



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 line² 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

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, 2023⁸

	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, 2023¹⁰

	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 devastating 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 2022¹¹

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.

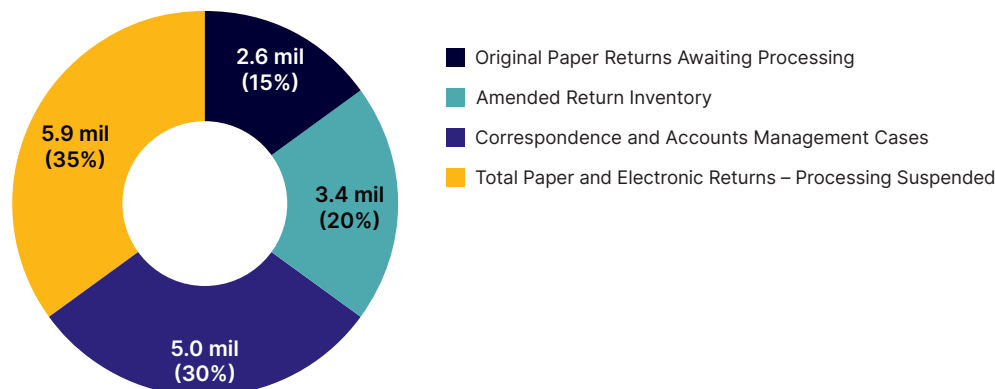
ANALYSIS

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 2.1.4¹⁵**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, through 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, 2023²¹

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

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.

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;

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.

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

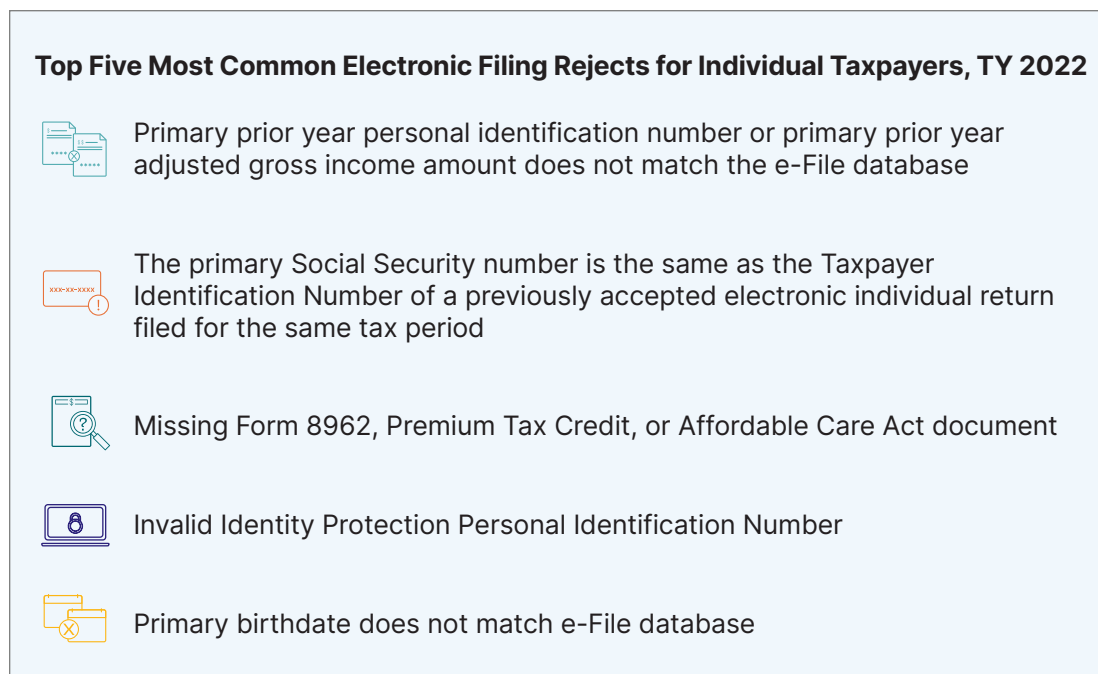
These rejections cause additional burden and delay for taxpayers who are potentially victims of identity theft. In addition, they often impact separated or divorced taxpayers who may not claim legitimate dependents and credits on e-filed returns because the non-qualifying parent or other non-qualifying individual already claimed the dependents on a previously filed return. Figure 2.1.7 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 2.1.7⁵⁷

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.

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>.