, data shows that the IRS had all but stopped processing these claims by that time, and they continue to be paused as of the writing of this Most Serious Problem.[22] Although the term "processing" generally means taking an action such as allowing the claim in full or part, disallowing the claim in full or part, or assigning to a revenue agent for examination, the IRS seems to be using the term "processing" to include stepping back and strategizing how to proceed – not the actions most taxpayers think of as processing. As a result, hundreds of thousands of pre-moratorium claims are still waiting on the IRS to process them, and taxpayers await refunds while the number of post-moratorium claims continue to pile up.[23]

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15 IRS Fact Sheet, FS-2023-25, IRS Achieves Key Paperless Processing Initiative Goal, Outlines Improvements for Filing Season 2024 (Nov. 2023), https://www.irs.gov/newsroom/irs-achieves-key-paperless-processing-initiative-goal-outlines-improvements-for-filing-season-2024.

16 TIGTA, Ref. No. 2024-408-002, *Inflation Reduction Act: Assessment of a Free and Electronic Direct Filing Tax Return System* 9 (2023), https://www.tigta.gov/reports/audit/inflation-reduction-act-assessment-free-and-electronic-direct-filing-tax-return.

17 IRS Fact Sheet, FS-2023-25, IRS Achieves Key Paperless Processing Initiative Goal, Outlines Improvements for Filing Season 2024 (Nov. 2023), https://www.irs.gov/newsroom/irs-achieves-key-paperless-processing-initiative-goal-outlines-improvements-for-filing-season-2024.

18 *See* TIGTA, Ref. No. 2023-IE-R010, *Inflation Reduction Act: Assessment of the IRS's Efforts to Deliver Expected Improvements for the 2023 Filing Season* (2023), https://www.tigta.gov/reports/inspection-evaluation/inflation-reduction-act-assessment-irss-efforts-deliver-expected.

19 Janet L. Yellen, Sec'y of the Treasury, Remarks at the IRS Facility in New Carrollton, Maryland (Sept. 15, 2022), https://home.treasury.gov/news/press-releases/jy0952; IRS response to TAS fact check (Dec. 12, 2023). Fully staffed TACs means having all available workstations in a TAC filled with the appropriate type of face-to-face employee.

20 *See* Most Serious Problem: *Compliance Challenges for Taxpayers Abroad: Taxpayers Abroad Continue to Be Underserved and Face Significant Challenges in Meeting Their U.S. Tax Obligations*, *infra*.

21 IRS News Release, IR-2023-169, To Protect Taxpayers From Scams, IRS Orders Immediate Stop to New Employee Retention Credit Processing Amid Surge of Questionable Claims; Concerns From Tax Pros (Sept. 15, 2023), https://www.irs.gov/newsroom/to-protect-taxpayers-from-scams-irs-orders-immediate-stop-to-new-employee-retention-credit-processing-amid-surge-of-questionable-claims-concerns-from-tax-pros.

22 *See* Most Serious Problem: *Processing: Ongoing Processing Delays Burden and Frustrate Taxpayers Awaiting Refunds and Other Account Actions*, *supra*.

23 *Id.*

The list could go on. The point is that it shouldn't. The question going forward is how to ensure that IRS reform efforts focus on long-term progress rather than short-term narratives. Stakeholders debated this issue at length in the run-up to the IRS Restructuring and Reform Act of 1998 (RRA 98),[24] legislation that led to extensive reforms at the IRS. The bipartisan commission assigned by Congress at the time to investigate IRS reform stated in a 1997 report that unless the IRS could be "insulated from political interference," the result would be that the IRS would take a "reactive" approach to reform efforts, with "scattered attention to a host of non-strategic issues."[25]

THE IRS MUST FOCUS ON LONG-TERM PROGRESS
rather than short-term narratives

To that end, the commission considered the appropriate role for the Treasury Department in tax administration.[26] The commission found that Treasury's increased involvement in IRS oversight "often amount[ed] to little more than costly and sporadic exercises in micro-management that lack the necessary strategic and long-term focus. … The Commission is confident that Treasury, the President, and [the] IRS would save resources and improve tax administration if the Treasury spent less time 'in the details,' and more time focused on priority matters and overall accountability at the IRS."

Before Congress passed RRA 98, the working assumption initially was that the IRS would be removed from the Treasury Department.[27] Ultimately Congress decided to leave the IRS within the Treasury Department but to also establish an IRS Oversight Board, consisting primarily of people from the private sector with experience running large service organizations who could provide independent guidance to "ensure that the IRS is moving forward in a cogent, focused direction."[28] While the IRS Oversight Board still exists by statute, it has been effectively defunct since 2015 when it suspended operations.[29] As such, it remains unresolved how to insulate the IRS from the sometimes short-term goals of the Treasury Department. But it is important for tax administration that the IRS remain insulated from political interference and focus on its mission of providing America's taxpayers with top-quality service by helping them understand and meet their tax responsibilities and by enforcing the law with integrity and fairness.

24 IRS Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685 (1998) [hereinafter referred to as RRA 98].
25 *See* Report of the National Commission on Restructuring the Internal Revenue Service, A Vision for a New IRS (June 25, 1997), https://www.taxnotes.com/tax-notes-today-federal/legislative-and-policy-issues/full-text-irs-restructuring-commissions-final-report-part-1-2/1997/06/26/12db0.
26 *Id.* ("While Treasury retains its rightful place as the developer of tax policy for the executive branch, it generally is, and should remain, removed from tax administration.").
27 George Guttman, *The IRS Oversight Board: One Year in*, Tax Notes, Dec. 10, 2001, at 1375, https://www.taxnotes.com/tax-notes-today-federal/tax-system-administration-issues/news-analysis-irs-oversight-board-one-year/2001/12/12/10cp5.
28 Report of the National Commission on Restructuring the Internal Revenue Service, A Vision for a New IRS (June 25, 1997), https://www.taxnotes.com/tax-notes-today-federal/legislative-and-policy-issues/full-text-irs-restructuring-commissions-final-report-part-1-2/1997/06/26/12db0.
29 *See* Armando Gomez, *Can the IRS Yet Achieve the Restructuring Commission's Vision?*, 20 Pitt. Tax Rev. 23, 39 (2022), https://taxreview.law.pitt.edu/ojs/taxreview/article/view/167. Some other statutory changes remain effective, however. For example, RRA 98 established the five-year term for the IRS Commissioner. IRC § 7803(a)(1)(B); RRA 98, Pub. L. No. 105-206, § 1102(a), 112 Stat. 685, 697 (1998).

The IRS Needs to Take a More Centralized and Permanent Approach to Engaging External Stakeholders and Seeking Comments From Stakeholders

The IRS has emphasized that feedback from external stakeholders is an important part of implementing the initiatives in its reform plan.[30] To maximize the value of potential feedback, the IRS should provide stakeholders with specific and detailed information on its plans, provide a centralized location on IRS.gov for opportunities to comment, and effectively manage the comments it receives.

Publicizing requests for feedback in different ways can make it difficult for stakeholders to keep track of all the issues on which the IRS is seeking comments, as well as the specific email addresses where they should send comments. For example, to publicize the request for comments on SOP Initiative 2.3, the IRS created an email address where stakeholders could submit comments (wi.otc.cam@irs.gov), which it noted in certain email newsletters and sent to various IRS advisory committees and groups advancing taxpayer interests.[31] For Initiative 2.4, the IRS created a separate email address (LBI.SOP.Initiative.Feedback@irs.gov) that it announced in a news release.[32] Stakeholders who did not see a particular email or presentation with the information may have missed the opportunity to comment.

The IRS should list all comment opportunities on IRS.gov and consider designing pages so stakeholders can submit comments directly on the website, similar to the existing online page that allows for stakeholders to submit comments about IRS forms and publications.[33] An added benefit of a centralized approach to comments is that it would create a more permanent, ongoing approach to stakeholder feedback. Reform should be an ongoing process of incremental improvement that public feedback continuously informs.

In seeking feedback on some SOP initiatives, the IRS has sought to leverage some of its existing relationships with stakeholder groups, such as the Electronic Tax Administration Advisory Committee, the Internal Revenue Service Advisory Council, and the Taxpayer Advocacy Panel. These groups provide valuable feedback to the IRS on many issues. Having these groups available for comment further underscores the importance of establishing long-term institutional approaches to feedback.

Simplicity: Taxpayers Shouldn't Have to Struggle to Figure Out How to Comply and Claim Benefits

Confusing or Late Legal Guidance Causes Problems for Taxpayers, Tax Professionals, Related Businesses, and Stakeholders, Potentially Requiring Them to Reverse Course at the Last Minute

When IRS guidance isn't timely or doesn't settle issues with certainty, the agency effectively passes the burden of interpreting tax law to taxpayers and tax professionals while retaining for itself the option of later choosing a position. Taxpayers should not have to get an advanced degree in tax law to understand their obligations. They need straightforward, plain language information on what the law requires so they can meet their obligations effectively and foresee how the law will impact their transactions.

30 *See, e.g.*, IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan 3, 32, 54, 125 (Apr. 2023), https://www.irs.gov/pub/irs-pdf/p3744.pdf.
31 IRS response to TAS information request (Oct. 2, 2023).
32 IRS News Release, IR-2023-171, IRS Requests Comments On Expanding Tax Certainty and Issue Resolution Programs for Business Taxpayers (Sept. 15, 2023), https://www.irs.gov/newsroom/irs-requests-comments-on-expanding-tax-certainty-and-issue-resolution-programs-for-business-taxpayers.
33 IRS, Comment on Tax Forms and Publications (Feb. 14, 2023), https://www.irs.gov/forms-pubs/comment-on-tax-forms-and-publications.

STRAIGHTFORWARD, PLAIN LANGUAGE IS NECESSARY

Taxpayers should not have to get an advanced degree in tax law to understand their obligations

For example, in the lead-up to the 2023 filing season, the IRS was slow to clarify its position on two significant issues of widespread concern, leading to uncertainty and confusion for taxpayers, tax professionals, and related businesses.[34] The first involved the taxability for federal income tax purposes of special state relief payments or tax refunds paid in 2022 to residents of 21 states to help offset the costs of inflation or the pandemic. Despite considerable high-profile uncertainty on the federal tax treatment of such payments and requests by numerous states for guidance, the IRS did not clarify its position until February 10, 2023, after the filing season had begun.[35] Because filing had already started, tax return software developers had already devoted resources to deciding how to treat the amounts and programmed their software accordingly (knowing the risk that the IRS might later take a different view but having little or no option). Any taxpayers who filed returns reporting the payments as taxable would have needed to file amended or superseding returns to exclude the payments. The IRS could have avoided such cost and confusion with more timely and proactive guidance.

Another example of late guidance involved the changes to reporting thresholds for the issuance of Forms 1099-K, Payment Card and Third Party Network Transactions, by third-party settlement organizations such as Venmo, PayPal, and Cash App. The expansion of the reporting requirements from prior law had led to widespread concern that many taxpayers would receive incorrect Forms 1099-K and not know how to account for them when filing their tax return. Third-party settlement organizations and users of the apps repeatedly asked the IRS to provide guidance. Despite nearly two years of lead time, on December 23, 2022, the IRS effectively pulled the plug, postponing implementation of the lowered reporting threshold for one year.[36] Then, at the end of 2023, the IRS issued another one-year postponement, announcing on November 21, 2023, that it will again delay the $600 Form 1099-K reporting threshold for third-party settlement organizations due to the "complexity of the new provision, the large number of individual taxpayers affected, and the need for stakeholders to have certainty with enough lead time."[37] Although delaying the implementation of the new legislation is favorable to taxpayers and should reduce taxpayer confusion and frustration during 2024, early and clear guidance could have reduced the anticipated burdens. Once again, the National Taxpayer Advocate recommends the IRS continue to provide guidance and education to reduce burdens as it implements the transition starting in 2025 and provide specific guidance to taxpayers who receive an incorrect Form 1099-K for personal use.

The continuing saga of ERC claims should also serve as lessons learned to the IRS on how it should have developed early guidance and processes when implementing new legislation. The ERC is a refundable credit that Congress first authorized in 2020 during the COVID-19 pandemic to provide employers with additional

34 *See* Erin M. Collins, The IRS Must Be Proactive in Issuing Timely and Clear Guidance to Resolve Tax Reporting Ambiguities, NATIONAL TAXPAYER ADVOCATE BLOG (Aug. 30, 2023), https://www.taxpayeradvocate.irs.gov/news/nta-blog-the-irs-must-be-proactive-in-issuing-timely-and-clear-guidance/.

35 IRS News Release, IR-2023-23, IRS Issues Guidance on State Tax Payments to Help Taxpayers (Feb. 10, 2023), https://www.irs.gov/newsroom/irs-issues-guidance-on-state-tax-payments-to-help-taxpayers.

36 IRS Notice 2023-10, 2023-3 I.R.B. 403, Revised Timeline Regarding Implementation of Amended Section 6050W(e), https://www.irs.gov/pub/irs-drop/n-2023-10.pdf.

37 IRS News Release, IR-2023-221, IRS Announces Delay in Form 1099-K Reporting Threshold for Third Party Platform Payments in 2023; Plans for a Threshold of $5,000 for 2024 to Phase in Implementation (Nov. 21, 2023), https://www.irs.gov/newsroom/irs-announces-delay-in-form-1099-k-reporting-threshold-for-third-party-platform-payments-in-2023-plans-for-a-threshold-of-5000-for-2024-to-phase-in-implementation; IRS Notice 2023-74, 2023-51 I.R.B. 1, Revised Timeline Regarding Implementation of Amended Section 6050W(e), https://www.irs.gov/pub/irs-drop/n-23-74.pdf.

funds to help them retain employees. However, a cascade of issues, many but not all within the IRS's control, led to extensive delays in processing ERC claims[38] and ultimately to potentially fraudulent claims.[39] While the IRS issued guidance relatively quickly after Congress first enacted ERC legislation,[40] the guidance and rules for eligibility confused many small business owners.[41] Taxpayers and tax professionals were largely unable to reach knowledgeable IRS representatives who could clarify how the rules would apply in their situation.[42] The processes the IRS developed for ERC claims relied on manual processing of paper submissions at a time when few employees were available to work those claims.[43] A TIGTA audit found that the IRS did not timely update its programming and procedural guidance, adequately train employees on processes, or appropriately prioritize ERC claims.[44] The combination of confusing rules, lack of documentation of eligibility requirements on amended returns, and inefficient processes created fertile ground for ERC mills to lure business owners into filing fraudulent claims. As problems snowballed for the IRS, the agency has had to look for new solutions to pull itself out from the situation, such as a moratorium on the processing of new claims[45] and procedures allowing taxpayers to withdraw existing claims.[46] The September 14, 2023, news release announcing the moratorium also stated that the IRS was developing a settlement program for taxpayers who had received an improper ERC payment and that it would provide more details in Fall 2023. However, as of the drafting of this Most Serious Problem, taxpayers are still waiting to learn the terms and conditions of the settlement program. Overall, while it was a difficult assignment for the IRS to develop an efficient method to manage ERC claims during the pandemic, the path the IRS took led to the current situation. Hindsight is a wonderful thing, but the ability to understand what caused the challenges and delays is important for the IRS to understand to make better decisions in the future. Going forward, the IRS should be proactive, ensure that its guidance and procedures are timely, simple, and practical for both taxpayers and IRS employees, and address any failures in processes before they spiral out of control.

SOP Initiative 1.7 aims to "[p]rovide earlier legal certainty," noting that in recent years, the IRS has been able to provide guidance "only for priority issues, leaving many taxpayers unaware of how the IRS views the application of the law and whether certain positions will be accepted."[47] One project in the initiative is to expand capacity in the Office of Chief Counsel and the Department of the Treasury Office of Tax Policy to

38 TIGTA, Ref. No. 2022-46-059, *Delays Continue to Result in Businesses Not Receiving Pandemic Relief Benefits* (2022), https://www.tigta.gov/reports/audit/delays-continue-result-businesses-not-receiving-pandemic-relief-benefits.

39 *See* Jonathan Curry & Lauren Loricchio, *IRS Halts ERC Claims Processing Amid 'Tsunami' of Fraud*, Tax Notes, Sept. 18, 2023, https://www.taxnotes.com/taxpractice/credits/irs-halts-erc-claims-processing-amid-tsunami-fraud/2023/09/18/7h96l.

40 The IRS did not timely address all issues and is still releasing guidance. For example, the IRS only recently, in November 2023, issued a 14-page legal advice memorandum on whether employers could have relied on recommendations that the Occupational Safety and Health Administration made in 2020 and 2021 to meet the definition of an "eligible employer" for purposes of the ERC. IRS, Memorandum AM 2023-007, Issues Related to Whether an Employer Experienced a Full or Partial Suspension of the Operation of a Trade or Business Under Section 2301 of the Coronavirus Aid, Relief, and Economic Security Act or Section 3134 of the Internal Revenue Code Due to Communications From the Occupational Safety and Health Administration (Nov. 3, 2023), https://www.irs.gov/pub/lanoa/am-2023-007.pdf.

41 Government Accountability Office (GAO), GAO-22-104582, *Tax Equity: Enhanced Evaluation Could Improve Outreach to Small Business Owners* (2022), https://www.gao.gov/products/gao-22-104582; Juan F. Vasquez Jr. et al., *ERC Audits and the IRS's $80 Billion Cash Infusion*, Tax Notes, Oct. 31, 2022, https://www.taxnotes.com/tax-notes-today-federal/compliance/erc-audits-and-irss-80-billion-cash-infusion/2022/10/31/7f9bg.

42 Letter from Pat Cleary, National Association of Professional Employer Organizations, to Janet L. Yellen, Sec'y of the Treasury, Tax Notes, Apr. 7, 2022, https://www.taxnotes.com/tax-notes-today-federal/credits/employer-org-calls-more-action-erc-processing-backlog/2022/04/13/7dcpy.

43 TIGTA, Ref. No. 2021-46-064, *Effects of the COVID-19 Pandemic on Business Tax Return Processing Operations* (2021), https://www.tigta.gov/reports/audit/effects-covid-19-pandemic-business-tax-return-processing-operations.

44 TIGTA, Ref. No. 2022-46-059, *Delays Continue to Result in Businesses Not Receiving Pandemic Relief Benefits* (2022), https://www.tigta.gov/reports/audit/delays-continue-result-businesses-not-receiving-pandemic-relief-benefits.

45 IRS News Release, IR-2023-169, To Protect Taxpayers From Scams, IRS Orders Immediate Stop to New Employee Retention Credit Processing Amid Surge of Questionable Claims; Concerns From Tax Pros (Sept. 14, 2023), https://www.irs.gov/newsroom/to-protect-taxpayers-from-scams-irs-orders-immediate-stop-to-new-employee-retention-credit-processing-amid-surge-of-questionable-claims-concerns-from-tax-pros.

46 IRS News Release, IR-2023-193, IRS Announces Withdrawal Process for Employee Retention Credit Claims; Special Initiative Aimed at Helping Businesses Concerned About an Ineligible Claim Amid Aggressive Marketing, Scams (Oct. 19, 2023), https://www.irs.gov/newsroom/irs-announces-withdrawal-process-for-employee-retention-credit-claims-special-initiative-aimed-at-helping-businesses-concerned-about-an-ineligible-claim-amid-aggressive-marketing-scams.

47 IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan 32 (Apr. 2023), https://www.irs.gov/pub/irs-pdf/p3744.pdf.

proactively address more taxpayer questions using both formal and informal legal guidance and rulings. The second project in the initiative is to develop additional guidance tools to address current challenges and, where possible, provide greater certainty for taxpayers.[48]

These projects remain largely in the early stages, but they are promising. Taxpayers and tax professionals need more IRS guidance, both formal and informal. In addition, the IRS needs to continue its work updating the organization and searchability of IRS.gov to make it easier for taxpayers and tax professionals to find applicable guidance once it does become available. Taxpayers and tax professionals often first look to use self-help tools and online resources to address tax questions and issues but get frustrated when the available information is not readily identifiable or is buried in pages of links with unclear titles.[49]

The IRS's Office of Online Services has an ambitious plan of ongoing projects to make IRS.gov content easier to find, understand, and use. The projects include user testing, journey mapping, and initiatives to make content more searchable and improve its placement on the website. A recent joint project by the IRS's Taxpayer Experience Office and the Wage and Investment Division demonstrates the type of improvements the IRS can make by analyzing gaps in compliance. Following a study indicating that recently divorced taxpayers, who before divorce were generally in compliance, had begun to receive balance due notices, the team developed a landing page to centralize information on tax issues relating to divorce with the goal of providing clear guidance to improve compliance for these individuals.[50] The next steps should be to continue to study the effectiveness of the page and the effects on compliance for this group of taxpayers and to decide whether the IRS needs to make further changes.

Reliance on IRS guidance remains an issue.[51] Informal guidance like FAQs and online tools project the appearance of certainty, but taxpayers can't actually rely on such informal guidance to defend the merits of their positions in an audit or in litigation.[52] The IRS is making efforts to become more transparent about this by adding language to IRS.gov explaining when taxpayers can rely on IRS guidance,[53] but the next step forward is to minimize or eliminate this uncertainty altogether. Informal guidance should include direct references to formal law, such as through citations, hyperlinks, or QR codes, wherever informal guidance advises taxpayers to commit to a tax position. After taxpayers read clear descriptions in informal guidance and understand the framework for the rules, many will then be able to understand the more technical language in formal guidance. Such citations also help keep informal guidance up to date and eliminate errors by facilitating review within the Office of Chief Counsel and the IRS. Most informal guidance receives periodic review, but IRS employees do not always have enough time to fit a lengthy review into their workload.

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48 IRS response to TAS information request (Sept. 15, 2023).

49 *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/.

50 IRS, Filing Taxes After Divorce or Separation, https://www.irs.gov/individuals/filing-taxes-after-divorce-or-separation (Oct. 31, 2023); IRS response to TAS information request (Sept. 21, 2023).

51 See discussion in National Taxpayer Advocate 2022 Annual Report to Congress 120-121 (Most Serious Problem: *IRS Transparency: Lack of Transparency About Processing Delays and Other Key Data Frustrates Taxpayers and May Undermine Voluntary Compliance*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MSP_07_Transparency.pdf.

52 Taxpayers can cite their reliance on some informal guidance to seek relief from certain penalties. *See* IRS, General Overview of Taxpayer Reliance on Guidance Published in the Internal Revenue Bulletin and FAQs (July 28, 2023), https://www.irs.gov/newsroom/general-overview-of-taxpayer-reliance-on-guidance-published-in-the-internal-revenue-bulletin-and-faqs. *See also Miller v. Comm'r*, 114 T.C. 184, 195 (2000) ("Taxpayers rely on such publications at their peril. Administrative guidance contained in IRS publications is not binding on the Government, nor can it change the plain meaning of tax statutes."); Joshua D. Blank & Leigh Z. Osofsky, *The Inequity of Informal Guidance*, 75 Vand. L. Rev. 1093, 1110-1116 (2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3909897 (arguing that the "two tiers of formal and informal tax law systematically disadvantage taxpayers who lack access to sophisticated advisors").

53 In response to a recommendation in the National Taxpayer Advocate 2022 Annual Report to Congress that the IRS clearly state on all guidance the extent to which the taxpayer can rely on the guidance either for penalty relief or in an audit, the IRS has agreed to update the IRS.gov reliance webpage to include a reference to other IRS.gov webpages, publications, forms, instructions, and other types of informal guidance made public by the IRS as subject to the same reliance limitations as FAQs. The IRS will also add a link to the updated page on the bottom of the IRS.gov homepage under *Know Your Rights*. IRS response to TAS fact check (Dec. 11, 2023).

Specific, pinpointed citations to underlying law would help IRS reviewers – as well as taxpayers and tax professionals – more quickly search for applicable legal developments and determine whether the wording in the guidance is the best characterization of the law. Going forward, the absence of citations in informal guidance would also indicate when there is no formal guidance directly on point.

The IRS Should Notify Taxpayers of Errors or Programming Changes to IRS Tools, Including Direct E-File

The IRS intends to expand the availability of tools such as calculators and chatbots as part of its efforts to create additional informal guidance.[54] A direct e-file system would also constitute an IRS tool, in that its user prompts and structure would serve as informal guidance that taxpayers would rely on in deciding what reporting positions to take. IRS tools can be helpful to taxpayers in understanding their obligations, but they involve some special transparency considerations. Errors in tools can arise even when there are no mistakes in the interpretation of law, due to the possibility of bugs in the programming. The IRS must identify and fix programming errors just as transparently as any updates it makes to written IRS guidance like FAQs.

In 2023, TAS found that the IRS Withholding Estimator tool was, in some situations, providing estimates that were erroneously low.[55] This was not due to a misinterpretation of applicable law, rather an issue in the calculation and display of results. Nonetheless, taxpayers who relied on the tool's estimate could have withheld too little, putting them at risk of penalties and additional, unexpected tax due at the time of filing for which they might not have set aside adequate funds. The IRS corrected the calculation error, but the Withholding Estimator webpage and FAQs do not yet notify the public of the error.[56]

The landing page for IRS tools should include a link where users can find the history of material changes to the tool or IRS programing errors, with plain language descriptions of how the changes affect users, particularly in the case of errors that may adversely affect taxpayers or expose them to risk of examination or penalties.[57] The IRS should consider adding a comments box directly on the page where users could provide feedback regarding potential errors or problems they encounter.

Some tools, like an IRS direct e-file system, may be so impactful that the IRS should actively alert prior users when there are material updates. With a direct e-file system, for example, if the IRS were to modify the programming during filing season or change the language of user prompts, taxpayers who had already filed their return may be adversely affected and may need an opportunity to file an amended or superseding return.

Tools should advise taxpayers to print summaries for their records in case they later need to prove reliance on that tool. The IRS's Withholding Estimator and Interactive Tax Assistant already provide useful summaries that include the user prompts, user inputs, and the tool's recommendations. However, neither tool clearly directs taxpayers to print the summary for their records. As online accounts develop additional functionality, the IRS should consider creating a feature that allows taxpayers to save these summaries to their online account and request alerts regarding any material changes to tools they have used.

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54 IRS response to TAS information request (Sept. 15, 2023). The IRS did not refer to calculators or chatbots in its response to the TAS information request. Rather, these tools are included as examples of what the IRS might create, based on existing IRS tools and news of recent IRS efforts in this area. *See*, *e.g.*, IRS News Release, IR-2023-178, IRS Expands Use of Chatbots to Help Answer Questions on Key Notices; Expands on Technology That's Served 13 Million Taxpayers (Oct. 4, 2023), https://www.irs.gov/newsroom/irs-expands-use-of-chatbots-to-help-answer-questions-on-key-notices-expands-on-technology-thats-served-13-million-taxpayers.

55 IRS, Tax Withholding Estimator (Nov. 16, 2023), https://www.irs.gov/individuals/tax-withholding-estimator. According to the IRS, the error was due to the computations not appropriately including the deduction for Qualified Business Income for self-employed individuals.

56 TAS Systemic Advocacy, Information Gathering Project 67012, 2023 Tax [Withholding] Estimator Underestimates SE Tax; IRS, Tax Withholding Estimator, https://apps.irs.gov/app/tax-withholding-estimator (last visited Dec. 15, 2023); IRS, Tax Withholding Estimator FAQs (Nov. 15, 2023), https://www.irs.gov/individuals/tax-withholding-estimator-faqs.

57 Sensitive information could be withheld.

Trust: A Lack of Transparency Can Lead to Taxpayer Skepticism and Reduced Voluntary Tax Compliance

Taxpayers Need More Information on the Status of Their Claims With the IRS and in the Resolution of Issues

In focus group sessions on IRS Transparency at the 2023 IRS Nationwide Tax Forums, tax professionals discussed having difficulties reaching someone at the IRS on the phone, getting the IRS to respond to correspondence, or receiving explanations of the reason for IRS delays.[58] When tax professionals did reach someone on the phone, they reported that the representatives they spoke with often did not adequately understand the relevant tax law requirements and could not provide the assistance needed. One tax professional described calling the IRS to follow up on IRS correspondence on a specific taxpayer issue; however, each time the tax professional called, the agent could not provide any information on what steps the IRS had taken or what additional information it needed.[59]

Tax professionals in the focus groups also expressed frustration that the IRS did not adequately respond either to confirm the receipt of information or to keep the tax professionals apprised of developments on claims. Tax professionals explained that the IRS generally either tells them to allow 30 to 60 days for processing or sends a letter asking to allow an additional 60 days, a process that may repeat indefinitely with no resolution. Tax professionals stated that they would like an acknowledgment when the IRS receives information or correspondence as well as defined timelines of when the IRS will follow up.[60]

IRS tools like Where's My Refund?[61] and Where's My Amended Return?[62] continue to provide only limited information, primarily indicating whether the IRS received the return, approved a refund, or sent a refund. In the focus groups on IRS Transparency, tax professionals explained that Where's My Refund? worked adequately for simple returns that did not involve problems but that it did not provide helpful information for returns that had issues requiring further action.[63] The IRS has stated that integrating refund status information into individual online accounts is a high priority and is currently targeting May 2024 for the initial release of Where's My Refund? integration into individual online accounts.[64]

The IRS SOP includes plans to provide more up-to-date information on wait times and processing times. The IRS currently lists some of this information on an "IRS Operations" page on IRS.gov,[65] where it posts updates on several issues, such as delays in processing returns and amended returns. However, the information on this page is vague and isn't presented in a user-friendly format. For example, the page currently states that as of November 11, 2023, the IRS had 953,000 unprocessed individual returns, including 2022 and 2021 returns that need review or correction, and that it is taking the IRS more than 21 days to issue a refund relating to these returns. The next section explains that returns received in the current year with problems could take more than 120 days to resolve. Many taxpayers in this situation who come to this page for information would likely have already waited more than the 21 or 120 days described on the page. Providing a minimum period of delay without information on the expected timing of resolution or a maximum period of delay is not completely helpful for taxpayers who need to know when to expect an action from the IRS.

58 2023 IRS Nationwide Tax Forums TAS Focus Groups, IRS Transparency 5 (Oct. 2023).
59 *Id.* at 6.
60 *Id.* at 6.
61 IRS, Where's My Refund? (Oct. 18, 2023), https://www.irs.gov/refunds.
62 IRS, Where's My Amended Return? (June 27, 2023), https://www.irs.gov/filing/wheres-my-amended-return.
63 2023 IRS Nationwide Tax Forums TAS Focus Groups, IRS Transparency 5 (Oct. 2023).
64 IRS response to TAS fact check (Dec. 11, 2023).
65 IRS, IRS Operations: Status of Mission-Critical Functions (Dec. 8, 2023), https://www.irs.gov/newsroom/irs-operations-status-of-mission-critical-functions.

When the IRS Makes Inaccurate Statements or Representations, It Should Act Quickly to Acknowledge and Correct Them

The Tax Court recently granted, in part, a taxpayer's motion to impose sanctions against the IRS pursuant to IRC § 6673(a)(2)(B) because "the objective actions of [IRS] counsel [rose] to the level of bad faith" for the failure to notify the court about a backdated document and not timely correcting the error in *LakePoint Land II, LLC v. Commissioner*.[66] The document related to a penalty that required timely written supervisory approval under IRC § 6751(b). The IRS supervisor had signed the penalty lead sheet in February 2017 but backdated her signature, making it appear that she had signed it in July 2016.[67] In seeking judgment on the issue in court, the IRS Office of Chief Counsel submitted the backdated penalty lead sheet along with a declaration incorrectly stating that the IRS supervisor had signed the sheet in July 2016. The taxpayer pressed the issue, and the Office of Chief Counsel eventually had to concede the backdating of the document and the inaccurate statements in the declaration. However, the Office of Chief Counsel delayed its concession for months after submitting the document and then pivoted to an alternative argument to try to prevail in the case.[68] Though the Tax Court acknowledged "the actions of [IRS] counsel may have begun as unintentional and unknowing," it found that such actions "have multiplied the proceedings in this case unreasonably and vexatiously," thereby making the government "vulnerable to liability for the costs, expenses, and fees attributable to the services of the taxpayer's attorney's professional services that are required as an appropriate response to the misconduct."[69]

Based on the National Taxpayer Advocate's personal experience as a former employee in the Office of Chief Counsel, IRS employees do not intentionally and knowingly misrepresent information, but when operations or Counsel employees present inaccurate information to a court, the effect on public trust can be long-lasting. An incident like in *LakePoint* may give life to speculation about the extent of IRS misconduct and bad faith, which may undermine public trust and voluntary compliance. While the IRS can't entirely forestall such behavior on the part of certain employees, when it occurs, it must take appropriate steps to take ownership, acknowledge it, and rectify it. It should be noted that on October 11, 2023, the Office of Chief Counsel held a mandatory training for all Division Counsel attorneys on how to properly evaluate evidence of IRC § 6751(b) supervisory approval of penalties for cases in litigation. The National Taxpayer Advocate commends the Office of Chief Counsel for taking the issue seriously and taking appropriate steps so that such mishaps do not happen in the future. However, given that similar allegations of backdating have now arisen in other cases,[70] the Office of Chief Counsel should promptly complete the review in regard "of syndicated conservation easement cases to ensure that the evidentiary record about supervisory approval is properly presented and that the agency pursues or continues to pursue penalties only where appropriate."[71] The National Taxpayer Advocate also recommends that the IRS make the findings public, directly contact any negatively affected taxpayers, and take the necessary steps to rectify the situation.[72]

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66 T.C. Memo. 2023-111. If the attorney is appearing on behalf of the IRS Commissioner, the Tax Court may require the United States to "pay such excess costs, expenses, and attorneys' fees in the same manner as such an award by a district court." IRC § 6673(a)(2)(B).

67 *LakePoint Land II, LLC v. Comm'r*, T.C. Memo. 2023-111, slip op. at 3.

68 *Id.* at 11-12.

69 *Id.* at 12-13. *See also* IRC § 6673(a)(2)(B).

70 *See* Kristen A. Parillo, *Easement Litigants Allege Penalty Backdating in Three More Cases*, Tax Notes, Aug. 21, 2023, https://www.taxnotes.com/tax-notes-today-federal/charitable-giving/easement-litigants-allege-penalty-backdating-three-more-cases/2023/08/21/7h38t; *see also* Kristen A. Parillo, *Easement Litigants Allege Dodgy Penalty Approval by IRS Employees*, Tax Notes, Oct. 3, 2023, https://www.taxnotes.com/tax-notes-today-federal/audits/easement-litigants-allege-dodgy-penalty-approval-irs-employees/2023/10/03/7hdtk.

71 *LakePoint Land II, LLC v. Comm'r*, No. 13925-17 (T.C. Sept. 7, 2023) (joint motion for continuance of trial), https://www.taxnotes.com/tax-notes-today-federal/conservation-easements/irs-partnership-reach-settlement-conservation-easement-case/2023/09/13/7h909.

72 As these events were unfolding, the Treasury Department issued proposed regulations and a proposed legislative amendment to IRC § 6751, both of which would allow for supervisory approval of applicable penalties at the last possible moment, seriously eroding the taxpayer protections provided by the statute. This is addressed further in two legislative recommendations in the National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (Clarify That Supervisory Approval Is Required Under IRC § 6751(b) Before Proposing Penalties) and (Require an Employee to Determine and a Supervisor to Approve All Negligence Penalties Under IRC § 6662(b)(1))*.

CONCLUSION AND RECOMMENDATIONS

Taxpayers, tax professionals, stakeholders, and industry expect and deserve a well-functioning tax system based upon fairness and equity that protects taxpayer rights and ensures everyone pays their fair share of taxes. A transparent and efficient tax administration will build taxpayers' trust in the IRS, resulting in an effective and fair voluntary tax system that fully implements the Taxpayer Bill of Rights.

The funding in the IRA provides a unique opportunity to modernize, and the IRS cannot afford to waste it or lose the trust of Congress and taxpayers. The IRS needs to adopt a long-term focus in its reform efforts, provide clear and specific data on its modernization plans and progress, and develop lasting channels of communication that allow for feedback from external stakeholders. It needs to increase its capacity to issue clear and timely guidance and continue working on improvements to IRS.gov to make such guidance easier to access. Finally, the IRS needs to improve its processes for responding to taxpayer and tax professional inquiries to consistently provide knowledgeable, prompt, and helpful information that correctly answers questions or advances the resolution of issues and gains the trust of the American people.

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Provide quarterly updates of milestones accomplished and an annual report updating the SOP. Include performance metrics for stated objectives that will allow for the evaluation of outcomes, including specific deadlines on when the IRS will meet these objectives.
2. Provide specific and verifiable details on the Direct File pilot; the number of taxpayers utilizing the tool; processing successes, issues, and lessons learned associated with the tool; and the costs of a direct e-file system.
3. Set up a centralized location on IRS.gov to inform the public of requests for feedback on modernization initiatives, with information on how to submit comments.
4. Add information to IRS tools notifying taxpayers when the IRS has made material changes and updated features.
5. Develop processes to more consistently and timely acknowledge the receipt of taxpayer correspondence and provide accurate timelines on when the IRS expects to respond or act.
6. Provide weekly information throughout the year on 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.
7. Publicly disclose the findings of its review of syndicated conservation easement cases on the potential backdating of penalty documents.

RESPONSIBLE OFFICIALS

Douglas O'Donnell, Deputy Commissioner, Services and Enforcement

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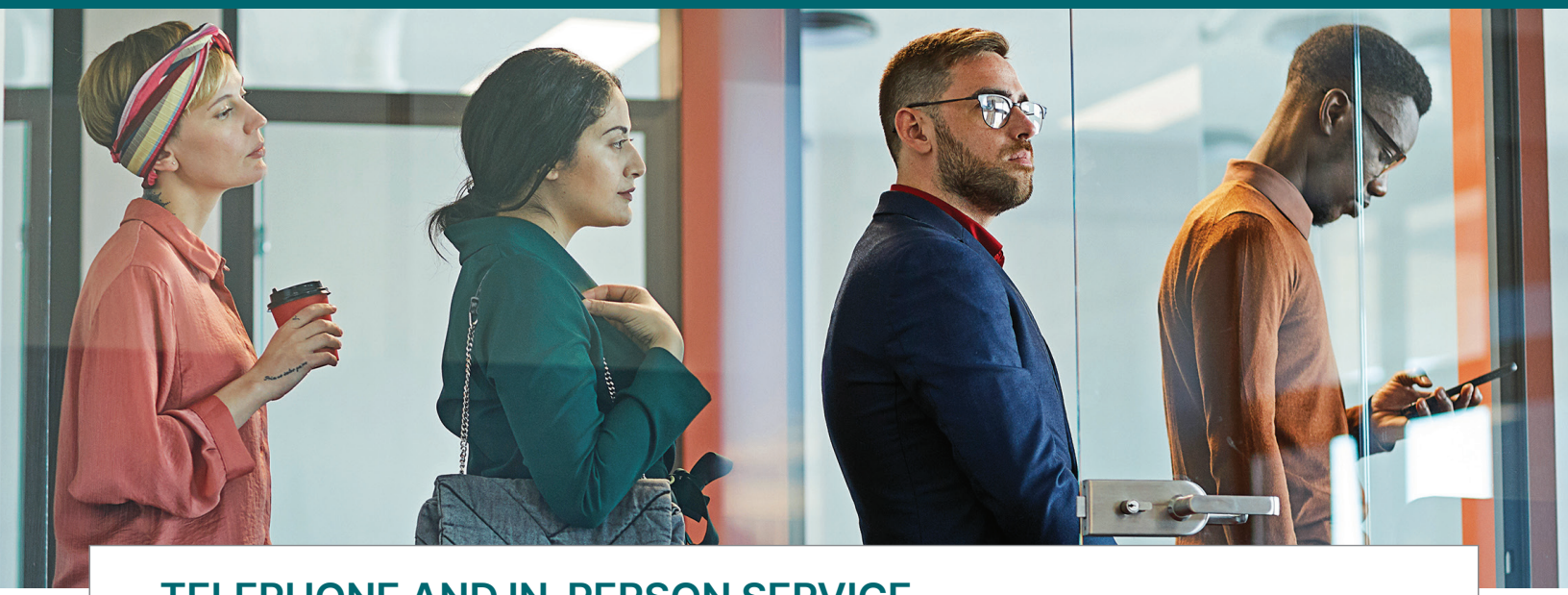

TELEPHONE AND IN-PERSON SERVICE

Despite Improvements in Its Service Levels, the IRS Still Does Not Provide Taxpayers and Tax Professionals With Adequate, Timely Telephone and In-Person Service

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

When taxpayers call the IRS, they expect and deserve quality service without suffering long wait times.[1] In 2023, telephone service was considerably better; however, it is still not providing the level of service that taxpayers and tax professionals need throughout the year. And based upon its Level of Service (LOS) measurement, the IRS is not able to accurately determine how to best provide that quality service.

The IRS's LOS metrics tell taxpayers nothing about how many calls the IRS transferred, whether taxpayers had to call multiple times, and whether the taxpayer ultimately received the information they needed. The IRS LOS does not measure whether customer service representatives (CSRs):

- Provide dependable and accurate assistance;
- Provide responsive assistance;
- Provide knowledgeable and courteous service; or
- Have the ability or training to answer taxpayer questions at the initial point of contact.

Although the IRS significantly improved phone service over the past year, the way the IRS calculates LOS paints a picture far more optimistic than the reality of the taxpayer's experience when calling for assistance and does not address "quality service." Tax professionals have been frustrated with the wait times and low LOS, incurring unnecessary costs due to IRS delays or CSRs' inability to answer questions.

1 *See* Taxpayer Bill of Rights (TBOR), https://www.taxpayeradvocate.irs.gov/taxpayer-rights (last visited Dec. 15, 2023). The rights contained in TBOR are also codified in IRC § 7803(a)(3).

Taxpayers who need face-to-face service can make an appointment to visit Taxpayer Assistance Centers (TACs) for free tax help to address their tax questions and receive support if they face language barriers. Although TACs exist throughout the United States, several states have just one TAC location, and many are not fully staffed or operate on a limited schedule causing challenges for taxpayers. Many TACs do not meet the needs of taxpayers who live too far away or can't make an appointment at a time that works for them.

EXPLANATION OF THE PROBLEM

When taxpayers need assistance meeting their federal tax return filing and payment obligations, they obtain service through two of the IRS's primary service channels: telephone help lines and TACs.[2] Taxpayers and tax professionals unable to get their questions answered experience increased burden or may not be able to resolve their issues. When taxpayers cannot reach the IRS by phone or in person, it not only harms them but also the IRS by creating costly, multiyear negative impacts on IRS processing when taxpayers turn to paper correspondence to communicate with the IRS.[3]

The IRS reports CSR LOS as a key indicator of how well it is providing phone service. As it directs increasing numbers of taxpayers to self-service options, the IRS needs better measures of the taxpayer experience to ensure that those who need to speak with a live assistor can reach one and resolve their issue. The CSR LOS the IRS reports suffers from these deficiencies:

- CSR LOS accounts for about 77 to 85 percent of the total call volume the IRS receives, but it excludes important phone lines, such as those that taxpayers call with questions about balances owed and requests for help making payment arrangements, where LOS in fiscal year (FY) 2023 was 53 percent;[4]
- CSR LOS doesn't measure whether the IRS resolved the caller's issue; and
- Without a comprehensive measure of service, CSR LOS hinders the IRS from making effective decisions on allocating taxpayer services resources.

Taxpayers seeking face-to-face assistance at a TAC may experience difficulties. Some taxpayers do not live or work close to a TAC location or can't receive service at a suitable time. Some taxpayers can't get assistance from TACs because TAC standard operating hours are 8 a.m. to 4:30 p.m., Monday through Friday. Other taxpayers couldn't get an appointment because of staffing shortages (*e.g.*, the IRS couldn't open 43 TACs during the 2023 filing season), and it had 230 TACs not fully staffed.[5] As of September 2023, 266 of the 363

2 *See* IRS, Service to Taxpayers (Apr. 14, 2023), https://www.irs.gov/statistics/service-to-taxpayers.

3 *See* Most Serious Problem: *Processing: Ongoing Processing Delays Burden and Frustrate Taxpayers Awaiting Refunds and Other Account Actions*, *supra*.

4 IRS, Joint Operations Center (JOC), Snapshot Reports: Enterprise Snapshot, Enterprise Total; IRS, JOC, Snapshot Reports: Accounts Management (weeks ending Sept. 30, 2020; Sept. 30, 2021; Sept. 30, 2022; Sept. 30, 2023). Net Accounts Management (AM) attempts divided by net Enterprise attempts for FY 2020, FY 2021, FY 2022, and FY 2023 produced percentages of 82 percent, 85 percent, 82 percent, and 77 percent, respectively. IRS, JOC, Snapshot Reports: Product Line Detail (week ending Sept. 30, 2023). 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)).

5 *See* Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2023-IE-R010, *Inflation Reduction Act: Assessment of the IRS's Efforts to Deliver Expected Improvements for the 2023 Filing Season* (2023), https://www.tigta.gov/sites/default/files/reports/2023-09/2023ier010fr.pdf.

TACs (73 percent) were less than fully staffed, limiting service appointments available to taxpayers.[6] The IRS's inability to fully staff all TAC locations emphasizes the need to provide alternative methods of service. It must scale up alternative face-to-face service options to meet taxpayer needs, including offering service during non-standard hours, hosting service pop-up events in rural areas, and assisting taxpayers via videoconferencing.

Despite improvements during FY 2023, taxpayers still lack quality service due to the following issues:

- The IRS makes critical resource allocations to achieve a benchmark LOS on phones instead of focusing on improving the taxpayer experience, including whether and how easily taxpayers resolved their issue;
- Antiquated technology limits the ability of CSRs to assist callers; and
- TACs do not offer more options and times for taxpayers to use their services.

ANALYSIS

Calls for improved taxpayer service have come from both the legislative and executive branches, and Congress has issued the IRS a mandate to improve taxpayer service.[7] The Taxpayer First Act requires the IRS to develop and implement strategies to improve taxpayers' experiences with the IRS. During the past year, the Inflation Reduction Act (IRA) funding provided the IRS the ability to hire additional CSRs, increase LOS, and improve IRS customer service.[8]

IRS Level of Service Metrics Do Not Measure How Many Taxpayers Had Their Issues Resolved

The Office of Management and Budget (OMB) designated IRS as one of 25 high-impact federal service providers and issued guidance to manage customer experience and improve service delivery.[9] OMB guidance identifies seven factors that affect how customers experience federal services, none of which the IRS addresses in its CSR LOS measure.[10] These factors include:

- Satisfaction (whether the customer is satisfied with service received);
- Confidence/trust (whether the interaction increased confidence in the federal program/service or the ability to serve its relevant population);
- Effectiveness/quality (whether the customer's need was addressed or issue was resolved);
- Ease/simplicity (whether it was easy to complete what needed to be done);
- Efficiency/speed (whether it took a reasonable amount of time to complete what needed to be done);
- Equity/transparency (whether the customer was treated fairly/understood what was being asked of the customer throughout the process); and
- Employee helpfulness (whether employees the customer interacted with were helpful).

6 Janet L. Yellen, Sec'y of the Treasury, Remarks at the IRS Facility in New Carrollton, Maryland (Sept. 15, 2022), https://home.treasury.gov/news/press-releases/jy0952; IRS response to TAS fact check (Dec. 12, 2023). Fully staffed TACs means having all available workstations in a TAC filled with the appropriate type of face-to-face employee.

7 Taxpayer First Act, Pub. L. No. 116-25, 133 Stat. 981 (2019); an Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14, Pub. L. No. 117-169, 136 Stat. 1818 (2022) [hereinafter referred to as the "Inflation Reduction Act"]; OMB, Preparation, Submission, and Execution of the Budget, Circular No. A-11, Section 280 (July 10, 2020).

8 Taxpayer First Act, Pub. L. No. 116-25, 133 Stat. 981 (2019); Inflation Reduction Act, Pub. L. No. 117-169, 136 Stat. 1818 (2022).

9 OMB, Preparation, Submission, and Execution of the Budget, Circular No. A-11, Section 280 (July 10, 2020).

10 According to OMB, it developed the factors using leading practices from the private and public sectors, including Fortune 500 companies, market research institutions, and international organizations.

The IRS surveys a fraction of callers who receive live assistance to assess these metrics, but that information is not publicly reported or combined with CSR LOS.[11] Basic customer surveys may only reveal that taxpayers are unhappy with a service without providing insight into why and what actions leaders can take to improve. Government agencies such as the Veterans Health Administration use human-centered design research to identify the top pain points for its customers.[12] Human-centered design creates products and services around the needs, wants, perspectives, and behaviors of people. It uses empathy and understanding to meet the needs of users, looking more at the nuances of individuals' behaviors and experiences than opinions. A core component of human-centered design is to learn what customers need using qualitative research methods such as interviews, firsthand observation, and focus groups.[13] To comply with the OMB guidance to manage the customer experience and improve service delivery, the IRS needs a focused approach to improve the taxpayer experience, as some segments of the taxpaying population face unique challenges in getting access to the information and services needed to comply with their tax obligations.[14]

In 2022, Treasury Secretary Janet Yellen set ambitious goals for 2023 "to transform the IRS into a 21st century agency" and set even higher goals for 2024, focusing on achieving a CSR LOS of 85 percent and reducing average call wait times to five minutes or less.[15] The Treasury Inspector General for Tax Administration (TIGTA) performed a study to assess how the IRS performed during Filing Season (FS) 2023 in meeting the expectations laid out by Secretary Yellen.[16] It found that the IRS met only two of the Secretary's five expectations, one of which was improving CSR LOS on the Accounts Management (AM) toll-free phone lines during FS 2023 from approximately 15 percent to 85 percent and the other of which was reducing the average wait time from nearly 30 minutes to 15 minutes.[17] Taxpayers generally contact the AM telephone lines seeking assistance with tax law questions and account inquiries and checking on the status of their tax return or tax refund.

Achieving the staffing levels necessary to reach an 85 percent CSR LOS inevitably leads to idle time for CSRs between calls. From January through April 22, 2023, CSRs spent 3.73 million hours staffing telephones to achieve a CSR LOS in excess of 85 percent; however, CSRs spent 1.27 million of those hours waiting to receive calls.[18] The IRS makes significant resource allocations with their associated costs to achieve a benchmark CSR LOS. However, the CSR LOS metric is not a measurement of the quality of service the IRS provides to taxpayers or the overall taxpayer experience; rather, it is a metric on answering calls.

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11 IRS response to TAS information request (Oct. 3, 2023).

12 *See* Nadzeya Shutava, et al., Partnership for Public Service, Designing a Government for the People (2022), https://ourpublicservice.org/publications/designing-a-government-for-the-people/.

13 *Id.*

14 *See* IRS, Pub. 5426, Taxpayer First Act Report to Congress (Jan. 2021), https://www.irs.gov/pub/irs-pdf/p5426.pdf.

15 Janet L. Yellen, Sec'y of the Treasury, Remarks at the IRS Facility in New Carrollton, Maryland (Sept. 15, 2022), https://home.treasury.gov/news/press-releases/jy0952; Janet L. Yellen, Sec'y of the Treasury, Remarks at IRS Headquarters in Washington, D.C. (Nov. 7, 2023), https://home.treasury.gov/news/press-releases/jy1888.

16 TIGTA, Ref. No. 2023-IE-R010, *Inflation Reduction Act: Assessment of the IRS's Efforts to Deliver Expected Improvements for the 2023 Filing Season* (2023), https://www.tigta.gov/sites/default/files/reports/2023-09/2023ier010fr.pdf; Janet L. Yellen, Sec'y of the Treasury, Remarks at the IRS Facility in New Carrollton, Maryland (Sept. 15, 2022), https://home.treasury.gov/news/press-releases/jy0952. The five goals were resolving the backlogs of paper-filed tax returns and other tax account inventory; staffing the IRS's TACs to full capacity; improving the level of telephone service from approximately 15 percent to 85 percent and reducing the average wait time from nearly 30 minutes to 15 minutes; automating the scanning of millions of individual paper-filed tax returns to expedite the processing of tax returns and issuance of refunds; and providing taxpayers with the ability to receive and respond to notices online.

17 TIGTA, Ref. No. 2023-IE-R010, *Inflation Reduction Act: Assessment of the IRS's Efforts to Deliver Expected Improvements for the 2023 Filing Season* (2023), https://www.tigta.gov/sites/default/files/reports/2023-09/2023ier010fr.pdf; *see also* National Taxpayer Advocate 2021 Annual Report to Congress 66, 73 (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 (where TAS recommended the IRS should be staffed to answer at least 85 percent of taxpayer calls).

18 IRS, Ready Agent Hours (RAH) Report (Jan. 1, 2023, through Apr. 22, 2023); *see* Most Serious Problem: *Processing: Ongoing Processing Delays Burden and Frustrate Taxpayers Awaiting Refunds and Other Account Actions*, *supra*.

Approximately 35 phone lines reside within the IRS's Wage and Investment AM function, which typically accounts for about 77 to 85 percent of the total call volume the IRS receives.[19] As shown in Figure 2.4.1, CSRs answered 27.3 million taxpayer calls in FY 2023 with live assistance, 5.6 million more calls compared to FY 2022.[20]

FIGURE 2.4.1, IRS Enterprise Phone Lines: Call Attempts, Calls Answered, Calls Answered by an IRS Employee, and Total LOS, FYs 2020-2023[21]

IRS Enterprise Phone Lines	FY 2020	FY 2021	FY 2022	FY 2023
Enterprise Total Call Attempts	100.5 mil	281.7 mil	173.3 mil	92.9 mil
Enterprise Total Calls Answered	47.5 mil	72.2 mil	51.8 mil	44.3 mil
Enterprise Calls Answered by a Live Assistor	24.2 mil	32.0 mil	21.7 mil	27.3 mil
Enterprise LOS	51%	21%	21%	51%
Enterprise Calls Answered by a Live Assistor	24%	11%	13%	29%
Enterprise Calls Answered With Automated Assistance	23%	14%	17%	18%

Although the IRS reported a 51 percent CSR LOS in FY 2023, live assistors answered only 29 percent of the total calls. Automated responses answered 18 percent of the total calls, and the IRS did not answer the rest, or the caller disconnected. The improvements in CSR LOS from 21 to 51 percent between FY 2022 and FY 2023 came with a sharp decrease in the number of IRS-initiated disconnects, which occur when the IRS connects calls to sites that are closed or unable to provide service due to high demand. The IRS initiated a disconnect on over 74 million calls in FY 2022 and reduced that number to 16.3 million in FY 2023.[22] That reduction is a significant improvement, but the IRS is still disconnecting far too many calls.

The IRS uses AM's CSR LOS as a primary indicator of how well the IRS is meeting caller demand; however, it does not reflect the percentage of total calls that live assistors answered. CSR LOS reflects only calls directed to the IRS's AM telephone lines and serviced by live assistance and calls where prerecorded responses provided taxpayers information. Live assistors answered only one of every four calls on AM lines while the remaining taxpayer calls were completed using automated self-service options or reflected disconnected calls.[23]

Taxpayers who speak with a CSR may not resolve their issue because the CSR lacks the information or the tools to help them do so. CSRs are the frontline employees who answer calls on IRS phone lines. They provide general tax information, furnish updates on the status of taxpayer returns/refunds/accounts, and adjust taxpayer accounts, when appropriate. Often CSRs are the IRS's first, and sometimes only, contact with a taxpayer. The IRS trains CSRs to communicate with taxpayers and be knowledgeable about tax law and IRS operational procedures. As of July 30, 2023, there were 14,460 trained CSRs working independently.[24]

19 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; Sept. 30, 2023). Net AM attempts divided by net Enterprise attempts for FY 2020, FY 2021, FY 2022, and FY 2023 produced percentages of 82 percent, 85 percent, 82 percent, and 77 percent, respectively.
20 IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending Sept. 30, 2023).
21 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Enterprise Total (weeks ending Sept. 30, 2020; Sept. 30, 2021; Sept. 30, 2022; Sept. 30, 2023). "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)).
22 IRS response to TAS information request (Nov. 16, 2023).
23 IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending Sept. 30, 2023).
24 IRS response to TAS information request (Oct. 3, 2023).

During FY 2023, AM hired 5,626 new CSRs, and as of August 26, 2023, about 71 percent had completed training.[25] Although the IRS has significantly improved the availability of phone service, much of its resources have gone toward restoring more than 10,000 positions that have been depleted over the past decade.[26] During FY 2023, the IRS spent $800 million of the $3.2 billion provided for taxpayer services in the IRA on expenses such as hiring additional CSRs to enhance LOS and reduce the paper backlog.[27] The IRS anticipates exhausting all IRA taxpayer services funding in just four years.[28]

The IRS's attrition rate is nearly 26 percent higher than the average for federal agencies, and in the next five years, about 63 percent of IRS employees will be eligible for retirement.[29] That means any plan to improve phone and in-person service must rely on improving the quality of each interaction rather than relying on an ever-increasing number of employees to improve service levels. The IRS plans to improve service delivery by increasing self-service options for taxpayers by 50 percent over the next three years to reduce demand for live service, reducing taxpayer frustration through feature-rich customer callback enhancements, and enhancing assistor services through multichannel agent desktop and automation.[30]

Since 2019, the IRS has expanded use of callback technology to improve the taxpayer experience. Customer callback options are now available on 116 taxpayer-facing applications, covering up to 95 percent of taxpayers calling the IRS for toll-free live assistance.[31] The IRS's callback technology lets taxpayers provide their callback number, hang up, and move on with other activities while awaiting a call back once an assistor becomes available. In January 2023, the IRS switched to a more advanced callback system that offers more dynamic scheduling and reporting and future optional expansion features, such as text alerts.[32] The IRS uses four performance metrics to evaluate the callback system: number of callers offered callback, percent of callers electing callback, success rate in reconnecting, and taxpayer time saved.[33]

Although the IRS improved telephone service throughout FY 2023 compared to FY 2022, CSR LOS declined after the filing season once the IRS reallocated resources, averaging only 51 percent over FY 2023.[34] The IRS deserves credit for the improvement in phone service, but its reported metrics can be misleading. When the IRS reports an 85 percent CSR LOS, it does not mean that 85 percent of taxpayers who called one of the IRS's 102 phones lines received assistance and does not reflect how many callers were satisfied with their experience.

To determine whether IRS telephone lines are operational and whether the IRS affords taxpayers simple, fast, and accessible customer service, TIGTA made test calls to all 102 telephone lines in service during FS 2023 (85 lines that provide live assistance and 17 that provide automated assistance through recorded messages) and identified that the IRS needs to improve to ensure that taxpayers receive top quality service when contacting

25 IRS response to TAS information request (Oct. 3, 2023).
26 IRS, Pub. 5530, Fiscal Year 2024 Budget in Brief (Feb. 2023), https://www.irs.gov/pub/irs-pdf/p5530.pdf (explaining that staff levels fell because of unfunded inflation increases, growing needs for expanded information technology systems, and various legislative mandates).
27 IRS, Pub. 5530, Fiscal Year 2024 Budget in Brief (Feb. 2023), https://www.irs.gov/pub/irs-pdf/p5530.pdf.
28 *Id.*
29 *Id.*
30 IRS, Strategic Development Executive Steering Committee Governance Baseline (Aug. 17, 2023).
31 U.S. Dep't of the Treasury, Filing Season 2023 Report Card: IRS Delivered Significantly Improved Customer Service (Apr. 17, 2023), https://home.treasury.gov/news/press-releases/jy1421.
32 IRS, Wage and Investment (W&I) Business Performance Review (BPR) Q1 FY 2023, at 7 (Feb. 23, 2023).
33 IRS, W&I BPR Q3 FY 2023, at 21 (Aug. 16, 2023).
34 IRS, JOC, Snapshot Reports: Enterprise Snapshot for Enterprise Total, Accounts Management, and Consolidated Automated Collection Service data (week ending Sept. 30, 2023).

IRS customer service telephone lines.[35] The test calls revealed that calls to 21 IRS phone lines resulted in hold times exceeding 30 minutes, five lines where assistance was unavailable due to staffing shortages, and two where the IRS initiated a disconnect.[36]

There are 62 telephone lines that comprise the IRS's agencywide telephone "Enterprise." Among the top ten Enterprise lines by call volume, two (installment agreement/balance due lines and the Taxpayer Protection Program line) are not included in the CSR LOS measure the IRS reports publicly. Of the 92.9 million total call attempts the IRS Enterprise phone system received in FY 2023, live assistors and automation answered 44.3 million (48 percent) calls.[37]

FIGURE 2.4.2, Top Ten IRS Enterprise Telephone Lines by Volume of Calls, FY 2023[38]

Telephone Product Lines	Net Attempts	Assistor Calls Answered	Percentage of Calls Answered by a Live Assistor	Total Calls Answered (Live and by Automation)	LOS
Refund Hotline – Automated Only	16.2 mil	0.3 mil	0%	11.6 mil	65%
Individual Income Tax (Primary Line for Individual Taxpayers)	13.7 mil	4.1 mil	30%	5.0 mil	69%
Installment Agreement/Balance Due	8.4 mil	4.4 mil	52%	4.4 mil	53%
Business and Specialty Tax Services	7.0 mil	2.6 mil	37%	2.6 mil	49%
Practitioner Priority Service	6.7 mil	1.9 mil	29%	1.9 mil	34%
TAC Appointment Scheduling	5.7 mil	1.9 mil	34%	1.9 mil	49%
Taxpayer Protection Program	5.4 mil	1.6 mil	29%	1.6 mil	31%
Refund Call Back	4.0 mil	0.8 mil	21%	2.3 mil	58%
Wage and Investment – Individual Master File (IMF) Customer Response	3.4 mil	1.0 mil	29%	1.6 mil	61%
Business Master File (BMF) Customer Response	2.5 mil	0.7 mil	27%	0.7 mil	31%
Total	**73.0 mil**	**19.3 mil**		**33.6 mil**	

35 TIGTA, Ref. No. 2024-IE-R001, *Actions Are Needed to Improve the Quality of Customer Service in Telephone Operations* (2023), https://www.tigta.gov/sites/default/files/reports/2023-11/2024ier001fr.pdf.

36 *Id.*

37 IRS, JOC, Snapshot Reports: Enterprise Snapshot for Enterprise Total, Accounts Management, and Consolidated Automated Collection Service data (week ending Sept. 30, 2023). All numbers in Figure 2.4.2 are rounded; however, the percentage change is calculated on the actual numbers.

38 IRS, JOC, Snapshot Reports: Product Line Detail (week ending Sept. 30, 2023). "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)).

The IRS routed 73 million (79 percent) of the calls it received to ten telephone lines in the IRS Enterprise based on the taxpayers' issue. The remaining 20 million calls (21 percent) were spread across the IRS's remaining 52 telephone lines in varying volumes.[39] "Net Attempts" reflect the attempts made to reach each of the ten highest volume telephone lines. "Assistor Calls Answered" reflect the number of calls that reached a live assistor while "Total Calls Answered" refers to all calls answered live and via automated assistance. These measures are useful for measuring the demand on IRS phone lines but not the taxpayer experience when taxpayers call the IRS for assistance.

While the IRS reported a 69 percent LOS on the Individual Income Tax line, LOS was much lower on other lines. Taxpayers calling the Installment Agreement/Balance Due line received only a 53 percent LOS. Assistors working the Balance Due line answer questions about balances owed and help taxpayers make payment arrangements. Taxpayers who cannot reach the IRS through this line risk becoming subjects of enforced collection actions, such as bank and wage levies and the filing a Notice of Federal Tax Lien. Taxpayer representatives calling the Practitioner Priority Service line experienced only a 34 percent LOS. When representatives cannot reach a CSR, it impedes their ability to help the taxpayers they represent.

The IRS created a new measure – Level of Service (Automation) (LOS(A)) – to capture the combined number of taxpayers who call seeking assistance from the IRS and receive a response to their inquiry by an assistor or through automated interactions based on taxpayer responses to prompts, such as the Where's My Refund? or Where's My Amended Return? lines. LOS(A) was 39.3 percent in FY 2022 and 66 percent in FY 2023.[40] While IRS service has improved according to its own LOS and LOS(A) measurements, taxpayers do not get to interact with live or automated assistance in more than a third of all calls. Callers captured in the LOS measurement still may not receive an answer to their question or resolve their issue. The IRS should modify its measure of LOS on telephones to factor in the quality of the experience of callers, including measuring whether taxpayers received the information requested, whether they needed to speak with multiple IRS employees, and whether the IRS provided additional information such as links to materials or videos.[41] This data would allow the LOS to better reflect the caller's experience.

Figure 2.4.3 shows the IRS uses additional metrics to measure phone service, including the number of Assistor Calls Answered; Average Speed of Answer, the average time that customers waited in an assistor queue before the IRS connected them to an agent; and Average Handle Time, the average amount of time an assistor spent helping the customer (includes talk time, hold time, and after-call work called wrap time).[42] What these numbers don't indicate is whether callers who spent 26 minutes total call time had their question answered or issue resolved.

39 IRS, JOC, Snapshot Reports: Product Line Detail (week ending Sept. 30, 2023); IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending Sept. 30, 2023). All numbers are rounded; however, the percentage change is calculated on the actual numbers.

40 IRS, Pub. 5530, Fiscal Year 2024 Budget in Brief 1 (Feb. 2023), https://www.irs.gov/pub/irs-pdf/p5530.pdf; IRS response to TAS information request (Oct. 3, 2023).

41 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)).

42 IRS response to TAS information request (Oct. 3, 2023).

FIGURE 2.4.3, Phone Service Metrics, FY 2023[43]

Telephone Line	CSR LOS	Assistor Calls Answered	Average Speed of Answer	Average Handle Time	Total Call Time
Enterprise	51%	27,257,751	13.3 minutes	15 minutes	28.3 minutes
Accounts Management	52%	17,934,696	10 minutes	16 minutes	26 minutes

IRS Level of Service Metrics Do Not Adequately Measure Taxpayer Satisfaction With IRS Phone Tree Choices

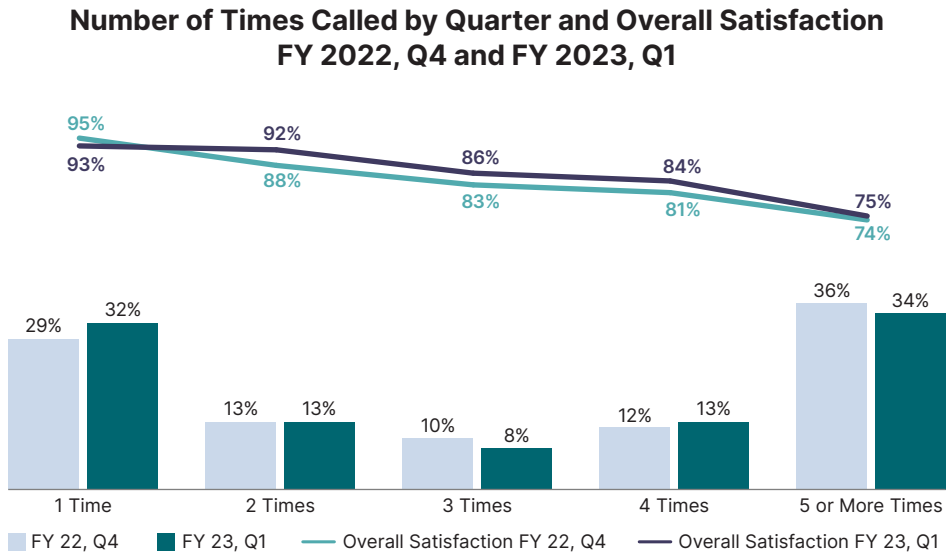
Callers cannot indicate whether they prefer to receive automated assistance. A phone tree greets callers to the AM lines. Depending on the options a taxpayer selects, the phone system determines whether to direct the caller to a live assistor or one of its automated offerings. During FY 2023, 15.7 million callers were greeted by a phone tree, then selected an application to resolve tax account issues, obtained tax information, or otherwise directed themselves to the appropriate source of assistance.[44] It is important for the IRS to analyze whether its phone tree system meets the needs of the taxpaying public and whether automated assistance resolves taxpayer issues. Not all IRS units have a public phone number that taxpayers can dial directly. For example, a taxpayer calling to inquire about the location of their passport submitted to obtain an Individual Taxpayer Identification Number may not be able to reach a live assistor by navigating the phone tree. Taxpayers deserve to reach a live assistor when necessary to resolve their issue, and the IRS must provide appropriate staffing to meet taxpayer demand.[45] We recommend the IRS measure satisfaction with IRS phone tree choices when it conducts toll-free customer satisfaction surveys.

The IRS continuously selects and invites some toll-free callers to participate in customer satisfaction and experience surveys. It uses an automated Interactive Voice Recognition system to invite select callers to take a survey immediately after speaking with a CSR. The objective of the survey is to identify what AM Toll-Free staff and managers can do to improve customer service and to track callers' satisfaction with AM phone service attributes over time.[46] Callers who only interacted with the automated telephone system are not eligible to participate in the survey.[47] Thus, the IRS has no way of measuring whether callers routed to automated assistance would have preferred the IRS route them to a live assistor, potentially generating additional follow-up calls to the IRS.

Figure 2.4.4 shows taxpayers are most dissatisfied when they need to make multiple calls to resolve their issues, with 34 percent of survey respondents in the first quarter of FY 2023 having called five or more times and 68 percent having called more than once.[48]

43 IRS response to TAS information request (Oct. 3, 2023).
44 IRS, W&I Comprehensive Data Dictionary (2024); IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending Sept. 30, 2023).
45 *See* National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress vol. 1, at 6-8 (Introduction: *The National Taxpayer Advocate's Remarks on the Role of Trust and Taxpayer Advocate Service in Fostering Tax Compliance*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/JRC20_Volume1.pdf.
46 IRS response to TAS information request (Oct. 3, 2023).
47 *Id.*
48 *Id.*

FIGURE 2.4.4[49]



Note: There are no significant differences between FY 2022, Q4 and FY 2023, Q1 for these questions.
Note: Overall Satisfaction percentages are those who chose "Agree" or "Somewhat Agree."

Overall satisfaction decreases as the number of calls increases, with approximately an 18-point decrease in satisfaction from those who called once to those who called five or more times. The IRS can address one-call resolution by 1) using operational data to identify the specific call reasons; 2) conducting interviews with taxpayers to develop the "worst case" journey maps of how the first and subsequent calls unfold and the source of pain points; and 3) commissioning a study of best practices among like institutions with similar complex issues to learn process, people, or technology solutions to improve the customer experience.[50]

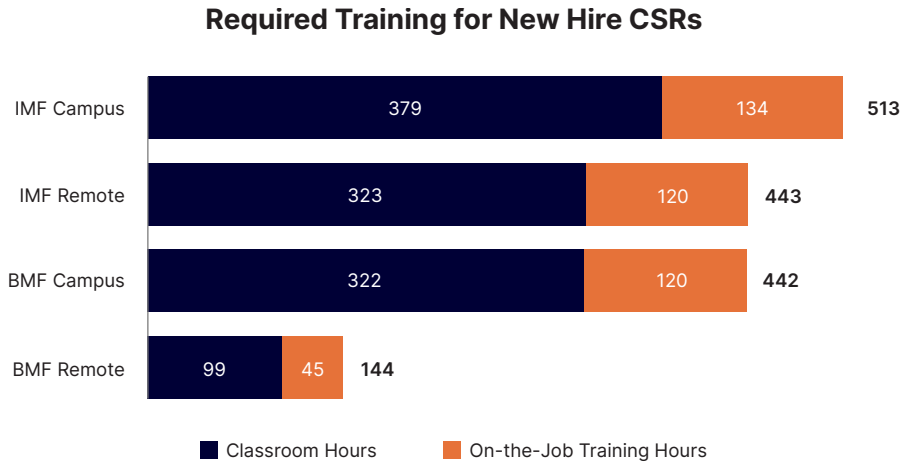
Customer Service Representative Training Cannot Overcome Limitations of Antiquated Technology

CSRs answering calls need to be prepared to encounter a wide variety of issues. A CSR is considered trained after successful completion of classroom training and on-the-job training.[51] Taxpayers who speak with a CSR may not resolve their issue because the CSR lacks the information or the tools to help them do so. For example, CSRs on AM phone lines cannot view all notices and letters the IRS has mailed the taxpayer, which can limit the CSR's ability to provide information about the taxpayer's specific circumstances.

Figure 2.4.5 shows that CSRs working at campus locations responsible for answering IMF calls and paper processing must complete 513 hours of training before working the full scope of telephone and inventory duties independently, which takes 15 weeks to complete. CSRs answering only BMF calls remotely do not complete training on paper processing and thus have the fewest number of training hours at 144.[52]

49 There are no significant differences between FY 2022 Q4 and FY 2023 Q1 for these questions. Overall satisfaction percentages are those who chose "agree" or "somewhat agree."
50 IRS response to TAS information request (Oct. 3, 2023).
51 *Id.*
52 IRS response to TAS information request (Oct. 3, 2023).

FIGURE 2.4.5[53]



A background in tax is not a requirement for new CSRs, and even after completing the necessary training to answer incoming taxpayer calls independently, CSRs may not be able to answer all taxpayer questions. Similar to any new job position, it is not unusual for new CSRs to spend time in the position before they gain the experience to provide correct and useful information. CSRs provide a valuable service and have a wide range of information to provide to taxpayers and tax professionals, and training is key to their success.

Additional obstacles, such as limited space for in-person training and delays in procuring computers and peripheral equipment, can delay onboarding of new CSRs.[54] The IRS Strategic Operating Plan includes initiatives to improve the availability and accessibility of taxpayer services by ensuring employees have the right tools to perform their work.[55] The IRS provides CSRs with the tools necessary to perform their job, but they suffer from a common flaw. They are all based on antiquated systems that manage individual and business taxpayer accounts and distribute taxpayer data across the IRS. The IRS's processing system has been the backbone for core tax processing for millions of taxpayer accounts since the 1960s and is one of the oldest systems in the government. To put that in context, the IRS has been using the same information system as the foundation for all its taxpayer information data management since before the invention of push-button telephones.[56] Even experienced, highly knowledgeable CSRs can only work as fast as the technology with which the IRS equips them. Because of limitations in the technology of the IRS's core processing systems, CSRs cannot view the correspondence a taxpayer or professional has submitted or received from the IRS, further limiting their ability to help callers resolve their issues. A taxpayer can provide a CSR with a notice or letter number, and a CSR can provide general information about the purpose of the correspondence but cannot specify what specific documentation the taxpayer needs to provide to resolve the issue as they cannot view the letter sent to the taxpayers. CSRs can see some tax account data; however, to effectively assist all callers, CSRs need a holistic view of taxpayers' accounts in real-time during live phone calls to address the taxpayers' issues, including viewing correspondence sent to or received from the taxpayer and information discussed during a voicebot interaction.

53 IRS response to TAS information request (Oct. 3, 2023).
54 IRS responses to TAS information request (Sept. 26, 2023; Oct. 3, 2023).
55 IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan (Apr. 2023), https://www.irs.gov/pub/irs-pdf/p3744.pdf.
56 Associated Press, *President Starts Countdown for Fair*, THE GETTYSBURG TIMES, Apr. 23, 1963, at 11.

The IRS Must Leverage Taxpayer Interactions With Voicebots to Improve Live Assistance

In addition to live assistors, the IRS provides phone service to taxpayers using bots and other automated assistance. The IRS used bots to increase self-service capabilities for general taxpayer inquiries in English and Spanish so those with more complex issues could get through to live assistors on the phone.[57] Voicebots are software powered by artificial intelligence that allow a caller to navigate an interactive voice response system. For taxpayers calling with common questions, voicebots can provide quick answers and help free up CSRs to concentrate on more complex inquiries. The IRS deployed voicebots to the Economic Impact Payment and Advance Child Tax Credit lines to offer self-assistance on general procedures and tax law issues without requiring taxpayers to authenticate their identity for assistance based on their personally identifiable information.[58] The IRS deployed the first voicebot on Balance Due lines in January 2022.[59] In June 2022, the IRS expanded voicebot capabilities, allowing taxpayers with a balance due to create installment agreements after completing an identity verification procedure – without needing to speak with a CSR.[60] The voicebot answers taxpayer inquiries about payments, collection notices, and general collection issues. Voicebots handled more than 2.7 million calls in FY 2023, and 48 percent were contained within the voicebot without the need to escalate to a live assistor.[61]

When a taxpayer interacts with a voicebot, the IRS measures quantitative data, such as total calls, the number and percent of calls the voicebot answers, and the number and percent transferred for live assistance.[62] However, the IRS is doing little to measure customer satisfaction with the assistance taxpayers receive from voicebots. The IRS has not been able to implement a survey to measure customer satisfaction with the assistance taxpayers receive from voicebots. IRS executives are prioritizing updates, including a customer satisfaction survey, for updates to the voicebot platform in the upcoming fiscal years.[63]

When taxpayers cannot resolve their issue after interacting with a voicebot, they can continue to wait for a live assistor. For the 52 percent of callers who interact with a voicebot but ultimately need to speak with a live CSR, the IRS is unable to leverage the information from the bot interaction to support the work of the CSR due to its current system's limitations. When the taxpayer must provide the same information a second time, it unnecessarily wastes the time of the taxpayer and CSR, and longer calls mean CSRs can assist fewer taxpayers. Bots can contribute to an omnichannel service model by identifying the issue that prompted the taxpayer to call and helping CSRs better prepare to assist the taxpayer in resolving their issue.

Taxpayers may also seek self-assistance by interacting with a chatbot on IRS.gov. Chatbots simulate human conversation through web-based text interaction that uses artificial intelligence-powered software to respond to natural language prompts.[64] Taxpayers unable to resolve their issue with a chatbot can request to connect to a live assistor during regular business hours. After the taxpayer interacts with a chatbot, the IRS asks a single yes/no question to evaluate their experience: "Was the information presented helpful?"[65] Although voicebots and chatbots are new technologies for the IRS, the IRS should prioritize implementing comprehensive measures of the taxpayer experience when interacting with voicebots and chatbots.

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57 *See* IRS, Using Voice and Chat Bots to Improve the Collection Taxpayer Experience (Sept. 29, 2022), https://www.irs.gov/about-irs/using-voice-and-chat-bots-to-improve-the-collection-taxpayer-experience.
58 IRS response to TAS information request (Oct. 3, 2023).
59 *See* IRS, Using Voice and Chat Bots to Improve the Collection Taxpayer Experience (Sept. 29, 2022), https://www.irs.gov/about-irs/using-voice-and-chat-bots-to-improve-the-collection-taxpayer-experience.
60 *Id.*
61 IRS response to TAS information request (Nov. 16, 2023).
62 IRS response to TAS information request (Oct. 3, 2023).
63 IRS response to TAS fact check (Dec. 12, 2023).
64 IRS News Release, IR-2022-56, IRS Unveils Voice and Chat Bots to Assist Taxpayers With Simple Collection Questions and Tasks; Provides Faster Service, Reduced Wait Times (Mar. 10, 2022), https://www.irs.gov/newsroom/irs-unveils-voice-and-chat-bots-to-assist-taxpayers-with-simple-collection-questions-and-tasks-provides-faster-service-reduced-wait-times.
65 IRS response to TAS information request (Oct. 3, 2023).

Face-to Face Service Hours at Taxpayer Assistance Centers Do Not Meet Taxpayer Needs

The IRS provides face-to-face taxpayer assistance at local TAC offices across the country, the District of Columbia, and Puerto Rico.[66] TACs are staffed by IRS employees trained to provide services such as:

- Account inquiries (help with letters, notices, and levies on wages or bank accounts);
- Adjustments (changes to tax account information or payments);
- Basic tax law assistance (answers related to individual federal tax returns);
- Acceptance of cash payments or creation of payment arrangements;
- Authentication of the identity of individuals identified as potential victims of tax-related identity theft;
- Ordering of transcripts and tax forms; and
- Information on IRS.gov resources and tools.[67]

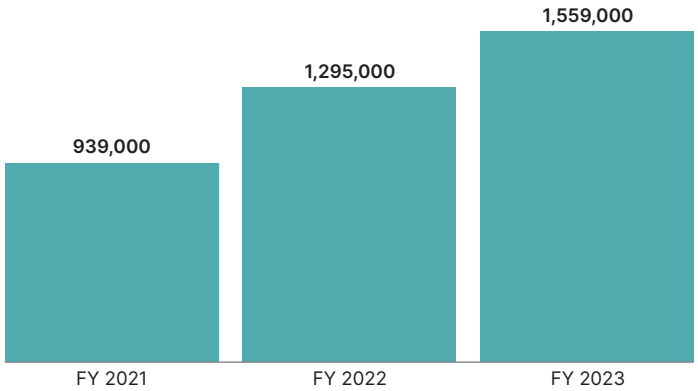
Taxpayers seek help at TACs for many reasons; the top five issues in FY 2023 were Taxpayer Protection Program identity verification, transcripts, refund inquiries, non-cash payments, and balance due/installment agreements/collection notices.[68] Since 2011, the number of TAC locations has declined from 401 to 363,[69] and the IRS has no plans to open or close any new TACs in FY 2024.[70]

Customer satisfaction surveys of taxpayers assisted at TACs indicate that shortcomings in IRS service are based on the availability of service rather than the quality of service provided. Taxpayers serviced at TACs rate the quality of their service 88 percent or higher.[71] The highest proportions of agreement among taxpayer experience components were for the helpfulness of employees and professionalism of the representative.[72]

Figure 2.4.6 shows the increase in taxpayers who received assistance at a TAC in the aftermath of the pandemic.

FIGURE 2.4.6[73]

Taxpayers Who Received Assistance at a TAC, FYs 2021-2023



66 IRS response to TAS information request (Oct. 3, 2023).
67 IRS News Release, IR-2023-127, IRS Continues Reopening Closed Taxpayer Assistance Centers; Begins Special Series of Community Assistance Visits to Help Taxpayers in 8 States to Expand Service for People Who Aren't Near Agency Offices (July 14, 2023), https://www.irs.gov/newsroom/irs-continues-reopening-closed-taxpayer-assistance-centers-begins-special-series-of-community-assistance-visits-to-help-taxpayers-in-8-states-to-expand-service-for-people-who-arent-near-agency-offices.
68 IRS response to TAS fact check (Dec. 12, 2023).
69 IRS, W&I Inventory Report (week ending Apr. 15, 2023).
70 IRS response to TAS information request (Oct. 3, 2023).
71 *Id.*
72 *Id.*
73 *Id.*

While the IRS exceeded the number of taxpayers it assisted in the prior years in FY 2023, it still fell short of Secretary Yellen's directive to fully staff the TACs.[74] The IRS defines full staffing at a TAC location as having all available workstations in a TAC filled with the appropriate type of face-to-face employee.[75] For a TAC to be open with less than full staffing, the IRS must have at least one trained employee permanently assigned to the TAC to provide service to taxpayers.[76] During FY 2023, the IRS reopened 16 TACs it had closed since the beginning of the pandemic, and it opened four new TACs in Puerto Rico and one new TAC in Mississippi.[77] Despite funding provided in the IRA and the IRS's agreement to a 2022 National Taxpayer Advocate recommendation to fully staff all TACs, the IRS fully staffed fewer than 100 TAC locations (27 percent) during FY 2023.[78]

Employee attrition affects staffing levels at TACs. While the IRS wants to expand and fill new positions, it first needs to fill the positions associated with individuals leaving the agency or business unit. For example, during the period from October 1, 2022, to April 30, 2023, 344 TAC employees either separated from the IRS or moved to another position within the IRS.[79] Therefore, the hiring of 576 new employees during that period only resulted in a net gain of 232 employees to staff the TACs during FS 2023.

The IRS Must Expand Taxpayer Assistance Center Service Hours to Include Weekends

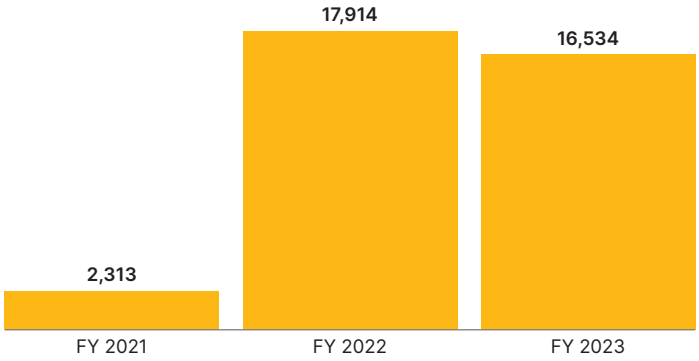
Recognizing the importance of providing face-to-face assistance to taxpayers outside of normal business hours, the IRS expanded its hours for certain TACs one Saturday a month during the filing season to allow taxpayers to receive assistance without an appointment.[80] About 2,800 IRS and TAS employees volunteered to work at 93 TAC locations that participated in the IRS's "Taxpayer Experience Days" focused around FS 2023.[81] Although a welcome relief for many taxpayers in some cities, taxpayers experienced difficulties due to the high volume of participants and the IRS's inability to timely service these taxpayers, leaving some frustrated. Saturday walk-in events relied on IRS employees who volunteered to meet staffing needs and thus did not have consistent hours or frequency.

Taxpayers demonstrated a desire for Saturday service, though the IRS scheduled Saturday events only once a month during the filing season and relied on IRS volunteers to meet staffing needs. As shown in Figure 2.4.7, only 2,313 taxpayers in FY 2021 received walk-in assistance at a TAC Saturday event while 17,914 taxpayers in FY 2022 and 16,534 taxpayers in FY 2023 received assistance at Saturday events. Taxpayers should be able to receive Saturday TAC service year-round.

74 TIGTA, Ref. No. 2023-IE-R010, *Inflation Reduction Act: Assessment of the IRS's Efforts to Deliver Expected Improvements for the 2023 Filing Season* (2023), https://www.tigta.gov/sites/default/files/reports/2023-09/2023ier010fr.pdf.
75 IRS response to TAS information request (Oct. 3, 2023).
76 *Id.*
77 The reopened TAC locations are Casper, WY; Binghamton, NY; West Nyack, NY; Overland Park, KS; Longview, TX; Santa Fe, NM; Queensbury, NY; Charlottesville, VA; La Crosse, WI; Cranberry Township, PA; Colorado Springs, CO; Joplin, MO; Jackson, TN; Augusta, ME; Bellingham, WA; and Trenton, NJ. The new TAC location is Greenville, MS; TIGTA, Ref. No. 2023-IE-R010, *Inflation Reduction Act: Assessment of the IRS's Efforts to Deliver Expected Improvements for the 2023 Filing Season* (2023), https://www.tigta.gov/sites/default/files/reports/2023-09/2023ier010fr.pdf.
78 TAS Recommendations and IRS Responses, TAS Recommendation 4-1 (2022), https://www.taxpayeradvocate.irs.gov/news/directory-entry/2022-msp-04-telephone-and-in-person-service/; IRS response to TAS information request (Oct. 3, 2023).
79 TIGTA, Ref. No. 2023-IE-R010, *Inflation Reduction Act: Assessment of the IRS's Efforts to Deliver Expected Improvements for the 2023 Filing Season* (2023), https://www.tigta.gov/sites/default/files/reports/2023-09/2023ier010fr.pdf.
80 *See* IRS News Release, IR-2023-66, Special Saturday Help From IRS Available Without an Appointment on April 8 at Multiple Taxpayer Assistance Centers (Apr. 3, 2023), https://www.irs.gov/newsroom/special-saturday-help-from-irs-available-without-an-appointment-on-april-8-at-multiple-taxpayer-assistance-centers.
81 IRS response to TAS fact check (Dec. 12, 2023).

FIGURE 2.4.7[82]

Taxpayers Receiving Assistance During Taxpayer Experience Days



Secretary Yellen has made a goal for FS 2024 to increase TAC hours of in-person assistance to over 8,000 more hours than last filing season.[83] Consistent with Secretary Yellen's goal, the IRS plans to launch a pilot to test the feasibility of offering appointments before and after normal business hours in selected locations during the next filing season.[84] This is a positive and critical step toward meeting taxpayer needs.

The IRS Must Expand Virtual Taxpayer Assistance Center Appointments

In addition to servicing taxpayers in a face-to-face environment, the IRS also assists taxpayers virtually by using Virtual Service Delivery (VSD) or Web Service Delivery (WebSD); both programs allow taxpayers to interact with IRS employees in real time. VSD allows a taxpayer to receive face-to-face assistance via IRS-provided videoconferencing equipment at a community partner location, such as a public library. The IRS offers VSD at 13 locations and held 166 virtual appointments in FY 2022 and 191 appointments in FY 2023.[85] While VSD requires taxpayers to travel, WebSD allows taxpayers to meet with IRS representatives in a virtual conference using personal devices over the internet. The IRS assisted 7,239 taxpayers through WebSD in FY 2022 and 11,102 in FY 2023, far more than VSD during the same period.[86] WebSD Pilot 2 virtual conferencing began March 15, 2022, and will end on December 31, 2023. Virtual conferencing grants access to TAC services for taxpayers who can't visit a TAC office in person. The IRS should continue to offer options for virtual appointments at TACs permanently.

The IRS Needs to Expand Access to Service by Increasing the Number of Community Assistance Visits

Following a 2021 National Taxpayer Advocate recommendation, the IRS relaunched its Community Assistance Visit (CAV) program in June 2023 for the first time post-pandemic, with events in nine cities between June and September 2023.[87] The National Taxpayer Advocate is appreciative of the IRS's efforts to conduct and staff CAVs (pop-up TACs) to expand their reach and assist taxpayers. CAVs act as temporary TACs that provide outreach to underserved communities and taxpayers living in rural communities identified

82 IRS response to TAS fact check (Dec. 12, 2023).
83 Janet L. Yellen, Sec'y of the Treasury, Remarks at IRS Headquarters in Washington, D.C. (Nov. 7, 2023), https://home.treasury.gov/news/press-releases/jy1888.
84 IRS response to TAS information request (Sept. 28, 2023).
85 IRS response to TAS information request (Nov. 16, 2023).
86 IRS response to TAS information request (Oct. 3, 2023). IRS response to TAS fact check (Dec. 12, 2023).
87 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/; IRS response to TAS information request (Oct. 3, 2023).

as traditionally underserved, generally in areas over 120 minutes driving distance from the nearest TAC.[88] Generally, pop-up TACs operate for three days to offer walk-in one-on-one assistance to individual and business taxpayers with similar services as TACs.[89] When selecting locations for CAVs, the IRS considers many factors, including number of Form 1040 filers, number of late-filed or balance due returns, number of identity theft notices, population size of limited English proficiency taxpayers, population size of those self-identifying as belonging to a Native American/American Indian tribe or an Alaskan Native Corporation, locations with social vulnerability based on demographic and economic factors, and proximity to current TAC locations.[90]

At one CAV event in 2023, IRS Field Assistance partnered with the Lihue Public Library to host a CAV in the city of Lihue on the Hawaiian island of Kauai. Kauai Island does not have a TAC, and the CAV allowed local taxpayers to receive services without traveling by plane or boat to the next closest TAC in Honolulu, on Oahu Island, nearly 100 miles away.[91] CAVs provide a critical component of the IRS's taxpayer service model by providing access and meeting taxpayers where they are. The IRS should expand its efforts to secure public facilities through partnership with local businesses and city officials and provide frontline assistance to bring in-person service to taxpayers located remotely.

CONCLUSION AND RECOMMENDATIONS

The IRS's plan for improving service delivery includes increasing self-service options for taxpayers by 50 percent over the next three years to reduce demand for live service, reducing taxpayer frustration through feature-rich customer callback enhancements, enhancing assistor services through multichannel agent desktop and automation, and improving in-person contact management and scheduling functionality at TACs.[92] While ensuring more taxpayers can connect to a live person for assistance when needed, the IRS must also focus on the quality of a taxpayer's experience when contacting the IRS for assistance and collect meaningful data to allow it to evaluate the quality of service on all channels, including self-assistance options.

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Adopt alternate measures of service on telephones that combine the existing CSR LOS calculation with the seven customer experience factors outlined in OMB Circular No. A-11, Section 280, by the end of FY 2024.
2. Add questions to the toll-free customer satisfaction surveys to measure satisfaction with IRS phone tree choices by the end of FY 2024.
3. Provide CSRs with a holistic view of taxpayers' accounts in real time during a phone call, including correspondence sent to or received from the taxpayer, information discussed during a voicebot interaction, and tax account data by the end of FY 2025.
4. Implement comprehensive measures of the taxpayer experience when interacting with voicebots and chatbots by the end of FY 2024 and allow taxpayers to provide feedback to identify ways to improve the technology and determine core reasons for the requests to elevate the call to a live person.

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88 *See* IRS, Pub. 5426, Taxpayer First Act Report to Congress (Jan. 2021), https://www.irs.gov/pub/irs-pdf/p5426.pdf.

89 CAVs can assist taxpayers with making payment arrangements but cannot accept payments. IRS News Release, IR-2023-127, IRS Continues Reopening Closed Taxpayer Assistance Centers; Begins Special Series of Community Assistance Visits to Help Taxpayers in 8 States to Expand Service for People Who Aren't Near Agency Offices (July 14, 2023), https://www.irs.gov/newsroom/irs-continues-reopening-closed-taxpayer-assistance-centers-begins-special-series-of-community-assistance-visits-to-help-taxpayers-in-8-states-to-expand-service-for-people-who-arent-near-agency-offices.

90 IRS response to TAS information request (Oct. 3, 2023). IRS response to TAS fact check (Dec. 12, 2023).

91 IRS, W&I, The Insider, Hawaii: FA Volunteers Resolve Taxpayers' Concerns During Community Assistance Visit (last visited Nov. 15, 2023) (on file with TAS).

92 IRS, Strategic Development Executive Steering Committee Governance Baseline (Aug. 17, 2023).

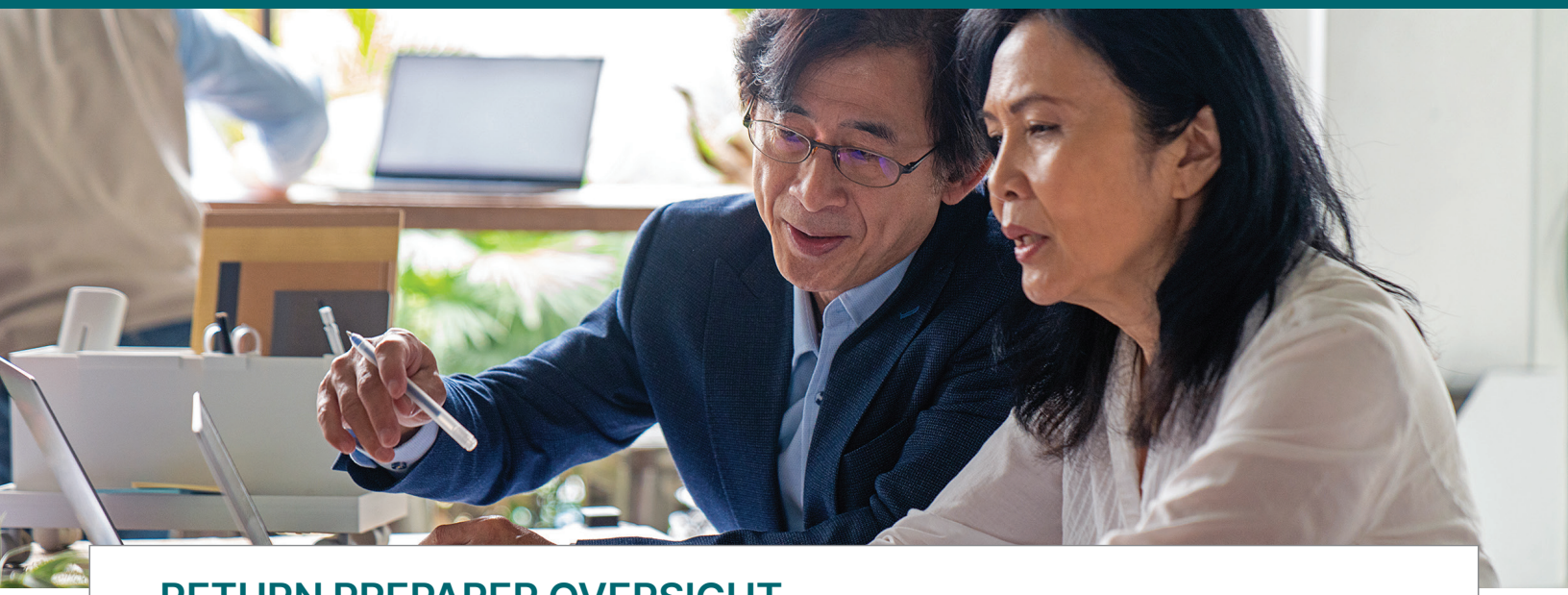
5. Increase availability of TAC in-person assistance to ensure taxpayers can obtain an appointment within seven days and extend hours of operation beyond 8 a.m. to 4:30 p.m., Monday through Friday, including regular Saturday hours, by the end of FY 2025.
6. Establish a metric to measure the number of hours TACs were available for in-person service.

RESPONSIBLE OFFICIALS

Kenneth Corbin, Commissioner, Wage and Investment Division

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

David Padrino, Chief Transformation and Strategy Officer



RETURN PREPARER OVERSIGHT

The Lack of Return Preparer Oversight Endangers Taxpayers, Burdens the IRS, and Harms Tax Administration

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Tax return preparers prepare over half of the individual income tax returns filed on an annual basis. Taxpayers, the IRS, and our voluntary tax system rely on the quality and integrity of these preparers.[1] Return preparers are the frontline defense in preventing fraud and errors, and they play an essential role in tax administration. Many of them, however, have no credentials and are subject to no minimum standards, such as competency tests and continuing education.[2] However, our tax laws are complicated, and our economic and social situations are complex. The absence of practice requirements and IRS oversight exposes taxpayers to a greater risk of incompetent or unethical actions by preparers. Because taxpayers bear responsibility for the accuracy of their own returns, inept or dishonest preparers harm taxpayers by subjecting them to unanticipated tax deficiencies, penalties, interest, overpaid taxes, or lost refunds. Furthermore, taxpayers' sensitive financial and personal information must be safeguarded by preparers who have a high degree of tax knowledge, education, and ethical standards.

1 IRS, Pub. 5296, Comprehensive Taxpayer Attitude Survey (CTAS) 2021 Executive Report 33 (Apr. 2022), https://www.irs.gov/pub/irs-pdf/p5296.pdf.

2 Hereafter, these preparers will be referred to as "non-credentialed preparers." For purposes of this Most Serious Problem, "non-credentialed preparers" refers to tax professionals not otherwise covered by 31 C.F.R Part 10, reprinted in Treasury Department Circular 230. Professionals covered by Circular 230 include certified public accountants, attorneys, enrolled agents, enrolled actuaries, and enrolled retirement plan agents engaged in practice before the IRS. The IRS may grant special appearances to certain individuals (*e.g.*, students of a low-income taxpayer clinic) to authorize practice before the IRS. Additionally, Circular 230 extends to participants in the Annual Filing Season Program, which is an opt-in educational program for preparers who consent to adhere to the standards articulated in Circular 230 Subpart B (duties and restrictions relating to practice before the IRS) and section 10.51 (relating to incompetence and disreputable conduct). *See* Rev. Proc. 2014-42, § 4.05(4), 2014-29 I.R.B. 192.

EXPLANATION OF THE PROBLEM

The current unregulated state of the preparer industry sometimes lends itself to a "Wild West" environment that victimizes taxpayers. Some real-life examples of preparer misconduct include:

- A Utah accounting firm was charged with claiming over $11 million in fraudulent Employee Retention Credits[3] and sick and family leave wage credits on behalf of clients;[4]
- A preparer in New Jersey was arrested after filing more than 1,000 false tax returns claiming over $124 million in pandemic-related tax credits for businesses owned by himself and others;[5]
- An Ohio preparer was charged with filing returns without obtaining approval from clients and even forging client checks, then hiding the money in a secret account;[6]
- A California preparer filed thousands of tax returns reporting improper deductions, including returns deducting mortgage interest for taxpayers who are not homeowners;[7] and
- Another California preparer routinely stole the identities of clients, using their data to file fraudulent returns and depositing the refunds onto a prepaid credit card.[8]

Sometimes taxpayers collaborate with unscrupulous preparers while on other occasions, well-intentioned, unsophisticated taxpayers are victimized by the errors or misdeeds of their preparers. Although tax professionals falling within Circular 230 are not immune from sanctionable behavior, IRS statistics show that non-credentialed preparers often generate a disproportionate level of audit adjustments. For example, approximately 94 percent of the total dollar value of audit adjustments made on prepared tax year (TY) 2021 returns claiming the Earned Income Tax Credit (EITC) were made to returns prepared by non-credentialed preparers.[9] Because this group has a hand in over 40 million returns each year, both taxpayers and tax administration are placed at risk by the absence of minimum preparer standards and oversight.[10] The incongruity of this situation is well-captured by the National Consumer Law Center, which observed that in most states, "there are more regulatory requirements for hairdressers than tax preparers. Yet the impact of a bad haircut is far less damaging than an inaccurate tax return."[11] A vast array of other professions that deal with public trust and safety, ranging from nurses to public school teachers to electricians, likewise require credentialing and licensing as a matter of course.

Accordingly, the National Taxpayer Advocate is concerned that:

- Non-credentialed preparers demonstrably harm taxpayers;
- Stakeholder calls for preparer regulation have so far gone unheeded;
- Legal limitations present an obstacle to adequate oversight;
- Return preparers lack adequate incentives to voluntarily come within the established oversight umbrella; and
- Administrative deterrents to bad behavior are insufficient.

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3 *See* IRC § 3134.
4 Dep't of Justice Press Release, U.S. Attorney's Office, District of Utah, Utah County Residents and an Accounting Business Charged in $11 Million COVID-Related Tax Fraud Scheme, (Feb. 3, 2023), https://www.justice.gov/usao-ut/pr/utah-county-residents-and-accounting-business-charged-11-million-covid-related-tax-fraud.
5 Madeleine Ngo, *Over 3,100 Charged With Pandemic Relief Fraud, Justice Dept. Says*, N.Y. Times, Aug. 23, 2023, https://www.nytimes.com/2023/08/23/business/pandemic-relief-fraud-justice-department.html.
6 Blake Ellis, *Tax Preparer Horror Stories*, CNN, Feb. 18, 2014, https://money.cnn.com/2014/02/18/pf/taxes/tax-preparers/index.html.
7 Michelle Singletary, *Seven Red Flags That Your Tax Preparer is a Fraud*, Wash. Post, Mar. 3, 2023, https://www.washingtonpost.com/business/2023/03/03/tax-preparer-fraud/.
8 Blake Ellis, *Tax Preparer Horror Stories*, CNN, Feb. 18, 2014, https://money.cnn.com/2014/02/18/pf/taxes/tax-preparers/index.html.
9 IRS, Compliance Data Warehouse (CDW), Individual Returns Transaction File (IRTF) TY 2018-2022, Return Preparers and Providers (RPP) Database, and Audit Information Management System (AIMS) Closed Case Database (through Sept. 28, 2023).
10 *Id.*
11 Blake Ellis, *Tax Preparer Horror Stories*, CNN, Feb. 18, 2014, https://money.cnn.com/2014/02/18/pf/taxes/tax-preparers/index.html.

ANALYSIS

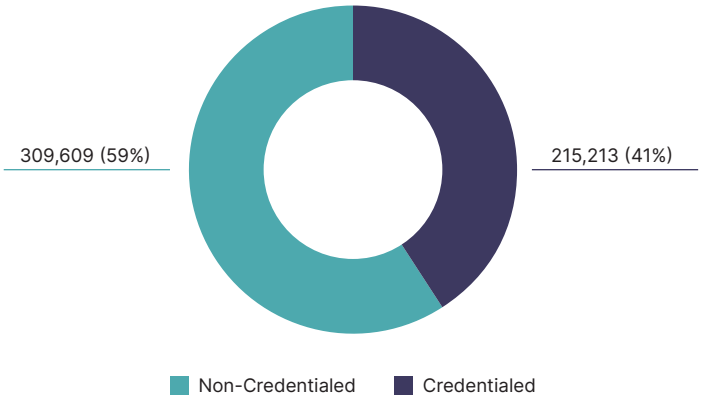
Non-Credentialed Preparers Demonstrably Harm Taxpayers

Various datapoints illustrate the extent of the problem presented by non-credentialed preparers. This data presents a picture of non-credentialed preparers as targeting lower-income taxpayers and producing individual income tax returns that are subject to higher-than-usual audit rates.

The IRS identifies tax return preparers by their Preparer Tax Identification Number (PTIN). IRC § 6109 requires that preparers register for PTINs and include these numbers, along with their names, on returns that they file. The IRS considers those who neglect these requirements "ghost preparers," and if identified by the IRS, they are subject to penalties on a per-return basis.[12] Because the IRS cannot determine the number of ghost preparers, the total number of tax return preparers is unknown, but for TY 2022, there were over 500,000 unique PTINs recorded on returns, almost 60 percent of which belonged to non-credentialed preparers.[13] Figure 2.5.1 shows this predominance of non-credentialed preparers.

FIGURE 2.5.1[14]

PTINs Recorded on Prepared Individual Returns
Credentialed Versus Non-Credentialed Preparers, TY 2022



The types of returns prepared by non-credentialed versus credentialed preparers vary, but non-credentialed preparers disproportionately serve lower-income taxpayers. For instance, clients who claim the EITC are more likely to hire non-credentialed preparers than credentialed preparers.[15] While the dollars involved in each of these returns may not be as significant as those involved in the returns of wealthier taxpayers, eligibility for these tax credits can be complex, and mistakes by preparers can be catastrophic for EITC taxpayers, as those errors can deprive taxpayers of funds on which they rely to meet their basic living expenses.

12 IRC § 6695; Treas. Reg. § 1.6695-1.
13 IRS, CDW, IRTF TY 2018-2022, RPP Database (through Sept. 28, 2023).
14 *Id.* These values represent the count of credentialed or non-credentialed return preparers who prepared at least one individual income tax return in TY 2022.
15 IRS, CDW, IRTF TY 2018-2022, RPP Database, and AIMS Closed Case Database (through Sept. 28, 2023).

An analysis of returns claiming the EITC demonstrates the alarming dangers posed by non-credentialed preparers. Figure 2.5.2 shows, for TY 2021 tax returns, the number of returns claiming the EITC, the number of audits of EITC returns, and the number of audit adjustments on those returns for credentialed versus non-credentialed preparers.

FIGURE 2.5.2, Audit Rates and Dollars Adjusted on Prepared EITC Returns, Credentialed Versus Non-Credentialed Preparers, TY 2021[16]

Type of Preparer	Credentialed	Non-Credentialed
Returns Claiming EITC	3,307,125	12,500,722
Percentage of EITC Returns	21%	79%
Audits on EITC Returns	5,912	63,215
Percentage of Audits on EITC Returns	9%	91%
Audit Adjustments on EITC Returns	3,434	50,592
Percentage of EITC Audit Adjustments	6%	94%

This troubling comparison shows that while non-credentialed preparers file about 79 percent of prepared returns claiming the EITC, their returns account for 91 percent of the associated audits and generate 94 percent of audit adjustments, results that are disproportionate to their numbers.[17] By contrast, credentialed preparers' EITC returns are subject to significantly fewer audits, and when audited, these returns are adjusted at relatively lower rates compared to their numbers. This snapshot of data drawn from prepared returns claiming the EITC suggests that non-credentialed preparers are less equipped than their credentialed counterparts to accurately determine their clients' tax liabilities. In turn, this poor performance subjects taxpayers to a range of potential hardships, including refund delays or refunds that must be paid back, penalties for inaccurate returns, and even fees for other tax professionals to assist in solving the problems created by their non-credentialed preparers. Taxpayers may not be aware that non-credentialed preparers cannot represent them before the IRS, including during an audit, which can leave taxpayers helpless when they are most in need of assistance.

The data surrounding credits claimed on Form 7202, Credit for Sick Leave for Certain Self-Employed Individuals, show a similar phenomenon. Congress established this credit to provide assistance for certain taxpayers seriously impacted by COVID-19.[18] Unfortunately, it also had the unintended consequence of acting as a beacon for predatory tax return preparers. Of prepared returns claiming this credit, 82 percent were generated by non-credentialed preparers.[19] However, non-credentialed preparers were responsible for 99 percent of the credits disallowed by IRS Examination.[20] Once again, non-credentialed preparers caused harm to many taxpayers in the form of frustrated expectations and potential penalties.

The IRS is working to identify unscrupulous preparers more proactively so that it can protect taxpayers. The Research, Applied Analytics, and Statistics (RAAS) group within the IRS defines an "unscrupulous preparer" as any preparer whom the Refundable Credit Return Preparer Strategy has identified as having submitted

16 IRS, CDW, IRTF TY 2018-2022, RPP Database, and AIMS Closed Case Database (through Sept. 28, 2023). Due to the ongoing nature of audits for TY 2021, these numbers should not be considered final. The column reflecting "Audit Adjustments on EITC Returns" shows only positive audit adjustments, meaning those audits that result in taxpayers owing money to the IRS. Negative or no-change audit adjustments are outside the scope of this analysis.
17 IRS, CDW, IRTF TY 2018-2022, RPP Database, and AIMS Closed Case Database (through Sept. 28, 2023).
18 IRS News Release, IR-2021-31, New IRS Form Available for Self-Employed Individuals to Claim COVID-19 Sick and Family Leave Tax Credits Under FFCRA (Feb. 8, 2021), https://www.irs.gov/newsroom/new-irs-form-available-for-self-employed-individuals-to-claim-covid-19-sick-and-family-leave-tax-credits-under-ffcra.
19 IRS, CDW, Sick and Family Leave Data from Form 7202 in IRTF, IMF (through Sept. 28, 2023).
20 *Id.*

large numbers of client returns that break a rule related to that program.[21] Recent analysis by the IRS, building on a study from Stanford University, shows that unscrupulous preparers are a significant driver of disproportionate EITC audit rates for taxpayers of racial minorities and may be contributing to a racial disparity within tax administration.[22]

Unscrupulous preparers concentrate in lower-income neighborhoods with minority populations and often prey on marginalized communities.[23] Non-credentialed preparers comprise the overwhelming majority of this predatory group (approximately 92 percent).[24] The IRS's current inability to oversee return preparers, particularly non-credentialed preparers, makes it difficult, if not impossible, to adequately protect lower-income and racial minority taxpayers from preparers who may end up subjecting them to taxes, penalties, and interest they cannot afford. This lack of authority is harming taxpayers and jeopardizing quality tax administration.

Of the preparers that prey on marginalized communities

92%

are non-credentialed

Stakeholder Calls for Preparer Regulation Have So Far Gone Unheeded

Consistent with the troubling picture painted by the data, stakeholders generally agree that non-credentialed preparers should be subject to minimum standards and oversight. While specific ideas and proposals vary, there is widespread consensus that allowing non-credentialed preparers to operate without regulation is perilous for both taxpayers and the tax system.

As explained by the American Institute of Certified Public Accountants (AICPA), "Ensuring that tax preparers are competent and ethical, and that the IRS has the tools it needs to conduct appropriate oversight, is critical to maintaining taxpayer confidence in our tax system and protecting the interests of the American taxpayer."[25] Similarly, the Government Accountability Office (GAO) has concluded that a lack of regulation "can put some taxpayers at risk of receiving insufficient or incompetent tax preparation services. As a result, some taxpayers may be exposed to potentially burdensome enforcement actions."[26]

21 IRS response to TAS information request (Aug. 31, 2023). The IRS does not necessarily have a specific servicewide definition of "unscrupulous preparer" common across all contexts. IRS response to TAS fact check (Nov. 2, 2023).

22 Letter from Comm'r Danny Werfel, Internal Revenue, to Sen. Ron Wyden, Chair, S. Comm. on Finance (May 15, 2023), https://www.finance.senate.gov/imo/media/doc/werfel_letter_to_sen_wyden.pdf; Hadi Elzayn et al., *Measuring and Mitigating Racial Disparities in Tax Audits*, Stanford Inst. for Econ. Pol'y Rsch. (Jan. 2023), https://siepr.stanford.edu/publications/working-paper/measuring-and-mitigating-racial-disparities-tax-audits; Jonathan Curry, *IRS: "Unscrupulous" Paid Preparers a Key Factor in Racial Audit Gap*, Tax Notes, June 26, 2023, at 2237, https://www.taxnotes.com/tax-notes-today-federal/tax-system-administration/irs-unscrupulous-paid-preparers-key-factor-racial-audit-gap/2023/06/23/7gwz5.

23 Letter from Comm'r Danny Werfel, Internal Revenue, to Sen. Ron Wyden, Chair, S. Comm. on Finance (May 15, 2023), https://www.finance.senate.gov/imo/media/doc/werfel_letter_to_sen_wyden.pdf.

24 IRS response to TAS information request (Aug. 31, 2023).

25 AICPA, *AICPA Signals Strong Support for Tax Preparer Regulation Legislation* (June 30, 2021), https://www.aicpa-cima.com/news/article/aicpa-signals-strong-support-for-tax-preparer-regulation-legislation.

26 GAO, GAO-23-105217, *Paid Tax Return Preparers: IRS Efforts to Oversee Refundable Credits Help Protect Taxpayers but Additional Actions and Authority Are Needed* 33 (2022), https://www.gao.gov/assets/gao-23-105217.pdf.

A lack of oversight opens the door to several potential abuses. For example, a representative of the Consumer Financial Protection Bureau has noted that some preparers "use the return filing process as an opening to sell high-priced loan products that can carry outrageously high fees."[27] Likewise, TAS has received descriptions of multiple cases in which clients of non-credentialed preparers experienced refund and even identity theft, only to learn that in the rare situation that the Department of Justice (DOJ) successfully prosecutes those preparers, there is nothing stopping them from setting up a new business and continuing to harm more taxpayers.[28] We have heard stories of an often-unsavory triumvirate formed among financial technology companies (fintechs), large banks, and unscrupulous preparers, who sometimes combine to manipulate unwitting taxpayers into buying products, such as high-fee debit cards, loans, and online accounts, that these taxpayers do not need and cannot afford.[29]

Further, other stakeholders, such as the Electronic Tax Administration Advisory Committee, agree that return preparers should be subject to regulation and oversight and made subject to minimum standards.[30] In a recent conversation with TAS, representatives of one stakeholder group commented that the vast majority of return preparers are professional and want to comply with the rules but that the IRS needs to have authority to administer reasonable competency tests followed by continuing education and the ability to police bad actors.[31] Among other things, participants in this conversation lamented that bad behavior on the part of preparers falls especially hard on non-English-speaking and other underserved communities.[32]

Likewise, the National Association of Enrolled Agents has testified to Congress that enrolled agents "have, for some time, supported the efforts to bring order to the chaos all too easily found in the return preparer community. … We believe that taxpayers and the tax community are better served by the basic proposition that tax returns should only be done by a preparer who has shown competency through testing on that particular return."[33]

Finally, taxpayers themselves have definite views regarding the need for oversight. The 2018 IRS Comprehensive Taxpayer Attitudes Survey found that the vast majority of taxpayers believe tax preparers should be held to ethical and competency standards.[34] Specifically, over 70 percent of respondents believe it is very important that tax preparers demonstrate ethical behavior and competence.[35]

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27 Leslie Book, *Unscrupulous Return Preparers Draw Attention At The ABA Tax Section Midyear Meeting*, Procedurally Taxing (Feb. 14, 2023), https://www.taxnotes.com/procedurally-taxing/unscrupulous-return-preparers-draw-attention-aba-tax-section-midyear-meeting/2023/02/14/7h72q?pt=1&.

28 Discussions with outside stakeholders (Aug. 7, 2023). The discussions with outside stakeholders TAS conducted occurred with practitioners and members of stakeholder groups speaking either in their individual capacities or as representatives of their organizations.

29 Discussions with outside stakeholders (Aug. 7, 2023).

30 IRS, Pub. 3415, Electronic Tax Administration Advisory Committee Annual Report to Congress 44 (June 2023), https://www.irs.gov/pub/irs-pdf/p3415.pdf.

31 Discussions with outside stakeholders (Aug. 3, 2023).

32 *Id.*

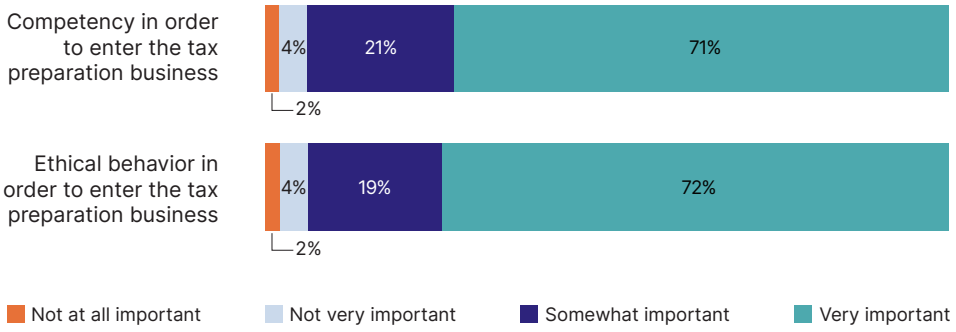
33 *The Implementation of the IRS Paid Tax Return Preparer Program: Hearing Before Subcommittee on Oversight of House Committee on Ways and Means*, 112th Cong. (2011) (Statement of Lonnie Gary, EA, USTCP Chairman, Government Relations Committee National Association of Enrolled Agents) 69, https://www.govinfo.gov/content/pkg/CHRG-112hhrg70890/html/CHRG-112hhrg70890.htm.

34 IRS, Pub. 5296, CTAS 2018 Executive Report 42 (Nov. 2018), https://core.publish.no.irs.gov/pubs/pdf/p5296--2019-03-00.pdf.

35 *Id.*

FIGURE 2.5.3[36]

Taxpayer Attitudes About the Importance of Tax Preparer Standards



*Totals may not equal 100% due to rounding.

Legal Limitations Present an Obstacle to Adequate Oversight

Rarely has there been such consensus among stakeholders, taxpayers, and the IRS regarding so important an area of tax administration. Normally, this broad agreement would have long ago resulted in the type of standards and oversight that almost everyone believes should be in place. Nevertheless, legal obstacles currently prevent these overdue standards and regulations from being put into place.

Loving v. IRS and subsequent related cases have held that the IRS can only regulate practitioners representing taxpayers before it.[37] Simply acting as a return preparer does not, in the eyes of the courts, rise to the level of "practice before the IRS."[38] As a result, tax return preparation activities are not generally subject to IRS oversight under existing law.

The IRS does have statutory authority to impose certain preparer penalties, based on specific circumstances.[39] Nevertheless, the courts have taken the ability to determine and enforce basic educational and competency standards out of the hands of the IRS. Now, only credentialed preparers, such as enrolled agents, certified public accountants, and attorneys, fall within the scope of the IRS Office of Professional Responsibility. However, even if these practitioners misbehave to such an extent that they are suspended or disbarred from practice before the IRS, they can still continue preparing tax returns.

This state of affairs has led to the range of abuses and taxpayer harms described above and poses an ongoing threat to taxpayers and the tax system. Accordingly, as both the National Taxpayer Advocate and the IRS have previously recommended, Congress should consider passing legislation that would restore the IRS's ability to establish educational requirements for and conduct oversight of return preparers.[40] Diligent, informed, and ethical return preparers are a crucial element of tax administration and the protection of taxpayer rights, and they are a key component to the success of the voluntary tax system.

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36 IRS, Pub. 5296, CTAS 2018 Executive Report 42 (Nov. 2018), https://core.publish.no.irs.gov/pubs/pdf/p5296--2019-03-00.pdf.
37 *Loving v. IRS*, 917 F. Supp. 2d 67 (D.D.C. 2013), *aff'd*, 742 F.3d 1013 (D.C. Cir. 2014); *Sexton v. Hawkins*, 119 A.F.T.R.2d 2017-1187, (D. Nev. 2017).
38 *Loving v. IRS*, 917 F. Supp. 2d 67 (D.D.C. 2013), *aff'd*, 742 F.3d 1013 (D.C. Cir. 2014); *Sexton v. Hawkins*, 119 A.F.T.R.2d 2017-1187, (D. Nev. 2017); *Ridgely v. Lew*, 55 F.Supp.3d 89 (D.D.C. 2014).
39 *See, e.g.*, IRC § 6694(a), (b).
40 National Taxpayer Advocate 2023 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 5 (*Authorize the IRS to Establish Minimum Competency Standards for Federal Tax Return Preparers*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_PurpleBook_02_ImproveFiling_3.pdf.

DILIGENT • INFORMED • ETHICAL

Return preparers are key to the voluntary tax system

Return Preparers Lack Adequate Incentives to Voluntarily Come Within the Established Oversight Umbrella

Absent legislation giving the IRS oversight authority regarding return preparers, the IRS only has authority with respect to those preparers who willingly subject themselves to IRS regulation. Most commonly, this occurs when those wishing to prepare tax returns enroll in the IRS's Annual Filing Season Program (AFSP).[41] Under this program, tax return preparers obtain 18 hours of continuing education, renew their PTINs, and consent to adhere to the obligations in Circular 230, Subpart B, setting forth the duties and restrictions relating to practice before the IRS and section 10.51, defining incompetence and disreputable conduct.[42] Voluntary entrance by preparers into this program is a benefit to taxpayers because these preparers undertake basic levels of professional education and agree to follow professional standards administered by the IRS. It is also helpful to the IRS, as it gives the IRS a mechanism to oversee the competence and integrity of participating preparers.

Accordingly, the IRS has a huge incentive to induce return preparers to join the AFSP and to persuade taxpayers to hire AFSP participants. Toward this end, the IRS provides participants in the AFSP with certain perks, such as listing them in a public directory of tax return preparers and granting them limited representation rights.[43] To this point, however, these benefits have not resonated with most non-credentialed preparers. Only about 65,000 preparers participated in the AFSP, as compared with the approximately 310,000 active non-credentialed preparers in 2022.[44]

The IRS can do a better job of educating the public regarding the differences between non-credentialed and credentialed preparers. The IRS does caution taxpayers that with the level of trust placed in these individuals, it is important to hire someone worthy of that trust.[45] Taxpayers, however, can only connect with this information if they happen to search online for terms that bring up these useful IRS webpages.[46] Members of the general public, who often receive recommendations for preparers more by word of mouth than through online research, would be unaware of these IRS materials. They may also be unaware of the differences between a credentialed and non-credentialed preparer and unaware of the potential downstream consequences of using a non-credentialed preparer. The IRS, its stakeholders, members of the tax return

41 IRS, Annual Filing Season Program, https://www.irs.gov/tax-professionals/annual-filing-season-program (last visited Nov. 6, 2023). Others, such as attorneys and certified public accountants, are automatically subject to Circular 230 where practice before the IRS is concerned. Nevertheless, Circular 230 does not require any education or knowledge regarding tax return preparation.
42 IRS, Annual Filing Season Program, https://www.irs.gov/tax-professionals/annual-filing-season-program (last visited Nov. 6, 2023); Rev. Proc. 2014-42, 2014-29 I.R.B. 192.
43 IRS, Annual Filing Season Program, https://www.irs.gov/tax-professionals/annual-filing-season-program (last visited Nov. 6, 2023).
44 IRS response to TAS information request (Aug. 16, 2023); IRS, CDW, IRTF TY 2018-2022, RPP Database, and AIMS Closed Case Database (through Sept. 28, 2023).
45 IRS, Need Someone to Prepare Your Tax Return?, https://www.irs.gov/tax-professionals/choosing-a-tax-professional (last visited Nov. 6, 2023).
46 *Id.*

preparation industry, members of the press, and members of Congress all need to educate taxpayers about the risks of using non-credentialed preparers. Together, all parties need to protect taxpayers from incompetent or unscrupulous return preparers.

The IRS encourages preparers to voluntarily come within the credentialing umbrella by, among other things, promoting the AFSP to preparers via social media posts, annual news releases, online reminder letters, and advertising at the IRS Nationwide Tax Forums.[47] The IRS Return Preparer Office does not have a budget line item for these efforts, however, and they are primarily focused on preparers who are already tuned into the IRS.[48] TAS urges the IRS to increase this budget and use it to expand its educational activities aimed at both taxpayers and preparers. This might take the form of a strong, optimized social media presence that creatively highlights the desirability of working with AFSP participants or other credentialed preparers and how taxpayers can locate them. Even relatively small and inexpensive steps, such as signage promoting the use of credentialed preparers at Taxpayer Assistance Centers, could help protect potentially vulnerable taxpayers from preparer abuse. These additional expenditures and the enhanced outreach they would bring would benefit taxpayers, credentialed preparers, AFSP participants, and ultimately the IRS.

This publicity effort should also extend to the IRS's free tax assistance programs, Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE).[49] These programs provide free tax return preparation services to taxpayers who generally earn less than $60,000 a year, who have disabilities, who speak limited English, or who are 60 years of age or older.[50] VITA and TCE volunteers must pass tax law training that meets or exceeds IRS standards and that highlights the importance of maintaining taxpayer privacy and confidentiality.[51] Each return they prepare is subject to quality review.[52] These programs exist to assist underserved taxpayers rather than to exploit them and provide an excellent alternative to the dangers posed by non-credentialed preparers. As a result, the IRS should encourage the use of VITA and TCE wherever possible and should seek additional congressional funding to ensure the existence of robust and sustainable programs, which would benefit both taxpayers and the IRS.

Administrative Deterrents to Bad Behavior Are Insufficient

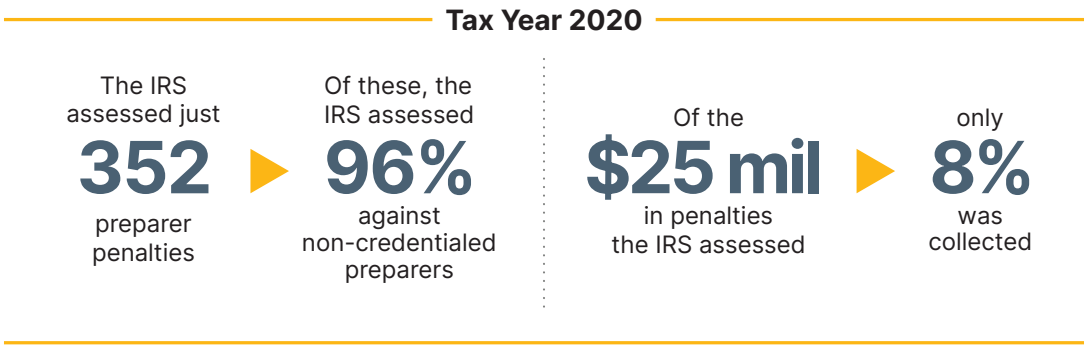
Assertive Use of Preparer Penalties

In addition to educational and promotional efforts surrounding credentialed preparers, the AFSP, VITA, and TCE, the IRS should make better use of all of its existing statutory tools to fight unethical or incompetent preparers. Although the IRS lacks necessary broad regulatory authority over return preparers, it does have the ability to sanction preparers, including via penalties, for specific actions or inactions.[53] For example, preparers who take unreasonable positions on clients' returns face penalties of the greater of $1,000 or 50 percent of the income earned by preparing that return, and in the case of willful or reckless conduct, those penalties increase substantially.[54] Lapses of diligence regarding prepared returns, such as failure to furnish taxpayers with copies of their own returns or failure to sign prepared returns, come with smaller penalties, but those penalties can stack up if preparers repeat those failures across many clients' returns.[55]

47 IRS response to TAS information request (Aug. 16, 2023).
48 *Id.*
49 IRS, Free Tax Return Preparation for Qualifying Taxpayers, https://www.irs.gov/individuals/free-tax-return-preparation-for-qualifying-taxpayers (last visited Nov. 6, 2023).
50 *Id.*
51 *Id.*
52 *Id.*
53 IRC §§ 6694, 6695, 6700, 6701, 6713, 7206, 7207, 7216, 7408.
54 IRC § 6694(a), (b).
55 IRC § 6695.

Penalties are inherently retroactive in nature, and that is a significant drawback when it comes to protecting taxpayers. The IRS can only assert some of these penalties after an audit of the taxpayer's return. In other cases, such as many of the penalties under IRC § 6695, the IRS has no straightforward way to identify preparers who may be violating the statute. As just one illustration, if a preparer perpetually fails to sign client returns, the IRS cannot easily tell without other evidence that there was a preparer involved in the return at all.

The result is that the IRS assesses relatively few preparer penalties, and very few of those penalties are paid. For example, in TY 2020, the IRS assessed only 352 preparer penalties.[56] Beyond that, of the almost $25 million in assessed penalties, the IRS collected only eight percent.[57] The IRS assessed approximately 96 percent of these penalties against non-credentialed preparers, and by dollars assessed, 98 percent go to non-credentialed preparers.[58] The fact that sanctionable behavior is occurring overwhelmingly on the non-credentialed side of the return preparer profession indicates that the IRS could cut substantially into the most egregious activity by this group if it more aggressively enforced the penalties at its disposal.



Some stakeholders have suggested that the IRS's approach to enforcement needs more teeth.[59] Others agree that there are no meaningful consequences even for egregiously bad actors.[60] These practitioners have described situations where, after observing clusters of refund theft and fraud, they made numerous referrals to the DOJ, only to discover it took no investigative or enforcement action and the bad actors are continuing to prepare tax returns.[61]

In addition, the IRS itself receives and investigates an astonishingly low number of preparer misconduct complaints. For example, in calendar year 2022, the Return Preparer Office received 1,609 complaints and referred 239, or 15 percent, for further action.[62] These odds favor unscrupulous and incompetent preparers. In the absence of authority to regulate return preparers, the IRS could do a better job of maximizing the enforcement tools it already has.

56 IRS, CDW, IRTF TY 2018-2022, PTIN, and Enforcement Revenue Information System (ERIS) (through Jan. 28, 2023). Additional preparer penalties stemming from TY 2020 returns are likely to occur. When considering the same preparer penalties assessed during FY 2022 (this is the most recent full year of data in the ERIS database), 883 preparers were assessed at least one of these penalties.
57 IRS, CDW, IRTF TY 2018-2022, PTIN, and ERIS (through Jan. 28, 2023). 2020 reflects the most recent year for which TAS has relatively complete data.
58 IRS, CDW, IRTF TY 2018-2022, PTIN, and ERIS (through Jan. 28, 2023).
59 Discussions with outside stakeholders (Aug. 3, 2023).
60 Discussions with outside stakeholders (Aug. 7, 2023).
61 *Id.*
62 IRS response to TAS information request (Aug. 15, 2023). Other IRS functional units and divisions of Treasury, including IRS Criminal Investigation and the Treasury Inspector General for Tax Administration, may also receive complaints about return preparers. IRS response to TAS fact check (Nov. 2, 2023). The reasons why some complaints are not referred vary. Some are duplicate complaints about the same preparer, others do not meet referral criteria, and in some instances, no violation is found to have occurred.

Accordingly, the existing return preparer penalty structure, which itself is fairly light, is insufficiently used as a deterrent by the IRS. The IRS should carefully administer these penalties and limit them to incidents of egregious behavior by preparers so as not to jeopardize taxpayers' ability to obtain tax return preparation services. Nevertheless, the IRS can and should do more to protect taxpayers from bad actors by advisedly, but aggressively, employing the existing return preparer penalties.

For example, the IRS should explore the feasibility of systemically assessing IRC § 6695(c) preparer penalties when return preparers use expired or otherwise invalid PTINs. Theoretically, this could have the unintended consequence of somewhat increasing preparers abandoning PTINs altogether and becoming ghost preparers. Nevertheless, penalties do exist that the IRS can and should vigorously apply against ghost preparers when they are identified. Where PTIN violations are concerned, the IRS should consider a legally permissible means of mailing letters to the associated taxpayers and informing them that the IRS has penalized their preparer for a PTIN violation or, at a minimum, letting them know that the preparer did not properly complete required preparer information.[63] While making it clear that preparer selection is up to taxpayers, the letter could also explain the benefits of credentialed preparers and could highlight the AFSP, VITA, and TCE. Although oversight authority is still needed, a more energetic application of existing penalties, along with increased transparency to taxpayers regarding the transgressions of their preparers, could go a long way toward deterring such misbehavior.

Preparer Tax Identification Number Revocation

Additionally, Congress should consider allowing the IRS to revoke PTINs in the case of demonstrably bad behavior by preparers. If Congress is reluctant to furnish the IRS with a broad grant of authority, it could always limit PTIN revocations to violations of the already established return preparer penalty statutes. The IRS currently can refuse or revoke electronic filing information numbers (EFINs) if preparers fail to pass suitability checks and subsequent reviews or if they are prohibited by federal court injunction or another federal or state action from participating in IRS e-file.[64] Congress should allow PTIN revocation under similar circumstances. In the meantime, the IRS should expand its capacity for more assertively using its EFIN-monitoring power to deter preparers from engaging in wrongdoing. There is no one-size-fits-all solution to stop aggressive and unscrupulous return preparers. However, the IRS should have multiple tools and the necessary oversight to identify and stop bad and unethical behavior.

Consolidated Management

Participants in one conversation with TAS also suggested that enforcement efforts would benefit greatly if the IRS brought them under a single cohesive management structure rather than spreading them across the agency, as is currently the case.[65] TAS's own experience in researching this issue has borne out this observation. Along the way, we communicated with representatives of the Return Preparer Office; the Office of Professional Responsibility; the Small Business/Self-Employed Division; the Wage and Investment Division; and the IRS's RAAS function.[66] Many of them own small portions of the return preparer activity undertaken by the IRS, but none has comprehensive authority in this area. Likewise, the available data in this space, which is needed to evaluate return preparer competence and to undertake enforcement activity against bad actors, is difficult to obtain and can sometimes fall through the cracks.

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63 For example, the IRS sometimes sends the CP591 letter to taxpayers when the IRS suspects that taxpayers' returns claiming one or more refundable credits may be inaccurate and when those taxpayers may have hired a tax preparer to prepare their returns. This letter does not identify the preparer as having been penalized, but after informing taxpayers of the potential problem with their returns, it reminds taxpayers that they are ultimately responsible for the correctness of their returns and then provides tips on selecting a tax preparer. A carefully worded similar letter might present a legally permissible way to inform taxpayers of PTIN violations on their returns. At a minimum, the IRS should explore such an approach.

64 IRS, Pub. 3112, IRS E-File Application & Participation (Oct. 2022), https://www.irs.gov/pub/irs-pdf/p3112.pdf; Rev. Proc. 2007-40, 2007-26 I.R.B. 1488.

65 Discussions with outside stakeholders (Aug. 3, 2023).

66 IRS responses to TAS information requests (Aug. 10, 2023; Aug. 15, 2023; Aug. 16, 2023; Aug. 31, 2023).

For example, TAS asked each of these IRS business units how many preparer due diligence letters were sent out to credentialed versus non-credentialed preparers. These letters typically are mailed when the IRS suspects that a preparer has not met due diligence requirements on client returns claiming EITC or related benefits.[67] None of the IRS groups receiving our inquiry was able to tell us how many of the letters were mailed out, the credentialed status of recipients, or what group within the IRS, if any, might have this information. The absence of centralization regarding return preparer activity is a serious systemic flaw that the IRS should correct. The IRS has approved a servicewide preparer strategy, which relies on a cross-functional team to achieve its goals.[68] However, placing these efforts within a unified management structure could best facilitate meaningful improvement.

To its credit, the IRS is taking some steps that could potentially be helpful in this area. It undertakes escalating measures, called "treatments," including warning letters, preparer audits, and educational visits, aimed at certain tax return preparers whom the IRS has identified as in need of education or more direct intervention.[69] Additionally, the IRS is proposing expanded and increased penalties for unscrupulous preparers and is accelerating an existing research effort aimed at detecting and ensuring compliance among ghost preparers.[70] These are commendable initiatives, but they should represent only the early steps along a path toward more vigorous enforcement activity against incompetent or dishonest tax return preparers, the majority of whom appear to be non-credentialed. Without oversight and the ability to discipline unscrupulous preparers or bar them from preparing returns, however, the IRS will remain limited in its ability to protect vulnerable taxpayers.

CONCLUSION AND RECOMMENDATIONS

The IRS's inability to oversee return preparation places taxpayers and the tax system at risk. The available data suggests that the most common bad actors in this industry are non-credentialed preparers. The IRS, however, is extremely limited in the tools it has at its disposal to regulate incompetent or dishonest preparers. The tax community shares a broad consensus that preparer regulation is highly desirable. Nevertheless, judicial decisions that the IRS has no such authority stand in the way of much-needed preparer oversight. It is up to Congress to provide this much-needed oversight capacity to the IRS.

As a result, Treasury should continue to join TAS in advocating for bipartisan legislation providing the IRS with the authority to implement regulations in this area.[71] These legislative efforts have historically received bipartisan support. At the same time, the IRS should step up its efforts to provide preparers with encouragement to voluntarily bring themselves within the IRS's purview. Further, the IRS should carefully, but more aggressively, apply the existing return preparer penalties to deter tax return preparers from acting in ways that are negligent or dishonest.

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67 *See, e.g.*, letters listed on IRS.gov, *Reaching Out to Paid Preparers*, https://www.eitc.irs.gov/tax-preparer-toolkit/preparer-compliance-focused-and-tiered/reaching-out-to-preparers/reaching-out (last visited Nov. 6, 2023).

68 No action is currently being taken to implement this strategy due to the proposed IRS reorganization. IRS response to TAS fact check (Nov. 2, 2023).

69 IRS response to TAS information request (Aug. 10, 2023).

70 Letter from Comm'r Danny Werfel, Internal Revenue, to Sen. Ron Wyden, Chair, S. Comm. on Finance (May 15, 2023), https://www.finance.senate.gov/imo/media/doc/werfel_letter_to_sen_wyden.pdf.

71 Historically, oversight initiatives have received bipartisan support. *See, e.g.*, Dep't of the Treasury, *General Explanation of the Administration's Fiscal Year 2024 Revenue Proposals* 181-184 (Mar. 2023), https://home.treasury.gov/system/files/131/General-Explanations-FY2024.pdf; Michael Cohn, *Trump Budget Calls for More Oversight of Tax Preparers*, ACCT. TODAY (Feb. 13, 2018), https://www.accountingtoday.com/news/trump-budget-calls-for-more-federal-oversight-of-paid-tax-preparers.

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Expand the scope of its efforts to educate taxpayers regarding the importance of relying on credentialed preparers, including AFSP participants, rather than non-credentialed preparers.
2. Increase publicity for the VITA and TCE programs and seek additional annual funding from Congress to support and develop those programs.
3. Vigorously enforce return preparer penalties where appropriate, including through the use of systemically assessed IRC § 6695(c) penalties and letters to taxpayers whose preparers have received return preparer penalties.
4. Establish a single function within the IRS to be responsible for all matters regarding tax return preparation to consolidate authority and better protect taxpayers from incompetent or unscrupulous return preparers.

Legislative Recommendations to Congress

The National Taxpayer Advocate recommends that Congress:

1. Amend Title 31 § 330 of the U.S. Code to authorize the Secretary to establish minimum standards for paid federal tax return preparers.[72]
2. Amend IRC § 6109 to authorize the Secretary to revoke PTINs concurrently with the assessment of sanctions for violations of established minimum standards for paid federal tax return preparers.[73]

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

72 These minimum standards could be as limited as simply authorizing the Secretary to make all return preparers subject to the same rules and responsibilities as those participating in the IRS's AFSP. For legislative language generally consistent with this recommendation, see Taxpayer Protection and Preparer Proficiency Act of 2019, S. 1192 & H.R. 3330, 116th Cong. (2019) and other bills cited herein.

73 National Taxpayer Advocate 2023 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 5 (*Authorize the IRS to Establish Minimum Competency Standards for Federal Tax Return Preparers*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_PurpleBook_02_ImproveFiling_3.pdf.

IDENTITY THEFT

Lengthy Issue Resolution Delays and Inadequate Notices Burden Taxpayers Who Are Victims of Identity Theft or Whose Returns the IRS Has Flagged for Possible Identity Theft

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Individuals who are victims of tax-related identity theft are waiting an average of nearly 19 months for the IRS to process their returns and send their refunds. Yes, you read that correctly: for many victims, that's *more than a year and a half!* During the pandemic, the IRS's policy decisions to prioritize other areas (such as shuffling employees to answer telephone lines) contributed to these unreasonable processing delays that continued throughout 2023 and are expected to continue into 2024. But there is a second group of taxpayers also harmed. Each year, the IRS flags millions of returns for potential identity theft. Taxpayers who have filed legitimate returns deal with inadequate notices and difficulties authenticating their identity. Until a taxpayer completes authentication, the IRS cannot process their tax return or send their refund.

EXPLANATION OF THE PROBLEM

With enough identifying information, a criminal can fraudulently file an individual or company's tax return. The U.S. Federal Trade Commission (FTC) received about 2.8 million fraud and identity theft reports in 2021, a 22 percent increase from the year prior.[1] Reports of associated financial losses topped $5.9 billion in 2021, an increase of over 70 percent compared with 2020.[2]

1 Fed. Trade Comm'n, Consumer Sentinel Network Data Book 2021 (2022), https://www.ftc.gov/reports/consumer-sentinel-network-data-book-2021.

2 FTC Press Release, *New Data Shows FTC Received 2.8 Million Fraud Reports from Consumers in 2021* (Feb. 22, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/02/new-data-shows-ftc-received-28-million-fraud-reports-consumers-2021-0.

Identity theft is a persistent problem that affects taxpayers, the IRS, and tax administration. Many taxpayers may not even know of the theft until they try to electronically file their tax return, only to have IRS systems reject it due to a previous filing using their Social Security number. The IRS's Identity Theft Victim Assistance (IDTVA) program, among other things, helps these taxpayers resolve their identity theft issues.[3]

Though the IRS has taken steps to prevent tax-related identity theft, its efforts have resulted in millions of taxpayers facing significant problems including refund delays. Both the IDTVA program and the IRS efforts to prevent identity theft are experiencing significant challenges, including:

- Taxpayers who are victims of tax-related identity theft often must wait nearly 19 months for the IRS to process their returns and send their refunds;[4]
- IRS systems for detecting and preventing identity theft have struggled with high false detection rates, subjecting taxpayers who filed legitimate returns to refund delays;
- Taxpayers receive only one letter asking them to authenticate their identity when the IRS suspects an identity thief may have filed a tax return, and taxpayer response rates to these letters are low; and
- Some taxpayers are having to wait too long to receive their Identity Protection Personal Identification Numbers (IP PINs), delaying access to an underutilized tool for preventing tax-related identity theft.

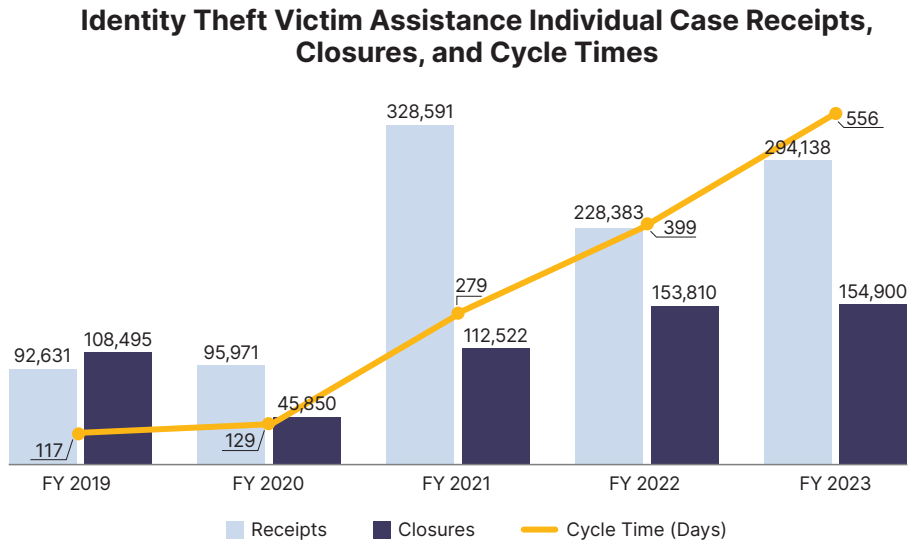
ANALYSIS

Taxpayers Who Are Victims of Tax-Related Identity Theft Often Must Wait Nearly *19 Months* for the IRS to Send Their Refunds and Process Their Returns

Taxpayers who are victims of tax-related identity theft can seek assistance from the IRS's IDTVA program.[5] Unfortunately, extremely long cycle times plague the IDTVA program due to several factors, including the IRS temporarily shutting down during the beginning of the pandemic and the issuance of pandemic relief in the form of Economic Impact Payments and Advance Child Tax Credit payments. Together, these created a significant increase in IDTVA case receipts.[6] (Note: These delays have caused a significant hardship for taxpayers, particularly low-income taxpayers who rely on their refunds to pay their day-to-day living expenses, as 69 percent of these taxpayers had adjusted gross income at or below 250 percent of the Federal Poverty Level in fiscal year (FY) 2023.)[7] Figure 2.6.1 shows the increase in case receipts and cycle times as well as the IRS's continued struggle to close IDTVA-Accounts Management (AM) inventory.

3 IRS, IRS Identity Theft Victim Assistance: How It Works, https://www.irs.gov/individuals/how-irs-id-theft-victim-assistance-works (last visited Dec. 4, 2023).
4 IRS, Accounts Management (AM) IDTVA, Research Analysis and Data (RAD), Correspondence Imaging System (CIS) Closed Case Cycle Time for the Identity Theft (IDT) Victims Unit Reports, Fiscal Year (FY) 2023.
5 The IRS's AM group works most identity theft cases.
6 Internal Revenue Manual (IRM) 25.23.2.3.1, Dependent Identity Theft (Oct. 1, 2022), https://www.irs.gov/irm/part25/irm_25-023-002r. On November 9, 2020, the IRS began working cases where a dependent's identity had been improperly used. This opened an entire subset of the identity theft population after the 2019 tax season for the IRS to work. Cycle time begins with IDTVA receipt of the identity theft claim and ends when the IDTVA employee takes action to correct the taxpayer's account.
7 Taxpayers typically become aware that their identity has been used to file a fraudulent return when they attempt to e-file their tax return and the IRS rejects it or when they receive an IRS notice informing them that they owe the IRS money. IRS, Compliance Data Warehouse (CDW), Individual Master File (IMF) and Individual Returns Transaction File (IRTF) (Sept. 28, 2023).

FIGURE 2.6.1[8]



In FY 2019, the IRS received 92,631 IDTVA receipts, and in FY 2021, that number jumped to 328,591.[9] This increase in AM case receipts drove up cycle times from 117 days in FY 2019 to 279 days in FY 2021 and to 556 days, nearly 19 months, in FY 2023, its highest point to date.[10] This 556-day time period falls far outside the 120-day time period the IRS typically strives for when resolving IDTVA claims.[11]

The IRS's cycle times for IDTVA cases increased due to the significant rise in identity theft cases and the challenges that continuing IRS operations faced during pandemic (*i.e.*, employees could not enter worksites and process these claims).[12] However, the IRS prioritized certain aspects of its customer service, most notably achieving an 85 percent Level of Service (LOS) on certain toll-free lines, which came at the expense of other IRS operations including the processing of IDTVA claims. To achieve this 85 percent LOS goal, the IRS used extra funding to hire about 5,000 employees to answer incoming calls.[13] Besides hiring new employees, the IRS also took most AM customer service representatives (CSRs) off their assigned duties and reassigned them to answer incoming calls on the toll-free lines.[14] This included reassigning 572 identity theft CSRs

8 IRS, Joint Operations Center (JOC), AM RAD, CIS Closed Case Cycle Time for the AM Individual Taxpayer IDT Victims Unit Reports, for FY 2019 through FY 2023. In FY 2019, the IRS did not provide a breakout for only AM IDTVA inventory so the actual time may be slightly higher. Customer Accounts Service (CAS), IDTVA IMF Account in Inventory Reports, FY 2019 through FY 2023.

9 IRS, JOC, CAS, AM Paper Inventory Report, IDTVA Reports, AM, FYs 2019, 2021, and 2023.

10 IRS, JOC, AM IDTVA, RAD, CIS Closed Case Cycle Time for the Identity Theft Victims Unit Reports, FYs 2019, 2021, and 2023. Note: The 556-day time period is for IDTVA cases AM works that make up the vast majority of IDTVA cases. These cases include individual IDTVA cases worked in AM but do not include individual IDTVA cases involving a compliance issue worked in AM. The time period for *all* IDTVA cases is slightly less, running at an average of 497 days to reach resolution.

11 IRM 25.23.2.2.3, IDT Case Processing Time Frames (Mar. 16, 2023), https://www.irs.gov/irm/part25/irm_25-023-002r. The IRS is advising taxpayers that it typically resolves IDTVA cases within 120 days, but due to extenuating circumstances, it is taking the IRS on average 480 days to resolve these cases (processing timeframe was increased from 430 days to 480 days per IRM Procedural Update 23U0987).

12 IRS, Servicewide Electronic Research Program Alert 20A0135, Product Line Closure (Mar. 24, 2020). The IRS shut down all phone lines on April 1, 2020.

13 Janet L. Yellen, Sec'y of the Treasury, Remarks at the IRS Facility in New Carrollton, Maryland (Sept. 15, 2022), home.treasury.gov/news/press-releases/jy0952.

14 National Taxpayer Advocate Fiscal Year 2024 Objectives Report to Congress 1 (*Review of the 2023 Filing Season*), https://www.taxpayeradvocate.irs.gov/reports/2024-objectives-report-to-congress/full-report/.

from identity theft paper inventory to the AM phone lines.[15] If the IRS reassigns identity theft CSRs to work AM phone lines in the 2024 filing season, this will likely further delay the closure of more IDTVA cases, aggravating an already untenable situation.

Perhaps this trade off was understandable so taxpayers could obtain the answers they needed during filing season, but we are now more than three years from the beginning of the pandemic. The IRS should be able to figure out how to provide taxpayers with the customer service they need without siphoning it from other critical programs. The continuation of these extraordinary cycle times is unreasonable, burdens taxpayers, and compromises taxpayer rights.

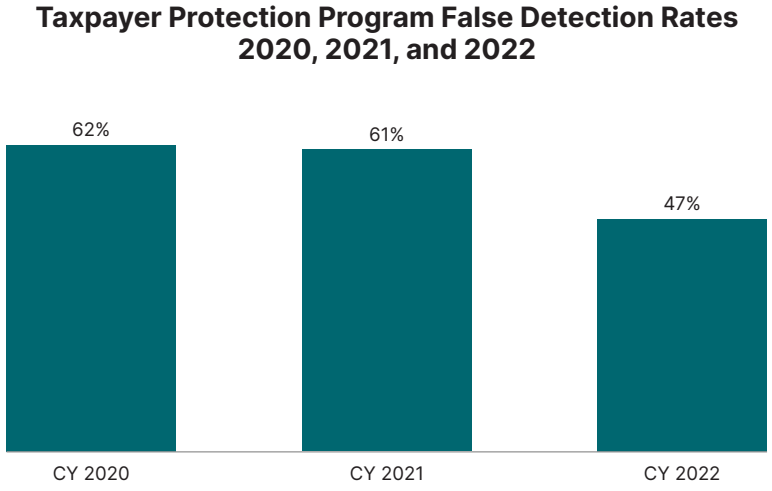
IRS Systems for Detecting and Preventing Identity Theft Have Struggled With High False Detection Rates, Subjecting Taxpayers Who Filed Legitimate Returns to Refund Delays

The IRS created the Taxpayer Protection Program (TPP) to identify and stop the processing of returns filed by identity thieves to prevent the issuance of fraudulent refunds. To prevent fraud, it screens returns by running them through a series of filters. After the IRS applies the filters to the return information, the return receives a score; if that score exceeds a certain threshold, the IRS will route the return to the TPP.[16] Once the filters select a return as potential identity theft, the IRS issues letters to taxpayers instructing them to authenticate their identity and return information. The most common letters the IRS sends to taxpayers instruct them to either authenticate online, over the phone, or in person at a Taxpayer Assistance Center (TAC).[17] The IRS will not complete processing of these returns or issue refunds associated with them until taxpayers complete the authentication process.[18]

The IRS's programming of its identity theft fraud detection systems' filters and models is a tricky balancing act. The filters must be broad enough to detect most of the possible identity theft returns while also minimizing the number of legitimate returns selected into the program. When the filters select legitimate returns into the TPP, the IRS commonly refers to this as the "false detection rate" (FDR).[19] Over the past few years, the IRS has consistently set its FDR target at about 50 percent, and each year the FDR has exceeded this target, with the exception of calendar year (CY) 2022, when it achieved an FDR of about 47 percent.[20] Figure 2.6.2 shows the FDR for the TPP over the past three years.

15 IRS response to TAS information request (Sept. 21, 2023). The 572 employees were permitted to work IDTVA cases during their allotted overtime.
16 *See* IRM 25.25.6.1(1) and (3), Program Scope and Objectives (Nov. 1, 2021), https://www.irs.gov/irm/part25/irm_25-025-006r; IRM 25.25.3.1(1), Program Scope and Objectives (Aug. 30, 2019), https://www.irs.gov/irm/part25/irm_25-025-003r.
17 IRS, Letter 5071C, Potential Identity Theft during Original Processing with Online Option (Jan. 3, 2023).
18 The IRS can release returns that TPP selects and holds without taxpayer contact if the IRS receives enough third-party data on the return allowing the IRS to confirm its authenticity.
19 A false positive occurs when a system selects a legitimate return and delays the refund past the prescribed review period. IRS response to TAS information request (Oct. 19, 2017).
20 IRS, Wage and Investment (W&I) Business Performance Review (BPR) Q3, FY 2023 (Aug. 2023).

FIGURE 2.6.2[21]



Acknowledging that the IRS's identity theft fraud detection system will always select legitimate returns into the TPP, it is critical that the filters keep the FDR at a reasonable level. The IRS should take steps to ensure that the lower FDR in CY 2022 is the beginning of a trend – and not a blip – putting the FDRs more in line with its regular target of about 50 percent, which is the target range experienced by merchants.[22] A lower FDR will reduce the number of taxpayers who filed legitimate returns having their returns selected into the TPP, thus eliminating the need for taxpayers to spend time authenticating their identity and return information to obtain their refund.

Additionally, it is important that the authentication process is quick and simple. However, IRS data indicates that taxpayers experience difficulties authenticating their identity and return information. In CY 2022, it took taxpayers 46 days on average to authenticate their identities.[23] The IRS has been working with TAS to develop a survey to better understand why it takes taxpayers so long to complete the authentication process. This survey will help the IRS identify the barriers taxpayers may experience when attempting to complete the authentication process (*e.g.*, taxpayers don't understand the letters, have difficulty answering the online authentication questions, or can't get an appointment at a TAC).

Taxpayers Receive Only One Letter Asking Them to Authenticate Their Identity When the IRS Suspects an Identity Thief May Have Filed a Return, But Taxpayer Response Rates to These Letters Are Low

When the IRS is questioning whether a return is legitimate, it will send taxpayers one letter asking them to authenticate their identity, and it will not process their return and issue their refund until the taxpayer responds to the letter and completes the authentication process. Because the IRS is holding taxpayers' refunds, it would be reasonable to assume taxpayers would quickly respond to these letters. However, about half of the authentication letters sent out in CY 2022 resulted in no response. In 2022, the IRS suspended processing of 4.8 million tax returns and requested taxpayers authenticate their identities before releasing their refunds.[24] Out of those, the IRS resolved about two million tax returns suspected of identity theft through

21 IRS, W&I, BPR Q3, FY 2023 (Aug. 2023); IRS, W&I, BPR Q4, FY 2022 (Nov 2022).
22 Keith Briscoe, *Fraud and False Declines: Fighting the Downward Spiral With Collaboration*, The Paypers, Apr. 28, 2017, https://www.thepaypers.com/expert-opinion/fraud-and-false-declines-fighting-the-downward-spiral-with-collaboration/768755.
23 IRS, W&I, BPR Q3, FY 2023 (Aug. 2023).
24 IRS, IDT and Integrity and Verification Operation (IVO) Inventory End of Year Main Report (Dec. 31, 2022).

internal research or taxpayer responses and released the refunds; taxpayers confirmed nearly 255,000 as identity theft. However, over 2.5 million returns remained suspended as of December 31, 2022, because the taxpayers still had not authenticated their identities with the IRS.[25]

There are many reasons a taxpayer might not respond to an authentication letter. For example, the IRS presumes that if a taxpayer does not respond to an authentication letter, it was likely that the identity thief received it and abandoned their plan to steal the refund upon realizing the IRS was aware of the fraud. This is a legitimate explanation that makes up a portion of the roughly 2.5 million taxpayers who did not respond to IRS authentication letters. But there are also other possible explanations for this high no-response rate that the IRS needs to examine, including that the taxpayer never received the authentication letter, or they received it but didn't understand it.

Taxpayers May Not Receive Authentication Letters

Some taxpayers may not respond to the letters because they never received them. One issue is that the IRS does not track the number of TPP letters returned as undeliverable.[26] Therefore, it cannot place an indicator on a taxpayer's account that the post office returned a letter or notice or investigate to find a more recent address. We recommend the IRS track the number of TPP letters returned as undeliverable to better understand the magnitude of this issue. Additionally, when letters are returned as undeliverable, the IRS should conduct research to determine if the taxpayer has a more recent address.

Another issue occurs because the IRS will only send an authentication letter to the address used on the tax return that the TPP filters selected.[27] Even when a taxpayer calls to update their address, the IRS will not update it because it does not want to possibly send the letter to the individual attempting to perpetrate the fraud.[28] Though it's logical to want to prevent fraudulent refunds, the IRS burdens taxpayers with these rules, particularly those who are transient or move frequently, and most are low-income. (Note: Nearly 69 percent of the taxpayers whose returns the IRS selected into TPP in FY 2023 had income at or below 250 percent of the Federal Poverty Level.[29]) When the taxpayer contacts the IRS to update their address, the IRS should verify the address the taxpayer has provided by conducting independent research.

Even If Taxpayers Receive Their Authentication Letter, They May Struggle to Understand It and the Process

Taxpayers and practitioners have often complained that IRS identity theft authentication letters are overly complex and unclear. During a conversation about the authentication process with Low Income Taxpayer Clinic practitioners, they stated that many taxpayers – particularly those who speak English as a second language – find both the letters and the authentication process complicated and confusing. To the IRS's credit, it has taken these criticisms to heart and made an initial step toward improving the clarity of these letters.[30] If taxpayers cannot understand the letters in plain language, they will either call the IRS's TPP toll-free phone line to seek additional information, or they will simply not take any action to authenticate their identities.

25 IRS, IDT and Integrity and Verification Operation (IVO) Inventory End of Year Main Report (Dec. 31, 2022).
26 IRS response to TAS information request (Sept. 21, 2023).
27 *See* IRM 25.25.6.1, Program Scope and Objectives (Nov. 1, 2021), https://www.irs.gov/irm/part25/irm_25-025-006r.
28 IRM 25.25.6.6.2(4), Procedures for When the Caller Has Not Received or Lost the Taxpayer Protection Program (TPP) Letter (May 23, 2023), https://www.irs.gov/irm/part25/irm_25-025-006r.
29 IRS, CDW, IMF and IRTF (Sept. 28, 2023).
30 The IRS revised Letter 5071C, Potential Identity Theft during Original Processing with Online Option, on January 3, 2023.

In 2023, taxpayers who attempted to call the toll-free line to seek clarification regarding authentication letters had trouble reaching a CSR, as only about 31 percent of taxpayers who called the TPP line reached an IRS assistor.[31]

The IRS recently studied how to improve taxpayer responses to these letters by examining the usage of QR codes, which taxpayers scan with their smartphone to visit a website that explains the letter and what they need to do next. In 2022, it found that only about 18 percent of taxpayers who received a letter with an insert that included a QR code actually used the code; its 2023 pilot showed that for taxpayers who received a letter with a QR code directly embedded, the usage rate ranged from 44-58 percent.[32] This was the case for all age groups, including taxpayers aged 60 or older, the age group least likely to use the QR code.[33] The findings support that taxpayers are more likely to use embedded QR codes, but the IRS should not use the codes as a replacement for important information included in letters. Some taxpayers will not use the QR code or do not have the necessary smartphone to access the information. The IRS should build on this study and develop another study that focuses more on the letter content and tests variations on the language to deliver the same message and see what yields a better response rate.

In addition to content, the IRS should explore whether sending multiple authentication letters rather than merely sending one would increase the taxpayer response rate. To examine this possibility, TAS is conducting a study where it is sending letters to nearly 4,000 taxpayers it suspects filed legitimate returns but whose refunds the IRS has not issued because the taxpayers haven't responded to the IRS to authenticate their identity.[34] These TAS letters offer assistance with identity authentication. The IRS should conduct its own study determining whether sending multiple letters increases taxpayers' response rates.

Some Taxpayers Have to Wait Too Long to Receive Their Identity Protection Personal Identification Numbers, Delaying Access to an Underutilized Tool for Preventing Tax-Related Identity Theft

The IRS Is Behind in Processing These Requests Made on Paper Forms

Any taxpayer who wants to protect themselves from tax-related identity theft can request an IP PIN, and taxpayers who have experienced tax-related identity theft are automatically issued an IP PIN at the time the IDTVA program resolves their case.[35] The IP PIN is a unique number known only to the taxpayer and the IRS. Taxpayers in the IP PIN program receive a new IP PIN annually.

Taxpayers without a tax-related identity theft case who would like an IP PIN can apply online, by mail with a completed Form 15227, Application for an Identity Protection Personal Identification Number, or by visiting a TAC in person.[36] Online and in person are probably the most expedient ways to get an IP PIN, but the online method requires an authentication process that some taxpayers might find burdensome. The in-person method requires taxpayers to travel to a TAC.[37] Figure 2.6.3 breaks down how taxpayers requested IP PINs in FY 2022.

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31 IRS, JOC Snapshot Product Line Detail Report (Sept. 30, 2023). One reason for this low LOS is that the IRS focused a number of its resources on specific AM phone lines to meet an 85 percent LOS goal. Unfortunately, the IRS did not include the TPP phone line in this 85 percent LOS goal, likely contributing to the continued frustration for taxpayers who sought information about their refund delays and steps to take.

32 IRS TPP Letter Pilot, Final Analysis FY 2023, slide 11 (Aug. 21, 2023).

33 IRS TPP Letter Pilot, Final Analysis FY 2023 (Aug. 21, 2023).

34 TAS sent letters to taxpayers whom it suspects filed legitimate returns. TAS looked at certain criteria on the returns to make this determination, including if the taxpayer received a refund in subsequent years, the taxpayer's age, and the amount of taxpayer's withholding, among other things.

35 IRM 25.23.2.9.1.1, Automatic Enrollment in the IP PIN Program (Feb. 2, 2023), https://www.irs.gov/irm/part25/irm_25-023-002r.

36 *See* IRS, Get an Identity Protection PIN (IP PIN), https://www.irs.gov/identity-theft-fraud-scams/get-an-identity-protection-pin (last visited Sept. 15, 2023).

37 *Id.*

FIGURE 2.6.3, Methods for Requesting an IP PIN During the 2022 Filing Season[38]

Taxpayer Assistance Center	Form 15227	Online
5,800	6,400	491,000

For taxpayers who request an IP PIN by mailing Form 15227 to the IRS, processing times have increased. The IRS currently aims to process these requests within 120 days of receiving them;[39] however, in FY 2023 through September 30, 2023, 60 percent of the IP PIN applications took beyond 120 days, increasing taxpayer anxiety.[40] The increase in IDTVA cases over the last several years has increased processing delays, and the IRS needs to ensure it is devoting enough resources to processing paper IP PIN requests in a timely fashion. It should consider providing taxpayers with an application they can electronically submit to the IRS. Although taxpayers using this method would not receive an IP PIN instantaneously like they would if they use the online application, the processing time would be shorter for these electronically submitted forms.

Identity Protection Personal Identification Numbers Are an Underutilized Identity Theft Protection Tool

The IP PIN is a valuable and underutilized identity theft protection tool for taxpayers. Anyone concerned about tax-related identity theft can request an IP PIN; however, only about 525,000 taxpayers opted into the IP PIN program in CY 2022.[41] The FTC received over 1.1 million reports of identity theft in 2022.[42] Thus, there were more than double the number of individuals affected by identity theft than those who requested IP PINs. There are a few possible explanations for this low participation rate. Taxpayers may be reluctant to voluntarily opt into the program because they can't opt out of it. It's understandable that the IRS would not permit taxpayers who have been victims of tax-related identity theft to opt out because the IRS needs to protect the government fisc and prevent issuing improper refunds to bad actors. However, this justification does not apply to taxpayers who voluntarily opt into the program. The IRS should provide these taxpayers a way to opt out of the IP PIN program before the next filing season.

Another possible explanation is that taxpayers aren't aware of the availability of this option and how it can protect them against tax-related identity theft. The IRS should expand its outreach efforts, ensuring that financial institutions, local law enforcement, and state taxing authorities know of the IRS's IP PIN program and can inform individuals how to access it. For example, if taxpayers have been victims of financial identity theft, such as finding irregular charges to their bank accounts, their bank should inform them about getting an IP PIN if they are also concerned about tax-related identity theft. Once informed, taxpayers can visit the IRS website and request an IP PIN as an added precaution. This type of collaboration with private-public stakeholders will expand awareness of this effective identity theft protection tool.

38 IRS, W&I, BPR Q4, FY 2022 (Nov. 2022). Data is as of early October 2022.
39 IRM 25.23.12.6.1, Responding to Telephone Inquiries Regarding Form 15227 for Obtaining an IP PIN (Oct. 1, 2023), https://www.irs.gov/irm/part25/irm_25-023-012r.
40 IRS, JOC, CAS, CAS AM Paper Inventory Reports, FY 2023 IDTVA Inventory Report (week ending Sept. 30, 2023). In FY 2023, the IRS received approximately 42,230 IP PIN applications. Recently, the IRS extended the overage timeframe for processing IP PIN requests from 90 days to 120 days. IRM 25.23.12.6.1, Responding to Telephone Inquiries Regarding Form 15227 for Obtaining an IP PIN (Oct. 1, 2023), https://www.irs.gov/irm/part25/irm_25-023-012r. On average, it is taking the IRS 480 days to process some applications.
41 IRS, W&I, BPR Q1, FY 2023, at 6 (Feb. 23, 2023).
42 FTC Press Release, *New FTC Data Show Consumers Reported Losing Nearly $8.8 Billion to Scams in 2022* (Feb. 23, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/02/new-ftc-data-show-consumers-reported-losing-nearly-88-billion-scams-2022.

CONCLUSION AND RECOMMENDATIONS

Tax-related identity theft is a continuous problem that plagues taxpayers and the IRS, and its prevalence has increased in recent years due to pandemic-related circumstances that enticed many bad actors. For those individuals or businesses that have been victims of identity theft it is a difficult, unpleasant, and emotional experience. Victims of identity theft may feel overwhelmed, helpless, angry, isolated, betrayed, and even embarrassed. This crime may trigger fears regarding financial security and the ability to trust again. The IRS should do everything possible to timely assist these victims and provide them with the peace of mind that the IRS is looking out for their best interests and protecting their rights.

Although the IRS has worked diligently to prevent tax-related identity theft, there is still room for improvement. The FDRs of IRS identity theft filters and models have consistently been too high in past years, only coming down to a more reasonable level in FY 2022, and too few taxpayers respond to IRS letters asking them to authenticate their identities. Taxpayers who avail themselves of one of the most effective ways to protect themselves from tax-related identity theft may have to wait more than 120 days for the IRS to complete their initial IP PIN request if they submit their request by mail.

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Refrain from having IDTVA employees perform other duties unrelated to working identity theft cases until the average cycle time for resolving IDTVA cases is less than 90 days.
2. Program identity theft filters to consistently have an FDR below 50 percent.
3. Conduct a pilot where the IRS sends taxpayers authentication letters using different versions of plain language and tests sending multiple letters in close proximity of one another to determine if these changes improve the taxpayer response rate.
4. Track when the IRS receives authentication letters returned as "undeliverable" and develop procedures to have IRS employees conduct research to verify a taxpayer's most recent address.
5. Provide a process by which taxpayers can electronically submit Form 15227 and ensure the process routes the forms to the appropriate unit within 48 hours of receipt.
6. Conduct outreach to private-public stakeholders making them aware of the availability of IP PINs and how taxpayers can request them.
7. Provide taxpayers who voluntarily opt into the IP PIN program a means by which they can opt out of the program.

RESPONSIBLE OFFICIAL

Kenneth Corbin, Commissioner, Wage and Investment Division

ONLINE ACCOUNT ACCESS FOR TAXPAYERS AND TAX PROFESSIONALS

Digital Services Remain Inadequate, Impeding Efficient Case Resolution and Forcing Millions of Taxpayers to Call or Send Correspondence to the IRS

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Taxpayers and tax professionals lack a comprehensive online account[1] with integrated digital communication tools to access tax information and services that are essential for tax administration and quality service. Taxpayers and tax professionals wanting to interact online need and deserve quality self-service options and quick responses from the IRS. When taxpayers cannot quickly communicate with the IRS to resolve issues and receive answers to their questions simply and securely, it negatively affects the taxpayer experience, which in turn impacts taxpayers' overall satisfaction and trust in the IRS. The lack of an intuitive, self-service avenue to interact online with the IRS forces taxpayers and tax professionals to pursue alternative methods that delay resolution, such as calling for assistance, seeking in-person assistance at a Taxpayer Assistance Center (TAC), forgoing assistance, or submitting paper documents. Unfortunately, the COVID-19 pandemic caused delays and frustration that severely limited these conventional methods.[2]

EXPLANATION OF THE PROBLEM

Bringing the IRS into the 21st century by expanding digital functionality is necessary to improve the taxpayer experience and raise taxpayers' overall satisfaction and trust in the IRS. Public trust in the IRS is at the core of our nation's system of self-assessment and voluntary tax compliance.[3]

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1 Collectively Individual Online Accounts (IOLAs), Business Tax Accounts (BTAs), and Tax Pro Accounts (Tax Pro). The analysis reflects online account upgrades through November 30, 2023.

2 Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2024-400-006, *Final Results of the 2023 Filing Season* (2023), https://www.tigta.gov/sites/default/files/reports/2023-11/2024400006fr.pdf.

3 *See* Office of Management and Budget (OMB) Circular No. A-11, 280.1-280.4 (Aug. 2023), https://www.whitehouse.gov/wp-content/uploads/2018/06/a11.pdf; Exec. Order No. 14058, 86 Fed. Reg. 71,357 (Dec. 13, 2021), https://www.federalregister.gov/documents/2021/12/16/2021-27380/transforming-federal-customer-experience-and-service-delivery-to-rebuild-trust-in-government; Taxpayer First Act, Pub. L. No. 116-25, 133 Stat. 981 (2019).

When taxpayers lack digital service options, such as communicating with the IRS online, accessing tax data online, or digitally signing documents, the IRS forces them to use more conventional methods (*e.g.*, mailing or faxing paper documents, calling customer service lines, or visiting in person at a TAC). If a taxpayer has the option to use self-help methods to answer questions or resolve issues, the conventional assistance channels have shorter wait times for those taxpayers that need or want in-person or telephone assistance. Providing multiple service channels would allow the IRS to provide faster service and responses and eliminate delays, which would improve customer service for all taxpayers. A win-win.

Robust online accounts and digital services would provide taxpayers flexibility.[4] A key benefit of expanding online account functionalities and digital services is providing taxpayers and tax professionals faster service with the convenience of 24/7 availability.

Here are some examples of how the IRS harms taxpayers and tax professionals with its insufficient online account tools:

- The lack of robust functionality forces taxpayers to resort to more conventional forms of communication, thereby resulting in slower resolution times, increased taxpayer frustration and confusion, and scarce IRS resources for those that need the personal touch.
- Individual online accounts (IOLAs) still lack comprehensive features, including the ability to track submissions through the entire lifecycle of a return (filing through the closing of any controversy issue), submit offers in compromise online, chat with a revenue officer, and calculate payoffs for any balances due.
- Business taxpayers have little access to online services and tools, forcing them to call the IRS or fax or mail in documents, thus slowing resolution times and increasing taxpayer frustration.
- Tax Pro Accounts (Tax Pro) for tax professionals offer too few functionalities and thus remain underutilized. Without expanded functionalities, including access to client tax data, the IRS forces tax professionals to call for assistance or submit paper documents on behalf of taxpayers.
- Reporting agents have little access to online services, forcing them to either call the IRS or fax or mail in documents, thus slowing resolution times and increasing frustration.
- The Document Upload Tool (DUT) only provides taxpayers and tax professionals with the ability to electronically upload documents, eliminating the need to mail, fax, or email a document. It does not provide a backend workflow process. Without an efficient DUT backend workflow process and integration with an enterprise case management system, the IRS requires its employees to manually process DUT submissions, which will cause delays. Until the IRS implements a backend workflow process and case management system integration, the National Taxpayer Advocate is concerned this will cause the next backlog of submissions. Additionally, failure to manage taxpayer expectations for DUT will create confusion regarding expected response times.
- The IRS could enhance the taxpayer experience through increased promotion of online account options for both taxpayers and tax professionals and through IRS employee training on how to use these resources to better assist taxpayers.
- Taxpayers and tax professionals who struggle with completing the identity verification process required to set up online accounts are unable to use these vital resources.[5]

4 *See also* OMB Memorandum No. M-23-22, *Delivering a Digital-First Public Experience* (Sept. 2023), https://www.whitehouse.gov/omb/management/ofcio/delivering-a-digital-first-public-experience/.

5 Twenty-one percent of new users failed a step in the verification process. IRS response to TAS information request (Oct. 13, 2023).

ANALYSIS

A 2022 TAS research report compared online accounts and the digital services available for individuals on IRS.gov to the taxing authorities of 41 U.S. states, the District of Columbia, Puerto Rico, and three foreign countries.[6] The report identified three areas where the IRS website lacked features commonly found on other taxing authority websites:

1. Filing options on the taxing authority's own website;[7]
2. The ability to receive and respond to most notices online; and
3. Robust in-person and digital contact options.

In April 2023, the IRS released the IRS Strategic Operating Plan (SOP) outlining how it intends to use the Inflation Reduction Act (IRA) funding.[8] If completed accordingly, many of the objectives have the potential to transform the modernization of online accounts and digital services through projects, such as improving self-service options, building status-tracking tools, and expanding digital response options. Additionally, the objectives would address the examples of taxpayer and tax professional issues listed previously.[9] Many projects and initiatives are underway; however, the IRS still has much work to complete. As the IRS implements its SOP, it should continue developing online account functionality with a taxpayer-centric approach that prioritizes the experience and needs of individual and business taxpayers and tax professionals with input from stakeholders.

On September 22, 2023, the Office of Management and Budget (OMB) issued memorandum M-23-22, *Delivering a Digital-First Public Experience*, which provides guidance to agencies on how to design and deliver websites and digital services to the public. It includes and summarizes many best practices for digital services shared by the National Taxpayer Advocate including:

- Provide services to the public in a manner that maximizes self-service or transaction completion;
- Design and deliver digital options with users at the center of the experience;
- Prioritize customization to help users complete more relevant tasks more quickly;
- Ensure accessibility for people of diverse abilities;
- Provide content that is authoritative and easy to understand;
- Ensure the design of digital services incorporates appropriate privacy safeguards; and
- Build a digital workforce capable of delivering information and services to the public.[10]

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6 National Taxpayer Advocate 2022 Annual Report to Congress 222 (TAS Research Report: *A Review of Online Accounts and Web Services Offered by U.S. State and Foreign Country Taxing Authorities*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_CA_Online-Accounts.pdf. These foreign countries are the United Kingdom, Australia, and Canada.

7 For purposes of the study, online filing did not include those websites that simply referred visitors to third-party filing options, such as Free File or commercial service providers. National Taxpayer Advocate 2022 Annual Report to Congress 229 (TAS Research Report: *A Review of Online Accounts and Web Services Offered by U.S. State and Foreign Country Taxing Authorities*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_CA_Online-Accounts.pdf. The IRS is conducting a Direct File pilot during the 2024 filing season. IRS, Pub. 5788, Inflation Reduction Act § 10301(1)(B) IRS-run Direct e-File Tax Return System (May 2023), https://www.irs.gov/pub/irs-pdf/p5788.pdf.

8 IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan (Apr. 2023), https://www.irs.gov/pub/irs-pdf/p3744.pdf; 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).

9 IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan 26-27, 42, 52 (Apr. 2023), https://www.irs.gov/pub/irs-pdf/p3744.pdf.

10 OMB Memorandum No. M-23-22, *Delivering a Digital-First Public Experience* (Sept. 2023) (implementing the 21st Century Integrated Digital Experience Act, Pub. L. No. 115-336, 132 Stat. 5025 (2018)), https://www.whitehouse.gov/omb/management/ofcio/delivering-a-digital-first-public-experience/.

Individual Online Accounts Still Lack Full Functionality

The IRS continued to expand IOLA functionality over the past year and plans to further develop it as part of its SOP.[11] In 2023, IOLAs allow individual taxpayers to view basic account information, make payments, enter into payment plans, and view and download certain notices. TAS commends the IRS for continuing to expand the functionality and capabilities within IOLA. However, the IRS has more work to do before achieving fully functional accounts that entice taxpayers to select IOLA as their preferred communication method. We look forward to working with the IRS on continued improvements.

Almost 17 million unique users accessed IOLAs in fiscal year (FY) 2023. As shown in Figure 2.7.1, taxpayers made 8.2 million payments worth $39.7 billion through online accounts in FY 2023. Additionally, the IRS sent approximately 325,000 notices as digital-only because taxpayers opted to go paperless.[12] This is a good start that benefits both taxpayers and the IRS. For many taxpayers and tax professionals, paperless is seen as more efficient, and it is also more efficient for the IRS. When the IRS does not have to process a paper submission or paper notice, it saves time and shifts resources to other customer service functions.

FIGURE 2.7.1[13]

Online Account Statistics, FY 2023

Activity
92.2M sessions of users accessed View Your Account Information Page
64.4M authenticated user sessions
16.8M unique users have accessed their online account
Actions taken after viewing balance information
8.2M payments worth **$39.7B** made directly within Online Account
891K payment plans established or revisions made via Online Account • **273K** established within Online Account • **617K** that were directed out of Online Account to complete transaction in Online Payment Agreement
325K notices generated digital-only and avoided printing because of going paperless through Online Account Profile preferences • **19M** sessions navigated to Get Transcript • **15.6M** sessions with a download

As shown in Figure 2.7.2, there are 16 active IRS self-assistance applications, and only four are available within IOLA. The remaining 12 are only available outside of the IOLA account. And these 12 applications do not require the same level of authentication so they can only provide very limited information.[14]

11 IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan 26-27, 42, 52 (Apr. 2023), https://www.irs.gov/pub/irs-pdf/p3744.pdf.
12 IRS response to TAS information request (Oct. 25, 2023).
13 *Id.*
14 *Id.*

FIGURE 2.7.2, IRS Online Self-Assistance Applications[15]

Application Name	Available Tool(s)	Information From Application Reflected in Online Account	Type of User	Number of Transactions or Sessions, FY 2023
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	64,379,786
Get Transcripts Online	Retrieve a variety of transcripts online to view, print, or download	Yes	Individual	82,522,766
Get Transcripts by Mail	Receive a return or account transcript through mail	Yes	Individual and Business	614,905
Where's My Refund?	Learn status of refund	No	Individual	303,132,924
Where's My Amended Return?	Verify receipt and processing status for amended return (Form 1040-X)	No	Individual	13,951,765
Direct Pay	Pay directly from bank account	Yes	Individual	12,536,719
Online Payment Agreements	Request a payment agreement for certain taxpayers	Yes	Individual	2,020,102
Identity and Tax Return Verification Service (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	824,934
IP PIN	Validate identity and retrieve an Identity Protection Personal Identification Number online	No	Individual	2,272,461
Modernized Internet Employer Identification Number	Apply for and receive an Employer Identification Number online	No	Individual and Business	7,202,661
Transcript Delivery Service – Reporting Agents	Retrieve a variety of account transcripts through mail, fax, or online	No	Individual and Business	1,009,057
Transcript Delivery Service – States	Retrieve a variety of account transcripts through mail, fax, or online	No	Individual and Business	314,753
Transcript Delivery Service – Third Parties	Retrieve a variety of account transcripts through mail, fax, or online	No	Individual and Business	885,556,641
Income Verification Express Service	Retrieve transcripts from an online secure mailbox to verify income of a borrower	No	Individual and Business	4,830,097

15 IRS response to TAS information request (Oct. 25, 2023).

Application Name	Available Tool(s)	Information From Application Reflected in Online Account	Type of User	Number of Transactions or Sessions, FY 2023
Free Application for Federal Student Aid (FAFSA) Online	Access tax return information and transfer it directly to the FAFSA form	**No**	Individual	15,852,507
Tax Withholding Estimator	Estimate income tax for current tax year and compare that estimate with current withholding	**No**	Individual	4,205,039
Interactive Tax Assistant	Receive answers to basic tax law questions	**No**	Individual and Business	1,558,618

In the National Taxpayer Advocate's 2020 and 2022 Annual Reports to Congress, TAS recommended making all self-assistance applications available through the IOLA as well as a standalone application.[16] The IRS declined to adopt these recommendations.[17] TAS's recommendation was not to make self-assistance applications available exclusively within IOLA but rather accessible from IOLA. Having a one-stop shop, in our opinion, will increase usage and improve the customer experience for those who select IOLA as their preferred method of communication. In 2020, the IRS responded that adopting our recommendation would add to taxpayer burden because IOLA 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).[18] But the IRS missed the point. These applications do not provide the necessary information when taxpayers encounter a problem. In 2022, the IRS responded that even though the recommendation "is consistent with taxpayer expectations," it would not commit to a one-click access framework.[19] TAS continues to recommend that once a user authenticates and logs into a secure online account, they should have one-click access to all self-assistance applications as well as access to applications outside of IOLA. Additionally, TAS recommends the IRS provide expanded information through self-assistance applications if the taxpayer logs into a secure online account. The IRS needs to design IOLA as a mobile-friendly and device-agnostic service. Taxpayers have a *right to be informed* about delays, the cause of the delay, and how they can correct the problem; that information is not available with the lower level of authentication.[20]

16 National Taxpayer Advocate 2022 Annual Report to Congress 99 (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*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MSP_05_Online-Access.pdf; National Taxpayer Advocate 2020 Annual Report to Congress 55 (Most Serious Problem: *Online Records Access: Limited Electronic Access to Taxpayer Records Through an Online Account Makes Problem Resolution Difficult for Taxpayers and Results in Inefficient Tax Administration*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_MSP_03_OnlineRecords.pdf.

17 TAS Recommendations and IRS Responses, TAS Recommendation 5-1 (2022), https://www.taxpayeradvocate.irs.gov/news/directory-entry/2022-msp-05-online-access-for-taxpayers-and-tax-professionals/ (last visited Sept. 19, 2023); TAS Recommendations and IRS Responses, TAS Recommendation 3-4 (2020), https://www.taxpayeradvocate.irs.gov/news/directory-entry/2020-msp-3-online-records/ (last visited Dec. 5, 2023).

18 TAS Recommendations and IRS Responses, TAS Recommendation 3-4 (2020), https://www.taxpayeradvocate.irs.gov/news/directory-entry/2020-msp-3-online-records/ (last visited Dec. 5, 2023).

19 TAS Recommendations and IRS Responses, TAS Recommendation 5-1 (2022), https://www.taxpayeradvocate.irs.gov/news/directory-entry/2022-msp-05-online-access-for-taxpayers-and-tax-professionals/ (last visited Dec. 5, 2023).

20 *See* IRC § 7803(a)(3)(A).

To improve the customer experience, we recommend online accounts increase functionality, including the ability to:

- Verify receipt of submissions and documents;
- Track submissions throughout the entire lifecycle of a tax return (processing, examination, collections, administrative appeal);
- Determine where their return is in the process, including the assigned employee and manager's names and contact information;
- View and import Forms W-2 and 1099 into their tax return software;
- Submit offers in compromise online;
- Calculate payoffs for any balances due;
- Request penalty relief or abatement;
- View taxpayer-specific disaster relief postponement dates;
- Determine assessment and collection statute expiration dates;
- View a calendar of relevant due dates;
- View all IRS communications;
- Access the online tools for people of diverse abilities;
- Chat with IRS personnel and schedule a follow-up call if necessary; and
- Communicate with personnel from Examination, Appeals, or Counsel or their manager.

Business Tax Accounts Are Only Available to Limited Business Taxpayers[21]

In the fall of 2023, the IRS launched an early version of Business Tax Accounts (BTA) that is only available to sole proprietors. The very limited functionality allows sole proprietors to view their business profile, manage authorized users, and generate and download Letters 6575, Tax Certificate for Award Use, and 6574, Business Tax Compliance Report. The IRS SOP describes numerous features, including several TAS has recommended, that the IRS could make available in the near future (2024-2026).[22] The IRS should continue deployment of additional features with a taxpayer-centric approach. Unless BTA provides a suite of useful tools available for all businesses, the IRS should not expect large numbers of business taxpayers to sign up and use it. TAS recommends the IRS develop a comprehensive online account for business taxpayers by FY 2025, including features such as document upload, secure messaging, due date reminders for upcoming tax return or information return filings, payment options, and refund tracking.

Tax Pro Accounts Lack Comprehensive Features

In 2021, the IRS introduced Tax Pro for use by tax professionals who have met certain requirements.[23] Once tax professionals are able to access Tax Pro, they are only able to perform limited functions, such as electronically filing Forms 2848, Power of Attorney and Declaration of Representative, or 8821, Tax Information Authorization; viewing a list of their active authorizations for individual taxpayers; withdrawing authorizations for individual taxpayers; and requesting individual clients' transcripts of account.[24] Even with proper authorizations, tax professionals cannot view any business taxpayer information in Tax Pro, forcing tax professionals to call the IRS or submit material on paper.

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21 Internally, the IRS refers to these accounts as Business Online Accounts (BOLAs).

22 IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan (Apr. 2023), https://www.irs.gov/pub/irs-pdf/p3744.pdf.

23 A Centralized Authorization File (CAF) number is a unique nine-digit identification number that is assigned the first time a representative files a third-party authorization with the IRS. *See* IRS, What is a CAF number?, https://www.irs.gov/businesses/small-businesses-self-employed/what-is-a-caf-number (last visited Dec. 5, 2023). To use Tax Pro, tax professionals must have a CAF number and be in good standing with the IRS, and their associated address must be in one of the 50 states or the District of Columbia.

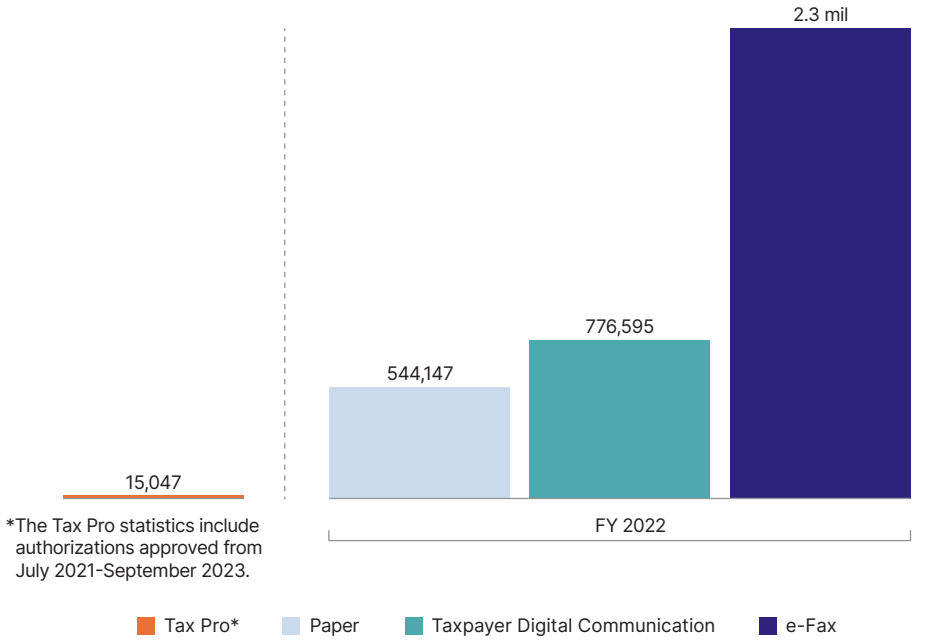
24 *See* Erin M. Collins, Attention Tax Professionals: Check Your Tax Pro Account, National Taxpayer Advocate Blog (Aug. 30, 2023), https://www.taxpayeradvocate.irs.gov/news/nta-blog-attention-tax-professionals-check-your-tax-pro-account/.

Tax professionals play a vital role in the tax system. They assist with tax administration issues and alleviate taxpayer barriers to compliance. Improving the functionality and ease of Tax Pro would support tax professionals and the taxpayers who rely on these professionals. When a representative cannot perform the necessary functions to service a client's tax account through Tax Pro, 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.

Since Tax Pro launched in July 2021, tax professionals and their clients have completed only 11,342 power of attorney authorizations and 3,705 tax information authorizations through Tax Pro, as the system was clunky.[25] In comparison, during FY 2022, tax professionals submitted 2.3 million authorizations through e-Fax; 776,595 authorizations through Taxpayer Digital Communication (TDC); and 544,147 authorizations on paper.[26]

FIGURE 2.7.3[27]

Power of Attorney and Tax Information Authorizations by Source



The IRS must enhance its capabilities and add access to self-assistance and digital communication tools within Tax Pro. Robust functionality will not only make this application more appealing to tax professionals and help boost usage, but it will provide better customer service and potentially reduce unnecessary client fees and delays.

25 IRS response to TAS information request (Oct. 25, 2023). *See also* TIGTA, Ref. No. 2023-40-033, *Opportunities Exist to Improve the Accuracy of Information in the Centralized Authorization File and Increase the Use of the Tax Pro Account System* (2023), https://www.tigta.gov/reports/audit/opportunities-exist-improve-accuracy-information-centralized-authorization-file-and.

26 TIGTA, Ref. No. 2023-40-033, *Opportunities Exist to Improve the Accuracy of Information in the Centralized Authorization File and Increase the Use of the Tax Pro Account System* 9 (2023), https://www.tigta.gov/reports/audit/opportunities-exist-improve-accuracy-information-centralized-authorization-file-and.

27 IRS response to TAS information request (Oct. 25, 2023). *See also* TIGTA, Ref. No. 2023-40-033, *Opportunities Exist to Improve the Accuracy of Information in the Centralized Authorization File and Increase the Use of the Tax Pro Account System* (2023), https://www.tigta.gov/reports/audit/opportunities-exist-improve-accuracy-information-centralized-authorization-file-and.

TAS held focus groups during the 2022 IRS Nationwide Tax Forums 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.[28] TAS recommends the IRS expand Tax Pro's features to allow authorized representatives access to all their clients' tax records through the representative's Tax Pro account to provide and perform the full scope of assistance. Through Tax Pro and with appropriate authorization, tax professionals should have the ability to perform actions on behalf of their clients such as:

- View the entirety of their clients' online account information (to the extent of their authorization);
- Request an installment payment agreement;
- View the status of a tax return;
- View all notices and correspondence;
- Respond to correspondence and notices;
- Request an offer in compromise;
- Verify submissions;
- Track submissions throughout the entire process lifecycle of a tax return (processing, examination, collections, administrative appeal);
- Calculate payoffs for any balances due;
- Communicate with the IRS throughout the process;
- Have the ability to schedule a call with an IRS employee;
- Request a Centralized Authorization File number;
- View taxpayer-specific disaster relief postponement dates;
- Determine assessment and collection statute expiration dates;
- Request penalty relief or abatement for their client; and
- Apply for an extension of time to file for their client.

Tax Pro should also expand to include clients who are business taxpayers, not only individual taxpayers. While the IRS ultimately plans to expand functionality and include business taxpayers, this must be a priority as the agency moves toward a 21st century digital tax system.

Reporting Agents Lack Online Account Access

Reporting agents (RAs) play a major role in the tax system. When authorized by Form 8655, Reporting Agent Authorization, RAs may sign and file returns and make tax deposits and payments on behalf of their clients.[29] Even though RAs file millions of returns and make substantial deposits and payments with the IRS, they are not eligible for any of the three existing online accounts (*i.e.*, IOLA, BTA, or Tax Pro) and do not have a version of online accounts that reflect the scope of RA authorization.[30] For tax year (TY) 2022, the IRS authorized RAs to file over 3.4 million Form 940 filings and nearly 3.9 million Form 941 filings.[31]

28 Observations from TAS's Focus Group Interviews, 2022 IRS Nationwide Tax Forums.
29 IRS, Form 8655, Reporting Agent Authorization (Oct. 2018), https://www.irs.gov/pub/irs-pdf/f8655.pdf.
30 Tax Pro requires a CAF number, but RA authorizations are at the company level so no CAF number exists. *See* IRS, Tax Pro Account, https://www.irs.gov/tax-professionals/tax-pro-account (last visited Dec. 5, 2023); IRS, Form 8655, Reporting Agent Authorization (Oct. 2018), https://www.irs.gov/pub/irs-pdf/f8655.pdf.
31 IRS, Compliance Data Warehouse (CDW), Business Return Transaction File (BRTF), TY 2022 (Nov. 15, 2023).

Because RAs lack an intuitive, self-service avenue to interact online with the IRS, they are forced to call for assistance, forgo assistance, or submit paper documents. Given the important role RAs play in the tax system,[32] TAS recommends providing RAs access to online accounts with a set of tools that reflect the scope of RA authorization.

Document Upload Tool Lacks an Efficient Workflow Process

In 2023, the IRS continued to expand the availability of DUT.[33] DUT allows taxpayers or tax professionals to securely provide documentation online for notices requiring a response.[34] However, TAS has concerns about the IRS workflow to process documents received through DUT. Currently, documents received through DUT require a manual process after receipt. So once again, the IRS is getting it half right. Although DUT allows taxpayers and tax professionals to reduce paper submissions, the IRS has not established an efficient backend workflow to process DUT submissions without creating a new type of backlog. As shown in Figure 2.7.4, after receiving a document on DUT, IRS Business Operating Divisions (BODs) must log into the DUT tool, download the response, and then route the document to the network location designated by the BOD.[35]

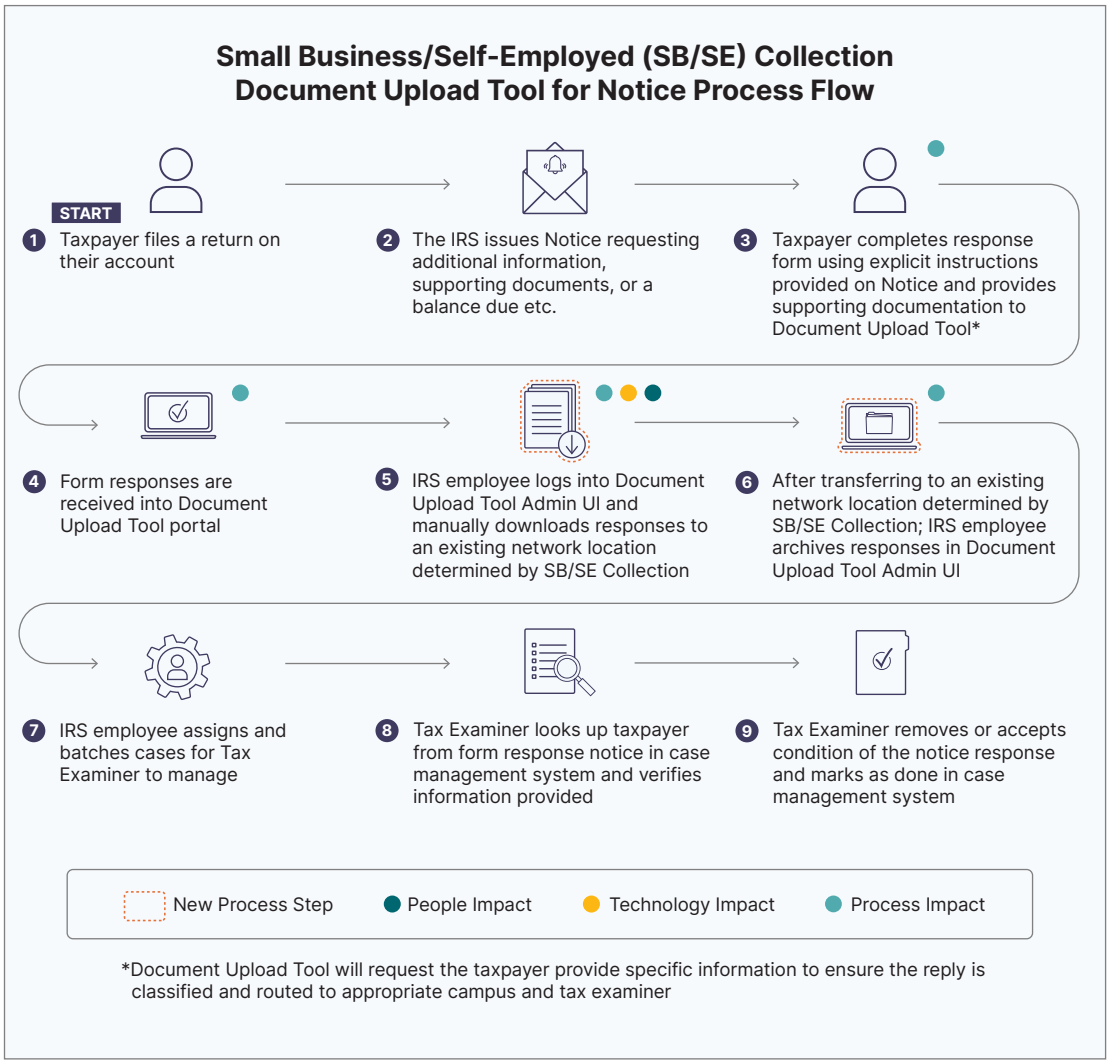
32 *See* IRS, Reporting Agents File (RAF), https://www.irs.gov/businesses/small-businesses-self-employed/reporting-agents-file-raf (last visited Dec. 5, 2023).

33 TIGTA, Ref. No. 2023-IE-R010, *Inflation Reduction Act: Assessment of the IRS's Efforts to Deliver Expected Improvements for the 2023 Filing Season* (2023), https://www.tigta.gov/reports/inspection-evaluation/inflation-reduction-act-assessment-irss-efforts-deliver-expected; IRS News Release, IR-2023-148, Inflation Reduction Act 1-Year Report Card: IRS Delivers Dramatically Improved 2023 Filing Season Service, Modernizes Technology, Pursues High-Income Individuals Evading Taxes (Aug. 16, 2023), https://www.irs.gov/newsroom/inflation-reduction-act-1-year-report-card-irs-delivers-dramatically-improved-2023-filing-season-service-modernizes-technology-pursues-high-income-individuals-evading-taxes; Janet L. Yellen, Sec'y of the Treasury, Remarks at IRS Headquarters in Washington, D.C. (Nov. 7, 2023), https://home.treasury.gov/news/press-releases/jy1888.

34 IRS, IRS Document Upload Tool (Oct. 27, 2023), https://www.irs.gov/help/irs-document-upload-tool; IRS response to TAS information request (Oct. 13, 2023).

35 IRS response to TAS information request (Oct. 12, 2023).

FIGURE 2.7.4[36]



TAS recommends the IRS develop an IRS-wide workflow for processing DUT submissions and integrate submissions with an enterprise case management system to deliver documents quickly and efficiently to the correct IRS employees.

The IRS Fails to Adequately Promote Awareness of Online Accounts

The IRS should improve awareness of online accounts and standalone digital services among taxpayers, tax professionals, and IRS employees. Not only should the IRS provide education about how to make the most of the available online accounts and digital services, but it should also timely provide notification to taxpayers, tax professionals, and IRS employees of upgrades and new features.

36 IRS response to TAS information request (Oct. 12, 2023).

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 91,000 employees attend Digital Day events annually.[37] If IRS employees are not familiar with online account capabilities, their ability to assist and educate taxpayers and tax professionals about online accounts will be severely limited. TAS recommends providing mandatory training about online accounts to all taxpayer-facing employees and IRS-wide updates about new features and upgrades to online accounts and standalone digital services.

The IRS should continue to promote online accounts and educate taxpayers and tax professionals about the user benefits and data safety within online accounts. All communications with taxpayers and tax professionals present opportunities to promote and educate. The IRS has undertaken some practices to inform taxpayers and tax professionals about the availability of online accounts, including through links on the IRS.gov homepage. Additionally, for example, when the IRS mails paper copies of digitally available notices that are viewable in online accounts, it includes an additional paper notice in the envelope that informs taxpayers about online accounts.[38] The IRS conducts a biannual webinar with a step-by-step demonstration of online accounts for approximately 5,000 tax professionals.[39] However, the IRS should use all communications with taxpayers and tax professionals as an opportunity to promote online accounts. For example, if a taxpayer receives a notice with an invitation to use the unauthenticated DUT,[40] the IRS should offer the taxpayer an opportunity to register for an online account after using the DUT. The annual filing season community events provide an opportunity to demonstrate online accounts, educate taxpayers about the benefits of their use, and respond to online account questions. Also, TAS recommends that when a taxpayer or practitioner signs into online accounts, the IRS provide a "What's New" banner at the top of the screen to highlight recent upgrades to online accounts.

Taxpayers Need More Options for Identity Proofing

To ensure the security of taxpayer data, taxpayers and tax professionals must create an account using an identity proofing process that confirms the identity of the account creator. 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.[41] There is no government CSP that meets the security requirements.[42]

Taxpayers can have trouble completing the identity proofing process for many reasons, including having unacceptable documents or being former victims of identity theft. Twenty-one percent of would-be users failed a step in the identity proofing process. The most common issues were: (1) failing the financial records or telecom verification checks (23 percent of failures) and (2) uploading and verifying identity documents, typically due to blurry images or failed document security checks (19 percent of failures). Where taxpayers cannot complete this process, the CSP serves as a "trusted referee" to assist the taxpayer with identity proofing. Fourteen percent of all CSP credentials are completed using a trusted referee.[43]

37 IRS response to TAS information request (Oct. 25, 2023).
38 IRS response to TAS information request (Sept. 13, 2023).
39 IRS response to TAS information request (Oct. 25, 2023).
40 Unauthenticated DUT allows taxpayers to use the invitation from the IRS to submit documents without creating an online account.
41 ID.me serves as the only IRS CSP.
42 TIGTA, Ref. No. 2023-2S-070, *Key Events of the IRS's Planning Efforts to Implement Login.gov for Taxpayer Identity Verification* (2023), https://www.tigta.gov/sites/default/files/reports/2023-10/20232S070fr.pdf.
43 IRS response to TAS information request (Oct. 13, 2023). Prior to the involvement of trusted referees, the CSP offers multiple layers of real-time human review to assist users during the self-service identity verification process. Discussions with outside stakeholders (Nov. 16, 2023).

The IRS should maintain the security of taxpayer information but also strive to improve the taxpayer experience for those who need or want additional assistance accessing online accounts. Not all taxpayers have the technological literacy or internet availability to prove their identity without assistance. Some taxpayers simply prefer to complete identity proofing in person. In its SOP, the IRS stated a goal of expanding the number of CSPs in FY 2023 to give taxpayers and tax professionals choices, but it has not implemented this.[44] In May 2023, the IRS launched an in-person identity proofing pilot for those who experience challenges completing the process online. The IRS sent approximately 24,000 invitations to authenticate in person. Of those invited, 597 taxpayers scheduled in-person verification appointments, and the IRS verified 189 to receive credentials.[45] TAS recommends the IRS continue to explore in-person identity proofing options and expanding the number of CSPs so that all taxpayers can create online accounts if they choose.

CONCLUSION AND RECOMMENDATIONS

The IRS has the potential to transform tax administration and bring the IRS into the 21st century with the modernization of online services for taxpayers and tax professionals using IRA funding and the IRS SOP.[46] This year, the IRS launched BTA and expanded the services available in IOLA and Tax Pro, but it has more work to do. As the IRS continues to expand the services and functionality available in online accounts, it should remain focused on improving the taxpayer experience with efficient, understandable tools. Taxpayers and tax professionals need and deserve reliable, quality customer service using their chosen communication method.

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Add increased capabilities and functionality to IOLA, including the ability to track submissions through the entire process, submit offers in compromise online, and calculate payoffs for any balances due, to provide individuals with robust self-service options available at the convenience of the taxpayer.
2. Provide individual and business taxpayers with one-click access to all authenticated and unauthenticated self-assistance applications from an intuitive, centralized location.
3. Deploy a comprehensive online account for business taxpayers by FY 2025, including features such as due date reminders for upcoming tax return or information return filings, payment options, and refund tracking.
4. Add increased capabilities and functionality to Tax Pro, such as viewing notices and letters and uploading requested documents, to provide authorized representatives seamless access to their clients' online accounts through Tax Pro.
5. Provide RAs with access to online services with the ability to file Form 8655 electronically, access return transcripts, and verify business name and Employer Identification Numbers electronically.
6. In FY 2024, create an IRS-wide digital backend workflow for processing DUT submissions and integrate submissions with an enterprise case management system to deliver the document quickly and efficiently to the correct IRS employees.

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44 IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan 44 (Apr. 2023), https://www.irs.gov/pub/irs-pdf/p3744.pdf; TIGTA, Ref. No. 2023-2S-070, *Key Events of the IRS's Planning Efforts to Implement Login.gov for Taxpayer Identity Verification* (2023), https://www.tigta.gov/sites/default/files/reports/2023-10/20232S070fr.pdf. *See* Jonathan Curry, *Declared Dead 18 Months Ago, ID.me Is Now Top IRS ID Checker*, Tax Notes, Aug. 28, 2023, at 1514-16, https://www.taxnotes.com/lr/resolve/tax-notes-today-federal/declared-dead-18-months-ago-id-me-is-now-top-irs-id-checker/7h4nx.

45 IRS response to TAS information request (Oct. 13, 2023).

46 Pub. L. No. 117-169, § 10301, 136 Stat. 1818, 1831-32 (2022); IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan (Apr. 2023), https://www.irs.gov/pub/irs-pdf/p3744.pdf.

7. Require mandatory annual training for IRS employees on IOLA, Tax Pro, BTA, and digital communication tools to allow employees to educate taxpayers about the applications.
8. Timely notify taxpayers, tax professionals, and IRS employees of new features and upgrades available in IOLA, Tax Pro, BTA, and digital communication tools.
9. Expand taxpayer identity proofing options, including increasing the number of CSPs and expanding in-person identity assistance to taxpayers.
10. Provide kiosks in central locations to give taxpayers access to their online account.
11. Incorporate best practices set forth in OMB Memorandum M-23-22, *Delivering a Digital-First Public Experience*.

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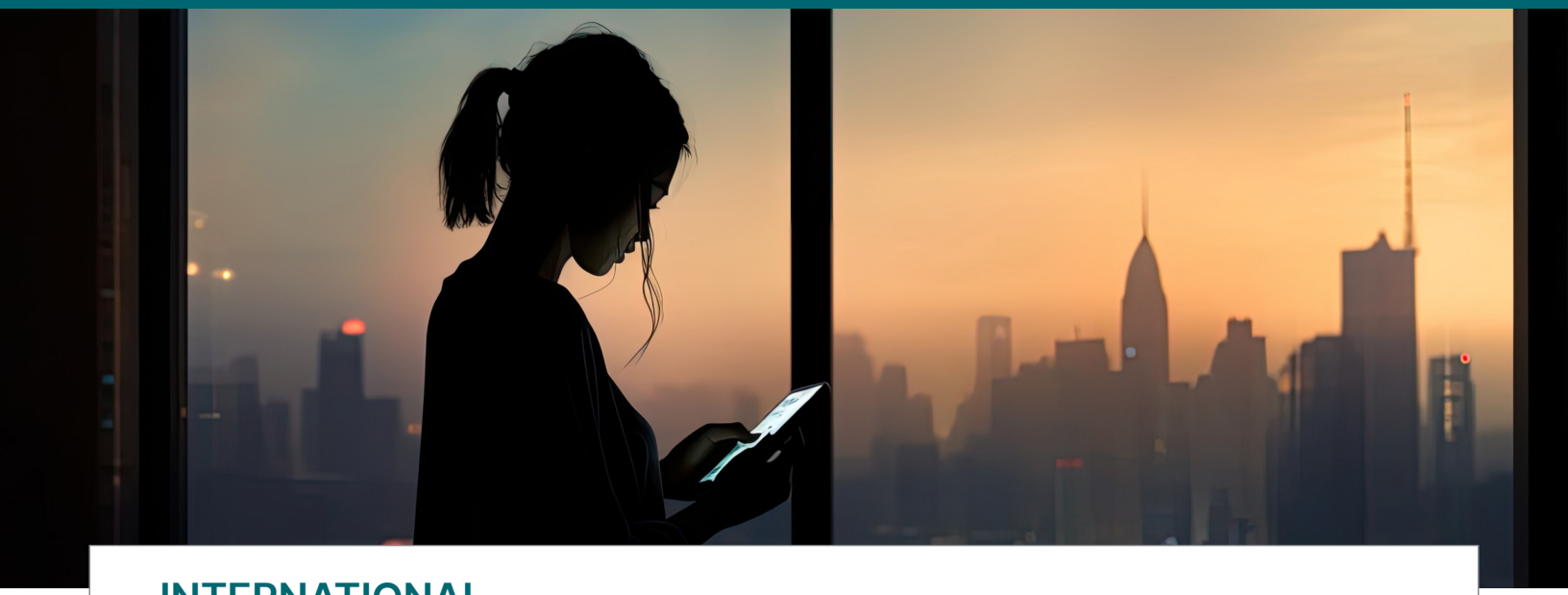

INTERNATIONAL

The IRS's Approach to International Information Return Penalties Is Draconian and Inefficient

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

U.S. persons who receive money from abroad or who have certain foreign financial interests and cross-border business activities are potentially subject to a wide range of U.S. reporting requirements. Many of these requirements come with significant penalty exposure when a filing is late, incomplete, or inaccurate. These international information return (IIR) penalties harm sometimes unsuspecting lower-income taxpayers, small businesses, and immigrants. The majority of these penalties are automatically assessed,[1] broadly applied, needlessly harsh, and often unexpected.[2]

EXPLANATION OF THE PROBLEM

Congress established the IIR penalty regime primarily to combat tax avoidance and discourage U.S. taxpayers from hiding income and assets abroad. The National Taxpayer Advocate appreciates Congress's efforts to prevent tax avoidance; however, most high net worth individuals and large companies have sophisticated advisors and generally avoid these penalties or successfully obtain abatements. By contrast, lower-income individuals, immigrants, and small businesses' advisors do not have the same expertise, and these taxpayers tend to inadvertently trigger the penalty. By statute, many of these information return penalties apply even when there is no underlying tax liability. The statutory structure is wide-ranging, and taxpayers are confronted with a complex series of information reporting requirements and associated penalties covering,

1 Although penalties may be automatically assessed, taxpayers may seek and, in some cases, receive penalty relief by asserting defenses. *See*, *e.g.*, Treas. Reg. § 1.6038-2(k)(3)(ii).

2 IIR reporting requirements and the related penalties are located in Chapter 61, Subchapter A, Part III, Subpart A & B. These penalties are the primary focus of this Most Serious Problem. Certain other IIR penalties are set forth in Chapter 68, Subchapter B, Part I. These are specifically established as assessable penalties and will be broadly addressed in the latter portion of this Most Serious Problem.

among other things, specified foreign financial assets,[3] certain interests in foreign business entities,[4] and gifts or inheritances from foreign sources.[5] Although the IRS must follow statutory mandates, it has meaningful discretion in how to implement these requirements. Rather than promoting tax compliance through taxpayer education and support, the IRS has opted to flex its administrative muscle and bring down the enforcement hammer on good-faith taxpayers and bad actors alike.

Rather than promoting tax compliance through taxpayer education and support, the IRS has opted to flex its administrative muscle and bring down the enforcement hammer on good-faith taxpayers and bad actors alike.

As a result of this approach, many taxpayers are exposed to potentially life-changing penalties for failure to meet information filing requirements that are obscure and complex. For example, some "accidental Americans" who were born in the United States but lived the bulk of their lives abroad have faced huge tax liabilities and IIR penalties, even though they never thought of themselves as U.S. citizens.[6] Likewise, a U.S. person holding a controlling interest in a foreign partnership could face significant penalties, even though the partnership generates no taxable income.[7] Similarly, a relatively unsophisticated taxpayer receiving a once-in-a-lifetime tax-free gift could lose a substantial portion of that gift to penalties simply because they had no idea of a reporting obligation.[8]

In the foreign gift context, the penalties can be huge; over the years 2018-2021, even taxpayers who reported $400,000 or less in income received an average penalty of over $235,000.[9] Also, the IRS imposes a substantial amount of IIR penalties on the non-wealthy. For instance, 71 percent of individual IRC § 6038 penalties are assessed against lower- to middle-income taxpayers (those reporting under $400,000 in income).[10] Likewise, 83 percent of systemic business IRC §§ 6038 and 6038A penalties are assessed against small and midsize businesses (those with assets under $10 million).[11]

The National Taxpayer Advocate is concerned that IIR penalties:

- Are systemically assessed, without any prior review or opportunity to establish reasonable cause or other defenses;
- Are often erroneously classified as assessable and therefore must be paid before judicial review, which deprives taxpayers of review in the U.S. Tax Court and causes financial hardship; and
- Are disproportionate in comparison with any potential underlying tax and fall particularly hard on lower-income taxpayers and small businesses.

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3 IRC § 6038D.
4 IRC § 6038.
5 IRC § 6039F.
6 *See, e.g.*, Vivienne Walt, Why 'Accidental Americans' Are Desperate to Give Up Their U.S. Citizenship, TIME, Dec. 23, 2020, https://time.com/5922972/accidental-americans-fatca/; Darla Mercado, Why 'Accidental Americans' Have an Uphill Battle With the IRS, CNBC, Oct. 3, 2019, https://www.cnbc.com/2019/10/03/why-accidental-americans-have-an-uphill-battle-with-the-irs.html.
7 IRC § 6038(a).
8 IRC § 6039F.
9 IRS, Compliance Data Warehouse (CDW), Individual and Business Master File (IMF/BMF), Individual and Business Returns Transaction File (IRTF/BRTF) (Sept. 2023). Throughout this narrative, all penalty statistics associated with total assets/income stratification reflect data from the most common income tax returns, representing about 96 percent of businesses filing Forms 1120, 1120F, or 1065 and at least 75 percent of individuals filing Form 1040 for which IIR penalties were assessed. All data from CDW referenced in this Most Serious Problem narrative is based on the analysis of IIR penalties assessed in calendar years 2018-2021.
10 IRS, CDW, IMF and IRTF (Sept. 2023).
11 IRS, CDW, BMF and BRTF (Sept. 2023).

ANALYSIS

International Information Return Penalties Are Disproportionately Harsh When Compared With the Offense

Taxpayers Can Fall Victim to International Information Return Penalties in a Range of Situations

The IIR penalty framework, established by statute, generally follows a common approach for information returns that are late, missing, or incomplete.[12] Typically, upon learning of their filing obligation, taxpayers voluntarily file missing information returns – albeit late – only to have their compliance rewarded with a harsh penalty. Upon receipt of a late IIR, the IRS's computer system automatically assesses the penalty, and the IRS begins its collection procedures.[13] To add insult to injury, many of these penalties bear no relation to any underlying taxable income.

The IRS also assesses these penalties manually at the conclusion of the examination process. During an examination, if the examiner becomes aware of a missing or incomplete form, they notify the taxpayer of the penalty and provide time to undertake the requisite reporting. If the taxpayer does not provide the information timely, the IRS can, in many cases, propose a continuation penalty, which can aggregate to alarming levels.

For example, IRC § 6038D requires a person holding specified foreign financial assets to undertake reporting with respect to those assets on a Form 8938, Statement of Specified Foreign Financial Assets, attached to their annual income tax return.[14] The initial penalty for failing to do so is $10,000, and if taxpayers do not respond in the first 90 days, the IRS assesses an additional $10,000 every 30 days, up to a ceiling of $50,000.[15] IRC § 6038(b) imposes an identical reporting requirement and penalty on U.S. persons who control certain foreign business entities.[16] In neither case does the taxable income, or lack thereof, generated by the applicable assets or entities impact the penalties.

Similarly, IRC § 6048 generally imposes a reporting requirement upon, among other things, parties responsible for certain foreign trusts,[17] which often includes expatriates with retirement funds in their countries of residence.[18] These responsible parties must provide information on Form 3520, Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts, or Form 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner, within the applicable deadline[19] or face penalties under IRC § 6677.[20] That code section provides for an initial penalty equal to the greater of $10,000 or *35 percent*[21] of the gross reportable amount, and if taxpayers have not provided responsive information after

12 *See generally* IIR penalties in Chapter 61, Subchapter A, Part III, Subpart A, and Chapter 68, Subchapter B, Part I. These penalties are not applied in a completely uniform manner. However, they generally follow a common approach.
13 Systemically assessed penalties are those that are automatically assessed electronically without initial review or action from IRS personnel. Assessments made based on actions taken by IRS personnel are referred to as "manual assessments."
14 IRC § 6038D(a).
15 IRC § 6038D(d).
16 IRC § 6038.
17 IRC § 6048(a).
18 Rev. Proc. 2020-17, 2020-12 I.R.B. 539, and Rev. Proc. 2014-55, 2014-44 I.R.B. 753, provide exemptions from this information reporting requirement in some situations, but the exemptions are not comprehensive enough to resolve all situations where taxpayers may be subject to penalties for interacting with their own retirement funds.
19 The due dates for Forms 3520 and 3520-A were provided in IRS Notice 97-34, 1997-1 CB 422, Information Reporting on Transactions with Foreign Trusts and on Large Foreign Gifts, and were later amended and codified by the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (Surface Transportation Act), Pub. L. No. 114-41, 129 Stat. 443, in an off-code provision.
20 IRC § 6677. There is a reasonable cause exception for the penalties under IRC § 6677(d) and relief provided under Rev. Proc. 2020-17 for transactions with certain tax-favored foreign retirement trusts and tax-favored nonretirement trusts.
21 In the case of reporting required of U.S. persons under IRC § 6048(b), the initial penalty is reduced to the greater of $10,000 or five percent of the gross reportable amount.

90 days, then every 30 days the IRS assesses a $10,000 continuation penalty up to the full gross reportable amount.[22] Penalties measured against the gross reportable amount, which can include something as simple as biweekly contributions to certain self-funded foreign retirement plans,[23] can multiply quickly.

To make matters worse, the IRS often does not immediately consider requests for reasonable cause relief for IIR penalties. Taxpayers are exposed to IIR penalties either when missing returns are identified during an audit or when they come forward and file late information returns. The IRS tells taxpayers that they can submit requests for reasonable cause relief, but that it may not consider those requests, in which case they will have to resubmit them later in the process.[24] This cavalier approach is unfair to taxpayers and inefficient for the tax system. As a result, the IRS should review reasonable cause relief requests before assessing penalties.

IIR penalties begin as substantial and can grow to be exorbitant. This alone is concerning, but the scope of these penalties is especially troubling when considering that the statute provides that the IRS can impose them when there is little or no underlying taxable income involved. Additionally, these penalties can fall particularly hard on immigrants who retain interests from their home countries.[25] Often, these interests can generate substantial U.S. tax penalties, even when they are relatively small interests and even though they may not generate any taxable income.

Gifts From Foreign Persons Are Traps for the Unwary

The approach taken to reporting foreign gifts and bequests well illustrates the inherent unfairness of the IIR penalty regime. IRC § 6039F requires U.S. persons who receive foreign gifts or bequests worth more than $10,000[26] to submit information returns to the IRS. For each month that the taxpayer fails to report the gift or bequest, the IRS can assess a penalty of five percent of the total amount of the gift, up to a maximum of 25 percent. For gifts and bequests from foreign individuals or estates, the IRS provides administrative guidance raising the reporting threshold to $100,000,[27] but the penalties themselves remain the same.[28] The code's explicit requirement impacts gifts from foreign corporations and partnerships, whereas the IRS's administrative guidance impacts those from foreign individuals and estates.

These penalties can be unexpected and severe for unsophisticated taxpayers. Imagine a lower- or middle-income U.S. taxpayer receiving a $500,000 inheritance from a foreign relative. Because this bequest is excludable from income,[29] the taxpayer may not realize that there was an information reporting requirement until after the fact. In this scenario, the recipient of the tax-free inheritance could suddenly end up with an IIR penalty of up to $125,000, depending on how many months have elapsed since the receipt of the inheritance. As with several other IIR penalties, these penalties are potentially subject to an abatement for reasonable cause.[30] Nevertheless, the taxpayer cannot be certain that the IRS will grant this relief and, in the meantime, is exposed to the delay, cost, and stress inherent in seeking relief from the IRS.

22 IRC § 6677(a).
23 IRC § 6048(a)(3)(B)(ii)(I). Contributions to certain employer-funded retirement plans are excludable from IRC § 6048(a) reporting.
24 IRS, Delinquent International Information Return Submission Procedures, https://www.irs.gov/individuals/international-taxpayers/delinquent-international-information-return-submission-procedures (last visited Nov. 20, 2023).
25 Discussions with outside stakeholders (Aug. 15, 2023).
26 IRC § 6039F(d) provides for a cost-of-living adjustment to the $10,000 threshold.
27 This increased threshold is not subject to a cost-of-living adjustment, unlike the $10,000 statutory threshold.
28 Notice 97-34, § VI-B.1.
29 IRC § 102.
30 IRC § 6039F(c)(2).

The available data shows that the IRC § 6039F penalty can be severe. Between 2018 and 2021, there were over 4,000 penalties assessed against individuals and businesses, totaling $1.7 billion.[31] During this period, the average penalty was approximately $426,000 while the median penalty was approximately $58,000,[32] as shown in Figure 2.8.1.

FIGURE 2.8.1, IRC § 6039F Penalty Data, Businesses and Individuals, Aggregated for 2018-2021[33]

Number of Penalties	Total Dollars Assessed	Average Penalty (Mean)	Median Penalty
4,038	$1,718,381,301	$425,553	$57,714

The IRC § 6039F penalties have an especially heavy impact on individual taxpayers: 92 percent were assessed against individuals.[34] Figure 2.8.2 shows penalty data by year for individual taxpayers.

FIGURE 2.8.2, IRC § 6039F Penalty Data for Individuals, 2018-2021[35]

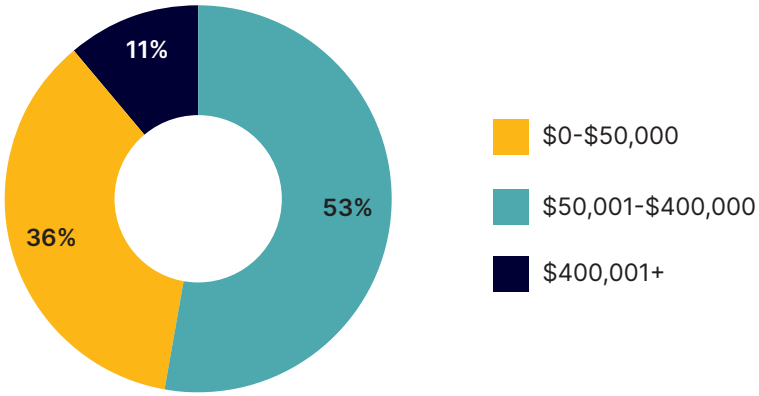
Year	Total Penalties Assessed	Total Dollars Assessed	Average Penalty (Mean)	Median Penalty
2018	586	$77,274,037	$131,867	$39,160
2019	1,015	$238,326,771	$234,805	$56,560
2020	837	$282,289,168	$337,263	$60,000
2021	1,297	$246,414,866	$189,988	$52,978

Further, a startling number of these penalties are assessed against lower- and middle-income individuals. Figure 2.8.3 illustrates the income breakdown of these assessments.

31 IRS, CDW, IMF/BMF (Sept. 2023).
32 *Id.* The median is the value in the middle of a data set, meaning that 50 percent of data points have a value smaller or equal to the median and 50 percent of data points have a value higher or equal to the median.
33 IRS, CDW, IMF/BMF (Sept. 2023). Because of such factors as the broad penalty relief provided in IRS Notice 2022-36, 2022-36 I.R.B. 188, Penalty Relief for Certain Taxpayers Filing Returns for Taxable Years 2019 and 2020, and processing delays due to COVID-19, penalty data in any given recent year may not be illustrative of long-term trends. For this reason, we are presenting a four-year average alongside annual data. TAS provides penalty data based on when penalties are assessed rather than by the tax year for which they are assessed to facilitate presentational clarity and to illustrate current policy and trends. The IRS states that IRC § 6039F penalty data is not necessarily indicative of its future expectations due to recent changes undertaken with the administration of the program. IRS response to TAS fact check (Nov. 16, 2023).
34 IRS, CDW, IMF/BMF (Sept. 2023). This 92 percent is based on the total number of IRC § 6039F penalties assessed.
35 IRS, CDW, IMF (Sept. 2023).

FIGURE 2.8.3[36]

IRC § 6039F Penalties by Total Positive Income, 2018-2021



The penalties assessed against the lower- and middle-income individuals are daunting. During the years 2018-2021, the mean penalty for taxpayers with $50,000 or less in total positive income was $226,000 while the median penalty was $50,000.[37] For taxpayers with between $50,000 and $400,000 in total positive income, the mean penalty was $242,000 and the median was $53,000.[38] These penalties are excessively punitive and go well beyond what the IRS needs to promote tax compliance.

The IRS abates these penalties at rates often exceeding 50 percent, which highlights the stress and burden this framework places on taxpayers.[39] Taxpayers should not be receiving startling letters informing them of $200,000 penalties that are more likely to be abated than collected. This problem is exacerbated by the circumstance that these penalties are not directly eligible for the first-time abatement (FTA). Further, when taxpayers provide reasonable cause statements for their late filing, IRS Campus employees routinely ignore the reasonable cause statement, assess the penalty, and furnish taxpayers with their right to go to the IRS Independent Office of Appeals, which often concedes these penalties based on factors such as reasonable cause.[40] It should not go unnoticed that most of the late filings are voluntarily filed, and the IRS rewards taxpayers by assessing penalties. The IRS's actions cause undue hardship, burden taxpayers, and create unnecessary work for other IRS operating divisions.

In many cases, failures to file simply result from a basic ignorance of reporting obligations. This is particularly true when there are no federal income tax consequences involved. Additional transparency and clarity regarding filing requirements could contribute significantly to compliance, which would be beneficial to both taxpayers and the IRS. For example, the IRS should update Schedule B (Form 1040), Interest and Ordinary Dividends, and the related instructions to include foreign gifts as potentially reportable transfers.

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36 IRS, CDW, IMF and IRTF (Sept. 2023). Total positive income reflects the total of all positive income and adjustment lines.
37 IRS, CDW, IMF and IRTF (Sept. 2023).
38 *Id.*
39 IRS, CDW, IMF (Sept. 2023). After being systemically flagged, these penalties are manually assessed. However, at that time, IRS personnel simply perform a mechanical function and do not apply judgment regarding discretionary factors, such as whether reasonable cause should be provided. *See* Internal Revenue Manual (IRM) 21.8.2.19.2, Form 3520 & Applicable Penalties (Oct. 4, 2022), https://www.irs.gov/irm/part21/irm_21-008-002r; IRM 21.8.2.19.3, Form 3520-A & Applicable Penalties (Nov. 7, 2022), https://www.irs.gov/irm/part21/irm_21-008-002r.
40 Letter from Blake Vickers, Chair, Am. Inst. of Certified Pub. Accts. Tax Exec. Comm., to Andrew Keyso, Chief, IRS Indep. Off. of Appeals, and Lia Colbert, Comm'r, Small Bus./Self-Employed (Aug. 14, 2023), https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fus.aicpa.org%2Fcontent%2Fdam%2Faicpa%2Fadvocacy%2Ftax%2Fdownloadabledocuments%2F2023%2Faicpa-letter-on-form-3520-appeals-acm-to-campus-submit.docx.

The IRS has already used its discretion to create an increased threshold for reporting in the case of taxpayers receiving gifts or bequests from foreign individuals or estates rather than from business entities. TAS appreciates this decision and guidance, insofar as they go, but they are incomplete. Whereas IRC § 6039F(d) provides for a cost-of-living adjustment to the $10,000 reporting threshold, the IRS's administrative guidance providing the $100,000 threshold creates no such cost-of-living adjustment. The IRS should revise Notice 97-34 to create a comparable cost-of-living adjustment for the $100,000 threshold, which would enable more taxpayers to avoid the burden of reporting and the perils of misreporting gifts and bequests that would be completely unreportable by beneficiaries if received from a U.S. source instead of a foreign source.[41] While this step would not solve the problem of disproportionate IIR penalties, it would represent significant and very feasible progress toward more equitable treatment of gifts and bequests from foreign individuals and estates.

International Information Return Penalties Are Not Just the Problem of the Rich

These penalties are sometimes thought of as a niche issue impacting only the very wealthy with lucrative and vast holdings abroad. Nevertheless, data with respect to IRC § 6039F, as well as IRC §§ 6038 and 6038A, make clear that this is far from the case. Instead, the IIR regime sweeps lower- and middle-income taxpayers into its broad and punitive grasp.

These penalties are sometimes thought of as a niche issue impacting only the very wealthy with lucrative and vast holdings abroad. But the international information return regime sweeps lower- and middle-income taxpayers into its broad and punitive grasp.

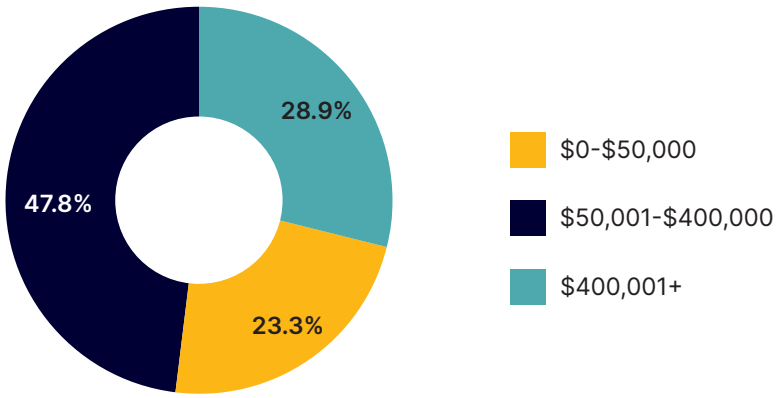
For example, as Figure 2.8.3 shows, the IRS imposed 53 percent of IRC § 6039F penalties against taxpayers with between $50,000 and $400,000 of income.[42] Remarkably, another 36 percent of the taxpayers incurring this penalty had income between zero and $50,000.[43] Collectively, this group of taxpayers, whose income ranged from zero to $400,000, was assessed an average penalty of over $235,000.[44] This is not just a rich person's problem and overwhelmingly impacts unsophisticated lower- and middle-income taxpayers.

This same phenomenon is apparent in the context of IRC §§ 6038 and 6038A penalties. When the IRS applies IRC § 6038 penalties to individuals, 71 percent are assessed against taxpayers with income of $400,000 or less.[45] The average penalty amount for these individuals is over $42,500.[46] Figure 2.8.4 shows this income stratification.

41 According to the U.S. Bureau of Labor Statistics, $100,000 in 1997, when the IRS created this guidance, is today the equivalent of over $190,000. U.S. Bureau of Lab. Stats., CPI Inflation Calculator, https://www.bls.gov/data/inflation_calculator.htm (last visited June 13, 2023).
42 IRS, CDW, IMF and IRTF (Sept. 2023).
43 *Id.*
44 *Id.*
45 *Id.*
46 *Id.*

FIGURE 2.8.4[47]

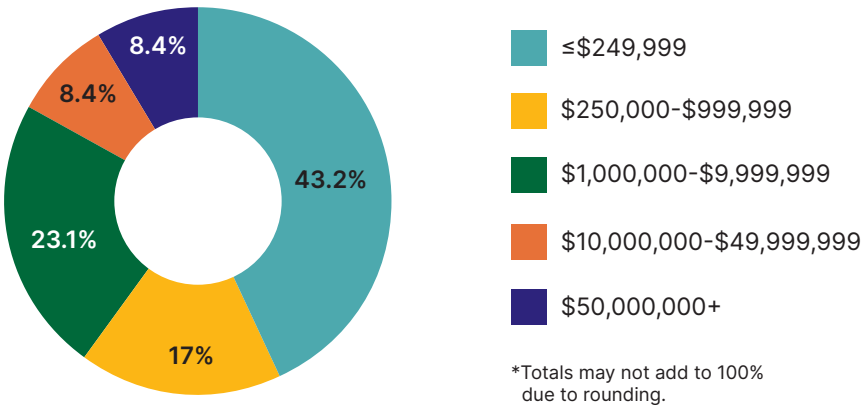
Individual IRC § 6038 Penalties by Total Positive Income, 2018-2021



IIR penalties do not only impact lower- and middle-income individual taxpayers. Small and midsize businesses also bear a disproportionate burden. Specifically, small and midsize businesses comprise the overwhelming majority (83 percent) of systemic IRC §§ 6038 and 6038A penalty assessments, with the remaining 17 percent attributed to large businesses with assets greater than or equal to $10 million.[48] In dollar terms, small and midsize businesses are subject to 64 percent of the aggregate business penalties imposed under IRC §§ 6038 and 6038A.[49] Figure 2.8.5 illustrates this distribution.

FIGURE 2.8.5[50]

Systemic Business IRC §§ 6038 and 6038A Penalties by Total Assets, 2018-2021



47 IRS, CDW, IMF and IRTF (Sept. 2023).
48 IRS, CDW, BMF and BRTF (Sept. 2023). The IRS classifies business size based on amount of assets. In this subsection, we focus on businesses receiving systemic assessments, as the vast majority of IIR penalties assessed to businesses are imposed via that mechanism.
49 IRS, CDW, BMF and BRTF (Sept. 2023).
50 *Id.*

IRC §§ 6038 and 6038A do provide for abatements based on reasonable cause. Even here, though, better outcomes correlate to greater resources. Analysis undertaken by TAS Research indicates that abatements of IRC § 6038 penalties are more likely to be received by larger businesses.[51]

The reach of IIR penalties goes far beyond the mega-wealthy and the Fortune 500. It broadly affects lower- to middle-income individuals and small and midsize businesses. The often-large penalties generated by the regime, combined with other compounding factors raise serious concerns regarding equity, due process, and access to justice.

Interplay With Foreign Account Tax Compliance Act and Report of Foreign Bank and Financial Accounts Penalties

IIR penalties intertwine with related reporting obligations, which complicates compliance and increases penalty exposure. For example, taxpayers with foreign accounts and assets must substantially duplicate information reporting required by the Foreign Account Tax Compliance Act (FATCA) regime[52] and the information reporting required by the Financial Crimes Enforcement Network (FinCEN), which is satisfied by submitting the Report of Foreign Bank and Financial Accounts (FBAR).[53] Much of the information requested by the two Treasury Department bureaus is duplicative, yet affected individuals must complete separate forms for each, and failures to report correctly and completely in either or both contexts result in a separate, overlapping set of penalties, even when little or no tax is owed. This duplication is costly and burdensome and can lead to the mistaken belief that reporting for one has satisfied the requirement for the other.[54] Such is not the case, however, and taxpayers are at risk of potentially causing IIR penalties or FBAR penalties, the latter of which can be exorbitant if the FBAR reporting failure is deemed to be "willful."[55]

The IRS has become increasingly aggressive in asserting that taxpayers' failures to file are willful, which leads to draconian penalties for good-faith errors.[56] In prior years, the National Taxpayer Advocate has proposed legislative recommendations to address these problems:

1. Reduce taxpayer reporting burden and government costs to process and store the same or similar information twice by eliminating duplicative filing requirements for taxpayers with foreign accounts and assets;[57]

51 IRS, CDW, BMF and BRTF (Sept. 2023). The abatement rate for these penalties assessed from 2018 through 2021 was 72 percent for partnerships and corporations reporting less than $1 million in total assets, compared to an abatement rate of 85 percent for those corporations and partnerships reporting $100 million or more of total assets.

52 *See* Hiring Incentives to Restore Employment Act, Pub. L. No. 111-147, 124 Stat 71 (2010) (adding Chapter 4 of IRC §§ 1471-1474; IRC § 6038D), collectively referred to as the Foreign Account Tax Compliance Act; 31 U.S.C. § 5314 and 31 C.F.R. §§ 1010.350, 1010.306(c).

53 *See id.*

54 *See also* National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* (*Eliminate Duplicative Reporting Requirements Imposed by the Bank Secrecy Act and the Foreign Account Tax Compliance Act*).

55 *See also* National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* (*Modify the Definition of "Willful" for Purposes of Determining Report of Foreign Bank and Financial Accounts Violations and Reduce the Maximum Penalty Amounts*).

56 *See* Erin M. Collins, Foreign Information Penalties: Part Three: Keeping a Watchful Eye on the FBAR Guard Dog, National Taxpayer Advocate Blog (May 2, 2023), https://www.taxpayeradvocate.irs.gov/news/nta-blog-chapter-61-foreign-information-penalties-part-three/.

57 National Taxpayer Advocate 2023 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 13 (*Eliminate Duplicative Reporting Requirements Imposed by the Bank Secrecy Act and the Foreign Account Tax Compliance Act*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_PurpleBook_02_ImproveFiling_6.pdf.

2. Clarify that the government has the burden to establish willfulness by clear and convincing evidence before asserting a civil willful FBAR penalty and that the government cannot meet this burden by relying on the Schedule B attached to a return;[58] and
3. Eliminate 31 U.S.C. § 5321(a)(5)(C)(i)(I), which would narrow the statutory maximum civil penalty for a willful FBAR violation to no greater than 50 percent of the balance in the account at the time of the violation so that a $100,000 penalty is not imposed with respect to low-balance accounts.[59] These challenges continue to be a thorn in the side of U.S. taxpayers and cause unnecessary burdens.

Systemic Application of International Information Return Penalties Squanders the Resources of Both Taxpayers and the IRS

The disproportionality of IIR penalties is bad enough when considered in isolation. The harsh results sometimes generated by these penalties, however, are exacerbated because IIR penalties are systemically assessed. This occurs as an automatic matter when IRS systems process late information returns.[60] Systemically assessing penalties when taxpayers willingly come forward and file their late returns discourages voluntary compliance.[61] This is especially problematic because these penalties, assessed in haste and without consideration of case-specific facts and circumstances, can only be dealt with after the time-consuming and burdensome dedication of resources by both taxpayers and the IRS.

For many IIR penalties, much of this late filing is ultimately determined to result from innocent circumstances, including unavailability of the requisite information and IRS error.[62] This situation inevitably generates a large number of penalty abatements. Although abatements are always preferable to improperly assessed and collected penalties, high abatement rates indicate flawed policies and that there may be a better way to proceed.

TAS analyzed abatement rates for the IRC §§ 6038 and 6038A penalties since they are the most frequently assessed IIR penalties, averaged across 2018-2021. We analyzed this data for systemic and for manual (Individual Master File) assessments in terms of both numbers and dollars, as shown in Figure 2.8.6.[63] Across these four years, for systemic assessments, the abatement percentage, measured by number of penalties, was 74 percent and by dollar value was 84 percent.[64] Manual assessments for individual taxpayers were abated at a rate of only 27 percent by number and 16 percent by dollar amount.[65]

58 National Taxpayer Advocate 2023 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 75 (*Modify the Definition of "Willful" for Purposes of Finding Report of Foreign Bank and Financial Accounts Violations and Reduce the Maximum Penalty Amounts*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_PurpleBook_04_ReformPenInts_34.pdf.

59 *Id.*

60 The IRS uses systemic assessment for business taxpayers rather than individual taxpayers. *See* IRM 21.8.2.20.2, Form 5471 Penalties Systemically Assessed from Late-Filed Form 1120 Series or Form 1065 (Oct. 1, 2023), https://www.irs.gov/irm/part21/irm_21-008-002r; IRM 21.8.2.21.2, Form 5472 Penalties Systemically Assessed from Late-Filed Form 1120 Series (Oct. 1, 2023), https://www.irs.gov/irm/part21/irm_21-008-002r.

61 *See* Daniel N. Price, Response to request for public comments on Forms 3520 and 3520-A, OMB No. 1545–0159 (Feb. 9, 2023), https://www.pricetaxlaw.com/_files/ugd/6311c3_2d54fe7a201141bb9b89af2da098e83e.pdf.

62 These examples are drawn from TAS's observations. *See also* IRS response to TAS information request (Oct. 1, 2020).

63 IRS, CDW, IMF/BMF (Sept. 2023). Because the numbers for the manual versus systemic assessments under each code section were in similar proportion, if not similar volumes, TAS has combined the data for these two penalties to present more simplified numbers. Abatement rates generally increase as more time elapses from the assessment date.

64 IRS, CDW, BMF (Sept. 2023).

65 IRS, CDW, IMF (Sept. 2023).

FIGURE 2.8.6, IRC §§ 6038 and 6038A Data, Annual Averages for 2018-2021[66]

Type of Assessment	Number of Penalties Assessed	Dollar Amount Assessed	Number of Abatements	Dollars Abated	Abatement Percentage by Number	Abatement Percentage by Dollar
Systemic	10,052	$390.8 million	7,484	$327.8 million	74%	84%
Manual (Individual Master File)	915	$44.0 million	248	$7.2 million	27%	16%

With abatement rates as high as 74 percent by number of penalties, the IRS should not be burdening taxpayers with a procedure that automatically and mechanically assesses penalties and then leaves things to be worked out later. Instead, it is more sensible and equitable for the IRS to apply an element of caution in IIR penalty administration. This is precisely what occurs when the IRS applies penalties manually, which involves discretion and oversight of IRS personnel. The result of this human deliberation, as opposed to unthinking, systemic action, is the assessment of far fewer penalties that the IRS must subsequently abate.

The IRS should also adopt an approach that elevates education over retribution. As TAS previously proposed, the IRS should extend FTA to cover IIR penalties, which it could implement systemically.[67] This policy would represent a more streamlined and comprehensive version of what is already occurring as a practical matter for many systemically assessed and subsequently abated IIR penalties.[68]

The IRS could mail a letter to taxpayers who would have incurred an IIR penalty but for use of such an FTA to inform them of the waiver, clarifying where they went wrong and explaining that there will be no more administrative waiver for the next three years. This policy would add an important element of humane tax administration to the otherwise heavy-handed and mechanical functioning of the IIR penalty regime.

Classification of International Information Return Penalties as Immediately Assessable Can Subject Taxpayers to an Additional Layer of Hardship

Some Taxpayers May Face What Feels Like Strict Liability

The IRS is best served by focusing on compliance rather than retribution. Nevertheless, IIR penalties disproportionately and indiscriminately punish taxpayers while narrowing their options for judicial review. This limitation on the terms of judicial oversight is especially problematic given the harsh terms of IIR penalties.

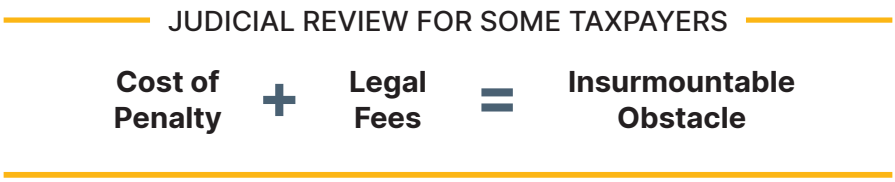
66 IRS, CDW, IMF (Sept. 2023). Because of such factors as the broad penalty relief provided in IRS Notice 2022-36 and processing delays due to COVID-19, penalty data in any given recent year may not be illustrative of long-term trends. For this reason, we are presenting a four-year average.

67 National Taxpayer Advocate 2020 Annual Report to Congress 131 (Most Serious Problem: *International: The IRS's Assessment of International Penalties Under IRC §§ 6038 and 6038A Is Not Supported by Statute, and Systemic Assessments Burden Both Taxpayers and the IRS*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_MSP_08_International.pdf.

68 FTA is applied to IIR penalties when it is applied to the underlying return, but it could also be applied more broadly without reference to the underlying return. National Taxpayer Advocate 2020 Annual Report to Congress 128 (Most Serious Problem: *International: The IRS's Assessment of International Penalties Under IRC §§ 6038 and 6038A Is Not Supported by Statute, and Systemic Assessments Burden Both Taxpayers and the IRS*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_MSP_08_International.pdf.

Some IIR penalties are specifically designated as assessable by Chapter 68, Subchapter B of the IRC, or explicitly cross-reference other portions of the IRC providing authority to immediately assess the penalties.[69] Other IIR penalties, residing within Chapter 61, Subchapter A, such as the IRC §§ 6038, 6038A, and 6039F(c)(1)(B) penalties, have historically also been treated by the IRS as assessable. The IRS immediately assesses such penalties, and taxpayers have no recourse to U.S. Tax Court review because jurisdiction in that court generally depends on the existence of a deficiency.[70] Instead, taxpayers wishing to obtain judicial review of an assessable penalty must pay that penalty, and only then are they able to contest it in a federal district court or the U.S. Court of Federal Claims.[71]

This jurisdictional requirement and the out-of-pocket expense it entails can be exasperating for many taxpayers, but where IIR penalties are concerned, it can represent an insurmountable obstacle on account of the sometimes-huge penalty assessments. Such is particularly the case for lower- to middle-income taxpayers, who may be prevented from seeking judicial review, even of obviously incorrect IRS determinations, by the combined cost of the penalty and associated legal fees. One professional group explained to TAS that the government often delays settlement discussions until late in the litigation process, effectively requiring litigants to incur legal fees in the range of $100,000 just to contest the penalties in court.[72]



The IRS does allow taxpayers to seek a post-assessment, prepayment review in the IRS Independent Office of Appeals, which can include a reasonable cause defense. Nevertheless, administrative relief depends on IRS discretion, which leaves many at the mercy of the IRS given the limited options for judicial review.[73] For non-wealthy taxpayers, treatment of IIR penalties as assessable can create a *de facto* strict liability situation, in which these taxpayers are effectively barred from challenging IRS administrative decisions because of their lack of sufficient wealth. The entire IIR penalty regime, incorporating disproportionately large penalties that are systemically assessed and can be difficult to challenge, raises serious concerns regarding equity, due process, and access to judicial review.

69 *See, e.g.*, IRC §§ 6039F(c)(1)(B), 6677(e), 6679(b). By contrast, penalties calculated by looking to an understatement of tax on taxpayers' underlying returns are generally subject to deficiency procedures. In this circumstance, the IRS must issue taxpayers a statutory notice of deficiency giving them the opportunity for prepayment review in Tax Court. If the case cannot be resolved administratively, the IRS can only assess and collect the penalty when no judicial review is sought or when the Tax Court and other subsequent appellate courts sustain the IRS's position. Other penalties, however, typically those determined without reference to the underlying return, are treated as assessable penalties.

70 *See generally* IRC §§ 6211-6213.

71 IRC § 7422.

72 Discussions with outside stakeholders (July 25, 2023).

73 *See* National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* (*Expand the U.S. Tax Court's Jurisdiction to Hear Refund Cases*); National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* (*Provide That Assessable Penalties Are Subject to Deficiency Procedures*).

The Farhy Decision Presents the IRS With Both Problems and Opportunities

In a recent decision in *Farhy v. Commissioner*, the U.S. Tax Court ruled that the IRS could not assess and collect IRC § 6038(b) penalties because Congress had failed to grant the statutory authority to do so.[74] The analysis of the *Farhy* opinion appears to make its holding applicable, by analogy, to most IIR penalties within Chapter 61, Subchapter A.[75] This outcome throws much of the IIR penalty regime and the IRS's ability to enforce it into disarray.[76]

The government is appealing the *Farhy* opinion to the D.C. Circuit Court of Appeals and arguing that the Tax Court's decision should be reversed.[77] Regardless of how the D.C. Circuit ultimately rules, the IRS and Congress should treat *Farhy* as a golden opportunity to revisit the IIR penalty regime and make it more fair for taxpayers.

The IRS's reliance on systemic assessments also raises the legal issue of whether the IRS has met the requirements of IRC § 6751(b) by providing only a notation of penalty approval from the IRS reporting system, the Accounts Management System, as proof of supervisory approval.[78] This issue is currently being litigated in the U.S. Tax Court.[79]

The IRS should work with Congress to make all IIR penalties subject to deficiency procedures. This would solve the IRS's immediate enforcement problem while representing a substantial benefit for taxpayers. Since taxpayers would be granted a forum in the U.S. Tax Court in which to seek prepayment judicial review, they would no longer face the potential inequity of being shut out of the court system on account of lack of sufficient financial resources. For the first time, lower- and middle-income taxpayers would have access to the same due process afforded wealthy taxpayers in the context of IIR penalties. The IRS would also have an incentive to proceed cautiously in asserting IIR penalties, as impacted taxpayers could cost-effectively challenge these penalties.

If IIR penalties were subject to deficiency procedures, the IRS would also immediately benefit. The IRS cannot effectively move forward before resolution of the issue raised in *Farhy*, and this approach would provide the IRS with much-needed certainty. It would also definitively clarify the issue in a way that is equitable for taxpayers and protects their due process rights. This matters because tax compliance is most effective when taxpayers feel they are being treated fairly.[80] Adopting deficiency procedures for IIR penalties would provide significant benefits for both taxpayers and tax administration.

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74 *Farhy v. Commissioner*, 160 T.C. No. 6 (Apr. 3, 2023). *See also* Erin M. Collins, Chapter 61 Foreign Information Penalties: Part One: Taxpayers and Tax Administration Need a Legislation Fix, National Taxpayer Advocate Blog (Apr. 20, 2023) https://www.taxpayeradvocate.irs.gov/news/nta-blog-chapter-61-foreign-information-penalties-part-one/.

75 Andrew Velarde, *Official Says Info Return Penalty Suits Not Feasible After* Farhy, Tax Notes, June 5, 2023, at 1409, https://www.taxnotes.com/tax-notes-today-international/penalties/official-says-info-return-penalty-suits-not-feasible-after-farhy/2023/05/30/7gs0m.

76 *See, e.g.*, Nathan J. Richman, *Appeals Plans to Concede Unassessable Penalty CDP Cases*, Tax Notes, June 9, 2023, at 1457, https://www.taxnotes.com/tax-notes-today-international/information-reporting/appeals-plans-concede-unassessable-penalty-cdp-cases/2023/06/09/7gvhw. Appeals has since treated this as a coordinated issue. IRS response to TAS fact check (Nov. 16, 2023).

77 Leslie Book, *Government Files Notice of Appeal in* Farhy, Procedurally Taxing (July 14, 2023), https://www.taxnotes.com/procedurally-taxing/government-files-notice-appeal-farhy/2023/07/14/7h6r6.

78 Andrew Velarde, *IRS Looks to Fight Informational Return Penalty Approval Case*, Tax Notes, Sept. 1, 2023, at 1300, https://www.taxnotes.com/tax-notes-today-international/penalties/irs-looks-fight-information-return-penalty-approval-case/2023/09/01/7h801.

79 *Ching Tzu Lu a.k.a. Susan Lu, Petitioner v. Comm'r*, No. 10523-23L (T.C. filed July 1, 2023).

80 Marjorie E. Kornhauser, *A Tax Morale Approach to Compliance: Recommendations for the IRS*, 8 Fla. Tax Rev. 599 (2007), https://journals.upress.ufl.edu/ftr/article/view/388/367; John Hasseldine and Peggy Hite, *Key Determinants of Compliance and Noncompliance*, Tax Notes, Oct. 23, 2007, https://www.taxnotes.com/tax-notes-today-federal/compliance/key-determinants-compliance-and-noncompliance/2007/10/23/xkzr.

CONCLUSION AND RECOMMENDATIONS

When a taxpayer voluntarily corrects the failure to file an IIR, their good-faith action has the unexpected effect of causing the IRS to automatically assess a penalty. Furthermore, in light of the *Farhy* opinion, the IRS's ability to assess and collect most IIR penalties may be jeopardized. If the IRS does not administratively abate the assessed penalty, taxpayers will need to pay the penalty in full before seeking judicial review.

The IIR penalty regime is characterized by attributes that impose significant hardships on taxpayers, especially for lower- to middle-income taxpayers and small and midsize businesses. The penalties themselves are often disproportionate and extraordinarily harsh when considered in light of the underlying tax liabilities involved. Rather than being imposed on taxpayers who are voluntarily filing late information returns correcting an honest mistake or curing past noncompliance, they should be reserved for bad actors. To make matters worse, the majority of IIR penalties are systemically assessed, which leads to the broad imposition of these penalties, even when they may be inappropriate under the circumstances. Because the IRS has treated IIR penalties as assessable penalties, taxpayers are also deprived of a prepayment forum in the U.S. Tax Court and can only obtain review of IRS administrative actions by first paying the penalties and then taking the case to a federal district court or the Court of Federal Claims.

These factors have historically placed taxpayers subject to IIR penalties in a difficult position and may have caused extreme financial hardship for many. Given the U.S. Tax Court's recent decision in *Farhy v. Commissioner*, however, the IRS has problems of its own. Nevertheless, the IRS continues to systemically assess and collect these penalties. The solution for taxpayers and the IRS is a comprehensive administrative and statutory reform of the IIR penalty regime in which the IRS enforces penalties in a way that is more educational than punitive and imposes them via a system similar to deficiency procedures. Taxpayers have the *right to a fair and just tax system*,[81] and the IRS's procedural approach to IIR penalties continues to cause hardship and inequities for many. Protection of taxpayer rights is a bedrock aspect of quality tax administration.

ADMINISTRATIVE RECOMMENDATIONS TO THE IRS

The National Taxpayer Advocate recommends that the IRS:

1. Stop automatic assessment and collection of Chapter 61 IIR penalties prior to considering the taxpayer's specific facts and circumstances, including providing the taxpayer their appeal rights with the Independent Office of Appeals.
2. Update the Internal Revenue Manual to require review of any reasonable cause relief requests before assessing penalties when these requests are submitted in conjunction with IIRs potentially giving rise to penalties.
3. Extend eligibility for FTA to all IIR penalties regardless of whether the underlying return was filed late.
4. Revise Notice 97-34 or issue guidance to make the administrative $100,000 threshold subject to the same inflation adjustments as the $10,000 threshold set forth in IRC § 6039F.
5. Update Schedule B and the related instructions to include foreign gifts as potentially reportable transfers.

81 *See* IRC § 7803(a)(3)(J).

LEGISLATIVE RECOMMENDATIONS TO CONGRESS

The National Taxpayer Advocate recommends that Congress:

1. Amend IRC § 6212 to require the Secretary to establish procedures to send a notice of IIR penalties to the taxpayer by certified mail or registered mail for adjudication with the U.S. Tax Court prior to assessing any "assessable penalty" or other IIR penalty listed in Chapter 61, Subchapter A, Part III, Subpart A.[82]
2. Clarify that the government has the burden to establish willfulness by clear and convincing evidence before asserting a civil willful FBAR penalty and that the government cannot meet this burden by relying on the Schedule B attached to a return.[83]
3. Eliminate 31 U.S.C. § 5321(a)(5)(C)(i)(I), which would have the effect of narrowing the statutory maximum civil penalty for a willful FBAR violation to no greater than 50 percent of the balance in the account at the time of the violation so that a $100,000 penalty is not imposed with respect to low-balance accounts.[84]
4. Amend IRC § 6038D and 31 U.S.C. § 5314 to eliminate duplicative reporting of assets on Form 8938 where a foreign financial account is correctly reported or reflected on an FBAR while ensuring continued IRS access to foreign financial asset data for both tax compliance and financial crime enforcement purposes.[85]

RESPONSIBLE OFFICIALS

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

Holly Paz, Commissioner, Large Business and International Division

Kenneth Corbin, Commissioner, Wage and Investment Division

82 *See* National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* (*Provide That Assessable Penalties Are Subject to Deficiency Procedures*).

83 National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* (*Modify the Definition of "Willful" for Purposes of Determining Report of Foreign Bank and Financial Accounts Violations and Reduce the Maximum Penalty Amounts*).

84 *Id.*

85 National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* (*Eliminate Duplicative Reporting Requirements Imposed by the Bank Secrecy Act and the Foreign Account Tax Compliance Act*).

COMPLIANCE CHALLENGES FOR TAXPAYERS ABROAD

Taxpayers Abroad Continue to Be Underserved and Face Significant Challenges in Meeting Their U.S. Tax Obligations

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Taxpayers abroad face vast difficulties in complying with their U.S. tax obligations. Many find themselves trying to navigate a complex tax system they do not understand, and the IRS offers limited assistance and guidance. Taxpayers outside the United States face filing requirements not typically applicable to taxpayers living in the United States, with the added layer of complexity of applying the laws and treaties unique to the country in which they reside. Taxpayers lack accessible, real-time customer service assistance from the IRS, and help from private tax professionals, if available, is often expensive; both contribute to additional burden for these taxpayers. Taxpayers abroad may face severe penalties if they fail to file forms, some of which they may not even be aware.[1] The complexity of the tax code, the inability to easily comply, and the fear of severe penalties are so great that some taxpayers choose to relinquish their U.S. citizenship.[2]

EXPLANATION OF THE PROBLEM

International taxpayers face a complex tax code that, combined with the lack of IRS service and a comprehensive plan targeted at fixing these issues, results in frustration and non-compliance.

1 *See* Most Serious Problem: *International: The IRS's Approach to International Information Return Penalties Is Draconian and Inefficient*, *supra*.

2 Kate Dore, *The Top Reason Why Americans Abroad Want to Dump Their U.S. Citizenship*, CNBC, May 18, 2021, https://www.cnbc.com/2021/05/18/the-top-reason-why-americans-abroad-want-to-dump-their-citizenship.html (citing a 2021 study of over 3,100 U.S. citizens living overseas that found nearly one in four were considering giving up their citizenship and more than four in ten of those citing U.S. tax compliance as their reason). On October 2, 2023, the U.S. State Department published a Proposed Rule to reduce the current fee for processing requests for a Certificate of Loss of Nationality of the United States from $2,350 to $450, citing anecdotal evidence suggesting that "difficulties due at least in part to stricter financial reporting requirements imposed by the Foreign Account Tax Compliance Act (FATCA) ... may well be a factor" in the motivation for U.S. citizens to renounce their citizenship. *See* Schedule of Fees for Consular Services-Administrative Processing of Request for Certificate of Loss of Nationality (CLN) Fee, 88 Fed. Reg. 67687 (Oct. 2, 2023) (to be codified at 22 C.F.R. § 22.1). Public Comments to the Proposed Rule are also replete with recitations of compliance with U.S. tax laws as a reason for relinquishing U.S. citizenship.

The burden and expense of filing tax and international information returns (IIRs), especially when a large percentage of individuals do not owe tax,[3] further the problem. The frustrations, time, expense, and complexity domestic taxpayers face are magnified for taxpayers abroad and exacerbated by the added layer of another country's tax laws and the potential for severe penalties for mistakes and omissions.

Challenges and issues that taxpayers abroad continue to face in meeting their U.S. federal tax obligations include:

- Significant difficulties complying with complex tax laws and filing requirements, finding affordable and competent help, and accessing declining IRS customer service options;
- Difficulty obtaining an Individual Taxpayer Identification Number (ITIN) and no ability to efficiently check the status of their application; and
- Timeframes for taxpayers abroad to respond to key IRS notices are insufficient, and in the case of certifications for passport revocations, non-existent.

ANALYSIS

U.S. taxation of individual taxpayers abroad is extremely complex. The United States, unlike almost every other country, taxes its citizens and residents on worldwide income, regardless of the taxpayer's residency ("citizen-based taxation"). This means the U.S. tax code requires a U.S. citizen or a resident alien[4] to file a U.S. income tax return reporting all worldwide income, regardless of where the individual lives. Additionally, the U.S. tax regime applies to nonresident aliens[5] and foreign businesses with U.S.-source income and operations. Foreign persons are generally subject to "net-basis" U.S. tax on income that is effectively connected with a U.S. trade or business.[6] Foreign persons are also subject to a "gross-basis" U.S. tax at a 30 percent rate on certain other categories of U.S.-source income (*e.g.*, interest, dividends, rents, royalties) subject to exceptions and limitations.[7]

Because the U.S. tax code's application is so broad, it captures many types of taxpayers. For example, U.S. citizens who move overseas and do not relinquish their U.S. citizenship remain subject to U.S. tax law. Also "accidental Americans"[8] have U.S. tax obligations even though they often do not realize it and may not even be aware they are U.S. citizens. Citizens of other countries who come to the United States temporarily can be subject to U.S. taxation, such as foreign students who may have a U.S. filing obligation.[9] In some cases, individuals who have never been in the country are subject to U.S. taxation; for example, the United States may tax a foreign person who receives dividends from a U.S. corporation on the dividends. In addition to intricate statutory rules for the taxation of foreign income of U.S. persons and U.S. income of foreign persons, the United States has bilateral income tax treaties with 66 countries.[10]

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3 Approximately 62 percent of individual international taxpayers reported zero tax liability between 2016 and 2021. IRS, Compliance Data Warehouse (CDW), Individual Returns Transaction File (IRTF) Tax Years (TYs) 2016-2021 (through Sept. 28, 2023).

4 A resident alien is defined as an individual who is not a U.S. citizen and: (1) is a lawful permanent resident of the U.S. (*i.e.*, a green card holder); (2) meets the substantial presence test under IRC § 7701(b)(3) and Treas. Reg. § 301.7701(b)-1(c); or (3) makes an election under IRC § 7701(b)(4) to be treated as a resident alien. IRC § 7701(b); Treas. Reg. § 301.7701(b)-1.

5 Nonresident aliens are individuals who are not U.S. citizens or resident aliens. *See* IRC § 7701(b)(1)(B).

6 *See generally* IRC §§ 871, 872, 881, 882. A U.S. person is any citizen or resident of the United States, a domestic partnership or corporation, or any estate or trust that is not considered foreign. Any person who does not fit the definition of a U.S. person is considered a foreign person. *See generally* IRC § 7701.

7 *See generally* IRC §§ 871 and 881.

8 "Accidental Americans" are citizens of a foreign country who were born in the United States and only lived there for a brief time or were born outside the United States to a parent with U.S. citizenship.

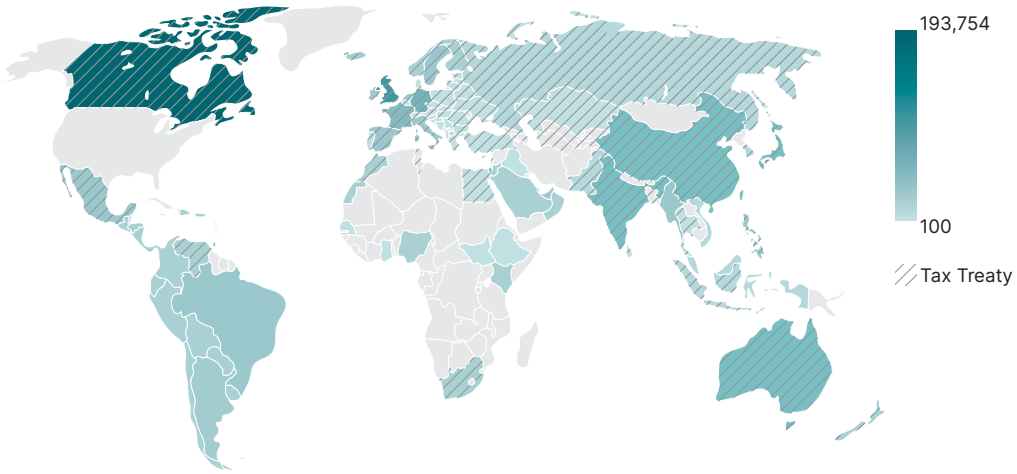
9 IRS, Foreign Students, Scholars, Teachers, Researchers and Exchange Visitors (Nov. 8, 2023), https://www.irs.gov/individuals/international-taxpayers/foreign-students-scholars-teachers-researchers-and-exchange-visitors.

10 IRS, United States Income Tax Treaties – A to Z (Oct. 27, 2023), https://www.irs.gov/businesses/international-businesses/united-states-income-tax-treaties-a-to-z. *See also* IRS, Tax Treaty Tables (May 22, 2023), https://www.irs.gov/individuals/international-taxpayers/tax-treaty-tables. For a recent case illustrating the complexity of applying statutory requirements and treaty provisions, see *Aroeste v. United States*, No. 3:22-cv-00682, 2023 WL 8103149 (S.D. Cal. Nov. 20, 2023) (holding that a Mexican citizen with U.S. lawful permanent residency status was not a "U.S. person" required to file a Report of Foreign Bank and Financial Accounts).

Because of the broad and complicated nature of the U.S. tax system, it is difficult to quantify the number of taxpayers impacted. According to the U.S. Department of State, roughly nine million U.S. citizens reside abroad as of 2020, including military personnel, students studying abroad, and State Department employees.[11] Other estimates and methodologies vary, ranging from 3.9 to 4.8 million (not including military).[12] Estimates may not include "accidental Americans"[13] and do not include non-resident individuals and foreign businesses with U.S. tax obligations. While the exact numbers are unclear, the number of taxpayers abroad with U.S. tax obligations is significant.

FIGURE 2.9.1[14]

U.S. International Individual Tax Filers by Country, TY 2021



The IRS acknowledged in the Taxpayer First Act Report to Congress that international taxpayers have less access to IRS services and much lower e-filing rates.[15] In her 2022 Annual Report to Congress, the National Taxpayer Advocate recommended that the IRS develop a comprehensive customer service strategy for U.S. citizens and resident aliens abroad and foreign individuals with U.S. tax obligations, and the IRS agreed.[16] However, the IRS has not conducted any studies to assess the population's needs.[17] Because of the complexity of the tax laws and lack of IRS service and assistance, the number of taxpayers abroad who may not comply, either inadvertently or intentionally, is unknown but potentially sizeable. Until the IRS assesses the international population and makes a concerted effort to educate and assist this population in meeting its U.S. tax obligations, noncompliance will continue.

11 *See* U.S. Dep't. of State, Bureau of Consular Affs., Consular Affairs by the Numbers (2020), https://travel.state.gov/content/dam/travel/CA-By-the-Number-2020.pdf. TAS is not aware of a more recent government study.
12 *ACA/DEG Analysis of Revenue Effects of Residence-Based Taxation*, Am. Citizens Abroad (Apr. 28, 2022), https://www.americansabroad.org/articles/aca-deg-analysis-of-revenue-effects-of-residence-based-taxation/; *State of the Overseas Voter*, Fed. Voting Assistance Program, https://www.fvap.gov/info/reports-surveys/overseas-citizen-population-analysis (last visited Dec. 7, 2023).
13 Banking organizations estimated that in Europe in 2016 there were more than 110,000. *See* Vivienne Walt, *Why 'Accidental Americans' Are Desperate to Give Up Their U.S. Citizenship*, Time, Dec. 23, 2020, https://time.com/5922972/accidental-americans-fatca/.
14 IRS, CDW, IRTF TY 2021 (through Sept. 28, 2023).
15 IRS, Pub. 5426, Taxpayer First Act Report to Congress (Jan. 2021), https://www.irs.gov/pub/irs-pdf/p5426.pdf.
16 TAS Recommendations and IRS Responses, TAS Recommendation 10-1 (2022), https://www.taxpayeradvocate.irs.gov/news/directory-entry/2022-msp-10-overseas-taxpayers/ (last visited Dec. 7, 2023).
17 IRS response to TAS information request (Oct. 4, 2023).

Taxpayers Abroad Experience Significant Difficulties Complying With Complex Tax Laws, Finding Help to Ensure Compliance, and Accessing Declining IRS Customer Service Options

The Complexity of the Code Adds to the Filing Challenges Taxpayers Abroad Face

The complexity of the U.S. tax code is a barrier to return filing. The average American taxpayer finds the tax code extremely difficult to understand; this is equally true for taxpayers abroad.[18] There are numerous complex and confusing areas that leave taxpayers abroad perplexed and searching for help, including determining resident status, eligibility for credits, and business and retirement issues.

Taxpayers who are not U.S. citizens must determine their resident status, which can be difficult. They must figure out whether they are resident aliens by meeting either the green card test or the substantial presence test.[19] Because the code taxes resident and nonresident aliens differently, this determination is crucial, and an incorrect determination can cost taxpayers money. Similarly, while taxpayers abroad may claim certain benefits like the foreign earned income exclusion, foreign housing allowance, and the foreign tax credit,[20] the rules for determining eligibility for these benefits are complicated by any standard.[21] Taxpayers residing abroad must navigate complicated tax laws if they own businesses. Many provisions are relatively new,[22] and the application of the tax on global intangible low-taxed income (GILTI) to small businesses operating overseas has been particularly challenging.[23] Retirement plans present another area of complexity. U.S. taxpayers who participate in foreign workplace retirement plans need to determine whether the code taxes them on the contributions, earnings, and transfers of assets between plans,[24] which requires the taxpayers to figure out the laws of the United States and the country they reside in as well as any relevant tax treaties.[25]

The requirements to file numerous IIRs are one area of significant complexity.[26] The tax code may significantly penalize taxpayers for failing to comply with the requirements or incorrectly completing the forms.[27] These IIRs are convoluted, and the instructions are not intuitive, *e.g.*, Forms 3520, Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts, and 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner. The forms' instructions are often inconsistent and confusing regarding due dates. Taxpayers must file the forms on paper,[28] and the compliance burden

18 National Taxpayer Advocate 2022 Annual Report to Congress 45, 48 (Most Serious Problem: *Complexity of the Tax Code: The Complexity of the Tax Code Burdens Taxpayers and the IRS Alike*), https://www.taxpayeradvocate.irs.gov/reports/2022-annual-report-to-congress/most-serious-problems.

19 IRC § 7701(b)(1)(A)(i), (ii). The substantial presence test requires an exhaustive and confusing computation of the number of days they were physically present in the United States during the current year and the preceding two years. IRC § 7701(b)(1)(A)(ii). *See also* IRS Topic No. 851, Resident and Nonresident Aliens (June 15, 2023), https://www.irs.gov/taxtopics/tc851. Even if a taxpayer doesn't qualify, they can still choose to be treated as a U.S. resident for part of the year under the first year election. *See* IRC § 7701(b)(1)(A)(iii).

20 *See generally* IRC §§ 901, 903, 904, 911, 912. For instance, U.S. taxpayers abroad may be entitled to claim the foreign tax credit if they paid foreign taxes on income that is also subject to U.S. tax. IRC § 901. In TY 2021, approximately 271,000 taxpayers filed Form 1116, Foreign Tax Credit (Individual, Estate, or Trust). IRS CDW, IRTF TY 2021 (through Sept. 28, 2023).

21 Publication 514, a 49-page document, suggests that taxpayers may also need to see other publications and forms. IRS, Pub. 514, Foreign Tax Credits for Individuals (Jan. 31, 2023).

22 *See* Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (2017).

23 IRC § 951A; Ines Zemelman, EA, *Global Intangible Low-Taxed Income (GILTI): What It Is, How It Works & Examples*, Taxes for Expats (Aug. 21, 2023), https://www.taxesforexpats.com/articles/foreign-business/global-intangible-low-taxed-income-gilti.html.

24 *See* Christopher R. Callahan, *U.S. Tax Laws Governing Foreign Pensions*, Tax Notes, Dec. 6, 2022; *Debunked: Three Myths About International Retirement Plans*, H&R Block (Dec. 1, 2022), https://www.hrblock.com/expat-tax-preparation/resource-center/income/retirement/international-retirement-plan-myths/.

25 *See*, *e.g.*, IRS, The Taxation of Foreign Pension and Annuity Distributions (Mar. 9, 2023), https://www.irs.gov/businesses/the-taxation-of-foreign-pension-and-annuity-distributions.

26 Some of these include IRS Forms 3520, 3520-A, 5471, 5472, 8858, 8865, 8854, 8833, and 1120-FSC; for residents of U.S. territories, these include Forms 4563, 5074, 8689, and 8898.

27 For a detailed discussion on the penalties associated with IIRs, see Most Serious Problem: *International*: *The IRS's Approach to International Information Return Penalties Is Draconian and Inefficient*, *supra*.

28 *See* Letter from the American Institute of Certified Public Accountants (AICPA) Tax Executive Committee to Ryan K. Bessey, Senior Program Analyst, IRS Office of Servicewide Penalties (Aug. 14, 2023), https://us.aicpa.org/content/dam/aicpa/advocacy/tax/downloadabledocuments/2023/aicpa-comments-on-suggestions-for-changes-to-form-3520-and-instructions-submit.pdf.

is substantial, with the IRS estimating it takes on average 54 hours to prepare and file Form 3520 and 43 hours for Form 3520-A.[29] The IRS took a much-needed step to clarify these forms' applicability to foreign retirement plans when it issued Rev. Proc. 2020-17 to exempt certain plans from reporting under IRC § 6048.[30] Nonetheless, burdens still exist,[31] and the IRS should consider providing additional clarification, including whether the IRS will provide reporting relief to foreign pensions where deferral of tax on earnings is available under a tax treaty.

One reason for the complexity with IIRs is the overlapping statutory reporting requirements under the Foreign Account Tax Compliance Act (FATCA) and Bank Secrecy Act.[32] FATCA requires U.S. citizens, residents, and certain nonresidents to report information on foreign financial assets to the IRS when the assets' value exceeds certain thresholds.[33] The Bank Secrecy Act requires U.S. citizens and residents to report foreign accounts to the Financial Crimes Enforcement Network (FinCEN) when their combined value exceeds $10,000 at any time during the year.[34] Individuals must complete separate forms for each law: they file Form 8938, Statement of Specified Foreign Financial Assets, with their annual income tax return to comply with FATCA and FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR), to comply with the Bank Secrecy Act.[35] Individuals are subject to significant penalties for failure to report assets on one or both forms, even when they owe little or no tax.[36] The filing burden is disproportionately greater to international taxpayers, as they must file Form 8938 at considerably higher rates than domestic individuals, as Figure 2.9.2 shows.

29 IRS, 2022 Instructions for Form 3520, at 13 (Dec. 2023), https://www.irs.gov/pub/irs-pdf/i3520.pdf; IRS, 2022 Instructions for Form 3520-A, at 7 (Dec. 2023), https://www.irs.gov/pub/irs-pdf/i3520a.pdf.

30 Rev. Proc. 2020-17, 2020-12 I.R.B. 539, https://www.irs.gov/pub/irs-drop/rp-20-17.pdf.

31 *See, e.g.*, Letter from AICPA Tax Executive Committee to Ryan K. Bessey, Senior Program Analyst, IRS Office of Servicewide Penalties (Aug. 14, 2023), https://us.aicpa.org/content/dam/aicpa/advocacy/tax/downloadabledocuments/2023/aicpa-comments-on-suggestions-for-changes-to-form-3520-and-instructions-submit.pdf (suggesting an exception for certain pension plans); *Foreign Trust Transaction Reporting Must Be Improved, Firm Says*, Tax Notes, Feb. 9, 2023 (private law firm provides suggested improvements to Forms 3520 and 3520-A, including increasing the reporting thresholds); Roy A. Berg & Marsha-Laine Dungog, *U.S. Income Tax Treatment of Australian Superannuation Funds*, Tax Notes, Oct. 10, 2016 (suggesting that Australian superannuation arrangements be exempted from reporting).

32 Additionally, the National Taxpayer Advocate encourages Congress and the IRS to take legislative and regulatory action to reduce the duplicative burdens. *See* National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* (*Eliminate Duplicative Reporting Requirements Imposed by the Bank Secrecy Act and the Foreign Account Tax Compliance Act*).

33 Pub. L. No. 111-147, Title V, Subtitle A, § 511, 124 Stat. 71, 109-10 (2010) (codified at IRC § 6038D).

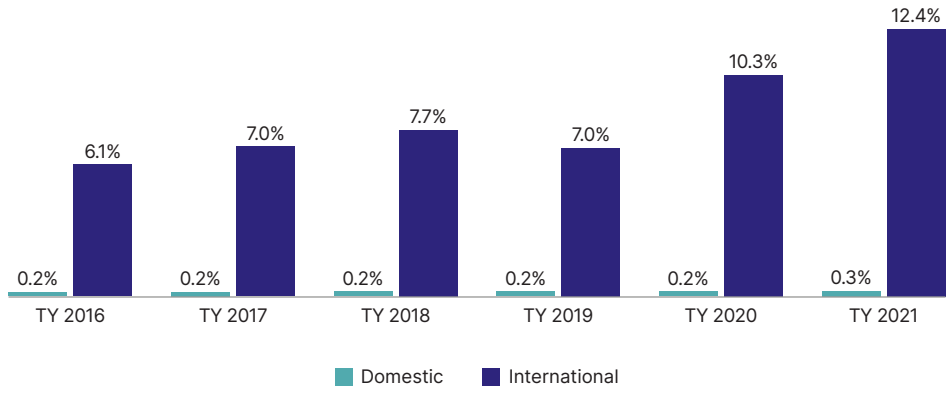
34 31 U.S.C. § 5314; 31 C.F.R. § 1010.306(c).

35 The authority to enforce the FBAR reporting requirements has been redelegated from FinCEN to the Commissioner of Internal Revenue by means of a Memorandum of Agreement between FinCEN and IRS. *See* 31 C.F.R. § 1010.810(g).

36 For example, in the context of FATCA, civil penalties begin at $10,000 for taxpayers who fail to file a complete Form 8938 plus an additional penalty of up to $50,000. IRC § 6038D(d). Non-willful violations of FBAR reporting requirements are subject to penalties of up to $10,000 (adjusted annually for inflation). 31 U.S.C. § 5321(a)(5)(B)(i); 31 C.F.R. § 1010.821. Willful violations of FBAR reporting requirements are subject to penalties of up to the greater of 50 percent of the account balance or $100,000 (adjusted for inflation), 31 U.S.C. § 5321(a)(5)(C), (D)(ii).

FIGURE 2.9.2[37]

Domestic and International Taxpayers Filing Form 8938, TYs 2016-2021



Adding to the burden on international taxpayers, the IRS offers the vast majority of tax forms and instructions in English only. The main publication for international taxpayers is Publication 54, Tax Guide for U.S. Citizens and Resident Aliens Abroad, a 35-page publication that includes information on filing requirements, withholding and self-employment tax, key exclusions and deductions, and tax treaties, among other things. However, the IRS publishes it in English only;[38] the IRS should provide Publication 54 in other languages so that non-English speaking taxpayers can understand and comply with their U.S. tax obligations.

Taxpayers Abroad Lack Affordable, Qualified Tax Return Preparers and Free IRS Return Preparation Assistance

Due to the complexity of the tax code, individual taxpayers abroad often resort to using paid preparers to help them meet their tax filing obligations, as Figure 2.9.3 shows.

FIGURE 2.9.3, Individual Returns Filed Using a Paid Return Preparer by Type of Taxpayer, Tax Years (TYs) 2018-2021[39]

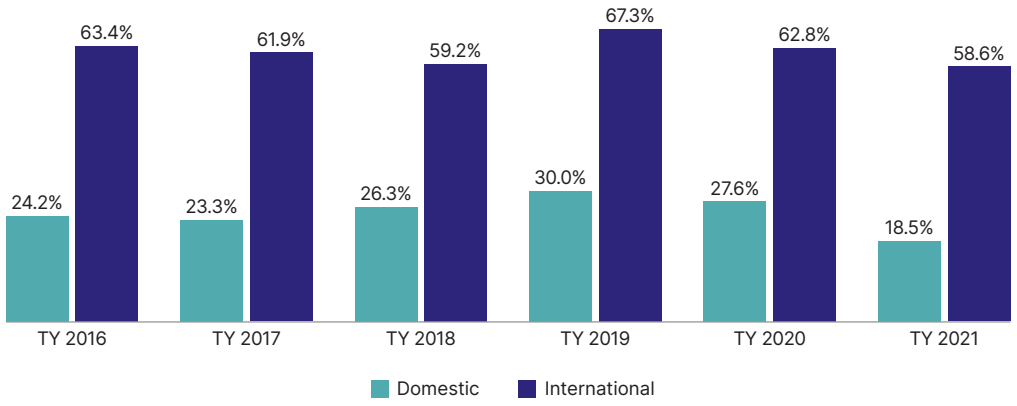
Tax Year	International Taxpayers Using a Paid Return Preparer	Domestic Taxpayers Using a Paid Return Preparer
2018	62%	54%
2019	49%	49%
2020	61%	53%
2021	64%	53%

37 IRS, CDW, IRTF, Modernized Tax Return Data Base, Business Returns Transaction File, TYs 2016-2021 (through Sept. 28, 2023).
38 IRS, Forms and Publications Index Search, https://www.irs.gov/forms-pubs-all-search (last visited Nov. 28, 2023). In contrast, Publication 519, U.S. Tax Guide For Aliens, is available in several languages. IRS, About Publication 519, U.S. Tax Guide for Aliens (Aug. 3, 2023), https://www.irs.gov/forms-pubs/about-publication-519.
39 IRS, CDW, IRTF TYs 2018-2022 (through Sept. 28, 2023). Thus, with the exception of TY 2019 (when pandemic-related stimulus from the Coronavirus Aid, Relief, and Economic Security Act encouraged filing or use of the Non-Filer portal), individuals residing abroad had their tax return prepared by paid preparers at a higher rate than those in the United States.

However, there is a lack of return preparers abroad with sufficient knowledge and expertise to prepare U.S. tax returns, and those available may charge exorbitant fees.[40] The IRS Directory of Federal Tax Return Preparers With Credentials and Select Qualifications reflects the shortage of qualified professionals for some countries.[41] The absence of qualified preparers arguably contributes to non-compliance, as taxpayers may not file if they don't understand the law and cannot find a reasonably priced, qualified, and competent professional to prepare their returns. Further, the majority of the individual taxpayers abroad who filed Forms 1040 and 1040NR in TYs 2016 through 2021 reported no tax liability.[42] The disparity in the numbers of international taxpayers who reported no tax liability compared to domestic taxpayers who reported no tax liability is significant, as shown in Figure 2.9.4. However, the cost of filing the return is much higher for international taxpayers, which adds to their burden and especially affects lower-income taxpayers.[43] Outside stakeholders report that the burden and high cost of filing a return, especially when there is no tax liability, can lead taxpayers abroad to question the need to file a return or to justify not filing at all.[44] In fiscal year (FY) 2021, 56 percent of individual international filers reported adjusted gross income (AGI) of less than $25,000, 68 percent less than $50,000, and 76 percent less than $75,000. Only less than five percent had AGI greater than $400,000.[45]

FIGURE 2.9.4[46]

Individual Domestic vs. International Taxpayers Who Filed a Return Reporting No Tax Liability



40 One stakeholder relayed that an individual had to pay an entire month's salary to have her return prepared. Discussions with outside stakeholders (Aug. 2023). *See also* National Taxpayer Advocate 2022 Annual Report to Congress 171 n. 45 (Most Serious Problem: *Overseas Taxpayers: Taxpayers Outside of the United States Face Significant Barriers to Meeting Their U.S. Tax Obligations*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MSP_10_Overseas.pdf (noting that American Citizens Abroad estimated that return preparation fees for individual U.S. returns for U.S. citizens abroad are generally between $2,000 and $3,000, while the National Society of Accountants estimated that average fees for a Form 1040 prepared in the United States in 2021 was $220 or $323, depending on whether the return included itemized deductions).

41 For example, Thailand, a country from which 7,409 individual income tax returns were filed in TY 2021, lists only five preparers, all but one in Bangkok. Mexico, a country from which 10,929 individual income tax returns were filed in TY 2021, lists only 23 preparers. *See* IRS, Directory of Federal Tax Return Preparers with Credentials and Select Qualifications, https://irs.treasury.gov/rpo/rpo.jsf (last visited Dec. 18, 2023); IRS, CDW, IRTF, TYs 2016-2022 (through Sept. 28, 2023).

42 IRS, CDW, IRTF, TYs 2016-2021 (through Sept. 28, 2023).

43 *See* note 40, *supra*.

44 Discussions with outside stakeholders (Aug. 2023).

45 IRS, CDW, IRTF TY 2021 (through Sept. 28, 2023).

46 No tax liability is defined as having a "Total Tax" of $0 before payments and refundable credits. IRS, CDW, IRTF TYs 2016-2021 (through Sept. 28, 2023).

Taxpayers abroad also have almost no ability to access free IRS return preparation assistance. The IRS manages free tax return preparation services for qualifying taxpayers through its Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) programs.[47] The IRS conducted virtual VITA training at 22 military bases in Europe and Asia in 2022 and established regular VITA sites in Germany, Japan, Korea, Kosovo, the Netherlands, and the United Kingdom.[48] While TAS welcomes this development, these sites are on military bases and are not accessible to many taxpayers abroad, who need real-time assistance and services. In the absence of in-person services, the IRS should provide taxpayers abroad free assistance through virtual IRS-sponsored VITA or TCE appointments.

The IRS Has No In-Person Assistance Options Outside of the United States and Puerto Rico, a Problem That Has Persisted for Many Years

The lack of affordable and knowledgeable return preparers or free return preparation services abroad leaves taxpayers on their own to figure out how to comply with the complex rules they encounter when filing their tax returns. This would reasonably drive many of these taxpayers to seek assistance from the IRS, but IRS customer service options are limited. Taxpayers abroad continue to face serious customer service and support deficiencies, with one of the prime deficiencies being no access to in-person assistance. At one time, the IRS had 15 foreign attaché posts that allowed taxpayers abroad free and convenient access to in-person IRS assistance.[49] Citing decreased appropriations, the IRS closed its last four tax attaché offices in Beijing, Frankfurt, London, and Paris in 2014 and 2015. With these closures, the IRS completely erased its international footprint for in-person customer service.

Domestically, the IRS is ramping up its in-person customer service, but nothing similar is happening abroad. In November 2022, the IRS announced plans to hire over 700 employees to staff more than 270 Taxpayer Assistance Centers (TACs) in the United States.[50] However, aside from the U.S. territory of Puerto Rico, the IRS has no TACs abroad, as shown in Figure 2.9.5.

47 *See* IRS, Free Tax Return Preparation for Qualifying Taxpayers (Nov. 16, 2023), https://www.irs.gov/individuals/free-tax-return-preparation-for-qualifying-taxpayers. The IRS manages the VITA and TCE programs, but IRS partners operate and volunteers who have passed tax law training that meets IRS standards staff them.

48 *See* National Taxpayer Advocate 2022 Annual Report to Congress 168 (Most Serious Problem: *Overseas Taxpayers: Taxpayers Outside of the United States Face Significant Barriers to Meeting Their U.S. Tax Obligations*) (IRS comments to report), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MSP_10_Overseas.pdf.

49 *See* National Taxpayer Advocate 2015 Annual Report to Congress 72, n.4 (Most Serious Problem: *International Taxpayer Service: The IRS's Strategy for Service on Demand Fails to Compensate for the Closure of International Tax Attaché Offices and Does Not Sufficiently Address the Unique Needs of International Taxpayers*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC15_Volume1_MSP_07_International-TP-Service.pdf.

50 IRS News Release, 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.

FIGURE 2.9.5

International Taxpayer Assistance Center Locations

On October 20, 2023, the IRS announced that it had reopened 50 TACs with Inflation Reduction Act (IRA)[51] funding and had also started a special series of events called Community Assistance Visits (CAVs).[52] CAVs are temporary TACs designed to provide taxpayers in underserved areas a chance to meet face-to-face with the IRS.[53] However, there are no international CAVs.[54] Due to the temporary nature of CAVs, offering this service internationally would be a way for the IRS to provide much-needed customer service while still assessing long-term solutions. IRS Commissioner Danny Werfel has noted that as far as getting taxpayers the help they need, "in-person assistance is a vital piece that the IRS cannot overlook."[55] Unfortunately, the IRS continues to neglect this vital service for international taxpayers. The IRS needs to provide in-person service abroad, including reopening foreign tax attachés and/or establishing international TACs. Until the IRS rectifies this problem, it should provide virtual TAC appointments for taxpayers abroad.[56]

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51 An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14, Pub. L. No. 117-169, 136 Stat. 1818, 1831-33 (2022) [hereinafter referred to as the "Inflation Reduction Act"]; *see also* Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, § 251, 137 Stat. 10, 30-31 (rescinding some of the funding).

52 IRS News Release, IR-2023-194, IRS Launches New Initiatives Using Inflation Reduction Act Funding to Ensure Large Corporations Pay Taxes Owed; Continues to Improve Service and Modernize Technology with Launch of Business Tax Account (Oct. 20, 2023), https://www.irs.gov/newsroom/irs-launches-new-initiatives-using-inflation-reduction-act-funding-to-ensure-large-corporations-pay-taxes-owed-continues-to-improve-service-and-modernize-technology-with-launch-of-business-tax-account.

53 IRS News Release, IR-2023-127, IRS Continues Reopening Closed Taxpayer Assistance Centers; Begins Special Series of Community Assistance Visits to Help Taxpayers in 8 States to Expand Service for People Who Aren't Near Agency Offices (July 14, 2023), https://www.irs.gov/newsroom/irs-continues-reopening-closed-taxpayer-assistance-centers-begins-special-series-of-community-assistance-visits-to-help-taxpayers-in-8-states-to-expand-service-for-people-who-arent-near-agency-offices.

54 The IRS identified Ciales, Puerto Rico, as an additional location to host a CAV. IRS News Release, IR-2023-194, IRS Launches New Initiatives Using Inflation Reduction Act Funding to Ensure Large Corporations Pay Taxes Owed; Continues to Improve Service and Modernize Technology with Launch of Business Tax Account (Oct. 20, 2023), https://www.irs.gov/newsroom/irs-launches-new-initiatives-using-inflation-reduction-act-funding-to-ensure-large-corporations-pay-taxes-owed-continues-to-improve-service-and-modernize-technology-with-launch-of-business-tax-account.

55 IRS News Release, IR-2023-127, IRS Continues Reopening Closed Taxpayer Assistance Centers; Begins Special Series of Community Assistance Visits to Help Taxpayers in 8 States to Expand Service for People Who Aren't Near Agency Offices (July 14, 2023), https://www.irs.gov/newsroom/irs-continues-reopening-closed-taxpayer-assistance-centers-begins-special-series-of-community-assistance-visits-to-help-taxpayers-in-8-states-to-expand-service-for-people-who-arent-near-agency-offices.

56 The IRS did not conduct face-to-face (*i.e.*, in-person) assistance, outreach, or education outside of the United States and Puerto Rico in 2023. IRS response to TAS information request (Sept. 22, 2023).

In the absence of in-person service, the IRS needs to provide alternative support. Yet, other IRS services are lacking, and it has cut programs that were available to taxpayers abroad without replacing them.[57] A program specifically geared toward international taxpayers was the International Individual Taxpayer Assistance (IITA) team, which the IRS created in 2012 and included representatives from IRS Business Operating Divisions and TAS. The IITA team did useful work, including producing videos aimed to assist individual taxpayers abroad. Recognizing the importance of support to the international community, the National Taxpayer Advocate recommended the IRS make the team permanent, but the IRS did not agree.[58] Taxpayers abroad desperately need an IRS team devoted to assist them with their unique and complex needs.

The IRS also needs to improve other methods of communications and assistance. It provides only one dedicated telephone line for international taxpayers (the International Taxpayer Service Call Center).[59] This is not a toll-free line, and the IRS does not offer customer callback as an option.[60] Therefore, the taxpayer must wait on the line until an IRS representative gets to the call. While the IRS does offer extended hours of operation for this line,[61] it is not convenient for all taxpayers considering the differences in global time zones. Taxpayers have cited chronic problems with dropped calls and inability to reconnect to the original agent, resulting in inefficient service and duplicative calls and explanations by taxpayers.[62] Further, the IRS limits this line to questions regarding tax accounts, such as overpayment status, balances owed, and correspondence; it refers taxpayers to a website that provides resources on more complex tax topics.[63] This is frustrating, time-consuming, and expensive for taxpayers who waited on hold for a representative only to find out their questions are ones that the representative cannot answer. The IRS should establish a toll-free number or other workable free alternative dedicated to international taxpayers, devise a way to connect taxpayers with more complex questions to an IRS employee with specialized knowledge, and provide a customer callback option.[64]

Problems Accessing Online Resources and Limited Payment and Refund Options Persist

Many IRS systems still are not compatible with the needs of taxpayers abroad. While the IRS has made technological strides in accessibility, many are inapplicable to these taxpayers because of IRS limitations. For example, the IRS offers an online account application that allows individual taxpayers to access tax records, make and view payments, view their accounts and balances, create and view payment plans, obtain transcripts, and more.[65] To access an online account, taxpayers must first create an account through a credential service provider (CSP).[66] Taxpayers living outside of the United States who have a government-issued credential and a Social Security number may verify their identity through the CSP self-service option. However, taxpayers living outside of the United States who don't have a U.S. phone number, mailing address, or Social Security

57 *See* National Taxpayer Advocate 2015 Annual Report to Congress 72 (Most Serious Problem: *International Taxpayer Service: The IRS's Strategy for Service on Demand Fails to Compensate for the Closure of International Tax Attaché Offices and Does Not Sufficiently Address the Unique Needs of International Taxpayers*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC15_Volume1_MSP_07_International-TP-Service.pdf.

58 *See* National Taxpayer Advocate 2012 Annual Report to Congress 262, 265-67, 273 (Most Serious Problem: *Challenges Persist for International Taxpayers as the IRS Moves Slowly to Address Their Needs*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/Most-Serious-Problems-International-Taxpayer-Issues.pdf.

59 IRS, Contact My Local Office Internationally (July 24, 2023), https://www.irs.gov/help/contact-my-local-office-internationally.

60 Last year, the National Taxpayer Advocate recommended that the IRS offer customer callback on the international telephone line. The IRS agreed to explore the possibility, noting it would need to evaluate the feasibility within the IRS call center infrastructure. *See* TAS Recommendations and IRS Responses, TAS Recommendation 10-5 (2022), https://www.taxpayeradvocate.irs.gov/news/directory-entry/2022-msp-10-overseas-taxpayers/ (last visited Dec. 7, 2023).

61 The hours of operation are from 6 a.m. to 11 p.m. (Eastern Time, U.S. and Canada).

62 Systemic Advocacy Management System Issue 68439 (July 25, 2023).

63 *See* IRS, Find Information on Complex Tax Topics (June 13, 2023), https://www.irs.gov/help/find-information-on-complex-tax-topics.

64 TAS has a dedicated phone line for all incoming international calls. This line is programmed to automatically route calls from abroad to the appropriate TAS office depending on the country of origin and TAS business hours. While this line is not toll-free, it guarantees that the call is directed to the appropriate office, thus saving time and frustration. The IRS should provide a similar service that would help alleviate wait times. TAS, TAS Provides One-Stop Phone Service for Taxpayers Living Abroad (Apr. 18, 2023), https://www.taxpayeradvocate.irs.gov/news/tas-provides-one-stop-phone-service-for-taxpayers-living-abroad.

65 IRS, Your Online Account (Oct. 10, 2023), https://www.irs.gov/payments/your-online-account.

66 The IRS outsources identity proofing and credential management to a CSP, which is also responsible for assisting taxpayers who have difficulty completing the process.

number need to take additional steps to verify and complete the process through a video chat call and the submission of supplementary documents. If these taxpayers cannot verify their identities through the CSP, the IRS has no practical alternative method for them to establish their identities and gain access to these online systems.

Taxpayers abroad also face difficulties in making payments to and receiving payments from the IRS. The current IRS system cannot accept electronic payments from foreign bank accounts.[67] Therefore, foreign taxpayers can only make electronic payments through a U.S. financial institution or U.S. corresponding bank. Similarly, they can only make international wire transfers, which can be expensive, from a U.S. financial institution or corresponding bank or a bank that has a banking relationship with a U.S. bank, if the taxpayers have a bank account with the foreign bank.[68] Otherwise taxpayers have to either make a paper remittance or pay with a credit card. Fortunately, the IRS is in the planning stages of the Make Payments Easy Initiative, which will allow taxpayers abroad to make electronic payments to the IRS directly from their foreign bank accounts.[69]

Direct deposit of refund options for foreign taxpayers are even more limited. The only current option for international direct deposit of refunds is a manual refund issued through the International Treasury Service (ITS), which is only available for refunds over $1,000,000 or for TAS hardship situations.[70] Between November 2022 and July 2023, the IRS issued just 12 manual refunds through ITS to taxpayers in six countries.[71] Thus, for all practical purposes, this option is unavailable to almost all international taxpayers.

The IRS's Strategic Operating Plan Fails to Specify How It Will Address Customer Service Gaps

While the IRS has received significant funding from the IRA,[72] it is unclear how much it will devote to improving service deficiencies and reducing the burden on international taxpayers. The IRS's Strategic Operating Plan (SOP) lists its priorities for the funding.[73] Specific provisions relating to international taxpayers in the IRS SOP are almost non-existent,[74] and it is unclear the extent to which the general improvements in service and technological enhancements will apply to international taxpayers. With the IRA funding, the IRS can analyze the needs of international taxpayers and provide much-needed outreach, education, and customer service to assist them in understanding and complying with their tax obligations. Squandering this opportunity will only further perpetuate the difficulties taxpayers abroad experience.

Taxpayers Abroad Struggle to Obtain Individual Taxpayer Identification Numbers and Efficiently Check Their Application Status

Individuals who are not eligible for Social Security numbers must use an ITIN to file their tax returns.[75] The process for obtaining an ITIN burdens and confuses taxpayers. The IRS states that it takes up to 11 weeks for international taxpayers to receive an ITIN,[76] although processing times can fluctuate throughout the

67 IRS response to TAS information request (Sept. 13, 2023).
68 *Id.*
69 IRS response to TAS information request (Sept. 13, 2023).
70 *Id.*
71 *Id.*
72 Inflation Reduction Act, Pub. L. No. 117-169, 136 Stat. 1818, 1831-33 (2022); *see also* Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, § 251, 137 Stat. 10, 30-31 (rescinding some of the funding).
73 IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan (Apr. 2023), https://www.irs.gov/pub/irs-pdf/p3744.pdf.
74 A search of the word "international" in the IRS SOP results in 12 hits with only four actually involving provisions relating to international taxpayers.
75 *See* IRC § 6109(d), (i); Treas. Reg. § 301.6109-1(d)(3)(ii). Individuals eligible for Social Security numbers are U.S. citizens, lawful permanent residents (green card holders), non-citizens who are authorized to work in the United States, and non-citizens who need a Social Security number to receive certain benefits and services. For more information on who qualifies for a Social Security number, see Abigail F. Kolker & William R. Morton, Cong. Rsch. Serv., R47483, *Noncitizen Eligibility for Employment Authorization and Work-Authorized Social Security Numbers (SSNs)* (Mar. 22, 2023), https://crsreports.congress.gov/product/pdf/R/R47483.
76 *See* IRS, Instructions for Form W-7, Application for IRS Individual Taxpayer Identification Number (Nov. 2023), https://www.irs.gov/pub/irs-pdf/iw7.pdf.

year,[77] and the IRS rejected approximately 26 percent of the applications processed in FY 2022.[78] Taxpayers may only apply for an ITIN when they need one to file a federal income tax return, unless a limited exception applies.[79] To apply, the individual must complete Form W-7, Application for IRS Individual Taxpayer Identification Number, and submit it with their income tax return (unless an exception applies) and identification documents (*e.g.*, a passport or birth certificate).[80] The documents must be the originals or copies certified by the issuing agency as exact copies.[81]

International taxpayers have two options to submit the application: (1) mail Form W-7 to the IRS and include the original documents or certified copies, thus risking the originals being lost or not timely returned by the IRS[82] or (2) pay to use a Certifying Acceptance Agent (CAA) who reviews the documents and submits the application to the IRS with copies of the documents.[83] Taxpayers located in the United States also have the option to get help by making an appointment at a designated TAC, but there are no TACs outside the United States and Puerto Rico. Failure to provide requisite identity documents often results in rejection of the application. For applications the IRS processed in FY 2022, taxpayers had an almost 15 percent higher rate of success for receiving an ITIN when submitting via a CAA than individuals who submitted their applications directly (84.1 percent to 69.4 percent) and approximately half the rejection rate (15.9 percent to 30.5 percent).[84] As of February 2023, there are 410 Acceptance Agents[85] and CAAs in 43 foreign countries.[86] While it is actively conducting outreach to increase the number of domestic CAAs, the IRS should also focus on increasing the number of foreign CAAs.[87] It generally costs a taxpayer several hundred dollars to use a CAA, which is often too expensive for low-income individuals. While some VITA sites currently offer CAA services,[88] they may not use VITA grant funds for this purpose. The IRS should explore expanding the scope of its VITA program to allow grant funds to be used to provide certification services for taxpayers at VITA sites.

77 *See*, *e.g.*, IRS, IRS Operations: Status of Mission-Critical Functions, Requested an Individual Taxpayer Identification Number (ITIN) (Dec. 1, 2023), https://www.irs.gov/newsroom/irs-operations-status-of-mission-critical-functions.

78 IRS, CDW, Entry Application Programs (EAP) FY 2022 (through Sept. 28, 2023).

79 *See* Internal Revenue Manual (IRM) 3.21.263.5.2, Filing Tax Return versus Exception Criteria (Jan. 1, 2023), https://www.irs.gov/irm/part3/irm_03-021-263r. ITINs expire if not used on a tax return at least once every three years, and all ITINs issued prior to 2013 have expired. IRC § 6109(i)(3).

80 IRC § 6109(i)(2). The IRS accepts 13 types of identification documents. *See* IRM 3.21.263.5.6(4), ITIN Documentation Requirements (Nov. 12, 2021), https://www.irs.gov/irm/part3/irm_03-021-263r.

81 IRC § 6109(i)(2); IRM 3.21.263.6.3.4.2.1(4), Supporting Identification Document Certification Requirements (Mar. 16, 2023), https://www.irs.gov/irm/part3/irm_03-021-263r. Employees of U.S. consulates and embassies may be able to certify foreign documents.

82 *See*, *e.g.*, TAS, TAS Helps Locate Missing Passports Filed With Individual Taxpayer Identification Number (ITIN) Request (Sept. 23, 2020), https://www.taxpayeradvocate.irs.gov/news/successstories-tas-helps-locate-missing-passports-filed-with-individual-taxpayer-identification-number-itin-request/.

83 IRC § 6109(i)(1); Treas. Reg. § 301.6109-1(d)(3)(ii), (iv); IRM 3.21.263.4.2, Acceptance Agents Form W-7 Documentation Requirements (Jan. 1, 2022), https://www.irs.gov/irm/part3/irm_03-021-263r.

84 IRS, CDW, EAP, FY 2022 (through Sept. 28, 2023).

85 Acceptance Agents are agents who are authorized by the IRS to assist individuals obtain ITINs. They review necessary documents and forward completed Forms W-7 to the IRS. However, they cannot certify original documents. IRS, How to Become an Acceptance Agent for IRS ITIN Numbers (Aug. 22, 2023), https://www.irs.gov/individuals/international-taxpayers/how-to-become-an-acceptance-agent-for-irs-itin-numbers.

86 IRS response to TAS information request (Sept. 13, 2023).

87 Relatedly, the IRS needs to ensure an end to the moratorium on accepting CAA applications that has been in place since August 2022 and is currently expected to last until the end of 2023. *See* IRS, New ITIN Acceptance Agent Program Changes (Nov. 20, 2023), https://www.irs.gov/individuals/new-itin-acceptance-agent-program-changes. While the purpose of the moratorium is laudable – modernizing the application process to include electronic filing – it is concerning that it has lasted as long as it has.

88 IRS, VITA Sites that Offer CAA Services, https://www.irs.gov/individuals/vita-sites-that-offer-caa-services (last visited Dec. 15, 2023).

ITINs are critical for taxpayers to be able to comply with their U.S. tax obligations, but delays receiving them occur because the application and tax return are submitted and processed on paper, not electronically.[89] If a taxpayer abroad wants to know the status of an application or is struggling with the documentation rules, it can be difficult to get assistance. All ITIN applications go to the IRS's Austin ITIN unit, which has specialized training and experience, but there is no way for taxpayers to contact the Austin ITIN unit by phone for questions on their specific application.[90]

Individual Taxpayer Identification Numbers are critical for taxpayers to be able to comply with their U.S. tax obligations. But the IRS processes the applications and related returns on paper, which causes delays.

The IRS SOP stated a generalized intention to modernize the ITIN process.[91] To better serve taxpayers, prevent unnecessary delays, and encourage voluntary compliance, the National Taxpayer Advocate recommends the IRS modernize the ITIN process to allow taxpayers to apply for an ITIN throughout the year and submit alternate proof of a filing requirement other than an annual tax return;[92] allow CAAs to electronically file Form W-7 with copies of the supporting documentation; and modernize the Real-Time System (RTS) the IRS uses to process W-7 forms to enhance data quality and management, including a process for logging documents upon receipt. The IRS should also provide dedicated phone resources, including a phone number to the Austin ITIN unit, to assist taxpayers with the ITIN application process and prominently display current estimates of ITIN processing times on the ITIN landing page of the IRS website.

Timeframes for Taxpayers Abroad to Respond to Key IRS Notices Are Insufficient and in Some Cases Non-Existent

It generally takes longer for mail sent from the United States to reach taxpayers abroad. Contributing to the delays are the variations in postal systems by country and problems with taxpayers not updating their foreign address.[93] While it is not possible to determine the average mailing time due to external factors in other countries, it can be significant.[94] Many IRS notices are time-sensitive, requiring responses within a certain timeframe. Failure to take timely action often carries serious consequences. The IRS issued over 1.3 million notices and other correspondence to foreign addresses in FY 2021 and over 1.6 million in FY 2022.[95]

89 While the IRS announced its Paperless Processing Initiative as part of its SOP, it did not eliminate any paper processing from the Form W-7 application process. IRS response to TAS information request (Sept. 14, 2023).
90 IRS response to TAS information request (Sept. 14, 2023).
91 IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan 22 (Apr. 2023), https://www.irs.gov/pub/irs-pdf/p3744.pdf.
92 *See* Erin M. Collins, Most Taxpayers Needing a New ITIN Are Prohibited From Filing Electronically, Causing Unnecessary Refund Delays, NATIONAL TAXPAYER ADVOCATE BLOG (Feb. 6, 2023), https://www.taxpayeradvocate.irs.gov/news/nta-blog-most-taxpayers-needing-a-new-itin-are-prohibited-from-filing-electronically-causing-unnecessary-refund-delays/.
93 The IRS has developed an "update my foreign address" application. Once this application is available to the public for the Individual Online Account, it should help prevent delays due to inaccurate addresses. IRS, Individual Online Account (IOLA) & Tax Pro Account Status Briefing (Sept. 27, 2023) (on file with TAS). While the results remain to be seen, this is a step in the right direction.
94 *See* Laura Snyder et al., *Mission Impossible: Extraterritorial Taxation and the IRS*, TAX NOTES (Mar. 22, 2021) (citing a 2020 Taxpayer Advocacy Panel study concluding that it is common for it to take more than 50 days, and sometimes more than 100, for mail from the IRS to reach international recipients).
95 IRS, CDW, Notice Delivery System, FY 2022 (through Sept. 28, 2023); National Taxpayer Advocate 2022 Annual Report to Congress 173, n.107 (Most Serious Problem: *Overseas Taxpayers: Taxpayers Outside of the United States Face Significant Barriers to Meeting Their U.S. Tax Obligations*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MSP_10_Overseas.pdf.

For taxpayers abroad, lack of timely notification causes them to lose critical administrative, due process, and judicial rights. In several instances, the IRS provides taxpayers abroad either no additional time or insufficient additional time. For example, the IRS sends paper correspondence to taxpayers who are subject to correspondence and Automated Underreporter (AUR) examinations.[96] The IRS only provides taxpayers with a foreign address 15 additional days to respond to an AUR audit inquiry;[97] the IRS gives taxpayers abroad 45 days and domestic taxpayers 30 days. Even more egregious, the IRS provides taxpayers abroad no additional time in the case of a correspondence exam.[98] If the taxpayer does not timely provide information, the IRS will generally issue a notice of deficiency. Further, while an extension to provide documentation to the IRS in a correspondence exam may be available upon request, many taxpayers may not be aware of this option. The IRS should provide additional time upfront without putting the burden on a taxpayer to request an extension. While the IRS can administratively extend response time for some notices, others, such as Collection Due Process (CDP) and math error notices, are statutory.[99] Because of the significant legal consequences these notices impart, Congress should consider amending the CDP and math error notice requirements to allow taxpayers located outside of the United States additional time to respond.[100]

Taxpayers Should Receive a Separate Notice Informing Them of Passport Revocation and Providing Them With Appeal Rights

There is also one instance in which a lack of any type of notice can have a profound effect on taxpayers, especially those abroad. IRC § 7345 provides for the revocation or denial of passports in the case of certain tax delinquencies. The IRS is required to certify individuals to the Department of State when they have a "seriously delinquent tax debt."[101] The Department of State will generally not renew a passport or issue a new passport upon receiving the certification and can also revoke a passport. The IRS does not send a standalone precertification notice; rather, it only notifies the taxpayer at the time it makes the certification.[102] While a

96 IRS response to TAS information request (Sept. 15, 2023). The IRS uses correspondence examinations to look at limited issues on a taxpayer's return, and they are generally narrower in scope than a regular audit. The AUR program compares income reported on a taxpayer's return to information provided to the IRS by third parties. *See* IRS, How the IRS Ensures Compliance With the Tax Laws (Oct. 23, 2023), https://www.irs.gov/about-irs/how-the-irs-ensures-compliance-with-the-tax-laws.

97 IRM 4.19.3.22.8(7)a, Correspondence (June 28, 2021), https://www.irs.gov/irm/part4/irm_04-019-003r.

98 Any taxpayer may request an extension, and the IRS will grant an automatic 30-day extension for the first request. IRM 4.19.13.11.7(2), Taxpayer Requests Additional Time to Respond (Apr. 6, 2022), https://www.irs.gov/irm/part4/irm_04-019-013r.

99 CDP notices allow taxpayers to request a hearing before the Independent Office of Appeals (Appeals) to review a filed Notice of Federal Tax Lien or a proposed levy, but they must do so within 30 days of the date of the CDP notice. IRC §§ 6320(a)(3)(B), 6330(a)(3)(B). After the hearing, Appeals issues a notice of determination, which allows taxpayers 30 days in which to request judicial review of the determination. IRC §§ 6320(c), 6330(d)(1). While the Supreme Court recently held that this 30-day time limit is not jurisdictional and may be tolled in *Boechler, P.C. v. Comm'r*, 596 U.S. 199 (2022), a taxpayer must establish that equitable tolling applies. Math error notices allow a taxpayer 60 days in which to request abatement of a "summary assessment" of tax arising from mathematical or clerical errors as defined in IRC § 6213(g). *See* IRC § 6213(b)(1), (2)(A). If a taxpayer timely requests abatement, the IRS must abate the summary assessment and then follow deficiency procedures under IRC § 6212 if it wishes to reassess an increase in tax. IRC § 6213(b)(2)(A).

100 While the IRC allows taxpayers outside the United States an additional 60 days (150 days total) to challenge a deficiency determination under IRC § 6213(a), it does not afford them a similar extension of the 30-day period under IRC §§ 6320(c) and 6330(d)(1). Congress should amend IRC § 6330(d) to allow additional time to request a CDP hearing and to request judicial review of a CDP determination, consistent with IRC § 6213(a). *See* National Taxpayer Advocate 2002 Annual Report to Congress 244 (Legislative Recommendation: *Collection Due Process*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/arc2002_section_two.pdf; *see also* National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* (*Give Taxpayers Abroad Additional Time to Request a Collection Due Process Hearing and to File a Petition Challenging a Notice of Determination in the U. S. Tax Court*). Similarly, IRC § 6213(b)(2)(A) does not allow taxpayers outside of the United States any additional time to challenge a math error notice. To protect taxpayer rights and promote consistency, Congress should amend IRC § 6213(b)(2)(A) to allow taxpayers an additional 60 days (120 days total) to request an abatement of tax when a math error notice is addressed to a person outside the United States. *See* National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* (*Give Taxpayers Abroad Additional Time to Request Abatement of a Math Error Assessment*).

101 A "seriously delinquent tax debt" is defined as unpaid, legally enforceable taxes (including interest and penalties) totaling more than $50,000 (adjusted annually for inflation), for which the IRS has filed a Notice of Federal Tax Lien and all administrative remedies under IRC § 6320 have lapsed or been exhausted, or a levy has been issued. IRC § 7345(b)(1).

102 IRC § 7345(d). The only direct notice the IRS provides to taxpayers that their passports may be revoked is a paragraph on the second page of a CDP levy notice (Letter 1058) that the IRS may have issued months or even years prior to making a certification. A seriously delinquent tax debt certification is not the reason for the notice.

taxpayer can challenge a certification in court, this can be costly and time-consuming. Because of the vital importance of a passport to Americans, especially those abroad, the IRS should provide a precertification notice to taxpayers that allows them to appeal a proposed IRS certification of a seriously delinquent tax debt.[103]

CONCLUSION AND RECOMMENDATIONS

Taxpayers abroad continue to face significant challenges complying with their U.S. tax obligations. The extreme complexity of the tax code is magnified by the interpretation and application of the U.S. tax laws through the tax laws of the countries in which taxpayers reside and the technical treaties that may exist between the United States and their countries. Taxpayers abroad are a community the IRS underserves, and they need help that is unavailable from the IRS in person and is difficult and sometimes expensive to otherwise obtain. They experience unique burdens without the benefit of IRS services. While simplification of the tax code is up to Congress, unless and until that occurs, it is incumbent upon the IRS to do more to help taxpayers abroad understand and comply with their tax obligations. The IRS can and should take actions administratively, such as facilitating in-person and remote filing assistance through VITA and TCE and modernizing the ITIN processing system. With the additional funding provided by the IRA, the IRS can cure deficiencies in service to taxpayers abroad if it makes them a priority. In the absence of assistance and support from the IRS, taxpayers abroad may demonstrate waning compliance.

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Clarify the scope of Rev. Proc. 2020-17 to provide certainty regarding the reporting requirements of foreign workplace retirement plans under IRC § 6048, including foreign pensions where deferral of tax on earnings is available under a U.S. tax treaty.
2. Translate the most common international tax forms and instructions, starting with Publication 54, into multiple languages other than English.
3. Provide in-person services abroad including reopening foreign tax attachés and/or TACs, beginning with cities with the highest number of filers. Until it does, the IRS should offer or facilitate virtual TAC, VITA, and TCE appointments to taxpayers outside of the United States, with the same services available to domestic taxpayers.
4. Develop a cross-functional team solely focused on assisting international taxpayers. The team should have regular meetings, objectives, and measurable results.
5. Provide a toll-free international telephone line or alternative free service dedicated solely to taxpayers abroad.
6. Provide greater accessibility to online accounts for taxpayers abroad who cannot authenticate through the current CSP.

103 *See* Nina E. Olson, The IRS's New Passport Program: Why Notice to Taxpayers Matters (Part 1 of 2), National Taxpayer Advocate Blog (Feb. 6, 2023), https://www.taxpayeradvocate.irs.gov/news/ntablog-the-irss-new-passport-program-why-notice-to-taxpayers-matters-part-1-of-2/; Nina E. Olson, The IRS's New Passport Program, How Lack of Notice Harms Taxpayers (Part 2 of 2), National Taxpayer Advocate Blog (Feb. 6, 2023), https://www.taxpayeradvocate.irs.gov/news/ntablog-the-irss-new-passport-program-how-lack-of-notice-harms-taxpayers-part-2-of-2/.

7. Modernize the ITIN application process to: 1) allow taxpayers to apply for an ITIN throughout the year and submit alternate proof of a filing requirement other than an annual tax return; 2) allow CAAs to electronically file Form W-7 with copies of the supporting documentation; and 3) improve the RTS the IRS uses to process W-7 forms to enhance data quality and management, including a process for logging documents upon receipt. The IRS should also provide dedicated resources and a phone number to the Austin ITIN unit and prominently display current estimates of ITIN processing times on the ITIN landing page of the IRS website.
8. Explore expanding the scope of the VITA program to allow grant funds to be used to provide ITIN certification services for taxpayers at VITA sites.
9. Allow taxpayers located outside the United States an additional 60 days upfront to respond to all IRS correspondence that requires a response or other action from the taxpayer.
10. Provide a precertification notice to taxpayers that allows them to attempt to resolve tax liabilities and appeal a proposed IRS certification of a seriously delinquent tax debt before the IRS sends a certification regarding passport revocation to the Department of State. This notice should give taxpayers outside of the United States an additional 60-day response time beyond that provided domestically.

Legislative Recommendations to Congress

The National Taxpayer Advocate recommends that Congress:

1. Amend IRC § 6038D and 31 U.S.C. § 5314 to eliminate duplicative reporting of assets on IRS Form 8938 where a foreign financial account is correctly reported or reflected on an FBAR while ensuring continued IRS access to foreign financial asset data for both tax compliance and financial crime enforcement purposes.
2. Amend IRC §§ 6320(a)(3)(B), 6330(a)(3)(B), and 6330(d)(1) to allow 90 days (*i.e.*, an additional 60 days) (i) to request a CDP hearing after the issuance of a CDP lien or levy notice and (ii) to file a petition for review in the U.S. Tax Court after the IRS issues a notice of determination if the notice is addressed to a person outside the United States.
3. Amend IRC § 6213(b)(2)(A) to allow taxpayers 120 days to request an abatement of tax when a math error notice is addressed to a person outside the United States.

RESPONSIBLE OFFICIALS

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

Holly Paz, Commissioner, Large Business and International Division

Kenneth Corbin, Commissioner, Wage and Investment Division

David Padrino, Chief Transformation and Strategy Officer, Transformation and Strategy Office

APPEALS

Despite Some Improvements, Many Taxpayers and Tax Professionals Continue to Perceive the IRS Independent Office of Appeals as Insufficiently Independent

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

The lack of independence and operational efficiency in the IRS Independent Office of Appeals (Appeals) process undermines taxpayer trust and prolongs dispute resolution. When taxpayers are unable to resolve their issue in Appeals or question the impartiality of Appeals, they may opt for costly litigation instead, adding financial and emotional strain. These issues erode confidence in the tax system, are burdensome, and compromise the taxpayer's statutory *right to appeal an IRS decision in an independent forum*.

EXPLANATION OF THE PROBLEM

Appeals is an essential forum for taxpayers to administratively resolve IRS disputes. Independence and operational efficiency are twin pillars that support a thriving Appeals function. While Appeals is dedicated to these principles, the National Taxpayer Advocate has concerns about Appeals' current operations and structure. These include:

- Not all Appeals decisions are autonomous and transparent;
- The perception exists that Chief Counsel attorneys attend Appeals conferences to develop issues for trial;
- Proposed regulations limit Appeals' independence;
- Taxpayers experience significant delays scheduling in-person conferences;
- A compliance culture lives within the Appeals organization;
- Appeals needs to use the Alternative Dispute Resolution (ADR) program to its full potential; and
- Appeals needs to do additional work to ensure its independence.

ANALYSIS

Background

A process for administratively appealing an IRS decision has existed in one form or another since 1927.[1] The Taxpayer First Act of 2019 (TFA) marked a significant legislative effort to modernize the IRS and enhance taxpayer rights by codifying the formal establishment of Appeals.[2] This provision sought to provide taxpayers with a fair and impartial forum for resolving tax disputes, thereby reducing the need for costly and time-consuming litigation.[3] While the TFA aimed to make the tax dispute resolution process more efficient and less burdensome for taxpayers,[4] challenges related to scheduling conferences, resource limitations, and a prevailing compliance culture within Appeals hinder effectiveness. On a positive note, in May 2020, the IRS Commissioner appointed Andrew Keyso as the Chief of Appeals. The National Taxpayer Advocate applauds his efforts to listen to internal and external stakeholders to improve the independence and functionality of Appeals. But the culture and operations are slow to change. The National Taxpayer Advocate is optimistic that with the additional Inflation Reduction Act funds, the Chief of Appeals will be able to hire the necessary staff to improve the organization and provide better service for taxpayers. But some of the challenges are unrelated to funding.

Not All Appeals Decisions Are Autonomous and Transparent

Recent data and observations indicate that Appeals Officers (AOs) often lack autonomy in making settlement decisions based on the hazards of litigation.[5] This is contrary to the intended role of AOs to independently assess the hazards of litigation and guide the settlement process. This perceived lack of autonomy undermines the integrity of the Appeals process and erodes taxpayer confidence in the system.

In a typical case, a taxpayer interacts with an AO who has the authority to settle a case. Appeals also employs specialists, such as subject matter experts and technical guidance coordinators, who work behind the scenes on coordinated issues.[6] These specialists often approach cases differently than AOs and are not as accessible to taxpayers as an AO. While AOs aim to resolve cases based on a taxpayer's unique facts and circumstances, their settlement authority can be limited on cases involving Appeals specialists and coordinated issues.[7]

We have heard from taxpayers and practitioners that they are frustrated as Appeals specialists often inform AOs and taxpayers that they cannot approve a settlement that deviates from undisclosed, nationwide settlement parameters for a coordinated issue or industry.[8] This lack of transparency hinders meaningful

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1 H.R. Rep. No. 116-39, pt. 1, at 28 n.5 (2019).
2 Pub. L. No. 116-25, § 1001, 133 Stat. 981, 983 (2019) (codified at IRC § 7803(e)); H.R. Rep. 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).
3 H.R. Rep. No. 116-39, pt. 1, at 29 (2019). Congress enacted this provision to "foster confidence in the integrity of the IRS and the independence of its administrative proceedings and to encourage voluntary compliance [by way of] an independent administrative appeals function within the IRS."
4 In February 2023, the Treasury Inspector General for Tax Administration (TIGTA) determined that Appeals personnel were not always notifying taxpayers of their IRC § 7803(e)(7) case file access rights or documenting their case management system with the specific coding or history narrative as directed by internal guidance. Further, when Appeals personnel sent case files, they did not always provide them to the taxpayer more than ten calendar days before the Appeals conference, as required by statute. TIGTA, Ref. No. 2023-15-010, *Actions Have Been Taken to Implement Taxpayer First Act Provisions Related to the IRS Independent Office of Appeals; However, Some Improvements Are Still Needed* (2023), https://www.tigta.gov/reports/audit/actions-have-been-taken-implement-taxpayer-first-act-provisions-related-irs.
5 Appeals Technical Employees have varying official titles, such as AO, Settlement Officer, and Appeals Team Case Leader. For simplicity, this Most Serious Problem refers to the basket of titles collectively as "Appeals Officers" or "AOs," and these should be read as including Settlement Officers and Appeals Team Case Leaders.
6 *See* Internal Revenue Manual (IRM) 8.7.3.3, Coordinated Issues (Oct. 1, 2012) (governs when and to what extent Appeals cases engage specialists), http://www.irs.gov/irm/part8/irm_08-007-003.
7 *See* IRM 8.7.3.3.2(1), Appeals Coordinated Issues with Review and Concurrence (Dec. 1, 2022) ("An ACI with Review and Concurrence … is an issue with Service-wide impact or importance, requiring Technical Specialist evaluation to ensure uniformity and consistency nationwide. … [The AO] must obtain the Technical Specialist's tentative approval of the settlement proposal and/or settlement range before any settlement options are discussed with the taxpayer."), http://www.irs.gov/irm/part8/irm_08-007-003.
8 Discussions with outside stakeholders (Sept. 28, 2023). *See* IRM 8.7.3.3, Coordinated Issues (Oct. 1, 2012) (governs when and to what extent Appeals cases engage specialists), http://www.irs.gov/irm/part8/irm_08-007-003.

negotiation and often leads to a breakdown in the settlement process. Taxpayers cannot meaningfully engage in a discussion on case resolution if Appeals makes the decision based on undisclosed settlement standards to which taxpayers are not privy. Many times, taxpayers are not communicating with the decision-maker or do not have access to the decision-maker since a "wizard behind the curtain" exists who is making decisions for the assigned AO in coordinated cases.[9]

Many practitioners perceive the current system as encouraging a "one-size-fits-all" approach to settlements involving coordinated issues, disregarding the unique facts and circumstances of individual cases. This often forces taxpayers into unnecessary litigation, as they think they may receive a more impartial consideration of their unique facts and circumstances in Tax Court. The lack of autonomy and transparency in the Appeals process undermines public confidence in the tax system. Courts base their decisions on the unique facts and circumstances of each case, a practice that practitioners perceive is not consistently followed by the current Appeals process.

THE LACK OF AUTONOMY AND TRANSPARENCY IN THE APPEALS PROCESS **undermines public confidence in the tax system.**

The current practice of relying on undisclosed settlement parameters concerning coordinated issues is at odds with the judicial mindset and culture that Appeals should embody. Additionally, because they might lack training, experience, or confidence in their understanding of complex issues, AOs may defer to specialists even if they are not required to do so. This problem is exacerbated for AOs who are new to the role or unfamiliar with the complexity of certain issues they handle. Appeals does not require AOs to have prior litigation experience or a working knowledge of the rules of evidence, which courts often rely upon in reaching a decision.[10] Many AOs face challenges in determining how to correctly assess the hazards of litigation.

Appeals should make it explicit that specialists serve only as consultants. The AO should be the one responsible for understanding the legal issues and facts and for assessing the hazards of litigation independently. Appeals should reevaluate its current list of 48 coordinated issues to determine if Appeals can grant AOs more autonomy in these matters.[11]

At the conclusion of each Appeals case, the AO must draft an Appeals Case Memorandum (ACM) or its equivalent[12] that explains the rationale for the settlement decision. Appeals provides that ACM to the examination division.[13] Independence should require that Appeals share the ACM with the taxpayer at the same time. While AOs are supposed to verbally discuss the rationale for a decision with a taxpayer, these discussions do not always include the same analysis of the hazards of litigation as determined by the AO in the ACM. Taxpayers should not see AOs as being in close association with the IRS function that raised the issue. It is not the job of Appeals to help the IRS in developing its cases or issues; it must remain neutral and be independent.

9 Discussions with outside stakeholders (Sept. 28, 2023).
10 See IRS, Standard Position Descriptions for Appeals Officers, SPD Nos. 95758 (Grade 11), 92930 (Grade 12), 92931 (Grade 13), 92932 (Grade 14), and 93207 (Grade 15), none of which require experience in tax litigation or expertise with rules of evidence.
11 This list identifies issues on which AOs must seek guidance from specialists. It does not provide the settlement standards used by Appeals specialists. For a current list, see IRS, Appeals Coordinated Issues and Appeals Settlement Guidelines (May 5, 2023), https://www.irs.gov/appeals/appeals-coordinated-issues-and-appeals-settlement-guidelines. *See* IRS response to TAS fact check (Dec. 7, 2023) (confirming 48 total coordinated issues).
12 *See* IRM 8.6.2.2, Introduction to Appeals Case Memos (ACMs) (Aug. 17, 2017), http://www.irs.gov/irm/part8/irm_08-006-002. For less complicated matters, the IRM allows for Form 5402, Appeals Transmittal and Case Memo, in lieu of an ACM. *See* IRM 8.6.2.3.2, Using Form 5402 as the Appeals Case Memo (ACM) (Mar. 16, 2015), http://www.irs.gov/irm/part8/irm_08-006-002.
13 *See* IRM 8.6.2.2.2, Types of Appeals Case Memos (ACM) (Mar. 16, 2015), http://www.irs.gov/irm/part8/irm_08-006-002; IRM 8.6.2.2.1, Four Major Sections of an Appeals Case Memo (ACM) (Mar.16, 2015), http://www.irs.gov/irm/part8/irm_08-006-002.

If Appeals continues to share the ACM with Compliance, the National Taxpayer Advocate recommends that Appeals share a copy with the taxpayer at the close of every case to protect a taxpayer's *right to be informed* about the rationale behind an Appeals decision.[14]

The Perception Exists That Chief Counsel Attorneys Attend Appeals Conferences to Develop Issues for Trial

The presence of IRS Chief Counsel attorneys at initial conferences in large and certain coordinated cases appears to compromise Appeals' independence, thereby affecting the quality of settlements and overall taxpayer confidence in the Appeals process.[15] Practitioners report a concern with the presence of Chief Counsel attorneys as it is seen as geared toward developing issues for trial for the benefit of the IRS. This atmosphere discourages taxpayers and impedes the likelihood of reaching a fair and impartial settlement.

The Office of Chief Counsel is the chief legal advisor to the IRS on all matters pertaining to the interpretation, administration, and enforcement of the internal revenue laws (as well as all other legal matters). Counsel attorneys provide legal guidance and interpretive advice to the IRS. As such, Counsel attorneys "speak with one voice" and might not provide independent advice to AOs on evaluating the hazards of litigation.

The National Taxpayer Advocate recommends that Appeals engage external experts to assist on complex matters to properly assess hazards of litigation in valuation issues, difficult cases, or issues of first impression. The ability to use external experts would provide an additional level of independence. This would also ensure the Appeals process focuses on achieving a fair and impartial settlement.

Proposed Regulations Limit Appeals Independence

There are proposed regulations implementing the Taxpayer First Act that potentially undermine the independence of Appeals.[16] They prohibit Appeals from considering a taxpayer's argument that a Treasury regulation, IRS notice, or revenue procedure is invalid unless there is an unreviewable decision from a federal court. The proposed regulations define an unreviewable decision as "a decision of a Federal court that can no longer be appealed to any Federal court because all appeals in a case have been exhausted or the time to appeal has expired and no appeal was taken."[17]

The regulation also excepts from Appeals consideration arguments a taxpayer raises that the IRS asserts is a frivolous position (*e.g.*, "constitutional" issues).[18] However, there are situations in which the IRS wrongly proposes a frivolous return penalty for constitutional issues. For example, a taxpayer may properly assert a valid Fifth Amendment privilege against self-incrimination. If the IRS proposes a frivolous return penalty, the

14 IRC § 7803(a)(3)(A).

15 Although no formal definition of a "large case" within Appeals exists, we use the term to mean cases involving organizations with assets of $10 million or more and cases with specified coordinated issues.

16 Prop. Reg. §§ 301.7803-2 and 301.7803-3, 87 Fed. Reg. 55,934 (Sept. 13, 2022) (Resolution of Federal Tax Controversies by the Independent Office of Appeals), https://www.federalregister.gov/documents/2022/09/13/2022-19662/resolution-of-federal-tax-controversies-by-the-independent-office-of-appeals. *See also* Jeffrey S. Luechtefeld, *Proposed Regs Limit the Independence of the Office of Appeals*, Tax Notes, Oct. 17, 2022, at 373, https://www.taxnotes.com/lr/resolve/tax-notes-today-federal/proposed-regs-limit-the-independence-of-the-office-of-appeals/7f737.

17 Prop. Reg. § 301.7803-2(c)(18), 87 Fed. Reg. 55,934, 55,942 (Sept. 13, 2022).

18 Prop. Reg. § 301.7803-2(c)(1), 87 Fed. Reg. 55,934, 55,937 (Sept. 13, 2022).

> [The Proposed Regulation] provides that Appeals consideration is not available for an administrative determination made by the IRS with respect to a particular taxpayer in which the IRS rejects a frivolous position, which includes any case solely involving the failure or refusal of the taxpayer to comply with the tax laws because of frivolous moral, religious, political, *constitutional*, conscientious, or similar grounds. (emphasis added).

AO will not be able to judge the hazards of litigation on that issue. Under the proposed regulation, Appeals cannot consider the case, thereby requiring these taxpayers to litigate the issue without an administrative appeals review.[19]

In other words, the proposed regulations state that an AO cannot consider the hazards of litigation on an issue that questions the validity of an official agency interpretation where the IRS may still appeal a judicial decision on that interpretation, even if the original decision was in the taxpayer's favor.[20] This would effectively tie the AO's hands, forcing them to align with the IRS's official position rather than making an independent assessment of the probability of a taxpayer succeeding in challenging a regulation, notice, or revenue procedure even if a court has already found in the taxpayer's favor.

This is not a purely academic concern. For example, multiple cases[21] have held IRS notices invalid because of the agency's violation of the Administrative Procedure Act (APA).[22] Yet, under the proposed regulations, AOs are prohibited from considering the legal hazards concerning the IRS's compliance with the APA during the period in which the IRS has appealed or still could appeal such decisions. What then is the role of the Independent Office of Appeals? Is it an arm of the IRS, or is it independent? These proposed regulations restrict Appeals' ability to act independently in resolving cases without litigation.[23]

The IRS should revisit the proposed regulations implementing the TFA that limit the AO's ability to independently consider all the hazards of litigation, even those contrary to the IRS's official position when the IRS is actively appealing a judicial decision. This is one reason why Appeals needs its own independent legal counsel rather than relying on the "one voice" of counsel.

Taxpayers Experience Significant Delays Scheduling In-Person Conferences

The foundation of an effective Appeals process is the opportunity for taxpayers to engage directly with the decision-maker.[24] Yet, current scheduling practices and operational constraints undermine the value of in-person meetings, leading to resolution delays and in some cases, forcing taxpayers to opt for litigation instead of the Appeals process.

Taxpayers report significant delays in scheduling Appeals conferences, particularly for coordinated issues. Some taxpayers face wait times of nine to 12 months, which is sometimes longer than obtaining a Tax Court date.[25] Some practitioners attribute this to the current work arrangement where some AOs are in the office only one day a week, leading to a bottleneck of face-to-face conference requests.[26] This delay is counterproductive to the resolution process, undermines the purpose of the Appeals system, and is contrary to the taxpayer's *right to quality service*.

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19 *See Youssefzadeh v. Comm'r*, No. 14868-14 L (T.C. Nov. 6, 2015) (order distinguishing a taxpayer's Fifth Amendment invocation for portions of Schedule B from a refusal to file a meaningful tax return on constitutional grounds).

20 Prop. Reg. § 301.7803-2(c)(18)-(20). *See also* IRS, Interim Guidance Memorandum AP-08-0922-0011, Interim Guidance for Cases in Which Taxpayers Raise Arguments Regarding the Validity of a Treasury Regulation or Procedural Validity of an IRS Notice or Revenue Procedure (Sept. 14, 2022), https://www.irs.gov/pub/foia/ig/appeals/ap-08-0922-0011.pdf.

21 *See*, *e.g.*, *Green Valley Invs., LLC v. Comm'r*, 159 T.C. 80 (2022); *CIC Servs., LLC v. IRS*, 141 S.Ct. 1582 (2021); *Mann Constr., Inc. v. United States*, 27 F.4th 1138 (6th Cir. 2022).

22 5 USC § 551, *et seq*.

23 *See* Jeffrey S. Luechtefeld, *Proposed Regs Limit the Independence of the Office of Appeals*, Tax Notes, Oct. 17, 2022, at 373, https://www.taxnotes.com/lr/resolve/tax-notes-today-federal/proposed-regs-limit-the-independence-of-the-office-of-appeals/7f737.

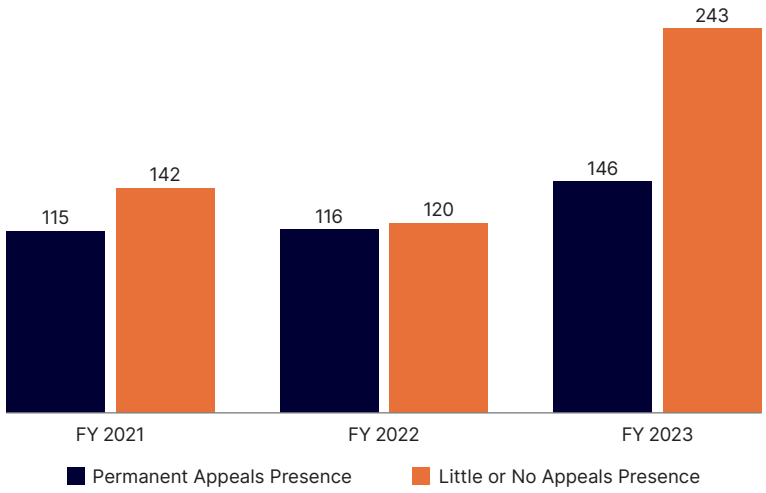
24 "Conferences are a key way in which Appeals hears the taxpayer's position, understands the law and facts in dispute and proposes a resolution [...] During the conference, the Appeals officer will engage with taxpayers in discussing potential settlements. At the conclusion of their appeal, they should understand exactly how and why their case was resolved." IRS News Release, IR-2023-101, Improving Nationwide Access to IRS Appeals; Public Input Wanted (May 11, 2023), https://www.irs.gov/newsroom/improving-nationwide-access-to-irs-appeals-public-input-wanted.

25 Discussions with outside stakeholders (Sept. 28, 2023).

26 *Id*.

FIGURE 2.10.1

Average Number of Days for a Taxpayer to Get an Appeals Conference Once the IRS Assigns an Appeals Officer



Currently, Appeals does not have a permanent presence in every state, but it must continue to provide in-person conferences in all states to meet the needs of taxpayers. For fiscal year (FY) 2021 to FY 2023, there were 11 states with little to no Appeals presence.[27] All other states, including the District of Columbia, have at least one permanent Appeals office.

Practitioners report no net improvement in the time the IRS assigns a case to Appeals until a first conference in the post-pandemic era.[28] Appeals data confirms this, as the average time for a taxpayer to get an Appeals conference once Appeals receives the case has increased by 27 percent[29] from FY 2021 to FY 2023 in states with a permanent Appeals presence[30] and by 71 percent[31] in the same period for states without a permanent Appeals presence.[32]

In-person meetings are more than a procedural formality; they offer substantive benefits to taxpayers. Being in the same room allows for easier document review, provides an opportunity for the AO to judge credibility of witnesses, and provides more effective communication between taxpayers and the AO. Yet, some practitioners note that this benefit disappears if the AO is physically present but defers the ultimate decision to a specialist who is present only telephonically or virtually.[33]

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27 These include Alaska, Arkansas, Idaho, Kansas, Montana, New Mexico, North Dakota, Rhode Island, South Dakota, Vermont, and Wyoming. *See* IRM 8.6.1.5.1.1, Circuit Riding (Sept. 25, 2019), http://www.irs.gov/irm/part8/irm_08-006-001r. As of this report, Appeals also has a presence in Albuquerque, New Mexico. IRS response to TAS fact check (Dec. 7, 2023).

28 Discussions with outside stakeholders (Oct. 10, 2023).

29 We estimate a 27 percent increase (146 divided by 115 minus one) for non-docketed closed examination sourced cases (Primary Business Codes 201-207). These numbers do not include collection work or docketed cases.

30 IRS response to TAS information request (Sept. 7, 2023).

31 We estimate a 71 percent increase (243 divided by 142 minus one) for non-docketed closed examination sourced cases (Primary Business Codes 201-207). These numbers do not include collection work or docketed cases.

32 Appeals uses Process (P) Measure Reports to compute cycle time for the various process measures on non-docketed cases. IRM 8.10.1.10.1.8, Process (P) Measure Report (Oct. 15, 2014), http://www.irs.gov/irm/part8/irm_08-010-001. The average time for a taxpayer to get an Appeals conference once Appeals receives the case, known as the P4 measure, was 116 days for FY 2021 through FY 2022 in states with a permanent Appeals presence. This increased to an average of 146 days for FY 2023 through July 31, 2023. The P4 measure was an average of 131 days for FY 2021 through FY 2022 in states without a permanent Appeals presence, which increased to an average of 243 days for FY 2023 through July 31, 2023. IRS response to TAS information request (Sept. 7, 2023).

33 Discussions with outside stakeholders (Sept. 28, 2023).

Because of these issues, some taxpayers are bypassing the Appeals process altogether and petitioning the Tax Court, leading to an unnecessary burden on the court system and increased cost for taxpayers.[34] This is contrary to the intended function of Appeals as a mechanism for efficient and fair resolution of tax disputes.[35]

The National Taxpayer Advocate recommends Appeals review and optimize its scheduling process to reduce wait times for taxpayer conferences, particularly for coordinated issues. Appeals' current work-from-home policy should emphasize the prioritization of taxpayer access to in-person conferences.

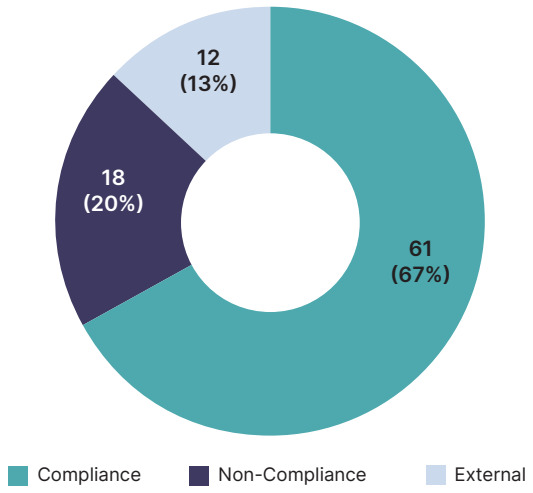
The National Taxpayer Advocate also recommends that Appeals emphasize the importance of the AO as the primary decision-maker. When AOs must rely on the advice of specialists, those specialists should be available in person so taxpayers and their representatives can address their unique facts and circumstances directly with the decision-maker.[36]

A Compliance Culture Lives Within the Appeals Organization

The prevailing compliance culture within Appeals poses challenges to its independence and effectiveness. Appeals recruits most AOs from IRS Compliance, often leading to a mindset focused on defending Compliance's position rather than impartially assessing the hazards of litigation. This mindset transition can take years and, in some cases, may never completely occur without adequate and ongoing training.[37]

FIGURE 2.10.2

Appeals Officers Hired by Source, FY 2023



34 Discussions with outside stakeholders (Sept. 28, 2023).

35 On May 11, 2023, in coordination with the National Taxpayer Advocate, Appeals sought public comments on how to improve access for taxpayers who do not live near an Appeals office. IRS News Release, IR-2023-101, Improving Nationwide Access to IRS Appeals; Public Input Wanted (May 11, 2023), https://www.irs.gov/newsroom/improving-nationwide-access-to-irs-appeals-public-input-wanted. The National Taxpayer Advocate applauds Appeals for its willingness to seek public comments on this important matter, as Appeals data and practitioner comments show there is still work to do concerning taxpayer access to the Appeals process.

36 *Cf.* Discussions with outside stakeholders (Sept. 28, 2023).

37 *See* National Taxpayer Advocate 2022 Annual Report to Congress 141 (Most Serious Problem: *Appeals*: *Staffing Challenges and Institutional Culture Remain Barriers to Quality Taxpayer Service Within the IRS Independent Office of Appeals*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MSP_09_Appeals.pdf. *See also* James P. Walsh & Leonidas C. Charalambides, *Individual and Social Origins of Belief Structure Change*, 130 J. Soc. Psychol. 517 (1990), https://doi.org/10.1080/00224545.1990.9924614 (finding the likelihood of mindset change depends on how self-conscious one is of a current mindset; as the more subconscious filters are hidden, the greater the probability is of rigidity of a prior mindset).

For example, in FY 2023, Appeals hired 91 new AOs.[38] Of those, 87 percent were current IRS employees, and only 13 percent were external hires.[39] Of all the internal hires, 77 percent came directly from IRS Compliance positions and the other 23 percent from other IRS positions.[40] Therefore, many taxpayers and practitioners observe that AOs come to the job with a compliance mindset[41] that sidelines a judicial attitude toward settlement.[42]

The National Taxpayer Advocate recommends that Appeals continue to actively recruit AOs from outside the IRS, possibly offering compensation differentials to attract experienced talent. Additionally, the IRS Human Capital Office must work with Appeals leadership to provide the necessary resources to aid in the expeditious hiring of candidates for Appeals to fulfill its mission. Hiring a mix of candidates would not only bring diverse perspectives to the Appeals process but could reduce the influence of a compliance-centric mindset. To retain external hires and ensure their effective transition into the new AO role, Appeals should allocate resources for increased and ongoing training focused on the impartial assessment of litigating hazards and resulting settlement negotiations.

Appeals Needs to Use the Alternative Dispute Resolution Program to Its Full Potential

ADR is a tool the IRS uses to resolve tax disputes without litigation (*e.g.*, Fast Track Settlement (FTS), Fast Track Mediation, Post-Appeals Mediation).[43] The IRS designed these programs to expedite the resolution process. When these programs are successful, they expedite resolution of a tax controversy, saving time and money, eliminating the need for litigation, reducing the burden on taxpayers and the IRS, and protecting taxpayer rights: a win-win. The ADR process can also provide the parties an avenue to articulate their positions before a neutral mediator who can provide valuable feedback on the strengths and weaknesses of those positions, triggering additional settlement discussions and possible resolution of the issues.

A 2023 report from the Government Accountability Office (GAO) highlights significant shortcomings in the IRS's management and use of ADR programs.[44] Figure 2.10.3 illustrates the relatively steady decline in ADR cases closed since FY 2013.[45]

38 These were AOs who did not serve in an AO job series immediately prior to their hiring. Other AO hiring consisted of promotions or other transfers from existing AO job series.

39 *See* Most Serious Problem: *IRS Hiring Recruitment, and Training: Shortcomings in the IRS's Employee Hiring, Retention, Recruitment, and Training Programs Adversely Affect the Quality of Taxpayer Service the IRS Provides and Undermine Effective Tax Administration*, *supra*.

40 IRS, Human Resources Reporting Center, Workforce Planning and Management Reports, Migration Reports, External Hire Report for FY 2023 (Oct. 5, 2023). Compliance positions include Internal Revenue Agent, Internal Revenue Officer, Criminal Investigator, Tax Law Specialist, Tax Examining Technician, and Tax Specialist.

41 Discussions with outside stakeholders (Oct. 10, 2023). Compliance decisions are usually binary in that the decisions are limited to either allowing or disallowing items.

42 Appeals defines judicial attitude toward settlement in IRM 8.6.4.2.5, Judicial Attitude Towards Settlement (June 16, 2020), http://www.irs.gov/irm/part8/irm_08-006-004.

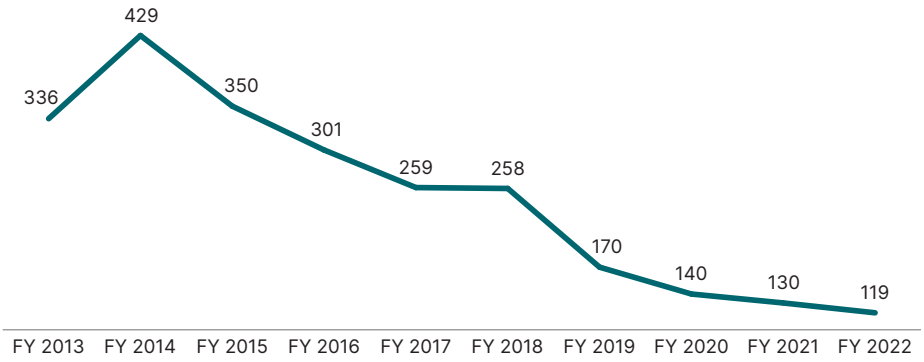
43 Available ADR programs include FTS for the Large Business and International (LB&I), Small Business/Self-Employed (SB/SE), and Tax-Exempt/Government Entities (TE/GE) Divisions for examination matters; Fast Track Mediation – Collection for collection matters; Rapid Appeals Process available to most LB&I cases or SB/SE estate and gift cases; and Post Appeals Mediation (if IRS Appeals settlement discussions are unsuccessful and the remaining disputed issues are fully developed). *See* IRS News Release, IR-2023-136, IRS Invites Public Input on Ways to Improve Dispute Resolution Programs; Suggestions Wanted (July 27, 2023), https://www.irs.gov/newsroom/irs-invites-public-input-on-ways-to-improve-dispute-resolution-programs-suggestions-wanted.

44 GAO, GAO-23-105552, *IRS Could Better Manage Alternative Dispute Resolution Programs to Maximize Benefits* (2023), https://www.gao.gov/products/gao-23-105552. The GAO conducted its study, in part, because of the National Taxpayer Advocate's report "that the use of ADR programs has steadily declined, while resolving disputes through the IRS appeals process is taking longer."

45 Data on ADR usage includes FTS for LB&I, SB/SE, and TE/GE; Fast Track Mediation for Collections; Rapid Appeals Program; and Post Appeals Mediation. Data describe cases that closed in that fiscal year. GAO, GAO-23-105552, *IRS Could Better Manage Alternative Dispute Resolution Programs to Maximize Benefits* (2023), https://www.gao.gov/products/gao-23-105552.

FIGURE 2.10.3

IRS Alternative Dispute Resolution Cases Closed, FYs 2013-2022



Notably, use of ADR has declined by 65 percent between FY 2013 and FY 2022.[46] This is concerning, especially given the lack of comprehensive data collected to understand the reasons behind the decline.

The decrease in the use of ADR and the lack of sufficient data to track program management make it harder to determine its success or failure. Absent data, objective measures, and taxpayer feedback, it is difficult to evaluate how ADR programs are working and to measure the value of the programs. When taxpayers and the government rely only on the full appeals process (*i.e.*, without first going through ADR), it takes more time and consumes more public and private resources. One recommendation to increase usage would be for Appeals to provide training to both educate and incentivize employees to offer ADR to taxpayers.

The FTS program offers taxpayers a chance to resolve disputes quickly using Appeals as a mediator, even while their case is still in the hands of Compliance. However, some tax professionals note that Compliance often rejects these FTS requests from taxpayers, stating that the taxpayer and the government are "too far apart."[47] This reasoning is flawed because mediation is especially useful when both sides are far apart and unable to agree. Therefore, the parties being "too far apart" should be a reason to accept a taxpayer's request for FTS, not to deny it.

Additionally, when Compliance denies an FTS request, it does not inform Appeals or keep records for analyzing trends. This lack of communication and data means Appeals is unaware of the number of FTS requests made, their outcomes, or how Appeals might improve the program. Without this information, Appeals cannot measure how well the ADR programs are working or understand the reasons behind the significant drop in their use.[48] GAO recommended that Appeals implement a system of regular monitoring of taxpayer experiences with ADR and use taxpayer feedback for real-time improvements.

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46 According to the Appeals Centralized Database System. *See* GAO, GAO-23-105552, *IRS Could Better Manage Alternative Dispute Resolution Programs to Maximize Benefits* 10 (2023), https://www.gao.gov/products/gao-23-105552.

47 Discussions with outside stakeholders (Sept. 11, 2023). See also IRS response to TAS information request (Nov. 1, 2023), providing the following public comment:

> In one anecdotal example, a practitioner was informed that PAM is only appropriate in "close" cases, though the Service employee communicating that information was unable to provide any authority for that rule nor were they able to provide objective parameters regarding what would constitute a "close" case.

Letter from American Bar Ass'n Tax Section, to Danny Werfel, Comm'r, Internal Revenue (Sept. 15, 2023), https://www.americanbar.org/content/dam/aba/administrative/taxation/policy/2023/091523comments.pdf.

48 See Figure 2.10.3, *infra*, showing a drop in ADR cases from 336 in FY 2013 to 119 in FY 2022.

On July 27, 2023, the Chief of Appeals initiated a taxpayer feedback mechanism by requesting public comments on how to improve ADR programs.[49] The National Taxpayer Advocate agrees with the GAO report's findings and recommends that where the case remains under the jurisdiction of Compliance and the IRS denies the taxpayer's ADR request for reasons other than those in the established guidelines (*e.g.*, the parties are "too far apart"),[50] Compliance must share the data with Appeals. Additionally, Appeals should track this and related data to make data-driven decisions on improving ADR programs.

Another significant concern is the absence of an obligation for Compliance to provide a substantial explanation as to why it rejected a taxpayer's ADR request. Taxpayers are left without the reasons for the denial and no way forward to contest the decision. This limited transparency can contribute to perceptions that the IRS is not committed to the ADR initiatives and that it bases its decision on convenience to Compliance rather than facts and law.

Appeals Needs to Do Additional Work to Ensure Its Independence

The statutory establishment of Appeals in 2019 was a deliberate and considered response by Congress to the pressing need for an appeals function within the IRS that was independent from the agency's influence. The emphasis on independence is a recurring theme in the legislative history of the TFA, which underscores Congress's commitment to ensuring fairness and impartiality in the administrative appeals process.[51] The very positioning of this provision as the first section of the TFA demonstrates its fundamental importance to protecting taxpayer rights.[52]

Since the TFA's enactment, there have been commendable strides toward achieving Congress's vision of an independent Appeals office. But there is still work to be done. Congress's vision of an appeals function free of IRS influence is a goal that remains only partially fulfilled. The TFA, as it stands, lays a solid foundation, but the structure built upon it requires further development to fully realize Appeals' independence.

Key to future discussions of the IRS and Congress are proposals that some may view as extreme, yet they remain fundamental in cementing the independence of Appeals. One such topic for future discussion is the provision for Appeals to have its own independent legal counsel. This move would ensure that the IRS appeals process is free of agency influence in both reality and public perception, thereby bolstering taxpayer morale and confidence in the system's impartiality. Another significant topic of discussion is that the Secretary of the Treasury should appoint the Chief of Appeals instead of the IRS Commissioner.[53] This change would further distance Appeals from the agency's influence by ensuring the head of the appeals function is not beholden to the person in charge of IRS compliance. As discussions advance, bold topics such as these are necessary for meaningful discussions on how to fully realize Congress's goal of a truly independent administrative appeals function within the IRS.

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49 IRS News Release, IR-2023-136, IRS Invites Public Input on Ways to Improve Dispute Resolution Programs; Suggestions Wanted (July 27, 2023), https://www.irs.gov/newsroom/irs-invites-public-input-on-ways-to-improve-dispute-resolution-programs-suggestions-wanted.

50 *See* IRS, Pub. 5022, Fast Track Settlement – A Process for Prompt Resolution of Small Business Self Employed Tax Issues (Sept. 2021), https://www.irs.gov/pub/irs-pdf/p5022.pdf.

51 *See, e.g.*, H.R. Rep. No. 115-637, pt. 1, at 17 (Apr. 13, 2018) (accompanying H.R. 5444).
> In order to foster confidence in the integrity of the IRS and the independence of its administrative proceedings, as well as to encourage voluntary compliance, the Committee believes it is advisable to codify the role of an independent administrative function within the IRS and establish a new Independent Office of Appeals. In doing so, the Committee seeks to reassure taxpayers of the independence of the persons providing the administrative review.

52 *See* Pub. L. No. 116-25, § 1001, 133 Stat. 981, 983 (2019).

53 Discussions with outside stakeholders (Sept. 11, 2023).

CONCLUSION AND RECOMMENDATIONS

To ensure the taxpayers' *right to appeal an IRS decision in an independent forum*, the Appeals process must operate independently, free from external influence, including influence from the IRS.[54] This independence must exist in both practice and perception to reinforce the taxpayers' *right to a fair and just tax system*.[55] Further, by addressing current operational inefficiencies, Appeals protects the taxpayers' *right to quality service*, resulting in prompt, courteous, and professional assistance in their dealings with the IRS.[56]

Administrative Recommendations to the IRS

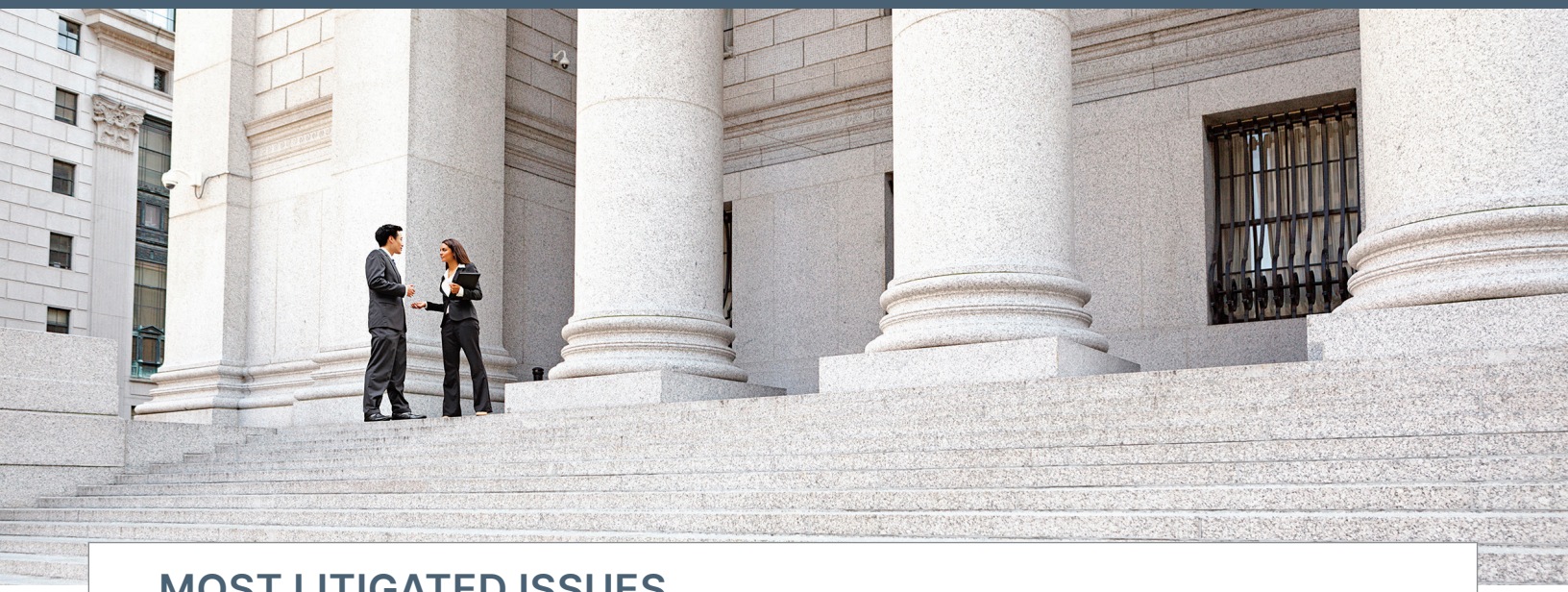
The National Taxpayer Advocate recommends that the IRS:

1. Prioritize in-office availability of AOs to reduce wait times and increase taxpayer access for in-person conferences.
2. Require technical guidance coordinators and other specialists, whose advice the AO relies upon, be available in person if requested so taxpayers can address their unique facts and circumstances directly with those specialists.
3. Provide additional budget to contract outside experts on complex matters and hire attorneys that report to the Chief of Appeals.
4. Revise the Internal Revenue Manual to require Appeals to share all ACMs with taxpayers and establish policies and mandatory procedures to effectively track these efforts.
5. Hire more AOs from outside the IRS who have the necessary qualifications and experience to reduce the influence of a compliance mindset on Appeals' culture.
6. Provide continuous education for all AOs emphasizing a judicial attitude toward settlement to reduce a compliance mindset.
7. In collaboration with Compliance, restructure the current ADR process to provide (a) an ability to appeal the initial determination to Compliance upper management, (b) the creation of a centralized group within Appeals responsible for reviewing Compliance denials of ADR requests, (c) clearer guidance on issues excluded from ADR consideration, and (d) a written explanation to taxpayers citing the basis for the denial.
8. In collaboration with Compliance, collect consistent, reliable data on what happens to taxpayer requests to use ADR as well as the results of each ADR program, such as resolutions achieved for the time and costs invested.

RESPONSIBLE OFFICIAL

Andrew Keyso, Chief, Independent Office of Appeals

54 *See* IRC § 7803(a)(3)(E).
55 *See* IRC § 7803(a)(3)(J).
56 *See* IRC § 7803(a)(3)(B).



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 and provide recommendations to mitigate litigation. 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

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 also* 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). *See* National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* (*Expand the U.S. Tax Court's Jurisdiction to Hear Refund Cases*).

4 IRC § 7422(a).

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 U.S. Tax Court (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 tax 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) 2023, about 97 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 2023 period from October 1, 2022, through September 30, 2023 (the reporting period).

We also reviewed the issued statutory notices of deficiency (SNDs) regarding which petitions were filed with the U.S. 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 an SND before assessing additional income tax, estate tax, gift tax, and certain excise taxes unless the taxpayer agrees to the additional assessment. An SND also starts the 90-day period in which the taxpayer can file a petition with the U.S. Tax Court.[11]

METHODOLOGY

Our analysis identified 488 court opinions, with 202 opinions issued by the Tax Court in the reporting period.[12] We also reviewed 286 court opinions from other federal courts, including from U.S. district courts, U.S. Courts of Appeals, U.S. Court of Federal Claims, U.S. Bankruptcy Courts, and the U.S. Supreme Court.[13] The total number of opinions is a 33 percent increase from the 368 cases we identified last year.[14]

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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), (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 an IRS determination in an SND can do so in the Tax Court without needing to pay the disputed tax first; in contrast, if the taxpayer wanted to file a suit for refund in another forum, such as a U.S. district court, the taxpayer must generally prepay the entire amount in dispute.

10 Data compiled by the IRS Office of Chief Counsel (Oct. 20, 2023); IRS, Counsel Automated Tracking System, TL-711 and TL-712. Does not include cases on appeal and declaratory judgments.

11 Note that if the SND "is addressed to a person outside 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). The Tax Court has construed this language broadly, concluding among other things that the 150-day period for filing a petition applies when a notice of deficiency is mailed to an address outside the United States as well as when a notice of deficiency is mailed to an address within the United States but the taxpayer is located outside the United States. *See*, *e.g.*, *Levy v. Comm'r*, 76 T.C. 228 (1981) (holding that the 150-day rule is applicable to a U.S. resident who is temporarily outside of the country when the notice is mailed and delivered); *Looper v. Comm'r*, 73 T.C. 690 (1980) (holding that the 150-day rule is applicable where a notice is mailed to an address outside the United States); *Lewy v. Comm'r*, 68 T.C. 779 (1977) (holding that the 150-day rule is applicable to a foreign resident who is in the United States when the notice is mailed but outside the United States when the notice is delivered); *Hamilton v. Comm'r*, 13 T.C. 747 (1949) (holding that the 150-day rule is applicable to a foreign resident who is outside the United States when the notice is mailed and delivered).

12 Our analysis does not include cases on appeal and declaratory judgments.

13 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.

14 National Taxpayer Advocate 2022 Annual Report to Congress 175 (Most Litigated Issues), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MostLitigatedIssues.pdf.

The second part of our analysis identified 20,839 petitions submitted by taxpayers in FY 2023 seeking judicial review in the Tax Court to identify the issues appearing most frequently, using data provided by the IRS Independent Office of Appeals (Appeals).[15] Only a small fraction of petitions result in a trial or court ruling on the merits. Of the 34,912 cases closed in the Tax Court in FY 2023, more than 99 percent were resolved or dismissed without a ruling on the merits.[16] We identified the issues in SNDs to determine the unagreed audit issues.[17] Our research team compiled the data for our analysis using information from the Compliance Data Warehouse (CDW), Individual Master File (IMF) Transaction History table for FY 2023, 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. 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.

MOST LITIGATED ISSUES IN TAX COURT 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 110 to 92 cases.

FIGURE 3.1, Top Tax Court Opinions Issued for Individual Taxpayers, FY 2023[18]

Ranking	Issue Category	Tax Court Opinions Discussing Issue
1	Gross Income (IRC § 61 and Related IRC Sections) and Unreported/ Underreported Income	28
2	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)	9 (tie)
3	Innocent Spouse Relief (IRC § 6015)	9 (tie)
4	Whistleblower Award Determinations (IRC § 7623(b)(1))	8
5	Adjusted Gross Income (AGI) Exclusions and Deductions	6 (tie)
6	Judicial Review of Passport Revocation (IRC § 7345(e))	6 (tie)

15 IRS response to TAS information request (Oct. 30, 2023) (showing totals of petitions to the Tax Court during FY 2023).
16 Data compiled by the IRS Office of Chief Counsel (Oct. 20, 2023); IRS, Counsel Automated Tracking System, TL-711. Inventory pending as of September 30, 2023.
17 IRS response to TAS information request (Oct. 30, 2023). TAS matched this data to information from CDW, IMF Transaction History table for FY 2023, and the Examination Operational Automation Database (Nov. 2023).
18 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 hearing cases, accuracy-related penalties, managerial approval of 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.

Ranking	Issue Category	Tax Court Opinions Discussing Issue
7	Schedule A Deductions (IRC §§ 211-224)	5
8	Premium Tax Credit (IRC § 36B)	3 (tie)
9	Ten Percent Additional Tax on Early Distributions From Qualified Retirement Plans (IRC § 72(t))	3 (tie)
10	Attorney Fees (IRC § 7430)	2 (tie)
11	Charitable Contribution Deductions (IRC § 170)	2 (tie)

FIGURE 3.2, Top Tax Court Opinions Issued for Business Taxpayers, FY 2023[19]

Ranking	Issue Category	Tax Court Opinions Discussing Issue
1	Schedule C Income and Expenses	19
2	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
3	Charitable Contribution Deductions (IRC § 170)	12 (tie)
4	Gross Income (IRC § 61 and Related IRC Sections)	12 (tie)
5	Schedule A Deductions (IRC §§ 211-224)	11
6	Corporate Income (Excluding Cost of Goods Sold (COGS)) or Expenses	10 (tie)
7	Passive Activity (Schedule E) Income and Expenses	10 (tie)
8	Schedule K-1 Flow-Through Items for Forms 1120-S and 1065	9
9	AGI Exclusions and Deductions	8
10	Partnership Income (Excluding COGS) or Expenses	5

MOST LITIGATED 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 allow us to 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.[20] Figure 3.3 shows this year's most petitioned issues to the Tax Court for individuals from most to least.[21]

19 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 cases, accuracy-related penalties, managerial approval of penalties, and frivolous issues penalties and separately discuss them under *Collection Due Process Hearings* (*IRC §§ 6320 and 6330*) and *Other Issues*, *infra*.

20 IRS response to TAS information request (Oct. 20, 2023). TAS matched this data to information from CDW, IMF Transaction History table for FY 2023, and the Examination Operational Automation Database (Nov. 2023).

21 Our approach was calculated using IRS SAIN codes designed to consistently track issues for tax administration.

FIGURE 3.3, Top Ten Individual Taxpayer Issues Petitioned to the Tax Court, FY 2023[22]

Ranking	Issue Category	Total Petitions to Tax Court
1	Gross Income (IRC § 61 and Related IRC Sections)	13,475
2	Statutory Adjustment	5,409
3	Filing Status and Dependents	2,088
4	Family Status Related Credits	1,772
5	Payments and Credits	1,669
6	Earned Income Tax Credit (EITC)	1,608
7	Federal Income Tax Withholding	1,036
8	Schedule A Itemized Deductions Under IRC §§ 211-224	916
9	AGI Exclusions and Deductions	778
10	Taxes and Other Credits	617

Figure 3.4 shows this year's most petitioned issues to the Tax Court for businesses from most to least.[23]

FIGURE 3.4, Top Ten Business Taxpayer Issues Petitioned to the Tax Court, FY 2023[24]

Ranking	Issue Category	Total Petitions to Tax Court
1	Sole Proprietorship Trade or Business Expense	1,707
2	Sole Proprietorship Gross Income	1,228
3	Passive Activity (Schedule E) Income and Expenses	903
4	Corporate or Partnership Trade or Business Expense	358
5	Corporate or Partnership Gross Income	303
6	Taxes and Other Credits	214
7	Schedule K-1 Flow-Through Items	68
8	Charitable Contributions	47
9	Farming and Agriculture Activities – Gross Income	31
10	Balance Sheet – Stockholder Equity	29

22 IRS response to TAS information request (Oct. 20, 2023). TAS matched this data to information from CDW, IMF Transaction History table for FY 2023, and the Examination Operational Automation Database (Nov. 2023). 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.

23 Our approach here, similar to Figure 3.3, was calculated using IRS SAIN codes designed to consistently track issues for tax administration.

24 IRS response to TAS information request (Oct. 20, 2023). TAS matched this data to information from CDW, IMF Transaction History table for FY 2023, and the Examination Operational Automation Database (Nov. 2023).

Gross Income (IRC § 61 and Related IRC Sections)

As required under IRC § 7803(c)(2)(B)(ii)(XI), TAS has tracked the most litigated tax issues for more than 20 years, and controversies involving gross income and unreported or underreported income have been at or near the top of this list since the first report.[25] This year, it was the number one issue among those litigated in the Tax Court with 28 substantive opinions issued in cases with individuals and 12 with business taxpayers. Like in FY 2022, this issue was also the largest category of cases with 13,475 individual taxpayers who petitioned the Tax Court.[26] Among business taxpayers, the second highest total was sole proprietorship gross income with 1,228 petitions, the fifth highest was corporate or partnership gross income with 303 petitions, and the ninth highest was farming and agriculture activities gross income with 31 taxpayers who petitioned the Tax Court.[27]

Schedule A Deductions (IRC §§ 211-224), Excluding Charitable Contribution Deductions (IRC § 170)

Itemized deductions reported on Schedule A of Form 1040 were frequently the subject of litigation for individual taxpayers and were among the ten most litigated issues for the seventh time since the National Taxpayer Advocate 2000 Annual Report to Congress.[28] In FY 2023, we identified 16 decisions in which itemized deductions were litigated in the Tax Court and 916 petitions.[29]

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 businesses and nine opinions involving individuals 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. Although it did not make the top ten list for petitions in FY 2023, 164 taxpayers petitioned the Tax Court about these penalties and additions to tax.

Sole Proprietorships and Schedule C Income and Expenses

This litigation typically focuses on applying well-settled legal principles, statutes, and regulations to taxpayers' particular facts and circumstances. We identified and reviewed 19 business cases where this category of issues was litigated in the Tax Court. Taxpayers petitioned the Tax Court in 1,228 cases where sole proprietorship income was at issue and 1,707 cases where sole proprietorship trade or business expenses were at issue during the examination in FY 2023.[30] This was the most litigated issue for business taxpayers both in petitions to the Tax Court and opinions issued by the court after holding a trial in FY 2023. Trade or business deductions have been among the most litigated issues since TAS has tracked such activity.[31]

Innocent Spouse Relief (IRC § 6015)

We identified nine 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

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25 *See, e.g.*, National Taxpayer Advocate 2000 Annual Report to Congress 65, 69, 152 (Most Litigated Issues), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/pub2104-2000.pdf.
26 IRS response to TAS information request (Oct. 20, 2023); IRS, CDW, IMF Transaction History table for FY 2023.
27 IRS response to TAS information request (Oct. 20, 2023); IRS, CDW, IMF Transaction History table for FY 2023.
28 This year and in previous years, charitable contribution deductions have been classified separately as a Most Litigated Issue category.
29 We counted cases involving charitable deductions separately under *Charitable Contribution Deductions*, *infra*.
30 IRS response to TAS information request (Oct. 20, 2023); IRS, CDW, IMF Transaction History table for FY 2023, and the Examination Operational Automation Database (Nov. 2023).
31 *See, e.g.*, National Taxpayer Advocate 2000 Annual Report to Congress 70 (Most Litigated Issues), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/pub2104-2000.pdf.

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 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), IRC § 6015(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 use a SAIN code to specify innocent spouse claims.

Adjusted Gross Income Exclusions and Deductions

We identified 14 cases (six individual and eight business) where the taxpayer claimed a portion of his or her income could be excluded from the calculation of AGI and was 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. This category includes taxpayers claiming income from discharge of indebtedness that was excluded from gross income under IRC § 108. AGI Exclusions and Deductions was the ninth most litigated issue for individuals in petitions to the Tax Court (778).

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 eight opinions issued in the Tax Court where individuals challenged an IRS whistleblower award determination 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.[32] Taxpayers may appeal final determinations of the IRS Whistleblower Office regarding awards under IRC § 7623(b) within 30 days of such determination.[33] In FY 2022, the Whistleblower Office issued 132 awards to whistleblowers totaling nearly $38 million, which included 26 post-petition whistleblower awards awarded under IRC § 7623(b).[34]

Charitable Contribution Deductions (IRC § 170)

We identified two opinions in individual cases and 12 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 designating syndicated conservation easements as a listed transaction and aggressively auditing taxpayers.[35] In FY 2023, among business taxpayers, charitable contribution deductions were the eighth most litigated issue where 47 business taxpayers petitioned the Tax Court. Although it fell short of the top ten in the individual category, it was an issue in 350 individual taxpayer petitions.[36]

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32 *See* IRS, Whistleblower Office, https://www.irs.gov/compliance/whistleblower-office (Sept. 29, 2023).
33 *See* IRC § 7623(b)(4). *See also* Internal Revenue Manual (IRM) 25.2.2.8.2.2(7), IRC 7623(b) Claims (May 28, 2020), https://www.irs.gov/irm/part25/irm_25-002-002.
34 *See* IRS, Pub. 5241, Fiscal Year 2022 Annual Report IRS Whistleblower Office (June 2023), https://www.irs.gov/pub/irs-pdf/p5241.pdf.
35 *See* IRS Notice 2017-10, 2017-4 I.R.B. 544, Syndicated Conservation Easement Transactions, https://www.irs.gov/pub/irs-irbs/irb17-04.pdf (Jan. 23, 2017). 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. *See*, *e.g.*, *Green Valley Invs., LLC v. Comm'r*, 159 T.C. No. 5 (Nov. 9, 2022) and *Green Rock, LLC v. IRS*, 654 F.Supp.3d 1249 (N.D. Ala. 2023).
36 IRS response to TAS information request (Oct. 20, 2023); IRS, CDW, IMF Transaction History table, and the Examination Operational Automation Database (Nov. 2023).

Passive Activities (Schedule E) Income and Expenses

We identified ten 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 903 petitions during FY 2023.

Premium Tax Credit (IRC § 36B)

The Premium Tax Credit (PTC) is a refundable credit that helps eligible individuals and families cover the premiums for their health insurance purchased through the Marketplace. Qualifying taxpayers who enroll in health insurance through a Marketplace can receive advance payments of the PTC. The Marketplace estimates the amount of PTC a taxpayer will qualify for using the taxpayer's estimated household income and family size. The taxpayer then chooses to have all, some, or none of the advance credit payments paid to the insurance provider. If a taxpayer's advance credit payments are more than his or her PTC, the taxpayer must repay the excess advance credit payments (the amount of the repayment may be limited for taxpayers with household income of less than 400 percent of the Federal Poverty Level for their family size). In three cases during FY 2023, taxpayers challenged their liability after the IRS determined they needed to repay some or all of their advance payments of the PTC.

Ten Percent Additional Tax on Early Distributions From Qualified Retirement Plans (IRC § 72(t))

IRC § 72(t)(1) imposes a ten percent penalty on any amount a taxpayer receives from a qualified retirement plan (as defined in IRC § 4974(c)), unless the distribution qualifies for one of the exceptions provided in IRC § 72(t)(2), such as distributions made on or after the date on which the employee attains age 59½, made to a beneficiary (or to the estate of the employee) on or after the death of the employee, or attributable to the employee being disabled.[37] In three opinions during FY 2023, taxpayers challenged their liability for the ten percent penalty.

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 third on individual taxpayer issues petitioned to the Tax Court with 2,088 petitions.

Family Status Related Credits

The family status related credits category includes the Child Tax Credit (CTC), 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 fourth on individual taxpayer issues petitioned to the Tax Court with 1,772 petitions. The EITC, in its own category, ranked sixth on individual taxpayer issues petitioned to the Tax Court with 1,608 petitions from individual taxpayers in FY 2023.

37 IRC § 72(t)(2)(A)-(N) provides circumstances where early distributions can be made without incurring a penalty.

Taxes and Other Credits

This category includes taxes on qualified retirement plans, including individual retirement accounts, Social Security and Medicare tax on tip income, and various credits such as the Retirement Savings Contribution Credit under IRC § 25B, mortgage interest credit under IRC § 25, and credits and carryforwards from alternative minimum tax under IRC § 55. During FY 2023, 617 petitions included these types of issues in the individual category, making it the tenth most litigated issue for individual taxpayers. Among Schedule C and Schedule E filers, which we classified in the business category, it ranked sixth with 214 petitions.

OTHER ISSUES

This year, we tracked the issues litigated in the Tax Court and other federal courts separately. We also analyzed the accuracy-related penalty under IRC § 6662, the frivolous issues penalty under IRC § 6673, supervisory preassessment penalty approval under IRC § 6751(b)(1), 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))[38]

We identified 43 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 2023, 33 business and ten individual taxpayers petitioned the Tax Court where the accuracy-related penalty for negligence or substantial understatement of tax was an issue during the examination.[39]

Supervisory Preassessment Penalty Approval Under IRC § 6751(b)(1)

We identified 12 opinions that ruled on supervisory preassessment 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."[40] 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), the additions to tax for failure to pay sufficient estimated tax (IRC §§ 6654 and 6655), and the accuracy-related penalty (IRC § 6662(b)(9)-(10)); and (ii) any other penalty that is "automatically calculated through electronic means."[41] 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.[42] 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

38 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).
39 IRS response to TAS information request (Oct. 20, 2023); IRS, CDW, IMF Transaction History table, and the Examination Operational Automation Database (Nov. 2023).
40 IRC § 6751(b)(1).
41 IRC § 6751(b)(2).
42 *See* S. Rep No. 105-174, at 65 (1998).

'assessment.'"[43] Due to this ambiguity in the statute, an increasing number of courts have had to grapple with this issue when written supervisory approval must be provided.[44] Thus, we continue to see litigation on this issue.[45]

Frivolous Issues Penalty (IRC § 6673)

During the reporting period, the Tax Court decided eight 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.[46] Occasionally, when the IRS has not requested the penalty, and the facts are appropriate, the court has nonetheless raised the issue *sua sponte*.[47] For FY 2023, 17 taxpayers were assessed the IRC § 6673(a) and (b) frivolous issue penalties totaling $96,411.[48]

Collection Due Process Hearings (IRC §§ 6320 and 6330)

Our review of litigated issues found 30 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.

43 *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)).

44 *See* National Taxpayer Advocate 2019 Annual Report to Congress 149 (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 (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.

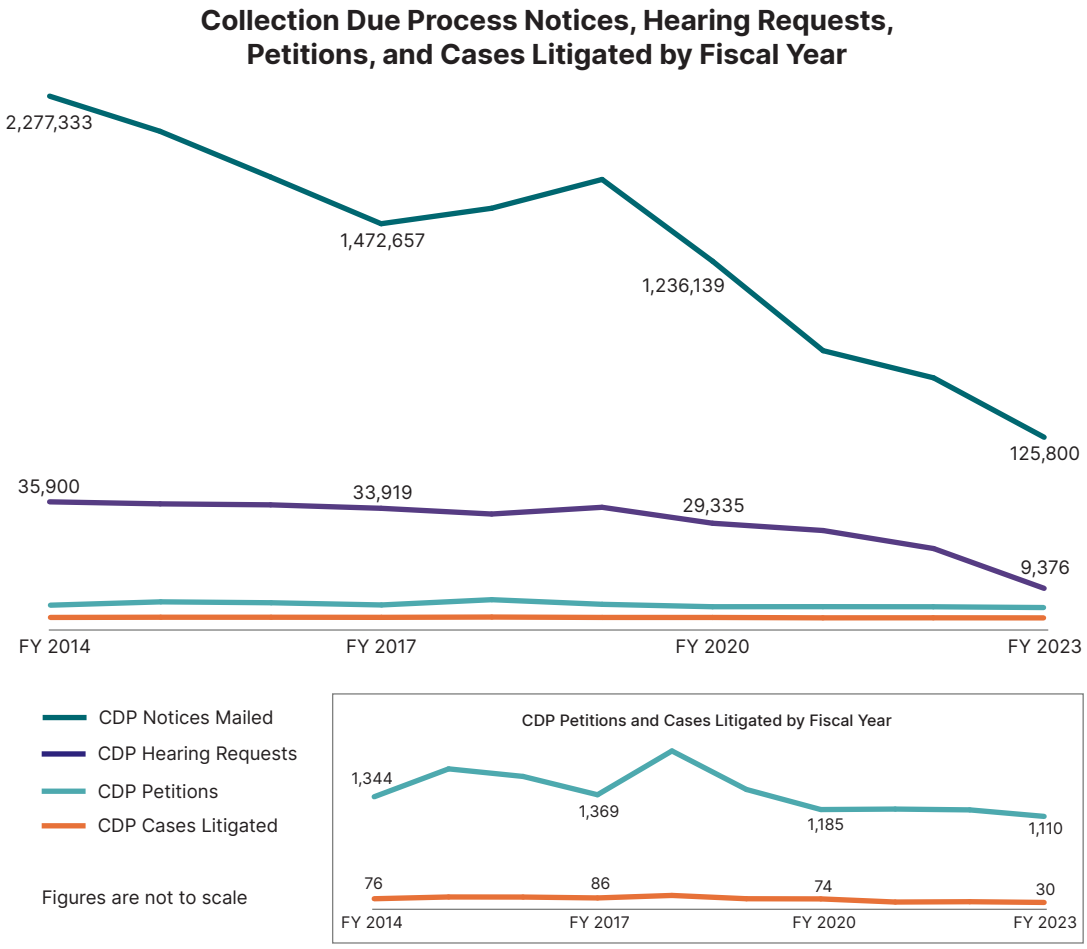
45 For a legislative recommendation on this topic, see National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* (*Clarify That Supervisory Approval Is Required Under IRC § 6751(b) Before Proposing Penalties*); *see also* National Taxpayer Advocate 2023 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 75 (*Clarify That Supervisory Approval Is Required Under IRC § 6751(b) Before Proposing Penalties*), https://www.taxpayeradvocate.irs.gov/reports/2022-annual-report-to-congress/national-taxpayer-advocate-2023-purple-book/.

46 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.

47 "*Sua sponte*" means "of his or its own will or motion; voluntarily; without prompting or suggestion." BLACK'S LAW DICTIONARY (2nd ed.), https://thelawdictionary.org/sua-sponte/ (last visited Dec. 8, 2023). 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.

48 IRS, CDW, IMF Transaction History table for FY 2023, and the Examination Operational Automation Database (Dec. 1, 2023).

FIGURE 3.5[49]



We recorded a slight decrease in CDP petitions, with 1,110 in FY 2023, down from 1,181 petitions in FY 2022.[50] *Pro se* taxpayers continue to make up a majority of the total cases in FY 2023, with 906 of 1,110 (82 percent) cases having unrepresented taxpayers compared to 204 (18 percent) represented taxpayers.[51] An increasing portion of CDP taxpayers are proceeding without a representative compared to the ten-year average, where an average of 70 percent cases were *pro se* compared to an average of 30 percent involving represented taxpayers over a ten-year period from FYs 2014 to 2023.[52]

49 IRS, Counsel Automated Tracking System; IRS, CDW, IMF Transaction History table (FYs 2014-2023). We identified 30 CDP case opinions issued during FY 2023. Please note that data may have changed from prior reports because some CDP transactions are posted to the Master File after the close of the fiscal year.

50 IRS, CDW, IMF Transaction History table (FYs 2014-2023). The total number of CDP petitions to the Tax Court was compiled by the IRS Office of Chief Counsel (Nov. 1, 2023). IRS, Counsel Automated Tracking System, Subtype DU. Inventory pending as of September 30, 2023. Does not include cases on appeal.

51 The total number of CDP petitions to the Tax Court was compiled by the IRS Office of Chief Counsel (Nov. 1, 2023). IRS, Counsel Automated Tracking System, Subtype DU. Inventory pending as of September 30, 2023. This does not include cases on appeal. Some CDP notices and hearings that occur during the fiscal year are recorded after the close of the fiscal year so we updated prior year numbers to reflect those later-recorded CDP notices and hearings.

52 The total number of CDP petitions to the Tax Court was compiled by the IRS Office of Chief Counsel (Nov. 1, 2023). IRS, Counsel Automated Tracking System, Subtype DU. Inventory pending as of September 30, 2023. This does not include cases on appeal. Some CDP notices and hearings that occur during the fiscal year are recorded after the close of the fiscal year so we updated prior year numbers to reflect those later-recorded CDP notices and hearings.

In FY 2023, the IRS issued 125,800 CDP notices to taxpayers (73,967 individual and 51,833 business), a sharp decline from the 500,534 notices issued to individual taxpayers in FY 2022.[53] In FY 2023, 9,376 taxpayers requested CDP hearings (5,768 individual and 3,608 business), down from 21,579 requested in FY 2022.[54] Although the number of CDP notices mailed to taxpayers has declined by more than 74 percent in the past decade, the number of hearings requested has declined by only 57 percent over the same period.[55] 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

Although our top ten issues are calculated by analyzing data from the Tax Court, where the number of docketed cases and dollars in dispute far exceed litigation in other courts, the 202 opinions from the Tax Court account for over 41 percent of the 488 total opinions we reviewed for FY 2023. In non-Tax Court opinions, total individual cases (195) were more than double business cases (91). The top three issues resulting in opinions from courts other than the Tax Court during FY 2023 were:

- Civil Actions to Enforce Federal Tax Liens or to Subject Property to Payment of Tax (IRC §§ 6321 and 7403): 44 opinions;
- Civil Actions for Refund (IRC § 7422): 38 opinions; and
- Summons Enforcement (IRC §§ 7602(a), 7604(a), and 7609(a)): 25 opinions.

Notably, in the Court of Federal Claims, there were 18 opinions related to employment tax issues during FY 2023, making it the most litigated tax issue in that court. According to our review of opinions, a substantial amount of that litigation involved airline pilots, with 128 litigants over 16 cases, all related to employment tax issues.

Civil Actions to Enforce Federal Tax Liens or to Subject Property to Payment of Tax (IRC §§ 6321 and 7403)

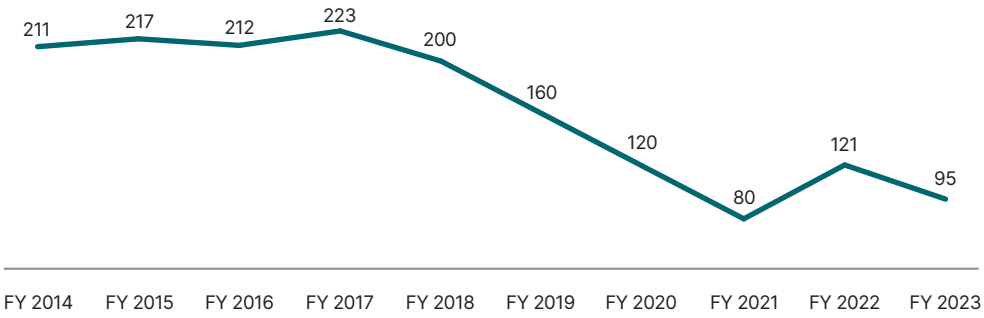
During the reporting period in FY 2023, we identified 44 opinions involving civil actions to enforce liens under IRC §§ 6321 and 7403. This is a 132 percent increase from the 19 opinions reported last year.[56]

In FY 2023, 95 federal tax lien cases were referred to the Department of Justice (DOJ) for enforcement and foreclosure, down 21 percent from the 121 cases referred in FY 2022.[57] This is a downward tick in the trend in referrals to the DOJ since last year but still greater than the lowest year, FY 2021, as shown in Figure 3.6.

53 IRS, CDW, IMF, Business Master File (BMF) (FYs 2022-2023).
54 *Id.*
55 IRS, CDW, IMF, BMF (FYs 2014-2023).
56 National Taxpayer Advocate 2022 Annual Report to Congress 182 (Most Litigated Issues), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MostLitigatedIssues.pdf.
57 Based on data provided by the DOJ to the IRS Office of Chief Counsel (Oct. 18, 2023); *see also* National Taxpayer Advocate 2022 Annual Report to Congress 182 (Most Litigated Issues), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MostLitigatedIssues.pdf.

FIGURE 3.6[58]

Lien Cases Referred to the U.S. Department of Justice



Summons Enforcement (IRC §§ 7602(a), 7604(a), and 7609(a))

During FY 2023, 24 proceedings to quash or enjoin enforcement of a summons were filed, and ten summons enforcement proceedings were filed for 34 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.[59] The DOJ handles motions to quash summonses (the United States is listed as a defendant), and the U.S. Attorney's Offices handle suits to enforce summonses (the United States is listed as a plaintiff).

SETTLEMENTS OF CASES PETITIONED TO THE TAX COURT

Most cases filed by taxpayers in the Tax Court are resolved without a trial. After a taxpayer files a petition, the IRS Office of Chief Counsel (Counsel) files an answer. Counsel then generally refers the case to Appeals for settlement consideration. If the taxpayer and Appeals do not resolve the case, it is returned to Counsel, who may also settle the case.

During FY 2023, 23,119 Tax Court cases were settled, 16,963 by Appeals and 6,156 by IRS Chief Counsel.[60] Figure 3.7 shows the number of Tax Court cases settled by Appeals and IRS Chief Counsel during the last ten fiscal years.

58 Based on data provided by the DOJ to the IRS Office of Chief Counsel (Oct. 18, 2023); National Taxpayer Advocate 2022 Annual Report to Congress 182 (Most Litigated Issues), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MostLitigatedIssues.pdf.

59 Data provided by the DOJ to the IRS Office of Chief Counsel (Oct. 18, 2023). 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 2023; rather, it reflects only those for which the DOJ Tax Division opened a matter.

60 Data compiled by IRS Office of Chief Counsel (Oct. 20, 2023). IRS, Counsel Automated Tracking System, TL-708D, TL-709. Inventory pending as of September 30, 2023. Does not include cases on appeal or declaratory judgments. FY 2023 Tax Court cases settlement data provided by the IRS Office of Chief Counsel included a discrepancy of 16 cases. Therefore, the number could be as high as 23,135. The IRS Office of Chief Counsel attributed this discrepancy of 16 cases to data entry error. IRS response to TAS information request (Oct. 27, 2023).

FIGURE 3.7[61]

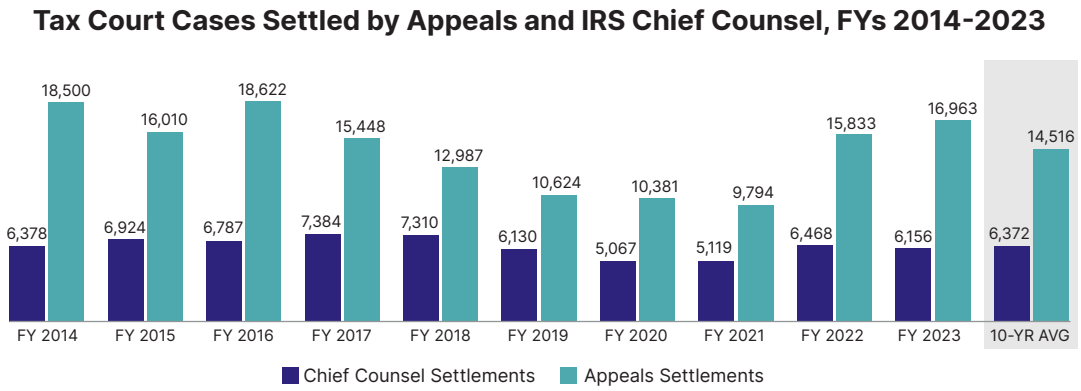


Figure 3.8 shows the outcomes of Tax Court petitions for FY 2023, with settlements broken down between Appeals and IRS Chief Counsel. Two-thirds of the cases were settled, with nearly 49 percent settled by Appeals and almost 18 percent settled by IRS Chief Counsel.

FIGURE 3.8[62]

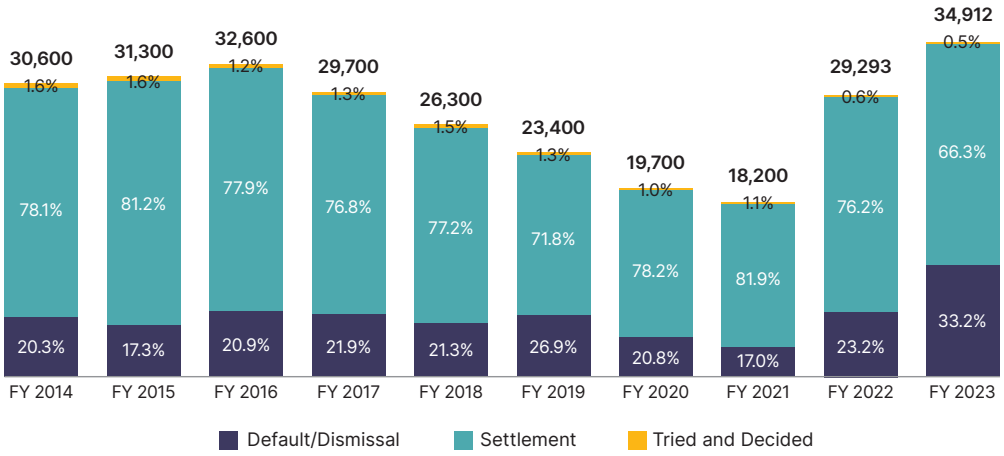
The vast majority of cases petitioned to the Tax Court are settled by agreement between the parties. Figure 3.9 illustrates the cases dismissed, settled, and tried in the Tax Court during the last ten fiscal years. In FY 2023, 66.2 percent of the Tax Court cases were closed by settlement, while 33.2 percent were dismissed or defaulted, and only one-half of one percent were tried.

61 Data compiled by IRS Office of Chief Counsel (Oct. 20, 2023). IRS, Counsel Automated Tracking System, TL-708D, TL-709. Inventory pending as of September 30, 2023. Does not include cases on appeal or declaratory judgments. FY 2023 Tax Court cases settlement data provided by the IRS Office of Chief Counsel included a discrepancy of 16 cases. Therefore, the number could be as high as 23,135. The IRS Office of Chief Counsel attributed this discrepancy of 16 cases to data entry error. IRS response to TAS information request (Oct. 27, 2023).

62 Data compiled by IRS Office of Chief Counsel (Oct. 20, 2023). IRS, Counsel Automated Tracking System, TL-708D, TL-709. Inventory pending as of September 30, 2023. Does not include cases on appeal or declaratory judgments. FY 2023 Tax Court cases settlement data provided by the IRS Office of Chief Counsel included a discrepancy of 16 cases. The IRS Office of Chief Counsel attributed this discrepancy of 16 cases to data entry error. IRS response to TAS information request (Oct. 27, 2023). The discrepancy in the number of settled cases is *de minimis* and does not change the relative percentages.

FIGURE 3.9[63]

Cases Dismissed, Settled, and Tried in the Tax Court, FYs 2014-2023



Settlements are vital to the tax litigation process. They are beneficial because they save all parties the time and expense of a trial and provide certainty and finality. To provide settlement opportunities, IRS Chief Counsel continued to coordinate with Low Income Taxpayer Clinics (LITCs),[64] American Bar Association volunteer attorneys, and other *pro bono* organizations to offer "Settlement Days" in FY 2023. IRS Chief Counsel held 28 events, 20 of which were virtual and eight of which were in person.[65] Through Settlement Days, IRS Chief Counsel held 285 meetings and settled 187 cases, resulting in a settlement rate of almost 66 percent in FY 2023.[66] The taxpayers whose cases were not settled still benefited because they had the opportunity to obtain free legal advice from volunteer attorneys or LITCs and were in a better position to understand their cases and the Tax Court process.

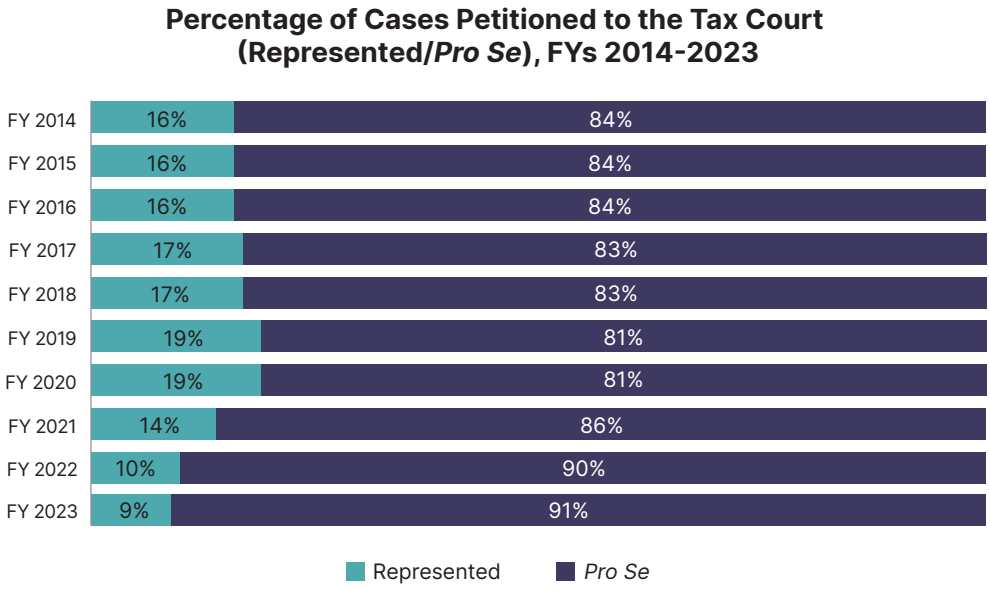
63 Data compiled by the IRS Office of Chief Counsel (Oct. 20, 2023). IRS, Counsel Automated Tracking System, TL-711. Inventory pending as of September 30, 2023. Does not include cases on appeal or declaratory judgments. FY 2023 Tax Court cases settlement data provided by the IRS Office of Chief Counsel included a discrepancy of 16 cases. The IRS Office of Chief Counsel attributed this discrepancy of 16 cases to data entry error. IRS response to TAS information request (Oct. 27, 2023). The discrepancy in the number of settled cases is *de minimis* and does not change the relative percentages.
64 *See* IRC § 7526.
65 Data compiled by IRS Office of Chief Counsel (Sept. 28, 2023).
66 *Id.*

ANALYSIS OF *PRO SE* LITIGATION

When a taxpayer appears before the court without a representative, they are appearing *pro se*.[67] In FY 2023, about 91 percent of cases petitioned to the Tax Court involved *pro se* taxpayers, and in about nine percent of the cases the taxpayers were represented.[68] Over the past ten years, an average of 84.6 percent of taxpayers appearing in Tax Court were not represented by counsel.[69] 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 dollar amounts at issue, 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[70]



67 "*Pro se*" means "for himself; in his own behalf; in person." BLACK'S LAW DICTIONARY (2nd ed.), https://thelawdictionary.org/pro-se/ (last visited Dec. 8, 2023).

68 Data compiled by IRS Office of Chief Counsel (Oct. 20, 2023), 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.

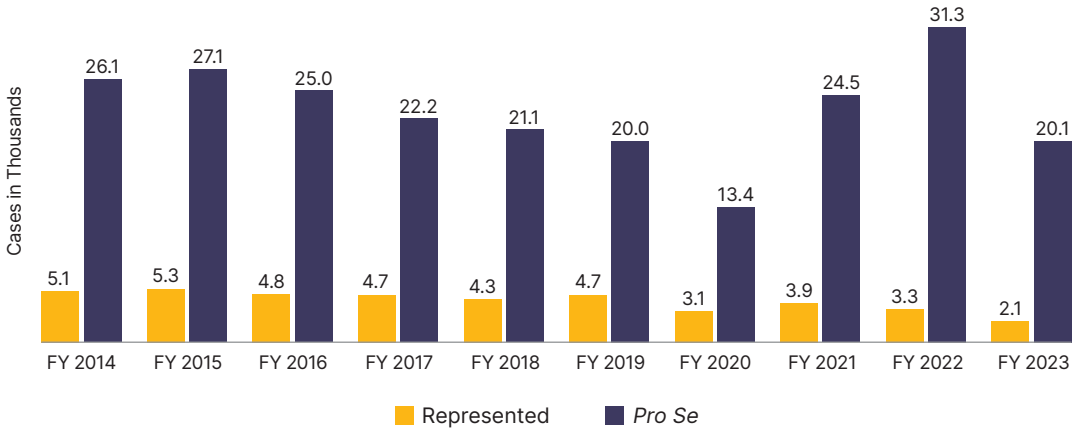
69 Data compiled by IRS Office of Chief Counsel (Oct. 20, 2023), Counsel Automated Tracking System, TL-708A.

70 *Id.*; National Taxpayer Advocate 2022 Annual Report to Congress 185 (Most Litigated Issues), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MostLitigatedIssues.pdf. Does not include cases on appeal and declaratory judgments.

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[71]

Total Cases Petitioned to the Tax Court (Represented/*Pro Se*), FYs 2014-2023



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 ($200,000 for FY 2023) for eligible LITCs.[72] The Tax Court administers the tax clinics and the Bar-Sponsored Calendar Call programs that provide advice and assistance to many low-income, self-represented taxpayers.[73] The tax clinics and Bar-Sponsored Calendar Call Program enable eligible taxpayers to receive free legal advice and representation at a trial session.

Each year, LITCs provide crucial assistance to low-income taxpayers in 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 can exercise their rights and are afforded the opportunity to reach a fair and just outcome. LITCs provide access to justice and assistance that help low-income taxpayers obtain much-needed refunds and protect their *right to pay no more than the correct amount of tax*.[74]

During 2022, 122 LITCs participated in the Tax Court Clinical Program. LITC practitioners litigated 1,537 cases in the Tax Court on behalf of low-income taxpayers and 23 cases in other federal courts.[75] LITC practitioners assisted taxpayers in many cases without litigation, entering appearances in 1,053 cases, representing taxpayers in 532 cases that did not require an entry of appearance, and providing informal advice

71 Data compiled by IRS Office of Chief Counsel (Oct. 20, 2023), Counsel Automated Tracking System, TL-708A; National Taxpayer Advocate 2022 Annual Report to Congress 185 (Most Litigated Issues), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MostLitigatedIssues.pdf. Does not include cases on appeal and declaratory judgments.

72 IRS, Pub. 3319, Low Income Taxpayer Clinics Grant Application Package and Guidelines (May 2023), https://www.irs.gov/pub/irs-pdf/p3319.pdf. TAS administers and oversees the grant program through its LITC Program Office.

73 *See* U.S. Tax Court, Clinics & *Pro Bono* Programs, https://www.ustaxcourt.gov/clinics.html (last visited Dec. 8, 2023). The Tax Court continues to invite academic and non-academic tax clinics and bar-sponsored programs to consider participating and representing *pro se* taxpayers.

74 *See* IRC § 7803(a)(3)(C).

75 Email from TAS LITC Program Office (Oct. 30, 2023) (on file with TAS).

through consultation at the Tax Court in 552 cases.[76] In addition to the services they provide through direct assistance, LITCs 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[77] on grant funding was not indexed for inflation, TAS recommends changes to the LITC Program that would provide for even more taxpayers to receive assistance in resolving their controversies with the IRS.[78] Across the LITC Program, many LITC practitioners helped taxpayers who were facing large tax bills and dwindling hope. For example, an LITC helped a taxpayer prevail in a factually and legally complex case involving a fraudulent debt claim and a coerced sale of the taxpayer's home that resulted in an $80,000 tax bill. In another case, an LITC helped a taxpayer prevail in challenging income classification and entitlement to the EITC and CTC, resulting in a refund of more than $12,000.[79] In these cases and many more, LITCs helped taxpayers achieve the fair and just result they deserved.

PUBLIC ONLINE ACCESS TO TAX COURT FILINGS

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 improve 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. PACER provides access to millions of case file documents and docket information for all district, bankruptcy, and appellate courts. Documents on PACER have certain personal identifiers removed or redacted before the record becomes public, including Social Security numbers, financial account numbers, the name of a minor, date of birth, and home addresses in a criminal case.[80]

IRC § 7461 governs the accessibility and publication of documents that enter the Tax Court system.[81] 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). Enacted in 1954 and last amended in 1984, IRC § 7461 was written long before lawmakers contemplated issues related to online access.[82]

The Tax Court launched a new online case management system, Docket Access Within A Secure Online Network (DAWSON), in December 2020.[83] Under this system, the Tax Court allows parties to a case to access case records online. The Tax Court expanded access through DAWSON in August 2023 to include all newly filed post-trial briefs (in non-sealed cases) filed by government and non-government practitioners

76 Email from TAS LITC Program Office (Oct. 30, 2023).
77 For FY 2023, additional funding allowed LITCs to receive grants of up to $200,000. IRS, Pub. 3319, Low Income Taxpayer Clinics Grant Application Package and Guidelines (May 2023), https://www.irs.gov/pub/irs-pdf/p3319.pdf.
78 National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* (*Enable the Low Income Taxpayer Clinic Program to Assist More Taxpayers in Controversies With the IRS*).
79 Email from TAS LITC Program Office (Nov. 3, 2023) (on file with TAS).
80 PACER, Frequently Asked Questions, https://pacer.uscourts.gov/help/faqs/what-information-available-through-pacer (last visited Dec. 8, 2023).
81 IRC § 7461.
82 68A Stat. 887, Ch. 736 (1954); Pub. L. No. 98–369, Div. A, Title IV, § 465(a), 98 Stat. 494, 825 (1984).
83 *See* U.S. Tax Court, Press Release (Dec. 18, 2020), https://ustaxcourt.gov/resources/press/12182020.pdf.

admitted to practice before the Tax Court and all newly filed *amicus* briefs filed pursuant to Rule 151.1 of the Tax Court Rules of Practice and Procedure.[84] In FY 2023, about ten percent of petitioners to the Tax Court were represented by a practitioner admitted to practice before the Tax Court.[85]

Tax Court Rule 27 provides privacy protections for filings made with the Tax Court. It requires parties and nonparties to redact the following information from court filings: (1) taxpayer identification numbers, (2) dates of birth (just the year is permissible), (3) names of minor children, and (4) financial account numbers.[86] The Tax Court limits access to pleadings on DAWSON because filings don't always have the necessary redactions to comply with Rule 27, and the Tax Court seeks to prevent the inadvertent disclosure of confidential information.

Non-sealed evidence, briefs, pleadings, and transcripts of proceedings not offered through electronic access to nonparties can only be accessed by visiting the Tax Court building in Washington, D.C., during normal business hours (between 8 a.m. and 4:30 p.m., excluding federal holidays). 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.

Records can also be accessed by calling the Tax Court records department and requesting 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. 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.[87]

The Tax Court serves a practical purpose 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, the Tax Court could expand electronic access to non-sealed documents on dockets without violating privacy rights by 1) using redaction software that would automatically redact certain types of sensitive or protected information, even when inadvertently included in a filing and 2) improving awareness and educational materials for unrepresented taxpayers 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. Taxpayers deserve access and transparency in our court system and tax administration regardless of where they are located.

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 "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.[88]

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84 U.S. Tax Court, Admin. Ord. 2023-02, *Expanding Remote Electronic Access to Certain Court Documents* (May 5, 2023), https://www.ustaxcourt.gov/resources/administrative_orders/Administrative_Order_2023-02.pdf.

85 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. T.C. R. 200, https://www.ustaxcourt.gov/resources/ropp/Rule-200(2nd-amended).pdf.

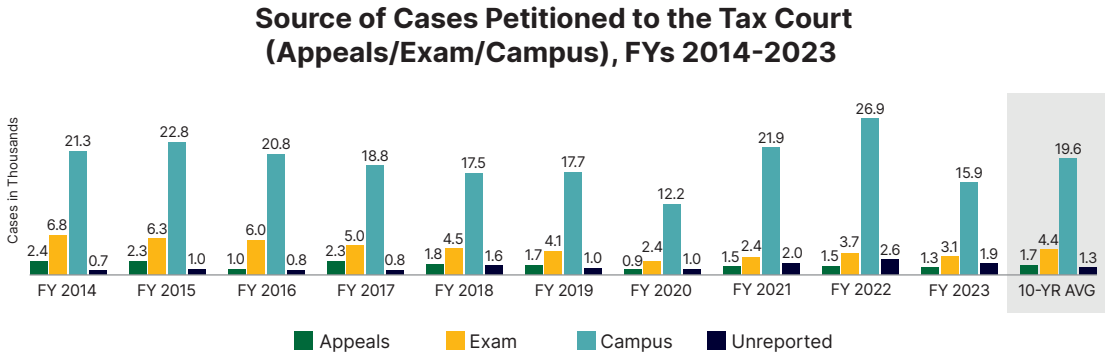
86 T.C. R. 27(b), https://www.ustaxcourt.gov/rules.html.

87 U.S. Tax Court, Transcripts and Copies, https://www.ustaxcourt.gov/transcripts_and_copies.html (last visited Dec. 1, 2023).

88 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.

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[89]



From FY 2022 to FY 2023, petition filings declined in all categories. Petitions arising from Campuses saw the largest real decrease, with about 11,000 fewer petitions compared to last year. However, Campuses remain the most significant source of petitions filed, consistent with the trend over the past decade. On average over the past ten fiscal years, about 72 percent of petitions in the Tax Court resulted from an SND being issued from a Campus.[90]

When an SND is issued from a Campus, it is highly likely that the taxpayer has not 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 Appeals Officers who were more inclined to defend the IRS's position than to impartially assess the hazards of litigation.[91] 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 saw the vast majority of cases in FY 2023, although Tax Court inventory sharply declined from last year's numbers.

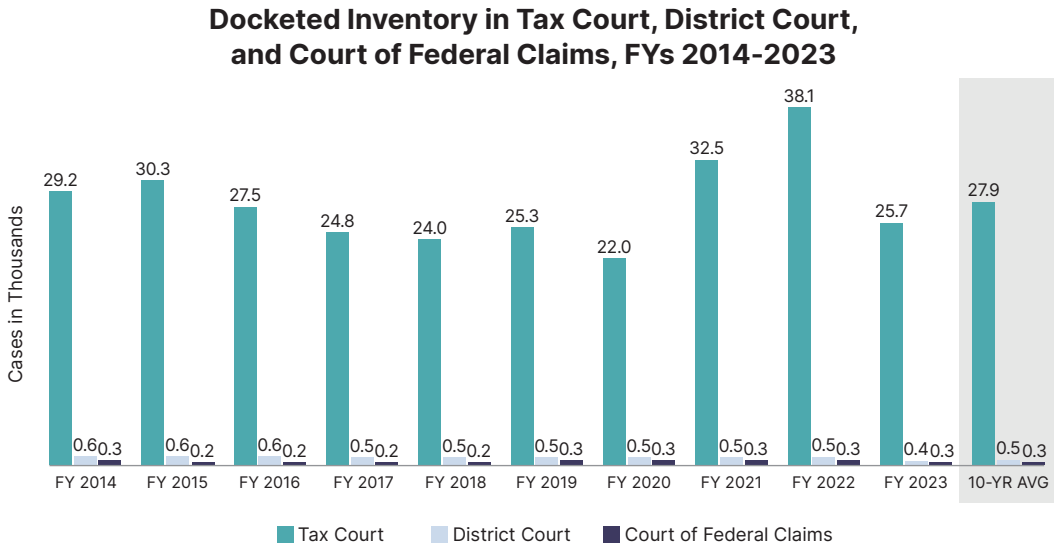
The inventory of docketed cases in all U.S. district courts continued a slight downward trend, and inventory in the Court of Federal Claims remained roughly the same as in prior years. Figure 3.13 compares the number of docketed cases in inventory in the Tax Court, the Court of Federal Claims, and the district courts at the end of the past ten fiscal years and calculates a ten-year average.

89 Data compiled by the IRS Office of Chief Counsel (Oct. 20, 2023); 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.

90 Data compiled by the IRS Office of Chief Counsel (Oct. 20, 2023); 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.

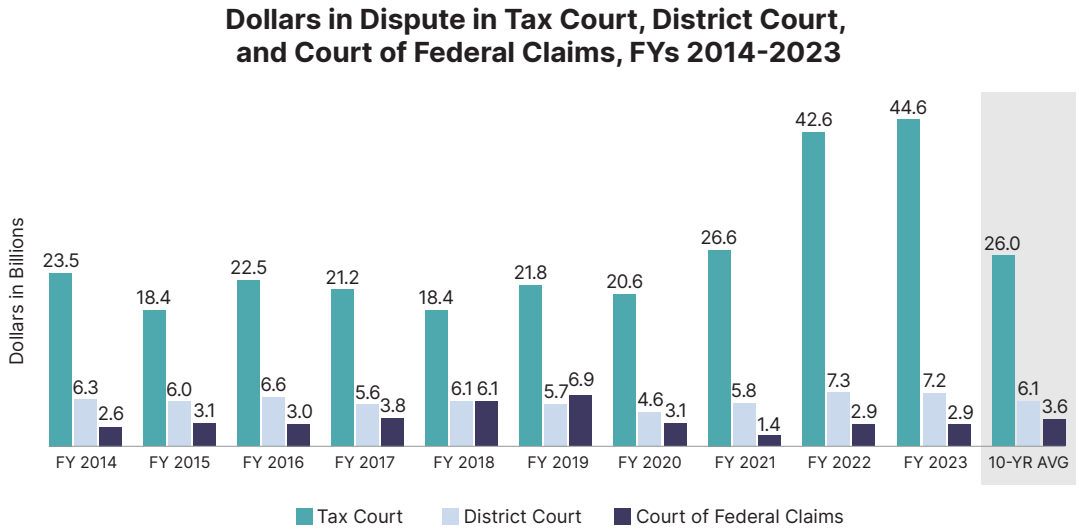
91 *See* National Taxpayer Advocate 2023 Annual Report to Congress (Most Serious Problem: *Appeals*: *Despite Some Improvements, Many Taxpayers and Tax Professionals Continue to Perceive the IRS Independent Office of Appeals as Insufficiently Independent*), *supra*.

FIGURE 3.13[92]



While the Tax Court docket has the overwhelming majority of cases, more money is at stake on average in tax litigation in the district courts and the Court of Federal Claims. However, amounts at stake in the Tax Court rose sharply in FYs 2022 and 2023, roughly doubling the average in the prior eight years. Amounts at issue in the district courts and Court of Federal Claims remain close to their ten-year averages.[93] Figure 3.14 shows the total yearly dollars in dispute for the docketed case inventory in these courts over the past ten fiscal years.

FIGURE 3.14[94]



92 Data compiled by the IRS Office of Chief Counsel (Oct. 20, 2023); IRS, Counsel Automated Tracking System, TL-708B.
93 Data compiled by the IRS Office of Chief Counsel (Oct. 20, 2023); IRS, Counsel Automated Tracking System, TL-708B.
94 Data compiled by the IRS Office of Chief Counsel (Oct. 20, 2023); IRS, Counsel Automated Tracking System, TL-708B. These dollar amounts may vary from year to year due to the individual nature of taxpayer claims, and they do not exclude amounts at issue in lawsuits ultimately determined to be frivolous. Does not include cases on appeal and declaratory judgments.

Looking to the pending inventory of Tax Court cases at the end of FY 2023, in nearly 68 percent of the cases, there was less than $50,000 at stake.[95] About two percent of the total docketed Tax Court cases involved an amount in dispute of more than $10 million, but that represents nearly 83 percent of all dollars in dispute in the Tax Court. Figure 3.15 shows the breakdown of FY 2023 Tax Court cases by dollars in dispute.

FIGURE 3.15[96]

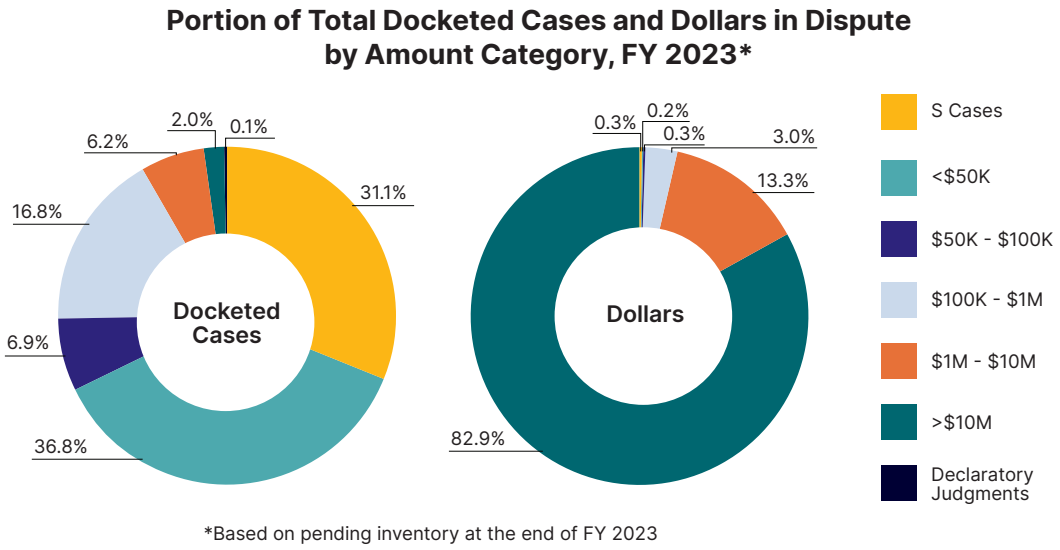
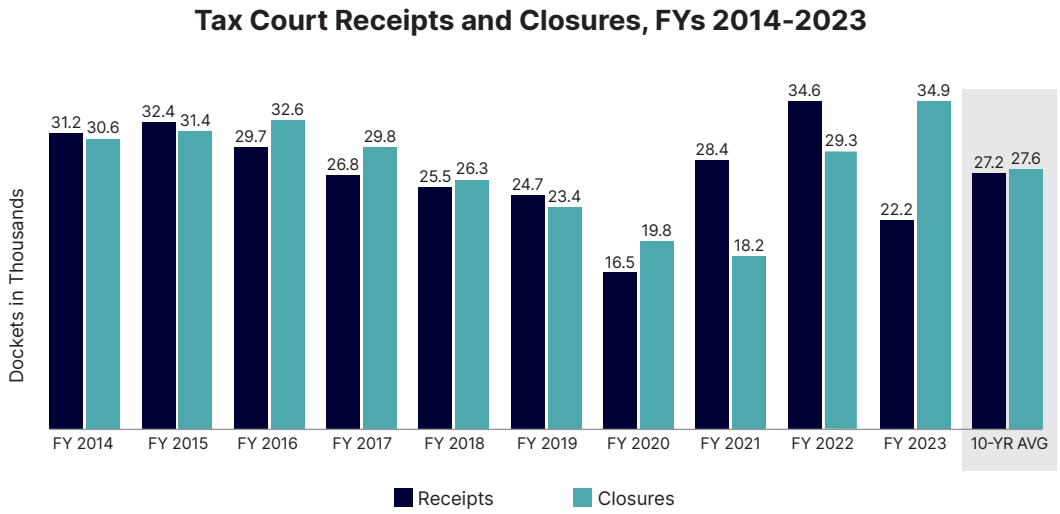


Figure 3.16 shows the Tax Court receipts and closures of cases over a ten-year period. This data shows how receipts fell to all-time lows in FY 2020 but increased in FYs 2021 and 2022. In FY 2023, receipts fell sharply from last year, but closures were at their highest in the ten-year period.

95 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. R. 171, https://www.ustaxcourt.gov/resources/ropp/Rule-171_Amended_03202023.pdf.

96 Data compiled by the IRS Office of Chief Counsel (Oct. 20, 2023); IRS, Counsel Automated Tracking System, TL-711. Inventory pending as of September 30, 2023. Does not include cases on appeal. Totals may not add up to 100 percent because of rounding.

FIGURE 3.16[97]



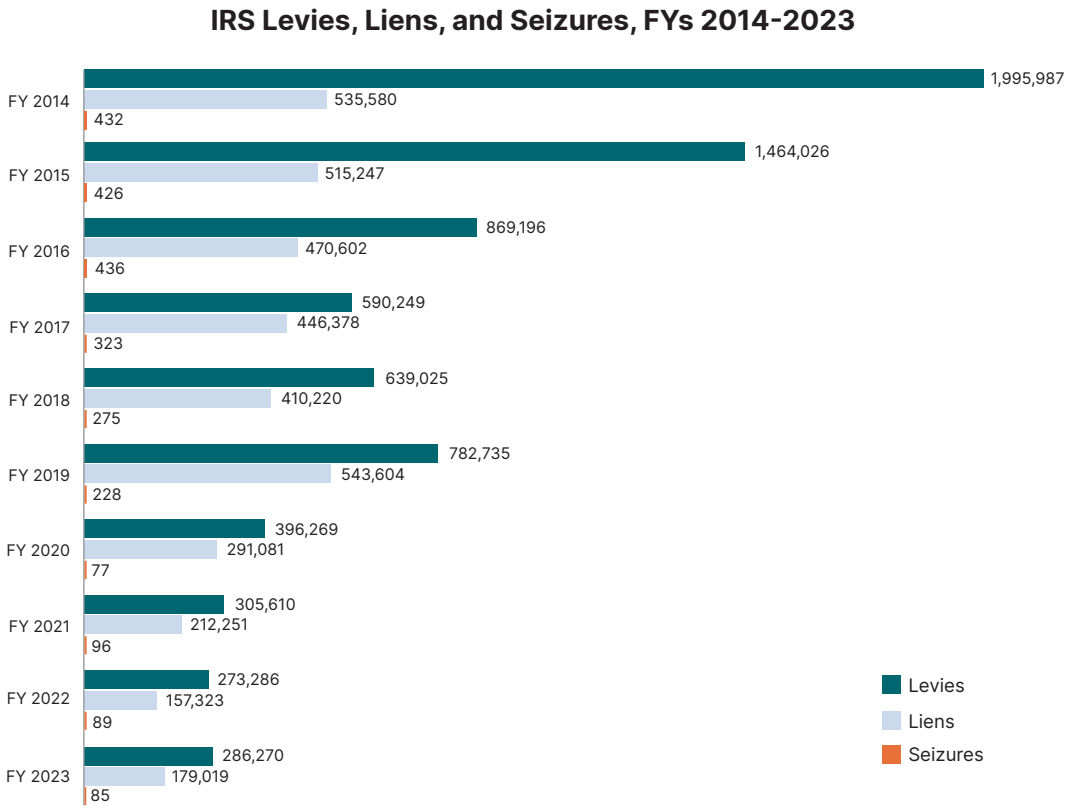
Tax Court cases begin with a taxpayer filing a petition to the Court.[98] However, in a U.S. district court, both taxpayers and the IRS or the DOJ representing the United States can initiate proceedings as part of enforcement actions.

The DOJ, on behalf of the United States, files suit for the IRS including summons enforcement actions to produce books, papers, records, or other data or to give testimony as required by the summons.[99] 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.[100] If 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.[101] 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, each of which has experienced a steady decline.

97 Data compiled by the IRS Office of Chief Counsel (Oct. 20, 2023); IRS, Counsel Automated Tracking System, TL-711. Inventory pending as of September 30, 2023. Does not include cases on appeal or declaratory judgments.
98 *See*, *e.g.*, IRC § 6213 (with respect to deficiency proceedings).
99 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).
100 IRC § 7403.
101 Refund suits will be discussed separately in this section.

FIGURE 3.17[102]



Some of the low numbers in recent years are attributable in part to measures taken during the pandemic with respect to collection efforts, but overall, the downward trend began much earlier, corresponding with a decline in numbers of IRS collection personnel.[103] Levies and liens in FY 2023 both show a slight uptick from FY 2022 but remain well below historic numbers. The number of seizures was at its ten-year low in FY 2020.

102 IRS, Pub. 55-B, IRS Data Book FY 2010, https://www.irs.gov/pub/irs-soi/10databk.pdf, through IRS, Pub. 55-B, IRS Data Book FY 2022, https://www.irs.gov/pub/irs-pdf/p55b.pdf (Table 25 Delinquent Collection Activities, Fiscal Years); IRS, Activity Report 5000-24 (Oct. 12, 2023); IRS, Activity Report 5000-25 (Oct. 4, 2023).

103 *See* Robert A. Warren et al., *Rendering Unto Caesar What Is Owed: Collecting Taxes Receivable*, TAX NOTES, Dec. 20, 2021, at 1724, https://www.taxnotes.com/tax-notes-today-federal/tax-system-administration/rendering-unto-caesar-what-owed-collecting-taxes-receivable/2021/12/20/7cnwr.

REFUND LITIGATION

A taxpayer who believes the IRS has erroneously assessed or collected tax may file a refund suit in a U.S. district court or the Court of Federal Claims to recover the amount.[104] The taxpayer generally must fully pay the tax assessed by the IRS prior to bringing the suit.[105] The full payment requirement is a key difference between a refund suit and a suit brought in Tax Court, where a taxpayer can challenge a determination of tax liability prior to paying the disputed amount.[106]

Before bringing a refund suit, IRC § 7422 requires that the taxpayer file an administrative refund claim with the IRS. The refund claim must comply with requirements related to the adequacy of the filing, including that the taxpayer sign and verify the claim.[107] It must also generally be filed within three years from the time the return was filed or two years from the time the tax was paid, whichever expires later.[108] If the IRS disallows a refund claim or does not act within six months of filing, the taxpayer may then bring a refund suit in court.[109] When the IRS's preliminary findings in examination are to disallow the claim, the taxpayer is generally allowed to appeal administratively. If agreement is not reached during the examination or appeals process, the IRS issues a statutory notice of claim disallowance that explains the taxpayer's right to file a refund suit.[110] Taxpayers must generally file a refund suit within two years beginning on the mailing date of the notice of claim disallowance, although the taxpayer and IRS may agree to extend this period.[111]

In her 2022 Report to Congress, the National Taxpayer Advocate identified the Supreme Court's decision in *Boechler v. Commissioner*,[112] which held the 30-day time limit on filing a petition for review of a CDP determination is non-jurisdictional, as a significant case in FY 2022.[113] In FY 2023 refund litigation cases, the Court of Federal Claims and district courts had the opportunity to consider the consequences of *Boechler* and related jurisprudence in the context of whether the IRC § 7422 requirements are jurisdictional. For example, the Court of Federal Claims issued holdings in two cases finding the taxpayer's signature and verification requirement was not jurisdictional based on recent changes in Federal Circuit precedent[114] but also determined in another case that the timely filed refund claim requirement was jurisdictional, as previously decided in prior Federal Circuit case law the court determined was not impacted by *Boechler*.[115] These

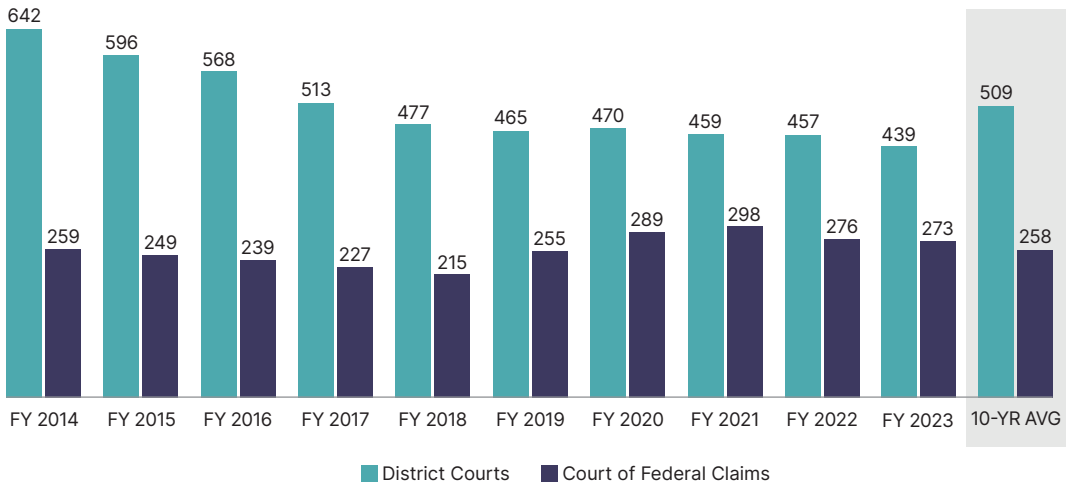
104 IRC § 6532; 28 U.S.C. § 1346(a)(l).
105 *See Flora v. United States*, 362 U.S. 145 (1960).
106 The full payment requirement is unfair to taxpayers as it limits the ability to file suit if they are unable to pay the disputed amount. Equal access to justice should allow taxpayers who cannot pay what the IRS says they owe to have the same opportunities to challenge a determination as wealthier taxpayers. *See* National Taxpayer Advocate 2022 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 96 (*Repeal* Flora*: Give Taxpayers Who Cannot Pay the Same Access to Judicial Review as Those Who Can*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_PurpleBook_07_StrengthTPR_48.pdf; National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* (*Expand the U.S. Tax Court's Jurisdiction to Hear Refund Cases*).
107 IRC §§ 6061(a), 6065; Treas. Reg. §§ 1.6012-1(a)(5), 1.6065-1(a), 301.6402-2(b)(1), (e).
108 IRC § 6511.
109 IRC § 6532(a)(1).
110 *See* IRM 4.10.11.2.16(1), Claims for Refund - Post Examination Appeal Rights (Sept. 29, 2022), https://www.irs.gov/irm/part4/irm_04-010-011.
111 IRC § 6532(a). Whether the IRS will agree to an extension depends on the facts and circumstances of each case, including whether an extension will prevent possible inequities to taxpayers. *See* IRM 4.10.11.2.16.1.1(5), IRC 6532 Two-Year Period to File Refund Suit - Consideration and Examiner's Responsibilities (Sept. 29, 2022), https://www.irs.gov/irm/part4/irm_04-010-011.
112 *Boechler v. Comm'r*, 596 U.S. 199 (2022).
113 National Taxpayer Advocate 2022 Report to Congress 192 (Most Litigated Issues: *Significant Cases*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MostLitigatedIssues.pdf. The *Boechler* decision has put a focus on which IRC provisions are non-jurisdictional, as illustrated by two significant cases identified by the National Taxpayer Advocate this year: *Hallmark Research Collective v. Comm'r* and *Culp v. Comm'r*. *See* Most Litigated Issues: *Significant Cases*, *infra*.
114 *Vensure HR, Inc. v. United States*, 164 Fed. Cl. 276 (Fed. Cl. 2023); *Cooper v. United States*, 165 Fed. Cl. 531 (Fed. Cl. 2023).
115 *Polk v. United States*, 167 Fed. Cl. 731 (Fed. Cl. 2023).

FY 2023 cases highlight the evolving landscape for taxpayers regarding the question of whether IRC § 7422 requirements are jurisdictional, which will be an ongoing issue for taxpayers as the question continues to be litigated.[116]

As shown in Figure 3.18, in FY 2023, 712 refund cases remained in inventory, down slightly from 733, the FY 2022 total. The U.S. district courts presided over 439 of these cases, while 273 went before the U.S. Court of Federal Claims.[117]

FIGURE 3.18[118]

Tax Refund Case Inventory Before the District Courts and Court of Federal Claims, FYs 2014-2023



CRIMINAL TAX VIOLATIONS

Tax administration has long been a target for criminal activity, which the IRS combats with its Criminal Investigation (CI) Division that includes approximately 2,100 special agents deployed globally.[119] The special agents of IRS CI have federal investigative jurisdiction over various financial crimes, including complex fraud and money laundering schemes, but only IRS CI has federal jurisdiction to investigate potential criminal tax violations of the IRC.[120] IRS CI refers its criminal investigations to the DOJ for prosecution.[121]

116 *See, e.g.*, Carlton M. Smith, *Courts Differ on Curing Jurisdictional Defects in Refund Suits After Filing*, PROCEDURALLY TAXING (Oct. 6, 2023), https://www.taxnotes.com/procedurally-taxing/courts-differ-curing-jurisdictional-defects-refund-suits-after-filing/2023/10/06/7hf1k?highlight=7422; Carlton M. Smith, *DOJ Wins One Case and Loses Motions in Another Where POAs Signed First Refund Claims for Taxpayers, Part II*, PROCEDURALLY TAXING (May 26, 2023), https://www.taxnotes.com/procedurally-taxing/doj-wins-one-case-and-loses-motions-another-where-poas-signed-first-refund-claims-taxpayers-part-ii/2023/05/26/7h5ts?highlight=7422; Keith Fogg, *Circuit Precedent and Supreme Court Decisions*, PROCEDURALLY TAXING (Feb. 20, 2023), https://www.taxnotes.com/procedurally-taxing/circuit-precedent-and-supreme-court-decisions/2023/02/20/7h6m7?highlight=7422.

117 Data compiled by the IRS Office of Chief Counsel (Oct. 20, 2023); IRS, Counsel Automated Tracking System, TL-712. Does not include cases on appeal or declaratory judgments.

118 Data compiled by the IRS Office of Chief Counsel (Oct. 20, 2023); IRS, Counsel Automated Tracking System, TL-712. Does not include cases on appeal or declaratory judgments.

119 IRS, Criminal Investigation (CI) At-a-Glance (last updated Mar. 29, 2023), https://www.irs.gov/about-irs/criminal-investigation-ci-at-a-glance.

120 *Id.*

121 *Id.*

During FY 2023, IRS CI initiated 2,676 investigations, referred 1,838 cases to the DOJ for prosecution, and aided in securing 1,508 convictions, with an 88.4 percent overall rate of conviction.[122] The work of IRS CI resulted in $272 million in seizures and identification of $5.5 billion in tax fraud and $31.6 billion in other financial crimes in FY 2023.[123]

According to U.S. Courts' Federal Judiciary Caseload Statistics, there was about a ten percent decrease in criminal tax fraud cases commenced in federal district courts in FY 2023 compared to FY 2022, with 342 and 381 cases per year, respectively.[124] A total of 387 criminal tax fraud defendants appeared in U.S. district courts in FY 2023, with 345 who pled guilty and another 17 criminally convicted or sentenced after a bench or jury trial.[125] For comparison, in 2022, 370 of criminal tax fraud defendants pled guilty, and 12 were convicted or sentenced via a bench or jury trial.[126]

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.[127]
- 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).[128]
- Amend IRC § 7602(c) to require the IRS to provide taxpayers with a tailored notice that identifies the specific information it plans to request from a third party. Before the IRS seeks such information from a third party, it should give taxpayers a reasonable period of time to respond to the notice, including by providing the required information, unless an exception under IRC § 7602(c)(3) applies.[129]
- Amend IRC § 7433(d)(3) to allow taxpayers 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 the earlier of two years from the date on which the IRS sends its decision on the administrative claim to

122 IRS, Pub. 3583, Internal Revenue Service: Criminal Investigation Annual Report (Dec. 2023), https://www.irs.gov/pub/irs-pdf/p3583.pdf.
123 *Id.*
124 U.S. Courts' 2023 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, 2022, and March 31, 2023, https://www.uscourts.gov/statistics/table/d-2/federal-judicial-caseload-statistics/2023/03/31.
125 U.S. Courts' 2023 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, 2022, and March 31, 2023, https://www.uscourts.gov/statistics/table/d-4/federal-judicial-caseload-statistics/2023/03/31.
126 U.S. Courts' 2023 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, 2022, and March 31, 2023, https://www.uscourts.gov/statistics/table/d-4/federal-judicial-caseload-statistics/2023/03/31.
127 For further discussion, see National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* (*Clarify That Supervisory Approval Is Required Under IRC § 6751(b) Before Proposing Penalties*).
128 For further discussion, see National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* (*Require an Employee to Determine and a Supervisor to Approve All Negligence Penalties Under IRC § 6662(b)(1)*).
129 For further discussion, see National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* (*Require the IRS to Specify the Information Needed in Third-Party Contact Notices*).

the taxpayer by certified or registered mail or, if the IRS does not render a decision, five years from the date the right of action accrued to file the administrative claim with the IRS.[130]

- 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) six months after the date of the Appeals closing letter.[131]
- Amend IRC § 7403 to preclude IRS employees from requesting that the DOJ file a civil action in a U.S. district court seeking to enforce a tax lien and foreclose on a taxpayer's principal residence, except where 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 no reasonable alternative exists for collection of a taxpayer's debt;
    2. The foreclosure and sale of the residence would not create an economic hardship due to the financial condition of the taxpayer; and
    3. If the property to be levied is owned by the taxpayer but is used as the principal residence of the taxpayer's spouse, the taxpayer's former spouse, or the taxpayer's minor child, the IRS has sent a notice addressed in the name of the taxpayer's spouse or ex-spouse, individually or on behalf of any minor children.[132]
- 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.[133]
- 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.[134]

130 For further discussion, see National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* (*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 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.

131 For further discussion, see National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* (*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 Claim*). On occasion, taxpayers have sought to refresh time-barred claims by filing later claims that are identical or substantially identical. We do not recommend Congress permit such end-runs around the rule, and the courts generally have not allowed them. *See Peretz v. United States*, 148 Fed. Cl. 586, 607 (2020) ("This court and its predecessor courts, as well as courts in other circuits, have long held that repetitively filed claims do not extend the time for which a plaintiff can file suit under 26 U.S.C. § 6532.") and cases cited therein. If Congress is concerned about potential abuse, our recommendation could be modified to provide that an extension beyond two years will only be permitted for the first refund claim filed for a tax period.

132 For further discussion, see National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* (*Provide Taxpayer Protections Before the IRS Recommends the Filing of a Lien Foreclosure Suit on a Principal Residence*). 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).

133 For further discussion, see National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* (*Expand the U.S. Tax Court's Jurisdiction to Hear Refund Cases*).

134 For further discussion, see National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* (*Provide That "an Opportunity to Dispute" an Underlying Liability Means an Opportunity to Dispute Such Liability in the U.S. Tax Court*).

- Amend IRC § 6212 to require the IRS to issue a statutory notice before assessing any "assessable penalty" or other international information return (IIR) penalty listed in Chapter 61, Subchapter A, Part III, Subpart A.[135]
- Amend IRC § 6402 to require the IRS to act on refund claims within three years. Failure to take timely action on a refund claim would result in an additional five percent interest on top of the IRC § 6621 rate, and in the event of litigation, the burden of proof would shift to the Secretary.[136]
- Amend IRC §§ 6320(a)(3)(B), 6330(a)(3)(B), and 6330(d)(1) to allow 90 days (*i.e.*, an additional 60 days) in which to request a CDP hearing after the issuance of a CDP lien or levy notice and in which to file a petition in the U.S. Tax Court to request a hearing after the issuance of a notice of determination if the notice is addressed to a person outside the United States.[137]

SIGNIFICANT CASES

This section describes cases decided in FY 2023 that involve issues of general importance to federal tax administration.[138]

Tax Court Holds Filing Deadlines Are Jurisdictional for Tax Deficiency Cases

In *Hallmark Research Collective v. Commissioner*, a California-based marijuana dispensary filed a Tax Court petition challenging several IRS deficiency notices.[139] These notices disallowed business deductions under IRC § 280E, which pertains to businesses involved in the trafficking of controlled substances.[140] Due to its accountant's illness, the taxpayer filed the Tax Court petition one day late, missing the 90-day deadline set by IRC § 6213(a). The Tax Court dismissed the case for lack of jurisdiction on April 1, 2022.

Subsequently, the U.S. Supreme Court ruled in *Boechler v. Commissioner* that the 30-day period for filing a petition seeking Tax Court review of a collection determination under IRC § 6330(d)(1) is not jurisdictional and is subject to equitable tolling, which allows for exceptions to late filing based on good cause.[141] *Hallmark* filed a motion to vacate the previous Tax Court dismissal based on *Boechler*, arguing IRC §§ 6213(a) and 6330(d)(1) are functionally the same.

The Tax Court disagreed. Instead, it held the language and context of IRC § 6213(a) clearly indicated that the deadline for filing a deficiency case is jurisdictional. The court also cited historical amendments to IRC §§ 6213(a) and 7459(d) as evidence supporting the jurisdictional nature of the deadline.

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135 For further discussion, see National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* (*Provide That Assessable Penalties Are Subject to Deficiency Procedures*).

136 For further discussion, see National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* (*Require the IRS to Timely Process Claims for Credit or Refund*).

137 For further discussion, see National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* (*Give Taxpayers Abroad Additional Time to Request a Collection Due Process Hearing and to File a Petition Challenging a Notice of Determination in the U.S. Tax Court*).

138 When identifying the ten most litigated issues, TAS analyzed federal decisions issued during the fiscal year period beginning on October 1, 2022, through September 30, 2023. For purposes of this section, we used the same period.

139 159 T.C. No. 6 (Nov. 29, 2022).

140 *See generally* Erin M. Collins, Despite Operating Legally in Many States, Marijuana-Related Businesses Face Significant Federal Income Tax Law Challenges, NATIONAL TAXPAYER ADVOCATE BLOG (May 10, 2022), https://www.taxpayeradvocate.irs.gov/news/nta-blog-despite-operating-legally-in-many-states-marijuana-related-businesses-face-significant-federal-income-tax-law-challenges/.

141 *Boechler P.C. v. Comm'r*, 596 U.S. 199 (2022). *See also* National Taxpayer Advocate 2022 Annual Report to Congress 192, 193 (Most Litigated Issues: *Significant Cases*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MostLitigatedIssues.pdf.

The *Hallmark* case has significant implications for taxpayers, particularly concerning their *right to challenge the IRS's position and be heard*, as outlined in the Taxpayer Bill of Rights.[142] The Tax Court's decision to uphold the jurisdictional nature of the filing deadline under IRC § 6213(a) limits the scope for equitable tolling. This could potentially affect taxpayers who, for valid reasons, are unable to meet the strict filing deadlines, thereby affecting a taxpayer's *right to a fair and just tax system*.[143]

The *Hallmark* decision is likely to impact how the Tax Court and appellate courts interpret the jurisdictional nature of filing deadlines in tax cases.[144] It sets a precedent that could limit the applicability of equitable tolling in future cases, affecting the taxpayer's ability to challenge IRS determinations. This decision is also expected to trigger further litigation in circuit courts[145] and possibly another Supreme Court review given its apparent divergence from the *Boechler* ruling.

Third Circuit Holds Filing Deadlines Are Not Jurisdictional for Tax Deficiency Cases

In contrast to *Hallmark Research Collective*, the Third Circuit in *Culp v. Commissioner* upset the Tax Court's view on its jurisdiction related to the timeliness of taxpayer petitions in tax deficiency cases.[146] The Tax Court had maintained for almost 100 years that if a petition arrives late, the court lacks jurisdiction to hear the case, regardless of the reason for the delay. In *Culp*, the Third Circuit decided the tax deficiency filing deadline is not jurisdictional and is subject to equitable tolling, which allows for exceptions based on good cause.

The taxpayers in this case, retired employment discrimination attorneys, filed a late Tax Court petition disputing an IRS determination that they owed a tax year 2015 tax deficiency, arguing they never received the original notice of deficiency. The Tax Court dismissed their petition for lack of jurisdiction, prompting an appeal to the Third Circuit.

The Third Circuit panel unanimously reversed the Tax Court's decision, holding that the controlling statute must clearly state Congress intended for a time limit to create a jurisdictional barrier. The Third Circuit found the nearly century-old statute in question did not make such a clear statement and therefore applied the presumption of equitable tolling in deficiency cases.

This case is significant for several reasons. First, it potentially opens the doors of the Tax Court to approximately 600 taxpayers each year who file late.[147] This is particularly significant for unrepresented taxpayers, who make up most late filers.[148] Not all late filers will come in, as only those within the Third Circuit's appellate jurisdiction[149] with a valid reason for the delay can currently present the merits of their case without having to first pay the tax and sue for a refund in another federal court. Those outside the Third Circuit's appellate jurisdiction still cannot. This latter point is bolstered by the Tax Court's recent reaffirmation of its *Hallmark* decision, maintaining that a tax deficiency filing deadline is jurisdictional.[150]

142 IRC § 7803(a)(3)(D).
143 IRC § 7803(a)(3)(J).
144 On November 2, 2023, the Tax Court reaffirmed its position that tax deficiency filing deadlines are jurisdictional in *Sanders v. Comm'r*, 161 T.C. No. 8 (Nov. 2, 2023).
145 The Third Circuit has already ruled contrary to the Tax Court's *Hallmark* decision, finding timely filing non-jurisdictional in tax deficiency cases. *See Culp v. Comm'r*, 75 F.4th 196 (3d Cir. 2023), *infra*.
146 75 F.4th 196 (3d Cir. 2023).
147 Keith Fogg, *Opening the Tax Court's Doors,* Procedurally Taxing (Sept. 11, 2023), https://www.taxnotes.com/tax-notes-today-federal/litigation-and-appeals/opening-tax-courts-doors/2023/09/11/7h8bt.
148 *Id*.
149 According to the *Golsen* rule, *Culp* sets a precedent for the Tax Court in cases within the Third Circuit's appellate jurisdiction. *Golsen v. Comm'r,* 54 T.C. 742 (1970), *aff'd on other grounds*, 445 F.2d 985 (10th Cir. 1971). Thus, taxpayers with rights to appeal to the Third Circuit can argue for an extended petition deadline due to exceptional circumstances even if the filing is late. However, this rule is not universally binding and does not impact Tax Court cases in other jurisdictions.
150 *Sanders v. Comm'r*, 161 T.C. No. 8 (Nov. 2, 2023).

Second, the decision ensures more flexible consideration of the timeliness issue for those within the Third Circuit's appellate jurisdiction, safeguarding the taxpayers' *rights to challenge the IRS's position and be heard*[151] and *to a fair and just tax system*.[152]

Because it challenges the Tax Court's traditional stance on jurisdiction and timeliness, *Culp* will potentially have a far-reaching impact for future tax cases involving equitable tolling arguments. This will require IRS attorneys to review taxpayer petitions more vigilantly and could lead to more Tax Court hearings on the validity of excuses for the late filing of a petition.

Yet, the issue is far from settled. On October 3, 2023, the government filed a petition for rehearing *en banc*,[153] arguing the Third Circuit panel decision contradicts a century of case law[154] and obliterates the careful balance Congress struck between prepayment review in the Tax Court and post-payment refund suits in the district courts and Court of Federal Claims.[155] The Third Circuit sustained the panel's decision.[156] However, future litigation is likely before the issue is settled for all taxpayers.[157] Therefore, judicial clarification is still needed. Congress can avert future litigation by considering legislation that clarifies the jurisdictional nature of filing deadlines in tax cases, thereby providing more certainty to courts, taxpayers, and the IRS.

The IRS Is Not Authorized to Assess and Collect Penalties Under IRC § 6038(b) for Failure to File Certain International Information Returns

In *Farhy v. Commissioner*,[158] the taxpayer challenged the IRS's authority to assess and collect IIR penalties for the failure to file Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations.[159] The taxpayer had a reporting requirement under IRC § 6038(a) to report his ownership interests in two foreign corporations but failed to file the required Forms 5471 for multiple tax years. The IRS assessed an initial penalty under IRC § 6038(b)(1) for each year and continuation penalties under IRC § 6038(b)(2). The IRS sought to collect the penalties via levy, and the taxpayer timely filed a CDP petition with the Tax Court.

The taxpayer argued that, unlike many other penalty provisions in the tax code, IRC § 6038 has no language authorizing assessment of the penalty it imposes. In addition, the taxpayer argued that because this IRC section falls outside of the sections in Subchapter B of Chapter 68 of Subtitle F, which is entitled *Assessable Penalties*, and because it has no language linking its penalty provision to any other authorization to assess and collect penalties, the IRS does not have authority to assess and collect this penalty.

151 IRC § 7803(a)(3)(D).
152 IRC § 7803(a)(3)(J).
153 *Culp v. Comm'r*, No. 22-1789 (3d Cir. filed Oct. 3, 2023) (petition for rehearing *en banc*).
154 On appeal, the IRS argues the Tax Court "is a court of limited jurisdiction," *Comm'r v. McCoy*, 484 U.S. 3, 7 (1987) (*per curiam*), which "possess[es] only such jurisdiction as is expressly conferred by Congress." *Sunoco Inc. v. Comm'r*, 663 F.3d 181, 187 (3d Cir. 2011).
155 *Sunoco*, 663 F.3d at 187 ("The Tax Court's principal basis for jurisdiction is I.R.C. § 6213(a). That section of the Tax Code gives the Tax Court jurisdiction to redetermine a 'deficiency' in income, estate, gift, and certain excise taxes as to which the IRS has issued a notice of deficiency pursuant to I.R.C. § 6212(a).").
156 *Culp v. Comm'r*, 75 F.4th 196 (3d Cir.), *reh'g denied*, No. 22-1789 (3d Cir. Nov. 28, 2023).
157 *See* Mary Katherine Browne, *Third Circuit Rejects Rehearing on Equitable Tolling in* Culp, Tax Notes, Nov. 29, 2023, https://www.taxnotes.com/tax-notes-today-federal/litigation-and-appeals/third-circuit-rejects-rehearing-equitable-tolling-culp/2023/11/29/7hlkr. For examples of cases in other circuit jurisdictions arguing against the *Hallmark* holding that timely filing in tax deficiency matters is jurisdictional for the Tax Court, see *Nutt v. Comm'r*, 160 T.C. No. 10 (May 3, 2023), *appeal filed*, Notice of Appeal, No. 15959-22 (11th Cir., Aug. 1, 2023); *Sanders v. Comm'r*, 161 T.C. No. 8 (Nov. 2, 2023); *Evenhouse v. Comm'r*, T.C. Memo. 2023-113.
158 160 T.C. No. 6 (Apr. 3, 2023).
159 IRS, Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations, https://www.irs.gov/pub/irs-pdf/f5471.pdf.

The IRS raised several arguments in favor of its contrary position. The primary contention was that the term "assessable penalties" refers to any penalty in the IRC not subject to deficiency procedures and that no IRC section limits the term "assessable penalties" to those found within Subchapter B of Chapter 68. The IRS also contended that the definition of "taxes," which includes "assessable penalties," in IRC § 6201 is broad enough to encompass IRC § 6038(b) penalties.

The Tax Court found the taxpayer's arguments correct, holding that the IRS may not proceed with the collection of IRC § 6038(b) penalties from the taxpayer via the proposed levy because the IRS did not have the statutory authority to assess these penalties.

Farhy has significant implications for taxpayers with international financial interests, and the court held the IRS lacks statutory authority to make IRC § 6038(b) penalty assessments.

The National Taxpayer Advocate previously identified the assessment of international penalties under IRC §§ 6038 and 6038A as a Most Serious Problem, deeming these assessments "legally unsupportable" and overly burdensome for the IRS and taxpayers.[160] The National Taxpayer Advocate also warned of future litigation in this area and recommended legislative changes to provide clarity.[161]

Farhy could open the door for litigation involving additional forms, related penalties,[162] and other non-international penalty sections that do not explicitly provide the IRS with assessment authority. The decision might also affect taxpayers subject to related penalties under other sections of the tax code, such as IRC § 6038A(d).

The case also underscores the need for legislative clarification regarding IIR penalties. The National Taxpayer Advocate renews her previous recommendation that Congress treat all IIR penalties as subject to deficiency procedures.[163] This means taxpayers would receive a formal statutory notice and an opportunity to dispute the penalties in Tax Court. The legislative change will create a more fair and just tax system[164] because it allows all taxpayers to argue their case in court without having to first pay the penalties and then sue for a refund. For the first time, lower- and middle-income taxpayers would have access to the same due process afforded more affluent taxpayers in the context of IIR penalties. The change will also encourage the IRS to assess these penalties more carefully, knowing more taxpayers can challenge them without the sometimes-crippling cost of prepayment.

160 National Taxpayer Advocate 2020 Annual Report to Congress 119 (Most Serious Problem: *International*: *The IRS's Assessment of International Penalties Under IRC §§ 6038 and 6038A Is Not Supported by Statute, and Systemic Assessments Burden Both Taxpayers and the IRS*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_MSP_08_International.pdf; Erin M. Collins, International Information Return Penalties Impact a Broad Range of Taxpayers, NATIONAL TAXPAYER ADVOCATE BLOG (Aug. 22, 2023), https://www.taxpayeradvocate.irs.gov/news/nta-blog-international-information-return-penalties/.

161 National Taxpayer Advocate 2020 Annual Report to Congress 119 (Most Serious Problem: *International*: *The IRS's Assessment of International Penalties Under IRC §§ 6038 and 6038A Is Not Supported by Statute, and Systemic Assessments Burden Both Taxpayers and the IRS*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_MSP_08_International.pdf; Erin M. Collins, International Information Return Penalties Impact a Broad Range of Taxpayers, NATIONAL TAXPAYER ADVOCATE BLOG (Aug. 22, 2023), https://www.taxpayeradvocate.irs.gov/news/nta-blog-international-information-return-penalties/.

162 *See, e.g.*, IRS, Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business, https://www.irs.gov/pub/irs-pdf/f5472.pdf; IRS, Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation, https://www.irs.gov/pub/irs-pdf/f926.pdf; IRS, Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships, https://www.irs.gov/pub/irs-pdf/f8865.pdf; and IRS, Form 8938, Statement of Specified Foreign Financial Assets, https://www.irs.gov/pub/irs-pdf/f8938.pdf.

163 National Taxpayer Advocate 2020 Annual Report to Congress 119 (Most Serious Problem: *International*: *The IRS's Assessment of International Penalties Under IRC §§ 6038 and 6038A Is Not Supported by Statute, and Systemic Assessments Burden Both Taxpayers and the IRS*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_MSP_08_International.pdf.

164 *See* IRC § 7803(a)(3)(J).

Per *Bittner*, the $10,000 Report of Foreign Bank and Financial Accounting Penalty Is Per Form, Not Per Bank Account

The U.S. Supreme Court case *Bittner v. United States* involved the interpretation of penalties for non-willful violations of the Report of Foreign Bank and Financial Accounting (FBAR) under the Bank Secrecy Act (BSA).[165] The BSA requires U.S. citizens to annually disclose their foreign account financial interests, with a penalty of up to $10,000 for a non-willful failure to do so.[166] The taxpayer, a dual citizen of Romania and the United States, failed to file FBARs for his interests in multiple foreign accounts. As a result, the government imposed a $2.72 million penalty, calculating the penalty on a per-account basis. The taxpayer argued the $10,000 penalty should apply per reporting form, not per account. The case reached the Supreme Court after conflicting opinions from the Fifth and Ninth Circuits.[167]

In a five-to-four decision, the Supreme Court sided with the taxpayer, holding the penalty for non-willful FBAR violations applies per reporting form, not per account, because the statutory language of the BSA, along with IRS and Treasury publications, support a per-form approach. The dissent argued the statute naturally reads to apply penalties per account.

The case has significant implications for taxpayers with foreign bank accounts and directly impacts several taxpayer rights. First, the opinion ensures taxpayers are not excessively penalized, aligning with the *right to pay no more than the correct amount of tax*.[168] Second, the decision clarifies the penalty structure, informing taxpayers of their obligations under the law.[169] Third, the ruling resolves ambiguity in FBAR penalty calculations, thereby promoting the *right to a fair and just tax system*.[170]

Bittner serves as a check on the IRS's discretion and curtails agency overreach. The IRS has already updated its procedures for examining FBAR reporting in line with the *Bittner* decision, indicating immediate changes in enforcement and appeals procedures for non-willful FBAR violations.[171]

The United States Supreme Court Upholds Third-Party Summons Notification Exception

In *Polselli v. IRS*, the Supreme Court ruled unanimously that the IRS is permitted to access third-party records without notifying the third parties when looking for assets to cover unpaid taxes, even if the taxpayer has no legal claim over the records and accounts summoned.[172] The IRS sought to collect over $2 million in taxes owed by the taxpayer. To aid in this collection, the IRS issued summonses for the bank records of the taxpayer's wife and the taxpayer's lawyers. The IRS gave neither the wife nor the lawyers notice of these summonses, and they subsequently filed motions to quash the summonses. The district court dismissed these motions for lack of subject matter jurisdiction, and the Sixth Circuit affirmed.

165 598 U.S. 85 (2023).
166 31 U.S.C. § 5321(a)(5)(A), (B).
167 *United States v. Bittner*, 19 F.4th 734 (5th Cir. 2021) (holding the $10,000 FBAR penalty applies per account, not per reporting form); *United States v. Boyd*, 991 F.3d 1077 (9th Cir. 2021) (holding the penalty applies per reporting form, no matter the number of accounts).
168 IRC § 7803(a)(3)(C).
169 IRC § 7803(a)(3)(A).
170 IRC § 7803(a)(3)(J).
171 Interim Guidance Memo (IGM) SBSE-04-0723-0034, Interim Guidance on FBAR Examination Case Procedures Due to Supreme Court Decision (*Bittner v. US*) (July 6, 2023), https://www.irs.gov/pub/foia/ig/sbse/sbse-04-0723-0034-redacted.pdf; IGM, FBAR Case Procedures Due to the *Bittner v. United States* Supreme Court Decision, AP-08-0923-0010 (Sept. 26, 2023), https://www.irs.gov/pub/foia/ig/spder/ap-08-0923-0010-redacted.pdf.
172 598 U.S. 432 (2023).

The principal issue was the interpretation of IRC § 7609(c)(2)(D)(i), which provides an exception to the general rule that the IRS must notify third parties when their records are summoned. The petitioners argued the exception should only apply if the delinquent taxpayer has a legal interest in the summoned records.[173] The Supreme Court unanimously rejected this interpretation, holding that the statute does not mention any requirement for a legal interest.

Highlighting the adjacent IRC § 7610(b)(1), which emphasizes a taxpayer's "proprietary interest," the Court noted that this omission in IRC § 7609 was deliberate. Although the Court broadly interpreted the phrase "in aid of … collection" in the statute, which allows for an exception to notifying third parties, it did not explicitly define these boundaries.[174] A concurring opinion stressed vigilance in applying this exception to ensure taxpayer rights are not unduly compromised.

This ruling streamlines the IRS's ability to collect unpaid taxes; however, it also raises concerns about taxpayer rights, particularly the *rights to privacy*[175] and *to be informed*,[176] especially for individuals who are not directly involved in the underlying tax delinquency case.

The Court's decision leaves open questions about the precise boundaries of the IRS's power under IRC § 7609. While the ruling is narrow, it sets a precedent that can be cited in future cases involving IRS summonses and third-party records. Given the potential impact on taxpayer rights, particularly the *rights to privacy* and *to be informed*, Congress should review this statute to ensure it provides clear guidance on when and to whom third-party notice is required concerning IRS summonses.

Litigation Trend: Challenges Concerning the Administrative Procedure Act

The increase in litigation challenging IRS notices under the Administrative Procedure Act (APA)[177] is a notable development for tax administration. Cases in FY 2023 continue the trend established in previous years, especially for cases challenging IRS notices concerning micro-captive insurance transactions[178] and syndicated conservation easement charitable deductions.[179] This trend is evidence of increased judicial scrutiny of the IRS's adherence to APA procedures when issuing notices with the force of law.[180]

For FY 2023, both *Green Valley Investors, LLC v. Commissioner*[181] and *Green Rock, LLC v. IRS*[182] involved taxpayer challenges to Notice 2017-10, which identified certain syndicated conservation easement transactions as "listed transactions" requiring disclosure.[183] The courts in both cases relied heavily on the Sixth Circuit's reasoning in last year's decision, *Mann Construction, Inc. v. United States*,[184] which found the IRS had issued a

173 Specifically, IRC § 7609(c)(2)(D)(i) provides an exception for notice of a summons "issued in aid of the collection of an assessment made or judgment rendered against the person with respect to whose liability the summons is issued."
174 IRC § 7609(c)(2)(D).
175 IRC § 7803(a)(3)(G).
176 IRC § 7803(a)(3)(A).
177 5 U.S.C. §§ 551, 553-59, 701-06.
178 *See*, *e.g.*, IRS Notice 2016-66, 2016-47 I.R.B. 745, Transaction of Interest – Section 831(b) Micro-Captive Transactions, challenged in *CIC Servs., LLC v. IRS*, 141 S.Ct. 1582 (2021).
179 *See*, *e.g.*, IRS Notice 2017-10, 2017-4 I.R.B. 544, Syndicated Conservation Easement Transactions as Tax Avoidance Transactions, challenged in *Green Valley Invs., LLC v. Comm'r*, 159 T.C. No. 5 (Nov. 9, 2022) and *Green Rock LLC v. IRS*, 654 F.Supp.3d 1249 (N.D. Ala. 2023). *See also* SECURE 2.0 Act of 2022, enacted as Division T of the Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, 136 Stat. 4459 § 605 (Dec. 29, 2022).
180 Regulations and notices with the force of law are typically categorized as "legislative," as opposed to merely "interpretative" rules. Legislative rules require APA notice-and-comment rulemaking. *See Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 96 (2015).
181 159 T.C. No. 5 (Nov. 9, 2022).
182 654 F.Supp.3d 1249 (N.D. Ala. 2023).
183 IRC §§ 6011(a) and 6111(a) permit the IRS to make regulations requiring disclosures of certain information with a tax return.
184 27 F.4th 1138 (6th Cir. 2022) (invalidating the IRS's enforcement of IRS Notice 2007-83, which required the reporting of transactions involving cash-value life insurance policies connected to employee benefit plans, for failure to follow notice-and-comment procedures required by the APA for legislative rules).

similar notice without following the APA's notice-and-comment rulemaking process.[185] The courts in *Green Valley Investors* and *Green Rock* held the IRS's issuance of the Notice 2017-10 without following notice-and-comment rulemaking violated the APA's procedural requirements, leading to the setting aside of the notice.

In *Govig & Associates, Inc. v. United States*,[186] the taxpayers similarly argued the IRS failed to follow required notice-and-comment rulemaking when issuing Notice 2007-83. The court found this procedural challenge time barred as the taxpayers did not bring the claim within six years of the notice's *issuance* in 2007. However, the substantive claim that the IRS exceeded its statutory authority in issuing the notice was not time-barred because the IRS's *application* of the notice to the taxpayer didn't occur until 2019.

The trend represented by these cases should alert the IRS of its need to adhere more rigorously to the APA when issuing guidance that has the force of law. It reflects the ongoing tension between tax enforcement and regulatory compliance, underscoring the need for the IRS to strictly adhere to legal and procedural standards in its administrative actions. The trend also illustrates the evolving nature of tax administration, particularly in areas like conservation easements and micro-captive transactions, where IRS interpretations and enforcement practices continue to develop under increased judicial scrutiny that upholds procedural safeguards to ensure fairness and compliance with APA mandates.

Additionally, the trend impacts taxpayer rights. Taxpayers are entitled to fair warning of potential changes to laws and IRS procedures that carry the force of law. They are also entitled to comment on those changes.[187] The increase in APA litigation emphasizes the importance of the IRS adhering to proper procedures, particularly the notice-and-comment requirement, which directly relates to adequately informing taxpayers of proposed changes to the law and giving them an opportunity to provide input on rules that affect them.[188] Also, taxpayers have a right to prompt, courteous, and professional assistance from the IRS.[189] The litigation trend spotlights instances where the IRS did not fully comply with procedural requirements, potentially affecting the quality of service it provides to taxpayers. Lastly, the emphasis on procedural correctness and fairness aligns with a taxpayer's *right to a fair and just tax system*,[190] one in which the IRS must play by the rules established by Congress.

185 See 5 U.S.C. § 553 for notice-and-comment rulemaking processes.
186 No. CV-22-00579-PHX-DGC (D. Ariz. Mar. 22, 2023).
187 IRC § 7803(a)(3)(A). *Cf. Mann Construction, Inc. v. United States*, 27 F.4th 1138, 1142 (6th Cir. 2022), *quoting Azar v. Allina Health Servs.*, 139 S.Ct. 1804, 1816 (2019) ("Notice and comment gives affected parties fair warning of potential changes in the law and an opportunity to be heard on those changes.").
188 After *Mann Construction* and *Green Valley Investors* set aside IRS Notice 2017-10 for failure to comply with the notice-and-comment rulemaking of the APA, the IRS published a notice of proposed rulemaking (REG-106134-22) in the *Federal Register* (87 FR 75185) proposing regulations that identify certain syndicated conservation easement transactions and substantially similar transactions as listed transactions for purposes of Treas. Reg. § 1.6011-4(b)(2) and IRC §§ 6111 and 6112. A public hearing was held by teleconference on March 1, 2023.
189 IRC § 7803(a)(3)(B).
190 IRC § 7803(a)(3)(J).

TAS ADVOCACY

INTRODUCTION

TAS is an independent organization within the IRS that serves as the advocacy ombuds for taxpayers. TAS operates around four central statutorily mandated objectives:

- 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.

In this section, TAS reports on some of its 2023 advocacy updates and highlights. We include information from our Case Advocacy and Systemic Advocacy functions and share some of our success stories and initiatives that represent advocacy work from across the TAS organization.

TAS CASE ADVOCACY

Central to the mission of TAS is protecting taxpayer rights and providing assistance to all types of taxpayers (*e.g.*, individuals, business owners, exempt entities) when they have issues interacting with the IRS. To accomplish these vital mission components, we help taxpayers one-on-one in resolving problems with the IRS. Our Intake Advocates and Case Advocates work with taxpayers, their representatives, and congressional staffs to resolve specific tax problems. TAS also learns from the problems we see and resolve by using information from our discussions and case results to inform and support two other components of TAS's statutory mission: proposing changes in IRS administrative practices and identifying potential legislative changes to relieve taxpayers' problems.[1]

Fiscal year (FY) 2023 was a transitional year for TAS. We made meaningful progress in returning to a more normal business state while still recovering from the impact of the pandemic. We concede we have more work to do, but we have seen our workload shift from return processing issues resulting from the IRS backlog to

1 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 Annual Report to Congress and Purple Book.

more individualized issues involving stopped refunds, identity theft, and decedent account refunds. Decedent account refunds often occur because grief-stricken family members are unfamiliar with IRS decedent return processing procedures and require additional assistance to reach resolution. Other issues such as stopped refunds and identity theft may involve tax schemes where TAS can provide education, resolve issues, try to prevent taxpayers from becoming victims, and protect their *right to a fair and just tax system*.[2]

Impact of Schemes on Taxpayers and Our Advocacy Efforts

One area of focus in FY 2023 involved taxpayers impacted by aggressive marketing and tax schemes. These schemes involved the addition of questionable credits or deductions to a taxpayer's return to inflate their refund, such as the promotion of large refunds related to the Credits for Sick Leave and Family Leave for Certain Self-Employed Individuals, Fuel Tax Credits, Employee Retention Credits, etc.[3] The mass marketing of these credits caused delays and challenges for taxpayers and the IRS.

It became difficult to fulfill our role as advocates and protectors as we discovered taxpayers had, intentionally or unintentionally, become part of these schemes. We used investigative skills, good sense, and judgment to ensure we remained aware of schemes without losing our advocacy mindset and assisted taxpayers with receiving the benefits Congress intended. In FY 2023, to protect taxpayers' rights, we issued guidance and trained our employees on how to advocate for taxpayers caught up in schemes.[4] If we were able to determine the taxpayer was eligible for the benefits, we advocated for their position. If not, we educated the taxpayer and encouraged them to file an amended return removing the items they could not support.[5]

In addition, TAS proactively conducted preventative outreach to ensure vulnerable taxpayers were educated about schemes that involved questionable credits and deductions. TAS used data analytics and case resolution information to identify trends and developed outreach products and coordinated events that raised awareness about common tax issues and provided TAS a platform to continuously advocate and protect taxpayer rights.

TAS will continue to focus on advocating for taxpayers. Sometimes that means advocating with the IRS on behalf of the taxpayer when the taxpayer has a position TAS believes is supported by facts and law. Other times, advocacy is educating the taxpayer about their eligibility for the underlying claim and having a frank conversation about their options.

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2 IRC § 7803(a)(3)(J).

3 *See* IRS News Release, IR-2023-131, Taxpayers See Wave of Summer Email, Text Scams; IRS Urges Extra Caution With Flood of Schemes Involving Economic Impact Payments, Employee Retention Credits, Tax Refunds (July 21, 2023), https://www.irs.gov/newsroom/taxpayers-see-wave-of-summer-email-text-scams-irs-urges-extra-caution-with-flood-of-schemes-involving-economic-impact-payments-employee-retention-credits-tax-refunds; IRS News Release, IR-2023-170, Red Flags for Employee Retention Credit Claims; IRS Reminds Businesses to Watch Out for Warning Signs of Aggressive Promotion That Can Mislead People Into Making Improper ERC Claims (Sept. 14, 2023), https://www.irs.gov/newsroom/red-flags-for-employee-retention-credit-claims-irs-reminds-businesses-to-watch-out-for-warning-signs-of-aggressive-promotion-that-can-mislead-people-into-making-improper-erc-claims; IRS News Release, IR-2023-169, To Protect Taxpayers From Scams, IRS Orders Immediate Stop to New Employee Retention Credit Processing Amid Surge of Questionable Claims; Concerns From Tax Pros (Sept. 14, 2023), https://www.irs.gov/newsroom/to-protect-taxpayers-from-scams-irs-orders-immediate-stop-to-new-employee-retention-credit-processing-amid-surge-of-questionable-claims-concerns-from-tax-pros; IRS News Release, IR-2023-71, IRS Wraps Up 2023 Dirty Dozen List; Reminds Taxpayers and Tax Pros to Be Wary of Scams and Schemes, Even After Tax Season (Apr. 5, 2023), https://www.irs.gov/newsroom/irs-wraps-up-2023-dirty-dozen-list-reminds-taxpayers-and-tax-pros-to-be-wary-of-scams-and-schemes-even-after-tax-season.

4 *See* Internal Revenue Manual (IRM) 13.1.24.6.4, Guidance for Cases Involving Potential Schemes (Aug. 21, 2023) (IRM procedural update TAS-13-0823-0904), https://www.irs.gov/pub/foia/ig/tas/tas-13-0823-0904.pdf.

5 TAS does not have the authority to process amended returns; therefore, we encourage taxpayers to file an amended return with the IRS. Taxpayers not willing to file an amended return have the right to have the IRS consider the return as filed and make a determination.

Case Receipt Trends in Fiscal Year 2023

In FY 2023, TAS received 219,251 cases, which are 3,976 fewer cases than received in FY 2022, a decrease of nearly two percent.[6] Intake Advocates assisted and resolved the issues of another 28,147 taxpayer calls without the need to establish a TAS case.[7]

FIGURE 4.1, TAS Case and Intake Receipts and Relief Rates, FYs 2022-2023[8]

Case Categories	Receipts FY 2022	Receipts FY 2023	Percent Change	Relief Rates FY 2022	Relief Rates FY 2023	Percent Change
Economic Burden	109,434	116,044	6.0%	78.6%	75.3%	-4.2%
Systemic Burden	103,079	95,077	-7.8%	80.8%	81.2%	0.5%
Best Interest of the Taxpayer	1,361	4,722	247.0%	77.5%	79.7%	2.8%
Public Policy	9,353	3,408	-63.6%	80.5%	84.3%	4.7%
Subtotal	**223,227**	**219,251**	**-1.8%**	**79.7%**	**78.2%**	**-1.9%**
Calls Resolved With Alternative Assistance	14,541	28,147	93.6%			
Grand Total Receipts	**237,768**	**247,398**	**4.1%**			

Figure 4.2 shows the top ten issues in the cases TAS received in FYs 2022-2023.

FIGURE 4.2, Top Ten Issues in Cases Received in TAS, FYs 2022-2023[9]

Rank	Issue Description	FY 2022	FY 2023	Percent Change FY 2022 to FY 2023
1	Processing Amended Returns	25,706	36,171	40.7%
2	Pre-Refund Wage Verification Hold	35,498	26,052	-26.6%
3	Decedent Account Refunds	7,001	12,695	81.3%
4	Identity Theft	8,682	11,915	37.2%
5	Earned Income Tax Credit Audits, Reconsiderations, and Recertifications	14,782	10,507	-28.9%

6 Data obtained from Taxpayer Advocate Management Information System (TAMIS) (Oct. 1, 2022; Oct. 1, 2023).

7 The TAS Centralized Case Intake 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 upfront, 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), https://www.irs.gov/irm/part13/irm_13-001-016.

8 Data obtained from TAMIS (Oct. 1, 2022; Oct. 1, 2023). The relief rate is the percentage of closed cases where TAS provided full or partial relief as requested by the taxpayer. *See* IRM 13.1.21.2.1.1, Relief Codes (Apr. 1, 2021), https://www.irs.gov/irm/part13/irm_13-001-021. Relief rates are based on the cases closed during FY 2023 that TAS may have received in a prior fiscal year.

9 Data obtained from TAMIS (Oct. 1, 2022; Oct. 1, 2023). 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), https://www.irs.gov/irm/part25/irm_25-025-003r. 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 were 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. Since we do not have full FY 2022 data for Error Resolution System/Reject and Decedent Account Refund issues to compare against FY 2023, we have not included the percentage change.

Rank	Issue Description	FY 2022	FY 2023	Percent Change FY 2022 to FY 2023
6	Error Resolution System/Reject	11,461	9,527	-16.9%
7	Taxpayer Protection Program Issues	9,673	9,516	-1.6%
8	Lost and Stolen Refunds	5,798	7,792	34.4%
9	Returned and Stopped Refunds	5,064	7,639	50.8%
10	Processing Original Returns	13,035	5,985	-54.1%
Other TAS Receipts		**86,527**	**81,452**	**-5.9%**
Total TAS Receipts		**223,227**	**219,251**	**-1.8%**

Most Prevalent Issues in TAS Cases, With a Focus on Economic Burden Cases

Nearly 47 percent of TAS's case receipts involve taxpayers experiencing an economic burden.[10] 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 2023 compared to FY 2022.

FIGURE 4.3, Top Five Case Issues Causing Economic Burden Receipts, FYs 2022-2023[11]

Rank	Issue Description	FY 2022	FY 2023	Percent Change FY 2022 to FY 2023
1	Processing Amended Returns	15,202	21,036	38.4%
2	Pre-Refund Wage Verification Hold	23,564	16,591	-29.6%
3	Earned Income Tax Credit Audits, Reconsiderations, and Recertifications	11,102	8,062	-27.4%
4	Error Resolution System/Reject	6,560	6,866	4.7%
5	Identity Theft	4,526	6,736	48.8%

TAS dedicates significant resources to resolving the systemic causes of these issues. As discussed in the Most Serious Problems section of this and past reports, we provide recommendations to the IRS to improve processes that cause taxpayers to experience economic or systemic burdens.

Taxpayer Assistance Orders

TAS is the safety net for taxpayers who have fallen through the IRS cracks. One powerful statutory tool TAS uses to advocate for these taxpayers is the Taxpayer Assistance Order (TAO). This authority allows TAS to direct the IRS to cease an action, take a certain action, or refrain from taking a certain action when the

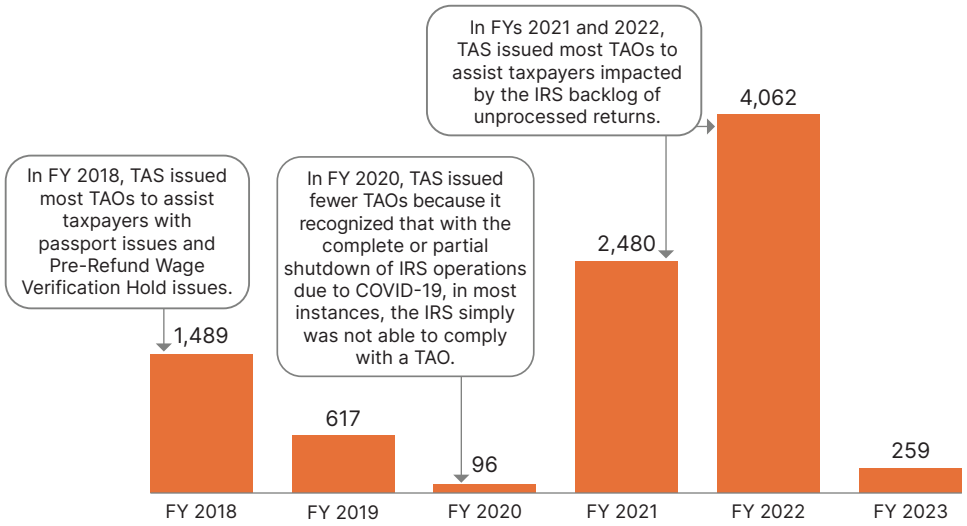
10 Data obtained from TAMIS (Oct. 1, 2023).

11 Data obtained from TAMIS (Oct. 1, 2022; Oct. 1, 2023). 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), https://www.irs.gov/irm/part25/irm_25-025-003r. 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 were combined; therefore, the data compiled after this date will no longer have unpostable issues. Since we do not have full FY 2022 data for Error Resolution System/Reject issues to compare against FY 2023, we have not included the percentage change.

taxpayer is experiencing or about to experience a significant hardship and the law supports relief.[12] Often, TAS lacks the statutory or delegated authority to resolve a taxpayer's problem; instead, TAS advocates for resolution by issuing an Operations Assistance Request (OAR) to the responsible IRS Business Operating Division (BOD) for correction of an issue. If time is of the essence, TAS may choose to bypass the OAR and issue a TAO.[13] TAS may also issue a TAO if the OAR does not resolve the case. A TAO may 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.[14] It may order the IRS to take expedited action to prevent further harm to the taxpayer if the IRS refuses or otherwise fails to take the action TAS requested to resolve the case.[15] Once TAS issues a TAO, the BOD must either take the actions ordered or appeal for resolution at higher management levels.[16] The BOD must include a written explanation with its appeal to allow TAS to consider whether to elevate, modify, or rescind the TAO.[17] Only the National Taxpayer Advocate, IRS Commissioner, or Deputy Commissioner may modify or rescind a TAO. A TAO may be modified to further resolution by changing the ordered actions, and unless a rescission occurs, the BOD must take the action(s) ordered within the timeframes afforded in the TAO.[18]

FIGURE 4.4[19]

Taxpayer Assistance Orders Issued, FYs 2018-2023



12 IRC § 7811(b)(2); Treas. Reg. § 301.7811-1(c)(2); IRM 13.1.20.2, Addressing Taxpayer Problems (June 14, 2023), https://www.irs.gov/irm/part13/irm_13-001-020.
13 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 1.2.2.13.1, Delegation Order 13-1 (Rev. 1), Authority to Issue, Modify or Rescind Taxpayer Assistance Orders (Mar. 17, 2009), https://www.irs.gov/irm/part1/irm_01-002-002.
14 Treas. Reg. § 301.7811-1(c)(3); IRM 13.1.20.2, Addressing Taxpayer Problems (June 14, 2023), https://www.irs.gov/irm/part13/irm_13-001-020.
15 IRC § 7811(a)(1)(A); Treas. Reg. § 301.7811-1(a)(1), (c).
16 IRM 13.1.20.6, TAO Appeal Process (June 14, 2023), https://www.irs.gov/irm/part13/irm_13-001-020.
17 *Id.*
18 IRC § 7811(c)(1); Treas. Reg. § 301.7811-1(b).
19 Data obtained from TAMIS (Oct. 1, 2018; Oct. 1, 2019; Oct. 1, 2020; Oct. 1, 2021; Oct. 1, 2022; Oct. 1, 2023). *See* National Taxpayer Advocate 2018 Annual Report to Congress 562 (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 (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 (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 (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.

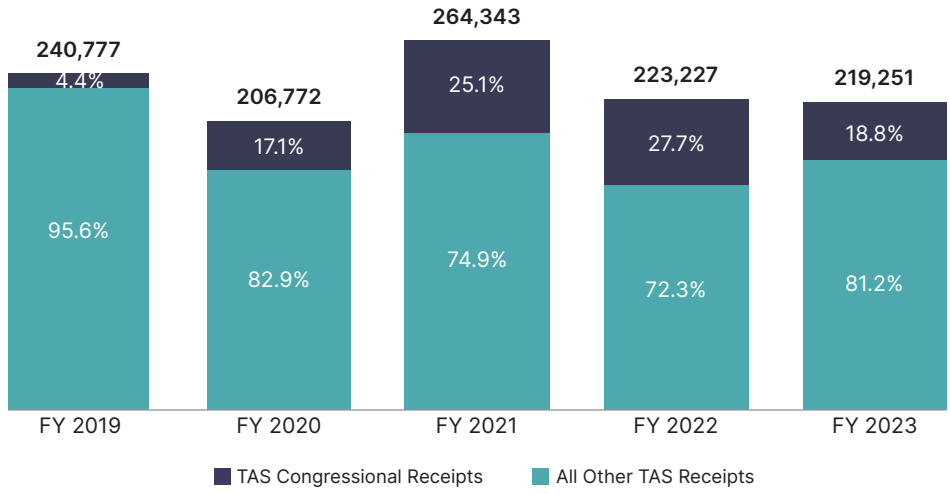
In FY 2023, TAS issued 259 TAOs to protect the rights of taxpayers. In FY 2023, TAS also issued three bulk TAOs, on behalf of 169 taxpayers, instructing the IRS to process taxpayers' amended returns within 14 days and to consider reasonable cause before applying the first-time abatement rule when waiving penalties. Overall, in FY 2023, the IRS complied with 191 TAOs within an average of approximately 30 days indicating that it should have provided relief to the taxpayer sooner as there were no significant disagreements with the resolutions TAS ordered.[20]

Congressional Case Trends

TAS reviews all constituent tax account inquiries it receives from members of Congress. In FY 2023, congressional offices referred 41,222 inquiries, which was almost 19 percent of TAS's total receipts (a nearly nine percent decrease from FY 2022).[21] As shown in Figure 4.5, congressional referrals rose in FYs 2020-2022 due to the COVID-19 pandemic and the resulting backlogs. This was significantly higher than FY 2019 where less than five percent of TAS's case receipts were congressional referrals. As TAS and the IRS return to a more normal business state, we expect congressional referrals to continue to drop.[22]

FIGURE 4.5[23]

TAS Congressional Receipts to Total TAS Case Receipts, FYs 2019-2023



In FY 2023, congressional referrals involving the processing of amended returns were the number one reason congressional offices contacted TAS for assistance with constituents' tax-related issues. Processing amended returns congressional receipts decreased nearly 17 percent from FY 2022. As shown in Figure 4.6, other processing issues referred to TAS by congressional offices have also declined as the IRS business processes have returned to normal.

20 Data obtained from TAMIS (Oct. 1, 2023).
21 Data obtained from TAMIS (Oct. 1, 2021; Oct. 1, 2022).
22 Data obtained from TAMIS (Oct. 1, 2019; Oct. 1, 2020; Oct. 1, 2021; Oct. 1, 2022; Oct. 1, 2023).
23 Data obtained from TAMIS (Oct. 1, 2019; Oct. 1, 2020; Oct. 1, 2021; Oct. 1, 2022; Oct. 1, 2023).

FIGURE 4.6, TAS Top Ten Congressional Receipts by Primary Core Issue Codes, FYs 2022-2023[24]

Rank	Issue Description	FY 2022	FY 2023	Percent Change
1	Processing Amended Returns	7,204	6,016	-16.5%
2	Pre-Refund Wage Verification Hold	6,934	4,948	-28.6%
3	Decedent Account Refunds	2,525	2,815	11.5%
4	Taxpayer Protection Program Issues	3,881	2,762	-28.8%
5	Processing Original Returns	8,728	2,353	-73.0%
6	Lost or Stolen Refund	2,230	2,030	-9.0%
7	Identity Theft	2,354	1,970	-16.3%
8	Other Refund Inquiry or Issue	3,499	1,762	-49.6%
9	Error Resolution System/Reject	3,590	1,653	-54.0%
10	Math Error	2,296	1,303	-43.2%
Other Issues		**18,551**	**13,610**	**-26.6%**
Total Congressional Receipts		**61,792**	**41,222**	**-33.3%**

Expand Outreach to Additional Underserved Populations

TAS recognizes that outreach is critical to inform taxpayers in underserved communities about tax benefits or changes in tax laws and to raise awareness about TAS as a free advocacy organization. TAS outreach targets the general taxpayer population in addition to focusing on educating taxpayers within identified underserved communities. In FY 2023, TAS conducted 5,954 outreach events to reach taxpayers, tax practitioner communities, members of Congress and their staff, and other stakeholders to discuss the emerging IRS issues and their impact.[25] TAS also focused on educating taxpayers within identified underserved communities. In FY 2023, TAS partnered with the IRS and organizations, including legal services providers, libraries, homeless shelters, Low Income Taxpayer Clinics (LITCs), colleges and universities, and others to raise awareness about TAS services.

Each quarter, TAS conducted outreach focused on reaching first-time filers, small business owners and self-employed taxpayers, international taxpayers, or individuals with disabilities through virtual and in-person collaborations. We supported the IRS at 18 Saturday Taxpayer Experience Days[26] across the country and

24 Data obtained from TAMIS (Oct. 1, 2022; Oct. 1, 2023). 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), https://www.irs.gov/irm/part25/irm_25-025-003r. 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 were 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.

25 Data obtained from Outreach Database (Oct. 1, 2023).

26 *See* IRS News Release, IR-2023-20, IRS Announces Special Saturday Hours for Face-to-Face Help; Dozens of Taxpayer Assistance Centers Open Across the Nation (Feb. 6, 2023), https://www.irs.gov/newsroom/irs-announces-special-saturday-hours-for-face-to-face-help-dozens-of-taxpayer-assistance-centers-open-across-the-nation.

conducted 592 Problem Solving Day events to meet with taxpayers, discuss their tax issues, and determine eligibility for TAS services.[27] We facilitated five Case Resolution Rooms over 15 days at the IRS Nationwide Tax Forums to meet with hundreds of tax practitioners and resolve their clients' tax issues.[28]

In January, TAS raised awareness among working families about eligibility requirements and the benefits of the Earned Income Tax Credit (EITC) through EITC Awareness Day. TAS also reached taxpayers to educate them about tax responsibilities, tax benefits, tax credits, and how to avoid tax filing pitfalls through Pre-Filing Season Readiness outreach events.

In FY 2024, TAS will continue to partner with LITCs; members of the Taxpayer Advocacy Panel (TAP); staff of local congressional offices; the IRS Stakeholder Partnerships, Education, and Communication function; community-sponsored events and state agencies; and other stakeholders; it will interact with taxpayers during in-person and virtual events to raise awareness about TAS's free services and provide timely critical tax information to taxpayers.

TAS SYSTEMIC ADVOCACY

TAS strives to improve the taxpayer experience and ensure that the IRS is respecting taxpayers and their rights. As a part of this, TAS makes administrative recommendations to the IRS and legislative recommendations to Congress. These recommendations often endorse actions that create positive resolutions to mitigate problems, reduce taxpayer burden, and ensure the IRS treats all taxpayers fairly.

TAS does not limit itself to a single approach in its advocacy work for taxpayers. While TAS Case Advocacy focuses on work with individual taxpayers or their representatives to resolve their specific problems with the IRS, TAS Systemic Advocacy works to identify systemic issues that affect large numbers of taxpayers. These systemic issues involve systems, processes, policies, procedures, or legislation.

Multiple avenues help identify systemic issues. For example, Systemic Advocacy closely collaborates with TAS Case Advocacy to elevate trends identified through reviews of TAS casework and outreach events. This collaboration is critical to TAS's advocacy work as it looks at taxpayer service holistically to find and resolve problems. Systemic Advocacy learns about some problems via submissions to its Systemic Advocacy Management System (SAMS)[29] database. Systemic Advocacy studies and analyzes these issues to determine how they affect taxpayers. Systemic Advocacy then determines what options are available to resolve the issue. Some options include opening a project to investigate the issue or suggesting rewording of a publication.

TAS employees serve on cross-functional IRS teams so they can recognize potential systemic issues and recommend changes before they become a problem. This proactive approach helps protect taxpayer rights and ensures that the IRS considers and minimizes taxpayer burden. Systemic Advocacy also partners with TAP and LITCs to learn about problems from those working broadly with taxpayers.

The Most Frequent Issue Submitted to the Systemic Advocacy Management System Related to Taxpayer Refunds[30]

SAMS is a web-based system that allows TAS to receive and prioritize systemic issues and problems. SAMS plays a crucial role in informing TAS about systemic problems in the IRS or the tax law. Anyone – individuals, businesses, academic and research institutions, professional organizations, practitioners, and all

27 Data obtained from Outreach Database (Oct. 1, 2023).
28 *See* IRS News Release, IR-2023-37, 2023 IRS Nationwide Tax Forums to be Held in Five Cities (Mar. 2, 2023), https://www.irs.gov/newsroom/2023-irs-nationwide-tax-forums-to-be-held-in-five-cities.
29 SAMS is a web-based system that allows TAS to receive and prioritize systemic issues and problems.
30 Data obtained from SAMS (Oct. 17, 2022). The top five issues submitted to SAMS for FY 2023 were refunds, collection issues, no categories apply, return processing, and service.

other interested parties – who is aware of a tax problem that affects more than one taxpayer, involves IRS processes, or affects taxpayer rights can submit an issue via SAMS.[31] TAS reviews, researches, and monitors SAMS submissions, advocating for change when appropriate.

Many submissions to SAMS in FY 2023 identified refund issues – 1,831 of 5,206 submissions, or about 35 percent.[32] This illustrates that IRS processing backlogs and operational delays continue to impact the taxpayer's ability to receive their much-needed refunds. In the Case Advocacy function, TAS advocates for taxpayers on an individual level to resolve their issues and get their refunds; on a systemic level, TAS uses its Systemic Advocacy function to urge both the IRS and Congress to make changes that will reduce processing delays.

SAMS submissions this fiscal year showed an encouraging trend as they fell to 5,206, a significant decrease from FY 2022 receipts of 9,433[33] but still much higher than pre-pandemic levels of 888 in 2018 and 897 in 2019.[34]

Taxpayer Advocacy Panel

TAP is a Federal Advisory Committee established in 2002 under the authority of the Department of the Treasury.[35] Although TAP is 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 taxpaying public who serve on committees dedicated to reviewing specific areas of the IRS that impact customer service and satisfaction.

TAP committees hold monthly meetings open to the public and provide a forum for taxpayers to speak directly on issues concerning customer service burdens.[36] TAP provides the taxpayer perspective on critical tax administration 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.

The committees research and develop recommendations for potential elevation to the IRS for its consideration and response. However, there are no established deadlines or agreement with the IRS on providing responses to TAP's recommendations. In her FY 2024 Objectives Report to Congress, the National Taxpayer Advocate promoted establishing a standardized process for the IRS to review and respond to TAP recommendations. TAS will assist TAP in developing accountable procedures with the IRS BODs when reviewing and responding to public recommendations.

In FY 2023, TAP submitted 222 recommendations to the IRS suggesting improvements to the taxpayer experience. For example, TAP identified concerns about taxpayer guidance on how to file returns completely and accurately for foreign accounts; it made 45 recommendations to help foreign taxpayers avoid the significant penalties for incorrect or missing filings.[37] The recommendations will reduce the IRS's burden of assessing the penalties and responding to taxpayers who believe the IRS assessed the penalties in error or who want to make an abatement request.

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31 *See* SAMS, https://www.irs.gov/advocate/systemic-advocacy-management-system-sams (Dec. 5, 2023).
32 Data obtained from SAMS (Oct. 12, 2023).
33 Data obtained from SAMS (Oct. 17, 2023).
34 Data obtained from SAMS (Nov. 7, 2023).
35 Federal Advisory Committee Act, Pub. L. 92–463, §1, 86 Stat. 770, 770 (1972).
36 Taxpayers may also submit issues online through TAP's website, https://www.improveirs.org/.
37 Data obtained from TAP (Nov. 14, 2023). Each year, TAP produces an annual report to highlight TAP's accomplishments. *See, e.g.*, IRS, Pub. 4444, Taxpayer Advocacy Panel 2022 Annual Report (Mar. 2023), https://www.improveirs.org/wp-content/uploads/2023/04/2022-tap-annual-report-v2.pdf.

TAS Systemic Advocacy Collaborates With the Office of Taxpayer Correspondence to Improve IRS Letters and Notices

TAS Systemic Advocacy is collaborating closely with the Office of Taxpayer Correspondence (OTC) regarding IRS Strategic Operating Plan Initiative 2.3 to develop taxpayer-centric notices. TAS participated in 233 data gathering calls[38] with the IRS where TAS provided input on IRS guidance, letters, and notices during the development process rather than having to advocate for changes after product creation. These calls led to TAS participating in the creation or revision of 387 letters/notices for FY 2023.[39]

A cooperative partnership with OTC allows TAS to advocate for taxpayer rights and reduce taxpayer burden by ensuring taxpayer correspondence clearly explains what taxpayers need to know and what they need to do to comply with the tax laws. The Taxpayer Bill of Rights (TBOR) entitles taxpayers to clear explanations of the laws and IRS procedures in all notices and correspondence.[40]

To ensure all taxpayers have clear, understandable guidance about TAS's assistance, Systemic Advocacy and OTC have signed a memo of understanding to formalize a new, seamless process to ensure the use of standard language about TAS in more IRS correspondence. The memo standardizes language about TAS and its assistance and identifies the correspondence products in which the IRS should insert it. Also, the memo upholds the incorporation of plain language as required in the Plain Writing Act of 2010; affirms the consistent treatment of TBOR information; eliminates redundant requests to revise TAS language; and eliminates the risk of duplicate, unnecessary, and incorrect language.

TAS Reviews IRS Publications and Guidance to Relieve Burden and Protect Taxpayer Rights

Systemic Advocacy is proactive in its efforts to ensure that IRS employee guidance and instructions contain the key elements to protect taxpayer rights. TAS works collaboratively with the IRS to review both internal and external IRS products and customer communications, such as IRS notices, forms, and publications, to identify and address items that might unintentionally cause taxpayer burden or harm.

Subject matter experts within TAS examine the IRS guidance, procedures, and materials. They then advocate with 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 IRS materials in advance of publication or may open its own negotiations with the IRS if it discovers problems during TAS's work with taxpayers.[41] Advocating for taxpayers to ensure they receive timely, accurate information ensures TAS fulfills a critical aspect of its mission.

During FY 2023, TAS reviewed 808 internal documents and 722 external IRS products and provided 869 recommendations to modify the drafts – 400 of which directly impacted taxpayer rights. The IRS accepted 706 (81 percent) of our overall recommended changes and 279 (70 percent) of the recommendations impacting taxpayer rights.[42]

38 Data obtained from Internal Management Document/Single Point of Contact (IMD/SPOC) (Nov. 15, 2023).
39 *Id.*
40 IRC § 7803(a)(3).
41 IRM 13.2.1.5.1, IMD/SPOC Reviews (Sept. 29, 2020), https://www.irs.gov/irm/part13/irm_13-002-001.
42 IMD/SPOC data obtained from Systemic Trends and Analysis Report (Oct. 13, 2023).

TAS Proposes Administrative and Legislative Changes to Mitigate Taxpayer Problems

The National Taxpayer Advocate submits two reports to Congress each year: an Activities Report, delivered in January, and an Objectives Report, delivered in June. The law requires that TAS deliver the reports to the Senate Committee on Finance and the House Committee on Ways and Means with no prior review or comment from the IRS Commissioner, the IRS Oversight Board, the Secretary of the Treasury, any other Treasury office or employee, or the Office of Management and Budget.[43]

Almost every area of the TAS organization contributes to developing the reports, including investigating systemic issues and analyzing data and trends. Many subject matter experts and technical liaisons serve on cross-functional teams with the IRS to learn about issues, propose solutions, and work collaboratively to resolve problems.

Specifically in the Annual Report to Congress, TAS makes formal recommendations to the IRS for administrative changes and to Congress for legislative changes. This year, TAS makes 73 administrative recommendations to the IRS, covering a range of adjustments to improve taxpayers' experiences with the IRS.[44] The report also proposes 66 legislative recommendations to Congress, highlighting issues the IRS cannot (or declines to) address through administrative remedy.[45]

TAXPAYER ADVOCATE DIRECTIVES

A Taxpayer Advocate Directive (TAD) is a mechanism that provides the National Taxpayer Advocate the opportunity to formally raise systemic issues before IRS officials, requesting that they address her concerns and implement improvements to processes that affect taxpayer rights. IRS Delegation Order 13-3 authorizes the National Taxpayer Advocate to issue a 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."[46] The National Taxpayer Advocate will summarize TAD activity in the Annual Report to Congress, as required by the IRC § 7803(c)(2)(B)(ii).

Taxpayer Advocate Directives Issued in Fiscal Year 2023

The National Taxpayer Advocate issued no TADs or proposed TADs in FY 2023.

43 IRC § 7803(c)(B)(iii).
44 For a discussion of the top ten Most Serious Problems this year, see Most Serious Problems: *Introduction*: *The Most Serious Problems Encountered by Taxpayers*, *supra*.
45 *See* National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration*.
46 IRM 1.2.2.13.3, Delegation Order 13-3 (formerly DO-250, Rev. 1), Authority to Issue Taxpayer Advocate Directives (Jan. 17, 2001), https://www.irs.gov/irm/part1/irm_01-002-002. Section 1301 of the Taxpayer First Act, Pub. L. No. 116-25, § 1301, 133 Stat. 981, 991 (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.

Highlights of TAS Successes and Initiatives During Fiscal Year 2023

Each year, TAS helps thousands of people resolve their tax problems. This list provides just a few examples of how TAS advocated for taxpayers during FY 2023.

FILING GUIDANCE
TAS Tax Tip Assisted Taxpayers Holding Digital Assets Frozen in Bankruptcy Proceedings
TAS Developed Name, Image, Likeness Guidance for Student-Athletes and Their Parents
TAS Advocated for and Secured Programming Fixes to the IRS Tax Withholding Estimator
TAS Successfully Advocated for Certain Taxpayer Populations Unable to Comply With E-File Mandates Due to Religious Reasons
TAS Worked to Clarify Form 1099-K Reporting Requirements
TAS Urged the IRS to Provide Guidance on the Taxability of State Tax Refunds
TAS Successfully Advocated for Clearer Notice and Demand for Payment Letters Sent to Taxpayers in Disaster Relief Areas
COLLECTIONS
TAS Partnered With the IRS to Return Refunds Erroneously Placed in Excess Collection
TAS Engagement Led to the Return of Levy Proceeds
After Four Years of Advocacy, TAS Successfully Resolved Penalty and Interest Charges on Restitution-Based Assessments
TAXPAYER ACCOUNTS
TAS Identified and Corrected Confusing Language to Reduce Burden for Taxpayers Victimized by Attempted Fraudulent Return Filings
TAS Worked to Prevent Alternative Minimum Tax Math Errors
TAS Advocated for Relief for American Samoa Residents Impacted by an Identity Theft Filter Modification
TAS Efforts Led to an Improved Identity Theft Notification Involving Deceased Taxpayers
TAS Partnered With the IRS to Secure Get Transcript Tool Corrections for Married Filing Joint Accounts When One Spouse Is Deceased
At the Request of a Congressional Office, TAS Developed a Taxpayer Dashboard Mock-Up to Illustrate Taxpayer-Centric Communication Options
TAS Collaborated With the IRS to Add Updates and an In-App Notification to Online Account for Certain Taxpayers to Authenticate Return Filing
TAS Research Led to an Improved Ability for Taxpayers to Obtain Tax Return Transcripts
TAS Argued for Procedural Remedies to Undo Permanently Restricted Secure Access Digital Identification Accounts of Legitimate Taxpayers and Tax Professionals
TAS/IRS COLLABORATIONS
TAS Collaborated With the IRS to Review the IRS's Development of Online Portals for 2022 Inflation Reduction Act Credits
TAS Worked With the IRS to Assist Connecticut Taxpayers Whose Forms 1099-G Were Significantly Overstated
TAS Successfully Advocated for Additions to Notices That Uphold Taxpayer Rights and Reduce Taxpayer Burden
PENALTIES
TAS Successfully Worked for a Consistent Taxpayer Experience Improvement Involving the Inflation Reduction Act
TAS WEBSITE & SERVICES
TAS Ensured Webpages Contain Important Statutes of Limitation Information

FILING GUIDANCE

TAS Tax Tip Assisted Taxpayers Holding Digital Assets Frozen in Bankruptcy Proceedings

Explanation: In 2022, several companies in the crypto market filed bankruptcy, affecting millions of creditors. TAS received several Systemic Advocacy Management System (SAMS) submissions from taxpayers asking if losses from digital asset investments are deductible and if there is a requirement to report income reflected on Forms 1099 when their investments lost significant value.

ADVOCACY RESULT: TAS recognized the IRS has limited guidance for taxpayers on digital asset loss reporting requirements. TAS developed a Tax Tip: *When Can You Deduct Digital Asset Losses on Your Tax Return?*[1] to educate taxpayers on how to report a loss on their tax returns. This ensured that taxpayers understand the deductibility of their losses and the information return reporting requirements so they can better prepare their returns. It should also help taxpayers avoid needing to file an amended return or triggering IRS document matching inquiries. This reduces taxpayer burden and protects the taxpayer's *right to be informed*.[2] TAS will continue to monitor this issue as instability continues in that financial sector and will issue further guidance as needed.

TAS Developed Name, Image, Likeness Guidance for Student-Athletes and Their Parents

Explanation: Student-athletes and their parents or guardians may be unaware that Name, Image, Likeness (NIL) income is taxable and that they must report it on federal and state income tax returns. Before the 2021 Supreme Court decision[3] and the National Collegiate Athletic Association (NCAA) releasing guidance,[4] college and high school students could not benefit from their NIL without jeopardizing their NCAA eligibility.

ADVOCACY RESULT: TAS recognized the need to educate student-athletes on their federal tax filing obligations and developed two Get Help pages[5] on NIL and NIL Collectives on the TAS website, which the IRS then published on IRS.gov. These pages inform student-athletes about the reporting and filing requirements associated with NIL income to enable them to file accurate tax returns and possibly prevent IRS inquiries. TAS provided these resources supporting the taxpayer's *right to be informed* and will monitor this issue to look for further opportunities to educate and advocate.

1 *See* TAS Tax Tip: When Can You Deduct Digital Asset Investment Losses on Your Individual Tax Return? (Oct. 24, 2023), https://www.taxpayeradvocate.irs.gov/news/tas-tax-tip-when-can-you-deduct-digital-asset-investment-losses/.
2 IRC § 7803(a)(3)(A).
3 *NCAA v. Alston*, 141 S. Ct. 2141 (2021).
4 *See* NCAA, *NCAA Adopts Interim Name, Image and Likeness Policy* (June 30, 2021), https://www.ncaa.org/news/2021/6/30/ncaa-adopts-interim-name-image-and-likeness-policy.aspx.
5 *See* TAS, Name, Image, and Likeness: Income Paid to Student-Athletes Is Taxable Income (Oct. 24, 2023), https://www.taxpayeradvocate.irs.gov/get-help/general/nil/; TAS, Name, Image, and Likeness (NIL) Collectives (Oct. 24, 2023), https://www.taxpayeradvocate.irs.gov/get-help/general/nil/nil-collectives/.

TAS Advocated for and Secured Programming Fixes to the IRS Tax Withholding Estimator

Explanation: Through SAMS, TAS learned of inaccurate calculations using the IRS Tax Withholding Estimator (TWE), an online tool designed to assist taxpayers in estimating the correct amount of federal income tax withholding. This tool helps prevent under-withholding and an unexpected tax bill when taxpayers file their tax returns. TAS identified several discrepancies within the TWE in the computation of taxable income, self-employment tax, and federal withholding when compared to manual calculations.

ADVOCACY RESULT: TAS advocated for the IRS to fix the TWE programming to include the Qualified Business Income (QBI) deduction for self-employed taxpayers and a QBI worksheet illustrating how the deduction was computed. TAS also advocated for updates to the TWE Frequently Asked Questions on IRS.gov. Due to TAS's efforts, taxpayers may now confidently rely on the calculations of the TWE in computing their estimated federal tax liability for each tax year and for other tax planning purposes. These actions promote the taxpayer's *rights to be informed* and *to pay no more than the correct amount of tax*.[6]

TAS Successfully Advocated for Certain Taxpayer Populations Unable to Comply With E-File Mandates Due to Religious Reasons

Explanation: The Taxpayer First Act included e-file mandate provisions impacting a wide variety of forms. Amish taxpayers and preparers, however, cannot comply with e-file mandates for religious reasons. Specifically, they are members of a recognized religious group conscientiously opposed to its members using electronic technology, including filing tax returns electronically.

ADVOCACY RESULT: TAS worked with Amish leaders, the IRS, and Chief Counsel to develop an administrative exemption for this population, and Treasury issued final regulations in February 2023. As a result of TAS's advocacy, Treas. Reg. §§ 301.6011-2(c)(6)(ii), 301.6011-3(b)(2), 301.6011-5(b)(2), and 301.6037-2(b)(2) provide that the IRS will allow an administrative exemption for filers for whom using the technology required to file an electronic form conflicts with their religious beliefs. After the issuance of the final regulations, TAS continued to work with Amish leaders, the IRS, and Chief Counsel to properly implement the administrative exemption. In addition, TAS's advocacy led to the Instructions to IRS Form 8508, Application for a Waiver from Electronic Filing of Information Returns, and IRS Notice 2023-60, Electronic Filing Administrative Exemptions, Waivers, and Rejections, providing instructions on how this population can claim the administrative exemption from the e-file mandate rules.

6 IRC § 7803(a)(3)(A), (C).

TAS Worked to Clarify Form 1099-K Reporting Requirements

Explanation: The American Rescue Plan Act of 2021 reduced the reporting threshold from $20,000 to $600 for third-party payment settlement organizations (TPSOs), such as PayPal, Venmo, and Cash App.[7] On December 23, 2022, the IRS delayed the implementation of the $600 reporting requirement for one year.[8] On November 21, 2023, the IRS delayed the implementation for an additional year.[9] These delays were due to the significant increase in the number of Forms 1099-K, Payment Card and Third Party Network Transactions, that TPSOs will be filing each year.[10] While we applaud the IRS for delaying implementation to give TPSOs time to comply and taxpayers to understand the change in reporting threshold, TAS identified that the instructions on the back of Form 1099-K don't clearly explain what "gross amount" represents.

ADVOCACY RESULT: The IRS accepted TAS's recommended improvements to the form and its instructions, including clarifying "gross amount." The revised Form 1099-K will include a link to *Understanding Your Form 1099-K* on IRS.gov. TAS's advocacy will reduce taxpayer concern and confusion about complying with the updated threshold.

TAS Urged the IRS to Provide Guidance on the Taxability of State Tax Refunds

Explanation: TAS received 27 SAMS submissions in early February regarding the taxability of California's Middle Class Tax Refund.[11] TAS also received inquiries from several taxpayers and practitioners outside California with questions on the taxability of other state refund/rebate checks that had been received during 2022, indicating they were not getting the IRS guidance they needed to correctly calculate taxable income.

ADVOCACY RESULT: TAS opened an information gathering project to monitor the issue and the National Taxpayer Advocate released a blog stating "[t]he IRS must issue guidance and provide education in a proactive and timely manner," as timely guidance "is key to eliminating confusion and frustration for taxpayers and tax professionals, earning the trust of the American people, and providing quality service."[12] The IRS issued guidance on state tax payments the next day,[13] and TAS followed up with a news release urging taxpayers to carefully review the IRS-issued guidance due to its complexity.[14]

7 References to these TPSOs are for illustrative purposes only and are not intended to suggest an endorsement by the National Taxpayer Advocate, the Taxpayer Advocate Service, or the IRS.
8 *See* Notice 2023-10, 2023-3 I.R.B. 403.
9 *See* Notice 2023-74, 2023-51 I.R.B. 1484.
10 IRS, Pub. 6961, Calendar Year Projections of Information and Withholding Documents for the United States and IRS Campuses 2023 Update 3 (Aug. 2023), https://www.irs.gov/pub/irs-pdf/p6961.pdf.
11 Data obtained from SAMS (Feb. 16, 2023).
12 Erin M. Collins, The IRS Must Be Proactive in Issuing Timely and Clear Guidance to Resolve Tax Reporting Ambiguities, National Taxpayer Advocate Blog (Aug. 30, 2023), https://www.taxpayeradvocate.irs.gov/news/nta-blog-the-irs-must-be-proactive-in-issuing-timely-and-clear-guidance/.
13 IRS News Release, IR-2023-23, IRS Issues Guidance on State Tax Payments to Help Taxpayers (Feb. 10, 2023), https://www.irs.gov/newsroom/irs-issues-guidance-on-state-tax-payments-to-help-taxpayers.
14 TAS, TAS Shares IRS's Guidance on Taxability of State Tax Payments (Feb. 21, 2023), https://www.taxpayeradvocate.irs.gov/news/tas-shares-irss-guidance-on-taxability-of-state-tax-payments/.

TAS Successfully Advocated for Clearer Notice and Demand for Payment Letters Sent to Taxpayers in Disaster Relief Areas

Explanation: The IRS postponed filing and payment deadlines to August 15 or October 16 for taxpayers in eight states who were eligible for disaster relief.[15] Taxpayers who filed their returns early with a balance due expected to make a timely payment by the postponed date. However, the IRS followed its normal collection procedures and mailed an initial collection notice and demand for payment letter reflecting an incorrect due date. The letter informed the disaster relief taxpayers that interest and penalties would accrue after the due date reflected on the front page of the letter, and payment was not required prior to the postponed deadline, either August 15 or October 16. Rather than correct the date on the notice and demand for payment letter, the IRS included a short paragraph on the back of page four of the letter. The letters led to confusion and questions.

ADVOCACY RESULT: TAS advocated for clarifying the notice and demand for payment letters for current and future taxpayers in disaster relief areas, and the IRS subsequently sent disaster relief taxpayers follow-up letters clarifying the right to postpone payment, stating: "Since your address of record is located in a federally declared disaster area, the IRS has automatically granted you disaster relief … [t]his gives you an extension of time to file your tax returns as well as make your tax payment listed on the CP14 Notices. You do not need to contact us to get this extra time to pay."[16]

COLLECTIONS

TAS Partnered With the IRS to Return Refunds Erroneously Placed in Excess Collection

Explanation: The IRS extended the timeframe to file 2016 refund claims from April 15, 2020, to July 15, 2020. The IRS did not update its computer programming for this change so employees had to manually release the refunds. Unfortunately, not all IRS employees received the guidance to complete the manual adjustment timely, and the IRS erroneously rejected thousands of timely filed 2016 refund claims and sent the overpayments to Excess Collection File, a separate file containing non-Revenue Receipts that cannot be identified or applied.[17]

ADVOCACY RESULT: In partnership with the IRS, TAS established a plan to identify impacted accounts, retrieve the overpayments sent to the Excess Collection File in error, and honor the timely refund claims. TAS identified the same issue with some tax year (TY) 2017 refund claims and included those additional accounts in the recovery process. In October 2022, as a result of this effort, 10,563[18] taxpayers received refunds that the IRS denied. This collaborative effort protected the taxpayer's *rights to quality service, to pay the correct amount of tax due*, and *to finality*.[19]

15 IRS, Tax Relief in Disaster Situations (Dec. 6, 2023), https://www.irs.gov/newsroom/tax-relief-in-disaster-situations.
16 IRS News Release, IR-2023-121, IRS Sends Special Mailing to Taxpayers in Certain Disaster Areas (June 28, 2023), https://www.irs.gov/newsroom/irs-sends-special-mailing-to-taxpayers-in-certain-disaster-areas.
17 *See* IRM 3.17.220.1(1), Program Scope and Objectives (Nov. 24, 2017), https://www.irs.gov/irm/part3/irm_03-017-220r.
18 Email from the IRS Wage and Investment (W&I) Division (Oct. 12, 2022) (on file with TAS).
19 IRC § 7803(a)(3)(B)(C), (F).

TAS Engagement Led to the Return of Levy Proceeds

Explanation: The IRS tested a pilot program in CY 2020 that allowed revenue officers (ROs) to print Letter 1058, Final Notice of Intent to Levy and Notice of Your Right to a Collection Due Process Hearing, via the Centralized Print Site (CPS). ROs not included in the pilot group erroneously thought CPS printed and mailed the letters they generated. Because of this error, the IRS levied taxpayers who did not receive a notice of intent to levy.

ADVOCACY RESULT: TAS and the IRS found the IRS had issued premature levies to taxpayers. TAS advocated for the IRS to contact these taxpayers, advise them of their rights, and provide them with the option of having the IRS return or retain the levy proceeds. TAS worked with the IRS to ensure it returned all levy proceeds to taxpayers who sought that option.

After Four Years of Advocacy, TAS Successfully Resolved Penalty and Interest Charges on Restitution-Based Assessments

Explanation: On October 3, 2017, the U.S. Tax Court issued an opinion, *Klein v. Comm'r*, stating the IRS is prohibited from assessing interest and failure-to-pay (FTP) penalties on restitution-based assessments (RBAs) made under IRC § 6201(a)(4)(A). Restitution is an amount the court orders a criminal case defendant to pay, which generally reflects the amount the government would have collected had the crime not occurred. Beginning in 2018, TAS advocated for revised RBA procedures and the abatement of FTP penalty and interest on impacted taxpayers' RBA accounts.

ADVOCACY RESULT: TAS provided the IRS revisions to Internal Revenue Manual (IRM) 25.26, Restitution; IRM 4.8.6, Criminal Restitution and Restitution Based Assessments; and IRM 5.1.5, Field Collection Procedures Balancing Civil and Criminal Cases, to ensure the IRS does not erroneously assess FTP penalties and interest on RBA accounts. TAS advocated for over four years to ensure the IRS completed interest abatements. TAS was instrumental in getting the IRS's procedures revised to safeguard taxpayers who incur RBA balances from receiving FTP penalties or who were erroneously assessed interest.

TAXPAYER ACCOUNTS

TAS Identified and Corrected Confusing Language to Reduce Burden for Taxpayers Victimized by Attempted Fraudulent Return Filings

Explanation: The IRS Taxpayer Protection Program (TPP) selects potential identity theft returns and sends letters to the return filer to authenticate their identity and confirm filing or non-filing by telephone, online, or in person. TAS learned from a SAMS submission that IRS phone assistors were erroneously advising taxpayers to visit a Taxpayer Assistance Center (TAC) when they didn't file the TPP-selected tax return. The IRS does not require taxpayers claiming identity theft to appear in person at a TAC location, and these taxpayers were frustrated and angry at the incorrect guidance.

ADVOCACY RESULT: TAS found misleading instructions in IRM 21.1.3.2.4, Additional Authentication. TAS collaborated with the Return Integrity Verification Operations program to quickly disseminate an email reminder to all phone assistors that the IRS does not require taxpayers claiming identity theft to go to a TAC to authenticate. TAS also verified the IRS removed the confusing language in the IRM and correctly linked IRS phone assistors to IRM 25.25.6, Taxpayer Protection Program. The new guidance helps IRS phone assistors provide consistent treatment and prevents them from sending taxpayers who didn't file TPP-selected returns to a TAC office to authenticate.

TAS Worked to Prevent Alternative Minimum Tax Math Errors

Explanation: Each year, the IRS makes a concerted effort to update all the forms, schedules, and instructions taxpayers need to file their tax returns. For TY 2022, a small change in numbering the boxes of Form 1099-DIV, Dividends and Distributions, led to problems in the Instructions for Form 6251, Alternative Minimum Tax – Individuals. This slight change of box numbers left taxpayers confused with the amount they should use to calculate their alternative minimum tax (AMT).

ADVOCACY RESULT: TAS recommended that the IRS explain the Form 1099-DIV box number changes and recommended a change to the AMT instructions. The IRS accepted both recommendations, republished a corrected version of the 2022 AMT instructions, and explained the correction in an article.[20] TAS's advocacy ensured taxpayers had the information needed to comply with the tax laws and prevented potential math errors on the 2022 tax returns of many taxpayers with an extension of time to file for those who had not yet filed their tax returns.

TAS Advocated for Relief for American Samoa Residents Impacted by an Identity Theft Filter Modification

Explanation: Residents of American Samoa are entitled to claim federal income tax withheld on Social Security benefits reflected on Form SSA-1042S, Social Security Benefit Statement. The IRS selected approximately 1,000 tax returns filed for TY 2022 claiming these refunds as potential identify theft.[21] The American Samoan government elevated the cases to TAS for assistance. TAS research confirmed the federal income tax withholding claimed matched information received by the Social Security Administration, but the IRS return selections for these specific claims doubled compared to the previous year.

ADVOCACY RESULT: TAS contacted Return Integrity and Compliance Services (RICS) and requested data to verify the number of selections for these claims during the same period the previous year and requested an explanation for the increased selections. RICS confirmed modifications to the identity filters caused over-selections of returns from American Samoa residents. TAS advocated for implementation of programming changes to avoid over-selection of American Samoa claims in future years. RICS agreed to release the selected returns and is taking the steps to prevent this issue from reoccurring.

TAS Efforts Led to an Improved Identity Theft Notification Involving Deceased Taxpayers

Explanation: TAS identified that due to its identity theft filters, the IRS had not completed processing on returns filed with fiduciary paperwork (*e.g.*, Form 56, Notice Concerning Fiduciary Relationship). Deceased taxpayers' representatives had correctly filed the tax returns, but IRS identity theft filters did not recognize the listed representative. The IRS was addressing Letters 4883C, Potential Identity Theft During Original Processing, to the deceased taxpayer rather than the personal representative.

ADVOCACY RESULT: TAS worked with RICS to identify and confirm the programming error affecting these accounts. TAS advocated for Letter 4883C to include the personal representative information and fiduciary guidance and for an update to the letter landing page.

20 IRS, Post-Release Changes to Tax Forms, Instructions, and Publications (Dec. 8, 2023), https://www.irs.gov/forms-pubs/changes-to-current-forms-publications; IRS, Correction to 2022 Instructions for Form 6251 (May 22, 2023), https://www.irs.gov/about-irs/correction-to-the-2022-instructions-for-form-6251.

21 Email from W&I (July 13, 2023) (on file with TAS).

TAS Partnered With the IRS to Secure Get Transcript Tool Corrections for Married Filing Joint Accounts When One Spouse Is Deceased

Explanation: TAS received a SAMS submission from a Power of Attorney (POA) who could not access the Get Transcript tool on IRS.gov for a surviving spouse on married filing joint balance due account. TAS shared the submission with Identity Protection Strategy and Oversight (IPSO), which discovered that Get Transcript was not allowing access to the surviving spouses and their representatives.

ADVOCACY RESULT: TAS collaborated with IPSO and the Transcript Delivery System Information Technology Department to correct the programming. Due to TAS's advocacy on the issue and its partnership with the IRS, a surviving spouse or their POA now has immediate access to the joint account information.

At the Request of a Congressional Office, TAS Developed a Taxpayer Dashboard Mock-Up to Illustrate Taxpayer-Centric Communication Options

Explanation: After reading Most Serious Problem: *Processing Delays* in the 2022 Annual Report to Congress, a congressional office asked if TAS could make a policy proposal that fits TAS's idea of reform, in which the IRS would create an easy-to-read online dashboard designed to address several points the National Taxpayer Advocate raised to improve transparency to the taxpayer.

ADVOCACY RESULT: Based on the points raised by the legislative aide, TAS developed a Taxpayer Dashboard prototype with the taxpayer in mind. TAS designed the dashboard as a user-friendly way to help the taxpayer navigate and understand the availability of IRS services. The dashboard would show live wait times for toll-free phone numbers and current processing timeframes for various paper returns, forms, amended returns, and certain types of correspondence. The dashboard would allow taxpayers to make online appointments with a TAC and show how busy the TAC would be if the taxpayer planned to walk in without scheduling an appointment. Due to TAS's efforts, legislators will use the Taxpayer Dashboard prototype as the starting point to increase the IRS's transparency.

TAS Collaborated With the IRS to Add Updates and an In-App Notification to Online Account for Certain Taxpayers to Authenticate Return Filing

Explanation: In 2022, TAS elevated an issue to the Secure Access Digital Identification program owners after receiving numerous SAMS submissions from taxpayers confused by next steps upon completing the identity proofing process using a Video Chat Agent. To complete the two-step process required for taxpayers who receive certain TPP notices, taxpayers must first complete identity proofing through a third-party credential service provider to establish login credentials and then return to the IRS (ID Verify) to finish the tax return verification process. The confusion stemmed from unclear email instructions taxpayers received after completing their identity proofing process.

ADVOCACY RESULT: TAS improved the email communication language to provide clearer instructions to reduce taxpayer confusion and recommended the IRS implement an alert within a taxpayer's online account. Starting January 29, 2023, taxpayers who received TPP notices and undertook online authentication received notification within their online account, informing them that the IRS has selected their return for additional verification.[22] TAS's advocacy for better taxpayer communication protected the taxpayer's *right to be informed*.[23]

22 W&I, Individual Online Account (IOLA) Status Briefing (Mar. 29, 2023) (on file with TAS).
23 IRC § 7803(a)(3)(A).

TAS Research Led to an Improved Ability for Taxpayers to Obtain Tax Return Transcripts

Explanation: TAS received information that the IRS was rejecting many taxpayer requests on Form 4506-T, Request for Transcript of Tax Return.

ADVOCACY RESULT: TAS conducted research and discovered the IRS was rejecting the requests because taxpayers were not entering the correct tax year or time period on line 9 of the form. For example, when a taxpayer filed their 2017 individual tax return on April 15, 2018, they incorrectly entered 12/31/2018 on the form instead of 12/31/2017. To fix the issue, taxpayers had to resubmit the forms or make appointments at TACs to request tax return transcripts. This was inconvenient prior to the COVID-19 pandemic but became impossible during the pandemic due to the nationwide shutdown. TAS advocated with the IRS to revise Form 4506-T to add an example to line 9 that assists taxpayers with their requests, which helps prevent rejections of transcript requests.

TAS Argued for Procedural Remedies to Undo Permanently Restricted Secure Access Digital Identification Accounts of Legitimate Taxpayers and Tax Professionals

Explanation: In early 2023, TAS elevated an issue regarding individual taxpayers and tax professionals who were unable to access IRS online products or services. The IRS had restricted these taxpayer accounts from access to online products or services to protect their tax account information after it detected suspected fraud activity. There was no process in place, however, to remediate these accounts and restore online access. While TAS understands the IRS's responsibility to protect taxpayer information, TAS voiced concerns about the lack of a remediation process for legitimate taxpayers and tax professionals to restore their online access. The restrictions forced impacted taxpayers to use nondigital service alternatives, such as paper correspondence, telephone assistance, and in-person visits.

ADVOCACY RESULT: The IRS reinstated online access for some impacted taxpayers after a closer review of their accounts and formed a Lean Six Sigma Project team, including TAS representatives, to actively analyze the issue and recommend a solution. The team continues to assess the problem, and the IRS is exploring avenues for reinstating online access to impacted taxpayers.

TAS/IRS COLLABORATIONS

TAS Collaborated With the IRS to Review the IRS's Development of Online Portals for 2022 Inflation Reduction Act Credits

Explanation: The Inflation Reduction Act (IRA) Tax Provision Implementation Office and the Taxpayer Experience Office (TXO) are reviewing the IRS development of online portals for applying 2022 IRA credits for potential enhancements to the taxpayers' user experience. TXO asked TAS to develop customer needs statements (*i.e.*, personas) based on literature reviews, digital listening, provision owner interviews, etc., to cover each profile and provision group; to provide ongoing support for high-level questions from both the Internal Revenue Service Advisory Council and the Electronic Tax Administration Advisory Committee; and to support a long-range User Research Plan.

ADVOCACY RESULT: Despite a short deadline, TAS met with the IRS to create customer needs statements for implementing several IRA provisions and user portals. The team worked together in the months that followed on a long-term research plan that included input from actual users, journey maps, prototyping, and user testing. A TXO executive cited TAS's efforts as "a testament to the depth of knowledge and skills we have across the IRS. These efforts not only provide a crucial perspective to the immediate work but will continue to shape the customer experience."

TAS Worked With the IRS to Assist Connecticut Taxpayers Whose Forms 1099-G Were Significantly Overstated

Explanation: In April 2023, TAS was made aware of a discrepancy on Forms 1099-G issued by the State of Connecticut reporting taxable grants, where the Forms 1099-G were overstated as a result of a decimal error. The IRS was proposing adjustments based on these overstated Forms 1099 that were causing a significant burden to the impacted taxpayers. In addition, the incorrect overstatements were affecting taxpayers being processed by the Automated Underreporter (AUR) Program.

ADVOCACY RESULT: The Local Taxpayer Advocate in Hartford, Connecticut, worked with the IRS Government Liaison to get corrected Forms 1099-G issued by the state. The TAS team discussed the audit issue with IRS Campus Examination executives and reached out to the AUR program to make it aware of the issue. The IRS subsequently determined that the process was not identifying the corrected Forms 1099-G and was able to adjust to ensure AUR did not select these cases.

TAS Successfully Advocated for Additions to Notices That Uphold Taxpayer Rights and Reduce Taxpayer Burden

Explanation: The Office of Taxpayer Correspondence (OTC) is redesigning taxpayer notices to support the IRS's Strategic Operating Plan Objective 2.3 of developing taxpayer-centric notices that taxpayers can understand, delivered in ways they prefer, with clear explanations of issues and steps to resolution.

ADVOCACY RESULTS: TAS worked with OTC and notice owners to incorporate additions to several letters. The IRS accepted recommendations to add audit reconsideration language to the CP79 series; an Appeals due date to CP523H; a fax number to CP63; and TAS language to CP3501. It also accepted a recommendation to update confusing language in the CP53 notice as to why the IRS couldn't directly deposit a refund. These recommendations support taxpayer rights and reduce taxpayer burden.

PENALTIES

TAS Successfully Worked for a Consistent Taxpayer Experience Improvement Involving the Inflation Reduction Act

Explanation: On August 24, 2022, in response to its processing delays related to the COVID-19 pandemic, the IRS issued a broad late filing administrative penalty relief program. This penalty relief applies to failure-to-file penalties and certain international information return penalties for TYs 2019 and 2020 returns filed through September 30, 2022. The IRS granted penalty relief automatically for eligible returns. Approximately 4.35 million taxpayers received abatements totaling $5.04 billion.[24]

ADVOCACY RESULT: TAS actively participated on an IRS team to review and comment on notices, IRM changes and procedural updates, and external communication related to this relief. TAS made sure that the relief did not affect the taxpayer's first-time abatement eligibility. TAS also recommended the IRS revise IRM 5.1.15, Reasonable Cause Assistant, to ensure its guidance was consistent with the new relief program. The IRS agreed and prioritized the revision. Thanks to this collaborative effort, TAS helped preserve the taxpayer's *right to pay no more than the correct amount of tax*.[25]

24 Email from Office of Servicewide Penalties (Sept. 7, 2022) (on file with TAS).
25 IRC § 7803(a)(3)(C).

TAS WEBSITE & SERVICES

TAS Ensured Webpages Contain Important Statutes of Limitation Information

Explanation: TAS identified the need for supplementary content in plain language on both IRS and TAS webpages to educate taxpayers about the consequences of specific events such as pending installment agreements, offers in compromise, and bankruptcy. These events can prolong the timeframes within which the IRS may assess or collect taxes and may affect a taxpayer's claim(s) for refund.

ADVOCACY RESULT: TAS negotiated and collaborated with the IRS, and notable changes were made to eight pages on the TAS website and 12 pages on the IRS website alongside the creation of four new statute landing pages on IRS.gov.[26] TAS's advocacy for additional online information empowers taxpayers to comprehensively understand their rights and responsibilities in tax-related matters.

26 SAMS Information Gathering Project #51593.

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FAX: 855-818-5697

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 2023. 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** – To the extent possible, the data contained in this section was reviewed by the IRS; however, the completion date of the research may impact the IRS's ability to conduct a review of the study. If the IRS was not able to review a research study, a footnote to that effect will be added at the beginning of the study.
- **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.

Glossary of Acronyms

ACRONYM	DEFINITION
ABA	American Bar Association
ACA	American Citizens Abroad
ACI	Appeals Coordinated Issue or Automated Collection System Conversational Interactive Voice Response
ACM	Appeals Case Memorandum
ACS	Automated Collection System
ACTC	Additional Child Tax Credit
ADA	Antideficiency Act
ADR	Alternative Dispute Resolution
AdvCTC	Advance Child Tax Credit
AFSP	Annual Filing Season Program
AGI	Adjusted Gross Income
AICPA	American Institute of Certified Public Accountants
AIMS	Audit Information Management System
ALE	Allowable Living Expense
AM	Accounts Management
AMIR	Accounts Management Inventory Report
AMT	Alternative Minimum Tax
AO	Appeals Officer
AOD	Action on Decision
AOTC	American Opportunity Tax Credit
APA	Administrative Procedures Act
ARC	Annual Report to Congress
ARPA	American Rescue Plan Act
ATIN	Adoption Taxpayer Identification Number
AUR	Automated Underreporter
BLS	Bureau of Labor Statistics
BMF	Business Master File
BNA	Bureau of National Affairs
BOD	Business Operating Division
BOLA	Business Online Account
BPR	Business Performance Review
BRTF	Business Return Transaction File
BSM	Business Systems Modernization
BTA	Business Tax Account
CA	Case Advocacy
CAA	Certified Acceptance Agent

ACRONYM	DEFINITION
CAF	Centralized Authorization File
CAP	Collection Appeals Program
CAR	Collection Activity Report
CARES Act	Coronavirus Aid, Relief, and Economic Security Act
CAS	Customer Account Services
CAV	Community Assistance Visit
CB	Cumulative Bulletin
CCDM	Chief Counsel Directives Manual
CCI	Centralized Case Intake
CDP	Collection Due Process
CDW	Compliance Data Warehouse
CFR	Code of Federal Regulations
CI	Criminal Investigation Division
CIS	Correspondence Imaging System or Collection Information Statement
CLN	Certificate of Loss of Nationality
CLS	Classroom Learning Services
CNBC	Consumer News and Business Channel
CNC	Currently Not Collectible
CNN	Cable News Network
COGS	Cost of Goods Sold
COVID-19 or COVID	Coronavirus Disease 2019
CPA	Certified Public Accountant
CPI	Consumer Price Index
CPS	Centralized Print Site
CSP	Credential Service Provider
CSR	Customer Service Representative
CTAS	Comprehensive Taxpayer Attitude Survey
CTC	Child Tax Credit
CY	Calendar Year
DAWSON	Docket Access Within a Secure Online Network
DCIA	Debt Collection Improvement Act of 1996
DEG	District Economics Group
DHA	Direct Hire Authority
DO	Delegation Order
DOJ	Department of Justice

Appendix 3: Glossary of Acronyms

ACRONYM	DEFINITION
DUT	Document Upload Tool
EAP	Entry Application Programs
EFIN	Electronic Filing Information Number
EFTPS	Electronic Federal Tax Payment System
EIC	Earned Income Credit
EITC	Earned Income Tax Credit
ERBP	Employee Referral Bonus Program
ERC	Employee Retention Credit
ERIS	Enforcement Revenue Information System
ERS	Error Resolution System
ET	Eastern Time
ETARAS	Electronic Tax Administration Research and Analysis System
FAFSA	Free Application for Federal Student Aid
FATCA	Foreign Account Tax Compliance Act
FBAR	Report of Foreign Bank and Financial Accounts
FDR	False Detection Rate
FEPCA	Federal Employees Pay Comparability Act
FFCRA	Families First Coronavirus Response Act
FICA	Federal Insurance Contributions Act
FinCEN	Financial Crimes Enforcement Network
FPLP	Federal Payment Levy Program
FR	Federal Register
FRCP	Federal Rules of Civil Procedure
FS	Fact Sheet or Filing Season
FSC	Foreign Sales Corporation or Federal Salary Council
FTA	First-Time Abatement
FTC	Federal Trade Commission
FTE	Full-Time Equivalent
FTM	Fast Track Mediation
FTP	Failure to Pay
FTS	Fast Track Settlement
FY	Fiscal Year
GAO	Government Accountability Office
GS	General Schedule
HAB	Highest Aggregate Balance
HCO	Human Capital Office
IA	Installment Agreement
ID	Identification
IDT	Identity Theft

ACRONYM	DEFINITION
IDTVA	Identity Theft Victim Assistance
IG	Interim Guidance
IGM	Interim Guidance Memorandum
IIR	International Information Return
IITA	International Individual Taxpayer Assistance
IMD	Internal Management Document
IMF	Individual Master File
IOLA	Individual Online Account
IP PIN	Identity Protection Personal Identification Number
IPSO	Identity Protection Strategy and Oversight
IRA	Inflation Reduction Act
IRB	Internal Revenue Bulletin
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
IRTF	Individual Return Transaction File
IT	Information Technology
ITIN	Individual Taxpayer Identification Number
ITS	International Treasury Service
IVO	Integrity and Verification Operation
JCT	Joint Committee on Taxation
JOC	Joint Operations Center
LB&I	Large Business and International Division
LITC	Low Income Taxpayer Clinic
LLC	Limited Liability Company
LOS	Level of Service
LOS(A)	Level of Service (Automation)
MeF	Modernized e-File
MLI	Most Litigated Issue
MSP	Most Serious Problem
NCAA	National Collegiate Athletic Association
NFTL	Notice of Federal Tax Lien
NIL	Name, Image, Likeness
NOD	Notice of Determination
NR	Non-Resident
NRP	National Research Program
NTA	National Taxpayer Advocate
NTEU	National Treasury Employees Union
OAR	Operations Assistance Request
OBR	Offset Bypass Refund

Appendix 3: Glossary of Acronyms

ACRONYM	DEFINITION
OCC	Office of the Comptroller of the Currency
ODC	Credit for Other Dependents
OIC	Offer in Compromise
OJT	On-the-Job Training
OLS	Online Services
OMB	Office of Management and Budget
OPA	Online Payment Agreement
OPM	Office of Personnel Management
OPR	Office of Professional Responsibility
OTC	Office of Taxpayer Correspondence
PACER	Public Access to Court Electronic Records
PAM	Post-Appeals Mediation
PCA	Private Collection Agency
PDF	Portable Document Format
PIN	Personal Identification Number
PLR	Private Letter Ruling
PMTA	Program Manager Technical Advice
POA	Power of Attorney
PPS	Practitioner Priority Service
PRWVH	Pre-Refund Wage Verification Hold
PTA	Parent Teacher Association
PTC	Premium Tax Credit
PTIN	Preparer Tax Identification Number
Q&A	Question and Answer
QBI	Qualified Business Income
RA	Reporting Agent or Reasonable Accommodation
RAAS	Research, Applied Analytics, and Statistics
RAD	Research Analysis and Data
RAF	Reporting Agent File
RAH	Ready Agent Hours
RBA	Restitution-Based Assessment
RICS	Return Integrity and Compliance Services
RO	Revenue Officer
RPP	Return Preparers and Providers
RRA 98	IRS Restructuring and Reform Act of 1998
RRC	Recovery Rebate Credit
RSED	Refund Statute Expiration Date
RTS	Real-Time System
SADI	Secure Access Digital Identity
SAIN	Standard Audit Index Number

ACRONYM	DEFINITION
SAMS	Systemic Advocacy Management System
SB/SE	Small Business/Self-Employed Division
SBA	Small Business Administration
SE	Self-Employment
SECA	Self-Employment Contributions Act
SERP	Servicewide Electronic Research Program
SIGPR	Special Inspector General for Pandemic Recovery
SIGTARP	Special Inspector General for the Troubled Asset Relief Program
SITLP	State Income Tax Levy Program
SME	Subject Matter Expert
SND	Statutory Notice of Deficiency
SOP	Strategic Operating Plan
SPD	Standard Position Description
SPOC	Single Point of Contact
SSA	Social Security Administration
SSN	Social Security Number
STARS	Strategic Talent Acquisition and Recruiting Solutions
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
TBOR	Taxpayer Bill of Rights
TC	Transaction Code
TCE	Tax Counseling for the Elderly
TCJA	Tax Cuts and Jobs Act
TCMP	Tax Compliance Measurement Program
TDC	Taxpayer Digital Communication
TE/GE	Tax-Exempt and Government Entities Division
TEFRA	Tax Equity and Fiscal Responsibility Act
TFA	Taxpayer First Act
TIGTA	Treasury Inspector General for Tax Administration
TIN	Taxpayer Identification Number
TPC	Third-Party Contact
TPP	Taxpayer Protection Program

Appendix 3: Glossary of Acronyms

ACRONYM	DEFINITION
TPSO	Third-Party Payment Settlement Organizations
TWE	Tax Withholding Estimator
TXO	Taxpayer Experience Office
TY	Tax Year
UC	Unemployment Compensation
USAS	USA Staffing
USTCP	United States Tax Court Practitioners
VITA	Volunteer Income Tax Assistance
VSD	Virtual Service Delivery
W&I or WI	Wage and Investment Division
WebSD	Web Service Delivery
WO	Whistleblower Office

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