

Taxpayer Advocate Report to Congress

Cross References

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National Taxpayer Advocate Nina E. Olson released her mid-year report to Congress that identifies the priority issues the Taxpayer Advocate Service (TAS) will address during the upcoming fiscal year, including the IRS' long-term strategic planning, tax-related identity theft and administration of the Patient Protection and Affordable Care Act (ACA), and presents highlights of the recently concluded filing season.

Overview of the Filing Season

The report says the IRS ran a generally successful filing season under difficult circumstances. "With funding down about 17% on an inflation-adjusted basis since FY 2010, and with the IRS having had to implement large portions of the ACA and the Foreign Account Tax Compliance Act (FATCA) this year without any supplemental funding, sharp declines in taxpayer service were inevitable," Olson wrote. Likening the 2015 filing season to "A Tale of Two Cities," however, the report says: "For the majority of taxpayers who filed their returns and did not require IRS assistance, the filing season was generally successful. For the segment of taxpayers who required help from the IRS, the filing season was by far the worst in memory."

The report notes the following: During the filing season, the IRS processed 126.1 million individual tax returns (compared with 125.6 million last year) and issued 91.8 million refunds (compared with 94.8 million last year). The average refund amount was \$2,711 (compared with \$2,686 last year).

- The IRS answered only 37% of taxpayer calls routed to customer service representatives overall, and the hold time for taxpayers who got through averaged 23 minutes. This level of service represents a sharp drop-off from the 2014 filing season, when the IRS answered 71% of its calls and hold times averaged about 14 minutes.
- The IRS answered only 39% of calls from taxpayers seeking assistance from TAS on the National Taxpayer Advocate (NTA) Toll-Free hotline, and hold times averaged 19 minutes. TAS serves as the IRS' "safety net" for taxpayers who are experiencing a financial or systemic hardship as a result of IRS action or inaction.
- The IRS answered only 17% of calls from taxpayers who called after being notified that their tax returns had been blocked by the Taxpayer Protection Program (TPP) on suspicion of identity theft, and the hold times averaged about 28 minutes. In three consecutive weeks during the filing season, the IRS answered fewer than 10% of these calls.
- The IRS answered only 45% of calls from practitioners who called the IRS on the Practitioner Priority Service line, and hold times averaged 45 minutes.

- The number of “courtesy disconnects” received by taxpayers calling the IRS skyrocketed from about 544,000 in 2014 to about 8.8 million this filing season, an increase of more than 1,500%. The term “courtesy disconnect” is used when the IRS essentially hangs up on a taxpayer because its switchboard is overloaded and cannot handle additional calls.
- The decline in telephone performance can be attributed largely to three factors: the number of taxpayer calls routed to telephone assistors increased by 41%, the number of calls answered by telephone assistors decreased by 26%, and the average call duration increased by 10%.
- The IRS sharply restricted the availability of paper copies of forms and publications, imposing burden on taxpayers without internet access or online literacy. The IRS’ own Taxpayer Assistance Centers (TACs) and its Tax Form Outlet Partners such as libraries and post offices did not receive forms until February 28, almost halfway through the filing season. Once a TAC ran out of forms or publications, it could not order more.

Olson wrote that the decline in taxpayer service imposes increased compliance burdens on taxpayers and may lead to erosion in taxpayer trust. “For a tax system that relies on voluntary self-assessment by its taxpayers, none of this bodes well,” she wrote. “In fact, there is a real risk that the inability of taxpayers to obtain assistance from the government, and their consequent frustration, will lead to less voluntary compliance and more enforced compliance.”

Long-Term IRS Strategic Planning

The report attributes the decline in taxpayer service levels to the reduction in IRS funding and reiterates the Advocate’s longstanding view that the IRS requires additional funding to meet taxpayer service needs. However, Olson wrote, “temporary periods of limited funding can have the salutary effect of causing an organization to rethink its mission and allocate its resources more effectively.”

Olson commends the IRS for undertaking development of a new concept of operations (CONOPS) that aims to establish a vision for where the IRS should be in five years. However, she says the foundational principles on which the CONOPs are based are critical to success and expresses concern about two aspects of those principles.

First, Olson expresses concern that the IRS continues to view itself primarily as an enforcement agency, with taxpayer service receiving less emphasis. For example, the IRS Enforcement budget is more than double the Taxpayer Services budget, and even that comparison understates the disparity because much of the Taxpayer Services budget is allocated to tax return processing, which most taxpayers would not view as a service.

“It should be emphasized that more than 98% of all tax revenue collected by the IRS is paid voluntarily and timely. Less than two percent is collected through enforcement action,” the report says. “Thus, increasing enforced collection would be a hollow victory if voluntary compliance declines because of decreasing taxpayer service and the attendant loss of good will.”

The report says the IRS develops its policies largely around the relatively small portion of the taxpayer population that is unwilling to comply with the tax laws. “This focus has all sorts of consequences for the vast majority of taxpayers who are willing to comply, not

the least of which is that they bear an increased burden in navigating processes designed for evaders,” Olson wrote. “That is unwise, counterproductive, and expensive.” She urges the IRS in developing its long-term plans to place primary emphasis on meeting “the needs of the overwhelming majority of taxpayers who are trying to comply with the tax laws.”

Second, Olson expresses concern that the IRS is contemplating plans that would replace traditional IRS employee-to-taxpayer interaction with online services and expanded use of third parties such as preparers, tax professionals, and even software packages, to serve as the taxpayers’ interface with the IRS. She says that expanded availability of online services will provide significant benefits in many areas, but “it is wishful thinking, if not foolhardy, to expect taxpayers to rely on computer-driven systems for resolution of tax problems that, if not resolved fully, could lead to devastating financial consequences.”

She continued: “Taxpayers, and their representatives, need the ability to talk with IRS employees, explain their circumstances, and make sure that the IRS understands their position. The IRS should want to talk with these taxpayers, because each conversation provides an opportunity for it to understand the taxpayer’s facts and circumstances, recognize a situation that presents a different issue, educate the taxpayer about what is required for full compliance, and provide a full resolution to the taxpayer’s problem.”

The report cites the recent unauthorized access to tax information through the IRS’ “Get Transcript” application as an example of the risks of automation. While TAS itself has recommended the IRS accelerate efforts to give taxpayers online access to their accounts, Olson wrote, “The ‘Get Transcript’ incident serves as an important reminder that where data security must be balanced against convenience and budget savings, data security must be paramount.” She said that “all existing plans must be double-checked and triple-checked before implementation to ensure that every reasonable data security precaution has been considered.”

Olson views the IRS’ attempt to define its vision through the CONOPS as potentially transformative for taxpayers. For that reason, she recommends that after the IRS completes a draft of the CONOPS, it make the draft CONOPS public and solicit taxpayer comments before finalizing them. “This is the taxpayers’ tax system, after all, and taxpayers have the right to know what the IRS is planning for them,” she said.

Assisting Victims of Identity Theft-Related Refund Fraud

In recent years, taxpayers (and the IRS) have been victimized by identity thieves who use stolen identity information to file fraudulent returns to try to obtain refunds. As the problem has grown worse and the IRS has understandably implemented more filters to identify questionable returns, an increasing number of taxpayers have been affected and have faced significant delays in receiving their refunds.

There are two circumstances under which taxpayers may be affected. First, if an identity thief has filed a false return on which the IRS has paid a refund, the IRS will automatically freeze the return later filed by the legitimate taxpayer. A recent TAS study showed that the IRS takes about six months to resolve these cases and pay out the legitimate

taxpayer's refund. The IRS and TAS continue to see large numbers of these cases. In each of calendar years 2013 and 2014, the IRS received about 730,000 identity theft cases with taxpayer impact, and over the last three fiscal years, TAS has received an average of about 52,000 identity theft cases a year.

Second, the IRS runs most returns claiming a refund through certain filters to identify suspicious returns. When it identifies a return as suspicious, the IRS suspends the processing of the return and issues a notice requiring the taxpayer to authenticate his or her identity. During the 2015 filing season, the IRS' Taxpayer Protection Program (TPP) filters stopped more than twice as many questionable returns as in the prior year. Specifically, as of April 23, 2015, the TPP stopped 1,558,874 returns as compared with 764,439 at a similar point in 2014, an increase of 104%. About one-third of the returns stopped by the TPP turned out to come from legitimate filers, and at least for the largest segment of the TPP inventory, this false positive rate is up substantially from the 2014 filing season. Thus, more than 600,000 taxpayers who filed legitimate returns had their returns frozen as suspicious and had to take additional steps to receive their refunds.

During the filing season alone, the IRS received about 1.6 million taxpayer calls on its Identity Protection Specialized Unit (IPSU) telephone line. The level of service was about 54% and the average hold time was about 25 minutes. It also received about 2.9 million taxpayer calls on its TPP telephone line. As noted above, the level of service was 17% for the TPP line, and the average hold time was about 28 minutes.

The report expresses concern that the IRS is not doing enough to assist identity theft victims and reiterates the National Taxpayer Advocate's longstanding recommendation that the IRS assign a single employee to coordinate complex identity theft cases. "Without a single employee with whom to work, identity theft victims often have to call the IRS multiple times and talk with multiple employees about different aspects of their case," the report says. "Equally important, no one employee is held accountable for the resolution of the case. Thus, affected taxpayers often feel like they are victimized a second time by the IRS' processes."

The report says a primary focus for TAS during the upcoming year will be to recommend improvements and alternative approaches to reduce the time it takes to achieve complete and accurate resolution of identity theft cases from the victim's perspective.

Affordable Care Act

The report says the most significant new challenge the IRS faced during the 2015 filing season was the processing of tax returns reflecting two central provisions of the ACA – the Premium Tax Credit (PTC) and the Individual Shared Responsibility Payment (ISRP). Overall, the report credits the IRS with doing a commendable job implementing those provisions, including by developing or updating information technology systems, issuing guidance, and working with other federal agencies.

On tax returns processed through the end of April, taxpayers filed about 2.6 million returns with Form 8962, Premium Tax Credit (PTC), which reflected either the receipt of the Advanced PTC or new PTC claims for 2014. The average amount of PTC claimed per

return was about \$3,000. In addition, taxpayers filed about 6.6 million returns reporting the ISRP, and the average amount reported was about \$190. About 10.7 million taxpayers filed Form 8965, *Health Coverage Exemptions*, claiming exemptions from the health-insurance coverage requirements. The IRS cautions that this data is preliminary and subject to change as it reviews the data, processes additional tax year 2014 returns, and conducts compliance activities.

The report says there were some significant glitches that occurred during the filing season, but most were not attributable to IRS error. The most significant was the Center for Medicare and Medicaid Services' issuance of erroneous Forms 1095-A, *Health Insurance Marketplace Statement*, to about 800,000 individuals who had purchased health insurance from the federal Exchange. The Treasury Department addressed the mistake by issuing taxpayer-favorable guidance informing taxpayers who had already filed returns based on the incorrect information that they did not need to file amended returns and pledging that the IRS would not pursue the collection of any additional tax based on the updated information in the corrected forms. The IRS answered about 68% of taxpayer telephone calls on ACA issues that were routed to telephone assistants, which far exceeded the overall average on its customer service lines of about 37%.

As a result of IRS data sampling and additional analysis conducted by TAS Research, it was discovered that more than 300,000 taxpayers overpaid the ISRP on tax returns processed through the end of April, the report says. Most of those taxpayers did not owe the ISRP because they were eligible for an exemption due to their low incomes. The report says the average ISRP overpayment was a little over \$110 per return. The National Taxpayer Advocate has recommended that the IRS issue refunds to the affected taxpayers without requiring them to file amended returns. Since the majority of taxpayers use paid tax return preparers, most would probably spend more than the roughly \$110 average overpayment amount in preparer fees if amended returns are required. At the time the report was finalized, the IRS had not made a decision.

The report says a primary ACA focus for TAS during the upcoming year will be to train its Case Advocates to better assist taxpayers requiring assistance, notably on ACA collection activities and the Employer Shared Responsibility Payment provision. TAS will also continue to participate on internal IRS working groups to present a taxpayer perspective on ACA issues and raise concerns it identifies through its casework and other sources.

Other Issues Covered in Report

The National Taxpayer Advocate's FY 2016 Objectives Report to Congress also identifies nine other areas of focus for the upcoming year, describes TAS's efforts to improve its advocacy for and service to taxpayers, summarizes pending TAS research initiatives, and provides an update on TAS's efforts to implement an integrated technology system.

Volume 2 of the report contains the IRS' responses to the administrative recommendations the National Taxpayer Advocate made in her 2014 Annual Report to Congress, along with additional TAS comments. Overall, the report made 93 administrative recommendations. The IRS says it has implemented, is implementing, or will implement 45 of the recommendations, although its agreement to do so is contingent on resources in some cases.