

Transparency

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 Initiative⁵ 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.

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-X⁸ 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 assistants 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

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-irs-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 claims³⁸ 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 claims⁴⁵ 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/irsoia/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-irs-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/2022/04/13/7dcpv>.

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.

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.

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

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.

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