

2020 National Taxpayer Advocate Annual Report to Congress

Most Serious Problems Encountered by Taxpayers: IRS and TAS Responses

MSP #1: IRS RECRUITMENT, HIRING, AND EMPLOYEE RETENTION: Quality Taxpayer Service and Protection of Taxpayer Rights Are Directly Linked to the IRS's Need to Improve Its Recruitment, Hiring, and Retention Strategies

PROBLEM

As the IRS faces the realities that come with an aging and shrinking workforce, its inability to attract, hire, and retain younger generations of workers threatens its ability to fairly and efficiently administer the tax laws while providing the best customer service to our nation's taxpayers. The IRS's success as an agency depends almost entirely on its workforce. Even with outdated technology and a shrinking budget, the IRS has continued to serve, relatively successfully, as the accounts receivable department for the U.S. government while also administering social programs and implementing congressional mandates. Unfortunately, the IRS has been unable to simultaneously fill and maintain its employee base, while also trying to replenish the losses incurred over the past decade.

TAS Recommendation	[1-1] Hire additional HR Specialists to meet hiring demand.
IRS Response	IRS agrees to implement TAS recommendation in full, contingent upon funding and hiring approvals.
IRS Action	We have prepared a staffing plan to hire 200+ hiring support positions.

TAS Response	It is encouraging that the IRS plans to implement this recommendation in full. TAS understands that HCO has begun implementing this recommendation and has announced approximately 40 of those positions as of April 2021.
TAS Recommendation	[1-2] Restructure internal hiring processes to improve cycle times.
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	The IRS has already implemented this recommendation. We restructured the hiring process, more than doubling hiring production and eliminating the hiring request backlog. A key aspect of this success was the adoption of a hiring “workstation” concept, a best practice at other federal agencies, which aligns hiring activities across the three major phases of the hiring process. This model improves transparency, accountability, and efficiency while providing a solid foundation for career development and training of human resources (HR) professionals. A career development program (Career+) was also implemented to assess the proficiency levels of the HR staff and support the development of training plans. This effort resulted in the implementation of an 8-week comprehensive training course for the hiring staff. The IRS implemented the transition to USAStaffing as the new hiring platform to align with technology available and widely used across the federal government, which will increase efficiencies in the hiring process and further improve cycle times.
TAS Response	TAS disagrees with this response. TAS would not have made a recommendation if we thought this issue had been corrected. Yes, hiring processes were restructured, but there is no tangible correlated success with the new processes as cycle times were still 150 percent of HCO’s goal at the time of the report. Further, as several subject matter experts from the various BODs indicated in our discussions, they do not believe that the “workstation” concept is more efficient. Rather, they indicated that it has been very frustrating for them and does not appear to be working as well as the prior system.

TAS Recommendation	[1-3] Renegotiate the hiring process with the NTEU to allow for up to 50 percent of all hiring announcements to be filled externally.
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	The IRS is exploring opportunities to make the hiring process more agile through National Agreement negotiations and, while the agency will propose ways to streamline the process, those processes are subject to negotiation with NTEU. The IRS agrees to review opportunities to expand external hiring and has already identified hiring activities as a top priority for fiscal year 2021 negotiations. Negotiations, mediation, and fact-finding are set to end in August 2021. However, if either party requests assistance from the Federal Service Impasses Panel, the process may not end until August 2022.
TAS Response	It is encouraging that the IRS agrees to implement this recommendation in part, and TAS stands ready to assist with these efforts where we can. We will continue to advocate for the IRS on these fronts, as the issues are important and need to be meaningfully and quickly addressed.

TAS Recommendation	[1-4] Provide the IRS divisions with a single point of contact in the assigned HCO Employment Office for each of their hiring packages.
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IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	This recommendation has been implemented. The Human Capital Office (HCO) assigned Business Account Managers to each business unit to serve as a single point of contact to provide personalized, dedicated, and comprehensive service throughout the hiring process.
TAS Response	TAS understands that HCO believes the BAMs suffice for a single point of contact for BODs. However, several of our BOD contacts noted issues in their experience with the BAMs. The issues noted primarily involved the concern that the BAMs were often unable to answer simple questions about a specific hiring package, and it could take days to get a response to a question. Not having a single point of contact who can quickly answer specific questions on hiring packages is problematic for the BODs, and it causes greater inefficiencies for HCO. Further, it has downstream effects on candidates applying for positions.

TAS Recommendation	[1-5] Allow the divisions to work their own announcements and hiring packages, when requested, while providing oversight, quality review, and technical support to ensure they follow the proper processes.
IRS Response	IRS does not agree to implement TAS recommendation. The business units and the Human Capital Office (HCO) share responsibility for planning and execution of the IRS hiring process, and we believe the current model is effective and efficient. HCO is committed to partnering with the business units to continue to refine hiring activities. Monthly meetings are scheduled between the business units and HCO's Business Account Managers to address concerns and facilitate ongoing improvements.
IRS Action	N/A

TAS Response	While TAS has noticed some improvements in its hiring processes, it is discouraging that HCO is not willing to accept assistance from the BODs in this area. With the potential for a ten percent increase to IRS funding in FY 2022, there will likely be a significant wave of IRS hiring on the horizon. TAS has concerns that HCO is not ready to deal with the influx of hiring activity. We don't believe HCO should discount the BODs' offer of assistance with hiring. Many of the staff in these organizations came from HCO and receive the same training as the HCO staff. The monthly meetings with the BAMS have been helpful in addressing some issues, but having the BAMS serve as a conduit to address questions related to hiring packages throughout the various workstation phases further slows the process. While HCO believes that the current model is effective and efficient, it is clear from reviewing the cycle times and visiting with subject matter experts from impacted BODs that there is significant room for improvement.
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TAS Recommendation	[1-6] Conduct a research study to learn from successful recruitment strategies used by other federal agencies and the private sector.
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	We have already implemented this recommendation. The IRS engaged the Schatz Strategy Group to assess and analyze the IRS recruitment strategy compared to other federal agencies and the private sector. As a result, the IRS reestablished a Recruitment Team within the Strategic Talent Analytics & Recruitment Solutions (STARS) Office, implemented quarterly enterprise-wide forums to share best practices, and increased our presence on social media and virtual platforms. Results of these efforts were shown when we launched a new IRS Forward program for recent graduates, which resulted in over 26,900 applicants and 900 recent graduate hires in from June 2019 to January 2021 solely from this program. Of these, 291 were under the age of 30 and an additional 195 were between ages 30-39. Ninety percent of the recent graduate hires were hired from external announcements.
TAS Response	It is hard to come to any conclusions regarding this data without additional context. We are happy that the IRS has realized some success with its new targeted program for recent graduates. While 26,900 applicants and 900 recent graduate hires over the course of a year and a half sounds great, without further context, we do not know what these numbers demonstrate.

TAS Recommendation	[1-7] Invest more time, effort, and money and be more proactive in its recruitment efforts.
IRS Response	IRS agrees to implement TAS recommendation in full, contingent on funding.
IRS Action	Funding dependent, the IRS will increase recruitment staffing and spending to expand on the current recruitment portfolio which includes developing advertising collateral (videos, gifs., recruitment flyers, images, and communication), maintaining a social media presence, using nationally recognized virtual job boards, developing and maintaining relationships with schools, and participating at in-person and virtual career fairs.
TAS Response	It is encouraging that the IRS agrees to implement this recommendation in full. We are optimistic that the funding received is sufficient to expand the IRS's recruitment efforts significantly.

TAS Recommendation	[1-8] Rather than hiring out to contractors, bring background check staff back to the IRS as full-time employees.
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IRS Response	IRS does not agree to implement TAS recommendation. The IRS ceased conducting its own background investigations in 2019 because aging investigation cycle times were negatively impacting the ability of the Service to meet its hiring needs and increasing exposure to risk. We added a prescreen process instead to allow employees to onboard with certain checks shortly after selection and investigations were outsourced. The authority to conduct IRS background investigations is with the Defense Counterintelligence and Security Agency (DCSA), which conducts approximately 97 percent of all federal background investigations across government. It would be cost-prohibitive to stand up an IRS background investigation team (which would require staffing, training, travel, technology, and contracts) and it would be counter-productive in driving increased agility, efficiency, effectiveness, and security as directed by the IRS Strategic Plan.
IRS Action	N/A
TAS Response	TAS understands HCO's response. However, subject matter experts from several BODs noted issues with background investigations. If there are things that HCO or the IRS can do to further improve the way these are worked for the IRS, it would be beneficial for all parties involved.

TAS Recommendation	[1-9] Work with the Department of Treasury to seek approval for additional direct-hire authority for critical IRS positions beyond IRS IT, and consider seeking legislative changes to expand critical pay authority for IRS positions beyond IRS IT.
IRS Response	IRS agrees to implement TAS recommendation in full.

IRS Action	We will seek additional approval for direct-hire authority for critical positions. The IRS has prepared a request for direct-hire authority for filing season positions and routed it through the appropriate channels for approval and submission to the Office of Personnel Management. We will consider seeking legislative changes to expand critical pay authority for IRS positions beyond IRS IT. The Human Capital Office will partner with Legislative Affairs to discuss legislative changes that would allow the IRS to expand the Streamlined Critical Pay Authority beyond IT-related positions where a level of expertise and knowledge exceeds those that exist in the IRS and federal government.
TAS Response	It is encouraging that the IRS agrees to implement this recommendation in full. We are encouraged that HCO will be able to get some traction in these areas, as it would be beneficial to the IRS as a whole.

MSP #2: TELEPHONE AND IN-PERSON SERVICE: Taxpayers Face Significant Difficulty Reaching IRS Representatives Due to Outdated Information Technology and Insufficient Staffing

PROBLEM

The ability to speak to an IRS employee over the phone or in person and receive quality service is critical to meeting taxpayer needs. However, the current budget requested by the IRS and approved by Congress targets level of service (LOS) measurements for fiscal year (FY) 2021 at 60 percent, which means that four out of every ten taxpayers calling the IRS cannot get through to a customer service representative (CSR). Additionally, there were 401 Taxpayer Assistance Centers (TACs) in 2011, and now only 358. With the enactment of the Taxpayer First Act (TFA), the IRS can pursue novel approaches to improve customer service via an omnichannel approach, however, it lacks sufficient resources. Problems with IRS customer service were exacerbated during the COVID-19 pandemic. For example, nearly all free tax preparation sites for elderly and low-income taxpayers closed, resulting in a nearly 30 percent drop in free returns filed compared to last year.

TAS Recommendation	[2-1] Prioritize expanding customer callback technology to relieve taxpayers of the frustration associated with long hold times and low levels of service.
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	The IRS agrees expanding customer callback technology on the toll-free telephone lines will relieve taxpayer burden of waiting in a live queue for an available customer service representative and can also help improve the level of service by reducing call abandons and retries. In FY 2019, the IRS began a multi-year, phased initiative to deploy customer callback technology as part of the IRS Modernization Plan by piloting customer callback technology on one telephone line. The IRS expanded the technology to five telephone lines in FY 2019 and to sixteen telephone lines in FY 2021 to offer the service to more taxpayers. The IRS is also upgrading the call center infrastructure as part of the overall strategy to expand the customer callback option and, based upon available funding, reach our goal of an optimal use of the technology by the end of FY 2024.

TAS Response	It is encouraging that the IRS has agreed to implement our recommendation. We look forward to working with the IRS as it expands customer callback technology.
TAS Recommendation	[2-2] Provide taxpayers with the option of receiving face-to-face service through videoconferencing technology. The IRS's use of this technology was restricted during the initial months of the pandemic due to limited bandwidth, which the IRS must address as it further incorporates this technology into its operations.
IRS Response	IRS agrees with TAS recommendation but cannot implement it currently due to funding limitations.
IRS Action	The IRS plans to implement the recommendation of using face-to-face services as widely as possible, based upon available funding and other considerations. The recent IRS report to Congress on the Taxpayer First Act aligns with this recommendation in envisioning a seamless taxpayer experience, including integration of digital, telephone, and face-to-face channels. If additional resources are made available and security requirements to protect taxpayer data can be met, we will be able to implement this important vision.
TAS Response	We appreciate the IRS's agreement and understand that funding limitations will impact the ability to meet this recommendation. Videoconference technology will play an important role in providing a seamless taxpayer experience. Pursuing this option as a priority will benefit the taxpayer experience through improved quality service.

TAS Recommendation	[2-3] Continue to explore alternative telephonic support by developing an automated telephone tool designed to complete specific software-based tasks and/or voice chatbot. Either system could handle routine questions or tasks which would free up CSRs for those individuals who have more complex issues or have a need to speak with a human.
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	The IRS agrees alternative telephone support utilizing self-service automated responses to frequently asked questions (FAQs) is desirable to free up customer service representatives for more complex issues. For example, the IRS has already developed several self-service tools to assist with the extremely high telephone demand associated with Economic Impact Payments (EIPs), including an Economic Impact Payment Center webpage with FAQs and the capability for taxpayers who establish an account on IRS.gov/account to view the amount of the EIP they received when preparing their 2020 return so they can reconcile any EIP received with the allowable amount. The IRS has also been exploring natural language technology to help address the high EIP telephone traffic by utilizing intelligent automation to understand the caller's request and provide responses from a database of approved responses. We have also been working on a conversational artificial intelligence voice and chat bot that will address routine collection issues through self-help options.
TAS Response	It is encouraging that the IRS has agreed to implement our recommendation. We look forward to learning about progress made in this area and working with the IRS in implementing the alternative telephone support.

TAS Recommendation	[2-4] Continue to explore the feasibility of incorporating and providing incentives for partner sites to implement the use of videoconferencing software into the VITA and TCE programs.
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	The IRS has implemented a strategy to ensure that all available videoconferencing platforms, including virtual assistance, are available for partner use to deliver critical tax preparation services to taxpayers while balancing the security of taxpayer information during the 2021 filing season and beyond. For example, the IRS conducted overseas military VITA training virtually for the 2021 filing season using two web-based platforms, ZoomGov and WebEx. Use of the videoconferencing technologies allowed 17 instructors to provide training to 16 military bases located in Europe and Asia. In comparison, five instructors traveled overseas to conduct training at 10 military bases for the 2020 filing season. Not only was the IRS able to deliver the training to more sites using the virtual platforms, we were able to save approximately \$45,000 in travel costs. Using these platforms allowed instructors to share presentations, and both instructors and students were able to share their screens to show inputs for mock scenarios within the simulated VITA/TCE learning environment in the TaxSlayer Practice Lab. The IRS also developed a new Publication 5450, 2021 VITA/TCE Site Operations for partners and volunteers that provides guidance to face-to-face partners for alternative strategies for preparing tax returns virtually to support taxpayers in filing their returns on time. Publication 5450 also provides guidance for partners to highlight the availability of videoconferencing in their Virtual VITA/TCE Plan (Form 15273) and Virtual VITA/TCE Taxpayer Consent Form (Form 14446).
TAS Response	It is encouraging that the IRS has agreed to implement our recommendation. We stand ready to work with the IRS in expanding accessibility for taxpayers and raising awareness about availability at VITA and TCE partner sites.

TAS Recommendation	[2-5] Ensure meaningful performance measures for existing and/or newly emerging telephone, online, and in-person assistance methods to objectively measure customer service.
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	The IRS uses a suite of performance, quality, and feedback measures that are presented in a multi-channel performance dashboard that includes historical performance, current year performance, and planned performance. These measures include elements such as wait times, level of service, and accuracy for tollfree and face-to-face services. The IRS is implementing the Taxpayer First Act (TFA), which calls for transformational changes in the way the IRS serves its stakeholders and performs its operations. While the IRS continues to modernize its websites and services, it does so in the service of these larger strategic initiatives. The IRS also collaborates with other agencies, such as the Social Security Administration and Department of Education, and with industry, including tax preparers, our Security Summit partners, and financial institutions, where customer experience journeys overlap. The approach for most new TFA measures is to develop and test the measure in FY 2021, create a baseline standard to serve as a comparison or control in FY 2022, and set the target for FY 2023. The customer experience measures developed for the taxpayer experience strategy will report on a suite of cross-functional experience measures.
TAS Response	It is encouraging to see agreement in ensuring meaningful performance measures in this area. Meaningful, objective measurements will ensure that the IRS is improving the taxpayer experience.

MSP #3: ONLINE RECORDS ACCESS: Limited Electronic Access to Taxpayer Records Through an Online Account Makes Problem Resolution Difficult for Taxpayers and Results in Inefficient Tax Administration

PROBLEM

To provide top quality service, as measured through the eyes of the taxpayers, the IRS must improve its online access to taxpayer records. Due to limited technology systems, the IRS operates under a largely paper-based system, requiring taxpayers to keep copies of paper correspondence, call the IRS and deal with the toll-free line challenges, or use a patchwork of electronic online applications to gather necessary information to meet their tax obligations. This system leads to inefficiencies and causes unnecessary burdens as taxpayers cannot access essential information, resulting in delays and dissatisfaction.

TAS Recommendation	[3-1] Provide business taxpayers access to an online account similar to the IRS's Online Account that is available to individual taxpayers.
IRS Response	IRS agrees with TAS recommendation but cannot implement it currently due to funding limitations.
IRS Action	The Taxpayer Experience Strategy as laid out in the recent Taxpayer First Act Report to Congress outlines the IRS's commitment to expanding digital services to businesses as one of its six key areas of focus. The IRS is committed to expanding the secure online accounts currently available for individual taxpayers and making similar online accounts available for businesses and tax professionals. Subject to funding limitations and other resource constraints, the IRS anticipates beginning to conduct taxpayer research in FY 2021, with authorization work and design to begin in subsequent years, again, subject to funding.
TAS Response	TAS is pleased the IRS is moving forward with the actions necessary to provide Online Account services to business taxpayers. Because these taxpayers have similar needs to individual taxpayers when it comes to accessing information and conducting their business with the IRS online, the IRS should prioritize and expedite these efforts.

TAS Recommendation	[3-2] Prioritize posting to the Online Account notices that provide the taxpayer with key statutory or administrative rights, a deadline for action, or notice of a potential intrusive enforcement action, such as levy.
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	The Taxpayer Experience Strategy as laid out in the recent Taxpayer First Act Report to Congress outlines the IRS's commitment to expanding digital services, including the delivery of notices. Subject to funding constraints, the IRS will seek to prioritize conversion of notices and will incorporate the criteria recommended by TAS into the prioritization as possible given other resource demands.
TAS Response	Although there are both funding and technological barriers to placing certain notices in the Online Account, TAS is looking forward to working with the IRS to identify some of the most fundamental notices in terms of taxpayer rights and prioritize these for posting. Even if there are some statutory notices and other notices with deadlines that cannot be posted at this time, TAS expects to target notices that will help taxpayers exercise their rights and meet important deadlines.

TAS Recommendation	[3-3] Develop a timeline for when all remaining notices used by the IRS, outside the 11 notices already scheduled, will be available to be viewed within taxpayers' Online Accounts.
IRS Response	IRS agrees with TAS recommendation but cannot implement it currently due to funding limitations.

IRS Action	The IRS intends to convert as many of the remaining notices to a digital format as possible given funding levels and other resource demands. Consistent with the 21st Century Integrated Digital Experience Act (IDEA) legislation, the IRS plans to conduct research to gain insights into taxpayer needs that will inform a more robust prioritization plan for digital notice delivery. Given uncertain resources, legislative demands, and potential changes to the inventory of notices utilized for tax administration, the IRS cannot commit to a timeline for all remaining notices at this time.
TAS Response	The IRS should work toward prioritizing its goal of placing all taxpayer notices in the Online Account, similar to the California Franchise Tax Board. Including only some notices online may confuse taxpayers, causing them to miss paper notices in the mail that are not in the Online Account. Although funding may dictate the timeline, the IRS should be making plans to place all notices online.

TAS Recommendation	[3-4] Provide access to all self-assistance online applications through the Online Account.
IRS Response	IRS does not agree to implement TAS recommendation. Not all existing self-assistance online applications require the same level of registration or authentication that is necessary to gain access to the individual Online Account. Preserving access to the greatest number of taxpayers is a key IRS consideration in determining which tools should be incorporated into a robust account experience. It would be unnecessarily burdensome for taxpayers to satisfy a higher level of authentication to access all our applications. The integration of existing features within a consolidated account must also be balanced against our ability to develop new features that will improve the taxpayer experience.
IRS Action	N/A
TAS Response	TAS's recommendation is not to remove all freestanding IRS online applications and make them only available in the Online Account. Instead, the recommendation asks the IRS to make them also available within the Online Account, so taxpayers can have a one-stop shop for all their IRS needs. Certainly, we agree with the IRS that requiring additional authentication where it is not needed would burden taxpayers.

TAS Recommendation	[3-5] Update and consolidate Online Account information to reflect information from all other IRS online applications.
IRS Response	IRS agrees with TAS recommendation but cannot implement it currently due to funding limitations.
IRS Action	The IRS has a growing list of taxpayer needs to prioritize based on funding. The IRS agrees with the need for a migration plan for qualified existing self-service applications to a consolidated account experience where incorporating them will improve the taxpayer experience. However, funding limitations necessitate such a migration plan to be prioritized against the need to build new services that do not otherwise exist online. If funded, IRS agrees that consolidation of features would improve the taxpayer experience. However, the IRS does not agree that all self-assistance online applications should be accessed through Online Account. For example, today the Tax Withholding Estimator is accessible to anyone and does not require registration. Imposing registration requirements will limit the number of taxpayers able to access this self-assistance tool. Conversely, if the same functionality can be used without such protections, rebuilding the service behind such protections could be duplicative and reduce the pace at which other services can be brought online.
TAS Response	The recommendation is not asking for the applications themselves to be available within the Online Account (although the previous recommendation does ask for this), but instead for valuable taxpayer specific data to be incorporated. For example, the information about when a refund is sent to the specific taxpayer should be incorporated into the Online Account so the taxpayer does not have to view a transcript that may not yet reflect this information. The IRS already made progress in this area earlier this year by placing Economic Impact Payment information within the Online Account, which was previously only available through the freestanding application.

TAS Recommendation	[3-6] Integrate secure messaging so that taxpayers can initiate and view messages and upload and download documents to and from the IRS within their Online Accounts.
IRS Response	IRS agrees with TAS recommendation but cannot implement it currently due to funding limitations.
IRS Action	The IRS plans to integrate access to secure messaging in Online Account in FY 2023; however, this is not currently funded.
TAS Response	While TAS acknowledges the funding restrictions, placing secure messaging within the Online Account should be prioritized. Allowing taxpayers to view a notice, ask questions, send documents, and make requests, all within a single visit to the Online Account, should encourage taxpayer participation in the tax system and expedite the exam and collection processes.

TAS Recommendation	[3-7] Place taxpayer-specific alert banners on the main dashboard of taxpayers' Online Accounts to provide information regarding their status of their cases and highlight important deadlines, such as the due date for providing documentation in an examination, the assignment of a balance due case to a Revenue Officer, or the deadline to request a CDP hearing.
IRS Response	IRS agrees with TAS recommendation but cannot implement it currently due to funding limitations.

IRS Action	The IRS would like to evolve the use of alert banners for a more personalized experience; however, this feature is not currently funded.
TAS Response	Although there is not funding at this time, personalization should be revisited when the IRS receives additional funding for the Online Account. This feature may help taxpayers meet deadlines and take advantage of rights that might otherwise lapse if taxpayers are not reminded of them.

TAS Recommendation	[3-8] Allow taxpayers to add, change, or remove authorized representatives through the Online Account.
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	The IRS will add these features to Online Account this summer along with the launch of Tax Professional Accounts.
TAS Response	Allowing taxpayers to change their authorized representatives within the Online Account supports taxpayers' right to retain representation. The feature will reduce burden and mitigate delays caused by unopened or unprocessed mail.

TAS Recommendation	[3-9] Allow taxpayers to give authorized representatives access to Online Account records for the authorized tax years.
IRS Response	IRS agrees with TAS recommendation but cannot implement it currently due to funding limitations.
IRS Action	In future years, IRS plans to add features to the tax professional online account, including a link to the transcript delivery system where tax professionals could both establish authorization and then access records for a particular taxpayer, tax type, and tax year. Currently, tax professionals may use eServices to access transcripts; however, they must first complete the authorization via fax or mail.
TAS Response	For taxpayers who are represented and choose to interact with the IRS exclusively through an authorized representative, the Online Account does not provide much benefit. It is essential that representatives have a way to access the taxpayer's information in the Online Account, limited to only the information the taxpayer has authorized them to access.

TAS Recommendation	[3-10] Allow taxpayers to update their address and other contact information through the Online Account.
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IRS Response	IRS agrees with TAS recommendation but cannot implement it currently due to funding limitations.
IRS Action	The IRS is currently planning for these features to be implemented in FY 2022 in accordance with the IT Modernization Plan, depending on funding and other resource constraints.
TAS Response	Allowing taxpayers to change their address or contact information online is a service that taxpayers already expect with respect to other institutions such as banks. This change will bring the IRS closer to the world-class service it is striving to provide. This new capability should reduce undelivered mail, saving the IRS time and resources and increasing the chances that taxpayers receive their notices and correspondence.

TAS Recommendation	[3-11] Allow taxpayers to make certain requests and file certain forms through the Online Account, such as a CDP request, a penalty abatement request, or a tentative carryback application for refund where e-file is not otherwise available.
IRS Response	IRS agrees with TAS recommendation but cannot implement it currently due to funding limitations.
IRS Action	This capability could utilize planned integration of, and access to, secure messaging in Online Account, which is planned for FY 2023. However, this is not currently funded.
TAS Response	Allowing taxpayers to make certain requests and file certain documents online will increase participation in the tax system and mitigate problems caused by unopened and unprocessed mail. TAS looks forward to the IRS making this capability available, even if it is limited to only several types of requests and documents initially.

TAS Recommendation	[3-12] Continue to fund the technological upgrades the IRS requires to provide an enhanced level of service that the country deserves to improve its overall operations.
IRS Response	N/A – Congressional Recommendation
IRS Action	N/A
TAS Response	N/A

TAS Recommendation	[3-13] Provide sufficient funding for the Business Systems Modernization account to enable the IRS to replace its 1960s technology systems, create an integrated case management system, and offer robust online accounts for taxpayers and practitioners.
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IRS Response	N/A – Congressional Recommendation
IRS Action	N/A
TAS Response	N/A

MSP #4: DIGITAL COMMUNICATIONS: Limited Digital Communications With the IRS Make Problem Resolution Unnecessarily Difficult for Taxpayers

PROBLEM

The COVID-19 related closures and resulting challenges exposed critical shortcomings in IRS service and communication channels. Going forward, the IRS must increase the availability and use of digital communications. To improve taxpayer service and avoid widescale service shutdowns during a future national or local emergency, the IRS should address:

- The crucial need to maintain an omnichannel service environment;
- Taxpayers' need for an expanded and permanent way to digitally transmit and sign documents;
- Authentication barriers for many digital applications;
- Taxpayers' difficulty signing up for Taxpayer Digital Communications Secure Messaging;
- Limited digital communication options for taxpayers (individuals and businesses);
- The need for all digital applications to be mobile-ready; and
- Limited virtual face-to-face service options.

TAS Recommendation	[4-1] Maintain a robust omnichannel service environment at the same time that it enhances its digital offerings.
IRS Response	IRS agrees to implement TAS recommendation in full.

IRS Action	The Taxpayer First Act Report to Congress includes a vision for a seamless experience that helps taxpayers solve problems and comply with their tax obligations. Under this strategy, we will integrate digital tools with other service channels (e.g., toll-free telephone assistance and walk-in assistance) to resolve issues efficiently and further improve the taxpayer experience. Taxpayers expect and routinely encounter similar “omni-channel” approaches with services like online banking and shopping. Using our omni-channel model, taxpayers will have the flexibility to communicate with the IRS via their preferred method and transition seamlessly to another resource or channel most suited to resolving their issue. We will deploy an omni-channel model to facilitate a 360 degree view of taxpayer records (e.g., real time tax filings, interaction history, appointment schedule, etc.) as well as launch a virtual face-to-face video chat option with IRS employees to simulate an in-person appointment for those that require a human touch point but are unable to or prefer not to meet in person. In addition, the Taxpayer First Act Report to Congress outlines opportunities to enhance digital services as a result of the proposed Organizational Redesign Strategy for the IRS.
TAS Response	The IRS’s vision for a seamless taxpayer experience as set forth in the Taxpayer First Act Report to Congress is a promising development. Taxpayers have a right to quality service, and being able to communicate with the IRS via their preferred service channel, with the ability to transition seamlessly to another service channel, will ensure that this taxpayer right is realized to a greater extent. In addition, the IRS deployment of a 360-degree view of taxpayer records in the omnichannel model will likely significantly reduce burden as taxpayers navigate the IRS to resolve their tax issues. We eagerly await its development.

TAS Recommendation	[4-2] Accept electronic signatures on all documents that require a signature, once the IRS assesses, identifies, and eliminates any data security vulnerabilities, if applicable.
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	Providing an electronic signature option for all documents is a long-term goal for the IRS. To reach this goal, the IRS developed a framework to assess IRS forms and prioritize them for e-Signature digitization and integration based on risk, policy considerations, federal mandates, and legal requirements. The IRS will use this analysis to identify opportunities to expedite form digitization and enable digital signatures to further enhance the taxpayer experience.

TAS Response	The IRS's development of a framework to assess and prioritize forms for e-signature is the necessary first step in the process to digitalize forms. Both taxpayers and the IRS will benefit as the IRS makes progress on its long-term goal of enabling electronic signatures on all documents.
TAS Recommendation	[4-3] Make permanent the use of a secured messaging system with taxpayers and their representatives.
IRS Response	IRS agrees with TAS recommendation but cannot implement it currently due to funding limitations.
IRS Action	The IRS is committed to making secured messaging available for taxpayers and their representatives. As part of the Taxpayer First Act Taxpayer Experience Strategy, the IRS outlined plans for a digital portal for taxpayers to securely access their tax information, make changes to their personal information, and communicate with the IRS online. These plans include providing secure two-way messaging that will give taxpayers the ability to communicate with IRS employees through their online accounts. This feature comes with related increased costs for licenses and technology support and must be prioritized in the context of other initiatives within the agency's taxpayer experience strategy and information technology modernization efforts.
TAS Response	The IRS's commitment to making secured messaging available to both taxpayers and representatives in the Taxpayer Experience Strategy is encouraging. We acknowledge that such plans are costly and, to address this issue, the National Taxpayer Advocate has made a legislative recommendation to provide sufficient funding to implement the digital services proposed in the Taxpayer First Act Report to Congress.

TAS Recommendation	[4-4] Make permanent and expand the list of documents the IRS will accept and transmit by email using an established secured messaging system, once the IRS assesses, identifies, and eliminates any data security vulnerabilities and file size limitation issues, if applicable.
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	In January 2021, the IRS established a cross-functional team to evaluate the long-term viability, benefits, and risks of these flexibilities and develop recommendations as to whether these temporary policies should be extended, and the specific forms listed expanded. While these deviations may not be permanent, secured messaging will continue to be utilized as the IRS moves toward a fully digitalized state.
TAS Response	In its response, the IRS committed to continue secured messaging as it moves toward a fully digitized state. The cross-functional team's evaluation of the long-term viability of the current temporary policies is necessary to ensure all data security vulnerabilities are adequately addressed.

TAS Recommendation	[4-5] Assess how the new SADI platform will impact different demographics and determine the feasibility of potentially increasing accessibility to digital applications as they are integrated with SADI, while also maintaining compliance with NIST guidelines.
IRS Response	IRS agrees to implement TAS recommendation in full.

IRS Action	We recognize that underserved taxpayers face unique challenges with regard to authentication and identity assurance. Deploying the focused strategies for reaching underserved communities envisioned under the Taxpayer First Act Taxpayer Experience Strategy should address these unique challenges.
TAS Response	The Taxpayer Experience Strategy specifically references online account authentication for international taxpayers in its focused strategies to reach underserved communities. While this is certainly an important effort, we encourage the IRS to commit to expand efforts to increase the e-authentication verification rate for underserved communities.

TAS Recommendation	[4-6] Expand the availability of TDC eGain Text Chat beyond ACS.
IRS Response	IRS agrees with TAS recommendation but cannot implement it currently due to funding limitations.
IRS Action	The IRS supports expanding the availability of the TDC Platform capabilities, including text chat, authenticated chat, chat deflection, and virtual assistant, to assistors Servicewide, subject to resource constraints and prioritization. The IRS considers utilization of all TDC capabilities regularly and executes a periodic prioritization process to expand TDC usage within resource constraints. Our next prioritization effort is planned for FY 2022, and we will seek for this recommendation to be prioritized and funded, in which case we will expand chat capabilities accordingly.
TAS Response	We acknowledge that current funding limitations restrict the IRS's ability to expand TDC Platform capabilities, and we are encouraged that the IRS commits to consider such expansion during its FY 2022 prioritization effort. In addition, the National Taxpayer Advocate has made a legislative recommendation that Congress adequately fund the IRS's Taxpayer Experience Strategy, which includes widespread integration of chat capabilities.

TAS Recommendation	[4-7] Continue to develop digital service tools that are mobile-ready.
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	Consistent with the 21st Century Integrated Digital Experience Act legislation, the IRS is already obligated to develop new tools and services into mobile-ready experiences subject to legislative timelines and funding or other resource constraints. While we are actively working toward this goal, this activity will be ongoing with no final implementation date.
TAS Response	The IRS's response acknowledges funding and other resource constraints as it actively works toward meeting its legislative obligations to make tools and services mobile-ready. The National Taxpayer Advocate has made a legislative recommendation that Congress adequately fund the IRS's Taxpayer Experience Strategy, which includes widespread integration of mobile services.

TAS Recommendation	[4-8] Expand the use of virtual face-to-face technology to taxpayer-facing functions as permitted, while ensuring proper authentication and authorization controls are in place.
IRS Response	IRS agrees to implement TAS recommendation in part.

IRS Action	The IRS is deploying several virtual face-to-face technology processes within available resources and funding in order to increase virtual services long-term. As part of the assessment process, the IRS is updating policies to ensure proper authentication, authorization, monitoring, and data protection controls are in place. Because of the urgent need for virtual interactions, the IRS is expediting the roll-out by investigating and deploying multiple virtual technologies at the same time. Making these technologies widely available to front-line assistors, tax examiners, revenue officers, and revenue agents will require significant new investment in software, network infrastructure, and cybersecurity controls and must be prioritized in the context of other initiatives within the agency's taxpayer experience strategy and information technology modernization efforts.
TAS Response	The IRS's response recognizes the urgent need to expand virtual services and mentions that the agency has already taken steps to expedite the deployment of several virtual technologies. In addition, the IRS is taking the critical initial steps to update policies for authentication, authorization, monitoring, and data protection controls to ensure successful deployment of such services. The IRS did not commit to roll out the technologies to all taxpayer-facing functions due to a need to prioritize initiatives given the agency's limited resources. Accordingly, the National Taxpayer Advocate will continue to recommend that Congress adequately fund the IRS's Taxpayer Experience Strategy, which includes plans to expand virtual services.

TAS Recommendation	[4-9] Provide sufficient funding for the IRS to quickly and safely expand digital services including those proposed by the Taxpayer Experience Strategy of the Taxpayer First Act Report to Congress.		
IRS Response	N/A – Congressional Recommendation		
IRS Action	N/A		
TAS Response	N/A		

MSP #5: E-FILING AND DIGITALIZATION TECHNOLOGY: Failure to Expand Digitalization Technology Leaves Millions of Taxpayers Without Access to Electronic Filing and Wastes IRS Resources

PROBLEM

The IRS's antiquated information technology systems and infrastructure present significant obstacles to expanding electronic filing (e-filing) and digitizing paper returns. Automated processing of an e-filed form eliminates the need for the costly manual transcription of millions of lines of data, and the increased accuracy of the data imported reduces the need to resolve transcription errors. While most taxpayers prefer e-filing when it is available, some prefer to file paper returns or must file on paper because they do not have access to a computer or broadband internet. Therefore, even as the IRS expands its e-filing options, it must maintain options that allow taxpayers to choose their preferred method of filing. It must also improve the processing of paper returns by expanding existing technology and implementing new technology to reduce processing delays. These actions reduce burden to taxpayers and the IRS and produce long-term cost savings.

TAS Recommendation	[5-1] Make and publish an e-file plan for the forms that taxpayers cannot e-file.
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	The W&I e-File Services organization will continue to support the Digitalization Office and Information Technology as the lead stakeholders in the agency to determine the best way to move forward to expand IRS digitalization technology as outlined in the IRS Integrated Modernization Plan and required by the Taxpayer First Act. This includes developing an e-file plan for evaluating and prioritizing forms that taxpayers cannot currently e-file that is flexible to meet IRS priorities while continuing to respond to new legislative and other critical operational needs.
TAS Response	Developing and publishing an e-file plan that includes all forms that taxpayers cannot currently e-file will demonstrate the IRS's commitment to reducing e-filing barriers for all taxpayers. Expanding e-filing options will provide better service to taxpayers and will reduce the IRS's paper processing workload.

TAS Recommendation	[5-2] Reevaluate the MeF System to allow for e-filing of all forms, schedules, and attachments.
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	The IRS will perform a study to determine the feasibility of allowing all forms, schedules, and attachments to be electronically filed using the current MeF infrastructure based upon agency priorities and available resources (e.g., allocated funding, project schedule, programming resources).
TAS Response	It is encouraging that the IRS will study the feasibility of allowing all forms, schedules, and attachments to be electronically filed. Expanding e-filing options will provide better service to taxpayers and will reduce the IRS's paper processing workload.

TAS Recommendation	[5-3] Expand the use of optical character recognition and 2-D barcoding to improve processing of paper filings and reduce processing transcription errors.
IRS Response	IRS agrees to implement TAS recommendation in part.

IRS Action	The IRS is piloting the conversion of paper returns to a digital format in the Lockbox environment. The pilot is currently working through the technical and legal questions involved. The IRS is also exploring the expanded use of optical character recognition (OCR) for paper tax returns in a separate pilot project. As part of the IRS's digitalization strategy, the IRS may consider these and other options for some forms, correspondence, and other paper submissions. Both barcoding and OCR technology have limitations and costs. For example, barcoding does not encode all information on complex returns, and OCR may misinterpret some information, requiring quality review and manual re-entry (as does the current manual transcription process).
TAS Response	It is encouraging that the IRS is exploring the expanded use of OCR for paper tax returns through a pilot project and is willing to consider expanded use of barcoding on paper returns. All technologies have associated limitations and costs, but OCR and barcoding can be valuable tools for improving the IRS's paper processing systems.

TAS Recommendation	[5-4] Make permanent all temporary changes to electronic or digital signature requirements the IRS implemented in response to the COVID-19 pandemic
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	Not all temporary changes may be made permanent due to National Institute for Standards & Technology (NIST) requirements. However, the IRS continues its work towards identifying permanent signature solutions that allow for electronic submission of forms and digital transactions in a secure manner that meets NIST requirements. As we work toward permanent solutions, we are committed to maintaining as much flexibility as possible for electronic and digital signature requirements. We are taking specific actions in hopes of speeding up our e-Signature Program due to the increased need for virtual interactions during the pandemic.
TAS Response	TAS understands the agreement in part and that the IRS is bound by NIST requirements. It is encouraging that the IRS is committed to maintaining as much flexibility as possible for electronic and digital signature requirements.

MSP #6: INFORMATION TECHNOLOGY MODERNIZATION: Antiquated Technology Jeopardizes Current and Future Tax Administration, Impairing Both Taxpayer Service and Enforcement Efforts

PROBLEM

Despite its responsibility for collecting the most tax revenue in the world and its vital role in social benefits administration, the IRS operates with severely outdated information technology (IT) systems and infrastructure. Without a substantial overhaul of its IT systems, some of which were originally developed in the 1960s, and transformation of how the IRS interacts with taxpayers, the IRS cannot provide first-rate taxpayer service or efficiently carry out its enforcement and collection efforts. As the nation's tax collector, the IRS can ill-afford to have its systems crash. The IRS will require significant, sustained multi-year funding from Congress to modernize its IT systems. Disruptions in IRS operations can erode taxpayer confidence in the tax administration system and ultimately lead to reduced levels of tax compliance.

TAS Recommendation	[6-1] Compile data on the operations and maintenance costs of all legacy systems to assist in prioritizing decommissioning decisions.
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	As required by the Office of Management and Budget (OMB), the IRS will continue to regularly report upon our major and minor information technology investments through ITdashboard.gov and other forums. The IRS will also continue to improve cost tracking and reporting according to new government-wide standards such as the Technology Business Management (TBM) framework, as resources and funding allow. While the IRS does consider cost as one factor, decommissioning decisions almost always rely upon other factors such as taxpayer or employee experience, security and risk of aging hardware and software, architectural direction, and other operational considerations.
TAS Response	Compiling this data is in direct support of the IRS Modernization Plan. TAS looks forward to working with the IRS to make this priority successful.

TAS Recommendation	[6-2] Expedite the development of a Servicewide centralized system to store digital tax records to allow the IRS to go completely paperless.
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	The IRS is committed to strengthening data intake capabilities to enable enhanced validation, storage, protection, and sharing of data. The IRS established the new Enterprise Digitalization and Case Management Office (EDCMO) in FY 2020 to strategically address these needs and enhance the taxpayer and employee experience by spearheading the IRS's efforts to modernize and consolidate systems, simplify business processes, and empower taxpayers and employees to rapidly resolve issues in a simplified digital environment. Specifically, EDCMO is developing and leading efforts to transform the IRS into a more digitally driven agency through innovative initiatives designed to reduce paper volume, increase access to digital data, and prepare the IRS to effectively manage and leverage digital data. As part of this, the IRS is committed to working as quickly as possible to increase the amount of paper-based forms and tax records that can be stored digitally and other efforts that push the IRS towards becoming more paperless wherever possible.
TAS Response	TAS looks forward to the IRS's plan to comply with the National Archives and Records Administration (NARA) criteria for all records. TAS is encouraged by the possibilities brought about by tools such as the documentation upload tool (DUT) (<i>i.e.</i> , the pilot for digital mailroom).
TAS Recommendation	[6-3] Create CIO liaisons for each IRS division knowledgeable about both the business needs and the technical aspects to bridge the disconnect between the needs of the IRS divisions and what IT can deliver.

IRS Response	IRS agrees with TAS recommendation but cannot implement it currently due to funding limitations.
IRS Action	All operating divisions have a dedicated Business System Planning (BSP) individual or function that serves a role similar to what the National Taxpayer Advocate describes. Additionally, Information Technology (IT) leadership regularly meets with operating division leadership to discuss strategic and tactical priorities and acts upon requests as necessary. In the near future, as part of the Taxpayer First Act reorganization strategy, the IRS will strengthen the bridge between the operating divisions and IT at the most senior level, as the CIO will directly report to the IRS Commissioner to work closely with peers in taxpayer service, compliance, strategy, and operations to deliver upon Service-wide priorities. With additional hiring authority and budgetary resources, IT will expand the current business relationship management program whereby specific liaisons within IT act as concierges to help business unit customers navigate complex IT processes and ensure service needs are met.
TAS Response	TAS is encouraged by the IRS meeting with IT leadership on a regular basis. TAS looks forward to working with the IRS to advance these goals to create a seamless experience for taxpayers and employees.
TAS Recommendation	[6-4] Compile a list of IT lessons learned during COVID-19, documenting the problems taxpayers experienced due to IT-related challenges during the pandemic so it can be better prepared for the future.
IRS Response	IRS agrees to implement TAS recommendation in part.

IRS Action	The IRS has documented lessons learned from various actions related to COVID-19 and the CARES Act, including Economic Impact Payment processing. Further, the IRS has actually implemented these lessons in our programming, processes, and operations for subsequent relief efforts, such as the second Economic Impact Payment. Because the pandemic is still ongoing, and IT resources are focused on implementing additional legislative, filing season, and modernization functionality, the IRS will share existing documentation with the National Taxpayer Advocate, but will only document additional information as resources allow.
TAS Response	TAS looks forward to reviewing the lessons learned and working with the IRS to implement actions to mitigate future issues.

TAS Recommendation	[6-5] Expand modernization efforts to include BMF to provide a comparable level of service (e.g., online accounts, digital services, shorter processing cycles (CADE 2), etc.) to business taxpayers it will provide to individual taxpayers.
IRS Response	IRS does not agree to implement TAS recommendation. The IRS agrees with the importance of the Business Master File (BMF) and continued modernization of the business taxpayer experience in parallel with improvements to the individual taxpayer experience. However, these efforts are likely to require funding and prioritization within the Operations Support portfolio, rather than trying to fit within the very limited Business Systems Modernization (BSM) appropriation and Modernization Plan. The IRS continues to make improvements for business taxpayers in FY 2020 and FY 2021, including customer callback on several business phone applications, integration of BMF data with ECM, and digital communication opportunities with several types of individual, business, and tax exempt customers and their representatives.
IRS Action	N/A
TAS Response	TAS believes that BMF taxpayers have the same rights as Individual Master File (IMF) taxpayers to have an end-to-end modernized, real-time platform (<i>i.e.</i> , information submission, document processing, taxpayer experience, etc.). TAS is encouraged that the IRS acknowledges the importance of BMF modernization.

TAS Recommendation	[6-6] Ensure the amount requested for its IT budget is sufficient and sustainable to fully fund its multiyear modernization plan.
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	The IRS agrees to request the funding required to operate and maintain existing systems, to fund modernization efforts, and to deliver legislation such as the CARES Act. However, the IRS collaborates with the Department of the Treasury, Office of Management and Budget, and Congress through the passback and President's Budget process. Congress ultimately determines appropriation levels, including the business systems modernization appropriation.
TAS Response	TAS appreciates the complexity of the budget process and will work with IRS to raise awareness for the needed additional funding and provide the necessary justification for budget requests.

TAS Recommendation	[6-7] Consider seeking financial assistance from the Technology Modernization Fund.
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IRS Response	IRS does not agree to implement TAS recommendation. While the IRS appreciates government-wide efforts to fund technology modernization and cybersecurity work, the Technology Modernization Fund (TMF) has specific requirements that make other options better suited to our funding challenges. In particular, projects funded by the TMF are expected to pay back loans over five years from regular appropriations, projects are funded on an incremental basis based upon milestone completion, and the use of rapid and iterative development practices is expected. When the IRS implements new technology, even in situations where we replace legacy systems, operations and maintenance costs are often higher for the new system and require ongoing funding (<i>i.e.</i> , direct appropriations). Further, one of the key requirements for the IRS Modernization Plan is stable and predictable funding, a requirement that the TMF cannot guarantee.
IRS Action	N/A
TAS Response	TAS appreciates that the IRS took the time to consider the use of the TMF funds, similar to other larger government agencies. The use of TMF funds could supplement funds allocated by Congress and should be viewed as complementary to that funding. TMF is an alternative source for short-term modernization funding that may assist in completing some of the pilots outlined in TFA for the one- to three-year timeframe.

TAS Recommendation	[6-8] Provide the IRS with sufficient, sustained funding to improve taxpayer service and modernize its IT systems over a predictable multiyear period, allowing the IRS to properly implement its modernization plan as a whole and not in pieces.
IRS Response	N/A – Congressional Recommendation
IRS Action	N/A

TAS Response	N/A
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TAS Recommendation	[6-9] Ensure that any increase in funding for enforcement (including program integrity cap adjustments) is coupled with a commensurate increase in funding for service and operations support so taxpayers seeking to respond to the IRS can do so easily. This way, the IRS need not prioritize IT over enforcement.
IRS Response	N/A – Congressional Recommendation
IRS Action	N/A
TAS Response	N/A

MSP #7: CORRESPONDENCE EXAMS: Taxpayers Encounter Unnecessary Delays and Difficulties Reaching an Accountable and Knowledgeable Contact for Correspondence Audits

PROBLEM

In response to taxpayer complaints about the inability to contact IRS staff directly, section 3705(a) of the Restructuring and Reform Act of 1998 (RRA 98), required that IRS correspondence “include in a prominent manner the name, telephone number, and unique identifying number of an Internal Revenue Service employee.” However, more than 20 years later, the IRS still has not meaningfully implemented this provision regarding its correspondence audit programs. This makes it difficult and frustrating for taxpayers or their representatives to reach a single point of contact at the IRS who is accountable and knowledgeable when seeking answers to questions about their audit or the information they submitted. The IRS correspondence audit program, as designed, leaves taxpayers solely dependent on toll-free phone services that operate with limited availability or receiving IRS notifications issued with uncertain timeframes. The inability to reach a single point of contact diminishes the customer experience, creates IRS inefficiency, hinders opportunities to engage and educate our nation’s taxpayers and decreases potential for developing and building trust with the IRS.

TAS Recommendation	[7-1] Provide taxpayers responding to correspondence audit notices the name, telephone number, and unique identifying number of an IRS employee who can serve as their direct contact throughout the correspondence audit process, along with the employee’s secure email address or the TDC Secure messaging access needed to send and receive documents and communicate electronically with the assigned examiner.
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IRS Response	IRS does not agree to implement TAS recommendation. As outlined in our response included in the National Taxpayer Advocate's report, and previously noted in IRS responses to the 2014 and 2018 National Taxpayer Advocate Annual Reports to Congress, it is impractical to assign one employee to handle all aspects of a taxpayer's correspondence examination from beginning to end. When we receive a written response from a taxpayer, it is assigned to one tax examiner to review. When the tax examiner sends a letter in response, the letter identifies the tax examiner by name and includes Examination's toll-free telephone number, since tax examiners do not have direct telephone lines. By calling the toll-free telephone number at their convenience, taxpayers reach the next available phone assistor. All phone assistants are trained and experienced tax examiners who have access to the taxpayer's case history and can work with the taxpayer toward case resolution. However, if a taxpayer responds to an examination letter with correspondence and later calls the toll-free line and is not satisfied at the end of the call, they can request that the assigned tax examiner return their call.¹ In 2020, the IRS expanded secure messaging within Taxpayer Digital Communications (TDC) to all five of the Small Business/Self-Employed Division's (SB/SE) campuses. In general, like with paper correspondence, these messages are directed back to the examiner who last worked their case. We believe our current procedures appropriately balance taxpayer service with sound tax administration within our current resource constraints.
IRS Action	N/A
TAS Response	While the IRS continues to advise that it is not practical to assign one employee to handle all aspects of the taxpayer's correspondence examination, the described procedures suggest that correspondence audits are primarily assigned and worked by one employee. Correspondence examiners hold responsibility for both staffing the correspondence audit toll-free phone lines and for auditing the tax returns selected for correspondence audit. It remains unclear why these employees can audit returns and answer calls, yet it is impractical for correspondence examiners to answer calls from the taxpayers they are assigned to audit.

¹ IRM 4.19.10.1.7.1(6), Correspondence Examination Letters. Letters mailed on cases in the corporate inventory will include the appropriate BOD corporate toll-free number, "Tax Examiner" as person to contact, and the site-specific identification number. If the letter sent is in reply to taxpayer correspondence, the letter, case history, and all letter attachments must identify the originating tax examiner to provide information for any subsequent contact, if needed.

TAS Recommendation	[7-2] Ensure that the volume and timing of audits conducted are commensurate with the IRS's ability to provide correspondence audit toll-free phone services, timely correspondence responses, and timely audit completion.
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	Since 2014, SB/SE Correspondence Examination has used the Enterprise Planning Scenario Tool (EPST) to develop the Correspondence Examination Starts Plan, which utilizes comparative scenarios to optimize the mix of inventory and available resources. EPST provides a weekly plan by Campus for opening additional examinations, with projected weekly mail receipts, to maintain a balanced and manageable mail inventory based on available staffing throughout the fiscal year. The plan is adjusted throughout the year to account for actual mail receipts, adding test inventory, changes in resources, program pauses/stoppage (<i>e.g.</i>, COVID response), and system downtime and testing.
TAS Response	TAS appreciates the IRS's agreement to ensure that the volume and timing of audits conducted are commensurate with the IRS's ability to provide correspondence audit toll-free telephone service, timely correspondence responses, and timely audit completion with the use of its EPST tool. Acknowledging that this tool has been in use since 2014, TAS notes that the W&I and SB/SE correspondence audit toll-free telephone levels of service have consistently remained in the 40 and 60 percent ranges respectively, while significant overage correspondence responses continued throughout fiscal years 2016 through 2019. TAS looks forward to any recalibrations of the IRS's EPST that will serve to increase the levels of service on the correspondence audit toll-free telephones and improve the timeliness of correspondence responses and audit completion.

TAS Recommendation	[7-3] Expand TDC Secure Messaging capabilities to all correspondence audit programs.
IRS Response	IRS does not agree to implement TAS recommendation. In August 2020, SB/SE expanded TDC in Correspondence Examination to all five of its campuses. We plan to invite taxpayers from all TDC eligible audit types beginning in April 2021. Certain audit issues are not conducive to TDC (e.g. Non-filers, Criminal Investigation); therefore, those taxpayers will not be invited to participate. Due to budget constraints and continued challenges with taxpayers' ability to authenticate, the IRS is not expanding TDC to all 10 campuses at this time.
IRS Action	N/A
TAS Response	TAS realizes that budget constraints and continued authentication challenges could hinder the IRS's ability to immediately expand TDC at this time. The current initiatives to invite taxpayers from all eligible TDC audit types in April 2021 is a step in the right direction. TAS looks forward to TDC expanding to all eligible audit types when feasible.

MSP #8: INTERNATIONAL: The IRS's Assessment of International Penalties Under IRC §§ 6038 and 6038A Is Not Supported by Statute, and Systemic Assessments Burden Both Taxpayers and the IRS

PROBLEM

The IRS's treatment of IRC §§ 6038 and 6038A foreign information reporting penalties as systemically assessable is legally unsupportable, administratively problematic, and imposes costs, delays, and stress for taxpayers. Because the penalties are immediately assessed, taxpayers' only recourse is to rely on IRS discretion and request a reasonable cause abatement of the penalties or pay them and seek a refund in federal court. This approach is particularly unsuited to these penalties, as demonstrated by abatement rates in excess of 55 percent when measured by number of penalties and 71 percent when measured by dollar value. Thus, both taxpayers and the IRS are expending significant time, energy, and money addressing penalties that ideally should not be assessed in the first instance.

TAS Recommendation	[8-1] Stop erroneously assessing Chapter 61 penalties, including the IRC §§ 6038 and 6038A penalties, and refer assessment and collection efforts to the Department of Justice when appropriate.
IRS Response	IRS does not agree to implement TAS recommendation. We disagree the IRS lacks legal authority to assess Chapter 61 penalties. As previously stated, the Internal Revenue Code provides two methods to assess penalties, either (1) pursuant to deficiency procedures or (2) as assessable penalties, that is, those penalties not subject to deficiency procedures. Penalties under Chapter 61, including sections 6038 and 6038A, are meant to enforce reporting requirements, are not based on the tax shown on a return or the existence of a deficiency, and may be imposed even when the taxpayer has an overpayment. No court has ever ruled that the IRS lacks authority to assess these penalties without following deficiency procedures, and the IRS has consistently treated Chapter 61 penalties as assessable as far back as records are available. Further, the authority in section 6201(a) to assess "all taxes" is an expansive provision broad enough to include Chapter 61 penalties without regard to whether assessable penalties refers exclusively to penalties in Chapter 68B of the Code or had a broader meaning of penalties not subject to deficiency procedures.
IRS Action	N/A

TAS Response	The IRS's argument that it has the legal authority to assess Chapter 61 penalties is unpersuasive. TAS concurs that the IRC does not provide authority for the use of deficiency procedures with respect to these penalties. Beyond this negative proposition, the IRS does not provide any unambiguous statutory language or on-point judicial rulings regarding how Chapter 61 penalties can be properly assessed. IRC § 6201 simply states that assessable penalties can be assessed and the caselaw only stands for the proposition that penalties not subject to deficiency procedures do not require deficiency procedures. These circumstances, however, do not establish that Chapter 61 penalties are assessable in the first instance. The IRS primarily relies on the circular logic that just because the IRS cannot apply deficiency procedures, it therefore, by definition, must be able to treat these penalties as assessable. Nevertheless, the IRS fails to explain how the authority to assess is affirmatively conferred by its inability to proceed using deficiency procedures. The IRS seeks to create a false dichotomy, under which the lack of one right automatically gives rise to another. The National Taxpayer Advocate and some legal commentators, however, see nothing in the law giving the IRS the actual or implied authority to assess Chapter 61 penalties. This is why, in the absence of Congressional action, assessment and collection of Chapter 61 penalties must be referred to the Department of Justice.
TAS Recommendation	[8-2] Send soft notices to taxpayers upon discovery of late-filed international information returns as a means of enhancing compliance and minimizing the number of penalties being asserted.
IRS Response	IRS does not agree to implement TAS recommendation. Generally, soft notices are used by the IRS to alert taxpayers to potentially non-compliant behavior, enabling them to take action to become compliant if applicable. Because section 6038 and 6038A filing requirements are event based, the IRS can't determine who has a requirement prior to the taxpayer filing the form, except in cases of direct taxpayer communication such as a field audit. As such, the IRS would be unable to identify missing forms in advance and send soft letters as an encouragement for compliance before assessing a penalty. These penalties are only systemically assessed after the taxpayer has resolved their non-filing issue by filing late. Sending a soft letter to the taxpayer, where there are no actions for them to take to rectify their noncompliance, would be confusing to taxpayers, may increase taxpayer burden, and would be a poor use of IRS resources. It would also be a disservice to taxpayers who make a concerted effort to understand their tax obligations and timely comply. Assessment of these penalties at filing, much like with other assessable penalties, provides the most equitable treatment of enforcement.

IRS Action	N/A
TAS Response	Pre-assessment correspondence could benefit both taxpayers and the IRS. We agree that the classic soft letter allowing for initial compliance as a means of avoiding a penalty would be inoperable in the instant case. The high rates of IRC §§ 6038 and 6038A penalty abatements, however, indicate that many of these penalties are being unnecessarily, and unjustifiably, assessed. One means of addressing this circumstance is to send correspondence, be it designated as a soft letter or something else, giving potentially impacted taxpayers the opportunity to explain why no penalty should be assessed in the first instance. This approach would contribute to the education of taxpayers and minimize the inefficient and burdensome practice of first assessing and then abating these penalties. Further, it would contribute to tax equity by placing the IRS in a better position to distinguish between good-faith mistakes and intentional tax noncompliance.
TAS Recommendation	[8-3] Extend eligibility for the first-time abatement to all Chapter 61 penalties, including the IRC §§ 6038 and 6038A penalties, regardless of whether the underlying return was filed late.
IRS Response	IRS does not agree to implement TAS recommendation. The IRS's policy of First Time Abatement (FTA) has only ever been applicable to the three common civil penalties: failure to file ² , failure to pay, and failure to deposit. Information returns, both domestic and international, are not eligible.
IRS Action	N/A

² This includes delinquency penalties under sections 6651(a)(1), 6698, and 6699.

TAS Response	A first-time abatement of Chapter 61 penalties is both possible and desirable. The IRS already allows an abatement of the IRC §§ 6038 and 6038A penalties whenever a related IRC § 6651 penalty receives a first-time abatement. In information provided to TAS by the IRS, it estimates that 40 percent of the abatements in this area are attributable to this practice. Because the first-time abatement is a matter of policy, the IRS is free to provide a broad first-time abatement for all Chapter 61 penalties and we continue to recommend the IRS abate these penalties through the first-time abatement procedures. This expansion would help to educate taxpayers and streamline tax administration. It would foster a better understanding of the law by taxpayers, facilitate information gathering by the IRS, and substantially decrease the number of penalties asserted. Good faith taxpayers would have their rights protected, while the IRS would still receive necessary information.
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TAS Recommendation	[8-4] Expand deficiency procedures to cover Chapter 61, including the IRC §§ 6038 and 6038A penalties.
IRS Response	N/A – Congressional Recommendation
IRS Action	N/A
TAS Response	N/A

MSP #9: AMENDED RETURNS: The IRS Processes Most Amended Returns Timely But Some Linger for Months, Generating Over a Million Calls That the IRS Cannot Answer and Thousands of TAS Cases Each Year

PROBLEM

In fiscal year (FY) 2019, the IRS's failure to set clear expectations and keep taxpayers informed of the status of their amended returns generated over 2.2 million calls, 1.4 million of which it was able to answer, and resulted in over 9,400 TAS cases. The IRS's published expected processing time for amended returns is 16 weeks. However, the IRS fails to advise taxpayers that if their amended returns are audited, processing will take significantly longer. One of the steps in the process, assigning an amended return that has been selected for audit to an examiner (who contacts the taxpayer) and opening the audit, alone took an estimated median of three to nine weeks for individual amended returns, and 14 to 16 weeks for corporate amended returns. Moreover, when taxpayers file an amended return to request a reduction in an assessed tax that remains unpaid, *i.e.*, a request for abatement, the IRS sometimes refuses to consider the claim and issues a form letter rejecting the claim without an adequate explanation to the taxpayer. Although the IRS has the authority to consider these claims, the form letter simply states the law does not allow a claim to reduce tax owed and instructs the taxpayer to pay the tax followed by another amended return.

TAS Recommendation	[9-1] Revise the IRM to provide that if a request for tax abatement is incomplete, the employee should solicit the necessary documentation from the taxpayer, and if the documentation is not forthcoming or is insufficient, the employee should deny the request, explain the reason for the denial, and explain the different procedures that apply to requests for tax abatement and requests for refund.
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	We are currently working on Internal Revenue Manual (IRM) updates to remove the "no consider" process for tax abatements. We will emphasize the need to contact the taxpayer for any missing information and to fully consider the claim when the missing information is received. Complete claims will still be subject to all review processes.

TAS Response	The National Taxpayer Advocate is pleased that the IRS is revising the IRM to correct the procedures for handling requests for tax abatements. We look forward to reviewing the modified IRM.
TAS Recommendation	[9-2] If the IRS determines the taxpayer is not entitled to an abatement, issue a 30-day letter providing taxpayers the right to file a protest with the Independent Office of Appeals for abatement of tax and updating and clarifying the IRM's No Immediate Tax Consequence provisions by referencing abatement cases.
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	Based on our actions to remove the "no consider" process for tax abatements in response to Recommendation MSP 9-1, a 30-day letter process will no longer be needed as we will be providing the taxpayer an opportunity to provide the missing information without first paying the tax.
TAS Response	Even if the IRS improves the process for considering requests for tax abatements by removing the "no consider" process, taxpayers should still have the opportunity to seek review by the Independent Office of Appeals. The IRS response is misleading as the IRS does not agree to implement the TAS recommendation.
TAS Recommendation	[9-3] Remove any selectable paragraph in Letter 916C that states the law does not allow taxpayers to file a claim to reduce the tax they owe or appears to advise taxpayers that they cannot seek an abatement of tax without first paying the amount of tax already assessed (Paragraph N in the current version of Letter 916C).

IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	We are currently working with other internal functions to update the referenced letter after considering input relative to removing this paragraph. We will take appropriate actions based upon this effort.
TAS Response	We look forward to reviewing an updated version of Letter 916C.

TAS Recommendation	[9-4] Revise the IRM to instruct employees not to use a fill-in paragraph in Letter 916C to state the law does not allow taxpayers to file a claim to reduce the tax they owe or to inform taxpayers they cannot seek an abatement of tax without first paying the amount of tax already assessed.
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	We will revise the IRM in conjunction with the revisions referenced in our response to Recommendation MSP 9-1.
TAS Response	We look forward to reviewing the revised IRM.

TAS Recommendation	[9-5] Identify and address the cause of lengthy examination times for amended returns.
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	The Small Business/Self-Employed Division (SB/SE) reviewed the cycle time for examinations of amended returns as well as other returns selected for audits. The cycle time to conduct an examination on amended returns is lower than other examinations both in Field and Campus operations. When an amended return is examined, the scope is not necessarily limited to just the claim issue; therefore, the expectation of the amount of audit work needed to examine the return should be similar to a regular examination. The Large Business & International Division (LB&I) also reviewed cycle times for examinations of claims. For mid-sized corporations, there was an increase of a few months in cycle times for claims (other than claims that are statutorily subject to review by Congress' Joint Committee on Taxation), but that increase in cycle time is diminished as we move to cycle time for large corporations. Claims reviewed by the Joint Committee added around 8 months to the cycle time, which is expected due to the Joint Committee process. The timing of when a claim or amended return is received within the LB&I examination cycle may impact how long it takes to resolve. The initial examination could be the result of the claim or an amended tax return being filed; the claim may be incorporated into an ongoing examination; or the claim may be received at the conclusion of the initial examination of a tax return. Examination teams fully apprise taxpayer corporations that an examination of issues raised by filing an amended return prior to or during the course of an audit will increase the length of time needed to conduct the examination. In summary, the length of any audit is based on the facts and circumstances of each case and may be impacted by the necessity to balance competing priorities as well as other extenuating circumstances such as disasters.

TAS Response	The IRS's response shows that it reviewed cycle times and has some ideas about what drives cycle time but does not agree to implement the TAS recommendation.
TAS Recommendation	[9-6] Identify and address the cause of the increase in processing time for corporations' unaudited amended returns.
IRS Response	IRS agrees to implement TAS recommendation in full.

IRS Action	We continually review and monitor all inventories, including the unaudited corporate amended returns. Multiple factors influence processing times each year, such as government shutdowns, legislation, available resources, and even nationwide pandemics. Each year, we tailor our efforts to address processing timeframes to the specific circumstances that have contributed to them. The circumstances surrounding our current situation include the following: Historical data shows the 1120X receipts have not increased as compared to prior years, but closures were down considerably compared to the prior year. Both campuses assigned business (BMF) returns have validated that the CP80 inventory (for BMF taxpayers who make a payment but fail to file a return within six months after the return due date) did not contribute to the backlog of amended returns. The BMF campuses were heavily impacted by the pandemic due to building closures, across the board staffing shortages, various systemic issues, and limited paper time because of phone demand. The two BMF campuses have about 720 Customer Service Representatives trained and working these cases and many other types of work, so they are spread between the various paper programs and phone lines. We are expecting staffing increases from employees returning from Weather and Safety leave and about 200 new hires in the upcoming weeks. As a result, we should see improvements in the amount of staffing we can apply to this inventory. The corporate amended inventory is portable and processed via Account Management Services/Correspondence Imaging Services, so we are exploring options for in-office and telework employees to do this work. However, delays in working these cases are compounded by document requests not yet fulfilled due to Federal Records Center closures/staffing shortages. Increasing staffing will not help if we can't get the returns needed to work these cases.
TAS Response	The TAS analysis was based on the IRS's performance in FYs 2017-2019, before the onset of the pandemic, yet the IRS response primarily references problems created by the pandemic. The pandemic may have worsened the problem, but the problem was already evident. The IRS detailed response does not agree to implement the TAS recommendation.
TAS Recommendation	[9-7] Add additional status updates to the "Where's My Amended Return" tool to allow taxpayers to see when the IRS selects their amended return for audit, when it assigns the audit to an examiner, and what an estimated completed processing time is based on the return's current status.

IRS Response	IRS does not agree to implement TAS recommendation. Expanding “Where’s My Amended Return” beyond its original use may provide inaccurate and/or confusing information to taxpayers, as all amended returns selected (or referred) for examination may not be audited. If an audit will be conducted on the amended return, taxpayers are notified in writing.
IRS Action	N/A
TAS Response	It is unclear why taxpayers would be confused if they were informed that their amended return was selected for examination and may or may not be audited. Moreover, once an amended return is selected for examination, it is assigned to an examiner, who may decide to survey, rather than audit, the return. The IRS could inform taxpayers, for example, how long this step alone is currently taking.

TAS Recommendation	[9-8] Revise the IRM and Form 1120X instructions to more accurately reflect the expected processing time for amended returns.
IRS Response	IRS does not agree to implement TAS recommendation. The current instructions for Form 1120X state, “It often takes 3 to 4 months to process Form 1120X.” Wage and Investment confirmed that the timeframe for processing Form 1120X as stated is still accurate. Therefore, the instructions will not be updated. Processing time does not include the time expended if an amended return is selected for examination. Once a definitive decision is made to examine the assigned amended return, the taxpayer will be notified in writing.
IRS Action	N/A
TAS Response	Perhaps the IRS could simply adjust the current instructions to inform taxpayers that processing time does not include time expended if an amended return is selected for examination.

MSP #10: REFUND DELAYS: Taxpayers Whose Legitimate Returns Are Flagged by IRS Fraud Filters Experience Excessive Delays and Frustration in Receiving Their Refunds

PROBLEM

The IRS issues most refunds promptly, but its pre-refund fraud filters delay millions of legitimate refund claims. In 2020, these filters flagged about 1.9 million returns for identity verification and 3.3 million to verify income and withholding. But the IRS ultimately issued most refunds requested on returns it flagged in calendar year 2019. Taxpayers whose refunds were delayed had trouble getting specific and timely information about the status their refunds.

TAS Recommendation	[10-1] Offer taxpayers with refunds flagged during the fraud screening processes an electronic option that provides them with: a) More accurate estimates of when they can expect to receive a refund (e.g., offer estimates before the refund is approved instead of just afterward); b) What specific information the IRS needs to verify; c) Whom the taxpayer can contact with questions; and d) How to upload identity verification information (e.g., by using a cell phone or camera) without first passing through Secure Access.
IRS Response	IRS agrees with TAS recommendations but cannot implement them currently due to funding limitations.

IRS Action

- a) We have submitted Unified Work Requests (UWRs) to request programming to update the Where's My Refund tool to provide taxpayers more specific responses based on the reason their return was flagged for review. However, the UWRs are subject to funding limitations and competing priorities.
- b) During the initial hold we place on returns during the fraud screening process, we do not ask the taxpayer to provide any information because we are awaiting third party data to be provided by the employer. We will submit a UWR to request programming to provide taxpayers a message in Where's My Refund that the return is being reviewed and they will be sent a letter if specific documentation is needed. If the return is moved to a treatment stream, we send the taxpayer a letter asking for the specific information needed to resolve their account.
- c) The IRS agrees that keeping taxpayers informed of their case status is important; however, with our systemic Questionable Return Program process, we are unable to identify specific contact information regarding the site or employee at that time.

UWRs have been submitted to update Where's My Refund to provide more specific responses based on the reason a return is flagged and direct the taxpayer to the proper telephone line. (e.g., if there is a delay due to Taxpayer Protection Program (TPP) filters, the taxpayer is referred to the TPP line, or if there is a delay due to a Return Integrity/Verification hold, the taxpayer is referred to the toll-free line.) The UWRs have been denied due to funding limitations. Our letters to taxpayers do provide a contact number to call for additional assistance. In addition, the Wage and Withholding and Automated Questionable Credit letters also provide an eFax number the taxpayer can use to submit their supporting documentation electronically.

- d) We continually explore ways to improve the overall taxpayer experience and the authentication process. For example, we are aggressively looking at ways for taxpayers to digitally transmit documents to the IRS. Specifically, we are exploring a capability that may allow taxpayers to send unsecured information that could be uploaded via irs.gov. This capability is still in the research phase, but we are excited about the potential of this feature and how it will improve the taxpayer experience.

TAS Response	a) TAS is pleased that the IRS agrees to update its Where's My Refund tool to provide more accurate estimates of when taxpayers can expect a refund. TAS understands there are funding constraints and competing priorities that affect when such updates may be available but continues to advocate for prioritizing this project, allowing for the implementation of such upgrades. b) TAS is encouraged that the IRS has agreed to submit a request to modify the Where's My Refund tool to inform taxpayers that their return is being reviewed and they will receive a letter if more information is needed. This change will better observe the taxpayer's right to be informed. Additionally, these changes may have the added benefit of reducing taxpayer phone calls inquiring as to when they can expect their refunds. c) TAS appreciates that a request was submitted to update the Where's My Refund tool to provide more specific responses based on the reason a return is flagged and direct telephone numbers to the proper IRS telephone lines that taxpayers should call for more specific information. We are disappointed to hear that this request has been denied and ask the IRS to reconsider our proposal. We understand that the IRS provides contact numbers on its notices but including this information on the Where's My Refund tool would be yet another way taxpayers would know whom to contact regarding the status of their refunds. d) TAS is encouraged by the IRS's continued interest in providing modern options by which taxpayers can submit documents to the IRS. The IRS's continued efforts to leverage modern technology will ultimately improve the taxpayer experience when interacting with the IRS and will likely promote voluntary compliance. TAS looks forward to continuing to work with the IRS to develop systems that offer more technologically advanced capabilities.
TAS Recommendation	[10-2] Make permanent the temporary procedures that allow taxpayers to submit identity verification documents by eFax, at least when other modes of communication are unavailable.

IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	We will continue to assess the availability and status of in-person and telephone communication channels and continue to provide the eFax option as appropriate.
TAS Response	TAS is encouraged that the IRS appears to be open to further extending the eFax option for taxpayers to submit documentation. Continuing to offer this option for taxpayers to upload documents while the IRS continues to explore and develop technology that will allow taxpayers to upload documents electronically is yet another way by which the IRS can improve the taxpayer experience.

TAS Recommendation	[10-3] Upgrade IRS systems so the taxpayer is automatically informed of the status of his or her case when it moves to another treatment stream (e.g., Examination) or when a case is automatically opened in those downstream functions, and so any authorized IRS employee can see the status of the case and related taxpayer correspondence.
IRS Response	IRS agrees to implement TAS recommendation in part.

IRS Action	We are transitioning to an Enterprise Case Management (ECM) system, the benefits of which include allowing authorized IRS employees to gain the ability to see an individual taxpayer's entire range of issues, relevant case data, and communications to effectively resolve cases. As a result, IRS representatives will be able to resolve more inquiries in a single contact and identify when a taxpayer is already working with another employee to facilitate handoffs, thus improving the overall taxpayer experience. The ECM multiyear enterprise solution aims to support the goals of the IRS Integrated Modernization Business Plan by consolidating more than 60 systems into a single platform. This will enable authorized IRS employees a real-time, 360-degree view of a taxpayer's history, relevant case data, and prior communications to more quickly resolve cases. IRS Information Technology (IT) is transforming delivery of ECM by using a commercial off-the-shelf (COTS) platform and cloud computing strategy. This facilitation of case resolution and improved customer service is also crucial in the IRS's objective of putting taxpayers first. ECM Release 1 went into production at the end of calendar year 2020, providing IT and business foundational capabilities as well as case management capabilities for the Tax Exempt & Government Entities (TE/GE) Exempt Organizations Customer Service group. Subsequent releases will deliver case management capabilities to a widening circle of business units across the IRS. The ECM Program has developed a sequencing strategy and release plan structure to support the delivery of future ECM releases for FY 2021 and beyond.
TAS Response	The IRS's move toward a more modern system, which brings a number of IRS systems under one large umbrella, will allow more access to taxpayer information to each IRS function, thereby providing the IRS enhanced capabilities in helping taxpayers resolve their outstanding tax issues. Although this is a significant undertaking, and full implementation is still years in the future, it is encouraging that the IRS is closer to making this improved system a reality to improve tax administration and taxpayer service.

TAS Recommendation	[10-4] Fund technology upgrades to expedite legitimate refund requests while continuing to modernize and replace obsolete IRS systems.
IRS Response	IRS agrees with TAS recommendation but cannot implement it currently due to funding limitations.

IRS Action	We continue to invest significant sums in the technology used for screening, verifying, and processing both ID theft and non-ID-theft (e.g., wage verification) pre-refund cases. This includes advanced analytics to improve our filters and selections, case process automation, data matching improvements, and tools for taxpayers to provide additional information and transparently view the status of their refund. As resources are available, the IRS will take additional steps to expedite legitimate refund requests and modernize the systems involved in this process. In the future state, the IRS's Enterprise Case Management system will meet many of the requirements that the National Taxpayer Advocate highlights — including accepting scanned or electronic information from taxpayers and employers, systemic referrals between functions, Automated workflows to release refunds and communicate with other systems, and integrations between information return systems, fraud systems, and correspondence systems to reduce manual entry and procedures.
TAS Response	Although the process to update IRS systems is long and arduous, the National Taxpayer Advocate is encouraged that the IRS continues to take steps toward implementation of this modernization plan and believes that advances such as allowing taxpayers to upload documents electronically will improve taxpayer interactions with the IRS, ultimately resulting in taxpayers getting their refunds faster and having their issues resolved quicker.

TAS Recommendation	[10-5] Update procedures so CSRs can provide specific information to taxpayers about how to expedite a refund (i.e., identify a specific discrepancy) and ask that RIVO employees respond to the taxpayer's inquiry.
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	The Systemic Verification process will automatically release the refund once the return information is verified. Systemic Verification relies on Information Return Processing data, which can change daily. It is dependent on the timeliness of the third-party employers submitting their Form W-2, Wage and Income Statement, documentation. Since the COVID-19 pandemic, we have updated several sections of the Internal Revenue Manual with instructions for the CSR to provide the taxpayer with an eFax number to send their documentation, which could assist in releasing the refund quicker.

TAS Response	TAS is in full agreement that systemic processes are an efficient way to administer the refund fraud program, ultimately resulting in a faster release of refunds. Despite systemic processing improvements, taxpayers are all too often unable to obtain information from CSRs regarding the status of their refund and what they need to do to expedite the refund. TAS once again encourages the IRS to reconsider its current procedures and provide CSRs with as much information as possible regarding the status of taxpayer refunds and what taxpayers need to do to assist in its release. In addition, RIVO should establish procedures for its employees to respond directly to taxpayers upon receipt of a referral from another IRS function, outside of the current process to issue an interim letter requesting additional time for review.
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TAS Recommendation	[10-6] Measure and evaluate W&I's performance based on how many taxpayers with legitimate refunds its fraud filters flag and how many must wait more than 60 days to receive their refunds.
IRS Response	IRS does not agree to implement TAS recommendation. Roughly 98% of refund returns are not selected by fraud filters. The remaining 2% often have reported information that may not adhere to known patterns and may not have the information returns needed to validate reported amounts. Without proper validation, the IRS risks issuing improper refunds. We understand the concern of how refund delays can impact taxpayers and strive to balance this concern against the risk of issuing improper refunds. To this end, the IRS continually evaluates changes in the tax system and makes improvements to our refund fraud detection methods, including refining our filters. We continue to improve the filters using a variety of methodologies, algorithms, data sets, and techniques to help stay ahead of fraudsters. We evaluate and monitor the performance of each filter on a weekly basis and adjust filters that are not performing as expected. We apply lessons learned from confirmed cases and consider emerging trends. We will continue to rebuild and refresh our filters and models each year to better detect emerging schemes, taking into account historical patterns.
IRS Action	N/A

TAS Response	TAS understands the IRS's concerns regarding the issuance of improper refunds. However, if information on the return cannot be verified, it is important for the IRS to monitor how long these refunds are being held until the IRS makes a decision on how to proceed (<i>i.e.</i>, release the refund or transfer the return to one of the IRS's treatment streams for assignment). While it is not appropriate to issue refunds where the information on the return cannot be validated, it is equally unacceptable to hold refunds in perpetuity. The IRS, while holding a case in suspense and awaiting the next compliance action, needs to keep the taxpayer informed and track the amount of time the case is being held.
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MLI #1: Appeals From Collection Due Process Hearings Under IRC §§ 6320 and 6330

PROBLEM

A Collection Due Process (CDP) hearing is an opportunity for a taxpayer to have an independent and meaningful review by the IRS Independent Office of Appeals (Appeals) prior to the IRS's first levy or immediately after its first Notice of Federal Tax Lien (NFTL) filing to enforce a tax liability. At the hearing, the taxpayer has the right to raise any relevant issues related to the unpaid tax, the lien, or the proposed levy, including the appropriateness of the collection action, collection alternatives, spousal defenses, and, under certain circumstances, the underlying tax liability.

Once Appeals issues a determination, a taxpayer has the right to judicial review of that determination if the taxpayer timely requests a CDP hearing and timely petitions the U.S. Tax Court. Generally, the IRS suspends levy actions during a levy hearing and any subsequent judicial review of the Appeals determination that follows the hearing.

CDP has been one of the federal tax issues most frequently litigated in the federal courts since 2001; however, only a small fraction of eligible taxpayers exercises their right to an administrative hearing, and far fewer taxpayers petition the Tax Court to review their case.

Our review of litigated issues found 74 opinions on CDP cases during the review period of June 1, 2019, through May 31, 2020. Taxpayers prevailed in full in five of these cases (seven percent) and, in part, in five others (about seven percent). Forty-five taxpayers (61 percent) appeared *pro se* (unrepresented). Cognizant of the distinct disadvantage that *pro se* litigants face, federal courts routinely read their submissions liberally and interpret them to raise the strongest arguments that they suggest. The IRS prevailed fully in 64 cases (about 86 percent) of the opinions.

TAS Recommendation	[MLI 1-1] Use internal data pertaining to a taxpayer's income and assets compared to his or her Allowable Living Expenses to determine if a taxpayer is in economic hardship or qualifies for a collection alternative, such as an offer in compromise, prior to issuing an intent to levy notice or NFTL. Working with taxpayers ahead of time could negate the need for further collection action.
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IRS Response	Consistent with sections 6320 and 6330 of the Internal Revenue Code, the IRS provides taxpayers with notice of, and an opportunity for, a Collection Due Process (CDP) hearing after a Notice of Federal Tax Lien (NFTL) is filed and before a notice of levy is issued. Letter 3172 is the CDP notice of the NFTL filing, and Letter 1058 or Letter LT11 is the CDP notice of the intent to levy. CDP notices are not automated notices, but rather are issued after we have mailed several automated notices and the account has remained unresolved. We then analyze the case (using data such as the taxpayer's income) to decide if it is a high priority and should be assigned to a Collection function. The assigned Collection function then attempts to contact the taxpayer and makes the determination that issuing the CDP notice is the appropriate next action because the taxpayer has not responded, or they have been unable to resolve the case. At the point that we issue the <i>Notice of Intent to Levy and Your Right to a Hearing</i> or initiate the filing of the NFTL, therefore, we have already provided the taxpayer an opportunity to work with us on collection alternatives. Accordingly, we do not agree to implement TAS Recommendation MLI #1-1.
IRS Action	N/A
TAS Response	TAS appreciates the work that goes into determining if the IRS should issue an intent to levy notice or an NFTL. However, the current analysis focuses on if the case should be pursued, if the taxpayer has responded, etc. We recommend that the IRS use internal data not to categorize the case for collection potential but to flag cases that would make good candidates for hardship identification or collection alternative, regardless of involvement with the taxpayer up to that point. For instance, flagged cases for hardship could avoid receipt of an intent to levy notice or an NFTL. Predetermining the appropriate collection alternative would put data to use that may already be available, thereby saving resources and ensuring the <i>right to quality service</i>.

MLI #3: Accuracy-Related Penalty Under IRC § 6662(b)(1) and (b)(2)

PROBLEM

The accuracy-related penalty may be imposed if the taxpayer's negligence or disregard of rules or regulations causes an underpayment of tax required to be shown on the taxpayer's return, or if an underpayment exceeds a computational threshold called a substantial understatement. The accuracy-related penalty does not apply to any portion of an underpayment where the taxpayer acted with reasonable cause and in good faith. Additionally, the supervisor of the employee making the penalty determination generally must provide written approval of the accuracy-related penalty before the "initial determination of such assessment."

Much of the accuracy-related penalty litigation this year and in previous years has focused on either whether the taxpayer met the reasonable cause exception or whether the IRS failed to secure timely supervisory approval. Still, the overall number of accuracy-related penalty cases has been declining. We identified only 64 opinions issued between June 1, 2019, and May 31, 2020, where taxpayers litigated the negligence or substantial understatement components of the accuracy-related penalty.

TAS Recommendation	[MLI 3-1] Issue regulatory guidance to clarify that the supervisory approval under IRC § 6751(b) must occur prior to the first time the IRS sends a written communication to the taxpayer proposing the penalty as an adjustment.
IRS Response	The IRS agrees to implement TAS recommendation in part.

IRS Action	Over the last few years, the IRS has focused on ensuring our processes and procedures accurately reflect when supervisory approval is necessary for all examination programs. We appreciate that the National Taxpayer Advocate (NTA) recognized our efforts, noting in her report the significant decrease from last year in court opinions where taxpayers prevailed due to an IRS failure to comply with supervisory approval requirements. The IRS sends a written communication to the taxpayer proposing the penalty as an adjustment, the IRS agrees to implement the recommendation in part. The Department of the Treasury 2020-2021 Priority Guidance Plan issued November 17, 2020, lists proposed regulations regarding supervisory approval of proposed penalties as among the guidance projects that will be the focus of efforts of the Department of the Treasury, the IRS, and the IRS Office of Chief Counsel during the 12-month period from July 1, 2020, through June 30, 2021. The ultimate rules imposed by final regulations are not predetermined. The views of many stakeholders will be considered, including public comments received on any proposed regulations.
TAS Response	TAS appreciates that the IRS is prioritizing guidance on the supervisory approval requirement during the current fiscal year. We hope this guidance will be included on the following fiscal year's plan if the proposed guidance is not published for public comment this fiscal year.
TAS Recommendation	[MLI 3-2] Update its IRM to clarify that where the IRS uses a computer program to determine the accuracy-related penalty based on negligence, an IRS employee must first contact the taxpayer and review the facts and circumstances prior to determining the applicability of the negligence penalty and the IRS must obtain supervisory approval to ensure the penalty is appropriate prior to assertion of the penalty, consistent with the Memorandum from Director, Examination Field and Campus Policy, to Area Directors, Field Examination, SBSE-04-0920-0054 (Sept. 24, 2020).

IRS Response	The IRS disagrees with TAS's recommendation to require, where the IRS uses a computer program to determine the accuracy-related penalty based on negligence, that employees contact the taxpayer and review the facts and circumstances prior to determining the applicability of the negligence penalty and obtain supervisory approval prior to asserting it. The IRS's procedures for penalties assessed using a computer program are in accordance with current law and regulations and with sound tax administration. Internal Revenue Code (IRC) section 6751(b)(2) provides that managers need not approve any penalties automatically calculated (assessed without an employee independently determining the appropriateness of the penalty) through electronic means. The NTA's report also acknowledges the 2020 decision in which the Tax Court found the IRS did not have to obtain supervisory approval because the penalty was automatically calculated through electronic means. The IRS uses a computer program to determine the accuracy-related penalty based on negligence for the Automated Underreporter (AUR) program. AUR matches taxpayer income and deductions submitted by third parties such as banks, brokerage firms and other payers on information returns (e.g. Form 1099, Form W-2) against amounts reported on individual income tax returns. The IRS Office of Chief Counsel has advised, citing Treas. Reg. 1.6662-3(b)(1)(i), that negligence is strongly indicated where a taxpayer fails to include on an income tax return an amount of income shown on an information return. Based on this opinion, we believe the AUR program would not need to discuss any additional facts and circumstances with the taxpayer prior to determining the applicability of the negligence penalty. Nonetheless, Internal Revenue Manual (IRM) 20.1.5.2.3, Supervisory Approval of Penalties — IRC 6751 Procedural Requirements, provides that if a taxpayer submits a response, written or otherwise, that challenges the penalty or the amount of tax to which the penalty is attributable, written supervisory approval is required before the issuance of any Statutory Notice of Deficiency that includes the penalty. This IRM section further provides: "[t]he exception for penalties automatically calculated through electronic means no longer applies once a Service employee makes an independent determination to pursue a penalty or to pursue adjustments to tax for which a penalty is attributable."
IRS Action	N/A
TAS Response	TAS is disappointed the IRS will not reconsider its policy of imposing the negligence portion of the accuracy-related penalty based on a single indicia of negligence, without any analysis of the surrounding facts and circumstances that would weigh against the negligence determination. The IRS's use of electronic means to determine negligence deprives taxpayers of the protection provided by IRC § 6751(b). The related legislative recommendation included in the 2020 Annual Report to Congress explains situations where a taxpayer may not have acted negligently, notwithstanding unreported income from an information return for a second year. The IRS's insistence on asserting the negligence penalty based solely on a computer program will continue to infringe <i>taxpayers' rights to a fair and just tax system and to pay no more than the correct amount of tax</i>.

TAS Recommendation	[MLI 3-3] Amend IRC § 6751(b)(1) to clarify that no penalty under Title 26 shall be assessed or entered in a final judicial decision unless the penalty is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate prior to the first time the IRS sends a written communication to the taxpayer proposing the penalty as an adjustment.
IRS Response	N/A – Congressional Recommendation
IRS Action	N/A
TAS Response	N/A

TAS Recommendation	[MLI 3-4] Amend IRC § 6751(b)(2)(B) to clarify that the exception for "other penalties automatically calculated through electronic means" does not apply to the negligence penalty under IRC § 6662(b)(1).
IRS Response	N/A – Congressional Recommendation

IRS Action	N/A
TAS Response	N/A

MLI #6: Summons Enforcement Under IRC §§ 7602, 7604, and 7609

PROBLEM

TAS used commercial legal research databases to identify 40 federal opinions issued between June 1, 2019, and May 31, 2020, involving IRS summons enforcement and related issues. Of these 40 opinions reviewed, seven cases applied the standards for summons enforcement set forth in *United States v. Powell*, five cases involved the assertion of a privilege by the taxpayer, and two cases involved the issuance of a John Doe summons under IRC § 7609(f) (where the taxpayer(s) under investigation is not specifically identified or is unknown). Furthermore, six of the 40 cases were appeals decided by a United States Court of Appeals. Twenty-nine of the opinions involved individual taxpayers, while 11 involved business taxpayers. The government filed a petition to enforce the summons in 19 cases, while the taxpayer initiated by filing a petition to quash the summons in 21 cases. Overall, no taxpayers fully prevailed, but one case resulted in a partial taxpayer win with a split decision.

In fiscal year (FY) 2020, at least 433 summons cases were in the Office of Chief Counsel's inventory. A total of 34 cases were referred to DOJ in FY 2020. Subtracting those 34 from the total inventory means that 399 cases were handled by U.S. Attorneys' Offices. Many summons are complied with and do not require court enforcement (as demonstrated by the relatively small number of summons enforcement cases TAS identified for the period June 1, 2019, through May 31, 2020).

TAS Recommendation	[MLI 6-1] Revise its third-party contact letters and internal guidance, including updated Letter 3164-A, to inform the taxpayer of what the IRS needs and to give the taxpayer a reasonable opportunity to provide the information before contacting third parties.
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IRS Response	Our procedures for contacting third parties balance taxpayers' and third parties' expectations of privacy with what is needed for effective tax administration. The Taxpayer First Act of 2019 (TFA) changed the notification requirements in the Internal Revenue Code, and specified the timing and required content of the advance notice of third-party contacts. The IRS timely implemented this TFA provision to ensure our employees appropriately follow the revised requirements. IRS employees are directed to first attempt to obtain information voluntarily from taxpayers and witnesses prior to issuing a summons, and not to issue a summons if the desired documents are available from IRS records. They resort to serving a summons if the records are not provided, or if the records provided are incomplete. See generally IRM 25.27.1. More specifically, the IRS requests information from taxpayers through telephonic, face-to-face, or written communication prior to contacting third parties for the information. Functional areas are required to document their contact with taxpayers and outline the specific actions needed. Field Collection utilizes Form 9297, Summary of Taxpayer Contact, and Field Examination utilizes Form 4564, Information Document Request, to request the information from the taxpayer needed in connection with the determination or collection of a tax liability. If the taxpayer complies with the request, IRS contact with a third party may be unnecessary. When we must contact a third party, we adhere to the relevant provisions of the law and regulations. We provide advance notice of the intent to contact third parties 45 days prior to making contact with any third party; we record each contact (unless an exception applies); and we provide a list of contacts to the taxpayer upon request. The IRS is sensitive to the concerns of harm to individuals or damage to businesses' reputations. Our procedures already promote open communication with taxpayers to gain their cooperation, and provide taxpayers with ample opportunity to voluntarily provide the information. Accordingly, we do not agree to implement TAS's recommendation.
IRS Action	N/A
TAS Response	Although we appreciate the IRS response, the IRS can do more in this arena to inform taxpayers of what it specifically needs, such as updating internal guidance and taxpayer correspondence letters, including Letter 3164-A, to allow time for taxpayers to respond to specific IRS requests and to reduce summons enforcement challenges.

TAS Recommendation	[MLI 6-2] Amend IRC § 7602(c)(1) to require the IRS to tell the taxpayer in third-party contact notices what information it needs (if any) and give the taxpayer a reasonable opportunity to provide the information before contacting a third-party, unless an exception applies.
IRS Response	N/A – Congressional Recommendation
IRS Action	N/A
TAS Response	N/A

MLI #7: Failure to File Penalty Under IRC § 6651(a)(1), Failure to Pay an Amount Shown as Tax on Return Under IRC § 6651(a)(2), and Failure to Pay Estimated Tax Penalty Under IRC § 6654

PROBLEM

Under IRC §§ 6651(a)(1), (a)(2), and 6654, the IRS may impose penalties on taxpayers when they fail to timely file a tax return, fail to pay an amount shown as tax on a return, or underpay installments of estimated taxes, respectively. Of the 31 cases we reviewed, taxpayers appeared pro se in 20, and in these cases, the outcomes almost always favored the IRS. Taxpayers were represented in the only case in which the court ruled in their favor.

During our reporting period, between June 1, 2019, and May 31, 2020, there were a total of 24,064,628 taxpayers who had penalties imposed due to the failure to timely file a tax return, to pay an amount shown as tax on a return or underpay installments of estimated taxes. The largest total category of abatements was for individual taxpayers with 176,308 abatements for taxpayers who had failed to pay an amount on a tax return due to a reasonable cause. During this same period, taxpayers petitioned Tax Court in 127 cases where the failure to timely file a tax return penalty (delinquency penalty) and/or the estimated tax penalty was an issue during the examination.

TAS Recommendation	[MLI 7-1] Review and revise notices and publications where appropriate to provide more examples of circumstances that constitute reasonable cause to better educate taxpayers.
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IRS Response	As the NTA points out, determining when the IRS may impose the IRC §§ 6651(a)(1), 6651(a)(2), and 6654 penalties for failures to timely file a tax return, failures to pay an amount shown as tax on a return, or underpayments of installments of estimated taxes, respectively, is relatively straightforward. The nearly unanimous rulings in favor of the IRS illustrate the case law is well established, and the statutory and regulatory guidance is exhaustive. Policy Statement 3-2 (Formerly P-2-7),³ established in December of 1970, states “any sound reason advanced by a taxpayer as the cause for delay in filing a return, making deposits under the Federal Tax Deposit System, or paying tax when due, will be carefully analyzed to determine whether the applicable penalty should be asserted.” Reasonable cause is based on the individual facts and circumstances of each taxpayer, not whether a request meets or follows specific examples. The IRS will consider any sound reason for failing to file, deposit, or pay. Because the reasonable cause determination is based on individual fact and circumstances and cannot be fairly captured within a specific list of examples, the IRS does not agree to implement the NTA’s recommendation in this Most Litigated Issue. The IRS takes seriously its goal to empower and enable all taxpayers by helping taxpayers understand their rights and responsibilities. IRS.gov clearly describes the types of penalty relief available, examples of situations and facts to consider when requesting reasonable cause, types of supporting documentation that may be needed, and even how to request an appeal if the IRS denied the request for penalty relief.⁴ The IRS is taking steps to increase awareness of penalties and educate taxpayers by making penalty information easier to find in IRS.gov searches; revising current penalties web pages on IRS.gov to expand and clarify information, including how to avoid the penalties through compliance; and adding additional web pages to IRS.gov for certain types of penalties, which will contain more helpful language from Policy Statement 3-2. Notices, publications, and form instructions have undergone continuous updates to address penalty relief and reasonable cause, as applicable,⁵ and contain sufficient information to inform taxpayers of the options available if they disagree with the penalty.
IRS Action	N/A

³ See IRM 1.2.1.4.2.

⁴ See <https://www.irs.gov/businesses/small-businesses-self-employed/penalty-relief>.

⁵ Reasonable cause penalty relief is not applicable to all penalties. Although reasonable cause is not applicable for relief of the estimated tax penalty, a waiver of the penalty may be requested. A CP 30 for failing to pay estimated taxes (or CP 30A, if applicable) is issued when the penalty is assessed. It explains the estimated tax penalty and also the appeal rights to the taxpayer.

TAS Response

TAS agrees there is substantial guidance regarding when reasonable cause should be applied for failure to file, failure to pay an amount shown as tax on a return, and failure to pay estimated tax penalties, and acknowledges that the IRS has made significant efforts to ensure taxpayers can learn about when abatement may be appropriate and how to make such a request.

Additionally, as the IRS points out in its response, TAS agrees that reasonable cause abatement is dependent upon the particular facts and circumstances of a taxpayer's situation, and there is no fact sheet that can be provided to a taxpayer to determine if reasonable cause abatement is appropriate. However, TAS believes it is critical that taxpayers get as much information about reasonable cause abatement, including examples of when such an abatement may be appropriate, in a variety of formats including notices. This will best observe a taxpayer's right to be informed and may help in assisting taxpayers in determining when requesting reasonable cause abatement may be most appropriate.

MLI #8: Itemized Deductions Reported on Schedule A (Form 1040)

PROBLEM

Itemized deductions reported on Schedule A of IRS Form 1040 were among the ten Most Litigated Issues for the fourth time since the National Taxpayer Advocate's 2000 Annual Report to Congress. During this reporting period between June 1, 2019, and May 31, 2020, we identified 21 decisions, in which itemized deductions were litigated in federal courts. All but four of these cases were litigated in the U.S. Tax Court. The courts affirmed the IRS position in 17 of these cases, or about 81 percent, while taxpayers fully prevailed in two cases, or about ten percent of the cases. The remaining two cases, or about ten percent, resulted in split decisions. Taxpayers were represented in nine of the 21 (or 43 percent) while 12 of 21 cases (or 57 percent) had pro se (without counsel) taxpayers. During this same period, taxpayers petitioned Tax Court in 1,120 cases where itemized deductions was an issue during the examination.

TAS Recommendation	[MLI 8-1] Evaluate the IRS's existing communication strategy, including the IRS website, guidance, and publications, to taxpayers, preparers, and practitioners to determine how to increase awareness about itemized deductions, including recordkeeping requirements. Then based on the findings, conduct outreach within the next two fiscal years to better educate taxpayers.
IRS Response	IRS agrees to implement TAS recommendation in part.

IRS Action	The IRS has included itemized deductions and recordkeeping requirements consistently in our outreach efforts and is constantly evaluating information, feedback, and other data to build campaigns to educate taxpayers. Therefore, we agree to implement Recommendation MLI 8-1 in part. The IRS, including through our tax organization partners, regularly provides educational opportunities to inform taxpayers and practitioners about itemized deductions, along with other audit issue topics, and connects with the tax preparer community through virtual presentations, meetings, and cascading media information. In addition, through our partnerships with other non-tax organizations and corporations, the IRS has shared information to help the people they serve, members and employees in meeting their filing obligations, including itemized deductions changes and recordkeeping. The IRS Nationwide Tax Forums have addressed the changes to itemized deductions included in the Tax Cuts and Jobs Act (TCJA) as well as recordkeeping. In 2020, the Tax Forums presented the following seminars on preparer audit issues: “IRS Key Enforcement Issues,” “Due Diligence in Practice before the IRS: Record-Keeping,” and “Representing the Taxpayer without Records, Reconstructing Income and Expenses.” Recordkeeping and documentation of itemized deductions are also addressed in the 2021 annual federal tax refresher course that is part of the Return Preparer Office’s Annual Filing Season Program (AFSP). Approximately 33,000 return preparers take the federal tax refresher course each year. The IRS posts general communications about recordkeeping and Schedule A itemized deductions on our website. In addition, the Interactive Tax Assistant’s Deduction section for taxpayers currently includes a wealth of information on the topic. Information is also included through tax forms and publications. Our news media and social media messages include information on itemized deductions and recordkeeping. For example, we posted several tweets during the Get Ready for Filing Season campaign that focused on deductions. The IRS also regularly conducts outreach on new tax legislation, most recently for the individual extenders and the Taxpayer Certainty and Disaster Relief Act of 2020 and how such legislation affects deductions for which taxpayers may be eligible. As the National Taxpayer Advocate’s report acknowledges, it is reasonable to predict that litigation in this area will diminish
TAS Response	It is encouraging that the IRS agrees to implement this recommendation in part, and we look forward to working with the IRS to better educate taxpayers, preparers, and practitioners to increase awareness about itemized deductions, including recordkeeping requirements.

MLI #9: Charitable Contribution Deductions Under IRC § 170

PROBLEM

We identified 14 opinions issued between June 1, 2019, and May 31, 2020, on the issue of the deductibility of charitable contributions under IRC § 170, which is three fewer cases than in last year's report. Of the 14 cases, the most common issues were whether a donation constituted a qualified conservation easement (eight cases) and whether a claimed deduction was adequately substantiated (six cases). An additional case involved both issues. Taxpayers were usually represented, and the IRS usually prevailed. During this same period, taxpayers petitioned the Tax Court in 401 cases where charitable contributions were an issue during the examination.

IRS court victories in conservation easement cases do not appear to have deterred taxpayers from engaging in these transactions. Between 2017 and 2018, the number of individual participants in these transactions increased from 14,000 to 16,900, with many participating in multiple deals; the total amount of deductions claimed through these tax shelters increased from \$6.8 billion in 2017 to \$9.2 billion in 2018. In June 2020, the IRS offered to settle docketed Tax Court cases with this issue. Some taxpayers may accept the IRS's offer to settle their cases with this issue, but litigation in this area may very well continue for years.

TAS Recommendation	[MLI 9-1] Develop and publish additional guidance that contains sample easement provisions to assist taxpayers in drafting deeds that satisfy the statutory requirements for qualified conservation contributions, particularly the perpetuity requirement for those conservation easements that incentivize land preservation for future generations.
IRS Response	IRS agrees to implement TAS recommendation in part.

IRS Action	We share the goal of preventing unnecessary litigation by making it easier for taxpayers to draft conservation easement deeds that are fully compliant with the requirements set forth in I.R.C. § 170(h) and the regulations, and agree to implement TAS' recommendation in part. To that end, we released Chief Counsel Advice, CCA 2020-02011 (Jan. 10, 2020), that provides sample language for a constructive denial clause within a conservation easement deed, as well as a General Legal Advice Memorandum, GLAM 2020-001 (Mar. 27, 2020), providing sample language to amend a conservation easement, both of which are consistent with the perpetuity requirements set forth in I.R.C. § 170(h). The Office of Chief Counsel (Counsel) will consider publishing formal guidance containing sample clauses, while continuing to balance guidance priorities as a whole. In the meantime, Counsel plans to continue drafting and releasing informal guidance including sample clauses that taxpayers may use when drafting conservation easement deeds.
TAS Response	The National Taxpayer Advocate is pleased the IRS recognizes that additional guidance may avert litigation. As noted in the report, the guidance the IRS provided in 2020 was welcome. We look forward to additional guidance that may help taxpayers navigate these complex issues and help prevent unnecessary litigation.

RESEARCH STUDY: The IRS Can Systemically Identify Taxpayers at Risk of Economic Hardship and Screen Them Before They Enter Into Installment Agreements They Cannot Afford

PROBLEM

The majority of IRS installment agreements (IAs) with individual taxpayers are streamlined agreements, meaning that verification of a taxpayer's financial circumstances is not required when the liability does not exceed a certain amount and can be paid within a specified number of years. To reduce taxpayer burden and minimize IRS resources when agreeing to an IA, the IRS has eased the requirements for entering into a streamlined IA. While streamlined IAs do not require the taxpayer to provide verification of his or her financial circumstances, unfortunately, these agreements place many taxpayers in a position where they cannot afford basic living expenses while meeting the payment required by the IA.

The IRS established allowable living expenses (ALEs) to ensure that the satisfaction of their unpaid tax liabilities does not interfere with the ability to pay for those expenses necessary for basic living. ALEs include groceries and other incidentals such as apparel or cleaning supplies, housing and utilities, transportation, and out-of-pocket health care expenses. However, with streamlined IAs, the IRS never compares the amount of these necessary expenses to the taxpayer's income. The result can be an IA that the taxpayer cannot afford while also meeting necessary living expenses.

TAS believes the IRS should establish an indicator, which shows whether a taxpayer is likely facing economic hardship. Specifically, TAS has developed an algorithm using the IRS ALEs to indicate when a taxpayer has income not in excess of their likely ALEs. In these situations, TAS believes the IRS should perform a basic financial analysis to ensure the taxpayer can afford the IA. Doing so could eliminate IRS rework when the taxpayer defaults an unaffordable IA, while also allowing the IRS to pursue other collection alternatives such as an offer in compromise or temporarily suspending collection action until the taxpayer's financial situation becomes more favorable.

This research study explores the effectiveness of an algorithm developed by TAS and based on systemically available information about the taxpayer's income and likely ALEs. The study examines non-streamlined IAs for individuals initiated from fiscal year (FY) 2017 through most of FY 2020. While TAS's concern is with streamlined IAs, we tested the effectiveness of the algorithm with non-streamlined IAs. Since the IRS is required to conduct financial verification on non-streamlined IAs, the outcome of the algorithm is being compared to these IAs.

The study shows that the algorithm agrees with the IRS determination 82 percent of the time and rises to 86 percent if no vehicle ownership expenses are allowed. The agreement rate increases to 95 percent when the taxpayer's systemically detected income exceeds \$50,000. Other conclusions from this study include:

- Agreement between an algorithm allowing taxpayers their likely ALEs and the IRS determination has increased slightly from FY 2017 to FY 2020;

- An algorithm comparing internal IRS income data to the minimum amount of ALEs provided to taxpayers has a 96 percent agreement rate with the IRS determination that the taxpayer could afford an IA; and
- An algorithm using internal IRS data to compare taxpayer's income to their likely ALEs are more likely to agree with the IRS determination when the taxpayers are elderly or when the taxpayers are married. However, the same algorithm is unlikely to agree with the IRS determination for taxpayers with systemically detected income of \$25,000 or less.

TAS believes the IRS should display an economic hardship indicator on taxpayer accounts when estimates of a taxpayer's ALEs and income indicate the taxpayer is not likely to afford a streamlined IA. If the indicator shows the likelihood of economic hardship, the IRS should perform a basic financial analysis before entering into the IA to make sure the taxpayer can afford the arrangement.

TAS Recommendation	[RS 1-1] The IRS should implement an economic hardship indicator on taxpayer accounts when estimates of a taxpayer's ALEs and income indicate the taxpayer is not likely to afford a streamlined IA. If the indicator shows the likelihood of economic hardship, procedures would direct the IRS to perform a basic financial analysis before entering into the IA to ensure the taxpayer can afford it without causing additional financial hardship and potentially triggering unnecessary defaults.
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IRS Response	The IRS currently uses analytics (considering factors known through internal sources) when prioritizing and assigning collection work to the optimal work stream. We also offer a wide range of alternatives for taxpayers who may be facing difficult financial circumstances, including Partial Pay Installment Agreements, temporary suspensions of collection activity (for Currently Not Collectible accounts), and Offers in Compromise. TAS has proposed a computation using the IRS Allowable Living Expenses (ALEs) to attempt to indicate when a taxpayer has income not in excess of their likely basic living expenses. If a likelihood of economic hardship is indicated, TAS further recommends procedures directing the IRS to perform a basic financial analysis before entering into an installment agreement to ensure the taxpayer can afford it without causing additional financial hardship and potentially triggering unnecessary defaults. The concept of making such a computation a part of the installment agreement acceptance decision is an interesting one, and we have explored this concept in the past and have been engaged with TAS on this issue. We appreciate that our feedback has been heard and is reflected in the NTA's 2020 Annual Report. We do not believe income and presumed expenses alone would be sufficient to conclusively state that a taxpayer could not meet the proposed agreement, and the TAS recommendation seems to acknowledge that concern. The computation would not dictate the case outcome, but rather would be used to indicate a need for further inquiry into the taxpayer's financial condition. One key concern is that such a practice would lead to more taxpayers being subjected to financial analysis interviews, an often lengthy process which could greatly reduce the number of taxpayers the IRS is able to serve. In light of this concern, further research is necessary in order to determine the utility of TAS's recommendation, including analysis of the results as they relate to the IRS decision on all types of installment agreements and Currently Not Collectible determinations, extending the analysis to determine the long-term performance of installment agreements and Currently Not Collectible determinations, analysis of the costs and savings associated with developing and implementing the change, and analysis of the performance of existing IRS analytics (like the CFO Recovery Model¹⁹) in place of creating a new computation. We will continue to partner with TAS on this issue, but believe further analysis of the concept and its wider impacts is warranted before we can determine whether such a change would benefit taxpayers and the IRS. Accordingly, we decline to implement the TAS recommendation.
IRS Action	N/A

TAS Response

The National Taxpayer Advocate appreciates the IRS's willingness to discuss the possibility of placing a marker on the accounts of taxpayers indicating a taxpayer's likely ability to afford to pay toward his or her delinquent federal tax liabilities. TAS agrees with the IRS that its proposed algorithm using internal IRS data will not always be sufficient to determine if economic hardship exists. As indicated in this TAS study, IRS systemic data will not always be able to determine if a taxpayer has the ability to pay a federal tax delinquency without incurring economic hardship. For instance, a taxpayer may receive a raise in income, move to a location where expenses are lower, or pay less than the average amount for a necessary living expense, such as housing or transportation. However, as indicated in its study report, the TAS algorithm produced results agreeing with the IRS determination, after conducting a financial analysis, in nearly 82 percent of the nonstreamlined installment agreements entered into by the IRS from October 2016 through July 2020.

Over the past four years, the IRS has entered into nearly 10.5 million IAs, and about 70 percent of these agreements have been streamlined. The IRS agrees to streamlined IAs without conducting any analysis of a taxpayer's financial condition. TAS understands that requiring the IRS to conduct a basic analysis of a taxpayer's ability to pay on outstanding federal tax debts will require some additional resources, and the taxpayer may be slightly inconvenienced by providing financial information to the IRS. Nevertheless, the taxpayer has the right to a fair and just tax system. The Internal Revenue Manual states that allowable living expenses are designed to provide for a taxpayer and his or her family's health and welfare. The IRS's current procedures do not afford this ability to many taxpayers entering into streamlines IAs each year.

TAS agrees that the IRS offers other collection alternatives to taxpayers who cannot afford to pay, such as temporary delays in collection activity or offers in compromise. Yet, these alternatives generally require the IRS to conduct a financial analysis. Furthermore, taxpayers may not be knowledgeable of these alternatives or may be afraid to inquire about them. Therefore, TAS believes that the IRS should identify taxpayers who do not have the apparent ability to make payments on their outstanding federal tax obligations and be required to verify their ability to pay on these delinquencies while also affording basic living expenses. TAS looks forward to continuing to partner with IRS to develop methods to ensure that taxpayers can afford streamlined IAs, without unduly burdening them or the IRS.