National Taxpayer Advocate

2026 PURPLE BOOK

Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration

December 31, 2025

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NATIONAL TAXPAYER ADVOCATE 2026 PURPLE BOOK: COMPILATION OF LEGISLATIVE RECOMMENDATIONS TO STRENGTHEN TAXPAYER RIGHTS AND IMPROVE TAX ADMINISTRATION

INTRODUCTION

Section 7803(c)(2)(B)(ii)(IX) of the Internal Revenue Code requires the National Taxpayer Advocate, as part of her Annual Report to Congress, to propose legislative recommendations to resolve problems encountered by taxpayers. This year, we present 71 legislative recommendations.

To make these recommendations as accessible and user-friendly as possible for Members of Congress and their staffs, we have taken several steps:

- **Organized recommendations by category,** generally following the stages of tax administration (*e.g.,* return filing, audits, collection), so readers can easily locate areas of interest.
- **Presented each recommendation in a standardized format,** modeled after congressional committee reports, including sections on "Present Law," "Reasons for Change," and "Recommendation(s)." Each begins with a concise, plain-language summary of the underlying "Problem" and our proposed "Solution." Our objective is to allow readers to quickly get a feel for all our recommendations by scanning the summaries.
- **Referenced past legislation,** where relevant bills have been introduced that are generally consistent with one of our recommendations. We have included a footnote at the end of the recommendation that identifies one or more of those bills. (Because of the large number of bills introduced in each Congress, we may have overlooked some. We apologize for any bills we have inadvertently omitted.)
- **Provided a comprehensive reference table in Appendix 1,** identifying additional materials, including prior bills and detailed discussions from earlier National Taxpayer Advocate reports.

By our count, Congress has enacted approximately 53 legislative recommendations proposed by the National Taxpayer Advocate, including 23 provisions enacted as part of the Taxpayer First Act.[1] See Appendix 2 for a complete listing.

During the last two months of 2025, Congress enacted three recommendations from the National Taxpayer Advocate 2025 Purple Book. On November 25, 2025, the President signed into law H.R. 998, the Internal Revenue Service Math and Taxpayer Help Act, which significantly improves the clarity of math error notices.[2] This legislation was based on 2025 Purple Book Recommendation #9, *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.*[3] On December 11, 2025, the Senate approved H.R. 1491, the Disaster Related Extension of Deadlines Act, which had previously been passed by the House.[4]

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1 Taxpayer First Act, Pub. L. No. 116-25, 133 Stat. 981 (2019). We say Congress enacted "approximately" a certain number of National Taxpayer Advocate recommendations because in some cases, enacted provisions are substantially similar to what we recommended but are not identical. The statement that Congress enacted a National Taxpayer Advocate recommendation is not intended to imply that Congress acted solely because of the recommendation. Congress, of course, receives suggestions from a wide variety of stakeholders on an ongoing basis and makes decisions based on the totality of the input it receives.

2 Pub. L. No. 119-39, 139 Stat. 659 (2025).

3 National Taxpayer Advocate 2025 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* (*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*). https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/12/ARC24_PurpleBook_03_ImproveAssmtCollect_9.pdf.

4 Disaster Related Extension of Deadlines Act, H.R. 1491, 119th Cong. (2025).

Section 2(a) of the bill implements 2025 Purple Book Recommendation #55, *Amend the Lookback Period for Allowing Tax Credits or Refunds to Include the Period of Any Postponement or Additional or Disregarded Time for Timely Filing a Tax Return*. Section 2(b) of the bill implements 2025 Purple Book Recommendation #56, *Protect Taxpayers in Federally Declared Disaster Areas Who Receive Filing and Payment Relief From Inaccurate and Confusing Collection Notices*. At our publication deadline, the bill had been presented to the President for signature and was awaiting his action.

The Office of the Taxpayer Advocate is a non-partisan, independent organization within the IRS that assists taxpayers in resolving problems with the IRS and makes administrative and legislative recommendations to mitigate taxpayer problems and protect taxpayer rights. We call this compilation the "Purple Book" because the color purple, as a mix of red and blue, symbolizes bipartisanship. Historically, tax administration legislation has attracted bipartisan support. For example, both the Taxpayer First Act (2019) and the Internal Revenue Service Math and Taxpayer Help Act (2025) passed Congress on voice votes and by unanimous consent.

The recommendations presented in this volume are common-sense, generally non-controversial reforms designed to strengthen taxpayer rights and improve tax administration. We welcome the opportunity to discuss these recommendations with Members of Congress and their staffs.

Below are ten legislative recommendations we highlight for particular attention:

- **Authorize the IRS to Establish Minimum Standards for Federal Tax Return Preparers and to Revoke the Identification Numbers of Sanctioned Preparers (Recommendation #5).** 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 subject them to penalties and interest charges. Non-credentialed preparers also drive much of the high improper payments rate attributable to wrongful Earned Income Tax Credit (EITC) claims. In FY 2024, 27.3% of EITC payments, amounting to $15.9 billion, were estimated to be improper, and among tax returns claiming the EITC prepared by paid tax return preparers, 96% of the total dollar amount of EITC audit adjustments was attributable to returns prepared by non-credentialed preparers.

  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. The Obama, Trump, and Biden administrations have each recommended that Congress authorize the Treasury Department to establish minimum standards for federal tax return preparers. To protect taxpayers and the public fisc, we likewise recommend that Congress provide this authorization as well as authorization for the Treasury Department to revoke the Preparer Tax Identification Numbers (PTINs) of preparers who have been sanctioned for improper conduct.[5]

- **Expand the 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 (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

5 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 prepared.

Federal Claims is generally more challenging – filing fees are more costly, rules of civil procedure are complex, the judges generally do not have tax expertise, and proceeding without a lawyer is difficult. By contrast, taxpayers litigating their cases in the Tax Court face a low $60 filing fee, 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. In FY 2024, about 97% of all tax-related litigation was adjudicated in the Tax Court.[6] 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.

- **Enable the Low Income Taxpayer Clinic Program to Assist More Taxpayers in Controversies With the IRS (Recommendation #64).** The Low Income Taxpayer Clinic (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% "match" requirement so a clinic cannot receive more in grants than it raises from other sources. The nature and scope of the LITC Program has evolved considerably since 1998, and those requirements are preventing the program from expanding assistance to 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%, where doing so would expand coverage to additional taxpayers.
- **Require the IRS to Timely Process Claims for Credit or Refund (Recommendation #2).** Millions of taxpayers file refund claims 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 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. The absence of a processing requirement is a poster child for non-responsive government. While the IRS generally does process refund claims, the claims can and sometimes do spend months and even years in administrative limbo within the IRS. We recommend Congress require the IRS to act on claims for credit or refund within one year and impose certain consequences on the IRS for failing to do so.
- **Allow Taxpayers to Claim the Child Tax Credit and Earned Income Tax Credit for a Child Who Meets All Statutory Requirements Except Having a Social Security Number by the Due Date for the Tax Return (Recommendation #58).** The tax law requires that a taxpayer's children have Social Security numbers (SSNs) by the tax return filing deadline to claim them for purposes of the Child Tax Credit (CTC) or EITC. The intent of this requirement is to limit the tax credits to U.S. persons, but in a variety of circumstances taxpayers cannot or do not obtain SSNs for their children in time and lose out on thousands of dollars of benefits for which they otherwise qualify. For example, a taxpayer may claim a child born on December 31 for purposes of these credits but generally must have the child's SSN in hand by April 15 to do so (unless filing for an extension).

  Among taxpayers who lose out on the credits: military and other expatriate families stationed overseas who must take additional steps to obtain SSNs; parents who don't obtain SSNs in time when a birth takes place outside a hospital setting and the parents don't file a timely SSN application, a hospital misplaces the paperwork, the Social Security Administration (SSA) makes a processing error, or the parents move and mail isn't forwarded; adopted children who have not yet received SSNs; children

6 Data compiled by the IRS Office of Chief Counsel (Nov. 8, 2024). IRS, Counsel Automated Tracking System, TL-711 and TL-712. This data does not include cases on appeal and declaratory judgments.

who are born and die before the SSA issues an SSN; and taxpayers who do not obtain SSNs for their children due to religious beliefs (*e.g.,* some Amish sects). In these circumstances, U.S. citizens are being denied valuable benefits intended by Congress. We recommend Congress allow taxpayers who obtain SSNs after the filing deadline to timely file amended returns to claim CTC and EITC benefits or, in the case of those opposed to SSNs for religious reasons, to submit other forms of substantiation.[7]

- **Provide Consistent Tax Relief for Victims of Federally Declared Disasters (Recommendation #53).** After a hurricane, flood, wildfire, or other natural disaster has destroyed homes or businesses, Congress often passes legislation to provide tax relief to those affected. But there is no consistency regarding whether or which forms of tax relief are granted. Taxpayers may receive extensive relief, some relief, or no relief at all. Relief, even when granted, generally is not authorized until months later. The current ad hoc approach creates uncertainty for disaster victims and their communities and often means that similarly situated taxpayers receive different results. We recommend Congress determine which forms of tax relief to grant in the case of federally declared disasters and provide that relief automatically. In the alternative, recognizing that different types of disasters may warrant different forms of relief, we recommend Congress authorize a menu of relief options and direct the Treasury Department to prescribe regulations for determining which forms of relief to provide based on the nature and severity of the disaster.

- **Extend Reasonable Cause Defense for the Failure-to-File Penalty to Taxpayers Who Rely on Return Preparers to E-File Their Returns (Recommendation #31).** The tax law imposes a penalty of up to 25% 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." 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 timely filed. 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.

  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 court's 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 mail themselves so they can ensure compliance. We recommend Congress clarify that reliance on a preparer to e-file a tax return may constitute "reasonable cause" for penalty relief and direct the Secretary to issue regulations detailing what constitutes ordinary business care and prudence for purposes of evaluating reasonable cause requests.

- **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 Tax Court, where taxpayers are required to file petitions for review within 90 days of the date on a notice of deficiency (150 days if addressed to a person outside the United States). The Tax Court has held it lacks the legal authority

7 The IRS is currently making an administrative exception in the case of children who die before an SSN is issued.

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 held that filing deadlines are subject to "equitable tolling" in the context of 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.

- **Strengthen Incentives for IRS Contractors to Ensure Their Employees Keep Taxpayer Return Information Confidential (Recommendation #70).** The IRS currently receives about 10 million paper-filed Forms 1040, U.S. Individual Income Tax Return, nine million paper-filed Forms 941, Employer's Quarterly Federal Tax Return, and two million paper-filed Forms 940, Employer's Annual Federal Unemployment (FUTA) Tax Return, each year.[8] In the past, IRS employees have transcribed these returns on IRS campuses. Beginning in 2026, the IRS plans to send a large portion of these returns to private contractors to scan in their own facilities. Particularly in light of the recent case involving Charles Littlejohn, a contractor's employee who stole the tax return information of thousands of taxpayers and then provided it to news organizations, we recommend Congress strengthen penalties applicable to government contractors whose employees improperly inspect or disclose tax return information to incentivize them to implement and maintain more stringent systemic safeguards.
- **Provide That Assessable Penalties Are Subject to Deficiency Procedures (Recommendation #14).** The IRS ordinarily must issue a notice of deficiency giving taxpayers the right to appeal an adverse IRS determination in the Tax Court before it may assess tax.[9] In limited situations, however, the IRS may assess penalties without first issuing a notice of deficiency. These penalties are generally subject to judicial review only if a taxpayer first pays the penalties and then sues for a refund. Assessable penalties can be substantial, sometimes running into the millions of dollars. Under current 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. To ensure taxpayers have an opportunity to obtain judicial review before they are required to pay often substantial penalties they do not believe they owe, we recommend Congress require the IRS to issue a notice of deficiency before imposing assessable penalties.

8 IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2025-2032, at 4 (Sept. 2025), https://core.publish.no.irs.gov/pubs/pdf/p6292--2025-06-00.pdf.

9 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).

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STRENGTHEN TAXPAYER RIGHTS

Legislative Recommendation #1

Elevate the Importance of the Taxpayer Bill of Rights by Redesignating It as Section 1 of the Internal Revenue Code

SUMMARY

- *Problem:* The IRS is arguably the federal agency that Americans fear the most. Without a court order, it can garnish a taxpayer's wages, levy against a taxpayer's bank account, and file a Notice of Federal Tax Lien against a taxpayer's property to collect an IRS-determined tax debt. Taxpayers fear the IRS may take these actions erroneously or without regard to taxpayer rights.
- *Solution:* Redesignate the Taxpayer Bill of Rights (TBOR) as Section 1 of the IRC. While partly symbolic, this change would send an important message to U.S. taxpayers and IRS employees alike that Congress expects IRS employees to respect taxpayer rights and considers them foundational for effective tax administration.

PRESENT LAW

IRC § 7803(a)(3) requires the Commissioner to "ensure that employees of the Internal Revenue Service are familiar with and act in accord with taxpayer rights as afforded by other provisions of this title [the Internal Revenue Code], including –

(A) the right to be informed,
(B) the right to quality service,
(C) the right to pay no more than the correct amount of tax,
(D) the right to challenge the position of the Internal Revenue Service and be heard,
(E) the right to appeal a decision of the Internal Revenue Service in an independent forum,
(F) the right to finality,
(G) the right to privacy,
(H) the right to confidentiality,
(I) the right to retain representation, and
(J) the right to a fair and just tax system."[1]

REASONS FOR CHANGE

Taxpayer rights are the foundation for effective tax administration. The U.S. tax system is frequently characterized as a system of "voluntary compliance." While taxpayers ultimately may face penalties for noncompliance, our system relies in the first instance on the willingness of taxpayers to file returns on which they self-report their incomes (some of which is not reported to the IRS by third parties and is therefore difficult for the IRS to detect in the absence of self-reporting) and to pay the required tax.

1 This provision was enacted as part of the Consolidated Appropriations Act, 2016. *See* Pub. L. No. 114-113, Div. Q, § 401(a), 129 Stat. 2242, 3117 (2015). These ten rights are generally referred to as the "Taxpayer Bill of Rights," although the statute does not use that term.

In recent years, more than 160 million individuals and more than 13 million business entities have filed income tax returns annually, and they are entitled to be treated with respect. Not only is making clear that taxpayers possess rights the right thing to do, but TAS research suggests that when taxpayers have confidence the tax system is fair, they are more likely to comply voluntarily, which may translate into enhanced revenue collection.[2]

When we first proposed codifying the TBOR in 2007, we did not recommend a specific location for it in the Internal Revenue Code (IRC).[3] In codifying the TBOR, Congress placed the language in IRC § 7803(a), which deals with the appointment and duties of the Commissioner.

The National Taxpayer Advocate recommends the ten rights that make up the TBOR and are codified in IRC § 7803(a)(3) be relocated and recodified as Section 1 of the IRC. Doing so would make a strong and important statement about the value Congress places on taxpayer rights and its expectation that IRS employees must respect and act in accordance with those rights.

RECOMMENDATION

- Move § 1 of the IRC to place it before Subtitle A and amend it to read as follows:[4]

SECTION 1. TAXPAYER BILL OF RIGHTS.

(a) Taxpayer Rights.

(1) In discharging their duties and responsibilities, every officer and employee of the Internal Revenue Service shall act in accordance with taxpayer rights as afforded by other provisions of this title, including –

(a) the right to be informed,
(b) the right to quality service,
(c) the right to pay no more than the correct amount of tax,
(d) the right to challenge the position of the Internal Revenue Service and be heard,
(e) the right to appeal a decision of the Internal Revenue Service in an independent forum,
(f) the right to finality,
(g) the right to privacy,
(h) the right to confidentiality,
(i) the right to retain representation, and
(j) the right to a fair and just tax system.[5]

2 *See* National Taxpayer Advocate 2013 Annual Report to Congress vol. 2, at 33 (Research Study: *Small Business Compliance: Further Analysis of Influential Factors*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/2013-ARC_VOL-2-3.pdf; National Taxpayer Advocate 2012 Annual Report to Congress vol. 2, at 1 (Research Study: *Factors Influencing Voluntary Compliance by Small Businesses: Preliminary Survey Results*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/Research-Studies-Factors-Influencing-Voluntary-Compliance-by-Small-Businesses-Preliminary-Survey-Results.pdf.

3 *See* National Taxpayer Advocate 2007 Annual Report to Congress 478 (Legislative Recommendation: *Taxpayer Bill of Rights and* De Minimis *"Apology" Payments*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/arc_2007_vol_1_legislativerec.pdf.

4 This change would require conforming IRC changes. IRC § 7803(a)(3) could be deleted, and existing IRC § 1 would have to be renumbered. To avoid the need to renumber subsequent code sections, Section 1 could be renumbered as Section 1A.

5 For legislative language generally consistent with this recommendation, although with certain wording differences, see System Transparency and Accountability for the IRS Act, H.R. 7341, 117th Cong. § 2 (2022). We are proposing to relocate the existing language in IRC § 7803(a)(3), with a minor refinement to the lead-in language that we think makes it read more clearly and does not substantially change the meaning. However, if the staffs of the tax writing committees have any concerns about a language change, the text of IRC § 7803(a)(3) could be redesignated as IRC § 1 without a change in language.

Legislative Recommendation #2

Require the IRS to Timely Process Claims for Credit or Refund

SUMMARY

- *Problem:* Taxpayers expect the IRS to process their claims for credit or refund promptly after they file them. Surprisingly, however, the IRS is not legally required to process refund claims, and when it does process them, it faces no deadline for doing so. As a result, taxpayers often experience extended processing delays and sometimes are left with no recourse but to file a refund suit in court to recover their tax overpayments.
- *Solution:* Require the IRS to process taxpayer claims for credit or refund within 12 months of filing and, if it fails to do so, pay additional interest to taxpayers.

PRESENT LAW

IRC § 6402 authorizes the IRS to issue a credit or refund when a taxpayer has made an overpayment of tax. Pursuant to IRC § 6511, taxpayers generally may file a claim for credit or refund within the later of three years from the date they filed their return or two years from the date they paid the tax. After receiving a valid claim, the IRS generally has 45 days to issue a credit or refund before it must pay interest, as set forth in IRC § 6621.[1] Once a taxpayer files a refund claim, the taxpayer can seek recovery in a U.S. district court or the U.S. Court of Federal Claims when the IRS disallows the claim or when six months have elapsed, whichever occurs first.[2]

Although the tax code prescribes deadlines by which taxpayers must file claims for credit or refund, it does not prescribe reciprocal deadlines requiring the IRS to act on those claims.

REASONS FOR CHANGE

Taxpayers filing claims for credit or refund with the IRS are seeking money to which they believe they are entitled. They may need timely access to the funds for basic living expenses or to finance essential business operations. Taxpayers want and have a right to expect quick review and processing of their claims.

However, the tax code does not require the IRS to process claims for credit or refund, or even to respond to taxpayers at all. The IRS can simply ignore refund claims. This bizarre result is a poster child for non-responsive government. It fails to meet the basic expectations expressed in the Taxpayer Bill of Rights, including the *rights to be informed, to quality service, to pay no more than the correct amount of tax, to finality,* and *to a fair and just tax system.*[3]

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1 IRC § 6611(a), (e)(2). IRC § 6621 sets forth the applicable interest rates. IRC § 6621(a)(1) provides that the interest rate for overpayments of tax is generally the federal short-term rate, plus three percentage points (two percentage points in the case of a corporation).

2 IRC § 6532(a)(1). Under current law, a taxpayer may not bring a suit for refund in the U.S. Tax Court. However, for most taxpayers, the U.S. Tax Court is the best court in which to challenge an adverse IRS decision because its judges possess specialized tax expertise, and it is often a less formal, less expensive, and more accessible forum for *pro se* and low-income taxpayers. For a related recommendation to allow taxpayers to bring refund suits in the U.S. Tax Court, see Legislative Recommendation: *Expand the Tax Court's Jurisdiction to Hear Refund Cases*, *infra*.

3 *See* Taxpayer Bill of Rights (TBOR), https://www.taxpayeradvocate.irs.gov/taxpayer-rights (last visited Sept. 5, 2025). The rights contained in TBOR are also codified in IRC § 7803(a)(3).

While the IRS generally does process claims for credit or refund, some claims spend months or even years in administrative limbo. Other than having to pay interest, no legal or economic incentive exists for the IRS to expeditiously review and process these claims.

If the IRS has taken no action on a refund claim within six months from the date of filing, the taxpayer may file a lawsuit for recovery in a U.S. district court or the U.S. Court of Federal Claims. When that occurs, the courts and the IRS expend judicial resources before the IRS's Examination function or the IRS Independent Office of Appeals (Appeals) has had an opportunity to evaluate the claim. Moreover, litigation is time-consuming, complex, and costly for taxpayers and the government alike.

By authorizing taxpayers to sue the government for a refund six months after filing an administrative refund claim, Congress has implicitly demonstrated its expectation that six months is enough time for the IRS to process a claim. But the IRS will only realize this expectation if Congress creates requirements and incentives to bring about timely action. Recognizing that the agency may lack the resources to process all refund claims within six months, particularly in complex cases, the National Taxpayer Advocate believes the tax code should require the IRS, within 12 months from the date of filing, to take one of the following three actions:

- Allow the claim (in whole or in part);
- Disallow the claim (in whole or in part); or
- Initiate an audit of the tax year for which the taxpayer made the claim.

If the IRS fails to perform one of the above actions within 12 months, the tax code should require the IRS to pay the taxpayer an additional two percentage points of interest on the portion of the claim ultimately allowed (often referred to as "hot interest"). If the IRS is doing its job properly, it would not face this consequence.[4]

The statute should also provide the IRS with the authority to rescind a Notice of Claim Disallowance with the written consent of the taxpayer.[5] This would benefit taxpayers who have filed a claim for credit or refund and erroneously received a Notice of Claim Disallowance. The IRS would be able to use rescission authority to correct administrative errors, such as notices issued to the wrong taxpayer, for the wrong tax period, and for an incorrect amount.[6]

RECOMMENDATIONS[7]

- Amend IRC § 6402 to require the IRS to act on timely claims for credit or refund within 12 months by allowing the claim (in whole or in part), disallowing the claim (in whole or in part), or initiating an audit of the tax year for which the taxpayer made the claim.

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4 If this proposal is enacted and the IRS fails to prioritize the processing of refund claims, there is a risk it will simply disallow all refund claims at the 12-month mark to comply with the processing requirement and avoid paying extra interest. That would not be an acceptable result. In enacting the IRS Restructuring and Reform Act of 1998, the conference committee, adopting language from the Senate Finance Committee report, stated in the context of penalties: "[I]n any court proceeding, the Secretary must initially come forward with evidence that it is appropriate to apply a particular penalty to the taxpayer before the court can impose the penalty." H.R. Rep. No 105-599, at 241 (1998) (Conf. Rep.); *see* IRC § 7491(c). Along similar lines, and without shifting the burden of proof, Congress should consider requiring the IRS to more specifically state the basis for disallowing a refund claim in a Notice of Claim Disallowance. *See* National Taxpayer Advocate 2014 Annual Report to Congress vol. 1, at 172 (Most Serious Problem: *Notices: Refund Disallowance Notices Do Not Provide Adequate Explanations*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/2014-ARC_VOL-1_S1_MSP-17-508.pdf.

5 *See*, *e.g.*, IRC § 6212(d) (rescission of a statutory notice of deficiency).

6 Congress has provided rescission authority in the deficiency context, allowing the IRS to rescind a statutory notice of deficiency upon the mutual agreement of the IRS and the taxpayer. *See* IRC § 6212(d).

7 For legislative language generally consistent with this recommendation, see Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 603 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill.

- Provide that if the IRS fails to act on a timely refund claim within 12 months, it must pay interest at the rate set forth in IRC § 6621(a)(1)(A), plus two percentage points, on the amount of the claim ultimately allowed.
- Amend IRC § 6402 to give the IRS the authority to rescind a Notice of Claim Disallowance with the written consent of the taxpayer.

Legislative Recommendation #3

Require Notices of Claim Disallowance to Clearly State the Reasons for Disallowance, Explain Administrative and Judicial Appeal Options, and Specify Applicable Timeframes

SUMMARY

- *Problem:* When the IRS disallows a taxpayer's claim for refund, it generally sends the taxpayer a disallowance notice. However, this notice often lacks essential information, provides confusing or incorrect explanations, or fails to advise taxpayers of their rights. Current law imposes minimal content requirements, resulting in notices that leave taxpayers unsure about why their claim was denied, what steps they may take next, and by when they must act. These deficiencies undermine taxpayer rights to appeal the IRS's decision in an independent forum or seek judicial review of the disallowance.
- *Solution:* Require IRS notices of claim disallowance to (1) clearly state the specific reason(s) for the disallowance, (2) provide complete instructions on how to pursue administrative and judicial review, (3) identify, prominently and accurately, the deadlines for doing so, and (4) provide information on requesting an extension of the two-year period to appeal the disallowance judicially or administratively.

PRESENT LAW

IRC § 6402 authorizes the IRS to issue a credit or refund when a taxpayer has overpaid their tax.[1] Pursuant to IRC § 6511, taxpayers generally must file a claim for credit or refund by the later of (i) three years from the date they filed their return or (ii) two years from the date they paid the tax. After receiving a valid claim, the IRS normally has 45 days to issue a credit or refund before interest begins to accrue under IRC § 6621.[2]

When the IRS denies a refund claim, IRC § 6402(l) requires the Secretary to "provide the taxpayer with an explanation for such disallowance." Once a taxpayer has filed a claim for refund with the IRS, the taxpayer may file suit to recover the refund if either (i) the IRS has disallowed the claim or (ii) six months have elapsed from the date the taxpayer submitted the claim for refund with the IRS, whichever comes first.[3]

REASONS FOR CHANGE

A notice of claim disallowance should serve two critical functions: (1) inform the taxpayer why the IRS denied the refund and (2) describe the taxpayer's options if they disagree with the IRS determination.[4] Despite the importance of these notices, they are often vague or missing key information. In 2024, for example, the IRS acknowledged that disallowances relating to the Employee Retention Credit (ERC) contained significant errors, such as:

- Failing to inform taxpayers of their right to seek review by the Independent Office of Appeals;
- Failing to inform taxpayers of their right to file suit in a U.S. district court or the U.S. Court of Federal Claims; and

1 Certain refundable credits can give rise to an overpayment. *See* IRC § 6401(b).
2 IRC § 6611(a), (e)(2). IRC § 6621 sets forth the applicable interest rates. IRC § 6621(a)(1) provides that the interest rate for overpayments of tax is generally the federal short-term rate, plus three percentage points (two percentage points in the case of a corporation).
3 IRC § 6532(a)(1).
4 *See* National Taxpayer Advocate 2025 Annual Report to Congress, https://www.taxpayeradvocate.irs.gov/AnnualReport2025.

- Failing to provide accurate or clear explanations about why the IRS disallowed the claim.[5]

An informal TAS review of 100 notices of claim disallowance found that 30% omitted essential information about appeal rights, judicial review options, information regarding extensions of the deadline for filing suit under IRC § 6532, or some combination thereof.[6]

Despite these omissions and flaws, these notices typically satisfy current legal requirements, leaving taxpayers without the guidance they need to preserve their rights.[7] Put differently, the IRS can get a lot wrong in the notice, or omit critical information, yet the notice of claim disallowance is still considered valid, leaving the taxpayer to try to piece together what to do next.

These omissions, errors, and lack of specificity put taxpayers at risk for missing their opportunity to protest or seek judicial review of the disallowance. Additionally, because of vague explanations for the disallowance, a taxpayer may submit information that is irrelevant to the true reason for the disallowance. This could cause an unnecessary back and forth between the taxpayer and the IRS, wasting the limited amount of time the taxpayer has to dispute the disallowance and causing needless frustration.

In the past, we raised similar concerns about the clarity and specificity of IRS-issued math error notices, and we recommended that Congress pass legislation to require the IRS to provide clearer and more precise explanations.[8] In 2025, Congress did so by enacting the Internal Revenue Service Math and Taxpayer Help Act.[9] This recommendation is proposing that Congress take similar action to improve the clarity and specificity of notices of claim disallowance. Doing so would better protect taxpayers and their rights, while minimizing taxpayer confusion that drains both IRS and taxpayer resources. In addition, we recommend the IRS be given the authority to rescind a notice of disallowance in situations where it failed to provide a clear explanation of the disallowance or omitted information about the right to appeal or seek judicial review, thereby giving it the opportunity to correct its error(s).[10]

RECOMMENDATIONS

- Amend IRC § 6402(l) to require that every notice of claim disallowance include:
  - A clear, specific, and accurate explanation for the disallowance;
  - An explanation of how to appeal the disallowance;
  - A statement that the taxpayer has the right to file suit to recover the refund;
  - In bold at the top of the notice, the precise date by which taxpayers must file suit in a U.S. district court or the U.S. Court of Federal Claims under IRC § 6532(a); and

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5 National Taxpayer Advocate 2024 Annual Report to Congress 4-20 (Most Serious Problem: *Employee Retention Credit: IRS Processing Delays Are Resulting in Uncertainty and Are Harming and Frustrating Business Owners*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/12/ARC24_MSP_01_ERC.pdf.

6 TAS examined a random sample of 100 cases where taxpayers received a 105C letter between October 1, 2024, and July 31, 2025, and checked these letters for inclusion of the right to file an appeal, the right to file suit in a U.S. district court or the U.S. Court of Federal Claims, and instructions for filing Form 907 to extend the two-year timeframe to protest the disallowance.

7 *See* Internal Revenue Manual (IRM) 21.5.11.21.8, No Consideration and Disallowance of Claims (Jan. 1, 2026), https://www.irs.gov/irm/part21/irm_21-005-011r; IRM 21.5.3.4.6.1, Disallowance and Partial Disallowance Procedures (Oct. 1, 2025), https://www.irs.gov/irm/part21/irm_21-005-003r. The IRS instructs its employees to include additional information regarding appeal rights, judicial review, and extending the IRC § 6532 time period.

8 *See* National Taxpayer Advocate 2025 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* (*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*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/12/ARC24_PurpleBook_03_ImproveAssmtCollect_9.pdf.

9 Pub. L. No. 119-39, 139 Stat. 659 (2025).

10 IRC § 6212(d) permits the IRS to rescind a statutory notice of deficiency in limited circumstances. We recommend broadening the circumstances.

  - A statement that the taxpayer has the right to request an extension of the two-year period to appeal the disallowance, accompanied by an explanation of the extension process.

- Amend IRC § 6402(l) to authorize the IRS to rescind a notice of claim disallowance when the notice fails to provide a specific explanation for the disallowance and/or omits required information regarding administrative or judicial review. This authority would enable the IRS to correct defective notices and ensure that taxpayers are not disadvantaged by agency error.

IMPROVE THE FILING PROCESS

Legislative Recommendation #4

Treat Electronically Submitted Tax Payments and Documents as Timely If Submitted on or Before the Applicable Deadline

SUMMARY

- *Problem:* If a taxpayer mails a payment or tax return to the IRS that is postmarked by midnight on the due date, the payment or tax return will be considered timely even if it is received a week later. If the taxpayer submits the same payment or return to the IRS electronically on the due date, however, it may be considered late if the IRS receives and processes it the next day. This dichotomy can harm taxpayers who make timely electronic submissions, and it favors paper transmission over electronic transmission – exactly the opposite incentive the rules should provide.
- *Solution:* Provide that a payment or document submitted by midnight on the due date will be considered timely even if the IRS does not receive and process it that day.

PRESENT LAW

IRC § 7502(a)(1) provides that if certain requirements are satisfied, a mailed document or payment is deemed filed or paid on the date of the postmark stamped on the envelope. Therefore, if the postmark shows a document or payment was mailed by the due date, it will be considered timely, even if it is received after the due date.

IRC § 7502(b) and (c) provide that this timely-mailed/timely-filed rule (commonly known as the "mailbox rule") applies to documents and payments sent by U.S. postal mail, designated private delivery services, and electronic filing through an electronic return transmitter. It does not apply to all filings and payments. With respect to electronic filing, the Secretary is authorized to issue regulations describing the extent to which the mailbox rule shall apply.[1] To date, the only regulations the Secretary has issued relating to electronic filing cover documents filed through an electronic return transmitter (*i.e.*, documents that are e-filed).[2]

REASONS FOR CHANGE

The statutory mailbox rule in IRC § 7502 does not apply to the electronic transmission of payments to the IRS or to the electronic filing of time-sensitive documents (except documents filed electronically through an electronic return transmitter), including those transmitted via fax, email, the digital communication portal, or an online account.[3] If the IRS does not receive an electronically submitted document or payment until after the due date, the document or payment is considered late, even if the taxpayer can produce confirmation that they transmitted the payment or document on or before the due date. This comparatively unfavorable treatment of electronically submitted documents and payments undermines the IRS's efforts to encourage greater use of digital services and imposes additional cost and burden on taxpayers and the IRS.

1 IRC § 7502(c)(2). While this provision authorizes the Secretary to extend the mailbox rule for electronic filing, it does not authorize the Secretary to extend the mailbox rule for electronic payments.

2 Treas. Reg. § 301.7502-1(d).

3 *See* Treas. Reg. § 301.7502-1(d)(3)(i) (containing a definition of an electronic return transmitter). *See also* Rev. Proc. 2007-40, 2007-1 C.B. 1488 (providing a list of documents that can be filed electronically with an electronic return transmitter).

On March 25, 2025, the President issued an Executive Order generally requiring that payments to the government be received through electronic means.[4] However, existing methods to make tax payments through electronic means are confusing or inaccessible and, in some cases, may treat timely submitted payments as late.

There are currently three methods by which taxpayers can make tax payments to the government through electronic means – online taxpayer accounts, Direct Pay, and the Treasury Department's Electronic Federal Tax Payment System (EFTPS).

Online taxpayer accounts. Currently, only about 25% of individual taxpayers have established online accounts.[5] For now, that substantially limits the pool of taxpayers who can pay in this way. The low take-up rate is due to several factors, including that taxpayers must authenticate their identities with a third party to create an online account. Some taxpayers are not comfortable providing personal identifying information to a third-party contractor or have not seen the benefit of having an online account. Other taxpayers do not possess the necessary documentation to meet existing authentication requirements. In addition, the timing of when payments are credited is not clear, so even where payments are made through online accounts, the problems inherent in the other methods (described immediately below) may exist.

Direct Pay. This payment method, while accessible to all taxpayers with a bank account and arguably easier to use, creates the potential for timely programmed payments to be treated as late, which may subject taxpayers to penalties for late payments. At a minimum, the instructions can cause taxpayer confusion. According to the Direct Pay help page, the system is available until 11:45 p.m. Eastern Time (ET), but payments submitted after 8 p.m. ET typically show as made the next business day. That implies that some payments made in the evening on the payment due date may be treated as processed the following day and therefore late. However, the help page also notes that Direct Pay and EFTPS "treat payments due on the date of payment as being made on time, even if the bank withdrawal actually happens later." This confusingly worded statement indicates that a payment made on the due date, even if processed late, will be considered timely. It also may take up to two business days for a payment to process. According to the IRS website:

> To verify your payment was processed successfully, check your online tax account two business days after the date you scheduled the payment to be withdrawn from your bank account. Your online tax account will indicate whether a payment attempt was rejected. If the payment is still listed as "Pending," check back after three more business days to see if the payment was returned or reversed. If it was, you can try submitting it again to avoid interest and penalties.[6]

Given the small percentage of taxpayers with online tax accounts, most taxpayers currently cannot determine whether their payments were successfully processed in this way. In addition, advising taxpayers to submit their payments again may lead to further confusion, particularly because the IRS has experienced delays in timely processing payments. In June 2025, for example, the IRS issued a statement instructing taxpayers to ignore balance due notices if they submitted a timely payment that the IRS had not yet processed. These balance due notices imposed penalties and interest charges that the IRS had to remove after processing the timely submitted payments.[7] A year earlier, the IRS issued a similar statement because of delays in processing payments from 2023 tax returns.[8] IRS delays in processing timely submitted electronic payments can cause

4 Exec. Order 14247, *Modernizing Payments To and From America's Bank Account*, 90 Fed. Reg. 14001 (Mar. 25, 2025), https://www.whitehouse.gov/presidential-actions/2025/03/modernizing-payments-to-and-from-americas-bank-account.
5 IRS response to TAS information request (Oct. 15, 2025) (50.8 million Individual Online Accounts).
6 IRS, Direct Pay Help (Aug. 28, 2025), https://www.irs.gov/payments/direct-pay-help.
7 IRS, IRS Statement on Delay in Processing Some Electronic Payments (June 12, 2025), https://www.irs.gov/newsroom/irs-statement-on-delay-in-processing-some-electronic-payments.
8 IRS, IRS Statement on Balance Due Notices (CP14) (June 12, 2024), https://www.irs.gov/newsroom/irs-statement-on-balance-due-notices-cp14.

duplicate payments, erroneous balance due notices that include penalties and interest, taxpayer confusion, and additional phone calls. Taxpayers should not have to rely on the IRS to adjust payment dates to reflect the submission date rather than the processing date.

Electronic Federal Tax Payment System. When taxpayers use EFTPS, the third option, there may be an even longer lag between when a payment is submitted and when it is processed. The EFTPS website displays the following warning: "Payments using this Web site or our voice response system must be scheduled **by 8 p.m. ET the day before the due date** to be received timely by the IRS" (emphasis in original).[9] This limitation applies to all payments.

> *Example:* Based on the bolded language on the EFTPS website, if a taxpayer owes a balance due on April 15 and mails the payment to the IRS before midnight on April 15, the payment will be considered timely, even if it takes a week or longer for the IRS to receive, open, and process the check. If the same taxpayer submits the payment using EFTPS, the payment will be considered late if submitted after 8 p.m. on April 14 (28 hours earlier), even though the payment generally would be debited from the taxpayer's account on April 16 – often a week sooner than if submitted by postal mail.

This disparity in the treatment of mailed and electronically submitted payments makes little sense. As compared with a mailed check, an electronic payment is received more quickly, is cheaper to process, and eliminates the risk that a mailed check will be lost or misplaced. Yet rather than encouraging taxpayers to use EFTPS, an earlier deadline serves as a deterrent.

Despite the bolded warning on the main EFTPS website, the related FAQs describe circumstances in which the IRS will credit both business and individual tax payments on the date the payment is made.[10] For example, the FAQs state that business tax payments of $1 million or less made before 3 p.m. ET on the due date will be considered timely. While 3 p.m. ET on the due date is certainly better than 8 p.m. ET the day before the due date, the parameters detailed in the FAQs do not go far enough. The FAQs further confuse individual taxpayers by stating that payments meeting certain criteria submitted before 11:45 p.m. ET with the current business day selected are still considered timely. It is unclear why the Treasury Department has chosen to bury the more flexible time periods in the FAQs.

Given the limitations discussed above, the National Taxpayer Advocate recommends that Congress amend the mailbox rule in IRC § 7502 to add permanence and common sense, so taxpayers can rely on the timeliness of electronically submitted payments.

RECOMMENDATION

- Amend IRC § 7502 to apply the statutory mailbox rule to all time-sensitive documents and payments electronically submitted to the IRS in a manner comparable to similar documents and payments submitted through the U.S. Postal Service or a designated delivery service and direct the Secretary to issue regulations implementing this requirement.[11]

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9 *See* U.S. Dep't of the Treasury, Electronic Federal Tax Payment System (EFTPS), https://www.eftps.gov/eftps (last visited Aug. 27, 2025).

10 EFTPS, *Frequently Asked Questions, What If I Have to Make a Payment That Is Due Today?*, https://www.eftps.gov/eftps/direct/FAQGeneral.page (last visited Aug. 27, 2025).

11 In March 2025, legislation consistent with this recommendation was approved by the House on a voice vote. *See* Electronic Filing and Payment Fairness Act, H. R. 1152, 119th Cong. § 2 (2025). Similar language is included in a bipartisan discussion draft bill released by the chairman and ranking member of the Senate Finance Committee. *See* Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 905 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill.

Legislative Recommendation #5

Authorize the IRS to Establish Minimum Standards for Federal Tax Return Preparers and to Revoke the Identification Numbers of Sanctioned Preparers

SUMMARY

- *Problem:* Most paid tax return preparers are non-credentialed. Some have no training or experience. Taxpayers are harmed when incompetent tax return preparers make errors that cause them to pay too much tax, fail to claim tax benefits for which they qualify, or subject them to IRS tax adjustments and penalties for understating their tax. Likewise, the public Treasury is harmed when incompetent or unethical preparers claim tax benefits for which taxpayers do not qualify, leading to billions of dollars in improper payments.
- *Solution:* Require paid non-credentialed tax return preparers to take annual continuing education courses about federal tax laws and procedures and meet minimum standards of conduct, and authorize the IRS to revoke the identification numbers of sanctioned tax return preparers.

PRESENT LAW

Federal law imposes no competency or licensing requirements on paid tax return preparers. Credentialed individuals who may prepare tax returns, including attorneys, certified public accountants (CPAs), and enrolled agents (EAs), are generally required to pass competency tests, take continuing education courses (including an ethics component), and maintain minimum standards of professional conduct.[1] However, most paid preparers are non-credentialed and are neither required to take any continuing education courses in tax return preparation nor follow prescribed standards of conduct.[2]

IRC § 6109(a)(4) requires all tax return preparers, regardless of credential, to include an identifying number on tax returns they prepare. Treasury Regulation § 1.6109-2 requires preparers to apply for a Preparer Tax Identification Number (PTIN) from the IRS and include it on prepared returns.

REASONS FOR CHANGE

In recent years, the IRS has received over 160 million individual income tax returns annually. Paid tax return preparers prepare most of these returns. Both taxpayers and the tax system depend heavily on the ability of preparers to prepare accurate returns. Yet numerous studies have found that non-credentialed tax return preparers routinely prepare inaccurate returns, which harms taxpayers and the public fisc.[3]

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1 Volunteers who prepare tax returns as part of the Volunteer Income Tax Assistance and Tax Counseling for the Elderly programs are held to similar standards.

2 In tax year 2023, more than 60% of all preparers with Preparer Tax Identification Numbers (PTINs) were non-credentialed preparers. National Taxpayer Advocate 2024 Annual Report to Congress 68 (Most Serious Problem: *Tax-Related Scams: More Taxpayers Are Falling Victim to Tax-Related Scams*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/12/ARC24_MSP_05_Tax-Scams.pdf.

3 *See, e.g.*, Government Accountability Office (GAO), GAO-14-467T, *Paid Tax Return Preparers: In a Limited Study, Preparers Made Significant Errors* (2014), https://www.gao.gov/products/gao-14-467t; GAO, GAO-06-563T, *Paid Tax Return Preparers: In a Limited Study, Chain Preparers Made Serious Errors* (2006), https://www.gao.gov/products/gao-06-563t; Treasury Inspector General for Tax Administration, Ref. No. 2008-40-171, *Most Tax Returns Prepared by a Limited Sample of Unenrolled Preparers Contained Significant Errors* (2008); Jamie Woodward, Acting Comm'r, N.Y. Dep't of Tax'n and Fin., Remarks at the IRS Tax Return Preparer Review Public Forum (Sept. 2, 2009); *see also* Tom Herman, *New York Sting Nabs Tax Preparers*, Wall St. J., Nov. 26, 2008, https://www.wsj.com/articles/SB122765734841458181.

To protect the public, federal and state laws generally require lawyers, CPAs, 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 maintain professional standards, including completion of continuing professional education. Taxpayers and the tax system would benefit from requiring tax return preparers to maintain minimum standards reflective of their position of trust and expected competence.

The relationship between preparer credentials and overclaims in the Earned Income Tax Credit (EITC) program provides a stark illustration of the need to strengthen preparer standards. The EITC is one of the federal government's largest means-tested anti-poverty programs. It enjoys broad bipartisan support, but it is also plagued by a high improper payments rate. In fiscal year 2024, the IRS estimates the amount of improper payments was $15.9 billion, or 27.3% of dollars paid out.[4] IRS data suggests that a significant portion of improper payments was attributable to tax returns prepared by non-credentialed preparers. Among returns claiming the EITC prepared by paid tax return preparers in tax year 2023, non-credentialed preparers prepared approximately 83%, and the returns they prepared accounted for about 96% of the total dollar amount of EITC audit adjustments made on prepared returns.[5] Requiring that tax return preparers obtain continuing education and comply with minimum standards of conduct is arguably the simplest and most effective step Congress can take to improve return accuracy and reduce improper payments.

In 2009, the IRS Commissioner took steps to implement minimum standards for paid return preparers. Section 330 of Title 31 of the U.S. Code authorizes the Treasury Department to regulate "practice" before the IRS, and the Commissioner took the position that tax return preparation falls within the definition of "practice." On that basis, the IRS initiated extensive hearings and discussions with stakeholder groups to receive comments and develop a program under which all parties believed they could operate.[6] The IRS, together with the Treasury Department, implemented the program in 2011. However, a federal court later rejected the IRS's position that it had the legal authority to regulate tax return preparation, holding that "mere" tax return preparation did not constitute "practice" before the IRS.[7]

The IRS consequently terminated the program, and as a fallback, it created a voluntary "Annual Filing Season Program." Non-credentialed preparers who participate generally must meet specific requirements, including taking 18 hours of continuing education each year, which includes an examined tax refresher course. The IRS provides preparers who satisfy the program requirements with a "Record of Completion" they presumably can use in their marketing to attract potential clients.[8] However, the program is less rigorous than the one the IRS implemented in 2011, and most non-credentialed preparers do not participate. The voluntary program does not satisfy the objectives of a comprehensive regime.

Since the 2011 program was invalidated, the Obama, first Trump, and Biden administrations have each previously asked Congress to pass legislation giving the Treasury Department the legal authority to establish and enforce minimum standards. Excerpts from their proposals include the following:

The Obama administration: "Incompetent and dishonest tax return preparers increase collection costs, reduce revenues, disadvantage taxpayers by potentially subjecting them to penalties and interest as a result of

4 GAO, GAO-25-107753, *Improper Payments: Information on Agencies' Fiscal Year 2024 Estimates* 5, 6 (2025), https://www.gao.gov/products/gao-25-107753.

5 IRS, Compliance Data Warehouse, Individual Returns Transaction File, Return Preparers and Providers PTIN Database and Audit Information Management System – Closed Cases Database (Nov. 7, 2025). Tax returns filed in FY 2024 generally are tax year 2023 returns.

6 *See* IRS, Pub. 4832, Return Preparer Review (Dec. 2009), https://www.irs.gov/pub/irs-pdf/p4832.pdf.

7 *Loving v. IRS*, 917 F. Supp. 2d 67 (D.D.C. 2013), *aff'd*, 742 F.3d 1013 (D.C. Cir. 2014).

8 Rev. Proc. 2014-42, 2014-29 I.R.B. 192.

incorrect returns, and undermine confidence in the tax system…[Our] proposal would explicitly provide that the Secretary has the authority to regulate all paid tax return preparers."[9]

The first Trump administration: "The Administration continues to hold that improved regulation of preparers is an effective means to improve voluntary compliance. Thus, the Administration requests that the IRS be granted the authority to require minimum standards for all 400,000 tax preparers without credentials."[10]

The Biden administration: "The current lack of authority to provide oversight on paid tax return preparers results in greater non-compliance when taxpayers who use incompetent preparers or preparers who engage in unscrupulous conduct become subject to penalties, interest, or avoidable costs of litigation due to the poor-quality advice they receive. The lack of authority affects revenues to the IRS when the resulting noncompliance is not mitigated during return processing. Regulation of paid tax return preparers, in conjunction with diligent enforcement, will help promote high quality services from paid tax return preparers, will improve voluntary compliance, and will foster taxpayer confidence in the fairness of the tax system."[11]

The IRS is continuing to expand the capabilities of its online programs to give preparers access to an increasing amount of confidential taxpayer information.[12] While there are considerable benefits to expanding online access to taxpayer information, there are also significant security risks, including identity theft and other fraud. Allowing non-credentialed tax return preparers to access more confidential tax return information would increase these risks.

Some have argued that requiring preparers to take annual continuing education courses would address competence but would not ensure preparers conduct themselves ethically. The National Taxpayer Advocate agrees that tax law competency and ethical conduct are distinct issues. However, she believes preparer standards would raise both competency and ethical conduct levels. A preparer who invests in annual continuing education courses would demonstrate a commitment to return preparation as a profession. The preparer would be a vested partner in the tax system and would have more to lose if found to have engaged in misconduct, as do attorneys, CPAs, EAs, and other credentialed preparers. In addition, if tax return preparation is characterized as "practice" before the IRS under 31 U.S.C. § 330, the Office of Professional Responsibility would have oversight authority over preparers and could impose sanctions in cases of unethical conduct.[13]

Under current law, every preparer must obtain a PTIN from the IRS to prepare tax returns, but except in very limited cases, the IRS does not have the authority to revoke the PTINs of preparers who engage in improper or illegal conduct. Congress should authorize the IRS to revoke the PTINs of such preparers.

In sum, IRS data and third-party compliance studies have consistently found that tax returns prepared by non-credentialed preparers are often inaccurate. Minimum standards would directly improve preparer competency levels and would likely raise ethical norms. In addition, giving the IRS the authority to revoke the PTINs of substantially noncompliant preparers would provide the IRS with a tool to encourage compliant behavior in the profession.

9 Dep't of the Treasury, *General Explanations of the Administration's Fiscal Year 2015 Revenue Proposals* 244 (Mar. 2014), https://home.treasury.gov/system/files/131/General-Explanations-FY2015.pdf.

10 Dep't of the Treasury, *FY 2019 Budget in Brief* 7, https://home.treasury.gov/system/files/266/16.-IRS-FY-2019-BIB-FY2019.pdf.

11 Dep't of the Treasury, *General Explanations of the Administration's Fiscal Year 2025 Revenue Proposals* 206 (Mar. 2024), https://home.treasury.gov/system/files/131/General-Explanations-FY2025.pdf.

12 *See* IRS, Tax Pro Account, https://www.irs.gov/tax-professionals/tax-pro-account (last updated Aug. 12, 2025).

13 For a general overview of the rules of practice before the IRS, see IRS, Pub. 947, Practice Before the IRS and Power of Attorney (Feb. 2018), https://www.irs.gov/pub/irs-pdf/p947.pdf.

RECOMMENDATIONS

- Amend 31 U.S.C. § 330 to authorize the Secretary to establish minimum standards for paid federal tax return preparers.[14]
- Amend IRC § 6109 to authorize the Secretary to revoke PTINs concurrently with the assessment of sanctions for violations of established minimum standards for paid federal tax return preparers.[15]

14 For legislative language generally consistent with this recommendation, see, *e.g.*, Tax Refund Protection Act, S. 1209 & H.R. 2702, 118th Cong. § 2 (2023). The Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 504 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill, takes a slightly different approach to achieve the same objective as this recommendation.

15 For legislative language generally consistent with this recommendation, see, *e.g.*, System Transparency and Accountability for the IRS Act, H.R. 7341, 117th Cong. § 3(e)(2) (2022).

Legislative Recommendation #6

Extend the Time for Small Businesses to Make Subchapter S Elections

SUMMARY

- *Problem:* Individuals who incorporate their sole proprietorship or small business often do not learn about the benefits of electing "S" corporation status until they sit down with a tax professional to prepare their first corporation income tax return, but by that time the deadline for making an "S" election has passed. Taxpayers routinely obtain permission to make late elections, but doing so imposes additional costs and burdens on both the business and the IRS.
- *Solution:* Allow taxpayers to elect "S" status on their first timely filed S corporation income tax return.

PRESENT LAW

IRC § 1362(b)(1) provides that a small business corporation (S corporation) may elect to be treated as a passthrough entity for any taxable year by making an election at any time during the preceding taxable year or at any time on or before the 15th day of the third month of the current taxable year. The prescribed form for making this election is IRS Form 2553, Election by a Small Business Corporation.

IRC § 6072(b) provides that income tax returns of S corporations made on a calendar-year basis must be filed on or before March 15 following the close of the calendar year, and income tax returns of S corporations made on a fiscal year basis must be filed on or before the 15th day of the third month following the close of the fiscal year.

REASONS FOR CHANGE

Many small business owners are not familiar with the rules governing S corporations, and they learn about the ramifications of S corporation status for the first time when they hire a tax professional to prepare their corporation's income tax return for its first year of operation. By that time, the deadline for electing S corporation status has passed. Failure to make a timely S corporation election can cause significant adverse tax consequences for businesses, such as incurring taxation at the corporate level and rendering shareholders ineligible to deduct operating losses on their individual income tax returns. For context, roughly 6.1 million S corporation returns were filed in fiscal year (FY) 2024, which accounted for about 73% of all corporation income tax returns.[1]

Taxpayers may seek permission from the IRS to make a late S corporation election under Revenue Procedure 2013-30 or through a private letter ruling (PLR) request. Under the revenue procedure, a corporation that failed to timely file Form 2553 may request relief by filing Form 2553 within three years and 75 days of the date the election is intended to be effective. In addition, the corporation must attach a statement explaining its "reasonable cause" for failing to timely file the election and the diligent actions it took to correct the mistake upon its discovery.

Finally, all shareholders must sign a statement affirming they have reported their income on all affected returns as if the S corporation election had been timely filed (*i.e.*, during the period between the date the S

1 IRS, Pub. 55-B, IRS Data Book, 2024, Table 2, Number of Returns and Other Forms Filed, by Type, Fiscal Years 2023 and 2024 (May 2025), https://www.irs.gov/pub/irs-pdf/p55b.pdf.

corporation election would have become effective if timely filed and the date the completed election form is filed). If an entity cannot comply with the revenue procedure, it may request relief through a PLR. In 2025, the standard user fee for a late-election relief PLR is $14,500, although that fee drops to $3,450 or $9,775 for taxpayers who certify that their gross income is lower than $400,000 or $10 million, respectively.[2]

The S corporation election deadline burdens small businesses by requiring them to pay tax professionals and often IRS user fees to request permission to make a late election. It burdens shareholders because when the IRS rejects an S corporation return due to the absence of a timely election, the status of the corporation is affected, and that may cause changes on the shareholders' personal income tax returns. In addition, the deadline and relief procedures burden the IRS, which must allocate resources to process late-election requests.

Because small business owners often consider the S corporation election for the first time when they prepare their company's first income tax return, the burdens described above would be substantially alleviated if corporations could make an S corporation election on their first timely filed income tax return.

RECOMMENDATION

- Amend IRC § 1362(b)(1) to allow a small business corporation to elect to be treated as an S corporation by checking a box on its first timely filed S corporation income tax return.[3]

2 User fees for PLRs are set forth in the first revenue procedure of each year. For 2025 user fees, see Rev. Proc. 2025-1, 2025-1 I.R.B. 84. Treas. Reg. § 301.9100-3 prescribes the procedures and requirements for requesting late-election relief.

3 For legislative language generally consistent with this recommendation, see Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 902 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill; Tax Administration Simplification Act, S. 5316, 118th Cong. § 2 (2024), and H.R. 8864, 118th Cong. § 3 (2024); Protecting Taxpayers Act, S. 3278, 115th Cong. § 304 (2018).

Legislative Recommendation #7

Adjust Individual Estimated Tax Payment Deadlines to Occur Quarterly

SUMMARY

- *Problem:* Estimated tax installment payments for individual taxpayers are often referred to as "quarterly payments," but they are not due at even three-month intervals. Rather, they are spaced at three-month, two-month, three-month, and four-month intervals (April 15, June 15, September 15, and January 15). These uneven payment deadlines are confusing to taxpayers who must make estimated tax payments, most notably self-employed taxpayers.
- *Solution:* Revise the estimated tax payment deadlines to occur at quarterly intervals.

PRESENT LAW

IRC § 6654(c) generally requires individual taxpayers to make estimated tax payments in four installments due on April 15, June 15, September 15, and January 15. IRC § 6654(l) generally applies the same deadlines for estates and trusts.[1]

REASONS FOR CHANGE

Although estimated tax installment payments are often referred to as "quarterly payments," the payment dates do not align with calendar year quarters and are not evenly spaced at three-month intervals. These dates are not intuitive and cause confusion, as taxpayers struggle to remember the due dates. This confusion affects traditionally self-employed workers, workers in the gig economy, and other persons subject to the estimated tax regime for individuals including domestic investors in stocks, bonds, and real estate whose income may not be subject to withholding. Setting due dates to fall 15 days after the end of each calendar quarter would be more logical and make it easier for taxpayers to remember and comply with the due dates.

RECOMMENDATION

- Amend IRC § 6654(c)(2) to set the estimated tax installment deadlines to occur 15 days after the end of each calendar quarter (April 15, July 15, October 15, and January 15).[2]

1 IRC § 6654(j) generally requires certain non-resident aliens to make three estimated tax payments, which are due on June 15, September 15, and January 15. The June 15 date coincides with the due date for IRS Form 1040-NR, U.S. Nonresident Alien Income Tax Return, as provided in IRC § 6072(c). If this proposal is adopted, we recommend the second payment deadline be changed from September 15 to October 15 for consistency. IRC § 6655(c) generally requires corporate taxpayers to make estimated tax payments in four installments due on April 15, June 15, September 15, and December 15. Some of the benefits of establishing uniform quarterly deadlines would also apply to corporate taxpayers, but we have not analyzed the implications of changing the corporate deadlines. For that reason, this recommendation is limited to the deadlines applicable to individual taxpayers.

2 For legislative language generally consistent with this recommendation, see Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 903 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill; Tax Administration Simplification Act, S. 5316, 118th Cong. § 3 (2024), and H.R. 8864, 118th Cong. § 4 (2024); Tax Deadline Simplification Act, H.R. 3708, 118th Cong. § 2 (2023) and H.R. 4214, 117th Cong. § 2 (2021).

Legislative Recommendation #8

Eliminate Duplicative Reporting Requirements Imposed by the Bank Secrecy Act and the Foreign Account Tax Compliance Act

SUMMARY

- *Problem:* U.S. taxpayers with foreign accounts and assets are subject to two sets of information reporting requirements – one for the IRS and one for the Financial Crimes Enforcement Network (FinCEN). Much of the information requested by these two Treasury Department bureaus is duplicative. Yet individuals must complete separate forms for each and are subject to significant penalties for failing to report accounts or assets on one or both forms, even when the individuals owe little or no tax.
- *Solution:* Eliminating duplicative reporting requirements for taxpayers with foreign accounts and assets.

PRESENT LAW

The Bank Secrecy Act, found primarily in Title 31 of the U.S. Code, requires U.S. citizens and residents to report foreign accounts to FinCEN when the combined value of those accounts exceeds $10,000 at any time during the calendar year.[1] Individuals comply with this requirement by filing FinCEN Report 114, Report of Foreign Bank and Financial Accounts (FBAR).

The Foreign Account Tax Compliance Act (FATCA) added § 6038D to the Internal Revenue Code (Title 26).[2] It requires U.S. citizens, resident aliens, and certain non-residents to report to the IRS foreign financial assets exceeding specified reporting thresholds, including certain financial accounts maintained at foreign financial institutions.[3] To comply with this requirement, individuals who meet the reporting threshold must file IRS Form 8938, Statement of Specified Foreign Financial Assets, with their annual income tax return. IRC § 6038D authorizes the IRS to issue regulations or other guidance to provide exceptions from FATCA reporting, including when the reporting would duplicate other disclosures.[4]

REASONS FOR CHANGE

Many U.S. taxpayers, particularly those abroad, face increased compliance burdens and costs because the FATCA and FBAR reporting requirements significantly overlap.[5] The duplicative reporting regime is also inefficient for the government, with the Government Accountability Office (GAO) reporting it "creates additional costs to the government to process and store the same or similar information twice, and enforce reporting compliance with both requirements."[6]

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1 31 U.S.C. § 5314; 31 C.F.R. § 1010.306(c). The authority to enforce the FBAR reporting requirements has been redelegated from FinCEN to the IRS. *See* 31 C.F.R. § 1010.810(g).

2 Pub. L. No. 111-147, Title V, Subtitle A, § 511(a), 124 Stat. 71, 109-110 (2010).

3 Treas. Reg. § 1.6038D-2 provides for increased reporting thresholds for certain individuals living abroad. Individuals who are unmarried, or who are married but file separate tax returns, who have their tax home in a foreign country, and who meet certain tests for physical presence abroad will meet the specified reporting thresholds if the total value of their specified foreign financial assets is more than $200,000 on the last day of the tax year ($400,000 for individuals filing jointly), or more than $300,000 ($600,000 for individuals filing jointly) at any time during the tax year. Lower reporting thresholds apply to individuals who do not have a tax home in a foreign country or do not meet one of the physical presence abroad tests. Despite the higher reporting thresholds, many taxpayers living abroad will still have to file because of the broad definition of "specified foreign financial assets" or because they do not meet some of the other requirements.

4 The IRS has provided exceptions for assets reported on certain IRS international information returns and for assets held in the U.S. territories by *bona fide* residents of the territories. Treas. Reg. § 1.6038D-7(a)(1), (c).

5 For a comparison of the requirements, see IRS, Comparison of Form 8938 and FBAR Requirements, https://www.irs.gov/businesses/comparison-of-form-8938-and-fbar-requirements (last updated Sept. 18, 2025).

6 GAO, GAO-19-180, *Foreign Asset Reporting: Actions Needed to Enhance Compliance Efforts, Eliminate Overlapping Requirements, and Mitigate Burdens on U.S. Persons Abroad* 25 (2019), https://www.gao.gov/products/gao-19-180.

We believe two bureaus within the same cabinet department (Treasury) should be able to harmonize their information collection procedures to reduce the significant burdens the current reporting regime imposes on taxpayers. At the same time, we recognize there are complexities that can only be addressed through legislation. FATCA reporting and FBAR reporting serve different purposes, and while there is significant overlap between the two, they are not identical with respect to whom they apply, which assets must be reported, and the information collected.[7] We concur with the GAO's assessment that a legislative change to the FATCA and FBAR statutes is necessary to eliminate overlapping reporting requirements and the collection of duplicative information, while still ensuring each agency retains access to the information it needs.[8]

The National Taxpayer Advocate recommends Congress amend Titles 26 and 31 to eliminate FATCA reporting requirements under IRC § 6038D for foreign financial accounts that are correctly reported on an FBAR. The National Taxpayer Advocate also recommends Congress provide a limited exception from FATCA reporting requirements for financial accounts held in the country in which a U.S. taxpayer is a *bona fide* resident (commonly known as the "same-country" exception).[9] If adopted, these recommendations would reduce compliance burdens for U.S. taxpayers who currently must navigate the complex and duplicative reporting regime themselves, or pay higher fees to tax professionals to do it for them, and could reduce the government resources required to process and store the same information twice.

RECOMMENDATIONS

- Amend IRC § 6038D and 31 U.S.C. § 5314 to eliminate duplicative reporting of assets on IRS Form 8938 when a foreign financial account is correctly reported on an FBAR, while ensuring each agency's continued access to information.[10]
- Amend IRC § 6038D to exclude accounts maintained by a financial institution organized under or licensed to conduct business in the country of which a U.S. person is a *bona fide* resident from the specified foreign financial accounts required to be reported on IRS Form 8938.[11]
- Authorize the Secretary of the Treasury to issue regulations under Titles 26 and 31 to harmonize the FATCA and FBAR reporting requirements to eliminate duplication and direct the Secretary to issue such regulations within one calendar year from the effective date of the legislation.

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7 While FATCA reporting is focused on identifying income from foreign sources and curbing taxpayer noncompliance, FBAR reporting is focused on identifying money laundering and other financial crimes.

8 GAO, GAO-19-180, *Foreign Asset Reporting: Actions Needed to Enhance Compliance Efforts, Eliminate Overlapping Requirements, and Mitigate Burdens on U.S. Persons Abroad* 42-43 (2019), https://www.gao.gov/products/gao-19-180. The GAO report makes the following recommendation: "Congress should consider amending the Internal Revenue Code, Bank Secrecy Act of 1970, and other statutes, as needed, to address overlap in foreign financial asset reporting requirements for the purposes of tax compliance and detection, and prevention of financial crimes, such as by aligning the types of assets to be reported and asset reporting thresholds, and ensuring appropriate access to the reported information."

9 Outside stakeholders have reported that FATCA reporting burdens have caused some foreign financial institutions to decline to do business with U.S. expatriates, making it difficult for U.S. citizens to open bank accounts in some countries. An exception for *bona fide* residents of a foreign country would reduce those burdens without substantially undermining the purpose of FATCA, because individuals who open bank accounts in the country in which they reside are more likely to need the account for legitimate purposes and less likely to be engaged in tax evasion than individuals who open accounts in countries with which they have little connection. For additional discussion, see National Taxpayer Advocate 2015 Annual Report to Congress 353-363 (Legislative Recommendation: *Foreign Account Reporting: Eliminate Duplicative Reporting of Certain Foreign Financial Assets and Adopt a Same-Country Exception for Reporting Financial Assets Held in the Country in Which a U.S. Taxpayer Is a* Bona Fide *Resident*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC15_Volume1_LR_05_Foreign-Acct-Reporting.pdf.

10 For legislative language taking a different approach to harmonization, see Tax Simplification for Americans Abroad Act, H.R. 5432, 118th Cong. § 4 (2023), which would amend 31 U.S.C. § 5314 to provide that a taxpayer could satisfy FBAR requirements by attaching information required under IRC § 6038D to their annual tax return. *See also* Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 201 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill.

11 For legislative language generally consistent with this recommendation, see, *e.g.*, Overseas Americans Financial Access Act, H.R. 8873, 118th Cong. § 3 (2024).

Legislative Recommendation #9

Authorize the Use of Volunteer Income Tax Assistance Grant Funding to Assist Taxpayers With Applications for Individual Taxpayer Identification Numbers

SUMMARY

- *Problem:* The tax code requires millions of individuals who are not eligible for Social Security numbers (SSNs) to file tax returns. To process returns from these individuals, the IRS generally requires them to obtain an Individual Taxpayer Identification Number (ITIN). However, the process for obtaining an ITIN is complex and confusing, especially for non-English speaking individuals who cannot afford professional tax advice. Certifying Acceptance Agents (CAAs) can help.
- *Solution:* Authorize Volunteer Income Tax Assistance (VITA) programs to use federal grant funds to provide CAA services.

PRESENT LAW

IRC § 6109(a)(1) authorizes the Secretary to require taxpayers to include a Taxpayer Identification Number (TIN) on tax returns and other documents.[1] Most taxpayers use SSNs for this purpose, but taxpayers who are not eligible for SSNs generally must request an ITIN from the IRS.[2]

In 1996, the IRS published guidance allowing CAAs to assist taxpayers with ITIN applications and to authenticate identification documents.[3] In 2015, Congress codified the IRS's use of "community-based certified acceptance agents" for this purpose and directed the IRS to develop strategies to expand the CAA program and encourage participation in it.[4]

IRC § 7526A, enacted as part of the Taxpayer First Act, authorizes the IRS to award federal grants for the development, expansion, or continuation of VITA programs.[5] VITA programs offer free tax preparation services to eligible taxpayers. IRS community partner organizations operate VITA sites and staff them with IRS-certified volunteers.[6] IRC § 7526A(b) enumerates the permissible uses of VITA grant funds, but it does not specifically enumerate the costs associated with providing CAA services as a permissible use.

REASONS FOR CHANGE

Many people need ITINs, including certain non-residents, immigrants, and others who are required to file U.S. tax returns but who are not eligible for a Social Security number. For 2023, the IRS received about 3.8 million individual tax returns that included an ITIN.[7] A significant but unknown number of additional individuals do not file required returns each year because they are unable to navigate the ITIN application process.

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1 *See* Treas. Reg. § 301.6109-1(b).
2 Treas. Reg. § 301.6109-1(a)(1)(ii)(B). Taxpayers apply for an ITIN using Form W-7, Application for IRS Individual Taxpayer Identification Number (Dec. 2024), https://www.irs.gov/pub/irs-pdf/fw7.pdf.
3 *See* Rev. Proc. 96-52, 1996-2 C.B. 372, *superseded by* Rev. Proc. 2006-10, 2006-1 C.B. 293, https://www.irs.gov/irb/2006-02_IRB.
4 Consolidated Appropriations Act, 2016 (commonly referred to as the Protecting Americans from Tax Hikes Act of 2015), Pub. L. No. 114-113, Div. Q, Title IV, § 203, 129 Stat. 2242, 3078 (2015).
5 Pub. L. No. 116-25, § 1401, 133 Stat. 981, 993 (2019).
6 IRS, Free Tax Return Preparation for Qualifying Taxpayers, https://www.irs.gov/individuals/free-tax-return-preparation-for-qualifying-taxpayers (last updated Sept. 11, 2025).
7 IRS, Compliance Data Warehouse (CDW), Individual Returns Transaction File Table (IRTF), Tax Year (TY) 2023 (through June 26, 2025).

To protect against fraud, the IRS applies strict rules in verifying identity documents and other information taxpayers must submit with their applications.[8] This makes the ITIN application process difficult for two reasons. First, the ITIN application itself can be challenging to fill out, particularly for non-English speaking individuals. Second, an individual who prepares and submits an ITIN application without assistance must provide original identity documents with the application, which may include passports, birth certificates, driver's licenses, and visas. The IRS will return these documents after verifying them. The IRS website says the agency is currently taking seven to 11 weeks to process ITIN applications.[9] Many people are uncomfortable mailing their identity documents to the IRS, not having the documents while the IRS reviews them, and risking the IRS losing the documents.

Taxpayers can avoid mailing their identity documents to the IRS if they obtain assistance with their ITIN application at an IRS Taxpayer Assistance Center (TAC) or from a CAA. Both TAC employees and CAAs are authorized to authenticate certain identifying documents.

The CAA program is particularly useful for three reasons. First, the IRS approves ITIN applications prepared with CAA assistance at higher rates than applications prepared with either TAC assistance or sent directly by ITIN applicants.[10] CAAs are certified in forensic document training and must undergo regular IRS compliance reviews.[11] In addition, if the IRS needs more information about a CAA-assisted application, the IRS can contact the CAA directly, which can lead to a more efficient resolution.

Second, as Congress emphasized in its 2015 legislation, it is important for the CAA program to be "community-based." Because many ITIN applicants are immigrants to the United States, CAAs often need to be able to work in a foreign language or understand the unique features of identity documents from a taxpayer's home country or region within that country.[12]

While some CAAs work through nonprofit organizations, many do not, with some CAAs reportedly charging thousands of dollars for ITIN application assistance.[13] VITA programs could provide CAA services to a broader swath of taxpayers at no cost.

Third, VITA sites principally prepare tax returns, and taxpayers generally must submit ITIN applications in conjunction with tax returns. Thus, awarding funding for VITA sites to prepare ITIN applications along with tax returns would provide "one-stop shopping" for these individuals.[14]

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8 *See* National Taxpayer Advocate 2024 Annual Report to Congress 88 (Most Serious Problem: *Individual Taxpayer Identification Number Processing: IRS Dependence on Paper Forms and Manual Document Review Is Causing Delays, Mistakes, and Potential Security Risks*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/12/ARC24_MSP_07_ITIN-Processing.pdf.

9 IRS, How to Apply for an ITIN, https://www.irs.gov/tin/itin/how-to-apply-for-an-itin (updated Mar. 12, 2025).

10 National Taxpayer Advocate 2024 Annual Report to Congress 100 (Most Serious Problem: *Individual Taxpayer Identification Number Processing: IRS Dependence on Paper Forms and Manual Document Review Is Causing Delays, Mistakes, and Potential Security Risks*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/12/ARC24_MSP_07_ITIN-Processing.pdf.

11 *See* IRS, ITIN Acceptance Agent Program, https://www.irs.gov/individuals/itin-acceptance-agent-program (updated Apr. 1, 2025).

12 The IRS Advisory Council has similarly recommended expansion of CAAs at VITA sites. *See* IRS, Pub. 5316, Internal Revenue Service Advisory Council Public Report 165-166 (Nov. 2023), https://www.irs.gov/pub/irs-prior/p5316--2023.pdf; *see also* Letter from Coalition for Immigrant Taxpayer Experience to Danny Werfel, Comm'r, Internal Revenue (Mar. 4, 2024) (on file with TAS) (agreeing with the IRS Advisory Council's 2023 recommendations to expand CAA services at VITA sites).

13 Discussion during ITIN unit site visit (Sept. 10, 2024).

14 Most ITIN taxpayers would have qualified for return preparation assistance from VITA based on income limits in 2024, yet relatively few such taxpayers used VITA for that purpose. Among ITIN taxpayers who used a tax return preparer, 88% relied on a non-credentialed preparer. IRS, CDW, IRTF, Individual Master File, Return Review Program Preparer Tax Identification Number Table, TY 2023, (through June 26, 2025). If these taxpayers could obtain return preparation assistance at the same time they apply for ITINs, they would be more likely to use VITA programs for return preparation, saving themselves tax preparation fees and likely filing more accurate returns. *See* IRS, Pub. 5162, Compliance Estimates for the Earned Income Tax Credit Claimed on 2006-2008 Returns 26 (Aug. 2014), https://www.irs.gov/pub/irs-soi/EITCComplianceStudyTY2006-2008.pdf (finding EITC overclaims on 51.5% of returns prepared by unenrolled tax return preparers as compared with 23% of returns prepared at VITA, Tax Counseling for the Elderly, or IRS locations; these percentages represent the average between the IRS lower bound and upper bound estimates).

The IRS office that manages VITA – Stakeholder Partnerships, Education and Communication – focuses on developing and supporting partnerships with local organizations that have pre-established relationships and successful track records assisting people in their communities.[15] Expanding the availability of CAAs at VITA sites would provide ITIN taxpayers with access to trusted partners in their communities who can assist them in preparing both ITIN applications and tax returns, increasing the accuracy of these filings at no cost to taxpayers.

RECOMMENDATION

- Amend IRC § 7526A(b) to add the ordinary and necessary costs of providing CAA services as a permissible use of VITA grant funds.

15 *See* Internal Revenue Manual 22.30.1.1.1, Background (Sept. 4, 2020), https://www.irs.gov/irm/part22/irm_22-030-001.

IMPROVE ASSESSMENT AND COLLECTION PROCEDURES

Legislative Recommendation #10

Continue to Limit the IRS's Use of "Math Error Authority" to Clear-Cut Categories Specified by Statute

SUMMARY

- *Problem:* The tax law generally requires the IRS to follow "deficiency procedures" when it determines a taxpayer owes additional tax, and deficiency procedures give taxpayers important rights, including the right to challenge the IRS determination in the U.S. Tax Court (Tax Court). However, the law also gives the IRS the authority to provisionally bypass deficiency procedures and summarily assess tax when a tax return contains one of 27 categories of "mathematical or clerical errors" (often referred to as "math errors"). On several occasions, the Department of the Treasury (Treasury) has requested that Congress grant it the authority to add new categories of math errors by regulation. This change could have the effect of depriving taxpayers of deficiency procedures (and thus the right to challenge the IRS's position in the Tax Court) in a wider range of circumstances.
- *Solution:* Congress should retain the sole authority to revise categories of math errors, not give Treasury the authority to add new categories of math errors by regulation, and impose additional safeguards regarding when the IRS may use math error authority.

PRESENT LAW

Before the IRS may assess a deficiency, IRC § 6213(a) ordinarily requires that it send the taxpayer a "notice of deficiency" that gives the taxpayer 90 days (or 150 days if addressed to a taxpayer outside the United States) to challenge the IRS's position by filing a petition with the Tax Court (known as "deficiency procedures"). The taxpayer's ability to appeal a deficiency determination to the Tax Court before paying the tax is central to a taxpayer's *right to appeal an IRS decision in an independent forum*.[1]

As an exception to standard deficiency procedures, IRC § 6213(b)(1) authorizes the IRS to summarily assess and collect tax without first providing the taxpayer with a notice of deficiency or access to the Tax Court when addressing "mathematical and clerical" errors (commonly referred to as "math error authority"). If a taxpayer contests a math error notice within 60 days from the date on the notice, IRC § 6213(b)(2)(A) requires that the IRS abate the assessment. If the IRS abates the assessment, it must follow deficiency procedures if it chooses to reassess the tax. If a taxpayer fails to respond to a math error notice timely, the taxpayer forfeits the right to challenge the liability in court prior to assessment. The IRS may summarily assess deficiencies arising from 27 types of mathematical or clerical errors, which IRC § 6213(g)(2), subparagraphs A-AA, codifies.

REASONS FOR CHANGE

Congress generally requires the IRS to follow deficiency procedures, which provide taxpayers with notice and a reasonable opportunity to challenge the IRS's tax adjustment. Most importantly, Congress provided taxpayers with the opportunity to dispute an adverse IRS determination in an independent judicial forum (*i.e.*, the Tax Court) before being required to pay additional tax. Congress authorized math error authority, which provides

1 *See* Taxpayer Bill of Rights (TBOR), https://www.taxpayeradvocate.irs.gov/taxpayer-rights (last visited Sept. 24, 2025). The rights contained in TBOR are also codified in IRC § 7803(a)(3).

fewer taxpayer protections, as a limited exception to regular deficiency procedures. It allows the IRS to make adjustments in cases of clear taxpayer error, such as where a taxpayer incorrectly adds or transcribes numbers from one form to another. If a taxpayer who receives a math error notice does not ask the IRS to abate the tax within 60 days, the taxpayer loses the right to Tax Court review before the IRS makes the assessment.

Math error procedures are cheaper and simpler for the IRS than deficiency procedures. For that reason, Treasury has previously requested that Congress grant it the authority to assess tax without issuing a statutory notice of deficiency where the information provided by the taxpayer does not match the information contained in government databases or any other third-party databases that Treasury specifies in regulations – what it has referred to as "correctable errors."[2]

The National Taxpayer Advocate is concerned about the impact on taxpayer rights of giving Treasury broad authority to add new categories of math error by regulation. The National Taxpayer Advocate's Reports to Congress have documented numerous circumstances in which the IRS has used math error authority to address discrepancies that have undermined taxpayer rights.[3]

If the IRS uses math error authority to address more complex issues that require additional fact finding, its assessments are more likely to be wrong, and the IRS's computer-generated notices, which confuse many taxpayers in the simplest of circumstances, are likely to become even more difficult to understand.[4]

Math error authority is appropriate for the IRS to use where required schedules are omitted or where annual or lifetime dollar caps have been exceeded. It is also appropriate to use where there is a discrepancy between a return entry and data available to the IRS from certain reliable government databases, such as records maintained by the Social Security Administration. But Treasury and the IRS should not be the sole arbiters of that reliability. Rather, Congress should retain the authority to determine whether the IRS's "efficiency gains" by using math error authority in specific instances outweigh the loss of significant taxpayer protections that deficiency procedures provide.

RECOMMENDATIONS

- Refrain from giving Treasury the authority to add new categories of "correctable errors" by regulation. Because the deficiency procedures created by Congress provide important taxpayer protections, Congress should retain the sole authority to determine whether and when to create exceptions to deficiency procedures by adding categories of mathematical or clerical errors by statute.

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2 *See, e.g.*, Staff of J. Comm. On Tax'n, 116th Cong., Description of Certain Revenue Provisions Contained in the President's Fiscal year 2020 Budget Proposal 62, 64, JCS-1-19 (July 8, 2019), https://www.jct.gov/CMSPages/GetFile.aspx?guid=7375e9d9-b13c-4692-a667-7e66ec7234e9; Dep't of the Treasury, *General Explanations of the Administration's Fiscal Year 2016 Revenue Proposals* 245-246 (Feb. 2015) https://home.treasury.gov/system/files/131/General-Explanations-FY2016.pdf.

3 *See, e.g.*, National Taxpayer Advocate 2018 Annual Report to Congress 164 (Most Serious Problem: *Post-Processing Math Error Authority: The IRS Has Failed to Exercise Self-Restraint in Its Use of Math Error Authority, Thereby Harming Taxpayers*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/07/ARC18_Volume1_MSP_11_PostProcessing.pdf; National Taxpayer Advocate 2018 Annual Report to Congress 174 (Most Serious Problem: *Math Error Notices*: *Although the IRS Has Made Some Improvements, Math Error Notices Continue to Be Unclear and Confusing, Thereby Undermining Taxpayer Rights and Increasing Taxpayer Burden*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/07/ARC18_Volume1_MSP_12_MathError.pdf.

4 The National Taxpayer Advocate previously recommended improving the specificity of math error notices as well as making them easier to understand. *See* National Taxpayer Advocate 2025 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (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)*, https://www. taxpayeradvocate.irs.gov/wpcontent/uploads/2024/12/ARC24_PurpleBook_03_ImproveAssmtCollect_9.pdf. On November 25, 2025, the President signed into law the Internal Revenue Service Math and Taxpayer Help Act, which was based on this recommendation. Pub. L. No. 119-39, 139 Stat. 659 (2025). *See also* Erin M. Collins, A Win for Taxpayers: Internal Revenue Service Math and Taxpayer Help Act, National Taxpayer Advocate Blog (Dec. 1, 2025), https://www.taxpayeradvocate.irs.gov/news/nta-blog/a-win-for-taxpayers-internal-revenue-service-math-and-taxpayer-help-act/2025/12/.

- Amend IRC § 6213(b) to permit an assessment arising out of mathematical or clerical error only when the IRS has researched all information in its possession that could help reconcile the discrepancy.
- Amend IRC § 6213(g) to authorize the IRS to exercise its existing (and any new) authority to summarily assess a deficiency due to "clerical errors" only where: (i) there is a discrepancy between a return entry and reliable government data; (ii) the IRS's notice clearly describes the discrepancy and how to contest it; (iii) the IRS has researched all information in its possession that could help reconcile the discrepancy; and (iv) the IRS does not have to evaluate documentation to make a determination.
- Amend IRC § 6213 to provide that the IRS is not authorized to use any new criteria or data to make summary assessments unless Treasury, in consultation with the National Taxpayer Advocate, has evaluated and publicly reported on the reliability of the criteria or data for that intended use.[5]

5 For a more limited recommendation, see National Taxpayer Advocate 2015 Annual Report to Congress 329 (Legislative Recommendation: *Math Error Authority: Authorize the IRS to Summarily Assess Math and "Correctable" Errors Only in Appropriate Circumstances*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC15_Volume1_LR_02_Math-Error-Authority.pdf.

Legislative Recommendation #11

Require Independent Managerial Review and Written Approval Before the IRS May Assert Multiyear Bans Barring Taxpayers From Receiving Certain Tax Credits and Clarify That the Tax Court Has Jurisdiction to Review the Assertion of Multiyear Bans

SUMMARY

- *Problem:* Refundable credits, including the Earned Income Tax Credit (EITC) and the Child Tax Credit (CTC), can be a lifeline for many low-income families, accounting for a high percentage of their household incomes. To deter improper claims, the law requires the IRS to ban taxpayers who make improper claims from receiving these credits under certain circumstances in future years – even if the taxpayers otherwise meet all eligibility requirements in those future years. Because a multiyear ban against receiving tax credits can have financially devastating consequences for taxpayers and their families, there must be adequate administrative and judicial safeguards to ensure they are only imposed in appropriate cases.
- *Solution:* Require IRS managerial approval of multiyear bans and clarify that the U.S. Tax Court (Tax Court) has jurisdiction to review the imposition of a ban for the years in which the ban is imposed.

PRESENT LAW

IRC §§ 24(g), 25A(b)(4), and 32(k) require the IRS to ban a taxpayer from claiming the CTC, the Credit for Other Dependents (ODC), the American Opportunity Tax Credit (AOTC), and the EITC for two years if the IRS makes a final determination that the taxpayer improperly claimed the credit with reckless or intentional disregard of rules and regulations. The duration of the ban increases to ten years if the IRS makes a final determination that the taxpayer fraudulently claimed the credit. These code sections refer to the years for which the ban is imposed as the "disallowance period."[1]

IRC § 6214 grants the Tax Court jurisdiction to redetermine a deficiency for the tax year(s) before the court, but it does not grant the Tax Court jurisdiction to redetermine deficiencies for other tax years.

REASONS FOR CHANGE

Congress directed the IRS to impose multiyear bans against taxpayers' eligibility for the CTC, ODC, AOTC, and EITC to deter and penalize improper claims. These multiyear bans are unique in tax law because they prevent taxpayers from receiving credits in future years, even if they otherwise satisfy all eligibility requirements in those years.

Refundable credits can be a lifeline for low-income taxpayers. For eligible taxpayers who received a notice in calendar year 2024 banning them from claiming the EITC for two years, the amount of disallowed EITC was, on average, 26% of the taxpayer's adjusted gross income.[2] Thus, it is critical there be adequate safeguards to

1 IRC §§ 24(g)(1)(A), 25A(b)(4)(A)(i), 32(k)(1)(A).

2 IRS, Compliance Data Warehouse, Notice Delivery System, Individual Master File (IMF) Transaction History, IMF Fixed Entity, and Individual Returns Transaction File (Nov. 6, 2025). In some cases, a taxpayer's Adjusted Gross Income (AGI) was zero, negative, or less than their EITC. To include these taxpayers but avoid skewing the results, this analysis set the EITC at 100% of the taxpayer's AGI in such cases.

ensure both that the IRS imposes a ban only when a taxpayer acts with the requisite improper intent and that a taxpayer has access to meaningful judicial review of an IRS ban determination.

Written Managerial Approval

In most ban cases, IRS procedures require a manager to review the case independently and approve the assertion of a ban in writing.[3] However, the IRS's internal rules allow the agency to impose two-year bans automatically in some EITC cases,[4] and the IRS expanded its practice of automatically imposing bans to include the refundable portion of the CTC (referred to as the Additional Child Tax Credit, or ACTC).[5] Three TAS research studies of two-year ban cases found that managerial approval, even where required, is often lacking.[6] Moreover, because the IRS's policy of requiring managerial approval of multiyear bans is administrative, the IRS may eliminate or weaken the requirement at any time.

The National Taxpayer Advocate does not believe that multiyear bans should ever be imposed by automatic or systemic means. The law provides for imposition of the two-year ban only in cases where the IRS determines a taxpayer acted recklessly or with intentional disregard of rules and regulations, and it provides for imposition of the ten-year ban only in cases where the IRS determines a taxpayer's claim was fraudulent. Notably, the law does not permit the IRS to impose a multiyear ban when an improper claim is due to inadvertent error, or even due to negligence.

A computer is not capable of assessing a taxpayer's state of mind and therefore cannot determine whether an improper claim was due to reckless or intentional disregard of rules and regulations. This determination requires an independent facts-and-circumstances investigation by an employee. In light of the potentially harsh financial impact of multiyear bans on taxpayers, Congress should require managerial approval in all cases before the IRS imposes such bans.

Tax Court Jurisdiction

Although a taxpayer should be able to obtain independent Tax Court review of a multiyear ban, it is not clear whether, or when, the Tax Court has the jurisdiction to reverse a multiyear ban. That is because the imposition of a ban and the effect of a ban on a taxpayer's tax liability occur in different tax years.

First, the Tax Court may not have jurisdiction to reverse a ban in the year it is imposed. IRC § 6214 generally limits the Tax Court to determining the amount of tax owed in the tax year(s) before it. By its nature, a ban

3 Internal Revenue Manual (IRM) 4.19.14.7.1(2), 2/10 Year Ban Guidelines for Correspondence Examination Technicians (CET) (Jan. 1, 2025), https://www.irs.gov/irm/part4/irm_04-019-014r.

4 IRM 4.19.14.7.1.5, Project Codes 0027 and 0028 – EITC Recertification With a Proposed 2 Year EITC Ban (Jan. 3, 2023), https://www.irs.gov/irm/part4/irm_04-019-014r.

5 The American Rescue Plan Act, Pub. L. No. 117-2, § 9611, 135 Stat. 4, 144 (2021), made the CTC fully refundable for tax year 2021. *See* Treasury Inspector General for Tax Administration, Ref. No. 2021-40-036, *Improper Payment Rates for Refundable Tax Credits Remain High* 8 (2021) (reporting that "IRS management stated that, starting in Processing Year 2021, systemic processes will assess the two-year ban for the ACTC.").

6 *See* National Taxpayer Advocate 2023 Annual Report to Congress, 2023 Research Reports, at 27, 34 (Research Study: *Study of the Two-Year Bans on the Earned Income Tax Credit, Additional Child Tax Credit, and American Opportunity Tax Credit*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC-2023_TAS-Research-Report_WEB_FINAL.pdf; National Taxpayer Advocate 2019 Annual Report to Congress vol. 2, at 239 (Research Study: *Study of Two-Year Bans on the Earned Income Tax Credit, Child Tax Credit, and American Opportunity Tax Credit*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/11/ARC19_Volume1_TRRS_02_EITCban.pdf. National Taxpayer Advocate 2013 Annual Report to Congress 103 (Most Serious Problem: *Earned Income Tax Credit: The IRS Inappropriately Bans Many Taxpayers From Claiming EITC*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/2013-ARC_VOL-1_S1-MSP-9.pdf.

against claiming tax credits in future years will affect the taxpayer's tax liability in future years – not in the year in which it is imposed.[7]

Second, the Tax Court may not have jurisdiction to reverse a ban in the years in which the ban is in effect. By operation of law, a ban automatically denies benefits in future years. If a taxpayer challenges the IRS's deficiency determination in a year in which the ban denies tax credits, the year in which the ban was initially imposed generally will not be before the court. It is unclear whether the court may reach back to the earlier year to determine whether the IRS properly imposed the ban.

Transparency is a critical element of taxpayer rights and fairness, and taxpayers should understand clearly when they may seek Tax Court review of an adverse IRS determination. Here, the law is uncertain, and there appear to be four possible outcomes: (i) the Tax Court may have jurisdiction to review a ban both for the year in which it is imposed and for the year in which it is effective; (ii) the Tax Court may have jurisdiction to review a ban for the year in which it is imposed but not for the year in which it is effective; (iii) the Tax Court may not have jurisdiction to review a ban for the year in which it is imposed but may have jurisdiction to review it for the year in which it is effective; or (iv) the Tax Court may not have jurisdiction to review a ban at any time. These procedural uncertainties undermine a taxpayer's rights *to be informed*, *to appeal an IRS decision in an independent forum*, and *to a fair and just tax system.*

In general, the Tax Court's jurisdiction to adjust CTC, ODC, AOTC, and EITC claims is based on its deficiency jurisdiction.[8] As noted above, the determination to subject a taxpayer to a multiyear ban does not itself create a deficiency in the current tax year. Therefore, the National Taxpayer Advocate recommends that Congress amend IRC § 6214 to grant the Tax Court jurisdiction to determine whether a ban was properly imposed during a proceeding involving a deficiency created by the imposition of the ban (*i.e.*, during the two years in which the credits are denied rather than the initial year in which the ban was imposed).

RECOMMENDATIONS

- Amend IRC §§ 24(g), 25A(b)(4), and 32(k) to require independent managerial review and written approval based on consideration of all relevant facts and circumstances before the IRS may assert a multiyear ban.[9]
- Amend IRC § 6214 to clarify that the Tax Court has jurisdiction (i) to review the IRS's final determination to impose a multiyear ban under IRC §§ 24(g), 25A(b)(4), or 32(k) in any proceeding involving the years in which the notice of deficiency disallows CTC, ODC, AOTC, or EITC on the basis of a multiyear ban, and (ii) to allow the affected credit if it finds a multiyear ban was improperly imposed and the taxpayer otherwise qualifies for the credit.[10]

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7 *Compare Garcia v. Comm'r*, T.C Summ. Op. 2013-28 (holding, in a nonprecedential case, that a ban did not apply to future years), with *Ballard v. Comm'r*, No. 3843-15S (T.C. Feb. 12, 2016) (declining to rule on the application of IRC § 32(k), noting that the application of the ban had no effect on the taxpayer's federal income tax liability for the year before it).

8 IRC §§ 6213(a), 6214(a).

9 The National Taxpayer Advocate is not proposing to amend IRC § 6751(b), because determinations made by electronic means are exempt from the requirement of supervisory approval under IRC § 6751(b)(2)(B). As discussed above, the determination of the application of a multiyear ban should not be made electronically and should be reviewed and approved by the supervisor of the employee who makes the determination.

10 For legislative language generally consistent with this recommendation, see Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 305 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill.

Legislative Recommendation #12

Give Taxpayers Abroad Additional Time to Request Abatement of a Math Error Assessment

SUMMARY

- *Problem:* U.S. taxpayers abroad generally need more time to respond to IRS notices than taxpayers living within the United States. The tax code gives taxpayers abroad an additional 60 days to respond to a notice of deficiency, but it does not provide taxpayers abroad additional time to respond to a math error notice – even though failure to respond to a math error notice within 60 days means the IRS may assess the tax and the taxpayer generally forfeits the right to challenge the IRS's assessment in the U.S. Tax Court (Tax Court).
- *Solution:* Give taxpayers abroad an additional 60 days to respond to math error notices.

PRESENT LAW

IRC § 6213(b) authorizes the IRS to make a "summary assessment" of tax arising from mathematical or clerical errors as defined in IRC § 6213(g), thus bypassing otherwise applicable deficiency procedures. Under IRC § 6213(b)(2)(A), however, a taxpayer has 60 days after a math error notice is sent to request an abatement of the summary assessment. If the taxpayer makes an abatement request within 60 days, the IRS must abate the summary assessment and then follow deficiency procedures under IRC § 6212 if it wishes to reassess an increase in tax. If the taxpayer does not submit an abatement request within 60 days, the taxpayer generally forfeits the right to file a petition in the Tax Court to dispute the IRS's assessment of tax. No additional time is allowed to request an abatement when the math error notice is addressed to a taxpayer outside the United States.

By contrast, the rules applicable to notices of deficiency give taxpayers outside the United States additional response time. In general, a taxpayer may file a petition in the Tax Court for a redetermination of a deficiency within 90 days from the date the notice is mailed. However, when the notice of deficiency "is addressed to a person outside the United States," IRC § 6213(a) provides that the taxpayer has 150 days from the date the notice is mailed to file a Tax Court petition. The Tax Court has construed this language broadly, concluding among other things that the 150-day period for filing a petition applies not only when a notice of deficiency is mailed to an address outside the United States, but also when a notice of deficiency is mailed to an address within the United States if the taxpayer is located outside the United States.[1]

REASONS FOR CHANGE

The U.S. government has estimated that the number of U.S. citizens residing abroad is about 4.4 million.[2] Taxpayers abroad (either temporarily or permanently) often require more time to respond to IRS notices than taxpayers living in the United States. Mail delivery takes longer in both directions – in some cases,

1 *See, e.g., Levy v. Comm'r,* 76 T.C. 228 (1981) (holding that the 150-day rule is applicable to a U.S. resident who is temporarily outside the country when the notice is mailed and delivered); *Looper v. Comm'r*, 73 T.C. 690 (1980) (holding that the 150-day rule is applicable when a notice is mailed to an address outside the United States); *Lewy v. Comm'r*, 68 T.C. 779 (1977) (holding that the 150-day rule is applicable to a foreign resident who is in the United States when the notice is mailed but is outside the United States when the notice is delivered); *Hamilton v. Comm'r*, 13 T.C. 747 (1949) (holding that the 150-day rule is applicable to a foreign resident who is outside the United States when the notice is mailed and delivered).

2 *See* U.S. Dep't of Def., Fed. Voting Assistance Program, *FVAP 2022 Post-Election Report to Congress* (Nov. 2023) (reporting results of its Overseas Citizen Population Analysis), https://www.fvap.gov/info/reports-surveys/2022postelectionreporttocongress. The U.S. government does not maintain a list of U.S. citizens living abroad, so estimates vary.

substantially longer. In addition, persons temporarily abroad often do not have access to their tax or financial records, making it particularly difficult for them to respond timely to notices.

By giving taxpayers abroad 60 additional days to file a petition in the Tax Court in response to a notice of deficiency, Congress recognized that holding overseas taxpayers to the same deadlines as taxpayers located in the United States would be unreasonable. The same logic applies to math error notices. In fact, the need for U.S. taxpayers living abroad to be given additional time is arguably greater in the case of math error notices, because the standard response deadline is 60 days (as opposed to 90 days for filing a Tax Court petition in response to a notice of deficiency).

RECOMMENDATION

- Amend IRC § 6213(b)(2)(A) to allow taxpayers 120 days to request an abatement of tax when a math error notice is addressed to a person outside the United States.[3]

3 Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 205 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill. For an additional proposal to modify a tight response deadline imposed on taxpayers abroad, see *Give Taxpayers Abroad Additional Time to Request a Collection Due Process Hearing and to File a Petition Challenging a Notice of Determination in the Tax Court*, *infra*.

Legislative Recommendation #13

Give Taxpayers Abroad Additional Time to Request a Collection Due Process Hearing and to File a Petition Challenging a Notice of Determination in the Tax Court

SUMMARY

- *Problem:* Taxpayers abroad often experience long delays in receiving mail from the IRS and generally need more time to respond to notices than taxpayers living in the United States. The tax code allows an additional 60 days for taxpayers abroad to challenge a notice of deficiency, but it does not allow additional time to request a Collection Due Process (CDP) hearing or challenge a CDP notice of determination. As a result, taxpayers abroad may lose critical administrative, due process, and judicial rights.
- *Solution:* Amend the tax code to allow an additional 60 days for taxpayers abroad to request a CDP hearing and to challenge a CDP notice of determination in the Tax Court.

PRESENT LAW

IRC § 6320(a) requires the IRS to give taxpayers notice and an opportunity for a hearing after it files a Notice of Federal Tax Lien (CDP lien notice).[1] IRC § 6330(a) generally requires the IRS to give taxpayers notice and an opportunity for a hearing before it issues a levy (CDP levy notice).[2] In both cases, taxpayers have 30 days to request a CDP hearing.[3]

A CDP hearing allows for review of a filed Notice of Federal Tax Lien or a proposed levy and is conducted by an impartial officer of the Independent Office of Appeals (Appeals). It gives a taxpayer the opportunity to raise defenses, challenge the appropriateness of a lien or levy, and propose collection alternatives.[4] A taxpayer may also dispute the existence or amount of the underlying tax liability at a CDP hearing if the taxpayer "did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability."[5] If the parties cannot otherwise resolve the issues, Appeals issues a notice of

1 A CDP lien notice must be sent not more than five business days after the filing of the notice of lien. The notice is required to be (i) given in person; (ii) left at the dwelling or usual place of business of such person; or (iii) sent by certified or registered mail, return receipt requested, to such person's last known address. IRC § 6320(a)(2).

2 A CDP levy notice must be sent not less than 30 days before the day of the first levy unless an exception under IRC § 6330(f) applies. The notice is required to be (i) given in person; (ii) left at the dwelling or usual place of business of such person; or (iii) sent by certified or registered mail, return receipt requested, to such person's last known address. IRC § 6330(a)(2).

3 IRC §§ 6320(a)(3)(B), 6330(a)(3)(B). Taxpayers will still be allowed an Appeals hearing if the request is late, but it is an "equivalent" hearing, not a CDP hearing, and they cannot challenge the Appeals determination in Tax Court. Treas. Reg. §§ 301.6320-(1)(i)(1), 301.6330-1(i)(1). Thus, taxpayers lose the right to judicial review if they miss the 30-day response deadline in IRC §§ 6320(a)(3)(B) and 6330(a)(3)(B). In *Organic Cannabis Found., LLC v. Comm'r,* 161 T.C. 13 (2023), the Tax Court held that the 30-day period for requesting a CDP hearing may be equitably tolled when the circumstances warrant it. However, equitable tolling is applied only sparingly and when taxpayers seeking tolling establish that (i) they pursued their rights diligently and (ii) extraordinary circumstances prevented them from filing timely. *See*, *e.g.*, *Cunningham v. Comm'r,* 716 F. App'x. 182, 183-184 (4th Cir. 2018) (unpublished) (holding that equitable tolling was not appropriate under the test articulated in *Menominee Indian Tribe of Wis. v. United States*, 577 U.S. 250 (2016), when a taxpayer missed the deadline for responding to a CDP levy notice by one day because she misunderstood the letter).

4 IRC §§ 6320(c), 6330(c)(2)(A).

5 IRC §§ 6320(c), 6330(c)(2)(B). The phrase "underlying tax liability" includes the tax deficiency, any penalties, additions to tax, and statutory interest. *Katz v. Comm'r,* 115 T.C. 329, 339 (2000).

determination, which allows the taxpayer 30 days to request judicial review of the IRS's determination in the Tax Court.[6] This 30-day period is statutory.[7]

The time periods provided to request a CDP hearing or to challenge a notice of determination in the Tax Court do not allow additional time for taxpayers abroad to complete these actions. By contrast, IRC § 6213(a) gives taxpayers residing outside the United States an additional 60 days (150 days total) to challenge a deficiency determination under IRC § 6213(a).

REASONS FOR CHANGE

The U.S. government has estimated that the number of U.S. citizens residing abroad is about 4.4 million.[8] Mail sent from the United States to taxpayers abroad often takes several weeks to arrive, as does mail sent by taxpayers abroad to the United States. Further, taxpayers abroad often do not have ready access to their tax and financial records and often are unable to obtain assistance from advisors or the IRS.[9] For these reasons, taxpayers outside the United States frequently need additional time to respond to IRS notices.

Many IRS notices with significant legal consequences impose tight response deadlines that taxpayers abroad cannot meet easily, if at all. In the deficiency context, Congress recognized that the regular 90-day response period set forth in IRC § 6213(a) is not sufficient for taxpayers outside the United States, and it afforded them an additional 60 days (a total of 150 days) in which to challenge a deficiency determination with the Tax Court. In the CDP context, however, taxpayers are only given 30 days to request a CDP lien or levy hearing or to seek judicial review of an adverse IRS determination with the Tax Court, with no additional time provided for taxpayers living abroad. Such an abbreviated timeframe is prejudicial for these taxpayers.

Consistent with the extra 60 days taxpayers abroad have been given to respond to notices of deficiency, the National Taxpayer Advocate recommends taxpayers abroad be given an extra 60 days to respond to CDP notices. In practice, the need for extra time for taxpayers abroad is even greater for CDP notices; meeting the standard 90-day response deadline for notices of deficiency is at least plausible, while meeting the standard 30-day response deadline for CDP notices generally is not.

RECOMMENDATION

- Amend IRC §§ 6320(a)(3)(B), 6330(a)(3)(B), and 6330(d)(1) to allow 90 days (*i.e.*, an additional 60 days) (i) to request a CDP hearing after the issuance of a CDP lien or levy notice and (ii) to file a petition for review in the Tax Court after the issuance of a notice of determination if the notice is addressed to a person outside the United States.[10]

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6 IRC §§ 6320(c), 6330(d)(1).

7 IRC § 6330(d)(1). In *Boechler, P.C. v. Comm'r*, 596 U.S. 199 (2022), the Supreme Court held that the 30-day time limit is not jurisdictional and may be equitably tolled when the circumstances warrant it. However, equitable tolling is applied only sparingly and when taxpayers seeking tolling establish that (i) they pursued their rights diligently and (ii) extraordinary circumstances prevented them from filing timely. *See Menominee Indian Tribe of Wis. v. United States*, 577 U.S. 250, 255 (2016).

8 *See* U.S. Dep't of Def., Fed. Voting Assistance Program, *2022 Post-Election Report to Congress* (Aug. 2023) (reporting results of its Overseas Citizen Population Analysis), https://www.fvap.gov/info/reports-surveys/2022postelectionreporttocongress. The U.S. government does not maintain a list of U.S. citizens living abroad, so estimates vary.

9 For a discussion of the challenges faced by taxpayers abroad, see National Taxpayer Advocate 2023 Annual Report to Congress 116 (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*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23_MSP_09_Compliance-Abroad.pdf.

10 For an additional proposal to modify a tight response deadline imposed on taxpayers abroad, see *Give Taxpayers Abroad Additional Time to Request Abatement of a Math Error Assessment, supra*; *see also* Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 205 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill, which would amend IRC § 6213(b)(2)(A) to allow persons outside of the United States an additional 60 days to request abatement of a math error.

Legislative Recommendation #14

Provide That Assessable Penalties Are Subject to Deficiency Procedures

SUMMARY

- *Problem:* To judicially challenge an "assessable penalty," a taxpayer must pay the penalty in full and then bring suit in a U.S. district court or the U.S. Court of Federal Claims to recover the payment. The inability of taxpayers to obtain judicial review prior to assessment and the requirement that they pay the penalties in full to obtain judicial review after assessment can effectively deprive taxpayers of judicial review.
- *Solution:* Give taxpayers an opportunity to challenge assessable penalties in the U.S. Tax Court (Tax Court) before assessment by making these penalties subject to deficiency procedures.

PRESENT LAW

IRC § 6212 requires the IRS to issue a "notice of deficiency" before assessing certain liabilities. When the IRS issues a notice of deficiency, IRC § 6213 authorizes the taxpayer to petition the Tax Court within 90 days (or 150 days for notices addressed to a person outside the United States) to review the IRS determination.

IRC § 6671(a) authorizes the IRS to assess some penalties without first issuing a notice of deficiency.[1] These penalties are generally subject to judicial review only if taxpayers first pay the penalties and then incur the costs of filing suit in a U.S. district court or the Court of Federal Claims to recover the payments.[2] These courts generally impose higher filing fees than the Tax Court, and due to the complexities of their rules and formalities of their procedures, taxpayers usually have to retain an attorney to dispute the assessment.

In addition, some assessable penalties are subject to the "full payment rule." In *Flora v. United States*,[3] the U.S. Supreme Court held that, with limited exceptions, a taxpayer must fully pay an assessment before filing a refund suit in a U.S. district court or the Court of Federal Claims to obtain judicial review of an adverse IRS determination.[4] Penalties requiring full payment have historically included foreign information reporting penalties under IRC §§ 6038, 6038A, 6038B, 6038C, and 6038D, and penalties relating to reportable transactions under IRC §§ 6707 and 6707A.[5]

Although IRC § 6671(a) authorizes the IRS to immediately assess "assessable" penalties and specifically references only the "penalties and liabilities provided by this subchapter" (*i.e.*, IRC Chapter 68, Subchapter B), the IRS takes the position that various international information return (IIR) penalties contained in Chapter 61, Subchapter A, Part III, Subpart A of the tax code are also immediately assessable without the

1 These "assessable" penalties are generally ones that are due and payable upon notice and demand. Unlike penalties subject to deficiency procedures, assessable penalties carry no rights to a 30-day letter, agreement form, or notice requirements prior to assessment. Internal Revenue Manual 20.1.9.1.5(2), Common Terms and Acronyms (Jan. 29, 2021), https://www.irs.gov/irm/part20/irm_20-001-009.

2 *See* IRC § 7422 for requirements relating to refund suits.

3 362 U.S. 145 (1960).

4 One exception to the full payment rule applies to "divisible" taxes. In the case of divisible taxes, a taxpayer may pay only a fraction of the tax and judicially challenge the penalty. These penalties include the trust fund recovery penalty under IRC § 6672(a). The Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 312 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill, includes additional exceptions to the full payment rule for taxpayers who are paying their tax liability through an installment agreement or whose account is in currently not collectible status, provided there is no other pending proceeding that may provide judicial review.

5 Courts ruled that full payment was required prior to a judicial challenge of the IRC § 6707 penalty in *Pfaff v. United States*, 117 A.F.T.R.2d 2016-981 (D. Colo. 2016), and *Diversified Grp., Inc. v. United States,* 841 F.3d 975 (Fed. Cir. 2016).

issuance of a notice of deficiency, including the penalty under IRC § 6038 for failure to file Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations. When applicable, penalties under these sections can be substantial.[6]

REASONS FOR CHANGE

The IRS's systemic assessment of these assessable penalties creates hardships for taxpayers, causes substantial inequities and inefficiencies in tax administration, and rests on a questionable legal foundation.[7] The IRS's position is that the penalties in Title 26, Subtitle F, Chapter 61, Subchapter A, Part III are not subject to deficiency procedures. The National Taxpayer Advocate's position, consistent with the U.S. Tax Court's holding in *Farhy v. Commissioner*, *Mukhi v. Commissioner*, and *Mukhi v. Commissioner* (*"Mukhi II"*), is that the tax code does not contain or cross-reference language authorizing the IRS to treat these penalties as assessable, and therefore the Department of Justice must institute a civil suit to recover the penalties.[8]

Although the U.S. Court of Appeals for the D.C. Circuit reversed the Tax Court's decision in *Farhy* and held that the penalties are assessable,[9] the Tax Court is only required to follow that decision in cases appealable to the D.C. Circuit.[10] In a case appealable to the U.S. Court of Appeals for the Eighth Circuit, the Tax Court, in a full court opinion, reaffirmed its position that the IRS lacks authority to assess the IIR penalties at issue, which could result in a split opinion between circuits.[11] In the meantime, it appears the IRS is not changing its litigation position, leaving taxpayers in a quandary over how to proceed while it continues to assess these penalties.

To protect taxpayer rights, the National Taxpayer Advocate recommends Congress clarify that the IRS cannot assess IIR penalties before it issues a notice giving taxpayers the right to judicial review. Taxpayers who are savvy enough to request an abatement based on reasonable cause or a conference with the IRS Independent Office of Appeals frequently obtain relief from assessable penalties, particularly where the IRS imposes penalties systemically (rather than imposing them manually during an audit). For the most frequently assessed IIR penalties (IRC §§ 6038 and 6038A), TAS has found that across calendar years 2020-2023, the abatement

6 The amount of the penalty under IRC § 6038 for failure to file Form 5471 with respect to certain foreign corporations and partnerships is $10,000 for each accounting period. IRC § 6038(b). An additional "continuation penalty" of up to $50,000 can be added to each penalty if the failure continues for more than 90 days after the IRS sends notice of the failure. IRC § 6038(b)(2). The amount of the penalty under IRC § 6707 for failure to furnish information regarding reportable transactions, other than listed transactions, is $50,000. IRC § 6707(b)(1). If the penalty is with respect to a listed transaction, the amount of the penalty is the greater of (i) $200,000 or (ii) 50% of the gross income derived by the material advisor with respect to aid, assistance, or advice provided before the date the information return is filed under IRC § 6111. IRC § 6707(b)(2). In *Diversified Grp.*, the penalties assessed under IRC § 6707 for failure to register its tax shelter totaled $24.9 million. *Diversified Grp., Inc. v. United States*, 123 Fed. Cl. 442, 445 (Fed. Cl. 2015), *aff'd*, 841 F.3d 975 (Fed. Cir. 2016).

7 *See* National Taxpayer Advocate 2020 Annual Report to Congress 119 (Most Serious Problem: *International*: *The IRS's Assessment of International Penalties Under IRC §§ 6038 and 6038A Is Not Supported by Statute, and Systemic Assessments Burden Both Taxpayers and the IRS*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_MSP_08_International.pdf.

8 *See Farhy v. Comm'r*, 160 T.C. 399 (2023), *rev'd and remanded*, 100 F.4th 223 (D.C. Cir. 2024); *Mukhi v. Comm'r* 162 T.C. 177 (2024), *adhered to on recons.*, 163 T.C. 150 (2024); *Mukhi v. Comm'r ("Mukhi II")*, 163 T.C. 150 (2024), *adhering to on recons.,* 162 T.C. 177 (2024).

9 *Farhy*, 100 F.4th at 236 (D.C. Cir. 2024).

10 *See Golsen v. Comm'r*, 54 T.C. 742 (1970); *Mukhi v. Comm'r ("Mukhi II")*, 163 T.C. 150 (2024), *adhering to on recons.*, 162 T.C. 177 (2024).

11 *Mukhi v. Comm'r ("Mukhi II")*, 163 T.C. 150, (2024), *adhering to on recons.*, 162 T.C. 177 (2024). *See also* order in *Safdieh v. Comm'r*, No. 11680-20L (T.C. Dec. 5, 2024) and order and decision in *Cauchon v. Comm'r*, No. 23863-22L (T.C. Feb. 14, 2025).

percentage of those systemically assessed penalties was 73% as measured by number of penalties imposed and 81% as measured by dollar value.[12]

Specifying that deficiency procedures apply would prevent the systemic assessments the IRS often abates, a process that imposes undue burdens on taxpayers and unnecessarily consumes resources for the IRS. Additionally, eliminating the requirement that taxpayers prepay the penalties in order to challenge them in court would ensure all taxpayers have access to judicial review of adverse IRS determinations. It is simply wrong to require taxpayers to pay penalties that can be disproportionate to the tax owed without first giving them an opportunity to obtain independent judicial review. This is particularly important for taxpayers who face large penalties but have limited resources.

Making assessable penalties subject to deficiency procedures would put pre-assessment judicial review of penalties in the hands of the Tax Court, which has several benefits. First, the Tax Court is generally better equipped than other courts to consider tax controversies due to the tax expertise of its judges. Second, the Tax Court is more accessible to less knowledgeable and unrepresented taxpayers than other courts because it uses informal procedures, particularly in disputes that do not exceed $50,000. Third, taxpayers litigating in the Tax Court are generally offered the option to receive free legal assistance from a Low Income Taxpayer Clinic or *pro bono* representative. Thus, the Tax Court in most instances is the least expensive and easiest-to-navigate judicial forum, particularly for low-income taxpayers.

As noted above, *Farhy* was reversed by the D.C. Circuit but remains applicable to cases appealable to other circuits, thus leaving considerable uncertainty regarding the legal status of Chapter 61, Subchapter A, Part III, Subpart A IIR penalties and resulting in taxpayers being treated differently based on the circuit in which they reside. Congressional action would resolve ambiguity in this area and provide important due process protections for taxpayers.

RECOMMENDATION

- Amend IRC § 6212 to require the Secretary to establish procedures to send a notice of IIR penalties to the taxpayer by certified mail or registered mail for adjudication with the U.S. Tax Court prior to assessing any IIR penalty or other IIR penalty listed in Chapter 61, Subchapter A, Part III, Subpart A of the IRC.[13]

12 IRS, Compliance Data Warehouse (CDW), Business Master File and Individual Master File (Nov. 5, 2025). Because of such factors as the broad penalty relief provided in IRS Notice 2022-36, 2022-36 I.R.B. 188, Penalty Relief for Certain Taxpayers Filing Returns for Taxable Year 2020, and processing delays due to COVID-19, penalty data in any given recent year may not be illustrative of long-term trends. For this reason, we are presenting a four-year average. *See also* National Taxpayer Advocate 2023 Annual Report to Congress 101, 111 (Most Serious Problem: *International: The IRS's Approach to International Information Return Penalties Is Draconian and Inefficient)*, https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23_MSP_08_International.pdf. The abatement percentage of those penalties manually assessed was 37% as measured by number of penalties and 30% as measured by dollar value.

13 The Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 311 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill, takes a slightly different approach in that it authorizes, but does not require, the IRS to issue a notice of deficiency for certain IIR penalties. As TAS's recommendation would make the issuance of a notice of deficiency prior to assessment mandatory rather than discretionary, we believe that the approach taken in TAS's recommendation is preferable. Requiring the IRS to follow deficiency procedures would better protect taxpayers' rights to *pay no more than the correct amount of tax*, *challenge the IRS's position and be heard*, and *a fair and just tax system*.

Legislative Recommendation #15

Direct the IRS to Implement an Automated Formula to Identify and Protect Taxpayers at Risk of Economic Hardship

SUMMARY

- *Problem:* The IRS routinely takes collection actions against taxpayers (through levies and liens) and routinely enters into installment agreements (IAs) with taxpayers without first undertaking a financial analysis to determine whether those taxpayers can afford to make payments. IRS collection actions can have a devastating impact on financially vulnerable taxpayers, potentially leaving them without sufficient funds to pay basic living expenses for themselves and their families. The IRS also wastes resources by pursuing these cases because, among other things, it may later have to reverse collection actions or deal with defaulted IAs.
- *Solution:* Direct the IRS to implement an automated economic hardship screen, similar to the one developed by TAS, to identify taxpayers who are at risk of economic hardship and may qualify for relief under existing tax code provisions.

PRESENT LAW

The tax code contains several provisions that protect taxpayers experiencing economic hardship from IRS collection actions. IRC § 6330(c)(2)(A)(iii) authorizes a taxpayer in a Collection Due Process hearing to propose collection alternatives, which may be based on an inability to pay the tax due to economic hardship.

IRC § 6343(a)(1)(D) requires the IRS to release a levy if the IRS determines the levy "is creating an economic hardship due to the financial condition of the taxpayer." Under Treasury Regulation § 301.6343-1(b)(4), economic hardship exists when an individual is "unable to pay his or her reasonable basic living expenses."

IRC § 7122(d) requires the IRS to develop and publish schedules of national and local allowances (known as "allowable living expenses" or ALEs) to ensure that taxpayers entering into offers in compromise are left with "an adequate means to provide for basic living expenses."

REASONS FOR CHANGE

In general, the IRS is required to halt collection actions against taxpayers who can demonstrate they are facing economic hardship. However, many if not most taxpayers do not know this, and the IRS does not proactively seek to identify such taxpayers to inform them of their rights or how to substantiate economic hardship.[1] Further, the IRS routinely applies collection treatments that do not require any financial analysis, such as entering into streamlined IAs. Because the IRS typically does not place a marker on the accounts of taxpayers who appear to be at elevated risk of economic hardship and because taxpayers are often unaware the IRS must halt collection actions if they cause economic hardship, vulnerable taxpayers may face potentially devastating consequences.

1 *See* National Taxpayer Advocate 2018 Annual Report to Congress 228 (Most Serious Problem: *Economic Hardship: The IRS Does Not Proactively Use Internal Data to Identify Taxpayers at Risk of Economic Hardship Throughout the Collection Process*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/07/ARC18_Volume1_MSP_15_EconomicHardship.pdf.

TAS estimates that about 36% of taxpayers who entered into streamlined IAs through the IRS's Automated Collection System (ACS) in fiscal year 2024 had incomes at or below their ALEs.[2] To emphasize the point: More than a third of taxpayers who agreed to streamlined IAs in ACS could potentially have received the benefit of other collection alternatives, such as offers in compromise or Currently Not Collectible-Hardship (CNC-Hardship) status, if they had known to call the IRS to explain their financial circumstances.

That is not a fair result. Whether taxpayers are left with sufficient funds to pay basic living expenses for themselves and their families should not depend on the taxpayers' knowledge of IRS procedural rules.

To address this problem, the TAS Research function has developed an automated algorithm that we believe can, with a high degree of accuracy, identify taxpayers whose incomes are below their ALEs. In a 2020 study, TAS Research compared the results of its algorithm with the results the IRS reached itself when assessing over 242,000 IA applications that required financial analysis during the years 2017-2020. The TAS algorithm and the IRS's financial analysis came to the same conclusion 82% of the time.[3] If the IRS uses the TAS algorithm or develops an alternative formula that is more accurate, it could place a "low-income" indicator on the accounts of all taxpayers whom the formula identifies as having incomes below their ALEs.[4] The formula would not constitute a final determination of a taxpayer's financial status or ability to pay, but it would signal that a taxpayer is at risk of economic hardship and, therefore, that the IRS should take additional protective steps.

While the ALE standards represent only average expenses for taxpayers and should not be used to automatically close a case as CNC-Hardship, an ALE-based indicator would be a useful starting point for financial analysis in the collection context. The IRS could use it to alert collection employees speaking with a taxpayer over the phone of the need to request additional financial information so the IRS can analyze the specific facts and circumstances of the taxpayer's case. The IRS could also use a low-income indicator to trigger a notification to taxpayers entering into online IAs that informs them of their right to contact the IRS collection function for assistance if they believe they cannot pay their tax debts without incurring economic hardship. The IRS could also use it to screen out these taxpayers from automated collection treatments such as the Federal Payment Levy Program, selection for referral to private collection agencies, or passport certification, unless and until the IRS has made direct personal contact with the taxpayer to give them an opportunity to substantiate their financial information.

At the time Congress enacted statutory protections for financially vulnerable taxpayers from collection actions, the IRS did not have the technological capability to proactively identify at-risk taxpayers through automation. Probably for that reason, the law allows the IRS to take collection actions without considering a taxpayer's financial condition and places the burden on affected taxpayers to raise economic hardship and ask for relief.

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2 IRS, Collection Financial Standards, Allowable Living Expenses, and Compliance Data Warehouse (CDW), Individual Return Transaction File, Information Returns Master File, and Individual Master File (Nov. 13, 2025). This estimate allows two vehicle ownership expenses for married taxpayers filing joint returns. TAS published a study on the feasibility of using an algorithm to identify taxpayers at risk of economic hardship in the National Taxpayer Advocate 2020 Annual Report to Congress. This study used a more conservative estimate of ALEs, allowing only one vehicle ownership expense. See National Taxpayer Advocate 2020 Annual Report to Congress 249 (TAS Research Study: *The IRS Can Systemically Identify Taxpayers at Risk of Economic Hardship and Screen Them Before They Enter Into Installment Agreements They Cannot Afford*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_TRRS_EconomicHardship.pdf.

3 National Taxpayer Advocate 2020 Annual Report to Congress 249, 257 (TAS Research Study: *The IRS Can Systemically Identify Taxpayers at Risk of Economic Hardship and Screen Them Before They Enter Into Installment Agreements They Cannot Afford*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_TRRS_EconomicHardship.pdf.

4 The IRS has internal data available to provide an initial indicator of whether a taxpayer may be at risk of economic hardship, but it uses this information in very limited circumstances. For instance, a Reduced User Fee Indicator is used to determine whether taxpayers entering into IAs are eligible for a reduced or waived user fee, but the indicator is not used to screen for potential economic hardship. *See* Internal Revenue Manual 5.14.1.2(11), Installment Agreements and Taxpayer Rights (July 2, 2024), https://www.irs.gov/irm/part5/irm_05-014-001r.

But today, the IRS can identify taxpayers at risk of economic hardship with a high degree of accuracy. It is not in anyone's interest for the IRS to collect from taxpayers when doing so will leave them without funds to pay basic living expenses for themselves and their families.

The IRS can implement an economic hardship screen on its own, but to date, it has declined to do so. For that reason, we are recommending that Congress provide direction.

RECOMMENDATION

- Direct the IRS to implement an algorithm that will enable it to (i) identify taxpayers at high risk of economic hardship; (ii) ask questions of taxpayers who contact the IRS regarding a balance due to identify those at risk of hardship; (iii) alert taxpayers at risk of economic hardship who seek to enter into streamlined IAs online of the resources available to them; (iv) determine whether to exclude taxpayers' debts from automated collection treatments such as the Federal Payment Levy Program, the private debt collection program, and passport certification; and (v) possibly rank cases for collection priority.[5]

5 For legislative language generally consistent with this recommendation, see Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 108 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill; Improving IRS Customer Service Act, S. 5280, 118th Cong. § 5 (2024).

Legislative Recommendation #16

Allow Taxpayers to Dispute an Underlying Tax Liability in a Collection Due Process Hearing If They Have Not Had a Prior Opportunity to Dispute the Liability in the U.S. Tax Court

SUMMARY

- *Problem:* The IRS takes collection actions against some taxpayers who had their tax liability determined by the IRS but did not have an opportunity to challenge the existence or amount of that liability in the U.S. Tax Court (Tax Court). These taxpayers generally have no alternative but to pay the tax the IRS says they owe and then seek a refund in a different federal court, an option that many taxpayers cannot afford and that imposes additional burden.
- *Solution:* Allow taxpayers to challenge the existence or amount of the underlying tax liability at a Collection Due Process (CDP) hearing in cases where they did not have a prior opportunity to dispute the liability in Tax Court.

PRESENT LAW

IRC §§ 6320(b) and 6330(b) provide taxpayers with the right to request an independent review of a Notice of Federal Tax Lien or a proposed levy action. The review is provided through a CDP hearing conducted by the IRS Independent Office of Appeals (Appeals) and is subject to review by the Tax Court, which is generally the only prepayment judicial forum in which taxpayers may resolve disputes with the IRS. In most cases, the existence and amount of a tax liability has already been conclusively determined by this point under procedures that gave the taxpayer an opportunity to seek Tax Court review of the IRS's determination. Thus, the purpose of the CDP hearing is typically limited to determining whether taxpayers qualify for collection alternatives (*e.g.*, an offer in compromise or an installment agreement) based on their ability to pay.

In certain circumstances, however, taxpayers are not given an opportunity to seek Tax Court review of the IRS's liability determination prior to a CDP hearing. Where a taxpayer "did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability," IRC § 6330(c)(2)(B) provides that the taxpayer may dispute the existence or amount of the underlying tax liability at a CDP hearing.[1]

However, the IRS and the courts interpret IRC § 6330(c)(2)(B) and the Treasury regulations under IRC §§ 6320 and 6330 restrictively. They take the position that a taxpayer does not have a right to dispute the existence or amount of a liability if the taxpayer had a prior opportunity for a conference with Appeals, even if the taxpayer had no prior opportunity for Tax Court review of the liability and even if no subsequent Tax Court review of the Appeals determination is available.[2] For example, one court has held that a taxpayer who did not receive a notice of deficiency was not permitted to dispute his underlying liability in a CDP hearing because the taxpayer previously sought to resolve the tax liability through audit reconsideration.[3] And

1 IRC §§ 6320(c), 6330(c)(2)(B). The phrase "underlying tax liability" includes the tax deficiency, any penalties, additions to tax, and statutory interest. *See Katz v. Comm'r,* 115 T.C. 329, 339 (2000).

2 *See* Treas. Reg. §§ 301.6320-1(e)(3), Q&A-E2, 301.6330-1(e)(3), Q&A-E2; *Lewis v. Comm'r*, 128 T.C. 48, 61 (2007); *Iames v. Comm'r*, 850 F.3d 160 (4th Cir. 2017); *Keller Tank Servs. II, Inc. v. Comm'r*, 854 F.3d 1178 (10th Cir. 2017); *Our Country Home Enters., Inc. v. Comm'r*, 855 F.3d 773 (7th Cir. 2017). Additionally, at least one Court of Appeals has held that IRC § 6330(c)(4)(A) provides an independent basis for denying a merits hearing in the CDP process if a prior merits hearing occurred. *Iames,* 850 F.3d 160.

3 *Lander v. Comm'r*, 154 T.C. 104 (2020). Audit reconsiderations are not subject to Tax Court review.

then, because the underlying liability was not at issue in the CDP hearing, the taxpayer was precluded from disputing the underlying liability in the Tax Court proceeding.[4]

IRC § 6330(c)(4)(A) provides, in part, that a taxpayer is precluded from raising an issue during a CDP hearing if the issue was raised in a previous administrative hearing. This restriction has been interpreted to mean that if a taxpayer had a prior hearing at Appeals with respect to the liability, the issue of the liability cannot be raised at the CDP hearing, *even if the taxpayer had no prior opportunity for Tax Court review*.[5]

Mere notification of the right to request an Appeals conference may prevent the taxpayer from later disputing the tax liability in a CDP hearing. For example, the IRS assesses some penalties without issuing a notice of deficiency.[6] The IRS notifies the taxpayer of the proposed penalty by sending a letter or notice. Whether or not the taxpayer requests or receives a conference with Appeals in response to the letter, the taxpayer will not be permitted to dispute the merits of the liability at a CDP hearing or in the Tax Court. To obtain judicial review of the underlying liability, the taxpayer generally must pay the full amount of the tax liability and seek a refund in a U.S. district court or the U.S. Court of Federal Claims.[7]

REASONS FOR CHANGE

The value of CDP proceedings is undermined when taxpayers who have never had an opportunity to dispute their underlying liability in the Tax Court are precluded from doing so during their CDP hearing, and these taxpayers are left with no alternative but to pay the tax and then seek a refund, an option that not all taxpayers can afford. The National Taxpayer Advocate believes that judicial and administrative interpretations limiting a taxpayer's ability to challenge the IRS's liability determination in a CDP hearing are inconsistent with Congress's intent when it enacted CDP procedures. Allowing taxpayers to dispute their tax liabilities in CDP hearings if they have not had a prior opportunity to dispute their tax liabilities in Tax Court will better protect taxpayer rights, including the *rights to pay no more than the correct amount of tax*, *to challenge the IRS's position and be heard*, *to appeal an IRS decision in an independent forum*, and *to a fair and just tax system*.[8]

RECOMMENDATIONS

- Amend IRC § 6330(c)(2)(B) to allow taxpayers to raise challenges to the existence or amount of an underlying tax liability at a CDP hearing for any tax period if the taxpayer did not receive a valid notice

4 *See* Treas. Reg. § 301.6330-1(f)(2), Q&A-F3.

5 *Our Country Home Enters., Inc. v. Comm'r,* 855 F.3d 773, 792-793 (7th Cir. 2017); *Keller Tank Servs. II, Inc. v. Comm'r*, 854 F.3d 1178, 1199-1200 (10th Cir. 2017) (both cases holding that a taxpayer who challenged an IRC § 6707A penalty at an Appeals hearing prior to assessment was precluded from raising the issue in a CDP hearing); Treas. Reg. §§ 301.6320-1(e)(3), Q&A-E2, 301.6330-1(e)(3), Q&A-E2.

6 These "assessable" penalties are primarily found in IRC §§ 6671 through 6720C. The IRS sometimes assesses these penalties systemically (*i.e.*, automatically by computer rather than manually during an audit). *See*, *e.g.*, Internal Revenue Manual 21.8.2.20.2(1), Form 5471 Penalties Systemically Assessed From Late-Filed Form 1120 Series or Form 1065 (Oct. 1, 2024), https://www.irs.gov/irm/part21/irm_21-008-002r.

7 Under *Flora v. United States*, 362 U.S. 145 (1960), a taxpayer must have "fully paid" the assessment before filing a refund suit. One exception to the full payment rule applies to "divisible" taxes. The Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 312 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill, includes additional exceptions to the full payment rule for taxpayers who are paying their tax liability through an installment agreement or whose account is in "currently not collectible" status and there is no other pending proceeding that may provide judicial review.

8 *See* Taxpayer Bill of Rights (TBOR), https://www.taxpayeradvocate.irs.gov/taxpayer-rights (last visited July 30, 2025). The rights contained in TBOR are also codified in IRC § 7803(a)(3).

of deficiency for such liability, or in a non-deficiency case, if the taxpayer did not have an opportunity to dispute the liability in the U.S. Tax Court.[9]

- Clarify that IRC § 6330(c)(4)(A) applies only to collection issues and not to liability issues, which are addressed exclusively in IRC § 6330(c)(2)(B).[10]

9 For legislative language generally consistent with this recommendation, see TAS Act, 119th Cong. § 308 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill. Relatedly, the National Taxpayer Advocate recommends that Congress expand the Tax Court's jurisdiction to include refund suits. *See Expand the Tax Court's Jurisdiction to Hear Refund Cases*, *infra*. The TAS Act includes a provision consistent with this recommendation. *See* TAS Act, 119th Cong. § 310 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill. If TAS Act § 310 or a similar provision is enacted, Congress should add clarifying language to this section to exclude the opportunity to bring a refund suit under IRC § 7442(b)(1) from the definition of prior opportunity in order to prevent unintended consequences that might render this provision meaningless. *See* Leslie Book, *Taxpayer Assistance and Service Act: Fixing CDP's Prior Opportunity Provision*, Procedurally Taxing (Mar. 31, 2025), https://www.taxnotes.com/lr/resolve/procedurally-taxing/taxpayer-assistance-and-service-act-fixing-cdps-prior-opportunity-provision/7rtkv.

10 For legislative language generally consistent with this recommendation, see TAS Act, 119th Cong. § 308 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill.

Legislative Recommendation #17

Prohibit the IRS From Withholding the Earned Income Tax Credit Portion of a Taxpayer's Refund to Satisfy Federal Tax Liabilities

SUMMARY

- *Problem:* Taxpayers who qualify for social welfare benefits like the Earned Income Tax Credit (EITC) generally are low income and rely on these benefits to pay their basic living expenses. When a taxpayer eligible for the EITC has an outstanding federal tax liability, the IRS ordinarily will withhold the EITC to satisfy the tax liability, potentially leaving the taxpayer without sufficient funds to pay expenses. Reducing the amount of EITC a taxpayer receives undermines the purpose of this anti-poverty program.
- *Solution:* Prohibit the IRS from withholding the EITC portion of a taxpayer's refund to satisfy federal tax liabilities.

PRESENT LAW

IRC § 6402(a) generally authorizes the IRS to offset (*i.e.*, withhold) a taxpayer's refund and apply it to satisfy a prior-year federal tax liability, but it does not require the IRS to do so.[1] If a taxpayer can demonstrate they will experience an economic hardship if the IRS offsets their refund, the IRS will typically "bypass" the offset (*i.e.*, pay the refund), as long as the request is made within a specific timeframe. This is referred to as an "offset bypass refund" (OBR).[2] During the COVID-19 pandemic, the IRS exercised its discretion to pay refunds generated by Recovery Rebate Credits (RRCs) to all eligible taxpayers in full, without reduction to satisfy outstanding federal tax debts.[3]

The EITC is a refundable credit for low-income working individuals and families.[4] It is claimed on a tax return and is included in the computations that determine whether a taxpayer is entitled to receive a refund and, if so, the amount of the refund.

The Debt Collection Improvement Act of 1996 (DCIA) requires federal agencies to offset certain federal payments to collect outstanding non-tax debts owed to the United States.[5] However, the amount subject to offset is statutorily limited in some instances, and payments made pursuant to "means-tested" anti-poverty

1 *Kalb v. United States*, 505 F.2d 506, 509 (2d Cir. 1974). The IRS is required to offset a taxpayer's refund to pay down certain liabilities, such as non-tax federal debts, past-due child support, and state income tax and unemployment compensation debts. *See* IRC § 6402(c), (d).

2 Internal Revenue Manual (IRM) 21.4.6.5.7.1, Offset Bypass Refund (OBR) (Aug. 13, 2025), https://www.irs.gov/irm/part21/irm_21-004-006r.

3 In the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Congress enacted IRC § 6428 to provide for RRCs, payable in advance, that would not be offset to satisfy outstanding liabilities other than past-due child support obligations. *See* Pub. L. No. 116-136, § 2201(a), (d)(1)-(3), 134 Stat. 281, 338 (2020). In the Consolidated Appropriations Act, 2021, Congress enacted IRC § 6428A to provide for additional RRCs and amended section 2201 of the CARES Act to provide that only the portion of RRCs that were paid as advance refunds were exempt from offset to satisfy outstanding liabilities other than past-due child support obligations. *See* Pub. L. No. 116-260, §§ 272(a), 273(b)(1), 134 Stat. 1182, 1965 (2020). At TAS's urging, the IRS exercised its discretion under IRC § 6402(a) to not offset RRCs, whether received in advance or claimed on a tax return, to satisfy outstanding tax liabilities. *See, e.g.*, IRS Fact Sheet, FS-2021-17, IRS Updates 2020 Recovery Rebate Credit Frequently Asked Questions, Q&A-E2 (Dec. 2021), https://www.irs.gov/pub/taxpros/fs-2021-17.pdf; IRS Fact Sheet, FS-2022-04, IRS Issues Frequently Asked Questions to Assist Those Claiming the 2021 Recovery Rebate Credit, Q&A-F2 (Jan. 2022), https://www.irs.gov/pub/taxpros/fs-2022-04.pdf.

4 IRC § 32. The Supreme Court has stated: "The earned income credit was enacted to reduce the disincentive to work caused by the imposition of social security taxes on earned income ... and to provide relief for low-income families hurt by rising food and energy prices." *Sorenson v. Sec'y of Treasury,* 475 U.S. 851, 864 (1986).

5 *See* DCIA, *included in* Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No.104-134, § 31001, 110 Stat. 1321, 1321-358 (1996) (codified at 31 U.S.C. § 3716). The offsets are carried out through the Treasury Offset Program.

programs, such as Supplemental Security Income and Temporary Assistance to Needy Families, are exempt from offset when an exemption is requested by the head of the agency administering the program.[6] In substance, the EITC is a means-tested benefit, but it does not meet the DCIA definition of that term.[7]

REASONS FOR CHANGE

Like other anti-poverty programs, Congress created the EITC to provide financial support for low-income individuals and families and to reduce poverty. The average adjusted gross income of taxpayers who received the EITC for tax year 2024 was $23,919.[8] If a low-income taxpayer has an unpaid tax debt, however, the IRS may offset the taxpayer's refund – including the portion generated by the EITC – to satisfy the debt. Withholding EITC benefits undermines the EITC's anti-poverty objective.

Taxpayers can request an OBR for their refund – including the EITC portion – but the timeframe for making the request is narrow. The IRS must approve an OBR between the date the return is filed and the date the IRS assesses the tax shown on the return. This period is approximately ten to 20 days when a return is filed electronically. Additionally, the IRS does not widely publicize its OBR program. As a result, many taxpayers are unaware they can obtain an OBR or learn about the option after it is too late. In fiscal year 2025, for example, just 1,023 taxpayers received OBRs.[9]

The IRS has exercised its discretion to refrain from offsetting tax benefits to satisfy past-due federal tax liabilities in limited cases, but it has not adopted a general policy of exempting EITC refunds from offset. Consistent with congressional recognition reflected in the DCIA that offsets may impose economic hardships on recipients of federal benefits, the National Taxpayer Advocate recommends Congress prohibit the IRS from offsetting the portion of a taxpayer's refund attributable to the EITC.

To be clear, TAS is *not* recommending that the IRS release the full amount of any refund subject to offset – just the portion of the refund that is attributable to the EITC. Programming would be straightforward, rendering it easily administrable.[10]

RECOMMENDATION

- Amend IRC § 6402(a) to prohibit the Secretary from offsetting the EITC portion of a taxpayer's refund to satisfy prior-year tax liabilities.

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6 31 U.S.C. § 3716(c)(3)(B). "Means-tested programs" are those that base eligibility on a determination that the income and/or assets of the beneficiary are inadequate to provide the beneficiary with an adequate standard of living without program assistance. 31 C.F.R. § 285.5(e)(7)(i). The Secretary of the Treasury has the discretion to exempt payments made under programs that are not means-tested when so requested by the payment agency. 31 U.S.C. § 3716(c)(3)(B); 31 C.F.R. § 285.5(e)(7)(ii).

7 *See, e.g.*, Democratic Staff of H. Comm. on the Budget, *What You Need to Know About Means-Tested Entitlements* (May 1, 2017), https://democrats-budget.house.gov/publications/report/what-you-need-know-about-means-tested-entitlements; Congressional Budget Office, Federal Means-Tested Programs and Tax Credits – Infographic (Feb. 11, 2013), https://www.cbo.gov/publication/43935.

8 IRS, Compliance Data Warehouse (CDW), Individual Return Transaction File (Nov. 5, 2025).

9 IRS, CDW, Individual Master File Transaction History table (Nov. 5, 2025).

10 The Section of Taxation of the American Bar Association (ABA) has also advocated for a prohibition against offsetting the refunds of EITC recipients. *See* ABA, *Proposals for Improvements in Taxpayer Service* (Apr. 5, 2022), https://www.americanbar.org/content/dam/aba/administrative/taxation/policy/2022/040522comments.pdf; ABA, *Comments Regarding Review of Regulatory and Other Relief to Support Taxpayers During COVID-19 Pandemic* (Jan. 15, 2021), https://www.americanbar.org/content/dam/aba/administrative/taxation/policy/2021/011521comments.pdf.

Legislative Recommendation #18

Eliminate Installment Agreement User Fees for Low-Income Taxpayers and Those Paying by Direct Debit

SUMMARY

- *Problem:* Taxpayers who cannot pay their tax liabilities on time may make monthly payments through an installment agreement (IA). The IRS generally charges these taxpayers a "user fee" to manage IA payment plans. Although user fees are modest, they may discourage some taxpayers from applying for IAs and settling their tax liabilities voluntarily.
- *Solution:* Require the IRS to waive the user fee for IAs with taxpayers whose adjusted gross incomes do not exceed 250% of the Federal Poverty Level and taxpayers who enter into direct debit IAs (DDIAs).

PRESENT LAW

In cases where a taxpayer is unable to pay the full amount of their tax liability in a single lump sum, IRC § 6159(a) authorizes the IRS to enter into an IA under which the taxpayer will pay the liability in monthly installments. A taxpayer can apply for an IA on paper, over the phone, or in person (these three are considered "Regular IA origination"), or by using an online payment agreement (OPA).

Under 31 U.S.C. § 9701, the IRS is authorized to set user fees by regulation.[1] Pursuant to Treas. Reg. § 300.1, the IRS currently charges $178 for entering into regular IAs and $69 for entering into OPAs.[2] If a taxpayer authorizes the IRS to direct debit monthly payments from a bank account, the fee is reduced to $107 for regular IAs and $22 for OPAs. These fees are designed to enable the agency to recover the full costs of administering IAs.

For low income taxpayers – those with adjusted gross incomes at or below 250% of the Federal Poverty Level – Treas. Reg. § 300.1 caps the IA fee at $43.[3] In addition, IRC § 6159(f)(2)(A) waives the fee for low-income taxpayers who enter into DDIAs. Low-income taxpayers who cannot enter into DDIAs (*e.g.*, because they do not have a bank account) must pay the $43 fee. If they make all payments required under the IA, IRC § 6159(f)(2)(B) requires the IRS to reimburse the amount of the fee. In 2018, Congress amended IRC § 6159(f)(1) to prohibit the IRS from increasing the IA user fees.

REASONS FOR CHANGE

Taxpayers who are low income and cannot afford to pay their tax bills are, almost by definition, experiencing a financial hardship. Many also do not have bank accounts. Therefore, requiring them to pay even a $43 user

1 *See also* Off. of Mgmt. & Budget (OMB), Circular No. A-25 (revised), https://www.whitehouse.gov/wp-content/uploads/2017/11/Circular-025.pdf (establishing a general policy that agencies should charge user fees "against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public.").

2 The IRS fee for OPAs is lower than the amount prescribed by regulations. Treas. Reg. § 300.1(b)(2) states: "The fee is $149 for entering into online payment agreements on or after January 1, 2017, ..." TAS has been advised that the IRS Office of Chief Counsel has initiated a project to amend the regulation to match the current fee in the Internal Revenue Manual (IRM). IRM 5.14.1.2(10), Installment Agreements and Taxpayer Rights (July 2, 2024), https://www.irs.gov/irm/part5/irm_05-014-001r.

3 In evaluating a taxpayer's eligibility for a low-income user fee, the IRS determines adjusted gross income based on the taxpayer's last filed tax return. The National Taxpayer Advocate believes collectibility determinations should be based on the taxpayer's current financial situation – not the taxpayer's financial situation at the time the liability was incurred. For that reason, we support the use of a taxpayer's current income in making IA user fee waiver determinations when adjusted gross income is either unavailable or not reflective of the taxpayer's current financial situation. For a more detailed discussion of this issue, see *Require the IRS to Consider a Taxpayer's Current Income When Determining Whether to Waive or Reimburse an Installment Agreement User Fee*, *infra*.

fee up front, in addition to their tax liabilities, likely discourages some from entering into IAs. Moreover, the cost of processing OPAs and DDIAs is so minimal that charging a user fee could cost the government more in lost tax revenue and increased enforcement expenses than the user fee recovers.

RECOMMENDATION

- Amend IRC § 6159 to require the IRS to waive the user fee for all IAs with taxpayers whose adjusted gross incomes do not exceed 250% of the Federal Poverty Level and for all DDIAs.[4]

4 For legislative language generally consistent with this recommendation, see Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 107 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill; Affordable Payment Agreements for Taxpayers Act, H.R. 2675, 118th Cong. § 2 (2023).

Legislative Recommendation #19

Improve Offer in Compromise Program Accessibility by Eliminating the Upfront Payment Requirements

SUMMARY

- *Problem:* Taxpayers who cannot afford to pay their tax liabilities in full may apply for an offer in compromise (OIC). Under an OIC, the IRS agrees to accept less than full payment in satisfaction of the debt. Currently, taxpayers must include a user fee and non-refundable partial payment with their OIC applications unless they meet an exception for low-income taxpayers. Studies have shown that these upfront payment requirements may substantially reduce access to the OIC program and consequently reduce collection revenue.
- *Solution:* Eliminate the requirements that taxpayers include upfront user fees and partial payments with OIC applications.

PRESENT LAW

IRC § 7122(a) authorizes the IRS to settle a tax debt by accepting an OIC. According to Policy Statement 5-100, the IRS will "accept an offer in compromise when it is unlikely that the tax liability can be collected in full and the amount offered reasonably reflects collection potential."[1] Taxpayers whose offers are accepted must file and pay their taxes for the next five years, as stated on IRS Form 656, Offer in Compromise. If they fail to remain in compliance for the five-year period, the IRS may seek to collect the amounts it compromised.

IRC § 7122(c)(1)(A) requires a taxpayer who would like the IRS to consider a "lump-sum" offer – payable in five or fewer installments – to include a nonrefundable partial payment of 20% of the amount of the offer with the application. IRC § 7122(c)(1)(B) requires a taxpayer who would like the IRS to consider a "periodic payment" offer – an offer payable in six or more installments – to include the first proposed installment with the application and to continue to make installment payments while the IRS is evaluating the offer. Generally, if the IRS rejects or returns the offer, the IRS does not return the partial payments to the taxpayer but instead applies the payments to the taxpayer's underlying liability.[2]

In addition to the partial payments, Treas. Reg. § 300.3 requires that offer applications include a $205 user fee, with certain exceptions, including if the taxpayer qualifies as low income. IRC § 7122(c)(3) provides that taxpayers with low incomes (*i.e.*, taxpayers with adjusted gross incomes for the most recent tax year that do not exceed 250% of the Federal Poverty Level guidelines) are not subject to the user fee or the partial payment requirement.[3] They may apply for a waiver on Form 656.

REASONS FOR CHANGE

By accepting an offer, the IRS often collects money it would not otherwise collect and may convert a noncompliant taxpayer into a compliant one by requiring the taxpayer, as a condition of the agreement, to timely file returns and pay taxes for the following five years. The Treasury Department's General Explanations of the Administration's Fiscal Year 2017 Revenue Proposals acknowledged the benefit of offers and proposed

1 Internal Revenue Manual (IRM) 1.2.1.6.17, Policy Statement 5-100, Offers Will Be Accepted (Jan. 30, 1992).
2 IRM 5.8.2.3(6), Initial Processing of Offers in Centralized Offers in Compromise Sites (June 14, 2024), https://www.irs.gov/irm/part5/irm_05-008-002. For some exceptions, see IRM 5.8.2.4.1 Determining Processability (June 14, 2024), https://www.irs.gov/irm/part5/irm_05-008-002.
3 *See also* Treas. Reg. § 300.3(b)(ii), (iii).

to repeal the partial payment requirement, explaining that the requirement "may substantially reduce access to the offer-in-compromise program" and that reducing access to the offer in compromise program "makes it more difficult and costly to obtain the collectable portion of existing tax liabilities."[4] The Treasury Department estimated that repealing the requirement would raise revenue.[5]

The partial payment requirement went into effect in 2006.[6] Studying the impact of the legislative change in 2007, TAS found that taxpayers above the low-income threshold were no better able to afford to make partial payments than those below it and that those below it frequently did not obtain a waiver.[7] The study showed that taxpayers often looked to third parties for assistance, primarily family and friends. However, third parties may be less likely to provide funds knowing the IRS will not return the payment if it rejects the offer.

Along similar lines, a 2005 Treasury Inspector General for Tax Administration (TIGTA) report found that when the IRS first imposed a user fee (it was $150 in 2003), OIC submissions declined by more than 20% among taxpayers at every income level, including those who were eligible for a fee waiver.[8]

RECOMMENDATIONS

- Amend IRC § 7122(c) to remove the requirement that taxpayers include a partial payment with offer applications.[9]
- Provide that any user fee that is imposed will not be required as an upfront payment but rather will be collected out of amounts otherwise due on accepted offers.[10]

4 Dep't of the Treasury, *General Explanations of the Administration's Fiscal Year 2017 Revenue Proposals* 220 (Feb. 2016) (Revise Offer-in-Compromise Application Rules), https://home.treasury.gov/system/files/131/General-Explanations-FY2017.pdf.

5 In the past, the IRS has expressed concern that repealing the partial payment requirement or limiting the user fee might have the effect of increasing the number of offers that are frivolous, not made in good faith, or submitted mainly to stop levies or otherwise delay collection efforts. Existing rules provide some protection against these practices. *See, e.g.,* IRC § 6702(b) (imposing a $5,000 penalty for the submission of a frivolous OIC application); IRM 5.8.4.7.1 (Apr. 25, 2025), Offer Submitted Solely to Delay Collection, https://www.irs.gov/irm/part5/irm_05-008-004 (stating that offers submitted solely to delay collection should be returned). If these measures are insufficient, Congress may consider providing the IRS with additional mechanisms through which it can discourage improper offers or remedy their effects without making it more difficult for taxpayers to submit offers in good faith.

6 Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. No. 109-222, § 509, 120 Stat. 345, 362 (2006).

7 National Taxpayer Advocate 2007 Annual Report to Congress vol. 2, at 76 (Research Study: *Effect of Tax Increase and Prevention Reconciliation Act of 2005 on IRS Offer in Compromise Program*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/arc_2007_vol_2.pdf.

8 TIGTA, Ref. No. 2005-30-096, *The Implementation of the Offer in Compromise Application Fee Reduced the Volume of Offers Filed by Taxpayers at All Income Levels* (2005).

9 For additional background, see, *e.g.*, National Taxpayer Advocate 2006 Annual Report to Congress 507 (Legislative Recommendation: *Improve Offer in Compromise Program Accessibility*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/2006_arc_section2_v2.pdf. As an alternative to full repeal of the partial payment requirement, the 2006 recommendation proposed expanding the partial payment exceptions to include taxpayers with limited access to liquid assets and those who would face economic hardship.

10 For legislative language generally consistent with the recommendation to repeal the partial payment requirement, see Small Business Taxpayer Bill of Rights Act of 2025, S. 1386 and H.R. 2782, 119th Cong. § 17 (2025); Small Business Taxpayer Bill of Rights Act of 2023, S. 1177 and H.R. 2681, 118th Cong. § 17 (2023). These bills do not retain the exception to user fees for low-income taxpayers found in IRC § 7122(c)(3), but we recommend that Congress preserve that exception.

Legislative Recommendation #20

Require the IRS to Consider a Taxpayer's Current Income When Determining Whether to Waive or Reimburse an Installment Agreement User Fee

SUMMARY

- *Problem:* Taxpayers who apply for an installment agreement (IA) are ordinarily required to pay a user fee, but the law requires the IRS to waive the fee, or in some cases to reimburse the fee, if a taxpayer's adjusted gross income (AGI) is at or below 250% of the Federal Poverty Level. Under current law, the IRS determines whether to waive the IA user fee based solely on the taxpayer's most recently filed tax return, even if the return was filed years ago and does not accurately reflect the taxpayer's *current* financial condition.
- *Solution:* Require the IRS to consider the taxpayer's *current* financial condition in determining his or her eligibility for a waiver or reimbursement of the IA user fee.

PRESENT LAW

A taxpayer who is unable to pay a federal income tax liability in full may apply for an IA or an offer in compromise (OIC). For IAs, IRC § 6159(f)(2) provides that the user fee shall not be imposed, or in some cases will be refunded, for any taxpayer with an AGI that does not exceed 250% of the Federal Poverty Level "as determined for the most recent year for which such information is available."[1] For OICs, IRC § 7122(c)(3) similarly provides that the user fee shall not apply to any taxpayer with an AGI that does not exceed 250% of the Federal Poverty Level "as determined for the most recent taxable year for which such information is available."

REASONS FOR CHANGE

Although the statutory provisions governing user fees for IAs and OICs are nearly identical, IRS policy in some cases treats taxpayers applying for IA fee waivers less favorably than taxpayers applying for OIC fee waivers. In evaluating a taxpayer's eligibility for an IA user fee waiver, the IRS determines AGI by relying solely on the taxpayer's last filed tax return, even if the return was filed several years ago and does not accurately reflect the taxpayer's current ability to pay.[2]

As a general matter, tax *liability* determinations are made for the tax period at issue. By contrast, tax *collectability* determinations are made based on the taxpayer's current financial condition or, in certain circumstances, on the taxpayer's future collection potential. User fee waiver determinations should similarly be based on whether the taxpayer can afford to pay the user fee today. Relying on an old tax return to make the determination often will not produce an accurate result. If, for example, a taxpayer last filed a tax return for 2018 and has not had a filing requirement since that time, considering only the taxpayer's 2018 return will

1 Where a low-income taxpayer pays an IA by direct debit from their bank account, IRC § 6159(f)(2)(A) requires the IRS to waive the IA user fee. Where a low-income taxpayer does not make payments by direct debit (perhaps because the taxpayer does not have a bank account), the IRS requires the taxpayer to pay a $43 user fee, and IRC § 6159(f)(2)(B) requires the IRS to reimburse the fee upon completion of the IA. The National Taxpayer Advocate recommends the fee be waived for all low-income taxpayers. *See Eliminate Installment Agreement User Fees for Low-Income Taxpayers and Those Paying by Direct Debit*, *supra*.

2 *See* Internal Revenue Manual (IRM) 5.14.13.7(5), Installment Agreement User Fees: Authority and General Information (Aug. 20, 2025), https://www.irs.gov/irm/part5/irm_05-014-013 (providing that for IAs filed on or after April 10, 2018, a taxpayer's AGI should be considered "as reported on their most recently filed tax return.").

enable the IRS to determine whether the taxpayer could have afforded to pay the user fee based on their 2018 income, but that is irrelevant to whether he or she can afford to pay the user fee today. The taxpayer's financial condition may have improved or deteriorated significantly in the intervening years.

In contrast to the IRS's policy of relying solely on the taxpayer's last filed return to make low-income fee waiver determinations for purposes of IAs, the IRS's policy for making low-income fee waiver determinations for OICs is more flexible. If the taxpayer does not qualify for a fee waiver based on the last-filed return for purposes of an OIC application, the IRS will determine whether the taxpayer qualifies for a fee waiver based on the taxpayer's current income and household size.[3] Thus, the OIC review process considers more current information when the taxpayer does not qualify based solely on a previous year's AGI, whereas the IA review process does not.

To protect taxpayers' *right to a fair and just tax system*, user fee waiver determinations for IAs and OICs should be consistent and based on the taxpayer's current financial condition to the maximum extent possible. We recommend Congress clarify the law to require that the IRS consider a taxpayer's current income when determining eligibility for the IA user fee waiver (or reimbursement) if no recent return has been filed (*i.e.*, if the taxpayer was not required to file a recent tax return or if the taxpayer indicates his or her financial condition has worsened).[4]

RECOMMENDATION

- Amend IRC § 6159(f) to require the Secretary to consider a taxpayer's current income in addition to the AGI on the taxpayer's last-filed return when determining whether to waive or reimburse an IA user fee.

3 IRM 5.8.2.4.1(7), Determining Processability (June 14, 2024), https://www.irs.gov/irm/part5/irm_05-008-002. A similar issue arises in the context of the private debt collection program authorized by IRC § 6306. That statute provides that the account of a taxpayer with AGI at or below 200% of the Federal Poverty Level may not be assigned to a private collection agency, and it directs the IRS to make the AGI determination based on "the most recent taxable year for which such information is available." The IRS currently will look for returns going back up to ten years – which clearly do not reflect the taxpayer's current income – but will not consider information reporting documents or other current income information. For our recommendation to change that approach along the same lines as this recommendation, see *Revise the Private Debt Collection Rules to More Accurately Identify and Protect Taxpayers With Incomes Below 200% of the Federal Poverty Level*, *infra*.

4 We believe existing law provides the IRS with this authority, but the IRS has not agreed. The IRS has stated in the past that it can only determine "gross income" and not "adjusted gross income" (the statutory basis for a waiver) from information reporting documents. We believe the agency can implement a common-sense alternative method to assess a taxpayer's current financial condition for purposes of the IA user fee waiver since that is the point of the statute, and the fact that the IRS is doing exactly that in the context of OIC fee waivers shows its position is not applied consistently. Nevertheless, if the IRS believes it lacks legal authority to use a taxpayer's most recent income reporting documents to estimate current income for purposes of making IA low-income fee waiver determinations, we believe clarifying legislation would help.

Legislative Recommendation #21

Modify the Requirement That the Office of Chief Counsel Review Certain Offers in Compromise

SUMMARY

- *Problem:* The IRS Office of Chief Counsel is currently required to review and provide a legal opinion for every accepted offer in compromise (OIC) where the amount of unpaid tax is $50,000 or more, even though the IRS determines whether to accept an OIC primarily based on an analysis of the taxpayer's financial condition and very few OICs present significant legal issues. This requirement delays OIC processing and diverts Counsel attorneys from performing their core legal work.
- *Solution:* Require Counsel review of OICs only in cases that present significant legal issues.

PRESENT LAW

IRC § 7122 authorizes the Secretary to enter into an agreement with a taxpayer that settles the taxpayer's tax liabilities for less than the full amount owed, provided the taxpayer's case has not been referred to the Department of Justice. Such an agreement is known as an OIC. Treas. Reg. § 301.7122-1(b) provides that the IRS may compromise liabilities to the extent there is doubt as to liability or doubt as to collectibility, or to promote effective tax administration. The regulations further define these terms and describe instances when compromise is appropriate.

IRC § 7122(b) requires the Treasury Department's General Counsel to review and provide an opinion for accepted OICs in all criminal cases and in civil cases where the amount of unpaid tax assessed (including any interest, additional amount, addition to tax, and assessable penalty) is $50,000 or more. This authority is exercised by the IRS Office of Chief Counsel.[1]

REASONS FOR CHANGE

The IRS receives tens of thousands of OIC applications every year. The overwhelming majority are submitted based on doubt as to collectibility (*i.e.*, the taxpayer says they cannot afford to pay the debt in full). In these cases, the IRS decides whether to accept an OIC primarily by performing a financial analysis that compares the taxpayer's ability to pay (based on income and assets) with the taxpayer's allowable living expenses. Currently, the IRS also must verify that the legal and IRS policy requirements for compromise are met prior to proposing acceptance, even though very few OICs present significant legal issues that require Office of Chief Counsel involvement. The time Counsel employees spend reviewing and learning the facts of every criminal OIC case and every civil OIC case where the amount of unpaid tax assessed is $50,000 or more creates significant delays in OIC processing and is often duplicative of work the IRS has already performed. It also requires a significant commitment of legal resources on the part of the IRS. The Office of Chief Counsel reports that it spends over six thousand hours each year reviewing OICs.[2] Taxpayers would be better served if the IRS allocated those resources elsewhere.

1 *See* Internal Revenue Manual 8.23.4.3.3, Counsel Review of Acceptance Recommendations (Dec. 5, 2024), https://www.irs.gov/irm/part8/irm_08-023-004.

2 Emails from IRS Office of Chief Counsel (Sept. 9, 2025; June 14, 2024; Nov. 29, 2021; Sept. 1, 2020; and Aug. 9, 2019) (on file with TAS).

In addition, delays in OIC processing may impede a taxpayer's ability to make other financial decisions while awaiting a response and may even jeopardize the taxpayer's ability to pay the amount offered if their financial circumstances deteriorate while the OIC is awaiting Counsel review.

The National Taxpayer Advocate believes the OIC process would be improved if Congress repeals the blanket requirement that Counsel review all OICs in civil cases where the unpaid tax assessed is $50,000 or more and replace it with language authorizing the Secretary to determine when an opinion of the Treasury Department's General Counsel, or the Counsel's delegate, is required with respect to an OIC.[3]

RECOMMENDATION

- Amend IRC § 7122(b) to repeal the requirement that Counsel review all OICs in civil cases where the amount of unpaid tax assessed (including any interest, additional amount, addition to tax, or assessable penalty) is $50,000 or more and replace it with language authorizing the Secretary to determine when an opinion of the Treasury Department's General Counsel, or the Counsel's delegate, is required with respect to an OIC.[4]

3 The Treasury Department has made a similar proposal. *See* Dep't of the Treasury, *General Explanations of the Administration's Fiscal Year 2025 Revenue Proposals* 177 (Mar. 2024) (Modify the Requirement That General Counsel Review Certain Offers in Compromise), https://home.treasury.gov/system/files/131/General-Explanations-FY2025.pdf.

4 For legislative language generally consistent with this recommendation, see Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 111 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill; Taxpayer Bill of Rights Enhancement Act of 2017, S. 1793, 115th Cong. § 303 (2017); Taxpayer Bill of Rights Enhancement Act of 2015, S. 1578, 114th Cong. § 403 (2015).

Legislative Recommendation #22

Require the IRS to Mail Notices at Least Quarterly to Taxpayers With Delinquent Tax Liabilities

SUMMARY

- *Problem:* The IRS is required to send billing notices to taxpayers with tax debts once a year. Private businesses typically send billing notices more frequently, often monthly. By sending infrequent billing notices, the IRS receives fewer payments from taxpayers, and as a result, more taxpayers face aggressive IRS collection actions such as levies and liens.
- *Solution:* Require the IRS to send notices to taxpayers with tax debts at least quarterly.

PRESENT LAW

IRC § 7524 requires the IRS to send taxpayers with delinquent accounts a notice "[n]ot less often than annually" that sets forth the amount of the tax delinquency as of the date of the notice.

REASONS FOR CHANGE

The IRS satisfies the IRC § 7524 requirement by sending taxpayers with delinquent accounts Notice CP-71, Reminder Notice, once a year. However, the infrequency of IRS billing notices leaves collectible revenue uncollected and subjects taxpayers who likely would make payments if they received more frequent reminders to additional penalties and interest charges, along with harsher consequences such as wage garnishments, bank account levies, and property liens.

Sending more frequent notices after the IRS's initial notice stream would entail additional postage and processing costs. However, private sector businesses, including credit card issuers and retailers, face the same trade-off, and almost all such creditors send billing notices more frequently than once a year. Most send billing notices on at least a monthly basis. In other words, they have found that frequent notices generate more revenue, net of costs.

Further, a TAS study found that in the second year after either a Notice of Federal Tax Lien was filed or the taxpayer received a monthly collection letter, the monthly collection letter generated a greater reduction in the amount owed.[1] Many individual and business taxpayers face financial challenges and prioritize paying the bills of creditors who are sending regular notices and are top of mind.

RECOMMENDATION

- Amend IRC § 7524 to require the IRS to notify taxpayers of delinquent tax liabilities at least quarterly.[2]

1 National Taxpayer Advocate 2018 Annual Report to Congress vol. 2, at 170 (Research Study: *Further Analyses of "Federal Tax Liens and Letters: Effectiveness of the Notice of Federal Tax Liens and Alternative IRS Letters on Individual Tax Debt Resolution"*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/09/ARC18_Volume2_06_FedTaxLiens.pdf.

2 For legislative language generally consistent with this recommendation, see Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 109 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill; Rural IRS Accountability Act, H.R. 7844, 117th Cong. § 2 (2022); Protecting Taxpayers Act, S. 3278, 115th Cong. § 201 (2018). As more taxpayers establish online accounts, the IRS will be able to transmit more notices to taxpayers electronically rather than by traditional mail. For that reason, we are phrasing our recommendation broadly to allow that means of communication as an option.

Legislative Recommendation #23

Clarify When the Two-Year Period for Requesting Return of Levy Proceeds Begins So Persons Subject to Paper Levies and Persons Subject to Electronic Levies Are Similarly Treated

SUMMARY

- *Problem:* The IRS can return levy proceeds to a taxpayer in certain circumstances, or to a third party in the case of a wrongful levy, if a request for return is made within two years from the "date of levy." For paper levies, the date of levy is the date the notice of levy was served. For electronic levies, the IRS considers the date of levy to be the date on which it received the levy proceeds. This means parties subject to paper levies may not be able to recover funds that parties subject to electronic levies may recover.
- *Solution:* Allow the IRS to return levy proceeds if the funds were *received* by the IRS within the preceding two years, regardless of the date the original levy was *served*.

PRESENT LAW

IRC § 6331 authorizes the IRS to levy on a taxpayer's property and rights to property that exist at the time a levy is served in order to collect unpaid tax liabilities. The levy attaches to fixed and determinable obligations even if receipt of a payment arising from the obligation is deferred until a later date. A levy on a taxpayer's salary or wages is continuous from the date the levy is first made until the levy is released.[1] A levy on certain specified federal payments such as Social Security benefits is also continuous,[2] and may be made electronically under the Federal Payment Levy Program (FPLP).[3]

IRC § 6343(b) authorizes the IRS to return money levied upon or money received from the sale of levied property (levy proceeds) to third parties when it determines the levy was wrongful, provided the third party requests the return within two years from the date of such levy.[4] The IRS may also return levy proceeds to taxpayers as if the property had been wrongfully levied upon when it determines one of the circumstances specified in IRC § 6343(d)(2) exists, provided the taxpayer requests the return within two years from the date of such levy.[5]

Paper levies. For paper levies delivered by hand or mail, the date of levy is the date the levy is delivered to the person in possession of the property.[6] In the case of a continuous levy under IRC § 6331(e), the date of levy is

1 IRC § 6331(e).
2 IRC § 6331(h).
3 The FPLP is an automated process used by the IRS to systemically levy federal payments owed to taxpayers. *See* IRS, Federal Payment Levy Program (Apr. 30, 2025), https://www.irs.gov/businesses/small-businesses-self-employed/federal-payment-levy-program.
4 Under IRC § 7426(a)(1), a third party may bring a suit against the United States to recover amounts wrongfully levied. IRC § 6532(c) requires that a wrongful levy suit be brought within two years of the date of the levy unless a timely request for return of property was made pursuant to IRC § 6343(b).
5 IRC § 6343(b), (d) permits the IRS to return specific property levied upon at any time.
6 Treas. Reg. § 301.6331-1(c).

the date the notice of levy is first served by hand or by mail on the person in possession of the taxpayer's salary or wages.[7]

Electronic levies. The Treasury regulations under IRC § 6331 do not define the date of levy when the levy occurs through electronic means, including through the FPLP. For electronic levies through the FPLP, however, the Internal Revenue Manual (IRM) provides that the IRS will return all or a portion of the levy proceeds it *received* during the two-year period preceding the date of the request for return without regard to the date the initial levy was *delivered*.[8] While this policy is included in the IRM, the IRM is simply a set of instructions to help IRS employees do their jobs. Neither the IRS nor taxpayers may rely on it in court.

REASONS FOR CHANGE

IRS levies on assets, such as wages, pension benefits, annuities, or Social Security benefits, may result in multiple payments over many years. The IRS has the authority to return levy proceeds to a third party or to the taxpayer if the person requests the proceeds within two years of the date of levy under certain circumstances. If a party requests return of levy payments more than two years after the date of such levy, the IRS is not authorized to return the payments.

For paper levies, the IRS can return levy proceeds if the request for return is received within two years of the date the levy was first served. In the case of FPLP levies under IRC § 6331(h), however, the IRM provides that the IRS can return a levied payment if the payment was made within the two-year period before the date of the request for return. These differing rules cause the IRS to treat similarly situated persons differently and infringe upon a third party or taxpayer's *right to a fair and just tax system*.

> *Example:* Assume the IRS issues a continuous levy to a taxpayer's employer in Year One. In Year Three, the taxpayer's living expenses increase significantly due to large medical bills, and the levy causes an economic hardship for the taxpayer. In Year Four, the taxpayer asks the IRS to release the levy and return the levy proceeds that the IRS received during the time in which the taxpayer was experiencing economic hardship. The IRS is prohibited from returning the levy proceeds to the taxpayer because more than two years have elapsed since the date the levy was served.
>
> Contrast this result with a taxpayer whose Social Security benefits are levied under the FPLP. The IRS may return up to the last two years of levy payments even if the request occurs more than two years after the FPLP levies began.

RECOMMENDATION

- Amend IRC § 6343(b) to strike the term "date of such levy" and substitute "each date the Secretary received such amount."[9]

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7 A continuous levy is issued via Form 668-W, Notice of Levy on Wages, Salary, and Other Income, and is generally a "paper levy," which is defined as "either a manual or systemic levy on Form 668-A, or Form 668-W, that is prepared and issued by [a revenue officer]." This differs from an FPLP levy, which is an automated levy. Automated levies are "levies issued through the Automated Levy Programs." They are transmitted electronically, and the proceeds are received electronically. IRM 5.11.5.1.6, Terms/Definitions/Acronyms (June 13, 2018), https://www.irs.gov/irm/part5/irm_05-011-005.

8 *See* IRM 5.11.7.3.7(2), Returning FPLP Levy Proceeds (July 1, 2022), https://www.irs.gov/irm/part5/irm_05-011-007r (providing for return within two years from the date of such levy payment); IRM 5.19.9.3.7(5), Returning SITLP Payments (June 23, 2022), http://www.irs.gov/irm/part5/irm_05-019-009r (providing for return within two years from the date of such levy payment).

9 For legislative language generally consistent with this recommendation, see Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 115 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill.

Legislative Recommendation #24

Protect Retirement Funds From IRS Levies, Including So-Called "Voluntary" Levies, Absent Flagrant Conduct by a Taxpayer

SUMMARY

- *Problem:* Congress has recognized that almost all Americans eventually require savings to pay for their necessary living expenses in retirement, and it has consequently provided significant tax incentives to encourage retirement savings. This congressional objective is undermined when the IRS levies on retirement accounts, including when the IRS allows taxpayers with tax debts to agree to "voluntary" levies on their retirement accounts.
- *Solution:* Prohibit the IRS from levying on retirement accounts unless a taxpayer has engaged in flagrant conduct.

PRESENT LAW

The IRS has wide discretion to exercise its levy authority. IRC § 6331(a) generally authorizes the IRS to "levy upon all property and rights to property" of the taxpayer, which includes retirement savings. Some property is exempt from levy pursuant to IRC § 6334.

The Internal Revenue Manual (IRM) requires the IRS to complete a specialized analysis that generally protects retirement accounts from levy unless the taxpayer has engaged in "flagrant conduct." The IRM provides 13 examples of flagrant conduct but does not define the term.[1] In 2017, the IRS modified the IRM to allow taxpayers to request "voluntary" levies on their retirement accounts. Upon taxpayer request, the IRS may now levy even in the absence of flagrant conduct.[2]

REASONS FOR CHANGE

Congress has provided significant tax incentives to encourage taxpayers to save for retirement, and the same policy considerations support shielding retirement savings from IRS levies. Almost all workers eventually retire and need retirement savings to pay for basic living expenses. Retirees without sufficient retirement savings are more likely to experience economic hardship and qualify for taxpayer-funded public assistance.

While the IRM contains procedures to protect retirement savings by requiring a specialized analysis prior to levy, these procedures do not provide sufficient taxpayer safeguards. Since the 2017 IRM change, taxpayers may agree to "voluntary" levies even when they did not engage in flagrant conduct and would have had their retirement accounts protected from IRS levy in the past. These taxpayers may agree to such levies out of fear or anxiety, and they may consequently find themselves in economic hardship during retirement.

It is important to note that taxpayers generally may not rely on IRM violations as a legal basis to challenge IRS actions in court, and the IRS may modify or rescind IRM provisions at any time without congressional or public input.

Because retirement accounts are critical to the financial well-being of retirees, levy protections should be a matter of law, rather than left to the IRS's discretion. Several exemptions in IRC § 6334 reflect policy

1 IRM 5.11.6.3, Funds in Pension or Retirement Plans (Mar. 14, 2024), https://www.irs.gov/irm/part5/irm_05-011-006.
2 IRM 5.11.6.3(3), Funds in Pension or Retirement Plans (Mar. 14, 2024), https://www.irs.gov/irm/part5/irm_05-011-006.

determinations. For example, Congress has determined the IRS should not levy on child support payments because doing so would likely harm children. To better protect retirees, the National Taxpayer Advocate recommends Congress exempt retirement accounts from levy, absent flagrant conduct by the taxpayer, and define the term "flagrant conduct" in the statute.[3]

RECOMMENDATIONS[4]

- Amend IRC § 6334(a) to include qualified retirement savings as a category of property exempt from levy unless it is determined that the taxpayer has engaged in flagrant conduct and the levy would not create an economic hardship.
- Amend IRC § 6334 to define "flagrant conduct" as an action intended to evade or defeat any tax imposed by Title 26 or the collection or payment of any such tax.[5]

3 We recognize that adopting these recommendations would impact taxpayers who might want to dip into their retirement savings to pay their tax debts and request a levy to avoid the 10% tax that applies to early distributions from retirement accounts. On balance, however, we believe the greater protections afforded to retirement savings by our recommendations outweigh this impact.

4 For legislative language generally consistent with these recommendations, *see*, *e.g.*, John Lewis Taxpayer Protection Act, H.R. 3738, 117th Cong. § 203 (2021); Taxpayer Protection Act, H.R. 2171, 115th Cong. § 203 (2017).

5 In rare cases, a taxpayer with vast retirement savings may be delinquent in paying his or her tax debts without having engaged in flagrant conduct. To avoid providing an unlimited exemption from levy in these cases, Congress could make the levy exemption subject to a cap, such as $1 million in qualified retirement savings, and index it for inflation to maintain its value in future years.

Legislative Recommendation #25

Provide Stronger Taxpayer Protections Before the IRS May Recommend the Filing of a Lien Foreclosure Suit on a Taxpayer's Principal Residence

SUMMARY

- *Problem:* One of the most severe and potentially devastating actions the IRS can take to collect a tax debt is to seize and sell a taxpayer's principal residence (*i.e.*, home). The IRS can do this either administratively (seizure and sale) or judicially (lien foreclosure). The law provides significant and meaningful taxpayer protections before the IRS may proceed administratively, but there are far fewer safeguards when the IRS proceeds judicially.
- *Solution:* Provide the same protections to taxpayers and their families who are subject to judicial lien foreclosure suits as those subject to administrative seizure and sale of their principal residence.

PRESENT LAW

Selling a taxpayer's principal residence to satisfy a tax liability is one of the most intrusive collection remedies the IRS can impose against a taxpayer. The IRS has two different procedures to accomplish this: (i) an administrative seizure and sale or (ii) a lien foreclosure suit. The two cannot be used concurrently. The IRS generally uses the administrative seizure and sale procedures unless there are issues concerning the title or lien priorities that make the property less marketable at an administrative sale or unless it may be difficult to obtain or preserve the value of the property.[1] In these situations, the IRS uses the lien foreclosure procedure to enhance its ability to sell the property and obtain a higher sale price. Additionally, the IRS generally uses the lien foreclosure procedure when the collection statute expiration date is imminent (one year or less).[2]

Administrative Seizure

A taxpayer's principal residence is generally exempt from administrative levy (*i.e.*, seizure).[3] However, IRC § 6334(e)(1)(A) provides that a principal residence shall *not* be exempt if a U.S. district court judge or magistrate "approves (in writing) the levy of such residence."[4] An administrative seizure is generally subject to significant taxpayer protections. The government must show that "the taxpayer's other assets subject to collection are insufficient to pay the amount due."[5] It must also establish that "no reasonable alternative for collection of a taxpayer's debt exists."[6] In addition, if the property is owned by the taxpayer but is used as the principal residence of the taxpayer's spouse, former spouse, or minor child, the IRS is required to send a letter

1 Chief Counsel Directives Manual 34.6.2.2(1), Judicial Enforcement of the Tax Lien (Aug. 8, 2023), https://www.irs.gov/irm/part34/irm_34-006-002; *see also* Internal Revenue Manual (IRM) 5.17.4.8.2.1, Administrative Collection Devices Are Not Feasible or Adequate (Mar. 25, 2022), https://www.irs.gov/irm/part5/irm_05-017-004.

2 A 2022 Treasury Inspector General for Tax Administration (TIGTA) report concluded that an imminent collection statute expiration date was a main factor in the IRS's decision to utilize lien foreclosure procedures rather than pursue administrative seizure of a principal residence. TIGTA, Ref. No. 2022-30-026, *The IRS Primarily Uses Lien Foreclosures When Pursuing Principal Residences, Which Do Not Provide the Same Legal Protections as the Seizure Process* 6 (2022). *See also* IRM 5.10.2.3(2), Judicial Approval for Principal Residence Seizures (July 12, 2019), https://www.irs.gov/irm/part5/irm_05-010-002.

3 IRC § 6334(a)(13).

4 The term "administrative seizure" in the context of a principal residence seizure is somewhat misleading, as it suggests the action is taken solely by the IRS without judicial involvement. In fact, both the administrative seizure and lien foreclosure suit procedures require judicial approval before collecting from a taxpayer's principal residence.

5 IRC § 6334(e).

6 Treas. Reg. § 301.6334-1(d)(1).

addressed to or on behalf of each such person providing notice of the commencement of the proceeding.[7] Further, IRC § 6343(a) requires the IRS to release a levy under certain circumstances, including where it determines that the levy "is creating an economic hardship due to the financial condition of the taxpayer."[8]

Lien Foreclosure Suit

IRC § 7403 authorizes the Department of Justice (DOJ) to file a civil action against a taxpayer in a U.S. district court to enforce a tax lien and foreclose on a taxpayer's property. There is no exclusion for property consisting of a taxpayer's principal residence. As compared with administrative seizures, statutory taxpayer protections are considerably more limited in lien foreclosure suits. For example, the Supreme Court has held: "We can think of virtually no circumstances … in which it would be permissible to refuse to authorize a sale simply to protect the interests of the delinquent taxpayer himself or herself."[9] A court has some discretion to refuse to authorize a sale that would impact a spouse, children, or other third parties, but even in that circumstance, the discretion is limited.[10] Further, the IRS is not required to establish that there is no reasonable alternative for collection of the debt or notify the taxpayer's spouse, former spouse, or family unless they have an ownership interest in the property to be foreclosed.[11]

REASONS FOR CHANGE

IRC § 6334(e), requiring judicial approval of the administrative sale of principal residences, was enacted as part of the IRS Restructuring and Reform Act of 1998. The Senate Finance Committee report stated that the "seizure of the taxpayer's principal residence is particularly disruptive to the taxpayer as well as the taxpayer's family," and a principal residence therefore "should only be seized to satisfy tax liability as a last resort."[12]

This code section provides protections to taxpayers subject to administrative seizures of principal residences but offers no such protections to taxpayers subject to judicial foreclosures of principal residences. While the IRS may prefer one procedure over the other depending on the circumstances, from a taxpayer's standpoint there is no meaningful difference between the two actions. A lien foreclosure has the same devastating impact as an administrative seizure – the taxpayer's principal residence is sold and the proceeds are applied to their tax liability. Both groups of taxpayers deserve the same protections, as do their families.[13]

At the recommendation of the Office of the Taxpayer Advocate, the IRS added procedures to its Internal Revenue Manual (IRM) that provide additional taxpayer protections before the IRS may refer a case to the

7 If "it is unclear who is living in the principal residence property and/or what such person's relationship is to the taxpayer," the IRS must address the letter to "Occupant." Treas. Reg. § 301.6334-1(d)(3).

8 IRC § 6343(a)(1)(D).

9 *United States v. Rodgers*, 461 U.S. 677, 709 (1983).

10 *Id.* at 680, 709-710.

11 In *United States v. Maris*, 109 A.F.T.R.2d 2012-775 (D. Nev. 2012), the court held that the United States was required to establish that no reasonable alternative existed for collection of the taxpayers' debt before foreclosing tax liens on a principal residence. *See also United States v. Maris*, 111 A.F.T.R.2d 2013-2475 (D. Nev. 2013). However, other courts have held that the requirements for administrative seizure and sale of a principal residence are not applicable to lien foreclosure under IRC § 7403. *See*, *e.g.*, *United States v. Martynuk*, 115 A.F.T.R.2d 2015-613 (S.D.N.Y 2015) (declining to follow *Maris*) and the cases cited therein.

12 S. Rep. No. 105-174, at 86-87 (1998).

13 A suit to foreclose a tax lien on a principal residence is supposed to be "the secondary alternative used only when the seizure remedy is not the optimal solution" and "should only be pursued when there are no reasonable administrative remedies and hardship issues." IRM 5.17.4.8.2.5(2), Lien Foreclosure on a Principal Residence (Sept. 8, 2023), https://www.irs.gov/irm/part5/irm_05-017-004. However, a 2022 TIGTA report determined that during the period July 1, 2019, through June 30, 2020, the IRS utilized lien foreclosure procedures in 88% of the cases involving principal residences and only pursued administrative seizure in 13% (difference due to rounding). TIGTA, Ref. No. 2022-30-026, *The IRS Primarily Uses Lien Foreclosures When Pursuing Principal Residences, Which Do Not Provide the Same Legal Protections as the Seizure Process* 6 (2022).

DOJ for the filing of a lien foreclosure suit.[14] The IRM prescribes certain initial steps the IRS must take, such as attempting to identify the occupants of a residence and advising the taxpayer about TAS assistance options. It also sets forth an internal approval process prior to referring a lien enforcement case to the DOJ. However, the IRM is simply a set of instructions to IRS staff. Taxpayers generally may not rely on IRM violations as a basis for challenging IRS actions in court, and the IRS may modify or rescind IRM provisions at any time.

Because of the devastating impact the seizure and sale of a taxpayer's principal residence may have on the taxpayer and their family, the National Taxpayer Advocate believes taxpayer protections from lien foreclosure suits should be codified and not left for the IRS to determine through IRM procedures.

RECOMMENDATIONS

- Amend IRC § 7403 to codify current IRM administrative protections, including that an IRS employee must receive executive-level written approval to proceed with a lien foreclosure suit referral.
- Amend IRC § 7403 to preclude the IRS from requesting that the DOJ file a civil action in a U.S. district court seeking to enforce a tax lien and foreclose on a taxpayer's principal residence unless and until:

  (1) The IRS has determined that the taxpayer's other property or rights to property, if sold, would be insufficient to pay the amount due, including the expenses of the proceedings, and no reasonable alternative exists for collection of the taxpayer's debt;

  (2) The IRS has determined that the foreclosure and sale of the residence would not create an economic hardship due to the financial condition of the taxpayer; and

  (3) If the property is owned by the taxpayer but is used as the principal residence of the taxpayer's spouse, former spouse, or minor child, the IRS has sent a notice addressed in the name of the taxpayer's spouse or ex-spouse, individually or on behalf of any minor children.[15]

14 *See* IRM 5.17.4.8.2.5(3), Lien Foreclosure on a Principal Residence (Sept. 8, 2023), https://www.irs.gov/irm/part5/irm_05-017-004; IRM 5.17.12.20.2.2.4, Additional Items for Lien Foreclosure of Taxpayer's Principal Residence (Nov. 9, 2023), https://www.irs.gov/irm/part5/irm_05-017-012; IRM 25.3.2.4.5.2(3), Actions Involving the Principal Residence of the Taxpayer (Nov. 9, 2023), https://www.irs.gov/irm/part25/irm_25-003-002r.

15 For legislative language generally consistent with this recommendation, see Small Business Taxpayer Bill of Rights Act of 2025, H.R. 2782 and S. 1386, 119th Cong. § 11 (2025); Small Business Taxpayer Bill of Rights Act of 2023, H.R. 2681 and S. 1177, 118th Cong. § 11 (2023); Small Business Taxpayer Bill of Rights Act of 2015, H.R. 1828 and S. 949, 114th Cong. § 16 (2015); and Eliminating Improper and Abusive IRS Audits Act of 2014, S. 2215, 113th Cong. § 8 (2014).

Legislative Recommendation #26

Provide Collection Due Process Rights to Third Parties Holding Legal Title to Property Subject to IRS Collection Actions

SUMMARY

- *Problem:* When the IRS takes collection actions against a taxpayer, the taxpayer is entitled to a Collection Due Process (CDP) hearing at which they may raise defenses, challenge the appropriateness of the collection action, and propose collection alternatives. In some cases, the IRS takes collection actions against property held by third parties, but these third parties are not entitled to a CDP hearing. Therefore, they have fewer procedural protections than the taxpayer who actually owes the tax.
- *Solution:* Clarify that affected third parties who hold legal title to property subject to IRS collection actions are entitled to CDP protections to the same extent as the taxpayer who owes the tax.

PRESENT LAW

When a taxpayer does not pay their federal tax due upon notice and demand, a tax lien for the unpaid amount automatically arises under IRC § 6321. The IRS may file a Notice of Federal Tax Lien (NFTL) against and levy upon (seize) all property or rights to property of "any person liable to pay any tax" who neglects or refuses to pay, including property owned by certain third-party individuals or entities.[1] These third parties include nominees, alter egos, and persons to whom lien-encumbered property is transferred (collectively, "affected third parties").

The tax code provides certain CDP rights to a taxpayer when the IRS takes collection action. IRC § 6320(a) requires the IRS to give taxpayers notice and an opportunity for a hearing after it files an NFTL. IRC § 6330(a) generally requires the IRS to give taxpayers notice and an opportunity for a hearing before it issues a levy. The IRS must provide these CDP rights to "the person described in section 6321" after filing an NFTL and to "any person with respect to any unpaid tax" before levying against property.[2] When the IRS takes collection actions against affected third parties, however, it does not provide CDP rights, even though it seeks to collect from their property and has thus determined they are liable with respect to the unpaid tax to the extent of such property.[3]

REASONS FOR CHANGE

Congress created CDP notice and hearing procedures to give taxpayers the right to a meaningful hearing before the IRS levies their property or immediately after the IRS files an NFTL against their property. During a CDP hearing with the IRS Independent Office of Appeals (Appeals), a taxpayer has the opportunity to raise defenses, challenge the appropriateness of collection actions, and propose collection alternatives.[4] If the parties cannot resolve the issues, Appeals issues a notice of determination that allows the taxpayer to seek judicial review in the U.S. Tax Court.[5]

In some affected third-party circumstances, the IRS seeks to collect from specific property (*e.g.*, property that has been transferred to a third party subject to a tax lien). In other cases, the IRS seeks to collect from all of

1 *See* IRC §§ 6321, 6323(f), 6331(a).
2 IRC §§ 6320(a)(1), 6331(d)(1), 6330(a)(1). IRC § 6321 also refers to "any person liable to pay any tax."
3 A CDP lien notice will only be given to the person described in IRC § 6321 who is named on the NFTL. Treas. Reg. § 301.6320-1(a)(2), Q&A-A1. A CDP levy notice will only be given to the person described in IRC § 6331(a). Treas. Reg. § 301.6330-1(a)(3), Q&A-A1.
4 IRC §§ 6320(c), 6330(c)(2).
5 IRC §§ 6320(c), 6330(d)(1).

the affected third party's property (*e.g.*, an alter ego).[6] In both situations, the IRS may file NFTLs that identify the affected third party and levy upon property that, under state law, belongs to the affected third party. For purposes of CDP eligibility, however, Treasury regulations interpret the term "person" as including only the taxpayer (*i.e.*, the person upon whom the tax was imposed and who refused or neglected to pay following notice and demand).[7] The IRS does not afford affected third parties CDP rights when the IRS takes collection actions against the property.[8]

The collection remedies for affected third parties are unduly burdensome and inefficient and lack adequate procedural safeguards. A third party may seek administrative review of a nominee/alter ego lien or levy determination by requesting a Collection Appeals Program (CAP) hearing through Appeals.[9] However, since Appeals' goal is to decide CAP cases within five days, a CAP hearing only provides a summary review.[10] While quick resolution is a laudable goal, an affected third party utilizing a CAP appeal may not receive a thorough review. Furthermore, CAP decisions are final and not subject to judicial review.[11] The only judicial remedies available to affected third parties require filing suit in a U.S. district court, which is difficult to navigate without legal representation and can be costly for all parties.[12] Affected third parties who cannot afford the significant expense and burden of litigation may never be able to challenge an inappropriate or unlawful collection action.

In fiscal year (FY) 2025, the IRS issued 1,003,695 CDP notices to taxpayers; 29,016 taxpayers requested CDP hearings; and 1,371 taxpayers filed CDP petitions in the U.S. Tax Court.[13] By comparison, the IRS only filed 912 nominee and alter ego NFTLs during FY 2025.[14] Expressly providing CDP rights to affected third parties would not impose an undue administrative burden on the IRS, and it would reduce litigation costs for both the government and the affected third parties.

For these reasons, the National Taxpayer Advocate believes it is incongruous and inequitable for taxpayers who originally were responsible for tax debts to receive the full protection of IRC §§ 6320 and 6330, while affected third parties holding legal title to property subject to IRS collection actions do not receive these same due process protections.

RECOMMENDATION

- Amend IRC §§ 6320 and 6330 to extend CDP rights to affected third parties who hold legal title to property subject to IRS collection actions.[15]

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6 *See Oxford Capital Corp. v. United States*, 211 F.3d 280, 284 (5th Cir. 2000); Internal Revenue Manual (IRM) 5.17.2.5.7(2), Property Held by Third Parties (Jan. 8, 2016), https://www.irs.gov/irm/part5/irm_05-017-002.

7 *See Greenoak Holdings Ltd. v. Comm'r*, 143 T.C. 170 (2014).

8 *See Greenoak Holdings Ltd. v. Comm'r*, 143 T.C. 170 (2014); Treas. Reg. §§ 301.6320-1(a)(2), Q&A-A7, 301.6330-1(a)(3), Q&A-A2, 301.6320-1(b)(2), Q&A-B5, and 301.6330-1(b)(2), Q&A-B5.

9 Treas. Reg. §§ 301.6320-1(b)(2), Q&A-B5, 301.6330-1(b)(2), Q&A-B5.

10 IRM 8.24.1.3.8, Case Procedures under CAP (Aug. 20, 2024), https://www.irs.gov/irm/part8/irm_08-024-001.

11 *Hughes v. Comm'r*, T.C. Memo. 2012-42; IRM 8.24.1.2(6)a, Distinctions Between CAP and Collection Due Process (CDP) Hearings (Sept. 28, 2021), https://www.irs.gov/irm/part8/irm_08-024-001.

12 For example, if the IRS has filed an NFTL, the third party who holds the title is left with the option to bring an action to quiet title under 28 U.S.C. § 2410 in a U.S. district court. To contest a nominee, alter ego, or transferee levy, the affected third party must file a wrongful levy action under IRC § 7426 in a U.S. district court.

13 Of the total hearing requests, 22,664 involved individual taxpayers and 6,352 involved business taxpayers. IRS Compliance Data Warehouse (CDW), Individual Master File (FY 2025) and Business Master File (FY 2025) (through Sept. 25, 2025). CDP petition data includes FY 2025 Tax Court petitions subsequent to CDP hearings requested in FY 2024 - 2025 by September 25, 2025. Actual numbers may be higher because some may not have been posted to taxpayer accounts until FY 2026.

14 IRS response to TAS information request (Nov. 26, 2025).

15 For more detail, see National Taxpayer Advocate 2012 Annual Report to Congress 544 (Legislative Recommendation: *Amend IRC §§ 6320 and 6330 to Provide Collection Due Process Rights to Third Parties (Known as Nominees, Alter Egos, and Transferees) Holding Legal Title to Property Subject to IRS Collection Actions*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/Legislative-Recommendations-The-IRS-Should-Provide-Collection-Due-Process-Rights-to-Third-Parties-Holding-Property.pdf.

Legislative Recommendation #27

Extend the Time Limit for Taxpayers to Sue for Damages for Improper Collection Actions

SUMMARY

- *Problem:* Both taxpayers and the government benefit when the IRS has an opportunity to consider a taxpayer's claim to recover damages for improper collection actions before the taxpayer files suit in court, but current filing deadlines require taxpayers in some cases to file suit in court before the IRS has a chance to consider their claims.
- *Solution:* Give taxpayers more time to file suit in court if they have filed a timely administrative claim with the IRS.

PRESENT LAW

IRC § 7433(a) authorizes taxpayers harmed by improper collection actions to sue the United States for damages if an IRS employee has recklessly or intentionally, or by reason of negligence, disregarded any provision of the tax code or any regulation relating to the collection of federal tax. Under IRC § 7433(d)(3) and Treas. Reg. § 301.7433-1(g)(2), the suit must be brought in a U.S. district court within two years from the date on which the taxpayer had a reasonable opportunity to discover all essential elements of a possible cause of action.

Before a taxpayer may sue the United States, IRC § 7433(d)(1) requires the taxpayer to file an administrative claim with the IRS. Treas. Reg. § 301.7433-1(d) provides that a taxpayer generally may not file suit in court until the earlier of (i) the date six months after filing an administrative claim or (ii) the date on which the IRS renders a decision on the claim. However, if the claim is filed within the last six months of the two-year period for filing suit, the taxpayer may file suit in court at any time before expiration of the two-year period.

REASONS FOR CHANGE

IRC § 7433(d)(1) reflects a policy decision that it is generally in the best interests of both the taxpayer and the government to allow the IRS to consider and render a decision on a taxpayer's claim before a case is brought to court. If a case is resolved at the administrative level, both parties are spared the time and expense of litigation. Treas. Reg. § 301.7433-1(d) reflects a complementary policy decision that if the IRS does not render a decision on an administrative claim within six months, taxpayers should be able to bring their cases to court without having to wait indefinitely for an IRS decision.

The existing rules, however, do not always achieve the goal of allowing the IRS to consider and render a decision before a taxpayer files suit. For example, while a claim is pending at the administrative level, the two-year period for filing suit in a U.S. district court continues to run. If a taxpayer files an administrative claim during the final six months of the two-year period, the taxpayer may be forced to file suit in a U.S. district court before the IRS has an opportunity to render a decision on the administrative claim, or else will forfeit the right to do so.

To give the IRS an opportunity to render an administrative decision while preserving the taxpayer's right to challenge an adverse decision in court, the two-year period that commences when the right of action accrues should be tied to the deadline for filing an administrative claim, rather than the deadline for filing suit.

Specifically, if the IRS renders an adverse or partially adverse decision on a timely filed administrative claim, the taxpayer should be allowed to file suit within two years from the date of the IRS's decision (*i.e.*, similar to the time allowed for filing suit after a refund claim is denied).

At the same time, to ensure taxpayers do not have to wait indefinitely for an IRS decision, a taxpayer should be permitted to file suit in a U.S. district court if a timely filed administrative claim goes unanswered for six months. These rules would ensure the IRS has a full six-month period to consider and render a decision on a taxpayer's damages claim based on an alleged improper collection action while preserving the taxpayer's right to file suit if the IRS does not render a timely decision.

RECOMMENDATIONS

- Amend IRC § 7433(d)(1) to provide that before a taxpayer may file a civil action, the taxpayer must first file an administrative claim with the IRS within two years from the date a right of action accrues.
- Amend IRC § 7433(d)(3) to allow taxpayers to file a civil action in a U.S. district court (i) no earlier than six months from the date on which the administrative claim was filed and (ii) no later than the earlier of two years from the date on which the IRS sends its decision on the administrative claim to the taxpayer by certified or registered mail or, if the IRS does not render a decision, five years from the date the right of action accrued to file the administrative claim with the IRS.[1]

1 For legislative language generally consistent with this recommendation, see Taxpayer Bill of Rights Enhancement Act of 2017, S. 1793, 115th Cong. § 201(c) (2017); and Taxpayer Bill of Rights Enhancement Act of 2015, S. 1578, 114th Cong. § 301(c) (2015). Other bills have proposed simply lengthening the period to bring an action under IRC § 7433(d)(3) from two years to five years. *See*, *e.g.*, Small Business Taxpayer Bill of Rights Act of 2025, S. 1386 and H.R. 2782, 119th Cong. § 3(b) (2025); Small Business Taxpayer Bill of Rights Act of 2023, S. 1177 and H.R. 2681, 118th Cong. § 3(b) (2023).

Legislative Recommendation #28

Revise the Private Debt Collection Rules to More Accurately Identify and Protect Taxpayers With Incomes Below 200% of the Federal Poverty Level

SUMMARY

- *Problem:* The tax code prohibits the IRS from utilizing private companies to collect the tax debt of any taxpayer with adjusted gross income (AGI) of 200% or less of the Federal Poverty Level. The IRS currently determines AGI by relying exclusively on a taxpayer's last-filed tax return, going back up to ten years. However, collectibility determinations are normally made on the basis of the taxpayer's current financial condition, and a tax return filed ten years ago is not a reliable measure of a taxpayer's current financial condition.
- *Solution:* Direct the IRS to estimate a taxpayer's AGI based on third-party information reporting documents (*e.g.*, Forms W-2 and 1099) if no return has been filed in the last two years.

PRESENT LAW

IRC § 6306 directs the Secretary to enter into qualified tax collection contracts with private collection agencies (PCAs) to collect certain "inactive tax receivables."[1] Subsection (d) of IRC § 6306 lists categories of collection cases that are not eligible for assignment to PCAs.

In 2019, Congress amended subsection (d) to add the following category of collection cases to the list of those not eligible for PCA assignment:[2]

> [A] taxpayer who is an individual with adjusted gross income, as determined for the most recent taxable year for which such information is available, which does not exceed 200 percent of the applicable poverty level (as determined by the Secretary).

REASONS FOR CHANGE

The IRS implemented the exclusion for taxpayers with AGIs that do not exceed 200% of the Federal Poverty Level in a manner that fails to identify those taxpayers accurately. It has chosen to rely exclusively on a filed tax return, even if the taxpayer has not filed a recent return. Rather than using alternative means to estimate the taxpayer's current AGI (*e.g.*, third-party information reporting documents like Forms W-2 and 1099), the IRS reaches back up to ten years to locate a return to determine AGI.

This approach produces anomalous results. A taxpayer who could afford to pay tax ten years ago may not be able to do so today – and these are the cases Congress intended to exclude from assignment to PCAs. Conversely, a taxpayer who could not afford to pay tax ten years ago might have earned additional income or acquired additional assets and might now be able to make payments.

> *Example:* A taxpayer last filed a tax return in 2016 when his AGI was $75,000. In 2017, he retired due to age or disability. He did not pay his tax liability and still has a balance due. Since 2017, his income has consisted solely of Social Security benefits, and he has not had a filing obligation. In 2025, under

1 IRC § 6306(a), (c).
2 Taxpayer First Act, Pub. L. No. 116-25, § 1205(a), 133 Stat. 981, 989 (2019) (adding IRC § 6306(d)(3)(F)).

its current approach, the IRS will look back to the taxpayer's 2016 tax return to determine whether his income is above or below 200% of the Federal Poverty Level. It will see an AGI of $75,000 and likely assign his case to a PCA, even though this is a case Congress sought to exclude from PCA assignment because the taxpayer's current income is low.

By contrast, if the same taxpayer earned only $30,000 in 2016 and third-party information reports show he earned $100,000 in 2025, the case likely would not be assigned to a PCA under the IRS's approach, even though the taxpayer can and probably should be required to make payments currently.

To ensure that collectibility determinations are based on a taxpayer's *current* ability to pay, the National Taxpayer Advocate has recommended that the IRS utilize information on a tax return if one has been filed in the last two years and, if not, that the IRS estimate AGI from the information reporting documents the IRS receives.[3]

If the IRS relies on information reporting documents, it will have to use gross income rather than AGI because it may not know which adjustments the taxpayer is qualified to claim, if any. In some cases, that may have the effect of overestimating a taxpayer's AGI and therefore assigning some cases to PCAs that should have been excluded. Even so, we believe that basing collectibility determinations on recent information will be far more accurate than reaching back for information up to ten years old.[4]

The Treasury Inspector General for Tax Administration (TIGTA) reached a similar conclusion and has similarly recommended that the IRS consider using "both last return filed information and third-party income information in its methodology to exclude low-income taxpayers from PCA inventory."[5]

RECOMMENDATION

- Amend IRC § 6306(d)(3)(F) to direct the IRS to determine an individual's AGI "for the most recent taxable year for which such information is available" by reference to the individual's most recently filed tax return if one has been filed in the preceding two years or, if not, by reference to information reporting documents described in part III of subchapter A of chapter 61 of the IRC.

3 No method will perfectly identify taxpayers with current AGI below 200% of the Federal Poverty Level. If the IRS uses third-party information reporting documents to make collectibility determinations, it will not take into account income not reported on those documents, such as self-employment income. But that is likely to be true even when the IRS relies on filed tax returns, as tax gap studies show most income not reported to the IRS on third-party documents is not reported on tax returns either. *See* IRS Pub. 1415, Federal Tax Compliance Research: Tax Gap Estimates for Tax Years 2014-2016, at 20 (Oct. 2022), https://www.irs.gov/pub/irs-pdf/p1415.pdf.

4 A data run the IRS performed to compare the method the IRS is using with the method TAS has proposed found the two methods would exclude roughly the same number of taxpayers. To make the comparison, cases assigned to PCAs as of September 12, 2019, were matched to the Individual Returns Transaction File to determine the last individual income tax return filed and to the Information Returns Master File to determine current income reported by third-party payors. For the reasons described above, we believe the TAS approach would do a better job of identifying the taxpayers whom Congress intended to exclude.

5 TIGTA, Ref. No. 2021-30-010, *Fiscal Year 2021 Biannual Independent Assessment of Private Collection Agency Performance* 20 (2020).

REFORM PENALTY AND INTEREST PROVISIONS

Legislative Recommendation #29

Convert the Estimated Tax Penalty Into an Interest Provision to Properly Reflect Its Substance

SUMMARY

- *Problem:* If a self-employed taxpayer fails to pay sufficient estimated tax during the year, the IRS will impose an addition to tax that is calculated as an interest charge but classified as a penalty. The term "penalty" implies that the taxpayer has engaged in improper conduct, yet small business taxpayers often experience significant fluctuations in their incomes and expenses from year to year that make it difficult to accurately estimate their tax liabilities.
- *Solution:* Reclassify the addition to tax for underpaying estimated tax from a penalty to an interest charge.

PRESENT LAW

Through the combination of wage withholding and estimated tax payments, the tax code aims to ensure that federal income and payroll taxes are paid ratably throughout the year. IRC § 3402 generally requires employers to withhold tax on wages paid to employees. For many employees, wage withholding covers their tax liabilities in full. But taxpayers who are self-employed or who have investment income typically are not subject to withholding on this non-wage income and instead must make estimated tax payments.

IRC § 6654 generally requires individual taxpayers to pay at least the lesser of (i) 90% of the tax shown on a tax return for the current tax year or (ii) 100% of the tax shown on a tax return for the preceding tax year (reduced by the amount of wage withholding) in four installment payments due on April 15, June 15, and September 15 of the tax year, and January 15 of the following tax year.[1] IRC § 6655 generally requires corporate taxpayers to pay at least 100% of the tax shown on a tax return for the current tax year or, in some cases, 100% of the tax shown on a tax return for the preceding tax year in four installment payments due on April 15, June 15, September 15, and December 15.

IRC §§ 6654(a) and 6655(a) provide that a taxpayer who fails to pay sufficient estimated tax will be liable for a penalty that is computed using the underpayment rate established by IRC § 6621 and applying it to the amount of the underpayment for the period of the underpayment. IRC § 6621 is an interest provision. Therefore, the additional amount a taxpayer owes for failing to pay sufficient estimated tax is calculated as an interest charge, even though it is classified as a penalty.

Unlike the failure-to-file and failure-to-pay penalties described in IRC § 6651(a)(1) and (2) and the accuracy-related penalty described in IRC § 6662, the penalty for failure to pay estimated tax generally is not subject to a "reasonable cause" exception. IRC § 6654(e)(3) allows the IRS to waive the estimated tax penalty for individual taxpayers only in certain limited circumstances, including when the Secretary determines that imposing the penalty would be "against equity and good conscience" by reason of "casualty, disaster, or other

1 If the adjusted gross income of a taxpayer for the preceding tax year exceeds $150,000, "110 percent" is substituted for "100 percent." IRC § 6654(d)(1)(C).

unusual circumstances" or when a taxpayer retired after having attained the age of 62 or became disabled during the taxable year *and* the underpayment was due to reasonable cause.

REASONS FOR CHANGE

For a variety of reasons, taxpayers often have difficulty estimating how much tax they will owe. Self-employed taxpayers or taxpayers who own small businesses may experience significant fluctuations in their income and expenses from year to year. Taxpayers with sizable investment incomes may also experience significant fluctuations. Substantial changes in tax laws, such as those that took effect in 2018 and 2025, may affect tax liabilities in ways that taxpayers do not fully anticipate. As a result, millions of taxpayers do not satisfy the requirements of IRC § 6654 and are liable for penalties each year, even though many have reasonably attempted to comply. Corporate taxpayers face similar challenges.

The term "penalty" carries negative connotations, and the National Taxpayer Advocate believes it should be reserved for circumstances in which a taxpayer has failed to make reasonable efforts to comply with the law. Her position aligns with the assessment of the House Committee on Ways and Means when it wrote during a previous Congress: "Because the penalties for failure to pay estimated tax are calculated as interest charges, the Committee believes that conforming their title to the substance of the provision will improve taxpayers' perceptions of the fairness of the estimated tax payment system."[2] TAS research studies have found that "tax morale" has an impact on tax compliance.[3] Conforming the estimated tax penalty's title to reflect its true substance as an interest provision should improve fairness and encourage voluntary compliance.[4]

RECOMMENDATIONS

- Reclassify the penalty for failure to pay sufficient estimated tax as an interest charge. Toward that end, relocate IRC §§ 6654 and 6655 from chapter 68 to chapter 67 and make conforming modifications to the headings and text.[5]
- If the failure to pay sufficient estimated tax continues to be treated as a penalty, consider expanding the reasonable cause exception in IRC § 6654(e)(3)(B) to apply to all individual taxpayers.[6]

2 H.R. Rep. No. 108-61, at 23-24 (2003).

3 *See* National Taxpayer Advocate 2013 Annual Report to Congress vol. 2, at 1 (Research Study: *Do Accuracy-Related Penalties Improve Future Reporting Compliance by Schedule C Filers?*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/2013-ARC_VOL-2-1.pdf.

4 Interest provisions do not normally include waiver exceptions based on equitable considerations. *See* Internal Revenue Manual (IRM) 20.2.1.1.2(1), Authority (Dec. 26, 2024), https://www.irs.gov/irm/part20/irm_20-002-001r. Nonetheless, Congress may consider preserving the limited waiver exception for the individual estimated tax penalty, which allows the IRS to waive the charge when it would violate equity and good conscience to impose it. IRC § 6654(e)(3)(A).

5 For legislative language generally consistent with this recommendation, see Taxpayer Protection and IRS Accountability Act, H.R. 1528, 108th Cong. § 101 (2003).

6 Expanding the reasonable cause exception in IRC § 6654(e)(3)(B) to all individual taxpayers, not just newly retired or disabled individuals, would allow the IRS to base relief on what is reasonable, rather than the more difficult standard of "against equity and good conscience." *See* IRM 20.1.3.3.2.1.2, Waiver Criteria Under IRC 6654(e)(3)(A) (July 23, 2020), https://www.irs.gov/irm/part20/irm_20-001-003r (explaining that the "against equity and good conscience" standard is more limited than "reasonable cause"). For more details on a recommendation to expand the reasonable cause exception to all individual taxpayers who may be subject to the estimated tax payment regime for the first time, see National Taxpayer Advocate 2008 Annual Report to Congress vol. 2, at 34 (Research Study: *A Framework for Reforming the Penalty Regime*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/08_tas_arc_vol2.pdf.

Legislative Recommendation #30

Apply a Single Interest Rate to Underpayments of Estimated Tax in the Periods Between Each Installment Due Date

SUMMARY

- *Problem:* The due dates for estimated tax payments do not align with the dates on which the interest rate for estimated tax underpayments is adjusted. As a result, more than one interest rate may apply to an underpayment during the period between each estimated tax installment due date, causing unnecessary complexity and burden for taxpayers.
- *Solution:* Apply the same interest rate to underpayments of estimated tax for the entire period between each installment due date.

PRESENT LAW

IRC § 6654(c) provides that individual taxpayers who make estimated tax payments must submit those payments on or before April 15, June 15, and September 15 of the taxable year and January 15 of the following taxable year.[1] Similarly, IRC § 6655(c) provides that corporations required to make installment payments must submit those payments on or before April 15, June 15, September 15, and December 15 of the taxable year.[2] Failure to make required estimated tax payments results in a penalty that is determined by the underpayment rate, the amount of the underpayment, and the period of the underpayment.

Under IRC § 6621(a)(2), the underpayment rate is equal to the federal short-term interest rate, plus three percentage points. Under IRC § 6621(b)(1), the federal short-term interest rate is determined quarterly by the Secretary of the Treasury. If the Secretary determines a change in the federal short-term interest rate, the change is effective on January 1, April 1, July 1, or October 1.[3] For individual estimated tax underpayments, IRC § 6621(b)(2)(B) delays the timing of the April 1 rate change to April 15, partially aligning the timing of the interest rate changes with the requirements of IRC § 6654.

REASONS FOR CHANGE

Under current law, more than one interest rate may apply to an underpayment in the period between each estimated tax installment due date. For example, if a taxpayer fails to make an estimated tax payment due June 15 and the Secretary determines a change in the federal short-term interest rate effective July 1, one interest rate would apply for the period from June 16 through June 30, and another rate would apply beginning July 1. A change in interest rate just 15 days after the estimated tax installment due date causes unnecessary complexity and burden for taxpayers. This complexity and burden would be reduced if the same interest rate applied to the entire period between required installments.

1 To make compliance easier, the National Taxpayer Advocate separately recommends that Congress set the estimated tax payment deadlines 15 days after the end of each calendar quarter (April 15, July 15, October 15, and January 15). *See Adjust Individual Estimated Tax Payment Deadlines to Occur Quarterly*, *supra*.

2 The dates referenced in the text apply to calendar-year taxpayers. Fiscal-year taxpayers will have estimated tax due dates in different months at similar intervals. Thus, they face the same problem as calendar-year taxpayers with interest rate adjustments that do not align with estimated tax installment due dates. IRC §§ 6654(k), 6655(i).

3 IRC § 6621(b)(2)(A) ("[T]he Federal short-term rate determined under [§ 6621(b)(1)] for any month shall apply during the first calendar quarter beginning after such month.").

RECOMMENDATION

- Amend IRC §§ 6654 and 6655 to provide that the rate applied to an estimated tax underpayment shall be set as of the due date for each required estimated tax installment and shall be the underpayment rate established by IRC § 6621 for the calendar quarter of the due date of that required installment.[4]

4 For legislative language generally consistent with this recommendation, see Taxpayer Bill of Rights Enhancement Act of 2017, S. 1793, 115th Cong. § 305 (2017). If this proposal is adopted, repeal of IRC § 6621(b)(2)(B) may be required. *See also* H.R. Rep. No. 108-61, at 25 (2003); Taxpayer Protection and IRS Accountability Act, H.R. 1528, 108th Cong. § 101 (2003).

Legislative Recommendation #31

Extend Reasonable Cause Defense for the Failure-to-File Penalty to Taxpayers Who Rely on Return Preparers to E-File Their Returns

SUMMARY

- *Problem:* A taxpayer who fails to file a tax return by the deadline is subject to a late-filing penalty unless the taxpayer can demonstrate "reasonable cause" for the failure. In 1985, the Supreme Court held that reliance on a tax return preparer to file a return did not alone constitute reasonable cause for a late-filing penalty because the taxpayer had a responsibility to ensure the deadline was met. While that conclusion may be appropriate in the context of paper-filed returns where a taxpayer can mail the return themself, it is not appropriate in the context of e-filed returns, where the preparer typically submits the return directly and the taxpayer cannot easily verify whether a return has been filed and accepted.
- *Solution:* Allow taxpayers who rely on tax return preparers to e-file their returns to receive reasonable cause relief from the failure-to-file penalty if the preparer fails to timely file the return.

PRESENT LAW

IRC § 6651(a)(1) imposes an addition to tax when a taxpayer fails to file a return by the due date unless the taxpayer can show the failure was due to reasonable cause and not due to willful neglect (the "failure-to-file penalty").[1] Reasonable cause exists when a taxpayer has exercised ordinary business care and prudence but was unable to file the return within the prescribed time.[2]

In *United States v. Boyle*, the Supreme Court held that a taxpayer's reliance on an agent to file a return did not constitute reasonable cause for late filing.[3] In *Boyle*, the tax return at issue was filed on paper. In 2023, the U.S. Court of Appeals for the Eleventh Circuit held that the *Boyle* decision also applies to e-filed returns.[4] Several U.S. district courts have similarly held that *Boyle* applies to e-filing.[5]

In the IRS Restructuring and Reform Act of 1998, Congress adopted a policy that "paperless filing should be the preferred method and most convenient means of filing Federal tax and information returns" and gave the Secretary broad authority to incentivize taxpayers to file returns electronically.[6] IRC § 6011(e)(3) authorizes the Secretary to require tax return preparers to file returns electronically unless they reasonably expect to file ten or fewer individual income tax returns during a calendar year. Treasury Regulation § 301.6011-7 implements this requirement.

1 The penalty amount is 5% of the tax due for each month or partial month the return is late, up to a maximum of 25%. The penalty increases to 15% per month up to a maximum of 75% if the failure to file is fraudulent. IRC § 6651(f).

2 Treas. Reg. § 301.6651-1(c)(1). *See also* Internal Revenue Manual (IRM) 20.1.1.3.2, Reasonable Cause (Nov. 21, 2017), https://www.irs.gov/irm/part20/irm_20-001-001r.

3 *Boyle*, 469 U.S. 241 (1985).

4 *Lee v. United States*, 84 F.4th 1271 (11th Cir. 2023).

5 *See, e.g.*, *Haynes v. United States*, 119 A.F.T.R.2d (RIA) 2202 (W.D. Tex. 2017), *vacated and remanded*, 760 F. App'x 324 (5th Cir. 2019); *Intress v. United States*, 404 F. Supp. 3d 1174 (M.D. Tenn. 2019); *Oosterwijk v. United States*, 129 A.F.T.R.2d (RIA) 512 (D. Md. Jan. 27, 2022).

6 Pub. L. No. 105-206, § 2001, 112 Stat. 685, 723 (1998); IRC § 6011(f).

REASONS FOR CHANGE

At the time *Boyle* was decided, all tax returns were filed on paper. Taxpayers generally could fulfill the basic responsibility of mailing returns to the IRS themselves, even when they engaged tax professionals to prepare them. In ruling that the taxpayer in *Boyle* was not entitled to reasonable cause abatement as a matter of law, the Supreme Court stated that "[i]t requires no special training or effort to ascertain a deadline and make sure that it is met."[7]

In effect, the *Boyle* decision concluded that the duty to file a return is non-delegable. While that rule might make sense in a paper-filing context, it is not reasonable to apply it in the e-filing context. Today, most taxpayers effectively delegate the electronic filing of their returns to preparers or use software providers. Particularly when a taxpayer uses a preparer, the taxpayer is generally several steps removed from the filing process. When a preparer e-files a tax return, he or she must transmit it through an electronic return originator (typically, a software company) to the IRS. Thus, there are four parties sequentially involved in this chain: (i) the taxpayer; (ii) the preparer; (iii) the software company; and (iv) the IRS. If the IRS rejects an e-filed tax return, it generally sends a notification back through the software company to the preparer, but it will not notify the taxpayer directly.[8] In these circumstances, a taxpayer cannot easily ensure his or her return has been properly submitted by the preparer and accepted by the IRS. In addition, the IRS rejects e-filed returns before processing them for a variety of reasons, and a return that is e-filed with the IRS but rejected before processing is not treated as timely filed. By contrast, the same return would be considered timely filed if submitted on paper. The comparatively worse outcome for e-filing incentivizes paper filing, and therefore runs contrary to congressional intent.

While Treasury regulations generally require tax return preparers to e-file client returns, the regulations exempt preparers from the e-filing requirement if a taxpayer provides the preparer with "a hand-signed and dated statement" that says the taxpayer chooses to file a paper return.[9] Because taxpayers can mail paper returns themselves, this "opt-out" may reduce a taxpayer's risk of incurring a failure-to-file penalty. In light of the congressional directive to incentivize e-filing, it is illogical to increase the penalty risk for taxpayers who e-file.[10]

The Eleventh Circuit's decision, *Lee v. United States*, highlights the unfairness of applying the *Boyle* rule in the context of e-filing. In many ways, the taxpayer in *Lee* was a model taxpayer. A surgeon with significant earnings, he hired a certified public accountant (CPA) to prepare and file his complicated returns for 2014-2016. During each of those years, he ensured the returns were timely prepared and verified, and he sent a signed Form 8879, IRS e-file Signature Authorization, to the CPA before the filing deadline. Additionally, he made significant overpayments of tax each year to avoid an underpayment penalty, choosing to apply the overpayments to the following year's liability. However, his CPA never filed the returns, apparently because they were too complex for the filing software, and he did not tell the taxpayer. The CPA also did not provide the IRS with the taxpayer's correct mailing address, so the taxpayer did not receive any notices. The taxpayer was completely unaware his returns had not been filed until the IRS visited his office in 2018. Because the

7 *Boyle*, 469 U.S. at 252.
8 IRM 3.42.5.7.2(1), Form 1040 Online Filing (Nov. 22, 2023), https://www.irs.gov/irm/part3/irm_03-042-005r.
9 Treas. Reg. § 301.6011-7(a)(4)(ii).
10 For context, over half of all individual income tax returns filed during the 2025 filing season were prepared by professionals and e-filed. *See* IRS, 2025 Filing Season Statistics for Week Ending April 18, 2025, https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-april-18-2025.

CPA had not filed the returns, the IRS did not apply the 2014 overpayment to subsequent years, leaving the taxpayer with tax liabilities for 2015 and 2016 and approximately $70,000 in penalties.[11]

After filing a refund claim with the IRS, which was denied, the taxpayer brought suit in U.S. district court, arguing there was reasonable cause for the failure to file due to his reliance on the CPA. The district court held that the *Boyle* rule applied to e-filed returns and the Eleventh Circuit agreed.[12] The taxpayer made several arguments as to why the penalties should be abated, including that once he had sent the Form 8879 to the CPA, the burden was on the CPA to file the returns and the failure to do so was beyond the taxpayer's control. The Eleventh Circuit rejected the taxpayer's arguments, concluding there was no basis to treat e-filed returns differently from paper-filed returns under the Supreme Court's *Boyle* decision.

One judge wrote a concurring opinion "to highlight the risks facing taxpayers" due to *Boyle*'s application in the e-filing context, noting the fact that the taxpayer owed taxes and penalties to the IRS despite his otherwise prudent actions "is reflective of the current e-filing system and the precarious situation in which it places taxpayers who rely on" preparers.[13] The judge added: "[U]nder Boyle's bright line rule, it is not clear whether Lee would be excused from penalties *even if his accountant [had] affirmatively misrepresented to him that his returns were filed on time*."[14]

Prior to the Eleventh Circuit's decision in *Lee*, several U.S. district courts had similarly held that *Boyle* applied in the e-filing context.[15] As in *Lee*, the facts of these cases illustrate the unfairness of *Boyle*'s application. In *Haynes v. United States*, a married couple employed a CPA to prepare and file their joint tax return.[16] The preparer timely e-filed the return, but the IRS did not accept it for processing because a taxpayer identification number was listed on the wrong line. The preparer did not receive a rejection notice from the IRS. The preparer notified the taxpayers that their return had been timely filed. Ten months later, the IRS notified the taxpayers that their return had not been received and asserted the failure-to-file penalty. The taxpayers requested penalty abatement for reasonable cause, asserting they had sought to file their return timely, their preparer had transmitted the return timely, and both the preparer and the taxpayers believed the return had been received. The taxpayers filed suit in district court, arguing that *Boyle* should not apply in the context of electronic filing because the complexities of e-filing vastly exceed the comparatively simple and verifiable task of mailing a return. The district court concluded that the holding in *Boyle* applies to e-filed returns to the same extent as paper-filed returns and ruled in the government's favor as a matter of law.[17]

The issue in these cases is not whether the failure-to-file penalty is applicable in the first instance. Based on the wording of the statute, there is no doubt the penalty is applicable if the return is filed late. Rather, the issue is whether taxpayers are entitled to request abatement of the penalty on reasonable cause grounds. Because the *Boyle* decision used relatively sweeping language, lower courts have seemingly felt bound to apply its

11 The penalties were for failure to file a return under IRC § 6651(a)(1) and failure to pay tax under IRC § 6651(a)(2). The Eleventh Circuit noted that it and other courts have held that *Boyle* also applies to the failure-to-pay penalty. *Lee v. United States*, 84 F.4th 1271, 1275 (11th Cir. 2023).

12 *Lee v. United States*, 129 A.F.T.R.2d (RIA) 667 (M.D. Fla. Feb. 8, 2022).

13 *Lee v. United States*, 84 F.4th 1271, 1281 (11th Cir. 2023) (Lagoa, J., concurring).

14 *Id*. at 1282 (emphasis added).

15 *See*, *e.g.*, *Haynes v. United States*, 119 A.F.T.R.2d (RIA) 2202 (W.D. Tex. 2017), *vacated and remanded*, 760 F. App'x 324 (5th Cir. 2019); *Intress v. United States*, 404 F. Supp. 3d 1174 (M.D. Tenn. 2019); *Oosterwijk v. United States*, 129 A.F.T.R.2d (RIA) 512 (D. Md. Jan. 27, 2022).

16 *Haynes*, 119 A.F.T.R.2d (RIA) 2202 (W.D. Tex. 2017).

17 On appeal, the U.S. Court of Appeals for the Fifth Circuit vacated and remanded the district court's decision on different grounds and did not take a position on the *Boyle* issue. *Haynes v. United States*, 760 F. App'x 324 (5th Cir. 2019). *See also* Keith Fogg, *Reliance on Preparer Does Not Excuse Late E-Filing of Return*, Procedurally Taxing (Sept. 4, 2019), https://www.taxnotes.com/procedurally-taxing/reliance-preparer-does-not-excuse-late-e-filing-return/2019/09/04/7h5vr.

holding in the context of e-filed returns, notwithstanding the significant differences between paper filing and electronic filing.

While the bright-line rule embodied in *Boyle* is convenient for the IRS to administer, the nearly automatic assessment of the failure-to-file penalty for e-filed returns deemed late (often where the return was submitted timely by the taxpayer or preparer but rejected by the IRS before processing) is grossly unfair and undermines the congressional policy that e-filing be encouraged. The American College of Tax Counsel shares this view and submitted a compelling *amicus curiae* brief in the appeal of the *Haynes* decision.[18]

RECOMMENDATION

- Amend IRC § 6651 to specify that reasonable cause relief may be available to taxpayers that use return preparers to submit their returns electronically and direct the Secretary to issue regulations specifying what constitutes ordinary business care and prudence for e-filed returns.

18 *See* Brief of American College of Tax Counsel (Nov. 27, 2017), https://www.actconline.org/wp-content/uploads/2018/02/ACTC_Amicus_Brief_Haynes.pdf.

Legislative Recommendation #32

Authorize a Penalty for Tax Return Preparers Who Engage in Fraud or Misconduct by Altering a Taxpayer's Tax Return

SUMMARY

- *Problem:* When a corrupt tax return preparer steals from a client or from the public fisc, the government's enforcement options are limited. The Department of Justice (DOJ) may bring criminal charges, but it lacks the resources to do so except in cases of widespread, high-dollar schemes. The alternative is civil penalties, but the law currently does not authorize meaningful ones.
- *Solution:* Authorize the IRS to impose larger civil penalties in a wider range of cases.

PRESENT LAW

IRC § 6694(b) authorizes the IRS to impose a penalty when a tax return preparer has understated a taxpayer's liability on a return or a claim for refund and the understatement is due to willful or reckless conduct.[1]

IRC § 6695(f) imposes a $500 penalty (adjusted for inflation) on a preparer who negotiates (*e.g.*, endorses) a taxpayer's refund check.[2]

REASONS FOR CHANGE

TAS has handled hundreds of cases involving return preparer fraud or misconduct. In the most common scenario, a taxpayer visits a preparer to get a tax return prepared, the preparer completes the return while the taxpayer is present, and the preparer alters the return after the taxpayer leaves before submitting it to the IRS. In some cases, the items of income, deduction, and credit are accurate, but the preparer alters the direct deposit routing information so the entire refund is directed to the preparer's account instead of the taxpayer's. In other cases, the preparer increases the refund amount by altering items of income, deduction, or credit and then elects a split refund, so the taxpayer receives the refund amount expected and the additional amount goes to the preparer.[3]

The DOJ has the authority to bring criminal charges against preparers who alter tax returns, but resource constraints generally preclude such charges, except in cases of widespread schemes. In addition, the dollar amount of a refund obtained by a preparer in these cases often will determine whether DOJ pursues an erroneous refund suit under IRC § 7405, also due to resource constraints.[4] Therefore, it is important that the IRS have the authority to impose sizeable civil penalties against preparers who alter tax returns without the knowledge or consent of the taxpayers who hired them.

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1 The penalty amount is per return or claim for refund and equal to the greater of $5,000 or 75% of the income derived (or to be derived) by the tax return preparer with respect to the return or claim. IRC § 6694(b)(1).

2 The penalty is assessed on a per-check basis and adjusted annually for inflation, as provided by IRC § 6695(h).

3 Taxpayers can split their refunds among up to three accounts at a bank or other financial institution. IRS, Form 8888, Allocation of Refund (Oct. 2024), https://www.irs.gov/pub/irs-pdf/f8888.pdf. The instructions to Form 8888 advise taxpayers not to deposit their refunds into their tax return preparer's account.

4 *See* Internal Revenue Manual (IRM) 21.4.5.15(6), Collection Methods for Category D Erroneous Refunds (Oct. 1, 2007), https://www.irs.gov/irm/part21/irm_21-004-005r ("The erroneous refund suit is limited to amounts that exceed the litigating threshold established by the Department of Justice.").

Under current law, the IRS has very limited authority to impose civil penalties in instances of preparer fraud or misconduct. The IRC § 6694 penalty generally will not apply to either of the scenarios described above for the following reasons:

- When a preparer has altered only the direct deposit information on the return and has not changed the tax liability, there is no understatement of tax.
- When a preparer has altered items of income, deduction, or credit to increase a taxpayer's refund after the taxpayer has reviewed and approved the return for filing, the IRS Office of Chief Counsel has concluded that the resulting document is not a valid tax return.[5]

In addition, it is unclear whether the IRC § 6695(f) penalty applies. Treasury regulations have interpreted the IRC § 6695(f) penalty as applicable to a preparer who negotiates "a check (including an electronic version of a check)."[6] Although the IRS's internal procedures currently treat direct deposits as subject to the IRC § 6695(f) penalty, the tax code and regulations do not make clear whether a direct deposit is legally identical to an electronic version of a check.[7] Even if the penalty is applicable, the penalty amount for calendar year 2025 of $650 is small in relation to the size of refunds that some preparers misappropriate and therefore is unlikely to serve as a deterrent.[8]

The National Taxpayer Advocate recommends the IRS be given the authority to assess and collect civil penalties against tax return preparers who engage in fraud or misconduct by altering the return of a taxpayer for personal financial gain.

RECOMMENDATIONS

- Amend IRC § 6694(b) so the penalty the IRS may assess against a tax return preparer for understating a taxpayer's liability is broadened beyond tax returns and claims for refund by adding the words "and other submissions purporting to be returns."[9]
- Amend IRC § 6695 to (i) explicitly cover a preparer who misappropriates a taxpayer's refund by changing the direct deposit information and (ii) increase the dollar amount of the penalty to deter preparers from engaging in this type of fraud or misconduct. To make the public fisc whole, the penalty should be equal to 100% of the amount a preparer has improperly converted to his own use by altering a taxpayer's return or direct deposit information.[10]

5 IRS, Program Manager Technical Advice (PMTA) 2011-20, Tax Return Preparer's Alteration of a Return (June 27, 2011), https://www.irs.gov/pub/lanoa/pmta_2011-20.pdf; PMTA 2011-13, Horse's Tax Service (May 12, 2003), https://www.irs.gov/pub/lanoa/pmta-2011-013.pdf.

6 Treas. Reg. § 1.6695-1(f)(1).

7 *See* IRM 20.1.6.5.6, Negotiation of Check – IRC 6695(f) (Oct. 13, 2021), https://www.irs.gov/irm/part20/irm_20-001-006.

8 Rev. Proc. 2024-40, 2024-45 I.R.B. 1100, https://www.irs.gov/pub/irs-drop/rp-24-40.pdf.

9 For legislative language generally consistent with this recommendation, see Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 501 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill.

10 For legislative language generally consistent with this recommendation, see Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 503 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill.

Legislative Recommendation #33

Clarify That Supervisory Approval Is Required Under IRC § 6751(b) Before Proposing Penalties

SUMMARY

- *Problem:* By law, some penalties require supervisory approval. Due to an apparent drafting error, the statute leaves the timing of the required approval unclear. This ambiguity has generated conflicting decisions among the courts, creating confusion for taxpayers and the IRS alike and undermining the purpose of the supervisory approval requirement.
- *Solution:* Clarify that supervisory approval is required before a proposed penalty is communicated in written form to a taxpayer.

PRESENT LAW

IRC § 6751(b)(1) provides: "No penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher-level official as the Secretary may designate."

IRC § 6751(b)(2) carves out two categories of exceptions from this supervisory approval requirement:

- The additions to tax for failure to file a tax return or pay the tax due (IRC § 6651), the additions to tax for failure to pay estimated tax (IRC §§ 6654 and 6655), and the penalty for the overstatement or disallowance of certain charitable contribution deductions (IRC § 6662(b)(9) and (10)), and
- Any other penalty that is "automatically calculated through electronic means."[1]

REASONS FOR CHANGE[2]

IRC § 6751(b) protects the taxpayer *right to a fair and just tax system.*[3] The procedure prescribed in IRC § 6751(b) ensures that penalties are only imposed in appropriate circumstances and are not used as a "bargaining chip" to pressure taxpayers into settlement.[4] However, the statutory phrase "initial determination of [an] assessment" is unclear. A "determination" is made based on the IRS's investigation of the taxpayer's liability and an application of the penalty statutes. An "assessment" is merely the entry of a decision on IRS records. Therefore, while a penalty can be determined and a penalty can be assessed, the IRS cannot "determine" an "assessment."[5] Due to this apparent drafting error and consequent ambiguity in the statute, an increasing number of courts have had to grapple with the question of when written supervisory approval

1 Generally, a penalty is considered automatically calculated through electronic means if the penalty is proposed by an IRS computer program without human involvement. *See*, *e.g.*, *Walquist v. Comm'r*, 152 T.C. 61 (2019).

2 *See also* Erin M. Collins, Treasury FY 2025 Green Book Proposes to Essentially Eliminate Written Supervisory Approval for Penalties, National Taxpayer Advocate Blog (last updated May 3, 2024), https://www.taxpayeradvocate.irs.gov/news/nta-blog/treasury-fy-2025-green-book-proposes-to-essentially-eliminate-written-supervisory-approval-for-penalties/2024/05.

3 *See* Taxpayer Bill of Rights (TBOR), https://www.taxpayeradvocate.irs.gov/taxpayer-rights (last visited Sept. 19, 2025). The rights contained in the TBOR are also codified in IRC § 7803(a)(3).

4 *See* S. Rep. No. 105-174, at 65 (1998).

5 *See Chai v. Comm'r*, 851 F.3d 190, 218-19 (2d Cir. 2017); *Graev v. Comm'r*, 147 T.C. 460 (2016) (Gustafson, J., dissenting).

must be provided.[6] In recent years, courts have come to conflicting conclusions about when the supervisory approval must occur:

- In 2016, the U.S. Tax Court (Tax Court) held in *Graev v. Commissioner* (which was later vacated) that supervisory approval for penalties subject to deficiency procedures could take place at any point before the assessment was made.[7]
- In 2017, the U.S. Court of Appeals for the Second Circuit held in *Chai v. Commissioner* that supervisory approval was required for penalties subject to deficiency procedures no later than the date on which the IRS issued the notice of deficiency or, if the penalty was asserted through an answer or amended answer, the date of that filing.[8]
- In 2019, the Tax Court held in *Clay v. Commissioner* that supervisory approval for penalties subject to deficiency procedures was required prior to sending the taxpayer a formal communication that included the right to go to the IRS Independent Office of Appeals.[9]
- In 2020, the Tax Court followed *Clay* and held in *Laidlaw's Harley Davidson Sales, Inc. v. Commissioner* that the same timing rule applied to assessable penalties. However, the U.S. Court of Appeals for the Ninth Circuit overruled the Tax Court decision in 2022.[10] The Ninth Circuit held that approval must be obtained before assessment of the penalty or, if earlier, before the relevant supervisor loses discretion to approve the penalty assessment.
- In 2025, the U.S. Court of Appeals for the Fifth Circuit affirmed a Tax Court decision in *Swift v. Commissioner* that denied deductions for premiums paid into a captive insurance arrangement and upheld a 20% accuracy-related penalty.[11] The Fifth Circuit agreed with the Ninth Circuit's holding in *Laidlaw's* that IRC "§ 6751(b)(1) requires written supervisory approval before the assessment of the penalty or, if earlier, before the relevant supervisor loses discretion whether to approve the penalty assessment."[12]

In *Belair Woods, LLC v. Commissioner*, the Tax Court found the IRS did not have to obtain supervisory approval before sending the taxpayer a Letter 1807, TEFRA Partnership Cover Letter for Summary Report, which invited the taxpayer to a closing conference to discuss proposed adjustments.[13] Instead, the court found that Letter 1807 only advised the taxpayer of the possibility that penalties could be proposed, and the pivotal moment requiring supervisory approval was when the IRS sent the 60-day letter formally communicating its definite decision to assert the penalties.

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6 *See* National Taxpayer Advocate 2020 Annual Report to Congress 194 (Most Litigated Issue: *Accuracy-Related Penalty Under IRC § 6662(b)(1) and (b)(2)*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_MLI_03_Accuracy.pdf; National Taxpayer Advocate 2019 Annual Report to Congress 149 (Most Litigated Issue: *Accuracy-Related Penalty Under IRC § 6662(b)(1) and (2)*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC19_Volume1_MLI_03_Accuracy.pdf; National Taxpayer Advocate 2018 Annual Report to Congress 447 (Most Litigated Issue: *Accuracy-Related Penalty Under IRC § 6662(b)(1) and (2)*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/07/ARC18_Volume1_MLI_01_AccuracyRelatedPenalty.pdf.

7 147 T.C. at 460, *superseded by, in part, modified by, in part,* 149 T.C. 485 (2017).

8 851 F.3d 190 (2d Cir. 2017). In *Minemyer v. Comm'r*, 131 A.F.T.R.2d 2023-364 (10th Cir. 2023), the Tenth Circuit agreed with *Chai* that supervisory approval for a civil fraud penalty must be obtained by the date of the notice of deficiency.

9 152 T.C. 223 (2019), *aff'd on other grounds*, 990 F.3d 1296 (11th Cir. 2021).

10 *Laidlaw's Harley Davidson Sales, Inc. v. Comm'r*, 29 F.4th 1066 (9th Cir. 2022), *rev'g* 154 T.C. 68 (2020). *See also Kroner v. Comm'r*, 48 F.4th 1272 (11th Cir. 2022), *rev'g* T.C. Memo. 2020-73, in which the Eleventh Circuit agreed with the Ninth Circuit's *Laidlaw's* decision. In *Carter v. Comm'r*, 130 A.F.T.R.2d 2022-5978 (11th Cir. 2022), *rev'g* T.C. Memo. 2020-21, the Eleventh Circuit followed its decision in *Kroner*.

11 *Swift v. Comm'r,* 144 F.4th 756 (5th Cir. 2025), *aff'g* T.C. Memo. 2024-13.

12 *Swift v. Comm'r,* 144 F.4th 756 (5th Cir. 2025) (quoting *Laidlaw's Harley Davidson Sales, Inc. v. Comm'r*, 29 F.4th at 1074).

13 154 T.C. 1 (2020).

In September 2020, the IRS issued interim guidance that instructs employees to obtain written supervisory approval before sending a written communication that offers the taxpayer an opportunity to sign an agreement or consent to assessment or proposal of a penalty.[14] The interim guidance specifies that prior to obtaining written supervisory approval, employees can share written communications with the taxpayer that reflect proposed adjustments as long as they do not offer the opportunity to sign an agreement or consent to assessment or proposal of the penalty.

In 2024, the Treasury Department issued final regulations under IRC § 6751, effective for penalties assessed on or after December 23, 2024.[15] For pre-assessment penalties subject to Tax Court review, the regulations allow supervisory approval to be obtained any time before issuance of the statutory notice of deficiency. For penalties raised in Tax Court after a petition is filed, the regulations allow supervisory approval to be obtained any time before the Commissioner requests the court determine the penalty. Penalties not subject to pre-assessment Tax Court review may be approved up until the time of the assessment.

Thus, the regulations establish a broad window and allow the requisite supervisory approval to occur late in the process. In this way, the regulations bring relative certainty to this area, but they do so by seriously eroding the taxpayer protections provided by IRC § 6751 and in opposition to the views expressed by a range of stakeholders and commentators, including the National Taxpayer Advocate.[16]

Both *Belair Woods* and the Treasury Department's position leave open the possibility that IRS employees could use penalties as a bargaining chip – precisely what Congress sought to prevent by enacting IRC § 6751(b). Under *Belair Woods*, IRS employees can propose penalties to induce a resolution without first obtaining written supervisory approval, so long as the communication is deemed a proposal and not a definite decision. This approach undermines the statutory intent because, as explained in the dissent in *Belair Woods*, "[e]very communication from the Commissioner proposing a deficiency and a related penalty – whether it is a preliminary report, a 30- or 60-day letter, or a notice of deficiency – sets forth proposed adjustments, which do not become final until a decision is entered, or an assessment is properly recorded."[17]

In addition to the timing issue, the statutory language of IRC § 6751(b)(1) is problematic because of its focus on "assessment" and its apparent inapplicability to refund suits. In *Wells Fargo & Company v. Commissioner*, a refund suit, the IRS asserted an accuracy-related penalty to offset any refund the court might award to the taxpayer. The U.S. Court of Appeals for the Eighth Circuit concluded that supervisory approval of the penalty was not required.[18] Because the penalty could have led only to a reduced refund and not to a balance to be assessed, the court found there could be no "assessment" and thus there could be no requirement for supervisory approval.

14 Interim Guidance Memorandum (IGM) SBSE-04-0920-0054, Timing of Supervisory Approval of Penalties Subject to IRC 6751(b) (Sept. 24, 2020), *reissued by* IGM SBSE-04-0922-0075, Reissue Interim Guidance (IG) for Timing of Supervisory Approval of Penalties Subject to IRC 6751(b) (Sept. 28, 2022), *reissued by* IGM SBSE-04-1223-0062, Interim Guidance (IG) for Timing of Supervisory Approval of Penalties Subject to IRC 6751(b) (Dec. 15, 2023), *reissued by* IGM SBSE-04-1024-0053, Temporary Interim Guidance for Timing of Supervisory Approval of Penalties Subject to IRC 6751(b) (Oct. 22, 2024). This was incorporated into Internal Revenue Manual (IRM) 4.10.6.6.4.1, Timing of Supervisory Approval (Aug. 25, 2025), and IRM 4.10.6.6.4.2, Written Supervisory Approval of Penalties Under IRC 6751(b) (Aug. 25, 2025), https://www.irs.gov/irm/part4/irm_04-010-006.

15 Treas. Reg. § 301.6751(b)-1, 89 Fed. Reg. 104419 (Dec. 23, 2024), https://www.federalregister.gov/documents/2024/12/23/2024-29074/rules-for-supervisory-approval-of-penalties.

16 For a more detailed discussion of the problems arising under the IRS's interpretation of IRC § 6751, see Erin M. Collins, Reconsidering the IRS's Approach to Supervisory Review, National Taxpayer Advocate Blog (last updated Feb. 9, 2024), https://www.taxpayeradvocate.irs.gov/news/nta-blog-reconsidering-the-irs-approach-to-supervisory-review. Stakeholder comments regarding the proposed regulations can be viewed at IRS, Notice of Proposed Rulemaking, Notice of Hearing, Rules for Supervisory Approval of Penalties: Hearing, IRS-002023-0016, 88 Fed. Reg. 49,397 (July 31, 2023), https://www.regulations.gov/document/IRS-2023-0016-0010/comment.

17 *Belair Woods, LLC v. Comm'r*, 154 T.C. 1, 11 (Jan. 6, 2020) (Marvel, J., dissenting).

18 957 F.3d 840 (8th Cir. 2020), *aff'g* 260 F. Supp. 3d 1140 (D. Minn. 2017).

In practice, more than 98% of penalties imposed by the IRS are excluded from the supervisory approval requirement through one of the exceptions in IRC § 6751(b)(1).[19] But where written supervisory approval is required, the National Taxpayer Advocate believes it should be required early enough in the process to ensure it is meaningful and is not merely an after-the-fact rubber stamp applied in the cases in which a taxpayer challenges a proposed penalty.

RECOMMENDATION

- Amend IRC § 6751(b)(1) to clarify that no penalty under Title 26 shall be assessed or entered in a final judicial decision unless the penalty is personally approved (in writing) by the immediate supervisor of the individual making such determination, or such higher-level official as the Secretary may designate, prior to the first time the IRS sends a written communication to the taxpayer proposing the penalty as an adjustment.[20]

19 In fiscal year 2024, the IRS imposed 43.5 million penalties on individuals, estates, and trusts in connection with income tax liabilities. The following penalties, generally imposed by electronic means, accounted for over 98% of the total: failure-to-pay (22.4 million), failure-to-pay estimated tax (15.3 million), failure-to-file (3.4 million), and bad checks (1.7 million). IRS, Pub. 55-B, 2024 IRS Data Book, Table 28, Civil Penalties Assessed and Abated, by Type of Tax and Type of Penalty, Fiscal Year 2024, at 62 (2025), https://www.irs.gov/pub/irs-pdf/p55b.pdf.

20 For legislative language generally consistent with this recommendation, see Fair and Accountable IRS Reviews Act, H.R. 5346, 119th Cong. (2025) (approved by the House on a voice vote); Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 113 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill. These bills differ somewhat in approach but aim to achieve the same objective.

Legislative Recommendation #34

Require an Employee to Determine and a Supervisor to Approve All Negligence Penalties Under IRC § 6662(b)(1)

SUMMARY

- *Problem:* The tax code generally requires supervisory approval before the IRS may assess a penalty, but it provides an exception for penalties that may be automatically calculated and do not require employee judgment. The IRS takes the position that the negligence penalty can sometimes be automatically calculated and applied. However, whether a taxpayer acted with "negligence" requires an assessment of the taxpayer's conduct and state of mind, which a computer cannot make. As a result, the IRS is sometimes imposing the negligence penalty in cases where the taxpayer was not negligent.
- *Solution:* Do not allow the IRS to impose the negligence penalty by automation, absent employee review and supervisory approval.

PRESENT LAW

IRC § 6662(b)(1) imposes a penalty equal to 20% of any underpayment of tax required to be shown on a tax return that is attributable to negligence or disregard of rules or regulations. IRC § 6662(c) defines negligence to include "any failure to make a reasonable attempt to comply with the provisions of this title" and disregard to include "any careless, reckless, or intentional disregard."

IRC § 6751(b)(1) provides: "No penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate."[1] IRC § 6751(b)(2) carves out two categories of exceptions from this supervisory approval requirement:

- The additions to tax for failure to file a tax return or pay the tax due (IRC § 6651), the additions to tax for failure to pay sufficient estimated tax (IRC §§ 6654 and 6655), and the penalty for the overstatement or disallowance of certain charitable contribution deductions (IRC § 6662(b)(9) and (10)); and
- Any other penalty that is "automatically calculated through electronic means."[2]

REASONS FOR CHANGE

IRC § 6751 states that the initial determination of penalties must be personally approved (in writing) by the immediate supervisor of the individual making the initial determination, subject to the exceptions described above. In the significant majority of cases, the IRS imposes penalties by electronic means because it is easier and cheaper to do so.[3] Where the imposition of a penalty is mechanical, such as the penalties for failure to file,

1 The meaning of "initial determination of such assessment" and the timing required for approval have been the subject of litigation. *See*, *e.g.*, *Belair Woods v. Comm'r*, 154 T.C. 1 (2020). For a recommendation to clarify the timing, see *Clarify That Supervisory Approval Is Required Under IRC § 6751(b) Before Proposing Penalties*, *supra*.

2 Generally, a penalty is considered automatically calculated through electronic means if the penalty is proposed by an IRS computer program without human involvement. *See*, *e.g.*, *Walquist v. Comm'r*, 152 T.C. 61 (2019).

3 In fiscal year 2024, the IRS imposed 43.5 million penalties on individuals, estates, and trusts in connection with income tax liabilities. The following penalties, generally imposed by electronic means, accounted for over 98% of the total: failure-to-pay (22.4 million), failure-to-pay estimated tax (15.3 million), failure-to-file (3.4 million), and bad checks (1.7 million). IRS, Pub. 55-B, 2024 IRS Data Book, Table 28, Civil Penalties Assessed and Abated, by Type of Tax and Type of Penalty, Fiscal Year 2024, at 62 (2025), https://www.irs.gov/pub/irs-pdf/p55b.pdf.

failure to pay, or failure to pay estimated tax, that approach is justifiable, and these penalties accounted for more than 98% of all penalties assessed by the IRS in fiscal year 2024.[4]

However, imposition of a penalty for "negligence or disregard of rules or regulations" is different. To determine whether a taxpayer made a reasonable attempt to comply with the law, an employee must analyze the taxpayer's state of mind, the actions the taxpayer took to comply, and the taxpayer's motivations for taking those actions. The National Taxpayer Advocate believes a computer cannot accurately perform this analysis.

The IRS takes a different view. Treas. Reg. § 1.6662-3(b)(1)(i) states that negligence is strongly indicated when a taxpayer omits income reported on an information return from his or her income tax return. In reliance on this regulation, the IRS has programmed its computers to calculate certain negligence penalties automatically as part of its Automated Underreporter (AUR) program. For example, the AUR system proposes the negligence penalty where IRS data suggests the taxpayer failed to report income reflected on a third-party information return for a second tax year in a row.[5]

Legal advice from the Office of Chief Counsel goes further, concluding that "in the absence of any other evidence suggesting the failure was not negligent, it is appropriate to propose and subsequently assess an accuracy-related penalty for negligence when a taxpayer does not include on an income tax return an amount of income shown on an information return."[6]

However, the AUR system in this scenario solely checks for the presence of information returns and unreported income. It cannot determine there is no other evidence that would rebut the negligence finding, such as whether the information return was mailed to a different address than the one used by the taxpayer when filing the return or whether the information return contained an error. Before the IRS can reasonably conclude that a taxpayer acted negligently, an employee must review the case to consider facts and circumstances that may suggest the taxpayer did not act negligently.

The AUR program and regulations require supervisory approval for the negligence penalty if the taxpayer submits a response to the notice issued through the AUR program.[7] However, there are many reasons a taxpayer may not respond. A taxpayer may have moved and not received the notice. A taxpayer may have put the notice aside and not replied before the response deadline. Or a taxpayer may have accepted the proposed tax adjustment without realizing that he or she must respond to avoid the penalty assessment.

In these and other circumstances, taxpayers may face a penalty for negligence without any analysis into their reasonable attempts to comply with the tax laws. Allowing a computer to determine negligence without employee involvement harms taxpayers and undermines the protections afforded by IRC § 6751(b). The Treasury Department has made a legislative proposal that would perpetuate this harm by definitively removing all IRC § 6662 penalties, including negligence penalties, from the supervisory review and approval requirement.[8]

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4 In fiscal year 2024, the IRS imposed 43.5 million penalties on individuals, estates, and trusts in connection with income tax liabilities. The following penalties, generally imposed by electronic means, accounted for over 98% of the total: failure-to-pay (22.4 million), failure-to-pay estimated tax (15.3 million), failure-to-file (3.4 million), and bad checks (1.7 million). IRS, Pub. 55-B, 2024 IRS Data Book, Table 28, Civil Penalties Assessed and Abated, by Type of Tax and Type of Penalty, Fiscal Year 2024, at 62 (2025), https://www.irs.gov/pub/irs-pdf/p55b.pdf.

5 Internal Revenue Manual (IRM) 4.19.3.22.1.4(3), Accuracy-Related Penalties (Nov. 29, 2023), https://www.irs.gov/irm/part4/irm_04-019-003r.

6 IRS, Program Manager Technical Advice 2008-01249, Accuracy Related Penalties and the Automated Underreporter Program (Oct. 22, 2007), https://www.irs.gov/pub/lanoa/pmta01249_7337.pdf.

7 IRM 4.19.3.22.1.4(4), Accuracy-Related Penalties (Nov. 29, 2023), https://www.irs.gov/irm/part4/irm_04-019-003r; Treas. Reg. § 301.6751(b)-1(a)(3)(vi).

8 U.S. Dep't. of the Treasury, *General Explanations of the Administration's Fiscal Year 2025 Revenue Proposals* 175 (Mar. 11, 2024), https://home.treasury.gov/system/files/131/General-Explanations-FY2025.pdf.

RECOMMENDATION

- Amend IRC § 6751(b)(2)(B) to clarify that the exception for "other penalties automatically calculated through electronic means" does not apply to the penalty for negligence or disregard of rules or regulations under IRC § 6662(b)(1).

Legislative Recommendation #35

Increase the Burden of Proof for Determining That a Failure to File a Report of Foreign Bank and Financial Accounts Was "Willful" and Reduce the Maximum Penalty Amount

SUMMARY

- *Problem:* Penalties for failure to disclose foreign assets on a Report of Foreign Bank and Financial Accounts (FBAR) are steep and become even steeper when the IRS determines a taxpayer's failure was "willful." The IRS is sometimes aggressive in asserting that a taxpayer's failure to file is willful, which can lead to draconian penalties for good-faith mistakes.
- *Solution:* Increase the burden of proof on the IRS for declaring a failure "willful" and reduce the maximum penalty for willful violations involving small accounts.

PRESENT LAW

The Bank Secrecy Act requires U.S. citizens, residents, and entities to report foreign accounts to the Treasury Department's Financial Criminal Enforcement Network (FinCEN) when the combined value of those accounts exceeds $10,000 at any time during the calendar year.[1] They must do so on FinCEN Form 114, Report of Foreign Bank and Financial Accounts.

31 U.S.C. § 5321(a)(5) imposes civil penalties for failing to report foreign accounts. The penalty amount depends on whether the failure was non-willful or willful. For a non-willful violation, the maximum civil penalty is $10,000 (adjusted for inflation), subject to a reasonable cause exception.[2] Under 31 U.S.C. § 5321(a)(5)(C)(i), the maximum civil penalty for a willful violation is the greater of $100,000 (adjusted for inflation) or 50% of the account balance at the time of the violation. For violations occurring over multiple years, the IRS has adopted a policy, set forth in the Internal Revenue Manual (IRM), that limits the total amount of penalties to 50% of the highest aggregate balance of all unreported foreign accounts for all years under examination, which can be increased to 100% for willful violations.[3]

REASONS FOR CHANGE

The maximum FBAR penalty is among the harshest civil penalties the government may impose.

FBAR penalties are so steep there is debate about whether they violate the prohibition against excessive fines in the Eighth Amendment to the U.S. Constitution.[4] In 2025, the U.S. Court of Appeals for the Eleventh Circuit held that the Eighth Amendment's prohibition against excessive fines applies to FBAR penalties and partially reduced the taxpayer's penalty after finding it was grossly disproportionate to the offense of failing to

1 31 U.S.C. § 5314; 31 C.F.R. § 1010.350.

2 31 U.S.C. § 5321(a)(5)(B)(i); *see also Bittner v. United States*, 598 U.S. 85 (2023) (holding that the $10,000 cap applies on a per-FBAR report, not per-account, basis).

3 IRM 4.26.16.5.4.1(4), Penalty for Non-willful Violations – Calculation (Aug. 26, 2025), https://www.irs.gov/irm/part4/irm_04-026-016; IRM 4.26.16.5.5.3(7), Penalty for Willful FBAR Violations – Calculation (June 24, 2021), https://www.irs.gov/irm/part4/irm_04-026-016.

4 *See, e.g.*, Matthew A. Melone, *Penalties for the Failure to Report Foreign Financial Accounts and the Excessive Fines Clause of the Eighth Amendment*, 22 Geo. Mason L. Rev. 337 (2015).

disclose the foreign account.[5] This decision creates a split among the circuits, as the U.S. Court of Appeals for the First Circuit held in 2022 that the Eighth Amendment does not apply to FBAR penalties.[6]

An example illustrates the potential severity of the FBAR penalties, particularly for smaller accounts. Assume an account holder maintains a balance of $25,000 in a foreign account that they willfully fail to report. The IRS may, under the statute, impose a penalty of over $100,000 per year (the exact amount depends on the year since the $100,000 is adjusted for inflation) and may go back six years, producing an aggregate statutory maximum penalty of over $600,000. The IRS should not impose such a severe penalty under the IRM; the IRM is simply a set of instructions to help IRS employees do their jobs. It is not legally binding and can be changed at any time.

In this example, the penalty may exceed the account balance because the statute provides that the maximum penalty is the *greater of* $100,000 (adjusted for inflation) or 50% of the account balance. The $100,000 cap only applies to accounts with balances below $200,000 like the one in the example. For higher balance accounts, the maximum statutory penalty is limited to 50% of the account balance.[7] The National Taxpayer Advocate recommends Congress address this disparity by removing the $100,000 cap, thereby limiting the maximum statutory penalty for a willful FBAR violation in all cases to 50% of the account balance.

While the distinction between willful and non-willful violations makes sense in concept, its application can lead to unduly harsh results. If the IRS chooses to assert a violation was willful, it is very difficult for a taxpayer to prevail. One reason is because Form 1040, U.S. Individual Income Tax Return, includes Schedule B, which is titled "Interest and Ordinary Dividends" and is used by taxpayers to report such income. Schedule B contains a question at the bottom that asks whether the taxpayer has a foreign account and whether the taxpayer is required to file FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR). The IRS has argued, and some courts have agreed, that since taxpayers are presumed to know the contents of their return when they sign it under penalty of perjury, a failure to file an FBAR form is willful where a taxpayer filed a tax return that includes Schedule B (because it mentions the FBAR filing requirement).[8] Further making it difficult for taxpayers to prevail is that courts generally have allowed the government to prove willfulness in FBAR cases by a "preponderance of the evidence," rather than requiring the government to meet the higher standard of "clear and convincing" evidence, which is typically the standard in tax fraud cases.[9]

These practices are unfair to taxpayers. Tax forms and instructions contain a lot of verbiage, and few if any taxpayers have a complete understanding of all lines, questions, and instructions on a return or schedule – or even read them all. Most taxpayers rely on tax professionals to prepare their returns and may never see the language. Additionally, it is common for individuals who have lived in foreign countries or have immigrated

5 *United States v. Schwarzbaum*, 127 F.4th 259 (11th Cir. 2025), *aff'g in part, rev'g in part, and remanding* the case.

6 *United States v. Toth*, 33 F.4th 1, 15-19 (1st Cir. 2022), *cert. denied*, 143 S.Ct. 552 (2023). Justice Gorsuch dissented from the denial of certiorari. He wrote:

> This decision is difficult to reconcile with our precedents. . . . The government did not calculate [the FBAR] penalty with reference to any losses or expenses it had incurred. The government imposed its penalty to punish [the appellant] and, in that way, deter others. Even supposing, however, that [the appellant's] penalty bore both punitive and compensatory purposes, it would still merit constitutional review. Under our cases a fine that serves even "*in part* to punish" is subject to analysis under the Excessive Fines Clause.

Id. at 553.

7 A 50% penalty on an account with a balance over $200,000 would always exceed the $100,000 cap of 31 U.S.C. § 5321(a)(5)(C) (i). However, as the $100,000 cap is adjusted for inflation, the total account balance subject to the cap would also increase.

8 Not all courts have accepted the IRS's argument. For two recent examples discussing key cases in this area, see *United States v. Saydam*, 134 A.F.T.R.2d 2024-5086 (N.D. Cal. July 12, 2024) and *United States v. Niksich*, No. 1:22-CV-02411-SCJ2024, WL 3915240 (N.D. Ga. July 8, 2024).

9 *See, e.g.*, *United States v. Vettel*, 729 F. Supp. 3d 904, (D. Neb. 2024); *United States v. Reyes*, 133 A.F.T.R.2d 2024-468 (E.D.N.Y. 2024); *United States v. Garrity*, 304 F. Supp. 3d 267 (D. Conn. 2018); *United States v. Bohanec*, 263 F. Supp. 3d 881 (C.D. Cal. 2016); *United States v. McBride*, 908 F. Supp. 2d 1186 (D. Utah 2012).

to the United States to maintain foreign bank accounts, and they may overlook the reporting requirement for benign reasons.

Account holders who do not file FBAR forms due to negligence, inadvertence, or similar causes are appropriately subject to penalties for non-willful violations, which have a reasonable cause exception. But they should not face uncertainty regarding possible application of the harsh penalties for willful violations. The National Taxpayer Advocate recommends Congress clarify that the IRS must prove a violation was willful without relying on the Schedule B or its instructions and must do so by clear and convincing evidence.

RECOMMENDATIONS

- Clarify that the government bears the burden to establish willfulness by clear and convincing evidence in civil willful FBAR penalty suits and that the government cannot meet this burden by relying on the Schedule B attached to a return.
- Remove subsection (I) in 31 U.S.C. § 5321(a)(5)(C)(i) so that the maximum statutory civil penalty for a willful FBAR violation is 50% of the account balance.

STRENGTHEN TAXPAYER RIGHTS BEFORE THE OFFICE OF APPEALS

Legislative Recommendation #36

Require Taxpayers' Consent Before Allowing IRS Counsel or Compliance Personnel to Participate in Appeals Conferences

SUMMARY

- *Problem:* The IRS Independent Office of Appeals (Appeals) has adopted a policy, particularly in high-dollar cases, authorizing the inclusion of IRS Chief Counsel and Compliance personnel in taxpayer conferences, even if the taxpayer objects to their participation. This policy undermines both taxpayer confidence in the independence of Appeals and Congress's objective when it codified Appeals' independence as part of the Taxpayer First Act of 2019.
- *Solution:* Require Appeals to obtain taxpayer consent before inviting Counsel or Compliance personnel to attend a taxpayer conference.

PRESENT LAW

As part of the Taxpayer First Act of 2019, Congress codified the IRS's longstanding Appeals function as the "Internal Revenue Service Independent Office of Appeals."[1] The intent was to "reassure taxpayers of the independence" of Appeals.[2] But present law does not directly address the inclusion of personnel from the IRS Office of Chief Counsel (Chief Counsel) or the IRS Compliance functions in conferences held by Appeals.[3]

REASONS FOR CHANGE

When an IRS Compliance function proposes or takes an action against a taxpayer, the taxpayer generally has the right to appeal the decision administratively. The Taxpayer Bill of Rights includes *the right to appeal an IRS decision in an independent forum*, which means, in part, that "[t]axpayers are entitled to a fair and impartial administrative appeal of most IRS decisions, including many penalties, and have the right to receive a written response regarding the Office of Appeals' decision."[4]

Despite this language, taxpayers and their representatives often doubt that Appeals operates independently of Chief Counsel or the Compliance functions.[5] Because Appeals Officers are IRS employees, they generally work in the same buildings as Chief Counsel and Compliance personnel, consider other IRS personnel to be

1 Taxpayer First Act, Pub. L. No. 116-25, § 1001, 133 Stat. 981, 983 (2019) (codified at IRC § 7803(e)).

2 H.R. Rep. No. 116-39, pt. 1, at 29 (2019) (accompanying H.R. 1957, which was enacted into law without change to this provision as H.R. 3151). In 2012, the IRS published Revenue Procedure 2012-18, 2012-10 I.R.B. 455, which, among other things, places parameters around *ex parte* communications between Appeals and other representatives of the IRS, such as Counsel and Compliance. This guidance is premised on a recognition that Appeals must be unbiased and impartial, both in fact and in appearance.

3 IRC § 7803(e)(6)(B) provides the Chief of Appeals with authority to obtain legal assistance and advice from the staff of the IRS Office of Chief Counsel. Legislative language issued as a discussion draft by Senate Finance Committee Chairman Mike Crapo and Ranking Member Ron Wyden would authorize Appeals to hire independent attorneys separate from the Office of Chief Counsel. *See* Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 601 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill.

4 *See* IRS, Taxpayer Bill of Rights (TBOR), https://www.taxpayeradvocate.irs.gov/taxpayer-rights (last visited Dec. 4, 2025). The rights contained in the TBOR are also codified in IRC § 7803(a)(3).

5 Taxpayers and practitioners consistently raise concerns about inclusion of both Chief Counsel and Compliance personnel. The Compliance functions are the entities that are taking action against the taxpayer, so their position is inherently adversarial. Chief Counsel's job generally is to provide a legal justification to support the IRS Compliance function's position as long as the position is legally defensible. Because Appeals Officers sometimes do not have a full understanding of the law, particularly in complex cases, Appeals Officers may give excessive deference to Counsel's input, even though there often are legally defensible arguments on both sides of the case.

colleagues, and often have served in Compliance functions themselves before becoming Appeals Officers. For decades, concerns have been raised about whether Appeals provides a truly independent review as opposed to placing a rubber stamp on IRS Compliance decisions, at least in some cases.

In the Taxpayer First Act of 2019, Congress sought to address these concerns by codifying the Appeals function as the "Internal Revenue Service Independent Office of Appeals."[6] Its stated goal was to "reassure taxpayers of the independence" of Appeals.[7] However, current law does not address whether personnel from Chief Counsel or Compliance may attend Appeals conferences without taxpayer consent.

Historically, Counsel and Compliance provided input into Appeals conferences by way of the case file and, if the case was complex, at a pre-conference with the Appeals team. Chief Counsel and Compliance personnel did not attend the taxpayer conference because Appeals conferences are intended to be negotiation-focused meetings between taxpayers (or their representatives) and Appeals Officers, where the Appeals Officer makes an independent decision about how to resolve a case, taking into account the likelihood of prevailing in court. This structure fosters rapport, encourages constructive settlement dialogue, and reinforces the perception of Appeals as a neutral arbiter.[8]

In October 2016, Appeals revised its Internal Revenue Manual (IRM) provisions to permit Chief Counsel and Compliance personnel to attend conferences, even when taxpayers object.[9] From a taxpayer perspective, Chief Counsel and Compliance participation alters the dynamic of the conference and in some circumstances is the reason the case was not previously resolved. Their participation shifts the tone away from collaborative resolution and toward adversarial argument, which is inconsistent with Appeals' mission to "resolve Federal tax controversies without litigation" in a manner that is impartial and consistent.[10]

Tax compliance depends, in part, on taxpayer confidence in the fairness of the tax system. Requiring taxpayer consent to the participation of Chief Counsel and Compliance personnel in taxpayers' Appeals conferences would strengthen the independence of the appeals process both in reality and, equally important, in perception.

RECOMMENDATION

- Amend IRC § 7803(e) to provide that a taxpayer shall have the right to a conference with the Internal Revenue Service Independent Office of Appeals that does not include personnel from the IRS Office of Chief Counsel or the IRS Compliance functions unless the taxpayer affirmatively consents to the participation of those parties in the conference.[11]

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6 Appeals has existed in one form or another since the IRS formed the Special Advisory Committee in 1927. IRM 8.1.1.1.1, Background (Jan. 9, 2024), https://www.irs.gov/irm/part8/irm_08-001-001.

7 H.R. Rep. No. 116-39, pt. 1, at 29 (2019) (accompanying H.R. 1957, which was enacted into law without change to this provision as H.R. 3151), https://www.congress.gov/committee-report/116th-congress/house-report/39/1:

> To foster confidence in the integrity of the IRS and the independence of its administrative proceedings and to encourage voluntary compliance, the Committee believes it is advisable to codify the role of an independent administrative appeals function within the IRS and provide new guidelines for procedures that the IRS is to follow in the new office. In doing so, the Committee seeks to *reassure taxpayers of the independence of the persons providing the administrative review*. (Emphasis added).

8 For a more detailed discussion of this topic, see National Taxpayer Advocate 2025 Annual Report to Congress, https://www.taxpayeradvocate.irs.gov/AnnualReport2025.

9 IRM 8.6.1.5.4(1), Participation in Conferences by IRS Employees (Oct. 1, 2016), https://www.irs.gov/irm/part8/irm_08-006-001r.

10 IRC § 7803(e)(3); IRM 8.1.1.2(1), Accomplishing the Appeals Mission (Jan. 9, 2024), https://www.irs.gov/irm/part8/irm_08-001-001.

11 For legislative language generally consistent with this recommendation, see Protecting Taxpayers Act, S. 3278, 115th Cong. § 601 (2018). This recommendation is not intended to limit the ability of Appeals to obtain legal assistance and advice from the Office of Chief Counsel, as permitted by IRC § 7803(e)(6)(B), nor to limit Appeals' own attorneys from participating in a settlement conference. *See* Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 601 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill (proposing Appeals be authorized to hire independent attorneys separate from the Office of Chief Counsel).

STRENGTHEN THE OFFICE OF THE TAXPAYER ADVOCATE

Legislative Recommendation #37

Clarify That the National Taxpayer Advocate May Hire Legal Counsel to Enable Her to Advocate More Effectively for Taxpayers

SUMMARY

- *Problem:* In advocating for taxpayer rights and developing an independent position on matters that affect taxpayers both individually and collectively, the National Taxpayer Advocate often requires independent legal advice. Prior to 2015, the IRS permitted the National Taxpayer Advocate to hire her own attorneys. Since that time, the IRS has prohibited her from hiring attorneys, undermining her ability to do her job effectively.
- *Solution:* Authorize the National Taxpayer Advocate to hire attorneys who report directly to her.

PRESENT LAW

Pursuant to 31 U.S.C. § 301(f), the General Counsel of the Department of the Treasury is the chief law officer for the Department. The IRS Chief Counsel is an Assistant General Counsel and the chief law officer for the IRS. With a few exceptions, Treasury Department Order 107-04 provides that all attorneys in the Treasury Department must work in the Legal Division and report to the General Counsel.[1] Treasury's inspectors general and the Office of the Comptroller of the Currency (OCC) are excluded from this requirement based on specific statutory language in 5 U.S.C. § 403(g) and 12 U.S.C. § 482, respectively, and therefore are authorized to hire and supervise their own attorneys.[2] No law specifically authorizes the National Taxpayer Advocate to hire and supervise attorneys. However, IRC § 7803(c) makes clear that the Taxpayer Advocate Service (TAS) is expected to operate independently of the IRS in key respects. A few examples:

- IRC § 7803(c)(2)(A) directs TAS to assist taxpayers in resolving problems with the IRS, to identify areas in which taxpayers have problems in their dealings with the IRS, and to make administrative and legislative recommendations to mitigate such problems.
- IRC § 7803(c)(4)(A) requires each local taxpayer advocate to notify taxpayers that TAS offices "operate independently of any other Internal Revenue Service office and report directly to Congress through the National Taxpayer Advocate."
- IRC § 7803(c)(2)(B)(iii) requires the National Taxpayer Advocate to submit reports to Congress directly, "without any prior review or comment from … the Commissioner, the Secretary of the Treasury, the Oversight Board, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget." This provision is similar to the one that applies to the OCC (12 U.S.C. § 250).

1 Treas. Order 107-04 states: "With the exception of persons employed by the Treasury Inspector General, TIGTA, SIGTARP, SIGPR, or the Chief Counsel of the Office of the Comptroller of the Currency, all attorneys whose duties include providing legal advice to officials in any office or bureau of the Department are part of the Legal Division under the supervision of the General Counsel."

2 5 U.S.C. § 403(g) provides: "Each Inspector General shall, in accordance with applicable laws and regulations governing the civil service, obtain legal advice from a counsel either reporting directly to the Inspector General or another Inspector General." Similarly, 12 U.S.C. § 482 provides: "Notwithstanding any of the provisions of section 481 of this title or section 301(f)(1) of title 31 to the contrary, the Comptroller of the Currency shall, subject to chapter 71 of title 5, fix the compensation and number of, and appoint and direct, all employees of the Office of the Comptroller of the Currency."

When Congress reorganized the IRS in 1998, it recognized that the National Taxpayer Advocate requires independent counsel to advocate for her positions. The version of the IRS Restructuring and Reform Act of 1998 passed by the Senate contained the following authorization: "The National Taxpayer Advocate shall have the responsibility and authority to … appoint a counsel in the Office of the Taxpayer Advocate to report directly to the National Taxpayer Advocate."[3] In explaining this provision, Senator Grassley said: "In order to make the Taxpayer Advocate more independent, which is what this bill does, it logically follows that the Taxpayer Advocate should have its own legal counsel."[4]

This provision was not included in the final bill. However, the conference report stated that the "conferees intend that the National Taxpayer Advocate be able to hire and consult counsel as appropriate."[5]

REASONS FOR CHANGE

Beginning in 2004, with the approval of the Commissioner of Internal Revenue, TAS hired and employed attorney-advisors. The National Taxpayer Advocate requires independent attorney-advisors because she often takes positions, both in working individual cases and in systemic advocacy efforts, that are directly contrary to the position of the IRS and the Office of Chief Counsel.

Once attorneys in the Office of Chief Counsel have adopted a legal position interpreting a law or regulation for purposes of IRS operations, procedures, or litigation, it would be unrealistic to expect those same attorneys to effectively help the National Taxpayer Advocate develop a legal position that challenges their own interpretation or an interpretation adopted by the Chief Counsel organization for which they work. Notably, the Chief Counsel organization requires its attorneys to reconcile disputes internally so that they ultimately all "speak with one voice."[6] Thus, although the National Taxpayer Advocate sometimes receives legal advice from Chief Counsel attorneys, the advice is not independent from the advice they provide to the rest of the IRS. By contrast, TAS's own attorney-advisors have enabled the National Taxpayer Advocate to develop an independent perspective and advocate independently for taxpayers, as the law requires.

In 2015, the IRS for the first time denied a routine TAS request to backfill existing attorney positions due to attrition. It cited Treasury Department General Counsel Directive No. 2, which states: "Except for positions in the Inspectors General offices or within the Office of the Comptroller of the Currency, attorney positions shall not be established outside of the Legal Division" unless the General Counsel or Deputy General Counsel(s) provides a waiver. In 2016, the National Taxpayer Advocate submitted a nine-page memo to the Acting General Counsel requesting permission to continue to hire attorney-advisors. It asked the Acting General Counsel to modify General Counsel Directive No. 2 to add a carve-out for the Office of the Taxpayer Advocate, as it does for the Inspectors General offices. Alternatively, the National Taxpayer Advocate orally requested that a "waiver" be granted, as authorized by the directive. TAS subsequently submitted another hiring request, and it was again denied by the IRS.

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3 H.R. 2676, 105th Cong. § 1102(a) (as passed by the Senate, May 7, 1998).

4 44 Cong. Rec. 8476 (1998). The provision was added to the bill as an amendment sponsored by Senator Grassley on the Senate floor.

5 H.R. Rep. No. 105-599, at 216 (1998) (Conf. Rep.). In 2003, the House passed legislation with nearly identical language. It would have authorized the National Taxpayer Advocate to "appoint a counsel in the Office of the Taxpayer Advocate to report solely to the National Taxpayer Advocate." *See* Taxpayer Protection and IRS Accountability Act of 2003, H.R. 1528, 108th Cong. § 306 (2003) (as passed by the House, June 19, 2003). The legislation was sponsored by then-Cong. Rob Portman, who had previously been the lead House sponsor of the IRS Restructuring and Reform Act of 1998. It would have added this language as a new subsection (III) to IRC § 7803(c)(2)(D)(i). Although the authorization was not enacted into law, it bears mention that the Senate in 1998 and the House in 2003 approved virtually identical provisions of the legislation, suggesting the RRA 98 conference report language cited above had significant congressional support.

6 *See* Chief Counsel Directives Manual (CCDM) 35.4.1.4, Coordination With Other Counsel Offices (Feb. 7, 2013), https://www.irs.gov/irm/part35/irm_35-004-001; CCDM 31.1.4.6, Reconciliation of Disputes (Aug. 11, 2004), https://www.irs.gov/irm/part31/irm_31-001-004.

If the National Taxpayer Advocate is not able to hire attorney-advisors, TAS's ability to advocate for taxpayers both individually and collectively and the National Taxpayer Advocate's ability to produce high-quality reports to Congress will be significantly compromised. The National Taxpayer Advocate believes the conference report language stating that the "conferees intend that the National Taxpayer Advocate be able to hire and consult counsel as appropriate" provides a sufficient legal basis for her to hire attorneys who report to her. The General Counsel has disagreed, maintaining that a statutory change is required.[7]

RECOMMENDATION

- Amend IRC § 7803(c)(2)(D) to expressly authorize the National Taxpayer Advocate to hire legal counsel who report directly to him or her.[8]

7 As an interim measure, the National Taxpayer Advocate has hired attorneys into a non-attorney job series. While the National Taxpayer Advocate is very proud of the staff she has, TAS's inability to hire attorneys into the attorney-advisor job series has significantly limited the pool of qualified candidates who apply, particularly from leading law firms. The job series the IRS has authorized TAS to use is titled "Legal Administrative Specialist." Many skilled attorneys seeking to maximize their future employment prospects in the legal profession want to work in an attorney-designated position and are reluctant to apply for an "administrative specialist" position. Moreover, individuals searching for attorney positions on USAJobs.gov would be unlikely to find a "Legal Administrative Specialist" position.

8 For legislative language generally consistent with this recommendation, see National Taxpayer Advocate Enhancement Act, H.R. 997, 119th Cong. (2025) (approved by the House on a 385-0 vote); National Taxpayer Advocate Enhancement Act, S. 1704, 119th Cong. (2025); Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 401 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill; (similar to the National Taxpayer Advocate Enhancement Act but would also give the National Taxpayer Advocate direct hire authority to recruit and appoint qualified applicants). For more detail, see National Taxpayer Advocate 2016 Annual Report to Congress 37 (Special Focus: *IRS Future State: The National Taxpayer Advocate's Vision for a Taxpayer-Centric 21st Century Tax Administration*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC16_Volume1_SpecialFocus.pdf; National Taxpayer Advocate 2002 Annual Report to Congress 198 (Legislative Recommendation: *The Office of the Taxpayer Advocate*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/arc2002_section_two.pdf.

Legislative Recommendation #38

Clarify the Authority of the National Taxpayer Advocate to Make Personnel Decisions to Protect the Independence of the Office of the Taxpayer Advocate

SUMMARY

- *Problem:* To protect the independence of TAS, the tax code authorizes the National Taxpayer Advocate to take independent personnel actions with respect to employees of TAS's local offices. However, the tax code does not provide this independent authority with respect to TAS's national office employees. TAS's national office employees advocate for systemic changes in IRS practices and policies, often take advocacy positions in conflict with IRS leadership, and therefore require personnel protection to the same extent as TAS's local office employees.
- *Solution:* Clarify that the National Taxpayer Advocate has the authority to take independent personnel actions with respect to all TAS employees.

PRESENT LAW

The IRS Restructuring and Reform Act of 1998 (RRA 98) included provisions to protect TAS's independence from the rest of the IRS. For example, IRC § 7803(c)(4)(A)(iii) requires TAS's local offices to notify taxpayers that they "operate independently of any other Internal Revenue Service office and report directly to Congress through the National Taxpayer Advocate." To reinforce TAS's independence, IRC § 7803(c)(2)(D) authorizes the National Taxpayer Advocate to "appoint" local taxpayer advocates in each state and to "evaluate and take personnel actions (including dismissal) with respect to any employee of any local office."

The National Taxpayer Advocate's authority to make independent personnel decisions is discussed in the legislative history of RRA 98. The conference report states that the National Taxpayer Advocate "has the responsibility to evaluate and take personnel actions (including dismissal) with respect to any local Taxpayer Advocate *or any employee in the Office of the Taxpayer Advocate*."[1] Thus, the conference report and the statute are clearly inconsistent – the conference report states that the statute gives the National Taxpayer Advocate the authority to make independent personnel decisions regarding all TAS employees, but the statute confers that authority only with respect to employees of TAS's local offices.

REASONS FOR CHANGE

IRC § 7803(c)(2)(A) assigns the National Taxpayer Advocate two principal advocacy responsibilities: (i) to advocate for taxpayers in specific cases (case advocacy) and (ii) to advocate for administrative and legislative changes to resolve problems that affect many or all taxpayers (systemic advocacy). While the conference report language indicates Congress intended to give the National Taxpayer Advocate independent personnel authority over all TAS employees engaged in both advocacy functions, the statute as written only covers employees of TAS's local offices, who primarily engage in case advocacy. Thus, the National Taxpayer Advocate currently does not have independent personnel authority over TAS's national office employees, including TAS's senior leadership and TAS's systemic advocacy employees, even though these employees also advocate

1 H.R. Rep. No. 105-599, at 214 (1998) (Conf. Rep.) (emphasis added). The report states that the conference committee adopted the Senate amendment with respect to the National Taxpayer Advocate provisions, except as modified. H.R. Rep. No. 105-599, at 216 (1998) (Conf. Rep.). The Senate bill and report contained the same inconsistency as the conference bill and report. *See* H.R. 2676, 105th Cong. § 1102 (as passed by the Senate, May 7, 1998); S. Rep. No. 105-174, at 23 (1998).

independently on behalf of taxpayers, have the same potential conflicts, and face the same potential retaliatory personnel actions that Congress sought to address in 1998.

The rationale for authorizing the National Taxpayer Advocate to make independent personnel decisions for TAS's national office employees is, in key respects, even more compelling than for TAS's local office employees. TAS's national office employees primarily advocate for systemic change in IRS practices and policies, often placing them in direct conflict with IRS senior officials. This concern is not merely theoretical. At the end of each year, IRS executives review and approve performance ratings for TAS's senior leaders. This creates the potential for TAS leaders perceived by the IRS as "team players" to be given better performance ratings and bonus awards than TAS leaders perceived to be more assertive and independent in their advocacy. For the same reasons it would be inappropriate for IRS leaders to evaluate and make compensation determinations for Treasury Inspector General for Tax Administration employees, IRS leaders should not be making personnel determinations for TAS employees.

RECOMMENDATION

- Amend IRC § 7803(c)(2)(D)(i)(II) to clarify that the National Taxpayer Advocate shall have the authority to take personnel actions with respect to all TAS employees.[2]

2 For legislative language generally consistent with this recommendation, see Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 402 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill.

Legislative Recommendation #39

Clarify the Taxpayer Advocate Service's Access to Files, Meetings, and Other Information

SUMMARY

- *Problem:* The IRS has occasionally declined to provide the National Taxpayer Advocate with the timely and complete information required to do her job of advocating for taxpayers and reporting to Congress, and has prevented TAS employees from attending IRS meetings when requested by taxpayers who have open TAS cases.
- *Solution:* Authorize the National Taxpayer Advocate and her staff to access all IRS information relevant to TAS's duties and allow TAS to participate in IRS meetings when requested by taxpayers who have open TAS cases.

PRESENT LAW

IRC § 7803(c)(2) requires TAS to assist taxpayers in resolving problems with the IRS, identify areas in which taxpayers are experiencing problems in their dealings with the IRS, make administrative and legislative recommendations to mitigate those problems, and submit two reports to Congress each year.

IRC § 6103 generally prohibits the disclosure of tax returns or return information, but IRC § 6103(h) provides that "returns and return information shall, without written request, be open to inspection by or disclosure to officers and employees of the Department of the Treasury whose official duties require such inspection or disclosure for tax administration purposes."

REASONS FOR CHANGE

In general, the National Taxpayer Advocate has significant access to IRS systems and data.[1] However, the IRS has sometimes declined to provide TAS with timely and complete access to (i) audit files of taxpayers who have open TAS cases; (ii) meetings between the IRS and taxpayers who have open TAS cases, even when a taxpayer has requested TAS's attendance; (iii) advice that the Office of Chief Counsel has provided to other IRS business units; and (iv) information required by the National Taxpayer Advocate to provide Congress with a "full and substantive analysis" of systemic taxpayer problems, as required by IRC § 7803(c)(2)(B).[2] Lack of access undermines TAS's independence and ability to fully advocate for taxpayers, both individually and collectively.

1 Nina E. Olson, *Institutionalizing Advocacy: Some Reflections on the Taxpayer Advocate Service's Evolution as an Advocate for Taxpayers*, 18 Pitt. Tax Rev. 11, 19 (2020) ("In House and Senate hearings, members of Congress struggled to come up with the right design, one that would balance the office's need to be inside the IRS so as to have immediate access to information and planning, with the unremitting pressure to conform to the IRS leadership's point of view."), https://taxreview.law.pitt.edu/ojs/taxreview/article/view/122/194.

2 *See, e.g.,* National Taxpayer Advocate 2018 Annual Report to Congress 42 (Most Serious Problem: *Transparency of the Office of Chief Counsel: Counsel Is Keeping More of Its Analysis Secret, Just When Taxpayers Need Guidance More Than Ever*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/07/ARC18_Volume1_MSP_02_TransparencyOCC.pdf; National Taxpayer Advocate 2016 Annual Report to Congress 34 (Special Focus: *IRS Future State: The National Taxpayer Advocate's Vision for a Taxpayer-Centric 21st Century Tax Administration*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC16_Volume1_SpecialFocus.pdf.

RECOMMENDATIONS

- Amend IRC § 7803(c) to clarify that for any cases open and pending in TAS, the National Taxpayer Advocate and her designees are authorized to participate in meetings between taxpayers and employees of the IRS or the Office of Chief Counsel, at the taxpayer's request; and shall have access to tax returns, return information, administrative files, and legal advice provided by the Office of Chief Counsel to the IRS.[3]
- Amend IRC § 7803(c) to clarify that in furtherance of her tax administrative duties, the National Taxpayer Advocate and her designees shall have access to all data, statistical information, legal advice provided by the Office of Chief Counsel to the IRS, and information necessary to perform a "full and substantive analysis" of the issues, as required by IRC § 7803(c)(2)(B).[4]

3 For a similar legislative proposal, see Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 403 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill.

4 *Id.* This recommendation is not intended to create a waiver of privilege with respect to information the IRS may lawfully keep confidential. When TAS receives information from the IRS, it protects the information from disclosure if it is privileged. Under the Taxpayer First Act of 2019, the Secretary is now required to provide the National Taxpayer Advocate with "statistical support" for the Annual Report to Congress. Pub. L. No. 116-25, § 1301(b), 133 Stat. 981, 991 (2019). However, this requirement only encompasses statistical studies, compilations, and the review of information already obtained by TAS. It does not address TAS's broader need for access to information, including the right to review case files and attend taxpayer meetings. The Taxpayer Rights Act of 2015, H.R. 4128, 114th Cong. § 403 (2015) and S. 2333, 114th Cong. § 403 (2015), would have granted TAS access to case-related files and meetings, but it did not address TAS's need for access to information required to report on systemic issues.

Legislative Recommendation #40

Authorize the National Taxpayer Advocate to File *Amicus* Briefs

SUMMARY

- *Problem:* When a federal court is deciding a case that may affect the fundamental taxpayer rights of many or all taxpayers, the court would benefit if the National Taxpayer Advocate is authorized to submit an *amicus* brief to share her views as the voice of the taxpayer. However, current law does not authorize the National Taxpayer Advocate to submit an *amicus* brief in a federal tax case.
- *Solution:* Authorize the National Taxpayer Advocate to appear as *amicus curiae* in federal tax cases and submit *amicus* briefs for judicial consideration on issues that may affect the protection of fundamental taxpayer rights, particularly those contained in the Taxpayer Bill of Rights.[1]

PRESENT LAW

IRC § 7803(c)(2)(A) requires the Office of the Taxpayer Advocate to assist taxpayers in resolving problems with the IRS, to identify areas in which taxpayers experience problems in their dealings with the IRS, and to make administrative and legislative recommendations to mitigate such problems. IRC § 7803(c)(2)(B)(ii)(XI) directs the National Taxpayer Advocate in her annual reports to Congress to "identify the 10 most litigated issues for each category of taxpayers, including recommendations for mitigating such disputes."

Under 28 U.S.C. § 516, only officers of the Department of Justice may represent the United States in litigation, except as otherwise authorized by law. IRC § 7452 specifies that the Secretary of the Treasury "shall be represented by the Chief Counsel for the Internal Revenue Service or his delegate" in litigation before the U.S. Tax Court.

Pursuant to 5 U.S.C. § 612(b), the Small Business Administration (SBA) Chief Counsel for Advocacy is authorized to appear as *amicus curiae* in court and submit *amicus* briefs to present their views in cases that may affect the interests of small businesses. By contrast, the National Taxpayer Advocate, who is often referred to as "the voice of the taxpayer," is not authorized to appear as *amicus curiae* or submit *amicus* briefs in federal tax litigation.

REASONS FOR CHANGE

Precedential issues that may affect the fundamental taxpayer rights of many or all taxpayers occasionally come before the courts with no one representing the interests of taxpayers as a group or advocating to protect taxpayer rights.[2] In the rare cases where a court's decision has the potential to affect the fundamental taxpayer rights of many or all taxpayers, courts would benefit from hearing the position of the National Taxpayer Advocate as the voice of the taxpayer.

1 *See* Taxpayer Bill of Rights (TBOR), https://www.taxpayeradvocate.irs.gov/taxpayer-rights (last visited July 11, 2025). The rights contained in TBOR are also codified in IRC § 7803(a)(3).

2 To cite one example, in *Facebook, Inc. v. IRS*, the court decided that the Taxpayer Bill of Rights did not create a legally enforceable right to a hearing before the IRS Independent Office of Appeals. *Facebook, Inc. v. IRS*, 121 A.F.T.R.2d 2018-1752 (N.D. Cal. 2018); IRC § 7803(a)(3)(E). While that decision may have been correct on the facts of the case, the court's broad ruling seemingly applies to limit the Appeals' rights of all taxpayers.

Just as the SBA Chief Counsel for Advocacy may submit *amicus* briefs to inform federal courts about certain impacts on small businesses, the National Taxpayer Advocate could more effectively protect taxpayer rights if granted comparable authority to submit *amicus* briefs in cases that may affect taxpayer rights.[3]

RECOMMENDATION

- Amend IRC §§ 7803 and 7452 to authorize the National Taxpayer Advocate to appear as *amicus curiae* in federal tax cases and submit *amicus* briefs on issues that may affect the protection of taxpayer rights, particularly those contained in the Taxpayer Bill of Rights.[4]

3 *See* TBOR, https://www.taxpayeradvocate.irs.gov/taxpayer-rights (last visited July 11, 2025). The rights contained in TBOR are also codified in IRC § 7803(a)(3).

4 For more detail, see National Taxpayer Advocate 2016 Annual Report to Congress 37 (Special Focus: *IRS Future State: The National Taxpayer Advocate's Vision for a Taxpayer-Centric 21st Century Tax Administration*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC16_Volume1_SpecialFocus.pdf. *See also* IRS Program Manager Technical Advice 2007-00566 (Oct. 2, 2002), https://www.irs.gov/pub/lanoa/pmta00566_7189.pdf.

Legislative Recommendation #41

Authorize the Office of the Taxpayer Advocate to Assist Certain Taxpayers Experiencing Economic Hardships During a Lapse in Appropriations

SUMMARY

- *Problem:* During government shutdowns, IRS lien and levy activities carried out by automation are permitted to continue, but IRS and TAS employees, including the National Taxpayer Advocate, generally are prohibited from assisting taxpayers experiencing economic hardships as a result of those collection activities.
- *Solution:* Clarify that TAS and IRS Collection employees may work during government shutdowns to the extent necessary to assist taxpayers experiencing economic hardships as a result of IRS collection actions.

PRESENT LAW

Article I of the Constitution provides that "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law."[1] The Antideficiency Act (ADA) is one of several statutes that implement this provision.[2] Specifically, 31 U.S.C. § 1341(a), among other things, prohibits any officer or employee of the U.S. government or the District of Columbia government from (i) making or authorizing an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation or (ii) involving his or her respective government employer in a contract or obligation for the payment of money before an appropriation is made, unless authorized by law. The ADA contains an additional prohibition against the acceptance of voluntary services, "except for emergencies involving the safety of human life or the protection of property."[3]

IRC § 6343(a)(1)(D) requires the Secretary to release a levy and promptly notify the affected person if the Secretary determines the levy "is creating an economic hardship due to the financial condition of the taxpayer."

IRC § 7803(c)(2)(A)(i) directs the Office of the Taxpayer Advocate (commonly referred to as the Taxpayer Advocate Service, or TAS) to "assist taxpayers in resolving problems with the Internal Revenue Service." IRC § 7811 authorizes the National Taxpayer Advocate to issue a Taxpayer Assistance Order (TAO) where a "taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Secretary." A significant hardship includes "an immediate threat of adverse action" and "irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted." A TAO may require the Secretary "within a specified time period ... to release property of the taxpayer levied upon."

REASONS FOR CHANGE

Lien and levy activities carried out by automation, which do not require the expenditure of additional appropriations, are permitted to continue during government shutdowns resulting from lapses in appropriations. During the 2025, 2018-2019, and 2013 shutdowns, the IRS issued thousands of notices of levy on Social Security and other government benefits as well as levies on wages and financial accounts of

1 U.S. Const. art. I, § 9, cl. 7.
2 Pub. L. No. 97-258, 96 Stat. 877, 923 (1982).
3 31 U.S.C. § 1342.

individuals and businesses, because these notices were preprogrammed into the IRS's computer systems before the shutdowns began.

Thousands of additional taxpayers were affected by collection actions taken in the weeks preceding the shutdowns. For example, a bank generally has up to 21 days to remit levied account proceeds to the IRS. Therefore, levies issued in the 21 days preceding a government shutdown may affect taxpayers after the shutdown begins.

Despite IRC provisions that protect and relieve taxpayers who are experiencing economic hardship from levies, the IRS Lapsed Appropriations Contingency Plans generally have not permitted IRS or TAS employees, including the National Taxpayer Advocate, to work economic hardship cases during government shutdowns to assist these taxpayers.[4] In addition, some taxpayers who requested the assistance of the National Taxpayer Advocate and TAS prior to the shutdown experienced significant hardships and irreparable injuries because TAS could not work on their cases during the shutdown.[5]

In its Lapsed Appropriations Contingency Plans,[6] the IRS, with concurrence from the Treasury Department and the Office of Management and Budget (OMB), takes the position that the ADA's exception for "protection of property," in the context of the IRS's authority to administer the Internal Revenue Code, applies solely to *government* property – not *taxpayer* property.[7] As a result, it has concluded that TAS's activities to assist taxpayers in releasing IRS levies that create an economic hardship due to the financial condition of the taxpayer do not fit within the exception. We question that interpretation. First, the statute itself simply says "property." The distinction between "property" and "government property" is obvious, and if Congress intended to limit the scope of the exception to "government property," it presumably would have written the statute to specify "government property." Second, interpretating "property" to include only "government property" undermines Congress's more recent statutory enactment of IRC § 6343(a)(1)(D), which is intended to protect taxpayers from levies that cause economic hardship.

Even accepting the IRS's position that the ADA's exception for the "protection of property" is limited to the protection of *government* property, a threshold determination must be made about whether levied funds are, in fact, government property. IRC § 6343(a)(1)(D) requires the Secretary to release a levy if it is "determined that such levy is creating an economic hardship due to the financial condition of the taxpayer." In blunt terms, Congress has made a determination that the IRS should not take property if doing so would put the taxpayer and the taxpayer's family out on the street.

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4 *See* IRS, Servicewide Electronic Research Program Alert 19A0017, Release of Levy and Release of Lien (2019) ("While there is a lapse in funding during the partial shutdown we are not authorized to take this action. We may do so once we are fully opened, so please call us back at that time. Please apologize to the taxpayer and explain we are not authorized to release the levy or lien due to the partial government shutdown. Explain that they may call us back after we are fully reopened.").

5 For additional discussion of how TAS's statutory authority to assist taxpayers suffering or about to suffer significant hardships was undermined during a shutdown, see National Taxpayer Advocate Fiscal Year 2015 Objectives Report to Congress 79 (Area of Focus: *The IRS's Decision Not to Except Any TAS Employees During the Government Shutdown Resulted in Violations of Taxpayer Rights and Undermined TAS's Statutory Authority to Assist Taxpayers Suffering or About to Suffer Significant Hardship*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/The-IRSs-Decision-Not-to-Except-Any-TAS-Employees-During-the-Government-Shutdown.pdf, and National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress 40 (*Impact of the 35-Day Partial Government Shutdown on the Taxpayer Advocate Service*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/JRC20_Volume1_GovShutdown.pdf.

6 *See, e.g.*, IRS, *Fiscal Year 2024 Lapsed Appropriations Contingency Plan* (Mar. 15, 2024). The lapse plan in effect during the 2025 government shutdown generally utilized multi-year Inflation Reduction Act funds (rather than appropriated funds) to maintain core IRS operations and therefore does not reflect the agency's typical lapse approach under the ADA. *See* IRS, *Fiscal Year 2026 Lapsed Appropriations Contingency Plan* (effective Oct. 8, 2025).

7 This interpretation originated with a heavily fact-specific decision that was issued by the Comptroller of the Treasury in 1902 and preceded the enactment of the ADA. In it, the Comptroller concluded that an individual who delivered mail that had been scattered in a train wreck could be paid for his services. *See* Government Accountability Office, GAO-06-382SP, *Principles of Federal Appropriations Law*, vol. II at 6-111 (3d ed. 2006) (citing 9 Comp. Dec. 182, 185 (1902)), https://www.gao.gov/assets/2019-11/202819.pdf.

TAS plays a central role in helping the Secretary determine whether a levy would create an economic hardship and therefore whether property can be levied upon (meaning it would become government property). Thus, if the IRS seeks to protect "government property" via a levy, it must give affected taxpayers an opportunity to show the levy will cause an economic hardship and therefore should be released (meaning it is not government property).[8]

From a policy perspective, the current interpretation produces results that greatly undermine taxpayer rights, including the *right to a fair and just tax system*.[9] The asymmetry of allowing the IRS to take collection action against a taxpayer while not allowing TAS to work with the taxpayer and the IRS to determine whether the collection action is creating an economic hardship (*e.g.*, imminent eviction) that requires a levy release under law shocks the conscience. To eliminate the abrogation of the taxpayer protections codified in IRC § 6343(a)(1)(D), the National Taxpayer Advocate believes the IRS should either work with the Treasury Department and OMB to adopt an ADA interpretation allowing TAS and Collection employees to release ongoing levies that create economic hardships or suspend all existing levies and refrain from imposing new levies during government shutdowns. The current asymmetrical approach produces an absurd "heads the IRS wins, tails the taxpayer loses" result.

While we will continue to advocate within the agency to protect taxpayers during government shutdowns, our experience to date suggests the existing legal interpretation is unlikely to change. For that reason, we recommend Congress clarify the law to ensure that government shutdowns resulting from a lapse in appropriations do not subject taxpayers to serious economic hardships, which in some cases may include eviction, utility shutoffs, or the inability to pay for medical treatment.

RECOMMENDATION

- Clarify that during a lapse in appropriations (i) the National Taxpayer Advocate may incur obligations in advance of appropriations for purposes of assisting taxpayers experiencing an economic hardship within the meaning of IRC § 6343(a)(1)(D) due to an IRS action or inaction and (ii) the IRS may incur obligations in advance of appropriations for purposes of complying with any TAO issued pursuant to IRC § 7811.[10]

8 The Justice Department has issued a legal opinion concluding that certain government functions not specifically authorized to continue during a lapse in appropriations must nonetheless continue where the lawful continuation of these functions is "necessarily incident" to other activities for which there is statutory authority to continue. *See* Authority for the Continuance of Government Functions During a Temporary Lapse in Appropriations, 5 Op. O.L.C. 1 (1981), www.justice.gov/file/22536/download.

9 *See* IRC § 7803(a)(3)(J); *see also* Taxpayer Bill of Rights (TBOR), https://www.taxpayeradvocate.irs.gov/get-help/taxpayer-rights (last visited July 30, 2025). The rights contained in the TBOR are also codified in IRC § 7803(a)(3).

10 For legislative language generally consistent with this recommendation, see Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 405 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill.

Legislative Recommendation #42

Repeal Statute Suspension Under IRC § 7811(d) for Taxpayers Seeking Assistance From the Taxpayer Advocate Service

SUMMARY

- *Problem:* When a taxpayer makes a written request for TAS assistance, IRC § 7811(d) provides that the period of limitations within which the IRS may assess or collect tax is extended. The provision is intended to protect the IRS's interests, but the IRS has not implemented it since its enactment in 1988. In addition, the provision does not apply when a taxpayer requests assistance from TAS by phone, so if implemented, taxpayers who request TAS assistance in writing and taxpayers who request TAS assistance by phone would be treated differently.
- *Solution:* Repeal IRC § 7811(d).

PRESENT LAW

IRC § 7811(d) suspends the statutory period of limitations for any action for which a taxpayer seeks assistance from TAS "[u]pon application filed by a taxpayer with the Office of the Taxpayer Advocate."

Treasury Regulation § 301.7811-1(e)(4) clarifies that "[t]he statute of limitations is not suspended in cases where the [National Taxpayer Advocate] issues an order in the absence of a written application for relief by the taxpayer or the taxpayer's duly authorized representative."

REASONS FOR CHANGE

Even though Congress enacted this provision in 1988, the IRS has never implemented it.[1] The intent of the provision was to protect the interests of the government, but the IRS has not seen a need to make use of it. Moreover, implementation of the rule would require significant technology upgrades and procedural changes that the IRS has chosen not to undertake.

In concept, IRC § 7811(d) aims to ensure the IRS will not lose the ability to assess or collect tax if the applicable statutory deadlines pass while a taxpayer's case is pending with TAS. Suspension of the assessment or collection period would give the IRS more time to take enforcement actions. However, statute suspensions are unnecessary to protect the government's interests. The IRS currently may take enforcement actions against taxpayers with open TAS cases where necessary to protect the government's interests.[2]

Furthermore, if the IRS ever were to implement IRC § 7811(d), it would cause similarly situated taxpayers to be treated differently. By its terms, the provision only applies when a taxpayer submits a written request for TAS assistance. It does not apply when a taxpayer requests TAS assistance by phone, the most popular way for taxpayers to seek TAS's help. Thus, this provision – apart from being unnecessary and unutilized – would produce disparate outcomes for taxpayers who, despite lacking any knowledge of this issue, contact TAS by different means.

1 Technical and Miscellaneous Revenue Act of 1988, Pub. L. No. 100-647, § 6230, 102 Stat. 3342, 3734 (1988).

2 Even if TAS issues a Taxpayer Advocate Order (TAO) directing the IRS to suspend collection, TAS will generally agree to modify the TAO if collection is in jeopardy. If TAS ever did not agree to do so, the Commissioner or Deputy Commissioner could modify or rescind the TAO. *See* IRC § 7811(c)(1).

Lastly, despite the IRS's decision not to implement the provision, it has been raised in litigation, creating uncertainty for taxpayers and the IRS alike.[3] Given that IRC § 7811(d) has not been used since it was enacted more than 35 years ago, it serves no useful purpose, and its repeal would prevent future litigation in which the provision is cited, the National Taxpayer Advocate recommends it be repealed.

RECOMMENDATION

- Repeal IRC § 7811(d).[4]

3 In *Rothkamm v. United States*, 802 F.3d 699 (5th Cir. 2015), *rev'g* 2014 WL 4986884 (M.D. La. Sept. 15, 2014), the U.S. Court of Appeals for the Fifth Circuit held, in relevant part, that IRC § 7811(d) tolled the period for filing a wrongful levy claim, which by operation of IRC § 6532(c)(2) extended the period for filing suit. IRS Action on Decision 2020-03, 2020-17 I.R.B. 663, explains that except for cases appealable to the Fifth Circuit, the IRS will not follow the holding in *Rothkamm* that IRC § 7811(d) suspends the running of the limitations periods for third parties to file wrongful levy claims or suits, and outside the Fifth Circuit, the government will continue to defend its interpretation.

4 For legislative language generally consistent with this recommendation, see Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 404 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill; John Lewis Taxpayer Protection Act, H.R. 3738, 117th Cong. § 202 (2021); Taxpayer Protection Act, H.R. 2171, 115th Cong. § 202 (2017); Taxpayer Protection Act, H.R. 4912, 114th Cong. § 202 (2016). For more detail, see National Taxpayer Advocate 2015 Annual Report to Congress 316 (Legislative Recommendation: *Statute of Limitations: Repeal or Fix Statute Suspension Under IRC § 7811(d)*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC15_Volume1_LR_01_Statute-Limitations.pdf.

STRENGTHEN TAXPAYER RIGHTS IN JUDICIAL PROCEEDINGS

Legislative Recommendation #43

Expand the Tax Court's Jurisdiction to Hear Refund Cases

SUMMARY

- *Problem:* For most taxpayers, the U.S. Tax Court (Tax Court) is the best court in which to challenge an adverse IRS decision because the judges possess specialized tax expertise and taxpayers can represent themselves more easily and cheaply than in other federal courts. However, taxpayers generally may litigate their tax liabilities in Tax Court only when the IRS determines they owe more tax and issues a notice of deficiency. Taxpayers who are seeking a refund of tax they already paid cannot ask the Tax Court to review their claim. Instead, they must sue for a refund in other federal courts that operate with more complicated rules and charge higher fees.
- *Solution:* Expand the Tax Court's jurisdiction to determine tax liabilities and refunds in refund cases.

PRESENT LAW

IRC § 7442 defines the jurisdiction of the Tax Court.

IRC § 6212 requires the IRS to issue a notice of deficiency before assessing certain liabilities. When the IRS issues a notice of deficiency, IRC § 6213(a) authorizes the taxpayer to petition the Tax Court within 90 days (or 150 days if the notice is addressed to a person outside the United States) to review the IRS determination. This notice of deficiency is the taxpayer's "ticket to Tax Court." It allows the taxpayer to challenge the liability before it is assessed and before it must be paid.

By contrast, taxpayers who believe they have made an overpayment and are seeking a refund of monies already paid do not have access to the Tax Court. To claim a refund, a taxpayer must first file an administrative refund claim, and if the IRS disallows it, or simply ignores it, the taxpayer's only recourse is to file suit in a U.S. district court or the U.S. Court of Federal Claims.[1]

REASONS FOR CHANGE

There are multiple reasons why taxpayers would benefit if they could bring refund suits in the Tax Court:

- The Tax Court is typically better equipped than other courts to consider tax controversies because its judges are tax experts who specialize in handling disputes arising under the tax code.
- The Tax Court is more accessible than other courts to less knowledgeable and unrepresented taxpayers because it offers simplified and less formal procedures, particularly for disputes that do not exceed $50,000.[2] For this reason, most taxpayers are able to represent themselves.[3]

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1 Under current law, the IRS is not required to process refund claims. It may simply ignore them. Although the IRS typically does process refund claims, it faces no deadline for doing so and some remain in limbo for years. For a related recommendation, see *Require the IRS to Timely Process Claims for Credit or Refund, supra*.

2 Disputes involving $50,000 or less can be selected for special, less formal proceedings under IRC § 7463. These are referred to as "small tax" or "S" cases. The Tax Court's decision in small tax cases is nonreviewable and becomes final 90 days from the date the decision is entered.

3 According to the Tax Court, in fiscal year (FY) 2024, taxpayers were self-represented (*pro se*) in approximately 80% of the cases filed. *See* United States Tax Court, FY 2026 Congressional Budget Justification 27 (May 1, 2025). In the past, we received data from the IRS Office of Chief Counsel which provided a slightly higher percent of *pro se* cases in the Tax Court, however, going forward we will be relying on the Tax Court provided figure.

- The Tax Court has a robust working relationship with the Low Income Taxpayer Clinic Program, which provides free legal assistance to taxpayers who meet eligibility criteria (generally, incomes that do not exceed 250% of the federal poverty level and amounts in controversy that do not exceed $50,000).[4] That means lower income taxpayers who want representation can usually obtain it.
- The Tax Court is typically more affordable than other courts, with a filing fee of only $60.

For these reasons, the Tax Court is usually the least expensive and best judicial forum for low-income and small business taxpayers.

Under current law, as described above, taxpayers who receive a notice of deficiency and wish to challenge the IRS's proposed adjustment can file a petition in the 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 to obtain a judicial determination.

> *Example:* Jane Doe files a return that reflects a tax liability of $10,000, which was fully and timely paid. Shortly after filing her original return, Jane discovers she made an error, and her tax liability is $2,000 less than reported. Accordingly, she files an amended return claiming a refund of $2,000. If the IRS either disallows or does not timely respond to the claim, Jane cannot go to Tax Court because there is no deficiency (*i.e.*, the IRS has not determined that any additional tax is due). Jane will have to file a refund suit in a U.S. district court or the U.S. Court of Federal Claims. However, the costs of an attorney and the court filing fee would probably exceed the amount of her refund claim, so Jane would probably give up on getting the refund to which she is entitled. This result harms taxpayers and infringes on their *rights to pay no more than the correct amount of tax, to challenge the IRS's position and be heard,* and *to appeal an IRS decision in an independent forum*.[5]

The National Taxpayer Advocate recommends that all taxpayers bringing refund suits be given the option to litigate their tax disputes in the Tax Court. By expanding the Tax Court's jurisdiction to include refund controversies, Congress can enhance taxpayers' rights to bring actions that otherwise might be effectively denied and give all taxpayers a better opportunity to obtain judicial review of adverse IRS determinations.

RECOMMENDATION

- Amend IRC §§ 7442 and 7422 to give the Tax Court jurisdiction to determine liabilities in refund suits to the same extent as the U.S. district courts and the U.S. Court of Federal Claims.[6]

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4 IRC § 7526(b)(1)(B).

5 *See* Taxpayer Bill of Rights (TBOR), https://www.taxpayeradvocate.irs.gov/taxpayer-rights (last visited Sept. 11, 2025). The rights contained in the TBOR are also codified in IRC § 7803(a)(3).

6 For legislative language generally consistent with this recommendation, see Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 310 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill. For a related recommendation that would allow taxpayers to challenge assessable penalties in the Tax Court, see *Provide That Assessable Penalties Are Subject to Deficiency Procedures*, *supra*. Based on existing law and procedures, the IRS Office of Chief Counsel represents the government in Tax Court cases, and the Justice Department's Tax Division represents the government in U.S. district court and the U.S. Court of Federal Claims cases. If the Tax Court's jurisdiction is expanded and some cases shift toward the Tax Court, the number of attorneys representing the government in each agency may require adjustment. For context, in FY 2024, the Tax Court had 97% (23,468 of 24,136 cases) of all tax-related docketed inventory. Data compiled by the IRS Office of Chief Counsel (Nov. 8, 2024) from Counsel Automated Tracking System, TL-711 and TL-712. This data does not include cases on appeal and declaratory judgments.

Legislative Recommendation #44

Authorize the Tax Court to Order Refunds or Credits in Collection Due Process Proceedings Where Liability Is at Issue

SUMMARY

- *Problem:* In most U.S. Tax Court (Tax Court) cases, the court has the authority to determine that a taxpayer made an overpayment of tax and order the IRS to provide a refund or credit. Where the Tax Court considers the IRS's determination of liability in a Collection Due Process (CDP) hearing, however, the Tax Court does not have the authority to order a refund or credit – even if the taxpayer did not have a prior opportunity to challenge the liability. This restriction on the Tax Court's authority imposes financial costs and time burdens on taxpayers, who must separately sue for a refund or credit in another federal court. It also creates judicial inefficiencies by requiring the filing of multiple causes of action.
- *Solution:* Allow the Tax Court to order a refund or credit in all cases in which it is authorized to determine a taxpayer's tax liability.

PRESENT LAW

In deficiency cases, IRC § 6512(b) grants the Tax Court jurisdiction to determine that a taxpayer made an overpayment of income tax for the period at issue and that such amount must be refunded or credited to the taxpayer.[1] IRC § 6511(a) generally requires a taxpayer to file a claim for credit or refund by the later of three years from the time a return was filed or, if no return was filed, two years from the time the tax was paid.

In CDP proceedings, IRC § 6330(c)(2)(B) allows a taxpayer to challenge an underlying liability if the taxpayer "did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability."[2] However, several courts have concluded that the Tax Court in CDP cases, unlike in deficiency cases, does not have jurisdiction to determine the extent to which a taxpayer has made an overpayment and is entitled to a refund or credit.[3]

The reasoning for this conclusion is that IRC § 6330(d)(1) "gives the Tax Court jurisdiction 'with respect to such matter' as is covered by the final determination in a requested hearing before the Appeals Office."[4] The determination by the Office of Appeals (Appeals) is required to address (i) "the verification … that the requirements of any applicable law or administrative procedure have been met,"[5] (ii) any relevant issues raised by the taxpayer "relating to the unpaid tax or the proposed levy," including "the existence or amount of the underlying tax liability," if the taxpayer "did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability,"[6] and (iii) whether the proposed collection action "balances the need for efficient collection of taxes with the legitimate concerns of [the taxpayer] that any collection action be no more intrusive than necessary."[7] Based on these considerations, the

1 IRC § 6401 provides that the term "overpayment" includes "that part of the amount of the payment of any internal revenue tax which is assessed or collected after the expiration of the period of limitation properly applicable thereto." The Supreme Court has stated that an overpayment occurs "when a taxpayer pays more than is owed, for whatever reason or no reason at all." *United States v. Dalm*, 494 U.S. 596, 609 n.6 (1990). *See also Jones v. Liberty Glass Co.*, 332 U.S. 524, 531 (1947).

2 IRC § 6330(c)(2)(B).

3 *See Greene-Thapedi v. Comm'r*, 126 T.C. 1 (2006); *Willson v. Comm'r*, 805 F.3d 316 (D.C. Cir. 2015); *McLane v. Comm'r*, T.C. Memo. 2018-149, *aff'd*, 24 F.4th 316 (4th Cir. 2022); *Brown v. Comm'r*, 58 F.4th 1064 (9th Cir. 2023), *aff'g* T.C. Memo. 2021-112.

4 *Greene-Thapedi v. Comm'r*, 126 T.C. 1, at 6 (2006).

5 IRC § 6330(c)(1), (c)(3)(A).

6 IRC § 6330(c)(2), (c)(3)(B).

7 IRC § 6330(c)(3)(C).

Appeals Officer is supposed to make a determination "regarding the legitimacy of the proposed levy [or filing of notice of federal tax lien] and, if relevant, the amount and/or existence of the unpaid tax liability."[8] Because the existence or nonexistence of an overpayment (as opposed to an unpaid tax liability) is not pertinent to this determination by Appeals, the courts have reasoned the Tax Court lacks jurisdiction to review the issue.

REASONS FOR CHANGE

The limitation on the Tax Court's jurisdiction to determine an overpayment and order a refund in CDP cases prevents taxpayers from obtaining resolution of their tax disputes in a single forum and imposes unnecessary financial and administrative burdens on taxpayers and the court system.

The Tax Court, unlike other federal courts, is a prepayment forum that ordinarily allows taxpayers to dispute their liabilities without first having to pay them in full. In CDP proceedings, only taxpayers who did not otherwise have an opportunity to dispute their underlying liabilities are permitted to contest them.

Taxpayers who are allowed to challenge the existence of a liability in CDP proceedings can do so because they did not receive a notice of deficiency or otherwise have a previous opportunity to dispute the liability. When taxpayers do not receive a notice of deficiency, it generally means either that they were issued a notice of deficiency but did not actually receive it or that a type of tax was assessed against them that is not subject to deficiency procedures. A prior opportunity to dispute the liability means a prior opportunity for a conference with Appeals offered either before or after the assessment of the tax.[9] Therefore, if a taxpayer is allowed to challenge the liability in CDP, it means that the taxpayer has not had a prior opportunity to go to court or to Appeals.

Under these circumstances, the inability of the Tax Court to order a refund or credit seems not only unfair but inefficient. For a taxpayer in a CDP proceeding to receive a refund, the taxpayer must fully pay the assessed tax for the taxable year(s) at issue, file a timely administrative refund claim with the IRS under IRC § 6511 and, if the claim is denied, timely file a refund suit in a U.S. district court or the U.S. Court of Federal Claims. It would be much more efficient to allow the taxpayer to claim the refund in the CDP case and to allow the court that is already familiar with the facts of the case to determine whether an overpayment exists.

CDP taxpayers who may challenge the existence or amount of an underlying tax liability pursuant to IRC § 6330(c)(2)(B) should, similar to taxpayers in deficiency proceedings, have the opportunity to obtain a refund in a prepayment forum, rather than be required to full-pay the asserted liability and then incur additional time and expense to dispute the liability in another forum.[10] Amending IRC § 6330 to explicitly grant the Tax Court the authority to determine overpayments and order refunds in CDP cases will protect taxpayers' *rights to pay no more than the correct amount of tax* and *to finality,* and reduce taxpayer burden.[11] The Tax Court could apply to CDP proceedings its long-established procedures for determining an overpayment in deficiency cases, so new procedures would not be required.

8 *Willson v. Comm'r*, 805 F.3d at 316.

9 Treas. Reg. § 301.6330-1(e)(3), Q&A E2.

10 *See also* Carlton M. Smith, *Give the Tax Court Full Refund Jurisdiction*, Procedurally Taxing (June 7, 2024), https://www.taxnotes.com/procedurally-taxing/give-tax-court-full-refund-jurisdiction/2024/06/07/7k9bg; Carlton M. Smith, *Proposed TAS Act to Allow Tax Court Collection Due Process Overpayment Jurisdiction*, Procedurally Taxing (Feb. 28, 2025), https://www.taxnotes.com/procedurally-taxing/proposed-tas-act-allow-tax-court-collection-due-process-overpayment-jurisdiction/2025/02/28/7rbgk.

11 *See* IRS Pub. 5170, Taxpayer Bill of Rights (July 2014), https://www.irs.gov/pub/irs-pdf/p5170.pdf; IRC § 7803(a)(3).

RECOMMENDATION

- Amend IRC § 6330(d)(1) to grant the Tax Court jurisdiction to determine overpayments for the tax periods at issue and to order refunds or credits in a CDP case, subject to the limitations of IRC §§ 6511(a) and 6512(b)(3), if the court determines that the taxpayer's underlying tax liability for a taxable year is less than the amounts paid or credited for that year.[12]

12 Under this proposal, refund claims in CDP cases would continue to be subject to the limitations of IRC §§ 6511(a) and 6512(b)(3). If the claim was filed by the taxpayer within three years from the time a return was filed, the refund would be limited to the amount paid in the three-year period (plus extensions) before the notice of deficiency was mailed and the amount paid after the notice of deficiency was mailed. For legislative language generally consistent with this recommendation, see Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 309 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill.

Legislative Recommendation #45

Promote Consistency With the Supreme Court's *Boechler* Decision by Making the Time Limits for Bringing All Tax Litigation Subject to Equitable Judicial Doctrines

SUMMARY

- *Problem:* The U.S. Supreme Court has held that the U.S. Tax Court (Tax Court) may toll the 30-day deadline for filing a petition in a Collection Due Process (CDP) case when it is equitable to do so (*e.g.*, when a taxpayer misses a filing deadline due to a medical emergency). However, the tax code contains other filing deadlines, including deadlines in deficiency and refund cases, and it is not clear whether courts have the authority to toll those deadlines on equitable grounds.
- *Solution:* Clarify that federal courts may toll filing deadlines in all tax cases when it is equitable to do so.

PRESENT LAW

Various provisions of the tax code authorize proceedings or suits against the government, provided such actions are brought timely. If a time limit for bringing suit is deemed a jurisdictional requirement, it cannot be waived. IRC § 7442, which relates to the jurisdiction of the Tax Court, does not specify that prescribed periods for petitioning the Tax Court are jurisdictional.[1] IRC § 7451(b) provides a *statutory* tolling rule for filing petitions in any case in which a filing location is inaccessible or otherwise unavailable to the general public on the date a petition is due, but it does not address whether the period for filing a petition is subject to *equitable* tolling by the courts in other circumstances.

Equitable doctrines that, if available, might excuse an untimely filing include (i) equitable tolling (applicable when it is unfair to hold a plaintiff/petitioner to a statutory deadline because of facts and circumstances that unduly impeded their compliance); (ii) forfeiture (applicable when the parties have acted as if the case need not operate under the statutory deadlines); and (iii) waiver (applicable when the parties have agreed explicitly that a case need not operate under legal deadlines).

In *Boechler, P.C. v. Commissioner*, the Supreme Court held that the 30-day time limit in IRC § 6330(d)(1) to file a petition with the Tax Court for review of a CDP determination is not a jurisdictional requirement.[2] The Court noted that time limits that are not jurisdictional are presumptively subject to equitable tolling and explained that "we treat a procedural requirement as jurisdictional only if Congress 'clearly states' that it is."[3] After parsing the language of IRC § 6330(d)(1), the Court found no such clear statement. The Court therefore held that the 30-day period in IRC § 6330(d)(1) is subject to equitable tolling.[4]

Taxpayers generally bring their actions in the Tax Court, a U.S. district court, or the U.S. Court of Federal Claims.[5]

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1 IRC § 7442 provides in its entirety:
The Tax Court and its divisions shall have such jurisdiction as is conferred on them by this title, by chapters 1, 2, 3, and 4 of the Internal Revenue Code of 1939, by title II and title III of the Revenue Act of 1926 (44 Stat. 10-87), or by laws enacted subsequent to February 26, 1926.

2 596 U.S. 199 (2022), *rev'g and remanding* 967 F.3d 760 (8th Cir. 2020).

3 *Id.* at 203.

4 *Id.* at 208-211.

5 Some tax claims may also be heard by U.S. bankruptcy courts. The Supreme Court has held that the three-year lookback period that may qualify a tax liability for discharge in bankruptcy is subject to equitable tolling. *Young v. United States*, 535 U.S. 43, 47 (2002).

U.S. Tax Court

CDP cases like *Boechler* are not the only type of controversy in which taxpayers, by filing a petition in the Tax Court within a specified period, may litigate their tax liabilities without first paying the tax. Other examples include deficiency proceedings and "stand-alone" innocent spouse cases (*i.e.*, where a taxpayer seeks innocent spouse relief in situations other than in response to a notice of deficiency or as part of a CDP proceeding).

IRC § 6213(a) provides that "[w]ithin 90 days ... the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency." The Supreme Court in *Boechler* acknowledged that lower courts have interpreted the IRC § 6213(a) deadline as jurisdictional and therefore not subject to equitable tolling but noted that "almost all [such lower court cases] predate this Court's effort to 'bring some discipline' to the use of the term 'jurisdictional.'"[6] After the Supreme Court decided the *Boechler* case, the Tax Court held that equitable tolling does not apply to deficiency cases.[7] In separate cases, however, the Second, Third, and Sixth Circuits disagreed and held that the IRC § 6213(a) deadline is not jurisdictional and is subject to equitable tolling.[8]

As for tax code provisions imposing time limits to petition the Tax Court to determine innocent spouse relief in stand-alone cases, the Supreme Court in *Boechler* noted that IRC § 6015(e)(1)(A) "much more clearly link[s] [its] jurisdictional grant[s] to a filing deadline," but the Court did not decide whether the time limit is jurisdictional.[9] Prior to *Boechler*, three appellate courts agreed with the Tax Court and held that the time limit for requesting stand-alone innocent spouse relief is jurisdictional.[10]

Other Federal Courts

Taxpayers seeking refunds may obtain judicial review in federal courts other than the Tax Court if they sue within a specified period. A refund suit can generally be brought in a U.S. district court or in the U.S. Court of Federal Claims within two years from the date the IRS denies a claim.[11] There is a split among the circuits regarding whether the statutory period for bringing a suit for refund is subject to equitable doctrines.[12]

Similarly, parties other than the taxpayers with an interest in or lien on levied property may sue in a U.S. district court to enjoin enforcement of a wrongful levy or sale or to recover property (or proceeds from the sale

6 *Boechler*, 596 U.S. at 208.

7 *Hallmark Res. Collective v. Comm'r*, 159 T.C. 126 (2022).

8 *Oquendo v. Comm'r*, No. 24-1205 (6th Cir. Aug. 25, 2025), *Buller v. Comm'r*, No. 24-1557, 2025 BL 287156 (2d Cir. Aug. 14, 2025); *Culp v. Comm'r*, 75 F.4th 196 (3d Cir. 2023). In *Oquendo*, the Sixth Circuit acknowledged it had previously held the IRC § 6213(a) deficiency deadline is jurisdictional, but it emphasized that its decisions preceded the Supreme Court's decision and guidance in *Boechler*. It said that it was "not bound by published circuit precedent if intervening Supreme Court caselaw requires modification," *Oquendo*, *supra*, slip op. at 9, and that "past cases interpreting § 6213(a)'s petition-filing deadline as jurisdictional are better viewed as vestiges of a bygone era." *Id.*, slip op. at 15.

9 *Boechler*, 596 U.S. at 206 (quoting a previous version of IRC § 6015(e)(1)(A) which provided, in relevant part, that "[t]he individual may petition the Tax Court (and the Tax Court shall have jurisdiction) to determine the appropriate relief available to the individual under this section if such petition is filed during the 90-day period." The Court also noted that a previous version of IRC § 6404(g)(1) conferred Tax Court jurisdiction "over any action . . . to determine whether the Secretary's failure to abate interest under this section was an abuse of discretion, . . . if such action is brought within 180 days." The Court said these formulations more clearly link the jurisdictional grant to a filing deadline.).

10 *Nauflett v. Comm'r*, 892 F.3d 649, 652-54 (4th Cir. 2018); *Matuszak v. Comm'r*, 862 F.3d 192, 196-198 (2d Cir. 2017); *Rubel v. Comm'r*, 856 F.3d 301, 306 (3d Cir. 2017).

11 IRC § 6532(a)(1).

12 *Compare RHI Holdings, Inc. v. United States*, 142 F.3d 1459, 1460-1463 (Fed. Cir. 1998) (declining to apply equitable principles to IRC § 6532), *and Becton Dickinson & Co. v. Wolckenhauer*, 215 F.3d 340 (3d Cir. 2000) (finding time limits set forth in IRC § 6532 are jurisdictional and not subject to equitable tolling), *with Volpicelli v. United States*, 777 F.3d 1042 (9th Cir. 2015) (concluding the time limits set forth in IRC § 6532 are not jurisdictional and are subject to equitable tolling), *and Howard Bank v. United States*, 759 F. Supp. 1073, 1080 (D. Vt. 1991), *aff'd*, 948 F.2d 1275 (2d Cir. 1991) (applying equitable principles to IRC § 6532 and estopping the IRS from raising the limitations period as a bar to suit).

of property) if they do so within a specified period (generally, within two years of levy).[13] Several federal courts have held that this period is not subject to equitable tolling.[14] However, one appellate court has held it is.[15]

Taxpayers may also bring suit, if they do so within the specified periods, to seek civil damages in a U.S. district court or bankruptcy court regarding unauthorized actions by the IRS.[16] Courts have differed on whether equitable doctrines can toll the period for bringing suit.[17]

REASONS FOR CHANGE

The *Boechler* decision clarified that the filing deadline in CDP cases is not jurisdictional, and that the deadline is subject to equitable tolling. However, it did not address whether filing deadlines in other tax cases are jurisdictional or subject to equitable tolling. There is inconsistency in lower courts' interpretations of the various statutes that contain filing deadlines in tax cases.[18]

The consequence for failing to commence suit in the Tax Court or another federal court within the time limits prescribed by the tax code is severe – taxpayers forfeit their day in Tax Court or other federal courts with jurisdiction to hear their claims.

Treating the tax code time limits for bringing suit as jurisdictional – which means that taxpayers who file suit even seconds late are barred from court regardless of the cause – can lead to harsh and unfair results. For example, the IRS itself occasionally provides inaccurate information to taxpayers regarding the filing deadline, and even in that circumstance the court has declined to hear the taxpayer's case.[19] Other extenuating circumstances may include a medical emergency (*e.g.*, a heart attack or other medical condition that requires a taxpayer to be hospitalized). Moreover, most Tax Court petitioners do not have representation, and unrepresented taxpayers are less likely to recognize the severe consequences of filing a late petition.[20]

Consistent with taxpayers' right to a fair and just tax system, equitable doctrines should be available to excuse a late filing in extenuating circumstances.[21] Taxpayers would still be required to demonstrate that an equitable

13 IRC § 6532(c).

14 See *Becton Dickinson and Co. v. Wolckenhauer*, 215 F.3d 340, 351-354 (3d Cir. 2000), and cases cited therein from four other circuits (holding that the IRC § 6532(c) period is jurisdictional and not subject to equitable tolling).

15 *See, e.g., Volpicelli v. United States*, 777 F.3d 1042, 1047 (9th Cir. 2015) (holding that the IRC § 6532(c) period is subject to equitable tolling); *Supermail Cargo, Inc. v. United States*, 68 F.3d 1204 (9th Cir. 1995) (same).

16 IRC §§ 7431(d), 7432(d)(3), 7433(d)(3).

17 *Compare Aloe Vera of America, Inc. v. United States*, 580 F.3d 867, 871-872 (9th Cir. 2009) (holding that the time for bringing suit under IRC § 7431 is not subject to equitable tolling), *and Hynard v. IRS*, 233 F. Supp. 2d 502, 509 (S.D.N.Y. 2002) (holding that the time for bringing suit under IRC § 7433 is not subject to equitable tolling), *with Ramos v. United States*, 90 A.F.T.R.2d (RIA) 7176 (N.D. Cal. 2002) (denying motion to dismiss because doctrine of equitable tolling might apply to an IRC § 7433 action), and *Bennett v. United States*, 366 F. Supp. 2d 877, 879 (D. Neb. 2005) (holding that the application of equitable tolling to IRC §§ 7432 and 7433 actions has not been definitively determined, but it is an extraordinary remedy and did not apply in this case).

18 Inconsistencies also exist in statutory interpretations of deadlines in tax cases other than types already discussed. For example, in *Belagio Fine Jewelry, Inc. v. Comm'r*, 162 T.C. 243 (2024), the Tax Court held that the 90-day period for filing a petition for determination of employment status under IRC § 7436(b)(2) is not jurisdictional and is therefore subject to equitable tolling, and in *Myers v. Comm'r,* 928 F.3d 1025 (DC Cir. 2019), the Court of Appeals for the DC Circuit held that the 30-day period for filing a petition to challenge the IRS's determination of a whistleblower award under IRC § 7623(b)(4) is not jurisdictional and is subject to equitable tolling.

19 *See, e.g., Nauflett*, 892 F.3d at 652-54 (doctrine of equitable tolling did not apply to innocent spouse case despite reliance on alleged erroneous IRS advice regarding the filing deadline); *see also Rubel v. Comm'r*, 856 F.3d 301, 306 (3d Cir. 2017).

20 In fiscal year 2024, about 89% of taxpayers were unrepresented before the Tax Court. National Taxpayer Advocate 2024 Annual Report to Congress 165 (Most Litigated Issues), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/12/ARC24_MostLitigatedIssues.pdf.

21 *See* IRC § 7803(a)(3)(J) (identifying the "right to a fair and just tax system" as a taxpayer right); *see also* Taxpayer Bill of Rights (TBOR), https://www.taxpayeradvocate.irs.gov/taxpayer-rights (last visited July 29, 2025). The rights contained in TBOR are also codified in IRC § 7803(a)(3).

doctrine applies, and courts could apply the doctrines narrowly. However, the National Taxpayer Advocate believes courts should have the flexibility to make those determinations.

RECOMMENDATIONS

- Enact a new section of the tax code to clarify that the time periods in the code within which taxpayers may petition the Tax Court or file suit in other federal courts are not jurisdictional and are subject to equitable judicial doctrines.[22]
- Specify that equitable tolling periods are included in timeliness determinations for purposes of enjoining any actions or proceedings or ordering any refunds or relief.[23]

22 For legislative language generally consistent with this recommendation, see Tax Court Improvement Act, H.R. 5349, 119th Cong. § 5 (2025) (as passed by the House, Dec. 1, 2025), which would amend IRC § 7451(b) to extend equitable tolling to deficiency cases and amend IRC § 7459(d) to provide that a dismissal based on untimeliness is not a decision on the merits. *See also* Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 307 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill. These bills differ from our recommendation in that they would extend equitable tolling to deficiency cases but not to all tax litigation (*e.g.,* innocent spouse claims or refund cases). Under the draft Senate bill, a late-filed petition in the Tax Court would no longer be dismissed for lack of jurisdiction if the taxpayer is able to establish that equitable tolling should apply. That would mean that a dismissal of a petition from a notice of deficiency by the Tax Court due to untimeliness would be treated as a decision on the merits under IRC § 7459(d), and the doctrine of *res judicata* would prevent the taxpayer from pursuing a refund suit. Consistent with H.R. 5349, we recommend that IRC § 7459(d) be correspondingly amended to provide that a dismissal based on untimeliness is not a decision on the merits.

23 For example, the last two sentences of IRC § 6213(a) provide that:

> The Tax Court shall have no jurisdiction to enjoin any action or proceeding or order any refund under this subsection unless a timely petition for a redetermination of the deficiency has been filed and then only in respect of the deficiency that is the subject of such petition. Any petition filed with the Tax Court on or before the last date specified for filing such petition by the Secretary in the notice of deficiency shall be treated as timely filed.

To ensure consistency, equitable tolling must be applied to the underlying cause of action. Otherwise, a change in law consistent with our first recommendation could lead to the absurd result in which equitable tolling is interpreted as applying to the filing of a suit for refund, thus making the suit timely, but not applying to the underlying statutory period in which the IRS is authorized to issue a refund under IRC § 6514, thus barring the taxpayer from receiving a refund if the suit is successful. For discussion of a related issue, see *Extend the Deadline for Taxpayers to File a Refund Suit When They Request Appeals Reconsideration of a Notice of Claim Disallowance and the IRS Has Not Acted Timely Decided Their Claim, infra*.

Legislative Recommendation #46

Extend the Deadline for Taxpayers to File a Refund Suit When They Request Appeals Reconsideration of a Notice of Claim Disallowance and the IRS Has Not Timely Decided Their Claim

SUMMARY

- *Problem:* When the IRS mails a notice of claim disallowance denying a taxpayer's claim for credit or refund, the taxpayer has two years to file a refund suit to obtain judicial review of the IRS's decision. The taxpayer may request that the IRS Independent Office of Appeals (Appeals) reconsider a claim disallowance, but the two-year period for filing suit is not suspended during Appeals' consideration unless both parties agree to an extension in writing. If Appeals does not resolve the claim timely, the taxpayer may miss the deadline to file a refund suit and thereby forfeit their refund while waiting for Appeals to act.
- *Solution:* Extend the two-year period for taxpayers to file a refund suit if they have timely requested Appeals' reconsideration of a notice of claim disallowance and Appeals has not made its decision within two years of the denial of the refund claim.

PRESENT LAW

If the IRS denies a taxpayer's claim for refund by issuing a notice of claim disallowance, the taxpayer may bring a suit for refund in a U.S. district court or the U.S. Court of Federal Claims.[1] IRC § 6532(a)(1) requires that a refund suit be initiated within two years from the date the IRS mailed the notice of claim disallowance. IRC § 6514(a)(2) prohibits the IRS from issuing a refund after the two-year period for filing a refund suit expires unless the taxpayer has brought a timely suit.

The taxpayer and the IRS may extend the period for bringing a refund suit if an extension is executed by both parties before the two-year period has expired.[2] While a taxpayer may request that Appeals reconsider a claim after the IRS has issued a notice of claim disallowance, IRC § 6532(a)(4) specifically provides that such reconsideration does not extend the period to bring a refund suit.

REASONS FOR CHANGE

The strict two-year limitation on bringing a refund suit and the requirement that any refund must be paid within that period poses hazards for taxpayers and tax professionals alike. They may assume that because they are actively pursuing resolution of their claim with Appeals, their rights to file suit and receive a refund are protected. However, reconsideration of a disallowed claim does not extend the period to file suit under IRC § 6532 or the period in which the IRS is permitted to issue a refund under IRC § 6514. Therefore, if Appeals

1 Under current law, a taxpayer may not bring a suit for refund in the U.S. Tax Court. The Tax Court is a prepayment forum for challenging federal tax disputes. Its judges possess specialized tax expertise, and it is often a less formal, less expensive, and more accessible forum for *pro se* and low-income taxpayers. For a related recommendation to allow taxpayers to bring refund suits in the U.S. Tax Court, see Legislative Recommendation: *Expand the Tax Court's Jurisdiction to Hear Refund Cases*, *supra*.

2 IRC § 6532(a)(2); Rev. Rul. 71-57, 1971-1 C.B. 405. *But see Kaffenberger v. United States*, 314 F.3d 944, 953 (8th Cir. 2003) (holding that the two-year period under IRC § 6532(a)(1) can be extended after the two-year period has expired); *nonacq. on this issue*, 2004-35 I.R.B. 350. IRS, Form 907, Agreement to Extend the Time to Bring Suit, is used to extend the period for bringing a refund suit. However, Form 907 must be countersigned by the IRS, and there is no designated method for taxpayers to submit the form to the IRS to be countersigned. *See* Erin M. Collins, Notice of Claim Disallowance: Don't Make This Mistake, National Taxpayer Advocate Blog (last updated Feb. 8, 2024), https://www.taxpayeradvocate.irs.gov/news/nta-blog-notice-of-claim-disallowance-dont-make-this-mistake.

fails to complete consideration of a claim within two years from the date the IRS mails a notice of claim disallowance, the IRS is prohibited by IRC § 6514(a)(2) from issuing a refund, even if the IRS agrees that a refund is owed. IRC § 6514(a)(2) even prohibits the IRS from issuing a refund where Appeals has made a determination within the two-year period but the IRS did not issue the payment or allow the credit during that period.

Current law may discourage taxpayers from seeking administrative resolution of disputed issues because their refund claims could become time-barred while an appeal is pending. Conversely, it may encourage unnecessary litigation to protect the refund period of limitations. It is advantageous to all parties to allow the administrative process to play out without risking taxpayers' ability to seek judicial review. By allowing the administrative appeal process to conclude, all parties may avoid the challenges and costs of a lawsuit, and the federal courts may avoid hearing a case the parties can resolve without judicial involvement.

Statutes of limitation are important to prevent open-ended claims. But where taxpayers are working with the IRS to reach an administrative resolution, the period of limitations should not jeopardize the taxpayers' ability to receive a refund or credit or to obtain judicial review of an adverse Appeals determination if the IRS does not act timely. This is particularly true where taxpayers timely pursue their appeal rights, but Appeals is simply behind on its case inventories or a case gets lost in transit between different IRS functions.

To prevent these inequities, IRC § 6532 should be amended to remove paragraph (a)(4), which provides that any administrative reconsideration of a disallowed claim does not extend the period to file a refund suit. Further, IRC § 6532 should be amended to ensure that where taxpayers timely request Appeals' review of a disallowed claim, the period to file a refund suit will not expire for at least six months after the date Appeals makes a final determination with respect to the claim. This will allow sufficient time for taxpayers to decide whether to pursue judicial review if Appeals denies their claim and for the IRS to issue the refund or allow the credit if Appeals allows their claim.[3]

RECOMMENDATION

- Amend IRC § 6532(a) to remove subsection (a)(4) and to provide that where a taxpayer has submitted a written request for reconsideration of a disallowed claim by the IRS's Independent Office of Appeals within two years of the mailing of a notice of claim disallowance, the time to bring a suit for refund shall not expire before the later of (i) the standard two-year period provided in IRC § 6532(a)(1) or (ii) six months after the date of the Appeals closing letter.[4]

3 IRC § 6514(a)(2) prohibits the issuance of a refund after the expiration of the period for filing a refund suit. By amending IRC § 6532(a) to extend the period to file suit, the period within which the IRS may pay a refund or issue a credit under IRC § 6514(a)(2) would similarly be extended.

4 Under current law, the IRS is not required to process a taxpayer's claim for credit or refund or even respond to the claim. Theoretically, the IRS can simply ignore a refund claim. For a legislative recommendation that would require the IRS to timely process claims for credit or refund, see Legislative Recommendation: *Require the IRS to Timely Process Claims for Credit or Refund, supra*. *See also* Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 603 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill, which would amend IRC § 6402(l) to require the IRS to respond to refund claims and which includes a provision similar to this recommendation that would suspend the two-year period for filing a refund suit during the pendency of Appeals consideration of a claim disallowance.

Legislative Recommendation #47

Authorize the Tax Court to Sign Subpoenas for the Production of Records Held by a Third Party Prior to a Scheduled Hearing

SUMMARY

- *Problem:* The U.S. Tax Court's (Tax Court's) pre-trial discovery powers are more limited than those of other federal courts. As a result, litigants often must attend pre-trial conferences solely to request or obtain books, records, and other key documents, and pre-trial discussions may be delayed or impeded, increasing the likelihood cases that otherwise would be settled must go to trial.
- *Solution:* Authorize the Tax Court to issue third-party subpoenas directing the production of documents prior to a scheduled hearing.

PRESENT LAW

IRC § 7456(a)(1) authorizes the Tax Court to issue subpoenas for the "production of all necessary returns, books, papers, documents, correspondence, and other evidence, from any place in the United States at any designated place of hearing …." The Tax Court interprets IRC § 7456(a)(1) as permitting it to issue a subpoena to produce documents by a third party only at designated places of hearing, including trial sessions, pre-trial hearings, depositions, and pre-trial conferences.[1] The Tax Court does not believe it has the authority to issue a subpoena directing a third party to produce records in advance of a hearing to facilitate pre-trial discovery.

REASONS FOR CHANGE

Efficient pre-trial discovery is an important means of limiting litigation and promoting settlement between the parties. The Federal Rules of Civil Procedure (FRCP) prescribe the procedural rules that apply in most federal courts. FRCP Rule 45 allows for the use of subpoenas to secure pre-trial discovery of documents, including third-party documents to be produced prior to the scheduling of any hearing or deposition.[2] The Tax Court, however, is governed by Tax Court Rules rather than the FRCP. Unlike FRCP Rule 45, the analogous Tax Court rule (Tax Court Rule 147) does not provide for the use of subpoenas to enforce delivery of documents prior to a trial, apart from the scheduling of a deposition or hearing.[3]

The Tax Court's authority to go beyond Tax Court Rule 147 was addressed in *Johnson v. Commissioner*.[4] In that case, the IRS issued a third-party subpoena to Bank of America to produce documents. The taxpayer assented to the subpoena. Likewise, Bank of America expressed a willingness to comply, but not before the date specified in a properly authorized subpoena.

The IRS filed a motion asking the Tax Court to permit it to issue a subpoena directing Bank of America to produce the requested documents "prior to" the date of the scheduled trial session. The motion stated that

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1 Order, *Johnson v. Comm'r*, No. 17324-18 (T.C. Dec. 26, 2019); Order, *N. Donald LA Prop., LLC. v. Comm'r*, No. 24703-21 (T.C. Oct. 14, 2022).

2 Fed. R. Civ. P. 45(a)(1)(A), (c)(2)(A).

3 Tax Ct. R. 147(a)(1)(B); *see, e.g.*, Kaelyn J. Romey, *No More Document Dumps or Secret Subpoenas: Amending the U.S. Tax Court Rules to Conform to the Federal Rules of Civil Procedure, Streamlining Pretrial Discovery*, 4 Bus. Entrepreneurship & Tax L. Rev. 107 (2020), http://scholarship.law.missouri.edu/betr/vol4/iss1/45. Effective March 20, 2023, the Tax Court added Rule 147(a)(3) to conform closely to Rule 45(a)(4) of the FRCP by requiring that before a subpoena is served on a third party, a notice and copy of the subpoena must be served on each party to the case. The amendment to Rule 147(d) also provides protections for the person subject to the subpoena. *See* Press Release, U.S. Tax Ct. 92-93 (Mar. 20, 2023), https://ustaxcourt.gov/files/documents/03202023.pdf.

4 Order, *Johnson v. Comm'r*, No. 17324-18 (T.C. Dec. 26, 2019).

obtaining the documents in advance of the scheduled trial might obviate the need for Bank of America to appear at the trial and facilitate settlement discussions with the taxpayer that might eliminate the need for a trial. The Tax Court stated that the IRS's position was "not unreasonable" and that production of the documents might benefit all parties. Nevertheless, it concluded that it lacked the authority to issue such a subpoena. Under IRC § 7456(a), the Tax Court concluded it could only authorize a third-party subpoena to produce documents on the hearing date.

Recognizing the potential benefits arising from earlier document delivery, the Tax Court's order discussed several workarounds the litigants could employ to secure the documents before trial. Subsequent guidance from the Tax Court and other Tax Court cases authorize document subpoena hearings prior to a case's trial session.[5] Despite the use of the document subpoena hearings, the National Taxpayer Advocate believes there is no good reason the authority of the Tax Court should be more limited than the authority of other federal courts to issue subpoenas that would allow the parties to engage in pre-trial discovery to resolve or narrow issues without the need for judicial involvement.

RECOMMENDATION

- Amend IRC § 7456(a) to expand the authority of the Tax Court to issue subpoenas directing the production of records held by a third party prior to a scheduled hearing.[6]

5 Order, *N. Donald LA Prop., LLC. v. Comm'r,* No. 24703-21 (T.C. Oct. 14, 2022); U.S. Tax Ct., Subpoenas for Remote Proceedings (revised Dec. 10, 2020), https://www.ustaxcourt.gov/resources/zoomgov/subpoenas_for_remote_proceedings.pdf.

6 For legislative language generally consistent with this recommendation, see Tax Court Improvement Act, H.R. 5349, 119th Cong. § 2 (2025) (approved by the House on a voice vote); Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 301 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill.

Legislative Recommendation #48

Provide That the Scope of Judicial Review of Innocent Spouse Determinations Under IRC § 6015 Is *De Novo*

SUMMARY

- *Problem:* If the IRS denies a taxpayer's request for equitable relief in an innocent spouse case, the taxpayer may request judicial review of the IRS's denial, but in doing so, the taxpayer is generally prohibited from presenting evidence in court that they did not previously present to the IRS unless the evidence is newly discovered or was previously unavailable. This is true even if the requesting spouse was subjected to domestic violence or psychological abuse that caused them not to present the evidence to the IRS. This limitation on introducing evidence can prevent taxpayers who otherwise qualify for innocent spouse relief from receiving it. It can fall particularly hard on unrepresented taxpayers who did not understand this requirement when they were dealing with the IRS.
- *Solution:* Revise IRC § 6015 to allow courts to consider all relevant evidence in reviewing requests for equitable relief in innocent spouse cases.

PRESENT LAW

Taxpayers who file joint federal income tax returns are jointly and severally liable for any deficiency or tax due in connection with their joint returns. IRC § 6015, sometimes referred to as the "innocent spouse" rules, provides relief from joint and several liability under certain circumstances. If traditional relief from a deficiency is unavailable under subsection (b) of IRC § 6015 and separation of liability relief from a deficiency is unavailable under subsection (c), a taxpayer may qualify for equitable relief from deficiencies and underpayments under subsection (f). Relief under IRC § 6015(f) is appropriate when, considering all the facts and circumstances of a case, it would be inequitable to hold a joint filer liable for the unpaid tax or deficiency. If the IRS denies relief under any subsection of IRC § 6015 or a request for relief has gone unanswered for six months, the taxpayer may file a petition with the U.S. Tax Court (Tax Court) under IRC § 6015(e).

There has been uncertainty regarding both the scope of review and the standard of review the Tax Court should apply in innocent spouse cases. In 2008, the Tax Court held that the scope of its review in IRC § 6015(f) cases, like its review in IRC § 6015(b) and (c) cases, is *de novo*, meaning it may consider evidence introduced at trial that was not included in the administrative record.[1] In 2009, the Tax Court also held that the standard of review in IRC § 6015(f) cases, like its review in IRC § 6015(b) and (c) cases, is *de novo*, meaning the Tax Court will consider the case anew, without deference to the IRS's determination.[2]

In 2009, the IRS Office of Chief Counsel (Chief Counsel) issued guidance to its attorneys instructing them to argue, contrary to the Tax Court's holdings, that judicial review in all IRC §6015(f) cases is limited to issues and evidence presented before the IRS Appeals or Examination functions and that the proper standard of

1 *Porter v. Comm'r*, 130 T.C. 115 (2008).
2 *Porter v. Comm'r*, 132 T.C. 203 (2009) (a continuation of the case that produced the 2008 holding).

review is "abuse of discretion."[3] In 2011, the National Taxpayer Advocate recommended that Congress amend IRC § 6015 to reflect the Tax Court's holdings and reject the IRS's position.[4]

In June 2013, following an appellate court decision affirming the Tax Court's holdings, Chief Counsel issued guidance instructing its attorneys to cease arguing that the scope and standard of review in IRC § 6015(f) cases are not *de novo*.[5] In June 2013, Chief Counsel also issued an Action on Decision stating that although the IRS disagrees that IRC § 6015(e)(1) provides for both a *de novo* standard of review and a *de novo* scope of review, the IRS would no longer argue that the Tax Court should limit its scope of review in IRC § 6015(f) cases to the administrative record or its standard of review in IRC § 6015(f) solely for an abuse of discretion.[6]

In 2019, Congress added paragraph (7) to IRC § 6015(e). It provides that "any review of a determination made under this section is *de novo* by the Tax Court."[7] However, this *de novo* review is limited to consideration of "(A) the administrative record established at the time of the determination, and (B) any additional newly discovered or previously unavailable evidence." The provision does not define the terms "newly discovered"[8] or "previously unavailable."[9]

REASONS FOR CHANGE

IRC § 6015(e)(7), which limits the Tax Court's scope of review, applies to determinations made "under this section" (*i.e.*, IRC § 6015). Thus, the provision supersedes Tax Court jurisprudence regarding the review not only in IRC § 6015(f) cases, but also in cases involving the application of IRC § 6015(b) and (c).

The provision may be intended to encourage the IRS and taxpayers to compile a complete administrative record or resolve cases without litigation.[10] In some cases, however, taxpayers – particularly taxpayers not represented by counsel – may not understand the significance of certain evidence or the consequences of failing to present it to the IRS. In other cases, taxpayers may present relevant evidence during trial to a neutral third party – the judge – that they are reluctant to share with the IRS, such as evidence of the other joint filer's domestic violence or abuse.[11]

It is difficult to imagine a state law that bars victims of domestic violence from introducing evidence at trial that goes beyond what they initially told police and was included in police records. The requirement that the

3 IRS Chief Counsel Notice CC-2009-021, Litigating Cases Involving Claims for Relief From Joint and Several Liability Under Section 6015(f): Scope and Standard of Review (June 30, 2009).

4 National Taxpayer Advocate 2011 Annual Report to Congress 531 (Legislative Recommendation: *Clarify that the Scope and Standard of Tax Court Determinations Under IRC 6015(f) Is* De Novo), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/2011_ARC_Legislative-Recommendations.pdf.

5 IRS Chief Counsel Notice CC-2013-011, Litigating Cases That Involve Claims for Relief From Joint and Several Liability Under Section 6015 (June 7, 2013).

6 Action on Decision (AOD) 2012-07, I.R.B. 2013-25 (June 17, 2013), issued in response to *Wilson v. Comm'r*, 705 F.3d 980 (9th Cir. 2013), *aff'g* T.C. Memo. 2010-134. An AOD is a formal memorandum prepared by Chief Counsel that announces the litigation position the IRS will take in the future regarding the issue addressed in the AOD.

7 Taxpayer First Act, Pub. L. No. 116-25, § 1203, 133 Stat. 981, 988 (2019).

8 The Tax Court has defined "newly discovered" as "recently obtained sight or knowledge of for the first time." *See Thomas v. Comm'r*, 160 T.C. 371 (2023).

9 In other cases, such as where a taxpayer raises innocent spouse as a defense in a deficiency case or the IRS does not issue a notice of determination, the Tax Court's scope and standard of review will continue to be *de novo*. *See Eze v. Comm'r*, No. 17486-19S (T.C. Jan. 21, 2022), and *Schnackel v. Comm'r,* T.C. Memo. 2024-76 (both cases following *Porter v. Comm'r*, 132 T.C. 203 (2009)).

10 *See* Treasury Inspector General for Tax Administration, Ref. No. 2024-300-001, *The Innocent Spouse Program Needs Improved Guidance for Employees and Increased Communication With Taxpayers* 5-6 (2023), (the IRS did not fully develop facts and circumstances in 22% of examined cases; underdeveloped factors included domestic abuse, knowledge test, compliance, economic hardship, and mental/physical health).

11 Abuse that prevented a taxpayer from challenging the treatment of an item on a joint return out of fear the other spouse might retaliate would weigh in favor of granting relief. *Stephenson v. Comm'r*, T.C. Memo. 2011-16, is an example of a case in which the Tax Court's finding that the petitioner was physically and verbally abused by her husband was largely based on evidence produced at trial because the issue of abuse was not fully developed administratively.

Tax Court generally limit itself to considering evidence included in the administrative record – even where the requesting spouse suffered from domestic violence and otherwise meets the innocent spouse requirements – is similarly misguided. To enable the Tax Court to make the correct decision based on the merits of an innocent spouse claim, the National Taxpayer Advocate believes the court should be permitted to consider all relevant evidence, whether or not it was provided to the IRS in a prior administrative proceeding.

Finally, some taxpayers who wish to obtain review by a federal court that is *de novo* in scope may pay the asserted tax and bring a refund suit before a U.S. district court or the U.S. Court of Federal Claims. But this approach carries the risk that these courts may conclude they lack jurisdiction to hear innocent spouse claims.[12] To address these cases, and in recognition that innocent spouse claims often follow domestic violence or emotional abuse, the National Taxpayer Advocate recommends the statute be amended to allow all courts with jurisdiction over IRC § 6015 cases to consider all relevant evidence. The Treasury Department has made a similar proposal.[13]

RECOMMENDATION

- Replace IRC § 6015(e)(7) with the following: "The standard and scope of review of any petition or request for relief filed under this section in the Tax Court or other court of competent jurisdiction shall be *de novo*."[14]

12 The National Taxpayer Advocate recommends that Congress address this risk. *See Clarify That Taxpayers May Raise Innocent Spouse Relief as a Defense in Collection, Bankruptcy, and Refund Cases, infra*.

13 *See* Dep't of the Treasury, General Explanations of the Administration's Fiscal Year 2025 Revenue Proposals 190 *(Allow the Tax Court to Review All Evidence in Innocent Spouse Relief Cases)*.

14 This recommendation averts the possibility that the language in IRC § 6015(e)(7) that "[a]ny review of a determination under this section shall be reviewed *de novo* by the Tax Court" could be construed as conferring exclusive jurisdiction on the Tax Court to hear innocent spouse claims, which would preclude innocent spouse relief in collection, bankruptcy, and refund cases litigated in other federal courts and would be inconsistent with IRC § 6015(e)(1)(A) (conferring Tax Court jurisdiction "in addition to any other remedy provided by law"). Such an interpretation would also be inconsistent with the legislative recommendation *Clarify That Taxpayers May Raise Innocent Spouse Relief as a Defense in Collection, Bankruptcy, and Refund Cases, infra*. For legislative language generally consistent with this recommendation, see Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 306 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill.

Legislative Recommendation #49

Clarify That Taxpayers May Raise Innocent Spouse Relief as a Defense in Collection, Bankruptcy, and Refund Cases

SUMMARY

- *Problem:* Some federal courts have allowed taxpayers to make requests for innocent spouse relief in collection, bankruptcy, and refund cases, while others have not. As a result, similarly situated taxpayers are treated inconsistently, and some taxpayers are left without any forum in which to seek innocent spouse relief before a court enters a financially damaging judgment.
- *Solution:* Clarify that U.S. district courts, bankruptcy courts, and the U.S. Court of Federal Claims have jurisdiction to grant innocent spouse relief in collection, bankruptcy, and refund cases.

PRESENT LAW

Married taxpayers who file joint returns are jointly and severally liable for any deficiency or tax due. Spouses who live in community property states and file separate returns are generally required to report half the community income on their separate returns. As an exception, IRC §§ 6015 and 66, sometimes referred to as the "innocent spouse" rules, provide relief from joint and several liability and from the operation of community property rules. Taxpayers seeking innocent spouse relief generally must file IRS Form 8857, Request for Innocent Spouse Relief. After reviewing the request, the IRS issues a final notice of determination granting or denying relief in whole or in part.

The U.S. Tax Court (Tax Court) has jurisdiction to determine the appropriate relief if a taxpayer files a petition: (i) within 90 days from the date the IRS mails its final notice of determination, or (ii) if the IRS fails to issue a notice of determination, no earlier than six months after the request for innocent spouse relief is made.[1] Under IRC § 6015(e)(1)(A), the Tax Court's jurisdiction to decide innocent spouse claims does not appear to be exclusive.[2] IRC § 6015(e)(1)(A) provides that an individual may petition the Tax Court for review of an innocent spouse determination "[i]n addition to any other remedy provided by law."

The Tax Court is the only prepayment judicial forum in which a taxpayer may obtain review of an adverse IRS determination. However, there is no right to a jury trial in the Tax Court. Moreover, while the standard of review of a denial of a claim for innocent spouse relief under IRC § 6015 is *de novo*, the scope of the Tax Court's review is limited to "(A) the administrative record established at the time of the determination, and (B) any additional newly discovered or previously unavailable evidence."[3]

The Tax Court does not have jurisdiction over collection suits arising under IRC §§ 7402 and 7403, over bankruptcy proceedings arising under Title 11 of the United States Code, or over refund suits arising under IRC § 7422. Some federal courts with jurisdiction in these cases have considered taxpayers' innocent spouse

1 IRC § 6015(e)(1)(A). The Tax Court may also have jurisdiction where the taxpayer requests innocent spouse relief as an affirmative defense. *See, e.g.*, *Van Arsdalen v. Comm'r*, 123 T.C. 135 (2004) (deficiency proceeding); *Estate of Wenner v. Comm'r,* 116 T.C. 284 (2001) (interest abatement proceeding).

2 Under IRC § 6015(e)(3), the Tax Court loses jurisdiction in refund cases. *See Coggin v. Comm'r*, 157 T.C. 144 (2021).

3 IRC § 6015(e)(7). This provision was enacted as part of the Taxpayer First Act, Pub. L. No. 116-25, § 1203, 133 Stat. 981, 988 (2019). The National Taxpayer Advocate recommends revising IRC § 6015(e)(7) to remove this limitation on the Tax Court's scope of review. *See Provide That the Scope of Judicial Review of Innocent Spouse Determinations Under IRC § 6015 Is* De Novo, *supra*.

claims, which is consistent with IRC § 6015(e)(1)(A).[4] However, other federal courts have held that the Tax Court's jurisdiction to decide innocent spouse claims is exclusive and have declined to consider such claims in collection, bankruptcy, and refund cases.[5]

REASONS FOR CHANGE

Inconsistent decisions about whether taxpayers may seek innocent spouse relief in collection, bankruptcy, and refund cases have created confusion and resulted in inconsistent treatment of similarly situated taxpayers. In addition, treating the Tax Court as having exclusive jurisdiction over innocent spouse claims may deprive some taxpayers of their day in court. If other federal courts decide they cannot consider innocent spouse claims in collection, bankruptcy, and refund cases, taxpayers in those cases may be left without any forum in which to seek innocent spouse relief before a court enters a financially damaging judgment or, in rare cases, a taxpayer loses his or her home to foreclosure. At the same time, taxpayers forced to raise their innocent spouse claims in Tax Court will be deprived of a *de novo* scope of review that would be available in other federal courts.

Legislation is needed to clarify that the statutory language of IRC § 6015, which confers Tax Court jurisdiction "in addition to any other remedy provided by law," does not give the Tax Court exclusive jurisdiction to determine innocent spouse claims and that U.S. district courts, bankruptcy courts, and the U.S. Court of Federal Claims may also consider whether innocent spouse relief should be granted.

RECOMMENDATION

- Amend IRC §§ 6015 and 66 to clarify that taxpayers are entitled to raise innocent spouse relief as a defense in proceedings brought under any provision of Title 26 (including §§ 6213, 6320, 6330, 7402, 7403, and 7422) and in cases arising under Title 11 of the United States Code.[6]

4 *See, e.g.*, *United States v. Diehl*, 460 F. Supp. 1282 (S.D. Tex. 1978), *aff'd per curiam*, 586 F.2d 1080 (5th Cir. 1978) (IRC § 7402 suit to reduce an assessment to judgment); *In re Pendergraft*, 119 A.F.T.R.2d (RIA) 1229 (Bankr. S.D. Tex. 2017) (bankruptcy proceeding); *In re Bowman*, 129 A.F.T.R.2d (RIA) 909 (Bankr. E.D. La. 2022) (bankruptcy proceeding); and *Hockin v. United States*, 400 F. Supp. 3d 1085, 1092 n.2 (D. Or. 2019) (refund suit).

5 *United States v. Boynton*, 99 A.F.T.R.2d (RIA) 920 (S.D. Cal. 2007) (IRC § 7402 suit to reduce an assessment to judgment); *United States v. Cawog*, 97 A.F.T.R.2d (RIA) 3069 (W.D. Pa. 2006) (IRC § 7403 suit to foreclose on federal tax liens); *In re Mikels*, 524 B.R. 805 (Bankr. S.D. Ind. 2015) (bankruptcy proceeding); *Chandler v. United States*, 338 F. Supp. 3d 592 (N.D. Tex. 2018) (refund suit); and *Geary v. United States*, 650 B.R. 486 (Bankr. W.D. Pa. 2023) (bankruptcy proceeding).

6 *See Provide That the Scope of Judicial Review of Innocent Spouse Determinations Under IRC § 6015 Is* De Novo, *supra*. For legislative language generally consistent with this recommendation, see Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 306 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill.

Legislative Recommendation #50

Fix the Donut Hole in the Tax Court's Jurisdiction to Determine Overpayments by Non-Filers With Filing Extensions

SUMMARY

- *Problem:* A "donut hole" in the U.S. Tax Court's (Tax Court's) jurisdiction prevents it from reviewing some taxpayer refund claims. This unusual situation arises when taxpayers overpay their tax obligations, obtain a six-month filing extension but do not file a return, and later receive a notice of deficiency from the IRS. The Tax Court's jurisdiction to review refund claims in these circumstances is uncertain, which harms taxpayers.
- *Solution:* Amend IRC § 6512(b)(3) to clarify that the Tax Court has jurisdiction to review refund claims by taxpayers affected by the existing "donut hole."

PRESENT LAW

IRC § 6511(a) provides that taxpayers who believe they have overpaid their tax generally may file a claim for credit or refund with the IRS by the later of:

1. Three years from the date the return was filed; or
2. Two years from the date the tax was paid.

IRC § 6511(b) places limits on the amount the IRS may credit or refund by imposing a two-year or three-year lookback period:

1. Taxpayers who file claims for credit or refund within three years from the date their original return was filed will have their credits or refunds limited to the amounts paid within the three-year period before the filing of the claim, plus the period of any extension of time for filing their original return.[1]
2. Taxpayers who do not file claims for credit or refund within three years from the date the original return was filed will have their credits or refunds limited to the amounts paid within the two-year period immediately preceding the filing of the claim.[2]

For calendar year taxpayers, IRC § 6513(b) provides that any tax deducted and withheld on wages and any amounts paid as estimated tax are deemed paid on April 15 in the year following the close of the taxable year for which the paid tax is allowable as a credit. This generally means that taxpayers who have overpaid their tax but not filed a tax return cannot claim a refund more than two years after the tax was paid or deemed paid.

When the IRS proposes to assess additional tax, it ordinarily must issue a notice of deficiency to the taxpayer, who can then seek review in the Tax Court if they disagree with the IRS's position.[3] If the taxpayer files a timely petition, the Tax Court generally has jurisdiction under IRC § 6512(b) to determine whether the taxpayer is due a refund for the tax year at issue. The amount of the refund is limited to the tax paid within a specified period. The relevant period here is described in IRC § 6512(b)(3)(B), which limits the refund to tax paid during the applicable two- or three-year lookback period in IRC § 6511(b)(2), running from the date the IRS mailed the notice of deficiency.

1 *See* IRC § 6511(b)(2)(A).
2 *See* IRC § 6511(b)(2)(B).
3 IRC §§ 6212, 6213.

In 1996, the Supreme Court held in *Commissioner v. Lundy* that the language in IRC § 6512(b)(3)(B) meant the two-year lookback period applied to a taxpayer who had not filed a return before the IRS mailed a notice of deficiency.[4] The IRS had mailed the notice in the third year after the return's filing deadline, and the Court determined that the taxpayer was unable to recover overpayments from withholding since those amounts were deemed paid on the original due date of the return, which was more than two years before the date of the notice of deficiency.

The Supreme Court's interpretation created a disparity between non-filers who received a notice of deficiency during the third year after the return was due and taxpayers who received such a notice but had filed returns on or before the date of the notice. Filers received the benefit of the three-year lookback period and could be refunded overpayments attributable to withholding and estimated taxes. By contrast, non-filers were subject to the two-year lookback period and thus could not recover their overpayments because the amounts were deemed paid on the due date of the return, which was outside the two-year window. In 1997, Congress added flush language to IRC § 6512(b)(3) to eliminate the disparate results by extending the lookback period for non-filing taxpayers from two years to three years when the IRS mailed a notice of deficiency "during the third year after the due date (with extensions) for filing the return."[5]

REASONS FOR CHANGE

The 1997 law may not have entirely fixed the problem it was enacted to solve. According to the legislative history, Congress enacted the special rule of IRC § 6512(b)(3) to put non-filers who receive notices of deficiency within three years after the date a return was due on the same footing as taxpayers who file returns on or before the IRS mails the notice of deficiency. The special rule was supposed to allow non-filers "who receive a notice of deficiency and file suit to contest it in Tax Court during the third year after the return due date to obtain a refund of excessive amounts paid within the three-year period prior to the date of the deficiency notice."[6]

In 2017, the Tax Court interpreted the law in a way that has created a jurisdictional "donut hole" for taxpayers who filed for an extension but did not subsequently file their return. In *Borenstein v. Commissioner*, the Tax Court concluded that it lacked jurisdiction to determine a non-filer's overpayment because the non-filer had requested a six-month extension to file and the IRS had mailed the notice of deficiency during the first six months of the third year following the original due date – *i.e.*, after the second year following the due date (without extensions) and before the third year following the due date (with extensions).[7] Under the Tax Court's reading of the statute, the words "with extensions" can delay by six months the beginning of the "third year after the due date" for non-filers who received filing extensions but do not file and who then receive a notice of deficiency from the IRS.

This unintended glitch opens a six-month "donut hole" during which the IRS can send deficiency notices to taxpayers without triggering the Tax Court's jurisdiction to consider the refund claims of those taxpayers. Although the U.S. Court of Appeals for the Second Circuit reversed the Tax Court's decision, the Tax Court is not required to follow the Second Circuit's decision in cases arising in other circuits.[8] Thus, unless the Tax Court revisits its own precedent, a legislative fix is still needed.

4 516 U.S. 235 (1996).
5 Taxpayer Relief Act of 1997, Pub. L. No. 105-34, § 1282(a), 111 Stat. 788, 1037 (1997); H.R. Rep. No. 105-220, at 701 (1997) (Conf. Rep.).
6 H.R. Rep. No. 105-220, at 701 (1997) (Conf. Rep.).
7 *Borenstein v. Comm'r*, 149 T.C. 263 (2017), *rev'd*, 919 F.3d 746 (2d Cir. 2019). *See also O'Connell v. Comm'r*, No. 6587-20 (T.C. May 20, 2021) (settled in accordance with the *Borenstein* precedent).
8 *Golsen v. Comm'r*, 54 T.C. 742, 757 (1970), *aff'd*, 445 F.2d 985 (10th Cir. 1971).

Example: For tax year 2021, John Doe made timely estimated tax payments in excess of his tax liability, so the tax was deemed paid on April 15, 2022. He requested a six-month extension of time to file his return, but he ultimately did not file it. On July 2, 2024, the IRS mailed him a notice of deficiency for the 2021 tax year. Mr. Doe responded to the notice by petitioning the Tax Court and explaining the notice was incorrect because he had paid the asserted deficiency. He then filed a tax return showing he had overpaid his tax and was due a refund. Because Mr. Doe did not file a return previously, the general rule of IRC § 6512 limits the Tax Court to refunding payments made within two years from the date on the notice of deficiency, without regard to extensions (i.e., for taxes paid on or after July 2, 2022). This rule would not help Mr. Doe because he paid his taxes on April 15, 2022, which is more than two years before the date of the notice of deficiency.

Under the Tax Court's interpretation of the statute, the flush language in IRC § 6512 also would not help Mr. Doe, because it would only apply if the IRS had mailed the notice of deficiency during the third year after the due date of his return (with extensions) (*i.e.*, the year beginning after October 15, 2024). Because the IRS mailed his notice of deficiency before the third year had begun, the special rule did not apply, and Mr. Doe could not get his refund. If a taxpayer requests a filing extension but does not file a return, this glitch will arise whenever the IRS issues a notice deficiency more than two years after the regular filing deadline (generally, April 15) and not more than two years after the extended filing deadline (generally, October 15).

This problem affects a relatively limited number of taxpayers. However, because Congress enacted legislation designed to put filers and non-filers who overpaid their tax on the same footing and the Tax Court's position in the *Borenstein* case effectively overturns Congress's intended result, the National Taxpayer Advocate believes it is important to highlight this unintended glitch and recommend a solution.[9]

RECOMMENDATION

- Amend the flush language in IRC § 6512(b)(3) by inserting the word "original" before "due date" and striking the parenthetical clause "(with extensions)."

9 For more detail, see Nina E. Olson, The Second Circuit in *Borenstein* Helped to Close the Gap in the Tax Court's Refund Jurisdiction, But Only for Taxpayers in that Circuit, National Taxpayer Advocate Blog (last updated Sept. 16, 2025), https://www.taxpayeradvocate.irs.gov/news/nta-blog/ntablog-the-second-circuit-in-borenstein-helped-to-close-the-gap-in-the-tax-courts-refund-jurisdiction-but-only-for-taxpayers-in-that-circuit/2019/04.

MISCELLANEOUS RECOMMENDATIONS

Legislative Recommendation #51

Restructure the Earned Income Tax Credit to Make It Simpler for Taxpayers and Reduce Improper Payments

SUMMARY

- *Problem:* The Earned Income Tax Credit (EITC) is one of the federal government's largest anti-poverty programs, but its eligibility requirements are complex. As a result, millions of eligible taxpayers fail to claim the EITC, while other taxpayers claim amounts for which they are not eligible, leading to a high "improper payments" rate.
- *Solution:* Simplify the EITC by separating it into a "worker credit" and a "child credit," remove age limits for claiming it, and treat unemployment compensation as earned income.[1]

PRESENT LAW

The EITC is a refundable tax credit for low- and moderate-income working individuals and families.[2] Eligibility for the EITC and the amount of EITC a taxpayer may claim are based on a variety of factors, including the taxpayer's earned income, the number of qualifying children, and the taxpayer's filing status. The EITC is not available to taxpayers who have disqualified income (*e.g.*, investment income such as dividends, capital gains, and rental income) that exceeds the applicable limit ($11,950 for tax year (TY) 2025).[3] Taxpayers without qualifying children may claim the EITC (commonly referred to as the "childless EITC"), but only if they are between the ages of 25 and 64.[4]

The EITC is structured so that as earned income rises, the credit phases in, plateaus at a maximum amount, and then phases out. The phase-in, maximum, and phase-out amounts depend on the taxpayer's filing status and the number of qualifying children. The maximum credit for TY 2025 is $649 if the taxpayer has no qualifying children, $4,328 with one qualifying child, $7,152 with two qualifying children, and $8,046 with three or more qualifying children.[5]

An individual must meet three primary requirements to be a taxpayer's qualifying child for purposes of the EITC.[6] First, the individual must have a specific blood or legal relationship to the taxpayer.[7] Second, the individual must share a residence in the United States with the taxpayer for more than half the year.[8] Third, the individual must be under the age of 19 (or under age 24 if a full-time student) or be permanently and totally disabled.[9]

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1 The National Taxpayer Advocate also recommends that Congress simplify and update the definition of a "qualifying child" as used in the EITC and other tax provisions to reflect modern family structures. *See Adopt a Consistent and More Modern Definition of a "Qualifying Child" Throughout the Internal Revenue Code*, *infra*.

2 IRC § 32.

3 Rev. Proc. 2024-40, § 2.06(2), 2024-45 I.R.B. 1100, https://www.irs.gov/pub/irs-irbs/irb24-45.pdf.

4 IRC § 32(c)(1)(A)(ii).

5 Rev. Proc. 2024-40, § 2.06(1), 2024-45 I.R.B. 1100, https://www.irs.gov/pub/irs-irbs/irb24-45.pdf.

6 Where there are competing claims for the same child, "tiebreaker" rules prioritize the claims. IRC § 152(c)(4)(B).

7 IRC §§ 32(c)(3)(A), 152(c)(2).

8 IRC § 32(c)(3)(C).

9 IRC §§ 32(c)(3)(A), 152(c)(3). The individual must also have a Social Security number that is valid for employment. IRC § 32(c)(3)(D), (m).

Unemployment compensation (UC) is based on a taxpayer's earned income and included in adjusted gross income (AGI) under IRC § 85, but UC is generally *not included* in earned income under IRC § 32 and thus does not count when computing the amount of EITC for which a taxpayer is eligible.

REASONS FOR CHANGE

Enacted in 1975, the EITC is one of the federal government's largest anti-poverty programs for low-income workers.[10] For TY 2024, about 23.5 million taxpayers claimed EITC benefits worth $68.5 billion.[11] Overall, most people consider the EITC to be an effective anti-poverty program, but its eligibility requirements are complex. As a result, some taxpayers who are eligible for the credit fail to claim it, missing out on this important benefit.[12] At the same time, the program suffers from a relatively high rate of improper payments that could be reduced if the eligibility requirements were simplified.[13]

Restructure EITC as Two Credits: a Worker Credit and a Child Credit

The National Taxpayer Advocate recommends restructuring the EITC into two credits: (i) a refundable *worker credit* based on each individual worker's earned income, irrespective of the presence of a qualifying child, and (ii) a refundable *child credit* that would reflect the costs of caring for one or more children.

Worker Credit. Much like the current EITC, the worker credit would phase in as a percentage of earned income, reach a plateau, and then phase out.[14] Unlike the current EITC, the credit amount would depend solely on income and would not vary based on whether the taxpayer is claiming one or more qualifying children. Increasing the worker component of the EITC would provide a greater incentive to work, which is a core objective of the credit. This change could also substantially reduce improper payments. The IRS receives Forms W-2 and other information reporting documents directly from employers and other payors of income. For that reason, it can accurately verify income amounts for EITC recipients who are employees, who constitute by far the largest group of EITC claimants, and it can verify some income amounts for EITC recipients who are self-employed.[15]

Child Credit. The child credit would be designed as a fixed amount per qualifying child, subject to an AGI phase-out, and would replace the portion of the existing EITC that is based on the number of qualifying children. It could be consolidated with or replace the Child Tax Credit (CTC). This could be accomplished in various ways, and proposals to expand the CTC could provide a starting point for developing the new credit.[16] The National Taxpayer Advocate also recommends that Congress standardize and modernize the definition of "qualifying child" used in the tax code, which is discussed in a separate Legislative Recommendation.[17]

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10 *See, e.g.*, Nicardo McInnis et al., *The Intergenerational Transmission of Poverty and Public Assistance: Evidence From the Earned Income Tax Credit* 5-6 (Nat'l Bureau of Econ. Rsch., Working Paper No. 31429, 2023), https://www.nber.org/papers/w31429 (highlighting analyses of the credit's impacts on low-income workers).

11 IRS, Compliance Data Warehouse (CDW), Individual Returns Transaction File (Nov. 6, 2025).

12 Approximately 20% of eligible taxpayers do not claim the EITC. *See* IRS, EITC Participation Rate by State (Aug. 21, 2025), https://www.irs.gov/tax-professionals/eitc-central/eitc-participation-rate-by-state.

13 An improper payment is generally "any payment that should not have been made or that was made in an incorrect amount, including an overpayment or underpayment, under a statutory, contractual, administrative, or other legally applicable requirement" and includes "any payment to an ineligible recipient." 31 U.S.C. § 3351(4). For fiscal year 2024, the IRS estimates that approximately 27% of the total EITC program payments were improper. OMB, Annual Improper Payments Dashboard (FY 2024), https://www.paymentaccuracy.gov/payment-accuracy-the-numbers/ (last visited Oct. 6, 2025).

14 For examples regarding how a per-worker credit might be structured, see Elaine Maag, Investing in Work by Reforming the Earned Income Tax Credit, Urban Inst. (2015), https://www.urban.org/research/publication/investing-work-reforming-earned-income-tax-credit.

15 A relatively small percentage of EITC claimants are self-employed individuals. The IRS generally receives less information from third-party payors with respect to self-employed individuals.

16 *See, e.g.*, American Family Act, H.R. 3899, 118th Cong. § 2 (2023); Working Families Tax Relief Act of 2023, S. 1992, 118th Cong. § 201 (2023); Press Release, Office of Sen. Steve Daines, *Daines Announces Framework for Support for Families, Pregnant Moms* (June 15, 2022), https://www.daines.senate.gov/2022/06/15/daines-announces-framework-for-support-for-families-pregnant-moms/.

17 *See Adopt a Consistent and More Modern Definition of a "Qualifying Child" Throughout the Internal Revenue Code*, *infra*.

Remove Age Eligibility Restrictions

As described above, the childless EITC is generally available only to taxpayers between the ages of 25 and 64. For 2021 only, Congress expanded the age range of eligible workers to include adults over the age of 18 (age 24 for students), and made qualified homeless and former foster youth eligible to claim the credit at age 18.[18] The National Taxpayer Advocate recommends making the 2021 changes permanent. There are an estimated 33 million individuals under the age of 25 and over the age of 64 who are participating in the workforce, which includes about 22 million individuals under the age of 25 and about 11 million individuals over the age of 64.[19] Consistent with the EITC program's dual mission of alleviating poverty and providing a work incentive, individuals who are over the age of 18 (age 24 for students) should not be excluded from EITC eligibility. Further, we recommend that the 2021 provision lowering the eligibility age to 18 for qualified homeless and former foster youth be made permanent due to the special challenges these individuals face. For example, one study found that "after reaching the age of 18, 20% of the children who were in foster care will become instantly homeless."[20]

Unemployment Compensation

Taxpayers who receive UC based on their employment earnings cannot use their UC income to qualify for the EITC. The apparent rationale for not counting UC is that the EITC was designed largely to provide a work incentive. However, UC is paid exclusively to individuals who were working and became separated from their jobs due to no fault of their own. During the COVID-19 pandemic, for example, millions of individuals lost their jobs when certain segments of the economy, including restaurants, hotels, and airlines, substantially reduced their workforces. In other instances, local disasters such as hurricanes, tornadoes, and wildfires have adversely affected segments of the economy and led to mass layoffs. Because UC is effectively a replacement for a portion of the wages working individuals would have earned if they had not been separated from their jobs and because UC benefits are only paid for a limited number of months, treating UC as earned income solely for purposes of the EITC would provide additional support for low-income families, while still maintaining the nexus between working and receiving the EITC.[21]

RECOMMENDATIONS

- Separate the EITC into two refundable components: a worker credit and a child credit.[22]
- Expand the age eligibility for the EITC to individuals who have attained age 19 (age 18 in the case of qualified homeless or former foster youth, and age 24 for specified students), with no upper age limit.[23]
- Amend IRC § 32(c)(2)(A)(i) to include UC as EITC-qualifying earned income.

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18 American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 9621, 135 Stat. 4, 152-153 (2021) (codified at IRC § 32(n)).

19 U.S. Bureau of Lab. Stat., Employment Projections: Table 3.1, Civilian labor Force by Age, Sex, Race, and Ethnicity, 2004, 2014, 2024, and Projected 2034 (Numbers in Thousands) (modified Aug. 28, 2025), https://www.bls.gov/emp/tables/civilian-labor-force-summary.htm. Note that the data includes workers who are 16, 17, and 18 years old. This legislative recommendation would not apply to these individuals except for 18-year-olds who are qualified homeless or qualified former foster youth.

20 *See* Erin M. Collins, Former Foster Youth and Homeless Youth May Be Eligible to Claim the Earned Income Tax Credit, National Taxpayer Advocate Blog (last updated Dec. 10, 2024), https://www.taxpayeradvocate.irs.gov/news/nta-blog/nta-blog-former-foster-youth-and-homeless-youth-may-be-eligible-to-claim-the-earned-income-tax-credit/2022/02 (citing National Foster Youth Institute data).

21 In some cases, including UC in earned income may reduce a taxpayer's EITC or make a taxpayer ineligible to claim it.

22 The National Taxpayer Advocate also recommends that Congress simplify and modernize the definition of a "qualifying child" as used throughout the code. *See Adopt a Consistent and More Modern Definition of a "Qualifying Child" Throughout the Internal Revenue Code*, *infra*.

23 For legislative language generally consistent with this recommendation, see Working Families Tax Relief Act of 2023, S. 1992, 118th Cong. § 101(a), (b) (2023). Other bills would allow the childless EITC for working individuals who are age 18 and older. *See, e.g.*, Lower Your Taxes Act, H.R. 5953, 118th Cong. § (3)(e) (2023); EITC Age Parity Act of 2023, H.R. 5689, 118th Cong. § 2 (2023); EITC Modernization Act, H.R. 5421, 118th Cong. § 3(f) (2023); and Worker Relief and Credit Reform Act of 2023, H.R. 1468, 118th Cong. § (2)(b) (2023). For legislative language that would allow the credit for older Americans, see EITC for Older Workers Act of 2024, H.R. 9361, 118th Cong. § 2 (2024) (repealing the upper age limit).

Legislative Recommendation #52

Adopt a Consistent and More Modern Definition of a "Qualifying Child" Throughout the Internal Revenue Code

SUMMARY

- *Problem:* Numerous provisions in the tax code use the term "qualifying child," but they contain several different definitions of the term. These inconsistent definitions are confusing to taxpayers. The different definitions make compliance difficult, causing some taxpayers to fail to claim tax benefits for which they qualify and other taxpayers to claim tax benefits for which they do not qualify, which can subject them to liability for additional tax, penalties, and interest. Furthermore, the relationship test embedded in the definitions has not been updated to reflect the rise of non-traditional families and childcare arrangements, preventing certain primary caregivers from receiving benefits.
- *Solution:* Adopt a consistent and more modern definition of the term "qualifying child" throughout the tax code by using a consistent age requirement, removing or revising the relationship test to expand eligibility to modern families, and revising the definition of a "qualifying relative" to allow a taxpayer to claim the qualifying child of another taxpayer who is entitled to claim the child but does not do so.

PRESENT LAW

IRC § 152(a) broadly defines a "dependent" as a qualifying child or a qualifying relative.[1] To be a qualifying child under IRC § 152(c), an individual generally must: (i) be under age 19, or age 24 if a student, unless permanently and totally disabled; (ii) be the taxpayer's child, stepchild, foster child, brother, sister, half-brother, half-sister, stepbrother, stepsister, or a descendant of any of them; (iii) live with the taxpayer for more than half the year; (iiii) not provide more than one-half of the individual's own support during the year; and (iv) not file a joint return for the year.

IRC § 152(c) is meant to provide a uniform definition of a qualifying child for four tax benefits: head-of-household (HoH) filing status, the Child and Dependent Care Credit, the Child Tax Credit (CTC), and the Earned Income Tax Credit (EITC).[2] The definition also affects eligibility for other provisions like premature distributions from tax-favored accounts for medical and education expenses, dependent care assistance programs, and family member fringe benefits.[3]

The Working Families Tax Relief Act of 2004 added this uniform definition to the tax code.[4] At the time, Congress concluded that the use of multiple definitions contributed to a lack of clarity.[5] But there are still provisions in the tax code that deviate from the uniform definition. For example, while the uniform definition requires that a qualifying child be under age 19 (or age 24 if a student), the CTC may only be claimed with respect to children under age 17.[6] Another example: The term "qualifying child" and the relationships described in IRC § 152(c)(2) encompass several types of familial relationships, including grandchildren, but

1 IRC § 152(a).
2 IRC §§ 2(b), 21, 24, & 32. Prior to tax year 2018, the definition also applied for purposes of the dependency exemption. However, the dependency exemption was suspended by the Tax Cuts and Jobs Act for tax years 2018-2025 and permanently repealed for future years by the One Big Beautiful Bill Act.
3 IRC §§ 72(t)(7), 125, 129, 132, & 223.
4 Pub. L. No. 108-311, § 201, 118 Stat. 1166, 1169-1165 (2004).
5 Staff of J. Comm. on Tax'n, 109th Cong., Gen. Explanation of Tax Legis. Enacted in the 108th Cong. 124-125, JCS-5-05 (J. Comm. Print 2005), https://www.jct.gov/publications/2005/jcs-5-05.
6 IRC §§ 24(c)(1) & 152(c)(3).

in the case of a married taxpayer who is seeking to be treated as unmarried for purposes of claiming HoH filing status, only a son or daughter meets the definition of a qualifying child – grandchildren do not qualify.[7]

IRC § 152(d) defines the term "qualifying relative." Under IRC § 152(d)(1)(D), one criterion for being a qualifying relative of a taxpayer is that the individual "is not a qualifying child of such taxpayer or any other taxpayer...." This provision, as currently written, excludes children who could be claimed as qualifying children by another taxpayer but are not.

REASONS FOR CHANGE

Consistency Reduces Confusion and Eases Administration

The deviations from a uniform definition are needlessly confusing. Not surprisingly, many taxpayers do not understand the differences in requirements. They may assume that if a child is "qualifying" for purposes of one IRC provision, the child is qualifying for all IRC provisions. Conversely, they may assume that if a child is not qualifying for purposes of one IRC provision, the child is not a qualifying child for any IRC provision.[8] This confusion can cause taxpayers to file inaccurate tax returns, which may lead to audits and additional tax liabilities, penalties, and interest charges. It can also cause taxpayers to fail to claim benefits to which they are entitled. For example, in tax year 2021, about 14% of taxpayers with children who were eligible to receive EITC benefits did not claim them.[9]

Confusion also increases the administrative burden on the IRS, as it must program its return processing systems using different definitions for different provisions, program its audit selection models to distinguish among conflicting definitions, and devote audit and collection resources to reporting inaccuracies that exist solely because taxpayers (and even some tax preparers) confuse the various definitions when filling out tax returns.

The Relationship Test Prevents Primary Caregivers From Receiving Certain Tax Benefits

The uniform definition and other eligibility rules for family-focused tax benefits, such as the EITC and CTC, were written when two-parent households predominated. Living arrangements have evolved. Blended families, multigenerational family arrangements, divorce, and cohabitation have become more common.[10] Childcare arrangements have become complex as more children split their time between different households, and 4% of children live with or are supported by non-parent relatives and others.[11] When children are raised or informally fostered by nonqualified relatives or family friends, benefits like the EITC and CTC cannot be properly claimed.

Taxpayers can only receive the child-related portion of the EITC and the CTC when they have a qualifying child, not a qualifying relative.[12] The IRC § 152(c)(2) relationship test for a qualifying child restricts eligibility

7 IRC §§ 152(c)(2) & 7703(b).

8 *See, e.g.*, Treasury Inspector General for Tax Administration, Ref. No. 2021-40-070, *Addressing Complex and Inconsistent Earned Income Tax Credit and Additional Child Tax Credit Rules May Reduce Unintentional Errors and Increase Participation* 6-7 (2021).

9 IRS/Census Exact Match, Project 6000463. Release authorization CBDRB-FY24-CES004-016, CBDRB-FY24-CES026-014, CBDRB-FY24-CES004-018.

10 *See, e.g.*, Lydia R. Anderson et al., U.S. Census Bureau, P70-174, Current Population Reports, Living Arrangements of Children: 2019 (Feb. 2022), https://www.census.gov/content/dam/Census/library/publications/2022/demo/p70-174.pdf.

11 *See, e.g.*, Jacob Goldin & Ariel Jurow Kleiman, *Whose Child Is This? Improving Child-Claiming Rules in Safety-Net Programs*, 131 Yale L.J. 1719 (2022), https://www.yalelawjournal.org/article/whose-child-is-this; Elaine Maag et al., Urban Inst., Increasing Family Complexity and Volatility: The Difficulty in Determining Child Tax Benefits 11 (2016), https://www.urban.org/research/publication/increasing-family-complexity-and-volatility-difficulty-determining-child-tax-benefits; Lydia R. Anderson et al., U.S. Census Bureau, P70-174, Current Population Reports, Living Arrangements of Children: 2019, at 3 tbl.1, (Feb. 2022), https://www.census.gov/content/dam/Census/library/publications/2022/demo/p70-174.pdf; U.S. Census Bureau, *Historical Living Arrangements of Children*, Fig. CH-1 (Nov. 2023), https://www.census.gov/data/tables/time-series/demo/families/children.html.

12 IRC §§ 24, 32, 152.

to only a few close relatives.[13] This test mainly excludes children who live in low-income households.[14] It is estimated that the relationship test excludes two million children for purposes of some CTC benefits.[15] A child who does not live with a sufficiently close relative cannot be claimed by anyone.[16] Similarly, where a taxpayer is seeking to be treated as unmarried for purposes of HoH filing status, the relationship rules prevent the taxpayer from claiming grandchildren.[17]

Congress can address these shortcomings by modernizing the uniform definition of a qualifying child, as the current definition often no longer reflects real-life living arrangements. The definition should be amended to encompass more types of families. The overly restrictive relationship test of IRC § 152(c)(2) should be expanded to include additional categories of relatives or replaced with a more inclusive primary caregiver standard.[18] The residency test and other requirements should remain in place to ensure the tax benefits are going to taxpayers providing care to children in their household.[19]

To allow heads of non-traditional families to claim children they care for as dependents, another amendment to the current IRC § 152 rules would make a significant difference – adding the words "claimed as" to IRC § 152(d)(1)(D), so the term "qualifying relative" means an individual who is not claimed as a qualifying child of such taxpayer or of any other taxpayer for any taxable year in the calendar year in which such taxable year begins. That language would also conform to the language used in IRC § 152(c)(4)(C), which allows a taxpayer other than a parent to claim a qualifying child. Under that provision, if the parents may claim a qualifying child but neither parent does so, the child may be claimed as the qualifying child of another taxpayer if the adjusted gross income of that taxpayer is higher than the highest adjusted gross income of either parent.[20]

RECOMMENDATIONS

- Adopt a consistent and more modern definition of the term "qualifying child" throughout the IRC.
- Use a consistent age when defining a "qualifying child."
- Modernize the definition of a qualifying child in IRC § 152(c) to reflect evolving family units either by expanding the relationship test described in IRC § 152(c)(1)(A) and (2) to include additional categories of relatives or by replacing the relationship test of IRC § 152(c)(1)(A) and (2) with a primary caregiver standard.
- Amend IRC § 152(d)(1)(D) to provide that the term "qualifying relative" means an individual "who is not claimed as a qualifying child of such taxpayer or of any other taxpayer for any taxable year in the calendar year in which such taxable year begins."

13 IRC § 152(c).

14 *See* Jacob Goldin & Katherine Michelmore, *Who Benefits from the Child Tax Credit?* (Nat'l Bureau of Econ. Rsch., Working Paper No. 27940, 2021), http://www.nber.org/papers/w27940.

15 *Id*. at 19, 29 tbl.3.

16 IRC §§ 24(c), 152(c).

17 IRC §§ 2(b), 152(f)(1), 7703(b).

18 Relevant considerations should include which adult performs caregiving and makes caregiving decisions for the child, including factors like who prepares meals, who transports the child to school, and who makes medical appointments for the child. For a more detailed discussion on modernizing the definition of a qualifying child, see National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress vol. 3, at 17 (*Earned Income Tax Credit: Making the EITC Work for Taxpayers and the Government*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/JRC20_Volume3.pdf; *see also* Ariel Jurow Kleiman, *Revolutionizing Redistribution: Tax Credits and the American Rescue Plan*, 131 Yale L.J. Forum 535, 555-556 (2021), https://www.yalelawjournal.org/forum/revolutionizing-redistribution-tax-credits-and-the-american-rescue-plan.

19 *See* IRC § 152(c)(1)(B)-(E).

20 *See* IRC § 152(c)(4)(C).

Legislative Recommendation #53

Provide Consistent Tax Relief for Victims of Federally Declared Disasters

SUMMARY

- *Problem:* After a hurricane, flood, wildfire, or other natural disaster has destroyed homes and other property, Congress sometimes passes legislation to provide tax relief to the victims. However, there is no consistency regarding whether or which forms of tax relief are provided. As a result, taxpayers may receive extensive relief, some relief, or no relief at all. This approach creates uncertainty for disaster victims and often results in unequal treatment for taxpayers facing similar hardships.
- *Solution:* Determine which forms of tax relief to provide to victims of federally declared disasters and provide that relief consistently. Alternatively, Congress could authorize a menu of relief options and direct the Secretary to prescribe regulations that define the circumstances under which each type of relief should be provided, depending on the nature and severity of the disaster.

PRESENT LAW

IRC § 7508A(a) authorizes the Secretary to postpone certain taxpayer obligations, such as filing a tax return, for up to one year when the taxpayer is affected by a federally declared disaster.[1] However, this provision does not authorize the Secretary to provide substantive tax relief.

Congress has periodically enacted disaster-specific tax relief. For example, the Taxpayer Certainty and Disaster Tax Relief Act of 2020 provided various forms of relief. Among its key provisions, it allowed penalty-free disaster-relief withdrawals from tax-exempt retirement plans up to $100,000, allowed affected employers to receive a 40% tax credit for the purpose of retaining employees, increased the tax deduction for disaster-related personal casualty losses, and allowed taxpayers to claim the earned income tax credit (EITC) based on earned income in the prior year.[2]

The 2020 legislation was implemented to address the financial and economic challenges created by the COVID-19 pandemic, but a review of tax code changes in prior years shows disaster-related tax relief legislation was enacted on a one-off basis more than a dozen times, and since 2020, additional disaster-related tax relief legislation has been enacted.[3]

For example, the Federal Disaster Tax Relief Act of 2023 authorized taxpayers in federally declared disaster areas to deduct unreimbursed personal casualty losses without itemizing deductions and reduced the threshold

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1 Under IRC § 7508A(a), the Secretary may disregard a period of up to one year when determining whether certain acts are timely with respect to taxpayers affected by a federally declared disaster as defined in IRC § 165(i)(5)(A), a significant fire, a terroristic or military action as defined in IRC § 692(c)(2), or a qualified state-declared disaster as described in IRC § 7508A(c). The Secretary's authority to postpone federal tax deadlines due to state-declared disasters is relatively recent. *See* Filing Relief for Natural Disasters Act, Pub. L. No. 119-29, 139 Stat. 471 (2025). While this recommendation focuses on tax relief relating to federally declared disasters, Congress may reasonably decide to provide the same relief for state-declared disasters.

2 Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Div. EE (Taxpayer Certainty and Disaster Tax Relief Act of 2020), §§ 301-306, 134 Stat. 1182, 3070 (2020). Congress has authorized taxpayers to claim the EITC based on prior-year income after several other disasters as well. *See, e.g.*, Disaster Tax Relief and Airport and Airway Extension Act of 2017, Pub. L. No. 115-63, § 504(c), 131 Stat. 1168, 1183 (2017); Heartland Disaster Tax Relief of 2008, Pub. L. No. 110-343, Div. C, Title VII, Subtitle A, § 701, 122 Stat. 3765, 3912 (2008); Katrina Emergency Tax Relief Act of 2005, Pub. L. No. 109-73, Title IV, § 406, 119 Stat. 2016, 2028 (2005). We include a separate recommendation to make that relief automatic in federally declared disaster areas. *See* Legislative Recommendation: *Permanently Give Taxpayers Affected by Federally Declared Disasters the Option of Using Prior Year Earned Income to Claim the Earned Income Tax Credit*, *infra*.

3 *See* Wolters Kluwer, *Internal Revenue Code*, vol. 1, at 784-785 (Winter 2025).

for losses to $500 per casualty, overriding the 10% adjusted gross income limitation. This relief covered disasters declared between January 1, 2020, and February 10, 2025. The bill also provided that certain disaster relief payments received between 2020 and 2025 were excludable from gross income, including unreimbursed amounts received as compensation for losses from qualified wildfire disasters declared after December 31, 2014. Payments received on or after February 3, 2023, for certain losses related to a train derailment in East Palestine, Ohio were also treated as tax-free qualified disaster relief payments.[4]

While the relief provided by the Federal Disaster Tax Relief Act of 2023 expires after 2025, several bills have already been introduced to extend this or similar relief in future years. The Federal Disaster Tax Relief Act of 2025 would extend relief for victims of federally declared disasters through 2026,[5] while the Protect Innocent Victims of Taxation After Fire Extension Act would extend wildfire relief through 2032.[6]

Over the past two decades, Congress has provided other forms of relief in federally declared disasters.[7] These include an extension of time to replace involuntarily converted property;[8] housing exemptions for displaced disaster victims;[9] increased contribution limits for qualified charitable donations to relief organizations;[10] and relief regarding expensing, depreciation, and the timing of losses.[11]

REASONS FOR CHANGE

The current approach by which Congress provides tax relief to taxpayers who live in federally declared disaster areas on a case-by-case basis is problematic for several reasons. First, those dealing with disasters and trauma need answers and certainty, and the current approach produces uncertainty. Individual taxpayers, businesses, and others affected by natural disasters, including state and local governments, often do not know whether relief will be granted until months after disaster strikes or even longer, rather than at the time when clarity is most needed. Second, there are no defined standards for when Congress grants relief or what type of relief is provided. In practice, victims of large, highly publicized disasters often receive more relief than victims of smaller disasters. This can result in unequal treatment of taxpayers facing similar hardships.

To ensure fairness, predictability, and a just tax system for all taxpayers affected by federally declared disasters, the National Taxpayer Advocate recommends that Congress determine which forms of relief are appropriate for victims of federally declared disasters and make the relief permanent. We also recommend any thresholds be indexed to inflation.

4 Federal Disaster Tax Relief Act of 2023, Pub. L. No. 118-148, 138 Stat. 1675 (2024).
5 S. 2744, 119th Cong. (2025).
6 H.R. 5225, 119th Cong. (2025).
7 For a partial list, see Heartland Disaster Tax Relief Act of 2008, Pub. L. No. 110-343, Div'n C, Title VII, § 702(a), 122 Stat. 3765, 3912 (2008).
8 IRC § 1033(h) allows four years to obtain replacement property without recognition of capital gains. Some legislation has extended this period to five years. *See, e.g.*, Katrina Emergency Tax Relief Act of 2005, Pub. L. 109-73, § 405, 119 Stat. 2016, 2028 (2005).
9 Katrina Emergency Tax Relief Act of 2005, Pub. L. 109-73, § 302, 119 Stat. 2016, 2023 (2005).
10 Not every declared disaster qualified for this special treatment, and donations were required to be linked to disaster relief. *See* Heartland Disaster Tax Relief Act of 2008, Pub. L. No. 110-343, Div'n C, Title VII, § 702(d)(12), 122 Stat. 3765, 3917 (2008).
11 Various provisions have allowed taxpayers to deduct qualified disaster expenses in the year paid or incurred, to carry back losses attributable to federally declared disasters, and to increase the depreciation allowance. *See* Heartland Disaster Tax Relief Act of 2008, Pub. L. 110-343, Div'n C, Title VII, §§ 707-708, 710, 122 Stat. 3765, 3923-3925 (2008).

One limitation of this approach is that not all disasters are the same, and some may warrant different forms of relief than others.[12] Recognizing that not all disasters are the same, and to provide a more certain framework but allow for flexibility, Congress could instead pass legislation authorizing several forms of tax relief and directing the Secretary to prescribe regulations that define the circumstances under which each type of relief should be granted, depending on the nature and severity of the disaster. Although this approach still involves some discretion, it would yield more consistent and predictable outcomes.

RECOMMENDATION

- Amend IRC § 7508A to specify the tax relief that will be provided to taxpayers who live in federally declared disaster areas.
    - In the alternative, amend IRC § 7508A to authorize a menu of relief options and direct the Secretary to prescribe regulations that define the circumstances under which each type of relief should be granted, depending on the nature and severity of the disaster.

12 For example, the consequences of the wildfires in California and the train derailment in East Palestine, Ohio differ in key respects. In the wildfires, property was destroyed, but property owners may rebuild. Therefore, relief measures to reduce the costs of rebuilding may be appropriate. In the train derailment, hazardous chemicals were released, potentially making the area uninhabitable. Therefore, tax relief relating to involuntarily converted property may be more appropriate, along with relief to help residents relocate temporarily or permanently, depending on whether remediation efforts are able to remove the chemicals and make the area habitable.

Legislative Recommendation #54

Permanently Give Taxpayers Affected by Federally Declared Disasters the Option of Using Prior Year Earned Income to Claim the Earned Income Tax Credit

SUMMARY

- *Problem:* Low-income workers who lose their jobs due to a federally declared disaster may suffer a double financial hit – loss of earned income and loss of the Earned Income Tax Credit (EITC). On several occasions, Congress has mitigated this impact by allowing taxpayers affected by federally declared disasters to claim the EITC based on their prior year's earned income. But on other occasions, similarly-situated taxpayers did not receive this relief.
- *Solution:* Establish a general rule giving taxpayers in federally declared disaster areas the option to use their prior year's earned income for purposes of the EITC.

PRESENT LAW

The EITC is a refundable tax credit specifically for working families with low and moderate incomes. Several factors determine eligibility for the EITC and its value, including the taxpayer's earned income, filing status, and number of qualifying children, if any.[1]

IRC § 165(i)(5) defines a "federally declared disaster" as any disaster determined by the President to warrant federal assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and defines a "disaster area" as the area so determined to warrant federal assistance.

On numerous occasions when the President has declared a disaster, Congress has passed legislation that gave affected taxpayers who earned less income in the disaster year the option of using their prior year's earned income for purposes of the EITC.[2] This provision is referred to as the "EITC lookback rule." Most recently, Congress authorized the EITC lookback rule for tax years 2020 and 2021 to provide taxpayers with relief from the pandemic.[3]

REASONS FOR CHANGE

The EITC is generally designed to incentivize work through tax benefits available only to individuals who have earned income. During major disasters like a pandemic, hurricane, or wildfire, many employed taxpayers experience an unexpected disruption in work and loss of earned income. Affected taxpayers who previously had earned income levels that qualified them for the EITC may suffer a double financial hit: (i) they may lose the income earned from their jobs and (ii) they may lose their EITC because they are no longer earning income.

The EITC lookback rule is designed to provide relief for this problem. To illustrate, assume a taxpayer who was consistently employed for several years was laid off in early 2020 because of the pandemic. As a result, the taxpayer was not able to earn sufficient income in 2020 to qualify for the EITC, but the taxpayer had earned

1 IRC § 32.

2 *See, e.g.*, Disaster Tax Relief and Airport and Airway Extension Act of 2017, Pub. L. No. 115-63, § 504(c), 131 Stat. 1168, 1183 (2017); Heartland Disaster Tax Relief of 2008, Pub. L. No. 110-343, Div. C, Title VII, Subtitle A, § 701, 122 Stat. 3765, 3912 (2008); Katrina Emergency Tax Relief Act of 2005, Pub. L. No. 109-73, Title IV, § 406, 119 Stat. 2016, 2028 (2005).

3 *See, e.g.*, American Rescue Plan Act, Pub. L. No. 117-2, § 9626, 135 Stat. 4, 157 (2021); Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Div. EE, Title II, § 211, 134 Stat. 1181, 3066-3067 (2020).

sufficient income in the prior year to qualify. The EITC lookback rule provided relief by allowing the taxpayer to qualify for the EITC based on their 2019 income.

To date, Congress has authorized the use of the EITC lookback rule on a disaster-by-disaster basis. This one-off approach treats similarly situated taxpayers differently, where taxpayers affected by some disasters receive relief while taxpayers affected by other disasters do not. To ensure a fair and just tax system for all taxpayers affected by federally declared disasters, the National Taxpayer Advocate recommends that Congress amend IRC § 32 to permanently provide the EITC lookback option for all taxpayers who are affected by a federally declared disaster as defined in IRC § 165(i)(5).

RECOMMENDATION

- Amend IRC § 32 to permanently allow taxpayers who are affected by a federally declared disaster as defined by IRC § 165(i)(5) to elect to use their prior year's earned income to calculate and claim the EITC.[4]

4 For legislative language generally consistent with this recommendation, see Tax Fairness for Disaster Victims Act, H.R. 2619, 118th Cong. § 2 (2023). There are two related issues that warrant consideration. First, Congress passed legislation in 2025 that provides certain relief to taxpayers in areas affected by *state*-declared disasters. *See* The Filing Relief for Natural Disasters Act, Pub. L. No. 119-29, § 2, 139 Stat. 471 (2025). It would be reasonable to apply that approach here. Second, the Additional Child Tax Credit (ACTC) authorized by IRC § 24 is also dependent on the taxpayer's earned income, so it would also be reasonable to extend this proposal to apply to the ACTC. To be taxpayer favorable, however, the taxpayer should be permitted to make separate elections for the EITC and ACTC because there are circumstances where basing a claim on the prior year's earned income could increase one credit but decrease the other credit.

Legislative Recommendation #55

Reinstate the Theft Loss Deduction So Scam Victims Are Not Taxed on Amounts Stolen From Them

SUMMARY

- *Problem:* The tax code historically has allowed individual taxpayers to deduct personal casualty theft losses, but since tax year 2018, the code has sharply restricted the availability of this deduction. Together with timing constraints on deductions and refund claims, this restriction generally prevents scam victims from offsetting their losses unless they were incurred in a trade or business or a transaction entered into for profit.
- *Solution:* Repeal the current IRC § 165(h)(5) limitation to restore the pre-2018 rules and allow taxpayers to claim a theft loss deduction in the year of the related income event by filing an amended return, even if they discover the theft after the refund limitations period.

PRESENT LAW

IRC § 165(a) generally authorizes taxpayers to deduct "any loss sustained during the taxable year and not compensated for by insurance or otherwise." In the case of an individual, IRC § 165(c) limits the deduction to (i) losses incurred in a trade or business; (ii) losses incurred in a transaction entered into for profit, even if unconnected to a trade or business; and (iii) losses not connected with a trade or business or a transaction entered into for profit, if such losses arise from a casualty or theft (personal casualty losses).

Since tax year 2018, IRC § 165(h)(5) has provided that an individual taxpayer may only claim a personal casualty loss deduction to the extent of personal casualty gains or to the extent the loss is attributable to a federally declared disaster or, for tax years beginning after 2025, to the extent the loss is attributable to a state-declared disaster as well.[1] Under IRC § 165(c), the limitation of IRC § 165(h)(5) does not apply where an individual taxpayer incurs the loss in a trade or business or in any transaction entered into for profit.[2]

IRC § 165(e) provides that any loss arising from theft is treated as sustained during the taxable year in which the taxpayer discovers the loss. A loss has not been sustained, and no portion of the loss is deductible, if at the end of the year there is a reasonable prospect of recovery.[3]

IRC § 6511(a) generally allows taxpayers to file a claim for credit or refund by the later of three years from the date the return was filed or two years from the date the tax was paid.

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1 The Tax Cuts and Jobs Act (TCJA) generally repealed the deduction for theft losses incurred by individuals for tax years 2018-2025, except for losses attributable to federally declared disasters. *See* Pub. L. No. 115-97, § 11044, 131 Stat. 2054, 2087 (2017). In 2025, Congress enacted the One Big Beautiful Bill Act, which made repeal of the deduction permanent, while also allowing losses from state-declared disasters to qualify for tax years beginning after 2025. *See* Pub. L. No. 119-21, § 70109, 139 Stat. 72 (2025).

2 IRC § 165(c)(1) addresses losses incurred in a trade or business, while IRC § 165(c)(2) addresses losses incurred in any transaction entered into for profit (although not connected with a trade or business). The IRS Office of Chief Counsel concluded that some scam victims may claim theft loss deductions, even under the TCJA's restrictions, if the taxpayer had a profit motive when entering into the scam transaction. The memorandum considered either investment or protection of an investment as sufficient to establish a profit motive. IRS Office of Chief Counsel, IRS Legal Memorandum (ILM) 202511015 (Jan. 17, 2025, released Mar. 14, 2025).

3 Treas. Reg. §§ 1.165-1(d)(2), (d)(3) and 1.165-8(a)(2); Rev. Rul. 2009-9, 2009-14 I.R.B 735; *Vennes v. Comm'r*, T.C. Memo. 2021-93 at 34-35.

IRC § 72(t) imposes a 10% additional tax on early distributions from qualified retirement accounts made before the taxpayer reaches age 59½, with enumerated exceptions.[4]

REASONS FOR CHANGE

Prior to 2018, IRC § 165 allowed individual victims of thefts that are considered personal casualty losses to deduct their losses from taxable income, provided the loss exceeded $500 and the taxpayer complied with the limitation in pre-TCJA IRC § 165(h)(2) relating to their adjusted gross income. The TCJA significantly narrowed this deduction through 2025, and the One Big Beautiful Bill Act made the change permanent. As a result, many scam victims now face – and will continue to face – tax bills on money they lost to fraudsters.

While the theft loss deduction is still available for businesses and for individuals who incur losses in transactions entered into for profit under IRC § 165(c), many scam victims do not fall into these categories. The IRS previously provided relief for Ponzi scheme victims, determining such fraudulent investment schemes were entered into for profit, but currently there is no similar safe harbor protection for victims of other scams.[5]

> *Example:* A taxpayer, scammed into withdrawing retirement funds, must pay taxes on the withdrawal, plus a 10% additional tax if they are not yet 59½ years old.[6] This is the case even though the scammer absconded with the funds and the taxpayer never benefitted from the money withdrawn.

Whether a scam victim can deduct a loss like this often depends on proving a profit motive.[7] This may be plausible for investment scams, but it is nearly impossible for romance or scare tactic scams.[8] In addition, because current law requires the taxpayer to claim the deduction in the year the theft was discovered (not in the year the taxpayer lost the money), a taxpayer who is still within the statute of limitations period for a refund might not have enough income in the later year to deduct the loss fully.[9] Even if Congress amends IRC § 165(e) to allow scam victims to deduct a loss in the same year as any associated income inclusion event, a taxpayer who is outside the current statute of limitations period for a refund might not benefit from the change and might not be able to deduct all their losses against the amount stolen from them.[10]

RECOMMENDATIONS

- Repeal the current limitation in IRC § 165(h)(5) and reinstate the pre-TCJA rules allowing personal theft loss deductions.

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4 The 10% amount is legally an additional tax, although it is often referred to as a 10% "penalty." Exceptions are enumerated in IRC § 72(t)(2).

5 Rev. Rul. 2009-9; Rev. Proc. 2009-20, 2009-14 I.R.B. 749, *as modified by* Rev. Proc. 2011-58, 2011-50 I.R.B 849. These rulings were issued to provide clarity to victims of a scheme famously perpetrated by Bernard Madoff. According to a 2025 legal memorandum by IRS Chief Counsel, most scam victims are not eligible for this safe harbor because the safe harbor requires that the scam be a "specified fraudulent arrangement" and imposes requirements related to criminal charges or complaints against the "lead figure" of the scam. IRS Office of Chief Counsel, ILM 202511015 (Jan. 17, 2025, released Mar. 14, 2025).

6 IRC § 72(t)(1).

7 For factors to consider in determining whether a taxpayer entered into a transaction for profit, see Treas. Reg. § 1.183-2. *See also* IRS Office of Chief Counsel, ILM 202511015, examples 1, 2, and 3.

8 For a discussion of tax-related scams, see National Taxpayer Advocate 2024 Annual Report to Congress 59 (Most Serious Problem: *Tax-Related Scams: More Taxpayers Are Falling Victim to Tax-Related Scams*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/12/ARC24_MSP_05_Tax-Scams.pdf. Chief Counsel confirms that victims of these scams cannot claim a theft loss deduction under the current version of IRC § 165. IRS Office of Chief Counsel, ILM 202511015.

9 IRC § 165(e). However, qualifying losses can be carried to other tax years.

10 Consider an example that illustrates how losses may be limited. Assume a taxpayer with a fixed annual income of $50,000 is scammed out of $100,000 from their IRC § 401(k) account in Year One, creating total income in that year of $150,000. In Year Three, the taxpayer discovers the scam. Under current law, the taxpayer cannot deduct the $100,000 loss against the Year One income of $150,000. Instead, the taxpayer must claim the deduction in Year Three against their fixed income of $50,000. This means there may not be enough income for the taxpayer to net out the $100,000 theft loss.

- Amend IRC § 165(e) to enable scam victims to deduct a loss in the same year as any associated income inclusion event.[11]
- Amend IRC § 6511 to extend the limitations period for refund claims related to newly discovered theft losses due to scams.
- Amend IRC § 72(t) to create an exception to the 10% additional tax on early distributions from qualified plans (*e.g.*, IRC § 401(k), IRA, or other tax-deferred accounts) that were withdrawn because of a scam.

11 Congress could give taxpayers the option to claim the loss in the year a statutory change is enacted.

AFTER OUR PUBLICATION DEADLINE, LEGISLATION REFLECTING THIS RECOMMENDATION WAS SIGNED INTO LAW ON DECEMBER 26, 2025.

Legislative Recommendation #56

Amend the Lookback Period for Allowing Tax Credits or Refunds to Include the Period of Any Postponement or Additional or Disregarded Time for Timely Filing a Tax Return

SUMMARY

- *Problem*: Taxpayers who file their tax returns by the April 15 filing deadline ordinarily have until April 15 three years later to file a claim for credit or refund of any overpayments of tax. When a filing deadline is postponed due to a federally declared disaster or similar reason, however, the three-year "lookback period" for paying refunds is not correspondingly extended. Consequently, some taxpayers who take advantage of postponed filing deadlines cannot obtain refunds even if they timely file their refund claims. This is confusing and a trap for the unwary.
- *Solution:* When a filing deadline is postponed, extend the three-year lookback period in which the IRS may allow claims for credit or refund by the same amount of time.

PRESENT LAW

IRC § 6511(a) provides that taxpayers who believe they have overpaid their tax generally may file a claim for credit or refund with the IRS by the later of:

1. Three years from the date the return was filed; or
2. Two years from the date the tax was paid.

IRC § 6511(b) places limits on the amount the IRS may credit or refund by using a two-year or three-year lookback period:

1. Taxpayers who file claims for credit or refund within three years from the date the original return was filed will have their credits or refunds limited to the amounts paid within the three-year period before the filing of the claim, plus the period of any extension of time for filing the original return (the "three-year lookback period"). See IRC § 6511(b)(2)(A).
2. Taxpayers who do not file claims for credit or refund within three years from the date the original return was filed will have their credits or refunds limited to the amounts paid within the two-year period immediately preceding the filing of the claim. See IRC § 6511(b)(2)(B).

For calendar year taxpayers, IRC § 6513(b) provides that any tax deducted and withheld on wages and any amounts paid as estimated tax are deemed paid on April 15 in the year following the close of the taxable year for which the paid tax is allowable as a credit.

There are certain circumstances in which filing deadlines may be postponed. For example, under IRC § 7508A, when the Secretary determines that a taxpayer has been affected by a federally declared disaster, the Secretary is authorized to disregard certain acts a taxpayer is required to undertake under the IRC, including the filing of a tax return, for up to one year.[1] The time that is disregarded in this context has been described as

1 Under IRC § 7508A(a), the Secretary may disregard a period of up to one year when determining whether certain acts are timely with respect to taxpayers affected by a federally declared disaster as defined in IRC § 165(i)(5)(A), a significant fire, a terroristic or military action as defined in IRC § 692(c)(2), or a qualified state-declared disaster as described in IRC § 7508A(c).

a "postponement."[2] The Secretary exercises this authority regularly.[3] For example, the Secretary exercised this authority during the COVID-19 pandemic by disregarding the period from April 15 to July 15 in 2020, and disregarding the period from April 15 to May 17 in 2021 for purposes of timely filing an individual income tax return.[4]

REASONS FOR CHANGE

When a taxpayer files a timely return, the deadline for filing a subsequent claim for refund or credit under IRC § 6511(a) and the time in which the IRS may issue a refund or credit under IRC § 6511(b) generally align. That is true both when a taxpayer files a return by the regular April 15 filing deadline and when a taxpayer requests an extension of time and files a return by the extended October 15 deadline. When a return filing deadline is postponed under IRC § 7508A, however, the three-year lookback period for the IRS to issue a refund or credit is *not* automatically extended. As a result, taxpayers who take advantage of a postponed filing deadline beyond April 15 may not receive a refund or credit if they wait three years to file a claim.

> *Example:* In 2019, a taxpayer had income tax withheld from his paycheck every two weeks. The taxpayer filed his 2019 return on the postponed filing deadline of July 15, 2020, without claiming a refund. The taxpayer's 2019 tax liability was fully paid through withholding, which was deemed paid on April 15, 2020. Based on the return filing date of July 15, 2020, the taxpayer filed a claim for refund on July 14, 2023. Under IRC § 6511(a), the claim for refund was timely, as it was filed within three years from the return filing date. Under the three-year lookback period of IRC § 6511(b), however, the amount of the taxpayer's refund was limited to payments made in the three years prior to filing the claim (*i.e.*, payments made on or after July 14, 2020). The withholding deemed paid on April 15, 2020, fell outside that period, so the refund amount was limited to $0, effectively denying the taxpayer any refund.[5]
>
> By contrast, if the taxpayer had requested a filing extension until October 15, 2020, the lookback period would not have expired with respect to the taxpayer's timely refund claim in 2023 because the lookback period of IRC § 6511(b)(2)(A) includes the extension period.

The IRS remedied this problem for the tax years for which filing deadlines were postponed during the COVID-19 pandemic. The IRS issued Notice 2023-21, under its authority in IRC § 7508A(a), to disregard the period of postponement when determining the beginning of the lookback period for taxpayers who timely filed 2019 or 2020 tax returns pursuant to the postponements.[6] Thus, under this notice taxpayers were able to file claims for credit or refund within three years of the postponed return due dates without having their credits or refunds barred by the three-year lookback period.

Notice 2023-21, however, only fixed the problem for claims for credit or refund for tax years 2019 and 2020 with respect to the COVID-19 postponement. Thus, the outcome in the above example generally persists for taxpayers when the IRS postpones return filing deadlines due to federally declared disasters. We do not

2 *See* Treas. Reg. § 301.7508A-1(d)(3).

3 *See* IRS, Tax Relief in Disaster Situations (Sept. 22, 2025), https://www.irs.gov/newsroom/tax-relief-in-disaster-situations.

4 *See* IRS Notice 2020-23, 2020-18 I.R.B. 742, Update to Notice 2020-18, Additional Relief for Taxpayers Affected by Ongoing Coronavirus Disease 2019 Pandemic, https://www.irs.gov/pub/irs-drop/n-20-23.pdf; IRS Notice 2021-21, 2021-15 I.R.B. 986, Relief for Form 1040 Filers Affected by Ongoing Coronavirus Disease 2019 Pandemic, https://www.irs.gov/pub/irs-drop/n-21-21.pdf. These notices did not affect the date on which any withheld tax or estimated tax for 2019 or 2020 was deemed paid. *See* Treas. Reg. § 301.7508A-1(b)(4) ("To the extent that other statutes may rely on the date a return is due to be filed, the postponement period will not change the due date of the return"). Any withheld tax or estimated tax for 2019 was deemed paid on April 15, 2020, for calendar year taxpayers. Similarly, any withheld or estimated tax for 2020 was deemed paid on April 15, 2021, for calendar year taxpayers.

5 This would be the same for any estimated tax payments.

6 2023-11 I.R.B. 563, Lookback Periods for Claims for Credit or Refund for Returns With Due Dates Postponed by Notice 2020-23 or Notice 2021-21, https://www.irs.gov/irb/2023-11_IRB.

believe such an outcome was intended. Because of the large number of federally declared disasters for which the IRS grants relief each year and the millions of taxpayers affected, we recommend that Congress provide a permanent solution to this problem.[7]

RECOMMENDATION

- Amend IRC § 6511(b)(2)(A) to provide that when any postponement or addition or disregarding of time is granted pursuant to the IRC for purposes of timely filing, the limit on the amount of a credit or refund will be the amounts paid in the three-year period preceding the filing of a claim for credit or refund, *plus any period of extension, postponement, or additional or disregarded time for timely filing the related return*.[8]

7 Other contexts where this could occur include: (1) when additional time is provided under IRC § 7503 if a due date falls on a Saturday, Sunday, or legal holiday and (2) when time is disregarded under IRC § 7508 while an individual is serving in a combat zone or contingency operation.

8 For legislative language generally consistent with this recommendation, see Disaster Related Extension of Deadlines Act, H.R. 1491 & S. 1438, 119th Cong. § 2(a) (2025) (the House approved H.R. 1491 on a 423-0 vote); Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 112(a) (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill.

AFTER OUR PUBLICATION DEADLINE, LEGISLATION REFLECTING THIS RECOMMENDATION WAS SIGNED INTO LAW ON DECEMBER 26, 2025.

Legislative Recommendation #57

Protect Taxpayers in Federally Declared Disaster Areas Who Receive Filing and Payment Relief From Inaccurate and Confusing Collection Notices

SUMMARY

- *Problem:* When the IRS postpones a filing and payment deadline due to a declared disaster, some taxpayers with balances due file their returns before the postponed deadline but wait until the postponed deadline to make payment. That is permissible, yet the law often requires the IRS to mail a "notice and demand" for payment before the deadline for payment occurs. The notice includes language about penalties and interest accruing, even where no penalties or interest apply, causing needless confusion and worry for taxpayers and needless work for the IRS. In 2023, over a million California taxpayers received these confusing notices, as did taxpayers in Alabama, Arkansas, Florida, Georgia, Indiana, Mississippi, and Tennessee.
- *Solution:* When the IRS postpones a filing and payment deadline, tie the deadline for mailing a notice and demand for payment to the postponed filing deadline if the return is filed prior to the postponed date.

PRESENT LAW

IRC § 7508A provides that when the Secretary determines a taxpayer has been affected by a declared disaster, a significant fire, or a terroristic or military action, the Secretary is authorized to "disregard" for up to one year certain acts the taxpayer and the government are required to undertake under the internal revenue laws, including the filing of a tax return and the payment of tax.[1] This disregarded time is referred to as a "postponement."[2]

IRC § 6303(a) requires the IRS to issue a notice and demand for payment within 60 days of assessment. An assessment generally occurs after a taxpayer files a return showing a tax liability (*i.e.,* the taxpayer self-reports the tax, also known as a "self-assessment"). Under IRC § 6303(b), if an assessment occurs before the last date prescribed for payment of tax, no notice and demand for payment is required until after the last date "prescribed" for payment of tax.[3]

REASONS FOR CHANGE

A period of postponement under IRC § 7508A does not change the due date of the return.[4] Thus, a glitch in the rules arises because a "postponed" payment deadline does not change the "prescribed" payment deadline. It merely allows the IRS to disregard a period of up to one year for performance of the tax-related act.[5] Because the prescribed due date for payment does not change, IRC § 6303 requires the IRS to issue a notice and demand for payment within 60 days of assessment.

1 IRC § 7508A(a) (citing IRC § 7508(a)(1)). The Filing Relief for Natural Disasters Act, Pub. L. No. 119-29, § 2, 139 Stat. 471 (2025), amended IRC § 7508A to include state-declared disasters as disasters eligible for IRC § 7508A postponements.
2 *See* Treas. Reg. § 301.7508A-1(d)(3).
3 *See also* IRC § 6151.
4 Treas. Reg. § 301.7508A-1(b)(4).
5 IRC § 7508A(a) (citing IRC § 7508(a)(1)); Treas. Reg. § 301.7508A-1(b)(4).

In 2023, the IRS postponed certain filing and payment deadlines for taxpayers affected by severe weather in almost all of California.[6] Some of these taxpayers filed their returns with a balance due before the postponed deadline but held off on making payments until the postponed deadline.

> *Example:* The regular filing deadline of April 15 is postponed until November 15. A taxpayer files a balance due return on June 1 and plans to make payment on the postponed filing deadline of November 15. The assessment of tax occurs on June 1 (by reason of the self-assessed tax on the filed return), and the IRS issues a notice and demand for payment within 60 days (*i.e.*, by July 31). The notice informs the taxpayer that interest and penalties will accrue after the due date reflected on the front page of the notice. The taxpayer is concerned that her accountant's advice about waiting to make a payment until the postponed due date was incorrect and is worried she may face IRS collection action. As a result, the taxpayer may pay the tax earlier than legally required (November 15) or may seek additional advice from the accountant and incur additional fees.

The IRS sent over a million of these notice and demand letters to taxpayers in California covered by a disaster relief declaration. It also sent these notices to taxpayers in Alabama, Arkansas, Florida, Georgia, Indiana, Mississippi, and Tennessee.[7] The IRS included a short paragraph on the back of page four of the notice explaining that the taxpayer may qualify for disaster relief. After receiving complaints from affected taxpayers and tax professionals, the IRS sent out updated notices to clarify that taxpayers covered by disaster declarations did not have to pay before the postponed due date.[8] But the IRS continued to send out notice and demand letters to taxpayers whose returns showed a balance due because it believes the notice is legally required to protect its ability to later collect any unpaid tax.[9]

Under IRC § 7508A, the Secretary has the legal authority to postpone issuing a notice and demand for payment, but the Secretary has rarely done so.[10] We urge the Secretary to routinely postpone issuing notices and demands for payment when postponing filing and payment deadlines. However, because of the large number of declared disasters for which the IRS grants relief each year and the millions of affected taxpayers, we recommend that Congress pass legislation to provide a permanent solution to this problem so that case-by-case exceptions are not required.[11] The proposed recommendation would keep the IRS from mailing notices that lead to taxpayer confusion and anxiety.

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6 *See* IRS, IRS Announces Tax Relief for Victims of Severe Winter Storms, Flooding, Landslides, and Mudslides in California, https://www.irs.gov/newsroom/irs-announces-tax-relief-for-victims-of-severe-winter-storms-flooding-landslides-and-mudslides-in-california (last visited Oct. 8, 2024). Seven other states (Alabama, Arkansas, Florida, Georgia, Indiana, Mississippi, and Tennessee) faced a similar issue with incorrect notice and demand letters. *See* Erin M. Collins, Disaster Relief: What the IRS Giveth, the IRS Taketh Away. Or So It Seems for Disaster Relief Taxpayers Until You Get to Page 4 of the Collection Notice (Part One), National Taxpayer Advocate Blog (last updated Feb. 9, 2024), https://www.taxpayeradvocate.irs.gov/news/nta-blog-cp-14-collection-notice-part-one; IRS News Release, IR-2023-121, IRS Sends Special Mailing to Taxpayers in Certain Disaster Areas (June 28, 2023), https://www.irs.gov/newsroom/irs-sends-special-mailing-to-taxpayers-in-certain-disaster-areas.

7 *See* Erin M. Collins, Disaster Relief: What the IRS Giveth, the IRS Taketh Away. Or So It Seems for Disaster Relief Taxpayers Until You Get to Page 4 of the Collection Notice (Part One), National Taxpayer Advocate Blog (July 11, 2023), https://www.taxpayeradvocate.irs.gov/news/nta-blog-cp-14-collection-notice-part-one.

8 *Id.*; *see also* Erin M. Collins, Disaster Relief: What the IRS Giveth, the IRS Taketh Away. Or So It Seems for Disaster Relief Taxpayers Until You Get to Page 4 of the Collection Notice (Part Two), National Taxpayer Advocate Blog (last updated Feb. 9, 2024), https://www.taxpayeradvocate.irs.gov/news/nta-blog-cp-14-collection-notice-part-two; IRS News Release, IR-2023-121, IRS Sends Special Mailing to Taxpayers in Certain Disaster Areas (June 28, 2023), https://www.irs.gov/newsroom/irs-sends-special-mailing-to-taxpayers-in-certain-disaster-areas.

9 In 2024, the IRS introduced a disaster coversheet to accompany the notice and demand letters. The package now includes the notice and demand with the non-postponed due date and the coversheet with the postponed due date. Although this added coversheet is an improvement, the conflicting information still creates the risk of taxpayer confusion.

10 Treas. Reg. § 301.7508A-1(c)(2)(ii). *See, e.g.*, IRS Notice 2023-71, 2023-44 I.R.B. 1191, Relief for Taxpayers Affected by the Terroristic Action in the State of Israel, https://www.irs.gov/pub/irs-drop/n-23-71.pdf; IRS Notice 2020-23, 2020-18 I.R.B. 742, Update to Notice 2020-18, Additional Relief for Taxpayers Affected by Ongoing Coronavirus Disease 2019 Pandemic, https://www.irs.gov/pub/irs-drop/n-20-23.pdf.

11 *See* IRS, Tax Relief in Disaster Situations, https://www.irs.gov/newsroom/tax-relief-in-disaster-situations (last visited Oct. 2, 2025).

RECOMMENDATION

- Amend IRC § 6303(b) to include postponement periods when determining the last date prescribed for payment of tax.

Legislative Recommendation #58

Allow Taxpayers to Claim the Child Tax Credit and Earned Income Tax Credit for a Child Who Meets All Statutory Requirements Except Having a Social Security Number by the Due Date for the Tax Return

SUMMARY

- *Problem:* Taxpayers are prohibited from claiming a child who does not have a Social Security number (SSN) by the tax return due date for purposes of receiving the benefits of the Child Tax Credit (CTC) and the Earned Income Tax Credit (EITC). Although this rule was intended to prevent CTC and EITC claims for children who are not U.S. citizens or are otherwise ineligible for SSNs, it has had the unintended effect of denying benefits to U.S.-citizen children who simply did not receive SSNs in time.
- *Solution:* Provided all other eligibility requirements are met, and based on the limited circumstances described below, taxpayers should be allowed to either (i) file a timely original return and claim the CTC and EITC for an otherwise qualifying child without an SSN or (ii) file a timely amended return and claim the CTC and EITC for an otherwise qualifying child who receives an SSN after the due date of the original return.

PRESENT LAW

IRC § 24(a) generally allows individual taxpayers to claim a tax credit for each qualifying child listed on their income tax return (known as the child tax credit). IRC § 24(h) provides that the maximum CTC amount is $2,200 per qualifying child.

IRC § 24(h)(7) requires the taxpayer to include the SSNs of both the taxpayer (or, in the case of a joint return, the SSN of at least one spouse) and any qualifying children, and it requires that the SSNs be issued "before the due date for such return."

IRC § 32(a) generally allows low- and moderate-income working individuals and families to claim a refundable tax credit (known as the earned income tax credit). Eligibility for the EITC and the amount of EITC a taxpayer may claim are based on a variety of factors, including the taxpayer's earned income, the number of qualifying children, and the taxpayer's filing status. The EITC is structured so that as earned income rises, the credit phases in, plateaus at a maximum amount, and then phases out. The phase-in, maximum, and phase-out amounts depend on the taxpayer's filing status and the number of qualifying children. The maximum credit for tax year 2025 is $649 if the taxpayer has no qualifying children, $4,328 with one qualifying child, $7,152 with two qualifying children, and $8,046 with three or more qualifying children.

Similarly, IRC § 32(m) requires the taxpayer to include the SSNs of both the taxpayer(s) and any qualifying children for whom the taxpayer is claiming the EITC, and it requires that the SSNs be issued "on or before the due date for filing the return for the taxable year."

REASONS FOR CHANGE

The requirements under IRC §§ 24(h)(7) and 32(m) that a taxpayer and the qualifying child each have an SSN valid for employment were intended primarily to prevent individuals who are not authorized to work in

the United States from qualifying for CTC or EITC benefits.[1] However, the requirement is also having the unintended effect of preventing thousands of families from receiving CTC and EITC benefits with respect to children who are U.S. citizens if their paperwork is not in order.

The financial impact can be significant. A couple having their first child may miss out on tax benefits worth more than $6,000 (CTC benefits of $2,200 and EITC benefits of $4,328).

This situation commonly arises when the taxpayer receives the child's SSN after the due date for the return for a year in which the child was otherwise a qualifying child. Because the law requires that the SSN be issued prior to the due date of the return, the taxpayer is not able to claim the otherwise qualifying child on an original return, or on amended return after the SSN is received.

Taxpayers would benefit if they are permitted to claim a qualifying child on an amended return in the following circumstances:

- ***Children receive their SSNs after the filing deadline.*** Approximately 3.6 million children are born in the United States each year, an average of about 300,000 per month.[2] Most children are born in hospitals. Before a mother is discharged, the hospital generally asks her to complete Form SS-5, Application for a Social Security Card, on behalf of the child. The hospital normally submits the application directly to the Social Security Administration (SSA), which issues a number and mails the card to the mother.

  When the process works as intended, the parents will receive an SSN for the child by the April 15 filing deadline (or, if the parent(s) request a filing extension, by the October 15 extended filing deadline).[3] But when dealing with a population of 3.6 million newborns per year, the process does not always work according to plan. Some births take place at home or in other non-hospital settings, and without prompting from the hospital staff, parents do not always prioritize submitting an SSN application. Hospitals sometimes misplace paperwork and neglect to submit the applications. The SSA, like most large agencies, sometimes makes processing errors. Parents sometimes move, and the mail may not reach them. Other parents may have elected not to apply for an SSN when the child was born, perhaps not appreciating the tax consequences, or may experience delays in receiving an SSN for an older child. Opportunities for administrative processes or errors to delay the SSA's issuance of an SSN to a child are magnified for members of the U.S. Armed Forces who are stationed overseas, other U.S. citizens residing overseas, and whose children are born in overseas hospitals.[4]

  In each of these situations, when an SSN is issued after the return due date, the taxpayer is permanently barred from claiming the CTC or EITC for that year, even on an amended return where they can provide the qualifying child's SSN, despite the child meeting all other eligibility criteria.
- ***Adopted children have not yet received their SSNs***. Prior to 2018, the IRS could allow the CTC for taxpayers whose children had Adoption Taxpayer Identification Numbers (ATINs), which are identification numbers issued by the IRS for use while a taxpayer is waiting to receive an SSN for an

1 More specifically, IRC § 24(h)(7) requires that the SSN be valid for purposes of employment, while IRC § 32(m) requires that the SSN have been issued other than for purposes of receiving federal benefits (which in practice leaves employment as a primary reason for obtaining an SSN). Both requirements cross reference definitions in section 205(c)(2)(B)(i) of the Social Security Act, Pub. L. No. 74-271, 49 Stat. 620 (1935).

2 National Center for Health Statistics (NCHS), *NCHS Data Brief* No. 535 (July 2025), https://www.cdc.gov/nchs/data/databriefs/db535.pdf.

3 To qualify for CTC and EITC benefits between April 15 and October 15 with respect to a child, the taxpayer must have filed Form 4868, Application for Automatic Extension of Time To File U.S. Individual Income Tax Return. Millions of taxpayers who file after April 15 do not file an extension request. That is partly because most taxpayers receive refunds, and there generally is no penalty for filing a late return if no tax is due.

4 *See* https://tricare.mil/LifeEvents/Baby/Resources/SocialSecurityCard, last visited Dec. 19, 2025.

adopted child. After the SSN requirement was tightened in 2018, however, the IRS stopped providing administrative relief to allow the CTC with respect to children with ATINs. The delay in issuing an SSN also could prevent an eligible individual with an adopted child from claiming the EITC.

In other cases, otherwise qualifying children never receive an SSN due to circumstance or religious belief. These include:

- ***Children who were born and died in the same or consecutive tax years***. The Social Security Administration does not knowingly issue SSNs to individuals who have died. Therefore, even though parents are otherwise permitted to claim the CTC and EITC with respect to a child who dies shortly after birth, the SSN requirement effectively makes the child ineligible. The IRS is currently making an administrative exception to this requirement for purposes of the CTC.[5] While the National Taxpayer Advocate is pleased that this category of taxpayers is receiving relief, it is unclear on what basis the IRS has the legal authority to create an administrative exception to the statutory SSN requirement for this category of affected taxpayers. It also could change its administrative position, so a change in law would provide certainty for families that find themselves in this tragic position.
- ***Children for whom parents do not apply for SSNs due to deeply held religious beliefs***. Prior to 2018, IRC § 24 required a taxpayer claiming a child for purposes of the CTC to provide only a taxpayer identification number (TIN) for the child.[6] The TIN did not have to be an SSN. In addition, the IRS provided administrative relief to allow the credit to a taxpayer without a TIN for a qualifying child due to the taxpayer's deeply held religious beliefs. It no longer does so.[7] The fact that taxpayers with religious-based reasons for not obtaining SSNs for their children who are U.S. citizens are now barred from receiving the CTC not only denies them a valuable tax benefit, but it raises constitutional questions and may be a violation of the Religious Freedom Restoration Act.[8]

The National Taxpayer Advocate understands the reason for the SSN requirement but believes it is crafted too restrictively and is preventing tens of thousands of families who meet all substantive eligibility criteria from receiving valuable tax benefits.

RECOMMENDATIONS

- Amend IRC §§ 24(h)(7) and 32(m) to remove the requirement that a Social Security number must be obtained before the due date of the original return to allow taxpayers, where the issuance of an otherwise qualifying child's SSN has been delayed, to claim the child on an amended tax return.[9]

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5 *See* Internal Revenue Manual 3.12.3.31.1.5(4), Fields 01TCE> and 94CEV, Total Children Eligible for Child Tax Credit (EC 344) (Jan. 1, 2026), https://www.irs.gov/irm/part3/irm_03-012-003r. ("For all tax years, allow the Child Tax Credit when the child's SSN is missing and the child was born and died in the same or consecutive tax period if the taxpayers provide documentary support in the form of a copy of the birth certificate, death certificate, or hospital record.")

6 A TIN is an identification number used by the IRS in administering the tax laws. It includes an SSN but also includes an Individual Taxpayer Identification Number, an ATIN, and other identifying numbers.

7 This change affects CTC eligibility for certain sects in the Amish community. Most Amish sects consider the EITC to be a form of welfare they will not accept, so EITC eligibility is not a factor for them.

8 *See* The Tax Filing Season: Hearing Before H. Ways and Means Comm., Subcomm. on Gov't Oversight, 116th Cong. 22-27 (Mar. 7, 2019) (testimony of Nina E. Olson, National Taxpayer Advocate), https://www.congress.gov/event/116th-congress/house-event/109041?s=7&r=6; National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress 48 (Area of Focus: *TAS Will Urge the IRS to Reconsider Its Position on the Application of the Religious Freedom Restoration Act to the Social Security Requirement Under IRC § 24(h)(7), Which Has the Effect of Denying Child Tax Credit Benefits to the Amish and Certain Other Religious Groups*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/JRC20_Volume1_AOF_02.pdf.

9 This proposal can be narrowed if there is significant concern that taxpayers who obtain SSNs eligible for employment will file amended returns to claim benefits for prior years when they did not have qualifying SSNs. For example, it could be made applicable only to U.S. citizens or nationals, it could be made applicable only for years for which the taxpayer and the child had qualifying SSNs, or it could be made applicable only to amended returns filed within a certain period of time after the due date of the original return.

- Amend IRC §§ 24(h)(7) and 32(m) to allow a taxpayer to claim the CTC with respect to a qualifying child without an SSN if the taxpayer and child meet all other eligibility requirements for the credit and if the taxpayer:
  - Had a child who was born and died in the same or consecutive tax years; or
  - Has a sincere and deeply held religious belief that prohibits them from obtaining an SSN.[10]

10 As explained in a prior footnote, the Amish are the principal religious group affected by the SSN requirement, and the Amish generally would not claim the EITC.

Legislative Recommendation #59

Allow Members of Certain Religious Sects That Do Not Participate in Social Security and Medicare to Obtain Employment Tax Refunds

SUMMARY

- *Problem:* Members of certain religious sects, most notably the Amish, do not accept Social Security or Medicare benefits. The law consequently exempts them from the requirement to pay Social Security and Medicare taxes if their employers are members of the same religious sect. However, this exemption does not apply if they work for employers who are not members of the same religious sect. These differing outcomes make little sense. Members of religious sects who will neither claim nor receive Social Security or Medicare benefits should not be required to pay Social Security or Medicare taxes, regardless of their employers' religious beliefs.
- *Solution:* Allow members of recognized religious sects who work for employers who are not members of such sects to claim a refund or credit for employment taxes paid.

PRESENT LAW

Federal Insurance Contributions Act and Self-Employment Contributions Act Taxes

IRC § 3101 imposes a tax on wages paid to employees to fund old-age, survivors, and disability insurance (Social Security) and hospital insurance (Medicare) pursuant to the Federal Insurance Contributions Act (FICA).[1] IRC § 3111 requires employers to pay FICA tax at the same rate on their employees' wages.[2]

IRC § 1401 imposes a comparable tax on self-employed individuals pursuant to the Self-Employment Contributions Act (SECA). This tax is paid in full by the self-employed individual.

Exemptions for Members of Religious Sects

Members of the Amish community sought exclusions from these taxes because the tenets of their religion prohibit them from accepting social insurance benefits. In response, Congress enacted IRC § 1402(g), which exempts self-employed individuals who are members of certain religious faiths from the requirement to pay SECA tax. An individual may apply for an exemption from SECA tax by filing IRS Form 4029, Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits,

> ... if he is a member of a recognized religious sect or division thereof and is an adherent of established tenets or teachings of such sect or division by reason of which he is conscientiously opposed to acceptance of the benefits of any private or public insurance which makes payments in the event of death, disability, old-age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act).[3]

1 Under IRC § 3101, a tax of 6.2% is imposed on employee wages to fund old-age, survivors and disability insurance, and a tax of 1.45% is imposed to fund hospital insurance. In certain circumstances, employee wages are subject to an additional 0.9% tax to further fund hospital insurance (Additional Medicare Tax). Employers are generally required to withhold FICA taxes from their employees' wages under IRC § 3102(a).

2 Because IRC § 3111 imposes an excise tax on the employer at the same rate with respect to the employee's wages, it is commonly understood that FICA tax is paid half by the employer and half by the employee.

3 IRC § 1402(g)(1).

Congress subsequently enacted IRC § 3127 to exempt employers from paying their portion of FICA tax under IRC § 3111, provided that both the employer and the employee are members of the same recognized religious sect, both the employer and the employee are adherents of established tenets or teachings of the sect, and both the employer and employee file and receive approval for exemption from their respective portions of FICA tax.[4] The employer and employee must each receive approval by filing IRS Form 4029.[5]

IRC § 6413(b) requires the IRS to refund any overpayment of a taxpayer's FICA tax.

REASONS FOR CHANGE

The exemptions under IRC §§ 1402(g) and 3127 do not extend to members of recognized religious sects who work for employers who are not members of the same religious sect. Members of these sects therefore are paying for Social Security and Medicare benefits that their religious beliefs prohibit them from accepting. The National Taxpayer Advocate believes this result is inequitable and is inconsistent with the taxpayer's *right to a fair and just tax system*. The rationale for exempting self-employed Amish workers and Amish employees of Amish employers, as the law currently provides, applies equally to Amish employees who work for non-Amish employers.[6]

This inequity can be resolved by amending IRC § 6413 to allow employees who are members of a recognized religious group and work for an employer who is not a member of the same recognized religious group to file a refund claim for their portion of remitted FICA tax. Amish leaders have expressed a preference for allowing Amish employees of non-Amish employers to recover the employee's portion of the FICA tax through a refund claim, rather than by exempting the employee from paying the FICA tax, to avoid imposing an additional recordkeeping burden on employers and thereby potentially deterring employers from hiring them.[7]

RECOMMENDATION

- Amend IRC § 6413 to allow employees who meet the definition of "a member of a recognized religious sect or division thereof" in IRC § 1402(g) to claim a credit or refund of the employee's portion of FICA taxes withheld from their wages.[8]

4 IRC § 3127 establishes the requirements for employers and employees who are members and adherents of the same recognized religious sect to be exempt from their respective FICA tax obligations, as required under IRC §§ 3101 and 3111. If the employer is a partnership, all partners of that partnership must be members of and adhere to the tenets of the same recognized religious sect. All partners of the partnership must apply and be approved individually for the exemption. Treas. Reg. § 31.3127-1(a).

5 For more information regarding the Form 4029 exemption application for members of recognized religious sects, see IRS, Pub. 517, Social Security and Other Information for Members of the Clergy and Religious Workers (Dec. 6, 2024), https://www.irs.gov/pub/irs-pdf/p517.pdf.

6 IRC § 1402(g). The discussion in this legislative recommendation applies to any member of a recognized religious sect or division thereof as described in this provision. Historically, the Amish and Mennonites have been the religious groups that have utilized this provision.

7 Meeting between TAS and Amish leaders (Aug. 16, 2019). If this recommendation is enacted, an employer who is not a qualifying member of a recognized religious sect would remain liable for his or her portion of the FICA tax pursuant to IRC § 3111.

8 For legislative language generally consistent with this recommendation, see Religious Exemptions for Social Security and Healthcare Taxes Act, H.R. 6183, 117th Cong. § 2 (2021).

Legislative Recommendation #60

Remove the Requirement That Written Receipts Acknowledging Charitable Contributions Must Be "Contemporaneous"

SUMMARY

- *Problem:* To claim certain types of charitable contributions, a taxpayer must obtain a contemporaneous written acknowledgment from the donee organization within a short time after making the contribution. Taxpayers who do not obtain a written acknowledgment by the deadline are not eligible for the deduction, even if they made the contribution and can otherwise substantiate it.
- *Solution:* Eliminate the requirement that the written acknowledgment must be "contemporaneous."

PRESENT LAW

IRC § 170(a) authorizes deductions for charitable contributions made during a taxable year. To claim a deduction of $250 or more, IRC § 170(f)(8)(A) requires that a taxpayer be able to substantiate the contribution with a "contemporaneous written acknowledgment" from the donee organization. To be "contemporaneous," IRC § 170(f)(8)(C) requires that the acknowledgment be received on or before the earlier of the date on which the tax return is filed or the date on which the tax return is due (including extensions). If the acknowledgment is sent late or if a timely but defective acknowledgment is supplemented with needed information after the deadline, the taxpayer is not eligible for the deduction, regardless of whether the taxpayer otherwise qualifies for it.[1]

Under IRC § 170(f)(8)(B), the acknowledgment must include the following information:

1. The amount of cash and a description (but not value) of any property other than cash contributed.
2. Whether the donee organization provided any goods or services in consideration, in whole or in part, for any property described in clause (i).
3. A description and good-faith estimate of the value of any goods or services referred to in clause (ii) or, if such goods or services consist solely of intangible religious benefits, a statement to that effect.

"Contemporaneous" timing requirements are also found in IRC § 170(f)(12)(C) relating to contributions of vehicles and IRC § 170(f)(18)(B) relating to contributions to donor-advised funds.

REASONS FOR CHANGE

Strict contemporaneous timing requirements harm taxpayers and tax-exempt organizations that make a technical mistake in their written acknowledgments or that provide some required or corrected information after the statutory deadline has passed.

> *Example:* Assume a taxpayer contributes $275 to a school's Parent Teacher Association (PTA). The taxpayer receives an acknowledgment letter from the PTA thanking her for the donation and stating the contribution amount, but the letter fails to state that no goods or services were provided in consideration for the donation. The taxpayer notices the omission of this language as she is preparing her tax return

1 *See, e.g.*, *Albrecht v. Comm'r,* T.C. Memo. 2022-53, at *5 n.4 (where a timely obtained written acknowledgment was found insufficient to meet the content requirements for substantiation under IRC § 170(f)(8)(B) and the court could not consider additional documentation that supplied the missing information because the donee organization provided it after the contemporaneous recordkeeping deadline).

and asks the PTA to send a corrected acknowledgment. If the corrected acknowledgment is provided even one day after the taxpayer files her return, she will be ineligible for the deduction. If the taxpayer were to contest this outcome in the Tax Court, the judge would not have the discretion to allow the deduction, even if the evidence conclusively showed the contribution was made and no goods or services were provided in exchange.[2]

In another context, Congress enacted a similar "contemporaneous" recordkeeping requirement but repealed it a year later because it imposed excessive burdens on taxpayers. Specifically, Congress in 1984 added a contemporaneous recordkeeping requirement to IRC § 274(d) relating to the business use of vehicles due to concern about significant overstatements of deductions. Yet by 1985, it concluded the contemporaneous recordkeeping requirement "sweeps too broadly and generally imposes excessive recordkeeping burdens on many taxpayers."[3] Congress repealed the "contemporaneous" requirement while retaining the rules governing the content of the information that must be substantiated.[4] IRC § 274(d) now requires a taxpayer to substantiate a claimed expense by adequate records or by sufficient evidence corroborating the taxpayer's own statement establishing the amount, time, place, and business purpose of the expense.

Under similar reasoning, removing the "contemporaneous" component of the written acknowledgment requirements in IRC § 170 would still require taxpayers to provide sufficient evidence to substantiate their deductions, but it would reduce taxpayer burden and give the IRS and the courts common-sense flexibility in administering the law.

RECOMMENDATION

- Remove the "contemporaneous" component of the written acknowledgment requirements in IRC § 170(f)(8), (f)(12), and (f)(18).[5]

2 *See, e.g.*, *Durden v. Comm'r*, T.C. Memo. 2012-140.
3 S. Rep. No. 99-23, at 3 (1985); H.R. Rep. No. 99-34, at 4 (1985).
4 Pub. L. No. 99-44, § 1, 99 Stat. 77 (1985).
5 Conforming changes may be required in IRC §§ 2522 and 6720.

Legislative Recommendation #61

Establish a Uniform Standard Mileage Deduction Rate

SUMMARY

- *Problem:* The IRC authorizes taxpayers to deduct the costs of operating an automobile for several purposes. In combination with administrative guidance, however, it authorizes different standard mileage rates for each purpose. This is complicated and confusing for taxpayers, tax professionals, and IRS employees alike.
- *Solution:* Establish a uniform mileage deduction rate for all purposes.

PRESENT LAW

There are currently three different standard mileage deduction rates: one for business miles, a second for charitable miles, and a third for medical transportation and military relocation miles. The rate for charitable miles is fixed by the IRC. The mileage rates for other purposes are not. Instead, the IRS generally adjusts the mileage rates annually.[1] Revenue Procedure 2019-46 states that the IRS will adjust the mileage rates in an annual notice.[2]

- *Business Miles:* IRC § 162 authorizes a deduction for the ordinary and necessary expenses a taxpayer pays or incurs during the taxable year, including the costs of operating an automobile used in a business. In 2025, the mileage deduction for business purposes was 70 cents per mile.[3]
- *Charitable Miles:* IRC § 170 authorizes a deduction for the use of an automobile in providing free services to a charitable organization. IRC § 170(i) sets the mileage deduction for providing free services to a charitable organization at 14 cents per mile. This amount was set in 1998, was not indexed for inflation, and has not been changed since that time.[4]
- *Medical and Military Moving Miles:* Deductions for the costs of operating an automobile are currently permitted for transport to medical care (see IRC § 213) and for military moving purposes (see IRC § 217). In 2025, the standard mileage rate for these purposes was 21 cents per mile.[5]

The IRS sets the standard mileage rate for business purposes by adding the fixed and variable costs of operating a motor vehicle. It sets the standard mileage rate for medical transportation and military relocation automobile expenses based solely on variable costs. Taxpayers have the option to calculate and deduct the actual costs of operating a vehicle in lieu of claiming the standard mileage allowance.[6]

REASONS FOR CHANGE

The costs of operating a motor vehicle are the same regardless of whether the vehicle is used for business, charitable, medical, or military moving purposes. The use of three different rates causes confusion for

1 *See* IRC § 62; Treas. Reg. §§ 1.62-2, 1.274-5.
2 2019-49 I.R.B. 1301, https://www.irs.gov/irb/2019-49_IRB.
3 IRS News Release, IR-2024-312, IRS Increases the Standard Mileage Rate for Business Use in 2025; Key Rate Increases 3 Cents to 70 Cents Per Mile (Dec. 19, 2024), https://www.irs.gov/newsroom/irs-increases-the-standard-mileage-rate-for-business-use-in-2025-key-rate-increases-3-cents-to-70-cents-per-mile.
4 IRC § 170(i); Taxpayer Relief Act of 1997, Pub. L. No. 105-34, § 973, 111 Stat. 788, 898 (1997).
5 IRS News Release, IR-2024-312, IRS Increases the Standard Mileage Rate for Business Use in 2025; Key Rate Increases 3 Cents to 70 Cents Per Mile (Dec. 19, 2024), https://www.irs.gov/newsroom/irs-increases-the-standard-mileage-rate-for-business-use-in-2025-key-rate-increases-3-cents-to-70-cents-per-mile.
6 *Id.*

taxpayers, tax professionals, and IRS employees. For example, someone may know the deduction rate for one purpose and, not realizing there are different rates, erroneously apply that rate for another purpose. Indeed, some civic minded self-employed individuals may claim mileage deductions for both business and charitable purposes on the same tax return. Not only do multiple rates cause confusion, but if a taxpayer uses the wrong rate, even inadvertently, he or she may be subject to a tax adjustment, penalties, and interest charges. This undermines public confidence in the fairness of the tax system. If a motor vehicle on average costs a certain amount to operate, that mileage rate should apply across the board.

Additionally, the National Taxpayer Advocate notes that the 14-cent standard mileage rate for charitable miles established in 1998 does not reflect the current costs of automobile usage. Mileage rates should be indexed for inflation.

RECOMMENDATIONS

- Establish a uniform standard mileage deduction rate for business, charitable, medical, and military moving expenses, harmonizing IRC §§ 162, 170(i), 213, and 217.[7]
- Index the standard mileage deduction rate for inflation.

7 Under current law, taxpayers claiming a deduction at the standard business mileage rate must reduce the basis of their vehicle by the amount attributable to depreciation. *See* IRC § 1016(a)(2); Rev. Proc. 2019-46, 2019-49 I.R.B. 1301, https://www.irs.gov/irb/2019-49_IRB. Similar basis reductions are not required for deductions relating to the use of a vehicle for charitable, medical, or military moving purposes. If Congress establishes a uniform mileage rate, it may wish to consider whether any corresponding changes to the basis adjustment rules would be appropriate.

Legislative Recommendation #62

Encourage and Authorize Independent Contractors and Service Recipients to Enter Into Voluntary Withholding Agreements

SUMMARY

- *Problem:* Independent contractors are not subject to wage withholding. Instead, they are required to pay their taxes on their own. Many do not. If the IRS audits them or otherwise detects their noncompliance, they become liable for unpaid tax, penalties, and interest charges. If the IRS does not detect their noncompliance, federal revenue collection is impaired.
- *Solution:* Encourage independent contractors and businesses to enter into voluntary withholding agreements.

PRESENT LAW

IRC Chapter 24, Collection of Income Tax at Source on Wages, provides for required withholding of taxes on wages paid to employees, certain gambling winnings, some pensions and annuities, amounts subject to backup withholding, and certain other payments. In addition, IRC § 3402(p) provides for voluntary withholding at the option of the income recipient on certain payments such as Social Security benefits, unemployment benefits, and other benefits.[1] IRC § 3402(p)(3) authorizes the Secretary to promulgate regulations to provide for withholding from any payment that does not constitute wages if the Secretary finds withholding would be appropriate and the payor and recipient of the payment agree to such withholding.[2]

Although the Secretary may issue guidance by publication in the Internal Revenue Bulletin describing payments for which withholding under a voluntary agreement would be appropriate, the only such guidance issued to date is Notice 2013-77, dealing with dividends and other distributions by Alaska Native Corporations.[3]

IRC § 6654(a) generally imposes a penalty for failure to pay sufficient estimated tax during the year, computed by applying (i) the underpayment rate established under IRC § 6621, (ii) to the underpayment, (iii) for the period of the underpayment.

REASONS FOR CHANGE

Unlike employees whose wage payments are subject to federal income tax withholding, independent contractors are generally responsible for paying their own taxes. Independent contractors generally must make four estimated tax payments during the year. However, many independent contractors fail to make estimated tax payments for a variety of reasons and therefore face penalties under IRC § 6654. In addition, some do not save enough money to pay their taxes at the end of the year. As a result, they face additional penalties and interest charges, and they may face IRS collection action, including liens and levies.

1 IRC § 3402(p)(1)(C), (p)(2).

2 IRC § 3402(p)(3) authorizes the promulgation of regulations for withholding from (i) an employee's remuneration for services that do not constitute wages and (ii) any other agreed-upon source that the Secretary finds appropriate. The Secretary must find the withholding would be appropriate "under the provisions of [IRC Chapter 24, Collection of Income Tax at Source on Wages]." Payments made when a voluntary withholding agreement is in effect are treated as if they are wages paid by an employer to an employee for purposes of the income tax withholding provisions and related procedural provisions of subtitle F of the IRC.

3 *See* Treas. Reg. § 31.3402(p)-1(c); IRS Notice 2013-77, 2013-50 I.R.B. 632, Voluntary Withholding on Dividends and Other Distributions by Alaska Native Corporations, https://www.irs.gov/pub/irs-drop/n-13-77.pdf.

The absence of withholding on payments to independent contractors also has a negative impact on revenue collection. IRS National Research Program studies show that tax compliance is substantially lower among workers whose income taxes are not withheld.[4]

This problem may be increasing as more people are working in the so-called "gig economy." It is projected that by 2028 there will be about 90 million U.S. workers participating in the gig economy.[5] To reduce the risk they will not save enough money to pay their taxes, some independent contractors would prefer to have taxes withheld throughout the year, as is done for employees. There is a legitimate debate about the circumstances under which withholding should be required, but there is no reason it should not be permitted. The National Taxpayer Advocate believes the law should allow and make it easy for workers and businesses to enter into voluntary withholding agreements when both parties wish to do so.

For many businesses, withholding on payments to independent contractors will not impose an additional burden. In addition to paying independent contractors, most large companies have full-time employees, such as administrative staff, so they already have procedures in place to withhold.

The National Taxpayer Advocate understands some businesses may be reluctant to withhold due to concerns that the IRS may cite the existence of withholding agreements to challenge underlying worker classification arrangements. Although the existence of a withholding agreement is generally not a factor the IRS considers when determining whether a worker should be classified as an employee or an independent contractor, clarifying that the IRS may not consider it will provide both businesses and independent contractors with reassurance that entering into a voluntary withholding agreement will not affect worker classification.[6]

RECOMMENDATION

- Amend IRC § 3402(p) to clarify that when voluntary withholding agreements are entered into by parties for the withholding of income tax and these parties do not treat themselves as engaged in an employer-employee relationship, the IRS may not consider the existence of such agreements as a factor when challenging worker classification arrangements.[7]

4 *See* IRS, Pub. 5869, Research, Applied Analytics & Statistics Federal Tax Compliance Research: Tax Gap Projections for Tax Year 2022 (Oct. 2024), https://core.publish.no.irs.gov/pubs/pdf/p5869--2024-10-00.pdf.

5 *Gig Economy in the U.S. – Statistics & Facts*, Statista, July 3, 2024, https://www.statista.com/topics/4891/gig-economy-in-the-us.

6 *See* Treas. Reg. § 31.3121(d)-1; Rev. Rul. 87-41, 1987-1 C.B. 296; Internal Revenue Manual 4.23.5.7.1, Control Test (Dec. 10, 2013), https://www.irs.gov/irm/part4/irm_04-023-005r. Also, clarification should provide that entering into such an agreement would not bar a business or organization from obtaining relief under Section 530 of the Revenue Act of 1978 if the business or organization meets all the requirements set forth in this section. Revenue Act of 1978, Pub. L. No. 95-600, § 530, 92 Stat. 2763, 2885 (1978). *See also* Erin M. Collins, Voluntary Withholding in the TAS Act, National Taxpayer Advocate Blog (last updated May 28, 2025), https://www.taxpayeradvocate.irs.gov/news/nta-blog/voluntary-withholding-in-the-tas-act/2025/04/.

7 For legislative language generally consistent with this recommendation, *see* Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 901 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill; Small Business Owners' Tax Simplification Act of 2017, H.R. 3717, 115th Cong. § 9 (2017), https://www.congress.gov/bill/115th-congress/house-bill/3717.

Legislative Recommendation #63

Require the IRS to Specify the Information Needed in Third-Party Contact Notices

SUMMARY

- *Problem:* The IRS may contact third parties to obtain information or documentation relating to taxpayers. Recognizing that third-party contacts (TPCs) "may have a chilling effect on the taxpayer's business and could damage the taxpayer's reputation in the community," Congress has required the IRS to provide advance notice to affected taxpayers.[1] However, the IRS sometimes does not tell the taxpayer what information it is seeking or give the taxpayer a reasonable opportunity to provide the information so it can avoid a TPC.
- *Solution:* Require the IRS to provide taxpayers with a tailored notice that identifies the specific information it plans to request from a third party, unless advance notice would jeopardize the collection of tax or another statutory exception applies.

PRESENT LAW

IRC § 7602(c)(1) generally requires the IRS to give taxpayers notice before contacting third parties (*e.g.*, banks, employers, employees, vendors, customers, friends, and neighbors) to request information about them. The IRS may provide this TPC notice only if it intends to make a TPC during the period specified in the notice, which may not exceed one year. Generally, the IRS must send the notice at least 45 days before making the TPC.[2] No law expressly requires the IRS to let the taxpayer know what specific information it needs (or seeks to verify) before contacting third parties.

IRC § 7602(c)(3) waives the TPC notice requirement if (i) the taxpayer has authorized the contact; (ii) the IRS determines for good cause that providing notice would jeopardize the IRS's tax collection efforts or may involve reprisal against any person; or (iii) the contact is made in connection with a criminal investigation.

REASONS FOR CHANGE

The TPC notice requirement was enacted as part of the IRS Restructuring and Reform Act of 1998 (RRA 98).[3] The Senate report accompanying the bill explained that "taxpayers should have the opportunity to resolve issues and volunteer information before the IRS contacts third parties."[4] The House-Senate conference report accompanying RRA 98 stated that "in general [the TPC] notice will be provided as part of an existing IRS notice."[5] Based on the conference report language, the IRS implemented the TPC notice requirement by including generic language in Publication 1, Your Rights as a Taxpayer, which the IRS sends to taxpayers in a variety of circumstances, whether or not it plans to make a TPC.[6]

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1 H.R. Rep. No. 105-599, at 277 (1998) (Conf. Rep.).

2 The 45-day requirement was enacted by the Taxpayer First Act (TFA). Pub. L. No. 116–25, § 1206, 133 Stat. 981, 990 (2019). The IRS has issued a notice of proposed rulemaking to address the TFA amendment that would shorten the 45-day notice period to ten days or eliminate it altogether under certain circumstances. *See* Advance Notice of Third-Party Contacts, 89 Fed. Reg. 20371, 20371-77 (proposed Mar. 22, 2024) (amending Treas. Reg. § 301.7602-2).

3 RRA 98, Pub. L. No. 105-206, § 3417(a), 112 Stat. 685, 757 (1998).

4 S. Rep. No. 105-174, at 77 (1998).

5 H.R. Rep. No. 105-599, at 277 (1998) (Conf. Rep.).

6 IRS, Pub. 1, Your Rights as a Taxpayer (Sept. 2017), https://www.irs.gov/pub/irs-pdf/p1.pdf. Under the heading "Potential Third Party Contacts," Publication 1 states, in part: "[W]e sometimes talk with other persons if we need information that you have been unable to provide, or to verify information we have received."

When Congress enacted the Taxpayer First Act (TFA) in 2019, it rejected the generic approach of including the TPC language in Publication 1. The TFA amended IRC § 7602(c) to require the IRS to send the TPC notice only when it intends to make a TPC and to send the TPC notice at least 45 days before making the contact.[7] In explaining the change, the House report accompanying the TFA quoted testimony from a former IRS official, who said the then-existing TPC notice requirement was "useless and does not effectively apprise taxpayers that such contact will be made, to whom it will be made, or that the taxpayer can request a third party contact report from the IRS." The House report said TPCs "may have a chilling effect on the taxpayer's business and could damage the taxpayer's reputation in the community." It also said the change would "provide taxpayers more of an opportunity to resolve issues and volunteer information before the IRS contacts third parties."[8]

If the IRS were to include TPC notices as part of an existing IRS notice (such as Form 4564, Information Document Request) that requests information from the taxpayer, the 45-day period would give the taxpayer a realistic opportunity to avoid a TPC by providing the information requested on the form.[9] However, the IRS generally does not include a request for that information with the TPC notice.[10]

A tailored notice that identifies the specific information the IRS plans to request from a third party would be more effective in motivating taxpayers to provide the information themselves. The IRS previously tailored TPC notices in this way.[11] Generating tailored notices would not unduly burden the IRS because most TPCs are made in the collection context, where the IRS is seeking assets via levy rather than information, and TPC notices in the collection context are not implicated by this recommendation.[12] Within the smaller subset of cases where the IRS is seeking specific information, identifying what information the IRS is seeking would empower the taxpayer to protect their reputation by providing the information themselves so a TPC is unnecessary. Thus, using tailored TPC notices is consistent with a taxpayer's *rights to be informed* and *to privacy*, which includes the right to expect enforcement to be "no more intrusive than necessary," and it might save IRS resources by reducing the number of TPCs.[13]

RECOMMENDATION

- Amend IRC § 7602(c) to require the IRS to provide taxpayers with tailored notices that identify the specific information it plans to request from a third party. Before the IRS seeks such information from

7 Pub. L. No. 116-25, § 1206, 133 Stat. 981, 990 (2019); *see* Advance Notice of Third-Party Contacts, 89 Fed. Reg. 20371, 20371-77 (proposed Mar. 22, 2024) (which would amend Treas. Reg. § 301.7602-2 to address TFA amendments and create several exceptions allowing the IRS to shorten the 45-day notice requirement to ten days or eliminate it altogether).

8 H.R. Rep. No. 116-39, pt. 1, at 44-45 (2019). This report accompanied H.R. 1957, 116th Cong. (2019). Congress ultimately made one change to H.R. 1957 unrelated to the TPC provision and enacted the TFA as H.R. 3151, 116th Cong. (2019). However, H.R. Rep. No. 116-39 remains the sole committee report explaining the TFA.

9 IRS, Form 4564, Information Document Request (May 2023).

10 *See, e.g.*, Internal Revenue Manual 25.27.1.3.1, TPC Notification Procedures (Apr. 7, 2021), https://www.irs.gov/irm/part25/irm_25-027-001; IRS, Letter 3164, Third-Party Contact.

11 For further discussion, see National Taxpayer Advocate 2015 Annual Report to Congress 123, 127 (Most Serious Problem: *Third Party Contacts: IRS Third Party Contact Procedures Do Not Follow the Law and May Unnecessarily Damage Taxpayers' Businesses and Reputations*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC15_Volume1_MSP_12_Third-Party-Contacts.pdf; National Taxpayer Advocate Fiscal Year 2018 Objectives Report to Congress 98 (Area of Focus: *IRS Third Party Contact (TPC) Notices Should Be More Specific, Actionable, and Effective*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/JRC18_Volume1_AOF_12.pdf.

12 TPCs often arise from IRS requests for payment from third parties, such as banks served with a levy for the taxpayer's funds on deposit or in connection with the advertising or conduct of public auction sales of the taxpayer's property. A prior TAS study found the IRS made TPCs in 68.1% of its field collection cases and 8.5% of its field examination cases. National Taxpayer Advocate 2015 Annual Report to Congress 123 (Most Serious Problem: *Third Party Contacts: IRS Third Party Contact Procedures Do Not Follow the Law and May Unnecessarily Damage Taxpayers' Businesses and Reputations*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC15_Volume1_MSP_12_Third-Party-Contacts.pdf. This recommendation generally does not cover collection contacts, because in those cases, the IRS is not asking a third party for information that the taxpayer could provide.

13 *See* Taxpayer Bill of Rights (TBOR), https://www.taxpayeradvocate.irs.gov/get-help/taxpayer-rights (last visited Nov. 19, 2025). The rights contained in TBOR are also codified in IRC § 7803(a)(3).

a third party, it should include the third-party contact notice with another IRS notice requesting the information to give taxpayers a reasonable opportunity to respond and provide the information, unless an exception under IRC § 7602(c)(3) applies.[14]

14 If the taxpayer responds, the IRS may still contact a third party if it has a legitimate need to interview witnesses or corroborate information provided by the taxpayer. For legislative language generally consistent with this recommendation, see Taxpayer Notification and Privacy Act of 2025, S. 2629, 119th Cong. § 2 (2025); Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 906 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill.

Legislative Recommendation #64

Enable the Low Income Taxpayer Clinic Program to Assist More Taxpayers in Controversies With the IRS

SUMMARY

- *Problem:* In 1998, Congress created the Low Income Taxpayer Clinic (LITC) grant program to provide free or nominal-cost representation to low-income taxpayers involved in controversies with the IRS and to provide education about taxpayer rights and responsibilities to taxpayers who speak English as a second language (ESL). The law capped the grant that could be awarded to any clinic at $100,000 per year. The law also limited the grant amount a clinic may receive to the amount it raises from other sources. These restrictions prevent the LITC Program from assisting as many low-income taxpayers as it otherwise could.
- *Solution:* Eliminate the annual $100,000 per-clinic funding cap and reduce the matching funds requirement when doing so would expand coverage to additional taxpayers.

PRESENT LAW

The LITC grant program was established by the IRS Restructuring and Reform Act of 1998.[1] IRC § 7526(a) authorizes the Secretary, subject to the availability of appropriated funds, to provide matching grants for the development, expansion, or continuation of LITCs. IRC § 7526(b)(1) defines a qualified LITC as a clinic that provides free or nominal-cost representation to low-income taxpayers in controversies with the IRS or operates programs to inform ESL individuals about their rights and responsibilities under the tax code.

IRC § 7526(c)(1) imposes an annual aggregate limitation of $6 million for LITC grants "[u]nless otherwise provided by specific appropriation."

IRC § 7526(c)(2) imposes an annual limitation on grants to a single clinic of $100,000.[2]

IRC § 7526(c)(5) limits the amount of LITC funding a clinic may receive to the amount it raises from other sources (*i.e.*, a 100% matching funds requirement). The match may be in cash or third-party in-kind contributions (*e.g.,* volunteer time, donated supplies).

REASONS FOR CHANGE

The LITC Program is an effective and low-cost means to assist low-income and ESL taxpayers. In 2025, the LITC Program Office awarded grants to 138 organizations in 44 states, the District of Columbia, and Puerto Rico. In 2024, the most recent year for which complete retrospective data is available, clinics receiving grant funds represented over 21,000 taxpayers dealing with IRS tax controversies, including in cases before the U.S. Tax Court (Tax Court). They provided consultations or advice to over 18,000 additional taxpayers. The clinics worked closely with the Tax Court and the IRS Office of Chief Counsel to resolve docketed cases on a pre-trial basis where possible. They reduced or corrected taxpayers' liabilities by more than $53 million and helped

1 Pub. L. No. 105-206, 112 Stat. 685, 774 (1998).

2 In recent appropriations acts, Congress has doubled the per-clinic cap from $100,000 to $200,000. *See, e.g.*, Consolidated Appropriations Act, 2024, Pub. L. No. 118-47, 138 Stat. 460, 526 (2024). This change has been helpful, but appropriations legislation is annual, and several clinics have told us they are reluctant to invest in raising additional matching funds and hiring and training additional employees unless they have assurance that these higher funding levels will be made available in future years. For that reason, we continue to recommend raising the caps in the authorizing statute (*i.e.*, IRC § 7526).

taxpayers secure more than $10 million in tax refunds. They also brought thousands of taxpayers back into filing and payment compliance, and helped ensure that individuals understood their rights and responsibilities as U.S. taxpayers by conducting more than 20,000 educational activities that were attended by over 161,000 individuals.[3]

The success of the LITC Program is tied largely to the extensive use of volunteers. Over 1,300 volunteers contributed to the success of LITCs by volunteering about 45,000 hours of their time.[4]

There are many underserved low-income taxpayers across the nation who could benefit from LITC assistance. A primary goal of LITC management is to provide quality service to more taxpayers. However, IRC § 7526 contains two restrictions that limit their ability to do so.

First, the annual limitation on grants to a single clinic of $100,000, which has remained unchanged since 1998, prevents the LITC Program Office from awarding additional funds to qualified clinics that have demonstrated excellence in assisting low-income and ESL taxpayers and the ability to efficiently handle more cases. Even if the restriction were to be retained, the $100,000 cap enacted in 1998 would have to be raised to nearly $200,000 simply to reflect the effects of inflation.[5] However, the LITC Program Office could ensure more taxpayers receive LITC services if it is given discretion to provide larger grants to clinics that demonstrate they can use the funds productively. The objective is not to create a small number of "super clinics;" to the contrary, we believe it is important to maintain maximum geographic coverage for taxpayers across the United States. Rather, as more taxpayers are becoming comfortable working with service providers remotely and as the Tax Court has begun to offer virtual trial sessions, we believe some clinics will be able to achieve economies of scale that will allow them to serve considerably more taxpayers at comparatively less cost, including taxpayers in states or counties that do not currently have an LITC.[6]

Second, the 100% matching funds requirement in some cases serves as a barrier to coverage. The purpose of the match requirement is to ensure that each clinic's management maintains a broad commitment to assisting taxpayers and to encourage clinics to recruit tax professionals on a volunteer basis to assist additional taxpayers. In general, strong clinics do not have difficulty meeting the requirement, and we believe the match requirement generally should be retained. But in certain circumstances, resources to meet the match requirement may be limited. The LITC Program Office has encountered difficulty identifying and funding clinics in certain states and counties, and a lower match requirement would make it economically feasible for additional clinics to operate.

In addition, if our recommendation to eliminate the $100,000 per-clinic funding cap is adopted, clinics that can meet the 100% matching funds requirement when receiving grants of $100,000 may have difficulty raising funds in excess of $100,000 on a 1:1 basis. Thus, clinics awarded grants in excess of $100,000 should not be held to the same 100% matching funds requirement. The same is true for new clinics that are trying to get off the ground in underserved areas. Taxpayers would be better served if the LITC Program Office is given the discretion, delegated by the Secretary of the Treasury, to reduce the matching percentage in these circumstances (but not below 25%), where doing so would expand coverage to additional taxpayers.

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3 IRS, Low Income Taxpayer Clinic Program Office data (as of Sept. 26, 2025) (on file with TAS).

4 *Id.*

5 *See* U.S. Bureau of Labor Statistics, CPI Inflation Calculator, https://www.bls.gov/data/inflation_calculator.htm (last visited Sept. 4, 2025).

6 The Taxpayer First Act, Pub. L. No. 116–25, Title I, § 1401(a), 133 Stat. 981, 993 (2019), authorized an analogous program, the Volunteer Income Tax Assistance (VITA) matching grant program, which provides free tax return preparation for individuals with low to moderate incomes (*i.e.,* below the maximum Earned Income Tax Credit threshold), individuals with disabilities, and individuals with limited English proficiency. The VITA statute, IRC § 7526A, was modeled after the LITC statute but does not impose any limitation on the amount that may be awarded to a qualifying grantee.

RECOMMENDATIONS

- Eliminate the $100,000 per-clinic funding cap imposed under current law by removing subsection (2) from IRC § 7526(c) and renumbering subsequent subsections accordingly.
- Amend IRC § 7526(c)(5) to retain the 100% "matching funds" requirement as a general rule but provide that the Secretary has the discretion to allow a lesser matching rate (but not less than 25%), where doing so would expand coverage to additional taxpayers.[7]

7 For legislative language generally consistent with this recommendation, see Low-Income Taxpayer Clinic Modernization Act of 2024, H.R. 8876, 118th Cong. § 2 (2024). *See also* Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 110 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill.

Legislative Recommendation #65

Clarify That Late-Filed Tax Returns Qualify as "Returns" for Bankruptcy Discharge Purposes

SUMMARY

- *Problem:* Some courts interpret an ambiguous provision in the Bankruptcy Code to mean that filing a tax return late is the same as never having filed a return at all. Under federal bankruptcy law, individual taxpayers who do not file a tax return cannot receive a discharge for that year's related tax debts. Thus, filing late in certain areas of the country, even by a single day, can permanently deprive individual taxpayers of discharge of their tax debt – just as if they had never filed the return.
- *Solution:* Amend the Bankruptcy Code to provide that untimely filing does not invalidate an otherwise correctly filed tax return.

PRESENT LAW

Section 523(a) of the Bankruptcy Code excludes certain debts from discharge.[1] Among those on the list, individual debtors cannot have a tax debt discharged for a tax year for which they (i) did not file a tax return or (ii) filed a tax return late and less than two years before filing the bankruptcy petition.[2]

This statutory scheme clearly creates distinct consequences for tax returns that are filed late as opposed to returns that are not filed at all: Individual debtors who file late may receive a discharge with respect to tax returns filed at least two years before their bankruptcy filing, whereas individual debtors who have not filed tax returns may not. Despite this clear distinction, many courts have held that returns that are filed late cease to qualify as returns. In those circuits, individual taxpayers who file after the applicable return filing deadline – even if they otherwise meet all filing requirements – are permanently barred from receiving a discharge of the related tax debts for those years.

When deciding what constitutes a tax return, the courts generally apply a four-factor analysis known as the *Beard* test.[3] A return satisfies the *Beard* test if it (i) contains sufficient data to calculate tax liability, (ii) purports to be a return, (iii) represents an honest and reasonable attempt to satisfy the requirements of tax law, and (iv) was executed under penalties of perjury. Additionally, for purposes of bankruptcy discharge, Congress in 2005 added an unnumbered paragraph at the end of section 523(a) to define the term "return."[4] The paragraph states, in part, that to qualify as a "return," the filing must satisfy the "requirements of applicable non-bankruptcy law (including applicable filing requirements)."

Applying these rules, the U.S. Courts of Appeals have come to different conclusions as to whether late filings can constitute "returns" for dischargeability purposes:[5]

1 The Bankruptcy Code is codified as Title 11 of the United States Code. Unless otherwise noted, all code section references are to provisions in the Bankruptcy Code. Section 523(a) applies to the discharge provisions contained in sections 727, 1141, 1192, 1228(a), 1228(b), and 1328(b).

2 Bankruptcy Code § 523(a)(1)(B).

3 *See Beard v. Commissioner*, 82 T.C. 766, 777 (1984), *aff'd*, 793 F.2d 139 (6th Cir. 1986) (per curiam).

4 Because the paragraph has no numbered or lettered subsection designation, courts often cite to it as section 523(a)(*) and refer to it as the "hanging paragraph" or "flush language." *See, e.g.*, *In re Shek*, 947 F.3d 770, 774 n.6 (11th Cir. 2020).

5 The term "return" as used in Bankruptcy Code § 523(a) may apply not only to federal income tax returns but also to other tax returns filed pursuant to federal, state, or local law. Some case law on this issue addresses filings other than Forms 1040. *See, e.g.*, *In re Pitts*, 497 B.R. 73 (Bankr. C.D. Cal. 2013) (applying the reasoning from this line of cases to Form 941 employment tax returns).

- Six circuits – the Third, Fourth, Sixth, Seventh, Ninth, and Eleventh – have held that Forms 1040 filed after the IRS assesses tax do not demonstrate a valid tax purpose and thus fail the *Beard* requirement of showing an honest and reasonable attempt to satisfy the tax law.[6]
- Three circuits – the First, Fifth, and Tenth – have held that any purported tax return document that is filed late, even by just one day, cannot constitute a "return" for bankruptcy discharge purposes because timely filing is one of the "applicable filing requirements" imposed by the unnumbered paragraph in section 523(a). This has come to be known as the "one-day late" rule.[7]
- One circuit – the Eighth – has held that late filing is not generally relevant to whether a Form 1040 constitutes a "return."[8]

REASONS FOR CHANGE

The same circumstances that lead taxpayers to spiraling tax debts may also lead them to miss filing deadlines. Yet under the different interpretations of section 523(a), discharge eligibility varies dramatically by jurisdiction. Individual taxpayers who miss filing deadlines and later file for bankruptcy face vastly different discharge rules depending on where they reside in the country. Some taxpayers may receive full relief from their tax debt, while others receive no relief at all.

> *Example:* Due to a serious medical condition, a taxpayer with an excellent compliance history files her federal and state tax returns one day after their deadlines and is unable to pay the amounts owed. If the taxpayer subsequently files for bankruptcy in a jurisdiction that follows the one-day late rule, neither the state nor federal tax debts would ever qualify for discharge. Meanwhile, a taxpayer in the same situation living in a different jurisdiction may receive a complete discharge.

Significantly, the IRS itself disagrees with courts that have held late-filed Forms 1040 cannot meet the definition of a tax return.[9] Under the tax law, taxpayers who file late may be subject to additional penalties and face certain other consequences, but they do not permanently lose the ability to file a return for that year. The IRS routinely accepts and processes these Forms 1040 as valid returns, albeit late, and may even abate late-filing penalties if the taxpayer provides evidence of reasonable cause.[10]

Defining "returns" in the Bankruptcy Code to include late Forms 1040 would not eliminate consequences for late filing.[11] Under section 523(a)(1)(B)(ii) of the Bankruptcy Code, a discharge of a tax debt is permitted for a late-filed tax return only if the return was filed at least two years before the date of the filing of the bankruptcy petition. Yet jurisdictions that have adopted the one-day-late rule have largely rendered that two-

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6 *See In re Giacchi*, 856 F.3d 244, 248-249 (3rd Cir. 2017); *In re Moroney*, 352 F.3d 902, 906-907 (4th Cir. 2003); *In re Hindenlang*, 164 F.3d 1029, 1034-1035 (6th Cir. 1999); *In re Payne*, 431 F.3d 1055, 1057 (7th Cir. 2005); *In re Hatton*, 220 F.3d 1057, 1061 (9th Cir. 2000); *In re Justice*, 817 F.3d 738, 744-746 (11th Cir. 2016).

7 *See In re Fahey*, 779 F.3d 1, 4-5 (1st Cir. 2015); *In re McCoy*, 666 F.3d 924, 932 (5th Cir. 2012); *In re Mallo*, 774 F.3d 1313, 1321 (10th Cir. 2014). These cases involve late-filed state income tax returns.

8 *See In re Colsen*, 446 F.3d 836, 840 (8th Cir. 2006).

9 IRS Chief Counsel Notice 2010-016, Litigating Position Regarding the Dischargeability in Bankruptcy of Tax Liabilities Reported on Late-Filed Returns and Returns Filed After Assessment, http://www.irs.gov/pub/irs-ccdm/cc_2010_016.pdf; Internal Revenue Manual (IRM) 5.9.17.8.1, Determining Dischargeability of Late Filed Returns in Which a SFR Was Prepared (Sept. 10, 2024), https://www.irs.gov/irm/part5/irm_05-009-017r. The IRS's position is that although late Forms 1040 may still qualify as "returns," any tax debt that is assessed prior to the taxpayer's submission of the Form 1040 is not dischargeable. Courts have not generally adopted this reasoning.

10 *See* Treas. Reg. § 301.6651-1(c); IRM 20.1.1.3.2, Reasonable Cause (Nov. 21, 2017), https://www.irs.gov/irm/part20/irm_20-001-001r.

11 For similar recommendations, see letter from American Bar Ass'n Tax Section to Chairman and Ranking Members of the Senate Finance Committee and House Ways and Means Committee (July 29, 2014), https://www.americanbar.org/content/dam/aba/administrative/taxation/policy/2014/072914letter.pdf; National Taxpayer Advocate 2014 Annual Report to Congress 417 (Legislative Recommendation: *Late-Filed Returns: Clarify the Bankruptcy Law Relating to Obtaining a Discharge*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/2014-ARC_VOL-1_S2_LR-19-508.pdf.

year waiting period meaningless.[12] Modifying the definition of a "return" in section 523(a) would allow that exception to once again have effect in those jurisdictions.

RECOMMENDATION

- Amend section 523(a) of the Bankruptcy Code to specify that an otherwise valid tax return does not lose its status as a "return" solely because it was filed after the statutory deadline.

12 *See In re Fahey*, 779 F.3d 1, 13 (1st Cir. 2015) (Thompson, J., dissenting) ("[T]here would be no point in leaving in [Section 523(a)(1)(B)(ii)] – the specific exception that deals with late filers – if Congress meant for the hanging paragraph to penalize everyone who misses filing deadlines. As the majority concedes, we should not, when we can avoid it, construe statutes in a way that allows a 'clause, sentence, or word' to be 'superfluous, void, or insignificant.'").

Legislative Recommendation #66

Compensate Taxpayers for "No Change" National Research Program Audits

SUMMARY

- *Problem:* To refine its audit selection formulas, the IRS audits a randomly selected group of taxpayers each year, effectively making them "guinea pigs" to help it improve the way it does its job. These National Research Program (NRP) audits impose burdens on the selected taxpayers, as they often incur fees for representation by a tax professional, must spend considerable time gathering and organizing requested documentation, and experience the stress of an IRS audit.
- *Solution:* Absent fraud, compensate taxpayers who undergo NRP audits that do not result in changes to their tax liabilities and consider waiving any tax, interest, and penalties that result from these audits.

PRESENT LAW

There is no provision under present law that authorizes compensation of taxpayers who are audited under the IRS's NRP or provides relief from the assessment of tax, interest, and penalties that may result from NRP audits.

REASONS FOR CHANGE

Through the NRP, the IRS conducts audits of randomly selected taxpayers. The NRP benefits tax administration by enabling the IRS to gather strategic information about taxpayer compliance behavior as well as information about the causes of reporting errors. This information helps the IRS update its workload selection formulas and thereby enables it to focus its audits on returns with a relatively high likelihood of error. It also helps the IRS to estimate the "tax gap." In addition, NRP studies benefit Congress by providing taxpayer compliance information that is useful in formulating tax policies.

For the thousands of individual taxpayers or businesses that are subject to NRP audits, however, they impose significant burdens.[1] In essence, these taxpayers, even if fully compliant, serve as "guinea pigs" to help the IRS improve the way it does its job. They must contend with random and sometimes intensive audits that consume time, drain resources (including representation fees), and may impose an emotional and reputational toll.

In 1995, the House Ways and Means Subcommittee on Oversight held a hearing on the NRP's predecessor, the Taxpayer Compliance Measurement Program (TCMP).[2] Testimony provided during the hearing, and subsequent witness responses to questions-for-the-record, indicated that TCMP audits imposed a heavy burden on taxpayers and reflected a strong view that audited taxpayers were bearing the brunt of a research project intended to benefit the tax system as a whole. Proposals raised at the hearing included compensating taxpayers selected for TCMP audits as well as possibly waiving tax, interest, and penalties assessed during the audits.

Following the hearing, the House Budget Committee included a proposal in its 1995 budget reconciliation bill to compensate individual taxpayers by providing a tax credit of up to $3,000 for TCMP-related expenses.[3] Ultimately, the proposal was not adopted. Instead, the IRS was pressured to stop conducting TCMP audits.

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1 For information on NRP audits, see IRS, Form 1040 – Individual Income Tax, National Research Program, https://nrp.web.irs.gov/1040-study.html (last visited Sept. 5, 2025).

2 *Taxpayer Compliance Measurement Program: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways and Means*, 104th Cong. (1995), https://www.govinfo.gov/content/pkg/CHRG-104hhrg20681/pdf/CHRG-104hhrg20681.pdf.

3 *See* H.R. Rep. No. 104-280, vol. 2, at 28 (1995).

The IRS's inability to perform regular TCMP audits, however, undermined effective tax administration because it prevented the agency from updating its audit selection formulas. Using older formulas likely meant that a larger number of compliant taxpayers faced (unproductive) audits and that audit revenue declined.

About a decade later, the IRS reinstated the TCMP under the new NRP name. Some procedures have changed, but the burden on many of the selected taxpayers remains substantially the same. For the same reasons identified during the 1995 House hearing, the National Taxpayer Advocate believes it is appropriate to recognize that taxpayers audited under the NRP are bearing a heavy burden to help the IRS improve the effectiveness of its compliance activities. A tax credit or authorized payment would alleviate the monetary component of the burden. Further relief could be provided by waiving any assessment of tax, interest, and penalties resulting from an NRP audit.[4] However, this waiver should not apply where tax fraud or an intent to evade tax is uncovered during the audit.

RECOMMENDATIONS

- Compensate taxpayers for "no change" NRP audits through a tax credit or other means.[5]
- Consider waiving the assessment of tax, interest, and penalties resulting from an NRP audit, absent fraud or an intent to evade federal taxes.

4 Alternatively, legislation could require NRP-audited taxpayers to pay any additional tax owed and limit relief to interest and penalties. However, to the extent the purpose of NRP audits is to identify areas where NRP-audited taxpayers are underreporting tax so the IRS can revise its audit selection formulas, a waiver of tax as well as interest and penalties may be more effective, as taxpayers might be more forthcoming with auditors if they are assured they will not face additional assessments (absent fraud).

5 For legislative language that would allow a deduction for certain individual taxpayers of up to $5,000 for qualified NRP expenses, see Small Business Taxpayer Bill of Rights Act of 2025, S. 1386 and H.R. 2782, 119th Cong. § 14 (2025).

Legislative Recommendation #67

Improve Tax and Financial Literacy by Promoting Interagency Collaboration and Modernizing the Requirement That the IRS Publish Charts on Government Revenue and Outlays

SUMMARY

- *Problem:* Limited tax and financial literacy is a significant problem that has costly consequences for taxpayers and the government alike. In 2003, Congress took an important step to improve financial literacy by creating the Financial Literacy and Education Commission (FLEC), which includes representatives from 24 federal agencies. The FLEC has a range of duties related to promoting financial literacy and education, but none specifically addresses tax literacy. Separately, Congress has required the IRS to publish pie charts showing major income and outlay categories in its tax return instructions. This requirement, enacted in 1990 when paper instructions were the norm, does not reflect current data visualization practices.
- *Solution:* Amend 20 U.S.C. § 9703 to include the promotion of tax literacy among the duties of the FLEC (or create a separate multi-agency commission focused on tax literacy) and modernize the requirement that the IRS publish graphics showing government revenue and spending.

PRESENT LAW

In 2003, Congress created the FLEC, a multi-agency task force responsible for developing a national strategy on financial education.[1] 20 U.S.C. § 9703(a)(1) directs the FLEC, through the authority of its members, "to take such actions as it deems necessary to streamline, improve, or augment the financial literacy and education programs, grants, and materials of the Federal Government, including curricula for all Americans." 20 U.S.C. § 9703(a)(2) directs the FLEC to emphasize "basic personal income and household money management and planning skills." 20 U.S.C. § 9703 imposes additional requirements on the FLEC, such as developing best practices for teaching financial literacy to higher education students, maintaining a website that serves as a clearinghouse for information about federal financial literacy and education programs, and developing and disseminating materials to promote financial literacy and education to the public.

IRC § 7523(a), enacted in 1990, requires the IRS to include in a prominent place in the instructions for Form 1040 two pie-shaped charts showing the relative sizes of "major outlay categories" and "major income categories."[2] IRC § 7523(b)(1) defines major outlay categories as (1) defense, veterans, and foreign affairs; (2) Social Security, Medicare, and other retirement; (3) physical, human, and community development; (4) social programs; (5) law enforcement and general government; and (6) interest on the debt. IRC § 7523(b)(2) defines major income categories as (1) Social Security, Medicare, and unemployment and other retirement taxes; (2) personal income taxes; (3) corporate income taxes; (4) borrowing to cover the deficit; and (5) excise, customs, estate, gift, and miscellaneous taxes.

1 Financial Literacy and Education Improvement Act, Pub. L. No. 108-159, Title V, § 513, 117 Stat. 1952, 2003 (2003) (codified at 20 U.S.C. §§ 9701-9707); *see also* U.S. Dep't of the Treasury, *Financial Literacy and Education Commission*, https://home.treasury.gov/policy-issues/consumer-policy/financial-literacy-and-education-commission (last visited Nov. 14, 2025).

2 Pub. L. No. 101-508, Title XI, § 11622(a), 104 Stat. 1388, 1388-504 (1990).

REASONS FOR CHANGE

Limited tax and financial literacy is a significant problem in this country.[3] In 2024 alone, it is estimated that insufficient financial literacy in the United States costs people more than $243 billion, or an average of about $1,015 per adult.[4]

Having a basic understanding of taxes and the U.S. tax system is important because taxes influence how people make decisions that impact many areas of their lives. Tax and financial literacy are intertwined in financial decision-making, including managing a household budget, saving for retirement, paying for education, buying a house, and starting or expanding a small business. Filing a tax return is often a prerequisite for obtaining loans and other financial resources required for success and stability, including small business loans, home mortgages, and federal student aid.

The National Taxpayer Advocate commends the IRS for its efforts to work with other federal agencies to promote taxpayer education and outreach. However, significant knowledge gaps remain. There is a need for the IRS and other federal agencies to develop a more coordinated approach to providing tax-focused education in a meaningful and systemic way and to incorporate tax literacy content into other agencies' financial literacy programming. Congress took an important step to improve financial literacy in this country when it created the FLEC. In its two decades of existence, the FLEC has performed an impressive array of work, including developing a financial education website, holding public hearings on important issues related to financial literacy, and issuing reports that look at financial literacy from a variety of perspectives.[5] The National Taxpayer Advocate encourages Congress to amend the law that created the FLEC to add duties related to promoting tax literacy or to create a separate multi-agency commission focused on tax literacy.

Another way in which Congress can promote tax literacy is by updating the requirements in IRC § 7523. An important component in tax literacy is understanding the role of the U.S. tax system. The public benefits from seeing where the money that funds the government comes from and the purposes for which the government uses it, and it is likely that some taxpayers who perceive that connection will be more compliant with their tax obligations.

The requirements in IRC § 7523 are outdated, reflecting that they were enacted in 1990 when paper instructions were the norm. Today, there are better ways to visualize and present this data to the public. To give taxpayers a more complete picture of the role taxes play in our lives, the National Taxpayer Advocate recommends Congress modernize IRC § 7523 by directing the IRS to develop and post graphics on IRS.gov that present information on government revenue and spending in a way that uses plain language and incorporates technology to provide an interactive data visualization experience.[6]

RECOMMENDATIONS

- Amend 20 U.S.C. § 9703 to include the promotion of tax literacy among the duties of the FLEC or create a similar multi-agency commission focused on tax literacy.

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3 *See* National Taxpayer Advocate 2024 Annual Report to Congress 104 (Most Serious Problem: *Tax and Financial Literacy: Limited Tax and Financial Knowledge Is Causing Serious Consequences for Taxpayers*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/12/ARC24_MSP_08_Literacy.pdf.

4 Nat'l Fin. Educators Council, *Financial Illiteracy Cost Americans $1,015 in 2024*, https://www.financialeducatorscouncil.org/financial-illiteracy-costs (last visited Sept. 3, 2025).

5 For examples of FLEC's reports, see U.S. Dep't of the Treasury, *Financial Literacy and Education Commission, Resources*, https://home.treasury.gov/policy-issues/consumer-policy/financial-literacy-and-education-commission.

6 For additional background, see National Taxpayer Advocate 2020 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 9 (*Require the IRS to Provide Taxpayers With a "Receipt" Showing How Their Tax Dollars Are Being Spent*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC19_PurpleBook_01_StrengthRights_3.pdf.

- Amend IRC § 7523 to require the IRS to develop, post on IRS.gov, and at least annually update graphics that present information on government revenue and spending in an accessible manner and that use interactive data visualization to provide taxpayers with a better understanding of the U.S. tax system. Also, require the IRS to publicize the availability of this information.

Legislative Recommendation #68

Establish the Position of IRS Historian Within the Internal Revenue Service to Record and Publish Its History

SUMMARY

- *Problem:* Unlike many other federal agencies, the IRS does not have a historian to catalog and publish an analysis of its successes and failures. This is significant because many of the challenges the IRS faces are recurring, such as its decades-long efforts to modernize its information technology systems and its efforts to strike the appropriate balance between collecting delinquent taxes and respecting taxpayer rights. To cite an adage, those who fail to learn from history are doomed to repeat it.
- *Solution:* Establish the position of IRS historian within the agency to systematically document the IRS's history and lessons learned, and to publish objective analyses of the IRS's operations, including its successes and failures.

PRESENT LAW

The IRS is subject to federal recordkeeping and disclosure laws that require it to maintain records and provide public access to certain documents. Under the Federal Records Act, the IRS must properly manage and preserve its records.[1] Under the Freedom of Information Act, the public can request access to many IRS records.[2] However, no statute requires the IRS to compile or publish a comprehensive history or analysis of its tax administration programs and policies. In practice, this means the IRS has no obligation to proactively study or explain the historical outcomes of its major initiatives.

REASONS FOR CHANGE

The IRS's mission and strategic objectives have remained largely the same for decades. For example, the IRS's Strategic Operating Plan published in April 2023 reiterates many of the same themes and goals as earlier plans – improving taxpayer service, resolving issues quickly, focusing enforcement on high-dollar noncompliance, upgrading technology systems, and building a skilled workforce.[3] These core priorities are likely to remain similar in the future.

In recent years, the IRS has been tasked with implementing major legislative changes from pandemic relief programs and the expanded Child Tax Credit under the American Rescue Plan Act (ARPA),[4] to new reporting requirements in the Infrastructure Investment and Jobs Act (IIJA),[5] to a wide array of tax provisions in the Inflation Reduction Act in 2022[6] and the One Big Beautiful Bill Act in 2025.[7] Each of these acts created substantial operational and communication challenges. ARPA, for example, vastly expanded taxpayer benefits and imposed a much lower reporting threshold for Form 1099-K – changes that confused many taxpayers

1 44 U.S.C. §§ 3101-3107.
2 5 U.S.C. § 552.
3 IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan (Apr. 2023), https://www.irs.gov/pub/irs-pdf/p3744.pdf; IRS, Pub. 3744-A, 2024 IRA Strategic Operating Plan Annual Update Supplement (Apr. 2024), https://www.irs.gov/pub/irs-pdf/p3744a.pdf.
4 Pub. L. No. 117-2, § 9611, 135 Stat. 4, 144-148 (2021) (adding IRC § 24(i), which expands the Child Tax Credit).
5 Pub. L. No. 117-58, § 80603(b)(3), 135 Stat. 429, 1339 (2021) (amending IRC § 6050I(d) to redefine "cash" to include digital assets for reporting purposes).
6 *See generally* Pub. L. No. 117-169, 136 Stat. 1818 (2022).
7 Pub. L. No. 119-21, 139 Stat. 72 (2025).

and led to IRS delays in implementation.[8] The IIJA introduced new compliance burdens (such as reporting on digital assets) that diverted IRS time and resources away from core tax administration duties.[9] An official record of how the IRS managed (or mismanaged) past surges in workload or policy changes could have helped the agency anticipate problems and more effectively implement these programs. An official record of how the IRS implemented these programs could help the agency implement future programs.

Although the IRS is subject to external audits and reviews by the Government Accountability Office, the Treasury Inspector General for Tax Administration, and others, there is a gap when it comes to continuous internal analysis of its own operations. No IRS unit is tasked with comprehensively documenting the agency's history and gleaning lessons for internal use. This contrasts with other federal entities that have established official historians or history offices.[10] For example, the Department of State, the Department of Defense, the U.S. House of Representatives, and even the Maritime Administration (within the Department of Transportation) all employ historians to research and chronicle their activities.[11]

These government historians serve various roles, such as researching and writing for publication and internal use, preserving historical documents, sites, and artifacts, and providing historical information to the public through websites and other media.[12] It is critical that historians be objective and accurate.[13] For example, the Historian of the Department of State is required to publish a documentary record of the foreign policy decisions and actions of the United States, including facts providing support for and alternative views to policy positions ultimately adopted, without omitting or concealing defects in policy.[14] In this way, historians in federal agencies promote transparency and accountability. Because more Americans interact with the IRS than with any other federal agency, the public interest and potential benefits of learning from the agency's successes and failures are particularly high.

The IRS once experimented with having an official historian. The outcome underscores the need to codify the role. In 1988, the IRS hired its first and only historian, Shelley Davis. Davis quickly discovered that much of the agency's post-Prohibition-era history had never been documented and that IRS management was often hostile toward preserving records. The relationship between the IRS and Davis was tense, and she later testified

8 *See* IRS, 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.

9 *See* Treasury Inspector General for Tax Administration, Rpt. No. 2024-300-030, *Virtual Currency Tax Compliance Enforcement Can Be Improved*, at 7 (July 10, 2024) (describing the IIJA's expansion of "broker" and the need for IRS Form 1099-DA). *See also* Joyce Beebe, *Debate Over the New Digital Asset Broker Reporting Rules: Striking the Right Balance* (Apr. 4, 2024) ("The surprisingly large estimate of 8 billion copies of Form 1099-DA that the IRS anticipates receiving [...] poses challenges for the IRS, as much of it may either be duplicative or unusable."), https://www.bakerinstitute.org/research/debate-over-new-digital-asset-broker-reporting-rules-striking-right-balance.

10 *History at the Federal Government*, Soc'y For History In The Fed. Gov't, https://shfg.wildapricot.org/history-at-fedgov (last visited Sept. 18, 2025).

11 *See* U.S. Dep't of State, Office of the Historian, *About the* Foreign Relations of the United States *Series*, https://history.state.gov/historicaldocuments/about-frus; U.S. Dep't of Defense, Historical Office, *Mission* (noting the DoD's historical office and use of historians to maintain institutional memory and produce histories), https://history.state.gov/historicaldocuments/about-frus; History, Art & Archives, U.S. House of Representatives, *Historians of the House* (describing the cataloguing, research, and publishing functions of the House Historian), https://history.house.gov/People/Appointed-Officials/Historians; U.S. Dep't of Transportation, Maritime Administration, *Maritime Administration History Program* (explaining how MARAD's history program documents and promotes maritime heritage), https://www.maritime.dot.gov/outreach/history/maritime-administration-history-program.

12 Soc'y For History In The Fed. Gov't, Historical Programs In The Federal Government: A Guide (1992), https://shfg.wildapricot.org/Historical-Programs-Guide.

13 *Id*.

14 22 U.S.C. § 4351(b).

to Congress that the IRS routinely "shreds its paper trail, which means there is no history, no evidence, and ultimately no accountability."[15] The IRS eliminated her position and never hired a historian again.

The National Taxpayer Advocate believes the IRS should be required to have a historian to assist it in avoiding mistakes of the past and to promote transparency and accountability. With the IRS touching nearly every American, the public deserves a clearer understanding of the agency's operations. Further, a tax system informed by its own history will be better prepared to serve taxpayers and build trust going forward.

RECOMMENDATION

- Add a new subsection to IRC § 7803 to establish the position of IRS historian within the IRS. The IRS historian should have expertise in federal taxation and archival methods, be appointed by the Secretary of the Treasury in consultation with the Archivist of the United States, and report to the Commissioner of Internal Revenue. The duties of the IRS historian require access to IRS records, including tax returns and return information (subject to the confidentiality and disclosure provisions of IRC § 6103). The IRS historian should be required to report IRS history objectively and accurately, without omitting or concealing defects in policy.[16]

15 *See Practices & Procedures of the Internal Revenue Service, Hearings Before the S. Comm. on Finance*, 105th Cong. 35 (1997) (statement of Shelley Davis, former IRS Historian), https://www.govinfo.gov/content/pkg/CHRG-105shrg43781/pdf/CHRG-105shrg43781.pdf.

16 For additional background, see National Taxpayer Advocate 2011 Annual Report to Congress 582 (Legislative Recommendation: *Appoint an IRS Historian*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/2011_ARC_Legislative-Recommendations.pdf.

Legislative Recommendation #69

Postpone Tax Deadlines for Hostages and Individuals Wrongfully Detained Abroad

SUMMARY

- *Problem:* U.S. taxpayers who are held hostage or wrongfully detained in foreign countries generally cannot file tax returns or make tax payments, yet under current law they may be subject to interest charges and penalties that the IRS does not have the legal authority to waive.
- *Solution:* Automatically postpone tax filing and payment deadlines for hostages and individuals who are wrongfully detained abroad (and their spouses) and provide for the refund or abatement of penalties, interest, and other additional amounts assessed.

PRESENT LAW

IRC § 7508A(a) gives the Secretary of the Treasury or his delegate the authority to postpone the deadline for performing certain acts under the internal revenue laws for a taxpayer determined by the Secretary or his delegate to be affected by a terroristic or military action as defined in IRC § 692(c)(2).[1] IRC § 7508A(a) limits a deadline postponement to one year in response to each terroristic or military action.

REASONS FOR CHANGE

Currently, the Secretary has discretion to postpone the deadlines for submitting tax filings, making tax payments, and performing other time-sensitive, tax-related acts for individuals who are held hostage or wrongfully detained abroad as the result of a terroristic or military action. However, the Secretary does not have the authority to postpone these deadlines for hostages or detainees in other circumstances (*e.g.*, where a foreign government jails a U.S. taxpayer or the taxpayer is kidnapped in a manner that is not designated as a terroristic action). Moreover, even where the Secretary may postpone these deadlines, the period of postponement is limited to one year.

Individuals who are held hostage or wrongfully detained abroad should not have to rely on the Secretary's limited discretionary authority to relieve them from the consequences of their inability to meet their tax obligations. In addition, the duration of the postponement period should match the duration of the hostage's or detainee's inability to meet their tax obligations and should not be subject to a one-year limit.

1 IRC § 692(c)(2)(A) defines a terroristic action as "any terroristic activity which a preponderance of the evidence indicates was directed against the United States or any of its allies." Section 4.01(1) of Revenue Procedure 2004-26, 2004-1 C.B. 890, provides that prior to publishing a determination that an event outside the United States constitutes a terroristic action within the meaning of IRC § 692(c)(2), the Secretary or his delegate will ascertain whether the Department of State and the Department of Justice believe that a preponderance of the evidence indicates the event resulted from terrorist activity directed against the United States or its allies.

RECOMMENDATION

- Establish an automatic postponement of the deadlines for performing the acts set forth in IRC § 7508(a)(1), as incorporated in IRC § 7508A(a)(1), for individuals who are held hostage or unlawfully detained abroad (and their spouses) that lasts for the duration of the period the individual is held hostage or unlawfully detained abroad, plus one year.[2]

2 For legislative language generally consistent with this recommendation, see Stop Tax Penalties on American Hostages Act, S. 655, 119th Cong. § 2 (2025); and Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 801 (Discussion Draft 2025), https://www.finance.senate.gov/download/tax-admin-bill. The TAS Act contains a related provision that would allow the same individuals to apply for interest and penalty relief. TAS Act, § 802. If the non-detained spouse is due a refund because of overwithholding or excess estimated tax payments, the non-detained spouse should be authorized to file a current return to receive the refund and then file a superseding joint return with the detained spouse for up to one year after the detained spouse's release.

Legislative Recommendation #70

Strengthen Incentives for IRS Contractors to Ensure Their Employees Keep Taxpayer Return Information Confidential

SUMMARY

- *Problem:* In 2025, the IRS received about 10 million paper-filed individual income tax returns and millions of other paper-filed returns. Historically, IRS employees have transcribed these returns, but beginning with the 2026 filing season, the IRS will be sending most of these returns to private contractors to be scanned using optical character recognition or similar technology. Processing millions of tax returns outside IRS-controlled systems increases the risk that confidential taxpayer return information may be improperly accessed, inspected, or disclosed.
- *Solution:* Strengthen penalties applicable to IRS contractors and their employees to ensure protection of taxpayer information and to deter unauthorized inspections or disclosures of tax returns or tax return information.

PRESENT LAW

IRC § 6103 generally prohibits the disclosure of tax returns or tax return information by an officer or employee of the United States or other specified persons, including contractors or their employees.[1] Any officer or employee of the United States, or any other specified person, who willfully commits an unauthorized disclosure may be subject to a fine not to exceed $5,000, imprisonment not to exceed 5 years, or both.[2] Officers or employees of the United States will be dismissed from office or terminated from employment upon conviction.[3] Under IRC § 7213A, an officer or employee of the United States or a specified person who willfully inspects any return or return information without authorization may be subject to a fine not to exceed $1,000, imprisonment not to exceed one year, or both.[4] Officers or employees of the United States who are convicted of any violation of IRC § 7213A(a) will be dismissed from office or discharged from employment.[5]

Under IRC § 7431, when either an officer or employee of the United States (or non-officer or non-employee of the United States) makes an unauthorized disclosure of a taxpayer's return information either knowingly or by reason of negligence, the taxpayer can file suit against the United States in U.S. district court. Taxpayers may be entitled to damages, including the greater of $1,000 for each unauthorized disclosure act or the sum of actual damages plus punitive damages for willful acts or gross negligence, plus attorney fees.

REASONS FOR CHANGE

One of the IRS's most important responsibilities is protecting the confidentiality of taxpayer information.[6] Protecting taxpayer information lies at the core of the IRS's culture, and despite minor breaches, the IRS has done it remarkably well for decades. IRS systems are built to protect taxpayer return information and to

1 IRC § 6103(n). Pursuant to regulations prescribed by the Secretary, returns and return information may be disclosed to any person, including any person described in IRC § 7513(a), to the extent necessary in connection with the processing, storage, transmission, and reproduction of such returns and return information; the programming, maintenance, repair, testing, and procurement of equipment; and the provision of other services for purposes of tax administration.

2 IRC § 7213(a). In addition to these penalties, the officer or employee or person may be required to pay the costs of prosecution.

3 IRC § 7213(a)(1).

4 IRC § 7213A.

5 IRC § 7213A(b).

6 Taxpayer Bill of Rights (TBOR), https://www.taxpayeradvocate.irs.gov/get-help/taxpayer-rights/ (last visited Dec. 19, 2025) (right to confidentiality). The rights contained in TBOR are also codified in IRC § 7803(a)(3).

record unauthorized access of taxpayer records, and employees receive extensive initial training and regular refresher training on the importance of protecting confidentiality and the consequences for failing to do so. Employees are keenly aware that violations can result in termination of employment and criminal prosecution. Protecting taxpayer information is in the IRS's DNA.

Many contractors receiving tax returns or return information have limited prior experience with IRC § 6103 and its requirements. It is not in their DNA. Their computer systems may not be set up to protect taxpayer information or to quickly detect any unauthorized access as well as IRS systems. The recent case involving Charles Littlejohn, at the time an employee of government contractor Booz Allen Hamilton, Inc., provides a useful example.[7] Mr. Littlejohn improperly accessed the tax return information of "Public Official A," widely reported to be President Trump, and then accessed the returns of thousands of the wealthiest individuals in the IRS's database, leaking the information to news organizations. His actions exposed gaps in contractor oversight, training, and system safeguards.

Beginning with the 2026 filing season, the IRS plans to send a significant portion of the roughly 10 million paper-filed Forms 1040, U.S. Individual Income Tax Return, nine million paper-filed Forms 941, Employer's Quarterly Federal Tax Return, and two million paper-filed Forms 940, Employer's Annual Federal Unemployment (FUTA) Tax Return, it receives each year to private contractors for scanning.[8] Most of the contractors have not done this work before. They will not be working on IRS property, and their employees will be entering taxpayer data into the contractor's own computer systems. Therefore, there is risk that an employee could remove or photograph tax returns or download information from the contractor's computer systems without detection, or that a third party could breach the firewall and gain unauthorized access to its systems.

The return transcription contracts contain certain requirements designed to ensure contractors protect taxpayer information, including a requirement that any of the contractor's employees who handles tax return information receive the same confidentiality training as IRS employees. Employees who steal tax returns or tax return information face serious consequences (*e.g.*, Mr. Littlejohn was sentenced to 5 years in prison). But to ensure contractors implement and maintain adequate systemic safeguards, the contractors themselves must face serious consequences if they fail to take all reasonable steps to protect taxpayer return information from disclosure.

The IRS (and therefore American taxpayers) has incurred significant costs to provide credit monitoring services for thousands of taxpayers whose tax return information was disclosed by Mr. Littlejohn when he was working for Booz Allen. At a minimum, contractors should be required to pay for credit monitoring services on behalf of taxpayers whose information is improperly inspected or disclosed by the contractor or one of the contractor's employees due to contractor misconduct, negligence, or failure to maintain adequate controls.

While it is important not to create unreasonable penalties for lesser offenses, failure to maintain adequate safeguards to protect taxpayer return information should carry more significant penalties, including significant monetary penalties[9] or even debarment from federal contracting for up to three years in extreme cases.[10]

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7 *U.S. v. Charles E. Littlejohn*, 1:23-cr-00343 (D.D.C. 2023).

8 IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2025-2032, at 4 (Sept. 2025), https://core.publish.no.irs.gov/pubs/pdf/p6292--2025-06-00.pdf.

9 Under IRC § 7431, taxpayers can bring suit for damages in U.S. District Court against a contractor who commits an unauthorized disclosure or inspection of their tax return or return information. However, it is costly and time consuming for taxpayers to file suit in federal court, making such occurrences rare.

10 *See* 41 USC § 1303(a), which authorizes "a single Government-wide procurement regulation, to be known as the Federal Acquisition Regulation" (FAR), and pursuant to that authority, FAR Subpart 9.4, "Debarment, Suspension, and Ineligibility."

RECOMMENDATIONS

- Extend criminal liability for violations of IRC § 6103 under IRC §§ 7213 and 7213A to the contractor itself for knowing or reckless disregard of the safeguard requirements for tax return information.
- Require IRS contractors to pay the costs of credit monitoring services for any taxpayers whose tax return information is disclosed by the contractor or one of its employees.
- Consider other possible sanctions, including fines against the contractor (*e.g.*, 25% of the purchase price specified in the contract if any of the contractor's employees is convicted of an IRC § 6103 violation and the contractor failed to exercise due diligence to prevent such a violation), or in extreme cases, debarment from federal contracting.
- Amend IRC § 7803(d)(1) to require the Treasury Inspector General for Tax Administration to include information in its semiannual reports regarding any violations of IRC § 6103 committed by contractors, including the names of such contractors and a summary of any administrative or civil actions taken with respect to such violations.

Legislative Recommendation #71

Eliminate the IRS's "Roadmap for Evading Tax Court Review" in Collection Due Process Cases

SUMMARY

- *Problem:* In 1998, Congress gave taxpayers the right to request an independent review of a proposed levy or a Notice of Federal Tax Lien (NFTL) through a Collection Due Process (CDP) hearing. In some cases, taxpayers may also challenge their underlying assessed liability before the U.S. Tax Court (Tax Court). However, a 2025 Supreme Court decision held that the Tax Court loses jurisdiction over CDP cases when the IRS abandons the lien or levy at issue, even if the taxpayer's underlying liability is also before the court. This can effectively prevent taxpayers from obtaining judicial review of the IRS's liability determination.
- *Solution:* Amend the CDP rules to ensure that the Tax Court retains jurisdiction over a dispute as to tax liability if the IRS withdraws the collection action at issue; extend the IRC § 6511 period of limitations for obtaining a refund during the pendency of a CDP hearing and appeal; and strengthen the Tax Court's authority to resolve all issues properly raised, including the correct amount of tax due.

PRESENT LAW

IRC §§ 6320(b) and 6330(b) provide taxpayers with the right to an independent review of an NFTL filing or a proposed levy action. The substantive and procedural protections of CDP "reflect congressional intent that the Commissioner should collect the correct amount of tax, and do so by observing all applicable laws and administrative procedures."[1]

Taxpayers may contest the collection action in a CDP hearing before the Independent Office of Appeals (Appeals). During the hearing, taxpayers may raise certain issues, including challenges to the appropriateness of the NFTL filing or levy, and may propose collection alternatives. Additionally, taxpayers may dispute the existence or amount of their underlying tax liability if they did not receive a statutory notice of deficiency for the liability or did not otherwise have an opportunity to dispute it.[2] If the taxpayer is not satisfied with the administrative outcome, the taxpayer may seek judicial review of the notice of determination by timely petitioning the Tax Court.[3]

During the pendency of a CDP hearing and any related appeals, IRC § 6330(e)(1) suspends the proposed levy and the running of certain periods of limitation. However, this provision does not suspend the periods of limitation in IRC § 6511 governing refund claims and credit lookback periods, which may result in taxpayers losing some or all of an otherwise allowable refund by the time the CDP hearing and Tax Court review are complete.

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1 *Montgomery v. Comm'r*, 122 T.C. 1, 10 (2004) ("In view of the statutory scheme as a whole, we think the substantive and procedural protections contained in sections 6320 and 6330 reflect congressional intent that the Commissioner should collect the correct amount of tax, and do so by observing all applicable laws and administrative procedures."); *see also* S. Rep. No. 105-174, at 67 (1998) ("[F]ollowing procedures designed to afford taxpayers due process in collections will increase fairness to taxpayers.").

2 IRC § 6330(c)(2)(B). Where the IRS has not issued a notice of deficiency, Tax Court review is available if the taxpayer did not otherwise have an opportunity to dispute the liability. *Id.*; *see also* IRC § 6330(c)(4)(A); *see, e.g.*, *Sun River Fin. Tr. v. Comm'r*, T.C. Memo. 2020-30, at *10. The National Taxpayer Advocate believes that all taxpayers should have the right to challenge the IRS's determination of their tax liabilities in the Tax Court. *See Allow Taxpayers to Dispute an Underlying Tax Liability in a Collection Due Process Hearing If They Have Not Had a Prior Opportunity to Dispute the Liability in the U.S. Tax Court*, *supra*.

3 IRC § 6330(d)(1).

In 2025, the Supreme Court held in *Commissioner v. Zuch* that there are stark limits in the statutory provisions that provide the Tax Court with jurisdiction and authority to resolve CDP cases.[4] Namely, if the IRS withdraws its proposed levy or lien filing, the Tax Court loses CDP jurisdiction over the case, even where the taxpayer has properly raised a challenge to the underlying liability.[5] In addition, the Supreme Court noted it was "skeptical" of the scope of the Tax Court's authority to order relief in *Zuch* beyond enjoining the levy.[6]

The dissenting opinion by Justice Gorsuch raised concerns about the implications and practical consequences of the majority's interpretation of CDP jurisdiction:[7]

> The short of it all is this. The IRS seeks, and the Court endorses, a view of the law that gives that agency a roadmap for evading Tax Court review and never having to answer a taxpayer's complaint that it has made a mistake. After today, [CDP] proceedings are essentially risk-free for the IRS. It may pursue a levy and argue its case to the Tax Court. Then, if the Tax Court seems likely to side with the taxpayer, the IRS can drop the levy and avoid an unfavorable ruling on the taxpayer's underlying tax liability. Doing so will often prove only a small setback for the IRS because the agency remains free to pursue other collection methods – including keeping, rather than refunding, a taxpayer's later overpayments. And the taxpayer will often find herself without any way to challenge the IRS's error or prevent the agency from keeping more of her money than it is lawfully due.

REASONS FOR CHANGE

Terminating the Tax Court's jurisdiction in the middle of litigation harms taxpayers and is inefficient for both the parties involved and the federal courts. In *Zuch*, the Tax Court properly obtained jurisdiction over the taxpayer's CDP case to review the determination to proceed with the IRS levy, which included a challenge to the taxpayer's underlying liability. During the Tax Court proceeding, the IRS used the taxpayer's later-year overpayments to fully satisfy the taxpayer's liability at issue, rendering the levy unnecessary. The majority concluded that once the levy was no longer at issue, the Tax Court lacked jurisdiction to decide anything further, including the taxpayer's underlying liability.

In this situation, once the Tax Court's jurisdiction ends, the taxpayer's only potential recourse for judicial review is to file a refund suit in a U.S. district court or before the Court of Federal Claims – a vastly more complex and expensive alternative. Depending on how much time has passed since initiating the CDP hearing, statutes of limitations on refunds may bar the taxpayer from getting full relief in these other forums. Lower- and middle-income taxpayers may be disproportionately affected, as the IRS can offset their subsequent-year refundable tax credits (*e.g.*, the Child Tax Credit and Earned Income Tax Credit) against prior-year tax liabilities, including the amounts at issue in the CDP case.[8]

In addition, the Supreme Court's opinion in *Zuch* questioned whether the Tax Court would have the authority to address IRS errors even if it did not lose jurisdiction. This is a terrible result for taxpayers. When

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4 *Comm'r v. Zuch*, 605 U.S. 422 (2025); *see* National Taxpayer Advocate 2025 Annual Report to Congress, https://www.taxpayeradvocate.irs.gov/AnnualReport2025.

5 The facts of *Zuch* involved a proposed levy, not an NFTL filing, and the Supreme Court thus addressed the possibility of a proposed levy. However, the jurisdictional language at issue in *Zuch* also applies to CDP cases involving an NFTL filing.

6 *Id*. at 430-431 ("Finally, we are skeptical that the Tax Court has authority to provide any relief under § 6330(e) that goes beyond an order enjoining a levy. Section 6330(e)(1) authorizes the Tax Court to 'enjoi[n]' 'the beginning of a levy or proceeding,' but it may do so 'only in respect of the unpaid tax or proposed levy to which the determination being appealed relates.' The provision does not authorize the Tax Court to order a refund or to issue a declaratory judgment that resolves disputes about tax liability.").

7 *Id*. at 442.

8 *See Prohibit the IRS From Withholding the Earned Income Tax Credit Portion of a Taxpayer's Refund to Satisfy Federal Tax Liabilities*, *supra*; Brief for Center for Taxpayer Rights as Amicus Curiae Supporting Respondents, at 6-10, *Comm'r v. Zuch*, 605 U.S. 422 (2025), No. 24-416, https://www.supremecourt.gov/DocketPDF/24/24-416/352878/20250324165340339_24-416%20Amicus%20Brief.pdf.

a taxpayer has properly raised a liability challenge, the Tax Court should have the authority to decide the case, and if it rules for the taxpayer, to grant relief to resolve the challenge in full. The National Taxpayer Advocate believes Congress should clarify that the Tax Court has authority to provide declaratory relief to adequately address an underlying liability challenge raised as part of a CDP case.[9]

RECOMMENDATIONS

- Amend IRC § 6330(d)(1) to provide that the Tax Court retains jurisdiction to determine the existence and amount of a liability properly raised under IRC § 6330(c)(2)(B) (*i.e.,* in any case where the IRS abandons the collection action or proposed collection action at issue, the abandonment shall not deprive the Tax Court of jurisdiction). The IRS should not be able to divest the court of jurisdiction through unilateral action.
- Clarify under IRC § 6330(d) that the Tax Court may redetermine the correct amount of the liability. Limitations similar to those found in IRC § 6214(a)-(b) should apply.
- Amend IRC § 6330(e)(1) to include tolling of the periods in IRC § 6511 (relating to limitations on credit or refund) during the pendency of a CDP hearing and any related appeals.[10]

9 The Tax Court should also have the authority to order refunds and credits when appropriate. *See Authorize the Tax Court to Order Refunds or Credits in Collection Due Process Proceedings Where Liability Is at Issue*, *supra*.

10 For legislative language that would similarly authorize the Tax Court to retain jurisdiction in CDP cases and provide for statute extensions, see Taxpayer Due Process and Enhancement Act, H.R. 6506, 119th Cong. (2025) (approved by the House Committee on Ways and Means on December 10, 2025, by a 41-0 vote).

APPENDIX 1: Additional Reference Materials for Legislative Recommendations in This Volume

LR #	Tax Administration Legislative Recommendations	National Taxpayer Advocate (NTA) Annual Report References	Congressional Bill and Committee Report References
Strengthen Taxpayer Rights			
1	Elevate the Importance of the Taxpayer Bill of Rights by Redesignating It as Section 1 of the Internal Revenue Code.	NTA 2017 Annual Report 93; NTA 2016 Annual Report 15; NTA 2016 Annual Report 98; NTA 2013 Annual Report 51; NTA 2013 Annual Report 5; NTA 2011 Annual Report 493; NTA 2007 Annual Report 478.	H.R. 7341, 117th Cong. § 2 (2022).
2	Require the IRS to Timely Process Claims for Credit or Refund.	NTA 2024 Annual Report 21; NTA 2023 Annual Report 5.	Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 603 (Discussion Draft 2025).
3	Require Notices of Claim Disallowance to Clearly State the Reasons for Disallowance, Explain Administrative and Judicial Appeal Options, and Specify Applicable Timeframes.	N/A	N/A
Improve the Filing Process			
4	Treat Electronically Submitted Tax Payments and Documents as Timely If Submitted on or Before the Applicable Deadline.	NTA 2017 Annual Report 278.	Electronic Filing and Payment Fairness Act, H.R. 1152, 119th Cong. § 2 (2025); Tax Administration Simplification Act, H.R. 1075, 118th Cong. § 2, and S. 684, 118th Cong. § 4 (2025); Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 905 (Discussion Draft 2025); Tax Administration Simplification Act, H.R. 8864, 118th Cong. § 2, and S. 5316, 118th Cong. § 4 (2024); Electronic Communication Uniformity Act, S. 1338, 118th Cong. (2023); H.R. 7844, 117th Cong. § 4 (2022); H.R. 3278, 117th Cong. § 1 (2021); H.R. 7641, 116th Cong. § 1 (2020).

LR #	Tax Administration Legislative Recommendations	National Taxpayer Advocate (NTA) Annual Report References	Congressional Bill and Committee Report References
5	Authorize the IRS to Establish Minimum Standards for Federal Tax Return Preparers and to Revoke the Identification Numbers of Sanctioned Preparers.	NTA 2024 Annual Report 59; NTA 2023 Annual Report 65; NTA 2022 Annual Report 128-140; NTA 2021 Annual Report 163; NTA 2009 Annual Report 41; NTA 2008 Annual Report 423.	Tax Refund Protection Act, S. 1209 and H.R. 2702, 118th Cong. § 2 (2023); H.R. 7341, 117th Cong. § 2 (2022); S. 2856, 117th Cong. § 1 (2021); H.R. 5375, 117th Cong. § 1 (2021); H.R. 4184, 117th Cong. § 2 (2021); H.R. 3737, 117th Cong. § 2 (2021); H.R. 3738, 117th Cong. § 401 (2021); S. 1192, 116th Cong. § 2(c) (2019); S. 1138, 116th Cong. § 5(c) (2019); H.R. 3157, 116th Cong. § 5 (2019); H.R. 3330, 116th Cong. § 2 (2019); H.R. 3466, 116th Cong. § 1 (2019); H.R. 4751, 116th Cong. § 2 (2019); H.R. 8501, 116th Cong. § 2 (2019); S. 3278, 115th Cong. § 202 (2018); H.R. 4912, 114th Cong. § 401 (2016); S. 676, 114th Cong. § 406 (2015); S. 2333, 114th Cong. § 202 (2015); H.R. 4128, 114th Cong. § 202 (2015); S. 137, 114th Cong. § 2 (2015); H.R. 4141, 114th Cong. § 2 (2015); H.R. 1528, 108th Cong. § 141 (2004) (passed by Senate); S. 882, 108th Cong. § 141 (2003) (reported by Sen. Fin. Comm.), *see also* S. Rep. No. 108-257, at 30-31 (2003).
6	Extend the Time for Small Businesses to Make Subchapter S Elections.	NTA 2010 Annual Report 410; NTA 2004 Annual Report 390; NTA 2002 Annual Report 246.	Tax Administration Simplification Act, H.R. 1075, 118th Cong. § 3, and S. 684, 118th Cong. § 2 (2025); Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 902 (Discussion Draft 2025); Tax Administration Simplification Act, H.R. 8864, 118th Cong. § 3, and S. 5316, 118th Cong. § 2 (2024); S. 3278, 115th Cong. § 304 (2018); S. 711, 115th Cong. § 7 (2017); H.R. 1696, 115th Cong. § 7 (2017); H.R. 1, 113th Cong. § 3606 (2014); S. 2271, 112th Cong. § 2 (2012); H.R. 3629, 109th Cong. § 2 (2005); H.R. 3841, 109th Cong. § 302 (2005).

LR #	Tax Administration Legislative Recommendations	National Taxpayer Advocate (NTA) Annual Report References	Congressional Bill and Committee Report References
7	Adjust Individual Estimated Tax Payment Deadlines to Occur Quarterly.	NTA 2022 Annual Report 54.	Tax Administration Simplification Act, H.R. 1075, 118th Cong. § 4, and S. 684, 118th Cong. § 3 (2025); Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 903 (Discussion Draft 2025); Tax Administration Simplification Act, H.R. 8864, 118th Cong. § 4, and S. 5316, 118th Cong. § 3 (2024); Tax Deadline Simplification Act, H.R. 3708, 118th Cong. § 2 (2023); H.R. 4214, 117th Cong. § 2 (2021); H.R. 5979, 116th Cong. § 2 (2020); H.R. 593, 116th Cong. § 2 (2019); S. 3278, 115th Cong. § 305 (2018); H.R. 3717, 115th Cong. § 2 (2017).
8	Eliminate Duplicative Reporting Requirements Imposed by the Bank Secrecy Act and the Foreign Account Tax Compliance Act.	NTA 2023 Annual Report 101; NTA 2015 Annual Report 353.	Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 201 (Discussion Draft 2025); Overseas Americans Financial Access Act, H.R. 8873, 118th Cong. § 3 (2024); Tax Simplification for Americans Abroad Act, H.R. 5432, 118th Cong. § 4 (2023); H.R. 5799, 117th Cong. § 3 (2021) (exception for certain individuals from FATCA); H.R. 4362, 116th Cong. § 3 (2019) (same); S. 869, 115th Cong. § 2 (2017) (pertaining to FATCA reporting requirements repeal); H.R. 2054, 115th Cong. § 2 (2017) (same); H.R. 2136, 115th Cong. § 2 (2017) (exception for certain individuals from FATCA); H.R. 5935, 114th Cong. § 2 (2016) (pertaining to FATCA reporting requirements repeal); S. 663, 114th Cong. § 2 (2015) (same); S. 887, 113th Cong. § 2 (2013) (same).
Improve Assessment and Collection Procedures			
9	Authorize the Use of Volunteer Income Tax Assistance Grant Funding to Assist Taxpayers with Applications for Individual Taxpayer Identification Numbers.	NTA 2024 Annual Report 88.	N/A

LR #	Tax Administration Legislative Recommendations	National Taxpayer Advocate (NTA) Annual Report References	Congressional Bill and Committee Report References
10	Continue to Limit the IRS's Use of "Math Error Authority" to Clear-Cut Categories Specified by Statute.	NTA 2018 Annual Report 164, 174; NTA 2015 Annual Report 329; NTA 2014 Annual Report 163; NTA 2011 Annual Report 74.	N/A
11	Require Independent Managerial Review and Written Approval Before the IRS May Assert Multiyear Bans Barring Taxpayers From Receiving Certain Tax Credits and Clarify That the Tax Court Has Jurisdiction to Review the Assertion of Multiyear Bans.	NTA 2019 Annual Report vol. 2, at 239; NTA 2013 Annual Report 103.	Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 305 (Discussion Draft 2025).
12	Give Taxpayers Abroad Additional Time to Request Abatement of a Math Error Assessment.	NTA 2023 Annual Report 116; NTA 2022 Annual Report 165; NTA 2016 Annual Report 393.	Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 205 (Discussion Draft 2025).
13	Give Taxpayers Abroad Additional Time to Request a Collection Due Process Hearing and to File a Petition Challenging a Notice of Determination in the Tax Court.	NTA 2023 Annual Report 116; NTA 2022 Annual Report 165; NTA 2016 Annual Report 393; NTA 2002 Annual Report 244.	N/A
14	Provide That Assessable Penalties Are Subject to Deficiency Procedures.	NTA 2024 Annual Report 118; NTA 2021 Annual Report 179; NTA 2020 Annual Report 119.	Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 311 (Discussion Draft 2025).
15	Direct the IRS to Implement an Automated Formula to Identify and Protect Taxpayers at Risk of Economic Hardship.	NTA 2020 Annual Report 249.	Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 108 (Discussion Draft 2025); Tax Return Preparer Accountability Act of 2025, H.R. 1983, 119th Cong. § 3 (2025); Improving IRS Customer Service Act, S. 5280, 118th Cong. § 5 (2024).
16	Allow Taxpayers to Dispute an Underlying Tax Liability in a Collection Due Process Hearing If They Have Not Had a Prior Opportunity to Dispute the Liability in the U.S. Tax Court.	NTA 2021 Annual Report 179; NTA 2018 Annual Report 367.	Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 308 (Discussion Draft 2025).
17	Prohibit the IRS from Withholding the Earned Income Tax Credit Portion of a Taxpayer's Refund to Satisfy Federal Tax Liabilities.	NTA 2021 Annual Report 179; NTA 2016 Annual Report 325; NTA 2009 Annual Report 365.	Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 106 (Discussion Draft 2025).

LR #	Tax Administration Legislative Recommendations	National Taxpayer Advocate (NTA) Annual Report References	Congressional Bill and Committee Report References
18	Eliminate Installment Agreement User Fees for Low-Income Taxpayers and Those Paying by Direct Debit.	NTA 2021 Annual Report 179; NTA 2017 Annual Report 307; NTA 2015 Annual Report 14; NTA 2007 Annual Report 66.	Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 107 (Discussion Draft 2025); Affordable Payment Agreements for Taxpayers Act, H.R. 2675, 118th Cong. § 2 (2023); S. 1793, 115th Cong. § 301 (2017); S. 3471, 114th Cong. § 504 (2016) (reported by Sen. Fin. Comm.) (low-income fee waiver provisions and limitation on future increase), *see also* S. Rep. No. 114-375, at 84 (2016); S. 3156, 114th Cong. § 114 (2016) (low-income fee waiver provisions and limitation on future increase), *see also* S. Rep. No. 114-298, at 17-19 (2016); S. 1321, 109th Cong. § 301 (2006); H.R. 1528, 108th Cong. § 101 (2004) (passed by Senate); S. 882, 108th Cong. § 101 (2003), *see also* S. Rep. No. 108-257, at 5-6 (2003).
19	Improve Offer in Compromise Program Accessibility by Eliminating the Upfront Payment Requirements.	NTA 2006 Annual Report 507.	Small Business Taxpayer Bill of Rights Act of 2025, S. 1386 and H.R. 2782, 119th Cong. § 17 (2025); Small Business Taxpayer Bill of Rights Act of 2023, S. 1177 and H.R. 2681, 118th Cong. § 17 (2023); H.R. 7033, 117th Cong. § 17 (2022); H.R. 3738, 117th Cong. § 206 (2021); S. 1656, 117th Cong. § 17 (2021); H.R. 8700, 116th Cong. § 206 (2020); S. 2689, 115th Cong. § 17 (2018); H.R. 2171, 115th Cong. § 206 (2017); H.R. 4912, 114th Cong. § 206 (2015); H.R. 2343, 111th Cong. § 2 (2009).
20	Require the IRS to Consider a Taxpayer's Current Income When Determining Whether to Waive or Reimburse an Installment Agreement User Fee.	NTA 2021 Annual Report 179.	N/A

LR #	Tax Administration Legislative Recommendations	National Taxpayer Advocate (NTA) Annual Report References	Congressional Bill and Committee Report References
21	Modify the Requirement That the Office of Chief Counsel Review Certain Offers in Compromise.	N/A	Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 111 (Discussion Draft 2025); S. 1793, 115th Cong. § 303 (2017); S. 1578, 114th Cong. § 403 (2015); S. 1321, 109th Cong. § 304 (2005); (reported in Senate) (*see also* S. Rep. No. 109-336, at 20-21 (2006); H.R. 1528, 108th Cong. § 104 (2004) (passed by Senate); S. 882, 108th Cong. § 104 (2003), *see also* S. Rep. No. 108-257, at 8-9 (2003); H.R. 1661, 108th Cong. § 334 (2003); H.R. 1528, 108th Cong. § 304 (2003) (passed by House), *see also* H.R. Rep. No. 108-61, at 43-44 (2003); H.R. 5728, 107th Cong. § 204 (2002) (passed by House); H.R. 3991, 107th Cong. § 304 (2002), *see also* H.R. Rep. No. 107-394, at 25 (2002); H.R. 5549, 107th Cong. § 104 (2002); H.R. 5763, 107th Cong. § 204 (2002).
22	Require the IRS to Mail Notices at Least Quarterly to Taxpayers With Delinquent Tax Liabilities.	N/A	Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 109 (Discussion Draft 2025); H.R. 7844, 117th Cong. § 2 (2022); S. 3278, 115th Cong. § 201 (2018).
23	Clarify When the Two-Year Period for Requesting Return of Levy Proceeds Begins So Persons Subject to Paper Levies and Persons Subject to Electronic Levies Are Similarly Treated.	N/A	Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 115 (Discussion Draft 2025); H.R. 7844, 117th Cong. § 3 (2022).
24	Protect Retirement Funds from IRS Levies, Including So-Called "Voluntary" Levies, Absent Flagrant Conduct by a Taxpayer.	NTA 2015 Annual Report 340; NTA 2006 Annual Report 527.	H.R. 3738, 117th Cong. § 203 (2021); H.R. 8700, 116th Cong. § 203 (2020); H.R. 2171, 115th Cong. § 203 (2017); H.R. 3340, 115th Cong. § 204 (2017); H.R. 4912, 114th Cong. § 203 (2016); S. 2333, 114th Cong. §§ 306 and 307 (2015); H.R. 4128, 114th Cong. §§ 306 and 307 (2015).

LR #	Tax Administration Legislative Recommendations	National Taxpayer Advocate (NTA) Annual Report References	Congressional Bill and Committee Report References
25	Provide Stronger Taxpayer Protections Before the IRS May Recommend the Filing of a Lien Foreclosure Suit on a Taxpayer's Principal Residence.	NTA 2019 Annual Report 176; NTA 2012 Annual Report 537.	Small Business Taxpayer Bill of Rights Act of 2025, S. 1386 and H.R. 2782, 119th Cong. § 11 (2025); Small Business Taxpayer Bill of Rights Act of 2023, S. 1177 and H.R. 2681, 118th Cong. § 11 (2023); H.R. 7033, 117th Cong. § 11 (2022); S. 1656, 117th Cong. § 11 (2021); S. 2689, 115th Cong. § 11 (2018); S. 949, 114th Cong. § 16 (2015); H.R. 1828, 114th Cong. § 16 (2015); S. 2215, 113th Cong. § 8 (2014).
26	Provide Collection Due Process Rights to Third Parties Holding Legal Title to Property Subject to IRS Collection Actions.	NTA 2019 Annual Report 176; NTA 2012 Annual Report 544.	S. REP. NO. 105-174, at 68 (1998) (Senate report accompanying its version of the RRA 98 legislation referred to "[t]he taxpayer (or affected third party).'').
27	Extend the Time Limit for Taxpayers to Sue for Damages for Improper Collection Actions.	N/A	S. 1793, 115th Cong. § 201(c) (2017); S. 1578, 114th Cong. § 301(c) (2015).
28	Revise the Private Debt Collection Rules to More Accurately Identify and Protect Taxpayers With Incomes Below 200% of the Federal Poverty Level.	N/A	N/A
Reform Penalty and Interest Provisions			
29	Convert the Estimated Tax Penalty Into an Interest Provision to Properly Reflect Its Substance.	NTA 2013 Annual Report vol. 2, at 1-13; NTA 2008 Annual Report vol. 2, at 34-36.	H.R. 1528, 108th Cong. § 101 (2003) (passed by House), *see also* H.R. REP. No. 108-61, at 23-24 (2003); H.R. 1661, 108th Cong. § 301 (2003).
30	Apply a Single Interest Rate to Underpayments of Estimated Tax in the Periods Between Each Installment Due Date.	N/A	S. 1793, 115th Cong. § 305 (2017); S. 1578, 114th Cong. § 405 (2015); H.R. 1528, 108th Cong. § 101 (2003) (passed by House), *see also* H.R. REP. No. 108-61, at 25 (2003).
31	Extend Reasonable Cause Defense for the Failure-to-File Penalty to Taxpayers Who Rely on Return Preparers to E-File Their Returns.	N/A	N/A
32	Authorize a Penalty for Tax Return Preparers Who Engage in Fraud or Misconduct by Altering a Taxpayer's Tax Return.	NTA 2023 Annual Report 65; NTA 2011 Annual Report 558.	Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 501, § 503 (Discussion Draft 2025); H.R. 3340, 115th Cong. § 101 (2017); S. 2333, 114th Cong. § 203 (2015); H.R. 4128, 114th Cong. § 203 (2015).

LR #	Tax Administration Legislative Recommendations	National Taxpayer Advocate (NTA) Annual Report References	Congressional Bill and Committee Report References
33	Clarify That Supervisory Approval Is Required Under IRC § 6751(b) Before Proposing Penalties.	NTA 2024 Annual Report 118; NTA 2023 Annual Report 151-152; NTA 2019 Annual Report 157.	Fair and Accountable IRS Reviews Act, H.R. 5346, 119th Cong. § 2 (2025) (passed by House); IRS Accountability and Taxpayer Protection Act, S. 2358, 119th Cong. § 2 (2025); Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 113 (Discussion Draft 2025); IRS Accountability and Taxpayer Protection Act, S. 1249, 118th Cong. § 2 (2023).
34	Require an Employee to Determine and a Supervisor to Approve All Negligence Penalties Under IRC § 6662(b)(1).	NTA 2024 Annual Report 126.	N/A
35	Increase the Burden of Proof for Determining That a Failure to File a Report of Foreign Bank and Financial Accounts Was "Willful" and Reduce the Maximum Penalty Amount.	NTA 2023 Annual Report 109-110; NTA 2014 Annual Report 331-345.	N/A
Strengthen Taxpayer Rights Before the Office of Appeals			
36	Require Taxpayers' Consent Before Allowing IRS Counsel or Compliance Personnel to Participate in Appeals Conferences.	NTA 2023 Annual Report 135; NTA 2022 Annual Report 149-150; NTA 2019 Annual Report 62-68; NTA 2017 Annual Report 203.	Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 601 (Discussion Draft 2025); Small Business Taxpayer Bill of Rights Act of 2023, S. 1177 and H.R. 2681, 118th Cong. § 7 (2023); Strengthen Taxpayer Rights Act of 2023, H.R. 6332, 118th Cong. § 2 (2023); H.R. 7033, 117th Cong. § 7 (2021); S. 1656, 117th Cong. § 7 (2021); S. 3278, 115th Cong. § 601 (2018); S. 2689, 115th Cong. § 7 (2018).

LR #	Tax Administration Legislative Recommendations	National Taxpayer Advocate (NTA) Annual Report References	Congressional Bill and Committee Report References
Strengthen the Office of the Taxpayer Advocate			
37	Clarify That the National Taxpayer Advocate May Hire Legal Counsel to Enable Her to Advocate More Effectively for Taxpayers.	NTA 2016 Annual Report 37; NTA 2011 Annual Report 573; NTA 2002 Annual Report 198.	National Taxpayer Advocate Enhancement Act, H.R. 997, 119th Cong. § 2 (2025); National Taxpayer Advocate Enhancement Act, S. 1704, 119th Cong. § 2 (2025); Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 401 (Discussion Draft 2025); National Taxpayer Advocate Enhancement Act of 2023, H.R. 2755, 118th Cong. § 2(a) (2023); Taxpayer Advocate Enhancement Act, S. 1283, 118th Cong. § 2 (2023); S. 5311, 117th Cong. § 4 (2022); H.R. 1528, 108th Cong. § 306 (2003) (passed by House), *see also* H.R. Rep. No. 108-61, at 44-45 (2003); H.R. 1661, 108th Cong. § 335 (2003).
38	Clarify the Authority of the National Taxpayer Advocate to Make Personnel Decisions to Protect the Independence of the Office of the Taxpayer Advocate.	N/A	Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 402 (Discussion Draft 2025); National Taxpayer Advocate Enhancement Act of 2023, H.R. 2755, 118th Cong. § 2(b) (2023).
39	Clarify the Taxpayer Advocate Service's Access to Files, Meetings, and Other Information.	NTA 2016 Annual Report 34.	Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 403 (Discussion Draft 2025); S. 2333 and H.R. 4128, 114th Cong. § 403 (2015).
40	Authorize the National Taxpayer Advocate to File *Amicus* Briefs.	NTA 2016 Annual Report 37; NTA 2011 Annual Report 573; NTA 2002 Annual Report 198.	N/A
41	Authorize the Office of the Taxpayer Advocate to Assist Certain Taxpayers Experiencing Economic Hardship During a Lapse in Appropriations.	NTA Fiscal Year 2020 Objectives Report to Congress 40-44; NTA Fiscal Year 2015 Objectives Report to Congress 79-91; NTA 2011 Annual Report 552.	Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 405 (Discussion Draft 2025); S. 2333 and H.R. 4128, 114th Cong. § 404 (2015) (TAS may provide assistance to taxpayers facing enforcement actions during a lapse in appropriations).
42	Repeal Statute Suspension Under IRC § 7811(d) for Taxpayers Seeking Assistance From the Taxpayer Advocate Service.	NTA 2015 Annual Report 316.	Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 404 (Discussion Draft 2025); H.R. 3738, 117th Cong. § 202 (2021); H.R. 8700, 116th Cong. § 202 (2020); H.R. 2171, 115th Cong. § 202 (2017); H.R. 4912, 114th Cong. § 202 (2016).

LR #	Tax Administration Legislative Recommendations	National Taxpayer Advocate (NTA) Annual Report References	Congressional Bill and Committee Report References
Strengthen Taxpayer Rights in Judicial Proceedings			
43	Expand the Tax Court's Jurisdiction to Hear Refund Cases.	NTA 2018 Annual Report 364.	Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 310 (Discussion Draft 2025).
44	Authorize the Tax Court to Order Refunds or Credits in Collection Due Process Proceedings Where Liability Is at Issue.	NTA 2017 Annual Report 293.	Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 309 (Discussion Draft 2025).
45	Promote Consistency With the Supreme Court's *Boechler* Decision by Making the Time Limits for Bringing All Tax Litigation Subject to Equitable Judicial Doctrines.	NTA 2017 Annual Report 283.	Tax Court Improvement Act, H.R. 5349, 119th Cong. § 5 (2025) (passed by House); Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 307 (Discussion Draft 2025).
46	Extend the Deadline for Taxpayers to File a Refund Suit When They Request Appeals Reconsideration of a Notice of Claim Disallowance and the IRS Has Not Timely Decided Their Claim.	N/A	N/A
47	Authorize the Tax Court to Sign Subpoenas for the Production of Records Held by a Third Party Prior to a Scheduled Hearing.	N/A	Tax Court Improvement Act, H.R. 5349, 119th Cong. § 2 (2025) (passed by House); Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 301 (Discussion Draft 2025).
48	Provide That the Scope of Judicial Review of Innocent Spouse Determinations Under IRC § 6015 Is *De Novo*.	NTA 2011 Annual Report 531.	Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 306 (Discussion Draft 2025).
49	Clarify That Taxpayers May Raise Innocent Spouse Relief as a Defense in Collection, Bankruptcy, and Refund Cases.	NTA 2018 Annual Report 387; NTA 2010 Annual Report 377; NTA 2009 Annual Report 378; NTA 2007 Annual Report 549.	Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 306 (Discussion Draft 2025).
50	Fix the Donut Hole in the Tax Court's Jurisdiction to Determine Overpayments by Non-Filers With Filing Extensions.	NTA 2018 Annual Report 392.	N/A

LR #	Tax Administration Legislative Recommendations	National Taxpayer Advocate (NTA) Annual Report References	Congressional Bill and Committee Report References
Miscellaneous Recommendations			
51	Restructure the Earned Income Tax Credit to Make It Simpler for Taxpayers and Reduce Improper Payments.	NTA 2022 Annual Report 51-53, 243-267; NTA 2021 Annual Report 163; NTA Fiscal Year 2020 Objectives Report vol. 3, at 8, 14, 17-19; NTA 2016 Annual Report 334.	EITC for Older Workers Act of 2024, H.R. 9361, 118th Cong. § 2 (2024) (remove upper age limit only); Working Families Tax Relief Act of 2023, S. 1992, 118th Cong. § 101 (2023) (modify age requirement); Lower Your Taxes Act, H.R. 5953, 118th Cong. § 3 (2023) (lower age to 18 and remove upper age limit); EITC Age Parity Act of 2023, H.R. 5689, 118th Cong. § 2 (2023) (lower age to 18 and remove upper age limit); EITC Modernization Act, H.R. 5421, 118th Cong. § 3 (2023) (lower age to 18 and remove upper age limit); Worker Relief and Credit Reform Act of 2023, H.R. 1468, 118th Cong. § 2 (2023) (lower age to 18 and remove upper age limit); H.R. 4665, 117th Cong. § 2 (2021) (lower age to 18 and remove upper age limit); H.R. 174, 117th Cong. § 3 (2021) (lower age to 18 and remove upper age limit); H.R. 5376, 117th Cong. § 137401 (2021) (as reported in House) (modify age requirement); H.R. 8352, 116th Cong. § 30203 (2020) (lower age to 18 and remove upper age limit); H.R. 5271, 116th Cong. § 2 (2019) (lower age to 18 and remove upper age limit); HR 4954, 116th Cong. § 2 (2019) (lower age to 19, 18 for homeless and former foster youth, and increase maximum age to 68); H.R. 3507, 116th Cong. § 401 (2019) (lower age to 19, 18 for former foster youth, and increase maximum age to 68); H.R. 3157, 116th Cong. § 2 (2019) (lower age to 19 and increase maximum age to 68); H.R. 1436, 116th Cong. § 3 (2019) (lower age to 18 and remove upper age limit); S. 2790, 116th Cong. § 2 (2019) (lower age to 19, 18 for homeless and former foster youth, and increase maximum age to 68);

LR #	Tax Administration Legislative Recommendations	National Taxpayer Advocate (NTA) Annual Report References	Congressional Bill and Committee Report References
51			S. 1138, 116th Cong. § 2 (2019) (lower age to 19 and increase maximum age to 68); H.R. 6873, 115th Cong. § 3 (2018) (lower age to 18); H.R. 4074, 115th Cong. § 1501 (2017) (lower age to 21 and increase maximum age to retirement age); H.R. 3465, 115th Cong. § 401 (2017) (lower age to 21, 18 for former foster youth, and increase maximum age to 68); H.R. 2681, 115th Cong. § 2 (2017) (lower age to 21, 18 for former foster youth, and increase maximum age to 68); H.R. 4946, 114th Cong. § 2 (2016) (lower age to 21); H.R. 3005, 114th Cong. § 201 (2015) (lower age to 21, 18 for former foster youth, and increase maximum age to 68); H.R. 2721, 114th Cong. § 1701 (2015) (lower age to 21 and increase maximum age to retirement age); H.R. 5352, 113th Cong. § 1901 (2014) (lower age to 21 and increase maximum age to retirement age).
52	Adopt a Consistent and a More Modern Definition of a "Qualifying Child" Throughout the Internal Revenue Code.	NTA 2022 Annual Report 50; NTA 2018 Annual Report 421; NTA 2006 Annual Report 463.	N/A
53	Provide Consistent Tax Relief for Victims of Federally Declared Disasters.	N/A	N/A
54	Permanently Give Taxpayers Affected by Federally Declared Disasters the Option of Using Prior Year Earned Income to Claim the Earned Income Tax Credit.	N/A	Working Families Disaster Tax Relief Act, S. 3432 and H.R. 6645, 119th Cong. § 2 (2025); Tax Fairness for Disaster Victims Act, H.R. 3975, 119th Cong. § 2 (2025); Tax Fairness for Disaster Victims Act, H.R. 2619, 118th Cong. § 2 (2023).
55	Reinstate the Theft Loss Deduction So Scam Victims Are Not Taxed on Amounts Stolen From Them.	NTA 2024 Annual Report 59.	Tax Relief for Victims of Crimes, Scams, and Disasters Act, H.R. 3469 and S. 1773, 119th Cong. § 2 (2025) (reinstatement of personal theft loss deduction, extension of limitations period); No Penalties for Victims of Fraud Act, H.R. 2163, 119th Cong. § 2 (2025) (waiver of early withdrawal penalty).

LR #	Tax Administration Legislative Recommendations	National Taxpayer Advocate (NTA) Annual Report References	Congressional Bill and Committee Report References
56	Amend the Lookback Period for Allowing Tax Credits or Refunds to Include the Period of Any Postponement or Additional or Disregarded Time for Timely Filing a Tax Return.	2025 Purple Book LR #55, 133-135.	Disaster Related Extension of Deadlines Act, H.R. 1491, 119th Cong. § 2(a) (2025).
57	Protect Taxpayers in Federally Declared Disaster Areas Who Receive Filing and Payment Relief From Inaccurate and Confusing Collection Notices.	2025 Purple Book LR #56, 136-138.	Disaster Related Extension of Deadlines Act, H.R. 1491, 119th Cong. § 2(a) (2025).
58	Allow Taxpayers to Claim the Child Tax Credit and Earned Income Tax Credit for a Child Who Meets All Statutory Requirements Except Having a Social Security Number by the Due Date for the Tax Return.	NTA Fiscal Year 2020 Objectives Report to Congress 48.	N/A
59	Allow Members of Certain Religious Sects That Do Not Participate in Social Security and Medicare to Obtain Employment Tax Refunds.	N/A	Religious Exemptions for Social Security and Healthcare Taxes Act, H.R. 8819, 118th Cong. § 2 (2024); H.R. 6183, 117th Cong. § 2 (2021); H.R. 2714, 116th Cong. § 2 (2019).
60	Remove the Requirement That Written Receipts Acknowledging Charitable Contributions Must Be "Contemporaneous."	N/A	N/A
61	Establish a Uniform Standard Mileage Deduction Rate.	N/A	N/A
62	Encourage and Authorize Independent Contractors and Service Recipients to Enter Into Voluntary Withholding Agreements.	NTA 2016 Annual Report 322; NTA 2012 Annual Report 19; NTA 2010 Annual Report 371; NTA 2008 Annual Report 375.	Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 901 (Discussion Draft 2025); H.R. 593, 116th Cong. § 9 (2019); H.R. 1625, 116th Cong. § 2(b) (2019); S. 700, 116th Cong. § 2(b) (2019); H.R. 3717, 115th Cong. § 9 (2017).
63	Require the IRS to Specify the Information Needed in Third-Party Contact Notices.	N/A	Taxpayer Notification and Privacy Act of 2025, S. 2629, 119th Cong. § 2 (2025); Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 906 (Discussion Draft 2025); Taxpayer Notification and Privacy Act of 2023, S. 2111, 118th Cong. § 2 (2023).
64	Enable the Low Income Taxpayer Clinic Program to Assist More Taxpayers in Controversies With the IRS.	N/A	Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 110 (Discussion Draft 2025); Low-Income Taxpayer Clinic Modernization Act of 2024, H.R. 8876, 118th Cong. § 2 (2024).

LR #	Tax Administration Legislative Recommendations	National Taxpayer Advocate (NTA) Annual Report References	Congressional Bill and Committee Report References
65	Clarify That Late-Filed Tax Returns Qualify as "Returns" for Bankruptcy Discharge Purposes.	N/A	N/A
66	Compensate Taxpayers for "No Change" National Research Program Audits.	N/A	Small Business Taxpayer Bill of Rights Act of 2025, S. 1386 and H.R. 2782, 119th Cong. § 14 (2025); Small Business Taxpayer Bill of Rights Act of 2023, S. 1177 and H.R. 2681, 118th Cong. § 14 (2023) (in part); H.R. 7033, 117th Cong. § 14 (2022) (in part); S. 5014, 117th Cong. § 2 (2022); S. 1656, 117th Cong. § 14 (2021) (in part); S. 2689, 115th Cong. § 14 (2018) (in part); H.R. Rep. No. 104-280, vol. 2, at 28 (1995).
67	Improve Tax and Financial Literacy by Promoting Interagency Collaboration and Modernizing the Requirement That the IRS Publish Charts on Government Revenue and Outlays.	NTA 2024 Annual Report 104.	N/A
68	Establish the Position of IRS Historian Within the Internal Revenue Service to Record and Publish Its History.	NTA 2011 Annual Report 582.	N/A
69	Postpone Tax Deadlines for Hostages and Individuals Wrongfully Detained Abroad.	N/A	Stop Tax Penalties on American Hostages Act, S. 655, 119th Cong. § 2 (2025); Stop Terror-Financing and Tax Penalties on American Hostages Act, H.R. 1868, 119th Cong. § 2 (2025); Taxpayer Assistance and Service (TAS) Act, 119th Cong. § 801 (Discussion Draft 2025); Stop Tax Penalties on American Hostages Act of 2024, S. 4057, 118th Cong. (2024); Stop Terror-Financing and Tax Penalties on American Hostages Act, H.R. 9495, 118th Cong. § 2 (2024).
70	Strengthen Incentives for IRS Contractors to Ensure Their Employees Keep Taxpayer Return Information Confidential.	N/A	N/A
71	Eliminate the IRS's "Roadmap for Evading Tax Court Review" in Collection Due Process Cases.	N/A	N/A

Note: This chart is current through December 15, 2025. Additional bills and committee reports relating to National Taxpayer Advocate legislative recommendations may have been introduced or enacted after our publication deadline.

APPENDIX 2: Prior National Taxpayer Advocate Legislative Recommendations Enacted Into Law

LR #	Legislative Recommendations	Selected National Taxpayer Advocate (NTA) Report References	Public Laws Adopting the Recommendations (in Whole or in Part)
Strengthen Taxpayer Rights			
1	Enact a Taxpayer Bill of Rights.	NTA 2014 Annual Report, Legislative Recommendation #1, 275-310; NTA 2013 Annual Report, Most Serious Problem LR #1, 1-5.	Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401, 129 Stat. 2242, 3117 (2015) (codified at IRC § 7803(a)(3)). Division Q is called the "Protecting Americans from Tax Hikes Act of 2015" or "PATH Act."
2	Require the IRS to Provide Annual Taxpayer Rights Training to Employees.	2017 Purple Book LR #2, 5-7.	Taxpayer First Act, Pub. L. No. 116-25, § 2402(2), 133 Stat. 981, 1014 (2019).
3	Improve Customer Service by Meeting the Preferences of Taxpayers and Stakeholders.	NTA 2008 Annual Report, Most Serious Problem #6, 95-113.	TFA, Pub. L. No. 116-25, § 1101(a), 133 Stat. 981, 985 (2019).
4	Revamp the IRS Budget Structure and Provide Sufficient Funding to Improve the Taxpayer Experience and Modernize the IRS's Information Technology Systems.	NTA 2021 Annual Report, 48, 62, 77, 106, 146; 2020 Purple Book LR #2, 3-6; NTA 2019 Annual Report, Most Serious Problem #1, 3-14; NTA 2019 Annual Report, Most Serious Problem #2, 15-22; NTA 2019 Annual Report, Most Serious Problem #3, 23-33.	Inflation Reduction Act of 2022, Pub. L. No. 117-169, 136 Stat. 1818 (2022).
Improve the Filing Process			
5	Authorize the Volunteer Income Tax Assistance Grant Program.	2019 Purple Book LR #3, 8-10; 2017 Purple Book LR #5, 12-13.	TFA, Pub. L. No. 116-25, § 1401(a), 133 Stat. 981, 993 (2019) (codified at IRC § 7526A).
6	Authorize the IRS to Work With Financial Institutions to Reverse Misdirected Deposits.	2019 Purple Book LR #9, 20-21; 2017 Purple Book LR #11, 24-25.	TFA, Pub. L. No. 116-25, § 1407, 133 Stat. 981, 1001 (2019) (codified at IRC § 6402(n)).
7	Provide Victims With Notice of Suspected Identity Theft.	NTA 2011 Annual Report, Most Serious Problem #3, 48-73.	TFA, Pub. L. No. 116-25, § 2007, 133 Stat. 981, 1005 (2019) (codified at IRC § 7529).
8	Give All Taxpayers the Option to Receive and Use an Identity Protection Personal Identification Number.	NTA 2017 Annual Report, Most Serious Problem #19, 211-218; NTA 2015 Annual Report, Most Serious Problem #16, 180-187.	TFA, Pub. L. No. 116-25, § 2005, 133 Stat. 981, 1004 (2019).
9	Provide Identity Theft Victims With a Single Point of Contact at the IRS.	NTA 2017 Annual Report, Most Serious Problem #19, 211-218; NTA 2015 Annual Report, Most Serious Problem #16, 180-187; NTA 2013 Annual Report, Most Serious Problem #6, 75-83; NTA 2011 Annual Report, Most Serious Problem #3, 48-73.	TFA, Pub. L. No. 116-25, § 2006, 133 Stat. 981, 1004 (2019).

LR #	Legislative Recommendations	Selected National Taxpayer Advocate (NTA) Report References	Public Laws Adopting the Recommendations (in Whole or in Part)
10	Develop and Implement Guidelines for Managing Stolen Identity Refund Fraud Cases.	NTA 2017 Annual Report, Most Serious Problem #19, 211-218; NTA 2015 Annual Report, Most Serious Problem #16, 180-187; NTA 2013 Annual Report, Most Serious Problem #6, 75-83; NTA 2011 Annual Report, Most Serious Problem #3, 48-73.	TFA, Pub. L. No. 116-25, § 2008, 133 Stat. 981, 1006 (2019).
11	Collaborate With the Public and Private Sectors to Protect Taxpayers From Identity Theft and Refund Fraud.	NTA 2017 Annual Report, Most Serious Problem #20, 219-226.	TFA, Pub. L. No. 116-25, § 2008, 133 Stat. 981, 1006 (2019).
12	Require Employers Filing More Than Five Forms W-2, 1099-MISC, and 941 to File Them Electronically.	2019 Purple Book LR #8, 17-19; 2017 Purple Book LR #10, 21-23.	TFA, Pub. L. No. 116-25, § 2301, 133 Stat. 981, 1012 (2019) (codified at IRC § 6011(e)(2)(A)).
13	Increase Preparer Penalties.	NTA 2003 Annual Report, Key Legislative Recommendation, 270-301.	United States–Korea Free Trade Agreement Implementation Act, Pub. L. No. 112-41, Title V, § 501, 125 Stat. 428, 459 (2011) (codified at IRC § 6695(g)).
14	Allow Married Co-owners of a Business to Elect to File as Sole Proprietors Rather Than as Partners.	NTA 2002 Annual Report, Key Legislative Recommendation, 172-184.	U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Pub. L. No. 110-28, Title VIII, § 8215, 121 Stat. 112, 193 (2007) (codified at IRC § 761).
15	Tax a Child's Income at Rates That Do Not Depend on the Parents' Income (*i.e.*, Fix the "Kiddie Tax").	NTA 2002 Annual Report, Key Legislative Recommendation, 231-242.	Tax Cuts and Jobs Act ("TCJA"), Pub. L. No. 115-97, § 11001, 131 Stat. 2054 (2017) (codified at IRC § 1).
16	Authorize the IRS to Require Brokers to Report Basis Information Upon the Sale of Securities.	NTA 2005 Annual Report, Key Legislative Recommendation #5, 433-441.	Energy Improvement and Extension Act of 2008, Pub. L. No. 110-343, Div. B, Title IV, § 403, 122 Stat. 3765, 3854 (2008) (codified at IRC § 6045(g)).
17	Accelerate the Filing Deadline for Certain Information Returns.	NTA 2013 Annual Report, vol. 2, 68-96.	PATH Act, Pub. L. No. 114-113, Division Q, Title II § 201, 129 Stat. 2242, 3076 (2015) (codified at IRC § 6071(c)).
18	Do Not Require Correction of *De Minimis* Errors on Certain Information Returns.	NTA 2013 Annual Report, vol. 2, 68-96.	PATH Act, Pub. L. No. 114-113, Division Q, Title II § 201, 129 Stat. 2242, 3076 (2015) (codified at IRC § 6071(c)).
19	Accelerate the Filing Deadline for Certain Partnerships and Trusts.	NTA 2003 Annual Report, Key Legislative Recommendation, 302-307.	Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, Pub. L. No. 114-41, § 2006(a), 129 Stat. 443, 457 (2015) (codified at IRC § 6072).

LR #	Legislative Recommendations	Selected National Taxpayer Advocate (NTA) Report References	Public Laws Adopting the Recommendations (in Whole or in Part)
20	Change the Deadline for Filing FinCEN Report 114 (Relating to Report of Foreign Bank and Financial Accounts) to Match the Deadline for Filing Federal Income Tax Returns and Form 8938 (Including Extensions).	NTA 2014 Annual Report, Legislative Recommendation #6, 331-333.	Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, Pub. L. No. 114-41, § 2006(b)(11), 129 Stat. 443, 458-459 (2015).
21	Eliminate Tax Strategy Patents.	NTA 2007 Annual Report, Legislative Recommendation #4, 512-524.	Leahy-Smith America Invents Act, Pub. L. No. 112-29, § 14(a), 125 Stat. 284, 327 (2011).
Improve Assessment and Collection Procedures			
22	Require That Math Error Notices Describe the Reason(s) forthe Adjustment With Specificity, Inform Taxpayers They MayRequest Abatement Within 60 Days, and Be Mailed by Certified or Registered Mail.	NTA 2021 Annual Report 89; NTA 2018 Annual Report 174; NTA 2014 Annual Report 163; NTA 2011 Annual Report 74; NTA 2004 Annual Report 163; NTA 2003 Annual Report 113; NTA 2001 Annual Report 33.	Internal Revenue Service Math and Taxpayer Help Act, Pub. L. No. 119-39, § 2, 139 Stat. 659 (2025) (codified at IRC § 6213(b)).
23	Extend the Period for a Third Party to Request a Return of Levied Proceeds From Nine Months to Two Years.	NTA 2001 Annual Report, Key Legislative Recommendation, 202-208.	TCJA, Pub. L. No. 115-97, § 11071, 131 Stat. 2054, 2091 (2017) (codified at IRC § 6343(b)).
24	Allow Taxpayers to Request Equitable Innocent Spouse Relief Under IRC § 6015(f) Any Time Before Expiration of the Period of Limitations on Collection.	2019 Purple Book LR #26, 48-49; 2017 Purple Book LR #16, 33.	TFA, Pub. L. No. 116-25, § 1203, 133 Stat. 981, 988 (2019) (codified at IRC § 6015(f)(2)).
25	Prevent the Debts of Low Income Taxpayers From Being Assigned to Private Collection Agencies.	2019 Purple Book LR #28, 52-53.	TFA, Pub. L. No. 116-25, § 1205, 133 Stat. 981, 989 (2019) (codified at IRC § 6306(d)(3).
26	Hold Taxpayers Harmless When the IRS Returns Funds Levied From a Retirement Plan or Account.	2017 Purple Book LR #22, 41-42.	Bipartisan Budget Act of 2018, Pub. L. No. 115-123, Div. D, Title II, § 41104, 132 Stat. 64, 155-156 (2018) (codified at IRC § 6343(f)).

LR #	Legislative Recommendations	Selected National Taxpayer Advocate (NTA) Report References	Public Laws Adopting the Recommendations (in Whole or in Part)
27	Authorize the IRS to Enter Into Partial Payment Installment Agreements That Do Not Fully Pay the Liability Before Expiration of the Limitations Period.	NTA 2001 Annual Report, Key Legislative Recommendation, 210-214.	American Jobs Creation Act of 2004, Pub. L. No. 108-357, § 843, 118 Stat. 1418, 1600 (2004) (codified at IRC § 6159(a)).
28	Send Change of Address Notices to an Employer's Old and New Addresses and Promote the Use of Offers in Compromise for Victims of Payroll Tax Fraud.	NTA 2012 Annual Report, Most Serious Problem #23, 426-444.	Consolidated Appropriations Act, 2014, Pub. L. No. 113-76, Division E, Title I, § 106, 128 Stat. 5 (2014) and subsequent appropriations acts.
Reform Penalty and Interest Provisions			
29	Clarify That a Reasonable Cause Exception Applies to the Penalty for Erroneous Refund or Credit Claims Under IRC § 6676.	NTA 2014 Annual Report, Legislative Recommendation #8, 351-356; NTA 2011 Annual Report, Legislative Recommendation #6, 544-547.	PATH Act, Pub. L. No. 114-113, Division Q, Title II, § 209(c), 129 Stat. 2242, 3085 (2015) (codified at IRC § 6676(a)).
30	Notify Exempt Organizations When They Have Failed to File Two Consecutive Returns or Notices Before Their Exemption Is Automatically Revoked.	NTA 2011 Annual Report, Status Update #2, 437-450.	TFA, Pub. L. No. 116-25, § 3102, 133 Stat. 981, 1016 (2019) (codified at IRC § 6033(j)(1)).
31	Reduce the Disproportionate Penalty for Failure to Make Special Disclosures of "Listed Transactions" Under IRC § 6707A.	NTA 2008 Annual Report, Legislative Recommendation #10, 419-422.	Small Business Jobs Act of 2010, Pub. L. No. 111-240, § 2041, 124 Stat. 2504, 2560 (2010) (codified at IRC § 6707A(b)).
Strengthen Taxpayer Rights Before the Office of Appeals			
32	Codify the Independent Office of Appeals and Allow Those Denied Access to Appeals to Protest to the IRS Commissioner.	2019 Purple Book LR #35, 64.	TFA, Pub. L. No. 116-25, § 1001(a), 133 Stat. 981, 983 (2019) (codified at IRC § 7803(e)).
Enhance Confidentiality and Disclosure Protections			
33	Limit Redisclosures and Unauthorized Uses of Tax Returns and Tax Return Information Obtained Through IRC § 6103-Based "Consent" Disclosures.	2019 Purple Book LR #38, 67; 2017 Purple Book LR #39, 66.	TFA, Pub. L. No. 116-25, § 2202, 133 Stat. 981, 1012 (2019) (codified at IRC § 6103(c)).
34	Penalize Unauthorized Disclosures of Return Information by Tax Whistleblowers.	NTA 2015 Annual Report, Legislative Recommendation #14, 413-418.	TFA, Pub. L. No. 116-25, § 1405(a)(2), 133 Stat. 981, 998 (2019) (codified at IRC § 7213(a)(2)).
35	Provide Status Updates Sufficient to Allow a Whistleblower to Monitor the Progress of the Claim.	NTA 2015 Annual Report, Most Serious Problem #13, 143-158.	TFA, Pub. L. No. 116-25, § 1405(a)(1), 133 Stat. 981, 997-998 (2019) (codified at IRC § 6103(k)(13)).

LR #	Legislative Recommendations	Selected National Taxpayer Advocate (NTA) Report References	Public Laws Adopting the Recommendations (in Whole or in Part)
Strengthen the Office of the Taxpayer Advocate			
36	Codify the Taxpayer Advocate Directive (TAD) Appeal Process and Require the NTA to Report to Congress on Any TAD Not Honored by the IRS.	2019 Purple Book LR #43, 75-76; 2017 Purple Book LR #41, 68-69; NTA 2016 Annual Report, Special Focus, 39-40.	TFA, Pub. L. No. 116-25, § 1301(a), 133 Stat. 981, 991-992 (2019) (codified at IRC § 7803(c)(5) and IRC § 7803(c)(2)(B)(ii)(VIII)).
37	Establish the Compensation of the NTA by Statute and Eliminate Eligibility for Cash Bonuses.	2019 Purple Book LR #49, 83-84; 2017 Purple Book LR #49, 79-80.	TFA, Pub. L. No. 116-25, § 1301(c), 133 Stat. 981, 993 (2019) (codified at IRC § 7803(c)(1)(B)(i)).
Strengthen Taxpayer Rights in Judicial Proceedings			
38	Clarify That IRS Employees May Refer Taxpayers to a Specific Low Income Taxpayer Clinic.	2019 Purple Book LR #14, 29-30; 2017 Purple Book LR #8, 18; NTA 2007 Annual Report, Additional Legislative Recommendation #4, 551-553.	TFA, Pub. L. No. 116-25, § 1402, 133 Stat. 981, 997 (2019) (codified at IRC § 7526(c)(6)).
39	Consolidate Judicial Review of Collection Due Process (CDP) Hearings in the Tax Court.	NTA 2005 Annual Report, Key Legislative Recommendation #7, 447-470.	Pension Protection Act of 2006, Pub. L. No. 109-280, § 855, 120 Stat. 780, 1019 (2006) (codified at IRC § 6330(d)(1)).
40	Clarify That the Scope and Standard of Tax Court Determinations Under IRC § 6015(f) Is *De Novo*.	2019 Purple Book LR #52, 91-93; NTA 2011 Annual Report, Legislative Recommendation #4, 531-536.	TFA, Pub. L. No. 116-25, § 1203(a)(1), 133 Stat. 981, 988 (2019) (codified at IRC § 6015(e)(7)).
41	Clarify That the Tax Court Has Jurisdiction to Review Stand-Alone Equitable Innocent Spouse Relief Determinations Under IRC § 6015(f).	NTA 2001 Annual Report, Key Legislative Recommendation, 159-165.	Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432, Division C, Title IV, § 408, 120 Stat. 2922, 3061-3062 (2006) (codified at IRC § 6015(e)(1)).
42	Allow Taxpayers Seeking Exemption Under IRC § 501(c)(4) and Certain Others to Seek a Declaratory Judgment Just Like Those Seeking Exemption Under IRC § 501(c)(3).	NTA 2014 Annual Report, Legislative Recommendation #12, 371-379.	PATH Act, Pub. L. No. 114-113, Division Q, Title IV, § 406, 129 Stat. 2242, 3120 (2015) (codified at IRC § 7428(a)(1)).
43	Protect Tax Whistleblowers From Retaliation.	NTA 2015 Annual Report, Legislative Recommendation #13, 409-412.	TFA, Pub. L. No. 116-25, § 1405(b), 133 Stat. 981, 998-999 (2019) (codified at IRC § 7623(d)).
Miscellaneous Provisions			
44	Generally Avoid Forfeiture or Seizure of Deposits Structured to Avoid Currency Reporting When They Are From a Legal Source.	IRS Reform: Perspectives From the National Taxpayer Advocate, Hearing Before the H. Comm. on Oversight, 115th Cong. (May 19, 2017) (statement of Nina E. Olson, National Taxpayer Advocate), 23.	TFA, Pub. L. No. 116-25, § 1201, 133 Stat. 981, 986-987 (2019) (codified at 31 USC § 5317(c)(2)).

LR #	Legislative Recommendations	Selected National Taxpayer Advocate (NTA) Report References	Public Laws Adopting the Recommendations (in Whole or in Part)
45	Provide Commercial Fishermen the Benefit of Income Averaging Currently Available to Commercial Farmers.	NTA 2001 Annual Report, Additional Legislative Recommendation, 226.	AJCA, Pub. L. No. 108-357, § 314(b), 118 Stat. 1418, 1468-1469 (2004) (codified at IRC § 1301(a)).
46	Allow Self-Employed Individuals a Deduction for Health Insurance Premiums.	NTA 2001 Annual Report, Additional Legislative Recommendation, 223.	SBJA, Pub. L. No. 111-240, § 2042, 124 Stat. 2504, 2560 (2010) (codified at IRC § 162(l)).
47	Clarify That Attorney Fees for Discrimination Suits Are Deductible by Victims.	NTA 2002 Annual Report, Key Legislative Recommendation, 161-171.	AJCA, Pub. L. No. 108-357, § 703, 118 Stat. 1418, 1546-1548 (2004) (codified at IRC § 62(a)(19) and then subsequently renumbered).
48	Create a Uniform Definition of a "Qualifying Child" for Tax Provisions Relating to Children and Family Status.	NTA 2001 Annual Report, Key Legislative Recommendation, 78-100.	Working Families Tax Relief Act of 2004, Pub. L. No. 108-311, § 201, 118 Stat. 1166, 1169-1175 (2004) (codified at IRC § 152).
49	Amend IRC §§ 108(a) and 6050P to Provide That Gross Income Does Not Include, and the Department of Education Is Not Required to Report, Income From the Cancellation of Student Loans Under the Coronavirus Aid, Relief and Economic Security Act.	2020 Purple Book LR #59, 131-132.	American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 9675, 135 Stat. 4, 185-186 (2021) (codified at IRC §108(f)(5)).
50	Restructure the Earned Income Tax Credit to Make It Simpler for Taxpayers and Reduce Improper Payments.	NTA Fiscal Year 2020 Objectives Report, vol. 3, at 8, 14, 17-19; 2020 Purple Book LR #53, 115-119.	ARPA, Pub. L. No. 117-2, §§ 9621, 9622, and 9623, 135 Stat. 4, 152-154 (2021) (codified at IRC § 32).
51	Provide Earned Income Tax Credit Relief During National Disasters.	2021 Purple Book LR #54, 120-121.	ARPA, Pub. L. No. 117-2, § 9626, 135 Stat. 4, 157 (2021).
52	Whistleblower Program: Amend IRC §§ 7623 and 6103 to Provide Consistent Treatment of Recovered Foreign Account Tax Compliance Act (FATCA) and Report of Foreign Bank and Financial Accounts (FBAR) Penalties for Whistleblower Award Purposes.	NTA 2015 Annual Report, Key Legislative Recommendation, 419-425.	BBA 2018, Pub. L. No. 115-123, Div. D, Title II, § 41108(a) to (c), 132 Stat. 64, 158 (2018) (codified at IRC § 7623(c)).
53	Amend the Adoption Credit to Acknowledge Jurisdiction of Native American Tribes.	NTA 2012 Annual Report, Legislative Recommendation, 522-525.	One Big Beautiful Bill Act, Pub. L. No. 119-21, § 70403, 139 Stat. 72, 214 (2025) (codified at IRC § 23(d)(3)).

Note: As of December 15, 2025, approximately 53 legislative recommendations proposed by the National Taxpayer Advocate had been enacted into law. We say "approximately" because in some cases, enacted provisions are substantially similar to what we recommended but are not identical. Additional legislative recommendations may have been enacted after our publication deadline.

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