A Brave New World: The Taxpayer Experience in a Post-Sequester IRS

By Nina Olson

National Taxpayer Advocate (NTA) Nina Olson delivered these remarks May 9 at the Laurence Neal Woodworth Memorial Lecture at the meeting of the American Bar Association Section of Taxation. The views expressed herein are solely those of the NTA. The NTA is appointed by the Treasury secretary and reports to the IRS commissioner. However, the NTA presents an independent taxpayer perspective that does not necessarily reflect the position of the IRS, Treasury, or the Office of Management and Budget.

Olson argues that taxpayer rights are human rights. To protect those rights, she recommends that Congress enact a taxpayer bill of rights so that taxpayers and IRS employees understand the fundamental principles on which our tax system is based, and that it fund the IRS at the levels required to enable the government to meet taxpayer needs and make those rights a reality. She argues that reduced funding for the IRS, and the agency's consequent cutbacks in staff training, have placed taxpayer rights in jeopardy.

Prologue

I wrote this speech in the days preceding IRS revelations about its treatment of social welfare organization applications for recognition as tax-exempt entities, and I delivered it the night before these revelations were made public. At the time I had no knowledge of the Treasury Inspector General for Tax Administration (TIGTA) report or investigation, nor did the Inspector General approach me in the course of his investigation. In fact, while I had read conflicting press reports about IRS review of social welfare organizations over the past year, TAS received only 19 cases relating to the delayed ruling process out of over 915,000 cases we received between January 1, 2010, and May 2013.

While the causes underlying the sequence of events discussed in TIGTA's report are many, they are the direct consequence of the issues I discussed in this Woodworth Lecture and in my Annual Reports to Congress over the last twelve years. There are times when I have felt like Cassandra, the daughter of King Priam of Troy, of *Illiad* fame. Zeus, in a fit of pique, grants Cassandra the gift of foresight but also curses her by preventing anyone from believing her prophecies.

This speech was my effort to shake off that curse — to get people to wake up to the consequences of shrinking the IRS budget, virtually eliminating funding for training, reducing taxpayer service to laughable levels (if it weren't so sad), and undertaking enforcement actions before any meaningful attempt to communicate with taxpayers — in short, reducing taxpayers to widgets and dehumanizing them into objects that need to be "processed efficiently." Little did I know that the very next day would provide a compelling example of just that tendency.

My hope now is that this speech will provide a way forward out of this morass. I encourage Congress to consider my recommendation for a Taxpayer Bill of Rights, so that IRS employees and taxpayers alike understand the fundamental principles upon which our tax system is founded. And I encourage Congress, rather than cutting the IRS budget, to fund the IRS at the levels necessary to make those rights a reality.

Taxpayer Rights as Human Rights

I have had the enormous privilege of serving as the National Taxpayer Advocate since 2001. Over these twelve years, I have seen so much — I am reminded of the replicant Roy Batty, played by Rutger Hauer in *Blade Runner*, who, as his demise nears, says, "I've seen things you people wouldn't believe. . . . "

At any rate, I began my service when the IRS Restructuring and Reform Act of 1998 and the significant taxpayer protections it enacted were still fresh in everyone's minds. And over the years I have watched as this consciousness of rights has faded from the collective memory.

It is this trend that prompts the theme for my remarks today. I believe that the IRS is at a turning point, and for a number of reasons, we are beginning the slide to a radically different IRS from that which many of us in the room today practiced before or worked in just a decade or two ago. I believe that unless we act to change the trend, the IRS of tomorrow will have very little personal interaction with taxpayers, will be unable to adequately address the needs of a very diverse taxpayer population, and will not understand the various communities of taxpayers — geographic, economic, trade or business, cultural. It will relentlessly drive forward on the path of more automation, particularly in those very areas that require *personal* interaction to be effective, using automation mostly to make its *own* work more convenient and rarely more helpful or tailored to the *taxpayer*. As it does so, the IRS becomes ever more distant from understanding the needs and attitudes of the diverse taxpayer base that it is supposed to serve.

I am not sure what to call the era we are entering now, except to say that it is a brave new world. And like the world in Aldous Huxley's book, it is not a very desirable one.

In my remarks today, I will attempt to analyze this situation in some detail and identify the underlying causes; explain the serious consequences that derive from these circumstances; and propose an approach that just might turn the tide back. But before we can get to that silver lining, so to speak, I have to take us on a fairly depressing journey.

And even before we start down that road, I want to provide a framework for analysis. As the National Taxpayer Advocate, it is my job to ensure that the tax administrator treats its taxpayers right. I have advocated for years that Congress enact an actual Taxpayer Bill of Rights, consisting of ten rights, like our constitutional bill of rights.[1] This is not a mere gimmick — the majority of taxpayers today don't have a clue whether they have rights or what those rights are. In a 2012 survey commissioned by my office, only 46 percent of U.S. taxpayers said they believed they have rights before the IRS, and only 11 percent said they knew what those rights were.[2]

A TBOR, simply stated and articulating basic rights of any taxpayer, as well as the taxpayer's basic obligations to the tax system — since rights don't exist in a vacuum — would form the organizing principle around which tax administration should operate.

For example, if we say that taxpayers have a right to be assisted, then that right implies that taxpayers can expect prompt, courteous, and professional assistance with respect to their tax obligations, in the manner in which they are best able to understand, and to be provided a method to lodge grievances when service is inadequate. They can expect that the tax system will attempt to keep compliance costs to a minimum, and that assistance will be available in a timely and accessible manner and without unreasonable delays.

At their core, taxpayer rights are *human* rights. They are about our inherent *humanity*. Particularly when an organization is large, as is the IRS, and has power, as does the IRS, these rights serve as a bulwark against the organization's tendency to arrange things in ways that are convenient for itself, but actually dehumanize us. Taxpayer rights, then, help ensure that taxpayers are treated in a humane manner.

Keeping that point in mind, for the purposes of my remarks today, I ask how a tax system in the 21st century should be designed to give meaning to its foundational principles — that taxpayers have certain rights. And in order to answer that question, we need to figure out how we got to the tax system we have today.

How Did We Get to This 'Brave New World'?

Here are the major aspects of this brave new world of tax administration:

- a tax code profoundly complex;
- a taxpayer population extraordinarily diverse;
- a tax system that has a bifurcated mission of revenue collection and benefits disbursement, requiring separate sets of skills from its workforce;
- a tax agency seriously underfunded for the tasks it is assigned;
- a tax workforce profoundly undertrained in taxpayer rights, problem-solving, communication, and tax administration principles;
- a taxpayer base that distrusts government and the IRS; and
- a public discourse that finds it acceptable to rail against paying taxes even as everyone receives some benefits from the system.

How did we get in such a mess?

Let us briefly look at the history of the IRS, which my reports have elsewhere termed a path from tax collector to fiscal automaton. In 1913, when the 16th amendment was ratified, we had 358,000 individual taxpayers, concentrated in the professions and higher incomes. The personal exemption was $3,000, equivalent to more than $65,000 in 2011

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[1]For a detailed discussion of my legislative recommendation for a taxpayer bill of rights, see National Taxpayer Advocate 2011 Annual Report to Congress (Legislative Recommendation: *Enact the Recommendations of the National Taxpayer Advocate to Protect Taxpayer Rights*) 493-518; and National Taxpayer Advocate 2007 Annual Report to Congress (Legislative Recommendation: *Taxpayer Bill of Rights and De Minimis "Apology" Payments*) 478-489. The proposed rights are (1) the right to be informed; (2) the right to be assisted; (3) the right to be heard; (4) the right to pay no more than the correct amount of tax; (5) the right of appeal; (6) the right to certainty; (7) the right to privacy; (8) the right to confidentiality; (9) the right to representation; and (10) the right to a fair and just tax system. Taxpayer obligations include (1) the obligation to be honest; (2) the obligation to be cooperative; (3) the obligation to provide accurate information and documents on time; (4) the obligation to keep records; and (5) the obligation to pay taxes on time.

[2]Forrester Research Inc., The TAS Omnibus Analysis, from North American Technographics Omnibus Mail Survey, Q2/Q3 2012, 19-20 (Sept. 17, 2012).

dollars. In 1918, only 15 percent of the U.S. population paid income taxes. By 1944, with the advent of withholding, as others have put so well, the tax system converted from a class tax to a mass tax. We grew to 47.1 million individual taxpayers. The standard deduction relieved taxpayers with adjusted gross income of at least $5,000 (comparable to more than $63,000 in 2011) of the burden of itemizing deductions generally relating to business.[3] To deal with these hordes of middle class taxpayers entering the system, the IRS adopted mass production techniques.[4]

Today, almost half the U.S. population consists of return filers. We have about 143 million individual taxpayers.[5] What's more, we are delivering major social and economic programs through the Code — poverty relief, family assistance, incentives for work, home ownership, education, health care, specialized industries, energy, and manufacturing, and hiring.

To deal with this morass of programs, the IRS primarily communicates with its taxpayers indirectly — through preparers and other tax professionals, or through correspondence and notices. Its enforcement activities are increasingly automated, functioning subject to pre-programmed rules and triggers. The IRS rarely *engages* with taxpayers, preferring to *push* information out and let taxpayers *figure* it out.

The tax code itself is perilously complex. As I've reminded everyone in my most recent Annual Report to Congress, the IRS estimates it takes individuals and businesses over 6.1 billion hours to meet their annual filing requirements — the equivalent of 3 million full-time workers. One estimate places the Code's length at almost 4 million words. And there has been an average of more than one tax law change a day since 2001.[6]

Is it any wonder then that individual taxpayers are so unsure of themselves that 59 percent use paid preparers and another 30 percent use software to prepare their returns?[7] Only 11 percent go it alone, of which I am one, agonizingly. I feel it is my duty to slog through the actual return on my own.

Notwithstanding all this complexity, we have a taxpayer base that draws from a very diverse population. In the 2010 census, one quarter of the U.S. population identifies themselves as racial minorities, not counting Hispanics; one-fifth speaks a language other than English at home; over 15 percent of the population lives in poverty; over 5 percent of households are comprised of unmarried partners; 13 percent of the population is over age 65; millions of individuals experience domestic violence and abuse each year; 79 percent live in urban areas, 21 percent live in rural areas, and 5 to 7 million U.S. citizens live abroad.[8]

The relative unsophistication of a large part of our taxpayer base is shown by the IRS experience with the Earned Income Tax Credit or EITC, a refundable credit for the working poor.[9] For tax year 2011, more than 27 million taxpayers claimed almost $62.1 billion in EITC benefits.[10] These taxpayers are by definition low income — and as my office and Low Income Taxpayer Clinics have documented so well, low income taxpayers are more likely to have low functional, financial, and reading literacy; be unbanked and transient; have low computer literacy and less access to the Internet and computers; and have less access to representation.

Yet we are drawing this population into the tax system in a major way, and are then surprised to find that they get things wrong. And once they get things wrong, all hell breaks loose — we impose penalties against them, including the 2-year ban on claiming EITC, without any inquiry into, much less proof of, actual intentional or negligent disregard of the rules and regulations.

Lest anyone doubt the accuracy of what I am saying, let me recount the results of a research study my staff conducted and I reported on in my 2007 Annual Report to Congress.[11] We reviewed the entire population of taxpayers whose Tax Year 2004 returns were audited for EITC. Taxpayers who were *represented* in the audits were almost twice as likely to receive more EITC and received almost twice as much EITC as *unrepresented* taxpayers. Now, there may be many reasons for this result, but conducting audits by correspondence when the affected population has low literacy skills is one sure way to

[3]*See* S. Rept. 78-885, 78th Cong. 2nd Sess. (May 16, 1944).

[4]*See generally* National Taxpayer Advocate 2011 Annual Report to Congress, Vol. 2 (*From Tax Collector to Fiscal Automaton: Demographic History of Federal Income Tax Administration, 1913 — 2011)*, 1-62.

[5]IRS, *IRS Data Book*, Table 9a: *Examination Coverage: Recommended and Average Recommended Additional Tax After Examination, by Type and Size of Return* (2012).

[6]National Taxpayer Advocate 2012 Annual Report to Congress (Most Serious Problem: *The Complexity of the Tax Code*) at 5-6.

[7]*Id.*

[8]*See generally* National Taxpayer Advocate 2011 Annual Report to Congress (Most Serious Problem: *Introduction to Diversity Issues: The IRS Should Do More to Accommodate Changing Taxpayer Demographics*) 273-283.

[9]IRC section 32.

[10]IRS Compliance Data Warehouse, Individual Returns Transaction File for Tax Year 2011.

[11]National Taxpayer Advocate 2007 Annual Report to Congress, Vol. 2 (*IRS Earned Income Credit Audits — A Challenge to Taxpayers)* at 94.

assess more dollars. The IRS is communicating with these folks in what might as well be a foreign language — and in some cases, it actually is. In fact, in a TAS survey of EITC taxpayers who were audited, more than 25 percent stated they didn't even know the audit notice letter was telling them their returns were being audited.[12]

Approaches like this deny the basic humanity of the taxpayer and implicate at least three taxpayer rights, including the right to pay the correct amount of tax due, the right to representation, and the right to a fair and just tax system. That is, taxpayers have the right to expect the IRS will apply the tax law with integrity and fairness to all, to pay only the tax legally due, and to have all tax credits, benefits, refunds, and other provisions properly applied. They have the right to be represented in contacts, transactions, and controversies with the IRS by an authorized representative of their choice, and taxpayers who do not have the means to afford representatives may be eligible for free or nominal fee representation by LITCs and student tax clinics. And taxpayers have the right to expect that the tax system will take into consideration the specific facts and circumstances that might affect their underlying liability, ability to pay, or ability to provide information timely.

The last point about special circumstances is important because the trend today throughout the world is to use the tax system as a benefits administrator. The beneficiaries of these tax expenditures are often persons who are the least capable of navigating the complexities of the tax system. Thus, many tax administrators are struggling with the challenges presented by this new role. The IRS's failure to explicitly acknowledge that it has two separate and discrete missions exacerbates its already pronounced tendency to do things according to its own convenience regardless of whether it fits the taxpayer's knowledge, skills, or abilities, thereby violating a fundamental taxpayer right.[13]

The revenue collection function requires, to some extent, different skills from the benefits disbursement function. Even if we eliminate most tax expenditures from the Code, there are legitimate reasons for running something like an EITC through it — and if we pull this population into the tax system, then we have an obligation to develop procedures and hire employees with the requisite social services skill set and interview techniques. We need to recognize the humanity of these taxpayers and adapt our procedures to their needs and abilities.

Budget Cuts Worsen IRS Treatment of Taxpayers

Having said all this, I want to be fair. While I am the first to acknowledge the IRS can improve its policies and procedures — indeed, it is my statutory mission to point out those opportunities — the IRS needs to be funded adequately to accomplish these tasks. Yet since FY 2010, the IRS's budget has been reduced by *nearly $1 billion, or about 8 percent*, due to across-the-board budget cuts and sequestration.[14]

This is just plain nuts. If you are trying to collect revenue and reduce the deficit, you don't achieve that by cutting your accounts receivable function and furloughing its employees. As the revenue collector, the IRS is different from all other federal agencies. Each dollar appropriated for the IRS generates substantially more than one dollar in federal revenue. In FY 2012, the IRS collected about $2.52 trillion on a budget of about $11.8 billion.[15] That translates to an average return-on-investment (ROI) of about 214:1. The marginal ROI of additional spending will not be nearly so large, but virtually everyone who has studied the IRS budget has concluded that the ROI of additional funding is positive. In 2011, former Commissioner Shulman estimated in a letter to Congress that proposed cuts to the IRS budget would result in reduced revenue collection of *seven times* as much as the cuts.[16]

As a result of these budget reductions, the following things have happened:

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[12]*Id.* at 103-104.

[13]For a detailed discussion about the IRS's dual mission, see National Taxpayer Advocate 2010 Annual Report to Congress (Most Serious Problem: *The IRS Mission Statement Does Not Reflect the Agency's Increasing Responsibilities for Administering Social Benefit Programs*) 15-27.

[14]*See* Hearing Before Subcomm. On Financial Services and General Government of H. Comm. on Appropriations, 113th Cong. (2013) (statement of Steven T. Miller, Acting Commissioner of Internal Revenue), *available at* http://appropriations.house.gov/uploadedfiles/hhrg-113-ap23-wstate-millers-20130409.pdf.

[15] GAO, GAO-13-120, Financial Audit: IRS's Fiscal Years 2012 and 2011 Financial Statements 65 (Nov. 2012), *available at* http://www.gao.gov/assets/650/649881.pdf; Department of the Treasury, *FY 2013 Budget in Brief*, at http://www.treasury.gov/about/budget-performance/budget-in-brief/Documents/11.%20IRS_508%20-%20passed.pdf.

[16]Letter from Douglas H. Shulman, Commissioner of Internal Revenue, to the chairmen and ranking members of the House Committee on Ways and Means (and its Subcommittee on Oversight) and the Senate Committee on Finance (Oct. 17, 2011), *available at* http://democrats.waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/media/pdf/112/Rep_Lewis_IRS_Letter.pdf. In addition to generating direct revenue, IRS compliance actions produce indirect revenue gains. Studies show that taxpayers who might otherwise be tempted to bend the rules report their income more accurately as the likelihood of an audit increases.

- The IRS is unable to answer about one out of every three calls it receives from taxpayers trying to speak with an employee.[17]
- It is unable to process a high percentage of taxpayer letters responding to IRS compliance notices within established timeframes. For example, at the end of FY 2012, the IRS's inventory of taxpayer correspondence dealing with tax account adjustments was over 1 million letters, and 48 percent were considered ''overage.''[18]
- It is unable to timely resolve hundreds of thousands of identity theft cases, with victims having to wait 6 months or longer before receiving their refunds.[19]

Perhaps most telling, on April 15, the statutory deadline for filing individual income tax returns, the IRS managed to answer only 57 percent of the calls it received.[20] Some in the IRS view that as a success, I guess because it could have been much worse. But I really don't know how anyone could view that as a success. Under any grading curve imaginable, 57 percent is an ''F.'' This state of affairs is a gross violation of the aforementioned taxpayer right to be assisted in meeting one's tax obligations.

In the enforcement realm, the effect of the cuts is even more damaging, because that is where the IRS's awesome audit and collection powers can have the most grievous impact on taxpayers' welfare.

The IRS currently conducts over 75 percent of its individual income tax audits by correspondence, which the IRS views as highly ''efficient'' because it does not require lots of brick-and-mortar offices with higher-graded employees conducting audits.[21] In a few centralized sites, IRS employees will talk with a taxpayer if he or she calls in, but the IRS virtually never calls the taxpayer for clarification about any information the taxpayer submits or to explain what more the taxpayer should produce. In a study we conducted last year of Tax Court cases involving the EITC that were fully conceded by the Commissioner, we looked at what happened to the taxpayer at the IRS audit stage to identify why taxpayers who correctly claimed the EITC on their returns didn't resolve the issue in audit and had to go to Tax Court to receive recognition of that fact.[22] We found the following:

- in most cases, the taxpayers tried to resolve their problems by calling the IRS before they filed their Tax Court petitions, calling five times on average, and in some instances more than 15 times;
- in most cases, taxpayers submit documentary evidence that the Appeals Officer or Chief Counsel Attorney accepts during the Tax Court proceeding as probative of the claim;
- taxpayers who submit documents often do so only after petitioning the Tax Court, but these taxpayers have usually spoken with an IRS examiner beforehand;
- only infrequently — in 13 percent of the cases — do taxpayers wait until after they file their Tax Court petitions to call the IRS and submit documents;
- in almost a fifth of all cases, taxpayers submit documentation, usually approved by the IRM, that the examiner rejects but an Appeals Officer or Chief Counsel attorney accepts;
- cases are rarely settled based on hazards of litigation; instead the resolution is based on documentary evidence; and
- in 5 percent of the cases, the examiner denied the EITC by misapplying the law.

The failure of the IRS audit function to elicit the available and probative documentation despite having five opportunities on average to speak with the taxpayer can be devastating. The taxpayers in our sample had to wait an average of almost a year and a half to get refunds that on average constituted more than a quarter of their adjusted gross incomes. The average EITC claimed was $3,479 and the average adjusted gross income was $17,024.

These findings suggest violations not only of the taxpayer rights to assistance and to pay the correct amount of tax due but also of the right to be heard. Taxpayers have the right to raise their objections and provide additional documentation or explanation in response to actions by the IRS, which should consider those objections and explanations promptly and impartially. Moreover, the IRS should

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[17]IRS, Joint Operations Center, *Snapshot Reports: Enterprise Snapshot* (week ending Sept. 30, 2012). The Accounts Management phones lines (previously known as the Customer Account Services phone lines) receive the significant majority of taxpayer calls. However, calls to compliance phone lines and certain other categories of calls are excluded from this total.

[18]During the final week of FY 2012, the backlog of correspondence in the tax adjustments inventory stood at over one million letters, and the percentage classified as ''overage'' stood at 48 percent. IRS, Joint Operations Center, *Weekly Enterprise Adjustments Inventory Report* (week ending Sept. 29, 2012).

[19]*See, e.g.*, National Taxpayer Advocate 2012 Annual Report to Congress 42-67 (Most Serious Problem: *The IRS Has Failed to Provide Effective and Timely Assistance to Victims of Identity Theft).*

[20]IRS, Joint Operations Center, *Accounts Management Rollup* (Apr. 15, 2013).

[21]FY 2012 IRS Data Book, Table 9a (1,122,216 correspondence audits/1,481,966 total audits).

[22]*See* National Taxpayer Advocate 2012 Annual Report to Congress, Vol. 2 (*Study of Tax Court Cases in which the IRS Conceded the Taxpayer Was Entitled to Earned Income Tax Credit* (EITC)), 71-104.

provide the taxpayer with an explanation of why those objections or explanations are not sufficient and what is required to better document the taxpayer's concern. This study of Tax Court cases also demonstrates the importance of the taxpayer's right to an administrative and judicial appeal, which is crucial to the actual and perceived fairness of the tax system.

In another study we published in December 2011, Taxpayer Advocate Service Research reviewed the IRS's use of math error authority for dependent Taxpayer Identification Numbers, or TINs.[23] The IRS can disallow a dependency exemption and related credits if the dependent's TIN appears incorrect per various databases it has access to. Under math error authority, the IRS summarily assesses the additional tax and notifies the taxpayer that he or she has 60 days to disagree with the assessment. If the taxpayer timely challenges the assessment, the IRS abates the assessment and proceeds with deficiency procedures, which gives the taxpayer the right to go to Tax Court. In our study we found that 55 percent — more than half! — of the 2009 Tax Year math error notices for dependent TINs were later at least partially abated, and in 56 percent of the cases that were abated, the IRS had sufficient information in its own records to determine that the dependent was in fact legitimate. In other words, even though the IRS could have spent less time figuring this out for itself, it *automatically* assessed tax and imposed a burden on the taxpayer to come in and provide information to undo the original assessment.[24] Now, I understand how you might want to do that in some instances where there is a low abatement rate, but when more than half of the assessments are abated, well, as I've noted earlier, taxpayers have the right to expect the tax system will take some curative steps before imposing undue burden on them.

My staff went a bit further and looked at those cases that did not have any adjustment to the math error. In 41 percent of those cases, had the IRS examined its own records, it could have corrected and allowed one or all dependents in 52 percent of the cases. These sample percentages translate into over 40,000 taxpayers who may not have received the refunds to which they are entitled, and we estimate these taxpayers lost at least $44 million attributable to these dependent TINs, an average of $1,274 per taxpayer. The fact that taxpayers did not respond to the math error notice, then, is not indicative of their eligibility for dependent exemptions or other credits. It may be indicative, however, of how demographics impact tax administration.

This last point about math error authority is particularly troublesome because with a shrinking budget, legislative expansion of math error is very enticing. First, the machines can do it; second, these legislative proposals score high in revenue estimates; and third, they have the gloss of efficiency and revenue protection. Never mind that if you send one of those cryptic letters to a low-literacy taxpayer who doesn't know how to respond or doesn't trust the IRS enough to respond, the ostensibly easy money violates several taxpayer rights. And if taxpayers do respond and you have an abatement rate of 55 percent, you end up spending more in undoing the assessment than you did in issuing the assessment in the first place. But those costs don't get factored into IRS return-on-investment calculations. Nor does the cost of disaffection experienced by the taxpayer.

Finally, let's talk about collection in the brave new world of reduced funding. Here again we see the IRS turning to automation to increase productivity. A few statistics say it all: In FY 2012, the Automated Collection System received 2.8 million taxpayer cases[25]; in that year it issued over 2.2 million levies.[26] That is, the ratio of levies to cases was 79 percent. Yet, only 2 percent of ACS employees' direct time was spent on outbound calls.[27] Basically, ACS issues levies in order to get the taxpayer to call in. Certainly some of those taxpayers would have responded to a call from an ACS employee rather than receiving an enforcement action. In fact, a 2000 IRS study found that notices had a higher response rate than levies.[28] What is the disaffection cost to the IRS of a taxpayer who would have responded to a less intrusive compliance touch? Even with this automated so-called efficient approach to collection, ACS only collected 7 percent of its almost $43 billion case receipts in FY 2012.[29]

[23]*See* National Taxpayer Advocate 2011 Annual Report to Congress, Vol. 2 (*Math Errors Committed on Individual Tax Returns: A Review of Math Errors Issued on Claimed Dependents*), 113-144.

[24]IRC section 6213(b) and (g).

[25]IRS, Collection Activity Report, NO-5000-2, *Taxpayer Delinquent Accounts Report* (Oct. 2012).

[26]IRS, Collection Activity Report, NO-5000-24, *Levy & Seizure Report* (Oct. 2012).

[27]Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2010-30-046, *More Management Information is Needed to Improve Oversight of Automated Collection System Outbound Calls* 6 (Apr. 28, 2010).

[28]ACS Telephone Response Study, Kansas City Customer Service Site March-April 2000.

[29]National Taxpayer Advocate 2012 Annual Report to Congress (Most Serious Problem: *The Automated Collection System Must Emphasize Taxpayer Service Initiatives to Resolve Collection Workload More Effectively*) at 381.

The IRS's misguided collection approach is illustrated by a recent discussion on the LITC listserv hosted by the ABA Tax Section.[30] The LITC's client, who receives Social Security Disability Income of less than $1,000 per month, submitted an offer in compromise. His reasonable collection potential is zero. The IRS's position appeared to be that it must have $100. In the words of the taxpayer's representative, ''The manager complained that we are wasting their time with these low-dollar offers and should be using currently not collectible status for these people.'' The IRS offered a 24-month payment plan for the $100, stating it couldn't accept less than $100, and noting that the client spent $12.94 in two transactions at a liquor store.

Now, in addition to the alleged violation of several taxpayer rights, this scenario, if true, is an outright violation of law. Internal Revenue Code section 7122 provides that ''an officer or employee of the Internal Revenue Service shall not reject an offer-in-compromise from a low-income taxpayer solely on the basis of the amount of the offer.'' This provision entered the law in response to my testimony in the hearings for the Internal Revenue Service Restructuring and Reform Act of 1998. In testimony submitted for my appearance before the Senate Finance Committee in February 1998, I wrote:

> Low income taxpayers are unable to qualify for offers-in-compromise because they cannot raise a sufficient amount of funds to interest the Service in processing the offer. In my district, I have been advised that an otherwise acceptable offer would be immediately rejected as ''frivolous'' if it were to come in between $500 and $1,000, on the [] ground that it costs the Service more than that amount to process the offer. Such a policy has the effect of permitting only affluent taxpayers to ''buy'' relief from tax liabilities through offers-in-compromise. Congress should make clear that there is no minimum offer amount required for consideration of an offer.[31]

I must also note that this value-laden discussion is a violation of the taxpayer's right to privacy. Taxpayers have the right to expect that any IRS inquiry or enforcement action will involve as little intrusion into taxpayers' lives as possible, will be limited to information relevant to the matter at hand, and will follow all due process considerations. It is irrelevant to this investigation that the taxpayer spent money at a liquor store. In fact, in most low income communities, the only food store is a cash and carry, that is, a liquor store that sells milk and microwave meals and such. Where I lived in Philadelphia right after my marriage in 1974, our ''food store'' was the local wig shop. Seriously, if I had charged or written a check for food items, it would be to Wig-o-Rama. What would the IRS impute from that?

This kind of enforcement mindset will only be exacerbated by a well-meaning but troubling effort to address the fact that federal budget rules give the IRS no ''credit'' for the revenue it collects.[32] In a partial attempt to address this problem, several Appropriations acts in recent years have given the IRS additional funding by using a mechanism known as a ''program integrity cap adjustment.'' Under this mechanism, new funding appropriated for IRS *enforcement* programs generally does not count against otherwise applicable spending ceilings provided:

> 1. The IRS's existing enforcement base is fully funded; and
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> 2. A determination is made that the proposed additional expenditures will generate an ROI of greater than 1:1 (*i.e.*, the additional expenditures will increase federal revenue on a net basis).

The Administration's budget proposal released last month recommends a change to the Balanced Budget and Emergency Deficit Control Act of 1985 to provide program integrity cap adjustments for the next ten years.[33] While this cap adjustment mechanism may provide a relatively easy path to providing the IRS with more resources, I am concerned that taxpayer service activities have been excluded from this enhanced funding mechanism in the past and would continue to be excluded under the Administration's proposal. The rationale has been that the IRS is able to measure the direct

[30]E-mail from LITC Staff Attorney to ABA-Tax Low Income Taxpayer Clinic Listserv (May 7, 2013).

[31]S. Rep. No. 105-529, at 333 (1998). IRS Restructuring: Hearings Before the S. Comm. on Finance on H.R. 2676, 105th Cong. 329-336 (1998) (statement of Nina E. Olson, Executive Director, Community Tax Law Project).

[32]Once the relevant Appropriations Subcommittee receives its section 302(b) allocation for the upcoming fiscal year, funding the programs under its jurisdiction is essentially a zero-sum game — each dollar allocated to one agency reduces the pool of funds available for others. *See* Congressional Budget and Impoundment Control Act, Pub. L. No. 93-344, section 302(b)(1), 88 Stat. 297, 308 (1974) (providing that the Appropriations Committee of each House shall subdivide its allocation of funding under the annual budget resolution among its subcommittees). The ''program integrity cap adjustment'' mechanism, which I later discuss, is a limited but flawed exception to this rule.

[33]*See* Department of the Treasury, General Explanations of the Administration's Fiscal Year 2014 Revenue Proposals 187 (Apr. 2013).

ROI of its enforcement activities — *i.e.,* it can compute to the dollar the amounts collected by its Examination, Collection, and document-matching functions — but is unable to quantify the ROI of taxpayer services. Thus, it is not currently possible to document whether or to what extent its taxpayer services generate an ROI greater than 1:1.

Creating a mechanism that allows more funding for enforcement actions while excluding taxpayer service activities like outreach and education would be a mistake, for two reasons. First, common sense tells us that taxpayer services are a significant driver of tax compliance and generate a very high ROI. Publishing tax forms and instructions, conducting outreach and education, assisting taxpayers, tax preparers, and tax-software manufacturers, and otherwise administering the tax filing season are absolute prerequisites for tax compliance. In general, the ROI of these service activities is probably greater than the ROI of enforcement actions. As I discussed in detail in the National Taxpayer Advocate's 2012 Annual Report to Congress, the IRS could greatly improve its taxpayer services if it received additional funding for that purpose.

Second, an enforcement-only cap adjustment will inherently push the IRS to become more of a hard-core enforcement agency. It should be emphasized that in FY 2012, direct enforcement revenue amounted to only $50.2 billion,[34] or two percent of total IRS tax collection of $2.52 trillion.[35] *The remaining 98 percent resulted from voluntary front-end tax compliance.* If cap adjustments are applied solely to bolster enforcement funding, the relative allocation of the IRS budget between enforcement and taxpayer service will shift over time in a direction that causes taxpayers to fear the IRS more and voluntarily cooperate less. Primarily because of the proposed cap adjustments, the Administration's ten-year funding projections show that funding for the IRS Enforcement appropriation would increase by more than twice as much as funding for the IRS's Taxpayer Services appropriation.[36] In our effort to enforce the laws against noncompliant taxpayers, we must take care to avoid steps that may alienate compliant taxpayers and thereby jeopardize the existing tax base. But this seems to be the direction we are heading in our brave new world.

I am also deeply concerned about the dramatic reduction in the training budget for IRS employees. Because of budget constraints, the IRS's full-time, permanent workforce was cut from about 86,000 to 79,000 employees from FY 2010 to FY 2012, a decrease of 8 percent.[37] This workforce reduction makes it imperative that the remaining IRS employees receive top-quality training so they can perform their jobs as effectively and efficiently as possible. Yet the IRS estimates that by the end of FY 2013, it will have cut its training budget by *83 percent* as compared with FY 2010.[38]

The IRS has tried to train employees at lower cost by replacing in-person training with remote instruction. That is a constructive approach to a point. Some types of training can effectively be provided remotely. But other types, such as teaching taxpayer-facing employees how to interview taxpayers and working through case studies so that they learn to apply taxpayer rights in real-world circumstances, do not lend themselves well to a virtual setting. In addition, employees of many IRS functions are spread around the country, and it is difficult for IRS managers to do their jobs properly if they cannot meet periodically — face to face — with the employees they supervise. In my view, it is *impossible* to cut the IRS's training budget by 83 percent without impairing the ability of IRS employees to perform their jobs effectively.

As if this is not enough damaging belt-tightening, the IRS, pursuant to a Treasury Department directive, has implemented new rules that require executives who manage the major IRS functions, myself included, to obtain prior approval from the Deputy Commissioner for any training (or other event) that

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[34]IRS, Fiscal Year 2012 Enforcement and Service Results *at* http://www.irs.gov/pub/irs-news/FY%202012%20enforcement%20and%20service%20results-%20Media.pdf.

[35]*See* note 15, *supra*.

[36]Budget of the United States Government: Analytical Perspectives, Supplemental Materials Fiscal Year 2014: Table 32-1, Federal Programs by Agency and Account, at 304-305, *available at* http://www.whitehouse.gov/sites/default/files/omb/budget/fy2014/assets/32_1.pdf. Taxpayer service spending is shown on the top line, which is labeled "Taxpayer Services: Appropriations, discretionary . . . 803." Enforcement spending is the sum of the line labeled "Federal law enforcement activities: Appropriations, discretionary . . . 751" and the line labeled "Central fiscal operations: Appropriations, discretionary . . . 803." Over the FY 2014 through FY 2023 period, these projections show that Taxpayer Services spending would rise by 23 percent, while Enforcement spending would increase by 54 percent.

[37]IRS Integrated Financial System, Commitments, Obligations, Expenditures & Disbursements report. These figures track employees in "pay status" and exclude employees who were in Leave Without Pay or related statuses.

[38]IRS Fact Sheet, FS-2013-05, *IRS Achieves $1 Billion in Cost Savings and Efficiencies* (April 2013), *available at* http://www.irs.gov/uac/IRS-Achieves-$1-Billion-in-Cost-Savings-and-Efficiencies (last visited April 12, 2013). From FY 2010 to FY 2012, the IRS had already cut its training budget from about $168 million to about $63 million, a reduction of 62 percent. IRS Integrated Financial System, Commitments, Obligations, Expenditures & Disbursements report.

will cost *$3,000* or more.[39] As a practical matter, this low threshold has made most in-person meetings impossible. Considering the costs of airfare, local transportation, hotel accommodations, and per diem reimbursements, attendance by more than two persons in many cases will generate costs above $3,000. By analogy, these rules are akin to requiring members of Congress and their staffs to obtain advance written permission from their leadership before visiting the states or districts they represent, including their state offices, or attending any conferences outside Washington, D.C. — on the theory that ''virtual'' town halls are just as effective as being there. The quality of the communication is simply not equivalent. My own organization, the Taxpayer Advocate Service, used to provide a rigorous one-week training session each year for all of our employees. It is not reasonable to expect employees to sit in front of a computer screen for a full week and absorb the same level of information they would receive from classroom presentations, interactive case studies, and discussions.

With these travel and training rules in place, IRS employees will not have the skills and knowledge to help taxpayers obtain the assistance necessary to comply with the tax laws and resolve problems that arise. IRS officials will no longer attend conferences throughout the country where they can hear the concerns of practitioners. That absence of interaction with taxpayers and even one's own employees does not bode well for the tax system. It further isolates the IRS from its taxpayers. It enables the IRS to ignore the *humanity* of taxpayers.

Taxpayer Rights in Action: A Tale of 2 Taxpayers

To illustrate this point about the dehumanization of the tax system and its participants, I'd like to tell a story. Actually, it is a Tax Court case, *Antioco v. Commissioner*.[40] The story I am about to tell is all from the public record, namely the court's memorandum decision, issued on February 4th of this year. Ms. Antioco is a 71-year-old woman who lived with her 96-year-old mother in a 5-unit apartment building she acquired with proceeds from the sale of a property pursuant to her divorce. She attempted a section 1031 like-kind exchange but missed the deadlines, so after she sank all of the sales proceeds into her new property she learned she had a rather large tax liability for two years. In response to an IRS notice of intent to levy, Ms. Antioco requested a Collection Due Process hearing and proposed to pay $1,000 per month until she could refinance her property to pay the tax bill. She told the IRS she was the primary caretaker for her elderly mother who lived in one of the apartment units and was having health problems, and she said that the levy would cause them both ''economic hardship.'' In addition to making the $1,000 payments, Ms. Antioco explored lending options, but despite significant equity in the property, she was unable to refinance with cash out for various reasons, including an unacceptable debt-service coverage ratio. She ultimately was able to refinance at a reduced interest rate with no cash out, but the bank required her to put her mother's name on the deed to the property as well as on the loan. She provided the Appeals Officer with evidence of her unsuccessful efforts to secure cash-out refinancing, and the loan commitment for the lower-interest rate refinancing. Meanwhile the IRS issued a notice of determination sustaining the seizure on various grounds, including that the levy on the building balanced the government's need for ''efficient collection.'' The taxpayer appealed to Tax Court, and before trial the Commissioner sought a remand because the Appeals officer had abused her discretion by not requesting that the taxpayer submit a new financial statement and relevant documentation regarding her business income. The court granted the remand.

So far, so good. But on remand a new Appeals Officer ''preliminarily determined Ms. Antioco's decision to add her mother to the title had '*essentially* rendered [her] insolvent and devoid of any equity in assets,''' that she could pay her liabilities but ''*simply chose not to do so*,''[41] that he would not consider her ''economic hardship,'' and that ''[t]he issue of *** her 96-year old mother (to explain why she cannot sell) [is a] diversionary argument that I will not consider.''[42]

The appeals officer ultimately issued a supplemental notice of determination sustaining the proposed levy on the building. The court describes it thusly:

> The notice concluded that Appeals could not consider her proposed installment agreement because there was over $900,000 in equity in Ms. Antioco's apartment building and she had fraudulently transferred it to her mother. It went into great detail explaining the numerous factors that [the Appeals Officer] believed

[39]*See* Interim Guidance Memorandum, Control No. CFO-01-1212-01 (Dec. 27, 2012) (issued pursuant to Treasury Directive 12-70 (Nov. 28, 2012), *available at* http://www.treasury.gov/about/role-of-treasury/orders-directives/Pages/td12-70.aspx). The Deputy Commissioner herself can only approve training and travel up to $24,999. Any training or travel over that threshold must be sent to the Treasury Department for approval.

[40]T.C. Memo. 2013-35 (2013), 2013 T.C. Memo. LEXIS 36.

[41]2013 T.C. Memo. LEXIS 36, at **8-9.

[42]*Id.* at **9-10.

showed Ms. Antioco had committed fraud, including that she concealed the transfer from the government, became insolvent as a result of the transfer, and was left without any "equity in assets" to pay the federal government. It also suggested that Ms. Antioco could've gotten a loan from a financial institution to pay off her liabilities. And it concluded that Ms. Antioco was a "non-compliant" and "won't pay taxpayer" who refused to provide numerous requested documents and was "using her 95 year old mother as an emotional diversion."[43]

The court made short shrift of all of these arguments, and even some the government tried to advance after the fact. It stated that the Appeals Officer's "determination that Ms. Antioco committed fraud is just plain wrong — wrong as a matter of law, because he didn't know what constructive fraud meant, and clearly erroneous as a matter of fact because he did not determine whether Ms. Antioco had actually committed fraud under any of those [relevant] tests."[44] It found "simply not believable" the Appeals Officer's trial testimony that he did not consider Ms. Antioco's economic hardship argument because she never raised the issue. Ultimately the court remanded the case yet again with even more specific instructions than the first remand, ordering Appeals to consider the taxpayer's proposed installment agreement, financial information, and special circumstances and economic hardship claims.

The case is fascinating reading for many reasons, but I am discussing it here because there seems to be an almost willful blindness to the taxpayer's human condition and exigent circumstances. Decisions were made based on predisposition in contradiction of the facts or the law. Somehow the government found this taxpayer a "won't pay" taxpayer — in IRS jargon, that means a tax cheat and therefore "no holds are barred" on collection activity — and chose to accuse her of fraud, notwithstanding that during the CDP hearing and the two trials, the taxpayer maintained her monthly payments and by the time of the second trial had reduced one year's tax liability by $88,000 through payments and loss carrybacks. The court found the Appeals Officer's determination that Ms. Antioco was non-compliant to be clearly erroneous. But how did this case happen?

One answer is that this case unfolded the way it did because the IRS does not train its employees on fundamental taxpayer rights as derived from human rights. To accuse a 71-year-old taxpayer of "using her 95-year-old mother as an emotional diversion" instead of acknowledging her legitimate concern that, as the court put it, "her mother would not be able to survive the sale of the building and subsequent move because of her health and advanced age" is a triumph of dehumanized tax administration. It also happens to be a violation of the fundamental right articulated in section 6330 that the Appeals Officer in a CDP hearing shall take into consideration "whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary."[45] This important requirement relates back to the fundamental taxpayer rights to privacy and to a fair and just tax system.

I contrast this story with one about a former client of mine during my time at The Community Tax Law Project, the low income taxpayer clinic I founded. This taxpayer was a woman from the Middle East whose husband had hidden money from her to support his mistress, not reported that income on their joint returns for two years, forged my client's name on statute extensions, and then fled the country when the IRS came after him and reduced federal tax liens to judgments. I attempted several different approaches to relieve her of joint and several liability, including filing innocent spouse claims under 6013(e) and a Form 843 claim. Despite copious documentation, I was unable to get a single human being at the IRS to look at the evidence I had amassed. Two years later and in an act of almost-despair, I filed a Doubt as to Liability Offer. This last effort at least resulted in the IRS assigning a Revenue Agent to review the case.

At our initial meeting, the Revenue Agent noted our evidence showing my client had an English reading comprehension level of 2 percent. He paused and then told me that when his mother was in her teens she had been interned in a Polish labor camp during World War II. She escaped and made her way to America. She arrived here without knowing any English at all. He said to me that he could understand how terrifying and difficult it must be to navigate not just the tax system but your life when all is turned upside down. By acknowledging the vulnerable human condition of my client, the revenue agent opened his mind to the actual facts and evidence in the case. He found that my client was indeed an innocent spouse and he worked with me to get the judgment vacated with respect to my client. As a result of his actions, my client received a refund of previously levied and

[43]*Id.* at **10-11.
[44]*Id.* at *18.
[45]IRC section 6330(c)(3)(C).

offset funds in an amount that was almost twice her annual salary as a hair cutter.

The Way Forward to a Better New World

Over my twelve years as the National Taxpayer Advocate, I have made copious recommendations to improve tax administration and provide better taxpayer assistance while collecting revenue. I will not go through them here — just check out our website, our reports, my congressional testimony, and my blog. We've made concrete, practical suggestions for achieving comprehensive tax reform and for restructuring the budget rules that apply to the IRS.

But there are two things we must do in order to avoid going further into the frightening and self-defeating brave new world I've described here today:

- First, we must enact an enforceable Taxpayer Bill of Rights that serves as the core principles of U.S. tax administration.
- Second, we must fund the IRS sufficiently so it can administer the tax system in accord with those fundamental principles even as it discharges its dual mission of revenue collection and benefits administration.

For example, if the right to be assisted encompasses all that I've just described today, then Congress has an obligation to provide funding to the IRS and conduct oversight of the IRS to make that right a reality. From a budget standpoint, the Executive and Legislative branches should be asking, "What is the level of funding that will enable the government to satisfy the taxpayer's right to assistance?" Moreover, if taxpayer assistance is a taxpayer right, then there should be *measures* for how well the IRS is fulfilling and protecting that right, and there should be *remedie*s for taxpayers when that right is violated.

If we do not make taxpayer rights the linchpin of our tax system, as our Bill of Rights is the lynchpin of our constitutional democracy, we lose our heart and soul. This is what taxpayer rights are about — protecting them not only recognizes the taxpayer's human condition but also reminds us of our own humanity. It saves us from our prejudices and our preconceived notions. It makes it impossible for us to think of taxpayers as widgets or cases or pieces of paper. Even more than being about the taxpayer's humanity, taxpayer rights are about reclaiming our own humanity. A revenue officer has no less power to levy upon property or file a lien if she listens carefully and compassionately to the taxpayer's situation. But she just might find out the salient fact that will provide an alternative solution — in fact, the correct solution. Which, of course, is a fundamental taxpayer right.