

2008 Annual Report to Congress

National Taxpayer Advocate

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NATIONAL TAXPAYER ADVOCATE

2008 ANNUAL REPORT
TO CONGRESS

Volume One



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*This report is dedicated
in memoriam to
Greg Lintner.*

*In his personal heroism,
and as a revenue officer and
Taxpayer Advocate Service employee,
he sought to do what was right and honorable, and serves as
an inspiration to friends, colleagues, and even strangers.*

He is sorely missed.

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Honorable Members of Congress:

I respectfully submit for your consideration the National Taxpayer Advocate's 2008 Annual Report to Congress. Section 7803(c)(2)(B)(ii) of the Internal Revenue Code requires the National Taxpayer Advocate to submit this report each year and in it, among other things, to identify at least 20 of the most serious problems encountered by taxpayers and to make administrative and legislative recommendations to mitigate those problems. Thus, the statute requires that the report focus on problems and areas in need of improvement.

Indeed, with a tax system as complex as ours, there are inevitably many problems and areas in which improvements can be made, and I will address the major ones in detail. For context, however, I note that 2008 marks the ten-year anniversary of the enactment of the Internal Revenue Service Restructuring and Reform Act of 1998, and this therefore seems like an appropriate time to point out that the IRS has improved substantially over the past decade. It is more responsive to taxpayers than it was in 1998. It has also made strides in improving its technology. This year we watched as the IRS delivered a successful filing season despite numerous changes in law that were enacted late in 2007 and delivered economic stimulus checks to about 119 million taxpayers with just a few months to plan.¹ These two challenges required the IRS to make trade-offs, which included a reduction in the level of service on its toll-free lines from 82 percent in fiscal year 2007 to 53 percent in Fiscal Year (FY) 2008,² but in light of the hand the IRS was dealt, it performed extremely well. I think it is important to take stock of how much the IRS has improved before proceeding to discuss taxpayer problems.

The IRS and the Current Economic Environment

This report is published as a new Administration and a new Congress arrive to address the daunting challenges facing the U.S. economy. Tax administration and the Internal Revenue Service have an important role to play in furthering the nation's recovery – not just because the IRS collects about 96 percent of the federal government's revenue but also because burdensome tax policies, inadequate customer service, and inappropriate enforcement actions drive up compliance costs for all taxpayers, including small businesses, and thereby impede economic growth.

Thus, in this year's report – presented in two volumes – we focus on challenges to tax administration in the 21st century, especially during economic downturns. First and foremost among the most serious problems facing taxpayers is the complexity of the tax code, followed by the IRS's enforcement activity toward taxpayers who are experiencing economic hardships and by the tax treatment of cancellation of debt income. In the Legislative Recommendations section of this report, we pick up the discussion about complexity. We reprise our call for simplification in several major areas of tax law, including the Alternative Minimum Tax (AMT),

¹ U.S. Department of the Treasury, *Treasury Distributes 1.546 Million Additional Stimulus Checks in November*, HP-1319 (Dec. 5, 2008) (data reflects number of payments made through November 2008).

² See *Internal Revenue Service Fiscal Year 2008 Enforcement Results (Slide 7: Taxpayer Service)*, at http://www.irs.gov/pub/irs-news/2008_enforcement.pdf.

education and retirement savings incentives, and the family status provisions.³ We also submit several new recommendations for your consideration, including proposals to reform the worker classification regime and to revamp the current penalty provisions in the Internal Revenue Code. Finally, Volume II of this report presents three research studies of importance to tax administration in economically challenging times: (1) a comprehensive review of the Code's penalty regime; (2) an automated method to identify taxpayers who are experiencing economic hardship so the IRS can systemically screen them from automated levies; and (3) a second installment in our series of research studies on the impact of tax preparers on taxpayer compliance.

A Call for Tax Reform and Simplification

In earlier Annual Reports to Congress, we have highlighted the “confounding complexity of the Internal Revenue Code” as one of the most serious problems facing taxpayers.⁴ We do so again this year. While in past reports we have focused on the Alternative Minimum Tax as the primary example of this complexity,⁵ this year the “poster child” for complexity is Cancellation of Debt Income (CODI).⁶ This issue – which has received very little attention in the media – threatens to undermine any nascent recovery by homeowners facing loan restructuring or foreclosures, not to mention by taxpayers who find themselves unable to pay their automobile or credit card debts as a result of declining economic conditions. Although Congress provided partial relief to taxpayers with home mortgages in the Mortgage Forgiveness Debt Relief Act, CODI problems persist. The Act provided that taxpayers may exclude CODI resulting from taxable mortgage debt cancellation where the proceeds were used to acquire or improve their principal residence. But it appears that the majority of homeowners who took out subprime mortgages used a portion of the loan proceeds for other purposes, including paying off car loans, credit card balances, student loans, and medical bills. Thus, if these taxpayers either work out a debt reduction agreement with their lenders or abandon or lose their homes in foreclosure, they will have CODI unless some other exclusion – such as insolvency – applies.⁷

Moreover, lenders are required to report CODI to the IRS on Form 1099-C, *Cancellation of Debt*, and the IRS generally may assume any reported CODI is taxable unless the taxpayer files a form with his tax return to claim an exclusion. Very few taxpayers know to file this form, and as a result, taxpayers may be unnecessarily targeted for examination and tax assessment in tens of thousands of cases. It is probably safe to say that taxpayers facing eviction from their homes and the resulting disruption of their financial and personal lives will not be thinking about

³ The family status provisions include filing status (IRC § 1), personal and dependent exemptions (IRC § 151), the child tax credit (IRC § 24), the earned income tax credit (IRC § 32), the child and dependent care credit (IRC § 21), and the separated spouse rules (IRC § 7703(b)).

⁴ See National Taxpayer Advocate 2004 Annual Report to Congress 2-7.

⁵ See National Taxpayer Advocate 2001 Annual Report to Congress 166-77; National Taxpayer Advocate 2003 Annual Report to Congress 5-19; National Taxpayer Advocate 2004 Annual Report to Congress 383-85; and National Taxpayer Advocate 2006 Annual Report to Congress 3-5.

⁶ When a borrower is unable to pay a debt and the creditor cancels some or all of it, the amount of loan cancellation is generally treated as taxable income to the debtor. IRC § 61(a)(12).

⁷ The Mortgage Forgiveness Debt Relief Act expressly provided that CODI is excludable under this provision only to the extent that the amount of debt cancellation exceeds the amount used for these “non-qualified” purposes.

CODI. These taxpayers and those who are able to arrange debt reduction will find, a few years down the road when they are about to achieve some measure of financial stability, that they owe the IRS a sizable sum. In our report, we make several administrative recommendations and one legislative recommendation that should mitigate this problem and prevent millions of taxpayers from getting ensnared in this incredibly complex, burdensome, and devastating regime.

Of course, we haven't let up on our advocacy for repeal or reform of the Alternative Minimum Tax, either. Over the last eight years we have championed the need for AMT reform, and while there is now widespread agreement that reform is needed, the sheer scope of the revenue impact paralyzes all efforts other than one-year fixes. Today, we have reached a point where even one-year fixes are extremely expensive⁸ – and the perniciousness and invasiveness of the AMT is demonstrated by the fact that *it will cost more in 2009 to repeal the AMT than it would cost to repeal the regular income tax rules and leave the AMT in place*. Absent continual one-year patches, almost a quarter of all individual taxpayers will have to navigate the AMT. That is a sad statement about the complexity of our tax system, and that fact alone should compel the new administration and Congress to undertake the fundamental tax reform necessary to repeal the AMT.⁹ It is simply inexcusable for a tax system to impose this kind of burden on millions of taxpayers.

As if CODI and AMT were not enough to demonstrate the current complexity of the Internal Revenue Code, consider this: the number of civil tax penalties has increased from about 14 in 1954 to more than 130 today.¹⁰ Many of these penalties are rarely applied, and some contribute little to the generally accepted premise that civil tax penalties should primarily serve to promote voluntary compliance. In our legislative proposal for penalty reform and the accompanying study in Volume II, we lay out some basic principles for penalty provisions, including horizontal equity, proportionality, and procedural fairness. We highlight one penalty, IRC § 6707A, in a separate legislative recommendation. As currently designed, IRC § 6707A violates the basic proposition that a penalty should be proportional to the harm that occurs. The purpose of the penalty is to combat tax shelters by requiring taxpayers who enter into transactions deemed by the IRS as aggressive to make special disclosures. As written, however, Section 6707A requires the IRS to impose a penalty of \$200,000 per entity per year and \$100,000 per individual per year even if the taxpayer had no knowledge that the IRS deemed the transaction aggressive and even if the taxpayer derived no tax savings from the transaction. In the case of a “listed transaction,” the IRS must impose the full amount of the penalty and may not waive or rescind it under any circumstances.

⁸ The cost of the AMT patch for 2008 is estimated at \$78.9 billion. Some revenue will be recouped in subsequent years, resulting in an estimated ten-year cost of \$64.1 billion. Joint Committee on Taxation, *Estimated Budget Effects of the Tax Provisions Contained in an Amendment in the Nature of a Substitute to H.R. 1424, Scheduled for Consideration on the Senate Floor on October 1, 2008* (Oct. 1, 2008).

⁹ Absent any changes in law, it is now projected that in 2010, 33 million individual taxpayers will be subject to the AMT. Tax Policy Center, *Aggregate AMT Projections, 2008-2018*, Table T08-0248 (Nov. 4, 2008), available at <http://www.taxpolicycenter.org/numbers/Content/PDF/T08-0248.pdf>. Most observers believe that Congress, at a minimum, will pass another “patch” that limits the growth in the AMT by increasing the AMT exemption amounts.

¹⁰ For a list of about 130 current law penalties, see Vol. II, *A Framework for Reforming the Penalty Regime*, Appendix A, *infra*.

A final illustration of how complex our tax system has become. Although few people enjoy paying taxes, most understand that “taxes are what we pay for a civilized society.”¹¹ But it adds insult to injury that more than 80 percent of taxpayers today find tax filing so complicated that they feel compelled to pay transaction fees simply to pay their taxes. About 60 percent of taxpayers pay preparers to do the job, and another 22 percent purchase tax software to help them perform the calculations themselves. In the long run, we recommend that Congress simplify the tax code so that taxpayers can compute and pay their taxes far more simply.

In addition, we advocate an immediate step to assist taxpayers who seek return preparation assistance. Since 2002, we have recommended that Congress protect taxpayers who use preparers by requiring unenrolled preparers to pass a minimum competency test, register with the IRS, and satisfy continuing professional education requirements. Oregon has had success with a similar system, and recent “shopping visits” to unenrolled preparers conducted by the Government Accountability Office, the Treasury Inspector General for Tax Administration, and most recently and dramatically, the New York State Department of Taxation and Revenue,¹² have shown significant deficiencies in the competence and professional standards of unenrolled preparers. The Senate has previously approved legislation to regulate preparers, and the House Ways and Means Subcommittee on Oversight has held a hearing focused in part on the subject. In this report, we reiterate our recommendation that Congress act to professionalize the return preparation industry.

Taxpayer Service and Enforcement in Challenging Economic Times

During economic downturns, the IRS is placed in a difficult position. On the one hand, more taxpayers are experiencing economic setbacks – loss of jobs, loss of homes, losses on investments – and thus are more likely to be unable to pay all their taxes. On the other hand, as the budget deficit grows, the IRS comes under subtle pressure to collect more federal revenue and close the tax gap. In addition, as the administration and Congress look for ways to reduce federal spending, the IRS’s annual appropriation becomes an attractive target for budgetary savings.

All of the most serious problems of taxpayers that we identify in this year’s report address the delicate balance the IRS must achieve between these competing pressures. We note that the IRS must change some of its practices to avoid exacerbating the financial distress of taxpayers who are already experiencing economic difficulties. We note that the IRS’s own studies show that more enforcement actions – liens and levies – do not translate into commensurate increases in revenue collection. For example, while the number of levies issued by the IRS increased by an astonishing 1,608 percent from FY 2000 to FY 2007 – from 220,000 levies to about 3.76 million – the increase in total collection yield during this period was slightly less

¹¹ See *Compania General De Tabacos De Filipinas v. Collector of Internal Revenue*, 275 U.S. 87, 100 (1927) (Holmes, J., dissenting).

¹² Tom Herman, *New York Sting Nabs Tax Preparers*, Wall Street Journal (Nov. 26, 2008).

than 45 percent.¹³ We note that current IRS guidance provides little direction to help IRS employees identify taxpayers who are experiencing economic hardship and prevent undue economic burden on affected taxpayers. We also show that the IRS underutilizes collection alternatives, particularly offers in compromise and partial pay installment agreements, currently available to resolve taxpayer liabilities. For example, the number of accepted offers in compromise has decreased by over 72 percent from FY 2001 to FY 2008.¹⁴ While it is commendable that the IRS is now talking about how it wants to help taxpayers who are experiencing economic difficulties,¹⁵ the IRS has always possessed the tools to help these taxpayers, and training its employees to utilize these tools properly and flexibly would go a long way toward improving tax compliance, especially in challenging economic times.¹⁶

Effecting Culture Change in the IRS

This year, in an effort to better identify where there is agreement and clarify where there is disagreement between the National Taxpayer Advocate and the IRS, we identified our tentative recommendations in the initial section of each “Most Serious Problem” discussion so that the IRS could address our tentative recommendations in its responses. As a result of this procedure, we have been able to narrow issues, and our final recommendations are more discrete, actionable, and fewer than in earlier reports. In many instances, the IRS either identified or committed to initiatives in its responses that, if properly administered, will address our concerns. The National Taxpayer Advocate’s final recommendations, however, often reflect a fundamental philosophical disagreement between TAS and the IRS – particularly in the area of looking at IRS actions from the taxpayer’s perspective. The good news is that there is lots the IRS is currently doing to improve its operations. The not-so-good-news is that there is lots more work to do – particularly in the area of internal culture change – before the IRS achieves its potential as a disciplined but compassionate tax administration.

What appears to be driving this disconnect is the sense, in the IRS responses to the Most Serious Problems included in this report, that the IRS is so hampered by the requirements of its work that it simply doesn’t have the time, resources, or energy to look at itself critically and ask fundamental questions about how it is doing its job. In responses to discussions of taxpayer service, collection, examination, and local compliance initiatives herein, the IRS resists questioning whether it is measuring the right actions to improve voluntary compliance, resists exploring new methods of providing face-to-face service to taxpayers, resists measuring

¹³ IRS, Small Business/Self-Employed Division (SB/SE) Research, *Liens, Levies, Seizures, and Total Yield: 10 Year Filing Trend*, (Aug. 19, 2005), supplemented with data from various SB/SE Collection Activity Reports and Statistics of Income (SOI) Data Book information for FY 1999 to FY 2007.

¹⁴ SB/SE Collection Activity Report, *No-5000-108* (FY 2001-FY 2008). In FY 2001, the IRS accepted 38,643 offers compared to 10,677 in FY 2008.

¹⁵ IRS News Release, *IRS Speeds Lien Relief for Homeowners Trying to Refinance, Sell*, IR-2008-141 (Dec. 16, 2008).

¹⁶ In this report, we also note that it is important for the IRS to maintain balance in its approach to collecting unpaid employment tax liabilities. The IRS has come under pressure to ramp up its collection of unpaid employment tax liabilities. This pressure stems, in part, from a recent GAO report which found that unpaid employment tax liabilities increased from \$49 billion in 1998 to \$58 billion in 2008. While that may be a true statement, it is critical that observers interpret the data correctly. Inflation increased by 30 percent over that period, so the employment tax gap has seemingly shrunk in real (inflation-adjusted) terms. Department of Labor, Bureau of Labor Statistics, *Consumer Price Index – All Urban Consumers (CPI-U)* (Dec. 29, 2008). As well, the \$58 billion figure represents a multi-year, cumulative total, and the majority of that total consists of interest and penalties rather than tax itself. For a detailed discussion of the IRS response to unpaid employment taxes, see Most Serious Problem, *Employment Taxes*, *infra*.

the impact of its centralization initiatives on voluntary compliance, resists making real changes to its examination strategy to address the difficulties taxpayers face in responding to correspondence exams, and resists establishing a world-class, 21st century think tank to explore what actions and initiatives help taxpayers achieve and maintain tax compliance.¹⁷

If the IRS is not able to make the case for itself that with the proper funding it will deliver world class tax administration, who will? If the IRS is unwilling to challenge the status quo with respect to its way of doing business in these challenging times, who will support its current funding? Well, to some extent this report makes that case. As the National Taxpayer Advocate, I believe (and describe in the report that follows) that – right here, right now – the IRS has the tools it needs to help taxpayers be compliant. And I believe the IRS has the talent available to it – right here, right now – to challenge its entrenched assumptions about service and enforcement and become a truly world class tax administrator. And I believe it is *essential* to the economic well-being of the United States that the new Administration and the new Congress invest in the IRS so that it can better serve the taxpayers who provide the lifeblood of government, in good times and in bad times alike.

As the agency that collects about 96 percent of all federal revenue and the agency that more Americans interact with each year than any other, the IRS has an important and demanding job to do. I hope Members of Congress and their staffs find this report helpful as you consider how to best assist the IRS in collecting revenue while simultaneously protecting taxpayer rights and minimizing taxpayer burden.

Respectfully submitted,



Nina E. Olson
National Taxpayer Advocate
31 December 2008

¹⁷ See Most Serious Problems, *Customer Service Within Compliance*; *Taxpayer Service: Bringing Service to the Taxpayer*; *The Impact of IRS Centralization on Tax Administration*; *Customer Service Issues in the IRS's Automated Collection System (ACS)*; *The IRS Needs to More Fully Consider the Impact of Collection Enforcement Actions on Taxpayers Experiencing Economic Difficulties*; *The IRS Correspondence Examination Program Promotes Premature Notices, Case Closures, and Assessments*; *Suitability of the Examination Process*; and *Local Compliance Initiatives Have Great Potential But Face Significant Challenges*, *infra*.

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Introduction: The Most Serious Problems Encountered by Taxpayers

Internal Revenue Code (IRC) § 7803(c)(2)(b)(ii)(III) requires the National Taxpayer Advocate to prepare an Annual Report to Congress which contains a summary of at least 20 of the most serious problems encountered by taxpayers each year. For 2008, the National Taxpayer Advocate has identified, analyzed, and offered recommendations to assist the IRS in resolving 20 such problems. This year's report also includes a status update on the IRS's Private Debt Collection (PDC) initiative, which reiterates the National Taxpayer Advocate's prior recommendation that the initiative be discontinued.¹

As in previous years, this report discusses at least 20 of the most serious problems encountered by taxpayers – but not necessarily the top 20 most serious problems. That is by design. Since there is no objective way to select the 20 most serious problems, we consider a variety of factors when making this determination. Moreover, while we carefully rank each year's problems under the same methodology (described immediately below), the list remains inherently subjective in many respects.

To simply report on the top 20 problems would pose many difficulties. First, in doing so, it would require us to repeat much of the same data and propose many of the same solutions year to year. Our tax system and the Code have grown to a point where the IRS employs more than 100,000 workers and collects in excess of \$2 trillion each year from individuals, small and large businesses, and tax-exempt entities. This state of affairs inevitably creates problems that may not be transparent but nonetheless merit the attention of the National Taxpayer Advocate and the IRS. Thus, the statute allows the National Taxpayer Advocate to be flexible in selecting both the subject matter and the number of topics to be discussed, and to use the report to put forth actionable and specific solutions instead of mere criticism and complaints.

Methodology for Determining the Most Serious Problems

The National Taxpayer Advocate considers a number of factors in identifying, evaluating, and ranking the most serious problems encountered by taxpayers. The 20 issues and the status update in this section of the Annual Report were ranked according to the following criteria:

- Impact on taxpayer rights;
- Number of taxpayers affected;
- Interest, sensitivity, and visibility to the National Taxpayer Advocate, Congress, and other external stakeholders;

¹ See National Taxpayer Advocate 2007 Annual Report to Congress 411-31; National Taxpayer Advocate 2006 Annual Report to Congress 34-61.

- Barriers these problems present to tax law compliance, including cost, time, and burden;
- The revenue impact of noncompliance; and
- Taxpayer Advocate Management Information System (TAMIS) and Systemic Advocacy Management System (SAMS) data.

Finally, the National Taxpayer Advocate and the Office of Systemic Advocacy examine the results of this ranking and adjust it where editorial or numeric considerations warrant a particular placement or grouping. This year, we placed the majority of the 20 problems in four basic categories: taxpayer service issues, compliance issues, examination issues, and tax administration issues.

Taxpayer Advocate Management Information System List

The identification of the most serious problems reflects not only the mandates of Congress and the IRC, but TAS's integrated approach to advocacy – using individual cases as a means for detecting trends and identifying systemic problems in IRS policy and procedures or the Code. TAS tracks individual taxpayer cases on the TAMIS. The top 25 case issues, which are listed in Appendix 1, reflect TAMIS receipts based on taxpayer contacts in fiscal year (FY) 2008, a period spanning October 1, 2007 through September 30, 2008.

IRS Responses

TAS provides the IRS's respective operating divisions and functional units with the opportunity to comment on and respond to the problems described in each year's report. These responses appear unedited, under the heading "IRS Comments," followed by the National Taxpayer Advocate's own comments and recommendations.

Use of Examples

The examples presented in this report illustrate issues raised in cases handled by the TAS. To comply with IRC § 6103, which generally requires the IRS to keep taxpayers' returns and return information confidential, the details of the fact patterns have been changed.

MSP
#1**The Complexity of the Tax Code****Definition of Problem**

The most serious problem facing taxpayers is the complexity of the Internal Revenue Code.

Analysis of Problem

The largest source of compliance burdens for taxpayers – and the IRS – is the overwhelming complexity of the tax code.¹ The only meaningful way to reduce these burdens is to simplify the tax code enormously.

Consider the following:

- According to a TAS analysis of IRS data, U.S. taxpayers and businesses spend about 7.6 billion hours a year complying with the filing requirements of the Internal Revenue Code.² And that figure does not even include the millions of additional hours that taxpayers must spend when they are required to respond to an IRS notice or an audit. (For a breakdown of hours by tax form and information reporting document, see Table 1.1.1 at the end of this section.)
- If tax compliance were an industry, it would be one of the largest in the United States. To consume 7.6 billion hours, the “tax industry” requires the equivalent of 3.8 million full-time workers.³
- Compliance costs are huge both in absolute terms and relative to the amount of tax revenue collected. Based on Bureau of Labor Statistics (BLS) data on the hourly cost of an employee, TAS estimates that the costs of complying with the individual and

¹ This report focuses on the impact of tax complexity on taxpayers. It should be noted that tax complexity also places a significant burden on the IRS as the tax administrator.

² The TAS Research function arrived at this estimate by multiplying the number of copies of each form filed in tax year 2006 by the average amount of time the IRS estimated it took to complete the form. While the IRS data is the most authoritative available, the amount of time the average taxpayer spends completing a form is difficult to measure with precision. TAS cannot determine the margin of error of existing estimates. Apart from the inherent imprecision of measuring time burdens for the “average” taxpayer, this TAS estimate may be low because it does not take into account all forms and it does not include the amount of time taxpayers spend responding to post-filing notices, examinations, or collection actions. Conversely, the TAS estimate may be high because IRS time estimates have not necessarily kept pace fully with technology improvements that allow a wider range of processing activities to be completed via automation. The TAS estimate includes both the time individual and business taxpayers spend filling out their tax returns and the time businesses spend generating information reporting documents like Forms W-2 and Forms 1099. Other published estimates generally have not included the time spent generating information reporting documents.

³ This calculation assumes each employee works 2,000 hours per year (i.e., 50 weeks, with two weeks off for vacation, at 40 hours per week).

corporate income tax requirements in 2006 amounted to \$193 billion – or a staggering 14 percent of aggregate income tax receipts.⁴

- Since the beginning of 2001, there have been more than 3,250 changes to the tax code, an average of more than one a day, including more than 500 changes in 2008 alone.⁵
- The Code has grown so long that it has become challenging even to figure out how long it is. A search of the Code conducted in the course of preparing this report turned up 3.7 million words.⁶ A 2001 study published by the Joint Committee on Taxation put the number of words in the Code at that time at 1,395,000.⁷ A 2005 report by a tax research organization put the number of words at 2.1 million, and notably, found that the number of words in the Code has *more than tripled* since 1975.⁸
- Tax regulations, which are issued by the Treasury Department to provide guidance on the meaning of the Internal Revenue Code, now stand about a foot tall.⁹ The CCH Standard Federal Tax Reporter, a leading publication for tax professionals that summarizes administrative guidance and judicial decisions issued under each section of the Code, now comprises 25 volumes and takes up nine feet of shelf space.¹⁰ Two companies publish newsletters *daily* that report on new developments in the field of

⁴ The IRS and several outside analysts have attempted to quantify the costs of compliance. For an overview of previous studies, see Government Accountability Office (GAO), GAO-05-878, *Tax Policy: Summary of Estimates of the Costs of the Federal Tax System* (Aug. 2005). There is no clearly correct methodology, and the results of these studies vary. All monetize the amount of time that taxpayers and their preparers spend complying with the Code. The TAS estimate of the cost of complying with individual and corporate income tax requirements (and thus excluding the time spent complying with employment, estate and gift, and excise tax requirements) was made by multiplying the total number of such hours (7.0 billion) by the average hourly cost of a civilian employee (\$27.54), as reported by the BLS. See BLS, U.S. Department of Labor, *Employer Costs for Employee Compensation – December 2006*, USDL: 07-0453 (Mar. 29, 2007) (including wages and benefits), at http://www.bls.gov/news.release/archives/ecec_03292007.pdf. The TAS estimate of compliance costs as a percentage of total income tax receipts for 2006 was made by dividing the income tax compliance cost as computed above (\$193 billion) by total 2006 income tax receipts (\$1.4 trillion). See Office of Management and Budget, *Budget of the United States Government – Fiscal Year 2009*, Historical Tables, Table 2-1. TAS's estimate that compliance costs amount to about 14 percent of aggregate income tax receipts falls within the range of previous estimates. For example, Professor Joel Slemrod has computed that compliance costs constitute about 13 percent of income tax receipts, while the Tax Foundation has computed that compliance costs constitute about 22 percent of income tax receipts. See Public Meeting of the President's Advisory Panel on Federal Tax Reform (Mar. 3, 2005) (statement of Joel Slemrod, Paul W. McCracken Collegiate Professor of Business Economics and Public Policy, University of Michigan Stephen M. Ross School of Business), at <http://www.taxreformpanel.gov/meetings/meeting-03032005.shtml>; J. Scott Moody, Wendy P. Warcholik & Scott A. Hodge, *Special Report: The Rising Cost of Complying with the Federal Income Tax* (Tax Foundation, Dec. 2005), at <http://www.taxfoundation.org/research/show/1281.html>.

⁵ Unpublished CCH data provided to TAS.

⁶ To determine the number of words in the Internal Revenue Code, a librarian in the IRS Office of Chief Counsel downloaded a zipped file of Title 26 of the U.S. Code (i.e., the Internal Revenue Code) from the website of the U.S. House of Representatives at http://uscode.house.gov/download/title_26.shtml. She unzipped the file, copied it into Microsoft Word, and used the “word count” feature to compute the number of words. The version of Title 26 she used was dated Jan. 3, 2007, so the count does not reflect legislation passed during the 110th Congress. The Code contains certain information, such as a description of amendments that have been adopted, effective dates, cross references, and captions, that do not have the effect of law. It is possible that other attempts to determine the length of the Code have attempted to exclude some or all of these components, but there is no clearly correct methodology to use, and there is no easy way to selectively delete information from a document of this length.

⁷ See Staff of the Joint Committee on Taxation, 107th Cong., *Study of the Overall State of the Federal Tax System and Recommendations for Simplification*, Pursuant to Section 8022(3)(B) of the Internal Revenue Code of 1986 (vol. I), at 4 (Comm. Print 2001).

⁸ J. Scott Moody, Wendy P. Warcholik & Scott A. Hodge, *Special Report: The Rising Cost of Complying with the Federal Income Tax* (Tax Foundation, Dec. 2005), at <http://www.taxfoundation.org/research/show/1281.html>.

⁹ See CCH Income Tax Regulations (which runs 11,700 pages in six volumes) or RIA Federal Tax Regulations (which runs five volumes).

¹⁰ CCH Standard Federal Tax Reporter (2008).

taxation; the print editions often run 50-100 pages and the electronic databases contain substantially more detailed information.¹¹

- The complexity of the Code leads to perverse results. On the one hand, taxpayers who honestly seek to comply with the law often make inadvertent errors, causing them either to overpay their tax or to become subject to IRS enforcement action for mistaken underpayments of tax. On the other hand, sophisticated taxpayers often find loopholes that enable them to reduce or eliminate their tax liabilities.
- Individual taxpayers find the return preparation process so overwhelming that more than 80 percent pay transaction fees to help them file their returns. About 60 percent¹² pay preparers to do the job,¹³ and another 22 percent purchase tax software to help them perform the calculations themselves.¹⁴
- The Code contains no comprehensive Taxpayer Bill of Rights that explicitly and transparently sets out taxpayer rights and obligations.¹⁵ Taxpayers do have rights, but they are scattered throughout the Code and the Internal Revenue Manual and are neither easily accessible nor written in plain language that most taxpayers can understand.¹⁶

The Office of the Taxpayer Advocate sees dozens of examples of the impact of tax law complexity each year. Here are some key illustrations:

- ***Excessive Number of Education and Retirement Savings Incentives.*** The Code currently contains at least 11 incentives to encourage taxpayers to save for and spend on education; the eligibility requirements, definitions of common terms, income-level thresholds, phase-out ranges, and inflation adjustments vary from provision to

¹¹ These publications are *Highlights & Documents* (published by Tax Analysts) and the *Daily Tax Report* (published by BNA). According to the Federal Editor in Chief of Tax Analysts, *Tax Notes Today* (the electronic publication that serves as the main source for stories in *Highlights & Documents*) contains an average of 50-70 items a day.

¹² Among unincorporated business taxpayers, about 74 percent use preparers. IRS Compliance Data Warehouse, Individual Returns Transaction File (Tax Year 2006).

¹³ In tax year 2007, about 62 percent of returns were prepared by preparers. IRS Compliance Data Warehouse, Individual Returns Transaction File (tax year 2007). To complete the percentage prepared for a fee, we subtracted the number of returns prepared by Volunteer Income Tax Assistance (VITA) sites.

¹⁴ The number of individual taxpayers who purchase tax software was computed by starting with the number of On-Line File and Self V-Code returns (33.2 million), subtracting the number of Free File returns (3.9 million), and dividing the result (29.3 million) by the total number of returns (134.4 million). IRS Office of Research, Analysis, and Statistics, Response to TAS Information Request (Dec. 17, 2008); 2007 Free File Weekly Snapshot Report Week 40. This data relates to Tax Year 2006.

¹⁵ Congress has enacted several pieces of legislation that bear the title, "Taxpayer Bill of Rights," but those pieces of legislation contain discrete provisions rather than an overarching list of core rights. See Technical and Miscellaneous Revenue Act, Pub. L. No. 100-647 (1988) (containing the Omnibus Taxpayer Bill of Rights, also known as "TBOR 1"); Taxpayer Bill of Rights 2, Pub. L. No. 104-168 (1996) (also known as "TBOR 2"); and Internal Revenue Service Restructuring and Reform Act, Pub. L. No. 105-206 (1998) (containing the Taxpayer Bill of Rights 3, also known as "TBOR 3").

¹⁶ The National Taxpayer Advocate has previously recommended that Congress enact a Taxpayer Bill of Rights that sets out taxpayer rights and obligations. See National Taxpayer Advocate 2007 Annual Report to Congress 478-89 (Legislative Recommendation: *Taxpayer Bill of Rights and De Minimis "Apology" Payments*).

provision.¹⁷ The Code also contains at least 16 incentives to encourage taxpayers to save for retirement; these incentives are subject to different sets of rules governing eligibility, contribution limits, taxation of contributions and distributions, withdrawals, availability of loans, and portability.¹⁸ Taxpayers wishing to choose the optimal vehicle to save for college must know the difference between a Section 529 plan, a Coverdell Education Savings Account, and the Hope and Lifetime Learning Credits, among other alternatives. Taxpayers wishing to choose the optimal plan in which to save for retirement must know the difference between a traditional IRA, a Roth IRA, a Section 401(k) plan, a Section 403(b) plan, and a SARSEP, among others.

The point of a tax incentive, almost by definition, is to encourage certain types of economic behavior. But taxpayers can only respond to incentives if they know they exist and understand them. Choice is good, but too much choice is overwhelming. It is not reasonable to expect the average taxpayer to learn the details of at least 27 education and retirement incentives to determine which ones provide the best fit.¹⁹

- **The Alternative Minimum Tax (AMT).** The AMT concept, originally enacted in response to a report that 155 high-income taxpayers had paid no tax for the 1966 tax year,²⁰ now effectively requires taxpayers to compute their taxes twice – once under the regular rules and again under the AMT regime – and then to pay the higher of the two amounts.²¹ The AMT was originally conceived to prevent wealthy taxpayers from escaping tax liability through the use of tax-avoidance transactions. However, most of the significant tax loopholes that enabled taxpayers to escape tax at the time the AMT was written have long since been closed, and it is now estimated that about 77 percent of the additional income subject to tax under the AMT is attributable simply to family

¹⁷ Tax benefits for past educational expenses include the deduction for interest on education loans in IRC § 221 and an income exclusion for the cancellation of student loan debt in IRC § 108(f). Tax incentives for current expenses include the Hope and Lifetime Learning Credits in IRC § 25A, the above-the-line deduction for qualified tuition and related deductions in IRC § 222, the income exclusion for qualified scholarships in IRC § 117, and the income exclusion for employer education assistance programs in IRC § 127. Tax incentives for future education expenses include the exclusion of interest income from U.S. Savings Bonds used to pay education tuition and fees in IRC § 135, the income exclusion for early distributions to pay qualified higher education expenses from Roth IRAs in IRC § 408A, Qualified Tuition Programs in IRC § 529, and Coverdell Education Savings Accounts in IRC § 530.

¹⁸ Types of retirement plans available under the Internal Revenue Code include traditional IRAs, nondeductible IRAs, nonworking spousal IRAs, Roth IRAs, rollover IRAs, Savings Incentive Match Plan for Employees (SIMPLE) IRAs, IRC § 401(k) plans, profit-sharing plans, money purchase plans, employer-funded defined benefit plans for private employers, Simplified Employee Pensions (SEPs), Salary Reduction Simplified Employee Pension Plans (SARSEPs), SIMPLE 401(k) plans used by small employers, IRC § 403(b) tax-sheltered annuity plans for IRC § 501(c)(3) organizations and public schools, IRC § 414(d) governmental plans, and IRC § 457(b) deferred compensation plans for state and local governments.

¹⁹ This report contains legislative recommendations to streamline the multitude of education and retirement incentives. See Legislative Recommendation, *Simplify and Streamline Education Tax Incentives*, and Legislative Recommendation, *Simplify and Streamline Retirement Savings Tax Incentives*, *infra*. For more detailed recommendations proposed in a prior report, see National Taxpayer Advocate 2004 Annual Report to Congress 403-22 (Key Legislative Recommendation, *Simplification of Provisions to Encourage Education*) and National Taxpayer Advocate 2004 Annual Report to Congress 423-32 (Key Legislative Recommendation, *Simplification of Provisions to Encourage Retirement Savings*).

²⁰ Congress acted after learning that 155 taxpayers with adjusted gross incomes above \$200,000 had paid no federal income tax for the 1966 tax year. See *The 1969 Economic Report of the President: Hearings Before the Joint Economic Comm.*, 91st Cong., pt. 1, p. 46 (1969) (statement of Joseph W. Barr, Secretary of the Treasury). The forerunner of the AMT was an "add-on" minimum tax enacted in 1969.

²¹ The AMT rules are contained in IRC §§ 55-59.

size or residing in a high-tax state.²² Few people think of having children or living in a high-tax state as a tax avoidance maneuver, but under the unique logic of the AMT, that is how those actions are treated. Yet government has become so dependent on AMT revenue that Congress to date has been unwilling to make permanent changes in law to curtail the AMT, and it is not likely that such changes will be made outside the context of major tax reform.²³

- **Tax Consequences of Mortgage Foreclosures and Canceled Debts.** Most financially distressed individuals who lose their homes to foreclosure or cannot pay off their car loans, credit card balances, student loans, or medical bills probably do not realize that their delinquency may increase their tax liabilities, but it often does. If a creditor writes off a debt, the tax code generally treats the amount of the canceled debt as taxable income to the debtor.²⁴ Congress has carved out a number of exclusions, including a recently enacted exclusion to help homeowners whose mortgage debts are canceled when their houses are foreclosed upon and sold.²⁵ However, taxpayers do not receive the benefit of these exclusions automatically. A taxpayer must file Form 982, *Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)*, to claim an exclusion. Form 982 is extremely complex, and very few taxpayers or preparers are familiar with it. The IRS estimates that it takes business taxpayers ten hours and 43 minutes to complete the form,²⁶ and the form is not included in many tax software packages available to taxpayers.

IRS data shows that approximately two million Forms 1099-C, *Cancellation of Debt*, are issued to taxpayers each year reporting canceled debts.²⁷ The National Taxpayer Advocate estimates that tens of thousands and possibly hundreds of thousands of taxpayers who qualify to exclude canceled debts from gross income

²² See Tax Policy Center, *Tax Facts: AMT Preference Items 2002, 2004-2006* (citing unpublished tabulations from the Office of Tax Analysis, Department of the Treasury), at http://www.taxpolicycenter.org/taxfacts/Content/PDF/amt_preference.pdf. With respect to personal exemptions, the AMT disallows the personal exemptions that are allowed under the regular tax rules to reflect the additional costs of maintaining a household and raising a family. With respect to state and local taxes, the AMT disallows the deduction for the payment of state and local income, sales, and property taxes that taxpayers are allowed to claim under the regular tax rules to reduce "double taxation" at the federal and state levels on the same income.

²³ This report contains a legislative recommendation to repeal the AMT. See Legislative Recommendation, *Repeal the Alternative Minimum Tax for Individuals*, *infra*. The National Taxpayer Advocate has repeatedly identified the AMT as a serious problem for taxpayers and has recommended its repeal in prior reports and congressional testimony. See National Taxpayer Advocate 2006 Annual Report to Congress 3-5 (Most Serious Problem, *Alternative Minimum Tax for Individuals*); National Taxpayer Advocate 2004 Annual Report to Congress 383-85 (Key Legislative Recommendation, *Alternative Minimum Tax*); National Taxpayer Advocate 2003 Annual Report to Congress 5-19 (Most Serious Problem, *Alternative Minimum Tax for Individuals*); National Taxpayer Advocate 2001 Annual Report to Congress 166-77 (Key Legislative Recommendation, *Alternative Minimum Tax for Individuals*); see also *Alternative Minimum Tax: Hearing Before the Subcomm. on Select Revenue Measures of the House Comm. on Ways & Means* (Mar. 7, 2007) (statement of Nina E. Olson, National Taxpayer Advocate); *Blowing the Cover on the Stealth Tax: Exposing the Individual AMT: Hearing Before the Subcomm. on Taxation and IRS Oversight of the Senate Comm. on Finance* (May 23, 2005) (statement of Nina E. Olson, National Taxpayer Advocate).

²⁴ IRC § 61(a)(12).

²⁵ IRC § 108(a)(1).

²⁶ The IRS does not provide a separate estimate of the amount of time individual taxpayers spend completing Form 982.

²⁷ IRS Document 6961, Table 2 (showing that the IRS expects to receive about 1.9 million Forms 1099-C in 2008 and about 2.1 million Forms 1099-C in 2009).

do not file Form 982 to claim allowable exclusions.²⁸ Instead, some of these taxpayers unnecessarily include the amount of the canceled debt in gross income, and other taxpayers who fail to include it unnecessarily face IRS examinations and tax assessments.²⁹

- **Earned Income Tax Credit (EITC) Complexity.** About 22 million low income taxpayers claim the EITC each year.³⁰ The eligibility requirements and computations are complex, yet EITC recipients are relatively less able to understand complex rules and less likely to speak English as their primary language, creating a recipe for confusion.³¹ EITC complexity leads to improper claims by taxpayers – some intentional but many inadvertent – and to improper denials by the IRS. A 2004 TAS study surveyed cases in which the IRS denied an EITC claim on audit but the taxpayer asked the IRS to reconsider its findings. Despite the initial IRS denials, the study found that taxpayers ultimately obtained some or all of the EITC amount they had claimed on their returns in 43 percent of the cases (and they received, on average, 94 percent of the amount they had originally claimed).³²

Another window into EITC complexity: One might expect that low income taxpayers would be less likely to need return preparers because their sources of income are often limited to wages and perhaps interest income, yet 72.5 percent of taxpayers who claim the EITC use tax preparers.³³

- **Proliferating Tax Sunsets.** The tax code contains more than 100 provisions that are temporary and set to expire soon, up from about 21 in 1992. Tax benefits have increasingly been enacted for a limited number of years in order to reduce their cost for budget-scoring purposes. Although most such benefits are periodically renewed, some are not. For example, the AMT patch and the deductions for state and local taxes and for tuition and fees paid to a post-secondary institution are generally renewed for one or two years at a time, but the extensions are not guaranteed and the amount of the AMT patch is generally changed with each renewal. If taxpayers do not know whether

²⁸ This report identifies the tax treatment of canceled debts as one of the most serious problems facing taxpayers and contains a legislative recommendation designed to ensure that more taxpayers who are entitled to exclusions are able to obtain them. See Most Serious Problem, *Understanding and Reporting the Tax Consequences of Cancellation of Debt Income*, and Legislative Recommendation, *Simplify the Tax Treatment of Cancellation of Debt Income*, *infra*. The National Taxpayer Advocate also identified the tax treatment of canceled debts as a serious problem in her 2007 report. See National Taxpayer Advocate 2007 Annual Report to Congress 13-34 (Most Serious Problem, *Tax Consequences of Cancellation of Debt Income*).

²⁹ The IRS receives Forms 1099-C, *Cancellation of Debt*, from lenders reporting the amount of each canceled debt. The IRS document-matching program compares each Form 1099-C it receives against the tax return of the taxpayer with the same taxpayer identification number. If a canceled debt is reported to the IRS on Form 1099-C and the amount is not reported on the taxpayer's return, the discrepancy will be flagged and the taxpayer may face IRS examination and tax assessment.

³⁰ IRS Compliance Data Warehouse, Individual Returns Transaction File (Tax Year 2006).

³¹ This report contains a recommendation to restructure and simplify the family status provisions in the Code, including the EITC. See Legislative Recommendation, *Simplify the Family Status Provisions*, *infra*. For a previous recommendation to simplify the family status provisions in the Internal Revenue Code, see National Taxpayer Advocate 2005 Annual Report to Congress 397-406 (Key Legislative Recommendation, *Tax Reform for Families: A Common Sense Approach*).

³² National Taxpayer Advocate 2004 Annual Report to Congress, vol. 2 (Research Report, *Earned Income Tax Credit (EITC) Audit Reconsideration Study*).

³³ IRS Compliance Data Warehouse, Individual Returns Transaction File (Tax Year 2006).

a tax benefit will remain in the Code, the incentive is less likely to influence their decision-making, thereby undermining its purpose. The uncertainty associated with an expiring tax benefit also makes it difficult for taxpayers to estimate their tax liabilities and pay the correct amount of estimated tax, potentially subjecting them to penalties and causing disillusionment with the tax system.³⁴

- **Phase-out Complexity.** More than half of all individual income tax returns filed each year are affected by the phase-out of certain tax benefits. A common phase-out relates to the deduction allowed for personal exemptions. For example, a married couple with two minor children is generally allowed to claim four personal exemptions if they file a joint return, with each deduction worth \$3,500 (\$14,000 in the aggregate) in tax year 2008.³⁵ If the family's adjusted gross income (AGI) exceeds a certain threshold, however, the exemption amount is phased out at a rate of two percentage points for each additional \$2,500 (or fraction thereof) of income. Thus, under permanent law, the benefits of the personal exemptions would fully phase out over a \$125,000 income range. But under a temporary provision that will sunset after 2009, the phase-out is capped at one-third of the exemption amount. Thus, the phase-out may not reduce the exemption amount below \$2,333 per family member (\$9,332 in the aggregate).³⁶ This computation is not obvious to the average taxpayer, and as noted, there are about 100 phase-outs that operate in this manner. Like tax sunsets, phase-outs are largely used to reduce the cost of tax provisions for budget-scoring purposes. However, phase-outs add substantial complexity and create marginal "rate bubbles" – income ranges within which an additional dollar of income earned by a relatively low income taxpayer is taxed at a higher rate than an additional dollar of income earned by a relatively high income taxpayer. This inequity is largely hidden by the complexity of the phase-out calculations.³⁷
- **Unclaimed Telephone Excise Tax Refunds.** In 2006, taxpayers were permitted to claim a one-time tax credit for telephone excise taxes that the government concluded it had improperly collected in the past.³⁸ The amount of the credit ranged from \$30 to \$60, depending on the number of personal exemptions the taxpayer was entitled to claim on the return.³⁹ No substantiation was required unless a taxpayer claimed a larger amount, so this credit was essentially free money. Yet IRS data show that 28 percent of eligible taxpayers (37 million out of 133.2 million) did not claim the credit.⁴⁰ The only

³⁴ This report contains a legislative recommendation to reduce the procedural incentives for Congress to enact tax sunsets. See Legislative Recommendation, *Eliminate (or Reduce) Procedural Incentives for Lawmakers to Enact Tax Sunsets*, *infra*.

³⁵ IRC § 151(d).

³⁶ See IRS Form 1040 Instructions at 36 (2008).

³⁷ This report contains a legislative recommendation to reduce the number of phase-outs in the Internal Revenue Code. See Legislative Recommendation, *Eliminate (or Simplify) Phase-Outs*, *infra*. To the extent that phase-outs are intended to increase the tax burden on higher income taxpayers, the same result can be achieved by adjusting the marginal tax rates, a more straightforward approach that is simpler and avoids the problem of marginal rate bubbles.

³⁸ See IRS Notice 2006-50, 2006-1 C.B. 1141. Unlike the other examples cited in this section, the telephone excise tax refunds were authorized by the Department of the Treasury and did not involve congressional action.

³⁹ IRS News Release, *IRS Announces Standard Amounts for Telephone Tax Refunds*, IR-2006-137 (Aug. 31, 2006).

⁴⁰ IRS Office of Research, Analysis, and Statistics, Response to TAS Information Request (Dec. 17, 2008).

plausible explanation is that taxpayers missed the credit because of the complexity of the law and the tax forms.⁴¹

- **Burgeoning Penalties.** The number of civil penalties in the Code has grown from about 14 in 1954 to approximately 130 today.⁴² Penalties should be designed to enhance voluntary tax compliance, but they also should be reasonable and can only influence future taxpayer behavior if taxpayers are aware that the penalties exist. As a consequence of “penalty creep,” some penalties are obscure or unduly harsh. For example, Section 6707A of the Code, which was enacted in 2004 to combat tax shelters, imposes a minimum penalty of \$100,000 per individual per year and \$200,000 per entity per year for a failure to disclose a “listed transaction.”⁴³ The penalty reflects strict liability – the IRS must impose the penalty even if the taxpayer derived little or no tax benefit, even if the taxpayer had no reason to know the transaction was questionable, and even if the transaction was not “listed” until years after the taxpayer’s return was filed and the transaction was complete. Taxpayers cannot challenge this penalty in court. As a result, an individual who does business as an S corporation and who entered into a transaction that he did not know was listed and that provided little or no tax savings would face an automatic \$300,000 penalty per year. In addition, the usual three-year statute of limitations on tax assessments does not apply in the case of listed transactions,⁴⁴ so if the taxpayer entered into a listed transaction that was reflected on his return for ten years, he would face an automatic \$3 million penalty overall. TAS has about 40 cases in its inventory involving non-rescindable Section 6707A penalties,⁴⁵ and we understand the IRS is considering this penalty in hundreds of additional cases. If Congress does not change the law quickly, this penalty may bankrupt middle-class families that had no intention of entering into a tax shelter.⁴⁶
- **Small Business Burdens.** Small business taxpayers face a particularly bewildering array of laws, including a patchwork set of rules that governs the depreciation of equipment, numerous and overlapping filing requirements for employment taxes, and a vague set of factors that govern the classification of workers as either employees or independent contractors and that can keep businesses and the IRS battling each other for years with no obvious “correct” answer.⁴⁷

⁴¹ One might assume that tax preparers would know about the credit. Yet IRS data show that 16 percent of practitioner-prepared returns failed to claim the credit as well. IRS Office of Research, Analysis, and Statistics, Response to TAS Information Request (Dec. 17, 2008).

⁴² This estimate excludes criminal penalties and certain excise tax penalties. For a list of penalties and additional information about how the list was compiled, see *A Framework for Reforming the Penalty Regime*, in volume 2 of this report.

⁴³ IRC § 6707A.

⁴⁴ IRC § 6501(c)(10).

⁴⁵ TAS, Taxpayer Advocate Management Information System (keyword and history search performed in December 2008).

⁴⁶ This report contains a legislative recommendation to modify IRC § 6707A to mitigate the harsh results the penalty can produce. See Legislative Recommendation, *Modify Internal Revenue Code § 6707A to Ameliorate Unconscionable Impact*, *infra*. This report also contains a comprehensive set of recommendations to simplify the penalty provisions of the Code overall. See Legislative Recommendation, *Reforming the Penalty Regime*, *infra*, and an accompanying study, *A Framework for Reforming the Penalty Regime*, in volume 2 of this report.

⁴⁷ This report contains a legislative recommendation to simplify worker classification determinations. See Legislative Recommendation, *Worker Classification*, *infra*. In addition, the National Taxpayer Advocate previously proposed a package of legislative recommendations designed reduce the tax burdens on small business. See National Taxpayer Advocate 2004 Annual Report to Congress 386-402 (Key Legislative Recommendation, *Small Business Burdens*).

Recommendation

The National Taxpayer Advocate recommends that Congress substantially simplify the Internal Revenue Code.

America's taxpayers deserve a simpler and less burdensome tax system that enables them to comply with their tax obligations expeditiously – not one that requires them to spend 7.6 billion hours filing their returns every year, thereby consuming the equivalent of 3.8 million full-time workers. Taxpayers deserve a tax system that enables them to prepare their returns cheaply – not one that requires them to pay practitioners for help, as nearly 61 percent of individual taxpayers and 74 percent of unincorporated business taxpayers do today. Taxpayers deserve more clarity about their rights and obligations under the tax code in the form of a Taxpayer Bill of Rights. Taxpayers deserve a tax system that enables them to make wise choices about education and retirement savings – without having to wade through the details of at least 27 tax-favored alternatives. Taxpayers deserve a tax system that enables them to compute their tax liabilities fairly and transparently – not one that effectively requires them to compute their tax liability under two sets of rules (the regular rules and the AMT rules) and often to pay more tax under the AMT regime simply because they engaged in the “tax-avoidance behavior” of having children or living in a high-tax state.

Taxpayers deserve better than a tax system so complex that honest taxpayers often overpay while sophisticated taxpayers often find loopholes, and so complex that 37 million taxpayers could fail to claim a tax credit because they did not know it was available. Taxpayers deserve better than a tax system that gives financially distressed taxpayers a tax break when they default on their mortgage or other consumer debts and the debts are cancelled – but then makes claiming the tax break so burdensome that many and probably most eligible taxpayers do not claim it. Low income taxpayers deserve a simpler set of rules by which determine EITC eligibility.

Taxpayers deserve certainty about which provisions will remain in the tax code so they can plan accordingly – without having to regularly grapple with uncertainty because more than 100 provisions sunset regularly and may or may not be renewed or modified. Taxpayers deserve to understand exactly how their tax liabilities are computed – not provisions like phase-outs, which make the computations seem impenetrable and subject lower income taxpayers to higher marginal tax rates than upper income taxpayers. Taxpayers deserve simplicity and proportionality in the penalty rules; it is not reasonable that a taxpayer who claims minimal or even no tax savings may face a mandatory, non-waivable \$300,000 penalty per year for failing to file a disclosure form that he may not even know he is required to file.

These are a few aspects of a system that requires pervasive reform. The good news is that there is widespread agreement on the need for tax simplification. The National Taxpayer Advocate has previously identified the complexity of the tax code as the most serious

problem facing taxpayers,⁴⁸ members of Congress regularly complain about the complexity of the Code, and in 2005, an advisory panel created by President Bush to study the federal tax system delivered a detailed report with substantive recommendations.⁴⁹ The bad news is that despite widespread agreement on the need for tax simplification, there has not yet been sustained action to make it happen.

To assist the Congress in pursuing tax simplification, we offer a number of proposals in the Legislative Recommendations section of this report, including recommendations to streamline the education and retirement savings incentives, repeal the AMT, allow taxpayers to exclude modest amounts of canceled debts from income without filing Form 982, simplify the family status provisions of the Code, reduce tax sunset and phase-out provisions, and revise the penalty structure.

The National Taxpayer Advocate continues to view tax simplification as essential and urges the new administration and the new Congress to make it a priority. In doing so, she recommends that emphasis be given to six core principles:

1. The tax system should not “entrap” taxpayers.
2. The tax laws should be simple enough so that most taxpayers can prepare their own returns without professional help, simple enough so that taxpayers can compute their tax liabilities on a single form, and simple enough so that IRS telephone assistants can fully and accurately answer taxpayers’ questions.
3. The tax laws should anticipate the largest areas of noncompliance and minimize the opportunities for such noncompliance.
4. The tax laws should provide some choices, but not too many choices.
5. Where the tax laws provide for refundable credits, they should be designed in a way that is administrable; and
6. The tax system should incorporate a periodic review of the tax code – in short, a sanity check.⁵⁰

⁴⁸ See National Taxpayer Advocate 2004 Annual Report to Congress 2-7 (Most Serious Problem, *The Confounding Complexity of the Tax Code*).

⁴⁹ Report of the President’s Advisory Panel on Federal Tax Reform, *Simple, Fair, and Pro-Growth: Proposals to Fix America’s Tax System* (Nov. 2005), at www.taxreformpanel.gov.

⁵⁰ The National Taxpayer Advocate previously articulated these principles in a presentation to the President’s Advisory Panel on Federal Tax Reform. See Public Meeting of the President’s Advisory Panel on Federal Tax Reform (Mar. 3, 2005) (statement of Nina E. Olson, National Taxpayer Advocate), at <http://www.taxreformpanel.gov/meetings/meeting-03032005.shtml>. For more detail, see National Taxpayer Advocate 2005 Annual Report to Congress 375-80 (Key Legislative Recommendation, *A Taxpayer-Centric Approach to Tax Reform*).

TABLE 1.1.1, Hours Required to Prepare Tax Returns and Information Reporting Documents

Type of Return	Number (in millions)	Average Total Hours/Minutes	Total Hours (in millions)
Tax Returns			
Individual Income Tax (1040)	134.6	26.40	3,553.44
Estate and Trust Income Tax (1041)	3.6	116.27	418.56
Estate and Trust Est'd Tax (1041-ES)	0.7	3.28	2.30
Partnerships (1065)	3.0	126.75	380.25
Electing Large Partnerships (1065-B)	0.0001	113.95	0.01
S Corporations (1120S)	3.9	145.97	569.27
Corporations (1120)	1.8	193.77	348.78
1066	0.03	54.25	1.63
1120-A	0.2	115.08	23.02
1120-C	0.001	107.60	0.11
1120-F	0.02	222.45	4.45
1120-FSC	0.006	152.90	0.92
1120-H	0.2	32.62	6.52
1120-L	0.001	178.20	0.18
1120-PC	0.006	212.33	1.27
1120-POL	0.005	36.62	0.18
1120-REIT	0.01	130.37	1.30
1120-RIC	0.009	118.15	1.06
Estate Tax (706)	0.5	7.75	3.88
Gift Tax (709)	0.2	5.77	1.15
Employment Tax (940 series)	6.0	37.32	223.92
Employment Tax (941 series)	24.0	15.40	369.60
Tax-Exempt Organizations (990)	0.4	152.33	60.93
Excise Tax (720) (data from 10/2008)	0.1	28.67	2.87
Form 1040X (data from 11/07/2006)	3.7	3.50	12.95
Tax Returns Subtotal			5,988.56

Information Reporting	Number (in millions)	Average Total Hours/Minutes	Total Hours (in millions)
W-2	243.3	0.50	121.65
K-1 (1041)	3.5	12.47	43.63
K-1 (1065)	17.8	45.87	816.49
K-1 (1120S)	6.7	42.03	281.62
1096	5.6	0.22	1.21
1098	105.2	0.12	12.27
1098-C	0.2	0.25	0.05
1098-E	18.2	0.12	2.12
1098-T	24.2	0.22	5.24
1099-A	0.5	0.15	0.08
1099-B	538.1	0.33	179.37
1099-C	1.7	0.17	0.28
1099-CAP	0.002	0.18	0.00
1099-DIV	103	0.30	30.90
1099-G	72.7	0.18	13.33
1099-H	0.02	0.30	0.01
1099-INT	231.7	0.22	50.20
1099-LTC	0.2	0.22	0.04
1099-MISC	83.5	0.27	22.27
1099-OID	4.1	0.20	0.82
1099-PATR	1.6	0.25	0.40
1099-Q	1.0	0.18	0.18
1099-R	76.3	0.30	22.89
1099-S	4.2	0.13	0.56
1099-SA	1.0	0.13	0.13
5498	108.5	0.20	21.70
5498-ESA	0.8	0.12	0.09
5498-SA	1.4	0.17	0.23
W2-G	9.7	0.30	2.91
Information Returns Subtotal			1,630.69
Grand Total			7,619.25

Except as noted, all data is for Tax Year 2006. Sources: IRS Form Instructions for Tax Year 2006; IRS Fiscal Year 2007 Data Book; Document 6961 (Calendar Year 2007 Projections); Document 6149 (Calendar Year 2007 Projections); and Document 6186 (Calendar Year 2007 Projections).

MSP
#2**The IRS Needs to More Fully Consider the Impact of Collection
Enforcement Actions on Taxpayers Experiencing Economic Difficulties****Responsible Officials**

Richard E. Byrd, Jr., Commissioner, Wage and Investment Division
Chris Wagner, Commissioner, Small Business/Self-Employed Division

Definition of Problem

For the last eight years, the National Taxpayer Advocate has criticized the IRS for its continuing failure to fully and properly utilize alternatives to collection enforcement actions.¹ In light of the recent downturn in the United States economy, it is imperative for the IRS to consider the circumstances of taxpayers facing economic hardship before initiating enforcement actions. In today's economic environment, taxpayers who previously were able to pay their taxes find themselves unemployed, behind on housing payments, and unable to meet their basic living expenses. Thus, the ranks of taxpayers who are unable to meet their tax obligations will swell.

The IRS is entrusted with a wide variety of powerful enforcement tools (*e.g.*, federal tax liens, levies, property seizures, suits to foreclose the federal tax lien, and summonses) to collect delinquent tax revenue. The National Taxpayer Advocate recognizes the need for appropriate enforcement action against uncooperative or evasive taxpayers. However, when the IRS too quickly initiates "hard line" enforcement, regardless of the taxpayer's level of cooperation and compliance, and without careful consideration of the facts and circumstances and the full impact of these actions, the end result will likely be undue economic hardship on the taxpayer. This might ultimately lessen the ability of the taxpayer to resolve the debt and remain in compliance with future tax obligations.

The National Taxpayer Advocate has identified the following concerns with the IRS's current collection strategy, which, if left unchecked, will create far more problems than it resolves – worsening the financial woes of many American taxpayers, while recovering

¹ See National Taxpayer Advocate 2007 Annual Report to Congress 374-87 (Most Serious Problem, *Offers in Compromise*), 388-94 (Most Serious Problem, *Inadequate Training and Communication Regarding Effective Tax Administration Offers*), 432-47 (Status Update, *IRS Collection Strategy*); National Taxpayer Advocate 2006 Annual Report to Congress 62-82 (Most Serious Problem, *Early Intervention in IRS Collection Cases*), 83-109 (Most Serious Problem, *IRS Collection Payment Alternatives*), 507-19 (Key Legislative Recommendation, *Improve Offer in Compromise Program Accessibility*); National Taxpayer Advocate 2005 Annual Report to Congress 270-91 (Most Serious Problem, *Allowable Living Standards for Collection Decisions*); National Taxpayer Advocate 2004 Annual Report to Congress 226-45 (Most Serious Problem, *IRS Collection Strategy*), 311-41 (Most Serious Problem, *Offers in Compromise*), 433-50 (Key Legislative Recommendation, *Offers in Compromise: Effective Tax Administration*); National Taxpayer Advocate 2003 Annual Report to Congress 99-112 (Most Serious Problem, *Offers in Compromise*); National Taxpayer Advocate 2002 Annual Report to Congress 15-24 (Most Serious Problem, *Processing of Offer in Compromise Cases*); National Taxpayer Advocate 2001 Annual Report to Congress 202-15 (Most Serious Problem, *IRS Collection Procedures*).

much less revenue than the IRS could potentially realize through more cooperative payment arrangements:

- Current IRS enforcement initiatives do not reflect a proper balance between service and enforcement;
- Increased enforcement actions such as liens and levies do not necessarily translate into increased collection revenue;²
- Current IRS guidance provides little direction to prevent undue economic hardship for affected taxpayers; and
- The IRS has multiple collection alternatives at its disposal, such as installment agreements (IA) and offers in compromise (OIC), but fails to properly utilize them. For example, the number of *accepted* offers has decreased by over 72 percent from fiscal year (FY) 2001 to FY 2008.³

Under current economic conditions, it is reasonable to expect taxpayers to experience other financial stresses, such as foreclosure on a home, unemployment, or even bankruptcy. Recent reports indicate bankruptcy filings have now increased by 29 percent from FY 2007 to FY 2008,⁴ foreclosures have risen by 71 percent in the third quarter of 2008 compared to the same period in 2007,⁵ and the nation's unemployment rate now stands at six percent.⁶ Thus, if there was ever a time for the IRS to reevaluate its collection tactics, this would be it. An approach that balances the need for enforcement with an equal concern for customer service and taxpayer rights is more essential now than ever.

Analysis of Problem

Background

Congress Has a Long History of Emphasizing the Need for Restraint in the Use of IRS Collection Tools.

Section 6331(a) of the Internal Revenue Code (IRC) authorizes the IRS to collect taxes “by levy upon all property and rights to property” belonging to a person who “neglects or refuses to pay” any tax, and IRC § 6331(b) defines “levy” as including “the power of distraint and seizure by any means.” However, over the past 30 years, Congress has enacted several

² The number of levies issued by the IRS increased by 1,608 percent (from 220,000 to roughly 3.76 million) from FY 2000 to FY 2007. However, the increase in total collection yield during this period was only slightly less than 45 percent. Moreover, from 1998 to 2000, IRS levies *decreased* from over 2.5 million to 220,000, yet collection yield during this period actually *increased*. From FY 2001 to FY 2002, the use of IRS levies almost doubled (increased by 91 percent), yet collection yield increased by only two percent. Our analysis is based on an IRS study: IRS, Small Business/Self-Employed Division (SB/SE) Research, “*Liens, Levies, Seizures, and Total Yield: 10 Year Filing Trend*,” (Aug. 19, 2005) and then supplemented with data from various SB/SE Collection Activity Reports and Statistics of Income (SOI) Data Book information for FY 1999 to FY 2007.

³ SB/SE Collection Activity Report, *NO-5000-108* (FY 2001 - FY 2008). In FY 2001, the IRS accepted 38,643 OICs compared to 10,677 in FY 2008.

⁴ See United States Bankruptcy Court, at http://www.uscourts.gov/Press_Releases/2008/bankrupt_newstat_ftable_mar2008.xls (last visited Nov. 14, 2008).

⁵ Alan Zibel, *US Foreclosure filings up 71 percent in 3Q*, Associated Press, Nov. 6, 2008.

⁶ See United States Bureau of Labor Statistics, at <http://www.bls.gov> (last visited Nov. 14, 2008).

key pieces of legislation to properly restrain the IRS's awesome collection powers. Most recently, the IRS Restructuring and Reform Act of 1998 (RRA 98) had a profound impact on the IRS's approach to enforcement actions.⁷ This important legislation placed a renewed emphasis on customer service and taxpayer rights. For example, RRA 98 significantly changed the management and oversight structure of the IRS. It also strengthened and enhanced the rights and protections applicable to taxpayers, such as:

- Establishing collection due process (CDP) hearing rights;⁸
- Requiring that the IRS receive the written approval of a U.S. District Court judge or magistrate prior to seizure of a principal residence;⁹
- Requiring an administrative review and appeal of any rejected OIC or IA;¹⁰ and
- Realigning the IRS's method of measuring its employees' performance to encourage and achieve an even-handed approach to tax administration, particularly as it relates to enforcement activities.¹¹

Over the years, the IRS has attempted to emphasize the need for an approach to administering the tax laws with proper balance between enforcement and service. IRS policies involving the collection of delinquent taxes include:

- Policy Statement P-5-1, which states, "The Service is committed to educating and assisting taxpayers who make a good faith effort to comply... In determining the appropriate enforcement action to take, factors such as the taxpayer's delinquency history should be considered. Promotion of long-term voluntary compliance is a basic goal of the Service, and in reaching this goal, the Service will be cognizant not only of taxpayers' obligations under our system of taxation but also of their rights."¹²
- Policy Statement P-5-34, which states, "The facts of a case and alternative collection methods must be thoroughly considered before determining seizure of personal or business assets is appropriate. Taxpayer rights must be respected. The taxpayer's plan to resolve past due taxes while staying current with all future taxes will be considered. Opposing considerations must be carefully weighed, and the official responsible for making the decision to seize must be satisfied that other efforts have been made to collect the delinquent taxes without seizing. Alternatives to seizure and sale may include

⁷ The Internal Revenue Service Reform and Restructuring Act of 1998 (RRA 98), Pub. L. No. 105-206, 112 Stat. 685 (1998).

⁸ RRA 98 § 3401(a) adding IRC § 6320 which allows a taxpayer the right to a CDP hearing within five days after filing of the first notice of federal tax lien with respect to a tax liability; RRA 98 § 3401(b) adding IRC § 6330 which allows a taxpayer the right to a CDP hearing prior to the first levy (except in special or jeopardy situations).

⁹ RRA 98 § 3445(a) (amending IRC § 6334(a)(13)); RRA 98 § 3445(b) (amending IRC § 6334(e)).

¹⁰ RRA 98 § 3462(c)(1) and (c)(2) (adding IRC §§ 7122(d) and 6159(e), respectively).

¹¹ For a more detailed discussion of IRS measures, see Most Serious Problem, *Customer Service Within Compliance*, *infra*.

¹² Internal Revenue Manual (IRM) 1.2.14.1.1 (Aug. 18, 1994).

an installment agreement, offer in compromise, notice of levy, or lien foreclosure. Seizure action is usually the last option in the collection process.”¹³

- Policy Statement P-5-2, which states, “Case resolution, including actions such as lien, levy seizure of assets, installment agreement, offer in compromise, substitute for return, summons, and IRC 6020(b), are important elements of an effective compliance program. When it is appropriate to take such actions, it should be done promptly, yet judiciously, and based on the facts of each case.”¹⁴

Moreover, the IRS revamped its procedural guidance to require collection employees (*i.e.*, revenue officers) to determine whether a taxpayer presents a “will pay,” “can’t pay,” or “won’t pay” situation when a seizure is contemplated. The guidance further stated, “Generally, seizures should be limited to those taxpayers who represent true ‘won’t pay’ situations.”¹⁵

IRS Enforcement Initiatives Do Not Reflect a Proper Balance Between Service and Enforcement.

In recent years, the tone of communications from the IRS Commissioner’s office began to drift from the guidance drafted after RRA 98, by focusing more on enforcement than service. As former Commissioner Mark Everson noted in a 2004 speech to the Internal Revenue Service Advisory Council (IRSAC), “The word ‘enforce’ is one that people didn’t even like to use when I turned up here. That’s not the case anymore.”¹⁶ Not surprisingly, the IRS’s use of enforcement tools has significantly increased each year since the lows in the years following the implementation of RRA 98. For example,

- Levies have increased by 1,608 percent (220,000 issued in FY 2000 compared to 3,757,190 in FY 2007);¹⁷
- Notice of federal tax lien (NFTL) filings have increased by 308 percent (167,867 filed in FY 1999 compared to 683,659 in FY 2007);¹⁸ and
- Seizures have increased by 320 percent (161 conducted in FY 1999 compared to 676 in FY 2007).¹⁹

¹³ IRM 1.2.14.1.8 (2) (May 28, 1999).

¹⁴ IRM 1.2.14.1.2 (Feb. 17, 2000).

¹⁵ IRM 5.10.1.4 (Oct. 1, 2004) provides a detailed description of these three categories.

¹⁶ Heidi Glenn and Warren Rojas, *Everson Delays EITC Certification Effort, Backs Other IRSAC Ideas*, 105 Tax Notes 905 (2004).

¹⁷ SB/SE Collection Activity Reports and SOI Data Book information for FY 2000 to FY 2007. See National Taxpayer Advocate 2006 Annual Report to Congress 110-29. Note: For the purpose of our analysis, 2008 data was not used due to the impact of the 2008 economic stimulus payment (ESP) on IRS collection activities. The IRS was forced to shift many of its Automated Collection System (ACS) resources away from normal collection work for several months to focus on answering ESP questions.

¹⁸ Various SB/SE Collection Activity Reports and SOI Data Book information for FY 1999 to FY 2007. Note that the FY 2007 figures were 79 percent higher than the FY 1998 figures (382,755).

¹⁹ SB/SE Collection Activity Report, *Seizure Disposition Reports, NO-5000-33*, and SOI Data Book information for FY 1999 to FY 2007. While the current number of seizures represents only a small fraction of the FY 1998 total (2,259), the significant increase in recent years bears watching.

These increases reflect areas of emphasis within the IRS Collection program in recent years. For example, the Small Business/Self-Employed (SB/SE) Division's FY 2008 Collection Program Letter directed priority attention to "increase the timely pursuit and appropriate application of complex enforcement tools such as seizures, nominee liens, transferee assessments, and suits to protect the government's interest in liabilities owed."²⁰ Accordingly, the IRS developed and delivered specialized training to its collection employees on these subjects in FY 2007 and early FY 2008. Training sessions for employees working bankruptcy cases placed a great deal of emphasis on subjects such as pursuing collection actions against exempt, excluded, or abandoned assets at the conclusion of a Chapter 7 bankruptcy proceeding,²¹ and initiating suits to enforce the federal tax lien in lieu of conducting an administrative seizure.²²

The National Taxpayer Advocate has maintained a vigilant watch on these trends and devoted a large portion of her 2006 and 2007 Annual Reports to Congress to the IRS's collection strategy and programs.²³ In response to the issues raised and recommendations proposed in these reports, the IRS agreed to collaborate with TAS on several collection task forces. TAS and the IRS established five such working groups in February 2008 to address the IRS's application of allowable living expense (ALE) standards, collection payment alternatives (OIC and IA), the levy program, and early intervention techniques.²⁴ More recently, the IRS Chief of Collection agreed to collaborate with the National Taxpayer Advocate to develop training for collection employees on taxpayer rights and the proper use of collection alternatives.

While these joint task forces are a step in the right direction, the National Taxpayer Advocate has still noted an emerging trend in TAS cases involving collection issues. TAS is now seeing an IRS inclination to use enforcement very early in the case, rather than as a last resort. Local TAS offices and practitioners confirm the Collection function is more frequently requiring taxpayers to liquidate equity in assets, including personal residences and retirement accounts, to pay delinquent tax bills or the IRS will use its powerful collection

²⁰ SB/SE, *SB/SE Collection Program Letter FY 2008*, 6.

²¹ U.S. Bankruptcy Code § 541(a)(1) provides that when a person files a bankruptcy petition, a bankruptcy estate is created consisting of "all legal and equitable interests of the debtor in property as of the commencement of the case," except for the interests identified in subsections (b) and (c)(2). Section 541(b) excludes from the bankruptcy estate certain types of property, including interests in Individual Retirement Accounts and Qualified Tuition Programs, more commonly known as 529 plans. Section 541(c)(2) excludes from the bankruptcy estate, property which is subject to an anti-alienation provision enforceable under applicable non-bankruptcy law. The Supreme Court in *Patterson v. Shumate*, 504 U.S. 753, 759-760 (1992) held that ERISA qualified pension plans are excluded from the bankruptcy estate under this section. Additionally, the debtor is allowed to exempt certain property from the bankruptcy estate under § 522. Further, property that is considered burdensome or of inconsequential value to the estate can be abandoned as property of the estate by the trustee. As a general rule, exempt or abandoned property cannot be used to satisfy any pre-petition debts during and after the bankruptcy case, unless the liens encumbering such property survive bankruptcy which would occur only if a prepetition notice of tax lien had been filed. U.S. Bankruptcy Code § 522(c)(2)(B). Unlike exempt or abandoned property, which was initially property of the estate, excluded property never becomes part of the bankruptcy estate. As such, excluded property can be used to satisfy prepetition debts *in rem* without regard to whether a prepetition notice of federal tax lien was filed because unlike with property of the estate, liens against excluded property cannot be avoided.

²² The government uses a suit to foreclose a tax lien where there is a specific, presently available source of collection. In a foreclosure action, the Department of Justice often requests a judgment against the taxpayer.

²³ See National Taxpayer Advocate 2007 Annual Report to Congress 324-95, 432-47; National Taxpayer Advocate 2006 Annual Report to Congress 31-171.

²⁴ For a detailed discussion of the five task forces, see National Taxpayer Advocate Fiscal Year 2009 Objectives Report to Congress 39-40.

tools to do so. IRS consideration of the current economy and the hardship consequences of these actions are not evident in many of these cases. We believe the dilemma facing these taxpayers is often a “false choice” - liquidate your assets or the IRS will do it for you. As a result, we have seen an increase in the need for TAS involvement and the use of Taxpayer Assistance Orders to provide relief in these situations.²⁵

Increased Enforcement Actions Such as Liens or Levies Do Not Necessarily Translate Into Increased Collection Revenue.

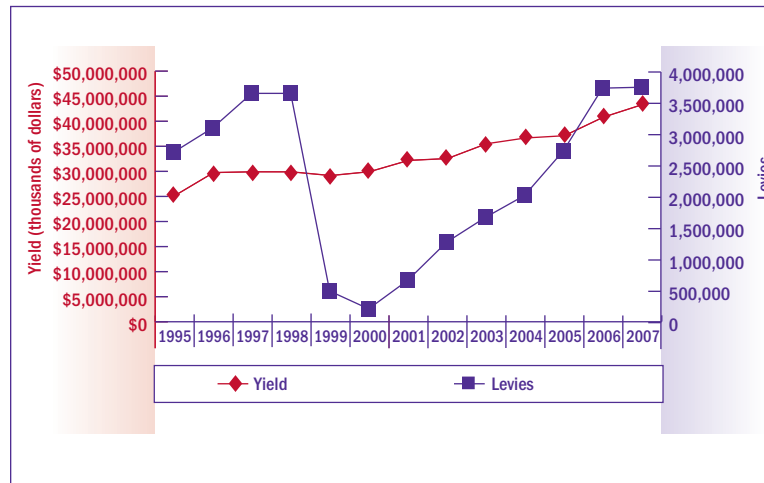
As the nation faces a period of economic decline, with a corresponding decrease in tax revenues and an increase in the federal budget deficit, it is natural for the IRS to ramp up efforts to ensure all taxpayers pay their fair share of taxes. Intuitively, it seems to follow that a significant increase in the use of the IRS’s more powerful collection tools would lead to a corresponding increase in collected revenue. Surprisingly, an analysis of data representing IRS enforcement actions and results does not support this assumption. In the years immediately following RRA 98, the use of traditional IRS collection enforcement actions fell substantially, primarily because of the need to implement the changes brought about by the new law. This decline eventually led to a perception that the IRS tax enforcement programs were underutilized and “out of balance.” *Interestingly, IRS studies have shown the total Collection yield was actually higher from FY 2000 to FY 2002 (the years when, according to many sources, IRS Collection went “out of business”) than in FY 1995 and FY 1996, the peak years for levies and seizures.*²⁶

For example, the number of levies issued by the IRS increased by 1,608 percent (from 220,000 to roughly 3.76 million) from FY 2000 to FY 2007. The increase in total collection yield during this period was only about 45 percent. An analysis of this relationship on a year-to-year basis shows no direct correlation between the volume of levies issued and the corresponding collection yield. As the following chart reveals, from FY 1998 to FY 2000, IRS levies *decreased* from over 2.5 million to 220,000. Yet, collection yield during this period actually *increased!* From FY 2001 to FY 2002, the use of IRS levies almost doubled (increased by 91 percent), yet collection yield increased by only two percent. An IRS research study has concluded that although traditional enforcement actions declined substantially post-RRA 98, “total collection yield was not dramatically impacted by RRA 98,” and actually increased in every year but one after RRA 98!²⁷

²⁵ IRC § 7811 authorizes the National Taxpayer Advocate to issue a Taxpayer Assistance Order (TAO) when a taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the tax laws are being administered if relief is not granted. See also IRM 13.1.20.2 (Dec. 15, 2007). In certain circumstances, the National Taxpayer Advocate or her delegate may issue a TAO to direct the IRS to take a specific action, cease a specific action, or refrain from taking a specific action, or to direct the IRS to review at a higher level, expedite consideration of, or reconsider a taxpayer’s case. IRM 13.1.20.3 (Dec. 15, 2007). In FY 2008, TAS issued 28 TAOs on collection-related matters. This accounts for slightly more than 41 percent of all TAOs issued.

²⁶ SB/SE Research, *Liens, Levies, Seizures, and Total Yield: 10 Year Filing Trend* (Aug. 19, 2005).

²⁷ *Id.*

CHART 1.2.1, Total Collection Yield and Levies Issued FY 1995 – FY 2007

One possible explanation for this result is that if the public perceives a more open and flexible IRS, taxpayers with collection problems might be more willing to come forward and “get right” with their government.²⁸ Another possible explanation is that the IRS filed liens and issued levies inappropriately – *i.e.*, in unproductive cases. It is clear that the IRS Collection operation did not actually go “out of business” during the post-RRA 98 years, but rather replaced its more traditional tools with new alternatives, including earlier intervention on employment tax cases and expanded use of streamlined IAs. While levy and seizure authority are important collection tools that allow the IRS to address serious incidents of non-compliance (*i.e.*, taxpayers who clearly “won’t pay”), the data indicates that expanded use – as opposed to judicious use – of these tools does not necessarily translate into tax dollars collected. Moreover, the data indicates that reasonable collection alternatives and methods may be more effective at collecting delinquent liabilities for taxpayers having trouble in paying their tax debts.

IRS Guidance Provides Little Direction to Prevent Undue Economic Hardship on Affected Taxpayers.

TAS has reviewed the IRS procedural guidance to Collection employees that governs the nature of enforcement actions, in order to identify the degree to which an overly aggressive approach to enforcement may be facilitated, or even encouraged, by system design or emphasis. In general, we have found that the Collection portions of the Internal Revenue Manual (IRM) pertaining to enforcement actions provide little or no direction to IRS employees regarding proper pre-decisional consideration of economic hardship issues. Economic hardship is derived from IRC § 6343; however, the IRM procedures provide very

²⁸ See National Taxpayer Advocate 2007 Annual Report to Congress 156-61 (Most Serious Problem, *Taxpayer Service and Behavioral Research*); National Taxpayer Advocate 2007 Annual Report to Congress vol. 2, 158-67 (*Normative and Cognitive Aspects of Tax Compliance: Literature Review and Recommendations for the IRS Regarding Individual Taxpayers*).

little actual guidance about applying this concept to actual case decisions, particularly in the areas governing enforced collection. IRM 5.19.4.4.10(j) does include an adequate explanation of economic hardship, but this guidance is for consideration *after* the IRS issues a levy, not before.

Policy Statement P-5-71 states that, “A hardship exists if the levy action prevents the taxpayer from meeting necessary living expenses. In each case a determination must be made as to whether the levy would result in actual hardship, as distinguished from mere inconvenience to the taxpayer.”²⁹ Yet, the most commonly used enforcement action — a levy of a taxpayer’s salary, wages, or bank account — is predominantly issued via automation. Thus, the IRS requires little to no human intervention to make a distinction of hardship or “mere inconvenience.”³⁰ Similarly, the IRS’s Automated Collection System’s (ACS) current process of systemically filing an NFTL on cases that are “shelved” or placed into the queue (regardless of whether the IRS made or initiated contact with the taxpayer), has the potential for further economic harm in today’s economic times.³¹ At a time when so many homes are in foreclosure, the IRS should use caution when issuing federal tax liens, which are often more damaging than bankruptcy to taxpayers’ attempts to secure credit.

Bankruptcy Does Not Always Provide a “Fresh Start” for Taxpayers with IRS-Related Debts – Even When the Tax Debts Are Discharged.

It seems that obvious economic hardship is most likely in situations where IRS enforcement actions will cause the loss of a taxpayer’s home or retirement assets. The loss of a home invariably will affect the ability of a typical taxpayer to meet today’s necessary living expenses, and in many cases, the loss of retirement assets will have a significantly negative impact on the taxpayer’s ability to meet future living expenses. Yet, consider current IRS procedures involving taxpayers who have filed for bankruptcy protection utilizing Chapter 7 of the United States Bankruptcy Code (11 USC), commonly known as a “liquidating bankruptcy.” In Chapter 7 proceedings, a debtor may claim certain property as “exempt.” The trustee cannot liquidate such property, nor can it be used to satisfy a debt, except in the case of alimony, security interests, non-dischargeable tax debts, and dischargeable taxes secured by an NFTL.³² A common asset claimed as “exempt” is the debtor’s home. Other types of property are considered “excluded” from the bankruptcy estate. Generally, “excluded” property involves retirement assets (*e.g.*, Employment Retirement Income Security Act (ERISA) qualified pension plans and Individual Retirement Accounts).³³ In these

²⁹ IRM 1.2.14.1.14 (Nov. 19, 1980).

³⁰ For a more detailed discussion of IRS levies, see National Taxpayer Advocate 2006 Annual Report to Congress 110-29.

³¹ IRM 5.19.4.5.2 (Apr. 26, 2006).

³² IRM 5.9.17.4(1) (May 16, 2008).

³³ IRM 5.9.17.4(3) (May 16, 2008). See also, Most Serious Problem, *Customer Service Issues in the IRS’s Automated Collection System (ACS)*, *infra*.

situations, the ability of debtors to retain their homes and retirement assets are a critical component of the “fresh start” concept that is a key element of the bankruptcy process.³⁴

The IRC, on the other hand, allows the IRS to pursue assets claimed as “exempt” or “excluded” in the bankruptcies, provided the prepetition tax lien encumbering those assets survived the bankruptcy even where the taxes have been discharged. Unlike exempt property where an NFTL must have been filed prepetition for a lien to survive bankruptcy, an NFTL need not be filed prepetition in order for the IRS to take collection action against excluded property, as the statutory lien under IRC § 6321 survives bankruptcy and is sufficient to allow the IRS to collect the discharged taxes from excluded property.³⁵

In recent years, the IRS has placed greater emphasis in pursuing collection on cases where a prepetition federal tax lien had been filed involving tax periods that were discharged in a Chapter 7 bankruptcy, and the taxpayer claimed a home or retirement accounts as exempt or excluded assets. Once identified, the IRS mails a letter to this taxpayer requiring him or her to either pay in full the outstanding lien interest in the property, or pay an amount equal to the available equity in the asset.³⁶ Otherwise, the IRS may initiate enforcement action – typically a suit to foreclose on real property or a notice of levy on retirement accounts. In some situations, the IRS may forego immediate collection from exempt property and allow the NFTL to remain on file in the prospect of collecting dischargeable taxes at some future date.³⁷

In reviewing IRS procedural guidance in this area, we found very little recognition that the IRS demands on these taxpayers could create an economic hardship. Yet, these taxpayers have already been found insolvent by a bankruptcy court, which certainly would indicate they might have difficulty paying their liabilities. Particularly in light of the current U.S. economy, and the substantial tightening of the credit markets, a requirement for taxpayers to turn over to the IRS an amount equal to the equity in their homes is essentially requiring them to sell their homes in a deflated, stalled market.

We have found no evidence that SB/SE has established management controls to monitor the number of these demand letters or the volume and nature of enforcement actions initiated in these types of insolvency cases. Nor could we obtain reliable data on the number of suit to foreclose recommendations that Collection employees have made in these situations.³⁸ We have seen firsthand in TAS casework the serious economic harm these actions can create for taxpayers because of these suit recommendations. Consequently, we

³⁴ 11 USC § 522. Federal bankruptcy law embraces the entire field of debtor-creditor relationships to provide a uniform and equitable method to distribute the debtor’s assets to the debtor’s creditors. At the same time, it gives the debtor an opportunity to start over with a clean (or at least improved) financial slate.

³⁵ IRC § 6321. A federal tax lien is created by statute and attaches to a taxpayer’s property and rights to property for the amount of the liability. This is known as the “statutory” or “secret” federal tax lien.

³⁶ IRM 5.9.17.4.1(9) (May 16, 2008).

³⁷ IRM 5.9.17.4.2(3) (May 16, 2008).

³⁸ SB/SE response to TAS research request (Oct. 27, 2008).

are very concerned that the increase of enforcement activity in this area, without adequate safeguards and controls or guidance to employees to fully consider the economic harm to taxpayers, may very well create negative consequences for many taxpayers who were seeking a “fresh start” through the insolvency process.

IRS Guidance Lacks Distinction as to What Constitutes a “Won’t Pay” Taxpayer.

Another area in which IRS guidance fails to recognize the effects of the current economic environment is its consideration of whether a taxpayer is a “won’t pay” or a “can’t pay.” Presently, only one IRM section contains any reference to the differing characteristics of such taxpayers.³⁹ Examples of “won’t pay” taxpayers include:

- Taxpayers who have the ability to remain current and resolve their delinquent taxes through an alternative collection method but will not do so;
- Taxpayers who do not have the ability to remain current and resolve their liabilities, but have assets in excess of exempt amounts that will yield net proceeds to apply to the liabilities and are unwilling or unable to borrow on or liquidate these assets; and
- Taxpayers who will not cooperate with the IRS (*e.g.*, those that evade contact or withhold financial information).

Unwillingness and evasiveness are legitimate reasons to designate a taxpayer as a “won’t pay.” However, his or her inability to borrow is not a proper indicator, especially in today’s tough lending market. Yet, under current IRS procedures, even if a taxpayer is cooperative, in compliance with current filing and payment requirements, and is making a good faith effort to resolve his or her tax liability but simply cannot quite meet all of the IRS’s demands, he or she will be labeled as a “won’t pay.” By our account, the taxpayer “wants” to comply but “can’t.” Clearly, there is a significant difference between the two. It is imperative for the IRS to adapt its policies to properly reflect that enforced collection actions should only be taken where unwillingness and a lack of cooperation are present.

Moreover, in many situations where taxpayers have met our three criteria (cooperation, current compliance, and good faith efforts), the IRS uses the noncompliance that led to the taxpayer’s deficiencies, and other past behavior, to justify seizure or enforcement action. In general, a taxpayer’s current level of cooperation and willingness to find a way to resolve the liabilities should be judged as the standard and in such instances, the IRS should explore a viable collection alternative. This is particularly true in situations where the IRS has devoted little or no effort to contacting the delinquent taxpayers in a timely manner, and has allowed the tax problems to fester – sometimes for many years.⁴⁰

³⁹ IRM 5.10.1.4 (Oct. 1, 2004).

⁴⁰ For more detail, see National Taxpayer Advocate 2006 Annual Report to Congress 62-82 (Most Serious Problem, *Early Intervention in IRS Collection Cases*).

The IRS Has Multiple Collection Alternatives at its Disposal But Fails to Use Them Properly.

Although they are not widely considered as such, IAs and OICs are in fact collection tools and not resolutions of last resort. As IRS Policy Statement P-5-2 makes clear, IAs and OICs are as useful as a lien, levy, or seizure of assets when trying to collect tax.⁴¹ Further, Policy Statement P-5-34 provides that, “Collection enforced through seizure and sale of the assets occurs only after thorough consideration of all factors and of alternative collection methods.”⁴² Moreover, the statement reminds employees “the official responsible for making the decision to seize must be satisfied that other efforts have been made to collect the delinquent taxes without seizing... Seizure is usually the last option in the seizure process.”⁴³ However, TAS cases suggest the IRS is taking the position that the taxpayer must sell all assets with equity (including personal residences) or secure financing before the IRS will consider any other collection option, which seems to be contrary to IRS policy.

For example, if a taxpayer has significant equity in assets as well as the ability to make monthly payments but cannot fully pay his or her liabilities prior to expiration of the Collection Statute Expiration Date (CSED), the IRS has several potential collection alternatives at its disposal.⁴⁴ The American Jobs Creation Act of 2004 amended IRC § 6159 to clarify that the IRS is authorized to enter into IAs that do not provide for full payment of the taxpayer’s liability over the life of the agreement.⁴⁵ These agreements are known as Partial Payment Installment Agreements (PPIA). IRS guidance states that, “Before a PPIA may be granted, equity in assets must be addressed, and if appropriate, be used to make payment. In most cases taxpayers will be required to use equity in assets to pay liabilities.”⁴⁶ However, the same guidance also provides that, “A PPIA may be granted if a taxpayer does not sell or cannot borrow against assets with equity because ... it would impose an economic hardship on the taxpayer to sell property, borrow on equity in property, or use a liquid asset to pay the taxes.”⁴⁷ Given today’s economic conditions (*e.g.*, a slumping real estate market, strict lending requirements, poor credit histories, and a lack of funds to service equity loans), a taxpayer’s ability to “cash in” on the equity in his or her assets may be limited. In such cases, it makes good business sense for the IRS to enter into IAs or PPIAs to collect at least those funds that are immediately available, while addressing taxpayers’ economic hardship. Yet, the IRS continues to underuse PPIAs. In the past two Annual Reports to Congress, the National Taxpayer Advocate has urged the IRS to increase awareness and

⁴¹ IRM 1.2.14.1.2 (Feb. 17, 2000).

⁴² IRM 1.2.14.1.8(2) (May 28, 1999).

⁴³ *Id.*

⁴⁴ IRC § 6502(a).

⁴⁵ See H.R. Rep. No. 108-755, at 1697 (2004) (Conf. Rep.).

⁴⁶ IRM 5.14.2.2(2) (July 12, 2005).

⁴⁷ IRM 5.14.2.2(2)(E) (July 12, 2005). TAS applauds the IRS for including language referencing an economic hardship in this IRM section and encourages the IRS to place similar guidance within all sections related to enforced collection actions.

usage of PPIAs.⁴⁸ In FY 2008, the IRS granted 22,555 PPIAs, which accounts for less than one percent of all IAs granted.⁴⁹

An even more useful and successful collection payment alternative is the streamlined IA. The IRS may approve a streamlined IA where the aggregate unpaid balance of tax liabilities is \$25,000 or less, and can be fully paid within 60 months or prior to the CSED, whichever comes first.⁵⁰ These agreements do not require detailed financial analysis or approval by IRS managers, and may be granted even when a taxpayer could pay the full balance sooner.⁵¹ Yet, the IRS has recently restricted the use of streamlined IAs by requiring loan denial letters from taxpayers who would otherwise qualify if financial information reveals potential equity in assets.⁵²

Although RRA 98 promoted the use of IAs as a viable collection tool, the number of agreements granted by the IRS also declined in the years after the law took effect. From 1998 to 2001, IAs decreased by over 680,000. From 1999 to 2002, the IRS experienced a corresponding decrease in revenue dollars collected through IAs – approximately \$485.8 million.⁵³ The IRS Office of Chief Counsel’s position, which questioned the authority of the IRS to enter into IAs that would not fully pay the outstanding tax liabilities, may have contributed significantly to these reductions.⁵⁴ Not until the American Jobs Creation Act of 2004 was the IRS able to resume granting IAs that would only partially pay the outstanding tax liabilities, known as PPIAs. However, as noted above, the number of PPIAs granted since the legislative change represents only a fraction of the decrease in IA activity and revenue dollars collected. We continue to question whether the IRS’s overly cautious use of the PPIA represents lost opportunities to collect a significant amount of additional revenue, and afford many more taxpayers reasonable payment solutions for their tax debts.

In RRA 98, Congress encouraged the IRS to be flexible in its use of OICs.⁵⁵ Yet since the 2001 centralization of offer processing, both the number of offers submitted and the number of offers accepted have declined. Over this period, the IRS introduced many strict procedural requirements aimed at greater “efficiencies” in processing, and narrowly

⁴⁸ National Taxpayer Advocate 2007 Annual Report to Congress 432-47; National Taxpayer Advocate 2006 Annual Report to Congress 86-87.

⁴⁹ SB/SE Collection Activity Report, NO- 5000-6, *Installment Agreement Cumulative Report* (Sept. 29, 2008). A total of 2,624,487 IAs were granted in FY 2008.

⁵⁰ IRM 5.14.5.2 (Sept. 26, 2008).

⁵¹ *Id.*

⁵² IRM 5.19.1.5.4.2(3) (Apr. 28, 2008).

⁵³ SB/SE Collection Activity Report, NO-5000-6, *Installment Agreement Cumulative Report*, FY 1999 to 2002. For our analysis of dollars collected via installment agreements, we used FY 1999 to FY 2002 data to account for the fact that the revenue for installment agreements is not likely to be fully received within the same year the IA is granted.

⁵⁴ See National Taxpayer Advocate 2001 Annual Report to Congress 210-14.

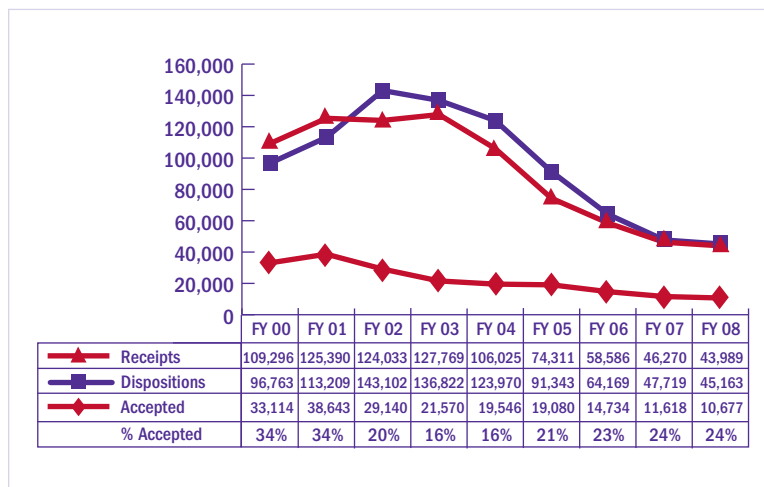
⁵⁵ The conference report for RRA 98 states,

The conferees believe that the IRS should be flexible in finding ways to work with taxpayers who are sincerely trying to meet their obligations and remain in the tax system. Accordingly, the conferees believe that the IRS should make it easier for taxpayers to enter into offer-in-compromise agreements, and should do more to educate the taxpaying public about the availability of such agreements.

H.R. Conf. Rep. 599, 105th Cong., 2d Sess., 289 (1998).

interpreted requirements imposed by Congress.⁵⁶ Not surprisingly, this approach has substantially chilled the submission of “good” OICs, with accepted offers declining by over 72 percent from FY 2001 to FY 2008.⁵⁷ As a result, and as the following chart vividly illustrates, taxpayers and practitioners no longer view the IRS offer program as a viable collection alternative.

CHART 1.2.2, IRS OIC Program, FY 2000 - FY 2008⁵⁸



Similarly, under another provision of RRA 98, Congress granted the IRS authority to accept an OIC based on Effective Tax Administration (ETA), which the IRS interprets as allowing it to compromise based on “economic hardship” or “equity and/or public policy.”⁵⁹ For an individual to qualify for an ETA offer based on economic hardship, he or she must have net equity of his or her assets plus future income (reasonable collection potential) which must be greater than the amount owed and exceptional circumstances, such as when the collection of the tax in full would create an economic hardship.⁶⁰ However, guidance addressing ETA offers based on hardship is conspicuously absent from published policies and procedures governing the Collection program.⁶¹ As discussed in the 2007 Annual Report to Congress, this guidance should include, among other things, a requirement to consider

⁵⁶ See T.D. 9086, 68 Fed. Reg. 48,785 (Aug. 15, 2003); Treas. Reg. § 300.3 (explaining the IRS’s ability to charge a user fee for offer processing and investigation); Pub. L. No. 109-222 § 509, 120 Stat. 362 (2006), effective July 16, 2006, and codified at IRC § 7122(c)(1) (explaining The Tax Increase Prevention & Reconciliation Act of 2005 (TIPRA) and allowing the IRS to require a nonrefundable partial payment of 20 percent at the time of offer submission or monthly installment payments depending on the offer type and terms). For more information regarding IRS’s processing of offers, see IRM 5.8.3.4 (Sept. 23, 2008).

⁵⁷ SB/SE Collection Activity Report, *NO-5000-108* (FY 2001 - FY 2008). In FY 2001, the IRS accepted 38,643 OICs compared to 10,677 in FY 2008.

⁵⁸ SB/SE Collection Activity Report, *NO-5000-108* (FY 2000 - FY 2008).

⁵⁹ RRA 98; H.R. Conf. Rep. 599, 105th Cong., 2d Sess., 289 (1998); Treas. Reg. § 301.7122-1(b)(3). “Economic hardship” occurs when an individual taxpayer is unable to pay reasonable basic living expenses. See Treas. Reg. § 301.6343-1.

⁶⁰ IRM 5.8.11.2.1 (Sept. 1, 2005).

⁶¹ For a more detailed discussion of ETA OICs, see National Taxpayer Advocate 2007 Annual Report to Congress 388-94.

whether an ETA offer might be an appropriate collection alternative before determining to seize or recommending foreclosure on a personal residence.⁶² This reminder remains a necessity as TAS continues to encounter situations where the IRS has pursued collection on the equity in taxpayers' homes, with no consideration of whether the ETA offer is a viable option.

Conclusion

The IRS has many powerful enforcement tools at its disposal to help administer the nation's tax laws. However, effective tax administration calls for the IRS to reserve the more intrusive of these tools for situations involving uncooperative taxpayers who refuse to voluntarily comply with their filing and payment requirements and who will not work with the IRS to establish reasonable payment plans. The line between "won't pay" and "can't pay" is a fine one, especially in today's tough economic times when taxpayers feel desperate. As more and more taxpayers suddenly find themselves struggling to make ends meet, it is incumbent upon the IRS to take into account the economic realities of the day. In fact, there is nothing new about this duty – it is already incorporated into many of the IRS's longstanding policy statements. When the IRS moves too quickly to collect revenue and fails to consider each taxpayer's specific circumstances, an imbalance between customer service, taxpayer rights, and enforcement is the unnecessary byproduct.

To more effectively deal with taxpayers in these difficult economic times, the IRS should consider taking the following actions: clarify or develop a new uniform policy statement that defines the concept of economic hardship; provide specific guidance requiring pre-decisional consideration of the concept of economic hardship in all IRM sections related to IRS Collection enforcement activities; review policies and procedures related to insolvency and the pursuit of exempt and excluded assets and establish adequate managerial safeguards and controls for situations when enforcement is appropriate; remove any procedural guidance related to the need to secure loan denial letters when a streamlined IA is an acceptable alternative; review and revise all existing policies and procedures related to collection payment alternatives such as OICs and PPIAs to allow for more flexibility and better usage in situations where economic hardship is present; continue to review and revise current case assignment practices to provide earlier intervention and resolution before a taxpayer's financial uncertainty worsens; and proceed in partnership with the National Taxpayer Advocate to develop training for collection employees on taxpayer rights and collection alternatives.

IRS Comments

The IRS understands the sensitive nature of the current economy and the potential effects it is having or will have on taxpayers. The IRS anticipates that taxpayers who previously

⁶² National Taxpayer Advocate 2007 Annual Report to Congress 388-94.

were able to pay their taxes may be unable to do so as a result of the economic downturn. As reflected in our current case dispositions, we already have procedures in place for taxpayers who are experiencing financial hardships and are unable to pay their tax liability. Collection alternatives such as an installment agreement, an offer in compromise, and currently not collectible status are all used to resolve taxpayer cases. We are closely monitoring our receipt patterns and installment agreement and offer in compromise defaults to be able to effectively manage an increase in taxpayer cases, a subset of which would be those with economic hardship. Additionally, we plan to expand our outreach efforts to ensure taxpayers understand the availability of payment alternatives and where to go for assistance in resolving their tax liability if they are experiencing financial hardship.

We believe our collection policies and procedures maintain the proper balance between service and enforcement. The Fiscal Year 2008 Collection Program Letter outlined collection priorities and our focus on quality and timeliness. As the National Taxpayer Advocate states, a collection priority in FY 2008 was to increase the timely pursuit and appropriate application of enforcement tools. The focus, however, was not to take more enforcement action, but to take timely and appropriate case actions. The Collection Program Letter also included priorities to:

- Ensure that employees consider all available options in resolving taxpayer accounts.
- Improve Field Collection casework quality by ensuring that employees communicate clearly with taxpayers as to what is expected and the possible consequences if expectations are not met, and that there are clear actions dates with timely follow-up.
- Improve service to taxpayers to facilitate their understanding and fulfillment of their tax responsibility.
- Identify and take action to address problems being experienced by taxpayers in the Collection program

The use of enforcement action is authorized by the Internal Revenue Code and Treasury Regulations. IRS policies and procedures provide further guidance and limit the use of enforcement action. There are checks and balances in place to ensure employees follow procedures and adhere to IRS policies. The Treasury Inspector General for Tax Administration (TIGTA) and the Government Accountability Office (GAO) conduct independent reviews of IRS enforcement programs. TIGTA stated in its FY 2008 report, *Review of Compliance with Legal Guidelines When Conducting Seizures of Taxpayers' Property*, that there were no instances in the cases reviewed where taxpayers were adversely affected by the seizure action.⁶³ In addition, the IRS continuously conducts program reviews to evaluate adherence to policies and procedures. When necessary, changes are made or guidance clarified to improve program effectiveness.

⁶³ TIGTA, Ref. No. 2008-30-126, *FY 2008 Review of Compliance with Legal Guidelines When Conducting Seizures of Taxpayers' Property*.

The National Taxpayer Advocate notes increases in the number of liens, levies, and seizures from 1999 to 2007 and correlates the increase directly to an increased emphasis on enforcement action. However, the message to collection employees was, and continues to be, “take the right action at the right time” to move the case toward resolution. By taking timely and appropriate case actions, we have increased our case dispositions and are able to work more cases. As a result, there is the potential for an increase in the number of levies, liens, and seizures.

The IRS disagrees with the National Taxpayer Advocate’s notion that due to the economic decline and possible decrease in tax revenues that it is natural for the IRS to ramp up efforts to ensure all taxpayers pay their fair share of taxes. We will continue resolving cases with timely and appropriate case actions. Each case resolution is determined based on the individual facts and circumstances of the case, including economic hardship. We believe a balanced measure of an effective Collection program includes overall case quality and appropriate case resolutions, and not the number of enforcement actions taken.

Current guidance provides direction to collection employees on addressing situations and resolving cases when taxpayers experience an economic hardship.⁶⁴ Levies are released and cases reported currently not collectible based on the taxpayer’s inability to pay the tax liability while paying necessary living expenses. Enforcement decisions are made based on the individual facts and circumstances of the case available at the time the action is taken. IRS procedures limit situations in which enforcement actions, such as seizure of a taxpayer’s principal residence or levy of certain retirement plans, may be taken.⁶⁵ Seizure of a principal residence requires judicial consideration and approval affording the taxpayer the opportunity for a review by an independent third party. Prior to levying on a retirement plan, procedures, which were developed in coordination with the National Taxpayer Advocate, require consideration of the availability of other assets to pay the outstanding liability. Additionally, even if no other assets are available, a determination must be made that the taxpayer’s conduct has been flagrant. IRM 5.11.6.2 provides guidance for this type of levy, including examples of flagrant conduct.⁶⁶

The IRS agrees the “fresh start” afforded individual debtors is an important element of bankruptcy policy. The fresh start is just one of the competing policies Congress sought to balance when it created the Bankruptcy Code’s comprehensive scheme for treatment of debts. The most recognized example of this balance is found in the numerous exceptions to discharge found in section 523 of the Bankruptcy Code. In balancing the fresh start sought by debtors, creditors’ interest in collecting, and the general public’s interest in having an orderly process to support the flow of commerce, Congress determined that

⁶⁴ IRM 5.11.2.2.1 (Jan. 1, 2006); IRM 5.16.1.2.9 (Dec. 1, 2006).

⁶⁵ IRM 5.10.2 (Nov. 3, 2006); IRM 5.11.6.2 (Mar. 15, 2005).

⁶⁶ IRM 5.11.6.2 (Mar. 15, 2005).

certain debts would not be discharged, even by a debtor who successfully completed the bankruptcy process.⁶⁷

Similarly, bankruptcy law has long recognized that a bankruptcy discharge does not generally affect lien interests,⁶⁸ and the Supreme Court has affirmed that this rule survives under the current Code.⁶⁹ Collection from such assets is consistent with the policy decisions made by Congress in establishing and defining the scope and limits of the relief afforded to debtors under the Bankruptcy Code. Any collection actions taken to enforce the federal tax lien against assets that were exempt, abandoned, or excluded from the bankruptcy estate must be in accordance with the provisions of the Internal Revenue Code, Treasury Regulations, and IRS policies and procedures. The same IRS requirements applicable to seizures of principal residences or levying on retirement plans,⁷⁰ such as level of approval required, consideration of economic hardship, and use of other collection alternatives, continue to apply when such assets were part of a bankruptcy estate.

The IRS agrees it is important to recognize the effects of the current economic environment and the taxpayer's ability to resolve their tax delinquency. We also believe our current policies and procedures provide sufficient guidance for the "won't pay" determination prior to consideration of seizure action. IRM 5.10.1.4 provides detailed guidance to assist Revenue Officers with this determination.⁷¹ The National Taxpayer Advocate states that enforced collection action should only be taken where unwillingness and a lack of cooperation are present. The actual enforcement decision is often much more complicated. A taxpayer may be willing to make some form of payment and yet still not reach agreement with the IRS on ability to pay or the appropriate resolution of the case. Whether the use of enforced collection action is appropriate must be determined based on all of the facts and circumstances of each individual case.

The IRS agrees installment agreements and offers in compromise are viable collection tools to be used when appropriate to resolve taxpayer liabilities. The IRS uses IAs to collect delinquent taxes and foster compliance. In FY 2007, over 97 percent of the installment agreements granted by the IRS were streamlined agreements which require little or no financial documentation. With respect to documentation requirements, it should be noted that the procedures for streamlined installment agreements have been revised to clarify that loan denial letters are not required as part of the necessary documentation for such agreements

The National Taxpayer Advocate makes the assumption that the reduction in dollars collected via installment agreements is directly related to the number, or reduction in

⁶⁷ See *Grogan v. Garner*, 498 U.S. 279, 287 (1991). "Congress evidently concluded that the creditors' interest in recovering full payment debts in these categories outweighed the debtors' interest in a complete fresh start."

⁶⁸ See *Long v. Bullard*, 117 U.S. 617 (1886).

⁶⁹ See *Johnson v. Home State Bank*, 501 U.S. 78 (1991); *Dewsnup v. Timm*, 502 U.S. 410 (1992).

⁷⁰ IRM 5.10.2 (Nov. 3, 2006); IRM 5.11.6.2 (Mar. 15, 2005).

⁷¹ IRM 5.10.1.4 (Oct. 1, 2004).

the number, of installment agreements established over a period of time, that being 1999 through 2002, post RRA 98. However, making that assumption may not necessarily be accurate, as the length of the term of a streamlined installment agreement changed from thirty six (36) months to sixty (60) months in April 1999.⁷² Reduction in the tax dollars collected could as well be directly attributable to the change in the length of terms in the installment agreements subsequently granted during the same period of time. The change in length from thirty-six (36) months to sixty (60) would correspond with payment amounts being reduced by almost half.

The Partial Payment Installment Agreement (PPIA) allows a taxpayer to make payments against a tax debt when the payment schedule will not fully pay the liability prior to the expiration of the collection statute. Legislation allowing the use of the PPIA was enacted in 2004; hence, this is a fairly new collection tool for the IRS. In 2006, the first year PPIAs were available, the IRS granted 13,328 agreements. We continue to emphasize the use of PPIAs, when appropriate, to collection employees. We have seen corresponding increases in the number of PPIAs granted in FY 2007 (18,921) and in FY 2008 (22,555).⁷³ Additionally, a recent change in policy requires that a PPIA must be considered in cases where an offer in compromise is being rejected.

The Offer in Compromise program is an important alternative for taxpayers that are unable to pay in full, particularly those taxpayers that are experiencing economic difficulties. Our goal is to evaluate each offer and make a decision based on the facts presented by the taxpayer. As such, the policies and procedures we have established are meant to ensure that taxpayers who qualify have access to the program at any point during the collection process.⁷⁴

While the total number of offer receipts has declined since 2003, the rate of decline has slowed and, over the past three months, total offer receipts as compared to the same time period last year has increased.⁷⁵ There are several factors that have contributed to the decrease in offer receipts, including but not limited to, implementation of the \$150 application fee and implementation of the Tax Increase Prevention and Reconciliation Act (TIPRA) of 2005 which mandated a payment equal to 20 percent of the OIC amount with all OIC submissions. In an effort to ensure the accessibility of the OIC program the IRS increased its outreach efforts to identify who qualifies for an OIC and provided clearer instructions and worksheets in the Form 656, *Offer in Compromise*.

The IRS continues to be proactive with internal and external stakeholders by providing outreach and clear guidance on economic hardship, as well as public policy Effective Tax Administration (ETA) offers. Our outreach efforts have been geared toward providing a

⁷² IRM 21.9.1 (Apr. 1999).

⁷³ IDRS Extracts, SB/SE Collection Activity Report, NO-5000-6, *Installment Agreement Cumulative Report* (Sept. 28, 2008).

⁷⁴ IRM 5.8 (Sept. 23, 2008).

⁷⁵ SB/SE Collection Activity Report, NO-5000-108 (FY 2003-FY 2008), *Monthly Report of Offer in Compromise Activity* (FY 2008 and FY 2009).

clear understanding of the regulations governing ETA offers. Publication 594, *The IRS Collection Process*, also discusses ETA offers as an acceptable resolution. In addition, the Form 656, *Offer in Compromise*, definition of an ETA offer was revised to help clarify when an ETA offer is appropriate and outline the documentation a taxpayer should include with an ETA offer. Internal guidance, including several sections of the IRM,⁷⁶ specifically discusses ETA offers and alternative resolutions. Effective Tax Administration training was also provided to all field revenue officers during FY 2008.

The National Taxpayer Advocate makes seven specific suggestions to more effectively deal with taxpayers in these difficult economic times. We are taking or have taken the following actions with respect to these issues:

As noted earlier, we believe that current guidance provides sufficient direction to collection employees on addressing situations and resolving cases when taxpayers experience an economic hardship.⁷⁷ However, the IRS is looking to expand outreach efforts to ensure taxpayers understand the availability of payment alternatives and where to go for assistance in resolving their tax liability if they are experiencing financial hardship.

Pre-decisional consideration of economic hardship is present as part of the analysis and determination to pursue certain enforcement actions. In order to ensure our employees have the most up to date guidance, IRM sections, including those related to enforcement actions and economic hardship, are continually reviewed and revised to ensure they are in conformance as policies and procedures are updated. Additionally, we are developing a course for FY 2009 Revenue Officer Continuing Professional Education on responding to economic conditions. The course will focus on current economic conditions and the potential impact to taxpayers in general and collection cases specifically.

Managerial safeguards and controls including managerial approval of enforcement action taken against assets that were exempt, abandoned, or excluded from the bankruptcy estate are incorporated into current IRS policies and procedures. Any collection actions taken to enforce the federal tax lien against these assets must be in accordance with the provisions of the Code, Treasury Regulations, and IRS policies and procedures. The same IRS requirements applicable to seizures of principal residences or levying on retirement plans,⁷⁸ such as level of approval required, and consideration of economic hardship and use of other collection alternatives, continue to apply even when such assets were part of a bankruptcy estate.

The requirements for streamlined installment agreements have been revised to clarify that loan denial letters are not required as part of the necessary documentation for such

⁷⁶ IRM 5.8.11 (Sept. 23, 2008); IRM 5.8.7.8 (Sept. 23, 2008); IRM 5.10.1.3.2 (Dec. 13, 2005); IRM 5.15.1.35 (May 9, 2008).

⁷⁷ IRM 5.16.1.2.9 (Dec. 2006).

⁷⁸ IRM 5.10.2 (Nov. 3, 2006); IRM 5.11.6.2 (Mar. 15, 2005).

agreements.⁷⁹ In FY 2007, over 97 percent of the installment agreements granted by the IRS were streamlined installment agreements.

Current policies and procedures allow for flexibility and use of PPIA and OIC in cases where economic hardship is present. A recent revision to the IRM requires that alternative resolutions, including a PPIA, must be discussed with a taxpayer prior to rejecting an OIC.⁸⁰ Additionally, we continue to emphasize the appropriate use of PPIAs to all collection employees.

We agree that reviewing case assignment practices should be an ongoing course of action. The current Consolidated Decision Analytics Project is developing more sophisticated decision analytics to route cases earlier, faster, and more accurately to the correct treatment streams.

The IRS will continue to work with representatives from the National Taxpayer Advocate on established collection improvement teams. These teams are focused on taxpayer rights and issues related to IAs, OICs, notices of federal tax lien, and the Trust Fund Recovery Penalty.

Taxpayer Advocate Service Comments

Troubled economic times require preemptive rather than reactive solutions. Thus, the National Taxpayer Advocate is encouraged that the IRS recognizes that current economic conditions create an environment where many more taxpayers will find it difficult to meet their federal tax obligations in a timely manner, as they struggle financially. We are pleased to note that many of the IRS's comments reflect a proactive approach to dealing with taxpayers who are unable to pay, particularly those affected by the economic uncertainty of the day.

For example, we commend the IRS for its plans to expand outreach efforts so that taxpayers understand the availability of payment alternatives and how to obtain help in resolving their tax liabilities when experiencing financial hardship. Another positive development is the IRS plan to develop a course for revenue officers to provide additional guidance on considering the impact of current economic conditions on taxpayers with IRS tax debts. We expect the IRS will work with TAS in developing this course, particularly since taxpayers with significant hardships frequently end up as TAS cases, and TAS can provide the IRS with valuable information on how the IRS can avoid exacerbating the taxpayers' economic situations. We are very pleased to see that the IRS has clarified its position that loan denial letters are not mandatory prerequisites for streamlined IAs. Moreover, we acknowledge

⁷⁹ IRM 5.19.1.5.4.2 (Nov. 19, 2008).

⁸⁰ IRM 5.8.7.8 (Sept. 23, 2008).

recent communications from the IRS to alert taxpayers to the availability of lien subordinations in situations where such actions will facilitate the ability of some taxpayers to refinance their mortgages, rather than lose their homes to foreclosure actions.⁸¹

The National Taxpayer Advocate also agrees that the IRS actually needs to look no further than its existing collection toolkit to effectively resolve taxpayer cases where economic hardship exists, as it already possesses numerous viable collection alternatives, such as IAs, OICs, and CNC. However, the National Taxpayer Advocate remains concerned that IRS's response to the current economic downturn in regards to collection does not adequately consider the taxpayer's perception of IRS collection practices. Failing to take the appropriate steps to address this economic crisis could result in the perception of the IRS using "harsh" collection tactics in troubled times, thereby, discouraging taxpayers from trying to work things out with the IRS. Conversely, the perception of a more reasonable and flexible IRS is likely to encourage more taxpayers to try.

An Imbalance Between Service and Enforcement Remains.

The National Taxpayer Advocate has repeatedly stated, and the IRS has reiterated "that enforcement and service are not mutually exclusive." The IRS asserts that its collection policies and procedures maintain the proper balance between service and enforcement, but this is not always the case. We acknowledge that the IRS's intent of the FY 2008 Collection Program Letter may have been to focus not on taking *more* enforcement actions, but rather taking *timely* and *appropriate* case actions. In reality, the IRS may have sent mixed signals to its employees by placing a heightened emphasis on maximizing the use of enforcement tools, such as seizure and sale, suits to foreclose on the federal tax lien or reduce the tax liability to judgment, and the pursuit of exempt, abandoned, and excluded assets following a successful Chapter 7 bankruptcy. Considering the training material's lack of direction for employees to consider the potential economic hardship such actions could have on a taxpayer, along with the corresponding lack of procedural guidance in this area, we do not believe that the delivered message adequately reflected a balance of service *and* enforcement.

Moreover, in FY 2008, the IRS continued to issue the majority of its levies via automation (*e.g.*, ACS and the Federal Payment Levy Program), generally initiating such enforcement action prior to attempting a personal contact with the taxpayer. The IRS's stated goal for collection is "taking the right action at the right time." The National Taxpayer Advocate believes the right time and right action are predicated on two simple factors – early intervention and personal contact. By personally interacting with a taxpayer when the problem first arises, it is easier to ascertain the appropriate facts and circumstances *prior* to taking enforcement action and avoid having to deal with negative downstream consequences such as economic hardship and taxpayer burden. The heavy reliance on automated levy and lien

⁸¹ See IRS News Release IR-2008-141, *IRS Speeds Lien Relief for Homeowners Trying to Refinance, Sell* (Dec. 16, 2008).

filing – without taxpayer contact – undermines the IRS’s mission of increasing voluntary compliance.

IRS Guidance for Consideration of Economic Hardship Is Lacking.

The National Taxpayer Advocate respectfully disagrees with the IRS’s assertions that its current guidance provides sufficient direction to collection employees on how to address economic hardship. As noted in this report, our review of IRS Collection procedures in Part V of the IRM reveals very little specific guidance on what to include in pre-decisional consideration of economic hardship issues prior to initiating enforcement actions. Moreover, the IRM contains very few meaningful examples to illustrate to IRS Collection employees situations where these factors should lead to the use of collection alternatives, such as PPIAs and OICs. In fact, during the past year the National Taxpayer Advocate has seen a number of IRS Collection cases where these considerations were disregarded.

The IRS also states its guidance for levying on a retirement plan properly accounts for and considers whether the action will impose an economic hardship on a taxpayer. However, the National Taxpayer Advocate recently identified serious concerns with the guidance specifically referenced by the IRS and took exception with the IRS’s definition of what constitutes “flagrant conduct.” IRM 5.11.6.2 cites several examples of flagrant behavior but many of them focus on past actions of the taxpayer rather than his or her current level of compliance. For example, we agree that a taxpayer who is currently raising frivolous arguments or willfully evading the IRS should be classified as flagrant. However, under existing guidelines, a taxpayer who continues to contribute to a retirement plan while taxes are accruing, or who was assessed a Trust Fund Recovery Penalty ten years ago, would also be considered as having exhibited flagrant behavior.⁸² The IRS’s rationale is flawed since it fails to consider whether the taxpayer’s continued contributions were voluntary or if the IRS ever notified him or her that making future contributions could be construed as flagrant behavior, nor does it account for the current level of compliance by the taxpayer with an old TFRP assessment. The National Taxpayer Advocate has asked the IRS to reconsider this position and to clarify that in general a determination of flagrant behavior should be based on *current* actions rather than historical.

A Fresh Start in the Eyes of Whom?

The National Taxpayer Advocate appreciates the IRS’s acknowledgment of the concept of a “fresh start” for taxpayers whose taxes are discharged through a Chapter 7 bankruptcy. We do not disagree that the IRS retains specific authority to enforce the federal tax lien against assets that were exempt, abandoned, or excluded from the bankruptcy estate. However, we are concerned that current IRS guidance provides far too little direction for local offices to determine which assets they wish to pursue. Moreover, the IRS’s lack of any mechanism to track enforcement actions taken against these assets makes the matter even more troubling.

⁸² IRM 5.11.6.2(5) (Mar. 15, 2005).

Since many taxpayers survive bankruptcy proceedings with very little to their names other than their exempt or excluded property, the National Taxpayer Advocate respectfully requests the IRS reconsider its pursuit of these assets and develop specific guidance that incorporates consideration of economic hardship into each and every determination. Although the National Taxpayer Advocate agrees there are specific enforcement authorities for the IRS to pursue assets that were exempt, abandoned, or excluded from the bankruptcy estate, it is important to keep in mind the fundamental concept of bankruptcy – providing taxpayers with a “fresh start.”

Limited Use of Available Collection Alternatives

Interestingly, the National Taxpayer Advocate has been engaged in this same dialogue about collection alternatives with IRS Collection management for several years. While we believe that IRS Collection policies and procedures unduly restrict reasonable payment alternatives to many taxpayers who require such flexibility in order to rebuild their lives, the IRS has routinely responded as it has again this year – “we already have procedures in place for taxpayers who are experiencing financial hardships and are unable to pay their tax liability.” However, the IRS fails to fully utilize these collection tools now, and continuing this flawed approach is especially shortsighted in these economic times. For example, in FY 2008, the IRS Collection Field operation collected approximately \$6.6 billion dollars on delinquent taxpayer accounts (excluding formal installment agreements).⁸³ Yet, over \$11 billion dollars were abated on these accounts, and \$12.9 billion were reported as uncollectible.⁸⁴ As a percentage of overall case dispositions, the number of taxpayers granted PPIAs and OICs last fiscal year was negligible.⁸⁵ The IRS only collected a little more than \$200 million with OICs in FY 2008, the lowest amount in many years, and approximately 45 percent of those dollars were accepted by Appeals. Tax practitioners increasingly tell us that the OIC has become irrelevant in their considerations of collection solutions for their clients. At the conclusion of FY 2008, the IRS reported over 9.2 million taxpayer delinquent accounts (TDAs) in active inventory.⁸⁶ Of these, approximately 3.3 million – over a third – of these accounts were inactive and assigned to the Collection “queue.”⁸⁷ Approximately 6.2 million of these accounts involved delinquencies for tax periods from 2004 or older.⁸⁸ The IRS response to this report indicates that the emphasis in the Collection program in FY 2008 was “take the right action at the right time,” and “we will continue resolving cases with timely and appropriate actions.” Unfortunately, the FY 2008 program data does not reflect the IRS position on this matter.

⁸³ SB/SE Collection Activity Report, *Taxpayer Delinquent Account Cumulative Report, NO-5000-2* (Sept. 29, 2008)

⁸⁴ *Id.*; SB/SE Collection Activity Report, *Recap of Accounts Currently not Collectible Report, NO-5000-149* (Sept. 27, 2008); SB/SE Collection Activity Report, *NO-5000-6, Installment Agreement Cumulative Report* (Sept. 29, 2008).

⁸⁵ SB/SE Collection Activity Report, *Report of Offer in Compromise Activity, NO-5000-108* (Sept. 29, 2008).

⁸⁶ SB/SE Collection Activity Report, *Taxpayer Delinquent Account Cumulative Report, NO-5000-2* (Sept. 29, 2008).

⁸⁷ *Id.*

⁸⁸ *Id.*

The National Taxpayer Advocate continues to urge the IRS to reevaluate its Collection strategy, and develop procedures that deliver a true balance of service and enforcement with taxpayers who owe delinquent tax dollars. The conditions discussed in this report are not new. We have identified these concerns for several years. However, the current downturn in the economy has created a situation where many more taxpayers will be suffering through financial difficulties that may lead to tax debts. A continuation of the IRS's current inflexible Collection strategy will likely result in numerous lost opportunities to collect the delinquent revenue while providing service to taxpayers in a manner that fosters voluntary compliance.

Recommendations

The National Taxpayer Advocate recommends that the IRS:

1. Clarify or develop a new uniform policy statement that defines the concept of economic hardship.
2. Provide specific guidance requiring pre-decisional consideration of the concept of economic hardship in all Internal Revenue Manual sections related to IRS Collection enforcement activities.
3. Review all polices and procedures related to insolvency and the pursuit of exempt and excluded assets and establish adequate managerial safeguards and controls for situations when enforcement is appropriate, including the tracking of collection actions against exempt and excluded assets.
4. Continue to review and revise current case assignment practices to provide earlier intervention and resolution before a taxpayer's financial uncertainty worsens.

MSP
#3**Understanding and Reporting the Tax Consequences of
Cancellation of Debt Income****Responsible Officials**

Richard J. Byrd, Jr., Commissioner, Wage and Investment Division
Chris Wagner, Commissioner, Small Business/Self-Employed Division

Definition of Problem

The National Taxpayer Advocate, in her 2007 Annual Report to Congress, identified the tax consequences of cancellation of debt income as one of the most serious problems encountered by taxpayers.¹ The rules that determine whether cancellation of debt income is includible in gross income are complex. There are several exceptions to the general rule of includibility, such as the exception for debt canceled when a homeowner becomes unable to make payments on a loan secured by his or her principal residence under the Mortgage Forgiveness Debt Relief Act (MFDRA).² The requirements for reporting excluded amounts are also complex, and taxpayers often do not receive reliable information about their tax reporting and payment obligations concerning cancellation of debt income.

For example, the New York Times described the operation of MFDRA as follows: “Suppose a buyer defaults on a \$220,000 mortgage. The bank forecloses and sells the house in today’s battered market for \$180,000. The \$40,000 of remaining debt is discharged. Under previous law, the \$40,000 was considered income and was subject to taxation. Under this law, the tax obligation is forgiven.”³ According to the Fort Worth Star-Telegram: “In tax law, the amount of forgiven debt is typically treated as income and is taxed. But to help people who are affected by the mortgage crisis, Congress excluded homeowners whose mortgage debt was forgiven in years 2007, 2008 and 2009. Keep good records, and keep track of the amount that the bank wrote off.”⁴

These newspaper accounts are not inaccurate, but they fail to mention two important points. First, even though “qualified principal residence indebtedness” under MFDRA includes most home loans whether they resulted from a refinancing transaction, a second mortgage, or a home equity line of credit, the fact that the canceled debt is a home loan does not mean the MFDRA exception applies. *The exception does not cover loan proceeds used for any purpose other than to acquire or improve a principal residence.*⁵ As described

¹ National Taxpayer Advocate 2007 Annual Report to Congress 13-34. This problem ranked second among the 26 most serious problems addressed.

² Pub. L. No. 110-142 (2007).

³ Jan M. Rosen, *New Rules Ease the Sting of Mortgages*, The New York Times, Feb. 10, 2008.

⁴ Vicki Lee Parker, McClatchy Newspapers, *Tax Tips for Dealing with Turbulent Markets*, Fort Worth Star-Telegram, Sept. 28, 2008.

⁵ Pub. L. No. 110-142 § 2(b)(2007).

below, many homeowners used a portion of their home loans to pay off medical bills, student loans, or other expenses. These canceled debts are not excludible from income under MFDRA (although they may be excludible under a different exception). Second, neither homeowners nor any other debtors who exclude cancellation of debt from income *automatically* receive the benefit of the exclusion. To claim the exclusion, taxpayers are required to file Form 982, *Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)* with their tax returns.⁶ If they fail to file Form 982, the IRS will assume the cancellation of indebtedness income is taxable.⁷

In recognition of the seriousness of the problems taxpayers face in reporting cancellation of debt, the National Taxpayer Advocate makes a Legislative Recommendation in this year's Annual Report to Congress suggesting three options that would make it easier for financially distressed taxpayers to exclude cancellation of debt from gross income.⁸

Analysis of Problem

Background

According to RealtyTrac, "one in every 475 U.S. housing units received a foreclosure filing in September [of 2008]. Foreclosure filings were reported on 765,558 U.S. properties during the third quarter, up more than three percent from the second quarter and up 71 percent from the third quarter of 2007."⁹ In response to this foreclosure crisis, Congress extended MFDRA, which was originally set to terminate on December 31, 2010, through 2012.¹⁰ The rise in foreclosures has taken place against a backdrop of increasingly risky loan practices.

In recent decades, an increasing number of housing loans were made by lenders specializing in subprime lending.¹¹ Subprime loan originations reached \$160 billion in 1999, representing 12.5 percent of total originations.¹² According to a Department of Housing and Urban Development and Department of Treasury Task Force on Predatory Lending report, "The primary purpose of over 50 percent of first lien subprime mortgages and up to 75 percent of second lien subprime mortgages is debt consolidation and/or general consumer credit, not home purchase, home improvement or refinancing the rates and terms

⁶ IRS Pub. 4681, *Canceled Debts, Foreclosures, Repossessions, and Abandonments*, 4-7 (2007).

⁷ *Id.* at 3 (2007). The IRS is notified that a debt has been canceled by means of Form 1099-C, *Cancellation of Debt*, issued by creditors who forgive a debt of \$600 or more.

⁸ See Legislative Recommendation, *Simplifying the Tax Treatment of Cancellation of Debt Income*, *infra*.

⁹ Press Release, RealtyTrac, *Foreclosure Activity Decreases 12 Percent in September*, at <http://www.realtytrac.com/ContentManagement/pressrelease.aspx?ChannelID=9&ItemID=5299&acct=64847> (Oct. 23, 2008).

¹⁰ Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, § 303.

¹¹ Department of Housing and Urban Development and Department of the Treasury Task Force on Predatory Lending, *Curbing Predatory Home Mortgage Lending* 28 [hereinafter Treasury-HUD Report], at <http://www.hud.gov/library/bookshelf12/pressrel/treasrpt.pdf> (2000).

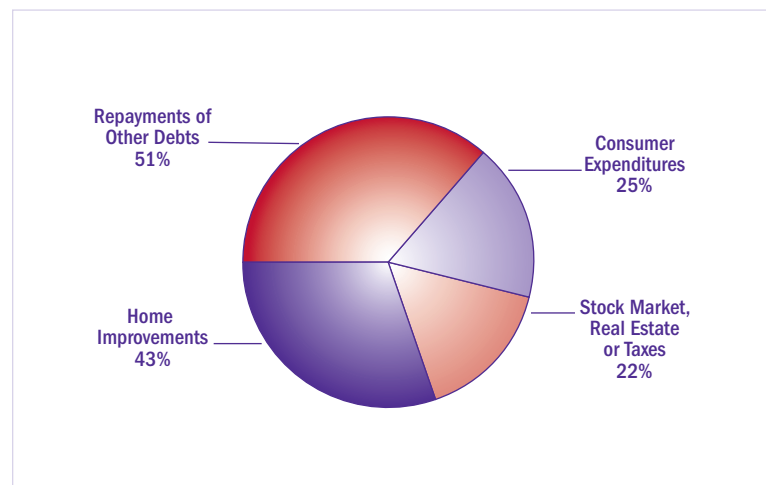
¹² *Id.* at 29.

of a mortgage.¹³ Borrowers 65 years of age or older were three times more likely to hold subprime mortgage loans than borrowers under 35.¹⁴

Of the subprime loans that were second lien mortgages, 45 percent of the loans were used for debt consolidation, 30 percent for medical, education and other expenses, and 25 percent for home improvement.¹⁵

In the majority of loans, a portion of the proceeds was still being used to cover living expenses and pay other non-mortgage debt such as credit cards in 2001 and early 2002, as shown below:¹⁶

CHART 1.3.1, Use of Funds from Refinancings, 2001 and 2002



Percentages add up to more than 100 because each refinancing loan could have been used for multiple purposes. Source: Federal Reserve System, Flow of Funds Accounts of the United States.

From 1992 to 2001, the level of credit card debt among seniors between 65 and 69 years old increased by 217 percent.¹⁷ “With virtually all medical expenses now payable by credit card, there is evidence to suggest that deductibles, co-pays, dental and vision care, prescription drugs and other uncovered costs played a significant role in the increased credit card balances of many older Americans.”¹⁸

¹³ *Id.* at 26.

¹⁴ Neil Walters and Sharon Hermanson, *Subprime Mortgage Lending and Older Borrowers*, AARP, at <http://www.aarp.org/research/credit-debt/mortgages/aresearch-import-182-DD57.html> (March 2001).

¹⁵ Treasury-HUD Report at 31.

¹⁶ Javier Silva, *A House of Cards: Refinancing the American Dream*, at http://archive.demos.org/pubs/house_cards.pdf (2005). Percentages are based on number of loans issued and not on loan amounts.

¹⁷ Heather C. McGhee & Tamara Draut, *Retiring in the Red: The Growth of Debt Among Older Americans* 3, at http://archive.demos.org/pubs/Retiring_2ed.pdf (2004) (percentage based on 2001 dollars).

¹⁸ *Id.* at 6.

According to the New York Times, after years of “flooding Americans with credit card offers and sky-high credit lines, lenders wrote off an estimated \$21 billion in bad credit card loans in the first half of 2008.”¹⁹ If unemployment continues to increase, debt cancellation could exceed historic norms.²⁰

Cancellation of this debt does not qualify for exclusion from income under MFDRA, and using home loan proceeds to pay this debt disqualifies canceled loans for exclusion under MFDRA. Taxpayers need to be able to determine whether their canceled debt is excludible from income under a different exception (such as the insolvency exception) and must file Form 982 to claim the benefit of that exception.

Developments Since the 2007 Annual Report to Congress

The 2007 Annual Report recommended changes to various aspects of the reporting process to make it easier for taxpayers to understand their obligations in reporting cancellation of indebtedness income. The report recommended that the IRS:

- Develop a comprehensive publication that would assist taxpayers in preparing returns;
- Provide in-person assistance to taxpayers who seek information or return preparation assistance;
- Improve the form used by lenders to report cancellation of indebtedness income and the form used by taxpayers to report reductions in tax attributes; and
- Improve its communications with taxpayers who it believes misreported cancellation of indebtedness income.

We commend the IRS for taking the steps described below that improved the availability of reliable information and assistance to taxpayers, and for working with the office of the National Taxpayer Advocate to address our concerns.

New Publication 4681 Provides Better Information to Taxpayers

The National Taxpayer Advocate strongly recommended “that the IRS develop a publication on the tax treatment and reporting of cancellation of indebtedness income that consolidates all relevant information in one place.”²¹ The IRS developed Publication 4681, *Canceled Debts, Foreclosures, Repossessions, and Abandonments*, in collaboration with the Taxpayer Advocate Service and released it in May 2008. The publication fills a critical

¹⁹ Eric Dash, *Consumers Feel the Next Crisis: It's Credit Cards*, The New York Times, Oct. 29, 2008.

²⁰ *Id.*

²¹ National Taxpayer Advocate 2007 Annual Report to Congress 31.

information gap, because it provides an exhaustive explanation of cancellation of indebtedness issues.²²

The Taxpayer Advocate Service (TAS) Raised Awareness about Cancellation of Debt

As part of the 2008 IRS Nationwide Tax Forums, held in six major cities (Atlanta, Chicago, Orlando, Las Vegas, New York, and San Diego), TAS developed and presented a training session entitled *Cancellation of Debt – What You Need to Know*. The session was designed to raise awareness of the issue among practitioners and to provide guidance for them. It opened with a video podcast showing the National Taxpayer Advocate describing cancellation of debt income and how this issue affects taxpayers. The session proceeded in a panel format with a TAS executive serving as moderator, a TAS attorney or systemic advocacy analyst sharing the TAS perspective, a representative from the Wage and Investment (W&I) division Automated Underreporter (AUR) unit describing how the IRS handles Forms 1099-C, and a local Low Income Taxpayer Clinic (LITC) staff member discussing the impact of cancellation of debt income on taxpayers and practitioners.

This session proved extremely popular, attracting standing room only crowds at all of the first three Tax Forums. The Atlanta and Chicago presentations drew more than a thousand attendees. In each of the final three locations, the session was presented twice to accommodate everyone who wished to attend, and attendees were given the new Publication 4681 as a reference document.

The IRS Revised Form 982

The National Taxpayer Advocate noted in the 2007 Annual Report that “The IRS could substantially simplify the task of completing the form [Form 982] for non-business taxpayers by clarifying the instructions.”²³ In 2008, the IRS, in collaboration with TAS, revised Form 982 and the instructions to incorporate the MFDRA provisions (and other statutory provisions pertaining to Hurricane Katrina) and to provide clarification. The revised instructions include a detailed chart that guides taxpayers to the appropriate lines on the form. The taxpayer sees a column captioned “*IF the discharged debt you are excluding is...*” with a menu of different types of debt (qualified principal residence indebtedness, nonbusiness debt, or any other debt). Each category of debt on the menu corresponds to a column captioned “*THEN follow these steps...*” The steps explain exactly which lines on the form to complete.

²² In July 2008, the National Taxpayer Advocate awarded the National Taxpayer Advocate award to TAS and other IRS and Chief Counsel employees who worked on the new Publication. The National Taxpayer Advocate Award is conferred on IRS employees who make extraordinary contributions in support of the following TAS strategic objectives: advocate changes in tax law or procedures that protect taxpayer rights, reduce taxpayer burden, and improve IRS effectiveness; improve TAS’s ability to identify and respond to taxpayer concerns; identify significant sources of TAS casework and work with operating divisions on strategies to reduce inappropriate TAS workload; and ensure the human resources component of TAS is adequate to meet its workload demands.

²³ National Taxpayer Advocate 2007 Annual Report to Congress 23.

The revised Form 982 is a substantial improvement over the previous version, although it does not reference Publication 4681 because the publication was issued later. As described below, further changes in Form 982 are desirable.

The IRS Revised Form 1099-C

Form 1099-C, *Cancellation of Debt*, is used by lenders to report cancellation of indebtedness.²⁴ Lenders issued Forms 1099-C to over 1.4 million taxpayers in 2006 and to more than 1.6 million taxpayers in 2005.²⁵ In 2006, over 15 percent of the taxpayers issued a 1099-C received more than one, but on only two percent of the Forms 1099-C did the issuer check the box to indicate the debt was discharged in bankruptcy.²⁶

The 2007 Annual Report to Congress noted that although taxable cancellation of indebtedness income does not arise if the underlying debt is nonrecourse, “there is no difference in the way canceled recourse debts and canceled nonrecourse debts are reported on Form 1099-C.”²⁷ Form 1099-C also did not instruct the issuer to provide its telephone number, which made it more difficult for a debtor who disagrees with the amount recorded by the issuer as the fair market value of the property (or with any other aspect of the form) to communicate with the issuer to resolve the problem. The IRS revised Form 1099-C in 2008 to include the field “Was borrower personally liable for repayment of the debt?” and to instruct the issuer to provide its telephone number. The reverse side of the 1099-C, which contains “Instructions for Debtor,” was changed to incorporate references to Publication 4681. The National Taxpayer Advocate applauds the IRS for making these improvements and looks forward to continued collaboration with the IRS in further refining and developing Form 1099-C and instructions.

The IRS Expanded Assistance to Taxpayers

In her 2007 report, the National Taxpayer Advocate noted that the IRS designated the tax treatment of canceled debt a subject that is “out of scope” for tax return preparation assistance at Volunteer Income Tax Assistance (VITA) sites, Tax Counseling for the Elderly (TCE) sites, and at the IRS’s own Taxpayer Assistance Centers (TACs).²⁸ She recommended that the IRS designate the tax treatment of canceled debts as “in scope” for purposes of preparing returns and answering general questions at the TACs. She further recommended that the IRS provide specialized training on cancellation of indebtedness issues to a unit of telephone assistors and then route taxpayer calls on these issues to those assistors.²⁹

²⁴ Treas. Reg. § 1.6050P-1(a)(1).

²⁵ Lenders issued Forms 1099-C to 1,452,393 taxpayers in 2006 and to 1,635,820 taxpayers in 2005. IRS Compliance Data Warehouse, *Individual Returns Master File* (Tax Years 2005, 2006).

²⁶ IRS Compliance Data Warehouse, *Individual Returns Master File* (Tax Year 2006).

²⁷ National Taxpayer Advocate 2007 Annual Report to Congress 18.

²⁸ *Id.* at 24.

²⁹ *Id.* at 33.

The IRS removed the “out of scope” designation at VITA and TCE sites with respect to the MFDRA exception for cancellation of debt income. Volunteers who staff these sites may now assist taxpayers in determining whether the MFDRA exception applies to them. However, training at VITA and TCE sites appears to incorporate Publication 4702, *Mortgage Forgiveness Debt Relief Act of 2007*, which is inadequate and out of date. We recommend that the IRS develop better training materials for VITA and TCE sites, confirm that VITA and TCE volunteers who staff these sites can spot potential application of other exceptions to cancellation of debt income, and refer taxpayers who visit VITA and TCE sites to TACs or LITCs, as appropriate.

The IRS also removed the “out of scope” designation at the TACs, and is providing more extensive training on cancellation of debt income for some TAC employees. Senior staff began training in November 2008 to be qualified to assist taxpayers with this issue by January 2, 2009, when the new filing season begins. As of December 15, 2008, 277 employees certified that they received such training. The printed training materials cover the insolvency and bankruptcy exceptions for cancellation of debt income, but not the exceptions for qualified farm indebtedness or qualified real property business indebtedness (these exceptions continue – we believe, appropriately – to be designated “out of scope”).³⁰ The materials explain the meaning of insolvency and state “Note: Advise the taxpayer to attach a statement to their return explaining how they arrived at their insolvency amount. This could be done by listing all their assets in one column and liabilities in another.”³¹ The materials include several examples from the new Publication 4681, as well as a glossary of terms and training on how to complete Form 982.³²

The printed training materials will be used in conjunction with an interactive electronic assistance program that was also recently developed and is scheduled to be launched in January 2009. The software, referred to as ITLA (Interactive Tax Law Assistant), is organized as an interview in which the taxpayer (through the IRS employee) answers a series of questions that lead to a conclusion and a recommended course of action.

Although one of the ITLA questions is “Were you insolvent at the time the debt was canceled?” the assistor is cautioned, “Note to Assistor: do not assist taxpayer with the insolvency calculation.” Further, ITLA does not appear to distinguish between qualified principal residence indebtedness and home loan proceeds used to pay other types of debt. The relevant question, “Did you incur the debt in acquiring, constructing, or substantially improving your principal residence?” does not permit the taxpayer to respond that only

³⁰ *Cancellation of Debt for Field Assistance & SPEC Employees* (Oct. 2008). Taxpayers who ask questions that are out of scope are referred to the IRS toll-free numbers, the Internet, or a trained phone assistor. If a qualified assistor is not available, the IRS arranges a callback with a response time of up to 15 days. See I.R.M. 21.3.4.3.7.5 (Oct. 1, 2008).

³¹ *Cancellation of Debt for Field Assistance & SPEC Employees* at 5-20 (Oct. 2008).

³² The glossary contains, among other entries, “Insolvency/Solvency” which states, in part: “You were insolvent immediately before the cancellation to the extent that the total of all your liabilities exceeded the FMV of all of your assets immediately before the cancellation. For purposes of determining insolvency, assets include the value of everything you own (including assets that serve as collateral for debt and exempt assets which are beyond the reach of your creditors under the law, such as your interest in a pension plan and the value of your retirement account).”

a portion of the debt was so used. Therefore, the assistor may incorrectly conclude that all (or none) of the taxpayer's canceled debt is excludible from income.³³ For this reason, only IRS employees who receive separate training on cancellation of debt income should use ITLA. Taxpayers who call the IRS toll-free number (1-800-829-1040) to inquire about cancellation of indebtedness issues will speak with a Customer Service Representative who has received training and will use the same interactive ITLA software described above. Moreover, the IRS should add a follow-up question to ITLA inquiring whether the taxpayer used the proceeds for another purpose such as debt consolidation.

Continuing Challenges

Since the National Taxpayer Advocate's 2007 Annual Report to Congress, the IRS has dealt with several aspects of cancellation of indebtedness that pose difficulties for taxpayers. Particularly with respect to raising awareness of the issue and providing taxpayers with useful information, the IRS has been proactive. However, the difficulty of accurately describing this area of the law in terms that make sense to many taxpayers makes misreporting more likely. Misreporting will not, in many cases, result in an underpayment of tax, yet it may trigger an enforcement action by the IRS. The IRS needs to communicate with taxpayers who do not perfectly account for their cancellation of debt income before resorting to enforcement measures. As Commissioner Shulman has said, the IRS must show sensitivity in dealing with taxpayers buffeted by difficult economic times.³⁴

Taxpayer Challenges in Reporting Canceled Debts on Form 982 Persist.

Taxpayers who exclude cancellation of indebtedness from income are required to report a corresponding reduction in tax attributes by filing Form 982. As described below, the IRS matches this form (and the taxpayer's tax return) with Forms 1099-C issued to the taxpayer to determine whether the taxpayer properly reported cancellation of indebtedness income. Taxpayers who exclude cancellation of debt from income entirely under MFDRA need only reduce their basis in their residence by the amount of the canceled debt.³⁵

As described above, however, many taxpayers cannot use the MFDRA exception to exclude all of the canceled debt because they used some of the debt proceeds for purposes other than the acquisition, construction, or improvement of their principal residences. These taxpayers may avail themselves of the insolvency exception. Form 982, which is used to claim insolvency, contains a definition of insolvency and an example that illustrates the concept, but the form does not include a worksheet for calculating insolvency, nor does it direct

³³ The IRS has indicated that a revised version of the ITLA software will be available on Dec. 5, 2008, which will address these shortcomings in the current application. IRS response to TAS Nov. 21, 2008.

³⁴ Martin Vaughan, *IRS Head: Tough Economic Times Call for Sensitive Approach*, Dow Jones Newswires, Oct. 27, 2008. See also Most Serious Problem, *Customer Service within Compliance*, *infra*; Most Serious Problem, *The IRS Needs to More Fully Consider the Impact of Collection Enforcement Actions on Taxpayers Experience Economic Difficulties*, *infra*.

³⁵ Pub. L. No. 110-142 § 2(b); IRS Pub. 4681, *Canceled Debts, Foreclosures, Repossessions, and Abandonments 7* (2007).

the taxpayer to submit any substantiation of insolvency with the completed Form 982. As described below, this lack of guidance may result in later enforcement action by the IRS.

Further, taxpayers who qualify for another exception (such as the insolvency exception) will have to contend with the ordering rules set out in Form 982, which direct them to reduce tax attributes (such as basis, net operating losses, general business credit carryovers, minimum tax credits, and capital losses) in relation to the amount of the canceled debt. Taxpayers who are not farmers or businesses will very likely not have tax attributes other than personal property. Therefore, they will face the requirement of reporting adjustments to personal property such as furniture, jewelry, and clothing.

The reduction in basis in personal property will increase the gain on any subsequent disposition of these items or reduce the (nondeductible) loss. Implicit in the logic of this statutory scheme is the supposition: (1) that the taxpayer can establish that he or she has basis in personal property in an amount greater than zero; (2) that the taxpayer who reduces his or her basis in personal property may later sell such personal property; and (3) in the event of such sale the taxpayer will accurately report the gain or (nondeductible) loss, having kept track of the basis in the sold property in the interim. Also implicit in this framework is the supposition that the IRS likewise keeps track of basis in taxpayers' personal property as reported on Form 982. In a statutory environment such as this, to say nothing of the economic difficulty the taxpayer is likely facing, the importance of engaging in sensitive, proactive, and helpful communications with taxpayers, especially those whom the IRS identifies as having misreported collection of indebtedness income, is evident.

The IRS Is Too Quick to Take Enforcement Measures When Taxpayers Misreport Cancellation of Debt.

Taxpayers may first become aware they may need to report cancellation of indebtedness income when they receive a letter, Notice CP 2000, *Notice Proposing Adjustments to Income, Payments, or Credits*. The IRS issued 126,906 such notices in 2005.³⁶ The Notice CP 2000 is the first step toward assessment of the tax and in this sense is an enforcement measure.

The IRS may issue Notice CP 2000 after an AUR analyst evaluates a discrepancy between amounts shown on a Form 1099-C and on the taxpayer's return. It may be issued *even if the taxpayer files a Form 982 claiming that he or she was insolvent*, if the taxpayer does not also include a statement showing the amount of the insolvency. As described above, Form 982 does not direct the taxpayer to include such a statement. The Notice CP 2000 states that a discrepancy exists and instructs the taxpayer: "If you claimed insolvency, please provide us with a breakdown of your total assets and liabilities immediately before the cancellation of debt."

³⁶ IRS response to TAS research request (Oct. 31, 2007); UR TY 2005 Process Code Results - Data Extracted 10/27/07, AUR National Rollup for Category 29 (cancellation of debt).

Therefore, taxpayers who successfully navigate Form 982 and attest to their insolvency may nevertheless find themselves facing an IRS enforcement action when they receive a Notice CP 2000 instructing them to provide a breakdown of their assets and liabilities, without any guidance as to what form the report is to take. The IRS should develop tools and schedules, including an insolvency worksheet, to help taxpayers accurately and completely meet their reporting obligations for cancellation of debt income when they file their tax returns.

The IRS Should Create a Single Unit Dedicated to Handling Cancellation of Debt Issues.

The complexity of this area of the law, coupled with the frequency of the issue and the expectation, in view of continued economic difficulties, that the number of taxpayers affected by cancellation of debt will grow, warrants the creation of a specialized IRS unit to handle related questions. This approach is not unusual: the IRS set up a specialized unit in 1998 to handle claims for relief from joint liability under newly enacted IRC § 6015,³⁷ and created procedures for accessing the “U.S. competent authority” in the early 1970s to help taxpayers deal with certain provisions of international tax treaties.³⁸ Providing more in-depth training to fewer employees would lead to better quality control and consequent improvement in service on a more timely basis (or in real time), consistency in service, and greater ease in spotting and accommodating emerging trends. The centralized unit should be given authority to initiate communications with taxpayers who may have misreported their cancellation of debt income by writing to them at their last known addresses and attempting to ascertain their current addresses. The unit should be responsible for initiating communications that focus on helping taxpayers meet their reporting obligations, rather than establishing that they have not.

Conclusion

The rules pertaining to cancellation of indebtedness income are complex and, for most taxpayers, counterintuitive. In 2008, the IRS responded to several concerns raised by the National Taxpayer Advocate in her 2007 Annual Report to Congress, but needs to do more to inform taxpayers of the rules and simplify the reporting procedures. The IRS should update the materials it uses to train volunteers who staff the VITA and TCE sites and revise the new ITLA software to verify that it accurately reflects the statutory framework and complements the written training materials. To the extent the IRS requires taxpayers to furnish a breakdown of assets and liabilities in order to claim the insolvency exception, it should provide appropriate forms and instructions, and revise Form 982 to direct taxpayers to provide this information with their returns. The IRS should create a specialized unit to handle cancellation of debt issues. IRS communications to taxpayers who misreport their cancellation of debt should take into account the economic difficulty that these taxpayers are likely facing. By extending the term of MFDRA through 2012, Congress recognized that

³⁷ See IRS Form 8857, *Request for Innocent Spouse Relief* (1998).

³⁸ See Rev. Proc. 70-18, 1970-2 C.B. 493.

the economic distress that leads to debt cancellation is not likely to abate in the next few years. The tax treatment of debt cancellation will therefore require continued attention.

IRS Comments

As a result of the downturn in the economy and the increasing numbers of taxpayers affected by taxable debt forgiveness income, the IRS has taken, and will continue to take actions to help taxpayers better understand and comply with these very complex provisions of the Internal Revenue Code. Many of these actions were taken in close collaboration with the National Taxpayer Advocate, who timely identified this as an emerging issue and provided the IRS with a number of excellent suggestions. As outlined in more detail below, the IRS developed a new Publication 4681, clarified other related forms, instructions, and publications, and expanded the scope of the services offered at TACs and IRS-sponsored volunteer sites to address this issue. In addition, IRS compliance notices are being revised to reference the Mortgage Forgiveness Debt Relief Act of 2007 and to include the new Publication 4681. Finally, as an integral part of the planning for the 2009 filing season, the IRS is developing enhanced communications products, updating and expanding IRS.gov, and increasing outreach to taxpayers, partners, and tax practitioners on this important subject.

The IRS developed Publication 4681, *Canceled Debts, Foreclosures, Repossessions, and Abandonments*, in collaboration with TAS, to consolidate all relevant information in one document. The publication, which was released in May 2008, provides a thorough explanation of cancellation of debt (COD) issues. The National Taxpayer Advocate recognized this accomplishment by awarding the National Taxpayer Advocate award to IRS employees who worked on the new publication.

The IRS, in collaboration with TAS, also revised Form 982, *Reduction of Tax Attributes Due to Discharge of Indebtedness*, and the instructions to incorporate MFDRA provisions and simplify the task of completing the form for non-business taxpayers. A new table was also added to the instructions on *How to Complete the Form*, to clearly explain which lines on Form 982 must be completed in situations involving qualified principal residence debt, other non-business debt (such as car loan or credit card debt), and other debts.

Although the National Taxpayer Advocate states the revised Form 982 is a substantial improvement over the previous version, she also states taxpayers continue to face challenges in reporting canceled debts on Form 982. Specifically, the National Taxpayer Advocate mentions that Form 982, which is used to claim insolvency, does not include a worksheet for calculating insolvency, nor does it direct taxpayers to submit substantiation of insolvency. The IRS notes that, because of the vast numbers and types of assets and liabilities that can exist for taxpayers, it is impossible to develop a worksheet that would work for all taxpayers. The IRS believes it would be more beneficial to illustrate the calculation through the use of examples, such as those in Publication 4681. To this end, the IRS plans to add

a reference in Form 982 that directs taxpayers to the insolvency examples in Publication 4681. Further, the IRS is updating Publication 525, *Taxable and Nontaxable Income*, to include more specific guidelines on the types of assets and liabilities that must be included in the computation for taxpayers seeking to exclude income based on the insolvency exclusion.

With regard to the National Taxpayer Advocate's recommendation that the IRS direct taxpayers to submit substantiation of insolvency with the completed Form 982, the IRS believes this would pose unnecessary burden on those taxpayers since most will not receive a CP 2000 notice from the IRS. The IRS further notes this information is not required during the processing of Form 982, but is normally requested only in connection with resolution of an information return document matching discrepancy, or when a return is selected for examination.

With respect to the VITA and TCE programs, the IRS expanded the scope at VITA/TCE sites to include COD issues relating to the MFDRA. Volunteers with advanced certification will be trained to assist taxpayers with tax return preparation for income excluded due to "discharge of qualified principal residence indebtedness." A Screening Sheet will be available for volunteers to identify those taxpayers who can be assisted at the volunteer sites and those that need to be referred to TACs or Low Income Taxpayer Clinics. In addition, a training supplement to the 2008 Publication 4491, *Volunteer Student Guide*, is currently under development. The supplement, Publication 4491-X, will include information about the MFDRA, plus updates on other legislation that have become available since Publication 4491 was published. Two outreach products – Publication 4702, *Mortgage Forgiveness Debt Relief Act of 2007 Overview*, and Publication 4705, *Tax Relief for Struggling Homeowners and FAQs* – are also being updated to provide partners, volunteers, and employees with current information about the MFDRA.

With respect to TACs, the IRS has also expanded the scope of return preparation assistance to include COD issues related to MFDRA. Further, for tax law assistance, the IRS removed the "out of scope" designation and is providing extensive training on COD income for TAC employees who have received Intermediate Tax Law Training. The Interactive Tax Law Assistant (ITLA), an interactive electronic assistance program, will address insolvency, allowing trained assistants to help with a comparison of assets vs. liabilities.³⁹ Additional probes were added to determine the portion of principal residence indebtedness that was used for a purpose other than acquiring, constructing, or substantially improving the taxpayer's principal residence. The ITLA will also include a resulting response that will address the equity portion of the debt.

The IRS agrees that only IRS employees who receive separate training on COD income should use ITLA. Providing high quality service depends on employees knowing when and

³⁹ <http://serp.enterprise.irs.gov/databases/irm-sup.dr/current/itla/itla-home.htm>.

where to refer issues that are outside their training, certification and expertise. As such, referral procedures are in place to assist taxpayers when an employee encounters a question beyond their training or expertise. Taxpayer issues beyond these levels will be handled through a clearly defined referral process.⁴⁰

The National Taxpayer Advocate asserts the IRS is too quick to take enforcement action when taxpayers misreport COD. For example, the National Taxpayer Advocate states taxpayers may first become aware that they may need to report COD income when they receive a letter, Notice CP 2000, *Notice Proposing Adjustments to Income, Payments, or Credits*. The IRS believes taxpayer's first indication that they need to report COD income more often arises when they receive Form 1099-C, *Cancellation of Debt*, from the lender. Form 1099-C is required to be filed with the IRS and the taxpayer for cancellation of any debts of \$600 or more. However, if the taxpayer fails to include this income on their return or to claim one of the applicable exceptions or exclusions on Form 982, they may receive a CP 2000 notice from the IRS. This notice includes a special paragraph that instructs the taxpayer that under certain conditions, cancelled or forgiven debt should be included on returns as income. This paragraph also informs taxpayers that if they claim insolvency, they should provide a breakdown of total assets and liability immediately before the cancellation of debt. Further, TY 2007 and future CP 2000 notices that involve COD income will include reference to the MFDRA and a copy of Publication 4681.

For COD cases selected for review by the Automated Underreporter (document matching) Program, if the taxpayer files Form 982 to claim the insolvency exception, a CP 2000 request for substantiation of insolvency is much like any other issue where the IRS is verifying the taxpayer's claim. The practice of requesting additional information from the taxpayer, even though inclusion of that information is not required at the time of filing, is not unique to situations involving COD insolvency status.

Finally, the National Taxpayer Advocate recommends the IRS create a single unit dedicated to handling COD issues, similar to the current Innocent Spouse program or the U.S. competent authority procedures created in the early 1970s. It is important to understand that unlike Innocent Spouse or the recently centralized Identity Theft unit, where specialized handling is provided to address unique claims or uncommon issues, the requirement to report and pay tax on COD income is an integral part of IRS' information, education, assistance, and compliance operations. In light of current economic conditions, the IRS believes the additional focus and attention to the COD income issue, as outlined above, is fully warranted. However, there are myriad complex provisions in the Code. At this time, the IRS does not believe the COD income issue is so unique as to justify creation of redundant, centralized operations dedicated solely to this particular tax provision.

⁴⁰ IRM 21.3.4.3.7, *Referral Procedures*.

Taxpayer Advocate Service Comments

The National Taxpayer Advocate applauds the IRS for recognizing the seriousness of this problem and taking appropriate action such as working with TAS to develop Publication 4681, *Canceled Debts, Foreclosures, Repossessions, and Abandonments*; revising Form 982, *Reduction of Tax Attributes Due to Discharge of Indebtedness*; and expanding assistance to taxpayers at TACs and IRS-sponsored volunteer sites. The National Taxpayer Advocate welcomes the IRS's commitment to continue to enhance its training materials and communications products.

While the IRS and the National Taxpayer Advocate have worked together very effectively in addressing issues surrounding the problem of understanding and reporting the tax consequences of cancellation of debt income, some challenges remain where the IRS appears not to appreciate the uniqueness and long-term nature of the problem. For example, the IRS believes that a taxpayer first realizes he or she may have cancellation of indebtedness income upon receipt of the Form 1099-C. This assertion simply does not correspond to the realities taxpayers face when their homes are foreclosed, they are evicted, and their former residences sold. Taxpayers in this situation seek alternative living arrangements, such as with friends or family or in shelters, and they may move several times. It should come as no surprise that many taxpayers in this situation do not notify the lender that foreclosed on their home of their current whereabouts in order to ensure that they will receive a form they have never heard of which will permit them to meet a tax reporting obligation that they do not even suspect exists. This is a unique problem, and the IRS should find unique approaches to helping taxpayers understand and report the tax consequences of their debt cancellation. An AUR notice, as the likely first indication taxpayers receive that they may have a tax liability, should be explanatory and helpful, keeping in mind that many taxpayers will not in fact owe additional taxes. The outreach and communications products that the IRS is creating, described in its response, could be included with the initial letter AUR sends.

We are unconvinced that the IRS cannot produce an insolvency worksheet for taxpayers to submit with their tax returns when they claim the insolvency exception. The IRS is developing specific guidelines pertaining to insolvency for inclusion in Publication 525, *Taxable and Nontaxable Income*, which demonstrates that the capability exists. Designing a form with that information (including a line for "other" assets or liabilities if necessary), providing a general explanation for the form, and referencing Publication 525, would be helpful and appropriate.

As another example of the IRS's underestimate of the significance of this issue, the IRS explains that it solicits substantiation from taxpayers claiming the insolvency exception "much like any other issue where the IRS is verifying the taxpayer's claim." It is true that the rules pertaining to cancellation of debt income have been in place for many years. As our statistics show, however, entire segments of the population, such as the elderly with

credit card debt used to pay for medical care, are now affected by these rules for the first time. Middle-class taxpayers whose jobs will be impacted by the economic downturn and the subprime lending spree of recent years will join the ranks of those with debt cancellation reporting obligations. These conditions will transform the problem of cancellation of debt reporting into a taxpayer crisis for the next five years at least. The IRS is short-sighted to resist immediate and fundamental accommodation of this reality.

Recommendations

In summary, the National Taxpayer Advocate recommends that the IRS:

1. Develop an insolvency worksheet for taxpayers claiming the insolvency exception;
2. Revise Form 982 to instruct taxpayers claiming the insolvency exception to attach an insolvency worksheet to their returns; and
3. Create a centralized unit dedicated to handling cancellation of debt issues.

MSP
#4**Employment Taxes****Responsible Official**

Chris Wagner, Commissioner, Small Business/Self-Employed Division

Definition of Problem

With an estimated \$58 billion in unpaid employment taxes, it is clear that the IRS faces a significant noncompliance problem.¹ At the same time, approximately 88 percent of all employment tax returns are filed with no balance due.² Thus, recognizing that the majority of taxpayers are compliant, the IRS needs to take a balanced approach to collecting these taxes. While the need to collect unpaid payroll taxes is clear, the IRS should apply different treatments to taxpayers depending on their level of and reasons for noncompliance. The National Taxpayer Advocate has the following concerns about the IRS's current procedures and initiatives to address noncompliance:

- IRS policies may overreach and undermine some of the important protections enacted in the Taxpayer Bill of Rights 2 (TBOR 2) and the IRS Restructuring and Reform Act of 1998 (RRA 98), especially with respect to Trust Fund Recovery Penalties (TFRPs);³
- While it is essential to address the existing significant level of noncompliance, the IRS must also focus on encouraging voluntary compliance by assisting those taxpayers attempting to comply with complex rules and procedures;
- The IRS has not concentrated sufficient resources on early intervention techniques to prevent the accumulation of substantial employment tax liabilities; and
- To avoid costly downstream enforcement actions, the IRS needs to focus on building up a local compliance presence for enforcement purposes and to perform outreach and education initiatives.

¹ IRS Compliance Data Warehouse, Accounts Receivable Dollar Inventory, Cycle 200738 (the closest cycle to Sept. 30, 2007) for employment tax (Form 941) delinquencies outstanding. The Government Accountability Office (GAO) recently conducted an audit to address the problem of unpaid payroll taxes at the request of the Permanent Subcommittee on Investigations of the U.S. Senate Committee on Homeland Security and Governmental Affairs. The results of the study were the focus of a hearing on July 29, 2008, titled "Payroll Tax Abuse: Businesses Owe Billions and What Needs to Be Done About it." GAO, GAO-08-617, *Tax Compliance: Businesses Owe Billions in Federal Payroll Taxes* 23 (July 2008). This discussion will detail this audit and recommendations, *infra*.

² Compliance Data Warehouse, Business Return Transaction File and Accounts Receivable Dollar Inventory for Tax Periods 200609, 200612, 200703, and 200706 (the data does not account for unfiled return investigations remaining after third quarter 2008).

³ TBOR 2, Pub. L. No. 104-168 § 903, 110 Stat. 1452, 1466 (1996); RRA 98, Pub. L. No. 105-206 § 3307, 112 Stat. 685, 744 (July 22, 1998).

Analysis of Problem

High Rate of Employment Tax Compliance

Employment taxes constitute a significant source of revenue for the federal government. In fiscal year (FY) 2007, of the total \$2.7 trillion the IRS collected, payroll taxes represented approximately \$850 billion.⁴ Despite the burdensome and complex requirements associated with employment taxes, the rate of compliance among employment taxpayers is quite high. For example, IRS data shows that in FY 2007, over 88 percent of all employment tax returns were filed with no balance due.⁵ Thus, IRS data indicates that the overwhelming majority of employers are presumably compliant.

GAO Report on Significant Employment Tax Noncompliance

While employment tax compliance is relatively high, noncompliance is still a significant problem. The Government Accountability Office (GAO) recently conducted an audit to address the problem of unpaid payroll taxes at the request of the Permanent Subcommittee on Investigations of the U.S. Senate Committee on Homeland Security and Governmental Affairs. The results of the study were the focus of a hearing on July 29, 2008, titled “Payroll Tax Abuse: Businesses Owe Billions and What Needs to be Done About it.” The audit found that as of September 30, 2007, over 1.6 million businesses owed over \$58 billion in unpaid federal payroll taxes (including penalties and interest) that have accumulated over the last 10 years. The IRS has classified over half of the debt as currently uncollectible.⁶

The National Taxpayer Advocate’s research similarly indicates that as of September 2007, 1.6 million taxpayers owed approximately \$58 billion in employment taxes. Less than half of this amount – \$26.2 billion – represented actual taxes, as interest (\$17.5 billion) and penalties (\$14.2 billion) made up the rest.⁷ Approximately 30 percent of the \$58 billion consists of interest, demonstrating that the timing of IRS intervention is extremely vital, because the accumulation of interest and penalties significantly exacerbates delinquency issues.

In its report, GAO concluded employment tax noncompliance is increasing. In a 1998 study, GAO found unpaid payroll taxes totaled \$49 billion. The recent GAO report found that in the ten years since, the number of businesses with unpaid payroll taxes has

⁴ IRS, *FY 2007 Data Book* Table 1.

⁵ Compliance Data Warehouse, Business Return Transaction File and Accounts Receivable Dollar Inventory for Tax Periods 200609, 200612, 200703, and 200706 (the data does not account for unfiled return investigations).

⁶ GAO, GAO-08-617, *Tax Compliance: Businesses Owe Billions in Federal Payroll Taxes* 23 (July 2008). It is unclear why the IRS classified the unpaid taxes as currently uncollectible. GAO noted that the IRS assigned to revenue officers about \$7 billion, and about \$9 billion remained in the queue awaiting assignment. In addition, GAO’s analysis found that the number of businesses with more than 20 quarters of tax debt (five years of unpaid payroll tax debt) more than doubled between 1998 and 2007.

⁷ IRS Compliance Data Warehouse, *Accounts Receivable Dollar Inventory, Cycle 200738* (the closest cycle to September 30, 2007) for employment tax (Form 941) delinquencies outstanding.

decreased from 1.8 million to 1.6 million, but the size of the tax debt increased by approximately 20 percent.⁸

The National Taxpayer Advocate questions whether employment tax noncompliance has in fact increased over the past decade. The 1998 figures cited by GAO were not adjusted for inflation; such adjustment is necessary to reflect the change over ten years. In fact, the amount of the inflation-adjusted employment tax gap appears to have shrunk, because \$49 billion in 1998, adjusted for the consumer price index, is equivalent to over \$62 billion in 2007. In addition, the GAO data does not indicate whether the number of employers in the United States has increased in the last ten years, or whether the ratio of unpaid payroll taxes to total payroll taxes has increased during this time. Merely providing aggregate data without making these adjustments and comparisons can distort the picture and prevent the IRS from designing appropriate solutions.

Complex Employment Tax Requirements

Employers that pay wages for services of an employee are required to deduct and withhold Social Security, Medicare, and income taxes from the wages.⁹ Employers are also responsible for unemployment tax (FUTA) and their share of the Social Security and Medicare tax for their employees.¹⁰ Employers may receive a credit, subject to limitations, on their unemployment tax up to the amount of state unemployment taxes they pay.¹¹ The determination of whether an employer has employees subject to withholding is based on the facts and relationship surrounding the employment.¹²

Generally, employers are responsible for filing tax returns and making periodic payments, known as deposits, to the IRS for employment taxes. While the rates for Social Security and Medicare taxes are fixed by law, employers may calculate income tax withholding under the percentage method or the wage bracket method.¹³ An employer determines withholding based on the wage bracket method by finding the proper withholding on the tables provided in Publication 15, (Circular E), *Employer's Tax Guide*, and referencing the bracket for the withholding from the employee's pay period wages, pay period, marital status, and number of allowances for withholding. If the wages exceed the amount for the period and marital status provided, the employer may use the percentage method to determine

⁸ GAO, GAO-08-617, *Tax Compliance: Businesses Owe Billions in Federal Payroll Taxes* 23 (July 2008).

⁹ See IRC §§ 3102(a) and 3402(a). The employee's rate of tax is 6.2 percent of wages for Social Security up to the contribution and benefit base and 1.45 percent of wages for Medicare. See IRC § 3121(a). The contribution and benefit base as determined under § 230 of the Social Security Act is \$102,000 for 2008 and \$106,800 for 2009. See <http://www.ssa.gov/pressoffice/factsheets/colafacts2009.htm> (last visited Dec. 22, 2008).

¹⁰ See IRC §§ 3301, 3111(a) and (b). The employer's tax for Social Security and Medicare is identical to the employee's tax. The employer's unemployment tax under IRC § 3301 is equal to 6.2 percent of each employee's wages up to \$7,000. See IRC § 3306(b).

¹¹ IRC § 3302(a). The credit may not exceed 5.4 percent of the wages subject to Federal Unemployment Taxes (FUTA). See IRS Pub. 15, (Circular E), *Employer's Tax Guide*, 30 (2008).

¹² See Legislative Recommendation, *Worker Classification*, *infra*; IRC §§ 3121(b) and 3306(c); IRS Pub. 15-A, *Employer's Supplemental Tax Guide*, 4-5 (2008).

¹³ IRC § 3402(b) and (c).

withholding.¹⁴ The percentage method involves multiplying the employee's pay period wages, reduced by the amount of each withholding allowance for a certain period and marital status, by the percentage for the income level on the table in Publication 15.

An employer determines the amount of allowances for or exemption from withholding from the employee's Form W-4, *Employee's Withholding Allowance Exemption Certificate*, which is to be completed and submitted at the time the employee begins employment.¹⁵ If the employee fails to provide Form W-4, the employer must withhold taxes as if the employee were single and had no withholding allowances.¹⁶ The IRS requires employers to retain current Forms W-4 for all of their employees and may require the employer to submit copies upon written notice or as directed in published guidance.¹⁷

Employers with total FUTA exceeding \$500 in any quarter must deposit the tax with the IRS.¹⁸ Employers are required to deposit Social Security, Medicare, and income tax withholding for employees either annually, semiweekly, or monthly. Those with total Social Security, Medicare, and income tax withholding less than \$50,000 during the lookback period (the annual period ending on June 30) generally deposit these taxes by the 15th of the month following the month the taxes were collected.¹⁹ Employers with aggregate employment taxes exceeding \$50,000 during the lookback period must deposit the taxes on a semiweekly basis.²⁰ Semiweekly depositors must make their employment tax deposits on or before the following Wednesday if their payroll is paid on Wednesday, Thursday or Friday, or on or before the following Friday if their payroll is paid between Saturday and Tuesday.²¹

Employers may deposit employment taxes through the Electronic Federal Tax Payment System (EFTPS) or by depositing or mailing the funds to an authorized financial institution or IRS lockbox. Employers with deposits exceeding \$200,000 in a year are required to use the EFTPS the following year.²² The IRS provides instructions to taxpayers with Form 8109, *Federal Tax Deposit Coupon*.²³ The IRS may assert a penalty under IRC § 6656 for failure to timely make any required employment tax deposit.²⁴ There are two exceptions to

¹⁴ IRS Pub. 15, (Circular E), *Employer's Tax Guide*, 36 (2008).

¹⁵ IRC § 3402(f)(2)(A).

¹⁶ IRS Pub. 15, (Circular E), *Employer's Tax Guide*, 15 (2008).

¹⁷ Treas. Reg. § 31.3402(f)(2)-(1)(g)(1)(i); IRS Publication 15, (Circular E), *Employer's Tax Guide*, 16 (2008).

¹⁸ IRS Pub. 15, (Circular E), *Employer's Tax Guide*, 15 (2008).

¹⁹ Treas. Reg. § 31.6302-1(b)(2).

²⁰ Treas. Reg. § 31.6302-1(b)(3).

²¹ Treas. Reg. § 31.6302-1(c)(2)(i).

²² Internal Revenue Manual (IRM) 5.7.1.7 (July 18, 2008).

²³ IRS Pub. 15, (Circular E), *Employer's Tax Guide*, 22-23 (2008).

²⁴ For failing to make a timely or proper deposit, the penalties are: two percent for deposits made one to five days late; five percent for deposits made six to 15 days late; ten percent for deposits made more than 15 days late; ten percent for deposits made within ten days from notice and demand for payment; ten percent for deposits made at an unauthorized financial institution, directly to the IRS, or with a payroll tax return (unless excepted); ten percent for amounts subject to electronic deposit requirements but not deposited with EFTPS; 15 percent for deposits not made within the earlier of ten days from notice and demand or on the day that demand for immediate payment is made by the IRS. See IRC § 6656(a).

monthly or semiweekly deposits: (1) if in any deposit period an employer has accumulated \$100,000 or more of employment taxes, the employer must make a deposit the next banking day;²⁵ and (2) in some cases, a payment with the payroll tax return may be made in lieu of a monthly or semiweekly deposit without penalty.²⁶

Most employment tax returns are due at times other than when the deposits are due. The taxpayer must file Form 941, *Employer's Quarterly Federal Tax Return*, no later than the last day of the month following the close of the calendar quarter. Some employers may receive written notification from the IRS that they are entitled to file annually on Form 944, *Employer's Annual Federal Tax Return*, instead of Form 941.²⁷ Employers file Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*, to report federal unemployment tax,²⁸ and must file Forms 940 and 941 by the last day of the month following the close of the tax year.²⁹ Employers are required to report to each employee the amounts of wages paid and withholding by January 31 of each year on Form W-2, *Wage and Tax Statement*.³⁰ Employers must file Form W-3, *Transmittal of Wage and Tax Statements*, with copy A of all Forms W-2 with the Social Security Administration by the last day of February each year.³¹

IRS Employment Tax Enforcement Procedures

Most IRS collection efforts for employment taxes focus on early intervention and the detection of pyramiding taxpayers.³² In addition to using the specific tools for employment taxes identified below, the IRS collects these taxes through balance due notices, lien and levy determinations, and filing notices of federal tax lien or levy and seizure of the employer's property. The IRS is particularly concerned with collecting employment tax deposits and imposes a trust for these taxes on employers under IRC § 7512(b) by providing notice.³³ The IRS also imposes a special trust under IRC § 7501 on any person required to collect

²⁵ Treas. Reg. § 31.6302-1(c)(3).

²⁶ For example, an employer may be able to submit a monthly deposit with its Form 941, which is due one month after the close of the calendar quarter, if the liability reported on the form is \$2,500 or less, or there is a deposit shortfall not greater than the lesser of two percent of the total tax liability or \$100 and the payment is made with the return when its due date is the shortfall makeup date. Similarly, an employer who files Form 944 may be able to make its deposit for the fourth quarter with its return if its tax liability does not exceed \$2,500 and it has made its deposits for the first, second and third quarters. See IRS Publication 15, (Circular E), *Employer's Tax Guide*, 19, 22 (2008).

²⁷ See IRS Pub. 15, (Circular E), *Employer's Tax Guide*, 25 (2008).

²⁸ See *id.* at 30.

²⁹ See *id.* at 25, 30.

³⁰ See IRC § 6041(d).

³¹ See IRS Pub. 15, (Circular E), *Employer's Tax Guide*, 2 (2008).

³² See IRM 5.7.8.3 (Oct. 6, 2006). A pyramiding taxpayer is an in-business taxpayer, not current with federal tax deposits (FTDs), that has two or more tax modules assigned to the IRS's Collection Field function (CFF). "A taxpayer that is pyramiding taxes is not demonstrating a good faith effort to comply." IRM 5.7.8.3(2) (Oct. 6, 2006).

³³ See IRC § 7512(a). The trust is imposed if the person fails to collect, truthfully account for, or pay over such tax, or fails to make deposits, payments, or returns for such tax. The notice required must be delivered in hand to such person for any such failure. For purposes of a corporation, partnership or trust, a notice delivered in hand to an officer, partner or trustee shall be deemed to be delivered in hand to such corporation, partnership or trust and all officers, partners, trustees and employees thereof.

and withhold an employee's taxes, which forms the basis for the TFRP under IRC § 6672.³⁴ In practice, the IRS ensures employment tax compliance by monitoring federal tax deposits (FTDs) and taking action when the employer is delinquent or late on making the deposits.³⁵ However, the IRS appears to focus most of its monitoring efforts on employers making semiweekly deposits.³⁶

Once the IRS is alerted to an employer's noncompliance, it will assign an FTD Alert to a revenue officer.³⁷ During the initial contact with the taxpayer, the revenue officer will explain the noncompliance; provide Publication 1, *Your Rights as a Taxpayer*, and Notice 931, *Deposit Requirements for Employment Taxes*; discuss the true cost of failing to deposit taxes, including the FTD penalty, with the employer; ensure that the employer understands the consequences of continued noncompliance; and encourage the employer to remain current with deposits first, while working to resolve past due deposits. After the initial contact, the revenue officer will monitor compliance until the account is resolved.³⁸

A revenue officer who is unsuccessful at collecting employment taxes from the employer or the responsible person after proceeding with any levies and filing any liens will then decide whether a criminal referral is necessary. The revenue officer will determine if the employer's case is egregious; that is, collection procedures have been unproductive or futile in stopping or reducing trust fund pyramiding. The revenue officer will hand-deliver to the employer or, if the employer is unavailable, leave at the place of business a letter explaining the employer has flagrantly failed to pay and collect employment taxes and prosecution under IRC § 7215 may be appropriate.³⁹ The revenue officer may then require monthly filing of Form 941-M and monthly or semimonthly tax deposits.⁴⁰ If the employer fails to comply with the requirements, the revenue officer may seek prompt assessment of unpaid monthly liabilities, prepare substitutes for returns under IRC § 6020(b), or take enforcement action by the end of the quarter. The revenue officer may request a civil injunction to stop further pyramiding or make a criminal referral for failure to adhere to special bank account rules.⁴¹

Assessment and Collection of Trust Fund Recovery Penalties

The IRS has the statutory authority to assess the TFRP against any person responsible for collecting and paying the delinquent employment taxes.⁴² Upon initial contact with the delinquent employer and within 120 days of assignment of the balance due account,

³⁴ IRC § 7501(a) and (b).

³⁵ See IRM 5.7.1 (July 18, 2008).

³⁶ IRM 5.7.1.2 (July 18, 2008).

³⁷ IRM 5.7.1.4 (July 18, 2008).

³⁸ IRM 5.7.1.6 and 5.7.1.7 (July 18, 2008).

³⁹ IRM 5.7.2.1 (June 4, 2002).

⁴⁰ IRM 5.7.2.2 (June 4, 2002).

⁴¹ IRM 5.7.2.2(5) (June 4, 2002).

⁴² IRC § 6672.

the revenue officer will determine whether the IRS will assert the TFRP.⁴³ The period for a TFRP determination may be shortened if necessary to meet the statutory period for assessment.⁴⁴ The amount of the penalty equals 100 percent of the income and FICA taxes withheld from the employees.⁴⁵

The IRS imposes the TFRP on responsible persons that willfully fail to collect or pay over trust fund taxes to the IRS.⁴⁶ The IRS assigns responsibility for this failure as a matter of position, authority, and status that is heavily dependent on the facts and circumstances of each case.⁴⁷ A responsible person may include another business entity or an officer, employee, owner or surety of the employer.⁴⁸ A person is responsible to pay or collect the trust fund taxes if he or she has a duty to perform, a power to direct collection of and payment of the employer's taxes, accountability and authority to pay, and power to control which creditors are paid. The revenue officer will pursue the TFRP against the responsible person(s) unless the employer pays or liquidates specific assets to pay the trust fund taxes within 90 days of the initial contact, the responsible person agrees to pay or liquidate specific assets to pay within 90 days of the initial contact, or the employer enters an In-Business Trust Fund Express installment agreement.⁴⁹

The assessment of TFRPs came under intense congressional scrutiny in the time leading up to and during the RRA 98 hearings. TBOR 2 and RRA 98 included several provisions protecting taxpayer rights during assessment and collection of the TFRP. For example, TBOR 2 required the IRS to provide advance notice of the penalty at least 60 days before assessing it, as well as providing a right to contribution where more than one person is liable for the penalty.⁵⁰ RRA 98 permitted personal service of the preliminary notice informing the "responsible person" of the proposed penalty. The conference report specifically stated that such measure could "afford taxpayers the opportunity to resolve cases involving the 100-percent penalty at an earlier stage."⁵¹ In addition, RRA 98 prevents the IRS from collecting the full amount of any assessed penalty while litigation is pending.⁵²

⁴³ IRM 5.7.4.1 (Sept. 23, 2008).

⁴⁴ IRC § 6501(a) and (b)(2); IRM 5.7.4.1 (Sept. 23, 2008). In addition, the IRS is statutorily authorized to initiate jeopardy assessments for TFRPs. IRC § 6672(c)(5); IRM 5.1.4.2 (Apr. 1, 2005).

⁴⁵ IRC §§ 6671(b), 6672(a); IRM 5.7.3.3.1 (Apr. 13, 2006); IRM 5.7.3.3.2 (Apr. 13, 2006).

⁴⁶ IRC § 6672; IRM 5.7.3.3 (Apr. 13, 2006). Willful means intentional, deliberate, voluntary, reckless, or knowing, as opposed to accidental. No evil intent or bad motive is required. IRM 5.7.3.3.2 (Apr. 13, 2006).

⁴⁷ IRM 5.7.3.3.1(1) (Apr. 13, 2006).

⁴⁸ *Id.*

⁴⁹ IRM 5.7.4.1(3) (Sept. 23, 2008).

⁵⁰ TBOR 2, Pub. L. No. 104-168 §§ 901-903, 110 Stat. 1452, 1466 (1996).

⁵¹ RRA 98, S. Rep. No. 105-174, 105th Cong. § 3307 (Apr. 22, 1998); Pub. L. No. 105-206 § 3307, 112 Stat. 685, 744 (July 22, 1998).

⁵² RRA 98, S. Rep. No. 105-174, 105th Cong. § 3307 (Apr. 22, 1998); Pub. L. No. 105-206 § 3307, 112 Stat. 685, 744 (July 22, 1998).

General Concerns Regarding Development of IRS Employment Tax Strategy

Acknowledgement of IRS Progress

The National Taxpayer Advocate agrees that the IRS should make the collection of unpaid payroll taxes an utmost priority. Employers have already withheld the taxes from their employees' salaries and the IRS pays refunds on these amounts to these employees regardless of whether it collects the withheld funds. In addition, payroll taxes fund the Social Security program, which is projected to experience an excess of program expenses over payroll tax revenue within the next ten years.⁵³ However, considering the high tax dollars at stake and the intense congressional scrutiny, the National Taxpayer Advocate is concerned that the IRS may take a reactive approach to this problem that will not serve the long-term best interests of taxpayers or tax administration.

The IRS has undertaken some efforts to address employment tax noncompliance. For example:

- From FY 2005 to FY 2007, the number of employment tax audits increased by 66.8 percent, while the audit coverage rate rose from 0.11 percent to 0.20 percent.⁵⁴
- The IRS states that it has committed to help employers avoid problems by educating them on their employment tax responsibilities. It says that virtually every IRS function and division participates in employment tax outreach and education.⁵⁵
- The IRS sends fewer notices in employment tax cases so personal contact can occur sooner. The highest priority cases even bypass the telephone operation in favor of making first contact in the field.⁵⁶
- The IRS attempts to identify potential problems as early as possible in the process. For example, the FTD Alert process helps identify at an early stage those semi-weekly depositors that have not made federal tax deposits in the current quarter or have deposited substantially smaller amounts than in prior quarters.⁵⁷

These IRS initiatives, however, are either underutilized, inadequately staffed, or lacking strategic focus. For example, the Treasury Inspector General for Tax Administration (TIGTA) reviewed the FTD Alert program and found positive results, such as increased deposits and a higher percentage of fully paid subsequent tax liabilities. However, TIGTA

⁵³ The Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds, *2006 Annual Report 2* (May 1, 2006).

⁵⁴ *Payroll Tax Abuse: Businesses Owe Billions and What Needs to Be Done About It: Hearings Before the Perm. Subcomm. on Investigations of the S. Comm. on Homeland Security and Governmental Affairs*, 110th Cong. (July 29, 2008) (testimony of Linda Stiff, IRS Deputy Commissioner, Services and Enforcement).

⁵⁵ *Id.*

⁵⁶ *Id.* However, even these high priority cases could wait in a queue before being assigned. As discussed *infra*, at the end of FY 2007, 30.2 percent of the modules in the collection queue awaiting assignment were employment tax liabilities (Forms 941 and 944). Over 50 percent of the modules were in the collection queue for 16 months or more. IRS, *5000-2 Collection Activity Report* (Sept. 2008); IRM 5.1.20.2.3.2 (May 27, 2008).

⁵⁷ *Payroll Tax Abuse: Businesses Owe Billions and What Needs to Be Done About It: Hearings Before the Perm. Subcomm. on Investigations of the S. Comm. on Homeland Security and Governmental Affairs*, 110th Cong. (July 29, 2008) (testimony of Linda Stiff, IRS Deputy Commissioner, Services and Enforcement).

noted that the IRS did not regularly analyze the program to determine its impact on compliance; nor did revenue officers follow such procedures as contacting the taxpayers within the required times, monitoring current FTDs, or informing taxpayers about potential penalties or enforcement consequences.⁵⁸ The National Taxpayer Advocate has identified the inadequacy of the IRS's outreach and education to small business taxpayers as a most serious problem in several Annual Reports to Congress.⁵⁹

Assessment and Collection of Trust Fund Recovery Penalties

The National Taxpayer Advocate is particularly concerned about the assessment and collection of TFRP under IRC § 6672. It is important that the IRS tread carefully when engaging in enforcement activities or developing new policies regarding this penalty. IRS employment tax examination and collection actions were subject to intense scrutiny during the hearings that led to RRA 98. As the Senate Finance Committee pointed out in a conference report for RRA 98, “[t]he imposition of the 100-percent penalty is a serious matter.” In fact, during the hearings, one practicing attorney stated the following:

Trust Fund Recovery Tax: This is really not a penalty. It is a tax Currently, the IRS uses a “shotgun approach” to assessing this penalty within an organization. It’s something like the old Army joke: “I need volunteers – you, you, and you.” Field cases are not properly and thoroughly developed. Many targeted taxpayers are innocent. Taxpayers wishing to contest this assessment have to plead their case before the IRS. The IRS is the sole judge, jury, and executioner. The IRS knows that most targeted taxpayers cannot afford to go to court, so the IRS sticks them with the assessment, guilty or not. The bottom line is an economic life sentence.⁶⁰

During the same set of hearings, the National Taxpayer Advocate, who at the time was the Executive Director of The Community Tax Law Project, a low income taxpayer clinic, also voiced concerns about the IRS assessment of TFRPs. In her testimony, she discussed how revenue officers frequently did not explain to the taxpayer the concept of “responsible person” or the underlying purpose of the inquiry into responsibility for payment and the possible results of a finding of responsibility. She represented several taxpayers who were coerced to agree to the assessment of the penalty and were not advised of their right to disagree with the revenue officer and obtain further review of the proposed assessment.⁶¹ Accordingly, she requested that the IRS require revenue officers to provide the taxpayer with a separate statement outlining the requirements for making an IRC § 6672

⁵⁸ TIGTA, Ref. No. 2007-30-180, *The Federal Tax Deposit Alert Program Helps Taxpayers Comply with Paying Taxes, but Alerts Can Be Worked More Effectively* (Sept. 17, 2007). In response to the audit, the IRS committed to improve the shortcomings in the program.

⁵⁹ See, e.g., National Taxpayer Advocate 2006 Annual Report to Congress 172-96.

⁶⁰ *IRS Restructuring: Hearing Before the S. Comm. on Finance*, 105th Cong. (Feb. 5, 1998) (statement of Robert Schriebman, practicing tax attorney).

⁶¹ *IRS Restructuring: Hearing Before the S. Comm. on Finance*, 105th Cong. (Feb. 5, 1998) (statement of Nina E. Olson).

assessment, the taxpayer's rights pertaining to the responsible person penalty assessment, and an explanation of the effect of consenting to an assessment.

In addition to the protections afforded taxpayers in TBOR 2,⁶² RRA 98 included several provisions protecting taxpayer rights during assessment and collection of the TFRP. For example, RRA 98 permitted personal service of the preliminary notice informing the "responsible person" of the proposed penalty. Personal service would increase the likelihood that taxpayers would pay attention to and resolve disputes earlier in the process.⁶³ In addition, RRA 98 prevented the IRS from collecting the full amount of any assessed penalty while litigation is pending.⁶⁴ Considering that Congress enacted these protections in response to the hearings, it is important that the IRS strictly monitor compliance with the provisions to verify that taxpayer rights are safeguarded.

In the 2007 Annual Report to Congress, the National Taxpayer Advocate identified the following aspects of the TFRP process as in need of improvement:

- Incomplete TFRP investigations;
- Delays by Collection personnel in sending taxpayer protests to the Appeals function;
- Failure to apply payments and credits accurately and in a timely manner;
- The lack of collectability determinations prior to assessment of the TFRP; and
- Collection policies that compromise the rights of taxpayers before the IRS actually determines a responsible person's liability.⁶⁵

In its response to the 2007 report, the IRS pointed out several remedial actions then in place or underway. We appreciate the IRS's commitment to improving TFRP assessment and collection. However, we are concerned that the latest GAO report and related congressional hearing may have the effect of undermining the IRS's efforts to protect taxpayers' rights in the complex TFRP process; therefore, we will actively monitor the IRS's actions in this area.

Encouraging Voluntary Compliance

While the GAO study raised concerns about the IRS's focus on voluntary compliance, the National Taxpayer Advocate believes this focus on balance is beneficial. First, the IRS needs to look at the hard facts. In FY 2007, over 88 percent of all employment tax returns were filed with no balance due.⁶⁶ This data indicates the IRS needs to assist the

⁶² TBOR 2 required advance notice of the penalty at least 60 days before assessment and provided a right to contribution where more than one person is assessed the penalty. TBOR 2, Pub. L. No. 104-168 §§ 903, 110 Stat. 1452, 1466 (1996).

⁶³ RRA 98, S. Rep. No. 105-174, § 3307 (Apr. 22, 1998); Pub. L. No. 105-206, § 3307, 112 Stat. 685, 744 (July 22, 1998).

⁶⁴ *Id.*

⁶⁵ For a detailed discussion, see National Taxpayer Advocate 2007 Annual Report to Congress 395-410.

⁶⁶ Compliance Data Warehouse, Business Return Transaction File and Accounts Receivable Dollar Inventory for Tax Periods 200609, 200612, 200703, and 200706 (the data does not account for unfiled return investigations).

overwhelming majority of employers in *maintaining compliance*. To do this, the IRS must first understand the causes, barriers, and challenges employers face in complying with employment taxes. Noncompliance may stem from a variety of factors, including but not limited to (1) confusion over complex filing and payment responsibilities, (2) cash flow issues, and (3) intentional tax evasion.⁶⁷ For an effective enforcement strategy, the IRS needs to treat each type of taxpayer according to the particular cause of their noncompliance. The success of this approach would depend upon the IRS's ability to distinguish among taxpayers based on their level of compliance and reason for noncompliance, if applicable. The first step in this approach is for the IRS to continue its field tests of education initiatives.⁶⁸ The IRS should next supplement these tests with combined education and enforcement pilots, which will enable it to determine which techniques encourage compliance for each type of employer and at various stages of the business lifecycle. For example, fully compliant taxpayers might benefit from receiving certain types of outreach and education to ensure future compliance. Businesses struggling to survive but falling behind on payroll tax responsibilities could receive education coupled with early intervention techniques. In addition, where taxpayers might benefit from better business practices, the IRS could work with the Small Business Administration and organizations such as SCORE to pair the taxpayer up with a mentor.⁶⁹ Finally, the IRS should reserve more severe collection techniques for repeat offenders that intentionally fail to comply.⁷⁰ The IRS should also research and analyze the best time to intervene based on the type of taxpayer.

Early Intervention

The recent GAO report noted that early intervention benefits both the government and taxpayers, and encouraged the IRS to concentrate more resources on this process. The National Taxpayer Advocate strongly agrees with GAO in this regard, and has written at length about the benefits of early intervention.⁷¹ Early intervention includes education, outreach, and enforcement initiatives aimed at “touching” the taxpayer as soon as possible after the IRS detects a delinquency. The FTD Alert program is one example of an early intervention technique. While the IRS has an interest in collecting taxes, businesses also benefit if they are prevented from accumulating substantial unpaid payroll taxes, along

⁶⁷ The Small Business/Self-Employed division (SB/SE) conducted focus groups during the 2007 IRS Nationwide Tax Forums on the topic of employment tax compliance. In general, the focus group participants gave the following four main reasons why small business owners do not timely or fully pay their trust fund taxes: (1) cash flow problems, (2) “snowballing” missed payments, (3) lack of enforcement, and (4) poor planning. SB/SE Research, 2007 Nationwide Tax Forums: Employment Tax Compliance – Are Your Clients at Risk? NCH0088 (May 2008).

⁶⁸ See SB/SE Research Report, Project No. 06.08.004.03, *Measuring the Effect of TEC Outreach on Construction Industry Employment Taxes* 29 (Jul. 2004); SB/SE Research Report, Project No. 06.06.005.04, *Measuring the Effect of TEC Outreach on Construction Industry Employment Taxes Phase II* 51 (Jan. 2006). Both studies found that general outreach seemed to improve employment tax compliance in the construction industry.

⁶⁹ SCORE is a nonprofit association that works with the Small Business Administration to educate and promote the success of small businesses nationwide. For more information on SCORE, see <http://www.score.org> (last visited on Nov. 9, 2008).

⁷⁰ See IRS Office of Program Evaluation and Risk Analysis (OPERA), *Study of TEC, SPEC, and NPL's Prefiling/Outreach Services, Organizational Model Options for Greater Efficiency* (Dec. 30, 2004); Memorandum from Mark Gillen, Director of Office of Program Evaluation and Risk Analysis to Deputy Commission for Services and Enforcement, OPERA TEC/SPEC/NPL Study – Organization Model Options (Dec. 30, 2004).

⁷¹ See, e.g., National Taxpayer Advocate 2007 Annual Report to Congress 395-410, 432-47; National Taxpayer Advocate 2006 Annual Report to Congress 62-82.

with the associated penalties and interest. Over time, unpaid balances may compound beyond the business's ability to pay and ultimately cause financial jeopardy.⁷² For example, IRS data shows that for FY 1998, the average amount owed on employment tax returns with a balance due was \$8,271 in 1999. However, the average amount of FY 1998 tax module liabilities increased to \$19,250 in 2003 and \$28,343 in 2008.⁷³

The National Taxpayer Advocate strongly believes early intervention is important to prevent pyramiding of employment tax liabilities. Once a taxpayer demonstrates noncompliance, the IRS should act as quickly as possible to prevent further accumulation of liabilities. While its resources are limited, any additional resources allocated to early intervention will certainly save resources downstream for the IRS. The IRS could use lower grade employees to make personal contacts early in the process, help the taxpayer enter into an installment agreement to satisfy existing liabilities, as well as requiring the taxpayer to pay more frequently in the future.⁷⁴ If the taxpayer continues to fail to make payments, the IRS can initiate enforcement procedures to bring the taxpayer into compliance before the debt grows too large to resolve and the taxpayer acquires a habit of noncompliance. Toward this end, the IRS needs to make many more outbound calls to taxpayers than it does now. Simply sending letters and placing taxpayers into collection queues awaiting assignment is not an effective compliance strategy.

At the end of FY 2008, 30.2 percent of the modules in the collection queue waiting assignment were employment tax liabilities (Forms 941 and 944). Table 1.4.1 illustrates the age of the cases.⁷⁵

TABLE 1.4.1, Age of Employment Tax Modules

Less than 6 months	278,255	28.1%
6 to 9 months	86,218	8.7%
10 to 15 months	110,779	11.2%
16 months and over	516,402	52.1%
Total	991,654	100.0%

⁷² GAO, GAO-08-617, *Tax Compliance: Businesses Owe Billions in Federal Payroll Taxes* (July 2008).

⁷³ IRS Compliance Data Warehouse, IRS Accounts Receivable Inventory File (the data reflects FY 1998 liabilities as of 199934, 200334, and 200834). The data only includes FY 1998 liabilities assessed as of the 199934 cycle and does not reflect the addition of other late filed returns or returns from other tax periods. Our 2006 Annual Report to Congress noted that 71.1 percent of business (BMF) employment tax cases involved delinquencies of less than \$3,000. However, due to the small dollar figures, the IRS did not assign high priority to these cases despite the fact that employment tax deficiencies tend to pyramid very quickly. In FY 2005, the IRS briefly worked employment tax deficiencies on a "last due, first worked" basis and saw almost immediate positive results. However, the IRS decided to discontinue this initiative and assign small dollar delinquencies to the Automated Collection System rather than the Cff, because they are not priority assignments. As a result, BMF revenue declined. See National Taxpayer Advocate 2006 Annual Report to Congress 62-82.

⁷⁴ See National Taxpayer Advocate 2006 Annual Report to Congress 68-69. As noted in the 2006 report, IRS data provides ample evidence to suggest the IRS may not be working its optimal inventory, and collecting newer, lower dollar inventory is more effective than working older, higher dollar inventory. See IRS CACI Hybrid Test Update (Aug. 13, 2008). Recently, at the urging of the National Taxpayer Advocate, the IRS designed plans for a test that would measure the success of low grade IRS employees in attempting to collect on cases with small dollar amounts, which the IRS is not currently working.

⁷⁵ IRS, *5000-2 Collection Activity Report* (Sept. 2008).

The Need for Local Compliance Presence

Participants in a Small Business/Self-Employed division (SB/SE) focus group at the IRS's 2007 Nationwide Tax Forums suggested the most important way to educate small business owners about trust fund tax responsibilities is for IRS personnel to conduct field visits. These tax professionals indicated phone calls and letters do not work because many clients just bring unopened IRS letters to their practitioners and ignore the calls. In addition, participants suggested that any marketing materials include stories about the worst penalties.⁷⁶ These focus group findings support the National Taxpayer Advocate's position that a local compliance presence is absolutely critical for an effective collection strategy. The IRS needs to make person-to-person contact with taxpayers as early as possible in the collection process. However, we see no evidence that the IRS plans to increase local compliance initiatives. In fact, the IRS has raised limited resources as an obstacle to pursuing this avenue further.⁷⁷ We agree that local presence would require additional resources. However, making personal contact earlier in the process, especially with respect to employment tax liabilities, could help bring taxpayers into compliance before their liabilities spiral out of control and avoid more costly enforcement actions downstream.

The Need for More Local Outreach and Education Initiatives

The IRS increasingly relies on industry partners to provide outreach and education to taxpayers. While strategic partnerships are vital, the IRS should devote more resources to grassroots initiatives.⁷⁸ A local presence is essential to understand the local economy and culture, and identify issues that may affect compliance.⁷⁹ In fact, as discussed above, focus group participants recommended the IRS educate taxpayers about payroll tax responsibilities through field visits. While any contact is better than no contact, the participants indicated the IRS needs to educate taxpayers through other means besides phone calls and letters.⁸⁰ Thus, the IRS should consider conducting more outreach and education through local initiatives, including field compliance visits.⁸¹ The IRS should also consider developing pilot outreach programs to test the impact of local outreach initiatives on employment tax compliance, and should consider using a cognitive learning lab to design the pilot programs.⁸²

⁷⁶ SB/SE Research, 2007 Nationwide Tax Forums: Employment Tax Compliance – Are Your Clients at Risk? NCH0088 (May 2008).

⁷⁷ For more information, see National Taxpayer Advocate 2004 Annual Report to Congress 226-45.

⁷⁸ Memorandum from Mark Gillen, Director of Office of Program Evaluation and Risk Analysis to Deputy Commission for Services and Enforcement, Opera TEC/SPEC/NPL Study – Organization Model Options (Dec. 30, 2004).

⁷⁹ For a more detailed discussion of the benefits of local compliance, see Most Serious Problem, *Local Compliance Initiatives Have Great Potential but Face Serious Challenges*, *infra*.

⁸⁰ SB/SE Research, 2007 Nationwide Tax Forums: Employment Tax Compliance – Are Your Clients at Risk? NCH0088 (May 2008).

⁸¹ In 2005, the IRS eliminated the Taxpayer Education and Communications (TEC) organization within SB/SE. The elimination of TEC resulted in the virtual elimination of the local footprint for outreach and education services provided by the IRS to small businesses. See National Taxpayer Advocate 2006 Annual Report to Congress 172-96. In addition, see SB/SE Research Report, Project No. 06.08.004.03, *Measuring the Effect of TEC Outreach on Construction Industry Employment Taxes* 29 (July 2004); SB/SE Research Report, Project No. 06.06.005.04, *Measuring the Effect of TEC Outreach on Construction Industry Employment Taxes Phase II* 51 (Jan. 2006). The studies both found that general outreach seemed to improve employment tax compliance in the construction industry.

⁸² For more information about cognitive learning labs, see National Taxpayer Advocate 2007 Annual Report to Congress 156-61.

Public Service Campaigns

The IRS should test the impact of a public information campaign that shows the social cost of unpaid employment taxes and warns employers of the risks of noncompliance, with messages such as:

Don't get behind on your payroll taxes – Don't even think about it! By failing to comply with your payroll tax responsibilities, you are cheating your employees, and you are unfairly competing in the marketplace. If you fail to pay your payroll taxes, the IRS can pierce the corporate veil and assess you personally. These taxes are nondischargeable in bankruptcy.⁸³

This type of message will convey the importance of meeting employment tax obligations. It also makes clear the detrimental impact noncompliance can have on the employer's ability to stay in business and on the personal finances of individual employees and officers.

GAO Report and Congressional Hearings

Based on its review of the IRS's collection actions for egregious payroll tax offenders, GAO made the following recommendations:⁸⁴

- Develop a process to monitor collection actions against egregious payroll tax offenders.
- Determine the feasibility of treating businesses with egregious payroll tax debt and the responsible owners/officers with TFRP assessment as a single, unified, coordinated collection effort assigned to a single revenue officer.
- Develop and implement procedures to expeditiously file a notice of federal tax lien as soon as possible once a payroll tax debt is identified – including cases in the queue awaiting assignment. GAO recommended the IRS file liens on both the businesses with unpaid payroll taxes and the owners or officers assessed a TFRP.⁸⁵
- Develop and implement procedures to monitor compliance with the new TFRP assessment time frames.⁸⁶ In addition, develop performance goals and measures to evaluate the accumulation of unpaid payroll taxes by businesses, the extent and timeliness of TFRP assessments, and the effectiveness of collection actions.

⁸³ See also our recommendation to the IRS to develop educational materials explaining third party payers and the responsibilities and liabilities each party assumes in such arrangements. Third party arrangements could assist employers in meeting their employment tax obligations. They could also help ensure that the business owners do not spend the funds inappropriately before remitting them to the IRS. National Taxpayer Advocate 2007 Annual Report to Congress 337-54.

⁸⁴ This list is a summary of the GAO report recommendations and is not verbatim. GAO also recommended that the IRS develop performance goals and measures to specifically evaluate the accumulation of unpaid payroll taxes, the extent and timeliness of TFRP assessments, and the effectiveness of actions taken to collect unpaid payroll taxes and TFRP assessments.

⁸⁵ In his opening statement for the hearing, Senator Carl Levin recommended that Congress enact S. 1124, the Levin-Coleman "Tax Lien Simplification Act," which would require Treasury to establish an electronic tax lien registry at the federal level. *Payroll Tax Abuse: Businesses Owe Billions and What Needs to Be Done About It: Hearings Before the Perm. Subcomm. on Investigations of the S. Comm. on Homeland Security and Governmental Affairs, 110th Cong. (July 29, 2008) (testimony of Sen. Carl Levin, Chairman, Subcomm. on Investigations).*

⁸⁶ Revenue officers are required to determine whether to pursue a TFRP within 120 days of the case being assigned and to complete the assessment within 120 days of the determination. IRM 5.7.4.1 (Sept. 23, 2008).

- Work with states that have developed procedures for matching financial accounts to tax debts. The IRS should evaluate the potential to develop and implement similar procedures or collaborate with the states to leverage their efforts.⁸⁷

The National Taxpayer Advocate agrees with several of GAO's recommendations, including the monitoring of egregious accounts, a unified corporate/responsible persons case strategy, and performance measures aimed at increasing voluntary compliance and the effectiveness of collection actions. As discussed below, however, the National Taxpayer Advocate is concerned about several of the other recommendations presented in the GAO report and in testimony presented at the associated congressional hearing.

Streamlining the Procedures to Assess Trust Fund Recovery Penalties

The GAO study found the IRS took an average of 40 weeks to determine whether to assess a TFRP and an additional 40 weeks to actually assess the penalty. In addition, GAO cited an IRS study that found 43 percent of taxpayers assessed the TFRP never made a payment on the penalty.⁸⁸ Based on the findings of the study, both GAO and testimonies submitted for the associated congressional hearing recommended the IRS streamline the assessment of TFRPs. In fact, one proposal provided that the IRS should automatically impose the penalty after a business misses a specified number of quarterly payroll payments, unless a revenue officer provides a written justification why the action should not be taken.⁸⁹

The National Taxpayer Advocate believes the GAO TFRP data does not present the entire picture because it does not reflect the statutory assessment and abatement process. Taxpayers have a right to challenge a proposed TFRP assessment.⁹⁰ It is unclear from GAO's data how much of the 43 percent nonpayment figure is attributable to abatement as a result of an appeal. Further, the TFRP may be assessed on multiple responsible persons for one entity. If the IRS collects fully against the entity or one of the responsible persons, it cannot collect against the others. It is unclear whether the 43 percent figure reflects adjustments for responsible persons who do not pay the liability because one of the parties fully pays that liability.⁹¹

The National Taxpayer Advocate is particularly concerned with the recommendation to automate the assessment of the TFRP, as it appears inconsistent with current law and is likely to result in erroneous assessments that will negatively impact taxpayers. Before the IRS can assess the penalty against an individual, it is statutorily required to conclude the individual was responsible for withholding and paying over the payroll taxes and *willfully*

⁸⁷ GAO, GAO-08-617, *Tax Compliance: Businesses Owe Billions in Federal Payroll Taxes* (July 2008).

⁸⁸ GAO, GAO-08-617, *Tax Compliance: Businesses Owe Billions in Federal Payroll Taxes* (July 2008).

⁸⁹ *Payroll Tax Abuse: Businesses Owe Billions and What Needs to Be Done About It: Hearings Before the Perm. Subcomm. on Investigations of the S. Comm. on Homeland Security and Governmental Affairs*, 110th Cong. (July 29, 2008) (testimony of Sen. Carl Levin, Chairman, Subcomm. on Investigations).

⁹⁰ For more information on the appeal procedures for proposed TFRP assessments, see National Taxpayer Advocate 2007 Annual Report to Congress 395-410.

⁹¹ IRC § 6672(d). TBOR 2, Pub. L. No. 104-168, § 903, 110 Stat. 1452, 1466 (1996), provided a federal statutory right of contribution in favor of responsible persons who actually pay more than their share of trust fund penalties.

failed to do so.⁹² Courts have settled on a variety of factors to consider in determining liability for the TFRP. IRM 5.7.3.3 incorporates the judicially determined factors by providing relevant indicators to determine personal responsibility and willfulness.⁹³

Automating these processes would be a step in the wrong direction. Human involvement is absolutely necessary to determine whether the indicia for responsibility and willfulness are present before the IRS assesses this severe penalty on any individual. In addition, assessing the penalty on an individual involves piercing the corporate veil, which raises due process concerns.⁹⁴ Revenue officers need to interview potentially responsible persons, gather and review relevant documents, and look to the role and responsibility the person played in the day-to-day financial affairs of the business entity.⁹⁵ As discussed in the 2007 Annual Report to Congress, the assessment of the TFRP can have disastrous economic results on those deemed responsible. Thus, the IRS needs to confirm that necessary indicia are present, which requires a complete TFRP investigation. Moreover, given that a taxpayer can meet the statutory criteria for a responsible person for one quarter and not for another quarter, an automated or truncated process will not be able to make such determinations and would cause unnecessary downstream work for other IRS functions – Appeals, TAS, and the Office of Chief Counsel – and the courts.⁹⁶

In the 2007 Annual Report to Congress, the National Taxpayer Advocate raised concerns about incomplete TFRP investigations and the high abatement rate for the penalty. The failure to follow established procedures for TFRP may lead the IRS to erroneous liability determinations and may even violate taxpayer rights. Table 1.4.2 below sets forth the assessment and abatement data for the TFRP for fiscal years 2000 to 2007:⁹⁷

⁹² IRC § 6672(a).

⁹³ See National Taxpayer Advocate 2007 Annual Report to Congress 396-97 (for a detailed discussion of the judicially determined factors).

⁹⁴ Unlike corporations, sole proprietors and partners are already personally liable for business debts, so this discussion is solely directed at corporations.

⁹⁵ IRM 5.7.4 (Apr. 13, 2006). Revenue Officers use Form 4180, *Report of Interview with Individual Relative to Trust Fund Recovery Penalty or Personal Liability for Excise Taxes*, to interview potentially responsible persons. IRM 5.7.4.2.1 (Apr. 13, 2006).

⁹⁶ The IRS is statutorily authorized to initiate jeopardy assessments for TFRPs. IRC § 6672(c)(5); IRM 5.1.4.2 (Apr. 1, 2005). When the National Taxpayer Advocate was in private practice, she represented many taxpayers against whom the penalty was applied as a result of a “blanket assessment.” That is, the IRS merely looked at state corporation records to identify the corporate officers, and without further inquiry assessed the TFRP against anyone listed, regardless of their involvement in or control of the corporation’s affairs. In several instances, these “officers” were merely family members who had no involvement with the corporation. In response to concerns such as these, TBOR 2 imposed a requirement of a proposed notice of assessment, providing the taxpayer with the ability to challenge the penalty before it is assessed. TBOR 2, Pub. L. No. 104-168, §§ 901-903, 110 Stat. 1452, 1465 (1996); IRC § 6672.

⁹⁷ IRS Enforcement Revenue Information System (ERIS), *Data on IRS Compliance Data Warehouse* (as of Mar. 31, 2008).

TABLE 1.4.2, Trust Fund Recovery Penalties Assessed and Abated⁹⁸

Assessment FY	Penalty Assessment Count	Penalty Assessment Amount	Penalty Abatement Count	Penalty Abatement Amount	Percent Abated Count	Percent Abated Amount
2000	52,233	\$ 834,576,985	27,777	\$ 345,772,561	53.2%	41.4%
2001	69,128	\$ 1,234,252,130	37,388	\$ 440,977,235	54.1%	35.7%
2002	179,046	\$ 1,616,752,742	85,722	\$ 590,860,337	47.9%	36.5%
2003	212,302	\$ 1,881,521,456	106,127	\$ 668,216,827	50.0%	35.5%
2004	207,395	\$ 2,271,334,173	102,667	\$ 987,341,530	49.5%	43.5%
2005	208,662	\$ 1,897,399,091	105,102	\$ 587,221,865	50.4%	30.9%
2006	179,000	\$ 1,719,460,445	84,244	\$ 423,273,153	47.1%	24.6%
2007	167,811	\$ 1,829,332,461	60,184	\$ 359,848,189	35.9%	19.7%

The data indicates that over the eight-year period from FY 2000 through FY 2007, the IRS abated an average of 47.8 percent of the number of assessed TFRPs and 33.1 percent of the amount of assessed TFRPs. While many factors affect the abatement rate, including insufficient computer coding to indicate related party payments as adjustments, the high abatement rate is one indicator that the TFRP assessment process is ineffective, or at the very least that the IRS cannot provide data to accurately measure the performance of the TFRP process. Accordingly, the National Taxpayer Advocate is concerned that automation will weaken the process even further.

In response to the GAO audit and associated congressional hearings, the IRS committed to conduct an end-to-end review of the TFRP process to identify factors that adversely affect the ability of the IRS to enforce employment tax compliance as well as pursue timely and effective collection. As part of this project, the IRS will review its guidance and employee adherence to the guidance and determine whether to modify existing procedures.⁹⁹ We applaud the IRS for reviewing this topic and encourage the IRS to take a balanced approach with an emphasis on taxpayer rights. We ask that the IRS invite TAS to participate in any such reviews.

Streamlining the Lien Filing Process

GAO recommended that the IRS expedite its procedures to file notices of federal tax lien (NFTL). Specifically, GAO recommended that the IRS file liens as soon as possible once it identifies a payroll tax debt, including in cases awaiting assignment in the queue. It also recommended that the IRS file liens on both the businesses with unpaid payroll taxes and

⁹⁸ It is important to note that that the FY 2007 assessment data reflects newly assessed penalties. The decrease in the abatement rate is not reflective of the IRS's performance. Rather, it merely indicates that these penalties were recently assessed and abatements may not have occurred yet.

⁹⁹ IRS Enterprise Wide Employment Tax Program, *Talking Points/Status Update for BOD Commissioners Meeting on June 2, 2008* (May 29, 2008).

the owners or officers assessed a TFRP.¹⁰⁰ However, based on the abatement data for TFRPs and the intensive, fact-specific nature of TFRP determinations, it appears that such expedited procedures may be inaccurate and impose undue burdens on taxpayers. For example, the IRS abated 47.1 percent of the TFRPs assessed in FY 2006.¹⁰¹ Considering the high dollar amounts of these penalties and the fact that the IRS is piercing the corporate veil by assessing the penalty on individuals, the IRS should proceed cautiously if it plans to implement the recommendation with respect to TFRPs.

The IRS has formed a Lien Policy Analyst Team to review the lien filing process and determine the feasibility of filing the liens as soon as payroll tax liabilities are identified. The National Taxpayer Advocate encourages the IRS to take a balanced approach that increases efficiency with minimal taxpayer burden.¹⁰² The review should also consider whether liens are a productive collection tool for payroll tax liabilities. The IRS should not merely focus of the number of liens filed, because increasing the number of liens may not necessarily bring in more tax dollars. The review should track the dollars collected solely from liens (adjusting for the amount of dollars brought in by refund offsets where individuals are concerned). In addition, the review should include gathering data to determine whether the act of filing the lien impedes the business's ability to continue in business and pay taxes. Further, the IRS needs to review whether employment tax cases were not addressed early before penalties and interest accrue to the business's detriment.

Impact on Worker Misclassification

Before the IRS streamlines the lien process for employment taxes, it needs to consider the impact of such action on the growing worker misclassification problem. There are many reasons for worker misclassification, including situations when, due to the burden and risk associated with having employees, employers inappropriately classify their workers as independent contractors rather than employees. Whether a worker is classified as an employee or independent contractor affects the application of labor laws as well as tax treatment for both the worker and the service recipient. Whether inadvertent or deliberate, the misclassification of employees as independent contractors can have serious consequences for workers and the recipients of the services they provide. In addition, misclassification has a significant revenue impact due to the difference in, and in many cases the absence of, information reporting and tax withholding requirements for independent contractors.¹⁰³ Automatic liens and enforcement initiatives just for the sake of enforcement without the necessary supporting research will only exacerbate the growing trend of worker misclassification.

¹⁰⁰ GAO, GAO-08-617, *Tax Compliance: Businesses Owe Billions in Federal Payroll Taxes* (July 2008). In his opening statement Senator Carl Levin recommended that Congress enact S. 1124, the Levin-Coleman "Tax Lien Simplification Act," which would require Treasury to establish an electronic tax lien registry at the federal level. *Payroll Tax Abuse: Businesses Owe Billions and What Needs to Be Done About It: Hearings Before the Perm. Subcomm. on Investigations of the S. Comm. on Homeland Security and Governmental Affairs*, 110th Cong. (July 29, 2008) (testimony of. Sen. Carl Levin, Subcomm. on Investigations).

¹⁰¹ IRS ERIS, as of the end of March 2008.

¹⁰² IRS Lien Policy Analyst Team, *Conference Call Agenda* (Aug. 20, 2008) (on file with the Office of the Taxpayer Advocate).

¹⁰³ For a detailed discussion of this topic, see Legislative Recommendation, *Worker Misclassification*, *infra*.

Conclusion

The National Taxpayer Advocate is concerned that the IRS is taking a reactive rather than proactive approach to employment taxes, which will not serve the best interests of taxpayers and tax administration. Instead of merely focusing on egregious noncompliance, it is essential to acknowledge that the majority of taxpayers are attempting to comply with their employment tax obligations. As such, the IRS needs to research the causes of employment tax noncompliance and treat each type of taxpayer accordingly. For those struggling to understand and meet their complex employment tax obligations, the IRS needs to offer assistance as well as early intervention techniques to bring those taxpayers into compliance. The IRS should reserve its more severe enforcement initiatives for taxpayers who intentionally fail to meet their obligations. Finally, considering that employment taxes, and trust fund recovery penalties in particular, came under intense scrutiny during the landmark 1998 hearings on restructuring the IRS, the IRS needs employment tax procedures that are not only effective but protect taxpayers' due process rights.

The IRS should consider taking the following actions to improve the employment tax program: perform research to determine the reasons for employment tax noncompliance, the types of service or enforcement-related treatments necessary to bring each type of taxpayer into compliance, and the best time for the IRS to intervene with such treatments; partner with the Small Business Administration and organizations such as SCORE to pair up taxpayers with mentors once they have indicated they are confused about tax filing and payment obligations; develop pilot outreach programs through cognitive learning labs to test the impact local outreach initiatives have on employment tax compliance; explore and test a public information campaign to convey to employers the importance of meeting employment tax obligations, and the detrimental impact noncompliance can have on the finances of both the business entity and individuals deemed responsible; as part of the Lien Policy Analyst Team, track the dollars generated by liens to determine whether they are an effective collection tool for payroll tax liabilities; and include the Taxpayer Advocate Service in all studies, reviews, and workgroups associated with the employment tax program.

IRS Comments

Collection of employment taxes is a core mission of the IRS. Historically, we succeed in collecting 99.8 percent of all employment taxes owed.¹⁰⁴ Over the past ten years, the IRS has collected more than \$11 trillion in payroll taxes.¹⁰⁵

To achieve this level of success, the IRS uses a balanced approach of service and enforcement to assist businesses in understanding the requirements related to employment taxes and to encourage compliance. The IRS also acknowledges that it can be difficult to start

¹⁰⁴ IRS Masterfile.

¹⁰⁵ GAO Blue Book and IRS Financial Statements.

and maintain a business over a number of years given the myriad of laws and regulations with which businesses must comply and the competitive pressures that exist in the market.

To that end, virtually all of the IRS functional and operating divisions participate in employment tax outreach and education. The IRS provides substantial information about employment taxes on IRS.gov, on other websites through partnerships and work with other organizations, including groups that represent small businesses, and through electronic and print media. In FY 2008, IRS partnered with almost 700 tax professional and industry Web sites to include such information.

Quarterly, the IRS sends out approximately seven million Social Security Administration (SSA) IRS Reporter newsletters with Form 941. The newsletter is received by all businesses that receive Form 941 and contains information on subjects such as Social Security Administration laws, the Electronic Federal Tax Payment System, and changes in SSA or IRS electronic filing systems.

The IRS continues to strengthen the Enterprise Wide Employment Tax Program (EWETP). We are developing a EWETP Strategic Plan that outlines objectives to provide affected key stakeholders and the public with the right information pertaining to employment taxes. The identified key stakeholders include practitioner groups, industry and professional organizations, applicable federal, state, and local agencies. The IRS continues to encourage voluntary compliance through outreach and education geared to the small business owner, by providing a host of products and services that assist this customer base with their tax responsibilities, including their employment tax responsibilities, and offers these products and services through a variety of vehicles that meet the needs of the small business audience. For example, the Small Business Tax Workshops (SBTWs) are available in a classroom setting, while the *Virtual* SBTW is available on a compact disc or on irs.gov. Another example is the “e-News for Small Businesses” which has accumulated over 118,000 subscribers during FY 2008 and includes small business owners as well as other external tax professional and industry stakeholders. We launch regular editions aimed at helping small business owners and self-employed persons voluntarily comply with their tax responsibilities including:

- Important upcoming tax dates;
- What’s new for small businesses on the IRS website;
- Reminders and tips to assist small businesses with tax compliance; and
- IRS news releases and special announcements.

We used research data to determine locations with the highest concentration of small business and self-employed taxpayers and that data drove the decision on employee placement.

We leverage outreach events with external stakeholders such as Small Business Development Centers, SCORE, CPAs, enrolled agents, and chambers of commerce. We

provide support to these stakeholders by providing products and approved presentations for key message delivery on various topics concerning the small business owner, including employment taxes. Employment taxes are either a topic of a general small business tax workshop or the only topic presented.

The decision to conduct a workshop is driven by identified demand and determining a leveraged stakeholder to deliver the workshop. During FY 2008 there were Small Business Workshops held in 47 states. We expect to expand these workshops to locations in all 50 states, to include industry specific sessions, and to increase the number offered.

SB/SE did not design its outreach and education function to meet one-on-one with small business owners, as there are more than 45 million small business taxpayers. The outreach mission has always been to strategically leverage stakeholder relationships in such a way to form networks through which we would provide the latest tax law and policy information. With focused research aimed at stakeholder groups, we are able to enhance our network to include channels of communication directly to individual members of these groups.

The vast majority of small business customers rely on practitioners to prepare their tax returns. Our relationship with national practitioner groups and their local affiliates such as the AICPA, National Enrolled Agents, National Public Accountants, American Bar Association, and NATP continues to afford us outreach and educational opportunities while providing a systematic method of capturing issues concerning tax administration. We continue to expand our network each year in order to reach more of the small business community. We believe that this type of educational approach through capable leveraged partners is a successful one.

In addition, the IRS supports the Large and Midsize Business (LMSB) customer base by working with major accounting and law firms to resolve employment tax issues expeditiously. Our LMSB Employment Tax Program and engineers also play an integral role in the valuing of stock options. Our valuations will be utilized as part of a nationwide analysis on the valuation of stock options and will be disseminated at various professional groups of accountants, valuation/ appraisal groups and bar associations through out the year.

In situations where our extensive outreach and education efforts do not achieve voluntary compliance to the tax laws, the IRS utilizes the FTD Alert process, which helps to identify, at an early stage, taxpayers classified as semi-weekly depositors who have not made federal tax deposits during the current quarter, or have made deposits in substantially lower amounts from prior quarters.

This program has very positive results, such as increased deposits and a higher percentage of fully paid subsequent tax liabilities. The IRS recognizes that although the program is effective, it must be periodically reviewed and modified to ensure it remains an effective early intervention tool. During FY 2009, the IRS will conduct an end-to-end review of the

program to include a thorough analysis of available data, current procedures and guidance as well as the program's impact on compliance. An overall assessment of the program will enable the IRS to better leverage this program to assist taxpayers, at a very early stage, if they have fallen behind on FTDs.

The IRS's policies and procedures for assessing and collecting the TFRP follow the requirements of the Taxpayer Bill of Rights¹⁰⁶ and the IRS Restructuring and Reform Act of 1998.¹⁰⁷ We continually monitor and safeguard taxpayer rights throughout the TFRP process through program reviews and case/quality reviews. The IRS is committed to continually safeguard taxpayer rights and approach cases strategically as we consider GAO's recommendations. The proposal to automatically impose the TFRP in certain circumstances was made by Senator Levin during his opening remarks at the Permanent Subcommittee on Investigations (PSI) hearing on Tuesday, July 29, 2008. The IRS is giving thorough consideration to all recommendations resulting from GAO's review of payroll taxes and the subsequent PSI hearing, but has not made final decisions on them at this time.

The IRS has already taken steps to address the National Taxpayer Advocate's concern regarding the timeliness and thoroughness of taxpayers being informed that they are potentially a "responsible person." To ensure potentially responsible individuals are better informed up front of the potential for personal liability and their rights in the TFRP process, we developed guidance that will require revenue officers, during the initial contact, to discuss specifics of the TFRP and its potential impact on the individuals.

The IRS is also developing face-to-face training material entitled "Strategic Approach to Employment Taxes" to reinforce the many tools available to revenue officers to assist taxpayers in achieving and maintaining compliance and actions that can and should be taken when a taxpayer does not cooperate or become current in paying employment tax liabilities. This training will be delivered in 2009 to all revenue officers.

We disagree with the National Taxpayer Advocate's conclusion that the 'high abatement rate is one indicator that the TFRP assessment process is ineffective.' Transaction Code (TC) 241, labeled "abate miscellaneous penalty," is used to adjust the TFRP of responsible individuals when credits are received on either the underlying corporate assessment or on related TFRP accounts. Use of the TC 241 ensures that we collect the unpaid payroll taxes only once; it does not indicate that the original TFRP assessment was erroneous or that the assessment process is ineffective. Financial Management Information System data for FY2006 showed that 82 percent of TFRP transactions coded as "abatements" were actually adjustments to accounts because of payments on related responsible persons' TFRP assessments or on the underlying corporate trust fund liability. Actual abatements may also result from a debtor's successful completion of a Chapter 13 payment plan.

¹⁰⁶ TBOR 2, Pub. L. No. 104-168, § 903, 110 Stat. 1452, 1466 (1996); RRA 98, Pub. L. No. 105-206 § 3307, 112 Stat. 685, 744 (July 22, 1998).

¹⁰⁷ RRA 98, S. Rep. No. 105-174, § 3433 (Apr. 22, 1998); Pub. L. No. 105-206, § 3433, 112 Stat. 685, 759 (July 22, 1998).

In her report, the National Taxpayer Advocate makes six specific suggestions to improve the employment tax program. We are taking or have taken the following actions with respect to these issues:

We have launched two research projects to gather information that will enable us to more accurately define “egregious,” a term often used to describe taxpayers that repeatedly pyramid employment tax liabilities. These projects will not only identify traits and characteristics of taxpayers that pyramid employment tax liabilities but also help us detect ways to improve procedures, guidance and treatment streams that could assist all employers in staying current with payroll tax liabilities.

The IRS routinely leverages partnerships with the Small Business Administration as well as other external stakeholders such as Small Business Development Centers, SCORE, CPAs, enrolled agents, and chambers of commerce to address taxpayer’s confusion regarding employment tax reporting and payment compliance. We continually strive to identify issues and concerns that may be impacting taxpayers and work to expand and tailor workshops and outreach efforts to alleviate taxpayer confusion.

The IRS continues to examine products and services that would accurately gauge the impact local outreach initiatives have on employment tax compliance. Currently, we rely on an effective survey and feedback process administered by both the IRS and our external partners as a part of each outreach effort.

The IRS has an effective public information and outreach program that leverages electronic and printed media, as well as personal involvement through directed contact with external stakeholder partners. In addition, IRS policy and requirements ensure taxpayers are provided information throughout the filing and payment process that explains their rights, responsibilities and potential consequences of non-compliance.

The IRS is also engaged in an end-to-end review of the Federal Tax Lien program, in which the overall effectiveness of the program, existing guidance, current policy and the overall cost/benefits of filing liens are being analyzed.

TAS is participating in the current review of the Federal Tax Lien program, and on other teams the IRS has established to analyze various employment tax programs.

Taxpayer Advocate Service Comments

The National Taxpayer Advocate believes the collection of employment taxes warrants top priority and commends the IRS for its continued efforts to develop a balanced strategic plan for the Enterprise Wide Employment Tax Program (EWETP). We agree with the IRS that success of the EWETP hinges upon an approach that encourages compliance through both service and enforcement.

Given the high level of employment tax compliance, the EWETP needs to focus heavily on helping taxpayers maintain compliance. The first step in this process is to assist businesses in understanding their employment tax obligations. We are pleased that the IRS engages in extensive outreach and education by leveraging its partnerships with external stakeholder groups. We understand the vital role such partnerships play in the program. However, we continue to believe that local IRS presence is essential for the IRS to understand the local economy and culture, and identify issues that may affect compliance. Thus, the IRS should conduct more outreach and education through local initiatives, including field compliance visits. The IRS should also develop pilot programs to test the impact of local outreach initiatives on employment tax compliance, and should consider using a cognitive learning lab to design the pilot programs.

The IRS needs to focus on early intervention techniques for businesses trying but struggling to meet their employment tax obligations. Both the IRS and taxpayers benefit from early intervention, which prevents taxpayers from accumulating substantial unpaid payroll taxes along with the associated penalties and interest. The FTD Alert process is an important early intervention “touch” and we commend the IRS for planning to assess the program.

We encourage the IRS to safeguard taxpayers’ rights as it responds to the recommendations made by GAO and others during the July 2008 hearings by the Permanent Subcommittee on Investigations of the U.S. Senate Committee on Homeland Security and Governmental Affairs. Protecting taxpayers’ due process rights is especially important during the assessment and collection of the Trust Fund Recovery Penalty (TFRP), the imposition of which can have a devastating impact on a taxpayer.

As noted in our discussion above and by the IRS in its response, there are several reasons why the IRS may abate TFRPs. Unlike some other penalties, the high abatement rate does not necessarily indicate a high rate of erroneous assessments. While the IRS may abate a TFRP for several reasons, IRS computer systems do not track the particular reasons for the abatement. Thus, the IRS cannot provide data to accurately reflect the performance of the TFRP process.

We are pleased with the IRS’s plans to conduct research on issues related to employment tax. The research on common characteristics of taxpayers who pyramid employment tax

liabilities is essential to determine how to prevent such behavior. In addition, the IRS's planned research to determine appropriate treatments to encourage compliance is a very important step in a balanced approach. The National Taxpayer Advocate also encourages the IRS to research the effectiveness of local outreach initiatives and looks forward to assisting in this research.

Recommendations

The National Taxpayer Advocate recommends that the IRS take the following actions to improve the employment tax program:

1. Perform research to determine the reasons for employment tax noncompliance, the types of service or enforcement-related treatments necessary to bring each type of taxpayer into compliance, and the best time for the IRS to intervene with such treatments;
2. Partner with the Small Business Administration and organizations such as SCORE to pair up taxpayers with mentors once they have indicated they are confused about tax filing and payment obligations;
3. Develop pilot outreach programs through cognitive learning labs to test the impact local outreach initiatives have on employment tax compliance;
4. Explore and test a public information campaign to convey to employers the importance of meeting employment tax obligations, and the detrimental impact noncompliance can have on the finances of both the business entity and individuals deemed responsible;
5. As part of the Lien Policy Analyst Team, track the dollars generated by liens to determine whether they are an effective collection tool for payroll tax liabilities; and
6. Collaborate with the Taxpayer Advocate Service in all studies, reviews, and workgroups associated with the employment tax program.

MSP
#5**IRS Process Improvements to Assist Victims of Identity Theft****Responsible Officials**

Jim Falcone, Acting Deputy Commissioner for Operations Support
 Richard E. Byrd, Jr., Commissioner, Wage and Investment Division
 Deborah G. Wolf, Director, Office of Privacy, Information Protection and Data Security
 Julie Rushin, Director, Strategy and Finance, Wage and Investment Division

Definition of Problem

Over the past several years, the National Taxpayer Advocate has cited identity theft as a most serious problem encountered by taxpayers.¹ In her 2007 Annual Report to Congress, the National Taxpayer Advocate included a comprehensive review of IRS identity theft procedures and identified several major concerns.²

Congress also recognizes identity theft as a growing problem. The House Committee on Ways and Means and the Senate Committee on Finance each held hearings about the IRS response to identity theft in early 2008. The National Taxpayer Advocate testified at both hearings.³ In the April 10, 2008 hearing before the Senate Finance Committee, IRS Commissioner Douglas Shulman acknowledged the need for the IRS to improve its procedures for assisting victims of identity theft and promised that the IRS would develop a comprehensive plan to help these taxpayers.⁴

We applaud the IRS for recognizing identity theft as a serious problem and devoting significant resources to resolve many of the issues we have previously identified. Over the past year, the IRS has made a number of improvements to its procedures to assist victims of identity theft. For example, the IRS now tracks victims of identity theft by placing

¹ See National Taxpayer Advocate 2007 Annual Report to Congress 96-115 (comprehensively addressing the problems with IRS identity theft procedures); National Taxpayer Advocate 2005 Annual Report to Congress 180-91 (addressing the excessive delays in resolving taxpayer problems and deficiencies in IRS procedures); National Taxpayer Advocate 2004 Annual Report to Congress 133-36 (addressing the inconsistent treatment of identity theft cases across the IRS); National Taxpayer Advocate Fiscal Year 2009 Objectives Report to Congress viii-xx; National Taxpayer Advocate Fiscal Year 2008 Objectives Report to Congress 15-16, 36-40; National Taxpayer Advocate Fiscal Year 2007 Objectives Report to Congress 24.

² See National Taxpayer Advocate 2007 Annual Report to Congress 96-115.

³ *Identity Theft in Tax Administration: Hearing Before the Senate Committee on Finance*, 110th Cong. (Apr. 10, 2008) (statement of Nina E. Olson, National Taxpayer Advocate); *The Tax Return Filing Season, Internal Revenue Service Operations, Fiscal Year 2009 Budget Proposals, and the IRS National Taxpayer Advocate's Annual Report: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways and Means*, 110th Cong. (Mar. 13, 2008) (statement of Nina E. Olson, National Taxpayer Advocate).

⁴ See *Identity Theft in Tax Administration: Hearing Before the United States Senate Committee on Finance*, 110th Cong. (Apr. 10, 2008) (statement of Douglas Shulman, IRS Commissioner); see also Tax Notes Today, IRS Officials Pledge Improved Communications with Taxpayers, 2008 TNT 91-5 (May 9, 2008); Tax Notes Today, *Shulman Promises Improvement in IRS Response to Identity Theft*, 2008 TNT 71-2 (Apr. 11, 2008).

a marker on the victim's account.⁵ The IRS has also established an Identity Protection Specialized Unit and a toll-free hotline for identity theft victims.⁶

However, the National Taxpayer Advocate has concerns with the approach the IRS has taken in implementing the new procedures to assist identity theft victims. First, we are concerned that identity theft victims with tax problems will not receive comprehensive assistance from the Identity Protection Specialized Unit. Second, we have identified gaps in the way the IRS tracks identity theft victims. Third, we would like the IRS to improve its communication with identity theft victims. Fourth, we would like the IRS to allow its employees to exercise greater discretion to deviate from established guidelines when determining the rightful owner of a disputed Social Security number (SSN).

Analysis of Problem

Background

Identity theft occurs when someone unlawfully uses another's personal data to commit fraud or other crimes. Identity theft is most commonly encountered in tax administration when an individual intentionally uses the SSN of another person to file a falsified tax refund claim or fraudulently obtain employment. Identity theft affects almost every aspect of tax administration – tax return filing, auditing, collection, protection of taxpayer information, etc. – and harms innocent taxpayers.

According to the Federal Trade Commission (FTC), the lead federal agency charged with combating identity theft, there were 258,427 reported incidents of identity theft in 2007, up from 246,124 in 2006.⁷ As shown in Table 1.5.1 below, TAS stolen identity cases have increased over sixfold from fiscal year (FY) 2005 to FY 2008.⁸

TABLE 1.5.1, TAS Stolen Identity Cases, FY 2005 TO FY 2008

	FY 2005	FY 2006	FY 2007	FY 2008
Primary Issue Code 425, Stolen Identity	922	2,486	3,327	7,147
Secondary Issue Code 425, Stolen Identity	739	1,381	2,603	3,690
Combined Stolen Identity	1,661	3,867	5,930	10,837

⁵ See Memorandum for Division Commissioners, Chiefs, National Taxpayer Advocate, Directors, from Director, Privacy, Information Protection and Data Security, *Identity Theft Tracking Implementation* (Jan. 4, 2008).

⁶ Servicewide Electronic Research Program (SERP) Alert, *Identity Theft Hotline* (Sept. 24, 2008).

⁷ Federal Trade Commission, *Consumer Fraud and Identity Theft Complaint Data, January – December 2007* 5, at <http://www.ftc.gov/opa/2008/02/fraud.pdf> (last visited Dec. 16, 2008).

⁸ Taxpayer Advocate Management Information System, FY 2005, FY 2006, FY 2007, and FY 2008.

In general, there are two motives for identity theft in the context of tax administration. In refund-related identity theft, the perpetrator files a falsified tax return to obtain a fraudulent refund. This type of identity theft harms taxpayers by blocking their efforts to file legitimate returns and receive refunds. Identity theft victims may also be denied certain deductions and credits while the IRS addresses the fraudulent return on its systems.

The second motive is employment-related identity theft, where the perpetrator utilizes the personal information of another to obtain employment. The employer prepares a Form W-2 with the victim's SSN. This can cause problems for the identity theft victim, who may receive bills from the IRS for tax owed on income he or she never earned.

Regardless of the motive, identity theft creates serious consequences for the innocent taxpayer. For a detailed explanation of these problems, please refer to prior Annual Reports to Congress issued by the National Taxpayer Advocate.⁹

Concerns Regarding the IRS's Identity Theft Victim Assistance Strategy

The Identity Protection Specialized Unit Should Monitor All Identity Theft Cases.

Identity theft victims should have a single point of contact within the IRS to assist in resolving all federal identity theft-related tax issues, and should not need to contact the IRS multiple times to resolve their issues. Until recently, the IRS did not have an enterprise-wide strategy to deal with identity theft cases. For example, the Automated Underreporter (AUR), Automated Collection System, Accounts Management (AM), Examination functions, and the Criminal Investigation division all assisted victims of identity theft, but no single function had the overall responsibility to resolve all of the victim's tax account issues, which resulted in taxpayers coming to TAS for assistance. Without a coordinated effort, each function worked identity theft cases independently according to its own procedures, requiring some taxpayers to provide the same information to the IRS several times. More importantly, there was a real danger that the IRS was not addressing all related issues or all tax periods of accounts impacted by identity theft.

The National Taxpayer Advocate recommended in her 2007 Annual Report to Congress that the IRS establish a dedicated, centralized unit to handle all identity theft cases.¹⁰ The IRS concurred with this recommendation and created an Identity Protection Specialized Unit to assist victims of identity theft. Effective October 1, 2008, taxpayers can call a toll-free hotline (800-908-4490) to report their identity theft issues, obtain information, and take steps to protect their accounts.¹¹

⁹ See National Taxpayer Advocate 2007 Annual Report to Congress 96-115 (comprehensively addressing the problems with IRS identity theft procedures); National Taxpayer Advocate 2005 Annual Report to Congress 180-91 (addressing the excessive delays in resolving taxpayer problems and deficiencies in IRS procedures); National Taxpayer Advocate 2004 Annual Report to Congress 133-36 (addressing the inconsistent treatment of identity theft cases across the IRS); National Taxpayer Advocate Fiscal Year 2009 Objectives Report to Congress viii-xx; National Taxpayer Advocate Fiscal Year 2008 Objectives Report to Congress 15-16, 36-40; National Taxpayer Advocate Fiscal Year 2007 Objectives Report to Congress 24.

¹⁰ See National Taxpayer Advocate 2007 Annual Report to Congress 115.

¹¹ See SERP Alert, Identity Theft Hotline, at <http://www.irs.gov/individuals/article/0,,id=136324,00.html> (Sept. 24, 2008).

The Identity Protection Specialized Unit provides two essential services to identity theft victims. First, it conducts a global account review to identify all issues related to the identity theft. Second, the unit provides regular account monitoring to ensure full case resolution. These are two very valuable services the IRS provides to identity theft victims. However, current IRS procedures provide these benefits only to identity theft victims who call the specialized unit with a tax-related problem. The IRS does not provide these benefits to taxpayers who directly call other IRS functions to resolve tax issue(s).

For identity theft victims who have not received any notices from the IRS regarding tax issues, the IRS encourages these individuals to call the toll-free hotline to report their identity theft incident.¹² For individuals who have received notices from the IRS about their identity theft-related tax issues, the IRS directs them to contact the Identity Protection Specialized Unit only “if you have previously been in contact with the IRS and have not achieved a resolution.”¹³ A recent Servicewide Electronic Research Program (SERP) Alert advises that “employees in AM, AUR, Collections, Exam, etc., with existing tax-related identity theft cases, or receiving new tax-related identity theft cases, should follow their established procedures to work these cases.... Do NOT route these cases to the [Identity Protection Specialized Unit].”¹⁴

To reiterate, the IRS refers identity theft victims *without* tax account problems to the Identity Protection Specialized Unit, yet directs identity theft victims *with* tax account problems not to call this unit.¹⁵ It seems counterintuitive for the IRS to devote significant resources to establishing a centralized unit to assist victims of identity theft, only to limit access to this unit to taxpayers who have had their wallets stolen or experienced some other non-tax identity theft issue.

The National Taxpayer Advocate recognizes that there is a benefit in asking taxpayers to respond to the IRS function originating the correspondence – otherwise, the function may proceed to the taxpayers’ detriment. However, if the IRS simply relies on existing procedures, we cannot be confident that the IRS will address all related issues.

The IRS needs to take a much more taxpayer-centric approach to resolving the myriad of account problems created by identity theft. The National Taxpayer Advocate recommends that the IRS operating division or function, as it addresses the tax account issue at hand, refer the case of the identity theft victim back to the centralized unit for a global account review. This account review is necessary to ensure that all of a victim’s identity theft-related account issues are addressed. If the account review uncovers additional issues, then the Identity Protection Specialized Unit should refer the case to the appropriate function(s)

¹² See <http://www.irs.gov/individuals/article/0,,id=136324,00.html> (last visited Oct. 3, 2008).

¹³ See *id.*

¹⁴ See SERP Alert 080389, *Functions Are Referring Their Tax-Related Identity Theft Cases to the AM Identity Theft Units in Error* (Oct. 6, 2008).

¹⁵ See <http://www.irs.gov/individuals/article/0,,id=136324,00.html> (last visited Oct. 3, 2008).

and monitor the case until full resolution. If there are no other open issues, the centralized unit would close the case.

The IRS Is Unable to Accurately Quantify Incidents of Identity Theft.

Identity theft is a recurring issue for many taxpayers, who often find themselves battling to resolve account problems with the IRS over multiple years. The IRS recently developed a method to systemically identify taxpayers whose identities were stolen. On January 1, 2008, the IRS implemented a tracking system that places an indicator on an identity theft victim's account once he or she has provided verification of identity theft.¹⁶ This indicator will alert the IRS in subsequent filing years that this taxpayer may need special attention.

The operating divisions will develop “business rules” – that is, a set of rules intended to filter out fraudulent returns – that will apply to accounts flagged with the identity theft indicator.¹⁷ Beginning in January 2009, returns that do not meet the business rules will be removed from the posting process.¹⁸ If the return falls outside the established parameters, the IRS will review the return manually before processing any refund claims.

We are pleased with this positive development, as the National Taxpayer Advocate has long advocated such a tracking system.¹⁹ With the ability to track identity theft cases, the IRS will be better able to allocate appropriate resources and identify areas where procedures need to be improved. However, the National Taxpayer Advocate has identified several shortcomings with the way the IRS currently tracks identity theft cases.

The IRS does not place the marker in many situations where the IRS itself identifies identity theft cases. For example, the IRS will not use its identity theft marker in employment-related fraud cases involving a “name-SSN mismatch” (*i.e.*, where the taxpayer's name, according to IRS data files, does not match the associated SSN for that name). If an identity thief uses another taxpayer's SSN but the name does not correspond, the AUR function will not attribute the income reported on information returns (*e.g.*, Forms W-2 or Forms 1099) bearing the SSN to the identity theft victim.²⁰ While this result spares the victim significant headaches, it also means that no identity theft marker will be applied, even though it is clear that the SSN has been misused and may be misused for years to come.

In addition, the IRS still does not track cases where taxpayers do not respond to IRS correspondence or where they provide insufficient documentation of identity theft. If a taxpayer does not reply to a request for information or responds after the prescribed time,

¹⁶ See Memorandum for Division Commissioners, Chiefs, National Taxpayer Advocate, Directors, from Director, Privacy, Information Protection and Data Security, *Identity Theft Tracking Implementation* (Jan. 4, 2008). See also IRM 4.19.13.25 (Jan. 4, 2008) (implementing identity theft tracking procedures in the Automated Underreporter units).

¹⁷ See PIPDS, *Substantiated Identity Theft Tracking and Implementation* (Jan. 4, 2008).

¹⁸ See *id.*

¹⁹ See National Taxpayer Advocate 2005 Annual Report to Congress 191.

²⁰ See Internal Revenue Manual (IRM) 4.19.3.4.1 (Nov. 8, 2005).

the IRS simply moves the taxpayer into scrambled SSN procedures and does not count the case as an identity theft case.²¹

For these reasons, it is apparent that even with the identity theft marker, the IRS will not be able to accurately quantify the number of tax-related identity theft cases. Without an accurate estimate, it will be difficult for the IRS to allocate appropriate resources to assist victims of identity theft. More significantly, accounts that are not tracked will not receive the benefit of account monitoring or global account review provided by the Identity Protection Specialized Unit.

The concern over the IRS's ability to accurately estimate the number of tax-related identity theft incidents underscores the need for a centralized unit that monitors *all* instances of tax-related identity theft. The IRS should apply an indicator on all identity theft cases, whether identified by the IRS or reported by the taxpayer.

Need for Improved Communication with Identity Theft Victims

Current IRS communications with identity theft victims lack clarity. When the IRS receives multiple filings using the same SSN and cannot determine which person rightfully owns the number, it issues a Letter 239C, *Scrambled SSN Clarification to Taxpayer*, to both taxpayers (the first of two Letters 239C that may be sent). The first letter instructs the taxpayer to provide documents that are not part of the standard identity theft documentation, *e.g.*, a copy of a current utility bill or bank statement. At this point, the only thing the taxpayer knows for sure is that he or she has a tax problem. The requirement to obtain such documents places an unnecessary burden on taxpayers and may delay case resolution.

The Letter 239C does not notify the taxpayer that identity theft is a possible or likely cause of the problem; it merely says that “there may be a problem with the Social Security number you used on your income tax return.”²² At no point does the IRS clearly explain that the taxpayer may be a victim of identity theft. More importantly, the letter fails to adequately describe the consequences of an insufficient or untimely response. If taxpayers do not timely respond to this vague notice, the IRS initiates scrambled SSN procedures, which may result in the identity theft victim being unable to claim certain credits and deductions (such as the earned income tax credit (EITC) or the personal exemption) for several years.²³

Even when the IRS has verified the existence of fraud, it still does not notify taxpayers that they may be victims of identity theft. Before June 2008, the IRS was not clear as to whether the disclosure restrictions in Internal Revenue Code (IRC) § 6103 would prevent the IRS from sharing any information about the identity theft with the owner of the compromised SSN. However, in June 2008, the IRS received written guidance from the Office of Chief

²¹ See IRM 21.6.2.4.3.9.1 (June 4, 2008).

²² IRM 21.6.2.4.4 (Oct. 1, 2007).

²³ See National Taxpayer Advocate 2007 Annual Report to Congress 545-46.

Counsel stating that the IRS may disclose to the SSN owner that the number has been used on another return and that he or she is an apparent victim of identity theft, without violating IRC § 6103.

The IRS should not only alert taxpayers of potential identity theft when another tax return is filed using their SSN, but also when their number shows up on a document associated with another tax return. For example, the AUR unit does not notify taxpayers about the misuse of their SSNs if the name on the tax return does not match the SSN shown on the associated Form W-2.²⁴

We recommend that the IRS stop using the Letter 239C for identity theft cases and develop a new letter for these cases. This letter should explain why the IRS thinks the taxpayer may be a victim of identity theft, instruct the taxpayer on the next steps to take, provide a form the taxpayer can submit to the IRS, and provide a phone number for the identity theft hotline.

Not only does the IRS use unclear language when communicating with identity theft victims, it also delays processing their tax returns. Some identity theft cases are initially treated as a “duplicate filing,” which means that the IRS receives multiple filings of the same tax form using the same name and the same SSN.²⁵ For example, a duplicate filing can occur when an identity thief files a tax return under the name and SSN of the victim.

It is the job of the AM function to sort out whether the duplicate filing is a situation where the taxpayer was attempting to file an amended return or where he or she was the victim of identity theft.²⁶ Given the difficulties in working identity theft cases, this determination ought to be a priority for the IRS. Rather than prioritizing these cases, however, the IRS actually delays the processing of duplicate filings by two to three weeks.²⁷

IRS Employees Should Be Allowed to Exercise More Discretion in Identity Theft Cases.

In 2007, the IRS established standardized documentation requirements for taxpayers to substantiate their claim of identity theft. Identity theft victims are directed to provide either a copy of a police report or an affidavit of identity theft obtained from the FTC.²⁸ There is nothing magical about the FTC affidavit of identity theft. It is a self-reported document that actually contains a statement emblazoned in red ink and capital letters:

²⁴ See IRM 4.19.3.4.1 (Nov. 8, 2005).

²⁵ See IRM 21.6.7.4.4 (Oct. 1, 2008).

²⁶ See *id.*

²⁷ See Most Serious Problem, *Incorrect Examination Referrals and Prioritization Decisions Cause Substantial Delays in Amended Return Refunds for Individuals*, *infra*.

²⁸ See Memorandum for Commissioner, Small Business/Self-Employed Division, Commissioner, Wage and Investment Division, and Chief, Appeals, from Deputy Commissioner for Services and Enforcement and Deputy Commissioner for Operations Support, *Standard Identity Theft Documentation* (June 11, 2007).

“DO NOT SEND AFFIDAVIT TO THE FTC OR ANY OTHER GOVERNMENT AGENCY.”²⁹

Faced with contradictory instructions from the IRS and FTC, identity theft victims are understandably confused about the purpose and use of the affidavit.

When the IRS developed its standardized list of acceptable documents, it did so with the intention of easing taxpayer burden. With this in mind, the IRS should recognize that some identity theft victims are faced with extremely unusual circumstances and may not be able to comply with the requirement to produce one of the two acceptable documents. In order to deal with extraordinary situations, the IRS should allow its managers the discretion to deviate from established guidelines.

For example, a taxpayer came to TAS in 2008 with an unusual situation. He had recently been released from prison after serving several years, and was surprised to receive a letter from the IRS stating that he had failed to report income from a job in another state during one of the years he was incarcerated. The taxpayer provided prison records verifying his whereabouts and a letter from the SSA stating that it had determined that he had no earnings in the year in question. The IRS did not dispute that the earnings were not the taxpayer’s, but refused to adjust his account until it received one of the two types of documentation listed in the IRM.

Here, the taxpayer provided two documents that proved he was a victim of identity theft, yet the IRS refused to adjust his account, even when TAS elevated the issue by issuing a Taxpayer Assistance Order (TAO). The issue was finally resolved in the taxpayer’s favor after the National Taxpayer Advocate issued a TAO to the Deputy Commissioner of the Wage and Investment division.

Another area where IRS employees should be able to exercise discretion is when deciding whether to implement “scrambled SSN” procedures. When the IRS cannot determine the true owner of an SSN in question, it initiates scrambled SSN procedures and assigns a temporary IRS number (IRSN) to all users of the SSN, including the victim of identity theft.³⁰ All parties are told to use the IRSN on their future tax returns instead of the SSN. This action means these filers will not be eligible for tax benefits that require a valid SSN, such as the EITC and the personal exemption.³¹

For years, the National Taxpayer Advocate has expressed concern that the IRS has been moving identity theft cases into the scrambled SSN process prematurely, rather than

²⁹ The Identity Theft Affidavit may be obtained from the FTC website at <http://www.ftc.gov/bcp/edu/resources/forms/affidavit.pdf> (last visited Dec. 16, 2008).

³⁰ The IRS follows scrambled SSN procedures when two or more taxpayers file returns using the same SSN and there is no clear indication as to which taxpayer owns the SSN. See IRM 21.6.2.4.2(4) (Jan. 22, 2008).

³¹ See IRM 21.6.2.4.4 (Oct. 1, 2007).

using information already available to the IRS to avoid these procedures.³² Not only are scrambled SSN procedures burdensome for innocent taxpayers, but they affect too many taxpayers unnecessarily.

The IRS should give its employees more latitude in determining the rightful owner of the SSN and avoid the scrambled SSN process altogether. For example, if the IRS receives two returns using the same SSN, the IRS employee should be instructed to look at the filing history and utilize all available research tools.³³ If the research shows that taxpayer A has filed returns reporting wages using the associated SSN for ten years, but the SSN belongs to a 16-year-old child (taxpayer B, who has filed a return for the first time this year), the IRS employee should be able to determine who owns the number. In this instance, the IRS should not initiate scrambled SSN procedures, but should place an identity theft indicator on taxpayer B's account and alert taxpayer B that his or her SSN has been compromised so that he or she can take measures to protect his or her identity.

The IRS should allow its employees and managers the latitude to exercise discretion where appropriate. We note that current IRS guidance does instruct AM employees to “make every effort to locate the correct TIN [taxpayer identification number] for each taxpayer before contacting the taxpayer(s).”³⁴ However, our experience is that AM employees have been reluctant to exercise any discretion in making a determination as to which filer is the true owner of the SSN in question. This reluctance may be a result of a slight change in the IRM in 2005. Prior to 2005, the IRM instructed AM employees that “[e]very effort should be made to locate a correct TIN for both taxpayers BEFORE using scramble procedures” (emphasis in original).³⁵ Note that TAS experienced a significant increase in stolen identity cases post-2005.

The IRS can provide adequate guidance to its employees about how to exercise judgment in making these determinations, and can update this guidance with examples derived from actual cases. If warranted, the Identity Protection Specialized Unit should track these “unusual circumstances” and meet with TAS to develop any administrative or legislative changes needed to address these situations systemically.

³² *Identity Theft in Tax Administration: Hearing Before the United States Senate Committee on Finance*, 110th Cong. (Apr. 10, 2008) (statement of Nina E. Olson, National Taxpayer Advocate); National Taxpayer Advocate 2007 Annual Report to Congress 101-03; National Taxpayer Advocate 2005 Annual Report to Congress 184; National Taxpayer Advocate 2004 Annual Report to Congress 134-36.

³³ While current IRS guidance does instruct AM staff to “make every effort to locate the correct TIN [taxpayer identification number] for each taxpayer before contacting the taxpayer(s),” TAS’s experience is that these employees are reluctant to exercise any discretion in determining the true owner of the SSN. See IRM 21.6.2.4.2.3 (May 23, 2008).

³⁴ IRM 21.6.2.4.2.3 (May 23, 2008).

³⁵ IRM 21.6.2.4.2.2 (Oct. 27, 2004). The IRM further instructs employees to research CC IMFOL, RTVUE, INOLE, NAMES, DUPOL, FFINQ, and REINF, request MFTRA, obtain NUMIDENT, and request all returns for the years involved.

Conclusion

Commissioner Shulman has expressed a desire to focus on the taxpayer's experience in dealing with the IRS, stating "we must not only meet legal requirements, we must walk a mile in the taxpayers' shoes and help them navigate the system."³⁶ The National Taxpayer Advocate applauds this approach and feels that this should be the IRS's focus in developing procedures for assisting identity theft victims.

We are pleased that the IRS has made positive strides in addressing the concerns we identified in prior years. However, we have identified a number of concerns with the IRS approach. The IRS should consider taking the following actions to improve its assistance to victims of identity theft: provide global account review and account monitoring (if necessary) for all identity theft victims; allow its employees the discretion to deviate from established guidelines in accepting evidence of identity theft; and allow its employees more latitude in determining the rightful owner of a disputed Social Security number.

We urge the IRS to continue working with TAS to improve assistance to victims of identity theft. We will closely monitor the impact of these new procedures and will work collaboratively with the Office of Privacy, Information Protection, and Data Security to address new issues as they arise.

IRS Comments

The IRS appreciates that the National Taxpayer Advocate recognizes the significant progress the IRS is making to address identity theft. We continue to work closely with the National Taxpayer Advocate to identify areas for improvement in meeting the challenges of resolving tax problems related to identity theft. The IRS is committing significant resources to address the challenges posed in protecting taxpayers' identities and identity information. An enterprise-level Identity Protection Strategy serves as the foundation for all of our efforts to provide services to victims of identity theft and to reduce the effects of identity theft on both taxpayers and tax administration. This strategy, which was initiated in 2004 and updated this year, focuses on three priority areas that are fundamental to protecting taxpayers' identities and addressing the impact of identity theft.

Victim Assistance: It is a strategic goal of the IRS to better assist taxpayers by expediting and improving resolution of identity theft-related tax issues. On October 1, 2008, the IRS opened the Identity Protection Specialized Unit (IPSU), a unit dedicated to resolving tax issues incurred by identity theft victims. This unit enables victims to have their questions answered and issues resolved quickly and effectively. In its first two months, the IPSU responded to approximately 7,500 inquiries. We expect this number to rise as awareness of this service increases.

³⁶ IRS Commissioner Douglas Shulman made these remarks during a discussion of the ten-Year Anniversary of the IRS Restructuring and Reform Act of 1998 at a conference organized by Tax Analysts. See IR-2008-90 (July 18, 2008).

The IRS has also begun sending a series of new letters to taxpayers regarding identity protection. This year, we began by sending letters to individuals identified through our work processes as actual or probable victims of identity theft. Through the pilot program for these notifications, the IRS sent over 2,000 letters. These letters inform taxpayers that their personal information was used by another individual to file a fraudulent refund return or that their information may have been compromised through phishing scams. They provide contact information for the IRS, as well as valuable information on steps victims can take to resolve any tax-related issues and to prevent potential future harm. During the coming year, we will expand our efforts and begin notifying all IRS-discovered victims of refund crimes. Additionally, based on information received by the IRS during return filing, we will begin a new pilot project to notify taxpayers whose information has been improperly used by another person to gain employment.

The IRS is committed to an ongoing review of our communications with identity theft victims to ensure they are clear, meaningful, and necessary. We will continue our practice of vetting communications extensively and requesting feedback from taxpayers to inform these reviews. We look forward to our continued collaboration with the National Taxpayer Advocate on this important area of victim assistance.

Outreach: The IRS is committed to increasing awareness of identity protection through multiple communication channels and education efforts. The IRS has focused heavily this year on raising awareness of identity protection issues through direct contact with the tax practitioner and taxpayer communities. Led by our newly formed Office of Privacy, Information Protection, & Data Security, the IRS has addressed groups at over 40 events throughout the country, including six Nationwide Tax Forums. During the Nationwide Tax Forums, we addressed over 5,700 practitioners on this topic. Additionally, the newly established IRS Online Fraud Detection and Prevention (OFDP) office is a co-sponsor of the Onguardonline.gov website, along with the Federal Trade Commission (FTC), Department of Homeland Security, Naval Criminal Investigative Service, and other federal government agencies. This website is an excellent resource for consumers and contains information from the federal government and technology industry on strategies for protecting personal information. The response to IRS outreach in these settings has been overwhelmingly positive and we have received valuable feedback from taxpayers and the practitioner community.

This year, the IRS engaged key executives and experts in the fields of privacy and identity theft, in the domestic and international arenas, to share and acquire information on best practices for protecting and assisting the public. On July 21-22, 2008, the IRS hosted these individuals in the first IRS Identity Protection Forum. The goal of the forum was to share common experiences and successes in the protection of identity information and gain insights into trends and future developments in this area of growing interest. This forum has proven successful in bringing together its participants to combat identity theft. For example, the IRS has held discussions with one of the forum presenters to discuss vulnerabilities

for identity theft in check cashing establishments and is collaborating internally to identify possible opportunities for pursuing proactive identity theft solutions. In addition, the FTC forum participants engaged the IRS to collaborate on developing an identity theft guide for pro bono attorneys. Representatives at the forum from Her Majesty's Revenue & Customs have held several follow-up meetings with the IRS and the Department of Justice (DOJ), resulting in increased collaboration in combating identity theft, generally, and particularly the global problem of phishing.

Prevention: The IRS is building a strong prevention program to reduce incidents of identity theft. This program is based upon three priorities: (1) reducing opportunities for thieves to obtain identity information, (2) reducing the opportunities for thieves to use the data they have stolen, and (3) increasing deterrence efforts to discourage identity theft. The IRS has established the OFDP office to address the increasing and evolving threat of online fraud and reduce opportunities for identity thieves to obtain information. The IRS Criminal Investigation (CI) Division and the OFDP office are working closely with the Treasury Inspector General for Tax Administration (TIGTA), the DOJ, the FBI, and the FTC to pursue criminal investigations and prosecutions of phishing perpetrators, as appropriate.

The IRS has significantly improved the ability to quantify and track incidents of identity theft. In January 2008, the IRS began placing an identity theft marker on the accounts of taxpayers who identify themselves to the IRS as victims of identity theft who have experienced an impact on their tax accounts. This marker is an excellent tool for assisting taxpayers because it indicates to any employee handling the taxpayer's account that they are dealing with a substantiated case of identity theft. We project that more than 24,000 accounts will carry this particular marker by the end of this calendar year.

On October 1, 2008, we rolled out several new markers. One marker is being placed on the accounts of taxpayers who self-identify as potential or actual victims with no apparent impact on tax administration. Another is being used where, through our business processes, we have identified individuals as being impacted by refund fraud or phishing schemes. We project that more than 23,000 accounts will carry this marker by the end of this calendar year.

We also use an account marker to annotate identity theft cases identified through our duplicate returns determination process. When two returns are filed using the same SSN and the IRS is unable to determine the true owner of the SSN through its normal business processes, we have historically used our scrambled SSN procedures to resolve the case. This involves submitting limited information from the returns to the Social Security Administration for verification of the true owner of the SSN. We have been working to improve our procedures to more efficiently resolve duplicate returns cases without using the scrambled SSN process. As we work through the current inventory of scrambled SSN cases and make a determination as to the true owner of the SSN, we are marking the account of the legitimate SSN owner and notifying that individual with a modified, more targeted

Letter 239C. This letter contains specific information concerning the impact of identity theft on the taxpayer's account. Within the next few months, we will be working through the existing inventory of cases and notifying the impacted taxpayers.

In 2009, we will test the use of another new account marker with taxpayer notification to annotate the accounts of taxpayers whose SSNs have been inappropriately used by others to gain employment. The IRS receives tax returns each year that are filed using an Individual Tax Identification Number (ITIN) with a Form W-2 attached containing an SSN, and the new marker will specifically address this population of victims.

We are also employing our identity theft markers to reduce the ability of identity thieves to use stolen information. Beginning in January 2009, any tax return filing activity on the accounts of taxpayers who have been flagged in our system as victims of identity theft will be filtered based on a thorough analysis of common indicators of fraud. The use of these filters will enable an automatic, systemic review of a taxpayer's account to determine whether new return filings are legitimate. Suspicious filings will be systemically removed from return processing for manual review. Most legitimate taxpayers will not experience an additional delay in the amount of time it takes to receive a refund in this situation. We will communicate with those taxpayers from whom we may need additional information in order to resolve their cases.

The National Taxpayer Advocate recommends that the Identity Protection Specialized Unit monitor all identity theft cases.

Often, the first IRS point of contact for a taxpayer is the function that initiated a notice to the taxpayer. Our analysis indicates that centralization of all identity theft cases in one unit would increase case resolution time and, thus, taxpayer burden. The function that is the business owner of that taxpayer's specific issue has the case background and specialized knowledge necessary to most effectively and efficiently resolve the problem. To ensure fair and consistent treatment of victims across all functions, the IRS is developing a central reference point in the Internal Revenue Manual that links all identity theft-related procedures outlined in the IRM and cites examples of common issues and proper case resolution. We issued interim guidance in a series of memoranda in September 2008, and intend to release the finalized *Service-wide Identity Theft Guidance* in early 2009.

The IRS recognizes that tax-related identity theft cases can be very complex and may require specialized support, particularly where a victim has multiple tax-related issues. The IPSU is specifically chartered to assist taxpayers who have experienced tax problems as a result of identity theft and either have been unable to have their issues effectively resolved by the function or have multiple issues that require coordination among various functions. One mission of the IPSU is to reduce the burden of victims by serving as their central contact point within the IRS. IPSU assistors are responsible for working with the various functions to ensure that all known identity theft-related issues are resolved. Taxpayers may

contact the IPSU of their own accord or may be referred to the IPSU by the originating function.

We are in the process of establishing mandatory procedures for global account review by all functions that have contact with victims. Our analysis indicates that review by the taxpayer's first point of contact is a more effective and efficient means of reducing taxpayer burden than mandatory referral of the taxpayer to the IPSU for global account review. Where a review uncovers other identity theft-related issues, those specific cases will be routed to the IPSU; which will ensure complete and timely resolution.

The IRS is pleased with the initial success of the IPSU and will continue to raise awareness of this valuable service, both internally and externally. Further, we will review our policies on an ongoing basis to ensure they are consistent with our commitment to provide effective and efficient service in a manner that reduces taxpayer burden.

The National Taxpayer Advocate recommends that employees be allowed the discretion to deviate from established guidelines in accepting evidence of identity theft.

Where taxpayers self-identify as victims of identity theft, in an effort to prevent further fraud, we require proof of identity and substantiation of identity theft with either a police report or the FTC's Affidavit of Identity Theft. We do this to prevent identity thieves from committing further fraud by identifying themselves as the legitimate taxpayer. Because of this risk, we currently limit employee discretion on variations to our standard documentation requirements. The IRS is developing its own identity theft affidavit that will collect from victims the information most pertinent to tax administration, and will require a sworn signature. We expect this form to be available for use in 2009. This new form, which will be both simpler and more specific to IRS use, will make it easier for taxpayers to complete the substantiation process.

For cases with exceptional circumstances, where this documentation cannot be provided, we have established a working group, with representatives from TAS, to address unusual conditions. This working group is also charged with reviewing our business processes in light of such cases and making recommendations for meaningful change where appropriate.

The National Taxpayer Advocate recommends that employees be allowed more latitude in determining the rightful owner of a disputed Social Security number.

The IRS has recently implemented process changes for empowering employees with greater discretion in determining the rightful owner of an SSN in our duplicate returns cases. This year, the IRS chartered a Lean Six Sigma team consisting of process review experts with a mandate to improve the duplicate returns determination process. After a thorough review, the team made specific recommendations for streamlining the resolution process and preventing future duplicate returns cases from being submitted to the SSA

through our scrambled SSN process. The team developed a criteria-based checklist that enabled employees to use their knowledge and judgment to make a determination as to the rightful owner of the SSN in approximately 63 percent of the cases that would have been referred for scrambled procedures. This means that 63 percent of legitimate taxpayers whose returns would otherwise have been held up in the scrambled SSN process had their account issues resolved efficiently and received their refunds quickly.

As of October 1, 2008, a group of employees with specialized training are applying the new process modifications, as detailed in interim procedural guidance, to the entire existing open inventory of scrambled SSN cases. Based on feedback from their experience in working through the cases, we will further modify the redesigned processes as appropriate. We are confident that, with additional experience, training, and, if necessary, process modifications, our employees will be able to use their knowledge and judgment to prevent a greater percentage of duplicate returns cases from being placed in the scrambled SSN process.

Conclusion

The IRS has made significant progress in the area of identity protection this year. We are committed to the ongoing implementation and improvement of our Identity Protection Strategy. We will continue to engage taxpayers, the practitioner community, and industry experts in educational and collaborative outreach initiatives such as the Identity Protection Forum. We look forward to continuing our collaboration with the National Taxpayer Advocate in identifying, developing, and implementing additional improvements in this important area of tax administration.

Taxpayer Advocate Service Comments

We are pleased that the IRS recognizes identity theft as a serious problem and has made it a priority to address many of the concerns identified in this report. In the past year, the IRS has improved a number of processes relative to identity theft-related tax issues.

We advocated for a global account review for all identity theft victims who come to the IRS. The IRS notes in its response that it is establishing mandatory procedures for global account review. The IRS prefers that this review be conducted by the function having the first contact with the victim. From a taxpayer perspective, it does not matter which function performs this global account review, as long as it is conducted timely and thoroughly. The National Taxpayer Advocate does not have any concerns with the IRS's proposed approach, and looks forward to seeing these procedures implemented.

We also recommended that the IRS allow its employees the discretion to deviate from established guidelines when accepting documentation as evidence of the identity theft. The IRS feels that the burden of providing documentation will be lessened with the develop-

ment of a new IRS identity theft affidavit. The IRS notes that a working group will review cases with exceptional circumstances. The National Taxpayer Advocate remains concerned that there will always be taxpayers with circumstances that the IRM does not contemplate. We feel that a better approach is to provide managers the authority to exercise discretion in these unique circumstances.

The National Taxpayer Advocate also recommended that the IRS empower its employees with greater discretion in determining the rightful owner of an SSN in duplicate returns cases. We are pleased to learn that the Lean Six Sigma team has reached a similar conclusion. We hope that the IRS will adopt this proposal to streamline the resolution process and prevent future duplicate returns cases from being submitted to the SSA through the Scrambled SSN process, and we applaud the IRS for applying these procedures to the current backlog of Scrambled SSN cases.

The IRS has made significant improvements to its procedures for assisting identity theft victims. The National Taxpayer Advocate looks forward to continued collaboration with the IRS in this area. She expects, as a result of these improvements, that TAS identity theft cases will be few and far between in the years to come.

Recommendations

In light of the IRS's agreement with our suggestions, the National Taxpayer Advocate has no specific recommendations at this time. However, she will continue to monitor that the IRS implements the following actions it has agreed to take to improve its assistance to victims of identity theft:

1. Provide global account review and account monitoring (if necessary) for all identity theft victims;
2. Allow its employees the discretion to deviate from established guidelines in accepting evidence of identity theft; and
3. Allow its employees more latitude in determining the rightful owner of a disputed Social Security number.

MSP
#6**Taxpayer Service: Bringing Service to the Taxpayer****Responsible Officials**

Richard E. Byrd, Jr., Commissioner, Wage and Investment Division

Chris Wagner, Commissioner, Small Business/Self-Employed Division

Stephen T. Miller, Commissioner, Tax Exempt & Government Entities Division

Definition of Problem

The IRS has the responsibility to help taxpayers understand and meet their tax obligations. Taxpayer service is not a “one size fits all” endeavor, but one that requires continuous innovation and testing of new solutions. Fundamental to this concept is a proactive service strategy by which the IRS reaches out to the taxpayer with education and help in solving problems.

Although the IRS is improving its face-to-face service and outreach, it should explore additional taxpayer-centric services. As part of this effort, the IRS should return to its original “one-stop shopping” concept on which Taxpayer Assistance Centers (TACs) were founded (*i.e.*, a centralized location where taxpayers can resolve all issues related to their accounts, have questions answered, and receive tax preparation services) and extend this concept to other environments such as phone and Internet service.¹ The IRS should also offer taxpayers service through the channels they need and prefer; provide face-to-face assistance with tax law questions based on the needs of different geographic areas; offer taxpayers a more efficient method of submitting cash payments; explore new alternatives and best practices for future taxpayer service; and consolidate its outreach, marketing, and education initiatives.

Analysis of Problem**The Evolution of Taxpayer Assistance Centers**

In response to concerns raised by the IRS Restructuring Commission,² Congress held hearings in 1997 and 1998 focusing on taxpayer problems and restructuring the IRS.³ The

¹ Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2005-40-110, *The Effectiveness of the Taxpayer Assistance Center Program Cannot Be Measured* 7 (July 2005).

² Bob Kerrey, Co-Chair and Rob Portman, Co-Chair, *Report of the National Commission on Restructuring the Internal Revenue Service, A Vision for a New IRS* (June 25, 1997).

³ See *Practices and Procedures of the Internal Revenue Service: Hearing of the S. Comm. on Finance*, 105th Cong. (Sept. 23-25, 1997); *Recommendations of the National Commission on Restructuring the IRS on Taxpayer Protections and Rights: Hearing of the Comm. on Ways and Means Subcomm. on Oversight*, 105th Cong. (Sept. 26, 1997).

hearings revealed, among other things, that the IRS failed to provide quality service to taxpayers.⁴ Shortly thereafter, the IRS established Problem Solving Days,⁵ which proved to be a great success and led the IRS to reevaluate services offered in its walk-in offices. The IRS modified services to make every day a problem-solving day.⁶

The hearings led to the IRS Restructuring and Reform Act of 1998 (RRA 98).⁷ As part of RRA 98, Congress allocated funds to enable the IRS to extend more pre-filing and other assistance to taxpayers.⁸ In 2001, the IRS created a business unit named Field Assistance (FA) to plan for 676 TAC sites⁹ tasked with providing a wide variety of services.¹⁰ Presently, however, the IRS has only 401 TACs, and those sites are within 30 minutes drive time of just 60 percent of the United States population.¹¹ As discussed in the 2007 Annual Report, the National Taxpayer Advocate considers this level of coverage insufficient.¹² The National Taxpayer Advocate hopes the IRS uses the lessons from its Geographic Coverage Initiative, an evaluation of TAC locations and services, to expand TAC services to a larger percentage of taxpayers.¹³

Improved Aspects of Face-to-Face Service

Commissioner Douglas Shulman stated the IRS should focus on transparency, seamless-ness, and building an environment of trust in the agency.¹⁴ He has also declared that the IRS must approach taxpayer service from a taxpayer's viewpoint to develop trust, providing the taxpayer with a seamless experience that produces the correct answer during the first

⁴ *Practices and Procedures of the Internal Revenue Service: Hearing of the S. Comm. on Finance*, 105th Cong. (Sept. 23-25, 1997). United States Senate, Committee on Finance, 105th Congress 2nd Sess. on H.R.2676 (Jan. 28-29; Feb.5, 11, 25, 1998).

⁵ *Many Unhappy Returns*, Charles O. Rossotti, 136-137, Harvard Business School Publishing (2005).

⁶ *The 2002 Tax Return Filing Season and the IRS Budget for Fiscal Year 2003: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways and Means*, 107th Cong. (Apr. 9, 2002) (testimony of Charles O. Rossotti, Commissioner of Internal Revenue).

⁷ RRA 98, Pub. L. No. 105-206 § 1002.

⁸ *Id.*

⁹ Charles O. Rossotti, Commissioner, Internal Revenue Service, Approval of the Wage and Investment (W&I) Organization 21 (Oct. 1, 2001); TIGTA, Ref. No. 2005-40-110, *The Effectiveness of the Taxpayer Assistance Center Program Cannot Be Measured 1* (July 2005).

¹⁰ Services included: accepting cash and checks for taxes due; setting up installment agreements and payment plans; answering taxpayer questions and assisting in resolving issues detailed in various IRS letters and notices; active involvement in the IRS's enforcement efforts by focusing on face-to-face compliance activities and working delinquent taxpayer cases; and making appointments, including multilingual assistance. TIGTA, Ref. No. 2005-40-110, *The Effectiveness of the Taxpayer Assistance Center Program Cannot Be Measured 7* (July 2005).

¹¹ IRS, *Taxpayer Assistance Blueprint: Phase 2*, 116 & 194 (Apr. 17, 2007).

¹² National Taxpayer Advocate 2007 Annual Report to Congress 162-82 (Most Serious Problem, *Service at Taxpayer Assistance Centers*).

¹³ Although TAS provided three team members to assist on the Geographic Coverage Initiative, the team did not share its findings with the National Taxpayer Advocate. It is the understanding of the National Taxpayer Advocate that the IRS Commissioner was briefed on the Geographic Coverage Initiative. In May 2005, the IRS announced plans to close 68 of the 401 established TAC offices. In response to the IRS proposal, Congress directed that the IRS not close any TACs, and mandated that the IRS address taxpayer needs, and IRS service delivery. This directive prohibited reducing any level of taxpayer service until the completion of a TIGTA study detailing the results of any proposals. Congress also mandated that the IRS consult with the National Taxpayer Advocate and the IRS Oversight Board. TIGTA determined that inaccuracies in the TAC model's workload and the absence of customer information diminished the effectiveness of the closure model, but neither the IRS nor TIGTA were able to ascertain the effect TAC closures might have on compliance. TIGTA, Ref. No. 2005-40-061, *The Taxpayer Assistance Center Closure Plan Was Based on Inaccurate Data 3* (Mar. 2006).

¹⁴ IRS, *Remarks of Douglas Shulman Before the Federation of Tax Administrators on June 9, 2008*, at <http://www.irs.gov/irs/article/0,,id=183721,00.html> (last visited July 14, 2008).

contact.¹⁵ The National Taxpayer Advocate commends the IRS on its most recent taxpayer service initiatives, which help increase trust and taxpayer understanding of the IRS through face-to-face contacts.¹⁶

Taxpayer Assistance Blueprint

Congress mandated that the IRS, in consultation with the National Taxpayer Advocate and the IRS Oversight Board, develop a five-year plan for taxpayer service by April 2006.¹⁷ The IRS subsequently developed the Taxpayer Assistance Blueprint (TAB).¹⁸ However, studies conducted for the TAB, the 2006 Oversight Board study, and the National Taxpayer Advocate's 2006 Annual Report to Congress demonstrate that taxpayers need different services provided through different channels.¹⁹ The TAB addressed taxpayer service only for individual taxpayers. The National Taxpayer Advocate believes that the Small Business/Self-Employed division (SB/SE) would benefit from a similar initiative to understand the characteristics and needs of small business taxpayers.²⁰

Geographic Coverage Initiative

In 2008, the IRS established the Geographic Coverage Initiative to evaluate TAC locations and determine the best locations and services based on IRS and taxpayer needs.²¹ In the 2007 Annual Report to Congress, the National Taxpayer Advocate found the level of TAC coverage insufficient, in that 40 percent of the population is more than 30 minutes drive time from a TAC location.²² The National Taxpayer Advocate recommends the IRS use the lessons from the Geographic Coverage Initiative to expand face-to-face service through the TACs to a larger percentage of taxpayers and urges the IRS to share the final report from this initiative with TAS.²³

¹⁵ "First, in every interaction, every transaction we conduct with a taxpayer, we should think about it from the outside-in – from the taxpayer's point of view, even though we may not ultimately agree with the taxpayer. Taxpayers will be judging their interactions with the IRS and the government based on their most recent experiences with other world-class service organizations. This should be our standard. Second, if a taxpayer deals with more than one business group within the IRS, we should coordinate with each other so the hand-off is quick and trouble-free." IRS Commissioner Douglas Shulman, e-mail to all IRS employees (July 9, 2008).

¹⁶ IRS, *Report to Congress: Progress on the Implementation of the Taxpayer Assistance Blueprint, April 2007 to February 2008* (Apr. 2007).

¹⁷ *Processing Assistance, and Management (Including Rescission of Funds), Joint Explanatory Statement of the Committee of Conference*, Conference Report 109-307, 2-6, at <http://www.rules.house.gov/109/text/hr3058cr/109hr3058jes.pdf> (last visited Dec. 10, 2008).

¹⁸ IRS, *Taxpayer Assistance Blueprint: Phase 2* (Apr. 17, 2007).

¹⁹ See IRS Oversight Board, *Taxpayer Customer Service and Channel Preference Survey Special Report* (Nov. 2006); National Taxpayer Advocate 2006 Annual Report to Congress vol. 2, 1-15, *Study of Taxpayers Needs, Preferences, and Willingness to Use IRS Services*.

²⁰ National Taxpayer Advocate 2006 Annual Report to Congress 183.

²¹ In May 2005, the IRS announced plans to close 68 of the 401 established TAC offices. In response to the IRS proposal, Congress directed that the IRS not close any TACs, and mandated that the IRS address taxpayer needs, and IRS service delivery. This directive prohibited reducing any level of taxpayer service until the completion of a TIGTA study detailing the results of any proposals. Congress also mandated the IRS consult with the National Taxpayer Advocate and the Oversight Board. As a result, TIGTA determined that inaccuracies in the TAC model's workload and the absence of customer information diminished the effectiveness of the closure model, but neither the IRS nor TIGTA were able to determine the effect TAC closures might have on compliance. TIGTA, Ref. No. 2005-40-061, *The Taxpayer Assistance Center Closure Plan Was Based on Inaccurate Data 3* (Mar. 2006).

²² IRS, *Taxpayer Assistance Blueprint: Phase 2*, 116 & 194 (Apr. 17, 2007).

²³ Although TAS contributed three members to the team, the IRS did not share the final report with them or the National Taxpayer Advocate before briefing the IRS Commissioner. The IRS also denied repeated requests from the National Taxpayer Advocate for a copy of the report to be used in developing this Most Serious Problem.

Facilitated Self-Assistance Research Project

The Facilitated Self-Assistance Research Project (FSRP) is located at 15 TACs where the IRS provides help with self-assistance (on computer workstations) or telephone self-assistance via the IRS toll-free system.²⁴ FSRP provides the IRS the opportunity to educate taxpayers on different services channels, freeing the TAC employees to help taxpayers with issues that are more complex. While the potential exists for the FSRP to be successful, current operating procedures hinder that success. To accomplish the goals of the FSRP, the IRS needs to use screeners effectively to determine which taxpayers can use self-assistance stations. TIGTA is concerned that screeners are not available or used effectively and efficiently at all FSRP sites.²⁵ The program needs the full support of the IRS in both staffing and effective evaluation to succeed.²⁶

Account Transcripts

TACs provided account transcripts until October 1, 2003,²⁷ when the IRS changed its policy and made transcripts available only by methods not conducive to the time-sensitive needs of taxpayers. In response, TAS cases increased. The IRS finally recognized that taxpayers need to receive transcripts face-to-face and changed its policy again in 2007, which the National Taxpayer Advocate recommended in several Annual Reports to Congress and in testimony before the Senate and House.²⁸ The original decision to cease providing transcripts at TACs flew in the face of taxpayer needs and preferences, and if the IRS had researched the decision effectively, it would have avoided imposing substantial taxpayer burden. The account transcript history should serve as a cautionary tale to the IRS regarding the hazards of making decisions without fully researching the consequences to taxpayers. The IRS now provides account transcripts to all taxpayers on an immediate basis at walk-in offices. This service reduces both taxpayer burden and the need for taxpayers to seek account transcript assistance from TAS.²⁹

Bringing the IRS to the Taxpayer

Service Delivery

The IRS is making strides in improving taxpayer outreach through face-to-face services, but needs to do more to meet taxpayer needs. The expansion of the IRS's Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) programs increased VITA

²⁴ IRS, *Report to Congress: Progress on the Implementation of the Taxpayer Assistance Blueprint, April 2007 to February 2008* 31 (Apr. 2007).

²⁵ Information provided by TIGTA (Oct. 15, 2008).

²⁶ *Id.*

²⁷ IRS Field Assistance Newsletter, Congressional Update, *Get Copies of Tax Return Information in Two Easy Ways* (2002).

²⁸ See National Taxpayer Advocate 2007 Annual Report to Congress 162-82; National Taxpayer Advocate 2005 Annual Report to Congress 254; National Taxpayer Advocate 2004 Annual Report to Congress 8-25; *United States Senate Appropriations Subcommittee on Transportation, Treasury, the Judiciary, Housing and Urban Development, and Related Agencies*, 109th Cong. (Apr. 7, 2005) (statement of Nina E. Olson, National Taxpayer Advocate); *Joint Review of the Strategic Plans and Budget of the Internal Revenue Service: Hearing Convened by the Chairman of the Joint Committee on Taxation*, 109th Cong. (May 19, 2005) (statement of Nina E. Olson, National Taxpayer Advocate).

²⁹ IRM 21.3.4.14.4 (Dec. 19, 2007).

tax preparation to more than 3.5 million returns through June 2008, a gain of more than 33 percent compared to June 2007.³⁰ The National Taxpayer Advocate believes VITA and the TACs should complement and coordinate with each other. This approach should include the use of mobile vans to provide taxpayer service to remote locations during the filing season, offering tax preparation and including issues that are normally “out of scope”, but needed in different geographic areas.³¹ However, TACs and VITA sites should only be part of the IRS strategy to deliver service to the taxpayer. Previously, the IRS committed to providing alternate service methods.³² The IRS should coordinate with other federal and state agencies, such as the Social Security Administration or state tax authorities, to provide one-stop shopping for taxpayers. The IRS could target specific groups of taxpayers by collaborating with agencies the groups use frequently; for example, by working with state motor vehicle departments, the IRS could offer excise fuel tax assistance to truck drivers.

Outreach Examples

On February 13, 2008, the President signed the Economic Stimulus Act (ESP) of 2008, providing stimulus payments to approximately 124 million households.³³ To help deal with the task of delivering these payments IRS employees contributed ideas for outreach, education, and services to taxpayers, with outstanding results.³⁴ The ESP effort was a one-time, unanticipated, consolidated outreach initiative, and the National Taxpayer Advocate commends the IRS for the efficiency of its work. The IRS opened 700 IRS and partner sites in 50 states on Saturday, March 29, 2008, and another 200 sites in April to reach out to taxpayers to file ESP returns. These efforts resulted in approximately 155,700 ESP returns prepared in the TACs through July 31, 2008,³⁵ and approximately 11 million ESP telephone services provided between October 1, 2007 and August 30, 2008.³⁶ The IRS also found that taxpayers demanded direct personal contact about the ESP program, despite receiving mailings and having information available online.³⁷

Another example of outstanding service is the IRS’s Office of Indian Tribal Governments outreach to Indian Nations. During 2008, the office conducted 85 events with a total attendance of more than 3,600 customers.³⁸ The office also offered large-scale workshops for 227 Alaskan tribal villages and 112 Navajo villages.³⁹ Services include educational

³⁰ IRS, *Customer Assistance, Relationships and Education (CARE) Weekly Report* (Sept. 28, 2008). Tax returns prepared increased by 872,733, or 33.2 percent (this includes Economic Stimulus Package Returns).

³¹ “Out of scope” refers to issues in the areas of tax law questions, account questions and tax return preparation that TAC employees cannot address. IRM 21.3.4.3.7.5 (Dec. 31, 2007); IRM 21.3.4-1 (Apr. 7, 2008); IRM 21.3.4.3.7.5 (Dec. 31, 2007).

³² National Taxpayer Advocate 2003 Annual Report to Congress 149.

³³ IRS, *Basic Information on the Stimulus Payments*, at <http://www.irs.gov/newsroom/article/0,,id=179211,00.html> (last visited on Sept. 15, 2008).

³⁴ IRS, Wage and Investment Division (W&I), *Economic Stimulus Payments, IRS Employees Reach Out*, at: http://win.web.irs.gov/Econ_Stim_Paymnts/ESP_employee_stories_home.htm (last visited Sept. 15, 2008).

³⁵ W&I, Field Assistance response to TAS information request Sept. 15, 2008.

³⁶ W&I, Customer Account Services response to TAS information request Nov. 13, 2008.

³⁷ *Financial Services and General Government Appropriations Bill 2009 Report*, 110th Congress, 2d session 24 (June 2008).

³⁸ Tax Exempt and Government Entities (TE/GE), Office of Indian Tribal Governments response to TAS information request (Aug. 7, 2008).

³⁹ *Id.*

workshops on Title 31, employment tax forms, tip reporting, employment taxes, the Earned Income Tax Credit (EITC), information reporting, and gaming issues.⁴⁰ VITA also held sessions at seven events.⁴¹ The IRS should follow the Office of Indian Tribal Governments' model in targeting and bringing programs to other taxpayer populations.

Face-to-Face Service: One Step Forward, Two Steps Back.

After RRA 98, the IRS embarked on a campaign to improve face-to-face taxpayer service. However, before achieving its initial goals, the IRS began paring back face-to-face service and offering more Internet services, without adequately studying the impact of such reductions on taxpayer needs or their ability to comply with their tax obligations.⁴²

Reduced Services for Small Business and Self-Employed Taxpayers

The SB/SE division, created after RRA 98, included the Taxpayer Education and Communications (TEC) organization, whose purpose was to deliver face-to-face education and outreach programs to small business taxpayers to help them comply with their tax obligations.⁴³ The IRS planned to provide TEC with over 1,200 staff in 15 major field locations by FY 2002.⁴⁴ Instead, in October 2005, the IRS merged TEC with other outreach and communications organizations under the Communication, Liaison and Disclosure (CLD) function in SB/SE and reduced it from 536 to 183 employees.⁴⁵ CLD provides information electronically or through partners and stakeholders in the field, and has eliminated specialized face-to-face services for small businesses.⁴⁶ To adequately assist this taxpayer base in complying with tax obligations, the IRS should revive the original concept of TEC, and develop a five-year strategic plan based on the services and delivery channels that small business taxpayers need and prefer.

Reduced Services for Tax-Exempt Organizations

The TE/GE division conducted workshops through its Exempt Organizations (EO) unit on various topics, including Form 990, Return of Organization Exemption from Income Tax, between October 2007 and May 2008.⁴⁷ These workshops include face-to-face interactive forums on the Form 990, *Return of Organization Exemption from Income Tax*.⁴⁸ However, EO delivers most of its education and outreach through the Internet, and responds to

⁴⁰ TE/GE, Office of Indian Tribal Governments response to TAS information request (Aug. 7, 2008).

⁴¹ *Id.*

⁴² "We will continue to launch new and enhanced filing and payment programs to create an environment where electronic interaction is the preferred option for our customers." IRS, *Strategic Plan 2005-2009* 13.

⁴³ National Commission on Restructuring the Internal Revenue Service, *A Vision for a New IRS* 8 (June 25, 1997).

⁴⁴ General Accounting Office, GAO-03-711, *Workforce Planning Needs Further Development for IRS's Taxpayer Education and Communication Unit 2* (May 7, 2003).

⁴⁵ National Taxpayer Advocate 2006 Annual Report to Congress 177.

⁴⁶ IRS, *My SB/SE*, at <http://mysbse.web.irs.gov/CLD/SL/AboutSL/default.aspx> (last visited Dec. 10, 2008).

⁴⁷ TE/GE response to TAS information request (Sept. 24, 2008).

⁴⁸ TE/GE response to TAS information request (June 30, 2008).

invitations received rather than initiating speaking opportunities.⁴⁹ Because TE/GE received fewer of these requests, the number of customers reached dropped 35 percent compared to the first quarter of FY 2006.⁵⁰ Specifically, two 2006 events not repeated in 2007 accounted for 2,300 fewer customers reached.⁵¹ Electronic taxpayer service should not supplant face-to-face outreach unless EO has data that supports organizations preference for these services.⁵²

The IRS Should Consider Reviving Telefile.

The National Taxpayer Advocate commends the IRS for studying the revitalization of aspects of TeleFile, after previously failing to consider the consequences of eliminating the program, which enabled taxpayers to file returns at no charge by using their telephone keypads.⁵³ Approximately 4.4 million taxpayers used the program annually.⁵⁴ However, the IRS discontinued TeleFile in August 2005, over the objections of the National Taxpayer Advocate, because of increasing costs and declining use. The IRS ended TeleFile to save an estimated \$17 million to \$23 million,⁵⁵ but a subsequent TIGTA report found the move increased burden for a significant number of taxpayers.⁵⁶ Approximately two million taxpayers who used TeleFile in 2005 would have been eligible to do so again in 2006. Instead, more than one quarter of these taxpayers paid a total of \$23.6 million to file their 2006 returns, and nearly half of the former Telefile taxpayers reverted to filing paper returns.⁵⁷ In the end, the elimination of TeleFile cost taxpayers more than the program would have cost the IRS.⁵⁸

The IRS Needs to Provide More Face-to-Face Service.

Taxpayer service from the perspective of a taxpayer needs to be more taxpayer-centric, transparent, and seamless. The IRS needs to examine which services it can deliver to various demographic groups, and the channel, or means of delivery, that each group needs and prefers.⁵⁹

⁴⁹ TE/GE, *Business Performance Review* 23, at http://tege.web.irs.gov/content/PLANMainWindow/LinkedHtmlDocuments/TEGE_BPR_Feb_07.doc (Feb. 23, 2007).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Internal Revenue Service FY 2009 Budget Request: Hearing Before the Subcomm. on Financial Services and General Government, S. Comm. on Appropriations*, 110th Cong. (Apr. 16, 2008) (testimony of Nina E. Olson, National Taxpayer Advocate).

⁵³ Information provided by IRS Customer Assistance, Relationships and Education (CARE) representative (Sept. 15, 2008).

⁵⁴ TIGTA, Ref. No. 2007-40-116, *Eliminating TeleFile Increased the Cost and Burden of Filing a Tax Return for Many Taxpayers* 2 (July 2007).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* at 3.

⁵⁹ See, e.g., National Taxpayer Advocate 2005 Annual Report to Congress 7; National Taxpayer Advocate 2006 Annual Report to Congress vol. 2, *Study of Taxpayers Needs, Preferences, and Willingness to Use IRS Services* 14.

TAC Services Remain Out of Reach for Many Taxpayers.

Many opportunities exist for the IRS to improve face-to-face services. Taxpayers in remote areas may have difficulty obtaining services from a TAC since most TACs are in more populous areas.⁶⁰ Further, only 55 percent of TACs are open 36 to 40 hours per week.⁶¹ Even though the IRS has hired seasonal workers to provide a higher level of staffing, more resources are necessary to meet taxpayer needs.⁶² For example, many people can only visit TACs during their lunch hours, when many TACs are closed.⁶³ Thus, the IRS should vary the service times at different locations to allow more taxpayers to use the TACs. TACs could rotate tax preparation to Saturdays and certain evenings during the week, marketing these services to taxpayers in advance. By using alternatives to brick-and-mortar TACs, such as mobile vans, the IRS could deliver specialized services to communities that need them. In collaboration with state tax agencies, and other service-oriented agencies, such as the Social Security Administration, the IRS should target specific taxpaying populations and services.⁶⁴

TACs Should Be Able to Answer More Tax Law Questions.

TACs are required to answer tax law questions for taxpayers.⁶⁵ Because the IRS considers many such issues out of scope at the TACs, their employees cannot provide seamless taxpayer service.⁶⁶ Not all geographic areas require identical tax law issues to be in scope, however, and the IRS could perform a comprehensive study to determine the need for issues to be back in scope in various areas. At present, the preparation of Schedule F, *Profit or Loss from Farming*, is out of scope in all areas.⁶⁷ A study might find it makes no sense to offer Schedule F preparation at all TACs, such as those in New York City, but it could benefit taxpayers to bring it into scope in areas where farming is a major industry, such as Iowa. The IRS does a disservice to taxpayers by universally declaring face-to-face assistance on certain issues out of scope without determining the geographically based demand for those services.

Taxpayers Continue to Face Problems in Submitting Cash Payments to the IRS.

Taxpayers who do not have checking or savings accounts (*i.e.*, the unbanked) encounter difficulties when trying to make payments at TACs. The IRS is offering a courier service

⁶⁰ See <http://www.irs.gov/localcontacts/index.html> (last visited Dec. 22, 2008).

⁶¹ National Taxpayer Advocate 2007 Annual Report to Congress 166.

⁶² *Internal Revenue Service FY 2009 Budget Request: Hearing Before the Subcomm. on Financial Services and General Government, S. Comm. on Appropriations*, 110th Cong. (Apr. 16, 2008) (testimony of Nina E. Olson, National Taxpayer Advocate).

⁶³ Internal Revenue Service, Contact My Local Office, at <http://www.irs.gov/localcontacts/index.html> (last visited Nov. 12, 2008).

⁶⁴ *Internal Revenue Service FY 2009 Budget Request: Hearing Before the Subcomm. on Financial Services and General Government, S. Comm. on Appropriations*, 110th Cong. (Apr. 16, 2008) (testimony of Nina E. Olson, National Taxpayer Advocate).

⁶⁵ IRM 21.3.4.3.6.(5) (June 2, 2008).

⁶⁶ IRM 21.3.4-1 (Apr. 7, 2008). Taxpayers needing assistance with certain types of return preparation or tax law questions involving rental property, cancellation of debt, rental income, depreciation, Schedule F, *Profit or Loss from Farming*, or most self-employment income need to hire a preparer or call the toll-free line because these tax law areas are out of scope (assistors cannot answer) in the TACs.

⁶⁷ IRM 21.3.4-1 (Apr. 7, 2008).

that allows taxpayers to make cash payments directly into an IRS account so the taxpayer will receive immediate account credit.⁶⁸ While the National Taxpayer Advocate commends this initiative, the IRS is piloting the service in only ten TACs due to funding issues.⁶⁹ The IRS needs to study the possibility of offering cash payment centers at local banks, grocery, or retail stores, many of which already have bank branches. The IRS needs numerous payment locations that are not just conventional brick and mortar sites, and should never turn away any taxpayer who is ready to make a payment, regardless of how he or she wants to make the payment.⁷⁰

A Vision of Taxpayer Service

The National Taxpayer Advocate previously addressed the need to determine taxpayer preferences and needs for service, including preferred channels such as face-to-face, telephone, and the Internet.⁷¹ Tax agencies and other organizations recognize the need for such information and focus on the needs of the taxpayer as crucial to the success of taxation systems. For example, the Organisation for Economic Co-Operation and Development (OECD) Taxpayer Services Sub-group identified putting the customer in the center as one of its guiding principles, and supports marketing and information based on individual customers according to socio-demographic criteria.⁷²

The Australian Tax Office (ATO) strives to be an open and transparent organization where interaction with taxpayers allows for service channel choice.⁷³ Australia designs its taxpayer systems from the “outside in,” that is, building customer interaction points from the perspective of the customer, taking into account the needs and preferences of the taxpayer.⁷⁴ In 2003 the ATO developed a channel strategy with the aim of creating a tax program that is “easier, cheaper, and more personalized” to the taxpayer.⁷⁵ Using research, studies of taxpayer needs and preferences, tax administration concerns, and channel restrictions, the ATO created a channel preference system for various types of taxpayer interactions.⁷⁶ Australia provides transaction assistance through the Internet, the phone, by paper, and face-to-face; customer interactions may be held over the phone, on the Internet, through e-mail, over paper, and face-to-face; and customers can receive information through the

⁶⁸ W&I response to TAS information request (Sept. 15, 2008).

⁶⁹ *Id.* Also, TACs do not accept payments at 22 percent of the locations. National Taxpayer Advocate 2007 Annual Report to Congress 172.

⁷⁰ National Taxpayer Advocate 2007 Annual Report to Congress 172.

⁷¹ National Taxpayer Advocate 2006 Annual Report to Congress vol. 2, 14, *Study of Taxpayers Needs, Preferences, and Willingness to Use IRS Services*.

⁷² OECD is a global organization that produces global sources of comparable statistics, and economic and social data. In addition to collecting data, OECD monitors trends, analyzes and forecasts economic developments, and researches social changes or evolving patterns in trade, environment, agriculture, technology, and taxation in democratic countries. See The Organisation for Economic Co-Operation and Development, *Improving Taxpayer Service Delivery: Channel Strategy Development*, prepared by the Forum on Tax Administration Taxpayer Services Sub-group 9, 38 (May 2007)

⁷³ ATO, *Towards the New Millennium, A Benchmark for Tax Administration*, at <http://www.ato.gov.au/corporate/content.asp?doc=/content/22866.htm> (Sept. 11, 2000).

⁷⁴ *Id.*

⁷⁵ OECD, *Improving Taxpayer Service Delivery: Channel Strategy Development*, prepared by the Forum on Tax Administration Taxpayer Services Sub-group 42, 58 (May 2007).

⁷⁶ *Id.* at 16.

Internet, via paper, on the phone, by e-mail, or in person.⁷⁷ Through research, the ATO seeks to define the best channels to provide service to the taxpayers, balancing taxpayer needs and preferences with the achievement of the ATO mission.⁷⁸

New Zealand's Inland Revenue Service developed a new business plan, *Our Way Forward*, in 2006.⁷⁹ The plan encompasses four goals, of which the first is to “target and tailor our activities through understanding our customers.”⁸⁰ New Zealand presents its tax collection and administration activities as a collaborative agreement between the taxpayer and the government, emphasizing the role that each must play for the tax system to function effectively.⁸¹ The goal is to form a “customer-led” revenue system where taxpayer involvement will encourage voluntarily compliance with tax obligations.⁸² Based on this goal, New Zealand developed a Families Customer Perspective, which uses child support issues in New Zealand and Working for Families Tax Credits as well as paid parental leave to identify opportunities to improve and tailor the way the New Zealand tax administration communicates with its family customers.⁸³ New Zealand intends to complete a series of longitudinal studies to evaluate the effectiveness of the Working for Families program, encompassing elements such as awareness of the program, household economic surveys, and demographic information.⁸⁴

OCED members report they intend to use interactive digital television or telepresence.⁸⁵ Several tax authorities are testing this channel, which will integrate video, text, and data, and be interactive. In the United States, medical professionals have used videoconferencing for some time but are also using a variety of tools, including one called “telemedicine.”⁸⁶ Physicians can provide services through a robot with an attached computer beaming to a patient's bedside from anywhere in the world as long as the physician has a high-speed Internet connection. Using a joystick and laptop, the physician can navigate the robot down hospital corridors, rotate it 360 degrees, zoom in on a patient's eyes, X-rays, or vital signs monitor, and can hear and speak as if he were in the room with the patient.⁸⁷ The IRS could use similar technology to reach taxpayers in remote geographic locations with

⁷⁷ OECD, *Improving Taxpayer Service Delivery: Channel Strategy Development*, prepared by the Forum on Tax Administration Taxpayer Services Sub-group 42, 58 (May 2007). *Id.* at 17.

⁷⁸ *Id.* at 58.

⁷⁹ Inland Revenue, *Our Way Forward*, David Butler, Commissioner of Inland Revenue, at <https://www.ird.govt.nz/resources/file/eb3c8201af5d6c8/way-forward-2006.pdf> (last visited Aug. 22, 2008).

⁸⁰ *Id.*

⁸¹ Meeting with representatives of New Zealand's Inland Revenue Customer Insight Group (June 3, 2008).

⁸² *Id.*

⁸³ Inland Revenue, *Families Customer Perspective, Families Child Support, Working for Families Tax Credits, Paid Parental Leave* (Aug. 2007).

⁸⁴ Presentation of Valmai Copeland, *You Earn How Much! An Investigation of Self-Reported Income Versus Administrative Income Data*, New Zealand Inland Revenue, at the 2008 IRS Research Conference (June 11, 2008).

⁸⁵ Cindy Waxer, *Telepresence; Current and Future*, VOIP-News, Making VoIP Connections, at <http://www.voip-news.com/feature/telepresence-current-future-apps-051507/> (May 15, 2007).

⁸⁶ Linda Lou, *Dr. Robot is On Call, Interactive tool can make rounds*, The San Diego Union Tribune, at <http://www.signonsandiego.com/news/northcounty/20080815-9999-1m15robodoc.html> (Aug. 15, 2008).

⁸⁷ *Id.*

pre-filing and post-filing services, thereby using its staffing more efficiently and effectively. Since telepresence is interactive, the TACs could provide all services, including return preparation, tax law, and account services through this communication mode.

Conclusion

July 22, 2008, marked the tenth anniversary of the IRS Restructuring and Reform Act of 1998. In this time, the IRS has substantially improved its customer service to taxpayers. The development of the Taxpayer Assistance Blueprint (TAB) helped the IRS learn more about taxpayers than it ever knew in the past. It also provided a strategic roadmap for future services and research. However, the IRS, the world's largest tax administrator, must do better. To bring world-class customer-centric service to the taxpayer, the IRS should continue the TAB with a comprehensive study of taxpayer service needs and preferences, expand the TAB to address other taxpayer segments, and implement the findings in a taxpayer service strategy tailored to the needs of the population it serves. The IRS should conduct a survey of tax law needs by geographic location and bring tax law areas into scope at the TACs based on taxpayer demand. To make taxes easier, the IRS needs to expand its cash payment acceptance program to all TACs and consider offering payment stations in alternative locations such as banks. The IRS must put the needs and preferences of the taxpayer first to provide timely and effective service that encourages voluntary compliance.

IRS Comments

The IRS agrees that it must help taxpayers understand and meet their tax obligations. We are committed to offering top quality service and, in doing so, continuously evaluate and improve our large and diverse portfolio of customer services. We remain aware of changing taxpayers' preferences in how they access the IRS and receive the information they need and believe that we must innovate and evolve to provide customer service successfully.

2008 Filing Season and Economic Stimulus Payments

The 2008 filing season was very successful, both in terms of serving taxpayers through multiple channels and in meeting challenges the IRS faced. Through November 7, 2008, the IRS processed over 155 million individual income tax returns and issued over 107 million refunds, totaling nearly \$259 billion. The IRS also processed an additional 8.5 million returns filed solely for purposes of claiming an economic stimulus payment. Electronic filing grew again this year with 89.9 million, or 58 percent, of individual taxpayers filing electronically. This represents a 12.4 percent increase over the prior year.

The ESP legislation had a dramatic impact on our telephone program, resulting in over twice the number of toll-free calls in the January-June period of 2008 than in 2007 (118 million versus 57 million). Automated Calls and Web Services more than doubled from last year's volumes while Assistor Calls Answered increased by 26 percent. The IRS.gov

website also proved to be a valuable resource to taxpayers, with a 24 percent increase in “Where’s my Refund” inquiries, while our new “Where’s my Rebate” tool experienced 37 million completed inquiries. In addition, as of November 8, 2008, the website has been visited more than 332 million times, a 65.9 percent increase over 2007. These visits resulted in more than two billion page views, an almost 67.3 percent increase over 2007.

During the 2008 filing season, the IRS continued to provide services at all 401 TACs. Assistance with ESP contributed to an increase in the volume of contacts at the TACs from February 15, 2008, through May 31, 2008, compared to the same period in 2007. The IRS also continued to provide services to low income, the elderly, the disabled, and those with limited-English proficiency through the VITA and TCE programs. The VITA/TCE volunteers prepared over 3.5 million returns, an increase of 33.2 percent over last year. Due to our outreach efforts, this increase includes many taxpayers that filed for ESP that normally do not have a filing requirement.

Face-to-Face Services

The IRS has improved its delivery of face-to-face services and will continue to do so. The National Taxpayer Advocate commends the IRS on its most recent taxpayer services initiatives and suggests the IRS do more to meet taxpayer needs. We have plans in place in several areas that will help improve our services.

Taxpayer Assistance Blueprint

With regard to continuing the TAB, we developed a multi-year research strategic plan to ensure that we expand and refine our understanding of taxpayer and partner needs, preferences, and behavior. This plan addresses a wide array of service-related research that will build upon the benchmark survey undertaken during the TAB, including recurring surveys of needs and preferences of taxpayers who have contacted the IRS, as well as those who have not.

In addition, we established a multi-divisional research council to ensure that the research plan addresses a broad spectrum of taxpayer segments. By helping the IRS increase its understanding of taxpayer needs and behaviors, efforts of the council and analysis of research findings will help to refine and improve future service delivery strategies.

The IRS agrees the SB/SE division would benefit from a similar TAB initiative. The SB/SE division’s Research office is already working with the W&I division on a TAB Research Plan to address similar issues with small business taxpayers and practitioners and has taken on several TAB projects and other related research on the characteristics and needs of small business taxpayers.

The SB/SE division CLD function is also partnering with SB/SE Research to obtain data to assist in determining and planning outreach activities. For example, SB/SE Research provided a comprehensive library of existing research targeted toward the non-filer

community. This research will be used to develop an outreach strategy aimed at small business taxpayers who are not complying with their filing requirements. SB/SE is also working on a project to determine whether significant portions of the tax gap can be isolated by industry and geography to best focus outreach. In the last two years, SB/SE Research has completed approximately 60 projects with many current projects underway.

Geographic Coverage Initiative

The IRS established the Geographic Coverage Initiative (GCI) in 2008 to evaluate TAC locations and services based on the IRS and taxpayer needs. Through the GCI, the IRS is exploring options for increasing the geographic coverage rate by using alternative locations and increasing partnership services. For example, the TAC program is partnering with the Volunteer program in FY 2009 to provide account resolution services in addition to the normal return preparation services offered at select VITA/TCE locations. After evaluating this pilot program, the IRS may offer these services at additional locations. In addition, the IRS is collaborating with Federal, State, and City agencies to establish alternative locations similar to disaster assistance sites where customers can receive one-stop assistance. There is already one multi-agency site in Salt Lake City, Utah, where IRS employees are co-located with the Utah State Tax Department. We expect to expand the number of locations offering multi-agency services during 2009.

Facilitated Self-Assistance Research Project

As the National Taxpayer Advocate mentions, the IRS implemented the FSRP to provide taxpayers options for self-assistance through computer workstations and access to the IRS toll-free system. The National Taxpayer Advocate believes that for the FSRP to be successful, the IRS needs to use screeners effectively to determine which taxpayers can use self-assistance stations. The IRS agrees and, based on analyses it performed on the current operating procedures, we are already implementing changes to improve the screening process. In this regard, we have allocated additional resources to ensure screeners are available and used effectively in each site and expanded training to ensure support for FSRP is readily available. For the 2009 filing season, FSRP has expanded to 35 additional TACs, bringing the total number of sites to 50.

Service Delivery to Taxpayers

The IRS is committed to providing service to taxpayers in the range of ways that they want. This includes face-to-face interaction at TACs, as well as by electronic means. How IRS provides services, both in terms of methods and through its organizational structure, needs to change and evolve with taxpayer preferences. The IRS continuously evaluates and studies its service delivery to maximize its assistance to taxpayers.

Face-to-Face Contact at Taxpayer Assistance Centers

The National Taxpayer Advocate mentions many taxpayers can only visit TACs during their lunch hours, when many TACs are closed and that the IRS should vary service times at different locations to allow more taxpayers to use the TACs. As noted in the IRS response to a similar point raised in the National Taxpayer Advocate's 2007 Annual Report for Congress, TAC standard operating hours are 8:30 a.m. to 4:30 p.m., which allows employees to have lunch as required by negotiated labor management agreements. However, to ensure we make face-to-face services available to those taxpayers unable to visit a TAC during normal operating hours, the IRS is adding a Super Saturday during the FY 2009 filing season to allow taxpayers to receive return preparation on Saturday. Further, with a goal of assisting over 530,000 EITC-eligible taxpayers with return preparation during the 2009 filing season, special EITC events will be held on January 31, February 7, and February 21, 2009, to help customers outside of normal business hours.

Scope of Questions Answered at TACs

The National Taxpayer Advocate also argues that TACs should be able to answer more tax law questions based on the needs of different geographic areas and asserts that, because the IRS considers many issues out of scope at the TACs, employees cannot provide "seamless" taxpayer service. As noted in the IRS response to the same point raised in the National Taxpayer Advocate's 2007 Annual Report for Congress, and again in its response to this year's Most Serious Problem on Centralization, just a few years ago the IRS was criticized for the relatively low level of tax law accuracy provided by its TACs. To address this concern, the IRS took aggressive action to increase employee training, implement enhanced quality measures and employee accountability, and control the scope of the issues addressed. The latter is intended to concentrate our employee training on the kind of issues most often encountered in the TAC environment, as well as to ensure consistency with TAC employees' grade levels and expertise.

The National Taxpayer Advocate is correct that TAC employees may not address Schedule F farm income issues currently. This complex area of tax law includes such issues as accrual accounting, leases and rents, inventory valuation, employee expenses, pensions and profit sharing, depreciation, cooperative distributions, agricultural program payments, crop insurance payments, and other sophisticated and specialized issues. However, the GCI is exploring the possibility of adding into scope geographic-based tax law topics, such as farming. The IRS expects to accomplish this by training selected subject matter experts and employing a referral system, while carefully evaluating the accuracy of these services. For FY 2009, two topics have already been added into scope at the TACs - Non-Resident Alien issues and Cancellation of Debt (Mortgage Forgiveness). Cancellation of Debt income has also been added into scope at the VITA/TCE sites.

Cash Payments at TACs

The IRS accepts all approved forms of payment at its TACs, including cash when nearby conversion options are unavailable. To address employee safety concerns and potential integrity issues involved in dealing with cash, the IRS is refining its payment processes and seeking other options for handling cash payments. In FY 2008, the IRS successfully implemented a pilot program that offered courier services at ten TAC locations. Using the courier service, taxpayers can make cash payments that are deposited directly into a Treasury account. These payments are secure and taxpayers receive immediate account credit. In FY 2009, the IRS will expand courier services to the 177 TACs that are not co-located with a financial institution or U.S. Post Office where taxpayers can otherwise readily convert cash into other forms of payment.

Taxpayer Education and Communication Division

The National Taxpayer Advocate offers the merging of TEC with other outreach and communications organizations under the CLD function in SB/SE as an example of reduced services for small businesses and self-employed taxpayers. The IRS disagrees with the National Taxpayer Advocate's assessment.

Since SB/SE's inception, it has been committed to balancing service and enforcement by educating its taxpayers on tax law and IRS policy using a leveraged outreach approach. Although SB/SE has adjusted its organizational structure since RRA 98, it has always contained an education and outreach function and staffing dedicated to pure outreach and education has not diminished.

The IRS used a strategic approach when it merged TEC with other outreach and communications organizations under the CLD function. Research data showed locations with the highest concentration of small business and self-employed taxpayers, which drove the decision on employee placement. External stakeholders in all 50 states and Washington, D.C., have a liaison contact in the Stakeholder Liaison function. With advancements in technology and strengthened stakeholder relationships, liaison activities are not diminished from changes to the numbers or physical locations of the IRS employees involved. Although the original TEC design included approximately 1,200 staff, the organization never reached that level. Further, the number of TEC staff that were to be fully dedicated to outreach activities is approximately the same as the number of staff in the redesigned Stakeholder Liaison function.

Service to the Tax-Exempt Community

The IRS agrees that service to the tax-exempt community is essential and is committed to educating this sector through the EOs division within the Tax TE/GE division. The EO division has expanded and diversified its efforts to communicate, update and share information for tax-exempt organizations by balancing "in-person" employee presentations for their

administrators with “round the clock” availability through the IRS.gov.⁸⁸ For example, the “Charities and Non-profits” section of IRS.gov has approximately 1,600 articles on 70 pages devoted specifically to tax-exempt organizations. Public reliance on the internet to receive timely and relevant information has grown exponentially. Use of the “Charities and Non-Profits” pages of IRS.gov has increased 81 percent since FY 2005.

This increased presence on the Internet was complemented by increased in-person presentations. Due in large part to the release of the redesigned Form 990 and the new Form 990-N (*e-Postcard*), requests for speakers during FY 2008 increased nearly 50 percent over the previous year.⁸⁹ To reach a broader audience, EO also offered 19 two-hour workshops on the new Form 990 at the six 2008 nationwide Tax Forums and introduced the form changes during its 17 Small and Mid-size Workshops in six cities across the country. In all, 41,752 people attended the speeches, Tax Forums, and Workshops, an increase over the FY 2006 figure of 32,368 and FY 2007 figure of 39,338.⁹⁰

Reviving Telefile

With regard to reviving Telefile, the IRS launched a comprehensive study, the Advancing e-file Study, to review the characteristics of taxpayers who do not file electronically and analyze a number of options that could help drive up the rate of electronic filing, including Telefile. The IRS engaged an independent firm, the MITRE Corporation, to conduct the study and produce the report. The IRS will look at the experience of the States and other countries, consider costs, benefits and security issues, and discuss potential implementation issues. The Advancing e-file Study will be done in two phases. Phase I was completed and released to the public on November 6, 2008, and provides 13 options for expansion. Phase II will address initial costing, cost-benefit and return on investment analyses and predictions of growth and is expected to be delivered in August 2009.

Conclusion

In summary, the IRS currently offers a large and diverse portfolio of customer services targeted to meet the needs and preferences of specific taxpayer populations. The IRS strives continually to improve these services within appropriated funding levels in order to help taxpayers understand and meet their tax obligations.

⁸⁸ TE/GE, *EO Annual Report and FY 2009 Work Plan* 7-8, at http://www.irs.gov/pub/irs-tege/finalannualrptworkplan11_25_08.pdf.

⁸⁹ TE/GE, *4th Quarter Business Performance Review* 13, at http://tege.web.irs.gov/content/PLANMainWindow/LinkedHtmlDocuments/TEGE_BPR_4th_Quarter_FY08_Executive_Summary.doc.

⁹⁰ *Id.*

Taxpayer Advocate Service Comments

The National Taxpayer Advocate is encouraged by the actions the IRS is taking and intends to take in regard to customer service. We understand the evolving nature of taxpayer needs and preferences and support the effort of the IRS to expand upon the TAB Benchmark Survey with continuing studies of taxpayer needs and preferences. The National Taxpayer Advocate commends the IRS efforts to study the SB/SE taxpayer population, to bring tax law issues back into scope at the TACs, and expand the FSRP and the courier cash payment acceptance program.

The Voice of the Taxpayer

The Taxpayer Advocate Service is the voice of the taxpayer within the IRS. When the IRS creates projects and working groups on issues affecting taxpayer service, it is essential that TAS be represented and able to voice concerns from the perspective of the taxpayer. TAS provided three team members for the IRS's Geographic Coverage Initiative, but after several months of work, the IRS stopped including our team members in the Initiative. The National Taxpayer Advocate is surprised to learn that these activities have continued while TAS has been excluded. It is also a matter of concern that TAS has not been included in plans for a TAB for small business and self-employed taxpayers, like the one already in place for individual taxpayers. While the National Taxpayer Advocate commends the IRS for beginning work on this strategy, it is necessary that TAS be a part of such projects if the IRS truly intends to think about service from the perspective of the taxpayer. The National Taxpayer Advocate has recommended in several Annual Reports that the IRS conduct a small business/self-employed TAB.⁹¹ The Taxpayer Advocate Service was a significant author of the original TAB. It is in the interest of taxpayers and tax administration that the IRS reach out to the Office of the Taxpayer Advocate and invite participation on matters that have significant impact on taxpayers.

Scope of Tax Law Assistance

The National Taxpayer Advocate is encouraged by the effort to bring tax law issues into scope at TACs based on geographic need. However, we are concerned that the IRS reiterates the same response provided in last year's Report to Congress about not providing assistance on issues such as farming income because the issues are too complicated.⁹² A tax law issue that is complex for IRS employees is just as complex for taxpayers, if not more so. Previous criticism of the IRS's accuracy rate in answering tax law questions does not justify the decision to simply declare those issues out of scope instead of training employees in complicated areas of the law where taxpayers need the most assistance. While we understand that the IRS may have needed to limit its scope of questions several years ago in order to get its quality under control, as the IRS itself notes, it is now doing well with the

⁹¹ See, e.g., National Taxpayer Advocate 2006 Annual Report to Congress 172-96, National Taxpayer Advocate 2007 Annual Report to Congress 35-65.

⁹² National Taxpayer Advocate 2007 Annual Report to Congress 174.

limited scope of questions it is answering. The techniques that enabled it to achieve higher quality with easier tax law questions can and should be applied to more complex questions, where there is a demonstrated need. Complexity of the tax code is not an excuse for taxpayers' noncompliance; nor should it be an excuse for the IRS to fail to assist taxpayers in their need.

TAC Hours of Operation and Service Locations

While the National Taxpayer Advocate commends the IRS plan to hold a Super Saturday and three EITC Saturday events, this response does not address the concern that on a regular basis, taxpayers can only receive face-to-face assistance at TACs from 8:30 a.m. until 4:30 p.m. One Super Saturday is not enough, because it will only reach taxpayers available that one day. Holding more than one event would ease the burden on taxpayers who need IRS help. Varying the hours at TACs, staggering employees' lunch hours, and rotating tax preparation to evenings, combined with well-targeted outreach regarding the hours, would reach more taxpayers and permit flexibility in scheduling for taxpayers.⁹³

Partnering with VITA and TCE sites is a good first step. However, the IRS needs more avenues for reaching taxpayers in remote areas where brick and mortar TACs do not exist. The IRS should consider using mobile vans, telepresence, and other creative solutions to meet the needs of these taxpayers. While co-locating a TAC with the Utah State Tax Department site in Salt Lake City, Utah, is a good example of working with other agencies, Salt Lake City is a relatively populated area that already has a TAC and at least five VITA sites.⁹⁴ Co-locating should be used especially as a tool where the IRS currently has little or no presence.

The Way Forward

The National Taxpayer Advocate is encouraged by the steps the IRS is taking and has committed to take to address customer service issues. We remind the IRS that including the perspective of the taxpayer is crucial when evaluating changes to taxpayer service and we encourage the IRS to include TAS in all taxpayer services initiatives. The National Taxpayer Advocate emphasizes the need for a comprehensive study of taxpayer needs and preferences. We are hopeful that as the IRS moves forward it will continue to study these evolving needs and preferences and look for innovative ways to provide service.

⁹³ National Taxpayer Advocate 2007 Annual Report to Congress 179.

⁹⁴ See <http://www.irs.gov/localcontacts/article/0,,id=98338,00.html>; <http://utahtaxhelp.org/findSite.aspx> (all sites last visited Dec. 18, 2008).

Recommendations

The National Taxpayer Advocate recognizes the efforts the IRS has made thus far to improve service and recommends the IRS make the following changes to bring more services to taxpayers:

1. Expand the Taxpayer Assistance Blueprint to other taxpayer segments, including TE/GE taxpayers, and implement the findings in a taxpayer service strategy tailored to the needs of the population the strategy serves.
2. Conduct a survey of tax law needs by geographic location and bring tax law areas into scope at the TACs based on taxpayer demand.
3. Co-locate with other federal and state agencies, use mobile vans, and explore the possibility of telepresence to reach taxpayers in locations where the IRS has limited or no face-to-face presence.
4. Collaborate with the Taxpayer Advocate Service in all ongoing and new studies pertaining to taxpayer service, including the Taxpayer Assistance Blueprint for small business and self-employed taxpayers currently underway.

MSP
#7**Navigating the IRS****Responsible Officials**

Richard E. Byrd, Jr., Commissioner, Wage and Investment Division
Chris Wagner, Commissioner, Small Business/Self-Employed Division
Steven T. Miller, Commissioner, Tax-Exempt and Government Entities Division
Frank Y. Ng, Commissioner, Large and Mid-Size Business Division
Sarah Hall Ingram, Chief, Appeals
Eileen C. Mayer, Chief, Criminal Investigation
Art Gonzalez, Deputy Chief Information Officer for Modernization and Information
Technology Services
Frank Keith, Chief, Communications and Liaison

Definition of Problem

The IRS Restructuring and Reform Act of 1998 (RRA 98) required the IRS to reorganize and improve customer service.¹ Congress directed the IRS to create separate units responsible for providing “end to end” service to groups of taxpayers with similar needs.² Ten years after RRA 98, employees, taxpayers, and practitioners still have difficulty locating the appropriate IRS office or employee to assist them in resolving tax problems.

In contrast, many state government agencies and tax agencies in other countries provide easy access and a wealth of information for their customers, suggesting the IRS can do much more to help taxpayers and practitioners navigate the IRS. Citizens compare the service they receive from the IRS with the service they receive from other organizations, where accessing account information, resolving problems, and sending and receiving information 24 hours a day with minimal inconvenience and cost, have become the norm. The IRS would do well to consider what it is like for taxpayers to accomplish these tasks when they encounter difficulties in simply determining where and to whom, in a 100,000-person agency, they should direct their inquiries.³

¹ RRA 98, Pub. L. No. 105-206, 112 Stat. 690 (July 22, 1998).

² Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in 1998*, 1 (1998).

³ Commissioner Douglas Shulman recently stated, “In order to make voluntary compliance easier, we must walk a mile in the taxpayers’ shoes and help them navigate the system. Taxpayers will be judging their interactions with the IRS and the government based on their most recent experiences with other world-class service organizations. This should be our standard.” E-mail from Commissioner Shulman to all employees (July 9, 2008).

Analysis of Problem

Background

In years past, the IRS was the subject of a great deal of study and criticism. According to one IRS publication, studies identified a wide range of problems, including a lack of resources for employees and poor service for taxpayers.⁴

In the mid 1990s, Congress created the National Commission on Restructuring the IRS to review IRS practices and make recommendations for modernizing and improving efficiency and taxpayer services.⁵ The House Committee on Ways and Means conducted hearings regarding the recommendations of the commission.⁶ In 1997, the Senate Finance Committee held hearings to examine IRS practices and procedures,⁷ restructuring,⁸ and oversight.⁹ The enactment of RRA 98 followed. First, RRA 98 required the IRS to reorganize its structure and restate its mission.¹⁰ Specifically, RRA 98 called for the IRS to eliminate or modify its structure, at that time based on national, regional, and district subdivisions,¹¹ and to restate its mission to place greater emphasis on serving the public and serving taxpayers' needs.¹²

RRA 98 also required the IRS to be more accountable to taxpayers and practitioners. Section 3705 of the law requires IRS employees to provide taxpayers with their names and a unique identifying number, and to the extent practical and if advantageous to the taxpayer, assign one employee to handle a taxpayer's matter until it is resolved.¹³

⁴ See IRS Pub. 3349, *Modernizing America's Tax Agency* 1 (Jan. 2000).

⁵ Pub. L. No. 104-52, 109 Stat. 509 (1995), amended by Pub. L. No. 104-134, 110 Stat. 1321, § 2904 (1996) and Pub. L. 104-208, 110 Stat. 3009, § 643 (1996).

⁶ *Report of the National Commission on Restructuring the Internal Revenue Service: Hearing Before the House Ways and Means Committee*, 105th Cong. (June 25, 1997).

⁷ *Practices and Procedures of the Internal Revenue Service: Hearings Before the S. Comm. on Finance*, 105th Cong. (Sept. 23-25, 1997).

⁸ *IRS Restructuring: Hearings Before the S. Comm. on Finance*, 105th Cong. (Jan. 28, 1998).

⁹ *IRS Oversight: Hearings Before the S. Comm. on Finance*, 105th Cong. (April 28-30 and May 1, 1998).

¹⁰ Before enactment of RRA 98, the mission of the IRS read: "The purpose of the Internal Revenue Service is to collect the proper amount of tax at the least cost; serve the public by continually improving the quality of our products and services; and perform in a manner warranting the highest degree of public confidence in our integrity, efficiency and fairness." IRS, Full Text: Revised IRS Policy Statement on Privacy, Tax Notes Today, Mar. 18, 1994, LEXIS 94 TNT 53-47. After enactment of RRA 98, the IRS changed the mission statement to read: "Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all." IRM 1.1.1 .1 (1) (Mar. 1, 2006).

¹¹ Pub. L. No. 105-206, § 1001, 112 Stat. 685, 689 (1998).

¹² Pub. L. No. 105-206, § 1002, 112 Stat. 685, 690 (1998).

¹³ Pub. L. No. 105-206, § 3705, 112 Stat. 685, 777 (1998).

The IRS Faces Challenges in Helping Taxpayers Locate Assistance and Resolve Problems.

Taxpayer Characteristics Influence Communication with the IRS

Although the IRS encourages taxpayers to choose the Internet as their preferred method of communication,¹⁴ Internet services “cannot be the only game in town.”¹⁵ Some taxpayers cannot use the Internet as their primary source of communication, due to technical problems,¹⁶ language barriers,¹⁷ literacy skills,¹⁸ or problems associated with aging.¹⁹ Even taxpayers who could use the Internet as their primary communication channel do not necessarily prefer it. As Table 1.7.1 (below) indicates, many would rather use the telephone when seeking help from the IRS.

The Type of Service Needed Influences Communication.

Table 1.7.1 shows the results of a study of taxpayer preferences for communicating with the IRS. The study illustrates that the method of communication taxpayers choose depends on the type of assistance they need.²⁰

Table 1.7.1, Survey Respondents' First Choice of Method of Communication

Service Needed	Telephone	In Person	IRS Website	E-mail	Mail
Tax Law Questions	51%	14%	21%	9%	2%
Tax Dispute or Error	61%	22%	6%	5%	3%
Return Preparation	45%	4%	16%	6%	2%
Forms / Publications	27%	13%	30%	8%	8%

Note: Percentages do not total 100 because not all taxpayers stated their preferences.

The survey respondents consistently preferred personal contact, either by telephone or in person, to other types of assistance. Further, some taxpayers will use the method of communication they have always used. One survey of present and future Internet use

¹⁴ The IRS strategic plan states: “We will continue to launch new and enhanced filing and payment programs to create an environment where electronic interaction is the preferred option for our customers.” See *IRS Strategic Plan 2005-2009* 13.

¹⁵ *Internal Revenue Service FY 2009 Budget Request: Hearing Before the Subcommittee on Financial Services and General Government, S. Comm. on Appropriations*, 110th Cong. 9 (Apr. 16, 2008) (statement of Nina E. Olson, National Taxpayer Advocate).

¹⁶ Nearly two-thirds of Americans (64 percent) have broadband access at home or at work and the remaining 36 percent have dial-up access (13 percent) or no access at all (23 percent). Pew Internet and American Life Project, *How People Use the Internet, Libraries, and Government Agencies When They Need Help* 3 (Dec. 30, 2007).

¹⁷ Only one in ten recent immigrants is proficient in reading English. Among immigrants who have lived in the United States for 26 years or more, only 37 percent say they can read a book or newspaper in English very well. Pew Hispanic Center, *English Usage Among Hispanics in the United States*, Shirin Hakimzadeh and D’Vera Cohn 8 (Nov. 29, 2007).

¹⁸ The literacy skills of approximately 14 percent or 30 million American adults are below basic levels (no more than the most simple literacy skills). U.S. Department of Education, *National Assessment of Adult Literacy*, at http://nces.ed.gov/naal/kf_demographics.asp (last visited Sept. 9, 2008).

¹⁹ Physical and mental limitations attributable to age, including visual impairment, coordination problems, and ability to process information, contribute to decreased use of the internet. Only 22 percent of Americans age 65 and older use the internet. Pew Internet and American Life Project, *Older Americans and the Internet* 12-13 (Mar. 25, 2004).

²⁰ IRS Oversight Board, *Taxpayer Customer Service and Channel Preference* (Nov. 2006).

concluded that taxpayers who prefer human contact would continue to prefer such assistance over digital channels.²¹

The Structure and Size of the IRS Contribute to Navigational Problems.

The IRS deals directly with more Americans than any other institution, public or private.²² In fiscal year (FY) 2007, the IRS processed more than 138 million income tax returns.²³ The IRS employs more than 100,000 employees in 12 major business units with over 800 offices inside and outside the United States.²⁴ A taxpayer trying to find an employee with the knowledge and authority to help with a particular tax question or problem is facing a difficult task. The IRS does not have a topical directory or a personnel directory available to help the taxpayer determine the department or business function that he or she must contact. Instead, the IRS offers toll-free numbers that direct the taxpayer to one of almost 14,000 Customer Service Representatives (CSRs).²⁵ The CSR will research publications and Internal Revenue Manuals (IRM) to try to answer the taxpayer's question or help resolve a particular tax problem. If the question or problem is "out of scope," the CSR will use a list of over 1,000 topics, organized by issue, to determine the correct number to which to transfer the call.²⁶

When the taxpayer ultimately reaches the "correct department," the results may be less than satisfying. Since the reorganization, and in spite of RRA 98's mandates, the IRS has moved away from providing end-to-end service to taxpayers. Because a taxpayer's problem may involve more than one program or function, he or she may need to make additional calls to separate functions — and as each function works independently, the problem may become worse before being resolved. For example, a taxpayer who needs to have an audit reconsidered, but in the meantime has received a notice of intent to levy, may have to work with the Examination, Collection, and Appeals units.

In addition to the list that CSRs research when transferring calls, the IRS maintains a topical list of publically marketed numbers.²⁷ However, neither list is available to the public.

²¹ Wage and Investment, Strategy and Finance, *Understanding Customer's Communications Channel Use* 6, 22 (Aug. 2003).

²² IRS, *IRS Organization Blueprint* (Apr. 2000).

²³ The IRS processed 138,893,908 individual income tax returns in FY 2007. See *IRS 2007 Data Book*.

²⁴ The actual number of employees as of Sept. 27, 2008, was 101,759. IRS, Human Resources Reporting Center, *IRS Staffing by Business Unit*, at <http://152.217.41.30/> (last visited Oct. 15, 2008).

²⁵ The actual number of CSRs as of Sept. 27, 2008 was 13,956. IRS, Human Resources Reporting Center, *IRS Staffing by Occupational Series and Grade*, at <http://152.217.41.30/> (last visited Oct. 15, 2008).

²⁶ Toll-free tax law assistance "Out of Scope" policy delineates the services the Customer Account Services: Accounts Management function (CAS: AM) will and will not provide in tax form/schedule preparation, tax planning, legal advice, and answering complex tax questions. "Out of scope topics" appear in the following categories: International, Partnership, Corporation, Exempt Organization, Trusts, Rentals, Sale of Business, Depreciation, Capital Gains and Losses, and more than a dozen miscellaneous topics. See Probe and Response Guide, at http://serp.enterprise.irs.gov/databases/irm-sup.dr/current/pr.dr/pr_home (last visited Dec. 15, 2008). Taxpayer calls are transferred to one of 40 English lines or one of 17 Spanish lines. See Telephone Transfer Guide, at <http://serp.tcc.irs.gov/TTGuide/TTGuide.jsp> (last visited Dec. 15, 2008).

²⁷ A "publicly marketed" telephone number is available on IRS.gov or published in specific IRS forms, instructions or publications. This list is not available to the public in any one location. See "The Source," at <http://gatekeeper.web.irs.gov/plList.asp> (last visited Oct. 15, 2008).

How Successful is the IRS in Helping Taxpayers and Practitioners Navigate?

In accordance with § 3705 of RRA 98, the IRS assigns all employees unique identification numbers and requires them to give their names and identifying numbers during telephone, face-to-face and written contact with taxpayers.²⁸ However, IRM directives virtually ensure that the taxpayer's subsequent efforts to speak to the same employee will be futile. The manual instructs employees *not* to research internal phone directories in response to taxpayer requests to speak to a specific employee, even if the taxpayer knows the name and identifying number of that employee. Only if a taxpayer *insists* will the IRS try to locate a specific employee and ask that person to return the call.²⁹ It is unclear whether the IRS monitors the effectiveness of this procedure.

Apart from the obstacles the IRM provisions pose, knowing an IRS employee's identification number will not help the taxpayer find a specific employee because the IRS has no searchable database of these numbers. As a practical matter, it is virtually impossible for a CSR to identify the employee with whom the taxpayer previously spoke by name alone.³⁰ TAS has asked the IRS to create a searchable database of identification numbers as it converts to a new employee identification system.³¹

Even Internet-savvy taxpayers have difficulty in navigating the IRS. The Internet provides a wealth of information, including a topical tax index.³² However, this directory does not have an associated telephone number the taxpayer can call for further help with a particular problem or question.

²⁸ IRM 3.21.259.1 (Jan. 1, 2008).

²⁹ IRM 21.1.3.15 (Oct. 1, 2007), provides:

- (1) A caller or visitor may ask to speak to a specific employee who previously handled their inquiry. The caller may provide the name and/or ID card number of the previous employee and indicate that he/she needs to discuss the account with that person.
Note: Do not research internal phone directories and give the taxpayer or their representative the name or phone number of any employee (*i.e.*, CSR, Manager, Analyst, etc.).
- (2) Make every effort to resolve the taxpayer's issue yourself. Encourage the caller or visitor to allow you to research his/her account.
- (3) If you cannot resolve the situation or if the taxpayer insists on speaking with the prior employee:
 - (a.) Advise the taxpayer that you will contact the other employee and have him/her return the call.
 - (b.) Prepare Form e-4442, 4442, 4442-DI, (Inquiry Referral), with the pertinent information, including the employee's name, ID number, the date the taxpayer spoke with the original employee and the specific issue.
 - (c.) Annotate "ACT SECTION 3705(a)" (RRA 98) at the top (or where text is first input) on Form e-4442, 4442, 4442-DI and immediately, within the hour, forward to your manager who will attempt to locate the other employee by contacting the ID Media Program Manager in Mission Assurance and Security Services.

³⁰ Considering that the IRS has over 100,000 employees, many of whom have the same or similar names, the correct spelling of the first and last name, and even the first initial of the employee's middle name, is essential to locating that employee with the Discovery Directory, the only tool IRS has provided to its employees for this purpose. IRS employees are only required to give the taxpayer their last names (some employees have permission to use a pseudonym) rendering the task virtually impossible in some cases.

³¹ This initiative is in response to Homeland Security Presidential Directive 12 dated August 27, 2004. This initiative requires that all applicable IRS employees receive a new "Smart ID" badge with a personal identification number (PID) to meet the RRA 98 requirement for a unique identifier. The PID is a 10 digit number that will be static for the life of each employee's account. TAS has elevated the need for a searchable PID database in compliance with RRA 98 to the HSPD Project Management Office (PMO).

³² For more information, see IRS Tax Topics Index, at <http://www.irs.gov/taxtopics/index.html> (last visited Oct. 28, 2008).

International taxpayers face very special problems in navigating the IRS. Taxpayers located outside the United States cannot access the toll-free number to call the IRS for help with account problems, notices, and bills, or to request a publication.³³ In addition, the international taxpayer has very limited opportunities for face-to-face interaction as the IRS has offices in only four foreign cities.³⁴

The problem of navigating the IRS is especially acute for practitioners who interact with the IRS frequently and need to give and receive information to resolve their clients' tax matters. Preparers who participated in TAS focus groups repeatedly stated that communicating with the IRS is a problem. The problems practitioners identified include the amount of time required to resolve issues; the inability to reach someone who can resolve the issue; the difficulty in finding a person familiar with the case; and the inability to talk with the same person more than once.³⁵

Taxpayers Turn to the Taxpayer Advocate Service to Help Navigate the IRS.

The Systemic Advocacy Management System (SAMS) allows IRS employees, taxpayers, practitioners, and other interested parties to report systemic issues and problems directly to TAS. A systemic issue affects a segment of taxpayers locally, regionally, or nationally and involves systems, processes, policies, procedures, or legislation. Problems involving "Access to IRS" rated sixth among issues submitted on SAMS from October 1, 2007, to September 30, 2008.³⁶ Taxpayers who cannot resolve their cases with the IRS because they are continually referred to various divisions may turn to TAS. TAS handled approximately 274,000 cases in FY 2008, of which more than 180,000 related to systemic problems and failures.³⁷

IRS Employees Have Trouble Navigating Their Own Agency.

The centralization of programs within the IRS has caused significant confusion about workload realignment and responsibility. If the IRS does not timely update the Campus Locator Guide used by TAS employees or inform TAS that a program has moved to a different campus, TAS employees have trouble determining where to send Operations Assistance

³³ IRC § 7701(a)(9) defines the term "United States" to include the 50 states and the District of Columbia.

³⁴ IRS offices are located in Frankfurt, Germany; London, United Kingdom; Paris, France; and Beijing, China. See IRM 4.30.3 (Sept. 12, 2006). For additional information on communication problems specific to international taxpayers, see Most Serious Problem, *Access to the IRS by Taxpayers Located Outside of the U.S.*, *infra*.

³⁵ Preparers stated that employees in one location answering questions about letters sent from another IRS location contribute to the problem of finding someone knowledgeable about a case; the inability to contact the same person about an issue leads to several iterations of assistors asking the same questions and preparers restating the same issue before finding someone with the authority and knowledge to address the situation; relatively simple problems could be resolved quickly if they could just talk to one person; and when calling the telephone number given to them by CSRs, they were referred back to the CSRs. TAS, 2006 IRS Tax Forum Focus Group, *Most Serious Problems Facing Taxpayers* 6-7 (Feb. 2007).

³⁶ SAMS database. In FY 2008, SAMS received 964 submissions covering 91 different issues. There were 37 submissions relating to problems involving Access to the IRS.

³⁷ Taxpayer Advocate Management Information System (TAMIS) data obtained from Business Performance Review System (BPMS) (Sept. 30, 2008).

Requests (OARs).³⁸ OARs returned to TAS employees after being sent to an incorrect address create unnecessary delays in resolving taxpayers' issues. Other IRS employees experience similar problems and must diligently review daily updates to the Servicewide Electronic Research Program (SERP), multiple IRMs, and the Campus Locator Guide to determine the correct number to call or address to use when forwarding taxpayer correspondence. Informational tools, when updated in a timely manner, will remove obstacles for all IRS employees.

The IRS should pattern its internal navigation tools after those developed by TAS. The TAS intranet (internal) website includes a comprehensive directory of field and headquarters offices and staff.³⁹ It lists employees by position and location (state or TAS area, *i.e.*, region), which allows users to find specific TAS employees and determine the duties they perform.

How Does the IRS Compare to Other Agencies?

The IRS customer service line for individuals, 1-800-829-1040, requires taxpayers to navigate through a number of prompts before reaching a CSR, who will try to transfer the call to the correct department if he or she cannot help the taxpayer.⁴⁰ In contrast, many state tax agency websites display telephone directories with numbers for various departments.⁴¹ For example, the Indiana Department of Revenue site has an option to “find a person” or “find an agency.” This feature searches for personnel by name, phone number, or department. If the employee's name is unknown, the search will display all employees of the agency in alphabetical order when the user selects the Department of Revenue.⁴²

The United Kingdom's revenue agency website also has a search feature that allows the user to select from contacts for individuals, employers, small businesses, and corporations.⁴³ Under each of these selections, the taxpayer will find tax information regarding the topic and contact information, including the phone number, e-mail address, and hours when the contact is available. The agency also has a textphone option for customers who are deaf, hearing impaired, or speech impaired.

Centralized customer call numbers help connect people to government and community services with greater accuracy and less wasted time. The Federal Communications

³⁸ TAS uses OARs to request assistance from an IRS operating division or functional unit to complete an action on a TAS case when TAS does not have the authority to take the required action(s).

³⁹ TAS, *TAS Directory*, at <http://tasnew.web.irs.gov/TASdirectory/> (last visited Oct. 27, 2008).

⁴⁰ The IRS offers other specialized help lines for businesses, exempt organizations, refund inquiry, TAS, hearing impaired, and IRS.gov website help.

⁴¹ Several state tax agencies have departmental phone numbers that taxpayers can use to direct dial the department that can help them with their particular tax problem. See California, at <http://www.ftb.ca.gov/forms/misc/1240.pdf>; Indiana, at http://www.in.gov/rde/xfw/in_core/phonebook.htm; Maine, at http://www.state.me.us/revenue/homepage_files/telephon.html; Minnesota, at http://www.taxes.state.mn.us/taxes/home_con/contact_page.shtml; New Hampshire, at <http://www.nh.gov/revenue/contact/index.htm>; New Mexico, at http://www.tax.state.nm.us/trd_fone.htm; Oklahoma, at <http://www.tax.ok.gov/phone.html>; Ohio, at http://tax.ohio.gov/channels/global/globalcall_us.stm; North Carolina, at <http://www.dorn.com/aboutus/department.html>; South Carolina, at <http://www.sctax.org/shell/phone.pl?searchkey=B> (all sites last visited Oct. 15, 2008).

⁴² See Indiana Government website, at http://www.in.gov/rde/xfw/in_core/phonebook.htm (last visited Oct. 15, 2008).

⁴³ See Her Majesty's Revenue & Customs, at <http://www.hmrc.gov.uk/index.htm> (last visited Oct. 27, 2008).

Commission (FCC) approved a 311 telephone service for nationwide use in 1997.⁴⁴ More than 30 city governments use the three-digit dedicated phone number to allow residents and visitors to reach important government services from any location at any time.⁴⁵ When dialing 311, a customer service representative will answer the call, ask for detailed information about the request, and immediately transfer the call to the appropriate city department. New York City's three-digit number is the largest such system and perhaps the largest public call center in the country. The system is available 24 hours a day, in more than 150 languages.⁴⁶

The 311 service is also accessible on nyc.gov. There, a customer can access a directory of community based organizations providing health and human services in New York City. The directory provides descriptions, addresses, and phone numbers of the various organizations and programs, and is searchable by category, location, zip code, or name. The 311 service also includes a look-up that allows customers to check the status of existing service requests created through the 311 call center.⁴⁷

Conclusion

Taxpayers need to be able to navigate the IRS to determine correct tax liabilities, file returns, remit payments, and resolve any account problems. The IRS has the responsibility to provide the navigational tools that will enable taxpayers to accomplish these tasks.

The IRS should consider taking the following actions to enable navigation: for internal use, create a researchable directory of IRS personnel using a unique identifying number and a topical index organized by business function of IRS personnel; for Internet savvy taxpayers and practitioners, create a topical index on IRS.gov that outlines the related tax law and IRS procedures and gives a contact number for the department with the expertise to answer any questions that the site fails to resolve; and for taxpayers who need personal interaction, create a phone number (similar to the 311 system) staffed by operators who will obtain details about the taxpayer's question or problem, and direct the taxpayer to the department(s) that can help.

IRS Comments

We agree that navigating the IRS, both internally and externally, is essential to providing world class customer service and we are dedicated to providing the navigation tools necessary to serve taxpayers and IRS employees. The National Taxpayer Advocate's report implies that the IRS is not in conformance with requirement of the IRS Restructuring and Reform

⁴⁴ Federal Communications Commission, Report CC97-7, *FCC Creates New 311 Code for Non-Emergency Police Calls and 711 Code for Access to Telecommunications Replay Services* (Feb. 1997).

⁴⁵ See *Cities with 311 Non-Emergency Telephone Service*, at <http://www.911dispatch.com/info/311map.html> (last visited Oct. 15, 2008).

⁴⁶ See *311 Service Non-Emergency Government 311 Services*, at <http://www.311service.org/> (last visited Oct. 15, 2008).

⁴⁷ See *NYC 311*, at <http://www.nyc.gov/html/misc/html/311atnycgov.html> (last visited Oct. 15, 2008).

Act of 1998 (RRA 98). The IRS disagrees and has taken every step necessary to implement both the requirements and spirit of this law. Although we were pleased to learn that for an agency as large as the IRS serving millions of taxpayers every year only four percent reported access to the IRS as a problem, we will continue to work to improve those results.⁴⁸

Internally, IRS employees have access to extensive information regarding “who does what in the IRS” on internal websites and employee contact data on the Discovery Directory. The latter is an employee database researchable by name, Standard Employee Identification Number (or SEID), and job series. We believe current business unit directories available to IRS employees through the Intranet and the Discovery Directory meet the employee-locator needs of the vast majority of internal IRS customers without the addition of employee badge numbers.

Externally, the IRS provides taxpayers with multiple customer contact toll-free numbers, understanding that this is the preferred method to contact the IRS for the majority of customer service needs. These services are divided into three main categories:

- Taxpayer-initiated calls, such as Form 1040 individual tax law help, business and specialty tax help, and tax help for exempt organizations, retirement plan administrators, and government entities: These are publicly marketed numbers located in publications and forms instructions, media campaigns, on the IRS website, as well as telephone directory assistance.
- Calls in response to an IRS notice, letter or bill: These numbers are not published for general use. When the IRS initiates a contact with a taxpayer, (as opposed to taxpayer initiated contacts) a unique number is provided on the notice for the taxpayer to call. The telephone scripts and services reached through these numbers are targeted to notice recipients. For example, for Individual Master File (IMF) notices we provide a unique telephone number that provides only IMF options to the caller. The Customer Service Representatives that answer these calls are specifically trained to meet these taxpayers’ needs. The comparable Business Master File (BMF) notice response number offers choices tailored to that customer segment. This reduces taxpayer burden by providing only a customized set of options and is more expeditious in getting the caller to the information they need or to an IRS employee trained and able to respond to their question.
- Calls from tax practitioners: Contact numbers are also provided to practitioners through the Practitioner Priority Service (PPS). The menu choices and associated employee skills are adapted to meet the unique needs of these customers. For example, PPS offers the support needed to resolve multiple cases with one call. By limiting the customer base to practitioners only, we can plan service delivery more accurately based on the number of calls received on this line, as well as ensure the line is adequately staffed with employees specifically trained to address practitioner issues.

⁴⁸ See footnote 36, *supra*.

Recognizing the complexity of tax law, and that taxpayers have different levels of understanding, if a taxpayer with a tax law related question is unable to navigate through our scripts or does not select a valid option, they are routed to a screener (operator) who determines the appropriate place to route their call. This is similar to the 311 service mentioned in the National Taxpayer Advocate's report. Via the Form 1040 menu, this service asks customers to choose from broad categories of subjects to get them to the correct IRS resource as quickly and efficiently as possible.

In addition, IRS stakeholder liaisons in every state maintain an IRS Telephone Directory for Practitioners to assist members of the local practitioner community as they attempt to resolve tax issues through normal channels. These directories provide the name and telephone contact information of each IRS employee having supervisory responsibility for IRS programs in the practitioner's state. In addition to the practitioner directory, the IRS.gov website lists stakeholder liaison contact information, by state, for use by practitioners and industry partners to discuss IRS policies and practices.⁴⁹

The IRS continues to make improvements to IRS.gov, including website navigation. Currently, taxpayers can research specific topics by using the "Search" function. We also encourage taxpayers to use IRS.gov as a resource for the most updated tax and filing season information, answers to Frequently Asked Questions, and quick and easy access to IRS forms and publications. For FY 2009, we will be including an enhanced Frequently Asked Questions offering on IRS.gov, featuring "natural language" searchability that allows customers to enter a search question or topic in the same manner as everyday conversation. The system uses programmed syntax and content links to point users to the correct source information.

While the IRS endeavors to provide taxpayers with the best customer experience possible, these services must be provided in a way that ensures their accuracy and timeliness while maximizing the use of limited IRS resources. Developing and maintaining an immense public directory for a subject as complex as the Internal Revenue Code and an organization as large and physically dispersed as the over 100,000 employees of the IRS is in no way comparable to the State or Taxpayer Advocate Service examples offered by the National Taxpayer Advocate. Such a public directory for use by as many as 200 million taxpayers would likely prove unwieldy for taxpayers and a very costly administrative challenge for the IRS to maintain. Further, current telephone systems cannot support large-scale public access to employees' personal administrative telephone lines, nor are most non-customer service occupations trained or able to effectively handle any volume of taxpayer calls. Instead, the IRS has taken well-considered and industry-proven steps to service large volume and wide-ranging subject matter inquiries from taxpayers through our web, toll-free telephone, and Taxpayer Assistance Center services.

⁴⁹ See IRS, *Stakeholder Liaison (SL) Local Contacts*, at <http://www.irs.gov/businesses/small/article/0,,id=153991,00.html> (last visited Dec. 15, 2008).

Taxpayer Advocate Service Comments

Taxpayers are responsible for complying with the Internal Revenue Code in determining their correct tax liability, filing their returns, and paying their taxes. To meet this responsibility, the taxpayer must communicate with the IRS, an agency with over 100,000 employees and a multitude of offices, divisions, and functions. RRA 98 was enacted to ease this process by creating separate units responsible for providing “end to end” service to groups of taxpayers with similar needs and by directing that to the extent practicable and where advantageous to the taxpayer, one IRS employee “shall be assigned to handle a taxpayer’s matter until it is resolved.”

Assigning employees a badge number that has no directory associated with it does not guarantee that the same employee will handle the taxpayer’s matter until it is resolved. The Discovery Directory is searchable by name (which, as noted, may be similar to another employee’s name) and SEID, which is not the same as the badge number the employee is required to furnish to the taxpayer. Further, even if the IRS had a database searchable by the badge number actually provided to the taxpayer, IRM directions hinder the congressional mandate to allow the taxpayer access to the employee with whom the taxpayer previously spoke. The IRM directs its employees to encourage the taxpayer to allow the employee who responds to a call to research the account instead. Eventually (only at the taxpayer’s insistence), the IRS may arrange for a callback by the employee the taxpayer previously dealt with (under a procedure whose effectiveness may not be measured).

We agree with the IRS that it would be wonderful if only four percent of taxpayers reported access to the IRS as a problem. However, when interpreting data on the issue from TAS’s Systemic Advocacy Management System (SAMS), the IRS evidently assumed each SAMS submission represents a single taxpayer. In fact, each SAMS submission relates to multiple taxpayers, often entire segments of the population (hence the “systemic” nature of the problem).

We agree that the IRS provides publicly marketed telephone numbers, but they are scattered as indicated by the IRS in its response. Our recommendation is to consolidate these numbers for reference in one publicly available location. The phone numbers furnished in IRS communications to taxpayers are generally for departments, and not for the employees who may have actually worked on the taxpayers’ issues. Practitioners also identified difficulties in using the PPS, such as finding the same IRS employees they spoke with previously.

We applaud the IRS for continuing to improve IRS.gov. Web-based navigation by taxpayers may increase over time, but some taxpayers prefer personal contact by phone or in person and are unlikely to change their preference. Therefore, the IRS also should continue to enhance phone operations.

The IRS's mission is not to "endeavor to provide taxpayers with the best customer experience possible." It is "providing America's taxpayers top quality service." The fact that tax agencies in states or in other countries provide better service means that IRS service is not "top." By describing other states' and countries' experience with helping their constituents navigate bureaucracies, we are not suggesting the IRS blindly adopt those methods. Rather, we are challenging the IRS to think about new ways of helping taxpayers reach the person or program area they need, instead of merely maintaining what it is willing to do. The IRS could learn a great deal about the difficulty taxpayers experience in navigating its system by setting up a learning lab and observing actual taxpayers trying to find their way, unassisted, around our phone system and the Internet. As the tax administrator—the face of government to so many people—the IRS cannot afford to be simply as good as a credit card company or health insurance company – we must be better.

Recommendations

In summary, the National Taxpayer Advocate recommends that the IRS:

1. Revise the IRM to direct its employees to accommodate taxpayer requests to speak to a particular employee, whenever feasible.
2. Create a personnel directory for internal use, searchable by the same employee number that IRS employees give to taxpayers.
3. Create a personnel directory for internal use organized by business function.
4. Adjust the topical tax index on IRS.gov to include telephone numbers of offices associated with each topic.
5. Establish a cognitive learning lab to test and observe taxpayers' experiences in navigating the IRS.

MSP
#8**IRS Handling of ITIN Applications Significantly Delays
Taxpayer Returns and Refunds****Responsible Official**

Richard E. Byrd, Jr., Commissioner, Wage and Investment Division

Definition of Problem

Any individual who has a tax return filing obligation but is not eligible to obtain a Social Security number (SSN) must apply to the IRS for an Individual Taxpayer Identification Number (ITIN).¹ In recent years, the National Taxpayer Advocate has raised concerns over ITIN processing.²

IRS problems often cause lengthy delays in assigning ITINs and impose other burdens on taxpayers, including:

- Delayed processing of ITIN applications and associated returns;
- Loss of original taxpayer identification documents;
- Denial of ITINs to decedents; and
- Inadequate tax assistance and information to applicants.

Further, those who apply for ITINs are primarily foreign taxpayers who are least able to navigate the IRS.³

ANALYSIS OF PROBLEM**Background**

The IRS established the ITIN program in 1996 to facilitate tax return filing by aliens who have U.S. tax filing obligations and are ineligible for SSNs.⁴ An ITIN does not establish an

¹ Internal Revenue Code (IRC) § 6109; Treas. Reg. § 301.6109-1(d)(3). See also Instructions to IRS Form W-7, *Application for IRS Individual Taxpayer Identification Number* (Rev. Feb. 2008). Examples of individuals who need ITINs include:

- Non-resident alien filing a U.S. tax return and not eligible for an SSN;
- U.S. resident alien (based on days present in the United States) filing a U.S. tax return and not eligible for an SSN;
- Dependent or spouse of a U.S. citizen/resident alien; and
- Dependent or spouse of a non-resident alien visa holder.

² National Taxpayer Advocate 2004 Annual Report to Congress 143; National Taxpayer Advocate 2003 Annual Report to Congress 60.

³ See also Most Serious Problem, *Access to the IRS by Individual Taxpayers Located Outside the United States*, *infra*.

⁴ Certain persons are required to file U.S. income tax returns and pay U.S. income tax regardless of their immigration or residence status. See generally IRC §§ 7701, 864, 871; Treas. Reg. §§ 301.7701(b)-1; 864(c)(1)-(4).

identity for the applicant and is to be used only for tax administration purposes.⁵ The IRS has assigned over 14 million ITINs since the inception of the program.⁶

The IRS continues to process a very large number of ITIN applications.⁷ For the 2008 processing year, the Austin Submission Processing Center (AUSPC) received 1.7 million applications.⁸ The ITIN database reflects that the IRS has approved 90 percent of applications over the course of the program.⁹ Table 1.8.1 below shows receipts, assignments, and rejects for 2005 through 2008.

TABLE 1.8.1, ITIN Applications Processed 2005 – 2008

Processing Year	2005	2006	2007 ¹⁰	2008 ¹¹ (Partial Year)
Receipts	1,652,100	1,909,147	2,313,288	1,732,330
Assignments	1,195,397	1,502,441	1,768,902	1,490,405
Rejects	266,471	261,718	580,153	227,005

Although tax return filing is the most common use for ITINs, the IRS may issue them for other legitimate tax administration purposes. For example, an ITIN may be used to open a bank account,¹² for information reporting,¹³ or for withholding on the income of foreign investors.¹⁴

Delays in Processing ITIN Applications Cause Taxpayer Burden.

The IRS Does Not Measure the Time for Processing ITIN Applications.

The IRS does not monitor the time it takes to process ITIN applications, which leaves it unable to accurately measure the timeliness of service provided to these individual taxpayers.

⁵ IRM 3.21.263.1(6) (Jan. 1, 2008) provides that the ITIN *does not*:

- Qualify the applicant for Earned Income Tax Credit or Social Security benefits;
- Confer a particular immigration status to the applicant; or
- Qualify the applicant's right to work in the United States.

⁶ IRS, *ITIN Operations Controls Report ITIN4340* (Oct. 25, 2008); total assigned records: 14,235,915; total primary assigned: 7,196,338; total other assigned: 7,040,231.

⁷ For a detailed discussion of the ITIN processing operation, see National Taxpayer Advocate 2004 Annual Report to Congress 143 (Most Serious Problem, *Processing ITIN Applications and Amended Related Federal Income Tax Returns*).

⁸ IRS, *ITIN0850 ITIN Receipt Pattern Report* (Sept. 30, 2008).

⁹ IRS, *ITIN 4340 Controls Report* (Oct. 25, 2008). There were 14,235,915 assigned (accepted) ITIN records out of 15,693,467 total database records.

¹⁰ IRS response to TAS information request (July 25, 2008). "Receipts" include applications and other correspondence. "Assignments" means numbers assigned.

¹¹ IRS, *ITIN Report SP001* (Sept. 30, 2008). The final disposition of 14,812 suspended applications could not be determined at the time of the report. 2008 data includes program results for the first nine months of the year. Reject counts include initial and subsequent (re)applications.

¹² See Form W-9, *Request for Taxpayer Identification Number and Certification*. See also Forms W-8BEN, W-8ECI, W-8EXP, and W-8IMY.

¹³ Forms W-2 and 1099 and its progeny (e.g., 1099-DIV, 1099-INT, and 1099-OID).

¹⁴ See, e.g., Forms 8288, 1042, and 1042-S.

The IRS's goal for processing applications submitted with tax returns is 11 business days; the goal for processing applications without returns is 16 business days.¹⁵ The IRS calculates this time not from the date it receives the applications, but from the batch creation date.¹⁶ Since the batch creation date may be substantially later than the date the application was originally submitted to or received by the IRS, the IRS does not measure the actual length of time that taxpayers must wait for an ITIN.¹⁷ The IRS also does not measure the time required to resolve the hundreds of thousands of applications it suspends for lack of sufficient documentation or information, nor does the IRS measure the delays encountered by those who must resubmit applications.¹⁸

Absent valid and accurate measurement, IRS inventory control systems cannot monitor applications experiencing delays in processing. The IRS should follow the IRM to measure the time for processing from the original receipt of each and every ITIN application, including those it suspends. The IRS should also measure the rework generated by rejected or suspended applications to assess its own effectiveness in communicating application requirements and processing applications.

The IRS Should Modify Its Requirement to Attach a Valid Tax Return with the ITIN Application.

On December 17, 2003, the IRS announced a significant change to the ITIN application process.¹⁹ From that date on, the IRS required applicants to attach an original valid federal tax return with their Form W-7, *Application for IRS Individual Taxpayer Identification Number*, unless they meet one of the delineated exceptions.²⁰ Previously, a taxpayer could apply for an ITIN in advance to ensure that he or she received a number from the IRS before filing a return.²¹

¹⁵ IRM 3.30.123.6.10 (Jan. 1, 2008) states that the timeframe should be calculated from IRS received date to the input date into RTS; IRS response to TAS information request (June 20, 2008) specifies that “day” means a non-holiday Monday through Friday. In its response to the National Taxpayer Advocate’s 2003 Annual Report to Congress, the IRS committed to processing ITINs within two weeks. See National Taxpayer Advocate 2003 Annual Report to Congress 60-79.

¹⁶ Effectively, the IRS calculates the time for reviewing batches of applications – that is, the *average time it takes to input the application data into the operating system, without regard to additional time needed to resolve errors or omissions*. See IRS response to TAS information request (June 20, 2008). *But* see IRM 3.30.123.6.10 (Jan. 1, 2008) (requiring the processing to be accomplished within the timeframes from the [first] IRS Received Date to the input in the ITIN Real-Time-System (RTS)).

¹⁷ IRS response to TAS information request (June 20, 2008). *But* see IRM 3.30.123.6.10 (Jan. 1, 2008) (requiring processing to be accomplished within the timeframes from the [first] IRS Received Date to the input in RTS)).

¹⁸ IRS, *ITIN SPO01 Report* (May 19, 2008) reflecting 134,560 suspended; *ITIN SPO01 Report* (June 18, 2008) reflecting 85,672 suspended. See also IRM 3.21.263.4(10) (Jan. 1, 2008). IRS employees notify affected applicants by letter that their ITIN applications are rejected because the federal tax return was not signed, or did not reflect a filing requirement, or the applicant’s name did not appear on the return. A Hard Reject is a complete rejection of both the return and the ITIN application. If the IRS rejects the ITIN application but can accept the return, the IRS processes the return using a temporary Internal Revenue Service Number (IRSN). IRM 3.21.263.4.5 (Jan. 1, 2008).

¹⁹ IRS News Release, *IRS Announces Revisions to ITIN Applications* (Dec. 17, 2003).

²⁰ IRS Pub. 1915, *Understanding Your IRS Individual Taxpayer Identification Number* (Sept. 2007). An example of an exception is opening an interest-bearing bank account.

²¹ Applicants who are not required to pay income tax but need an ITIN for a purpose other than filing an income tax return, such as to take advantage of a tax treaty provision, may still apply for an ITIN at any time throughout the tax year. IRS Pub.1915, *Understanding Your IRS Individual Taxpayer Identification Number* (Sept. 2007).

By requiring ITIN applicants to attach tax returns to their Forms W-7, the IRS policy causes a wave of ITIN applications at the beginning of each filing season. This policy creates a bottleneck of ITIN applications at the peak of the tax return processing season, placing a seasonal strain on IRS resources. Delays in ITIN processing cause downstream consequences to taxpayers, acceptance agents, and tax preparers.²² The IRS decision to postpone ITIN applications also impacts state taxing authorities, since the applicants must wait to receive ITINs before filing state tax returns.²³

The National Taxpayer Advocate recommends that the IRS process ITIN applications throughout the year but retain the requirement that taxpayers demonstrate a tax administration purpose for the number. For example, a primary taxpayer could include a copy of a current pay stub showing withholding of tax.²⁴

IRS Rationale for Not Allowing ITIN Applications Before Filing Is Based on Flawed Assumptions.

The IRS stands behind its decision to require taxpayers to attach a valid tax return to the ITIN application. The IRS explains its rationale for the requirement as follows:

The Service believes that a substantial number of the ITINs that have been issued have subsequently not been used for tax reporting and payment. The Service is fully sensitive to the possible dangers that can arise from the misuse of the ITINs for the purpose of creating an identity, including the possible threat to national security.²⁵

The National Taxpayer Advocate is deeply concerned by the implications of this explanation. The IRS implies that the requirement for ITIN applicants to attach a tax return is necessitated by the extensive misuse of ITINs. We do not agree with the premise that ITIN misuse is widespread.

The National Taxpayer Advocate's 2003 Annual Report to Congress included a table showing ITIN use on tax returns. Of approximately 6.9 million ITINs assigned from the inception of the program in 1996 through October 1, 2003, nearly three quarters showed up

²² IRM 3.21.263.3.1(1) (Jan. 1, 2008) defines an acceptance agent as one authorized to assist aliens in obtaining an ITIN. The acceptance agent reviews the required supporting identification documents; the certified acceptance agent authenticates the same documents and provides a "Certificate of Accuracy" and any required supporting exception documentation.

²³ For example, the California state income tax return requires an SSN or ITIN. See California Resident Income Tax Return 2007, at http://www.ftb.ca.gov/forms/07_forms/07_540a.pdf (Feb. 2008).

²⁴ In her 2003 and 2004 Annual Reports to Congress, the National Taxpayer Advocate identified the IRS's failure to timely process ITIN applications as a Most Serious Problem. Specifically, the National Taxpayer Advocate recommended that the IRS allow taxpayers to file ITIN applications without tax returns before the filing season, if the applicants submit documentation showing they are required to file returns. The IRS did not implement this recommendation.

²⁵ IRS response to TAS information request (June 20, 2008).

on returns.²⁶ The Wage and Investment division (W&I) conducted a subsequent study in 2005, with similar results.²⁷

It is disingenuous for the IRS to imply that less than 100 percent usage of ITINs on tax returns is symptomatic of ITIN misuse. In fact, there are many valid reasons why an ITIN may not be used in conjunction with a tax return. Many aliens who obtained ITINs later adjusted their immigration status to permanent resident status, thus becoming eligible for SSNs. Others leave the United States for their home countries when their temporary work or student visas expire. Some foreign investors need an ITIN for a one-time transaction. Some may obtain ITINs for return filing purposes but do not file because their incomes were below the filing threshold. In each of these situations, the ITIN is eventually no longer needed by its owner, but the IRS has no procedures to automatically “retire” or set an expiration date for the numbers.²⁸ If the IRS prefers to retire unused ITINs, it should do so as a function of post-assignment ITIN administration and not as a pretext for restricting new ITIN assignment.

ITIN Delays Hold Up Tax Return Processing and Refunds.

In 2008, over 95 percent of Forms W-7 were submitted with tax returns.²⁹ Moreover, according to an IRS study, 83 percent of ITIN tax returns are due refunds, all of which are delayed by ITIN application and paper return processing times.³⁰ Filing tax returns concurrently with ITIN applications delays processing of the returns and associated refunds because:

- Regardless of whether the ITIN applications are complete or incomplete, the IRS does not forward the attached returns for processing until it either assigns an ITIN or rejects the application;³¹
- The IRS requires the accompanying tax return to be filed only on paper, so the return cannot receive the expeditious processing afforded to e-filed returns;³² and

²⁶ See National Taxpayer Advocate 2003 Annual Report to Congress 66. These figures are based on IRS Modernization & Information Technology Services (MITS) analysis of Individual Master File, Return Transaction File.

²⁷ IRS, *Individual Taxpayer Identification (ITIN) Usage Analysis*, Project 4-05-25-2-023N, 5-6, 11-12, and 14 (Aug. 2005). The W&I study covered tax years 1996 through 2003 (as of Oct. 1, 2003). For example, in 2001 tax return usage was 73.9 percent.

²⁸ If the taxpayer subsequently receives a SSN and notifies the IRS, the IRS will revoke the ITIN and associate all prior tax information under the ITIN with the new SSN. However, taxpayers are not required to notify the IRS. See IRS Pub. 1915, *Understanding Your IRS Individual Taxpayer Identification Number 19* (Sept. 2007). Nor does the IRS receive a notification of status adjustment from the U.S. Citizenship and Immigration Services.

²⁹ 66,449 Forms W-7 were filed without returns, compared to 1,517,473 total Forms W-7 filed. See IRS, *ITIN0852 Report* (June 18, 2008) (information through June 1, 2008).

³⁰ IRS, W&I Research Group 4, *Individual Taxpayer Identification (ITIN) Usage Analysis for 2004*; Project # 4-06-25-2-051N 6-7 (Mar. 2007).

³¹ IRM 3.21.263.5.2.8 (1) (Jan. 1, 2008).

³² For example, the IRS issues refunds on electronically filed returns in as little as ten days by direct deposit or in three weeks for a paper check. See IRS, Instructions to Form 1040, *U.S. Individual Income Tax Return* (2007). See also IRS TAX TIP 2008-29, *Direct Deposit and Split Refund*, at <http://www.irs.gov/newsroom/article/0,,id=179041,00.html> (last visited Dec. 12, 2008).

- The IRS processes tax refunds due to taxpayers with ITINs only after accepting their ITIN applications and associated paper returns, thus significantly extending processing times.³³

When the taxpayer files a Form W-7 with the return, the IRS responds to the ITIN application in “8-10 weeks if submitted during peak processing periods.”³⁴ The eight to ten weeks required for the application processing is in addition to the time required for the paper return processing that follows, which takes three to six weeks.³⁵ By comparison, the IRS processes electronically filed returns in three weeks.³⁶ In tax year 2005, these delays in ITIN processing affected 280,000 taxpayer refunds totaling over \$500 million.³⁷

If applicants could apply for and receive ITINs before filing their initial tax returns, the ITIN processing time would not postpone the processing of the returns, and the applicants could file their tax returns electronically. E-filing initial ITIN returns will also help the IRS achieve its goal of having 80 percent of all returns e-filed and reduce its paper return processing costs. Additionally, an ITIN applicant who is compelled to file a paper return cannot benefit from the Free File initiative or the free e-file services of the Volunteer Income Tax Assistance (VITA) program.

IRS Procedures Lead to the Loss of Taxpayer Documents.

The IRS requires ITIN applicants to substantiate their personal identities and foreign status by submitting original documents (or certified or notarized copies) with their applications.³⁸ Acceptable documentation includes passports, driver’s licenses, and civil birth certificates.³⁹ Because of the difficulty of acquiring certified or notarized copies, applicants frequently submit originals.

Because of this policy, applicants do not have access to their original documents, sometimes for extended periods, while the IRS processes their applications. The subsequent lack of access to these documents can create burden for the applicants, who are advised in the application instructions that if the IRS does not return the original documents after 60 days, the taxpayers can only call the IRS’s general help telephone number.⁴⁰ An IRS telephone assistor who takes a call from a taxpayer asking for the return of original documents prepares

³³ IRS, W&I Research Group 4, *Individual Taxpayer Identification (ITIN) Usage Analysis for 2004*; Project # 4-06-25-2-051N 6-7 (Mar. 2007).

³⁴ IRS, Instructions to Form W-7, *Application for IRS Individual Taxpayer Identification Number 3* (Feb. 2008).

³⁵ IRS Pub. 1084, *IRS Volunteer Site Coordinator’s Handbook* (2007).

³⁶ IRM 21.4.1.3(2) (Oct. 1, 2006).

³⁷ IRS, W&I Research Group 4, *Individual Taxpayer Identification (ITIN) Usage Analysis for 2004*; Project # 4-06-25-2-051N Table 6, 6 (Mar. 2007).

³⁸ Instructions to Form W-7, *Application for IRS Individual Taxpayer Identification Number 2* (Feb. 2008).

³⁹ The instructions to Form W-7 list 13 acceptable documents. The National Taxpayer Advocate previously recommended that the “IRS should discourage the submission of original documents and work to find an acceptable and workable substitute for ITIN applicants.” National Taxpayer Advocate 2004 Annual Report to Congress 151.

⁴⁰ Instructions to Form W-7, *Application for IRS Individual Taxpayer Identification Number 3* (Feb. 2008). If within the U.S., the applicant is advised to call 1-800-829-1040, not the ITIN operation where the application is processed. If outside the U.S., the applicant is advised to call 215-516-2000 (a toll-charge call).

a paper form reporting the loss of documents and routes it to the AUSPC.⁴¹ If the original documents are permanently lost, the burden on the applicant can be profound, including the inability to establish personal identity until he or she can obtain replacements from the issuing country or office.⁴² The loss of documents may also affect individuals' abilities to earn a livelihood or travel within and outside the United States.

Many times, the IRS attempts to send documents back to the applicant, but they are returned to the IRS because the applicant has moved and not provided a forwarding address. The IRS maintains a local database of original documents, including passports, which the Postal Service has returned to the IRS as undeliverable.⁴³ If an applicant subsequently contacts the IRS to recover the document and the IRS has established a database record for it, the IRS will search for and return the document to the applicant. However, the IRS does not inform applicants when it cannot find their documents. In these cases, applicants do not know that the IRS ever received or acted on their requests to locate a missing document.⁴⁴ The IRS should promptly acknowledge all applicant requests for the return of original documents and notify the applicants if it cannot locate them.

Denying ITINs to Decedents Creates Burden.

The IRS policy of not assigning ITINs to decedents⁴⁵ causes unwarranted negative tax consequences to their estates or, in the case of a decedent dependent, to the primary taxpayer.⁴⁶ The denial of an ITIN to a decedent dependent denies a personal exemption deduction and a possible child tax credit to the taxpayer filing the tax return.⁴⁷ The IRS should assign ITINs to decedent aliens who are otherwise entitled to a tax number.

The IRS Provides Inadequate Tax Assistance and Information to Applicants.

More than one million taxpayers submit new ITIN applications each year, challenging the IRS to provide adequate informational assistance to applicants and practitioners in English and foreign languages through publications, forms, IRS.gov postings, live help by telephone, and letter notices. Many applicants rely on the Taxpayer Assistance Centers

⁴¹ IRM 3.21.263.4.15 (Jan. 1, 2008). When applicants visit IRS Taxpayer Assistance Centers (TACs) to report the loss of original documents, TAC employees prepare Forms 4442, *Inquiry Referral*, and route them to the AUSPC.

⁴² For example, in one TAS case the loss of the passport left the applicant unable to travel and reenter the U.S. for the three-month period that was required by his government to replace his passport.

⁴³ IRS response to TAS information request (June 20, 2008). From February 2007 through June 13, 2008, the AUSPC had tracked 3,403 original documents that were undeliverable. See also IRM 3.21.263.5.10.4(4) (Mar. 17, 2008).

⁴⁴ IRS response to TAS information request (June 20, 2008). AUSPC procedural deficiency is identified in Systemic Advocacy Management System (SAMS) Project P0028938.

⁴⁵ IRM 3.21.263.5.5 (2) (Jan. 1, 2008).

⁴⁶ IRS, *ITIN Reason Code Count Report* (Sept. 30, 2008). Code R11 (decedents) reflected 150 denials, cumulative from January 1 to September 30, 2008. However, the total also includes unspecified numbers of decedents when a taxpayer's representative notifies IRS of the death of the taxpayer after the ITIN has been assigned and the number is revoked.

⁴⁷ See Pub. 519, 24-26, (2007).

(TACs) for face-to-face help in completing or submitting applications, requiring more IRS resources.

The National Taxpayer Advocate previously recommended that Publication 1915, *Understanding Your IRS Individual Taxpayer Identification Number (ITIN)*, should provide accurate instructions that conform to the actual handling of ITIN applications.⁴⁸ The IRS significantly changed Publication 1915 (and the Spanish version) for 2008. Still, during the 2008 processing year, the IRS suspended over 260,000 applications for lack of adequate documentation or information.⁴⁹ Moreover, the IRS ultimately rejected over 186,000 of those suspended applications because applicants did not respond timely or provide adequate information.⁵⁰

The National Taxpayer Advocate remains concerned about the availability and adequacy of assistance and information in Publication 1915, including telephone assistance, toll-free and international access, and help from TACs, embassies, consulates, notaries, and acceptance agents.⁵¹ The National Taxpayer Advocate previously recommended that the IRS revise the ITIN application rejection notice to refer to Publication 4134, *Low Income Taxpayer Clinic List*, to make applicants aware of a resource that could help them.⁵² However, the CP567 reject notice, the CP566 suspense notice, and the CP569 hard reject notice do not cite Publication 4134.⁵³

The IRS should provide the information in Publication 4134 to recipients of the rejection notices. Low Income Taxpayer Clinics (LITCs) are statutorily charged with providing education and outreach to taxpayers who speak English as a second language (ESL),⁵⁴ and are excellent resources on the barriers ESL taxpayers face in complying with tax obligations. Therefore, the IRS should not only inform taxpayers about the clinics, so they can obtain assistance when their ITIN applications are denied, but it should also use the LITCs to review related draft documents and publications.

The National Taxpayer Advocate also previously asked the IRS to revise the ITIN database to generate a copy of the notice issued to an applicant to the Acceptance Agent or power

⁴⁸ National Taxpayer Advocate 2004 Annual Report to Congress 143.

⁴⁹ IRS, *ITIN Suspense and Reject W-7 Reason Code Count Report* (May 31, 2008). Supporting documentation is unacceptable: 135,591; supporting documentation is not original, certified, or notarized: 52,706; applicant's signature is missing or the signature requirement is not met: 75,011. The total of all suspension code counts is 358,344.

⁵⁰ IRS, *ITIN Suspense and Reject W-7 Reason Code Count Report* (Sept. 30, 2008). Response to CP566 notice was incomplete: 114,033; No response to CP566 notice: 72,700.

⁵¹ For a comprehensive discussion of the problem, see Most Serious Problem, *Access to the IRS by Individual Taxpayers Located Outside the United States*, *infra*.

⁵² National Taxpayer Advocate 2004 Annual Report to Congress 143.

⁵³ IRM 3.21.263 Exhibits 22-24 do not reference Publication 4134.

⁵⁴ IRC § 7526(b)(1)(A)(II).

of attorney who submitted the application.⁵⁵ We applaud the IRS for implementing this suggestion in January 2007.

The IRS Has Missed Opportunities to Expand Acceptance Agent Services.

The IRS authorizes Acceptance Agents to provide specialized assistance to taxpayers filing ITIN applications. Certified Acceptance Agents are designated to inspect original documents of applicants and certify that the documentation meets IRS standards. This certification eliminates the need for the applicant to forward original documents or notarized copies to the ITIN processing unit. IRS employees at TACs may perform the same document inspection and certification service.

The only form of personal identification for ITIN application purposes that the IRS accepts without supplemental documentation is the passport. However, only 9.9 percent of applicants submitted passports or certified copies (compared to 42.3 percent who provided birth certificates).⁵⁶ This figure suggests the preferred method of documentation is unavailable to most applicants because they lack passports or have no means of submitting acceptable certified copies. Because many U.S. jurisdictions (including California, Texas, Illinois, and Florida) prohibit the copying and the subsequent certification of public records by a notary public, taxpayers need a universally workable method for applicants and Acceptance Agents to meet the requirements for submitting copies of documents.⁵⁷

Certified Acceptance Agents can reduce burden on taxpayers by reviewing original documents in the presence of the applicant and immediately returning the documents to their owners. The agent submits a copy of the document with the application to the IRS and attests to its validity. The controlling revenue procedure provides that other federal agencies, banks, colleges, and universities can certify copies of documents, which independent notary publics cannot do.⁵⁸ The IRS should promote the Certified Acceptance Agent program and use other federal agencies to perform acceptance agent duties as contemplated in the Treasury Regulation (*e.g.*, the Postal Service performs a similar service in processing passport applications).⁵⁹

Conclusion

IRS policy restrictions and flaws with the ITIN application process significantly delay returns and refunds, and disadvantage affected taxpayers compared to taxpayers with SSNs. Taxpayers who must use ITINs to comply with their tax obligations face significant

⁵⁵ National Taxpayer Advocate 2004 Annual Report to Congress 143.

⁵⁶ IRS, *ITIN 9993 Supporting Document Types Submitted with W-7 Report* (Mar. 31, 2008).

⁵⁷ See, *e.g.*, Tex. Gov't Code Ann. § 406.016 (a)(5).

⁵⁸ Rev. Proc. 2006-10, 2006-1 C.B. 293, § 4.02(1). Eligible persons include federal agencies, colleges and universities, banking institutions, and foreign persons.

⁵⁹ Treas. Reg. § 301.6109-1(d)(3)(iv).

difficulties with receiving timely assignment of ITINs, expeditious processing of associated returns and refunds, and timely return of original taxpayer identification documents.

The IRS should consider taking the following actions to streamline the ITIN application process: permit applicants to file an ITIN application without a return prior to the filing season if applicants can document that they are required to file returns; implement adequate timeliness measurements for processing *all* ITIN applications, including applications suspended by the IRS as incomplete; allow new ITIN applicants to file returns electronically; promptly acknowledge all applicant requests for the return of original documents; permit the assignment of ITINs to decedents; provide all applicants a toll-free number that is answered by employees of the ITIN operation; share draft ITIN forms and publications with LITCs on a regular basis; revise ITIN rejection notice with a reference to the LITC publication and webpage; and promote and expand the Certified Acceptance Agent program.

IRS Comments

We appreciate the National Taxpayer Advocate's review of the ITIN program. Since the inception of the ITIN program in 1996, the IRS has assigned over 13.9 million ITINs. During FY 2008 alone, the IRS successfully processed 2.5 million Form W-7 applications, assigned 1.6 million new ITINs, and processed over 1.5 million returns related to these applications.

In 1996, the U.S. Department of the Treasury issued regulations that introduced the ITIN and required foreign persons to use an ITIN as their unique identification number on federal tax returns.⁶⁰ These regulations were intended to address the concern by the IRS and Treasury Department that without a unique number taxpayers could not effectively be identified and their tax returns could not be efficiently processed. As a result, ITINs are issued by the IRS to non-resident and resident alien individuals that do not have, and do not qualify for, an SSN. ITINs enable these aliens to comply with U.S. tax laws and provide the IRS a means to effectively process and account for their returns and payments. An ITIN does not authorize work in the U.S., establish immigration status, or provide a valid form of identification outside of the federal tax system. For this reason, the IRS does not apply the same strict standards as agencies that provide genuine identity certification, such as a requirement to apply in person or third-party verification of identity documentation.

In December 2003, in addition to other changes, the IRS adopted a requirement for most ITIN applicants to attach a valid tax return to their Form W-7 application. This procedure was designed to ensure that the ITIN assigned is used for its proper tax administration purpose. Associating the issuance of the ITIN with the filing of a tax return is the only reliable method for IRS to verify the number is being requested for and properly used for tax administration purposes. As a result, ITINs are no longer issued solely based upon a

⁶⁰ T.D. 8671, 1996-1 C.B. 314.

statement that an applicant requires an ITIN in order to file a return without proof that the individual in fact needs the number to do so.

The IRS continually strives to provide the best possible customer service and agrees with several of the National Taxpayer Advocate's recommendations, as outlined below.

With regard to timeliness measures, our goal for processing applications submitted with tax returns is 11 business days. This timeframe ensures the tax return is processed and refunds are issued timely. Form W-7 applications without tax returns have an established processing period of 16 business days. In order to more accurately reflect the received date, in March 2008, we implemented procedures that set the batch (grouping of applications) date as the actual received date plus two days.⁶¹ This procedure was adopted to identify the date an application was received in the processing center from the applicant and/or their representative. The additional two days account for the time needed for mail to be processed by the Receipt and Control function and batching to be completed by the ITIN clerical function. This more accurately reflects the date applications are input into the ITIN Real Time System (RTS). The IRM allows 45 days for applications that are suspended to be resolved.⁶² This timeframe was adopted for notices and is consistent with the timeframes used for processing returns within the interest free period. However, we agree that management information on suspended applications is currently limited on RTS. Contingent on funding availability, we plan to expand and improve the management reports available from RTS to enable the IRS to better monitor the status of suspended applications.

The National Taxpayer Advocate recommends that IRS permit applicants to file an ITIN application without a return prior to the filing season upon establishing a federal tax administration need, such as including a current pay stub. The IRS acknowledges that the majority of ITINs are used on tax returns. However, there are still significant issues that must be addressed to ensure that ITINs are issued and used for their intended purpose. The same ITIN usage statistics cited by the National Taxpayer Advocate in her report reflect that fully a quarter or more of all ITINs issued by IRS have not been used on tax returns.

The IRS motives for requiring the filing of a tax return with the ITIN application are hardly disingenuous, as suggested by the National Taxpayer Advocate. Rather, the IRS had, and continues to have, significant and valid concerns that ITINs were being requested for non-tax purposes, such as for obtaining a driver's license. Because a growing number of states were beginning to accept ITINs for driver's license purposes, in August 2003, the IRS took the unprecedented step of sending letters to all the state departments of motor vehicles to alert them to the risks of accepting ITINs as a form of non-tax identification. In March, 2004, this and related concerns about potential misuse of ITINs were also the subject of a joint hearing before the House Ways and Means Subcommittees on Oversight and Social

⁶¹ Procedures implemented by the ITIN Program Office for more effective tracking of applications and processing.

⁶² IRM 3.21.263 (May 13, 2008).

Security.⁶³ Indeed, during this hearing the General Accounting Office (GAO, now the Government Accountability Office) testified that it was able to obtain a bogus ITIN and use it for a variety of non-tax purposes that could allow someone to blend into society under a false identity. In light of these concerns, the IRS believes the requirement to attach a return to the Form W-7 ITIN application strikes a reasonable balance between the competing objectives of facilitating compliance with U.S. tax laws and ensuring, to the extent possible, that ITINs are not issued for purposes other than federal tax administration. The National Taxpayer Advocate's suggested acceptance of a pay stub in lieu of the requirement to file a tax return with the ITIN application will not achieve the same degree of assurance.

With regard to the National Taxpayer Advocate's additional concerns that taxpayers who are filing an ITIN application with a tax form are not able to file electronically and may not receive their refunds as quickly as other taxpayers, it is important to note that a taxpayer must apply for and obtain an ITIN only once. As a result, the taxpayer's inability to file electronically and any potential delay in receiving a refund will only occur in the year the ITIN is issued; subsequent years are not affected.

We agree with the National Taxpayer Advocate's recommendation that all applicants' requests for the return of original documents should be promptly acknowledged. We previously identified this as an area for improvement and are actively exploring options for an appropriate format that will acknowledge the applicant's inquiry and advise the taxpayer of the IRS's attempts to locate missing original documents. We expect to have the new procedures in place by 2010.

With regard to issuing decedents an ITIN, these types of situations are infrequent and unusual. The affected applicants represent less than one percent of the total volume of Form W-7 applications with returns that have been processed this year⁶⁴ and even less in prior years. We previously evaluated this issue and concluded that it was not prudent to allow ITINs for decedent applicants due to increased vulnerability of fraud, the limited tax purpose (one time use), and the IRS's limited ability to monitor and subsequently revoke the number to eliminate future use. All qualifying applicants must currently provide supporting documentations that proves their identity, foreign status, and continuing existence.⁶⁵ However, we are sensitive to taxpayers' need for a taxpayer identification number to comply with federal tax laws in this situation since decedents do not qualify for a temporary taxpayer identification number. As a result, effective for the 2009 filing season we will make every effort to accommodate decedent ITIN applications on a case-by-case basis after a review of the particular circumstances involved in each such application.

⁶³ *Social Security Number and Individual Taxpayer Identification Number Mismatches and Misuse, Joint Hearing Before the Perm. Subcomm. on Oversight and Perm. Subcomm. on Social Security of the H. Comm. on Ways and Means, 108th Cong. (Mar. 10, 2008).*

⁶⁴ *IRS, ITIN Production Report, Yearly Comparative Data for week ending Sept. 27, 2008 vs. Sept. 29, 2007; Suspense and Reject W-7 Reason Code Count Report (Sept. 30, 2008).*

⁶⁵ *IRM 3.21.263.5.3.2 (Feb. 19, 2008).*

Regarding the recommendation to provide a toll-free number that is answered by an employee of the ITIN operation, we agree that there is a need for Form W-7 applicants to have telephone access to skilled employees. However, this need is already being met without diverting resources from ITIN processing operations. Form W-7 applicant calls are routed to a special toll-free phone area with adequate resources and proficiency in handling a large volume of calls. We provide the employees in this area with the necessary training and access to appropriate databases to address ITIN customer inquiries. In addition to providing good customer service, we also believe this to be the most effective use of limited IRS resources.

We remain committed to the promotion and expansion of the Acceptance Agent Program. The IRS has an effective marketing and outreach strategy that is evidenced in the growth of the program. The number of Acceptance Agents has increased from 1,400 in August 2004 to 5,044 as of November 2008. The current IRS promotion and expansion strategy includes participation in conferences hosted by community-based organizations and other internal and external stakeholders, such as the LITC Conference, colleges and universities, and professional practitioner organizations. Additionally, we conducted outreach and recruitment workshops for Representative Rangel in February of 2007 and Representative Serrano in September 2007 for their non-profit constituents in New York. Information on the Acceptance Agent program is also shared annually at the IRS-sponsored Nationwide Tax Forums.

With regard to LITCs' opportunity to review ITIN forms and publications, the public and all stakeholders have the same opportunity to make suggestions to simplify forms or publications by e-mailing comments to [*taxforms@irs.gov](mailto:taxforms@irs.gov) or by writing to Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Avenue NW, IR-6526, Washington, DC 20224. External stakeholders can also e-mail comment or suggestions directly to the ITIN Program Office at ITINProgramOffice@irs.gov.

With regard to the recommendation to revise the ITIN rejection notice, the IRS will add a reference to Publication 4134, *Low Income Taxpayer Clinic List*, and the LITC webpage in notices for FY2010. In the interim, we will include this publication in our outreach activities.

Taxpayer Advocate Service Comments

The National Taxpayer Advocate is pleased that the IRS expresses a commitment to expanding the Acceptance Agent program, acknowledges the need for improvements in its management information system on suspended ITIN applications, and recognizes the need to accommodate applications for decedent taxpayers. We also commend the IRS for taking steps toward prompt acknowledgement of applicants' requests for the return of original documents and its plan to expand and improve the management reports available from the ITIN Real Time System (RTS) to better monitor the status of suspended applications. We will continue to monitor the IRS's progress in resolving these issues. However, the National Taxpayer Advocate is very concerned that the IRS has not considered viable and less burdensome alternatives to its current policy of requiring the filing of a tax return concurrently with the initial application for the ITIN.

The IRS has stated that receiving a return with the application is the *only* reliable way to verify that the ITIN number is being requested and properly used for tax administration purposes. The IRS has offered no rationale for this statement. The IRS permits an exception for ITIN assignment for a taxpayer who owns "an asset that generates income subject to IRS information reporting and/or tax withholding requirements," yet the IRS does not permit the assignment of an ITIN based on a comparable showing of earned income (*e.g.*, a pay stub) until filing a tax return.⁶⁶ This inconsistent treatment of unearned and earned income for assigning ITINs essentially ignores the legal requirement to provide the taxpayer identification number regardless of the type of income at issue.⁶⁷ The National Taxpayer Advocate has proposed a well-balanced approach to developing a process for the taxpayers to obtain ITINs during the year, prior to filing season, with proof of employment and withholding (or self-employment), *e.g.*, pay stubs, Forms 1099-MISC, *Miscellaneous Income*, etc. Such an approach would help the IRS smooth out its workload during the year, especially the logjam of ITIN applications during the filing season.⁶⁸

The IRS maintains that it had and continues to have concerns that ITINs were being requested for non-tax purposes, and therefore the requirement to file a tax return with the ITIN application strikes a reasonable balance between tax compliance and avoiding improper ITIN assignments. However, IRS data clearly indicates the majority of ITIN holders attempt to file returns and comply with the tax laws. Therefore, the IRS should continue to encourage aliens to obtain ITINs because the numbers are the entry point into the tax

⁶⁶ IRS Pub. 1915, *Understanding Your IRS Individual Taxpayer Identification Number* 11 (2004).

⁶⁷ IRC § 6109; Treas. Reg. § 301.6109-1(d)(3).

⁶⁸ Of the 1,409,903 ITIN applications with tax returns received by September 30, 2008 at the AUSPC, 1,201,109 (or 85 percent) had been received by May 19, 2008. IRS, *ITIN SP001 Reports* (May 19, and Sep. 30, 2008).

system for these taxpayers. By restricting ITIN assignment, the IRS risks pushing alien taxpayers into the cash economy.⁶⁹

The National Taxpayer Advocate is also concerned that denying an ITIN to a decedent, on the premise that the number might later be misused for a non-tax purpose, is unfair to the party that has a legitimate need for the ITIN. The IRS should be able to administer tax identification numbers without transferring the associated costs to the estates of the affected taxpayers. The National Taxpayer Advocate also disagrees that a case-by-case approach would resolve this matter, and serve the purpose of fair and uniform tax administration, because of the discretionary character of such action.

The National Taxpayer Advocate encourages the IRS to take greater measures to expand the parameters of the Acceptance Agent program as contemplated by the Treasury Regulations.⁷⁰

Recommendations

The National Taxpayer Advocate recommends that the IRS take the following actions to improve the ITIN application process:

1. Permit applicants to file an ITIN application without a tax return prior to the filing season if applicants can document that they are required to file returns.
2. Allow new ITIN applicants to file returns electronically.
3. Measure the processing time for *all* ITIN applications, including applications suspended by the IRS as incomplete.

⁶⁹ *Social Security Number and Individual Taxpayer Identification Number Mismatches and Misuse, Joint Hearing Before the Perm. Subcomm. on Oversight and Perm. Subcomm. on Social Security of the H. Comm. on Ways and Means, 108th Cong. (Mar. 10, 2008)* (testimony of Nina E. Olson, National Taxpayer Advocate; Mark Everson, former IRS Commissioner; Raul Yzaguirre, President of the National Council of La Raza; and Linton Joaquin and Marielena Hincapié, National Immigration Law Center).

⁷⁰ Treas. Reg. § 301.6109-1(d)(3)(iv).

MSP
#9**Access to the IRS by Individual Taxpayers Located Outside
the United States****Responsible Officials**

Richard E. Byrd Jr., Commissioner, Wage and Investment Division
 Chris Wagner, Commissioner, Small Business/Self-Employed Division
 Frank Y. Ng, Commissioner, Large and Mid-Size Business Division
 Jim Falcone, Acting Deputy Commissioner, Operations Support
 Frank Keith, Chief, Communications and Liaison

Definition of Problem

The United States taxes the worldwide income of U.S. citizens, resident aliens, and domestic corporations as well as the U.S.-sourced income of nonresident aliens and foreign corporations.¹ The current system of worldwide taxation is extremely complicated and difficult to understand.² Individual taxpayers located outside the United States need a venue to seek assistance in complying with their U.S. tax obligations.³ The IRS provides toll-free customer service to taxpayers within the United States and in some U.S. territories. However, those outside the country generally incur greater communication expenses, such as international telephone charges, transportation, and carrier mailing costs in trying to communicate with the IRS. One of the Wage and Investment (W&I) Operating Division's goals is "to ensure accurate, timely, accessible responses to tax law and tax account inquiries," but the IRS does not provide taxpayers with all the necessary resources.⁴ Although the IRS has developed a number of customer service initiatives as a part of its strategy for international tax administration, it does not devote enough resources to meet the needs and preferences of taxpayers outside the United States, jeopardizing the declared goal of improving taxpayer service.⁵

¹ See Internal Revenue Code (IRC) §§ 1(a), 11(a), 61(a), and 862(a)(5); Treas. Reg. § 1.1-1(b). See also IRC §§ 861, 862, 864, 871, and 882.

² International tax treaties play an important role in international taxation. The U.S. currently has tax treaties with 66 countries. See <http://www.irs.gov/businesses/international/article/0,,id=96739,00.html> (last visited July 21, 2008). These treaties provide for reduced rates and exemptions from U.S. taxes or foreign taxes on certain items of income from U.S. or foreign sources. These reduced rates and exemptions vary among countries and specific items of income, thus increasing the complexity.

³ IRC § 7701(a)(9) defines the term "United States" to include the 50 states and the District of Columbia.

⁴ IRS, W&I Division, *Wage & Investment Strategy & Program Plan FY 2008 – FY 2009* 33-34.

⁵ See IRS Large & Mid-Size Business Division (LMSB), *Servicewide Approach to International Tax Administration, Strategic Goal 1: Improve Taxpayer Service*, at http://lmsb.irs.gov/international/dir_compliance/global/sis1.asp (last visited Oct. 29, 2008).

Analysis of Problem

Background

Approximately five million American citizens (excluding the military) currently live outside the U.S.⁶ In addition, there are about 511,000 U.S. troops stationed in foreign countries.⁷ Civilian taxpayers living outside the U.S. filed more than 380,000 tax returns in tax year 2005, while military personnel overseas filed over 205,000 returns.⁸ These taxpayers need a venue to contact the IRS for the resolution of their account-specific and tax law inquiries.

Taxpayers Located Outside the United States Have Limited Options to Access the IRS.

Taxpayers receive assisted and self-assisted services from the IRS via telephone, face-to-face meetings, electronic communication, and mail. The IRS provides a toll-free telephone line for taxpayers residing in the United States and some U.S. territories to access multiple tax help topics, or reach a Customer Service Representative with inquiries ranging from tax law questions to adjusting their accounts.⁹ However, most taxpayers outside the U.S. cannot access the toll-free number for help with account problems, notices, and bills or to request a publication. These taxpayers must use a regular toll telephone number.¹⁰

Taxpayers Located Outside the United States Cannot Use Free Services to Pay Their Tax Liabilities.

The IRS advertises that taxpayers may use the Electronic Federal Tax Payment System (EFTPS) free of charge to pay federal taxes via the Internet or phone, 24 hours a day, seven

⁶ Teleconference with the Office of Policy Coordination and Public Affairs, Bureau of Consular Affairs, U.S. Dept. of State (July 21, 2008). The Department of State estimated 3,784,693 U.S. citizens (excluding U.S. Government (military and non-military) employees and their dependents) resided outside the U.S. in July 1999. See General Services Administration, *Federal Citizen Information Center*, at http://www.pueblo.gsa.gov/cic_text/state/amcit_numbers.html (last visited July 21, 2008).

⁷ Personnel and Procurement Statistics, U.S. Dept. of Defense, at <http://siadapp.dmdc.osd.mil> (last visited July 21, 2008). The total of 510,927 personnel includes 288,627 troops stationed abroad, 196,600 troops deployed in Iraq, and 25,700 troops deployed in Afghanistan (data as of Dec. 31, 2007). The number does not include 43,009 civilian defense employees stationed abroad (July 1, 2008).

⁸ Compliance Data Warehouse, *Individual Returns Entity Table, Tax Year 2005*.

⁹ Internal Revenue Manual (IRM) 21.1.1.6, *Customer Service Representative (CSR) Duties* (Oct. 6, 2005).

¹⁰ Taxpayers must search the IRS.gov website to find the toll number at the Philadelphia Service Center, which is three links deep. Such a search is not easy to complete and may take an extended time. A taxpayer who does not have Internet access or cannot download IRS forms and publications may find it difficult, if not impossible, to figure out how to contact the IRS. Currently, the IRS provides customer service to international taxpayers through toll telephone service at the Philadelphia Accounts Management Center (PAMC).

days a week.¹¹ However, taxpayers outside the U.S. who do not have access to the Internet may incur international long distance phone charges.¹²

Taxpayers Located Outside the U.S. May Need More Time to Respond to IRS Notices and Requests for Information Documents.

In fiscal year (FY) 2007, the IRS sent more than 770,000 balance due notices, more than 93,000 math error notices, and approximately 2,500 Automated Underreporter (AUR) program notices to military addresses (*e.g.*, APO, FPO) and foreign addresses.¹³ More than 17,500 of these notices (sent to foreign locations and some U.S. territories) included a toll-free number that is generally not accessible from these locations.¹⁴ When taxpayers cannot reach the IRS by phone, they have to use foreign postal providers to respond to IRS correspondence.¹⁵ Taxpayers in countries lacking reliable postal systems may experience extended delays receiving time-sensitive documents from the IRS, or may not receive them at all.

The IRS generally grants a 30-day grace period before taking action against taxpayers residing overseas. However, since the IRS counts the period as starting on the date it mails the correspondence, and not on the date the taxpayer receives it, 30 days may be too short a time for the overseas taxpayer to respond.¹⁶ The IRS should consider allowing an additional 60 days for overseas taxpayers to reply to all IRS correspondence, similar to the additional 60 days provided by statute for these taxpayers to respond to notices of

¹¹ The Electronic Federal Tax Payment System is administered by the U.S. Department of Treasury, and enables businesses and individuals to pay all their federal taxes electronically. See <http://www.irs.gov/efile/article/0,,id=98005,00.html> (last visited Nov. 24, 2008).

¹² Taxpayers in 25 countries and territories of the total number of 194 countries and 67 territories may use AT&T international access telephone code to connect to the EFPTS system from these locations. Even though, when the taxpayers reach the AT&T toll free line in these locations, the AT&T voice prompt requests a calling card number and PIN before connecting to the EFTPS toll free line (*i.e.* the taxpayers should sign up for an AT&T calling card and may incur international long distance charges). Taxpayers in countries that do not have the code must use the EFTPS direct toll telephone number. See U.S. Department of the Treasury, *International Electronic Federal Tax Payment Deposit Instruction Booklet* 18 (Feb. 2006). This booklet, which is not available to the general public in paper form or at the IRS website, was internally provided to TAS in an email communication. See also U.S. Department of State Fact Sheet, *Independent Countries of the World*, at <http://www.state.gov/s/inr/rls/4250.htm> (Mar. 20, 2008); AT&T International Dialing Guide, at http://www.business.att.com/bt/dial_guide.jsp (last visited Nov. 4, 2008).

¹³ APO stands for "Army Post Office" and is associated with U.S. Army or Air Force installations. FPO stands for "Fleet Post Office" and is associated with Navy installations and ships in the United States. Regarding the balance due and math error notices, IRS sent 581,035 to individuals, and 285,916 to entities. W&I response to TAS information request (July 24, 2008). Automated Underreporter notices were sent only to individuals. SB/SE response to TAS information request (June 17, 2008).

¹⁴ The IRS sent over 4,400 notices to foreign addresses. Guam and American Samoa taxpayers received more than 13,000 notices, which included a toll-free number generally not accessible by the taxpayers in these territories. W&I response to TAS information request (July 24, 2008).

¹⁵ The reasons why taxpayers cannot reach the IRS toll phone number from overseas may range from individual financial difficulties to lack of international long-distance phone service.

¹⁶ IRM 3.30.123.5.1 (Jan. 1, 2008) provides suspense purge dates for taxpayer correspondence in response to IRS letters and notices. The time the taxpayer is given to answer generally amounts to 30 calendar days for domestic taxpayers and an additional 30 days for those residing overseas. In trust fund recovery penalty (TRFP) cases, the IRS gives only 15 additional days to taxpayers outside the country to consent to or protest the proposed assessment (75 days to taxpayers outside the U.S.; 60 days to domestic taxpayers). See Rev. Proc. 2005-34 § 4.01, 2005-24 I.R.B. 1233; IRM 5.7.6.1.1 (Feb. 1, 2007).

deficiency.¹⁷ The IRS should also consider using a delivery confirmation service to verify receipt of correspondence by taxpayers outside the United States.

The IRS Provides Limited Face-to-Face Assistance to Taxpayers Located Outside the United States.

Taxpayers with U.S. filing obligations may reside in 194 countries, and more than 60 territories, colonies, and dependencies of these countries.¹⁸ Table 1.9.1 below lists the top ten countries where Americans reside outside the United States. The IRS, however, has offices in only four foreign nations,¹⁹ and even at these locations, the IRS tax attachés' main responsibilities focus on examinations and exchange of information agreements with foreign governments.²⁰ While these offices also assist American taxpayers living abroad, only a limited number of employees are assigned to taxpayer service in the foreign posts.²¹ The number of phone lines dedicated to customer service averages from two to four per office.²²

¹⁷ IRC § 6213(a) restricts assessment of a deficiency in respect of any tax against "a person outside the United States" until the expiration of 150-day period after the notice of deficiency is mailed (90 days for domestic taxpayers). See *id.*; see also IRM 25.6.5.7.2 (Mar. 1, 2006). In another example, U.S. citizens and resident aliens who file calendar year returns are required to file tax returns by April 15. However, taxpayers located overseas on the due date receive an automatic extension of two months or 60 days (until June 15 for calendar year filers). See IRM 3.38.147.3.12, *Extension of Time to File International Returns* (Jan. 1, 2008). Thus, a minimum additional 60-day timeframe for responding to all IRS correspondence by taxpayers outside the country should apply uniformly across the board to all types of IRS correspondence. This would provide taxpayers located overseas an adequate time to respond to IRS inquiries and notices. Currently, Accounts Management allows response times as long as 60 days in some cases (depending on the country in which the taxpayer resides). See W&I response to TAS research request (July 23, 2008). LMSB suspense dates for international correspondence are based on the facts and circumstances of the case and examiners/managers use their professional judgment in determining these dates and granting extensions when necessary. See LMSB response to TAS research request (July 18, 2008).

¹⁸ See U.S. Department of State Fact Sheet, *Independent Countries of the World*, at <http://www.state.gov/s/inr/rls/4250.htm> (Mar. 20, 2008).

¹⁹ The IRS posts are located in Frankfurt, Germany; London, United Kingdom; Paris, France; and Beijing, China. See IRM 4.30.3, *Overseas Posts* (Sept. 12, 2006). See also IRM 4.30.3.3 (Sept. 12, 2006) for post jurisdictions. The IRS announced the opening of a new tax attaché office in Beijing, China on November 3, 2008. See http://lmsb.irs.gov/international/dir_treaty/eoi_overseas/postnews.asp (last visited Oct. 29, 2008). The office in China will serve approximately 65,157 U.S. citizens residing in China. See Federal Citizen Information Center, U.S. General Services Administration, at http://www.pueblo.gsa.gov/cic_text/state/amcit_numbers.html (last visited July 21, 2008). While the number of overseas posts providing taxpayer service declined from seven to three, the number of overseas posts dedicated to Criminal Investigation (CI) steadily increased. In 2002, the IRS had seven overseas posts of duty (PODs), in Berlin, London, Mexico City, Paris, Rome, Singapore, and Tokyo. CI had Country Attachés stationed in Frankfurt, Mexico City, Bogota, Hong Kong, and Ottawa. See IRM 4.30.3.1 (Feb. 1, 2002). In 2004, the IRS added a CI POD in London and reduced the number of tax attachés that provide customer service to three – in Berlin, Paris, and London. See IRM 4.30.3.1 (Aug. 1, 2004). Since 2006, the IRS added two more CI PODs, in Baghdad and Barbados, for a total of eight, while the number of PODs dedicated to customer service remained the same. See IRM 4.30.3.1 (Sept. 12, 2006).

²⁰ Attachés also work directly with IRS agents in LMSB, SB/SE, TE/GE, and CI who need information about ongoing audits. See IRS Today, Vol. 4 No.1, (Jan./Feb. 2008), *A Day in the life of the Paris Tax Attaché*, at <http://communications.no.irs.gov/ProductIndex/IRSToday/IRST200801/story10.asp> (last visited Aug. 8, 2008). The main purpose of attaches is to exchange information and provide taxpayer assistance to Americans living abroad. See *id.*

²¹ LMSB response to TAS research request (July 15, 2008). The London office has four Taxpayer Service Specialists, while both the Frankfurt and Paris offices have two Taxpayer Service Specialists.

²² *Id.*

Table 1.9.1, Top Ten Countries Outside the U.S. Where Americans Reside²³

Country	U.S. Citizens Residing	IRS Post	Customer Service Employees
Mexico	1,036,300	No	0
Canada	687,700	No	0
United Kingdom	224,000	Yes	4
Germany	210,880	Yes	2
Italy	168,967	No	0
Philippines	105,000	No	0
Australia	102,800	No	0
France	101,750	Yes	2
Israel	94,195	No	0
Spain	94,513	No	0

The IRS Provides Limited Internet-based Services to Taxpayers Located Outside the United States.

Taxpayers outside the U.S. rely on the IRS.gov website as the main source of information on international tax matters. The site directs taxpayers to various forms and publications, but the materials do not offer consistent information on how to reach the IRS. For example, Publication 593, *Tax Highlights for U.S. Citizens and Residents Going Abroad*, provides instructions on how to file returns and describes resources for taxpayers seeking assistance. The publication lists three telephone numbers at U.S. embassies and recommends that the taxpayer write to the Philadelphia Service Center (PSC).²⁴ Surprisingly, the publication does not list the toll number for the PSC. Publication 54, *Tax Guide for U.S. Citizens and Resident Aliens Abroad*, does include the number, but only after directing taxpayers to the embassy phone numbers.

To help taxpayers with tax law questions (not account-related), the IRS implemented Electronic Tax Law Assistance (ETLA) in 1996, allowing taxpayers to ask general tax law questions via the Internet. In 2004, however, as the feature became more popular, and the volume of inquiries grew, the IRS moved the link “deeper” into its website.²⁵ This link is now at the very bottom of the International web page and is difficult to find. As a result,

²³ See Federal Citizen Information Center, U.S. General Services Administration, at http://www.pueblo.gsa.gov/cic_text/state/amcit_numbers.html (last visited July 21, 2008).

²⁴ See Publication 593, *Tax Highlights for U.S. Citizens and Residents Going Abroad* 11 (Jan. 2008); Publication 54, *Tax Guide for US Citizens and Resident Aliens Abroad* 45 (2007).

²⁵ W&I Research Group 4, *Analysis of Communication Channel Migration in Private Industry Report Project: 4-04-04-2-036N* (Sept. 2004); see Joint Operations Center (JOC) ETLA Reports, at <http://joc.enterprise.irs.gov> (last visited Nov. 24, 2008). In the beginning of FY 2004, the IRS had a direct link on the website home page. The increase in web mail volume in the first month of the tax season (Jan. 2004) led the IRS to move the link “deeper” into the site with the only access through the site map (i.e., no links from other pages). See IRM 21.2.1.4.24.1.2, *Electronic Tax Law Assistance* (Oct. 1, 2004). The research report concluded that the movement of the link led to the decreased usage by taxpayers.

ETLA usage by taxpayers overseas has dropped by 95 percent from its peak in FY 2003, as evidenced by the table below.²⁶

TABLE 1.9.2, ETLA Web Mail FY 1998-2008*

Fiscal Year	Volume Received	Questions from Aliens and U.S. Citizens Abroad
1998	73,901	4,082
1999	249,963	16,145
2000	303,925	15,424
2001	264,458	14,927
2002	176,960	11,106
2003	231,669	18,246
2004	110,813	8,294
2005	30,784	4,909
2006	18,767	3,611
2007	15,357	3,375
2008	16,383	3,483

* Through June 20, 2008.

Usage by international taxpayers has declined every year since 2003, the last year the ETLA link was easily accessible. International taxpayers need a way to seek assistance, not only for routine tax law inquiries, but also for questions on tax law changes.²⁷ Prominent display of the ETLA on the IRS International web page would provide taxpayers access to the tax law explanations they need.

The IRS Provides Limited Access to Forms and Publications in Foreign Languages for Persons with Limited or No English Proficiency.

As a part of the federal government's effort to expand and integrate products and services for Limited English Proficient (LEP) taxpayers, the IRS established the Multilingual Initiative program.²⁸ The IRS committed to help taxpayers understand and meet their tax responsibilities regardless of their inability to understand and speak English. IRS strategic

²⁶ IRS, *Joint Operations Center (JOC) ETLA reports FY 1996 thru FY 2007 and June 2008*, at <http://cpmm6.ausc.irs.gov/ETLA/scripts/test/ReportPicker.cfm> (last visited Nov. 24, 2008). Some questions may be from resident aliens and taxpayers within the U.S. asking about international issues. However, the number is unknown.

²⁷ One recent example of changes in the international tax law was the Tax Increase Prevention and Reconciliation Act (TIPRA) of 2005, which reduced the foreign earned income (and foreign housing costs) exclusion amounts by the aggregate amount of any deductions or other exclusions otherwise disallowed. In many cases, TIPRA increased the federal income tax imposed on U.S. taxpayers residing overseas to an amount greater than it would have been under previous law. See TIPRA, § 515, Pub. L. No. 109-222, 120 Stat 345 (2006); see also IRC § 911(f); Notice 2006-87, 2006-43 I.R.B. 766; Notice 2007-25, 2007-12 I.R.B. 760.

²⁸ See Executive Order 13166, *Improving Services for Persons with Limited English Proficiency (LEP)*, 65 FR 50121 (2000); see also Policy Statement P-22-3, IRM 22.31.1.1.2 (Apr. 1, 2006).

plans include removing impediments for groups with language, cultural, and other barriers, and increasing the scope and accessibility of services offered electronically.²⁹

However, the IRS has translated only a limited number of forms and publications into foreign languages.³⁰ The information in foreign languages is not easily accessible from the IRS website, which lists forms and publications by date and by number, but not by language.³¹ Nor does the Spanish version of the site contain all the information and resources available on the main English site.³² In contrast, the revenue agencies of many other countries translate their entire sites and many tax assistance materials into various languages.³³

Taxpayers outside the United States may have limited English proficiency and thus experience difficulties in understanding their U.S. tax obligations. As Spanish is the third most common language in the world, the IRS should consider completely translating its website and all forms and publications into Spanish.³⁴ The IRS should supplement its online resources with a list of easily accessible forms and publications in other widespread world languages.

Taxpayers Located Outside the United States Incur Downstream Costs to Receive the Information or Services They Need to Comply with Federal Tax Laws.

Taxpayers outside the United States incur phone charges when calling the international toll line at the PSC. Overseas taxpayers must navigate through two menus before placement in the queue, and then the average wait time in the queue exceeds five minutes.³⁵ Taxpayers frustrated with navigating through menus and holding after being placed in a queue often disconnect before reaching an assistor. Those who cannot obtain necessary assistance and face the complexity of international tax laws and regulations may resort to hiring tax practitioners, who pass on their communication costs in reaching the IRS to the same taxpayers.

²⁹ W&I, *Strategy & Program Plan FY 2008 – FY 2009* 33.

³⁰ The MLI provides minimal written translation of vital IRS documents in the following languages: Spanish, Chinese (simplified), Chinese (traditional), Korean, Russian, and Vietnamese.

³¹ See IRS website, at <http://www.irs.gov/formspubs/index.html> (last visited June 26, 2008).

³² See <http://www.irs.gov/espanol/index.html> (last visited Nov. 24, 2008).

³³ For example, the Canada Revenue Agency's website is viewable in English and French, at <http://www.cra-arc.gc.ca/menu-e.html>; Mexican Tax Administration website - in Spanish and English, at <http://www.sat.gob.mx>; Netherlands Tax Agency - in Dutch, English, and German, at <http://www.belastingdienst.nl/>; Chinese State Administration of Taxation website - in Chinese and English, at <http://www.chinatax.gov.cn/n480462/index.html>; and the Australian Taxation Office has its website translated into 19 languages other than English, at <http://www.ato.gov.au/default.asp?menu=6753> (all sites - last visited June 26, 2008).

³⁴ English is the fourth most common language, with 340 million speaking it as a first language. The three most spoken languages are: Chinese - 873 million; Hindi - 370 million; and Spanish - 350 million. See *Top 30 languages of the world*, at http://vistawide.com/languages/top_30_languages.htm (last visited June 26, 2008).

³⁵ IRS toll line places taxpayers not connected immediately with a live call center representative in a queue. IRS call center representatives take the calls placed in a queue in the order they were received. JOC FY 2007 Average Speed of Answer (ASA) for International phone number 215-516-2000 was 301 seconds. See *Enterprise Snapshot Report* (Sept. 30, 2007), at <http://joc.enterprise.irs.gov/etd/snapshots/fy07/snapshotsres.asp> (last visited Nov. 4, 2008).

The IRS Joint Operations Center (JOC), which monitors calls to the international toll line, reports the number of callers who hang up before placement in the queue has increased by 95 percent from 2004 to 2007, while the number who hang up *after* being placed in the queue has risen 407 percent.³⁶ The average wait time once in the queue has increased by 125 percent from 2004 to 2007.³⁷ The IRS should take steps to minimize the wait time for overseas taxpayers reaching the toll line and consider providing alternatives, such as call back and estimated wait time options.³⁸

Inefficient Customer Service to Taxpayers Outside the U.S. Contributes to Noncompliance.

Generally, a U.S. citizen or resident residing outside the U.S. must file a U.S. income tax return unless his or her total income, without regard to the foreign earned income exclusion, is below an amount based on filing status.³⁹ However, a substantial percentage of Americans residing abroad fail to file U.S. tax returns.⁴⁰ A General Accounting Office (GAO, now the Government Accountability Office) report concluded that although the scope of noncompliance abroad is largely unknown, evidence suggests that it may be prevalent and the revenue impact significant.⁴¹

The IRS does not measure the level of noncompliance by U.S. taxpayers abroad that is attributable to ineffective customer service.⁴² The IRS recognizes a significant amount of noncompliance is due to tax law complexity, which leads to errors of ignorance, confusion, and carelessness.⁴³ This problem especially applies to taxpayers outside the country who may experience difficulties with the complexity of international tax laws and regulations, the inability to reach the IRS to obtain assistance, and the unavailability of necessary forms

³⁶ JOC, International Toll Number 215-516-2000, at <http://joc.enterprise.irs.gov>. (last visited Nov. 4, 2008). Telephone abandonment is a call terminated by the taxpayer when he/she hangs up before being routed to the next automated menu topic or before he/she speaks with a Customer Service Representative (Assistor). Thus, primary abandonment refers to termination by the taxpayer before being placed into the “queue.” Secondary abandonment refers to termination by the taxpayer after placement in the queue, but before connection to an assistor. A queue is a holding place for incoming calls waiting for an available resource. A queue keeps calls in sequence so they will be answered in the order received.

³⁷ JOC, International Toll Number 215-516-2000, at <http://joc.enterprise.irs.gov>. (last visited Nov. 4, 2008).

³⁸ Participants in a recent toll-free survey rated “the time it took to reach the IRS” the highest in dissatisfaction and the top opportunity for improvement. Telephone charges did not influence the responses from the taxpayers, as they called the toll free number. The survey also piloted an estimated wait time option, that two-thirds (66 percent) of taxpayers heard. Just under one-half (46 percent) of the taxpayers, who heard the estimated wait time message, said that hearing the message had a positive effect on their overall call experience. See Pacific Consulting Group, Internal Revenue Service Customer Satisfaction Survey, *Toll-Free National Report 6* (May 2008).

³⁹ See IRC § 6012(a); Treas. Reg. § 1.1-1(b); IRS Publication 54, *Tax Guide for U.S. Citizens and Resident Aliens Abroad 3* (2007). For 2007, the threshold amounts were \$8,750 for a single individual under the age of 65 and \$17,500 for a married couple filing jointly, both of whom were under age of 65.

⁴⁰ See IRS Information Letter, IRS INFO 2001-0198 (Sept. 28, 2001). U.S. citizens and residents residing abroad have an obligation to file U.S. tax returns while overseas even if they earn less than the excludable amount under IRC § 911.

⁴¹ GAO, GAO/GGD-98-106, *Tax Administration Nonfiling Among U.S. Citizens Abroad 21-22* (May 1998).

⁴² Department of the Treasury, *Budget in Brief FY 2007 60*, at <http://cl.no.irs.gov/la/BranchB/Budget/FY07%20irs%20bib.pdf> (last visited Nov. 24, 2008).

⁴³ IRS, *Reducing the Federal Tax Gap, A Report on Improving Voluntary Compliance 6* (Aug. 2, 2007).

and publications. Some individuals may be unaware of their status as U.S. taxpayers with an obligation to file a U.S. tax return.⁴⁴

An Increasing Number of Overseas Taxpayers Seek Assistance from the Taxpayer Advocate Service.

Taxpayers unable to reach the IRS often seek the assistance of the Taxpayer Advocate Service (TAS).⁴⁵ TAS case receipts for taxpayers with military and foreign addresses increased 550 percent between FY 2005 and FY 2007.⁴⁶ A review of cases involving civilian taxpayers with foreign addresses reveals that 24 percent of the inquiries came from just two countries.⁴⁷ Twenty-two percent of all inquiries involved three TAS primary issue codes:

- Form W-7, *Individual Taxpayer Identification Number (ITIN)*;
- Original return processing; and
- Reconsideration of assessment (Substitute for Return, IRC § 6020(b), Audit).⁴⁸

The growing confusion of overseas taxpayers who experience difficulty in accessing the IRS customer service from abroad contributes to noncompliance among these taxpayers.⁴⁹

IRS Plans Improvements to International Taxpayer Service.

The W&I division suggests as part of a servicewide approach to international tax administration a number of measures, which, if adopted, will increase the accuracy and speed at which employees respond to international taxpayers calling the toll telephone number at the PSC. These initiatives include:

- Creation of an online reference library to provide research support to IRS employees assisting overseas taxpayers at the Philadelphia Accounts Management (AM) function;⁵⁰

⁴⁴ For example, an individual who was born outside the U.S. may be a U.S. citizen by reason of his parents' U.S. citizenship and subject to U.S. tax. Similarly, green card holders who no longer reside in the U.S. but have not surrendered their green cards remain subject to U.S. tax. Department of Treasury, Office of Tax Policy, *Income tax Compliance by U.S. Citizens and U.S. Lawful Permanent Residents Residing Outside of the U.S. and Related Issues* 14 (May 1998).

⁴⁵ IRS has a link on the International Taxpayer web page for the TAS. The link provides several phone numbers for TAS (depending on where the taxpayer resides).

⁴⁶ Taxpayer Advocate Management Information System (TAMIS) database, FY 2005, FY 2006, and FY 2007.

⁴⁷ Canada submitted 15 percent of total inquiries, followed by the United Kingdom with nine percent. *Id.*

⁴⁸ An Audit Reconsideration is the process the IRS uses to reevaluate the results of a prior audit where additional tax was assessed and remains unpaid, or a tax credit was reversed, and the taxpayer does not agree with IRS's determination. It is also the process the IRS uses when the taxpayer contests a Substitute for Return (SFR) determination by filing an original delinquent return. An SFR is a return prepared by IRS for a taxpayer under IRC § 6020(b). The IRS will prepare the return using information they have received from third parties. The return will not include any additional exemptions or expenses. An audit is a return selected for examination.

⁴⁹ For additional information on ITIN problems, see Most Serious Problem, *IRS Processing of ITIN Applications Significantly Delays Processing of Taxpayer Returns and Refunds*, *supra*.

⁵⁰ W&I Strategy Document, *Support for Servicewide Approach to International Tax Administration* 10 (May 9, 2008).

- Review and update of the IRM, the Probe and Response (P&R) Guide, and Technical Communication Documents to include current and accurate guidance that has an impact on international tax and U.S. territory issues;⁵¹
- Conversion and upgrade of the existing International P&R Guide Tax Law Categories into the Interactive Tax Law Assistant (ITLA) enhanced guidance interface, now underway with a phased approach to continue deployment of ITLA content internally through FY 2009;⁵² and
- The Customer On-Line Decision Support Tool (COLDS), releases 1 and 2, is planned for deployment on IRS.gov in FY 2009 and 2010 for use by internal and external customers.⁵³

Other planned initiatives to improve customer service for international taxpayers include:

- Exploration of options to improve the quality of IRS outreach materials available to taxpayers outside the U.S.;⁵⁴
- Development of an opinion survey to address the unique needs, preferences, and behaviors of overseas taxpayers;⁵⁵
- Focus group discussions with tax practitioners at the FY 2008 Nationwide Tax Forums in Atlanta, Chicago, and San Diego, addressing the services the IRS should provide for international taxpayers;⁵⁶ and
- LMSB outreach for the international taxpayer population, including citizen nights, tax assistance tours, tax forum presentations, publications in consular news letters, news circulars, and tax journals, tax pamphlet distribution, and updates to the international section on IRS.gov.⁵⁷

Insufficient Funding May Hinder IRS Plans for Enhancing International Customer Service.

The IRS suspended many prior toll-free initiatives due to the funding constraints that often affect customer service initiatives. Once the IRS develops new initiatives, it submits a budget request to the IRS Oversight Board for approval, then to the Department of Treasury, then to the Office of Management and Budget, and finally to Congress as a part of the

⁵¹ *Id.*

⁵² ITLA is a logic driven, interactive tool that provides the probes, responses, and answers needed for assistors to address customer tax law inquiries in accounts management (AM) and field assistance (FA) functions. W&I, *Customer On-line Decision Support Tool Release 1* (June 12, 2008).

⁵³ COLDS release 1 will be launched in FY 2009 and upgrade the existing Frequently Asked Questions (FAQ). COLDS release 2 will display an enterprise tax law guide for the internal assistors in both AM and FA functions and for the use of taxpayers and practitioners. The tool will enhance the assistor and taxpayer self service capability by guiding them to accurate answers to tax law questions not addressed by the FAQ section on the web. *Id.*

⁵⁴ W&I Strategy Document, *Support for Servicewide Approach to International Tax Administration 14* (May 9, 2008).

⁵⁵ *Id.* at 15.

⁵⁶ *Id.* at 8. W&I incorporated questions concerning taxpayer service suggested by TAS. See *id.* at 15.

⁵⁷ LMSB response to TAS information request (May 25, 2008).

President's budget.⁵⁸ Since desirable projects compete for limited resources, the IRS cannot timely fund many of the projects.⁵⁹ Unfortunately, funding issues often lead to rejected or delayed initiatives for enhancing customer service.⁶⁰

During the third quarter of FY 2008, TAS joined forces with W&I, LMSB, and the JOC Business Requirements Integration and Deployment Group to develop business requirements for international toll-free telephone access. This effort led the IRS to make a Change Request (CR) to MITS that, if approved for funding, would provide international toll-free telephone access to the AM function in Philadelphia and National Taxpayer Advocate (NTA) toll-free line for U.S. taxpayers in Canada and Mexico. Both TAS and AM functions have requested toll-free access in Canada and Mexico, later followed by expansion to other countries with large U.S. taxpayer populations.⁶¹ The work request went forward as a priority. However, the IRS reported the resources needed to implement this initiative exceed what MITS has available. Another CR has been submitted requesting costing for this initiative, and it is anticipated the initiative may be incorporated in the Modernization Vision and Strategy Process (MV&S).⁶²

Conclusion

Insufficient customer service places overseas taxpayers at a clear disadvantage compared to their counterparts located in the United States. These taxpayers face significant difficulties in obtaining the necessary information from the IRS to comply with their tax obligations. International taxpayers need adequate taxpayer service before they file their returns, due to the complexity of international tax law. Such taxpayer service could significantly reduce unintentional errors and improve voluntary compliance. The IRS should provide these taxpayers with adequate options to obtain information, and also to resolve their account issues without additional financial burden.

The IRS should consider taking the following actions to improve customer service for taxpayers overseas: provide international toll-free telephone access to the Accounts Management function in Philadelphia and NTA toll-free line for U.S. taxpayers in Canada

⁵⁸ SB/SE, *Roles & Input in the IRS Budget Formulation Process: A Framework for Strategy & Finance/Business Unit Collaboration*, at http://sbse.web.irs.gov/SF/Finance/Formulation/Budget_Formulation_Process.pdf (last visited May 6, 2008).

⁵⁹ IRS, In the Know, *Modernization Vision and Strategy Program Completes FY 2009 IT Portfolio Selection Cycle*, Vol. 3, Issue 13 (June 28, 2007), at http://mits.web.irs.gov/NoSearch/M_Communications/IntheKnow/20070628Vol3Iss13/MV&ScompletesITPortfolioSelectionCycle.htm (last visited Nov. 24, 2008).

⁶⁰ In October 2003, AM initially submitted a Change Request (CR) 2004-009 to Modernization Information Technology Services (MITS) requesting development and implementation of cost-free phone service for U.S. taxpayers residing outside of the continental United States. The request was re-numbered and re-submitted as CR 2007-026 in October 2006. MITS operational and maintenance budgets have been unable to incur additional costs associated with providing this service. W&I response to TAS research request (July 23, 2008).

⁶¹ On May 30, 2008, CR 2007-026 was renumbered as CR 2008-115 (International Call Processing – AM). This CR requests access to IRS services via no-cost/low-cost telephone service for customers residing outside the United States with IMF, BMF, EIN, and Tax Law issues. In addition, CR 2008-116 (International Call Processing – TAS) was submitted requesting similar functionality for customers seeking TAS assistance. Ranking for both CRs are high priority (ranked seven and eight out of 29) by the business units. Consideration will be given to both change requests, with other business priorities competing for limited MITS resources and funding. W&I response to TAS research request (July 23, 2008).

⁶² Conference call with IRS (Sept. 4, 2008).

and Mexico, later followed by expansion to other countries with large U.S. taxpayer populations;⁶³ provide taxpayers located outside the United States with first access to the Internet Customer Account Services (ICAS) system; prominently display the ETLA on the IRS international web page; and implement Estimated Waiting Time (EWT) functionality on IRS toll customer service lines.

IRS Comments

International tax law can be extremely complex and, as the international community continues to grow, it is essential to enhance the level of assistance to these taxpayers. In 2007, the IRS implemented the Servicewide Approach to International Tax Administration; a far-reaching plan that engages every operating division to strategically address international tax issues. Improving international customer service is a key component of this approach and each division is committed to doing its part.

One of the primary elements of our focus is to provide U.S. citizens living abroad, international taxpayers, and taxpayers in the U.S. territories, with pre-filing assistance that includes clear and accurate information before they file their tax return. A number of strategic initiatives have been adopted or implemented to achieve this goal. For example, an IRS task force is working with the State Department to develop consistent, comprehensive, tax information that will be placed on every U.S. Embassy/Consulate web page in the world. Enhancements have been added or expanded on the IRS.gov website, such as the International Frequently Asked Questions, monthly International Tax Gap Articles, comprehensive information on our tax treaties, and information on the expatriation tax provisions, foreign earned income exclusion, and housing cost limitations. Presentations on “International Tax Issues” were delivered to thousands of tax professionals in six cities at the 2006, 2007, and 2008 IRS Tax Forums. During the 2008 filing season, IRS employees at the London, Frankfurt, and Paris posts assisted over 30,000 taxpayers in countries under their jurisdiction. These employees also delivered nine tax seminars to groups of U.S. citizens residing abroad, and participated in seven American citizen nights where tax questions were answered.

Throughout the years, the IRS has provided a number of customer services to the international taxpayer. Approximately 300 employees in Accounts Management (AM) are dedicated to answer both written and telephone inquiries on international tax law and account related issues. AM partnered with Compliance to develop training tracks and to expand the Probe and Response Guide to include a number of additional international tax issues to increase the scope of questions Accounts Management will address, as well as improve the accuracy of their responses. These new topics will be converted to the Interactive Tax Law Assistant in 2009. Additionally, monthly conference calls are conducted by headquarters

⁶³ The IRS has already informed TAS that the resources needed to provide toll free-telephone service for taxpayers located outside the United States exceeds the available resources that MITS currently has available. However, we recommend that costing of this initiative be completed, and a business case developed and submitted for prioritization in the MV&S process.

quality analysts with the international tax law department manager, team leaders, and work leads to share information about trends and improvement opportunities related to international telephone service. Other international services provided by the IRS include the U.S. Residency Certification, the International Centralized Authorization File, International Employer Identification Number, the Military Cover-Over program (a government to government program whereby IRS remits to certain U.S. territories taxes paid by former territory residents currently serving in the U.S. armed forces), and the processing of a variety of tax and information returns unique to the international customer.

Generally, online links, such as the Electronic Tax Law Assistant (ETLA), are strategically placed on IRS.gov to encourage the customer to first research and use self-service applications to find answers to their questions before using ETLA. IRS web pages are designed to optimize the self-service resolution of customer inquiries first, and then provide a venue for assisted resolution.

As noted by the National Taxpayer Advocate, there were a total of 251,000 balance due and math error notices sent to foreign addresses during FY 2007. A review of these notices revealed that in some cases the toll-free number was incorrectly listed in the space where the international toll number should have been listed. However, of these notices less than 1,000 erroneously included a toll-free number that cannot be accessed from locations outside the United States and U.S. territories.⁶⁴ A programming change will be requested to correct this error.

With regard to the recommendation that the IRS allow an additional 60 days for overseas taxpayers to reply to all IRS correspondence, as noted by the National Taxpayer Advocate, the IRS already allows additional time for overseas taxpayers to respond. This additional time varies depending on the type of correspondence involved. While the IRS will review the timeframes allowed for responses to international correspondence, we are unaware of any data that supports the supposition that current timeframes are inadequate or that the costs associated with using international delivery confirmation services are warranted.

The IRS continually strives to provide optimum customer service to all customers and has continually explored opportunities to provide cost free/low cost telephone service to the international customer segment. However, in addition to the IRS's obligation to provide the best possible service to all customers, there is an equal responsibility to balance that service with the associated costs. The potential financial burden to provide "no cost" telephone service to all international customers is prohibitive and is the primary reason that this service has not been instituted to date. For example, based on FY 2008 international service circuitry occupancy for calls received, and applying the average cost (\$1.49) for each minute, the circuitry cost would be roughly \$9.8 million for FY 2008. This represents an average circuitry cost of \$38.39 per handled call, 79 times higher than comparable circuitry

⁶⁴ Notice Gatekeeper, *Fiscal Year 2007 Math Error and Balance Due Notices*.

usage charge for domestic calls.⁶⁵ This cost estimate is for usage only and does not factor in any Modernization and Information Technology Services (MITS) costs associated with design, operations and maintenance, nor any potential increase to staffing to meet the demand which would likely result from offering international toll-free service. However, as we continue to assess this issue we will explore the most cost effective options on a country by country basis, including the recommended service for Canada and Mexico.

Although the IRS does not provide a toll-free channel for international callers at this time, military personnel stationed overseas can get help with meeting their tax obligations through support services such as Volunteer Income Tax Assistance (VITA) and the Armed Forces Tax Council, which provide assistance to all branches of the Armed Services. Moreover, the Military OneSource online system provides free online tax preparation and filing for members of the armed forces and their families, along with guidance and answers to their tax questions.

We agree that it would be desirable to provide an accurate EWT on current international service lines as we do with many of the toll-free product lines. However, international calls are processed using a different telecommunications platform than toll-free calls and there are technology limitations that affect our ability to accurately project EWT. We do not believe it would be appropriate to provide an EWT for these lines when we can not be confident of its accuracy.

The National Taxpayer Advocate also recommends completely translating the IRS website into Spanish and providing forms and publications in other widespread worldwide languages. Translating the entire IRS website into Spanish would be cost prohibitive, entailing creation of a duplicate Spanish-speaking staff to support IRS.gov. However, the IRS Language Services Council prepared a list of approximately 110 vital documents to be translated into Spanish based on input from internal and external stakeholders. All of these documents have been translated and are currently available on IRS.gov and *El IRS en Español*. A further needs assessment is being conducted to identify additional products and services needed by non English-speaking taxpayers. Current and future translations of forms and publications into languages other than English will be determined using the data from this needs assessment.

Lastly, regarding the recommendation to make My IRS Account or MIRSA, previously known as Internet Customer Accounts Services (ICAS), available to international taxpayers, a recent business decision was made to indefinitely suspend this project in light of continuing security concerns and competing modernization priorities.

⁶⁵ AT&T JOC, *Fiscal Year 2008 Snapshot Product Line Report*.

Taxpayer Advocate Service Comments

The National Taxpayer Advocate commends the IRS for the implementation of the Servicewide Approach to International Tax Administration, and offers TAS assistance in this important effort. We are both appreciative of and pleased with the initiatives to improve taxpayer service described in the IRS comments, especially free tax help provided to the members of the armed forces and their families through VITA and the Armed Forces Tax Council. We also applaud the IRS for changing the IRS.gov website to prominently display ETLA as the first link on the IRS international web page,⁶⁶ and for adding the missing PSC toll number for international taxpayers in Publication 593.⁶⁷

However, the National Taxpayer Advocate believes the IRS should and can do more toward meeting its number one strategic goal of improving taxpayer service.⁶⁸ The complexity of international tax law calls for free and effective customer service to taxpayers located outside the United States. The IRS provides substantially fewer resources to such taxpayers compared to those in the U.S., effectively putting international taxpayers at a disadvantage and jeopardizing voluntary compliance. In many situations, *e.g.*, responding to IRS correspondence or inquiring about the information needed to file compliant returns, international taxpayers may have a vital need to speak with a live IRS customer service representative. In the absence of a toll-free line, such taxpayers must call the IRS toll telephone number, incurring an average cost of \$1.49 per minute (according to the IRS comments). This cost places a significant financial burden on international taxpayers who are making every effort to comply with their tax obligations. It is disingenuous for the IRS to state that providing toll-free access for individual taxpayers outside the U.S. is cost prohibitive while it requests over \$116 million for international enforcement initiatives in FY 2010, including increased examinations of individual taxpayers, compared to the \$9.8 million needed to establish international toll-free telephone lines for these taxpayers.⁶⁹

The National Taxpayer Advocate is also concerned about the 17,565 balance due and math error notices sent to foreign addresses and addresses in some U.S. territories, including Guam and American Samoa, which listed the international toll-free number that is inaccessible from those locations.⁷⁰ We hope the IRS will promptly resolve the associated programming error.

⁶⁶ See IRS public website, International Taxpayer web page, at <http://www.irs.gov/businesses/small/international/index.html> (last visited Nov. 24, 2008).

⁶⁷ See Publication 593, *Tax Highlights for U.S. Citizens and Residents Going Abroad 12* (Dec. 10, 2008).

⁶⁸ See IRS LMSB, *Servicewide Approach to International Tax Administration, Strategic Goal 1: Improve Taxpayer Service*, at http://lmsb.irs.gov/international/dir_compliance/global/sis1.asp. (last visited Oct. 29, 2008).

⁶⁹ See FY 2010 Proposed Resource Initiative – Pending in Treasury, *Reduce the Tax Gap Attributable to Globalization* (last visited Nov. 24, 2008).

⁷⁰ Notices with the toll-free number were sent to 2,628, 1,763, and 61 taxpayers outside the U.S., *i.e.* total of 4,452. A total of 13,113 of these notices were also sent to taxpayers in Guam and American Samoa, which cannot generally access a toll-free number or incur a long distance charge. W&I response to TAS information request (July 24, 2008).

We agree that the IRS has broad discretion in establishing the time periods allowed for international taxpayers to respond to various IRS inquiries. Such timeframes may vary from 60 to 15 days. The National Taxpayer Advocate believes the IRS should allow a uniform 60-day grace period for overseas taxpayers to reply to all IRS correspondence before taking action, similar to the additional 60 days provided by statute for these taxpayers to respond to notices of deficiency.⁷¹ The IRS needs to look beyond the mere legal requirements and “focus on the taxpayer’s experience ...walk a mile in the taxpayers’ shoes and help them navigate the system.”⁷² It is obvious that the taxpayers residing in some foreign countries may need additional time to respond to IRS letters and notices because of common delays in mail delivery. In such cases, we recommend the IRS design a test to determine what mail delivery delays the taxpayers experience in particular international locations and implement specific timeframes accordingly.⁷³

The IRS has stated it cannot accurately project estimated wait times for international callers because the calls are processed using a different telecommunications platform. However, the average wait time for international taxpayers, incurring international phone charges at an average rate of \$1.49 per minute, has increased 125 percent from 2004 to 2007.⁷⁴ The IRS should update the telecommunications platform to allow EWT functionality and reduce the wait time for overseas taxpayers, adhering to its strategic goal of improving service to the international taxpayers.

The National Taxpayer Advocate fundamentally disagrees with the IRS’s statement that translating the IRS website into Spanish would “entail creation of a duplicate Spanish-speaking staff to support IRS.gov, making it cost prohibitive.” In light of the additional \$116 million requested for international enforcement initiatives, and absent the estimated cost for the translation, we find it difficult to understand why providing essential tax information in Spanish on the website would be cost prohibitive. As stated above, many countries and U.S. states translate their entire websites into Spanish and other languages.⁷⁵ The IRS should reconsider the need for a complete translation of IRS.gov into Spanish. TAS offers its assistance and experience in developing this and other multilingual products

⁷¹ See IRC § 6213(a); see also IRM 25.6.5.7.2 (Mar. 1, 2006). Cf. IRM 3.30.123.5.1 (Jan. 1, 2008); Rev. Proc. 2005-34 § 4.01, 2005-24 I.R.B. 1233; IRM 5.7.6.1.1 (Feb. 1, 2007).

⁷² IRS Commissioner Douglas Shulman, *Remarks Before Tax Analysts Conference on Ten-Year Anniversary of the IRS Restructuring and Reform Act of 1998*, at <http://www.irs.gov/newsroom/article/0,,id=184857,00.html> (last visited Dec. 11, 2008).

⁷³ E.g., taxpayers residing in countries with efficient postal systems, such as France, Germany, or the United Kingdom, may be subject to a 30-day grace period, while those residing in distant locations, such as Australia, New Zealand, or South Africa, or in locations with underdeveloped infrastructure, such as Mongolia, Somalia, or Uzbekistan, may need extended timeframes of 60 days or more to respond to IRS correspondence.

⁷⁴ JOC, International Toll Number 215-516-2000, at <http://joc.enterprise.irs.gov> (last visited on Nov. 4, 2008).

⁷⁵ Spanish currently is the third most populous language in the world with 350 million speaking it. Population projections for the U.S. alone expect the Hispanic population (already the largest minority group) to triple in size by 2050, and comprise 29 percent of the U.S. population. Pew Hispanic Center, *U.S. Population Projections: 2005-2050* (Feb. 11, 2008).

and services as part of the federal government's effort to expand and integrate products and services for Limited English Proficient (LEP) taxpayers.⁷⁶

The IRS has stated that security concerns and competing modernization priorities have made it necessary to indefinitely suspend the "My IRS Account" (formerly ICAS). Tax agencies in other countries and many states have overcome the security issues and instituted customer-friendly applications similar to the suspended "My IRS Account."⁷⁷ Taxpayers compare the service they receive from the IRS with the service they receive from other organizations, where accessing account information, resolving problems, and sending and receiving information 24 hours a day with minimal inconvenience and cost have become the norm. Suspension of the "My IRS Account" project is a huge step backward for both the taxpayers and the IRS, and adversely affects the declared strategic goal of improving taxpayer service. The National Taxpayer Advocate is concerned that abandonment of this project will leave international taxpayers without an alternative, no-cost tool to comply with their U.S. tax obligations, in the absence of a toll-free access to the IRS. We urge the IRS to resolve the security issues with this application and reinstate this vital initiative.

Recommendations

The National Taxpayer Advocate recommends that the IRS consider taking the following actions to improve customer service for taxpayers overseas:

1. Provide international toll-free telephone access to the Accounts Management function in Philadelphia and the National Taxpayer Advocate (NTA) toll-free line for U.S. taxpayers in Canada and Mexico, followed by expansion to other countries with large U.S. taxpayer populations.
2. Resolve the security issues with the Internet Customer Account Services (ICAS) system and reinstate the "My IRS Account" application, providing taxpayers outside the United States with online access to their accounts.
3. Translate the complete IRS website content into Spanish, followed by expansion of IRS forms and publications available in other languages.
4. Implement Estimated Waiting Time (EWT) functionality on IRS toll customer service lines and reduce the wait time for international taxpayers at the Accounts Management function.

⁷⁶ See Executive Order 13166, *Improving Services for Persons with Limited English Proficiency (LEP)*, 65 FR 50121 (2000); see also Policy Statement P-22-3, IRM 22.31.1.1.2 (Apr. 1, 2006). *E.g.*, TAS employees have participated significantly in the production of the Basic Tax Responsibility DVD in Russian in partnership with the recently established Multilingual Initiative Program.

⁷⁷ See Canada Revenue Agency, at <http://www.cra-arc.gc.ca/eservices/tax/individuals/myaccount/vrttour/menu-e.html>, and U.S. State tax agencies such as Pennsylvania, at <http://www.doreservices.state.pa.us/Individual/default.htm>; California, at <http://www.ftb.ca.gov/online/myacct/index.asp>; Colorado at <https://www.myincometax.state.co.us/status/login.asp>; Illinois, at <http://www.revenue.state.il.us/Individuals/index.htm>; and Michigan, at <http://www.michigan.gov/taxes/0,1607,7-238-43513---,00.html> (all sites last visited Nov. 24, 2008).

MSP
#10**Customer Service Within Compliance****Responsible Officials**

Richard E. Byrd, Jr., Commissioner, Wage and Investment Division
Chris Wagner, Commissioner, Small Business/Self Employed Division
Steven T. Miller, Commissioner, Tax Exempt and Government Entities Division
Frank Y. Ng, Commissioner, Large and Mid-Size Business Division
Sarah Hall Ingram, Chief, Appeals

Definition of Problem

IRS business strategies and measures do not adequately emphasize a balanced approach between taxpayer service and enforcement within the IRS's compliance organizations. Current strategies and standards fail to integrate, recognize, and promote the concept of customer service within compliance activities in order to achieve long-term voluntary taxpayer compliance. Even though each IRS operating division (OD) has a customer service component in its mission statement, no division evaluates its compliance performance based on the level of "world class" customer service provided. At every level, the IRS rates operational performance against business measures focused on efficiency (*e.g.*, cycle time, case closures, average call time), instead of measuring operational effectiveness (*i.e.*, did the IRS's actions achieve the desired voluntary compliance results?).

Simply stated, the IRS gets what it measures. When a phone assistor is rated based on time utilization, he or she will not risk a poor performance appraisal to take the additional time necessary to address all issues apparent on a taxpayer's account.¹ By focusing only on the efficiency of a phone call, the IRS loses sight of whether the contact was effective.² Similarly, if an employee's successful performance is based on how much mail she or he opens and not whether she or he associates it with the right case, the IRS gains efficiency but loses effectiveness.

The downstream consequences of not considering both efficiency and effectiveness in performance standards can be severe and costly to taxpayers and the government. Taxpayers who cannot obtain the information or services they need to comply with federal tax laws, or to resolve an issue on the first attempt, can generate additional budget costs for the IRS and expenses for themselves. Potential downstream costs may include repeat contacts

¹ Internal Revenue Manual (IRM) 1.4.16.3.4.1 and 1.4.16.3.4.2 Average Time/Value to Monitor Efficiency and Average Handle Time (Jan. 4, 2008). See also: <http://core.publish.no.irs.gov/trngpubs/pdf/20287f08.pdf> (last visited on Nov. 24, 2008).

² Wage and Investment (W&I) Division, *Fiscal Year (FY) 2008 Accounts Management Program Letter*, at http://win.web.irs.gov/accountsmgmt/amdocs/FY08_Program_Letter_Measures/FY%202008%20Program%20Letter.doc (last visited on Nov 24, 2008).

on the same issue, errors on returns, the need for Taxpayer Advocate Service assistance, revenue loss, and possibly the costs of activities such as audits, collection activity, appeals, and litigation.³

Analysis of Problem

Background

The IRS Restructuring and Reform Act of 1998 (RRA 98) dramatically changed the way the IRS conducts and reviews its business operations. Congressional concern arose in part from the IRS's use of performance goals based on standards such as dollars assessed per hour, number of seizures, and assets sold, which were potentially driving inappropriate actions by employees and decisions by managers. To address this concern, RRA 98 mandated that the IRS strengthen its performance management system by establishing goals for individual, group, and organizational performance consistent with the IRS's performance planning procedures, and consider deficiencies noted in customer service surveys.⁴

RRA 98 represented a major step toward recognizing the importance of customer satisfaction. For the first time, the IRS encouraged employees to think of the individuals and businesses they serve as *customers*. Congress directed the IRS to place “greater emphasis on serving the public and meeting the taxpayer’s needs.”⁵ Congress challenged the IRS to “develop a procedure under which, to the extent practicable and if advantageous to the taxpayer, one Internal Revenue Service employee shall be assigned to a taxpayer’s matter until it is resolved.”⁶ In response, every IRS OD and function developed mission and/or vision statements:

Small Business/Self-Employed (SB/SE) Mission: To provide Small Business/Self-Employed customers with top-quality service by educating and informing them of the tax obligations, developing educational products and services, and helping them understand and comply with applicable laws and to protect the public interest by applying the tax law with integrity and fairness to all.⁷

Tax Exempt and Government Entities (TE/GE) Mission: To provide Tax Exempt and Government Entities customers top-quality service by helping them understand and

³ IRS, *2007 Taxpayer Assistance Blueprint, Phase II*, at 53.

⁴ Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, Title I, Subtitle C, § 1204, Basis for evaluation of Internal Revenue Service employees, § 9508 General Workforce performance management system (a)(2), 3525.

⁵ Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, Title I, Subtitle A, § 1002, Internal Revenue Service Mission to Focus on Taxpayers' Needs, 3504.

⁶ Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, Title V, Subtitle H, § 3705, Internal Revenue Service Employee Contact, 3580.

⁷ SB/SE, *About SB/SE*, at <http://mysbse.web.irs.gov/AboutSBSE/default.aspx> (last visited on Sept 9, 2008).

comply with applicable tax laws and to protect the public interest by applying the tax law with integrity and fairness to all.⁸

Large and Mid-Size Business (LMSB) Vision Statement:

- We are a world-class organization responsive to the needs of our customers in a global environment while applying innovative approaches to customer service and compliance.
- We apply the tax laws with integrity and fairness through a highly skilled and satisfied workforce, in an environment of inclusion, where each employee can make a contribution to the mission of the team.⁹

Wage and Investment (W&I) Mission: To provide Wage and Investment customers top quality service by helping them understand and comply with applicable tax laws and to protect the public interest by applying the tax law with integrity and fairness to all.¹⁰

Office of Appeals Mission: To resolve tax controversies, without litigation, on a basis which is fair and impartial to both the Government and the taxpayer in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the Service.¹¹

While each area of the IRS addresses service to taxpayers within its mission or vision statement, the function or OD does not support these pronouncements with quantifiable customer service measures at every level or in every program. The failure to establish and provide adequate customer service measures within compliance functions could lead to disparate treatment of taxpayers.¹²

Efficiency vs. Effectiveness

IRS Commissioner Douglas Shulman highlighted the importance of being both efficient and effective from the taxpayer's perspective in a July 9, 2008, e-mail communiqué:

In order to make voluntary compliance easier, we must not only meet legal requirements, but must walk a mile in the taxpayers' shoes and help them navigate the system.¹³

Efficiency and effectiveness are not mutually exclusive. If the IRS focuses solely on the efficiency of compliance activities, it can lose its effectiveness. The IRS recently set the

⁸ TE/GE, *About TE/GE*, at http://tege.web.irs.gov/templates/TEGEHome.asp?MWCContent=/content/TEGEMainWindow/linkedHTMLDocuments/about_te_ge.htm (last visited on July 14, 2008).

⁹ LMSB, *Field Focus Guide 2008*, at <http://core.publish.no.irs.gov/docs/pdf/33972j07.pdf> (last visited on Nov. 24, 2008).

¹⁰ W&I, *Wage and Investment Mission and Goals*, at http://win.web.irs.gov/aboutus/aboutus_goals.htm (last visited on July 14, 2008).

¹¹ IRS Office of Appeals, *About Appeals*, at <http://appeals.web.irs.gov/about/about.htm> (last visited on July 14, 2008).

¹² Each OD does conduct "Customer Satisfaction Surveys" but those are not customer service measures.

¹³ IRS Commissioner Douglas Shulman, e-mail to all IRS employees (July 9, 2008).

efficiency goal of reducing the processing time for correspondence audit cases.¹⁴ W&I reduced Earned Income Tax Credit (EITC) correspondence audit processing time by approximately three percent between 2006 and 2007, but did so by tightening electronic case processing timeframes and accelerating notices without properly considering taxpayer correspondence.¹⁵ The use of a computerized batch system helped achieve the stated goal.¹⁶ Because of batch processing, however, the IRS did not properly associate or consider taxpayer correspondence and prematurely issued 90-day notices of deficiency.¹⁷ What should have been considered in the audit process had to be reviewed downstream by Appeals, in the Audit Reconsideration process, TAS, and at times, the United States Tax Court.¹⁸

The best business measurement standard will address both efficiency and effectiveness. The National Taxpayer Advocate has noted the IRS has an “increased tendency to look for *efficient* approaches to tax administration (from the perspective of IRS resources) and a resistance to undertaking analysis from the taxpayer’s perspective.”¹⁹

You Get What You Measure

Each division sets fiscal year strategic initiatives to support the OD’s mission statement and establish operational goals.²⁰ Progress toward strategic initiatives rolls into the IRS Business Performance Review (BPR). In addition to highlighting current performance, the BPR addresses goals for the future, including Level of Service (LOS) metrics.²¹ The majority of these goals represent efficiency measures such as case closures, phone calls answered, correspondence contacts, currency of years under examination, proper use of levy actions, and the number of taxpayers served at a Taxpayer Assistance Center (TAC). Achieving strategic initiatives determines the “success” of the OD. While some initiatives for compliance functions have a customer satisfaction component, this component does not assess the effectiveness of contacts, promote efforts to strengthen service to taxpayers, or measure the impact on future compliance by taxpayers.

¹⁴ W & I, *Strategy & Program Plan Document 11622, FY 2008-2009* 90 (Sept. 2007).

¹⁵ W & I, *Business Performance Review 21- 23* (May 20, 2008).

¹⁶ IRM 4.19.20.1, Batch Processing Overview: Batch Processing is an IRS-developed, multifunctional software application that fully automates the initiation, aging, and closing of certain EITC and non-EITC cases. Using the batch system, Correspondence Exam can process specified cases with minimal to no tax examiner involvement until a taxpayer reply is received. Because the batch system will automatically process the case from creation to closing, it eliminates tax examiner involvement on no-reply cases.

¹⁷ National Association of Enrolled Agents, Letter Regarding Concern over Recent Enforcement Actions by IRS (Nov. 28, 2007) at http://www.naea.org/MemberPortal/Advocacy/Comments/letter_nov_28_2007.htm (last visited June 4, 2008); W&I, *Business Performance Review 21* (May 20, 2008).

¹⁸ For a detailed discussion of the impact of the batch system on taxpayer correspondence in the examination process, see Most Serious Problem, *The IRS Correspondence Examination Process Promotes Premature Notices, Case Closures, and Assessments, infra*.

¹⁹ National Taxpayer Advocate 2006 Annual Report to Congress, Preface X.

²⁰ See, e.g., W & I, *Strategy & Program Plan Document 11622, FY 2008-2009* (Sept. 2007) at 63 where W&I sets the operational priority of identifying efficiencies; and SB/SE Plan: 2008-2009 Plan at 57 where SB/SE sets the goal of exploring methods to align inventory with resources to maximize efficiencies.

²¹ Metrics quantify how processes are working in comparison with goals.

Pursuant to RRA 98 §1204, the IRS evaluates employees under a “Balanced Measure” system including the following critical job elements (CJEs):²²

- Employee Satisfaction;
- Customer Satisfaction - Knowledge;
- Customer Satisfaction - Application;
- Business Results -Quality; and
- Business Results - Efficiency.²³

In addition to CJEs, quality measures apply to every division’s work product.²⁴ As noted in *Organizational Performance Management and the IRS Balanced Measurement System*:

The quality measures provide information about how well IRS operating units developed and delivered their products and services. The quality measures are determined based upon a comparison of a sample of work items handled by certain functions or organizational units against a prescribed set of standards that incorporate the customers’ point of view. Additional quality measures will gauge the accuracy and timeliness of the products and services provided.²⁵

By definition, quality review measures incorporate the taxpayer’s point of view. In practice, however, the measures do not deliver on the promise of a taxpayer-centric strategy. Moreover, the underlying aspects of these CJEs and the quality standards fail to measure the desired outcome of voluntary compliance expressed in the IRS mission. Employees have little incentive to educate taxpayers on how to avoid errors in the future or to address the taxpayers’ unrelated tax issues, and are not encouraged to determine the basis for the taxpayers’ original non-compliant behavior. CJEs, which drive employee behavior, focus on the efficiency of work, not its effectiveness.

For example, in SB/SE Collection balance due cases, SB/SE expects the revenue officer (RO) to prepare a financial analysis of the taxpayer’s ability to pay and secure a payment agreement with the taxpayer as a basic task of the taxpayer contact. The RO’s analysis should include the taxpayer’s current financial position and the business practices leading the taxpayer to balance delinquencies.²⁶ Current operational, critical, and quality measures demonstrate the IRS field collection achieved an 84 percent quality score for fiscal year

²² Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No 105-206, § 1204.

²³ IRS, *Organizational Performance Management and the IRS Balanced Measurement System*, at <http://www.irs.gov/pub/irs-pdf/p3561.pdf> 3 (Dec. 1999) and <http://www.irs.gov/pub/irs-regs/td8830.pdf> (last visited on Sept 17, 2008).

²⁴ IRM 21.10.1.2.5 (Oct. 1, 2008), and 5.13.1(Sept. 1, 2007).

²⁵ IRS, *Organizational Performance Management and the IRS Balanced Measurement System*, at <http://www.irs.gov/pub/irs-pdf/p3561.pdf> 3 (Dec. 1999) and <http://www.irs.gov/pub/irs-regs/td8830.pdf> (last visited on Sept 17, 2008).

²⁶ IRM 5.15 (May 9, 2008).

(FY) 2007.²⁷ However, 22 percent of payment agreements defaulted and TAS has received more than 4,500 cases where the payment amounts were too high, leading to rework and increased taxpayer burden.²⁸ The addition of an outcome measure for the program, such as the percentage of taxpayers fulfilling their payment agreement and remaining compliant for a given period, would direct the IRS's strategies toward developing a taxpayer-centric approach.

Consider the case of a levy, filed due to nonpayment of a tax deficiency, which creates a hardship for the taxpayer.²⁹ TAS cases reflect numerous instances where the IRS refers the taxpayer to TAS to obtain a lien or levy release instead of securing the information needed to simply resolve the case and the hardship at the first point of contact with the IRS, *i.e.*, provide one-stop service.³⁰ The business plan measures the number of levies and liens successfully completed, giving the employee no incentive to release the levy and provide relief to the taxpayer.³¹

Current Measurement Pitfalls

The National Taxpayer Advocate's previous Annual Reports to Congress highlighted opportunities to improve the effectiveness of IRS correspondence exam processes.³² For example, when the IRS sends taxpayers math error notices that are hard to understand, taxpayers may find it difficult to reach someone at the IRS to answer questions. While the notices may be a very effective way to correct a tax return, the IRS misses the opportunity to educate taxpayers on how to avoid this problem in the future.³³ The IRS should also track the types of math errors made to develop proper educational efforts for taxpayers and IRS employees, and ultimately increase effectiveness.³⁴

From the IRS standpoint, correspondence examination is very efficient at assessing tax. The effectiveness of the overall program is called into question, however, when considering the outcome of EITC cases.³⁵ When TAS case advocates became involved, the taxpayers

²⁷ See http://sbse.web.irs.gov/SF/PPM/OPR/BPR/FY08_2ndQ_BPR.pdf 17(May 2008). This is on a 100-point scale.

²⁸ Collection Activity Report for IADEFAULT for cycle 39. Rates are increasing as indicated by the 2006, 2007, and 2008 rates of 18.26, 19.75, and 22.31 percent respectively. Business Performance Management System indicates for FY 2007 that TAS received more than 4,525 cases under PCI code 759 in which the installment agreement payments were too high. Taxpayer Advocate Management Information System (TAMIS) Primary Core Issue Code 759 indicates Installment Agreements, Other.

²⁹ IRC § 6343 (a)(1)(d) and IRM 5.11.2.2.1 (Jan 1, 2006).

³⁰ TAMIS research indicates over 11,000 referrals from IRS employees. See also IRM 5.10.3.5(8) (Sept. 7, 2007).

³¹ IRS SBSE *Business Performance Review, Performance Data Tables Only*, 26 Aug 2008; at http://sbse.web.irs.gov/SF/PPM/OPR/BPR/FY08_3rdQ_BPR_Perf_Data_Tables.pdf. The measure actually serves to undermine instead of promote efficiency. If the RO released the levy on the first taxpayer contact, the taxpayer would experience seamless, efficient, and effective service. Since the current measure does not incorporate effectiveness, a taxpayer will contact TAS when the RO does not provide relief, then TAS will refer the case to the RO, creating extra steps and lower efficiency for both the IRS and the taxpayer.

³² See National Taxpayer Advocate 2006 Annual Report to Congress 289-310 and National Taxpayer Advocate 2003 Annual Report to Congress 87-98 and 135-144.

³³ See National Taxpayer Advocate 2001 Annual Report to Congress 34.

³⁴ See National Taxpayer Advocate 2002 Annual Report to Congress 19-31.

³⁵ See National Taxpayer Advocate 2004 Annual Report to Congress vol. 2, 10, 35.

received on average two personal contacts (either letters or calls) to request documentation, and achieved significantly better audit results than in cases where the correspondence exam unit used letters as the only method of contact.³⁶ This is an excellent example of how failure to establish and provide adequate customer service measures within Compliance functions leads directly to disparate treatment of taxpayers, as well as incorrect audit results.³⁷

The IRS similarly misses the opportunity to consider the organizational effectiveness of the offer in compromise (OIC) program. The IRS bases the success of the program solely on efficiency standards relating to processing times and case standards. By reviewing cases where it rejected or returned the OIC, the IRS could compare the amount of the rejected or returned offer versus the amount the IRS ended up collecting.³⁸ By establishing a program measure focusing on the long-term compliance of the taxpayer, the IRS could assess the effectiveness of the program and determine whether it is in the government's benefit to settle on a lesser amount of money via an offer, or allow a balance due to be lost because the statutory period for collecting the tax has expired.³⁹

Services Provided by Other Taxing Authorities

Strengthening customer service to improve compliance is not new. Tax agencies from around the world have addressed this issue. Inland Revenue Service, New Zealand's tax agency, completed a business plan for 2006 – 2011 entitled "Our Way Forward."⁴⁰ The plan outlined the following goals:

- Target and tailor activities through understanding the customers;
- Optimize organizational efficiencies and reduce compliance cost over time;
- Create an environment that promotes compliance; and
- Continually invest in people and the tools to deliver future outcomes.⁴¹

Inland Revenue's use of a customer-focused proactive approach, along with legislative changes, improved the climate for voluntary compliance initiatives. "Our Way Forward" strives to make taxpayer obligations as easy as possible for those who wish to comply, and as difficult as possible to avoid for those who purposefully do not comply.⁴²

³⁶ National Taxpayer Advocate 2004 Annual Report to Congress vol. 2, 10, 35.

³⁷ *Id.*

³⁸ See IRS, *Offer in Compromise: Analysis of Various Aspects of the OIC Program* (Sept. 2004).

³⁹ IRM 5.19.1 (Apr. 28, 2008). IRC § 6503 provides that the length of period for collection after assessment of a tax liability is ten years. The collection statute expiration ends the government's right to pursue collection of a liability. Each tax assessment has a Collection Statute Expiration Date (CSED).

⁴⁰ New Zealand Inland Revenue Service, *Our Way Forward*, at <https://www.ird.govt.nz/resources/file/eb3c8201af5d6c8/way-forward-2006.pdf> (last visited on Aug 22, 2008).

⁴¹ *Id.*

⁴² *Id.*

Inland Revenue uses a system to measure outcome achievement and studies the impact of the intervention selected. Employing a research-based approach, the agency determines both the impact and cost-effectiveness of actions taken.⁴³ In addition, Inland Revenue established performance measures relating to different activities and aspects of performance. Performance evaluation is designed to be viewed in the aggregate due to the interrelated nature of the performance measures.⁴⁴

In the United Kingdom, Her Majesty's Revenue and Customs (HMRC) established benchmarks for the high level of service taxpayers should expect when dealing with HMRC.⁴⁵ The world's taxing agencies monitored the success of the program, and IRS representatives recently visited the United Kingdom to learn more. HMRC built upon the success of the initial program by developing a taxpayer-centered vision for small businesses.⁴⁶ The vision calls for a "Whole Customer View," which includes a single point of contact for taxpayers or their representatives to obtain information on tax forms, receive better help and support, and improve compliance by using real-time data. The taxpayer will have a "single customer account" showing all liabilities and payments as well as enabling taxpayers to make monthly payments on accounts.⁴⁷ Future HMRC plans include designing a strategy to target the right support to the right business at the right time.⁴⁸

The Swedish Tax Agency focuses on behavioral attitudes of taxpayers impacting compliance with tax laws. The agency's strategic plan states: "It is important to treat people fairly, with respect, to listen to them and explain decisions."⁴⁹ The Swedish Tax Agency focus moved from a focus on control to a focus on service.

The Australian Tax Organization's Strategic Statement for 2006-2010 shifted its emphasis from revenue collection to optimizing voluntary compliance by creating the right environment for people to pay taxes.⁵⁰ Australia provides customer service by way of "three Cs": Consultation, Collaboration, and Co-design.⁵¹

In the United States, Missouri's Department of Revenue established goals for its 2005-2009 Implementation Plan to:

⁴³ New Zealand Inland Revenue, *Statement of Intent 2006-2009* 19-21.

⁴⁴ *Id.* at 46-47.

⁴⁵ Inland Revenue, *The Government's Expenditure Plan, 1999/2000-2001/2002*, March 1999 at <http://www.hmrc.gov.uk/pdfs/dprrpt99.pdf> (last visited on Sept 15, 2008).

⁴⁶ HMRC, *Making the New Relationship a reality: HMRC's response to small businesses' priorities for reducing the administrative burden of the tax system* 5 (Nov. 2005).

⁴⁷ *Id.* at 6 (Nov. 2005). In contrast, the IRS systems are module based and employees must look at separate systems to construct a global view of the taxpayer's account. Taxpayers may not access their accounts on their own.

⁴⁸ *Id.*

⁴⁹ Swedish Tax Agency, *Right from the Start, Research and Strategies 46* (Aug. 2005) (translated version), at http://www.skatteverket.se/download/18.612143fd10702ea567b80002569/rapport200501_eng.pdf.

⁵⁰ M. Mc Kerchar, University of New South Wales, *Tax Complexity and its Impact on Tax Compliance*, The IRS Research Bulletin, Proceedings of the 2007 IRS Research Conference 196-197.

⁵¹ *Id.* at 198.

Accurately define and benchmark effective customer service, customer satisfaction, and performance measures and to use those benchmarks to improve customer satisfaction by clearly articulating them to our employees and holding every employee accountable for meeting his or her customer service benchmark.⁵²

The changes involved renaming the agency's business unit, changing the leadership, and establishing benchmarks for evaluating the performance of employees.⁵³

Emphasis Placed on Enforcement

The National Taxpayer Advocate has expressed concern that the IRS has been emphasizing tax law enforcement at the expense of taxpayer service in recent years. After the administration issued its FY 2008 budget proposal last year, the Government Accountability Office (GAO) analyzed recent IRS funding trends. Over the five-year period FY 2004 through FY 2008, it concluded that funding for enforcement had increased substantially while funding for taxpayer services had been reduced. Based on the administration's proposal for FY 2008, the GAO pointed out that funding over the FY 2004 through FY 2008 period would have increased by 19.4 percent for enforcement while funding for taxpayer services would have declined by 3.8 percent.⁵⁴ The final appropriations bill for FY 2008 made a modest adjustment to the administration's proposal, providing about \$46.9 million more for taxpayer service and \$145.5 million less for enforcement.⁵⁵

However, the IRS budget proposal for FY 2009 continued the trend of spending relatively more on enforcement. The president's proposal would have increased enforcement spending by \$490 million (7.0 percent), while increasing spending for taxpayer services by only \$23 million (0.6 percent).⁵⁶ Thus, after inflation, the proposal would reduce taxpayer services spending still further.

Moreover, the broad budget category titles "Taxpayer Services" and "Enforcement" do not tell the full story. Of the \$2.2 billion in the "Taxpayer Services" category, only \$645 million, or six percent of the IRS budget, is currently allocated for "Pre-filing Taxpayer Assistance and Education."⁵⁷ A significant majority of funds under the "Taxpayer Services" category is allocated for "Filing and Account Services," which largely covers the processing of tax returns. Returns processing is hardly a pure service activity. While it does enable the IRS to issue tax refunds, it is an internal processing function that also constitutes the first step

⁵² Missouri Department of Revenue, *Strategic Plan, 2005-2009*, 6.

⁵³ *Id.* at 12.

⁵⁴ Government Accountability Office, GAO-07-673, *Internal Revenue Service: Interim Results of the 2007 Tax Filing Season and the Fiscal Year 2008 Budget Request 27* (April 2007). These numbers are apparently not adjusted for inflation. GAO reported that overall IRS funding would increase, on an inflation-adjusted basis, by a mere 0.5 percent from FY 2004 to FY 2008 under the Administration's proposals. *Id.* at 26.

⁵⁵ Compare H.R. 2764 110th Cong. § 6 (2007) with Department of the Treasury, *FY 2008 Budget in Brief* at 55.

⁵⁶ Department of the Treasury, *FY 2009 Budget in Brief* at 54. These dollar amounts include the allocation of the Operations Support budget to the Taxpayer Services and Enforcement categories.

⁵⁷ *Id.* at 53.

in screening returns for audit. It is far removed from the type of taxpayer service that informs taxpayers about their tax obligations and assists them in complying with the laws. Notably, the IRS budget proposal for FY 2009 would have reduced this relatively low level of funding for taxpayer assistance and education from \$645 million to \$617 million – a reduction of over 4.3 percent in nominal terms and a larger reduction after taking into account inflation.⁵⁸

Compliance Opportunities Promoted by the IRS

The 2008-2009 IRS Strategic Initiative includes the goal to “*Improve service to make voluntary compliance easier.*”⁵⁹ This goal has four objectives:

- Incorporate taxpayer perspectives into all service interactions;
- Expedite and improve issue resolution across all interactions with taxpayers;
- Make it easier to navigate the IRS, provide targeted, timely guidance and outreach to taxpayers; and
- Strengthen partnerships with tax practitioners, preparers, and other third parties to ensure effective tax administration.⁶⁰

The IRS needs to determine how to measure its accomplishments toward these goals, including the performance of the ODs and the employees. The IRS has the opportunity to establish taxpayer-centric measures to encompass effectiveness as well as efficiency components to accomplish strategic goals. Previous Annual Reports to Congress included these suggestions for improving OD performance:

- Create a cognitive learning lab where the IRS conducts research with taxpayers to discover what actions or initiatives drive the desired compliance behavior;⁶¹
- Conduct comprehensive taxpayer surveys addressing taxpayer needs and preferences;⁶²
- Involve TAS, as the voice of the taxpayer, in discussions about designing and developing programs; and

⁵⁸ Department of the Treasury, *FY 2009 Budget in Brief* at 54. These dollar amounts include the allocation of the Operations Support budget to the Taxpayer Services and Enforcement categories. *Id.* at 53.

⁵⁹ IRS, *2008-2009 Strategic Initiative*.

⁶⁰ IRS, *I will* (handout for IRS executives at Commissioner’s meeting on FY 2009 Strategic Initiative) (Aug. 2008).

⁶¹ See National Taxpayer Advocate 2007 Annual Report to Congress Most Serious Problem, *Taxpayer Service and Behavioral Research*, 156-161 and Marjorie E. Kornhauser, *Normative and Cognitive Aspects of Tax Compliance: Literature Review and Recommendations for the IRS Regarding Individual Taxpayers*, National Taxpayer Advocate 2007 Annual Report to Congress, vol. 2, 138-180.

⁶² See National Taxpayer Advocate 2004 Annual Report to Congress, Most Serious Problem, *Education and Outreach Issues*, 51-66; National Taxpayer Advocate 2007 Annual Report to Congress, Most Serious Problem, *Exempt Organization Outreach and Education*, 197-209; IRS, *Taxpayer Assistance Blueprint: Phase I* (April 16, 2006); and IRS, *Taxpayer Assistance Blueprint: Phase II* (2006).

- Research the causes of taxpayer noncompliance, similar to the research the Swedish government conducted.⁶³

The IRS should focus on quality measures to drive employee behavior toward the goal of a seamless taxpayer experience. Quality measures should address, at a minimum:

- Were all related tax issues addressed during the taxpayer contact?
- Was one employee able to resolve all the taxpayer's issues?
- Has the employee incorporated the taxpayer's perspective in resolving the tax issue(s)?

Missed Opportunities

Failure to educate taxpayers about the causes of their problems is a missed opportunity to bring about long-term voluntary compliance. For example, in 2007 IRS assessed nearly \$276 million and then abated over \$211 million in penalties that related to charities not including a specific form with their original tax returns.⁶⁴ Once the organization submits the form, the IRS abates the penalties, but does little to educate the charity on how to comply with the requirements and may find itself assessing and abating the same penalty each year.⁶⁵

The Automated Underreporter (AUR) unit sends notices to taxpayers concerning underreported income. Every year, the IRS issues more than ten percent of these notices to repeat underreporters,⁶⁶ but fails to review their accounts to determine if they received similar notices in previous years, and does not send the notices timely, thereby missing the chance to educate the taxpayer on how to avoid errors.⁶⁷ The IRS thus creates a greater burden on taxpayers and expends resources in a continuous cycle of rework.

Conclusion

The IRS faces a complex challenge in balancing service and enforcement. Current measures do not promote customer service and may ultimately lead to noncompliant behavior by taxpayers.

⁶³ See Swedish Tax Agency, *Right From the Start and Leslie Book, The Poor and Tax Compliance: One Size Does Not Fit All*, 51 Kan. L. Rev. 1145 (2003), citing Robert Kidder & Craig McEwen, *Taxpaying Behavior in Social Context: A Tentative Typology of Tax Compliance and Noncompliance*, 2 Taxpayer Compliance 57 (1989).

⁶⁴ IRS, *Enforcement Revenue Information System (ERIS) for EO returns*, 2007 Daily Delinquency Penalty assessed during 2007 and abated as of March 2008.

⁶⁵ National Taxpayer Advocate 2005 Annual Report to Congress 299.

⁶⁶ IRS, *AUR Two Year Study Profile*, 2005, at http://win.web.irs.gov/Research/resdocs/4-05-07-2-025N_%20AUR_Two_Year_Profile.doc 19 (last visited on Sept. 15, 2008).

⁶⁷ *Id.*

The National Taxpayer Advocate believes the IRS should balance enforcement and customer service. In 2005, the Deputy Commissioner for Operations Support identified “one-stop customer service” as a priority for the organization.⁶⁸ The four goals were:

- To have a single point of entry accountable for customer requests;
- To collaborate within and between support functions;
- To communicate effectively with customers; and
- To redesign internal processes to expedite service.⁶⁹

Recognizing the importance of one-stop customer service reinforces the mandate of RRA 98 to meet the needs of the taxpayer and provide the taxpayer with one IRS employee to resolve their issues wherever possible.⁷⁰

By failing to establish business strategies or measures addressing customer service within compliance, the IRS fails to balance its approach to tax compliance. The current metrics support efficiency, not effectiveness. These measures do not drive the behavior needed for IRS employees to educate taxpayers or to provide the taxpayer with the tools to prevent non-compliant activity.

Each OD needs consistent strategic initiatives and mission statements to allow the taxpayer to address all issues with a single point of contact. Each division must also establish specific goals with the same emphasis on effective customer service as well as employee performance. While serving different taxpayer populations, all ODs and functions should share the common goal of achieving a seamless taxpayer experience.

The IRS should consider taking the following actions to strengthen customer service within compliance: create an IRS Cognitive Learning Lab;⁷¹ review its programs to identify opportunities for taxpayers to work with one employee from start to finish; involve TAS in program design discussions to incorporate the taxpayer perspective in any proposed programs; and incorporate effectiveness measures in the ODs’ quality reviews or other program reviews to address long-term taxpayer compliance and identify areas for improvement in service.

IRS Comments

In this Most Serious Problem, the National Taxpayer Advocate suggests that the IRS does not establish goals or measures for its compliance programs that adequately evaluate their

⁶⁸ E-mail from Deputy Commissioner, Operations Support to all Operation Support Employees, *One-Stop Customer Service Efforts* (Jan. 11, 2005).

⁶⁹ *Id.*

⁷⁰ Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No 105-206.

⁷¹ See National Taxpayer Advocate 2007 Annual Report to Congress 156-161 (Most Serious Problem: Taxpayer Service and Behavioral Research) and vol. 2, at 158-167 (Research Report: Normative and Cognitive Aspects of Tax Compliance: Literature Review and Recommendations for the IRS Regarding Individual Taxpayers).

performance or long-term effects on voluntary compliance from the taxpayer's perspective. In support of this hypothesis, numerous anecdotal examples are offered by the National Taxpayer Advocate of where the IRS fails in this regard. The IRS disagrees with these examples and has already addressed most of them in responses to prior National Taxpayer Advocate Annual Reports to Congress or elsewhere in response to this year's report.⁷²

However, the IRS completely agrees that it must drive its operations and customer services through a balanced set of measures that address business results, employee satisfaction, and customer satisfaction. With regard to the latter, for the IRS functions that directly interact with taxpayers, including compliance organizations, the customer is the taxpayer. All such organizations currently have metrics specifically geared to measuring taxpayer satisfaction and that are used to continually improve the IRS' performance in the eyes of the taxpayer. These measures are established as part of the IRS Strategic Planning and Budgeting process and included in IRS budget submissions. They are communicated to the IRS Oversight Board and reported on regularly for IRS Business Performance Reviews, the Department of Treasury, the President's Office of Management and Budget, and other external stakeholders.

For example, the LMSB division measures Customer Satisfaction at the division level for Coordinated Cases and it is measured all the way down to the Director of Field Operations level for Industry Cases. The scores are included in the Balanced Measure scorecards that are distributed monthly down to the Territory level. SB/SE division field and campus compliance functions measure customer satisfaction monthly using survey data and improvement goals are set each year. In the W&I division, feedback from campus compliance customer service surveys has been used to revise letters and tax forms to make them clearer and to revamp procedures to improve the taxpayer's experience.

As importantly, as alluded to in the National Taxpayer Advocate's report⁷³ the IRS is embarking on a new Strategic Plan for FY 2009-2013 that has a taxpayer focus at its core. The intent is to foster individual and organizational ownership of the taxpayer experience to make compliance as easy as possible. This plan will encourage all employees, not just those who are customer facing, to look for ways to provide taxpayers, partners and stakeholders with information that will be helpful and understandable by addressing questions such as "How would I feel if I were in the taxpayers' shoes?" and "Who will be using this material and what will they need?" The IRS is already making progress in socializing the goals

⁷² See for example IRS response at: National Taxpayer Advocate 2001 Annual Report to Congress 37, with regard to EITC notices; National Taxpayer Advocate 2002 Annual Report to Congress 28, with regard to math error authority; National Taxpayer Advocate 2004 Annual Report to Congress 330, with regard to offers in compromise; National Taxpayer Advocate 2004 Annual Report to Congress 60, with regard to education and outreach; National Taxpayer Advocate 2005 Annual Report to Congress 115, with regard to EITC examinations; National Taxpayer Advocate 2005 Annual Report to Congress 309, with regard to penalties; National Taxpayer Advocate 2007 Annual Report to Congress 204, with regard to Exempt Organizations outreach and education; National Taxpayer Advocate 2007 Annual Report to Congress 159, with regard to behavioral research; and National Taxpayer Advocate 2008 Annual Report to Congress, Most Serious Problem: The Correspondence Examination Process Promotes Premature Notices, Case Closures, and Assessments, with regard to the batch processing system and the alleged premature issuance of notices of deficiency.

⁷³ See footnote 60, *supra*.

and themes around which the new plan will be focused and managers and employees are already beginning to have conversations about how they can contribute to an improved customer experience.⁷⁴ Once the new strategic plan is finalized, all IRS functions will evaluate and, as needed, revise or create new measures that support the goals that will be expressed in the new IRS Strategic Plan. The National Taxpayer Advocate's views will be considered during this process.

The National Taxpayer Advocate's report also surfaces several issues that warrant specific rebuttal. The National Taxpayer Advocate implies that taxpayer default on installment agreements (IAs) is attributable to IRS employees failing to properly establish the agreements or setting the payments too high. In fact, approximately 97 percent of all IAs are streamlined. This allows taxpayers to reach payment agreements with minimum intrusion by IRS employees, and may also allow the taxpayer to make substantial payments until he or she is in a better position to make full payment, or take advantage of other options for resolving the case. IRS employees give taxpayers the opportunity to provide additional financial information when they indicate they cannot meet the terms of a proposed streamlined IA. The IRS believes its responsibility for each case is to take the right action at the right time. This includes taking actions to correct the balance due through an adjustment or declaring the account currently uncollectible.

Further, the National Taxpayer Advocate postulates that "(t)he business plan measures the number of levies and liens successfully completed, giving the employee no incentive to release the levy and provide relief to the taxpayer." Although IRS tallies the number of liens filed and levies served at a high level, these data are not measures, nor are they associated with targets or goals. These numbers cannot be tracked back to individual employees and no compliance employee is evaluated using the number of liens or levies issued. In fact, IRS Collection employees, whether Revenue Officers or Collection Representatives, are all expected to determine cause and cure for each case and to resolve that case at the earliest opportunity, including release of a lien or levy when appropriate. In further support of this allegation, the National Taxpayer Advocate refers to "numerous instances where the IRS refers the taxpayer to TAS to obtain a lien or levy release instead of securing the information needed to simply resolve the case and the hardship at the first point of contact..." In this regard, the IRS notes that IRS employees must refer cases to TAS when they meet TAS criteria. This is a requirement whenever a taxpayer requests TAS assistance or the IRS employee is unable to take steps to resolve the taxpayer's issue within 24 hours, including hardship cases in the collection stream.⁷⁵

⁷⁴ IRS Commissioner Douglas Shulman e-mail to all IRS employees July 9, 2008, stating, among other things: "First, in every interaction, every transaction we conduct with a taxpayer, we should think about it from the outside-in - from the taxpayer's point of view, even though we may not ultimately agree with the taxpayer. Taxpayers will be judging their interactions with the IRS and the government based on their most recent experiences with other world-class service organizations. This should be our standard." And, "While there are many critical components to taxpayer service; there are two I'd like to highlight today. First, we should aim to resolve any open issues at the earliest moment possible. This will save both the IRS and the taxpayer extra work down the line. Second, if a taxpayer deals with more than one business group within the IRS, we should coordinate with each other so the hand-off is quick and trouble-free."

⁷⁵ See IRC § 7803(c)(2)(C)(ii) and IRM 13.1.7.

With regard to the assertion and abatement of exempt organizations penalties for failure to include a specific form with their original tax returns, the National Taxpayer Advocate implies the IRS failed to educate taxpayers about the causes of their problems which resulted in a missed opportunity to bring long-term voluntary compliance. To the contrary, part of the process in educating taxpayers is communication. Before the IRS assesses a penalty, it communicates with the charity by sending two letters explaining the required information and that the return is not considered complete until the information is provided. These letters include a dedicated toll-free number should the organization have questions or need to speak with a specialist. There is also information available in publications, the tax return instructions, and on the IRS website to inform and educate tax exempt organizations regarding the penalties for filing incomplete returns. These charitable organizations are given ample opportunity to correct their filings. In most cases, the organizations respond to the first or second letter with the required information. If there is no response to either of the letters the IRS issues a penalty notice, again explaining the missing or incomplete information and giving the filer yet another opportunity to supply the required form. There is nothing in IRS records to support the National Taxpayer Advocate's conjecture that the IRS "may find itself assessing and abating the same penalty each year."

With respect to the National Taxpayer Advocate's specific recommendation to establish an IRS Cognitive Learning Lab, the IRS responded to this same issue for the NTA's 2007 Annual Report to Congress.⁷⁶ As noted in that response, the Taxpayer Assistance Blueprint (TAB) project has begun the process of assembling what is known in this area and supplementing that work with original survey research focused on the needs and desires expressed by individual taxpayers about the services they would like to be able to access. More recently, the President's FY 2008 Budget Request included a \$5 million initiative specifically aimed at improving and understanding the link between provision of services to taxpayers and their impact on taxpayer compliance. This initiative allowed the IRS to embark on a multi-year research agenda that could eventually pay large dividends through improved voluntary compliance. However, these results may or may not validate the National Taxpayer Advocate's proposal that utilizing a cognitive and behavioral lab would be an effective strategy for advancing research in this area. Because of the extensive research already completed for the TAB, the IRS now knows more than ever before about taxpayer needs, preferences and behaviors. The IRS is evaluating these studies and it should lead to a better understanding of the role of complexity in service, and how complexity contributes to taxpayer errors and misunderstanding that result in taxpayer burden and noncompliance. At this point, the IRS believes a cognitive learning lab would be redundant in light of the research efforts already underway.

With regard to the recommendation to identify opportunities for taxpayers to work with one employee from start to finish, the National Taxpayer Advocate also raises this issue

⁷⁶ National Taxpayer Advocate 2007 Annual Report to Congress 159.

elsewhere in this year's report.⁷⁷ In response, the IRS stated that it has taken well-considered and industry-proven steps to service large volume and wide-ranging subject matter inquiries from taxpayers through its web, toll-free telephone, and TAC services. Further, the IRS strives, to the extent possible, to allow taxpayers to address all issues with a single point of contact; and more importantly, with one contact. For example, field and office examinations are conducted by one Revenue Agent or one Tax Compliance Officer and the taxpayer has an immediate opportunity to pay the deficiency at the conclusion of the examination without the need for referral to the Collection function. The Automated Collection System is designed to close the balance due account in one contact. Taxpayers contacted by IRS in the AUR program can often fax in needed documents and resolve the AUR issue while on the phone. As another example, W&I correspondence examination telephone operations have implemented universal call routing to facilitate taxpayers' one-stop telephone interactions with the IRS by allowing them to talk to the next available examiner on any case, rather than having to wait and connect only with the examiner assigned to their case.

The National Taxpayer Advocate also recommends that the IRS involve the Taxpayer Advocate Service in program design discussions. The IRS regularly solicits, and always welcomes the National Taxpayer Advocate's perspective on new or ongoing programs, and will continue to do so. In this regard, the IRS acknowledges the National Taxpayer Advocate's many helpful contributions, such as her insightful suggestions for addressing cancellation of debt income issues discussed in more detail elsewhere in this report. However, because the views and recommendations of the Taxpayer Advocate Service are unconstrained by considerations of business, staffing, or budgetary limitations, on occasion the IRS is unable to adopt or fully accept the National Taxpayer Advocate's suggestions for IRS programs.

Finally, regarding the suggested incorporation of effectiveness measures in OD quality reviews, IRS quality reviews already include metrics that are designed to incorporate the taxpayer's point of view. For example, embedded quality reviews, tied to employee CJE's, assist in driving employees' behavior toward the goal of a quality taxpayer experience. Technical employees are held accountable for these quality measures, as are managers through performance expectations to provide feedback to their employees and to use these quality attributes to improve operations. The National Taxpayer Advocate's report gives the example of a phone assistor being measured on time utilization and states that "(b)y focusing only on the efficiency of a phone call, the IRS loses sight of whether the contact was effective." Time utilization is an appropriate measurement in the telephone assistance environment. However, it does not stand alone and is but one of a number of evaluative factors, including effectively addressing the taxpayer's issues and appropriately tailoring calls to meet the needs of the taxpayer.

⁷⁷ See Most Serious Problem: *Navigating the IRS*, *supra*.

Taxpayer Advocate Service Comments

The National Taxpayer Advocate is pleased that the IRS intends to focus on the perspective of the taxpayer in its upcoming Strategic Plan. Creating a culture where employees think about the needs of the taxpayer is an important step towards effective customer service.

However, several aspects of the IRS response raise concerns.⁷⁸ First, the National Taxpayer Advocate specifically recommended the creation of a Cognitive Learning Lab in the 2007 Annual Report to Congress.⁷⁹ The IRS provided a nearly identical response last year to the suggestion of creating a Cognitive Learning Lab. While we are pleased that the IRS is studying the results of the Taxpayer Assistance Blueprint, we are disturbed that in a year's time the IRS has not been able to provide any further information from its review of the TAB research on the merits of establishing a Cognitive Learning Lab. Further, the National Taxpayer Advocate disagrees with the IRS's assessment that the lab would be redundant to efforts currently underway. A Cognitive Learning Lab would provide the IRS with an environment to effectively test new forms and publications, outreach and education efforts, and to evaluate aspects of IRS actions and initiatives that make voluntary compliance difficult for the taxpayer. Through such a comprehensive understanding of how taxpayers perceive the IRS, use its resources, and interact with the agency and its employees, the IRS could better understand taxpayer behavior and make voluntary compliance easier.

Second, perhaps we were not clear in our treatment of effectiveness versus efficiency measures; however, the IRS seems to confuse customer satisfaction measures with effective customer service measures. *Effective customer service is not synonymous with customer satisfaction, and to treat the two as such does a disservice to the taxpayer.* The IRS needs to establish measures that reach the effectiveness of the service in order to determine if taxpayers are receiving the information and products they need to voluntarily comply with the tax laws. Customer service effectiveness measures should be part of the IRS strategic planning and budgetary process.

Finally, the IRS states "the views and recommendations of the Taxpayer Advocate Service are unconstrained by considerations of business, staffing, or budgetary limitations..." as a rationale for not implementing or fully accepting the National Taxpayer Advocate's suggestions. The IRS can implement many of these suggestions within current staffing and budgetary constraints so long as the IRS is willing to prioritize taxpayer service. Congress has previously shown significant support for customer service efforts within the IRS. Instead

⁷⁸ Elsewhere in this report we address IRS responses to specific programs, including offers in compromise, installment agreements, liens, levies, and penalty abatements. With respect to the IRS's assertion that it must refer a case to TAS whenever the IRS employee is unable to take steps to resolve the taxpayer's issue within 24 hours, we agree with that statement. However, we fail to see how a collection employee, once he or she determines that the taxpayer is experiencing economic hardship, cannot take steps within 24 hours to resolve that hardship, especially since TAS ultimately will refer the case back to the collection employee for action anyway. Collection's failure to address the economic hardship at the first point of contact simply represents a shirking of its responsibility to the taxpayer and a serious lapse of taxpayer service.

⁷⁹ National Taxpayer Advocate 2007 Annual Report to Congress 156-61.

of decrying the lack of resources available to taxpayer service initiatives (including those within compliance), the IRS can and must make a business case to the incoming Congress to demonstrate the need for further improvements.

Recommendations

The National Taxpayer Advocate recommends the IRS take the following steps to provide taxpayers with service within compliance:

1. Create a Cognitive Learning Lab to study the behavior and attitudes of taxpayers as they interact with IRS products, services, and compliance or enforcement initiatives.
2. Incorporate effectiveness measures in the operating divisions' quality reviews or other program reviews to address long-term taxpayer compliance and identify areas for improvement in service.
3. Review its programs to identify opportunities for taxpayers to work with one employee from start to finish.
4. Involve TAS early in program design discussions to incorporate the taxpayer perspective in any proposed programs.

MSP #11

Local Compliance Initiatives Have Great Potential but Face Significant Challenges

Responsible Officials

Chris Wagner, Commissioner, Small Business/Self-Employed Division
Richard E. Byrd Jr., Commissioner, Wage and Investment Division

Definition Of Problem

Over 15 years ago, the IRS acknowledged it could be more effective in improving tax compliance if it understood and addressed the local reasons for noncompliance.¹ Local organizations (*e.g.*, small business groups) and local sources of information (*e.g.*, local government lists of license or permit holders) can help the IRS identify, understand, and address noncompliance at the local level. Research suggests that concentrated IRS activity to reverse noncompliance norms among local businesses may have a greater “ripple effect” on voluntary compliance by other taxpayers than seemingly random examinations.² In addition, the IRS can learn about what works and what does not work by conducting and documenting small-scale compliance initiative projects (CIPs) at the local level. CIPs are projects that allow IRS employees to address a specific compliance problem using examinations or alternative treatments, such as outreach, education, form changes, legislative or regulatory changes, or agreements with the states.³ As a result, local CIPs have the potential to improve voluntary compliance, reduce the tax gap, and significantly contribute to the IRS’s store of knowledge.⁴

However, the IRS’s Wage and Investment Division (W&I) does not use CIPs and the Small Business/Self-Employed Division (SB/SE) CIP Program faces significant challenges.⁵ The IRS does not have adequate measures to evaluate the CIP program as a whole. Even if employees identify local areas of noncompliance that the IRS should address using a local CIP, the IRS’s organizational structure, CIP approval process, and focus on examination productivity metrics may discourage them from proposing alternative treatments, such as

¹ See, *e.g.*, IRS, Document 9102, *Compliance 2000*, Orientation Guide (July 1993) (describing dozens of projects to proactively improve local compliance).

² See, *e.g.*, Jon S. Davis, et al., *Social Behaviors, Enforcement, and Tax Compliance Dynamics*, 78 *Acct. Rev.* 39 (2003).

³ See IRM 4.17.4.4.1 (Feb. 1, 2004).

⁴ The “tax gap” is the amount of tax that is imposed by law for a given tax year, but not voluntarily and timely reported and paid.

⁵ Our discussion focuses on small business taxpayers, which are the responsibility of SB/SE, for several reasons. First, unreported business income (rather than non-business income) is responsible for the largest portion of the tax gap. See, *e.g.*, National Taxpayer Advocate 2007 Annual Report to Congress vol. II (A Comprehensive Strategy for Addressing the Cash Economy). The IRS needs additional tools to address this problem because unincorporated business income is subject to little information reporting and is difficult to detect using traditional enforcement tools. *Id.* Second, local CIPs may be less useful in addressing noncompliance among large businesses with a nationwide footprint, which are the responsibility of the Large and Midsize Business Division (LMSB). Third, the Tax Exempt and Government Entities Division (TE/GE) structures its program somewhat differently and it may not face the same challenges discussed below. Finally, although IRM 4.17.2.4 (Feb. 1, 2004) suggests that W&I has a CIP program, W&I does not currently use CIPs. IRS response to TAS information request (Oct. 8, 2008).

education and outreach, to proactively address them. Moreover, the IRS should do more to capture, analyze, distribute, and work with IRS research to follow up on the lessons it learns from local CIPs.

Analysis of Problem

Background

Historically, the IRS's Geographic Organization Had More Local Focus.

Before the IRS reorganized in the early 2000s, a single local office at the IRS – the District Director's office – had information about local noncompliance and the incentive and authority to act on that information (e.g., the authority to allocate examination, collection, research, and communication resources) by making local IRS functions work together to address local compliance problems.⁶ In the early 1990s, the IRS attempted to leverage its geographically based organization using a strategy called *Compliance 2000*, with the goal of increasing voluntary compliance.⁷

The premise of *Compliance 2000* was that because noncompliance is often inadvertent, the IRS could efficiently increase voluntary compliance by focusing on removing barriers to compliance and reserving expensive enforcement tools for situations where less expensive approaches would not be effective. With the assistance of a District Office of Research and Analysis (DORA), the districts were supposed to measure the effect of *Compliance 2000* projects on voluntary compliance rather than narrower examination metrics.⁸ The IRS ultimately abandoned *Compliance 2000*, primarily because it was difficult to quantify the effects of its projects on voluntary compliance.⁹ However, *Compliance 2000* achieved some instructive successes.

As an example, in the early 1990s, the IRS initiated a *Compliance 2000* project to address noncompliance by commercial fishermen in Alaska resulting from confusion as well as community norms and attitudes.¹⁰ With the assistance of local authorities, the IRS merged

⁶ See, e.g., General Accounting Office, GAO/GGD-98-39, *IRS's Use of Information Gathering Projects* 8 (Feb. 1998) (noting that the IRS consolidated its 63 district offices into 33 in 1994); IRM 1.1.2 (Feb. 2, 1999) (describing the most recent IRS reorganization); Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2003-10-134, *The Structures of the Internal Revenue Service and the National Treasury Employees Union Are Not Effectively Aligned* (June 2003) (same). See also, IRM 4568.1 (Mar. 27, 1999) (describing the pre-reorganization process); IRM 45(12)(5) (June 27, 1989) (same); IRM 4568.4 (Mar. 27, 1999) (same).

⁷ Unless otherwise indicated, the discussion of *Compliance 2000* is drawn from the following documents: *IRS Strategic Business Plan FY 1992 and Beyond*, IRS Document 7382 (Sept. 1991); IRS, *Compliance 2000: Orientation Guide*, Doc. 9102 (Rev. 7-1993); IRS Research, ELN-2003730103820-617, *Compliance 2000 Focus Group Report* (May 1, 1992); Government Accountability Office (GAO), GAO/GGD-96-109, *TAX RESEARCH, IRS Has Made Progress but Major Challenges Remain* (June 1996).

⁸ See, e.g., GAO, GAO/GGD-96-109, *TAX RESEARCH, IRS Has Made Progress but Major Challenges Remain* (June 1996) (noting, however, that DORA personnel who were supposed to measure *Compliance 2000* results sometimes lacked proper training, were hampered by delays to IRS computer systems upgrades, and did not systematically design or track their research results). See also IRM 1.7.4.4(2) (Nov. 1, 2007) (describing the reorganization of the IRS research function).

⁹ See, e.g., GAO, GAO/GGD-96-109, *TAX RESEARCH, IRS Has Made Progress but Major Challenges Remain* (June 1996).

¹⁰ Memorandum from District Director, Anchorage District, to Chief Compliance Officer, Western Region, *Compliance 2000 – Prototype Completion* (Aug. 23, 1994).

a list of fishing permit and license holders with existing IRS data to identify nonfilers. It used a mass summons to obtain information about the recorded value of their catches – information unavailable to the IRS’s automated nonfiler programs – to generate substitute returns for the nonfilers. The IRS worked with state and local officials to identify payments from local fish processors, state-issued fishing rights, and other payments that it could levy. Local IRS officials also proposed changes to federal and state laws to reduce confusion, promote compliance, and facilitate collection.¹¹

The IRS simultaneously launched extensive outreach and education efforts in remote fishing villages and on fishing vessels, preparing returns and training local volunteers to assist taxpayers. The IRS also enlisted the help of local community organizations, which hired a full-time Yupik-speaking individual to help local residents with tax problems, provided loans of up to \$30,000 to help fishermen pay delinquencies, and helped to publicize the IRS’s compliance initiatives. These efforts brought in over 1,000 unfiled returns, approximately \$4.6 million in new assessments, and ten guilty pleas. More importantly, the project significantly improved voluntary compliance among the target population, reducing nonfiling from 13.1 percent in tax year 1990 to 9.2 percent in tax year 1992.

The IRS Currently Addresses Local Compliance Problems Using Local Compliance Initiative Projects.

As noted above, the IRS now uses CIPs to address specific compliance problems rather than *Compliance 2000* projects.¹² The primary differences between a CIP and a *Compliance 2000* project are that the IRS does not try to measure the effect of a CIP on voluntary compliance, and CIPs go through a different approval process that reflects the IRS’s current organizational structure.¹³

A limited “Part One” CIP – a CIP involving 50 or fewer taxpayers (or 100 or fewer in Collection or Service Center Examination) generally requires concurrence or approval at five levels, including “other affected function(s),” if any.¹⁴ A larger “Part Two” CIP in SB/SE generally requires additional justification and concurrence or approval of the same parties as a Part One CIP plus four more.¹⁵ Unlike *Compliance 2000* projects, the success or failure of a CIP is measured by traditional examination metrics, such as proposed adjustment

¹¹ The state passed a law to allow for involuntary transfers of fishing permits. Memorandum from District Director, Anchorage District, to Chief Compliance Officer, Western Region, *Compliance 2000 – Prototype Completion* (Aug. 23, 1994). At the federal level, small fishing crews were exempt from FICA and FUTA, a source of confusion that the IRS proposed to address. *Id.*

¹² See IRM 4.17.4.4.1 (Feb. 1, 2004).

¹³ We do not suggest that it was easier for a local employee to initiate a *Compliance 2000* project in the past than it is to initiate a Part I CIP today. Obtaining the District Director’s approval was likely more difficult. Nor do we suggest that CIPs should be subject to less oversight.

¹⁴ See, e.g., Compliance Initiative Projects, Central Area Desk Procedures (Nov. 14, 2006); Compliance Initiative Projects, Western Area Desk Procedures (Oct. 16, 2006); Memorandum for All Examination Area Directors From Director, Examination Planning and Delivery, SBSE-04-0608-037, Interim Guidance on Part I Compliance Initiative Project: Taxpayer Contact Increase (June 12, 2008) (increasing the number of taxpayers that may be examined pursuant to a Part I CIP). These procedures supplement IRM 4.17.4.3 (Feb. 1, 2004).

¹⁵ See, e.g., Compliance Initiative Projects, Central Area Desk Procedures (Nov. 14, 2006); Compliance Initiative Projects, Western Area Desk Procedures (Oct. 16, 2006). See also IRM 4.17.4.4.4.1 (Feb. 1, 2004).

dollars per hour and the rate at which an examination results in no changes (called the “no-change” rate), rather than its impact on voluntary compliance.¹⁶

Local CIPs Are an Important Tool for Increasing Voluntary Compliance.

Local CIPs Can Help the IRS Focus Its Efforts in Areas Where National Return Selection Formulas Are Ineffective.

Taxpayer compliance varies from one region to another, as does the IRS’s ability to detect it using the Discriminant Index Function (DIF), a return selection algorithm that does not incorporate data regarding specific local compliance problems.¹⁷ For example, in fiscal year (FY) 2007, individual returns selected using DIF and examined by Revenue Agents produced a 36 percent no-change rate in SB/SE’s North Atlantic Area but only a 25 percent no-change rate in its Gulf States Area.¹⁸ Similarly, corporate returns selected using DIF and examined by Revenue Agents had a 55 percent no-change rate in the Gulf States but a 41 percent no-change rate in the North Atlantic.¹⁹

Especially in areas where noncompliance is high and the DIF is least effective, it is important for the IRS to develop good local CIPs, which can sometimes use local data that the IRS has not incorporated into DIF or other return selection programs. For example, through one recent CIP the IRS identified unreported income using information provided by the local government, which was not available on a nationwide basis.²⁰ Thus, CIPs enable the IRS to take advantage of such local information and partnerships.

Concentrated Compliance Activities Resulting from Local CIPs Can Have Greater “Indirect” Effects on Voluntary Compliance Than Seemingly Random Audits.

When the IRS focuses on particular taxpayer segments within a local community, especially small business segments (*e.g.*, construction contractors in a given city), word of the IRS activity spreads. Tax practitioners have observed this creates a ripple effect, driving the entire segment of the community, including many taxpayers who are not under audit, to seek out practitioners to help them comply. Those good compliance habits may remain long after IRS activity ceases, at least if the IRS is not perceived as going away (*i.e.*, continues some activity in the community), creating a “halo” effect. IRS researchers have

¹⁶ See, *e.g.*, Compliance Initiative Projects, Western Area Desk Procedures 5 (Oct. 16, 2006). Although § 1204 of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685, 713 (1998) and 26 C.F.R. § 801.3T(e), prohibit the IRS from using “records of tax enforcement results” (*e.g.*, dollars per hour) to evaluate individual employee performance, such measures can be used to evaluate initiatives and programs.

¹⁷ See, *e.g.*, Jon S. Davis, et al., *Social Behaviors, Enforcement, and Tax Compliance Dynamics*, 78 *Acct. Rev.* 39 (2003) (citing literature that observed geographic variations in compliance rates); Kim M. Bloomquist and Zhiyong An, *Geographic Variation in Schedule H Filing Rates: Why Should Location Influence the Decision To Report “Nanny” Taxes?*, Proceedings of the Annual Conference on Taxation (2005), at <http://www.irs.gov/pub/irs-soi/05bloom.pdf> (concluding that variations in Schedule H filing rates likely reflect geographic variations in compliance and that geographic differences in compliance with the nanny tax rules can be explained, in part, by local economic, cultural, and behavioral factors).

¹⁸ IRS response to TAS information request (Apr. 28, 2008) (providing Table 37 data for FY 2007).

¹⁹ *Id.* (providing Table 37 and local CIP examination results by area for FY 2007). These areas had only marginally better results using CIPs. In FY 2007, the local CIP no-change rate for all types of returns was 34.3 percent in the Gulf States Area and 43.2 percent in the North Atlantic Area. *Id.* However, the CIP results may not be comparable since they do not necessarily reflect results from corporate returns.

²⁰ IRS response to TAS information request (Apr. 28, 2008) (Compliance Initiative Project Termination Report for Project 514).

estimated that indirect effects of an examination on voluntary compliance are between six and 12 times the amount of the proposed adjustment.²¹

In contrast, seemingly random examinations (*e.g.*, examinations of returns selected using DIF or other national criteria) of taxpayers in different communities who do not communicate or compete with each other may not have the same indirect effects. In such cases, taxpayers are less likely to hear that more than one of their friends, associates, or competitors are working to get into compliance in response to the IRS's activities. As a result, they may believe the IRS is not very likely to audit them and may be less likely to take additional steps to become compliant.

Tax compliance research supports these intuitive notions. Researchers have suggested that local tax "morale" – non-rational factors and motivations, such as social norms, personal values and various cognitive processes – strongly affects an individual's voluntary compliance and his or her response to IRS enforcement activities.²² Other researchers have concluded that once the IRS focuses on a geographic area and improves compliance norms and habits within that community, high levels of compliance will persist even after the IRS reduces (but does not abandon) its compliance activity.²³ Thus, the IRS could probably improve both examination results and voluntary compliance by initiating more good local CIPs.

CIPs Could Allow Multifunctional Teams to Maximize the Effect of IRS Activities on Voluntary Compliance.

CIPs could allow IRS employees in a given geographic area to assemble multifunctional teams, including Examination, Collection, Communications, and Taxpayer Advocate Service (TAS) employees, to collaborate with local stakeholders to identify and address the root causes of local compliance problems.²⁴ As illustrated by the example above, such a multifunctional approach could be more effective in improving voluntary compliance than a single IRS function could achieve on its own. For example, the Communications & Liaison (C&L) function could help educate taxpayers so the IRS does not need to conduct as many examinations. The Collection function could help to ensure that the IRS promptly collects any examination assessments. TAS could voice the taxpayer's perspective in planning the CIP and help taxpayers and the IRS resolve complex problems that result from it. This multifunctional approach could maximize the ripple effect of the CIP on voluntary compliance.

²¹ Alan H. Plumley, Pub. 1916, *The Determinants of Individual Income Tax Compliance: Estimating The Impacts of Tax Policy, Enforcement, and IRS Responsiveness* 35-36 (Oct. 1996); Jeffrey A. Dubin, Michael J. Gaetz and Louis L. Wilde, *The Effect of Audit Rates on the Federal Individual Income Tax, 1977-1986*, 43 Nat. Tax J., 395, 396, 405 (1990).

²² See, *e.g.*, National Taxpayer Advocate 2007 Annual Report to Congress vol. II 138 (Marjorie E. Kornhauser, *Normative and Cognitive Aspects of Tax Compliance: Literature Review and Recommendations for the IRS Regarding Individual Taxpayers*).

²³ Jon S. Davis, et al., *Social Behaviors, Enforcement, and Tax Compliance Dynamics*, 78 Acct. Rev. 39 (2003).

²⁴ Under the old district structure, the District Offices of Research formed Compliance Planning Councils (CPC) to build district support for compliance research, oversee district compliance programs, and provide a multifunctional group to oversee district compliance workload. GAO, GAO/GGD-96-109, *IRS Has Made Progress but Major Challenges Remain* 9 (June 1996). Similarly, the IRS could use CIPs to promote more multifunctional coordination at the local level.

Local CIPs Can Generate Valuable Information.

The IRS generally does not select returns pursuant to a CIP using random methods that would allow it to reliably project the results to a larger population. Each local CIP is nonetheless similar to a small research study. The IRS identifies a compliance problem, identifies a target population, proposes an approach to address the noncompliance, and when the CIP ends, the CIP Coordinator writes a termination report that describes the results.²⁵ Such information about what works and what does not is a valuable resource. The IRS could use this information to develop effective CIPs to use in other communities or to identify areas where it needs to focus additional research.

The IRS Faces Challenges in Addressing Local Compliance Problems Using CIPs.***The CIP Program Has an Increasingly National Focus.***

As noted above, the IRS has eliminated its geographically based district structure and formed operating divisions focused on national taxpayer segments. Today, the IRS only has seven offices (rather than the 33 or 63 it previously had) that coordinate CIPs – called Planning & Special Programs Offices (or PSPs) – one in each of the seven areas.²⁶ PSPs allocate examination resources to ensure the areas meet national examination goals, and participate in the local CIP submission and approval process.²⁷ The PSP representatives that we spoke with believe they retain a sufficiently local focus.²⁸ However, consolidating the PSP offices – making them more centralized and less local – may have reduced the IRS's ability to identify local compliance problems, at least in the absence of additional outreach to local employees.²⁹

Indeed, the IRS approved only seven local Part Two CIPs in 2006-2007,³⁰ and two of those were prompted by the need to generate work for displaced IRS employees rather than a local compliance problem. Thus, the IRS does not appear to be using local CIPs very frequently.

Moreover, a recent operational review of the CIP program suggests a primary goal of the program is to develop local CIPs that the IRS can replicate nationwide, rather than to

²⁵ See generally IRM 4.17.4 (Feb. 1, 2004).

²⁶ On October 1, 2000, the IRS consolidated its 33 PSP offices into 16, one in each area, and on October 1, 2004, it consolidated these into only seven areas. IRS response to TAS information request (Apr. 28, 2008).

²⁷ See generally IRM 4.1.1 (Oct. 24, 2006); IRM 4.1.2 (Oct. 24, 2006); IRM 4.1.3 (Oct. 24, 2006); IRM 4.1.4 (Oct. 24, 2006).

²⁸ Teleconference with three PSP Territory Managers and SB/SE HQ personnel (July 8, 2008).

²⁹ See, e.g., IRM 1.7.4.4 (Nov. 1, 2007). Interviews with PSP Territory Managers and IRS Research employees who were employed before the reorganization, as well as TAS employees with similar backgrounds, suggest that in most cases the IRS Research function has never played a very active role in most CIPs or *Compliance 2000* projects. Teleconference with three PSP Territory Managers and HQ personnel (July 8, 2008). However, the role of IRS research employees varied from one district to another and their input could be very useful in some cases. *Id.* For a general discussion of centralization, see Most Serious Problem, *The Impact of IRS Centralization on Tax Administration*, *infra*.

³⁰ We requested five approved Part Two local CIPs for FY 2006 and FY 2007, selected as randomly as possible. TAS information request (July 15, 2008). However, the IRS provided only seven for 2006 and 2007 because “the Areas were working the National Office Part Two CIPs.” IRS response to TAS information request (Aug. 4, 2008).

improve voluntary compliance at the local level.³¹ While nationwide CIPs are important, they may not generate the same ripple effects as local CIPs.³²

There Are No Good National Measures for the CIP Program.

On average, local CIPs generate seemingly unimpressive results based on traditional examination metrics. The IRS is supposed to terminate a CIP if returns selected for audit as a result of the CIP do not produce better examination results than those selected by computer using the DIF.³³ While some local CIPs are better than others, over the last ten years, on average, they have had higher no-change rates than returns selected using DIF.³⁴ CIPs are similarly unimpressive when evaluated based on the dollars per hour the IRS generates auditing CIP-selected returns. For example, in FY 2007, the Western Area had a higher percentage of CIPs that exceeded the area DIF results based on the dollars per hour metric than any other area.³⁵ Even so, only 14 out of 25 of its CIPs (or 56 percent) exceeded the dollars per hour generated by DIF-selected returns in that area.³⁶ Moreover, DIF-selected return results are likely to improve in comparison to CIP results as the IRS updates the DIF formulas to incorporate data from the IRS's National Research Program.³⁷ There are a number of possible explanations for the seemingly poor CIP results.

Comparisons of CIP and DIF results aggregated above the local level may be misleading. The IRS generally evaluates CIP results at the area level,³⁸ and area CIP results vary widely.³⁹ However, national and area comparison of CIP and DIF examination results may be misleading if the IRS uses CIPs to select returns in localities where DIF does not work very well. If so, CIP results could exceed the DIF results at the *local* level, even if not at the area or national levels.

³¹ IRS response to TAS information request (June 1, 2008) (stating in the November-December 2007 operational review of the CIP program: "when you identify a Part I CIP with attractive results, is it viable as a Part II CIP for national consideration? You should always be asking this question which demonstrates the need to be proactive in culling through the Part I's looking for the next National CIP." The review does not mention the benefit of looking for CIPs that may significantly improve voluntary compliance at the local level.).

³² Relatively few Part I CIPs become Part II CIPs. From FY 2005 through May of FY 2008, about eight percent of all Part I CIPs became Part II CIPs. IRS response to TAS information request (Apr. 28, 2008). This may suggest either that the field employees could benefit from additional guidance or training about how to identify a good CIP or that the IRS should reexamine how it evaluates Part II CIP applications.

³³ IRM 4.17.4.7 (Feb. 1, 2004).

³⁴ AIMS Database (September 2008) (excluding correspondence and training examination results).

³⁵ IRS response to TAS information request (Apr. 28, 2008) (response to item 1h, excluding training returns).

³⁶ *Id.* In comparison, only seven out of 29 (or 24 percent) of the CIPs in the Gulf States Area exceed the area DIF on the dollars per hour measure. *Id.*

³⁷ SB/SE Research – Philadelphia, Project # PHL0026, *4-Model Workload Selection System Comparison to the New DIF Formulas* (May 2007) (indicating that the IRS implemented revised DIF formulas in January 2007).

³⁸ IRS response to TAS information request (Apr. 28, 2008) (providing DIF and local CIP examination results by area for FY 2007).

³⁹ For example, in FY 2007 the Western Area apparently developed better CIPs than other areas based on no-change metrics. In FY 2007, the local CIP no-change rate for the Western Area was 10.2 percent as compared to 43.2 percent for the North Atlantic Area. IRS response to TAS information request (Apr. 28, 2008) (providing DIF and local CIP examination results by area for FY 2007). In comparison, DIF-selected returns in the Western Area examined by Revenue Agents in FY 2007 resulted in a 29 percent no-change rate for individuals and a 51 percent no-change rate for corporations. *Id.* (file 206999T372009 on pages 3 and 4 of 35). Individual DIF-selected returns examined by Tax Auditors or Tax Compliance Officers resulted in a 17 percent no-change rate in the Western Area during FY 2007. *Id.* (file 206999T372009 on page 2 of 26). However, DIF-selected returns in the North Atlantic Area examined by Revenue Agents in FY 2007 resulted in a 36 percent no-change rate for individuals and a 41 percent no-change rate for corporations. *Id.* (file 201999T372009 on page 3 and 4 of 35). Individual DIF-selected returns examined by Tax Auditors or Tax Compliance Officers resulted in a 14 percent no-change rate in the North Atlantic Area for FY 2007. *Id.* (file 206999T372009 on page 2 of 26).

Comparisons of CIP and DIF examination results may also be misleading if the examinations do not involve the same types of IRS examiners and the same types of returns. Tax Compliance Officers (*i.e.*, employees who generally conduct office audits of individuals and businesses) generally produce better examination results than Revenue Agents (*i.e.*, employees who generally conduct field audits of businesses) simply because they audit different types of tax returns using different methods.⁴⁰ Tax Compliance Officers and Revenue Agents may audit CIP and DIF selected returns in different proportions. As a result, if Revenue Agents examine more CIP-selected returns, DIF may appear to generate better results than CIPs, even if the CIP would generate better results for a specific type of taxpayer or audit using these metrics.

More importantly, examination measures are imperfect because they do not capture the effect of CIPs on voluntary compliance. These difficulties leave the IRS with few good ways to measure the overall success or failure of the CIP program at the national level.⁴¹ Thus, it should consider ways to measure, recognize, and encourage success at the local level.

In addition, the IRS should not lose sight of the fact that because CIPs are experimental (*i.e.*, the first stage of a test) even good ones will not always initially produce better results than DIF – the IRS’s state-of-the-art return selection algorithm. Ideally, there should be multiple stages. First, the IRS should use CIPs to test theories about local compliance problems and solutions without the expectation that they will always exceed DIF return examination results. Second, the IRS should update its CIP return selection criteria and outreach methods to incorporate learning from its initial activities. Finally, if the IRS wants a more accurate measure of CIP results, it may need to conduct a study to evaluate the immediate and long-term effects of the CIP (or its methods) on voluntary compliance.

The Incentive for Local IRS Employees to Identify Local Compliance Problems May Need to Be Strengthened.

Local examination managers, area Coordinators, and area PSP managers are the types of local IRS employees who most often propose CIPs to national decision makers.⁴² Some of these decision makers are not responsible for compliance in any particular locale and some are not in the same chain of command as the employee making the submission.⁴³ In some areas, the PSP or CIP Coordinator may encourage local employees to submit CIPs and send

⁴⁰ For example, in FY 2007, DIF-selected return examination results varied by type of examiner as follows: Revenue Agents auditing individual returns produced \$333 per hour and had a 30 percent no-change rate, but Tax Compliance Officers auditing individual returns produce \$477 per hour and had a 12 percent no-change rate. IRS response to TAS information request (Apr. 28, 2008) (providing Table 37 examination results by area for FY 2007). This data does not suggest that Tax Compliance Officers are better than Revenue Agents, only that they audit different types of returns using different methods.

⁴¹ Although the IRS can generate reports showing CIP examination results at various levels, it does not include CIP results on the same internal reports used to report other types of examination results. IRS response to TAS information request (Apr. 28, 2008) (showing that “Table 37” – the internal IRS report that shows examination results from returns selected by various methods, including DIF – does not break out results for CIP selected returns as it had in prior years). As noted above, however, aggregated comparisons above the local level may be misleading.

⁴² IRM 4.28.1.3(5)(c) (Apr. 1, 2004); IRS response to TAS information request (Apr. 28, 2008).

⁴³ For example, cross-divisional CIPs require the approval of the applicable Division Commissioner or his/her delegate. IRM 4.17.4.9.4 (Feb. 1, 2004).

a memo of thanks to those that do.⁴⁴ However, PSPs do not manage most of these field employees. Such encouragement is probably less motivating than helping a District Director, a person in the field employee's direct chain of command, achieve one of his or her primary objectives – to improve compliance in the employee's community – as was the case prior to the reorganization.⁴⁵

No Resources Are Specifically Allocated to Allow Local IRS Employees to Identify and Work Local CIPs.

Pursuant to the national examination plan, each IRS area is required to examine a specific number of returns of various types of taxpayers each year.⁴⁶ The plan does not allocate resources to pursue new CIP work identified during the year.⁴⁷ Because the plan does not give CIP selected returns priority, and most IRS areas feel they are already fully utilizing all available resources,⁴⁸ area managers are less likely to encourage employees to seek out more work by proposing a CIP, especially if that work does not fit into the national examination plan. In a sample of 14 CIP termination reports that we reviewed, three indicated the CIP was abandoned in part because it did not fit the national plan.⁴⁹ These factors likely reduce the incentive for field employees to identify good CIPs.

Although the IRS Has Streamlined the CIP Approval Process, It Is Still Lengthy.

A 2002 report by the Treasury Inspector General for Tax Administration (TIGTA) indicated the length of time and number of approvals required to initiate CIPs discouraged IRS employees from recommending them.⁵⁰ The IRS has since automated the process so employees can submit CIPs for approval electronically. The raw number of local CIPs generating examination results has increased in recent years, from 22 in FY 2005 to 81 in FY 2007, perhaps because of steps taken to address the 2002 report.⁵¹ As noted above, however, the IRS still approved only seven local Part Two CIPs during 2006-2007. According to the IRS, it has reduced the median time to approve a Part Two CIP from 105 days in FY 2006 to 93 days in FY 2007, but a delay of 93 days (or three months) may still be enough to discourage some employees from submitting a CIP.⁵² These figures suggest the IRS should consider additional ways to streamline the approval process, while maintaining appropriate

⁴⁴ Compliance Initiative Projects, Central Area Desk Procedures 3 (Nov. 14, 2006); Compliance Initiative Projects, Western Area Desk Procedures 3 (Oct. 16, 2006); Teleconference with three PSP Territory Managers and SB/SE HQ personnel (July 8, 2008).

⁴⁵ We do not suggest here that the IRS should revert to its old District structure.

⁴⁶ See generally IRM 4.1.1.1 (Oct. 24, 2006).

⁴⁷ IRS response to TAS information request (Apr. 28, 2008) (FY 2008 exam plan).

⁴⁸ The areas generally responded to the proposed FY 2008 IRS examination plan by explaining why existing resources were insufficient to meet proposed targets. IRS response to TAS information request (Apr. 28, 2008) (area responses to FY 2008 exam plan).

⁴⁹ IRS response to TAS information request (Apr. 28, 2008) (a FY 2005 CIP termination report stated: "no returns were examined due to the Area's focus on only examining returns from the Strategic Priorities Program;" a FY 2006 termination report stated: "No returns were examined under this CIP. Work plan accomplishments for flow-through work were met through other means of workload selection;" a FY 2007 termination report stated: "The ATAT Coordinator has indicated that PSP has sufficient SEP inventory...").

⁵⁰ See TIGTA, Ref. No. 2002-30-171, *Controls Over Compliance Initiative Projects Have Improved, but Use of the Process Is Limited* (Sept. 2002).

⁵¹ IRS response to TAS information request (Apr. 28, 2008) (providing local CIP examination results by area for FY 2005 – FY 2007).

⁵² IRS response to TAS information request (June 13, 2008). The average approval time for FY 2007 was 79 days, down from 114 in FY 2006. *Id.*

oversight. For example, it could establish a written approval process that provides for reasonably short deadlines at each level. Alternatively, if the IRS established additional guidelines and training about how to develop good CIPs and made additional research resources available for drafting them, approvers might receive better-developed CIPs that take less time to approve.

Another Challenge Is to Ensure That CIPs Utilize Alternative Treatments – Such as Education and Outreach – In All Appropriate Instances.

The Internal Revenue Manual (IRM) states that because audits are the most expensive way to improve compliance, the IRS should consider “alternative treatments” such as outreach and education, revisions to forms or publications, legislative or regulatory changes, and agreements with state or local business licensing authorities.⁵³ While the Part One CIP approval form does not mention alternative treatments, the Part Two CIP approval form requires submitters to discuss them.⁵⁴ In addition, all Part Two CIPs require approval of the Area Manager, Stakeholder Liaison Field, who is supposed to provide guidance and suggestions on alternative treatments.⁵⁵ The PSP is also supposed to ensure the CIP authorization request includes the “proper” alternative treatments.⁵⁶ Yet the IRS does not track the number of CIPs that propose such treatments.⁵⁷ As a result, it may be difficult for the IRS to evaluate the extent to which employees are using them.

The 2002 TIGTA report found that CIP submissions often missed opportunities to include alternative treatments.⁵⁸ We reviewed seven local Part Two CIP submissions that the IRS approved in FY 2006 - 2007. Of these seven, four suggested alternative treatments, but none proposed any concrete plans to implement them.⁵⁹ Some CIP submissions may omit alternative treatments because CIPs proposing them require concurrence by the division commissioner of the “other affected functions,” which could further delay or even prevent implementation of the CIP.⁶⁰ Those other affected functions are also juggling competing priorities, so in some cases they may not concur with a CIP proposal for alternative treatments solely because it would require significant resources.

More importantly, the benefits of proactive alternative treatments that could be included in a CIP do not show up in IRS examination metrics. As a result, field examination employees

⁵³ IRM 4.17.4.4.1 (Feb. 1, 2004).

⁵⁴ Form 13502, *Compliance Initiative Project Authorization, Part One* (2003); Form 13498, *Compliance Initiative Project Authorization* (2003).

⁵⁵ See, e.g., *Compliance Initiative Projects, Central Area Desk Procedures* (Nov. 14, 2006); *Compliance Initiative Projects, Western Area Desk Procedures* (Oct. 16, 2006); Memorandum for All Examination Area Directors, from Director, Examination Planning and Delivery, *Interim Guidance on Part I Compliance Initiative Project: Taxpayer Contact Increase* (June 12, 2008); IRM 4.17.4.3 (Feb. 1, 2004); IRM 4.17.2.7 (Feb. 1, 2004).

⁵⁶ IRM 4.17.2.5 (Feb. 1, 2004).

⁵⁷ IRS response to TAS information request (Apr. 28, 2008); IRS response to TAS information request (June 26, 2008).

⁵⁸ See TIGTA, Ref. No. 2002-30-171, *Controls Over Compliance Initiative Projects Have Improved, but Use of the Process Is Limited* (Sept. 2002).

⁵⁹ IRS response to TAS information request (Aug. 4, 2008).

⁶⁰ IRM 4.17.4.9.4 (Feb. 1, 2004). Although all Part Two CIPs require approval of the Area Manager, Stakeholder Liaison Field, this approval is not required for a Part One CIP, unless Stakeholder Liaison is an “affected function.” The IRS may be less likely to include alternative treatments such as education in a Part Two CIP approval request if the treatment was not included in the Part One CIP.

may have less of an incentive to propose using alternative treatments to prevent noncompliance as part of a CIP, even if such solutions would ultimately be more efficient for the IRS and less burdensome for taxpayers. Thus, it may be appropriate for the IRS to take additional measures to ensure that CIPs use alternative treatments in all appropriate cases. It may be helpful for the IRS to revise the Part One CIP approval form so that submitters need to consider alternative treatments. Tracking these treatments and their results would also help the IRS obtain a more complete picture of the effectiveness of a given CIP.

The IRS Needs to Do More Follow-Up on CIPs to Identify, Document, and Disseminate Lessons Learned from Them.

As a successful CIP addresses a local compliance problem, it may become less productive over time (based on traditional examination metrics), until the IRS eventually discontinues it.⁶¹ IRS procedures call for the CIP Coordinator to write a CIP termination report addressing the CIP examination results, whether the results justified the time and resources, what difficulties the IRS encountered and how they were resolved, and successful procedures and audit techniques.⁶² These CIP termination reports should contain a good deal of useful information.

However, the quality of the CIP termination reports varies widely. After reviewing a sample of 14 reports from FY 2005 through FY 2007, we found most of them to be perfunctory, often leaving questions blank or providing one-sentence answers.⁶³ Moreover, SB/SE was unable to locate any CIP termination reports for years before FY 2005.⁶⁴ Nor does SB/SE regularly analyze them, summarize them, use them as the basis for further research, or make them widely available on the IRS intranet.⁶⁵ It should consider doing so.

IRS Researchers Could Help in Formulating and Evaluating Local CIPs.

Like a good CIP termination report, a good CIP submission includes extensive documentation and analysis. For example, according to IRS guidance it should describe the issue, how it was identified, the impact on compliance, the objectives and expected results, and information from a search for similar projects or data, if applicable.⁶⁶ The CIP approval form also asks the submitter to identify measures to evaluate noncompliance for purposes of monitoring and follow-up, as well as the costs and benefits of the project.⁶⁷ As noted

⁶¹ Employees must provide a special justification to continue a CIP beyond a two-year period. IRM 4.17.4.1 (Feb. 1, 2004). We note that the IRS may need to continue some level of activity among the target population even after it reduces CIP activity so it can extend the halo effect of the CIP on voluntary compliance and prevent noncompliance from increasing again.

⁶² IRS Form 13497, *Compliance Initiative Project Termination Report* (Aug. 2003).

⁶³ IRS response to TAS information request (Apr. 28, 2008) (providing five termination reports for FY 2007, five termination reports for FY 2006, and four for FY 2005).

⁶⁴ IRS response to TAS information request (Apr. 28, 2008). The IRS explained: "Information is consistently available only from 2005 forward due to the many reorganizations that took place in the PSP/Area offices." IRS response to TAS information request (June 6, 2008).

⁶⁵ Teleconference with three PSP Territory Managers and SB/SE HQ personnel (July 8, 2008).

⁶⁶ See, e.g., IRM 4.17.4.3 (Feb. 1, 2004).

⁶⁷ Form 13498, *Compliance Initiative Project Authorization* (2003).

above, we reviewed all seven of the Part Two CIPs approved in 2006 - 2007.⁶⁸ Only one included specific quantitative data from the Part One CIP or any other source to justify its approval. Although four identified possible alternative treatments, none of the submissions proposed to measure the results from any alternative treatments or evidenced any intent to implement them.⁶⁹ Thus, CIP submissions might improve if IRS researchers played a more active role in helping to formulate and evaluate CIPs in appropriate circumstances.

Conclusion

The CIP program has the potential to be a more valuable tool for improving voluntary compliance. The IRS should consider taking the following actions to improve the program:

- Update the IRM and CIP forms to provide additional guidance regarding when to propose CIPs, how to implement alternative treatments, approval timeframes, reasons for involving the IRS research or other functions, and how to measure and report CIP results.
- Provide local areas the flexibility to work good CIPs that do not necessarily fit into the categories currently reflected in the examination work plan. Consider modifying the examination plan to require each area to devote some resources to identifying and addressing local problems, working with local partners, and local sources of data; or at least allow the areas to divert resources from plan work to complete CIPs that are producing good results at the local level with appropriate national approval.
- Generate reports that show a better apples-to-apples comparison of CIP and DIF selected return results (and alternative treatment results) at the local level using both traditional measures, and to the extent practical, measures of the impact of these activities on voluntary compliance.
- Work with the IRS research function to develop better measures of the impact of CIPs and traditional examinations on voluntary compliance.
- Provide additional training or recognition to employees aimed at improving the quality of CIP submissions and CIP termination reports.
- Compile, analyze, follow-up on, and disseminate the results of local CIPs (including the impact of CIPs on voluntary compliance measures) on a regular basis to preserve for future decision makers, stakeholders, and researchers, the benefits of any lessons learned.⁷⁰

⁶⁸ IRS response to TAS information request (Aug. 4, 2008).

⁶⁹ We understand the IRS Research function was never very involved in the CIP process (or the predecessor of the CIP process). See, e.g., GAO, GAO/IGD-96-109, *TAX RESEARCH, IRS Has Made Progress but Major Challenges Remain* (June 1996) (noting that DORA personnel sometimes lacked proper training, were hampered by delays to IRS computer systems upgrades, and did not systematically design or track their research results).

⁷⁰ TE/GE posts some of its compliance initiative program reports on the IRS website. See, e.g., TE/GE, Resource Materials – Compliance Initiatives for Tax-Exempt Organizations, at <http://www.irs.gov/charities/article/0,,id=162493,00.html> (last visited Dec. 8, 2008); TE/GE, Political Activities Compliance Initiative (2008 Election), at <http://www.irs.gov/charities/charitable/article/0,,id=181565,00.html> (last visited Dec. 8, 2008).

IRS Comments

The IRS agrees that CIPs possess an increasingly national focus. However, most CIPs begin at the local level. When we identify issues that are common across the country, we leverage that knowledge to expand the local CIP to a national CIP. This process serves to improve voluntary compliance, reduce the tax gap, and significantly contribute to the IRS's store of knowledge.

Each Area monitors the success of a CIP by comparing Area CIP results against Area DIF results at the Tax Compliance Officer (TCO) and Revenue Agent (RA) level. Part I CIPs are designed to allow a small number of returns to be examined to test compliance using the key measures we utilize for our overall inventory. This provides the best measure to make appropriate resource decisions.

Our CIP approval process includes multiple levels of concurrence to ensure there is transparency and accountability in the CIP process. We need to ensure we are using our resources effectively, treating taxpayers fairly, and appropriately addressing areas of non-compliance. We agree that alternative treatments should be utilized when warranted and will continue to work with our Communication and Liaison employees to further explore outreach and education opportunities.

Our examiners take pride in the identification of a unique issue and are encouraged to consider the applicability of identified issues to multiple taxpayers. The IRS has several current CIPs that were referred by local field employees. The Area CIP coordinators have responsibility for identifying new areas of noncompliance and encourage field employees to contact them with referrals. Coordinators make presentations at group meetings where they receive recommendations from field employees for possible CIPs. In the FY 2009 Examination Program letter, Areas are specifically encouraged to use CIPs to help identify egregious areas to close the tax gap.

CIPs are discussed during monthly teleconferences between headquarters and the Areas and best practices are shared to improve submissions. Lessons learned upon the CIP's conclusion are captured on Form 13497, *Compliance Initiative Termination Report*. This form is currently being revised to provide more detailed information. We will continue to take steps to ensure we have proper follow-up on CIP results.

In her report, the National Taxpayer Advocate makes six specific suggestions to improve voluntary compliance. We are taking, or have taken, the following actions with respect to these issues:

The IRS is in the process of finalizing the revision to the IRM section on CIPs (IRM 4.17). The revised CIP IRM addresses how to implement alternative treatments, authorization approval timeframe guidelines, and methods to measure and report CIP results.

The returns examined under CIPs are considered discretionary work. The national examination plan and each area plan contain allocations for discretionary work. In the FY 2009 Examination Program letter, Areas were specifically encouraged to use CIPs to help identify egregious areas of noncompliance in order to close the tax gap.

Reports comparing local CIP results against local DIF results are generated and analyzed. The CIP results are further broken down to the RA and TCO level and then compared against the DIF results for each at the local level. This provides a valid comparison of CIP and DIF selected return results. Although a further analysis of the deterrent affects on noncompliance of alternative treatments may be helpful, we have not found a meaningful way to measure this effect.

We currently have research focusing on tax gap issues and measures, such as evaluating the effectiveness of the Form 1040 DIF scores, to enable selection of the most productive inventory for audit. Research, Analysis and Statistics and the National Research Program (NRP) are responsible for updating the voluntary compliance measure and updating the tax gap data. The Form 1040 NRP is now conducted annually, with yearly data updates to the voluntary compliance information. Concentrating our research efforts in this manner is the best way to efficiently focus our resources.

CIP training for the Area coordinators is in the planning stages, pending budgetary restrictions. The topics of the CIP training will include properly preparing CIPs, preparing timely and thorough CIP Termination Reports, and exploring alternative treatments. This training will be a train-the-trainer session so the Area CIP Coordinators can train field employees. The CIP coordinators encourage the field employees to call them with ideas for CIPs or to submit completed CIP authorization requests for review and approval.

We agree to perform a more thorough analysis of CIP results than currently conducted. Information on CIPs can be found on the CIP web page, which is available internally to all business units. From the web page, there is access to the CIP database, which describes current and terminated CIPs. The CIP coordinators for each CIP are listed and can provide detailed information on individual CIPs as necessary.

Taxpayer Advocate Service Comments

The National Taxpayer Advocate is pleased the IRS plans to:

- Update its CIP IRM (IRM 4.17) to address how to implement alternative treatments, establish approval timeframe guidelines, and ways of measuring and reporting CIP results;
- Revise Form 13497, *Compliance Initiative Termination Report*, to provide more detailed information;
- Annually update Form 1040 compliance research and evaluate the effectiveness of the Form 1040 DIF scores;
- Train the Area Coordinators in preparing CIPs, writing CIP termination reports, and exploring alternative treatments; and
- Perform a more thorough analysis of CIP results.

The National Taxpayer Advocate also commends the IRS for including language in its FY 2009 Examination Program Letter encouraging the local areas to use CIPs. In general, the IRS comments suggest that TAS and the IRS largely agree on the areas in need of improvement, if not all of the specific steps. However, some areas of disagreement remain.

National Focus

The comments suggest the IRS plans to continue to focus on identifying national CIPs, rather than local ones. These comments do not address the fact that local business groups, local IRS staff from other functions, and local sources of information can sometimes help the IRS identify, understand, and address noncompliance at the local level more effectively than national groups and national sources of data. As noted above, research suggests concentrated IRS activity to reverse noncompliance norms among local businesses may have a greater “ripple effect” on voluntary compliance by other taxpayers than seemingly random examinations.⁷¹ We acknowledge it is useful for the IRS to identify local CIPs that it can replicate at the national level, but the IRS should not ignore the benefits of local CIPs that cannot necessarily replicate nationwide. The two types of CIPs are not mutually exclusive. The National Taxpayer Advocate believes both are essential components of effective tax administration.

Measures

The IRS's comments confirm that it measures local CIP results using traditional measures (*e.g.*, no change rates and dollars per hour) at the area level, but IRS areas may encompass a multi-state footprint, which may be too large for valid comparisons against returns selected using other selection criteria. Moreover, the IRS has no good national measures for the

⁷¹ See, *e.g.*, Jon S. Davis, et al., *Social Behaviors, Enforcement, and Tax Compliance Dynamics*, 78 *Acct. Rev.* 39 (2003).

program. We recognize the difficulty the IRS faces in designing measures for the CIP program and gauging the success of alternative treatments at both the local and national levels, but the IRS's comments suggest it has given up on designing better measures.⁷² Because employees focus on measures, the IRS's efforts will not be as efficient or effective if it does not at least try to measure the impact of its activities (including CIPs) on the goal it wishes to achieve – increasing voluntary compliance. Moreover, the IRS will continue to struggle to identify and use effective alternative treatments if it does not try to measure whether and how employees use them.

Examination Plan

The IRS's comments suggest it included language in its FY 2009 Examination Program Letter encouraging the local areas to use CIPs.⁷³ However, the letter does not give the areas any specific resources to work CIPs.⁷⁴ According to the comments, CIPs are “discretionary” work and the examination plans provide resources for discretionary work. The plans have a discretionary component in the sense that they do not require the IRS areas to select all of the returns they audit using specific return selection criteria (*e.g.*, DIF selected returns), but contain no specific resource allocation for “discretionary” work. Rather, the examination plans require the areas to examine a certain number of returns from various types of taxpayers each year, so the areas only have enough resources to examine CIP generated returns as part of their discretionary workload if the CIP generates the right types of returns.⁷⁵ As noted above, in the sample of 14 CIP termination reports we reviewed, three indicated the IRS abandoned the CIP in part because it was not generating returns that fit into the categories required by the examination plan. Thus, without specifically allocating resources for CIPs or imposing a requirement that the areas use CIPs, the language in the 2009 Examination Program Letter is likely to have an important but limited impact.

Analysis of CIP Results and Access to Termination Reports

The IRS plans to revise the termination report form and provide additional training to CIP Coordinators about how to prepare these reports. In addition, the IRS pledges to “perform a more thorough analysis of CIP results.” These are steps in the right direction. The IRS comments suggest, however, that it is not inclined to initiate additional research to analyze CIP results. Nor does the IRS propose to make its CIP Termination Reports more widely available. It may be difficult for the IRS to make the most of the lessons it has learned from CIPs without taking these simple steps.

⁷² It is obviously possible to measure local changes in voluntary compliance by analyzing samples of the target population over time. As illustrated in the Alaskan *Compliance 2000* project (above), in past years the IRS did, in fact, develop and use various measures (*e.g.*, increases in the number of filers, decreases in the penalty rate, etc.) to evaluate the impact of local projects on voluntary compliance.

⁷³ According to the FY 2009 Examination Program Letter:

Areas are encouraged to identify egregious activities through Compliance Initiative Program (CIP) returns. Inclusion of these types of cases supports our strategy for addressing egregious non-compliance and our efforts to provide for balanced coverage. Returns with offshore tax issues, identified through CIPs, will be worked during FY 2009. SB/SE, Examination Program Letter for FY 2009 (Oct. 27, 2008).

⁷⁴ See *generally* IRM 4.1.1.1 (Oct. 24, 2006).

⁷⁵ IRS response to TAS information request (Apr. 28, 2008) (FY 2008 exam plan).

Recommendations

The National Taxpayer Advocate recommends the IRS:

1. Require each area to devote some resources to identifying and addressing local problems using local CIPs (*e.g.*, by working with local partners and local sources of data), or alternatively establish procedures to allow the areas to divert resources from plan work to complete local CIPs with appropriate national approvals;
2. Track the identification and implementation of alternative treatments in connection with all CIPs;
3. Work with the IRS (or SB/SE) research function to develop better measures of the impact of CIPs (including alternative treatments) and traditional examinations on voluntary compliance;
4. Make CIP termination reports more widely available to IRS employees and researchers (*e.g.*, by adding links to them on the CIP intranet website) to preserve the benefits of any lessons learned; and
5. Meet with the IRS (or SB/SE) research function regularly to identify CIP results that merit additional research and analysis.

MSP
#12**Customer Service Issues in the IRS's Automated Collection System****Responsible Officials**

Richard E. Byrd, Jr., Commissioner, Wage and Investment Division

Chris Wagner, Commissioner, Small Business/Self-Employed Division

Definition of Problem

The Automated Collection System (ACS) is an important component of the IRS Collection operation. In fiscal year (FY) 2008, ACS units closed nearly 2.1 million cases, collected \$2.4 billion in delinquent taxes, and issued nearly 2.3 million levies on taxpayer's assets.¹ While the ACS succeeds in collecting significant amounts of delinquent tax dollars, TAS frequently hears complaints from taxpayers, tax professionals, and Local Taxpayer Advocates (LTAs) about lapses in ACS customer service. Despite these complaints, the ACS's own assessment of its service reflects high customer satisfaction survey results and quality review scores. However, these measures do not adequately address taxpayer satisfaction in important areas, including:

- The failure of ACS customer satisfaction surveys and internal quality reviews to identify and measure several areas that are critical to taxpayers;
- The failure to promptly release ACS levies for economic hardship, installment agreements (IAs), and other situations in which the law requires prompt levy release;²
- The failure of ACS managers to timely respond to taxpayer requests to speak with them;
- Lengthy delays before a taxpayer's call is properly routed to a Customer Service Representative (CSR) who can handle that call;³
- The inability to work with the same ACS employee, even when the taxpayer must call ACS more than once in complex cases;
- Restrictive use of fax machines as a way for taxpayers to provide supporting documentation; and

¹ In FY 2008, the IRS routed taxpayer delinquent accounts (TDAs) for over 3.1 million taxpayers to the ACS for resolution. As of September 30, 2008, over 2.5 million taxpayer accounts involving unpaid taxes were in the ACS open inventory of TDAs, which included over \$18.2 billion in delinquent taxes. IRS, *Collection Activity Report, NO-5000-2, Taxpayer Delinquent Account Cumulative Report* (Sept. 2008). IRS, *Collection Workload Indicators (C23) Report* (Oct. 7, 2008).

² Internal Revenue Code (IRC) § 6342(a)(1); see also Treas. Reg. § 301.6343-1(b)(4).

³ IRS, Customer Satisfaction Survey, ACS, SB/SE National Report, April through June 2008 (Aug. 2008). IRS, Customer Satisfaction Survey, ACS, W&I National Report, October through December 2007 (Feb. 2008). Nationwide Tax Forums, ACS Focus Groups (July 2008, Aug. 2008, Sept. 2008).

- Inconsistent and unclear documentation requirements that burden ACS's customers.

The IRS has been aware for many years of the need to improve the customer service the ACS provides. In June 1998, the IRS completed an analysis of the system in an ACS Redesign Project.⁴ Many of the issues raised in the 1998 report continue to contribute to customer service problems today.

Analysis of Problem

Background

Brief Overview of the ACS

The ACS is primarily a call center collection operation that interacts with taxpayers responding to IRS notices of tax delinquency and notices of levy and liens for the purpose of addressing and resolving delinquent tax accounts. Depending on the nature of delinquency and the circumstances of the taxpayer, ACS telephone assistants can take financial information from the taxpayers, arrange payment alternatives, secure delinquent tax returns, and place accounts in abeyance.⁵ The Wage and Investment (W&I) and Small Business/Self-Employed (SB/SE) divisions are responsible for operating the 17 ACS units in 15 locations throughout the country.⁶ In FY 2007, the ACS units answered 5.4 million incoming calls and placed 1.9 million outgoing calls, for a total volume of 7.3 million calls.⁷ The ACS's mission is:

To collect delinquent taxes and tax returns through the fair and equitable application of the tax laws, including use of enforcement tools where appropriate, and provide education to customers to ensure future compliance.⁸

⁴ IRS, *Automated Collection System (ACS) Redesign Project* (June 1998).

⁵ ACS handles balance due and nonfiler cases that may require telephone contact. ACS employees review taxpayer data, and issue notices, liens, or levies to resolve delinquent tax cases. The IRS implemented ACS in 1983-1984 to replace its Collection Office function, which was a more paper-oriented operation. ACS is the middle stage of what is essentially a three-tier IRS collection pyramid: collection begins with notices, then moves to the ACS, and ultimately escalates to the IRS's field functions. The IRS uses Automated Collection System Support (ACSS) units to support ACS. ACSS handles much of the ACS paperwork, such as mailing notices, responding to taxpayer correspondence, processing Collection Due Process (CDP) hearing requests, mailing transcripts, and resolving diagnostic and error listings. See Internal Revenue Manual (IRM) 5.19.5.2.1 (Dec. 1, 2007) and IRM 5.19.6.1 (July 8, 2008).

⁶ W&I's seven units are in Atlanta, Austin, Buffalo, Fresno, Jacksonville, Guaynabo (Puerto Rico), and Seattle. SB/SE's six units are in Brookhaven, Denver, Detroit, Nashville, Oakland, and Philadelphia. W&I ACSS units are located at the Fresno and Kansas City campuses; SB/SE ACSS units are located at the Cincinnati and Philadelphia campuses. See IRM 5.19.6.1(2) (July 8, 2008).

⁷ See Government Accountability Office, GAO-08-728, *Tax Debt Collection: IRS Has a Complex Process to Attempt to Collect Billions of Dollars in Unpaid Tax Debts* 3 (June 2008). In FY 2008, the ACS units answered nearly 4.1 million incoming calls and placed approximately 250,000 outgoing calls for a total volume of 4.3 million. Additionally, the ACS answered 3.9 million Economic Stimulus calls which diverted resources from collection efforts. See IRS response to TAS research request (Dec. 18, 2008). ACS makes many outbound calls using the predictive dialer system technology in which calls are placed using an attending agent on the originating telephone line. If the dialer makes contact, it transfers the calls along with the other pertinent case data to a waiting IRS representative. When a busy signal or no answer is received, the dialer updates the account and reschedules the case to the predictive dialer queue for another attempt. See IRM 5.19.5.4.1 (Dec. 1, 2007) for a more detailed explanation of the process.

⁸ See <http://pccc.web.irs.gov/acs%20callsite.htm> (last visited Dec. 5, 2008).

Customer service is one of the balanced measures upon which the IRS, including the ACS, is evaluated.⁹ Despite its significant involvement with taxpayers and practitioners over the phone, the ACS is falling short of delivering quality customer service to all taxpayers.

ACS Customer Satisfaction Surveys and Internal Quality Review Processes Fail to Identify and Measure Critical Taxpayer Concerns

The ACS customer satisfaction survey results indicate that 92 percent of taxpayers are satisfied with the ACS customer service while only three percent are dissatisfied.¹⁰ While these results may reflect good customer service for some subset of the population of taxpayers interacting with the ACS, the manner in which the survey is conducted does not capture the full picture. For example, the ACS only administers its customer satisfaction survey to a sample of taxpayers who have completed their calls.¹¹ Thus, taxpayers whose calls terminate before their cases are resolved (*e.g.*, those who end the calls out of frustration) are not given the opportunity to participate in the survey. Moreover, ACS telephone assistors are notified by a “tone” over their headsets as to which taxpayers will be asked to participate in the survey *while the call is still in process*.¹² Thus, the sampling method raises potential bias in two respects: first, by excluding taxpayers who may have reason to be dissatisfied with the service received; and second, since telephone assistors may be aware which taxpayers are being offered the survey, it is possible to shape the level of service depending on whether the taxpayer will be surveyed.

The timing of the ACS customer satisfaction survey during the life cycle of the taxpayer’s interaction with the ACS may also impact the perception of the ACS’s level of service. In other words, a taxpayer may be very satisfied on any individual call with the ACS when it appears that his or her request for relief was granted or is being considered, but that perception can change if the subsequent relief does not meet the taxpayer’s expectations. The survey tends to measure a “snapshot” of ACS service rather than the overall picture by taking into consideration 16 customer service related attributes that exclude taxpayer

⁹ IRM 21.10.1.4.2.3 (Oct. 1, 2003) provides:

ACS Phones will be measured for Timeliness, Professionalism, Customer Accuracy, Regulatory/Statutory Accuracy, and Procedural Accuracy. These are the measures that are available and may be reported under the Balanced Measurement System.

¹⁰ IRS, Customer Satisfaction Survey, ACS, SB/SE National Report, April through June 2008 (Aug. 2008). IRS, Customer Satisfaction Survey, ACS, W&I National Report, April through June 2008 (Aug. 2008).

¹¹ IRM 21.10.1.9.4.2 (Oct. 1, 2006).

¹² IRM 21.10.1.9.4.4(1) (Oct. 1, 2008). The ACS uses monitors who listen to taxpayer calls to determine whether the call is from a taxpayer actually seeking the services that ACS provides. If the call is ACS related, the monitor notifies the ACS representative that the caller will be offered an opportunity to take the customer satisfaction survey. See *generally* IRM 21.10.1.9.4.2 (Oct. 1, 2006). Despite encouraging the monitors to provide the “tone” to the ACS telephone assistors later in the call, neither W&I nor SB/SE has issued written guidance to their monitors on when the “tone” should be provided to the assistors. The lack of procedures to determine when the “tone” is given to the assistors further reduces the reliability of the customer satisfaction survey.

feedback about the entirety of the ACS experience, including overall satisfaction with the final outcome of the case.¹³

In contrast to the ACS survey, the Collection Field function (CFf) surveys customer satisfaction for cases worked by revenue officers through a mailed questionnaire only *after* the cases are closed so the entire picture is available (*i.e.*, satisfaction with how the case was resolved and impressions of customer service in light of that resolution). The revenue officer is never notified that his or her case was selected for the customer satisfaction survey. As a result, the survey contains no inherent sampling bias. While the overall customer satisfaction rating for revenue officers is significantly lower than that of the ACS (61 percent favorable rating compared to at least 92 percent),¹⁴ reaction from tax professionals indicates a strong preference for working with revenue officers in the field rather than telephone assistants in the ACS.¹⁵ Thus, the ACS's perception of its customer service does not reconcile with taxpayers' and their representatives' perception of that service.

The ACS also conducts internal quality assessments of its service based on analysis of recorded taxpayer calls. These reviews measure quality in timeliness, customer accuracy, and

¹³ The 16 attributes are:

- Amount of time given to follow up with the IRS;
- Clarity of IRS notice, bill or invoice;
- Tone of IRS notice, bill or letter;
- Ease of understanding of the Automated Answering System (AAS) menu and instructions;
- After you reached representative, time to complete call;
- Time to get through to the IRS;
- Representative's description of non-compliance;
- Description of what was expected of you;
- Representative's authority to make decisions;
- Reached the right person;
- Representative's flexibility in handling your issue;
- Knowledge of representative;
- Getting all the information you needed during the call;
- Fairness in treatment;
- Friendliness of representative; and
- Representative's willingness to help with your issue.

See IRS, Customer Satisfaction Survey ACS, SB/SE, April through June 2008 (Aug. 2008); IRS, Customer Satisfaction Survey, ACS, W&I, April through June 2008 (Aug. 2008).

¹⁴ IRS, Customer Satisfaction Survey, Compliance Services Collection Operation (CSCO), SB/SE National Report, January through March 2008, with Annual Results (July 2008).

¹⁵ A number of prominent tax treatises contain advice to practitioners such as: "In most cases, ACS should be avoided." Arthur H. Boelter, 1 Rep. Bankr. Taxpayer, IRS Tax Collection System: Automated Collection System, § 3.38 (2008), noting problems when dealing with the ACS, including:

- In the ACS it takes two weeks for correspondence to be loaded into the ACS computers;
- The ACS is very stratified, such that the person answering the call will not be the person doing research if the underlying tax is questioned; and
- The ACS levies within four days if the taxpayer promises to make a payment immediately and it is not received within four days.

See also Robert E. McKenzie, 1 Rep Before Collection Division of the IRS, § 2:29, (2008), noting "In most instances, it is better to go to an IRS local area office or local office and deal with one of the Customer Service Representatives instead of attempting to phone the Automated Collection System." In discussing customer service related feedback about the ACS, members of the American Institute of Certified Public Accountants (AICPA) voiced the preference for dealing with revenue officers rather than the ACS. TAS dialogue with AICPA regarding ACS Customer Service (May 18, 2008).

professionalism by considering 77 attributes, such as whether the employee's greeting was professional, the taxpayer's issues were identified and addressed, and the taxpayer's name and address were verified.¹⁶ While a small number of these attributes measure events following the initial contact with the ACS,¹⁷ the ACS quality review criteria generally do not reflect a number of issues that appear to be very important to ACS customers, such as whether a levy was released in a timely fashion or whether a manager returned a call from a taxpayer or tax professional.

The National Taxpayer Advocate is concerned that significant service-related concerns consistently raised by taxpayers, tax professionals, and TAS case advocates are not reflected in IRS measures designed to track ACS customer satisfaction or quality.¹⁸ Consequently, the IRS may not recognize these issues as problem areas and target them for improvement.

ACS Procedures That Are Unnecessarily Burdensome

Over the past year, the National Taxpayer Advocate and her staff have met with tax professionals who routinely interact with the ACS, including representatives from the American Bar Association (ABA), American Institute for Certified Public Accountants (AICPA), the National Association for Enrolled Agents (NAEA), as well as Low Income Taxpayer Clinics (LITCs) and LTAs in TAS. A sample of these ACS customer service issues is set forth below.

The ACS Does Not Promptly Release Levies Under Certain Circumstances

"The taxpayers are now in an installment agreement, but the levy release was mailed instead of faxed and taxpayers' next check is scheduled to be deposited tonight. Only one taxpayer is working and the other is disabled. They are three months behind on their mortgage. They need this money to live."¹⁹

The ACS plays a significant role in the IRS's enforcement function. For example, of the 2.63 million levies issued against taxpayer assets in FY 2008, the IRS issued 86 percent (or 2.26 million) of them through the ACS.²⁰ The IRS also must release levies in some

¹⁶ ACS, *Quality Job Aid* (Oct. 1, 2007).

¹⁷ For example, one attribute measures whether after the call the IRS employee made the right decision to levy a taxpayer's assets. ACS, *Quality Job Aid* (Oct. 1, 2007).

¹⁸ Tax professionals from the AICPA, NAEA and LITCs met with TAS employees to discuss their concerns with ACS customer service (May 2008). Representatives from TAS also conducted focus groups on ACS customer service at the IRS sponsored Nationwide Tax Forums (July 2008, Aug. 2008, Sept. 2008). The results of the focus groups at the Tax Forums mirrored the complaints the National Taxpayer Advocate has heard from her own staff; however, the feedback from these focus groups and professional organizations is anecdotal and not intended as a statistically representative sample of all taxpayer experiences with the ACS.

¹⁹ Description by TAS case advocate of a type of case she has seen where the levy release is delayed and the IRS takes an extra garnishment.

²⁰ See IRS, *Collection Workload Indicators (C23) Report* (Oct. 7, 2008).

circumstances.²¹ The IRS must release the levy promptly upon the occurrence of a levy release event (*e.g.*, the statutory period for collection expires), if the taxpayer enters into an IA, or if the taxpayer has an economic hardship.²² However, the ACS has resisted adopting procedures that would result in more prompt releases by:

- Failing to disclose to taxpayers that the IRS has an expedited levy release policy that allows releases to be faxed to third parties (such as employers) rather than being mailed; and
- Imposing an additional hurdle on taxpayers who are persistent enough to uncover the expedited process by requiring taxpayers to prove they truly need faxed levy releases.

If the IRS agrees to release a levy based on a determination of economic hardship under IRC § 6343(a)(1)(D), the IRS must send a release of levy to the taxpayer's employer so the employer will stop remitting the taxpayer's wages to the IRS. The IRS's standard procedure is to mail the levy release to the employer, which can take seven to ten days, however the tax practitioner community has commented that it can take longer than ten days.²³ Because of penalties imposed under IRC § 6332, the employer will continue remitting payments to the IRS, despite the hardship, until the employer receives the release.

The IRS can easily stop these unnecessary levy payments by faxing the levy release to the employer. In fact, the IRS has an "expedited levy release" procedure, but does not tell taxpayers this procedure is available unless the taxpayer knows about internal IRS processes or happens to ask the telephone assistor the right questions.²⁴ Moreover, if the taxpayer learns of the expedited procedure and asks for a faxed levy release, the IRS imposes another hurdle by requiring the taxpayer to provide additional information to validate that his or her situation warrants a levy release.²⁵ A taxpayer who has already been determined to have an economic hardship should not have to provide still more information to merit a levy release being faxed instead of mailed.

The result of the ACS's approach is that taxpayers needlessly experience additional wage garnishments. The National Taxpayer Advocate addressed this problem in her 2005 Annual Report to Congress. At that time, the IRS would not agree to either inform taxpayers of

²¹ IRC § 6343(a)(1) requires levies be released in the following situations:

- (A) the liability for which such levy was made is satisfied or becomes unenforceable by reason of lapse of time;
- (B) release of such levy will facilitate the collection of such liability;
- (C) the taxpayer has entered into an agreement under section 6159 to satisfy such liability by means of installment payments, unless such agreement provides otherwise;
- (D) the Secretary has determined that such levy is creating an economic hardship due to the financial condition of the taxpayer; or
- (E) the fair market value of the property exceeds such liability and release of the levy on part of such property could be made without hindering the collection of such liability.

²² See Treas. Reg. § 301.6343-1(b)(4).

²³ IRM 5.19.4.4.10 (Sept. 24, 2008).

²⁴ *Id.*

²⁵ IRM 5.19.4.4.10(1) (Sept. 24, 2008).

the availability of the expedited process or modify its policy to reflect the fact that the cost of an extra levy to taxpayers in economic distress significantly outweighs the administrative inconvenience, if any, to the IRS of having to fax more levy releases rather than mail them.²⁶

ACS Managers Fail to Return Calls When Taxpayers Ask to Speak with Managers

"I cannot get a response when you ask to speak to a supervisor. Employees will not identify their supervisor. Supervisors are supposed to call back within a certain period and they do not call back."²⁷

Taxpayers and their legal representatives have an administrative right to speak with an IRS employee's manager in case of a dispute with the employee.²⁸ When a taxpayer or practitioner invokes this right, the IRS employee is required to inform the caller that the manager will call back. TAS has received complaints that ACS managers do not regularly return calls to taxpayers and tax professionals.²⁹ One LITC director reported that after asking to speak to a manager more than a dozen times over a period of two and one-half years, he had never received a callback.³⁰

The failure of managers to return calls erodes taxpayer confidence in the IRS and should be a measure of the service taxpayers receive. While important taxpayer publications and some portions of the Internal Revenue Manual (IRM) refer to the taxpayer's right to speak to a manager, the ACS procedures contain no such reference.³¹ The IRS does not track the number of manager callbacks requested and completed each year by the ACS and has no plans to develop such a process.³² Nor does the IRS hold managers accountable by making the timely completion of callbacks a requirement in their performance plans each year (*i.e.*, by tying this aspect of performance to the manager's bonus and pay).

²⁶ See National Taxpayer Advocate 2006 Annual Report to Congress 110; National Taxpayer Advocate 2005 Annual Report to Congress 209; See also http://www.irs.gov/pub/irs-utl/2005_arc_report_card_v2.pdf (last visited Dec. 5, 2008)

²⁷ Nationwide Tax Forums, ACS Focus Groups (Atlanta Forum, July 2008).

²⁸ IRM 3.0.273.7 (Jan. 1, 2008) provides:

"(1) As directed by the Taxpayer Bill of Rights 1 & 2, managers must be sure employees know and observe the rights of taxpayers. Taxpayers have the right to prompt, courteous and impartial treatment. In dealing with taxpayers:

- a. Assume each taxpayer wants to comply;
- b. Put yourself in the taxpayer's position;
- c. Identify the taxpayer's problem;
- d. Resolve the immediate problem and at the same time prevent future problems;
- e. Resolve the taxpayer's problem without referring him or her elsewhere;
- f. **Allow the taxpayer to speak to your supervisor if he or she feels your decision is unfair** (emphasis added); and
- g. Approach each taxpayer in a businesslike and professional manner."

²⁹ Nationwide Tax Forums, ACS Focus Groups (July 2008, Aug. 2008, Sept. 2008).

³⁰ Tax professionals from the AICPA, the NAEA, and LITCs met with TAS employees to discuss their concerns with the ACS (May 2008).

³¹ IRS Pub. 1, Your Rights as a Taxpayer (May 2005); IRS Pub. 594, The IRS Collection Process (July 2007). See generally IRM 5.19.5 (Dec. 1, 2007) and IRM 5.19.6 (July 8, 2008) (where there is no mention of manager callbacks). See also IRM 3.0.273.7 (Jan. 2008) (where reference is made to the manager contact right in the IRM for the Submission Processing function). But see IRM 1.4.20.1(2)h (Jan. 1, 2006) (where reference is made to manager contact by the operations and department manager for the Filing and Payment Compliance function, which includes the ACS).

³² W&I and SB/SE response to TAS research request (July 17, 2008).

Taxpayers Experience Lengthy Delays and Call Routing Problems Before Reaching Customer Service Representatives

“When you do get through to the ACS, you may be placed on hold for extended periods by an automated answering system.” [The author has experienced waits of more than 30 minutes.]³³

Both the W&I and SB/SE customer satisfaction surveys demonstrate that wait time continues to be a problem.³⁴ The wait time attribute received the lowest customer service ratings of all of the 16 attributes, with only 48 percent of ACS customers being satisfied with the time it takes to talk to an assistor in both W&I and SB/SE.³⁵ Even though the wait time attribute received the lowest customer satisfaction ratings, the survey administrator did not recommend any improvement opportunities for the wait time attribute for W&I but recommended that SB/SE focus improvement efforts on reducing wait time.³⁶

Taxpayers also complain about being routed from one function to the next in the ACS. The ACS utilizes an automated routing system that filters out non-ACS cases and routes ACS callers to the first available assistors. However, because not all assistors can handle complex cases, ACS must transfer taxpayers to those capable of dealing with their requests. Consequently, if a taxpayer does not qualify for a basic IA because the delinquency exceeds the threshold for a basic IA, the taxpayer will again be transferred until he or she reaches an assistor who can conduct the analysis.³⁷ The ACS offers no direct-dial option for large dollar cases, so even when callers know they need to speak with the large dollar unit, they must still go through the main ACS extension.³⁸ Such delays cause frustration and in some cases create a loss of service because the customers cannot continue to hold and must hang up, only to try again later. We have identified at least five distinct applications within the ACS that contribute to this problem.³⁹

³³ Robert E. McKenzie, 1 Rep Before Collection Division of the IRS, § 2:29 (2008).

³⁴ IRS, Customer Satisfaction Survey ACS, SB/SE, April through June 2008 (Aug. 2008); and IRS, Customer Satisfaction Survey, ACS, W&I, October through December 2007 (Feb. 2008).

³⁵ See IRS, Customer Satisfaction Survey ACS, SB/SE National Report, April through June 2008, Appendix E-1 (Aug. 2008).

³⁶ See IRS, Customer Satisfaction Survey ACS, SB/SE, April through June 2008 (Aug. 2008); IRS, Customer Satisfaction Survey, ACS, W&I, April through June 2008 (Aug. 2008).

³⁷ The most basic IA is known as a “guaranteed IA” because it is statutorily guaranteed to taxpayers under IRC § 6159(c) provided the amount of the delinquency does not exceed \$10,000 and the taxpayer has been otherwise compliant for the last five years. The IRS also administratively established another basic agreement known as the “streamlined IA” for accounts in which the delinquency is not greater than \$25,000. IRM 5.19.1.5.4.4(8) (Apr. 28, 2008). Installment agreements for amounts above \$25,000 require financial analysis of the taxpayer’s income, expenses, assets, and liabilities. IRM 5.19.1.5.4.8 (Apr. 28, 2008).

³⁸ IRM 5.19.1.6.6 (Apr. 28, 2008).

³⁹ The ACS uses agent groups to route customers to the correct applications for assistance. The ACS has five distinct agent groups: Alaska Perma Fund, Large Dollar, High Income Non-Filer, Practitioner Priority Service, and Regular ACS. IRS, Seven-Day Comments to Most Serious Problem, *Customer Service Issues in the IRS's Automated Collection System* (Nov. 10, 2008). Some taxpayers may be transferred from application to application (because the first application was not the right “gate” to solve the taxpayer’s problems), causing additional wait time and frustration.

The Inability to Work with the Same ACS Employee in Cases Requiring Multiple Contacts

“Each time I talk to the IRS, the individual tells me something different. They ask me to fax information, then do not act on it or enter the information into the system. I then call back to make sure that the case is noted, and the new person claims that there is nothing noted in the account. This is a systemic problem, since the IRS has no accountability or consistency in its call centers.”⁴⁰

A common complaint of taxpayers and tax professionals involves the inability to continue working with the same ACS employee in collection cases that require more than one contact to resolve.⁴¹ The ACS does not provide for extension dialing, or offer phone numbers for individual employees. Cases that require more than one contact rely on the documentation of prior contacts to provide ongoing service and continuity in case development. However, tax professionals have informed TAS and the IRS that missing, incorrect, or inadequate documentation of previous contacts with the ACS is common.⁴² Consequently, taxpayers and tax professionals often need to invest considerable time in repeating conversations that have already occurred or correcting information that has been captured incorrectly when working with ACS employees on subsequent contacts.

Historically, the IRS has said it is impractical to maintain toll-free extensions that would allow ACS employees to work inventories. However, the SB/SE ACS sites in Memphis and Nashville are testing the Corporate Approach to Collection Inventory (CACI) ACS Hybrid initiative. This system incorporates transferring calls for individual case assignment to ACS assistors into the processing of cases that ACS would typically transfer to the CFF due to the complexity of the issues involved. The National Taxpayer Advocate applauds the IRS for testing individual case assignment as part of this hybrid initiative and looks forward to reviewing the results. The National Taxpayer Advocate believes the IRS should also consider establishing teams of employees who are responsible for cases, and permit extension dialing, to increase the likelihood that a subsequent telephone assistor will have access to the information the taxpayer has already provided. Further, at a minimum, IRS customer satisfaction surveys and internal quality reviews should capture this taxpayer preference.

⁴⁰ Systemic Advocacy Management System (SAMS) Issue 29765 (July 2008).

⁴¹ Issue Management Resolution System (IMRS) 06-0000184-Contacting ACS Employees submitted in 2006, at <http://www.irs.gov/businesses/small/article/0,,id=168260,00.html> (last visited June 5, 2008).

⁴² IRS, *Income Statements*, at <http://www.irs.gov/businesses/small/article/0,,id=168260,00.html> (last visited Sept. 30, 2008).

Taxpayers Complain the Current Form 433-F, Collection Information Statement, Causes an Understatement of Expenses

“No one will listen. I am telling you that this form does not have any space for the taxes I pay, so now I am in an installment agreement that is at least 30 percent more than I should be paying.”⁴³

TAS has received complaints from taxpayers about the IRS's financial analysis forms. For example, ACS employees either send Form 433-F, *Collection Information Statement*, to the taxpayers to complete and send back with the required documentation, or they take the information during phone calls and enter it onto the 433-F screen on their systems. Taxpayers have told TAS they are obligating themselves to pay IAs they cannot afford because Form 433-F does not capture their federal, state, and local tax obligations. While an earlier version of the form (August 2005) did provide a space for the taxpayers to claim these obligations, the new version (June 2008) omits the space. TAS raised this issue with the IRS in the spring of 2008 but has not received a response.

The Restrictive Use of Facsimile (Fax) Technology and the Use of Standard Mail Place an Unnecessary Burden on Taxpayers

“If you have more than ten pages, you cannot fax substantiation to the ACS – the ACS needs to use reason. If you have 12 pages, you should be able to fax 12 pages.”⁴⁴

The ACS's reluctance to use fax machines is again evident in its policy of restricting taxpayers from faxing more than ten pages per case.⁴⁵ While an exception exists for taxpayers with a levy on their assets that cannot be released without the documentation, other taxpayers and practitioners must mail their information and wait for it to be entered into the ACS's data system to engage the IRS on the documentation's contents.⁴⁶ The IRS processes mailed documentation at the four ACS support sites (ACSS), which have at least 30 days to process correspondence before contacting the taxpayers. Although there are procedures for expedited cases, the 2008 training guide did not address actions to take on such cases.⁴⁷ Further, tax professionals and taxpayers have complained that the support sites often lose or misplace mailed documents, which must then be resubmitted, increasing the time needed to resolve cases.⁴⁸

⁴³ Taxpayer complaint to TAS representative after trying to work with the IRS to reduce an IA payment established by the ACS because taxes were not factored into the taxpayer's expenses. Ultimately, the agreement was reduced by an amount equal to the taxpayer's federal, state, and local tax obligations.

⁴⁴ IRS Nationwide Tax Forum, Focus Groups on ACS (Las Vegas Forum, Aug. 20, 2008).

⁴⁵ See IRM 5.19.1.6.3 (Apr. 28, 2008).

⁴⁶ See *id.*

⁴⁷ IRS Policy Statement P-6-12 requires a final response to the taxpayer be initiated within 30 calendar days of the earliest IRS received date. If a final response cannot be initiated within 30 calendar days, an interim response will be initiated by the 30th calendar day from the IRS received date. ACSS 2008 *Instructor Guide for Continuing Professional Education, Course 10341-201*.

⁴⁸ IRS Nationwide Tax Forum, Focus Groups on ACS (Las Vegas Forum, Aug. 20, 2008). Tax professionals from the AICPA, the ABA, the NAEA, and LITCs met with TAS employees to discuss their concerns regarding ACS customer service issues (May 2008) and (Sept. 2008).

Inconsistent and Unclear Documentation Requirements Burden ACS Customers

"There is inconsistent treatment within ACS varying by assistor, manager, location, etc."⁴⁹

"Without consistency across the country, you can't understand the rules and come to an agreement."⁵⁰

The National Taxpayer Advocate has received complaints from taxpayers about inconsistent treatment from one ACS site to another and from one ACS employee to another at the same site, such as one site accepting a particular type of document as substantiation while another does not.⁵¹ This inconsistency also extends to differences between the ACS and the Cff approaches to what documentation is required for taxpayers to obtain basic IAs. For example, taxpayers with delinquencies of \$25,000 or less are supposed to qualify for the streamlined IAs without the IRS performing financial analysis.⁵² Recently, the ACS added to the burden of taxpayers seeking to qualify for streamlined agreements by requiring those who appear to have some equity in their assets (*i.e.*, a primary residence), to seek out a loan and present a loan denial letter to the ACS.⁵³ Revenue officers in the field do not place this requirement on taxpayers, thereby creating inconsistency in the way similarly situated taxpayers are treated.⁵⁴ This new requirement will affect a substantial number of taxpayers. Of the 3.6 million tax accounts disposed by ACS in FY 2008, 38 percent were placed into IAs, 94 percent (or 1.2 million) of which were streamlined agreements.⁵⁵ Because of the current home lending crisis, individuals without cash or excellent credit often do not qualify for home loans.⁵⁶ The loan denial requirement is an additional exercise in futility for the taxpayers and a clear waste of IRS resources.

⁴⁹ IRS Nationwide Tax Forum, Focus Groups on ACS (Atlanta Forum, July 2008).

⁵⁰ IRS Nationwide Tax Forum, Focus Groups on ACS (Chicago Forum, July 2008).

⁵¹ For example, a tax professional needed to provide documentation to the ACS to support a request for a non-streamlined IA for more than one client. One ACS employee advised him he needed to submit two months of pay stubs while the other ACS employee advised him he needed six months of stubs. Tax professionals from the AICPA, the NAEA, and LITCs met with TAS employees to discuss their concerns with the ACS (May 2008); IRM 5.19.1-14 (Apr. 28, 2008) requires the taxpayer to submit the prior three months of wage statements. TAS employees, taxpayers, and tax professionals have also complained that the ACS rejects documentation that does not match its concept of how it should look. For example, a utility shutoff notice provided to substantiate a hardship was rejected by an ACS employee because it was a checkbox form and the ACS employee believed it was not authentic. Analysis and case examples provided by TAS Internal Technical Advisor Program technical advisors regarding ACS customer service issues (July 17, 2008). See IMRS 06-0000229 – Income Statements, at <http://www.irs.gov/businessess/small/article/0,,id=168260,00.html> –(last visited Dec. 19, 2008).

⁵² IRM 5.14.1.5 (July 12, 2005).

⁵³ IRM 5.19.1.5.4.2 (Apr. 28, 2008).

⁵⁴ IRM 5.14.1.5 (July 12, 2005).

⁵⁵ IRS, *Taxpayer Delinquent Account Cumulative Report, NO-5000-2* (Sept. 30, 2008); IRS, *Installment Agreement Cumulative Report, NO-5000-6* (Sept. 30, 2008).

⁵⁶ Louis Uchitelle, *Pain Spreads as Credit Vise Grows Tighter*, New York Times (Sept. 19, 2008); David Ellis, *The Credit Crunch: Loans Out of Reach*, CNNMoney.com (Sept. 25, 2008).

Other Concerns of Tax Professionals About Dealing with the ACS

As described above, TAS asked tax professionals about the ACS in focus groups at the IRS-sponsored 2008 Nationwide Tax Forums. The sessions included general questions and detailed questions designed to spur discussion (but not to suggest specific answers or concerns or generate a particular type of feedback). The responses do not reflect a statistically representative sample of all taxpayers served by the ACS; yet they provide important practitioner feedback, which is very limited in ACS customer satisfaction surveys.⁵⁷ Accordingly, a sample of two questions asked and responses is provided below:

Question: How would you describe your overall experience in working with the ACS during the past year?

Sample Responses:

“The phone system is horrible, keep getting put on hold. Workers are apprehensive to make decisions and need more training.”

“I have dealt with one or two individuals that were quite easy to deal with. It is unusual to deal with the same person when you call in more than once and to have the case followed through to resolution.”

“I have had problems with the ACS. It seems like they request information in a short timeframe, and then might take six months to review the material I send in – if they can find it. I have started sending everything certified, so at least I have a record that I send it and someone signed for it. In the meantime, my client continues to receive collection notices.”

“They lose files, paperwork, and claim they do not receive faxes. I have problems using the practitioner priority line regarding ACS issues, I usually get transferred and cut off.”

“They are definitely collection people, they do not provide assistance. Even if I use the PPS [Practitioner Priority Service], they tell me to call the number on the notice. You have to go through too many prompts/menus to get to ACS.”

Question: What, if any, advantages do you see occurring with the discussions and/or investigations that are conducted through ACS?

⁵⁷ Of the respondents for the ACS Customer Satisfaction Surveys, practitioners accounted for nine percent for SB/SE and three percent for W&I. IRS, Customer Satisfaction Survey, ACS, SB/SE National Report, April through June 2008 (Aug. 2008); IRS, Customer Satisfaction Survey, ACS, W&I National Report, April through June 2008 (Aug. 2008). W&I has informed the National Taxpayer Advocate that it is pursuing the development of a tax practitioner survey as part of its ACS customer satisfaction surveys. IRS, *Seven-Day Comments to Most Serious Problem, Customer Service Issues in the IRS's Automated Collection System* (Nov. 10, 2008).

Sample Responses:

"I personally see some advantages, if the issues are simple. You can usually handle these over the phone and get them resolved. I have completed installment agreements over the phone and faxed documents to get issues resolved in one call."

"Small, simple cases seem to work well."

"None."

Question: *What, if any, disadvantages do you see occurring with the discussion and/or investigations that are conducted through the ACS?*

Sample Responses:

"I am often put on hold for a long time – and the music is terrible."

"Levies don't come off with an IA [installment agreement], even if ACS says they will release the levy."

"ACS refused to talk to me [practitioner] because I was on a speaker phone with the taxpayer present. ACS insisted on talking to the taxpayer and having the taxpayer write notes to me [practitioner] to get answers."

This is a small sample of questions and answers. The groups yielded some positive comments about the ACS, but most comments suggest that the ACS has substantial room to improve its customer service. The National Taxpayer Advocate will share these responses with the IRS in hopes that the ACS will appreciate that its customer service surveys and internal reviews do not provide a full picture of the public's perception of its service, and will take action on these taxpayer service shortcomings.

Conclusion

The ACS serves a large number of taxpayers, who deserve and desire excellent customer service.⁵⁸ The National Taxpayer Advocate has heard widespread complaints about ACS service and has experienced reluctance on the part of the ACS to change its practices. While the information used for this analysis is largely anecdotal, it is consistent across the board. It appears that taxpayers and tax professionals believe the ACS serves taxpayers well in "simple cases." When cases become more complex (*e.g.*, when more than ten pages must be faxed to resolve a case quickly), the ACS becomes less oriented toward customer service.

⁵⁸ ACS's inventory was 1,568,674 for W&I and 935,410 for SB/SE. See Footnote 1, *supra*. IRS, *Collection Activity Report, NO-5000-2, Taxpayer Delinquent Account Cumulative Report* (Sept. 2008).

The ACS spends considerable resources on its customer satisfaction surveys to “identify what ACS staff and managers can do to improve customer service.”⁵⁹ These efforts measure important customer observations but ignore some of the most important aspects of ACS service (*i.e.*, the downstream impact on taxpayers dealing with the ACS). When the ACS listens to this information, it will be more apt to change policies that unnecessarily burden taxpayers.

The IRS should consider taking the following actions to improve the ACS program: explain to taxpayers that a levy release will occur sooner if the taxpayer faxes substantiation to ACS and ACS faxes the release while on the call; establish extension dialing capability for cases that require more than one contact with the taxpayer to improve case continuity; develop procedures and measures to track the number of manager callbacks requested by taxpayers and completed by the ACS managers; revise Form 433-F, *Collection Information Statement*, to provide fields to include federal, state and local taxes; establish a comprehensive fax policy that will allow taxpayers and practitioners to fax any and all documentation to the IRS including documentation that must be mailed under current procedures; eliminate the requirement that a taxpayer provide a loan denial letter when the taxpayer cannot obtain a home loan to pay his or her tax liabilities; provide taxpayers useful information and change the repetitive music they must listen to while on hold; develop a customer satisfaction survey that records taxpayer concerns about the overall handling of their cases; and implement a customer satisfaction survey specifically for tax practitioners.

IRS Comments

Quality customer service is a top IRS priority and our ACS employees take pride in providing the highest level of service to all taxpayers. Obviously, improvements can always be made to fully ensure that all taxpayer concerns are addressed.

We believe our Customer Satisfaction Survey (CSS) and internal quality reviews are adequate to gauge the level of our success in providing this quality service. The current ACS CSS rating is 92 percent favorable. The survey is conducted and verified by an independent third party, Pacific Consulting Group (PCG). Pacific Consulting Group uses statistically valid sampling to ensure the survey is unbiased and representative of the entire ACS customer base. Through the survey, PCG identifies key areas for improvement. These areas are identified as the *Top Improvement Priorities for ACS Customers* and *Top Improvement Priorities for Customer Service Representatives*. We concentrate on these key areas by focusing on them in operational reviews and throughout the year as we monitor call site performance.

The IRS has taken numerous actions in response to issues raised by the National Taxpayer Advocate in the 2005 and 2006 Annual Reports to Congress. We have also taken actions in

⁵⁹ IRS, Customer Satisfaction Survey ACS, SB/SE, October through December 2007 (Feb. 2008); IRS, Customer Satisfaction Survey, ACS, W&I, October through December 2007 (Feb. 2008).

response to recommendations made by IRS employees and the public through the Systemic Advocacy Management System (SAMS).

In July 2008, ACS implemented a reduction in the time it takes to generate the LP68, ACS levy release, and a reduction in the mail-out timeframes from seven days to five days. Additionally, ACS has been pursuing the use of e-fax services for all ACS call sites and support sites. This project is in its early stages and implementation of this initiative is contingent on future funding.

In her report, the National Taxpayer Advocate makes eight suggestions to improve the ACS program. Descriptions of the many actions the IRS has taken or is taking to improve ACS are provided below.

The IRS agrees, and it has always been our policy, that levy releases should be expedited to prevent over-collection and be responsive in resolving hardship situations and we have taken numerous improvement actions in this area. We have revised the IRM 5.19.4.4.10 to provide additional guidance for faxing levy releases and provided more examples in training materials. ACS is also pursuing technological alternatives to improve our efficiency in releasing levies.

In January 2008, the TAS Collection Levy Team (TCLT) was formed to address concerns TAS had with issues raised in the 2005 and 2006 Annual Reports to Congress. The team is comprised of analysts from Collection Policy, ACS, and TAS. One of the issues being addressed is the expedite release procedures. There continues to be discussions as to which situations require an expedite levy release and a resulting faxed levy release. Currently, there are expedite levy release procedures and all taxpayers are afforded the same rights as it pertains to levy releases. SB/SE and W&I currently have a joint effort in process as part of an initiative to look at collection processes that might be impacted by current economic conditions. As part of that effort IRM guidelines are currently under review to ensure levy release actions are expedited when appropriate. In addition current year financial analysis CPE will address hardship indicators and include scenarios to ensure IRS assistors are aware of the options available to expedite levy release action.

While ACS does not have a unique toll-free number for different applications, the technology of Enhanced Business Operating Division Routing (EBR) requests the taxpayer identification number (TIN) of the taxpayer, identifies Large Dollar calls by Business Operating Division (BOD), and routes the call accordingly. In effect, this provides direct-dial service. Callers who do not provide a TIN are default routed to a regular ACS tax examiner for assistance, which may ultimately require a manual transfer to an appropriately skilled tax examiner. Our call routing system does not allow us to direct a caller to a specific agent. Given the large number of ACS employees across the country, to provide extension dialing capabilities, or have the system successfully connect a large volume of callers to specific employees, would not provide timely quality service due to time zones, leave, breaks, hours worked, or various other activities of our employees that take them off the phones.

The IRS acknowledges there may be situations where a taxpayer requests to speak with an ACS manager and the manager is unsuccessful in returning the call. The IRM 1.4.20.1(2)(h) and IRM 5.19.8.4.16.4 provide clear guidance for both the ACS employees and managers. Guidance is also provided on the Electronic Automated Collection Service Guide (E-ACSG) on handling taxpayer requests for a manager callback. To address this issue and identify improvement opportunities, a random sampling of calls will be conducted on a quarterly basis and increased emphasis will be placed on this issue during operational reviews.

The IRS is working to add a field for taxes on Form 433-F, *Collection Information Statement*. In the interim, IRM 5.19.1.6.3(12) provides clear and concise guidance on determining a taxpayer's disposable income. Federal, state, and local tax obligations are automatically allowed as a deduction from gross pay, as well as FICA, Medicare, other mandatory retirement programs, and health insurance. Additionally, the Desktop Integration (DI) financial screen used by employees to enter financial information provided by the taxpayers automatically subtracts taxes from gross wages to arrive at a net wage amount.

The IRS is committed to providing the highest level of service to all taxpayers and ACS routinely uses fax machines to receive documentation needed to resolve issues. Due to capacity and resource limitations, the IRS established limits on the number of incoming facsimile pages to ten.⁶⁰ This limitation is to ensure that all callers receive prompt service without experiencing lengthy delays, either by taxpayers holding on the line while waiting for the IRS to receive their facsimiles or by callers waiting to speak to a representative.

ACS call sites have limited fax machines, which are not co-located, for the assistors to use. In general, call sites do not have high-speed fax machines capable of handling high volumes. It is challenging for assistors to provide service to customers when phone lines are tied up with taxpayers on hold waiting for their facsimile transmissions. The page limitation is merely a guide to promote equity and efficiency for both the taxpayer and the site. As more resources become available, we will revisit this issue.

Currently, ACS is designed to systemically generate a levy release when it recognizes the account is full paid. This promotes efficiency and equitable treatment for taxpayers. We recognize that systems have their limitations. It is, therefore, our policy to fax a levy release *any time* a mailed release will not be received by the levy source and processed in time to prevent additional monies from being submitted. We do not limit this policy to hardship situations.

Over the past several years, ACS has worked with Collection Policy to ensure the consistent treatment of taxpayers requesting an installment agreement. The IRM 5.19.1 has been updated to resolve the appearance that ACS and the CFf have different procedures for tax-

⁶⁰ IRM 5.19.1.6.3. The IRM procedure regarding the number of fax pages provides guidance to our employees to ensure all taxpayers receive prompt service without experiencing lengthy delays while on the phone. The IRM instructions generally limit the number of faxed pages; however, the IRM removes the limit for special situations, including hardship.

payers to obtain a basic installment agreement. The requirements for streamlined installment agreements have been revised to make it clear that loan denial letters are not required as part of the necessary documentation for such agreements.⁶¹ In fiscal year 2007, over 97 percent of the installment agreements granted by the IRS were streamlined installment agreements.

The music taxpayers hear while on hold is an enterprise-wide service and is not specific to the ACS operation. The routing system optimization planned in FY 2009 is addressing this issue with the intent of making overall improvements to the queue structure including what music is played, the volume, and what messages are integrated with the music based on relevancy.

ACS utilizes objective and unbiased data collected through our CSS to improve operations. The survey is available for all ACS phone applications, including the Tax Practitioner Line. A tone is heard, generally at the end of a call, to indicate selection to participate in the survey. The IRM 21.10.1.4.2 is being updated to stipulate that the "tone" will be heard near the end of the call. We believe our survey and internal quality reviews are adequate to gauge the level of our success in providing quality service.

In addition to the CSS, correspondence is also received from taxpayers and their representatives expressing either their satisfaction or dissatisfaction of how the IRS handled their situation. All complaints received, through any venue, are thoroughly researched, addressed, and, whenever possible, resolved. The use of Contact Recording has afforded the IRS an opportunity to listen to the actual call that led to the complaint, ensuring management has an accurate portrayal of what occurred during the call. Contact Analytics will be in place within a year and will help us to further identify areas that need improvement.

Taxpayer Advocate Service Comments

The National Taxpayer Advocate commends the IRS for continuing to make quality customer service a top priority, and acknowledges the pride ACS employees take in striving to provide the highest level of service to all taxpayers. She also appreciates the IRS's candor in its realization that it can also make improvements to fully address taxpayer concerns. The National Taxpayer Advocate is encouraged by the IRS's use of Contact Recording to listen in on actual taxpayer calls and obtain an accurate portrayal of what occurred, and looks forward to learning more about the IRS's Contact Analytics initiative to identify areas for further improvement. Moreover, she acknowledges the IRS's recent efforts to work closely with TAS and to evaluate her prior Annual Reports to Congress for recommendations to improve ACS as being steps in the right direction.

⁶¹ IRM 5.19.1.5.4.2 (Nov. 19, 2008).

Customer Satisfaction Survey and Quality Review Concerns

The IRS's belief that its Customer Satisfaction Survey and internal quality reviews are adequate is somewhat disconcerting in light of what TAS has heard and continues to hear from LTAs, taxpayers, and practitioners. As previously noted, TAS's main concern is that the IRS's survey process is too narrow in scope and fails to adequately measure the entire ACS experience. Under current survey procedures, the taxpayer may not receive the opportunity to properly rate the overall outcome, but rather is only able to assess a "snapshot" in time (*i.e.*, the ACS employee's behavior on a particular call). The National Taxpayer Advocate reiterates that the IRS needs to continue to explore ways of measuring the most important aspects of ACS service (*i.e.*, the downstream impact on taxpayers dealing with the ACS).

Restrictive Use of Fax Technology and Timely Release of Levy

The National Taxpayer Advocate is pleased to learn that the IRS is pursuing e-fax services for all ACS sites and that, in the interim, it has reduced the levy release generation times, as well as the mail-out timeframes from seven to five days. Reducing the waiting time between the IRS's levy release determination and the time the release is actually received will help to minimize taxpayer burden or hardship. We also agree that the revision of IRM 5.19.4.4.10 should further improve this area.

However, we respectfully disagree with the IRS's claim that its expedited levy release procedures are adequate. The National Taxpayer Advocate recognizes the ACS handles a large number of cases with limited resources. However, the ACS continues to send millions of levies on an annual basis. The IRS must stop and consider the downstream consequences of this type of enforcement activity, particularly in light of today's difficult economic times. While we agree that expedited procedures are listed in the applicable IRM sections, we continue to hear complaints that taxpayers are still not being advised of this option, unless they specifically request it. As a result, the National Taxpayer Advocate urges the IRS to include a required discussion of this option in all applicable IRM sections related to levy release. It is not so much a matter of increasing IRS employees' awareness of the existing procedures as it is to require employees to increase taxpayer awareness of this option. The National Taxpayer Advocate believes the IRS should fax or expedite a levy release *any time* it determines a *significant hardship is present*. The IRS should consider establishing a centralized ACS or ACS support unit that is dedicated to faxing levy releases and would not detract from a contact employee assisting the next customer.

Lack of Extension Dialing Capability

The National Taxpayer Advocate appreciates the IRS's explanation of its EBR technology, as this helps to better understand how the ACS routes calls. However, she disagrees with the IRS's assertion that the current large dollar case routing procedures in effect serve as direct dialing. In its explanation, the IRS states that when a taxpayer or practitioner with a large dollar case contacts the ACS and provides the taxpayer identification number, the call will

be immediately routed to the large dollar case unit. The National Taxpayer Advocate does not consider this to be direct dialing since the caller must wait on hold, speak to someone, and then be routed. The National Taxpayer Advocate believes the IRS should provide true extension dialing capability, at a minimum, for specialized units to enhance customer service.

ACS Manager Callbacks

The National Taxpayer Advocate applauds the IRS for recognizing that its managers are not following through with the managerial callback policy and for proposing quality reviews of these procedures. These efforts should go a long way toward addressing the concerns raised by many of the practitioners TAS spoke with earlier this year. We look forward to hearing more about the methodology to be used for tracking adherence with the IRS's stated policy.

Problems with Collection Information Statement, Form 433-F

The National Taxpayer Advocate is pleased to learn of the IRS's plans to revise the current Form 433-F, *Collection Information Statement*. The revision will greatly benefit taxpayers by allowing them to include the correct amounts for their local, state, and federal tax obligations when determining their monthly expenses. The National Taxpayer Advocate looks forward to the actual publishing of the form. Moreover, she believes the revision will further strengthen the guidance in the IRM and on the Desktop Integration intranet page for ACS employees helping taxpayers to provide the correct information.

Inconsistent IA Policies

The National Taxpayer Advocate commends the IRS on its recent decision to revise the ACS's streamlined IA procedures and make them consistent with those of the CFF. No longer requiring a loan denial letter as part of the necessary documentation will allow for much more efficient processing of a streamlined IA and will benefit all parties.

ACS's Fax Policies

The National Taxpayer Advocate recognizes the capacity and resource limitations that preclude the IRS from accepting high volumes of faxed pages. She also appreciates the IRS's response that this "is to ensure that all callers receive prompt service without experiencing lengthy delays." However, the National Taxpayer Advocate is disturbed by the IRS's argument that it is "equitable" and "fair" to refuse faxes based on a ten-page limit when accepting 20 pages by fax might possibly resolve a case for a taxpayer. When a taxpayer is forced to end a call because the assistor will not accept the appropriate number of faxed pages, the ACS unduly burdens the taxpayer by making him or her call back, wait on hold, and expend additional time (if the ACS assistor is unable to locate the mailed correspondence). Providing taxpayers with immediate assistance and resolution is fair and equitable and promotes customer service. The IRS should make co-locating fax machines and investing

in high-speed fax machines a priority to allow for more prompt case resolution and fewer taxpayer contacts. Moreover, if the IRS does not have the appropriate resources to provide world class service to its taxpayers, such as being able to receive 20 pages of faxed documents and answer a phone at the same time, then it should raise the issue to Congress and seek additional funding.

Recommendations

The National Taxpayer Advocate recommends that the IRS:

1. Develop specific guidance, for inclusion in all IRM sections related to levy releases, requiring employees to inform taxpayers of their option to obtain a faxed levy release.
2. Adopt a comprehensive fax policy, and obtain the necessary equipment, that will allow taxpayers and practitioners to fax any and all documentation to the IRS, including documents that must now be mailed.
3. Develop a customer satisfaction survey that records taxpayer concerns about the overall handling of their cases and develop and implement a survey specifically for tax practitioners.
4. Develop a tracking mechanism to identify and monitor situations where the taxpayer has requested to speak with an ACS manager, in order to evaluate the degree to which IRS's stated policy is being followed.

Did You Know?

- As early as 2004, the tax gap¹ attributable to small businesses doing business over the Internet was estimated to be as high as \$1 billion per year and rising.²
- According to one poll, 38 percent of American adults play computer or console games, and among those, 44 percent play games over the Internet.³
- Over 16 million people are estimated to have active subscriptions to Internet-based multiplayer environments called “virtual worlds,”⁴ many of which have their own economies and currencies.⁵
- As early as 2001, an economist estimated that time spent by “players” in one of the many virtual worlds generated about \$3.42 per hour, which represented a gross national product (GNP) of about \$135 million and a per capita GNP of about \$2,266 – roughly equivalent to Russia and higher than in many developing countries.⁶
- In 2005, about one billion real dollars changed hands in virtual worlds.⁷
- In 2006, about 3,100 “residents” of one of the smaller virtual worlds, called “Second Life,” who generated a net profit in virtual transactions had average revenues of \$20,000 in real U.S. dollars.⁸
- Some businesses now accept virtual dollars in exchange for real property or services.⁹
- Second Life charges a value added tax (VAT) on certain transactions between European Union residents and Second Life.¹⁰

¹ The “tax gap” is the amount of tax on legal transactions for a given year that is not paid voluntarily and timely.

² Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2005-30-010, *The Internal Revenue Service Is Making Progress in Addressing Compliance Among Small Businesses Engaged in Electronic Commerce* (Nov. 2004).

³ The Associated Press/America Online Poll, Gaming Study, Conducted by IPSOS Public Affairs, Project No. 81-5139-64, at <http://surveys.ap.org/data/Ipsos/national/2007-10-22%20Gaming%20Study.pdf> (Nov. 12, 2007).

⁴ A “virtual world,” described in greater detail below, is a computer-based simulated environment, which allows multiple users to interact using graphical representations of themselves (called “avatars”), typically over the Internet.

⁵ See Bruce Sterling Woodcock, *Total MMOG Active Subscriptions*, Version 22.0, at <http://www.mmogchart.com/Chart4.html> (Feb. 12, 2008).

⁶ See Edward Castronova, *Virtual Worlds: A First-Hand Account of Market and Society on the Cyberian Frontier*, CESifo Working Paper No. 618, 33, at <http://papers.ssrn.com/abstract=294828> (Dec. 2001).

⁷ Heather M. Rothman, *As Congress Considers Online Game Taxes, Linden Lab Contends Law Already Clear*, 210 DTR G-2 (Oct. 31, 2006).

⁸ Robert D. Hof, *My Virtual Life*, *Business Week*, at http://www.businessweek.com/print/magazine/content/06_18/b3982001.htm?chan=g1 (May 1, 2006). According to Second Life, about 531 unique users had positive monthly in-world cash flow worth more than \$2,000 in the month of April 2008. See Second Life, Economic Statistics http://secondlife.com/whatis/economy_stats.php (last visited May 12, 2008). Although still one of the smaller worlds, Second Life was recently estimated to have 93,219 “active subscriptions” and more than 12 million “registered users,” the vast majority of whom are in the United States. See Bruce Sterling Woodcock, *Total MMOG Active Subscriptions*, Version 22.0, at <http://www.mmogchart.com/Subscriptions.xls> (Feb. 12, 2008) (showing active subscriptions on sheet 4); Robin Sidel, *Cheer Up, Ben: Your Economy Isn't As Bad as This One*, *Wall Street Journal*, page A1, Jan. 23, 2008 (reporting registered users).

⁹ See Fistpitch, *Pizza Enters the Virtual World of Second Life*, at <http://www.fastpitchnetworking.com/pressrelease.cfm?PRID=8734> (Apr. 21, 2007).

¹⁰ See Second Life, *Value Added Tax*, at <http://secondlife.com/corporate/vat.php> (last visited May 12, 2008).

MSP
#13**The IRS Should Proactively Address Emerging Issues Such as Those Arising from “Virtual Worlds”****Responsible Officials**

Chris Wagner, Commissioner, Small Business/Self-Employed Division
Clarissa Potter, Acting Chief Counsel

Definition of Problem

A “virtual world” is a computer-based simulated environment, which allows multiple users to interact using graphical representations of themselves (called “avatars”), typically over the Internet. Economic activities associated with virtual worlds may present an emerging area of noncompliance, in part, because the IRS has not issued guidance about whether and how taxpayers should report such activities.¹¹ To proactively address the tax gap and improve voluntary compliance, when the IRS learns of an emerging economic activity that receives no clear tax treatment under existing guidance, it should quickly promulgate clear rules and enforce them consistently.

The remainder of this discussion illustrates some of the confusion taxpayers may face in reporting economic activities associated with virtual worlds. However, the broader challenge for the IRS is to identify any emerging economic activities with tax implications that taxpayers, especially unsophisticated ones, are likely to misreport without additional guidance, and to issue clarifying guidance quickly.

Analysis of Problem**What is a virtual world?**

As noted above, we use the term “virtual world” to refer to a computer generated environment that people can access simultaneously and remotely to interact with each other as well as other features of the environment, generally for a monthly subscription.¹² Participants are represented graphically as “avatars,” and may “own” virtual property, such as clothing, tools, weapons, or real estate, which is also graphically represented in the environment. Virtual worlds operate continuously and retain the location of an avatar and other items, even if the person represented by the avatar has shut off his or her computer.¹³

¹¹ Heather M. Rothman, *As Congress Considers Online Game Taxes, Linden Lab Contends Law Already Clear*, 210 DTR G-2 (Oct. 31, 2006) (quoting an IRS spokesman as acknowledging that “we have recognized it as an emerging area of noncompliance.”).

¹² Some virtual worlds generate income primarily from advertising revenue.

¹³ Because virtual worlds were first developed as games, they are sometimes called “massive multiplayer online games” or “MMOGs.”

One category of virtual world, exemplified by the World of Warcraft (WoW), is game-like, has defined objectives, and a significant amount of operator-developed content. WoW describes itself as follows:

World of Warcraft enables thousands of players from across the globe to come together online - undertaking grand quests and heroic exploits in a land of fantastic adventure.... Like most other role-playing games, World of Warcraft lets you advance in level as you gain experience. Experience can be gathered by killing monsters, exploring new destinations, and completing quests.... Nearly all quests give sizeable experience rewards. Many quests also provide material rewards, such as cash, potions, food, magic items, armor, and weapons.¹⁴

Another category of virtual world, exemplified by Second Life, is unstructured, utilizes more user-created content, and is more geared toward commercial and social interaction. Second Life describes itself as follows:

Second Life is a 3-D virtual world entirely created by its Residents... [p]erhaps you'll find a perfect parcel of land to build your house or business. You'll also be surrounded by the Creations of your fellow Residents. Because Residents retain the rights to their digital creations, they can buy, sell and trade with other Residents. The Marketplace currently supports millions of U.S. dollars in monthly transactions. This commerce is handled with the in-world unit-of-trade, the Linden dollar, which can be converted to U.S. dollars at several thriving online Linden Dollar exchanges.¹⁵

Google is also reportedly planning to launch a virtual world based on its extensive satellite photos and maps of the real world.¹⁶ Any such platform could greatly expand the economic activity associated with these worlds.

What type of economic activity goes on in virtual worlds?

In addition to buying virtual property, such as clothing or tools, a person's avatar can “steal,” “make,” or “find” it, or pick it up after defeating the prior owner. In some worlds, he or she can gamble for virtual money.¹⁷ Users can sell or exchange virtual property with other players for different property or in-world currency – gold in WoW or Linden Dollars in Second Life. The “terms of service” (TOS) or “end user license agreement” (EULA) contract

¹⁴ See <http://www.worldofwarcraft.com/info/basics/guide.html> (last visited May 12, 2008).

¹⁵ See <http://secondlife.com/whatis/> (last visited May 12, 2008).

¹⁶ See, e.g., Chris Taylor, *Google Moves into Virtual Worlds, by Combining Satellite Maps and 3-D Software, Google Earth Is Turning into a Virtual Online Playground*, CNNMoney.com, at http://money.cnn.com/2006/05/11/technology/business2_futureboy_0511/ (Dec. 14, 2006); Tom Smith, *Google's Virtual World Could Be Business Answer To Second Life*, the Information Week, at http://www.informationweek.com/blog/main/archives/2007/09/googles_virtual.html (Sept. 25, 2007).

¹⁷ Linden Labs, the operator of Second Life, recently banned gambling and unlicensed banking activities. See, e.g., Eric Reuters, *UPDATE 3 - Linden Bans Second Life Banks*, Reuters Second Life News Center, at <http://secondlife.reuters.com/stories/2008/01/08/breaking-linden-bans-second-life-banks/> (Jan. 8, 2008).

typically states that the operator may turn off the virtual world or cancel a participant’s account without compensation at any time and for any reason, retains ownership of all accounts and virtual property (*i.e.*, the participant is merely licensing use of the game and has no property interest in virtual items or accounts), and may prohibit the transfer of accounts or virtual property for “real” money.¹⁸ However, at least some of these limitations may not be enforceable under state law.¹⁹

Even if virtual property and avatars are not determined to be “property” under state law, they are valuable and can be sold for real dollars or in-world currencies, which can often be converted into real dollars. For example, in early 2008 a person could sell 1,000 WoW gold pieces for between \$12 and \$22 (an exchange rate of between 83.33 and 45.45 gold pieces per U.S. dollar).²⁰ A person could also sell 1,000 Linden Dollars on an in-world currency exchange for about \$3.75 (an exchange rate of 266 Linden Dollars per U.S. dollar).²¹

You’ve got to be kidding: Is this economic activity significant?

The economic activity in virtual worlds is significant. As early as 2001, an economist estimated that time spent in one of the many “virtual worlds” generated about \$3.42 per hour, which represented a gross national product (GNP) of about \$135 million and a per capita GNP of about \$2,266 – roughly equivalent to Russia and higher than in many developing countries.²² Since \$3.42 is a decent wage in some developing countries, people in such countries reportedly spend long hours in a virtual world to acquire virtual property and create avatars with favorable attributes that the entrepreneur can sell for real dollars.²³ In

¹⁸ For example, WoW’s TOS provides:

BLIZZARD MAY SUSPEND, TERMINATE, MODIFY, OR DELETE THE ACCOUNT AT ANY TIME WITH ANY REASON OR NO REASON, WITH OR WITHOUT NOTICE.... Blizzard does not recognize the transfer of Accounts. You may not purchase, sell, gift or trade any Account, or offer to purchase, sell, gift or trade any Account, and any such attempt shall be null and void. Blizzard owns, has licensed, or otherwise has rights to all of the content that appears in the Program. You agree that you have no right or title in or to any such content, including the virtual goods or currency appearing or originating in the Game, or any other attributes associated with the Account or stored on the Service. Blizzard does not recognize any virtual property transfers executed outside of the Game or the purported sale, gift or trade in the “real world” of anything related to the Game. Accordingly, you may not sell items for “real” money or otherwise exchange items for value outside of the Game. See WoW TOS § 7-8, at <http://www.worldofwarcraft.com/legal/termsofuse.html> (last visited May 12, 2008).

Second Life’s TOS allows participants to “retain... intellectual property rights with respect to Content you create in Second Life.” Second Life, TOS § 3, at <http://secondlife.com/corporate/tos.php> (last visited May 12, 2008). However, the TOS also grants Linden Labs a “perpetual, irrevocable, non-exclusive right and license” in any creations and provides that Linden Labs retains ownership of a person’s account and related data. *Id.*

¹⁹ See, e.g., Joshua Fairfield, *Virtual Property*, Indiana Law No. 50, at <http://ssrn.com/abstract=807966> (Oct. 2005); Erez Reuveni, *On Virtual Worlds: Copyrights and Contract Law at the Dawn of the Virtual Age*, 82 Ind. L.J. 261, 290-294 (2007) (discussing various arguments that could result in virtual property rights, notwithstanding the terms of the EULA or TOS). When Linden Labs exercised its right to deny a person access to virtual property, a court found the TOS arbitration clause to be unenforceable. See *Bragg v. Linden Research, Inc.*, 487 F. Supp. 2d 593 (E.D. Pa. 2007).

²⁰ See, e.g., <http://www.mmopawn.com/sell-1.html> (last visited Feb. 28, 2008). The actual price may depend on supply and demand conditions on the particular server hosting the part of the virtual world where the transaction will take place as well as the number of WoW gold pieces you are attempting to sell. An online chat on February 28, 2008, revealed that www.mmopawn.com would have paid \$14 for 1,000 WoW gold pieces on the “Aegwynn US – A” server.

²¹ See <http://secondlife.com/whatis/economy-market.php> (last visited Mar. 5, 2008).

²² See Edward Castronova, *Virtual Worlds: A First-Hand Account of Market and Society on the Cyberian Frontier*, CESifo Working Paper No. 618, 33, at <http://papers.ssrn.com/abstract=294828> (Dec. 2001).

²³ Eli Shayotovich, *Taxing Virtual Earnings – Seriously*, at http://www.businessweek.com/print/innovate/content/may2006/id20060502_832540.htm (May 2, 2006).

2006, one person was reported to have become a millionaire by developing and selling virtual real estate in Second Life,²⁴ and about 3,100 “residents” of Second Life who earned a net profit were reported to have generated average annual revenues of \$20,000 in real U.S. dollars.²⁵ Real world businesses such as Dell, Mazda, Adidas, Coca Cola, CNET, Major League Baseball, Harvard University, American Apparel, H&R Block, and Reuters have established a presence in Second Life.²⁶ The American Cancer Society reportedly raised about \$118,000 via a virtual “Relay for Life” in which over 1,000 avatars participated by “walking” through representations of real-life places.²⁷ In other words, by participating in these worlds, a significant number of people are creating real economic income. Where there is economic income, there is likely to be tax due from someone.²⁸

When people generate virtual income and property, whose property is it?

The federal income tax consequences of a transaction generally depend on what property rights are created or transferred under local law.²⁹ As noted above, most virtual world contracts provide that players obtain no property rights by playing the game, but since players or residents are creating significant value, scholars have speculated that such agreements might not be upheld.³⁰ Even if someone else owns the virtual property under state law, however, a person who creates valuable virtual property or turns it into “real” property or

²⁴ See Daniel Terdiman, *Big-shot Economist to Advise Teen Virtual World*, CNET News.com, Sept. 17, 2007. See also <http://acs.anshechung.com/> (last visited May 12, 2008).

²⁵ Robert D. Hof, *My Virtual Life*, Business Week, at http://www.businessweek.com/print/magazine/content/06_18/b3982001.htm?chan=g1 (May 1, 2006).

²⁶ See www.secondlife.com; Second Life, Brand Promotion, at http://secondlifegrid.net/how/brand_promotion (last visited Mar. 10, 2008). See also, Tim Beyers, *IRS to Tax Your Second Life?* The Motley Fool, at <http://www.fool.com/server/printarticle.aspx?file=/investing/high-growth/2006/10/16/irs-to-tax-your-second-life.aspx?terms=IRS%20to%20Tax%20Your%20Second%20Life> (Oct. 16, 2006). H&R Block has started to offer tax advice in Second Life and is accepting Linden Dollars in exchange for a new tax preparation product. See H&R Block Launches First Virtual Tax Experience in Second Life, at <http://www.hrblock.com/presscenter/articles/seconrelease.jsp> (last visited Mar. 10, 2008). It is also paying “residents” in Linden Dollars for helping to market its product on their own virtual property. *Id.* Even the IRS has studied the utility of virtual worlds as a communication and training tool, concluding the IRS could use them to recruit new employees and provide taxpayer service, for example, through “Virtual Tax Days” where the IRS answers tax questions inside a virtual world. Wage and Investment, Strategy and Finance, Program Evaluation and Risk Analysis (PERA), *Virtual Worlds*, Project No. 7-03-16-2-024 (Apr. 2003).

²⁷ American Cancer Society, Second Life Relay for Life, at http://www.cancer.org/docroot/GI/content/GI_1_8_Second_Life_Relay.asp (last visited May 12, 2008) and Second Life, Philanthropy and Fundraising, at http://secondlifegrid.net/how/philanthropy_and_fundraising (last visited Mar. 10, 2008).

²⁸ The European Union subjects Second Life transactions between the operator and EU residents to VAT taxes. See Second Life, *Value Added Tax*, at <http://secondlife.com/corporate/vat.php> (last visited Mar. 10, 2008).

²⁹ See, e.g., *Morgan v. Comm’r*, 309 U.S. 78, 80 (1940) (“State law creates legal interests and rights. The federal revenue acts designate what interests or rights, so created, shall be taxed.”). The EULA or TOS typically provides that a specific jurisdiction’s laws will apply. For example, the Second Life TOS provides: “This Agreement and the relationship between you and Linden Lab shall be governed in all respects by the laws of the State of California without regard to conflict of law principles or the United Nations Convention on the International Sale of Goods.” Second Life, TOS § 7.1, at <http://secondlife.com/corporate/tos.php> (last visited May 12, 2008).

³⁰ See, e.g., Joshua Fairfield, *Virtual Property*, Indiana Law No. 50, at <http://ssrn.com/abstract=807966> (Oct. 2005); Erez Reuveni, *On Virtual Worlds: Copyrights and Contract Law at the Dawn of the Virtual Age*, 82 Ind. L.J. 261, 290-294 (2007) (discussing various arguments that could result in virtual property rights, notwithstanding the terms of the EULA or TOS). As noted above, when Linden Labs exercised its right to deny a person access to virtual property, a court found the TOS arbitration clause to be unenforceable. See *Bragg v. Linden Research, Inc.*, 487 F. Supp. 2d 593 (E.D. Pa. 2007).

value is likely to wonder if he or she is nonetheless subject to tax on income from services, prizes, or winnings.³¹

What are some of the tax issues that virtual worlds raise?

Virtual world transactions raise a number of tax questions. For example, is a person subject to tax each time he or she acquires virtual property? How about when the person exchanges one virtual property for another, or for virtual currency? How about when the user sells the virtual property or his or her account (and avatar) for real money? What, if any, information reporting, withholding, backup withholding, and recordkeeping requirements apply to these transactions? Similarly, difficult questions may arise in connection with the tax obligations of virtual world operators.

Why might a taxpayer be confused about whether transactions involving virtual property should be reported as taxable income?

Income, broadly defined, is subject to tax.

Although the IRS has not issued any guidance directly addressing these difficult questions, a person is generally taxed immediately upon “all income from whatever source derived.”³² Income is defined broadly as any “undeniable accessions to wealth, clearly realized, and over which the taxpayers have complete dominion.”³³ Moreover, a person is generally subject to tax upon finding or earning money or treasure, winning a lottery, prize or award, stealing property, or trading one piece of property for another, potentially leading some to conclude that transactions involving virtual property are or should be subject to tax.³⁴

The receipt of prizes, winnings, and barter exchange “trade credits” are all subject to tax, information reporting, and withholding.

If the in-world sale or exchange of virtual property for other virtual property or in-world currency is analogous to barter (*i.e.*, trading), which generates taxable income, then each

³¹ At least for foreign persons, there is also a question about whether the person may be subject to tax in the United States, especially if the server is located in the United States. See generally, Richard L. Reinhold, *Some Things That Multilateral Tax Treaties Might Usefully Do*, 57 TAXL 661 (Spring 2004) (discussing the role of server location in determining if a corporation has a “permanent establishment” in the U.S.); Richard L. Doernberg, *Electronic Commerce: Changing Income Tax Treaty Principles A Bit?*, 89 Tax Notes 1625 (Dec. 18, 2000) (same). In addition, the location of the parties and the computer server may affect a state’s authority to require the parties to an online-transaction to collect or pay sales or use tax. See, e.g., Paula K. Royalty, *Tax Implications of Using Out-of-State Computer Servers*, 1 Shidler L.J. Com. & Tech. 5 (Feb. 2, 2005).

³² IRC § 61 (defining gross income). Some taxpayers are not even aware that Internet transactions are subject to tax. The press surrounding the “Internet Tax Moratorium,” which temporarily prohibits local governments from levying taxes on Internet connections may contribute to this misperception. See, e.g., Internet Tax Freedom Act Amendments Act of 2007, Pub. L. No. 110-108, 121 Stat. 1024 (Oct. 31, 2007).

³³ *Comm’r. v. Glenshaw Glass Co.*, 348 U.S. 426 (1955). *Cottage Sav. Ass’n v. Comm’r.*, 499 U.S. 554 (1991) further clarified that the exchange of substantially similar mortgages gave rise to “realization” under IRC § 1001 of any gain or loss because the mortgages embodied “legally distinct entitlements.” Thus, some may conclude that the exchange of one virtual item for another or for virtual currency triggers a “realization,” which they may also conclude is taxable in the absence of a clearly applicable nonrecognition provision.

³⁴ See, e.g., IRC § 74 (including in income prizes and awards); IRC § 83 (including in income property transferred in connection with the performance of services); Treas. Reg. § 1.61-14(a) (noting: “Illegal gains constitute gross income. Treasure trove, to the extent of its value in United States currency, constitutes gross income for the taxable year in which it is reduced to undisputed possession”); Rev. Rul. 80-52, 1980-1 C.B. 100 (noting members of a barter club had income from services in “the taxable year in which the [barter] credit units are credited to their accounts”); *Cesarini v. U.S.*, 428 F.2d 812 (6th Cir. 1970) (holding that cash discovered inside a piano purchased at auction is gross income in the year of the discovery).

transfer of virtual property could also generate taxable income.³⁵ In a barter exchange, one member provides goods or services to another in exchange for other goods or services or for trade credits, which can be used to acquire goods or services from other members. Since barter exchange operators are obligated to issue information returns (Form 1099-B, *Proceeds From Broker and Barter Exchange Transactions*) to each of their members, reporting each transaction³⁶ in excess of \$1,³⁷ some virtual world operators may be concerned that the IRS might assert they should be sending these information returns to their customers each year, as certain commentators have suggested.³⁸

Taxpayers have a similar duty to report any prizes or awards in excess of \$600.³⁹ Virtual world operators may also be concerned that if the virtual property “paid” to participants in virtual worlds is sufficiently analogous to taxable prizes (*e.g.*, a prize for completing a quest), then the IRS could assert the operators need to report the prizes on information returns. In such cases, the virtual world operator might also be required to withhold against the prize if the player was either a foreign person or failed to provide a tax identification number.⁴⁰ Such withholding would be difficult since the prize – the virtual property – is not paid in cash.

However, many taxpayers may not be certain that virtual worlds are analogous enough to barter exchanges or that virtual currency is sufficiently analogous to prizes to be subject to such rules, at least before a taxpayer cashes out his or her virtual items for real dollars. Pursuant to various technical rules, tax is often deferred until after an item is transferred for value, as further described below.⁴¹

³⁵ See, *e.g.*, Rev. Rul. 80-52, 1980-1 C.B. 100.

³⁶ See generally Treas. Reg. §§ 1.6045-1(a)(4); 1.6045-1(e), 1.6045-1(f); IRS Publication 525, *Taxable and Nontaxable Income* (2007). The barter exchange regulations notably tax the receipt of barter exchange credits or scrip at its face value (unless the Commissioner determines another value), even though pursuant to the regulations, “property does not include a credit or scrip.” Treas. Reg. § 1.6045-1(f)(5)(iii).

³⁷ Notice 2000-6, 2000-1 C.B. 315 (providing a *de minimis* \$1 exception).

³⁸ See Dustin Stamper, *Taxing Ones and Zeros: Can the IRS Ignore Virtual Economies?*, 114 Tax Notes 149 (Jan. 15, 2007) (reporting that Professor Bryan Camp and Tim McDowel, executive director of the National Association of Trade Exchanges, both indicated that virtual world operators could be subject to the barter exchange reporting requirements).

³⁹ IRC §§ 6041(a), 6041(d); IRC § 6041A(a), 6041A(e); Instructions for Form 1099-MISC (2008) (box 7); Instructions to Form W-2 G (2008). Although “brokers” are subject to similar information reporting rules under IRC § 6045, Internet auction sites such as eBay contend they are not brokers. See, *e.g.*, E-mail from Margaret M. Richardson to Eric Soloman and Michael Desmond (Apr. 16, 2007), *reprinted as*, Margaret M. Richardson, *Individual Comments on Third-Party Information Reporting for Online Commerce*, 2007 TNT 80-24 (Apr. 25, 2007).

⁴⁰ See generally IRC §§ 3406(a)(1), 3406(h)(2), 1441(a), 1442(a).

⁴¹ For a detailed discussion of why certain income is not taxed, see generally, Lawrence Zenenak and Martin McMahon, *Professors Look at Taxing Baseballs and Other Found Property*, 84 Tax Notes 1299 (Aug. 30, 1999); Joseph M. Dodge, *Accessions to Wealth, Realization of Gross Income, and Dominion and Control: Applying the “Claim of Right Doctrine” to Found Objects, Including Record-Setting Baseballs*, 4 Fla. Tax. Rev. 685 (2000); Bryan T. Camp, *The Play’s the Thing: A Theory of Taxing Virtual Worlds*, 59 Hastings L. J. 1 (Nov. 2007); Leandra Lederman, “Stranger than Fiction:” *Taxing Virtual Worlds*, 82 NYU L. Rev. 1620 (Mar. 2007).

The production of property is not subject to tax.

A person is not immediately subject to tax when he or she creates property. For example, a farmer is not taxed on the crops he grows and harvests before selling or exchanging them.⁴² A taxpayer may wonder if creating virtual items or setting out to obtain them is similar enough to farming and harvesting crops that such acquisitions are not taxable.

The receipt of property that is difficult to value is not always subject to tax.

A person is not immediately subject to tax when he or she acquires property that has no reasonably ascertainable fair market value. This is so even if the property could easily be valued if it were not subject to a contingency that affects its value.⁴³ For example, if a taxpayer sells stock in exchange for a right to receive an amount of money that is contingent on the outcome of pending litigation, the taxpayer might not be taxed until the litigation is resolved.⁴⁴ Such “open transaction” treatment also applies to payments for services in the form of nonqualified stock options that have no reasonably ascertainable fair market value. Such payments are not taxable until the options are exercised or transferred.⁴⁵ Similarly, payments for services made in the form of stock are not taxable even if the stock is easy to value, provided the stock is subject to a substantial risk of forfeiture (*e.g.*, the taxpayer forfeits the stock if he or she terminates employment before it “vests”) until the stock is transferred or the risk of forfeiture (*i.e.*, the contingency) lapses.⁴⁶

Although some virtual property is relatively easy to value because it is listed for sale on virtual property auction websites, other virtual property is not so easy to value. Some virtual property is not transferable under the TOS. Moreover, all virtual property is arguably subject to forfeiture at the discretion of the virtual world operator. The virtual world operator could cancel the taxpayer’s account, shut down the virtual world, or change the world in a way that eliminates the value of the virtual item. Thus, a taxpayer may wonder if such contingencies make the in-world acquisition and sale or exchange of virtual property nontaxable.

⁴² See *Morris v. Comm’r*, 9 B.T.A. 1273, 1277-1278 (1928), *acq.*, C.B. VII-2, 28 (1928); *Tatum v. Comm’r*, 46 T.C. 736, 739 (1966), *aff’d*, 400 F.2d 242 (5th Cir. 1968) (describing crops as representing an “unrealized appreciation”); *Strong v. Comm’r*, 91 T.C. 627 (explaining the general rule). See also Rev. Rul. 56-496; 1956-2 C.B. 17; IRC § 631; Treas. Reg. § 1.631-1(d) and (e). Scholars have distinguished a farmer’s harvest, a fisherman’s catch, and a miner’s diamonds, which a person sets out to obtain with the investment of labor or capital, from similar items that a taxpayer may find unexpectedly. See Joseph M. Dodge, *Accessions to Wealth, Realization of Gross Income, and Dominion and Control: Applying the “Claim of Right Doctrine” to Found Objects, Including Record-Setting Baseballs*, 4 Fla. Tax. Rev. 685, 696-697 (2000) (observing that no similar deferral applies to income from found items, which are generally taxable upon receipt).

⁴³ See generally *Burnet v. Logan*, 283 U.S. 404, 51 S. Ct. 550 (1931).

⁴⁴ See, *e.g.*, Rev. Rul. 58-402, 1958-2 C.B. 15; *In re Steen*, 509 F.2d 1398, 1403-1405 (9th Cir. 1975); Treas. Reg. § 1.1001-1(g)(2).

⁴⁵ See Treas. Reg. § 1.83-7.

⁴⁶ See IRC § 83(a); Treas. Reg. § 1.83-1.

Merely exercising the right to use someone else’s property is not subject to tax.

In certain circumstances, we do not tax the acquisition of the right to use another person’s property even if the use itself is valuable.⁴⁷ For example, one academic has observed that when vacationers on a cruise ship reallocate deck chairs which are all owned by the cruise operator, they are not subject to tax.⁴⁸ Each vacationer has purchased a right to use any of the chairs in the public areas of the cruise ship. So redistributing actual possession of the chairs among passengers who have the right to use them does not result in taxable income, even though there may be such a shortage of a given type of chair that one passenger may be willing to pay another to use it. Similarly, by paying to play the game, a taxpayer has the legal right to use any virtual property or virtual dollars that he or she could acquire inside the virtual world. Thus, a taxpayer may wonder if the acquisition and sale of virtual property for virtual dollars is nontaxable because it is similar to acquiring and trading the right to use a deck chair – a right that he or she acquired by paying to play the game.

Winnings are not always taxed immediately.

A gambler is generally not taxed after each winning hand of poker provided he or she does not leave the table or cash in his or her chips.⁴⁹ Thus, a taxpayer may wonder if the acquisition and sale of virtual property for virtual dollars is nontaxable because it is similar to winning a hand of poker before leaving the table or cashing out.

The IRS sometimes decides not to tax certain transactions.

In some cases, the IRS does not tax transactions that fall into a grey area, especially if the public widely believes they are not taxable and a contrary result might be difficult to administer. For example, academics have suggested the IRS’s policy of not taxing the receipt of frequent flier miles was more a product of political pressure than of technical analysis.⁵⁰ Commentators have said the same thing about the IRS’s decision not to tax a baseball fan who catches a record-breaking ball and immediately returns it.⁵¹ Similarly, many Internet

⁴⁷ The tax treatment of transactions on Second Life could differ from the treatment of transactions on other virtual worlds because according to the TOS Second Life Residents retain certain intellectual property rights to their virtual creations. Second Life, TOS § 3, at <http://secondlife.com/corporate/tos.php> (last visited May 12, 2008).

⁴⁸ See Leandra Lederman, “Stranger than Fiction:” *Taxing Virtual Worlds*, 82 NYU L. Rev. 1620, 1654 (Mar. 2007).

⁴⁹ See Rev. Proc. 77-29, 1977-2 C.B. 538 (suggesting that to properly substantiate gains and losses in “table games,” which are typically played using chips, a taxpayer should record the gambling results at a given table rather than after each hand). See also *Zarin v. Commissioner*, 916 F.2d 110, 114 (3rd Cir. 1990) (holding, in part, that casino chips were not “property” in the hands of a gambler, but rather “nothing more than an accounting mechanism... designed to facilitate gambling in casinos where the use of actual money was forbidden”). But see PLR 200532025 (May 3, 2005) (concluding an online gaming site operator must report online credits to a taxpayer’s gaming account, where the credits performed the same function as casino chips even if the taxpayer had not exchanged the credits for cash or property).

⁵⁰ Compare Ann. 2002-18, 2002-1 C.B. 621 (declaring “[T]he IRS will not assert that any taxpayer has understated his federal tax liability by reason of the receipt or personal use of frequent flyer miles or other in-kind promotional benefits attributable to the taxpayer’s business or official travel.... The relief provided by this announcement does not apply to travel or other promotional benefits that are converted to cash”) with Dominic L. Daher, *The Proposed Federal Taxation of Frequent Flyer Miles Received from Employers: Good Tax Policy But Bad Politics*, 16 Akron Tax J. 1 (2001) (suggesting that the receipt of frequent flyer miles is taxable under current law and that the IRS’s announcement was the result of political pressure).

⁵¹ Compare IR-98-56 (Sept. 8, 1998) with Darren Heil, *The Tax Implications of Catching Mark McGwire’s 62nd Home Run Ball*, 52 Tax. Law 871 (Summer 1999) (arguing that a taxpayer should be taxed even if he or she returns the ball because he or she exercises dominion and control over it and suggesting that because the IRS’s press release was the product of political pressure it may not reflect the correct interpretation of existing law).

users and virtual world operators believe that in-world transactions are not and should not be subject to tax, in part because of the administrative difficulties that taxation would present.⁵² Thus, a taxpayer may conclude that when the IRS gets around to providing guidance on the taxation of in-world transactions, it will likely reach the same conclusion, especially since it has not issued any guidance to the contrary even though the tax issues presented by virtual worlds have received significant publicity.

Why would it be difficult to administer the taxation of in-world transactions?⁵³

Aside from possibly having to analyze and litigate each of the questions described above, administering the taxation of in-world transactions would present significant challenges for taxpayers and the IRS, such as those described below.

Tracking and reconstructing many small transactions would be burdensome.

Most in-world sales or exchanges involve low value items of virtual property. For example, according to Second Life, in February 2008, its residents engaged in about 16 million transactions, 85 percent of which were for 199 Linden Dollars or less.⁵⁴ Since the exchange rate at that time was about 265 to 266 Linden Dollars to the U.S. dollar,⁵⁵ these statistics suggest that most transactions on Second Life are for less than \$1 and would not be subject to information reporting, even if the IRS treated Second Life as a barter exchange. Thus, residents and the IRS might need to track and document millions of small transactions without the benefit of information reporting.

Valuing virtual transactions would present challenges.

A related and potentially more serious problem would be valuing each of the virtual transactions. Although it might be relatively easy to value in-world currency (assuming we ignore any discount to account for the possibility the virtual world operator may take action that would reduce its value) if the currency is readily convertible into real dollars on an organized exchange, many virtual currencies are not traded that way.⁵⁶ Moreover, the value of a virtual currency on any given day could be very difficult for the IRS or a taxpayer to reconstruct years later in connection with an IRS audit. While valuing in-world transactions conducted in virtual currency would be burdensome, especially in light of the small dollar amounts typically involved, valuing in-world trades of other types of virtual property

⁵² See, e.g., Heather M. Rothman, *Tax Policy: As Congress Considers Online Game Taxes, Linden Lab Contends Law Already Clear*, 210 DTR G-2 (Oct. 31, 2006).

⁵³ Commentators have pointed out a number of policy arguments for and against the taxation of in-world transactions. See, e.g., Bryan T. Camp, *The Play's the Thing: A Theory of Taxing Virtual Worlds*, 59 Hastings L. J. 1, 44-71 (Nov. 2007); Leandra Lederman, “Stranger than Fiction:” *Taxing Virtual Worlds*, 82 NYU L. Rev. 1620, 1641-1672 (Mar. 2007); Steven Chung, *Real Taxation of Virtual Commerce: Has Second Life Crossed the Line?*, Spring 2007 (unpublished manuscript, on file with Hastings LJ). However, our discussion is limited to administrative considerations.

⁵⁴ Second Life, Economic Statistics, at http://secondlife.com/whatis/economy_stats.php (last visited Mar. 10, 2008).

⁵⁵ Second Life, LindeX Market Data, at <http://secondlife.com/whatis/economy-market.php> (last visited Mar. 10, 2008).

⁵⁶ For example, there is no currency exchange for WoW gold. Different Internet vendors buy and sell WoW gold at different rates which are not always publicly disclosed. The value of WoW gold depends on the size of the transaction and its location (e.g., the server on which it is located).

might be nearly impossible. For example, how would we value a trade of virtual armor for a virtual sword or the income from picking up a virtual sword?

IRS guidance could improve taxpayer compliance even if it simply clarified that in-world transactions are not taxable.

Internet-based transactions are a potential area of noncompliance, particularly when they are not subject to information reporting. Yet, the IRS sometimes responds to questions from taxpayers who want to comply with the rules, which the IRS has not adequately explained or written down, by asking the taxpayer to request a private letter ruling at significant personal expense.⁵⁷ In 2005, for example, when a taxpayer asked the IRS how to report the acquisition, exchange, and sale of virtual property, IRS employees gave him two different answers and one advised him to submit a private letter ruling request.⁵⁸ The taxpayer later published a book describing the situation, as well as his discussion with the IRS.

Some people are likely to conclude that if the rules are so complicated that the IRS cannot even figure them out, it is unreasonable for the government to expect taxpayers to do so.⁵⁹ They might also use such reasoning to justify noncompliance in other areas. Moreover, our system of voluntary compliance will break down if it demands that taxpayers report income that is impossible to report, pay tax on “virtual” income that cannot be used to pay real taxes, or makes taxpayers feel like “chumps” if, perhaps mistakenly, they do pay tax on such virtual income.⁶⁰ Thus, promulgating guidance would likely promote voluntary compliance even if it exempts in-world transactions from tax.⁶¹

⁵⁷ The greatest expense associated with a private letter ruling request is likely to be the cost of hiring a tax practitioner to submit the request. However, the IRS’s fee for a private letter ruling is: \$625 for taxpayers with gross income less than \$250,000, \$2,100 for those with gross income between \$250,000 and \$1 million, and \$11,500 for those with gross income of \$1 million or more. Rev. Proc. 2008-1, 2008-1 I.R.B. 1. For a discussion of the IRS’s difficulty in evaluating the impact of potential user fees on its ability to achieve its mission, see National Taxpayer Advocate 2007 Annual Report to Congress 66 (Most Serious Problem, *IRS User Fees: Taxpayer Service for Sale*).

⁵⁸ See Julian Dibbell, *Play Money, or, How I Quit My Day Job and Made Millions Trading Virtual Loot*, 303-311 (2006) (describing discussions with one IRS employee at a Taxpayer Assistance Center and his conclusion that in-game transactions involving virtual property are not taxable, and a follow up call to an IRS business assistance line where the IRS employee expressed the opinion that such transactions are taxable, but recommended that the taxpayer obtain a private letter ruling, for a fee, to get a more authoritative answer).

⁵⁹ See generally David J. Mack, *ITAX: An Analysis of the Laws and Policies Behind the Taxation of Property Transactions in a Virtual World*, 60 Admin. L. Rev. 749, 759 (Summer 2008) (urging the IRS to issue guidance on the taxation of virtual transactions, in part, to avoid creating “a society of unintentional tax cheats”).

⁶⁰ Imposing unreasonable recordkeeping burdens on taxpayers, as taxing in-world transactions might do, has long been thought to decrease voluntary compliance. See, e.g., Deborah H. Schenk, *Simplification for Individual Taxpayers: Problems and Proposals*, 45 Tax L. Rev. 121, 166-67 (1989).

⁶¹ Some commentators have suggested that from a tax policy perspective in-world transactions in Second Life should be subject to tax, but in-world transactions in other worlds should not. See, e.g., Leandra Lederman, “*Stranger than Fiction: Taxing Virtual Worlds*,” 82 NYU L. Rev. 1620, 1625 (Mar. 2007) (concluding “transactions in game worlds, such as WoW, should not be taxed unless the player engages in a real-market trade (a cash-out rule)... [and] that in intentionally commodified virtual worlds, such as Second Life, federal income tax law and policy counsel that in-world sales of virtual items be taxed”); and Steven Chung, *Real Taxation of virtual Commerce: Has Second Life Crossed the Line?* 14, 20 (Spring 2007) (unpublished manuscript, on file with Hastings LJ) (concluding that “imposing a taxable event at the in-world level would be fairer, would not create excess burdens and is not complex” but later clarifying “this article does not advocate taxing in-world transactions within Second Life”).

To its credit, the IRS has recently identified a number of issues presented by Internet auctions of virtual property and other aspects of virtual worlds.⁶² However, the IRS should consider doing more to help taxpayers comply with their tax obligations by quickly issuing guidance addressing how to report economic activities in virtual worlds, as well as in other emerging areas of economic activity.⁶³

IRS Comments

The IRS recognizes the need to address the tax aspects of new e-business activities. For example, the IRS formed the E-Business and Emerging Issues (EBEI) policy group in 2003 to address emerging issues resulting from the growth and expansion of business activities, advances in computer technology, and new developments in the use of e-business technology. This technology includes the advent of Internet-based “virtual world” games that may involve a “virtual economy” for game participants.

The EBEI group has partnered with IRS business units to provide a consistent strategy to address e-business tax issues. The IRS is engaged in the identification of tax issues resulting from new Internet-related activities and recommendation of appropriate strategies to address those issues. Such strategies include internal and external communications such as issuance of interim guidance memoranda, updates to the Internal Revenue Manual (IRM), IRS publications, and website postings.⁶⁴ We also had specific workforce training, research projects, proposals for published guidance, and IRS compliance initiative projects.

The IRS has issued guidance in the past on other activities that raise similar issues to those of “virtual world” game activities.⁶⁵ For example, guidance related to online auctions, bartering, and electronic businesses states that if a taxpayer spends more money on an activity than received, the taxpayer cannot claim a loss on an income tax return. If a taxpayer receives more money from an activity than spent, then the taxpayer may be required to

⁶² SB/SE Examination Policy, Reporting Compliance, *Internet Online Gaming an E-Business & Emerging Issues (DRAFT) Discussion Paper on the Compliance Impact of Internet Online Gaming* (May 2007). As early as 2004, the IRS conducted a Compliance Initiative Project to address noncompliance by Internet auction sellers. SB/SE Reporting Compliance, Compliance Improvement Project, *Internet Auction Sellers & Auction Brokers* (Feb. 25, 2004). By contrast, according to SB/SE Compliance it “has not identified any known examinations involving Internet Online Gaming and the sale of virtual game items.” SB/SE Examination Policy, Reporting Compliance, *Internet Online Gaming an E-Business & Emerging Issues (DRAFT) Discussion Paper on the Compliance Impact of Internet Online Gaming 4* (May 2007).

⁶³ TIGTA also recently found that the IRS could improve the accountability of its guidance process. See TIGTA, Ref. No. 2008-10-075, *The Published Guidance Program Needs Additional Controls to Minimize Risks and Increase Public Awareness* (Mar. 4, 2008).

⁶⁴ Communications include: IRS, *Retail Industry ATG - Chapter 3: Examination Techniques for Specific Industries (Electronic Business, Online Retail)*, at <http://www.irs.gov/businesses/small/article/0,,id=141491,00.html> (Aug. 2005); IRS, *Online Auction Sellers*, at <http://www.irs.gov/businesses/small/industries/article/0,,id=163622,00.html> (last visited Dec. 8, 2008); IRS, *Bartering Income*, at <http://www.irs.gov/businesses/small/article/0,,id=187904,00.html> (last visited Dec. 8, 2008); IRS, *Electronic Business*, at <http://www.irs.gov/businesses/small/article/0,,id=108188,00.html> (last visited Dec. 8, 2008); IRS, *Tax Responsibilities of Bartering Participants*, at <http://www.irs.gov/businesses/small/article/0,,id=188095,00.html> (last visited Dec. 8, 2008).

⁶⁵ Guidance includes: IRS, *Tax Tip 2008-02, Gambling Winnings and Losses*, at <http://www.irs.gov/newsroom/article/0,,id=172190,00.html> (last visited Dec. 8, 2008); IRS, *Tax Topic 419, Gambling Income and Expenses*, at <http://www.irs.gov/taxtopics/tc419.html> (last visited Dec. 8, 2008); Transcript for Business or Hobby, at <http://www.irs.gov/businesses/small/article/0,,id=187331,00.html>; IRS Pub. 525, *Taxable and Nontaxable Income*, at <http://www.irs.gov/pub/irs-pdf/p525.pdf> (2007) (analogous to gambling, found property, prizes & awards, bartering, hobbies, etc.).

report taxable income. This guidance should be helpful in assisting taxpayers who have questions about the tax consequences of their online “virtual world” game activities.

The IRS will continue to prioritize our guidance to meet taxpayer needs. Virtual world e-business issues and implementation of communication and compliance strategies will continue to be addressed through the EBEI policy group.

Taxpayer Advocate Service Comments

While the National Taxpayer Advocate is pleased the IRS has formed an E-Business and Emerging Issues policy group, provided guidance, and initiated training, research projects, and compliance initiative projects, she finds the IRS comments largely unresponsive to the concerns outlined above. The IRS guidance on barter, online auction sellers, gambling income, found property, etc. described in the IRS comments is helpful. However, this guidance mostly restates existing rules, addressing the relatively easy questions for which clear answers already exist.⁶⁶

As the tax administrator, the IRS has a duty to answer all of the basic questions about transactions undertaken regularly by significant numbers of taxpayers, such as those involving virtual items (described above), especially if the questions are difficult for taxpayers to answer on their own.⁶⁷ It may be unfair to expect the IRS to answer these questions before state property and contract laws have evolved far enough to provide clear guidance about when a transfer of virtual items is a transfer of property rights. These very difficulties, however, support the conclusion that the IRS should issue guidance. If the tax experts at the IRS cannot figure out what the rules are or should be, unsophisticated taxpayers who participate in the virtual economy have little hope of doing so. The IRS could at least make an administrative pronouncement about how taxpayers should treat these transactions in the interim as it studies the issue and the state law rules evolve.

More broadly, the IRS needs to produce specific early guidance on difficult issues confronted by taxpayers on a regular basis in emerging areas of economic activity. Otherwise, it risks turning these taxpayers into unintentional tax cheats, establishing noncompliance norms in the industry, and leaving IRS employees without clear guidance about how to do their jobs.

⁶⁶ For one of the most recent suggestions by a commentator regarding how the IRS could answer some of the difficult questions, see Theodore P. Seto, *When is a Game Only a Game?: The Taxation of Virtual Worlds*, Loyola-LA Legal Studies Paper No. 2008-24, at <http://ssrn.com/abstract=1220923> (Aug., 12 2008).

⁶⁷ The South Korea and Swedish tax agencies have issued some guidance in this area. See, e.g., Flora Graham, *Slapping a Tax on Playtime*, BBC News, at <http://news.bbc.co.uk/2/hi/technology/7746094.stm> (Nov. 25, 2008). Although the Swedish pronouncement was not promulgated in English, it reportedly stated that “in-game transactions may incur liability for both value-added tax as well as income tax under Swedish law.” Vili Lehdonvirta, *Sweden Moves to Tax In-Game Transactions*, Virtual Economy Research Network, at http://virtual-economy.org/blog/sweden_moves_tax_-game_transactions (Apr. 16, 2008).

Recommendations

The National Taxpayer Advocate recommends the IRS:

1. Work with the Office of Chief Counsel and the Treasury Department to issue guidance addressing how taxpayers should report economic activities in virtual worlds (or at least ask the Office of Chief Counsel to put it on the priority guidance plan) along with other emerging issues; and
2. Invite the Taxpayer Advocate Service to appoint a representative to the E-Business and Emerging Issues policy group.

MSP
#14**Suitability of the Examination Process****Responsible Officials**

Richard E. Byrd, Jr., Commissioner, Wage and Investment Division
Chris Wagner, Commissioner, Small Business/Self-Employed Division

Definition of Problem

The IRS Restructuring and Reform Act of 1998 refocused the IRS mission from enforcement to a “greater emphasis on serving the public and meeting taxpayers’ needs.”¹ Current law provides for “simple and nontechnical” processes and procedures for examining, or auditing, taxpayers’ returns.² The Internal Revenue Manual (IRM) and IRS publications provide opportunities for the IRS to meet taxpayer needs and preferences throughout the examination process.³ These needs and preferences may vary from choosing a method for conducting an examination (face-to-face versus correspondence) to requesting a telephone discussion of an audit issue with the examiner, and even include setting up a payment agreement for any taxes owed as a result of the audit. The IRS often fails to meet taxpayer needs and preferences due to limited resources or policy reasons. The resulting unsuitability of the process deviates from the IRS’s commitment to provide “top quality” taxpayer service and can lead to taxpayer complaints and tax controversies.⁴

Because the IRS does not consistently meet taxpayer needs and preferences, the tax assessed sometimes reflects the taxpayer’s inability to navigate the audit process rather than the amount truly owed. This is evidenced by the following disparities in audit and customer satisfaction results:

- Taxpayers audited in an office setting experience lower assessments and higher agreement rates;⁵

¹ IRS Restructuring and Reform Act of 1998 (RRA 98), Pub. L. No. 105-206, Title I, Subtitle A, § 1002, 112 Stat. 690 (July 22, 1998). See also IRS Mission Statement, Internal Revenue Manual (IRM) 3.0.273.2 (Jan. 1, 2008); IRS Pub. 1, *Your Rights as a Taxpayer* (May 2005).

² RRA 98, Pub. L. No. 105-206, Title III, Subtitle F, § 3503, 112 Stat. 771 (July 22, 1998).

³ For example, IRM 4.10.3.16.9 (Mar. 1, 2003) requires the IRS to honor a taxpayer’s request for a face-to-face interview. Such needs and preferences may include face-to-face meetings, relief requests under repetitive audit procedures, or correspondence audit issue discussions via telephone with a tax examiner.

⁴ Taxpayers may use various avenues to express dissatisfaction with the examination process ranging from requests for TAS assistance and Audit Reconsiderations to protests to the Appeals function and U.S. Tax Court.

⁵ Automated Information Management System (AIMS) from the Compliance Data Warehouse (CDW), Individual Tax Returns for Tax Periods 2005-2008 (Sept. 2008). See also Chart 1.14.1, Examination Closures, *infra*.

- Taxpayers audited by correspondence are more likely to be subject to repetitive audits;⁶ and
- Taxpayers who are able to discuss their correspondence audit by telephone with their tax examiner express very favorable comments.⁷

The National Taxpayer Advocate is very concerned about these disparities, which could jeopardize the fairness and uniformity of tax administration.

Analysis of Problem

An Introduction to IRS Examinations

Internal Revenue Code (IRC) § 7602(a)(1) authorizes the IRS to examine any books, papers, records, or other data that may be relevant to ascertain the correctness of any return.⁸ IRC § 7605(b) prevents the IRS from conducting unnecessary examinations of taxpayer's "books of account" more than once for each taxable year.⁹ As a practical matter, the "one inspection" rule has numerous limitations and applies only to the taxpayer's own records.¹⁰ For example, as part of the audit process, an examiner will inspect (*i.e.*, look at) taxpayer's prior and subsequent year tax returns to identify related issues or matters of concern.¹¹ An inspection of a tax return under these circumstances does not constitute an inspection of "books of account."¹² Similarly, the IRS has taken the position that other IRS contacts with taxpayers (*e.g.*, to resolve mathematical or clerical errors,¹³ unreported income or non-filing issues such as Automated Underreporter (AUR), (also called document matching)

⁶ For a detailed discussion on the frequency and likelihood of a Correspondence Examination, see Most Serious Problem, *The IRS Correspondence Examination Program Promotes Premature Notices, Case Closures, and Assessments*, *infra*.

⁷ Pacific Consulting Group, *Compliance Center Examination (CC Exam) SB/SE National Report, January Through March 2008* 10, 19 (July 2008).

⁸ IRC § 7602.

⁹ IRC § 7605(b); 26 C.F.R. § 301.7605-1(h).

¹⁰ The courts interpret the "one inspection" rule very narrowly, holding that a subsequent examination does not constitute a second inspection in many situations. See *Application of Magnus*, 299 F.2d 335 (2d Cir. 1962) (subsequent IRS third-party inquiry as a part of a continuing investigation "not a further examination"); *Dahl v. Comm'r*, T.C. Memo. 1974-190, *aff'd*, 526 F.2d 552 (9th Cir. 1975) (IRS reexamination of information contained in a prior audited return for the purpose of determining the correct tax liability for the year under examination not a second inspection); *Estate of Maceo v. Comm'r*, T.C. Memo. 1964-46 (IRS examination of new matters introduced by an amended tax return not a second examination when taxpayer failed to timely object); *U.S. v. Kendrick*, 518 F.2d 842 (7th Cir. 1975) (second examination applicable to a different type of tax); *U.S. v. Omohundro*, 619 F.2d 51 (10th Cir. 1980) (IRS subsequent examination of corporate records after examining the records of an individual taxpayer not a second examination); *Spell v. U.S.*, 907 F.2d 36, 38 (4th Cir. 1990) (transfer of the case to Criminal Investigation (CI) for further investigation after completing a routine audit not a second inspection).

¹¹ IRM 4.19.3.30.7.1 (Nov. 8, 2005).

¹² See *Curtis v. Comm'r*, 84 T.C. 1349, 1350 (1985).

¹³ See generally IRC § 6213(g).

inquiries,¹⁴ and Automated Substitute for Return (ASFR) entries¹⁵ do not constitute more than one inspection under IRC § 7605(b).¹⁶

The IRS audit program relies on one-on-one examination contact with a taxpayer and includes three types of examinations: correspondence examinations, examinations conducted in IRS offices, and field examinations typically held in a taxpayer's home or place of business.¹⁷ These examinations range from a mailed notice asking for clarification of a single tax return item to a full, face-to-face interview and review of the taxpayer's records.

The number of individual income tax returns examined has continuously increased since 2000.¹⁸ During fiscal year (FY) 2000, the IRS audited 617,765 such returns. By FY 2007, this figure more than doubled, with the IRS examining 1,384,563 individual returns. Examinations completed by correspondence accounted for 83 percent of all individual taxpayer audits,¹⁹ and IRS campus offices conducted slightly more than 71 percent of the correspondence examinations.²⁰

The Expanded Use of Correspondence Examinations

Correspondence examinations focus on a limited number of specific, clear-cut issues that would not normally require a full-scale field audit.²¹ Over the years, the number of examinations conducted by correspondence increased dramatically, focusing largely on economies of scale rather than taxpayer needs and preferences.²² The regulations refer to the convenience of a taxpayer; however, the current correspondence examination process is driven mainly by time and issue instead.²³ For example, although the IRM prescribes that IRS employees honor a taxpayer's request for a face-to-face examination, many taxpayers do not make this request, simply because they are unaware of this option.²⁴ Further, taxpayers who do know about the option may not fully realize how a face-to-face examination might better suit the issue and their needs.

¹⁴ The AUR program automatically matches the items reported on a tax return with information reported by third parties on information returns.

¹⁵ ASFR relies on data from information returns or prior year returns to prepare substitute returns and assessments for individuals who fail to file after the IRS sends them a notice.

¹⁶ See IRM 1.2.13.1.1, Policy Statement 4-3(3) (Dec. 21, 1984). This policy statement specifically states that any inspection of the taxpayer's books of account, to the extent necessary to resolve a discrepancy between the taxpayer's return and a broad category of informational returns, will not be considered an inspection of books and records within the meaning of IRC § 7605(b). See also IRS Chief Counsel Advisory 200009045 (Mar. 3, 2000) (request for information to taxpayers in Coordinated Examination Program not an examination of taxpayer's books); Field Service Advice FSA 199916004 (Apr. 22, 1999) (IRS compliance with a request from a foreign country for tax information on a U.S. taxpayer pursuant to a tax treaty not a second examination).

¹⁷ See Treas. Reg. §§ 601.105; 301.7605-1. See also *Statistics of Income (SOI) Tax Stats - IRS Tax Compliance Activities*, at <http://www.irs.gov/taxstats/compliancestats/article/0,,id=117875,00.html> (last visited Aug. 27, 2008).

¹⁸ Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2008-30-095, *Trends in Compliance Activities Through Fiscal Year 2007* 8 (Apr. 18, 2008).

¹⁹ *Id.*

²⁰ *Id.* at 7

²¹ IRM 4.10.3.16 (Mar. 1, 2003) and IRM 4.19.1.2.3 (Oct. 1, 2001).

²² General Accounting Office (GAO), GAO/GGD-99-48, *IRS Audits - Weaknesses in Selecting and Conducting Correspondence Audits* (Mar. 1999).

²³ Treas. Reg. § 601.105(b)(2)(ii).

²⁴ See IRM 4.10.3.16.9 (Mar. 1, 2003).

For FY 2009, the IRS plans to maintain the current level of correspondence examinations by initiating 1,122,554 individual audits.²⁵ Taxpayers contacted by the IRS regarding a math error notice, AUR, or SFR inquiry could still face an audit for the very year in question because the IRS does not consider these other programs to be examinations.²⁶

The General Accounting Office (GAO, now the Government Accountability Office) expressed concern about the suitability and volume of correspondence audits in a 1999 study.²⁷ The GAO found more than 50 percent of the taxpayers audited by correspondence did not respond to the IRS's letters. When asked why, the IRS indicated it had not studied the issue but speculated taxpayers may be overwhelmed or intimidated by the letters and may not be comfortable with responding; some may not understand the letters or know how to respond; and others may know they owe additional tax but hope their non-responsiveness discourages the IRS from trying to collect the tax.²⁸

More than 70 percent of the Earned Income Tax Credit (EITC) taxpayers surveyed for a TAS Research study indicated that, if given a choice, they would prefer to conduct their examinations in person, rather than through correspondence.²⁹ Perhaps most notably, more than 25 percent of the respondents indicated they were not even aware the IRS was auditing their returns.³⁰ The National Taxpayer Advocate is concerned about the suitability of these audits for correspondence examinations.³¹

Meeting Taxpayer Needs Positively Impacts Tax Compliance

The importance of conducting applied research on taxpayer needs and preferences should not be underestimated. Many scholars have studied the link between "tax morale"³² generated by meeting needs, preferences, and expectations, and tax compliance. Some believe tax compliance is driven by a psychological tax contract between citizens and tax

²⁵ IRS Enterprise Plan Summary (June 19, 2008).

²⁶ IRM 1.2.13.1.1., Policy Statement 4-3(3) (Dec. 21, 1984). This policy statement specifically states any inspection of the taxpayer's books of account, to the extent necessary to resolve a discrepancy between the taxpayer's return and a broad category of informational returns will not be considered an inspection of books and records within the meaning of IRC 7605(b).

²⁷ GAO, GAO/GGD-99-48, *IRS Audits – Weaknesses in Selecting and Conducting Correspondence Audits* (Mar. 1999).

²⁸ *Id.*

²⁹ National Taxpayer Advocate 2007 Annual Report to Congress vol. 2, 95. This study, conducted with W&I Research, indicated only about half of the respondents involved with Earned Income Credit audits said they clearly understood what they needed to do to comply with IRS requests for information.

³⁰ National Taxpayer Advocate 2007 Annual Report to Congress, vol. 2, 94-95, 103-104. See also *The 2008 Tax Return Filing Season, IRS Operations, FY 2009 Budget Proposals, and the National Taxpayer Advocate's 2007 Annual Report to Congress, Hearing Before the Subcomm. on Oversight, H. Comm. on Ways and Means*, 110th Cong. (Mar. 13, 2008) (testimony of Nina E. Olson, National Taxpayer Advocate).

³¹ For a detailed discussion of the Correspondence Examination Process, see Most Serious Problem, *The IRS Correspondence Examination Program Promotes Premature Notices, Case Closures, and Assessments*, *infra*.

³² Tax morale is a broad concept, which encompasses internal motivations and perceptions (e.g., I am a law-abiding person). Feld and Frey define tax morale "as a complicated interaction between taxpayers and the government establishing a fair, reciprocal exchange that involves giving and taking of both parties." See Lars P. Feld & Bruno S. Frey, *Tax Compliance as the Result of a Psychological Tax Contract: The Role of Incentives and Responsive Resolution*, 2007 Law & Policy 102.

authorities,³³ which is influenced by government policy and the behavior of the authorities. The psychological tax contract and the resulting tax morale presuppose that the taxpayer and the tax authority treat each other like partners, with mutual respect and honesty.³⁴ In the simplest terms, fair and respectful treatment raises tax morale, and authoritarian treatment undermines tax morale.³⁵

This approach is similar to the National Taxpayer Advocate's view of taxation as a social contract between the government and its taxpayers, with attendant rights and responsibilities on each party to that contract.³⁶ Taxpayer behavior and motivations play a vital role in determining individual taxpayer compliance.³⁷ If the IRS fails to recognize this process, it risks turning compliant taxpayers into noncompliant ones.³⁸

Taxpayer Needs and Preferences

In 2006, the National Taxpayer Advocate published a comprehensive analysis of taxpayer needs, preferences, and willingness to use IRS services, using data from several studies conducted by the IRS and other organizations as part of the Taxpayer Assistance Blueprint (TAB) initiative. TAS defined *taxpayer needs* as the collection of services taxpayers require to comply with their tax obligations and the requirement that these services be delivered in a manner that allows the taxpayer to correctly use them without unreasonable burden. *Preferences* are taxpayers' favored methods for obtaining services.³⁹ The results of this analysis and their relevance to the examination process are discussed below.

³³ Marjorie E. Kornhauser, *Normative and Cognitive Aspects of Tax Compliance*, Literature Review and Recommendations for the IRS Regarding Individual Taxpayers, 2007 National Taxpayer Advocate Annual Report to Congress vol. 2, 138.

³⁴ Lars P. Feld & Bruno S. Frey, *Tax Compliance as the Result of a Psychological Tax Contract: The Role of Incentives and Responsive Resolution*, 2007 Law & Policy 102.

³⁵ Example offered by Feld & Frey: "The tax officials can choose between these extremes in many different ways. For instance, when they detect an error in the tax declaration, they can suspect intent to cheat, and impose legal sanctions. Alternatively, the tax officials may give the taxpayers the benefit of the doubt, and inquire about the reason for the error. If the taxpayer in question indeed did not intend to cheat but simply made a mistake, he or she will most likely be offended by the disrespectful treatment of the tax authority. The feeling of being controlled in a negative way, and being suspected of tax cheating, tends to crowd out the intrinsic motivation to act as an honorable taxpayer and, as a consequence, tax morale will fall. In contrast, if the tax official makes an effort to locate the reason for the error by contacting the taxpayer in a courteous way, the taxpayer will appreciate this respectful treatment and tax morale will be upheld." *Id.*

³⁶ 2007 National Taxpayer Advocate Annual Report to Congress 478 (Key Legislative Recommendation, *Taxpayer Bill of Rights and De Minimis "Apology" Payments*). See also *Hearing on the 2008 Tax Return Filing Season, IRS Operations, FY 2009 Budget Proposals, and The National Taxpayer Advocate's 2007 Annual Report to Congress*, Hearing Before the Subcomm. on Oversight, H. Comm. on Ways and Means, 110th Cong. (Mar. 13, 2008) (testimony of Nina E. Olson, National Taxpayer Advocate).

³⁷ According to Joshua Rosenberg, in an ideal system (from the government perspective), "[people] would pay their taxes and feel good about it... [They] would feel about tax laws the same way they feel about criminal laws, contract laws, and property laws— that they are an important part of government and are enacted for our benefit. [People] would believe that others pay their fair share, would expect them to do so, would be disturbed when they did not, and would do what they could to ensure that the tax laws were properly enforced and that the IRS had all the information it needed." Joshua D. Rosenberg, *Narrowing the Tax Gap: Behavioral Options*, 117 *Tax Notes* 517 (2007).

³⁸ National Taxpayer Advocate Keynote Address, American Bar Association Tax Section (May 5, 2006).

³⁹ National Taxpayer Advocate 2006 Annual Report to Congress, vol. 2, 3.

Importance of Personal Communication during the Examination Process

Numerous studies highlight the need and preference for personal communication to resolve examination issues. When using IRS services, taxpayers overwhelmingly indicate they prefer in-person assistance.⁴⁰ Low income taxpayers (with annual incomes less than \$35,000) stated they prefer in-person assistance and would visit an IRS office if one were nearby.⁴¹ In 2006, the Treasury Inspector General for Tax Administration (TIGTA) reported increased personal interaction with taxpayers would allow more taxpayers timely access to the information they need to resolve discrepancies and reach agreement on tax matters.⁴²

According to the TIGTA report, easy phone access to the IRS helps resolve cases and issues. TAS-moderated practitioner focus groups showed that, while practitioners had difficulty contacting IRS auditors, they often successfully resolved outstanding issues after a telephone conversation with the auditor familiar with the case.⁴³ To address accessibility issues highlighted in the report and in customer satisfaction surveys, the IRS plans to switch to a universal call routing system that will automatically direct a call to the first available examination employee. While this change might meet the taxpayer's *need* to discuss a correspondence audit with an examiner, it does not address the taxpayer's *preference* and possible need to speak to someone *familiar* with his or her particular case.

A face-to-face audit may not be necessary if the IRS assigns the examination to one tax examiner with whom the taxpayer establishes a relationship. Through personalized, one-on-one communications, the examiner gains familiarity with the taxpayer's particular circumstances, while the taxpayer can share concerns and address any questions. Data compiled by the Pacific Consulting Group for SB/SE Correspondence Examination reflects very favorable results and comments from taxpayers who are able to contact their assigned correspondence examiner, make a personal connection, and discuss their case in detail.⁴⁴

Verbatim comments such as, "*I was impressed by how friendly and courteous the IRS employees were. The representative I spoke with was very friendly and understanding of my circumstance. She was helpful and knowledgeable and understood that these matters can be confusing for the taxpayer such as myself,*" and, "*The woman who handled my case was a delight to work with. Her grasp of the tax code was excellent. She treated me in a professional manner, but was very fair and pleasant,*"⁴⁵ showcase positive interactions during correspondence examinations. Unfortunately, the ease of getting through to the right person,

⁴⁰ IRS Oversight Board, *Taxpayer Customer Service and Channel Preference Survey Special Report* (Nov. 2006), 2006 Service Channels Survey, vii – viii.

⁴¹ National Taxpayer Advocate 2006 Annual Report to Congress, vol. 2, 6.

⁴² TIGTA, Ref. No. 2006-40-138, *The Wage and Investment Division Automated Underreporter Telephone Operations Could Improve Service to Taxpayers* 6 (Sept. 13, 2006).

⁴³ The National Taxpayer Advocate's Findings from the Earned Income Tax Credit (EITC) Examination and Document Requirements Focus Groups, IRS Tax Forums, June – September 2005 (Dec. 2005).

⁴⁴ Pacific Consulting Group, *Compliance Center Examination (CC Exam) SB/SE National Report, January Through March 2008* 10 (July 2008).

⁴⁵ Pacific Consulting Group, *Compliance Center Examination (CC Exam) SB/SE National Report, 2007 Verbatim Customer Satisfaction Comments*.

and the length of time to get through by phone, are still the areas with the most room for improvement in correspondence examination.⁴⁶

Taxpayers may need to request face-to-face meetings to resolve outstanding examination issues for a number of reasons, including language barriers, the inability to communicate clearly in writing, complexity of the tax law, and the volume of records required for verification.⁴⁷ For example, the state sales tax deduction, while very straightforward, could require numerous receipts for substantiation. Similarly, substantiating employee business expenses for an over-the-road truck driver may require the submission of a driver's log, which is not easily copied or duplicated.

The IRS is updating IRM 4.19.13.14, *Transfers to Area Office Examination or Appeals Office*, to provide examples of how to assist taxpayers who may request a transfer due to voluminous records.⁴⁸ While the IRM gives employees a method of sampling records, it does not offer examples of when to transfer a case to a local office. Examples of appropriate transfers would be useful for employees and would help promote consistent treatment of taxpayer cases.

IRS publications may lead taxpayers to believe that if they prefer to have a face-to-face meeting, all they have to do is ask. Publication 1, *Your Rights as a Taxpayer*,⁴⁹ informs taxpayers that they may “respond by mail or you can request a personal interview with an examiner.” Similarly, Publication 556, *Examination of Returns, Appeal Rights, and Claims for Refunds*, goes on to state that “if your return can be examined more quickly and conveniently in another area, such as where your books and records are located, you can ask to have the case transferred to that area.”⁵⁰ The public statements regarding the ability to have a face-to-face meeting simply do not agree with the internal processes in place to facilitate this request.

Whether the taxpayer's request is based on need or preference, the IRS rarely grants taxpayers a face-to-face meeting once a correspondence examination is underway. Complaints from taxpayers to TAS have revealed that even though IRS publications advertise taxpayers' right to a face-to-face conference, the IRS seldom honors taxpayer requests for in-person examinations.⁵¹ The IRS denies many such requests based on geographic inconvenience and the unavailability of premises for a face-to-face meeting. Further, the structure of the IRS makes it difficult to transfer a case from a campus correspondence exam unit to the field. This is because the Wage and Investment (W&I) Operating Division conducts most

⁴⁶ Pacific Consulting Group, *Compliance Center Examination (CC Exam) SB/SE National Report, January Through March 2008* (July 2008).

⁴⁷ National Taxpayer Advocate 2006 Annual Report to Congress 333.

⁴⁸ IRM 4.19.13.14 (clearance copy Aug. 2008).

⁴⁹ IRS Pub. 1, *Your Rights as a Taxpayer* (May 2005).

⁵⁰ IRS Pub. 556, *Examination of Returns, Appeal Rights, and Claims for Refund* (May 2008).

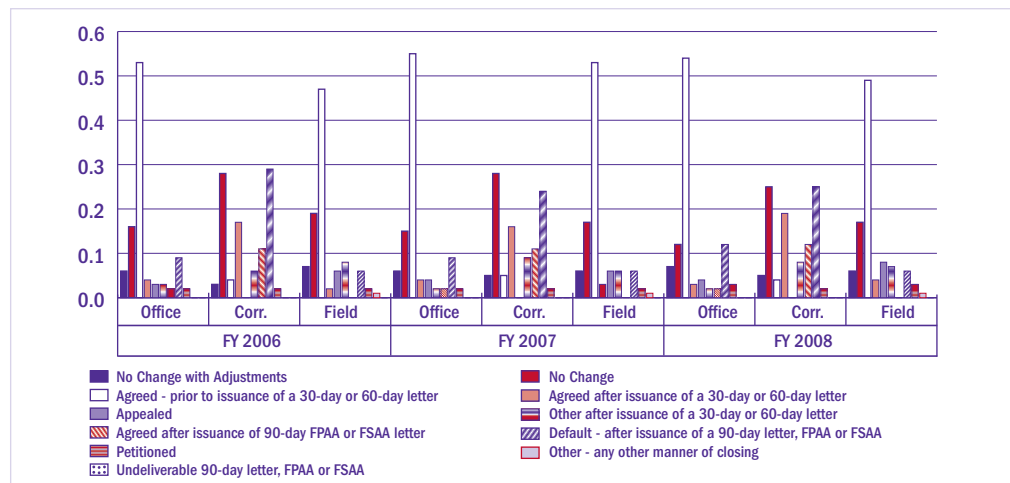
⁵¹ IRS Pub. 1, *Your Rights as a Taxpayer* (May 2005). See also I.R.M. 4.10.3.16.9 (Mar. 1, 2003) (providing that a taxpayer request for a face-to-face interview “should be honored.”) See also Systemic Advocacy Project P0027246, created after TAS received numerous complaints from taxpayers regarding the failure of the IRS to honor requests for face-to-face examinations.

correspondence audits while Small Business/Self Employed (SB/SE) division employees handle office audits, and the examination inventory system does not facilitate easy transfers between divisions.

The IRS conducts slightly more than 71 percent of correspondence examinations at campus offices, which are often not located in the taxpayer’s geographic area.⁵² Even if a campus is nearby, security measures prohibit walk-in traffic and face-to-face meetings.

TAS focus groups of practitioners expressed concern about problems with the practical application of correspondence audits. They indicated face-to-face audits were faster, cheaper, and provided a “better” result for the taxpayer.⁵³ While the definition of “better” is clearly subjective, the analysis of examination closures illustrated in Chart 1.14.1 below confirms that face-to-face audits produce a higher agreement rate.⁵⁴ This disparity jeopardizes the fairness and uniformity of tax administration. The use of various IRS examination processes should not influence the result of an audit.

CHART 1.14.1, Examination Closures



Based on the disparity in these figures, the IRS should consider a test group of similar audits and compare the results for taxpayers going through an office examination versus a correspondence examination. The study should cover the full consideration of audit issues and barriers, including response rates, agreement rates, dollars assessed, and dollars collected. Further, the IRS should survey this controlled group of taxpayers at the conclusion of their audits to evaluate the examination through their eyes. Only through research

⁵² TIGTA, Ref. No. 2008-30-095, *Trends in Compliance Activities Through Fiscal Year 2007* 7 (Apr. 18, 2008).

⁵³ The National Taxpayer Advocate’s Findings from the Correspondence Examination Focus Groups, IRS Tax Forums, June – September 2005 (Jan. 2006).

⁵⁴ Automated Information Management System (AIMS) from the Compliance Data Warehouse (CDW), Fiscal Years 2006 – 2008 (Sept. 2008).

such as this can the IRS fully assess whether the venue for an audit has an impact on the determination of true and correct tax.

When the IRS electronically transfers an examination case from correspondence audit to a field office, it faces a shortage of personnel in the field to provide in-person assistance. As of the end of FY 2007, the IRS had only 1,060 Tax Compliance Officers to hold face-to-face meetings.⁵⁵ The IRS lacks the staffing to honor these requests and does not factor case transfers from correspondence audit into the field into its enterprise work plans.

Repetitive Audits of the Same Issue

Current law restricts unnecessary IRS examinations and investigations and allows only one inspection of the taxpayer's "books of account" per year without a notice.⁵⁶ Neither taxpayers nor the IRS benefit from repetitive audits of the same issues, year after year, that do not result in an assessment of additional tax liability. Therefore, the IRM allows an auditor to close a case without examination when the issues under audit were examined in either of the two preceding years and IRS transcripts confirm the audit resulted in either a small or no change to the taxpayer's liability. Ambiguity in the IRM, however, has led some correspondence auditors to believe repetitive audit procedures only apply to face-to-face examinations.⁵⁷

Example: A taxpayer found the correspondence audit process unsuitable due to repetitive audits of the same issue. The taxpayer deducts alimony paid to his ex-wife every year. When the IRS audited this taxpayer by correspondence in 2005, he verified that he was entitled to the deduction and the IRS closed the case with no change to his tax. Subsequently, the IRS selected this taxpayer's 2006 return for audit for the same issue. The taxpayer does not feel the IRS needs to audit him every year just because his wife chooses not to report the alimony payments on her return. He would prefer that the IRS find a way of confirming he has already verified his entitlement to this deduction without initiating an audit.⁵⁸

Impact of Combination Letters on Tax Morale

In 1998, the IRS created the combination letter to reduce the duration of correspondence examinations.⁵⁹ The "combo" letter merged the initial contact letter and the official examination report into one mailing.⁶⁰ As opposed to an initial contact letter, where the IRS indicates it is reviewing a deduction or tax issue, the combo letter presumes the deduction

⁵⁵ TIGTA, Ref. No. 2008-30-095, *Trends in Compliance Activities Through Fiscal Year 2007* 6 (Apr. 18, 2008).

⁵⁶ IRC § 7605(b).

⁵⁷ IRM 4.10.2.8.5 (Aug. 1, 2007).

⁵⁸ Systemic Advocacy Management Submission (SAMS) Issue No. 29054.

⁵⁹ The IRS began using the Combo Letter in March 1999. *IRS, Electronic Publishing*, at <http://publish.no.irs.gov/catp.cgi?catnum=27226> (last visited Dec. 15, 2008).

⁶⁰ National Taxpayer Advocate 2007 Annual Report to Congress 292.

or tax issue is incorrect and attaches a report reflecting additional tax due. While the IRS eliminated the use of combination letters for EITC audits in 2005 at the request of the National Taxpayer Advocate, it still uses the letter for other discretionary work where the assessment of additional tax is considered “very likely.” Two audit areas using the combo letter involve self-employment tax and deductions for the child tax credit.

In the case of self-employment tax audits, the correspondence exam function reviews income items reflected on Form 1040, *Individual Income Tax Return*, Line 21, *Other Income*, that appear to be subject to self-employment tax but were not included in the computation on the original return. The IRS issues a combo letter with a report proposing the assessment of self-employment tax on the pre-identified income items. Results for FY 2008 (through April) indicate that of the 5,519 self-employment combo letter audits initiated, the IRS closed 57 percent with no change to tax liability. Of the 3,954 child tax credit combo letter audits initiated, the IRS closed 45 percent with no change to liability.⁶¹ The results indicate the additional tax the IRS presumed to be “very likely” has not materialized. These cases can have a negative impact on tax morale based on “guilty until proven innocent” treatment. In addition, the combo letter does not adequately explain taxpayers’ appeal rights, creating a possible abridgement of these rights in violation of the IRS Restructuring and Reform Act of 1998.⁶² TAS is pleased to report SB/SE and W&I have revisited its use of the Combo Letter in correspondence examinations and plans on limiting its use.⁶³ We encourage IRS to eliminate the use of combination letters in all situations.

Downstream Consequences of IRS Inability to Suit the Examination Process to Taxpayer Needs and Preferences

When taxpayers cannot obtain the information or services they need to work through a compliance issue, they often experience additional costs and burdens. A taxpayer may feel a need to pay for representation, or file a petition with the United States Tax Court to protect his or her rights, due to a breakdown in the correspondence examination process. The taxpayer is not the only one to experience these burdens. The IRS must also expend additional costly resources such as repeat contacts on the same issue, errors on returns, TAS assistance, revenue loss, and, possibly, enforcement costs – such as additional audits, collection activity, and appeals.⁶⁴

To address these issues, SB/SE convened a Correspondence Examination Taxpayer Satisfaction Improvement Team in June 2008. The purpose of the team is to improve customer satisfaction results by better meeting the expectations, needs, and preferences of the

⁶¹ W&I response to TAS research request (June 30, 2008).

⁶² RRA 98; Pub. L. No. 105-206, Title III, Subtitle F, § 3465, 112 Stat. 767 (July 22, 1998). See also National Taxpayer Advocate 2007 Annual Report to Congress 292-300; National Taxpayer Advocate 2006 Annual Report to Congress 296-297; National Taxpayer Advocate 2004 Annual Report to Congress 177-179; National Taxpayer Advocate 2003 Annual Report to Congress 87-98; National Taxpayer Advocate 2002 Annual Report to Congress 57-61.

⁶³ SB/SE and W&I have submitted a Unified Work Request requesting a systemic change to move certain excise penalty cases, Self-Employment Tax cases, Alimony cases, and non-EITC DUPTIN cases from the Combination Letter program to an Initial Contact Letter.

⁶⁴ 2007 Taxpayer Assistance Blueprint, Phase II, at 53.

taxpayer from the beginning of the correspondence examination process through final case closure. Using customer satisfaction data compiled by the Pacific Consulting Group, the team reviewed in depth the following four areas where taxpayer concerns and complaints showed the greatest room for improvement:

- Ease of getting through to the right person;
- Overall length of correspondence exam process;
- Providing consistent information about case; and
- Length of time to get through by phone.

The team is working on a number of recommendations, including:

- “Just a Phone Call Away from Great Customer Service” – an integrated approach for providing IRS employees with taxpayer comments, updated IRM guidance, and training regarding the importance of phone contact;
- “Exam Express” – an innovative program that will fast-track certain issues through the audit process;
- “First Read Improvements” – combining updated scanning technology and experienced tax examiners in the receipt and control process will improve the ability of correspondence examination functions to control, acknowledge, and address correspondence in a timely manner.

Early in the process, the team recognized that if the initial contact letters were improved, many complaints about the process could be resolved. For example, nearly three-quarters of EITC audited taxpayers personally call or visit the IRS in response to their initial contact letter, and 60 percent of those who contact the IRS are seeking guidance on what documentation is needed.⁶⁵ An initial contact letter that fully explains the correspondence examination process, the length of the process, and includes a tailored documentation request for each individual taxpayer might reduce the number of incoming calls to the IRS about these issues. The team is sending its data recommendations for improvement to the Commissioner’s Taxpayer Communications Taskgroup (TACT) for consideration and implementation.

Limited English Proficiency and Examination Suitability

Many taxpayers have limited English proficiency and thus experience difficulties in understanding their U.S. taxpayer rights and obligations, which may cause inaccurate audit results and further consequences for such taxpayers. The IRS established the Multilingual Initiative (MLI) program to help taxpayers understand and meet their tax responsibilities

⁶⁵ National Taxpayer Advocate 2007 Annual Report to Congress, vol. 2, 95.

regardless of their inability to understand and speak English.⁶⁶ IRS strategic plans include removing impediments for groups with language, cultural, and other barriers, and increasing the scope and accessibility of services.⁶⁷ The IRS should consider expanding the MLI program by offering foreign language assistance during the audit process. For example, the IRS could allow taxpayers to check a box on their returns indicating they prefer correspondence in another language – including Braille.⁶⁸ The National Taxpayer Advocate suggested the outside of the envelope could be in Braille to alert the reader to the importance of this document. This level of accommodation and assistance will provide the IRS with the most accurate information and assist taxpayers to overcome language, cultural, and accessibility barriers.⁶⁹

Conclusion

The importance of providing service from the taxpayer’s perspective was highlighted in a July 9, 2008, e-mail communiqué from IRS Commissioner Douglas Shulman, stating,

I also believe that we need to excel at both service and enforcement to meet our mission. It isn’t an either/or proposition. We need to do both. I would like to talk today a little about service and give you some of my thoughts on how we can drive continuous improvement to the service we deliver. First, in every interaction, every transaction we conduct with a taxpayer, we should think about it from the outside in – from the taxpayer’s point of view, even though we may not ultimately agree with the taxpayer.

The IRS should consider taking the following actions to address problems with the suitability of the examination process: substantially increase the focus of the examination process toward meeting taxpayer needs and preferences when determining the nature of an examination and completing an audit; develop and implement appropriate and consistent guidance specific to correspondence audit; test the results of correspondence audits compared to face-to-face audits for similar issues; stop using combination letters in all situations; and implement the suggestions made by the Customer Satisfaction Initiative Team (including the proper consideration of MLI initiatives in correspondence). By doing so, the IRS will live up to the Commissioner’s expectation that IRS employees consider the taxpayer’s experience in everything the employees do.

⁶⁶ See Executive Order 13166, *Improving Services for Persons with Limited English Proficiency (LEP)*, 65 FR 50121 (2000). See also Policy Statement P-22-3, IRM 22.31.1.1.2 (Apr. 1, 2006).

⁶⁷ W&I, *Strategy & Program Plan FY 2008 – FY 2009* 33.

⁶⁸ The Braille code, developed by Louis Braille (1809 – 1852), was first introduced in the United States in 1869 and was adopted as the Standard English Grade Two Braille code in 1932.

⁶⁹ See 2006 National Taxpayer Advocate Annual Report to Congress 333 (Most Serious Problem, *Limited English Proficient (LEP) Taxpayers: Language and Cultural Barriers to Tax Compliance*).

IRS Comments

The IRS conducts well over a million correspondence examinations each year – examinations that focus on a limited number of specific, clear-cut issues that do not normally require a full-scale, face-to-face audit of the taxpayer's books and records. In comparison to other types of audits, correspondence examinations require fewer resources from either the IRS or taxpayers, are considerably less invasive for taxpayers, and effectively contribute to the tax administration objectives of fostering voluntary compliance and reducing the Tax Gap. Use of correspondence examinations is only one of the ways in which the IRS serves the public and meets taxpayer needs, as emphasized by the IRS Restructuring and Reform Act of 1998 (RRA 98).

Through various outreach activities, the IRS continually strives to increase taxpayer awareness of tax law requirements, taxpayer-related responsibilities, and taxpayer rights. Information on contacting the IRS and the examination process is available on IRS.gov and in IRS publications. While the IRS is responsive to taxpayer requests for face-to-face assistance, the IRS designs and manages its examination programs based on the audit streams most appropriate for the issues involved. In addition, the inherent nature of correspondence examinations generally makes face-to-face assistance unnecessary because these audits involve a limited number of issues and usually require the submission of fewer documents by taxpayers to substantiate the items reported on their returns.

The National Taxpayer Advocate notes that according to a TIGTA report, easy telephone access to the IRS helps resolve cases and issues. The National Taxpayer Advocate also refers to IRS use of the universal call routing system. In this regard, the IRS is moving forward with a vision for corporate inventory for much of its correspondence examination work that has the potential to dramatically improve telephone access while meeting taxpayer needs and preferences.

The W&I division has completely eliminated extension routing on all cases. Universal call routing now facilitates taxpayers' telephone interactions with the IRS by allowing them to talk to the next available examiner. Taxpayers no longer have a need to connect with the particular IRS employee assigned to their case since all return data, letters, reports, and work papers are now available to all W&I examiners. In addition, it should be noted that survey results confirm that most taxpayer calls regard case status, documents needed to resolve the audit, and routine questions about the tax issue that can be readily addressed by any examiner.⁷⁰

The IRS has also implemented the self-assign feature that allows any tax examiner that answers the toll free number to assign an unassigned case to him or herself and make the final determination on the case if the information provided by the taxpayer is sufficient. A

⁷⁰ W&I October 2008 telephone survey results indicate that 70 percent of the taxpayers called for an explanation of the letter from the IRS while 11 percent wanted to let the IRS know they mailed records or wanted to provide other information.

Unified Work Request for programming has been submitted to expand this flexibility to cases in 90-day status as well. Other planned improvements include intelligent call routing, which will route calls to the most appropriate examiner based on the tax issues involved in the case. We are also moving forward with the correspondence imaging development project, which will eventually add taxpayer correspondence to the system, making the entire file, including taxpayer correspondence, available to any examiner at any site.

Telephone survey results reflect very favorable taxpayer feedback. For example, the W&I October 2008 survey reflects that 84 percent were satisfied with the time it took to reach IRS on the phone and 95 percent were satisfied with the length of time they spent with an examiner after they were connected. Further, 90 percent were satisfied with the ability of the examiner to make a decision on their case.

The National Taxpayer Advocate notes with approval the changes the IRS has made to reduce the use of combination or “combo” letters. We will also consider the National Taxpayer Advocate’s suggestion to eliminate the use of that letter for other correspondence examination audit streams. However, the IRS disagrees with the National Taxpayer Advocate’s allegation that use of these letters may abridge taxpayer rights in violation of RRA 98 by providing inadequate appeal rights. The combo letter, by definition, merges the initial contact letter and the 30-day letter into a single document that includes specific reference to the taxpayer’s right to file an administrative appeal. The combo letter also includes a copy of Publication 3498-A, *The Examination Process (Examinations by Mail)*. This publication discusses taxpayer rights, explains appeals procedures, and further outlines ways the IRS can assist taxpayers in the correspondence examination process in full conformance with RRA-98 requirements.

We are also pleased that the National Taxpayer Advocate endorses the work of the Correspondence Examination Taxpayer Satisfaction Improvement Team, which is considering the ease of contacting the right person at the IRS, overall length of the correspondence examination process, providing clear and consistent information, and length of time to get through by telephone. With regard to the National Taxpayer Advocate’s proposal that the IRS implement the recommendations made by the Team, deliberations are still ongoing and when the team issues its final report, its recommendations will be forwarded to the Commissioner’s Taxpayer Correspondence Taskgroup for consideration and approval.

The National Taxpayer Advocate also recommends that the IRS test the results of correspondence audits compared to face-to-face audits. The IRS is currently working to develop such a test. The National Taxpayer Advocate also notes, and we agree, that appropriate and consistent guidance specific to correspondence audits is vital. In this regard, the IRS works to continuously improve its guidance to correspondence examiners and telephone assistants.

Taxpayer Advocate Service Comments

The National Taxpayer Advocate commends the IRS for significantly improving telephone access to meet taxpayer needs and preferences. We applaud the IRS for implementing the self-assign feature, which allows any examiner who answers the toll-free number through universal call routing to make the final determination on the taxpayer's case if the information provided by the taxpayer is sufficient. The National Taxpayer Advocate also supports the extension of this feature to all audit cases, including those where the IRS has issued the statutory notice of deficiency. We encourage the IRS to proceed with intelligent call routing and correspondence imaging, which will further enhance communications and better suit taxpayer needs and preferences during the examination process. The National Taxpayer Advocate appreciates the efforts of the Correspondence Examination Taxpayer Satisfaction Improvement Team to improve taxpayer service during the examination process, and is pleased with the IRS's agreement to test the results of correspondence audits compared to face-to-face audits for similar issues. Such testing will help the IRS to improve its guidance regarding correspondence examinations and "focus on the taxpayer's experience."⁷¹

We are pleased the IRS is planning to conduct the test comparing correspondence and office exam results with respect to similar cases. This study should show whether particular taxpayer populations (*e.g.*, EITC taxpayers) are better able to understand what is required and bring in better information when conveyed in a face-to-face environment. If the test results confirm what TAS's survey results show, IRS should plan for and offer office examinations as an option in certain cases initially established as correspondence exams.

Although the National Taxpayer Advocate is pleased with the SB/SE and W&I plans to limit the use of the combo letter in some situations,⁷² she remains concerned about the use of the letter in all other situations because it potentially abridges taxpayer appeal rights. While the letter includes a copy of IRS Publication 3498-A, *The Examination Process (Examinations by Mail)* (Dec. 2006), both the publication and the letter fall short of adequately informing the taxpayers of their appeal rights as mandated in RRA 98 § 3465.⁷³ The National Taxpayer Advocate fundamentally disagrees with the joining of the 30-day timeframe to submit information with the 30-day timeframe to appeal. These two administrative

⁷¹ IRS Commissioner Douglas Shulman, *Remarks Before Tax Analysts Conference on Ten-Year Anniversary of the IRS Restructuring and Reform Act of 1998*, at <http://www.irs.gov/newsroom/article/0,,id=184857,00.html> (last visited Dec. 11, 2008).

⁷² SB/SE and W&I have submitted a Unified Work Request requesting a systemic change to move certain excise penalty cases, Self-Employment Tax cases, Alimony cases, and non-EITC DUPTIN cases from the Combination Letter program to an Initial Contact Letter.

⁷³ RRA 98, Pub. L. No. 105-206, Title III, Subtitle F, § 3465, 112 Stat. 767 (July 22, 1998). Letter 566-B-EZ (SC), *Simplified Service Center ICL/30 Day Combo Letter* (Feb. 2005), does not contain clear, upfront direction to the taxpayers about the right and ability to appeal. The letter instructs the taxpayer in one paragraph that, "If you do not agree with all the changes listed on Form 4549-EZ, please send us the following information by [date]: A letter telling us what item(s) you disagree with and why, and; Clear photocopies of the records, information, and/or supporting documents, listed on the enclosed Form(s)." It is not until the second page that the letter finally informs the taxpayers about the right to appeal, referring to explanations in the publication: "After we review what you've sent us, we will contact you with the result. If you still disagree with our findings, you have the right to file an administrative appeal as explained in the enclosed Publication 3498-A, *The Examination Process (Examinations by Mail)*." See *id.*

processes should remain separate. Accordingly, the National Taxpayer Advocate urges the IRS to eliminate all and any use of combination letters in the examination process.

Recommendations

The National Taxpayer Advocate recommends that the IRS takes the following specific actions to meet taxpayer needs and preferences during the examination process:

1. In consultation with TAS Research, conduct a research study that compares the results of correspondence audits with face-to-face audits for similar issues, with respect to agreements, adjustments, employee and customer satisfaction, taxpayer educational opportunities, and cycle time.
2. Immediately eliminate the use of combination letters in all situations during the examination process.
3. Finalize and promptly implement the suggestions made by the Customer Satisfaction Initiative Team, including the proper consideration of multilingual initiatives in correspondence, the integration of phone skill training, and the roll-out of updated documentation and substantiation protocol and resources.

MSP
#15**The IRS Correspondence Examination Program Promotes
Premature Notices, Case Closures, and Assessments****Responsible Officials**

Richard E. Byrd Jr., Commissioner, Wage and Investment Division
Chris Wagner, Commissioner, Small Business/Self-Employed Division

Definition of Problem

The correspondence examination program plays a vital role in the IRS mission of promoting voluntary compliance with the tax law. Correspondence audits focus on a limited number of specific, clear-cut issues that would not normally require a face-to-face examination.¹ These audits, conducted exclusively by mail, should help the IRS leverage its compliance resources, increase audit coverage, and minimize taxpayer burden.² Instead, the program as currently designed experiences problems that increase taxpayer burden. These problems include the mishandling of taxpayer correspondence (receipt, control, and response); a lack of one-on-one contact with taxpayers in resolving their inquiries and disputes; and inconsistent, sometimes ignored policies and procedures that cause premature and incorrect assessments of tax, penalties, and interest. Among the problems that limit the IRS's ability to operate an effective correspondence examination program are:

- An automated process that curtails examinations and leads to premature notices, case closures, and assessments;
- A lack of one-on-one contact with taxpayers, which results in premature enforcement actions;
- A focus on closing cases rather than helping taxpayers to resolve their problems; and
- A dramatic increase in the amount of overage discretionary correspondence mail.³

These problems significantly affect a taxpayer's experience with the correspondence examination process. The IRS's failure to communicate effectively with taxpayers; its preoccupation with closing cases rather than resolving issues; and its perpetual delays in responding to taxpayer correspondence all increase the likelihood of misunderstandings.⁴

¹ Internal Revenue Manual (IRM) 4.10.3.16 (Mar. 1, 2003). In addition to applying to field examiners, this IRM also applies to tax compliance officers (office auditors), tax examiners (correspondence examination), and audit accounting aides. See also IRM 4.19.1.2.3 (Oct. 1, 2001).

² For a detailed discussion of the suitability issues relating to correspondence audits, see Most Serious Problem, *Suitability of the Examination Process*, *supra*.

³ Wage and Investment Division (W&I), Compliance Measures (June 2008). Correspondence examinations do not include related compliance programs (e.g., Automated Underreported (AUR), Substitute-for-Return, (SFR), CP 2000, or Math Error programs). The discretionary correspondence examination mail figures are exclusive of any of the other compliance programs and reflect a 242 percent increase in overage correspondence.

⁴ National Taxpayer Advocate 2007 Annual Report to Congress, vol. 2, 107.

Analysis of Problem

Background

In fiscal year (FY) 2007, the IRS examined 1,384,563 individual income tax returns (Forms 1040), conducting 83 percent of these audits by correspondence.⁵ IRS Publication 556, *Examination of Returns, Appeal Rights, and Claims for Refund*, explains to taxpayers that the agency conducts *some* examinations entirely by mail.⁶ However, IRS data reveals correspondence examinations represent the largest segment of the examination program, comprising more than 71 percent of all FY 2007 examinations (individuals and businesses).⁷ In FY07, the IRS examined one in every 118 individual income tax returns by correspondence, but examined only one in every 561 individual returns face-to-face.⁸

The correspondence examination program has grown dramatically in recent years. In FY 2007, the IRS examined 1,144,596 Forms 1040 through correspondence,⁹ an increase of 160 percent over the 439,734 Forms 1040 examined by correspondence in FY 2000.¹⁰ The following chart illustrates the growth in correspondence examinations since FY 2000, in contrast to face-to-face examinations, which grew less than 35 percent over the same period (from 178,031 returns in FY 2000 to 239,967 in FY 2007).¹¹ In addition to routine correspondence audits, such as Earned Income Tax Credit, (EITC), the program also includes audits of non-filers, return preparers, high-income taxpayers,¹² and other types of inventory at the discretion of local managers.¹³ The IRS contends correspondence audits increase voluntary compliance and reduce taxpayer burden.¹⁴

⁵ Treasury Inspector General for Tax Administration (TIGTA), Ref. No.2008-30-095, *Trends in Compliance Activities Through Fiscal Year 2007* 35, 45 (Apr. 18, 2008).

⁶ IRS Pub. 556, *Examination of Returns, Appeals Rights, and Claims for Refund*, 3 (Rev. May 2008).

⁷ TIGTA, Ref. No.2008-30-095, *Trends in Compliance Activities Through Fiscal Year 2007*, 7 (Apr. 18, 2008).

⁸ *Id.* at 8.

⁹ *Id.* at 35.

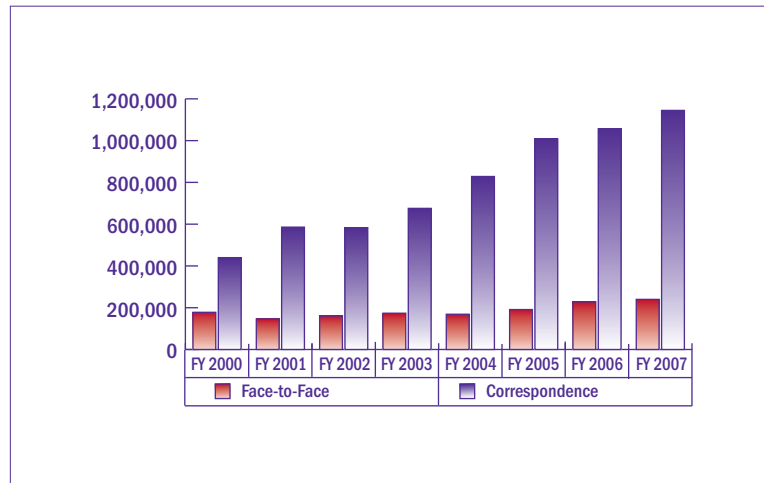
¹⁰ *Id.*

¹¹ *Id.*

¹² IRM 4.19.13.1 (Jan. 1, 2007). In FY 2007, the IRS changed the definition of high-income nonfilers from greater than \$100,000 in income to greater than \$200,000 in income; TIGTA, Ref. No. 2006-30-105, *While Examinations of High-Income Taxpayers Have Increased, the Impact on Compliance May Be Limited* (July 2006), 6. See also National Taxpayer Advocate 2006 Annual Report to Congress 292.

¹³ IRM 4.10.3.16.9 (Mar. 3, 2003); IRS, *Strategic Plan, 2005-2009*, 19; *Tax Fairness: Policy and Enforcement: Hearing Before the Subcomm. on Financial Services and General Government, H. Comm. on Appropriations*, 110th Cong. (Mar. 5, 2007) (statement of Nina E. Olson, National Taxpayer Advocate).

¹⁴ National Taxpayer Advocate 2006 Annual Report to Congress 302.

CHART 1.15.1, Growth in Correspondence Vs. Face-To-Face Examinations

Source: *Analysis of Examination Closed Case Database and IRS Data Book*¹⁵

Chart 1.15.1 above contrasts the growth in correspondence examinations and face-to-face audits for each year from FY 2000 through FY 2007.

This upward trend may be a cause for concern in view of an earlier General Accounting Office (GAO, now the Government Accountability Office) study that reported over 50 percent of taxpayers examined by correspondence failed to respond to the IRS's letters.¹⁶ Since the IRS routinely issues Statutory Notices of Deficiency in all of its no-reply audits, this statistic implies that half of all taxpayers examined by correspondence receive deficiency notices automatically.¹⁷ Moreover, the Treasury Inspector General for Tax Administration (TIGTA) recently reported that correspondence examinations may do little to improve compliance because they are less comprehensive than face-to-face audits.¹⁸

Evolution of the Correspondence Examination Process

General Overview of the Examination Program

The IRS accepts most federal income tax returns as filed but examines (or audits) a certain number each year to determine whether taxpayers are reporting their income, deductions, and credits completely and accurately. The agency typically conducts examinations in one of three ways: (1) field audits, (2) office audits, and (3) correspondence audits. The IRS identifies returns for examination using various methods, including computer scoring and document matching programs. Once selected for examination, the type of return

¹⁵ TIGTA, Ref. No. 2008-30-095, *Trends in Compliance Activities Through Fiscal Year 2007* 35 (Apr. 2008).

¹⁶ General Accounting Office, GAO/GGD-99-48, *IRS Audits, Weaknesses in Selecting and Conducting Correspondence Audits* 3 (Mar. 1999); National Taxpayer Advocate Fiscal Year 2009 Objectives Report to Congress xxxix (Jun. 30, 2009). See also National Taxpayer Advocate 2007 Annual Report to Congress 301. The National Taxpayer Advocate made a recommendation to identify effective uses of locator and other Internet based address search options.

¹⁷ IRM 4.19; National Taxpayer Advocate 2003 Annual Report to Congress 135.

¹⁸ TIGTA, Ref. No. 2008-30-095, *Trends in Compliance Activities Through Fiscal Year 2007* 3 (Apr. 2008).

(individual, business, or tax-exempt), the size of the entity, and the nature of the inquiry usually determine which IRS operating division will conduct the audit.¹⁹

The Large and Mid-Size Business Division (LMSB) employs revenue agents, who conduct audits at the taxpayer's place of business. Most LMSB taxpayers are high-asset corporations, whose returns involve large-dollar, complex tax issues, requiring an extensive review of their books and records.²⁰ Similarly, the Small Business/Self-Employed Division (SB/SE) employs revenue agents who conduct audits at the taxpayer's place of business. SB/SE field audits generally include smaller corporations, partnerships, and the larger sole proprietorships.²¹ SB/SE tax compliance officers, in contrast, conduct their audits in an office setting, where individual taxpayers typically bring their records for inspection.²² At the end of FY 2007, the IRS had 10,121 revenue agents and 1,060 tax compliance officers on staff.²³

The General Audit Process

Generally, the IRS follows the same approach in all of its income tax examinations (field, office, correspondence). At the start of an examination, the IRS sends an initial contact letter, notifying the taxpayer of the impending examination. The letter is accompanied by IRS publications that explain the taxpayer's rights during the examination, including appeal rights.²⁴ In both field and office audits, a document request accompanies the initial contact letter. The letter establishes an appointment with the taxpayer to begin the audit. In office and correspondence audits, the initial contact letter also identifies the issue(s) in the examination, and describes the documentation needed to resolve the disputes. The initial contact letter in correspondence audits may include a report proposing adjustments of items on the return that the IRS believes to be questionable.

Taxpayers who disagree with any of the proposed adjustments may request an informal conference with a supervisor. If this discussion does not resolve the taxpayer's concerns, he or she may request an independent review by the Appeals function, generally within 30 days. Those who are not satisfied after conferring with Appeals may take their cases to the U.S. Tax Court. In these situations, taxpayers must petition the court within 90 days

¹⁹ IRS Pub.1, *Your Rights as a Taxpayer* (Rev. May 2008); IRS Pub.556, *Examination of Returns, Appeals Rights, and Claims for Refund, 2-3* (Rev. May 2008); IRS Pub 3498-A, *The Examination Process (Examinations by Mail)* (Dec. 2006).

²⁰ IRM 4.46.1 (Mar. 1, 2006); IRM 4.46.2 (Mar. 1, 2006); IRM 4.46.3 (Mar. 1, 2006).

²¹ IRM 4.10.2 (Aug. 2007); IRM 4.10.3 (Mar. 2003).

²² *Id.*

²³ TIGTA, Ref. No. 2008-30-095, *Trends in Compliance Activities Through Fiscal Year 2007*, 6 (Apr. 2008). Recent findings from a GAO study suggests that increasing the enforcement efforts of field agents (in face-to-face audits) would be among the most effective steps the IRS could take to address the tax gap, though by no means the only step needed. One participant made the point that compliance efforts have a ripple effect and may have a larger impact on compliance than the actual audits; however, in spite of an IRS statistic revealing a 4:1 return on audit expenditures, "...the IRS will not be able to audit itself out of the tax gap." See GAO, GAO-08-703SP, *Highlights of the Joint Forum on Tax Compliance: Options for Improvement and Their Budgetary Potential* 7 (June 20, 2008).

²⁴ See IRS Pub.1, *Your Rights as a Taxpayer* (Rev. May 2005); IRS Pub. 1, *Your Rights as a Taxpayer* (Rev. May 2008); IRS Pub. 5, *Your Appeal Rights and How to Protest if You Don't Agree* (Jan. 1999); IRS Pub 3498-A, *The Examination Process (Examinations by Mail)* (Dec. 2006) (which combines Pub.1 and Pub. 5).

from the date the IRS mails the Statutory Notice of Deficiency (90-day letter).²⁵ If taxpayers do not respond to (or “default”) the 30-day letter,²⁶ the IRS issues a Statutory Notice of Deficiency. During the ensuing 90-day period, taxpayers are free to discuss their cases with the IRS. However, such discussions will not serve to extend the 90-day period to petition the court.

IRS Use of the Combination Letter Truncates the Correspondence Examination Process

Before 1999, the IRS sent an initial contact letter at the start of each correspondence examination, notifying taxpayers of the impending examination, informing them of the specific items under review, and requesting documentation to resolve the items in question. Taxpayers generally had 30 days to provide the information. The IRS would review the information, and if necessary, issue a 30-day letter with a report presenting the proposed adjustment(s).²⁷

In 1999, the IRS began using a combination or combo letter, replacing two distinct letters that the IRS previously issued at different times in the audit process, effectively merging the initial contact letter and the 30-day letter into a single document. The combo letter currently comprises the initial contact letter, document request, *and* audit report (30-day Letter).²⁸ The National Taxpayer Advocate has repeatedly voiced concerns that the combo letter in correspondence examinations is confusing to taxpayers and frequently results in either preemptive “protective” appeals and court petitions, or defaults where the tax is assessed after the IRS does not receive a response.²⁹ The letter also tells taxpayers they must first provide relevant information to the contact person named in the letter before Appeals will hear their cases. This instruction may result in taxpayers not requesting an appeal because they fear reprisal from the examiner and a worse result.

The combo letter not only combines two separate stages of the audit, thus truncating the audit process, but also conflates the examiner’s document requests and preliminary audit findings with the final audit report and Appeals notification. For many taxpayers, 30 days is simply not enough time to produce the myriad of documents requested by tax examiners, such as birth certificates, marriage licenses, Social Security cards, and school records,

²⁵ IRS Pub. 556, *Examination of Returns, Appeals Rights, and Claims for Refund* 5 (Aug. 2005). Taxpayers that do not respond to the 30-day letter (defined next) receive a 90-day letter, also known as a Statutory Notice of Deficiency.

²⁶ IRS Pub. 556, *Examination of Returns, Appeals Rights, and Claims for Refund* 4-5 (Aug. 2005). Taxpayers that do not agree with the examiner’s proposed changes will receive a letter (known as a 30-day letter) notifying them of their right to appeal the proposed changes within 30 days. The letter is accompanied by a copy of the examiner’s report, an agreement or waiver form, and a copy of Pub. 5, *Your Appeal Rights and How to Prepare a Protest if You Don’t Agree*.

²⁷ IRM MT 4200-619 (Oct. 25, 1996). See IRM 4252 (2) (Apr. 29, 1991); IRM 4253.4 (Jan. 1, 1991); IRM 4253.5 (June 29, 1992); IRM 4253.6 (Mar. 28, 1988); IRM 4254.3 (Nov. 2, 1981); IRM 4255.1 (May 25, 1988).

²⁸ IRM 4.19.10.1.6 (Jan. 1, 2006); The IRS began using the Combo letter, Letter 566-B (SC/CG) in March 1999, at <http://publish.no.irs.gov/catp.cgi?catnum=27226> (last visited Oct. 13, 2008).

²⁹ The Commissioner recently established a Taxpayer Communications Taskgroup (TACT) to review all taxpayer correspondence and work to eliminate those notices and letters that create confusion. TAS is represented on the TACT.

and may result in a hardship.³⁰ Moreover, without timely notification of whether tax examiners have received, reviewed, and accepted the taxpayers' information, the 30-day period may lapse without taxpayers knowing if they should provide different documents or request an appeal.³¹ In its efforts to streamline the correspondence audit process by using the batch processing system, the IRS may inadvertently prompt numerous taxpayers to file protective appeals requests or court petitions. It can be confusing to taxpayers when in one communiqué the IRS proposes adjustments, asks for additional documentation, and offers Appeal rights that should be exercised within the same 30-day period.³² The combo letter causes unnecessary burden and frustration for taxpayers, and results in costly downstream re-work for the IRS.³³

An Automated Process that Curtails Examinations and Results in Premature Notices, Case Closures, and Assessments

In recent years, external stakeholders have raised concerns that the IRS is issuing 90-day letters in correspondence examinations without first considering taxpayer correspondence.³⁴ These concerns may arise from the way the IRS conducts correspondence examinations. The most striking difference between correspondence and face-to-face examinations is the strict timeline to which tax examiners must adhere in managing their inventories using the automated batch processing mechanism.

Once the IRS engages the batch system, cases move through the examination process automatically. Each step in the process has a pre-established period programmed into the system. Files are not created or examiners assigned to the cases until the IRS receives and controls a taxpayer's correspondence.³⁵ If a taxpayer fails to furnish the requested documentation precisely within the prescribed period, the case automatically moves to the next phase in the process.

The issuance of premature 90-day letters has been attributed to the inflexibility of this process.³⁶ Because the batch system automatically processes a case from its creation through the issuance of a Statutory Notice of Deficiency and subsequent closing, the IRS has effectively eliminated the need for human involvement in every case in which a taxpayer does

³⁰ National Taxpayer Advocate 2007 Annual Report to Congress, vol.2, 103-107.

³¹ National Taxpayer Advocate 2007 Annual Report to Congress 292; National Taxpayer Advocate 2007 Annual Report to Congress, vol. 2, 103.

³² Letter 566-B, Service Center ICL/30 Day Combo Letter.

³³ National Taxpayer Advocate 2006 Annual Report to Congress 296; National Taxpayer Advocate 2003 Annual Report to Congress 87.

³⁴ National Association of Enrolled Agents, Letter Regarding Concern over Recent Enforcement Actions by IRS (Nov. 28, 2007), at http://www.naea.org/MemberPortal/Advocacy/Comments/letter_nov_28_2007.htm (last visited June 4, 2008); W&I, *Business Performance Review* 21 (May 20, 2008).

³⁵ IRM 4.19.13.6(1) (Jan. 24, 2006).

³⁶ When it issues an initial contact letter, which grants a taxpayer 30 days to furnish the requested documentation, the batch system suspends the file to await the taxpayer's response. If the taxpayer fails to reply within 45 days, which includes a 15-day period for mail and handling delays, the file is purged on the 45th day for preparation of the proposed report. If the initial contact letter (566B-EZ, 525, etc.) included an audit report, the file is purged for the issuance of a Statutory Notice of Deficiency. National Taxpayer Advocate FY 2009 Objectives Report to Congress, xxix-xl; W&I response to TAS inquiry (May 28, 2008).

not reply in a timely fashion.³⁷ If a taxpayer does respond, the tax examiner considers that response and reintroduces the case back into the batch system for automated closing.³⁸

The automated batch system enables the IRS to process correspondence examinations with little or no involvement by tax examiners until taxpayers reply to notices. However, the automated nature of the process can contribute to premature notices, case closures, and assessments, because it is geared primarily toward closing cases or moving them along, and may not provide taxpayers sufficient time or assistance to respond to IRS requests for information. The automated process limits the ability of taxpayers to engage in a meaningful dialogue with tax examiners, to ask questions about the process and the issues, and to resolve problems that invariably arise during the course of an examination.

The National Taxpayer Advocate recently reported that a review of the correspondence examination process W&I conducted at one campus found that 9.52 percent (or 3,086) of the 32,422 cases it reviewed were prematurely forwarded for issuance of a Statutory Notice of Deficiency.³⁹ In her 2007 Annual Report to Congress, the National Taxpayer Advocate once again encouraged the IRS to allow more time to associate and consider taxpayer documentation before issuing a notice of deficiency.⁴⁰

In 2008, IRS campus analysts identified a problem with a computer program that affects the suspense period for taxpayer responses. The IRS had lost the ability to stop issuing notices when cases were forwarded to the National Print Site for the printing of 90-day letters.⁴¹ The IRS had not updated the programming to account for the time between the requests to generate the notice and the notice being sent. While W&I indicated the problem has not caused any premature deficiency notices, the division admitted it does make it difficult to stop a statutory notice even when mail is received timely.⁴²

Overage Mail Delays Contribute to Premature Notices.

In 2006, the National Taxpayer Advocate reported that the IRS all too often does not respond to taxpayer correspondence in a timely fashion. In FY 2005, the IRS issued 2.9 million “interim” letters⁴³ advising taxpayers to expect delays of 30 days or more in processing their correspondence, over and above the IRS’s acceptable 30-day initial processing period. Correspondence delays generate additional follow-up contacts from concerned taxpayers, including duplicate return filings, duplicate correspondence, calls to the IRS’s toll-free line,

³⁷ IRM 4.19.20.1 (Jan. 1, 2008).

³⁸ *Id.*

³⁹ National Taxpayer Advocate FY 2009 Objectives Report to Congress, xxix-xi; W&I response to TAS inquiry (May 28, 2008).

⁴⁰ National Taxpayer Advocate 2007 Annual Report to Congress 299; W&I response to TAS inquiry (May 28, 2008).

⁴¹ W&I, *Business Performance Review* 21 (May 20, 2008).

⁴² *Id.*

⁴³ National Taxpayer Advocate 2006 Annual Report to Congress 222; IRS, Office of the Notice Gatekeeper, *Correspondence Letter Volumes*; IRM 3.0.273.19.4.1 (Jan. 1, 2006).

and Taxpayer Advocate Service referrals, all of which result in unnecessary re-work for IRS employees.⁴⁴

Tax practitioners have commented that the IRS frequently requests additional information prior to reviewing all relevant case information. In addition, the sheer volume of the documentation requested is often overwhelming. Moreover, practitioners continue to express concern about the IRS's failure to acknowledge receipt of correspondence, explaining that these circumstances make for an inefficient and frustrating examination process. This lack of acknowledgement also leads to more phone calls to the IRS to check on the status of documents.⁴⁵

A recent W&I FY 2008 Compliance Report underscores the National Taxpayer Advocate's growing concern, revealing that during the one-year period ending June 30, 2008, the IRS experienced a 242 percent increase in its overage discretionary correspondence examination mail.⁴⁶

A Lack of One-On-One Contact with Taxpayers Contributes to Premature Enforcement Actions.

The IRS's failure to actually locate and contact taxpayers when conducting a correspondence examination can result in premature notices, assessments, and case closures. If mail associated with a correspondence examination comes back to the IRS as undeliverable, the tax examiner must use the Social Security numbers for the account on the Integrated Data Retrieval System (IDRS) to search for a new address on information documents filed with the IRS.⁴⁷ If the examiner finds a new address, the IRS reissues the mail. However, if they find no new addresses, examiners continue with the process and issue all letters and reports to the taxpayers at their last known addresses of record even though they know the mail is not reaching the taxpayers. The same concern exists for mail that does not have the most current address but is not returned as undeliverable, *e.g.*, where mail forwarding has lapsed, or where taxpayers are transient and have no permanent address. This situation also could occur where taxpayers are avoiding non-IRS creditors, ex-spouses, etc. Ultimately, the IRS assesses the tax liability without the taxpayers realizing an examination has taken place.⁴⁸

Conversely, revenue agents and tax compliance officers conducting face-to-face examinations must actually locate taxpayers to make their initial contacts. If the initial contact

⁴⁴ National Taxpayer Advocate 2006 Annual Report to Congress 232.

⁴⁵ IRM 3.0.273.19.4.1 (Jan. 1, 2006); National Taxpayer Advocate 2006 Annual Report to Congress 222, 232, 294-295; The National Taxpayer Advocate, Findings from Correspondence Examination Focus Groups, IRS Tax Forums (June - Sept. 2005).

⁴⁶ W&I Compliance Measures (June 2008). Correspondence examinations do not include related compliance programs, such as the AUR, Substitute-for-Return (SFR), CP 2000, or Math Error Programs. Accordingly, correspondence examination mail is accounted for separately from Accounts Management mail, which has been directly impacted by the Economic Stimulus Payment initiative.

⁴⁷ See Legislative Recommendation, *Sending "Are You There? Letters to Credible Alternate Addresses*, *infra*.

⁴⁸ IRM 4.19.13.13 (Oct. 1, 2001). See also *Examination Procedural Job Aid for Tax Examiners* 48 (Jan. 2008).

letter is returned, field and office auditors must try to find a more current address.⁴⁹ Auditors who cannot reach taxpayers by telephone or letter follow the same requirements as a tax examiner and use the Social Security numbers for the account on IDRS to search for a new address on information documents. However, they also must perform additional research such as employing an asset locator service, issuing a postal tracer, contacting the taxpayer's employer, internet research, and querying the Currency Banking Retrieval System (CBRS). If the examiners still cannot locate the taxpayers, they must confer with their managers to decide whether the examination should continue.⁵⁰ The disparity in these two processes increases the likelihood of inaccurate default assessments in correspondence examinations, which harm taxpayers and generate costly downstream work such as audit reconsiderations and TAS involvement.

A Focus on Closing Cases Rather than Helping Taxpayers to Resolve their Problems

The IRS's focus has shifted from assisting taxpayers in understanding their tax obligations and resolving audit problems to closing cases and reducing examination cycle time. This approach is shortsighted and counterproductive. It causes faulty tax assessments, premature enforcement actions, and unnecessary burden and anxiety to the affected taxpayers.

The impact of this approach on taxpayers is significant, and was clearly stated in a letter to Acting Commissioner Linda Stiff, dated November 28, 2007, in which the President of the National Association of Enrolled Agents (NAEA) voiced growing concerns about a disturbing trend in IRS enforcement efforts.⁵¹ The IRS in the situations described issued a quick succession of notices without allowing adequate time to review and act on taxpayers' responses to requests for information, which culminated in premature deficiency notices. The National Taxpayer Advocate has repeatedly urged the IRS to allow more time to associate and consider taxpayer documentation before proceeding with enforcement. Although the IRS has acknowledged that it issues notices prematurely, it insists such occurrences are isolated.⁵²

At the heart of these problems lie the government's burgeoning tax gap and the IRS's Strategic Plan, operational priorities, and performance measures. The Strategic Plan calls for the reduction of audit cycle time as a key component in improving audits and audit coverage.⁵³ This strategy drives IRS managers to focus too heavily on closing cases and reducing examination cycle time, without considering existing, well-defined quality standards and a highly publicized commitment to customer service.

⁴⁹ *Id.*

⁵⁰ IRM 4.10.2.7.2 (Aug. 1, 2007).

⁵¹ National Association of Enrolled Agents Letter Regarding Concern over Recent Enforcement Actions by IRS (Nov. 28, 2007), at http://www.naea.org/MemberPortal/Advocacy/Comments/letter_nov_28_2007.htm (last visited June 4, 2008).

⁵² National Taxpayer Advocate FY 2009 Objectives Report to Congress, xxxix-xi; W&I response to TAS inquiry (May 28, 2008).

⁵³ IRS, *Strategic Plan 2005-2009* 19; W&I, *Strategy & Program Plan, FY 2008 - FY 2009* 8, 89; *Small Business/Self-Employed Plan FY 2008 - FY 2009* 8, 34.

In one instance, W&I reported accomplishments indicating it achieved a discretionary closure rate 25 percent higher than its year-to-date plan.⁵⁴ In the same report, W&I also reported that its discretionary cycle time was down by 14.2 percent.⁵⁵ Yet, in a separate report, W&I disclosed a disturbing 242 percent increase in its overage discretionary correspondence mail.⁵⁶ This disparity demonstrates that the focus on shortened cycle time may translate into the IRS not properly considering taxpayer correspondence and issuing incorrect and premature notices of deficiency.

Existing IRS Safeguards are Effective Only if Followed by all Employees on a Consistent Basis.

To its credit, the IRS has safeguards and procedures in place to encourage and assist tax examiners in conducting quality examinations. Except for the abbreviated procedures used in attempting to locate taxpayers and the use of the combo letter, present guidelines require tax examiners to observe the same procedures and standards followed in face-to-face examinations. Examiners must review the classified issues and prepare the initial contact letters. In communicating with taxpayers, they may use only nationally developed letters that the IRS has approved for content and clarity. Tax examiners must recognize and adhere strictly to prescribed procedures and times for each letter and report, and must be sure taxpayers understand their appeal rights. Moreover, they may not assert penalties without written approval from their supervisors. If taxpayers request face-to-face interviews, the examiners must confer with their managers, who make the final decisions about whether to honor the requests.⁵⁷

These safeguards and procedures do little good unless IRS employees and managers adhere to them consistently. For example, IRM provisions direct tax examiners to call taxpayers if they need additional information to evaluate correspondence and less than 15 days remain until default.⁵⁸ However, TIGTA reported tax examiners rarely attempted to contact taxpayers by phone when they needed additional information to complete the audits, even though taxpayers provided their phone numbers for this purpose.⁵⁹ Failure to follow the procedure and contact taxpayers by telephone to resolve correspondence examinations

⁵⁴ W&I, *Business Performance Review 27* (Feb 21, 2008).

⁵⁵ *Id.*

⁵⁶ W&I, *Compliance Measures* (June 2008). Correspondence examinations do not include related compliance programs, (e.g., AUR, SFR, CP 2000, or Math Error Programs). The discretionary correspondence examination mail figures are exclusive of any other compliance program.

⁵⁷ IRM 4.19.19.3(1) (Jan. 1, 2007); IRM 4.10.3.16.1 through 4.10.3.16.8 (Mar. 1, 2003); IRS Pub 3498-A, *Report Writing: The Examination Process (Examinations by Mail)*, says, "IRS employees will explain and protect your rights as a taxpayer throughout your contact with us." It explains that taxpayers may have someone represent them in correspondence and phone calls, that help may be available from a Low Income Taxpayer Clinic, that taxpayers may request the examination be conducted in person rather than through correspondence and that taxpayers have the same rights whether the examination is conducted by mail or in person.

⁵⁸ IRM 4.19.19.3(1) (Jan. 1, 2007).

⁵⁹ TIGTA, Ref. No. 2002-040-034, *Implementation of the Remote Examination Toll-Free Telephone Program Is Ongoing 4*. TIGTA notes that "When examiners do not attempt to contact taxpayers by telephone when additional information is needed to complete the audit, they are bypassing an opportunity to further the Remote Examination Toll-Free Telephone Program goal of improved customer service through the more expeditious completion of the audit process."

creates needless re-work and taxes the IRS's already limited resources. In response to a recent TAS inquiry, W&I and SB/SE indicated they encourage tax examiners to contact taxpayers by telephone, as provided in the IRM, and noted SB/SE added this procedure to its Operating Guidelines in FY 2007.⁶⁰

Conclusion

The IRS should consider taking the following actions to improve the correspondence examination program: implement processes and procedures to associate and consider taxpayer correspondence timely; move forward with systemic restrictions to limit the reduction of suspense periods in the batch processing system; issue a Servicewide Electronic Research Program (SERP) Alert covering IRM 4.19.3.1, *Outgoing Calls*, to emphasize the importance of effective use of the telephone in resolving correspondence examinations; eliminate the use of the Examination Procedural Job Aid, and follow the guidance in IRM 4.19.19, *Telephone Contacts*; align the procedures used by tax examiners in locating taxpayers and handling undeliverable mail in IRM 4.19.13, *Liability Determination – General Development and Resolution*, with the procedures used by tax compliance officers in IRM 4.10.2, *Examination of Returns – Pre-contact Responsibility*; and stop using the combo letter in all correspondence examinations, and revert to the pre-1999 examination procedure of issuing a preliminary audit report, followed by a traditional 30-day letter, at a later stage in the audit.

IRS Comments

As acknowledged by the National Taxpayer Advocate, correspondence examinations play a vital role in promoting voluntary compliance with the tax law and in closing the Tax Gap. During FY 2008, the IRS examined 1.1 million returns and assessed over \$6.7 billion through its correspondence examination programs. These programs include EITC and non-EITC programs, such as Schedule A tax issues, non-filers, premature IRA distribution, education credits, and child tax credit. The examination of these issues through correspondence, rather than through a field or office audit, requires fewer resources from either the IRS or taxpayers, and are considerably less invasive for taxpayers.

We do not agree that the automated correspondence examination process leads to premature assessments. Most EITC and some discretionary audits use an automated batch processing system. This is an excellent system that prevents, rather than causes, premature notices. Cases cannot move through the system until programmed timeframes have expired. When taxpayer correspondence is received and entered on the system, all actions cease until an examiner considers this correspondence. In this regard, the National Taxpayer Advocate cites a November 28, 2007, letter from the National Association of Enrolled Agents as an example of a situation culminating in premature issuance of

⁶⁰ IRM 4.19.13.9.1 (Mar. 3, 2006); W&I and SB/SE Response to TAS Inquiry (June 27, 2008).

deficiency notices. The letter from NAEA voiced concerns regarding the timing of IRS notices and indicated the IRS was issuing subsequent follow-up notices too rapidly. The IRS works with the NAEA and others in the practitioner community to solicit feedback and identify improvement opportunities. In this case, the IRS promptly reviewed and adjusted the suspense dates for printing these notices, which served to address the NAEA's concern. The National Taxpayer Advocate's report also states that 9.52 percent of cases at one campus had premature statutory notices issued. This was caused by a clerical error in calculating the suspension period in which the statutory notices were issued an average of three days earlier than the designated suspension period. Immediate actions were taken to correct this error.

We also do not agree with the National Taxpayer Advocate's contention that an increase in overage correspondence contributes to premature notices and assessments. While the IRS makes every effort to track and timely consider all taxpayer correspondence, from time to time heavy volumes prevent us from doing so. However, as noted above, once mail is received and entered into the system, all notices stop, except systemic interim letters, until the mail is considered. This applies to all mail, including overage. Further, in her report, the National Taxpayer Advocate repeatedly cites an overage mail percentage increase for W&I Discretionary Exam of 242 percent from 2007 to 2008. This figure is not presented in context and actually represents the difference from a June 2007 overage percentage of 11 percent compared to a June 2008 overage percentage of 17 percent.⁶¹ By the end of FY 2008, the overage percentage was reduced to less than eight percent.

The National Taxpayer Advocate's report also states that the IRS focuses on closing cases rather than helping taxpayers to resolve their problems. While we disagree with the statement, we agree we need to continually focus on helping taxpayers understand and resolve their tax issues. It is our intent to conduct a correspondence examination program that promotes the IRS mission and we realize that responding to the needs of taxpayers in this process is vital. In this regard, the IRS created a Taxpayer Communication Task Group to evaluate all IRS notices and explore communications improvement opportunities. In addition, the IRS works very closely with the tax practitioner community to identify specific opportunities for improvement in the correspondence examination program. Based on practitioner focus group feedback, we have initiated or planned changes such as the issuance of letters to acknowledge receipt of taxpayer correspondence and implementation of uniform and adequate notice suspense timeframes. We are also working with the National Taxpayer Advocate to address her concerns with the combination, or "combo" letter. Use of this letter is being eliminated for all but a few programs, such as Criminal Investigation referrals and non-filer cases, where the chance of the returns being adjusted are highly likely. These changes will be implemented during 2010.

⁶¹ IRS tracks mail that is overage compared to total mail. In June 2007, there were 627 pieces of mail overage out of a total inventory of 5,787. The comparable figures for June 2008 were 2,146 out of 12,500.

With regard to telephone contacts, the IRS is taking actions to move toward a vision for corporate inventory for much of this work. The W&I Division has implemented a self assign feature that allows a taxpayer to provide information to any tax examiner that answers our toll free number on an unassigned case. If the information the taxpayer provides is sufficient, the examiner can immediately assign the case to himself or herself and make the final determination on the case. A Unified Work Request for a programming change has also been submitted to expand this flexibility to cases in 90-day status. In addition, W&I has completely eliminated extension routing on all cases. Universal call routing now facilitates taxpayers' telephone interactions with the IRS by allowing them to talk to the next available examiner on any case. This process eliminates the need for the taxpayer to connect with the particular IRS employee assigned to his or her case, since all return data, letters, reports, and work papers are available to all examiners. In addition, an October 2008 telephone survey reflects that 70 percent of taxpayers called for an explanation of the letter from the IRS and another 11 percent called to inform the IRS that they mailed records or wanted to provide other information; issues that can easily be addressed by any examiner.

The IRS has received very favorable feedback from taxpayers regarding these changes to our telephone operations. For example, the W&I October 2008 telephone survey indicates 84 percent of taxpayers were satisfied with the time it took to reach a tax examiner on the phone and 95 percent were satisfied with the length of time they spent with the examiner after they were connected. Further, 90 percent were satisfied with the ability of the examiner to make a decision on their case. Other planned improvements include intelligent call routing, which will route calls to the most appropriate examiner based on the tax issues involved in the case. We are also moving forward with the correspondence imaging development project which will electronically add taxpayer correspondence to our front-line employees' desktops. This will allow for faster responses to taxpayer mail and reduce overage inventory.

Comments regarding the National Taxpayer Advocate's specific recommendations follow.

The National Taxpayer Advocate recommends that the IRS implement processes and procedures to timely associate and consider taxpayer correspondence. The IRS believes the standardization of timeframe guidance and related systems changes have already addressed the concerns raised by the NAEA. However, we will continue to work toward reducing overage correspondence and improving the timeliness of our responses to all taxpayer correspondence.

The National Taxpayer Advocate recommends that the IRS move forward with systemic restrictions to limit reduction of suspense periods in the batch processing system. The IRS has already submitted a Uniform Work Request to program RGS/CEAS to automatically populate the suspense period whenever a case is updated into a new letter status. In addition, system changes have already been made to standardize the suspense periods for

cases in Status 22. Cases are updated to Status 22 when the 30-day letter is issued to the taxpayer. The 30-day letter includes an audit report with proposed adjustments which is issued prior to the statutory notice.

The National Taxpayer Advocate recommends that the IRS issue a SERP Alert covering IRM 4.19.3.1 to emphasize the importance of effective use of the telephone. While we agree our employees should follow this IRM, we do not believe issuance of a SERP alert is the most effective way to ensure these provisions are being adhered to. Rather, we plan to address this area by evaluating the case reviews included in an ongoing study. The results will allow us to provide site-specific feedback for managers and employees regarding their performance in this area.

The National Taxpayer Advocate recommends that the IRS eliminate use of the Examination Procedural Job Aid and follow the guidance in IRM 4.19.19, *Telephone Contacts*. Correspondence examination telephone assistors are already required to follow IRM 4.19.19, which provides technical guidance that is not superseded by any locally generated procedural job aids. However, we will ensure that any such job aids do not contain instructions to staff that are inconsistent with the IRM. Further, W&I Examination has a Toll-Free Telephone Assistance Guide in SERP which contains hyperlinks to various IRM and other references for quick access to guidance for examiners to assist in the handling of taxpayer telephone calls.

The National Taxpayer Advocate recommends that the IRS align the procedures used by tax examiners in locating taxpayers and handling undeliverable mail in IRM 4.19.13 with the procedures used by tax compliance officers in IRM 4.10.2. During notice generation at the campus level, the address is systemically referenced against the most current IRS Master File address data for the taxpayer. In addition, when the notice is received at the National Print Site for mailing, another check is performed on the address to determine if it is a valid postal address prior to the mail-out. These procedures are fully consistent with the law and we believe they ensure that a majority of all correspondence reaches its intended recipient. IRS data indicates that currently only about six percent of correspondence examination notices are undelivered.⁶² Further, much of the guidance in IRM 4.10.2 that applies to more complex office and field examinations, such as use of third party contacts, postal tracer services, etc., are impractical in the campus correspondence examination environment.

Finally, the National Taxpayer Advocate recommends that the IRS stop using the combo letter in all correspondence examinations. As noted above, Uniform Work Requests for programming that will eliminate use of the combo letter in all but a few situations are in the implementation process. The IRS will also evaluate discontinuing the use of these letters for the remaining cases.

⁶² Audit Information Management System (AIMS) September 2008 database.

Taxpayer Advocate Service Comments

The National Taxpayer Advocate commends the IRS for its commitment to improving the correspondence examination program, for its innovation in the development of new customer service delivery systems, and for its willingness to work collaboratively with TAS and the practitioner community to improve customer service while seeking ways to reduce costs and burdens faced by taxpayers in complying with the law. The IRS's proactive approach to addressing the concerns of the NAEA, and its willingness to rethink its position on the use the combo letter are good examples of this commitment. The creation of a Taxpayer Communications Task Group, along with the aggressive use of focus groups, customer surveys, and national phone forums all serve to enhance the notice improvement process and improve communications with taxpayers. The advent of Universal Call Routing holds the promise of transforming IRS call sites into world class operation centers. Despite these system enhancements and service improvements, the National Taxpayer Advocate remains concerned that the unregulated growth in correspondence examinations is undermining the agency's ability carry out its mission and is burdening taxpayers.

The IRS's reliance on a rigid automated system for conducting examinations eliminates flexibility, a crucial element of the exam process. Adhering to the expiration of automated timeframes to move cases through the process could prematurely push cases forward, because taxpayers may not have sufficient time or assistance to respond to IRS requests for information. The automated process limits the ability of taxpayers to engage in a meaningful dialogue with tax examiners, to ask questions about the process and the issues, and to resolve problems that invariably arise during the course of an examination. While the National Taxpayer Advocate is pleased the IRS is communicating with stakeholders, such as the NAEA, the examples these stakeholders share continue to illustrate the type of problems that can arise when relying on an automated system to conduct examinations.⁶³

The National Taxpayer Advocate applauds the IRS's efforts to improve the control and tracking of unassociated correspondence and understands the challenges heavy volumes of mail can create. It is important to note the batch system cannot be effective unless correspondence is properly controlled and recorded upon receipt. Additionally, it is unacceptable for the IRS to send 2.9 million "interim" letters advising taxpayers to expect delays of 30 days or more in processing their correspondence, which is over and above the IRS's acceptable 30-day initial processing period.⁶⁴ These correspondence delays create additional follow-up contacts from concerned taxpayers, such as duplicate return filings, duplicate correspondence, calls to the IRS's toll-free line, and TAS referrals: all of which

⁶³ National Association of Enrolled Agents Letter Regarding Concern over Recent Enforcement Actions by IRS (Nov. 28, 2007), at http://www.naea.org/MemberPortal/Advocacy/Comments/letter_nov_28_2007.htm (last visited June 4, 2008).

⁶⁴ National Taxpayer Advocate 2006 Annual Report to Congress 222; IRS, Office of the Notice Gatekeeper, Correspondence Letter Volumes; IRM 3.0.273.19.4.1 (Jan. 1, 2006).

result in unnecessary rework for IRS employees.⁶⁵ In regard to the 241 percent figure, this number accurately represents the challenges the IRS is experiencing in addressing taxpayer correspondence in a timely fashion as compared to the increase in discretionary examinations in 2007 to 2008. No matter what percentage may be used, it is clear overage mail remains an issue.⁶⁶

The National Taxpayer Advocate acknowledges that the IRS is often under extraordinary pressure to do a number of tasks, including conducting examinations. However, in the past several years, the IRS has shifted from assisting taxpayers in understanding their tax obligations and resolving audit problems to closing cases and reducing examination cycle time. The IRS relies too heavily on moving cases along through an automated system, rather than considering all taxpayer correspondence and making sure the taxpayer understands his or her obligations. This approach may cause faulty tax assessments, premature enforcement actions, or unnecessary burden and anxiety to the affected taxpayers.

Comments Regarding IRS Response to TAS Recommendations

In addressing systemic restrictions that would operate to limit the reduction of the suspense periods in the automated batch processing system, the IRS indicates it has submitted a uniform work request to modify its programming to automatically populate the proper suspense period at each stage in the audit process. The National Taxpayer Advocate commends the IRS for this important step in the right direction, but also reminds the IRS that the system will only work if correspondence is properly controlled and recorded into the system upon receipt. In designing this system, the National Taxpayer Advocate urges the IRS install safeguards to protect taxpayers against the inadvertent circumvention of internal controls, and to improve the oversight of managers and examiners who are required to adhere to the agency's long-standing audit quality standards in conducting correspondence examinations.

The National Taxpayer Advocate supports the IRS's plans to conduct case reviews as part of an ongoing study to promote the effective use of the telephone in resolving correspondence examinations. Particular emphasis should be placed on adherence to IRM 4.19.13.9.1, which requires examiners to make telephone contact with taxpayers to resolve issues and clarify information needed *before* issuing a request for additional information. The National Taxpayer Advocate also urges the IRS to consider issuing a SERP alert to emphasize the importance of telephone contact, to mandate its use, and to stress the importance of adherence to IRS policy. A separate alert will reinforce and direct employees' attention to the IRM instruction. The IRS should also develop training materials for tax examiners covering telephone examination techniques.

⁶⁵ National Taxpayer Advocate 2006 Annual Report to Congress 232.

⁶⁶ W&I, *Compliance Measures* (June 2008). Correspondence examinations do not include related compliance programs (e.g., AUR, SFR, CP 2000, or Math Error Programs). The discretionary correspondence examination mail figures are exclusive of any other compliance program

The National Taxpayer Advocate disputes the IRS contention that merely satisfying the letter of the law represents an adequate attempt to contact taxpayers for the purpose of conducting examinations, especially in view of the high default rates and future downstream rework generated by audit reconsiderations. Moreover, the IRS has not presented data to support its contention that the use of postal tracers and third party contacts, typically used to contact taxpayers in office and field audits, is impractical for use in the context of correspondence examinations. The National Taxpayer Advocate believes the IRS should make a greater effort to locate and contact taxpayers before issuing a statutory notice of deficiency on “no reply” cases.

The National Taxpayer Advocate has long advocated for the IRS to stop using the combo letter in all correspondence examinations, and is pleased to report the IRS has agreed to eliminate the combo letter in all but a few examination programs, *e.g.*, non-filers and criminal investigations referrals that have high potential for audit adjustments, beginning in 2010. While the National Taxpayer Advocate would urge this action without delay, she commends the IRS for its willingness to consider the complete elimination of the combo letter and looks forward to working with the IRS in exploring this possibility.

Recommendations

The National Taxpayer Advocate recommends the IRS take the following actions to improve the correspondence examination process:

1. Implement processes and procedures to associate and consider taxpayer correspondence timely; move forward with systemic restrictions to limit the reduction of suspense periods in the batch processing system;
2. Issue a Servicewide Electronic Research Program (SERP) Alert covering IRM 4.19.3.1, *Outgoing Calls*, to emphasize the importance of effective use of the telephone in resolving correspondence examinations;
3. Eliminate the use of the Examination Procedural Job Aid and follow the guidance in IRM 4.19.19, *Telephone Contacts* and align the procedures used by tax examiners in locating taxpayers and handling undeliverable mail in IRM 4.19.13, *Liability Determination – General Development and Resolution*, with the procedures used by tax compliance officers in IRM 4.10.2, *Examination of Returns – Pre-contact Responsibility*; and
4. Stop using the combo letter in all correspondence examinations and revert to the pre-1999 examination procedure of issuing a preliminary audit report, followed by a traditional 30-day letter at a later stage in the audit.

MSP
#16**The Impact of IRS Centralization on Tax Administration****Responsible Officials**

Richard E. Byrd, Jr., Commissioner, Wage and Investment Division
Chris Wagner, Commissioner, Small Business/Self-Employed Division
Frank Y. Ng, Commissioner, Large and Mid-Size Business Division
Steven T. Miller, Commissioner, Tax Exempt and Government Entities Division
Sarah Hall Ingram, Chief, Appeals

Definition of Problem

Over the years, the IRS has centralized essential functions and programs involving taxpayer contact and interaction. The centralization of major programs significantly changes their organizational structure, management, work processes, and the quality of interaction between the IRS and taxpayers.

While centralization has its benefits, it can also harm taxpayers if the IRS fails to consider the true impact of centralization on taxpayer service and compliance. The IRS needs to do a better job of evaluating the downstream consequences to taxpayers when assessing the true cost of centralization.

Analysis of Problem**Background**

In 1998, the IRS was comprised of 33 districts and ten campuses (then called service centers). Each of these 43 organizations reported to a director who was charged with administering the entire tax code for every kind of taxpayer – from low income individuals to high income businesses, with simple and complex problems – within his or her district or campus. All of these units were geographically based and functionally separate, with multiple management layers. Four regional offices and a national office conducted oversight of these districts.¹

Congressional hearings in late 1997 uncovered a wide array of inconsistencies, inefficiencies, and deficiencies in taxpayer service, which Congress attributed in part to the geographically based structure of the IRS.² The hearings prompted the enactment of the

¹ Internal Revenue Manual (IRM) 1.1.1.2 (Feb. 26, 1999).

² See *Report of the National Commission on Restructuring the Internal Revenue Service: A Vision for a New IRS* (June 25, 1997); *Hearing Before Subcomm. on Oversight of the H. Comm. on Ways and Means on the Report of the National Commission on Restructuring the Internal Revenue Service* (July 24, 1997); *IRS Restructuring: Hearings Before the Committee on Finance, United States Senate, 105th Cong.* (Jan. 28-29, 1998; Feb. 5, 11, and 25, 1998).

IRS Restructuring and Reform Act of 1998 (RRA 98)³ and served as the impetus for the most significant IRS reorganization since 1952. RRA 98 codified the need for modernization and required the IRS to move from its geographically based system to a flatter management structure, in an effort to become a more customer-focused organization.⁴

Prior to the reorganization, the IRS was a “stovepipe” operation. In this type of structure, functional units (such as Accounts Management, Submission Processing, Exam, Collection, and Appeals) set and implemented their own priorities and objectives, which might be disconnected from the other functions and the organization as a whole. Under this arrangement, the IRS looked like a conglomeration of unconnected parts rather than an integrated organization moving toward a common goal. For example, if a taxpayer received a notice from the IRS and called the toll-free number to inquire about it, the customer service representative might not be able to help because he or she lacked the information needed to settle account problems.

The IRS subsequently reorganized into four major divisions based on the type of taxpayer served by each division:

- Wage and Investment (W&I), serving individual taxpayers with wage and investment income only;
- Small Business/Self-Employed (SB/SE), serving small businesses and fully or partially self-employed individuals;
- Large and Mid-Size Business (LMSB), serving corporations with assets of more than \$5 million;⁵ and
- Tax Exempt and Government Entities (TE/GE), serving a wide range of customers including small community organizations, major universities, pension funds, state governments, and Indian tribal governments.

Each of these divisions was given end-to-end responsibility for serving a particular group of taxpayers with similar needs. In this manner, the IRS hoped to better serve the American public by reorganizing into specialized units focused on taxpayer needs, rather than on its own internal needs. The reorganization was intended to eliminate stovepipes, reduce management levels, and bring decision-making close to the front line.⁶ Although the agency has made progress in breaking down stovepipe barriers, it has not done away with them as intended.

³ Internal Revenue Service Reform and Restructuring Act of 1998 (RRA 98), Pub. L. No. 105-206 (1998).

⁴ Pub. L. No. 105-206 § 1002 (1998).

⁵ The threshold for LMSB casework is now \$10 million in assets. See *Large & Mid-Size Business Division At-a-Glance*, at <http://www.irs.gov/irs/article/0,,id=96387,00.html> (last viewed Sept. 22, 2008).

⁶ See *Report of the National Commission on Restructuring the Internal Revenue Service: A Vision for a New IRS* (June 25, 1997).

Within a few years of the reorganization, the IRS moved away from providing end-to-end service to taxpayers and began to centralize functions at the campuses in an effort to realize efficiencies. For example, all Submission Processing, whether it affects individual or business taxpayers, now falls under W&I. LMSB never offered end-to-end account services for LMSB taxpayers; SB/SE handles these services instead.⁷ In TE/GE, the toll-free customer service phones are now answered by W&I rather than TE/GE employees.⁸

The IRS Has Achieved Certain Benefits by Centralizing Programs.

The IRS can take different approaches to centralization. Under a *programmatic* approach, separate functions are not centralized, but a central office coordinates their activities. In a *functional* approach to centralization, a specialized unit deals with the taxpayer from start to finish. In a third approach, one unit completes tasks on a case but is not responsible for the case from start to finish.

There are many valid, taxpayer-friendly reasons to centralize a program. Through centralization, an organization can identify inconsistencies that can be immediately resolved, reduce redundancies, and create efficiencies that might not be apparent if performed by separate units. Centralization allows for greater focus on coordination, standardization, and consolidation of equipment, processes, and technology.

However, the IRS may be harming taxpayers by centralizing processes without factoring in the impact on taxpayer service and taxpayer interaction with each process or program. Taxpayer-centric issues that the IRS should consider when deciding whether to centralize a program include:

- Can a remote centralization structure be designed to minimally affect the needs of the taxpayer population involved?
- Does the structure meet the needs of taxpayers and provide service that is more convenient?
- Does centralization include adequately staffed, competent, and trained personnel who understand taxpayers' business and individual needs?
- Does the IRS measure efficiency and productivity benefits to taxpayers along with the risks?
- Is the proposed centralization based on lessons learned, responses received, and taxpayer trends identified from past or similar centralization efforts?
- Can taxpayers locate, navigate, and effectively communicate with the centralized program?

⁷ See IRM 1.1.24 (Nov. 1, 2006).

⁸ Initially, TE/GE employees answered the toll-free calls. Effective October 1, 2006, responsibility for the TE/GE call site shifted to W&I Customer Account Services. See TE/GE Call Site Transferred to W&I, at <http://tege.web.irs.gov/templates/CASHome.asp> (last viewed Nov. 25, 2008); TE/GE Call Site Transfers to W&I, at http://win.web.irs.gov/cas/tege_welcomed_by_wi.htm (last viewed Nov. 25, 2008).

- Does the centralized structure work seamlessly with the rest of the IRS, including handing off cases, or does it create isolated units?
- Is there a fallback process when the centralized arrangement does not work for a particular taxpayer or type of taxpayer?

Centralized Programs That Have Benefitted Taxpayers

The following are examples of centralized IRS programs that have benefitted taxpayers while creating efficiencies and improving customer service. In each instance, the IRS realized its procedures for dealing with a very complex issue were inadequate. By centralizing, the IRS hoped to benefit from applying its procedures uniformly to taxpayers.

Earned Income Tax Credit

The Earned Income Tax Credit (EITC) is a refundable federal income tax credit for low income working individuals and families. It is a complex provision to administer; over 20 different IRS functions handle some portion of the EITC.⁹ In July 2002, the IRS took steps to improve administration of the EITC by creating the EITC Program Office in the W&I division.¹⁰ The goal of the EITC Program Office is to strengthen coordination and links among the functions so their interactions are seamless. Here, programmatic centralization of EITC program oversight into one office has brought a more focused approach to EITC marketing efforts and related compliance activities. The EITC Program Office has balanced compliance and outreach while standardizing budget allocations for the diverse EITC population.

Relief from Joint and Several Liability

Following the enactment of RRA 98, the IRS was overwhelmed with applications for relief from joint and several liability, due in part to a change in the law.¹¹ The inventory of joint and several liability, or “innocent spouse” cases rose from 46,619 in fiscal year (FY) 1999 to 54,402 in FY 2000.¹² To quickly identify new issues as it implemented the law, and to achieve consistency in its relief determinations, the IRS created a centralized unit to process joint and several liability claims. This centralization enabled the IRS to obtain much-needed support from the Office of Chief Counsel, the Appeals function, and TAS in an efficient and effective manner.

⁹ See Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2005-40-133, *Administration of the Earned Income Tax Credit Program Has Improved, but Challenges Continue*, Appendix V (Aug. 26, 2005).

¹⁰ See IRS, *EITC Program Effectiveness and Program Management FY 2002 – FY 2003* (Aug. 8, 2003).

¹¹ See National Taxpayer Advocate 2005 Annual Report to Congress 326; National Taxpayer Advocate 2003 Annual Report to Congress 170; National Taxpayer Advocate 2002 Annual Report to Congress 150; National Taxpayer Advocate 2001 Annual Report to Congress 128.

¹² See National Taxpayer Advocate 2001 Annual Report to Congress 128.

Centralized Programs That Have Been Less Than Successful

Some centralized IRS programs have failed to realize the anticipated benefits. One significant drawback of centralized programs is the emphasis on standardized, “cookie-cutter” processes over an individualized, fact-and-circumstances approach. Centralization of the offer in compromise (OIC) program is an example of a flawed centralization initiative.

The OIC program allows for the compromise of tax liabilities based upon “doubt as to liability” or “doubt as to collectability,” or in furtherance of “effective tax administration.”¹³ The goal of the program is to achieve collection of what is reasonably collectible, at the least cost and at the earliest possible time, and to promote future taxpayer compliance.¹⁴

The National Taxpayer Advocate has repeatedly voiced concerns over the rules and procedures, imposed as a result of centralization, that limit the accessibility and use of the OIC.¹⁵ It appears the IRS no longer uses the program to any significant extent as a viable collection alternative. Between FY 2001 and FY 2008, the number of offers accepted declined by 72 percent.¹⁶

Centralization Carries Some Drawbacks.

While centralization comes with many benefits, the IRS should not ignore the potential harm to taxpayers when it assesses the costs and benefits of centralizing a program. The National Taxpayer Advocate has raised concerns about the centralization of numerous programs in previous Annual Reports to Congress.¹⁷ The following discussion identifies some of the concerns the IRS needs to address to reduce negative impact on taxpayers when centralizing a process.

Reduced Opportunities for Face-to-Face Contact

In a survey conducted by the IRS Oversight Board, 60 percent of taxpayers stated that it is very important to be able to visit an office where an IRS representative will answer their questions.¹⁸ Since the IRS reorganization, however, taxpayers have had fewer opportunities to meet with employees to resolve their issues – or interact with the IRS in person at all. One significant consequence of centralization is the diminished level of face-to-face service the IRS offers to taxpayers.

¹³ See Treas. Reg. § 301.7122-1, *et. seq.*; Form 656, *Offer in Compromise*.

¹⁴ See IRS Policy Statement P-5-100, IRM 1.2.1.5.18 (Jan. 30, 1992).

¹⁵ See National Taxpayer Advocate 2007 Annual Report to Congress 375; National Taxpayer Advocate 2004 Annual Report to Congress 311; National Taxpayer Advocate 2003 Annual Report to Congress 99; National Taxpayer Advocate 2002 Annual Report to Congress 15; National Taxpayer Advocate 2001 Annual Report to Congress 52; National Taxpayer Advocate 2000 Annual Report to Congress 36; National Taxpayer Advocate 1999 Annual Report to Congress I-35.

¹⁶ SB/SE Collection Activity Report No. 5000-108 (FY 2001-FY 2008). In FY 2001, the IRS accepted 38,643 OICs compared to 10,677 in FY 2008.

¹⁷ See National Taxpayer Advocate 2006 Annual Report to Congress 130; National Taxpayer Advocate 2005 Annual Report to Congress 136; National Taxpayer Advocate 2004 Annual Report to Congress 264, 311; National Taxpayer Advocate 1999 Annual Report to Congress I-27, I-34, I-41, I-42.

¹⁸ IRS Oversight Board, *2007 Taxpayer Attitude Survey* (Feb. 2008).

Geographic centralization limits the opportunity for face-to-face interaction and exercise of independent judgment. For example, in an attempt to reduce cycle time and save resources by more efficiently working its “less complex” cases, the Office of Appeals centralized certain work streams at IRS campuses in 2003 and 2004.¹⁹ The National Taxpayer Advocate raised questions about this initiative in both the 2005 and 2006 Annual Reports to Congress and still holds many of the same concerns.²⁰

The trend of centralizing Appeals activity at campuses and the subsequent cutbacks in local office staffing reduce opportunities for taxpayers to obtain face-to-face Appeals hearings. While not every taxpayer needs or wants face-to-face meetings with Appeals, the National Taxpayer Advocate remains concerned about the potential impact of this policy, particularly on low income taxpayers. The lessened opportunity for face-to-face contact not only affects taxpayer service, but may also diminish enforcement. If the IRS has no presence in the local community, taxpayers may feel less inclined to keep current on their tax obligations.²¹

Loss of Local Expertise

Many IRS employees and managers possess unique skills and expertise, developed through years of experience in particular subjects. In addition, many have built relationships with state and local tax agencies, other government agencies, professional organizations, industry experts, and grassroots stakeholders. With centralization, the IRS may shift programs away from these experts to employees who (without extensive training) lack the necessary skills and abilities.

For example, the IRS consolidated 33 geographically dispersed lien units into a single centralized case processing lien unit at the Cincinnati Campus in 2005. Until then, each individual lien processing unit provided direct telephone and walk-in service for taxpayers. Lien employees dealt regularly with the appropriate authorities in their local jurisdictions and were familiar with local issues affecting taxpayers. Centralization virtually eliminated taxpayers’ ability to walk into an IRS office and obtain an immediate release of a lien.²²

The IRS experienced a similar loss of local expertise when it centralized oversight of the Taxpayer Assistance Centers (TACs). The IRS decided at the national level which issues were out of scope (*i.e.*, which the TAC employees would not address), leading to one-size-fits-all policies and underuse of local expertise. For example, a farmer in North Dakota may have a few questions about income averaging and depreciation of farm equipment. Before the IRS centralized the management of its TAC operations, the farmer could walk into the

¹⁹ See TIGTA, Ref. No. 2007-10-071, *The Office of Appeals Needs to Improve the Monitoring of Its Campus Operations Quality* (May 10, 2007).

²⁰ See National Taxpayer Advocate 2006 Annual Report to Congress 130; National Taxpayer Advocate 2005 Annual Report to Congress 136; National Taxpayer Advocate 2004 Annual Report to Congress 264, 311; National Taxpayer Advocate 1999 Annual Report to Congress I-27, I-34, I-41, I-42. IRS Oversight Board, *2007 Taxpayer Attitude Survey* (Feb. 2008).

²¹ See Marjorie E. Kornhauser, “Normative and Cognitive Aspects of Tax Compliance: Literature Review and Recommendations for the IRS Regarding Individual Taxpayers,” National Taxpayer Advocate 2007 Annual Report to Congress Vol. II, 144.

²² See National Taxpayer Advocate 2006 Annual Report to Congress 130.

local IRS office and ask these questions. Now, the IRS deems such farming questions out of scope for TAC employees.²³

Inadequate Centralized Resources Lead to Increased Inventory and Rework.

When centralization works as intended, an organization can address issues comprehensively and efficiently. However, the IRS must adequately staff its centralized programs and sufficiently train its employees. Insufficient staffing and inadequate training lead to increases in inventory and rework, which waste taxpayer time and agency resources.

In FY 2006 and FY 2007, the IRS consolidated the Combined Annual Wage Reporting (CAWR) and Federal Unemployment Tax Act (FUTA) programs at three campuses, with the Cincinnati Campus handling cases from 27 states. After the consolidation of the CAWR/FUTA program, TAS CAWR/FUTA receipts increased 68.7 percent in FY 2007 over FY 2006.²⁴

These examples illustrate a common theme in the problems created by centralization. Rising inventories, inadequate staffing and training, the inability of taxpayers and employees alike to navigate the system and make contacts, the loss of local familiarity, and the lack of face-to-face interactions all have a major impact on both taxpayers and IRS employees. Centralization should not come at the expense of taxpayers or the employees who serve them.

The IRS Should Fully Consider Factors That Impact Taxpayer Service When Deciding Whether to Centralize a Program.

If the IRS decides to centralize a program, the benefits to taxpayers should significantly outweigh any harm to taxpayer service. The IRS should ask and answer each of the following questions when it considers centralizing a program.

What are the expected benefits of centralization?

The IRS should conduct a comprehensive analysis to identify the expected gains in efficiency, cost savings, and other benefits of centralization before deciding to centralize any program. On what data or assumptions are these expectations based? Is there a way to quantify the estimated gains in efficiency? Do calculations of net cost savings include the costs of downstream consequences? Is there a plan to revisit and evaluate the decision to centralize and determine if the IRS has realized the expected benefits?

Is there a need for a strong local presence?

How do taxpayers feel about a faceless and nameless IRS? Does this program involve a subject or a taxpayer population that would benefit from a more localized structure?

²³ See Most Serious Problem, *Taxpayer Service: Bringing Service to the Taxpayer*, *supra*.

²⁴ See National Taxpayer Advocate 2007 Annual Report to Congress 651. See also Most Serious Problem, *Inefficiencies in the Administration of the Combined Annual Wage Reconciliation (CAWR) Program Impose Substantial Burden on Employers and Waste IRS Resources*, *infra*.

The trend toward centralization has repercussions through all areas of tax administration. One of the National Taxpayer Advocate's greatest concerns is the loss of a local footprint for the IRS.²⁵ While one can argue that technology enhances the communication process for taxpayers in some program areas, there is no adequate substitute for face-to-face or local interaction with some taxpayer populations. Some taxpayers may not need a face-to-face opportunity but do need local personnel who understand their particular environment or occupation.

When the IRS centralizes a program or process, it should not necessarily walk away from the local structure. Theoretically, the IRS can organize around the type of taxpayers served by the various operating divisions and functions without abandoning a geographic footprint.

What will be the impact of centralization on compliance?

Taxpayers and their representatives depend on IRS information about tax laws to comply with their tax obligations. A taxpayer's ability to obtain information has a direct bearing on voluntary compliance – *i.e.*, when information is difficult to obtain, voluntary compliance declines.²⁶ The IRS should consider whether centralization would make it easier or more difficult for taxpayers to obtain information about their tax obligations.

What will be the impact of centralization on taxpayer service?

The IRS needs to maintain fair and consistent treatment of all taxpayers, and must always ask itself whether centralization will harm a certain segment of taxpayers. For example, the IRS should evaluate the impact of centralization on low income taxpayers, the elderly, and those who speak English as a second language, who may be less able to navigate the IRS. Thus, taxpayers should retain their right to request local contact or face-to-face interaction with an IRS employee when appropriate.

Centralization can and should be invisible to taxpayers. Taxpayers have consistently provided their views on the importance of access to the IRS whether by phone, face-to-face, or electronic means. By a wide margin, those who contact the IRS prefer to receive service from a person rather than from automated systems. In a recent study, 61 percent of taxpayers identified calling the IRS as their most preferred way to obtain help in resolving a tax dispute or error, while another 22 percent selected visiting an IRS office as their first choice.²⁷ A program can achieve the benefits of centralization while preserving personal interaction by providing easily accessible and navigable telephone assistance and appropriate protections for those taxpayers who require face-to-face interactions.

²⁵ Nina Olson, National Taxpayer Advocate, Remarks Before the American Bar Association Section of Taxation (May 9, 2008).

²⁶ See Marjorie E. Kornhauser, "Normative and Cognitive Aspects of Tax Compliance: Literature Review and Recommendations for the IRS Regarding Individual Taxpayers," National Taxpayer Advocate 2007 Annual Report to Congress Vol. II, 144.

²⁷ See IRS Oversight Board, *Taxpayer Customer Service and Channel Preference Survey, Special Report 16* (Nov. 2006).

Are downstream consequences or hidden costs associated with transitioning to a centralized program?

The IRS should do its best to measure the true cost of centralizing a program from the outset. Do calculations of net cost savings include the costs of downstream consequences or costs associated with moving to a centralized program? Failure to adequately measure these costs inflates the projected savings from centralization.

Taxpayers who cannot obtain the information or services they need to comply with federal tax laws, or who cannot resolve their issues on their first attempt, can generate significant downstream costs such as repeat contacts, errors on returns, TAS intervention, revenue loss, and enforcement costs such as audits, audit reconsiderations, collection activity, appeals, and litigation. Hidden costs may include the expenses of training employees and communicating new procedures, as well as the loss of knowledge of local procedures.

Is there a fallback when centralization fails?

The IRS should always have plans in place to assist taxpayers when a centralized unit does not fully address their needs. The IRS needs to develop a strategy for problem solving in situations where centralization does not bring all the projected benefits, or harms taxpayers in ways that the IRS did not anticipate. The taxpayer can always come to TAS for assistance, but the IRS should have its own fallback plan.

In addition, the IRS should continuously analyze the appropriateness of centralization to see if the assumed benefits are actually realized. The IRS should conduct pilot tests that focus on customer feedback before implementing centralization efforts. The IRS should continue to measure the downstream impact on taxpayers after centralization.

Finally, by centralizing a program, the IRS makes itself more vulnerable to a natural disaster or other event that disrupts business activity. This concern is exacerbated if a program is consolidated within one campus. Does the IRS have a business resumption plan that has been tested?

Conclusion

Many large organizations may benefit from centralizing processes. When carried out correctly, centralization can significantly reduce redundancies and increase effectiveness.

However, if centralization is not properly established and implemented, taxpayers may be harmed. When considering whether to centralize a program, the IRS should measure the true cost of centralization, including the impact on taxpayer service and compliance. The IRS must invest the time and effort to properly evaluate the costs and benefits of centralization because the alternative means increased costs and additional compliance barriers for taxpayers.

The IRS should consider taking the following actions to validate that it considers all downstream consequences of centralization. The IRS should substantiate its assumptions about cost savings and taxpayer burden based on lessons learned, feedback mechanisms, and taxpayer trends. It is important for the IRS to base its decisions on research and conduct pilot programs to test the validity of its assumptions. The IRS should also establish a standard project matrix that defines the project, provides background information, sets forth objectives, establishes deliverables, quantifies expected benefits, and identifies necessary resources. The IRS should use this standard project matrix to evaluate programs and determine whether the anticipated benefits of centralization have been realized.

IRS Comments

The IRS agrees with the National Taxpayer Advocate's assessment that centralization of programs can significantly benefit taxpayers, reduce redundancies, increase efficiency and effectiveness, and improve customer services. However, the National Taxpayer Advocate also outlines perceived shortcomings of several IRS centralization efforts, including OIC, Appeals, Lien Processing, TACs, CAWR, and FUTA.

With regard to the OIC program, the National Taxpayer Advocate offers the decline in receipts and accepted offers from FY 2001 to 2007 as evidence of "a flawed centralization initiative." However, new OIC receipts continued to increase from FY 2001 through FY 2003, even after the centralized OIC sites were established in August 2001. The IRS believes the decline in new receipts that began in FY 2004 is not attributable to centralization, but rather is due to changes that began with implementation of the user fee in November 2003.

The user fee was put into effect to help offset the cost of the OIC program and to reduce the number of OICs submitted without merit. The IRS has recently taken steps to minimize the impact of the user fee on taxpayers, most notably by broadening the definition of low-income, so that more taxpayers will qualify for a waiver of the fee. These new guidelines became effective with the publishing of the Form 656, *Offer in Compromise*, in February 2007.

The February 2007 revision of Form 656 also included the new Tax Increase Prevention and Reconciliation Act (TIPRA) OIC guidelines and explanation of the new non-refundable payment terms required by the TIPRA legislation that became effective for all OICs received after July 16, 2006. The IRS recognizes these non-refundable payment terms may cause some taxpayers to be hesitant to submit an OIC; especially those taxpayers whose only means to fund their offers is from gifts or payments from friends or family. Therefore, the IRS is currently working with the Office of Chief Counsel and representatives of TAS to explore reasonable exceptions to this non-refundable payment requirement that are consistent with the statute.

It is also important to understand that the IRS has conducted many outreach efforts over the past few years to help educate taxpayers and their representatives about OICs. We believe these outreach efforts have led to a better understanding of who actually qualifies for an OIC and has contributed to a further reduction in receipts.

The IRS believes the long-term success of the OIC program is best achieved by maximizing the number of cases in which the IRS is able to complete the analysis and make a decision to accept or reject an offer on its merits. Contrary to the National Taxpayer Advocate's assertion that the "IRS no longer uses the program to any significant extent as a viable collection alternative," the IRS's goal is to accept as many OICs as there are taxpayers that qualify for the program. To that end, the IRS has repeatedly revised its procedures to maximize the number of OIC cases that are actually brought to closure, such as the FY 2007 changes to processability criteria that made it easier for taxpayers to file processable offers and the above-mentioned broadening of qualifications for the low income fee waiver.

With regard to centralized campus Appeals workstreams, the National Taxpayer Advocate states this has lessened the opportunity for face-to-face Appeals conferences and, without further explanation, offers a view that this may affect taxpayer service and ultimately diminish compliance. Taxpayers who have cases being considered in Appeals campus operations have a personal point of contact (the Appeals or Settlement Officer assigned to the case). While conferences may be telephonic, these procedures do not decrease a taxpayer's opportunity to be heard on the merits of his or her case, nor are we aware of any adverse impact on effective tax administration. Further, the Office of Appeals considers taxpayer requests for case transfers to permit face-to-face conferences and grants those requests when it is clear that a face-to-face conference will facilitate case resolution.

The National Taxpayer Advocate states that with centralization, the IRS may shift programs away from employees with experience and familiarity in dealing with local issues affecting taxpayers and the authorities in their local jurisdictions, to employees who lack the necessary skills and abilities. Specifically with respect to lien processing, the NTA contends that centralization virtually eliminated taxpayers' ability to walk into an IRS office and obtain an immediate release of a lien.

When the Lien Processing Units were consolidated, local expertise and relationships with state and local agencies transitioned to the centralized site. In addition, although 34 offices had lien operations prior to centralization, the lien operations personnel only occasionally provided assistance to taxpayers in getting liens released. Taxpayer assistance was most often provided by the Collection Advisory, Collection Field, or the Taxpayer Assistance groups that were co-located with these lien units. Those groups remained on-site, so the ability of taxpayers to visit a local office to obtain a lien release was not affected by the centralization of lien processing. In fact, the availability of IRS offices for obtaining a lien release was significantly increased when the IRS extended the authority to provide immediate lien releases to over 400 walk-in TACs.

The IRS believes the centralization of lien operations has had positive effects for taxpayers and other customers, both internal and external. These include significant improvements in payment processing of recording fees,²⁸ lien filing and recordation accuracy,²⁹ lien release timeliness,³⁰ and standardized employee training requirements.³¹ In addition, instead of contact points being based on diverse geographical arrangements which may have necessitated taxpayers making several long-distance calls, a single toll-free number was established for use by all taxpayers. While these benefits are significant, the IRS continues to conduct outreach to taxpayers and practitioners to inform them of the options available related to lien releases and other lien-related assistance.

The National Taxpayer Advocate cites centralized management of the TACs and the resulting adoption of national out-of-scope policies as a further example of centralization that underuses local expertise. As a case in point, the National Taxpayer Advocate offers the example of the North Dakota farmer who, due to the centralized management of TAC operations, can no longer walk into a local IRS office and ask questions about income averaging and depreciation of farm equipment.

As noted in the IRS response to this same point raised in the National Taxpayer Advocate's 2007 Annual Report for Congress, just a few years ago the IRS was criticized for the relatively low level of tax law accuracy provided by its TACs. To successfully tackle this concern, the IRS took aggressive, nationally-directed action to increase employee training, to implement enhanced quality measures and employee accountability, and to control the scope of the issues addressed. The latter is specifically intended to allow our training to concentrate on the kinds of issues most often encountered in the TAC environment, as well as to ensure consistency with TAC employees' grade levels and expertise. These nationally managed efforts brought about a significant and sustained improvement in tax law accuracy that benefits all TAC customers.

In this regard, TAC employees are not currently permitted to address Schedule F farm income issues because this is a very complex area of tax law. Farm-related tax issues include such things as accrual accounting, leases and rents, inventory valuation, employee expenses, pensions and profit sharing, depreciation, cooperative distributions, agricultural program payments, crop insurance payments, and other very sophisticated and specialized business issues. However, through the Geographic Coverage Initiative, an evaluation of TAC locations and services, the IRS is exploring adding into scope geographic based tax law topics, such as farming. The IRS expects to accomplish this by training selected subject matter experts and employing a referral system, while carefully evaluating the accuracy of

²⁸ Nearly 100 percent (99.7 percent) of billings paid timely as of September 2008. Beckley Finance Center, *Lien Payment Report*.

²⁹ 137,355 potential lost liens in August 2005 compared to 2,431 in November 2008. IRS, *Potential Lost Lien Report*.

³⁰ The untimely lien release rate in 2005 was 22 percent compared to 12 percent in 2008. Government Accountability Office, *GAO Financial Audit*, November 2005 and November 2008.

³¹ IRM 5.19.12, Training Guides 5737-001 and 5737-002.

these services. As a result of this initiative, two topics have already been added into scope for FY 2009: Non-Resident Alien Issues and Cancellation of Debt (Mortgage Forgiveness).

Finally, the National Taxpayer Advocate asserts that inadequate centralized resources led to an increase in TAS CAWR/FUTA receipts in FY 2007. However, the IRS does not believe there is a correlation between that increase and centralization. Rather the increase in TAS receipts was the direct result of an isolated, one-time inventory management issue that resulted in the erroneous download of additional IRS CAWR cases at one of the sites.

To address these various perceived inadequacies, the National Taxpayer Advocate recommends that the IRS substantiate assumptions about cost savings and taxpayer burden and adopt a standard project matrix to define and evaluate whether anticipated benefits of centralization have been realized. The establishment, assessment, and validation of planning assumptions are a routine and ongoing part of IRS business practices, including for programs that have been centralized. With regard to the use of a standard project matrix, while most IRS business operations and programs are unique and may not lend themselves to a standardized assessment tool, the IRS welcomes and will consider any specific model the National Taxpayer Advocate may have to offer.

Taxpayer Advocate Service Comments

The National Taxpayer Advocate appreciates the examples submitted by the IRS and acknowledges the IRS's continuing efforts to improve the centralization process. The IRS response focuses on the examples we used to illustrate potential problems associated with centralization, and offers explanations for some of the problems associated with the centralized programs we identified. We find some of these explanations unconvincing, especially with respect to the offer in compromise program.³² We have written in greater detail about these examples in this report or in prior year reports.³³

³² The IRS centralized its offer in compromise program in 2001. Since then, both the number of offers submitted and the number of offers accepted have declined. Over this period, the IRS introduced many strict procedural requirements, including the imposition of a user fee in 2003, aimed at greater "efficiencies" in processing. It takes a while for the impact of process changes to alter taxpayer behavior (*i.e.*, word about the process changes will spread as the process results in lower acceptance rates and is perceived as a barrier to getting offers accepted). On the other hand, OIC acceptances declined *immediately* in FY 2002. The decline in acceptances in FY 2002 and FY 2003 *predate* the imposition of the user fee. Post-2003, OIC submissions have significantly declined as a result of the user fee. The imposition of the user fee also has had a chilling effect on the number of offers accepted, as taxpayers are more reluctant to submit good offers. See Most Serious Problem, *The IRS Needs to More Fully Consider the Impact of Collection Enforcement Actions on Taxpayers Experiencing Economic Difficulties*.

³³ See, e.g., Most Serious Problem, *The IRS Needs to More Fully Consider the Impact of Collection Enforcement Actions on Taxpayers Experiencing Economic Difficulties*, *supra*; Most Serious Problem, *Inefficiencies in the Administration of the Combined Annual Wage Reconciliation (CAWR) Program Impose Substantial Burden on Employers and Waste IRS Resources*, *infra*; National Taxpayer Advocate 2006 Annual Report to Congress 130-40 (Most Serious Problem, *Centralized Lien Procedures*); National Taxpayer Advocate 2005 Annual Report to Congress 326-44 (Most Serious Problem, *Innocent Spouse Claims*).

The National Taxpayer Advocate continues to believe the IRS needs a project matrix to critically evaluate whether anticipated benefits of centralization are realistically achievable. We do not want this larger point to get lost in a discussion of examples. This project matrix is meant to help the IRS focus on when it is appropriate to centralize a program. The framework of questions we have developed should do just that – get the IRS to consider the different aspects of centralization beyond what is just convenient and less costly for itself, without considering the impact on taxpayer service.

The matrix we propose is not formulaic; a well-developed matrix raises questions that can be applied to the facts and circumstances of *any* specific centralization proposal. The questions are sufficiently flexible to be applied to a wide range of programs. It forces the IRS to think about downstream consequences. More importantly, the questions (and answers) allow the IRS the opportunity to evaluate the success of the centralization effort. We have already provided an example of such a matrix in this report. All the IRS has to do is ask and answer these questions for each proposed centralization initiative, and then evaluate the actual implementation against the expected results.

Recommendations

The National Taxpayer Advocate encourages the IRS to adopt the following recommendations to develop a more successful approach to centralization:

1. Establish a standard matrix that defines the project, provides background information, sets forth objectives, establishes tangible products, quantifies expected benefits, and identifies necessary resources.³⁴
2. Use this standard project matrix to evaluate programs and determine whether the anticipated benefits of centralization have been realized.

³⁴ TAS has already provided the IRS with a framework for this matrix in the series of questions set forth in this report.

MSP
#17**Incorrect Examination Referrals and Prioritization Decisions
Cause Substantial Delays in Amended Return Refunds for Individuals****Responsible Officials**

Richard E. Byrd, Jr., Commissioner, Wage and Investment Division
Art Gonzalez, Chief Information Officer

Definition of Problem

The IRS's handling of amended returns from individual taxpayers needlessly burdens these taxpayers. The processing of amended returns has ranked among the top four Taxpayer Advocate Service (TAS) case receipts every year since 1999.¹ In fiscal year (FY) 2008, problems caused by amended return processing procedures were the number one reason taxpayers came to TAS.² In recognition of this continuing problem, the IRS Oversight Board directed the Wage and Investment Division (W&I) and TAS to create a joint task force to study the causes of this rework. W&I and the National Taxpayer Advocate have identified six primary factors that prolong the processing of amended returns and delay taxpayers' refunds:

- No electronic filing option is available for individual taxpayers;
- The IRS does not meet general processing timeframes;
- Unnecessary Examination referrals add to already lengthy processing times;
- Correspondence Examination queue times prior to taxpayer contact add weeks, and sometimes months, to the process – while leaving taxpayers “in the dark” as to the status of their claims;
- The lack of information-sharing among IRS functions causes more unnecessary delays for taxpayers; and
- IRS business decisions on priorities negatively affect amended returns classified as “duplicate filings.”

¹ See National Taxpayer Advocate 1999 Annual Report to Congress VII-3; National Taxpayer Advocate 2000 Annual Report to Congress 135; National Taxpayer Advocate 2001 Annual Report to Congress 230; National Taxpayer Advocate 2002 Annual Report to Congress 389; National Taxpayer Advocate 2003 Annual Report to Congress 436 (reporting processing claims/amended returns as the number two Most Serious Problem for fiscal year (FY) 2003 based on Taxpayer Advocate Management Information System (TAMIS) receipts); National Taxpayer Advocate 2004 Annual Report to Congress 594 (reporting processing amended returns as the number two issue identified for FY 2004 based on TAMIS receipts); National Taxpayer Advocate 2005 Annual Report to Congress 569 (reporting processing amended returns as the number three issue identified for FY 2005 based on TAMIS receipts); National Taxpayer Advocate 2006 Annual Report to Congress 660 (reporting processing amended returns as the number three issue identified for FY 2006 based on TAMIS receipts); and National Taxpayer Advocate 2007 Annual Report to Congress 676 (reporting processing amended returns as the number two issue identified for FY 2007 based on TAMIS receipts).

² In FY 2008, TAS had 21,963 cases (an increase of 35 percent from FY 2007) in which the primary issue was IRS delays in processing amended returns. See TAMIS.

Even if the IRS implements incremental procedural changes aimed at improving efficiency in processing amended returns, significant delays will continue until the IRS gives these returns higher priority.

Analysis of Problem

Background

Millions of individual taxpayers file amended federal tax returns every year.³ These taxpayers have a variety of reasons for amending their previously filed returns, including:

- Complexity of the tax code;⁴
- Changes in circumstances;
- Late-year tax legislation;⁵ and
- Incomplete tax preparation programs.⁶

The processing of original returns and amended returns differ dramatically in processing time and the number of IRS units that the returns generally travel through before the IRS issues the requested refunds. In general, the vast majority of original individual tax returns filed using Forms 1040, *U.S. Individual Income Tax Return*, either are filed and processed electronically or are manually processed within days or weeks of receipt in the IRS campus Submission Processing units.⁷

In contrast, individual amended returns follow a much longer processing path because the IRS's amended return procedures and priorities differ considerably from those for original returns. Individuals cannot electronically file Forms 1040X, *Amended U.S. Individual Income Tax Return*, and only a minority are fully processed by the Submission Processing

³ For the past three fiscal years, the IRS has received approximately three million individual amended returns per year. The IRS received 3,164,872 amended returns/duplicate filings for FY 2005; 3,006,333 for FY 2006; and 3,252,100 for FY 2007. Through August 9, 2008, the IRS has received 3,237,397 amended returns/duplicate filings, an increase of 7.8 percent over the same period in FY 2007. IRS Joint Operations Center, *CAS Accounts Management Paper Inventory Reports, Cumulative Receipts Comparison by Program – Enterprise, FY 2007 and 2008*.

⁴ See National Taxpayer Advocate 2004 Annual Report to Congress 2, (listing the complexity of the tax code as the most serious problem facing taxpayers and the IRS alike). See also *Preparing Your Taxes: How Costly Is It? Hearing Before the Committee on Finance, United States Senate*, 109th Cong. 42 (Apr. 4, 2006) (statement of Michael Brostek, Director, Strategic Issues Team, U.S. Government Accountability Office) (finding that the complexity of the tax code impacts the accuracy of commercial paid tax preparers).

⁵ See National Taxpayer Advocate 2007 Annual Report to Congress 3 (discussing the impact of late-year tax-law changes on taxpayers).

⁶ Certain software packages and IRS Free File Alliance programs contain limitations on forms, causing taxpayers to overstate tax liabilities. See, e.g., *Preparing Your Taxes: How Costly Is It? Hearing Before the Committee on Finance, United States Senate*, 109th Cong. 10 (Apr. 4, 2006) (statement of Nina E. Olson, National Taxpayer Advocate) (finding that each of the Free File sites had its own capabilities and limitations). See also *Identity Theft: Who's Got Your Number, Hearing Before the Committee on Finance, United States Senate*, 110th Cong. (Apr. 10, 2008) (written statement of Nina E. Olson, National Taxpayer Advocate) (asserting that due to the IRS exerting little control over the content of each Free File program, each of the programs has its own eligibility requirements, capabilities, and limitations, and the complexity is confusing).

⁷ During 2008, 58 percent of Forms 1040 were filed electronically and were processed electronically. Forty-two percent of individual paper tax returns were manually processed in the Submission Processing units. Submission Processing employees are rated on their measured "production" – a combination of quality and speed in producing completed work. See *IRS Pipeline Status report and The Daily E-File Report* (on file with author).

units, which must either fully process or transfer the amended returns to the Accounts Management (AM) function within 12 days of receipt.⁸

Once transferred into AM, the amended returns may remain unprocessed for months due to competing higher priority items, such as toll-free telephone service, paper Forms 1040, correspondence, and notices. Unlike Submission Processing staff, AM employees are not rated on measured “production” in terms of quality and speed in processing. Instead, AM’s primary mission is telephone service.⁹ In the 2008 filing season, the economic stimulus payment added yet another higher priority item to the AM inventory by increasing the volume of telephone calls and amended returns received.¹⁰

Some amended returns may eventually move from AM to the Examination function to be analyzed for audit potential. Examination adds more processing time while determining whether to audit, correspond or close the amended returns, or move them back to AM because they do not meet established examination criteria. All the while, the taxpayer not only fails to receive his or her requested refund but also fails to receive any notification that the IRS ever received the amended return.

Regardless of their reasons for filing an amended return, taxpayers deserve the same filing and processing efficiencies that the IRS generally provides for original returns. To the majority of taxpayers who do not understand the inner workings of the IRS, the differences between the processing of original and amended returns are indistinguishable. Unfortunately, differences in processing and prioritization between original and amended returns cause substantial delay in amended return processing and the release of the associated refunds.

Six Primary Factors Prolong Amended Return Processing and Delay Refunds.

As noted previously, based on a joint study by TAS and W&I, the National Taxpayer Advocate has identified six primary factors in amended return processing that lead to prolonged processing and delayed refunds. Each factor is discussed in greater depth below.

No Electronic Filing Option Is Available for Individual Taxpayers.

In today’s electronic era, people have become accustomed to instant or near instant problem resolution and customer service. The IRS, acknowledging this trend, has steadily advanced its electronic filing capabilities over the years. The 2008 tax filing season set records with taxpayers electronically filing more than 86 million returns.¹¹ Interest in this

⁸ IRM 3.11.6.1.1(8) (Jan. 1, 2008).

⁹ Customer Account Services/Accounts Management Kansas City Campus 1040X Amended Return Project Overview. Processing paper is a secondary mission and the IRS gives higher priority to original returns, correspondence, and notices than it does to amended returns.

¹⁰ Because of the unusually high volume of amended returns in 2008, the IRS temporarily modified the normal processing timeframe for Forms 1040X from eight to 12 weeks to 12 to 16 weeks. See IRS, Servicewide Electronic Research Program (SERP) Alert AM IMF 080317, Processing Timeframes for Form 1040X, at <http://serp.enterprise.irs.gov/databases/irm.dr/current/alerts.dr/alert080317.htm> (Aug. 6, 2008).

¹¹ See IRS News Release, 2008 Tax Return Filing Season Sets E-File Record, IRS Says (May 28, 2008).

year's economic stimulus payments helped fuel a 44 percent increase in visits to the IRS website during the filing season, to almost 206 million visits.¹² Further, to take advantage of faster refunds, approximately 62 million taxpayers (representing almost 70 percent of all refund returns) chose a direct deposit option for their refunds in 2008.¹³

Notwithstanding these strides, the IRS does not allow individual taxpayers to electronically file their amended returns – despite allowing, and even at times requiring, corporations, tax-exempt organizations, and private foundations to do so.¹⁴ Thus, the same individual taxpayers who have come to expect and appreciate the ease and convenience of electronic filing for their original returns are forced to deal with the time-consuming, mistake-prone process of filing an amended return by paper, and its inherent processing delays.¹⁵ These taxpayers cannot reap the benefits of the electronic era, which include faster refunds, reduced chances of error, and an electronic acknowledgment within 48 hours confirming that the IRS has accepted their returns for processing.¹⁶

The IRS Is Not Meeting General Processing Timeframes.

Amended returns face much longer processing times than original returns. The IRS's own procedures establish that amended return processing takes longer, with original returns requiring six to eight weeks to process (three weeks if filed electronically) versus eight to 12 weeks to process Form 1040X.¹⁷ As mentioned earlier, because of the unusually high volume of amended returns in 2008, the IRS temporarily modified the normal eight to 12 week processing timeframe for Forms 1040X to 12 to 16 weeks.¹⁸

Data indicates that even prior to the impact associated with the economic stimulus payment, the IRS took much longer than eight to 12 weeks to process some amended returns. A study of a representative sample of TAS amended return case files found that taxpayers waited a mean of 182 days for the IRS to process their amended returns before contacting TAS for help.¹⁹ This equals 26 weeks, or half a year – more than double the highest range

¹² See IRS News Release, 2008 Tax Return Filing Season Sets E-File Record, IRS Says (May 28, 2008).

¹³ See *id.* (citing 61,820,000 taxpayers choosing a direct deposit option for their refund in 2008).

¹⁴ See Treas. Reg. §§ 301.6011-5 and 301.6033-5 (requiring certain corporations, tax-exempt organizations, and private foundations to electronically file their tax returns, including amended and superseding returns). The IRS has been accepting electronically filed corporate amended returns since the 2005 tax year. See Amended and Superseding Corporate Returns Tax Years 2005 and 2006, at <http://www.irs.gov/businesses/corporations/article/0,,id=168161,00.html> (Rev. July 26, 2007).

¹⁵ In response to a recommendation made by the TAS/IRS Rework Study group to increase the priority of the Form 1040X e-file initiative and thereby allow taxpayers to file Forms 1040X electronically, the IRS stated that it needs to revisit the sequencing strategy for development of e-file returns "in the near future" and that it would certainly put the Form 1040X "on the table" during those discussions. TAS/IRS Rework Study Report, Phase II at 20.

¹⁶ IRM 3.42.1.3.1 (Jan. 1, 2008).

¹⁷ IRM 21.4.1.3 (Oct. 1, 2006).

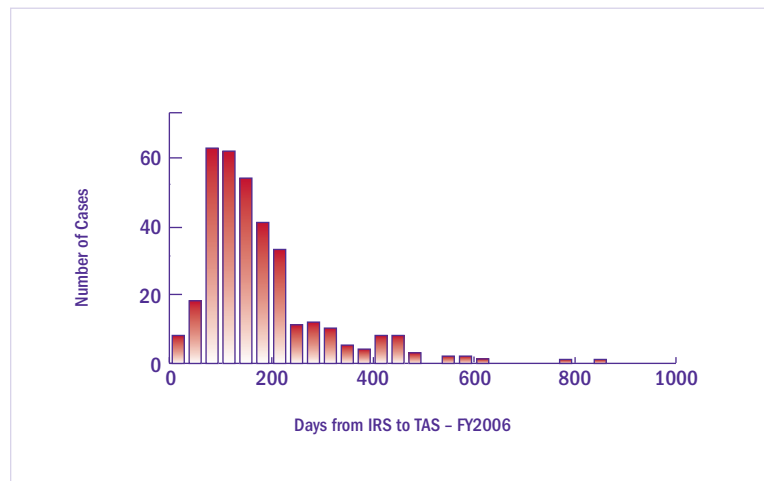
¹⁸ SERP Alert AM IMF 080317, *Processing Timeframes for Form 1040X*, at <http://serp.enterprise.irs.gov/databases/irm.dr/current/alerts.dr/alert080317.htm> (Aug. 6, 2008).

¹⁹ The TAS/IRS Rework Study group applied Account Management's Correspondence Imaging System data to a sample of TAS amended return cases. This analysis revealed that the mean number of days that cases were open prior to contacting TAS was 182 + 15 days at the 95 percent confidence level. The median number of days was 143. See TAS/IRS Rework Study Report, Phase II at 9.

under the general processing guidelines for amended returns – and ten weeks more than the highest range under the modified timeframes.

Chart 1.17.1 below details the total distribution of the sample of TAS amended return cases analyzed using data from the AM Correspondence Imaging System (CIS).²⁰ The chart depicts the number of days that the amended return was open in the IRS (based on receipt date) before the taxpayer contacted TAS. This diagram illustrates the lengthy processing timeframes for these amended returns.

CHART 1.17.1, Distribution of TAS Amended Return Cases by Date Received by the IRS to Date Received by TAS



Unnecessary Examination Referrals Add to Already Lengthy Processing Times.

The study of TAS amended return cases also shows that unnecessary Examination referrals contribute to prolonged processing times and delayed refunds.²¹ Despite the IRS’s established referral criteria, approximately three out of four referrals from AM to Examination are never selected for audit.²² These unnecessary Exam referrals contribute to processing delays by failing to resolve and process the case at the earliest point.

Data from the AM CIS for 2007 supports the notion that amended returns are inappropriately entering the Examination stream. The 2007 data shows that overall, AM referred

²⁰ TAS/IRS Rework Study Report, Phase II at 9. One case with more than 1500 days from the date the case was received in the IRS to the date the taxpayer contacted TAS was removed from the sample as an anomaly.

²¹ The term “Examination referrals” in this section indicates the process through which an IRS processing function refers an amended return to the Examination function for evaluation as to a potential audit or correspondence examination.

²² See CAT-A Reject Rate by Campus Jan-Dec 2007 spreadsheet, email from W&I dated May 28, 2008 (on file with author) (showing that only 25.6 percent of amended return referrals made by AM in 2007 were selected for examination).

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approximately 110,000 amended return cases to Examination.²³ Of these, only about 28,000 (or 1.23 percent of the total AM amended return inventory) were selected for examination, bringing the selection rate for referrals to 25.6 percent.²⁴ The remaining 74.4 percent of referrals were either accepted as filed (47.2 percent), disallowed (3.1 percent), not considered (7.0 percent), did not meet Category A (CAT-A) criteria (8.3 percent), or received another determination (8.8 percent).²⁵ Tightening up the Examination referral criteria by identifying more of the common characteristics of the amended returns that the Exam function accepts as filed would help expedite case processing, reduce Examination inventory levels, and ultimately lead to faster refunds.

Reducing erroneous referrals would further reduce overall amended return processing time. Based on the data above, erroneous referrals accounted for 15.3 percent of all AM referrals to Examination in 2007 (8.3 percent of referrals that did not meet CAT-A criteria plus seven percent that Examination did not consider).²⁶ This represents at least 16,700 taxpayers, many of whom are awaiting refunds, whose amended return processing was unnecessarily delayed because their returns, which did not meet Exam criteria or which were otherwise unworkable, were referred to Exam only to wind up, weeks later, back in AM where they started.

Unnecessary Examination referrals have a downstream impact for both the IRS and taxpayers. By overwhelming the Exam function with inappropriate referrals, the IRS is wasting resources that it could otherwise spend analyzing valid referrals. These unnecessary referrals needlessly delay refunds for taxpayers who are waiting for the IRS to process their amended returns. Yet despite the downstream impact and lengthier processing timeframes, AM has no accountability measures to identify or reduce erroneous and needless CAT-A referrals.²⁷

²³ AM referred 109,593 cases to Examination in 2007. CAT-A Reject Rate by Campus Jan-Dec 2007 spreadsheet, e-mail from W&I dated May 28, 2008 (on file with author).

²⁴ AM referred 109,593 cases to Examination in 2007. CAT-A Reject Rate by Campus Jan-Dec 2007 spreadsheet, e-mail from W&I dated May 28, 2008 (on file with author).

²⁵ *Id.* CAT-A criteria were established based on past examinations that identified characteristics indicating a high degree of noncompliance. Amended returns that meet CAT-A criteria must be referred to Examination.

²⁶ An analysis of CIS information on all AM referrals during FY 2007 showed that the total percentage of erroneous CAT-A referrals varied widely across campuses (from 8.3 percent in the Austin campus to 25.2 percent in the Atlanta campus), with an overall reject rate across all campuses of 15.3 percent. The CIS data analyzed covered planning periods (PPs) 2 and 3 for FY 2007 and PP1 for FY 2008. The reject rates included cases rejected as “not CAT-A” and those categorized as “no consider.” Those referrals that did not meet CAT-A criteria, by definition, were erroneous referrals because AM should be forwarding only those cases that meet CAT-A criteria to the Examination function. Amended returns that do not meet CAT-A criteria should be fully processed (including the release of the refund) by the AM function without Examination involvement. Cases that were not considered by Examination (“no consider” cases) may ultimately meet the CAT-A criteria, but they were incomplete/unworkable at the time of the referral (such as a missing form or schedule) and should not have been referred to Examination as CAT-A at this stage.

²⁷ Based on recommendations made by the TAS/IRS Rework Study group, AM has agreed to use test and control groups at the Atlanta campus to measure the effect of accountability measures. Additionally, W&I issued SERP Alerts (internal guidance highlighting areas of concern) to ensure that the new procedures for referring CAT-A cases to Examination are being followed and training is being developed. TAS/IRS Rework Study Report, Phase II at 7.

The downstream impact on taxpayers is reflected in the high volume of TAS cases involving amended returns.²⁸ While the IRS audits only about one percent of all returns,²⁹ a sample of TAS cases involving amended returns found that approximately 36 percent had Examination involvement.³⁰ Rejected CAT-A cases represented 22.8 percent of TAS CAT-A cases and six percent of total TAS amended return cases analyzed.³¹ These statistics demonstrate that inappropriate Examination involvement is affecting taxpayers and delaying refunds.

Correspondence Examination Queue Times Prior to Taxpayer Contact Lengthen the Process – While Leaving Taxpayers “In the Dark” As to the Status of Their Claims.

For the 25 percent of CAT-A referrals the IRS ultimately selects for examination, the processing timeframe increases further due to lengthy queue times (delays while the return awaits assignment) for correspondence examinations. Based on a statistically valid sample of the enterprise, average queue times for correspondence examination at IRS campuses (from the date selected for examination to the sending of the initial contact letter) ranged from three weeks to nearly two months (21 to 54 days).³² The following chart shows the average queue times by campus.

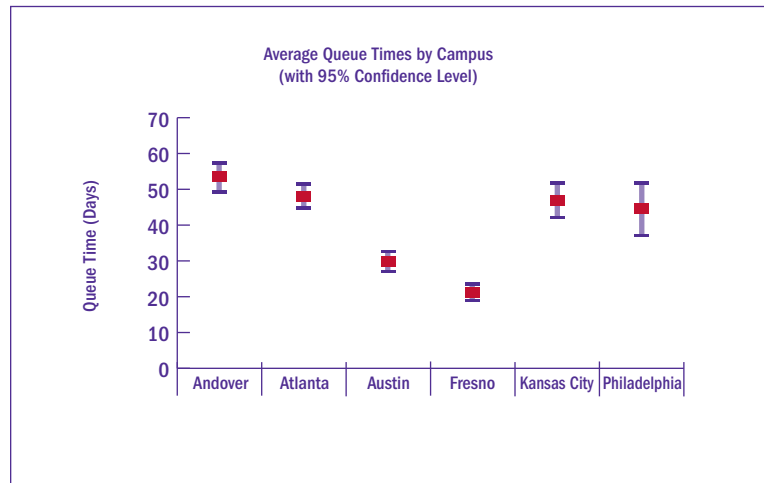
²⁸ In FY 2008, TAS had 21,963 cases in which the primary issue was IRS delays in processing amended returns. See TAMIS.

²⁹ Total individual returns audited overall for fiscal year (FY) 2007 increased to 1,384,563 from 1,293,681 in 2006. IRS, *Fiscal Year 2007 Enforcement and Services Results*, at <http://www.irs.gov/newsroom/article/0,,id=177701,00.html> (last visited Dec. 11, 2008). This represents approximately one percent of all individual returns filed. See IRS, *Statistics of Income, 2005: Individual Income Tax Returns Estimated Data Line Counts* (Sept. 2007).

³⁰ *TAS Phase I Report: The PCIC 330 Amended Return Study* 16 (Sept. 25, 2007).

³¹ TAS/IRS Rework Study Report, Phase II at 5.

³² *Id.* at 2. At a 95 percent confidence level, the average queue times are 21.1 ± 1.9 and 53.5 ± 3.8 days, respectively. These figures do not include statistics on the Brookhaven and Memphis campuses, which were removed from the sample to eliminate biases associated with the decrease in operations at these campuses. The average queue time for the Brookhaven campus was 56.8 ± 8.2 days. The average queue time for the Memphis campus was 101.7 ± 9.9 days.

CHART 1.17.2, Correspondence Examination Queue Times

Shortening queue times and notifying taxpayers sooner that their amended returns have been selected for examination not only would ease taxpayers' anxiety, but would reduce unnecessary phone calls and other taxpayer contacts. Under current procedures, until taxpayers receive either their refunds or initial examination letters, they are unaware of the status of their amended return processing. The IRS essentially leaves taxpayers "in the dark" for several weeks while it routes – and as discussed earlier, sometimes reroutes – their amended returns through the processing cycle.³³

To remedy this problem, the Austin Campus developed a tool, Always Part of the Solution (APOTS), which will automate the opening of the case in Exam on the Audit Information Management System (AIMS) and the issuance of the initial contact letter. This tool provides additional automation through the Examination process for all claims and has reportedly led to excellent improvements to cycle time for these case types. The average cycle time for Exam cases in the Austin Campus using APOTS was 116 days in FY 2007, compared to an average of 153 days for other W&I campuses. Examination is delivering the APOTS tool to the remaining W&I campuses.

The IRS's Lack of Information Sharing Among Functions Is Causing Unnecessary Delays for Taxpayers.

There is no doubt that fully processing amended returns at the earliest possible stage is beneficial for both taxpayers and the IRS. When the IRS closes cases earlier in the process, taxpayers receive refunds faster and inventory levels decline, thus allowing the IRS to process the remaining returns more quickly.

³³ See TAS/IRS Rework Study Report, Phase II at 4.

The Submission Processing amended return unit processes amended returns within 12 days of receipt under rigid guidelines referred to as adjustment function criteria (AFC). These returns are either fully processed or passed on to the AM function because they meet the AFC. Some cases are AFC because they require the use of the system command code DDBCK, a process by which the Examination function systemically reviews claims for child-related credits and selects those most likely to require further examination.³⁴ However, the Submission Processing staff has no access to DDBCK, primarily due to workload distribution issues. Allowing the Submission Processing function access to this command code would allow employees to process more amended returns further “upstream” in the process, provide those taxpayers with faster refunds on their child-related credits, and reduce inventory backlogs downstream. Submission Processing and AM concurred with a recommendation in the TAS/IRS Rework Study to shift additional case processing from AM to Submission Processing.³⁵

IRS Business Decisions on Prioritization Negatively Impacts Amended Returns Classified as “Duplicate Filings.”

A “duplicate filing” in IRS parlance occurs when the same tax form is filed multiple times with the same name and SSN.³⁶ A duplicate filing can occur for several reasons. For example, taxpayers may attempt to amend a previously filed Form 1040 by filing another Form 1040 rather than a Form 1040X, which is the designated form for an amended return. A duplicate filing condition also occurs when taxpayers’ identities are stolen, and the perpetrator files a return under the name and SSN of the victim.³⁷ It is the job of the AM function to sort out whether the taxpayer was trying to file an amended return or was the victim of identity theft.³⁸ Making this determination ought to be a priority for the IRS.

³⁴ Command Code DDBCK is used for validating additional children and credits claimed on amended returns. IRM 2.4.58.1(1) (Jan. 1, 2007). When a DDBCK request is entered with the primary taxpayer identification number (usually the Social Security number (SSN)), it displays the dependents and qualifying children from the original return or as last modified. By updating information into DDBCK, the IRS can update existing data to reflect changes from the submitted amended return. IRM 2.4.58.1(2) (Jan. 1, 2007). After the updated amended return information is transmitted, DDBCK validates any new taxpayer identification numbers against, among other databases, the Dependent Database (DDb). IRM 2.4.58.1(3) (Jan. 1, 2007). The DDb is a rule-driven database that identifies non-compliant Earned Income Tax Credit (EITC) and dependent issues using internal and external data elements and provides the ability to freeze refunds. If a rule condition is met as returns are processed through the DDb rule filtering process, the rule “fires” and the return is flagged for examination. The DDBCK Validation Result Screen instructs the user how to proceed with the case based on the database checks. If the case does not meet Examination criteria, the IRS can process the amended return as usual, but if the case needs to be classified or meets Examination criteria, it should be sent to Examination. IRM 2.4.58.1 (Jan. 1, 2007).

³⁵ W&I’s response indicated that this recommendation has been ongoing for a number of years. It is projected that over 500,000 cases will be sent to Submission Processing during FY 2009. Additional work types are being identified and volumes exceed 450,000. Additionally, AM is working with Compliance in an effort to obtain access to the DDBCK Command Code until a request for a related Integrated Data Retrieval System Command Code can be completed through the Unified Work Request process that would require only minor programming to block certain fields on DDBCK. Submission Processing employees could use it to update DUPOL (a command code that lists dependent SSNs claimed by a parent), Child Tax Credit, Additional Child Tax Credit, and earned income tax credit. TAS/IRS Rework Study Report, Phase II at 13.

³⁶ IRM 21.6.7.4.4 (Oct. 1, 2008).

³⁷ Identity thieves file tax returns in this manner either to fraudulently obtain a refund under the account of an innocent taxpayer or as part of accomplishing employment fraud. The National Taxpayer Advocate has again made the IRS’s identity theft procedures a Most Serious Problem this year. See Most Serious Problem, *IRS Process Improvements to Assist Victims of Identity Theft*, *supra*.

³⁸ IRM 21.6.7.4.4 (Oct. 1, 2008).

Rather than prioritizing these cases, however, the IRS actually deemphasizes processing duplicate filings.

Prioritization of case processing depends in part on the date a tax return is deemed received. When a duplicate filing occurs, the IRS classifies the return as a duplicate filing and issues an internal notice (CP 36). The IRS then uses the CP 36 notice date rather than the actual date of receipt for the duplicate filing document to set the priority of casework.³⁹ Therefore, because the IRS changes the original received date on the duplicate filing case, the case receives a later date and hence a lower priority than amended returns that are not designated as duplicate filing cases.

For example, two amended returns arrive at a campus on the same day (June 1) and are both stamped with the IRS received date of June 1, 2008. However, as the returns are processed, the IRS handles one as a duplicate filing and generates a case assignment (control) based on the duplicate filing condition. Commonly, the received date for the generated (automated) control is a minimum of two to three weeks later than the actual received date. For this example, the received date would change to June 21 for the duplicate filing return. Adhering to the IRS's "first in, first out" processing guideline, both cases should be worked alongside others received on approximately June 1. However, the IRS will typically work the duplicate filing later, with other cases received on the 21st. From the taxpayer's viewpoint, his or her amended return is not being processed timely, compared to others received on exactly the same date. The IRS's reported aged inventory percentages do not accurately reflect duplicate filing received dates.⁴⁰

As both amended return processing and IRS identity theft procedures are again Most Serious Problems affecting taxpayers, the IRS needs to stop deemphasizing their processing and begin to prioritize them.

Conclusion

Allowing individual taxpayers to electronically file amended returns would provide them with a myriad of benefits, including acknowledgement of receipt, decreased errors, and faster refunds. The IRS's indefinite date for implementation for accepting electronically filed amended returns needs to be reprioritized and expedited. However, until such an option becomes a reality, the IRS needs to alleviate unnecessary Examination involvement, reduce lengthy Exam queue times, require functions to share information to process

³⁹ IRM 21.6.7.4.4(2) (Oct. 1, 2008).

⁴⁰ The IRS disagreed with a recommendation by the TAS/IRS Rework Study group to test prioritization of duplicate filing cases. In its response, the IRS stated "[t]he difference in received date of the amended return and the CP 36 received date has been an issue for many years. The automated nature of the DUPF controlling and notice generation would require significant programming changes to recognize the IRS received date of the Transaction Code 976 document (if that can even be accomplished). Prioritization of certain case types without regard to the IRS received date already occurs. However, the significance of the DUPF case volume is too significant to prioritize without creating a major impact on other case types. The number of duplicate filings worked by AM currently exceeds 675,000 per year..." *TAS/IRS Rework Study Report*, Phase II at 12.

amended returns as far upstream as possible, and reconsider prioritization decisions on amended returns classified as duplicate filings.

The IRS should consider taking the following steps to improve amended return processing:

- Reprioritize and expedite the implementation date for accepting Forms 1040X electronically and include TAS representatives in the discussions on revisiting the sequencing strategy for development of e-file returns;
- Reconsider its decision not to provide individuals with a way of transmitting their returns directly with the IRS once Modernized e-file becomes available at the individual level;
- Tighten its Examination referral criteria for amended returns by identifying more of the common characteristics of the amended returns that the Exam function accepts as filed;
- Add accountability measures to reduce the number of CAT-A rejects from AM (based on the results of the study that the IRS has agreed to conduct);
- Implement the Always Part of the Solution (APOTS) tool throughout all remaining W&I campuses to automate the opening on AIMS and the issuance of the Examination initial contact letter for cases that are selected for Examination;
- Continue to identify additional amended return work types that the IRS can shift from AM to Submission Processing, and
- Prioritize duplicate filing conditions by creating a special unit that will only work duplicate filings.

IRS Comments

The IRS continues to be committed to improving the timeliness and quality of customer service to all taxpayers. Each year, millions of taxpayers file amended returns. In FY 2008, Accounts Management and Submission Processing processed 4.9 million amended returns with approximately 60 percent processed by AM and the remaining 40 percent processed by Submission Processing.⁴¹ Of this total volume, less than one half of one percent (21,963) of all amended returns required intervention by TAS caseworkers. Equally important, a statistically valid sample of amended returns conducted by the Program Analysis System (PAS) revealed that 92 to 98 percent of all amended returns received in FY 2005 to FY 2007 were processed within 90 days, which is the processing time cited in the Form 1040X Instructions. In FY 2008, the sample showed that 86 percent of amended returns were processed within the 90-day time frame.⁴²

⁴¹ IRS, *FY 2008 Work Planning & Cost Control (WP&C)*.

⁴² IRS, *National Quality Review System Time in Inventory Report*.

While amended returns are received throughout the year, it is important to note that approximately 65 percent of the total volume received occurs within a 15 week period that begins in mid-February and extends through the end of May. This peak volume of amended return receipts runs parallel with the peak telephone call demand that occurs from mid-February through April 15. In keeping with historic trends, telephone contacts remain the preferred channel of contact and in FY 2008 unprecedented call volumes were experienced as a result of the economic stimulus payment legislation. Enterprise toll-free CAS Assistor Calls Answered was 40.4 million and was 122.7 percent of plan (32.9 million), and 19.5 percent above the prior year (33.8 million).⁴³ This unparalleled influx of telephone calls to our toll-free operation regarding these special IRS payments to individuals to stimulate the nation's economy caused AM resources to be diverted almost exclusively to answering these calls. In fact, for a period of time, servicing this unprecedented call demand required the addition of Compliance staff from the Automated Collection System.

In response to these challenges, AM aggressively and strategically made every effort to meet the competing service demands of telephone call volumes and the processing of correspondence and amended returns. In an effort to mitigate the effect of the increased telephone demand, IRS monitored call volumes and the AM campuses were instructed almost instantaneously to move employee resources from telephones to paper whenever possible to maximize the number of tax examiners available to work paper inventories. Additionally, in order to ensure the most productive campuses worked paper inventory, the IRS utilized the Enterprise Management of Inventory, a model that determines which locations are more productively able to handle this workload. Inventory is then shifted to the most productive campus based on performance and resources using the Correspondence Imaging System (CIS). CIS is able to handle electronic shipment of this work so one campus can receive cases from other campuses instantaneously and begin working the cases immediately.

To further mitigate paper inventories, Field Assistance Taxpayer Assistance Center (TAC) employees and AM remote telephone site employees were reassigned correspondence inventory other than amended returns. This reassignment of work increased the number of available resources to work paper and enabled campus employees to concentrate on processing amended returns. SP also worked in collaboration with AM to expand the scope and volume of amended returns that could be processed by SP staff. SP and AM continue to work together to identify additional types of amended returns that can be worked by SP.

Other initiatives implemented this year include utilization of Inventory Control Managers (ICMs), who were installed at each AM campus in order to ensure further prioritization of paper inventory. The ICM is a full-time permanent position and each ICM is given full authority to make inventory decisions, such as ensuring cases are worked on a first-in first-out basis and reviewing old cases to determine why they have not yet been closed. In

⁴³ IRS, Joint Operations *Calls Answered Report*, Fiscal Year Ending Sept. 30, 3008.

addition, the xClaim Tool for Form 1040X was developed and deployed to all paper processing campuses in September 2008 to automate many aspects of the processing of amended tax returns. This tool allows the user to adjust accounts accurately and quickly with limited user input. Thus far, this new tool has shown positive impact on the IRS's ability to timely and accurately process amended returns while improving employee satisfaction.

AM also conducted an amended return study to better understand why taxpayers file amended returns. The primary purpose of this study was to gather information on customer needs, identify the most common reasons for filing amended returns, review patterns or trends in taxpayer or preparer behavior, and to identify opportunities to improve processing of these receipts. Data was gathered from 800 amended returns (400 from FY 2007 and 400 from FY 2008) and approximately 300 correspondence cases in the AM inventory. This data is currently being compiled in a database for analysis and will be compared to data from another amended return project that includes a comprehensive analysis of Master File data generated earlier this year. This extract is being paired with notice data and toll-free information. The information gained from these studies will lend insight into developing strategies on inventory planning, targeted training, and inventory assignment to improve the overall efficiency in processing amended returns.

As a result of the combination of the strategies implemented by AM in FY 2008, we have seen a significant improvement in the processing of paper inventory including amended returns. Barring passage of legislation generating the kind of extraordinary telephone demand we experienced earlier this year, we expect further improvements in amended return processing during 2009.

In her report, the National Taxpayer Advocate makes seven specific suggestions to improve amended return processing. We are taking, or have taken, the following actions with respect to these issues.

Modernized e-file (MeF) is designed to accept amended returns for business returns. Currently, the MeF project is working on a revised plan to phase in the Form 1040 and its associated forms and schedules. The current Phase 1 deployment is scheduled for January 2010. The MeF1040 multi-year release strategy will include acceptance of electronic amended returns. The sequencing strategy for MeF was developed to maximize benefits to all taxpayers, not just those filing amended returns. The IRS continues to seek ways to speed the acceptance and processing of amended returns. However, in light of current budgeting and management capacity issues, it will be difficult to significantly modify the current release schedule.

The IRS, working with the National Taxpayer Advocate among others, is producing a comprehensive study on ways to increase electronic filing. Direct filing options will be included in the study, as will a variety of other approaches. While the study will make no recommendations, it will look at how much each option (including direct filing) will likely affect the e-file rate. It will also estimate the costs of providing each option as well as any

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other policy considerations. The IRS will wait until that study is complete before determining which options to increase electronic filing it will support.

The Examination function (Compliance) is committed to working with AM to improve the overall CAT-A process. Together, we will review all CAT-A criteria to determine if any changes can be made that would improve the referral process.

Pending implementation of long-term solutions, currently under consideration, the Director of AM has issued a “must improve” directive to reduce the number of erroneous CAT-A referrals. AM campuses are currently reviewing Examination referral data weekly to determine the CAT-A reject percentage. IRM procedures have been added for lead/manager referral reviews to verify the accuracy of CAT-A referrals. In addition, AM will be using test and control groups at the Atlanta campus to measure the effect of establishing an accountability measure with the potential for implementation at the Department level.

APOTS is scheduled to be rolled out to all W&I campuses and through automation should improve the cycle time on selected cases. Currently, this tool is operational now in three campuses and will be added to the remaining W&I campuses in FY 2009.

As noted earlier, SP and AM continue to work together to identify additional types of amended returns that can be worked by SP.

AM will evaluate the suggestion to create specialized units to work duplicate filings. However, due to the complexity of the program and the volume of receipts, resources may not be available to support implementation of this option.

Taxpayer Advocate Service Comments

The IRS notes that only two to eight percent of amended returns filed in FY 2005 to FY 2007 were processed outside the 90-day processing time noted in the Form 1040X instructions. In FY 2008, the percentage of amended returns processed outside this timeframe spiked to 14 percent, an increase the IRS attributes to AM's role in administering the economic stimulus program.

The National Taxpayer Advocate recognizes the impact of the economic stimulus program on AM resources, and commends the IRS for doing a stellar job in administering this program on short notice. However, we note that for many years amended return processing issues have consistently been one of the top problems facing taxpayers who come to TAS for assistance.⁴⁴ The difficulties in processing amended returns did not arrive with the stimulus program in 2008.

In its response, the IRS outlines a number of initiatives it has implemented and tools it has developed to improve the processing of amended returns. We are encouraged that the IRS has dedicated resources to this important taxpayer service issue. We are especially pleased that the IRS has conducted a study to better understand why taxpayers file amended returns and identify opportunities to improve processing of these returns. This study should also identify opportunities to educate taxpayers about common errors on original returns, which might reduce the number of amended returns.

Finally, we continue to believe that allowing taxpayers to file amended returns electronically will reduce errors, decrease duplicate filing problems, speed up processing times, and lessen inappropriate examination referrals. Time wasted in handling amended returns inefficiently and ineffectively can be better spent on other taxpayer needs; electronic filing is central to these improvements.

⁴⁴ See National Taxpayer Advocate 1999 Annual Report to Congress VII-3; National Taxpayer Advocate 2000 Annual Report to Congress 135; National Taxpayer Advocate 2001 Annual Report to Congress 230; National Taxpayer Advocate 2002 Annual Report to Congress 389; National Taxpayer Advocate 2003 Annual Report to Congress 436 (reporting processing claims/amended returns as the number two Most Serious Problem for FY 2003 based on Taxpayer Advocate Management Information System (TAMIS) receipts); National Taxpayer Advocate 2004 Annual Report to Congress 594 (reporting processing amended returns as the number two issue identified for FY 2004 based on TAMIS receipts); National Taxpayer Advocate 2005 Annual Report to Congress 569 (reporting processing amended returns as the number three issue identified for FY 2005 based on TAMIS receipts); National Taxpayer Advocate 2006 Annual Report to Congress 660 (reporting processing amended returns as the number three issue identified for FY 2006 based on TAMIS receipts); National Taxpayer Advocate 2007 Annual Report to Congress 676 (reporting processing amended returns as the number two issue identified for FY 2007 based on TAMIS receipts).

Recommendations

The IRS should consider taking the following steps to improve amended return processing:

1. Allow taxpayers to file Forms 1040X electronically directly with the IRS.
2. Revise its Examination referral criteria for amended returns by identifying more of the common characteristics of the amended returns that the Exam function accepts as filed.
3. Analyze its database of amended returns to identify the reasons for filing those returns and develop an education campaign for taxpayers about avoidable errors on original returns that result in filing an amended return.
4. Prioritize duplicate filing conditions by creating a special unit that will only work duplicate filings.

MSP
#18**Inadequate Files Management Burdens Taxpayers****Responsible Officials**

Richard E. Byrd Jr., Commissioner, Wage and Investment Division
 Jim Falcone, Acting Deputy Commissioner, Operations Support

Definition of Problem

The IRS maintains many paper records with IRS Submission Processing Centers (SPC), filing more than 225 million taxpayer documents each year in fiscal year (FY) 2006 and FY 2007.¹ The IRS is required by law to efficiently maintain and manage agency records, including electronic and paper files, as evidence of IRS policies, decisions, and operations.² Most importantly, IRS records contain sensitive tax return and other related taxpayer information. Both taxpayers and IRS employees need prompt access to paper documents to resolve tax return issues or verify taxpayer information. In recent years, the IRS failed to follow prescribed administrative procedures and implement necessary safeguards for maintaining and managing paper files and records. This failure contributed to a number of complaints from taxpayers, practitioners, IRS employees, and other government agencies.³ The National Taxpayer Advocate identified several aspects of the IRS record keeping and paper file management processes that place substantial burden on taxpayers and undermine effective tax administration.⁴ These problems include:

- Delays and failures in providing paper records and files to taxpayers, practitioners, and other stakeholders authorized to receive such information;⁵
- A lack of timeframes for retrieval of paper files and follow-up procedures in the Internal Revenue Manual (IRM);
- A lack of adequate safeguards to protect confidential taxpayer information;
- A lack of effective standards to measure the quality of customer service and contractor or IRS performance; and

¹ Wage and Investment (W&I) response to TAS information request (June 26, 2008).

² See The Federal Records Act (FRA) of 1950, 44 U.S.C. § 3102.

³ Government Accountability Office (GAO), GAO-07-1160, *Tax Administration: The Internal Revenue Service Can Improve Its Management of Paper Case Files* 9-10 (Sept. 2007).

⁴ See *id.* at 12. The report shows that in 420 out of about 900 cases docketed at the U.S. Tax Court (46 percent), the Appeals function did not receive the requested files for over 25 days.

⁵ The IRS annually refunded more than \$3.7 million, or over 40 percent of the fees it collected for photocopies of taxpayers' documents from FY 2005 through FY 2008. W&I response to TAS information request (Dec. 16, 2008).

- An absence of a servicewide record keeping and paper file management strategy and database.

Recently, the IRS resumed in-house performance of the files management function, which was performed by a contractor for most of the past two years.⁶ Regardless of which entity operates the files maintenance function, the IRS must substantially improve the file management process.

Analysis of Problem

Background

The Federal Records Act (FRA) governs the IRS's management and use of taxpayer records.⁷ The Internal Revenue Code (IRC) requires the IRS to maintain and manage records without jeopardizing the security and confidentiality of the sensitive taxpayer information these records contain.⁸ The IRM provides internal control standards to ensure the efficiency of the agency's operations.⁹ Taxpayers and IRS employees need prompt access to the paper documents stored in agency records in many situations, including:

- Taxpayers who need copies of prior year documents to accurately complete current year tax returns;
- Taxpayers who have lost all documents in a catastrophic event;
- Taxpayers who are not in compliance with their tax obligations and want to resolve prior issues;
- Parties in tax controversies and administrative hearings; and
- IRS employees who need specific documents to accurately and efficiently serve taxpayers.

The SPCs filed more than 225 million taxpayer documents each year in FYs 2006 and 2007.¹⁰ The documents are stored in seven SPC campuses throughout the country.¹¹ Until 2006, the IRS managed paper files through local Submission Processing Directors at

⁶ W&I, *IRS Resumes Management of Campus Files Activity*, at <http://irweb.irs.gov/AboutIRS/Nwsctr/OtherNws/10180.aspx> (last visited Dec. 12, 2008).

⁷ United State Code Title 44, Chapter 31, § 3102 *et seq.*

⁸ See *generally* IRC § 6103.

⁹ See *generally* IRM 1.15.7 (Jan. 1, 2003).

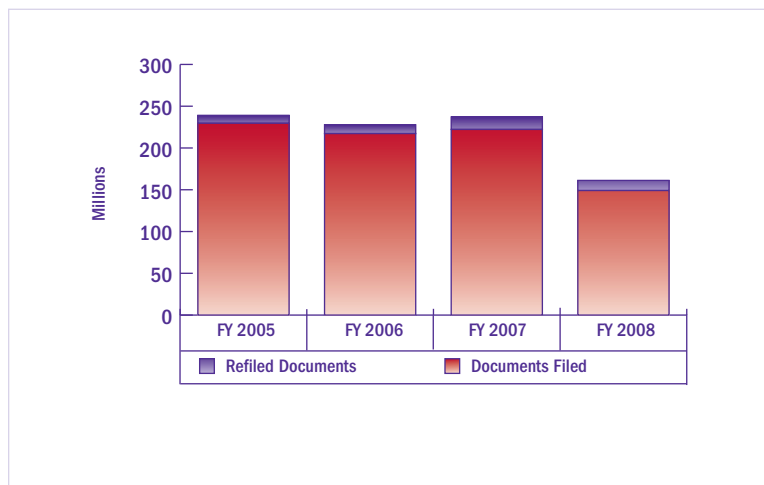
¹⁰ W&I response to TAS information request (Dec. 16, 2008). In FY 2006, IRS or vendor employees filed 217,264,116 documents and refiled 10,451,589 documents. In FY 2007, they filed 222,214,957 documents and refiled 14,886,641. In FY 2008, they filed 149,077,410 documents and refiled 12,106,549.

¹¹ Austin, TX; Andover, MA; Kansas City, MO; Ogden, UT; Atlanta, GA; Fresno, CA; and Cincinnati, OH. See Submission Processing Directory (May 9, 2008).

each campus.¹² In 2006, the IRS contracted out the operation of the files storage areas.¹³ However, on October 1, 2008, control of the files maintenance processes reverted back to the IRS.¹⁴

The following chart shows the number of paper documents filed and refiled from FY 2005 to FY 2008.

CHART 1.18.1, Documents Filed by Fiscal Year¹⁵



IRS employees annually request millions of paper documents containing confidential taxpayer information to resolve tax issues or verify tax return information.¹⁶ These requests include the electronic requests that Return and Income Verification Service Unit (RAIVS) employees make on behalf of taxpayers. In FY 2007 and FY 2008 respectively, the files function received approximately 3.3 million and 2.4 million electronic requests for copies of taxpayer documents.¹⁷ The IRS charges a fee for copies of tax returns, but reimburses the money if it cannot fill the taxpayers' requests within the 60 days allowed

¹² W&I, Submission Processing Charts for each campus from FY 2002 to FY 2008.

¹³ In August 2005, the government's Most Efficient Organization proposal won the competition for IRS files. However, on May 31, 2006, after comparison of all proposals, the IRS awarded a five-year contract to IAP World Services, Inc., including a one-year base period and four one-year option periods. IAP World Services, Inc. subcontracted work at three of the seven centers to Catapult Technology. The IRS did not conduct a Reduction in Force, but under Federal Acquisition Regulations governing the Right of First Refusal, employees were eligible for employment under the contract. The contractors did not employ many of the IRS Files employees when the operation assumed contractor management. Instead, the contractor hired new employees who did not have historical files processing operation knowledge and skills. See Christopher Lee, *Bush Plan to Contract Federal Jobs Falls Short*, Wash. Post, Apr. 25, 2008, at A01. See also Award/Contract to IAP World Services, Inc., Contract No. TIRNO-06-C-00041.

¹⁴ W&I, *IRS Resumes Management of Campus Files Activity*, at <http://irweb.irs.gov/AboutIRS/Nwsctr/OtherNws/10180.aspx> (last visited Dec. 12, 2008).

¹⁵ W&I response to TAS information request (Dec. 16, 2008).

¹⁶ See IRS Command Code Usage Report. Actual document counts are 3,289,901 for FY 2007 and 2,355,860 for FY 2008 (through Sept. 9, 2008) (Martinsburg Computing Center and Tennessee Computing Center counts).

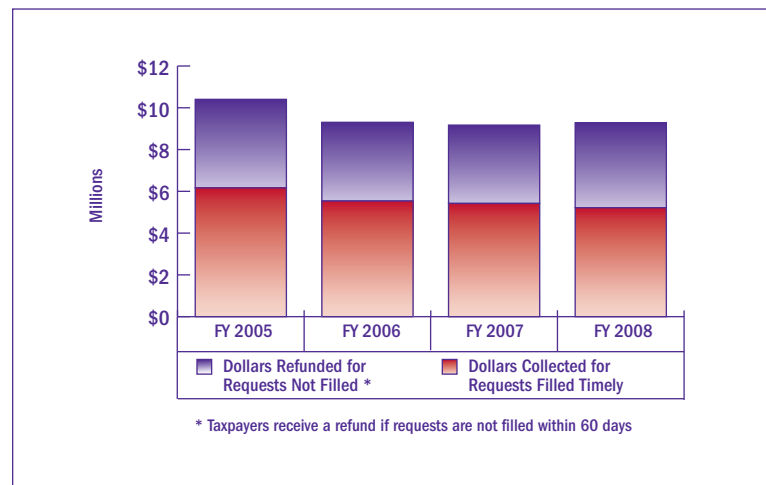
¹⁷ See IRS Command Code Usage Report. Actual document counts are 3,289,901 for FY 2007 and 2,355,860 for FY 2008 (through Sept. 9, 2008).

by IRS policy.¹⁸ The IRS refunded more than \$3.7 million, or over 40 percent of the fees it collected for photocopies of taxpayers' documents from FY 2005 through FY 2008.¹⁹

The amounts refunded serve as an indicator of the ineffectiveness of the current files operation. Notwithstanding the high level of refunds, the IRS decided to increase the cost of a copy of a tax document from \$39.00 to \$57.00 beginning on November 1, 2008.²⁰ The IRS prefers that taxpayers request account transcripts, which it provides free of charge, but are only available for the current and the prior three years.²¹

Chart 1.18.2 below shows the amounts collected from and refunded to taxpayers who requested documents by filing IRS Form 4506, *Request for Copy of Tax Return*, from FY 2005 to FY 2008; however, the IRS does not track the specific reasons for these refunds.²²

CHART 1.18.2, Dollars Collected and Refunded from/to Taxpayers (Requests (IRS Form 4506) for Documents Sent to RAIVS)²³



¹⁸ See Form 4506, *Request for Copy of Tax Return* (Jan. 2008).

¹⁹ W&I response to TAS information request (Dec. 16, 2008).

²⁰ W&I response to TAS information request via e-mail with W&I official representative (Aug. 8, 2008).

²¹ See IRM 21.2.3.4.1.2(2) (Oct. 1, 2007). "As stated on Form 4506-T, *Request for Transcript of Tax Return*, Form 1040 series tax return transcripts are only available for the current processing year and the three prior years. Taxpayers should not be told they can order tax return transcripts for earlier years." *Id.*

²² This information was also verified by on-site observation by TAS staff at four contractor files storage facilities: Kansas City (2007), Andover, Austin, and Cincinnati (2008).

²³ The IRS refunded \$4,238,716, \$3,767,113, \$3,748,916, and \$4,068,317 in photocopy fees to requesters in FY 2005, FY 2006, FY 2007, and FY 2008, respectively. W&I response to TAS information request (Dec. 16, 2008).

Taxpayers and IRS Employees Continue to Experience Substantial Delays in Receiving Paper Records.

The National Taxpayer Advocate and the Treasury Inspector General for Tax Administration (TIGTA) have addressed file management problems on a number of occasions.²⁴ However, even after the IRS contracted out the paper record keeping system, taxpayers and IRS employees continued to experience delays in receiving records.²⁵ The National Taxpayer Advocate discussed this issue in her 2001 Annual Report to Congress, yet remaining flaws in the file management process prevent taxpayers and IRS functions from receiving requested records timely.²⁶

The IRS has no database to track paper files. Even the Submission Processing RAIVS employees who request copies of taxpayer documents from the paper files operation cannot timely obtain copies of returns.²⁷ In some cases, the IRS cannot retrieve the requested documents at all.²⁸ Unfortunately, the IRS does not gather statistics on paper files that it cannot locate.

Affected taxpayers experience substantial hardship when they cannot obtain copies of their tax records.²⁹ For instance, when taxpayers do not receive copies, they are forced to reconstruct documents to satisfy the institution requesting the information from them. This process requires a significant amount of time and effort.

²⁴ See 2002 National Taxpayer Advocate Annual Report to Congress 140; 2001 National Taxpayer Advocate Annual Report to Congress 70. See also TIGTA, Ref. No. 2004-10-186, *Better Procedures Are Needed to Locate, Retrieve, and Control Tax Records* 11 (Sept. 2004).

²⁵ See GAO, GAO-07-1160, *Tax Administration: The Internal Revenue Service Can Improve Its Management of Paper Case Files* (Sept. 2007).

²⁶ IRM 3.5.61.5.9 (Jan. 1, 2008) requires expedited processing of TAS document requests within five business days. However, in many cases TAS case advocates experienced extended delays in receiving requested taxpayer documents. For example, TAS case advocates in Rhode Island collected information on all documents they requested between June 23, 2008, and July 21, 2008. Of the 30 documents employees requested, nine were received within two weeks, another ten were received within 30 days, and 11 documents or 37 percent were not received by the end of the study. Additionally, case advocates from Local Taxpayer Advocate (LTA) offices across the United States provided 51 examples of delayed processing of file requests from November 2006 to June 2007 that were documented on the Taxpayer Advocate Management Information System (TAMIS). TAS secured the documents from the Files function in only 36 cases. The average response time was 34 days. TAS did not receive documents or a response from the Files function in 15 cases, or nearly 30 percent. This sample of TAS requests selected using Command Code ESTABDV (Expedited requests for documents) and Form 2275, *Records Request, Charge and Recharge* (Aug. 2006) (paper form requesting a Special Search) methods shows that although the IRM mandates timely processing of TAS requests, such requests were not timely honored. Often, TAS employees made second and third requests, but the Files function indicated the returns were sent per the original request. Sometimes, it took weeks and months to receive the requested documents. Several examples indicate that when the Files function timely extracted documents it failed to mail them for several weeks. Delays prompt TAS case advocates to make multiple requests. These document delays cause taxpayer burden, including delayed refunds, assessed penalties, and interest.

²⁷ In 2007, the National Taxpayer Advocate received a Systemic Advocacy Management System (SAMS) submission from a RAIVS employee regarding the inability to receive returns timely from the Files function. See SAMS, Issue P0027183 (submitted on Mar. 20, 2007) on the lack of timely action on document requests. For example, RAIVS employees in Ogden, Utah, and Kansas City submitted a complaint through SAMS regarding a delay in securing requested taxpayer documents. Other SAMS submissions indicated missing documents were requested from the Kansas City campus beginning in December 2006. In one instance, a document request required five additional requests and took over 60 days for the Files function to fulfill. See SAMS, Issues P0026815 (submitted on Feb. 8, 2007) and I0027720 (submitted on June 26, 2007).

²⁸ See SAMS, Issues No. P0027183, P0026815, and I0027720. See also GAO, GAO-07-1160, *Tax Administration: The Internal Revenue Service Can Improve Its Management of Paper Case Files* 9-10 (Sept. 2007).

²⁹ Although the cost of a copied document increased from \$23 to \$39, and then to \$57 beginning Nov. 1, 2008, taxpayers still do not timely receive the requested tax return information. Despite the number of taxpayer requests decreasing due to the increased availability of account transcripts, the IRS still has problems securing files.

Effective tax administration also suffers when duplicate requests for documents waste labor resources and create additional costs for the IRS.³⁰ Moreover, in situations involving tax litigation, the inability to timely locate and produce the necessary paper file may cause the IRS to lose the litigation and the revenue at stake.³¹

The Lack of Specific Timeframes for Retrieval of Paper Files and Follow-up Procedures from the IRM Fosters Flaws in the Paper Files Management Process.

The IRM for the Files and Submission Processing functions does not contain any references to specific timeframes for filing requests, and this lack of formal performance requirements contributes to delays.³² IRS employees do not know when to submit a second request for paper documents. Informal timeframes vary for each Files site and contribute to the overall confusion.³³ The result is a series of constant delays that prompt TAS case advocates and IRS employees to submit multiple document requests, which undermine efficient and effective taxpayer service. The IRS should specifically and clearly define all IRM requirements regarding timeframes for paper files production and make these requirements mandatory for all involved in the process.

The Files Management Process Poses Disclosure Risks.

The law requires the IRS to protect sensitive taxpayer data from inadvertent disclosure.³⁴ However, in some cases, requesters receive the wrong taxpayer's documents.³⁵ Taxpayers and IRS employees report that the IRS and the contracted files storage centers mail documents to the wrong government addresses or the wrong taxpayers. In one case, a taxpayer complained to TAS that he received not only the wrong type of document but also documents belonging to several other taxpayers – and never did obtain the document he needed.³⁶

Under current procedures, when a taxpayer requests copies of documents, IRS employees do not always compare his or her address of record (the current address on the IRS Master File database) to the address on the request form as long as the Taxpayer Identification

³⁰ IRM 3.5.20.11.1 (Mar. 1, 2008) prescribes procedures for responses to requests for tax return information. When the requested file cannot be located the IRS must refund the taxpayer's money and inform the taxpayer by letter that it cannot locate the document(s).

³¹ See GAO, GAO-07-1160, *Tax Administration: The Internal Revenue Service Can Improve Its Management of Paper Case Files* 8 (Sept. 2007). The report shows that in 420 out of about 900 cases docketed at the U.S. Tax Court (46 percent), the Appeals function did not receive the requested files for over 25 days.

³² Cf. the prior version of IRM 3.30.123.15.1161 (Jan. 1, 2005) with IRM 3.30.123 (Jan. 1, 2008). In 2008, the IRS removed references to timeframes from the IRM, explaining that the function formerly known as "Cycle Control" was outsourced and the submission processing function did not establish criteria for monitoring the timeliness.

³³ See TAS OAR-ESTAB Procedures, at <http://tasnew.web.irs.gov/index.asp?pid=1487> (last visited July 23, 2008).

³⁴ See generally IRC §§ 6103, 7213, 7213A, and 7431.

³⁵ Most recently the Files function sent a local TAS office not only a Form 4251, *Return Charge-Out*, for a document the office requested, but also 50 other Forms 4251 with Social Security numbers (SSN) and taxpayers' Integrated Data Retrieval System (IDRS) name control data, which should have been sent to other centers across the nation. Review of incoming mail in a TAS office indicated that of 51 pieces, only one was requested by that office (Mar. 12, 2008).

³⁶ SAMS, Issue I0027720. A taxpayer sent the contractor Form 4506, *Request for Copy of Tax Return*, requesting a copy of the 2001 tax return. The taxpayer received copies of the Forms W-2 (including names, addresses, and SSNs) of four different taxpayers for tax years 2002 through 2005.

Number (TIN) and name match IRS records.³⁷ The IRS then mails the requested documents to the address provided by the taxpayer on Form 4506.³⁸ Because of this flawed verification process, the documents sent to the address on Form 4506 may be inaccurate and received by a different taxpayer.³⁹ This process also differs considerably from procedures for Customer Service Representatives (CSRs) who receive telephone requests from taxpayers for copies of their transcripts. The CSRs are required (unless the taxpayer correctly answers additional disclosure questions) to mail the transcript to the IRS's address of record to safeguard taxpayer information from disclosure.⁴⁰

At a time when identity theft is increasingly prevalent, the IRS must employ adequate safeguards for taxpayer information.⁴¹ While the Files function was contracted out, the IRM required the Contracting Officer Technical Representative (COTR)⁴² to dispatch security personnel to inspect the contractor's facility if the contractor compromised taxpayer information.⁴³ Although some disclosures are inadvertent, information provided by the IRS indicates that the COTR did not conduct the required inspections.⁴⁴ The Files contractor did not track all complaints from taxpayers or IRS employees or document complaints that would trigger an investigation by the COTR. IRS employees could access the Submission Processing *Files Operation Sharing* internal website, where they could obtain the phone number of the manager at a particular contractor site or e-mail a General Program Management Office (GPMO) analyst to complain.⁴⁵ However, if a requester complained directly to the contractor, the company did not necessarily provide this information to the COTR. Now that the IRS has resumed in-house files operation as of October 1, 2008, it should adequately track customer complaints and safeguard sensitive taxpayer information.

³⁷ IRM 3.5.20.6.2 (Mar. 1, 2008) requires a Receipt and Control employee or a RAIVS employee to verify two of three items that must be included on the request (address, name, and SSN). However, either the current or the prior address of the taxpayer is determined to be the address of record. IRM 3.5.20.8 (Mar. 1, 2008). Currently, IDRS searches taxpayer data based on the maximum of first four letters of the taxpayer's surname or business name. See IRM 3.0.273-2 (Jan. 1, 2008).

³⁸ Teleconference with IRS RAIVS analysts (June 3, 2008).

³⁹ *Id.*

⁴⁰ IRM 21.1.3.9 (Dec. 13, 2007), which is applicable to CSRs, requires that for the IRS to mail documents to a taxpayer's address of record, the taxpayer must answer authentication questions listed in IRM 21.1.3.2.3(4)(d) (Jan. 1, 2008), which include (for individual master file returns) the correct address of record, name, SSN, filing status, and the date of birth. To mail a taxpayer's return to an address other than the address of record, the taxpayer must meet criteria of IRM 21.1.3.2.4 (Oct. 1, 2006), which require verification of two or more of the following items from a taxpayer's return: spouse's date of birth, child's/children's date(s) of birth, amount of income reported on last return or tax due on return, employers shown on taxpayer's Forms W-2, financial institutions from taxpayer's Forms 1099-INT or Forms 1099-DIV, number of exemptions claimed on last return or on return in question, preparer, paid/unpaid, if any expected refund amount (within \$100) unless computed by IRS.

⁴¹ Identity theft is the number one consumer complaint in the United States, far outpacing all others. In 2007, the Federal Trade Commission received 258,427 complaints of identity theft. See Federal Trade Commission Report, *Consumer Fraud and Identity Theft Complaint Data, January–December 2007* (Feb. 2008), at <http://www.ftc.gov/opa/2008/02/fraud.pdf> (last visited Oct. 10, 2008). See also Most Serious Problem, *IRS Process Improvements to Assist Victims of Identity Theft*, *supra*.

⁴² A technical representative designated by the Contracting Officer (CO) to monitor performance and other contract administration duties associated with the award of a formal contract. See IAP/IRS Contract No. TIRNO-06-C-00041, Technical Exhibit 5-004, *Performance Work Statement for the IRS Files Activity*.

⁴³ IRM 11.3.24.4.3 (Jan. 1, 2006).

⁴⁴ W&I response to TAS information request (June 26, 2008). The IRS performed only Readiness Reviews at each site, which is not an adequate action according to IRM 11.3.24.3.3 (Jan. 1, 2006).

⁴⁵ W&I, Submission Processing, *Files Operation Sharing* website, at <http://hqnotes1.hq.irs.gov/SubmissionProcessing/SPWebPage.nsf/7746d2301afe8b468525684b004d8cc0/a9b9007c4362624f852571b7003ad240?OpenDocument> (last visited July 18, 2008).

The IRS failed to address existing disclosure related problems before awarding the files management contract. For example, the Integrated Data Retrieval System (IDRS) has a field for the employee requesting documents to enter an address but the address is not a mandatory fill field. If a requester does not enter an address, the IDRS Unit and Unit Security Representative Database (IUUD) system automatically retrieves the security address and contact information of the requester.⁴⁶ Sometimes, the retrieved address does not match the address of the requester and the Files function sends the documents to the wrong place.⁴⁷ In response to a Government Accountability Office (GAO) audit, the IRS committed to update the system to make the address a required field, but has not yet done so.⁴⁸ Nonetheless, TAS commends the IRS effort to address complaints by adding the option of filing a customer complaint as an electronic “Get It” ticket on the IRS intranet. This will allow any internal customers to register complaints immediately and receive a response within a specified time. The IRS has targeted functionality for this system by October 2008,⁴⁹ and should keep it operational after resuming direct files management.

Absence of Adequate Standards and Contractor Performance Measurements.

The former contractor’s (IAP World Services, Inc.) duties were defined by contract, which included a performance work statement or standards.⁵⁰ The IRS’s Files Government GPMO reviewed the contractor’s performance and communicated the results to the Contracting Officer (CO) or the COTR. The IAP contract measured the actual accomplishment of the task against the performance standard. Each time a contract employee received a request for a document, he or she searched for the document. There was no safeguard in place to determine whether the pulled document actually matched the request, or whether the document was previously sent to the requester.⁵¹ The current IRM neither requires the contractor or the IRS to match documents with the actual request, nor to indicate why the documents are missing.⁵² The IRM employs the same measures the IRS had in place prior to the contract.⁵³

⁴⁶ The IUUD system, updated only by security officers, allows IRS employees and managers who use IDRS and have intranet access to obtain contact information about IDRS units, managers, and security personnel. For each IDRS unit, the IUUD enables users to find the Unit Security Representative’s (USR) name and phone number, the manager’s name, address and phone number, a description of the unit, and additional information. See IRS As-Build Architecture, IUUD, at <http://aba.web.irs.gov/formsandprocesses/rdmpframes.html?/ABARoadMap/APPL134254594.html> (last visited May 28, 2008).

⁴⁷ On-site observations by TAS staff at four contractor Files sites: Kansas City (2007), Andover, Austin, and Cincinnati (2008).

⁴⁸ GAO, GAO-07-1160, *Tax Administration: The Internal Revenue Service Can Improve Its Management of Paper Case Files*, Appendix II (Sept. 2007). The IRS indicates that this change to IDRS has not occurred and it could not substantiate any plans for the change. W&I response to TAS information request (June 26, 2008).

⁴⁹ W&I response to TAS information request (June 26, 2008). However, the IRS has no written plan for marketing the “Get It” ticket method to all operating divisions for tracking customer complaints, which is an important component of this initiative.

⁵⁰ IAP/IRS Contract, *Performance Work Statement for the IRS Files Activity*, Section C, TIRNO-06-C-00041, at C-48.

⁵¹ On-site observation by TAS staff at four contractor Files sites: Kansas City (2007), Andover, Austin, and Cincinnati (2008). See also GAO, GAO-07-1160, *Tax Administration: The Internal Revenue Service Can Improve Its Management of Paper Case Files* 11 (Sept. 2007).

⁵² In January 2008, the IRS revised the respective IRM eliminating guidelines for IRS operating divisions concerning timeliness of requests. Specifically, former IRM 3.5.61.6.8 (Jan. 1, 2007) provided for expedited service in servicing TAS document requests. With the elimination of this guideline in January 2008, neither the Contractor’s Performance Work Statement (PWS) nor the IRM provide for expedited copies of documents to TAS when needed for Operations Assistance Request (OARs). See IRM 3.5.61.5.9 (Jan. 1, 2008).

⁵³ See W&I response to TAS information request (June 26, 2008); teleconference with the COTR (May 27, 2008).

Quality Assurance Evaluators (QAEs) employed by the IRS performed quality reviews at each campus based on valid customer complaints for general files requests.⁵⁴ Based on this data, the CO provided performance feedback to the contractor.⁵⁵ The contract required documentation and validation of customer complaints used to evaluate the performance of the contractor.⁵⁶ However, in the absence of written criteria regarding what constitutes a valid complaint, the IRS only cited those complaints that the QAEs found valid.⁵⁷ In fact, the IRS intranet Submission Processing site suggested sending complaints directly to the contractor site manager.⁵⁸ As a result, there were only 28 *valid* complaints in FY 2007 and only three *valid* customer complaints to date in FY 2008.⁵⁹ The low number of validated complaints combined with a high dollar volume of refunds indicates that customers may not even know how to properly file a complaint when they receive the money refunded from RAIVS.

The IRS's practice of using customer complaints as a basis for measuring the contractor's performance did not accurately reflect the quality of the services in the absence of adequate standards for determining the validity of complaints and an independent review of complaints by an impartial IRS quality review staff not affiliated with the files management function or the contractor. The absence of adequate standards for the review of customer complaints to determine validity, and for the objective evaluation of the Files function's performance, leaves the IRS unable to control the quality of the operation.⁶⁰

The IRS Still Lacks a Servicewide Paper File Management Strategy and Electronic Database.

A recent study shows that nearly one-third of all taxpayers prefer filing paper returns and will not change their filing method.⁶¹ Moreover, 46 percent of all taxpayers believe that mailing a return is still safer and more reliable than filing electronically.⁶² Unfortunately, problems with paper documents are not unique to the Files operation. Other parts of the

⁵⁴ However, since the IRS does not have a centralized method of receiving customer complaints, Files GPMO representatives decide whether complaints are valid.

⁵⁵ IAP/IRS Contract No. TIRNO-06-C-00041, Technical Exhibit 5-004, *Performance Work Statement for the IRS Files Activity*. This document reflects the general statements in the contract standards, "The correct returns and documents, including required attachments, are pulled from files, charged out, and routed to the correct recipient as specified on the request. No additional documents or information is inadvertently included." See *id.* According to the contract the PWS provides performance measures of the contract and that the CO provides performance feedback to the contractor. *Id.*

⁵⁶ IAP/IRS Contract No. TIRNO-06-C-00041, 3.5.2, *Documentation of Customer Complaints*, through 3.5.5, *Analysis of Results*.

⁵⁷ The QAE works for the Files GPMO and determines whether the complaint is valid. The QAE researches the complaint to determine if the action was caused by the IRS or outside the contractor's control. W&I response to TAS information request (June 26, 2008).

⁵⁸ Submission Processing Files Information Sharing, at <http://hqnotes1.hq.irs.gov/SubmissionProcessing/SPWebPage.nsf/7746d2301afe8b468525684b004d8cc0/8f5fef4a3df3f95785257307003ecf72?OpenDocument> (last visited May 9, 2008).

⁵⁹ W&I response to TAS information request (Sept. 15, 2008).

⁶⁰ GAO, GAO-07-1160, *Tax Administration: The Internal Revenue Service Can Improve Its Management of Paper Case Files* 13-14 (Sept. 2007).

⁶¹ IRS, Russell Research, *2007 Taxpayer Segmentation Study* 33 (Apr. 9, 2007). Thirty-two percent of taxpayers are used to filing paper returns and see no reason to change their filing method.

⁶² *Id.*

IRS store their own paper files and have experienced numerous problems with timely retrieval of taxpayer records and documentation.⁶³

The IRS is attempting to address its files problem, in part, through its modernization efforts. We commend the IRS for its plan to electronically image the paper 1040 family of returns. However, this multi-year project is still in the initial stages.⁶⁴ Further, the IRS still lacks a systemic servicewide approach to the management of paper files and records. Even after implementing electronic imaging for all future correspondence, the IRS cannot accomplish its objective of providing effective taxpayer service without an integrated database that can track and retrieve archived historical paper files.

Conclusion

Paper files are a reality and a necessity at the IRS even in this electronic age. Because a certain number of taxpayers are not comfortable filing electronically and will continue to use paper returns, the IRS will continue to receive and store paper documents.⁶⁵ The goal of effective and fair tax administration mandated by Congress requires the IRS to make these stored records readily available to the taxpayers and IRS employees when needed, without jeopardizing the security and confidentiality of the sensitive taxpayer information these records contain.

The IRS has taken or is taking specific measures to address many of our concerns. We commend IRS for the effort to create a cross-functional servicewide team (consisting of SB/SE, W&I, and AWSS employees) to improve files practices.⁶⁶ We believe the IRS's continued effort to improve the current paper files management operation process should produce tangible and measurable improvements that will benefit taxpayers and the IRS. We also recognize that many of our concerns are more difficult to resolve due to the limitations of IRS computer systems. However, the IRS has not previously been able to implement effective systems that would resolve many of our mutual concerns.

The IRS should consider taking the following actions to address problems in files management: develop a servicewide record keeping and paper file management strategy and database; take steps to convert paper returns to an electronic format; implement procedures in the RAIVS unit where all three items (TIN, address, and name) must be verified with IDRS and if the current address is not the same as the address of record, require a taxpayer to submit Form 8822, *Change of Address*, with the Form 4506; and revise relevant IRM provisions to employ adequate quality control and timeliness measurements for taxpayer

⁶³ For example, the National Taxpayer Advocate received a complaint from an exempt organization that had requested a copy of the IRS Determination Letter on January 30, 2008, from the Tax Exempt & Government Entities (TE/GE) division. Two TE/GE responses received on May 1 and May 15, 2008, erroneously contained determination letters for other exempt organizations but not for the one that requested the document. Letter to the National Taxpayer Advocate (June 9, 2008).

⁶⁴ W&I response to TAS information request (June 26, 2008).

⁶⁵ Russell Research, 2007 Taxpayer Segmentation Study, *A Study of The Needs & Drivers of U.S. Taxpayers* 34-35 (Apr. 11, 2007).

⁶⁶ See W&I response to TAS information request (June 26, 2008).

file requests. TAS offers its assistance in implementing these recommendations through participation of TAS representatives in a servicewide cross-functional team.

IRS Comments

As noted by the National Taxpayer Advocate, each year millions of taxpayers continue to file their tax returns on paper. It is the responsibility of the W&I Submission Processing division to manage the day-to-day processes and procedures that involve paper tax return filing and the storage and servicing of those returns.

Tax returns are processed and temporarily stored at the seven Submission Processing Centers throughout the country. Once processed, the returns are transferred to a Federal Records Center (FRC) facility for permanent storage, usually within one year. The amount of time that transpires between SPC processing and FRC storage primarily depends on the availability of space at the SPC. Because the availability of space varies at each of the SPCs, some sites will transfer returns to a FRC facility once a year, while other SPCs will make multiple transfers each year. Consequently, some SPCs are better able to service their document requests in-house without the more time consuming need to access an FRC facility.

As we look at the challenges in managing paper files, it is essential to emphasize the role the FRC facilities, operated by the National Archives and Records Administration, play in this process. The vast majority of requests for copies of tax returns and tax return photocopying for both internal and external customers require a coordinated effort with a FRC facility. There are numerous FRC facility locations and their proximity to the IRS and service levels vary. Also, historically, many of the facilities have had a high volume of re-files (documents previously requested and returned by IRS but waiting to be re-filed by the FRC) which adversely impacts our ability to service subsequent document requests.

The IRS acknowledges the need to improve various aspects of the files management process and has established a servicewide cross-functional team (hereinafter referred to as “the team”) to address many of the issues cited here. The central purpose of the team is to conduct a mapping of each of the processes, isolate problems, and then develop strategies to solve those problems. Thus far, the team has developed protocols for expediting requests for special projects, re-vamped the Form 2275, *Manual Request Form for Requesting Documents*, and instituted expedite procedures for FOIA, Ex Parte, and IRC § 6103(d) requests for the Disclosure Office. They have also established a process to address issues that interfere or limit the ability to obtain case files for court cases, Appeals, and other requests that require expeditious service.

Currently, the team is also working with the FRC facilities to improve the processing of requests for returns. In this regard, it has developed a process for the FRC facilities to track paper file requests that cannot be located or serviced timely to better understand the root causes for these delays. The team is also reviewing the feasibility of implementing this same process at the SPCs. In another effort, since many of the SPCs and FRC facilities are

unable to meet the 14-day response time for internal requests for tax returns, more realistic timeframes are being developed and should reduce the need for second and third requests.

It is equally important to note there are other, administrative errors that contribute to the delays or failure to provide paper records to taxpayers, practitioners, and other stakeholders. In this regard, when employees charge out returns and fail to either return the documents or return them timely, it affects the ability to process future document requests. The team also found that many of the complaints about documents that were not received were due to requestors entering incorrect or insufficient information. For example, some requests were made using an incorrect Document Locator Number (DLN). In addition, an SPC is unable to send the requested documents to the employee when he or she fails to provide the correct mailing address information. To deal with these issues, an instructional guide has recently been developed to illustrate the process for requesting documents and will be shared with employees. In addition, employees requesting documents through Command Code ESTAB must now enter their address in a required field prior to submitting the request.

The storage and retrieval of tax and administrative documents is, and always has been, of extreme importance to effective tax administration. Detailed processes and procedures for records management are currently contained in the 1.15 series of the IRM and constitute the Service's recordkeeping and paper file management strategy. In addition, the team will continue to explore opportunities to further improve files management procedures. However, we believe developing a database involving upwards of 12 million returns touched each year by both the SPCs and FRC facilities in order to track the status of document requests would prove labor intensive and prohibitively costly. However, as an alternative solution, the IRS is currently working on a proposal for modernizing the processing of paper returns that would use a scanned document in electronic format as the return of record. This project is part of the Modernized Submission Processing (MsP), a Form 1040 imaging project that will include imaging, auto-data extraction, and image archive for the Form 1040 family of returns. While we have high expectations for the MsP project, it remains in the planning stages and is currently unfunded.

With regard to the recommendations related to verification of address and a new requirement for taxpayers to submit Form 8822, *Change of Address*, with the Forms 4506, we would note that the RAIVS function currently completes a verification of the address of record on all requests. The IRM 3.5.20.8, *Processing Requests for Tax Return/Return Information*, requires verification of both the TIN and address or of the name and address to verify identity. If the address on the Form 4506 does not match current IRS records, RAIVS will conduct additional IDRS research to verify the taxpayer's identity. If unsuccessful, the RAIVS unit will return the Form 4506 and payment to the taxpayer with an explanation. This requirement will be further clarified in the IRM. Because current procedures require address verification, and because we are unaware of any data to support the contention that copies of returns are frequently mailed to unauthorized individuals due

to these procedures, we do not endorse the proposal to require taxpayers to submit Forms 8822 with Forms 4506.

The IRS will again establish the daily High Quality Work review process for filled requests. The team is reviewing this process, including timeframes and whether or not to retain the “Get It” ticket system previously used by the contractor for lodging complaints.

Taxpayer Advocate Service Comments

The National Taxpayer Advocate commends the IRS for establishing a servicewide team to address many of the issues raised in this report, and for resuming in-house performance of the files management function. The National Taxpayer Advocate is also pleased that the IRS changed its verification of address procedures to reflect consistency throughout the IRS regarding the provision of taxpayer account information. We appreciate the initiatives to improve file retrieval processes described in the IRS comments, especially the employee instructional guide illustrating the process for requesting documents, and the programming change requiring the requestor’s valid address to be entered prior to submitting the request. We hope this change will help the Files function to timely deliver requested documents to the correct addresses.

However, the transition of the Files function back to the IRS has not resolved the majority of the problems experienced by taxpayers, practitioners, and IRS employees with the paper file management process. Since the IRS is required by law to efficiently maintain and manage electronic and paper files, it is responsible for establishing adequate procedures for timely and efficient retrieval of paper files stored at the FRC facilities.⁶⁷ The National Taxpayer Advocate is concerned with the IRS’s plans to extend the timeframes for document requests beyond the current 14 days because “many of the Submission Processing Centers and FRC facilities are unable to meet the 14-day response time for internal requests for tax returns.” While extending this time period may help the IRS meet its deadlines, it will not help the taxpayer who needs the document within two weeks. We encourage the IRS to establish procedures for expedited handling of document requests, including all TAS document requests.⁶⁸ Rather than lengthening the timeframes, the IRS should establish effective processes and coordinate requests with FRC facilities, so it can meet the established timeframes. The IRS should also establish adequate IRM quality control and specific timeliness measurements for taxpayer files requests, especially expedited requests.

⁶⁷ See FRA of 1950, 44 U.S.C. § 3102.

⁶⁸ The National Taxpayer Advocate also encourages prompt IRM changes reflecting specific timeframes for expediting all TAS file requests. Clear and specific IRM requirements regarding expedited processing of these requests will eliminate the significant delays experienced by TAS case advocates and the need to submit multiple document requests, which undermine efficient and effective taxpayer service.

The National Taxpayer Advocate disagrees with the IRS's conclusion that it is prohibitively costly to develop a servicewide record keeping system and paper file management database. Many government agencies that deal with huge volumes of paper documents use bar coding and can track documents at any point of time. Bar coding and imaging of all incoming paper documents may actually save IRS resources in the future, with the costs recouped through the fees charged to requesters.⁶⁹ Although we are pleased with the IRS's efforts to implement the Modernized Submission Processing (MsP) project, which includes imaging, auto-data extraction, and image archive for the Form 1040 family of returns, the project will not affect paper file processing unless it receives adequate funding. The National Taxpayer Advocate supports funding for this important project and its expansion to all stored paper files and records.

The National Taxpayer Advocate is extremely concerned about the increase from \$39 to \$57 in the document retrieval fee in the absence of adequate quality controls and timeliness measurements for files requests. The IRS should reconsider this fee increase, which will place an additional hardship on taxpayers in light of the current economic situation and the increasing need for taxpayers to obtain copies of tax documents.

Recommendations

The National Taxpayer Advocate recommends that the IRS consider taking the following actions to improve the paper file management process:

1. Proactively pursue the Modernized Submission Processing project, allowing imaging, auto-data extraction, and image archive of scanned documents, and expand its application to all stored paper files and records.
2. Reverse the increase in the paper file retrieval fee until such time as the IRS improves the quality of file retrieval.
3. Revise relevant Internal Revenue Manual provisions to employ adequate quality control and specific timeliness measurements for taxpayer file requests, including TAS expedited requests.
4. Include TAS employees on the cross-functional servicewide team created to improve the Files operation.

⁶⁹ Bar coding paper returns and scanning all paper records would reduce storage space at the SPC and FRC facilities and allow more time to efficiently process and track all remaining paper documents that could not be bar-coded or scanned.

MSP
#19**The IRS Miscalculates Interest and Penalties but Fails to
Correct These Errors Due to Restrictive Abatement Policies****Responsible Officials**

Chris Wagner, Commissioner, Small Business/Self-Employed Division
Richard E. Byrd, Jr., Commissioner, Wage and Investment Division
Art Gonzalez, Chief Information Officer

Definition of Problem

The Internal Revenue Code (IRC) imposes a failure to pay (FTP) penalty and interest when taxpayers are unable to pay their liabilities in full by the due dates of their returns.¹ Because of system limitations and human error, the IRS miscalculates the FTP penalty and interest in certain situations that negatively affect many taxpayers each year. A TAS study found that computer-generated miscalculations of FTP penalties could potentially impact about two million taxpayer accounts. The IRS has a manual interest accuracy rate of 67.7 percent, which projects to 151,421 potentially incorrect accounts. While the IRS is aware of this problem, it has resorted to temporary work-around procedures to address miscalculations on a case-by-case basis rather than determining the full scope of the problem and instituting permanent solutions.²

The consequences of these miscalculations are numerous taxpayer burdens, including:

- Incorrect notices;
- Incorrect account payoff balances;
- Calls and letters from the IRS;
- Defaulted installment agreements; and
- Threats of adverse action through lien or levy.

The National Taxpayer Advocate has also identified policies that make it unnecessarily difficult for taxpayers to receive the statutory “reasonable cause” consideration for abatement of the FTP penalty.³ These failures by the IRS have contributed to thousands of complaints annually by taxpayers, practitioners, and IRS employees.

¹ IRC §§ 6651 and 6601.

² IRS, Servicewide Electronic Research (SERP) Alert 07077, *IDRS (CC INTST) and Master File Interest Discrepancy* (Dec. 13, 2006, reissued May 1, 2008, Alert 080194). The alert’s sample may not be statistically valid to project the accuracy rate to the population. However, the alert, which is based on a zero dollar tolerance, clearly shows that interest and FTP penalty calculation errors likely occurred in almost one out of every three accounts, or an accuracy rate of 67.7 percent, which supports the inference drawn in this report.

³ See Treas. Reg. § 301.6651-1(c). For example, the IRS will not abate a FTP penalty for reasonable cause if the taxpayer does not have the ability to pay the tax in full. Internal Revenue Manual (IRM) 20.1.2.1.3(2)(b) (Apr. 25, 2008).

Analysis of Problem

Background

Legal and Procedural Basis for Imposition of the FTP and Interest

The IRS asserts the FTP penalty when taxpayers fail to fully pay their taxes on or before the due dates of their tax returns. Under IRC § 6651(a), the IRS imposes the penalty rate of 0.5 percent per month, up to a maximum of 25 percent in the following instances:⁴

- Failure to pay tax shown on a return, which is calculated from the original due date of the return;⁵ and
- Failure to pay any tax required to be reported on a return that was not reported on the return, and for which the IRS has issued a notice and demand. This penalty does not apply if the amount shown in the notice and demand is paid within 21 calendar days from the date of the notice and demand (or within ten business days if the total balance due is \$100,000 or more). The IRS calculates this penalty from the date that is 21 calendar days, or ten business days, if applicable, after the notice and demand for payment was issued.⁶

Example: A taxpayer who has a tax liability of \$5,000 tax on April 15 and pays \$4,000 timely would be subject to the FTP penalty on the unpaid portion of \$1,000. Under IRC § 6651(a), the maximum penalty would be 25 percent of \$1,000, or \$250.

The FTP penalty is reduced every month by payments made before the day on which the penalty is imposed, and by any credits that are applied against the tax.⁷ Taxpayers who timely filed their returns (taking into account authorized extensions for the time to file) and enter into installment agreements are subject to a decreased FTP penalty rate – 0.25 percent – for any month the agreement is in effect.⁸ After the IRS determines the collection of tax is in jeopardy and issues a notice and demand for immediate payment, or ten days after the IRS issues a notice of intent to levy, it will increase the taxpayer's FTP penalty to one percent per month, double the original rate of 0.5 percent.⁹ However, the IRS will reduce the taxpayer's FTP penalty down to 0.25 percent per month beginning the month after the taxpayer enters an installment agreement following a levy or jeopardy notice.¹⁰

⁴ IRC § 6651(a)(2) and (3).

⁵ IRC § 6651(a)(2).

⁶ IRC § 6651(a)(3); IRM 20.1.2.5.1(1)(a) (Apr. 25, 2008).

⁷ IRC § 6651(b).

⁸ IRC § 6651(h).

⁹ IRC § 6651(d) and IRM 20.1.2.6.1 (June 17, 2008).

¹⁰ IRM 20.1.2.6.1(6) (Apr. 25, 2008).

Miscalculation of the FTP Penalty by the IRS

FTP penalty calculation errors are widespread, whether the IRS computes the amount manually or systemically.¹¹ A 2004 Treasury Inspector General for Tax Administration (TIGTA) report found a 24 percent error rate on manually calculated FTP penalties.¹² In 2008, TAS conducted research to determine the current potential scope of systemically computed penalty and interest miscalculations on taxpayer accounts.¹³ Table 1.19.1 below illustrates the systemic IRS error rate found in a statistically representative sample of taxpayer accounts, in which the IRS has assessed the FTP penalty.

TABLE 1.19.1, FTP Penalty Computation Errors Found In Current Taxpayer Accounts

2007 Total Population Taxpayer Accounts	Miscalculation Rate Observed in Sample	Potentially Miscalculated Taxpayer Accounts
23,886,760	8.3%	1,982,601

TAS observed a systemic FTP penalty and interest error rate of 8.3 percent in the statistically representative test population of 23,886,760 current Individual Master File (IMF) and Business Master File (BMF) taxpayer accounts.¹⁴ A projection of this sample to the total volume of automated IRS accounts shows that these errors would potentially affect about 1,982,601 taxpayer accounts.¹⁵

In the study, TAS found taxpayers who were systemically charged FTP penalties exceeding the maximum rate of 25 percent in direct violation of IRC § 6651, and taxpayers who were not charged the reduced FTP penalty rate due to an installment agreement (0.25 percent).¹⁶ These errors continue to plague taxpayers despite attempts by the IRS to correct programming problems.

Taxpayers face further burden when they must contact the IRS to resolve the erroneous accounts. Inaccurate computations from the program used by the IRS to calculate the FTP and interest accruals can lead the IRS to provide erroneous payoff amounts to taxpayers.¹⁷ When taxpayers are on installment agreements, miscalculated computations can cause defaulted agreements, which lead to additional user fees and the loss of the reduced

¹¹ “Systemically” refers to the IRS’s computer-generated computations. The IRS programs its computers to calculate the FTP penalty from rates determined by IRC § 6651 and procedures explained in the IRM. See generally IRM 20.1.2 (Apr. 25, 2008).

¹² TIGTA, Ref. No. 2004-30-184, *Errors in Failure to Pay Penalty Accounts Occur When the Penalty Is Computed Manually* (Sept. 27, 2004). This report presented the results of the TIGTA review of manually computed FTP penalty amounts.

¹³ FTP penalty population obtained from IRS data in the Compliance Data Warehouse. The statistical sample size observed was 373 with an error count of 31. This sample has a 95% confidence interval ± 2.8 percent.

¹⁴ Margin of error is 2.8 percent at the 95 percent level. Five of the 31 defects occurred on accounts containing a past or present timely filed return with an installment agreement.

¹⁵ This would potentially affect 1,982,601 miscalculated taxpayer accounts when projected across 23,886,760 automated IRS calculations.

¹⁶ IRC § 6651(h).

¹⁷ INTST is the primary program used by customer service representatives, TAS, and the ACS to calculate FTP penalty and interest. The Small Business/Self-Employed Office of Servicewide Interest supports INTST.

FTP penalty rate of 0.25 percent. The rate then doubles (0.5 percent) or quadruples (one percent), depending on the status of the taxpayer's account. The taxpayer may also receive erroneous notices. An example of this occurs when taxpayers who live or work abroad (including military personnel) should receive an automatic 60-day extension of time to file and pay but are sometimes erroneously charged an FTP penalty.¹⁸

Miscalculation of Restricted Interest

The IRS charges interest on a tax deficiency under IRC § 6601 for the time the taxpayer has use of the government's money. Conversely, the IRS pays interest to the taxpayer on an overassessment or overpayment under IRC § 6611 for the time the government has the taxpayer's money. In many instances, the period for which the IRS charges or pays interest to the taxpayer begins on the due date of the return. The interest accrual period is suspended, or "restricted" if certain deductions, credits, or items of income are present.¹⁹

The IRS's Integrated Data Retrieval System (IDRS) cannot identify all conditions involved in a restricted interest account, which means the IRS must manually compute *all* restricted interest.²⁰ IRS procedures require manual interest (restricted interest) calculations in numerous situations, including those where the taxpayer:

- Is located in a designated combat zone;
- Is located in a designated disaster area; or
- Has submitted an offer in compromise that reduces the liability.²¹

Significant Problems Exist Because IRS Computers Cannot Systemically Accrue Restricted Interest on Many Taxpayers' Accounts.

When account penalties and interest do not update automatically, IRS personnel must perform a series of complicated manual transactions that routinely give rise to errors. The IRM lists reasons for restricting interest on a taxpayer's account, but due to the complex and changing nature of interest, the list is not all-inclusive. Thus, the IRM offers only a partial reference for employees seeking to resolve account concerns.²²

¹⁸ See Treas. Reg. § 1.6081-5. U.S. citizens or residents living outside the U.S. and Puerto Rico (including military personnel) are granted an automatic two-month extension of time for filing and paying tax on a return if they attach a statement showing they are entitled to the extension.

¹⁹ IRM 20.2.8.6 (Aug. 1, 2006) lists the deductions, credits, or items of income and the IRC provisions that "restrict interest." Some of the reasons for restricting interest on a tax module are as follows: Forms 2285, *Combination Adjustments*; tax motivated transactions; net rate interest netting; Rev.-Rul. 99-40 (interest on deficiency after overpayment); multiple Form 870 waiver dates; error or delay in ministerial or managerial acts; ascertained date under IRC § 6502; non master file assessments; Forms 8697, *Look Back Method*; estate tax returns; combat zones; offers in compromise; large corporate underpayments; disaster areas; tax modules reinstated from retention; and reversals of gas tax credits.

²⁰ IRM 20.2.8.1(2) (July 31, 2001).

²¹ IRM 20.2.8.6 (Aug. 1, 2006).

²² IRM 20.2.8.6 (Aug. 1, 2006).

The IRM requires qualified IRS personnel to review all manual interest computations of more than \$50,000 in order to verify the accuracy.²³ Given that the restricted interest IRM is complex and the systemic tools for computing interest presents additional challenges, the IRS should reevaluate its current practices so that *all* taxpayers receive accurate interest charges. That is, all taxpayers with manually calculated interest should receive the same accuracy reviews as taxpayers who owe greater than \$50,000 in interest.

TAS researched IRS's databases and found that, as of July 2008, there were 468,795 restricted interest accounts.²⁴ An IRS Office of Servicewide Interest review of previously posted manual interest computations found the accuracy of these calculations to be only 67.7 percent.²⁵ This figure indicates that 32.3 percent of manual interest computations – almost one in three – are incorrect.

By the very nature of the scenarios surrounding restricted interest tax modules and the circumstances that cause these accounts to be restricted, taxpayers should not be subjected to additional burden when the IRS miscalculates manual interest. Based on the current number of restricted interest accounts, a 67.7 percent accuracy rate would project to 151,421 current potentially incorrect manual interest accounts.

Significant Taxpayer Burden Situations Occur When the IRS Miscalculates Penalties and Interest.

The IRS is aware of but has failed to correct many systemic problems that cause penalty and interest miscalculations.²⁶ These incorrect calculations lead numerous taxpayers to believe they have fully paid what the IRS says they owe, only to receive subsequent bills for accruals of interest, penalties, or both. If a taxpayer was planning to refinance his or her home or borrow from a bank or retirement savings under the mistaken belief that the IRS provided a correct final payoff amount, the taxpayer may be unable to raise the additional funds needed to resolve the remaining debt. This could lead to lien or levy action *after the IRS's own calculations led the taxpayer to believe the tax was fully paid*. The IRS could minimize this problem by systemically posting FTP and interest accruals on balance due accounts at least every three months.

The complexity of penalty and interest calculations makes it difficult for the ordinary taxpayer to identify errors in IRS notices and payoff statements. Taxpayers sometimes overpay penalty and interest without ever knowing the IRS made a mistake. Inaccurate penalty and interest calculations also cost the IRS because it must devote resources to refund excess payments or attempt to collect erroneous refunds.

²³ IRM 20.2.8.1(3) (Aug. 1, 2006).

²⁴ Compliance Data Warehouse IMF database. Data compiled from the Individual Master File; transaction code 340 dates between Oct. 1, 2007, and July 31, 2008.

²⁵ See IRS, Office of Servicewide Interest, reviews of previously posted manual interest computations for October 2007 through March 2008; see also Linda Stiff, Deputy Commissioner for Services and Enforcement, Memorandum to Division Commissioners (July 10, 2008).

²⁶ IRM 5.12.6.1.2 (Mar. 15, 2005).

Another example of problematic rework occurs each year during the period known as the “Dead Cycles,” the time from mid-December through the first week of January, when the IRS updates its IDRS computer system.²⁷ During this time, the IRS Masterfile does not allow accruals to taxpayers’ accounts on IDRS. As a result, systemic releases and account accruals do not occur until the “Dead Cycles” updates are complete. Work performed on taxpayers’ accounts during this time may require manual computations that are vulnerable to human error.

Inadequate IRS Training and Software Programming Contribute Significantly to Taxpayer Burden.

Many IRS business units utilize unique tax and interest computation software, containing programming variations for the calculation of the FTP penalty and interest. These differences are exacerbated when IRS employees possess varying degrees of skill and training in these areas.

Until the IRS completes a comprehensive review to verify computer programs that impact penalty and interest assessments are designed and functioning in accordance with law and policy, it will continue to use programs that may not work as intended. The IRS’s continued reliance upon inadequate programming could cause inequitable treatment of taxpayers and over-collection or lost revenue.

FTP Penalty Calculation Errors Can Be Compounded by the IRS’s Restrictive Reasonable Cause Penalty Abatement Policy.

A taxpayer can reduce or eliminate the FTP penalty by showing the failure to pay is due to reasonable cause and not willful neglect.²⁸ Under Treasury Regulation § 301.6651-1(c) (1), an FTP penalty abatement will be considered due to reasonable cause if the taxpayer shows he exercised “ordinary business care and prudence in providing for payment of his tax liability” and, nonetheless, was either unable to pay the tax, or would suffer an undue hardship if he paid on the due date.²⁹ However, the IRS has taken the position that a taxpayer must pay the tax due before it will abate the FTP penalty for reasonable cause.

The IRM provides that, “Generally, the taxpayer must pay the tax due before the Service will abate a FTP penalty for reasonable cause. The penalty and interest continue to accrue until the tax is paid.”³⁰ While IRC subsections 6651(a)(2) and (3) and the accompanying

²⁷ IRM 5.12.6.1.2 (Mar. 15, 2005).

²⁸ IRC § 6651(a)(2) and (3).

²⁹ “Undue hardship” is defined in Treas. Reg. § 1.6161-1(b).

³⁰ IRM 20.1.2.1.3(2)(b) (Apr. 25, 2008). The term “generally” in this IRM section suggests that there might be some situations in which the IRS would agree to consider reasonable cause for the FTP penalty without requiring that the taxpayer first pay the underlying liability. However, the IRS has made clear that in practice it does not make any exception to its “pay first” policy. TAS receives complaints from taxpayers who desire to assert reasonable cause to abate the FTP pay penalty but were denied that opportunity by the IRS because the tax had not yet been paid. In these cases, the crisis that gave rise to the taxpayer’s failure to pay the tax, such as a severe health condition that kept the taxpayer from earning wages, is the same crisis which the taxpayer desires to serve as the basis for the reasonable cause abatement. In April 2007, TAS proposed that the IRS change IRM 20.1.2.1.3(2) to allow reasonable cause to be raised in certain limited situations when the taxpayer’s inability to pay the tax was at issue; however, the IRS refused to do so.

Treasury Regulation § 301.6651-1(c)(1) do not list full payment of the underlying liability as a prerequisite for reasonable cause abatement of the FTP penalty, the IRS enforces such a requirement.³¹ Given this policy, the IRS would not consider the reasonable cause claim of a taxpayer who has a severe health condition preventing him or her from earning income and paying the tax unless the tax is paid in full – which the taxpayer could not do.³² The IRM provides, “There is no statutory requirement that the tax has to be paid in full before a FTP abatement request can be considered or can in fact be made,” but asserts that “there is no statutory requirement that the Service has to consider a FTP penalty abatement before the tax is fully paid.”³³ The IRM states the IRS has decided on the full-pay policy “per administrative discretion in the interests of the taxpayer and the Service.”³⁴ The IRM further asserts that: “These type scenarios do not provide quality taxpayer relations and only serve to multiply confusion.”³⁵ However, the IRM does not explain how refusing to hear the taxpayer’s explanation of reasonable cause, for not being able to pay the tax until the taxpayer pays the tax, encourages voluntary compliance. As this report was being developed, the IRS agreed to change its “pay first” policy. The National Taxpayer Advocate applauds the IRS for this change and looks forward to reviewing the revised policy.

The IRS may feel the abatement policy is in the best interest of tax administration in some cases; however, it is clear that taxpayers with no ability to pay the underlying tax in the foreseeable future are harmed when they are not granted the right to have their reasonable cause abatement claims heard.

Conclusion

It is important that the IRS protects the integrity of taxpayer accounts by accurately calculating the FTP penalty and interest. Too often, its systems fail to accurately calculate these additions to tax. While the IRS’s *intent* to administer the tax law fairly is not in question, the IRS must reduce miscalculations of penalties and interest, and further eliminate frustrating penalty abatement requirements. By reducing these barriers, the IRS will enhance voluntary compliance and taxpayer confidence in the IRS.

The IRS should consider taking the following actions to improve the process of calculating the FTP penalty and interest: include TAS as a partner on any existing teams or working groups concerning any instances in which programs are not functioning in accordance with the intent of the IRM; allocate adequate resources towards planning and programming for its Customer Account Data Engine, IDRS, Financial Management Information System, IMF, and BMF to resolve common penalty and interest computation issues allowing for systemic updates every three months; revise pertinent IRM sections so *all* taxpayers

³¹ IRM 20.1.2.1.3(2)(b) (Apr. 25, 2008).

³² An example taken from a closed TAS case. Taxpayer Advocate Management Information System (TAMIS) Primary Core Issue Code (PCIC) 520.

³³ IRM 20.1.2.1.3(2)(b) (Apr. 25, 2008).

³⁴ *Id.*

³⁵ *Id.*

are entitled to accuracy reviews of interest and penalty calculations; re-evaluate the overly complex restricted interest procedure in the IRM to make certain all taxpayers receive accurate interest charges; and allow taxpayers who have demonstrated the inability to pay the underlying tax the ability to be heard on their claims for reasonable cause abatement of the FTP penalty before the tax is paid.

IRS Comments

The IRS recognizes the need for continual scrutiny of our penalty and interest computations to ensure taxpayers are being treated fairly and assessments are accurate. The Servicewide Penalty and Servicewide Interest policy groups, embedded in the Small Business/Self-Employed Division were formed to uniformly address penalty and interest issues on an agency-wide basis.

The IRS has done much to correct systemic errors that cause penalty and interest miscalculations. All identified systemic conditions resulting in inaccurate calculations are reported to the Servicewide Penalty and Interest groups who meet with Master File and Integrated Data Retrieval System (IDRS) personnel to resolve and correct each reported condition. A cross-functional working group led by Servicewide Penalty and Interest, which includes members from functional areas, Modernization & Information Technology Services, and the Chief Financial Officer, was formed and meets weekly to address identified systemic problems within the penalty and interest programs. Members of this working group conducted a review of Master File programming, including a general random sample of open modules, as well as a sample of modules impacted by the recent implementation of programming changes. The review methodology was designed to confirm that recently implemented programming changes were performing as required under the law and to identify any programming that was not in compliance. The IRS will continue to perform periodic reviews and implement corrective programming to address identified issues.

Solutions to identified systemic differences between Master File and IDRS penalty and interest computations that cannot be fixed under the current processing system are being addressed by modernization efforts, through the use of the Common Services Penalty and Interest Computation Module. Use of a common module for systemic calculations will eliminate computational differences that can arise when more than one program is used to determine overpayment and underpayment interest and penalty amounts.

The IRS agrees that more work can be done to improve the accuracy of manual interest calculations; however, since we have not yet implemented a statistically valid review process, our actual accuracy rate is not known because our sample cannot be projected to the entire population. We are working with Research and Statistics to develop a statistically valid random sampling methodology that is planned for implementation in fiscal year (FY) 2009. We are also working with a vendor to improve a software product used by our employees which assists them with manual interest computations. Several significant en-

hancements of this software are scheduled for implementation this fiscal year. In addition, manual interest training has been updated and will be provided to interest computation functions servicewide. The priority to fully train interest computation personnel, and the availability of on-site assistance from the Servicewide Interest group, was communicated to all functions by the Commissioner in a memorandum dated July 10, 2008.

The IRS has a mandatory review in place of all manual interest computations greater than \$50,000.³⁶ The \$50,000 criterion was set to provide review of large dollar adjustments and to address sizable interest accuracy issues. In addition to this review requirement, all interest calculations, regardless of dollar amount, are subject to a random post review by interest reviewers located in the Servicewide Interest group. Feedback on errors and corrective actions are implemented as a result of these reviews.

There are restricted interest conditions which Master File and IDRS programming can systemically handle. For instance, generally, Master File and IDRS can systemically handle restricted conditions of modules with combat zone, disaster relief, and carryback adjustments stemming from net operating losses. To ensure accuracy, the IRM provides specific instructions for those special situations that require the manual computation and restriction of interest.³⁷

To alleviate any issues that may occur during IDRS “Dead Cycles”, we have included in the IRM instructions on how to handle the processing of adjustments in anticipation of the Dead Cycle timeframe.³⁸ “Dead Cycles” are necessary to provide Master File and IDRS systems the needed time to update computer programming. Processing of interest on underpayments input prior to the Dead Cycles does not in itself require or mandate the manual computation and restriction of interest. However, for overpayments that will complete processing during dead cycles, instructions provide for the issuance of manual refunds to limit the unnecessary accrual of credit interest that would occur by not being able to process refunds during this time period.

In her report, the National Taxpayer Advocate makes five specific suggestions to improve the process of calculating the FTP penalty and interest. The IRS is taking or has taken the following actions with respect to these issues:

We work in conjunction with the TAS Office of Systemic Advocacy to uncover systemic computational errors in our systems or gaps in our procedures. The IRS agrees that, where appropriate, we should include TAS as a partner on teams. We will provide periodic updates to TAS to ensure they are kept abreast of current activities where their active involvement on teams is not warranted.

³⁶ IRM 20.2.8.1 (July 31, 2001).

³⁷ IRM 20.2.8 (Aug. 1, 2006).

³⁸ IRM 21.2.4.3.15 (Jan. 11, 2008).

The IRS agrees to continue devoting resources toward planning and programming for its systems to resolve penalty and interest computation issues. Given the magnitude of this task, we must determine the correct balance of resource usage between updating this infrastructure and conducting day-to-day business. However, we do not have plans to allow for systemic updates every three months. A notice needs to be sent to the taxpayer for penalty and interest accruals to be posted to the taxpayer's account. Currently, the print sites are sending notices annually and can not handle the additional volume that would result from these additional accruals. We do not have the personnel or equipment resources to issue these additional notices.

The IRS threshold for mandatory review of manual interest computations was set at amounts greater than \$50,000.³⁹ The \$50,000 criterion was set to provide review of large dollar adjustments and to address sizable interest accuracy issues. Those not meeting this threshold are subject to our sample review process. Reviewing all manual interest computations is not the best use of our limited resources.

Complex restricted interest procedures are due in great part to the complexity of the IRC and the limitations of our systemic interest capabilities. The IRS will review IRM procedures and simplify restricted interest procedures where appropriate.⁴⁰

The IRS will change its policy of generally requiring the tax be paid before considering reasonable cause abatements. To establish reasonable cause, a taxpayer must make a satisfactory showing that he or she exercised ordinary business care and prudence in providing for payment of his or her tax liability and was nevertheless either unable to pay the tax or would suffer an undue hardship if they paid on the due date.⁴¹ If the taxpayer meets this reasonable cause criteria for not paying the tax when it was due (including any extension of time to pay), the FTP penalty will be abated. IRM 20.1.2 is being updated to reflect this position.

Taxpayer Advocate Service Comments

The National Taxpayer Advocate is pleased that the IRS agrees with the need for continual scrutiny of penalty and interest computations to guarantee taxpayers are treated fairly and assessments are accurate. The IRS response demonstrates that it is trying to be vigilant in its efforts to maintain taxpayers' confidence in the IRS and enhance voluntary compliance.

The National Taxpayer Advocate acknowledges the IRS's proactive efforts to correct systemic errors that cause penalty and interest miscalculations through periodic reviews and

³⁹ IRM 20.2.8.1 (July 31, 2001).

⁴⁰ IRM 20.2.8 (Aug. 1, 2006).

⁴¹ Treas. Reg. § 301.6651-1(c)(1).

corrective programming. The National Taxpayer Advocate applauds the IRS's modernization efforts and looks forward to seeing the impact of the Common Services Penalty and Interest Computation Module on inaccurate penalty and interest computations.

When the IRS makes assessments and provides notices to taxpayers annually rather than at least quarterly, FTP penalty and interest accruals may not post properly to taxpayers' accounts.⁴² Upon request for a payoff amount, an IRS employee must force a posting of the penalty and interest accrual which updates the account.⁴³ If an IRS employee does not monitor the account and the accruals do not post before payment, the IRS may erroneously refund the difference between the balance when the payment is posted and the balance when the proper accruals finally post; which, in turn, could create unnecessary work for the IRS and a tremendous burden for the taxpayer.

For example, the IRS's erroneous refund procedures require sending the taxpayer a notice requesting repayment of the erroneous refund. The taxpayer, who assumed the refund was correct, is then subject to interest charges. This creates unnecessary confusion. Taxpayers would rather pay the correct balance due (as advised by the IRS) rather than receive an erroneous refund notice in the future. While the IRS is reluctant to find the resources to systemically notify taxpayers of accruals every three months, the National Taxpayer Advocate believes these resources are a small cost to protect taxpayers' rights and prevent taxpayer confusion and unnecessary burden.

The National Taxpayer Advocate is pleased that the IRS agrees with the need to improve accuracy of manual interest calculations. We commend the IRS for working with Research and Statistics to develop a statistically valid random sampling methodology to review these calculations.

The IRS states it has a mandatory review in place for all manual interest computations greater than \$50,000.⁴⁴ However, the IRS recently informed its Division Commissioners that the manual interest computation accuracy rate for the first half of FY 2008 was 67.7 percent.⁴⁵ The National Taxpayer Advocate is troubled by this statistic and believes all taxpayers are entitled to the same level of quality reviews for accuracy, regardless of dollar amount. Moreover, it seems the IRS assumes that \$50,000 is the threshold amount to have

⁴² Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2005-30-052, *Procedures Regarding the Failure to Pay Tax Penalty Result in Inconsistent Treatment of Taxpayers and Hundreds of Millions of Dollars in Lost Revenue* (Mar. 18, 2005). IRC § 6303(a) provides that the IRS shall as soon as practicable after making an assessment give notice to each person liable for the unpaid tax. IRC § 6601(e)(2)(A) requires the IRS to assess and issue notice and demand for the FTP penalty before interest is accrued on the penalty. The IRS generally makes this assessment annually. However, for restricted interest and manually calculated penalties, the IRS may assess the penalty and interest more than annually thereby causing disparity between taxpayers whose interest and penalty charges are assessed annually and taxpayers whose interest and penalty charges are assessed manually. The report presented that the IRS would generate more revenue if it assessed penalty and interest and issued notices and demand for payment quarterly rather than annually.

⁴³ Servicewide Electronic Research and Policy (SERP) Alert 07077 (issued Dec 13, 2006).

⁴⁴ IRM 20.2.8.1 (July 31, 2001).

⁴⁵ See IRS, Office of Servicewide Interest, reviews of previously posted manual interest computations for October 2007 through March 2008; see also Linda Stiff, Deputy Commissioner for Services and Enforcement, Memorandum to Division Commissioners (July 10, 2008).

a great impact on a taxpayer's financial well-being. However, for a low income taxpayer, \$100 or \$1,000 can have the same relative economic impact as \$50,000 has for a more affluent taxpayer. If the IRS is trying to consider the taxpayer's perspective, it should impose a mandatory review of *all* manual interest computations.⁴⁶

The National Taxpayer Advocate does not dispute the necessity of "Dead Cycles." However, "Dead Cycles" lead to human error when computing interest and FTP penalties. Because these errors persist, it would be prudent for the IRS to offer clear guidance to customer service employees handling account payoff balances during the "Dead Cycles."⁴⁷

The National Taxpayer Advocate is pleased the IRS will include TAS as a partner on teams, and anticipates updates of current activities where TAS's active involvement on teams is not warranted.

The National Taxpayer Advocate applauds the IRS for agreeing to change its "pay first" policy, as it now allows a reasonable cause abatement to occur before the tax is paid. If the taxpayer meets reasonable cause criteria for not paying the tax when it was due (including any extension of time to pay), the FTP penalty will be abated. The IRS states it is updating IRM 20.1.2 to reflect this position. TAS looks forward to reviewing the revised policy. By reducing many of these barriers, the IRS will enhance voluntary compliance and taxpayer confidence.

Recommendations

The National Taxpayer Advocate recommends that the IRS take the following actions to improve penalty and interest administration:

1. Allocate adequate resources toward planning and programming for the Common Services Penalty and Interest Computation Module, Customer Account Data Engine, IDRS, Financial Management Information System, IMF, and BMF.
2. Resolve common penalty and interest computation and notice issues by allowing for assessments and systemic updates every three months in order to provide current account balance information to taxpayers.
3. Revise pertinent IRM sections to simplify restricted interest procedures and provide for accuracy reviews of interest and penalty calculations to *all* taxpayers.

⁴⁶ This review would provide the additional benefit of helping the IRS to identify all of the problem areas relating to restricted interest.

⁴⁷ In its response, the IRS claims that it has "included in the IRM instructions on how to handle adjustments in anticipation of the Dead Cycle . . .," but the IRM cited in the footnote only discusses how to process a manual refund to avoid interest charges to the IRS. The IRM cited does not discuss how to abate a penalty or adjust an account so that a taxpayer may avoid erroneous interest or penalties during the Dead Cycle.

MSP #20

Inefficiencies in the Administration of the Combined Annual Wage Reporting (CAWR) Program Impose Substantial Burden on Employers and Waste IRS Resources

Responsible Official

Chris Wagner, Commissioner, Small Business/Self-Employed Division

Definition of Problem

The Combined Annual Wage Reporting (CAWR) program ensures that employers accurately report annual wage data to the IRS and the Social Security Administration (SSA). If the IRS discovers a discrepancy in the wage and tax data reported by an employer, it issues a notice to the employer and requests that the employer provide the information necessary to resolve that discrepancy.¹ Employers often experience significant problems when they attempt to reconcile wage and tax discrepancies, including:

- Delays in case resolution;
- Unclear notices and letters that do not help employers reply timely or comply with reporting requirements; and
- Improper assessment of penalties.

These problems lead to downstream consequences that produce rework for the IRS and impose a burden on employers. An increasing number of employers seek assistance from TAS to resolve their CAWR issues. TAS cases increased by 264 percent between fiscal year (FY) 2005 and FY 2008.² In FY 2008, CAWR ranked as the number one issue in cases closed within TAS for large and midsize businesses, tax exempt organizations, and government entities.³

¹ Internal Revenue Manual (IRM) 4.19.4.3.1 (Feb. 1, 2008).

² TAS receipts for CAWR increased from 1,663 cases in FY 2005 to 2,867 cases in FY 2006 to 4,563 cases in FY 2007 to 6,059 cases in FY 2008. This is an increase of 264 percent from FY 2005 to FY 2008. See TAS Technical Analysis and Guidance response to research request (Nov. 10, 2008).

³ In FY 2008, CAWR ranked as the number one issue for cases closed for large and midsize businesses, tax exempt organizations, and government entities seeking assistance from TAS. CAWR is the fourth most common issue driving small business employers to TAS. The relief rates in CAWR cases are 82.5 percent for the Large and Mid-Size Business division (LMSB), 88.7 percent for the Tax Exempt and Government Entities division (TE/GE), and 86.5 percent for the Small Business/Self-Employed division (SB/SE). See TAS Technical Analysis and Guidance response to research request (Nov. 10, 2008); TAS, *Business Performance Review 4th Quarter FY 2008*.

Analysis of Problem

Background

The IRS and the SSA jointly administer the CAWR program, which compares Forms W-2, *Wage and Tax Statement*, and W-3, *Transmittal of Wage and Tax Statements*,⁴ to the Forms 94x series⁵ of employment tax returns. Generally, the purpose of the CAWR program is to ensure employers pay and report the correct amount of Social Security and Medicare taxes, federal income tax withheld, and Advanced Earned Income Tax Credit, and file Forms W-2 with SSA.⁶ An employer's failure to file Forms W-2 accurately and timely can adversely affect employees' individual SSA benefits.

When the IRS discovers a discrepancy between information reported on an employer's employment tax return and the information submitted to the SSA, it researches the issue before contacting the employer. If it cannot resolve the discrepancy internally, the IRS issues a notice advising the employer of the discrepancy and of the potential tax assessment or penalty for intentionally disregarding filing requirements for information returns.⁷

Delays in Case Resolution Due to Lack of Proper Inventory Management Controls

In 2006, the IRS began to consolidate the CAWR program in three campuses – Cincinnati, Memphis, and Philadelphia. Presumably, one goal of consolidation was to improve efficiency by developing and concentrating CAWR expertise. However, as shown in Table 1.20.1, the IRS has experienced a significant backlog of CAWR cases at these campuses in recent years.

TABLE 1.20.1, Percent of Overage CAWR Cases by Campus, FY 2006 - 2008⁸

Campus	FY 2006	FY 2007	FY 2008
Cincinnati	71.9%	65.5%	23.9%
Memphis	6.2%	71.7%	34.5%
Philadelphia	19.7%	13.4%	51.3%

TAS case advocates, employers, and practitioners report delays of six to 11 months in resolving cases.⁹ These delays leave employers in limbo about the status of their cases and

⁴ Forms W-2 and W-3 are the most common forms employers use to report wages paid to employees. Employers file these statements with the SSA. Other statements, including Form 1099-R, *Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRA, Insurance Contracts*, and Form W-2G, *Certain Gambling Winnings*, are filed with the IRS.

⁵ The Forms 94x series includes Forms 941 (*Employer's Quarterly Federal Tax Return*), 943 (*Employer's Annual Tax Return for Agricultural Employees*), 944 (*Employer's Annual Federal Tax Return*), and 945 (*Annual Return of Withheld Federal Income Tax*). Taxpayers file Schedules H (*Household Employment Taxes*) with Forms 1040 (*U.S. Individual Income Tax Return*) or 1041 (*U.S. Income Tax Return for Estates and Trusts*).

⁶ IRM 4.19.4.1 (Feb. 1, 2008).

⁷ IRM 4.19.4.3.1 (Feb. 1, 2008).

⁸ SB/SE response to TAS research request (Oct. 23, 2008).

⁹ The TAS Office of Systemic Advocacy received several advocacy issues concerning lengthy delays in case resolution. See Systemic Advocacy Management System (SAMS).

may expose them to inappropriate collection action.¹⁰ The IRS should develop internal management controls and adequately staff the program to prevent such backlogs of CAWR cases.

We are encouraged that the IRS recognizes the problem in the current procedures for working CAWR cases. TAS and the Small Business/Self-Employed division (SB/SE) established a team to study the effect of the CAWR program on TAS case receipts. The team will review CAWR processes, identify systemic problems, and discuss potential solutions.

IRS CAWR Notices Are Unclear and Do Not Necessarily Help Employers Comply

Screening is one of the most important aspects of CAWR case processing. The IRS conducts extensive research up front, working to resolve the discrepancy and avoid unnecessary contact with the taxpayer.¹¹ When the IRS does contact the taxpayer, however, the CAWR notices and letters are unclear and often leave employers unable to identify the cause of the discrepancy. For example, suppose an employer reports both wage and non-wage information returns. The employer files Forms W-2, Forms 1099-R, and Forms 941 for a tax year. The IRS issues a notice of a discrepancy and asks the employer to provide the information necessary to resolve that discrepancy.¹² The notice lists the total amounts reported on all forms (W-2, W-2G, 1099-R, and 1099-G) and includes a breakdown of the amounts of Social Security wages, Medicare wages, and income tax withheld, but does not specifically identify the discrepant data. This lack of specificity forces the employer to review all of its records, which can be time-consuming and costly. When employers have to spend a significant amount of time researching past years' tax information, they may not be able to respond timely. The employer has 45 days to respond to the CAWR notices.¹³

When the IRS issues unclear notices, it increases the chance that taxpayers will not respond timely. Table 1.20.2 below indicates a significant number of employers respond late or not at all to CAWR notices.

¹⁰ Under IRM 21.7.1.4.6.4 (Jan. 1, 2005), the IRS can take payments from one affiliated taxpayer account or tax period to satisfy an unpaid balance on another affiliated taxpayer account or tax period. It also allows offset to past due federal agency debts in some situations. This practice can lead to much work "unwinding" unnecessary credit transfers that could have been avoided if the IRS had promptly resolved the original problem.

¹¹ IRM 4.19.4.2 (Feb. 1, 2008).

¹² IRM 4.19.4.3.1 (Feb. 1, 2008).

¹³ IRM 4.19.4.3.1(3) (Feb. 1, 2008).

TABLE 1.20.2, Response to CAWR Notices¹⁴

Fiscal Year	Notices Issued	Replies	Late Replies ¹⁵	No Replies	Undeliverable Notices
2006	272,105	70,586	107,415	92,708	8,468
2007	275,472	88,103	118,196	128,389	17,146
2008	358,162	76,712	162,232	121,957	14,056

The low taxpayer response rate clearly indicates the IRS has an opportunity to improve notices sent to employers. For example, the CAWR notices do not provide employers an option to speak to employees in the CAWR units (who have done the screening, conducted extensive research, and issued the notice), but instead provide a toll-free number answered by an automated system. While the employer may reach a live assistor, the assistor is not able to provide additional guidance but simply advises the employer to respond to the notice immediately.¹⁶ Moreover, the live assistor does not have access to the CAWR Automated Program system¹⁷ and in many cases must refer the matter to the CAWR Unit.¹⁸ Further, the IRS does not send copies of these discrepancy notices to employers' representatives (including reporting agents). Due to a systemic limitation, the representatives do not get the pre-assessment notices.¹⁹

Improper Assessment of Penalties Leads to Subsequent Abatement

Employers are required to file complete and accurate information returns in a timely manner.²⁰ Internal Revenue Code (IRC) § 6721(a) provides for a penalty for failure to file correct information returns. The penalty is imposed for a failure to file an information return on or before the due date, or a failure to include all of the information required on the return or the inclusion of incorrect information. Generally, the penalty imposed under IRC § 6721(a) is \$50 for each return with respect to which a failure occurs, to a maximum of \$250,000 per filer per year.²¹ There are exceptions to the imposition of the penalty and to the maximum amount of the penalty in cases where the filer corrects the failure within

¹⁴ See SB/SE response to TAS research request (Oct. 23, 2008). The table includes data about the notices IRS sends in IRS-CAWR and SSA-CAWR cases. An IRS-CAWR case involves underpayment of taxes or excess withholding of Federal Income Tax or Advance Earned Income Credit. An SSA-CAWR case is generated when an employer does not file proper wage and tax statements (Forms W-2) which adversely affect individuals' retirement benefits.

¹⁵ Late replies are cases in which the employer's response is received by the IRS after the initial case is closed on the CAWR Automated Program (CAP system). Late replies consist of current tax years and prior tax years. See IRM 4.19.4.6 (Feb. 1, 2008).

¹⁶ IRM 4.19.4.11.1 (Feb. 1, 2008).

¹⁷ The CAWR cases identified by IRS and SSA are stored on the CAWR Automated Program (CAP) system. The CAP system acts as an audit trail of all actions taken on the cases worked by IRS. See <http://www.irs.gov/privacy/article/0,,id=139361,00.html> (last visited Nov. 21, 2008).

¹⁸ IRM 4.19.4.11.1-2 (Feb. 1, 2008).

¹⁹ However, employers' representatives receive copies of the notice of penalty assessment (the CP 215 notice). See SB/SE Issue Management Resolution System, Issue No. 06-0000130.

²⁰ IRC § 6724(d)(1)(A)(vii) defines the term information return as any statement of the amount of payments to another person required by IRC § 6051(d) (relating to information returns with respect to income tax withheld). IRC § 6051(d) provides that a Wage and Tax Statement (Form W-2) constitutes an information return.

²¹ IRC § 6721(d) provides lesser penalty amounts for taxpayers (i.e., small businesses) with gross receipts of \$5 million or less.

a specified time, the failure to include information is *de minimis*, or the filer's gross receipts do not exceed certain amounts.²²

IRC § 6721(e) provides for a higher penalty in the case of failures due to intentional disregard of filing requirements for information returns. "Intentional disregard" is defined as "knowing or willful."²³ Whether a person knowingly or willfully fails to file timely or fails to include correct information is determined on the basis of all the facts and circumstances in the particular case.²⁴ The penalty is the greater of \$100 per form required to be filed or ten percent of the total amount required to be reported on the information returns.²⁵ There is no set maximum amount for this penalty.²⁶

SB/SE recently updated its guidance on CAWR case procedures and the application of late filing penalties under IRC § 6721.²⁷ This update has led to inconsistent application of penalties, including multiple penalty assessments for single infractions. TAS case advocates are reporting increasing number of cases involving inconsistent treatment of employers.²⁸ Cases with similar fact patterns and proof of timely filing are sent to various campuses, with very different results.

Table 1.20.3 shows the total assessments and abatements of the IRC § 6721(e) intentional disregard penalty for FY 2003 to FY 2008.²⁹ On average, 81 percent of the penalty dollar amounts and 39 percent of the number of penalties assessed are later resolved, reduced, or abated.

²² IRC §§ 6721(b) - (d).

²³ Treas. Reg. § 301.6721-1(f)(2).

²⁴ Treas. Reg. § 301.6721-1(f)(2)(ii).

²⁵ IRC § 6721(e)(2)(A) and Treas. Reg. § 301-6721-1(f)(4).

²⁶ Treas. Reg. § 301.6721-1(f)(4) and (5) sets forth the rules and regulations for determining the amount of the penalty, the applicable statutory percentages and, how to compute the penalty.

²⁷ IRM 4.19.4, CAWR Reconciliation Balancing, was updated in February 2008.

²⁸ Since the change in policy, the TAS Office of Systemic Advocacy has received several advocacy issues regarding the application of the penalty, including issues concerning the inconsistent treatment of employers at the campuses. See SAMS.

²⁹ The National Taxpayer Advocate's 2003 Annual Report to Congress included penalty data from 1998 to 2002.

TABLE 1.20.3, Analysis of Assessment and Abatement of IRC § 6721(e)³⁰

Fiscal Year	Number of Assessments	Penalty Assessments	Number of Abatements	Abatement Amounts	Percent of Assessments Abated	Percent of Dollars Abated
2008	90,400	\$1,673,461,062	16,313	\$843,154,686	18.05%	50.38%
2007	145,508	\$2,544,823,429	57,019	\$2,044,439,852	39.19%	80.34%
2006	76,111	\$3,512,608,088	32,448	\$3,258,809,072	42.63%	92.77%
2005	104,994	\$2,843,505,108	44,321	\$2,522,471,493	42.21%	88.71%
2004	95,345	\$2,157,423,272	42,592	\$1,905,064,051	44.67%	88.30%
2003	117,096	\$1,872,673,195	55,357	\$1,615,361,239	47.27%	86.26%

The frequent abatement of penalty assessments under IRC § 6721(e)(2)(A), for intentional disregard of the filing requirements for information returns, indicates a serious problem with the administration of this penalty. In the 2003 Annual Report to Congress, the National Taxpayer Advocate expressed concern about premature CAWR assessments of tax and penalty, and subsequent abatements.³¹ The IRS has also recognized that CAWR assessments and subsequent abatements are a serious problem. In March 2007, the Large and Mid-Sized Business division (LMSB) analyzed CAWR cases involving its taxpayers that included assessment of tax and penalties,³² and found the IRS ultimately abated or significantly adjusted 90 percent of the penalties.³³ The assessment and subsequent abatement of penalties causes substantial rework for the IRS. It affects business results and customer satisfaction because securing the abatements requires substantial resources. Not only does the improper assessment of CAWR penalties cause a serious drain on IRS resources, it also imposes an unnecessary burden on employers.

Downstream Consequences Lead to Increased Rework for the IRS

Significant downstream consequences can emerge when the IRS does not timely resolve tax issues. Potential consequences may include repeat contacts on the same issue, the need for TAS assistance, revenue loss, and possible costs of enforcement such as collection activity and appeals.³⁴

Delayed resolution of wage and tax discrepancies negatively affects a variety of corrective actions to an employer's account. Correspondence delays generate additional follow-up contacts from employers, including multiple submissions of information and requests for

³⁰ IRS Enforcement Revenue Information System (ERIS), *IRC § 6721 Penalty Data on Intentional Disregard Penalty* (Sept. 30, 2008). ERIS captures data on civil monetary penalties.

³¹ See 2003 National Taxpayer Advocate Report to Congress 220-226.

³² LMSB CAWR Briefing (Mar. 2, 2007).

³³ *Id.*

³⁴ IRS, *Taxpayer Assistance Blueprint, Phase II*, at 53.

abatements, calls to the toll-free lines, and referrals to TAS – all of which mean re-work for the IRS.

The downstream impact on employers is reflected in the increasing volume of TAS cases involving wage reconciliation. Although SB/SE worked aggressively to reduce the open CAWR inventory and close overage cases by the end of 2007,³⁵ TAS continues to see growth in CAWR cases. TAS has experienced a 264 percent increase in cases received on CAWR issues from FY 2005 through FY 2008.³⁶ In FY 2007 and 2008, the number of related SAMS submissions increased considerably compared to FY 2005 and FY 2006.³⁷ These increases clearly indicate that many taxpayers are unable to resolve their problems and issues through normal IRS channels. The prolonged process of reconciling wage and tax returns adversely affects employers. The delays in case processing discussed above are an undue burden facing employers when they try to resolve wage reporting discrepancies.

Conclusion

IRS Commissioner Douglas Shulman frequently compares the service the IRS provides with that of other financial institutions. When interacting with a bank or brokerage firm, customers want to spend the least amount of time conducting their transactions. Likewise, the Commissioner stated, “the IRS should do everything possible to make it easy for taxpayers who are trying to navigate the organization, get answers to questions, pay their taxes, and get on their way.”³⁸ To achieve this goal in the CAWR program, the IRS should consider providing specific information about the wage reporting discrepancy on notices and letters to enable employers to more quickly respond to CAWR correspondence; including the phone number to the CAWR unit on notices and letters so that employers may contact a live assistant; and continuously training employees on when it is appropriate to assess CAWR penalties, thereby minimizing the need for penalty abatements.

IRS Comments

The IRS has taken significant steps to improve the overall effectiveness of the CAWR program. A one-time inventory backlog has been eliminated, the volume of overage cases has declined considerably, abatement rates continue to trend downward, and the quality of case actions continues to improve. The IRS is dedicated to building upon these successes and will continue to explore opportunities to improve the CAWR program.

³⁵ See SB/SE Business Performance Review 35 (Aug. 13, 2007).

³⁶ TAS case receipts for CAWR increased from 1,663 cases in FY 2005 to 2,867 cases in FY 2006 to 4,563 cases in FY 2007 to 6,059 cases in FY 2008. This is an increase of 264 percent from FY 2005 to FY 2008. See TAS Technical Analysis and Guidance response to research request (Nov. 10, 2008).

³⁷ TAS Office of Systemic Advocacy received 14 advocacy issues regarding CAWR in FY 2007 and 14 more issues in FY 2008, a significant increase over the six issues received in FY 2005 and the five in FY 2006. The advocacy issues describe the problems as backlogs of CAWR casework and taxpayer correspondence, premature collection and enforcement actions, and inconsistent application and treatment of CAWR civil penalty cases at the campuses. See SAMS.

³⁸ Remarks of IRS Commissioner Douglas Shulman Before the American Bar Association, at <http://www.irs.gov/irs/article/0,,id+18280,00.html> (last visited Oct. 24, 2008).

Recent actions taken by the IRS have produced notable improvements. To address an inventory backlog and alleviate taxpayer burden, the IRS implemented programming changes to prevent erroneous workload downloads. The IRS worked one-on-one with Reporting Agents affected by the backlog and provided expeditious handling of their clients' cases. The IRS established performance improvement milestones for the impacted campus and continuously monitors progress. As a result of these efforts, inventory backlogs in the CAWR program have been eliminated and overage casework has trended downward consistently over the past several months as shown in the chart below.³⁹

TABLE 1.20.4, CAWR Overages FY 2007-2008

Month Ending	FY 07 Overage	FY 08 Overage	FY 08 vs. FY 07
March	35,291	29,115	-17.5%
April	30,309	23,669	-21.9%
May	24,696	16,808	-31.9%
June	65,959	11,741	-82.2%
July	58,614	11,346	-80.6%
August	59,219	14,859	-74.9%
September	45,588	28,343	-37.8%

The IRS has taken steps to improve CAWR correspondence and has identified a number of system enhancements that focus specifically on improvements to CAWR notices. During FY 2010, copies of CAWR notices will automatically be sent to taxpayers' authorized representatives, interim letters to acknowledge the receipt of taxpayer correspondence will be systemically generated, and notice content and clarity will be improved through the use of case specific notice paragraphs. The IRS has also established a Taxpayer Correspondence Team (TaCT). Participants represent agency wide program areas, including CAWR/FUTA. The objective of the team is to further improve understandability and clarity of IRS notices and correspondence.

The IRS has bolstered outreach efforts to educate taxpayers on the importance of responding timely to CAWR Notices. Information was added to www.irs.gov on responding to SSA-CAWR Notices.⁴⁰ An article was included in the fall 2008 edition of the SSA/IRS Reporter linking the reader to the www.irs.gov for tips on responding to CAWR notices. Finally, the IRS developed and distributed background information about the CAWR program as well as a guide for responding to SSA-CAWR notices to the Reporting Agent community including the National Payroll Reporting Consortium, Independent Payroll Providers Association, and the American Payroll Association.

³⁹ Source: Compliance Inventory Reports (CIR).

⁴⁰ IRS, *Combined Annual Wage Reporting Missing Form W-2 Inquiries*, at <http://www.irs.gov/businesses/small/article/0,,id=182835,00.html>.

From 2003 through 2007, the percentage of penalty abatements decreased from 47 percent to 31.8 percent.⁴¹ In 2008, the abatement rate fell to 18.05 percent.⁴² The downward abatement trend is expected to continue as a result of outreach efforts and clarified case processing guidance.⁴³ The downward trend is also attributable to the collaborative efforts between SB/SE and LMSB to develop and implement an improved referral process between CAWR and the Large Corporation Technical Units (LCTUs). The refined process allows CAWR to resolve more large corporate case discrepancies prior to issuing a notice.

The IRS acknowledges that the download of unplanned inventory by campus operations did influence a one-time increase to CAWR-related TAS casework. As noted earlier, this backlog has now been eliminated. However, the IRS has concerns with the accuracy of the CAWR TAS case volumes and percentage increases noted in the National Taxpayer Advocate's report. In March 2008, IRS headquarters began collaborative efforts with TAS to address the increase in CAWR and FUTA related TAS cases. During related discussions, the IRS found that TAS case volumes attributed to the CAWR program on the Taxpayer Advocate Management Information System (TAMIS) included non-CAWR casework from at least four other IRS programs. The IRS also reviewed a sampling of 25 cases that TAS provided as CAWR/FUTA cases and found that 32 percent were unrelated to either CAWR or FUTA.

In her report, the National Taxpayer Advocate makes three specific suggestions to improve the CAWR program. The IRS has taken or is taking the following actions with respect to these suggestions:

As noted in the National Taxpayer Advocate's report, CAWR notices include several pieces of information. The notices provide information on discrepancies between the amounts reported to the IRS on employment tax returns and the corresponding amounts submitted on Forms W-2, W-2G, 1099-R, and 1099-G for each of the following fields:

- Social Security Wages;
- Social Security Tips;
- Medicare Wages;
- Federal Income Tax (FIT) Withheld; and
- Advanced Earned Income Credit (EIC) Payments.

These items are reported as overall totals on the employment tax returns. When the sum total of the corresponding amounts the taxpayer reports to the IRS on Forms W-2, W-2G, 1099-R, and 1099-G do not match the employment tax return, a notice is issued. Due to the aggregate reporting on the employment tax returns, the IRS is unable to determine the

⁴¹ See Table 1.20.3, *supra*.

⁴² IRS ERS, *IRC § 6721, Penalty Data on Intentional Disregard Penalty* (Sept. 30, 2008).

⁴³ IRM 4.19.4.6.1(6) – Late Replies Addressing SSA-CAWR Penalties.

specific information return(s) that may be the source of the mismatch. The IRS also does not know whether the mismatch was due to misreporting on the employment tax returns or the information return(s). Therefore, additional specificity to identify the discrepant data as suggested by the National Taxpayer Advocate is not possible.

The IRS has been exploring the feasibility of establishing a unique toll-free telephone number for use in the CAWR program. While this is being pursued, taxpayers who call the current business toll-free customer service number can speak to a customer service representative (CSR). Through the Integrated Data Retrieval System, CSRs have access to the same information that is available to CAWR program employees on the CAWR Automated Program (CAP) System. In addition, the CAWR handbook, IRM 4.19.4, includes an entire section that provides CSRs with guidance needed to respond to CAWR related inquiries.⁴⁴ Finally, until a CAWR program toll-free telephone number is available, the IRS will continue to use the current business toll-free customer service number on CAWR notices.

Clarifications regarding the late filing/intentional disregard penalties were finalized and included in the February 2008 CAWR handbook revision.⁴⁵ Related training materials were similarly updated to correspond with the clarified IRM guidance. The IRS did discover isolated instances where examiners, in one campus, had misinterpreted the updated instructions and were inappropriately attempting to apply multiple penalty assessment for single infractions. Upon discovery, IRS took immediate action to ensure the guidelines were being applied appropriately. We believe these efforts have sufficiently resolved the previous training issues.

Taxpayer Advocate Service Comments

The IRS should make it easier for employers to report wage and tax data and reconcile discrepancies. The National Taxpayer Advocate commends the IRS for its efforts to eliminate the backlog of inventory, reduce overage cases, and drive down penalty assessment and subsequent abatement rates. These are important steps to improving the efficiency of the CAWR program.

The IRS suggests that the increase in CAWR-related TAS casework was a one-time event attributable to the download of unplanned inventory by campus operations. The National Taxpayer Advocate does not agree with the IRS's perception that the rise in CAWR cases was due to a one-time event. An analysis of TAS case issues and feedback from taxpayers and practitioners suggests other factors contributed to the increase in TAS casework. As noted above, TAS case receipts involving CAWR issues went up 264 percent between

⁴⁴ IRM 4.19.4.11, IRS-CAWR/SSA-CAWR – CSR Information.

⁴⁵ IRM 4.19.4.

FY 2005 and FY 2008. During this period, TAS case advocates, employers, and practitioners complained about delays in case processing and repeated requests for documentation. In March 2008, SB/SE identified the lack of adequate clerical procedures and inventory management controls as reasons for the backlog.⁴⁶ TAS analysis of recent CAWR cases identifies the administration of penalties imposed under IRC § 6721(a) and (e) as a common issue. In our view, the problems with the CAWR program cannot be attributed solely to a one-time event.

The IRS noted that it worked one-on-one with reporting agents affected by the backlog to expedite the handling of their clients' cases. We commend the IRS for conducting this outreach, but what about the employers who were not represented by reporting agents? When significant delays occur in case processing, the IRS must communicate with all affected taxpayers – represented or otherwise.

The IRS states penalty abatements fell to 18.05 percent in FY 2008. We note that this figure refers to the percentage of assessments abated; the percentage of dollars abated in FY 2008 was still over 50 percent (50.38 percent).⁴⁷ We further note that both assessments and dollars abated will almost certainly increase over time. For example, the FY 2008 number for assessments abated was 10.7 percent and the percent of dollars abated was 17.8 percent as of March 2008.⁴⁸ By September 2008, the number of cases with penalty abatements had risen 7.35 percent while dollars abated increased 32.58 percent.

The IRS expressed concerns about the accuracy of the volume of TAS case receipts and the percentage of increases noted above, pointing to a review of 25 TAS cases that found 32 percent (eight cases) were unrelated to CAWR or FUTA. TAS provided the IRS with this sample of 25 cases for the TAS-IRS CAWR and FUTA Rework Study. The purpose of this small sample was to help TAS and the IRS develop a data capture instrument for the study. Further review of the eight cases shows the cases did involve a CAWR, FUTA, or civil penalty issue in at least one tax period. Most of these cases involved multiple tax periods and multiple issues.

The National Taxpayer Advocate commends the IRS on its efforts to improve the clarity and the content of CAWR notices and letters. However, the IRS can and must do more to communicate clearly about the CAWR program and the applicable penalties. The notices should include information that will help employers understand how to reply and provide documentation to resolve discrepancies.

⁴⁶ To remedy this problem, SB/SE created an IRM for clerical operations and program control guide. See IRM 4.19.22 (Apr. 2, 2008); FY 2008 CAWR Control Directions.

⁴⁷ See Table 1.20.3, Analysis of Assessment and Abatement of IRC § 6721(e), *supra*.

⁴⁸ IRS ERIS, *IRC § 6721 Penalty Data on Intentional Disregard Penalty* (Mar. 31, 2008).

Recommendations

The National Taxpayer Advocate recommends the IRS take the following actions to improve the CAWR program:

1. Redesign CAWR notices and letters to include specific information about the wage reporting discrepancy to enable employers to respond more quickly, or provide employers with more time to respond.
2. Include a toll-free telephone number for the CAWR unit on notices and letters so employers can contact a live IRS employee.
3. Provide regular refresher training for employees on when it is appropriate to assess CAWR penalties, incorporating examples culled from inventory showing when it is and is not appropriate to impose the penalty.

Status Update: The IRS's Private Debt Collection Initiative is Failing in Most Respects

Status Update: The IRS's Private Debt Collection Initiative is Failing in Most Respects

Responsible Official

Chris Wagner, Commissioner, Small Business/Self-Employed Division

Definition of Problem

In congressional testimony this past year, the National Taxpayer Advocate reiterated her call for repeal of the IRS's authority to use private collection agencies (PCAs) to collect delinquent taxes, citing numerous deficiencies and concerns with the initiative.¹ Most of the deficiencies still exist and several new concerns have arisen:

- Data analysis shows that PCAs are less efficient than the IRS at resolving taxpayers' cases;
- Taxpayers would be better served if the IRS Collection function intervened quickly – before liabilities balloon because of accumulating interest charges to the point where more taxpayers cannot afford to pay them – rather than sending cases to PCAs, where cases seem to languish;
- After working with the PCAs for several years, the IRS has not identified any “best practices” from the agencies that it finds worthy of adoption; and
- Long-term risks to taxpayer rights and taxpayer privacy remain.

Because PCAs do not have the authority to determine or negotiate the amount of a taxpayer's liabilities, the only cases PCAs can resolve are those in which there is no dispute about the liability amount. Cases that fit the criteria for PCA referral are quite limited. Thus, while the IRS collected \$2.7 trillion in fiscal year (FY) 2007 overall,² the IRS has been devoting significant time, energy, and dollars toward maintaining a program that brought in only \$37 million on a gross basis (before subtracting the operating costs of the program, the commissions of up to 25 percent paid to the PCAs, and indirect payments) in FY 2008.³ Taking into account the opportunity costs of spending appropriated funds on the private debt collection (PDC) program instead of spending those funds on more productive IRS Collection activities, the PDC program is probably causing a net reduction in federal revenue, which obviously defeats the purpose of the program. IRS data now show that the IRS's Collection function outperforms the PCAs in almost every way.

¹ Internal Revenue Service FY 2009 Budget Request: Hearing Before the Senate Subcomm. on Financial Services and General Government Committee on Appropriations, 110th Cong. (Apr. 16, 2008) (statement of Nina E. Olson, National Taxpayer Advocate).

² IRS, FY 2007 Data Book, Table 1.

³ IRS, Filing and Payment Compliance Advisory Council (Oct. 20, 2008).

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Analysis of Problem

Background

Since the inception of the PDC program in 2002, the National Taxpayer Advocate has expressed concerns about the initiative and has identified it as a serious problem in her last three Annual Reports to Congress.⁴ In these reports and in prior testimony, the National Taxpayer Advocate raised questions about cost effectiveness, transparency, inventory issues, training, privacy, and taxpayer rights.⁵ The IRS has attempted to address several of these issues by including TAS in the development of training materials and posting the PCA Policy and Procedures Guide on IRS.gov.⁶ However, despite the IRS's best efforts to make the initiative a success, its own Collection function can resolve taxpayer cases more efficiently and can better protect taxpayer rights.

The IRS Collection Function Is More Efficient at Resolving Taxpayer Cases.

Data analysis now shows that the IRS Collection function performs much better than the PCAs. The Automated Collection System (ACS), which is responsible for locating taxpayers by correspondence and phone and attempting to collect unpaid tax liabilities, is similar to the PCAs in design and purpose. TAS used data from the IRS's Cost Effectiveness Study, which has not yet been finalized and is still under IRS review, and compared PCA inventory to ACS cases that are very similar to cases worked by the PCAs, such as those involving relatively low dollar amounts or those in which the taxpayer cannot be contacted.⁷ The results were striking: ACS performed substantially better, collecting *three times* as much as the PCAs (*i.e.*, ACS collected 13 percent of the balance due while PCAs collected four percent of the balance due).⁸

Moreover, ACS performed better at working "PCA-like" inventory than at working its so-called "next best case" inventory.⁹ Totally apart from the PDC program, this finding could and probably should have a dramatic impact on the way the IRS prioritizes its collection cases. The IRS has repeatedly stated that if given additional funding for collection activities, it would not choose to work the types of cases it assigns to the PCAs. Instead, the IRS

⁴ See National Taxpayer Advocate 2007 Annual Report to Congress 411; National Taxpayer Advocate 2006 Annual Report to Congress 34; National Taxpayer Advocate 2005 Annual Report to Congress 76. For a discussion of the National Taxpayer Advocate's initial position on the Private Debt Collection initiative, see *IRS Use of Private Debt Collection Agencies by the IRS: Hearing Before the Subcomm. on Oversight of the H. Comm. Ways and Means*, 108th Cong. (May 23, 2003) (statement of Nina E. Olson, National Taxpayer Advocate).

⁵ See National Taxpayer Advocate 2007 Annual Report to Congress 411; National Taxpayer Advocate 2006 Annual Report to Congress 34; National Taxpayer Advocate 2005 Annual Report to Congress 76; *Internal Revenue Service Operations and FY 2009 Budget: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways and Means*, 110th Cong. (Mar. 13, 2008) (statement of Nina E. Olson, National Taxpayer Advocate), and *Internal Revenue Service FY 2009 Budget Request: Hearing Before the Subcomm. on Financial Services and General Government of the S. Comm. on Appropriations*, 110th Cong. (Apr. 16, 2008) (statement of Nina E. Olson, National Taxpayer Advocate).

⁶ IRS, *Private Collection Agency (PCA) Policy and Procedures Guide*, at <http://www.irs.gov/pub/irs-pdf/p4708.pdf> (July 1, 2008).

⁷ IRS response to TAS research request (Nov. 10, 2008). ACS worked cases similar to the types handled by PCAs, which are: shelved, low priority, or unable to locate or contact delinquency cases with balances due less than \$100,000.

⁸ IRS response to TAS research request (Dec. 19, 2008).

⁹ The next best cases are cases that the IRS has prioritized and usually involve high dollar balances due of less than \$100,000 for the Wage and Investment (W&I) Division and less than \$100,000 for the Small Business/Self-Employed (SB/SE) Division.

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has maintained it has a large category of cases that it currently lacks the resources to work, but that it believes would generate a higher return on investment than the cases being assigned to the PCAs. In general, the IRS has used the dollar amount of the balance due as a primary factor when prioritizing cases. However, data suggests the IRS business rules for determining the “next best cases” are far off the mark. While ACS collected 13 percent of the balance due when working “PCA-like” inventory, it brought in just two percent of the balance due for Wage and Investment (W&I) Division inventory and four percent for Small Business/Self-Employed (SB/SE) Division inventory when working what the IRS has heretofore considered its “next best case” inventory.¹⁰ This finding suggests that waiting until liabilities become large is not only bad for taxpayers but bad for revenue collection as well. It suggests that working the current inventory, even where the liabilities involve lower dollar amounts, may be more productive than waiting until interest charges accrue to the point where it is more difficult for the taxpayer to satisfy the tax debt.¹¹

IRS Early Intervention Is More Beneficial to Taxpayers than Having Their Cases Sit in the PCAs' Inventory.

As the above statistics illustrate, the IRS is very successful when it takes action on smaller liabilities, which also enables the taxpayer to resolve his or her liability before penalties and interest accumulate. Having the IRS work these cases upfront, rather than waiting for the penalties and interest to balloon high enough for the IRS to deem them a priority, is better for the taxpayer and is consistent with the IRS's Strategic Plan.¹² The National Taxpayer Advocate believes that prioritizing cases according to the greatest balance due amount, rather than intervening early, harms taxpayers and impacts voluntary compliance. Therefore, we believe the IRS should rethink this approach to prioritizing cases as a first step toward meeting the goals established in its Strategic Plan to “expedite and improve issue resolution” and to deliver “improved service to make voluntary compliance easier.”¹³

While the IRS resolved PCA-like cases efficiently in the cost effectiveness test, the PCAs are permitting cases to linger unresolved. Of the 181,210 modules placed with the PCAs through March 2008, only 36,000 (about 20 percent) have been resolved. This suggests that over 145,000 modules have remained unresolved in PCA inventory for at least six months, in addition to another 107,000 modules assigned during the last half of FY 2008.¹⁴ Since 62 percent of collections typically occur within the first six months, the most lucra-

¹⁰ IRS response to TAS research request (Dec. 19, 2008). In addition to collecting a higher percentage of the balance due on the “PCA-like” inventory, ACS also collected over eight times as many actual dollars from the “PCA-like” inventory than from W&I or SB/SE next best case inventory.

¹¹ See National Taxpayer Advocate 2006 Annual Report to Congress 68-69. As noted in the 2006 report, IRS data provides ample evidence to suggest the IRS may not be working its optimal inventory, and collecting newer, lower dollar inventory is more effective than working older, higher dollar inventory.

¹² IRS, *Strategic Plan 2009-2013: Overview*.

¹³ *Id.*

¹⁴ PCA inventory at the end of FY 2007 = 107,544 + 73,666 PCA receipts through March FY 2008 = 181,210 cases available for PCAs to work through March FY 2008. FY 2008 dispositions include 25,808 full pay cases, 6,547 installment agreements (IAs), 1,800 cases reported as currently not collectible, and 1,630 closed because the taxpayer was deceased or in bankruptcy for total FY 2008 dispositions of 35,785 or 19.7 percent (35,785 / 181,210) of FY 2008 cases assigned to the PCAs for at least six months. IRS, *Private Debt Monthly Snapshot* (Oct. 4, 2007); IRS, *Filing and Payment Compliance Modernization Briefing Private Debt Collection* (Apr. 14, 2008), IRS, *Filing and Payment Compliance Advisory Council* (Oct. 20, 2008).

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tive time for collection has passed.¹⁵ With more than 80 percent of PCA revenue collected within the first six months of placement, it appears unnecessary and risky to leave personal tax information with the PCAs for much longer than six months while the agencies take little productive action on their cases. The PCAs have held many cases in inventory for well over a year and they are just now being recalled.

Instead of putting these cases back into its pile of low priority cases, the IRS should evaluate what type of cases are coming back from the PCAs to prevent similar cases from going to the agencies in the first place and sitting in inventory. In our view, the IRS should work these cases itself once this analysis has been completed. Once the IRS selects a case for collection action, IRS Collection policy has generally been to work the case to completion. If the IRS did not work cases to completion, more taxpayers would choose to ignore IRS Collection attempts, hoping that the IRS would eventually give up. The impression that collection cases will be worked to completion will be undermined if the IRS assigns a case to a PCA and then shelves the case if the PCA is unsuccessful in collecting the debt, potentially contributing to a perception that ignoring tax collection may be a successful strategy.

After Working with PCAs for Several Years, the IRS Cannot Identify Any Best Practices to Adopt from the PCAs.

One of the theoretical benefits of contracting with private industry was that the IRS could learn techniques to improve its own efficiency and efficacy. However, in attempting to identify best practices based on the PCAs' work, the IRS PDC Program Office found that "the IRS is a high performing organization using many of the same practices used in private industry," and has not yet been able to adopt any practices.¹⁶ To the contrary, the IRS identified areas needing improvement in the PCAs' collection practices, such as the agencies' contacting and authentication rate.¹⁷ It is significant that the IRS has turned out to be more efficient at resolving taxpayers' cases than the PCAs and is now assisting the PCAs on improving their collection practices.

Long-Term Risks to Taxpayer Rights and Taxpayer Privacy

The National Taxpayer Advocate recognizes that the IRS has established and enforced safeguards that have protected against significant violations of taxpayer rights and taxpayer privacy.¹⁸ However, we remain concerned that the use of PCAs poses long-term risks in these areas, and even the strictest safeguards will only mitigate the inherent risks of this initiative. While the mission of the federal government is to serve its citizens, the mission of private companies like PCAs is to maximize profits. The PCAs' compensation is heavily tied to the amount of debt they collect, which may lead some collection agencies to take shortcuts or violate the rights or privacy of the debtors whose accounts they are trying to

¹⁵ Data based on cases assigned since PDC program inception through cycle 200739, meaning each module was assigned to the PCAs for at least one year.

¹⁶ IRS, *Filing and Payment Compliance Advisory Council* (Sept. 26, 2007); IRS response to TAS research request (Nov. 10, 2008).

¹⁷ IRS, *Filing and Payment Compliance Advisory Council* (May 5, 2008).

¹⁸ IRS, *Tax Collection Services Statement of Work*, TIRNO-08-K-00164, 8, 10, 23, 24 (§ 1.13-15 and ¶J.3.2.1-5) (Mar. 8, 2008).

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collect. Largely because of this incentive, the Federal Trade Commission reports that it receives more consumer complaints about PCAs each year than about any other industry.¹⁹

Additionally, PCA employees do not face the same consequences as IRS employees for violating taxpayer rights or privacy. An IRS employee who violates taxpayer rights or privacy may be subject to termination or another serious penalty. By contrast, the IRS does not require PCAs to take any action in such cases other than to remove the employee from work on IRS debts. For example, a PCA employee who violates the Taxpayer Bill of Rights, Taxpayer Bill of Rights 2, Fair Debt Collection Practices Act, Privacy Act, Disclosure statutes, or other applicable laws would only have to be taken off the IRS contract, not terminated like an IRS employee in the same circumstances.²⁰

We want to emphasize that to the best of our knowledge, no significant violations of this nature have occurred and the IRS has implemented procedures to minimize the risks. But we also believe that the incentives are such that violations eventually are likely to occur if the program is continued for the long term and particularly if it is expanded.

Conclusion

The National Taxpayer Advocate remains concerned that there is an inherently greater risk to taxpayer rights and taxpayer privacy when tax collection is outsourced to private, for-profit businesses. Further, data shows that the IRS is far superior to the PCAs in resolving taxpayer cases.²¹ Not only does the IRS outperform the PCAs in collecting revenue, but it also resolves more cases earlier, which benefits taxpayers by preventing interest and penalties from growing. Given the risk to taxpayer rights and the failure of the PDC initiative to produce revenue that exceeds expenses to date, the National Taxpayer Advocate continues to believe that the program should be discontinued.²² Moreover, the analysis of the IRS-PDC Cost Effectiveness Study suggests that if the IRS redesigned its own method of selecting priority cases, it would collect greater revenue, earlier in the process, at less cost and burden to taxpayers.

¹⁹ Federal Trade Commission, *Annual Report 2008: Fair Debt Collection Practices Act 12*.

²⁰ IRS, *Tax Collection Services Statement of Work*, TIRNO-08-K-00164, 8, 10, 23, 24 (§ 1.13-15 and ¶J.3.2.1-5) (Mar. 8, 2008). PCA employees are subject to a number of criminal and civil penalties if they make unauthorized disclosures. However, beyond these penalties the IRS itself has no authority to terminate employment, but only to remove that employee from the contract. This means the employee may still be employed with the PCA, where as IRS employees would be terminated in addition to civil and criminal penalties.

²¹ The PCAs disposed of 18 percent of their FY 2008 inventory by receiving full pay or establishing an installment agreement. Calculation based on PCA FY 2007 ending inventory, PCA receipts through March 2008 and PCA full pay and IA dispositions through all of FY 2008 (PDC Monthly Snapshot Reports for Sept. 2007, Mar. 2008, and Sept. 2008). ACS closed 41 percent of its FY 2008 inventory by full pay or the establishment of an IA. Calculation based on ACS FY 2007 IMF ending inventory, ACS IMF receipts through March 2008 and ACS IMF dispositions through all of FY 2008 (Collection Activity Report 5000-2 for Sept. 2007, Mar. 2008, and Sept. 2008).

²² IRS, Filing and Payment Compliance Advisory Council, 15 (May 1, 2007); e-mail from Director, PDC Program Office, to TAS Attorney Advisor (Feb. 29, 2008). The IRS incurred \$71 million in start-up cost for the PDC initiative. Since that point, the initiative has incurred annual costs of about \$7.65 million. This results in a total cost for the PDC initiative of \$78 million. However, the initiative's projected cumulative for actual dollars collected is \$73 million. This means the initiative's costs still exceed its revenue by \$5 million. IRS, Filing and Payment Compliance Advisory Council (Nov. 17, 2008).

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IRS Comments

Over the past year, the IRS and the National Taxpayer Advocate have collaborated on efforts to improve the PDC program, maintain a high level of work quality and performance, and enforce the safeguards established to protect taxpayer rights and taxpayer privacy. The IRS improved the transparency of PCA operations, added opt-out language to the IRS.gov web page for taxpayers who have had their accounts placed with the PCAs, and delivered refresher training to PCA employees. The IRS is committed to continuing to improve program performance, and we look forward to working with the National Taxpayer Advocate in addressing some of the key points outlined in her report.

The PDC program has been successful when measured against the goals established for it at inception. The program has generated revenue which would have gone uncollected in the absence of the program and allowed for the earlier resolution of taxpayer accounts than would have otherwise occurred. Specific accomplishments include:

- Coverage: Through October 25, 2008, the program has placed 178,460 taxpayer entities.²³
- Dollars collected: \$72.7 million in gross revenue has been collected.²⁴
- High taxpayer satisfaction: Taxpayer satisfaction has averaged nearly 96 percent since program inception.²⁵
- High quality: Regulatory, procedural, and customer accuracy metrics have averaged 99 percent since program inception.²⁶

It is important to evaluate the PDC program in the context of its original design and purpose.²⁷ Given limited IRS collection resources, PCAs provide an alternative method for taxpayers with unpaid tax liabilities to resolve their tax obligations. Cases selected for PCA assignment are from inventories that IRS employees would not otherwise work. As the IRS stated in the National Taxpayer Advocate's 2007 Annual Report to Congress, "The issue is not whether the PCAs or IRS can do a better job collecting this revenue. The issue is whether the revenue collected by PCAs goes uncollected."²⁸ The two organizations are inherently different, and will never have identical processes, people, or technology.

The IRS agrees with the National Taxpayer Advocate that early intervention in delinquent taxpayer cases is beneficial for both the taxpayer and the IRS. The IRS currently makes

²³ IRS, *Filing and Payment Compliance Modernization Briefing 3* (Nov. 17, 2008).

²⁴ *Id.* at 4.

²⁵ *Id.* at 3.

²⁶ *Id.* at 4.

²⁷ The National Taxpayer Advocate used data in her report from an unfinished IRS Private Debt Collection Cost Effectiveness Study to compare PCA performance with the performance of IRS collection functions. Draft report findings have not been validated nor shared outside the PDC program. IRS leadership will review and approve the final report prior to its release.

²⁸ National Taxpayer Advocate 2007 Annual Report to Congress 422.

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several attempts through the notice process to resolve a taxpayer's delinquency prior to the case being assigned to the ACS, Field Collection, or a PCA.

The IRS concurs with the National Taxpayer Advocate position that cases being returned from the PCAs should be evaluated to help improve both IRS and program performance. The IRS has initiated a comprehensive plan to recall cases assigned to PCAs for more than 26 months in which no payments have been received within the past 60 days. Cases returned under the recall process will be analyzed to identify improvement opportunities for inventory selection and case processing procedures.

A potential benefit from the PDC program is the identification of best practices in use by private sector collection agencies which could be adopted by the IRS. Dissimilarities between IRS and PCA operations have made the identification of best practices more challenging. While we have not yet formally adopted PCA best practices within the IRS, we continue to investigate opportunities to apply lessons learned from the PDC program to IRS operations.

The IRS appreciates the National Taxpayer Advocate's acknowledgement that we have established and enforced safeguards for the PDC program that have protected taxpayer rights and taxpayer privacy. Protection of taxpayer rights and privacy has been an overriding consideration in program administration since its inception, and will continue to be so going forward. To date, there are no reported instances of taxpayer information being misused or protected taxpayer information being intentionally disclosed. The IRS will continue its aggressive oversight of the program to ensure the PCAs maintain the highest level of compliance with all statutory requirements.

The PDC program is just one component of the IRS' overall collection strategy. The program has reduced potentially collectible delinquent tax receivables by providing taxpayers with the opportunity to resolve their tax liabilities sooner. Aggressive oversight and effective management have ensured PCA adherence to contract.

Taxpayer Advocate Service Comments

The National Taxpayer Advocate acknowledges the steps the IRS has taken to improve the PDC program and appreciates its collaboration with TAS throughout the program. Additionally, the National Taxpayer Advocate is encouraged to learn that the IRS will carefully analyze the cases it recalls from the PCAs. However, the National Taxpayer Advocate still holds numerous concerns about the protection of taxpayer rights and the overall success of the program. It makes little sense for the IRS to continue to devote significant time, energy, and dollars toward maintaining a program that brought in only *\$37 million*

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in FY 2008²⁹ and \$72.7 million overall³⁰ on a gross basis (before subtracting the operating costs of the program, the commissions of up to 25 percent paid to the PCAs, and indirect payments), especially when these figures are compared to the \$2.7 trillion the IRS collected in FY 2007.³¹

The IRS argues the PDC program has brought in revenue that would have gone uncollected and has resulted in earlier intervention in cases, but this is true only if the IRS did not take any action on these cases. The choice does not come down to either failing to work cases or hiring PCAs. In fact, the National Taxpayer Advocate has long suggested that PCA-type cases may be productive inventory for the IRS to work, and now there is data to support this claim.³² For instance, the results of a study conducted³³ by the IRS shows that ACS performed substantially better, collecting *three times* as much as the PCAs (collecting 13 percent of the balance due while PCAs collected four percent) when working “PCA-like” inventory.³³ The data demonstrates how superior the IRS is at resolving these cases and how keeping tax collection inside the IRS benefits the IRS and taxpayers alike. Not only did the study show the IRS's ability to resolve cases more efficiently than the PCAs, but it also demonstrated that ACS performed better at working “PCA-like” inventory than at working its so-called “next-best case” inventory. This finding was totally apart from the PDC program, but nonetheless, it should have a significant impact on the way the IRS prioritizes its collection cases.³⁴

The National Taxpayer Advocate understands that the IRS attempts to resolve taxpayers' cases through its notice process, but once this process has run its course, cases are placed on a “shelf” until interest charges accrue to the point where it is more difficult for the taxpayer to satisfy the debt.³⁵ Now, instead of sitting on the IRS's shelf, it appears many of these cases are languishing in PCA inventory.³⁶ The IRS's own policy now permits cases to stay with PCAs for 26 months before being recalled. In light of the recent data cited in this report and the IRS's commitment to early intervention, it seems the IRS needs to reprioritize its case inventory, so it works these smaller cases up front, rather than waiting for the penalties and interest to mushroom enough for the IRS to deem them a priority.³⁷

²⁹ IRS, *Filing and Payment Compliance Advisory Council* (Oct. 20, 2008).

³⁰ IRS, *Filing and Payment Compliance Advisory Council* (Nov. 17, 2008). This figure includes dollars for the first month of FY 2009.

³¹ IRS, *FY 2007 Data Book*, Table 1.

³² See National Taxpayer Advocate 2006 Annual Report to Congress 68-69.

³³ IRS response to TAS research request (Nov. 10, 2008).

³⁴ IRS response to TAS research request (Dec. 19, 2008). This data was collected by the IRS's own Cost Effectiveness Study, which has not yet been released.

³⁵ See National Taxpayer Advocate 2006 Annual Report to Congress 68-69. As noted in the 2006 report, IRS data provides ample evidence to suggest the IRS may not be working its optimal inventory, and collecting newer, lower dollar inventory is more effective than working older, higher dollar inventory.

³⁶ Of the 181,210 modules placed with the PCAs through March 2008, only 36,000 (about 20 percent) have been resolved. This suggests that over 145,000 modules have remained unresolved in PCA inventory for at least six months, in addition to another 107,000 modules assigned during the last half of FY 2008.

³⁷ IRS, *Strategic Plan 2009-2013: Overview*.

Status Update: The IRS's Private Debt Collection Initiative is Failing in Most Respects

In its response, the IRS states that the PDC program should be evaluated “in the context of its original design and purpose.” Under that analysis, the program is a failure. It was originally projected to bring in between \$1.5 and \$2.2 billion over ten years,³⁸ and \$46 million in FY 2007 and \$88 million in FY 2008.³⁹ Instead, the program has raised only \$32 million cumulative in FY 2007 and \$37 million through FY 2008 in gross revenue (this is before subtracting the operating costs of the program, the commissions of up to 25 percent paid to the PCAs, and indirect payments collected through offsets).⁴⁰ The IRS no longer publishes these ten-year projections and has not yet revised these long-term projections. Moreover, although the original “design” stated that PCAs would only work “simple” cases that taxpayers either agreed to or made three or more voluntary payments toward, since FY 2007 IRS has considered (and is) referring more complicated cases to the PCAs as the inventory of “simple” cases proves nonexistent.⁴¹

Most disturbing, the IRS misses the fundamental lesson it should draw from this initiative: that the IRS needs to develop processes – beyond the important notice stream – for actively interviewing and contacting taxpayers early in the collection life cycle. The IRS’s cost effectiveness study shows how successful the IRS can be when it approaches cases in this manner. It is true that the National Taxpayer Advocate elsewhere in this report identifies aspects of the IRS’s collection program that need improvement.⁴² Nevertheless, the cost effectiveness data, combined with the IRS’s mission of helping taxpayers become compliant (as contrasted to the PCA mission of maximizing profits for its shareholders), makes the case that federal tax collection should remain in the hands of the federal employees charged to collect federal revenue.

³⁸ IRS, *Filing and Payment Compliance Advisory Council* (May 1, 2007) at 14.

³⁹ *Id.*

⁴⁰ *Id.* at 2. The PDC program collected \$32 million in gross revenue for FY 2007. IRS, *Filing and Payment Compliance Advisory Council* (Oct. 20, 2008) at 4. The PDC program collected \$37 million in gross revenue for FY 2008.

⁴¹ IRS, *Filing and Payment Compliance Advisory Council* at 7 (Jan. 14, 2008). The taxpayers have not agreed to the additional tax assessed in these cases. It seems it would be more efficient for the IRS worked these cases itself, rather than sending them to the PCAs, since taxpayers have not agreed with the assessment and may dispute the addition to tax.

⁴² See Most Serious Problem, *The IRS Needs to Fully Consider the Impact of Collection Enforcement Actions on Taxpayers Experiencing Economic Difficulty*, *supra*.