

## PREFACE: Introductory Remarks by the National Taxpayer Advocate

### HONORABLE MEMBERS OF CONGRESS:

I respectfully submit for your consideration the National Taxpayer Advocate's 2015 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.

The year 2015 has been a memorable one for taxpayer rights. On November 19 through 21, over 160 people from 22 countries gathered at the National Archives and the Internal Revenue Service to participate in the Inaugural International Conference on Taxpayer Rights. The conference was convened by the National Taxpayer Advocate and co-sponsored by the American Bar Association Section of Taxation, the American College of Tax Counsel, the American Tax Policy Institute, the International Association of Tax Judges, the International Fiscal Association — USA Branch, and Tax Analysts. It included two days of presentations by speakers from countries as diverse as South Africa, Italy, Greece, Mexico, Sweden, Canada, England, Australia, and the United States, as well as a mini-conference on the third day with a panel of, and discussions by, taxpayer advocates and ombuds from around the world. The conference laid a foundation for continuing work and scholarship in the area of taxpayer rights, particularly as they derive from human rights' conventions, constitutional law, and statutes.<sup>1</sup>

On the evening of the first day of the International Conference on Taxpayer Rights, I stood in the Rotunda of the National Archives and viewed the documents on which the United States is founded — the Declaration of Independence, the Constitution, and the Bill of Rights. I was struck by James Madison's language quoted in a display about our nation's path to adopting a Bill of Rights:

I think we should obtain the confidence of our fellow citizens in proportion as we fortify the rights of the people against the encroachments of the government.

It is fitting that, less than one month after I read this statement at the historic conference, Congress passed and the President signed into law legislation that codified the provisions of the Taxpayer Bill of Rights (TBOR), an act I have been advocating for since 2007.<sup>2</sup> The need for and protections afforded by the TBOR cannot be overstated. In today's environment of low confidence and even distrust of the federal government and the IRS, the agency's adherence to the principles of the TBOR will demonstrate to taxpayers that they have reason to trust that it will administer the nation's tax laws fairly and justly.

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- 1 To see the conference agenda and abstracts of papers, visit [www.taxpayerrightsconference.com](http://www.taxpayerrightsconference.com). As papers from the conference are formally published in Tax Notes, The Tax Lawyer, and other journals, we will make them publicly available on this website. Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, § 401 (2015). The law requires the Commissioner to "ensure that employees of the Internal Revenue Service are familiar with and act in accord with taxpayer rights as afforded by other provisions of this title." The bill provides that these rights include the *right to be informed*, the *right to quality service*, the *right to pay no more than the correct amount of tax*, the *right to challenge the position of the Internal Revenue Service and be heard*, the *right to appeal a decision of the Internal Revenue Service in an independent forum*, the *right to finality*, the *right to privacy*, the *right to confidentiality*, the *right to retain representation*, and the *right to a fair and just tax system*. To its credit, the IRS itself announced its adoption of the Taxpayer Bill of Rights in June 2014. However, congressional action carries the force of law and makes a significant statement about the value our elected representatives place on taxpayer rights.
  - 2 The National Taxpayer Advocate has been recommending that Congress codify the Taxpayer Bill of Rights since 2007. See National Taxpayer Advocate 2007 Annual Report to Congress 478-98 (Legislative Recommendation: *Taxpayer Bill of Rights and De Minimis "Apology" Payment*).

The Taxpayer Bill of Rights is the roadmap to effective tax administration. Congress has set the IRS on this path by codifying the TBOR. It is now up to the IRS to more fully incorporate taxpayer rights into everything it does. However, I have significant concerns that the IRS is embarking on a path that will unintentionally undermine taxpayer rights rather than enhance them, thereby eroding taxpayer trust further. I discuss these concerns in the remainder of this preface, and specifically in the first Most Serious Problem: *Taxpayer Service: The IRS Has Developed a Comprehensive “Future State” Plan That Aims to Transform the Way It Interacts With Taxpayers, But Its Plan May Leave Critical Taxpayer Needs and Preferences Unmet.*

### The IRS Future State Vision and Its Implications for Taxpayer Rights

In response, in part, to significant budget cuts since 2010, the IRS has undertaken a multi-year exercise to develop a concept of operations (CONOPS) or “future state vision.” This exercise is long overdue and I commend the IRS for undertaking it. Not surprisingly, the IRS future state now under internal discussion proposes changes in agency operations that assume a constrained funding environment and therefore minimizes agency costs. As a result, these proposed changes have serious ramifications for taxpayers and taxpayer rights. Most significantly, the IRS future state vision redefines tax administration into a class system, where only taxpayers who are the most *non*compliant or who can “pay to play” will receive concierge-level service or personal attention.<sup>3</sup> The compliant or trying-to-comply taxpayers will be left either struggling for themselves or paying for assistance they formerly received for free from the IRS.

The language in the few future state documents that are publicly available is commendable enough.<sup>4</sup> For example, there is laudatory language about improving taxpayer service by giving taxpayers self-service options (“Facilitate voluntary compliance by empowering taxpayers with secure innovative tools and support”) and by working with third parties such as software companies, Circular 230 tax professionals, and other preparers (“Leverage and collaborate with external stakeholders”). There is discussion about being data-driven (“Select highest value work using data analytics and a [sic] robust feedback loops”) and conducting behavioral research (“Understand non-compliant taxpayer behavior and develop approaches to deter and change it”). I note, however, that there is no stated commitment to understanding *compliant* taxpayer behavior and developing approaches to *maintain and enhance it*. The focus of this document is primarily on enforcement challenges.

Yet even as the IRS has been and is now holding internal discussions, it is eliminating services without any future state substitutes for those services in place. As we describe in the #1 Most Serious Problem and throughout this report, the IRS is reducing assistance to taxpayers despite the absence of significant research into taxpayers’ needs and preferences for assistance or the effect of service reductions on taxpayers’ willingness or ability to comply voluntarily with their tax obligations. The implications of these decisions and actions are far-reaching and should be discussed publicly *before* the IRS implements them.

### A Brief Level-Setting: The Current State of Tax Administration Today

For fiscal year (FY) 2015, the IRS collected over \$2.8 trillion dollars (net of refunds), or over 90 percent of federal receipts. Figure 1 below shows the breakdown of contributors to the public fisc by type of tax payment.

<sup>3</sup> I am indebted to Professor Keith Fogg, Visiting Professor of Law and Director of Federal Tax Clinic Legal Services Center at Harvard Law School, for his inspired use of the phrase “concierge service.”

<sup>4</sup> See, e.g., *Tax Enforcement in a Resource-Challenged World* (32nd Annual National Institute on Criminal Tax Fraud and the Fifth National Institute on Tax Controversy, Las Vegas, NV, Dec. 9-11, 2015) slide 7. All quotes in this paragraph are from this document.

**FIGURE 1, Federal Tax Receipts by Type of Tax, FY 2015<sup>5</sup>**

Tax Type	Trillions of Dollars	Percent of Revenue
Individual Income Taxes	\$1.541	47%
Corporate Income Taxes	\$0.344	11%
Social Security/Retirement Benefits	\$1.065	33%
Excise Taxes	\$0.098	3%
Other	\$0.201	6%

Almost half of federal tax receipts are from individuals, including sole proprietors. Another third are paid by employers — many of which are small businesses. Yet the tax administration issues impacting these taxpayers get very little attention these days — particularly the needs and preferences of individual taxpayers. Note that about 45 percent of individual taxpayers have income at or below 250 percent of the Federal Poverty Level and thus are considered by Congress as unable to afford professional representation in tax disputes.<sup>6</sup> Keep this in mind as I describe the reality of tax administration for the masses of individual and small business/self-employed taxpayers.

During FY 2015, the IRS received over 100 million phone calls from taxpayers or their representatives.<sup>7</sup> Here is a snapshot of what they experienced:

**FIGURE 2, IRS Telephone Performance on Accounts Management and Select Lines<sup>8</sup>**

Phone Line	Level of Service	Average Speed of Answer (minutes)
Accounts Management	38.1%	30.5
Taxpayer Protection Unit	24.6%	29.6
Installment Agreements/Balance Due	37.0%	34.8
NTA Toll-Free	43.7%	16.2
Practitioner Priority Service	47.6%	46.6

The “Level of Service” (or LOS) refers to the percentage of calls the IRS answers among all calls routed to customer service representatives. On all Accounts Management telephone lines combined, the IRS answered only about 38 percent of its calls — meaning about 62 percent of calls simply didn’t get through. The 38 percent of taxpayers who spoke with an assistor waited on hold an average of over 30 minutes before reaching a representative. But there was considerable variation among the IRS’s dozens of phone lines, as Figure 2 indicates.

5 Congressional Budget Office, *The Budget and Economic Outlook 2012-2025*, 95; IRS FY 2016 Budget in Brief.

6 IRS Compliance Data Warehouse (CDW), Individual Returns Transaction File (Tax Year 2014). Internal Revenue Code (IRC) § 7526 provides that taxpayers with incomes at or below 250 percent of the Federal Poverty Level who are in controversies with the IRS are eligible for *pro bono* or nominal fee assistance from Low Income Taxpayer Clinics.

7 IRS, Joint Operations Center (JOC), *Snapshot Reports: Enterprise Snapshot, IRS Enterprise Total* (Sept. 30, 2015).

8 IRS, JOC, *Snapshot Reports: Product Line Detail* (Sept. 30, 2015).

As we have described in this year's Most Serious Problems about revenue protection and identity theft,<sup>9</sup> IRS fraud detection filters in FY 2015 had false positive rates ranging from 30 to 37 percent. In the Taxpayer Protection Program (TPP), IRS filters suspend return processing when they identify a risk of identity theft. To verify one's identity and continue return processing, a taxpayer can either call the IRS or try to authenticate online. The IRS detected and stopped approximately 4.8 million suspicious tax returns from January 1 through November 30, 2015. Well over 40 percent of these suspended returns are a result of the TPP, which had a false positive rate of 36.2 percent for this same timeframe. (This false positive rate is up from 19.8 percent for calendar year 2014).<sup>10</sup> All of these legitimate taxpayers were desperately attempting to free up their refunds, yet at one point during the filing season the level of service on the TPP line was below ten percent for three consecutive weeks — meaning more than 90 percent of the calls were not answered!<sup>11</sup> At another point the wait time was 60 minutes.<sup>12</sup> By the end of the fiscal year, the service levels were somewhat improved but still abysmal — 24.6 percent LOS and a 29.6 minute wait time.

Taxpayers who filed a balance due return and attempted to call the IRS during 2015 to make payment arrangements faced another daunting task. The IRS sends these taxpayers a series of notices that list a phone number to call; this is the same phone line a taxpayer selects to make payment arrangements if he or she calls the main toll-free "1040" number. Yet in FY 2015, the LOS on that line was 37.0 percent, and the average speed of answer (ASA) was 34.8 minutes. That is, *almost two-thirds* of these calls went unanswered. Now, these are taxpayers who owe the federal government money. They are calling to pay their taxes, or they are calling to tell the IRS they can't pay their taxes because they are experiencing economic hardship. Yet the IRS isn't able to pick up the phone to talk to them!

What happens to these taxpayers when the IRS doesn't pick up the phone? Well, after a certain period of time, the taxpayer's account is moved to the Automated Collection System (ACS), which, true to its name, searches out lien and levy sources so it can *automatically* file a Notice of Federal Tax Lien against the taxpayer's property or levy upon the taxpayer's bank account or wages. The IRS doesn't know the taxpayer has been trying to call it. Nor does the IRS make any effort to call the taxpayer before it automatically takes enforcement action against the taxpayer. By the time the taxpayer gets assigned to ACS, the IRS assumes the taxpayer has been unresponsive and is not trying to comply — despite the lousy levels of service on the pre-ACS phone lines.

How do these taxpayers feel when the first contact they actually have with the IRS is a lien filing or a levy on their wages? How will they behave with respect to their tax obligations in the future? What message is the IRS sending when it doesn't engage with the taxpayer and then takes an enforcement action? These are not theoretical questions. They go to the heart of the relationship the taxpayer has with his or her government (as represented by the IRS), and they have everything to do with the degree to which a taxpayer is willing to comply with the tax laws.

9 See Most Serious Problem: *Revenue Protection: Hundreds of Thousands of Taxpayers File Legitimate Tax Returns That Are Incorrectly Flagged and Experience Substantial Delays in Receiving Their Refunds Because of an Increasing Rate of "False Positives" Within the IRS's Pre-Refund Wage Verification Program*, *infra*; Most Serious Problem: *Identity Theft (IDT): The IRS's Procedures for Assisting Victims of IDT, While Improved, Still Impose Excessive Burden and Delay Refunds for Too Long*, *infra*.

10 IRS, *Global Identity Theft Report* (Nov. 2015).

11 IRS, JOC, *FY 2015 Weekly TPP Snapshot* (weeks ending Feb. 28, 2015 [9.7 percent], Mar. 7, 2015 [7.6 percent], and Mar. 14, 2015 [9.8 percent]).

12 IRS, JOC, *FY 2015 Weekly TPP Snapshot* (week ending Feb.28, 2015).

Before I discuss taxpayer or tax morale,<sup>13</sup> consider these data points. Ninety-eight percent of all tax revenue collected by the IRS is paid voluntarily. Less than two percent is collected through direct enforcement action.<sup>14</sup> If the IRS were to collect ten percent less in enforcement revenue, tax revenue would drop by less than \$6 billion. But if voluntary payments were to decrease by ten percent, tax revenue would drop by more than \$280 billion.<sup>15</sup> In light of this data, just where should we be putting our attention and our resources?

### A Discussion of First Principles: What Is Taxation About?

Simply put, taxation involves taking money from one person and applying that taking to the greater good of many, if not all. That is an extraordinary thing to ask of people. A tax system depends on taxpayers being willing to offer up their hard-earned or saved dollars and let their money be applied to everyone's — or someone else's — benefit.

So the central question in tax administration is: How do we promote that willingness? What does the tax administrator need to do to maintain and expand taxpayers' willingness to pay their taxes? Stated another way, how should the tax administrator behave so it doesn't undermine or lose taxpayers' willingness to comply with the tax laws? The answers to these questions should drive both the current and future state of the IRS.

### The Dynamics Between Power and Trust, Taxpayer and the Tax Agency

When we talk about taxpayers' willingness to comply, we really have to consider the relationship between the taxpayer and the government. This essentially involves an analysis of the dynamics between power and trust. Specifically, the government — and by extension, the tax agency — holds the awesome power of the state. For the tax system to work, the taxpayer has to trust that the government will use its power wisely and legitimately. If it does, taxpayers will be more willing to comply with the tax laws and meet their tax obligations.<sup>16</sup>

Power can be either coercive or legitimate.<sup>17</sup> Trust can be reason-based or learned. The dynamics between the type of power and the type of trust define and influence the climate of government-taxpayer interaction. We can have an antagonistic environment, or one that is service-oriented, or one that is cooperative. These climates of interaction define the kind of compliance we can achieve. In an antagonistic environment, you will have enforced compliance — which is very expensive, and often involves the use of both

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- 13 “Tax Morale” is the “collective name for all the non-rational factors and motivations — such as social norms, personal values and various cognitive processes — that strongly affect an individual’s voluntary compliance with laws.” National Taxpayer Advocate 2007 Annual Report to Congress vol. 2, 139 (Marjorie E. Kornhauser, *Normative and Cognitive Aspects of Tax Compliance: Literature Review and Recommendations for the IRS Regarding Individual Taxpayers*).
- 14 In FY 2015, the IRS collected total tax revenue of about \$3.3 trillion and refunded about \$400 billion. Only \$54.2 billion (about 1.9 percent) is classified as “Enforcement Revenue.” Government Accountability Office (GAO), GAO-16-146, *Financial Audit: IRS’s Fiscal Years 2015 and 2014 Financial Statements* 25 (Nov. 2015), available at [www.gao.gov/assets/680/673614.pdf](http://www.gao.gov/assets/680/673614.pdf).
- 15 About \$3.3 trillion in gross revenue collections less refunds of \$403 billion and less enforcement revenue of \$54.2 billion comes to about \$2.84 trillion in net taxes voluntarily paid. Ten percent of \$2.84 trillion is more than \$280 billion. By contrast, ten percent of IRS enforcement revenue is only slightly greater than \$5.4 billion. See GAO, GAO-16-146, *Financial Audit: IRS’s Fiscal Years 2015 and 2014 Financial Statements* 25 (Nov. 2015).
- 16 See Tom R. Tyler, *Why People Obey the Law* (Princeton, Princeton University Press) 2006. For a more recent exploration of the role of procedural justice in shaping perceptions of legitimacy of law enforcement agencies and actions, see Tom R. Tyler, Phillip Atiba Goff & Robert J. MacCoun, *The Impact of Psychological Science on Policing in the United States: Procedural Justice, Legitimacy, and Effective Law Enforcement*, *Psychological Science in the Public Interest*, Vol. 16(3), 75-109 (2015).
- 17 For a detailed analysis of the dynamic between power, trust, and the compliance environment, see Katharina Gangl, Eva Hofmann & Erich Kirchler, *Tax Authorities’ Interaction with Taxpayers: A Conception of Compliance in Social Dilemmas by Power and Trust*, *NEW IDEAS IN PSYCHOLOGY* 37, 13-23 (2015). See also Erich Kirchler, *The Economic Psychology of Tax Behaviour* (Cambridge, Cambridge University Press) (2007).

coercive and legitimate power, but very little trust. In a service-oriented environment, you will have voluntary compliance — but it is still a choice by the taxpayer; the taxpayer is learning that the government can be trusted to apply its power legitimately. The holy grail for tax administration is a cooperative environment of committed compliance — where compliance has become a way of life. The taxpayer trusts and expects the government will use its power appropriately and wisely (legitimately) and thus is willing to come forward when he or she makes mistakes, knowing that the government will listen and engage with the taxpayer.<sup>18</sup> The taxpayer, in turn, is willing to make the personal sacrifice of paying taxes for the greater good.

### The IRS Is Increasingly a Pay-to-Play System, Which Erodes Trust in the Tax System

Reading between the lines of the IRS future state vision, the IRS appears to replace traditional IRS employee-to-taxpayer interaction with online and third-party interactions. That is, the vision essentially eliminates IRS-taxpayer personal interaction except in the context of enforcement actions. Now, I understand that virtually all taxpayers would love to live their lives without *any* interaction with the IRS. But as I noted earlier, tens of millions of taxpayers need to contact and interact with the IRS every year. Over nine million taxpayers receive post-refund notices and experience refund delays every year.<sup>19</sup> The issues underlying those interactions are vitally important to each of those taxpayers — and the resolution of those contacts could literally impact the livelihood or survival of a person or a business.<sup>20</sup>

In the IRS future state, if a taxpayer wants to talk with the IRS about his concerns, he will be pretty much out of luck. He will be directed first to a website or an online account, the outlines of which are very vague and the creation of which may undermine significant taxpayer protections.<sup>21</sup> The online account will not provide for the kind of discussion necessary to ensure the IRS understands the details of the taxpayer's circumstances, or whether the taxpayer understands what the IRS is telling him or her.

18 This is why the Taxpayer Bill of Rights, adopted by the IRS in 2014 and codified on December 18, 2015, by the Consolidated Appropriations Act, 2016, includes the *right to challenge the IRS's position and be heard*. It is not enough for the taxpayer to have the right to challenge the IRS; the IRS must also *listen* to the taxpayer and *hear* his complaint.

19 For a breakdown of these notices, see *Most Serious Problem: Taxpayer Service: The IRS Has Developed a Comprehensive "Future State" Plan That Aims to Transform the Way It Interacts with Taxpayers, But Its Plan May Leave Critical Taxpayer Needs and Preferences Unmet, infra*.

20 In the Most Serious Problems section of this Annual Report, we have provided numerous examples of the harm that can befall taxpayers if they are unable to make personal contact with the IRS. See, e.g., *Most Serious Problems: Practitioner Services: Reductions in the Practitioner Priority Service Phone Line Staffing and Other Services Burden Practitioners and the IRS, infra*; *Revenue Protection: Hundreds of Thousands of Taxpayers File Legitimate Tax Returns That Are Incorrectly Flagged and Experience Substantial Delays in Receiving Their Refunds Because of an Increasing Rate of "False Positives" Within the IRS's Pre-Refund Wage Verification Program, infra*; *Identity Theft (IDT): The IRS's Procedures for Assisting Victims of IDT, While Improved, Still Impose Excessive Burden and Delay Refunds for Too Long, infra*; *Automated Substitute for Return (ASFR) Program: Current Selection Criteria for Cases in the ASFR Program Create Rework and Impose Undue Taxpayer Burden, infra*; *International Taxpayer Service: The IRS's Strategy for Service on Demand Fails to Compensate for the Closure of International Tax Attaché Offices and Does Not Sufficiently Address the Unique Needs of International Taxpayers, infra*; *Individual Taxpayer Identification Numbers (ITINs): IRS Processes Create Barriers to Filing and Paying for Taxpayers Who Cannot Obtain Social Security Numbers, infra*; *Earned Income Tax Credit (EITC): The IRS Does Not Do Enough Taxpayer Education in the Pre-Filing Environment to Improve EITC Compliance and Should Establish a Telephone Helpline Dedicated to Answering Pre-filing Questions From Low Income Taxpayers About Their EITC Eligibility, infra*; *Earned Income Tax Credit (EITC): The IRS Is Not Adequately Using the EITC Examination Process as an Educational Tool and Is Not Auditing Returns With the Greatest Indirect Potential for Improving EITC Compliance, infra*.

21 For a detailed discussion about individual and tax professional access to online accounts, see *Most Serious Problem: Taxpayer Access to Online Account System: As the IRS Develops an Online Account System, It May Do Less to Address the Service Needs of Taxpayers Who Wish to Speak with an IRS Employee Due to Preference or Lack of Internet Access or Who Have Issues That Are Not Conducive to Resolution Online, infra*; and *Most Serious Problem: Preparer Access to Online Accounts: Granting Uncredentialed Preparers Access to an Online Taxpayer Account System Could Create Security Risks and Harm Taxpayers, infra*. For a discussion of our concerns about "self-service" and "just-in-time" options, see National Taxpayer Advocate 2012 Annual Report to Congress 180-91 (*Most Serious Problem: The Preservation of Fundamental Taxpayer Rights Is Critical As the IRS Develops a Real-Time Tax System*).



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Alternatively, the taxpayer will have to pay a tax professional or purchase a tax software add-on for services the taxpayer previously received for free from the government in exchange for his willingness to cooperate and comply with the tax laws.

What is being lost in this vision of the future is the interest in and relationship with actual taxpayers — a dialogue with taxpayers. The IRS is designing its system so it can deal with taxpayers *en masse*. I understand how budget and workload constraints could drive the IRS to adopt this approach. In fact, the IRS performs “mass processing” responsibilities well — it will likely have processed about 150 million individual income tax returns, almost 11 million business entity returns, and over 2.1 billion information returns last year.<sup>22</sup> But *taxpayers* are not returns — they are *people* (or businesses run by people). If the *taxpayer* has a problem or needs some particular information, that’s where the system (and the vision) breaks down. That taxpayer in the future will have to undertake “self-service” or obtain “for-fee” third-party assistance.

This approach transforms our tax system into a pay-to-play system. Those who are sophisticated enough to understand their tax problem or their tax needs and can navigate the self-help options well enough to protect their rights will be able to do so. Those who have the ability to pay a third party to navigate the IRS and protect their rights will do so. But for those who have neither the expertise, the time, nor the resources to navigate these options — they will be up a creek. They will make mistakes with self-help; they will agree to assessments and adjustments they never should; and they will forfeit significant due process protections like the right to go to the United States Tax Court or have a Collection Due Process hearing — all because they can’t talk with an IRS employee about their situation or because they can’t afford to pay someone to help them. This creates a two-class tax system — those who can pay and those who can’t. It undermines the fundamental *right to a fair and just tax system*. When you add on the additional burden of paying “user fees” for actions and services that are rightly considered core duties and responsibilities of tax administration officials, the financial burden and consequence of pay-to-play becomes even greater. Fundamental rights are now up for sale.<sup>23</sup>

### **An Online Account Will Be Helpful But Comes With Significant Risks and Is No Replacement for Person-to-Person Interaction**

I am fully in support of robust online services. Since 2009, I have been calling for the IRS to create online taxpayer accounts with full information about a taxpayer’s tax returns, with the ability to export W-2 and 1099 information to software programs, check on the status of return and refund processing, correspondence, and other account transactions, and receive electronic acknowledgements. I also support Circular 230 tax professionals’ and preparers’ access to those accounts, with proper taxpayer authorization and so long as the taxpayer is informed of his right to receive, electronically or otherwise, notification of every online transaction made on his or her behalf. A well-designed taxpayer account will send due date notifications and updates on relevant current guidance. It will give taxpayers and their representatives the

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22 IRS Pub. 6187, *Calendar Year Projections of Returns by Major Processing Category* (Fall 2015); IRS Pub. 6292, *Fiscal Year Return Projections for the United States 2015-2022* (Fall 2015); IRS Pub. 6961, *Calendar Year Projections of Withholding and Information Return Documents for the United States and IRS Campuses* (2015 Update).

23 See Most Serious Problem: *IRS User Fees: The IRS May Adopt User Fees to Fill Funding Gaps Without Fully Considering Taxpayer Burden and the Impact on Voluntary Compliance*, *infra*.

ability to communicate by email, to schedule appointments for phone conferences with the IRS, and to conduct virtual face-to-face conferences via computer.

But when you expand that access to unregulated preparers or to other third parties, I have significant concerns. We already see the problems in this population of preparers relating to the Earned Income Tax Credit (EITC),<sup>24</sup> where certain unregulated, untrained preparers prey on vulnerable taxpayers.<sup>25</sup> Why would we want to give these preparers even more access to taxpayer information? And yet, if we don't provide these preparers access to taxpayer accounts, it is very likely the tens of millions of taxpayers who use these preparers won't be able or won't want to utilize their own online accounts, thereby carving a big hole in the IRS's online strategy. Thus, through its single-minded emphasis on online accounts, the IRS creates a situation where it will face enormous pressure to open up taxpayer account access to all unregulated return preparers.

Moreover, not every activity can or should be done online. Many things relating to tax require a conversation. People want to talk about the things that matter to them. And few things matter more to people than talking about what is going to happen to their money.

### **Less Secrecy and More Transparency: The IRS Needs to Start Its Future State Visions Now by Engaging With Taxpayers About Its Proposals and Plans**

What is driving the IRS to think this way and go down this path of a two-class tax system? To some extent, the IRS is a victim of its own apparent efficiency at moving masses of data and work, as evidenced by the fact that Congress has continued to hand it major new programs to administer including the Patient Protection and Affordable Care Act (ACA)<sup>26</sup> and the Foreign Account Tax Compliance Act (FATCA).<sup>27</sup> After five years of overall budget decreases, the IRS FY 2016 budget provides for much needed increases in taxpayer service funding, but it still leaves the IRS budget almost 19 percent below its FY 2010 funding level in inflation-adjusted terms,<sup>28</sup> and it does not even begin to account for the additional costs the IRS incurred to implement the ACA and FATCA.

In this environment of more work and inadequate funding, it is easy to bash the IRS. This bashing, in turn, can produce a bunker mentality in the IRS that makes it wary of sharing things with the public until

24 See IRC § 32.

25 See Most Serious Problem: *Earned Income Tax Credit (EITC): The IRS's EITC Return Preparer Strategy Does Not Adequately Address the Role of Preparers in EITC Noncompliance*, *infra*.

26 Pub. L. No. 111-148, 124 Stat. 119 (2010). For detailed discussion of current issues in ACA administration, see Most Serious Problem: *Affordable Care Act (ACA) – Business: The IRS Faces Challenges in Implementing the Employer Provisions of the ACA While Protecting Taxpayer Rights and Minimizing Burden*, *infra*; Most Serious Problem: *Affordable Care Act – Individuals: The IRS Is Compromising Taxpayer Rights As It Continues to Administer the Premium Tax Credit and Individual Shared Responsibility Payment Provisions*, *infra*; Legislative Recommendation: *Affordable Care Act Information Reporting: Allow Taxpayer Identification Number Matching for Filers of Information Returns Under IRC §§ 6055 and 6056*, *infra*.

27 Pub. L. No. 111-147, Title V, Subtitle A, 124 Stat. 71, 97 (2010). For detailed discussion of our concerns regarding IRS FATCA implementation, see Most Serious Problem: *International Taxpayer Service: The IRS's Strategy for Service on Demand Fails to Compensate for the Closure of International Tax Attaché Offices and Does Not Sufficiently Address the Unique Needs of International Taxpayers*, *infra*; Legislative Recommendation: *Foreign Account Reporting: Eliminate Duplicative Reporting of Certain Foreign Financial Assets and Adopt a Same-Country Exception for Reporting Financial Assets Held in the Country in which a U.S. Taxpayer Is a Bona Fide Resident*, *infra*; Legislative Recommendation: *Chapter 3 and Chapter 4 Credits and Refunds: Protect Taxpayer Rights by Aligning the Rules Governing Credits and Refunds for Domestic and International Withholding*, *infra*.

28 In FY 2010, the agency's appropriated budget stood at \$12.1 billion. In FY 2016, its budget was set at \$11.2 billion, a reduction of nearly eight percent over the six-year period. Inflation over the same period is estimated at nearly 11 percent. See Office of Management and Budget, *Fiscal Year 2016 Budget of the U.S. Government, Historical Tables*, Table 10.1 (showing Gross Domestic Product (GDP) and year-to-year increases in the GDP), available at <https://www.whitehouse.gov/sites/default/files/omb/budget/fy2016/assets/hist.pdf>.



they are absolutely finalized.<sup>29</sup> But that means the IRS will almost certainly miss things and get things wrong, precisely because it hasn't engaged the public and floated proposals publicly before they become set in stone.<sup>30</sup>

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**This bashing, in turn, can produce a bunker mentality in the IRS that makes it wary of sharing things with the public until they are absolutely finalized. But that means the IRS will almost certainly miss things and get things wrong, precisely because it hasn't engaged the public and floated proposals publicly before they become set in stone.**

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For any vision of the future to work, the IRS needs to engage taxpayers in the process. Taxpayers, in turn, need to speak up, get engaged, and hold the IRS accountable for responding to their needs. They need to contact their representatives in Congress and explain to them in real terms what it is like to interact with the IRS — the good and the bad. Tax professionals need to insist on a dialogue with the tax agency and push, push, push for greater transparency. They need to explain to their elected representatives why the current trajectory in tax administration is bad for tax compliance and just what it means for the representatives' constituents. Most importantly, Congress needs to assert its oversight authority and insist that the IRS come now, sooner not later, to explain the specifics of its future state vision. And those same hearings should include representatives of taxpayer segments as well as tax professionals. It is important that these hearings be kept separate from the hearings Congress has conducted in recent years on actual or perceived IRS shortcomings. Developing a consensus about the future state vision for our nation's tax system requires a single-minded focus on assessing the objectives of the tax system, what taxpayers need to comply with their tax obligations, and how to balance competing objectives. Finally, I believe the IRS should put its plan for the future out to the public for notice and comment.

Now, here is what I am going to do in 2016 to further the discussion of the IRS future state vision and to ensure that U.S. taxpayers have a voice in the process. I will be going around the country and holding public hearings on this topic. I will invite members of Congress and representatives of different taxpayer populations and stakeholders to join me so we can consider diverse viewpoints, and gather suggestions and descriptions of taxpayers' needs.

I am also going to highlight why taxpayers should care about what kind of IRS we have. There is no other federal agency that interacts as often with United States citizens and residents (and increasingly, non-residents). It is in taxpayers' best interests that they speak up about what kind and manner of assistance they need from the tax agency.

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29 Indeed, as we obtained information from the IRS to produce this Annual Report to Congress, the IRS has asserted that numerous data points and documents we intended to include in the report are "official use only" and may not be made public. Never before has the IRS made this assertion in so many instances, and never before have we ultimately failed to come to agreement on some disputed items. To avoid the risk my staff or I could be subject to disciplinary action for unauthorized disclosure, we have been forced to redact portions of text in some sections, and we have omitted relevant information in others. See, e.g., *Most Serious Problem: IRS User Fees: The IRS May Adopt User Fees to Fill Funding Gaps Without Fully Considering Taxpayer Burden and the Impact on Voluntary Compliance*, *infra*; *Most Serious Problem: Earned Income Tax Credit (EITC): The IRS's EITC Return Preparer Strategy Does Not Adequately Address the Role of Preparers in EITC Noncompliance*, *infra*.

30 One area in which the IRS is sharing its vision of the future is its plans to reorganize the Large Business & International (LB&I) Operating Division. Senior IRS officials have discussed and shared materials about the reorganization at several practitioner meetings in recent months. While this is to be commended, I note that LB&I caters to the part of the taxpayer population that can "pay to play" and expects (and receives) concierge-level service. No such plans have been shared about the IRS future state plans for the approximately 150 million individual taxpayers, much less the approximately 54 million small business taxpayers.

### Conclusion

Every day, the IRS faces the daunting task of juggling an increasing and diverse workload involving both revenue collection and benefits payments, with the relentless demands of doing everything in as cost-efficient a manner possible. But for the IRS to do its job well, it must start from the perspective of what government is about — namely, it is of the people, by the people, and for the people. The government is funded by taxes paid by the people. Therefore, the future state vision of the IRS needs to be designed around the needs of the people. If it is, it will be effective and efficient. Most importantly, it will be trusted by the people. As always, I look forward to working with Congress and the IRS to make this so.

Respectfully submitted,



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