WRITTEN STATEMENT OF

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HEARING ON

THE NATIONAL TAXPAYER ADVOCATE'S 2015 ANNUAL REPORT TO CONGRESS

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT OPERATIONS

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

U.S. HOUSE OF REPRESENTATIVES

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Chairman Meadows, Ranking Member Connolly, and distinguished Members of this Subcommittee:

Thank you for holding today's hearing on the National Taxpayer Advocate's 2015 Annual Report to Congress.[1] By statute, the report is required to describe at least 20 of the most serious problems encountered by taxpayers in their dealings with the Internal Revenue Service, to recommend administrative and legislative changes to mitigate the problems, and to identify the ten most litigated issues for each category of taxpayers.[2]

I. Overview

In my testimony today, I will begin by providing an overview of the functions of the Taxpayer Advocate Service (TAS), which I lead, and the National Taxpayer Advocate's Annual Report to Congress. I will then discuss the IRS Future State Plan, which envisions how the agency will operate in five years and beyond and embraces six broad themes, three of which I will use as organizing principles for this testimony. I will conclude my testimony with a discussion of some of the Information Technology challenges the IRS faces as it tries to achieve its Future State vision.

At the outset, I wish to point out that taxpayers are experiencing many problems today because the IRS lacks adequate resources to assist them. Since FY 2010, we estimate the IRS's budget has been reduced by about 19 percent on an inflation-adjusted basis. That is a huge reduction for any organization, particularly one as labor-intensive as the IRS. This year, Congress has given the IRS an additional $290 million, which is helpful, and I am hopeful Congress will continue to provide additional funding in the coming years to ensure our nation's taxpayers receive the assistance they deserve.

Notwithstanding that more funding is needed, the agency must strive to do its best with whatever resources it is given. A large part of my job is to make suggestions to further that objective from a taxpayer perspective. Thus in my testimony today, I will focus on the following three Future State themes:

- Facilitate voluntary compliance by empowering taxpayers with secure innovative tools and support.

- Leverage and collaborate with external stakeholders.

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[1] The views expressed herein are solely those of the National Taxpayer Advocate. The National Taxpayer Advocate is appointed by the Secretary of the Treasury and reports to the Commissioner of Internal Revenue. However, the National Taxpayer Advocate presents an independent taxpayer perspective that does not necessarily reflect the position of the IRS, the Treasury Department, or the Office of Management and Budget. Congressional testimony requested from the National Taxpayer Advocate is not submitted to the IRS, the Treasury Department, or the Office of Management and Budget for prior approval. However, we have provided courtesy copies of this statement to both the IRS and the Treasury Department in advance of this hearing.

[2] IRC § 7803(c)(2)(B)(ii).

- Select highest value work using data analytics and robust feedback loops.[3]

In my 2015 Annual Report to Congress, I not only discussed specific concerns with respect to each of these themes, but I also identified areas of current tax administration that raise questions about how well the IRS will execute on these themes in the Future State. Thus, with respect to each of the themes, I will discuss in detail the following topics:

1. **IRS Future State Plan**. The IRS has developed a Future State plan that envisions how the agency will operate in five years and beyond. A central component of the plan is the creation of, and reliance on, online taxpayer accounts. The IRS believes online accounts will produce significant cost savings and enable it to substantially reduce its expenditures for telephone and in-person assistance. I believe the IRS is wrong in believing that online accounts will substantially reduce taxpayer demand for telephone and face-to-face assistance, and I therefore believe it is critical the IRS not develop future plans based on assumed cost savings that may not materialize.

2. **Taxpayer Assistance at IRS Taxpayer Assistance Centers (TACs)**. The IRS has been reducing taxpayer service options at its TACs for several years, and it has recently decided to switch to an "appointment-only" system at all of its TACs by the end of 2016. The TACs, which were previously known as "walk-in sites," will no longer accept walk-in taxpayers, and it is conducting a pilot under which it is not even accepting tax payments from walk-in taxpayers. I believe the IRS's unwillingness to help walk-in taxpayers fails to meet the needs of many taxpayers for personal assistance, and I find the notion of declining to accept tax payments from walk-in taxpayers inexplicable and baffling for a tax collection agency.

3. **Online Account Access.** While I have long advocated that the IRS offer online account access to taxpayers, I am concerned about the extent of access that may be granted to preparers, the amount of control taxpayers have over their online accounts, and the level of accessibility for all taxpayers. The IRS must consider the willingness and ability of taxpayers to use online accounts, particularly in the face of massive security breaches of online government systems. I recommend that the IRS conduct research into the extent taxpayers would use online accounts, limit unregulated preparer access to online accounts, and allow taxpayers to control who can take specific actions using their online accounts.

[3] Internal Revenue Service, *IRS Future State: Overview – The Path Traveled and the Road Ahead* 7 (Draft: February 2016), *available at* https://www.irs.gov/PUP/newsroom/IRS%20Future%20State%20Journey_R.pdf (last visited April 11, 2016).

4. **Return Preparer Regulation.** The IRS's Future State plan relies heavily on taxpayers utilizing tax return preparation software or tax return preparers for assistance in everything from filing returns to interpreting notices. It will also rely on return preparers having access to taxpayer online accounts. The IRS currently lacks the authority to regulate paid tax return preparers, potentially exposing taxpayers to unscrupulous and unqualified preparers. The IRS should not place additional reliance on third parties until it has the ability to regulate them. I recommend that Congress grant the IRS the ability to establish minimum standards for return preparers.

5. **Improper Granting of § 501(c)(3) Status.** Form 1023-EZ, *Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, permits organizations to receive § 501(c)(3) status despite not qualifying. Form 1023-EZ, consisting mainly of checkboxes, has a 95 percent approval rate. The IRS's own analysis shows that when it requests basic documentation from these applicants, the approval rate is only 77 percent. TAS's analysis of a representative sample of approved Form 1023-EZ applicants shows that 37 percent do not qualify for § 501(c)(3) status. I recommend that Congress require the IRS to revise Form 1023-EZ to require organizations to submit their organizing documents as well as a statement of planned or actual activities and summary financial information, and require the IRS to review this information before making a determination.

6. **Impact of Taxpayer Service Cutbacks on U.S. Taxpayers Abroad.** The IRS has significantly reduced its overseas taxpayer service presence in recent years. About a year ago, it eliminated its last four overseas tax attaché posts. A few months ago, it eliminated an online system through which taxpayers could obtain responses to questions and a separate system that allowed IRS customer service representatives to refer taxpayer questions to employees with relevant expertise. These service cutbacks have coincided with the implementation of FATCA, leaving many of the more than 8.7 million U.S. citizens living abroad with more needs and less assistance. I recommend that the IRS re-open its recently closed tax attaché offices and that funding be provided for TAS to open small offices in four appropriate international locations to assist U.S. taxpayers living abroad in resolving problems with the IRS.

7. **IRS Procedures Burden Non-Resident Taxpayers.** The IRS has instituted across-the-board freezes on refund claims sought by nonresidents. The Form 1042-S freezes are designed to allow for comparison and verification of the information submitted by the withholding agent with the information supporting the refund claim. Nevertheless, these freezes can last for a year or longer and often expose taxpayers to substantial uncertainty, expense, and anxiety. I recommend the IRS align its policies and procedures for international withholding with those applied to domestic withholding.

8. **Impact of Stolen Identify Refund Fraud on Victims.** For nearly a decade, the tax system has been plagued by stolen identity refund fraud, wherein identity thieves impersonate legitimate taxpayers to try to obtain tax refunds in their names. Victims of tax-related identity theft face several consequences, including considerable hassle proving their identities, lengthy delays in receiving their refunds, and often a general feeling of helplessness that their privacy has been violated. IRS filters are doing a better job of blocking bogus returns, but the "false-positive" rate of these filters has increased, imposing additional burden on legitimate taxpayers, and victims continue to be frustrated by the hassle of dealing with the IRS. For any case involving more than one tax issue or more than one tax year, I recommend the IRS provide identity theft victims with the name of a single employee they can work with – and who will be held accountable – for the timely and proper resolution of their case.

As you know, I lead the Taxpayer Advocate Service (TAS), which predominately has two functions – "case advocacy" and "systemic advocacy." It is with respect to the systemic advocacy side that I appear today.[4] TAS identifies problems that are harming groups of taxpayers, and we make administrative and legislative recommendations to mitigate those problems. Any person – from inside the IRS or outside – may suggest issues for us to consider as systemic advocacy projects by submitting them online through the Systemic Advocacy Management System (SAMS).[5] By statute, I am required to submit two annual reports to the congressional tax-writing committees each year, and I describe the "most serious problems" facing taxpayers in my December 31 report.

The focus of my 2015 Annual Report to Congress was the IRS's "Future State" plans for taxpayer service and how those plans may impact taxpayer rights. I found this report particularly difficult to write given the reluctance of the IRS to commit its Future State plans to writing, thus making it nearly impossible to evaluate the full extent of the impact of contemplated service reductions and changes on taxpayers and voluntary compliance. We had to rely on high-level commentary, contractor-developed PowerPoint slides and vignettes, and my notes from IRS senior leadership meetings. Because even the high-level information raised concerns about the correctness of the IRS's underlying assumptions, I identified the IRS Future State plans as the number one most serious problem for taxpayers.

It is my belief that the IRS must make its plans public and seek comments from taxpayers and other stakeholders before making final decisions, much less

[4] On the case advocacy side, TAS is charged with helping taxpayers resolve their problems with the IRS. Over the last three years, we have handled over 200,000 cases annually, including almost all cases referred to the IRS by congressional offices. By statute, we maintain at least one office in each state. We serve as a *de facto* "safety net" to help taxpayers who are experiencing financial hardships as a result of the way the IRS is administering the tax code, and to help all taxpayers who are falling through the cracks of the bureaucracy. About 85 percent of TAS's budget and personnel are dedicated to case advocacy.

[5] Taxpayers and other stakeholders can submit issues at irs.gov/sams.

implementing, any of the contemplated service reductions. I am extremely pleased that the IRS, in response to TAS highlighting the issue in the Annual Report, has created a website and posted a large volume of documents relating to the Future State at https://www.irs.gov/uac/Newsroom/IRS-Future-State.

To further public participation, I announced and am holding Public Forums throughout the country, coordinated with members of Congress, to hear from taxpayers and tax professionals about what they need to help them comply with the tax laws, both today and in the Future State. To date, I have held five such forums, including one in Hendersonville, North Carolina, which was co-hosted by Chairman Meadows, as well as in Glen Ellyn, Illinois; the Bronx, New York; Harrisburg, Pennsylvania; and Washington, DC. We have plans for at least seven more. All written statements from each of the public speakers at our Public Forums are available at www.taxpayeradvocate.irs.gov/public-forums.

In the near future, we will post forum transcripts at that site. Moreover, my office will be conducting a national, statistically representative survey of taxpayers to learn how they want to interact with the IRS and what they need in order to comply with the tax laws. We will analyze and use all of this information in crafting recommendations about the IRS Future State in my 2016 Annual Report to Congress.

Last year during this hearing, I spoke about the need for continued oversight and scrutiny of the IRS by Congress. The IRS needs to demonstrate to Congress and U.S. taxpayers that it is allocating resources appropriately and wisely. I appreciate the subcommittee's commitment and follow through in inviting me to testify again this year highlighting the concerns I have raised in my most recent Annual Report to Congress. The continued need for close oversight is readily apparent as the IRS develops its Future State plans, and I urge the subcommittee to require the IRS to share those plans with Congress and engage in a conversation about the anticipated impact of those plans on the ability of taxpayers to comply with the tax law.

One final note before I launch into more detailed testimony. I believe the IRS Future State must take as its North Star the needs of the *vast* majority of taxpayers who are willing to comply with the tax laws. I use the word "willing" here deliberately, because it includes taxpayers who may not now be in compliance. These are taxpayers who *want* to comply but for one reason or another are not able to. It could be because of the astonishing complexity of the tax law. It could be because they have suffered some devastating financial, medical, or personal event. It could be because they were incorrectly advised by a third party. My point is, rather than designing tax administration around the small minority of taxpayers who are deliberately evading payment of tax, we should design our rules and procedures to make it easier and clearer for the willing taxpayers to comply. The IRS will still have its examination, collection, and criminal investigation powers to address the willfully noncompliant. But those activities should not be the driver of the agency, as they are today. In my opinion, any Future State plan will fail unless the IRS changes its focus to assistance and listens to taxpayers and their

representatives about what it takes to maintain and enhance voluntary compliance.

II. Facilitate Voluntary Compliance by Empowering Taxpayers with Secure Innovative Tools and Support.

A central component of the IRS Future State plan is the creation of, and reliance on, online taxpayer accounts. The IRS believes online accounts will produce significant cost savings and enable it to substantially reduce its expenditures for telephone and in-person assistance. I believe the IRS is wrong and that it is critical to maintain robust personal service options.

A. The IRS Future State Plan Commendably Commits the IRS to Develop Online Taxpayer Accounts, But the IRS Is Significantly Underestimating Continuing Taxpayer Demand for Telephone and Face-to-Face Service, and It Must Be Required to Maintain Those Services to Meet Taxpayer Needs.

During the past two years, the IRS has developed a "future state" plan that details how the agency will operate in five years and beyond. There are many positive components of the plan, including the goal of creating online accounts through which taxpayers and their representatives will be able to obtain information and interact with the IRS.

However, the plan raises significant concerns about the continued availability of telephone and face-to-face service. Taxpayer demand for IRS personal service is high and has remained so for many years. Of particular note, the IRS has received more than 100 million taxpayer calls and 5 million taxpayer visits in every year since FY 2008.

The IRS believes that online taxpayer accounts will enable the agency to achieve significant cost savings. In recent congressional testimony, for example, the Commissioner stated the move toward online accounts "is driven, in part, by business imperatives; when it costs between $40 and $60 to interact with a taxpayer in person, and less than $1 to interact online, we must reexamine how we provide the best possible taxpayer experience."[6]

While the goal of achieving cost savings is commendable, online accounts will only achieve significant cost savings if either (1) large numbers of taxpayers stop calling and visiting the IRS or (2) taxpayers continue to call and visit the IRS in large numbers but the IRS stops serving them.

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[6] *FY 2017 Treasury Department Budget Request: Hearing Before the Subcomm. On Financial Services and General Government of the S. Comm. On Appropriations,* 114th Cong. (2016) (statement of John A, Koskinen, Commissioner of Internal Revenue, at 3).

The IRS recently posted a document on IRS.gov that says: "[W]e recognize that some taxpayers will always prefer to deal with us on the phone or in person. These services will always be available to them in the Future State."[7]

Assuming that to be true, the crux of my disagreement with the IRS boils down to whether taxpayers will ultimately use online accounts as a *substitute* for personal service or whether taxpayers will use online accounts as a *supplement* to personal service.

For the foreseeable future, I believe taxpayers will use online accounts as a supplement to taxpayer service and therefore that online accounts will not produce a significant reduction in taxpayer telephone calls and visits. This is true for several reasons, including that millions of taxpayers do not have Internet access, millions of taxpayers with Internet access do not feel comfortable trying to resolve important financial matters over the Internet, and many taxpayer problems are not "cookie cutter," thus requiring a degree of back-and-forth discussion that is better suited for conversation and that taxpayers will insist upon.

1. Post-Filing Contacts.

Taxpayers who get into post-filing disputes with the IRS are particularly likely to want to speak with an IRS employee, and there are many taxpayers who fall into this category. In FY 2015, the IRS had actual or possible post-filing contacts with more than nine million taxpayers. Most arose because of proposed tax adjustments the IRS made. At our Public Forums, we have heard from panelists and attendees alike that they have called the IRS in order to receive an explanation for cryptic IRS notices they could not decipher. Others arose because the IRS temporarily or indefinitely froze tax returns and withheld refunds, generating taxpayer inquiries and attempts to provide substantiation.

If one were to focus solely on the individual audit rate of less than one percent,[8] one might assume that fewer than 1.5 million individual taxpayers have contacts with the IRS after filing a tax return. In fact, the number of taxpayers who have post-filing contacts with the IRS is vastly larger. For example:

- The IRS makes adjustments to taxpayer accounts under "math error" authority that do not count as audits.[9]

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[7] IRS Future State: Overview The Path Traveled and the Road Ahead (Draft: February 2016), *available at* https://www.irs.gov/PUP/newsroom/IRS%20Future%20State%20Journey_R.pdf (last visited March 7, 2016).

[8] In FY 2014, the individual audit rate was 0.86 percent. *See* IRS FY 2014 Enforcement and Service Results 2, *available at* https://www.irs.gov/PUP/newsroom/FY-2014%20Enforcement%20and%20Service%20Results%20--%20web%20version.pdf. At this writing, the individual audit rate for FY 2015 has not yet been released.

[9] IRC §§ 6213(b)(1) & (g)(2).

- The IRS makes adjustments to taxpayer accounts based on document-matching between information a taxpayer reports on his or her tax return and information the taxpayer's employer reports on a Form W-2 or a payor reports on a Form 1099. These adjustments do not count as audits.[10]

- The IRS operates an Automated Substitute for Return program in which it creates tax returns for taxpayers who did not file and who the IRS believes should have filed a return.[11] The automated returns produced under this program do not count as audits.

- The IRS employs a wide variety of anti-fraud filters to screen out fraudulent tax returns and refund claims. However, these filters are inherently both under-inclusive and over-inclusive. Where filters are over-inclusive, the IRS sometimes notifies taxpayers it has frozen their returns and requires them to submit additional documentation before it can proceed, and it sometimes temporarily suspends the processing of their returns (and the issuance of refunds) pending internal verification measures. Even where the IRS is solely performing internal verification, taxpayers experiencing refund delays will often call the IRS to find out why. These reviews also do not count as audits.

Thus, the number of taxpayers who receive notices and may have to get into a dialogue with the IRS about their unique facts and circumstances is as follows:[12]

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[10] *See* IRC § 7605 and Rev. Proc. 2005-32, 2005-1 C.B. 1206, regarding contacts with taxpayers and other actions taken by the IRS that are not treated as "examinations." In general, an examination involves the IRS's inspection of a taxpayer's books and records. Among contacts not treated as examinations are those resulting from the matching of information on a tax return with information already in the IRS's possession and considering any records the taxpayer provides voluntarily to explain a discrepancy between a filed return and information furnished by third parties that is used as part of a data-matching program. *See* Rev. Proc. 2005-32, § 4.03(1)(b) & (c).

[11] *See* IRC § 6020. For additional information regarding the automated substitute for return program, see National Taxpayer Advocate 2015 Annual Report to Congress 188-195 (Most Serious Problem: *AUTOMATED SUBSTITUTE FOR RETURN (ASFR) PROGRAM: Current Selection Criteria for Cases in the ASFR Program Create Rework and Impose Undue Taxpayer Burden).*

[12] Sources for data on audit and similar contacts are as follows: IRS Audit Information Management System, Closed Case Database (showing number of individual examinations closed in FY 2015); IRS Compliance Data Warehouse, Notice Delivery System (showing number of CP2000 and CP2501 document-matching notices mailed to distinct taxpayers by the IRS's Automated Underreporter Program in FY 2015); IRS Individual Master File (showing number of math error notices mailed to distinct taxpayers in FY 2015); IRS Collection Activity Report NO-5000-139 (Oct. 5, 2015) (showing number of automated substitute for return (ASFR) notices issued in FY 2015; ASFRs are created with respect to taxpayers that did not file tax returns but that the IRS believes should have filed tax returns).
Sources for data on refund delays are as follows: IRS Generalized Unpostable Framework (GUF) report, GUF5740 Closed Inventory Summary (Dec. 17, 2015) (showing that 729,487 returns were initially deemed unpostable for inconsistency with ID theft business rules but were later processed in calendar year 2015 through Dec. 17); IRS Return Integrity & Compliance Services (RICS), *Update of the Taxpayer Protection Program (TPP)* 8, (Dec. 9, 2015) (showing that 649,915 returns were stopped by Taxpayer Protection Program filters but were later found to be legitimate in calendar year 2015 through Dec. 9); IRS

FIGURE 1: Post-Filing Notices and Refund Delays That Generate Taxpayer Contacts

Individual Audits	1,228,693
Document Matching (AUR) Notices	3,836,216
Math Error Notices	1,886,216
Automated Substitute for Returns	184,776
Refund Delays	2,078,311
Total	**9,214,212**

It is not realistic to expect that taxpayers who are told they owe more tax or whose refunds have been significantly delayed are going to be satisfied resolving their problems with the IRS exclusively through an online account. A high percentage of taxpayers in this situation will want to speak with an IRS employee so they can be certain they understand the source of the problem and what more they need to do – and to try to obtain reassurance about when they can expect a final resolution.

2. IRS Technology Advancements Historically Have Not Reduced Taxpayer Demand for Personal Services Despite Hopes to the Contrary.

Ever since Congress enacted the IRS Restructuring and Reform Act of 1998,[13] the IRS has been speaking about harnessing technology to improve efficiency and reduce the need for personal service. In fact, the IRS has succeeded in dramatically increasing the percentage of taxpayers who file their returns electronically, it has vastly expanded its website to provide more information to taxpayers, and it has launched the "Where's My Refund" application to reduce telephone calls. The hope and expectation was that these measures would have substantially reduced taxpayer demand for personal service by phone or in person.

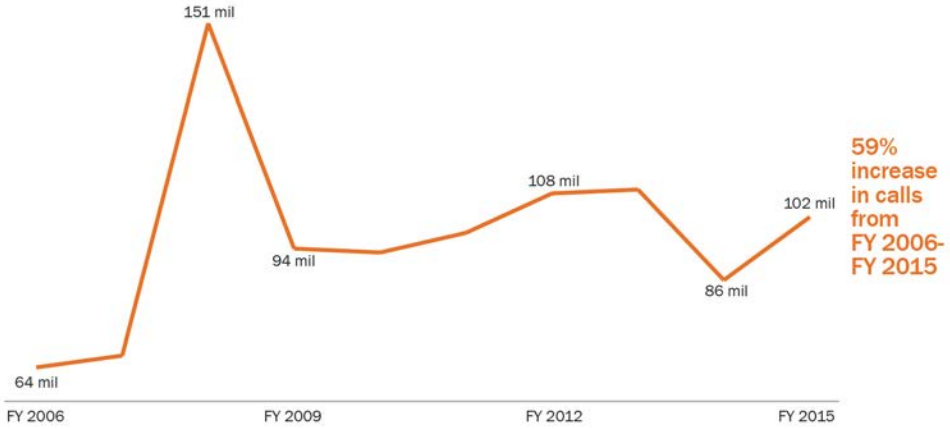
In fact, taxpayer demand for personal service has *increased* over time. The number of calls the IRS received on its Accounts Management lines over the past decade has risen from about 64 million in FY 2006 to about 102 million in FY 2015, an increase of about 59 percent, as shown in the following graph:[14]

Individual Master File (showing that 179,459 returns were stopped due to suspected fraudulent income documents that later were found to be legitimate and 155,103 returns were frozen from Jan. 1 through Sept. 30, 2015 because an identity theft return in the taxpayer's name had previously been submitted and posted; refund delays of less than two weeks are generally excluded from these totals). The number of refund delays shown in this chart is under-inclusive overall because there are additional sources of refund delays. However, a small number of returns may fit into more than one category and therefore be double-counted.

[13] Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685 (1998).

[14] IRS, Joint Operations Center, *Snapshot Reports*: *Enterprise Snapshot* (final week of each fiscal year for FY 2006 through FY 2015). The majority of the additional calls were handled by automation. The increase in calls seeking to speak with an IRS customer service representative (CSR) was 20 percent.

FIGURE 2: Taxpayer Calls to IRS Accounts Management Telephone Lines



(The one-time spike in telephone calls in FY 2008 was attributable to widespread confusion concerning payments under the Economic Stimulus Act of 2008.[15])

Taxpayer demand for face-to-face service at the IRS's walk-in sites has also remained high – above 5.6 million visits in FY 2015 – despite IRS service reductions, such as directing employees to refrain from answering tax-law questions and discontinuing the preparation of tax returns.[16]

These results are hardly surprising. The continuing demand for personal service despite greater online functionality is not unique to tax administration. For example, the Board of Governors of the Federal Reserve System conducts an annual survey of bank customers who use mobile phones to conduct their banking. The most recent survey found that 78 percent of bank customers reported they had visited a branch and spoken with a teller within the preceding month (an average of three times), and 67 percent reported they had used telephone banking within the preceding month (an average of four times). In addition, 87 percent reported they had used an automated teller machine (ATM) within the preceding month (an average of five times).

The IRS's Snapshot Reports do not specify the number of calls routed to CSRs, but that number can be roughly computed by dividing the number of calls answered by CSRs by the percentage of calls answered by CSRs (known as the "CSR Level of Service"). The number of calls routed to CSRs on the Account Management telephone lines increased from about 39.8 million in FY 2006 to about 47.9 million in FY 2015. The percentage increase in calls seeking to reach a CSR likely would have been considerably higher absent IRS policies designed to limit the scope of CSR-eligible subjects, such as sharply restricting the scope of tax-law questions CSRs may answer.

[15] Pub. L. No. 110-185, 122 Stat. 613 (2008).

[16] IRS Wage & Investment Division, Business Performance Review 7 (4th Quarter – FY 2015, Nov. 2, 2015).

Summarizing these survey results, the report concluded:

> Taken together, these estimates indicate that while mobile banking users are utilizing technological platforms at a high rate and on a consistent basis, they have also maintained connections to their banks through the more traditional branch and ATM channels.[17]

There is no doubt that secure online taxpayer accounts will be a positive development for both taxpayers and the IRS. But the IRS's own experience with technology improvements and data from other sectors suggest online accounts are unlikely to substantially reduce taxpayer demand for telephone and face-to-face service.

3. "Customer Callback" Technology.

The IRS has proposed implementing a customer callback system that would allow taxpayers who call the IRS's toll-free telephone lines to choose between remaining on hold and receiving a call back when their place in the telephone queue is reached.[18] We believe a customer callback system would significantly improve the taxpayer experience at a reasonable cost, and we urge the IRS to make a final determination about the system this year.

In the President's FY 2015 and FY 2016 budgets, the IRS proposed this initiative and estimated the cost would be about $3.3 million.[19] In November 2015, Commissioner Koskinen said that although the customer callback technology itself would cost about $3.5 million, the IRS had determined its phone system would need to be upgraded at a cost of about $45 million in order to allow the customer callback technology to run.[20]

We think a customer callback mechanism would be a prudent investment despite the cost to upgrade the telephone system. For context, the IRS's FY 2016 budget proposal requested about $186 million to increase the Level of Service (LOS) on its toll-free lines to 80 percent.[21] The significant majority of that funding would pay for additional customer service representatives and other costs that recur annually. By contrast, the

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[17] Board of Governors of the Federal Reserve System, *Consumers and Mobile Financial Services 2016,* at 14 (March 2016), *available at* http://www.federalreserve.gov/econresdata/consumers-and-mobile-financial-services-report-201603.pdf.

[18] *See* IRS, Congressional Justification for Appropriations accompanying the President's FY 2015 Budget at IRS-20 (2014); IRS, Congressional Justification for Appropriations accompanying the President's FY 2016 Budget at IRS-22 (2015).

[19] *Id.*

[20] *See* Lisa Rein, *IRS Customer Service Will Get Even Worse This Tax Filing Season, Tax Chief Warns,* Washington Post.com, Nov. 3, 2015.

[21] *See* IRS, Congressional Justification for Appropriations accompanying the President's FY 2016 Budget at IRS-22 (2015).

deployment of a customer callback system would essentially be a one-time cost, and it would permanently improve the IRS's LOS.

It should be emphasized that a high percentage of taxpayers who don't reach the IRS on their first attempt keep calling until they eventually get through. During the 2016 filing season, the overall LOS during the filing season has averaged 74 percent, and those taxpayers who have managed to reach an IRS telephone assistor have waited an average of 10 minutes on hold.[22] On the Taxpayer Protection Program (TPP) telephone line – which taxpayers are instructed to call to validate their identities if the IRS flags their returns as suspicious for identity theft – the LOS during the 2016 filing season has been 21 percent and the average hold time for successful callers has been 11 minutes.[23]

With customer callback technology, unsuccessful calls would be largely eliminated or at least substantially reduced – as would hold times. Most taxpayers would only have to call the IRS one time. Thus, this one-time cost would improve taxpayer service and substantially increase the LOS for years into the future.

Recommendations

I recommend that Congress direct the IRS to take the following actions:

- Commit to maintain high levels of telephone service and face-to-face service for the foreseeable future. The IRS should not make any plans – explicit or implicit – to reduce telephone and face-to-face service unless and until it becomes clear that taxpayer demand for such services is declining and taxpayers are able to successfully use other channels, including online accounts.

- Complete a study of "customer callback" technology with an eye toward implementing it for the 2017 filing season.

B. The IRS Continues to Reduce Service at the Taxpayer Assistance Centers.

During FY 2015, the IRS piloted a program in 44 of its Taxpayer Assistance Centers (TACs) to offer appointment-only based service to taxpayers.[24] In practice, this means that many TACs, which were once known as "walk-in sites," no longer offer walk-in service to taxpayers.[25] While initial information provided to TAS by the IRS regarding

[22] IRS, Joint Operations Center, *Snapshot Reports: Enterprise Snapshot* – Accounts Management lines (April 2, 2016).

[23] IRS, Joint Operations Center, *FY 2016 Weekly TPP Snapshot Report* (April 9, 2015).

[24] IRS, *Field Assistance Appointment Test Report-Executive Briefing* (Sept. 29, 2015).

[25] A proposed Internal Revenue Manual (IRM) currently circulating through internal clearance would permit TAC managers to use discretion to assist drop-in taxpayers experiencing hardships. However, the

this pilot seemed promising, I am very concerned with the pace at which the IRS has decided to move all TACs to appointment-only service, the methodology and measures used to determine the success of the pilot program, and reports TAS has received about recent TAC service. Initially the IRS planned to expand appointment only services to all TACs over FYs 2016, 2017, and 2018. Despite these concerns, the IRS has informed us that it plans to convert all remaining TACs to appointment-only at the rate of 30 or 35 each month, beginning in April until all TACs are appointment only by the end of FY 2016. I do not believe that an entirely appointment-based system meets the needs of taxpayers, and I am concerned about the impact of this approach on voluntary compliance, particularly given the IRS's increased reliance on online services in its Future State plans. At our Public Forums, the unavailability of walk-in assistance and the narrow scope of services and hours in the Taxpayer Assistance Centers (TACs) was a major concern of panelists and attendees.

While the IRS currently allows taxpayers to walk in to make a tax payment or to drop off a return, it is currently testing a pilot at five TACs where taxpayers will need appointments to complete even these basic tasks. It is harmful to both taxpayers and the public fisc for the IRS to turn away taxpayers who have taken the time to visit a TAC to pay their taxes. This proposal appears even more illogical when taking into account the results of the broader pilot in the 44 TACs. The results show that 20 percent of taxpayers had to wait between 13 and 41 days to obtain an appointment and five percent had to wait more than 41 days for an appointment.[26] Those are not encouraging results. Asking taxpayers seeking in-person assistance to wait so long to get an appointment or make a payment deters – rather than encourages – voluntary tax compliance.

Anecdotally, TAS has heard numerous complaints concerning the service at TACs, which I have raised through appropriate channels within the IRS. These reports range from the lack of available forms, to being turned away from appointment TACs, to long waits at other TACs. Employees told a taxpayer who was visiting the San Jose TAC solely to file a return that he needed an appointment. Employees refused to accept the return and advised him to drive an hour to the Oakland TAC where he would not need an appointment. Another taxpayer visited the San Jose TAC to make a payment on an existing installment agreement only to be told he had to make an appointment. Additionally, it has been reported that TAC employees have refused to assist taxpayers because they do not have appointments, *even when there had been no one in the TAC receiving or waiting to receive assistance.* In Brooklyn, an appointment-only site, TAC employees have reported being bored, while in the Manhattan TAC, taxpayers are lined up out the door. Further concerns have been reported to TAS about empty forms and publications racks in the TACs. The IRS informed us that they would only print a certain

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IRS does not define the term "hardship," nor does it allow for managers to use discretion to assist taxpayers when there are available TAC employees with no appointments.

[26] IRS, *Field Assistance Appointment Test Report-Executive Briefing*, at 7 (Jan. 13, 2016). In addition, 11,496 taxpayers did not show up for their appointments. The IRS removed those appointment wait times from the reported averages.

number of forms at the beginning of the filing season and when those were gone, they would not refill the racks. The IRS has now told TAS that the forms racks will be removed entirely from the TACs when they are empty so that taxpayers will not be upset to see empty racks.

There is a solution to this, even in a constrained budget. As I noted earlier, the IRS should have as its guiding light the needs of taxpayers who are willing to comply. When taxpayers are lining up to receive face-to-face service, the IRS should heed what the taxpayers are telling it. Thus, during the filing season, the IRS should reassign its locally-based audit and collection employees to assist in the TACs. By requiring audit and collection IRS employees, who normally see taxpayers with compliance problems, to assist taxpayers trying to comply, we will not only help these taxpayers, but we will remind audit and collection employees of how many taxpayers really are trying to get it right, and just how hard it is to do so. A better understanding of the causes of noncompliance is the first step toward getting someone into compliance.
The IRS used to do this – marshalling all employees to the TACs where demand was high – in the years immediately following 1998. I understand it is using some audit and collection employees in a few TACs during this filing season. However, I believe this should be the policy of the IRS for every TAC, in every filing season. We have taxpayers' attention during the filing season – we should be pulling out all stops to help them. If we make this effort, we may prevent future noncompliance and reduce work for those audit and collection employees.

I have continually raised concerns regarding the IRS's chipping away at the services provided by TACs.[27] Over the last few years, the IRS has limited the scope of tax law questions answered, will only answer tax law questions during filing season, and no longer prepares tax returns. With the latest move to appointment-only services, I believe the IRS will continue to use measures that do not fully capture the impact of its decisions on taxpayers and will allow the IRS to attempt to justify further reducing in-person service. Making a service more difficult to use, then touting declining use of that service as a reason to cut the service further or entirely, is disingenuous.

Recommendations

I recommend that the IRS take the following actions:

- Staff TACs during the filing season at sufficient levels that taxpayers generally do not need to make advance appointments to receive service.

[27] *See, e.g.*, National Taxpayer Advocate 2015 Annual Report to Congress (Most Serious Problem: *Individual Taxpayer Identification Numbers (ITINs): IRS Processes Create Barriers to Filing and Paying for Taxpayers Who Cannot Obtain Social Security Numbers*), National Taxpayer Advocate 2016 Objectives Report to Congress 20-21, National Taxpayer Advocate 2014 Annual Report to Congress (Most Serious Problem: Taxpayer Service: *Taxpayer Service Has Reached Unacceptably Low Levels and Is Getting Worse, Creating Compliance Barriers and Significant Inconvenience for Millions of Taxpayers*).

- Train IRS audit and collection employees co-located with TACs and have them on-call during the filing season to assist taxpayers in TACs where and when demand is high.

- Permit taxpayers to file a tax return or make a payment at any time without the need for appointments.

- Where a TAC generally operates by appointment, allow employees to assist taxpayers without appointments when there is an available employee.

C. As the IRS Develops an Online Account System, It Imposes Undue Burden on Taxpayers Who Require More Personalized Services.

Central to the IRS's envisioned Future State is the development of taxpayer online accounts. The IRS envisions online accounts enabling taxpayers and authorized third parties to "securely obtain taxpayer information, make payments, resolve compliance issues, share documentation, and self-correct issues in an individualized online account."[28] The IRS demonstrates its vision of how taxpayers will use online accounts through an individual taxpayer vignette displayed on its "Future State and IRS Activities" webpage, as summarized below:[29]

> Jane, a low income taxpayer, just rejoined the workforce as a teacher. Upon learning about the IRS online account program from her friend, Jane establishes an account. She prepares her own return by downloading her tax information from the IRS directly into a commercial tax [return] preparation software program. After filing, Jane receives a digital notification from the IRS confirming receipt. She receives a subsequent digital notification from the IRS stating that she might not qualify for the EITC because the IRS has no record that her 19 year-old son is a full time student. The notification asks Jane to validate the information and make any necessary corrections. After confirming that she does not qualify for the EITC because her son does not take enough courses, she "updates and resubmits her return instantly." To pay the amount of taxes she owes as a result of the correction, she applies for an installment agreement online and subsequently monitors the balance online as she makes payments.

I do not believe this vignette portrays an accurate representation of how a significant percentage of individual taxpayers will be able to interact with the IRS in the future. In fact, virtually every panelist at our Public Forums who represents taxpayers, including low income and small business taxpayers, found this vignette to be wildly off-the-mark. One panelist described taxpayers' needs as follows:

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[28] IRS, Draft IRS Future State: Overview, The Path Traveled and the Road Ahead 11 (Feb. 2016), available at https://www.irs.gov/PUP/newsroom/IRS%20Future%20State%20Journey_R.pdf (last visited March 22, 2016).

[29] https://www.irs.gov/PUP/newsroom/IRS%20-%20Individual%20Vignette%20-%20Version%20A.pdf (last visited March 22, 2016).

> Although some of our clients may be more "tech savvy" than others and thus fit into the archetype of the "Future State" taxpayer, the overwhelming majority first contact the IRS by calling the number listed on their notice or letter. It is rare that one of them will read the entire notice and know exactly what they need to do in order to comply with IRS demands. Rather, *they want a live person to explain to them exactly what they need to do.* They want an individual to review their account, and set them on the right path. This makes logical sense: for there is an inherent trust that exists when a communication is between two people rather than one person and a computer.[30]

While I have advocated for years that the IRS develop an online account system for taxpayers, in developing an online account system, the IRS should not ignore the needs of taxpayers who either have no Internet access or choose not to use an online account system for various reasons.[31] Although it is tempting to move taxpayer service toward superficially lower-cost self-assistance options, any efforts to significantly reduce personal service options may ultimately impair voluntary compliance and undermine the taxpayers' *right to quality service*, r*ight to be informed*, and *right to pay no more than the correct amount of tax.*[32]

1. The IRS Cannot Drastically Reduce Both Face-to-Face and Telephone Services as it Focuses on Online Services Because Taxpayers Will Still Continue to Require Personal Services.

Research has shown that a significant percentage of the taxpayer population will not utilize the taxpayer accounts in the way envisioned by the Future State initiation. My 2015 Annual Report cites various studies showing the digital divide in this country and the preference for multiple service delivery channels.[33] In the interim, I have held various public forums during which this topic was covered at length.[34]

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[30] Statement of Robert Hamilton, Esq., MidPenn Legal Services Low Income Taxpayer Clinic, National Taxpayer Advocate Public Forum on IRS Future State, Harrisburg, Pennsylvania (April 4, 2016).

[31] *See*, *e.g.*, National Taxpayer Advocate 2013 Annual Report to Congress vol. 2, 67-96 (Research Study: *Fundamental Changes to Return Filing and Processing Will Assist Taxpayers in Return Preparation and Decrease Improper Payments*).

[32] For a detailed discussion of the Taxpayer Bill of Rights, see http://www.taxpayeradvocate.irs.gov/About-TAS/Taxpayer-Rights.

[33] National Taxpayer Advocate 2015 Annual Report to Congress 56-63 (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*).

[34] For written statements and transcripts of these public forums, see http://www.taxpayeradvocate.irs.gov/public-forums (last visited March 23, 2016).

Pew Research Center periodically conducts surveys to determine Internet usage by American adults. While the survey results clearly show a steady rise in Internet usage among all populations, some populations adopt at a slower pace than others. [35] Significant percentages of certain populations still fall behind and will need to use methods that do not involve Internet usage to interact with the IRS.[36]

Another recent survey illustrates that not all tech-savvy individuals prefer online services for certain transactions. Millennials (survey respondents in the 18- to 34-year-old age group) reported a higher rate of mailing paper tax returns than respondents in older age groups (17 percent rate among millennials versus eight percent among respondents aged 35 and older).[37] Therefore, the IRS should consider in its future plans that a significant percentage of younger, more tech-savvy taxpayers may not utilize its online account for tax return preparation and possibly more transactions.[38]

The impact of shifting services online without providing alternatives for those without Internet access is not isolated to tax administration or commercial banking. For example, a recent New York Times article described the plight of low income schoolchildren attempting to complete their homework as the school district increasingly assigns more assignments requiring Internet access. Seven in ten teachers now assign homework that requires Internet access even though one- third of schoolchildren in the country have no home access. These children are forced to complete their homework in school buses, fast food restaurants, and libraries with free wi-fi.[39]

It is not surprising that taxpayers continue to demand more personalized services considering the complexity of the tax law. Taxpayers comfortable using self-service options online may still struggle with understanding the substance of the tax law and how it applies to their unique circumstances. While the IRS official website is helpful and extensive, it currently has approximately 140,000 pages which can be overwhelming to taxpayers unfamiliar with the tax law.[40] Moreover, the website is not

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[35] Andrew Perrin and Maeve Duggan, Pew Research Center, *Americans' Internet Access: 2000-2015* (June 26, 2015).

[36] *Id.*

[37] *Millennials Fear Filing Taxes More Than Most Americans, NerdWallet Survey Finds*, NerdWallet (Feb. 17, 2016).

[38] The IRS is currently testing its replacement system for "Get Transcript," which will enable taxpayers to create accounts and get a transcript, an IP-PIN, and enter into an installment agreement online. The testing involves IRS management and non-bargaining unit employee volunteers who attempt to establish an online account by verifying their identity through a 3-factor verification. Through April 6, 2016, only 47% of these tech-savvy IRS employees were able to pass the security screens. 26% of the users failed, and another 26% "fallout" – *i.e*., they pass one phase of a 3-factor identity verification but are not apparent in the next phase of the verification. Email from Rene Schwartzman, IRS Identity Assurance Executive, Apr. 7, 2016

[39] Cecilia King, *Bridging a Digital Divide That Leaves Schoolchildren Behind*, New York Times (Feb. 22, 2016).

[40] Information provided from IRS Office of Online Services, Online Engagement, Operations and Media (Sept. 25, 2015).

currently easy to navigate when using a mobile device, which could be a serious access issue for the increasing taxpayer population using smartphones.[41] Finally, at the Public Forums, practitioners uniformly expressed concerns about whether taxpayers would understand they are agreeing to in online self-correction, or understand what taxpayer rights they are relinquishing at the click of a mouse or trackpad.

2. The IRS Must Balance the Added Convenience of Expanding Online Services Against the Inherent Security Risks.

The recent cybersecurity breaches involving the IRS's IP PIN program, the "Get Transcript" online application, and the Office of Personnel Management's breach of federal employee records only serve to undermine taxpayers' trust in communicating with the IRS and government online.[42] For those taxpayers still willing to trust the IRS's online services, the IRS should investigate how taxpayers will respond to the necessary cybersecurity-related authentication measures to gain access to the system. It is unclear at what point extra security precautions are too burdensome and taxpayers avoid online account access as a result. In addition, the IRS might set the authentication measures at such a high level that it serves as a barrier to entry to taxpayers.

3. Questions Remain Concerning the Legal Implications of Self-Correction Authority.

I remain concerned about the scope of the self-correction authority set forth in the Future State initiative. It is my understanding that the self-correction capability would enable taxpayers, preparers and authorized third parties to perform such functions as verifying return changes made by the IRS, updating or amending returns, and providing additional documents.[43] It is unclear whether the self-corrections could address adjustments made pursuant to the agency's math error authority or whether they will extend beyond math error so that they constitute an abbreviated audit.[44] More importantly, it is unclear what these corrections will constitute. If the taxpayer corrects the return, will the correction constitute an amended return or is the return still an original return that the IRS has not yet completely processed? All of these possible options have legal consequences to the taxpayer and all have potential negative impacts on taxpayer rights.

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[41] Aaron Smith, Pew Research Center, *U.S. Smartphone Use in 2015* 1 (April 1, 2015).

[42] IRS, Statement on IP PINs (March 8, 2016); IRS, *IRS Statement on the "Get Transcript" Application* (June 2, 2015); OPM, Announcements, *Information About the Recent Cybersecurity Incidents* (June 23, 2015).

[43] Draft IRS Compliance Concept of Operations (CONOPS) 3, 19-22 (June 8, 2014) (on file with TAS).

[44] *See* IRC §§ 6213(b)(1) & (g)(2).

D. The Elimination of Key International Taxpayer Service Channels Has Increased Compliance Challenges for International Taxpayers and Undermined Taxpayer Rights.

As the IRS moves forward with its Future State plans, I am concerned about the ability of international taxpayers to receive the assistance they may need to meet their filing and reporting obligations. As the IRS emphasizes online self-help and reliance on third party assistance, it cannot ignore the needs of taxpayers who are faced with preparing increasingly complicated returns and filings.

Despite an increase in the number of international taxpayers, the IRS has significantly decreased its overseas taxpayer service presence in recent years.[45] While it has plans to expand international criminal investigation locations,[46] the IRS during late 2014 and 2015 eliminated the last four tax attaché posts abroad, citing a multi-year decrease in its appropriations.[47] Apart from the attachés, the only free option[48] for taxpayers abroad to ask a specific question and receive a response from an IRS employee was the Electronic Tax Law Assistance Program (ETLA), which the IRS terminated in October of 2015.[49] In conjunction with terminating ETLA, the IRS also discontinued R-mail, a system that allowed customer service representatives to refer taxpayer questions to employees with specific expertise.

The elimination of these essential services could not come at a worse time, as taxpayers abroad are facing unique challenges in complying with their obligations under the Foreign Account Tax Compliance Act (FATCA),[50] Foreign Bank and Financial Accounts (FBAR) reporting rules,[51] and the Affordable Care Act (ACA).[52] The combined effect of more requirements and less support is that over 8.7 million U.S.

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[45] National Taxpayer Advocate 2015 Annual Report to Congress 72-81. *See also* National Taxpayer Advocate 2011 Annual Report to Congress 156, fn. 39; National Taxpayer Advocate 2009 Annual Report to Congress 134-54.

[46] *See* Internal Revenue Service FY 2016 President's Budget 81 (Feb. 2, 2015), *available at* http://www.treasury.gov/about/budget-performance/CJ16/02-06.%20IRS%20FY%202016%20CJ.pdf.

[47] There were originally fifteen foreign tax attaché posts. On November 30, 2014, the IRS closed its Beijing office. The IRS closed tax attaché offices in Frankfurt, Germany; London, UK; and Paris, France, on June 26, 2015, Sept. 19, 2015, and Dec. 26, 2015, respectively.

[48] Because taxpayers calling abroad may have to pay long distance toll charges, the international taxpayer assistance line is not considered a free option.

[49] ETLA allowed the IRS to learn directly from taxpayers what problems and questions they had and how it needed to update its webpages and publications to provide the necessary information.

[50] FATCA was passed as a part of the Hiring Incentives to Restore Employment Act, Pub. L. No. 111-147, 124 Stat. 71 (2010) (adding Internal Revenue Code (IRC) §§ 1471-1474 & 6038D).

[51] *See* 31 U.S.C. §§ 5314, 5321; 31 C.F.R. §§ 1010.350, 1010.306(c); FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR), http://www.fincen.gov/forms/bsa_forms.

[52] The Patient Protection and Affordable Care Act of 2010 (ACA), Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified in scattered sections of the U.S. Code), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010).

citizens living abroad,[53] over 170,000 U.S. military service personnel and their families,[54] and hundreds of thousands of students and foreign taxpayers with U.S. tax obligations[55] who benefitted from the tax attaché offices are left with the options of obtaining all their information from IRS.gov web pages or calling the IRS toll line in the United States.[56]

Moreover, by eliminating ETLA and R-mail, the IRS has shut itself off from taxpayers abroad with no way of knowing (unless a taxpayer makes a mistake and the IRS selects his or her return for audit) whether it is providing the service taxpayers need. Without a two-way dialogue, information will be filtered and the IRS will decide what it thinks taxpayers need, instead of hearing what information taxpayers want and need. This interaction is vital, and any system of taxpayer service worthy of that name must have avenues for learning from its participants, instead of just telling them.

In addition to re-opening the four recently closed IRS tax attaché offices, the IRS could help meet the service needs of international taxpayers by establishing International Local Taxpayer Advocate (LTA) offices abroad. TAS is statutorily required to assist taxpayers who experience *significant hardships* in resolving problems with the IRS, to identify areas in which taxpayers are experiencing problems in dealing with the IRS and, to the extent possible, to propose changes in the administrative practices of the IRS to mitigate the problems identified.[57] TAS is the only IRS function exclusively devoted to resolving taxpayer issues with the IRS.[58] Establishing Taxpayer Advocate offices abroad would ensure that the IRS's international policies, processes, and procedures

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[53] The Department of State estimates that 8.7 million U.S. citizens live abroad and more than 80 million U.S. citizens travel abroad annually. U.S. Department of State, Bureau of Consular Affairs (April 2015), https://travel.state.gov/content/dam/travel/CA%20by%20the%20Numbers-%20May%202015.pdf (last visited on Mar. 7, 2016).

[54] U.S. Department of Defense, Defense Manpower Data Center, Ref. No. DRS #54601, *Total Military Personnel and Dependent End Strength By Service, Regional Area, and Country - Military* (as of Sept. 30, 2015), *available at* https://www.dmdc.osd.mil/appj/dwp/dwp_reports.jsp (last visited on Mar. 7, 2016).

[55] National Taxpayer Advocate 2015 Annual Report to Congress 81. Since 2011, the National Taxpayer Advocate has recommended establishing international Local Taxpayer Advocate offices at four locations abroad. *See also* National Taxpayer Advocate 2013 Annual Report to Congress 213; National Taxpayer Advocate 2009 Annual Report to Congress 183.

[56] Over half of taxpayers may be unable to reach an IRS employee on the toll-free phone lines this year. The Commissioner of Internal Revenue recently estimated the LOS on the toll-free phone lines for the entire filing season would "probably be at or above 65 percent," and the LOS for the full year would be "around 47 percent." John A. Koskinen, Commissioner of Internal Revenue, Address Before the National Press Club (Mar. 24, 2016), *available at* https://www.irs.gov/uac/March-24-2016-Commissioner-Koskinen-Speech-to-National-Press-Club. *See also* IRS, *Contact My Local Office Internationally*, http://www.irs.gov/uac/Contact-My-Local-Office-Internationally; National Taxpayer Advocate 2013 Annual Report to Congress 205-213.

[57] IRC § 7803(c)(2)(A)(i) – (iii).

[58] *See generally* IRC §§ 7803; 7811. *See also* IRS Pub. 1, *Your Rights as a Taxpayer*. The law requires at least one LTA in each state. International taxpayers cannot access TAS's toll-free telephone number from abroad.

protect taxpayers' rights *to be informed*, *to quality service*, and *to a fair and just tax system*,[59] and encourage future compliance by taxpayers dealing with the complexity and procedural burden of the international tax rules.

Recommendations

I recommend that the IRS take the following actions:

- Reopen and provide funding for its four tax attaché offices abroad;
- Reestablish the ETLA (or a similar program) with timeframes for responses and create a process for using the information from ETLA inquiries in updates to IRS internal and external materials, including the IRS.gov website; and
- Provide funding for and require the IRS to establish Local Taxpayer Advocates in four locations throughout the world, based on where there is there is the greatest taxpayer need or concentration of U.S. taxpayers.

III. Leverage and Collaborate with External Stakeholders.

The IRS envisions giving tax practitioners, noncredentialed preparers, and tax software companies access to additional taxpayer information so they can assist taxpayers without the need for direct IRS involvement. I have serious concerns about the reliance of the IRS's Future State on third parties and the implications for taxpayers. Shifting the burden of compliance costs to taxpayers when they can currently work directly with the IRS raises the barriers to compliance, particularly for lower income taxpayers and small businesses. Taxpayers deserve better. Having written a tax code so widely and rightly criticized for its complexity, I believe the government has a practical and moral obligation to help taxpayers comply. While the IRS has already significantly reduced taxpayer service, it should not make further cuts that cause taxpayers to incur additional compliance costs simply to file their returns and pay their taxes.

A. Minimum Standards for Return Preparers Are Essential to Protect Taxpayers under the IRS's Future State.

Tax return preparers are currently unregulated. Anyone, including individuals with no tax background and even individuals with criminal convictions, can obtain a Preparer Tax Identification Number (PTIN) from the IRS and hang out a shingle as a tax return preparer. The IRS should not even consider giving tax return preparers access to taxpayer account information until it is able to establish minimum standards for competence, to suspend preparers who engage in improper conduct, and to conduct

[59] The rights contained in the Taxpayer Bill of Rights (TBOR) that was adopted by the IRS are now listed in the Internal Revenue Code. *See* Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).

background checks to weed out preparers with criminal records. To grant all preparers access to taxpayer accounts is to put taxpayers' confidential tax information at risk. Although the vast majority of return preparers are conscientious and ethical, the IRS has ample evidence and experience to show that there are some return preparers who are committing refund fraud or are negligent.[60] Numerous studies have shown that unscrupulous and incompetent preparers operate in the areas and communities where low income persons reside.[61]

Referring taxpayers to third party providers raises important issues – both policy issues regarding the role government should play in assisting taxpayers who are trying to comply with their tax obligations and practical issues regarding data security. Congress should grant the IRS authority to require unenrolled return preparers who prepare returns for a fee to demonstrate minimum levels of competency by passing an initial test and then to take annual continuing education courses (including ethics).[62] I have been recommending such a system beginning with my 2002 Annual Report to Congress, and I reiterated this proposal most recently in my 2014 report.[63]

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[60] *The National Taxpayer Advocate's 2014 Annual Report to Congress: Hearing Before the H.R. Comm. on Oversight and Government Reform, Subcomm. on Government Operations*, 114th Cong. 18-20 (Apr. 15, 2015) (written testimony of Nina E. Olson, National Taxpayer Advocate); National Taxpayer Advocate 2014 Annual Report to Congress 543-44; National Taxpayer Advocate Fiscal Year 2015 Objectives Report to Congress 71-8; and National Taxpayer Advocate 2013 Annual Report to Congress 61-74 (Most Serious Problem: *Regulation of Return Preparers*: *Taxpayers and Tax Administration Remain Vulnerable to Incompetent and Unscrupulous Return Preparers While the IRS Is Enjoined from Continuing Its Efforts to Effectively Regulate Return Preparers*).

[61] For a chilling inventory of studies showing the predatory practices and abuses in this area, *see* Brief of Amici Curiae, National Consumer Law Center and National Community Tax Coalition in Support of Defendants-Appellants, *Loving v. Internal Revenue Service*, No. 13-5061 (D.C. Cir. 2014.)

[62] The Senate Finance Committee has twice approved legislation along the lines recommended by the NTA to impose preparer standards. *See* H.R. 1528 (incorporating S. 882) (108th Cong.); S. 1321 (incorporating S. 832) (109th Cong.). During the 108th Congress, the full Senate also approved the legislation. *See* H.R. 1528 (incorporating S. 882) (108th Cong.). However, the House of Representatives never took up companion measures. More recently, several bills have included proposals to regulate preparers. *See, e.g.*, S. 2333 and H.R. 4128, Taxpayer Rights Act, 114th Congress (2015); H.R. 4141, Tax Return Preparer Competency Act, 114th Cong. (2015). All of these bills would have required preparers to have the knowledge and skills to prepare accurate returns. In 2010, the IRS began to implement preparer regulation on its own, but the Court of Appeals for the District of Columbia invalidated the regulation as exceeding the agency's authority in the absence of authorizing legislation. *See Loving v. Comm'r*, 742 F.3d 1013 (D.C. Cir. 2014). Authorizing legislation would allow the IRS to resume the program that was already underway.

[63] See National Taxpayer Advocate 2014 Annual Report to Congress 299 (Legislative Recommendation: *Taxpayer Rights: Codify the Taxpayer Bill of Rights and Enact Legislation that Provides Specific Taxpayer Protections).* For more detailed discussions on regulation of return preparers, *see* National Taxpayer Advocate 2013 Annual Report to Congress 61-75 (Most Serious Problem: *Regulation of Return Preparers*: *Taxpayers and Tax Administration Remain Vulnerable to Incompetent and Unscrupulous Return Preparers While the IRS Is Enjoined from Continuing its Efforts to Effectively Regulate Return Preparers);* National Taxpayer Advocate 2008 Annual Report to Congress 423 (Legislative Recommendation: *The Time Has Come to Regulate Federal Tax Return Preparers*); National Taxpayer Advocate 2004 Annual Report to Congress 67 (Most Serious Problem: *Oversight of Unenrolled Return Preparers*); National Taxpayer Advocate 2003 Annual Report to Congress 270 (Legislative

Recommendations

I recommend that Congress:

- Authorize the IRS to require unenrolled return preparers to take a competency exam and fulfill annual continuing education requirements as a condition of preparing tax returns for compensation.

- Require the IRS, upon implementation of the testing and education regime, to conduct an extensive taxpayer-consumer education campaign so taxpayers know to select a preparer who has met the IRS minimum standards.

B. The IRS Should Restrict Preparer Access to the Online Account.

The IRS currently plans to enable the taxpayer to maintain control over who can gain access to the online account.[64] However, the IRS does not have any plans currently in development to restrict preparer access by type of preparer. I am concerned that the IRS will expose taxpayers to potential harm due to preparer incompetence or misconduct if it does not restrict access to only those preparers subject to IRS oversight pursuant to Circular 230.[65] The IRS has the ability to monitor and enforce this requirement because it has PTINs for these individuals. If the IRS does not limit online account access to only preparers subject to Circular 230 oversight, it could harm taxpayers and, consequently, increase compliance issues.

Although the vast majority of return preparers are conscientious and ethical, the IRS has ample evidence and experience to show that there are some return preparers who

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Recommendation: *Federal Tax Return Preparers Oversight and Compliance*); National Taxpayer Advocate 2002 Annual Report to Congress 216 (Legislative Recommendation: *Regulation of Federal Tax Return Preparers*).

[64] IRS, *Compliance Capabilities Initiative: Draft Blueprint for the Vision* 19 (June 19, 2014); IRS, *IRS Enterprise Concept of Operations (CONOPS): Taxpayer Advocate Service Briefing* 5, 10-2 (July 28, 2015) (on file with the National Taxpayer Advocate).

[65] For a detailed discussion of my proposal, see National Taxpayer Advocate 2015 Annual Report to Congress 64-71 (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*). Preparers subject to IRS oversight under Circular 230 include attorneys, certified public accountants, enrolled agents, enrolled actuaries, and enrolled retirement plan agents.[65] In addition, pursuant to Revenue Procedure 2014-42, preparers who have obtained the voluntary Annual Filing Season Program (AFSP) Record of Completion can represent taxpayers before the IRS during an examination of a tax return or claim for refund they prepared and signed after December 31, 2015. 31 U.S.C. § 10.3; Rev. Proc. 2014–42, § 6.01, 2014-29 I.R.B. 192, 194 (July 14, 2014).

are committing refund fraud[66] or are negligent, and that certain payroll service providers who have access to employer accounts also embezzle funds and cover their tracks by changing account information.[67] Without any restrictions on type of preparer, there is a greater chance that vulnerable taxpayers could be harmed by preparers who prey upon the elderly, low income, and taxpayers with disabilities. If the preparer either fraudulently or negligently prepares an inaccurate return, the IRS may have just given the preparer the ability to cover his or her tracks. Uncredentialed preparers could gain access, interact with the IRS on the taxpayer's behalf, and potentially address notices, proposed adjustments, or even proposed correctable errors without the taxpayer's consent or knowledge.[68] It is also possible that the taxpayer will not become aware of the problem for a long time. Finally, the preparer's actions could severely prejudice the taxpayer's procedural rights. For example, if the preparer accepts math error adjustments without the taxpayer's knowledge, the taxpayer may lose the right to contest the change in the U.S. Tax Court.[69] Virtually every tax professional panelist at our Public Forums to date has expressed concern about giving unregulated preparers access to taxpayer online accounts.

In order to prevent harm to vulnerable taxpayers, I believe it is important that the IRS design the online account system with safeguards to prevent unauthorized access or actions on the system. The IRS should enable the taxpayer to maintain strict and detailed control over preparer authorizations. The IRS should bring IRS Form 2848, *Power of Attorney and Declaration of Representative*, into the 21st century by building the online account system to provide specific checkboxes addressing authorizations for each type of action a preparer could take on behalf of the taxpayer on the online account system. The IRS should also develop and implement procedures to track preparer access and restrict unauthorized activities. Upon validating the preparer's PTIN information, if the system determines the preparer is not subject to Circular 230 oversight and did not take part in the voluntary Annual Filing Season Program, then it could automatically block certain authorization checkboxes. In addition, because the taxpayer may be held responsible for the preparer's actions on the system, whether authorized or not, it is crucial that the taxpayer is aware of *all* the actions taken by the preparer on the taxpayer's online account. Therefore, whenever a preparer takes any type of action on the online account system, including merely accessing the account, the system should alert the taxpayer, in a manner specified by the taxpayer, such as by

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[66] *The National Taxpayer Advocate's 2014 Annual Report to Congress: Hearing Before the H.R. Comm. on Oversight and Government Reform, Subcomm. on Government Operations*, 114th Cong. 18-20 (Apr. 15, 2015) (written testimony of Nina E. Olson, National Taxpayer Advocate).

[67] *The National Taxpayer Advocate's 2014 Annual Report to Congress: Hearing Before the H. Comm. on Oversight and Government Reform, Subcomm. on Government Operations*, 114th Cong. 20-3 (Apr. 15, 2015) (written testimony of Nina E. Olson, National Taxpayer Advocate).

[68] For more detail on the National Taxpayer Advocate's position on the proposed correctable error legislation, see *The National Taxpayer Advocate's 2014 Annual Report to Congress: Hearing Before the H. Comm. on Oversight and Government Reform, Subcomm. on Government Operations*, 114th Cong. 34-5 (2015) (written testimony of Nina E. Olson, National Taxpayer Advocate).

[69] IRC § 6213(b)(1); IRM 21.5.4.1, *General Math Error Procedures Overview* (Oct. 1, 2014).

email or text. If a preparer has taken an unauthorized action, the IRS should develop procedures to enable the taxpayer to undo any unauthorized transactions conducted by the preparer.

Recommendations

I recommend that the IRS take the following actions:

- Conduct research to identify the taxpayer base who will utilize the online taxpayer account system as well as other online service offerings, broken down by willingness to complete specific activities and willingness to complete various levels of cybersecurity authentication measures.

- Limit preparer access to the taxpayer online account system to only those preparers subject to IRS oversight under Circular 230 and validate the preparer's PTIN information.

- Develop the online account system so that the taxpayer can adjust preparer authorizations by checking a separate box for each type of action the designated preparer can take on the taxpayer's behalf and allow the taxpayer to receive notifications of any actions taken. The checkboxes should use plain language explanations reviewed by Taxpayer Advocacy Panel[70] members and Low Income Taxpayer Clinics[71].

IV. Select Highest Value Work Using Data Analytics and Robust Feedback Loops.

A central component of the IRS Future State vision is its ability to expand and utilize the vast amount of data it receives from taxpayers, employers, businesses, financial institutions, and other countries. I fully support a robust IRS research agenda. In fact, I believe the Taxpayer Advocate Service is a leader in research into taxpayer behavior and the impact of tax administrator actions on driving compliance or noncompliance, as evidenced by the research studies published in Volume 2 of my Annual Reports to Congress.

However, data is not knowledge. I am very concerned that the IRS often ignores the implications of data analysis, or analyzes data to support its own pre-determined conclusions, in order to justify a move in a particular direction. On other occasions, the

[70] The Taxpayer Advocacy Panel is a group of citizen volunteers who listen to taxpayers, identify issues that affect taxpayers, and make suggestions for improving IRS service and customer satisfaction. *See* www.improveirs.org.

[71] Low income taxpayer clinics are organizations that receive a grant from the IRS to represent low income taxpayers in a controversy with the IRS and educate taxpayers who speak English as a second language about their taxpayer rights and responsibilities. See IRC § 7526.

IRS has simply not asked the right question, thereby increasing the IRS's own costs of rework and burdening taxpayers. In this section I will discuss several areas of tax administration that call into question the ability of the IRS to analyze and act upon available data.

A. The IRS Is Conferring IRC § 501(c)(3) Status on Organizations that Do Not Meet the Legal Requirements.

In 2014, over my objections and those of other stakeholders, the IRS began addressing backlogs in its inventory of applications for tax-exempt status by allowing certain organizations to use new Form 1023-EZ, *Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*.[72] Form 1023-EZ adopts a "checkbox approach," requiring applicants merely to attest, rather than demonstrate, that they meet fundamental aspects of qualification as an exempt entity. Since it was introduced, more than half of all applications for exempt status as IRC § 501(c)(3) organizations have been submitted on Form 1023-EZ, and 95 percent of Form 1023-EZ applications have been approved.[73]

When the Exempt Organizations (EO) function of the Tax Exempt and Government Entities division (TE/GE), as part of a pre-determination review program, evaluated 965 Form 1023-EZ filers in slightly greater depth (rather than relying only on the attestations contained in Form 1023-EZ), it found an approval rate of only 77 percent.[74] Some applicants were rejected because they failed to respond to EO's request for additional information or were simply ineligible to use Form 1023-EZ, but in almost 20 percent of the cases the applicant did not meet the organizational test, a legal requirement for status as an IRC § 501(c)(3) organization.[75] To satisfy the organizational test, an applicant's organizing document must contain:

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[72] *See* National Taxpayer Advocate Fiscal Year (FY) 2015 Objectives Report to Congress 54-7. Among other things, organizations eligible to submit Form 1023-EZ must generally have annual gross receipts of $50,000 or less and assets with fair market value which does not exceed $250,000. Organizations that do not meet these eligibility requirements may apply using Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*.

[73] TE/GE First Quarter Business Performance Review (BPR) 2016 at 4 (Mar. 2016).

[74] *See* Rev. Proc. 2014-40, § 5.03, 2014-30 I.R.B. 229, 233 (providing that "the Service will select a statistically valid random sample of Forms 1023-EZ for pre-determination reviews"). Interim guidance to employees describes as the goals of the review to: "Identify applicants that do not qualify for exemption; …Enhance public trust by reinforcing that submission of Form 1023-EZ does not guarantee tax exemption will be recognized." As part of the pre-determination review, EO agents requested additional information from these applicants, such as "the organizing document with language required to meet the organizational test" and "a detailed description of past, present, and future activities; revenues and expenses." TEGE-07-0714-0017, *Interim Guidance on Processing Form 1023-EZ* (July 1, 2014). The results of the predetermination review are found in TE/GE, *Form 1023-EZ First Year Report* 5-6, EO Response to TAS information request (Oct. 29, 2015).

[75] TE/GE, *Form 1023-EZ First Year Report* 5, EO Response to TAS information request (Oct. 29, 2015); TE/GE response to TAS information request (June 11, 2015).

- An adequate purpose clause (among other things, the purposes of the organization must be limited to one or more exempt purposes described in IRC § 501(c)(3)); and,
- In general, an adequate dissolution clause (the organization's assets must be dedicated to an exempt purpose, which can be shown where the assets, upon dissolution, are required to be distributed for one or more exempt purposes).[76]

TAS's analysis confirmed the insufficiency of Form 1023-EZ to allow the IRS to make a determination as to an applicant's qualification as an IRC § 501(c)(3) organization. TAS analyzed a representative sample of corporations in 20 states that make articles of incorporation viewable online at no cost whose Form 1023-EZ was approved. TAS found the articles of incorporation of 37 percent of the organizations in the sample did not satisfy the organizational test.[77]

On December 21, 2015, TAS provided TE/GE with a list of 149 organizations in the TAS study whose Form 1023-EZ applications were approved even though the organizations do not qualify as IRC § 501(c)(3) organizations because their articles of incorporation lack an adequate purpose clause or required dissolution clause (or both). TAS recommended that TE/GE advise the organizations on the list of the deficiencies in their articles and require them to demonstrate (not simply attest) that they amended their articles to comply with the requirements for qualification as IRC § 501(c)(3) organizations.

When TAS followed up with EO in February of 2016 by asking how many organizations on the list had been contacted and how many had responded, the Director of Rulings and Agreements replied "the applicable procedures do not provide for contacting these taxpayers to request books & records in this context."[78] In a telephone conversation, the Director explained his view that such contact might constitute an audit. When TAS then inquired of the Acting Director, TE/GE Exempt Organizations, whether the 149 organizations would be included in its Form 1023-EZ post-determination audit program, the response was:

> The selection of cases for the 1023-EZ post-determination compliance program in EO exam is based on a statistical sample. So if any of those organizations are selected as part of the sample, then they will be examined. We cannot just pull

[76] *See* Treas. Reg. §§ 1.501(c)(3)-1(b)(1)(i)(A), (B); 1.501(c)(3)-1(b)(4). "Articles of organization" includes "the trust instrument, the corporate charter, the articles of association, or any other written instrument by which an organization is created." Treas. Reg. § 1.501(c)(3)-1(b)(2). In some states, known as *cy pres* states, a nonprofit corporation's articles need not include a specific dissolution provision because by operation of state law the organization's assets would be distributed upon dissolution for one or more exempt purposes, or to the federal government, or to a state or local government, for a public purpose. *See* Treas. Reg. § 1.501(c)(3)-1(b)(4).

[77] National Taxpayer Advocate 2015 Annual Report to Congress, vol. 2, 1-32 (Research Study: *Study of Taxpayers that Obtained Recognition as IRC § 501(c)(3) Organizations on the Basis of Form 1023-EZ*).

[78] E-mail from Director, Exempt Organizations – Rulings & Agreements (Feb. 8, 2016), on file with TAS.

> those cases into the sample, as that would invalidate the sample. To select a case for examination, we have to follow very specific examination procedures. These procedures provide internal controls on the selection of cases for examination to ensure that the returns selected for examination follow the examination strategy and are selected in a fair and unbiased manner. Currently, cases are selected for examination using three different methods, statistical sample, the 990 model queries, and referrals. Exam accepts both internal and external referrals. If you would like to submit a referral for these organizations, we would provide those referrals to our Referral Classification Unit for evaluation. I have attached the Form 5666 [TE/GE Referral Information Report] for your convenience.[79]

TAS then suggested that EO simply conduct compliance checks on the 149 organizations, which would not amount to an audit.[80] The Acting Director, TE/GE Exempt Organizations, responded that this could be a possible course of action in 2017.[81]

As of April 4, 2016, all but seven of the 149 organizations continued to be listed on EO Select Check, an IRS-maintained public database, as those to which tax deductible contributions may be made.[82]

Recommendations

I recommend that the IRS take the following actions:

- Negotiate with those states that do not make articles of incorporation publicly available online at no cost to provide the IRS with access to those online databases.

- Revise Form 1023-EZ. Revisions should:

[79] E-mail from Acting Director, TEGE Exempt Organizations (Feb. 8, 2016), on file with TAS.

[80] *See* IRS Pub. 4386, *Compliance Checks: Examination, Audit or Compliance Check? (*noting "a compliance check is a review conducted to determine the following: Whether an organization is adhering to record keeping and information reporting requirements; Whether an organization's activities are consistent with its stated tax-exempt purpose. It is a review of information and forms that we require organizations to file or maintain – for example, Forms 990, 990-T, 940, 941, W-2, 1099, or W-4. The check is a tool to help educate organizations about their reporting requirements and to increase voluntary compliance.").

[81] Minutes of Mar. 24, 2016 meeting between TAS Executive Director of Systemic Advocacy and Acting Director, TE/GE Exempt Organizations, on file with TAS.

[82] EO Select Check is an online search tool that allows users to search for organizations eligible to receive tax deductible contributions, organizations whose tax exemption has been automatically revoked for not filing a Form 990-series return or notice for three consecutive years, and organizations that have filed a Form 990-N (also called an e-Postcard), an annual notice required to be filed by small exempt organizations.

- Require applicants, other than corporations in states that make articles of incorporation available online to the IRS, to submit their organizing documents; and

- Require applicants to provide a description of their actual or planned activities and submit summary financial information such as past and projected revenues and expenses.

- Make a determination only after reviewing the Form 1023-EZ application, the applicant's organizing documents, its description of actual or planned activities, and its financial information, and where there is a deficiency in an organizing document, require an applicant to submit a copy of an amendment to its organizing document that corrects the deficiency and has been approved by the state, even where the documents are available online at no cost, before conferring exempt status.

B. The IRS's Approach to its Non-Resident Taxpayer Refund Process Results in Extensive Delays and Unwarranted Denials of Legitimate Credits and Refunds.

The IRS's Future State plans for taxes withheld at source from non-residents involves a fundamental change away from its prior practice of treating them in the same way as domestic refunds. Generally, refunds of both foreign and domestic amounts withheld at source were allowed in the absence of some affirmative indicia of fraud. This approach was, and continues to be, reasonable as nothing in my analysis, discussed in more detail below, indicates that taxpayers seeking refunds based on Form 1042-S withholding are any less compliant than other groups of taxpayers. Nevertheless, the IRS's current and future vision for non-residents who file returns seeking refunds of amounts withheld at source is characterized by an undifferentiated switch to an enforcement model of taxation.

Under IRC §§ 1441-1443 (Chapter 3), the IRS imposes withholding on payments made to non-resident aliens and foreign corporations and allows credits and refunds of the amounts to which these taxpayers are entitled.[83] For many years, the operation of this regime closely paralleled the approach taken by the IRS with respect to domestic withholding under IRC § 31 in that there were no restrictions limiting credits or refunds to the amount of withheld tax actually paid to the IRS.[84]

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[83] *See* Treas. Reg. §§ 1.1462-1 and 1.1464-1.

[84] For a discussion of prior IRS practice in the processing of Chapter 3 refund claims, *see* Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2010-40-121, *Improvements are Needed to Verify Refunds to Nonresident Aliens Before the Refunds are Sent Out of the United States* 6 (Sept. 2010).

However, as a result of additional reporting and withholding requirements established by the Foreign Account Tax Compliance Act (FATCA), which passed IRC §§ 1471-1474 (Chapter 4), the IRS became increasingly concerned about fraudulent activity on the part of taxpayers and withholding agents.[85] While IRS fears may have some foundation, the nature and extent of the potential fraudulent activities have not, to the best of my knowledge, been established by the IRS through any comprehensive, statistically valid evidence.[86] Moreover, there is no evidence that the level of potentially fraudulent refund claims is greater in the international area than the domestic area. Nevertheless, the IRS has taken the drastic step of freezing *all* Chapter 3 and Chapter 4 refunds for up to one year or longer, while attempting to match the documentation provided by taxpayers with the documentation provided by withholding agents.[87]

The IRS systemic matching program compares the Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, filed by the withholding agent with the Form 1042-S furnished as part of the taxpayer's return. This form-by-form verification process would not necessarily be problematic if the IRS had the resources and technology necessary to undertake it successfully. It does not. As of March 2016, Form 1040NR returns seeking Form 1042-S refund claims for the 2014 calendar year have been treated by the IRS as follows:

- 17,004 refund claims were initially frozen, with those refunds eventually released to taxpayers after an average delay of 26 weeks.
- Another 27,670 refund claims still remain in freeze status with an average delay of 33 weeks and counting.
- An additional 15,257 refund claims have now been disallowed after first having been frozen for an average period of 36 weeks.[88]

Even the refunds that ultimately are allowed have been long delayed and caused significant burden to taxpayers. This approach is not only costly for taxpayers, but for

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[85] Hiring Incentives to Restore Employment Act, Pub. L. No. 111-147, Title V, Subtitle A, 124 Stat. 71, 97 (2010); Notice 2015-10, 2015-20 I.R.B. 965.

[86] LB&I response to TAS information request (Sept. 9, 2015). After analyzing the issue with respect to the 2008 taxable year (TY), TIGTA found no statistically significant indicia of fraud relating to IRS processing of refund claims by nonresident aliens. A judgmental sample of TY 2007 and TY 2008 returns, however, revealed significant control weaknesses in the processing of refunds claimed on Forms 1040NR that could be exploited and therefore should be remedied. TIGTA, Ref. No. 2010-40-121, *Improvements are Needed to Verify Refunds to Nonresident Aliens Before the Refunds are Sent Out of the United States* 2 (Sept. 2010).

[87] IRM 21.8.1.11.14.2, *FATCA - Programming Beginning January 2015 Affecting Certain Forms 1040NR (TC 810–3 -E Freeze)* (May 1, 2015) (freezing refund up to 168 days). *See also* IRS, SERP Alert 15A0416, *Form 1040NR Frozen Refund Extension* (Sept. 11, 2015) and SERP Alert 15A0417, *Form 1120-F Frozen Refund Extension* (Sept. 11, 2015) (both extending the freeze up to 12 months).

[88] Compliance Data Warehouse (CDW), Individual Master File (IMF) Transaction History table, Individual Return Transaction File (IRTF) Form 1040 table, Extract Cycle as of 201612 (Mar. 2016). This data excludes the less than 100 Form 1040NR returns accompanied by Form 1042-S refund claims that have been released but were partially disallowed.

the IRS, which has estimated that an extension of the freezes through early 2016 could result in an interest expense of over $4 million.[89]

1. The Broad Application of Freezes and the Absence of an Efficient Withholding Verification Process for Forms 1042-S Cause Substantial Delays in Processing Non-Resident Returns and Releasing Legitimate Refunds.

The IRS is disallowing claims that are not quickly verified by its semi-automated matching tool developed for Forms 1042-S. These disallowances occur for reasons that are often beyond taxpayers' control, such as poor data quality and transcription errors.[90] Taxpayers are left with the option of persuading their withholding agent to amend inconsistent submissions, or undertaking the process of seeking review and relief from the IRS.[91]

I am concerned about the IRS's unwillingness to directly address Form 1042-S mismatches with withholding agents, as is done in the case of domestic refund. This direct dialogue between the IRS and withholding agents would be facilitated by the fact that approximately 85 percent of Chapter 3 and Chapter 4 withholding agents are domestic.[92] Thus, there is no rationale for the IRS to treat the vast majority of Form 1042-S mismatches differently from domestic refund mismatches.

Questions relating to mismatches in Forms 1042-S are made more difficult to resolve by the IRS's policy of intentionally withholding specific information about the alleged mismatches from taxpayers.[93] The IRS letters sent to taxpayers telling them that their Form 1042-S refund claims are disallowed do not provide specific information to taxpayers regarding the nature of the mismatches or the particular Form 1042-S fields requiring correction.

As an example of the problems being caused by the IRS's current approach, I recently became aware of foreign college students whose Form 1042-S refunds were disallowed by the IRS due to alleged mismatches in withholding information filed by the students

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[89] IRS presentation: *Foreign Account Tax Compliance Act, Large Business & International (LB&I) Withholding & Refunds (W&R) Discussion,* slide 4 (Oct. 2015).

[90] *See* IRM 21.8.1.11.14.3, *FATCA- 1042-S Matching Program - General Information - Identifying Related Letters, Transaction Codes, Reason Codes, 1042-S Data Fields* (Feb. 18, 2016).

[91] *Id*.

[92] LB&I response to TAS information request (Sept. 9, 2015). This percentage is developed from data provided by the IRS with respect to FY 2012 and FY 2013, which are the only years for which it furnished this information.

[93] *See* IRM 21.8.1.11.14.3, *FATCA- 1042-S Matching Program - General Information - Identifying Related Letters, Transaction Codes, Reason Codes, 1042-S Data Fields* (Feb. 18, 2016).

and their U.S. based educational institutions.[94] Most problems appear to be caused by a software error in the Form 1042-S preparation programs used by the universities and colleges. However, in at least some of these cases, it appears that the mismatches may themselves be the result of the IRS shifting data fields on the students' tax returns, thereby creating the mismatches giving rise to the disallowances.[95] Students and their educational institutions are finding it challenging to reconcile the alleged mismatches as the mismatches are not specifically identified in the letters sent to the students and because the letters themselves occasionally contain inaccurate taxpayer information.[96] In at least one case, TAS received reports of a student who had filed a refund claim over a year earlier and who received a disallowance letter along with a notification that, as a result of the disallowed claim, the student was also being assessed a failure-to-pay penalty.[97]

I have advocated that the IRS implement a systemic remedy to this problem to limit burden on a category of taxpayers and withholding agents that generates little risk of fraudulent activity. I have learned that the IRS plans to provide this systemic remedy, but it has not yet been implemented.

2. Using Targeted Enforcement and Withholding Verification Similar to that Applied in the Domestic Context Would Follow the IRS's Longstanding Policies, Would be "In Accord with Taxpayer Rights,"[98] and Would Represent an Effective and Efficient "Future Vision."

The vast majority of taxpayers filing Form 1042-S refund claims actually appear to be substantially more compliant than a comparable portion of the overall U.S. taxpayer population.[99] However, the IRS has indefinitely retained refunds owed to this group of

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[94] Systemic Advocacy Information Gathering Project (IGP) 34131; TAS General Project 34152. *See also* SERP Alert 16A0135 (Mar. 24, 2016).

[95] Systemic Advocacy IGP 34131; TAS General Project 34152. *See also* SERP Alert 16A0135 (Mar. 24, 2016).

[19] *Id*.

[97] *Id*.

[98] *See* IRC § 7803(a)(3).

[99] TAS bases this determination on the fact that Form 1040NR taxpayers claiming Form 1042-S refunds have a lower percentage of high-scoring Discriminant Index Function (DIF) returns in comparison to filers overall. Data drawn Mar. 25, 2016 for taxable year 2014 from IRS Compliance Data Warehouse, IRTF Entity table, and IMF Transaction History tables - *see* particularly Total Positive Income (TPI) Class 72, which encompassed most taxpayers in this group. High-scoring DIF returns were defined as those with a DIF value that exceeded 80 percent of DIF scores in the general population for a particular TPI class. TAS calculated a cutoff point for DIF scores at the 80th percentile for each TPI class for TY 2014, and derived the percentage of Form 1040NR taxpayers claiming Form 1042-S refunds in each TPI class that exceeded the DIF cutoff point. Overall, only approximately three percent of Form 1040NR taxpayers claiming Form 1042-S refunds exceeded their respective DIF cutoff points, compared to 20 percent for individual filers in the general population (especially TPI Class 72). Accordingly, Form 1040NR taxpayers

taxpayers while it proves the compliant majority innocent in order to protect the tax system from potential exploitation by the noncompliant few.

As I previously noted, while IRS concerns regarding fraud may have some validity, the nature and extent of the potential malfeasance have not, to the best of my knowledge, been established by the IRS through any comprehensive, statistically valid evidence. Such a rigorous analysis should be undertaken and its findings should govern the development of a more narrowly tailored, less intrusive program of administration for Chapter 3 and Chapter 4 refund claims. For example, a recent high-level TAS review of compliance data in this area indicates that problems appear to exist primarily with respect to a few small groups of taxpayers for whom individual strategies could be developed for revenue-protection purposes.[100]

Recommendations

I recommend that the IRS take the following actions:

- Provide systemic relief to students whose withholding refunds were disallowed on account of an error in the withholding software used by their colleges.
- Adopt the income and withholding verification process it currently uses in the domestic context.
- Revise IRS letters to affected taxpayers to include clear and specific information about the mismatch, including the specific field in a Form 1042-S or the related tax return, and provide clear instructions regarding how the taxpayer can substantiate the withholding to the satisfaction of the IRS.
- As in the domestic withholding context, allow refunds to taxpayers who have proven to the IRS the amount actually withheld, regardless whether the withholding agent deposited the amount with the Treasury.

C. The IRS Is Taking Important Steps to Prevent Stolen Identity Refund Fraud, But Needs to Do More to Assist Victims.

Tax-related identity theft is an invasive crime that has significant impact on its victims and the IRS.[101] Apart from the time and frustration involved in dealing with the IRS to

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claiming Form 1042-S refunds showed a lower percentage of "high-scoring" DIF returns, and thus more compliant behavior, than the overall population. We did, however, identify certain small groups of taxpayers within the overall group who appear to have considerable compliance issues (*see* TPI Classes 75 and 80).

[100] *Id.*

[101] *See* National Taxpayer Advocate 2015 Annual Report to Congress 180-187; National Taxpayer Advocate 2014 Annual Report to Congress vol. 2, 44-90; National Taxpayer Advocate 2013 Annual Report to Congress 75-83; National Taxpayer Advocate 2012 Annual Report to Congress 42-67; National

prove one's own identity, taxpayers generally do not receive their refunds until their cases are resolved.

I have concerns about both the IRS's preventive measures to combat identity theft and the IRS's approach to identity theft victim assistance.

1. The IRS Should Improve Its Identity Theft Filters and Allocate Sufficient Resources to Staff Its Phone Lines to Respond to Taxpayers Impacted by These Filters.

The IRS uses data analytics to develop various filters to detect suspicious tax returns. One such series of filters is known as the Taxpayer Protection Program (TPP). When the TPP flags a suspicious return, the processing of that return is suspended until the taxpayer is able to validate his or her identity. The IRS sends a letter instructing the taxpayer to either call the TPP phone number or answer some knowledge-based questions online to verify his or her identity.

Last filing season, approximately one out of three returns suspended by the TPP was a "false positive."[102] Although the IRS has not provided official false positive rate data for the 2016 filing season yet, we have indications that the false positive rate for the TPP remains in this range.

As a result, hundreds of thousands of taxpayers who filed legitimate returns must spend time contacting the IRS to verify their identities.[103] This created a significant backlog of calls to the TPP toll-free phone line. The LOS on the TPP line fell below ten percent for three consecutive weeks during the 2015 filing season.[104]

The same problems with the low LOS on the TPP phone lines continued in the early stages of the 2016 filing season. During the early part of the 2016 filing season, the IRS received about 3.6 million telephone calls on its TPP line, and it answered only about 12.3 percent.[105]

Taxpayer Advocate 2011 Annual Report to Congress 48-73; National Taxpayer Advocate 2009 Annual Report to Congress 307-317; National Taxpayer Advocate 2008 Annual Report to Congress 79-94; National Taxpayer Advocate 2007 Annual Report to Congress 96-115; National Taxpayer Advocate 2005 Annual Report to Congress 180-191; National Taxpayer Advocate 2004 Annual Report to Congress 133-136.

[102] IRS, *IRS Return Integrity & Compliance Services (RICS), Update of the Taxpayer Protection Program (TPP)* 9 (June 24, 2015).

[103] *Id*.

[104] For weeks ending February 28, 2015, March 7, 2015, and March 14, 2015, the LOS on the TPP line was 9.7 percent, 7.6 percent, and 9.8 percent, respectively.

[105] IRS, JOC, *FY 2016 Weekly TPP Snapshot Report* (week ending March 5, 2016).

The IRS has improved its LOS on the TPP phone line in the most recent weeks, partially due to the fact that the call volume to the TPP has tapered off significantly. For the week ending April 9, 2016, IRS assistors answered about 84 percent of the calls made to the TPP line, with an average wait time of 6 minutes.[106]

I support the use of data-driven models to detect suspicious tax returns. However, the IRS has an obligation to sufficiently test these filters – a false positive rate of 36.2 percent is unacceptably high.[107] Furthermore, the IRS must continue to ensure that the phone lines are sufficiently staffed to handle the volume of calls to the TPP.

2. The IRS Should Assign a Sole Contact Person to Assist Victims of Identity Theft When Multiple Functions Are Involved.

Identity theft cases account for approximately a quarter of all TAS case receipts.[108] One reason why so many identity theft cases end up in TAS is because of their complexity – historically, these cases often require actions to be taken by employees from multiple IRS functions.

To improve the victim experience and shorten its identity theft case cycle time, I have recommended that for complex identity theft cases (ones that require the victim to deal with multiple IRS functions), the IRS designate a sole contact person with whom the victim can interact for the duration of the case.[109] I believe this would not only put the victim more at ease, but would also avoid having an identity theft case fall through the cracks and adding to the cycle time. In fact, at our most recent Public Forum in Harrisburg, Pennsylvania, the panelist who was a victim of identity theft responded with a resounding (and monosyllabic) "Yes!" when asked whether it would have reduced his stress and anxiety had he been able to work with one, and only one, IRS employee.

The IRS recently reorganized its identity theft victim assistance units, moving toward a more centralized approach for which our office has long advocated.[110] As the IRS re-engineers its identity theft victim assistance procedures, it should look at its processes from the perspective of the identity theft victim. Given the multiple points of contact and resulting periods of inactivity, the IRS may find if it adopts our suggestions that it actually will require *fewer* resources to do the same volume of work. I am confident that taxpayers – our customers – would be much more satisfied with their experience.

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[106] IRS, JOC, *FY 2016 Weekly TPP Snapshot Report*. Prior year data taken from equivalent week.

[107] IRS, *IRS Return Integrity & Compliance Services (RICS), Update of the Taxpayer Protection Program (TPP)* (Dec. 2, 2015).

[108] Stolen Identity cases accounted for 22.7 percent (24,491 / 107,905) of all TAS case receipts for FY 2016. TAS Business Performance Management System (BPMS), FY 2016 Cumulative Receipts by Issue Code through March 31, 2016 (run date Apr. 1, 2016).

[109] National Taxpayer Advocate 2015 Annual Report to Congress 187; National Taxpayer Advocate 2014 Annual Report to Congress vol. 2, 55.

[110] *See* National Taxpayer Advocate 2007 Annual Report to Congress 115.

3. The IRS Should Strengthen and Expand the Identity Protection Personal Identification Number (IP PIN) Program.

In December of each year, the IRS issues IP PINs to certain victims of identity theft (IDT) whose identities and addresses have been verified.[111] An IP PIN is a unique code that some taxpayers must use, along with his or her taxpayer identification number, to file a tax return.[112] IP PINs are a very effective way to prevent refund-related IDT; a would-be identity thief simply cannot e-file a tax return on a protected account without entering the IP PIN (which changes every year).

In 2014, the IRS began a pilot to expand the issuance of IP PINs. Residents of the District of Columbia, Florida, and Georgia were given the opportunity to opt-in to receive an IP PIN, regardless of whether or not they were victims of IDT.[113] Although uptake was relatively low, the IRS continued the IP PIN opt-in pilot for residents of these three high-risk states.[114]

The IRS is currently exploring the feasibility of expanding the IP PIN opt-in pilot nationwide, but is concerned about the costs of administering the program. The IRS estimates that it costs as much as $36 per IP PIN over a three-year period (the costs of issuing replacement IP PINs are factored into this estimate).[115] For each taxpayer who opted to receive an IP PIN in 2014, $193 of revenue was protected.[116] In other words, the IRS stopped $5.36 in fraudulent refunds for every dollar it spent issuing IP PINs.[117] This is a conservative estimate which does not account for dollars protected in the second and third year of IP PIN use, while including the administrative cost of issuing IP PINs for three years. Based on these calculations, the IRS should request from Congress the needed funds to expand the IP PIN opt-in program.

In the early months of the 2016 filing season, the IRS encountered some problems with the IP PIN program. When a taxpayer loses the IP PIN that was issued by the IRS via letter, he or she is instructed to go to an IRS web site to retrieve the number. The taxpayer is asked a series of questions, including “knowledge-based authentication” questions drawn from a person’s credit history. However, because answers to these questions may be obtained by impersonators who are becoming increasingly

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[111] IRM 25.23.2.21, *Identity Protection Personal Identification Number (IP PIN)* (Sept. 8, 2015).

[112] *Id*.

[113] IRM 25.23.2.21.2, *IP PIN Opt-In Available for Designated Taxpayers Who Are Not ID Theft Victims* (Sept. 8, 2015).

[114] *Id*. Uptake was 0.08 percent in the 2014 pilot and 0.15 percent in the 2015 pilot.

[115] W&I Research and Analysis, IP PIN Opt-in Pilot Executive Checkpoint (Sept. 2015).

[116] $2.2 million net revenue protected / 11,400 opt-ins in 2014. *See* W&I Research and Analysis, IP PIN Opt-in Pilot Executive Checkpoint (Sept. 2015).

[117] $193 revenue protected / $36 cost of IP PIN issuance = $5.36 revenue protected per IP PIN issued.

resourceful, the IP PIN retrieval tool encountered the same problem as that of the IRS's "Get Transcript" service.

This filing season, the IRS released a statement saying it temporarily suspended the IP PIN retrieval tool, pending further review of its security features.[118] The IRS noted that of the 2.7 million taxpayers who received IP PINs for use the 2016 filing season, less than five percent of them used the online tool to try retrieving a lost or forgotten IP PIN.

I support the IRS's decision to suspend the IP PIN retrieval application as it reviews the security features. There may be a better way to deliver replacement IP PINs, and I have urged the IRS to look at how the private sector approaches online security. To that end, the IRS recently hosted a Security Summit with technology professionals from the private sector and state agencies to facilitate discussion on strengthening online authentication, among other topics.

Recommendations

I recommend that the IRS take the following actions:

- For identity theft cases involving more than one tax issue or more than one tax year, assign a single employee within the Identity Theft Victim Assistance unit to work with the identity theft victim until all related issues are fully resolved. The taxpayer should be given the opportunity to speak directly with that employee whenever possible, but if the employee is not available, the taxpayer should be given the option of leaving a message for the employee or speaking with another available assistor.

- Expand its IP PIN pilot to allow all taxpayers the ability to receive an IP PIN, and strengthen the online authentication for retrieving lost or forgotten IP PINs.

V. The IRS Must Develop and Deploy an IRS Enterprise Case Management System Generally and the Taxpayer Advocate Service Integrated System (TASIS) in Particular.

The IRS's information technology (IT) systems, particularly its case management systems, require an investment of funding to promote efficiency gains and improve taxpayer service. My own organization, the Taxpayer Advocate Service, is operating with a 1980s legacy system known as the Taxpayer Advocate Management Information System (TAMIS). TAMIS is largely obsolete and requires case advocates to perform many tasks manually that can and should be automated. Working with the IRS's IT function and a contractor, TAS has developed the requirements for a replacement system known as the Taxpayer Advocate Service Information System (TASIS), and

[118] IRS, *IRS Statement on IP PIN* (Mar. 7, 2016), *available at* https://www.irs.gov/uac/Newsroom/IRS-Statement-on-IP-PIN.

about seventy percent of the programming for TASIS has been completed.

About $20 million has already been spent on TASIS out of a total projected cost of about $32 million. TASIS was within an estimated 6 months of completion. For the last three years, the Senate Appropriations Subcommittee on Financial Services and General Government has repeatedly included TASIS on a list of six "major information technology project activities" about which it has directed the IRS to submit quarterly reports.[119] Yet the IRS has halted all work on TASIS due to budget constraints. This decision is penny-wise and pound-foolish for three reasons: (1) TASIS would allow TAS's case advocates to be much more efficient, reducing the number of case advocates needed for a given number of cases, so it would save money after a few years, (2) it makes no business sense to pull the plug on a successful IT project after more than 60 percent of the funds have been spent and it is within 6 months of completion, and (3) there are many business units in the IRS that would benefit from a new case management system, and the TASIS system includes many useful case management features that could be adapted to meet those units' needs.

A. ECM in General.

The IRS is currently undertaking an assessment of its case management systems as part of a comprehensive project to create a servicewide enterprise case management (ECM) solution. I use the term "case management" in a comprehensive sense to refer to electronic recordkeeping systems the IRS uses to track information about interactions with respect to taxpayers' tax returns or other tax-related matters. These systems include audit and collection case records for individuals and large, medium, and small businesses; exempt organization determinations; whistleblower claims; automated substitutes for returns; the automated underreporter (AUR) program; criminal investigations; and the Taxpayer Advocate Service case management system.

ECM offers a future vision for consolidated case management that will address the need to modernize, upgrade, and consolidate multiple aging IRS systems. The IRS now supports approximately 200 such systems, few of which communicate with one another and none of which provides an electronic substitute for the paper case file (*i.e.,* there are reams of paper supplementing whatever records are included in the electronic system).[120] The IRS's current case management system structure requires employees to:

- Retrieve data from many systems manually;

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[119] *See* S. REP. NO. 114-97, at 39 (2015); S. Rep. No. 113-80, at 34 (2013). In 2014, a similar provision was included in the Senate Appropriations Committee's draft report, but the draft report was not adopted for that year.

[120] Email from Director, Enterprise Case Management to TAS Acting Deputy Executive Director, Case Advocacy (Intake & Technical Support) (Mar. 11, 2016).

- Maintain both paper and electronic records;

- Transcribe or otherwise import information from paper and other systems into their own case management systems; and

- Ship, mail, or fax an estimated hundreds of thousands, if not millions, of case management files and supporting documents annually for management approval, quality review, and responses to Appeals and Counsel.

The ECM solution involves developing a common infrastructure for multiple projects to share. Implementation of the solution will provide the IRS with a consistently efficient approach to case management across all business units. While I agree that the IRS needs a servicewide ECM solution and am very supportive of such efforts, I am concerned about the IRS's failure to leverage the comprehensive work already completed in creating TASIS.

B. The Taxpayer Advocate Service Integrated System.

As I discussed in my testimony before this subcommittee last year and in several of my past Objectives Reports to Congress, TASIS is a versatile case management system that would replace TAMIS, TAS's current antiquated system. While ECM focuses on case selection and work assignment capabilities, among other things, TASIS focuses on case intake and case-building functions, creating virtual case files with data auto-populated from other IRS systems and information transmitted electronically between functions for review and action. Once TASIS is completed, the IRS can incorporate elements of TASIS into core ECM for use by other IRS business units, including the Exempt Organization function, Appeals, the Whistleblower Office, and the Innocent Spouse, Identity Theft, and Offer in Compromise units.

When TAS learned that TAMIS was slated for retirement, it capitalized on the opportunity to integrate all of its systems and business processes into a single state-of-the-art application. TAS developed over 4,000 business requirements for the case management system aspect of TASIS functionality, including:

- Fully virtual case files, in which all documentation (whether IRS or taxpayer-generated) will be scanned or received digitally into an electronic case file;

- Electronic access to other IRS case-management systems, with automatic retrieval of taxpayer information programmed into the system and no further need for TAS employees to obtain and import the information manually;

- Electronic submission and tracking of Operations Assistance Requests (OARs)[121], including receipt, acknowledgement, assignment, and response, in

[121] IRS Form 12183, *Operations Assistance Request,* is the form TAS uses when it lacks the statutory or delegated authority to perform an action on a case and must request the IRS to perform the action.

which TAS sends requests, with supporting documentation, to IRS functions to take actions on cases, eliminating delays and time-wasting manual tracking;

- Full access to all virtual case information for purposes of management and quality review, eliminating the delay and cost associated with transporting files;

- Taxpayer (and representative) ability to submit Form 911, *Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order),* electronically;

- Taxpayer (and representative) ability to submit documentation electronically;

- TAS and taxpayer (and representative) ability to communicate digitally, through email and text messages, including both substantive case information and reminders to help move the case along;

- Taxpayer (and representative) ability to electronically check the status of a case in TAS and see what actions have been taken or are underway; and

- An electronic case assignment system that matches, in real time, the complexity and direct time associated with the case with the skills and available direct time associated with each case advocate in any given office, taking into account an employee's unavailability because of annual leave, sick leave, training, or on-the-job instruction, eliminating delays in assignment, and minimizing the need to transfer cases.

These are just some of the capabilities contained within the TASIS Business System Requirements Report, which collectively illustrates the TASIS case management component will not just replace TAMIS but will significantly increase the productivity of TAS case advocates because they will no longer spend their valuable time tracking down paper documents or inputting information into multiple systems. Moreover, taxpayers will be able to communicate efficiently with TAS and electronically send key case information and documents. This functionality will enable our case advocates to spend their time advocating for taxpayers, rather than performing manual input and tracking documents and IRS actions.

TASIS began the transition from concept to reality in 2014 when an early prototype was rolled out for informal testing. Based on those test results, TAS was just months away from deploying the complete application. In March 2014, however, the IRS IT function notified TAS executives that TASIS would no longer be supported due to budget constraints.

This decision was a significant setback for TAS's case advocates and therefore for the taxpayers they serve. Moreover, even apart from supporting TAS's critical work, the foundation built through TASIS can benefit the IRS's ECM improvement efforts. Because TAS has a working knowledge of almost all other IRS case management

systems, we designed TASIS to serve as the basic system upon which other IRS divisions could add modules and functionality to meet their specific needs. Thus, the time, planning, development, and programming that TAS and IT have invested in TASIS can benefit all of the IRS.

At present, it is not clear the extent to which TASIS objectives will be included in the ECM plan or how TASIS will impact or align to the ECM solution. Yet the Senate Appropriations Committee has recognized the importance of TASIS and included it on its list of six "major information technology project activities" about which it directed the IRS to submit quarterly status reports.[122]

Unfortunately, as I mentioned above, because of budget constraints impacting the IRS's IT function, all IT activity on TASIS has come to a halt. To date, about $20 million – about 62.5 percent of the total estimated cost – has been invested in TASIS Release 1, and about 70 percent of the programming is complete. We are ready to begin the final programming as soon as funds are available. At the time the project was halted, it was estimated that six months and $12 million would be needed to complete Release 1 programming, testing, and launch. At this time, despite the demonstrated savings of TASIS and its benefits for all of the IRS, no funds are allocated to TASIS. If TASIS is not funded to completion, TAS will be forced to invest time and funds in upgrading TAMIS. This would be extremely wasteful, and would fail to provide TAS's case advocates with the tools they need to assist taxpayers in resolving their problems with the IRS.

As I stated last year, I believe that the design and implementation of TASIS is critical not only for TAS but to the IRS's ability to move forward and begin to harness the savings and burden reduction that a sophisticated case management system promises. For that to happen, the IRS requires sufficient IT funding to invest in new systems that have great promise. TASIS is one such program.

Recommendations

I recommend that Congress take the following actions:

- Provide that a portion of the funds in the IRS Business Systems Modernization (BSM) account shall be spent to complete the programming, testing, and deployment of TASIS as well as to maintain its long-term functionality.

- Provide additional information technology funding for the IRS to upgrade and streamline its enterprise case management systems.

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[122] *See* S. REP. NO. 114-97, at 39 (2015); S. REP. NO. 113-80, at 34 (2013). In 2014, a similar provision was included in the Senate Appropriations Committee's draft report, but the draft report was not adopted for that year.

VI. Conclusion

Last year, I indicated to this subcommittee that the IRS was failing to meet the service needs of U.S. taxpayers. The situation has not changed substantially in the intervening year. While telephone performance has improved during the 2016 filing season, the IRS continues to make cuts to taxpayer service in other areas as it struggles to meet its responsibilities under FATCA and the Affordable Care Act. Taxpayer service remains inadequate today, and the IRS's Future State plan raises concerns about whether taxpayers will receive adequate service in the future, given the IRS's belief that it will achieve significant cost savings by reducing telephone and face-to-face taxpayer service.

Additional resources would, of course, assist the IRS in serving taxpayers, but funding must be allocated in a way that prioritizes the greatest needs of taxpayers. The IRS can also take steps to improve its resource-allocation decisions and achieve greater efficiencies in its current state. The IRS needs to demonstrate to Congress and U.S. taxpayers that it is allocating resources appropriately and wisely. Congress in turn should conduct the necessary oversight into the nuts and bolts of tax administration to ensure the IRS is treating taxpayers fairly and is undertaking actions that promote long-term voluntary compliance, not just "quick hits." In this testimony, I have tried to offer some recommendations to help in this regard.

NINA E. OLSON

 Nina E. Olson, the National Taxpayer Advocate (NTA), is the voice of the taxpayer within the IRS and before Congress. She leads the Taxpayer Advocate Service (TAS), an independent organization inside the IRS that helps taxpayers resolve problems and works for systemic change to mitigate problems experienced by groups of taxpayers.

Throughout her career, Ms. Olson has advocated for the rights of taxpayers and for greater fairness and less complexity in the tax system. In calling for fundamental reform in 2012, she wrote, “A simpler, more transparent tax code will substantially reduce the estimated 6.1 billion hours and $168 billion that taxpayers spend on return preparation.”

Ms. Olson was appointed to the position of National Taxpayer Advocate in January 2001. Under her leadership, the NTA’s Annual Report to Congress has become an important vehicle for change. It is one of two reports the NTA is required by statute to deliver each year, and outlines the most serious problems facing taxpayers. The IRS has implemented hundreds of recommendations she has made for administrative change. Members of Congress have introduced bills to implement dozens of her recommendations for legislative change, and 15 of them have been enacted into law. In June 2014, the IRS adopted the Taxpayer Bill of Rights for which Ms. Olson had long advocated, grouping dozens of existing rights in the Internal Revenue Code into ten broad categories of rights, thereby making them clear, understandable, and accessible for taxpayers and IRS employees alike.

Ms. Olson is a member of the American College of Tax Counsel and delivered the group's prestigious Griswold Lecture in January 2010. More recently, she gave the 2013 Woodworth Lecture, sponsored by Pettit College of Law at Ohio Northern University. The non-profit Tax Foundation selected her to receive its Public Sector Distinguished Service Award in 2007. Money magazine named her one of 12 "Class Acts of 2004," and Accounting Today magazine has named her one of its Top 100 Most Influential People in the accounting profession each year since 2004.

Prior to her appointment as the NTA, Ms. Olson founded and served as Executive Director of The Community Tax Law Project, the first independent § 501(c)(3) low income taxpayer clinic in the United States. From 1975 until 1991, she owned a tax planning and preparation firm in Chapel Hill, North Carolina.

An attorney licensed in Virginia and North Carolina, Ms. Olson served as the chair of the American Bar Association (ABA) Section of Taxation’s Low Income Taxpayers Committee as well as the Pro Se/Pro Bono Task Force of the ABA Section of Taxation's Court Procedure Committee. She is the 1999 recipient of both the Virginia Bar Association's Pro Bono Publico Award and the City of Richmond Bar Association's Pro Bono Award. Ms. Olson graduated from Bryn Mawr College, cum laude, with an A.B. in Fine Arts. She received her J.D., cum laude, from North Carolina Central School of Law and her Master of Laws in Taxation, with distinction, from Georgetown University Law Center. Ms. Olson has served as an adjunct professor at several law schools.