

Status Update: The IRS's Reliance on Automated "Enforcement Assessments" Has Declined Significantly, but Concerns Remain

RESPONSIBLE OFFICIALS

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DEFINITION OF PROBLEM

In the 2011 Annual Report to Congress, the National Taxpayer Advocate expressed concerns about the IRS's wholesale use of automated "enforcement assessments" such as the Automated Substitute for Return (ASFR) program.¹ This report detailed the ASFR program's artificially-inflated assessments and low collection percentages, which lead to wasted IRS resources.

The report identified a need to improve the automated selection process to reduce taxpayer burden, and to enhance customer service options such as telephone contacts prior to finalizing assessments to resolve more ASFR cases early in the process. The National Taxpayer Advocate recommended a number of improvements to the ASFR program, such as revising procedures to emphasize personal contact with taxpayers prior to assessment, and applying a pre-assessment "collectibility" determination to all potential ASFR assessments.²

In fiscal year (FY) 2012, the IRS's use of ASFR assessments decreased dramatically from prior years. The number of assessments fell by 50 percent from FY 2011,³ while dollars assessed declined 54 percent.⁴ This Status Update explores possible reasons for the decrease.

ANALYSIS OF PROBLEM

The Automated Substitute for Return Program Is a Key Tool for Enforcing Filing Compliance.

ASFR is the key program for enforcing filing compliance by taxpayers who have not filed individual tax returns, but have incurred a "significant" tax liability.⁵ The program estimates the liability by computing tax, penalties, and interest based upon information reported to the IRS by third-party payers. When a taxpayer with reported income is delinquent in filing a return, the IRS attempts to secure the return through correspondence.

¹ See National Taxpayer Advocate 2011 Annual Report to Congress 93 (Most Serious Problem: *Automated "Enforcement Assessments" Gone Wild: IRS Efforts to Address the Non-Filer Population Have Produced Questionable Business Results for the IRS, While Creating Serious Burden for Many Taxpayers*); see also National Taxpayer Advocate 2007 Annual Report to Congress 246 (Most Serious Problem: *Nonfiler Program*).

² See National Taxpayer Advocate 2011 Annual Report to Congress 108 (Most Serious Problem: *Automated "Enforcement Assessments" Gone Wild: IRS Efforts to Address the Non-Filer Population Have Produced Questionable Business Results for the IRS, While Creating Serious Burden for Many Taxpayers*).

³ IRS, Collection Activity Report NO-5000-139, *National Delinquent Return Activity Report* (Sept. 2011-2012).

⁴ *Id.*

⁵ Internal Revenue Manual (IRM) 5.18.1.2 (Oct. 1, 2005). To meet ASFR processing criteria, the proposed tax liability must meet or exceed a predetermined dollar threshold.

If the attempt is unsuccessful, the IRS is authorized by the Internal Revenue Code (IRC) to prepare a substitute return for the taxpayer.⁶

The ASFR Program Has Proven to Be an Inefficient Use of IRS Resources, and It Artificially Inflates Assessments.

Since its inception, the ASFR program has been the subject of much analysis. As early as 1991, the IRS determined that "only a small percentage of the (ASFR) dollars and modules are collected during the assessment process and notice routine. More should be done in determining collectibility prior to making the (ASFR) assessment."⁷

In 1998, another IRS report concluded:

The IRS needs to place much greater emphasis on establishing contact with the taxpayers represented in the ASFR inventory, obtaining 'agreed' assessments for the tax years in question, and resolving all aspects of the taxpayers' delinquency problems, including collection, through one stop service.⁸

In the 2007 Annual Report to Congress, the National Taxpayer Advocate identified similar concerns with the ASFR program's "high default assessments, low collection percentages, and significant downstream consequences in the form of TAS casework."⁹

By FY 2011, the number of ASFR-generated returns had increased to eight times the number in FY 2002 (see Figure 1.S3.1).¹⁰

⁶ Internal Revenue Code (IRC) § 6020(b).

⁷ IRS, *Currently Not Collectible Study Group Report 82* (Feb. 1991).

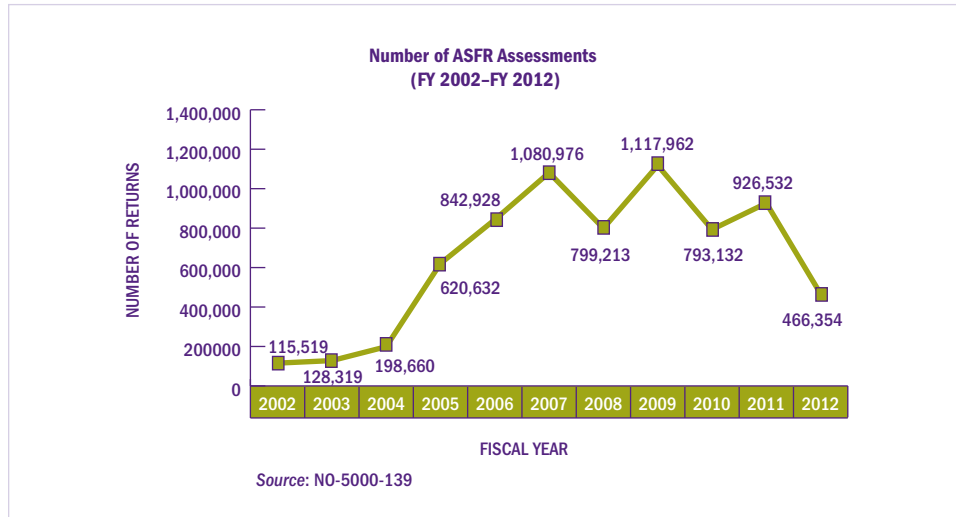
⁸ IRS, *Automated Substitute for Return (An Analysis from the Customer's Perspective)* 3 (Nov. 1998).

⁹ National Taxpayer Advocate 2007 Annual Report to Congress 246 (Most Serious Problem: *Nonfiler Program*).

¹⁰ IRS, Collection Activity Report NO-5000-139, *National Delinquent Return Activity Report* (2002 - 2011).

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FIGURE 1.S3.1, ASFR Assessments (FY 2002–FY 2012)

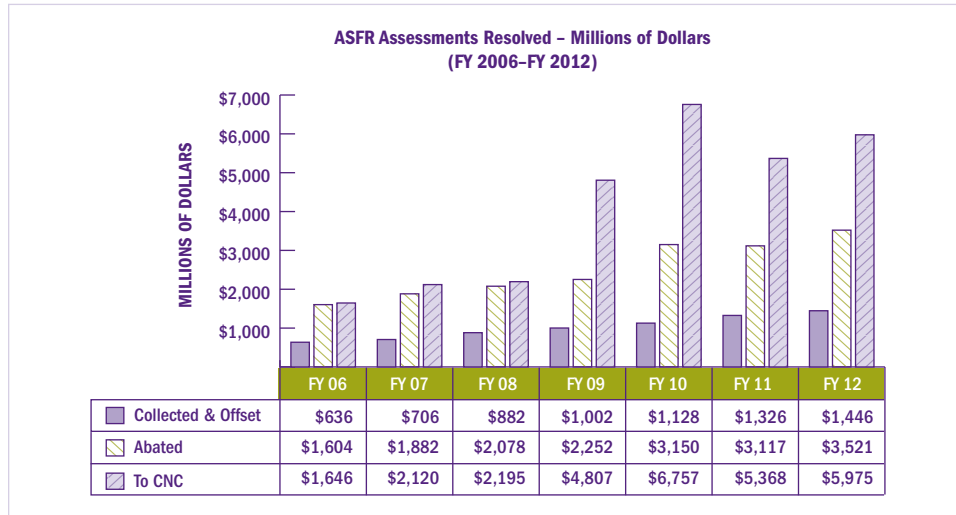


The National Taxpayer Advocate’s 2011 Annual Report to Congress pointed out that the IRS actually collected less than ten percent of the ASFR assessments from FY 2006 through FY 2011.¹¹ Moreover, the IRS abates or reports as currently not collectible a significant percentage of these accounts (see Figure 1.S3.2).

¹¹ See National Taxpayer Advocate 2011 Annual Report to Congress 97 (Most Serious Problem: *Automated “Enforcement Assessments” Gone Wild: IRS Efforts to Address the Non-Filer Population Have Produced Questionable Business Results for the IRS, While Creating Serious Burden for Many Taxpayers*).

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FIGURE 1.S3.2, ASFR Program Results (FY 2006–FY 2012)



ASFR Assessments Decreased Dramatically in FY 2012.

In FY 2012, the IRS made 466,354 ASFR assessments, compared to 926,532 in FY 2011,¹² which represents a 50 percent decrease.¹³ Correspondingly, the ASFR dollars assessed in FY 2012 decreased at a similar rate. The IRS made approximately \$6.7 billion in ASFR assessments in FY 2012, down 54 percent from \$14.4 billion in FY 2011.¹⁴

Possible Reasons for the Decrease in ASFR Assessments.

Clearly, the IRS made significant adjustments to the ASFR program in FY 2012. Reductions in ASFR assessments appear to have started in December 2011 and carried forward throughout the year.

The IRS has acknowledged that some of the adjustments were resource-driven (*i.e.*, the IRS opened fewer ASFR cases so the available staff could handle the workload in a timely manner). Additionally, the IRS has initiated a new practice that limits the number of ASFR returns assessed at one time on the same taxpayer. Finally, the IRS no longer initiates an ASFR assessment if the taxpayer already has a balance due for another tax year.

Although these adjustments appear to represent prudent business decisions, the IRS has not yet made the changes recommended in the 2011 Annual Report, which the National Taxpayer Advocate believes are still necessary. Placing more emphasis on pre-assessment contacts with taxpayers, and ending the practice of making ASFR assessments in cases

¹² IRS, Collection Activity Report NO-5000-242, *Type Assessment Cumulative Report, Part 1* (2006-2012).

¹³ IRS, Collection Activity Report NO-5000-139, *National Delinquent Return Activity Report* (Sept. 2011-2012).

¹⁴ *Id.*

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where the IRS has no confirmed address for a taxpayer would protect taxpayer rights, improve service, and maximize the benefits of IRS resources.

The IRS has informed us of its plan to implement an additional return delinquency notice for potential ASFR cases in FY 2013, which will be issued prior to ASFR processing. The IRS believes this notice will afford taxpayers additional time to respond, and may result in delinquent returns being filed without the need for ASFR assessments. The systemic changes associated with the implementation of this notice will also provide for additional telephone number and address research prior to ASFR processing, and will facilitate the testing of the potential benefits of using new technology in ASFR case processing.

The Taxpayer Advocate Service Will Study the Effectiveness of the ASFR Program.

In FY 2013, TAS Research will conduct an analysis to determine the results of ASFR assessments made after receiving notification that the ASFR letters were returned as undeliverable. The study will analyze dollars collected and case resolution type in addition to subsequent voluntary filing and payment compliance. If the analysis indicates the IRS collects less money on assessments and has less effective case resolutions when the taxpayer's mail is undeliverable, TAS will recommend testing a sample of ASFR casework to determine if additional attempts at personal contact will result in more accurate assessments and more dollars collected.

Additionally, we will explore what happens to ASFR cases that are transferred to the collection queue within one year of assessment. We will compare the dollars collected and case resolution type in these cases to ASFR assessments in which the IRS uses other collection streams.

CONCLUSION

The IRS has reduced its reliance on the ASFR assessments in FY 2012. However, the National Taxpayer Advocate still has serious concerns about the effectiveness of this program. While ASFR assessments may generate considerable potential accounts receivable, by design these assessments generally represent balances due that are artificially inflated and misleading. Further, we continue to find little evidence that this approach is effective in actually collecting delinquent revenue or promoting future compliance by the affected taxpayers.

The National Taxpayer Advocate reiterates the recommendations in the 2011 Annual Report to Congress that the IRS:

1. Reinstate the policy of not making automated enforcement assessments without confirming the taxpayer's address of record is valid, and require use of Form 4759, *Postal Tracer*, to confirm addresses prior to assessments in all "unagreed — no contact" situations.

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2. Revise ASFR processing procedures to emphasize the completion of telephonic, personal contacts with the affected taxpayers in all potentially "unagreed" ASFR cases prior to assessment.
3. Allocate adequate resources to the ASFR reconsideration process to ensure adjustments are initiated and completed in a timely manner.
4. Apply a pre-assessment collectibility determination to all potential ASFR assessments, including consideration of potential "unable to locate" and "little or no tax due" situations, and the potential for economic hardship based on the taxpayer's income level. Consider the taxpayer's last-filed return information in making this determination.