

Preface: Introductory Remarks by the National Taxpayer Advocate

HONORABLE MEMBERS OF CONGRESS:

It is my privilege to submit for your consideration the National Taxpayer Advocate's 2023 Annual Report to Congress. As required by law, this report identifies and discusses what I believe to be the ten most serious problems taxpayers face in their dealings with the IRS, summarizes the tax issues most frequently litigated in the Tax Court and other federal courts, and makes administrative and legislative recommendations to mitigate taxpayer problems and improve the taxpayer experience.¹ Our legislative recommendations are presented in a companion volume, National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration*.

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

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

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

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

1 IRC § 7803(c)(2)(B)(ii).

2 National Taxpayer Advocate Fiscal Year 2022 Objectives Report to Congress 1, 6 (*Review of the 2021 Filing Season*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/06/JRC22_FullReport.pdf (citing data provided by the IRS Wage and Investment (W&I) Division).

3 IRS, Joint Operations Center (JOC), Snapshot Reports: Enterprise Snapshot, Enterprise Total (week ending Sept. 30, 2021).

4 An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14, Pub. L. No. 117-169, § 10301, 136 Stat. 1818, 1831-1833 (2022) [hereinafter referred to as the "Inflation Reduction Act"].

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

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

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

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

SUCCESSSES AND CONTINUED AREAS OF WEAKNESS IN 2023

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

- **Good News About Form 1040 Processing.** At the close of the 2021 filing season, the IRS had a backlog of about 17 million paper-filed Forms 1040.⁸ All paper-filed Forms 1040 had to be transcribed, digit by digit, into IRS systems. By the end of 2023, the backlog of paper-filed Forms 1040 had been virtually eliminated.⁹
- **Good News About Telephone Service.** During FY 2021, IRS employees answered just 11 percent of its calls.¹⁰ In FY 2023, IRS employees answered 29 percent of its calls – an increase of more than

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

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

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

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

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

150 percent. The IRS’s benchmark “Level of Service” measure reached 85 percent for the filing season.¹¹ The IRS also substantially reduced average wait times on its toll-free lines from 29 minutes in FY 2022 to 13 minutes in FY 2023.¹² The improved performance was mostly attributable to two factors: i) the IRS hired more employees to answer the phones and ii) incoming calls dropped by two-thirds – from 282 million in FY 2021 to 93 million in FY 2023.¹³ Taxpayers generally call the IRS when they are experiencing problems, so the drop in call volume last year was a good sign that overall taxpayers’ problems have declined. (But see *Bad News About Telephone Service* below.)

Despite these vast improvements, challenges remain.

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

FIGURE 1.1.1, Volume of Unprocessed Amended Returns, Correspondence, and Accounts Management Cases Comparing Calendar Years 2018-2022 and 2023 Through October 28, 2023¹⁴

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

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

11 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Accounts Management (week ending Apr. 22, 2023).

12 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Enterprise Total (weeks ending Sept. 30, 2022, and Sept. 30, 2023).

13 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Enterprise Total (weeks ending Sept. 30, 2021, and Sept. 30, 2023).

14 IRS, AM Inventory Report (AMIR), National Inventory Age Report (weeks ending Dec. 29, 2018; Dec. 28, 2019; Dec. 26, 2020; Dec. 25, 2021; Dec. 31, 2022; and Oct. 28, 2023, respectively).

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

- **Employee Retention Credit (ERC) Processing.** As of early December, the IRS had a backlog of approximately one million ERC claims.¹⁶ Congress authorized the ERC to provide relief to employers that were shut down by a government order due to the COVID-19 pandemic during 2020 or the first three calendar quarters of 2021; that experienced a specified decline in gross receipts from the beginning of the pandemic through the third quarter of 2021; or that qualified as a recovery start-up business for the third or fourth quarters of 2021.¹⁷ The maximum credit amount was \$26,000 per employee (\$50,000 credit per calendar quarter for recovery start-up businesses).

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

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

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

¹⁵ IRS, Ready Agent Hours Report (Jan. 1, 2023, through Apr. 22, 2023).

¹⁶ As of December 6, 2023, the IRS reported it had an inventory of approximately 1.03 million unprocessed Forms 941-X, Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund. See IRS, IRS Operations: Status of Mission-Critical Functions, <https://www.irs.gov/newsroom/irs-operations-status-of-mission-critical-functions> (last visited Dec. 15, 2023). Employers use Form 941-X to claim the ERC, and about 95 percent of Forms 941-X contained ERC claims. IRS, Research, Analysis, and Data (RAD) Report, COVID Business Credits (week ending Sept. 30, 2023).

¹⁷ IRS, Employee Retention Credit (Dec. 6, 2023), <https://www.irs.gov/coronavirus/employee-retention-credit>.

¹⁸ IRS News Release, IR-2023-169, To Protect Taxpayers From Scams, IRS Orders Immediate Stop to New Employee Retention Credit Processing Amid Surge of Questionable Claims; Concerns From Tax Pros (Sept. 14, 2023), <https://www.irs.gov/newsroom/to-protect-taxpayers-from-scams-irs-orders-immediate-stop-to-new-employee-retention-credit-processing-amid-surge-of-questionable-claims-concerns-from-tax-pros>.

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

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

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

FIGURE 1.1.2, Results on All Telephone Lines and Accounts Management Telephone Lines, FY 2023²²

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

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

Figure 1.1.3, Results on the Practitioner Priority Service Telephone Line, FY 2023²³

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

19 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Accounts Management (week ending Apr. 22, 2023).

20 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Enterprise Total (week ending Apr. 22, 2023).

21 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Enterprise Total (week ending Sept. 30, 2023).

22 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Enterprise Total and Accounts Management (week ending Sept. 30, 2023).

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

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

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

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

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

PRIORITY ADMINISTRATIVE RECOMMENDATIONS TO IMPROVE THE TAXPAYER EXPERIENCE

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

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

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

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

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

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

29 See Erin M. Collins, The NTA Reimagines the IRS With a Dramatically Improved Taxpayer Experience (Part 2), NATIONAL TAXPAYER ADVOCATE BLOG (Sept. 15, 2022), <https://www.taxpayeradvocate.irs.gov/news/nta-blog-the-nta-reimagines-the-irs-with-a-dramatically-improved-taxpayer-experience-part-two>.

- **Prioritize the improvement of online accounts for individual taxpayers, business taxpayers, and tax professionals to provide functionality comparable to that of private financial institutions.**

Of all the steps the IRS can take to improve the taxpayer experience, creating robust online accounts has the potential to be the most transformational and should receive the highest priority. The IRS faces two significant challenges with respect to online accounts. First, the accounts require significant improvements so more taxpayers will see the benefits of using them. Second, the IRS will have to do a much better job of promoting online accounts. During 2023, individual taxpayers filed more than 160 million income tax returns, yet only 16.8 million users accessed individual online accounts.³⁰ That's just over ten percent. To better serve these taxpayers and persuade the other 90 percent of taxpayers to consider creating and using online accounts, the IRS should aim to provide online accounts through which taxpayers and tax professionals, among other things, can see full information about their accounts, receive and respond to IRS notices, and elect to receive payment reminders. That will enable taxpayers and tax professionals to keep fully informed about federal tax matters and to interact more smoothly with the agency, and it will substantially reduce the volume of telephone calls and mail the IRS receives.

- **Improve the IRS's ability to attract, hire, and retain qualified employees.** The IRS continues to struggle to hire qualified candidates in many key areas. Three of the main reasons are failure to advertise positions to the optimal target audience by job series, the slow pace of the hiring process, and non-competitive pay.

- *Regarding advertising:* Most Americans don't put "Check USAJobs.gov" at the top of their daily to-do lists, and even for those who use the website, it contains thousands of jobs; individuals without knowledge of a specific job are not likely to come across a given listing. To be effective, recruitment strategies must be tailored distinctly to each job series (*e.g.*, the IRS must market in different ways to hire submission processing employees, revenue agents, and attorneys). For priority jobs, the IRS needs to be more creative in identifying and conducting outreach to target audiences.
- *Regarding the onboarding process:* Notwithstanding recent improvements in the clearance process, selected candidates must often wait three months or longer for background checks and related onboarding prerequisites to be completed. Most candidates don't have the financial resources to wait that long for a paycheck. Many end up taking other jobs while they are waiting for the clearance process to play out. The hiring lag is shorter than it used to be, but the IRS still needs to find ways to make it shorter.
- *Regarding pay:* Many studies have been conducted that attempt to compare federal pay with private sector pay. The reality is that federal pay is competitive for some jobs but not for others. In some job categories (*e.g.*, revenue agents who audit large partnerships and corporations), the IRS seemingly has trouble hiring qualified employees because the pay isn't competitive. The IRS should work with the Office of Personnel Management and, if necessary, with Congress to ensure it has the pay flexibilities it needs to recruit and maintain a workforce equipped to do the job.

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

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

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

32 Office of Personnel Management, 2023 Federal Employee Viewpoint Survey Results, Department of the Treasury, Internal Revenue Service, Question 10 (2023).

33 IRS, IRS Document Upload Tool (Oct. 27, 2023), <https://www.irs.gov/help/irs-document-upload-tool>.

34 IRS Fact Sheet, FS-2023-18, IRS Launches Paperless Processing Initiative (Aug. 2023), <https://www.irs.gov/newsroom/irs-launches-paperless-processing-initiative>.

35 IRS, Submission Processing, Filing Season Statistics Report (week ending Nov. 4, 2023).

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

37 IRS Fact Sheet, FS-2023-18, IRS Launches Paperless Processing Initiative (Aug. 2023), <https://www.irs.gov/newsroom/irs-launches-paperless-processing-initiative>.

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

LEGISLATIVE RECOMMENDATIONS

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

- **Require the IRS to Timely Process Claims for Credit or Refund (Recommendation #2).** Millions of taxpayers file claims for credit or refund with the IRS each year. Under current law, there is no requirement that the IRS pay or deny them. It may simply ignore them. The taxpayers’ remedy is to file a refund suit in a U.S. district court or the U.S. Court of Federal Claims. For many taxpayers, that is not a realistic or affordable option, as full payment of the disputed amount is generally required, and there can be a sizeable filing fee. The absence of a processing requirement is a poster child for non-responsive government. While the IRS generally does process claims for credit or refund, the claims can, and sometimes do, spend months and even years in administrative limbo within the IRS. Providing symmetry between the assessment statute, which has a clear ending date, and a statute requiring the IRS to timely process claims for credit or refund would be good tax administration and would protect taxpayers’ *rights to be informed, to pay no more than the correct amount of tax, and to finality*. We recommend Congress require the IRS to act on claims for credit or refund in a timely manner and impose certain consequences for failing to do so.
- **Authorize the IRS to Establish Minimum Competency Standards for Federal Tax Return Preparers and Revoke the Identification Numbers of Sanctioned Preparers (Recommendation #4).** The IRS receives over 160 million individual income tax returns each year, and most are prepared by paid tax return preparers. While some tax return preparers must meet licensing requirements (*e.g.*, certified public accountants, attorneys, and enrolled agents), most tax return preparers are not credentialed. Numerous studies have found that non-credentialed preparers disproportionately prepare inaccurate returns, causing some taxpayers to overpay their taxes and other taxpayers to underpay their taxes, which may lead to penalties and interest charges. This harms taxpayers financially and undermines the taxpayers’ *right to pay no more than the correct amount of tax*. It also harms the government by reducing revenue collection overall. In FY 2022, for example, the IRS estimated the improper payments rate attributable to improper EITC claims was 32 percent,

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

Federal and state laws generally require lawyers, doctors, securities dealers, financial planners, actuaries, appraisers, contractors, motor vehicle operators, and even barbers and beauticians to obtain licenses or certifications and, in most cases, to pass competency tests. To protect taxpayers and the public fisc, we recommend Congress authorize the IRS to establish minimum competency standards for tax return preparers and to revoke the Preparer Tax Identification Numbers (PTINs) of preparers who have been sanctioned for improper conduct.⁴⁰

- **Require That Math Error Notices Describe the Reason(s) for the Adjustment With Specificity, Inform Taxpayers They May Request Abatement Within 60 Days, and Be Mailed by Certified or Registered Mail (Recommendation #8).** When the IRS proposes to assess additional tax, it ordinarily must issue a notice of deficiency to the taxpayer, which gives the taxpayer an opportunity to seek judicial review in the U.S. Tax Court if the taxpayer disagrees with the IRS’s position. In limited cases where a taxpayer commits a “mathematical or clerical error,” however, the IRS may bypass deficiency procedures and issue a “math error” notice that summarily assesses additional tax. If a taxpayer does not respond to a math error notice within 60 days, the assessment becomes final, and the taxpayer will have forfeited the right to challenge the IRS’s position in the Tax Court. Math error notices often do not clearly explain the reason for the adjustment and do not prominently explain the consequences of failing to respond within 60 days. We recommend Congress require the IRS to describe the error giving rise to the adjustment with specificity and inform taxpayers they have 60 days (or 120 days if addressed to a person outside the United States)⁴¹ to request that a summary assessment be abated, or they will forfeit their right to judicial review.
- **Provide That Assessable Penalties Are Subject to Deficiency Procedures (Recommendation #13).** The IRS ordinarily must issue a notice of deficiency giving taxpayers the right to appeal an adverse IRS determination in the U.S. Tax Court before it may assess tax.⁴² In limited situations, however, the IRS may assess certain penalties without first issuing a notice of deficiency. These penalties are generally subject to judicial review only if taxpayers first pay the penalties and then sue for a refund. Assessable penalties can be substantial, sometimes running into the millions of dollars. Under IRS interpretation, these penalties include, but are not limited to, international information reporting penalties under IRC §§ 6038, 6038A, 6038B, 6038C, and 6038D. The inability of taxpayers to obtain judicial review on a preassessment basis and the requirement that taxpayers pay the penalties in full to obtain judicial review on a post-assessment basis can effectively deprive taxpayers of the right to judicial review at all, impairing the taxpayers’ *right to challenge the IRS’s position and be heard*. To

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

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

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

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

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

ensure taxpayers have an opportunity to obtain judicial review before they are required to pay often substantial penalties that they do not believe they owe, we recommend Congress require the IRS to issue a notice of deficiency before imposing assessable penalties.

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

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

- **Clarify That Supervisory Approval Is Required Under IRC § 6751(b) Before Proposing Penalties (Recommendation #33).** IRC § 6751(b)(1) states: “No penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination.” At first blush, it seems a requirement that an “initial determination” be approved by a supervisor would mean the approval must occur before the penalty is proposed. However, the timing of this requirement has been the subject of considerable litigation, with some courts holding that the supervisor’s approval might be timely even if provided after a case has gone through the IRS Independent Office of Appeals and is in litigation. Very few taxpayers choose to litigate their tax disputes. Therefore, to effectuate Congress’s intent that the IRS not penalize taxpayers in certain circumstances without supervisory approval, the approval must take place earlier in the process. We recommend Congress amend IRC § 6751(b)(1) to require that written supervisory approval be provided before the IRS sends a written communication to the taxpayer proposing a penalty.
- **Expand the U.S. Tax Court’s Jurisdiction to Hear Refund Cases (Recommendation #43).** Under current law, taxpayers seeking to challenge an IRS tax-due adjustment can file a petition in the U.S. Tax Court, while taxpayers who have paid their tax and are seeking a refund must file suit in a U.S. district court or the U.S. Court of Federal Claims. Litigating in a U.S. district court or the Court of Federal Claims can be very challenging – filing fees are relatively high, rules of civil procedure are complex, the judges generally do not have tax expertise, and proceeding without a lawyer is difficult.

43 IRC § 6651(a)(1). The penalty increases to 15 percent per month up to a maximum of 75 percent in the case of a fraudulent failure to file. See IRC § 6651(f)(2).

44 *United States v. Boyle*, 469 U.S. 241 (1985).

45 *Lee v. United States*, No. 22-10793, 2023 WL 6979257 (11th Cir. Oct. 24, 2023).

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

- **Promote Consistency With the Supreme Court's *Boechler* Decision by Making the Time Limits for Bringing All Tax Litigation Subject to Equitable Judicial Doctrines (Recommendation #45).** Taxpayers who seek judicial review of adverse IRS determinations generally must file petitions in court by statutorily imposed deadlines. The courts have split over whether filing deadlines can be waived under extraordinary circumstances. Most tax litigation takes place in the U.S. Tax Court, where taxpayers are required to file petitions for review within 90 days of the date on the notice of deficiency (150 days if addressed to a person outside the United States). The Tax Court has held it lacks the legal authority to waive the 90-day (or 150-day) filing deadline even, to provide a stark example, if the taxpayer had a heart attack on Day 75 and remained in a coma until after the filing deadline. The Supreme Court recently held that filing deadlines are subject to "equitable tolling" in Collection Due Process hearings. We recommend Congress harmonize the conflicting court rulings by providing that all filing deadlines to challenge the IRS in court are subject to equitable tolling where timely filing was impossible or impractical.
- **Remove the Requirement That Written Receipts Acknowledging Charitable Contributions Must Be Contemporaneous (Recommendation #59).** To claim a charitable contribution, a taxpayer must receive a written acknowledgement from the donee organization before filing a tax return. For example, if a taxpayer contributes \$5,000 to a church, synagogue, or mosque, files a tax return claiming the deduction on February 1, and receives a written acknowledgement on February 2, the deduction is not allowable – even if the taxpayer has credit card receipts and other documentation that fully and unambiguously substantiate the deduction. This requirement can harm civic-minded taxpayers who do not realize how strict the timing requirements are and undermines congressional policy to encourage charitable giving. We recommend Congress modify the substantiation rules to require reliable – but not necessarily advance – acknowledgement from the donee organization.
- **Enable the Low Income Taxpayer Clinic (LITC) Program to Assist More Taxpayers in Controversies With the IRS (Recommendation #64).** The LITC Program assists low-income taxpayers and taxpayers who speak English as a second language. When the LITC Program was established as part of the IRS Restructuring and Reform Act of 1998, the law limited annual grants to no more than \$100,000 per clinic. The law also imposed a 100 percent "match" requirement so a clinic cannot receive more LITC grant funds than it raises from other sources. The nature and scope of the LITC Program has evolved considerably since 1998, and those requirements are preventing the program from expanding assistance to a larger universe of eligible taxpayers. We recommend Congress remove the per-clinic cap and allow the IRS to reduce the match requirement to 25 percent where doing so would expand coverage to additional taxpayers.

⁴⁶ The filing fee can be waived if the taxpayer establishes an inability to pay to the satisfaction of the Tax Court.

⁴⁷ Data compiled by the IRS Office of Chief Counsel (Oct. 20, 2023); IRS, Counsel Automated Tracking System, TL-711 and TL-712. This data does not include cases on appeal and declaratory judgments.

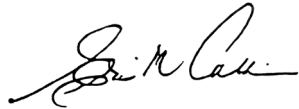
CONCLUSION

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

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

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

Respectfully submitted,



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